DEALING WITH LAND DISPUTES IN VANUATU

INTRODUCING THE CUSTOMARY LAND TRIBUNAL SYSTEM

Presented by
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Map of the Republic of Vanuatu
What is customary land?

- Ni-Vanuatu people lived on customary land
- Vanuatu has a rich, strong and embedded culture of chiefly systems and custom
- Land is managed using customary systems.
- It can be used by an individual as part of a family, a clan, a tribe etc
- Disputes are almost always about ownership and use of the land.
- Sometimes disputes relate to chiefly title
History of land disputes

- Traditional – tribal warfare caused many people to be displaced or relocated.
- Depopulation - introduced diseases struck the country, no proper health facilities.
- Post-colonialism issue - traders and missionaries relocated people, alienators took around 15% of customary land. Natives can only lodge caveats to challenge alienated land, but no in-Vanuatu have won challenges.
- Land speculation - introducing the lease system of managing land, land became a commodity in the cash economy rather than a heritage or kastom to ni Vanuatu.
Vanuatu is unique in the Pacific because the Constitution states on Chapter 12;

Article 73, all land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants

Article 74, the rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu

Article 75, only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with a recognized system of land tenure shall have perpetual ownership of their land

Article 78(2) government shall arrange for the appropriate customary institution or procedures to resolve disputes
Land Dispute Settlement

- In the pre independence era, the colonial administration introduced a system of dispute settlement by using native assessors and district agents to adjudicate land cases.
- After 1980 as provided for in the constitution all land cases were dealt in the Island Courts.
- The appeal process allowed up to the Supreme court.
- Lands adjudicated at village, area and Island level by custom chiefs were not recognised.
Island Court

- Complaint of Justice (Land jurisdiction) delayed and justice denied from mid 1990 – 2000
- Claimants preferred person who knew Vanuatu Custom to adjudicate land case
- In February 1999 the Chief Justice announced the Supreme court would not hear any more land appeal cases – An alternative needed to be found
- A team of consultants including Professor Don Paterson from USP Emalus campus and myself were assigned to get the view of the chiefs and stakeholders on a preferred court system to replace the Island Court
CUSTOMARY LAND TRIBUNAL ACT, 2001

- Key object of the Act is to provide for a system based on custom to resolve disputes about customary land

- Key purpose of the Act is to provide a legislative framework for resolving disputes within a single village, joint village, sub area, area, and Island levels

- The Act sets out the procedures to be applied and provides avenues for appeal
Role and responsibilities of the CLTU

- Provide support to all of the Customary Land Tribunals across the whole of Vanuatu.
- Provide advice, training, record keeping, follow-up etc in all CLT matters
- Create and maintain a register of all Chiefs and make this available to relevant parties
- Develop policies and procedures that support the CLT’s to operate efficiently
Why established Customary Lands Tribunal?

- Vanuatu has strong dispute settlement system in custom, which was not recognized.
- Vanuatu people agreed that only local chiefs are capable of adjudicating land cases.
What are Customary Land Tribunals (CLT) and how do they operate?

Adjudicators sat in CLT

- CLTs are set up by councils of chiefs at various levels (e.g. village, area, and island) and governed by the provisions in the Customary Land Tribunal Act, 2001.
- Give an example.
- CLT’s are established when there is a dispute.
- CLT’s are presided over by Chiefs and elders.
- CLT’s apply custom to determine ownership.
What are Customary Land Tribunals (CLT) and how do they operate?

- Claimants sat in CLT
- The secretary of each CLT is responsible to record all decisions which submitted to the CLTU
- CLTs decisions are recognized
- The procedures and mechanisms for appeal are only up to the Island level
- Appeals to the Supreme Court are only allowed when procedure have not been followed
How are the CLT’s supported?

- From 2001 to 2005 CLT administratively supported by Dispute Resolution officers in the Department of Lands of the Vanuatu Government

- The Customary Land Tribunal Unit (CLTU) established in 2006 under Ministry of Lands
Malvatumauri Chiefs Nakamal
How are the CLT’s supported?

- The CLTU works closely with the Malvatumauri National council of chiefs in administrating the CLTs at the various levels in the islands.

- In 2010, CLTU shifted to the Ministry of Justice & Community services and is located in Port Vila at the Vanuatu National Council of Chiefs Premises (Malvatumauri...
Has there be any review on CLTs operation and its Act?

- First review was carried out in 2005 (Professor Don Paterson, Alicta Vuti, Joel Simo & PNG lawyer/Consultant)
- Second review by VKS was carried in 2006 (Joel Simo)
- Latest review was undertaken in 2009 (Howard Van Trease and Joel Simo)
A Vanuatu Case Study

The Udaone Land Case
Udoane customary land, NW of Efate
Overview

- Custom of Efate
- Background of the case
- The Story
- What happened at the CLT Hearing
- Outcomes of the CLT Hearing
Custom of Efate

- In custom, land use is under a custom governance system

- The Efate customary land user system is mainly the patrilineal land system where land is passed from father to son

- Customary laws also recognise the matrilineal system in some cases

- In any given land boundary on Efate the land is governed by the Paramount Chief and his council
Custom of Efate (cont)

- All members of the tribe, family are accommodated
- Sacred and historical sites protected
- Preferred disputes resolution is through custom
Background to the case

- Land has history with early colonial settlers
- Has proven history of old village settlement
- Faced migration from people to land creating conditions for land disputes
- Customary ownership claimed before 1980
- Recognised as first village to be resettled in 1972
Background to case (cont)

- Chief and tribes protective of land boundary
- Land disputes went to the Island Court (1994)
- Case lodged with the joint village level in 2005
- Parties familiar with CLT procedures
- Case completed in June 2006
The story

- Closely related families making separate claims
- Claims are for the whole land in Udaone
- Same family, four different histories
- Claimants stated chief started to lease land without consultation
The Story (cont)

- Reference to Deeds of Sale in 1800’s
- Clear evidence of fear in loosing land
- Claimants producing history & family tree
- Claimants asking for eviction of other families
What happened at the CLT Hearing?

- The principal chiefs of the two neighbouring villages and their members adjudicated the case.

- CLT members know the custom of the area and have some knowledge of the disputed land.

- Accepted claimants from different areas and islands.

- All claimants asked to submit sketch map of their claim, history, and family tree.
What happened at the CLT hearing (cont)

- Total of 12 claimants allowed time to present case.
- Applied the customary land laws of Efate
- CLT hearing sat over a period of 18 months
- All parties were given opportunity to present their claims and respond to the others claims
What happened at the CLT Hearing? (cont)

- No limit on time and number of witnesses
- All claims heard if they were based on custom
- All claims were analysed through customary knowledge and fact
- Decision delivered in a timely manner
Outcomes of the CLT

- In the judgement reasons were given as to how their claims failed in custom

- Emphasised the importance of customary land use system

- Declared the Paramount Chief as Custodian of Udaone land boundary and custom owner of his portion of land

- Declared that all heads of tribes have custom owner rights to continue occupation and use of their land
Outcomes of the CLT (cont.)

- Udaone Council of chiefs to allocate land to their people
- Any land developments must have the consent of the principal chief and heads of tribes together
- Rights of other families to continue residing and living on the land subject to decision of Paramount Chief and his council
Conclusion

- This land dispute resolution system is understood and supported by Chiefs and the Ni-Vanuatu people
- It empowers the Chiefs who are the custodians of custom
- This system recognises the role of the chiefs
- Customary land laws are upheld through the CLT system
- Vanuatu Government has provided the legal mechanisms to adjudicate land cases
Thank you everyone
For your attention