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JUSTICE
for the **POOR**

Promoting equity and managing conflict in development

57179

WAN LIS, FULAP STORI LEASING ON EPI ISLAND, VANUATU

RAEWYN PORTER AND ROD NIXON



THE WORLD BANK

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Wan Lis, Fulap Stori

Leasing on Epi Island, Vanuatu

Raewyn Porter and Rod Nixon

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Executive Summary

Jastis Blong Evriwan (JBE), Vanuatu, is part of a World Bank research and development program called Justice for the Poor,¹ which supports analytical and programmatic work in countries where legal pluralism presents a central development challenge.

This study of 23 leases over land on the island of Epi is the first of the JBE research activities to examine land and natural resource management (L&NRM) and access to justice on particular Vanuatu islands. The research will be repeated on the island of Tanna. To inform the broader context of land leasing in Vanuatu, JBE, in collaboration with the government of Vanuatu, has begun collecting and analyzing government land-leasing data. This process commenced in late 2009 and will ultimately make it possible for leasing patterns in each of the island studies to be placed in a broader national land-leasing context.

The key government-sector strategies that the JBE program supports are the Law and Justice Sector Strategy, which seeks to enhance coordination between the various law and justice institutions and adopt a coherent approach to justice reform, and the Vanuatu Land Sector Framework (VLSF), which provides a roadmap for achieving the vision of “a prosperous, equitable and sustainable land sector for Vanuatu.” The Mission of the VLSF is “to provide an enabling environment for multi-stakeholder participation in the effective use, management and stewardship of Vanuatu’s land resources.” The vision and mission statements of the VLSF are underpinned by five themes or strategic objectives:

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

JBE intends that the Epi and Tanna islands studies on land leasing and dispute-resolution mechanisms will inform the government and its non-government partners and assist with the achievement of their strategic objectives.

This report commences with an introduction outlining the JBE program and the purpose of the L&NRM and access to justice-island locality studies within the government of Vanuatu reform agenda. Section 2 presents historical and economic information relevant to Epi and profiles governance and civil society activities. Section 3 has four parts. Section 3.1 provides a summary of the land leases on Epi and discusses lease history and lease categories. Section 3.2 provides a contextual overview of the lease-formation process and various regulations for land leasing in Vanuatu, drawing on the Epi research to report on land-leasing issues. Section 3.3 discusses the potential benefits of leasing, and Section 3.4 reports on disputes created by land leasing. There is

¹ JBE is funded under the East Asia and Pacific-Justice for the Poor Initiative (EAP-J4P), a collaboration between the World Bank and AusAID.

discussion of key points after each of Sections 3.2, 3.3, and 3.4. It should be noted that these discussion points are preliminary and will be reconsidered after the Tanna lease-profiling initiative has been completed. The first of three appendices describes the research approach used, the second provides details of each of the leases in the study, and the third provides examples of Department of Lands (DoL) standard lease clauses for agricultural, commercial, and special leases. Key findings of the Epi study are included in the remainder of this executive summary.

Leasing on Epi

- Government of Vanuatu national lease data indicates that there are 22 leases on Epi. Hard copy files were available from the DoL for 20 leases. A further three leases, for which there were no DoL files, were identified during field research. Therefore 23 leases form the database for the Epi lease analysis.
- Twenty leases (that is, minus one for no data, one cancelled, and one surrendered) comprise 6,317 hectares and cover approximately 14.18 percent of Epi total land area.
- Seventeen of the 23 leases were created on land previously alienated by Pre-independence titles.
- Of the 23 leases, eight are agricultural, eight are commercial, four are special (including an airport reservation, a school, and two communications facilities), one is residential, and two are of unknown type (although both are likely to be special, as one is a navigation/communications installation and the other a provincial administration lease).
- Of the seven active agricultural leases on Epi, only one new lease appears to be a serious commercial operation. However, this lease, which occupies 12 percent of Epi (5,343 hectares) and some of the island's best agricultural land, is highly contentious. Benefits (premium and annual rent) from this lease are payable to five (male) individuals acting as trustees of the custom landholders. Despite the existence of a trust structure, the trustees allegedly spent a premium payment of \$500,000 within seven months. This suggests that payments risk being of little long-term benefit in the absence of stronger arrangements for the management of resource flows that leasing may generate. Some subsistence activities previously being undertaken on this land have reportedly been terminated.
- A lease premium was definitely paid on one lease (see above point) but premiums were not paid on the leases that were formed from Pre-independence titles.
- A further agricultural lease of over 539 hectares appears of marginal commercial viability, but is not managed intensively and provides only 13 jobs.
- Rental rates for agricultural leases are around Vt 200–250² per hectare per year, for commercial leases around Vt 3,500–4,000 per hectare per year, and for special leases around Vt 14,000 per hectare per year.
- Six of the eight agricultural leases have been subject to disputes, and in the case of the remaining two, lessors have expressed dissatisfaction concerning the lack of development of the lease by the lessees.
- Several of the leases on Epi appear to record families attempting to secure land, possibly for commercial development purposes, without broader consultation with other community members or landholder claimants. These leases are subject to dispute.

² One hundred Vatu is equal to approximately \$0.98, according to the exchange rate in May 2010.

- Of the 23 leases studied, 10 had been subject to disputes. The most common form of dispute was between custom landholder claimants for land subject to a formal lease.

Specific issues identified concerning the lease-creation process

- Two cases were identified of secretive registration of leases based on customary claims (either to develop land independently or lease to other parties) without consulting other custom landholders and possible claimants, and without the involvement/approval of the island council of chiefs. A further case of minimal consultation and noninvolvement of the island council of chiefs occurred in relation to the registration of a large agricultural lease.
- The DoL may have registered leases without appropriate documentation being presented. For example, the Custom Owner Identification Form (COIF) is an important document, since it represents a chiefly and quasi-official endorsement of persons as the legitimate representative(s) of the custom landholders for the purpose of negotiating a lease. The person(s) identified in the COIF will ultimately be named as the lessor(s) if a lease is registered. However, COIFs are kept separately from the lease files and were found for only two of the Epi leases investigated. Even then, the process for consulting the custom landholder groups regarding land leasing was not recorded and most likely never occurred. In one case, a senior chief claims to have requested permission from the DoL, on three separate occasions, to see a COIF for a registered lease over land he claims to own himself, without success.
- Social and environmental impact assessments are not systematically carried out despite legislative requirements. For example, a 5,343 hectare agricultural lease (12% of Epi) was granted without any impact assessments being conducted even though the lease has reportedly displaced people from gardens and crops.
- Premiums paid up front are likely to prove tempting to custom landholders, but unless there are financial management structures in place that improve benefit distribution and prolong benefit impacts, these payments may result in few long-term benefits.
- Little support or information is available to custom landholders to guide decisions. This appears to be the case in relation to information on alternative development paths and also in relation to disputed leases for which the Minister of Lands became the lessor.
- The practice of writing leases in English, not Bislama, aggravates the lack of understanding of rights and responsibilities in relation to land leasing amongst custom landholders.
- Poor lease-creation processes produce poor outcomes, such as custom landholder disputes, maximum lease periods (75 years has become the norm rather than the exception for high-value joint venture leases), low rents (especially for agricultural leases), the appearance of lease clauses that require compensation for developments on expiry of the lease, and in all, minimal benefits for communities.

Specific issues identified concerning lease management/administration

- Conflict resolution is characterized by disputants pursuing the issue through multiple forums. Island councils of chiefs represent an appropriate forum for the resolution of custom landholder disputes, yet they do not have sufficient authority to ensure that

decisions are enforced. Moreover, there are no measures to ensure that the deliberations of the island councils of chiefs are considered by the formal courts. This results in uncertainty and encourages “forum shopping” in order to gain the most advantageous outcome.

- A case was identified where a Supreme Court decision had been made but no acceptance of this decision was evidenced at the local level. This suggests that consideration should be given to mediation and hopefully resolution of cases before proceeding to formal courts. In some instances, both parties may be deserving of consideration by the court. For example, the winning party, as part of reconciliation, may be required to pay compensation to the losing party.
- A further case was identified where the DoL failed to recognize a determination made by the Supreme Court when registering a lease. This suggests the need for the DoL to improve communication and file keeping.
- Reviews of annual rent payment and the monitoring of lease conditions are not undertaken systematically. The custom landholders of several leases expressed frustration at the lack of development of leases by lessees who had promised to undertake improvements. In only one case had a lease been cancelled according to the Land Referee process provided for by a covenant in a standard format lease.
- Short-term appointments (Minister of Lands, Director-General of Lands, Director of Lands) may compromise institutional memory and administrative efficiency. One case studied involved a lease that had been registered, deregistered, and then reregistered, all within an eight-month period of time. Different officials were involved along the way and appear to have variously interpreted the information on file.
- There does not appear to be adequate follow-up concerning leases subject to dispute for which the Minister of Lands has signed as the lessor. The DoL could more actively endeavor to resolve outstanding disputes. A recent (May 2010) diagram titled: “Process to withdraw funds from the Custom Owner Trust Account (COTA)” states that “customer submits island court or land tribunal declaration to the Lands Department” to begin the process of lease rectification and release of funds from the COTA account. This implies that custom landholders must be responsible for having the dispute resolved and initiating action to have the minister removed from the lease. However, custom landholders are likely to require assistance to resolve disputes, as Epi does not have a customary land tribunal set up and there is record of only two island court hearings of land disputes on Epi.
- There may also be a case for more robust auditing in relation to the COTA to ensure rents have been paid by the lessee and have been maintained in the account.

Continuing relevance of 2006 Land Summit recommendations

The 2006 Land Summit determined 20 resolutions that were endorsed by the Council of Ministers, although few advances have been made in implementing these. Key themes associated with the 20 recommendations include the following³:

- Shared ownership of land among community members

³ See Chris Lunnay et al., “Vanuatu: Review of National Land Legislation, Policy and Land Administration” (Canberra: AusAID, 2007), http://www.ausaid.gov.au/publications/pdf/vanuatu_land.pdf. Accessed July 2010. (Attachment 3.)

- Importance of inclusive decision making, including participation of women
- Determination of customary boundaries
- Review of leases, including rent and lease conditions
- Approval of leases by island council of chiefs
- Removal of power of Minister of Lands to approve leases over disputed land and the need for disputes to be resolved before a lease can be registered
- Determination of fair land rents and premium payments
- Zoning of land prior to leasing
- Advancement of cultural, environmental, and access provisions
- Provision of leases in Bislama.

The Epi study reaffirms the validity of the key Land Summit recommendations, as well as the need for attention to lease-benefit distribution and benefit-prolonging aspects. It is critical that attention is given to empowering community members to make informed decisions about leasing land. These actions could improve outcomes for custom landholders who wish to lease their land. Furthermore, there remains a huge gap between demand and action in developing strategies for custom landholders who want alternative development options to formal land leasing. This is a potential topic for further research.

“I had tumas long mifala blong karem infomesen long hao blong mekem development insaed long kraon blong mifala, olgeta long Vila oli no moa tingbaot mifala mekem se taem investa I kam mifala i mekem lis agrimen wan taem from mifala tu i wantem mane we i hariap mo i isi blong karem.”

(It is very difficult for us to receive information on how to develop our own land, maybe because the people in the capital forgot about us and so that is why whenever an investor comes along to ask for land we sign the papers right away, not knowing what will happen in the future because we want to get our hands on quick and easy money.)

The requirements of financial institutions to provide a loan for development projects are too difficult for local people. On the other hand, expatriates have the money so they can take loans to develop our land. The government set up an agriculture development bank as well as the agriculture college. People have land, they send their kids to the agriculture college to get knowledge but when they return, there is no capital for them to be able to develop their land. If they seek loans from the financial institutions to help them develop and manage their land, the institutions will want lease documents which they themselves cannot afford.

Billy Bakokoto (*Ifira Councilor*) Shefa Provincial Councillors Meeting, May 2010

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Glossary

Terms used in the Land Reform Act, Cap.123

“Improvements” includes the reclaiming of land from the sea; clearing, levelling, or grading of land; drainage or irrigation of land; reclamation of swamps; surveying and making boundaries; erection of fences of any description; landscaping of land; planting of long-lived crops, trees, or shrubs; laying-out and cultivation of nurseries; and buildings and structures of all descriptions that are in the nature of fixtures, fixed plant and machinery, roads, yards, gates, bridges, culverts, ditches, drains, soakaways, cesspits, septic tanks, water tanks, power and other reticulation systems, dips, and spray races for livestock.

“Land” includes land above the mean high water mark, all things growing on land and buildings, and other things permanently affixed to land, but does not include any minerals (including oils and gases) or any substances in or under land that are of a kind ordinarily worked for removal by underground or surface working.

“Lease” means the grant, with or without consideration, by the owner of the land of the right to the exclusive possession of his land, and includes the right so granted and the instrument granting it, and also includes a sublease but does not include an agreement for a lease.

“Lessee” means the proprietor of a lease or his successor in title.

“Lessor” means the person who has granted a lease of his successors in title.

“Trust” means any settlement, disposition, act of delivery, declaration, acknowledgement, or conduct by which a person (known as the trustee) holds or had vested in him property (which is called trust property) for the immediate, prospective, contingent, or conditional benefit of a beneficiary or beneficiaries (being a person or persons, whether living or unborn, or being a lawful purpose or object) but shall not include a unit trust or other collective investment scheme.

“Premium” does not appear in any Act interpretation. The *Land Leases (Amendment) Act 2003* refers to a premium in the context of the Minister extending the term of a lease: “the lessee pays to the Minister a premium which is to be determined by the Principal Valuation Officer within the meaning of the Valuation of Land Act No.22 of 2002.” The *Land Leases (Amendment) Act of 2004* defines a premium as a percentage rate of the unimproved market value of the land at the date of application and sets a prescribed fee of 35 percent of the unimproved market value of the land. The *Land Leases (Amendment) Act 2007* makes further changes so that a premium is to be determined based on the unimproved market value of the land at the date of application. The “premium is to be calculated based on the full market rental value of the unimproved value of the land and the annual contract rent as agreed to by the lessor and the lessee” (subsection 32C 6). Subsection 32D 2 states: “A new lease is not to be issued unless the lessee or the registered proprietor pays to the lessor a premium based on the full rental value of the unimproved value of the land as determined by the Minister from time to time and the contract rent as agreed to by the lessor and the lessee.” An additional clause (32D 4) is added whereby “The Minister may by order, prescribe the full rental value of the different classes of leases which are to be reviewed every 5 years.”

Acronyms

COIF	Custom Owner Identification Form
COTA	Custom Owner Trust Account
CLT	Customary Land Tribunal
CLTU	Customary Land Tribunal Unit
DAO	District Administration Officer
DoL	Department of Lands
EIA	Environmental Impact Assessment
JBE	Jastis Blong Evriwan
JBERG	Jastis Blong Evriwan Reference Group
L&NRM	land and natural resource management
LMPC	Land Management Planning Committee
PIA	Preliminary Impact Assessment
PFD	Program Framework Document (JBE)
VLSF	Vanuatu Land Sector Framework
VFSC	Vanuatu Financial Services Commission
Vt	Vatu

1. Introduction

Jastis Blong Evriwan (JBE) is part of a World Bank research and development program called Justice for the Poor, which supports analytical and programmatic work in countries where legal pluralism⁴ presents a central development challenge.

The JBE Project Framework Document (PFD) for Vanuatu outlines a number of priority research areas in Land and Natural Resource Management (L&NRM) and Access to Justice. The research undertaken on Epi island during March 2010 investigated the way customary groups negotiate and engage in land-lease dealings and the type and effectiveness of mechanisms and strategies people used to resolve disputes. This approach combined the L&NRM and Access to Justice research areas in order to: (i) document ways in which customary groups engage with the formal system and (ii) increase understanding of the type of justice problems citizens face and the mechanisms and strategies people use to enforce their rights. Integrating these two research interests supported a more holistic understanding of the ways in which custom landholder groups operate in the context of legal pluralism.

The key government sector strategies that the JBE program supports are the Law and Justice Sector Strategy, which seeks to enhance coordination between the various law and justice institutions and adopt a coherent approach to justice reform, and the Vanuatu Land Sector Framework (VLSF), which provides a roadmap for achieving the vision of “a prosperous, equitable and sustainable land sector for Vanuatu.” The Mission of the VLSF is “to provide an enabling environment for multi-stakeholder participation in the effective use, management and stewardship of Vanuatu’s land resources.” The vision and mission statements of the VLSF are underpinned by five themes or strategic objectives:

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

The current sector strategies and reform efforts are the outcome of a long period of Ni Vanuatu grievance over the alienation of their lands. This is discussed in Section 1.1.

1.1 Overview of land alienation in Vanuatu

Land alienation has a long history in Vanuatu, from the extraction of sandalwood trees, to the establishment of cotton plantations and Christian missions in the 1860s, to the development of

⁴ Legal pluralism manifests itself as a development challenge in at least three ways in Vanuatu. First, strong *kastom* (in its many variations) and a weak state exist in a parallel but undefined relationship, which makes the management of development processes extremely difficult. Second, *kastom* systems, while internally coherent, accessible, legitimate, and relatively well understood, are nonetheless being asked to address issues that stretch their capacity (for example, the sale of land for foreign investment). Third, processes whereby traditional and modern systems of property rights and contracting interact can have seriously inequitable and/or destabilizing effects. Key development problems experienced by Ni Vanuatu, especially the more marginalized, stem from these three issues (JBE Vanuatu PFD 2009).

copra plantations in the 1900s and the agricultural, residential, and tourism developments that followed. Significant land loss was a unifying factor and mobilizing force for the independence movement in the 1970s that demanded the return of alienated land to the rightful custom landholders.

At independence in 1980, the Constitution (Article 73) stated that all land in the Republic of Vanuatu belongs to the indigenous custom landholders and their descendants and the rules of custom shall form the basis of ownership and use of land (Article 74). Thus the Constitution effectively reversed previous alienations but provided for their replacement in certain circumstances.⁵ The Land Reform Act allowed “alienators” having a freehold or other beneficial interest in land, who were in occupation of the land and who had maintained the land and improvements in reasonably good condition, an entitlement to remain in occupation of the land until a lease agreement was negotiated with the custom landholders or payment was made for improvements to the land.

While these new leasing arrangements were originally intended to restore investor confidence and maintain agricultural development, they soon evolved into the method of negotiating new leases over custom land. The **Land Leases Act 1983** was an Act for the registration of leases and dealings in leases. However, as Lunnay et al. point out, this Act might have been drafted for any country for the registration of land ownership, as it was not nuanced for Vanuatu’s special features, namely, that land in Vanuatu is either under custom landholding (if in a rural area) or government landholding (if in an urban area). The term “lease,” for example, is defined to mean the grant “by the owner of the land of the right to the exclusive possession of *his* land,” and the term “lessor” is defined as “the person who has granted a lease or *his* successors in title.”⁶ This wording created uncertainty as to the nature of custom landholding—is it by customary group or by individuals? Epi lease research provides evidence of the continuing uncertainty and implications for group decision making around land leasing and benefit distribution.

Amendments were made to the Land Leases Act in 2004 that attempt to provide a fairer return for custom landholders when the value of their land is increased by, for example, a subdivision or strata title development. Nonetheless, many land leases have been created without the custom landholder’s full understanding of the law, the lease covenants, or the market value of the land.

Such was the concern at the scale of land alienation⁷ and the threat that this posed to the livelihoods of Ni Vanuatu, the authority of government, and the country’s social and political stability that the Vanuatu Cultural Centre organized a National Self-Reliance Summit in 2005 that identified land as one of the key development issues. This led to a National Land Summit being convened in 2006. The Land Summit produced a set of 20 resolutions, the development of an interim transitional strategy, and the establishment of a Steering Committee to advance the resolutions. The 20 resolutions endorsed by the Land Summit participants underscored the serious problems in such areas as agreements to lease custom land, lease conditions, land-use

5 State land previously owned by the French and British Condominium powers was not returned to custom landholders but preserved as public land. This was mainly urban land on Efate. The research team did not encounter any preserved public land on Epi island.

6 Lunnay et al., “Vanuatu: Review of National Land Legislation,” 12.

7 Research by Sue Farran on Efate leases revealed that 25 percent of the island was under lease. Sue Farran, “Myth or Reality: Case Study of Land Tenure in Efate, Vanuatu” (Paper to FAO/USP/RICS Foundation, South Pacific Land Tenure Conflict Symposium, April 10-12, 2002),

<http://www.usp.ac.fj/fileadmin/files/faculties/islands/landmgmt/symposium/PAPER84FARRAN.PDF>. Accessed July 2010.

planning, subdivisions, registration procedures, public access to beaches and rivers, and the public's awareness of land rights and laws. Four years on, the Vanuatu Land Sector Framework, which builds on the recommendations of the Land Summit, was publicly released in June 2010.

1.2 JBE Support to the Land Sector Framework

Despite the Land Summit consultations and recommendations for action, there has been limited capacity in the government or nongovernment sector to conduct research that would provide an empirical base to understanding land leasing and inform policy decisions. JBE is currently conducting two research projects that will help address this gap.

National lease profiling project

To inform this broader context of land leasing in Vanuatu, JBE, in collaboration with government of Vanuatu, has begun collecting and analyzing land-leasing data. The National lease profiling project will use existing lease data to profile land leasing in Vanuatu. This project will enable us to answer questions such as what area of land is leased, where leases are located, what are the percentages of different lease types, what are average rents, what is the length of the lease period, and what are the trends in leasing. The analysis of national lease data will provide a baseline for ongoing monitoring of leasing activity in Vanuatu, highlight areas where there are gaps in the data or the data are unreliable, and support land-leasing policy development.

Locality studies on Epi and Tanna

The national lease profiling project will be supplemented by in-depth studies of leasing on Epi and Tanna. These include an examination of all leases for these islands, as well as field research on the leasing process. This report is based on the Epi island research undertaken in May 2010; Tanna island research is scheduled for August 2010.

1.3 JBE Reference Group

The findings from the various JBE research activities are to be presented to a reference group comprising a range of civil society organizations and government agencies. The first JBE Reference Group (JBERG) meeting was held in February 2010. It was attended by 30 people, including representatives from key government departments and from Malvatumauri, the Vanuatu Cultural Centre, the Labor Union, the Vanuatu Christian Council, the Vanuatu Association of Non-Government Organizations, the University of the South Pacific, and other civil society organizations and community members. At this meeting, research findings from a JBE-commissioned study on land-leasing practices in the Roi Mata World Heritage area were presented and the methodology for the Epi research was discussed.

In May 2010 the second JBERG meeting was held, at which the findings from the Epi research were discussed. There was significant debate on whether leasing of land should be occurring at all, given that return of land to customary landholders was a key part of the Vanuatu independence struggle. The diversity of views expressed during the meeting reflects the passion Ni Vanuatu feel for the land and the complexities that have arisen over the last decade as new land alienations have increasingly undermined the 1980 independence land reforms.

A presentation of the research findings was also made to a meeting of Shefa provincial councillors in May 2010. The meeting adopted the presentation as part of their resolutions for action.

The body of this report comprises two further sections. Section 2 provides a profile of some of the relevant historical and economic features of Epi and aspects related to the structure of governance and civil society organization. Section 3 has four parts. Section 3.1 provides a summary of the land leases on Epi and discusses lease history and lease categories. Section 3.2 provides a contextual overview of the lease-formation process and various regulations for land leasing in Vanuatu, drawing on the Epi research to report on land-leasing issues. Section 3.3 discusses the potential benefits of leasing and Section 3.4 reports on disputes created by land leasing. There is discussion of key points after each of Sections 3.2, 3.3, and 3.4. The three appendices comprise: (i) a section outlining the research approach used for the Epi study; (ii) profiles of each of the leases included in the study; and (iii) examples of Department of Lands (DoL) standard lease clauses for agricultural, commercial, and special leases.

2. Epi Context

This section provides an overview of Epi. It presents a brief description of the colonial period, with particular focus on land alienation, and provides an overview of key features of the island today. This is followed by a description of the structure and roles of local government and the councils of chiefs and the activities of civil society organizations, particularly in relation to women and youth.

2.1 Colonial Period to Independence in 1980

During the colonial period from the mid-1800s, Epi experienced considerable land alienation for the purpose of planting coconut and producing copra. It is beyond the scope of this report to provide extensive coverage of the experiences of the local people or the land alienators during the colonial period; however, the following two paragraphs provide examples relevant to Epi.

The background to the alienation of land on Epi is illustrated by the following history:

In 1882 the Compagnie Caledonie des Nouvelle Hebrides (CCNH) was founded by John Higginson (British), a champion of French influence in the Pacific. He bought up British plantations and land claims when British (including Australian) planters went broke in the 1870s and early 1880s. CCNH also sent agents to acquire land in areas that had not experienced alienation, such as Epi. In many cases the agents did not even disembark but waited for local people to paddle out. They would put their mark on paper transferring the land in exchange for some trade goods. By 1892 there were claims over 55% of the land of Vanuatu. In 1905, CCNH was reorganized with French Government support and renamed Societe Francaise des Nouvelles Hebrides (SFNH).⁸

This history is personalized on Epi with the story of the well-known Valesdir plantation:

Georges Naturel, his wife Louisa and their six children moved to the New Hebrides in early 1900. Georges Naturel received a grant of 50 hectares of land from the SFNH at Diamond Bay, Epi on the 8th June 1901 calling it “Va-les-dir” (a play on the French idiom meaning, literally, “go and let them talk”) developing it into a showpiece plantation, before retiring to Noumea in 1920. He died suddenly from a serious illness in 1923. Before his death, Georges transferred the title of Valesdir to his three surviving sons (Andre 31 (1892-1953), Sylvain 29 (1894-1943), Robert 27 (1896-1944) and the family company of Societe Naturel Freres was formed for this purpose. The company ultimately added the adjoining properties of Votlo and Woamby to their Epi domains as well as, sometime later the island of Aisse, off Santo.⁹

Management practices during the colonial period are remembered as being exploitative, with payment to workers in the 1920s being made in a Valesdir currency only redeemable at a Valesdir store.

“Ples ia i kat ol kastom ples long hem ia, be taem ol man ia oli kam oli kliarem ples mifala no save blokem ol ples ia.”

⁸ Howard Van Trease, “The History of Land Alienation,” in *Land Tenure in Vanuatu*, ed. Peter Lamour (Suva, Fiji: University of the South Pacific, 1984).

⁹ Patrick O’Reilly, *Hebridais* (Paris: Musée de l’Homme, 1957), 162-164.

The area has some of our historical/custom places but when they came they cleared everything and we could not save these places.

As noted in Section 1.1 Article 73 of the Constitution effectively abolished all existing land titles but provided for their replacement in certain circumstances. “Alienators” who were in occupation of the land and who had maintained the land and improvements in reasonably good condition were entitled to remain in occupation of the land until a lease agreement was negotiated with the custom landholders. In order to enter into negotiations, alienators had to apply for a Certificate of Registered Negotiator. The Certificate had to state the names of the applicant and the custom landholders and provide brief details of the land under negotiation and the object of the negotiations. The minister was given the power to enter into agreements on behalf of custom landholders in certain circumstances.

Three months after independence the minister made a statement to Parliament (Ministerial Statement on Land Policy Implementation 1980) remarking that where it was clear that custom landholders wished to proceed with lease negotiations, he was looking for development proposals that would involve participation by Ni Vanuatu. He referred to three possible situations:

- For major development proposals, an agreement for up to 75 years, but on the basis of a joint venture with the custom landholders;
- For minor development proposals, a lease or joint venture agreement for up to 30 years;
- For proposals for no new investment, the area would be reduced to just the residence and immediate surroundings, and a lease would be for a maximum of 30 years.¹⁰

The majority of leases (17 out of 23) studied on Epi were created from Pre-independence titles. In the case of one lease, created from five hectares of a large Pre-independence plantation, the lease was surrendered in 2007 and subdivided into seven smaller commercial leases. Only one lease had a 30-year term, a further six leases have 50-year terms, and the remainder were for 75 years. No joint ventures were found.

2.2 Island Today

According to preliminary counts of the 2009 Census prepared by the Vanuatu National Statistic Office, Epi has a population of 5,648 people (2,881 males and 2,767 females) and 1,127 households, pointing to an average household size of five persons. Most households are predominantly dependent on subsistence agriculture.

Epi in the Context of Vanuatu

To put Epi into a national context, 80 percent¹¹ of the residents of Vanuatu reside in rural areas and are largely dependent on subsistence agriculture. Ninety-three percent of rural households are headed by a male and just 7 percent by a female. Fifty percent of all agricultural household members are less than 20 years-old, 44 percent are aged 20–59 years, and 6 percent are older than 59 years. Sixty percent have completed primary

¹⁰ This information is reproduced from Lunnay et al., “Vanuatu: Review of National Land Legislation,” 8-10. See this document for a full description of the Land Reform Regulation.

¹¹ The 2009 Census put this figure at 77 percent.

education and 22 percent have secondary education, but only 1.6 percent went on to tertiary education (Vanuatu Census of Agriculture 2007, 24).

The *Census of Agriculture 2007* states that Vanuatu's subsistence agriculture revolves around crop gardens that contain an abundance of vegetables such as island cabbage, beans, and so forth; root crops such as yam, taro, sweet potato, and cassava; and fruits such as mango, orange, and pamplemousse. Some of these crop gardeners also engage in coconut and/or kava planting, in which the coconut is used for both human and animal consumption. Most households keep one or two heads of cattle, as well as a number of pigs, goats, chickens, and other livestock. Some of them reside near or go to the coast, where there is an abundant supply of fish, shellfish, and crustaceans (2007, 20).

Epi is identified in the *Census of Agriculture* (2007, 21) as one of the four islands (along with Santo, Malekula, and Efate) on which commercial farms are concentrated. However, from observations during research, the copra plantations of the colonial period have not been maintained and the production of beef cattle on this previously cleared land, particularly in the south, is now the main industry. Lease 11 currently ships cattle to Port Vila three times a year. Cattle production is set to increase when the large Lease 10 is cleared for cattle production. There is talk that coconut production may be reactivated following the opening of the coconut oil mill on this lease.



Figure 1: Epi farming system: cattle and copra

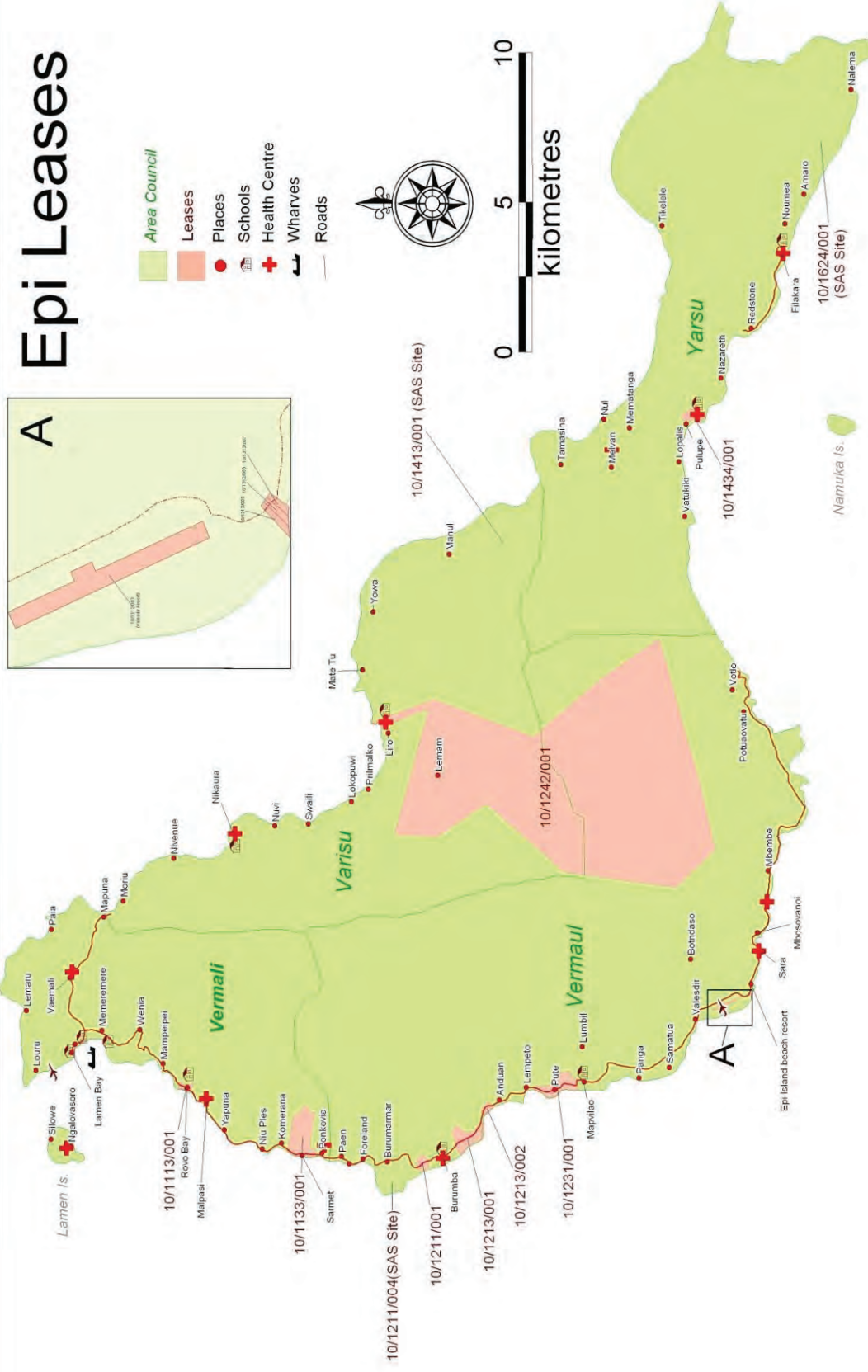
Epi is serviced by two airports: Valesdir in the south and Lamén Bay in the north. A poorly maintained road runs between Votlo in the south and Nikaura in the northeast but this can become impassable in the wet season as rivers rise. The rest of the island is accessed by walking tracks.

Epi has a small tourism industry catered for by four guesthouses: three in the north and one in the south. The main attractions are around Lamén Bay with its turtles, dugong, and coral reefs. The historic ruins at Rovo Bay and south on the Valesdir plantation provide further tourist interest.

The island of Epi is located in the northern part of Shefa province, one of the six provinces of the Republic of Vanuatu. As indicated in the map (below), the island is divided into the four administrative areas of Vermali, Varisu, Vermaul, and Yarsu and is 44,534 hectares in area. The

map, produced for JBE during the period of extracting lease file information from the DoL, also shows some, but not all, of the leases on Epi.

Epi Leases



2.3 Levels of Government

As outlined in Figure 2 below, the Republic of Vanuatu has three levels of government comprising the national, provincial, and area council levels.

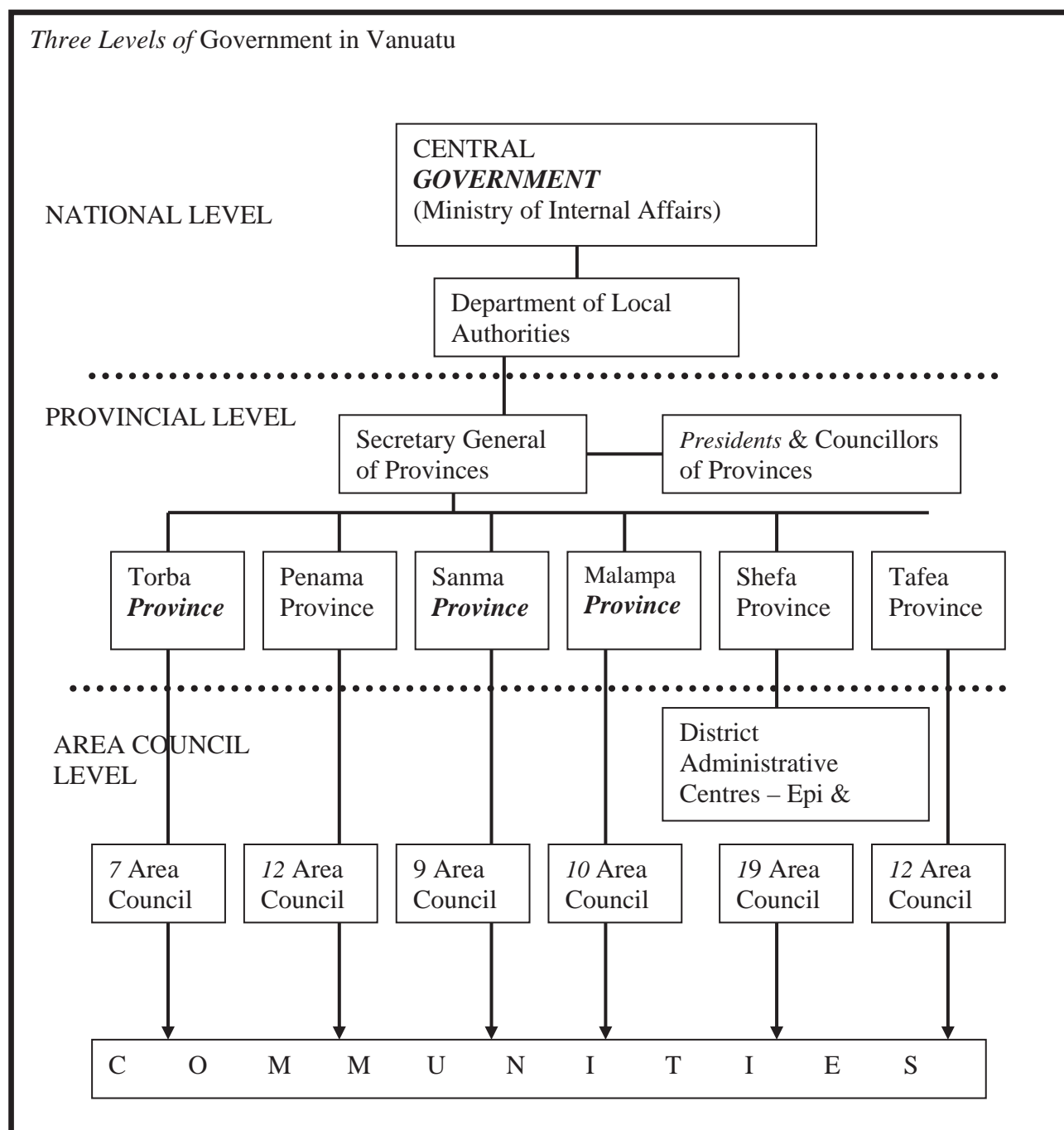


Figure 2: Government Structure in Vanuatu¹²

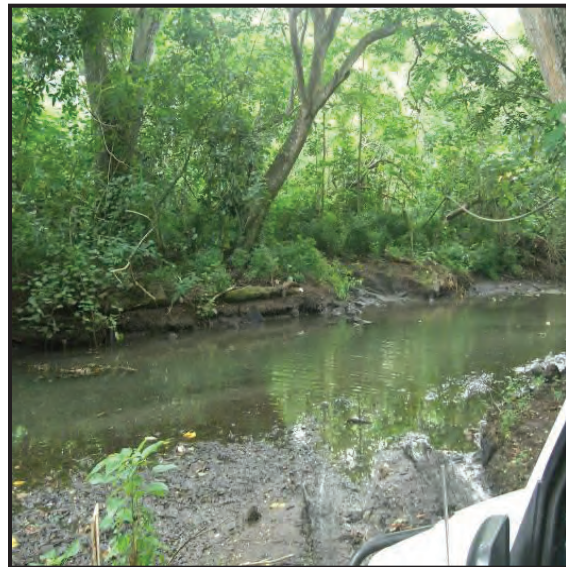
¹² From Otto Leisande, "Review of Local Governance Structures, Court Systems and Role of Churches in Vanuatu: Literature Review,". *Jastis Blong Evriwan* (JBE) (Washington, DC: World Bank, 2009), 10.

National Government

Central government services on Epi have been sporadic. For example, six police officers with transport were stationed at Rovo Bay between 1994 and 2005. However, since the 2005 cyclone destroyed the police station, there have been no police officers. Since 2005 police officers have been brought in from Tongoa or Port Vila when necessary. There is a plan to build a new police station once the dispute over the land lease covering the Rovo Bay local government administration site is resolved. In March 2010 the Minister of Lands posted a notice in the *Vanuatu Post* that the land will be compulsorily acquired as public land.

Other central government services located at Rovo Bay include a National Bank and an Agricultural Extension Officer equipped with a motorcycle. Other central government employees located throughout the island include teachers, civil aviation contractors, and health workers. Regarding the latter, the central government has funded the Vermali hospital in Rovo Bay and dispensaries in each of the other three local government areas. The province supports 10 first aid posts throughout the island, each employing one person at Vt 10,000 per month. The first aid posts are supplied by the central government.

The Department of Public Works is responsible for “national roads,” while responsibility for “feeder roads” rests with the province. There is little evidence of maintenance work on the national roads. The repair of a bridge destroyed by the 2005 cyclone has not been undertaken,



reportedly because it was too expensive for the regular maintenance budget and therefore required a national program budget that has not been forthcoming. According to a Shefa province councillor for Epi, a budget of Vt 420 million has been allocated for a model road to be built on Epi.

National road on Epi

This road construction will include five kilometers of sealed road plus lengths of other experimental road surfaces. Construction was expected to commence in May 2010.

Two Millennium Challenge Corporation/Millennium Challenge Authority projects were identified for Shefa province. The first of these was the Efate Ring Road, which is nearing completion, and the second was the upgrading of the wharf at Lamén Bay, Epi. It is uncertain, however, whether the Lamén Bay wharf upgrade will proceed, as funds have reportedly been absorbed by the Efate Ring Road. Concerns were expressed that the Efate Ring Road will benefit the largely foreign holders of land leases around the coastal fringe of Efate at the expense of essential infrastructure on the other islands of Shefa province.

Local government

Epi is part of Shefa province with the island headquarters located at Rovo Bay on an 11-hectare site that has been subject to a dispute (see Lease 1). The Post-independence Epi local government was established in 1983.

Provincial government employees located at Rovo Bay include the District Administration Officer (DAO), a cashier/typist, and a handyman. The island is divided into four areas: Vermali in the northwest of the island, Varisu in the central west, Vermaul in the southwest, and Yarsu in the east. There are four area secretaries (see section below) who work for the provincial administration but are located in their respective areas.

Physical planning for Shefa province only commenced on northern Efate two–three years ago and accordingly, no physical planning has been undertaken on Epi, though Vermali and Vermaul have been identified as the priority areas.

There is a single budget allocated to the whole province for administrative and development purposes. The bulk of the budget is absorbed by administrative expenses, leaving very little for infrastructure maintenance or development purposes. Development on Epi is, however, being discussed, as indicated in this item from the *Vanuatu Independent* dated March 13-19, 2010:

The government needs to develop the infrastructure of Epi island says MP Yoan Simon Omawa, for the country's economy and to improve the living of everyone. MP Omawa said north and south Epi roads need to be joined up, as well as roads to other highly productive areas of the island. He pointed out that places for the location of jetties had already been decided. This development of infrastructure would greatly enhance the transportation of Epi produce to Vila and Santo. MP Omawa was speaking during the visit of the head of state to Epi Island. Chairman Lami Sope of the Shefa Provincial Government made a similar appeal for a road to the Epi coconut oil mill...

A meeting with Shefa province councillors to report on the Epi lease study confirmed their support for developments on Epi and their facilitation of the 5,000-plus-hectare agricultural lease to advance commercial agriculture that is expected to bring benefits (roads, coconut oil mill, jobs) to the people of Epi.

Role of Provincial Government Councillors

There are three councillors from Epi on the Shefa Provincial Council. The role of councillors includes:

- Ensuring the appropriate delivery of government services to the people. Where necessary, raising issues and making recommendations to the Provincial Cabinet, which are then taken to the central government via a Liaison Officer employed by the central government for the province. For example, one Epi councillor who was interviewed stated that he had taken the issue of there being no police officer—and therefore no security—on Epi to the police commissioner.
- Assisting the community to create projects using councillor and donor funds. For example, a water system and aid-post constructed in Sara village were supported by a partnership between councillor and donor funds.
- Creating new bylaws for the province.

Role of Area Secretaries

According to the current and the former area secretaries of Vermaul, the role of area secretaries includes the following:

- Collecting tax from holders of business licences. There are approximately 60 businesses on Epi, including small retail shops, vehicle operators, sawmills, boat operators, kava bars, and “big” (larger) retail stalls (see photo below). According to the tax schedule, part-time businesses pay Vt 5,000 per year, small full-time businesses pay Vt 10,000 per year, and the three larger retail stores pay Vt 20,000 per year. The area secretaries deliver all business license fees to the DAO at Rovo Bay, who transfers the money to Shefa province.¹³
- Maintaining/enforcing bylaws and socializing new laws among the community/population.
- Updating records, including the electoral role and the registry of births, deaths, and marriages.
- Preparing communities for elections (provincial and national) and supporting the electoral process.
- Preparing the community for and coordinating the visits of the head of state and other important persons.
- Assisting council of chiefs meetings.
- Attending meetings where required, including meetings of women’s and youth organizations and reporting back to the DAO.
- Attending land meetings (including land-dispute meetings) but only to listen and report back to the DAO.

The area secretaries have no office, no vehicle (although sometimes they are equipped with bicycles), and no computers. Work-related transportation involves walking or travelling with vehicle operators (for a period of two–three years a vehicle was provided to support the work of the island administrators). Area secretaries work three days per week and receive a stipend for their services. The four Epi area secretaries have a monthly meeting with the DAO and all area secretaries (17) from Shefa province have an annual meeting.

¹³ It was reported by the area secretary that legislative change is underway that will exempt businesses earning less than Vt 4 million from VAT payments though they will still pay business license fees.

Council of Chiefs

The central government relies heavily on the role of chiefs for local governance functions but they are not recognized in the formal local government system. The Constitution provided for a National Council of Chiefs to discuss matters relating to custom and tradition (Art. 30 (1)). Article 31 required Parliament to enact a law to provide for the organization of the national council and to determine the role of chiefs at subnational levels. The **National Council of Chiefs Act** was passed in 2006. Through this Act, the government of Vanuatu attempted to create a register of island and urban councils of chiefs but this triggered local disputes and initially no action was taken. The Malvatumauri National Council of Chiefs, as part of its preliminary work to establish a National *Kastom* Land Office, now has a database for island councils of chiefs and is currently developing a database of area-level councils of chiefs.

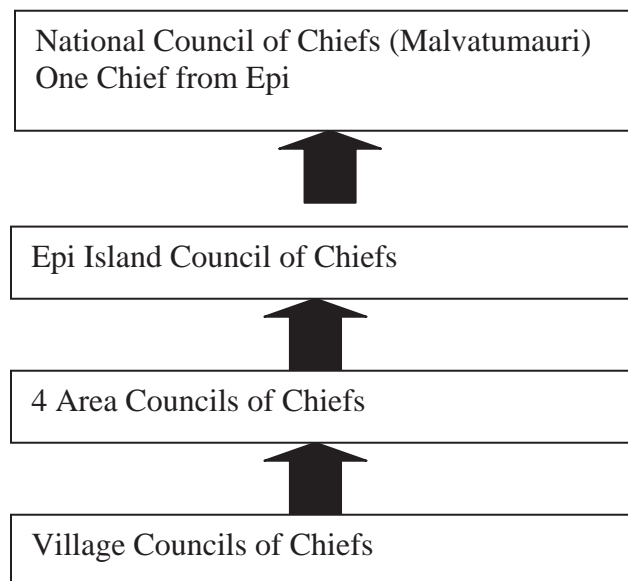


Figure 3: Structure of Epi Councils of Chiefs

The first level of the chiefly structure is the **Village Council of Chiefs**. The area of Vermali has nine villages, while Vermaul has seven villages and Varisu 13. The number of villages in Yarsu is unknown (reflecting the isolation of and difficulties of travel to this area). The chiefs, in a meeting attended by the research team, pointed out that historically there was only one chief in each village. Following resettlement into larger villages on coastal land, there could be a number of chiefs in a village, each representing his respective tribe. The chiefs cited the example of Moriu village in Varisu area, where there were three chiefs, three assistant chiefs, and three warrior chiefs (police blong chief).

The village councils provide a forum to discuss issues and decide matters jointly. The chiefs reported that on Epi, meetings of village chiefs take place every Thursday (although it is uncertain how often they are held in practice). Furthermore, at village council meetings people can raise any issue they wish (for example, arguments, family disputes, instances of violence and theft, investment proposals); however, final decisions rest with the village chiefs. Generally, cases must be resolved quickly in order to maintain peace in the village.

According to the chiefs, the *Area Council of Chiefs* is comprised of the relevant chiefs from the area. Land disputes often have to go to the area council level if the dispute involves more than one village and/or if one party to the dispute is not satisfied with the village council of chiefs' decision. The same can happen with area council of chiefs' deliberations, where the dispute is taken to the island council of chiefs.

The *Island Council of Chiefs* noted that a number of new land leases were presenting difficulties, in particular, when leases were registered in Port Vila but with neither consultation at the local level nor the knowledge of the island council of chiefs. They named Leases 1, 2, 4, and 10 as examples of problem leases. The chiefs made reference to misleading statements and fraudulent claims on Custom Ownership Identification Forms. The island council of chiefs has recommended to the minister and the DoL that all new leases should be approved by the island council of chiefs before being registered. However, no action has been taken to date on this recommendation.

“Dipatmen blo lans i mekem registration without stret toktok blong ol jifs se hu nao i stret kastom ona.”

(The Department of Lands registers these leases without the chiefs' consent as to who is the rightful custom owner.)

The Epi Island Council of Chiefs is represented on the National Council of Chiefs, *Malvatumauri*, as determined by the island council. Currently their representative is Chief Peter Norman.

The chiefs present at the meeting affirmed that all chiefs on Epi are appointed by virtue of bloodline (father to son) and if no sons are born, the chief's sister's son can be appointed chief. The chiefs said that there were no women chiefs on Epi and that a chief can decide when to retire and hand over the chiefly title to his heir; however, only one person can hold the chiefly title, that is, it cannot be held by both father and son concurrently.

“Sapos we papa blo yu hemi jif be afta yu kat fulap brata samtaem I no fes bon bae tekem afta lo papa be boe we hemi kat rispek mo hemia we I save lidim komiuniti nao bae hemi jif.”

(If your father is the chief and you have lots of brothers sometimes it might not be the first born who is next in line but the one who has more respect and leadership skills that will determine who the next chief will be.)

The chiefs said that the most common case addressed by councils of chiefs was stealing (because of “laziness”). Resolution of cases of theft was first through providing restitution to the aggrieved person/party and second, compensation to the chief for resolving the case. The second most common case was domestic violence/family conflicts, and the third was reported to be land disputes.

Besides the issues around the registration of new leases (above), the chiefs referred to the problem of descendants of plantation workers (*mankam*), brought to Epi during the colonial period, now claiming to be custom landholders. According to the chiefs, these workers came from the islands of Ambrym, Ambae, Malekula, Paama, and Tongoa. As suggested by Lease

cases 6, 7, and 9, a similar situation also prevails in relation to the descendants of European colonial settlers who married Ni Vanuatu. The chiefs said that they went to Port Vila in 2009 to request assistance from the Customary Land Tribunal Unit (CLTU) but were told that the CLTU had no resources to establish a tribunal on Epi.¹⁴ The chiefs said that they could only resolve these issues through discussion.

Although the island council of chiefs did not refer to any special rules of custom land ownership on Epi, a case from the island court (see box below) provides an illustration of some of the principles used by the court to determine custom ownership of land on Epi.

The Island Court case (Family Mokono v. Peter [2003] VUIC 2; Land Case 01 of 2000 (October 17, 2003)), related to the ownership of Velague land at Lamén Bay, Epi. The claim was based on a family tree, documentary evidence of the sale of the land in 1886, and evidence to show that the claimant was a chief.

In finding against the claimant, the court made the following statement: “The Claimant being a tribesman of the Velague according to the documents does not guarantee him the right in custom to have ownership of the land. Moreover, these instruments cannot be construed to give any absolute right to the claimant. It is fundamentally important that custom or the customary practices, practiced from generation to generations be proved by way of evidence. Hence, the Claimant’s right could only prevail if custom rights are proved. This is the foundation of one’s heritage prior to establishing any customary birth right... The claimant and his witnesses have failed to prove custom for instance, show the Court any undisputed Nasara or Nakamal. The claimant could not also explain the chiefly system practiced on Epi and its linkage to the land tenure.”

In finding the counter claimant to be the rightful owner of the land, the court noted that “their evidence are supported by manmade objects and sites visited during the land visit. The Four (4) Nakamals have been proved before our presence when we visited the pillars of stones used for ordination ceremonies of their Paramount Chiefs. According to the Chiefly system widely practiced in Epi, there is a Paramount Chief who exercises his authority over his subordinate Chiefs (assistant Chiefs). For illustration purposes, it is proved that in Lour, Varamasusu is the Paramount Chief and his assistants are Varawewe and Varalenleng. In the Nasara of Lumuwii, evidence shows that Chief Taritonga has ordained Chief Merai who is also a Paramount Chief. Pillars of stones marking his ordination are in existence and proven to be existing before 1886. It is evident that there is a customary obligation for a Paramount Chief to allocate land to his assistants together with their boundary limits. As a matter of reciprocity a custom lease is normally paid to the paramount Chief. This Chiefly system and the land tenure system are proved to be intertwined. Thus, any isolation or absence of these founding aspects to land would prove an invalid custom.”

¹⁴ The explanation for the absence of CLTs given to another team of researchers visiting Epi was that the principal chiefs on Epi were opposed, as they considered that CLTs reduced their authority.

2.4 Civil Society

Church Women's Group

Reflecting the internal disputes of the National Council of Women, there is currently no Epi island council of women operating. Area councils of women are said to exist, but there is no evidence of their activity. The only women's groups said to be active are the Vanuatu Women's Centre-instigated, violence-against-women groups led by women church members in Burumba and Sara villages.

Church Youth Groups

There is no operational island council of youth. This may change in the future, as the recently established National Council of Youth starts organizing its island membership. Youth meetings are reported to take place through church structures. Youth organizations are reported to undertake fundraising activities (selling fruit, kava, fish, and so forth) to raise money for such activities as the establishment of a guesthouse, travel to youth meetings on other islands, and the purchase of musical instruments for the church.



Figure 4: Big retail store on Epi (above) and villagers observing the research proceedings (over page).



3. Land leases on Epi

Section 3 has four parts. Section 3.1 provides a summary of the land leases on Epi and discusses lease history and lease categories. Section 3.2 provides, where appropriate, a contextual overview of the lease-formation process and various regulations for land leasing in Vanuatu, drawing on the Epi research to report on land-leasing issues. Section 3.3 discusses the potential benefits of leasing (rent, premiums, and so on) and Section 3.4 reports on disputes created by land leasing. There is discussion of key points after each of Sections 3.2, 3.3, and 3.4

Government of Vanuatu national lease data indicates that there are 22 leases on Epi. Hard copy files were available from the Department of Lands (DoL) for 20 leases. A further three leases, for which there were no DoL files, were identified during field research. Therefore 23 leases form the database for the Epi lease analysis. Twenty leases (that is, minus one for no data, one cancelled, and one surrendered) comprise 6,317 hectares and cover approximately 14.18 percent of Epi total land area.



Figure 5: Hearing lease stories on Epi

3.1 Summary of leases on Epi

Table 1 (over page) profiles key information concerning the 23 leases in the study, based both on analysis of the DoL files and interviews conducted in the field with lessees, lessors, and other informants. While the DoL lease files are part of the public record, the names of people have been changed to protect the confidentiality of the respondents and to provide some privacy to the lessors and lessees (see Appendix A: Methodology for more detail).

Table 1: Summary of Epi leases

Lease No.	Hard copy lease?	Custom Owner Identification Form (COIF)	Type	Area (Ha)	Term (years)	Date	Former Colonial Title	Annual Rent per Hectare (Vatu)	Rent Review	Premium Payment (Vatu)	Dispute	Comments & Summary Policy Points
Lease 1	No	No file	Unknown (possibly Special)	6.5 (originally 11 during colonial period)	50	2006-07	Yes	Too high (7m over 3 years) and variable, according to Province ¹⁵	N/A	Unclear	Yes	Govt. To purchase (March 2010) as public land following intractable dispute
Lease 2	Yes	No	Agricultural	115	75	2007	Yes	43 (but probably not paid because lease within family)	N/A	No	Yes	Both lessor and lessee are members of the same family. Lease alleged to have been made in secret and affected the claims of other residents. Appears to have been aimed at claiming land to use for tourist development purposes.
Lease 3	Yes	No	Agricultural (cancelled)	39	50	1987-1990	Unknown	100	N/A	Unknown	Yes	Lease cancelled 1990 (cancellation noted in national leasing database). Rent not paid Lessors applied for and were granted cancellation of lease on the basis that annual rent had not been paid between 1988 and 1990 and that the land had not been preserved, fenced, or generally developed, and the buildings not repaired, as outlined in the lease covenants. This case raises the question of why more dissatisfied lessors do not apply for cancellation of leases for nonpayment of rent or other breaches of lease covenants.
Lease 4	Yes	No	Agricultural	131	50	1980 (registered 1992)	Yes	151	Rent was reviewed after 5 years. Original rent Vt 10 per	No	Yes, between (1) custom claimants and (2) lessees.	Inconsistency within Min. Lands & other agencies regarding recognition of 1991 Supreme Court ruling, and refusal by losing parties to accept court decision. This leads to ongoing disputes, confusion, and lack of quiet enjoyment & development of leased land. Ownership of lease contested by lessees but no consideration given to cancelling lease.

¹⁵ See “comments” section for this lease. As outlined in the case-study profile for Lease 1, Shefa province paid Vt 7 million over three years to the lessor. Partly as a result of additional *ad hoc* demands by the lessor, the province initiated proceedings to purchase the land as public property.

											year.				
Lease 5	No	N/A	Unknown (probably special)	Unknown	64	30	Unknown	1980	Colonial era navigation tower	100 (no longer applicable – see comments)	N/A	No	Yes	Uncertain if the Minister of Lands remains the lessor and if rent has been paid to COTA. Early independence lease agreements (and some more recent lease agreements), required lessees to deliver up lease with all improvements at expiration of term. Telecommunications lease Council of Chiefs recognises lessors. However, one community member has contested the decision since 1980, causing no rent to be received by recognized custom landholders for 30 years. This case highlights the ability of one person to block benefit flow from a project to a group.	
Lease 6	Yes	No	Agricultural	Unknown	64	30	Unknown	1980 (registered in 1984)	Yes	100 (no longer applicable – see comments)	N/A	No	Yes	This case involves a Pre-independence title on which the descendants of the original alienators live. This family has succeeded in varying the lease (in the Supreme Court) such that they became the lessors on the basis of descent from a woman who inherited the right to the (normally patrilineal) land on the basis of having no brothers. The original lessors remain hostile to this outcome, and the case highlights the need for mediation and possible compensation. The case is an example of the broader issue of how <i>kastom</i> recognizes atypical “traditional” arrangements such as <i>mankam</i> . This case also demonstrates how descendants of settlers now married into local families may risk landlessness.	
Lease 7	Yes	No	Agricultural	6 (but 11 during colonial period) Now 6.	50	1980 (registered in 1992)	Yes	479	Yes, raised to 917	No	Yes, raised to 917	No	Yes	In this case there has been no development of the lease, to the dissatisfaction of the custom landholders. This case raises the question of whether transfer of a lease to an heir should be automatic regardless of commitment to develop the lease. This coastal site appears to be a possible case of land speculation.	
Lease 8	Yes	No	Rural Residential	9	75	2007	Unknown	2,666 (but probably not paid as lease within family)	N/A	1,800,000 (but probably not paid as lease within family)	Yes	Yes	Both parties to this dispute claim ownership of the land based on the claims of female descendants of male custom landholders reported to have left no male heirs. It is believed to be an interfamily dispute that the parties have failed to address using local forums.		
Lease 9	Yes	No	Agricultural	63	50	1993 (registered in 2006)	Yes	202	No	No	No	Yes	Initial boundary dispute between custom landholders delayed lease agreement for 9 years. A new dispute developed in 1999–2000 between		

Lease 10	Yes	No	Agricultural	5,343	75	2007	No	200	N/A	Yes	Yes	lessors and another community member, and lessee was ordered to pay rent to Shefa province. Lessee stopped paying rent to province in 2007 due to low copra prices. This raises point about monitoring of payment of rent to trusts in cases of disputed custom ownership.
Lease 11	Yes	No	Agricultural. Lessee tried unsuccessfully to vary lease to "agro-tourism" lease.	539	50 with right of renewal	1987	Yes	203	Following 2003 request by lessors owners, rent was increased from 151/Ha to present rate	No, but lessors have requested that this be addressed	No dispute but lessors unhappy with lack of lease development.	Multiple parties on Epi, including the Island Council of Chiefs, oppose this lease. Too little consultation appears to have been undertaken and no PIA or EIA are available in relation to this 5000 Ha+ lease which has reportedly displaced subsistence farmers. Trust established but (a) women are largely excluded and (b) trust does not protect money for community use and male custom landholders reportedly spent all premium funds. Lease includes provisions that will realistically enable the lessee to renew lease for a further 75 years as long as he pays rent. Lease appears to have been prepared by lessee's lawyer and favors the lessee.
Lease 12	Yes	No	Surrendered Commercial Lease Nos. (see below)	See Lease Nos. Lease 14 – 011	75	1993 – 2007	Formerly part of Valesdir plantation	550	N/A	No	No	A Trust has been established in connection with this lease, but it is unknown if this Trust has ever been audited. Reportedly, promises made by the investor in the company of MP for Epi for hospital, school, and substantive employment benefits never realized. The lack of development of this lease is inconsistent with legal requirements for 75-year leases. Lease is owned by well-known accountant currently held in Australia in relation to money laundering and tax evasion allegations. ¹⁶
Lease 13	Yes	No	Special	9	75	1988	Formerly part of Valesdir plantation	2,222	No review despite request	No	No	The fact that this lease has been surrendered is not noted in the national leasing database.
												No rent review despite reported letter of request.

¹⁶ See, for example, Kate McClymont and Jordan Baker, "The Vanuatu Connection – be Concerned, Federal Police Warn," *Sydney Morning Herald*, April 30, 2008, <http://www.smh.com.au/news/national/federal-police-raid-aussies-in-vanuatu/2008/04/29/1209234862808.html>. Accessed July 2010.

Lease 14	Yes	N/A		Commercial	Approx. 0.71	75	2008		Formerly part of Valesdir plantation	Approx. 4,200 ¹⁷	by lessors.	No	No	Intended for sale
Lease 15	Yes	N/A		Commercial	Approx. 0.71	75	2008			Approx. 4,200	N/A	No	No	Intended for sale
Lease 16	Yes	N/A		Commercial	Approx. 0.71	75	2008			Approx. 4,200	N/A	No	No	Intended for sale
Lease 17	Yes	N/A		Commercial	Approx. 0.71	75	2008			Approx. 4,200	N/A	No	No	Intended for sale
Lease 18	Yes	N/A		Commercial	Approx. 0.71	75	2008			Approx. 4,200	N/A	No	No	Intended for sale
Lease 19	Yes	N/A		Commercial	Approx. 0.71	75	2008			Approx. 4,200	N/A	No	No	Intended for sale
Lease 20	Yes	N/A		Commercial	Approx. 0.71	75	2008			Approx. 4,200	N/A	No	No	Employment benefits per Hectare on this lease are greater than any other lease examined on Epi. The lessees live on the lease and have developed a business that provides benefits and employment for custom landholder families.
Lease 21	Yes	No		Special	< 1	10 with right of renewal	2007		No	40,000 (for less than 1 Ha)	N/A but provision s for automati c increase	Unknown	No	Lease includes 10 year "auto renewal" option with improved rent increase provisions of 12.5% increase upon renewal. Also includes provisions requiring lessee to pay lessor interest at the rate of 12% per year in relation to any late rental payments. This lease highlights the high return of communications leases compared to other leases
Lease 22	Yes	No		Special	24	75	1980 (registre d in 2000 after some difficulties		No	833	Unknown	Unknown	Yes	Possibility that custom landholders did not understand laws giving Min. Lands the right to become lessor and that lease rent would be held in Trust. No information in file concerning dispute-resolution process. Lack of continuity on processing and management of lease possibly caused by lack of personnel continuity within Department of Lands.
Lease 23	No	Unknown		Special	< 1 (probably)	Unknown	Unknown		Unknown	Unknown	Unknown	Unknown	Unknown	-

¹⁷ Note that the average per hectare yearly rental for Leases 14–20 is Vt 4,200.

Lease history

Table 2: Lease History

Lease History	No.
Created from Pre-independence Title	10
Derived from Surrendered Lease that Formed Part of Pre-independence Title	7
Created on Previously Unalienated Land	3
Unknown (No Files)	3
Total	23

The majority of leases studied on Epi were created from Pre-independence titles (10) or, in the case of Lease 12, created from five hectares of a large Pre-independence plantation. This lease was surrendered in 2007 and subdivided into seven smaller commercial leases (Leases 14–20). All the land contained in these 17 leases had been alienated for plantations well before independence; this being the case, there were no stories told of the displacement of custom landholders. Lease 10, a 5,343-hectare cattle-grazing lease registered in 2007, has reportedly caused a loss of gardens and crops.

Table 3: Lease registration date

Year of Registration	Year Lease Backdated to	No. of Leases
1980		1
1984	1980	1
1987		2
1988		1
1992	1980 (both)	2
1993		1
2000	1980	1
2006	1993	1
2007		5
2008		7
Unknown		1
Total		23

The creation of leases from pre-independence titles occurred over the period from 1980 to 2008, some being registered in the 1990s and even 2000 and backdated to 1980. The long lease-creation process was often (six out of 10 cases) due to disputes between custom landholder claimants.

Lease categories

As indicated in Table 1, the 23 leases investigated on Epi fell into the categories of agricultural (8), commercial (8), special (4), rural residential (1), and unknown (2). Further information pertaining to these leases is summarized in the following paragraphs.

Agricultural leases on Epi

Eight agricultural leases were identified on Epi, of which one (Lease 3) has been terminated. This lease was terminated in 1990 at the request of the lessors, who successfully applied for cancellation based on the failure of the lessee to pay rent and develop the lease as per lease

covenants (see Section 3.2.4 for further discussion on this topic). Some key information pertaining to the remaining seven agricultural leases is outlined in the following table.

Table 4: Agricultural leases on Epi

Lease No	Hectares	Lease Term (Years)	Use/Comments	Benefits to Landholders
Lease 2	115	75 (from 2007)	Lease allegedly registered within family for tourism development purposes. In dispute.	Uncertain as family needs financing for development to occur.
Lease 4	131	50 (from 1980)	Former colonial-title. Lessee lives elsewhere. Little information available but lease unlikely to be intensively managed. Dispute history.	Vt 151 per Ha/year rent
Lease 6	64	30 (from 1980)	Used to provide livelihood (including some commercial cultivation) for the descendents of the settlers who held the colonial-era title. This family is now recognized as lessors (landholders) of the lease though marriage ties. Dispute history.	Current lessees now recognized as lessors by court. They benefit through use of property and plan to plant new crops.
Lease 7	6	50 (from 1980)	Part of a former colonial-era title, held by absent lessee. Custom landholders dissatisfied by lack of development.	Rent Vt 917 per Ha/year
Lease 9	63	50 (from 1993)	Former colonial-era title land used to provide livelihood for descendent of colonial era plantation manager. Not intensively managed. Subject to dispute.	Rent of Vt 202 per Ha/year currently not being paid.
Lease 10	5,343	75 (from 2007)	New agricultural lease covering 12% of the best agricultural land on Epi. Coconut oil mill and cattle farm to be developed. Subsistence activities reportedly displaced by development. Subject to serious dispute throughout community.	US \$500,000 premium. Rent Vt 200 per Ha/year.
Lease 11	539	50 (from 1987)	Former colonial-era copra plantation now leased by international investors used mainly for low intensity cattle production. Custom landholders dissatisfied with failure of lessees to develop lease as promised.	Rent Vt 203 per Ha/year; 13 jobs.

As outlined in Table 4 above, few of the agricultural leases on Epi are being used for operating commercially viable agricultural businesses. The large 5,343-hectare cattle lease appears to be intended to support an agribusiness project, and will presumably provide employment opportunities. It is, however, the subject of dispute among custom claimants. Furthermore, although this lease comprises around 12 percent of the island of Epi, financial benefits from the lease are being paid to five (male) custom landholders (acting as trustees) who have reportedly¹⁸ spent the \$500,000 premium without significant benefits to other beneficiaries.¹⁹ The second largest lease, Lease 11, appears to be a viable business, but one operating at a low level of intensity (providing 13 jobs). As with Lease 10, the annual rental payable per hectare is around Vt 200. At these levels of return it is tempting to suggest that landholders could eclipse the benefits presently obtained as lessors by using the land for commercially oriented activities

¹⁸ Such was the interest in this lease that information was provided by a number of informants who were consistent in the allegation that the premium had been spent by the lessors in just seven months. The research team was unable to interview the lessors due to the sensitiveness of the situation. The lessee was contacted and an interview requested, but this invitation was declined.

¹⁹ A sum of \$500,000 invested conservatively over a period of 75 years could generate an additional \$18,000 per year (inflation adjusted).

themselves, although it is beyond the scope of this paper to conduct an analysis of the opportunities and constraints with regard to alternative models of development.

A further four of the agriculture leases have similarities to Lease 10 in that they comprise areas of former colonial plantation land, but are different in that they are no longer used primarily for agribusiness purposes. All of these leases (Lease 4, Lease 6, Lease 7, and Lease 9) are held by descendents of former colonial-era title holders/plantation managers. These leases differ in that two of them (Lease 4 and Lease 7) are held by absentee lessees and are not believed to be intensely managed. The other two (Lease 6 and Lease 9) are occupied by descendents of colonial-era title holders and used to support the livelihoods of the occupiers. Commercial agribusiness activities appear to be at very a modest level. In the case of Lease 9, the level of economic activity carried out on the lease is so minimal that the elderly lessee has stopped paying rent. In the case of Lease 6, the lessees have been determined by the Supreme Court to be the lessors (as well as the lessees) through marriage, although the original custom landholders of the lease have clearly not yet accepted this outcome and still intend to reclaim the lease. The final agricultural lease (Lease 2), meanwhile, appears to involve a questionable claim over land (currently used by other community members) by a family intending to start a tourist operation. Again, this land was a copra plantation title during the colonial period, but was returned to custom landholder at independence.

Commercial leases on Epi

Eight commercial (this classification covers tourism) leases on Epi were included in the study (Lease 12 and Leases 14–20). Of these eight leases, only seven remain registered, as Lease 12 was surrendered in 2007 to facilitate the subdivision of the area into seven smaller leases, together comprising an area of five hectares. They are all intended for sale by the present lessee. One of these leases is the site of a guesthouse that provides direct and indirect employment opportunities for members of the local community.



Figure 6: Epi Guest House

Special, rural residential, and other leases on Epi

The remaining leases on Epi covered by the study consist of four special leases, one rural residential lease, and two leases of unknown type. The special leases include one 24-hectare lease for a school (Lease 22), which DoL files indicate was registered, deregistered, and reregistered (with the minister as lessor) in the course of a legal dispute and uncertainty over custom landholding. The other three known special leases comprise the Valesdir airport (Lease 11) and two telecommunications sites (Lease 21 and Lease 23). The two leases of unknown type (Lease 1 and Lease 5) may both be special leases, because Lease 1 is a 6.5-hectare lease for a public administration site and Lease 5 is the site of a telecommunications installation. The former lease is in the process of being acquired as public land following an intractable dispute between the government and the lessor. The latter lease has been subject to a dispute between custom landholders dating back to 1980.

The rural residential Lease 8 appears to be a case of a family endeavoring to claim and register land for the purpose of developing a tourist enterprise.

“Hemi wantem lisim graon blo mekem investor i kam mo development ples mo givim wok sem taem.”

He wanted to lease the land so that an investor can come and develop the place and provide jobs for the people.

3.2 Issues with land leasing

An overview of the DoL's lease-creation process is provided (boxed below) and then discussed in relation to problems with the land-leasing process identified during the Epi research.

The lease-creation process for rural land begins with an Application for Ministerial Consent for issue of a lease. This application is registered in the Planning Unit of DoL and then goes to the Land Management and Planning Committee (LMPC) for consideration. The LMPC is comprised of the Physical Planning Unit, provincial government, Environment Unit, Land Tribunal Office, and DoL. If the application is approved, a Negotiator Certificate (valid for 12 months) is issued and lease negotiations can proceed. The Negotiator Certificate is signed by the Minister of Lands, names the registered negotiator (potential lessee), and identifies the general area of land of interest (for example, Votlo to Nelson Bay), the type of land (for example, Pre-independence title number or custom land), the approximate number of hectares (exact area subject to a latter survey), the classification of lease requested, and custom landholders (named if already identified or yet to be identified).

When the custom landholders have not been identified on the Negotiator Certificate, a Custom Ownership Identification Form (COIF) (*kastom ona blong kraon*) is either provided to the negotiator or sent to a relevant chief in the nominated area via the area secretary (both options have been identified by DoL). A Public Notice is dispatched by the secretary of the LMPC to the area to notify people of the lease interest and asks the chiefs of the village council to hold a meeting to identify the correct custom holders of the land (sketch map provided). Minutes of the meeting are requested. The Notice recommends that any disputes should be referred to the village land tribunal or joint village land tribunal. The COIF should then be filled out and signed by the chiefs and big men. The COIF and minutes of the meeting are then placed on file at the DoL.

Lease negotiations then proceed, the land is surveyed and submitted to DoL for approval, the negotiator pays fees, the lease is prepared and signed by lessor and lessee, the lessee pays the land premium and advanced annual rent, and the lease is submitted to the Registration Unit for a series of approvals and the minister's consideration. When the lease is approved, stamp duty and registration fees are paid by the lessee and the lease is registered.

Three other Acts appear relevant to the lease-creation process and should be considered by the LMPC when weighing the approval of a Negotiator Certificate.

The **Physical Planning Act of 1986** is administered by provincial governments or, for urban areas, municipal councils. Such bodies can declare Physical Planning Areas and gazette a plan specifying those areas where development applications can be made. No one can undertake a development in a Physical Planning Area without the permission of the relevant provincial government or council.

The **Foreshore Development Act of 1975** states that no development can be undertaken on the foreshore (land below the mean high water mark and the bed of the sea, including the ports, harbors, and land in any lagoon) without having obtained the minister's (responsible for town and country planning—currently the Minister of Internal Affairs) consent.

The **Environmental Management and Conservation Act of 2002** requires that all projects, proposals, or development activities that are likely to cause "significant environmental, social and/or custom impacts" are subject to the requirements for Environmental Impact Assessments (EIA) provisions, in particular, activities that affect coastal dynamic or important custom resources. If a development proposal is subject to EIA provisions, a Preliminary Environmental Assessment (PEA) must be carried out by the ministry/department receiving the application and a report submitted to the Department of Environment and Conservation (DEC) with recommendations on whether or not a full EIA is needed for the project.²⁰

Negotiator Certificates and Custom Owner Identification Forms

Epi research has highlighted some problems with this lease-creation process. Negotiator Certificates, minutes of the LMPC meeting, Custom Owner Identification Forms (COIFs), and minutes of public meetings are kept separately from the land-lease files. JBE efforts to find these documents for Epi in the Planning Unit files resulted in 13 Negotiator Certificates (three for the same area of land), four public notices, four minutes of public meetings, and eight COIFs.

Only three out of the 13 Negotiator Certificates could be matched with the Epi lease files (Lease 1, Lease 8, and Lease 10). It is presumed that the 10 other Negotiator Certificates did not result in registered leases or that if they did, they could not be found in the DoL lease files. One COIF (for Lease 8) was found for the 23 leases investigated on Epi.

As noted in Section 3.2, the majority of leases on Epi resulted from Pre-independence titles and were therefore over land previously alienated and developed for agricultural purposes. For these leases the 2002 Environmental Management and Conservation Act is not relevant. However a Negotiator Certificate was approved by the LMPC for more than 5,000 hectares of custom land (12 percent of the land area of Epi) without any requirement for a PEA on its environmental, social, and/or custom impacts. Application of the Physical Planning Act of 1996 is less pertinent, as no physical planning has occurred on Epi to date and therefore no gazetted planning areas for which compliance is required.

²⁰ For full details see Lunnay et al., "Vanuatu: Review of National Land Legislation," 25-29.

With regard to COIFs, there are a number of issues related to the transparency and validity of the process:

- The COIF process encourages the notion of *individual* owners and thus undermines land holding by custom *group* (with the consequent monopolization of benefits by a few male custom landholders).
- In the absence of minutes of a meeting reporting on consultation with custom landholders, the COIF cannot validate a custom landholder agreement.
- COIFs are often completed by individual chiefs without a meeting.
- COIFs may be completed by people claiming to be chiefs, as there is no process for confirming the chiefs with authority to sign.
- Multiple names and spellings are used by people, making it difficult to track them from one document to another or to identify relationships between people.
- Monetary rewards are allegedly used to encourage chiefs to sign when there is uncertainty or other custom landholder claimants.

Minister of Lands as the lessor

In two lease cases (Lease 4 and Lease 22), the Minister of Lands became the lessor (acting as trustee for the yet to be determined custom landholders) when custom landholder-claimant disputes were apparently unresolved. In the case of Lease 22, the lease file information suggests that the custom landholders did not understand the law giving the Minister of Lands the right to become lessor and providing for rent paid by the lessee to be held in a trust account. The circumstance of the minister becoming the lessor could well have been avoided if there had been better continuity in the management of the lease-creation process in the DoL.

In both lease cases there is nothing on file (and interviews were not possible) to indicate that 18 and 10 years respectively after lease registration the custom landholder dispute had been resolved and the Minister of Lands replaced as lessor. Furthermore, there is nothing to indicate that annual rent has been paid into and preserved in the Custom Owner Trust Fund (COTA) set up for the purposes of receiving rent when the minister is the lessor. It is unknown whether monies in the COTA have been preserved and whether the fund is audited by the Auditor-General and reported to Parliament.

A recent (May 2010) DoL publication: “Process to withdraw funds from the Custom Owner Trust Account (COTA)” states that “customer submits island court or land tribunal declaration to the Lands Department” to begin the process of lease rectification and release of funds from the COTA account.

This implies that custom landholders must be responsible for having the dispute resolved and initiating action to have the minister removed from the lease. However, custom landholders are likely to require assistance to resolve disputes, as Epi does not have a customary land tribunal set up and there is record of only two island court hearings of land disputes on Epi.

Purchase of disputed land for public land

One lease dispute (Lease 1) involving the land on which the Epi subprovince local government-administration buildings are located has been resolved through the compulsory purchase of the land as public land by the government. The amount of compensation to be paid to the former lessor remains an outstanding issue, but a figure of Vt 45 million (\$450,000) has been mentioned in the press (*Vanuatu Daily Post*, March 15, 2010). The custom landholder does not appear to have accepted this figure (*Vanuatu Daily Post*, March 17, 2010).

Understanding of leasing and lease conditions

On Epi it was found that lessors often do not have a copy of the lease and where they do have a copy, there is little understanding of its conditions. This is due both to the lease being in English and to the lack of support to custom landholders to understand the conditions and implications of land leasing. As one lessee commented:

“Pepa blo lis I stap long inglis nomo mekem se lan ona I no save ridim mo andastanem; hemi lukaotem we ples nomo we oli putun amaon blo mani I stap lo hem.”

The lease document only comes in English so the landholder [lessor] can’t read or understand it; they only look for the place where the amount of money is written.

There are standard lease forms for each of the lease types that have a set of standard conditions (See Appendix C for examples of these for agricultural, commercial, and special leases). However, all the standard conditions can be deleted or changed. The research highlighted a number of instances where this has happened.

Lease Term

As indicated in Table 3.5, a lease term of 75 years has now become the common practice (13 out of 23), whereas a period of 75 years was intended at independence to be only for major developments with joint ventures (as discussed in Section 2.1).

Table 5: Lease terms

Lease Term (years)	No.
75	13
50	6 (one right of renewal)
30	1
10	1 (with right of renewal)
Unknown	2
Total	23

Delivering up the lease

Another example involved changing the requirement for delivering up the lease. In all cases except one, where there was a copy of the lease on file, the standard condition applied, that is, the lessee was required to deliver up the lease:

On expiration of the said term or other sooner determination of the lease peaceably and quietly to deliver up vacant possession of the demised land **including all improvements** thereon to the lessor.

The exception to this was Lease 10, where the relevant clause said:

On expiration of the said term or other sooner determination of the lease peaceably and quietly to deliver up vacant possession of the demised land to the lessor **providing that the lessor reasonably compensate the lessee for all the improvements** thereon.

This lease also contains a section on renewal for a further term of 75 years where the lessee has paid the rent and performed and observed the stipulations, in which case the lessor may at his sole discretion rent the demised land to the lessee for a further term. Return of the land to the custom landholder group on expiration of this lease is very unlikely, given the spending practices of the lessors and therefore their unlikelihood of being able to compensate for improvements. In this case, the lessors may have no option but to renew the lease for a further term.²¹

Lease disputes

One lease provision allows for lease disputes to be determined by a Land Referee.

The **Land Referee Act 1983** was repealed and replaced with the **Valuation of Land Act 2002**. This Act vests the Valuer General with the functions previously performed by the Land Referee, such as determination of rent payable for a lease and any reassessment of rent, disputes over the value of improvements, and any matter relating to the interpretation of a provision in the lease (Sec 5).

Despite the number of lessors (for example, Lease 7, Lease 9, Lease 11) that were dissatisfied with the lessees not developing the land or keeping promises of employment, there was only one lease (Lease 3) that had been cancelled. This followed the lessors applying for a determination from the Land Referee regarding nonpayment of rent and the land not being preserved, fenced, or generally developed as required in the lease covenants.

Transfer and sale of leases

Not only have lessees of Pre-independence plantations failed to maintain, let alone develop, the land for economic purposes, they have *transferred* the lease to children who live away from Epi. Rents are very low (commonly Vt 150–250 per hectare per year or less), and it is difficult not to conclude that the leases are kept only for speculative purposes, costing the absentee lessees little to keep.

More recent regulations require benefits to be paid to the lessor when the lease is sold.

The Land Leases (Amendment) Act No. 5 of 2007 states that:

(2) If a proprietor of a registered lease sells that lease, the proprietor must pay to the lessor, not more than 10% of the difference in amount between the unimproved market value of the land at the

²¹ In relation to leasing practices more broadly, an interview with a real estate agent undertaken in Port Vila in July 2009 suggests that shrewd real estate agents are committed to including clauses in leases that require lessors to either compensate (in this case expatriate) lessees for improvements at the expiration of lease terms or renew the leases (potentially for a further 75 years). One of the main concerns of investors, noted this real estate agent, is “what happens after 75 years?” The “compensation clause” is seen as a way of addressing this in the knowledge that lessors will rarely have the financial management skills to arrange for compensation for improvements.

time it was purchased and the unimproved market value of the land at the time of the present sale, unless the lessor and lessee have entered into another arrangement.

Leases 14–20 are small commercial leases that are intended for sale. When these sales occur, the lessor should receive the payment specified in the Act unless other arrangements have been made. We do not know what arrangements, if any, have been made between the lessor and lessee of leases 14–20.

Discussion

The Epi research raises a number of questions regarding how the lease process can be improved. These are discussed below.

The application to lease land starts with the LMPC consideration of whether to issue a Negotiator Certificate. The question arises as to how this process could be strengthened so that the potential environmental, social, and/or custom and gender impacts of a development are given full consideration as per the Physical Planning Act, the Foreshore Development Act, and the Environmental Management and Conservation Act.

If a Negotiator Certificate is approved for a given area of land, the question arises as to the support that should be given to custom landholder groups, including women and youth, in that area to fully understand the implications of leasing their land, the rights and responsibilities of lessors and lessees, and what alternatives they may have to develop the land themselves.

If a custom landholding group, including women and youth, make an informed decision to lease its land, the question arises of what legal advice they should have access to ensure the group understands and negotiates the lease covenants and decides on benefit-sharing arrangements prior to signing the lease.

A COIF is a formal requirement of the lease-formation process. The question arises as to how this process can be improved to ensure that discussion occurs and agreement is reached within and between custom landholder groups with rights in the land under lease consideration. The island council of chiefs should play a significant role in responding to this question, as they regard themselves as a body that has the knowledge and respect to correctly identify custom land owners.

Once a lease is registered, the covenants of the lease should be enforced. This raises the question as to who has responsibility for lease compliance. If the lessors are responsible for enforcing covenants, such as development conditions, rent reviews, environmental protections, lease transfer or sale, and so forth, there is a question of the support that lessors will need to enforce the covenants pertaining to their lease in order that they gain maximum benefit from the lease for the custom landholder group they represent.

The removal of the Minister of Lands as lessor from a lease and access to funds held in the COTA requires evidence that the dispute that led to the minister becoming the lessor is resolved by an island court or customary land tribunal. However many lessors are unable to access these courts due to cost or unavailability. This raises the question as to whether the DoL should be

supported to actively resolve all outstanding lease cases where the Minister of Lands is lessor, and to regularize the lease between the correct custom landholders and the lessee.

3.3 Benefits of leases

This section examines potential benefits to lessors and the broader community through leasing. These include annual rents, lease premiums, employment opportunities, and the transfer/sale of leases.

Land lease rents and rent reviews

Table 6 provides the annual rent payment per hectare for each of the leases investigated.

Table 6: Epi rents

Lease Type	No.	Rents (Vt) per Hectare/Year	Average Rent Vt
Agricultural	8	43, 100, 100, 151, 200, 202, 203, 917	239.50
Commercial	8	550, 4,200 (average of 7 similar leases)	3743.75
Special	4	833, 2,222, 40,000, one unknown	14,351.67
Rural Residential	1	2,666 (within family)	2,666
Unknown	2		
Total	23		

Average vatu rents per hectare are very low for agricultural leases, including those made from Pre-independence titles. Even the 2007 agricultural Lease 10 pays an average hectare rent of just Vt 200 per year. There is insufficient information to determine rents as a percentage of unimproved land value; however, one valuation document sighted for agricultural land put rent rates at 0.15 percent of land value. Commercial leases on Epi are smaller in area and pay more rent per hectare than agricultural leases even when commercial ventures have yet to be developed. Special leases highlight the high return from telecommunication towers compared with other lease types. Furthermore, because telecommunication towers require only a small land area and tend to be located in high and remote areas, they are less likely to displace people from their gardens and crops.

Table 7: Rent reviews

Rent Review	No.
Yes	3
No	2
Not due (lease less than five years)	11
Not applicable (cancelled, surrendered, within family)	4
Unknown	3
Total	23

Five yearly rent reviews are stipulated in all lease agreements and can be activated by either the lessor or lessee. In the three leases (Lease 4, Lease 7, and Lease 11) where the rent had been increased, the process was *ad hoc* and no formula for the rent increase was used. Two of the leases date back to 1980 and the other to 1987, so technically, a number of rent reviews should have occurred during the lease period.

Only one lease (Lease 21) for a communications installation had an auto-renewal option clause that included a rent increase provision of 12.5 percent upon renewal of the lease. This lease also

included a provision requiring the lessee to pay the lessor interest at the rate of 12 percent per year on any late rental payments.

Lease premiums and lessor trusts

No premiums were paid for leases created from Pre-independence titles in the Epi study. Amendments were made to the Land Leases Act in 2007.

The Land Leases [CAP 163] (Amendment) Act No. 5 of 2007 commencing September 10, 2007 requires that:

(2) A new lease is not to be issued unless the lessee or the registered proprietor pays to the lessor a premium based on the full rental value of the unimproved value of the land as determined by the Minister from time to time and the contract rent as agreed to by the lessor and the lessee.

(6) For the purposes of this section, the premium is to be calculated based on the full rental value of the unimproved value of the land and the annual contract rent as agreed by the lessor and the lessee.

Two Epi lease documents came under this new legislation regarding premium payments. The first (Lease 8) is a premium to be paid in installments, but as the lease was made between family members aspiring to develop a commercial venture, it is unlikely that this was paid.

The second (Lease 10) is the only known lease premium to have been paid based on interview data. This was for a new lease on 5,343 hectares on previously unalienated land. The custom landholder claimants (five men) created a trust that is the lessor in the lease document. The constitution of the trust states that trustees want: “to protect and firstly serve our interest and the interest of our children and their future,” “to manage and develop our land for durable prosperous benefits of our community,” and “to set up a trust that will manage the interest of the people of this particular land.” Despite the trust and its stated intentions, the interests of the beneficiaries would not appear to have been well protected and the approximately \$500,000 paid as a premium was reportedly spent within seven months.

The trust constitution specifically privileges male customary landholders in that it states that “priority rests with male customary land owners,” “seniority of membership is determined first from the eldest generation of the male customary land owners flowing down to the latest male generation,” and “in the event of and for any reason the trust is dissolved the balance of its assets shall be distributed equally between the first male generation of the customary land owners.” The trust constitution requires the keeping of accurate accounts of all financial transactions of the trust and that the trust is audited by an auditor approved at the previous annual general meeting.

Lease 11 also has a trust established in connection with the lease.

Information²² from the Vanuatu Financial Services Commission determined that the two Epi lease trusts are not registered under the **Trust Companies Act [CAP 69]**.²³ The trusts are more likely to be private *inter vivos* trusts, which can be established relatively easily without any need to register and therefore with no public disclosure requirements. Under private trusts the trustees have the legal ownership and can thus deal with the assets. The trustees are supposed to act only in the interests of the beneficiaries, but enforcement mechanisms would appear to be weak in practice.

Employment

The lessors of Leases 7, 9, and 11 all claimed that they had been promised by the lessees substantial employment benefits through lease development. Other than cattle farming on Lease 11, providing employment for 13 persons, these promises have not been fulfilled.

The large 5,343-hectare cattle lease (Lease 10) is nominated as an agribusiness project and will presumably provide employment opportunities, but the land is still being cleared. There is also discussion of a coconut oil processing plant being developed on this lease that could encourage investment in defunct coconut plantations on Epi and elsewhere.

Lease 20 has a guesthouse that provides greater employment benefits per hectare than any other lease examined on Epi. The lessees live on the lease and have developed a business that provides direct employment (house-help, cooking, gardeners) and indirect employment opportunities (tourist activities provided by lessor and family) to the custom landholder family.

Lease benefits and women

Although the Vanuatu Constitution incorporates nondiscrimination, Article 74 states that “rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu.” Epi is a patrilineal society where land is passed from father to son and it appears from the Epi research that women’s rights in land are not adequately considered in the leasing process.

Table 8: Leases and gender

Land and Gender	Lessor	Lessee
Male	22	12
Female	0	2
Joint Ownership	0	7
Unknown (no files)	1	2
Total	23	23

As shown in Table 8, there were no women listed as lessors on any lease file sighted. This underscores the practice of men being identified as “custom owners” in the lease-formation process and then becoming the recipients of any lease benefit payments. Furthermore, rights that women do have to use the land for gardens and crops can be jeopardized when the land is leased.

²² Interview with Toka Edmond, Liquidation Legal Officer, Vanuatu Financial Service Commission, May 21, 2010.

²³ The VFSC administers the registration and operation of trust companies. If a company wishes to provide trust services as its business, it needs to register as a trust company under the Trust Companies Act [Cap 69]. This Act does not cover the registration of trusts generally and, in particular, private *inter vivos* trusts. Vanuatu has a general Trustee Act that is based on the 1925 United Kingdom Act and very outdated. This Act covers trustee duties generally but does not provide for registration (information provided in private correspondence with Terry Reid, ADB Private Sector Development Initiative, Pacific Liaison and Coordination Office).

Lease 10, for example, has reportedly displaced people from gardens and crops, though the lessors claim the land was bush. As previously noted, many of the leases on Epi stem from Pre-independence alienation of land, so it is the older generations of women that experienced loss of land for gardens and crops.

Two women were named as lessees on lease documents. Both had inherited the lease from forebears who held Pre-independence titles. Neither woman lives on Epi. One Australian woman was a joint lessee with her spouse on seven commercial leases.

In one case (Lease 8) both parties to a dispute claimed to be custom landholders based on women's custodial right to the land when there were no male heirs. This was understood to be an interfamily dispute that the parties had failed to take to the local chiefly forum.

“Graon ya I blong mummy bong mi from hemi no kat ol brata, sipos mifala I wantem mekem wan samting long hem mifala mas askem hem fastaem.”

The land was given to my Mother because she had no brothers, so it is her land and if we want to work on it we have to ask her first.

Discussion

The Epi research raises a number of questions on how lease benefits can be improved and these are discussed below. Discussion points in Section 3.2.5 regarding custom landholder groups being supported and empowered to make informed decisions on land leasing are also relevant to improving the benefits for those who do decide to lease land.

The Epi research highlights the power imbalance between lessors and lessees at many levels but significantly when it comes to rent, rent reviews, and premium payments. This raises the question of how to empower custom landholder groups to negotiate these terms of a lease. One option is for the government and private sector to jointly agree on the determination of minimum rent values for unimproved land for all lease categories and ensure that these are publicly and widely distributed.

The trusts set up by land lessors on Epi fall outside any legal requirements for registration and public disclosure. Rather, they are private arrangements created by mutual agreement between the lessors. This raises the question of how custom landholder groups are to benefit from premium and rental payments for land that has been alienated by a single or small group of custom landholder claimants (the lessors). The need for properly managed and accountable trustee arrangements that enable wider benefit sharing from leasing arrangements is especially important given the trend towards large initial premium payments. Consideration could also be given to setting aside a compensation fund managed by and for women whose access to land for gardens and crops has been compromised.



Figure 7: Lease Interviews



Figure 8: Discussing a lease dispute

Land is our mother as it gives us food and we can talk so much about it but it is difficult. This is because chiefs are closer to the people, yet they are not given the power to make decisions. That is why even if we put land tribunals in place, it still does not work because decisions made through land tribunals are sometimes biased. We should put in place a system where chiefs have the power to make decisions. If chiefs have the power, then whenever there is a court case, it can always be referred back to the chiefs to resolve. **(Billy Bakokoto (*Ifira Councilor*), Shefa Provincial Councillors Meeting, May 2010)**

3.4 Lease Disputes

Table 9 (over page) provides a profile of disputed leases.

Table 9: Profile of disputed leases

Lease	Type of Dispute(s)	Was Caution Placed Y/N	Village Council of Chiefs	Area Council of Chiefs	Island Council of Chiefs	Customary Land Tribunal	Magistrate Court	Supreme Court	Office of the Valuer General/ Land Referee	Minister is Lessee	Comments
Lease 1	Dispute over rent resulting in compulsory acquisition by state	No	Unknown	Unknown	Unknown	N/A	Unknown	Unknown	Unknown	No	A value has been determined and intention of compulsory acquisition indicated by state
Lease 2	Registration of lease excluding other community members.	Yes	No	Yes	No	N/A	No	Intended	No	No	Key information (Custom Owner Identification Form) unavailable from DoL.
Lease 3	Dispute between lessors and lessee over nonpayment of rent and (un)fulfillment of lease conditions.	No	No	No	No	N/A	No	No	Yes	No	Land Referee Office (now Office of the Valuer General) approved application for forfeiture of lease based on grounds outlined under "type of dispute."
Lease 4	1. Custom landholder dispute 2. Lessee dispute	Yes	Yes	Yes	Yes	N/A	No	Yes	No	Yes	Custom landholder dispute determined by Supreme Court. Lessee inheritance dispute resolved Custom landholder dispute reemerges
Lease 5	Disagreement among custom landholders and exclusion of 2 custom owners from lease and subsequent benefits.	No	Yes	No	No	N/A	No	No	No	No	DoL reported to have registered lease in the name of only 1 custom landholder when 3 were allegedly identified on COIF (unsighted). Dispute not pursued as benefit distribution perceived to be within wider family group.
Lease 6	Dispute over custom landholding.	No	Yes	Yes	Yes	N/A	No	Yes	No	No	Determination of Supreme Court in which the names of the original lessors were removed from the title and replaced with the original lessees (now as lessors) is disputed by the original lessors.
Lease 8	Two parties claim descent from a female	Yes	Yes	Yes	Yes	Intended (but does	No	No	No	No	Both parties to this dispute claim custom landholding

	ancestor with no male heirs. One party has registered the land and this is disputed by the other party.	No	Yes, on 2 occasions in relation to initial dispute, as the case was returned by Area Council to the village level for resolution by independent elders	Yes	No	N/A	No	No	No	No	not exist on Epi)						based on female descendants of male custom landholders reported to have left no male heirs. It is believed to be an interfamily dispute which the parties have failed to address using local forums.
Lease 9	Initial dispute was boundary dispute between custom owners. Current dispute is between lessors and another community member claiming to be custom owner.	No													No	No	Initial boundary dispute between custom landholders delayed lease agreement for 9 years. A new dispute developed in 1999–2000 between lessors and another community member, and lessee was ordered to pay rent to Shefa province. Lessee stopped paying rent to province in 2007 due to low copra prices.
Lease 10	Many claimants excluded from consultation process and lease benefits.	Yes, a caution was placed due to dispute over a part of the land comprising this lease. This is significant because the disputed land has gone through multiple dispute resolution forums. Significantly, the land subject to this dispute appears critical to the basis of the claim to custom landholding of	No	No	No	N/A	No	No	No	No					No	No	Multiple parties on Epi, including the Island Council of Chiefs, oppose this lease. Too little consultation appears to have been undertaken and no PIA or EIA completed in relation to this 5000-Ha plus lease which will displace subsistence farmers. Questions regarding registration of this lease when a case concerning the lease area had reached the Supreme Court but not yet been determined.

Lease 22	This case has been characterized by (1) an administrative conflict over the legal status of the lessor and (2) a custom owner conflict.	one of the lessors of this lease.	No	Unknown	Unknown	Unknown	N/A	Unknown	Yes (administrative matter)	No	No	Dispute between custom landholder claimants resulted in Minister of Lands becoming lessor. Claimants both signed agreement for Minister to become lessor, but one claimant later told DoL that he did not understand what he was signing.
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Typology of lease disputes

As summarized in Table 10 below, 10 of the 23 leases examined for Epi were found to have been subject to disputes. Custom landholder-claimant disagreements were the most common form of dispute in the transfer of Pre-independence titles to leases. This situation has not changed in the alienation of new land for leasing. In the case of Lease 2, Lease 8, and Lease 10, all registered in 2007, there are custom landholder-claimant disputes. All three leases subsequently had cautions placed on them by other custom landholder claimants. A caution is only valid for one month to stay any dealings on the lease while the cautioner prepares papers and so forth to take the case to court. Another caution can be placed with the payment of the appropriate fees. The lease file documents do not show any renewal of the original cautions placed on these three leases.

Table 10: Typology of lease disputes

Disputants	No.
Custom Landholder-Claimant Dispute	6
Lessee Dispute	0
Both Custom Landholder-Claimant and Lessee Dispute	1
Between Lessor-Lessee Dispute	3
No Disputes	13
Total	23

Six of the eight agricultural leases have been or are still subject to disputes and in the case of the remaining two agricultural leases, custom landholders have expressed frustration concerning the lack of development of the leases by the lessors. Agricultural leases appear to be associated with a surprising level of social discord, while at the same time, the benefits accruing to local communities (with the exception of those few representing custom landholders) appear minimal.

“Man ia hem i no blong ples ya, hemi kam askem mi mo mi letem graon long hem blong I wok long hem be afta hem kerap hem ko lisim graon ya.”

That man is not from here, he came and asked me to let him plant on my land so I said yes, but then he went and leases that land.

Disputes between lessors and lessees were resolved in more decisive ways. One (Lease 1) was resolved by the compulsory acquisition of the land by the government, another (Lease 3) involved (unchallenged) lease cancellation, and a third (Lease 6) resulted in a Supreme Court decision to replace the lessors' names with those of the lessees.

Dispute-resolution forums

The dispute forums identified through lease files and by informants were the village, area, and island councils of chiefs, magistrates' court, and the Supreme Court. No island court cases were found on file or discussed by informants, although there are two Epi land cases recorded in the island court records. No customary land tribunals have been conducted on Epi.²⁴

²⁴ The JBE research team was informed that this was due to a lack of government funds to set up the customary land tribunal (CLT) infrastructure. However, the explanation for the absence of CLTs given to another team of researchers visiting Epi was that the principal chiefs on Epi were opposed, as they considered that CLTs reduced their authority.

“Mifala I askem blo gat lan tribunal be olgeta lo Vila se I nogat mani blo olgeta I kam.”

We asked to have the land tribunal here but the reply from Vila was that there was no money.

Table 11 indicates the number of forums land disputants access. Commonly the Epi councils (village, area, and island) of chiefs will be the first forums attended; four disputes went no further than the island council of chiefs. Three custom landholder-claimant disputes went to the Supreme Court and one custom landholder claimant intends taking his case to the Supreme Court.

Table 11: Number of dispute-resolution forums used

No. of forums used	Frequency
0 or unknown	2 (1 was a cancelled lease)
1 forum	3
2 forums	1
3 forums	1
4 forums	3
Total	10

Custom landholder-claimant disputes are frequently heard by councils of chiefs but remain unresolved largely due to the chiefs having no formal authority to enforce their decisions. The dispute may be taken to the Supreme Court if one party has the means to do so, but even then the losing party may not be aware of or accept the outcome, as was the case with Lease 6. There is also an example (Lease 10) of an impending Supreme Court case being overlooked when a lease was registered, though the dispute involved one of the subsequent lessors. In another case (Lease 22), the DoL was unaware of a Supreme Court decision concerning the legal status of a lessee when it was making decisions regarding the lease.

Disputes could travel through multiple dispute-resolution forums due to the losing party not accepting the outcome of the particular council or court. Even in the two cases that reached the Supreme Court (Lease 6 and Lease 4) there has been no closure on the dispute. In the case of Lease 6, the descendants of the Pre-independence title holder have succeeded in having the names of the lessors removed and replaced with the name of one of their family members, effectively making them custom landholders. This court judgement was based on a marriage to a Ni Vanuatu woman who inherited the right to the land (normally patrilineal in Epi) on the basis of having no brothers. The original lessors remain hostile to this outcome.

Discussion

Conflict resolution is characterized by disputants pursuing the issue through multiple forums. Island councils of chiefs represent a locally legitimate forum for the resolution of custom landholder disputes, yet they do not have sufficient authority to ensure that decisions are enforced. Moreover, there are no measures to ensure that the deliberations of island councils of chiefs are considered by the formal courts if and when they subsequently hear the same cases. This results in uncertainty and encourages “forum shopping” in order to gain the most advantageous outcome.

This raises the question of how the role of the island and area councils of chiefs in custom landholder-claimant disputes can be strengthened. Because the island councils cannot enforce their land decisions, the losing party regularly proceeds to have the case heard in the formal court system (as is the case with Epi, where no customary land tribunal has been established).

However, if lease registration could proceed only with the island council of chiefs agreeing that the correct process of identifying custom landholders has been followed, this would strengthen their role in the lease-creation process, reduce substantially the number of controversial leases, and settle more cases at the island level where the parties reside.

In the case of land claimants who long ago came from other islands and those who are descendants of colonial-era settlers who married Ni Vanuatu, there is a difficult question of rights to custom land. Do they have rights to custom landholding through marriage and if so, what sort of rights? These cases highlight the difficulties that can ensue once a dispute is “finally” resolved by the courts. Questions thus arise as to how the rulings of the formal justice system might be transformed into durable settlements on the ground.

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Appendices

Appendix A: Methodology

The JBE action research approach is designed to support and inform an enhanced pluralist process through generating research findings, which are then presented to the JBE Research Reference Group (JBERG) comprising representatives of civil society and government. Based on the approach outlined in Section 1 of this report, it was decided to select two islands for the initial round of “island studies,” and to undertake an investigation that would be sufficiently broad to reflect a range of research priorities outlined in the PFD and discussed in the introduction (that is, profiling of leases, analysis of lease disputes, principles of customary tenure—as they have an impact on leasing arrangements and equity, benefit-sharing arrangements, women’s role in decision making and dispute resolution, legal empowerment needs, and so forth).

It was decided that the two most developed islands (Efate and Santo) would be excluded from the initial selection so as to not overburden the research teams during the initial application of the methodology, and also to enable JBE to gain an understanding of land-leasing realities in the outer islands. Accordingly, Epi was chosen because of its history, along with Efate, Santo, and Malekula, as the site of commercial agricultural activities and because Shefa province views Epi as a suitable site for the development of commercial agriculture. Tanna was chosen because of its standing as a tourist destination as well as the site of some primary industry investments, because of opposition to expatriate investments in some areas (notably “Blackman Town”), and because of its location to the south of the Vanuatu islands. Including both Epi and Tanna in the first selection of research sites was intended to ensure that different sociocultural systems were included in the initial sample. The research in Epi was conducted in March 2010 and research in Tanna is planned for the August 2010 period.

The research team (comprising two consultant researchers Rae Porter and Rod Nixon; one Vanuatu land and culture specialist Douglas Kalotiti; and three research assistants Brigitte Olul, Wilkins Binihi, and Kingsley Baraleo) aimed to investigate every lease on Epi, although absent lessors or lessees prevented interviews from occurring in several cases (for example, Lease 4). In other cases (Lease 1, Lease 2, and Lease 10), it was decided not to approach some individuals due to the sensitivity of these leases at the present time, although other parties were interviewed in each of the cases mentioned. In the case of the 5,343-hectare cattle Lease 10, an attempt was made to interview the representative of the lessees in Port Vila; however, this individual declined the request for an interview. In four other cases (Lease 3, Lease 21, Lease 22, and Lease 23), weather conditions prevented interviews with relevant respondents, as the weather was too rough for travel to be undertaken by boat, as required. In cases where interviews were unable to be made, analysis of leases has been made based only on the contents of DoL leasing files (where this information exists). Detailed information concerning the sources on which each lease profile is based is included in Appendix B of this report, and is presented in summary form in the following table.

Table 12: Summary of sources of information on Epi leases

Lease No.	Lessor(s) interviewed	Lessee(s) interviewed	Other informants interviewed	Use of Dept. Lands Files*	Notes
Lease 1	No (sensitive)	No (sensitive)	Island Council of Chiefs DAO	No	
Lease 2	No (sensitive)	No (sensitive)	Disputant/Chief	Yes	Intrafamily lease and in dispute
Lease 3	No (inaccessible due to weather)	No	N/A	Yes	
Lease 4	No (absent)	No (lives in Noumea)	N/A	Yes	
Lease 5	Yes	No	N/A	No	
Lease 6	Yes	Yes	N/A	Yes	
Lease 7	Yes	No (absent)	N/A	Yes	
Lease 8	Yes	Yes	N/A	Yes	Intrafamily lease in dispute
Lease 9	Yes	Yes	Provincial Govt. Official	Yes	
Lease 10	No (sensitive), but a relative of one lessor was interviewed	No (refused interview request)	Island Council of Chiefs; Disputants; Shefa Councillor (for Epi)	Yes	Respondents were consistent their reports of the premium being spent by the lessors in a short period of time.
Lease 11	Yes	No (lessee held in Australia on tax charges)	Plantation Foreman (who is also related to custom landholders)	Yes	
Lease 12	Yes	Yes	N/A	Yes	Surrendered commercial lease
Lease 13	Yes	No	N/A	Yes	
Lease 14	Yes	Yes	N/A	Yes	
Lease 15	Yes	Yes	N/A	Yes	
Lease 16	Yes	Yes	N/A	Yes	
Lease 17	Yes	Yes	N/A	Yes	
Lease 18	Yes	Yes	N/A	Yes	
Lease 19	Yes	Yes	N/A	Yes	
Lease 20	Yes	Yes	N/A	Yes	
Lease 21	No (inaccessible due to weather)	No	N/A	Yes	
Lease 22	No (inaccessible due to weather)	No	N/A	Yes	
Lease 23	No (inaccessible due to weather)	No	N/A	No	

* "No" means no file information available; "Yes" means some information available

Where lease-specific interviews were possible (the majority of cases), the interview process was based around capturing the narrative of the leasing story, where feasible from different perspectives. Interviews were only conducted when the respondents were willing to share their stories and to see them recorded on butcher's paper and in research team notebooks. The research team was equipped with sheets of butcher's paper and colored markers to enable time lines of events to be depicted and maps of leases and chiefly boundaries to be drawn by respondents, and a checklist was used to ensure that the narrative format of the interviews covered all required areas.

The checklist (a summary version of a longer variant that team members had studied) included the following content and referred to the following lines of inquiry:

Preliminaries

Confidentiality—respondents were informed that their names would not be used in the compilation of data from the research.

Part 1: Confirming the lease data

Names and sex of informant(s)

Details of Lease

Part 2: The motives for the lease

(the story of why this lease was developed—who started the process and why)

Time line

Previous use (what for, who)

How did lease start and who initiated it

Year process began

Discussions within custom landholder group (if so, who was involved and what was agreed)

Objections

Role of money, payments, and promises

Part 3: Process of acquiring the lease

(the steps for getting the lease document registered)

Was it clear which chiefs had authority over the land—MAP

Source of authority of chiefs (appointed, traditional, other)

Did chiefs facilitate discussion

Use of maps and site visits

Future generations

Process for deciding custom landholder (agreements/disagreements)

Discussion about lease provisions (No. of years, premium, annual rent, subdivision of the land, special access conditions, joint venture, lease renewal provisions, and so on)

Benefit distribution discussion

Women's involvement in discussions

Was a committee or group formed (members?)

Was any agreement signed prior to the lease

Did anyone from the government (provincial government, survey department, Valuer-General, DoL) provide information about the lease to the custom landholder group or nominated landholder(s)

Did the proposed lessee come to discuss the lease before it was signed/registered

Did custom landholder group seek legal advice

Was there ever any threat that the Minister of Lands would sign the lease if there was a dispute
Special access provisions

If lease registered after 2000, was a PIA done? If so, was an EIA required? If so, was this completed? Results?

If the lease was after 2006 (Land Summit), was there a custom landholder group meeting? Were minutes of the meeting attached to lease application?

Part 4: Experiences *after* the lease was registered

Do custom landholders have a copy of the lease

Are conditions of the lease good or no good

What benefits have been received from the lease (including rent, employment, training) and how have they been distributed

Have Vatu from premium payment and rent payment been spent in a way that is good for families and children

If the lease is older than five years, have there been lease rent reviews

Are the conditions of the lease being maintained? If not, what actions have been taken?

Were there any joint-venture arrangements

Employment opportunities

Disputes over lease?

Transfer and/or subdivision requests?

Part 5: Local governance aspects

Role of: chiefs, church, area secretaries, role of provincial government

Describe any disputes that may have occurred with any of the above parties and how they were addressed

Part 6: Women and livelihoods

Use by women of land before lease

Were women consulted regarding lease

Did women/others lose access to economic resources and if so were they compensated

Were there disputes and how were they resolved

Part 7: Final questions

How do people receive information generally

Are there other land disputes that do not involve a lease?

To obtain a broader perspective of land leasing on Epi as well as information on governance and civil society aspects, the team met with the island council of chiefs, the Shefa province District Administration Officer for Epi, a former Shefa province area secretary for Vermaul (who also

served as driver) and a current, recently appointed area secretary for Vermaul (who accompanied the team much of the time). Unsuccessful attempts (frustrated by weather conditions) were made to interview representatives of women's organizations.

The data from interviews was in most cases recorded by multiple team members, and most of the case-study outlines were jointly written up by the whole team. This approach maximized the training value of the research for the contracted research assistants and also reduced the chances that any information would be overlooked or wrongly interpreted. The report notes where information used by the authors is drawn from interview respondents through terms such as "alleged," "allegedly," and "reportedly."

Appendix B: Profile of leases on Epi

Lease 1

Type	Unknown - no lease file data	Agricultural indicated on Negotiator Certificate
Lease Date		Possibly 2006
Lease Term		
Rent/ Vt Year	Unclear—see notes below	
Hectares	11.5 of Shefa subheadquarters	Larger Pre-independence title 483 Ringdove was applied for according to Negotiator Certificate but to exclude Shefa subheadquarters but possibly the lease was granted for all the land including the Shefa subheadquarters
Lessors	Mr. X	
Lessees	Mr. Y	

Pre-independence story

During the colonial period the land was used for plantation administration purposes by the Naturel Company. It appears to be part of the land known as Ringdove.

Post-independence

In 1983 the land was used to set up the offices for the Epi local government. In 2005 the Epi office for the Shefa provincial government occupied the buildings.

In 2005 a Negotiator Certificate was issued (and extended for another 12 months in 2006) to Mr. Y for the land known as Ringdove, Pre-independence title 483. The land area is stated as 483 hectares (but this may be an error, as it is the same as the title number) *excluding* Shefa subheadquarters. It appears that in 2006 a lease was made between Mr. X (lessor) and his son Mr. Y (lessee), but there is no lease file data to confirm this or to indicate whether the lease included or excluded the land of the Shefa subheadquarters.

In 2007 a sublease or agreement was reportedly made between Shefa province and Mr. Y. Shefa province subsequently requested that the lessee transfer the lease to the government; however, the lessee is refusing to do this. Shefa province has requested the Minister of Lands to declare the land as public land.

One of the reasons why Shefa province wants the land to be declared as public land is because it paid Vt 7 million to Mr. Y between 2006 and 2008. The province ceased payment in 2008 after allegedly paying Vt 100,000 per month for the site. Mr. Y at this time locked the buildings and demanded money. This is why extra money was paid amounting to a total of Vt 7 million between 2006 and 2008. The last time Mr. Y came to the site was in 2007, when he frightened people with a loaded rifle. At this time, Mr. Y was reportedly beaten, his rifle was destroyed, and police came and took him to Port Vila.

According to the *Vanuatu Daily Post* (March 15, 2010) the Minister for Internal Affairs, Moana Carcasses, has instructed the Ministry of Lands to compulsorily acquire the land for the Shefa

province Sub-District Office. Secretary General Michel Kalwoari has valued the land at Vt 45 million. The newspaper reports the landholder of Rovo Bay to be Fred August.²⁵

In a further article in the paper (*Vanuatu Daily Post*, March 17, 2010) concerning this matter, a writer identifying himself as Fred said that the negotiation process was in fact continuing and that the amount of Vt 45 million had not yet been agreed. Fred suggested that Secretary General Kalwoari may have been referred (in relation to the Vt 45 million) to an outstanding payment owed by the Shefa provincial government to the custom landholder(s).

Note that the research team is unsure whether Fred August is the same person as Mr. Y (lessee); however, both names are associated with the Rovo Bay site.

Specific policy points

- Land disputes can generate real threats of violence.
- Uncertainty over whether a lease was registered over the entire Pre-independence title area even though the Negotiator Certificate specified the exclusion of the Shefa subheadquarters.
- This case study illustrates the length of time taken for land to be acquired for public purposes and the difficulties (transparency, amount of compensation, and so forth) inherent in this process.
- Land valuations are disputed, and while the basis for compensation demands may sometimes seem unreasonable, they are less so when one considers that land premium payments are commonly spent so rapidly. This is perhaps less a justification for excessive compensation payments than an argument in support of robust funds for managing compensation payments.

²⁵ See “Land Acquisition (Statutory Orders) [CAP.215]” and “Public Notice to Custom owners of and persons interested in the land known as Rovo Bay, where the Shefa Province Sub centre is located, being the whole of the land described by registered survey plan Lease 1,” *Vanuatu Daily Post*, March 12, 2010. This notice outlines the clear intent of the Director of Lands and the Minister of Lands to acquire the land for public purposes.

Lease 2

Type	Agricultural
Lease Date	Nov 2007
Lease Term	75
Rent/ Vt Year	5,000
Hectares	115
Lessors	Three brothers and a son collectively referred to as Family P
Lessee	Another son belonging to Family P living in Port Vila

Mr. X and his community live on the leased land and put a caution on the lease in February 2010 (this is not recorded on the lease file information).

Pre-independence Story:

The land was originally owned by the Naturel family/company but returned to custom landholders, of which Mr. X's family was one, at independence. Mr. X's father died in the 1960s. The family/community used the land for copra, taro, bananas, and so on.

Post-independence:

In 2001–2002 Mr. X was told by Family P not to build permanent structures (concrete house or church) on the land.

In October 2007 the area council of chiefs had a meeting to make a decision about custom landholders. The area council told Mr. X to take Family P to the land to show them where the markers of where his and their boundaries were. According to Mr. X, Family P did not like the decision of the council of chiefs and they proceeded to register a lease in Port Vila without the knowledge of the council or Mr. X.

According to Mr. X, Family P came from L island. They say that a long time ago, they came in a canoe and took a small piece of land (around one hectare) at Mr. X's village of W. They are now claiming a lease of 115 hectares.

On January 22, 2010, Mr. X received a letter from Family P's lawyer telling him that he and his community must leave the land within 28 days or face legal action. On February 3, 2010, Mr. X went to Port Vila to get a lawyer. Through the lawyer he put a caution on the lease (costs: Vt 5,000 for the caution, Vt 50,000 for the lawyer, and the costs of the airfare to Port Vila). Mr. X said he will make a claim to the Supreme Court to hear the case.

Mr. X said that while he was in Port Vila, he went to the DoL three times and requested to see the Negotiator Certificate and the Custom Owner Declaration Form (COIF) but was told that this was private information. He asked if he could just view the documents and not take a copy but this request was denied.

Note: there is no Negotiator Certificate or COIF on the lease file data we received from the DoL.

According to an informant from the area, Family P had been acting secretly to secure the lease, knowing that there were other custom landholders (many reportedly from Lamen island) with claims on the land. This informant claims that Family P wanted to obtain a mortgage on the lease

in order to build a tourist bungalow and later subdivide the remaining land. This informant provided independent confirmation of the main points of the account of Mr. X.

Specific policy points

- Lease process not followed according to the lease file information—there is no COIF to identify who approved Family P as custom landholders of the 115 hectares of land.
- Lack of access to what should be public files (Negotiator Certificate and COIF).
- Both the lessees and lessor come from the same family. This type of action can be a strategy to secure the land and have a negotiable document for the purpose of credit. It can also be a strategy to corrupt the lease-creation system by having the process secured within one family group until the lease is registered.
- Apparent registration of an agricultural lease when the intention is to subdivide land for tourist development purposes (initially bungalow development followed by subdivision).

Lease 3

Type	Agricultural	
Lease Date	1987	
Lease Term	50	Lease cancelled in 1992 for non-payment of rent and other breaches of the lease covenants
Rent/ Vt Year	3,915	
Hectares	39	
Lessors	Mr. X Mr. Y	
Lessees	Mr. Z	
Premium	N/A	

Pre-independence Story:

Not available.

Post-independence:

There is nothing on file to indicate any difficulties with the lease-creation process or that there were any disputes between custom landholders.

Mr. X and Mr. Y, the lessors of Lease 3, applied for a cancellation of the lease in May 1990. Rent had not been paid in 1988, 1989, or 1990. The Lands Referee Office (The Lands Referee Act No. 15 [as amended] and the Land Leases Act No. 4 of 1983) provided a determination on August 30, 1990, that concluded that covenants of the lease, specifically, payment of rent and preservation of land, fencing, repairing buildings, and general development of the land, had not been met by the lessee. Further, in accordance with Section 44 of the Land Lease Act, the lessors had notified the lessee that the rent had not been paid and that he was in breach of other covenants of the lease, but they had had no response from the lessee. The lessee, Mr. Z, was notified of the application to cancel the lease and could have applied for relief against forfeiture but no response was submitted. Lands Referee Colin Passey determined that the lease be forfeited for nonpayment of rent and breach of other covenants in the lease.

In April 1991 Mr. X and Mr. Y applied to the Director of Land Records for cancellation of Lease 3, referring to the Determination of the Land Referee dated August 30, 1990. An Advice of Registration of a Dealing Affecting Registered Land was made in January 1992 that officially forfeited the lease.

Specific policy points

- This case raises the question of why more dissatisfied lessors do not apply to the Lands Referee to have the lease cancelled for nonpayment of rent or other breaches of the lease covenants.

Lease 4

Type	Agricultural	
Lease Date	Registered 1992 backdated to 1980.	Custom landholder dispute prevented registration of lease for a number of years
Lease Term	50	
Rent/ Vt Year	1,350 for five years thereafter 19,770	
Hectares	131	
Lessors	Minister of Lands on behalf of the indigenous landholders.	Lease file provides no indication of the Minister ceasing to be lessor
Lessees	Ms. X	Lease transferred to Ms. Y (living in Noumea) in June 2006
Premium	N/A	

N.B. Team unable to interview custom landholders, as they were absent and lessee lives in Noumea. There were people living in the house on the lease but they knew nothing of the lease history. This profile is based on a review of DoL lease information.

Pre-independence Story

Pre-independence titles 341 and 342.

Post-independence

This case involves a dispute between custom landholders who eventually went to the Supreme Court in 1991. Statements prepared for the Supreme Court hearing provide the only background to the custom landholder dispute. Despite the Supreme Court ruling, the Minister of Lands was still made the lessor. After the lease was registered, a dispute arose between the daughter of the Pre-independence title holder and her stepfather.

A. Custom owner dispute

Family K prepared a statement for the Supreme Court (Civil Case No. 233/86) June 1991 that claimed:

- They have the support (19 chiefs signed the statement) of all the chiefs of Varsu, Vermali, and Vermaul;
- Five pigs have been killed during five land courts but Family J had not ceased to occupy the land;
- Family J was not indigenous to Epi and their original place was on Ambryn; and
- Family K-member Isaac was killed by a member of Family J through the use of black magic.

Family J claimed to be the custom landholders of Pre-independence title 341 and occupied part of this land, thereby preventing its development. Family J said that they were descendants of the man (Jackara) who put the ancestor of Family K on the land.

The Supreme Court ordered Family J out of land titles 341 and 342, warning that if they continued to occupy anywhere within these titles, they will be committed to prison for an indefinite period until they remedy their contempt.

Custom landholders from Family K consented to the Minister of Lands signing the lease with lessee Ms. X (daughter of the Pre-independence land owners, the wife having remarried a local man Mr. M and now deceased). The lease was registered in 1992 but backdated to 1980.

B. Lessee dispute

On June 18, 1997, power of attorney was granted to Mr. M (husband of the deceased Pre-independence owner and stepfather to lessee Ms. X). Mr. M placed a caution on the lease in June 1997, forbidding any dealing on the lease without the cautioner's written consent. Ms. X successfully applied to have the caution placed by Mr. M withdrawn. The withdrawal is noted on file as September 11, 1997.

In September 1997 Ms. X claimed that she was incorrectly described in the lease. The change of name was accepted and registered. On November 24, 1997, the Office of Public Solicitor wrote to Ms. X on behalf of Mr. M regarding Lease 4 saying:

"We understand your mother married our client after the death of your father. Before your mother died she made a will in which she bequests the abovementioned property to her husband at that time, our client Mr M.

"After Independence day 1980 these titles have had to be re-registered. Your mother has died which leaves all registration to be in the name of Mr M as beneficiary through your mother's will. We are instructed you initiated processes to register this property but instead of it being in the name of Mr M, you had this property registered in your name. It meant therefore that you have bypassed the will which legally meant that the property cannot pass to you."

The letter goes on to say that court proceedings will commence that will be costly and may cause embarrassment to some people; however, the matter could be resolved without any damages to anyone if the lease was transferred to Mr. M.

A letter from the Office of the Public Solicitor dated January 22, 1998, to the Deputy Director of Land Records (in response to the latter asking that Mr. M withdraw the caution from the lease) asks for more time as "our client (Mr. M) requires certain confirmation as to the proper interpretation of French laws in regard to wills."

It would appear that Mr. M's bid to have the lease transferred to his name was unsuccessful. On December 21, 2000, a power of attorney was registered by Ms. X giving (presumed) daughter Ms. Y power of attorney over the lease.

On file is a letter dated January 31, 2003, from Family J to the DoL complaining about the way the title was given to Ms. Y, as she does not have Ni Vanuatu citizenship and they were not notified. Family J attached a letter from the Minister of Lands that declared Family J to be the custom landholder. Ms. Y transferred the lease to herself using her power of attorney. The transfer was approved by the Minister of Lands, signed June 12, 2006, and registered June 14, 2006.

Specific policy points

- Inconsistency within Ministry of Lands and other government agencies regarding recognition of court determinations and refusal by losing parties to accept the court decision. This leads to ongoing disputes, confusion, and lack of development of the land.
- Contested ownership of the lease by lessees but no consideration given to its cancellation and return to custom landholders.
- Uncertain whether the lessor still remains the Minister of Lands and whether any rent has been paid to COTA or custom landholders.

Lease 5

Type	Unknown	Navigation Tower
Lease Date	Unknown	No lease file data
Lease Term	Unknown	
Rent/ Vt Year	Unknown.	Understand that the first time Mr. V received money was an amount of Vt 15,000.
Hectares	Unknown	
Lessors	Mr. V	Mr. T and Mr. M both claim to be custom landholders but are not named on the lease
Lessees	Telecom Vanuatu Limited (TVL)	

No lease files information provided by Department of Lands

Pre-independence story

During the colonial period when the navigation tower was built, Mr. M was in New Caledonia, working in the nickel fields. The tower was built by the French government and used as a navigation tower at that time. When the French government came, they talked with the French teachers at the Burumba School to ask about the custom landholders. Mr. M was away and they identified Mr. T. They asked him to mark out the area required to make the road up to the tower site and then used bulldozers to clear a road. After the tower was built, a Mr. B, who was a teacher at the school, was placed in charge of looking after the tower because he had a truck.

Post-independence

According to Mr. M, when TVL came to set up the tower for telecommunications, they did not inform him. They had shipped in the parts by ship and were moving them up to the site but placed them just outside his yard. Upon seeing this he stopped any work on the tower from proceeding. After a month, someone from TVL approached Mr. V and asked him to ask Mr. M to please let the work continue. Mr. M said Mr. T came very early one morning and asked him to let the work proceed and promised that any problems concerning the land would be fixed later.

In 1987, the Burumba village Council of Chiefs sat down to discuss whether the land on which public infrastructure (schools, clinics, and so forth) was located could be leased. It was at that meeting that the village council identified Mr. T, Mr. V, and Mr. M as rightful custom landholders for the telecommunication towers. A COIF was presented at that meeting and the three custom landholders all signed it. It was then given to Mr. T to take to the lands department, but Mr. M reports that Mr. T did not give the form to the DoL. He claims Mr. T changed the names and put his name as the only lessor of the land. Mr. M said that he did not know how it happened but Mr. T and his family have been the only ones to receive rent payment since that time. Mr. M said he did not know if there had been rent reviews, only that the first rent payment that Mr. V received was an amount of Vt 15,000.

Mr. M reported that there are no disputes between family members of the three custom landholders. In 2008 there was a minor dispute that had Mr. T place a name leaf on the road leading up to the tower but he removed the leaf when asked by the community to do so. A son of Mr. V is married to an immediate daughter of Mr. M's family. Due to this relationship, it was

agreed that no legal action would be taken against Mr. V concerning the lease, as they consider it as helping one of their own family. It was a way of allowing their daughter and her children to get some money.

In new developments, Mr. M has also leased some of his land for the setting up of the E-Government tower which is situated next to the TVL tower. The reason Mr. M and the community agreed on having the tower was because they want to allow development to occur on Epi. He said that when the government asked about it, they all agreed. Mr. M claims that the government wants to purchase land in the future so as to avoid conflicts over leases. Mr. M says he was approached in 2008 by the E-Government people and through 2008–2009 they sorted out the paper work. In December 2009, there was a meeting with everybody from the village to talk about the benefits of the tower. It was at the same meeting that Mr. M and Mr. T's daughter signed the agreement, as Mr. T had died and his daughter has been representing him since. There has been no payment yet, but Mr. M claims that there will be a compensation payment of Vt 2 million when the land becomes public land. The land for the road that leads to the new tower will also be purchased by the government to make it a public road.

For now there are no disputes over the new tower, as all parties are in agreement and Mr. M reiterated that the whole community is happy about the new tower because it also provides employment for them. The young boys are paid Vt 1,000 per person for each night they spend guarding the tower, as it is still incomplete. The community was also paid by the government to clear the land and the road up to the tower.

Lease 6

Type	Agricultural	
Lease Date	1980 registered in 1984	
Lease Term	30	
Rent/ Vt Year	6,400	
Hectares	64	
Lessors	3 Custom Owners	Family S are now the lessor and lessee
Lessees	Family S	

Pre-independence story

In 1938 the land was the property of Societe Francaise des Nouvelles Hebrides (SFNH). On May 18, 1938, a survey was done for Mrs. S and sons. They planted copra, cotton, and corn. There have been four generations of Family S living on Epi with intermarriage with the local population.

Post-independence

According to the landholders, in 1980 Family S performed a custom ceremony with the three custom landholder groups to lease the Kalala Plantation. Following the custom ceremony, the three custom landholder groups agreed to sign a lease. Between 1980 and 1982 the lease was prepared and on October 22, 1982, the lease was signed by the three representatives of the custom landholder groups. Lease registration was 1984. The lease was for a 30-year period and they report that it was for an area of 60 hectares.

Rent was paid by the lessees until 1999 and then payment stopped. A lessor claimed that after a few years of Family S not paying rent, the representatives of the landholders went to see Family S. They said that Family S claimed that they were not making money on the plantation and could not fulfill the agreement on the conditions of rent payment.

In 2002 Family S took their custom landholder claim for the leased land to the village council of chiefs. Two different stories are told about the claim from this point onwards.

According to the lessors, the village council of chiefs decided in favor of the lessors. Family S appealed to the area council of chiefs but again, the case was decided in favor of the lessors. Family S then took the case to the island council of chiefs and again the decision was in favor of the lessors. Family S then took their case to the Supreme Court. The Supreme Court judgement was consistent with the decision of the three previous judgments. The lessors said that they had not enjoyed a good relationship with the lessees since 2002 and that they would not be renewing the lease when it expired on July 30, 2010.

According to Family S, after 1980 the relevant chiefs did not want to create a lease because they considered the land to belong to Family S already. However, a lease was registered and the land was peacefully leased and rent paid until 1999. At this time a dispute started.

In 1999 some members of Family S went to the sea to dive for trochus shells. Upon their return, the shells were taken from them, as the custom landholders claimed that since the Family S lease did not go as far as the sea, they had no right to remove the shells. This led to the beginning of

tension between Family S and the custom landholders. There was some discussion about a 50-50 sharing of the trochus shells but nothing eventuated. Family S said that the lessors took the case to the Supreme Court.

Conflicting accounts prevail concerning the outcome of the Supreme Court hearing. Whereas the lessors hold that the Supreme Court judgement supported the decision of the three councils of chiefs hearings, Family S presented a letter from the Supreme Court. This letter refers to Civil Case No. 160 of 2006 between Family S member (claimant) and the three custom landholders (defendants) ordering the following:

By virtue of the letter dated 14th December 2005 of the Lands Tribunal Office it is ordered that the persons presently recorded on Lease Title Lease 6 as the Lessors are to have their names removed from that title and replaced by Family S as the Lessors.

This letter was dated December 1, 2008, by Supreme Court Judge N. R. Dawson. Accordingly, as of December 1, 2008, two members of Family S were registered by the Lands Registry as the lessors of Lease No. 6.

The two parties to this case are at odds about what will happen next. The former lessors make no mention of the Supreme Court determination favoring Family S and state that there will be no renewal of Lease 6 upon the expiration of the lease term on July 30, 2010. Family S meanwhile consider the case closed and are preparing to plant new crops on the lease site. Clearly there has been no reconciliation between the two parties and the possibility of future conflict stemming from this case is real.

Note: The Change of lessor on the lease document to Family S was not recorded on the lease file data received from the DoL.

Of further interest is a Negotiator Certificate granted in 2007 to a member of Family S stating the custom landholder to be another member of Family S for the land covered by Pre-independence title 3625 known as Yamamoso. The lease classification requested is commercial/tourism. A Public Notice was issued by the Land Management Planning Committee (LMPC) and a COIF is on file. The COIF is signed by the chairman of the area council of chiefs, the secretary, and a member of Family S. There was a lease file found for this land. Possibly Family S now has two leases for which they are both lessors and lessees.

Specific policy points

- This case raises the question of mediation in order for Supreme Court determinations to be understood and accepted at the community level.
- There is a need for a compensation fund for cases where one party is successful in its claim but the other party also has a genuine claim to the land and is deserving of compensation.

Lease 7

Type	Agricultural	Agricultural
Lease Date	1980	1992 registered but lease backdated to 1980
Lease Term	50	Custom landholders believe lease period is 75 years
Rent/ Vt Year	2,875	5,500
Hectares	11	25 hectares during colonial period but reduced
Lessors	3 Custom landholders	same
Lessees	Mrs. G	In 1997 the lease was transferred from Mrs. G to her daughter, Mrs. B.

Pre-independence story

Between 1970 and 1980 Mr. and Mrs. G came to Epi. The lessors believed that the land area was approximately 25 hectares. The case involves Pre-independence title no.1032 called Revoliu Plantation.

Post-independence:

There were eight custom landholder claimants to land title 1032 after independence. The issue was resolved by a council of chiefs hearing comprising chiefs from Revoliu and Burumba villages. The chiefs agreed on the three custom landholders who became the lessors. There was no discussion with the women of the villages.

The lease issued (Lease 7) was *part* of the original title 1032. The request for the lease was agreed to by the custom landholders. The lease was registered in 1992 but backdated to 1980. Mrs. G, widowed in 1984-85, successfully had the lease issued in her name.

Vt 100 per hectare, backdated to 1980, was paid to the custom landholders (15 x 100 x 12 = 18,000). According to the lessors, the current rent is Vt 5,500 per year (note lease puts rent at 2,875 per year). According to the lessors, Mrs. B comes once every two years or so to pay the rent (the last time Mrs. B came was 2009).

According to the lessors, until three years ago, they were harvesting copra on the leased land and paying Mrs. B the value of the crop minus their labor costs.

In 1983, before his death, Mr. G authorized his daughter to use the land: "I [undersigned Mr. G] authorize my daughter Mrs. B (wife of Mr. B) to work for herself in my property." In 1997 the lease was transferred to the benefit of Mrs. B. It was at this time that the lessors said the lease was reduced down to six hectares (there is no indication of this in the file).

The lessors said that Mrs. B said she would build a stockyard, plant coconuts, and buy a truck for the plantation. According to the custom landholders, the six hectares were for copra and a cattle project; however, there has been no improvement. In 1995 there was a plan for kava production and/or a trading project, but that did not succeed. Mrs. B allegedly promised the lessors that they would work in the kava field but later she brought in a man from Tongoa. The custom landholders were reportedly unhappy about this nonlocal being involved in the project so they physically assaulted him. As nobody was left to look after the kava, it eventually failed.

The lessors do have a copy of the lease (not sighted) but say that they do not understand the conditions, as it is in English. The lessors understood the lease term to be 75 years, although it was actually 50 years. They also said that the rent is very low and they are not happy about it. They were apparently unaware that there was a provision for rent review and were also unsure of how much rent they were supposed to be paid according to the lease.

Specific policy points

- Lessors unaware of provisions of rent review.
- Land management of the lease unlikely to be met.
- Maintenance provisions for infrastructure unlikely to be met.
- Lease inaccessible as it is printed in English.
- Assignment or transfer of lease requires written consent of the lessors. How does this apply in the case of lease inheritance?

Lease 8

Type	Rural Residential	
Lease Date	March 2007	
Lease Term	75	
Rent/ Vt Year	24,000	None
Hectares	9	
Lessor	Mr. V	
Lessee	Brother of Mr. V	
Premium	500,000 vatu and then 100,000 vatu for the next 13 months. Total = 1,800,000	

Pre-independence story

According to Family V, the use of the land by a white man happened so long ago that they could not remember how the land was used before it was alienated.

According to Mr. A, who has placed a caution on this lease, he has used the land for agriculture since the 1970s. Mr. A claimed that he was permitted to use the land by French and British agents in 1975.

Post-independence:

A Negotiator Certificate was issued to a member of Family V over custom land (from an old alienators title) to be identified by survey. According to the minutes of the LMPC, the applicant wishes to secure the land with a residential lease and then transfer it to an investor who is currently negotiating with the landholders. The custom landholder was recorded as another member of Family V.

A rural residential lease (9.86 hectares according to the family) was registered on January 31, 2007. The lease was granted to a son of Family V for a term of 75 years by Family V, who claim to be the custom landholders. Family V said that they have the right to use the land through an inheritance to Mrs. V (elder)—that the land previously belonged to her father (inherited through the patrilineal line). The family claims that because there are no surviving brothers of Mrs. V (elder), her sons are the rightful custom landholders.

According to Family V, they discussed leasing the land to an investor but this never happened. A private consultant from Ifira suggested they lease the land within the family, with the idea that they would establish a tourism development project suited to tourist ship visits to the south of Lemboto. Family V recalled that the Vanuatu Tourism Authority visited in 2008 and stated that some of the Epi beaches would be good for tourism. In 2009, Family V decided to develop the land themselves. The lessee is reportedly in the process of trying to secure an agricultural development loan from the Vanuatu Agricultural Bank, which the family plans to use for the establishment of a tourism project. In order to organize the loan for the project, the lessee has been living in Port Vila since April 2009 and the only contact with him has been by telephone.

Note: Family V said that the lease was meant to be a commercial lease. Further, because the lease is within the family there is no payment of rent, despite what is written in the lease agreement. Note that there are no indications that a PIA/EIA was conducted in relation to the lease.

Caution

A caution was registered over this lease on February 8, 2007, only eight days after the lease was registered on January 31, 2007. The caution was initiated by Mr. A, who said that he is the custom landholder and that he was not consulted about the development proposal. Mr. A claims his wife inherited the land after her brother died and he has the right to use the land, which will eventually pass to his sons. Mr. A claimed that Mrs. V (elder) is from another family, although he also indicated that they may be related. Mr. A says he has used the land with the permission of the British and French authorities since the mid 1970s. He won a cattle award related to his work on the land in 1984 and had an agricultural project on the land in cooperation with the Ministry of Agriculture's abattoir project (an early national development project) between 1985 and 2002. He used the land until 2006 and only stopped when Family V commenced work "with ugly faces" and killed and/or stole his cattle, selling some of his cattle in Vila. Mr. A said that he reported the matter to his lawyer and to the police but no action has been taken. He took the case of the lease to the village council of chiefs in 2006 but lost. He then took the case to the area council of chiefs but lost. He took the case to the island council of chiefs in 2007, but they referred it back to the area council. Mr. A is currently considering a land tribunal hearing as the next step, though the land tribunal structure has not been set up on Epi.

According to a former area secretary, this is a family dispute.

Specific policy points

- Example of intended use of residential lease for tourist purposes. DoL requirement that a lease be surrendered and a new lease issued in order to effect a change of lease purpose.
- Example of intended loan from the Agricultural Development Bank for tourist project.
- This case appears to involve an argument between two sections of one family. Each section claims to be the rightful custom landholder based on patrilineal principles, but in this case, the claim to the land is via key females in the absence of a male inheritance line.

Lease 9

Type	Agricultural
Lease Date	Date of registration 2006, lease backdated to March 1993.
Lease Term	50
Rent/ Vt Year	12,732
Hectares	63
Lessors	4 custom landholders
Lessee	Mr. C

Pre-independence story

In 1926, Mr. C's father arrived with two other French men to operate a copra plantation. The plantation was known as Boute-Boute. Mr. C, whose mother was from the Banks Islands, was born in 1933. Between six and 10 Vietnamese workers were employed on the plantation in its heyday.

The family went to France and returned in the early 1950s. Mr. C took over the plantation after his father died in 1954–1955. Mr. C had two son and three daughters.

Post-independence

At independence the community wanted Mr. C to leave but he told them he would require compensation to do so. The community thus agreed to a 50-year lease, which was signed in the village with four custom landholders. Before the lease could be registered, however, there was a boundary dispute that had to be resolved. The dispute went from village to area to island council of chiefs without resolution. One party wanted to take the case to the island court in Port Vila. The other party did not agree. The dispute was taken back down to the village level, where independent villagers were asked to facilitate a resolution. This boundary dispute first came to light in 1983 and was only resolved in 1992. A peace ceremony was held between Mr. C and the community around 1993, at which a pig was killed and consumed. A rent of Vt 200 per hectare was negotiated at this time. This implies a rent of Vt 12,600 per year (the lease refers to Vt 12,732 payable on March 4 each year).

In 2008 Mr. C asked the community to allow him to expand the plantation to 100 hectares, but the community refused. The plantation has been unprofitable for some time. The lessors said that in recent times approximately two days' employment per month had been provided for one man. Furthermore, recently Mr. C had employed six young boys to work on the plantation; however, having no money to pay the workers, Mr. C sought to borrow money from a villager. There has been no replanting of coconut trees and no sale of copra since December 2009. At that time, Mr. C shipped copra to Port Vila and it is still on the dock.

Mr. C used to ship cattle to the Vila market but has not done so since 1993. He has approximately 50–60 heads of cattle, which he now sells only to the local market.

Presently there is a dispute between the lessors and another custom landholder from Burumba. As a result of this dispute, Mr. C was instructed in 2000 to pay his annual rent to Shefa province. Mr. C does not know the cause of the dispute.

Since 2007 Mr. C has not paid rent at all, stating that he has not made any money from copra since that time. Mr. C informed us that he had asked his children (living in Port Vila) to pay the rent for him but they had not responded. The lessors believe that the reason they are not receiving rent is due to the dispute, and they do not appear to realize that Mr. C is not paying rent. According to Mr. C, Shefa province has not written to him regarding unpaid rent since he ceased paying.

Mr. C said that his son wants to subdivide part of the lease between the road and the coast. He had discussed the subdivision with the lessors and the community, but they disagreed with the idea.

Specific policy points

- Lessors do not have a copy of the lease and believe, incorrectly, that they do not have the right to rent reviews.
- No enforcement of rental payment to trust funds. In this case the lessee stopped paying rent to Shefa province in 2007 and no action has been taken by the authorities.
- There may be a surge of new coastal tourism developments as unproductive agricultural lease originating in colonial era titles succeed to a younger generation. However, this would require surrender of the lease before a lease purpose change could be made.

Lease 10

Type	Agricultural (cattle)
Lease Date	2007
Lease Term	75
Rent/ Vt Year	1,068,670
Hectares	5,343
Lessors	Trust of five custom landholders
Lessee	Company of Mr. B

Story of the lease

An application for a Negotiator Certificate was initially refused by the LMPC (meeting in January 2006) because the land tribunal must identify the true custom landholders of the area due to the large area (5,000–10,000 hectares) applied for leasing. A letter was received from Mr. B's company requesting reconsideration of the application. The minutes also refer to a letter from the custom landholders stating their concern. A Negotiator Certificate was issued in April 2006 for approximately 5,000 hectares on the island of Epi. The Negotiator Certificate was renewed in May 2007 for the land known as Votlo to Nelson Bay. The custom landholders were not identified on either of the Negotiator Certificates.

Respondent: Mr. Y, who placed a caution on the lease in 2008.

Mr. N (the largest landholder in the lessors trust) was a “man come” from Santo in 1980 who asked Mr. Y to lend him some land for a joint project between the two of them whereby Mr. Y would give Mr. N the land and Mr. N would look after their small-scale cattle project. Mr. Y allowed Mr. N to use one–two hectares. After one year, Mr. N started claiming he was the custom landholder. The case was heard in 1982 by an area council of chiefs that decided in favor of Mr. Y. The case was then brought to the island council of chiefs sometime during 1983–1984. Again the case was in favor of Mr. Y.

In 1990 Mr. Y settled on or near the land in dispute. In 2001 Mr. Y wrote a letter to the island court in order to get Mr. N evicted, as he had refused to shift off the land. In 2004 the case was heard by the island court, but it was decided in favor of Mr. N. Mr. Y was ordered to move off of the land by judge Jerry Boe, who Mr. Y alleges is a friend of Mr. N.

Mr. Y returned to Mapvilao, where he has resided since. On April 8, 2004, Mr. Y lodged an appeal with the magistrates' court against the decisions of the island court in Land Appeal Case no. 056 of 2004. According to Mr. Y, the case was not heard because his lawyers were also representing Mr. B and told him he had to find other representation.

Also in 2004 Mr. Y filed an application for a restraining order and a stay order staying any dealings with the property. This order was granted by a justice of the Supreme Court on October 4, 2004.

Later, around the time that the lease was registered, Mr. Y made a claim to the Supreme Court that “on or about July 2007, the first defendants (the trust) were in breach of the Court Order by advertising the property for sale.” Mr. Y also requested that the court issue “an order that the First Defendants be arrested and be brought before this court to show cause why they failed to

comply with the orders.” Finally Mr. Y alleged that the “Third Defendant has fraudulently and/or by mistake registered a lease title No. Lease 10...on the property in breach of the stay orders in favour of the Second Defendants.” Mr. Y also noted that work had commenced on the lease site again in breach of the stay orders to the detriment of the community.

Following the registration of Lease 10 in 2007, Mr. Y lodged a caution over the lease through his lawyer. However, correspondence from the DoL dated March 10, 2008, advised Mr. Y that the “caution is not registrable.”

The basis of this determination was that:

a recent decision of the court of appeal in *Ratua Development Ltd vs Mathew Ndai and Edward Sumbe and others* Court of Appeal Civil Case no. 32 of 2007, in which it was held that interests as custom owners of land the subject of a lease are not cautionable interest under Subsection 93 (1) (a) of the Land Leases Act (Cap 163) (the “Act”)... Accordingly, all current Cautions lodged to protect the interests of persons as custom owners of land the subject of leases must be withdrawn or removed.

This same correspondence included a copy of a warning stating that “Any person lodging any caution with the Director or allowing any caution to remain without reasonable cause shall be liable to pay such compensation as the Court thinks just to any person who sustains damage or who has incurred costs or expenses thereby.”

There is no note on file to suggest that the caution has been withdrawn by Mr. Y. There is a note on file dated October 4, 2007, indicating that a claim has been made to the Supreme Court by Mr. Y against the trust (first defendants: Mr. B’s company, and second defendants: the Ministry of Lands, Geology and Mines).

Respondent: Mr. W

Mr. W is a son of one of the trust members and close friend of Mr. B.

Mr. W said that when Mr. B was investigating land in Epi, he approached two existing lessees on Epi to ascertain their interest in selling their leases to him but he was not successful in obtaining these existing leases. Many people were interested in leasing land, as they saw that it could be easy money, but Mr. B wanted land that was particularly suitable for cattle. He had a meeting with the claimant landholders of a large area of bush he was interested in that was allegedly not being used for gardens or crops.

This is contradicted by Quarantine Officer Mr. S, who has visited the lease site and said that there were subsistence garden sites scattered throughout the land. Mr. S indicated that kava and coconut crops had been bulldozed during the road-construction process but no other land clearing had taken place as yet. Mr. S said that those with subsistence gardens had moved off the land and referred to the lease site as “the best” agricultural land on Epi because of the good soil and flat topography.

Mr. W said two years had been spent attempting to identify the correct custom landholders, but this claim was contradicted by his remark that GPS was used to identify the boundaries,

suggesting that no one had walked the boundaries to ensure a thorough process of landholder identification.

Mr. W said that during the lease negotiation some of the custom landholders appeared to be more interested in getting access to the premium money than discussing the conditions of the lease (particularly the largest landholder in the trust). Therefore they allegedly signed the lease without conditions being clear, as they were concerned that there would be no money if they continued talking. Nonetheless, all the premium money from the transaction was reportedly spent within the first seven months (Vt 50 million) on consumables.

Mr. B had his project supported by the Varisu Area Council of Chiefs but the lease also extends into Vermali area, and there was no overall approval from the two area councils, or from the island council of chiefs. It was suggested by Mr. W that the island council of chiefs “does not have enough power.” The consultation for the lease-creation process was done too quickly to result in a widely supported outcome. As a result, there are now two groups evident in Epi: those who support the project and believe that it will provide job opportunities for young people on Epi, and those who are opposed to the lease on the grounds that the expanding population of Epi will require the land for subsistence farming activities.

Mr. W claimed that the benefits to Epi of the lease would be jobs, roads, and the Epi boat connection with Port Vila. He also said that there had been no assistance from the DoL during the lease-creation process.

In relation to the dispute with Mr. Y, Mr. W said that Mr. Y had built a permanent building on the disputed land. One of the trust members, Mr. N, went to the magistrates’ court to have Mr. Y removed and won the case. Mr. Y subsequently put a caution on the lease and has lodged a claim with the Supreme Court. There also appears to be a long-standing dispute involving these families over the death of a relative of Mr. Y.

Mr. W reports that a land transaction took place in the 2009–2010 period in which 600 hectares of land were leased by Mr. A (a trust member) to Mr. B in the Votlo area—land that allegedly does not belong to Mr. A. Mr. A has since moved from Sara to Lamén Bay, where he lives with his wife in his father-in-law’s house. It is said that if Mr. A returns to Sara he will be killed by his relatives.

Mr. W noted that the DoL is inept because Mr. A was able to get a Negotiator Certificate to sell the Votlo land that did not belong to him. He said that DoL officers receive too many payments under the table—this is the corrupt “speed system.” When the aggrieved relatives went to the Minister of Lands, he said that he could not revoke the lease but he could have it put in his name; the relatives declined to take this option.

Council of Chiefs

The council identified the Mr. B lease as one of the most difficult land cases on Epi. The council of chiefs has already asked for all new leases to be sent to them for approval, but the system is not in place to date. They said that they were not consulted on the Mr. B lease.

Lease Provisions quoted:

To deliver up at the end of the lease

3 q. On expiration of the said term of other sooner determination of the lease peacefully and quietly to deliver up vacant possession of the demised land to the lessor providing that the lessor reasonably **compensate** the lessee for all the improvements thereon.

Specific policy points

- Exclusion of women from trust funds. Priority placed on male customary landholders, an area of concern given that premium paid to the trust had reportedly been spent (trust document pages 1, 2, 3, and 7).
- This lease appears to have been processed by the Ministry of Lands against wishes of island-level governance authorities.
- The lease appears to be prepared by the lessee's lawyer and has clauses that favor the lessee. The lease included errors and obfuscations.
- The lease was registered despite a portion of the land being under a dispute that has reached the Supreme Court. This case appears to be critical to the custom landholder claim of one of the lessors.
- The applicant of the caution on the lease received a letter from the Director of Lands advising him to withdraw the caution. This is the only such letter on file.

Lease 11

Type	Agricultural	
Lease Date	1987	
Lease Term	50 years	Right of renewal
Rent/ Vt Year	81,600	109, 452
Hectares	539	
Lessors	Four custom landholders	Brother and 3 sons of the previous custom landholders
Lessees	JJ Investments	Company V

Pre-independence story

Georges Naturel and his wife Louisa moved to the New Hebrides in early 1900 with their six children. Georges Naturel received a grant of 50 hectares of land from the SFNH (see note below) at Diamond Bay, Epi on June 8, 1901, calling it “Va-les-dir” (a play on the French idiom meaning, literally, “go and let them talk”) and developing it into a showpiece plantation, before retiring to Noumea in 1920. He died suddenly from a serious illness in 1923. Before his death, Georges transferred the title of Valesdir to his three surviving sons (Andre, 31 [1892-1953], Sylvain, 29 [1894-1943], Robert, 27 [1896-1944]) and the family company of Societe Naturel Freres (SNF) was formed for this purpose. The company ultimately added the adjoining properties of Votlo and Woamby to their Epi domains as well as, sometime later, the island of Aisse, off Santo.²⁶

The descendants of Naturel left Valesdir prior to independence—reportedly around 1969. Management practices during the colonial period are remembered as being exploitative, with payment to workers being made in a Valesdir currency only redeemable at a Valesdir store. The custom landholders also report that the plantation fell into disrepair following its abandonment by Naturel. Fences were broken and cattle taken.

In 1975 Dick Smith, an American, came to Valesdir and he stayed one–two months to assess the viability of the plantation. A number of owners/managers were associated with Valesdir in the late 1970s–1980s. They include the American Dick Smith and an Englishmen reported to have butchered bullocks and flown them to Vila on a regular basis. He left at the time of independence.

Post-independence

In 1985 an Epi member of parliament (MP) brought Mr. S to meet with the custom landholders. The landholders did not want to lease the property but the MP promised that Mr. S would build schools, hospitals, and trucks, and provide employment. After finally being convinced, the custom landholders signed the lease. The lease was signed for 50 years with a 20-year option, although the landholders recall a 75-year lease. According to custom landholder Mr. M, who was present during the negotiations, the company has never fulfilled the promises of a hospital, a school, and trucks, and certainly there is no evidence of a hospital or school in 2010.

Following the negotiations, an agreement to lease was signed on January 19, 1986, and a rural agricultural lease registered in 1987. Concerning the following period, the custom landholders

²⁶ Patrick O'Reilly, *Hebridais* (Paris: Musée de l'Homme, 1957), 162-164.

say they were not happy about the employment arrangements because only one child of the custom landholders was employed as a permanent staff member on the plantation (one of five permanent staff) during the time that Mr. S was Director of Company V. During this time also, the copra cutters were recruited from other parts of Epi as well as the islands of Pamma, Ambrym, and Tongoa. These employment practices caused a dispute between the landholders and the investor. However, the investor refused to change employment practices at this time. Additionally, custom landholders were concerned that although Mr. S harvested copra, he made few improvements to the plantation. However, custom landholders also recall that Mr. S did employ people to replant copra at the rate of Vt 10 per seedling. Mr. S is remembered as a hard man for whom the locals had to work if they wanted to earn cash.

In 1992 Mr. A (senior partner of an accountancy firm) replaced Mr. S as Director of Company V. According to correspondence dated March 4, 1996 and included in the DoL records, Mr. A sought to transfer the Valesdir lease from an agricultural lease to a commercial-agricultural lease. Correspondence included in the DoL files indicates that this variation of purpose was supported by the custom landholders and that the variation was initially successful; however, correspondence dated October 16, 1996, indicates that the variation was rejected (under Section 47 and Section 111 CAP 163). Whereas correspondence from the Minister of Lands dated September 23, 1997, is on file, directing the Director of Land Records to register a variation of the lease from agricultural to “Agro-Tourism” (referring, however, to the original letter of request for variation), a file note dated April 23, 2007, indicates that the variation was ultimately rejected and earlier instructions (dated June 6, 1996) cancelled.

Note that the custom landholders understood Mr. S sold the lease to Mr. A for Vt 70 million in 1992 without their consent or knowledge, when in fact it appears that this was a transfer of directorship. Possibly, the explanation for this apparent contradiction is that Mr. A bought Company V Limited from Mr. S.

Mr. A did improve the employment arrangements in the second half of the 1990s, with the result that seven sons of custom landholders (plus one other) were employed on the leased land. One of these seven was Mr. F, who was first employed in 1996 and who became foreman in 2001.

In December 2007 the Telai Trust Valesdir (the custom landholders) wrote to Mr. A asking for a premium, as they had not been paid when the lease was made in the 1980s. They requested Vt 107 million to be divided according to the percentages of land each held. They met Mr. A in his office. Mr. A said no and told the custom landholders that they would have to negotiate the request with Mr. S—perhaps reinforcing the misperception of the custom landholders that Mr. S was a previous lease-holder. The custom landholders said that they have also raised the matter of a premium payment with the president of Shefa province, who said he would follow the matter up with the DoL.

In 2008 a valuation was completed by the Valuer-General. The details of this valuation are as follows:

Instructed by:	Telai Trust Ltd, Epi Island
Title:	Lease 11
Type of Lease:	Agricultural
Site Area:	539 hectares
Land Value:	Vatu 134,500,000 (vacant land only)
Premium fee:	Vatu 53,337,000
Rent Rates:	0.15%
Yearly Rent:	Vatu 226,969 (VAT included)
Valuation Date:	January 17, 2008

The custom landholders are of the view that the land is undervalued because it had features including waterfalls, creeks, and coral-quarrying sites for road construction (and also a beachfront position). According to the custom landholders, they asked for an increase in rent in 2003. The rent has been increased but as each custom landholder gets an individual payment, they were unsure of the total amount. However, a document was produced providing the following figures, which the custom landholders thought dated to 2007:

Lessor 1	222.5 Ha	Vatu 44,524
Lessor 2	160.0 Ha	Vatu 32,162
Lessor 3	111.0 Ha	Vatu 22,313
Lessor 4	52.0 Ha	Vatu 10,453
Total	554.5 Ha (including excisions)	Vatu 109,452

The custom landholders are dissatisfied with the management of the lease and are critical that a coastal area formerly kept clear for grazing now had bush regrowth and was no longer suitable for cattle. They want the land kept clear for grazing and were interested in securing the work of clearing this land and any increased cattle work resulting from this clearing. The custom landholders were worried that the lease would be transferred to another investor without their knowledge and did not know what they could do about this.

In February 2010 the custom landholders invited the Shefa provincial president to visit the lease and asked if they could cancel the lease or transfer it to another investor, but were told they could not do this. However, the president of Shefa province promised that he would write to Mr. A to relay their concerns. Mr. A was arrested in Perth on April 28, 2008, and charged for a tax scam involving 400 prominent Australians. He has three sons, two of whom are in Vanuatu and one in Sydney.

Regarding women of the custom land group, the all-male group of custom landholders claim to have the support of women in the various negotiations concerning the lease (including for premium payments).

Current business activities

In February 2010 the management sent 50 steers to Port Vila for sale. According to Mr. F, 40–50 steers are sent to Vila three times per year and this has been the practice since 2001. Each steer is believed to sell for between Vt 80,000 and Vt 100,000. Based on this calculation, stock sales realize between \$ 96,000 and \$150,000 per year. Concerning costs, there are 13 full-time employees with running costs of Vt 1 million for wages and Vt 1 million for fuel, and so forth. Thus at costs of Vt 2 million (\$20,000), the profit appears to be somewhere between \$76,000 and

\$130,000. Repayments on the purchase price would also have to be taken into account in profitability calculations. According to Mr. F, the copra side of the business may be reactivated following the opening of the copra mill on Lease 10.

Specific policy points

- Reported promises made by investor (in the company of national government member for Epi) of hospital, school, and substantive employment benefits for locals not fulfilled or, in the case of employment benefits, fulfilled slowly. A need for benchmarks and indicators to be included in leases and monitored.
- Need for agreed work-plans for larger leases to ensure that land is developed to maximize economic opportunities for community members.
- Lack of development of this lease is inconsistent with legal requirements for 75-year leases.
- Are trusts audited?

Lease 13

Type	Special	Valesdir Aerodrome was excised from the Valesdir Plantation lease
Lease Date	1988	
Lease Term	75	
Rent/ Vt Year	20,000	
Hectares	9	
Lessors	Mr. W and Mr. M	Lessor now Mr. L as his father Mr. W died. Mr. M no longer a lessor through mutual agreement after boundary clarification.
Lessees	Government of Vanuatu	

Pre-independence story

According to local sources, the French government built an airstrip on Valesdir plantation sometime between the 1960s and 1970s. It was used by Air Melanesia. The airstrip was built after lobbying from the French manager of Valesdir plantation at the time. In the late 1970s, the aerodrome was abandoned.

Post-independence

In 1987 Arnold Masing from Civil Aviation came to see Mr. W (Mr. L was present) and Mr. M regarding government lease of the aerodrome. The landholders (Mr. W and Mr. M) had already been determined before the meeting with the representatives of Civil Aviation. Land for the aerodrome was excised from the Valesdir plantation and registered in 1988 with the names of Mr. W and Mr. M as lessors. The lease was for 75 years with a rent of Vt 20,000 per year. No premium was paid.

A meeting in August 1992 between the four Valesdir custom landholders determined that the aerodrome lease land belonged to the son of Mr. W, that is, Mr. L. It was confirmed at a meeting of all custom landholders attended by this research team on March 9, 2010, that Mr. L was the sole custom landholder of the land of the airstrip.

In July each year the rent is paid by the Department of Public Works into a bank account. The rent has not been reviewed since 1988. Mr. L wrote a letter requesting an increase in rent but received no reply.

For 11 years Mr. L was the agent at the airport, looking after the ticketing and freighting of cargo. The family of Mr. L received a contract for grass cutting on the airstrip in 1992 but lost the contract in early 2010 to another family.

Specific policy points

- No rent review despite reported letter of request.

Lease 12 (subdivided into 14-20)

Lease 12 was a commercial lease registered in December 1993. The lease was sold in December 1995 and registered to the lessees in January 1996. In September 2007 the lease 10/1313/002 was surrendered in order that it could be subdivided into 7 leases (14-20) that were registered in January 2008.

Type	All commercial
Lease Date	2008 all seven subdivided leases were registered
Lease Term	75
Rent/ Vt Year	3, 000 Vatu/year for each lease
Hectares	Average for 7 leases = 0.71
Lessor	Mr. L
Lessees	Mr. and Ms. C

Pre-independence

The land under Lease 12 was part of the Pre-independence Valesdir plantation.

Post-independence

The lessee of the Valesdir plantation, from 1984 until he sold the lease in 1996, was married to the sister of Mr. S, who came to work for the lessee and was eventually given a piece of land of five hectares at the southern edge of the Valesdir lease. The custom landholder of this land was Mr. W. The land was surveyed and a commercial lease made between Mr. W and his son, Mr. L ,and the lessee Mr. S in 1993. The lease was for 75 years and the annual rent was Vt 2750 per year.

At the end of 1995 Mr. S sold the lease to Mr. and Ms. C. It was registered in January 1996. A Negotiator Certificate was necessary to sell the lease to Mr. and Ms. C. Mr. S was the registered negotiator (the certificate was dated April 1993). Mr. and Ms. C, with their three children, built a guesthouse.

In 2006, with the agreement of lessor Mr. L (Mr. W, his father, had died), Lease 12 was surrendered in order that the five hectares could be subdivided into seven smaller leases. All the leases are for 75 years and Vt 3,000 per year is the rent.

Mr. and Ms. C said that Mr. L asked for an 18–20 percent share of the value of sale, a truck, and a house (worth Vt 4 million) in order to do the subdivision. He asked for this on the advice of his brother-in-law, a senior lands officer. Mr. C said no, but that he would employ family members at the guesthouse and support Mr. L to do tours with visitors to the guesthouse. Mr. L's daughter-in-law works at the guesthouse in addition to some other members of his village.

Mr. L suggested that there is a verbal agreement with Mr. and Ms. C for a sum of money to be paid on the sale of individual leases. This could be a reference to the 10 percent of value of sale in the Land Reform Act 2007. Mr. and Ms. C intend to eventually sell the guesthouse and build a house for themselves on one of the leases.

Specific policy points

- The Valesdir lease is an agricultural lease; however, Mr. S was able to have his subdivided portion issued as a commercial lease.
- Will 10 percent value of sale (**Land Leases (Amendment) Act No. 5 of 2007**) be enforced when the subdivided leases are eventually sold or have the lessor and lessee entered into other arrangements?
- Where lessees have commitment to long-term living on lease and developing a business, there are financial and social advantages that benefit lessors.

Lease 21

Type	Special
Lease Date	May 19, 2007
Lease Term	10 (with 10 year "auto renewal" option)
Rent/ Vt Year	40,000
Hectares	< 1
Lessors	Mr. N
Lessees	Company S

N.B. Team unable to visit site to interview local parties due to weather and sea conditions. This profile is based on a review of lease information from the DoL.

Pre-independence story

N/A

Post-independence

This is a communications lease located in a remote area on the eastern side of the island.

A 10-year special lease (with a 10-year "auto renewal" option) was signed on May 29, 2007, between lessor Mr. N and lessee Company S for a rental rate of Vt 40,000 per year.

The lease agreement includes provisions for a 12.5 percent rent increase upon renewal of the lease after 10 years and a clause requiring the lessor to pay the lessee interest at the rate of 12 percent per year in relation to any late rental payments.

It is not known that there are any disputes in relation to this lease.

Specific policy points

- Communications leases appear to generate good annual rent compared to other kinds of leases. This site returns Vt 40,000 annually for less than a hectare, for example, when the Valesdir plantation returns Vt 81,600 for 529 hectares (Vt 154 per hectare). This comparison indicates that the lease makes about 260 times per hectare what the plantation lease does. Does this indicate an inconsistent or immature leasing market or just the profitability of the telecommunications industry compared to the copra/cattle industries?

Lease 22

Type	Special, Seventh Day Adventist (SDA) School
Lease Date	1980 (Registered June 9, 2000 after some difficulties)
Lease Term	75 Years
Rent/ Vt Year	20,000
Hectares	24
Lessor	The Minister of Lands (acting in accordance with Sections 8 & 9 of the Land Reform Act 9CAP 123).
Lessee	The Seventh Day Adventist (SDA) Church Limited

N.B. Team unable to visit site of interview local parties due to weather and sea conditions. This profile is based on a review of lease information from DoL.

Pre-independence story

N/A

Post-independence

The creation of Lease 22 has been affected by two different disputes. The first of these involved a dispute between the main SDA Church and an unauthorized group based in Pango (Efate) using the SDA name to describe themselves (reportedly as the “indigenous SDA” Church).

The second dispute involves a dispute between claimants of the site of the SDA School at Port Quime in Epi.

Advice Issued by Vanuatu Commissioner of Financial Services Requiring Resolution of SDA Conflict by the Court—March 1996

As described by the Chief Justice in his Supreme Court determination (see below), the SDA Church wrote to the Vanuatu Commissioner of Financial Service on December 19, 1995, to “be incorporated as a company limited by guarantee under the Companies’ Act.”

According to the correspondence respectively dated March 21, 1996, and March 27, 1996, the Commissioner of Financial Services advised the SDA Church that they could not be incorporated “as a company limited by guarantee under the Companies’ Act, until the issue as to who is the true and correct users of the name [SDA] is determined by the Court.”

This is understood to affect the ability of the SDA Church to be registered as a lessee.

Supreme Court Determination (Civil Case No. 57 of 1996) Outlawing the SDA “breakaway” group—September 19, 1996

In his Supreme Court Determination dated September 19, 1996 (Civil Case No. 57 of 1996), the Chief Justice ordered (where the “plaintiff” is the SDA Church of Vanuatu and the “defendants” were a “breakaway” group) using the SDA name without authorization, that:

1. ...the plaintiff church is the true Seventh Day Adventist Church in Vanuatu.
2. The defendants and any of them are hereby restrained from using the plaintiff’s name, whether it be Seventh-Day Adventist Church, SDA Church or Seventh-Day Church, and or any similar version thereof, in perpetuity.
3. The defendants shall pay the plaintiff’s costs; such costs to be taxed or agreed.

Lawyer Acting for SDA Church Forwards Supreme Court Determination to Minister of Lands—November 27, 1998

In correspondence dated November 27, 1998, Susan Bothman Barlow, a Melbourne lawyer acting on behalf of the SDA Church, wrote to the Minister of Lands indicating that her clients, the SDA Church, had lodged a lease over the Church's Epi property (and other properties on Santo and Tanna). Ms. Barlow referred to her clients' involvement in "a dispute between themselves and a small splinter group...based in Pango Village...purporting to hold themselves out as the Seventh-day Adventist Church," and drew the attention of the Minister of Lands to the fact that a judgment had been made by the Chief Justice in favor of her clients on this matter, and that the decision had never been overturned. Ms. Barlow attached the full (13-page) determination of Supreme Court Civil Case No. 57 of 1996 to her letter and asked to be advised, "as a matter of urgency what is required by your department for the purpose of effecting a final registration to my clients..."

Minister of Lands, forwards Ms Barlow's Letter (with Supreme Court Determination Attached) to the Director of Land Record—December 8, 1998

In his request, the Minister of Lands requested advice on the matters raised in Ms. Barlow's letter. This correspondence was sent also to the Director of Lands and other officials.

Action Taken to Create Lease with Minister of Lands as Lessor—October 1999

The creation of the Port Quime SDA School lease was also held up by a dispute between custom landholder claimants. In October 1999, DoL officers visited the island of Epi and obtained consent from custom claimants to enable the Minister of Lands to act as lessor in relation to the site.

Two custom claimants, Mr. L from Nul Nesa (on October 19, 1999) and Mr. T from Tomali village (on October 21, 1999) each signed a document titled "Agriman Blong Minista Blong Lans Hemi Saenem Lis Blong Kraon We Hemi Disput" stating that they agreed that the Minister of Lands could act as lessor of the site and that rent from the lease would be paid into the Custom Owner Trust Account (COTA). Both of the claimants signed the consent forms in the presence of the DoL Planning Officer (and witnesses).

Granting of Lease—October 27, 1999

Lease 22 was registered.

Withdrawal of Lease by Minister of Lands—December 2, 1999

In correspondence dated December 2, 1999, from the Acting Director of the DoL, the president of the SDA Church, Vanuatu Mission, Port Vila, was advised that the lease over the SDA School at Port Quime was being withheld. In this letter, the SDA president was advised of:

"...recent uncertainty over our grant of the Port Quime lease [to the SDA Church]...on or about October/November this year which was signed by the Minister of Lands for and on behalf of the disputing custom land owners."

The letter advised the SDA president that "Mr T, one of the original land owners" had alleged "irregularities in the signing of the said lease and the consent orders some weeks ago during the

visit to Epi of two of my officers as well as the validity of an alleged dispute made by Mr L of Nul Nesa village. The situation is such that it raises some insights as to the manner in which this lease was issued and poses some defect in our administrative processes resulting in our decision to engage the Minister of Lands to sign the Port Quime lease in the *presumption* that there was a dispute.”

Apparently overlooking the determination of the Supreme Court on the matter, the letter also referred to “conflicting interest between the SDA church and the so-called ‘Indigenous Seventh-Day Adventist Church’” and advised that “due consideration must be given to this matter as well and cannot be merely overlooked as an internal problem because it certainly will have a bearing on the lease itself.”

The letter also noted that the writer “had the opportunity to meet with Mr T himself and it is evident that he is a confused person...especially because he has since been subject to more than 3 different lease arrangements in the past 4 years.²⁷ He even demanded that the recent lease granted to the church be cancelled on the grounds that he was not properly advised [*sic*] of the new arrangements empowering the Minister to sign the lease.”

For reasons including those outlined above, the Acting Director of the DoL instructed “that the purported lease title Lease 22 be returned to us pending a full re-consideration and verification of the status of the alleged dispute...”

Completion of Registration Process Ordered—June 7, 2000

The decision to withdraw the lease was overturned in mid-2000, and in correspondence dated June 7, 2000, the DoL advised the Director of Land Records of the following:

...I have noted that the above mentioned lease has been withheld from registration for quite some time now without any imminent action by those parties concerned in bringing about a resolution to the alleged dispute to the land and as well to the ownership of the school property.

In my view there is no question that there still exists a custom ownership dispute over the school land between Mr T and Mr L of Nul Nessa village. Being as it is they have consented for the Minister of Lands to execute the lease on their behalf and for rent moneys payable thereunder to be held in the Custom Owners Trust Account (COTA) until their dispute has been resolved. This was accordingly been properly done and is in order.

As to the ownership of the school property it has been rightly acknowledged by this department that the Seventh-Day Adventist Conference which incorporated a company under the name of Seventh-Day Adventist Limited is the alienator of the property and thereby becomes the Lessee in respect of this lease rather than the Indigenous Seventh-Day Adventist which is a break-away group. The Seventh-Day Adventist Limited had appropriately executed the lease as Lessee.

With that said I would now hold that lease no. Lease 22 was properly executed and is in order for registration. Therefore I would advise that you should now proceed to complete registration of the lease without further delay.

²⁷ The Department of Lands lease file for Lease 22 does not contain the details of all these arrangements.

Key Development—June 9, 2000. The lease was registered by the DoL, with the Minister of Lands as lessor.

Specific policy points

- Possibility that custom landholders did not understand laws giving the Minister of Lands the right to become lessor, and that rent sourced from disputed leases for which minister is lessor would be held in a trust fund.
- There appears to be no information provided in lease files concerning resolution of disputes that would subsequently remove the Minister of Lands as lessor and distribute held funds.
- The series of changes concerning the registration status of Lease 22 raises the question of the extent to which personnel instability within the Ministry of Lands leads to a lack of continuity in processing and managing leases. In the case of Lease 22, this is demonstrated by the fact that the DoL was apparently unaware in 2000 (see section above titled “withdrawal of lease by Minister of Lands”) that the matter of the dispute with the “breakaway” SDA group had been resolved by the Supreme Court in 1996. Other inconsistencies pertain to the question of whether there was or was not a dispute between claimants concerning the site. This issue raises the question of whether it would be a worthwhile research project to establish a table of occupants since 1980 of the positions of (1) Minister of Land; (2) Director-General of Lands; (3) Director of Lands; and (4) Director of Land Records that provides information on the reason for each personnel change (including suspension). This could be used to emphasize to civil society the cost of personnel instability within the Ministry of Lands.

Appendix C: Department of Lands standard leases for Agricultural, Commercial and Special leases

1. Agricultural Lease
2. Commercial Lease
3. Special Lease



Ministry Of Land, Natural Resources, Energy And Rural Water Supply

AGRICULTURAL LEASE

SCHEDULE

PAYMENT AND RENT REVIEW

1. The Lessee (s) shall pay during the term of the lease to the Lessor (s), or into a bank account nominated by the Lessor (s) and shall keep receipts for all such payments for inspection by the Minister responsible for if required at any time a Yearly rent, free of all deductions and to be in advance, equal to the amount indicated on the lease AND FURTHER the rent is review able in accordance with the Land Lease Act Cap. 163 (as amended) and the review may be initiated by either the Lessor or the Lessee.

EXCEPTIONS AND RESERVATIONS

Use of Water

- 2 The Lessor(s) and the Lessee(s) hereby acknowledge and agree that:
 - a) (i) The Lessee shall be entitled to extract water from the demised land for the purposes of the proper exploitation of the demised land PROVIDED THAT the Lessee or any other person shall not restrict or change the natural course of any surface waterways by way of dams, rechannelling or by any other means without the written consent of the lessors and of the department responsible for agriculture and rural water supply.
 - (ii) Lessor(s) and all persons authorized by them shall have the right to fish and bath in the natural waterways and provided reasonable notice be given, to take and carry water therefore by means of pipes or otherwise PROVIDED HOWEVER that the taking of water does not interfere with the Lessee(s) rights thereto.

Right of lessors to hunt on undeveloped land

- b) All the game living on undeveloped or black bush land including wildfowl, flying foxes, wild pigs and coconut crabs, is reserved to the Lessor subject to the prior consent of the Lessee being given to the Lessor(s) to hunt on the demised land but in any event the Lessor(s) shall not hunt on land under cultivation or developed or stocked with cattle or other livestock, which includes any fenced undeveloped or black bush areas containing livestock.

Fruit trees and forest produce.

- c) Forest produce and naturally regenerated trees including coconut trees growing in unimproved areas on the demised land, not including trees which are improvements of or by the lessee are reserved to the Lessor(s), who shall have the right to enter on the land, to take forest produce or to grant a contract to other parties to do so under any license pursuant to the Forestry Act Cap 147 but subject to the prior written consent of the Lessee shall that all terms and conditions of any such contract granted and license issued therefore are complied with.

Rights of way.

- d) All rights of way if any hitherto used or enjoyed across any part of the demised land by the Lessor(s) and such further rights of way as may be determined to exist by any competent court shall continue for the benefit of the Lessor(s) and any persons authorized by them.

Power to enter.

- e) The Lessor(s) shall have the right for themselves and for all persons authorized by them with all necessary machinery, equipment, vehicles and horses to enter at all reasonable times and after given reasonable notice so the Lessee, upon any part of the demised land for the purposes of exercising any of the rights herein before excepted and reserved and for the purpose of inspecting and condition of the demised land PROVIDED ALWAYS that the Lessor(s) shall only enter the demised land on the prescribed access or rights of way as determined by the lessee AND the Lessor(s) shall make reasonable compensation to the lessee for any damage in consequence of the exercise of the aforesaid rights.

AGREEMENTS BY LESSEE.

- 3. The lessee agrees with the Lessor(s) as follows:-

TO use for agriculture only.

- a) Not to permit any part of the demised land to be used for any purpose other than the agricultural activities including primary processing and other services required for the sole and explicit support of same.

To Pay rent.

- b) To promptly pay the rents hereby reserved or any new rent substituted therefore in accordance with the provisions of this lease.

To pay rates.

- c) To promptly pay all lawfully imposed rates and assessments (including service rates) now or hereafter payable in respect of the leased land unless the same are exclusively payable by the Lessor(s) by virtue of any law.

To preserve land.

- d) To Farm and manage the demised land in such a manner as to preserve its fertility in accordance with good soil management practice as determined by the Department of Agriculture.

Not to commit waste or nuisance.

- e) Providing that it does not conflict with normal agricultural practice not to commit or suffer any willful or voluntary waste, spoil or destruction of the demised land or suffer to be done thereon anything which may become a nuisance or annoyance to the Lessor(s) or to the owner of occupier or adjoining land.

To prevent squatters

- f) To use its best endeavors to prevent squatters entering or residing on the land.

Keep land free of refuse.

- g) To keep the land clean of all refuse, noxious weeds, vermin and rubbish.

To fence.

- h) To enclose with good and substantial fencing the whole or any part of the demised land used for grazing or pasturing so that all stock on the demised land shall be at all times adequately fenced.

Not to fell trees near riverbank.

- i) Not to fell trees or clear or burn off bush or cultivate any demised land within a distance of seven meters from the bank of a river or stream unless it is essential for drainage purposes and is approved by the Department of Agriculture.

Not to clear or cultivate on top of hills.

- j) Not to clear, burn off, cultivate or permit excessive grazing at the top of any hill or on any slope exceeding 25 degrees unless permission is granted by the Department of Agriculture

Not to plant near public road.

- k) Not to plant any crops within ten meters of the center of any public road.

To repair buildings.

- l) To repair or replace as required, and keep in good repair all buildings together with all other constructions and fixtures in and upon the demised land or which during the tenancy may be erected or provided thereon.

To take the risk.

- m) To take the risk of all operations undertaken on the demised land and to indemnify the Lessor(s) against any action, claim, cost, damage or proceeding whatsoever caused arising either directly or indirectly from the lessee's operations **PROVIDED HOWEVER** that the Lessor(s) shall exercise their rights under clauses 2 (a) (ii), (b), (c), (d) and (e) of this schedule at their sole risk.

Not to assign or transfer ownership.

- n) Not without the prior consent in writing of the Lessor(s) (which consent shall not be unreasonably withheld) to assign, sub-lease, underlet, mortgage or part with possession of the demised land or any part thereof.

Agreements with Sub-Lessee.

- o) In the event of sub-leasing the demised land to covenant with the sub-lessee that he shall perform and observe the covenants on the lessee's part contained herein.

To deliver up at end of lease.

- p) On expiration of the said term or other sooner determination of the lease peaceably and quietly to deliver up vacant possession of the demised land including all improvements thereon to the lessor.

CUSTOM OWNERS

- 4. The Lessor(s) hereby represent and confirm to the lessee that they are the duly authorised representatives of the Custom Owners according to law who are under the Constitution of Vanuatu the Custom Owners entitled to create leasehold interest in and otherwise deal with the demised land.

QUIET ENJOYMENT.

- 5. The Lessor(s) agree with the Lessee as follows:
 - A. To permit the lessee on his paying the rents hereby reserved and performing the stipulations and provisions herein contained peaceably to hold and enjoy the demised land without any interruption by the Lessor(s).

- B. To indemnify the lessee and his successors in title from any claim that the money forms the premium or rent has not been properly paid out.

RE-ENTRY PROVISIONS.

6. If there shall be any breach of any of the conditions, agreements or obligations hereby imposed or implied or by any law imposed on the lessee, the provisions of the Land leases Act Cap 163 shall apply.

REGISTRATION OF LEASE.

7. All costs and disbursements howsoever arising in respect to the stamp duty and registration of this lease at the Vanuatu Land Records office shall be borne by the Lessee.

DETERMINATION OF DISPUTE.

8. If any dispute or difference shall arise between the Lessor and the lessee concerning any matter within this lease, it shall be referred to the Lands Referee appointed under the Lands Referee Act (Cap 148).

GOVERNED BY VANUATU LAWS.

9. This lease shall at all times be Governed by the Laws of Vanuatu.



COMMERCIAL LEASE

SCHEDULE

PAYMENT AND RENT REVIEW

1. The lessee (s) shall pay during the term of the lease to the lessor (s), or into a bank account nominated by the lessor (s) and shall keep receipts for all such payments for inspection by the minister responsible for if required at any time a yearly rent, free of all deductions and to be in advance, equal to the amount indicated on the lease **AND FURTHER** the rent is reviewable in accordance with the Land Lease Act Cap. 163 (as amended) and the review may be initiated by either the lessor or the lessee.

AGREEMENTS BY LESSEE

2. The lessee agrees with the lessors as follow:

To use for commercial purpose.

- a) Not to permit or suffer any part of the leased land to be used for any purpose other than for the trade or business of the sale for general merchandise and other services required for the sale and explicit support of the same and ancillary facilities and not to use or permit the use of the leased land for any noxious noisome of offensive art, trade, business, occupation or calling or in any such manner as to cause annoyance adjacent premises or the neighbourhood, however, notwithstanding the above, the lessee may also use a portion that in any case the produce of such agriculture shall only be used for the purpose of the said trade.
- b) To promptly pay the rents hereby reserved or any new rent substituted thereafter in accordance with the provisions of this lease
- c) To promptly pay all lawfully imposed rates and taxes payable by or charged upon the occupiers of the demised premises unless the same are exclusively payable by the lessors by virtue of any law.

- d) To repair or replace as required, and keep and leave clean and in good repair all buildings together with all other constructions and fittings and to keep in good working order all sewage disposal systems.
- e) To insure against damage or destruction to the full value of all buildings and accessories, with any money received in the event of such damage going towards repair and/or replacement.
- f) To allow the free and uninterrupted passage of water, electricity, telephone, drainage and other services and to allow entry for the repair of same.
- g) Not without the prior consent in writing of the lessors (which consent shall not be unreasonably withheld) to assign, sublease, underlet, mortgage or part with possession of the demised land or any part thereof.
- h) In the event of sub-leasing the demised land to covenant with the sub-lessee that he shall perform and observe the covenant on the lessee's part contained herein.
- i) Not to subdivide the demised land without the written consent of the lessors, and in any event not without the approval of the Director of Survey.
- j) To use its best endeavours to prevent squatters entering or residing on the land.
- k) To keep the land clear of all refuse, noxious weeds, vermin and rubbish.
- l) On expiration of the said term or other sooner determination of the lease peaceably and quietly to deliver up vacant possession of the demised land including all improvements thereon to the lessor.
- m) To take the risk of all operations undertaken on the land and to indemnify the lessors against any action, claim, cost, damage or proceeding whatsoever caused arising either directly or indirectly from the lessee's operation.
- n) Not to commit or suffer any wilful or voluntary waste, spoilage or destruction of the lease land or suffer to be done thereon anything, which may be or become a nuisance or annoyance to the lessors or to the owners or occupiers of adjoining land.
- o) To give first preference to indigineous citizens of Vanuatu for all staff posts or other type of employment both skilled and unskilled in connection with the tourist resort **PROVIDED THAT** such person

shall satisfy the normal requirements of the post offered and that they shall be subject to all normal rules of employment prevailing in the said resort.

CUSTOM OWNERS:

3. The lessor (s) hereby declare and confirm to the lessee that they are the duly authorized representatives of the custom owners according to law and under the constitution of Vanuatu are the custom owners entitled to create leasehold interest in the demised land and otherwise deal with the demised land.

AGREEMENT BY THE LESSOR:

4. The lessors agree with lessee as follows:
 - a) To permit the lessee on his paying the rents hereby reserved and performing the situations and provisions herein contained peaceable to hold and enjoy the demised land without any interruption by the lessors or any person deriving title under or in trust or them.
 - b) To indemnify the lessee and his successors in title from any Claim that the money for their premium or rent has not been properly paid out.

RE-ENTRY PROVISIONS

5. If there shall be any breach of any of the conditions, agreements or obligations hereby imposed or implied or by any law imposed on the lessee, the provisions of the Land Leases Act Cap 163 shall apply.

REGISTRATION OF LEASE

6. All costs and disbursements howsoever arising in respect to the stamp Duty and Registration of this lease at the Vanuatu Land Records Office shall be borne by lessee.

DETERMINATION OF DISPUTES

7. If any dispute or difference shall arise between the lessor and the lessee concerning any matter within this lease it shall be referred to the Land Referee appointed under the Land Referee Act Cap 148.

GOVERNED BY VANUATU LAWS

8. This lease shall at all times be governed by the laws of Vanuatu.



Ministry Of Land, Natural Resources, Energy And Rural Water Supply

SPECIAL LEASE

SCHEDULE A

PAYMENT AND RENT REVIEW

1. The lessee (s) shall pay during the term of the lease to the lessor (s), or into a bank account nominated by the lessor (s) and shall keep receipts for all such payments for inspection by the minister responsible for if required at any time a yearly rent, free of all deductions and to be in advance, equal to the amount indicated on the lease **AND FURTHER** the rent is review able in accordance with the Land Lease Act Cap. 163 (as amended) and the review may be initiated by either the lessors or the lessee.

EXCEPTIONS AND RESERVATIONS

Use of Water

2. The lessors and the lessees hereby acknowledge and agree that:
 - a) (i) The lessee shall be entitled to extract water from the demised land for the purposes of the proper exploitation of the demised land **PROVIDED THAT** the lessee or any other person shall not restrict or change the natural course of any surface waterways by way of dams, rechannelling or by any other means without the written consent of the lessors and of the department responsible for agriculture and rural water supply.
 - (ii) Lessors and all persons authorized by them shall have the right to fish and bath in the natural waterways and provided reasonable notice be given, to take and carry water therefore by means of pipes or otherwise **PROVIDED HOWEVER** that the taking of water does not interfere with the lessee's rights thereto.

Right of lessors to hunt on undeveloped land

- b) All the game living on undeveloped or black bush land including wildfowl, flying foxes, wild pigs and coconut crabs, is reserved to the lessors subject to the prior consent of the lessee being given to the lessors to hunt on the demised land but in any event the lessors

shall not hunt on land under cultivation or developed or stocked with cattle or other livestock, which includes any fenced undeveloped or black bush areas containing livestock.

Fruit trees and forest produce.

- c) Forest produce and naturally regenerated trees including coconut trees growing in unimproved areas on the demised land, not including trees which are improvements of or by the lessee are reserved to the lessors, who shall have the right to enter on the land, to take forest produce or to grant a contract to other parties to do so under any license pursuant to the Forestry Act Cap. 147 but subject to the prior written consent of the lessee that all terms and conditions of any such contract granted and license issued therefore and complied with.

Rights of way.

- d) All rights of way if any hitherto used or enjoyed across any part of the demised land by the lessors and such further rights of way as may be determined to exist by any competent court shall continue for the benefit of the lessors and any persons authorized by them.

Power to enter.

- e) The lessors shall have the right for themselves and for all persons authorized by them with all necessary machinery, equipment, vehicles and horses to enter at all reasonable times and after given reasonable notice so the lessee, upon any part of the demised land for the purposes of exercising any of the rights herein before excepted and reserved and for the purpose of inspecting and condition of the demised land **PROVIDED ALWAYS** that the lessors shall only enter the demised land on the prescribed access or rights of way as determined by the lessee **AND** the lessors shall make reasonable compensation to the lessee for any damage in consequence of the exercise of the aforesaid rights.

AGREEMENTS BY LESSEE.

- 3. The lessee agrees with the lessors as follows:-

To Pay rent.

- b) To promptly pay the rents hereby reserved or any new rent substituted therefore in accordance with the provisions of this lease.

To pay rates.

- c) To promptly pay all lawfully imposed rates and assessments (including service rates) now or hereafter payable in respect of the leased land unless the same are exclusively payable by the lessors by virtue of any law.

To preserve land.

- d) To manage the demised land in such a manner as to preserve its fertility in accordance with good soil management practice.

Not to commit waste or nuisance.

- e) Providing that it does not conflict with normal disposal practice not to commit or suffer any willful or voluntary waste, spoil or destruction of the demised land or suffer to be done thereon anything which may become a nuisance or annoyance to the lessors or to the owner or occupier or adjoining land.

To prevent squatters

- f) To use its best endeavors to prevent squatters entering or residing on the land.

Keep land free of refuse.

- g) To keep the land clean of all refuse, noxious weeds, vermin and rubbish.

To fence.

- h) To enclose with good and substantial fencing the whole or any part of the demised land so that all the land shall be at all times adequately fenced.

Not to fell trees near riverbank.

- i) Not to fell trees or clear or burn off bush or cultivate any land within a distance of seven meters from the bank of a river or stream unless it is essential for drainage purposes and is approved by the department of agricultural.

Not to clear or cultivate on top of hills.

- j) Not to clear, burn off, cultivate or permit excessive grazing at the top of any hill or on any slope exceeding 25 unless the department of agriculture grants permission.

Not to plant near public road.

- k) Not to plant any crops within ten meters of the center of any public road.

To repair buildings.

- l) To repair or replace as required, and keep in good repair all buildings together with all other constructions and fixtures in and upon the demised land or which during the tenancy may be erected or provided thereon.

To take the risk.

- m) To take the risk of all operations undertaken on the land and to indemnify the lessors against any action, claim, cost, damage or proceeding whatsoever caused arising either directly or indirectly from the lessee's operations **PROVIDED HOWEVER** that the lessors shall exercise their rights under clauses 2 (a) (ii), (b), (c), (d) and (e) of this schedule at their sole risk.

Not to assign or transfer ownership.

- n) not without the prior consent in writing of the lessors (which consent shall not be unreasonably withheld) to assign, sub-lease, underlet, mortgage or part with possession of the demised land or any part thereof.

Agreements with sub-lessee.

- o) In the event of sub-leasing the demised land to covenant with the sub-lessee that he shall perform and observe the covenants on the lessee's part contained herein.

To deliver up at end of lease.

- p) On expiration of the said term or other sooner determination of the lease peaceably and quietly to deliver up vacant possession of the demised land including all improvements thereon to the lessor.

CUSTOM OWNERS

- 4. The lessors hereby represent and confirm to the lessee that they are the duly authorised representatives of the custom owners according to law who are under the Constitution of Vanuatu the custom owners

entitled to create leasehold interest in and otherwise deal with the demised land.

QUIET ENJOYMENT.

5. The lessors agree with the lessee as follows:
 - a) To permit the lessee on his paying the rents hereby reserved and performing the stipulations and provisions herein contained peaceably to hold and enjoy the demised land without any interruption by the lessors.
 - b) To indemnify the lessee and his successors in title from any claim that the money forms the premium or rent has not been properly paid out.

RE-ENTRY PROVISIONS.

6. If there shall be any breach of any of the conditions, agreements or obligations hereby imposed or implied or by any law imposed on the lessee, the provisions of the Land leases Act Cap 163 shall apply.

REGISTRATION OF LEASE.

7. All costs and disbursements howsoever arising in respect to the stamp duty and registration of this lease at the Vanuatu Land Records office shall be borne by the lessee.

DETERMINATION OF DISPUTE.

8. If any dispute or difference shall arise between the lessors and the lessee concerning any matter within this lease, it shall be referred to the Lands Referee appointed under the Lands Referee Act Cap 148.

GOVERNED BY VANUATU LAWS.

9. This lease shall at all times be governed by the laws of Vanuatu.

Significant land loss was a unifying factor and mobilizing force behind Vanuatu's independence movement, a key demand of which was the return of alienated land to custom landholders. In contemporary Vanuatu, the ongoing alienation of customary land through leasing remains an important source of complaint. The World Bank Justice for the Poor program (Jastis Blong Evriwan in Vanuatu) explores this issue through in-depth locality studies which provide evidence of continuing inequities in land leasing practices and highlight some implications for group decision making and benefit-sharing.



Justice for the Poor is a World Bank research and development program aimed at informing, designing and supporting pro-poor approaches to justice reform.

www.worldbank.org/justiceforthe poor

