

# Vanuatu Land Program

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*Program Design Document*

12 February 2009

## Acronyms

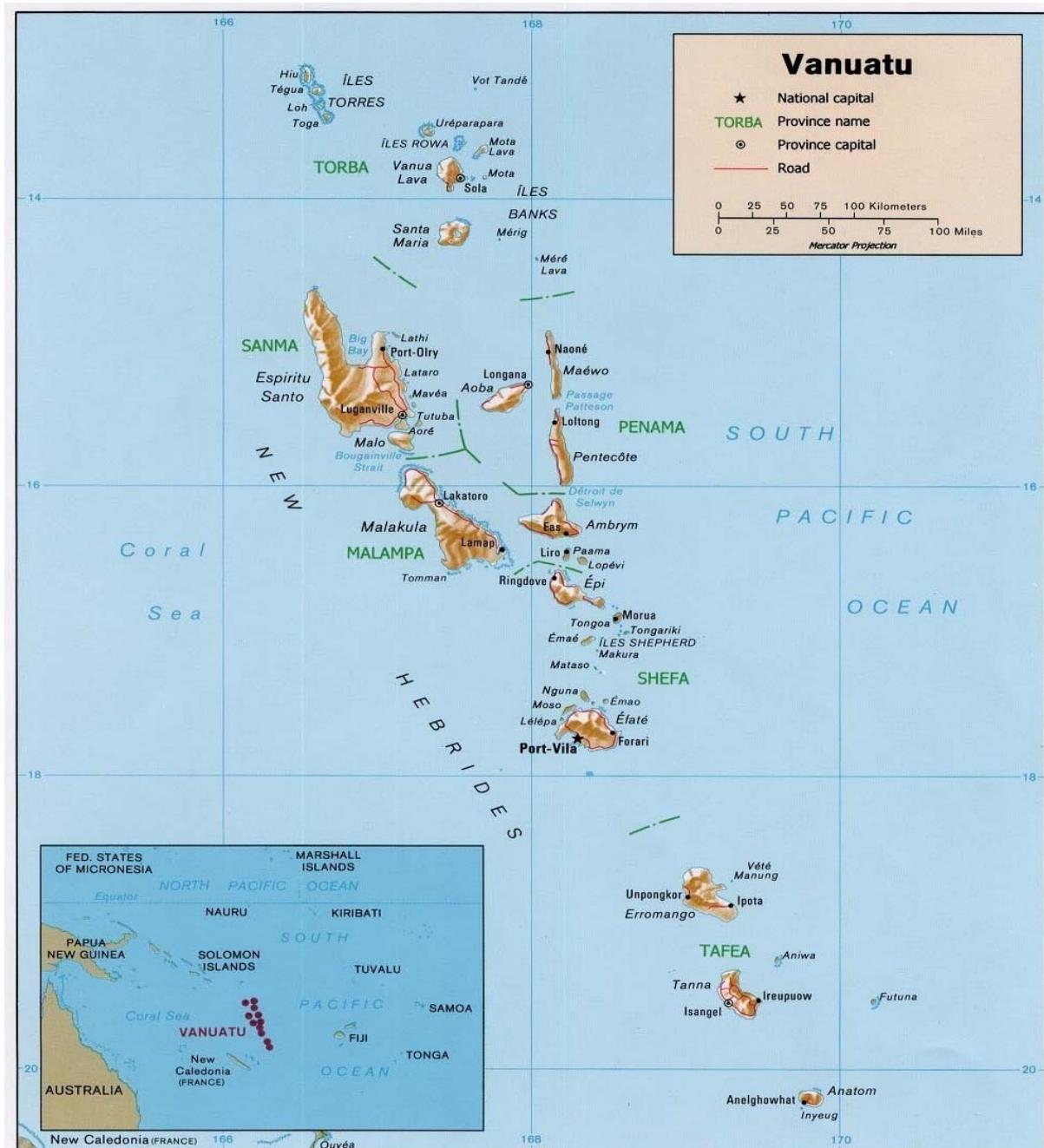
Acronym	Full Title
<b>AusAID</b>	Australian Agency for International Development
<b>CEDAW</b>	Convention on the Elimination of all Forms of Discrimination against Women
<b>CRP</b>	Comprehensive Reform Program
<b>Dol</b>	Department of Lands
<b>ERG</b>	Effectiveness Review Group
<b>IISD</b>	International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

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## Map of Vanuatu<sup>1</sup>



## 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.

<sup>1</sup> [http://www.lib.utexas.edu/maps/australia/vanuatu\\_rel98.jpg](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.

## 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)<sup>2</sup>. 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)<sup>3</sup>. 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 Document<sup>4</sup>. 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 AusAID<sup>5</sup>. 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).

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

<sup>3</sup> VSTLRI implementation is managed by GHD Hassall.

<sup>4</sup> 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.

<sup>5</sup> 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 230,000<sup>6</sup> 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 Vanuatu<sup>7</sup>. Under *kastom*<sup>8</sup>, 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 languages<sup>9</sup>, 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 codified<sup>10</sup>. 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 women<sup>11</sup>). 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.

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

<sup>7</sup> Article 73 and 74 of the Constitution

<sup>8</sup> Traditional norms of behaviour, values and relational structures

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

<sup>10</sup> 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.

<sup>11</sup> 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 identity<sup>12</sup>.

### **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 support<sup>13</sup>. Furthermore, power was frequently divided among several men, rather than concentrated in a single chief<sup>14</sup>. 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

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

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

<sup>14</sup> 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 Legislation<sup>15</sup>**

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 machinery<sup>16</sup>. 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 today<sup>17</sup>. 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;

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

<sup>16</sup> 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)

<sup>17</sup> 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 problems<sup>18</sup>. 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* program<sup>19</sup>.

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 average<sup>20</sup>. 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 instability<sup>21</sup>.

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,

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<sup>18</sup> 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*.

<sup>19</sup> *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.

<sup>20</sup> 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.

<sup>21</sup> 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 eroded<sup>22</sup>, 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 ideologies<sup>23</sup>. 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 bias<sup>24</sup>, 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

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<sup>22</sup> 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.

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

<sup>24</sup> See Naupa and Simo 2007

improve social cohesion, security and economic opportunity<sup>25</sup>. 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 gatherings<sup>26</sup> 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 owners<sup>27</sup> (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 circumstances<sup>28</sup>. 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

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<sup>25</sup> *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

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

<sup>27</sup> 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.

<sup>28</sup> 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 improvements<sup>29</sup>. 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* law<sup>30</sup>.

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 interest<sup>31</sup>. However, the Minister also has the power to facilitate development and circumvent complex and time-consuming disagreements by

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

<sup>30</sup> 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.

<sup>31</sup> Land Reform Act: Part V, Section 8 (2) (c).

transacting customary land which is under dispute<sup>32</sup>. The consequence of all this is that the Minister can appoint “negotiators” to manage the interests of customary owners in formal land dealings<sup>33</sup> 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 tensions<sup>34</sup>, 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

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<sup>32</sup> Land Reform Act: Part V, Section 8 (2) (b).

<sup>33</sup> Land Reform Act: Part IV, Section 6 (1)

<sup>34</sup> 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 finalisation<sup>35</sup>. 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 Foresore 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.

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<sup>35</sup> 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 Project<sup>36</sup> 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

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<sup>36</sup> 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 Pacific<sup>37</sup> 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):<sup>38</sup>

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.

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

<sup>38</sup> *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*<sup>39</sup>, 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.<sup>40</sup> 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 Vanuatu<sup>41</sup>, 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

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<sup>39</sup> *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.

<sup>40</sup> 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.

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

resolutions<sup>42</sup>. 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*<sup>43</sup> 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* report<sup>44</sup>. 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.

<ul style="list-style-type: none"> <li>• Make tenure security the priority.</li> </ul>	<ul style="list-style-type: none"> <li>• Adopt simple and sustainable reforms.</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure land policies reflect local needs.</li> </ul>
<ul style="list-style-type: none"> <li>• Intervene in policy reform only if it is necessary.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide safeguards for vulnerable groups.</li> </ul>	<ul style="list-style-type: none"> <li>• Actively involve stakeholders rather than informing them.</li> </ul>
<ul style="list-style-type: none"> <li>• Be prepared for long timeframes to achieve lasting reform.</li> </ul>	<ul style="list-style-type: none"> <li>• Work with and not against customary tenure.</li> </ul>	<ul style="list-style-type: none"> <li>• Balance the interests of landholders.</li> </ul>

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 Vanuatu<sup>45</sup>.

<sup>42</sup> 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.

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

<sup>44</sup> 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.

<sup>45</sup> 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.

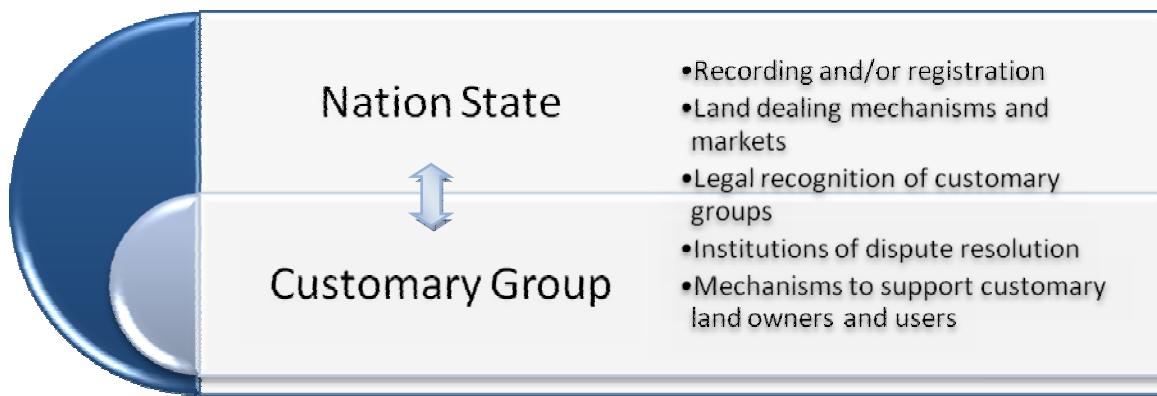


Figure 1: The five land initiatives that link *kastom* and national interests (AusAID *Making Land Work* 2008)

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 expectations<sup>46</sup>.

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;

<sup>46</sup> 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 Acts<sup>47</sup>. 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;

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<sup>47</sup> 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 limitation<sup>48</sup>. 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.

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<sup>48</sup> There are however, a few urgent changes to the Strata Act recommended.

Donor	Activity	
<b>AusAID</b>	Vanuatu Short-term Land Reform Initiatives (VSTLRI)	
	Compliance Audit of Land Leases Act	Zoning Map for Luganville
	Public Awareness	Subdivision Controls
	Review of Strata Titles Act	Review of previous AusAID land sector assistance
	Protection of Foreshore Reserves	Support for Malvatumauri National Council of Chiefs
	Development of a Land Sector Framework	Design of future long-term assistance
<b>AusAID</b>	Pacific Land Program – Regional Land Support Unit	
<b>NZAID</b>	Proposed assistance to the Customary Land Tribunals	
<b>NZAID</b>	Proposed Assistance to the Information Technology Centre in the Department of Lands	
<b>UNDP</b>	Assistance to sustainable land management with a focus on land degradation	
<b>UN ESCAP</b>	Potential assistance to develop a National Urban Land Policy	
<b>World Bank</b>	Ongoing research and potential assistance for a <i>Justice for the Poor</i> Program	
<b>World Bank</b>	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 circulation<sup>49</sup>. The Director General of Lands has indicated his commitment to undertaking wider

<sup>49</sup> 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.

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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.

### 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.

### 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 outcomes<sup>50</sup>. This is principally because the ultimate target beneficiaries are the customary landholders who themselves are an integral part of the land governance process. Hence

*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)*

*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)*

*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)*

<sup>50</sup> 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 coordination<sup>51</sup>.

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.

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<sup>51</sup> 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 failure<sup>52</sup>, 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

<sup>52</sup> See Section 1.4 Previous AusAID Assistance to the Land Sector

capacity and are severely constrained by a lack of human and financial resources<sup>53</sup>. 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 tenure<sup>54</sup> 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.

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<sup>53</sup> 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 VSLTR initiative in 2008 supports these findings and also suggests that new mechanisms for provincial and local assistance in the land sector are required.

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

## 2 Program Description

### 2.1 Goal<sup>55</sup>

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 Vanuatu<sup>56</sup>. 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*.

<sup>55</sup> 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.

<sup>56</sup> 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.

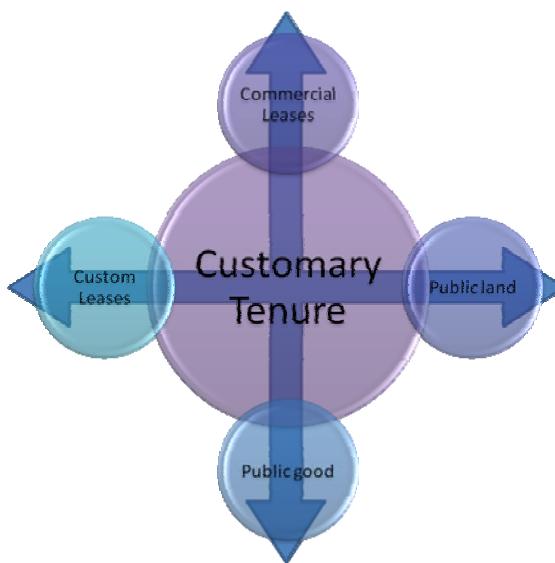


Figure 3: Customary tenure is central to all land dealings in Vanuatu

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'<sup>57</sup>, as well as the time to resolve differences of opinion, and gain a clear understanding of the interface between *kastom* and civil law.

<sup>57</sup> 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 practices<sup>58</sup>. 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

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<sup>58</sup> 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 Tribunal<sup>59</sup> (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).

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<sup>59</sup> 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 term<sup>60</sup>. 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.

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<sup>60</sup> 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.<sup>61</sup>

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).

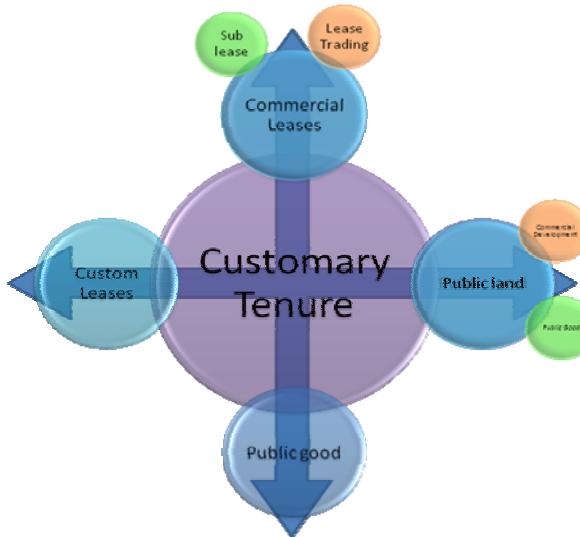


Figure 4: The primary and secondary dealings in customary land in Vanuatu.

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;

<sup>61</sup> 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 process<sup>62</sup>. In particular the Program will advance the development of the national Land Sector Framework (see Section 1.5)<sup>63</sup>. 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 Committee<sup>64</sup> 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);

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

<sup>63</sup> 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.

<sup>64</sup> 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 land<sup>65</sup>.** 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)<sup>66</sup>. 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;

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<sup>65</sup> 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).

<sup>66</sup> 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 data<sup>67</sup>.

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 weeks<sup>68</sup> 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

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<sup>67</sup> 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.

<sup>68</sup> 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 developed<sup>69</sup>. 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

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<sup>69</sup> 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.

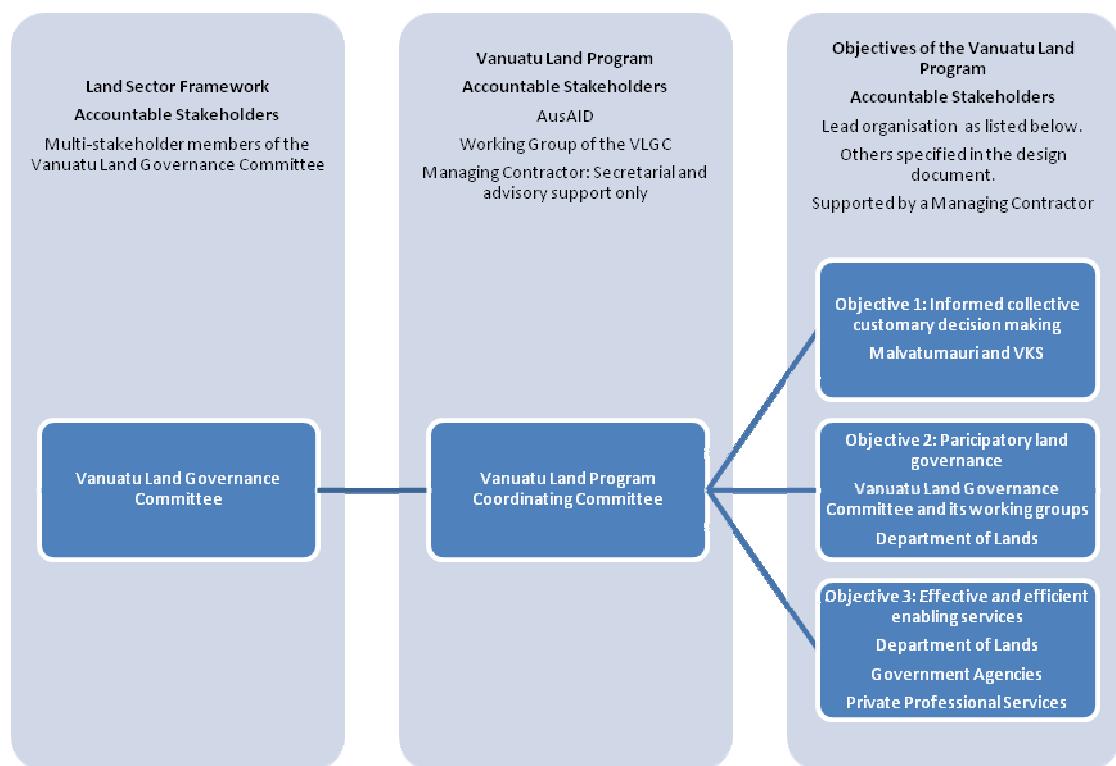


Figure 5: Management and governance arrangements for the Vanuatu Land Program

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:

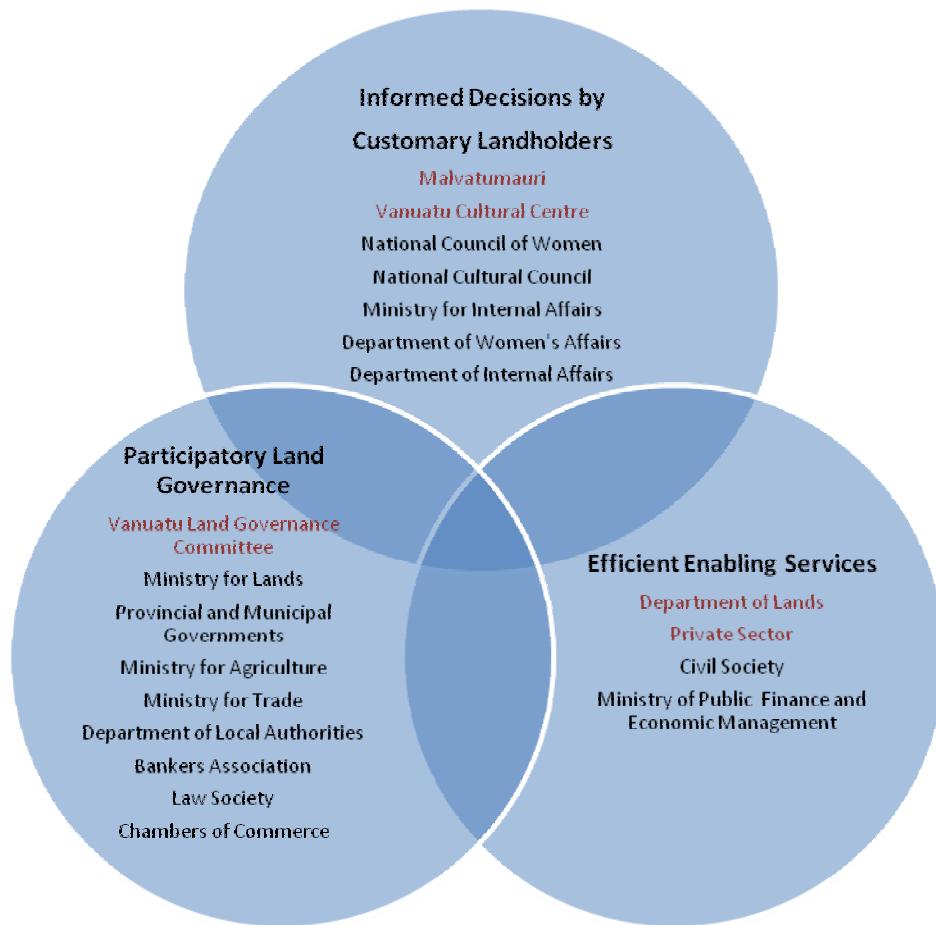
- Participate in the strategic direction and policy of the Program through the Program Coordinating Committee;
- Identify and ensure linkages to other AusAID programs and other donors, especially NZAID. In particular, links with the current AusAID support to Custom Governance and Public Service Reform 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.

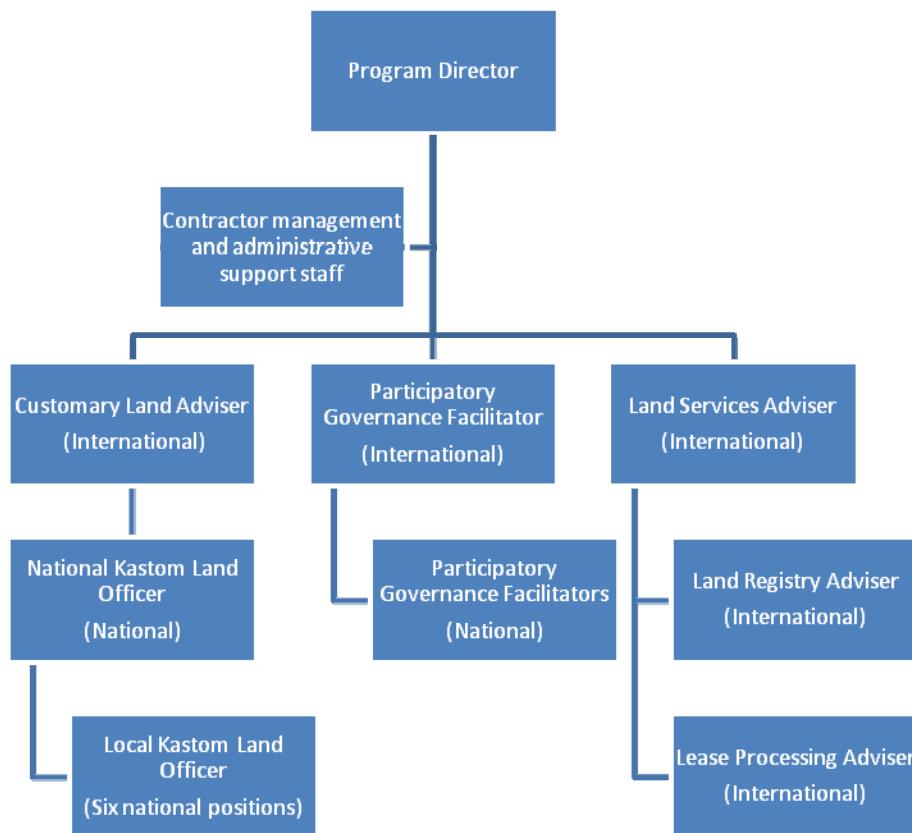
These skills and positions are shown in Table 3.

Position	Indicative Person Months	Alignment	Location
<b>International Advisory Positions – Long-term roles</b>			
<b>Program Director</b>	(Role combined with one of the positions below)		
<b>International Indigenous Land Specialist</b>	60	Implementation Service Provider	Program Head Office (Department of Lands)
<b>Participatory Land Governance Adviser</b>	60		
<b>Land Registry Adviser</b>	18		
<b>Lease Processing Adviser</b>	12		
<b>Land Services Adviser</b>	19		
<b>National Advisory Positions – Long-term roles</b>			
<b>National Kastom Land Officer</b>	60	Initially under the Implementation Service Provider but integrated into the Malvatumauri in Year 5	Malvatumauri
<b>Administrative Support to the National Kastom Land Office</b>	60	Initially under the Implementation Service Provider but integrated into the Malvatumauri in Year 5	Malvatumauri
<b>Kastom Focal Points</b>	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	
<b>M&amp;E Adviser</b>	60	Implementation Service Provider	Program Head Office (Department of Lands)
<b>Participatory Governance Facilitators</b>	120	Implementation Service Provider	Program Head Office (Department of Lands)
<b>Land Registry Support Staff</b>	126	Implementation Service Provider	Program Head Office (Department of Lands)
<b>Gender Focal Point</b>	60	Department of Lands (75%) Malvatumauri (25%)	Department of Lands
<b>Public Awareness Adviser</b>	18	Implementation Service Provider	Program Head Office (Department of Lands)
<b>Short-term Consultancy Pool</b>			
<b>M&amp;E Adviser</b>	84 (in total)	Implementation Service Provider	Program Head Office (Department of Lands)
<b>Peace and Conflict Adviser</b>			
<b>Land Law and Policy Adviser</b>			
<b>Gender Adviser</b>			
<b>Public Awareness Adviser</b>			
<b>Institutional/Organisation Adviser</b>			
<b>Land Information Systems Adviser</b>			
<b>Zoning and Development Adviser</b>			
<b>Land Services Adviser</b>			

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)<sup>70</sup>;
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 A\$13.9m.

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 regular amount will be paid for reimbursable costs and a percentage of fixed costs. The remaining fixed costs will be paid on contracted milestones. Grant Funds will be paid regularly based on projections in the Annual Plan and the reconciliation of past expenses. Financial audits on

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<sup>70</sup> 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.

all Grant Fund Accounts will be undertaken annually by an independent audit firm coordinated by the Implementation Service Provider.

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 on 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 PAA<sup>71</sup>, 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.
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;

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<sup>71</sup> 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.

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 process<sup>72</sup> (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.
- 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

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

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 context<sup>73</sup>. 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 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.

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<sup>73</sup> 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.

### 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 capacity<sup>74</sup> 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 AusAID<sup>75</sup>, but some have been from the European Centre for Development Policy Management<sup>76</sup>). 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.

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

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<sup>74</sup> “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*.

<sup>75</sup> “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.

<sup>76</sup> “Technical Assistance Personnel in the Solomon Islands” H. Baser, June 2007; “The Concept of Capacity” P. Morgan, May 2007.

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 Vanuatu<sup>77</sup>

#### *Introduction*

Sethy Regenvanu's 1981 statement that *Land is to a ni-Vanuatu as a mother is to a baby*<sup>78</sup> 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

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<sup>77</sup> 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.

<sup>78</sup> 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 patrilocal, 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 partilineally 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 Office<sup>79</sup> 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).

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

Table 5: Number of household members engaged in own household agricultural activities in last 12 month by sex and province<sup>80</sup>

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

<sup>79</sup> (National Statistics Office, 2008a:2-3)

<sup>80</sup> Source: National Statistics Office, 2008b: Table 3, p. 9.

<b>Corn</b>	61	517	148	167	202	377	<b>1,473</b>
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Table 6: Ten most commonly occurring plants found in gardens by type and province (August 2007)<sup>81</sup>

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.

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

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

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.

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

Table 8: Number of non-household members hired to work in household agricultural activities in last 12 month by sex and province<sup>83</sup>

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.

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

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

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

<sup>81</sup> Source: National Statistics Office, 2008b: Table 19, p. 21.

<sup>82</sup> Source: National Statistics Office, 2008b: Table 4, p. 10.

<sup>83</sup> Source: National Statistics Office, 2008b: Table 5, p. 10.

<sup>84</sup> 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
<b>Cocoa</b>	32	1,600	1,872	7,379	394	5	<b>11,273</b>
<b>Coffee</b>	-	-	-	-	-	1,588	<b>1,588</b>
<b>Pepper</b>	20	166	190	166	4	46	<b>592</b>
<b>Vanilla</b>	<b>233</b>	<b>3,724</b>	<b>2,706</b>	<b>2,079</b>	<b>690</b>	<b>962</b>	<b>10,393</b>

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

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

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)<sup>86</sup>

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

Table 12: Number of livestock kept by province (August 2007)<sup>87</sup>

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).

<sup>85</sup> Source: National Statistics Office, 2008b, Tables 9 -12, pps. 13 -16.

<sup>86</sup> Source: National Statistics Office, 2008b: Table 15, p. 19.

<sup>87</sup> 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"<sup>88</sup> 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,*

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<sup>88</sup> 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 Malvatumauri 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 Malvatumauri 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 Malvatumauri 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 equality 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 transformational<sup>89</sup> rather than as an impediment.

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<sup>89</sup> 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.<sup>90</sup> 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*

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<sup>90</sup> 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 Lands<sup>91</sup> 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:

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<sup>91</sup> 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 vatuvatu 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 their 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 loose 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 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 used 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?**

<b>Information</b>	<ul style="list-style-type: none"> <li>• Use of various media format example Wan Smol Bag, TV, Newspaper</li> <li>• Information awareness could be provided by USP</li> <li>• Human rights</li> <li>• Legislations on matrimonial properties*</li> <li>• Encourage more women participating / share decision-making in community level to national level</li> <li>• Gender awareness training</li> <li>• Structures to be in place with the community for information to flow</li> <li>• Need studies, documentation and information sharing</li> <li>• Women's customary land rights not understood</li> <li>• Women's land rights concept not clear to women</li> </ul>
<b>Education</b>	<ul style="list-style-type: none"> <li>• USP could help in providing a course on Land</li> <li>• Encourage old people to pass on their knowledge to the younger generations</li> <li>• Educate girls about customs &amp; tradition about land and their rights</li> <li>• Gender sensitisation*</li> <li>• Gender training / empower women to participate in all processes at all levels</li> <li>• Train women as trainers*</li> <li>• Gender &amp; development training and awareness through VNCW</li> <li>• General tradition way of land transaction, lineage &amp; genealogy to allow space for discussion, i.e., <i>kastom</i> identity curriculum for youths produced by the Vanuatu Cultural Centre &amp; social science text books development by NZAID.</li> <li>• Work more with young people</li> <li>• 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</li> </ul>

<b>What assistance would help?</b>	
	<ul style="list-style-type: none"> <li>• Gender awareness training to female and male leaders and members of the Tribunal</li> <li>• Conflict prevention training to leaders in the provinces but also to land owners to respect females / males (Vanuatu Women's Centre could do this)</li> </ul>
<b>Advocacy</b>	<ul style="list-style-type: none"> <li>• PacLII – treaties – human rights through courts / Magistrates / Judges / sound knowledge of custom</li> <li>• Increase participation of women in decision-making on lands</li> <li>• Awareness to the community with women</li> <li>• To keep context with whoever is dealing with the issue of land like chiefs, community Government</li> <li>• National Planning, Policies, Legislation on women's land rights</li> <li>• Awareness</li> </ul>
<b>Services</b>	<ul style="list-style-type: none"> <li>• Women need to be involved – in the very early stages of education</li> <li>• Government to help the land owner to develop through land in business</li> <li>• Department of land to schools, civil society organizations*</li> <li>• Awareness on land legislation</li> </ul>
<b>Formal Processes</b>	<ul style="list-style-type: none"> <li>• To involve women equally in the process of determining land rights</li> <li>• 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)</li> <li>• Women to know very well about policies and regulations</li> <li>• Land Act, Land policies, land legislation**</li> <li>• National Planning, Policies, Legislation on women's land rights* [also in Advocacy]</li> <li>• Review and amend all discriminatory laws on women to promote gender in development</li> <li>• Review Citizenship Act</li> <li>• Lands Officers to be placed in all provinces</li> <li>• Gender training / empower women to participate in all processes at all levels [also in Education]</li> </ul>
<b>Adjudication</b>	<ul style="list-style-type: none"> <li>• Involving Vanuatu National Council of Women in the process – experience of field workers can help in adjudicators</li> <li>• To operate on land issues in having laws that can cover the critical areas</li> <li>• Gender awareness training to female and male leaders and members of the Tribunal [also in Education]</li> </ul>

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

National Land Summit Resolution		Vanuatu Land Program Response	
<b>Resolution 1: Ownership of land</b>	The Government to make laws that provide that all land in Vanuatu is owned by groups (tribes, clans, or families).	1.2	<p>Improved stakeholder and public understanding and awareness of customary land practices (including gender and relational land interests)</p> <ul style="list-style-type: none"> <li>Incisive and revealing studies of key <i>kastom</i> land issues that directly influence policy, Program implementation, and target audience awareness of key issues.</li> </ul>
	Not one person (individual) is an owner of any traditionally owned ( <i>kastom</i> ) land.	1.2	<p>Improved stakeholder and public understanding and awareness of customary land practices (including gender and relational land interests)</p> <ul style="list-style-type: none"> <li>Incisive and revealing studies of key <i>kastom</i> land issues that directly influence policy, Program implementation, and target audience awareness of key issues.</li> </ul>
	Members of ( <i>kastom</i> ) traditional owning group (male and female) must be involved in the decision-making about their land.	1.3	<p>Improve decision-making by customary landholders</p> <ul style="list-style-type: none"> <li>Improved decisions made on important local land issues by customary landholders;</li> <li>Decisions made by customary groups show improved awareness of options and better and more equitable outcomes for all partners;</li> </ul>
		2.2	<p>Improved participatory mechanisms that will facilitate regional and local governance of land</p> <ul style="list-style-type: none"> <li>Improved participatory governance at the local level that links local Government, national agencies and customary groups, and coordinates local initiatives;</li> <li>Priority sub-national land issues are discussed and planned</li> </ul>

National Land Summit Resolution		Vanuatu Land Program Response	
		<p>at the local level and effectively linked and communicated to national agencies; and</p> <ul style="list-style-type: none"> <li>Effective, sustainable and appropriate multi-stakeholder and gender sensitive processes and structures operating at the sub-national level for participatory land governance.</li> </ul>	
<b>Resolution 2:</b> <b>How to identify the legitimate land owner</b>	<p>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).</p>	<p>1.2 Improved stakeholder and public understanding and awareness of customary land practices (including gender and relational land interests)</p> <ul style="list-style-type: none"> <li>Incisive and revealing studies of key <i>kastom</i> land issues that directly influence policy, Program implementation, and target audience awareness of key issues.</li> </ul>	<p><b>Groundwork established:</b> 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.</p>
	<p>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>.</p>	<p>1.1 Improved Customary Governance of Land by the Malvatumauri</p> <ul style="list-style-type: none"> <li>Sound, transparent and efficient customary governance and leadership on land issues by the Malvatumauri;</li> <li>An effective Lands Office is established within the Malvatumauri under core funding. It is valued by the Malvatumauri and supported sustainably by them;</li> <li>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;</li> <li>The Malvatumauri show strong advocacy for national land issues, and effectively contribute to national debate and policy direction; and</li> <li>Supporting frameworks for governance, transparency and accountability are established and</li> </ul>	<p><b>Directly Addressed:</b> 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.</p>

National Land Summit Resolution		Vanuatu Land Program Response	
		<p>modelled by the Malvatumauri.</p> <p>1.2 Improve decision-making by customary landholders</p> <ul style="list-style-type: none"> <li>• <i>Kastom</i> Focal Point officers established at the local level</li> <li>• Improved decisions made on important local land issues by customary landholders;</li> <li>• Customary groups gain improved access to quality information and professional services to aid with their priority decision-making;</li> <li>• Decisions made by customary groups show improved awareness of options and better and more equitable outcomes for all partners;</li> <li>• 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.</li> </ul>	
	<p>To carry out this task, the Government through the Ministry of Lands must set up Land Offices in all the provinces in Vanuatu.</p>	<p>1.3 Improve decision-making by customary landholders</p> <ul style="list-style-type: none"> <li>• <i>Kastom</i> Focal Point officers established at the local level</li> </ul>	<p><b>Directly Addressed</b></p> <p>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.</p>
<b>Resolution 3: Awareness</b>	The Government, Malvatumauri National Council of Chiefs and the Vanuatu Cultural Centre must assist the people (Chiefs, Schools, men and	<p>1.2 Improved stakeholder and public understanding and awareness of customary land practices (including gender and relational land interests) (Implemented by the VKS)</p> <ul style="list-style-type: none"> <li>• Improved access to information, understanding, and awareness of the importance of land within <i>kastom</i> by local communities and the wider public, as</li> </ul>	<p><b>Directly Addressed</b></p> <p>The Program supports both the VKS and the DOL to raise awareness</p>

National Land Summit Resolution	Vanuatu Land Program Response	
<p>women) to be aware about:</p> <ol style="list-style-type: none"> <li>1. Traditional (kastom) economy.</li> <li>2. Existing Land Laws.</li> <li>3. Kastomary Laws.</li> </ol>	<p>well as local and international investors (including gender and relational land interests)</p> <p>3.3 A national land awareness, knowledge and gender mainstreaming campaign Implemented by the DOL) <ul style="list-style-type: none"> <li>• 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.</li> </ul> </p>	
<p><b>Resolution 4: Enforcement of lease laws</b></p> <p>The Government must implement and review the laws and terms and conditions in a lease agreement, for example, the term of a lease, rent review, development conditions, and other terms.</p>	<p>3.1 A functioning Land Registry and Information Service <ul style="list-style-type: none"> <li>• Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases).</li> </ul> </p> <p>3.2 An effective land lease and development planning, assessment, permitting and enforcement service <ul style="list-style-type: none"> <li>• Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation.</li> </ul> </p>	<p><b>Directly Addressed:</b> The DOL will establish an effective lease registration service and review and enforce all lease conditions.</p>

National Land Summit Resolution		Vanuatu Land Program Response	
<b>Resolution 5: Lease agreements</b>	All lease agreements must: <ol style="list-style-type: none"> <li>1. Be in Bislama.</li> <li>2. Involve all members of the land owning group (men, women and children).</li> <li>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.</li> </ol>	3.1 A functioning Land Registry and Information Service <ul style="list-style-type: none"> <li>• Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases).</li> </ul>	<b>Directly Addressed</b> 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 <ul style="list-style-type: none"> <li>• Customary groups gain improved access to quality information and professional services to aid with their priority decision-making;</li> </ul>	<b>Directly Addressed</b> 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: <ul style="list-style-type: none"> <li>o The Certificate of Negotiation.</li> </ul>	2.3 Improved participatory mechanisms that facilitate formal dealings in land <ul style="list-style-type: none"> <li>• Formal land dealings with sound participatory governance processes and principles in place that ensure full consultation, representation and validation. Cases of</li> </ul>	<b>Directly Addressed</b> The Program will establish effective lease processes that ensure all stakeholders are properly involved in

National Land Summit Resolution	Vanuatu Land Program Response	
<ul style="list-style-type: none"> <li>o The Lease agreement.</li> </ul> <p>Any changes to the conditions of the lease (use of land (class of lease), term of lease).</p>	<p>inappropriate participation and representation are significantly reduced;</p> <ul style="list-style-type: none"> <li>• Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation;</li> <li>• Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation</li> </ul> <p>3.1 A functioning Land Registry and Information Service</p> <ul style="list-style-type: none"> <li>• Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases).</li> </ul> <p>3.2 An effective land lease and development planning, assessment, permitting and enforcement service.</p>	<p>decisions before leases are formalised.</p>
<p><b>Resolution 6: Certificate of Negotiation</b></p> <p>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.</p>	<p>2.3 Improved participatory mechanisms that facilitate formal dealings in land</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation;</li> <li>• Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation</li> </ul>	<p><b>Directly Addressed</b></p> <p>The Program will establish effective processes that ensure all stakeholders are properly involved in decisions before leases are formalised.</p>
<p><b>Resolution 7: Certificate of Negotiation</b></p> <p>There must be notice for every application to negotiate to the chiefs of the area where the land is</p>	<p>2.3 Improved participatory mechanisms that facilitate formal dealings in land</p> <ul style="list-style-type: none"> <li>• Formal land dealings with sound participatory governance processes and principles in place that ensure full</li> </ul>	<p><b>Directly Addressed</b></p> <p>The Program will establish effective processes that ensure all stakeholders are</p>

National Land Summit Resolution		Vanuatu Land Program Response	
	<p>located. That notice must have the following information:</p> <ol style="list-style-type: none"> <li>1. Detail of application;</li> <li>2. Development Plan; and</li> <li>3. Location of that Land.</li> </ol>	<p>consultation, representation and validation. Cases of inappropriate participation and representation are significantly reduced;</p> <ul style="list-style-type: none"> <li>• Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation;</li> <li>• Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation</li> </ul>	<p>properly involved in decisions before leases are formalised.</p>
<b>Resolution 8: Certificate of Negotiation</b>	<p>In every application to negotiate there must be:</p> <ol style="list-style-type: none"> <li>1. A copy of the applicant's passport (if they are a foreign investor).</li> <li>2. A copy of the Vanuatu Investment Promotion Authority (VIPA) Certificate.</li> <li>3. Details as to location of the land, boundaries, land use and area of the land.</li> <li>4. Details of development plan and any planning approval.</li> </ol>	<p>2.3 Improved participatory mechanisms that facilitate formal dealings in land</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation;</li> <li>• Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation</li> </ul>	<p><b>Directly Addressed</b> The Program will establish effective processes that ensure all stakeholders are properly involved in decisions before leases are formalised.</p>
<b>Resolution 9: Power of the Minister over disputed land</b>	<p>Remove the power of the Minister to approve leases over disputed land.</p>	<p>2.3 Improved participatory mechanisms that facilitate formal dealings in land</p> <ul style="list-style-type: none"> <li>• Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation; and</li> </ul>	<p><b>Indirectly Addressed</b> The Program will establish effective processes that ensure all stakeholders are properly involved in</p>

National Land Summit Resolution		Vanuatu Land Program Response	
		<ul style="list-style-type: none"> <li>Principles of good governance practice embedded in systems, processes and procedures for external land dealings at national and sub-national levels.</li> </ul>	decisions before leases are formalised.
	If the land is disputed, the dispute must be resolved before the Minister can approve a lease in relation to that land.	<p>2.3 Improved participatory mechanisms that facilitate formal dealings in land</p> <ul style="list-style-type: none"> <li>Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation; and</li> <li>Principles of good governance practice embedded in systems, processes and procedures for external land dealings at national and sub-national levels.</li> </ul>	<b>Directly Addressed</b> The Program will establish effective processes that ensure all stakeholders are properly involved in decisions before leases are formalised.
<b>Resolution 10: Strata Title</b>	The law must be clear that strata title only applies to buildings but it is not for subdividing land.	See below	<b>Indirectly Addressed</b> 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.	<p>2.3 Improved participatory mechanisms that facilitate formal dealings in land</p> <ul style="list-style-type: none"> <li>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;</li> <li>Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation;</li> <li>Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation</li> </ul>	<b>Directly Addressed</b> 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	
<b>Resolution 11:</b> <b>Agents/Middle men or women</b>	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 <ul style="list-style-type: none"> <li>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;</li> <li>Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation</li> </ul>	<b>Directly Addressed</b> The Program will work with the private sector to consider appropriate Codes of Conduct
<b>Resolution 12:</b> <b>Lease rental and premium</b>	The Government must pass a law for new rates of land rent for different classes of land throughout Vanuatu.		<b>Not Addressed</b>
	Land rent in rural areas must be based on a percentage of the value of the land.		<b>Not Addressed</b>
	The Government will work out and endorse a new method for calculating land premium which it thinks is fair.		<b>Not Addressed</b>
<b>Resolution 13:</b> <b>Sustainable development</b>	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 <ul style="list-style-type: none"> <li>Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases).</li> </ul> 3.2 An effective land lease and development planning, assessment, permitting and enforcement service <ul style="list-style-type: none"> <li>Effective services for planning sustainable land use,</li> </ul>	<b>Directly Addressed</b> Lease prerequisites and condition will be determined and enforced prior to lease approval

National Land Summit Resolution		Vanuatu Land Program Response	
development.		assessing development applications and enforcing land policy and legislation.	
<b>Resolution 14:</b> <b>Sustainable development</b>	Before an area can be leased, there must be a proper land use or zoning for that area.	<p>3.1 A functioning Land Registry and Information Service</p> <ul style="list-style-type: none"> <li>Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases).</li> </ul> <p>3.2 An effective land lease and development planning, assessment, permitting and enforcement service</p> <ul style="list-style-type: none"> <li>Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation.</li> <li>Both urban municipalities have a zoning map and development control plan; and</li> <li>Other designated “hot spots” and “areas of interest” are covered by zoning maps and development control plans.</li> </ul>	<b>Partially Addressed</b> Lease prerequisites and condition will be determined and enforced prior to lease approval. Zoning will be targeted to municipal and hot spot areas.
<b>Resolution 15:</b> <b>Lease conditions</b>	In every lease there must be conditions that: <ol style="list-style-type: none"> <li>Protect cultural sites;</li> <li>Protect the environment (such as rivers, wild life, beach etc), and allow for an access road into the leased land.</li> </ol>	<p>3.1 A functioning Land Registry and Information Service</p> <ul style="list-style-type: none"> <li>Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases).</li> </ul> <p>3.2 An effective land lease and development planning, assessment, permitting and enforcement service</p> <ul style="list-style-type: none"> <li>Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation.</li> <li>Both urban municipalities have a zoning map and development control plan; and</li> <li>Other designated “hot spots” and “areas of interest” are covered by zoning maps and development control plans</li> </ul>	<b>Directly Addressed</b> Lease prerequisites and condition will be determined and enforced prior to lease approval
<b>Resolution 16:</b> <b>Public access</b>	There must be public access to the sea and for the custom owner to continue	<p>3.1 A functioning Land Registry and Information Service</p> <ul style="list-style-type: none"> <li>Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land</li> </ul>	<b>Directly Addressed</b> Lease prerequisites and condition will be

National Land Summit Resolution		Vanuatu Land Program Response
<p>to use the area starting at the high water mark to the end of the reef.</p> <p>There must be public access to rivers and lakes in a leased area to allow custom owners to continue to enjoy that area.</p>	<p>transactions (leases).</p> <p>3.2 An effective land lease and development planning, assessment, permitting and enforcement service</p> <ul style="list-style-type: none"> <li>Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation.</li> <li>Both urban municipalities have a zoning map and development control plan; and</li> <li>Other designated “hot spots” and “areas of interest” are covered by zoning maps and development control plans.</li> </ul>	<p>determined and enforced prior to lease approval</p>
<p><b>Resolution 17: Enforcement</b></p> <ul style="list-style-type: none"> <li>Enforce every physical planning, Environmental Protection and Public Access Laws</li> </ul>	<p>3.2 An effective land lease and development planning, assessment, permitting and enforcement service</p> <ul style="list-style-type: none"> <li>Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation.</li> <li>Both urban municipalities have a zoning map and development control plan; and</li> <li>Other designated “hot spots” and “areas of interest” are covered by zoning maps and development control plans.</li> </ul>	<p><b>Directly Addressed</b> Enforcement of current legislation is a key areas of Program support.</p>
	<ul style="list-style-type: none"> <li>Support custom owners to enforce these conditions such as planning, environment and public access.</li> </ul>	<p>2.3 Improved participatory mechanisms that facilitate formal dealings in land</p> <ul style="list-style-type: none"> <li>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;</li> <li>Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation;</li> <li>Governance oversight committees and advisory structures established for external land dealings and providing</li> </ul>

National Land Summit Resolution		Vanuatu Land Program Response		
		rigorous and effective monitoring and evaluation		
<b>Resolution 18:</b> 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 <ul style="list-style-type: none"> <li>Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation.</li> <li>Both urban municipalities have a zoning map and development control plan; and</li> <li>Other designated “hot spots” and “areas of interest” are covered by zoning maps and development control plans.</li> </ul>	<b>Partly addressed</b> 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 <ul style="list-style-type: none"> <li>Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation.</li> <li>High use customers express satisfaction with the service and its transparency;</li> <li>Both urban municipalities have a zoning map and development control plan; and</li> <li>Other designated “hot spots” and “areas of interest” are covered by zoning maps and development control plans.</li> </ul>	<b>Directly Addressed</b> The program will clearly identify roles and responsibilities of Government Agencies in development planning.	
<b>Resolution 19:</b> 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 <ul style="list-style-type: none"> <li>Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation.</li> <li>Both urban municipalities have a zoning map and development control plan; and</li> <li>Other designated “hot spots” and “areas of interest” are covered by zoning maps and development control plans.</li> </ul>	<b>Partially addressed</b> The program will work on development planning in both urban municipalities and other priority hot spots	
<b>Resolution 20:</b> The Environment Unit must		3.3 A national land awareness, knowledge and gender	<b>Directly Addressed</b>	

National Land Summit Resolution		Vanuatu Land Program Response
<b>Awareness</b>	help the people (Chiefs, Schools, men and women) to raise their awareness of sustainable development and environmental protection	<p>mainstreaming campaign</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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</li> <li>• 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.</li> </ul>

### 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 %
<b>Total</b>	<b>92</b>	<b>1</b>

#### 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 Nguni)
- 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
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### 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
<b>1.0 INFORMED COLLECTIVE CUSTOMARY DECISION-MAKING</b>		
<b>1.1 Improved customary governance of land by the Malvatumauri.</b>	<ul style="list-style-type: none"> <li>The Malvatumauri demonstrate sound, transparent and efficient customary governance and leadership of land.</li> <li>An effective Lands Office is established within the Malvatumauri under core funding. It is valued by the Malvatumauri and sustainably supported by them;</li> </ul>	<ul style="list-style-type: none"> <li>Provide funding to the Malvatumauri for a <i>kastom</i> Land Officer;</li> <li>Provide administrative, operating and office space support for the establishment of a <i>kastom</i> Land Office within the Malvatumauri;</li> <li>Support and build the capacity of the Malvatumauri at the national, local and area levels (including technical</li> </ul>

Objective	Major Indicators of Success	Key activities to be undertaken
	<ul style="list-style-type: none"> <li>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;</li> <li>The Malvatumauri show strong advocacy for national land issues, and effectively contribute to national debate and policy direction; and</li> <li>Supporting frameworks for governance, transparency and accountability are established and modelled by the Malvatumauri.</li> </ul>	<ul style="list-style-type: none"> <li>training and legal awareness of land issues, leadership, conflict resolution, and gender);</li> <li>Undertake national advocacy and policy support to Government on land issues;</li> <li>Regularly monitor and evaluate success.</li> </ul>
1.2 Improve stakeholder access to information, understanding, and awareness of customary land practices (including gender / relational land interests).	<ul style="list-style-type: none"> <li>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).</li> <li>Incisive and revealing studies of key <i>kastom</i> land issues that directly influence policy, Program implementation, and target audience awareness of key issues.</li> <li>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.</li> <li>Increased awareness by key audiences (customary owners, investors and Government) regarding the issues surrounding <i>kastom</i> and land dealings.</li> <li>Clear support, direction and leadership from</li> </ul>	<ul style="list-style-type: none"> <li>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.</li> <li>Support for the Vanuatu Cultural Centre to undertake a public awareness program (A\$20,000 per annum administered by the Implementation Service Provider).</li> <li>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).</li> <li>Support the Malvatumauri to prepare a <i>kastom</i> Gender Policy.</li> <li>Regularly monitor and evaluate success.</li> </ul>

Objective	Major Indicators of Success	Key activities to be undertaken
	<p>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.</p>	
<p><b>1.3</b> Improve decision-making by customary landholders.</p>	<ul style="list-style-type: none"> <li>Customary landholders make improved decisions on important local land issues.</li> <li>Customary groups gain improved access to quality information and professional services to aid with their priority decision-making;</li> <li>Decisions made by customary groups show improved awareness of options and better and more equitable outcomes for all partners;</li> <li>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.</li> </ul>	<ul style="list-style-type: none"> <li>Appoint <i>Kastom</i> Focal Point officers to support decision-making related to customary land at the local level. These persons will: <ul style="list-style-type: none"> <li>Manage the Professional Land Services Support Fund (A\$25,000/provincial office/annum);</li> <li>Manage and negotiate a sustainability plan that ensures ongoing funding for the roles; and</li> <li>Regularly monitor and evaluate success.</li> </ul> </li> </ul>
<p><b>2.0 PARTICIPATORY LAND GOVERNANCE</b></p>		
<p><b>2.1</b> Effective and participatory sector wide governance of land.</p>	<ul style="list-style-type: none"> <li>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.</li> <li>Effective and meaningful representation and participation of partners in national land governance;</li> <li>Effective ongoing implementation of the Land Sector Framework, including proper</li> </ul>	<ul style="list-style-type: none"> <li>Stakeholder mapping, analysis and negotiation to identify appropriate and relevant stakeholders;</li> <li>Training of members of the Vanuatu Land Governance Committee (and its working groups) in areas that support its roles and responsibilities;</li> <li>Develop a Sustainability Plan for the Land Sector Framework;</li> <li>Development of participatory governance and advisory structures at the national level, as well as rules of engagement for all land sector stakeholders;</li> <li>Strengthening of the structure, authority and powers of</li> </ul>

Objective	Major Indicators of Success	Key activities to be undertaken
	<ul style="list-style-type: none"> <li>coordination and institutional harmonisation; and</li> <li>• Establishment of governance oversight committees and advisory structures, to provide rigorous and effective monitoring and evaluation of the Land Sector Framework.</li> </ul>	<ul style="list-style-type: none"> <li>relevant land management and planning committees;</li> <li>• Technical support for, and resourcing of, Land Sector Framework implementation (including thematic working groups<sup>92</sup>), consultation, oversight mechanisms and sector-wide governance processes;</li> <li>• Preparation of a land governance performance and evaluation framework<sup>93</sup>; and</li> <li>• 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.</li> </ul>
<b>2.2</b> Improved participatory mechanisms that facilitate regional and local governance of land.	<ul style="list-style-type: none"> <li>• Improved participatory governance at the local level that links local Government, national agencies and customary groups and coordinates local initiatives.</li> <li>• Priority sub-national land issues are discussed and planned at the local level and effectively linked and communicated to national agencies; and</li> <li>• Effective, sustainable and appropriate multi-stakeholder and gender sensitive processes and structures operating at the sub-national level for participatory land governance.</li> </ul>	<ul style="list-style-type: none"> <li>• Identification of the strengths and weaknesses of both 'official' and customary participatory governance structures, at provincial/island/area council levels;</li> <li>• Examination of the existing linkages and interface delivery mechanisms within these structures that facilitate land development planning, zoning, control and use;</li> <li>• Development of a plan for the implementation of participatory land governance processes at provincial/island/area levels;</li> <li>• Establishment of locally appropriate participatory governance and advisory structures, as well as rules of engagement for key stakeholders at the provincial/island/area levels;</li> </ul>

<sup>92</sup> 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.

<sup>93</sup> 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
<b>2.3</b> Improved participatory mechanisms that facilitate external dealings in land.	<ul style="list-style-type: none"> <li>• Transparent, accountable, and efficient participatory governance of key formal land transactions, especially leases.</li> <li>• 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;</li> <li>• Effective participatory processes, advisory structures and rules of engagement for the identified stakeholders in operation;</li> <li>• Governance oversight committees and advisory structures established for external land dealings and providing rigorous and effective monitoring and evaluation; and</li> <li>• Principles of good governance practice embedded in systems, processes and procedures for external land dealings at national and sub-national levels.</li> </ul>	<ul style="list-style-type: none"> <li>• Strengthening of the administration and management of land governance processes;</li> <li>• Strengthening the composition, authority and powers of all relevant oversight and evaluation committees; and</li> <li>• Establishment of supporting frameworks for transparency and accountability to be used to guide codes of conduct and ethical practices.</li> <li>• Undertake a stakeholder analysis and mapping exercise to identify the roles and responsibilities essential for external customary land dealings. These dealings may include:               <ul style="list-style-type: none"> <li>➢ lease administration and management</li> <li>➢ land planning and development</li> <li>➢ management of public land</li> <li>➢ sub-leases or strata titles on leased land</li> <li>➢ customary leases, and</li> <li>➢ compensation claims.</li> </ul> </li> <li>• 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);</li> <li>• Establish and strengthen composition, authority and powers of relevant oversight and evaluation committees; and</li> <li>• Formulate and incorporate good governance principles and practices within land planning, development, administration and management systems processes and procedures.</li> </ul>
<b>3.0 EFFECTIVE AND ENABLING SERVICES</b>		

Objective	Major Indicators of Success	Key activities to be undertaken
<b>3.1</b> A functioning Land Registry and Information Service.	<ul style="list-style-type: none"> <li>Secure, accurate and up to date Land Registry (and Registry Information Service) incorporating all formal land transactions (leases).</li> <li>High use customers express satisfaction with the service and its transparency;</li> <li>Seventy-five percent of simple dealings are registered within two weeks<sup>94</sup> in accordance with designated procedures and standards, and are not subject to dispute or court action;</li> <li>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;</li> <li>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</li> <li>Leases can be accepted and returned via a range of delivery nodes throughout the country.</li> </ul>	<ul style="list-style-type: none"> <li>Significantly reduce, and preferably eradicate, the large backlog in the Registry;</li> <li>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);</li> <li>Improve the processing operations within the Registry to achieve both integrity in processing, and agreed standards in processing times; and</li> <li>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.</li> </ul>
<b>3.2</b> An effective land lease and development planning, assessment, permitting & enforcement service.	<ul style="list-style-type: none"> <li>Effective services for planning sustainable land use, assessing development applications and enforcing land policy and legislation.</li> <li>High use customers express satisfaction with the service and its transparency;</li> <li>Both urban municipalities have a zoning map and development control plan; and</li> </ul>	<ul style="list-style-type: none"> <li>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;</li> <li>Assess the options for achieving a coordinated, integrated and effective regulatory and permitting service. Then formalise the preferred approach, with the approval of</li> </ul>

<sup>94</sup> 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
	<ul style="list-style-type: none"> <li>Other designated “hot spots” and areas of interest are covered by zoning maps and development control plans.</li> </ul>	<ul style="list-style-type: none"> <li>the individual agencies, and, if necessary, the Council of Ministers;</li> <li>Develop and implement coordinated processes and procedures including the use of check lists, and advice and training to clients;</li> <li>Further enhance the planning and development control plan support service;</li> <li>Undertake planning for both municipalities and designated hotspots; and</li> <li>Further enhance the coordinated compliance and enforcement service.</li> </ul>
3.3 A national land awareness, knowledge and gender mainstreaming campaign.	<ul style="list-style-type: none"> <li>Improved stakeholder awareness and knowledge of land processes, and of their roles and responsibilities related to formal land dealings.</li> <li>Particular emphasis within the Department of Lands to ensure gender mainstreaming occurs in all policies, processes and transactions.</li> <li>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</li> <li>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.</li> </ul>	<ul style="list-style-type: none"> <li>Establish a Public Information Unit within the Department of Lands to be responsible for planning, implementing and evaluating public information, education and communication activities;</li> <li>Conduct audience surveys and analyse the findings to define the knowledge gaps and attitudinal aspects of public awareness of land issues;</li> <li>Identify target audiences, in particular customary landholders and private developers, and the most appropriate means/media to convey information and deliver key messages;</li> <li>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;</li> <li>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</li> <li>Appoint a Gender Focal Point, with advice from the</li> </ul>

Objective	Major Indicators of Success	Key activities to be undertaken
<b>3.4</b> Effective organisational models and service delivery arrangements.	<ul style="list-style-type: none"> <li>Effective organisational models and service delivery arrangements (considered a medium-term initiative that will commence after Year Three).</li> <li>Distinct separation of policy and regulation roles from approval and service delivery mechanisms; and</li> <li>Right sized, right structured agencies delivering effective policy, regulation, and services that are sustainable in the long-term and based on appropriate service charges.</li> </ul>	<p>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.</p> <ul style="list-style-type: none"> <li>Assist the Department of Lands to develop a Women and Land Policy.</li> <li>The identification and evaluation of high-level organisational models. Subsequent detailed examination and discussion regarding one or two of these;</li> <li>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;</li> <li>The development of a business case for the recommended model in order to gain approval and authorisation;</li> <li>The establishment of a pilot, and its effective evaluation; and</li> <li>Following authorisation, a roll out<sup>95</sup> needs to be conducted.</li> </ul>

<sup>95</sup> It could well be that authorisation is not obtained in this Program's 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 or 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 Reporting<sup>96</sup> 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 research<sup>97</sup> 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

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<sup>96</sup> 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.

<sup>97</sup> 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 Malvatumauri

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)<sup>98</sup>
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

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<sup>98</sup> 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 technique<sup>99</sup> 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

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<sup>99</sup> 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 decisions<sup>100</sup>. 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;

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<sup>100</sup> 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
<b>1. Informed Collective Decisions by Customary Landholders</b>			
<b>1.1. Improve customary governance of land by the Malvatumauri</b>	<ul style="list-style-type: none"> <li>How has the involvement and leadership of the Malvatumauri in the lands sector changed?</li> <li>Do stakeholders value and respect the changes?</li> <li>What is the link between that change and the efforts of the Program?</li> </ul>	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
<b>1.2. Improve stakeholder and public understanding and awareness of customary land practices (including gender and relational land interests)</b>	<ul style="list-style-type: none"> <li>What evidence exists of a better informed community (men and women) regarding lands?</li> <li>What evidence exists of a more knowledgeable Government, regarding the land sector?</li> <li>What evidence exists of the private sector having a greater understanding of the role of kastom in land dealings?</li> <li>How is the Malvatumauri addressing gender issues differently?</li> <li>To what extent has the Program contributed to these changes?</li> </ul>	Customary owners	Participatory methods
		Private sector	Private Sector Survey
		Government	Participatory methods
		Malvatumauri	Participatory methods
		National Council of Women	
		VKS	Participatory methods
		National Council of Women	
		Customary owners	Participatory methods Program records on use of support and professional services
<b>1.3. Improve decision-making by customary landholders</b>	<ul style="list-style-type: none"> <li>What evidence exists that customary groups, both men and women, are making decisions about their land differently?</li> <li>To what extent is there greater equity in the</li> </ul>	Customary owners Vanuatu Land Governance Committee	Participatory method Program data s
		Vanuatu Land Governance	

Objectives	Evaluation Questions	Stakeholders	Data Collection Method
	<p>decisions, compared to similar decisions in the past?</p> <ul style="list-style-type: none"> <li>• What is the link to the Program?</li> <li>• What contribution did the Local <i>kastom</i> Lands Officer facility make to any change?</li> </ul>	Committee Customary owners National Council of Women	
<b>2. Participatory Land Governance</b>			
<b>2.1. Support the effective and participatory sector wide governance of land.</b>	<ul style="list-style-type: none"> <li>• What changes (positive or negative) can be seen in land sector governance?</li> <li>• Is the Vanuatu Land Governance Committee active and respected in its role?</li> <li>• How effectively is the LSF being implemented?</li> <li>• To what extent is the Program contributing?</li> </ul>	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
<b>2.2. Establish and/or improve participatory yet sustainable mechanisms that facilitate regional and local governance of land.</b>	<ul style="list-style-type: none"> <li>• What evidence exists that priority sub-national land issues are being handled differently?</li> <li>• What evidence exists of changes in sub-national land governance?</li> <li>• To what extent are sub-national land governance systems and processes increasingly</li> </ul>	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)?		
<b>2.3. Improve the participatory mechanisms that facilitate formal dealings in land.</b>	<ul style="list-style-type: none"> <li>What changes are evident in decision-making about formal land transactions, especially leases?</li> <li>To what extent are decisions more participatory, involving men and women from all stakeholder groups?</li> <li>What is the link to the Program's efforts?</li> </ul>	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	
<b>3. Effective and Enabling Services</b>			
<b>3.1. Establish a functioning Land Registry and Information Service</b>	<ul style="list-style-type: none"> <li>What evidence exists of more effective Land Registry services? <ul style="list-style-type: none"> <li>e.g. 75% simple dealings registered within 2 weeks in accordance with procedures and standards, and no subject to court action</li> <li>e.g. 80% complex dealings completed within 10 weeks in accordance with procedures and standards, not subject to dispute or court action</li> </ul> </li> <li>What has changed in the views of stakeholders (both men and women) regarding the Land Registry?</li> </ul>	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
	<ul style="list-style-type: none"> <li>• To what extent has Program support contributed to improvements?</li> </ul>	Private sector Vanuatu Land Governance Committee	
		Private sector Department of Lands Vanuatu Land Governance Committee	Private sector survey
<b>3.2. Establish an effective land lease and development planning, assessment, permitting &amp; enforcement service</b>	<ul style="list-style-type: none"> <li>• What has changed in development controls and zoning?</li> <li>• How have the views of the private sector changed regarding development controls and zoning?</li> <li>• What is the link with the work of the Program?</li> </ul>	Vanuatu Land Governance Committee	Department of Lands records
		Vanuatu Land Governance Committee	Department of Lands records
<b>3.3. Deliver a national land awareness, knowledge and gender mainstreaming campaign</b>	<ul style="list-style-type: none"> <li>• How has stakeholder (men and women customary owners, private sector and Government officials) awareness of the processes of formal land dealings increased?</li> <li>• What evidence exists of Department of Lands effectively mainstreaming gender?</li> <li>• To what extent has Program support contributed to those improvements?</li> </ul>	Customary owners (men and women)	Participatory methods
		Private sector	Private Sector Survey
		Government officials engaged in land sector processes or policies	Participatory methods
		Vanuatu Land Governance Committee	Participatory methods
		National Council of Women	
<b>3.4. Demonstrate effective organisational models and service delivery arrangements</b>	<ul style="list-style-type: none"> <li>• What evidence exists of more effective organisational arrangements?</li> </ul>	Vanuatu Land Governance Committee	Government records
		Vanuatu Land Governance Committee	Government records (Public Service Commission structures and Ministry of Finance)

Objectives	Evaluation Questions	Stakeholders	Data Collection Method
			and Economic Management budget)
<b>Sustainability</b>	<ul style="list-style-type: none"> <li>• What indications are there that Department of Lands will sustain Program benefits within its systems?</li> </ul>	Vanuatu Land Governance Committee AusAID	Department of Lands structure (as approved by the Public Service Commission) Approved Department of Lands budget
<b>Inputs</b>	<ul style="list-style-type: none"> <li>• Is Program implementation and management by the Implementation Service Provider effective and efficient?</li> </ul>	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(ILS)**

#### **General**

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

1. Support the Malvatumauri to establish a National Kastom Land Office;
2. Work with the Secretary General of the Malvatumauri to develop Terms of Reference for and recruit 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 and the Vanuatu National Council of Women 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 Coordinating Committee for approval;

12. Based on Program Coordinating Committee approval, implement the agreed Kastom Focal Point network, including selection, training and capacity building of the Kastom Focal Points;
13. Work with the Kastom Focal Points and the National Kastom Land Officer to develop an annual work program to be endorsed by the Malvatumauri and submitted to the Program Coordinating 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;
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 Coordinating Committee.

### **Reporting**

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

### **Other Duties**

20. Prepare miscellaneous correspondence, reports, and other documents as required;
21. Represent the Vanuatu Land Program in public forums, meetings and communications, as required; and
22. 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 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 Tribunal<sup>101</sup> (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.

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<sup>101</sup> 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						
<b>1.1 National Land Office</b>	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	<ul style="list-style-type: none"> <li>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.</li> <li>Solid facilitation during inception to ensure the office directly supports key Malvatumauri priorities.</li> </ul>
<b>1.1 National Land Office</b>	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	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>Place full management responsibility under the Program Director should persistent issues of resource capture arise.</li> </ul>
<b>1.3 Local Decision-making Support</b>	That the Government will not be able to sustainably support the devolved services of the <i>Kastom</i> Focal Point officers.	Program initiative will after Program support is withdrawn.	3	4	4	<ul style="list-style-type: none"> <li>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.</li> </ul>

<b>1.3 Local Decision-making Support</b>	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				<ul style="list-style-type: none"> <li>Significant work must occur to ensure that Department of Lands funding is not seen as capturing this resource.</li> <li>Close oversight by the Regional Participatory Governance groups (Component 2.2) will be essential.</li> <li>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)</li> </ul>
<b>2.0 PARTICIPATORY GOVERNANCE</b>									
<b>2.1 National Land Governance</b>	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				<ul style="list-style-type: none"> <li>Senior representation and engagement during Program implementation at all stages.</li> <li>Regular updates on Program implementation provided to Prime Minister, Council of Ministers, Minister of Lands, NLSC and high level Government officials.</li> <li>Resources at AusAID Post must be adequate to ensure close monitoring and the ability to consistently engage and participate.</li> </ul>
<b>2.1 National Land Governance</b>	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				<ul style="list-style-type: none"> <li>Conduct stakeholder analysis and mapping exercise to identify interests and agendas to ensure that expectations are met.</li> <li>Promote active participation and engagement of all stakeholders in the implementation, decision-making, priority setting and management of the governance system.</li> <li>Regularly hold stakeholder forums to seek feedback on progress of governance system and to continually build</li> </ul>

						stakeholder ownership and trust.
						<ul style="list-style-type: none"> <li>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.</li> </ul>
<b>2.1 National Land Governance</b>	Governance objectives and desired outcomes may be too diffuse as the range of stakeholders is extensive.	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	<ul style="list-style-type: none"> <li>Ensure training Programs are designed and delivered at the correct level for the respective audiences.</li> <li>Introduce a 'nested' Program of training which starts with simple concepts and then moves to more advanced principles as the Program evolves.</li> <li>Undertake stakeholder mapping and analysis to identify relevant stakeholders who should be involved in the different stages of the governance process</li> <li>Understand the power balance between stakeholders and ensure participation reflects this.</li> </ul>
<b>2.2 Sub-national Land Governance</b>	Concepts and principles of governance may also be too complex for stakeholders groups to understand, appreciate and implement.					
<b>2.1 National Land Governance</b>	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	<ul style="list-style-type: none"> <li>Conduct periodic assessments to gauge the level of acceptance, efficiency and effectiveness of the governance system by stakeholders and community groups.</li> <li>Monitor and evaluate ability of governance process to facilitate meaningful dialogue between partners.</li> <li>Regularly check the transparency of perceptions and expectations of stakeholders concerning participation in, ownership of, and benefits accruing from the governance process.</li> <li>Performance targets should be progressively set over the life</li> </ul>
<b>2.2 Sub-national Land Governance</b>						

						of the Program so that expectations can be managed and outcomes are achievable within a realistic set of performance measures.
<b>2.2 Sub-national Land Governance</b>	Low capacity in provincial agencies and regional/ area stakeholder groups	Reliance on provincial institutions cannot be guaranteed	H	M	4	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> </ul>
<b>2.3 Land Process and Policy Governance</b>	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	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> </ul>

<b>2.3 Land Process and Policy Governance</b>	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				<ul style="list-style-type: none"> <li>Advocate for injection of funds to recruit and retain staff in key stakeholder organisations to support governance initiatives.</li> <li>Ensure activities and mechanisms are in place to initiate and conduct a healthy policy dialogue and debate and formulate a land policy development process.</li> <li>Provide opportunities to participate in international study tours to examine and observe ‘best practice’ governance processes and policy implementation at work.</li> <li>Use pilot studies to identify potential policy successes.</li> <li>Focus on modifying existing laws and regulations rather than introducing new ones or implementing a grandiose national scheme of law reform.</li> <li>Engage law and justice agencies in land sector governance and strengthen their roles and involvement in the process.</li> <li>Ensure flexibility in Program implementation in order to adapt to changes as regulations or legislation are revised.</li> </ul>
<b>2.3 Land Process and Policy Governance</b>	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				<ul style="list-style-type: none"> <li>Regular risk assessment/ management workshops will be held to inform all stakeholders of Program implementation and status.</li> <li>Long-term engagement with key stakeholder groups is fundamental to the successful implementation of the governance system.</li> <li>Program implementation must/ will be adaptive, responsive and flexible.</li> <li>Identify potential “hot spots” in the land sector governance</li> </ul>

						<p>system and develop institutional and operational strategies to avoid or minimise potential fallout, embarrassment and related consequences.</p> <ul style="list-style-type: none"> <li>Identify issues that have been underestimated early during Program implementation so that they can be addressed quickly.</li> </ul>
<b>3.0 EFFECTIVE AND ENABLING SERVICES</b>						
<b>3.1 Land Registry</b>	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	<ul style="list-style-type: none"> <li>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.</li> </ul>
<b>3.1 Land Registry</b>	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	<ul style="list-style-type: none"> <li>Consider relocating to alternative premises close by to increase space and improve working conditions for staff</li> </ul>

<p>3.1 Land Registry</p> <p>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.</p>									
		A high level of good governance is difficult to obtain and public confidence in the operations does not increase	M	H	4				<ul style="list-style-type: none"> <li>When designing improved procedures make them as “tight” as possible.</li> <li>Seek to improve public awareness and understanding of the impact of corruption and establish codes of conduct expected from Government officials.</li> </ul>
<p>3.2 Assessment &amp; Compliance</p> <p>That some elements of the agencies, sections and personnel that need to cooperate find it difficult to fully do so</p>									
		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				<ul style="list-style-type: none"> <li>Ensure that all agencies continue to be fully informed and involved and hence maintain commitment.</li> <li>Foster a strong focus on service to the customer.</li> </ul>
<p>3.3 Awareness and Gender</p> <p>That the awareness campaign does insufficient research, and effectiveness is not tested regularly</p>									
		The campaign messages are not as appropriate or effective as they	L	M	2				<ul style="list-style-type: none"> <li>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.</li> <li>Involve from the start organisations/personnel that are</li> </ul>

	enough and/or is insufficiently responsive	could be and important segments of society are not reached.	representative of the various segments of society.				
<b>3.4 Organisational Models</b>	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 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.
<b>3.4 Organisational Models</b>	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

1. This Scope of Services (SOS) outlines the role of the Implementation Service Provider in supporting the Vanuatu Land Program and must be read in conjunction with the Vanuatu Land Program Design Document (PDD). The PDD sets out the context, scope, objectives and principles of the Vanuatu Land Program and is the primary reference document from which to gain an understanding of the intent, purpose and features of the Vanuatu Land Program. Where there is an inconsistency between the PDD and this SOS, the SOS will take precedence.

### A. PROGRAM BACKGROUND

2. AusAID is planning to provide support to four countries in the Pacific region under a new Australian Government initiative called the Pacific Land Program (PLP). In the case of Vanuatu, support under the Vanuatu Land Program 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 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 Priorities and Action Agenda. The Government roadmap for long-term reform is guided by a Land Sector Framework. Oversight of the framework will occur through a multi-stakeholder Vanuatu Land Governance Committee (VLGC). Australian, as well as other donor country assistance, is guided by this framework.

3. The National Land Summit clearly demonstrated the 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. There is understandable broad-based frustration with the slow pace of change. Even some of the initial apparent successes of the Summit, such as the limitations placed on Ministerial power, have since been reversed. Nonetheless, the issue, the passion, and the need for change remains. However, many of the stakeholders deeply distrust 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 a clear frustration with the long design processes required before implementation can begin.

### B. PROGRAM DESCRIPTION

4. 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:

5. 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 law, delivering benefits not just to themselves, but to future generations.

Key processes and partnerships for implementation include:

a. Improve the customary governance of land by the National Council of Chiefs (Malvatumauri): A National Kastom Land Office will be established to strengthen the

Malvatumauri's 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;

- b. 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 (VKS) to manage these activities; and
- c. 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, however over the term of the Program responsibility will be transferred to an agreed national body.

6. Objective 2: Participatory Land Governance.

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

Key processes and partnerships for implementation include:

- a. 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);
- b. Establish and/or improve participatory yet 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
- c. Improve the participatory mechanisms that facilitate formal dealings in land. In particular, the Program will establish or improve participatory, sustainable processes that are necessary to negotiate open, accountable and transparent 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.

7. 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:

- a. Establish a functioning Land Registry and Information Service. This will significantly reduce and preferably eradicate the backlog on land lease registrations and will establish a land lease and land parcel information service. The Program will support the Department of Lands to manage this activity;
- b. 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;
- c. Deliver a national land awareness, knowledge and gender mainstreaming campaign. The Program will support the Department of Lands to manage this activity; and
- d. 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.

**C. PROGRAM DURATION**

8. The Program will run for five years. The Implementation Service Provider (ISP) will commence services on XXXXXX and will complete the services no later than XXXXXX.
9. Whereas AusAID anticipates that its support of land reform in Vanuatu will continue for further phases beyond five years, this will depend on the outcomes of Program reviews to be undertaken by an Effectiveness Review Group (ERG) (see paragraph 17). However, the contractual term of the ISP is restricted to the first phase as described in the PDD. Future phases of the Program will be subsequently designed and separately contracted.
10. AusAID may, however, in accordance with the terms of this Contract and at its sole discretion, exercise its option to extend the services of the ISP in order to achieve, enhance or sustain the objectives of the PDD. AusAID will depend on the advice of the Effectiveness Review Group and their assessment of ISP performance in this regard (see paragraph 18).

**D. OFFICE ACCOMMODATION AND MANAGEMENT**

11. The ISP will establish the Program's central office within the Department of Lands in Port Vila. The Department of Lands will provide rent-free office space sufficient to accommodate long and short-term advisory staff, as well as ISP management and administrative staff. The ISP will fund all office refurbishment, capital, and operating costs. The ISP will appoint office support and administration staff as appropriate to the needs of the Program and institute administrative, financial, procurement and human resource systems that fully comply with Australian Government standards.

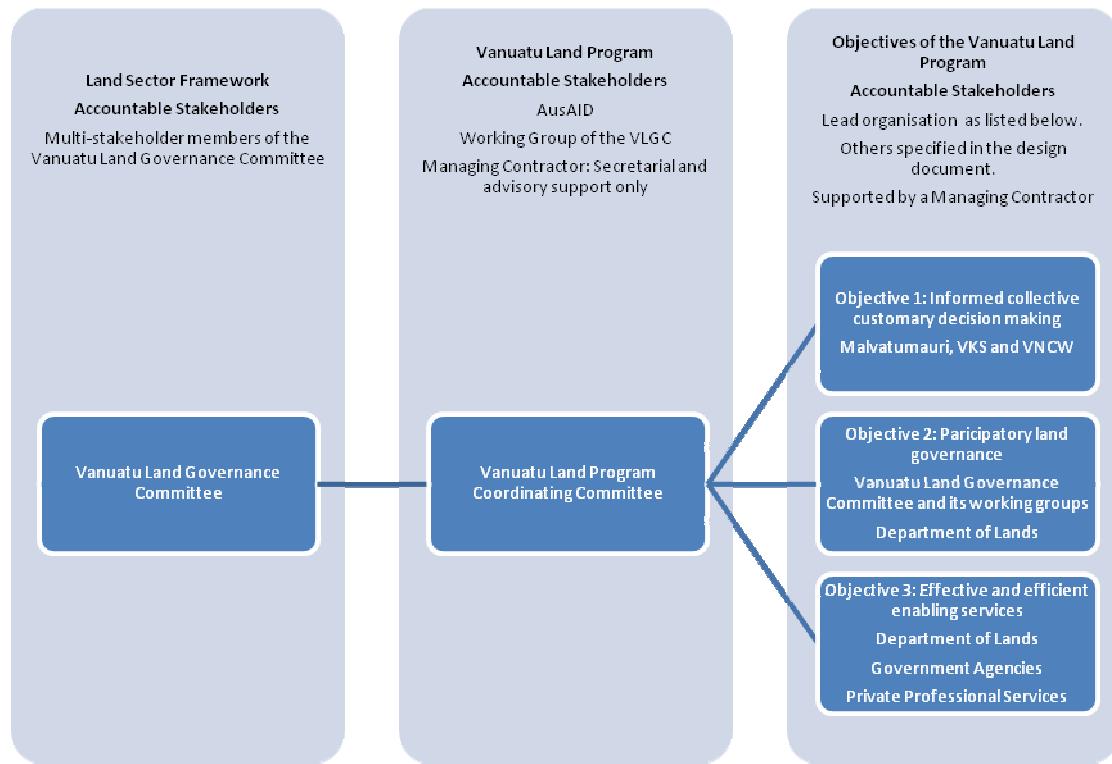
**E. CONTRACT ADMINISTRATION**

12. The ISP Program Director will be the primary point of contact for AusAID on technical, administrative, reporting and contractual issues. The ISP will provide appropriate administrative and contractual support to the Program Director to ensure that these tasks are efficiently managed and do not divert the Program Director unduly from key implementation and technical responsibilities.

13. The AusAID Activity Manager based in Port Vila will be the primary point of contact for the ISP related to all contractual, administrative and reporting requirements of the Program.

## F. COORDINATION AND CONSULTATION

14. The coordination and consultation relationships for the Program are summarised in the diagram below:



The VLGC will oversee the implementation of the Land Sector Framework. A working group of the VLGC will be appointed to work with AusAID as the Vanuatu Land Program Coordinating Committee (PCC). This PCC will be responsible for the oversight of the Program. It will be co-chaired by a representative of the VLGC and AusAID and will meet as required, but at least every six months.

The ISP will liaise with AusAID and the VLGC on the membership of the PCC, assist with the establishment of the PCC, and draft its operating guidelines, including its Code of Conduct. The ISP will provide secretariat services to the meetings of the PCC. This includes arranging and facilitating meetings, consulting on and finalising the agenda, preparing minutes, and circulating relevant documentation. The ISP will provide technical support to the PCC, including reports on the progress and activities of the Program. The ISP will respond to and implement recommendations of the PCC.

15. Key partners for each objective are: Objective 1: the Malvatumauri, the Vanuatu Cultural Centre (VKS) and the Vanuatu National Council of Women (VNCW); Objective 2: the VLGC, VLGC working groups and the Department of Lands; Objective 3: the Department of Lands, other relevant Government agencies and the private sector. While these represent the primary partners, broader consultation is expected throughout.

The ISP will liaise with AusAID, the VLGC and each partner agency to develop a partnership Memorandum of Agreement (MOA) that outlines the scope, roles, responsibilities and relationships

of each partnership with respect to the implementation of this Program. The MOAs will be expected to be signed during the inception period of the Program. The ISP will monitor each relationship as agreed in the MOA and report on the effectiveness of these to the PCC.

16. The ISP must ensure that its services fully accommodate the Government of Vanuatu, Malvatumauri and other stakeholders' request that AusAID assistance be facilitatory only, and not try and influence the direction of reform. Change must come from within Vanuatu and be championed by ni-Vanuatu stakeholders.

#### **G. PROGRAM REVIEW AND ISP PERFORMANCE ASSESSMENT**

17. The Program will 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. The ERG will visit the Program after inception, at mid-term and at completion, in order to report on the quality of implementation, the likely development impact, and to make recommendations on future assistance. The ERG will complete an ISP Performance Assessment according to criteria agreed in advance by AusAID and the ISP but based on paragraph 18. The ERG will provide strategic advice to AusAID, the VLGC, other partners, and the ISP on mechanisms to improve the effectiveness of the Program.

The ISP will facilitate the visits of the ERG. This will include: arranging accommodation, schedules, travel, interpreters and meetings; providing or sourcing key documentation as requested; and advising the ERG on Program implementation, impacts and risks. The ISP must cooperate with the ERG in all matters and attend those meetings, visits and other interactions that the ERG deems appropriate. The ISP will review reports of the ERG, actively disseminate and discuss these with stakeholders and integrate recommendations into work plans. The ISP will provide a summary report to the ERG reflecting action and progress against recommendations one month prior to each visit.

18. Key criteria to be used in ISP Performance Assessment will include:

- i. Quality of documents submitted as output reports, including their completeness, presentation, ease of understanding, analysis and identification of options, and appropriateness of recommendations;
- ii. Performance of technical advisors, including level of technical expertise, understanding of the Vanuatu context, ability to build and maintain relationships, and contribution to capacity building;
- iii. Quality of performance monitoring systems and reporting established, including appropriateness of indicators and targets, measurement of performance against targets, and analysis of results and identification of factors contributing or constraining performance;
- iv. Quality of communication systems and processes established, including the distribution and dissemination of information from the partnership program to partners, local governments, AusAID and other donors; and the receipt and responsiveness to information and requests from partners and stakeholders.

#### **H. PERSONNEL**

19. The ISP will provide a range of international and national advisers and fund some positions within Government and civil society. The anticipated full-time in-country staffing support to be provided by the Program includes 2.82 full-time equivalents of long-term international adviser support and 13.2 full-time equivalents of long-term national adviser support. Long-term positions are supplemented by a Short-term Consultancy Pool providing up to 84 person months of support. The following table provides an indicative breakdown of the skills and positions required:

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 (ISP)	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 ISP but integrated into the Malvatumauri in Year 5	Malvatumauri
Administrative Support to the National Kastom Land Office	60	Initially under the ISP but integrated into the Malvatumauri in Year 5	Malvatumauri
Kastom Focal Points	288	Commencing after Year 1. Initially under the ISP but integrated into the Malvatumauri, VKS, Government agency or Civil Society in Year 5	Province or Islands level

<b>Position</b>	<b>Indicative Person Months</b>	<b>Alignment</b>	<b>Location</b>
M&E Adviser	60	ISP	Program Head Office (Department of Lands)
Participatory Governance Facilitators	120	ISP	Program Head Office (Department of Lands)
Land Registry Support Staff	126	ISP	Program Head Office (Department of Lands)
Gender Focal Point	60	Funded by the ISP but a line position within the Department of Lands with responsibility as follows: Department of Lands (75%) Malvatumauri (25%)	Department of Lands
Public Awareness Adviser	18	ISP	Program Head Office (Department of Lands)

Position	Indicative Person Months	Alignment	Location
Short-term Consultancy Pool			
M&E Adviser	84 (in total)	ISP	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			

20. The tender process requires that the Program Director and International Indigenous Land Specialist be nominated along with a personnel strategy that outlines the process and timeframe to engage, manage, support and sustain all other long-term Program staff. Once the Contract is signed, the ISP will commence recruitment of all remaining staff based on the strategy proposed and agreed with AusAID.

21. The ISP must ensure that selection of short-term consultants from the Consultant Pool gives preference to national or Pacific regional professionals. The ISP must liaise with the Pacific Land Program who will establish a register of national and regional skills that can be accessed across all four country Programs. Only in cases where national or regional capacity cannot be found should broader international assistance be engaged.

22. Each year in the Annual Plan the ISP will propose the nominations and Terms of Reference for anticipated support from the Short-term Consultancy Pool. If the skills needed are not available from the Short-term Consultancy Pool then the ISP will propose TOR along with a selection process in the Annual Plan. The selection process and panel must include representation from the relevant partner agencies.

23. The ISP must work closely with partners to ensure that the timing, selection and scale of technical or operational assistance approved by the PCC is delivered in close consultation with all stakeholders, giving careful attention to flexibility, responsiveness, need, and absorptive capacity.

24. The ISP will ensure that all personnel are qualified and experienced for their positions against the agreed Terms of Reference, selected under a fair and transparent recruitment process, and receive annual performance appraisals.

## I. INCEPTION

25. At Contract commencement, the ISP will undertake broad consultations with all partners, AusAID, and other donors to initiate the Program, discuss relationships, appreciate stakeholder perspectives and confirm the Inception Plan. A draft Inception Plan will have been prepared as part of tendering and covers the first six months of the Program.

26. The ISP will refine the Inception Plan as discussed with stakeholders and agreed with AusAID and commence immediate implementation. Key activities that must be completed by the ISP during inception and thus must be scheduled within the Inception Plan will include but not be limited to:

- i. Develop draft MOAs for partnerships with the Department of Lands, the Malvatumauri, and the VKS. Once approved by AusAID, proceed with signing of the MOAs (see paragraph 15);
- ii. Complete the recruitment of all key staff positions as outlined in the approved Personnel Strategy (see paragraph 20);
- iii. Establish the Program Office within the Department of Lands (see paragraph 11);
- iv. Support the Malvatumauri to establish the National Kastom Land Office (see paragraph 34.i);
- v. Work with AusAID and the VLGC to finalise the membership and operations of the PCC (see paragraph 14 and 40). Schedule and complete the inaugural PCC meeting;
- vi. 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;
- vii. Prepare a Sustainability Framework for the Program, train key partners, and integrate key processes into the M&E Framework (see paragraph 59);
- viii. Develop and submit the Program's draft Annual Plan for the period remaining up to and including June 2010 (see Section 0);
- ix. Update and implement the Program's Risk Management Strategy;
- x. Develop operating procedures for the Program's Grant Fund Imprest Account and seek AusAID approval (see paragraph 29);
- xi. Develop the Program's Conflict Management Strategy (see paragraph 55);
- xii. Develop the Program's Gender Strategy (see paragraph 57); and

- xiii. Complete the development and assessment of suitable models for a local Kastom Focal Point network (see paragraph 36.i).

**J. FINANCIAL MANAGEMENT**

27. The ISP's program management, administration, and technical support costs will be paid on the basis of Fixed Fees and Reimbursable Costs as outlined in the attached Basis of Payment (Annex 9 of the PDD).

28. The ISP will manage a Grant Fund Imprest Account totalling A\$1.1m and including:

- i. a Customary Land Study and Research Grant Fund (A\$450,000: equivalent to A\$100,000 per annum commencing Quarter 2);
- ii. a Professional Land Services Support Fund (A\$562,500: equivalent to A\$25,000 per province per annum commencing FY2010/11); and
- iii. a VKS Gender Mainstreaming and Public Awareness Program Fund (totalling A\$135,000: equivalent to A\$30,000 per annum commencing Quarter 2).

29. The Grant Fund Administration Procedures (including establishment of the separate Grant Funds Imprest Account, audit regime, signatories, and risk management strategies) must be developed and approved by AusAID in the first two months and prior to the release of grant funds.

30. The ISP will apply to AusAID for grant fund tranches every six months, based on projections in the Annual Plan and including reconciliation of past expenses. Financial audits of all grant fund accounts will be undertaken annually by an independent audit firm nominated by the ISP and approved by AusAID. The costs of audits will be deducted from the Grant Funds Account.

**K. IMPLEMENTATION SERVICE PROVIDER SUPPORT TO OBJECTIVE 1.**

31. The ISP will facilitate Program partnerships that improve the quality of decisions by customary landholders, increase dialogue and lessen the potential for conflict.

32. The ISP will provide a package of support, technical assistance, training and mentoring that significantly strengthens partners' capacity to sustainably undertake their roles based on the following principles:

- i. Ownership of the decision-making process by all customary landholders;
- ii. Effective inclusion of women in decision-making and increased appreciation by all stakeholders of the benefits of equitable participation by women;
- iii. 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;
- iv. Empowerment of customary landholders to appropriately capture the benefits of development;
- v. Facilitation of processes, without undue or inappropriate influence;
- vi. Enhanced community cultural space for conflict resolution and decision-making;

- vii. 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
- viii. Sustainable, equitable and local access to information and support services.

33. The ISP will ensure that the Program establishes effective and complementary 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 VKS; and further proposed work under the World Bank's Justice for the Poor Program.

34. The ISP will coordinate Program support to the Malvatumauri that improves Customary Governance of Land by the Malvatumauri, including:

- i. Refurbish and/or extend the current Malvatumauri office (within the limits of the budget allocated) to make room for a National Kastom Land Office. Facilities should be adequate to accommodate a National Kastom Land Officer, an administrative officer, and provide space for intermittent advisers from the Program or other donor activities (e.g. the NZAID assistance to the Customary Land Tribunal). The Program will support the operating costs of the National Kastom Land Office.
- ii. Work with the Secretary General of the Malvatumauri to appoint a National Kastom Land Officer and administrative support. The National Kastom Land Officer will report to the Secretary General of the Malvatumauri but receive technical direction and support from the ISP. The ISP will provide mentoring and training to the National Kastom Land Officer to undertake their duties.
- iii. Support the Malvatumauri to budget and plan for the full transfer and sustainable management of the National Kastom Land Office from Year 5. The Program will fund the staff and operating costs of the National Kastom Land Office until Year 5 within agreed budget parameters.
- iv. 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 oversee *kastom* land issues and provide effective advocacy and policy advice to Government and other stakeholders.
- v. 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 their outcomes.
- vi. Work with the National Kastom Land Officer to support the Malvatumauri to establish frameworks for governance, transparency and accountability in a manner that supplements the activities of the Customary Governance Program or other donor support (see paragraph 33).

35. The ISP will coordinate Program support to the Vanuatu Cultural Centre (VKS) that improves stakeholder and public understanding and awareness of customary land practices (including gender and relational land interests), including:

Customary Land Study and Research Grant Fund (CLSRGF)

- i. Work with the VKS 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 (CLSRGF) (see paragraph 28) in line with the intention of the PDD including:
  - a. Selection processes and fund oversight will be governed by a multi-stakeholder committee approved by the PCC and including representatives of the VKS, the Malvatumauri, the Vanuatu National Council of Women, academe and the Program Director;
  - b. Responsibility to administer the processes for identification, selection, and monitoring of studies will rest with the VKS, while all financial controls will rest with the ISP;
  - c. The VKS is expected to be a partner in most studies; and
  - d. Broad partnerships are anticipated with other national or Pacific regional groups.
- ii. Ensure that CLSRGF Operating Guidelines are approved by the PCC before Grant Funds are released.
- iii. Audit and ensure compliance with CLSRGF Operating Guidelines, administer and sign all grant agreements, and manage all payments and financial auditing.

A Public Awareness and Gender Mainstreaming Program

- iv. Administer a grant fund that supports the VKS to implement a Public Awareness Program (PAP) and a Gender Mainstreaming Program (GMP) (see paragraph 28) in line with the intentions of the PDD.
- v. Ensure (for the GMP) that the VKS forms a significant and active partnership with the Gender Focal Point (GFP) within the Department of Lands (DOL) and the Vanuatu National Council of Women (VNCW), and that both become important delivery partners and receive appropriate funding for work undertaken. It is expected that within the term of the Program that the Malvatumauri, through the assistance of the Gender Focal Point, will issue a *kastom* Gender Policy.
- vi. Support the VKS and its stakeholders to develop a simple Public Awareness Strategy and a Gender Mainstreaming Strategy. Also support the VKS to develop an Annual Action Plan for the PAP and GMP that will be approved by the PCC as part of the Program Annual Plan.

36. The ISP will coordinate Program support that improves decision-making by customary landholders, including:

- i. 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 KFP 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 PCC for approval.

- ii. Based on the PCC approval, implement the agreed KFP network and undertake training and capacity building. It is expected that the KFP network will be implemented 12 months after Program commencement. While initially funded by the Program, the network will be transferred to the agreed funding platform at the end of Program Year Five.
- iii. Work with the KFP officers and the National Kastom Land Officer to develop an annual work program to be endorsed by the Malvatumauri and submitted to the PCC for approval as part of the Program Annual Plan.
- iv. Establish processes for and administer a Professional Land Services Support Fund (PLSSF). The PLSSF will allow the KFP network to access 'competitive' professional services that address major priority needs that have been 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.

#### **L. IMPLEMENTATION SERVICE PROVIDER SUPPORT TO OBJECTIVE 2.**

37. The ISP will facilitate Program partnerships that ensure participatory governance of land dealings at the national and sub-national levels in addition to formalising participatory processes needed for transparency in land leases.

38. The ISP will provide a package of support, technical assistance, training and mentoring that significantly strengthens partners' capacity to sustainably undertake their roles based on the following principles:

- i. Respect, recognition and inclusion of all national and local land stakeholders responsible for land governance;
- ii. Build on existing structures, roles and processes;
- iii. Ensure that appropriate consultation and participation bolsters the integrity of land roles and processes;
- iv. Ensure the effective and equitable representation of women and increase the awareness of women's rights and roles;
- v. Consider the establishment of specific groups to advise and/or audit processes;
- vi. Appreciate that effective processes will necessitate balancing the need for representation with efficient use of resources and time;
- vii. Build the capacity of all stakeholders to understand and implement improved processes, as well as advocate for integrity; and
- viii. Ensure that Government recognises and effectively discharges its custodianship obligations for urban and public land.

39. The ISP will ensure that the Program establishes effective links to AusAID support to Custom Governance and other donor assistance.

40. The ISP will coordinate Program support for sector-wide governance of land by a VLGC according to the agreed Land Sector Framework, including:

- i. Stakeholder mapping, analysis and negotiation to identify appropriate stakeholders, roles, responsibilities and powers of the VLGC;
- ii. Training of members of the VLGC (and its working groups) in areas that support its roles and responsibilities;
- iii. Provide technical support for, and resources to implement, monitor and revise the Land Sector Framework (including thematic working groups, consultation, oversight mechanisms and sector-wide governance processes);
- iv. In consultation with the VLGC, prepare a Code-of-Conduct for all its members and its 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.

41. The ISP will coordinate Program support to improve regional and local governance of land, including:

- i. Identify the strengths and weaknesses of both 'official' and customary participatory governance structures, at provincial/island/area council levels that facilitate land development planning, zoning, control and use;
- ii. Prioritise areas where the Program can have significant impact on improving sub-national land governance (giving due attention to budget, resource, capacity and sustainability constraints) and propose recommendations to the PCC for consideration;
- iii. Prepare work plans for approved land governance interventions and assist and strengthen key partnerships for their implementation;
- iv. Strengthen the membership, authority and powers of all relevant oversight and evaluation committees; and
- v. Establish supporting frameworks for transparency and accountability to be used to guide codes of conduct and ethical practices.

42. The ISP will support the participatory mechanisms needed to facilitate formal dealings in land, including:

- i. Identify key processes essential for external customary land dealings (particularly leases on customary land) and undertake an analysis of stakeholders, their roles and responsibilities;
- ii. Prioritise areas where the Program can have significant impact on improving formal dealings in customary land (giving due attention to budget, resource, capacity and sustainability constraints) and propose recommendations to the PCC for consideration;

- iii. Develop an appropriate participatory land governance process, advisory structures and rules of engagement for the approved priority interventions. These processes will incorporate the principle of free, prior and informed consent by customary landholders (including women);
- iv. Establish and strengthen composition, authority and powers of relevant oversight and evaluation committees; and
- v. Formulate and incorporate good governance principles and practices within land planning, development, administration and management systems processes and procedures.

**M. IMPLEMENTATION SERVICE PROVIDER SUPPORT TO OBJECTIVE 3.**

- 43. The ISP will facilitate Program partnerships that improve service delivery in key areas.
- 44. The ISP will provide a package of support, technical assistance, training and mentoring that significantly strengthens partners' capacity to sustainably undertake their roles based on the following principles:
  - i. Services and instruments must be relevant, appropriate and sustainable, based on the capacity and resources of the organisation or group charged with their provision;
  - ii. Services and instruments must be delivered equitably to all communities and other stakeholders;
  - iii. Government should devolve some roles to the private sector as and when appropriate;
  - iv. 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;
  - v. Systems and delivery options must be proven before full-scale implementation; and
  - vi. National capacity, or at least capacity within the Pacific region, to maintain systems (especially information management) after implementation must be assured.
- 45. The ISP will ensure that the Program establishes effective links, integrates with and complements NZAID assistance to the Information Management System within the Department of Lands and any other relevant donor assistance.
- 46. The ISP will support the Department of Lands and other relevant partners to establish a functioning Land Registry and Information Service, including:
  - i. Significantly reduce, and preferably eradicate, the large backlog in the Registry;
  - ii. 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);

- iii. Improve the processing operations within the Registry to achieve both integrity in processing and agreed standards in processing times; and
- iv. 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.

47. The ISP will support the Department of Lands and other relevant partners to establish an effective land lease and development planning, assessment, permitting and enforcement service, including:

- i. 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;
- ii. Assess the options for achieving a coordinated, integrated and effective regulatory and permitting service; formalise the preferred approach, with the approval of the individual agencies, and, if necessary, the Council of Ministers;
- iii. Develop and implement coordinated processes and procedures, including the use of checklists, advice and training to clients;
- iv. Further enhance the planning and development control plan support service;
- v. Undertake planning for both municipalities and designated 'hot spots'; and
- vi. Further enhance the coordinated compliance and enforcement service.

48. The ISP will support the Department of Lands to deliver a national land awareness, knowledge and gender mainstreaming campaign, including:

- i. Establish a Public Information Unit within the Department of Lands to be responsible for planning, implementing and evaluating public information, education and communication activities;
- ii. Conduct audience surveys and analyse the findings to define the knowledge gaps and attitudinal aspects of public awareness of land issues;
- iii. Identify target audiences, in particular customary landholders and private developers, and the most appropriate means/media to convey information and deliver key messages;
- iv. Liaise closely with the Kastom 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;
- v. Develop and deliver a public awareness program that targets the knowledge requirements of customary landholders, women, private developers, public sector agencies and other stakeholders;
- vi. Appoint a Gender Focal Point, with advice from the 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. Within the term of the Program it is expected that the Gender Focal Point will assist the Department of Lands to develop a Women and Land Policy;

- vii. Assist the Department of Lands to develop a Women and Land Policy.

49. From Year 3 onwards, the ISP will support the Department of Lands to assess and develop effective organisational models and service delivery arrangements, including:

- i. Identify and evaluate current and alternative high level organisational models and operating mechanisms that improve the efficiency, effectiveness and transparency of the Department of Lands in its service roles;
- ii. Engage with management, staff, partners and customers in a detailed assessment of promising options giving full regard to budget, resource, capacity and sustainability constraints. Prepare a report to the PCC on options considered feasible;
- iii. Develop a business case for the recommended model in order to gain approval and authorisation;
- iv. Establish a pilot, and undertake effective evaluation.

## **N. MONITORING AND EVALUATION**

50. The ISP will develop, maintain and regularly revise the Program's Monitoring and Evaluation (M&E) Framework. The inherent flexibility of a Program approach requires 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 will be modelled on that proposed in the PDD; nevertheless, the final tools and processes will be confirmed when the M&E arrangements are updated and revalidated for the Inception Plan (see paragraph 26.vi). The ISP must ensure that the M&E Framework complies with the following:

- i. The M&E Framework for the Program must be consistent with the Government of Vanuatu's PAA and the goals of the Vanuatu Australia Country Strategy;
- ii. The M&E approach and methodology must harmonise with M&E required for the Land Sector Framework and, within the scope of the Program, provide the VLGC with effective information sufficient to guide their oversight of the LSF;
- iii. Program M&E must support Government data collection and management, particularly in the Land Registry;
- iv. M&E must capture sufficient evidence of partner contribution to outcomes, to justify future phases of support;
- v. 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;

- vi. M&E processes will include an annual client satisfaction survey for the Department of Lands that will monitor the satisfaction levels of its main clients in the formal sector;
- vii. Procedures must integrate data collection and substantive Program activities in such a way that these two operations both support and enhance each other;
- viii. Include key processes and indicators that track Program contribution to the Gender Strategy (see paragraph 58), ongoing Conflict Analysis (see paragraph 56), the Sustainability Framework (see paragraph 59) and Anti-corruption (see paragraph 53); and
- ix. As much as possible, there must be disaggregation of data by gender as well as by province / island.

51. As noted in paragraph 17, the ERG will undertake three major independent evaluations: one after inception, one at mid-term and one at program completion. In addition to responsibilities mentioned earlier, the ISP will summarise and communicate key findings with partners and include findings in the Program Completion Report.

## **O. ISP IMPLEMENTATION OF AUSAID CROSS-CUTTING POLICIES**

### Anti-corruption

52. The ISP will actively implement and comply with the AusAID Anti-corruption Policy and the Australia-Vanuatu Development Anti-corruption Action Plan;

53. The ISP will ensure all Program staff receive anti-corruption training and sign a Code-of-Conduct that emphasises the essential role they play in representing Australian support to Vanuatu and modelling transparency in both their financial and facilitation roles. 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. The ISP will ensure that all staff are aware of and adhere to these guidelines. All cases of corruption identified by the ISP will be reported to AusAID within five days in accordance with current AusAID policy.

54. The ISP will ensure that the VLGC and PCC receive training on their important service roles, and will assist them to develop their own Codes-of-Conduct which all members will be expected to sign.

### Conflict

55. The ISP will actively implement and comply with the AusAID Conflict and Development Policy;

56. The ISP will work with the Department of Lands, Malvatumauri, VKS, civil society and AusAID to undertake a Conflict Analysis that will assess the sources and likelihood of conflict relevant to the Program and land reform more broadly. An Action Plan that identifies key strategies, capacity building, roles and responsibilities (including those of key partners) will form an annex to the Conflict Analysis. Key risks will be integrated into the Program's Risk Management Plan. The ISP will provide training to Program staff, affiliated workers and key stakeholders on conflict management,

mitigation and dispute resolution. The ISP will regularly update the Conflict Management Plan in consultation with key partners and ensure the Program mitigates conflict and builds peace.

#### Gender

57. The ISP will actively implement and comply with the AusAID Gender and Development Policy;

58. The ISP, in consultation with the Gender Focal Point, will develop the Program's Gender Strategy and integrate 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. The Gender Strategy will outline Program initiatives to assist the Department of Lands to develop a Women and Land policy and the Malvatumauri to issue a *kastom* Gender Policy. In addition, the Gender Strategy will ensure:

- i. 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;
- ii. Gender balance is specifically considered in any appointment selection processes, and that specific measures are undertaken to encourage and support women applicants. The strategy will also include additional mentoring and training for women staff members in order to attain senior roles;
- iii. The Program team and partners (including the Kastom Focal Point officers), as well as the VLGC, will receive quality training on the importance of integrating gender equity throughout the Program;
- iv. Progress toward the achievement of gender equity is tracked as part of the Program monitoring and evaluation.

#### P. PROGRAM SUSTAINABILITY

59. The ISP will develop a Sustainability Framework that will guide the VLGC and other Program partners when assessing the feasibility of systems, procedures, consultation processes and institutional reform. It will also inform the evaluation process. The Framework will be less than ten pages and will be delivered during the inception period. The ISP will provide training to the VLGC and major partners on the Framework. The Framework will:

- i. Provide a conceptual basis for understanding sustainability and how it will be managed within the Vanuatu Land Program;
- ii. 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
- iii. 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.

**Q. PROGRESS REPORTING AND ANNUAL PLANNING**

60. Reporting of Program progress and achievements will be six-monthly. This will take the form of an Annual Report (that will be included within the Annual Plan) and an interim Six Monthly Progress Report. The ISP must ensure that reporting focuses on the quality and scope of the ISP contribution to the Program and is:

- i. no more than 25 pages in length, is streamlined and appropriately pitched to meet the expectations of both AusAID and the Government of Vanuatu, and feeds directly into aid effectiveness review processes. It should include:
  - a. A summary of key issues and lessons learned;
  - b. Outline of key conflict management issues arising during the year;
  - c. Self-assessment of ISP performance in each of the core ISP service areas, based on verifiable evidence wherever possible, and with analysis linked to the M&E Framework;
  - d. A summary of the status of inputs provided by the ISP, tracking against the requirements under this Contract;
  - e. An Annex that provides a financial summary of the Program;
  - f. An Annex that outlines all technical reports produced;
  - g. An Annex that summarises public awareness activities undertaken.
- ii. Submitted to AusAID in draft form: in the case of the Annual Report, by the last day of March each year; and in the case of the Six Monthly Progress Report, by the last day of November each year, starting in 2009. Any variations to this timing or extensions to these deadlines must be approved in writing by AusAID;
- iii. Unless otherwise agreed, is submitted to AusAID in final form, incorporating any changes requested by AusAID, within two weeks of receipt of AusAID comments, which will be provided to the ISP within 30 days of receiving a draft report; and
- iv. Submitted in both electronic and hard copy, with the number of hard copies required to be determined by AusAID.

61. The annual planning cycle will be aligned with the Government of Vanuatu's budget, as well as with the planning timelines.

62. 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. 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. Some activities will need to be flexible, so as to adjust to possible fluctuations in budget availability.

63. The Annual Plan will be based on AusAID requirements as outlined in AusGuide and will include:

- i. The strategic approach to be used for the year;
- ii. Proposed activities under each objective of the Program;
- iii. Anticipated inputs by long-term advisers as well as proposed inputs from the Short-term Consultancy Pool. Short-term Consultancy Pool inputs should include a TOR for each engagement;
- iv. Proposed annual budget for the Program as negotiated with AusAID (see paragraph 62);
- v. An updated Risk Management Matrix;
- vi. A summary of updates made to the Program Gender Strategy;
- vii. A summary of updates made to the Conflict Management Strategy;
- viii. A summary of updates made to the M&E Framework.

## R. REPORTING

64. 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 (ERG). Outcomes of the evaluations will feed into the Mid-term Report and Program Completion Report. AusAID will also use the assessment of the ERG for the design of a subsequent phase, should this be agreed upon.

65. Key documents that must be developed by the ISP for the effective and efficient program management are shown in the table below. This table does not include key technical reports produced by the Program and referred to throughout this Scope of Services.

Report	Brief Description	Timing
Inception Plan	See Section 0	1 month after Program commencement
Grant Funds Operating Procedures	See Section 0	1 month after Program commencement
Six-monthly Program Reports	See Section 0	November 2009 November 2010 November 2011 November 2012 November 2013
Annual Plans	See Section 0	Within three months of commencement for FY 2009/10 30 March 2010

		30 March 2011 30 March 2012 30 March 2013
Monitoring and Evaluation Framework	See Section 0	Within three months of commencement and updated annually at the time of the Annual Plan
Sustainability Framework	See Section 0	Within four months of commencement and updated annually at the time of the Annual Plan or as required.
Conflict Management Strategy	See paragraph 56	Within five months of commencement and updated annually at the time of the Annual Plan or as required.
Gender Strategy	See paragraph 58	Within six months of commencement and updated annually at the time of the Annual Plan or as required.
Program Completion Report	In accordance with AusGuide and AusAID requirements	Draft report three months prior to Program completion. Final report submitted to AusAID two weeks after receipt of AusAID comments

66. In addition to the reports required under paragraph 65, the ISP must provide timely and up-to-date information as requested by AusAID or the Government of Vanuatu:

- i. as part of AusAID's Quality at Implementation and Annual Program Performance Report processes; or
- ii. as part of any other reporting or briefing request that is required by AusAID or the Government of Vanuatu.

67. The ISP must work collaboratively with AusAID to continuously improve its reporting quality and ensure that its reports are meeting the needs of the Program stakeholders.

68. The ISP must maintain a collection of all reports, technical papers and publications produced as part of the ISP services or the Program more broadly, for and on behalf of AusAID and the Government of Vanuatu. The ISP must ensure that these documents are readily available to all

relevant stakeholders throughout the life of the Program. After Program completion, documents must be sustainably located within a relevant institutional home(s).

## Annex 9. Basis of Payment

### 1. TOTAL AMOUNT

1.1 The total amount payable by the Commonwealth to the ISP shall not exceed the sum of [insert Financial Limitation] plus any GST.

### 2. FIXED FEES

2.1 The fixed fees payable by the Commonwealth to the ISP shall be paid to an upper limit of [insert \$XXX] representing the costs associated with personnel, management and administration costs, and the costs associated company on-costs, margins or multipliers, identified in the tender dated [insert date of tender].

2.2 Fixed fees will be paid on the basis of a Quarterly Billing Rate (QBR) representing 80% of the Fixed Fees, and Milestones, representing 20% of the Fixed Fees. The QBR and Milestone Schedule are included in Attachment 1 to this Basis of Payment.

### 3. REIMBURSABLE COSTS

3.1. The fees payable by the Commonwealth for reimbursable capacity building and technical assistance expenses shall be paid on a quarterly basis within 30 days of acceptance of Claims for Reimbursable Expenses to an upper limit of [\$XXX,XXX].

3.2. The schedule of approved reimbursable expenses shall be prepared in each Annual Plan and approved by AusAID in the format included in Attachment 2.

### 4. PROGRAM EXPENSES/GRANT FUNDS

4.1. The fees payable by the Commonwealth for acquirable cash grants under the Imprest Account shall be paid on a quarterly basis within 30 days of acceptance of Claims for Grant Funds to an upper limit of [\$XXX,XXX].

4.2. Once the Program Imprest Account Operating Procedures are in place and approved AusAID shall transfer funds to the Grant Imprest Account. For the first three months this will be based on an estimate of required funds required for the first three month period. Subsequent tranches of funds for the Imprest Account will be based upon estimates approved in the Annual Plan and dependent upon acquittals of previous tranches and acceptance of the Claim for Grant Funds.

### 5. CLAIMS FOR PAYMENT

5.1 The ISP's claims for payment shall be submitted by Tax Invoice when due in a form identifiable with the Services, and must include the following:

- (a) date of invoice
- (b) start date and end date for the work being invoiced
- (c) itemised list of all activities included in the invoice, with reference to the relevant acceptance conditions
- (d) where procurement is made in a foreign currency, the date of procurement and the amount in foreign currency paid as well as the Australian dollar price conversion should be included
- (e) verification of delivery and payment of procurement items prior to invoice where applicable
- (f) for reimbursable amounts, a detailed breakdown on the itemised expenditure and verification of claimed expenditure
- (g) total in Australian dollars
- (i) declaration by an office of the company or Project Director of the veracity of the invoice.

5.2 All claims for payment shall be made to:

The Director General  
Australian Agency for International Development  
GPO Box 887  
CANBERRA ACT 2601  
Attention: [insert name of Country Program Manager]  
[insert Section]

## Attachment 1

**Schedule for Fixed Fees**

Quarterly Billing Rate:	<i>Insert rate from tender</i>
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## Milestone Schedule

<b>Milestone</b>	<b>Verifiable Indicator</b>	<b>Month of submission</b>	<b>Payment amount</b>
1. Submission of final agreed Inception Plan	Evidence of extensive consultation in developing timelines;  Evidence that the Plan is within the absorptive capacity of Partners;  Compliance with expectations under paragraph 26.  Acceptance by AusAID	Q1	
2. Submission of final revised Logframe and M&E Framework for the Program	Evidence of extensive consultation in developing the report;  Compliance with expectations under paragraph 50.  Acceptance by AusAID	Q2	
3. Submission of final Conflict Management Strategy and Gender Strategy for the Program	Evidence of extensive consultation in developing the report;  Compliance with expectations under paragraph 56 and 58.  Acceptance by AusAID	Q3	
4. Submission of final Annual Report for 2009/10 and the Annual Plan 2010/11	Evidence of extensive consultation in developing the plan;  Compliance with expectations under paragraph 60 and 63.  Acceptance by AusAID	Q4	

5. Submission of final approved plan for the implementation of a KFP Network	<p>Evidence of extensive consultation in developing the plan;</p> <p>Evidence of broad-based agreement and PCC approval of the KFP plan according to expectations in paragraph 36.i.</p> <p>Acceptance by AusAID</p>	Q5	
6. Submission of final 2nd Six Monthly Report	<p>Compliance with expectations under paragraph 60.</p> <p>Acceptance by AusAID</p>	Q6	
7. DOL Land Registry backlog is cleared	DOL Director General certification that 95% of the backlog of lease registrations within the Land Registry are cleared excluding any leases subject to ongoing dispute or legal action.	Q7	
8. Submission of final Annual Report for 2010/11 and the Annual Plan 2011/12	<p>Evidence of extensive consultation in developing the report;</p> <p>Compliance with expectations under paragraph 60 and 63.</p> <p>Acceptance by AusAID</p>	Q8	
9. Submission of a final report to the PCC outlining priority areas where the Program can have significant impact on improving formal dealings in customary land	<p>Evidence of extensive consultation in developing options;</p> <p>Compliance with expectations under paragraph 42.</p> <p>Acceptance by AusAID</p>	Q9	
10. Submission of final 3rd Six Monthly Report	<p>Compliance with expectations under paragraph 60.</p> <p>Acceptance by AusAID</p>	Q10	
11. ISP meets service standards of the SOS	AusAID ERG Mid-term Mission: ISP Performance Assessment report is satisfactory or above based	Q11	

	on expectations outlined in paragraph 18. Any outstanding issues rectified and reported by ISP in response to report if necessary.		
12. Submission of final Annual Report for 2011/12 and the Annual Plan 2012/13	<p>Evidence of extensive consultation in developing the plan;</p> <p>Compliance with expectations under paragraph 60 and 63.</p> <p>Acceptance by AusAID</p>	Q12	
13. Submission of final report to the PCC on action taken by the ISP to advance the Program's Gender Strategy and influence the DOL to initiate a Women and Land Policy and the Malvatumauri to issue a Kastom Gender Policy	<p>Evidence of extensive activity and influence in advancing the Programs Gender Strategy;</p> <p>Compliance with expectations under paragraph 58.</p> <p>Acceptance by AusAID</p>	Q13	
14. Submission of final 4th Six Monthly Report	<p>Compliance with expectations under paragraph 60.</p> <p>Acceptance by AusAID</p>	Q14	
15. Submission of final report to the PCC on action taken by the ISP to address and respond to corruption	<p>Evidence of incisive and appropriate responses in accordance with AusAID Policy and the AusAID/DOL MOA.</p> <p>Existence of and adherence to Program initiated Codes-of-conduct.</p> <p>Compliance with expectations under paragraphs 52, 53, and 54.</p> <p>Acceptance by AusAID</p>	Q15	
16. Submission of final Annual Report for 2012/13 and the Annual Plan	<p>Evidence of extensive consultation in developing the plan;</p> <p>Compliance with</p>	Q16	

2013/14	expectations under paragraph 60 and 63. Acceptance by AusAID		
17. Submission of a final report to the PCC outlining options for institutional reform within the DOL	Evidence of extensive consultation in developing the report; Compliance with expectations under paragraph 49. Acceptance by AusAID	Q17	
18. Submission of final 5th Six Monthly Report	Compliance with expectations under paragraph 60. Acceptance by AusAID	Q18	
19. ISP meets service standards of the SOS	AusAID ERG Completion Mission: ISP Performance Assessment report is satisfactory or above based on expectations outlined in paragraph 18. Any outstanding issues rectified and reported by ISP in response to report if necessary.	Q19	
20. Submission of final Program Completion Report	Accepted by AusAID	Q20	
	Total value of Milestones		20% of total upper limit of Fixed Fees

Note that although the ISP is required to submit six-monthly reports each six months, only each second report is a payment Milestone.

## Attachment 2

## **Claims for Reimbursable Expenses**

## Annex 10. Documents Reviewed

1. AusAID 2005, *The Australia-Vanuatu Joint Development Cooperation Strategy 2005-2010*, 24 pp, viewed May 2008,  
[www.ausaid.gov.au/publications/pubout.cfm?ID=9451\\_8902\\_5426\\_2679\\_1525](http://www.ausaid.gov.au/publications/pubout.cfm?ID=9451_8902_5426_2679_1525)
2. AusAID 2006, *Australian Aid: Promoting Growth and Stability*, A White Paper on the Australian Government's Overseas Aid Program, Canberra, viewed May 2008,  
[www.ausaid.gov.au/publications/pubout.cfm?Id=6184\\_6346\\_7334\\_4045\\_8043](http://www.ausaid.gov.au/publications/pubout.cfm?Id=6184_6346_7334_4045_8043)
3. AusAID 2008, *Making Land Work*, viewed June 2008,  
[http://www.ausaid.gov.au/publications/pubout.cfm?ID=3363\\_9223\\_6836\\_1452\\_8140](http://www.ausaid.gov.au/publications/pubout.cfm?ID=3363_9223_6836_1452_8140)
4. Bolton, B., 2006, *Chief Willie Bongmatur Maldo and the incorporation of Chiefs into the Vanuatu State* in State, Society and Governance in Melanesia Discussion Paper 99/2.
5. Cox, M, Alatoa, H, Kensi, L, Naupa, A, Rawlings, G, Soni, N and Vatu, G 2007, *The Unfinished State: Drivers for Change in Vanuatu*.
6. Fingleton, J 2005, Pacific 2020 Background Paper: Land, viewed May 2008,  
[http://www.ausaid.gov.au/publications/pdf/background\\_land.pdf](http://www.ausaid.gov.au/publications/pdf/background_land.pdf)
7. Gender Policy [www.ausaid.gov.au/publications/pdf/guidetogenderanddevelopment.pdf](http://www.ausaid.gov.au/publications/pdf/guidetogenderanddevelopment.pdf)
8. Government of Vanuatu (circa 2004), *The Government's Comprehensive Reform Program Matrix 2004 – 2006*.
9. Government of Vanuatu 2006, *Sustainable Land Management and Fair Dealings to Ensure Progress with Equity and Stability* National Land Summit: Final Report.
10. Government of Vanuatu 2006, *Policy 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.
11. Grover, R, Torhonen, M, Palmer, D and Munro-Faure, P 2007, *Good governance in land tenure and administration*, FAO Land Tenure Studies, No. 9, Rome, 57 pp.
12. Innovation in AusAID Contracting
13. Lunnay, C, Fingleton, J, Mangawai, M, Nalyal, E and Simo, J 2007, *Review of National Land Legislation, Policy and Land Administration*, viewed May 2008,  
[www.ausaid.gov.au/publications/pubout.cfm](http://www.ausaid.gov.au/publications/pubout.cfm)
14. Manning, M and Hughes, P 2008, *Acquiring land for public purposes in Papua New Guinea and Vanuatu*, Case Study 12, Vol. 2, Making Land Work, Commonwealth of Australia.
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.
16. Pacific Islands Forum Secretariat 2008, *Customary Land Management and Conflict Minimisation: Guiding Principles and Implementation Framework for Improving Access to Customary Land and Maintaining Social Harmony in the Pacific*, Suva, Fiji.
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](http://www.ausaid.gov.au/publications/pdf/rapid_review_aug.pdf)

