At independence in 1980, alienated land in Vanuatu was returned to custom owners. The effect of this constitutional provision was to nullify all registered titles that had been granted during the colonial period. Though the framers of the Constitution did provide for a procedure to deal with land disputes, they did not anticipate that the problem would grow to become one of the most disruptive issues in Vanuatu society today. During the 1980s and 90s, numerous land disputes over the ownership of custom land were brought before the island courts, especially on the island of Efate, Malakula and Santo—the islands where the greatest number of formerly alienated properties were located. More recently, the number of land disputes has increased as a result of a surge in land speculation by foreigners attracted to Vanuatu to take advantage of new subdivision developments—especially along coastal areas—offered for leasing.

Reflecting the difficulty of working through opposing accounts and interpretations of custom, the decisions were often disputed and, as allowed under the Island Court Act, many were appealed to the Supreme Court for final judgment. In February 1999, the Chief Justice announced that the Court would no longer accept land cases due to the huge backlog that had accumulated and gave the Government one year to come up with an alternative solution. While there must have been a large number of cases before the Court, it is clear from an examination of the judgments that the main issue for the Chief Justice was the complexity of the cases and his lack of knowledge about custom principles in the various areas, despite the fact that he was allowed to have to custom advisors to assist him.

This led the Lands Department to organize a survey of the islands to try to find another solution to the difficult task of dealing with the increasing number of land disputes. The result of subsequent discussions was the passage of the *Customary Land Tribunal Act* (CLTA) of 2001, which mandated the establishment of customary land tribunal in place of the island courts. To deal with the fact that the Supreme Court was not able to deal adequately with the issue of custom, the new system that was introduced turned to the only institution within Vanuatu society with the expertise and capability—the chiefly system through the *Malvatumaauri* (the National Council of Chiefs) as the guardian of custom. The system allows anyone with a dispute about customary land to request the establishment of a tribunal within a community to attempt to find a resolution involving chiefs and people knowledgeable of custom principles.
The Act encourages parties in a dispute about customary land to first attempt to resolve the dispute ‘in accordance with the rules of custom or in any other lawful way’ before resorting to the land tribunal system (Section 10(1)). If negotiations have not resolved the dispute, people can request the formation of a Village Land Tribunal, which may be a joint tribunal if more than one village is involved. The meeting of the tribunal is widely advertised and there can be multiple parties to the dispute. The principal chief and two other chiefs or elders of each village involved form the Village Land Tribunal. Parties can object to the tribunal members if, for example there are clear conflicts. Presentation of each side’s case proceeds without rules of evidence and there is considerable freedom as to questioning and who can speak. No lawyers are permitted to participate. Appeals are permitted to the next level of tribunals—the Custom Area or Sub-Area land tribunal or Joint Custom Area and eventually to the Island Land Tribunal. There is no appeal to the Supreme Court as in the past, except in cases where violations of procedure have occurred.

The Act was implemented in 2002 and reviewed in 2005. At that time, it was found that a large portion of the population ‘did not understand the new law and had many reservations about it.’ People saw the Customary Land Tribunals as something foreign—not a part of the normal practice followed in their communities—with the recommendation that more explanation and awareness raising be undertaken. Subsequently, the Customary Land Tribunal unit, which was based in the Department of Lands, improved its operation—the result of more travel and contact and dissemination of information. In addition, the fact that customary land tribunals were actually taking place helped to raise awareness and reduce the early concerns. By 2009, a total of 133 tribunals had been conducted on various islands. The indication was that the Customary Land Tribunal system was becoming an accepted institution for the resolution customary land disputes in those islands where it has been used. The key to this growing acceptance is the fact that the system operates under the principle laid down by the Constitution—that ‘the rules of custom shall form the basis for ownership and use of land in Vanuatu.’

Despite these positive signs, it was felt that another review should take place to evaluate the overall operation of the Customary Land Tribunal Unit. There was growing concern, especially from the Malvatumaour, about the degree to which the principles of kastom and kastom practice were actually being used and the problem of insuring adherence to the rules in conducting tribunals as laid down in the Act. A review was commissioned in 2009 and a report presented 2011, which served as the basis for further discussions and recommendations for significant changes to the Act including an increase in the use of custom processes and the introduction of a system of mediation prior to the instigation of a land
tribunal. Most significant is the recommendation to refer appeals of area level land tribunals to specially constituted sittings of island courts to be known as Island Court (Land), replacing the island level tribunals. The Court would be headed by a magistrate include chiefs and elders with special knowledge of the region concerned. The effect of this new arrangement will be to insure that the decisions based on custom will gain recognition.

In addition, the review has led to further discussion on the whole issue of disputes over customary land with a proposal that the Customary Land Tribunal Act should be replaced with what is to be called the Customary Land Disputes Management Act, providing an expanded role in monitoring land dealings. It is expected to include provisions that will recognise group ownership of land and provide a procedure for landowners to mark their boundaries when no dispute exists. In addition, in the future it will require that before accepting a lease of customary land for registration, officers of the Department of Lands must confirm with the National Coordinator of Land Dispute Management that the land which is the subject of the lease is not the subject of a land dispute and that the boundaries of the land and the persons purporting to lease the land correspond with the details recorded with the National Coordinator. The relevant changes to the Act are being drafted and it is expected that they will be ready for consideration by Parliament in early 2012.

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