

Vanuatu Land Program

Program Design Document

20 February 2009

Acronyms

Acronym	Full Title
AusAID	Australian Agency for International Development
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CRP	Comprehensive Reform Program
DoL	Department of Lands
ERG	Effectiveness Review Group
IISD	International Institute for Sustainable Development
JICA	Japan International Cooperation Agency
LSF	Land Sector Framework
MTSF	Medium-term Strategic Framework
NLSC	National Land Steering Committee
NLS	National Land Summit
NZAID	New Zealand Agency for International Development
PAA	Policy and Action Agenda
PLP	Pacific Land Program
QA	Quality Assurance
UN ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNDP	United Nations Development Program
VKS	Vanuatu Cultural Centre
VLGC	Vanuatu Land Governance Committee
VLUPP	Vanuatu Land Use Planning Project
VNCW	Vanuatu National Council of Women
VSTLRI	Vanuatu Short-term Land Reform Initiatives

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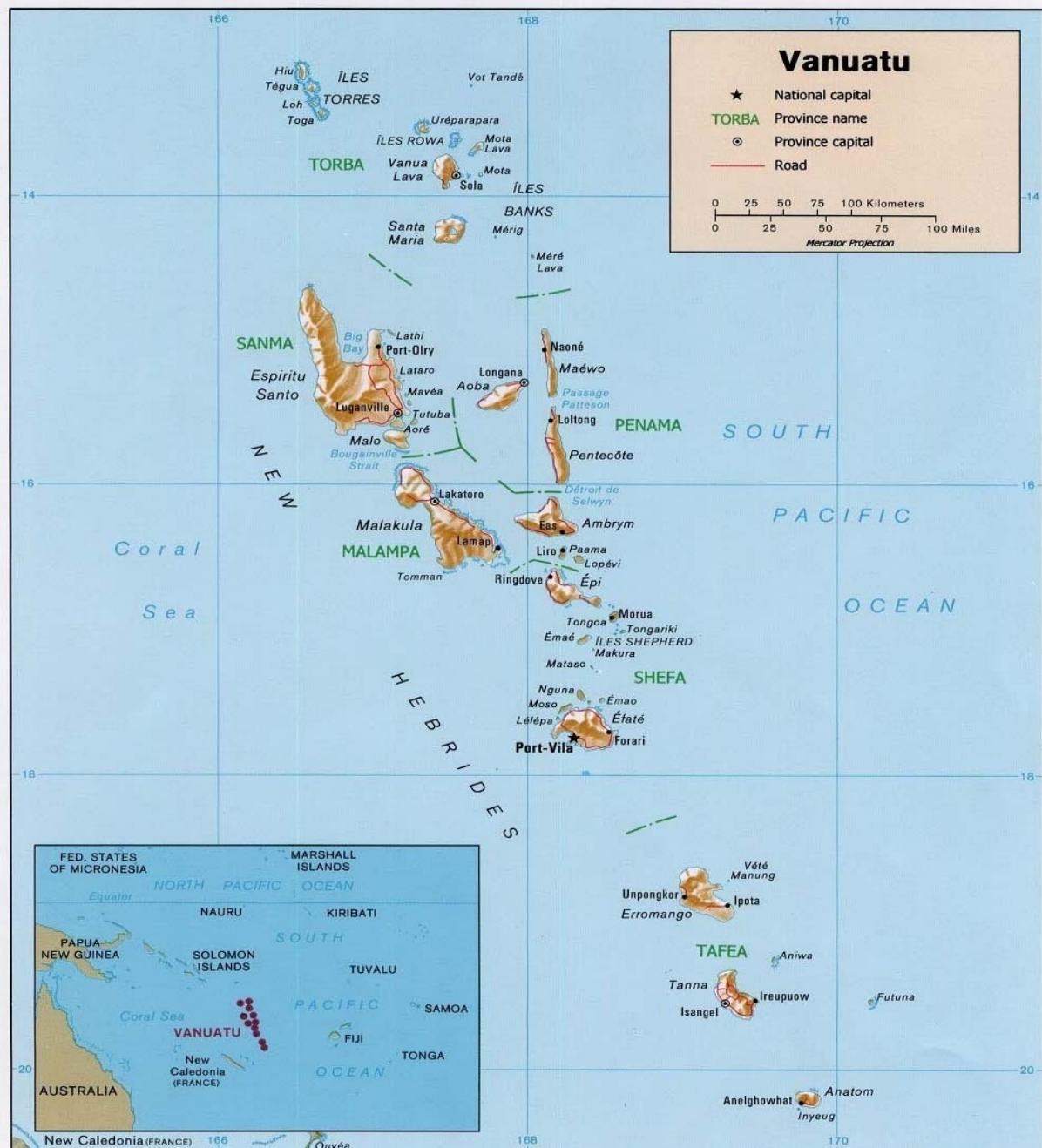
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Map of Vanuatu¹



Terminology:

The term “customary landholder” is used throughout the document to denote customary land owners, users and other ni-Vanuatu who have a customary interest in an area of land or its natural resources.

¹ http://www.lib.utexas.edu/maps/australia/vanuatu_rel98.jpg

Executive Summary

In response to the Vanuatu National Land Summit held in 2006, AusAID has agreed to provide assistance to the country's land sector. This is in line with Australia's broader initiative to support land reform in the Pacific under its Pacific Land Program. Proposed assistance is in full accord with the Constitution which enshrines the primacy of customary ownership. It also is in keeping with the Vanuatu Government's Comprehensive Reform Program and Policy and Action Agenda.

Government coordination of long term reform will be guided by a Land Sector Framework.

Australian, as well as other donor country assistance, is guided by this framework. Oversight of the framework will occur through a multi-stakeholder Vanuatu Land Governance Committee.

Prior to this design AusAID completed a significant review of the current situation and past assistance. In addition a series of short term initiatives have been undertaken. This design outlines the foundation for a longer term partnership and was approved for implementation in January 2008.

The design summarises the current status of the land sector in Vanuatu and gives particular attention to the complexities of customary tenure and the associated uncertainties associated with customary authority. Analysis shows however that current policy and legislation do not effectively embody the principles and spirit of the Constitution in formal law, and thus insecurity of customary tenure continues to this day.

Currently land development is driven by the needs of Government (for public land) and demand by international investors for residential or tourist development. There has been little traction as yet by ni-Vanuatu to 'kick-start' home grown development. Customary practices have interfaced poorly with the cash and market economy, and the current development trends are placing considerable pressure on customary land surrounding the major urban areas. In some cases there is clear evidence that traditional systems are being undermined by conflicting claims or exploited by unscrupulous individuals. Generally it is the less powerful, less vocal and more vulnerable segments of the community that suffer most. Women and youth are often neither consulted nor recognised in formal lease agreements. This has inevitably led to significant social tensions and, should the situation escalate or even continue as it is, there is the strong possibility of future conflict. It is clear in the long term that the impacts of current practice will harm both local communities and the country's development.

The limited Government services available are often ineffectively and inefficiently delivered. For example, compliance with lease negotiation requirements is poorly enforced and lease registration faces a huge backlog. Attention to these issues is seen as priority for any assistance. In addition, allegations of corruption are common and transparent procedures are needed to minimise risk and sanction those who flagrantly abuse the system.

Lessons from previous public sector reform show the benefit of working with individuals that champion change - be they in Government, the community, civil society, or private sector groups. There is also clear evidence that broad-based awareness and advocacy is needed to inform the debate and galvanise political will.

Based on the analysis, key elements of the assistance will include:

1. Support to customary decision-making;
2. Respect for and clarification of *kastom*;
3. Multi-stakeholder participation and ownership;
4. Effective links with dispute mediation and conflict resolution;
5. Clear and transparent enforcement of current formal laws related to lease agreements;
6. Improvement in basic Government services and enforcement related to land use;
7. Careful harmonisation of support to match absorptive capacity; and
8. Studies that establish a foundation for future policy and legislative reform.

The design proposes a Program of assistance with the following Goal:

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

This will be delivered through three objectives:

Objective 1: Informed Collective Decisions by Customary Landholders

This objective ensures that communities have the right and support to make informed collective decisions on the use of their customary land based on *kastom*, delivering benefits not just to themselves, but to future generations.

Key processes and partnerships for implementation include:

1. **Improve the customary governance of land by the Malvatumauri.** A National Kastom Land Office will be established to strengthen the Malvatumauri capacity to oversee, improve and support customary decision-making at the national, island and area level. The Program will support the Malvatumauri to manage these activities;
2. **Improve stakeholder and public understanding and awareness of customary land practices** (including gender and relational land interests). This will include three elements: i) a Customary Land Study and Research Grant Fund; ii) a Public Awareness and Information Program; and iii) gender mainstreaming within the Malvatumauri and other customary groups. The Program will support the Vanuatu Cultural Centre to manage these activities; and
3. **Improve decision-making by customary landholders.** The Program will assess and then implement a network of local Kastom Focal Points (KFP) to facilitate the delivery of information, referral and networking services that support decision-making on customary land at the local level. The agreed model will be initiated by the Program after broad consultation. Over the life of the Program, responsibility will be transferred to an agreed national body.

Objective 2: Participatory Land Governance

This objective recognises that land governance is not the sole responsibility of Government. The ongoing sustainable management of land depends on the fair dealings and diligence of all stakeholders, including the community.

Key processes and partnerships for implementation include:

1. **Support the effective and participatory sector wide governance of land.** The Program will support the Government to manage and monitor the national Land Sector Framework. The

Program will support the establishment, strengthening and operation of the multi-stakeholder Vanuatu Land Governance Committee (VLGC);

2. **Establish and/or improve participatory, sustainable mechanisms that facilitate regional and local governance of land.** Under the guidance of the VLGC, the Program will work with local Government, customary leaders, civil society and other stakeholders at the sub-national level; and
3. **Improve the participatory mechanisms that facilitate formal dealings in land.** In particular the Program will establish or improve the participatory yet sustainable processes needed to negotiate the open, accountable and transparent processes for leases on customary land (be they for public or private sector development). The Program will support the Department of Lands to identify and establish key processes, governance structures and oversight mechanisms.

Objective 3: Effective and Enabling Services

This objective delivers key services that underpin the two other objectives and will be delivered through a range of groups including Government, civil society and the private sector.

Key processes and partnerships for implementation include:

1. **Establish a functioning Land Registry and Information Service.** This will eradicate the land lease registration backlog and establish a land lease and land parcel information service. The Program will support the Department of Lands to manage this activity;
2. **Establish an effective land lease and development planning, assessment, permitting and enforcement service.** The Program will support the Department of Lands (and other regulatory agencies) to establish an integrated development planning service which supports zoning and ensures compliance; and
3. **Deliver a national land awareness, knowledge and gender mainstreaming campaign.** The Program will support the Department of Lands to manage this activity; and
4. **Demonstrate effective organisational models and service delivery arrangements.** After Year 3, the Program will support the Department of Lands to assess improved, appropriate and sustainable organisational roles and responsibilities for implementation.

The Program will be the primary mechanism that addresses 12 of the 20 National Land Summit Resolutions and will significantly contribute to a further seven. Australia's assistance will be structured through a program approach. This allows for flexible interventions, with delivery mechanisms that evolve over time. This first five year phase of assistance will establish the foundations for longer term partnerships. It is expected that future phases of the Program could:

1. Sustain achievements and broaden engagement in customary land, participatory governance and enabling services;
2. Begin a process of legislative reform;
3. Undertake more fundamental institutional reform within the Department of Lands; and
4. Improve service delivery in other areas of the Department of Lands (e.g. revenue generation).

The Program will be implemented by a Implementation Service Provider with the Program Office based within the Department of Lands. Oversight of the Program will rest with a Program

Coordinating Committee consisting of a working group of the new Vanuatu Land Governance Committee along with appropriate AusAID representation. In addition it is expected that the Pacific Land Program will establish an Effectiveness Review Group that will provide advice and guidance to this Program as well as those in other Pacific countries. The Program team will include a range of international and national advisers, supplemented by a Consultant Pool that preferentially targets national or Pacific regional professional support. The Program will be implemented over five years, commencing later in 2009. The estimated cost of the Program is A\$13.9m.

The design includes a draft Monitoring and Evaluation Framework, the intention being that it undergoes further development in partnership with the key Program stakeholders during Program inception. The Program will commence with a six month inception period during which all staff appointments are to be completed, project offices established and extensive stakeholder discussions commenced. Additional inception activities will include:

- a) a final review of the logframe to ensure that wording aligns with the final Land Sector Framework expected to be approved before implementation begins;
- b) finalisation of the Program M&E Framework and harmonisation of M&E approaches with those of the Land Sector Framework;
- c) a Peace and Conflict Analysis;
- d) finalisation of a Gender Strategy for the Program; and
- e) completion of Work Plan for the first full financial year of the Program.

Throughout implementation the Program will review and assess the capacity of partners and the sustainability of initiatives undertaken.

The Program will also develop a Risk Management Plan that outlines action to mitigate key implementation and contextual risks. These include:

- a) Capacity of Government agencies and shared roles;
- b) Land related conflict;
- c) Sustainability and incentives for capacity building;
- d) Harmonisation of inputs and support across the land sector;
- e) Acceptance of donor involvement in customary land; and
- f) Motivation for change and political will.

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Introduction

AusAID is currently providing support to four countries in the Pacific region under a new Australian Government initiative called the Pacific Land Program (PLP)². In the case of Vanuatu, support aims to address the resolutions of the multi-stakeholder Vanuatu National Land Summit held in September 2006 which identified priorities for action in the country's land sector. AusAID commenced interim assistance in early 2008, funding eight short-term activities under the twelve-month Vanuatu Short-term Land Reform Initiatives (VSTLRI)³. This current design has also been funded as one activity under the VSTLRI.

The design process commenced in June 2008 with the preparation of a Concept Document⁴. On 12 August 2008, AusAID peer reviewed the concept and recommended that the design proceed, and the main design mission was undertaken from 15 to 26 September 2008. The design team included strong involvement from the Government of Vanuatu, the Vanuatu Cultural Centre and AusAID⁵. The mission commenced with a major stakeholder workshop on 16 September 2008, followed by a series of further workshops with key target groups (e.g. Port Vila and Efate Council of Chiefs; the Vanuatu National Council of Women; the private sector; and land-related Government agencies). In addition, five field trips were undertaken to various islands (Espiritu Santo, Malakula, Efate, Nguna and Tanna), and numerous meetings were held with other individuals and groups.

The design mission was timed to coincide with a NZAID mission to design a program of support to the Customary Lands Tribunal and the improvement of information technology services within the Department of Lands. Consequently, members of the NZAID design team attended many of the workshops, and extensive discussions were held between the two teams to ensure synergy.

A draft Program Design Document was submitted to AusAID and Vanuatu partners in mid October who then provided initial feedback on the design. A final Draft Design was submitted on 31 October 2008 for AusAID's formal Peer Review process which occurred on 8 December 2008. The Peer Review completed a Quality at Entry assessment which approved the design but asked the Design Team to respond to a number of Peer Review comments. A Final Design Document was submitted to AusAID on 13 February 2009.

This Design Document firstly provides an analysis of important land issues in Vanuatu, along with the rationale for Australian support to the sector (Section 1). Secondly, it describes the goal and strategic outcomes of the Land Program (Section 2). Finally, it examines the management and governance arrangements, along with key risks (Section 3).

² The Pacific Land Program is a four year Australian Government budget initiative running from July 2008 to June 2012.

³ VSTLRI implementation is managed by GHD Hassall.

⁴ Swete Kelly, D.E., Larden, D., and Lyons, K. (2008). *Concept Document for Future Australian Assistance to Land Reform in Vanuatu*, AusAID Port Vila, July 2008.

⁵ The full design team included: Russell Nari (Director General, Department of Lands); Joel Simo (Vanuatu Cultural Centre); Anna Naupa (AusAID); William Ganileo (Department of Lands); David Swete Kelly (Design Program Director); Doug Larden (Land Specialist); Ken Lyons (Land Specialist and Technical Director of VSTLRI); Andy Lynch (Gender Specialist) and Sara Webb (M&E Specialist).

1 Analysis and Strategic Context

1.1 Country and Sector Issues

Vanuatu is a small Pacific island country with a population of about 230,000⁶ dispersed over 65 of the archipelago's 83 islands. The capital, Port Vila, has a population of only 41,050. With such a small and dispersed population, Government and civic organisations have very modest influence outside the towns. Furthermore, communication and inter-island trade is limited. Hence any donor intervention must plan carefully to ensure that its scope and scale match the modest capacity of potential partner agencies, while also ensuring that it integrates well with current Government programs.

1.1.1 Custom Tenure

At Independence from the Anglo-French Condominium Government in 1980, the land in Vanuatu was formally restored to the customary landholders. The new Constitution proclaimed: *All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants*. It further proclaimed that the rules of *kastom* form the basis of land ownership and use in Vanuatu⁷. Under *kastom*⁸, individual, family and clan identity is intrinsically linked to the land. As such, land is regarded not just as a physical entity, but is culturally linked with heritage, power, spirituality, and custodianship. Hence the exchange of rights to land is central to *kastom*, ensuring that harmony, authority, relationship networks and social responsibility are maintained and mediated both within and between clans.

Vanuatu has over 115 cultures and 106 languages⁹, and hence there is no single, universally acceptable form of customary practice. In addition, *kastom* practices are dynamic, evolving over time. As a result there are a variety of customary systems of land use and ownership, very few of which have been documented, and only rare cases are legally codified¹⁰. Hence, despite the legal fact that *all land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants*, the rights to any particular piece of land are often not easily identifiable, but rather are contingent upon oral histories, 'memory culture', complex local categories, and varying inheritance practices (which in some cases can disadvantage women¹¹). Rights have also been further blurred by ongoing development. Clustering of the population into villages, plantation communities and towns has been as common in Vanuatu as elsewhere, and in consequence many customary landholders no longer live within their traditional boundaries or even with their community. Because of this, boundaries and rights have inevitably become less certain over time.

⁶ National Statistics Office. (2008). Vanuatu Statistics Pocket Book. Ministry of Finance and Economic Management & Economic Management, p.2.

⁷ Article 73 and 74 of the Constitution

⁸ Traditional norms of behaviour, values and relational structures

⁹ Lynch, J. & Crowley, T. (2001). Languages of Vanuatu: A new survey and bibliography. Canberra: Pacific Linguistics

¹⁰ One example is the Efate Vaturisu Customary Land Law – but even this case has been criticised for the ambiguous reflection of traditional women's rights.

¹¹ Anna Naupa and Joel Simo (2007) in their study of *Matrilineal Land Tenure in Vanuatu* conclude that relevant Government agencies, civil society organisations and communities need to ensure that women participate in all decision-making about land in the interests of future stability and land security.

Customary land dealings largely revolve around primary (ownership) rights and secondary (usufruct) rights. Ownership rights can be passed on either matrilineally or patrilineally, but by and large are vested in men, whereas usufruct rights are held by both women and men. Usufruct rights may include permission for access purposes, as well as for cropping, collection of fuel or food, hunting, fishing or habitation. Within a single community, therefore, there can be a number of distinctly different, unrelated and potentially conflicting forms of interest in the same area of land, each being pertinent to a different sector of that community – men, women, a particular family, the clan as a whole, or some other specific alliance or association. While the Constitution recognises that *kastom* rules apply to customary land dealings, the lack of formal rules leads to ongoing disputes and lack of security (see Section 1.1.3). In the absence of formal legal clarity, ongoing disputes over ownership, boundaries, and use of the land vitally depend on *kastom* chiefs and *kastom* law to clarify any conflicting local practices. Despite the dynamic, diverse and often uncertain nature of *kastom* laws, beliefs and practices, as well as the colonial and religious influences upon it, *kastom* retains wide respect and authority across Vanuatu society. Indeed, it is almost universally regarded as the core of national identity¹².

1.1.2 Custom Authority

The peak organisation providing advice to Government on *kastom* values and practices in Vanuatu is the 22 member Malvatumauri (National Council of Chiefs), this being technically supported by the Vanuatu Cultural Centre. While the Constitution is unclear on how the customary owners or the rules of *kastom* are to be determined, it does stipulate that the Parliament must consult the Malvatumauri on all matters related to land. Their authority however is frequently bypassed. The subtlety and complexity of *kastom* practices was reflected in a workshop of almost fifty chiefs from Port Vila and Efate held in September 2008. This identified that around 80 percent of the decisions they make relate to tenure of customary land (ownership, boundaries and use). Yet a fundamental issue confronting all of these decisions has been a lack of clarity on customary authority and leadership.

Traditionally, leadership was achieved through a combination of ritual, economic and political achievement, and personal qualities. Hence a position of leadership was gained through what, at least to outsiders, appeared to be a rather indefinable process, although it was one that was highly dependent on community support¹³. Furthermore, power was frequently divided among several men, rather than concentrated in a single chief¹⁴. Yet the colonial Condominium Government and Christian missionaries found these subtleties difficult to deal with, usually preferring to cut through the complexities by establishing single leaders of their own making.

Nowadays authority is exercised by a range of chiefs who hold varying sway. These include *kastom* chiefs, led through the Malvatumauri, who are the traditional basis of authority and represent the families, clans and tribes of the ni-Vanuatu. However authority is also wielded by village or community chiefs whose leadership over a cluster of dwellings was established by the former colonial authorities in order to facilitate service delivery and religious proselytising. To further

¹² Milena Stefanova *The Price of Tourism: Land Alienation in Vanuatu* Justice for the Poor Program

¹³ Lissant Bolton, *Chief Willie Bongmatur Maldo and the incorporation of Chiefs into the Vanuatu State* in State, Society and Governance in Melanesia Discussion Paper 99/2.

¹⁴ Justin Haccius, World Bank *Justice for the Poor* Program

complicate matters, such villages frequently include families from a range of clans. Finally, chiefly status is also attributed to many religious or political leaders.

It is understandable then that many uncertainties arise from this diffusion and lack of clarity of traditional leadership structures and customary authority. Of particular concern is that the legal system accepts the legal status of a chief to sign official documents on behalf of their community (such as land leases), despite an often significant underlying uncertainty regarding the scope or status of that individual's authority. Currently the legal system does not afford similar status to the customary group as a whole.

1.1.3 National Land Policy and Legislation¹⁵

The Articles drafted in the Constitution clearly establish the primacy of *kastom* and confirm that customary ownership is vested with the ni-Vanuatu. However, the Constitution contains some important ambiguities. It gives little mention to the complexity of different rights to land, and is unclear whether the rights of customary ownership rest with an individual or a group. It also is unclear as to the intended scope of Government responsibilities when dealing in customary land. Notably, the Constitution calls for the Parliament, after consultation with the National Council of Chiefs, to implement a National Land Law that will resolve any uncertainties associated with its three central *kastom* articles (Articles 73, 74 and 75). Unfortunately, since the initial attempts to clarify land policy (e.g. the 1980 Land Policy Communiqué; the Land Reform Regulation; and the Ministerial Statement on Land Policy), no further attempts have been made. In addition, while the Alienated Land Act (1982) and the Land Lease Act (1983) established the basic legislative framework, most legislative reform since then can be largely viewed as adjustments to this basic machinery¹⁶. The 2007 Review of National Land Legislation, Policy and Land Administration notes that:

“Such changes in policy which did take place were mainly a weakening of the principles laid down at independence, and instead of policy development there was policy decline” (AusAID 2007).

No progress has been made on a more fundamental National Land Law. While inherent ambiguities remain and must eventually be addressed, it is widely agreed that poor or lack of enforcement of basic legislative machinery has led to the significant manipulation of formal land dealings and abuse of power which is occurring today¹⁷. This undermines the Constitutional vision of secure customary tenure.

It is clear from the National Land Summit that stakeholders in Vanuatu want to address these issues. As noted however in the recent *Making Land Work* studies, any further assistance to land policy or legislative reform must:

1. Make tenure security a priority;
2. Work with and not against customary tenure;
3. Actively involve communities and other stakeholders rather than only informing them;

¹⁵ The information in this section is summarised from the 2007 Review of National Land Legislation, Policy and Land Administration sponsored by AusAID.

¹⁶ E.g. Land Acquisition Act 1992, Land Reform (Amendment) Acts (1992 and 2000); Urban Lands Act (1993) Freehold Titles Act (1994); and Strata Titles Act (2000)

¹⁷ This is particularly true to leasing of customary land and the exercise of Ministerial powers (this is discussed further in Section 1.1.6)

4. Be prepared for long time frames to achieve lasting reform;
5. Apply policy only where necessary and adopt simple and sustainable reforms; and
6. Address the needs of users and vulnerable groups, not just owners.

While this design integrates these lessons and sets the foundation for change, it also acknowledges that change must be locally driven and will take time.

1.1.4 Development Issues and Land

Most ni-Vanuatu have access to land through customary systems and this, combined with the richness of the natural resources and social capital, has tended to buffer rural communities from some of the more extreme effects of poverty. At the same time however, the potential of land to nurture economic development in Vanuatu has rarely been realised under customary practices alone. Constraints such as poor inter-island transport, lack of access to credit, poor access to basic services, and limited income-earning opportunities have inhibited people's ability to explore the potential of their land and have resulted, directly or indirectly, in emerging social problems¹⁸. This development stalemate is regarded as a serious concern, and groups such as the Vanuatu Cultural Centre are striving to raise awareness of the need for custom-led development, particularly through their *Kastom Ekonomi* program¹⁹.

Population growth rates in Vanuatu are very high (2.6 percent) and in 2004, 41 percent of people were under 15 years. This demographic profile places a huge strain on education and youth employment – options which are particularly limited on most islands. One consequence is that growth in urban areas and peri-urban villages is occurring at more than twice the national average²⁰. This places further pressures on the land and leads to dissent and conflict when incursions on customary land occur. As a result, informal settlements have been established which lack basic services, pose a serious public health risk, and are a potential source of social instability²¹.

In summary, customary practices appear to have interfaced poorly with the development of the cash and market economy. There is increasing evidence that traditional systems are being severely challenged, undermined or exploited to support conflicting claims over land, the pursuit of inconsistent interests, and the private ambitions of some unscrupulous individuals.

1.1.5 Women and Land

The strength of customary systems is that they have evolved to ensure social security, safety and sustainability in traditional subsistence communities. As such, *kastom* integrates many practices that go some way toward protecting women's rights, albeit through their social relationships with men, either as mothers, children, sisters, nieces, wives, widows or orphans. In addition, *kastom* often provides traditional avenues for women to gain rank within society, permitting them access to,

¹⁸ Urban migration for work, education or escape has led to many absentee landholders. *kastom* processes have been undermined, some people (particularly women) have lost some of their rights, while others (particularly youth) openly challenge the structures and practices of *kastom*.

¹⁹ *Kastom Ekonomi* is part of the Vanuatu Cultural Centre's national awareness campaign promoting the traditional economy that supports over 80 percent of the population of Vanuatu.

²⁰ This may involve the indigenous population in peri-urban villages on their traditional lands, immigrants from other islands living in densely populated urban settlements, immigrants living on agricultural land outside the municipal boundary, including the traditional lands of the peri-urban communities; and expatriates living in coastal housing or gated subdivisions.

²¹ Cox et al., *The Unfinished State: Drivers for Change in Vanuatu*, April 2007.

and participation in, decision-making processes. This is usually limited, however, with most decisions under *kastom* still resting with the males, particularly where the decisions pertain to land management.

In 2007 the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW) reported on Vanuatu's progress against the commitments it has made under the Convention. The Committee was concerned by the persistence of adverse cultural norms, practices and traditions, as well as by openly patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men and their underlying identities. However, this report noted that any change in attitude will need to evolve and will take time.

Aside from the inequalities inherent in traditional systems, there is growing evidence that even the traditional protection of women's interests afforded by *kastom* in Vanuatu is tending to be eroded²², and the management of customary land is becoming even more male-centric than it has been traditionally. This is being driven in part through the sometimes overt, self-interested manipulation of *kastom* in response to issues such as the growing pressures on limited land resources, the increasing commoditisation of land, and - to some extent - external male-centred ideologies²³. In consequence, women are becoming more and more marginalised from the decision-making processes involved in land management. There is clear evidence that many of the decisions now being made are even less socially equitable and transparent than previously (particularly those related to formal land leases – see Section 1.1.6).

Furthermore, legislation alone will not remedy this. In point of fact, studies show that the existing land legislation is gender-neutral. Rather it is the implementation process that has adopted a male bias²⁴, with the concomitant increasing marginalisation of women. For this reason, both the 2006 Vanuatu National Women's Forum and the National Land Summit placed women's access to land on the national agenda (including their continued access to customary land for basic livelihood purposes). There remain to this day, however, no specific gender policies within the Department of Lands. The Vanuatu National Council of Women and other women's groups consider that the Department of Lands, in consultation with the Department of Women's Affairs, should develop a Gender Policy. This should identify specific strategies to manage inequities related to women and land, and adequate resources for its implementation, for example through the appointment of a Gender Focal Point.

Under the 1997 Comprehensive Reform Programme, the Government introduced a Gender Equity Policy comprising nine benchmarks to improve the situation of women. The first of these indicators was an increase in the visibility and meaningful participation of women in decision-making. In his address to the nation, the recently elected Prime Minister and his Government stated that they intend to move forward some of these commitments under the CRP. This Program design has the opportunity to contribute directly to this priority.

All ni-Vanuatu people must appreciate that it is not just a point of justice or privilege that women be allowed to participate in land matters. Improved gender equality has consistently been shown to

²² During this design specific consultations occurred with women and a workshop was held with the Vanuatu National Council of Women. A Gender Analysis and Workshop Outcomes are listed in Annex 1.

²³ See Anna Naupa and Joel Simo's paper on Matrilineal Land Tenure in Vanuatu 2007

²⁴ See Naupa and Simo 2007

improve social cohesion, security and economic opportunity²⁵. In summary, therefore, four key areas need to be addressed. Firstly, women must be given rights to use, own and develop land. Secondly, women must be included in any decision-making regarding land management, and their contributions must be acknowledged and taken into account. Thirdly, women's capacity must be increased, so that they are both aware of their rights and responsibilities, and confident to both express their opinions and advocate for needed improvements. Fourthly, the capacity of Government agencies and chiefs to provide the opportunity and to recognise the significant contribution that women can make must also be improved.

Ni-Vanuatu women are traditionally reluctant to speak in formal gatherings²⁶ and often prefer to exert their influence in more informal social contexts, or in the home. Hence increasing women's involvement in decision-making will only be enabled by all sectors appreciating women's roles as an integral part of *kastom*. It needs to be widely understood and acknowledged that women can bring a perspective on history, lineage, *kastom* practices, social responsibility and sheer common sense that would assist families, communities, islands and the nation itself in any dealings with land.

1.1.6 Formal Land Dealings

At Independence, a leasehold system was introduced to allow existing private users (mainly colonial plantation owners) to maintain access to the lands they had developed. In addition, existing public and freehold titles within Port Vila and Luganville were also protected by the establishment of a relatively secure urban leasehold system.

Under the current law, Government or private investors can negotiate long-term leases with customary owners²⁷ (e.g. 75 year renewable leases). Furthermore, while all land is deemed customary, any leases entered into are also deemed by law to be incontestable; hence once a lease has gone through the formal registration process, there is no legal recourse for a customary owner to rescind the deal, no matter what the circumstances²⁸. The incontestable status of such leasing arrangements is meant to provide protection for the public or private sector to develop land without fear of undue repercussions, yet these arrangements are often 'private' dealings that overlay significant customary disputes. In such circumstances, the only option for a disenfranchised customary land owner or user is to enter into a dispute with the person who signed the lease on his or her behalf, in order to gain a share of whatever proceeds that person has procured. However, there is no way for the disenfranchised to regain any right to the land itself.

In the past, leases for the development of large agricultural holdings or for the provision of land for public needs have been the touchstone of many ongoing disputes across the country. These have paled somewhat, however, when compared to recent land development issues. These days Vanuatu is being heavily promoted as a tourist destination: in 2006 it was voted and promoted as the

²⁵ *Gender Empowerment: an economist's perspective*. Professor Mark McGillivray, Chief Economist, AusAID. Presentation at the Workshop on Gender, Youth and Economic Empowerment in the Pacific, April 2008

²⁶ Vanuatu's adversarial judicial system (including the Customary Land tribunals) compounds the traditional reluctance of women to assert their rights.

²⁷ See Michael Manning and Philip Hughes, 2008, *Acquiring land for public purposes in Papua New Guinea and Vanuatu*, Case Study 12, Vol. 2, *Making Land Work*, Commonwealth of Australia.

²⁸ The law (under the Land Registration Act Section 14 (2) and the Land Leases Act Section 15), along with subsequent court decisions, upholds the validity of a properly registered lease. Any dispute must therefore be between customary parties related to the share of any lease proceeds.

happiest place on earth. It is also heavily promoted as a tax-free retirement and investment location. As a consequence, significant foreign investment has flowed into luxury residential and tourist development. Hence many erstwhile pristine coastal and hilltop vistas (particularly on Efate) have been leased, with some reports claiming more than 80 percent of coastal Efate is now subject to leases. Furthermore in a number of cases these residential subdivisions have taken over beach frontages, enclosed foreshores, and blocked local community access. In other cases, the leased land has remained idle and has not generated the promised development, or it has tied up prime agricultural land for alternative land uses.

The inherent subtleties of *kastom* law, combined with the uncertainty of *kastom* authority, and the lack of recognition of the customary group as a legal entity, has led to many reports of inept, selfish and at times corrupt dealings. Because of the incontestability of leases, there are many perverse incentives for both unscrupulous investors and self-interested sellers to ensure transactions are undertaken quickly, quietly and for cash. Too often, it has been reported that powerful individuals have signed leases without the full, informed and prior consent of all landholders, with the result that benefits are captured only by a few, and not shared equitably. Hence the attraction of short-term cash advantage has resulted in some ni-Vanuatu becoming estranged from their customary land as a consequence of terms and conditions that fail to provide access rights and/or long-term financial return. Moreover the initial selling price of such leases is often well below market rates. Furthermore in some cases, negotiated lease conditions have specified automatic renewal at the end of the term, unless the customary owners are able to provide compensation to the leaseholder for any capital improvements²⁹. In effect this would lead to a perpetual lease with little opportunity to renegotiate conditions.

For their part, land agents and investors have a pragmatic business-like approach to land transactions. While most appreciate the complexity and frequent uncertainty surrounding customary land ownership, like the colonial authorities before them, they do not wish to invest the time, effort or money to unravel such complexities, preferring instead to complete transactions quickly with an identified “chief”. There is currently no legal requirement, regulation, or code of conduct that requires them to ensure that all, or even the correct, customary owners have been identified. Investors claim that development would slow significantly if wider, more open consultations were mandated, as this would generate a plethora of claims and disputes, some of which would undoubtedly be spurious, or have little significance even under *kastom* law³⁰.

This is not to say that mechanisms have not been established in the Constitution to protect customary owners from potentially unscrupulous actions when establishing long-term formal leases. Yet these powers are vested in Government and acted on through the Minister of Lands. The Government (through the Minister) has the duty to protect customary owners from formal dealings that may be prejudicial to the owner, user or national interest³¹. However, the Minister also has the power to facilitate development and circumvent complex and time-consuming disagreements by

²⁹ See *Review of National Land Registration, Policy and Land Administration* report by Lunnay et al. 2007 for a full discussion.

³⁰ It must be argued however that similar development applications in developed countries can take months, if not years, to be approved and often have to go through lengthy and difficult public consultations.

³¹ Land Reform Act: Part V, Section 8 (2) (c).

transacting customary land which is under dispute³². The consequence of all this is that the Minister can appoint “negotiators” to manage the interests of customary owners in formal land dealings³³ but, if disputes arise (as they often do once money is involved), the Minister can then act unilaterally to complete transactions on land. As such, there are no checks and balances in place and there is significant opportunity for conflict of interest, abuse of power, and corrupt practice to arise from this anomaly. In recent years just such significant allegations have been raised. In fact, Resolution 9 of the National Land Summit called for the powers of the Minister over disputed land to be removed. In April 2008 a proposal from the Ministry of Lands to act on this recommendation was denied by the Council of Ministers with the view to restrict rather than remove the powers. A Council Paper to this effect is being prepared for March 2009.

Another unintended outcome of the lease process is that many ni-Vanuatu have now taken out leases on their own land. While customary owners are not entitled to lease land to themselves, they instead arrange for a near relative to lease the land on their behalf. As such, their land is legally protected from being leased to outsiders through any unscrupulous use of power, while the arrangement also provides owners with the certainty of tenure that formal lending institutions are willing to recognise as collateral – both the legal security and formal collateral are features which are not currently enabled through customary ownership. The inevitable and arguably unfortunate consequence of such arrangements is that *kastom* and *kastom* authority are further undermined and eroded.

Whereas Government and lawmakers appreciate that public and private sector investment needs certainty of ongoing tenure, many now believe that the application of the lease system has gone well beyond the original intent, and that the consequences of what seem at times to be unconscionable developments are central to many of the disputes surrounding land in Vanuatu. These developments have already caused considerable pain, frustration and at times conflict. Generally it is the less powerful, less vocal and more vulnerable segments of the community that suffer most. Women, who rarely have ownership rights but who do have usufruct rights, are frequently neither consulted nor even recognised in formal lease agreements, and thus their use rights are often lost. Likewise, the youth are not often consulted regarding the impact of lease arrangements on their futures, resulting in their estrangement from what would otherwise be their inheritance.

It is clear then that, in the absence of any effective policy, the long-term social and economic impacts of current practice are likely to harm both investors and local communities alike. It is worth stressing that disputed lands have inevitably led to significant social tensions³⁴, and that should the situation escalate - or even continue as it is - there is the strong possibility of future conflict.

1.1.7 Government Lease Services

The situation is not helped by the current disarray of the lease records in the Department of Land’s Registry Office. The best information from the Department of Lands indicates that 10,295 leases exist throughout the country. Sixty-seven percent of these leases are in the urban areas of Vila and Luganville. In fact, urban and broader development on the two main islands of Efate and Espiritu

³² Land Reform Act: Part V, Section 8 (2) (b).

³³ Land Reform Act: Part IV, Section 6 (1)

³⁴ Cox et al., *The Unfinished State: Drivers for Change in Vanuatu*, April 2007.

Santo account for 93 percent of all leases in the country (approximately 70 percent are on Efate). The remaining 7 percent are mainly large agricultural leases, spread across all islands, many of which are significantly under-developed. Approximately 2,800 leases (27 percent) are taken out directly on customary land, while the rest are sub-leases of public land (mainly residential and commercial) for which the Government collects a rent.

However, severe problems exist with a backlog of leases awaiting registration within the Department of Lands. An audit in May 2008 showed the backlog accounted for well over 6,000 leases, with approximately 3,500 awaiting registration, and a further 2,500 awaiting finalisation³⁵. Lease approvals are very slow, particularly for residential leases for ni-Vanuatu themselves, which can sometimes take two to four years to establish. In contrast, international investors generally find that their leases take less time. This means that ni-Vanuatu are disadvantaged as banks will not lend until leases are officially registered, and thus the development of leased land by locals is often slowed. As a result, many locals have to take personal loans at higher than mortgage interest rates as an interim measure if they wish to commence residential or commercial development immediately.

The poor record keeping and uncertainty of the lease registration process leads at best to huge operational inefficiencies, and at worst to significant allegations of bribery to facilitate speedier registration, or to other manipulation of the process to satisfy self interest or patronage. Hence clearing the backlog and establishing transparent and efficient processes for lease registration are seen as major priorities.

1.1.8 Corruption in Land Dealings

Formal land dealings and subsequent development involve considerable sums of money and open the opportunity for fraud, corruption and abuse of power. Section 1.1.6 and 1.1.7 have identified some of the areas where corruption may occur including:

1. Intentionally failing to engage all stakeholders in prior informed consultation and decision making;
2. Intentionally breaching clear legislative requirements related to land development specifically those specified under the Strata Title Act; Subdivision or Zoning Policy; and Foreshore Protection Act;
3. Intentionally misrepresenting one's status as a "chief" with authority to represent a community's interests in land dealing;
4. Paying bribes or benefits to individuals or sections of a community to ensure inappropriately quick decisions and the subversion of *kastom* practice;
5. The acceptance or demanding of bribes by Government officials to streamline or circumvent due process; and
6. Inappropriate use of Ministerial power to "resolve" disputes without reverting to due process.

³⁵ This situation was similar when the AusAID Vanuatu Land Use Planning Project (VLUPP) was in operation (see Section 1.4 Previous AusAID Assistance to the Land Sector). A major effort to clear the backlog was made under VLUPP, but has since built up again to even worse levels. Care will be needed to identify the reasons why previous process reform failed to achieve sustainable results.

In addition, the media regularly run stories of those who have allegedly suffered due to abuse of power or other instances of corruption. As well as those cases mentioned above, significant allegations relate to misappropriation of revenue funds, failure to pay prescribed revenues or taxes, and the inappropriate Government compensation for land acquisition (sometimes too much and sometimes too little).

Any program of assistance will at some stage have to deal with the issue of fraud and corruption and ensure effective procedures are in place to minimise risk, sanction those who flagrantly abuse the system, and establish systems and practices that reflect transparency and engender trust. AusAID has a “zero tolerance” policy to corruption and, in conjunction with the Government of Vanuatu has developed and is awaiting endorsement of the draft Australia-Vanuatu Development Anti-corruption Action Plan. An important element of this design will be how it effectively contributes to this Action Plan (see Section 3.8.3).

1.1.9 Commitment, capacity and incentives for change

The National Land Summit clearly demonstrated the huge groundswell of commitment to effect change in land dealings in Vanuatu. The years since the Summit have resulted in small changes that are well below the expectations of all stakeholders. The design noted broad-based frustration with the slow pace of change. Even some of the initial successes of the Summit, such as the limitations placed on Ministerial power, have since been reversed. Many of the stakeholders remain deeply mistrustful of each other, and confidence in the Government’s capacity to effect meaningful reform is low. While there is optimism regarding support from Australia, this is tinged with some suspicion regarding Australia’s motives and concerns about external ‘interference’ from a foreign donor. Added to this is a clear frustration with the long design processes required before implementation can begin. There is also a clear message from Government and communities that assistance must facilitate only and not try to influence the direction of reform. Put simply, change must come from within Vanuatu and be championed by ni-Vanuatu stakeholders.

In this regard, there are clear champions of change within key areas at present, notably in the current leadership of the Vanuatu Cultural Centre, the Malvatumauri and the Department of Lands. There is also passionate advocacy from academe, the churches, women’s groups, the private sector and the media – even though there is sometimes little unity in the views expressed. At the political level, however, there is no clear direction. Much is expected of the new Government, and the appointment to the position of Minister of Lands is being closely monitored. Unfortunately the expectation that the Minister may be able to lead reform is significantly eroded by past experience: in fact, past abuses of Ministerial power have been one source of much of the current frustration.

As such, fragmented and unclear political will is a major risk. The independent completion review of the Vanuatu Public Sector Reform Project³⁶ shows that the lower the level of unified political commitment to reform, the less useful is donor assistance to support reform. However, the review also points out that, even in a ‘non-reform’ environment, assistance is useful if it strengthens the hands of ‘reform champions’. As such, any program focused on land must initially focus on supporting the institutions and individuals that champion change. This should not only include Government but also expand to broader civil society, customary and private sector groups. Lessons

³⁶ AusAID (2006) Vanuatu Public Service Reform Project - Vanuatu Ministry of Finance and Economic Management - Institutional Strengthening Project. Independent Completion Report, June 2006

from previous public sector reform programs/initiatives also show that assistance must support broad-based awareness and advocacy campaigns to ensure debate and support for change is vocalised. Experience shows that if these approaches are effective then, over time, it may often galvanise political will.

Undoubtedly building the capacity of individuals and agencies to champion and sustain change will be challenging. When building capacity within this environment, a 2004 review of capacity building in public finance in the Pacific³⁷ stressed that:

- capacity building will take time;
- work-based learning is an effective means of skill transfer, especially when appropriately supported by local training courses;
- technical fixes or trying to import ‘best-practice’ models, without due regard to service delivery constraints, simply consumes scarce resources;
- capacity building will be ineffective unless it is delivered through local systems; and
- effective workplace incentives are often required so that agencies may retain trained staff.

The review also noted that in Vanuatu in particular, free flow and sharing of information between and within agencies was restricted by the doctrine that ‘information is power’ and required considerable cultural change. This impacted on the sustainability of capacity building efforts as these depend on the self-generating willingness of counterparts who have been trained to pass on their knowledge.

Finally, it is also expected that any team and partners involved in land reform may well become the focal point for frustration. As noted by the 2004 review, any Vanuatu development projects working in areas of national policy debate will attract scrutiny, criticism and controversy. As a result, Program teams and partners can expect stakeholders to express strong, often opposing opinions vigorously and possibly even abusively. The team must understand the options that exist in Vanuatu culture for furthering debate and maintain a certain ‘mental toughness’ to manage such circumstances effectively.

1.2 Vanuatu Land Sector Agenda

The Government of Vanuatu’s response to its broad development challenges is to improve the welfare of its people through the following strategies (Priorities and Action Agenda (PAA) for 2006 – 2015):³⁸

1. Achieve higher and sustainable economic growth to create jobs and raise incomes while conserving resources for future generations;
2. Ensure macro-economic stability to create a stable investment climate; and
3. Raise standards of service delivery, particularly to the rural and outer regions to improve access to basic health and primary education services while lowering costs of internal trade.

³⁷ AusAID (2004). Capacity Building in Public Finance: An evaluation of activities in the South Pacific; Evaluation and Review Series No. 36, September 2004

³⁸ *Priorities and Action Agenda 2006 – 2015: An Educated, Healthy and Wealthy Vanuatu*, Department of Economic and Sector Planning, Ministry of Finance and Economic Management and Economic Management, Government of the Republic of Vanuatu, June 2006.

The main implementation priorities for the PAA are:

1. The promotion of private sector led economic growth, particularly in primary industries and tourism, within an environment of public sector reform, good governance and appropriate regulation; and
4. The resourcing of education and training to ensure a skilled, motivated, gender-balanced labour force.

The country's land asset plays a pivotal role in the achievement of these development objectives and will, ultimately, require policy instruments to ensure a productive and sustainable land sector is created, fair dealings in all land transactions are undertaken and the tenure rights of all landholders are protected.

The central role of land in the social and economic development of Vanuatu has ensured its inclusion as part of the Government's Comprehensive Reform Program (CRP) which was initiated in 1997. The most recent CRP matrix for the period 2004 – 2006 highlighted the need for:

1. Reform of the land law system in order to minimise uncertainty about land tenure and facilitate better land use;
2. Gazettal of the Customary Land Act; and
3. An attractive, safe, healthy and sustainable environment.

The role of land was further emphasised at the *National Summit for Self Reliance and Sustainability* held in July 2005, during which the recommendation was made to stage the *National Land Summit*³⁹, referred to above. Six provincial land summits were held in the lead-up to this National Summit which was held in Port Vila in September 2006, and facilitated by both civil society and the Ministry of Lands. The goal of the Summit was to identify and agree on resolutions which would form the basis of a new land policy for the coming five to ten years.⁴⁰ It secured commitment from, and provided direction to, various stakeholders regarding key issues such as the ownership of customary land, fair dealings in land, lease agreements, physical planning, decentralised service delivery and the role of Government.

This design focuses on the expressed needs of the Government of Vanuatu, building as it does directly upon the 20 resolutions formulated during the Summit. These resolutions highlighted the importance of land as a driver for change in Vanuatu⁴¹, and hence the need to address the related issues of ownership, fair dealings and sustainable development within an effective, fair and sustainable policy framework and regulatory regime.

A document titled *Interim Transitional Strategy and Future Plans to Implement the Resolutions of the National Land Summit 2006* outlined the transitional strategy, while recommending the establishment of a National Land Steering Committee (NLSC) to oversee the implementation of the

³⁹ *Sustainable Land Management and Fair Dealings to Ensure Progress with Equity and Stability* National Land Summit: Final Report, Government of the Republic of Vanuatu, September 2006.

⁴⁰ Twenty resolutions were identified covering: land ownership, fair dealings in land, certificates of negotiation, Ministerial powers, strata titles, land agents, lease rentals and premiums, sustainable development, lease conditions, public access, enforcement, zoning and awareness.

⁴¹ Cox et al., *The Unfinished State: Drivers for Change in Vanuatu*, April 2007.

resolutions⁴². This document received final endorsement by the Council of Ministers in November 2006. Subsequently AusAID supported the 2007 *Review of National Land Legislation, Policy and Land Administration*⁴³ which has since served to guide both short and long-term assistance in the land sector.

1.3 The Pacific Land Program

Recently, the Australian Government has also responded strategically to land concerns across the Pacific, noting how land can be both the basis for sustained economic and social development and a flash point for conflict. In 2006 the Australian Government formulated strategic directions for its aid program over the coming decade. Reformed land tenure and administration arrangements in the Pacific were identified as a fundamental issue that needed to be addressed.

As such, AusAID commenced a Pacific Land Program with the broad aim of promoting growth and stability throughout the region. The program is currently supporting those Pacific nations who wish to improve their land tenure systems within a framework of customary tenure. As such, implementation of this design will be funded through AusAID's Pacific Land Program. The program focuses on the protection of the rights and interests of customary landholders, optimising economic and social development with regard to land, while strengthening tenure security and usage rights for individuals and groups in both rural and urban areas. The first step in this process was the publication of the *Making Land Work* report⁴⁴. This report identified nine key principles for the design and implementation of land reform programs in the Pacific (Table 1). Relevant principles have been incorporated into this design document.

• Make tenure security the priority.	• Adopt simple and sustainable reforms.	• Ensure land policies reflect local needs.
• Intervene in policy reform only if it is necessary.	• Provide safeguards for vulnerable groups.	• Actively involve stakeholders rather than informing them.
• Be prepared for long timeframes to achieve lasting reform.	• Work with and not against customary tenure.	• Balance the interests of landholders.

Table 1: *Making Land Work* Principles

The Pacific Land Program proposes that five major land related initiatives (see Figure 1) are needed to link customary groups and the nation. In a strategic development context, the Pacific Land Program is compatible with the broader objectives of the joint development cooperation strategy between Australia and Vanuatu⁴⁵.

⁴² The NLSC membership comprises representatives from Government, the Malvatumauri (National Council of Chiefs), the Vanuatu Cultural Centre, women's groups, youth groups and the private sector.

⁴³ Lunnay et al., *Review of National Land Legislation, Policy and Land Administration*, Vanuatu, March 2007.

⁴⁴ The *Making Land Work* report is a two volume compendium of contemporary material which looks at the issues of reconciling customary land and development in the Pacific (Vol. 1). It presents sixteen case studies on customary land and development with an emphasis on the lessons learnt (Vol. 2). The *Making Land Work* report was officially launched at a Land Policy Conference in Port Vila, Vanuatu in June 2008.

⁴⁵ The *Australia-Vanuatu Joint Development Cooperation Strategy 2005-2010* outlines three objectives to support the development goal of the Government of Vanuatu. These are: (1) improved governance, (2) raised productive capacity, and (3) improved service delivery.

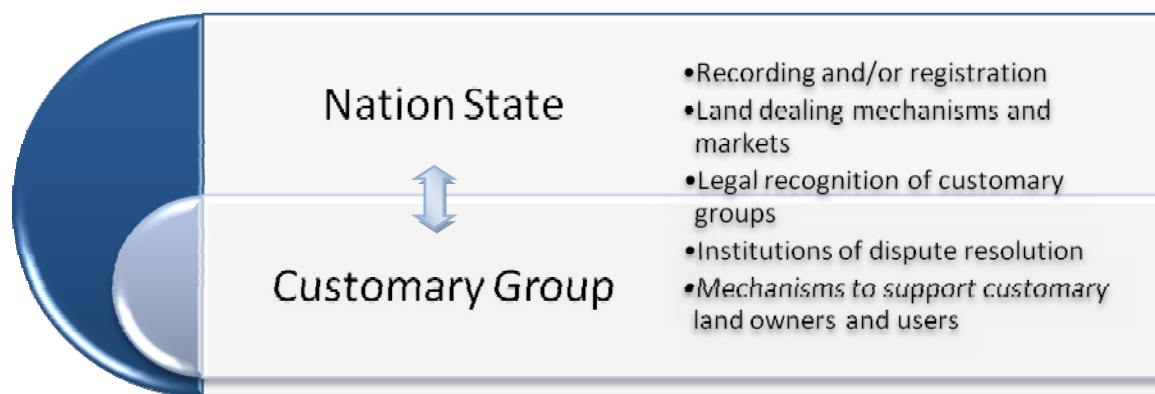


Figure 1: The five land initiatives that link *kastom* and national interests (AusAID Making Land Work 2008)

Moreover the five initiatives of the Pacific Land Program are considered highly relevant, even central to the Vanuatu context. In particular, they clearly align with the land policy initiatives of the Government of Vanuatu, as outlined in the post-Land Summit agenda. Furthermore, they closely conform to the outcomes of the stakeholder discussions held during the design process.

1.4 Previous AusAID Assistance to the Land Sector

1.4.1 Vanuatu Land Use Planning Project (VLUPP)

Prior to the current 12 month Vanuatu Short-term Land Reform Initiatives (VSTLRI), AusAID funded the Vanuatu Land Use Planning Project (VLUPP) between August 1995 and August 2000. VLUPP sought to build the planning capacity of the Government of Vanuatu with regard to the sustainable use of its land resources. Based on a review of the project conducted under VSTLRI, it appears that while it achieved some short-term successes and impact, VLUPP was unable to live up to longer term expectations⁴⁶.

The inability to institutionalise and mainstream land use planning functions within Government and the lack of resources and funding to ensure continuity after the project was completed were major factors in its lack of sustainability over the longer term. The lessons learnt from VLUPP have been incorporated into this design process. The key lessons were:

1. The level of political will and commitment to a land program must be strong if the program is to challenge current inequities. As such, the primary partner agency identified for implementation must be fully engaged in the design and the proposed activities must be aligned with the Government's agenda and policies;
2. Absorptive capacity limitations of participating Government agencies and stakeholder interest groups must be acknowledged. As such, a strong institutional framework, a sound governance system, and appropriate legislation must all be in place;
3. New approaches to land programs must include comprehensive awareness programs to ensure that all stakeholders accept, engage and commit during implementation;

⁴⁶ VLUPP Review Report, VSTLRI, October 2008.

4. Organisational structures and supporting advisory committees established for community-based initiatives must be aligned with traditional community models, and must also be adequately resourced;
5. The scale of implementation must be confined so that objectives do not become too ambitious, with resources dissipated across too many activities and/or diverse geographical areas;
6. Support services to Provincial Governments and local communities cannot be achieved using a national-centric approach. It is essential that these services are clearly specified, properly sustained and included in recurrent budgets; and
7. Greater emphasis on awareness, education and communication campaigns that maximise the learning outcomes for all stakeholders.

1.4.2 Vanuatu Short-term Land Reform Initiatives (VSTLRI)

In the last two years AusAID has provided a range of interim assistance to the National Land Steering Committee (NLSC) to progress the National Land Summit resolutions. Initially AusAID commissioned a Review of National Land Legislation, Policy and Land Administration which was delivered in March 2007. This provided significant analysis of the policy and legislative progress on land since the time of Independence. The review outlined an action plan that could form the basis of longer term Australian assistance and in particular, it specified a number of short-term activities.

This then formed the basis for the significant one-year package of activities already referred to - the Vanuatu Short-Term Land Reform Initiatives (VSTLRI). VSTLRI has provided assistance in the form of a number of activities, including the development of this design process and the review of VLUPP, as already discussed. As of February 2009, plans were well under way for a six month extension to VSTLRI. This interim phase builds on the achievements of the previous 12 months and provides continuity until the planned start-up of the long-term Program.

In addition to this Program design and the review of VLUPP, activities undertaken under VSTLRI include:

Compliance Audit of Land Leases Act: This audit has shown that payment of land rents are in arrears on up to 30 percent of leases, amounting to almost Vatu126m over the last three years alone. It has also noted that about 7 percent of leases include some form of unauthorised land use. More seriously, a significant number of leases also apparently breach one or other important Acts⁴⁷. The study also revealed the dire backlog in lease registrations (discussed earlier in Section 1.1.7 - Government Lease Services), as well as discrepancies between Ministry of Finance and Economic Management and Department of Lands records. Clearly the magnitude of the task to rectify such problems is beyond the current capacity of the Department of Lands, and resources and procedures need to be carefully reviewed. Opportunities identified for further action include:

- Ongoing audits of likely “hot spots” of non-compliance, ensuring checks include compliance with other Acts, not just the Land Lease Act;
- A significant increase in the annual rent and backlog collections;

⁴⁷ e.g. Foreshore Act (1975), Physical Planning Act (1986), Environment Act (2003), and Public Health Act (1998)

- A significant improvement in the quality of processes associated with the approval and issuing of leases, as well as with lease conditions and rent reviews;
- The necessity for both training of Government staff and a community awareness campaign, in order to communicate the main features of any associated Acts, as well as the legal rights and obligations of all parties involved in any leasing arrangements; and
- Development of a long-term improved relationship between the Department of Lands and the Department of Finance, with consideration given to the use of some of the projected increased revenue from rents to fund improved services.

Zoning maps and Development Control Plan for Greater Luganville: VSTLRI also developed a Zoning Map and Development Control Plan within a reasonably short time period for the Municipality and surrounding areas of Luganville. The plans have involved considerable community consultation and, as of February 2009, are awaiting finalisation and gazettal. While the final Zoning Map and Development Control Plan is clearly only as useful as any commitment to enforce it, its preparation has demonstrated significant progress in formalising development planning in Vanuatu and provides an important and valuable model for the future. In particular, it represents an important step in the development of a standard approach to zoning application, submission and checking processes based on the experience gained in Luganville.

Review of Legislation (Strata Title Act; Subdivision Policy; and Foreshore Protection Act): Reviews were conducted of three significant Acts or Policies. While there was a general consensus that the Acts themselves could be improved in certain areas, the study found that these flaws were mostly minor and not the major limitation⁴⁸. Instead, a lack of compliance has caused the most significant concerns – many provisions of the Acts have simply been ignored or forgotten by those submitting, assessing, or approving land development. Suggested actions to remedy this include the introduction of:

- Widespread awareness and regular training;
- Certification of competency to assess and approve compliance;
- The establishment of private certifiers;
- Random quality assurance (QA) checks for all certifiers (private and public); and
- Regular checks for compliance coupled with firm enforcement of the law.

Public Awareness: VSTLRI supported the work of a Public Relations Officer within the Department of Lands to conduct activities aimed at increasing awareness and understanding of land issues nationally. These included audience research, public discussion forums, newspaper articles (e.g. *Graon Toktok*), and radio broadcasts.

1.5 Alignment and Harmony – Donor and National Programs

The Land Summit catalysed the interest of many donors in Vanuatu, including AusAID. As such a number of donor activities are either already under way or have been proposed to the Ministry of Lands (Table 2). Other donors have channelled assistance through other stakeholders, such as support to the Vanuatu Cultural Centre.

⁴⁸ There are however, a few urgent changes to the Strata Act recommended.

Donor	Activity
AusAID	Vanuatu Short-term Land Reform Initiatives (VSTLRI)
	Compliance Audit of Land Leases Act Public Awareness Review of Strata Titles Act Protection of Foreshore Reserves Development of a Land Sector Framework Zoning Map for Luganville Subdivision Controls Review of previous AusAID land sector assistance Support for Malvatumauri National Council of Chiefs Design of future long-term assistance
AusAID	Pacific Land Program – Regional Land Support Unit
NZAID	Proposed assistance to the Customary Land Tribunals
NZAID	Proposed Assistance to the Information Technology Centre in the Department of Lands
UNDP	Assistance to sustainable land management with a focus on land degradation
UN ESCAP	Potential assistance to develop a National Urban Land Policy
World Bank	Ongoing research and potential assistance for a <i>Justice for the Poor</i> Program
World Bank	Potential assistance for hazard mapping

Table 2: Current and proposed assistance to the land sector in Vanuatu

In keeping with the Paris Declaration, harmonisation of roles between these donors will be essential to ensure both a strategic and a complementary approach. Harmonisation is also essential to avoid overwhelming the limited absorptive capacity of public, civil society and private sector agencies in such a small country. It is also important to avoid expending limited resources and capacity in areas not considered to be foundational to ongoing reform.

Importantly, the Government recently requested AusAID (through VSTLRI) to assist in the development of a Land Sector Framework. This framework will provide a roadmap for long-term reform of the land sector in Vanuatu, in addition to being a vehicle for harmonising donor engagement. The draft Land Sector Framework includes five thematic areas:

1. Enhancing the governance of land;
2. Engaging customary groups;
3. Improving the delivery of land services;
4. Creating a productive and sustainable sector; and
5. Ensuring access and tenure security for all groups.

The Land Sector Framework also outlines a multi-stakeholder governance structure for lands. This structure includes a governance committee intended to eventually take on the roles currently being filled by the National Land Steering Committee. This multi-stakeholder governance committee will play a pivotal role in policy, strategy, planning and donor coordination, as well as the oversight of implementation and evaluation.

At this point, the Land Sector Framework has been developed to a draft stage, ready for circulation⁴⁹. The Director General of Lands has indicated his commitment to undertaking wider

⁴⁹ The five strategic objectives are underpinned by a policy and activity agenda for medium and longer term priorities to be implemented over a ten year timeframe. The framework ensures that outcomes from the

consultations on the draft over the coming months, to incorporate any agreed changes, and then to have the Land Sector Framework endorsed by the Council of Ministers.

The Government has stressed that all proposed donor activities, including this design, must fit beneath the umbrella strategies of the Land Sector Framework. Also, it has indicated that the national land governance committee (or selected working groups from within it) should join with donors to provide implementation oversight of specific donor programs. In order to achieve these objectives, the Government has requested support to strengthen the Land Sector Framework and its various governance committees.

During this design the team met with all other donors in Vanuatu to discuss harmonisation and collaboration issues. The Government took a key role in facilitating these meetings. Currently the major area where collaboration is needed is with the planned NZAID activities. In anticipation of this, AusAID and NZAID had already ensured that the design missions took place in parallel and that the two design teams communicated closely, shared approaches, and held joint meetings. As a result, there is clear complementarity between the two designs. This will be discussed in greater detail in Section 2 - Program Description. AusAID and NZAID are now assessing opportunities for linked implementation of the two initiatives.

Links will also need to be managed to the Pacific Land Program's Regional Land Support Unit. This unit is currently envisaged to provide support to cross cutting themes between all four countries participating in the Pacific Land Program initiative. The Regional Land Support Unit is expected to provide research services, training, and exchanges across the Pacific Land Program. This support is yet to be clarified, but it is expected that it will complement and enhance the activities proposed under this initiative.

Significant support and background material for this design was also provided by the World Bank's Justice for the Poor research program on land. This study provides important insights into the subtleties of *kastom*, along with an understanding of the sensitivities surrounding land dealings, as well as the injustices perpetrated by the current development challenges. This information has been used to inform all interactions with customary groups. In addition, the study should prove invaluable to NZAID's support to strengthening the formal mediation and tribunal services associated with dispute resolution on customary land. Further work by the World Bank is expected on the Justice for the Poor program. It is not known as yet whether this will include further work in the land sector.

1.6 Rationale for AusAID Involvement

As can be seen from the preceding sections, considerable foundational analysis has been undertaken for this design. In particular, the National Land Summit and the *Making Land Work* initiatives underpin the rationale for Australia's further support. These, along with detailed assessments and stakeholder interviews, have confirmed the following key points as integral to the design. Potential areas for engagement based on the National Land Summit resolutions are clearly spelt out for each.

Vanuatu Land Program will complement other forms of donor support to the land sector. The Land Sector Framework will reportedly be submitted for approval to the Council of Ministers in late 2008.

1.6.1 Support to customary decision-making

Custom landholders were unanimous in their desire for assistance with key land decision-making especially issues related to: *kastom* authority, ownership, usage; boundaries; and development opportunities. In addition, the awareness and clarity of customary groups of their constitutional rights and responsibilities must be increased, while the capacity of traditional decision-making structures must also be enhanced at both the national and local levels. In particular, women were emphatic that they must not be excluded from land decisions.

Rather, they must be empowered with both the opportunity and increased capacity to contribute meaningfully in this regard. Importantly, all stakeholders have stressed that AusAID support must simply facilitate rather than influence the decision-making process itself.

Members of traditional (kastom) owning groups (male and female) must be involved in decision-making about their land. (NLS Resolution 1 (c))

The Malvatumauri and the Vanuatu Cultural Centre must assist the people to be aware of traditional economy, customary and formal land laws, and fair dealings (NLS Resolution 3)

1.6.2 Respect for and clarification of *kastom*.

Donor support must aim to clarify *kastom* practices in a format that is acceptable to local communities. It must also enhance the foundation of *kastom* by building the capacity of the Malvatumauri at both the national and the local levels. The design must also strive to improve access to professional support services through devolved service delivery.

The Malvatumauri National Council of Chiefs (along with National and Provincial Government) must assist the people to document traditional (kastom) land policies in each village, area and island in Vanuatu. This includes kastom boundaries, land dealings and other rules. (NLS Resolution 2b)

The Ministry of Lands (or other) must set up Land Offices in all provinces in Vanuatu (NLS Resolution 2c)

There needs to be legal advisory services to assist land owners who are interested in leasing any of their land. (NLS Resolution 5b)

1.6.3 Multi-stakeholder participation and ownership

Assistance should ensure the participation of key stakeholders in the governance of land and the implementation of the initiative. In many development contexts, efforts to support the land sector have tended to focus on strengthening the national land agency to improve the institutional, legal, technical, management and tenure frameworks. In Melanesian countries however, such an agency approach has failed to deliver expected outcomes⁵⁰. This is principally because the ultimate target beneficiaries are the customary landholders who themselves are an integral part of the land governance process. Hence

In all lease agreements, the Chief's and land owners must approve the certificate of negotiation, the lease agreement and any changes to condition of the lease. (NLS Resolution 5 c)

In all Certificates of Negotiation, there must be approval from the village, area and island council of chiefs, before the Department of Lands or Ministry of Lands can accept certificates. (NLS Resolution 6)

Notice of every application to negotiate must be sent to the chiefs of the area where the land is located and should include the location, application detail, and a development plan. (NLS Resolution 7)

Remove the power of the Minister to approve leases over disputed land. Disputes must be resolved before the Minister can approve a lease. (NLS Resolution 9)

⁵⁰ AusAID 2008, *Making Land Work*, Vol 1 p 107

many stakeholders agree that decisions regarding the future of land in Vanuatu cannot be managed solely by Government. Moreover, the administration is too small in itself to manage the complexity of the issues confronting it. Thus communities, civil society and the private sector must be empowered to assume their traditional responsibilities within a framework of participatory governance.

Such collaboration also requires that national and sub-national participatory governance processes are in place to oversee planning, investment and donor coordination⁵¹.

Furthermore, the rigour and transparency of such governance processes requires that multi-stakeholder responsibilities be spelt out, overseen and audited, particularly in the areas of land planning and zoning, and lease negotiation and registration. In particular, participatory mechanisms that govern the negotiation, approval and oversight of leases on customary land (particularly to international interests) must be developed and enforced. This will remove legal anomalies (e.g. conflicting Ministerial powers), improve transparency, remove conflict of interest and ensure equitable outcomes for all parties. This issue is also the touchstone for significant anger and potential conflict.

1.6.4 Mediating disputes and avoiding conflict

Land is central to the identity, and hence the future, of the ni-Vanuatu. In consequence, any form of estrangement from the land results in a deep sense of loss, particularly where it results from poor decision-making, self interest or corruption. In the worst cases this could easily escalate into conflict. Hence (as mentioned) AusAID will support work at the community level to strengthen both decision-making systems and processes, and the understanding of *kastom* practices that underlie decisions about the land. However in cases where disputes are not able to be resolved through traditional mechanisms, customary groups must be given the opportunity to elevate their concerns to the more formal mediation and adjudication level offered by the Customary Land Tribunals. Strengthening of the Customary Land Tribunals will be supported through NZAID assistance.

⁵¹ This issue was touched on in the National Land Summit, but was not the basis of a resolution.

1.6.5 Clear and transparent enforcement of current formal laws related to lease agreements

Legislative, regulatory and administrative frameworks for land must be based on transparent, diligent and unbiased enforcement. This is fundamental to the promotion of peace and stability, and hence economic and social development in the region. Furthermore, although it is probable that the current land laws in Vanuatu may need refinement in the long term, these are not responsible for limiting progress in the short to medium term. Instead, it is the lack of enforcement of the existing laws. Hence all stakeholders agree that AusAID should support improved enforcement. Yet Government systems are clearly already stretched, and one of the few ways to increase their effectiveness is for Government to develop collaborative partnerships with civil society and the private sector. In addition, private sector associations must themselves enforce codes of conduct on their membership.

Improved registration processing and information services are also desperately needed. Moreover, any such systems must be both stable and clear to all concerned.

In all cases, lease negotiation must ensure the full, prior and informed consent of all customary owners with interests in the land. Having all leases in Bislama and broadly communicating key information on proposed leases are simple first steps. Furthermore, no lease should be signed until any significant disputes are resolved.

The Government must implement the laws and the terms and conditions in a lease agreement including, rent review and development conditions. (NLS Resolution 4)

All lease agreements must be in Bislama and explain to all members of the customary group (men, women and children) the terms and conditions of the lease (NLS Resolution 5a)

Every application to negotiate should include a copy of the applicant's passport, the Vanuatu Investment Promotion Authority Certificate, land details, development plans and planning approval (NLS Resolution 8)

Before leases can be approved there must be: proper land use zoning for the area; environmental and social impact assessments; cultural heritage assessments; and clear public access conditions. (NLS Resolution 13, 15,16)

1.6.6 Improvement to basic Government services and enforcement related to land use

Land use planning and zoning processes have to date met with little success in Vanuatu. There are several factors involved in this failure⁵², including: lack of recognition by Government of the value of land use planning, uncertainty as to which agency is responsible, poor multi-stakeholder consultation and agreement; weak enforcement of the current laws; and compromise based on self interest. AusAID needs to support the processes of planning and zoning, with an initial focus on high risk and critical areas.

The government must strengthen and enforce all physical planning, environmental protection and public access laws and support customary groups to enforce these conditions (NLS Resolution 17)

1.6.7 Careful harmonisation of support to match absorptive capacity

The Government of Vanuatu and donors will need to work together to ensure that proposed assistance to the land sector is considered very carefully given the small size of the country and the limited capacity of Government, private sector and civil society institutions. This is particularly critical at the sub-national level where provincial and island-based organisations have very limited

⁵² See Section 1.4 Previous AusAID Assistance to the Land Sector

capacity and are severely constrained by a lack of human and financial resources⁵³. AusAID assistance must be guided by the Government's Land Sector Framework, as well as by its appropriately constituted governance committees. Assistance must also be provided to establish, train and manage oversight roles.

1.6.8 Establish a foundation for future policy and legislative reform

It is clear that over the medium to long term, Vanuatu must clarify the basic policy and legislative framework that ensures the principles and spirit of the Constitution are properly implemented. Fundamental to this is the need to define and guarantee customary land tenure. Ambiguities surrounding the rights of the group and the individual must be resolved, the role of Government to support rather than control custom tenure must be defined, and opportunities for any abuse minimised. It will take time, patience and mutual trust to define, agree and implement these changes. The first steps over the next five years, as outlined in the draft Land Sector Framework, and as agreed in this design, will address the issues of improved participatory governance of land, radically improved enforcement of key lease and planning legislation currently in place, and dramatically improved support to customary decision making. Underpinning this will be research, facilitated by the Vanuatu Cultural Centre, that assesses appropriate models of customary land tenure⁵⁴ that are in full agreement with the principles and spirit of the Constitution and could, after wide consultation, form the basis of future policy and legislation. In summary, this design will establish the foundation from which national land law and policy can be addressed in the medium to long term.

⁵³ Soni, N., Alatoa, H. and Harries, B. 2007, *Rural Economic Development Initiative (REDI) Stocktake*, Draft Final Report, Watergall Consulting Ltd, Port Vila, April. This paper highlights many of the challenges and weaknesses which have resulted in the technical advisory groups and bureaucratic structures at provincial and local levels to be ineffective and the REDI initiative to falter. The lessons learnt from the review of the AusAID-funded Vanuatu Land Use Planning Project (1995-2000) conducted under the VSTLR initiative in 2008 supports these findings and also suggests that new mechanisms for provincial and local assistance in the land sector are required.

⁵⁴ E.g. land trusts, incorporating land owner groups as discussed in *Making Land Work* (AusAID 2008)

2 Program Description

2.1 Goal⁵⁵

The following goal and three objectives form the basis of future Australian assistance to develop and sustain the Land Sector in Vanuatu (Figure 2).

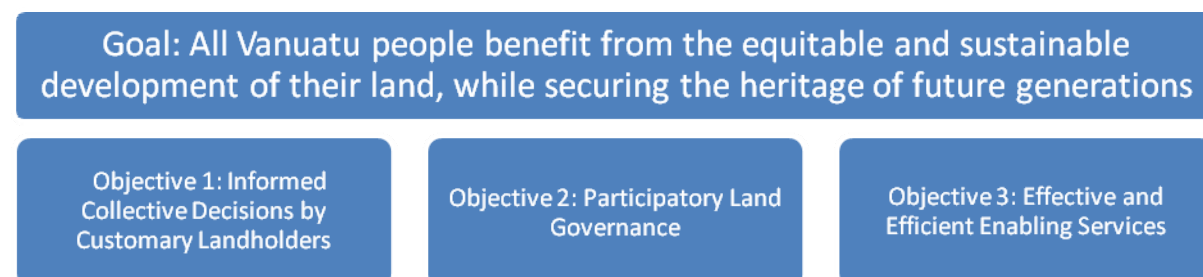


Figure 2: Proposed outcome areas for AusAID assistance

The goal recognises both the Vanuatu Policy and Action Agenda and the Vanuatu Constitution, and thus reflects the strategic intent of Australia's development partnership with Vanuatu⁵⁶. It acknowledges the right of current and future generations to enjoy the cultural, economic, employment, and environmental benefits arising from the current use or future development of their land, while ensuring that security of access, human habitat and food production are maintained. It also implies that adequate land must be set aside for public services and utilities.

The goal further requires that benefits flow equitably to all those entitled to a share including men, women, children and the aged. To achieve this goal, Vanuatu stakeholders have identified three objectives that form the basis of the Program of assistance. These include:

- Informed, collective decision-making by customary owners;
- Participatory land governance; and
- Effective and efficient enabling services.

The third objective, *Effective and efficient enabling services*, contributes to and supports the two main objectives of *Informed, collective, customary decision-making* and *Participatory land governance*.

⁵⁵ Terminology used for this Program aligns with AusAID Performance Terminology outlined by the Design, Performance and Advisory Group (B. Herne, August 2007). The hierarchy follows the convention Goal, Objective, and Intermediate Outcome.

⁵⁶ It is anticipated that this goal will be integrated into AusAID's Vanuatu Country Strategy. In addition it would be ideal if it was adopted as the goal for the Land Sector framework.

2.2 Objective 1: Informed Collective Decisions by Customary Landholders

Rationale and Overview

Informed collective and participatory decision-making is a key principle of the overall Program, as shown in Figure 3 below. This figure indicates that the central tenets of *kastom* must be supported in order for customary groups to make effective decisions regarding either *kastom* tenure or formal land dealings. Hence this Program will directly support and broker services to improve decision-making processes related to customary tenure, particularly those processes related to issues of authority, land ownership, and use.

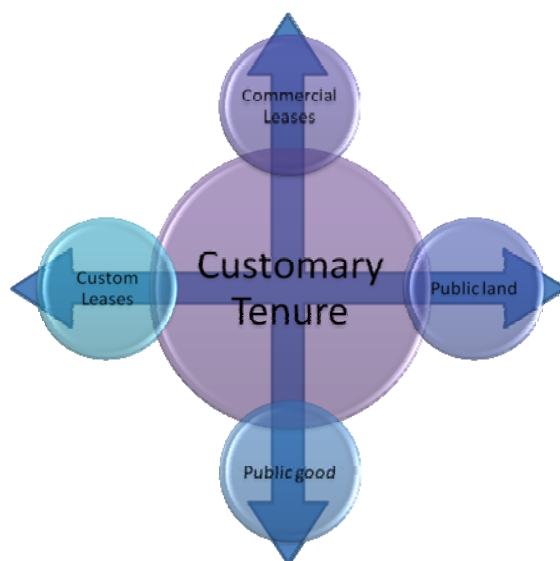


Figure 3: Customary tenure is central to all land dealings in Vanuatu

This objective recognises that communities have the right to make informed collective decisions on the use of their customary land based on *kastom* law, delivering benefits not just to themselves, but to future generations. Hence, by supporting customary decision-making this Program will provide or facilitate the training, networks, services and opportunity for customary landholders to improve the quality and long-term outcomes from pivotal decisions about their land. Support will be provided nationally through the Malvatumauri, as well as locally through provincially based focal-point officers.

For communities to pursue development of any sort (cultural, agricultural, tourist, or industrial), they must be aware of their options. Such informed decision-making ensures that any partnerships formed are equitable and sustainable. Furthermore, only in this way can it be ensured that development flows not only from external investment, but arises out of the initiative of the people themselves. Yet for development to be truly effective, communities must also have ‘cultural space’⁵⁷, as well as the time to resolve differences of opinion, and gain a clear understanding of the interface between *kastom* and civil law.

⁵⁷ A cultural space is defined as a place that brings together a concentration of popular and traditional cultural activities and also as a time for a regularly occurring event. It is encapsulated in the UNESCO proclamation on Intangible Cultural Heritage <http://www.unesco.org/culture/ich/index.php?lg=EN&pg=home>

The achievement of this objective will improve the quality of decisions, increase dialogue and lessen the potential for conflict. Importantly, this objective is flexible, responding as it does to the expressed needs of communities. Hence assistance will identify needs with the community and only provide assistance where invited.

The principles that will underpin achievement of this objective include:

- Ownership of the decision-making process by all customary landholders;
- Effective inclusion of women in decision-making and increased appreciation by all stakeholders of the benefits of equitable participation by women;
- Recognition that *kastom* law and traditional processes are the foundation of the land sector in Vanuatu, and that introduced laws, concepts and processes must be subordinate, respectful, and sustaining of *kastom* practices;
- Empowerment of customary landholders to appropriately capture the benefits of development;
- Facilitation of processes, without undue or inappropriate influence;
- Enhanced community cultural space for conflict resolution and decision-making;
- Increased capacity of *kastom* chiefs to oversee and support land decision-making that appreciates the needs of all segments of their community (especially women, youth and the aged); and
- Sustainable, equitable and local access to information and support services.

Assistance under this objective will ensure links to: current Government work on customary boundary mapping, the proposed NZAID assistance to Customary Land Tribunals; AusAID support to *kastom* governance through the Malvatumauri; current national studies on women and land being undertaken through the Vanuatu Cultural Centre; and further proposed work under the World Bank's Justice for the Poor Program.

Key processes and implementation

1. **Improve Customary Governance of Land by the Malvatumauri.** The Program will strengthen the Malvatumauri to oversee, improve and support customary decision-making at the national, island and area level.

A Malvatumauri Kastom Land Office will be established, headed by a National Kastom Land Officer. While the office and staff will initially be funded through the Program, it is intended that the office will be integrated into the Malvatumauri budget by the end of the fifth year. Assistance will also refurbish and support the operating costs of the National Kastom Land Office, as well as facilitate short-term donor programs and activities providing support to land (e.g. the NZAID assistance to the Customary Land Tribunal).

Assistance through the National Kastom Land Office will increase the capacity of the 22 national representatives of the Malvatumauri in their understanding of the technical and legal issues related to land, as well as increase their capacity to oversee *kastom* land issues and provide effective advocacy and policy advice to Government. Training, workshops and consultations will be held both nationally and regionally, and include the processes and practices that underpin *kastom* tradition and law, authority, representation (including gender awareness and relational roles), and decision-making on land holdings, allocations and use. The Program will build the capacity of the National Kastom Land Officer and assist the Malvatumauri with planning the

Program's interventions, providing training and support, and evaluating the impact of the Program on the capacity and function of the Malvatumauri.

The Malvatumauri will be the primary partner. The National Kastom Land Officer will report to the Secretary General of the Malvatumauri, but will receive technical direction and support from the Program Director.

Indicators of success include:

- Sound, transparent and efficient customary governance and leadership on land issues by the Malvatumauri;
- An effective Lands Office is established within the Malvatumauri under core funding. It is valued by the Malvatumauri and supported sustainably by them;
- The Malvatumauri understand the issues surrounding land, and hence confidently and participatively intervene to meaningfully resolve - or at least progress - the debate. Clear evidence that this generates the appreciation and respect of other stakeholders;
- The Malvatumauri show strong advocacy for national land issues, and effectively contribute to national debate and policy direction; and
- Supporting frameworks for governance, transparency and accountability are established and modelled by the Malvatumauri.

2. Improve stakeholder and public understanding and awareness of customary land practices (including gender and relational land interests). Improved awareness and understanding will be facilitated through three linked outputs.

Firstly, the Program will establish and run a Customary Land Study and Research Grant Fund. The fund's purpose will be to provide grants that support national and local studies to improve the understanding, documentation and legal recognition of *kastom* land practices⁵⁸. Up to A\$100,000 per year for five years will be provided, to be held in trust by the Implementation Service Provider. The majority of studies should be associated with the Vanuatu Cultural Centre, but preference will be given to partnerships, especially with other national or Pacific regional groups. The fund will be administered by the Vanuatu Cultural Centre and governed by a multi-stakeholder committee. Recommended annual budget will be approved by a Program Coordinating Committee as part of the Program's annual planning process.

Secondly, the Vanuatu Cultural Centre will also receive funding for a Public Awareness and Information Program (A\$20,000/annum). This program, to be developed with the support of Program advisers, will need to be approved by the Program Coordinating Committee at the same time as the Program Annual Plan. This awareness program is vital for promoting the values and contribution of *kastom* land practices within the context of Vanuatu culture and development. In particular, the awareness program will promote the outcomes of Customary Land Study and Research Grants, as well as other priority messages. The Vanuatu Cultural Centre public awareness team will implement the enhanced awareness program, which must

⁵⁸ It is proposed that an initial study topic will be on appropriate models whereby *kastom* groups as a whole (rather than as individuals) are legally recognised in their formal land transactions. Other priority topics identified during the design include: Cultural Heritage Sites Survey; clarification of *kastom* land law and practices; and background studies on gender and *kastom* land.

complement and not substitute for current funding by the Vanuatu Cultural Centre. Funding will be provided by the Implementation Service Provider in small reimbursable tranches based on the approved annual awareness plan.

Thirdly, the Program will support a gender mainstreaming program within the Malvatumauri and other customary groups (A\$10,000 per annum). This will be supported by appointing a Gender Focal Point within the Department of Lands. While the Gender Focal Point will work across the whole Program, s/he will specifically conduct gender awareness training within the Malvatumauri, and will also work with the National *Kastom* Land Officer, the Vanuatu Cultural Centre, the Department of Women's Affairs and the National Council of Women to ensure gender issues are appropriately integrated into the overall Program. It is hoped that through this support the Malvatumauri will, within the five years of the Program, develop and agree on a *kastom* Gender Policy that emphasises and protects the interests of women in *kastom* land dealings.

The Customary Land Study and Research Grant Fund will be managed by the Vanuatu Cultural Centre, but overseen by a committee consisting of the Program Director, as well as representatives of the Vanuatu Cultural Centre, the Malvatumauri, the National Council of Women and academe. The funds will be held in a trust fund under the control of the Implementation Service Provider.

The Vanuatu Cultural Centre will plan and manage the public awareness program. In addition they will collaborate with the Gender Focal Point (appointed within the Department of Lands – see Section 3), the Vanuatu National Council of Women and the Program Director to prioritise and schedule the gender program. As a guide only, approximately 25 percent of the Gender Focal Point's time should be dedicated to this component.

Indicators of success include:

- Improved access to information, understanding, and awareness of the importance of land within *kastom* by local communities and the wider public, as well as local and international investors (including gender and relational land interests);
- Incisive and revealing studies of key *kastom* land issues that directly influence policy, Program implementation, and target audience awareness of key issues.
- Increased appreciation by Government and the general public of the role the Vanuatu Cultural Centre plays in supporting the Malvatumauri and *kastom* in Vanuatu.
- Increased awareness by key audiences (customary owners, investors and Government) regarding the issues surrounding *kastom* and land dealings.
- Clear support, direction and leadership from the Malvatumauri and the Vanuatu Cultural Centre and the National Council of Women regarding culturally appropriate ways to ensure that women's inputs and roles in *kastom* land are appreciated, protected, enhanced and made more equitable.

3. **Improve decision-making by customary landholders.** The program will move towards appointment of local *Kastom* Focal Points (KFP) to facilitate the delivery of information, referral and networking services that support decision-making on customary land at the local level. The Program will initially assess the structure and capacity of the Malvatumauri, the Vanuatu

Cultural Centre, the Department of Lands, the Provinces and various civil society groups to field, manage and sustainably support the Kastom Focal Point network. Investigation of various models and options (including voluntary networks) will be carried out during inception, and recommendations made regarding the hosting, number, location, training and management of the KFPs before creating the KFP system.

The Kastom Focal Points will be tasked to implement an annual program as endorsed by the Malvatumauri under the direction of the National Kastom Land Officer. The Implementation Service Provider will work with the National Kastom Land Office (with the assistance of the Department of Lands) to appoint these positions.

The role of the *Kastom* Focal Point network will include:

1. Conduct consultations at the area and island level to determine the major customary land issues;
2. Identify and prioritise the needs of local communities for improved information and other services to aid decision-making;
3. Coordinate and undertake training workshops on prioritised issues, including assistance with the facilitation of local Participatory Governance Workshops (see Section 2);
4. Disseminate information materials produced by the Program and help coordinate local public awareness training and other Program related activities;
5. Provide information and advisory support to customary groups regarding traditional decision-making processes;
6. Identify professional service delivery necessary to assist decision-making at the local level;
7. Coordinate with the Department of Lands to facilitate and coordinate land services to support key issues and concerns;
8. Identify core local and national professional service providers who can provide services that either complement or enhance the capacity within the Department of Lands (gender, legal advice, financial planning advice, trust establishment, planning);
9. Broker additional professional assistance to support priority needs as identified;
10. Assume agreed but carefully limited roles for the Customary Land Tribunal⁵⁹ (the Malvatumauri and the Customary Land Tribunal are currently sections of the Ministry of Justice). Also, in limited and agreed areas, act as a contact point/agent for the Department of Lands.

Essentially, the Kastom Focal Point network will facilitate local community access to information, professional advice and services to support decision-making on a wide range of customary land issues. As such, the Kastom Focal Point network will need to work alongside and coordinate with national and provincial agencies, but will not be directly aligned with them. The Kastom Focal Point network will also need to coordinate closely with the public awareness team in the Vanuatu Cultural Centre and the public information team within the Department of Lands (see Sections 2 and 3 respectively).

⁵⁹ It must be stressed that the Local Kastom Land Officers will not be available to directly mediate disputes as this would be immensely time consuming and risky. Instead they will support customary mediation and links to the more formal Customary Land Tribunal processes. The formal links will be facilitated through the proposed NZAID support to the Customary Lands Tribunal.

The positions will commence 12 months after Program inception as this will ensure the National Kastom Land Office and National Kastom Land Officer are in place and functioning (see Section 1). The *Kastom* Focal Point network will initially be funded by the Program, but will be integrated into the Government budget after Year Five of the Program. The Department of Lands has already indicated its desire to support such roles in the long term⁶⁰. Even though these positions will eventually be funded by a Government agency, these roles should not be confined to delivering the agenda of the funding agency, but provide a focal point for customary owners to obtain advice and information regarding support services for any of their concerns regarding land. The Kastom Focal Point network will also be the contact points for all national land agencies seeking assistance with the coordination, planning and implementation of land activities, and hence are integral to the sub-national participatory governance activities outlined under Objective 2.2 (see Section 2).

To further assist communities, the Program will provide A\$25,000 per office per year for a 'competitive' Professional Land Services Support Fund. This will facilitate a suite of service support at the local level, addressing whatever major priority needs have been identified by the communities themselves (e.g. documentation of customary land practices, boundary mapping etc). Priorities will be selected locally, but approved nationally. The Professional Land Services Support Fund will respond to requests generated by the Kastom Focal Point officers and endorsed by the National Kastom Land Officer.

The Implementation Service Provider will support the training and capacity building of the Kastom Focal Point network. It will also assist with the development, management and oversight of their annual programs. Annual programs will be consolidated nationally by the Kastom Land Office and endorsed by the Malvatumauri before being submitted to the Program Coordinating Committee for approval as part of the annual planning process. The Professional Land Services Support Fund will be managed by the Implementation Service Provider.

Indicators of success include:

- A local Kastom Focal Point network established at the local level;
- Improved decisions made on important local land issues by customary landholders;
- Customary groups gain improved access to quality information and professional services to aid with their priority decision-making;
- Decisions made by customary groups show improved awareness of options and better and more equitable outcomes for all partners; and
- Government and communities appreciate the benefits of a local Kastom Focal Point network for land dealings, and identify mechanisms to sustainably fund both their positions and their operations into the future.

⁶⁰ However, careful consideration should be given to the eventual budget sourcing and alignment of these positions (options include the Malvatumauri under the Department of Justice, the Provincial Administration, or the Department of Lands).

2.3 Objective 2: Participatory Land Governance

Rationale and Overview

At the national level, elected officials and public servants are often viewed as having the primary mandate to manage and influence the development of land. Even so, the 1992 Rio Declaration recognised that in most cases stewardship of land falls not just on Government shoulders, but on a range of different stakeholders, and that a participatory multi-stakeholder approach is essential to dealing with such issues.⁶¹

The Program's second objective thus identifies that land governance must not be the sole responsibility of Government. Its ongoing sustainable management depends on the fair dealings and diligence of all stakeholders, including the community. As shown in Figure 4, the whole machinery of land use, transactions and dealings involves multiple stakeholders, including the private sector (developers, agents, and professional services), civil society organisations (including the Malvatumauri and National Council of Women), communities, local Government, and all national Government departments with a responsibility for land. Participation by all stakeholders will ensure that both institutions and society as a whole can appreciate and exercise their roles and responsibilities, allowing collaboration wherever necessary to address concerns and plan for the future. Moreover, a participatory approach more effectively reflects the complexity and range of land transactions and formal dealings that specifically interact with customary land (Figure 4).

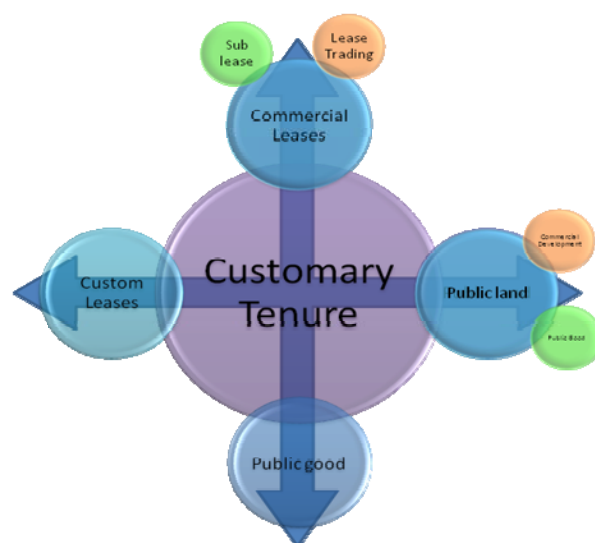


Figure 4: The primary and secondary dealings in customary land in Vanuatu.

The principles that will underpin achievement of this objective include:

- Respect, recognition and inclusion of all national and local land stakeholders responsible for land governance;
- Build on existing structures, roles and processes;

⁶¹ Vallejo, N and Hauselmann, P 2004, *Governance and Multi-stakeholder Processes*, This paper is a product of the Sustainable Commodity Initiative, a joint venture of the United Nations Conference on Trade and Development and the International Institute of Sustainable Development.

- Ensure that appropriate consultation and participation bolsters the integrity of land roles and processes;
- Ensure the effective and equitable representation of women and increase the awareness of women's rights and roles;
- Consider the establishment of specific groups to advise and/or audit processes;
- Appreciate that effective processes will necessitate balancing the need for representation with efficient use of resources and time;
- Build the capacity of all stakeholders to understand and implement improved processes, as well as advocate for integrity; and
- Ensure that Government recognises and effectively discharges its custodianship obligations for urban and public land.

Assistance under this objective will link specifically to the proposed AusAID support to Custom Governance and, in principle, to all other donor assistance conducted in the land sector.

Key processes and implementation

1. **Support the effective and participatory sector wide governance of land.** Support will specifically address participatory land governance from a sector-wide perspective, ensuring national oversight of the participation process⁶². In particular the Program will advance the development of the national Land Sector Framework (see Section 1.5)⁶³. It will also establish, support and strengthen the new multi-stakeholder entity tentatively called the Vanuatu Land Governance Committee. The Vanuatu Land Governance Committee will expand on the responsibilities of the existing National Land Steering Committee⁶⁴ by playing a broader role in institutional harmonisation, strategic planning, priority setting, policy development, resource mobilisation, and donor coordination. This will be in addition to its oversight of the implementation and performance evaluation of the Land Sector Framework. In this way it is envisaged that the Vanuatu Land Governance Committee will serve to mitigate three major risks facing the land sector: limited resources and capacity; poor institutional harmonisation; and lack of donor coordination. The Vanuatu Land Governance Committee will of course need to evolve with time as lessons are learnt, as well as respond to priority needs in the land sector as they arise.

Membership of the Vanuatu Land Governance Committee will be finalised through the Land Sector Framework, but will include:

- Central and line agencies of Government (particularly Economic and Sector Planning, Aid Coordination, Finance, Trade, Lands, Agriculture, Forestry and Internal Affairs);
- Sub-national Government units;
- Civil society organisations (including the Malvatumauri, the National Council of Women and the Vanuatu Cultural Centre);

⁶² *Kastom* governance systems will be addressed under Component 1.1. Operational governance will be integrally incorporated into the services and instruments, process of C3

⁶³ As a first step in this process the contractor will ensure that the M&E Framework for the Program aligns with the objectives of the LSF. This includes harmonisation of objectives, indicators and methodologies so that the Program directly supports Government of Vanuatu reporting requirements.

⁶⁴ The National Land Steering Committee was established to provide specific oversight and guidance for the implementation of the twenty resolutions that were agreed to at the 2006 National Land Summit.

- The private sector (developers, real estate agents, and related land professionals); and
- Local communities.

The day-to-day responsibility for logistics, secretarial support and administration for the Vanuatu Land Governance Committee will rest with the office of the Director General, Department of Lands. Implementation of training, workshops, activities, studies, monitoring and evaluation, will be funded through the Program and managed by the Implementation Service Provider, under the guidance and direction of the Vanuatu Land Governance Committee, or its nominated working groups.

Indicators of success include:

- Enhanced and effective participatory governance of the land sector through the enactment of the Government's Land Sector Framework and the efficient and effective operation of associated governance committees;
- Effective and meaningful representation and participation of partners in national land governance;
- Effective ongoing implementation of the Land Sector Framework, including proper coordination and institutional harmonisation; and
- Establishment of governance oversight committees and advisory structures, to provide rigorous and effective monitoring and evaluation of the Land Sector Framework.

2. **Establish and/or improve participatory, sustainable mechanisms that will facilitate regional and local governance of land.** This activity addresses the improvements that are needed in the participatory mechanisms to facilitate both regional and local governance of land. An initial assessment of the relative strengths and weaknesses within each of the regional administrative and operating environments will be followed by a carefully measured and sequential implementation approach. Lessons learnt from previous assistance programs highlight that absorptive capacity is critically weak at the sub-national level. Provincial and island-based organisations not only have very limited expertise, but are severely constrained by a lack of human, physical and financial resources.

Reliance on Provincial Governments to provide support for assistance programs has not been successful to date. Hence this activity will build on consultations undertaken by the Kastom Focal Points (see Section 3), focusing in particular on the participatory governance process needed to protect the rights of customary landholders in formal land dealings. This process will start with a series of participatory governance workshops and awareness training programs, in area /island council settings, that aim to maximise outreach and improve communication and feedback from local communities.

Implementation will be supported by the Implementation Service Provider in collaboration with the Kastom Focal Points. Governance mechanisms and structure will be formed in response to needs identified and tailored to local capacity and needs.

Indicators of success include:

- Improved participatory governance at the local level that links local Government, national agencies and customary groups, and coordinates local initiatives;
- Priority sub-national land issues are discussed and planned at the local level and effectively linked and communicated to national agencies; and
- Effective, sustainable and appropriate multi-stakeholder and gender sensitive processes and structures operating at the sub-national level for participatory land governance.

3. Improve the participatory mechanisms that facilitate formal dealings in land⁶⁵. This shifts the focus from the national and sub-national structures and processes for land governance to a more issues-based approach. It focuses specifically on the participatory governance processes needed to underpin and facilitate fair dealings in land. Land and property development in Vanuatu is a key driver of the tourism sector, and because of this should contribute significantly to broad-based economic development. Yet, to date, land development has often delivered significant inequities, with customary landholders bearing the brunt of sometimes iniquitous dealings. Yet the weak land governance system is not capable of exerting the controls, checks and balances which are vital to protect the interests of all stakeholders. The current situation related to the conflict over the scope and use of Ministerial powers is particularly important (see Section 1.1.7).

The Program will establish the participatory, sustainable approaches necessary to ensure open, accountable and transparent dealings with regard to customary land leases or sub-leases (be they for public or private sector development)⁶⁶. Particular attention will be given to the resolutions of the National Land Summit (see Section 1.6.3). Underpinning this initiative will be the development of Codes-of-Conduct for land professionals, associated with the strengthening of professional bodies. It should be noted however, that this outcome will not be achieved without overcoming a multitude of challenges; there are vested interests that will be difficult to sway, let alone subdue.

The key players in this process will be Government agencies, the private sector, and the law and justice sector, particularly those professionals within these sectors who are involved in land and property development.

The Implementation Service Provider will work with the Department of Lands to identify key processes, governance structures and oversight mechanisms.

Indicators of success include:

- Formal land dealings with sound participatory governance processes and principles in place that ensure full consultation, representation and validation. Cases of inappropriate participation and representation are significantly reduced;

⁶⁵ These transactions will include customary lease tenure, land lease administration and approvals, management of public land, land valuation and property taxation, development planning and control, urban and rural land use planning, environmental management, land stewardship and private sector services (e.g. legal, surveying, real estate and valuation).

⁶⁶ The services that are subsequently needed to support these agreed participatory governance processes will be developed under Objective 3.2 (see 2).

- Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation;
- Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation; and
- Principles of good governance practice embedded in systems, processes and procedures for external land dealings at national and sub-national levels.

2.4 Objective 3: Effective and Enabling Services

Rationale and Overview

The services and instruments which underpin the two other objectives of the proposed Program will be delivered through a range of groups including Government, civil society and the private sector. Yet to be appropriate, they must realistically reflect the capacity of the organisation that establishes and sustains them. Importantly, service delivery must occur when and where it is relevant (i.e. communities or other stakeholders needing to access these services should not be unduly disadvantaged due to their isolation).

The principles that will underpin the achievement of this objective include:

- Services and instruments must be relevant, appropriate and sustainable, based on the capacity and resources of the organisation or group charged with their provision;
- Services and instruments must be delivered equitably to all communities and other stakeholders;
- Government should devolve some roles to the private sector as and when appropriate;
- Delivery agencies must adopt a culture of ‘customer’ focused service, together with a value system that emphasises integrity and transparency in the provision of services;
- Systems and delivery options must be proven before full-scale implementation; and
- National capacity, or at least capacity within the Pacific region, to maintain systems (especially information management) after implementation must be assured.

Assistance under this objective will build on current AusAID short-term assistance. It must also ensure close links to the proposed NZAID assistance to the Information Technology Centre in the Department of Lands.

Key processes and implementation

1. **Establish a functioning Land Registry and Information Service.** Initially this activity will aim to reduce, and preferably eradicate, the backlog of land lease registration and dealings. It will then establish a land lease and land parcel information service. This will be used to support Registry processing, as well as wider public access to lease registration information. However, for this to be effective, the current program of scanning land leases and converting key information into a textual database must be completed. Additional scanning and data extraction will probably also be necessary. Concurrently it will be necessary to create a digital representation of the boundaries of all land parcels currently subject to leases. These different but complementary data sets will need to be integrated, with all data anomalies examined and set right. The

effectiveness of this activity and its value for current and future land dealings clearly depend on high standards of accuracy in the recording of these data⁶⁷.

To improve the efficiency, effectiveness and integrity of the routine processing of land dealings by the Registry, workflow processes will need to be studied and improved, as will the capacity of both the Registry staff who process the applications, and the major external customers who submit applications. Importantly, it will be essential to balance these services with the annual budget and staff resource allocations in order to ensure a sustainable and efficient service. Enabling technology will be required wherever appropriate, together with the development of suitable supporting applications.

Consideration should also be given to the Registry acting as a repository for both informal land 'agreements', and formally adjudicated decisions related to land (through the courts or Customary Land Tribunals). These agreements, which could take a number of forms, would not be subject to any formal registration process, but would simply be held in the repository. Once lodged, they could then be cross-referenced against lease agreements, to be retrieved at any time as evidence of an agreement.

Implementation of this objective will be through the Land Registry within the Department of Lands, in concert with other Government land and development regulators. To ensure that the service is customer-focused, it is envisaged that there should be significant ongoing consultation with both potential customers and land industry representatives.

Indicators of success include:

- A secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases);
- High-use customers express satisfaction with the service and its transparency;
- The majority (e.g. 75 percent) of simple dealings are registered within two weeks⁶⁸ in accordance with designated procedures and standards, and are not subject to dispute or court action;
- The majority (e.g. 75 percent) of complex dealings are completed within 10 weeks in accordance with designated procedures and standards, and are not subject to dispute or court action;
- Standard information regarding leases, including the status of any lease, can be advised within two days to a range of delivery nodes throughout the country; and
- Leases can be accepted and returned via a range of delivery nodes throughout the country.

2. Establish an effective land lease and development planning, assessment, permitting and enforcement service. Currently, permits for a variety of development approvals are provided by

⁶⁷ Note that part of this activity (the digital representation of the lease and land parcel boundaries) may be provided by the NZAID Project assisting information systems within the Department of Lands. However this complete activity is foundational to further activities under this program. As such close coordination and sequencing will be essential as will close oversight by NZAID and AusAID during implementation.

⁶⁸ This two week period refers to operations in the Registry only. It does not take into account the time required to gain Department of Land's approval for a dealing- This will be addressed by the next intermediate outcome.

a range of agencies. As such, the processing of approvals is poorly coordinated and lacks cohesion. This is especially important when the environmental, public health, and planning compliance issues related to development applications are being considered. Too often these are approached in a piecemeal fashion. This has resulted in poor compliance with regulatory requirements, as well as unforeseen impacts.

Firstly, the Program will support the Department of Lands (and other regulatory agencies) to establish a coordinated and integrated land lease and development service, dealing with all aspects of leasing, including: initial land lease allocation and approvals; consents for land lease transactions; development applications; building approvals; requests for change of lease type; lease conditions; rent reviews; and a customer advisory service. These services will directly underpin and support the participatory governance processes agreed under Objective 2.3 (see Section 3).

Secondly, the service would provide support to agencies that share the responsibility for zoning maps and development control plans, in particular town and rural planning schemes. Zoning maps and development control plans will be developed for both urban Municipalities in Vanuatu. In addition plans will be developed for designated high priority 'hot-spots'.

Thirdly, the service would be responsible for compliance checking and enforcement. One of the lessons of VSTLRI was the necessity of just such an enforcement service. The payment of land lease rents, and the amount of back rent owing, are major compliance issues, and close liaison with the Ministry of Public Finance and Economic Management will be necessary to ensure records are consistent.

A broad range of partner agencies will be involved in this component of the Program, including:

- Provincial Governments and/or Municipalities (depending upon the location of the land); and
- Various agencies within the national Government, in particular the Departments of Lands, Internal Affairs, Public Works, Public Health, the Environment Unit, Customs and the Ministry of Public Finance and Economic Management.

Under the existing legislation, all of the above have responsibility for at least one aspect of land leasing and land development.

Indicators of success include:

- Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation.
- High use customers express satisfaction with the service and its transparency;
- Both urban municipalities have a zoning map and development control plan; and
- Other designated 'hot-spots' and areas of interest are covered by zoning maps and development control plans.

3. **Deliver a national land awareness, knowledge and gender mainstreaming campaign.** It is widely accepted, and shown in VSTLRI, that all segments of Vanuatu society have limited understanding of *kastom* and of the formal sector land issues and laws. As such, two public

awareness programs will be implemented through this Program. The first will be managed by the Vanuatu Cultural Centre (under Objective 1.2 - see Section 2), while the second will be managed by a Public Information Unit within the Department of Lands. This will ensure that alternative avenues are considered and will allow differing perspectives on land issues to be communicated so that stakeholders have relevant, accurate information on which to base their decisions. Opportunities for joint campaigns and collaboration should occur, while still respecting the need for independence. The public awareness programs will build on the preliminary work of the VSTLRI (see Section 1.4).

In addition, the Program will increase gender awareness and mainstreaming within the Department of Lands through the appointment of a Gender Focal Point. While the Gender Focal Point will work across the whole Program, and in particular within the Malvatumauri, the Vanuatu Cultural Centre and the National Council of Women, (under Objective 1.2 - see Section 2), they will also work within the Department of Lands to conduct gender awareness training with Lands staff and ensure gender issues are appropriately integrated into the policies and operations of the Department. With the support of the Gender Focal Point, the Department will develop and agree on a Women and Land Policy that emphasises and protects the interests of women in all land dealings. The Gender Focal Point will also ensure that core participatory land governance processes under Objective 2 are reviewed to ensure appropriate representation and gender sensitisation and awareness. They will also represent the Department of Lands and the Malvatumauri on gender equity committees and other public forums, as appropriate.

The Department of Lands will be responsible for the overall delivery of the public awareness program through the Public Information Unit. The Department of Women's Affairs will coordinate the appointment of the Gender Focal Point within the Department of Lands and provide ongoing support to the appointee, while the Department of Lands will manage the position and facilitate the implementation of gender mainstreaming throughout its programs, systems and procedures.

Indicators of success include:

- Improved stakeholder awareness and knowledge of land processes, and of their roles and responsibilities related to formal land dealings. Particular emphasis within the Department of Lands to ensure gender mainstreaming occurs in all policies, processes and transactions.
 - Increased awareness and understanding by key audiences (customary landholders, investors and Government) regarding the issues surrounding *kastom* land practices and formal land dealings; and
 - Clear support, direction and leadership from the Department of Lands and the Department of Women's Affairs regarding culturally appropriate ways to ensure women's inputs and interests in land are appreciated, protected, enhanced and made more equitable.
4. **Demonstrate effective organisational models and service delivery arrangements:** The Program will commence by supporting key functional areas of land administration and management as outlined in Objectives 3.1, 3.2 and 3.3. Central to this will be installing a service ethic into Government practice. As the Program progresses, improved models of organisational structure, roles and responsibilities will become apparent. Importantly there is a need to consider clearly

separating policy and regulation roles from approval and service delivery mechanisms, as this has been shown to circumvent conflict of interest issues. It is envisaged that by the third year of the Program some improved, appropriate and sustainable organisational roles and responsibilities will be proposed for implementation.

In addition there is the need for land services and products to be made more widely available. In the particular case of Vanuatu, there is a need for an operational change from the current Department of Lands, Port Vila-based model. Nevertheless, as the Government is unlikely to be able to afford to staff and operate a number of nodes, such a change would probably involve an increased range of delivery partners including the private sector, along with civil society organisations including NGOs and churches. As such, alternative options for improved service delivery will be researched and appropriate models proposed.

Support through the Program must enable a gradual move to a “right sized” organisation, sustainable both in capability and the recurrent resources needed.

The main partners will be the Department of Lands and all other agencies with land related functions. It will also be necessary to closely involve industry associations, customer groups, the Public Service Commission and the Ministry of Public Finance and Economic Management.

At this time it is not possible to clearly identify the partners for the devolved delivery of services. Partner options will become clearer when the first two activities listed below have been conducted.

Indicators of success include:

- Effective organisational models and service delivery arrangements (considered a medium-term initiative that will commence after Year Three).
- Distinct separation of policy and regulation roles from approval and service delivery mechanisms; and
- Right sized, right structured agencies delivering effective policy, regulation, and services that are sustainable in the long-term and based on appropriate service charges.

2.5 Links to the National Land Summit and the Land Sector Framework

While Australian assistance is significant, it is still only one of a suite of initiatives planned by the Government of Vanuatu under its draft Land Sector Framework. Once approved, the Land Sector Framework will provide the staged sequencing that will gradually address all resolutions of the National Land Summit. Annex 2 details how Australian support proposed in this design will be the primary mechanism that addresses 12 of the 20 National Land Summit Resolutions and will significantly contribute to a further seven. Only one resolution is not addressed by the Australian assistance. Additional support from other donors will contribute to areas where Australian assistance is not directed. In addition, effective outcomes during the proposed five years of this assistance will ensure ongoing assistance that will address further priority issues (in particular legislative reform).

The Land Sector Framework is currently in draft form awaiting further consultation and refinement before being submitted for endorsement by the Government of Vanuatu. In addition monitoring

and evaluation processes are still to be developed. This design is closely aligned with the objectives and priorities of the current draft. Inevitably, by the time the Land Sector Framework is finalised and endorsed, some changes will have been made. In addition the M&E arrangements for the Framework will be developed⁶⁹. As such one of the first tasks of the Program during its inception will be to ensure that the design's logframe, indicators and approaches to monitoring are harmonised with the final Land Sector Framework. This will ensure that the Program's focus and M&E processes directly contribute to Government of Vanuatu policy and provide timely and relevant information that facilitates effective and efficient oversight of the Land Sector Framework.

2.6 Program Approach to Delivery

Vanuatu's Government, civil society and private sector agencies are small, have limited absorptive capacity, and frequently depend on key individuals to drive and champion change. As such, Australia's assistance to the land sector in Vanuatu will be structured through a program approach. This allows for flexible interventions, with delivery mechanisms that evolve over time. However, such a program approach assumes that Australian commitment will continue in the longer term, provided of course that the established partnerships demonstrate progressive engagement and clear contribution to outcomes. As such, the design proposes assistance be phased. The first five year phase is covered by this design.

2.6.1 Phasing of the Program

Land reform programs are acknowledged by most donors to require long-term partnerships (20 years or more). Under a phased approach, Australia indicates its willingness for a longer term ongoing partnership provided there is clear evidence of progress and achievement. This provides a clear incentive for partners to ensure performance meets agreed expectations.

This first phase of assistance will establish a foundation for further partnership. As noted earlier, it does not attempt to cover all critical issues at once (for example all issues raised during the National Land Summit or as covered by the longer horizons of the Land Sector Framework). Instead, this design sets the groundwork for community engagement, participatory governance and improved services so that future phases of engagement can address longer term outcomes.

The most obvious area not directly addressed in this first phase is legislative reform. The design fully appreciates that over the medium to long term, effective legislative reform must occur and must be supported. However, assistance in this area has been delayed until a second phase for two important reasons. Firstly, there is a need to develop a partnership of trust and mutual respect between Australia and Vanuatu stakeholders. Australia's support to a land program in Vanuatu is viewed with concern by some, scepticism by others and with hostility by a few. Addressing central legislation (such as security of customary land tenure) is seen as too sensitive an area for the bilateral program to commence work at this stage. However it will be noted that the Program supports the Vanuatu Cultural Centre to undertake foundational studies on models of customary ownership. It is hoped that the momentum and trust developed during the first phase of implementation will encourage partners to openly seek and champion legislative reform in a second phase. Clearly the Program approach ensures AusAID has the flexibility to support this work earlier if the Program exceeds expectations. Secondly, recent work (see Section 1.4.2) has shown that

⁶⁹ Currently it is proposed that the M&E approach for the Land Sector Framework will be undertaken by the same M&E specialist who completed the M&E Framework for this design. This will ensure close alignment.

current legislation (while needing improvement) is not the cause of many of the current difficulties. Instead, enforcement is the major problem. Hence the first phase focuses on enforcement and improved participation in decision making rather than on legislative reform.

It will also be noticed that the current phase does not address broad-based institutional reform within the Department of Lands or many of the important technical areas of land services. Firstly, institutional reform is an area that all stakeholders agree needs significant attention. However, it has been agreed that the first phase will specifically target improved delivery of key services of the Department (in particular, leases and planning) rather than starting with top-down reform. The momentum and commitment generated by improved service delivery will then open the way to addressing institutional reform more broadly. As such, Objective 3.4 begins the process of broader institutional analysis, but only after Year 3. Secondly, many technical skills need to be developed within the Department of Lands. The small size of the organisation, however, significantly limits its capacity to absorb enhanced or additional services. As such, this first phase focuses on the core service areas only to ensure that these are developed effectively.

It is expected that future phases of the Program will:

1. Sustain achievements and broaden engagement in customary land, participatory governance and enabling services;
2. Begin a phased process of legislative reform;
3. Undertake more fundamental and broader institutional reform within the Department of Lands and other key agencies; and
4. Broaden support to improved services to other sections within the Department of Lands (e.g. revenue generation).

2.6.2 Flexibility and Responsiveness

As mentioned, one of the benefits of a program model is the scope it provides to respond flexibly and appropriately to changing circumstances. This may result in advancing or slowing the pace of change, as appropriate, or the introduction of new initiatives that address emergent needs.

The program structure allows for a suite of complementary interventions that can:

1. Deliver tangible outputs (e.g. through embedded projects);
2. Build flexible partnerships or service delivery agreements with a range of stakeholders;
3. Build the capacity of all appropriate stakeholders to deliver services sustainably; and
4. Establish the processes necessary for stakeholders in the sector to engage equitably in negotiation, dialogue and decision-making.

The planning and oversight of these interventions is the role of the multi-stakeholder Vanuatu Land Program Coordinating Committee (see Section 3.1). This committee will annually review the current mix of activities and recommend enhancements that more appropriately respond to progress, absorptive capacity, and emergent needs. In addition, it will receive reports on a six monthly basis on progress and work with the Program Team to ensure partners maintain the agreed level of commitment to the Program.

Finally, the Implementation Service Provider for a program engagement must work closely with partners to ensure that the timing, selection and scale of technical or operational assistance

approved by the Program Coordinating Committee is delivered flexibly and responsively based on need and in close consultation with all stakeholders.

3 Implementation Arrangements

3.1 Management and governance arrangements

This section details the mechanisms for management and decision-making, both for the overall Program and for each of its three objectives. Figure 5 illustrates the accountability relationships envisaged for the Program. Firstly, the Vanuatu Land Governance Committee will oversee the implementation of the Land Sector Framework. Hence it is reasonable that it should also manage whatever donor coordination is necessary to ensure the logical, staged implementation of the Land Sector Framework strategies. Secondly, therefore, it is proposed that a working group of the Vanuatu Land Governance Committee will be appointed to work with AusAID as the Vanuatu Land Program Coordinating Committee (Figure 5). This PCC will have the oversight of the Program and be co-chaired by a representative of the VLGC and AusAID. The PCC will meet as required but at least every six months.

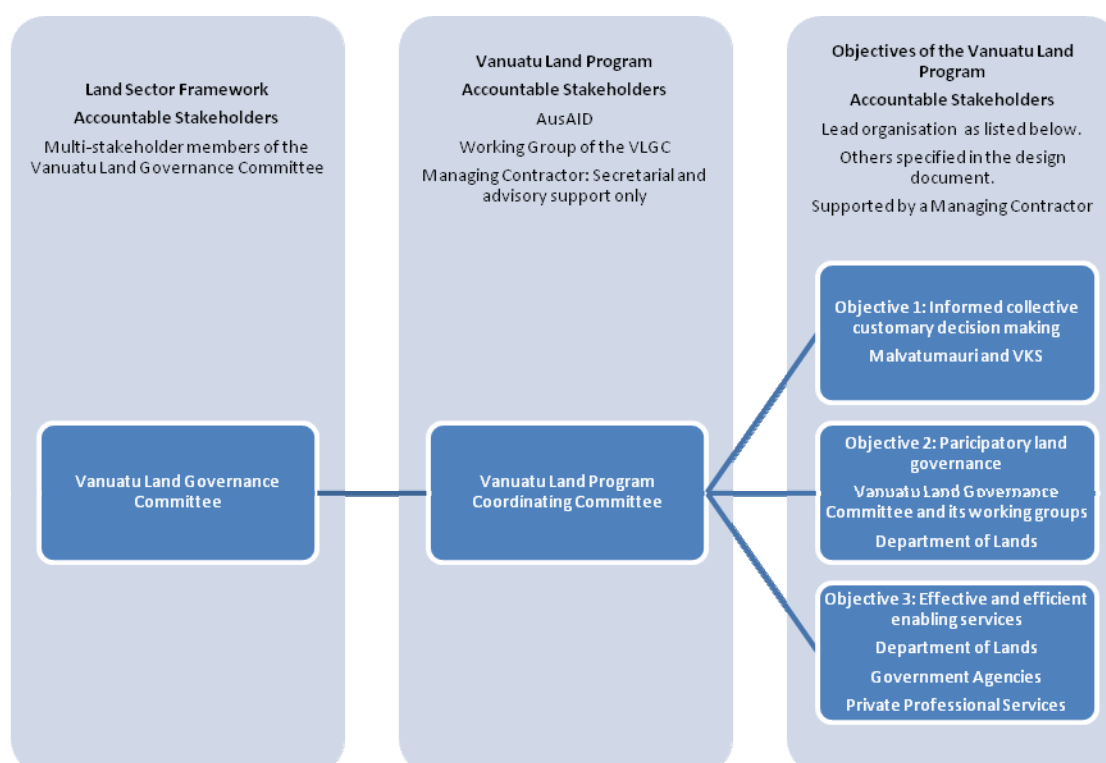


Figure 5: Management and governance arrangements for the Vanuatu Land Program

The Vanuatu Land Program Coordinating Committee will provide the direct policy, strategic direction and implementation oversight for the Vanuatu Land Program. Its roles will include:

- Considering the strategic direction for the Program and, through the Vanuatu Land Governance Committee, coordinating policy discussions between the Program, Government and non-state actors;
- Ensuring that coordination with NZAID activities (and other donor engagements) is harmonised. To facilitate this, the Program Coordinating Committee will include NZAID representation.

Consideration should also be given to this committee providing joint oversight of both the Australian and New Zealand Programs;

- Approving the Program's Annual Plan and budget, and specifically approving the annual work programs of the National Kastom Land Office as endorsed by the Malvatumauri, as well as the annual priorities of the Land Study and Research Grant Fund (Component 1);
- Ensuring that the participatory governance structures established under Component 2 are fully representative of stakeholders;
- Reviewing the processes and procedures developed by the Program to manage formal dealings in land, in this way ensuring transparency, accountability and equity (Component 3);
- Providing comment and recommendations to AusAID on the performance of the Implementation Service Provider; and
- Responding to ongoing Program evaluation, in particular directly engaging with the Pacific Land Program's Effectiveness Review Group (see later in this Section) in the Mid-term and Program Completion reviews.

AusAID has central management and strategic roles in the Program and will need to ensure adequate resourcing to:

- Participate in the strategic direction and policy of the Program through the Program Coordinating Committee;
- Identify and ensure linkages to other AusAID programs and other donors, especially NZAID. In particular, links with the current AusAID support to Custom Governance and Public Service Reform are directly relevant to the Program;
- Actively manage relationships with key partners. This includes selectively participating in partner forums and activities that provide strategic insights;
- Provide Program management and review, including participation in formal Program reviews and ensuring ongoing Program outcome and activity level monitoring; and
- Oversee contract management and administration.

Given the outcomes proposed, a range of stakeholder partnerships are planned to support the implementation of the Program. The primary Government partnership will be with the Ministry of Lands. Objective 1 will be delivered through the Malvatumauri, with support from the Vanuatu Cultural Centre and the Vanuatu National Council of Women. Objective 2 will be delivered through the Vanuatu Land Governance Committee, its working groups and the Department of Lands. Objective 3 will be delivered through the Department of Lands along with partners from the professional private sector and other agencies with a regulatory role for land. Some of the other key stakeholders for each component are shown in Figure 6, with the anticipated major partners highlighted against each objective.

While potential partners are clustered under the primary outcome to which they contribute, the Venn diagram reflects the potential of all partners to have wider roles across the Program.

The main Program will be implemented through an Implementation Service Provider who has responsibilities for both Program-wide management functions and operational functions related to each of the Program components. In all cases, the Implementation Service Provider operates as a

facilitator and enabler of other parties for the delivery and implementation of the Program, rather than being a direct implementer of outputs and activities.

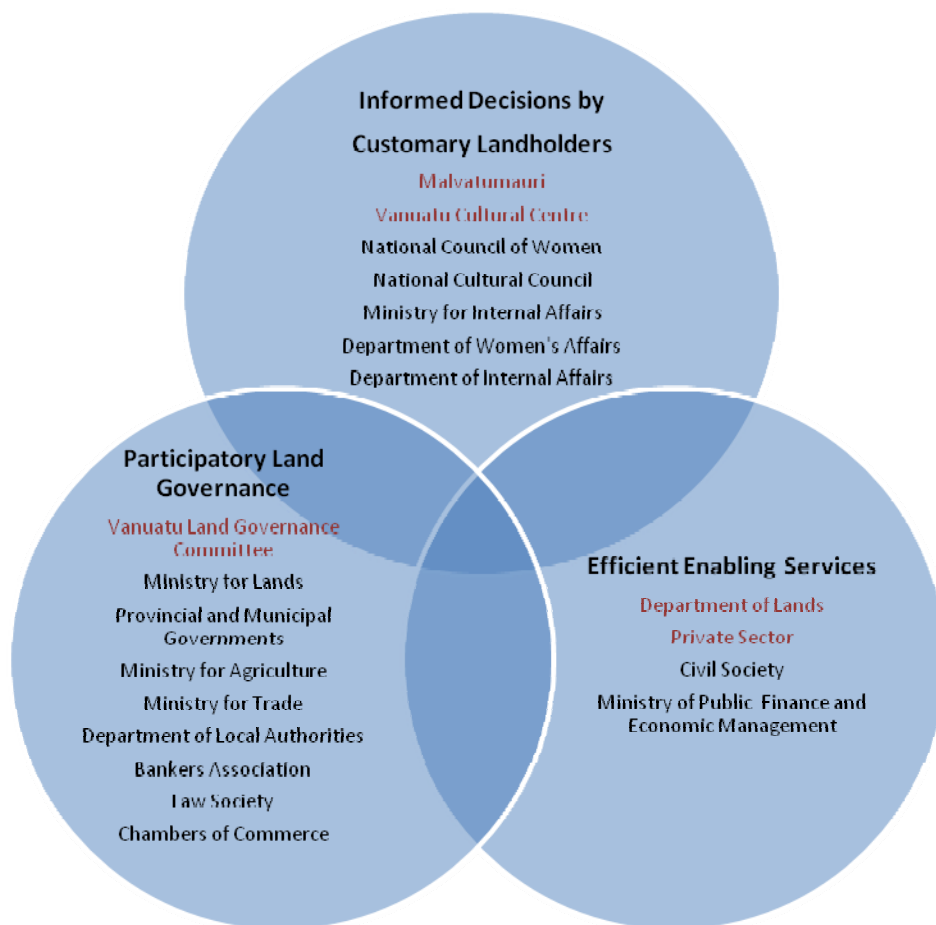


Figure 6: Potential stakeholders supporting the land sector (major partners are highlighted)

Program-wide functions include:

- Relationship management;
- Capacity building and institutional strengthening;
- Financial management;
- Grant Fund administration (e.g. the Land Study and Research Grant Fund; and the Professional Land Services Support Fund (Component 1);
- Administrative, secretariat and logistical support for the Vanuatu Land Governance Committee and the Vanuatu Land Program Coordinating Committee;
- Systems and procedures;
- Monitoring and evaluation;
- Human resource management; and
- Implementation of AusAID cross-cutting policies. Of particular relevance to this Program are the policies related to gender, anti-corruption and peace and conflict.

The Program will also be supported by an Effectiveness Review Group (ERG) established under AusAID's Pacific Land Program to oversee all four country initiatives. The ERG will be coordinated and funded by the Pacific Land Program Manager and will include appropriate specialist and

evaluation support. The role of the ERG will be to visit the Program after inception, at mid-term and at completion, in order to report on the quality of implementation and the likely development impact (see detail in Annex 55). In particular the ERG will provide strategic advice to AusAID, the Vanuatu Land Governance Committee, other partners, and the Implementation Service Provider on mechanisms to improve the effectiveness of the Program. It will also recommend further phasing of the Program as appropriate.

3.2 Advisory and Staffing Structure

The implementation of the Program will be managed on behalf of AusAID by an Implementation Service Provider. The Program team will comprise a range of international and national advisers. The Program will also fund some positions within Government and civil society. The anticipated full time in-country staffing profile includes 2.82 full-time equivalents of long-term international adviser support and 13.2 full-time equivalents of long-term national adviser support. These long-term personnel will be supported by a team of short-term specialists drawn from a Consultant Pool, with proposed inputs and Terms of Reference prepared annually by the Implementation Service Provider for Program Coordinating Committee endorsement.

These skills and positions are shown in Table 3.

Position	Indicative Person Months	Alignment	Location
International Advisory Positions – Long-term roles			
Program Director	(Role combined with one of the positions below)	Implementation Service Provider	Program Head Office (Department of Lands)
International Indigenous Land Specialist	60		
Participatory Land Governance Adviser	60		
Land Registry Adviser	18		
Lease Processing Adviser	12		
Land Services Adviser	19		
National Advisory Positions – Long-term roles			
National Kastom Land Officer	60	Initially under the Implementation Service Provider but integrated into the Malvatumauri in Year 5	Malvatumauri
Administrative Support to the National Kastom Land Office	60	Initially under the Implementation Service Provider but integrated into the Malvatumauri in Year 5	Malvatumauri
Kastom Focal Points	288	Initially under the Implementation Service Provider but integrated into the Malvatumauri, Vanuatu Cultural Centre, Government	Province or Islands level

Position	Indicative Person Months	Alignment	Location
		agency or Civil Society in Year 5	
M&E Adviser	60	Implementation Service Provider	Program Head Office (Department of Lands)
Participatory Governance Facilitators	120	Implementation Service Provider	Program Head Office (Department of Lands)
Land Registry Support Staff	126	Implementation Service Provider	Program Head Office (Department of Lands)
Gender Focal Point	60	Department of Lands (75%) Malvatumauri (25%)	Department of Lands
Public Awareness Adviser	18	Implementation Service Provider	Program Head Office (Department of Lands)
Short-term Consultancy Pool			
M&E Adviser	84 (in total)	Implementation Service Provider	Program Head Office (Department of Lands)
Peace and Conflict Adviser			
Land Law and Policy Adviser			
Gender Adviser			
Public Awareness Adviser			
Institutional/Organisation Adviser			
Land Information Systems Adviser			
Zoning and Development Adviser			
Land Services Adviser			

Table 3: Proposed staffing structure for the Vanuatu Land Program

Funding of short-term consultants from the Consultant Pool should give preference in all circumstances to national or Pacific regional professional support. It is anticipated that the Pacific Land Program will facilitate coordination between its four country programs in order to establish a register of national and regional skills that can be used across all programs. Only in cases where national or regional capacity cannot be found should international assistance be engaged.

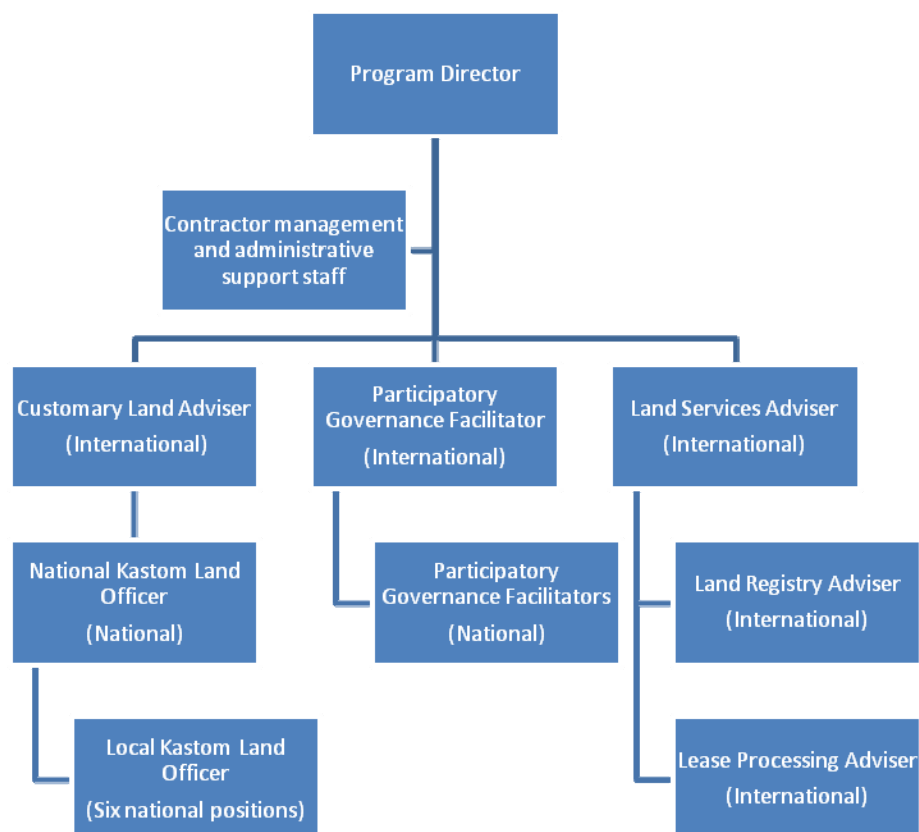


Table 4: Full-time Program positions

n.b The Customary Land Adviser is actually the International Indigenous Land Specialist

The Program will establish its central office within the Department of Lands. The Department of Lands will provide rent-free office space sufficient to accommodate long and short-term advisory staff, as well as Contractor management and administrative staff. The Program will fund all office refurbishment, capital, and operating costs.

3.3 Contracting strategy

The Program will need to mesh with the expected budget availability through the Pacific Land Program initiative. This has three implications:

1. Activities are roughly phased to fit with the available funding, this being more heavily weighted to the 2010/11 and the 2011/12 financial years (see discussion under Design Risks Section 3.9.1).
2. Some activities will need to be flexible, so as to adjust to possible fluctuations in budget availability; and
3. The Program period of five years extends beyond the current timing of the Pacific Land Program. This reflects both a more realistic time-frame, as well as AusAID's longer term partnership approach to the land sector in Vanuatu.

At annual planning time each year, the AusAID Manager of the Pacific Land Program will need to liaise with the Program Director to clarify the available budget. The Program Director will then need to discuss the implications with the Program Coordinating Committee and propose rescheduling of activities if necessary.

A staffing profile is shown in Table 3, and Terms of Reference for key positions in Annex 6. The Contracting Strategy for the Program proposes selecting the Implementation Service Provider on the basis of:

1. Experience and capability to provide the corporate support systems and services required within the context of a small Pacific Island nation;
2. The qualifications and experience of the Program Director and International Indigenous Land Specialist (no other positions will be nominated in the tender)⁷⁰;
3. A Personnel Strategy that identifies the process and timeframe to engage, manage, support and sustain all other long-term Program staff;
4. A proposed skills set and ten indicative CVs of national, Pacific regional and international personnel who could fulfil the requirements of the proposed Consultant Pool;
5. A broad understanding of customary land issues in the Pacific, with a more specific detailed understanding of the Vanuatu situation;
6. An understanding of key aid policies as they relate to the Program;
7. A draft Inception Plan that covers the first six months (approximately) of Program implementation; and
8. A proposed approach to fulfilling the role and responsibilities of the Implementation Service Provider.

Once selected, the Implementation Service Provider (with input from AusAID) will conduct both an international and a local search for the remaining long-term personnel positions. In addition, the Pacific Land Program will combine the indicative CVs proposed by tenderers for the Consultants Pool, and make this available to the Program. Each year in the Annual Plan the Implementation Service Provider will propose the short-term positions and inputs required from the Consultant Pool or, if necessary, undertake a broader selection process.

3.4 Timing and Budget

The Program will be implemented over five years, commencing in approximately late 2009. The estimated cost of the Program over this period will be [amount removed].

Once the Contract is signed, the Implementation Service Provider will commence recruitment of all remaining staff. During this time the Program office will be established within the Department of Lands, and consultations will occur with all key stakeholders to develop an Inception Plan. This Inception Plan will cover the period up to June 2010, and thus will incorporate the first year's Annual Plan (see 3.6 below). The Inception Plan will be delivered within three months of commencement.

The Program will be financed through a combination of:

- a Grants Funds Account (otherwise known as a contractor imprest account) totalling A\$1.1m and including: a) the Land Study and Research Grant Fund (A\$450,000: equivalent to A\$100,000 per annum commencing Quarter 2); b) Professional Land Services Support Fund (A\$562,500: equivalent to A\$25,000 per province per annum commencing FY2010/11); and a Vanuatu

⁷⁰ This is done in recognition of the small pool of international and national expertise available for Program implementation, and to avoid tenderers competing for potential advisers.

Cultural Centre Gender Mainstreaming and Public Awareness Fund (totalling A\$135,000: equivalent to A\$30,000 per annum commencing Quarter 2);

- reimbursable operational costs inclusive of all long and short-term personnel fees, all travel, all training and all equipment (total estimate of A\$10.4m over five years); and
- fixed contractor management costs incorporating all overhead costs, office refurbishment, office operating costs, consumables, maintenance costs, insurances and commercial margin (total estimate of A\$2.4m over five years).

A regular bi-monthly billing will be paid for 100% of reimbursable costs and 70% of fixed costs. The remaining 30% of fixed costs will be paid on contracted milestones. Grant Funds will be paid every six months based projections in the Annual Plan and the reconciliation of past expenses. Financial audits on all Grant Fund Accounts will be undertaken annually by an independent audit firm coordinated by the Implementation Service Provider.

3.5 Monitoring and Evaluation

The Vanuatu Land Program employs a flexible and responsive approach, structured around the multi-stakeholder management provided by the Vanuatu Land Governance Committee. As a result, conventional approaches to M&E in the land sector are neither sufficient nor appropriate for the Program: innovation is required. The M&E approach, outlined in Annex 5, responds to the design by incorporating new and emerging methodologies, as well as established and more familiar approaches. Nevertheless, the approach is still indicative. Early in Program implementation, the Program team will review and further develop it in partnership with key Program stakeholders. The two objectives of such a revision will be: to align and integrate it with M&E arrangements for the Land Sector Framework ; and to ensure it appropriately meets the needs of the Government of Vanuatu. . Throughout the refinement process the following principles will need to be applied:

- M&E processes must impose limited demands in terms of time and methodology on key stakeholders such as the Malvatumauri and the Department of Lands, while at the same time balancing their adequate engagement;
- M&E analysis and reporting must blend both qualitative and quantitative data collection methodologies within a structured framework;
- Program M&E must support Government data collection and management, particularly in the Lands Registry;
- Procedures must integrate data collection and substantive Program activities in such a way that these two operations both support and enhance each other; and
- As much as possible, there must be disaggregation of data by gender as well as by province / island.

Blending quantitative data with qualitative, open inquiry techniques recognises that outcomes are messy, fluctuating and influenced by many factors. As such, the M&E for this program includes the Performance Story Reporting approach to integrate disparate quantitative and qualitative data and provide a framework for its analysis. The final tools and processes will be confirmed during the update and revalidation of the M&E arrangements during Program inception.

Quantitative data will be especially important for the evaluation of Component 3, the data being drawn from the Department of Lands' own records, as well as from program records. Conversely,

qualitative data will underpin Component 1 and 2 and include program-specific data collection largely in the form of interviews. These will include semi-structured interviews with individuals (best suited to Government officials or key leaders), and group interviews (described as *storian* – best suited to the Malvatumauri, groups of customary owners or women). Furthermore the Program will support the Department of Lands to conduct an annual Client Survey. This will monitor the satisfaction levels of its main clients in the formal sector.

The Monitoring and Evaluation Framework for the Program is and must remain consistent with the Government of Vanuatu's PAA⁷¹, the goals of the Vanuatu Australia Country Strategy, and the (evolving) Land Sector Framework. The inherent flexibility of a program approach will require that the M&E Framework incorporate processes to regularly review and refine outcome statements to ensure they are clear, measurable and achievable within agreed timelines. The M&E Framework must also capture sufficient evidence of partner contribution to outcomes, in order to justify future phases of support.

Reporting of Program progress and achievements will be six-monthly, and the annual planning cycle will be aligned with the Government of Vanuatu's budget, as well as with the planning timelines. Three major independent evaluations will be undertaken, one after inception, one at mid-term and one at program completion. These will be conducted through the Pacific Land Program under the direction of the Effectiveness Review Group (see Section 3.1). Outcomes of the evaluations will feed into the mid-term and completion reports, as well as into the preparation of a subsequent phase, should this be agreed upon.

3.6 Inception Plan

As the first step in implementation, the Implementation Service Provider will be expected to work closely with ni-Vanuatu stakeholders to develop an Inception Plan covering the first six months (approximately) of Program implementation, up to June 2010, incorporating the first year's Annual Plan. Key activities that must be included in this Inception Plan include:

1. Develop draft MOAs covering for key partnerships with the Department of Lands, Malvatumauri, and Vanuatu Cultural Centre. Once approved by AusAID, proceed with signing of the MOAs.
2. Complete the recruitment of all key staff positions as outlined in the approved Personnel Strategy;
3. Establish the Program Office within the Department of Lands;
4. Support the Malvatumauri to establish the National Kastom Land Office;
5. Work with AusAID and the Vanuatu Land Governance Committee to finalise the membership and operations of the PCC. Schedule and complete the inaugural PCC meeting;
6. Complete a Logframe review and finalise the M&E Framework for the Program so that they:
 - a. Effectively harmonise Program objectives with those finally agreed for the Land Sector Framework; and
 - b. Establish a common set of indicators and evaluation methodologies that meet both AusAID and Government of Vanuatu requirements.

⁷¹ The M&E mechanisms for the PAA are not robust and hence stronger links to the AusAID CPS and Land Sector Framework may be needed.

7. Develop and submit the Program's draft Annual Plan for the remaining period up to and including June 2010;
8. Update the Program's Risk Management Strategy;
9. Develop and seek AusAID approval of operating procedures for the Program's Trust Fund imprest accounts;
10. Undertake consultations with key stakeholders in Government the Malvatumauri, the Vanuatu Cultural Centre and civil society to develop a recommended model for a network of local Kastom Focal Point officers. This should include assessing the capacity of current networks and options for voluntary appointments. The assessment (including appropriate recommendations on management, training, funding mechanisms and a Sustainability Plan), should be completed by the International Indigenous Land Specialist and the National Kastom Land Officer and submitted to the Vanuatu Land Program Coordinating Committee for consideration.
11. The Peace and Conflict Adviser will work with the Department of Lands, Malvatumauri, Vanuatu Cultural centre, civil society and AusAID to undertake a Conflict Analysis that will assess the sources and likelihood of conflict. An Action Plan that identifies key strategies, capacity building, roles and responsibilities (including those of key partners) will form an annex to the C Conflict Analysis. Key risks will be integrated into the Program's Risk Management Plan (see Section 3.9.2). The Peace and Conflict Adviser will provide training to Program staff, affiliated workers and key stakeholders on conflict management, mitigation and dispute resolution.
12. Development of the Program's Gender Strategy by the Gender Adviser and the Gender Focal Point and integration of key actions into Program work plans. The Gender Strategy will be revised annually and the M&E Framework will include key gender indicators that ensure the objectives of the strategy are achieved. Further details of the Gender Strategy are outlined in Section 3.8.1.

3.7 Sustainability and absorptive capacity

Sustainability is generally defined as the benefits of the Program continuing after assistance has ended. As stressed in Section 1.5, the Vanuatu Land Program should be seen as one stage of a long-term change process in the Vanuatu land sector, guided by the Government's Land Sector Framework. As such sustainability in the context of the Vanuatu Land Program must ensure the harmonisation and integration of activities that will follow on from the current phase, be they supported again by an international donor, or sustained from Government civil society or private sector resources. As such it is proposed that the Implementation Service Provider supports the development of a Sustainability Framework. The Sustainability Framework will guide the Vanuatu Land Governance Committee and the Vanuatu Land Program in the development of appropriate responses as well as informing evaluation processes.

The Framework will:

1. Provide a conceptual basis for understanding sustainability and how it will be managed within the Vanuatu Land Program;
2. Identify key aspects of sustainability that need to be taken into account and evaluated during implementation. These include institutional capacity and viability; harmonisation;

avoiding duplication and parallel processes; financing of recurrent expenses for ongoing services; and skills and training of key individuals; and

3. Identify evaluation tools to assess the harmonisation and integration of activities that will follow on from the current phase. Monitoring and evaluation must then ensure the strategies identified are on target.

It is particularly important that the Program responds effectively and sensitively to the limited absorptive capacity of key partners to ensure that interventions are appropriately scaled and sustainable. Government, civil society and private sector groups in Vanuatu are small and will remain so given the small population and economy. All interventions proposed must therefore be relevant to the country's needs, resources and capacity. As such any systems, procedures, consultation processes, structures and institutional reform must be specifically tailored to the human and financial resources available and carefully balanced to ensure that they do not divert scarce resources from other important areas. In this context the Program must be particularly sensitive in three areas:

1. Support to customary land dealings through a Kastom Focal Point network is a new system and current resources at the sub-national level are very small. Care is required to identify current players and processes and improve their efficiency and capacity as the foundation of any changes proposed;
2. The participatory governance structures must be efficient. Influential individuals in Vanuatu have many roles and are swamped with various consultations and meetings. The Program must be very careful to ensure that the most efficient use is made of people's time and that there is significant and sustainable momentum from within stakeholder groups to establish and sustain any new consultative structures;
3. Refined or new systems and procedures within the Department of Lands, or other land related agencies, must recognise the scarcity of professional staff and the competing needs for their time. Significant innovation is required to adapt current international best practice systems to the small institutions and resources rather than importing systems that require greater resources.

Also of critical importance to sustainability and absorptive capacity is the manner in which technical assistance is provided. It is very important that the Program does not divert key partners from other important duties to be involved in Program specific activities. The Program Director must work very closely with partners to understand their 'business' and mentor them to carefully and appropriately prioritise and allocate resources.

In addition, external technical assistance must avoid 'taking over' and simply undertaking tasks directly. The timing and inputs of external technical advisers must be carefully and modestly scheduled to ensure that the tasks are not only performed and reports produced, but that significant mentoring and support is provided so that the partner agencies understand, accept and inculcate the new ideas and changes before moving on. As such, the Program Director must exercise considerable insight, as it may often be more appropriate to use long-term advisers or locally engaged consultants to build capacity slowly and deliver simple technologies regularly, rather than 'fly in' an international expert for a limited period. If the Implementation Service Provider places the achievement of Program outputs above the long-term sustainable reform envisaged in the Goal,

then the intervention will have failed. As such the Implementation Service Provider must work with the partners and the PCC to constantly reflect on progress, revise timelines, and adjust inputs to ensure steady progress is made.

Finally, sustainability of this Program will demand close associations and harmonisation with other donor assistance, or national programs. Program leaders must meet regularly to discuss their work programs and harmonise inputs to ensure that efficient use is made of key stakeholder time, trainings are linked if possible, surveys and monitoring are not duplicated, and that scarce resources are not monopolised or diverted from priority areas.

3.8 Overarching Policy Issues (Gender, Anticorruption, Peace and Conflict)

3.8.1 Gender

An analysis of gender issues was commissioned as a background paper for the design process⁷² (see Annex 1). A summary of the main findings appears in Section 1.1.5. In addition recommendations have been incorporated into the design. The sustainable use and development of land requires the participation of both men and women. Yet given the disparities in social status between men and women in Vanuatu, the Program needs to give specific attention to gender equity in order to avoid exacerbating these disparities.

The Program Team includes a significant intermittent advisory support on gender. It is proposed that this support will be delivered by national, as well as Pacific regional or broader international advisers. The first output will be the participatory development of a Gender Strategy for the Program. The Gender Strategy aims to:

1. ensure women's participation in decision-making and leadership throughout the Program;
2. ensure that both women and men have access to Program resources;
3. strengthen the capacity of women to participate in leadership and decision-making within customary and formal land dealings;
4. increase the capacity of women's organisations and networks to demand good governance;
5. garner men's support to recognise and respect the contribution of women in decision-making at the local level; and
6. change attitudes about the rights of women.

In order to achieve these objectives, the Gender Strategy should include, among others, the following specific actions:

- A Gender Focal Point is to be appointed, with advice from the Department of Women's Affairs, within the Department of Lands. While initially supported by the Program, this position will become a full-time staff position within the Department by the end of the Program. The Gender Focal Point will work towards mainstreaming gender in the Department's operations, raising awareness of gender issues, ensuring women's representation in all key land processes and procedures, and supporting the Department to develop a Women and Land Policy that emphasises and protects the interests of women in all land dealings.

⁷² Lynch, A. (2007). *Gender Analysis of Land in Vanuatu*. AusAID, Vanuatu

- The Gender Focal Point will also work with the Malvatumauri to increase their appreciation and awareness of the value of women's roles in customary land decision-making, and to encourage them to support consultation with and the participation of women whenever significant decisions are being made. It is also intended that the Malvatumauri endorse a *kastom* Gender Policy.
- The Vanuatu Cultural Centre will conduct a gender awareness campaign (funded to A\$10,000 per annum) to specifically promote the important role that women can play in decision-making related to customary land. They will also fund studies of women's issues out of the Study and Research Grant Fund, in order to generate key lessons that can be reflected on not only across the Program, but across the entire sector.
- Any selection of participants in training and other Program activities will promote and support the equal participation of both women and men, and gender issues relevant to Vanuatu will be included in the content of all training workshops and other professional development activities;
- Program Management will favour the appointment of women in any selection processes, in order to achieve greater gender equity. The strategy will also include additional mentoring and training for women staff members in order to attain senior roles, as well as the deliberate selection of a gender balanced team of international advisers as a model and as mentors for local women and men.
- The management of the Program will also ensure that the Program team and partners (including the Kastom Focal Point officers), as well as all Participatory Governance Committees, receive quality training on the importance of integrating gender equity throughout the Program.
- The M&E Framework and other Program data collection and reporting tools will ensure all data are disaggregated by gender.
- Progress toward the gender objectives and activities listed above will be tracked as part of the Program monitoring and evaluation.

The Gender Strategy will be developed during the inception period. Actions identified will be integrated into Program work plans, and training of all Program staff and key partners will be provided.

The Gender Focal Point will assist the Program Gender Adviser to develop the Program's Gender Strategy. Once the Program has fully commenced and the Gender Focal Point has established a presence within the Department of Lands, they will then commence the development of a Gender Policy for the Department.

3.8.2 Conflict prevention and peace building

Land is a flash point for conflict throughout the Pacific. Customary land tenure and management practices have evolved within largely subsistence societies, and hence the increasing pressures from external development and the 'commodification' of land have resulted in significant conflict. As such, the Vanuatu Land Program specifically aims to ensure its interventions do not aggravate conflict, but instead work specifically with customary landholders, Government, and the private sector to address the areas where conflict arises. The design addresses conflict prevention and peace building as a cross-cutting issue, and as such Program implementation must adopt a conflict-sensitive approach in its implementation of Program activities. Moreover, the Program supports and encourages informed collective decision-making on land issues that has an explicit conflict prevention/peace building outcome, and seeks to improve the participatory governance of the land

sector by broadening participation and reducing all forms of exclusion and alienation. How this is addressed by each component is described below.

- Component 1 will specifically work to improve informed collective decision-making related to land. The Malvatumauri, Chiefs, and National and Kastom Focal Point officers will receive specific training on conflict management, participatory facilitation and dispute resolution. They will work to enhance the recognition and respect for *kastom* within communities – a key element of which centres on managing and resolving community conflict.
- Component 2 will promote the participatory governance of the land sector at three levels: nationally, regionally, and at the process level. Improved stakeholder participation will enable debate as well as enhance decision-making. Processes will be specifically chosen for review on the basis that they are both multi-stakeholder and have the potential to lead to significant conflict if the process is abused. In particular, this component will address the processes identified in the National Land Summit, specifically those related to the application of Ministerial powers, as this has the potential to escalate to conflict if abused.
- Component 3 addresses the area of improved services. In this regard the significant backlog and unwarranted delays in land registration are a significant source of dissatisfaction. In addition, the public awareness/public information program in the Department of Lands will address issues which have given rise to disputes and conflict in the past.
- Finally, as conflict is a key risk, the Program will be underpinned by a clear Conflict Analysis and unambiguous conflict mitigation strategies. The Conflict Analysis will be undertaken during inception and key risks integrated into the Risk Management Plan. This is discussed in greater detail in Section 3.9.2.

3.8.3 Anti-corruption

Land dealings worldwide are potential sources of self interest, greed and corrupt practices - a fact that is no different in Vanuatu than elsewhere, and the source of most of its conflict regarding land (see Section 1.1.8). The Program is obliged under AusAID policy to take a zero tolerance approach to corruption. As such four important responses are required:

Firstly, Program staff will be informed of this at their appointment, will receive anti-corruption training, and will sign a Code-of-Conduct that emphasises the essential role they will play in representing Australian support to Vanuatu, and modelling transparency in both their financial and facilitation roles. All Program finances will be regularly audited, and all Program processes that impact on stakeholders will be open and transparent. The Implementation Service Provider will ensure that the 'zero tolerance' policy is carefully applied to the internal workings of the Program, its staff and all donor funds.

Secondly, governance committees will likewise receive training on their important service roles, and will develop their own Codes-of-Conduct which all members will be expected to sign.

Thirdly, it is inevitable that the Program and its staff will eventually come face to face with evidence or allegations of corrupt practice. It is essential that the Program staff (be they from the Implementation Service Provider or partner organisations) have unambiguous processes to report and respond to corruption without fear of prejudice, knowing that appropriate action will be taken and that their identity, integrity and safety will be protected. In this regard AusAID will seek

agreement from the Vanuatu Government and key stakeholders prior to the start of the Program, on clear protocols and guidelines for people associated with the Program to use when confronted by fraud, corruption or abuse of power. AusAID intends that this will form the basis of a Memorandum of Agreement between all parties. The Implementation Service Provider will ensure that the Operations Manual for the Program and associated training outline clear anti-corruption processes that align with the MOA and the Australia-Vanuatu Development Anti-corruption Action Plan.

Fourthly, it is anticipated that significant resistance from vested interests may sometimes slow or even stall the Program. Hence, although the Program must emphasise to stakeholders that land reform is vital, it will inevitably only be able to move as fast and as far as local stakeholder ‘champions’ can enable it to do. As such, the Program cannot be the driver for improved transparency – it can only facilitate change where there is the local will for it to occur.

3.9 Critical Risks and Risk Management Strategies

As outlined in the Rationale Section (see Section 1.6), the Vanuatu Land Program has been designed to respond to the dynamic environment and changing context of the Vanuatu land sector. The design manages the uncertainty in the environment through three components based on funding mechanisms with sufficient flexibility to maintain their relevance and impact through foreseeable risks. The key risks associated with the Program are categorised below as risks associated with the design, the implementation and the context⁷³. A Risk Matrix is attached as Annex 77.

3.9.1 Design Risks

Managing Program flexibility

By its very nature, the incorporation of flexibility into a design in order for it to respond to changing circumstances is itself a risk. Flexibility not only requires both considerable and capable management, it also requires sophisticated monitoring to ensure that a Program adapts to the environment while still achieving its intended outcomes. To this end, the design of the Vanuatu Land Program includes several management and governance tasks shared between the Vanuatu partners, the AusAID Post, and the Implementation Service Provider. This itself is a risk, and great care will be needed to ensure that open and clear communication occurs between these groups; hence monitoring the effectiveness and efficiency of these processes will be crucial.

Program approach and long-term commitment

The design team has prepared a five year Program of engagement on the assumption that this will form part of a longer term commitment on AusAID’s part to land reform in Vanuatu. Although a five year Program will certainly make a significant contribution to the outcomes identified, the long-term sustainability of the interventions will depend on AusAID’s ongoing and flexible support.

Funding pipeline

Another design risk relates to the availability of funding through the Pacific Land Program. Funding is governed, not by need, but by Australian Treasury releases. While the Pacific Land Program has some flexibility to reallocate funds between different country programs, the potential exists for

⁷³ Design risks are those that relate to the overall concept of the Vanuatu land Program and may reduce its overall effectiveness in reaching its Purpose; Implementation Risks are those internal to the efficiency or efficacy with which the Vanuatu Land Program is delivered; Context Risks are those that relate to the external environment in which the Vanuatu Land Program operates.

individual programs to be forced to alter their implementation schedules significantly in response to funding shortfalls. The Pacific Land Program has addressed this issue by ensuring that activities under Component 3 are modular (both in scale and delivery time), and hence can be moved if the need arises. Currently the Program aligns with projected funding availability for three out of four years – the current budget requirement for 2009/10 is significantly higher.

3.9.2 Implementation Risks

Capacity of Government agencies and shared roles

This Program design recognises the central role national Government must play in coordinating and guiding land management and development, while at the same time acknowledging the limitations of the capacity of the Ministry of Lands to provide effective services across the country. The design therefore envisages that in order to be effective, certain service roles currently performed by the national Government may in future be:

1. devolved to Provincial/Municipal Governments;
2. provided by the private sector (e.g. valuation, surveying, etc); or
3. delivered by civil society (e.g. community facilitation and negotiation support).

Of course such change is only possible if the Government of Vanuatu both acknowledges the need, and establishes the processes to legitimise and oversee diverse service delivery models.

Current indications are that at least some segments of the Ministry are open to the possibility of reform in just these areas. In terms of the implementation of the Program, one important implication is that Australian technical and financial assistance will inevitably be directed at both Government and non-government stakeholders, in order to develop the capacity, professional networks, codes and oversight mechanisms needed to support reform.

Land related conflict

Land is a very emotive issue in Vanuatu and is the root cause of historic conflict in the country. This Program will quite likely become a focal point for disenfranchised sectors of the community to vent their frustration and anger. This is a particularly sensitive issue as Australian investors and agents are intimately involved in much of the development currently occurring in the country. The Program will thus need to monitor conflict closely and establish mechanisms to deal with conflict issues as they inevitably arise. The potential for the Program to become embroiled in conflict is a primary reason for the phased Program Approach adopted by the design (see Section 2.6.1. The principles of Do No Harm, conflict prevention and peace building embodied in AusAID's Peace Conflict and Development Policy must be incorporated into risk management practices and Program operations.

In addition, the Program will undertake a Conflict Analysis during the inception period (see Section 3.6). This will include an assessment of the conflict environment surrounding each of the Program's key partnerships. The Conflict Analysis will include an Action Plan that identifies key strategies, training, roles and responsibilities to deal with conflict wherever it arises (community, Government, corporate or civil society). Agreements with each partner organisation will include regular conflict mitigation reporting. Regular monitoring and annual updates of the conflict assessment must be scheduled with each key partner. Key concerns must be integrated into the Program's Risk

Management Matrix. Finally the Program will provide training to its staff, affiliated workers and key stakeholders on conflict management, mitigation and dispute resolution.

Capacity building

Building capacity⁷⁴ will be essential to the success of the Program across all three components.

Moreover, it will be a particularly challenging task due to the wide variety of groups, individuals, and organisations - each with greatly varying needs, view points and interests.

At one end of the spectrum of groups who require capacity building are the customary landowners. This includes the Malvatumauri, the Provincial and Island Council of Chiefs, the Kastom Focal Point officers and the communities. At the other end of the spectrum there is a land regulatory service that covers leasing, development planning, assessment and the issuing of permits, involving seven Government regulators. Not only will these seven regulators benefit from capacity building, but so will the private sector organisations that interact with them.

Several papers have examined recent capacity building efforts in the Pacific region (most have been internal to AusAID⁷⁵, but some have been from the European Centre for Development Policy Management⁷⁶). In summary, the results are extremely variable and generally not as good as hoped. Where good progress has been made, it has tended to be built on respected personal relationships in technical or more focused areas. These papers examined a variety of approaches to capacity building, yet none stands out as being more effective than the others. In essence, capacity building is very challenging, and all possible approaches should be considered.

In this Program it will be vital for the implementers to consider their approach(es) to capacity building very carefully and to even develop and trial novel approaches if that proves necessary. It will also be necessary for the M&E process to monitor implementation closely, so that any remedial action, such as changes of direction, approach, timing, personnel or resourcing can be addressed urgently.

Harmonisation of inputs and support across the land sector

Many donors are either currently engaged with, or at least showing interest in, ongoing support to the land sector in Vanuatu. This fact poses the significant risk that interventions will not be integrated or complementary. Moreover, available resources are limited, and it would be unfortunate if these were captured by secondary issues that were not necessarily the building blocks of a long-term strategy. Hence to harmonise donor inputs, as well as to protect and effectively manage stakeholder absorptive capacity, the Government of Vanuatu is currently developing a Land Sector Framework. This Land Sector Framework will clarify the entry points and principles for donor engagement.

⁷⁴ "The process of developing competencies and capabilities in individuals, groups, organisations, sectors or countries which will lead to sustained and self generating performance improvement". - Definition of Capacity Building from AusAID, 2004, *Capacity Development Principles and Practices*.

⁷⁵ "Improving Counterpart Relationship in Papua New Guinea" P Morgan July 2008; "Reflections on RAMSI and Capacity Development" P. Morgan, May 2007; Direct and Indirect Approaches to Technical Assistance – RAMSI Interventions in the Solomon Islands" P Morgan September 2007.

⁷⁶ "Technical Assistance Personnel in the Solomon Islands" H. Baser, June 2007; "The Concept of Capacity" P. Morgan, May 2007.

As such, the design has responded to the priority issues of the Land Sector Framework, ensuring coordination mechanisms are in place to liaise with Government, other stakeholders and other donors. The key risk is that other donors may not align with the Land Sector Framework, pursuing their own interests outside of its guidelines and strategies. To manage this risk, the design team was closely involved in the preparation of the Land Sector Framework. In addition, meetings and parallel design processes have been undertaken with NZAID, and discussions have been held with the UN and the World Bank.

In line with agreements under the Paris Declaration, NZAID and AusAID are currently discussing models where proposed NZAID assistance can be delivered in parallel with or integrated into the Vanuatu Land Program. NZAID plans to assist the information technology unit within the Department of Lands as well as strengthen the Customary Land Tribunals.

Assumptions

Within the design, numerous risks have been identified relating to its underlying assumptions. These are detailed in the Risk Matrix. These also need to be reviewed and either revalidated or revised during the inception period.

3.9.3 Contextual risks

Acceptance of donor involvement in customary land

Engagement by a foreign donor in customary land issues can only occur where ownership, direction and control are clearly vested with ni-Vanuatu stakeholders, a point that was repeatedly stressed by stakeholders during both the initial concept mission and the subsequent design mission. Without this clear mandate from the traditional landholders and the Vanuatu Government, this Program could not be pursued in its current form.

Motivation for change and political will

As evidenced by other land programs, it is often difficult to bring about substantive change in established norms and behaviours in the land sector if these are based on significant measures of perverse power, influence and financial dealings. In the case of Vanuatu, these risks have been highlighted by recent Council of Minister decisions related to the powers of the Minister to transact customary land dealings (see Section 1.6.5). The situation is challenging, and fair dealings can only come through the advocacy, consistency and influence of local stakeholders or other champions of change. Nevertheless, the presence of just such political commitment is evidenced by the strong support for change shown by the Director General of the Department of Lands, as well as by certain segments of civil society and the private sector. Furthermore, the potential for success can only be improved by the Program's emphasis on participatory governance and customary decision-making. This will ensure that all stakeholders are well aware of their responsibilities to both advocate for and inform representative decision-making.

3.9.4 Risk Management Processes and Responsibilities

Initial risk analysis has been undertaken for the Vanuatu Land Program. Further risk identification should be undertaken as part of the development of the Monitoring and Evaluation Framework. Given the flexible nature of the design, it can also be expected that new risks will be identified as the Program proceeds. These should be identified collaboratively with AusAID and stakeholders as part

of the ongoing performance monitoring process, and added to the Risk Management Plan as appropriate.

The Implementation Service Provider, in collaboration with AusAID, is responsible for monitoring all levels of risk, as well as for informing the Vanuatu Land Program Coordinating Committee of any impacts. Risk reporting is part of the overall monitoring reporting for the Program, at both output and outcome levels. Management of implementation risks is the responsibility of the implementers, and should be covered by the risk management strategies developed in the Risk Management Plan. On the other hand, the responsibility for the management of the design risks is shared between AusAID and the Government of Vanuatu. Nevertheless, specific responsibility for individual design risks needs to be assigned, and the relevant management strategies need to be in place, in order that the response to these risks is adequately guided.

Finally, risks which might arise from the context of the Program are outside the control of the activity implementers, and probably also outside the control of either AusAID or the Government of Vanuatu. These need to be identified and managed according to the threat they pose to the viability and achievement of the Program.

Annex 1. Gender Workshop Outcomes and Gender Analysis

This Annex includes a detailed gender analysis, along with the outcomes of a workshop held with women's representatives. Both activities were undertaken as part of the design mission.

Gender Analysis of Land in Vanuatu⁷⁷

Introduction

Sethy Regenvanu's 1981 statement that *Land is to a ni-Vanuatu as a mother is to a baby*⁷⁸ encapsulates the importance of land to most people in Vanuatu. For generations, traditional land tenure systems have linked women to land as their source of nourishment, livelihood, and identity; as such, land is to be valued, respected and protected. Yet today these ideas are being dramatically challenged, and land is now a highly controversial issue in Vanuatu. Uncertainty has arisen due to: Western concepts of 'ownership' versus traditional notions of 'custodianship' or 'trusteeship' for future generations of ni-Vanuatu; individual rights versus communal rights; *kastom* laws versus introduced laws; active versus silent participation by women in decision-making; and unparalleled land speculation versus holding land for perpetuity. These and many other dichotomies highlight the existing tensions that have, and will continue to have major impacts on current and future generations of ni-Vanuatu – both women and men.

This paper highlights the need to recognise the role of women in making a significant and necessary contribution to the way land is managed, in relation to both their reproductive and their productive roles. Underlying this is the fundamental belief that land is the source of both the spiritual and physical means of existence. The erosion of traditional expressions of the interrelatedness between woman and land, and the changing roles of men and women within rural and urban communities, pose serious threats to the basic social fabric of society and the lives of all ni-Vanuatu.

The introduction of patriarchal ideologies from early colonisers, misrepresentations of the teachings of the scriptures, increasing materialism and emphasis on the individual rather than the community are some of the direct products of development affecting the status of women in Vanuatu. Based on the resolutions of the National Land Summit of 2006, which acknowledges both traditional culture and the emerging modern culture in Vanuatu, the proposed AusAID funded Vanuatu Land Program provides a unique opportunity to make a significant positive impact on the status of women in relation to land and to reinforce the basic message that their participation in matters related to land is as important as the participation of men.

Although there is limited research and analysis of issues related to gender and land, it is clear that practical ways need to be identified to enable women and men to participate equally in decision-making around land. The concept of equality between men and women, while introduced, is not at odds with traditional values of respect for women: all speak to the inalienability and indivisibility of land to the men and women who live on the land and derive their identity, status and livelihood

⁷⁷ This paper is based on an 8 day review carried out between September & October 2008. It was prepared by Andonia Piau-Lynch to assist the Design Team to develop the AusAID Vanuatu Land Program.

⁷⁸ Van Trease (1987) quoted in Naupa & Simo (2008:77).

from it. Recognition of the inherent compatibility of custom values and introduced values through international laws such as the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), together with religious and spiritual teachings of values such as respect, offer Vanuatu a real opportunity to build the foundations for change.

Initiatives to raise awareness of land issues and provide space for women to be more actively involved in the process of decision-making are an integral part of the recommendations from the National Land Summit of 2006. These recommendations call for the recognition of custom and the role of chiefs but at the same time remind us to acknowledge the critical roles that women also play in upholding customs that give support to men in land matters. As Naupa and Simo (2008) say, amending current legislation or drafting new laws alone will not address the inequality and inequities that currently exist as a result of outside influences failing to recognise systems that have worked the past. A mind shift will also be required to re-evaluate the positive and complementary roles that men and women play in land matters. A huge potential therefore exists for creating that 'cultural space' for a mind shift in both men and women which recognises the benefits of partnership and sharing of responsibility for decision-making in land.

Customary Tenure

Prior to European contact, women's place in society was socially and economically secure but nevertheless weaker than that of men. Women acquired rights to land by virtue of their relationship with men, and those rights were controlled by men.

In 1896 France and Britain set up a separate administration and after 20 years they signed a protocol to jointly govern the territory and introduce a system for registering land claims. The protocol permitted alienation of land and established a court and procedures for dealing with land claims and settling titles. Titles could be registered unless successfully challenged, and claims were to be proven by documentation. Since customary tenure was neither recognised nor codified, the indigenous people lacked the documents necessary to defend their rights. As a result land increasingly dominated the political stage, becoming the catalyst for the nationalist movement that swept the country to independence in 1980, when all land was returned to the custom owners. Non-custom owners who had an interest in land became 'alienators' with the right to remain on the land until they either agreed with the custom owners to lease it or receive compensation for the improvements made on the land (Monson, 2004:36-37).

When European traders and missionaries arrived during the nineteenth century, it was indigenous men with whom they communicated and negotiated. As indigenous men took the front line to meet with the new arrivals – most likely in their roles as defenders and protectors of their land and their kin – this gave rise to the centrality of men as decision makers. Thus the centrality of a male-dominated view of dealing with both foreigners and indigenous people became entrenched, and the effects of this are now apparent in the marginalisation of women as decision-makers – not only in the community, but even in the home.

With 106 languages (Lynch & Crowley, 2001:4) each linked to different cultural beliefs and practices, land tenure systems in Vanuatu are highly diverse. Land is held by the group but is not regarded as common property in terms of either open access to all people or equal access to all members of the group.

In her analysis of the literature, Monson (2004) notes that:

“...literature on land tenure...is dominated by anthropological research on custom, divorced from the legislative framework... [while] texts produced by lawyers focus on the formal legal system paying minimal attention to the way in which it interacts with the customary legal system. Anthropological research is invaluable because the traditions, culture and social organisation of both the past and the present lie at the heart of land rights and underlie the law relating to land. However, customary law should not be examined in isolation from the legislative framework that influences and provides mechanisms for the enforcement of customary rights. Similarly, focusing on legal rights neglects the social reality that generally has a far greater day-to-day impact on people’s access to resources than does the formal law...” (Monson, 2004:16-17).

She maintains that:

“This academic division has hampered the synthesis of customary law and formal law because little progress is likely to be made when the texts used in law schools perpetuate the distinction between the two legal domains. Formally-trained legal officials rarely receive training in customary law, and officials in customary forums tend not to be trained in formal law. Courts also lack guidelines as to how customary law should be applied, or how it relates to legislation and common law...” (Monson, 2004:17).

Further:

“Land tenure systems have a key influence on the social and economic development of societies because the mode and method of distribution of land rights is of fundamental importance to sustainable development and the well-being of people. Land determines the patterns of land use and therefore the welfare of the people who depend on it for their daily needs, including food, building materials and wood for fires. It also provides the context for social interaction. Land is also an important component of the cultural identity and the cosmology of many societies... Because of its social and economic significance, land can be a key source of ongoing legal disputes and physical violence. Land tenure is therefore of fundamental importance to development, having a key influence on the social and economic opportunities available to people, and on the governance and stability of nations...” (Monson, 2004:2).

In their vitally key research on matrilineal land tenure in Vanuatu, Naupa & Simo (2008) highlight that:

“The central function of customary land tenure [which] has been to ensure social security and cohesion and the majority of Vanuatu continues to operate under customary law, which recognizes land rights of both men and women. This is however being threatened by the trend to view land management as a male-only domain, partly through the manipulation of kastom which is marginalizing women from the decision-making process. This trend is aggravated by the growing pressure on limited land resources and the increasing commodification of land. Legislation alone will not remedy this, yet it is essential for social cohesion and security that both women and men are able to participate in land matters...” (Naupa & Simo, 2008:77-78).

The codification of the land tenure systems has now been attempted by some Councils of Chiefs such as the Efate Vaturisu Customary Land Law of February 2007. A gender analysis of this code has been provided by Naupa and Simo (2008:109-110).

Inheritance and marriage practices

Inheritance and marriage practices also vary across Vanuatu society depending on whether the traditional system is patrilineal or matrilineal. While not commonly stated, extremely detailed and explicit words in almost all the languages in Vanuatu have evolved to articulate how people are related, who one can or cannot marry and so on. This knowledge is shared among those within particular cultures.

The following are excerpts from one researcher on marriage and inheritance and rights to inherit and/or use land, and the diversity of beliefs and practices that exists:

“When a woman marries she usually resides in her husband’s village where she has the usufructuary rights necessary to fulfil her domestic duties. In patrilineal societies her ability to continue to exercise her rights to her natal land depends upon the continuation of congenial relationships between the dominant men in her village and her husband’s village. Her rights to her husband’s land are also insecure as in some areas a woman loses these rights if her husband dies. If there are young sons, a man’s rights may transfer to his widow, but only until the boys become adults. (Monson, 2004:43).

“The rights of married women in matrilineal communities are not necessarily more extensive. On Pentecost a woman loses her rights to her clan’s land after marriage and they are ‘recovered’ by her sons. In other areas, a woman’s rights to her natal land continue after marriage but they are controlled and managed by her maternal uncles or brother. In addition, because women usually reside patrilocally, they are rarely able to exercise their rights after marriage...” (Monson, 2004:43).

“Kinship is of prime importance in the acquisition of rights to land throughout Vanuatu; however, the principles of inheritance and group organisation vary significantly. On Ambae, for instance, descent and inheritance are patrilineal on the western half of the island but matrilineal in the east. In the interior of Santo, descent and marriage are matrilineally organised, but land is inherited patrilineally and residence is patrilocal. The various permutations of lineality, locality and inheritance therefore produce tremendous diversity in local customs...” (Monson, 2004:44).

“A further layer of complexity exists because... individuals are linked by birth and marriage to several groups through which they obtain various land rights. Principles of inheritance co-exist and compete and may even change according to contemporary pressures. In Gaua, inheritance changed from patrilineal to matrilineal for a period, due to a shortage of men. As the population increased, a patrilineal system was re-established and there have been conflicting claims and interpretations of ‘custom’ ever since. Lineality is therefore a discourse, because the complexity of filiations can tie a person to almost any piece of land, provided they know enough about custom and have the skills to make the case...” (Monson, 2004:45).

“Women are rarely able to tap into the direct benefits of this dynamism because they are merely the conduits through which control of land passes...” (Monson, 2004:45).

“Furthermore, rights transmitted through women are subject to confirmation by men. In patrilineal communities, for example, children may use their mother’s group’s land to take fruit and other

products from the ground. These rights are, however, subject to their father making a payment to their maternal grandfather. In matrilineal societies, children are usually born in their father's village and must physically move to their mother's village and establish themselves there in order to establish their land rights. These patterns ensure that men maintain control over land. As a result the most common method of transferring rights is by fathers (in patrilineal societies) or maternal uncles (in matrilineal societies) making male children familiar with landholdings. If there are no sons, boys are often adopted from another group. Occasionally, when there is no male line of succession, females may inherit, but usually until they marry and have male offspring to carry on the line. These customs confirm women's marginal status by ensuring that men retain control over land rights and that women merely provide the means for their transfer..." (Monson, 2004:45).

How women and men contribute to livelihood from the land?

The National Statistics Office⁷⁹ has estimated that the population of Vanuatu in 2007 was 229,423. Of this number, 112,039 were women and 117,118 were men. An estimated 55,983 (24 percent) of the total population live in the urban centres of Luganville and Port Vila (41,050 and 14,934 respectively). The remaining 174,564 (76 percent) of the population live in the rural areas. Of these, 71,559 (41 percent) live in the SHEFA Province alone. Around 17 percent are engaged in agriculture, fishing and forestry, 10 percent in industry and 73 percent in services.

According to the preliminary results of the 2007 Agricultural Census from the National Statistics Office (2008b:9) there are over 111,000 household engaged in agricultural activities for their own household use in the preceding 12 months (see Table 5 below). While the analysis does not state how many people are in each household, the fact that such a high number of households engage in agricultural activity indicates their reliance on the land for sustenance and livelihood. As subsistence farmers, the main crops grown were mostly root crops for household consumption except for kava indicating its importance as a commercial crop (see Table 6 below).

	Torba	Sanma	Penama	Malampa	Shefa	Tafea	Vanuatu
Male	3,063	10,273	11,576	11,935	9,571	11,008	57,427
Female	2,958	9,119	10,197	11,346	8,888	11,183	53,690
Total	6,021	19,392	21,773	22,281	18,459	22,191	111,117

Table 5: Number of household members engaged in own household agricultural activities in last 12 month by sex and province⁸⁰

	Number of plants ('000)						
	Torba	Sanma	Penama	Malampa	Shefa	Tafea	Vanuatu
Taro - Island	130	1,356	3,492	514	247	1,178	6,917
Kava	122	3,571	255	1,033	694	730	6,405
Peanuts	22	2,539	21	89	1,312	556	4,539
Yam	346	433	1,103	535	509	599	3,525
Cassava / Manioc	155	164	258	510	575	1,157	2,819
Taro - Fiji	83	533	322	386	352	573	2,249
Island cabbage	122	490	259	388	377	400	2,033
Banana	154	253	244	458	238	233	1,579
Banana - plantain	90	197	205	355	386	226	1,358

⁷⁹ (National Statistics Office, 2008a:2-3)

⁸⁰ Source: National Statistics Office, 2008b: Table 3, p. 9.

Corn	61	517	148	167	202	377	1,473

Table 6: Ten most commonly occurring plants found in gardens by type and province (August 2007)⁸¹

The average hours men and women spend in agricultural activities were similar for both in the category of less than 10 hours and between 10 and 19 hours per week (Table 7). Slightly more men than women worked a 20 to 40 hour week.

	Less than 10 hours	10 – 19 hours	20 -29 hours	40 hours and over	Not stated	Vanuatu – (rural sector)
Male	20,677	12,432	16,743	5,944	1,630	57,427
Female	20,082	12,923	14,483	4,528	1,675	53,690
Both sexes	40,759	25,355	31,226	10,471	3,305	111,117

Table 7: Number of household members engaged in own household agricultural activities by sex and average hours worked (August 2007)⁸²

Table 8 below shows that more men than women were hired to work in household agricultural activities, with Sanma and Tafea provinces taking the lead in the numbers of people hired to help with these activities. However, details of the type of activities women and men were hired to work on are not available.

	Torba	Sanma	Penama	Malampa	Shefa	Tafea	Vanuatu
Male	31	1,452	331	515	101	1,857	4,287
Female	20	457	293	352	29	1,444	2,596
Total	51	1,909	624	867	130	3,301	6,883

Table 8: Number of non-household members hired to work in household agricultural activities in last 12 month by sex and province⁸³

As shown in Table 9 below, of the 7,509 respondents able to provide information about ownership of land used for growing crops, 77 percent reported land being owned by the respondent, less than one percent reported land being rented and 17 percent used land that was free. Data on how many of the respondent were males or females and how many of those who responded were female heads of household are not available.

Area of crop tenure (hectares)	Torba	Sanma	Penama	Malampa	Shefa	Tafea	Vanuatu – (rural sector)
Owned	235	639	1,734	1,122	1,325	709	5,789
Rented	1	46	1	0	10	1	59
Custom used	1	129	74	44	656	80	384
Used for free	3	732	254	68	44	176	1,277

Table 9: Area of crop garden by tenure and province (August 2007)⁸⁴

In addition to the crops grown for subsistence, cash cropping also plays a major role in the agricultural activities of households, with cocoa and vanilla as the two crops which yield the greatest returns (see Table 10 below). Less than one percent of households engaged in fishing and collecting other marine resources sold their produce, while 26 percent used the produce for personal

⁸¹ Source: National Statistics Office, 2008b: Table 19, p. 21.⁸² Source: National Statistics Office, 2008b: Table 4, p. 10.⁸³ Source: National Statistics Office, 2008b: Table 5, p. 10.⁸⁴ Source: National Statistics Office, 2008b: Table 18, p. 21.

consumption as well as for sale. 73 percent or almost all produce was used for personal consumption (Table 11).

	Number of sub-holdings						
	Torba	Sanma	Penama	Malampa	Shefa	Tafea	Vanuatu
Cocoa	32	1,600	1,872	7,379	394	5	11,273
Coffee	-	-	-	-	-	1,588	1,588
Pepper	20	166	190	166	4	46	592
Vanilla	233	3,724	2,706	2,079	690	962	10,393

Table 10: Number of cash crop sub-holdings by type of plant and province (August 2007)⁸⁵

	Torba	Sanma	Penama	Malampa	Shefa	Tafea	Vanuatu – (rural sector)
Mainly for consumption	720	1,908	2,015	3,699	1,715	1,500	11,557
Consumption / selling	575	281	713	691	1,179	688	4,127
Mainly for sale	6	0	12	23	33	0	74
Total household	1,300	2,189	2,742	4,413	2,927	2,188	15,758

Table 11: Number of households engaged in fishing and collecting other marine resources in the last 12 months by main purpose and province (August 2007)⁸⁶

Types of livestock	Torba	Sanma	Penama	Malampa	Shefa	Tafea	Vanuatu – (rural sector)
Breeding boars	1,128	3,507	6,413	4,407	2,972	6,003	24,430
Breeding sows	1,367	3,849	9,066	6,422	6,110	9,323	36,137
Other types of pigs	439	2,289	8,730	4,934	5,683	6,053	28,127
Goats	19	1,348	85	976	2,104	4,260	8,792
Chicken	12,606	75,182	87,252	71,502	54,593	67,116	368,251
Cattle	2,729	91,830	22,284	16,082	21,868	19,344	174,137

Table 12: Number of livestock kept by province (August 2007)⁸⁷

While these data are of value for a number of reasons, information on how men and women contribute to livelihood from the land would be enhanced if data were available on the gendered roles in this sector and the uses of some of these commodities in both the traditional and cash economies by men and women. For example, at the time of the survey some 88,694 pigs were counted, of which 24,209 or 27 percent were counted in Penama Province (see Table 12 above). As Naupa and Simo note:

“The importance of women’s contribution to feeding pigs used for different occasions in Pentecost and making sure that the land belonging to their husbands has sufficient food for the family as well as pandanus trees for the valued red mats and baskets highlights the significant role that women play in land management...” (Naupa & Simo, 2008:98).

⁸⁵ *Source*: National Statistics Office, 2008b, Tables 9 -12, pps. 13 -16.

⁸⁶ *Source*: National Statistics Office, 2008b: Table 15, p. 19.

⁸⁷ *Source*: National Statistics Office, 2008b: Tables 13 & 14, pps. 17-18.

These types of information would contribute significantly to the valuation of the women's contribution on the national agenda as called for under the Gender Equity Policy as well as the call by Naupa and Simo for further research on gender roles in land.

How women participate in land decisions

The notion of '*participation*' as a concept, and its meaning and activation in matters relating to land, bears important consideration with regard to women's involvement in decision-making. Sethy Regenvanu's frequently quoted defining statement that "Land to ni-Vanuatu is like a mother is to a baby"⁸⁸ is reflected in societal beliefs throughout the islands and plays a significant role in the 'invisible' roles that women are play, particularly in rural areas. In their insightful analysis of women's participation in land decisions in two matrilineal societies of Raga in North Pentecost and Mele village within close proximity to the nation's capital, Port Vila, Anna Naupa and Joel Simo (2008) provide some elegant descriptions of the meaning of 'land' and 'mother':

"Land is an inalienable part of our very existence; it is our mother and what sustains peace and harmony in both tribes..." (Naupa & Simo, 2008:97).

"Land is reciprocal – when it is taken care of, the bounties it produces will benefit the community and the family. It is for this reason that we consider land as the mother and we her children..." (Naupa & Simo, 2008:98).

"A woman is like the land: the land is the mother. It does not speak but it cares for its people and not only that but woman is also a symbol of peace as land signifies peace between the two tribes... that a woman is... that which protects and provides, so for a woman to speak is disrespectful in that it should be the man who should stand up and defend the tribe. When there are tribal matters such as land disputes, or community problems, women will always make their views heard through their chiefs or elders because these are the people who will be at the forefront to do all the negotiating and debating. We consider it disrespectful when our mothers are addressed in an inappropriate manner and for this reason men or the chiefs will do the talking on behalf of the tribe..." (Naupa & Simo, 2008:98-99).

The commonality of this view also exists elsewhere such as on Tanna where:

"...there appears to be no distinction between the human female as giving birth to life and the land as the sustainer, in fact they are seen to be one and the same. To clarify this further, Tannese view the woman as the important link in the chain of life in terms of man's relations to land and with his kin. The woman is the talisman or 'mana' (power) that gives status and authority to man's leadership with the community. The woman makes or breaks alliances; she is the hidden secrets of lineages and folklore. Her glory adorns the males and gives them the weight to show off their ranks. The woman in the eyes of the Tanna man gives him the power to be himself – without her he is nothing. In other words, the woman symbolizes knowledge and secret keeping (both strong affluent of traditional power-base), while the man is the architect, public orator, actor and decision maker with advice from his 'rib-side'. The saying that 'behind a great man is a great woman' holds true in real terms in Tannese tradition. The woman is the silent authority of the man. She is the manager, the achiever,

⁸⁸ *ibid*

the facilitator and the second opinion in problem solving; while the man is the symbolic figure to defend that hidden identity...” (Napwatt, Naupa & Sparkes, 2006:2).

They go on to say,

“... the western notion of ‘ownership’ of land is alien to the Tannese because... tradition land symbolizes the Mother and Woman [Woman is Land] being the source of life while man, as the beneficiary, assumes the architectural duty to determine how best to use land in the long run... has the moral duty and physical obligation to protect and defend land [as he would do for his ‘woman’ against aliens and perpetrators!]. The closest meaning would be ‘guardianship’ or ‘custodianship’... Women in Tanna cannot talk about land because it would be like talking about ‘themselves’, and according to social norms you let someone else talk about you; it is unseemly to talk about yourself or your own thing to others. Hence the issue of land being raised by men and discussed at length by them [is to] protect the woman from insults and disrespect... [and hence] women remain in the ‘background’... To say that women in Tanna are deprived of the right to speak is completely untrue according to custom. In fact, it is quite the opposite but those who are not well-versed in the social traditions do not know this...” (Napwatt, Naupa & Sparkes, 2006:3).

Concern about the misinterpretation of the term ‘landowners’ was voiced by the Director General of Lands at the consultative meeting with women in September 2008, when he suggested that ‘custodianship’ or ‘trusteeship’ are more appropriate terms. This has also been noted by Naupa & Simo (2008:101).

Naupa and Simo (2008) note that:

“Women may be consulted in land matters, but the final decision rests with the males. Traditional avenues for women to gain rank within society do exist, however, permitting them access to and participation in decision-making processes. The Raga case study, however, reveals a gradual shift in attitude towards women’s involvement in land matters; increasingly, it is being perceived as a male-only domain. Possible contributing factors to this change are the imposition of external religions and male-centered ideologies onto Raga society” (Naupa and Simo, 2008:77)

Mele villagers, on the other hand, can claim land rights through either parent, although typically men make all land decisions and women are not active participants in the process. Contemporary interpretation of *kastom* (traditional values and customs) in Mele has further marginalised women from land decision-making processes, as evidenced by the ambiguous codification of women’s land rights in the Efate Vaturisu Customary Land Law. Thus, in Mele the matrilineal land inheritance system was introduced about 150 years ago but with its proximity to the colonial and later national capital and its adaptation to Christian influences and dominant culture, it now has a double-descent land inheritance (Naupa and Simo, 2008).

The duality of positive cultural beliefs and values and the negative incursion of materialism clearly have an impact on women’s roles in decision-making. The opportunity exists to embrace the positive values from traditions both indigenous and introduced to re-direct the trend of marginalising women in decision-making on land issues by incorporating the reverence by which both land and women are positioned.

The respect that is accorded to land and to women as a mother is eloquently expressed in the following statement from a woman in North Pentecost:

“We make decisions but these decisions have to go through proper channels before it gets to the public. Normally it is the men who will be at the forefront to carry them out and we support from the background. It is not that we are not heard: we are respected.” (Naupa & Simo, 2008:99)

This expression of respect as gracefully articulated above is enshrined in our Constitution, is exemplified by Christ and is central to CEDAW. Understanding the value of respect is fundamental to realising the equality of both men and women and to ensuring that women participate in land decisions, access education, access the right information, and so on. In their concluding comments, Naupa & Simo caution us, however, that:

“...if this respect were genuinely part of traditional culture, then we could assume that women were previously not significant participants in land matters. [Their] research shows ... that women were more actively engaged in land decisions, particularly in the accumulation of land history and genealogies. So it is possible that the issue of ‘respect’ has become the gently and culturally appropriate justification for women’s increasing marginalization from land decisions. Fewer alarm bells [would] ring if respect is advanced as the explanation for men increasingly taking the lead without consulting with their women...” (Naupa & Simo, 2008:111).

Do customary processes achieve a fair deal for women?

According to Monson (2004),

“There is presently no means by which to record interests in land regulated by custom unless and until a dispute is formally resolved. The Constitution is silent as to how the ‘custom owners’ or the ‘rules of custom’ are to be determined, but provides that Parliament must consult the Malvatumaori or National Council of Chiefs on all land matters. This institution also has informal authority to determine the rules of custom because the courts frequently refer cases to it for its opinion. This institution has emerged from both colonial and indigenous practices and chiefs are rarely, if ever, women. Thus while recognition of the Malvatumaori achieves some synthesis of the customary and formal legal systems, it also compounds gender inequality by entrenching male authority under the guise of preserving ‘custom’...” (Monson, 2004:39).

Further, she states that:

“The formal law in Vanuatu regulates transactions involving people who are not customary landowners but is largely silent as to the rights of customary landowners, stating only that the rules of custom form the basis of ownership and use of land... Custom is defined as the customs and traditional practices of the indigenous peoples of Vanuatu. The Malvatumaori has published a Custom Policy that has to some extent codified customary law, but chiefs may make changes to it to ensure that it follows local custom. The Custom Policy provides that the ‘true custom owners’ of land are men whose lineage is directly connected to the village or clan located within the boundaries of that land. If the ‘owners’ are dead, male guest residents may assume ownership rights, provided they have lived there for at least four generations. Adopted sons and their descendants may assume rights only if the true owners and long-term guests have died out. Land may pass to a woman only if all of these men are dead, and none of her uncles are alive. Women may therefore ‘own’ land only as a last

resort. This policy seems designed to maintain the dominance of men over women and by recognising the authority of the Malvatumauri, the formal law reinforces this gender inequality...” (Monson, 2004:40).

Additionally Monson writes:

“In matrilineal society where women can achieve the rank of chief through the grading system, nevertheless land use is generally controlled by senior males... Rights to land derive from links to kin groups. Women are therefore assured of access to land, but men control the use and allocation of it...” (Monson, 2004:42).

“In the nakamal system where each group occupies a territory and has a number of tiles, titleholders have primary rights of use and the power to grant access to other members of the group. Women hold a very low status in the Nakamal system and are never titleholders. Titleholders control the use of land but as members of a community they are obliged to allow other members of the community to access and use it....In this system, women have rights to work on the group’s land but they may do so only in the name of the titleholder. These arrangements ensure that women have usufructuary rights to land but that men always retain control over those rights...” (Monson, 2004:43).

“Usufructuary rights held by women vary significantly throughout the island and depend upon the gender norms prevailing in their locality. In some matrilineal societies women automatically have usufructuary rights to land but in patrilineal societies women’s rights are more limited. Single women in patrilineal societies have rights to use and take produce from their father’s land. In some cultures small plots are set aside by male agnates for their sisters and daughters for specific use. In some patrilineal societies these rights are extensive enough for a woman to exercise them without consulting her male agnates but unlike the rights held by men, they are never transferable...” (Monson, 2004:43).

The case studies of Raga and Mele by Naupa & Simo (2008) show that matriliney in Vanuatu *does not* mean equal rights to land. Instead there is a range of land rights relating to [whether a person is male or female] with women’s rights generally being based on their social relationship to a male such as their father, brother or husband.

Implications for when customary law and traditional processes change

Ketty Napwatt and Anna Naupa, who spoke at the National Land Summit in 2006, present some reasons and some of the implications for when customary law and traditional processes change:

“The various tradition systems of land tenure found throughout Vanuatu all have a common goal: to ensure that everyone can survive from the land [So] why are women being marginalised from decision-making about land? The answer is greed... Heads of households and families, eager to make some quick vatu, rush into dodgy land dealings ignoring the broader traditional consultation that is required around land. The common argument that women do not have the right to talk about land in Vanuatu neglects the traditional role of women in land discussions... Actual poverty will easily become a reality in Vanuatu unless we address the breaking down of the traditional safety net...” (Napwatt, Naupa & Sparkes, 2006:2).

While I am not aware of any studies specifically addressing the implications for when customary law and traditional processes change, codification of traditional land tenure systems and customary laws

would provide the starting point to addressing these issues. However, recognising women's roles, creating the environment in which their voices can be heard, reviewing documents codifying customary laws as well as legislation and researching the implications will throw further light on the issues and concerns not only for women but for current and future generations of ni-Vanuatu.

Land Legislation and Administration

Currently there are nine land laws and related land legislation which are gender neutral and many of which outline the administrative responsibility of the Government. Only the Customary Land Tribunal Act (2001) specifies customary law as the foundation for its authority. However, it does not specify women's land rights under custom law or the rights of women to have equal opportunity in participating as adjudicators in the Tribunal. As the Act speaks of 'qualified elders' to be considered to sit on the Tribunal, and since 'custom owner' is poorly defined, it has been suggested that there is scope to include women at the decision making level, particularly through the introduction of a provision to include women elders. According to available information, there are 18 women out 197 adjudicators participating in Customary Land Tribunals (Naupa and Simo, 2008). That only nine percent of the adjudicators are female is not surprising because '...the majority of women... knew nothing about how they could participate in customary land tribunal discussion (Simo, 2005, quoted in Naupa and Simo, 2008:93).

Naupa and Simo (2008) have suggested amendments to the Land Tribunal Act that would actively include women as adjudicators.

Do state laws protect women's interests in relation to land?

Articles 73 and 74 of the Constitution provide that all land in Vanuatu belongs to the indigenous custom owners and their descendants and that the rules of custom form the basis of ownership and use of land. Chapter 3 of the Constitution provides that a perpetual interest in land may only be acquired by 'indigenous citizens' in accordance with a recognised system of land tenure. 'Indigenous citizens' are defined as those who have four grandparents who belong(ed) to an indigenous community (Monson, 2004:38-29).

According to Monson (2004:12), section 95(3) of the Constitution elevates and validates customary law which is frequently accused of discriminating against women. A key challenge is therefore balancing these competing claims, enshrined in the Constitution for the preservation of customary law on the one hand and those for gender equality on the other. Because of the economic and social significance of rights to land, understanding whether customary law is being incorporated into the formal legal system in a manner that is compatible with gender quality and therefore the development process.

Monson further states that

"...recognising that while 'land' might be defined differently under custom, examination of women's rights to land must not be limited to examination of rights to 'land' as determined by the customary law but must extend to corporeal property that might be deemed 'personal property' by the customary law. It must also extend to rights from economic gains from the land, such as rental income, because accesses to these rights also determine the social and economic opportunities open to individuals and groups..." (Monson, 2004:14).

In general terms, custom land does not belong to any individual. In his judgment of the 1995 civil case *Noel v Toto* [1995] Judge Kent noted Mr Hakwa's statement in the course of his submission that:

"All action before the Island Court and this court can only be representative action. In Vanuatu, land is owned by families, a group, a tribe, or even a whole island... A chief would be a person holding for other people. Mr Toto can only act in a representative capacity..." (Vanuatu Supreme Court, 1995).

As noted above by Monson (2004), issues to do with land should not just be directed to the physical land itself but its extensions, such as benefits derived from the land. The 1995 case of *Noel v Toto* was the earliest case where the court used the provisions of non-discrimination based on sex in CEDAW as part of its basis for ruling relating to land 'ownership' and benefits derived from it. In this case, which considered many issues (one of which being the issue of which law should be used if there is conflict between customary law and the Constitution), the Supreme Court acted in accordance with the legitimate expectation created by the Government by ratifying CEDAW. In his decision, the judge ruled that customary law is the basis of land ownership in Vanuatu, but it is subject to the Constitution and cannot be applied if it discriminates against women as that would be contrary to CEDAW as well as the Constitution. As Obed Toto was the head of the family, he was therefore obliged to share the income equally amongst his sisters, half-sisters, brothers and half-brothers, and legitimate children of his brother's first wife and the children of his de facto wife.

In recent years there have been cases enabling equitable distribution of property between divorced couples in the courts. In some rural areas, however, divorced women continue to be subject to customary norms which do not recognise these rights. In general, though, court decisions about land prior to customary land tribunals were inclined to resolve conflicts between women's human rights and customary law in favour of gender equality (Naupa & Simo, 2008). During the women's consultation at the National Council of Women's workshop held during the Program design mission in September 2008, a prominent women's rights advocate highlighted the current practice of using customary 'law' to withhold properties from widows (which they and their husbands had jointly purchased in cash) and distributing the properties to the men's families, describing this practice to be unjust and discriminatory. Finding ways to achieve recognition of formal ownership of joint properties acquired by modern means (such as with cash), and balancing this with kastom which determine distribution systems that appear to disadvantage women – while at the same time trying to maintain respect for rights and gender equality – will continue to present major challenges for years to come.

Lack of information, misinformation that 'under Vanuatu law only men can sell land (Naupa and Simo, 2008), misunderstanding and/or misleading interpretations of terms such as 'land owners', 'rights', 'gender', 'equality', and 'equity' all point to a need to have in place educational campaigns and strategies to increase understanding and build consensus around the meaning of these terms. Only through mutual understanding and consensus will different values be reconciled and systems be developed that enable women to participate as partners in decision-making on land issues.

How does the government land administration address gender?

In 1997 the Government of Vanuatu introduced the *Gender Equity* Policy comprising the following nine benchmarks to improve the situation of women under the Comprehensive Reform Programme:

1. visibility and meaningful participation in decision-making;
2. valuation of the contribution of women;
3. economic equality and independence;
4. violence against women and discriminatory laws;
5. general physical and mental health;
6. reproductive health;
7. customs, religion and culture;
8. education; and
9. environmental management and subsistence production.

A review of the implementation and impact of various provisions in this policy is currently not available.

In 2006 the Government launched the Priorities Action Agenda 2006-2015 with a clear statement on Gender and Development:

“Sustained growth and development is achievable only through the participation and involvement of all sections of society. Unfortunately, women, in almost all sectors of their lives, are disadvantaged, when compared to men. Creating an environment through the development of legislation and positive economic and social policies for the full development of women is necessary for the achievement of equality, development and peace... Progress has been made since independence in recognizing the important role of women and enhancing the status of women. However, there is still a long way to go in achieving an equal partnership between men and women in the pursuit of development. This lack of recognition of women as a valuable economic resource to foster development is based on what some people consider as traditional norms and expectations of a woman’s rightful role in society as homemakers...” (Government of the Republic of Vanuatu, 2006:35).

Clearly the Government has the intentions and aims to *promote gender equality and empower women* by incorporating gender issues in its national plans. However, at present it lacks the capacity to move these plans forward. Attempts by the Department of Women’s Affairs in the early 2000s to establish Gender Focal Points in each Ministry have been dismal.

It is also clear that the statement quoted above concerning the recognition of women as *“a valuable economic resource to foster development”* can be made more positive by promoting the role of women as mothers as part of our development towards achieving equality between men and women. Men and women play complementary roles which are often gender specific. A positive mind shift that can see equality as an inherent capacity within both men and women that can be harnessed through equal access to opportunities such as education and decision-making can also create a mind frame which sees the gendered roles of women as potentially transformational⁸⁹ rather than as an impediment.

⁸⁹ In her paper ‘*Beyond the Dichotomy of Formal and Substantial Equality: Towards a new Definition of Equal Rights*’, Sandra Freeman (2005) provides four concepts of equality: i) *Treating likes alike or formal equality*; ii) *Equality of Opportunities*; iii) *Equality of Results* and iv) *Equality as Transformation*, quoted in Piau-Lynch, 2007.

Similarly, the National Women's Forum made a number of recommendations as part of its review of the Beijing Platform for Action. Naupa and Simo (2008) have identified six recommendations in relation to land, several of which are ambitious and long-term objectives relating to gender equity in access to land resources and property. The National Women's Policy and Plan of Action 2007-2011 does not contain specific objectives that specifically address women's power in decision-making process about land management, reflecting perhaps an assumption or common view that a lack of involvement by women in decision-making is either not a widespread problem or is not considered to be a female domain. But it is clear that all the recommendations hinge on the fundamental issue of access to land which is the result of land management decisions. As access issues become more widespread, women's participation in land decisions will become increasingly vital within both customary and national structures. While access issues are of particular concern in urban areas, access to land will also become a major problem in rural areas in the near future given current land management practices, especially given existing male domination and the spread of the "commodification" of land (Naupa and Simo, 2008).

What is lacking in both these national plans are strategies and monitoring systems and tools to measure the impact of any actions carried out to implement them. During the consultation between the Department of Women's Affairs and stakeholders to review of the recommendations from the National Women's Forum, it was revealing that some of the participants – as senior representatives in NGOs who were part of the National Women's Forum – had not seen a copy of the National Women's Policy and Plan of Action. While we await the results of this review, it could be posited that public campaigns and awareness amongst stakeholders of their expected actions were not disseminated to the agencies that have a pivotal role to play in implementing the recommendations.

The Department of Lands has taken the lead to move on various issues to do with land for a number of years now commencing with the AusAID Land Use Planning Project in the early 2000s. How gender was incorporated into this project was not analysed in this paper. Since the National Land Summit of 2006, the Department of Lands has taken steps to ensure that the recommendations, most of which have to do with the administration of land matters, are implemented. As a result of this Summit, a number of agencies are now working with the Department to implement various aspects of the recommendations. The proposed new AusAID funded Vanuatu Land Project is one of those.

The Land Summit provided a pivotal point where women were, for the first time, provided the opportunity to speak on concerns about land as participants in the forum, which included the Malvatumauri Council of Chiefs, the Vanuatu Cultural Centre and NGOs.⁹⁰ As a result, several of the recommendations from that National Land Summit acknowledge the necessity to include women (Government of the Republic of Vanuatu, 2007: 40-43). They are:

Resolution 1.3: Members of traditional (*kastom*) owning groups (male and female) must be involved in the decision-making about their land

⁹⁰ The inclusion of women to speak about the effects of loss of land and loss of access to forests for fuel, medicinal herbs, food and gardens and reefs and shorelines for fish, shellfish and other food resources was made possible through the Women's Advocacy Coalition, a program of the Vanuatu Association of Non Government Organisations.

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 of traditional (*kastom*) economy; existing land laws; customary laws; fair dealings

Resolution 5.2: All lease agreements must involve all members of the land owning group (men, women and children)

Resolution 20: The Environment Unit must help the people (chiefs, schools, men and women) to raise their awareness of sustainable development and environment protection.

Other resolutions, while not identifying women specifically, could be construed to be inclusive of women. These include, for example, Resolution 2.2 that national and provincial governments and the Malvatumauri Council of Chiefs must assist the people to document traditional (*kastom*) land policies (customary land Laws) in each village, area and island in Vanuatu. This includes traditional communities' *kastom* boundaries, traditional (*kastom*) land dealing and other rules of *kastom*. Public awareness campaigns have been instituted by the Department of Lands, including the publication of *Graon Toktok* through the *Vanuatu Daily Post* on a weekly basis. Analysis of how gender is incorporated into this public awareness campaign has not been attempted in this paper.

In his address to stakeholders at a consultation held in September 2008, the Director General of the Department of Lands⁹¹ was very specific in his call for the inclusion and participation of women in decision-making and as part of the process currently underway within the Department. The proposed appointment within the Department of a Gender Focal Point speaks clearly of this commitment and recognition to address gender issues as an important aspect of the work of the Department. His clear statement that the AusAID program will be home grown calls for this program to be inclusive of both men and women.

One of the direct outcomes of the National Lands Summit and action taken by the Department of Land is the proposed AusAID Land Program, in which gender dimensions of the Summit recommendations were incorporated into the planning phase of the program itself. As part of this program support, initial review of some documentation from the Department of Lands has been made. Some initial recommendations have already been made on ways to address gender more effectively, including amendments to application forms for leases to include specific questions on the sex of the applicant and the beneficiaries, and number of men and women in corporations which are applying. A more extensive review of these forms has yet to be done, for example to provide information to the Department on how many women and men apply for land leases, and how many leases are jointly held by women and men. This information is important as it will provide a far more accurate picture of the current level of participation by women in the formal land sector in Vanuatu today.

Naupa and Simo (2008:112-114) have indicated other processes being put into place by the Department of Land. Of significance is the establishment of the National Land Steering Committee which has been charged with the oversight of progress on implementation of the resolutions from the National Land Summit. Their four main recommendations are:

⁹¹ This workshop was one of several conducted over a two week Land Program design mission.

1. To endorse and implement the recommendations made in their report “Matrilineal Land Tenure in Vanuatu”;
2. Mainstreaming gender in traditional land systems
 - Malvatumauri to implement its National Land Summit recommendation for research into gender roles relating to land;
 - Malvatumauri to lead a campaign for all chiefs to actively support women’s participation in land matters to promote women’s traditional leadership roles (roles for male advocates as well as the Vanuatu National Council of Women); and
 - The Vanuatu Cultural Centre’s Fieldworker’s network to lead research on custom, gender and land.
3. Mainstreaming gender in formalised land systems
 - All government administration processes relating to land (e.g. land registration, land leases, environmental impact assessment, infrastructure development) to ensure that consultation with women stakeholders is mandatory and recorded.
 - Customary Land Tribunal awareness and implementation activities to promote women’s participation and link into women’s traditional leadership roles.
 - 50 percent representation of women on land boards/committees.
 - The Department of Women’s Affairs to monitor the participation of women in formal decision-making processes (e.g. institutionalising a Gender Focal Point within the Department of Lands).
4. National campaign to encourage consultation with women
 - National Land Steering Committee to include in its public awareness campaign about land reform an education campaign in Vanuatu about the benefits of including women in decision-making and the risks to social security when they are marginalised from land matters.
 - The National kastom Ekonomi Committee to continue to advocate for women’s participation in decision-making about land and land resources in the interests of self-reliance and social security.

The advancement of women is not a privilege, a technical exercise, or something that has to be done because Vanuatu has ratified CEDAW. It is part of a broader exercise of creating an ordered society in which relationships between men and women, parents and children, employees and employers, governors and the governed adhere to principles of justice and respect, and emulate the highest aspirations of humankind (Bahá’í International Community, 2008). Thus, actions that aim to support inclusion of women in land matters acknowledge that women too are part of *kastom*, they too are the custodians the land and of the stories or histories of their lineage, and they hold a wealth of knowledge that can assist their men in their dealings with land. Practices that discriminate against women because of their sex are not only discriminatory and unlawful but they are also harmful to achieving equality.

Social Impact

Impact of loss of land on women

The impact of loss of land on women can only be given a cursory mention in this paper as no study has yet been done on this. In this paper, anecdotal evidence of the reliance on store-bought goods by women from Pango and Erakor, or their inability to access land at Samoa Point by women from Mele, or their inability to access reefs due to fencing off the whole length of beach at Turtle Bay and Pango Point, are some of the few observable and dangerous impacts that can be mentioned.

However, a glimpse of the potential psychosocial problems that exist can be seen from the following statement by Napwatt, Naupa and Sparkes (2006):

“Neglecting to include women in decision-making about land dealings has very real and very serious implications on the lives of mothers and their children, particularly those in and around Port Vila. Increasing Efate mothers without access to land for gardening are purchasing food from the market. Buying food for their families requires money, and if vatu is scarce because the profit from her husband’s land sales have run out, then a mother has to work, leaving her children in someone else’s care while she tries to make ends meet. Lack of quality parenting time can lead to all sorts of problems with children and youth: poor education because there is no help for homework, an increase in delinquency because no parental figure is at home after school and even an increase in teenage pregnancies because parents aren’t around to raise their children...” (Napwatt, Naupa & Sparkes, 2006:1).

Health impacts, such as an increase in lifestyle diseases such as diabetes as a result of a change of diet from traditional home-grown produce to processed, store-bought goods, resulting in low nutrition and obesity; social issues such as poverty, landlessness, rising crime rates, increase in the gap between those who have and those who have not, resulting from a loss of land have yet to be analysed. The mental health (or ill-health) of a population who have lost their land, and the subsequent consequences of hopelessness and suicide, alcohol or drug abuse, or violence in the home, are psychosocial, medical, legal and spiritual problems which the evidence indicates are on the increase. A detailed research of such impacts, not only on women but also on men and children, will show a society whose burden is heavy and whose safety nets are stretched nearly to bursting.

What are the implications for customary ownership when land becomes commodified, particularly when it increases in value? How does this affect women’s entitlement?

“The role of women has been devalued by the cash economy” is a statement attributed to Solomon Islands where the system is weakened by contemporary pressures such as the conferral of a monetary value upon land rights and the advent of leasing to facilitate their alienation. Men, who control the leasing of land, largely ignore women’s views and are spending the direct financial benefits on ‘men’s goods’ (such as alcohol)... Custom and contemporary pressures are therefore interacting to compound gender inequality...” (Monson, 2004:44).

Yet, this statement can also be applied to Vanuatu. According to Monson (2004),

“The commodification of land and the need for identifiable individuals with whom to deal has created opportunities for some people to increase their authority under the guise of ‘custom’ or even through the formal law. Non-custom landowners must be registered in order to negotiate with

custom owners and documents evidencing a disposition must be executed by all the registered landowners. Otherwise, however, the formal law is silent as to how non-custom landowners are to deal with custom landowners and how decisions are to be made internally by the landowning group. Chiefs have always had management powers over land and their influence has increased since the colonial period when Europeans identified them as the individuals with whom to deal. Their authority in land matters is now entrenched by the Constitution. Chiefs play a large role in non-customary transactions by acting as representatives of their people in leasing. However, many communities have lost confidence and respect in the role of chiefs, and in some areas, trust companies have been established to manage land.... The masters of tradition are rarely women, because men dominate decision making and political interaction. Women are rarely chiefs and their ability to participate in the male-domain of decision making is limited by the physical segregation of men and women..." (Monson, 2004:46-47).

As Napwatt, Naupa and Sparkes (2006) note:

"The current environment of uncontrolled land speculations and an increase in customary land disputes has severely impacted on women's traditional rights to land for subsistence and their ability to feed their children. This is particularly true for Efate residents. Marginalised from decision-making about land to be leased, women find themselves faced with a reduced land base from which to produce subsistence crops for their families; indeed many Pango and Erakor women have to purchase garden food from the market..." (Napwatt, Naupa & Sparkes, 2006:1).

In a previous brief submitted to the Vanuatu Land Program design team, a number of suggestions were made for their consideration. In particular the three measures for consideration by the team were:

1. the adoption of a long-term perspective to guide short and medium-term efforts to finance gender equality;
2. the use of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to evaluate national budgets / project budgets, and
3. the engagement of civil society perspectives, including religious institutions.

During consultations with women in Port Vila, it became clear that while acknowledging that land is a sensitive issue, many women regard current practices in the management of land to be discriminatory. Therefore the inclusion of a gender strategy within the design of the Program was called for.

Also referred to in the earlier brief was the fact that eliminating discrimination against women is not and cannot be the sole responsibility of one Government department, nor can discrimination be eradicated through legislation alone. By the same token, it cannot be expected that a five year program of support to the land sector will be able to achieve this. It takes generations to change attitudes and practices and therefore Government, chiefs, elders, men, women, boys and girls must all be involved in a collective mind change. Besides its short-term goals, Government will need to frame its policies with a longer term perspective such as one or two generations from now. So too must civil society institutions – e.g. of custom chiefs, religious organisations, women's organisations and so on – all work together to help bring about these changes. When we look at the proposed Program goal, *"All Vanuatu people benefit from the equitable and sustainable development of their*

land, while securing the heritage of future generations”, it is clear that this calls for a coordinated approach with a long-term vision involving non governmental organisations, business, academia and the informal sectors – and an approach that is inclusive of both men and women.

Conclusion

This paper has highlighted that many factors have contributed to the real and perceived marginalisation of women in decision-making. While there is great diversity in the customs and cultures in Vanuatu, there exists that fundamental belief in the land as the source of life and identity, as well as the view that the notion of ‘woman’ is synonymous with land. With modernity and its changing values encompassing the materialistic culture, these beliefs and values associated with the beliefs and the safety nets that held people together as a community are changing and in parts, have broken down and eroded. An opportunity exists for Government, churches, chiefs, women and men to re-evaluate the current trend and to take a firm direction that can maximise the contributions of both men and women. Concepts such as rights and values such as respect are not foreign: they existed in traditional society, and they exist today. It is the misconception, misunderstanding and misinterpretation of concepts and ideologies of equality between men and women that maintain the dominance of men over women. The reforms being proposed by the Government, to be implemented in partnership with civil society and other key stakeholders in Vanuatu’s development, represent important opportunities to correct misconceptions, build consensus and redress current inequalities.

It will be up to ni-Vanuatu themselves to respond to these opportunities and to marry the positive values expressed through *kastom*, spiritual/religious systems and formal legislation. For all their differences, these systems all speak a common language in terms of respect of the inherent dignity of the human being and of moving Vanuatu forward to a just society in which men and women are accorded the same respect and dignity.

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Gender Workshop

The following suggestions / comments / recommendations were made by 18 women attending the meeting at the Vanuatu National Council of Women's Conference Hall, Port Vila ,on Thursday 18 September 2008.

Women were asked to give their thoughts on three factors:

1. customary ownership,
2. customary use, and
3. external land dealings and transactions.

and respond to the question:

What are the inequities that arise in each area?

They were then asked to answer the following:

Over the next five years, what assistance would most help?

Inequities: General

- There is the assumption that only a woman should bring up the issues of women. Although they cannot fully speak for women – MEN just ignore the needs of women. When asked why they did not consider that women would need, they answer..."because there are no women on the committee"...yet refuse to appoint women on to a position that they can feel that they are contributing MEANINGFULLY!
- Men have convinced themselves that women cannot / should not be part of decision-making. This is a misconception that there have been traditional mechanisms in place to allow for this, but MEN have decided that it is no longer important.
- Women's opinions have not been sought for so long that they have not learnt to articulate their thoughts. Any attempt today is like squeezing blood from a stone – so difficult that men don't bother anymore because they say "women don't say anything anyway". Even worse now is that young women are being told that their opinion is worthless.
- Land disputes in the island affect all women / women are more affected than men leading to broken families.
- Concern that if women talk about land this can lead to separations.
- Women do not have a say in land matters.
- No support to have women who have land to develop it.

Inequities: *kastom* ownership

- Youth family members are not involved in any decision to pass on / sell land and only witness the end product & suffer the consequences.
- Very few women own land.

Inequities: *kastom* ownership

- Lack of knowledge (history) passed on to women.
- Practice of women losing their rights to land if they leave their place when they marry.
- Women can't have land in our own right – might be able to use but this isn't very secure and have to get male permission.
- Inheritance practices favour males - only boys can get land from dads.
- Absence from islands/lands: urban women lose decision-making rights or participation in discussions regarding land because she and her children live in an urban area for a long time.
- Women asked to give information that maybe sometimes they were not part of the original discussions...they will not be able to recount those decisions therefore are blamed for loss of land, especially young women today.
- No recognition / acknowledgment that Church and Colonial Administration have changed the ownership of land – especially in matrilineal societies.
- Women generally lack access to education – poor literacy means less able to access information for example in decisions related to development of land.
- Custom ownership (by women). In order to have a chance to have a piece of land women must make *kastom* to her uncle (by giving of gifts such as mats, food, kava). From there she may be granted some land so her children will have 'something' (land).
- Women have / can pay for a piece of land to use for her family.
- Decode the power of bride price and the reality of the status of women in Vanuatu.
- Matrilineal lineage on various islands of Vanuatu will force courts to make decisions on the rightful *kastom* owner or where this may be questioned whether women and their children will have equitable rights to the land in question
- Women have no say in the land but it is through them that rights can be traced for her sons to possess the land – bride price?

Inequities: *kastom* Use

- Practices & norms of use – especially for ceremonies & festivals that then make the land sacred therefore allow fallow etc. These practices were stopped by Christianity (missionaries) therefore abandoned which led to excessive abusive use of land.
- Identity: History, Name, Harbour, *Nakamal*, Spirits, Gardening
- Concept of 'cash economy' & 'development' has blurred people's vision from the traditional use of land
- Women can use land of their father, husband, or brother but NOT own it. Because land is owned by clans (Pentecost)
- When husband marries he lives on his land and therefore wife doesn't own it and loses everything she builds, for example house.
- Women are married to a tribe for exchange of land.
- Loss of right to use land or parts of land due to underhanded dealings by private dealers and agents without any thoughts for those family members and extended family who have rights to use the land
- Women not allowed to go to certain places such as *Nakamals*
- Disputes over rightful owner

Inequities: External land dealings & transactions

- Women are 'victims' of decision made by men without being consulted

Inequities: External land dealings & transactions	
	• Women's roles and responsibilities neglected and not recognised by men when selling land. • Land deals facilitated largely by external foreign agencies – who can manipulate locals & investors AND take advantage of local's ignorance for their gain. Women are NEVER consulted in these dealings or TOKEN consultation...they are listened to & not taken seriously • No consultation with women before selling • Decisions rarely involve women and can be use for bribery and against women • The purposeful LIES presented by real estate agents overseas as "FOR SALE" misleading buyers overseas that lures them to our dilemma • Sale of land which does not belong to the person. Buyers pay the wrong person and then problem arises that the ground is 'lost' • What about other children? Younger siblings? • Always for male preferences! E.g., sale of land = male status • Money / finance deriving from the transactions may not be beneficial to women • Private leases between independent lessee and customary lessor done without consultation with family members leading to loss of ground & livelihood of family which can lead to violence, begging (by going to eat and sleep with relations), loss of self respect • Sale of land to private owners denies women and men right of access to get fuel, food, medicine • Selling of 'inherited' land especially in rural areas when persons who is the 'owner' is absent in Vila or Santo • Taking over of land to make gardens when 'owners' are absent can lead to selling of the land

What assistance would help?	
Information	• Use of various media format example Wan Smol Bag, TV, Newspaper • Information awareness could be provided by USP • Human rights • Legislations on matrimonial properties* • Encourage more women participating / share decision-making in community level to national level • Gender awareness training • Structures to be in place with the community for information to flow • Need studies, documentation and information sharing • Women's customary land rights not understood • Women's land rights concept not clear to women
Education	• USP could help in providing a course on Land • Encourage old people to pass on their knowledge to the younger generations • Educate girls about customs & tradition about land the their rights • Gender sensitisation* • Gender training / empower women to participate in all processes at all levels • Train women as trainers* • Gender & development training and awareness through VNCW • General tradition way of land transaction, lineage & genealogy to allow space for discussion, i.e., <i>kastom</i> identity curriculum for youths produced by the Vanuatu Cultural Centre & social science text books development by NZAID. • Work more with young people • Encourage participatory learning in schools that would allow young people to actively be part of the learning process so that they can be better equipped to be part of the community processes including land

What assistance would help?	
	• Gender awareness training to female and male leaders and members of the Tribunal • Conflict prevention training to leaders in the provinces but also to land owners to respect females / males (Vanuatu Women's Centre could do this)
Advocacy	• PacLII – treaties – human rights through courts / Magistrates / Judges / sound knowledge of custom • Increase participation of women in decision-making on lands • Awareness to the community with women • To keep context with whoever is dealing with the issue of land like chiefs, community Government • National Planning, Policies, Legislation on women's land rights • Awareness
Services	• Women need to be involved – in the very early stages of education • Government to help the land owner to develop through land in business • Department of land to schools, civil society organizations* • Awareness on land legislation
Formal Processes	• To involve women equally in the process of determining land rights • Amend discriminatory provisions in the Citizenship Act (ni-Vanuatu male married to expatriate woman automatically gets citizenship but if an expatriate man married a ni-Vanuatu women he has to wait for the 10 years) • Women to know very well about policies and regulations • Land Act, Land policies, land legislation** • National Planning, Policies, Legislation on women's land rights* [also in Advocacy] • Review and amend all discriminatory laws on women to promote gender in development • Review Citizenship Act • Lands Officers to be placed in all provinces • Gender training / empower women to participate in all processes at all levels [also in Education]
Adjudication	• Involving Vanuatu National Council of Women in the process – experience of field workers can help in adjudicators • To operate on land issues in having laws that can cover the critical areas • Gender awareness training to female and male leaders and members of the Tribunal [also in Education]

Annex 2. How the Vanuatu Land Program addresses resolutions of the National Land Summit

National Land Summit Resolution		Vanuatu Land Program Response	
Resolution 1: Ownership of land	The Government to make laws that provide that all land in Vanuatu is owned by groups (tribes, clans, or families).	1.2 Improved stakeholder and public understanding and awareness of customary land practices (including gender and relational land interests) Incisive and revealing studies of key <i>kastom</i> land issues that directly influence policy, Program implementation, and target audience awareness of key issues.	Groundwork established: VKS supported studies will specifically review legal models of <i>kastom</i> land tenure as a basis for future legislation. No direct legislative action proposed in the current phase.
	Not one person (individual) is an owner of any traditionally owned (<i>kastom</i>) land.	1.2 Improved stakeholder and public understanding and awareness of customary land practices (including gender and relational land interests) Incisive and revealing studies of key <i>kastom</i> land issues that directly influence policy, Program implementation, and target audience awareness of key issues.	Groundwork established: VKS studies will specifically review legal models of <i>kastom</i> land tenure as a basis for future legislation. No direct legislative action proposed in the current phase.
	Members of (<i>kastom</i>) traditional owning group (male and female) must be involved in the decision-making about their land.	1.3 Improve decision-making by customary landholders - Improved decisions made on important local land issues by customary landholders; - Decisions made by customary groups show improved awareness of options and better and more equitable outcomes for all partners;	Directly Addressed Improved decision making by customary landholders and improved participatory processes are key Program outcomes
		2.2 Improved participatory mechanisms that will facilitate regional and local governance of land - Improved participatory governance at the local level that links local Government, national agencies and customary groups, and coordinates local initiatives; - Priority sub-national land issues are discussed and planned	

National Land Summit Resolution		Vanuatu Land Program Response	
		at the local level and effectively linked and communicated to national agencies; and Effective, sustainable and appropriate multi-stakeholder and gender sensitive processes and structures operating at the sub-national level for participatory land governance.	
Resolution 2: How to identify the legitimate land owner	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).	1.2 Improved stakeholder and public understanding and awareness of customary land practices (including gender and relational land interests) Incisive and revealing studies of key <i>kastom</i> land issues that directly influence policy, Program implementation, and target audience awareness of key issues.	Groundwork established: VKS studies will specifically review legal models of <i>kastom</i> land tenure as a basis for future legislation. No direct legislative action proposed in the current phase.
	The Government, Provincial Governments and Malvatumauri National Council of Chiefs must assist the people to document traditional (<i>kastom</i>) land policies (<i>Kastomary Land Laws</i>) in villages, areas or islands in Vanuatu. This includes traditional communities' <i>kastom</i> boundaries, traditional (<i>kastom</i>) land dealings and other rules of <i>kastom</i> .	1.1 Improved Customary Governance of Land by the Malvatumauri - Sound, transparent and efficient customary governance and leadership on land issues by the Malvatumauri; - An effective Lands Office is established within the Malvatumauri under core funding. It is valued by the Malvatumauri and supported sustainably by them; - The Malvatumauri understand the issues surrounding land, and hence confidently and participatively intervene to meaningfully resolve - or at least progress - the debate. Clear evidence that this generates the appreciation and respect of other stakeholders; - The Malvatumauri show strong advocacy for national land issues, and effectively contribute to national debate and policy direction; and - Supporting frameworks for governance, transparency and accountability are established and	Directly Addressed: The Malvatumauri will be strengthened to support local communities and <i>Kastom</i> Focal Point officers will facilitate professional support to help those communities who wish to document traditional land policies.

National Land Summit Resolution		Vanuatu Land Program Response	
		modelled by the Malvatumauri.	
		1.2 Improve decision-making by customary landholders • <i>Kastom</i> Focal Point officers established at the local level • Improved decisions made on important local land issues by customary landholders; • Customary groups gain improved access to quality information and professional services to aid with their priority decision-making; • Decisions made by customary groups show improved awareness of options and better and more equitable outcomes for all partners; • Government and communities appreciate the benefits of <i>Kastom</i> Focal Point officers for land dealings, and identify mechanisms to sustainably fund both their positions and their operations into the future.	
	To carry out this task, the Government through the Ministry of Lands must set up Land Offices in all the provinces in Vanuatu.	1.3 Improve decision-making by customary landholders • <i>Kastom</i> Focal Point officers established at the local level	Directly Addressed Firstly effective models of support will be agreed by communities, the Malvatumauri, VKS, DOL and other stakeholders. Secondly the agreed sustainable system of <i>Kastom</i> Focal Point officers will be implemented.
Resolution 3: Awareness	The Government, Malvatumauri National Council of Chiefs and the Vanuatu Cultural Centre must assist the people (Chiefs, Schools, men and	1.2 Improved stakeholder and public understanding and awareness of customary land practices (including gender and relational land interests) (Implemented by the VKS) • Improved access to information, understanding, and awareness of the importance of land within <i>kastom</i> by local communities and the wider public, as	Directly Addressed The Program supports both the VKS and the DOL to raise awareness

National Land Summit Resolution		Vanuatu Land Program Response	
	women) to be aware about: 1. Traditional (kastom) economy. 2. Existing Land Laws. 3. Kastomary Laws.	well as local and international investors (including gender and relational land interests)	
		3.3 A national land awareness, knowledge and gender mainstreaming campaign Implemented by the DOL) • Improved stakeholder awareness and knowledge of land processes, and of their roles and responsibilities related to formal land dealings. Particular emphasis within the Department of Lands to ensure gender mainstreaming occurs in all policies, processes and transactions.	
Resolution 4: Enforcement of lease laws	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.	3.1 A functioning Land Registry and Information Service • Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases). 3.2 An effective land lease and development planning, assessment, permitting and enforcement service • Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation.	Directly Addressed: The DOL will establish an effective lease registration service and review and enforce all lease conditions.

National Land Summit Resolution		Vanuatu Land Program Response	
Resolution 5: Lease agreements	All lease agreements must: 1. Be in Bislama. 2. Involve all members of the land owning group (men, women and children). 3. Explain clearly to the land owners the terms and conditions of leases and the rights they have under those agreements. Including 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.	3.1 A functioning Land Registry and Information Service • Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases). 3.2 An effective land lease and development planning, assessment, permitting and enforcement service 2.3 Improved participatory mechanisms that facilitate formal dealings in land • Formal land dealings with sound participatory governance processes and principles in place that ensure full consultation, representation and validation. Cases of inappropriate participation and representation are significantly reduced; • Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation; • Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation;	Directly Addressed Leases and lease conditions will be reviewed and closely communicated with communities before decisions are made.
	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.	1.3 Improve decision-making by customary landholders • Customary groups gain improved access to quality information and professional services to aid with their priority decision-making;	Directly Addressed The Program provides a Professional Services Fund for communities to engage appropriate professional support to assist in decision making.
	In all lease agreements, the Chiefs and land owners must approve: o The Certificate of Negotiation.	2.3 Improved participatory mechanisms that facilitate formal dealings in land • Formal land dealings with sound participatory governance processes and principles in place that ensure full consultation, representation and validation. Cases of	Directly Addressed The Program will establish effective lease processes that ensure all stakeholders are properly involved in

National Land Summit Resolution		Vanuatu Land Program Response	
	o The Lease agreement. Any changes to the conditions of the lease (use of land (class of lease), term of lease).	inappropriate participation and representation are significantly reduced; - Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation; - Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation	decisions before leases are formalised.
		3.1 A functioning Land Registry and Information Service Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases).	
		3.2 An effective land lease and development planning, assessment, permitting and enforcement service.	
Resolution 6: Certificate of Negotiation	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.	2.3 Improved participatory mechanisms that facilitate formal dealings in land - Formal land dealings with sound participatory governance processes and principles in place that ensure full consultation, representation and validation. Cases of inappropriate participation and representation are significantly reduced; - Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation; - Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation	Directly Addressed The Program will establish effective processes that ensure all stakeholders are properly involved in decisions before leases are formalised.
Resolution 7: Certificate of Negotiation	There must be notice for every application to negotiate to the chiefs of the area where the land is	2.3 Improved participatory mechanisms that facilitate formal dealings in land Formal land dealings with sound participatory governance processes and principles in place that ensure full	Directly Addressed The Program will establish effective processes that ensure all stakeholders are

National Land Summit Resolution		Vanuatu Land Program Response	
	located. That notice must have the following information: 1. Detail of application; 2. Development Plan; and 3. Location of that Land.	consultation, representation and validation. Cases of inappropriate participation and representation are significantly reduced; • Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation; • Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation	properly involved in decisions before leases are formalised.
Resolution 8: Certificate of Negotiation	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.	2.3 Improved participatory mechanisms that facilitate formal dealings in land • Formal land dealings with sound participatory governance processes and principles in place that ensure full consultation, representation and validation. Cases of inappropriate participation and representation are significantly reduced; • Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation; • Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation	Directly Addressed The Program will establish effective processes that ensure all stakeholders are properly involved in decisions before leases are formalised.
Resolution 9: Power of the Minister over disputed land	Remove the power of the Minister to approve leases over disputed land.	2.3 Improved participatory mechanisms that facilitate formal dealings in land • Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation; and	Indirectly Addressed The Program will establish effective processes that ensure all stakeholders are properly involved in

National Land Summit Resolution		Vanuatu Land Program Response	
	If the land is disputed, the dispute must be resolved before the Minister can approve a lease in relation to that land.	Principles of good governance practice embedded in systems, processes and procedures for external land dealings at national and sub-national levels.	decisions before leases are formalised.
		2.3 Improved participatory mechanisms that facilitate formal dealings in land - Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation; and - Principles of good governance practice embedded in systems, processes and procedures for external land dealings at national and sub-national levels.	Directly Addressed The Program will establish effective processes that ensure all stakeholders are properly involved in decisions before leases are formalised.
Resolution 10: Strata Title	The law must be clear that strata title only applies to buildings but it is not for subdividing land.	See below	Indirectly Addressed Studies indicate that Strata Title concerns are more appropriately addressed through proper stakeholder consultation and prior informed consent.
	If there is strata title, land owners must have the right (be entitled) to approve the strata titles and gain benefit from them.	2.3 Improved participatory mechanisms that facilitate formal dealings in land - Formal land dealings with sound participatory governance processes and principles in place that ensure full consultation, representation and validation. Cases of inappropriate participation and representation are significantly reduced; - Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation; - Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation	Directly Addressed The Program will establish effective processes that ensure all stakeholders are properly involved in decisions before leases are formalised.

National Land Summit Resolution		Vanuatu Land Program Response	
Resolution 11: Agents/Middle men or women	The Government must regulate the activities of real estate agents and middle men or women (e.g. through a Code of Practice and Ethics).	2.3 Improved participatory mechanisms that facilitate formal dealings in land - Formal land dealings with sound participatory governance processes and principles in place that ensure full consultation, representation and validation. Cases of inappropriate participation and representation are significantly reduced; - Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation	Directly Addressed The Program will work with the private sector to consider appropriate Codes of Conduct
Resolution 12: Lease rental and premium	The Government must pass a law for new rates of land rent for different classes of land throughout Vanuatu.		Not Addressed
	Land rent in rural areas must be based on a percentage of the value of the land.		Not Addressed
	The Government will work out and endorse a new method for calculating land premium which it thinks is fair.		Not Addressed
Resolution 13: Sustainable development	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 positive and negative aspects of that	3.1 A functioning Land Registry and Information Service Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases).	Directly Addressed Lease prerequisites and condition will be determined and enforced prior to lease approval
		3.2 An effective land lease and development planning, assessment, permitting and enforcement service Effective services for planning sustainable land use,	

National Land Summit Resolution		Vanuatu Land Program Response	
development.		assessing development applications and enforcing land policy and legislation.	
Resolution 14: Sustainable development	Before an area can be leased, there must be a proper land use or zoning for that area.	3.1 A functioning Land Registry and Information Service Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases).	Partially Addressed Lease prerequisites and condition will be determined and enforced prior to lease approval. Zoning will be targeted to municipal and hot spot areas.
		3.2 An effective land lease and development planning, assessment, permitting and enforcement service - Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation. - Both urban municipalities have a zoning map and development control plan; and - Other designated “hot spots” and “areas of interest” are covered by zoning maps and development control plans.	
Resolution 15: Lease conditions	In every lease there must be conditions that: - Protect cultural sites; - Protect the environment (such as rivers, wild life, beach etc), and allow for an access road into the leased land.	3.1 A functioning Land Registry and Information Service Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases).	Directly Addressed Lease prerequisites and condition will be determined and enforced prior to lease approval
		3.2 An effective land lease and development planning, assessment, permitting and enforcement service - Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation. - Both urban municipalities have a zoning map and development control plan; and - Other designated “hot spots” and “areas of interest” are covered by zoning maps and development control plans	
Resolution 16: Public access	There must be public access to the sea and for the custom owner to continue	3.1 A functioning Land Registry and Information Service Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land	Directly Addressed Lease prerequisites and condition will be

National Land Summit Resolution		Vanuatu Land Program Response	
	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.	transactions (leases). 3.2 An effective land lease and development planning, assessment, permitting and enforcement service • Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation. • Both urban municipalities have a zoning map and development control plan; and • Other designated “hot spots” and “areas of interest” are covered by zoning maps and development control plans.	determined and enforced prior to lease approval
Resolution 17: Enforcement	The Government must: • Enforce every physical planning, Environmental Protection and Public Access Laws	3.2 An effective land lease and development planning, assessment, permitting and enforcement service • Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation. • Both urban municipalities have a zoning map and development control plan; and • Other designated “hot spots” and “areas of interest” are covered by zoning maps and development control plans.	Directly Addressed Enforcement of current legislation is a key areas of Program support.
	• Support custom owners to enforce these conditions such as planning, environment and public access.	2.3 Improved participatory mechanisms that facilitate formal dealings in land • Formal land dealings with sound participatory governance processes and principles in place that ensure full consultation, representation and validation. Cases of inappropriate participation and representation are significantly reduced; • Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation; • Governance oversight committees and advisory structures established for external land dealings and providing	Directly Addressed Enforcement of current legislation is a key areas of Program support.

National Land Summit Resolution		Vanuatu Land Program Response	
		rigorous and effective monitoring and evaluation	
Resolution 18: Zoning	There is a need for the Government to strengthen the Physical Planning and Zoning laws.	3.2 An effective land lease and development planning, assessment, permitting and enforcement service - Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation. - Both urban municipalities have a zoning map and development control plan; and - Other designated “hot spots” and “areas of interest” are covered by zoning maps and development control plans.	Partly addressed 2008 studies show that while current laws could be enhanced the major issue is one of enforcement. Enforcement of current legislation is a key area of Program support
	The Government must consider giving more powers to the Land Management and Planning Committee (LMPC) through law.	3.2 An effective land lease and development planning, assessment, permitting and enforcement service - Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation. - High use customers express satisfaction with the service and its transparency; - Both urban municipalities have a zoning map and development control plan; and - Other designated “hot spots” and “areas of interest” are covered by zoning maps and development control plans.	Directly Addressed The program will clearly identify roles and responsibilities of Government Agencies in development planning.
Resolution 19: Zoning	There must be a National Subdivision Policy, Provincial Development Plan and Area Land Use policy.	3.2 An effective land lease and development planning, assessment, permitting and enforcement service - Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation. - Both urban municipalities have a zoning map and development control plan; and - Other designated “hot spots” and “areas of interest” are covered by zoning maps and development control plans.	Partially addressed The program will work on development planning in both urban municipalities and other priority hot spots
Resolution 20:	The Environment Unit must	3.3 A national land awareness, knowledge and gender	Directly Addressed

National Land Summit Resolution		Vanuatu Land Program Response	
Awareness	help the people (Chiefs, Schools, men and women) to raise their awareness of sustainable development and environmental protection	mainstreaming campaign - Improved stakeholder awareness and knowledge of land processes, and of their roles and responsibilities related to formal land dealings. Particular emphasis within the Department of Lands to ensure gender mainstreaming occurs in all policies, processes and transactions. - Increased awareness and understanding by key audiences (customary landholders, investors and Government) regarding the issues surrounding <i>kastom</i> land practices and formal land dealings; and - Clear support, direction and leadership from the Department of Lands and the Department of Women's Affairs regarding culturally appropriate ways to ensure women's inputs and interests in land are appreciated, protected, enhanced and made more equitable.	The Program support the DOL to conduct its own Public Awareness program.

Annex 3. Workshop Outcomes: Port Vila and Efate Chiefs

A full day workshop occurred with the participation of approximately 50 chiefs (all men) at the Chiefs' *Nakamal*, Port Vila, on Wednesday 17 September 2008.

General Issues Discussed

- Need to be cautious in setting the timeframe – do not rush things
- Need to document the broad principles of *kastom* law for the multiple cultures in Vanuatu
- Need to ensure that land management is not standardised as this may restrict the diversity of *kastom* law
- Need to strengthen the structure and operations of the Malvatumauri at the national, island, area and village level
- Need to strengthen the *kastom* governance system
- Government funds do not flow through chiefs so they are not able to improve services to their people.

Table 13: Votes by 46 chiefs of major areas of decision-making

Decision Area	Votes	percent
Ownership	33	36 %
Boundary (ownership)	19	21 %
Who is the Leader (Custom authority)	17	18 %
Use rights	7	8 %
Development (particularly that related to leases)	6	7 %
Define and clarify the rules of Custom	5	5 %
Public Land	3	3 %
Financial decisions related to credit and mortgage	2	2 %
Total	92	1

Ownership

Defining the issue

- Various systems and these need to be defined
- Ownership may be transferred through patrilineal or matrilineal lineage
- Paumaso (*kastom* arrangement between father and daughter)
- Clan allegiance defines ownership
- Need to be very careful about the use of terms especially community versus customary (clan) as ownership is vested in the family/tribe/clan and not in the community/village
- Difference between ownership and use leads to a lot of disputes

Who makes the decisions?

- Generally through the family where traditional inheritance is followed
- Paramount chief if there is a dispute
- Village Council of Chiefs

Problems

- Influence from outside

- Neglect of *kastom* inheritance traditions
- Where tradition is not followed or disputes arise it leads to disunity, reduced development, poor service delivery (education and health), and disrespect of chiefs
- Adoption
- Absentee landholders

Possible Areas of Assistance

- Legalise role of the Paramount Chief and Village Councils
- Boundary mapping
- Awareness of customary land law
- Para legal training for chiefs and councils
- Record keeping - Secretariat and administrative support to Council of Chiefs (decisions are documented)
- Participation of village council in policy development

Boundary

Defining the issue

- Decisions are made primarily at the family level
- Ongoing disputes are escalated to the
 - a) community to community;
 - b) community to Chief of Community; or
 - c) Chief to Chief
- Most people would prefer that mediation occurred within the *kastom* system and was not elevated to customary land tribunal and court system. This causes disunity and the costs are excessive.

Who makes the decisions?

- Family heads
- Village Council of Chiefs/Land Tribunal
- Council of Chiefs
- Area Council/Land Tribunal

Problems

- Destruction of property and violent conflict
- Community conflict
- Unclear lease arrangements
- Poor documentation of community ownership
- Poor availability of lease conditions

Possible Areas of Assistance

- Boundary identification and mapping
- Awareness and training
- Survey services
- Documentation of customary title

- Financial assistance for professional services
- Clarification of the current lease provisions
- Clarification of lease laws
- Improved functioning of Land Tribunals and Courts
- Better documentation of boundaries and decisions

Custom Authority

Defining the issue

- Chiefs are defined on bloodline
- Need to follow *kastom* ceremony

Who makes the decisions?

- Paramount chief following *kastom* ceremony
- *kastom* men in the *Nakamal*

Problems

- Lack of traditional knowledge
- Improper or corrupt decisions
- Dual leadership system (*kastom* and Government) causes disempowerment of chiefs; Chiefs have no resources to provide for their people
- Chiefs find it difficult to maintain neutrality
- Commercial and economic development are not in the hands of chiefs
- Majority decisions rather than *kastom*
- Younger generation questioning *kastom* traditions
- Money undermines authority

Possible Areas of Assistance

- Establish formal training on custom, *kastom* values, and character
- Use the media to enhance *kastom* authority
- Amend the Education Act to include *kastom* law in syllabus
- Support the *kastom* system through the formal Government system including budget allocation
- Provide assistance and expert advice
- Support the chief to provide services to his people (budget)

Use Rights

Defining the issue

- All cultures are different so it is hard to define
- Need to clearly differentiate between use and ownership (usually you own what you use but not always e.g. especially women)
- Custom arrangement between owner and user
- Trespass, squatting and problem of resettlement

Who makes the decisions?

- Family (e.g. father and sons as in Nguna)
- Chief

- Head Chief
- Village Council (includes land owner/s)
- “wills” help define inheritance rights

Problems

- Women are often disadvantaged (e.g. use is based on their relationship with a male)
- Overlapping boundaries
- *kastom* lease is not paid
- Other disputes arising from jealousy e.g. jealousy between owner and user
- Neighbour using land in a way you do not like (e.g. commercial enterprise)

Possible Areas of Assistance

- Formal processes to address decisions on land issues at the village level
- Access information on Land laws
- Information/mapping of boundaries (use and ownership)
- Financial services and training (e.g. on credit access)
- Mediation services and training
- Community planning training and services with village land councils

Annex 4. Detailed Component Description

Goal

All Vanuatu people benefit from the equitable and sustainable development of their land while securing the heritage for future generations

Outcomes

Informed decisions by customary landholders	Participatory land governance	Effective enabling services

Cross Cutting Themes

Gender equity and equality
Peace and social harmony
Building capacity

Guiding Principles

Clarity	Fairness	Stability	Simplicity
Affordability	Transparency	Accountability	Sustainability

Objective	Major Indicators of Success	Key activities to be undertaken
1.0 INFORMED COLLECTIVE CUSTOMARY DECISION-MAKING		
1.1 Improved customary governance of land by the Malvatumauri.	- The Malvatumauri demonstrate sound, transparent and efficient customary governance and leadership of land. - An effective Lands Office is established within the Malvatumauri under core funding. It is valued by the Malvatumauri and sustainably supported by them;	- Provide funding to the Malvatumauri for a <i>kastom</i> Land Officer; - Provide administrative, operating and office space support for the establishment of a <i>kastom</i> Land Office within the Malvatumauri; - Support and build the capacity of the Malvatumauri at the national, local and area levels (including technical

Objective	Major Indicators of Success	Key activities to be undertaken
	- The Malvatumauri understand the issues surrounding land, and hence confidently and participatively intervene to meaningfully resolve - or at least progress - the debate. Clear evidence that this generates the appreciation and respect of other stakeholders; - The Malvatumauri show strong advocacy for national land issues, and effectively contribute to national debate and policy direction; and - Supporting frameworks for governance, transparency and accountability are established and modelled by the Malvatumauri.	training and legal awareness of land issues, leadership, conflict resolution, and gender); - Undertake national advocacy and policy support to Government on land issues; - Regularly monitor and evaluate success.
1.2 Improve stakeholder access to information, understanding, and awareness of customary land practices (including gender / relational land interests).	- Local communities, the wider public, as well as local and international investors, have improved access to information, understanding, and awareness of the importance of land within <i>kastom</i>, (including gender and relational land interests). - Incisive and revealing studies of key <i>kastom</i> land issues that directly influence policy, Program implementation, and target audience awareness of key issues. - Increased appreciation by Government and the general public of the role the Vanuatu Cultural Centre plays in supporting the Malvatumauri and <i>kastom</i> in Vanuatu. - Increased awareness by key audiences (customary owners, investors and Government) regarding the issues surrounding <i>kastom</i> and land dealings. - Clear support, direction and leadership from	- The Implementation Service Provider to establish a trust account for the Customary Land Study and Research Grant Fund for up A\$100,000 per annum. Support the Vanuatu Cultural Centre to administer the fund and undertake an annual allocation to selected priority research topics. - Support for the Vanuatu Cultural Centre to undertake a public awareness program (A\$20,000 per annum administered by the Implementation Service Provider). - Support for the Vanuatu Cultural Centre/Vanuatu National Council of Women to undertake a national gender advocacy and awareness program, with a focus on gender awareness and policy related to land issues (A\$10,000 per annum administered by the Implementation Service Provider). - Support the Malvatumauri to prepare a <i>kastom</i> Gender Policy. - Regularly monitor and evaluate success.

Objective	Major Indicators of Success	Key activities to be undertaken
	the Malvatumauri and the Vanuatu Cultural Centre and the National Council of Women regarding culturally appropriate ways to ensure that `women's inputs and roles in <i>kastom</i> land are appreciated, protected, enhanced and made more equitable.	
1.3 Improve decision-making by customary landholders.	• Customary landholders make improved decisions on important local land issues. • Customary groups gain improved access to quality information and professional services to aid with their priority decision-making; • Decisions made by customary groups show improved awareness of options and better and more equitable outcomes for all partners; • Government and communities appreciate the benefits of a provincial focal point for land dealings, and identify mechanisms to sustainably fund both their positions and their operations into the future.	• Appoint <i>Kastom</i> Focal Point officers to support decision-making related to customary land at the local level. These persons will: • Manage the Professional Land Services Support Fund (A\$25,000/provincial office/annum); • Manage and negotiate a sustainability plan that ensures ongoing funding for the roles; and • Regularly monitor and evaluate success.
2.0 PARTICIPATORY LAND GOVERNANCE		
2.1 Effective and participatory sector wide governance of land.	• Enhanced and effective participatory governance of the land sector through the enactment of the Government's Land Sector Framework and the efficient and effective operation of associated governance committees. • Effective and meaningful representation and participation of partners in national land governance; • Effective ongoing implementation of the Land Sector Framework, including proper	• Stakeholder mapping, analysis and negotiation to identify appropriate and relevant stakeholders; • Training of members of the Vanuatu Land Governance Committee (and its working groups) in areas that support its roles and responsibilities; • Develop a Sustainability Plan for the Land Sector Framework; • Development of participatory governance and advisory structures at the national level, as well as rules of engagement for all land sector stakeholders; • Strengthening of the structure, authority and powers of

Objective	Major Indicators of Success	Key activities to be undertaken
	coordination and institutional harmonisation; and Establishment of governance oversight committees and advisory structures, to provide rigorous and effective monitoring and evaluation of the Land Sector Framework.	relevant land management and planning committees; - Technical support for, and resourcing of, Land Sector Framework implementation (including thematic working groups⁹²), consultation, oversight mechanisms and sector-wide governance processes; - Preparation of a land governance performance and evaluation framework⁹³; and - Preparation of a transparency and accountability framework, and implementation of a Code-of-Conduct for all members of the Vanuatu Land Governance Committee and its operational working groups. The Code-of-Conduct should stipulate mechanisms to handle conflict of interest issues as they inevitably arise. The Code should also stipulate any sanctions for breaches.
2.2 Improved participatory mechanisms that facilitate regional and local governance of land.	- Improved participatory governance at the local level that links local Government, national agencies and customary groups and coordinates local initiatives. - Priority sub-national land issues are discussed and planned at the local level and effectively linked and communicated to national agencies; and - Effective, sustainable and appropriate multi-stakeholder and gender sensitive processes and structures operating at the sub-national level for participatory land governance.	- Identification of the strengths and weaknesses of both 'official' and customary participatory governance structures, at provincial/island/area council levels; - Examination of the existing linkages and interface delivery mechanisms within these structures that facilitate land development planning, zoning, control and use; - Development of a plan for the implementation of participatory land governance processes at provincial/island/area levels; - Establishment of locally appropriate participatory governance and advisory structures, as well as rules of engagement for key stakeholders at the provincial/island/area levels;

⁹² This may include studies on peace and conflict, tenure rights and access, land stewardship, vulnerable groups, land market development, legal, institutional, professional conduct and ethical practice.

⁹³ The performance framework will establish both qualitative and quantitative indicators to measure the efficiency, efficacy and effectiveness, equity and transparency of the land governance system.

Objective	Major Indicators of Success	Key activities to be undertaken
		• Strengthening of the administration and management of land governance processes; • Strengthening the composition, authority and powers of all relevant oversight and evaluation committees; and • Establishment of supporting frameworks for transparency and accountability to be used to guide codes of conduct and ethical practices.
2.3 Improved participatory mechanisms that facilitate external dealings in land.	• Transparent, accountable, and efficient participatory governance of key formal land transactions, especially leases. • Formal land dealings with sound participatory governance processes and principles in place that ensure full consultation, representation and validation. Cases of inappropriate participation and representation are significantly reduced; • Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation; • Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation; and • Principles of good governance practice embedded in systems, processes and procedures for external land dealings at national and sub-national levels.	• Undertake a stakeholder analysis and mapping exercise to identify the roles and responsibilities essential for external customary land dealings. These dealings may include: ➢ lease administration and management ➢ land planning and development ➢ management of public land ➢ sub-leases or strata titles on leased land ➢ customary leases, and ➢ compensation claims. • Develop an appropriate participatory land governance process, advisory structures and rules of engagement for the identified stakeholders (primarily Government, the private sector and the justice sector). These processes will incorporate the principle of free, prior and informed consent by customary landholders (including women); • Establish and strengthen composition, authority and powers of relevant oversight and evaluation committees; and • Formulate and incorporate good governance principles and practices within land planning, development, administration and management systems processes and procedures.
3.0 EFFECTIVE AND ENABLING SERVICES		

Objective	Major Indicators of Success	Key activities to be undertaken
3.1 A functioning Land Registry and Information Service.	- Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases). - High use customers express satisfaction with the service and its transparency; - Seventy-five percent of simple dealings are registered within two weeks⁹⁴ in accordance with designated procedures and standards, and are not subject to dispute or court action; - Eighty percent of complex dealings are completed within ten weeks in accordance with designated procedures and standards, and are not subject to dispute or court action; - Standard information regarding leases, including the status of any lease, can be advised within two days to a range of delivery nodes throughout the country; and - Leases can be accepted and returned via a range of delivery nodes throughout the country.	- Significantly reduce, and preferably eradicate, the large backlog in the Registry; - Convert core land lease and land lease boundary information into digital form. Integrate the two data sets, and bring the integrated information up to a high standard of integrity and currency (potentially delivered through NZAID); - Improve the processing operations within the Registry to achieve both integrity in processing, and agreed standards in processing times; and - Develop an information service that provides any interested person with quick and accurate information on the status of any lease or other transaction that has been lodged with the Registry.
3.2 An effective land lease and development planning, assessment, permitting & enforcement service.	- Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation. - High use customers express satisfaction with the service and its transparency; - Both urban municipalities have a zoning map and development control plan; and	- Build a strong and committed working group, representative of all Government stakeholders, to gain consensus on both the underlying principles, and the process to be used; - Assess the options for achieving a coordinated, integrated and effective regulatory and permitting service. Then formalise the preferred approach, with the approval of

⁹⁴ This two week period refers to operations in the Registry only. It does not take into account the time required to gain Department of Lands approval for a dealing- This will be addressed by the next intermediate outcome.

Objective	Major Indicators of Success	Key activities to be undertaken
	Other designated “hot spots” and areas of interest are covered by zoning maps and development control plans.	the individual agencies, and, if necessary, the Council of Ministers; - Develop and implement coordinated processes and procedures including the use of check lists, and advice and training to clients; - Further enhance the planning and development control plan support service; - Undertake planning for both municipalities and designated hotspots; and - Further enhance the coordinated compliance and enforcement service.
3.3 A national land awareness, knowledge and gender mainstreaming campaign.	- Improved stakeholder awareness and knowledge of land processes, and of their roles and responsibilities related to formal land dealings. - Particular emphasis within the Department of Lands to ensure gender mainstreaming occurs in all policies, processes and transactions. - Increased awareness and understanding by key audiences (customary landholders, investors and Government) regarding the issues surrounding <i>kastom</i> land practices and formal land dealings; and - Clear support, direction and leadership from the Department of Lands regarding culturally appropriate ways to ensure women’s inputs and interests in land are appreciated, protected, enhanced and made more equitable.	- Establish a Public Information Unit within the Department of Lands to be responsible for planning, implementing and evaluating public information, education and communication activities; - Conduct audience surveys and analyse the findings to define the knowledge gaps and attitudinal aspects of public awareness of land issues; - Identify target audiences, in particular customary landholders and private developers, and the most appropriate means/media to convey information and deliver key messages; - Liaise closely with the <i>Kastom</i> Focal Point officers to ensure accurate, reliable information on all aspects of land dealings is disseminated widely at the provincial level and is readily accessible by local communities; - Develop and deliver a public awareness program that targets the knowledge requirements of customary landholders, women, private developers, public sector agencies and other stakeholders; and - Appoint a Gender Focal Point, with advice from the

Objective	Major Indicators of Success	Key activities to be undertaken
		Department of Women's Affairs, within the Department of Lands and implement a gender mainstreaming program for the Department of Lands, the Malvatumauri and the Vanuatu Cultural Centre. • Assist the Department of Lands to develop a Women and Land Policy.
3.4 Effective organisational models and service delivery arrangements.	• Effective organisational models and service delivery arrangements (considered a medium-term initiative that will commence after Year Three). • Distinct separation of policy and regulation roles from approval and service delivery mechanisms; and • Right sized, right structured agencies delivering effective policy, regulation, and services that are sustainable in the long-term and based on appropriate service charges.	• The identification and evaluation of high-level organisational models. Subsequent detailed examination and discussion regarding one or two of these; • The most appropriate methods for the delivery of particular services to customer segments need to be determined, as well as the cost and feasibility of establishing these; • The development of a business case for the recommended model in order to gain approval and authorisation; • The establishment of a pilot, and its effective evaluation; and • Following authorisation, a roll out⁹⁵ needs to be conducted.

⁹⁵ It could well be that authorisation is not obtained in this Programs five years. As such roll out may need to await future support, if that happens.

Annex 5. Monitoring and Evaluation Framework

This Monitoring and Evaluation Framework is indicative. It was developed during the design phase, informed by team discussions and document analysis. It will be essential for the Program implementing team to invest time and effort during Program inception to further develop and validate the M&E arrangements through a participatory approach, involving all the key stakeholders. This will be particularly crucial once the national Land Sector Framework and its associated M&E arrangements are finalised – either before inception or during the early months of program implementation. Many and varied groups have a strong interest in the land sector in Vanuatu, and hence in this Program, so their views about what is monitored, reported and measured are crucial. It will also be essential to align or integrate M&E arrangements between this program and the package of support provided by New Zealand Aid.

The design of the Vanuatu Land Program is ground-breaking for the land sector. It engages with formal land management and administration as well as with customary practices, supporting the Vanuatu people in their efforts to harmonise these two, sometimes opposing, elements. The approach is flexible and responsive, structured around the multi-stakeholder management provided by the Vanuatu Land Governance Committee. As a result, conventional approaches to M&E in the land sector are neither sufficient nor appropriate for the Program, hence innovation is required. The approach, as set out below, incorporates new and emerging methodologies, as well as established and more common approaches.

The M&E arrangements described below comprise:

- M&E principles
- M&E approaches and a suggested framework for annual analysis and reporting
- Methods for data collection
- A planning and reporting cycle
- An outline of roles and responsibilities (M&E inputs)

M&E Principles for Land Sector Program

While the M&E arrangements will be further detailed during inception, and once the national Land Sector Framework is finalised (with its own M&E arrangements), a number of principles will guide these arrangements:

- M&E processes must impose limited demands in terms of time and methodology on key stakeholders such as the Malvatumauri and the Department of Lands, while at the same time balancing their adequate engagement;
- M&E analysis and reporting must blend both qualitative and quantitative data collection methodologies within a structured framework;
- Program M&E must support Government data collection and management, particularly with respect to the national Land Sector Framework and in the Lands Registry;

- Procedures must integrate data collection and substantive Program activities in such a way that these two operations both support and enhance each other; and
- As much as possible, there will be disaggregation of data by gender as well as by province / island.

M&E Approach

Once finalised, the M&E arrangements for the national Land Sector Framework will guide the structure and approach of program M&E. However those arrangements are likely to be simple of will focus on national progress – there will still be an important need to examine *the performance of this program's support* to land reform in Vanuatu. Therefore M&E for this Program requires a mix of quantitative and qualitative methods, together with a systematic method of bringing these disparate data together, and a framework for analysing what these data tell us. Although, as noted above, the details of the methodology will be confirmed during the update and revalidation of the M&E arrangements during the inception period, the Program will explore a systematic Performance Story Reporting approach to integrate the disparate data as well as provide a framework for their analysis.

The Performance Story Reporting⁹⁶ technique is a practical tool for integrating qualitative and quantitative data in an assessment of how the Program is contributing to outcomes. A performance story report includes both qualitative and quantitative data in a five part structure. The 'results' chart forms a key part of this report and is essentially a program logic model that is populated with multiple lines of evidence, in order to tell the story of how investment has contributed to long-term goals.

Program Story Reporting assembles a wide range of data and uses a structured process of examining the evidence and reaching conclusions about performance. It is participatory, drawing on elements of action research⁹⁷ and other such methodologies, so it is appropriate to a multi-stakeholder-managed program such as this one. It utilises the views of impartial experts, but hinges on achieving consensus amongst the stakeholders regarding progress towards the Program outcomes.

A feature of the Program Story Reporting process is the 'summit workshop' - in this case, this could be a 'Results *Storian*' - which brings together all the stakeholders to consider the data, the views of experts, and the stories of change. On the basis of this information, stakeholders agree on categorical statements about the Program's performance (particularly its progress towards outcomes), as well as about the extent of the Program's contribution to perceived changes. These statements are then given a confidence rating. As such, the process is evidence-based and participatory, providing a structured reporting approach that can support year-to-year performance monitoring.

During the revision of M&E arrangements for this Program once the M&E arrangements for the national Land Sector Framework, it will be important to consider whether the 'Results

⁹⁶ Performance story reporting is currently being piloted by the Australian Government's Natural Heritage Trust for 14 separate projects, expanding to an additional 12 in 2009.

⁹⁷ Note that the *kastom* Governance Partnership utilises an action research approach to M&E and would thus be highly compatible with this approach, making limited additional demands on the Malvatumaauri

Storian' could be integrated with national processes for reviewing progress with land reform.

Program Story Reporting includes information in several formats, suitable for utilisation by different stakeholders, including:

1. Confirmed Program rationale (the theory of change)⁹⁸
2. Results chart (data)
3. Implications (for learning)
4. Instances of significant change (narrative – of use for communicating with non-technical groups and for public awareness efforts)

The Program Story Reporting approach would provide the basis for integrating the M&E approach with Program implementation, especially the awareness programs. The narrative 'performance stories' included in item 4 (above) would be accessible to the general public and non-technical stakeholders. These could be used as part of awareness-raising efforts by describing real-time, locally-specific examples of the sort of changes the Program is making.

Blending quantitative data with open inquiry qualitative techniques recognises that outcomes are messy, fluctuating and influenced by many factors. Quantitative data will be especially important for the evaluation of Component 3, the data being drawn from the Department of Lands' own records, as well as from Program records. Conversely, qualitative data will underpin Component 1 and 2 and include Program-specific data collection largely in the form of interviews. These will include semi-structured interviews with individuals (best suited to Government officials or key leaders), and group interviews (described as *storian* – best suited to the Malvatumauri, groups of customary owners or women). The Most Significant Change technique will also be used.

Methods

The M&E Matrix below specifies the key evaluation questions, the data collection tools and data sources, and the key stakeholders for each element. As noted above, M&E for this design is open and participatory rather than tied to pre-determined targets.

The main data sources included in the M&E arrangements are:

Department of Lands data

Initially this will involve the manual collation and analysis by the Program M&E personnel working with Lands Registry staff. The intention will be to increasingly automate data collection and management, ultimately seeking to integrate the data with new electronic systems if and when appropriate (linking to NZAID-supported work with the Information Technology Centre). These data will also include documentary evidence of changes to institutional structures, processes, and practice in areas relevant to the Program.

Private sector survey

The Program will support the Department of Lands to implement an annual Private Sector Survey. This will not only be useful for Program monitoring, but will ultimately become a

⁹⁸ An example of a simple theory of change is presented at the end of this section

management tool for the Department of Lands to monitor its own performance with regards to one sector of their stakeholder constituency. The survey will also contribute information and practice towards building a greater service culture in the Department of Lands. Such a survey is considered especially appropriate for the private real estate sector in Vanuatu, as it is comprised mainly of expatriates who would be comfortable with the survey format.

Program Data

Program data will be collected on:

- the utilisation of *Kastom* Focal Point officers and professional support services, including extent of use, types of use, and types of users (men, women, groups, individuals, locations);
- participation in training, dialogues, workshops and other capacity building activities, disaggregated by sex and location).

Because the intention is for the Department of Lands and/or other Government or non-government agencies to integrate Program-supported personnel into their staffing structure at or near the end of the Program period, the management system for Program data will be designed in a format that is suitable for transition into these other agencies' systems in year 5 of Program implementation.

Participatory methods

Participatory methods will be tailored to different groups such as customary leaders, land owners and users, and community members. Oral techniques – mainly interviews - will be utilised in keeping with Vanuatu's oral traditions. These interviews will only be semi-structured, and will include both individual and group interviews (*storian*). The Most Significant Change technique⁹⁹ is also likely to be used. Interviews will be designed to fit within Vanuatu's storytelling culture, will capture common information, and will provide narrative examples of change, or difficulties encountered.

Participatory techniques will complement the approach being used in the AusAID supported *kastom* Governance Partnership – with which the Malvatumauri will already be familiar – this initiative having already introduced the concept of '*storian*' as a capacity building and monitoring element. Techniques will incorporate the notion of dialogue, as well as a focus on outcomes, and will identify unanticipated changes, both positive and negative.

Program Inception Review

At the completion of the first six months (about December 2010) the Pacific Land Program Effectiveness Review Group (ERG) will conduct the first of three high-level assessments of the Program.

Program Mid-Term Review

During Year 3, the Pacific Land Program ERG, along with appropriate independent support, will undertake a participatory Mid-Term Review (MTR). The MTR will provide an

⁹⁹ MSC can be resource-intensive to implement, so judgements will need to be made during the inception phase as to the appropriateness and cost-effectiveness of MSC as compared to other qualitative methods such as semi-structured interviews.

independent external perspective on progress towards the outcomes, the effectiveness of the Program design and the management arrangements. It will also provide a starting point for dialogue between Australia and Vanuatu regarding plans for the end of the Program period, with particular consideration given to a decision as to whether or not a subsequent phase of Program support should be designed and implemented. It should also include an in-depth investigation into the results of a selected sample of lands decisions¹⁰⁰. The results would then feed into the public awareness program, as well as into Program monitoring and management.

End of Program Evaluation

At or near the end of the Program period, the Pacific Land Program ERG will undertake an End of Program Evaluation, the exact timing of which will be scheduled to ensure that outcomes can contribute to a future phase of the Program, should this have been agreed upon. Ideally this evaluation will be undertaken by the same evaluation team that conducts the Mid Term Review, to provide consistency in methodology and reporting.

The Terms of Reference and the evaluation team for the Inception, Mid Term Review and the End of Program Evaluation will need to be developed by AusAID and the Pacific Land Program and agreed upon by the Vanuatu Land Governance Committee. Also, all three evaluations will need to be designed and implemented in ways that incorporate the interests of stakeholders. In other words, all three are intended to provide opportunities for learning and understanding, and are not just an accountability exercise for AusAID as the funding partner.

Roles and Responsibilities

Overall responsibility for monitoring the Program will rest with the Vanuatu Land Governance Committee, supported by the Implementation Service Provider. Within the Implementation Service Provider, the Program Director will have operational responsibility for M&E activities, supported by the M&E Adviser and the national M&E Officer.

Each member of the Program's M&E team will have specific responsibilities, reporting to the Program Director, as follows:

International M&E Adviser:

This specialist will:

- Validate and operationalise M&E arrangements (in Year 1);
- Design and conduct baseline qualitative data collection with the Malvatumauri and other stakeholders;
- Design, pilot and implement the baseline private sector survey;
- Prepare baseline Department of Lands data (especially for Component 3);
- Support Program performance assessment and reporting, including the management of annual performance processes;

¹⁰⁰ Alternatively, such an investigation could be undertaken as part of the program-supported research program

- Provide technical support and advice to the Government of Vanuatu as required, particularly with respect to the Land Sector Framework and operational monitoring in the Department of Lands;
- Support and build the capacity of the national M&E Officer along with the personnel in the Department of Lands responsible for M&E and data management.

National M&E Officer

This officer will:

- Support the strengthening of appropriate Department of Lands data systems, ensuring coordination and cooperation with IT activities (especially those supported through NZAID);
- Support the Program Director, providing data for report preparation;
- Partner with the international M&E Adviser in all work;
- Prepare for all annual processes including the private sector survey, and the planning and arranging of participatory processes;
- Undertake data trawls in preparation for annual reporting;
- Assist the Department of Lands with the manual assembly and analysis of data (Component 3);
- Support the implementation of all M&E arrangements for the Land Sector Framework.

Program Story Reporting Facilitator

It is recommended that the team use an experienced Program Story Reporting Facilitator for the planning of performance story reporting, and for the first iterations of the results of *storian* and the outcomes panel. This facilitator, funded from the short-term advisory pool, should also train and support Program M&E personnel to manage subsequent annual reporting processes, with a particular emphasis on the national M&E Officer's capacity to facilitate the participatory processes in Bislama.

In summary, the Program Story Reporting Facilitator will:

- Support Program M&E personnel to plan and facilitate the Program Story Reporting process;
- Facilitate the Program Story Reporting *storian* exercise for the first year (end Y1);
- Train the national M&E Officer to facilitate future *storian* exercises (Y2+).

M&E Matrix

Objectives	Evaluation Questions	Stakeholders	Data Collection Method
1. Informed Collective Decisions by Customary Landholders			
1.1. Improve customary governance of land by the Malvatumauri	- How has the involvement and leadership of the Malvatumauri in the lands sector changed? - Do stakeholders value and respect the changes? - What is the link between that change and the efforts of the Program?	Malvatumauri Vanuatu Land Governance Committee	Observation of office Private sector survey Participatory methods Program data
		Malvatumauri	Participatory methods
		Malvatumauri	Participatory methods
		Vanuatu Land Governance Committee Customary owners	Private Sector survey
1.2. Improve stakeholder and public understanding and awareness of customary land practices (including gender and relational land interests)	- What evidence exists of a better informed community (men and women) regarding lands? - What evidence exists of a more knowledgeable Government, regarding the land sector? - What evidence exists of the private sector having a greater understanding of the role of kastom in land dealings? - How is the Malvatumauri addressing gender issues differently? - To what extent has the Program contributed to these changes?	Customary owners	Participatory methods
		Private sector	Private Sector Survey
		Government	Participatory methods
		Malvatumauri National Council of Women	Participatory methods
		VKS National Council of Women	Participatory methods
		Customary owners	Participatory methods Program records on use of support and professional services
1.3. Improve decision-making by customary landholders	- What evidence exists that customary groups, both men and women, are making decisions about their land differently? - To what extent is there greater equity in the	Customary owners Vanuatu Land Governance Committee	Participatory method Program data s
		Vanuatu Land Governance	

Objectives	Evaluation Questions	Stakeholders	Data Collection Method
	decisions, compared to similar decisions in the past? - What is the link to the Program? - What contribution did the Local <i>kastom</i> Lands Officer facility make to any change?	Committee Customary owners National Council of Women	
2. Participatory Land Governance			
2.1. Support the effective and participatory sector wide governance of land.	- What changes (positive or negative) can be seen in land sector governance? - Is the Vanuatu Land Governance Committee active and respected in its role? - How effectively is the LSF being implemented? - To what extent is the Program contributing?	Vanuatu Land Governance Committee Private sector Customary owners National Council of Women	Land Sector Framework M&E
		Vanuatu Land Governance Committee	Participatory methods
		Vanuatu Land Governance Committee	Department of Lands records
		Vanuatu Land Governance Committee	Land Sector Framework M&E outputs
		Vanuatu Land Governance Committee Malvatumauri Customary owners	Participatory methods
2.2. Establish and/or improve participatory yet sustainable mechanisms that facilitate regional and local governance of land.	- What evidence exists that priority sub-national land issues are being handled differently? - What evidence exists of changes in sub-national land governance? - To what extent are sub-national land governance systems and processes increasingly	Vanuatu Land Governance Committee	Government records
		Vanuatu Land Governance Committee Private sector	Private sector survey

Objectives	Evaluation Questions	Stakeholders	Data Collection Method
	gender sensitive (OR supporting and enabling the participation of women)?		
2.3. Improve the participatory mechanisms that facilitate formal dealings in land.	- What changes are evident in decision-making about formal land transactions, especially leases? - To what extent are decisions more participatory, involving men and women from all stakeholder groups? - What is the link to the Program’s efforts?	Vanuatu Land Governance Committee	Department of Lands records Court records
		Vanuatu Land Governance Committee	Records of Governance process and structures
		Vanuatu Land Governance Committee	Government records
		Vanuatu Land Governance Committee	Government records
		Vanuatu Land Governance Committee	Documented systems, processes and procedures
3. Effective and Enabling Services			
3.1. Establish a functioning Land Registry and Information Service	- What evidence exists of more effective Land Registry services? - e.g. 75% simple dealings registered within 2 weeks in accordance with procedures and standards, and no subject to court action - e.g. 80% complex dealings completed within 10 weeks in accordance with procedures and standards, not subject to dispute or court action - What has changed in the views of stakeholders (both men and women) regarding the Land Registry?	Private sector Department of Lands Vanuatu Land Governance Committee	Registry data
		Department of Lands Vanuatu Land Governance Committee	Registry data
		Customary owners Private sector Vanuatu Land Governance Committee	Registry data
		Customary owners	Registry data

Objectives	Evaluation Questions	Stakeholders	Data Collection Method
	To what extent has Program support contributed to improvements?	Private sector Vanuatu Land Governance Committee	
		Private sector Department of Lands Vanuatu Land Governance Committee	Private sector survey
3.2. Establish an effective land lease and development planning, assessment, permitting & enforcement service	- What has changed in development controls and zoning? - How have the views of the private sector changed regarding development controls and zoning? - What is the link with the work of the Program?	Vanuatu Land Governance Committee Vanuatu Land Governance Committee	Department of Lands records Department of Lands records
3.3. Deliver a national land awareness, knowledge and gender mainstreaming campaign	- How has stakeholder (men and women customary owners, private sector and Government officials) awareness of the processes of formal land dealings increased? - What evidence exists of Department of Lands effectively mainstreaming gender? - To what extent has Program support contributed to those improvements?	Customary owners (men and women) Private sector Government officials engaged in land sector processes or policies Vanuatu Land Governance Committee National Council of Women	Participatory methods Private Sector Survey Participatory methods Participatory methods
3.4. Demonstrate effective organisational models and service delivery arrangements	What evidence exists of more effective organisational arrangements?	Vanuatu Land Governance Committee Vanuatu Land Governance Committee	Government records Government records (Public Service Commission structures and Ministry of Finance)

Objectives	Evaluation Questions	Stakeholders	Data Collection Method
			and Economic Management budget)
Sustainability	What indications are there that Department of Lands will sustain Program benefits within its systems?	Vanuatu Land Governance Committee AusAID	Department of Lands structure (as approved by the Public Service Commission) Approved Department of Lands budget
Inputs	Is Program implementation and management by the Implementation Service Provider effective and efficient?	AusAID Vanuatu Land Governance Committee	Program data Audits of Program accounts

Annex 6. Position Descriptions

Program Director (PD)

General

The Program Director (PD) will be responsible for strategic oversight of the Program including responsibility for overall planning, coordination and management of technical support; including the conduct of fiduciary and risk assessments. The PD will also be responsible for developing and maintaining good working relationships with Program partners in relation to the management and coordination of the Program. The PD will need to ensure that all Program reporting is of a high standard and general communication and coordination with the Government of Vanuatu, the Vanuatu Land Governance Committee, AusAID and other donors and partners is well managed.

1. Complete the Program Inception Plan and, once approved, oversee all inception activities as specified in the Program Scope of Services;
2. In close collaboration with AusAID, manage the negotiation and signing of partnership agreements with key Program partners;
3. Manage the implementation of the Implementation Service Provider (ISP) recruitment strategy including the selection, briefing, orientation and performance of all Program staff;
4. Manage and coordinate communications between the ISP, Program partners and AusAID;
5. Support AusAID to manage coordination with other donors and other AusAID funded activities, and seek to build harmonisation;
6. Ensure the Monitoring and Evaluation Framework is in place and implemented;
7. Ensure ISP performance standards as set out in the Scope of Services are met;
8. Ensure all reporting is completed on time as outlined in the Scope of Services and is in accordance with AusAID standards and procedures;
9. Ensure local resources are utilised wherever possible, particularly with respect to local organisations and expertise;
10. Ensure cross-cutting issues such as gender, anti-corruption and conflict management are continuously addressed throughout the Program, and in collaboration with short-term advisory support in these areas, ensure a clear strategy is in place for the Program in each of these areas and that staff and partners receive appropriate training; and
11. Ensure efficient use is made of AusAID resources in achieving Program objectives.

Reporting

12. Prepare regular briefing notes, reports and work plans as required by the Vanuatu Land Program, AusAID and the VLGC;
13. Prepare and respond to AusAID requests for performance reporting in line with agency requirements; and
14. Coordinate and finalise all progress reporting, management reporting and technical reporting as outlined in the Scope of Services or agreed with AusAID.

Other Duties

15. Prepare miscellaneous correspondence, reports, and other documents as required by AusAID;
16. Represent the Vanuatu Land Program in public forums, meetings and communications, as required; and
17. Perform other duties as agreed with AusAID.

Qualifications and Experience

The successful applicant must have the following qualifications:

- A relevant post-graduate university degree in a land sector related field;
- Demonstrated experience in the leadership, oversight and harmonious management of international development assistance projects/ programs at the highest level;
- Proven skills in planning, program management and reporting skills in national/provincial development settings;
- Proven experience in building networks and partnerships at international level;
- Proven experience working in multi-disciplinary and multi-cultural environments;
- Excellent written and spoken communication skills; and
- Prior experience in developing countries is essential.

Duration

Inputs as required over a period of 5 years.

INTERNATIONAL INDIGENOUS LAND SPECIALIST (IILS)

General

Under the supervision of the Program Director (PD), the International Indigenous Land Specialist (IILS) will support and assist the Vanuatu Land Governance Committee (VLGC), the Malvatumauri, the Vanuatu Cultural Centre (VKS), the Department of Lands and other land sector groups to implement the Customary Decision Making objective (Part A Objective 1) of the AusAID-supported Vanuatu Land Program (VLP). In particular the IILS will:

1. Support the Malvatumauri to establish a National Kastom Land Office;
2. Work with the Secretary General of the Malvatumauri to appoint a National Kastom Land Officer and administrative support;
3. Provide training, mentoring and support to the National Kastom Land Officer to ensure they can competently and confidently perform their role and manage the National Kastom Land Office;
4. Support the Malvatumauri to budget and plan for the full transfer and sustainable management of the National Kastom Land Office from Year 5;
5. Work with the National Kastom Land Officer to undertake a capacity assessment of the 22 national representatives of the Malvatumauri, and develop and implement a training plan that significantly strengthens the Malvatumauri's capacity to provide effective advocacy and policy advice on kastom land issues to Government, civil society and other stakeholders;
6. Work with the National Kastom Land Officer to support the Malvatumauri to develop an appropriate strategy and plan that guides priorities for Malvatumauri action on land, and assists them to monitor these activities and evaluate the outcomes;
7. Work with the National Kastom Land Officer and the Malvatumauri to establish frameworks for governance, transparency and accountability;
8. Work with the Vanuatu Cultural Centre to develop the aims, scope, scale and transparent operating and management guidelines for a Grant Fund Imprest Account called the Customary Land Study and Research Grant Fund in line with expectations in the Implementation Service Provider's Scope of Services and the Program Design Document;
9. Administer a grant fund that supports the Vanuatu Cultural Centre to implement a Public Awareness program and a Gender Mainstreaming program in line with expectations in the Implementation Service Provider's Scope of Services and the Program Design Document;
10. Ensure that the VKS forms a significant and active partnership with the Gender Focal Point within the Department of Lands for the Gender Mainstreaming program and that both become important delivery partners and receive appropriate funding for work undertaken;
11. Assess the structure and capacity of the Malvatumauri, the Vanuatu Cultural Centre, the Department of Lands, the Provinces and various civil society groups to field, manage and sustainably support a Kastom Focal Point network. Workshop with key partners the options (including voluntary networks) and summarise the recommendations for a sustainable, affordable Kastom Focal Point network, including specifications of hosting, funding, number, location, management and training. Sustainable funding recommendations must take into account the grant funds available and the future capacity of a partner to maintain the network. Prepare a submission to the Program Management Committee for approval;

12. Based on Program Management Committee approval, implement the agreed Kastom Focal Point network, including selection, training and capacity building of the Kastom Focal Point officers;
13. Work with the Kastom Focal Point officers and the National Kastom Land Officer to develop an annual work program to be endorsed by the Malvatumauri and submitted to the Program Management Committee for approval as part of the Program Annual Plan;
14. Establish processes for and administer a Professional Land Services Support Fund (PLSSF). The Fund will allow the Kastom Focal Point network to access 'competitive' professional services that address major priority needs identified by the communities. Priorities will be selected locally, but amalgamated and prioritised nationally by the National Kastom Land Officer for inclusion in the annual work program;
15. In conjunction with the Program Director, ensure that short-term advisors to the Customary Decision Making component are managed effectively, including provision of regular staff work plans and performance appraisal; and
16. Provide operational, administrative and financial advice on the Customary Decision Making component and prepare annual work plans and budgets for approval by the Vanuatu Land Program and the Program Management Committee.

Reporting

18. Prepare regular briefing notes, reports and work plans as required by the Vanuatu Land Program and the Program Management Committee;
19. Prepare summary annual progress reports detailing Vanuatu Land Program development plans, issues and lessons learnt; and
20. Review workshop and seminar outputs on participatory land governance issues.

Other Duties

21. Prepare miscellaneous correspondence, reports, and other documents as required;
22. Represent the Vanuatu Land Program in public forums, meetings and communications, as required; and
23. Perform other duties as required by the Program Director.

Qualifications and Experience

The successful applicant must have the following qualifications:

- Relevant post-graduate university qualifications in social science, community development, anthropology, or rural extension with multi-sector experience including land related activities;
- Experience in working with customary practices and preferably the issues of customary land;
- Demonstrated experience in the management of international development assistance projects/ programs at a senior level;
- Proven skills in planning, program management and reporting skills in national/provincial development settings;
- Proven experience in building networks and partnerships at international level;
- Proven experience working in multi-disciplinary and multi-cultural environments;
- Excellent written and spoken communication skills; and
- Prior experience in developing countries is essential.

Duration

Inputs as required over a period of five (5) years..

Participatory Land Governance Adviser (PLGA)

General

Under the supervision of the Program Director, the **Participatory Land Governance Adviser (PLGA)** will support and assist the Vanuatu Land Governance Committee (VLGC), its Coordination Unit (or Secretariat), multi-stakeholder land sector groups, the Department of Lands and local Kastom Focal Point Network to facilitate and implement the Participatory Land Governance component of the AusAID-supported Vanuatu Land Program (VLP). The PLGA will also contribute to the further development of the Land Sector Framework in conjunction with the VLGC and donors. In addition the PLGA will:

1. Provide overall support and assistance for coordination, facilitation and implementation of the Participatory Land Governance component of the VLP on behalf of the VLGC, or its nominated sub-working group, in accordance with the Program Design Document, and ensure the component is integrated with the other Program components;
2. Support and assist the establishment and maintenance of effective national and sub-national networks with key multi-stakeholder land sector groups such as donors, government agencies, civil society and private sector, and facilitate their inputs and contributions to the component;
3. In conjunction with the VLGC, facilitate a comprehensive multi-stakeholder mapping and analysis process which will identify relevant stakeholders and their roles and responsibilities for participation in national, sub-national and issue-based land governance processes;
4. Provide technical support and assistance for the implementation of the national Land Sector Framework (LSF), including the establishment, strengthening and rules of engagement for the newly formed VLGC, its associated governance committees and thematic advisory groups;
5. Provide support to the VLGC in its role to facilitate participatory land governance from a sector-wide perspective, and provide national oversight of the participation process;
6. Provide direction and technical advice and support to the VLGC and GoV on the medium to longer-term development and implementation of the LSF, including opportunities for institutional harmonisation, donor coordination, strategic directions and priorities, and resource mobilisation;
7. Encourage dialogue and facilitate coordination between other land sector activities at the national and sub-national levels;
8. Assist the Kastom Focal Point network to build and maintain links with national and provincial Government, civil society and private sector stakeholder groups in support of participatory land governance processes;
9. Assist the local Kastom Focal Point officers and relevant line agencies to identify strengths and weaknesses of land governance structures at sub-national level (province, island and area councils), examine and evaluate existing linkages and interface delivery mechanisms within these structures that facilitate land development, and develop options that address priority needs for improved sub-national participatory governance of land;
10. In conjunction with the local Kastom Focal Point officers, and in response to identified needs at sub-national levels, establish effective, tailored land governance structures, oversight mechanisms and rules of engagement for participatory processes in targeted provinces to assist communities engaged, or wishing to engage, in formal land dealings;

11. Provide support for capacity building and assistance to the Kastom Focal Point officers and relevant provincial line departments in implementing the Participatory Land Governance component at the sub-national level;
12. In conjunction with the Department of Lands and relevant stakeholder groups (e.g. Government agencies, private sector, law and justice, land and property development professionals), provide advice on the participatory processes, good governance principles and structures, oversight mechanisms, administrative and management processes, codes of professional conduct and ethical practices needed to underpin and facilitate fair, open and accountable dealings in land;
13. Facilitate dialogue and assist with the formulation of accountability, transparency, policy, performance, monitoring and evaluation, technical and managerial frameworks and associated codes of conduct to support effective participatory land governance at national and sub-national levels;
14. In conjunction with the Program Director, ensure that short-term advisors to the Participatory Land Governance component are managed effectively, including the provision of regular staff work plans and performance appraisal;
15. Provide operational, administrative and financial advice on the Participatory Land Governance component and prepare annual work plans and budgets for approval by the Vanuatu Land Program and VLGC, or its nominated sub-working group;
16. Manage short-term advisory inputs for the component, including oversight of specific land governance, policy, legislative and issues-based studies and pilot applications to inform, test and evaluate new approaches to participatory land governance, policy formulation and regulatory improvement; and
17. Under the guidance of the Program Director, provide support for building the capacity of multi-stakeholder partners for the Participatory Land Governance component through the design and facilitation of regional and international training programs, awareness and communication workshops, policy formulation processes, and feedback mechanisms for knowledge sharing, skills enhancement and the analysis of lessons learned.

Reporting

18. Prepare regular briefing notes, reports and work plans as required by the Program Director;
19. Prepare summary annual progress reports detailing Vanuatu Land Program and Land Sector Framework development plans, issues and lessons learnt; and
20. Review workshop and seminar outputs on participatory land governance issues.

Other Duties

21. Prepare miscellaneous correspondence, reports, and other documents as required;
22. Represent the Vanuatu Land Program in public forums, meetings and communications, as required; and
23. Perform other duties as required by the Program Director.

Qualifications and Experience

The successful applicant must have the following qualifications:

- Relevant post-graduate university qualifications in a land-related area with multi-sector experience in land sector-related activities;
- Demonstrated experience in the management of international development assistance projects/ programs at a senior level;
- Proven skills in planning, program management and reporting skills in national/provincial development settings;
- Proven experience in land systems, processes and governance issues and practice;
- Proven experience in building networks and partnerships at international level;
- Knowledge of computer-based land information and mapping systems;
- Proven experience working in multi-disciplinary and multi-cultural environments;
- Excellent written and spoken communication skills; and
- Prior experience in developing countries is essential.

Duration

Inputs as required over a period of 5 years.

Kastom Focal Points

1. Conduct consultations at the Area and Island level to determine the major customary land issues;
2. Identify and prioritise the needs of local communities for improved information and other services to aid decision-making;
3. Coordinate and undertake training workshops on prioritised issues, including assistance with the facilitation of local Participatory Governance Workshops (see Section 2);
4. Disseminate information materials produced by the Program and help coordinate local public awareness training and other Program related activities;
5. Provide information and advisory support to customary groups regarding traditional decision-making processes;
6. Identify professional service delivery necessary to assist decision-making at the local level;
7. Coordinate with the Department of Lands to facilitate and coordinate land services to support key issues and concerns;
8. Identify core local and national professional service providers who can provide services that either complement or enhance the capacity within the Department of Lands (gender, legal advice, financial planning advice, trust establishment, planning);
9. Broker additional professional assistance to support priority needs as identified;
10. Assume agreed but carefully limited roles for the Customary Land Tribunal¹⁰¹ (the Malvatumauri and the Customary Land Tribunal are currently sections of the Ministry of Justice). Also, in limited and agreed areas act as a contact point/agent for the Department of Lands.

¹⁰¹ It must be stressed that the local Kastom Land Officers will not be available to directly mediate disputes as this would be immensely time consuming and potential risky. Instead they will support customary mediation and links to the more formal Customary Land Tribunal processes. The formal links will be facilitated through the proposed NZAID support to the Customary Lands Tribunal.

Annex 7. Risk Matrix

1.0 INFORMED CUSTOMARY DECISION-MAKING						
1.1 National Land Office	That the Malvatumauri lacks the organisational capacity to administer and strategically manage the Land Office.	The Land Office is unable to engage with the Malvatumauri at a level that strategically influences decision-making and build capacity	4	4	4	• Close and regular contact (monthly meetings) between the Program Director, the Malvatumauri Secretary General and the National <i>kastom</i> Lands Officer to discuss progress and planning. • Solid facilitation during inception to ensure the office directly supports key Malvatumauri priorities.
1.1 National Land Office	The National <i>kastom</i> Land Officer and office resources are directed to tasks not aligned with the priorities of the Program.	Program priorities and outcomes are undermined.	3	4	4	• Development of a MOA at inception to ensure and agree on the roles and responsibilities of the Land Office and the National <i>kastom</i> Land Officer. • Close and regular discussion to ensure Program priorities remain relevant and that emergent urgent issues only capture Land Office capacity and resources where agreed in writing. • Place full management responsibility under the Program Director should persistent issues of resource capture arise.
1.3 Local Decision-making Support	That the Government will not be able to sustainably support the devolved services of the <i>Kastom</i> Focal Point officers.	Program initiative wilt after Program support is withdrawn.	3	4	4	• Work closely with the Department of Lands and the Ministry of Public Finance to ensure recurrent budgets include sufficient funds for the salaries and operational costs of this service.

1.3 Local Decision-making Support	That the services of the <i>Kastom</i> Focal Point officers are captured by the Department of Lands to undertake their mandate and the broad whole-of-Government community support role is compromised	Communities no longer trust or use the local service because it is seen as simply promoting the Departmental agenda and not responding to local needs.	4	5	5	- Significant work must occur to ensure that Department of Lands funding is not seen as capturing this resource. - Close oversight by the Regional Participatory Governance groups (Component 2.2) will be essential. - If the threat is deemed too significant consideration should be given to moving responsibility for the positions under the Malvatumauri (via the Ministry of Public Finance)
2.0 PARTICIPATORY GOVERNANCE						
2.1 National Land Governance	Political stakeholders not engaged or supportive of participatory land governance initiatives	External (internationally funded) intervention may be regarded as inappropriate and participatory approaches are not supported.	L	H	3	- Senior representation and engagement during Program implementation at all stages. - Regular updates on Program implementation provided to Prime Minister, Council of Ministers, Minister of Lands, NLSC and high level Government officials. - Resources at AusAID Post must be adequate to ensure close monitoring and the ability to consistently engage and participate.
2.1 National Land Governance	Failure to continually engage all key stakeholders in land governance system	Key stakeholder groups may disengage from the land governance process and challenge the value and legitimacy of the governance system	L	M	2	- Conduct stakeholder analysis and mapping exercise to identify interests and agendas to ensure that expectations are met. - Promote active participation and engagement of all stakeholders in the implementation, decision-making, priority setting and management of the governance system. - Regularly hold stakeholder forums to seek feedback on progress of governance system and to continually build

							stakeholder ownership and trust. Define interests of all stakeholders, and use a 'risk management' approach during Program implementation to identify responsibilities and the likely consequences that will follow if respective parties fail to provide their specific contributions.
2.1 National Land Governance 2.2 Sub-national Land Governance	Governance objectives and desired outcomes may be too diffuse as the range of stakeholders is extensive. Concepts and principles of governance may also be too complex for stakeholders groups to understand, appreciate and implement.	Stakeholders and communities will have little understanding of the concepts and principles which underpin good governance and fail to see and/ or appreciate the potential benefits.	M.	L	2	- Ensure training Programs are designed and delivered at the correct level for the respective audiences. - Introduce a 'nested' Program of training which starts with simple concepts and then moves to more advanced principles as the Program evolves. - Undertake stakeholder mapping and analysis to identify relevant stakeholders who should be involved in the different stages of the governance process - Understand the power balance between stakeholders and ensure participation reflects this.	
2.1 National Land Governance 2.2 Sub-national Land Governance	Links and relationships between Government agencies and key stakeholders deteriorate because of unrealised expectations.	Potential for stakeholder groups to become disenchanted with the governance process and not longer contribute	L	M	2	- Conduct periodic assessments to gauge the level of acceptance, efficiency and effectiveness of the governance system by stakeholders and community groups. - Monitor and evaluate ability of governance process to facilitate meaningful dialogue between partners. - Regularly check the transparency of perceptions and expectations of stakeholders concerning participation in, ownership of, and benefits accruing from the governance process. - Performance targets should be progressively set over the life	

							of the Program so that expectations can be managed and outcomes are achievable within a realistic set of performance measures.
2.2 Sub-national Land Governance	Low capacity in provincial agencies and regional/ area stakeholder groups	Reliance on provincial institutions cannot be guaranteed	H	M	4	• Reduce dependencies on Provincial Governments for support through the use of ‘focal points’ (see Component 1) to resolve issues, advise on the governance system and to provide support information to communities. • Hold governance workshop(s) and training programs in area /island council settings and provide direct support to these stakeholder groups to maximise outreach, communication and feedback from local communities. • Strengthen customary governance structures in the regions and use these as the primary mechanism to reach local communities and to communicate at the national level.	
2.3 Land Process and Policy Governance	Absorptive and institutional capacities in agencies and stakeholder groups to implement land governance initiatives remain weak.	Organisations involved are unable to provide the staff and financial resources to achieve the objectives and desired outcomes from the governance system	H	M	4	• Land Sector Framework workshops will be conducted to emphasise the importance of the institutional harmonisation process, land sector resource sharing and the need to complement ongoing activities/programs in the sector and avoid duplication. • Develop strategies and training programs to ensure capacity building for land governance addresses the needs of all stakeholders and reflects a long-term commitment with continual reinforcement of training. • Resources should be accessed on a sector wide basis from all stakeholder groups to ensure that responsibility for land governance does not rest with one single organisation/ stakeholder group.	

							Advocate for injection of funds to recruit and retain staff in key stakeholder organisations to support governance initiatives.
2.3 Land Process and Policy Governance	Policy dialogue and development lags behind other related governance initiatives and are given a lower priority.	Impact of changes in governance processes might be delayed or not sustained if not underwritten by sound land policy and regulations.	L	M	2		- Ensure activities and mechanisms are in place to initiate and conduct a healthy policy dialogue and debate and formulate a land policy development process. - Provide opportunities to participate in international study tours to examine and observe ‘best practice’ governance processes and policy implementation at work. - Use pilot studies to identify potential policy successes. - Focus on modifying existing laws and regulations rather than introducing new ones or implementing a grandiose national scheme of law reform. - Engage law and justice agencies in land sector governance and strengthen their roles and involvement in the process. - Ensure flexibility in Program implementation in order to adapt to changes as regulations or legislation are revised.
2.3 Land Process and Policy Governance	Complexity of institutional issues may have been under-estimated.	May lead to stakeholder unwillingness to participate and cooperate in the development of the governance system because of the sensitive nature of some issues.	M	M	3		- Regular risk assessment/ management workshops will be held to inform all stakeholders of Program implementation and status. - Long-term engagement with key stakeholder groups is fundamental to the successful implementation of the governance system. - Program implementation must/ will be adaptive, responsive and flexible. - Identify potential “hots spots” in the land sector governance

							system and develop institutional and operational strategies to avoid or minimise potential fallout, embarrassment and related consequences.
							Identify issues that have been underestimated early during Program implementation so that they can be addressed quickly.
3.0 EFFECTIVE AND ENABLING SERVICES							
3.1 Land Registry	That major project assisted improvements in the land Registry are not sustained due to insufficient budget support from Department of Lands/MOF for the necessary staff and O&M	Over time the Registry will slide back to having high back logs and processing times, causing customer dissatisfaction as well as causing adverse social and economic effects.	M	H	4	Coordinate early meetings between Department of Lands and Ministry of Finance and Economic Management to discuss funding sustainability and options. Implement appropriate mechanisms and ensure compliance.	
3.1 Land Registry	That the number of temporary staff and the initial tempo and focus on land lease data capture and reducing data anomalies will prove disruptive to the normal operation of the Registry which is already under strain and working in very restricted space.	Disharmony and job dissatisfaction within the Registry	M	M	3	Consider relocating to alternative premises close by to increase space and improve working conditions for staff	

3.1 Land Registry	That it is not possible to substantially overcome the perverse incentives and the wontok obligations that impact on the achievement of high levels of transparency and good practice in the granting of approvals and the like.	A high level of good governance is difficult to obtain and public confidence in the operations does not increase	M	H	4	• When designing improved procedures make them as “tight” as possible. • Seek to improve public awareness and understanding of the impact of corruption and establish codes of conduct expected from Government officials.
3.2 Assessment & Compliance	That some elements of the agencies, sections and personnel that need to cooperate find it difficult to fully do so	Will not achieve a fully coordinated and integrated land lease and development planning, assessment, permitting, and enforcement service and hence will not achieve desired improvements in built and working environments.	M	H	4	• Ensure that all agencies continue to be fully informed and involved and hence maintain commitment. • Foster a strong focus on service to the customer.
3.3 Awareness and Gender	That the awareness campaign does insufficient research, and effectiveness is not tested regularly	The campaign messages are not as appropriate or effective as they	L	M	2	• Conduct sufficient audience research and consultation prior to designing the campaign and then conduct regular testing of its effectiveness in the various segments being targeted. • Involve from the start organisations/personnel that are

	enough and/or is insufficiently responsive	could be and important segments of society are not reached.				representative of the various segments of society.
3.4 Organisational Models	That it is not possible to get approval for the involvement of non Government personnel and/or that it cannot be made financially attractive or viable, and/or more or other Government offices cannot be involved	The delivery of land services will continue to remain Port Vila centric	M	M	3	From an early stage examine a wide range of delivery options and involve senior Government officers in several ministries whose approvals are likely to be needed.
3.4 Organisational Models	That while a “right sized & structured” organisational model for improved delivery of policy / regulatory, assessment, and approvals & service delivery might be developed with a fair degree of consensus, it cannot achieve the necessary official approvals to authorise and implement it.	A nationally affordable & sustainable effective land regulatory and services model / organisations will not be achieved resulting in less than the desired improvements being achieved & sustainable.	M	H	4	Start slowly and involve all Government staff /organisations likely to be affected as well as the high level elements in Government whose support & approval will be necessary.

Annex 8. Scope of Services (removed, see Contract Schedule 1)

Annex 9. Basis of Payment (removed, see Contract Schedule 2)

Annex 10. Documents Reviewed

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15. Naupa, A and Simo, J 2007, *Matrilineal Land Tenure in Vanuatu: Case Studies of Raga and Mele*, paper presented to the SPC/SPREP Sustainable Land Management Conference, Fiji, 1-4 October.
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17. Piau-Lynch, A 2007, *Vanuatu Country Profile on Gender*, JICA Vanuatu Office, Port Vila, 47pp.
18. Swete Kelly, D.E. and Larden, D. 2008 *Concept for future Australian assistance to land reform in Vanuatu*. AusAID Canberra.
19. UNDP, *Peace and Conflict Development Analysis*
20. UNIFEM, *Gendered Early Warning Systems Peace analysis*
21. www.ausaid.gov.au/publications/pdf/rapid_review_aug.pdf

NZAID

VANUATU

**Strengthening the Customary Land Tribunal and
the Department of Lands' Land Information
Management**

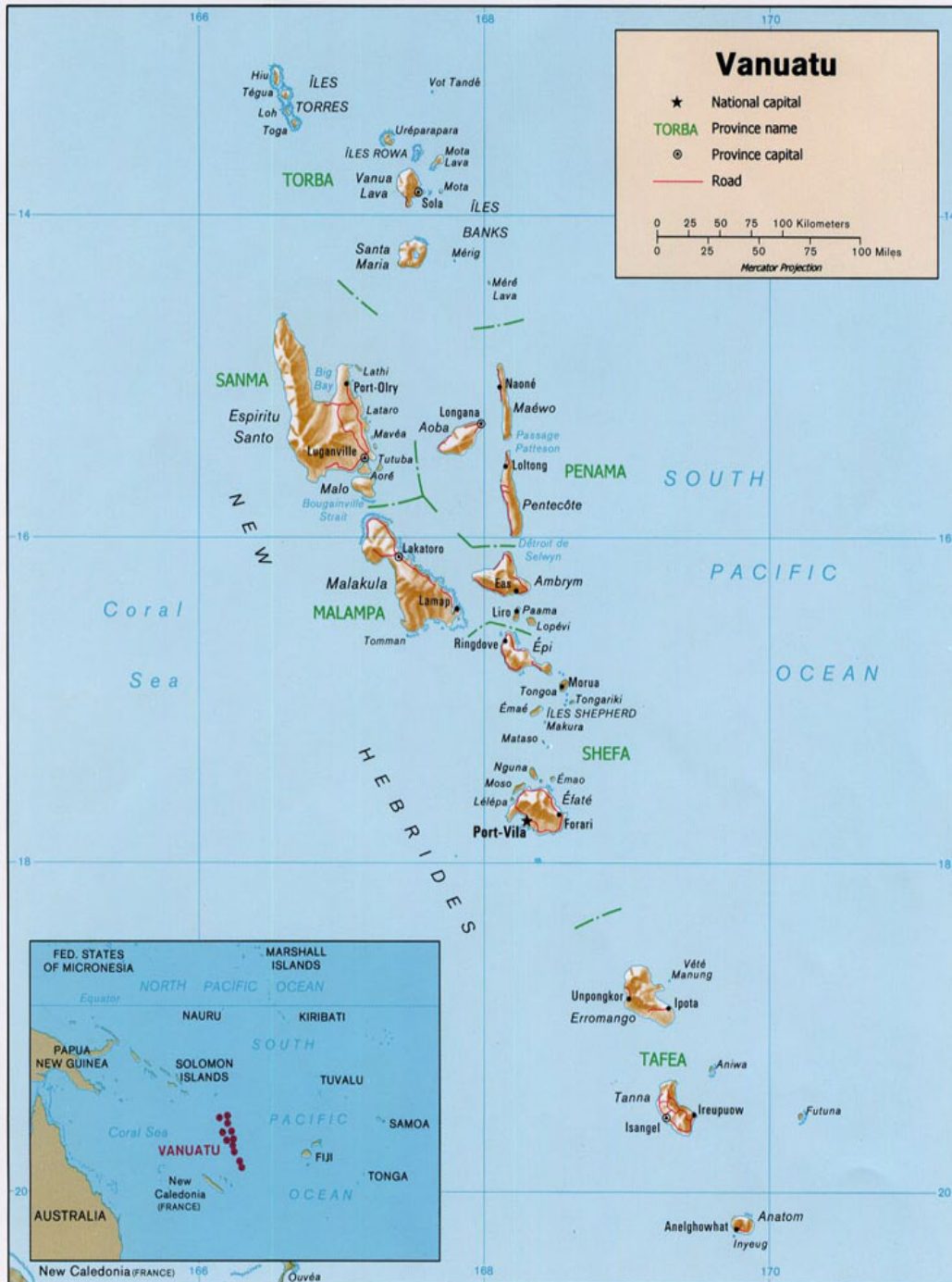
ACTIVITY DESIGN DOCUMENT

February 2009

This version revised for harmonisation purposes from October 2008

ADD

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ABBREVIATIONS

ADF	Australian Defence Forces
AusAID	Australian Agency for International Development
CARMA	Community Area Resources Management Activity
CLT	Customary Land Tribunal
CLTA	Customary Land Tribunal Act 2001
CLTU	Customary Land Tribunal Unit
CLU	Customary Land Unit
COM	Council of Ministers
CRP	Comprehensive Reform Program
DCDB	Digital Cadastral Data Base
DG	Director General
DIGO	Defence Imagery and Geospatial Organisation
DoL	Department of Lands
DOLSR	Department of Lands, Surveys and Records
FLIS	Fiji Land Information System
GIS	Geographic Information System
GoV	Government of Vanuatu
ICT	Information Communications Technology
IT	Information Technology
ITC	Information Technology Centre (in DOLSR)
LIMS	Land Information Management System
LIS	Land Information System
LT	Land Tribunal
LTTA	Long Term Technical Adviser
LUPO	Land Use Planning Office
MIS	Management Information System
MoF	Ministry of Finance
MoJSW	Ministry of Justice and Social Welfare
MoL	Ministry of Lands
MOU	Memorandum of Understanding
MSC	Managing Services Contractor
NCW	National Council of Women (Vanuatu National Council of Women)
NZAID	New Zealand Agency for International Development
OVG	Office of the Valuer General
STTA	Short Term Technical Adviser
TA	Technical Assistance
ToR	Terms of Reference
UPI	Unique Parcel Identifier
USP	University of South Pacific
VANRIS	Vanuatu Resource Information System
VNCW	Vanuatu National Council of Women

Executive Summary

Activity Origin and Design Process

In May 2007 NZAID responded to a request from the Government of Vanuatu (GoV) and the Department of Lands (DoL) for short-term technical assistance to develop two Government Investment Programs (GIP) proposals. The two proposals submitted for funding consideration were: (1) Customary Land Tribunal (CLT) Management project and (2) Lands records Management Systems and Information Technology Centre (ITC). The GIP proposals met the GoV requirements but needed refinement to meet NZAID funding requirements.

The broad strategies of support for the CLT and the ITC were reviewed. There was strong evidence that the general concept of the CLT and its approach is well accepted. However it was clear that there are concerns that the tribunal process removes the focus from custom and that there are some areas of the process that need to be reviewed. The strategy of supporting the CLT was clearly justified.

The previous review had proposed that strengthening of the CLU be supported initially through NZAID funding the vacant positions within CLU. The current status of government funding and the limited support for the filling of positions indicate that this is not a sustainable approach and that the possibility of the government funding the positions following the withdrawal of NZAID funding was very unlikely. The proposed strategy is to work on building capacity amongst the existing staff and to provide support during the peak periods of project activities through the contracting of people with specific expertise, such as mediation, public awareness and training.

Following an initial review it was decided the proposal to support the strengthening of the Information Technology Centre as proposed could not be justified. The concept of an ITC is questionable and in fact would not be recommended in the form initially proposed. The critical issue with the establishment of an ITC is that responsibility for data would be taken away from the agency responsible for its creation and maintenance, resulting in loss of ownership by the key agencies. It was agreed by NZAID and the GoV that it would be more beneficial to change the focus to supporting the development of Land Information Management (LIM) within DoL. This is a more strategic and sustainable short to medium term approach.

For the land information management and the support of IT within the DoL, the strategy is to focus on improving existing systems and integration of systems to provide better analysis and reporting mechanisms. It also focuses on building capacity and ultimately, a level of sustainability using the existing staff within the various sections of DoL that have or would be able to support some IT initiatives. Given the limited resources, capacity building will be gradual and managed so as to ensure staff are able to accommodate the various levels of training and software implementation.

Challenges and Key Policy Issues

The proposed support to be provided by NZAID for the Customary Land Tribunal and Land Information Management in the DoL fits within the draft Vanuatu Land Sector Framework through “Ensuring access and tenure security for all groups” and “Improving the delivery of land services”. Past activities have placed NZAID in a good position to support the two projects. The Land Sector Framework has evolved partly as a response to donor interest resulting from the 2006 Land Summit as well as the limited ability of the government, private sector and civil society to support a high level of increased development and support activities. The increased level of interest in supporting land sector activities in Vanuatu poses a key challenge to NZAID project and any other land related initiatives.

Concurrent to the NZAID design mission an AusAID design team were also in country developing a land sector program design following on from a Concept Design – Land for Progress and Equity that had been prepared in July 2008. This provided the opportunity to “harmonise” proposed development activity. The AusAID design is based around 3 objectives;

- (i) Improved customary governance of land;
- (ii) Improved participation mechanisms that facilitate local governance of land; and
- (iii) Improved participatory mechanisms that facilitate external dealings in customary land

The NZAID design complements the proposed AusAID program and activities have been prepared in a way that ensures minimal overlap, duplication or a drain on access to the minimal resources.

Activity Description

Program Goal: The program goal is “Poverty reduced through sustainable development of customary lands and supporting land information systems”. This goal reflects one of the areas of the NZAID Vanuatu Development Strategy outcomes which is the “reduction in actual and potential conflict associated with disputes over land ownership and user rights”. The program goal also reflects the support for private sector development and employment contained in the Government of Vanuatu “Priorities and Action Agenda 2006-2015” which has a policy objective of facilitating long-term secure access to land.

Project Objectives: The first activity objective “A strengthened Customary Lands Tribunal consistent with the GoV's national plans” will ensure that effective mechanisms are in place in Vanuatu to resolve land disputes through appropriate means and that there is a continuing emphasis on dispute resolution through the customary processes. A strengthened and improved tribunal process will ensure that there is emphasis on mediation as an important legislative first step to dispute resolution and should this process fail then the tribunal process will be streamlined to ensure that decisions are made as quickly as possible and that there is certainty in the decision making process.

The second objective “A Land Information Management system that meets current and future needs and supports economic development” will ensure that the GoV through the DoL is in a position to provide land information that can be used by government and the

private sector as means of improving development activities. The land information systems will support operations within the DoL and ensure that suitable data is available for decision making and record keeping, including the recording of information on land disputes and dispute resolution.

Outputs: The support for the strengthening of the Customary Land Tribunal and Land Information Management within DoL will work towards achieving the goals and objectives through 2 components.

Component 1; Customary Land Tribunal, is aimed at supporting the development and strengthening of the Customary Land Tribunal through strengthening of public awareness and the training of tribunal members. It is also proposed that there be increased emphasis on mediation as a means of preserving the customary approach to dispute resolution and ultimately reducing the number of land disputes that have to be referred to a CLT. The capacity of the CLU will be strengthened to ensure it is able to provide adequate support to the CLTs and the support activities.

The outputs under this component are:

- Sub-Component 1.1 - Mediation support services

- Sub-Component 1.2 - Public awareness and training

- Sub-Component 1.3 - Capacity Development of Customary Land Unit

Component 2: Land Information Management aims to support the development and strengthening of land information management activities in the DoL, through supporting and enhancing current land information management systems and developing new systems that will complement and enhance land administration activities in DoL.

The outputs under this component are:

- Sub-Component 2.1 - IT strategy

- Sub-Component 2.2 - Land survey records

- Sub-Component 2.3 - Mapping and imagery

- Sub-Component 2.4 - Valuation services

Risks

There are a number of risks that will need to be managed and strategies have been developed within the design to avoid or mitigate against the various risks. The most significant risk is the government approach to filling and funding positions within the DoL and the Ministry of Justice and Social Welfare (MoJSW). A decision has been made to build capacity utilising the existing resources both in the CLU and also the LIM areas of DoL. Where necessary contract positions will be funded through the project to assist with the delivery of project funded initiatives during the start up and peak project inputs.

A strategy for supporting the Customary Land Tribunal activities has been developed that will make use of existing resources in the provinces in preference to relying on staffing positions from within the CLU. There are existing structures within government at provincial level and also key personnel such as Area Council secretaries who are well positioned to support CLT activities. It is also proposed that use be made of the

provincial “Local *Kastom* Land Officers” that is being proposed under the AusAID land sector program.

A risk facing the CLT activities is the lack of awareness and limited capacity to undertake tribunal activities. To overcome these risks an extensive public awareness program and training programs have been developed. This will ensure that capacity is built within Area Councils to provide ongoing support for the CLT and that people are well informed of the actions to be undertaken in relation to land disputes. Indications are that women are not well represented on tribunals either as members or participants in hearings and an affirmative action program is proposed to address this deficiency.

A further risk facing tribunal activities is the perception that tribunals are taking the decision-making away from customary practices. It is proposed that there be a compulsory mediation process implemented prior to a case being submitted to a tribunal. Also, that the number of rights of appeal be reduced to ensure that tribunal hearings are not too far removed from the customary areas, which can be the case under the current legislation.

The risk in DoL with the ongoing development of land information management systems is that this requires staff capacity to adapt and implement the different software solutions and technical procedures. Staff in the key areas of DoL have a solid grounding in land information systems and the focus will be on providing extensive training and support in the software solutions. This will ensure that capacity is developed and that there will be sustainability of systems necessary to support the ongoing development of land administration activities in DoL.

Costs and TA Inputs

The estimated total cost for supporting the CLT and LIM activities in the DoL is **NZ\$ 4,130, 550** (to be tested by the market). Of this amount NZ\$ 1,890,490 is estimated for support to CLT activities made up of adviser fees (international and national) and funding of resource activities such as procurement items, public awareness and training. For the LIM activities NZ\$ 2,240,060 is estimated for support to LIM activities in the DoL. This is composed of adviser fees (international and national) and funding of resource activities such as procurement items, public awareness and training. The above amounts are estimates for a period of 3 years.

The technical assistance support is estimated to be for 70 person months of international input and 122 person months of national input.

Partner Inputs

The GoV will provide inputs to both project components through making staff resources available for project activities and for training. The GoV contribution of staff resource time has not been costed however the inputs to the LIM activities such as the creation of the DCDB and other databases will be significant and is estimated at 3 person years of input. GoV will be responsible for the provision of office facilities for the advisers and associated project activities. The project will also require access to resources in other areas of government, including the Vanuatu National Council of Women, the Malvatumauri Council of Chiefs, the Area Council secretaries and the Vanuatu Cultural

Centre. Although funding will be provided for many of the activities undertaken, these organisations will be required to provide project support, especially in the provinces.

Justification for NZAID Support

The NZAID, Vanuatu Development Programme Strategy 2006 – 2010 specifically identifies under “Objective Two: Governance” that NZAID will focus on contributing to an outcome of “Reduction in actual and potential conflict associated with disputes over land ownership and user rights”.

New Zealand has over many years supported the development and implementation of dispute resolution processes with the development of community based tribunals through:

- Supporting the drafting of the *Customary Land Tribunals Act 2001*;
- Assisting awareness training workshops with rural communities (May 2002);
- Supporting awareness training workshops with Malvatumauri on the Act;
- Funding a joint GoV and NZAID governance scoping study “A Conference on the Management and use of Customary Land Challenges and Issues” in 2002;
- An identification of chiefs exercise in 2003;
- A review of the *Customary Land Tribunals Act 2001* in 2005;
- Funding of the tri nations study tour in Nov 2006; and
- Funding the review of and amendment to the Customary Land Tribunal Act planned for early 2009.

This project continues and builds on the support provided previously in the development of the Customary Land Tribunal and has the opportunity to refine the tribunal process and continue support for public awareness campaigns and tribunal training.

The support for Land Information Management enables ongoing capacity building within another sector of DoL. This sector will have a major impact on the future development of land administration activities in DoL. The Land Information Management systems will become the “building blocks” for all future computer based initiatives in DoL. It is important that these systems are developed at an early stage of the land reform process which will take place in the DoL over coming years.

1. ACTIVITY CONTEXT

1.1. Development Context

Vanuatu is located in the South Pacific on the New Hebrides Islands. The total land area of Vanuatu is 12,200 square kilometres and the country comprises more than 80 mostly mountainous, volcanic islands with narrow coastal plains but only about 65 of the islands are inhabited. Some 80% of the total population of about 220,000 live in the rural areas, mainly along the coast and engage in subsistence agriculture. Divided administratively into six Provinces, the country is highly homogeneous, with 98 percent of its population indigenous ni-Vanuatu. The population is growing very rapidly at 2.7% per annum, with the urban areas growing at an even faster rate of 4.2% per annum. Adult literacy ranges from 66 percent to 74 percent.

Vanuatu is one of the most culturally diverse nations in the Pacific, with approximately 113 languages and associated cultures spread throughout the archipelago. The diversity of linguistic and cultural heritage, combined with the island geography, lends itself to unique and different practices, even between neighbouring villages. Beliefs and cultures differ. People from island to island inherit different ways of doing things that is common to all, but they still see and interpret things differently. This diversity presents challenges for implementation of activities such as communication and public awareness programmes.

Land to the people of Vanuatu is not something that is owned and that can be dispensed of whenever it is no longer needed. It is something that is part of a ni-Vanuatu's whole being, it is an inalienable part of them and in most cultures it is referred to as the '*mother*' or the '*father*'. Land in Vanuatu is sacred and for this reason people find it difficult to part with it, as it is their whole being and custom. It is where one expects food, shelter, generous support and family.

Custom in Vanuatu is the whole way of life of a people that has developed over thousands of years and is the mixture of social structures, values, and practices perceived as traditional in Vanuatu. It dictates what each island and cultural area has to do and it provides a way of interpreting life in different situations and contexts. It is a way of doing things that reflects the people's past, present and the distant future.

Custom in relation to land has traditionally been flexible and capable of adaptation and has served the needs of subsistence societies for many centuries. "Land to the Ni-Vanuatu is everything they have, it embodies their link to their past, their present and their future. It contains everything they do in life, that is, their daily interactions and their beliefs. ... it is for this reason that ni-Vanuatu see land as sacred and a part of themselves, ... Not only is it sacred, but it totally contradicts the imported notion of 'ownership' of land. Land is for the people and it is in custody for future generations"¹.

The majority of ni-Vanuatu are disadvantaged when it comes to negotiating agreements in relation to the external use of their land, as custom and tradition are not well

¹ Simo, J., (2005) *Report of the National Review of the Customary Land Tribunal Program in Vanuatu*; Vanuatu Cultural Centre

positioned to adapt to the external land development pressures. It is therefore of the utmost importance that the ni-Vanuatu receives support in ensuring that their land and the associated custom are provided with due protection and that they are appropriately supported and represented when responding to external development pressures.

Disputes are often driven by development. Development may take the form of population pressures, people wanting to use customary land for income generating projects, or people wanting to sell the use of land to investors. All of these things alter demand for land and also change what land means and how land can be used. In the process land conflicts are created. In many cases local customary mechanisms are able to effectively deal with such disputes. However the dispute resolution system that has been dealing with custom land issues for centuries is encountering difficulties in coping with some of the disputes that are evolving principally in relation to activities associated with the development of custom land by external developers.

1.2. Institutional, Policy and Program Context

1.2.1. The 2006 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 headings of; 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; and 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. 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.

1.2.2. The Steering Committee

To maintain the momentum generated by the National Land Summit and to assist in progressing discussion and actions 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 advancing 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.

1.2.3. Policy Development and Legislation

The Constitution adopted at independence had been hastily prepared, but its provisions on land in Chapter 12 reflect the central issue in the struggle for independence. Articles 73 to 81 ensure that land belongs to the "indigenous custom owners", that custom is protected and that alienated land is returned to custom owners.

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. Fortunately the Land Summit resolutions go a long way in clarifying these basic matters. However there is a need for action by the Government of Vanuatu (GoV) to ensure that land issues are given a high priority and are addressed.

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. The *Customary Land Tribunal Act 2001* (CLTA) was an important first step forward in clarifying customary land disputes but is still not operational across the whole country.

1.2.4. Government of Vanuatu Land Sector Program

The GoV has drafted a Land Sector Framework to assist with guiding the long-term development of the land sector in the country. The Land Sector Framework has evolved partly as a response to donor interest resulting from the 2006 Land Summit as well as the limited ability of the government, private sector and civil society to support any high level of increased development and support activities.

1.3. Program Context

The NZAID, Vanuatu Development Programme Strategy 2006 – 2010, specifically identifies under “Objective Two: Governance” that NZAID will focus on contributing to an outcome of “Reduction in actual and potential conflict associated with disputes over land ownership and user rights”.

New Zealand has, over many years, supported the development and implementation of dispute resolution processes with the development of community based tribunals through:

- Supporting the drafting of the *Customary Land Tribunals Act 2001*;
- Assisting awareness training workshops with rural communities (May 2002);
- Supporting awareness training workshops with Malvatumauri on the Act;
- Funding a joint GoV and NZAID governance scoping study “A Conference on the Management and use of Customary Land Challenges and Issues” in 2002;
- An identification of chiefs exercise in 2003;
- A review of the *Customary Land Tribunals Act 2001* in 2005;
- Funding of the tri nations study tour in Nov 2006; and
- Funding the review of and amendment to the Customary Land Tribunal Act planned for early 2009.

In the Joint scoping study of GoV/NZAID Nov 2002 support for the land tribunal system was identified as a valuable way of contributing to the development of a robust system for resolving land disputes that helps ensure community representation and helps clear the current backlog of cases. The study identified an overall need to support the use of locally-owned custom-based governance structures that can mesh with formal legislative processes in a constructive way.

The issues identified in that study included, increased likelihood of disputes over commercial developments, the need for a uniform planning system, the problems of using land as security for credit, rural v urban procedures for land developers and associated problems within the leasehold system around security, renewal and compensation. This long involvement has confirmed the value of NZAID’s continuing assistance in implementing Customary Land Tribunals legislation, governance, and encouraging dialogue and policy development on land issues through the land seminar and other financial support. This collaborative work with GoV has built up a sound experience and knowledge base regarding customary land in Vanuatu.

In May 2007 NZAID responded to a request from the GoV and the Department of Lands (DoL) for short-term technical assistance to develop two Government Investment Programs (GIP) proposals. The two proposals submitted for funding consideration were: (1) Customary Land Tribunal Management project and (2) Lands records

Management Systems and Information Technology Centre (ITC)². The GIP proposals met the GoV requirements but needed refinement to meet NZAID funding requirements.

The proposed support to be provided by NZAID for the Customary Land Tribunal and information technology in the DoL fits within the draft Vanuatu Land Sector Framework through “Ensuring access and tenure security for all groups” and “Improving the delivery of land services”. Past activities have placed NZAID in a good position to support the two components of the project now under consideration.

Concurrent to the NZAID design mission an AusAID design team was also in-country developing a land sector program design following on from a Concept Design – Land for Progress and Equity that had been prepared in July 2008. This provided the opportunity to “harmonise” proposed development activity. The AusAID design is based around 3 objectives;

- (iv) Improved customary governance of land;
- (v) Improved participation mechanisms that facilitate local governance of land; and
- (vi) Improved participatory mechanisms that facilitate external dealings in customary land.

The NZAID design complements the proposed AusAID program and activities have been prepared in a way that ensures minimal overlap or duplication.

Other NZAID and AusAID initiatives that also support the customary land tribunal and information technology activities include the NZAID support for de-centralisation and the AusAID support for the Malvatumauri.

1.4. Description of Problematic Situation

Although some significant progress has been made in Vanuatu land administration since independence, there are major difficulties and challenges. The ownership and rights of custom owners are based on oral tradition and they vary significantly from custom area to custom area. They are not organised to enable satisfactory interaction with potential and eventual lessees and developers. The *Customary Land Tribunal Act 2001* was an important first step forward in clarifying customary land disputes, however it is still not operational across the whole country and the overall understanding of the legislation and its purpose is weak.

Most custom owners and occupiers are not knowledgeable about the *Customary Land Tribunals Act 2001* or other relevant land law and regulations relating to land. Through the ambiguity of custom ownership and a lack of clear understanding of their rights, there can be a propensity for individuals to commit group owned land to leases and development without full reference and recompense to all the custom interests. The form of leasing is crude and does not provide a system capable of distributing to custom owners an equitable share of the land value or its increase in value through

² During the assignment it became clear that support for an Information Technology Centre was a long term goal, but also an approach that may not be realistic. NZAID approval was provide to change this activity to “Strengthen the Vanuatu Department of Lands of Records Management Systems and Land Information Systems”.

development. Consequently there are a growing number of disputes over land and associated rights that are increasing dissatisfaction and fuelling latent discontent and potential conflict.

There is an urgent need to provide the capability for custom owners to both preserve the custom of their land dealings and to benefit from the development they consider appropriate. An essential first step is to resolve disputes over land, clarify custom ownership rights and provide ready access to land information.

Land administration activities, responsibilities and disputes are placing an increasing demand on government for access to reliable and comprehensive land information. Government departments hold a wide range of geographic and land-related information but there is presently no strategic planning and coordination of data collection and management activities that are needed to ensure that the best use can be made of all the valuable data that exists within government.

Key policy issues identified in the recent examination of land administration in Vanuatu include; (i) the resolution of customary land disputes; (ii) raising public awareness of customary land legislation and land use rights; and (iii) enabling access to a wide range of customary land information across the whole of Vanuatu. The early resolution of these key priority issues will go a long way towards developing a long term and sustainable customary land tenure framework.

Currently DoL is finding it difficult to adequately resource established functions and to date it has been unable to cope with the backlog of custom land disputes and to maintain or extend the operation of the CLT into the Provinces. The situation is critical as development pressures continue to place increased pressure on custom land.

DoL is also facing major budget constraints with reports that it has debts of around VT 21 million (NZ\$328,000) owed on building rental and services. The department generates significant revenue for the GoV (see comments under Section 1.6.1) but it would appear that insufficient funds are available to manage its operations. Insufficient funding of operations clearly highlights an area of risk that needs to be managed. The AusAID funded activities will focus on services with DoL and coordination with their activities will be critical in mitigating the risks associated with financial issues.

The Ministry of Finance (MoF) are presently developing an IT Strategy as part of their vision for e-Government. The vision includes the construction and development of eight Microwave transmission sites and three VSAT sites to provide coverage to six provinces. Fibre optic cable network is envisaged within Port Vila, Luganville and other provincial centres. A central Data Centre is intended to be provided within MoF to centralise computer activity and provide “Gateways” between ministries to the Internet.³

The DoL’s Information Technology Centre Policy paper and Business Plan for the ITC, GIS and remote sensing provide guidelines for development of IT strategies within DoL. Existing visions, goals and objectives need to be reviewed to provide a holistic strategic direction or a “roadmap” to guide the development, service and supply and knowledge of and access to land and geospatial assets owned and maintained within the

³ Executive Summary – Vanuatu e-Government Project 2007

Department of Lands. It is important that DoL's land information management requirements drive their IT strategy and that this links in with the overall government IT strategy.

1.5. Stakeholder Analysis

The Customary Land Tribunal activities are presently administered by the Customary Land Unit (CLU) within the Department of Lands, with the Senior Customary Lands Officer reporting to the Principal Planning and Valuation Officer. The CLU was originally named the Customary Land Tribunal Unit (CLTU) when it was created following the passing of the *Customary Land Tribunal Act 2001*. Following a NZAID review of the Act in 2005 it was proposed that the unit should focus on customary disputes as well as supporting the Act and the name was changed to the Customary Land Unit.

There is presently a proposal to move the CLU under the Ministry of Justice and Social Welfare (MoJSW) which is the ministry in which the Malvatumauri is also located. This would appear to be a good proposal and it is understood that both the DoL and MoJSW are in agreement with the transfer and that the move is now dependent upon some administrative arrangements being clarified. Of concern is that the MoJSW is a newly created Ministry with a diverse collection of departments and entities. The support and ownership of the CLU by the DG of MoJSW is critical to the success of the implementation of the CLT activities.

Although details were not obtained from the MoJSW, following discussions with the Public Service Commissioner there is nothing to suggest that the staff and human resources issues within the MoJSW are any different to those being faced by the DoL. This therefore emphasises the importance of a strong focus on capacity building in both the CLU and LIM areas if any satisfactory level of sustainability is to be achieved. There is also a need for a program to be developed that focuses on the existing resources within agencies as there is little to indicate that the provision of external short-term funding of positions will result in those positions ultimately being funded by the GoV after donor support is removed.

The current situation in the GoV in relation to filling vacant organisational positions and funding of positions means that a pragmatic approach must be taken in relation to organisational arrangements and this could not be more relevant than for the CLU. It must be accepted that although the organisation structure for the unit has been approved there is little likelihood in the immediate to medium-term of the unfilled positions being filled. For this reason it is important that future activities of the CLU be planned around existing resources and also that use is made of existing or proposed staffing structures within other areas of government.

Indications are that of the 68 designated positions within the DoL functional areas, some 23 vacancies exist, that is 33% of designated positions are vacant. These have not been filled due to lack of GoV appropriation of finance for human resourcing. The Director General considers that the required level of appropriation could be achieved if good cases were presented.

The Human Resources Section of DoL have identified the need to improve performance and accountability issues throughout the department with a wide range of initiatives

including developing a stronger culture within DoL, developing and issuing performance-based personnel descriptions and training at all levels. While they have skilled trainers, conducting training courses is hampered through lack of finance.

There are a number of external stakeholders who have a strong vested interest in the successful implementation of project activities and who are in a position to play a key role in the project. However, each of these stakeholders has specific strengths and weakness that will impact on their abilities to support various project activities. These stakeholders include:

- **Malvatumauri:** The Malvatumauri are an integral component of ensuring the overall success of the Customary Land Tribunal Act and it is therefore important that they receive appropriate support necessary to undertake their support role. In reviewing the activities of the Malvatumauri it was realised that at present they have limited capacity. AusAID is providing funding to support the capacity building and development of the Malvatumauri and to strengthen and extend contributions from custom and community leadership to change and development. Given this support and the limited absorptive capacity it was considered that there would be no advantage to be gained in NZAID also adding support to the Malvatumauri. It will however be necessary to ensure that the support that is provided to the Malvatumauri enhances the activities required under the *Customary Land Tribunal Act 2001*.
- **Vanuatu National Council of Women:** Vanuatu National Council of Women (VNCW) is the national umbrella for women councils all over Vanuatu. The main focus is governance issues, particularly Women's Rights. Their structure outside of the main provincial centres is not strong and limited capacity will restrict the ability of the VNCW to support project activities.
- **Department of Women's Affairs** Promotes issues relating to women and ensures appropriate policies are implemented. Prioritises training for people in the provinces, gender sensitisation training for Members of Parliament and the development of a policy to address violence against women.
- **Vanuatu Cultural Centre:** Has prepared a review of the Customary Land Tribunal Program and shown a strong commitment to the effective administration of custom and custom land. Its survey of the initial public awareness programme has provided a useful assessment of the early CLT promotional activity. They have a strong interest in reviewing the effectiveness of the operation of the CLT and are a subsidiary stakeholder in the project for strengthening the CLT.
- **Vanuatu Association of NGOs (VANGO):** Exists to enable the extended family of NGOs to effectively promote and advance the interests and well-being of Vanuatu people. More specifically, VANGO is a network of NGOs, existing to facilitate communication and provide a common voice in Vanuatu aimed at improving the well-being of the communities NGOs serve. VANGO therefore has strong links into the NGO network in Vanuatu and may be able to provide support in some areas of activity.

- **Wan SmolBag Theatre:** Have the expertise and resources to produce community theatre as part of public awareness and community education. This organisation is highly regarded for the quality of work that it produces.

In relation to the operation of CLT the stakeholders, the customary land owners, had strong views on the current operations of the tribunals. It was difficult to determine from the available data as to whether there is equal access for all to the tribunal. However there are a several factors that would indicate that access is not available to all stakeholders. There were a number of cases reported where the administration costs were high and well above that detailed in the legislation. In at least one case one of the parties was unable to continue their claim as a result of the increasing costs. It was also reported that some claims lapsed as a result of claimants being unable to find funds to cover the basic administration fees. A number of stakeholders also report on the time that is taken for tribunals to be established and to hear a dispute. In some cases disputes have been appealed against several years ago to a higher tribunal such as an island tribunal and the tribunal has yet to convene.

There was almost unanimous agreement amongst all people interviewed that a mediation process would be beneficial to stakeholders and those who have disputes. It was believed that a mediation process would help preserve customary processes, would be cheaper, faster and enable more input from concerned parties.

1.6. Strategy Analysis

1.6.1. Institutional and Technical Analysis

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

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"*⁴.

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. The Ministry in the Corporate Plan 2006-2008 details its Vision, Mission and Values and summarises the strategic issues and the role and responsibility of each of the 5 strategic areas of responsibility under its control.

The Vision Statement is:

⁴ 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

*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.*⁵

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 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 MoL has significantly increased revenue generation over the past 4 years with overall revenue increasing by more than 400%. Total revenue for the MoL for the financial year 2007 was VT 882,752,627 (NZ\$ 13.8 m).

Over a number of years there have been limited funds within the annual budget for the filling of any vacant positions. Discussions with treasury officials indicate that there is little likelihood that funds will be available in the foreseeable future for filling of vacant positions. However the significant increase in revenue generation over the past few years would indicate that there may be an opportunity to present a case to government for the filling of a number of key positions, especially given that treasury estimates that approximately 40% of potential annual revenue to the value of VT 160m (NZ\$ 2.5m) goes uncollected.

The reduced staff numbers in the department means that it is not possible for all services to be delivered effectively and therefore different approaches need to be adopted to enable effective services to be delivered. This applies to both the Customary Land Tribunal and Land Information Management which are areas of support being looked at under this design activity. Combined with optimising capacity is the need for improving performance and accountability amongst staff within the public sector in general and DoL in particular. These institutional building aspects form a significant component of the proposed AusAID initiatives and hence complement the proposed NZAID initiatives.

1.6.2. Poverty Analysis

In an ADB discussion paper⁶ it was reported that since most communities still have land and food, absolute poverty, in the sense of starvation and destitution does not exist in Vanuatu. However the main cause of poverty “defined as a state of ‘having nothing’ (*no gat samting*), ‘being hopeless’, and ‘struggling for survival’ ” is as a result of lack of land

⁵ 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)

⁶ ADB; (2002); *Vanuatu – Discussion Paper*; Consultative Workshops for Poverty Reduction Strategies in Selected PDMCs; 21 October 2002; page 12

and to provide for food. Clearly land is seen as a key ingredient in the maintenance of well being and as an integral component of the retention of custom.

In a press release on 6 June 2006 the NZ Foreign Minister, the Hon. Winston Peters said that “Vanuatu faces some serious challenges. Migration to the cities has brought associated problems of crime, squatter settlements and unemployment, while poverty levels are also on the increase.”⁷

Vanuatu is the fourth poorest Pacific developing member country with ADB's *Hardship and Poverty in the Pacific*¹⁷ reporting that 40% of the whole population and 51% of the rural population lived below the \$1 per day poverty line in 1998, although these data do not adequately reflect the importance of the subsistence economy and relatively high level of food security. There are wide income disparities between urban, and rural and outer island areas. This is largely a result of low agricultural productivity and poor infrastructure facilities and basic services in rural and outer island areas. Most development efforts have been concentrated in the two principal urban centers of Port Vila and Luganville.

Pressures on land and the marine environment of Vanuatu have become visible in recent years as communities increasingly move from subsistence to reliance on cash incomes. Land resources are now being depleted by large-scale projects, such as logging, urban development and uncontrolled land subdivision. There are issues in relation to whether people of low socio-economic status or the often disadvantaged groups such as women and the elderly have equal access to interventions that are available.

Indications are that in the dispute resolution process through the CLT participation is limited and there is the opportunity for socially disadvantaged people to be excluded or sidelined during the tribunal process. The introduction of a well managed mediation process provides the opportunity for every person to have access to the dispute resolution process and to be heard.

1.6.3. Gender Analysis

The Constitution of Vanuatu in Article 5(1) clearly incorporates non-discrimination on the grounds of sex and provides for affirmative actions under the provisions on fundamental rights and responsibilities in 5(1)(k). Its commitment to including and advancing women has been part of the development plans since independence.

Current social, economic and political indicators highlight the disadvantaged position of women in all areas. Women are disadvantaged socially, economically, and politically, especially rural women. This is despite being responsible for harvesting and marketing most crops. In 1995 the Vanuatu Government ratified the Convention on the Elimination of all forms of Discrimination Against Women and included a National Plan of Action for Women in its Development Plan. Vanuatu's CRP includes a range of important and ambitious policy objectives aimed at improving social equity and sustainability. Because of existing inequalities, special emphasis has been given under

⁷ NZ Foreign Minister Winston Peters; 6 June 2006; www.beehive.govt.nz/node/26033

the CRP to assessing, from the design stage, the distribution of positive and negative gender impacts of reform.

There have been several reports prepared on the position of women in relation to land in Vanuatu and the position women play in relation to land. Although the Constitution incorporates non-discrimination, it is argued that Article 74 of the Constitution, which states that “the rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu”, means that many land cases may have typically ignored Article 5 in preference to custom, which means that women's rights may have not been considered.⁸

The Customary Land Tribunal Act does not specify women's land rights under custom law or the rights of women to have equal opportunity in participating as adjudicators in the Tribunal. Although women are not specifically excluded in the process, the lack of an affirmative statement in the legislation means that women and their role in the tribunal process are more than likely overlooked and in fact it is rare for male chiefs to appoint women as adjudicators. This creates the potential for discriminatory practices to be reinforced in the tribunal process.

The CLU statistics show that on Efate there are two women who have been appointed to undertake secretarial responsibilities and on Malakula Island two women have been appointed to the list of tribunal members. Other than these figures the CLU does not have any reliable statistics on women's participation in tribunal activities. However it would be reasonable to state that women's involvement is significantly less than the actual role that they play in the overall management and use of land.

There clearly needs to be an affirmative action program implemented that will ensure an increase in the number of women involved in CLT activities. This will assist in ensuring that women have an increased involvement in the general well being of their families and community generally. It is believed that an increased emphasis on mediation will assist greatly in ensuring that women have a more active role in dispute resolution processes and specifically in those disputes that directly impact on them and their family's well being.

In a previous NZAID funded review of the Customary Land Tribunal Act⁹ the implications of women's involvement in the adjudication process was reviewed. It was noted that there was a very low level of involvement by women in the tribunal process. Some of this was attributed to custom, where women are excluded from participating in the land ownership decision-making process. However even in villages where this was the case, there appeared to be no impediment to women participating in the tribunals as secretaries, other than the women themselves. In villages where the chiefs had said that they were encouraging women to put themselves forward as tribunal secretaries, there had been very low uptake.

⁸ Naupa, A., and Simo, J.; (2007) *Matrilineal Land Tenure in Vanuatu “Hu I Kakae long basket?” Case Studies of Raga and South Efate*; p 20

⁹ Mavromatis, G., Prof Paterson, D., Kanawi, J., Simo, J., and Vuti, A; (February 2005); *Implementation of the Customary Land Tribunal Act No 7, 2001*; NZAID

There are a number of gender affirmative action activities that can be supported and encouraged with the aim of increasing women's awareness of and involvement in the Customary Land Tribunal activities, including:

- National Land Steering Committee to promote the benefits of including women in decision-making as part of the public awareness and education programs;
- The project support to the involvement of the Vanuatu National Council of Women in project awareness and gender training programs;
- Malvatumauri to implement its National Land Summit recommendation for research into gender roles relating to land;
- Malvatumauri to lead a campaign for all chiefs to actively support women's participation in land matters and to promote women's traditional leadership roles;
- Customary Land Tribunals awareness and implementation activities to promote women's participation and link into women's traditional leadership roles.

With respect to women in the work force, within DoL the organisation chart and list of personnel indicate over 40% of established positions are filled by women and women occupy two senior managerial positions. Inspection of the Human Resource Management annual report for 2007 contains no reference to incidences of discriminatory practices within the organisation.

1.6.4. Other Cross-Cutting Issues

The proposed strategies also contribute to prevention or mitigating NZAID cross-cutting issues of conflict prevention and environmental protection. With respect to conflict prevention, issues and disputes pertaining to customary land usage and rights and insecurity of land tenure are recognised as major contributors to social and political unrest and instability. It also recognised that there is a significant marginalization of women in areas of social and economic development, governance and human rights at community and national levels. The marginalization appears to have been accompanied by an increase in social problems that directly impact on women as well as their reduced involvement in land issues.

Initiatives proposed under this programme to strengthen the CLT and LIM will assist in strengthening the understanding of customary land rights and improve land tenure security. A key input to the strengthening of the CLT activities is increased public awareness with a focus on gender issues and ensuring women are engaged in issues relating to land and the CLT. These initiatives should lead to fewer disputes over land, assist in delivering benefits to customary land owners and land investors and hence making an important and significant contribution to conflict prevention.

With respect to environmental protection, initiatives proposed within the LIM assist in monitoring and managing environmental issues. The establishment of a Geodetic Database and evaluation and recommendations of the "fitness for purpose" of the present geodetic control network will assist in evaluating the effects of tectonic continental plate movements and global warming on Vanuatu in particular and on the whole Pacific region in general. Topographical mapping and satellite imagery as provided by the Australian Defence Forces (ADF) provides a benchmark from which

existing land uses can be monitored. Proper custodianship and management of these data will assist in monitoring and managing land use and the effects of change on the environment. This combined with the establishment of a spatial Digital Cadastral Database (DCDB) and integration of aspatial (textural or attribute) lease/titles and land use and planning data from the AusAID project will assist in better monitoring of planning and enforcement issues, such as foreshore protection, access to land and proper and effective land use and management.

1.7. Lessons Learnt

There have been a number of donor funded projects within the Ministry of Lands and these projects provide some valuable lessons when considering the implementation of new projects. There have also been a number of land administration projects in other countries where there are lessons that are applicable to the Vanuatu situation and the project activities.

Human Resources: Human resource capacity within government and specifically within the DoL and MoJSW will be key to the development of sustainable activities. Structures in DoL have been developed based on an ideal staffing requirement. With over 30% of positions remaining unfilled and a limited opportunity in the foreseeable future for these positions to be filled, the temporary filling of positions using donor funding in anticipation of the government eventually being in a position to fill the positions is a dangerous assumption. It is important that program support is built around existing staffing. This is very applicable for the CLU.

Training: The past support provided by NZAID for the development of the Customary Land Tribunal also provides a number of key lessons. Some of the misunderstanding in relation to the purpose and operation of the CLT emanates from insufficient support being provided for public awareness activities and training. Although some initial training was provided, it has been noted that the quality of training was questionable and that there was no follow up or reinforcement training. The introduction of new concepts, especially those that are foreign to customary procedures require focused training and may require a number of iterations. There may be significant benefit derived from involving other stakeholders in assisting with the delivery of public awareness such as NGOs, churches, Malvatumauri and educational institutions in preference to the CLU attempting to undertake the whole program using its own resources.

Gender Training: The initial training provided for the CLT did not have a specific gender focus. As a result women are very poorly represented as members of tribunals (4 out of 175 names nominated) and have limited understanding in relation to their rights at the tribunal and also in relation to land issues generally. A gender affirmative action program on a land administration project in Lao PDR resulted in an increase of 250% of women being the sole name recorded on a land title.¹⁰ The initiative involves

¹⁰ In 1995 on 58% of land documents only a man's name appeared and 15% a women's name. Following the introduction of an ongoing affirmative action program which commenced in 1997 the figures in 2008 shown 22% of land documents in only a man's name and 38% a women's name (Lao Land Titling Project).

public awareness programs aimed specifically at women and women's only information meetings.

Information Technology in the DoL: The staff of the DoL have been able to demonstrate a good overall understanding of information technology and in fact have a number of LIM systems successfully operational with the department. However there is a clear indication that a more holistic and integrated approach needs to be taken with existing and proposed supporting systems. Further, as the use of information technology increases, sustainability becomes a problem with an increased number of different computer applications and where there has been limited training provided. For example within the Surveying and Mapping Section ArcGIS software has been provided by a donor for use in mapping applications. It remains largely unused due to training being conducted at a level that could not be understood by the participants. Ongoing use of the software was also made difficult due to the lack of data. The lesson that can be learnt from this exercise is to ensure that there is sufficient training at the required level and that data is available for use at the time of training. There is also a need for reinforcement training some time after the initial training is provided.

1.8. Selection of Strategies

Because of the strong relationships and the focus of the earlier NZAID aid to DoL the GoV has requested assistance on the CLT and LIM strengthening projects. Both these projects relate to critical land administration requirements that need urgent action and they are identified as key components within the GoV Land Sector Framework.

There has been a previous review undertaken to analyse areas of support in the land sector to be provided by NZAID. The broad strategies of support for the CLT and the ITC were initially reviewed. There was strong evidence that the general concept of the CLT and its approach is well accepted. However it was clear that there are concerns that the tribunal process removes the focus away from custom and there are some areas of the process that need to be reviewed. The strategy of supporting the CLT was clearly justified.

The previous review had proposed that strengthening of the CLU be supported initially through NZAID funding the vacant positions within CLU. The current status of government funding and the limited support for the filling of positions indicate this is not a sustainable approach and that the possibility of the government funding the positions following the withdrawal of NZAID funds was very unlikely. The adopted strategy is to work on building capacity within the existing staff and providing support during the peak periods of project activities through the contracting of people with specific areas of expertise, such as mediation, public awareness and training.

However the proposal to support the strengthening of the Information Technology Centre could not be justified. The concept of an ITC is questionable and in fact would not be recommended in the form that was initially proposed. The critical issue with the establishment of an ITC is that responsibility for data would be taken away from the agency responsible for its creation and maintenance, resulting in loss of ownership by the key agencies. It was agreed by NZAID and the GoV that it would be more beneficial to change the focus to supporting and strengthening the development of Land Information Management (LIM) systems.

For the land information management and the support for IT within the DoL the strategy is to focus on improving existing systems and integration of systems to provide for better analysis and reporting mechanisms. It also focuses on building capacity and ultimately a level of sustainability using the existing staff within the various sections of DoL that has or would be able to support some IT initiatives. Given the limited resources, capacity building will be gradual and managed so as to ensure staff are able to accommodate the various levels of training and software implementation.

2. ACTIVITY DESCRIPTION

2.1. Goal

The program goal is “Poverty reduced through sustainable development of customary lands and supporting land information systems”. This goal reflects one of the areas of the NZAID Vanuatu Development Strategy outcomes which is the “reduction in actual and potential conflict associated with disputes over land ownership and user rights”. The program goal also reflects the support for private sector development and employment contained in the Government of Vanuatu “Priorities and Action Agenda 2006-2015”¹¹ which has a policy objective of facilitating long-term secure access to land.

Land disputes can result in land not being used productively in relation to agricultural activities or being removed from the opportunity to use the land for economic development. The impacts can be significant if there is a reliance on the land by families to survive or to sustain a living. Therefore addressing land disputes can be critical in ensuring the economic survival of families.

2.2. Activity Objectives

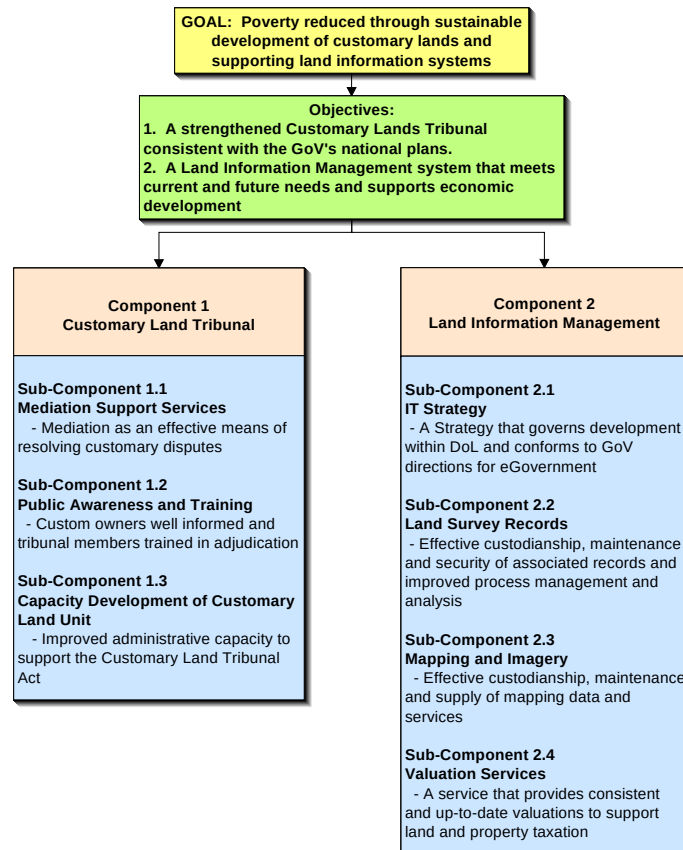
The first activity objective “A strengthened Customary Lands Tribunal consistent with the GoV’s national plans” will ensure that effective mechanisms are in place in Vanuatu to resolve land disputes through appropriate means and that there is a continuing emphasis on dispute resolution through the customary processes. A strengthened and improved tribunal process will ensure that there is emphasis on mediation as an important legislative first step to dispute resolution and should this process fail then the tribunal process will be streamlined to ensure that decisions are made as quickly as possible and that there is certainty in the decision-making process. This will ensure that land is available for use or economic development as quickly as possible.

The second objective “A Land Information Management system that meets current and future needs and supports economic development” will ensure that the GoV through the DoL is in a position to provide land information that can be used by government and the private sector as means of improving development activities. The land information systems will support operations within the DoL and ensure that suitable data is available for decision-making and record keeping, including the recording of information on land disputes and dispute resolution.

¹¹ Department of Economic and Sector Planning, Ministry of Finance and Economic Planning; (June 2006); *Priorities and Action Agenda 2006-2015 “An Educated, Healthy and Wealthy Vanuatu”*; Government of Vanuatu

2.3. Program Components and Outputs

The support for the strengthening of the Customary Land Tribunal and Land Information Management within DoL will work towards achieving the goals and objectives through 2 components (see Logical Frame Matrix in Annex 1). The project structure is shown in the following diagram.



2.4. Component 1: Customary Land Tribunal

Outputs for this component are:

Sub-Component 1.1 - Mediation support services

Sub-Component 1.2 - Public awareness and training

Sub-Component 1.3 - Capacity Development of Customary Land Unit

This component aims to support the development and strengthening of the Customary Land Tribunal through strengthening of public awareness and the training of tribunal members. It is also proposed that there be increased emphasis on mediation as a means of preserving the customary approach to dispute resolution and ultimately reducing the number of land disputes that have to be referred to a CLT. The capacity of the CLU will be strengthened to ensure it is able to provide adequate support to the CLTs and the support activities.

2.4.1. Sub-Component 1.1 - Mediation support services

The objective of this sub-component is to support an increased focus on mediation as a means of resolving land disputes. Section 6 of the CLTA does allude to recording decisions made prior to going to a tribunal, but does not specifically emphasise mediation or make mediation a requirement prior to being able to lodge a dispute before a tribunal.

There is very strong support for compulsory mediation to be introduced before any dispute can be put before a tribunal. A mediation process is seen as a means whereby land disputes can potentially be resolved through normal customary processes without having to resort to the CLT. Although it is recognised that custom does play a part in dispute resolution there is a general feeling that many disputes are taken out of the customary process too quickly and referred to a tribunal. The implementation of a compulsory mediation process will ensure that customary solutions are reinforced by legislation and that the CLT is an action of last resort. The implementation of mediation will require a concerted effort within the project to ensure that mediation is successful and is seen as a process that is preserving custom.

Given the support for this activity it is proposed that mediation activities be commenced early on in the project even though it is anticipated that this approach will not be strongly supported by legislation until some time well into the project. Support will be provided to ensure that a strong mediation process is developed. This will require initial research into current mediation activities in Vanuatu so as to ensure that there is no overlap and also to ascertain whether there is an opportunity to build on or utilise mediation programs that are being developed or in operation. It will be necessary to develop mediation training programs and it is then proposed that a group of people undertake a “training of trainer” program. Although the numbers of trainers required for the project will not be large it is proposed to provide training for up to 25 people so as to commence the creation of a pool of registered mediation trainers. These trainers would be selected from organisations such as the VNCW, NGOs, civil society and private sector.

Following the training of mediation trainers, the trainers will then provide mediation training to mediators in all provinces. It is proposed that the mediators be selected from regional organisational structures such as the church, teachers and other members of civil society with mediators to be selected based on Area Councils. It is recommended that Chiefs, although they play a key role in custom decision making, preferably not be involved in the role of a mediator. It is important that they are involved in the actual mediation decision making activities in preference to being a mediator. Not involving them as mediators is a recognition that should a dispute be referred to a tribunal the Chiefs may well be sitting in judgement on the tribunal.

Up to 25 training programs involving at least 200 participants from 62 Area Councils will be carried out during the project generally in the provincial capital. At least 3 representatives are expected from each Area Council, one of which will be a woman. The provincial workshops will be coordinated by the CLU with assistance from a Technical Assistant and change agents such as Wan SmolBag and other members of Civil Society. In a society where the literacy rate remains quite low, it is very important

that other methods of awareness raising are used. Wan SmolBag is well known for its advocacy work using drama. Priority areas and the numbers from each area will be determined based on the identified needs for mediators with the initial focus being in areas where there are high numbers of land disputes.

2.4.2. Sub-Component 1.2 - Public awareness and training

The objective of this sub-component is to ensure that the public are better informed in relation to the activities of the CLT and in relation to land issues generally and also to ensure that members of the tribunals are better educated and informed on their roles on the tribunal, the recording of decisions and the operations of the CLTA.

There are very strong indications that previous public awareness training and training programs have not been as effective as they could have been, with too much focus on volume in preference to quality. While there have been attempts by the Ministry of Lands to create national awareness of the Customary Lands Tribunal since the *Customary Land Tribunal Act 2001* was enacted, many users have expressed discontent in relation to the lack of understanding of the concept and its application in trying to solve land dispute cases. It is therefore proposed that there be significant support for public awareness activities and training. Without it the problems currently being encountered with the implementation of the CLTs will continue.

The CLU does not have sufficient resources to support the volume of training required and it is proposed that suitably trained and qualified staff be contracted to the CLU to support public awareness and training activities. It is also proposed that support for these activities be sourced from suitable NGOs and civil society and also the VNCW in supporting specific gender awareness initiatives.

A range of activities are proposed to support public awareness campaigns and training. These include the production of booklets, training DVDs, use of the communication network, workshops, and the use of the print media and radio. A number of these media will be used to support the actual campaigns and training that will be undertaken in the field.

The public awareness campaigns will be wide spread and focus initially in those areas where there is the most demand for mediation and tribunals, generally where there are the most land disputes. Over time the campaigns will spread throughout the whole country. It is proposed that as wide a cross section of people be exposed to the public awareness as possible.

The training on the CLTA and the operations of tribunals will focus on those people who have been nominated as tribunal members either in the capacity of tribunal members or secretaries. It is also proposed to provide training to other key personnel such as Area Council Secretaries, Provincial Councillors, Cultural Centre Field Workers and Education Zone Curriculum Advisors so as to ensure that there is a wide understanding amongst key people on the operations of the Act.

Figures indicate that there is little involvement of women in land disputes activities and in participating in tribunal activities. It is proposed that there be an affirmative action program that will ensure that women are made aware of their rights in relation to land matters and also their participation in mediation and on tribunals and active involvement

in tribunal matters and hearings. All training programs will also ensure that there is appropriate awareness training in relation to gender equity and women's rights.

One of the criticisms of the previous public awareness activities and training was that it was seen as a "once off" exercise. There were no follow-up campaigns, resulting in a gradual loss of knowledge and information on the tribunals. This is especially the case where tribunals have not been previously required or may only be used intermittently. Allowance has therefore been made for follow up and reinforcement programs.

2.4.3. Sub-Component 1.3 - Capacity Development of Customary Land Unit

The objective of this sub-component is to support the development of the capacity of the CLU to support the administration of the tribunal, public awareness, training and mediation activities under the current and proposed future Act. The capacity of the CLU is presently very weak with only one full time officer and two contract staff. With indications that this situation is unlikely to change in the near future the support and capacity building for the CLU has been based around this scenario and it is not proposed to fill positions using donor funds in anticipation that the government will eventually fund them. Emphasis is on building the capacity of the existing staff and during the periods of peak activity to utilise specialist contract personnel to support public awareness, training and mediation training activities.

The building of capacity within the CLU and ensuring that its activities are focused on supporting the Act are critical if the administration of the Act is to be successful. Of recent times the CLU has become involved in land dispute issues, which is clearly not a role of the CLU and there is a need for the unit to refocus its efforts. Support will be provided to enable the CLU to develop appropriate management skills, implement sound administrative procedures, develop and implement M&E activities and receive appropriate training in the presentation, delivery and supporting of training.

A key strategy in ensuring that the CLU is able to maintain effective and efficient support for the CLTA with limited resources is to support the unit in developing a network of support facilities in the provinces. There are a number of options that can be explored. The first option is to make use of the Area Council secretaries. The government has broken each of the provinces into smaller administrative areas called Area Councils (similar to local government areas) and there are 62 of these areas. Each Area Council has a secretary who is employed under the Ministry of Internal Affairs and provides general services to their Area Council. One possibility to be explored is to provide training to these secretaries with the aim of them being in a position to provide general advice on the CLTs and to issue and collect documents for returning to the CLU.

A further option that can be explored is to link into the AusAID funded land sector program for Vanuatu which through its support is proposing to establish provincial "Focal Point Officials" who with appropriate training will be in a position to provide general support and advice on a broad range of land matters. It would therefore be possible to provide these officials with training on the CLTA and for them to undertake an administrative role on behalf of the CLU.

2.5. Component 2: Land Information Management

Outputs for this component are:

- Sub-Component 2.1 - IT strategy
- Sub-Component 2.2 - Land survey records
- Sub-Component 2.3 - Mapping and imagery
- Sub-Component 2.4 - Valuation services

This component aims to support the development and strengthening of land information activities in the DoL through supporting and enhancing current land information management systems and developing new systems that will complement and enhance land administration activities in DoL.

To support the ongoing development of the Land Information System in DoL it is proposed that consideration be given to a twinning arrangement between DoL and an appropriate organisation. This would assist with ensuring that DoL has access to a resource for ongoing support of a technical nature after the completion of TA support.

2.5.1. Sub-Component 2.1 – It Strategy

The objective of this sub-component is to develop an IT strategy within DoL that conforms to GoV directions for e-Government. The component aims at developing a strategy to be used as a “roadmap” to guide the development of services and supply within DoL in general and the custodianship of and access to land and geospatial assets owned and maintained within DoL in particular.

It will provide guidelines for the purchase of hardware and software that is “fit –for-purpose” and provide standards for metadata and data exchange formats. It will address such issues as internal access to and distribution of data and user security and back-up policies. It will also provide standards and guidelines for delivery or distribution by external customers via Internet web-based applications and security provisions needed to protect the integrity of core assets.

The IT strategy will be developed so that it is in sympathy with the Land Sector Framework and supports the ongoing development of the land sector activities in Vanuatu.

2.5.2. Sub-Component 2.2 – Land Survey Records

This sub-component aims to provide more effective management, custodianship and security of core land survey records. It addresses issues within the following areas of activity where the SWOT analysis identified that deficiencies exist in present operations.

Survey Management and Practices – The management of survey plans from receipt/lodgement through to title registration will be addressed holistically and improvements made to provide for better management, document tracking and analysis and reporting of this important activity. Existing governing acts and regulations controlling the survey process will be reviewed along with existing survey practices. Through extensive consultation and discussion, changes will be recommended to provide for improved survey practices, regulation and optimal governance to achieve

outcomes and objectives in line with what the survey system is endeavouring to achieve in Vanuatu.

Cadastral Record Maps – will be converted into digital format, a Digital Cadastral DataBase (DCDB) to provide a spatial framework for integration with and analysis of data held in textural databases. The development of such a database is essential to supporting a computerised lease/registrars and supporting valuation and land use and planning activity as well as those of the CLT. This database will also become one of the key data sets and establish the framework for future development of GIS applications in Vanuatu, especially in relation to physical planning activities and in supporting the management of services such as water, electricity and communications.

Survey Plans – security of these records needs to be improved. No provision is made for protection from fire, vandalism or natural disaster. Repercussions from the total loss of survey plans and title records from the 1931 Napier earthquake are still occurring in New Zealand to this day. Component activity will address the issue of security by scanning of records and back-up of these digital data as part of normal computer system security measures. Scanning will also provide for improved access to survey plan internally within DoL and to the wider user community. This will provide for vastly improved process efficiencies within DoL and greatly improve customer service and reduce the time involved in servicing customers. Through remote access to data, users will be provided with the huge benefit of having access to and searching data from their office. This will also provide a modest revenue stream to DoL through customers paying for access to data and data downloaded.

Geodetic Database – this activity will provide for the encoding of survey control points into a geodetic database. A review of the existing geodetic and vertical datum network will also be undertaken to ascertain its fit-for-purpose state in terms of DoL's requirement for survey control and the GoV's commitment to monitoring continental plate movement and sea level rise through global warming.

The possibility for further education and training by means of short term training awards or attachments within this area has also been identified, along with the possibility of formal tertiary qualification by means of scholarships.

2.5.3. Sub-Component 2.3 – Mapping and Imagery

This sub-component is directed at providing efficient custodianship, maintenance and supply of mapping data and services. It addresses issues relating to the use and maintenance of mapping and imagery data supplied by the Australian Defence Forces (ADF). These issues relate to protection of data by Copyright, provision of data under licence agreements and setting a "fair price" for the provision of data and services.

Of prime importance under this component, is building the understanding and capability of DoL staff to be able to manage, maintain and supply mapping and imagery data for internal use within DoL and to its wide external user base. The component focuses on providing specific training in the use of application software and ongoing "on-the-job" training and mentoring throughout the first year of the project, by which time there should be sufficient transfer of knowledge for DoL ongoing sustainability in software operation. However, further follow-up activity will be provided through subsequent

years and extension of knowledge and understanding through attendance at courses and conferences.

This component recognises the need for greater awareness on behalf of DoL cartographic staff of issues pertaining to the custody of geospatial data and the manipulation of data for supply to customers. As such, a short study tour to LINZ and three private geospatial product and service supply firms in Wellington is provided to discuss issues and view operations. The possibility for further education and training by means of short-term training awards or attachments within this area has also been identified, along with the possibility of formal tertiary qualification by means of scholarships.

2.5.4. Sub-Component 2.4 – Valuation Services

This sub-component seeks to provide for an effective service and consistent up-to-date valuations to support land and property taxation.

Activity provides for a review of the present valuation roll and instigates changes for access to or integration of “sales records” as recorded in the Land Register and for systematic adjustment in terms of increases in land value. This requires close consultation and coordination with Land Registrar design requirements of the AusAID sponsored project.

The sub-component also recognises the need to provide for consistency in valuation assessment and as such standards and procedures will be discussed and implemented so as to provide for more uniform valuations.

The sub-component recognises the need for greater awareness on behalf of DoL valuers of issues pertaining to valuation practices and as such provides for a short study tour to LINZ and two private valuation firms in Wellington to discuss issues and view operations. The possibility for further education and training by means of short term training awards or attachments within this area has also been identified, along with the possibility of formal tertiary qualification by means of scholarships.

2.5.5. Cleansing of Data

Little cleansing of existing data is required under the component activity above. Most information systems are “stand-alone.” The exception being the DCDB and Valuation Roll. With respect to the DCDB, once the Lease/Title database has been completed it will need checking against the DCDB to ensure all records have a spatial parcel definition, or that spatially defined parcels have a corresponding Lease/Title record. If not, respective databases will need to be examined and corrected. With respect to the Valuation Roll, it is dependent on updating from changes to the Lease/Title records. Therefore no cleansing is required as such, but mechanisms in place to update Valuation Roll records from daily updating of the Lease/Titles database.

2.5.6. Mapping of Community Boundaries

Consideration was given to mapping of community boundaries. However this raised a number of issues with respect to what level of mapping was required, that is community, customary or tribal boundaries and the issues, complexity and value of each. At this point in time, the mapping of Community boundaries has been shelved until the need

and value becomes clearer. If considered desirable, identification of boundaries could be undertaken as part of other community awareness activities, boundaries shown on existing topographical maps and spatially depicted by the Mapping section at little additional cost.

2.6. Indicative Timing and Work-Plan

The GoV has indicated that support for the CLT and the Land Information Management systems in the DoL are high priority activities and support the Vanuatu Land Sector Framework. The work plan has been developed to ensure that a number of key support activities commence as soon as possible but at the same time it recognises the limited capacity within the CLU and also the DoL to support development initiatives. A work plan is included as Annex 2.

Within the work plan there is also recognition that there are other donors providing support in the land sector space such as AusAID and the UNDP and their programs will place added pressure on the limited resources. Coordination activities with the AusAID design has ensured that the NZAID program of support and that to be provided by AusAID are complementary and have minimal impact on access to resource requirements.

The initial focus on support for the CLTA will be to commence activities that will support a redrafting of the legislation. There will also be initial preparation activities for public awareness and training. Support for mediation activities will commence about 6 months after project commencement so that the feedback received from the legislative review process can be fed into the design of the mediation activities. Support for the capacity building and strengthening of the CLU will commence immediately to ensure it is well placed to support project activities as they commence.

The DoL has a good foundation from which to commence support for the Land Information Management systems however there is no clear direction or strategy within the department for the development of its LIM. Initial activities will focus on assisting the DoL in developing a LIM strategy which will support future IT initiatives and also the Land Sector Framework. Early support will also focus on providing training in the various GIS software applications in the department. This will ensure that staff are in a position to make maximum use of the resources that are available.

The AusAID program support has identified the creation of a Digital Cadastral Data Base (DCDB) as being a priority activity for supporting the registry activities and this activity has therefore been assigned a high priority and activities for the creation of the DCDB will need to start on commencement of the project. Any delays in the commencement of the NZAID project beyond the commencement of the AusAID project could have ramifications in relation to this activity.

2.7. Resources and Costs

Resources for supporting the project recognise the limited capacity and resources within the CLU and DoL. Much of the TA proposed is aimed at building capacity through the provision of training and assisting with the development of policies and procedures. Some national TA is proposed to support the CLU with the preparation and delivery of

public awareness, training and mediation programs. Some national TA has also been proposed to assist with data capture activities associated with the creation of the DCDB.

It is not proposed to support the funding of any full-time positions within the organisations as there are clear indications that it will be difficult to obtain ongoing government funding for these positions once the project funding ceases.

The estimated total cost for supporting the CLT and LIM activities in the DoL is **NZ\$ 4,130, 550** (to be tested by the market). Of this amount NZ\$ 1,890,490 is estimated for support to CLT activities made up of adviser fees (international and national) and funding of resource activities such as procurement items, public awareness and training. For the LIM activities NZ\$ 2,240,060 is estimated for support to LIM activities in the DoL. This is composed of adviser fees (international and national) and funding of resource activities such as procurement items, public awareness and training. The above amounts are estimates for a period of 3 years.

The technical assistance support is estimated to be for 70 person months of international input and 122 person months of national input.

The project will not cover any of the costs associated with the actual day-to-day operations of CLTs such as sitting fees and administration costs. These costs are presently built into the legislation and there is an expectation that they be met by those who are parties to the tribunal.

The GoV will provide inputs to both project components through making staff resources available for project activities and for training. The GoV contribution of staff resource time has not been costed however the inputs to the LIM activities such as the creation of the DCDB and other databases will be significant and is estimated at 3 person years of input. GoV will be responsible for the provision of office facilities for the advisers and associated project activities. The project will also require access to resources in other areas of government, including the Vanuatu Council of Women, the Malvatumauri Council of Chiefs, the Area Council secretaries and the Vanuatu Cultural Centre. Although funding will be provided for many of the activities that will be undertaken, these organisations will be required to provide project support especially in the provinces.

2.8. Implementing Responsibilities

NZAID will be responsible for providing funding and technical assistance resources necessary to ensure that the project is successfully implemented. Given the nature of the support that is required it will be important that consultants occupying some of the key positions have experience in Vanuatu and in some cases it will be necessary that the consultant is able to speak Bislama.

The implementing agency within the GoV for both the CLTA and CLU and the LIM activities is the DoL. However there is a proposal to move the CLU to the Ministry of Justice and indications are that this move could be imminent. The GoV will have responsibility for ensuring that there are sufficient staff in both the CLU and in the LIM areas of the DoL to support the activities proposed under the project and that funding is available to support the staff. The GoV will also have responsibility for ensuring that consultants have appropriate office facilities, including desks, chairs and access to

phone and internet facilities and also ensure that staff with appropriate skills are available to work with the international consultants and that the staff are prepared to receive training and support capacity building programs that will be implemented through the project.

There will also be a reliance on a number of external organisations supporting the project, such as the Department of Women, provincial officials and civil society including VNCW, Wan Smolbag and other selected NGOs.

3. MANAGEMENT AND MONITORING STRATEGIES

3.1. Management Arrangements

Given the high level of donor activity already underway or proposed to the Ministry of Lands, donor harmonisation is essential to ensure coordination of activities. The successful implementation of donor projects requires access to the limited capacity and resources available within the Ministry of Lands, highlighting the importance of coordination. To support the harmonisation of potential donors the GoV has prepared a draft Land Sector Framework.

The GoV has proposed that a Vanuatu Land Governance Committee be established with the responsibility of implementing the Land Sector Framework. The Vanuatu Land Governance Committee will establish a working group, the Vanuatu Land Program Coordinating Committee which will provide the policy, strategic direction, donor coordination and implementation oversight of the broader land program and will also undertake an oversight of the implementation and evaluation of donor projects such as this project being proposed by NZAID and the proposed AusAID land support program. It is strongly recommended that in preference to NZAID establishing its own management structure within government that NZAID seek to have a seat on the Vanuatu Land Program Coordinating Committee. This approach has been endorsed by the GoV.

To encourage project ownership it is proposed that the Managing Service Contractor (MSC) report to both the DG of Lands and DG of MoJSW for the respective project components. The MSC will be responsible for providing regular reports to the respective DGs and also for meeting with the DGs to discuss the reports and any project implementation issues. The MSC will also provide a copy of all reports to NZAID. The arrangements for the Vanuatu Land Program Coordinating Committee have yet to be clarified but it would be expected that reports would also be submitted to this committee.

The number of technical resources proposed for the CLT and LIM project activities is relatively small and it is not proposed to have a large number in country at any one time. However, during the first year of the project, when the largest number of TA will be mobilised, the GIS Specialist will be in-country for the whole period and it is proposed that this person take on a TA coordination role and the responsibility for reporting and attending meetings.

The MSC will need to assign a person who will be responsible for overall project management, coordination of TA inputs and in ensuring that project objectives and outputs are met throughout the whole duration of the project.

3.2. Monitoring and Reporting

Monitoring and Evaluation activities are critical in ensuring that project outcomes are being achieved and in ensuring that any project risks that may arise are addressed in a timely manner. A monitoring and evaluation framework will need to be developed by the Managing Services Contractor to ensure that the project is achieving its objectives and to ensure that the project risks are being identified and appropriately managed. The M&E framework that is developed will need to be developed in consultation with both DoL and MoJSW and signed off by NZAID.

Most of the international TA inputs are proposed to be short-term however there will be one position of GIS Specialist that has an extended input. It is proposed that the person occupying this position take on the role of reporting to DoL, MoJSW and the NZAID post during the assignment and also be responsible for providing a combined monthly report to counterpart agencies and NZAID on progress and raising any risks that have arisen that could impact on project implementation in both the areas of the CLT and LIM.

As well as M&E activities for project management the MSC will also have responsibility for ensuring that appropriate M&E systems are established within counterpart agencies so that GoV activities can be appropriately managed and reporting and review systems developed for strategic planning and annual reporting.

The Managing Contractor will be required to prepare within one month of commencement of the contract and in consultation with DoL and MoJSW, a project inception report that will update the work plan and set out the work program for the following 12 months. The project inception report will be provided to the GoV as well as NZAID. Two months prior to the commencement of each NZ Government fiscal year the Managing Contractor will be required to provide an annual plan for the following 12 month period.

It is proposed that prior to the completion of the three year project that there be a review of the implementation of the two project components and the sub-components. Following the review NZAID will make a decision on whether to continue ongoing support for a further period of up to two years.

3.3. Risk Management

NZAID has continued to have an active involvement with the ongoing development and support of activities associated with the Customary Land Tribunal Act. During the course of this association NZAID has funded a number of project reports that have assessed progress and identified issues resulting from the implementation of land dispute resolution through the use of tribunals. The ongoing reviews and reports have enabled a realistic assessment of risk management for this component of the project as well as mediation and public awareness to be undertaken. The risks associated with the support of land information management are very much associated with the absorptive capacity of the DoL and the integration of computer-based systems into DoL operations.

Both proposed activities are integral to the Land Policy Framework document and DoL activities and have been planned and developed as priority departmental requirements. Both project components adequately satisfy the range of critical success factors identified in the NZAID strategy and the AusAID concept design document.

A Risk Management Matrix is attached at Annex 4. This summarises all the risks and their potential damage to the program; the likelihood, impact and overall rating of each risk; the strategies which have been incorporated into the design to address each risk; and responsibilities for implementing the strategies.

Risks to the achievement and sustainability of the program goal and outcome arise from the Government of Vanuatu failing to support the project initiatives. Major risks to the support for the CLTA activities include:

- Amended draft legislation will not reflect the wishes of the people and government;
- Failure to support traditional/customary views on land ownership in dispute resolution;
- Focus on a courts solution in preference to an emphasis on mediation;
- Public awareness programs poorly prepared and presented;
- Insufficient resources available for public awareness and training;
- Government does not support CLU with staff and funding.

The major risks to the support for LIM within DoL include:

- IT Strategy is developed but not complied with;
- Breaches of computer security systems;
- Improved survey plan management system not implemented;
- DCDB not created or maintained;
- Complexities of application software becoming an obstacle to performance;
- Loss of trained staff due to transfer, promotion or resignation.

4. FEASIBILITY AND SUSTAINABILITY

4.1. Project Feasibility

Both components of the proposed project are feasible. Previous support provided by NZAID in developing the CLTA and its implementation provide sufficient confidence to indicate that there is strong support for the project initiative. The project is also building on existing activities associated with the CLT and CLU which have been shown to be operating, although the overall effectiveness is questionable.

In relation to the support for the LIM activities, support is based around building on what is already a reasonable foundation of technical skills. Unlike the situation in many other developing countries, the DoL already has some IT capacity and a demonstrated ability to work with IT systems and GIS applications. Other than supporting the development

of a DCDB (which already exists in hard copy form) there are no other initiatives proposed that require the DoL to undertake tasks that are not already being implemented or developed in some form already.

4.2. Sustainability

Both the CLT and LIM proposals have resulted from a process of land administration review and development in Vanuatu that has occurred over the last decade. They represent a strong commitment by GoV to implement projects designed by them to resolve priority land administration issues. Both these projects are integral to the Government of Vanuatu's recently developed Land Sector Framework.

The development of the Land Sector Framework highlights the support that land sector activities have within government. Critical to the progress and implementation of initiatives outlined in the framework is support from a champion – a person who is prepared to proactively support new initiatives and to support the changes needed in the management of land sector activities in Vanuatu. The current Director-General of Lands is such a champion and is a “mover and shaker” in the land sector space. Should the Director General move on it is not clear whether there is another champion with the same will and determination to take over the role.

There is the will and capacity within the current resources in both the CLU and LIM areas to build activities which have appropriate capacity and are sustainable in the long term. People have the basic skills and are in a position, with appropriate and strategic support, to develop and ensure there are sustainable systems in place at the end of the project.

The adopted strategy in supporting the CLTA is to work on building capacity within the existing staff and providing support during the peak periods of project activities through the contracting of people with specific areas of expertise, such as mediation, public awareness and training. It is also proposed that use be made of existing networks in Vanuatu such as the Area Council secretaries to provide support and to be a source of information on the CLTA. From a sustainability perspective this approach was considered preferable to that of providing funding to fill vacant positions and then find that at the end of the project there are no government funds to retain the positions.

For the land information management and the support for IT within the DoL, the strategy for building sustainability is to focus on improving existing systems and integration of systems to provide for better analysis and reporting mechanisms. The strategy also focuses on building capacity and ultimately a level of sustainability using the existing staff within the various sections of DoL that have or would be able to support some IT initiatives. Given the limited resources, capacity building will be gradual and managed so as to ensure staff are able to accommodate the various levels of training and software implementation.

The key issue facing sustainability is the resourcing and funding by the GoV. The current status of government funding and the limited support for the filling of positions indicate that staffing of government positions remains problematic.

Annex 1

Logical Framework Matrix

Logical Framework Matrix

	Activity Description	Indicators	Sources of Verification	Risks
Goal	Poverty reduced through sustainable development of customary lands and supporting land information systems	Poverty statistics	National Statistics Office	
Objectives	A strengthened Customary Lands Tribunal consistent with the GoV's national plans.	Customary Land Tribunal cases held	Customary Land Unit monitoring statistics	Government does not support custom and resource the CLU
	A Land Information Management system that meets current and future needs and supports economic development.	Land information supports DoL activities and is used by government and private sector	Details on use of land information data use in government and sales of data to private sector	Appropriate resources not provided by the government to support the development of LIM
OUTPUTS				
COMPONENT 1 - CUSTOMARY LAND TRIBUNAL				
	A functioning Customary Land Tribunal supported by efficient administrative procedures			
Sub-Component 1.1 - Mediation Support Services				
	Mediators trained and mediation is an effective means of resolving land disputes	Number of mediators, by gender, trained and the number of mediators, by gender, for each area council	CLU monitoring statistics	(i) Focus on a courts solution in preference to an emphasis on mediation (ii) Mediators are not selected or are poorly trained (iii) Government does not provide sufficient resources
		Number of villages assisted with mediation per year	CLU monitoring statistics	
		% of land disputes solved through mediation	CLU monitoring statistics	
		Number of land disputes that are referred to a CLT	CLU monitoring statistics	

	Activity Description	Indicators	Sources of Verification	Risks
				(iv) Insufficient focus on women as mediators
Sub-Component 1.2 - Public awareness and training				
	Custom owners well informed and tribunal members trained in adjudication procedures	Number of tribunal training programs conducted per year and number of participants by gender	CLU monitoring statistics	(i) Malvatumari does not support the training of the chiefs, secretaries and senior people in the communities. (ii) Public awareness programs poorly prepared and presented. (iii) Training is poorly prepared and presented and is ineffective (iv) Insufficient resources available for public awareness and training (v) Specific education and training programs are not held for women
		Number of public awareness programs conducted per year and number of participants by gender	CLU monitoring statistics	
		Number of radio programs presented	CLU monitoring statistics	
		Number and types of printed material produced and distributed	CLU monitoring statistics Field survey data	
		Number of awareness and training programs held specifically for women	CLU monitoring statistics	
Sub-Component 1.3 – Capacity Development of Customary Land Unit				
	Improved administrative capacity to support the Customary Land Tribunal Act	New administrative procedures and guidelines prepared	Quality assessment undertaken of procedures and guidelines	(i) CLU is not properly managed (ii) Government does not support CLU with staff and funding.
		Appropriate administrative recording procedures in	Quality assessment undertaken of the recording	

	Activity Description	Indicators	Sources of Verification	Risks
		place	systems	(iii) Appropriate M&E and administration procedures not developed and implemented
		Annual plans and budgets prepared and CLU activities undertaken in accordance with the plan and budget	Assessment of activities undertaken by the CLU	
		CLU staff receive appropriate administrative training	Management procedures are in place and implemented	
		Monitoring and evaluation procedures developed to support ongoing improvement of CLT activities	Recorded action undertake to address identified deficiencies and issues	
COMPONENT 2 - LAND INFORMATION MANAGEMENT				
	An efficient Land Information Management system that supports CLT activities and land information			
Sub-Component 2.1 - IT Strategy				
	An IT Strategic plan developed that governs development of fully integrated land database computer systems within DoL and conforms to GoV directions for e-Government	IT Strategic plan produced which identifies the requirements for computerisation, database management and internal and external access to data over the next five years Hardware and software purchases fit-for-purpose A fully operational and integrated networked computer system servicing	Comprehensive IT Strategy produced, approved by MoL steering committee and being implemented DoL management reports	(i) AN IT Strategy that drives DoL development, rather than DoL requirements driving the IT Strategy; (ii) IT Strategy not complied with; (iii) Internal breaches of security; (iv) External breaches of security

	Activity Description	Indicators	Sources of Verification	Risks
		the needs of DoL and its customers		
Sub-Component 2.2 - Land Survey Records				
	Effective custodianship, maintenance and security of associated records and improved process management and analysis	Survey Plans	Improved DoL statistics	(i) Improved survey plan management system not implemented (ii) Improved survey practices not implemented (iii) Loss of Survey Plan records. (iv) DCDB not created or maintained (v) Geodetic Database not created or maintained
		Database maintained and accessible to all users in accord with procedures	Improved DoL monthly, quarterly and annual management reports	
		Improved tracking of documents through all processes	Quality assurance checks that procedures are being followed.	
		Full analysis and reporting requirements catered for.		
		Improved Survey Practices	Comprehensive review report produced	
		Review of existing procedures and practices undertaken, recommended changes discussed with stakeholders and agreed changes implemented	Audit of survey practices and procedures in accord with Survey Acts and Regulation	
		Good survey practice guidelines being followed	Timely and efficient processing of survey plans	
		Improved validation procedures being followed.	DoL management reports.	
		Scanning of Survey Plans	Quality assurance checks	

	Activity Description	Indicators	Sources of Verification	Risks
		All existing survey plans scanned to an acceptable quality and timeframes and in accord with procedures Procedures to scan new survey plans on receipt implemented.	that procedures are being followed Targets set and monthly reports on performance in terms of those targets Count of number of survey plan images New survey plans being scanned on day of receipt DoL statistics and monthly reports.	
		Create and maintain a Digital Cadastral DataBase (DCDB) All existing cadastral records maps converted to digital format to acceptable quality and timeframes and in accord with procedures	Quality assurance checks that procedures are being followed Targets set and monthly reports on performance in terms of those targets Count of record maps converted DoL statistics and monthly reports.	
		Establish facilities for a creation and maintenance of a Geodetic Database	Quality assurance checks that procedures are being followed	

	Activity Description	Indicators	Sources of Verification	Risks
		All existing geodetic records converted to digital format	Count of geodetic database records	
		database up-to-date and procedures followed	Database maintained on a daily basis DoL monthly reports.	
		Assessment of the existing control network undertaken.	Comprehensive review report produced	
Sub-Component 2.3 - Mapping and Imagery				
	Effective custodianship, maintenance and supply of mapping data and services	All staff trained and able to access and maintain data and produce outputs Demonstrated improvement in capacity over years 1 to 2 Data supplied on time, to standard and to specification	All staff using ArcGIS for mapping products Staff performance reviews Quality assurance check of products Positive feed back from clients.	(i) Complexities of application software becomes an obstacle to performance; (ii) Loss of trained staff due to transfer, promotion or resignation; (iii) Proliferation of application software within DoL. (iv) Lack of will to introduce and implement changes (v) VANRIS not upgraded
		Standards developed Data Dictionary developed Licence agreements developed Pricing policy developed and approved Increased revenue.	Audit to check that data supplied to Standards, products are of required quality Audit of licences issued DoL monthly reports.	
		VANRIS reviewed and	Report prepared	

	Activity Description	Indicators	Sources of Verification	Risks
		recommendations made to upgrade and continue with its use or to transfer data to another application. Review recommendations implemented.		
Sub-Component 2.4 - Valuation Services				
	A service that provides consistent and up-to-date valuation to support land and property taxes	Review of existing procedures and practices undertaken, recommended changes discussed with stakeholders and approved changes implemented Good valuation practice guidelines being followed Timely and effective changes to lease/title databases reflected in Valuation Roll All valuation anomalies identified and re-valuations undertaken	Comprehensive review valuation procedures undertaken Changes to valuation practices and procedures implemented by the Principal Valuer Audit of valuation practices Fewer non-payment of tax returns Increased land and property tax revenue DoL quarterly and annual reports.	(i) Improved valuation role system not implemented; (ii) Improved valuation practices not implemented (iii) Complexities of valuation services becoming an obstacle to performance (iv) Loss of trained staff due to transfer, promotion or resignation;

Annex 2

Indicative Work Plan

Annex 2: STRENGTHENING THE CUSTOMARY LAND TRIBUNAL AND THE DEPARTMENT OF LANDS' LAND INFORMATION MANAGEMENT

[illegible]

[illegible]

Annex 4

Risk Management Matrix

Risk Management Matrix for Land Information Management

	Risk	Potential Damage to Program	L	I	R	Risk Avoidance and Management	Response/ Timing
GOAL							
1	Reform of Customary Land Tribunal Act is not endorsed	The use of the CLT loses credibility	Mo	Hi	4	The CLT Act will be amended to reflect the views of government and stakeholders and to ensure that it is relevant to the needs of customary groups as a means of resolving disputes	GoV
OBJECTIVES:							
2	Government does not support custom and resource the CLU	Credibility of the government to support ni-Vanuatu will be brought into question	Mi	Hi	4	Undertake activities that support the development of the CLT and ensures that it is a suitable mechanism for dispute resolution	GoV On going
3	Appropriate resources not provided by the government to support the development of LIM	Land administration reforms do not take place with a resultant impact on government revenue	Mi	Lo	3	Undertake activities that build capacity and sustainability within the LIM environment of the DoL	GoV DoL On going
4	Government does not provide sufficient financial support to ensure the effective operations of the CLT and LIM activities	Activities become unsustainable and with no dispute resolution mechanism land disputes will increase resulting in the potential for increased instability.	Mo	Hi	4	The GoV provide appropriate funds and resources	GoV MoJSW DoL
COMPONENT 1: CUSTOMARY LAND TRIBUNAL							
A functioning Customary Land Tribunal support by efficient administrative procedures							
Sub-Component 1.1: Legislative Review - Effective dispute resolution mechanism for custom land owners							
5	Amended draft legislation will not reflect the wishes of the people and government.	Will result in the CLT becoming inoperable and the tribunal process will not be used for dispute resolution	Lo	Hi	3	The multi-stakeholder oversight committee will monitor progress and need to ensure that there is open public consultation	GoV CLU During first 12 months

	Risk	Potential Damage to Program	L	I	R	Risk Avoidance and Management	Response/ Timing
6	Draft legislation not prepared within an acceptable timeframe.	Dispute resolution procedures can continue under present Act however it may be difficult to implement an effective mediation process.	Mo	Mo	4	The multi-stakeholder oversight committee will monitor progress and report to Minister of Lands	GoV CLU During first 12 months
7	Government does not provide leadership and approve the legislative amendment	Dispute resolution procedures can continue under present Act however it may be difficult to implement an effective mediation process.	Mo	Mo	4	The multi-stakeholder oversight committee will monitor progress and report to Minister of Lands	GoV CLU During first 12 months
8	Unresolved disputes can escalate and pose a potential threat to the stability of the country	The CLTs are not seen as an appropriate mechanism for resolving disputes	Mo	Hi	5	Review the CLT and implement mediation procedures to ensure that customary processes are protected and that there is an acceptable mechanism for dispute resolution.	GoV CLU Ongoing
9	Legislation does not take an affirmative position in relation to gender	Women will continue to be under-represented on the CLT and will continued to be disadvantaged in relation to access to land	Mo	Lo	4	Identify and propose specific gender impact initiatives that will ensure that women's rights are given appropriate consideration during legislative drafting	GoV CLU VNCW Donors During first 12 months
10	Failure to support traditional/customary views on land ownership in dispute resolution	People in dispute over land will loose confidence in the tribunal process and the CLTs will no longer be a process adopted for dispute resolution.	Lo	Hi	4	Introduce legislation to enforce the use of mediation as a first resort	GoV CLU Donors Ongoing
11	Malvatumauri do not support the legislation or the CLT concept	Dispute resolution mechanisms will not be implemented and CLTs will not operate.	Mo	Hi	4	Close liaison with active involvement of the Malvatumari during discussions on the current legislation and in the preparation of the legislative	GoV Malvatumauri

	Risk	Potential Damage to Program	L	I	R	Risk Avoidance and Management	Response/ Timing
						amendment. Malvatumari to be an active participant in the development of the mediation processes.	
Sub-Component 1.2: Mediation Support Services - Mediation as an effective means of resolving land disputes							
12	Focus on a courts solution in preference to an emphasis on mediation	Traditional/customary approach to solutions for land disputes will be lost resulting in a gradual degradation of custom	Lo	Hi	3	The multi-stakeholder oversight committee will monitor progress and need to ensure that there is open public consultation	GoV CLU During first 12 months
13	Mediators are not selected or are poorly trained	Mediation process collapses resulting in increased emphasis on the tribunal and possible less emphasis on custom	Mo	Hi	4	Implement procedures to ensure mediators are selected and trained to the required level of competency. Implement systems to evaluate and monitor the mediation process and mediator's performance	GoV CLU During first 12 months
14	Government does not provide sufficient resources	The mediation and tribunal processes fail to function effectively once donor support is removed	Hi	Mo	4	Ensure resources have been provided for the project to ensure that support activities during the build-up and until after the peak of activities is achieved and can then be undertaken by full time resources in CLU	GoV DoL CLU On going
15	Insufficient focus on women as mediators	Mediation program will lack credibility and potentially will not involve those who are better mediators.	Hi	Mo	4	Specific initiatives have been included so as to ensure that women receive appropriate education and training along with an affirmative action in relation to numbers of women involved	GoV CLU NGOs VNCW On going
Sub-Component 1.3: Public Awareness and Training - Custom owners well informed and tribunal members trained in adjudication							
16	MoJSW does not provide sufficient staff and funding	CLTs and dispute resolution system is ineffective	Mo	Hi	4	MoJSW to ensure adequate support is provided to the CLU.	GoV MoJSW

	Risk	Potential Damage to Program	L	I	R	Risk Avoidance and Management	Response/ Timing
	to enable the CLU to operate effectively						
17	Malvatumari does not support the training of the chiefs, secretaries and senior people in the communities.	Undermines the position of the CLT in dispute resolution and may ultimately weaken the dispute resolution process	Mo	Mo	4	There will be a need to work closely with the activities being funded by AusAID to support the Malvatumari. Strengthening of the Malvatumari will assist in building support.	Malvatumari GoV MoJSW Ongoing
18	Proposed AusAID Provincial Focal Points (Local <i>Kastom</i> Land Officers), Area Secretaries unable to provide adequate support to CLT activities in the provinces	Information is not readily available to CLTs and CLTs in the provinces do not have easy access to information and support	Mo	Hi	4	A strong focus on training and public awareness activities. Involvement of Local <i>Kastom</i> Land Officers and Area Secretaries in all relevant training programs.	GoV MoJSW Malvatumari Ongoing
19	Public awareness programs poorly prepared and presented.	The mediation and tribunal processes do not operate effectively and misunderstanding results in confusion.	Lo	Mo	4	Provide adequate support to the CLU to ensure that there is capacity to support public awareness programs	GoV CLU Ongoing
20	Public awareness program is poorly patronised or distributed, that is unequal access by groups of "lesser" socioeconomic status	Public awareness ineffective and CLTs operate inefficiently and ineffectively. Access to the CLT is inhibited	Lo	Mo	3	Devise and implement public awareness and communication management strategies to ensure all levels of society are reached	GoV CLU On going
21	Training is poorly prepared and presented and is ineffective	The tribunal process does not operate effectively and there is inadequate	Lo	Mo	4	Ensure sufficient funding and resources are provided so that trainers receive appropriate training and support	GoV CLU First 2 years
22	Insufficient resources	Public awareness ineffective	Lo	Hi	4	Ensure sufficient funding and resources	GoV

	Risk	Potential Damage to Program	L	I	R	Risk Avoidance and Management	Response/ Timing
	available for public awareness and training	and CLTs operate inefficiently and ineffectively				are made available so that effective public awareness and training is undertaken to support the CLT throughout the whole country.	CLU First 3 years
23	Specific education and training programs are not held for women	Women's participation in the CLT continues to remain low and women's rights to access to the CLT is inhibited	Lo	Mo	3	Specific awareness and training programs will be undertaken to ensure women are better aware of their rights in relation to land and participation in the CLT	GoV CLU VNCW On going
Sub-Component 1.4: Capacity Development of Customary Land Unit - Improved administrative capacity to support the Customary Land Tribunal Act							
24	CLU is not properly managed	Ineffective support is provide to the activities of the CLT	Mo	Mo	3	Train staff of the CLU in management, administration and M&E techniques to ensure they are able to support the CLTs	GoV CLU On going
25	Government does not support CLU with staff and funding.	The CLT Act is poorly managed and support for tribunals and mediation is not available	Hi	Mo	4	Contract staff are funded to support the CLU in implementation during the first few years of the project.	GoV CLU On going

	Risk	Potential Damage to Program	L	I	R	Risk Avoidance and Management	Response/ Timing
26	Loss of trained staff due to transfer, promotion or resignation	Limited ability to provide products and services	Hi	Hi	4	Provide for a career structure and performance reward for staff so that they are recognised according to ability, performance and qualifications; Plan training numbers to accommodate for regular annual loss and changes in personnel; Work closely with HR Manager and AusAID design team to ensure staff retention factors are built into DoL organisation change.	Director General HR Manager Ongoing
27	Appropriate M&E and administration procedures not developed and implemented	Effectiveness of the CLT Act cannot be assessed and deficiencies in activities are not able to be adequately addressed	Mo	Lo	3	Appropriate M&E procedures developed and staff of the CLU trained in M&E activities	GoV CLU On going
COMPONENT 2: Land Information Management							
Sub-Component 2.1: IT Strategy - A strategy that governs development within DoL and conforms to GoV directions for e-Government							
28	GoV's IT Strategy not implemented	Ad-hoc rather than integrated development that does not meet GoV needs. Dissemination of information to outlying areas not possible	Mo	Lo	2	Review GoV IT Strategy progress. Assist in formulation strategies and policies wherever possible.	ITTA Strategic Planner IT Manager Senior DoL staff Ongoing
29	An IT Strategy that drives DoL development, rather than the reverse	Ad-hoc rather than integrated development that does not meet DoL needs.	Mo	Hi	3	Review appropriateness of GoV strategies for DoL applications. Make representation on changes	ITTA Strategic Planner

	Risk	Potential Damage to Program	L	I	R	Risk Avoidance and Management	Response/ Timing
						necessary to meet DoL requirements. Specific direction to be given in TOR and in project briefing.	IT Manager Senior DoL staff Ongoing
30	IT Strategy not complied with	Software development and hardware purchases are not appropriate for intended applications.	Hi	Mo	3	Software development and hardware purchases to be approved by IT Manager as conforming to IT Strategy requirements. Possible use of same STTA consultant on all IT Analyst and programming activity.	DoL staff Ongoing
31	Internal and external breaches of security	Accuracy and integrity of DoL records compromised; Inappropriate access to data.	HI	Hi	4	All staff to be made aware of need for strict compliance of security requirements; Breaches will result in termination of employment; or prosecution; All aspects of security identified in the IT Strategy strictly enforced; On-going monitoring by database supervisors and IT staff.	IT Manager HR Manager Senior DoL staff Ongoing
Sub-Component 2.2: Land Survey Records - Effective custodianship, maintenance and security of associated records and improved process management and analysis							
32	Improved survey plan management system not implemented	Continuation of present computerised and manual systems	Lo	Lo	1	Ownership of change and “buy-in” by senior management and staff; Monitor through subsequent inspection and Management reports.	Surveyor General Ongoing
33	Improved survey practices not implemented	Minimal potential damage to the development of integrated databases. Risk of continuation of present sub-standard survey and survey	Mo	Lo	2	Ownership of change and “buy-in” by Surveyor General; Monitor through subsequent inspection and Management reports.	Surveyor General Ongoing

	Risk	Potential Damage to Program	L	I	R	Risk Avoidance and Management	Response/ Timing
		validation practices only.					
34	Loss of Survey Plan records.	Minimal potential damage to the development of integrated databases, but potentially of major damage to survey operations and lease/title definitions.	Mo	Hi	5	Develop and document procedures; Ownership of process and “buy-in” by senior management and staff; Set monthly targets and monitor performance and quality; Monitor through subsequent inspection and Management reports.	DoL staff STTA - DCDB Ongoing
35	DCDB not created or maintained	Spatial cadastral fabric not available for display and analysis with other textural or geospatial databases (Lease/title, valuation, zoning, planning, mapping etc)	Mo	Hi	5	Develop and document procedures; Ownership of process and “buy-in” by senior management and staff; Set monthly targets and monitor performance and quality; Monitor through subsequent inspection and Management reports; Create by contracted staff or “out-source” to private sources to minimise the risk of non-performance by limited DoL staff resources.	DoL staff STTA - DCDB Ongoing
36	Geodetic Database not created or maintained	Minimal potential damage to the development of integrated databases, but potential medium impact to survey operations.	Mo	Lo	2	Procedures to be developed and document; Ownership of change and “buy-in” by senior management and staff; Set monthly targets and monitor performance and quality; Monitor through subsequent inspection and Management reports.	DoL staff STTA Geodetic Ongoing
Sub-Component 2.3: Mapping and Imagery - Effective custodianship, maintenance and supply of mapping data and services							
37	Complexities of application	Limited ability to provide	Hi	Hi	4	Training and mentoring of application	Director

	Risk	Potential Damage to Program	L	I	R	Risk Avoidance and Management	Response/ Timing
	software becoming an obstacle to performance	products and services.				software to be undertaken over the course of one year; Provide for a short study tour to LINZ and three mapping organisations in Wellington; Identify and promote staff for specialist mapping or land information NZAID sponsored Short Term Training Awards or attachments; Monitor through subsequent inspection and Management reports	Surveyor General HR Manager STTA Mapping Ongoing
38	Loss of trained staff due to transfer, promotion or resignation	Limited ability to provide products and services	Hi	Hi	4	Provide for a career structure and performance reward for staff so that they are recognised according to ability, performance and qualifications; Plan training numbers to accommodate for regular annual loss and changes in personnel; Work closely with HR Manager and AusAID design team to ensure staff retention factors are built into DoL organisation change.	Director Surveyor General HR Manager Ongoing
39	Lack of will to introduce and implement changes	Services not provided to DoL and public. Difficult to develop IT systems for the longer term benefit of the country	Lo	Hi	4	Provide for a career structure and performance reward for staff so that they are recognised according to ability, performance and qualifications;	Director Surveyor General HR Manager Ongoing
40	VANRIS not upgraded	No damage to programme. However, geospatial and	Hi	Lo	2	Evaluation of suitability of VANRIS to be assessed;	Director

	Risk	Potential Damage to Program	L	I	R	Risk Avoidance and Management	Response/ Timing
		attribute data that may be suitable for land use and sustainability analysis may be lost.				Upgrade of data in VANRIS or conversion of data to another platform to be supervised	Surveyor General STTA Mapping Ongoing
Sub-Component 2.4: Valuation Services - A service that provides consistent and up-to-date valuation to support land and property taxes							
41	Improved valuation roll system not implemented.	Continuation of present computerised valuation roll. Updates from lease/title transfer or sales not provided or reflected in the valuation roll.	Lo	Hi	4	Develop and document procedures; Ownership of change and “buy-in” by senior management and staff; Monitor through subsequent inspection and Management reports.	DoL staff Ongoing
42	Improved valuation practices not implemented	Minimal potential damage to the development of integrated databases. Risk of continuation of present valuation practices only.	Mo	Lo	2	Ownership of change and “buy-in” by Principal Valuer; Monitor through subsequent inspection and Management reports.	Principal Valuer Ongoing
43	Complexities of valuation services becoming an obstacle to performance	Limited ability to provide quality or timely valuations.	Hi	Hi	4	Training and mentoring of valuation staff to be undertaken; Provide for a short study tour to LINZ and two valuation organisations in Wellington; Identify and promote staff for specialist valuation or land information NZAID sponsored Short Term Training Awards or attachments; Monitor through subsequent inspection and Management reports.	HR Manager Principal Valuer STTA Valuation Ongoing
44	Loss of trained staff due to	Limited ability to meet current	Hi	Hi	4	Provide for a career structure and	Director

	Risk	Potential Damage to Program	L	I	R	Risk Avoidance and Management	Response/ Timing
	transfer, promotion or resignation	or future demands of valuation section.				performance reward for staff so that they are recognised according to ability, performance and qualifications; Work closely with HR Manager and AusAID design team to ensure staff retention factors are built into DoL organisation change.	HR Manager Principal Valuer Ongoing

Annex 5

Adviser Terms of Reference

TERMS OF REFERENCE FOR CONSULTANT INPUTS

CUSTOMARY LAND TRIBUNAL

Background:

Vanuatu and New Zealand have agreed to work together in strengthening the Customary Land Tribunal and the Customary Land Unit in the Ministry of Lands in Vanuatu. The objective is to provide technical assistance to strengthen the operations of the Customary Land Tribunal aimed at supporting the land dispute resolution mechanisms and assisting in the reduction and resolution of land disputes. Three sub-components are identified as follows:

Sub-Component 1.1 – Mediation Support Services - Mediators trained and mediation is an effective means of resolving land disputes

Sub-Component 1.2 – Public Awareness and Training - Custom owners well informed and tribunal members trained in adjudication procedures;

Sub-Component 1.3 – Capacity Development of Customary Land Unit - Improved administrative capacity to support the Customary Land Tribunal Act

The programme will be implemented through the provision of New Zealand or International technical assistance over the next three years. Short Term Technical Advisors (STTA) will be deployed at intervals to meet objective timeframes.

Training:

A DoL counterpart will be assigned to each STTA. STTAs will work closely with his/her counterpart so that a thorough understanding of requirements understood. Capacity building should be to such a level of understanding that the counterpart is able to converse in this area with confidence and amend requirements or procedures as necessary in terms of future requirement.

General Experience and Personal Attributes:

The STTA is expected to have:

- A participatory and consultative approach to development;
- Ability to work with others preferably in a coaching role and in developing teams;
- Previous experience in training preferably in the context of information technology and ability to train counterparts;
- Good organisational, team work and interpersonal skills and be able to review and analyse outcomes;
- Ability to develop clear, concise, written procedures and respond to changing demands;
- Knowledge and experience of similar projects in developing countries, particularly in other Pacific Countries;
- Sensitivity to other cultures and ability to work effectively with Pacific Island culture and environment;
- Sensitivity to different ethnic value systems and communication differences;

- An understanding and commitment to gender equality;
- Understanding of the NZAID Guiding Principles and Policy Framework;
- Knowledge of Bislama would be an advantage.

Working Arrangements:

The STTA's will be located in Vanuatu at Port Vila. The DoL (or may be the MoJ) will provide the office space and furniture needed to implement the assigned tasks. The appointee's are expected to provide their own laptop.

STTA – Mediation Specialist

Scope of Work – Provide input to component 1, particularly;

- Determine whether there are existing mediation processes in operation in Vanuatu and if so undertake an assessment of them and determine their suitability for the CLT activities.
- Develop an approach to mediation that will support dispute resolution;
- Develop a training program for “training of trainers” mediation;
- Select people to be provided with mediator trainer training;
- Develop training course for mediators;
- Provide training for mediator trainers;
- Support the commencement of mediation training;
- Give consideration to gender issues as part of mediation activities;
- Develop a system for registering mediators.

Specific Skills and Experience

- A relevant tertiary qualification in social sciences or a related field;
- Must have experience in mediation training;
- A knowledge of Bislama would be beneficial.

Tenure

The appointee will be required to work in Vanuatu or approximately eight months during years one and two and some provincial travel may be required.

LTTA – National Mediation Specialist (ni-Vanuatu)

Scope of Work – Provide input to component 1, particularly;

- Provide support to the International Mediation Specialist;
- Assist with the development of mediation training material;
- Undertake a selection process for mediator trainers;
- Provide ongoing support to mediation training;

- v. Ongoing monitoring of mediation training and the effectiveness of the mediation process for dispute resolution;
- vi. Make amendments to the training program as required;
- vii. Work with the Supervisor of CLU in addressing identified deficiencies in the mediation process.

Specific Skills and Experience

- An appropriate qualification in an area such as teaching, communication, training is essential;
- Must have extensive experience in presentation and training and mediation skills would certainly be an advantage;
- Bislama is essential.

Tenure

The appointee will be required to work in Vanuatu for approximately seventeen (17) months over the three years of the project. Some provincial travel may be required.

STTA – Training Specialist (International)

Scope of Work – Provide input to component 1, particularly;

- i. Assess the training requirement for the CLU;
- ii. Assess the training requirement for the CLTA;
- iii. Develop all training courses;
- iv. Provide training to the CLU staff to better equip them to deliver training programs;
- v. Develop a program for the delivery of training to tribunal members;
- vi. In a follow up assignment, review the training program, training material and assess its effectiveness. Modify as required.

Specific Skills and Experience

- A tertiary qualification in an appropriate discipline (e.g., HRD, Organisational Development, Education, Training & Development, Public Administration);
- 10 years experience in developing and delivering training programs in developing countries;
- A knowledge of Bislama would be beneficial.

Tenure

The appointee will be required to work in Vanuatu or approximately six months over years one and two. Some provincial travel may be required.

LTTA – National Training Specialist (ni-Vanuatu)

Scope of Work – Provide input to component 1, particularly;

- i. Support the International Training Specialist;
- ii. Assist with the development of training courses;
- iii. Assist with the review of training requirements;
- iv. Provide ongoing support to the training program in each of the provinces;
- v. Deliver training to tribunal members throughout all provinces;
- vi. Deliver training on the CLT to non-tribunal members such as Area Council secretaries, government officials, NGOs etc
- vii. Undertake an initial assessment of the training program following the approval of the new Act.

Specific Skills and Experience

- Qualifications in an appropriate discipline (e.g., HRD, Organisational Development, Education, Training & Development, Public Administration);
- Must have experience in developing and delivering training programs;
- Bislama is essential.

Tenure

The appointee will be required to work in Vanuatu for approximately thirty (30) months over the three years of the project. Travel will be required to selected provinces to undertake research activities.

STTA – Communication Specialist

Scope of Work – Provide input to component 1, particularly;

- i. Develop a strategy for the public awareness campaign to support the CLT activities;
- ii. Look at the most appropriate ways of delivering information to the public;
- iii. Review the opportunities to use organisations such as Wan Smolbag, NGOs, Vanuatu National Council of Women to assist with public awareness activities;
- iv. Develop appropriate communication materials such as for radio, print media, telecommunications and DVD;
- v. Develop public awareness material that specifically informs women of their rights in relation to the CLT and land disputes generally;
- vi. Provide training to the national counterpart and to the staff of the CLU;
- vii. Develop any training programs in communication that may be required;
- viii. As there is no communication unit in the DoL it will be necessary to provide training to the staff of CLU in communication techniques;
- ix. Review the opportunity to utilise external resources to assist with communication initiatives.

Specific Skills and Experience

- A professional qualification in the area of communication;
- Demonstrated experience of working with media;
- Knowledge of Bislama is essential.

Tenure

The appointee will be required to work in Vanuatu for approximately six months in year one of the project. Travel to selected provinces may be required.

LTTA – National Communication Specialist (ni-Vanuatu)

Scope of Work – Provide input to component 1, particularly;

- i. Support the International Communication Specialist;
- ii. Actively develop communication material in each of the mediums;
- iii. Coordinate the outsourcing of the preparation of communication material;
- iv. Provide training to the staff of CLU on communication and presentation;
- v. Ensure that the NZAID project activities are suitably publicised;
- vi. Assess the impact of the new Act and amend communication literature to reflect any changes.

Specific Skills and Experience

- A qualification in an appropriate discipline;
- Must have extensive experience in the preparation of communication material and in the preparation of presentations;
- Bislama is essential.

Tenure

The appointee will be required to work in Vanuatu for approximately fifteen (15) months during the course of years one and two of the project. Travel to the provinces will be required.

STTA – Institutional Specialist (International)

Scope of Work – Provide input to component 1, particularly;

- i. Review the existing institutional arrangements for the CLU;
- ii. Review capacity building, training and education issues and requirements for the CLU and develop a training plan for staff;
- iii. Review the issues of staffing and funding of positions and if necessary develop a case for employment of staff to support CLU activities;
- iv. Meet with government and external personnel to gain an appreciation of the operations of the CLU and the external support mechanisms that could be used to support CLU activities;

- v. Assess the administrative requirements of the CLU and assist with developing appropriate administrative procedures;
- vi. Assist the CLU in developing a strategic plan, annual plan, financial plan and appropriate reporting systems;
- vii. Support the development of appropriate M&E systems to monitor and evaluate tribunal activities.

Specific Skills and Experience

- A qualification in an appropriate discipline (e.g., HRD, Organisational Development, Education, Public Administration);
- 10 years experience in developing and delivering training programs in developing countries;
- A knowledge of Bislama would be beneficial.

Tenure

The appointee will be required to work in Vanuatu for approximately three months at the commencement of year one of the project. Some travel to the provinces may be required.

LTTA – CLU – Technical Support (ni-Vanuatu)

Scope of Work – Provide input to component 1, particularly;

- i. Provide management support to the head of the CLU including public awareness, training and legislative review;
- ii. Participate in meetings, workshops and training activities and support such activities as required;
- iii. Develop appropriate M&E tools to ensure CLU activities can be suitably reported, managed and refined as required;
- iv. Develop financial and management tools necessary to support the CLU;
- v. Support the development of a strategic plan and annual plans;
- vi. Assist with the development and implementation of all CLT activities.

Specific Skills and Experience

- Previous experience in customary rights activities;
- Relevant university qualification such as anthropology, law,
- Bislama is essential

Tenure

The appointee will be required to work in Vanuatu with a tenure of up to 2 years. It is intended that the GoV will provide ongoing funding for this position beyond the 2 years of donor funding.

LAND INFORMATION MANAGEMENT

Background:

Vanuatu and New Zealand have agreed to work together in strengthening land information management systems in the Ministry of Lands in Vanuatu. The objective is to provide technical assistance to improve land information systems within the Department of Lands (DoL) aimed at meeting current and future land information management needs for better governance, service and supply and support to socio-economic development. Four sub-components are identified as follows:

Sub-Component 2.1 - IT Strategy - A Strategy that governs IT development within DoL and conforms to GoV directions for eGovernment;

Sub-Component 2.2 - Land Survey Records - Effective custodianship, maintenance and security of associated records and improved process management and analysis;

Sub-Component 2.3 - Mapping and Imagery - Effective custodianship, maintenance and supply of mapping data and services;

Sub-Component 2.4 - Valuation Services - An effective service that provides consistent and up-to-date valuations to support land and property taxation.

The programme will be implemented through the provision of New Zealand or International technical assistance over the next three years. Short Term Technical Advisors (STTA) will be deployed at intervals to meet objective timeframes.

Training:

A DoL counterpart will be assigned to each STTA. STTA's will work closely with his/her counterpart so that requirements are thoroughly understood. Capacity building should be to such a level of understanding that the counterpart is able to converse in this area with confidence and amend requirements or procedures as necessary in terms of future requirement.

General Experience and Personal Attributes:

The STTA is expected to have:

- A participatory and consultative approach to development;
- Ability to work with others, preferably in a coaching role and in developing teams;
- Previous experience in training, preferably in the context of information technology and ability to train counterparts;
- Good organisational, team work and interpersonal skills and be able to review and analyse outcomes;
- Ability to develop clear, concise, written procedures and respond to changing demands;
- Knowledge and experience of similar projects in developing countries, particularly in other Pacific Countries;
- Sensitivity to other cultures and ability to work effectively with Pacific Island culture and environment;

- Sensitivity to different ethnic value systems and communication differences;
- An understanding and commitment to gender equality;
- Understanding of the NZAID Guiding Principles and Policy Framework;
- Knowledge of Bislama would be an advantage.

Working Arrangements:

The STTA's will be located in Vanuatu at Port Vila. The DoL will provide the office space and furniture needed to implement the assigned tasks. The appointee's are expected to provide their own laptop for computer development.

STTA – Cadastral Data Capture Specialist

Scope of Work – Provide input to component 2, particularly;

- i. Develop and document procedures for the creation of a DCDB within the MapInfo environment;
- ii. Schedule DCDB capture in terms of AusAID's priorities for capture for validation of lease/titles records;
- iii. Develop and document procedures for the maintenance of the DCDB to appropriately record lodged, approved and registered survey plans;
- iv. Develop and document procedures for scanning of existing survey plans and scanning of survey plans and supporting documents on lodgement;
- v. Train staff in DCDB and scanning procedures.

Specific Skills and Experience

- A tertiary qualification in survey draughting or related land information fields;
- Experienced in the use of MapInfo application software;
- 10 years experience in development of land information systems.

Tenure

The appointee will be required to work in Vanuatu for approximately seven monthly components spread over years 1 to 3.

STTA – Land Cadastral Survey Specialist

Scope of Work – Provide input to component 2, particularly;

- i. Review existing survey legislation and regulations and existing survey and plan examination practices;
- ii. Consult with the Surveyor General and private surveyors on practice and procedural requirements;
- iii. Document recommended changes in practice and procedures for consideration by the Surveyor General;

- iv. Assist with the implementation of change.

Specific Skills and Experience

- A tertiary qualification in Land Surveying;
- 10 years practical cadastral surveying experience, preferably within both private practice and government organisations.

Tenure

The appointee will be required to work in Vanuatu for approximately five monthly components spread over years 1 to 3.

STTA – Geodetic Survey Specialist

Scope of Work – Provide input to component 2, particularly;

- i. Review the existing geodetic control network;
- ii. Document improvements necessary to make fit-for-purpose;
- iii. Development, schedule and cost a programme for upgrade for further consideration by NZAID.

Specific Skills and Experience

- A tertiary qualification in Geodesy or Land Surveying;
- 10 years practical experience in provision and analysis of survey control.

Tenure

The appointee will be required to work in Vanuatu for approximately one month at the commencement of year 2.

STTA – Valuation Specialist

Scope of Work – Provide input to Component 4, particularly;

- i. Review of the present Valuation Roll and design requirements for an effective system to provide updates and maintenance and systematic adjustment;
- ii. Develop procedures for the use and maintenance of the Valuation Roll;
- iii. Develop standards and procedures for uniform valuation assessments;
- iv. Provide training in the use of the improved systems and procedures;
- v. Develop and maintain skills and resources (capacity) within the DoL Valuation unit to perform valuation tasks.

Specific Skills and Experience

- A tertiary qualification in Land Valuation or related land information fields;
- 10 years practical land valuation experience, preferably within both private practice and government organisations.

Tenure

The appointee will be required to work in Vanuatu for approximately seven monthly components spread over years 1 to 2.

STTA – IT Strategic Planner

Scope of Work – Provide input to Component 1, specifically:

- i. Consult widely with GoV and DoL officials to ascertain visions and directions;
- ii. Consult with the AusAID design team on their vision of requirements;
- iii. Consult with customers on their requirements and expectations;
- iv. Review appropriateness of GoV IT Strategy for DoL LIM initiatives and make recommendations for change where required;
- v. Develop an IT Strategy and assist in the development of guidelines and standards that meets the short and long-term goals and objectives of land information management within DoL whilst complying with the GoV e-Government initiatives.

Specific Skills and Experience

- A tertiary qualification in Information Technology, or land information related field;
- 10 years experience in information technology and strategic planning.

Tenure

The appointee will be required to work in Vanuatu for two weeks at the commencement of year one.

STTA - IT Analyst/Designer

Scope of Work – Provide input to Component 2 and 4, particularly;

- i. Review existing and future requirements for a Survey Records Management System and develop a design specification;
- ii. Review existing and future requirements for a Valuation Roll and develop a design specification;
- iii. Review and develop a design specification for the development of a Geodetic database;
- iv. Identify requirements for support of on-line and remote (web-based) access to textual and geospatial information contained within DoL databases and develop design specifications.

The STTA will be required to consult and coordinate with the AusAID design team on their activities and the impact this may have on the data model and design.

Specific Skills and Experience

- A tertiary qualification in Information Technology, or land information related fields;
- 10 years practical IT Analyst experience, preferably the development of information systems for surveying, valuation or similar land geospatial related information system applications.

Tenure

The appointee will be required to work in Vanuatu for approximately four monthly assignments during years 1 to 2.

STTA - IT Programmer

Scope of Work – In conjunction with the STTA IT Analyst/Designer, provide input to Components 2 and 4, particularly;

- i. Develop a database for encoding and maintenance of a Survey Records Management System;
- ii. Develop a database for encoding and maintenance of a Valuation Roll and to support general re-valuations;
- iii. Develop a database for encoding and maintenance of a Geodetic survey records;
- iv. Assist with user testing to acceptance of databases developed;
- v. Document operational procedures;
- vi. Provide training in applications.

The STTA will be required to work in conjunction with the AusAID design and programming team on development of on-line and remote (web-based) access to textual and geospatial information contained within DoL databases.

Specific Skills and Experience

- A tertiary qualification in computer programming;
- 10 years practical experience, preferably the development of information systems for surveying, valuation or similar land or geospatial related information system applications.

Tenure

The appointee will be required to work in Vanuatu for approximately four monthly assignments during years 1 to 2.

LTTA - GIS Specialist

Scope of Work – Provide input to Component 3, particularly;

- i. Provide on-the-job training in ArcGIS;
- ii. Assist in the production of products and services;

- iii. Assist in the production of Data Dictionaries and metadata for databases;
- iv. Assist in the formulation of policies for copyright, licensing and costing of products and services;
- v. Promote the use of geospatial data and GIS applications for socio-economic development amongst the wider user community through user groups and forums;
- vi. Review VANRIS and associated geospatial data and make recommendations for upgrade or transfer to other platforms as appropriate.

Specific Skills and Experience

- A tertiary qualification in GIS or geospatial related fields;
- Experienced in the use of ESRI's ArcGIS application software;
- 10 years experience in GIS and use of geospatial data for production of products and services.

Tenure

The appointee will be required to work in Vanuatu for approximately one year during year 1, thence undertake four monthly assignments spread over years 2 to 3.

Annex 6

Design Report on Public Awareness and Communication

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PUBLIC AWARENESS AND COMMUNICATION

1. BACKGROUND

While there have been attempts by the Ministry of Lands to create awareness nationally of the Customary Lands Tribunal since the Customary Land Tribunal Act 2001 was enacted, many users have expressed discontent over understanding of the concept and its application in trying to solve land dispute cases. Many people consulted expressed the following as weakness in the CLTA and awareness process:

- The awareness process did not cover the whole country but only a selected number of islands in respective provinces.
- The explanations were too general mainly as a result of the brief time that was given for each consultation. As the literacy rate within the country is very low, it is very important that proper time is allocated for awareness purposes and presentations.
- Language used was deemed to be too technical and thus very difficult to understand.
- There were reports of consultations not being properly attended as there were other more important ceremonies taking place close by which the majority of community members chose to attend.
- Booklets were produced and distributed but these were not shared by those who were given the publications. The low level of literacy meant that not many people and communities were able to gain any valuable information from the booklets.
- Information was kept mainly at the DoL offices in Vila and Santo and not easily accessible to many communities.
- Confusion over the CLTA has lead to manipulation and abuse.
- Awareness material was not in Bislama language which made it difficult to understand.
- Proper planning must be done to allow time for the concept to be absorbed, questions asked and responded to. A minimum of 5 days should be allocated for awareness activities in each Area Council.
- Government must involve other stakeholders in carrying out awareness, particularly NGOs, churches, Malvatumauri Council of Chiefs, and education institutions.
- The public wants to know the overall Vanuatu Government policy on land.
- Consistent support from the government of Vanuatu through the Ministry of Lands and other government ministries.

There is evidence that the current system associated with the Customary Lands Tribunal and its associated hierarchy appeals system is perceived to be alienating

disputing parties from traditional values and practices. The current system allows for chosen individuals from other localities to adjudicate between disputing parties – traditionally, the matter would be sorted internally by those with the mandate to do so (mainly chiefs).

Some feedback suggests that allowing individuals from other localities to adjudicate over land dispute cases allows some neutrality and minimises bias. To allow traditional values and practices to provide the basis for decisions on land dispute cases, it is necessary that traditional values, practices and individual rights to land ownership are documented for every area – this will ensure that decisions made by the Customary Land Tribunals are based on a common platform. Such documents should be made available to every community, education institutions and particularly at the Area Council office. The storage of a copy of documents could also be arranged with the land office so as to ensure that copies are always available. Documentation of individual rights to land ownership would include the following;

- How land ownership is passed from one generation to another;
- Individual rights to land;
- Community rights to land;
- Adopted son or daughter;
- A couple without kids;
- Purchased property;
- Right of a woman to land;
- Right of a man to land;
- Right of a daughter to land;
- Right of a nephew or niece;
- Obligations of parents, and uncles;
- Land given to individual as good will;
- Forgoing land ownership due to bad debt;
- Forgoing ownership as a result of someone else caring for your loved one.

2. CURRENT PUBLIC AWARENESS AND COMMUNICATION ACTIVITIES IN LAND

Awareness and communications on the CLTA seem to be most prevalent in the provinces of Shefa, Sanma, Malampa, and Penama. These particular provinces have experienced numerous land cases which have ended up in Customary Land Tribunals. It is clear that the CLU needs an awareness and communications strategy which will increase people's understanding and confidence in the Customary Land Tribunal process.

AusAID is currently working with the Malvatumauri National Council of Chiefs (through the Queensland University of Technology) to assess the role of chiefs and investigate strategies for strengthening the capacity of the Malvatumauri Council of Chiefs Secretariat and the ability of individual chiefs to promote and maintain stability through

the practice of appropriate good governance processes. Currently, there are a number of AusAID-funded forums such as the “GRAON TOKTOK PABLIK FORUMs” which allows the public to have their say on various land issues. Awareness and information on such forums is passed on mainly through the radio, newspapers and electronic mail. Critiques argue that these forums have been too academic and focussed primarily in Port Vila and have failed to cover other areas of the country.

The National Land Summit which was organised by the Malvatumauri National Council of Chiefs, Ministry of Lands, Cultural Centre and NGOs in 2006, was an opportunity for the public to express themselves over land issues. Participants at the summit expressed concern over what they perceive as increasing incidence of traditionally-owned land being alienated, and are dubious about any government legislation perceived to be undermining the authority of chiefs in maintaining stability in communities.

3. SUPPORT FOR THE CUSTOMARY LAND TRIBUNAL

The main objective for support of the Customary Land Tribunal is so that land dispute cases are resolved amicably based on traditional values and practices as provided under the Customary Land Tribunal Act. To assist in this it is important that clear messages are communicated with the people to inform them of the CLTA and how disputes can be resolved through the tribunal process

Public awareness campaigns need to be professionally and strategically developed so as to ensure they reach the maximum possible audience through simple and clearly understood messages. 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 currently cover the whole nation, nor is it used strategically. 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 these networks. The Wan Smolbag through their youth network would enable messages to be conveyed through theatre play acting.

To ensure that there is effective public awareness to support the CLT, the following activities are recommended:

1. **Establishment of CLU Advisory Group:** The Customary Lands Unit Advisory Group to be established as soon as possible. CLU Advisory Group will include

representatives from the following: Ministry of Lands, Malvatumauri National Councils of Chiefs, Provincial Affairs, Vanuatu National Council of Women, Vanuatu Kaljare Senta, Vanuatu Police Force, VANGO, and Ministry of Education.

2. **Use of print media, radio, etc. to sustain awareness on the CLTA:** Throughout the program, the CLTU will coordinate awareness programs through the print media, internet and radio. Members of Civil Society and other development agencies may assist in producing and implementing awareness programs on the CLTA. Programs may also include awareness on various mediation techniques.
3. **Production of booklet for use by communities:** The CLTA booklet to be revised and simplified further. More copies to be made available to all Area Councils. A pictorial version of the CLTA should also be produced and distributed to all Area Councils - organizations such as Wan SmolBag have expertise in this area and may be called on to assist.
4. **Production of DVDs for use in awareness raising in communities:** The production of DVDs in Bislama (national dialect) explaining the CLTA, and acting out various scenarios and messages is an excellent way of reaching communities. More and more communities have access and operate DVD players.
5. **Internet based awareness and Information dissemination:** The CLU needs to establish its own website, organized in such a way that information is easily accessible. A mailing list of essential institutions and individuals will form part of this process.
6. **Digicel and Telecom:** For ease of communications nationwide, the CLU may engage both Digicel and Telecom in the awareness and information sharing process. Digicel has a 90% coverage of Vanuatu. Telecom Vanuatu on the other hand, owns all the land lines.
7. **Line Ministries:** CLU to provide information and awareness to government employees working in government departments and projects in provinces throughout the country. Awareness material and information packages can be passed on through these department representatives. Awareness materials can also be stored in these facilities.
8. **National workshops on Mediation Techniques:** Three mediation workshops to be organized by the CLU in Port Vila for over 60 participants, representing Civil Society, Private Sector and Government. The workshops which will be hosted in Port Vila at the beginning of the program, mid-term and at the end of the program will take (at least) 20 participants in each workshop. The workshops will focus on mediation techniques and will be facilitated by a Technical Assistant, and

coordinated by the CLU. Individuals trained in mediation techniques will assist in mediation training in provinces and may even be requested to provide mediation services in land dispute cases. At least one third of participants in these national workshops must be women.

9. **Provincial Mediation Training and CLTA Awareness:** Twelve training programs involving 186 participants from 62 Area Councils will be carried out during the duration of the program generally at the provincial capital. At least 3 representatives are expected from each Area Council, one of which will be a woman. The provincial workshops will be coordinated by the CLU with assistance from a Technical Assistant and change agents such as Wan SmolBag and other members of Civil Society. In a society where the literacy rate remains quite low, it is very important that other methods of awareness raising are used. Wan SmolBag is well known for its advocacy work using drama.

Area Council Secretaries, Provincial Councillors, Cultural Centre Field Workers and Education Zone Curriculum Advisors may also be invited to participate in this training and awareness workshops on the CLTA.

10. **Strengthen the Capacity of the Area Council Secretary as a conduit to information dissemination on the CLTA:** It is very important that respective provincial establishments are familiar with the CLTA – the CLU must build workable relationships with Provincial Headquarters, Area Council Secretaries and Provincial Councillors. It is important that space is allocated in every Area Secretary Office for storage of CLTA awareness material – communities can access these materials whenever necessary.
11. **National Workshop on the findings of the program:** A national workshop to be organized after the first two years of the project to discuss and review achievements and challenges and to assess future directions. All Area Councils must be represented. At least one third of participants at this workshop to be women.

4. WOMEN AND LAND ISSUES

The *Constitution of the Republic of Vanuatu* grants women de jure equality and makes sex discrimination specifically illegal. Whilst there are Constitutional provisions guaranteeing women equal status with men, the legal system often fails to enforce these provisions. It is important that the project is pro-active in ensuring that women are part of the Customary Land Tribunal process. This means that women must make up at least one third of mediators to be trained at the national level. At least one third of participants attending awareness workshop on the CLTA must be woman. As trained mediators, women must be encouraged by the CLU to facilitate dialogue during land dispute processes.

The following are some of the issues raised by Women at a recent land workshop in Port Vila:

- Need for Legislations on matrimonial properties.
- Women's customary land rights not understood.
- Women's land rights concept not clear to women.
- Encourage more women participating/share decision making at community level to national level.
- Gender awareness training is required.
- Structures to be in place within the community for information to flow.
- Need studies, documentation and information sharing.

In terms of educating women on land ownership issues, participants at the workshop proposed the following:

- University of South Pacific (USP) could help in providing a course on land and land related issues.
- Encourage old people to pass on their knowledge to the younger generations.
- Educate girls about customs & tradition about land rights.
- Gender training and training to empower women to participate in all processes at all levels.
- Train women as trainers.
- Gender and development training and awareness through VNCW.
- Encourage participatory learning in schools that would allow young people to actively be part of the learning process so that they can be better equipped to be part of the community processes including land.
- Gender awareness training to female and male leaders and members of the Tribunal.
- Conflict prevention training to leaders in the provinces but also to land owners to respect females/males (Vanuatu Women's Centre could do this).

It should be noted that the initial training provided for the CLTs did not have a specific gender focus. As a result women are very poorly represented as members of tribunals (4 out of 175 names nominated) and have limited understanding in relation to their rights at the tribunal and also in relation to land issues generally.

It has been reported that the majority of women know nothing about how they could participate in customary land tribunal discussions (Simo 2005: 34). Therefore, while the Act may have scope to include women in Tribunals, the information provided to ni-Vanuatu by the CLU does not emphasise this option to communities. While several of Vanuatu's land laws have scope for gender equality, it is their interpretation by administrators that undermines the decision-making opportunities for women.

Issues of gender need to be approached sensitively, particularly in relation to women's participation in customary decision-making structures. To assist in gaining a better

understanding of the activities of the CLT and also to enable a gender impact assessment of tribunal activities to be undertaken it is proposed that an anthropological study be included as an activity within the project. This study would need to be undertaken prior to the commencement of the review of the Customary Land Tribunal Act.

5. THE ROLE OF NGOS AND CIVIL SOCIETY

Civil Society members in Vanuatu play a significant role in planning and service delivery in rural communities throughout Vanuatu. Quite a number of established members of Civil Society have national networks with links from central right down to grassroots level. As the umbrella body of NGOs in Vanuatu, the Vanuatu Association of NGOs (VANGO) signed an MOU with the Government of Vanuatu in 2004, agreeing on the principles of engagement between the two entities. Working relationships between government, NGOs, and other members of Civil Society has been great. The following are members of VANGO who may be engaged in some aspects of this program:

NGO	AREAS OF ACTIVITY
Live and Learn Environmental Education	Works in all provinces throughout Vanuatu on Environmental Education
Oxfam International-Vanuatu Office	Focused on but not limited to, youth development in the areas of: Economic justice and livelihoods, HIV & Aids, gender justice, active citizenship and advocacy, and human security (Disaster management and conflict mitigation)
Save The Children Australia	Save the Children fights for Children' rights and delivers immediate and lasting improvements to children's lives worldwide. It aims to ensure that all children, regardless of gender, race, country of origin or religious belief have the means of survival, receive protection and have access to nutrition, primary health care and basic education. SCFA works in all provinces of Vanuatu.
Foundation of the Peoples of the South Pacific Vanuatu	FSP Vanuatu is has existed since the 1980s and focuses on development issues throughout the country.
Vanuatu Rural Development Training Centre's Association	VRDTCA has rural training centre network throughout the islands of Vanuatu. Main focus is on Non Formal Education – Curriculum Development, Capacity Building and Governance.
Nalmaluien Kape Ramar Mene	Water and Sanitation, women's home health, small business enterprise development, facilitating Seasonal Workers to New Zealand. Based primarily in Tanna, Tafea province.

Vanuatu Women' Centre	VWC as volunteers around the country in local communities set up committees against violence against women. Currently there are 37 committees involving a total of 222 members. Expertise of VWC is in Gender Equality, Gender Violence, Human Rights, Legal Advocacy and Research.
World Vision	Works in the majority of provinces. Main focus on adult literacy, water and sanitation, and capacity building
Voluntary Service Overseas	Working in the areas of participation and governance and HIV/AIDs
Wan SmolBag	One of longest established NGOs in Vanuatu. Focuses primarily on good governance advocacy using drama. Also has expertise in other forms of awareness methods including using pictures and cartoons, etc. Known locally, nationally, regionally and internationally.
Youth Challenge Vanuatu	Youth livelihoods and life skills and community development. Youth Challenge involves both international as well as local youths working together throughout the country
Vanuatu National Council of Women	Vanuatu National Council of Women is the national umbrella for women councils all over Vanuatu. Main focus is governance issues, particularly Women's Rights.

6. ROLE OF CHIEFS

While this program may not target training of Chiefs in Mediation and other techniques, it is very important that Chiefs do possess the necessary capacity to deal with land dispute cases in communities. Chiefs should not only know the contents of the CLTA but also be involve in mediation activities and training. In the absence of neutral mediators, particularly in remote communities where access is difficult, it is very important for chiefs to possess mediation skills to settle land disputes as urgently and expeditiously as possible.

It is in the best interest of the Malvatumauri National Council of Chiefs to work closely with the CLU to ensure that Chiefs throughout the six provinces are aware of the program implementation. AusAID, through the Queensland University of Technology (QUT) is providing technical and financial assistance to the Malvatumauri to help it build its capacity nation-wide, particularly in the governance sector.

7. DOCUMENTATION OF CASES

All cases facilitated through the Customary Lands Tribunal must be documented. Arguments from both sides and decisions taken must be documented to show how certain decisions are reached. These cases must be kept at the Area Council Secretary office and CLU for future references. Cases could also be stored in land offices for safe

keeping. Training on minute taking must be provided to those responsible and especially to the secretaries of Customary Land Tribunals.

8. INSTITUTIONALISATION OF CLT

It is essential that awareness and information on the Customary Land Tribunal Act is accessible by the majority of people throughout the provinces. As administrator of the CLTA, it is the role of CLU to have available the relevant material for distribution to communities. Other institutions that will store awareness and information material on the CLTA will include the following:

- Line Departments.
- Provincial Headquarters.
- Area Secretary Office and Provincial Sub-centers.
- Police outposts.
- Provincial Health facilities.
- Community Chiefs.
- Education institutions throughout the provinces (both public and private).
- Community Centers (Churches, youth centers, etc).
- Non Government Organization offices throughout the country.
- Private individuals.

The success of this program will depend very much on the involvement of stakeholders from inception to implementation. The reason for emphasising participation is that it consists of a “bottom-up” approach to development efforts rather than “top-down”. In the participatory approach, the people who will be affected by a program are brought in from the beginning so that they feel that they own the program and thus less resistant when the program is being implemented. Key to the success of this program therefore will be the ability to develop and maintain a supportive working relationship with central agencies, line ministries, Malvatumauri National Council of Chiefs, local regional councils, Church leaders, women leaders, civil society and local service providers. Coordination with other partners such as AusAID, European Commission and other development agencies is also advisable.

Stakeholders should collaboratively think about and discuss what the problems are and what are the good points of the project plan for the situation in a community. This process will serve not just for local people to inform outsiders but also for people to analyse their own situation. Stakeholders collaboratively decide based on what is expressed in the group and collaboratively agree on a strategy and on a time frame for implementation. As stakeholders have diverse experiences and educational backgrounds, it is essential that a lot of effort is expended to ensure that there is common understanding among the stakeholders.

9. MEDIATION

Although Section 6 of the Customary Land Tribunal Act refers specifically to the opportunity of arriving at a decision prior to being considered by a tribunal and this decision being recorded, this section does not enforce a process of mediation prior to a land dispute going to a tribunal. It is proposed that mediation become a compulsory

activity prior to any case being referred to a tribunal. Without mediation having taken place it is proposed that a case cannot be approved for submitting to a tribunal.

The implementation of mediation will require a concerted effort within the project to ensure that mediation is successful and is seen as a process that is preserving custom. During field visits there was very strong support for mediation as it was believed that too many disputes were referred directly to the tribunal without there being any attempt to resolve the dispute before hand. There were also strong feelings that the tribunal process was removing the dispute resolution process from the customary systems.

The project will support the development of mediation activities through the development of a "training of trainers" program for mediation and then the training of selected people from each of the Area Councils as mediators. A specific focus will be on the training of people such as teachers, church elders, respected community people etc in mediation skills. Although it may be necessary in some areas to train Chiefs as mediators it is considered preferable that Chiefs not be mediators as it is possible that they will be involved in the tribunal process if mediation fails.

It is also recommended that a register of mediation trainers and mediators be established. It is believed that there are other activities in Vanuatu where mediators are either proposed or are now being used. It would therefore be beneficial for all those involved in mediation activities if a register was created. Further work will be required in relation to the establishment of a register and a decision made on what agency will be responsible for managing the register.

Annex 7

Design Report on Review of Customary Land Tribunal

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CUSTOMARY LAND TRIBUNAL ACT

1. BACKGROUND¹²

With respect to land dispute settlement, the Constitution of Vanuatu provides that the government “shall arrange for the appropriate customary institutions or procedures to resolve disputes concerning ownership of custom land”. To this end, the Government passed the Customary Land Tribunal Act, 2001 establishing tribunals that build on existing custom (kastom) structures to manage disputes over ownership and land boundary issues. An aim of the Act was to implement the provisions of Article 78 (2) of the Constitution of Vanuatu by providing an alternative customary institution to the Island Courts, for resolving disputes as to custom ownership of land in Vanuatu.

A Customary Land Tribunal Office (now the Customary Land Unit) was subsequently set up within the Department of Lands, and two Department officers temporarily assigned to undertake the implementation of the Act.

NZAID (NZODA at that time) provided funding in May 2001 for the consultative process that contributed to the drafting of the Act. Following enactment of the legislation, further NZAID assistance was provided in May 2002 to:

- the Department of Lands to conduct awareness and training workshops with rural communities on the provisions of the Act, and
- Malvatumauri, to undertake awareness work with chiefs and determine true customary chiefs who would be eligible, along with community elders, to sit on Customary Land Tribunals.

The work of supporting the Customary Land Unit (CLU) and Malvatumauri has been ongoing since May 2002, although the overall success and impact of each in relation to the Customary Land Tribunal (CLT) activities is problematic.

In an ideal world where there was no migration, no disputes as to the rightful chiefs, no temptations from large cash incentives for development, where chiefs still lived in the village, and where the chief's authority was not challenged, the traditional customary processes would continue to be effective in resolving land disputes. Unfortunately this is not the situation across the whole of Vanuatu and new procedures to resolve land disputes have had to be adopted to complement the traditional customary processes. The Customary Land Tribunal is a compromise in that it uses customary law in a non-customary process. Findings were that it still offers the best alternative in situations where the customary procedures cannot be applied effectively.

If custom has not resolved the dispute people can apply to go to the village land tribunal, which may be joint if more than one village is involved. The meeting of the

¹² Much of the information in this section has been taken from the NZAID report; Mavromatis, G., Prof Paterson, D., Kanawi, J., Simo, J., and Vuti, A; (February 2005); *Implementation of the Customary Land Tribunal Act No 7, 2001*

tribunal is widely advertised and there can be multiple parties to the dispute. The principal chief and two other chiefs or elders of each village involved form the village land tribunal. Parties can object to the tribunal members if, for example, there are clear conflicts – although neutrality is not sought; indeed invariably tribunal members will have connections with the parties to the dispute. Presentation of each side's case proceeds without rules of evidence, and there is considerable freedom as to questioning and who can speak. No lawyers are permitted to participate.

The procedure can be stopped at any time if an amicable settlement is reached, however if this does not occur by the end of the hearing then the tribunal members must use custom law to make a decision. The decision can be appealed to a higher tribunal. Appeals from tribunals are reviewed by a higher land tribunal, be it a single/joint sub-area/custom area land tribunal. Jurisdiction over a final appeal lies within the island land tribunal. Some islands, such as Ambae, have, with general agreement, developed their own areas or "wards" for administering the Act.

The tribunal process is participatory, and people get to tell their stories to tribunal members. Implicit in the idea that tribunals are to use custom to make their decisions is that custom will be affirmed. The remit of the tribunals to use custom is left loose, so as to allow for variation in different regions, and for custom to evolve. Legitimacy for the tribunal's decisions is thought to spring from the power and legitimacy of the tribunal members themselves, which they have gained through their community standing.

The CLTA was primarily designed to overcome the issues that were associated with the use of the Island Courts to resolve land ownership. These included the high cost of litigation, lengthy waiting periods for hearings and appeals, and the Court's lack of knowledge of local custom. Therefore by eliminating these issues with the new legislation it was expected that the following positive outcomes would eventuate:

- economic development would be facilitated;
- kastom would be upheld, supported and reinforced in Vanuatu;
- the process to resolve customary land disputes could be sustained by the resources that were both available and accessible in Vanuatu.

2. ADMINISTRATION OF CUSTOMARY LAND TRIBUNAL ACT

2.1 Customary Land Unit (CLU)

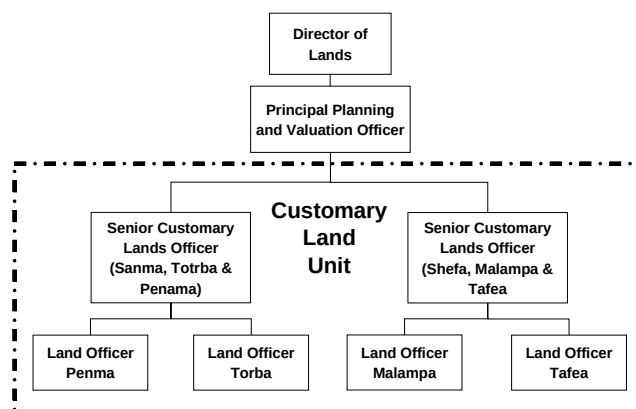
The administrative office established to support the Customary Land Tribunal Act of 2001 the Customary Land Tribunal Office (CLTO) consisted of a National Co-ordinator, a Resource Management Officer, and a secretary, all of whom were located in Port Vila. The organisational structure for the DOLSR approved in December 2004 did not include approval in the structure to support customary land activities.

Following a review in 2005 it was proposed that a Customary Land Unit (CLU) be established in the Department of Lands in an attempt to address a number of deficiencies and organizational issues associated with the CLTO. In the report a number of recommendations were proposed to more clearly define the role and responsibilities of the CLU. The purpose of the CLU was redefined to facilitate the

effective resolution of disputes involving customary land and it was recommended that the CLU “provide advice, support and training for kastom landowners and land users on all matters that affect their relationship with the land, especially leasing and ownership”.

This change in focus of the responsibilities of the CLU was a reaction to a number of land issues that were impacting on Vanuatu at the time and still continue to impact, in areas such as land leasing and land use. The CLU has never been in a position to fill these responsibilities for several reasons. Firstly the task of providing advice and support on issues related to land leasing, land use and land ownership was well outside the scope of activities required to support the Customary Land Tribunal Act and the staff of the CLU were not equipped to provide such advice. Secondly staffing and funding issues were always going to make the undertaking of this task difficult given the other activities that needed to be undertaken to provide adequate administrative support to the land tribunals. These additional responsibilities have resulted in the CLU having difficulty in undertaking its administrative responsibilities under the Act and the Senior Customary Lands Officer of the CLU has only recently put a proposal to the Director of the DoL that the unit focus solely on fulfilling its requirements under the Act and cease immediately providing any advice and support in relation to land disputes, land leases etc.

A structure for the CLU was approved in March 2006 and is shown in the organisation chart. Of the 6 positions in the approved organizational structure only one position, that of Senior Customary Lands Officer (Shefa, Malampa and Tafea) based in Port Vila, is filled by a full time officer. Two other positions in the organizational structure are presently filled by contract staff. It is intended that one of the contract staff will fill the position of Land Officer in Malampa and the other is presently filling an administration and support role. In Sanma Province one of the officials in the Land Office in Luganville undertakes a part time role in supporting the CLT activities devoting approximately 30% of his time to tribunal activities



The purpose of the CLU is to provide administration support for the CLT Act and has wide ranging responsibilities. The objectives of the CLU 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.

To achieve these objectives it aims to collaborate with the Malvatumauri to carry out training and establish Land Tribunals throughout the country; undertake public awareness campaigns and provide appropriate administrative support to tribunal activities. The CLU has adopted a set of performance measures however it has continually struggles to carry out its responsibilities, at least partly due to the limited staff resources available and limited funding. It would appear that the reorganisation following the 2005 review has had little impact on addressing any of the issues facing the operations of the CLU.

2.2 Progress with Implementation and Administration of the Act

The introduction of the CLTA has provided a valuable formal mechanism for resolving land disputes. However, a number of factors have obstructed the operation of CLT to date. These have largely been the lack of capacity of the CLU to fully implement tribunals and the inability of DoL to dedicate sufficient trained resources to service the land tribunals throughout each province to resolve the backlog of land disputes. The training and awareness initiative previously undertaken served as an introduction to tribunal activities but the role and means of access to the CLT still needs further promotion throughout the country. There is a low level of custom owner awareness of the role of the land tribunals and related land issues including the short and long term implications of leasing and development. The initial allocation of DoL officers for part of their time to CLT activities has not been maintained, indicating the difficulties the DoL has of maintaining dedicated resources for CLT activities.

However given the lack of resources to administer CLT activities and the administrative diversion it would appear that the overall concept of the Act and the purpose for its establishment has been generally well received. This is supported through the statistics in the following table that highlights the significant increase in tribunal activities between February 2005 and August 2008.

Customary Land Tribunal Statistics

Location	From 2001 to February 2005			From 2001 to August 2008			
	Number submitting tribunal names	Number of hearings held	Number of villages involved in hearings	Number submitting tribunal names	Number of hearings held	Number of villages involved in hearings	Council of Chiefs- Decisions Recorded ¹
Malekula	43	0	0	50	32	40	6
Ambae	21	2	1	21	10	15	2
Santo	42	25	5	40	110	120	10
Efate	15	5	4	15	30	35	4
Tongoa	1	0	0	2	0	0	0
Epi	13	0	0	13	1	0	1
Erromango	2	0	0	5	9	12	4
Torres	4	0	0	4	0	0	0
Banks	15	0	0	15	0	0	0
Tanna	6	0	0	6	4	4	6
Ambrym				3	1	1	0
Paama				1	0	0	0

TOTAL	162	32	10	175	167	227	33

Note 1: Council decisions refer to kastom settlement as per section 6 and have been recorded in the CLU database.

During this period there has been an increase of 135 tribunal hearings covering more than 200 villages. This table also shows the number of decisions that have been recorded by the Council of Chiefs under Section 6 of the Act and have been settled outside of the tribunal process. This is a key statistic when considering the current issues under the legislation and the strong recommendations for there to be an increased focus on mediation activities under Section 6.

2.3 Organisation

Under current organisational arrangements the CLU sits within the DoL and the Senior Customary Lands Officer reports to the Principal Planning and Valuation Officer. There is presently a proposal to move the CLU under the Ministry of Justice which is the ministry under which the Malvatumari is located. This would appear to be a good proposal and it is understood that both the DoL and Ministry of Justice (MoJ) agree with the transfer and that the move is now dependent upon some administrative arrangements being clarified.

The current situation in the GoV in relation to the filling and funding of vacant positions means that it is important that a pragmatic approach is taken in relation to organisational arrangements and this could not be more relevant for the CLU. It must be accepted that although the organisation structure for the unit has been approved there is little likelihood in the immediate to medium term of the unfilled positions being filled. For this reason future activities of the CLU must be planned around existing resources and use made of existing or proposed staffing structures within other areas of government and external to government.

For the foreseeable future it is recommended that the organisational focus be on building administrative capacity at the central level in Port Vila. There is presently one fulltime person and two contract staff based in Port Vila. Providing the contract staff can be retained and the positions converted into fulltime positions this will provide a minimal level of resources for the development of the administrative support required under the Act. Although the number is not ideal it will be possible to undertake all activities with the use of external regional resources. There is one officer in Luganville who is providing part time support for CLT activities, however with the CLU moving to another Ministry the relationship and the ability for the CLU to utilise the services of this position is unclear.

There are a number of options that can be explored that will enable the CLU to expand its overall support for the Act wider and into the key provinces and over time to all provinces. The first option is to make use of the Area Council secretaries. The government has broken each of the provinces into smaller administrative areas called Area Councils (similar to local government areas) and there are 62 of these areas. Each Area Council has a secretary who is employed under the Ministry of Internal Affairs and provides general services to their Area Council. One possibility to be explored is to provide training to these secretaries with the aim of them being in a

position to provide general advice on the CLTs and to issue and collect documents for returning to the CLU.

A further option that can be explored is to link into the AusAID funded land sector program for Vanuatu which through its support is proposing to establish provincial “Focal Point Officials” who with appropriate training will be in a position to provide general support and advice on a broad range of land matters. It would therefore be possible to provide these officials with training on the CLTA and for them to undertake an administrative role on behalf of the CLU. With the establishment of a provincial support network it will enable the staff of the central CLU to focus on providing (i) public awareness and training; (ii) records maintenance – records of decisions reached in land tribunal hearings and through alternative processes; (iii) performance monitoring; (iv) support services; and (v) policy advice to government. Being able to focus on these activities will ensure that the implementation of the CLT activities are strengthened and that people are better informed on the purpose and operation of the tribunals.

2.4 Training

Training has been the major activity undertaken by the staff of the CLU with many hundreds of chiefs and elders having attended courses. Training was seen as the precursor to having the chief of the village submit a list of names of possible adjudicators and secretaries for approval.

The 2005 review noted that the standard of training was questionable with some people having little or no knowledge of the tribunals and their purpose and the training provided to the village adjudicators and secretaries was largely inadequate and method of presentation generally inappropriate. There was a focus on presentations to large numbers of people that ran for two days and were generally in the form of lectures.

It was found that villages that had a high knowledge of the tribunal were characterised by, being on Efate or Santo, having relatively easy access to CLU staff, having very regular contact and support from the CLU staff, having held a number of hearings and continued exposure to the Act through the points listed above although not having attended any training courses.

Training also appears to have been seen as a one-off training event rather than a series of activities that would eventually result in proficient land tribunals. The lack of effectiveness of the lecture style of the training was further compounded by the lack of follow-up, particularly outside Santo and Efate.

The lack of training is seen as one of the major impediments to the broad acceptance and understanding of the land tribunals. It is also seen as one of the major reasons for a misunderstanding by many people as to when the tribunal should be used and the rules that govern the operation of tribunals.

If the overall successful acceptance of the tribunal process is to be maintained and the tribunals are to continue to operate effectively and to serve the purpose of addressing land disputes there is an overriding argument for a significant increase in the support for public awareness programs for the general public and for an increase in the training provided to tribunal members. The pressure on tribunal members and especially the secretaries to ensure that the tribunal is operated in accordance with the Act and that

procedures are adequately recorded is enormous and is exacerbated when the responsibilities are placed in the hands of people who may have a low level of education and literacy skills.

The key messages in relation to training that were recorded in the 2005 review remain relevant and are worthy of repeating here:

- That training is recognised as one component in an implementation program that will require a series of different inputs to be effective. Unless the whole of the program can be adopted, isolated training courses that are broadcast across the country should be minimised.
- That the implementation program be designed to address attitude and commitment, as well as skills and knowledge.
- That the implementation program, and specifically the training inputs, should be based on an understanding of the issues, attitudes and knowledge prevailing in the target audience which will have been formally assessed.
- There is a need to set clear and relevant learning objectives. For the effective implementation of the Act, adjudicators and secretaries would need to be both competent and confident to hold tribunal hearings.
- That the training program clearly set out the target locations and the target level of outcomes sought, and the expected timeframe for delivery. The areas with the greatest need would be given greatest priority.
- That the staff of the CLU are provided with formal training in adult education, in designing and running training programs, and in designing appropriate learning aids and handout material.

2.5 Role of the Malvatumauri and Chiefs

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. The Malvatumauri (National Council of Chiefs) plays a key role in the administration of the chiefly systems. Malvatumauri and the Island Councils of Chiefs are critical where chiefly disputes preclude the application of the tribunals. It is an important part of the land tribunal process that the Malvatumauri continue the processes of facilitating the identification of rightful chiefs so that kastom can be applied to customary land disputes. The Government must continue to work with the Malvatumauri and ensure that they receive appropriate support.

AusAID through its Governance for Growth program is providing support to the Malvatumauri. The focus of this partnership is the provision of support for the Malvatumauri 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. The priorities of the program include the development of training plans for secretariat officials at national and island level Councils of Chiefs and the provision of support to meet initial and high priority training needs; and the provision of office equipment for the Malvatumauri Council of Chiefs office in Port Vila which would enable them to communicate more effectively with partners and other Councils of Chiefs.

The Malvatumauri are an integral component of ensuring the overall success of the Customary Land Tribunal Act and it is therefore important that they receive appropriate support necessary to undertake their support role. In reviewing the activities of the Malvatumauri it was realised that at present they have limited capacity. However the AusAID funded program is going some way towards addressing this issue. Given this support and the limited absorptive capacity it was considered that there would be no advantage gained in NZAID also adding support to the Malvatumauri. It will however be necessary to ensure that the support that is provided to the Malvatumauri is sufficient to support the activities required under the Customary land Tribunal Act.

2.6 Gender

There have been several reports prepared on the position of women in relation to land in Vanuatu and the position women play in relation to land. Although the Constitution incorporates non-discrimination, it is argued that Article 74 of the Constitution, which states that “the rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu”, means that many land cases may have typically ignored Article 5 in preference to custom, which means that women’s rights may have not been considered.¹³

The Customary Land Tribunal Act does not specify women’s land rights under custom law or the rights of women to have equal opportunity in participating as adjudicators in the Tribunal. Although women are not specifically excluded in the process, the lack of an affirmative statement in the legislation means that women and their role in the tribunal process are more than likely overlooked and in fact it is rare for male chief’s to appoint women as adjudicators. This creates the potential for discriminatory practices to be reinforced in the tribunal process.

In a previous NZAID funded review of the Customary Land Tribunal Act¹⁴ the implications of women’s involvement in the adjudication process was reviewed. It was noted that there was a very low level of involvement by women in the tribunal process. Some of this was attributed to kastom, where women are excluded from participating in the land ownership decision-making process. However even in villages where this was the case, there appeared to be no impediment to women participating in the tribunals as secretaries, other than the women themselves. In villages where the chiefs had said that they were encouraging women to put themselves forward as tribunal secretaries, there had been very low uptake.

¹³ Naupa, A., and Simo, J.; (2007) *Matrilineal Land Tenure in Vanuatu “Hu I Kakae long basket?” Case Studies of Raga and South Efate*; p 20

¹⁴ Mavromatis, G., Prof Paterson, D., Kanawi, J., Simo, J., and Vuti, A; (February 2005); *Implementation of the Customary Land Tribunal Act No 7, 2001*; NZAID

The CLU statistics show that on Efate there are two women who have been appointed to undertake secretarial responsibilities and on Malakula Island two women have been appointed to the list of tribunal members. Other than these figures the CLU does not have any reliable statistics on women's participation in tribunal activities. However it would be reasonable to state that women's involvement is significantly less than the actual role that they play in the overall management and use of land.

There is the need for an affirmative action approach to be taken in relation to women and their involvement in the land tribunal. As stated above women are not excluded from being a member of a tribunal but at the same time there is no emphasis on them being an active participant in proceedings. It is not clear what part if any women play in being witnesses and parties to discussions in relation to land disputes.

It is recommended that the following gender affirmative action activities be supported and encouraged with the aim of increasing women's awareness of and involvement in the Customary Land Tribunal activities:

- National Land Steering Committee to promote the benefits of including women in decision-making as part of the public awareness and education programs;
- The project support the involvement of the Vanuatu National Council of Women in project awareness and gender training programs;
- Malvatumauri to implement its National Land Summit recommendation for research into gender roles relating to land;
- Malvatumauri to lead a campaign for all chiefs to actively support women's participation in land matters and to promote women's traditional leadership roles;
- Customary Land Tribunals awareness and implementation activities to promote women's participation and link into women's traditional leadership roles.

As well as these initiatives it is important that gender awareness is included in all literature, public awareness and training provided through the project.

3. REVIEW OF THE CUSTOMARY LAND TRIBUNAL ACT

During the development of the project design an initial assessment of the *Customary Land Tribunal Act 2001* was undertaken initially by way of a desk review and then through discussions with government officials and stakeholders who have been involved in tribunal activities. The following is an assessment of the Act gained from these processes and is intended only to provide an insight to the issues that may need to be addressed as part of a comprehensive assessment and the Act and the draft of amendments or maybe even the drafting of new legislation.

3.1 Introduction

- (a) The Customary Land Tribunal Act No.7 of 2001 (CLTA) was passed in December 2001.
- (b) The aim for the CLTA was to establish another forum or "appropriate customary institution" under Article 78(2) of the Constitution to resolve land disputes.

- (c) These are some reasons for the CLTA enactment:
 - (i) There was a backlog of Land Cases in the Island Court, so there was need to establish another forum, the Customary Land Tribunals (CLT) to hear and determine disputes over land ownership.
 - (ii) The CLT are Courts that are focused on resolving land disputes.
 - (iii) The CLT provides a system to identify custom owners.
 - (iv) The CLT process involves custom upon which custom land tenure in Vanuatu is based.
 - (v) The underlying aim is to free up land (biggest asset for Vanuatu) for economic development.

3.2 Outline of Issues with CLTA

There is a clear need to review the Customary Land Tribunals Act (the “Act”). The need arises from the following issues which were raised on the study tour of Efate, and Santo. The main issues were:

- a) The Customary Land Tribunal (CLT) process for resolving land disputes is too long;
- b) The CLT adjudicators are prone to being biased; (neutrality issue)
- c) There is a need for clarity in the CLT procedures for hearings;
- d) There are high costs for parties who bring claims to the CLT;
- e) How to speed up appeals - the Act does not specify what is to happen if appeal is not heard within 21 days.
- f) Section 6 – adoption of decisions made in accordance with custom methods outside of CLT process – this section could be used better in terms of mediation to resolve disputes before they reach the CLT. It is not clear what steps to be taken in recording decisions.
- g) The CLT is not custom – this issue is from the Chiefs and its national body, the Malvatumauri.

3.3 How well has the Legislation been received?

- (a) There has been mixed reception of the Act. Generally the more the Act was used, by operation of the CLTs, the less it was accepted as problems were realised.

3.4 Deficiencies in the Legislation and Recommendations for Possible Solutions reference to those consulted and their views.

3.4.1 Long Process

- (a) The Act provides, under Parts 2, 3, 4 and 5 for four levels of hearing. A party has 3 rights of appeal from the village, to the Island Land Tribunal, and a right of rehearing at the Island LT level.

- (b) Many of these people spoken too raised their concerns that the CLT process is too long.
- Mr Jerome Solomon – he lives at Tevroma near Luganville, Santo and had been a Claimant in the East Santo village tribunal. He stated that the process is long and that when the process is long, then money becomes an issue. It becomes more expensive the further you go. He also raised his concern that the appeal which they made to the next level Land Tribunal (Area) has not been heard for a long time.
 - Mr Gordon Willie, Officer in charge, of the Santo Lands Department confirmed that the CLT process is too long as people appeal rulings all the way to the Island LT and use the Supreme Court to challenge CLT rulings. He informed us that some parties abuse the system by appealing so that no developments can take place on land – and influencing judges not to hear appeals.
 - Mr Willie Tapasei, Secretary of a village Tribunal in North West of Efate, on Efate stated the Undaone Land Claim took two years for the village LT to complete and now it has been appealed to the North West Efate Area Tribunal. He further stated that North West Efate received 4 appeals for Takara, Creek Ai, Undaone and Leoasa Lands, and made rulings for Creek Ai and Leoasa, which have now been appealed to the Efate Island LT. He said in North West Efate custom, there is no appeal.
 - Once consultant, through his work, is aware that on Erromango Island, there have been only 2 CLT hearings that were completed in relation to Punisia Land and Ponive Land. The Ponive Land hearing began in 2005, got appealed to the Island LT, challenged in the Supreme Court, sent back to the Island LT for rehearing then challenged again in the Supreme Court. The Supreme Court in August 2008 upheld the Island LT's ruling which became final, as a party cannot appeal the Supreme Court's ruling under Section 39. It has therefore taken 3 years for the Ponive claim to be completed.
- (c) The majority of people we had discussions with said there should be only one right of appeal either from Chiefs mediation to the Area LT or from the village to the Area LT or to the Island Tribunal.

Recommendations

- Repeal and re-write Parts 2, 3, 4 and 5 of the CLTA to provide for just one right of appeal from Chief's level to the Land Tribunal.
- There be just one Land Tribunal known as the "Land Tribunal", and an appeal lies to it.

3.4.2 Bias/Impartiality Issue

- (a) Because people live together in villages, are related or know each other, Chiefs chosen as adjudicators of CLT from those villages were the subject of concerns raised that these adjudicators are biased.
- (b) Alicka Vuti, Coordinator of the CLU confirmed there are conflict of interest issues and suggests that Chiefs be empowered to remove Chiefs who are not neutral.

Selwyn Garu of Malvatumauri; said that the Chiefs are concerned that the same Chiefs sit at different levels of CLT in the same claim/dispute.

Gordon Willie of the Santo Lands Department stated parties influence adjudicators.

Willie Tapasei of North West Efate village Tribunal said there were some concerns raised about bias. Mr. Willie stated when there are bias issues, then parties challenge CLT rulings in the Supreme Court, which then prolong the CLT process.

Recommendations

- Review and amend Section 37 to prevent adjudicators being biased perhaps state that adjudicators must not have a conflict of interest. If they do they have to disqualify themselves from hearing the claim.

3.4.3 CLT Procedures need to be clear

- (a) Both Alicka Vuti and Gordon Willie stressed there is a big need to train Chiefs to ensure they are aware of the procedures. Mr. Willie said due to lack of understanding of the CLTA, Chiefs interpretation of the CLTA affects CLT rulings.
 - Produce in simple language (Bislama, English and French) rules of procedure for CLTs.
 - Provide extensive training on CLTA procedures and how to read and interpret the CLTA.

3.4.4 High Costs

- (a) Mr. Willie stated that in the Belmol Land dispute costs for each party was VT 40,000 and Mr. Tapasei said it was VT 36,000 at North West Efate for Udaone Land Claim. Some parties could not continue with their claims. High costs and unwillingness to pay these costs has contributed to the long delays in hearing CLT appeals that remain pending.
- (b) Section 32 (b) of the CLTA provides allowances for judges ranging from VT 1,500 to VT 4,000 per day. However, Section 32 (b) allows for transport and communication costs – this is where costs are raised to such high levels, and there is belief that Chiefs abuse this and over charge parties.

3.4.5 Provision to Speed up Appeal Hearings

It is not clear in the CLTA that appeals must be heard within 21 days of being received. Sections 13, 14, 18, 19, 23 only refer to Council of Chiefs convening meeting to establish LT to determine disputes, but there is no clear stipulation that the appeals must be heard within the same 21 days, or any other time period.

- On Santo and Efate almost all appeals from the village or area CLT to the next level have not been heard.
- Amend Sections dealing with appeals to specify procedure to be followed if appeal not heard within 21 days.

3.4.6 Section 6 – CLTA

- (a) Section 6 could be beneficial if it was made clearer. It provides for acceptance of rulings made in custom or a lawful way, in relation to disputes over custom land.
- (b) The Section fails to provide a procedure for how to record decisions accepted under that Section.
- (c) The Section does not state how and who should be involved in resolving disputes about custom land, the Chiefs are not mentioned.
- (d) This Section supports the systems outside of CLT, which is still widely used in Vanuatu. If that system could be enhanced, that could solve a lot of the concerns with CLT.
- (e) However, Parliament must address the Court of Appeal ruling in the case *Valele Family –v- Touru [2002] VUCA3*, which effectively declared that Chiefs rulings in relation to determining custom ownership of land are not valid; that only Courts established under the Constitution are mandated to rule as to custom ownership of Land.
- (f) A recommendation might be to legalise role of Chiefs outside of CLT in the CLTA, or provide the Chiefs mandate under the National Council of Chiefs Act to determine custom ownership dispute as to land.

3.4.7 CLT is not Custom

- (a) There was a clear message from the Chiefs that CLT is not custom, CLT are not working and the Chiefs do not want it (Malvatumauri message). However at a workshop of chiefs from Port Vila and Efate it was indicated that they would prefer to see customary matters addressed through mediation where possible, but see a role for the CLT and that assistance was required to improve the functioning of the CLT.
- (b) Mr. Garu said on Pentecost Island, the Chiefs rejected CLT because their system for resolving land disputes is better,
- (c) A recommendation can be to compare the CLTA and the Chiefs Act to see how Chiefs roles can be better utilised. The Chiefs issues seems to be that they want

to be in charge of CLT process because it uses custom and the Chiefs see themselves as the guardians of custom.

3.4.8 Section 39 – Supreme Court Supervisory Role

- (a) This Section provides for aggrieved parties to apply to the Supreme Court on procedural issues, such as CLT not taking into account a party's objection to a judge on the basis of bias. However, this right is open to parties at all levels of the CLT from village to island, so it delays the process further (see Erromango Ponive case referred to above).
- (b) There could be just one right to challenge LT ruling in Supreme Court, from the one LT.
- (c) Amend this section to provide for a specific time period, within which a party must apply to Supreme Court. There is no time limit in the CLTA as it is now.

3.4.9 Forms in CLTA Not Flexible

- (a) Same people (Willie Tapasei included) said the prescribed form to record judgements is not flexible and limits written CLT rulings.
- (b) Recommend that rules about written judgement be provided setting out a format to be used but leave it up to the judges to write the judgement.

3.4.10 CLT Not Able to Enforce Its Judgments

- (a) Malo Island ruled that certain people vacate land; they refused so the successful party had to get the Police involved to remove those people.
- (b) In both Efate and Santo people expressed lack of method or mechanism to enforce CLT judgements.
- (c) The Police could be given powers or the Court Sheriff could assist to enforce CLT rulings or the CLTA provide for CLT Sheriffs.

4. FUTURE ACTIONS

There is general agreement with the concept of the CLTs and that they have a place to play in relation to the resolving of land disputes. However there is a clear message that some actions are required if the process of land dispute resolution is to preserve, as much as possible, customary procedures and operate more effectively. These are in summary:

- (a) A strong mediation process needs to be developed that encourages solutions to land disputes before they are referred to the CLT.
- (b) The levels of appeal that are available need to be reduced.
- (c) Certain sections of the Act need to be tightened and time limits for certain actions to be introduced.

To refocus the legislation it will require some amendments to the current legislation. The general feeling is that due to the changes proposed it may be preferable to draft a

new piece of legislation; however this decision will need to be made after an initial review of the legislation is undertaken and following discussions with government.

Annex 8

Design Report on Strengthening of Land Information Management

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1. INTRODUCTION

The concept of an Information Technology Centre (ITC) emulates from the policy paper approved by the Minister of Lands and Director General of Lands on 25 October 2005¹⁵. This provides for the Department of Lands (DoL) to establish and maintain a central information system to service all need of Government and private sector in Land Information System/Geographic Information System (LIS/GIS) development and analysis.

Because of the strong relationships and the focus of earlier NZAID to DoL, the Government of Vanuatu (GoV) requested assistance on Customary Land Tribunal (CLT) and ITC strengthening projects. The need for strengthening within these areas was reviewed by Mr W Robertson in July 2007¹⁶ and incorporated into the Terms of Reference (TOR) for this Vanuatu Activity Design assessment.

From brief consultation with DoL staff and inspection of operations, it quickly became apparent that capacity for the support of such a centre was not currently available and would not become available in the foreseeable future. It also became evident from discussions with DoL staff and associated user groups that other aspects of information management within DoL as required for good governance, service and supply were in more urgent need of attention. In other words, information management within DoL needed addressing as a matter of high priority before the concept of the development of an ITC could be contemplated and thinly stretched resources committed in this area.

These initial observations were shared with the Director of Lands at a briefing¹⁷ who confirmed the ITC policy paper was intended as a long term strategy or concept paper and that assisting DoL with management of land related information and the development of Land Management Information systems and capacity building within DoL was of higher importance.

This departure or variance of scope/TOR was agreed by NZAID¹⁸ who considered “from an Information Technology perspective, to achieve an acceptable level of sustainability it will be preferable to build capacity within the relevant units of the DoL that will make use of IT systems in preference to focusing on the ITC. There is a need to look at coordinating the IT activities within DoL by developing a clear IT Strategy. This strategy would then enable support to be provided to separate entities within the department.”

The GoV also sort assistance in institutional strengthening and capacity building within DoL from AusAID. Concurrent to our design inspection, the AusAID design team was

¹⁵ Ministry of Lands Information Technology Centre Policy – October 2005

¹⁶ Proposal to Strengthen the Customary Lands tribunal (CLT) and Information Technology Centre (ITC) – W A Robertson July 2007

¹⁷ Meeting with Mr R Nari and NZAID Project Team 24 September 2008

¹⁸ Communications – Messrs Lunnay, Team Leader NZ Project Team and Chan NZAID

also in country developing a design following their prior Concept Document – Land for Progress and Equity. This provided the opportunity to “harmonise” development activity. A number of harmonization meetings were held whereby it was agreed in principle what activity could/should be undertaken by each team to ensure donor assistance and development was approached strategically, complementary and coordinated so that there was no duplication of effort or activity.

2. CURRENT RECORDS MANAGEMENT AND IT SYSTEMS

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, land use policies and legislation under the various land laws and regulations of Vanuatu on behalf of the GoV.

The organisational chart for the Department of Lands, Survey and Records as approved by the Public Service Commission in December 2004 is shown below.

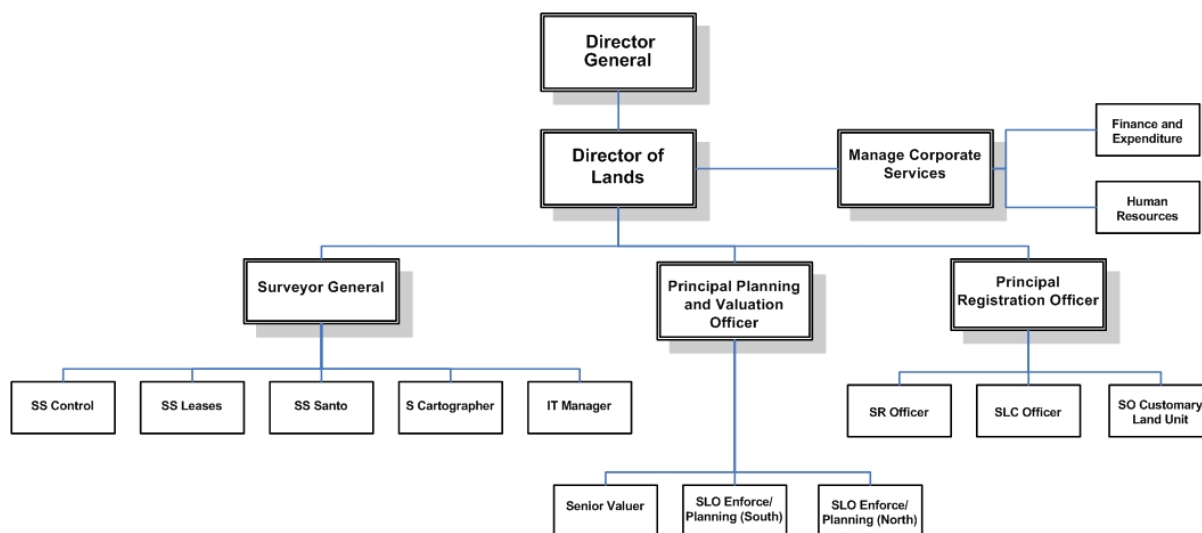


Figure 1: Organisational Structure of DOLSR

The structure identifies four distinct operational or functional areas, being;

- Corporate Services;
- Surveying and Mapping;
- Planning and Enforcement; and

- Registry and Lease Control.

Indications are that of the 68 designated positions within the above functional areas, some 23 vacancies exist, that is 33% of designated positions are vacant¹⁹. These have not been filled due to lack of GoV appropriation of finance for human resourcing. The Director General considers that the required level of appropriation could be achieved if good cases were presented.

Human resources have identified the need to improve performance and accountability issues through the department with a wide range of initiatives including developing a stronger culture within DoL, developing and issuing performance based person descriptions and training at all levels. While they have skilled trainers, conducting training courses is hampered through lack of finance.

2.1 Survey and Mapping Operational Area

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 examine and approve surveys undertaken by private surveyors of leasehold land;
- To update cadastral base maps;
- To undertake mapping activities and complete field checks for new maps for the whole country;
- To survey customary boundaries.

These activities are undertaken with a staff of 18. Currently there are 3 positions vacant.

2.1.1 Land Surveying and Records

Currently there is little need for field survey as most Government property in Efate and Malakula has been defined. Survey of Government property continues in Santo. Main activity undertaken within the central office in Port Vila is therefore examination of cadastral surveys undertaken by private sector surveyors. Currently some seven private survey companies are actively engaged in surveying in Port Vila and wider a-field within Efate. On average some 300 plans are submitted for approval per quarter (329 for the first quarter 2008) with 285 being approved as to survey. Private sector use LISCAD, AutoCAD or CivilCAD application software for survey planning, layout and

¹⁹ Human Resource Management Annual Report - 2007

calculations and the generation of supporting survey plans (although one company uses QuickCAD for plan generation)²⁰. The possibility therefore exists for supply of survey data in digital format to DoL for survey examination/validation and for maintenance of the DCDB to eliminate or reduce the need to re-enter survey data for these activities.

LISCAD is used within the survey section for survey mathematical validation and for plan generation. Mathematical validation appears to consist of a parcel close only. The use of programmable HP calculators could perform the same task if deemed necessary. Only one parcel is shown on survey plans (therefore in effect a “title” plan) and no overall survey plan is submitted. One therefore questions how overall definition is checked and surveyors or examiners are able to ensure no gaps or overlaps exist with adjoining parcels.

In addition to survey plans, calculation sheets are supplied for examination. Observations and reductions are supposed to be recorded in printed field books or pages. However, this practice no longer appears to be in practice due to the non-availability of printed field books or pages and the move to the use of total stations or GPS for measurement. No survey report appears to be generated or submitted to support survey definition.

Survey Plans

Survey plans are on transparent medium at A3 format.²¹ Paper was used prior to the introduction of transparent medium. Practice appears to be to have one parcel per survey plan, thus being a diagram to support lease definition and title registration.

Some 19,000 survey plans exist. Older records are kept in a strongroom at the old survey building (condemned due to earthquake damage). More modern records are housed in drawers within the present accommodation. Scanning of these records for archival/disaster management and for operational efficiencies is deemed highly desirable.

Trials have taken place in scanning of survey plans within Port Vila for archival and disaster protection purposes. These were scanned internally using the mapping Contex A0 drum scanner. It is understood that a resolution of 200 dpi and .TIFF format was used. Little consideration has been given to wider use and supply of survey plan imagery data or scanning of survey plans on receipt.

Survey Plan Register

The allocation of survey plans and parcel numbers is controlled by a card and Survey Registration Book. These, in conjunction with a Survey Registration Database,²² are also used to support the management of survey plans through processing steps (document tracking system). The database replicates the registration book and both

²⁰ Discussions – Mr M Meltenoven, Private Surveyor 25 September 2008

²¹ See Attachment 7.3 – Copy of Survey Plan

²² See Attachment 7.2 – Copy of Survey Registration Database screen

systems are maintained in parallel. Entry into the database appears to be undertaken by one person, rather than at source. In addition to these systems, an additional book is used for more detailed document tracking (date plan sent for requisition, received for requisition etc). Use of these systems needs to be rationalised and reviewed to ensure one database contains all the information required for internal document tracking, query and analysis and report generation and that the database is updated at source.

With respect to numbering, survey plans are numbered consecutively. Parcel numbering, as used for lease/title numbers are based on a code for the island in which located, the record map number on they are located and the next consecutive parcel number within the cadastral record map – each component separated by a forward slash. For example 12/0523/014. Therefore, in effect a form of geo-referenced Unique Parcel Identification (UPI) is used whereby the location of the parcel is referenced to cadastral record maps. Use of this form of UPI is recommended to continue in the interim and until such time as all lease and title records are computerised. However, continuation of this system needs to be reviewed long-term when cadastral record maps are discontinued, being replaced by the DCDB and reference to map based systems is no longer applicable.

Cadastral Record Maps

Cadastral Record Maps are available showing all registered land parcels and all Government land parcels within Vanuatu. Basically, urban areas are covered by some 274 - 1:500 scale maps, peri urban areas by some 1342 - 1:5,000 scale maps and rural areas by some 131 - 1:20,000 scale maps²³. These are on A1 to A0 format on transparent media and hung in vertical filing systems. Record maps are deteriorating through usage. Media is getting hard to procure and hence no redrawing/maintenance is taking place.

Cadastral maps are updated on a daily basis by nominally three draughting staff on registration of the land parcel. Given that delays in the registration process of two to four years is not uncommon, cadastral record maps are often grossly out-of-date with respect to subdivisional development. Consideration needs to be given to updating on a timelier basis including on approval as to survey.

The conversion of cadastral record maps to form a Digital Cadastral Database (DCDB) to provide spatial support to the lease/title registration system and zoning and planning activity is considered essential. This not only provides the framework on which these activities takes place, but also enables anomalies, discrepancies and inconsistencies in other databases and development activity to be analysed and graphically displayed/portrayed.

Trials have been undertaken in Port Vila and Luganville by scanning the hard copy cadastral record maps, geo-referencing of the resulting raster image and “screen digitising” within the MapInfo environment. Trials indicate that spatial conversion of some two maps can be achieved in a day. It is suggested that one per day could be

²³ See Attachment 7.1. Data supplied by Mr P Gambetta, Senior Cartographer

achieved with associated parcel identifier. This conversion methodology and platform is supported, although review and further development of structures within the MapInfo schema is required to support other associated cadastral related themes of data and attributes and to ensure a high degree of logical consistency is built into the conversion process.

2.1.2 Geodetic Surveys and Records

Geodetic activity is undertaken by one Senior Surveyor and two assistances. Geodetic control consists of control positions established from DOS observations prior to 1970. During the mid 1980's these were updated by Doppler observations. Latterly, further upgrading has occurred to provide control for mapping activity undertaken by Australian Defence Forces (ADF). A higher density of urban and peri urban control has been established around Efate and either side of Luganville to support urban development. Survey practices require surveyors to tie into control where within 3km of control marks. Lack of suitable density of control adds considerable to the cost of subdivisional work. The Geodetic Surveyor and private surveyors agree the density needs to be increased due to increase demand for development. Increased control is usually undertaken by private surveyors under contract (when funds are available) due to lack of govt surveyors and vehicles.

With respect to global positioning, GPS base stations have been established in Port Vila and Santo. These provide for survey definition by differential GPS observation techniques. GPS is used by private surveyors where topography and vegetation cover permits. Post-processing is undertaken by DoL.

With respect to height datum, tide gauges have been established in Port Vila and on Santo. The Geodetic Surveyor considers a network of benchmarks needs to be established to better monitor crustal movements. He also considers the entire network of control needs to be reviewed and re-observed using GPS technology to support geodetic analysis and to support cadastral surveying. A computerised geodetic database needs to be established.

The Geodetic Surveyor has also promoted the concept of a new projection and coordinate system for Vanuatu, the Vanuatu Map Grid (VMG)²⁴. Presently individual coordinate systems are used for individual islands for cadastral surveying purposes based on a transverse Mercator projection in terms of the Hayfords 1924 spheroid. Universal Transverse Mercator (UTM) is used for mapping. However the landmass of Vanuatu crosses two UTM zones (zones 58 and 59). The proposal is to use the present zone boundary as the central meridian of the VMG. Comment has been made that is just imposing another coordinate system that in these days of computerisation and ease of mathematical transformation is perhaps not necessary.

Geodetic records are kept in files and folders. These contain records of observations and coordinates and diagrams of the location of control marks etc. Files and folders are

²⁴ Discussion with Mr M Williams 25 September 2008

difficult to access and are deteriorating through the passage of time and use. It is proposed these be converted to a computerised Geodetic Database.

2.1.3 Topographical Mapping and Imagery

Cartographic activity is undertaken by six cartographers/draughting officers. This includes those associated with the updating of cadastral record maps. The topographical mapping unit (three personnel) has been involved in a project, in association with the Australian Department of Defence (ADF) through joint cooperation with the Australian Defence Imagery and Geospatial Organisation (DIGO), to provide spatial imagery and topographical map information in hard copy and digital formats. Under the Memorandum of Understanding (MOU), ADF have undertaken to provide:

1. published medium scale (1:50,000) topographical maps over all of the land mass of Vanuatu;
2. large scale (1:5,000) colour topographical maps over provincial centres based on radar orthophotographic imagery;
3. digital vector and imagery data used to produce hardcopy products.

Items 1 and 2 have been completed with the supply of 61 published medium scale topographical maps and 42 large scale colour photomaps. Mapping is based on the WGS 84 Datum, Transverse Mercator mapping projection and Universal Transverse Mercator (UTM) coordinate system (Zones 58 and 59). These have a stated accuracy of +/- 2.5 meters horizontal and +/- 3 meters vertical.

With respect to Item 3, digital imagery has been received. Orthophoto imagery has a pixel resolution of 0.2m. Radar imagery has a resolution of 1.25m. The supply of digital vector topographical data is awaited.

The MOU provided for the supply of associated hardware, ArcGIS software and training in the use thereof. Two appropriately specked PCs and a colour plotter were supplied mid 2006 together with two ArcGIS software licences (version 9.1 – already dated). A one-week “Introduction to ArcGIS” training course was provided onsite by representatives from ESRI Australia. Seven personnel from DoL Vanuatu and one from Solomon Islands attended this training course. However, ArcGIS has not been used since for a couple of reasons. Due to diversity of backgrounds and level of computer literacy within the participants, little if any of the concepts were grasped at the time of training. Timing of training did not coincide with the availability of data and hence what little knowledge was gained has been lost awaiting the supply of data.

As part of this project, a database of Place Names has been created.²⁵ This component was undertaken by DoL staff by discussing existing known place names with local community representatives, GPS'ing existing and new place name geographical positions and entering into a MS Access database. Nomenclature data were supplied to ADF for inclusion in mapping outputs. It is intended that the place name database be maintained and perhaps published as a Gazetteer of Place Names. Consideration needs to be given to extension of the database to an Index of Places Names and Streets.

With respect topographical data, no consideration has been given to maintenance or provision and supply of data. Consideration needs to be given to the development of supporting data dictionary/metadata documentation, standard interchange formats and licensing agreements and pricing policies associated with the supply of data. Consideration also needs to be given to wider access to these data including internet access.

2.1.4 Mapping of Community Boundaries

The Survey and Mapping Section has been undertaking pilot projects on Nguna Island (North of Efate) and Efate Island to investigate and map community boundaries. Mapping of such boundaries is required to meet statutory requirements under Section 35 of the Customary Tribunal Act. It is considered desirable/essential for internal users and external agencies to provide a focal point for local enquiry and perhaps mediation on any land related issues.

The activity involved 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) receivers and then using computer software to produce maps for verification/validation with the chiefs. Indications are that the methodology is sound. Some overlapping areas of interest were identified; however these were generally in remote rural regions of little immediate concern. These may also have occurred due to the inaccessibility of these areas for foot access and little appreciation of "map topography" on behalf of the chiefs concerned.

The number of community boundaries varies from island to island. There appears to be approx 10 communities on Efate with a total of 62 over the whole country.

2.1.5 Information Technology

Information technology activity is presently undertaken by three personnel. The positions of IT Manager, db Designer and db Officer are vacant. This is not through the lack of suitable candidates within Vanuatu, but due to lack of finance.

Matthew Temar - Computer Programmer has been assigned the task of developing an IT Strategy for DoL. However, progress in formulation of strategies is hampered by his

²⁵ See Attachment 7.7 – Copy of Place Names Index screen

involvement in other activity, such as overseeing the scanning of lease records. The Ministry of Finance (MoF) are presently developing an IT Strategy as part of their vision for e-Government. IT Strategies within the DoL should comply with those visions and strategies.

Due to the shortage of staff, little proactive activity is taking place and capacity for assistance to donor AID projects is limited.

DoL have their own servers, which are linked into the MoF servers. Advice from the IT Manage (Acting) is that while servers are able to cope with present activity, increased activity will require an upgrade to server capacity.²⁶ An internal Local Area Network (LAN) links PCs in all operational areas. What computers that are available appear to be of reasonable specification. However, many personnel use their own personal computers or laptop due to the non-availability of equipment within DoL.

2.1.6 Other Associated IT Activity

Vanuatu Resource Information System (VANRIS)

VANRIS was chosen as the primary technology GIS analysis tool as part of a previous AusAID-funded project in Forestry (VLUPP – Vanuatu Land Use and Planning Project) during the early nineties. 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 utilising a Community Area Resource Management Activity (CARMA) "Bridging the Gap". At its height, some (37) organisations were provided with a copy of VANRIS software²⁷

VANRIS is based on Tikiwiki, an Open Source Software (OSS) software package. As such it does not have a technical support base that could be readily accessed by users and system developers. When introduced it was still effectively in an "experimental" development stage. Several versions of VANRIS were developed during the life of the project. The development process was basically being driven by user requests to make the system user-friendlier.

A majority of the users contended that VANRIS was too advanced and sophisticated for planning staff without extensive exposure to the application of GIS. However, the then DoL team leader, William Ganileo considers it to be a user-friendly tool for personnel not experienced in GIS.²⁸

²⁶ Communications with Ms Josiana Jackson – 30 September 2008

²⁷ Mr D Larden – Extracts from VLUPP Review on VANRIS - 2008

²⁸ Discussion with Mr W Ganileo _ 26 September 2008.

VANRIS's widespread use basically ceased in 2000 with completion of the VLUPP project. Since the support from AusAID ceased, the lack of funding to support ongoing maintenance and upgrading of VANRIS and to conduct related training to expand its application among existing and potential users significantly reduced the effectiveness of VANRIS. There has been minimal input to the database and textual and geospatial information has not been updated for quite some time. The system is still operational and land use maps can still be produced through personnel within the Surveying and Mapping Operational section who are familiar with its use.

Most user agencies have switched to the MapInfo GIS software package introduced throughout the South West Pacific Island nations under a scheme sponsored and supported by the South Pacific Commission (SOPAC) (albeit that these licences are not considered to be "legal.") This development coincided with the demise of the VANRIS users group in 2000 that was then replaced by a GIS user group. Latterly, DoL has acquired, through joint cooperation with DIGO, digital vector mapping and imagery information with nationwide coverage. DIGO chose to utilise the ESRI ArcGIS product suite as the preferred analysis tools for this dataset.

The use of VANRIS as a tool for GIS analysis needs to be reviewed by a GIS technician versed in other applications to determine its future use. If considered to be "past its use-by-date," then consideration needs to be given to the currency of information contained within its databases and where current, converted onto an alternative platform (MapInfo or ArcGIS). If VANRIS is still considered to be a suitable tool for GIS analysis, then spatial representations need to be updated in terms of latest mapping.

2.2 Planning Enforcement Operational Section

2.2.1 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;
- Provide regional strategic plans that will reflect local government policies relating to development of land and its conservation;
- Develop policy formulation in identifying land and natural resources limitations and opportunities;
- 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.

Planning activity appears to be undertaken with a resource of four personnel located in Port Vila and Santo. There appear to be three staff vacancies.

2.2.2 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 one official. This person is expected to oversee compliance on a large number of land matters in the MoL including compliance with zoning and planning requirements, preserving access to land and foreshore access.

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.

2.2.3 Valuation Section

The Valuation section 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.

A Valuation Roll database²⁹ has been developed to record lease/title details and valuations. However, there does not appear to be any systematic approach to valuations or update of valuation information and no uniformity of roll information. While the valuation roll is maintained in terms of new valuations undertaken by DoL Valuers, the database is presently not capable of being maintained from sales records. Consequently, these data cannot be used for assessment of a general re-valuation. Improved processes, technical skills and computer systems are considered necessary to achieve an effective property tax system.

It has a resource establishment level of three (Principal Valuer plus two) and presently all positions are occupied. It is considered this level needs to be increased by two to three personnel due to increased work levels. Performance of duties is also hampered by lack of vehicles.

At least one private valuation firm, Vanuatu Property Valuations, have created their own database updated manually from sales records. It also contains a version of a DCDB, aerial photograph and terrestrial imagery. This has been developed due the lack of a GoV system to enable the company to perform private valuation effectively and consistently.³⁰

2.3 Registry and Lease Operational Section

The objectives of the Registry and Lease Control Section are to:

²⁹ See Attachment 7.5 – Copy of Valuation Roll screen

³⁰ Discussion – Mr R Barnes, Valuation Property Valuations – 29 September 2008

- Undertake efficient land registration and recording backed by secure storage and maintenance of legal land records;
- 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;
- Facilitate the preparation and execution of land leases and other land related documents;
- Provide valuation advice and maintain up to date valuation roles.

These activities are undertaken with a total of six registration staff, and two supporting secretary/typists. It was suggested that at least eight to nine registration staff are required to manage the current registration work-loads.

There are many issues that need addressing in the Land Registry Office, most of which are common to land registration agencies that use manual systems, are under staffed and under funded. There is a significant back-log of registration work. It has been reported that simple registrations, such as the registration of a mortgage or transfer of ownership, can take three months to a year. It has been estimated that the backlog of titles registration will take between two and four years to clear. Outstanding title and dealings registration is estimated to be worth 500m VT (\$NZ 7.5m). Delays in supply lease/title related documents are also significant. Private individuals, banking and government sector user groups have reported that simple enquiries and supply of copy of documents takes three to five days. Instances have been quoted of unofficial “urgency fee’s” being offered to process enquiries and registrations quicker.

As well as the administrative and procedural issues, considerable revenues are being lost due to poor accuracy, integrity and integration of records. Poor reconciliation of records between the lease and valuation records (supplied to MoF for billings) for instance is estimated to have a shortfall of 40% of estimated revenue of 160m VT (\$NZ 2.5m). A process is presently underway (VLAMS – Vanuatu Lease Audit Management System) to reconcile lease/ valuation and MoF records to improve revenue generation.

The unacceptably long delays are clearly having an impact on the land registration activities, general land development in Vanuatu. The backlogs and inefficient management clearly highlights the need to review the processes involved in the registration of documents and to provide a working computerised land registration system.

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.

Lease Records - The preservation of office records from fire or natural disaster is being addressed by the scanning of lease documents. For the past eighteen months, a project has been underway to scan and index current lease records. The index is intended to be used to create an automated register or database of leases³¹.

Some 10,300 current lease files have been scanned and indexed. Scanning consists of scanning all documents contained within the lease folder. Three Cannon DR 5010C scanners, associated PCs and supporting software were supplied by OAS (Office Automation Software Ltd, NZ – now Axon). On average some 15 documents are scanned as multipage .TIFF images at a resolution of 300dpi. As documents are scanned, pertinent data are being entered into a MS Access database (SAPERION). This data includes title #, application #, area, location, lessor, lessee, type, term, rent etc. These records are repeated for each type of document contained within the lease folder (transfer, mortgage etc). A team of three contract employees are undertaking this task. Approx 10 records can be completed by each team member per day. It is estimated that 1-2 years of activity remains.

Minor oversights have been identified in process design. One assumes that maintenance of database records can take place. However, no consideration appears to have been given to maintenance of imagery in terms of new image documents supporting new dealings. It is not known if it intended to make lease documents available within the public domain (they should be for transparency). If so, then consideration needs to be given to protection of confidential information such as mortgage details. Consideration needs to be given categorisation and separation of supporting document images.

Further development work is required on developing queries for statistical analysis of data. However, this has not been undertaken as some 1m VT (\$15,000 NZ) remain outstanding to OAS for supply and development. DoL expects that an AID donor agency will pick up this tab.

Focus is now being given to the scanning and indexing the backlog of lease applications. It is intended that old lease documents also be scanned and indexed for archival purposes.

3. GOV VISION FOR RECORDS MANAGEMENT AND IT

The MoF are presently developing an IT Strategy as part of their vision for e-Government. The vision includes the construction and development of eight Microwave transmission sites and three VSAT sites to provide coverage to six provinces. Fibre optic cable network is envisaged within Port Vila, Luganville and other provincial centres. A central Data Centre is intended to be provided within MoF to centralise computer activity and provide “Gateways” between ministries to the Internet.³²

³¹ See Attachment 7.6 – Copy of SAPERION screen

³² Executive Summary – Vanuatu e-Government Project 2007

The DoL's Information Technology Centre Policy paper and Business Plan for the ITC, GIS and remote Sensing provide guidelines for development strategies within DoL. The GoV Land Sector Framework has been developed to guide the long-term development of the land sector within Vanuatu.

Existing visions, goals and objectives need to be reviewed to provide a holistic strategic direction or a "roadmap" to guide the development, service and supply and knowledge of and access to land and geospatial assets owned and maintained within the DoL. Visions and strategies within the DoL need to comply with the above guidelines and the visions and strategies contained within GoV e-Government initiatives.

The DoL have no immediate plans for decentralisation beyond their present sub-office operational activity in Santo. However, with the development of information systems across all DoL operations and with realisation of the networking visions as part of the GoV e-Government plans, land information may be disseminated more widely. In the foreseeable future, it will be possible for persons or organisations interested in land related issues within their own Province, Island or Community, to view data located in DoL central office in Port Vila remotely via public Kiosks or terminals through the GoV network or privately via web-based enquiry.

4. HARMONISATION WITH AUSAID DEVELOPMENT PROGRAM

Concurrent to our design inspection, the AusAID design team was also in country developing a design mission following their prior Concept Design – Land for Progress and Equity. This provided the opportunity to "harmonise" proposed development activity. Activity required to provide efficient and effective land information management systems within DoL were identified and discussions held as to where development activity best take place.

4.1 Lease / Registration Operations

Both teams considered creating a functioning land registry to be of major priority and importance. Following discussion, the teams agreed that this and associated activity best fell into the AusAID development sector. Associated activity includes the development of an effective Lease Management database to control processes from lodgement through to title registration and the provision of imagery of lease documents for internal access and to increase transparency of the application and approval process.

4.2 Planning and Enforcement Operations

The AusAID team expressed a desire to continue with development of planning and zoning activity that has taken place as part of the AusAID short-term initiatives. The issue of leases and titles have to comply with zoning and planning requirements. It is

therefore desirable that development with this area is coordinated for effective assessment, permitting and enforcement aspects of lease application and title registration.

4.3 Valuation Section

With respect to valuation activity, the AusAID team made it clear that they were not interested in development of this activity³³. This is despite the essential need for synergies between the lease/titles database and the valuation roll database to provide up-to-date lease and sales data for re-valuations and land tax revenue generation. Being an important function of DoL, this activity has been accepted within NZAID development activity.

4.3 Survey and Mapping Operations

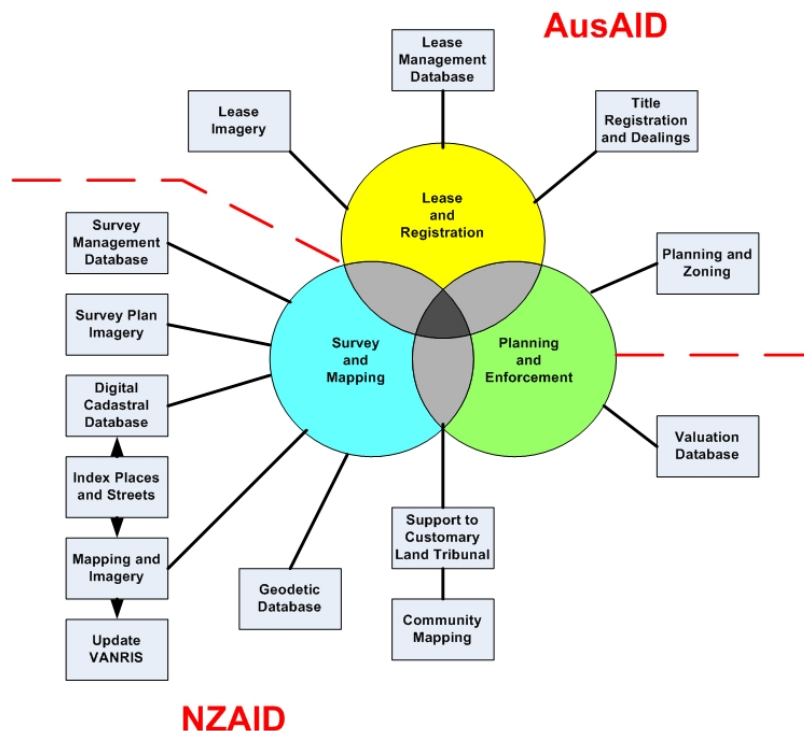
It was agreed that most survey and mapping activity be contained within NZAID development activity. The exception being the creation and maintenance of a Digital Cadastral DataBase (DCDB) – the spatial or graphical framework of surveyed land parcels for which lease are issued and titles registered. The AusAID design team³⁴ considered it essential to the creation of a lease database and the registration of title. The NZAID design team argued that leases can be processed and titles and dealings registered without the DCDB. Further, a DCDB is created and maintained from land survey records and hence development, maintenance and “ownership” needs to be retained within this operational area.

The NZAID team gave an assurance that development activity would be undertaken to AUSAID timeframes and milestones based on regional or Island areas. However, beyond our control is coordination of the start date of respective donor activity. Any delay to NZAID assistance beyond the commencement of AusAID assistance within their Land Registrar activity has been identified as an extremely high risk by the AusAID design team.

A graphic of the agreed areas of operational activity development is shown below.

³³ Discussion with Mr K Lyons - 25 September 2008

³⁴ Discussion with Mr K Lyons - 25 September 2008



5. NZAID LAND INFORMATION MANAGEMENT PROGRAM DESCRIPTION

The proposed NZAID Project Design approach was discussed the Director General of Lands. It has the support of the DG who considered donor assistance needed to concentrate on technical systems and support of those systems, rather than on technology itself. A brief of the NZAID Project Design concept was also presented at a workshop of senior personnel within DoL and the wider user community. Those who attended the workshop unanimously supported the concept. To quote from the acting IT Manager “it paints (outlines) on paper what the Department has wanted to achieve for so long but couldn’t do so due to its limited resources.”

While the proposed NZAID Project Design represents the visions of the design team, it was made clear by us and to us that the proposed Land Information Management strategies and reforms must reflect the needs of the Vanuatu Department of Lands. It must be further developed, owned and supported by staff at all levels to be successful.

The LIM project design builds on modest concepts and activity. It promotes simple concepts using the “KISS” approach rather than a high technology approach. Most of the concepts and activity has already been trialled within DoL. As the DG stated “we have dabbled in many areas.” They have survey management and valuations roll systems in place at present. They have undertaken a pilot of DCDB capture. They have trialled the scanning of survey plans. The only real area of weakness in

technological knowledge is in the use GIS application software within the mapping section.

The project design is intended not only to build and expand on the existing systems and knowledge base, but also take a more holistic approach to ensure all aspects of information are included and available for thorough analysis and reporting and to ensure proper “custodianship” and maintenance of land related datasets under the control of DoL. This is aimed to provide for improved governance and servicing and supply to internal and external users of land related information.

As stated by Mr Robertson in his CLT/ITC review “The NZ development assistance experience in setting up the FLIS (Fiji Land Information System) 17 years ago provides assurance of the feasibility of establishing appropriate computer systems in a Pacific Island country in a form that adjusts to local capability and user needs. The FLIS has been a successful and sustainable introduction of appropriate technology. Vanuatu starts its IT development path significantly more advanced than was the case for Fiji in 1990.”

Component activity has evolved from inspection of existing land information systems and discussions with key personnel within the DoL. It has also evolved from the SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis undertaken and documented in Section 6.3. This identified a large number of weaknesses within present information systems, processes and procedures across all operations areas. The project design builds on existing strengths and through the guidance and mentoring provided by technical assistance support, helps overcome existing weaknesses whilst endeavouring to realise opportunities and eliminate threats.

Component activity is summarised in the main Activity Design Document and in the Logical Framework Network attached as Annex 1. A description of Sub-Component activity follows.

5.1 Sub-Component 2.1 – IT Strategy

A strategy that governs IT development within DoL and conforms to GoV directions for e-Government

Component Activities

Develop an IT Strategy that can be used as a “roadmap” to guide the development, service and supply and knowledge of and access to land and geospatial assets owned and maintained within the Department of Lands.

The purpose of the IT Strategy is to:

- define the approach needed to ensure DoL’s land and geospatial information infrastructure meets the ongoing business needs of GoV;
- provide the framework for the leadership and direction needed for managing land and geospatial information;
- optimise the collective benefit from GoV and donor public investment in IT infrastructure;

- ensure quality fundamental land and geospatial data is available to all.

The IT Strategy will therefore address such issues as:

- Standards and guidelines required for the development of core data and associated infrastructure - hardware, software and programming language “fit-for-purpose.” This will include standards for metadata, internal data formats and data interchange formats;
- Management, maintenance and security of core data;
- Coordination of service and supply to internal users;
- Delivery/distribution to external customers via web-based applications.

Contribution to Government of Vanuatu’s Goals

The IT Strategy must align with strategies developed or in the process of being developed within DoL and to support e-Government initiatives within the GoV. It needs to recognise the GoV’s increasing use and reliance on land and geospatial information for a wide range of activities – from socio-economic planning and development, resource management to utilities and emergency services.

Technical Support

Technical support will consist of the appointment of a Short Term Technical Advisor (STTA) - **IT Strategic Planner**. The IT Strategic Planner will work closely with a DoL counterpart in the development of the IT Strategy so that understanding of requirements understood. Capacity building should be to such a level of understanding that the counterpart is able to converse in this area with confidence and amend the strategy as necessary in terms of future requirement.

5.2 Sub-Component 2.2 - Land Survey Records

Effective custodianship, maintenance and security of associated records for improved process management and analysis.

Component Activities

Component activity includes the following:

- Design and develop an effective Survey Records Management System for document tracking of survey plans throughout all processes, and analysis and reporting of activity;
- Create and maintain a Digital Cadastral DataBase (DCDB) to provide a spatial framework to support lease/registration, valuation and planning activities and wider socio-economic GIS analysis;

- Coordinate with the AusAID land registration design team on required delivery timeframes and ensure all milestones are met;
- Scan survey plans for disaster protection and archival purposes and provision of imagery to customers;
- Review present survey activity in terms of existing Acts and Regulations and recognised “good practices” and make recommendations for regulation, process and procedural improvements so as to provide for optimal governance, that is “as little as possible, as much as necessary” to ensure the outcomes and objectives of what the survey system is endeavouring to achieve is achieved;
- Design and develop a geodetic database to support the encoding of existing primary and secondary control marks. In addition to textual data, the database shall include or provide linkages to imagery of mark locations scanned (or digital photos of locations) from office records;
- Review the present geodetic control network and its ability to provide support to cadastral land survey, crustal deformation, global warming and wider exclusive economic zone administration activity requirements. The review shall make recommendations on upgrading and adjustment requirements and costings for consideration for additional NZAID support outside of the present project scope;
- Design and develop on-line and web-based applications to provide access to, display and downloading of textual (lease/title and valuation), geospatial (cadastral, geodetic, topographical and imagery) and imagery (survey plans, lease and associated supporting) as contained within the various DoL databases. Application to contain provisions to preserve the security and integrity of records, to provide read only access to selected data, but also to provide for billing for registered remote users to access and download detailed information within the public domain such as access to and copy of lease/title information and survey plans.

Technical Support

A number of STTAs will be assigned to provide technical assistance. These include:

- STTA - Cadastral Data Capture Specialist
- STTA - Land Cadastral Surveyor Specialist
- STTA - Geodetic Survey Specialist

Analysis of database design requirements and development of computer application programs will be undertaken by STTA - IT Analysts and Computer Programmers.

DoL counterparts will be assigned to all STTAs. All advisors will work closely with assigned DoL counterparts and provide on-the-job training so that an understanding of activity requirements thoroughly understood. Capacity building of counterparts shall be to such a level of understanding that the counterpart has a full understanding of all activity and is able to accept responsibility for continuation of activity on departure of the advisor.

Two survey personnel from DoL will be sponsored on a short study tour of LINZ, two survey firms in Wellington to view operations and field survey and office survey practices in operation.

5.3 Sub-Component 2.3 - Mapping and Imagery

Effective custodianship, maintenance and supply of mapping data and services.

This includes:

- Ensuring topographic and imagery information is managed as an authoritative national resource;
- It is maintained as an up-to-date record of natural and cultural features;
- It is readily available to those who need it.

Component Activities

Component activity includes the following:

- Develop and maintain skills and resources to manage and maintain the geospatial data as supplied by ADF and held in ArcGIS;
- Develop an understanding of the use of geospatial GIS applications for socio-economic analysis;
- Assist in the provision of products and services, that is make digital topographical and imagery information available to primary customers in formats suitable for diverse use and cartographic representations in paper format;
- Contribute to the development of copyright, licensing pricing policies and monitoring issues;
- Promote the concept of management of topographic and imagery information as an authoritative national resource;
- Contribute to the developing standards and a data dictionary as metadata to support geospatial information;
- Active participation and promotion of the use geospatial and GIS applications for socio-economic development amongst the wider user community through user groups and forums;
- Review VANRIS and associated geospatial data and upgrade or transfer to other platforms as appropriate.

Technical Support

Technical support will consist of the appointment of a Long Term Technical Advisor (LTTA) – **GIS Technician**. The LTTA will work closely within the Cartographic unit and provide on-the-job training and coaching/mentoring in the use of ArcGIS software for managing, updating and supply of data in digital and paper formats.

He/she will provide on-the-job training in use of GIS as a tool for socio-economic analysis.

Two cartographic or GIS personnel from DoL will be sponsored on a short study tour of LINZ, Terralink, SKM and Critchlow Limited (all in Wellington) to view operations and see a wide range of geospatial management, service and supply and analysis activity in place.

5.4 Sub-Component 2.4 Valuation Services

An effective service that provides consistent and up-to-date valuations to support land and property taxation

Component Activities

Component activity includes the following:

- Undertake a review of the present Valuation Roll;
- Coordinate with the AusAID design team on Land Registration/Valuation maintenance procedures;
- Design and develop an improved and effective Valuation Roll database that is able to be updated and maintained from Lease/Title registration activity, that provides for systematic adjustment of valuations and all required analysis and reporting requirements of the Valuation Section;
- Provide training in the use of the improved system;
- Assist with the development of procedures for systematic and uniform assessing and adjustment of general re-valuations;
- Assist in the development of standards to provide for uniform valuation assessments;
- Develop and maintaining skills and resources (capacity) within the DoL Valuation unit to perform valuation tasks.

Technical Support

Technical support will consist of the appointment of a STTA – **Valuation Specialist**. A DoL counterpart will be assigned to the STTA's. The STTA will work closely with the assigned counterpart and provide on-the-job training so that an understanding of activity requirements thoroughly understood. Capacity building of the counterpart shall be to such a level of understanding that the counterpart has a full understanding of all activity and is able to accept responsibility for continuation of activity on departure of the advisor.

Two valuation personnel from DoL will be sponsored on a short study tour of LINZ, two valuation firms in Wellington to view field and office valuation practices in operation.

4.3. Cleansing or Records

Mention has been made in previous submissions of the need to cleanse information records and the complexity of this task. With respect to the components within the proposed NZAID area of activity, little cleansing is necessary. The proposed scanning for survey plans, mapping and geodetic database activity are largely stand-alone activities with no cleansing required (assuming the ADF vector mapping contains a high degree of logical consistency). The review of survey practices is operational only and contains no records to cleanse.

The area of activity where most cleansing is required is within the Lease/Titles database that is identified as part of the AusAID development area. Survey Records Management System feeds into this. It may be possible that current records are able to assist in cleansing of Lease/Titles data. Similarly, the DCDB will assist in cleansing of Lease/Titles data. The DCDB will only contain one attribute of interest to the Lease/Titles database, that being the Lease/Title number. This will form a Unique Parcel Identifier (UPI) to link the two sets of data. In theory there should be a one-to-one relationship between DCDB parcel records and Lease/Title records. Matching of the two sets or records will be necessary and differences investigated manually and resolved to “cleanse” both sets of data.

With respect to the Valuation Roll, data contained within this dataset is largely populated from Lease/Titles data (owner, occupier, address and sales data etc.). Hence an accurate and well-maintained Land Register will provide “clean” updated data for valuation uses.

6. SUSTAINABILITY AND RISK

Personnel within DoL have most of the knowledge and intent to develop such LIM systems. However, they lack the financial and human resource capacity and specialists skills and knowledge to make it work at the level required. The project design allows for progressive development. This allows for knowledge and skills to be built over a period of time and hence increasing capacity as experience progresses, rather than the alternative of doing it all at once.

6.1 Sustainability

Of the activity identified in Component 2, only the creation of a DCDB is heavily dependent on resources during the initial capture phase. Rather than stretching existing resources, it is intended to create the DCDB by contract staff or ‘out-sourcing’ to the private sector. Beyond the estimated eighteen months of capture (initial capture of one year and six months of capture of secondary capture), maintenance activity will be at a lesser level and hence sustainable by DoL resources. All other activity builds on activity already under way or trialled within operational areas. Significant additional resources are therefore not required beyond existing establishment levels.

Sustainability is depends on capacity within DoL to resource activity to the level required for continued sustainability. Of critical importance to continue sustainability is the commitment by GoV and senior management within DoL is to ensure key vacancies are filled and equipment purchases made to maintain capacity at the required optimum levels.

Also of critical importance is the need for change at the institutional level. The HR Manager has identified the need to improve culture, work ethics and performance and accountability within DoL. The AusAID Land Design Mission has also identified the need for institutional reform and hence will focus on these aspects within its components, thus avoiding duplication of effort and resources in this important area of development.

6.2 Risks

Key strategies to manage all risks and to increase the sustainability of outcomes are integrated into the LIM program design. Lessons learned from other projects, both nationally and internationally have been taken into account. A Risk Management Matrix is attached at Annex 2. This summarises all risks and their potential damage to the program, the likelihood, impact and overall rating of each risk; the strategies which have been incorporated into the design to address each risk; and the responsibility for implementing these strategies. Over-arching responsibility for risk management is shared by DoL management personnel, the LIM contract Project Manager and the NZAID project coordinator.

6.3 Risk Analysis

Risks have been analysed through a SWOT Analysis. The analysis for the LIM components follows.

SWOT Analysis for Land Information Management

Strengths	Weaknesses
• A functioning survey plan management system in place; • Survey Acts, Regulations and survey validation processes in place; • Scanning of survey plan records trialled; • Creation of a DCDB trialled over Luganville and Port Vila; • Suitable hardware and software to support DCDB creation; • ADF topographic maps and digital data; • Suitable hardware and software to support ongoing mapping activity; • A functioning Valuation Roll database in place;	• Survey Plan Management system does not cater for all process activity; • System not maintained at source; • Limited analysis and reporting capabilities; • Violation of existing survey acts and regulations noted; • Survey validation processes appear to contain deficiencies; • No systematic program to provide for security of survey plan records; • No process in place to scan survey plans on receipt; • No process documentation for DCDB

• Staff reasonably well training in existing functions; • Staffs possess a reasonable level of computer literacy; • Land resource and use analysis able to be undertaken via VANRIS	development; • Trialled DCDB development not supporting future spatial and ongoing maintenance requirements; • Deteriorating geodetic records information; • No remote access to survey control records; • Unknown state of the Geodetic control network to meet future needs and commitments; • Limited/no knowledge of ArcGIS mapping application software; • No policies for the provision on mapping products under licence; • No standards documented to support for custodianship or provision of geospatial data; • No mechanisms to update valuation records from sales data; • Limited means to review valuations or investigate anomalies in valuations; • No means to provide for systematic land or property re-valuations; • Limited analysis and reporting capabilities; from Valuation Roll; • No integration between existing DoL databases or database records; • No Visions, Goals or Objectives for directions for access to DoL records (One-Stop-Shop or internet access); • MapInfo software licences not approved releases; • ArcGIS software version not current version; • Staff vacancies have existed for a period of time; • Existing staffing levels insufficient to effectively administer current DoL activity; • Existing personal computer hardware insufficient for effective administration of DoL activities; • Existing network servers insufficient to service future DoL activities; • General sub-standard level of work culture and work ethics; • Limited internal training being undertaken; • VANRIS data dated and application able

	to be used by a limited few.
Opportunities	Threats
• Increased efficiencies in the internal administration and management of land records through computerisation; • Increased accuracy and integrity of land records through computerisation; • Improved transparency of land dealings and making records available through computerisation; • Vastly improved customer servicing through computerisation; • Vastly improved public access to land related records via terminals at public counters; • Vastly improved access to land records via web-based applications; • Increased DoL revenue through remote access to survey, mapping and lease/title records; • Increased Government and Local Authority revenue through improved valuation processes and valuation records; • Increased capacity for analysis of land related matters within the private and public sector through computerisation and improved access to data; • Increased analysis of land resources and use through a re-vamped VANRIS	• GoV does not support NZAid initiatives; • GoV does not support NZAid initiatives with respect to appropriations of funds to support required staff establishment levels; • GoV does not support NZAid initiatives with respect to provision of appropriate levels of computer hardware; • Breaches of security or corruption of records through illegal access to database records; • Unresolved land ownership and land registration, disputes can escalate and pose a potential threat to the stability of the country.

6.3.1 Strategic Risks

The design teams approach to the development of components and activity strategies is based on extensive experience and lessons learned from regional and international experiences. The project design builds on modest concepts and activity, most of which has already been trialled within DoL. It promotes simple concepts using the “KISS” approach rather than a high technology approach. It allows for progressive development and building on the existing knowledge base. As such it has a lesser risk factor is built into the program and increases the likelihood of success.

The project is vulnerable from a resource and equipment (provision of computers) capacity perspective. A modest level of finance has been identified for additional or specialist equipment or software to ensure that direct NZAID sponsored activity is not wanting for equipment. However, the programme relies on management within DoL to resource personnel and equipment to optimum operational levels. The Director General has stated that necessary level of financial appropriation by MoF should be achieved provided good cases are put forward justifying the proposed levels of expenditure. The project has his full support and hence he is able to put his weight behind proposals.

International advisors may also assist this process by assisting management with proposals.

6.3.2 Operational Risks

Technical assistance will be provided from a team of experienced international advisors. The terms of reference (TOR) for each input will highlight the importance of working with a national counterpart and of building staff capacity. All advisors will work closely with assigned DoL counterparts and provide on-the-job training so that an understanding of activity requirements thoroughly understood. Capacity building of counterparts shall be to such a level of understanding that the counterpart has a full understanding of all activity and is able to accept responsibility for continuation of activity on departure of the advisor.

Considerable emphasis will be placed on efforts to mentor staff to take on increasing responsibilities and assist in strengthening the administration, management, and planning and analytical skills of key personnel within DoL. This combined with institutional strengthening and capacity building on behalf of the AusAID project team will reduce the likelihood of operational risks.

The highest identified operational risks are:

- Breaches of security;
- Loss of Survey Plans through fire or natural disasters;
- The DCDB not being completed in terms of AusAID development requirements; and
- Loss of staff in key areas through transfer, promotion or resignation.

With respect to breaches of security, steps invoked as part of the IT Strategy (user accounts and passwords, assigned access privileges, system security software and firewalls etc) together with close enforcement and monitoring of use should mitigate against these risks.

With respect to loss of Survey Plans, the scanning of historical plans and scanning of new plans on receipt will mitigate against this risk.

With respect to the non completion of DCDB in term of completion in terms of AusAID development requirements, it is proposed to utilise contract workers or “out-source” capture to private enterprise (private survey firms) to mitigate against this risk and so as not to use limited existing resources.

With respect to loss of staff in key areas through transfer, promotion or resignation, the NZAID Contractor will need to work closely with HR Manager and AusAID design team to ensure staff retention factors are built into DoL organisation change, that is to provide for a career structure and performance reward for staff so that they are recognised according to ability, performance and qualifications.

6.4 Risk Management Strategies

6.4.1 Program Coordination

It is suggested that an in-country Project Officer be assigned from within NZAID, Vanuatu. The role of the Project Officer is to act as a focal point for the NZAID program, to assist in the coordination of activity with AusAID development team and to review performance based on monitoring progress reports from international technical advisors, national counterparts and DoL management reports. Close coordination required is required with the AusAID development program so that common milestones are achieved.

The Managing Contractor will need to assign a person who will be responsible for over project management, coordination of STTA inputs and in ensuring that project objectives and outputs are met.

The program includes a joint NZAID and AusAID joint review of the whole DoL aid program in year three (2011).

6.4.2 Appointment of a Long Term Technical Advisor (LTTA)

Due to the complexities of GIS application software and varied nature of work within the mapping area, it is considered highly desirable that assistance and capacity building be developed over a longer period of time. It is therefore suggested that a TA be appointed for a twelve-month period. In addition to providing longer-term advice and mentoring within this component, the LTTA will be able to assist with the development of standards, licensing and pricing policies. He/she will also be better positioned to review the operations of VANRIS and assist in its upgrading or porting of data to another platform. He/she will also provide a degree of continuity of TA input within DoL and provide a briefing role to newly arrived STTAs.

6.4.3 Additional Capacity Building

Activity within Component 2 recognises the need for greater awareness on behalf of DoL within three key areas of issues pertaining to better governance of the survey system, the custody and manipulation of geospatial data for supply to customers and the need for greater awareness on behalf of DoL valuers of issues pertaining valuation practices. As such, short study tours to LINZ and two or three private service supply firms in Wellington is provided to discuss issues and view operations.

The possibility for further education and training by means of short term training awards or attachments within these areas has also been identified, along with sponsored to attend work associated courses or conferences within the Pacific Region in each of the first three years.

The possibility of formal tertiary qualification by means of NZAID sponsored scholarships is supported.

7. ATTACHMENTS

7.1 Table of Cadastral Record Map Numbers

Name of Island	1:20,000 Scale	1:5,000 Scale	1:500 Scale	Total By Island
Torres Group	4	25		29
Banks Group	14	102		116
Santo/Malo	34	420	131	585
Ambae	5	48		53
Maewo	5	38		43
Pentecost	6	56		62
Malakula	18	208		226
Ambrym	7	68		75
Paama/Lopevi	3	7		10
Epi	5	51		56
Shepherds Group	4	20		24
Efate	10	113	143	266
Erromango	9	97		106
Tanna/Aniwa	5	66		71
Aneityum/Futuna	2	23		25
Total by Scale	131	1342	274	1747

7.2 Survey Records Management Screen

Survey Reference	Date Received	Registration Application Number	New Lease	Subdivision	Combination	Boundary Alteration
100	05/09/1983	381/98	☒	☐	☐	☐

Survey Completed	Survey Check Completed	Draughting Check Completed	Plan Approved	Certify Plans To DLR	Cadastral Plan Updated
Date 04/09/1983 Initials DLS	Check ☒ Date 04/09/1983 Initials GB	Date 11/09/1983 Initials GB	Date 01/02/1984 Initials CP	Date 12/05/1998 Initials JMK	Date 08/06/1998 Initials JMK

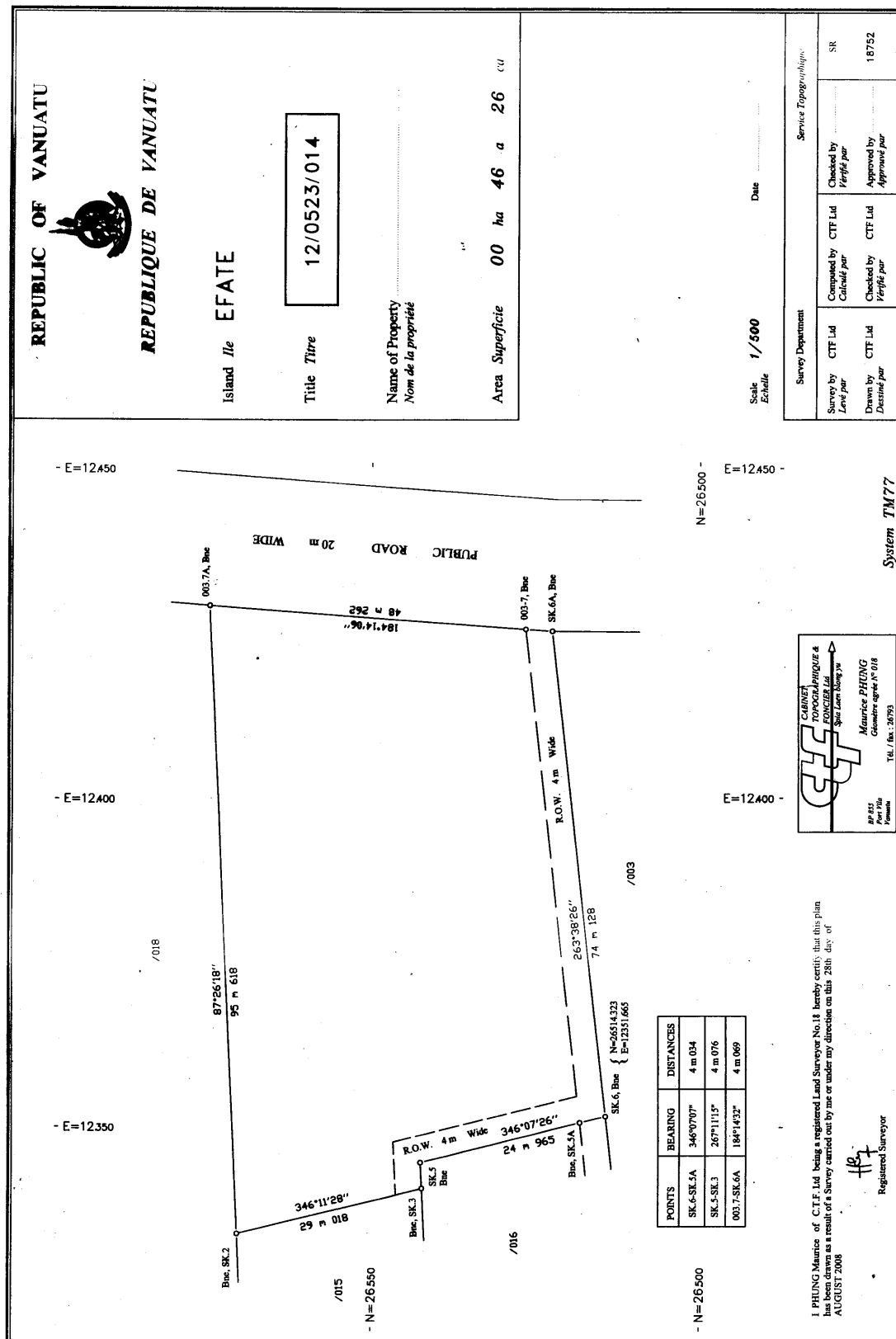
Old Title	Lot Number	New Title	Area
3871	0	03/OM74/0001	ha a ca 0 10 00

Comment

Print

Close

7.3 Example of Survey Plan



7.4 Survey Plan Examination Checklist

CHECKLIST FOR SINGLE SURVEYS		SUBMISSION: REGISTERED SURVEYOR DATE SURVEY PLAN TITLE NUMBER:		
CHECKLIST	YES	NO	N/A	
Administration FEE receipt attached.?				
1.URBAN				
a. Is the Negotiator Certificate attached.?				
b. Is related consent from lands department, alienators, trustees etc attached?				
c. Access provided and comply with Survey Regulations?.				
d. Is Zoning and area appropriate?				
e. Survey Report Completed.?				
f. Survey Plan completed and checked with name of property included.				
g. Computation sheet completed and checked (natural boundaries information)				
2.RURAL				
a. Is the Negotiators certificate attached?				
b. Is the consent from the Minister of Lands or Custom Owners or trustees attached?				
c. Do the areas comply with the survey regulations act.?				
d. Do the Roads or access comply with survey regulations act ?				
e. Are the natural boundaries shown.?				
3.GPS COORDINATES USED?				
a. completed GPS checklist				
RECOMMENDATIONS AND JUSTIFICATIONS				
a. COMPUTATION APPROVAL	DATE:			
B. FIELD CHECK APPROVAL	DATE:			
C.DRAFTING APPROVAL	DATE:			
SURVEYOR GENERAL DECISION				
DATE:				

7.5 Valuation Roll Screen

VALUATION ROLL 2004									
11/0D61/021		60'		11/0D61/021		11,488,000			
Title	11/0D61/021	Land Value 2004				Land Rent 2004		103,392	
Old Title A	11/0D61/006	Lease Extn				New Lease		Receipt Numbers	
Old Title B		Title Error		☒		Transfer			
Location	TEOUMA ROAD	OwnersName		MICHEL & ANITA DEROIN		Sales Value			
OwnersName	P.O. BOX 549	Owners Address		PORT VILA		Sales Date			
Date Approved	11/10/2007	Comments		Change of use from Residential to Commercial.					
Date Registered									
Lease Term	75								
Old Lease Type	COMMERCIAL								
New Lease Type	VMC	Port Vila Medium Commercial							
Total Area	11488								

Previous Record

Next Record

First Record

Last Record

Add Record

Delete Record

7.6 Lease Database Index Screen

SAPEROON Version 5.6 (diangalebani)

File Edit Archive Options Window Help

Query [Doland_q]

Department of Lands Vanuatu **Land Records Archive**

Title Number Application Number LeaseType

Old Title No Area LeaseTerm years

Lessor Rent VT p.a

Lessee Lease start date 09/23/2008

Location Caution ☐ Entry Number ☐

Doc Number Single From To Document Type Document Status

OK Cancel Quick Search

47955	TitleNo	OldTitleNo	Lessor	Lessee	Address	Area	Type	Lease	Term	Rent	DocT	DocStat	Applica	Scan
	12/0633/2	LOT 38 P	ERAKOR H	BEVERLEY	ERAKOR / EFA	No 0 HA 13	RESID	75 YE	6 575	Folder	Filed	923/97	06/11	
	12/0633/2	LOT 38 P	ERAKOR H	BEVERLEY	ERAKOR / EFA	No 0 HA 13	RESID	75 YE	6 575	Lease	Filed	275/99	06/06	
	12/0633/2	PART OF	ERAKOR H	BEVERLEY	BELLEVUE / EF	No 0 HA 13	RESID	75 YE	6 575	Lease	Filed	843/98	06/06	
	12/0633/2	PART OF	4 EILEEN BU	ANZ BANK	BELLEVUE / EF	No 0 HA 13	RESID	75 YE	11 137	Disch	Filed	1019/2	06/11	
	12/0633/2	PART OF	5 EILEEN BU	ANZ BANK	BELLEVUE / EF	No 0 HA 13	RESID	75 YE	11 137	Deed	Filed	1021/2	06/11	
	12/0633/2	PART OF	ERAKOR H	BEVERLEY	BELLEVUE / EF	No 0 HA 13	RESID	75 YE		Folder	Filed	629/98	06/11	
	12/0633/2	PART OF	1 ERAKOR H	BEVERLEY	BELLEVUE / EF	No 0 HA 13	RESID	75 YE	11 137	Lease	Filed	629/98	06/11	
	12/0633/2	PART OF	2 BEVERLEY	EILEEN BULE	BELLEVUE / EF	No 0 HA 13	RESID	75 YE	11 137	Transf	Filed	843/98	06/11	
	12/0633/2	PART OF	3 EILEEN BU	ANZ BANK	BELLEVUE / EF	No 0 HA 13	RESID	75 YE	11 137	Deed	Filed	843/98	06/11	
	12/0633/2	12/0634/0	ERAKOR H	BEVERLEY	BELLEVUE / EF	No 0 HA 13	RESID	75 YE		Folder	Filed	629/98	06/11	
	12/0633/2	12/0634/0	1 ERAKOR H	BEVERLEY	BELLEVUE / EF	No 0 HA 13	RESID	75 YE	11 137	Lease	Filed	629/98	06/11	
	12/0633/2	12/0634/0	2 BEVERLEY	HOSEA TAS	BELLEVUE / EF	No 0 HA 13	RESID	75 YE	111 37	Transf	Filed	225/99	06/11	
	12/0633/2	12/0634/0	3 HOSEA TA	ANZ BANK	BELLEVUE / EF	No 0 HA 13	RESID	75 YE	11 137	Deed	Filed	225/99	06/11	
	12/0633/2	12/0634/0	ERAKOR H	BEVERLEY	BELLEVUE / EF	No 0 HA 13	RESID	75 YE	6 575	Lease	Filed	225/99	06/06	
	12/0633/2	12/0634/0	ERAKOR H	BEVERLEY	BELLEVUE / EF	No 0 HA 13	RESID	75 YE	6 575	Lease	Filed	803/98	06/06	

Edit Print Delete Index... Save... View Security

Press F1 for Help

start SAPEROON Version 5.6 (diangalebani) Document1 - Microsoft... Document2 - Microsoft... 9:24 AM

7.7 Place Names Screen

Geographical Names Database - [View Geographical Names]

Geographical Name

Geographical Name	Port Vila			
Coordinates (UTM Projection)	Easting	215 423	Northing	80 37 214
Feature Type	Town			
Description of Feature				
Village population category				
Origin				
Meaning				
Previous Name				
Pronunciation of Name				
Status	Official			
Province	Shefa			
Local Government Area	Efate South West			
Name Collected Date				
Official Geographical Name Date				
Map Reference	Efate South West			

First Next Last Close

Annex 9

Terms of Reference for Design Mission

Terms of Reference

Design Team to Design Two Projects to Strengthen the Customary Lands Tribunal (CLT) and the Department of Lands' Information Technology Centre (ITC)

1. Recent Developments in the Land Sector in Vanuatu

- 1.1. In September 2006, the Government of Vanuatu (GoV) held its first National Lands Summit (Summit). Twenty resolutions were adopted at the Summit to direct land reform and underpin the development of a National Policy on Land.

2. NZAID and AusAID Engagement in the Land Sector in Vanuatu

- 2.1 NZAID has supported the establishment of the Customary Land Tribunal (CLT) in Vanuatu since 2000. NZAID is currently in the process of designing Phase II of the programme to expand and strengthen the CLT after this was agreed at the Summit. The Vanuatu Department of Lands (DoL) has also requested NZAID support to develop an effective and sustainable land registration and records management system for Vanuatu. As background preparation for these two initiatives, NZAID funded a tri-nation tour for a GoV delegation through Fiji, New Caledonia and New Zealand in November 2006 to look at the lessons learnt regarding systems and processes for land records management and the resolution of land disputes.

- 2.2 In February/March 2007 AusAID undertook a review of Vanuatu's land legislation, policy and land administration. The review report identified numerous reforms necessary to implement the Summit resolutions and possible assistance necessary to implement those outcomes, some for immediate and short-term action and others for the longer term. The review report provides the broad framework within which all inputs to the land sector should be aligned.

- 2.3 AusAID has now appointed a five-member team to: (a) assist the GoV prepare a land sector policy framework; and (b) develop a five-year land programme design document, which will consist of four components:

- (1) Policy and Legislation;
- (2) Institutional Development;
- (3) Land Management; and
- (4) Land Administration.

This work is scheduled to commence in late June 2008 and will culminate in the finalisation of a Project Design Document (PDD) in mid-November 2008. Relevant documentation on AusAID's support to the lands sector will be available to the Contractor.

3. Harmonisation and Coordination with AusAID

- 3.1 NZAID and AusAID are committed to the principles of the Paris Declaration on Aid Effectiveness. Both are keen to extend to the land sector the principles of partner ownership, donor/partner programme alignment, donor harmonisation, managing for results and mutual accountability. This will be achieved through greater coordination

and collaboration between the AusAID team and the NZAID project design team (Design Team) and coinciding the timing of the field work.

4. Proposals Approved through GIP³⁵

- 4.1 In May 2007 NZAID responded to a request from DoL for short-term technical assistance to develop two GIP proposals that had to be submitted for approval by the end of May in order to ensure that they could begin in 2008. The GIP proposals meet the GoV requirements in providing an overview of the nature of the projects, but they need refinement to meet NZAID funding requirements. NZAID has officially received two proposals from the GoV for funding consideration:

- (1) Customary Lands Tribunal Management Project and
- (2) Lands Records Management Systems and Information Technology Centre.

5. Activity Design of a Project to Strengthen the Customary Lands Tribunal Management Project

Background

5.1 Customary Lands Tribunal

The Customary Lands Tribunal Act, 2001 (the Act) mandated the establishment of the CLT to ease the backlog of land disputes in the court system. A Customary Lands Tribunal Office (CLTO) was set up in May 2002 within the DoL to undertake the implementation of the Act. NZAID provided support to the CLT from its inception (e.g. funding the consultative process that contributed to the drafting of the Act, awareness raising with the National Council of Chiefs - Malvatumauri) and in October 2002 undertook a joint scoping mission with the GoV to develop a strategy for NZAID assistance. In September 2004, a joint review was undertaken to establish the status of implementation of the Act and to provide clear advice on further NZAID assistance. The Review made eight major recommendations covering the operation of the CLT, land ownership issues and land policies. Paramount among the recommendations was the adoption of a National Policy on Land and continued NZAID support “to enhance the dispute resolution processes concerning customary land”.

5.2 Goal

A strengthened Customary Lands Tribunal consistent with the GoV's national plans and priorities.

5.3 Scope

To assess the current status of the CLT including: the quality of its services; capacity to respond to service demands and identify capacity gaps. This assessment will provide a basis for designing a project, which clearly outlines ways to strengthen the CLT in such areas as service quality, capacity and extension of its services beyond the pilot areas.

The assignment should comprise:

- Analyses of key documents (see attached list).
- Consultations with key stakeholders including, but not limited to:

³⁵ Government Investment Programme - system under which all aid programmes and projects are approved by the Government of Vanuatu. This ensures alignment with Government plans and priorities.

- (1) Relevant staff in the DoL, such as the CLT Unit
- (2) Relevant staff & policy analysts of the Ministry of Finance and Economic Development (formerly the Department of Economic and Sector Planning)
- (3) The Department of Strategic Policy Planning and Aid Coordination in the Office of the Prime Minister
- (4) Staff of other departments whose core functions include handling land related issues
- (5) The Land's Steering Committee
- (6) Malvatumauri
- (7) Judiciary
- (8) Cultural Centre
- (9) Women's groups and the Department of Women's Affairs
- (10) Selected local area council of chiefs and Customary land Tribunals that have adjudicated in disputes
- (11) Communities and a sample of CLT litigants
- (12) AusAID.

Consultation in the Provinces will be an essential part of this process.

- A CLT strengthening programme that focuses on the following areas:
 - a) Establishment and/or strengthening of tribunals in the Provinces
 - b) Review the training for judges/secretaries/adjudicators and propose strategies for extending delivery effectively and efficiently
 - c) Review and refinement of training manuals
 - d) Review and refinement of the standardised guidelines/advice for judges, secretaries, and adjudicators
 - e) Assess land information needs for judges, secretaries, and adjudicators and recommend appropriate response strategies
 - f) Review the DoL and CLT Unit administration processes and the capacity of the existing structure and make recommendations that will enable the CLT to function in accordance with the Act
 - g) Draw on the findings of AusAID's review of land legislation, the Act and related laws that dealt with land issues
 - h) Complements ITC component of the project and is able to respond to the information needs of its stakeholders
 - i) Develop an effective public awareness programme on the Act, functions of the CLT, including the production of appropriately targeted public education materials. This should be closely linked to AusAID's support to public awareness under their current support to short-term initiatives.
- A proposed NZAID programme of support, which builds on previous support to the CLT, complements and adds value to activities in other sectors of NZAID's bilateral programme.
- A proposed NZAID programme of support, which is designed with full consideration of AusAID's programme of support to the land sector and ensures harmonisation.

5.4 Objectives

A programme for strengthening the Vanuatu CLT

Questions:

5. 4.1) What is the current status of the CLT (including in the provinces)?

- 5.4.2) What is the Government's vision and priority to strengthen the CLT in the provinces?
- 5.4.3) What reforms are required to achieve 5.4.2 above? The Design Team should recommend activities - prioritised and sequenced (in order of short to medium term) together with indicative costs. This must include an assessment of the administrative processes, structure and capacity of DoL and CLT Unit and recommend a more effective and efficient means to enable the CLT to optimise its functions.
- 5.4.4) What are the land information needs of the CLT Unit, adjudicators and other users such as the Malvatumauri? How can the DoL best meet and manage these information needs, efficiently?
- 5.4.5) What are the implications of proposed reforms on the DoL budget and human resources?
- 5.4.6) How sustainable are the reforms over the medium-term? What commitment could GoV make towards the recurrent budget for CLT?
- 5.4.7) What are the core Human Resources (HR) required to implement the proposed reforms successfully? Are there any gaps in GoV capacity and capability that will need to be addressed? If so, how can these gaps be filled in the short and medium term?
- 5.4.8) What external technical assistance is needed to ensure the achievement of outcomes? If necessary, develop an HR capacity building transition plan for technical assistance requirements until the capacity gaps are filled.

A possible programme of support for NZAID to contribute to

Questions:

- 5.4.9) What activities to strengthen the CLT will the GoV be supporting and why?
- 5.4.10) What activities to strengthen the CLT can NZAID support in the next four years, whilst ensuring that they build on GoV contributions to the project, previous NZAID support, and complement and add value to activities in other sectors of NZAID's bilateral programme?
- 5.4.11) How will GoV cover NZAID funding to the CLT after the project is concluded?
- 5.4.12) What are some options for management and funding of the project, including any risks that may arise? (Please see the background paper on Funding Modalities)
- 5.4.13) How best can NZAID inputs be coordinated with the GoV priorities, plans and resources?
- 5.4.14) How best can NZAID's programme of support be coordinated and harmonised with AusAID's inputs?

6. Activity Design to Strengthen the Vanuatu Department of Lands Records Management Systems and Information Technology Centre

6.1 Goal

A Land Information Technology Centre (ITC) that meets current and future land information management needs of the CLT and the DoL.

6.2 Scope

The design of a project that will strengthen DoL's ability to manage land-related information through:

- up-grading of the DoL's ITC

- Information Communications Technology (ICT) training
- the development of a Land Management Information System (MIS) capable of processing and managing records, and exchanging data with other key systems in use by the DoL and the GoV.

The assignment should comprise:

- 6.3 An assessment of the current land records management and Information Technology (IT) systems of the GoV, including the work that has already started regarding digitalisation and computerisation of the land registration process.
- 6.4 An assessment of the medium- to long-term requirements of an effective land records MIS in Vanuatu taking into consideration the planned reform of the sector. This will include:
 - issues relating to processing of land administration documents, including lease registration, to assist land users
 - data cleansing
 - matching of all information to be included in the MIS
 - the accommodation of the line and image mapping recently provided by the Australian Department of Defence as a core mapping base
 - servicing of the CLT Unit
 - land use planning support
 - other priority land information requirements of GoV
 - linkage and/or consolidation of a number of GoV land related databases and processes to provide commonality of government geographic information, avoid duplication, and ensure core physical and property information about land is readily available for wide GoV and public use and access.
- 6.5 Analyses of key documents (see Annex I).
- 6.6 Objectives
To design a programme for strengthening the DoL ITC
 (see Annex 2: DoL's outline of the proposed project)

Questions:

- 6.6.1) What is the current status of land records management in the DoL (including in the Provinces) and the ITC?
- 6.6.2) What is the GoV's vision and priority to strengthen land records management, the ITC, and in the provinces?
- 6.6.3) What reforms are required to achieve 6.6.2 above? The Contractor will recommend activities - prioritised and sequenced (in order of short to medium term) together with indicative costs. This must include an assessment of the administrative processes, structure and capacity of DoL and recommend a more effective and efficient means to enable the ITC to optimise its functions.
- 6.6.4) What are the land information needs of the CLT Unit, adjudicators and other users such as the Malvatumauri? How can the DoL best meet and manage these information needs, efficiently? How will this project collaborate with the project to strengthen the CLT?
- 6.6.5) What are the implications of proposed reforms on the DoL budget and human resources?
- 6.6.6) How sustainable are the reforms over the medium-term? What commitment could the GoV make towards the medium and long-term recurrent budget for the ITC?

- 6.6.7) What capacity (human resources and skills) does DoL have to implement any proposed reforms? If DoL capacity is lacking propose viable alternative options that do not undermine DoL's role and responsibilities.
- 6.6.8) What external technical assistance is needed to ensure the achievement of outcomes? Where appropriate identify and recommend international and/or local technical assistants to assist with specific tasks, especially if DoL does not have such capacity or expertise.

6.7 A programme of support for NZAID to contribute to

Questions:

- 6.7.1 What activities to strengthen land records management and the ITC is the GoV supporting in the next four years?
- 6.7.2 What programme of activities to strengthen land records management and the ITC can NZAID support in the next four years, whilst ensuring that previous support is built on, and which complements and adds value to NZAID's CLT strengthening project, AusAID funded reforms in the sector, and activities in other sectors of NZAID's bilateral programme?
- 6.7.3) How best can NZAID inputs be coordinated with the GoV's priorities, plans and resources?
- 6.7.4) How best can NZAID's programme of support be coordinated and harmonised with AusAID's inputs?

6.8 Design of an ITC strengthening programme that focuses on:

- Designing an expanded and interlinked central information system that will provide access to the breadth of information required for land use planning and administration, e.g. detailed digital geographical map of an area, environmental information, who holds the customary ownership, interests and lease rights, and detailed property information, CLT decisions on customary ownership, status of the land, planning and zoning maps, the location and size of land areas and features
- providing good and accessible information for planning and development decisions and procedures for land users, planners and administrators to benefit from
- streamlining and removing delays in land record and other land related processing
- compatibility of spatial information and sharing of information across the whole of GoV, cleansing DoL data of erroneous information and matching all related information to enhance the quality and efficiency of all involved GoV Departments and Ministries.

6.9 A proposed NZAID programme of support, which is designed with full consideration of AusAID's programme of support to the land sector and ensures harmonisation.

7. **Timing, Duration and Milestones**

The design mission will take up to five weeks commencing in September 2008.

#	Milestone	Timeframe	Dates
1	Background reading	Up to 2 days	16 Sep 2008

2	Start of assignment briefing from NZAID (Wellington & Post) done by teleconference	3 hours	18 Sep 2008
3	Workplan for the assignment developed and agreed with NZAID and the DG Lands	Up to 1.5 days	18 /19 Sep 2008
4	Consultations in Port Vila and two Provinces, analysis, preliminary activity design proposal, workshop to stakeholders on preliminary findings and proposed project design	Up to 15 days	19 Sep to 2 Oct 2008
5	Draft Activity Design Document (ADD) submitted to NZAID, Director General Lands and other stakeholders for feedback		13 Oct 2008
6	Final feedback from stakeholders		23 Oct 2008
7	ADD finalised (incorporating feedback from stakeholders) and submitted to NZAID and DG Lands	Up to 3 days	30 Oct 2008
8	Peer review of AusAID Project Design Document by Team Leader	Up to 3 days	Oct/Nov 2008

8. Outputs

- 8.1 An ADD to strengthen the CLT and ITC which is consistent with the GoV's vision and priorities and meets NZAID's development priorities, values, principles and design standards. The ADD will be guided by NZAID's "**Activity Design Guideline**", and other relevant programme tools.
- 8.2 The ADD must include an overarching situational analysis of the CLT and ITC and relevant land and development issues to contextualise and rationalise the CLT and ITC strengthening programme. The ADD must include a clear proposal for NZAID funding based on an indicative work plan, a detailed five-year budget, a logical framework and draft terms of reference for any technical assistance proposed.
- 8.3 The CLT section of the ADD will address the questions raised in paragraph 5.4 above.
- 8.4 The ITC section of the ADD will address the questions in paragraph 6.6 above as well as:
- An assessment of the current systems of land records management and the requirements for automating the manual processes and for data cleansing and matching prior to data input.
 - An assessment of the hardware and software procurement required to establish a standard operating environment in the DoL, taking into account existing ICT infrastructure. Detailed specifications of major hardware, and software needs and a timeline for acquisition and operation.
 - A system design document that will guide the ultimate development of a land record MIS for the DoL. The system design document should include a data model, and interoperability framework for linking the MIS with other relevant systems already in use in the DoL and GoV, and a statement of system requirements.
 - A management plan for the operation of ITC including standards and guidelines and an operation plan for year one.
 - A training plan covering the training of ITC officers and associated staff.

- A review of project costs and requirements.
- An assessment of the strengths, weaknesses, threats and opportunities over the life of the project.
- An assessment of the capacity of DoL for maintaining the ITC at the completion of the project.

9. Methodology and Approach

- 9.1 The Design Team will ensure wide and participatory involvement by key stakeholders for an integrated ADD for both the CLT and ITC strengthening projects. The Design Team will work closely with the Director General of Lands and designated staff, the CLT Officer, ITC staff and relevant policy analysts in the Vanuatu Department of Strategic Policy Planning and Aid Coordination (DSPPAC) in the Prime Minister's Office. The consultations might include formal and informal individual and/or group meetings which will be convened and conducted in a manner that is inclusive and observes traditional values and local custom.
- 9.2 The Design Team will conduct much of its work in and around Port Vila, but will be expected to travel to selected areas of the country to consult and observe proceedings of the CLT in a province. Whilst the Design Team will undertake its field work separately from the AusAID team it is expected that the Team Leaders of both teams will convene regular joint team meetings for planning, briefing and discussing ideas. The Design Team will take into account the findings of the background documents listed in Annex I and II. It will also take into consideration the GoV's strategic plans, such as the Priorities Action Agenda (PAA) and NZAID and AusAID strategies and the Final Report of the 2006 National Land Summit. This includes NZAID strategies on cross-cutting issues such as human rights, gender, environment and HIV impacts.
- 9.3 At the end of the in-country consultations the Design Team will convene a workshop for the purpose of de-briefing key stakeholders. This will be an opportunity to offer preliminary thoughts on the content of the proposal and respond to any questions. It is expected that the exact nature of the workshop will have been discussed and agreed in advance with the AusAID design team Team Leader including the option of his participation.

10. Composition of the Design Team and Reporting

- 10.1 The Design team will consist of up to four members – a lawyer (or someone with a legal background) and preferably local; an international project design specialist with a background in social development (preferably land issues); a local communication expert; and an international ITC expert. At least some (and preferably all) of the team members will be knowledgeable of the CLT, Vanuatu custom and land issues.
- 10.2 The Design Team will report to the Director General of Lands and NZAID.

11. Skills Required

11.1 Team Leader & Development Programme Designer (International)

- High level of negotiation, facilitation and interpersonal skills;
- Demonstrated programme designing experience and well grounded understanding of good development practice, principles and approaches;

- Demonstrated analytical and writing skills;
- A tertiary qualification in a social science or in a subject of relevance, such as land and law;
- Experience in consultation process with government and community groups;
- An understanding and experience of NZAID programme design, implementation and management processes and requirements;
- Preferably experience in Vanuatu or Melanesian context;
- Preferably a good understanding of Bislama;
- Preferably experience in working in different cultures and understanding of *custom* in Vanuatu;
- Lead in drafting of the project design document; and
- Lead in finalisation of project design document.

11.2 **Information Communication Technology (ICT) Specialist (International)**

- A degree in ICT, surveying or land related field
- Background in database design, construction and maintenance
- Have a good understanding of the requirements for an effective land information management system suitable for small developing countries;
- Have good negotiation, facilitation and interpersonal skills;
- Experience in consultation process with government and community groups;
- An understanding of NZAID development approach and priorities;
- Preferably working experience in Vanuatu or Melanesian;
- Preferably a good understanding of Bislama;
- Preferably experience in working in different cultures and understanding of custom in Vanuatu; and
- Strong analytical and writing skills in order to contribute to drafting and finalisation of the project design document.

11.3 **Land Specialist (Ni Vanuatu)**

- Must have extensive knowledge of custom land issues gained through either research or involvement in land negotiations or mediation;
- Ideally, a qualified lawyer specialising in Land Law either in Vanuatu or Melanesia Pacific;
- Knowledge of Vanuatu law;
- An in depth understanding of Vanuatu culture and custom protocols and practice;
- High level of negotiation, facilitation and interpersonal skills;
- Knowledge of the Vanuatu context - socio, economic, political;
- Understanding of Government of Vanuatu development vision and priorities;
- Understanding of the operation of the Vanuatu public service, such as planning, resource allocation processes;
- Ability to follow up on any outstanding matters when International Consultants are off shore;
- Demonstrated analytical and writing skills;
- Contribute to drafting and finalisation of the project design document; and
- Must be fluent in English and Bislama.

11.4 **Communication Specialist (Ni Vanuatu)**

- Relevant qualification in a communication media such as press or radio;

- Experience in development of communication strategies suitable to Vanuatu context – rural, limited-English speaking and low literacy audiences;
- Experience in working with multiple-media public awareness campaigns;
- Understanding of GoV development vision and priorities;
- Provide advise on local cultural protocol and interpretation where required
- Gather information, such as reports, data, etc and knowing where to find information.
- Ability to follow up on any outstanding matters when international consultants are off shore;
- Must be fluent in English and Bislama and preferably French;
- Contribute to drafting of the project design document; and
- Contribute to finalisation of project design document.

12. Lands Subject Matter Expert

- 12.1 The knowledge, experience and expertise of the Design Team will be supplemented by an additional Lands Subject Matter Expert (SME), contracted separately by NZAID. The SME will provide subject matter expertise to the Design Team on land issues in Vanuatu including, but not limited to, the following areas:
- land law
 - land administration
 - land disputes and resolution
 - customary law and practice in relation to land tenure, use, etc.
- 12.2 The SME and the Team Leader will decide how the SME will provide their input into the projects' design. This will at a minimum include review of relevant documents and critique/peer review of the draft ADD. The feedback of the SME on the draft ADD will be incorporated into the final ADD. SME input may also take the form of their involvement in critical meetings or consultations.
- 12.3 The terms of reference for the SME are attached as Annex III. The SME will report to the Team Leader.

Annex I: Relevant Documents

- 1 Land Summit Resolutions (September 2006)
- 2 Customary Land Tribunal Act (2001);
- 3 Administrative Procedures Guidelines for the CLT (2003);
- 4 Lands Tribunal Training Guide: Information for Adjudicators and Secretaries (2003);
- 5 Lands Tribunal Hearing Procedures (2003);
- 6 NZAID-funded Review of the Implementation of the CLTA and Feasibility Study for NZAID Assistance (2004);
- 7 NZAID-funded Report of the National Review of the CLT Program in Vanuatu (2005);
- 8 Report on the re-evaluation of the ITC work plan for 2007
- 9 ToR for Tri-Nation Land Study Tour (2006);
- 10 Government of Vanuatu Land Tour briefing paper (2006);
- 11 Report of Tri-Nation Land Study Tour (2006);
- 12 AusAID-funded Review of Vanuatu National Land Legislation, Policy and Land Administration Report (2007);
- 13 AusAID ToR for the short-term initiatives identified in the report above;
- 14 2 X GIP Proposals;
- 15 Bill Robertson report regarding Strengthening of the CLT and ITC
- 16 Bill Robertson proposal;
- 17 NZAID: Funding Modalities Paper (see Anna Pasikale, NZAID); and
- 18 Sample reports from CLT Unit (see Alicita Vuti, CLT Officer, GoV)

Annex 10

Meetings and Interviews

MEETINGS AND INTERVIEWS

Date	Organisation	Personnel	Designation
18 September	National Council of Women (joint meeting with AusAID mission)	Approximately 12 representatives from NCW and other women's groups	
	Design Team briefing with NZAID	Leonard Chan Cameron Cowan James Tao David Swete Kelly Anna Naupa Chris Lunnay Allan Wilson Hamlison Bulu Henry Vira	NZAID NZAID NZAID AusAID Mission Design Specialist AusAID Design Team Design Team Design Team Design Team
19 September	Department of Lands, Survey and Records	Jean Marc Pierre Paul Gambetta Alicta Vuti Josiana Jackson Matthew Temar	Director of Lands Senior Cartographer Senior CL Officer IT Manager (Acting) Programmer
	Department of Lands - Mapping	Harold Moli Naelo Tosso	Project Coordinator – ADF Mapping Cartographer
	Office of Valuer General	Menzies Samuel	Valuer General
	Customary Land Unit	Alicta Vuti Gordon Amajmpat Leah Tarry	Senior CL Officer CLU Officer CLU Officer

Date	Organisation	Personnel	Designation
22 September	Private Sector (joint meeting with AusAID Mission)	Litiana Chillia Douglas Paterson John Tonne Adrian Sinclair Lynn Faber Peter Biasin, Garry Blake Paul Vogelsberger Ken Lyons David Swete Kelly William Ganileo	Mele Trustees Ltd Island Properties MCI BDO BDO ANZ Bank Ridgeway Blake Professionals Real Estate AusAID Mission AusAID Mission AusAID Mission
	Department of Lands	David Moses Martin Sokomanu Rodson Aru	Principal Valuer Surveyor General Examining Surveyor
	Customary Land Unit	Alicta Vuti	CLU Coordinator
23 September	Department of Lands	Matthew Temar	Lease Project Coordinator
	NGOs	Henry Vira David Tovovor, Jocelyn Loughman, Andonia Piau-Lynch Douglas Ngwele Michael Taurakoto Noa Saksak Leah Nimoho Alicta Vuti Charleon Falau,	Secretary General VANGO PF Net Project Manager Program Officer, World Vision National Coordinator, Disability Promotion and Advocacy Association FSPV Governance Officer Governance Program Manager, Wan Smolbag Theatre National Coordinator TE VKS GEF Small Grant, VANGO CLU Coordinator Chairman, VANGO
	Ministry of Finance	Brendan Toner	Revenue Advisor

Date	Organisation	Personnel	Designation
	Donor Coordination Meeting	Various representatives of donors and NZAID and AusAID mission members	
24 September	Land Reform Workshop (meeting convened by AusAID mission)	Various representatives	
	Department of Lands, Survey and Records	William Ganileo	Special Projects
	Meeting with DG and TA Team	Russell Nari	Director General and Chair of Steering Committee
	Malvatumauri	Chief Gratien Alguet Selwyn Garu	President Secretary
25 September	Department of Lands	Josiana Jackson Julie Garoleo Mahit Kalour Peter Pata Dominique W Moses Williams	IT manager HR Manager Finance Officer Valuer Valuer Geodetic Surveyor
	Geology and Mines	Chris Loan	Director
	Geomap Ltd	Martial Meltenoven	Private Surveyor
	Field Visit to Santo	Gordon Willie Gwen Wells Saniel Sul Ben Sive Jerome Solomon	Lands Officer Lands Officer Land Tribunal user Land Tribunal user & Land Tribunal Panel member Land Tribunal user
26 September	AusAID	Anna Naupa	Senior Program Officer
	Department of Lands	Alicta Vuti Gordon Amajmpat Leah Tarry	Senior CL Officer CLU Officer CLU Officer
	AusAID	AusAID Design Team presentation of – Aide Memoire	

Date	Organisation	Personnel	Designation
27 September	Justice for the Poor	Justin Haccius	Research Officer
29 September	Vanuatu Property Valuation	Richard Barnes	Reg. Valuer/Partner
	North West Efate Area Land Tribunal	Willie Tapasei	Secretary
	Public Service Commission	Mark Bele	Secretary
	Ministry of Internal Affairs	George Pakoa	Acting Director General
	Department of Local Authorities	Gerry Sampson	Physical Planning Unit
30 September	National Statistics Office	Benuel Lenge	Statistician
	Vanuatu Cultural Centre	Joel Simo	Research Officer
	Design Team conference call with NZAID	Leonard Chan, NZAID Tony Banks, NZAID James Tao, NZAID Chris Lunnay Allan Wilson Hamlison Bulu Edward Nalyal Henry Vari	
1 October	Department of Lands, Survey and Records	Russell Nari	Director General
	Workshop on presentation of draft design and discussion	27 participants including representatives from NZAID, AusAID, Malvatumauri, Ministry of Internal Affairs, DoL, CLU, NGOs	
	NZ High Commission	Jeff Langley Nicky Simmonds James Toa	High Commissioner NZAID Manager (Acting) Development program Coordinator, Vanuatu

Annex 11

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