



Housing, Land and Property Law in Vanuatu

1 Key laws and actors

Laws	The main laws governing housing, land and property are the Constitution of the Republic of Vanuatu (1980) , the Land Reform Act 1980 , the Land Leases Act 1983 , and the Custom Land Management Act 2013 .
Key government actors	The main government actors responsible for housing, land and property are the Department of Lands, the Land Management Planning Committee, the National Coordinator of Land Dispute Management and the National Housing Corporation.
Shelter cluster	There is an active shelter cluster in Vanuatu that is led by the government of the Vanuatu Public Works Department, and co-led by the International Federation of Red Cross and Red Crescent Societies.

2 Common types of tenure

Land in Vanuatu falls into two main categories: (1) custom land owned by its indigenous custom owners; and (2) public land vested in the Government. All urban land is public land; all rural land is custom land. The status of peri-urban land varies. The table below summarises common types of tenure in Vanuatu.

Tenure	Registrable?	Description	Title document
Customary ownership of land	Yes. A determination of custom ownership made in 2014 or later must be registered.	Land owned and occupied by its indigenous custom owners.	Written record of custom owner determination. Records are maintained by the Land Records Office.
Lease or sub-lease of custom land	Yes. A lease or sub-lease for 3 years or more must be registered.	A lease over custom land granted by the relevant indigenous custom owners. Maximum duration of 75 years. Lessee is entitled to sub-lease or mortgage.	Certified copy of the instrument of lease and survey plan. The Land Records Office maintains a register of leases.
Lease or sub-lease of public land	Yes. A lease or sub-lease for 3 years or more must be registered.	A lease over public land granted by the Government. Maximum duration of 75 years. Must be in the 'public interest', such as being for a charitable purposes or for public infrastructure. Lessee is entitled to sub-lease or mortgage.	Certified copy of the instrument of lease and survey plan. The Land Records Office maintains a register of leases.
Informal tenure arrangements	No	There are several different types of informal tenure arrangements, however detailed information about these arrangements is not available.	N/A

3 Security of tenure of vulnerable groups

<u>Women</u>	<p>There are no formal legal barriers to women holding registered leases or sub-leases. In practice, however, women are unlikely to possess registered leases or sub-leases. This likely reflects the fact that only a small proportion of households are headed by women.</p> <p>Customary land inheritance is predominantly patrilineal, but some areas of Vanuatu practice matrilineal or ambilineal land inheritance. In patrilineal systems, men generally have primary rights to land, meaning ownership and decision-making rights, while women generally have secondary rights to land, such as rights of access and use.</p>
<u>Minority groups</u>	<p>The <i>Constitution</i> provides that land can only be owned by indigenous citizens of Vanuatu who have acquired ownership in accordance with custom. Non-indigenous Vanuatuan citizens and immigrants cannot, therefore, own land in Vanuatu. Vanuatu is, however, largely ethnically homogenous, with over 99% of the population being 'ni-Vanuatu', a term referring to all Melanesian ethnicities originating in Vanuatu.</p>
<u>Informal settlements and landless people</u>	<p>As of 2016, 10 per cent of households in Vanuatu had informal tenure arrangements. There are a large number of informal settlements in Vanuatu's two main urban centres: Port Vila and Luganville.</p> <p>Squatters or residents of informal settlements do not appear to have property rights, such as adverse possession. To the contrary, there is recent anecdotal evidence of squatters and residents of informal settlements being evicted.</p>

4 Eviction, expropriation and relocation

<u>Eviction</u>	<p>Article 5(1) of the <i>Constitution</i> recognises that all persons are entitled to a number of fundamental rights and freedoms, including protection from unjust deprivation of property. This article may protect persons who have property rights from forced eviction. It is unlikely, however, to protect persons without property rights.</p> <p>If a state of emergency is declared, the Government may make regulations which do not comply with the Constitutionally protected rights and freedoms. Therefore, in an emergency, the Government may make regulations permitting it to forcibly evict persons with property rights, provided such regulations are necessary to deal with the emergency.</p>
<u>Expropriation</u>	<p>The government of Vanuatu may compulsorily acquire land for a 'public purpose' under the <i>Land Acquisition Act 1992</i>. The Government must, however, give the landowner 30 days' notice, provide them with an opportunity to object and pay them compensation.</p> <p>This process may not be practicable in the context of a disaster due to the 30-day notice period. If a state of emergency is declared, the Government could make regulations permitting it to expropriate land at short notice, provided such regulations are necessary to deal with the emergency.</p>
<u>Relocation</u>	<p>The Director of the National Disaster Management Office (NDMO) has powers that may be used to facilitate the relocation of persons affected by a disaster. Specifically, the Director may authorise an emergency services officer or volunteer to direct a person to leave a particular premises or to not enter a disaster area.</p> <p>If a state of emergency is declared, the Government could make regulations permitting it to relocate persons affected by the emergency, provided such regulations are necessary to deal with the emergency.</p>

**Disaster Law Housing, Land and
Property Mapping Project**

Vanuatu

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Disclaimer

This report is the result of a desktop review of publically available information. This report is not legal advice.

1 Introduction

1.1 Overview

The Red Cross Red Crescent aims to respond to disasters as rapidly and effectively as possible, by mobilising its resources (people, money and other assets) and using its network in a coordinated manner so that the initial effects of disaster are countered and the needs of the affected communities are met.

The Australian Red Cross (**ARC**) is a key Partner National Society, supporting the International Federation of Red Cross and Red Crescent Societies (**IFRC**) to respond to natural disasters in the Asia-Pacific.

The Red Cross Red Crescent has identified that better knowledge of local housing, land and property laws in the Asia-Pacific is vital to ensuring that emergency shelter is delivered efficiently and equitably in the aftermath of natural disasters.

Australian Red Cross, with technical support and initial research from IFRC, has provided the research template to which this memorandum responds. This memorandum comprises three main sections.

- The first section, entitled 'common tenure typologies', provides an overview of the different types of housing and land tenure in Vanuatu. It outlines the methods used to create and transfer tenure, and analyses the degree of security of tenure afforded by each form of tenure.
- The second section, entitled 'security of tenure of vulnerable groups', considers whether, and to what extent, certain groups face legal barriers to owning or accessing land and housing.
- The third section, entitled 'eviction, expropriation and relocation', considers the Vanuatuan laws which govern, or are applicable to, forced evictions, compulsory acquisition of land and relocations. This section also considers whether compensation is available in these situations.

1.2 Background information on Vanuatu

Vanuatu is an archipelago in the South Pacific Ocean comprising a Y-shaped chain of four main islands and 80 smaller islands, with a total land mass of 12,189 square kilometres.¹ Espiritu Santo and Malakula are the two largest islands, making up almost half of the total land mass of Vanuatu.² Several of Vanuatu's islands have active volcanoes with significant volcanic activity, including multiple eruptions in recent years.³

¹ Central Intelligence Agency, *Vanuatu* <<https://www.cia.gov/library/publications/the-world-factbook/geos/nh.html>>.

² US State Department Documents, *Background Notes: Vanuatu* (Report, 30 March 2009).

³ Central Intelligence Agency, above n 1.

The most recent census in Vanuatu was taken in 2016 after Cyclone Pam struck Vanuatu in March 2015. At this time, the population of Vanuatu was 272,459, with approximately one quarter of the population living in urban areas.⁴ Approximately 51,400 people live in Vanuatu's capital city Port-Vila which is located on the island of Efate.⁵ Vanuatu's second-largest urban centre is the town of Luganville on the island of Sanma, where approximately 16,300 people reside.⁶ Vanuatu is largely ethnically homogenous: 99% of the population is 'ni-Vanuatu', a term which is used to refer to all Melanesian ethnicities originating in Vanuatu.⁷ The literacy rate is approximately 85% for people aged 15 and over.⁸

(Map from: Central Intelligence Agency, Vanuatu <<https://www.cia.gov/library/publications/the-world-factbook/geos/nh.html>>.)

When Vanuatu gained independence from France and the United Kingdom on 30 July 1980 (the **Date of Independence**), the country's new constitution restored land rights to the 'indigenous custom owners and their descendants' and declared that the 'rules of custom shall form the basis of ownership and use of land' in Vanuatu.⁹ This is discussed in more detail in section 2.1(b) below.

Vanuatu is a Parliamentary Republic with a 52-seat unicameral national parliament, whose elected Members serve four-year terms. The Prime Minister is elected by the Members of Parliament and is usually the leader of the majority party or majority coalition. The Council of Ministers is appointed by the Prime Minister.¹⁰

Vanuatu comprises six provinces: Malampa, Penama, Sanma, Shefa, Tafea and Torba. Each province is administered by a provincial council, in



⁴ Vanuatu National Statistics Office, *2016 Post Pam Mini Census Report, Vol 1* <<https://vnso.gov.vu/index.php/component/advlisting/?view=download&fileId=4542>>.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Central Intelligence Agency, above n 1.

⁹ Sue Scott, Milena Stefanova, Anna Naupa and Karaeviti Vurobaravu, 'Vanuatu National Leasing Profile: A Preliminary Analysis' (Justice for the Poor Briefing Note, Volume 7 Issue 1, World Bank, May 2012) 1.

¹⁰ Ibid.

addition to which there are three municipal councils for the cities of Port Vila, Luganville and Lenakel. Municipal councils are generally independent from provincial councils. Provinces are divided into Local Government Regions, which are further divided into Area Council Divisions.¹¹

Customary institutions exist at several different levels, including those summarised below.

- At the lowest level, there are **Village Chiefs**; a village may have a single chief, or a group or council of chiefs.¹²
- A **Ward Council of Chiefs** is a seat of governance for a particular Ward and comprises chiefs from the villages in that Ward.¹³
- An **Area Council of Chiefs** is a seat of governance for a particular Area Council Division and comprises chiefs representing the Wards in the relevant Area Council Division.¹⁴
- An **Island Council of Chiefs** is a seat of governance for a particular island, or group of islands (excluding urban areas on the relevant island(s)). There are 20 Island Councils of Chiefs in total. An Island Council of Chiefs comprises custom chiefs elected by the respective Area Council of Chiefs.¹⁵
- An **Urban Council of Chiefs** is a seat of governance for a particular urban area. There are two Urban Councils of Chiefs in total, one for Port Vila and one for Luganville.¹⁶ An Urban Council of Chiefs comprises custom chiefs appointed by the relevant Island Council of Chiefs.
- The **National Council of Chiefs** (also known as the **Malvatumauri Council of Chiefs**) comprises custom chiefs elected by the Island Councils of Chiefs and the Urban Councils of Chiefs.¹⁷

These customary institutions play an important role in Vanuatuan government and society. Island Councils and Urban Councils may, for example, resolve disputes according to local custom.¹⁸ The Malvatumauri Council of Chiefs may make recommendations for preserving ni-Vanuatuan culture and languages, and may be consulted in relation to any bill before Parliament.¹⁹

2 Common tenure types

2.1 Tenure types

(a) What are the key pieces of legislation governing housing, land, building and planning? Please provide links to copies of the legislation.

The key pieces of legislation governing housing, land, building and planning are:

- [Constitution of the Republic of Vanuatu \(1980\)](#);
- [Land Reform Act 1980](#);

¹¹ *Decentralization Act 1994* ss 3, 4A.

¹² Miranda Forsyth, *A Bird That Flies With Two Wings: Kastom and State Justice Systems in Vanuatu* (ANU E Press, 2009) 97.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *National Council of Chiefs Act 2006* s 12, Schedule 1.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid* s 13.

¹⁹ *Constitution of the Republic of Vanuatu (1980)* art 30 (**Constitution**).

- [Alienated Land Act 1982](#);
- [Land Leases Act 1983](#);
- [Land Acquisition Act 1992](#);
- [Custom Land Management Act 2013](#); and
- [Land Reform \(Amendment\) Act 2013](#).

(b) What types of tenure exist?

(i) Background

In order to understand Vanuatuan land law, it is necessary to appreciate the important legal changes which occurred following the Date of Independence. During the colonial period, a large amount of land belonging to ni-Vanuatuan was alienated to the colonial governments and to private individuals. The *Constitution of the Republic of Vanuatu* (the **Constitution**), which commenced operation on the Date of Independence, radically altered this situation by providing that:

- all land in Vanuatu belongs to its indigenous custom owners and their descendants;²⁰
- the rules of custom are the basis for the ownership and use of land;²¹ and
- only indigenous citizens who have acquired their land in accordance with custom can have perpetual ownership of land.²²

The *Land Reform Act 1980* (the **Land Reform Act**), which also commenced operation on the Date of Independence, established arrangements for the return of land from alienators to the ni-Vanuatu. The *Land Reform Act* provided that an alienator was entitled to remain on land which they occupied until:

- they entered into a lease of the land with the custom owners, under which the custom owners were the lessor and the alienator was the lessee; or
- if there were improvements on the land (eg, houses or buildings), until they received payment for those improvements from the custom owners.²³

Alienators were only entitled to negotiate with custom owners about land if they registered as a 'negotiator' and obtained a 'negotiator's certificate'.²⁴ Further, agreements between alienators and custom owners regarding land were void and unenforceable unless approved by the Minister and registered in the Land Records Office.²⁵

Importantly, the *Reform Act* also provided that, from the Date of Independence, all 'state land' would vest in the Government of Vanuatu and henceforth be 'public land' held for the benefit of Vanuatu.²⁶ The term 'state land' was defined to mean all land owned by the British Government, the French Government, the Condominium or a Municipality. The

²⁰ *Constitution* art 73.

²¹ *Ibid* art 74.

²² *Ibid* art 75.

²³ *Ibid* s 3.

²⁴ *Ibid* s 6.

²⁵ *Ibid* s 7.

²⁶ *Ibid* s 9.

inclusion of the word 'Municipality' in the definition of 'state land' means that most urban land is public land.

The *Alienated Land Act 1982* (the **Alienated Land Act**), which entered into force two years after Independence, stipulated further arrangements for the return of land from alienators to the ni-Vanuatu. The *Alienated Land Act* provided that, if an alienator had not applied to be registered as a negotiator within 3 months of the Act coming into force, they would be required to vacate the land.²⁷ Further, if the custom owners did not wish to negotiate a lease with an alienator, the alienator would also be required to vacate the land.²⁸

In the almost forty years since Independence, there have been several other significant reforms to Vanuatuan land law, however the *Constitution*, the *Land Reform Act* and the *Alienated Land Act* provided the foundations of Vanuatu's current land law, by providing for the mass return of land to its custom owners.

(ii) Overview

Land in Vanuatu falls into two main categories:

- it may be owned by its indigenous custom owners (**Category One**); or
- it may be 'public land' held by the Government (**Category Two**).

In addition, regardless of whether land falls into the first or second category above, it may also fall into one or more of the following three categories:

- a registered lease or sub-lease (**Category Three**);
- an unregistered lease or sublease (**Category Four**); or
- one of a plethora of informal tenure arrangements (**Category Five**).

Thus, tenure arrangements are typically multi-layered and there are many different combinations of the above Categories of tenure.

(iii) Customary ownership

(A) Determination of custom ownership

The effect of articles 73 and 74 of the *Constitution* is that, with the exception of public land held by the Government, all land in Vanuatu is customary land which belongs to its indigenous customary owners.

The *Custom Land Management Act 2013* (the **Custom Land Management Act**) outlines the process for custom ownership of land to be determined and formally recorded. Importantly, once a determination of custom ownership has been filed with the National Coordinator of Land Dispute Management (the **National Coordinator**), the determination becomes a recorded interest in land and cannot be challenged except on the grounds of improper process or fraud.²⁹

The process for determining custom ownership, and for subsequently recording and filing a determination, is summarised below.

- A meeting of the relevant nakamal (or nakamals) is held and is attended by a custom land officer. The term *nakamal* means a customary institution that

²⁷ *Alienated Land Act 1982* s 24.

²⁸ *Ibid.*

operates as the seat of governance for a particular area. Custom land officers are public servants appointed by the Public Service Commission in consultation with the Malvatumauri Council of Chiefs.³⁰

- At the meeting, the custom land officer must read out the definition of 'custom owners' and 'membership of the custom owner group' as defined under the *Custom Land Management Act*. The custom land officer must not, however, take part in discussions.³¹
- The meeting of the nakamal may make a determination of the custom owners of the land provided that:
 - the meeting is convened in accordance with custom;
 - the decision is made in accordance with custom; and
 - the decision is made by consensus.³²
- If the nakamal makes a determination, it must be recorded in writing in the form set out in Schedule 3 to the *Custom Land Management Act*. It must:
 - include a sketch map showing the boundaries of the land;
 - be signed by the heads of the nakamal and other leaders;
 - be witnessed by the custom land officer;
 - contain the names of all persons who attended the meeting;
 - state the date and place of the meeting; and
 - specify the content of the determination (eg, which families, groups and individuals have interests in the land, and the nature of those interests).³³
- The custom land officer is then responsible for ensuring the written record of the custom owner determination is filed with the office of the National Coordinator, at which point it becomes a recorded interest in land.³⁴
- The Land Records Office must maintain records of the names of all custom owners identified in a recorded interest in land.³⁵

If the custom land lies within the jurisdiction of more than one nakamal, the process above still applies, but the determination must be made at a joint meeting of the nakamals.³⁶

(B) Ownership via a land trust

²⁹ *Custom Land Management Act 2013* ss 19(2), 27 and 40.

³⁰ *Ibid* ss 8(1) and 15.

³¹ *Ibid* s 16.

³² *Ibid* s 17(1), (2) and (4).

³³ *Ibid* s 18.

³⁴ *Ibid* s 19(1).

³⁵ *Ibid* s 2(f).

³⁶ *Ibid* ss 15(2) and 17(1).

It is possible, albeit very rare, for trust companies to hold and manage land on trust for the benefit of custom owners. As an example, Ifira Trustees Limited holds and manages peri-urban land near Port Vila for the benefit of the members of the Blakniu, Blakuita, Blakmalu and Blaknui clans.³⁷ Ifira Trustees Limited leases land to non-custom owners and uses the rents received from those leases to provide services to the Ifira community (eg, a pension scheme, water and electricity supply).³⁸ There are a total of 85 leases, each of which has a duration of 50 or 75 years.³⁹

(iv) Registered leases and sub-leases

Given that the only persons entitled to perpetual ownership of land are indigenous citizens who have acquired their land in accordance with custom,⁴⁰ the main method for non-custom owners to acquire land tenure is through leasing and sub-leasing.

Leases and sub-leases for greater than three years must be registered in the Land Leases Register (the **Register**), which is maintained by the Land Records Office in Port Vila.⁴¹ The maximum duration for a lease is 75 years.⁴² A person holding a registered lease is entitled to grant a sublease or mortgage, however subleasing requires the owner's consent (which cannot be withheld unreasonably).⁴³ Importantly, a registered lease or sub-lease provides the lessee with indefeasible title, subject to certain overriding interests (eg, the Government's power to compulsorily acquire land).⁴⁴

Both custom land and public land can be leased, although different legal requirements apply to each type of land.

(A) Leases over customary land

The *Land Reform (Amendment) Act 2013* (the **Reform Act 2013**) introduced strict processes and requirements for the grant of leases over custom land. The *Land Reform Act 2013* established the Land Management Planning Committee (the **LMP Committee**), which is responsible for approving leases of custom land. In carrying out this role, the LMP is supported by the National Coordinator and custom land officers.

The process for the grant of a lease over custom land is summarised below.

- **Pre-Negotiation:** A person must not enter into negotiations with any custom owners unless they have applied for and obtained a certificate that they are a registered negotiator (a **Negotiator's Certificate**).⁴⁵

³⁷ Jim Fingleton, Anna Naupa and Chris Ballard, 'Village Land Trusts in Vanuatu: 'One Common Basket'' in *Making Land Work — Volume Two: Case Studies on Customary Land and Development in the Pacific* (Australian Agency for International Development, 2008) 31.

³⁸ *Ibid* 34.

³⁹ *Ibid*.

⁴⁰ *Constitution* art 75.

⁴¹ *Land Leases Act 1983* ss 2, 4, 31, 32.

⁴² *Ibid* s 32.

⁴³ *Ibid* ss 36, 48 and 41(h).

⁴⁴ *Ibid* ss 15, 17.

⁴⁵ *Land Reform Act 1980* s 6(1).

An application for a Negotiator's Certificate must be made to the LMP Committee. The application must contain several pieces of information, including how the custom owners will participate in the development and what (if any) benefits will accrue to the custom owners.⁴⁶

If the LMP Committee is satisfied with the application, it must refer the application to the National Coordinator. A custom land officer must then follow a detailed and thorough process for identifying and consulting the custom owners.⁴⁷

The responsible custom land officer must prepare a 'custom owners' consultation report' which records, amongst other details,

- o whether the custom owners gave their free, prior and informed consent to lease negotiations;

and, if the custom owners, consented to negotiations:

- o how and by whom negotiations are to be conducted on behalf of the custom owners;
- o who is the contact person for the custom owners; and
- o any preferred meeting arrangement suggested by the custom owners.⁴⁸

Importantly, consent must be granted by consensus of all members or representatives of the group.⁴⁹

The National Coordinator must present the custom land officer's report to the LMP Committee, together with information about the ownership of the land.⁵⁰ The LMP Committee may then approve the application for a Negotiator's Certificate if it is satisfied that the custom owners have been satisfactorily identified and have consented to negotiate with the applicant.⁵¹

The LMP Committee may approve the application subject to such conditions as it thinks fit, but it must include a condition prohibiting the approved negotiator from making direct payments to individuals or the custom owner group before completion of a lease.⁵²

Although the LMP Committee is responsible for approving application, the actual Negotiator's Certificate is issued by the Minister.⁵³

The custom owners are required to appoint representatives to be listed on the Negotiator's Certificate.⁵⁴ If the number of custom owners is less than 15,

⁴⁶ Ibid s 6A(3)(c).

⁴⁷ Ibid ss 6B, 6C and 6D.

⁴⁸ Ibid s 6D.

⁴⁹ Ibid ss 1, 6F(1).

⁵⁰ Ibid s 6E.

⁵¹ Ibid s 6I(1).

⁵² Ibid s 6I(2)(e).

⁵³ Ibid s 6(2), (3).

⁵⁴ Ibid s 6G(1).

all of the custom owners must be stated on the Negotiator's Certificate. If there are more than 15 custom owners, then at least 15 names should be listed.⁵⁵

- **Negotiation:** Once a Negotiator's Certificate has been issued, negotiations may commence. There are a number of protections for custom owners during the negotiation process, including the following:
 - all custom owners listed on the Negotiator's Certificate must consent to any lease;⁵⁶
 - the registered negotiator must ensure the land is valued, and must disclose the contents of the valuation to the custom owners.⁵⁷
- **Verification:** Once negotiations are complete and the terms of a draft lease have been finalised, the negotiator must request the National Coordinator to take steps to confirm the agreement of the custom owners.⁵⁸

The National Coordinator must direct the responsible custom land officer to conduct a meeting, or meetings, with the custom owners and affected groups to confirm they agree by consensus to the lease.⁵⁹

The National Coordinator must then present to the Chairperson of the LMP Committee:

- a written report regarding whether the custom owners have consented to the lease; and
 - the proposed lease instrument with signatures of the representatives of the custom owners.⁶⁰
- **Notification of intention to register lease:** If the Chairperson receives a report from the National Coordinator which confirms that the custom owners have agreed to the lease, the National Coordinator must arrange for a notice of intention to register the lease to be made via radio broadcast, in the newspaper, on the land itself and at various government headquarters.⁶¹

Any person who considers the process to obtain consent from custom owners has not been properly observed may lodge a complaint with the Land Ombudsman.⁶² If no complaint is made to the Ombudsman within one month, the Chairperson must convene a meeting of the LMP Committee to consider whether to recommend for approval registration of the lease.⁶³

⁵⁵ Ibid s 6G(2).

⁵⁶ Ibid s 6J(1).

⁵⁷ Ibid s 6J(2).

⁵⁸ Ibid s 6J(3).

⁵⁹ Ibid s 6J(4).

⁶⁰ Ibid s 6J(9).

⁶¹ Ibid s 6K(1).

⁶² Ibid s 6K(2).

⁶³ Ibid s 6T(1).

- **Registration:** The LMP Committee must recommend to the Minister to approve the registration if it is satisfied, amongst other things that, legal processes have been complied with.⁶⁴ If the LMP has recommended for the lease to be registered, the Minister cannot unreasonably withhold their consent to the registration of the lease.⁶⁵ Upon approving the registration of a lease, the Minister must send the lease to the Director of Lands to be registered and notify the negotiator that the lease is to be registered.⁶⁶

(B) Leases over public land

In certain circumstances, the Minister may grant a lease over public land.

An application for a lease over public land must be made in the prescribed form to the Chairperson of the LMP Committee.⁶⁷ The Chairperson must, as soon as practicable, submit the application to the LMP Committee for its consideration against the criteria in Part 6B, which includes a requirement that the lease be for charitable purposes, be required for public infrastructure or otherwise be in the public interest.⁶⁸

If the Committee is satisfied that the application meets the criteria set out in Part 6B of the *Land Reform Act*, it must advise the Minister of its decision in writing.⁶⁹ The Minister must, subsequently, consult the Council of Ministers and seek its approval for the lease.⁷⁰ If the Council of Ministers approves an application, the Minister must approve the lease and notify the Director of Lands to register the lease.⁷¹

(v) Unregistered leases and sub-leases

It is unnecessary to register a lease or sub-lease for a period of 3 years or less.⁷² Given the number of online listings by real estate agencies in Vanuatu, it appears that there is a significant market for private leases for a duration of 3 years or less in urban areas. However, we have been unable to locate any further information about the prevalence of this form of tenure.

(c) Which, if any, of these types of tenure provide a high degree of security of tenure?

Both custom ownership and registered leases are capable of providing a high degree of security of tenure.

As discussed above, custom ownership of land is strongly protected by the *Constitution*, which provides that custom landholders have *perpetual* ownership of their land. Further, as discussed in section above, once a determination of custom ownership has been filed with the National

⁶⁴ Ibid s 6T(2).

⁶⁵ Ibid s 6T(7).

⁶⁶ Ibid s 6T(8).

⁶⁷ Ibid s 10A(1).

⁶⁸ Ibid s 10A(4), 10C(1)(a).

⁶⁹ Ibid s 10C(3).

⁷⁰ Ibid s 10C(4).

⁷¹ Ibid s 10C(5).

⁷² *Land Leases Act 1983* s 35.

Coordinator, it becomes a recorded interest in land and cannot be challenged except on the grounds of improper process or fraud.⁷³

Registered leases provide a high degree of security of tenure because they confer indefeasible title.⁷⁴ Further, it appears that registered leases operate as a form of quasi-freehold title, as evidenced by the following factors:

- first, a registered lease may be for a period of up to 75 years and it is common for registered leases to be for a period of several decades;⁷⁵ and
- second, it is possible to mortgage a registered lease as security for a loan, in the same manner as freehold land may be mortgaged in other jurisdictions.⁷⁶

(d) How does tenure differ between urban and rural areas? If possible, please provide statistics about the prevalence of each type of tenure in urban and rural areas.

Urban land is public land, while rural land is customary land. Both public land and customary land are often subject to a second layer of tenure in the form of registered or unregistered leases, or informal tenure arrangements.

There is limited publicly available information regarding the prevalence of leasing and informal tenure in urban and rural areas. The information which is available indicates the following trends.

- The percentage of rural land subject to registered lease varies dramatically between different areas. As an example, as of December 2010, 91 per cent of the island of Bokissa was subject to registered lease due to the large amount of tourism on that island.⁷⁷ Meanwhile, only 14 per cent of the island of Epi was subject to registered lease, with the remaining land being held by five groups of customary owners.⁷⁸
- The majority of urban land is subject to registered lease. As of December 2010, 69.5 per cent of land in Port Vila was under registered lease, while the figure was 69.6 per cent for Luganville.⁷⁹

2.2 Documenting tenure

(a) What are the main government and non-government bodies (eg, representative bodies) which administer or deal with housing, land and property?

The following government bodies and officials each play an important role in administering housing, land and property law.

(i) Department of Lands

The Department of Lands comprises three sections.

- The **Land Management** section is responsible for managing, facilitating and coordinating all land dealings in Vanuatu. It has numerous functions, including (but not limited to):

⁷³ *Custom Land Management Act 2013* ss 19(2), 27 and 40.

⁷⁴ *Land Leases Act 1983* ss 14, 15, 17.

⁷⁵ *Ibid* ss 32.

⁷⁶ *Ibid* s 51.

⁷⁷ Scott, Stefanova, Naupa and Vurobaravu, above n 9, 2, 3.

⁷⁸ *Ibid* 3, 5.

⁷⁹ Scott, Stefanova, Naupa and Vurobaravu, above n 9, 2–3.

- providing valuation services on behalf of Government;
 - certifying and processing lease-related dealings (eg, transfers, surrenders, variations and mortgages);
 - monitoring and enforcing compliance with lease provisions; and
 - supporting the LMP Committee to perform its role of assessing applications for leases over customary land.⁸⁰
- The **Land Registry** (also known as the **Land Records Office**) is responsible for registering leases and maintaining the Land Leases Register.⁸¹ The Land Leases Register contains a brief description of each lease, the details of the lessee and a note of any encumbrances affecting the lease.⁸² The Register is maintained in both English and French.⁸³ The Land Registry is also required to maintain records of the names of all custom owners identified in a recorded interest in land.⁸⁴
 - The **Land Survey** section is responsible for surveying public land which is subject to lease, surveying other land in exchange for payment of fees, and managing and updating survey records.⁸⁵

⁸⁰ Ministry of Lands and Natural Resources, 'Land Management' <<https://mol.gov.vu/index.php/en/land-management/237-land-management>>.

⁸¹ Ministry of Lands and Natural Resources, 'Land Registry' <<https://mol.gov.vu/index.php/en/land-survey-3>>.

⁸² *Land Leases Act 1983* ss 2(a), 4.

⁸³ *Ibid* s 2(a).

⁸⁴ *Ibid* s 2(f).

⁸⁵ Ministry of Lands and Natural Resources, 'Land Survey' <<https://mol.gov.vu/index.php/en/land-survey/282-land-survey>>.

(ii) Land Management Planning Committee

The Land Management Planning Committee (the **LMP Committee**) is responsible for reviewing applications for leases of customary land and public land, and making recommendations to the Minister regarding whether such leases should be registered. The LMP Committee's duties in relation to reviewing and approving lease applications are discussed in detail in section 2.1(b)(iv) above.

The LMP Committee comprises:

- a Chairperson who is appointed by the Minister in consultation with the Malvatumauri Council of Chiefs;⁸⁶
- the Director of Lands (or their senior representative);
- the Director of the Department of Environment (or their senior representative);
- the Director of the Vanuatu National Cultural Council (or their senior representative);
- a Senior Planner appointed by the Minister of Internal Affairs;
- the Senior Provincial Planner of the Shefa Provincial Government Council; and
- the Senior Provincial Planner of the Province in which the land is located, as may be required.⁸⁷

(iii) National Coordinator of Land Dispute Management

The National Coordinator is a public servant appointed by the Public Service Commission in consultation with the Malvatumauri Council of Chiefs.⁸⁸ The National Coordinator, with the support of Custom land officers, plays an important role in facilitating the determination of custom ownership, the resolution of custom ownership disputes and the approval of leases over custom land.

The National Coordinator is, amongst other things, responsible for:

- directing and overseeing the activities of the Custom land officers, who liaise directly with custom owners and attend nakamal meetings;
- reporting to the LMP committee on whether custom owners have consented to a proposed lease over custom land;
- recording determinations of custom ownership (including determinations of custom ownership in circumstances where ownership is disputed);⁸⁹ and
- compiling for each island, a register of the documents relating to a recorded interest in land and a determination of custom owners.⁹⁰

(iv) Custom Land Officers

Custom land officers are public servants appointed by the Public Service Commission in consultation with the Malvatumauri Council of Chiefs.⁹¹ Custom land officers play a vital

⁸⁶ *Land Reform Act 1980* s 8D.

⁸⁷ *Ibid* s 8A.

⁸⁸ *Custom Land Management Act 2013* s 10(1).

⁸⁹ *Ibid* s 10(2)(c).

⁹⁰ *Ibid* s 10(2)(g).

⁹¹ *Custom Land Management Act 2013* s 8(1).

role in facilitating the determination of custom ownership, the resolution of custom ownership disputes and the approval of leases over custom land. More specifically, as discussed in sections 2.1(b) and 3.2(c), custom land officers:

- facilitate determinations of custom ownership and disputes regarding custom ownership by:
 - attending meetings of the relevant nakamal;
 - witnessing the preparation of written determinations of custom ownership;
 - filing written determinations with the National Coordinator;
- facilitate the process for the issue of Negotiator's Certificates by:
 - identifying and consulting with the relevant custom owners; and
 - preparing custom owners' consultation reports;
- facilitate the review of proposed by leases over customary land by consulting with custom owners to confirm whether they agree by consensus to the proposed lease, and reporting on such consultations to the National Coordinator.

(v) National Housing Commission

The National Housing Corporation (**NHC**) is a statutory corporation whose function is to provide houses for sale or for lease at a minimum cost and in accordance with Government policy.⁹² The NHC is a not-for-profit entity.⁹³

(b) What statutory instruments or legal documents (eg, title deeds or leases) are used to create or transfer tenure?

As discussed in section 2.1(b)(iv) above, in order for a lease to be registered it must first be approved by the Minister on the recommendation of the LMP Committee. The processes for obtaining approval are detailed and stringent, especially for leases over customary land.

In addition, in order for a lease to be registered the applicant must lodge the following documents with the Land Records Office:

- a lease in the form prescribed by the *Land Leases Act* and set out in the *Land Leases (Prescribed Forms)* regulation;⁹⁴ and
- a survey plan for the land, which is prepared by the Director of Land Surveys upon application and after payment of a prescribed fee.⁹⁵

If a person applying for registration of a lease provides the Land Records Office with two or three copies of the lease, the Land Records Office will note the details of registration on the additional copies and return them to the applicant.⁹⁶ The applicant will also be provided with certified copies of the survey plan prepared by the Director of Land Surveys.⁹⁷ Thus, a person holding a registered leasehold will ordinarily have documents evidencing that interest in land.

⁹² *National Housing Corporation Act 1985* s 4.

⁹³ *Ibid* s 4.

⁹⁴ *Land Leases Act 1983* s 76(1).

⁹⁵ *Ibid*.

⁹⁶ *Ibid*.

⁹⁷ *Land Leases Act 1983* s 76(2).

(c) What non-legal documents or actions (eg, verbal agreements or handshakes) are used to create or transfer tenure?

Informal documents or processes generally cannot be used to create or transfer tenure. Leases and sub-leases for greater than three years must be registered.⁹⁸ To the extent that leases and sub-leases for greater than three years are not registered, they are ineffectual.⁹⁹ This also applies to lease-related dealings such as mortgages, transfers, surrenders and variations.¹⁰⁰

Leases and sub-leases for a period of less than three years are not required to be registered. However, we have been unable to locate information regarding whether verbal agreements are sufficient to create a valid lease or sub-lease for a period of less than 3 years.

2.3 Customary ownership

(a) Is customary ownership of land legally recognised? If so, what is the basis for legal recognition (eg, constitution, national legislation)?

As is evident from sections 2.1(b)(iii) and 2.1(b)(iv)(A) above, customary ownership of land is legally recognised and receives strong legal protection. The legal basis for the recognition and protection of customary ownership includes:

- articles 73, 74 and 75 of the *Constitution*, which provide that:
 - all land belongs to the indigenous custom owners and their descendants;
 - the rules of custom provide the basis for the ownership and use of land; and
 - only the indigenous custom owners may have perpetual ownership of land.
- the *Land Reform Act 2013* which establishes detailed and stringent processes for the granting of leases over customary land; and
- the *Custom Land Management Act* which establishes processes for the determination of custom land ownership and custom land disputes, and provides for such determinations to become recorded interests in land.

(b) What are the sources of customary rules (eg, village chief, elders, oral tradition)?

(c) What are the customary rules governing housing, land and property?

The term '*kastom*' is widely used in Vanuatu to refer to traditional norms and practices, including rules governing the use and ownership of land.¹⁰¹ Vanuatu has over 115 different cultures and 106 different languages.¹⁰² There is no universal set of customary rules shared by these different cultural and linguistic groups.¹⁰³ Rather, each group has its own traditions and practices, and few of these have been extensively documented or codified.¹⁰⁴

⁹⁸ Ibid ss 2, 4, 31, 32.

⁹⁹ Ibid.

¹⁰⁰ Ibid s 21.

¹⁰¹ Miranda Forsyth, 'Beyond Case Law: Kastom and Courts in Vanuatu' (2004) 35 *Victoria University of Wellington Law Review* 427, 429.

¹⁰² Department of Foreign Affairs and Trade, 'Vanuatu Land Program: Program Design Document' (Report, 12 February 2009) 2.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

Customary rules relating to land are generally recorded in memory and inherited through various cultural practices.¹⁰⁵ Chiefs are generally responsible for the managing conflict and are, therefore, an authoritative source on custom.¹⁰⁶ Internal migration between communities within Vanuatu means that customary rules relating to land have become less certain over time, and that rights to a particular piece of land may not be easily identifiable.¹⁰⁷

There is significant variation in the content of customary rules between groups. As an example, in different parts of Vanuatu, land may be transmitted matrilineally or patrilineally.¹⁰⁸ It may also be transmitted on the basis of common descent, residence, participation in common activities, ancestral burial or as part of an exchange of goods.¹⁰⁹

Despite the variation between groups, there are unifying principles that underlie the different customary systems. Universally, there is an emphasis on restoring relationships, on peace and harmony in the community, on the use of chiefs to facilitate agreement, on community involvement in dispute resolution processes and on the achievement of settlement by the payment of compensation.¹¹⁰ Melanesians are deeply rooted in their land;¹¹¹ land is central to their sense of identity, and they derive social status, strength and values from their native land.¹¹²

(d) What is the relationship between traditional legal ownership and customary ownership of land? Does the former override the latter?

Customary ownership is the only basis for legal ownership of land in Vanuatu. It is not possible to own land other than in accordance with custom. Therefore, 'traditional legal ownership' does not override customary ownership. Customary land may, however, be:

- acquired by the Government through agreement or by compulsory acquisition, in which case the rights of custom owners are extinguished; or
- leased for a period of up to 75 years, in which case the rights of custom owners are suspended for the duration of the lease.

2.4 Informal settlements

(a) What are the locations and boundaries of informal settlements?

(b) What kinds of tenure arrangements are in place in informal settlements?

There are a large number of informal settlements in both Port Vila and Luganville. In the greater Port Vila area, there are 13 informal settlements which, as of 2012, collectively housed approximately 13,000 people.¹¹³ As of 2016, 10 per cent of households in Vanuatu had informal tenure arrangements.¹¹⁴

¹⁰⁵ Ibid.

¹⁰⁶ Miranda Forsyth, above n 12, 97.

¹⁰⁷ Department of Foreign Affairs and Trade, 'Vanuatu Land Program: Program Design Document' (12 February 2009) 2.

¹⁰⁸ Ron Crocombe (ed), *Land Tenure in the Pacific* (University of the South Pacific, 1987) 262-3.

¹⁰⁹ Ibid 263, 267.

¹¹⁰ Forsyth, *A Bird That Flies With Two Wings*, above n 12, 95-6, 105, 106, 108.

¹¹¹ Peter Larmour (ed), *Land Tenure in Vanuatu* (University of the South Pacific, 1984) 4-5.

¹¹² Ibid 2.

¹¹³ Alexei Trundle and Darryn McEvoy, 'Climate Change Vulnerability Assessment: Greater Port Vila' (UN-HABITAT Cities and Climate Change Initiative, RMIT University Climate Change Adaptation Program, October 2015) 34.

¹¹⁴ Vanuatu National Statistics Office, 2016 Post Pam Mini Census Report (2016), <<https://vnso.gov.vu/index.php/component/advlisting/?view=download&fileId=4542>>.

There are numerous different forms of tenure arrangements in these informal settlements. The table below was published by United Nations Habitat in 2015 in its report entitled *Climate Change Vulnerability Assessment: Greater Port Vila*.¹¹⁵ It is based on information published by the National Housing Corporation in 2012. It contains information about the name, population size, location and tenure arrangements for each of the 13 informal settlements in the greater Port Vila area.

The descriptions in the column on the far right are not sufficiently detailed to give a full picture of the tenure arrangements in each settlement. However, it appears that several of these tenure arrangements are highly informal and are unlikely to be legally enforceable.

Settlement Name	Area	Population	H'holds	Tenure Arrangement
1. Blacksands and 2. Manples	Malapoa-Tagabe	7662	1568	Owned by Ifira, informal resident agreements and multiple sub-rental agreements
3. Tagabe Bridge	Malapoa-Tagabe	330	60	Owned by Ifira, annual rent agreements per household
4. Ohlen Freswin	Malapoa-Tagabe	1500	270	Government owned municipal land with disputed customary ownership and corporate sub-division
5. Ohlen Mataso	Anabrou-Melcoffee	560	80	Community-government lease arrangement, no services available
6. Simbolo	Freswota-Tassiriki	360	65	Community-government lease arrangement
7. Seaside Futuna/Tongoa/Paama	Central	1368	262	Island origin community-based sub-lease arrangement with no formal government standard requirements
8. Etas – Teouma (ex-Whitewood)	South	495	90	Community-government lease, two island community-based villages
9. Etas – Areman	South	145	26	Customary subdivision rent arrangement, no titles/approval
10. Etas	South	275	50	No formal subdivision, landowner payed monthly rent per-plot
11. Buninga/Paama Village	South	250	45	Land historically gifted to community, but held under separate corporate lease
12. Nambatri	South	90	16	Households on private leasehold against owner wishes with outstanding legal fees/property taxes for respective parties
13. Freswota Nth 4	Freswota - Tassiriki	110	20	Households on private land without title/permission

3 Security of tenure of vulnerable groups

3.1 Women

(a) Can women legally own, rent or inherit land and housing?

(b) In practice, do they? If not, why not?

There are no formal legal barriers to women holding registered interests in land.

In practice, very few women hold registered leases. The Vanuatu government does not release land leasing records by gender, however it appears that rural leases generally do not record ni-Vanuatu women as lessors, and while urban leases occasionally record ni-Vanuatu women as joint lessors, this is rare.¹¹⁶ This is likely to reflect the fact that, as at November 2016, only 9,664 out of 55,285 households were headed by a woman.¹¹⁷

¹¹⁵ Alexei Trundle and Darryn McEvoy, above n 113, 34 citing National Housing Corporation (2012) *Port Vila Informal Settlements Upgrading Projection – Basic Data on Port Vila Informal Settlements* (Government of Vanuatu, Port Vila).

¹¹⁶ Anna Naupa, 'Making the Invisible Seen: Putting Women's Rights on Vanuatu's Land Reform Agenda,' in Siobhan McDonnell, Matthew G. Allen and Colin Firther (eds.) *Katsum, Property and Ideology: Land Transformations In Melanesia* (2017, ANU Press) 308.

¹¹⁷ Vanuatu National Statistics Office, 2016 Post Pam Mini Census Report (2016), <<https://vnso.gov.vu/index.php/component/advlisting/?view=download&fileId=4542>>.

As discussed in section 2.3(b) above, there is a high degree of variation in customary land tenure systems in Vanuatu. Land inheritance is predominantly patrilineal, but some areas of Vanuatu practice matrilineal or ambilineal land inheritance.¹¹⁸

In patrilineal systems, land is passed from father to son, and women acquire and hold rights to land by virtue of their relationships to men.¹¹⁹ Men generally have primary rights to land, meaning ownership and decision-making rights, while women generally have secondary rights to land, such as rights of access and use.¹²⁰

In some patrilineal groups, women do play an important role in decision-making processes.¹²¹ Conversely, matrilineal land inheritance does not necessarily result in women possessing decision-making rights over land.¹²² For example, in Raga on Pentecost Island, inheritance of land is matrilineal and women are consulted in relation to land matters, however maternal uncles act as 'land administrators' and make final decisions in land matters.¹²³

Although women generally lack primary land rights under customary law, some commentators consider this does not always mean their rights are weaker. In some instances, women's customary land rights may be different but equal to men's rights.¹²⁴ Further, some commentators have identified that women's customary land rights have been weakened by external religions and ideologies.¹²⁵

3.2 Indigenous groups

- (a) Is indigenous customary ownership (or custodianship) of land legally recognised?**
- (b) Does customary ownership provide indigenous people with a high degree of security of tenure? If not, what are the barriers to indigenous people owning and/or living on their land?**

As discussed in section 2.3 above, customary land ownership is legally recognised and receives strong legal protection from the *Constitution*, the *Land Reform Act 2013* and the *Custom Land Management Act*. The latter two pieces of legislation, however, only came into effect in February 2014.

Prior to the commencement of the *Land Reform Act 2013* and the *Custom Land Management Act* there were insufficient legal protections for custom land owners. Custom owners were often at a serious disadvantage during lease negotiations with foreigners due to a lack of knowledge about the value of their land and the applicable property laws, and a lack of access to professional

¹¹⁸ *Vanuatu Land Program — Program Design Document* (12 February 2009) Department of Foreign Affairs and Trade <<https://dfat.gov.au/about-us/publications/Documents/vanuatu-land-program-design-document.pdf>> 63, 65; Anna Naupa and Joel Simo, 'Matrilineal Land Tenure in Vanuatu' in Elise Huffer (ed), *Land and Women: The Matrilineal Factor — The cases of the Republic of the Marshall Islands, Solomon Islands and Vanuatu* (Pacific Islands Forum Secretariat, 2008) 73, 81, 85.

¹¹⁹ Department of Foreign Affairs and Trade, above n 102, 63; Anna Naupa and Joel Simo, 'Matrilineal Land Tenure in Vanuatu' in Elise Huffer (ed), *Land and Women: The Matrilineal Factor — The cases of the Republic of the Marshall Islands, Solomon Islands and Vanuatu* (Pacific Islands Forum Secretariat, 2008) 73, 82.

¹²⁰ Naupa and Simo, above n 119, 82.

¹²¹ *Ibid.* 85.

¹²² Rebecca Monson *Land Rights of Melanesian Women: Women's Rights to Customary Land in Fiji and Vanuatu* (2004, Monash University), 43; Naupa and Simo, above n 119, 85.

¹²³ Naupa and Simo, above n 119, 77.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

advice.¹²⁶ As a result, custom owners were susceptible to agreeing to leases on unfavourable terms.¹²⁷

Further, prior to the commencement of the *Land Reform Act 2013* and the *Custom Land Management Act*, the Minister had sole discretion to approve or refuse leases of custom land. This discretion was allegedly misused, with the Minister approving leases on behalf of custom owners without any real input from them.¹²⁸

The *Land Reform Act 2013* and the *Custom Land Management Act* sought to address the foregoing issues by:

- creating an independently-chaired committee (the LMP Committee) to review applications for leases over customary land; and
- introducing detailed processes to ensure that leases are only granted over customary land with the free, prior and informed consent of the custom owners.

(c) Is there conflict between indigenous groups regarding land ownership? If so, to what degree? Are there mechanisms for resolving these conflicts?

Disputes over land are one of the most significant sources of conflict within Vanuatuan society.¹²⁹ The *Custom Land Management Act* provides the legal framework for the resolution of custom land disputes.

There are several different avenues for the resolution of custom land disputes:

- determination by the relevant nakamal(s);
- determination by mediation; and
- determination by a custom area land tribunal.

These processes are summarised below. In certain circumstances, a determination by a nakamal or by a custom area land tribunal may be reviewed by the relevant Island Court.

(i) Determination by nakamal

A nakamal may resolve a custom land dispute using customary processes provided that it adheres to Part 4 of the *Custom Land Management Act*. The process prescribed by Part 4 is as follows:

- the head of the relevant nakamal must convene a meeting as soon as possible after being notified of a dispute;¹³⁰
- the custom owners must write to the National Coordinator to request that a Custom land officer attend the meeting of the nakamal;¹³¹
- the Custom land officer must attend the meeting, but must not take part in any discussions;¹³² and

¹²⁶ Justin Haccius, 'The Interaction of Modern and Custom Land Tenure Systems in Vanuatu' (Discussion Paper 2011/1, School of International, Political and Strategic Studies, Australian National University, 2011) 14-5.

¹²⁷ Ibid 15.

¹²⁸ Milena Stefanova, 'The Price of Tourism: Land Alienation in Vanuatu', (Volume 2, Issue 1, Justice for the Poor, January 2008).

¹²⁹ Miranda Forsyth, *A Bird That Flies With Two Wings: Kastom and State Justice Systems in Vanuatu* (ANU E Press, 2009) 7.

¹³⁰ *Custom Land Management Act 2013* s 24(1).

¹³¹ Ibid s 23(1).

¹³² Ibid s 24(5).

- the meeting of the nakamal may determine the dispute provided that:
 - the meeting is convened in accordance with custom;
 - the decision is made in accordance with custom; and
 - the decision is made by consensus.¹³³

If the dispute relates to land which lies within the boundary of more than one nakamal, the process above still applies, but the meeting must be a joint meeting of the nakamals.

If a dispute is determined by a nakamal, the determination must be recorded in writing in the form set out in Schedule 3 to the *Custom Land Management Act*. It must:

- include a sketch map showing the boundaries of the land;
- be signed by the heads of the nakamal and other leaders;
- be witnessed by the custom land officers;
- contain the names of all persons who attended the meeting;
- state the date and place of the meeting; and
- specify the content of the determination, such as which families, groups and individuals have interests in the land, and the nature of those interests.¹³⁴

The Custom land officer must ensure that the written record is filed with the National Coordinator.¹³⁵

(ii) Mediation

If a nakamal is unable to resolve a dispute within 30 days, it must inform a Custom land officer of the failure to resolve the dispute.¹³⁶ The Custom land officer must invite the disputing groups or individuals to resolve the dispute by mediation and make all necessary arrangements for the mediation.¹³⁷ The mediator is to be a person nominated by the disputing groups or individuals.¹³⁸ The outcome of a mediation must be referred back to the nakamal to be agreed by consensus of all the members of the nakamal in the same manner as set out in paragraph (i) above.¹³⁹

(iii) Determination by Custom Area Land Tribunal

If a dispute cannot be resolved by the relevant nakamal(s), the Custom land officer must arrange for the relevant custom area council of chiefs to establish a Custom Area Land Tribunal.¹⁴⁰ A Custom Area Land Tribunal must comprise:

- the chairperson of the custom area council of chiefs; and
- two other persons knowledgeable in custom, appointed by the custom area council of chiefs.

¹³³ Ibid ss 25(1), (2) and (4).

¹³⁴ Ibid s 26.

¹³⁵ Ibid s 27(1).

¹³⁶ Ibid s 29(1).

¹³⁷ Ibid s 29(2).

¹³⁸ Ibid s 31.

¹³⁹ Ibid s 32(5).

¹⁴⁰ Ibid s 34(1).

If a dispute relates to land which is situated within two or more custom areas, a Joint Custom Area Land Tribunal is established.¹⁴¹

A Custom Area Land Tribunal must determine the dispute by customary processes and in accordance with the applicable rules of custom.¹⁴² A determination by a Custom Area Land Tribunal must be recorded and filed with the National Coordinator, in the same manner as a determination by a nakamal.¹⁴³

The decision of a Custom Area Land Tribunal is final.¹⁴⁴

(iv) Review by Island Court

The Island Courts may review decisions made by nakamals and custom area land tribunals in certain limited circumstances, such as where there is an allegation of fraud or failure to comply with the processes prescribed by the *Custom Land Management Act*.¹⁴⁵ When exercising this jurisdiction, the Island Court must comprise four Justices who are knowledgeable in the relevant custom area.¹⁴⁶

3.3 Minority groups

(a) Can minority groups (ie, ethnic minorities, immigrants, stateless people) legally own and/or rent land and housing? If so, are they subject to special conditions or restrictions? In practice, do minority groups legally own and/or rent land and housing? If not, why not?

The *Constitution* provides that land can only be owned by indigenous citizens of Vanuatu who have acquired ownership in accordance with custom. As a result, non-Indigenous Vanuatuan citizens and immigrants cannot own land in Vanuatu. There are, however, no formal legal barriers preventing such persons from obtaining other forms of tenure such as registered leases.

3.4 Landless people/squatters

(a) Do landless people/squatters have rights to land and/or housing (eg, adverse possession)? If so, are those rights respected?

The National Housing Corporation (**NHC**) is a statutory corporation whose function is to provide houses for sale or for lease at a minimum cost and in accordance with Government policy.¹⁴⁷ It appears, however, that the NHC is unable to provide adequate housing for the nation's poor because there are a large number of informal settlements in both of Vanuatu's two major urban areas: Port Vila and Luganville.

We have not located any sources indicating that squatters possess land rights. To the contrary, there is recent anecdotal evidence of squatters being evicted. For example, in October 2014,

¹⁴¹ Ibid s 34(5).

¹⁴² Ibid s 34(2).

¹⁴³ Ibid ss 39, 40.

¹⁴⁴ Ibid s 34(8).

¹⁴⁵ Ibid s 43(1).

¹⁴⁶ Ibid s 43(2).

¹⁴⁷ *National Housing Corporation Act 1985* ss 3, 4(1) and 4(3).

police enforced an eviction order against 300 people living illegally near Port Vila's airport.¹⁴⁸ The Minister of Lands did, however, secure land for the squatters in another settlement.¹⁴⁹

3.5 General questions

(a) Are there any other persons or groups that face difficulties in accessing or maintaining secure tenure (for example, due to internal displacement)?

There are groups of landowners who are unable, or may become unable, to access their land due to natural disasters or climate change.

For example, 65 per cent of households reported that they were temporary displaced due to Cyclone Pam, which struck Vanuatu in March 2015. Six months later in September 2015, 14 per cent of households were continuing to live in a new location as a result of Cyclone Pam, and 35% of households were hosting at least one other displaced family member or friend.

Climate change is likely to result in significant internal displacement within Vanuatu.¹⁵⁰ As a result, in 2007, the government of Vanuatu drafted a National Adaptation Programme for Action in relation to climate change, which included the relocation of vulnerable settlements and infrastructure as an adaptation strategy.¹⁵¹

4 Eviction, Expropriation and Relocation

4.1 Eviction

(a) Are there laws or regulations prohibiting forced evictions?

Article 5(1) of the *Constitution* recognises that all persons are entitled to a number of fundamental rights and freedoms, including protection from unjust deprivation of property. Article 5(1) may protect a person who has property rights from forced eviction. It is unlikely, however, to protect persons who do not have property rights, such as residents of informal settlements.

The Supreme Court has a broad power to make orders and give directions necessary to enforce Constitutional rights.¹⁵² Therefore, a person who is threatened with a forced eviction which would violate article 5(1) could apply to the Supreme Court for an order prohibiting the eviction. If an eviction has already occurred, they could apply for an order requiring the evictor to relinquish the property.

(b) In practice, are those laws adhered to?

Although there is anecdotal evidence that forced evictions occur, these evictions generally appear to be lawful and carried out pursuant to court orders. Set out below are three examples of recent forced evictions.

¹⁴⁸ RadioNZ, 'Squatters Expelled Near Main Vanuatu Airport' (20 October 2014) <<http://www.radionz.co.nz/international/pacific-news/257319/squatters-expelled-near-main-vanuatu-airport>>.

¹⁴⁹ RadioNZ, 'Land Found for Evicted Vanuatu Squatters' (21 October 2014) <<http://www.radionz.co.nz/international/pacific-news/257428/land-found-for-evicted-vanuatu-squatters>>.

¹⁵⁰ Climate Change Adaptation – United Nations Development Programme, 'Vanuatu National Adaptation Programme of Action' <<http://adaptation-undp.org/projects/vanuatu-national-adaptation-programme-action-napa>>.

¹⁵¹ National Advisory Committee on Climate Change, 'National Adaptation Programme for Action (NAPA)' (2007) <http://adaptation-undp.org/sites/default/files/downloads/vanuatu_napa.pdf>.

¹⁵² *Constitution* art 6.

- Two weeks after Cyclone Pam in 2015, the Vanuatuan Government evicted thousands of people remaining in evacuation centres across the country.¹⁵³
- In September 2016, over 300 indigenous Tanoliuans were evicted due to a lease being granted over their land by other persons purporting to be the custom owners.¹⁵⁴ The eviction was carried out by police pursuant to a court order in favour of the lessor.
- In October 2014, police enforced an eviction order against 300 people living illegally near Port Vila's airport.¹⁵⁵ The Minister of Lands secured land for the squatters in another settlement.

4.2 Expropriation

(a) Are there laws or regulations permitting the government to expropriate land?

Article 80 of the *Constitution* provides that the Government may own land acquired by it in the public interest. The *Land Acquisition Act 1992* provides the legal framework for the Government to compulsorily acquire land for a 'public purpose'. The term 'public purpose' is defined broadly to mean 'the utilisation of lands necessary or expedient in the public interest and includes a purpose which under any other written law is deemed to be a public purpose'.¹⁵⁶

In order to acquire land for a public purpose, the Government must adhere to the following process.

- **Preliminary investigations:** If the Minister decides that land is likely to be needed for a public purpose, he may direct the acquiring officer to:
 - give 30 days' notice to the custom owners and other persons interested in the land and display a notice conspicuously on the land; and
 - subsequently, enter the land to carry out any activities necessary to assess whether the land is suitable for the contemplated public purpose.¹⁵⁷
- **Notice of intended acquisition:** If the Minister decides that particular land is suitable for a public purpose, he must direct the acquiring officer to give notice to the custom owners and other persons interested in the land and conspicuously display a notice on the land.¹⁵⁸

The notice must, amongst other things, state that the Government intends to acquire the land for a public purpose, specify that public purpose and explain that written objections may be made to the acquiring officer within a specified period, which must not be less than 30 days.¹⁵⁹

¹⁵³ Siobhan McDonnell, '100 days since Cyclone Pam, people across Vanuatu pause to reflect on loss and resilience,' *The Conversation*, 18 June 2015 <<https://theconversation.com/100-days-since-cyclone-pam-people-across-vanuatu-pause-to-reflect-on-loss-and-resilience-40481>>.

¹⁵⁴ Len Garae, 'Eviction affects over 300,' *Vanuatu Daily Post*, 13 September 2017, <http://dailypost.vu/news/eviction-affects-over/article_a18ee98f-c1b4-53d0-bc0b-2af2f89cad6.html>.

¹⁵⁵ RadioNZ, 'Squatters Expelled Near Main Vanuatu Airport' (20 October 2014) <<http://www.radionz.co.nz/international/pacific-news/257319/squatters-expelled-near-main-vanuatu-airport>>.

¹⁵⁶ *Land Acquisition Act 1992* s 1 (definition of 'public purpose').

¹⁵⁷ *Land Acquisition Act 1992* s 2.

¹⁵⁸ *Ibid* s 4(1).

¹⁵⁹ *Ibid* s 4(2).

Once a notice has been issued, the custom owners are prohibited from leasing the land or doing any act that depreciates the value of the land for a period of 12 months.¹⁶⁰

- **Objections:** The acquiring officer must consider any objections received and make recommendations to the Minister on the objections.¹⁶¹ The Minister must consider the acquiring officer's recommendations in deciding whether or not acquire the land.¹⁶²
- **Declaration and Notice of Acquisition:** If the Minister decides that the land should be acquired, he must make a written declaration that the land is required, and will be acquired, for a public purpose.¹⁶³ The acquiring officer must publish the declaration in the Gazette and give notice to the custom owners and other persons interested in the land.¹⁶⁴
- **Compensation:** The Government must pay compensation to the custom land owners. This is discussed in section 4.4(a) below. Once notice has been provided and compensation has been paid, the Minister may direct the acquiring officer to take possession of the land for and on behalf of the Government.¹⁶⁵

(b) If so, are those laws or regulations applicable in the context of a disaster?

Responding to a disaster would likely qualify as a 'public purpose' under the *Land Acquisition Act*. The *Land Acquisition Act* does not, however, permit the Government to acquire land quickly because it requires the Government to provide notice, appeal rights and compensation to the relevant custom land owners. The *Land Acquisition Act* is therefore likely to be applicable to, but not practicable in, the context of a disaster.

Article 69(b) of the *Constitution* provides that:

- the President, acting on the advice of the Council of Ministers, may declare a state of emergency in response to a natural calamity, or to prevent a threat to or to restore public order; and
- once the President has declared a state of emergency, the Council of Ministers may make regulations for dealing with the public emergency.

Section 13 of the *National Disaster Act 2000* specifically provides that a state of emergency can be declared in relation to a disaster, provided that it constitutes a significant and widespread danger to life or property and exceeds the affected community's capability to deal with the disaster.¹⁶⁶ A state of emergency may be declared in relation to the whole, or specified parts, of Vanuatu.¹⁶⁷

If the Government wishes to expropriate land at short notice in response to a state of emergency caused by a disaster, it could rely on article 69(b) to create regulations permitting it to do so. Importantly, any regulations made under article 69(b) would not need to comply with the

¹⁶⁰ Ibid s 5(1).

¹⁶¹ Ibid s 4(3).

¹⁶² Ibid s 4(4).

¹⁶³ Ibid s 4(4).

¹⁶⁴ Ibid s 5.

¹⁶⁵ Ibid s 16(1)(a).

¹⁶⁶ *National Disaster Act 2000* s 13.

¹⁶⁷ Ibid.

constitutional protection against 'unjust deprivation of property', provided that the measures introduced are reasonably necessary in the circumstances.¹⁶⁸

4.3 Relocation

- (a) **Are there laws or regulations governing relocations?**
- (b) **Are there any other laws or regulations (ie, human rights instruments) that are applicable to relocations?**

(i) ***National Disaster Act 2000***

The *National Disaster Act 2000* established a National Disaster Management Office (the **NDMO**) which, amongst other things, is responsible for coordinating responses to emergencies and disasters across Vanuatu. The *National Disaster Act 2000* does not expressly contemplate relocations. It does, however, provide that, during a state of emergency, the Director of the NDMO (the **NDMO Director**) may authorise an emergency services officer or a volunteer to direct a person:

- to leave particular premises and to move out of a disaster area;
- to take any children or adults when leaving; and/or
- not to enter a disaster area.¹⁶⁹

If the person does not comply with the direction, an emergency services officer or volunteer may do all such things as are reasonably necessary to ensure compliance, including using reasonable force.¹⁷⁰

In addition to the powers described above, the NDMO Director may authorise an emergency services officer to:

- close to traffic any street, road, lane, thoroughfare or footpath or place open to or used by the public in a disaster area;
- close any other public or private place in a disaster area;
- order any wall or premises that have been damaged or rendered insecure in a disaster area to be pulled down or repaired at the expense of the owner; and/or
- shut off or disconnect the supply of any water, gas or electricity in a disaster area.

The NDMO Director's powers under the *National Disaster Act 2000* could be relied on to facilitate the relocation of persons affected or displaced by a disaster. However, the Director's powers under the *National Disaster Act 2000* are subject to the constitutional rights to liberty, freedom of assembly, freedom of movement and protection from unjust deprivation of property.¹⁷¹

(ii) **Constitution**

Article 81 of the *Constitution* provides the Government with a power to buy land from custom owners and transfer the ownership of that land to citizens from over-populated islands. This power may be used as the basis for the voluntary relocation of persons from over-populated islands.

¹⁶⁸ *Constitution* art 71.

¹⁶⁹ *National Disaster Act 2000* s 18(2).

¹⁷⁰ *National Disaster Act 2000* s 18(3).

¹⁷¹ *Constitution* art 5(1)(b),(h), (i) and (j).

Separately, as discussed in section 4.2(b) above, article 69(b) of the *Constitution* empowers the Council of Ministers to make regulations for dealing with a public emergency. The Council of Ministers could, therefore, make regulations providing or permitting the relocation of persons during a natural disaster.

Importantly, emergency regulations made under article 69(b) will be valid even if they derogate from the fundamental constitutional rights enshrined in article 5(1) of the *Constitution* (except for the rights to life and freedom from inhuman treatment and forced labour).¹⁷² Therefore, emergency regulations made under article 69(b) could potentially provide the Government with stronger powers to relocate persons compared to the NDMO Director's powers under the *National Disaster Act 2000*.

4.4 Compensation

(a) Are there laws or regulations providing compensation for people who are relocated, forcibly evicted, or whose land is expropriated?

(i) Expropriation

The *Land Acquisition Act 1992* provides that compensation must be paid when land is compulsorily acquired for a 'public purpose'.¹⁷³ Compensation is ordinarily determined by the acquiring officer, taking into account the following matters:

- the market value of the land;
- any damage caused by the Government while inspecting the land;
- any damage sustained by loss of crops or trees on the land;
- where part of a piece of land is acquired:
 - any damage sustained by the owner by reason of severing the acquired land from the other part of the land;
 - any damage caused by the acquisition injuriously affecting the remaining part of the land;
- where the custom owner is required to change their residence or place of business, any reasonable expenses incurred; and
- where the custom owner is required to surrender, vary or re-register any registrable interest as a result of the acquisition, the costs of such change.¹⁷⁴

A determination may be appealed to the Supreme Court, but will become final if no appeal is lodged within 30 days.¹⁷⁵

In addition to compensation for land acquired, the landholder is entitled to be compensated for any loss of rent or other financial gains for the period from the date of the notice of intention of acquisition until the date on which compensation is fully paid.¹⁷⁶

¹⁷² *Ibid* s 71(1).

¹⁷³ *Land Acquisition Act 1992* s 14.

¹⁷⁴ *Ibid* s 9.

¹⁷⁵ *Ibid* s 9.

¹⁷⁶ *Ibid* s 10.

(ii) Relocations

We have not located any laws or regulations that provide for compensation to be paid to persons who are relocated.

(iii) Eviction

As discussed in section 4.1(a) above, article 5(1) of the *Constitution* provides that all persons have a right to be protected from unjust deprivation of property. If a person is forcibly evicted in violation of article 5(1), they may apply to the Supreme Court for a compensation order.¹⁷⁷

Article 5(1) is unlikely to protect persons who do not have property rights, such as residents of informal settlements. However, the Government may provide compensation or other assistance to such persons on a discretionary basis. For example, as discussed in section 3.3(a) above, in October 2014, the Minister of Lands secured land for 300 squatters who were evicted from an informal settlement near Port Vila's airport.

(b) In practice, are these laws or regulations adhered to?

We have not located any information suggesting that the laws summarised in 4.4(a) above are not adhered to in practice.

4.5 Shelter cluster**(a) Is there an active shelter cluster in Vanuatu? If not, has the shelter cluster been activated during any previous disaster?**

Yes, there is an active Vanuatu shelter cluster that is led by the Vanuatuan Government's Public Works Department and co-led by the International Federation of Red Cross and Red Crescent Societies. The shelter cluster was activated during Cyclone Pam, and has recently been active in responding to Cyclone Donna.

¹⁷⁷ *Constitution* art 6(2).

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