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Village land trusts in Vanuatu: ‘one common basket’

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A snapshot

Village land trusts in Vanuatu: 'one common basket'

The village land trust is a concept used in Vanuatu after independence (1980) to meet the pressing need for a legally recognised body to make decisions on behalf of customary owners whose alienated lands were being returned. In the decades since, although the use of village land trusts has not spread around Vanuatu, the two main ones established—Ifira Trustees Limited and Mele Trustees Limited—have enjoyed relative success, albeit with mixed experiences. They have enabled leases to be negotiated over former alienated lands, revenues to be collected, investments to be made in businesses, and a wide range of services to be provided to the villages involved. The trusts have also been a symbol of village solidarity—a 'common basket' from which everyone can eat.

The experiences of the village land trusts provide some important lessons.

- » Land trusts can be an effective vehicle for representing group ownership in the formal economy.
- » The incorporation of land trusts requires a regulatory regime to ensure accountability and transparency.
- » Governments can play a supportive role when land trusts are being set up.
- » Land trusts can have the flexibility to incorporate traditional decision-making structures.
- » Business and investment activities are best kept separate from the land management activities of land trusts.
- » Land trusts would benefit from an intermediary advisory body.

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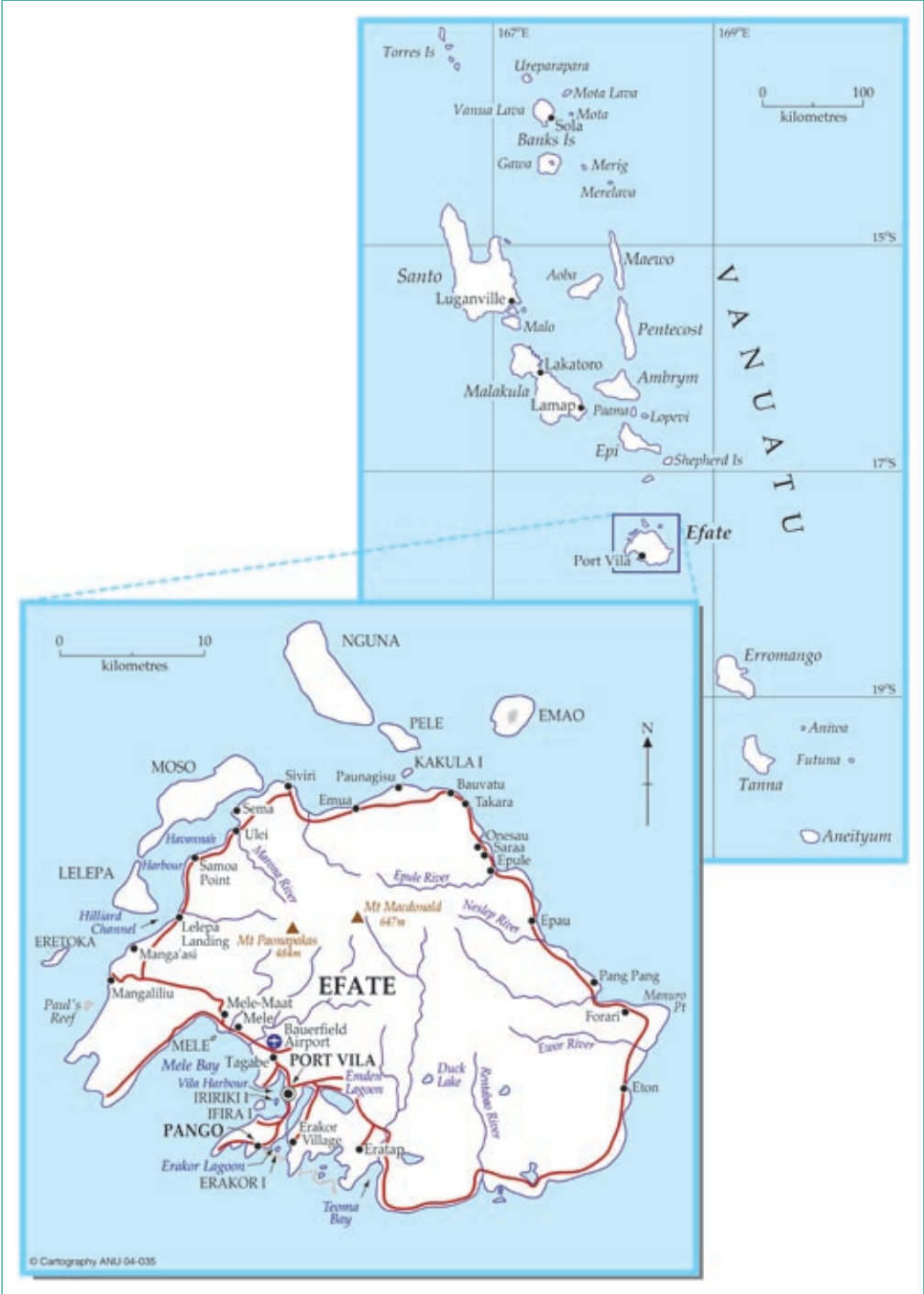
The setting

The area of Vanuatu covered by this case study lies on the outskirts of the capital Port Vila, and focuses on the peri-urban villages of Ifira and Mele (Maps 1 and 2). In recent years Vanuatu has built on its reputation as a Pacific holiday destination, becoming the focus of a land boom fuelled by investors from Australia and New Zealand. The great majority of this activity has been on the main island of Efate, where Port Vila is located. It is estimated that, since independence in 1980, 55 per cent of all land on the island—and more than 80 per cent of coastal land—has been converted by customary owners to long-term leases. This amounts to an extraordinary loss of control over the nation's land. Vanuatu's status as a tax haven is crucial in attracting investment (Rawlings 2007).

Ifira is an island of half a square kilometre, located at the entrance to the harbour of Port Vila, with a population of 983 at the time of the most recent national population census (1999). Large areas of the traditional lands of Ifira villagers were alienated during the colonial era. Although much of their land is now lost to the town of Port Vila, villagers still have important landholdings behind the wharf area, across the harbour's entrance at Malapoa and beyond to the airport. Perhaps the jewel of their landholdings is Iririki Island, just offshore and adjacent to the town's commercial centre. Reflecting their central location, Ifira villagers have long provided senior politicians, civil servants and businessmen.

Mele village moved to the mainland adjacent to its previous offshore island location in 1950 (Naupa 2005). With a population in 1999 of 1851, it is Vanuatu's largest village, lying 10 kilometres around Mele Bay from Port Vila. Its traditional lands stretch from a boundary with Ifira lands near the airport westwards around Mele Bay to Devils Point and Tukutuku, where they abut the mainland landholdings of the Lelepa Island villagers. The people of Mele village have been no less prominent in the nation's affairs than Ifira villagers, and they provided the first president after independence.

MAP 1 » VANUATU—FEATURING EFATE



MAP 2 » PORT VILA AND PERI-URBAN VILLAGES



Historical and political context of land management in Vanuatu

For present purposes, the history of land management in Vanuatu can be divided into two periods—before and after independence. Before independence in 1980, around 20 per cent of the country's land area (and a far greater percentage of the land suitable for agriculture) was owned by foreign interests. Beyond the boundaries of the two urban centres of Port Vila and Luganville, land management was almost entirely a matter of choice, with little in the way of planning and development requirements or land revenues. Titles in alienated lands were confirmed and registered by the Joint Court almost without exception, regardless of native claims to the contrary (Van Trease 1987). By the 1970s, however, as ni-Vanuatu became increasingly concerned that much of their most valuable land was in foreign hands, the level of protest increased greatly.

Measures were taken to return some land, but an Anglo–French Condominium with conflicting goals and agendas could not address the grievances. So these serious land problems were left to the incoming independent government to resolve. After a long struggle in which the central issue was returning alienated lands to their customary owners, the Constitution adopted at independence declared: 'All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants' (Article 73).¹

The only exception to this declaration was that the government could own land acquired in the public interest (Article 80). Under this power, much of the land within the town boundary of Port Vila became public land.

Whereas the land management system before independence could be called 'laissez-faire', for quite different reasons the system introduced at independence ended up being much the same. It was designed to deal with the pressing need to change the land tenure system from one dominated by outsiders to one giving priority to the needs of the nation's citizens. All alienated lands were returned immediately to customary owners. The Land Reform Act passed in 1980 enabled customary owners to negotiate leases for up to 75 years with the previous owners of their land. But this could be done directly without first determining customary ownership. Once registered under the Land Leases Act, no challenge to ownership can overturn a lease.

Matters such as identifying customary owners, while not ignored by the incoming government, could not be given priority. Even the vital question 'what are custom owners—individuals or groups?' was left to be answered later by a national land law called for by the Constitution (Article 76). This law was also intended to address Vanuatu's need for a comprehensive land administration system. Almost 30 years after independence a national land law is still not in place.

¹ In fact, Article 71 in the original version of the Constitution. A renumbering was carried out after independence.

In the absence of such a law, the nation's land affairs are being conducted with major gaps and weaknesses in land policies and laws and in the administrative system to implement them. Possibly the biggest gap is in how the customary group can be involved effectively in making decisions on customary lands. Into this gap, the ni-Vanuatu leaders introduced the concept of village land trusts. Such trusts have played a significant role in the land affairs of Mele and Ifira villages over the past three decades. The trusts combine traditional and modern institutions and are designed to meet modern needs without displacing the traditional values and practices underpinning village communities. As such the experiences of these village land trusts can make a valuable contribution to developing ways to manage lands in the Pacific islands.

Cultural context

The widespread alienation of customary lands through foreign ownership before independence and the widespread allocation of long-term leases in the decades since took place at Mele and Ifira against a background of cultural change. Anna Naupa (2005) concluded:

As cultural change blurs the boundaries between the traditional and the modern, indigenous reference to *kastom* [social structures, values and practices perceived as traditional] in contemporary Vanuatu is rather vague. Ni-Vanuatu remain aware of *kastom* ideals but can manipulate interpretations to suit changing needs ... The ambiguous nature of *kastom* therefore allows communities to address the changing social (and natural) environments, while always rooted in basic cultural values.

In the study area of South Efate, the *naflak* kinship system² plays a central role—now as in the past—in distributing chiefly titles and rights to land. *Naflak* are clan identities organised according to matrilineal descent. Before the interior and coastal settlements were amalgamated during the colonial era into the major villages surviving today, evidence suggests that individual settlements were identified primarily with a single landowning *naflak*. *Naflak* names reflect natural species, such as octopus or coconut. As a general rule the names of marine species identify communities with origins along the coast, while the names of terrestrial species identify communities with links to the interior of mainland Efate.

Naflak identities are inherited maternally—a brother and sister share the same *naflak* as their mother but not that of their father. A group of people sharing a *naflak* identity and traditionally residing together are referred to as a *nakainanga* (a matriclan descended from a common female ancestor). In contemporary Efate society, *naflak* is often referred to as 'family' and contrasts with 'bloodline' or those related by patrilineal forms of descent.

2 Called the *namatarao* kinship system on North Efate and offshore Nguna.

The temptation to see the society as unambiguously matrilineal must be resisted, because other factors have introduced patrilineal features. Both Ifira and Mele are dominated culturally by relatively recent Polynesian immigrants, employing patrilineal descent for rights to land. These people have subsequently intermarried with members of indigenous Melanesian Efate communities, thus also inheriting matrilineal *naflak* principles—a source of some internal tension and confusion. At a later stage Presbyterian missionaries also promoted patrilineal descent of chiefly titles and other rights. So, while rights to land and chiefly titles are generally acquired in accordance with principles of matrilineal descent, a mission-inspired revolution in kinship has promoted a system of patrilineal descent to chiefly titles and rights to land. This system is now widely regarded as 'traditional'.

One consequence of the contemporary interpretation of *kastom* is that women have become more marginalised from land decisions—only male heads of households participate in land matters.

It is not surprising therefore that under these many different influences there is confusion about what is customary, and how far *kastom* can form the basis for modern land tenure and land use. However, the official position is clear. Article 74 of the Constitution declares: 'The rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu'.

In addition Chapter 5 of the Constitution provides for the National Council of Chiefs (*Malvatumauri*) with a 'general competence to discuss all matters relating to custom and tradition'. Chiefs are officially recognised as having authority in a hierarchy—from village chiefs to area, island, provincial and national councils of chiefs. In 2006 the National Council of Chiefs Act was passed, providing an administrative structure for the National Council of Chiefs and identifying its role in registering island and urban councils of chiefs. Under the Customary Land Tribunals Act 2001 chiefs are the main authorities for settling land disputes, but their future role in developing the nation is unclear. Both the national executive and judiciary seem to have reservations about what their role should be (Lunnay et al. 2007).

These uncertainties about custom, and the role of customary groups and chiefs in the land matters of contemporary Vanuatu, present major problems for rational, fair and sustainable land management. Vanuatu has a comprehensive set of laws that deal with negotiating land leases, registering leases and other interests, settling land disputes, planning and protecting the environment³, but it does not have a law for identifying customary owners of land. Yet it is these people who own all land except public land and are entitled to negotiate leases that can tie up a community's lands for generations.

3 However, the laws are often not enforced (see Lunnay et al. 2007, pp. 18–21).

The level of dissatisfaction with current arrangements can be gauged by the popular support for the National Land Summit held in September 2006 and the wide range of reforms called for in its 20 resolutions. For decisions involving customary lands, the interests of groups (village, kinship group, family) need to be balanced with the interests of individuals. And to meet the nation's future land needs, the traditional and the modern need to be balanced.

The land trust concept

A trust is a highly specialised concept of the western legal system. Basically a person (the trustee) holds property for the benefit of other people (the beneficiaries). The trustee has particular duties and the legal authority to act on behalf of the beneficiaries, so that actions taken by the trustee are legally binding. These characteristics of trusts have made them an attractive mechanism for the ownership and management of customary lands.

Throughout history whenever colonisers encountered indigenous peoples, they applied concepts from their legal culture to them—literally, to 'assimilate' them. Thus customary groups were sometimes treated as corporations, cooperatives, associations or councils. At other times a representative approach, using agents or trustees, was adopted (Fingleton 1998). While converting indigenous institutions into something similar and familiar is convenient for colonisers, indigenous institutions can suffer as a result of the administrative mechanisms imposed on them.

Using the trust concept to reflect the relationship between chiefs of customary groups and the members of those groups assumes that the role of trustees under western law corresponds to the role of chiefs under customary land tenures. There are, however, fundamental differences between the two roles, an obvious one being that a chief is also a member of his customary group. This gives rise to unavoidable conflicts between a chief's personal interests and his duties as a trustee.

Yet the appeal of trusts remains and, provided that safeguards are in place to reduce the risk of conflict, they can fulfil a useful purpose in managing customary lands. One safeguard is to have a statutory body act as trustee for customary landowners, as the Native Land Trust Board does in Fiji. An alternative safeguard is to have a group of people, even a corporation, act as trustee for the landowners. Another safeguard is to allow the trustee to act on behalf of customary landowners only after a process leading to informed consent and in accordance with directions given by the landowners.

In Australia in the Northern Territory, for example, three main bodies are involved in holding and managing Aboriginal land titles—the traditional Aboriginal owners, Aboriginal land trusts and Aboriginal land councils. The land trusts hold title to the lands, but can exercise their powers over the lands only in accordance with directions given to them by the land councils, which must first get the informed consent of the traditional owners.

Vanuatu's experience of land trusts

Vanuatu has its own particular experience of land trusts. The Presbyterian Church used land trusts from early times to manage its many landholdings in Vanuatu (Van Trease 1987) and the Land Trust Board was established by the British colonial authorities in 1973 to facilitate the return of certain lands to customary ownership. The British attempted to set up a joint land trust board to implement more general land reforms, but this was unsuccessful (Van Trease 1987). By the late 1970s the Vanua'aku Party's leadership, with its Anglophone and Presbyterian connections, drew on these precedents when preparing to recover alienated lands at independence.

Another device used to press land claims was the land committee (called 'land council' in some places). The Fila Island Land Committee was established in 1973 to raise Fila (Ifira) land claims with the Anglo–French Condominium, and the Mele Land Committee was formed to do the same some years later. In the late 1970s the Vanua'aku Party encouraged villages to set up land committees to press their claims for returning alienated lands and identifying the original customary owners.

IFIRA LAND TRUST

The Ifira land trust was set up in 1976 by Kalpokor Kalsakau, who was Vanuatu's first finance minister after independence, using his knowledge of Fiji's Native Land Trust Board gained while a student in Fiji. He, Barak Sope, a highly influential Ifiran islander who was later prime minister, and the chief of Ifira, Graham Kalsakau, were the three signatories to a memorandum of association for setting up a trust company. In 1978 the trust was incorporated as a private company with the name Ifira Trustees Limited.⁴ Its objectives include to:

accept and execute the office of trustee, and to take, receive, hold and deal with all property ... that may be granted, conveyed, transferred or given to the Company upon any trust or trusts for the benefit of the people of Fila Island.

These people were further specified as 'the members from time to time of the Blakniu, Blakuita, Blakmalu and Blaknui clans'.⁵

⁴ It seems that the company was also licensed as a 'trust company' under the Trust Companies Regulation (Cap. 10) (George Vasaris, pers. comm., 2007). As defined in that law, a 'trust company' means any company carrying on trust business, and 'trust business' includes the business of acting as trustee (s. 2).

⁵ These are said to be the totems of the four *naflaks* (*blak* in Ifira), which originally settled Ifira Island, although the *naflak* identities were presumably inherited originally from in-marrying Efate mothers.

After Ifira Trustees Limited was incorporated, a declaration was signed by the chief of Ifira village and nine other villagers, whereby ‘the Ifira Island Community acting through the Chief and his Council and the Land Committee of Ifira Island’ vested certain lands in Ifira Trustees Limited to be held ‘beneficially for all the members of our community’. The lands handed over to Ifira Trustees Limited were listed by location and title number and included Iririki Island, Tagabe, Malapoa Estate, De Gaillard Residential Estate, and Malapoa Peninsula. It is notable that the trust was set up at the village level, which is a settlement unit made up of traditional landowning groups.

The declaration is a remarkable document, carefully drafted to address the difficult question of how land that would come under the ownership of the unidentified customary owners at independence could then be vested in the trust. It states:

IN MAKING THIS DECLARATION we state our awareness of Articles 71, 72 & 73 of the Constitution of the Republic of Vanuatu and say that there is no inconsistency between our DECLARATION and the said articles because –

1. the said Lands belong beneficially to the respective indigenous custom owners and their descendants;
2. we have applied our own rules of custom in deciding the basis of ownership and use of the said Lands;
3. we have adopted and therefore recognise the concept of a trust as being ‘a recognised system of land tenure’ for the purposes of our custom in regard to Article 73 of the Constitution.⁶

Whether this ‘vesting’ of customary land in the trust would survive a legal challenge by the customary owners is debatable.

MELE LAND TRUST

Ati George Sokomanu, Vanuatu’s first president after independence, also drew on the Native Land Trust Board precedent when establishing the Mele land trust. He had been a student in Fiji, and in 1979 the chief of the village, Peter Poilapa, was joined by four other villagers and their solicitor as the signatories of the memorandum of association for incorporating a private company, Mele Trustees Limited, which was incorporated in 1980. Its objectives include to act as trustee and receive property granted to it upon any trust ‘for the benefit of the people of Mele village’. These people are further specified as ‘the members from time to time according to custom of the various clans of kinship groups which together comprise the class of people known as Mele villagers’.

6 At independence, Articles 71 to 73 were renumbered 73 to 75.

Like Ifira, Mele village is not a single traditional landowning group but a number of landowning groups. As with the Ifira trust, those involved in setting up Mele Trustees Limited emphasised its importance in managing alienated lands on behalf of the community, rather than splitting them up among their respective customary owners.⁷ According to one person interviewed as part of the case study: 'Nobody knew exactly where their lands were, so Mele land trust took care of the lands'.

Much of Mele village lands had been alienated during the colonial era.⁸ So there was a very large area for which management arrangements had to be set up quickly. Naupa (2005, p. 7) estimated that about 30 per cent of all Mele lands was involved. However, inquiries have not brought to light a document similar to the declaration at Ifira, aimed at vesting the lands in the trust to administer on behalf of all Mele villagers.

Activities of the Ifira and Mele land trusts

IFIRA LAND TRUST

The main purpose of the Ifira land trust was to hold and manage land given to it on trust for the benefit of the specified villagers.

Iririki Island became the original cash cow for the trust. Its title was held from early times by the Presbyterian Church and during the 1970s the Fila Island Land Committee negotiated the return of the island to the customary owners. In 1976 the church assembly finally agreed the whole island would be returned, but on the proviso that it be held by a trust. According to information provided by Kalpokor Kalsakau, the land committee decided it would be held by the Ifira land trust, partly to meet the church's demands and partly to avoid arguments over the identity of the customary owners.

In 1983 a protracted land dispute was settled with a payment of US\$1 million by Iririki Resort, the lessee of part of Iririki Island, in return for a lease over the balance of the island. With this as capital, and with a steady flow of rents from its other properties, the trust built up its assets. By 1991 it had ten subsidiary companies with interests in stevedoring, shipping, waterfront development and many other businesses.⁹ The total value of its assets in that year was Vt281.5 million (US\$2.5 million). Its trading account showed that Vt219.6 million (US\$2.0 million) was made in 1990 from premiums on transferring leases, while the profit on rental property was Vt20.3 million (US\$0.2 million).

7 The trust's first administrator, Meto Nganga, its first secretary, Simeon Poilapa, and its adviser, Ati George Sokamanu, were all interviewed as part of this case study.

8 Chris Ballard extracted details from the Joint Court decision on Title 122, dated 1933, which shows 14 sales by one Mele chief between 1886 and 1902, amounting to well over 2000 hectares.

9 This information is taken from the public files of the Financial Services Commission, being the report and financial statements for Ifira Island Trust for the year ended 31 May 1991.

Ifira islanders interviewed for this case study emphasised the importance of the trust in maintaining community solidarity. As one interviewee put it: ‘Everybody eats from the one common basket’. Indeed, a striking feature of the trust’s operations is the services it provides to the Ifira community, young and old. These include a pension scheme for all islanders aged over 50 years, tertiary scholarships, village administration, the supply of water and electricity across the island, support for schools and community organisations (for sport, women, churches and people with disabilities), interest-free loans for school fees, the cost of medical evacuations and an annual Christmas voucher of Vt10 000 (US\$900) for all islanders aged over 18 years. Island leaders say that, if the emphasis had been on identifying only the customary owners of the leased lands, it would have ‘divided the community’. ‘The trust holds us together’.¹⁰

The basis of the trust’s wealth is its revenue from leases. By December 2001 Ifira Trustees Limited had granted the leases detailed in Table 1. While the total area (24.4 hectares) is not great, the land involved is on the edge of Port Vila and highly valuable.

TABLE 1 » LAND LEASED BY THE IFIRA AND MELE LAND TRUSTS AS AT DECEMBER 2001

	Number of leases	Total area	Lease terms
Ifira land trust	85	24.4 hectares	For 48 leases: 75 years For 37 leases: 50 years
Mele land trust	211	3788.75 hectares	Average: 60 years

Source: Farran (2002, p. 2).

Until a lease for 60 hectares of land at Malapoa Point was granted the trust had encountered no major conflicts, although there had been minor internal conflicts. In 2005 litigation over that lease began, which pitted Ifira Trustees Limited against the Kalsakau family. The central issue in the case revolved around the statutory power of the Minister of Lands to grant a lease over disputed land. The Acting Minister had granted the lease to Ifira Trustees Limited, but the Supreme Court set aside the grant in a decision approved by the Court of Appeal. A key consideration in the Court of Appeal’s judgement (October 2006) was that both the Acting Minister of Lands and the Director of Lands at the time were prominent Ifira islanders, with personal interests in the matters they were supposed to be dealing with independently. Of greater importance for the discussion in this case study is that the Kalsakau family was asserting its right to lease the land as their own customary land.

¹⁰ The quotations in this paragraph are from interviews with Michel Kalworai and four members of the trust’s board of directors.

MELE LAND TRUST

As with the Ifira land trust, the Mele land trust's main purpose was to hold and manage land given to it on trust for the benefit of the people of Mele village.

At an early stage the Mele land trust began accumulating assets. Without the initial capital base Ifira received from its court settlement, the Mele trust had to borrow to invest. In 1982 it raised capital to buy a 49 per cent share in the Hideaway Island Resort by placing a charge of Vt7 million (US\$70 000) on its shares, as security for repayment of the debt. Its lease income in 1983 was almost Vt2.5 million (US\$25 000), but in 1984 it received close to Vt16 million (US\$160 000) from logging operations on Mele land. In 1985 the trust purchased a 33 per cent share of Vate Timber Co. Ltd. for Vt7.7 million (US\$75 000). By 1989 its financial returns showed total assets of Vt18.4 million (US\$165 000) from its business of collecting lease incomes. By 1992, however, after a change of directors and accountants, the assets had been reduced to Vt4.8 million (US\$43 000).¹¹ This major change in the trust's fortunes reflected the changes in its decision making (discussed next).

In its early years the trust provided some services to the village community, including electricity, water and road improvements, and it supported various community organisations. Money was also distributed. However, these benefits dried up when the trust ran into financial difficulties. As the trust's difficulties increased, it relied more and more on granting new leases to generate income. By December 2001 the Mele land trust had granted the leases detailed in Table 1.

Whereas only 51 leases (mostly agricultural) were granted between 1980 and 1990, another 147 (mostly residential and commercial) were granted between 1993 and 1996.¹² Many of these leases have been converted into coastal subdivisions, denying Mele villagers access to their beaches and marine resources, with minimal return for the village. Indeed, Mele villagers are planning to move the village once again, to an inland location.

The loss of many of the trust's assets between 1992 and 1996 severely eroded its revenue base. The current board unsuccessfully invested in a couple of ventures to diversify the revenue base—a rubbish collection service, which had to be sold to meet the costs of an adverse Supreme Court judgement in a land dispute, and a community fishing venture, which failed in the face of strong competition. The trust is now exploring the feasibility of developing a housing subdivision of between 40 and 50 plots in the hills above the village.

¹¹ Information in this paragraph is taken from the public files of the Financial Services Commission, being the annual financial statements and directors reports.

¹² Data from the Vanuatu Archives, deposited by Sue Farran in 2003.

Decision making by the Ifira and Mele land trusts

IFIRA LAND TRUST

As a registered company Ifira Trustees Limited is subject to a wide range of requirements set out in legislation and in its articles of association, providing for the appointment of directors, their duties and the holding of meetings. Further requirements were added over time. Initially there were seven directors, including the village chief and a company, Financial Services Limited, but this was felt to be not fully representative of the Ifira community and the trust was restructured in 1999. The number of directors was increased to 31—the village chief and 30 ‘family’ representatives elected by an annual general meeting on the village council’s recommendation.

In 1999 a further adjustment involved appointing an advisory board—the Ifira Tenuku Land Management Board of Directors. According to Steven Kalsakau, the Member for Efate Rural and a director of Ifira Trustees Limited, its members are the 18 ‘main landowners’—the village chief, *naflak* leaders and family heads. In 2000 the advisory board issued a land policy ‘to facilitate the use of land for and on behalf of Ifira Trustees Limited’. The board’s decisions are declared to be binding on Ifira Trustees Limited, which must refer all land-related matters to the board before any implementation. The land policy further provides that, where customary owners of any land are identified, Ifira Trustees Limited can act on the owners’ behalf only with their agreement. The policy also provides for a leasing procedure, forms to be used, fees to be paid, the fixing of rents and premiums, land use zoning, surveying, valuation and the removal of unapproved settlers.

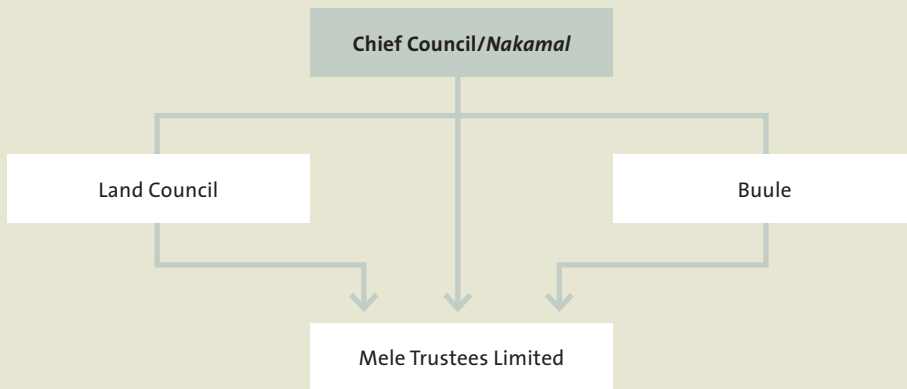
MELE LAND TRUST

Mele Trustees Limited is also subject to all the normal decision-making requirements set out in the company legislation and its articles of association. But it has faced some novel requirements from the beginning. Initially there were six directors, including the village chief and the solicitor acting for the trust. However, as Naupa (2005) has described, behind this formal decision-making body lay an elaborate structure in which the village chief and his council, a land council and a committee of elders (*Buule*) had major decision-making roles. The pre-independence land committee, comprising representatives from each of the 29 ‘families’ of the village, became the land council when Mele Trustees Limited was formed in 1980.

Naupa (2005, p. 8) continued:

The Land Council served as the cultural watchdog for Mele Trustees, which operated in a modern leasehold land tenure system. At its inception it was a policy of the Trust that its Board members received advice from three bodies in the village: the Chief and his Council in the *Nakamal*, the Land Council, and Buule, a committee of elders dedicated to tracing genealogies to ensure rightful claims to land (Fig. 1). The Council ensured that the Trust respected the traditions of people it represented in that individual clans were involved in decision-making through family representatives. The Council and the Trust together served to regulate development on Mele land to benefit villagers (eg through employment), and did their best to ensure that no land disputes would arise later.

FIGURE 1 » STRUCTURE OF MELE LAND BODIES, 1980–91



Source: Naupa (2005, p. 9).

This careful blending of the traditional and the modern bodies for making decisions about land management worked well for a decade. Naupa (2005, p. 9) described what happened next:

However, in 1991, recently graduated Mele university students banded together in opposition to the Mele Trustees' structure. They succeeded in abolishing the Land Council and Buule, and introduced in their place a committee of shareholders, comprised of family representatives.

The traditional transparent *nakamal* discussions were replaced with boardroom meetings with select representatives, removing knowledge of trust activities from the village. While women had been able to listen in on *nakamal* discussions, they were not represented on the newly formed committee of shareholders.

The trust's administrator at the time, Meto Nganga, mentioned another factor contributing to the trust's difficulties. As the customary owners of particular lands came to be identified, they began agitating to remove their lands from the management of the trust. The concept of 'one common basket', where everyone benefited from the village lands, began to collapse.

The original board of directors, with its chiefly representation, was replaced by a board elected by a new membership of 31 shareholders, each representing one of the original Mele 'families'.¹³ And, as already mentioned, the trust changed its accountants¹⁴, began to lose money, sold assets to cover debt and granted many leases to maintain a flow of income. During the 1990s there was further turmoil and directors were frequently replaced. It is estimated that, probably in response, somewhere between 75 and 80 per cent of the land formerly under the trust's management has been withdrawn and is now held and managed separately by four of Mele's 31 customary landowning families.

Reporting by the Ifira and Mele land trusts

IFIRA LAND TRUST

The company's legislation requires annual reporting and the filing of financial statements, which are available to the public. However, in Ifira's case a search at the Financial Services Commission revealed only one full report for the year ended 31 May 1991. For most other years all that is recorded is that assets of \$3 (the company's initial share capital) were held. Possibly the explanation can be found in the fact that the 1991 report is headed 'Ifira Island Trust', not Ifira Trustees Limited. It is known that there was a trust instrument, as it is referred to in the declaration vesting certain lands in Ifira Trustees Limited. Possibly two legal entities—Ifira Island Trust and Ifira Trustees Limited—are used as a legal device to keep certain information from the public eye.

The last report on the Financial Services Commission files is for 2001. Letters to the local newspapers complain about the absence of recent financial reports, and query how the trust's funds are being managed. On the other hand, there seems to be general satisfaction with the many benefits that the trust brings to Ifira village. Its attractive appearance and general wellbeing can be attributed in part at least to the trust's activities. During the case study there was no apparent opposition to the trust's continued existence.

¹³ This figure differs from the 29 'families' mentioned previously. One family seems to have divided and, on some accounts, the village chief was included as a member.

¹⁴ A member of the new accountancy firm became chairman of the trust's board of directors.

MELE LAND TRUST

It is a different story with the Mele trust. Its financial reporting is full and tells a story of fluctuating fortunes. From total assets of Vt2 million (US\$20 000) in 1981 the trust grew to hold Vt12.6 million (US\$126 000) in 1984, then sank during the mid-1980s only to rise again to a peak of almost Vt20 million (US\$200 000) in 1991. After restructuring and replacing directors, assets declined again to a low of Vt4.4 million (US\$44 000) in 1997. A major increase in leases granted increased the trust's assets to Vt10.6 million by 2003, the last year financial statements were lodged.

With the Mele land trust too there is the suggestion that two separate entities exist or at least that there are two separate accounts, one public and one private. The apparent lack of transparency was given as one reason for the distrust that motivated the takeover by the young university graduates in 1991. Yet annual general meetings were held and reports tabled as required by law, and the directors 'tried to make it understandable' to the villagers.¹⁵ Recently there has been concern that financial statements have not been lodged as required by law for the past three years.

Performance of the Ifira and Mele land trusts

Success is a relative concept in developing countries, where failure is common. The Ifira and Mele village land trusts have survived for some 30 years, which is a remarkable achievement in itself. As with other companies their fortunes have risen or fallen depending on the quality of their management. Not all investments have been profitable. For example, the Ifira trust's involvement in retail marketing was a failure.

The basic income of both trusts is the rents and premiums made from leasing the lands they manage on behalf of the customary owners. Both trusts have invested some of this income in businesses on those lands. Mele's funding of its share in Hideaway Island Resort showed how a legal entity can facilitate access to credit. The Ifira land trust has an impressive array of subsidiary companies contributing to the village, its stevedoring business being a valuable provider of employment. Directors of both trusts have been paid fees and other entitlements, adding to their individual wealth. The Mele directors received fees of Vt249 000 (US\$2400) in 1985. The remuneration for Ifira's directors in 1990 was Vt9 414 000 (US\$84 000).

What has been critical to the success of the trusts has been their ability to satisfy their village constituencies. Ifira land trust continues to provide a wide range of benefits and village services, and continues to enjoy popular support. Mele land trust, on the other hand, has provided declining levels of service and its popularity has correspondingly

¹⁵ Information in this paragraph was provided by the original administrator of the trust, Meto Nganga.

declined. In both cases their transparency in decision making and their accountability have been less than ‘best practice’, and regulatory oversight has been minimal. Problems may follow.

Each trust enabled village resources—land and people—to be melded for the greater benefit of all. The traditional village leadership (chiefs, *naflak* and family heads) and the new generation of educated younger members formed the decision-making nucleus, but their ‘family’ and ‘bloodline’¹⁶ connections to the villagers allowed village views to penetrate the land management issues dealt with by the trust.

However, the contrasting experience of the two trusts highlights the critical importance of balancing the different elements of the village community and meeting the needs and expectations of these elements. In both villages the land trusts incorporated traditional and modern features in their decision making. Ironically, it was in Mele, where this was done most systematically, that traditional inputs proved most vulnerable. When the educated younger members of the village felt their interests were not being met, they altered the trust’s structure along more democratic lines. However, the result was disastrous. By contrast, in Ifira the wide range of benefits provided from the trust’s incomes is seen as being responsible for its continuing support within the village.

The ongoing performance and sustainability of the trusts largely depends on them satisfactorily answering one crucial question: how do they hold their authority and manage the customary owners’ land? The loss of authority is an ongoing threat to the land trusts. Ifira attempted to answer this question by declaring that the trust was, in the words of the Constitution, a ‘recognised system of land tenure’ under Ifira custom and that the lands were vested in the trust. It seems that the Mele land trust made no such declaration. Therefore in recent years, when some dissatisfied villagers decided to remove their customary lands from the Mele trust, it could do nothing to prevent it. A similar threat now overhangs the Ifira trust.

In spite of these problems land trusts are a good option for facilitating land development while maintaining a landowner role in decision making. A testament to the value of the land trusts is revealed by the position of villages that did not adopt land trusts. The other main urban villages adjoining Port Vila, Pango and Erakor, have been targeted by developers and steadily their remaining customary lands have been leased to the developers. Such leasing is spreading throughout Efate and was a major grievance expressed at the National Land Summit in 2006 (see Case Study 14, ‘The paths to land policy reform in Papua New Guinea and Vanuatu’). The landholdings of the Lelepa Island villagers are also rapidly being converted to leasehold. Ironically it had a land trust like Ifira’s and Mele’s, but it was disbanded soon after independence. Its land committee continued until 2005, when it too was dissolved by the local paramount chief. Land disputes have increased dramatically since then.¹⁷

¹⁶ As mentioned previously, in modern Efate usage ‘family’ often refers to matrilineal kin and ‘bloodline’ to patrilineal kin.

¹⁷ Information provided by Peter Taurakoto, Vanuatu’s Ombudsman and a Lelepa villager.

Lessons

CONSIDER LAND TRUSTS A VEHICLE FOR MANAGING CUSTOMARY LAND

LESSON 1

Land trusts can be an effective way for managing the link between community land and the formal economy.

Customary owners have difficulties managing their land when participating in the formal economy. The Ifira and Mele communities attempted to resolve this situation by setting up land trusts. Their pioneers recognised the need for a legal entity for formal land dealings.

ENSURE LAND TRUSTS HAVE A ROBUST REGULATORY REGIME

LESSON 2

For land trusts to be effective they must be supported by a robust regulatory regime to ensure transparency and accountability.

When set up as a company, land trusts are subject to all the normal requirements for transparency and accountability (such as annual general meetings and reporting). However, there is evidence in Vanuatu that the statutory requirements for meetings and financial reports are not followed or enforced. A lack of transparency and accountability may have contributed to the difficulties of the Mele trust.

ACKNOWLEDGE THE SKILLS AND SUPPORT REQUIRED TO SET UP TRUSTS

LESSON 3

Setting up trusts requires skills that are not always available in a community, leaving a role for government in facilitating and regulating the formation of land trusts.

The Ifira and Mele land trusts were set up by senior members of the community who had good education. Through their education they learned about the nature of trusts, their capability and their applicability to customary land. They were able to draw lessons from the experience of the Native Land Trust Board in Fiji.

EMPHASISE COMMUNITY BENEFITS IN LAND TRUSTS

LESSON 4

Land trusts can be set up so that the emphasis is to benefit the community rather than individuals.

LESSON 5

Setting up land trusts with an emphasis on community benefits could improve their acceptance and their sustainability.

Probably the greatest contribution of the Ifira and Mele land trusts has been to village incomes and services. The trusts were set up to manage community lands for the benefit of their respective communities. The social 'contract' made when the trusts were set up was that they were a 'common basket' from which the whole community could 'eat'. Such applications and the distributions of income are likely to have reinforced the acceptance of Ifira Trust Limited in particular.

PROMOTE THE COMPATIBILITY OF TRUSTS WITH TRADITION

LESSON 6

It is possible for trusts to be set up to incorporate traditional decision-making structures and authority.

LESSON 7

It is important to combine the traditional with the modern, and groups with individuals.

A notable feature of the Ifira and Mele land trusts is how they have reinforced, rather than undermined, traditional authorities and the village structure. Only when these were replaced did the Mele trust start to stumble. Corporate structures for owning and managing customary land work best when they combine the traditional and the modern institutions, and embrace the group and individual levels of the local community. However, traditionalism may run counter to full-blown democracy, and there has been a notable lack of women as executives of both trusts. The Mele land trust had one female director on its initial board.

DEFINE THE SCOPE OF TRUSTS

LESSON 8

Land management and business operations are best kept separate when setting up a trust so as to 'quarantine' land tenure from the risks of business failure.

LESSON 9

By exposing land management to risks associated with other investments, the community may lease more land than is desirable in order to cover business losses.

The Mele and Ifira land trusts expanded into a range of business activities. Land management and business development are two different operations, which require different kinds of structures and regulation. Importantly business developments bring associated risk to a trust's land management activities. Mele village's lands were put at risk when business ventures failed.

ESTABLISH SUPPORTING MECHANISMS FOR TRUSTS

LESSON 10

An effective system for linking customary land to the formal economy might see land trusts being complemented by other mechanisms, such as advisory bodies.

The trust has proved to be a useful legal mechanism for 'signing off' on land dealings for the people of Ifira and Mele. But there also needs to be mechanisms for effective public awareness, consultation, advice and informed decision making within the affected local community. Generally this is outside the domain of trusts. In Ifira and Mele, separate chiefs' councils were set up to take on some of these responsibilities.

Appendix: Interviews

ABOUT IFIRA

- » Kalpokor Kalsakau
- » Steven Kalsakau, Executive Director, Ifira Trustees Limited, and Member of Parliament for Efate Rural
- » Tapangkai Basia ('Olfala Sope'), village leader
- » Tari Kalterekie, Manager, Ifira Land Management
- » Kalbovi Mangawai, Executive Director, Ifira Trustees Limited, and two other directors
- » Michel Kalworai, Secretary General, Shefa Provincial Government

ABOUT MELE

- » Ati George Sokomanu, former President of the Republic of Vanuatu and first Adviser to Mele Trustees Limited
- » Meto Nganga, first Administrator of Mele Trustees Limited
- » Simeon Poilapa, first Secretary of Mele Trustees Limited
- » Frank Latu, Director, Mele Trustees Limited
- » Sale Chilia, Director, Mele Trustees Limited

GENERALLY

- » Peter Taurakoto, Ombudsman
- » Emil Mael, Physical Planner, Shefa Provincial Government

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