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LAND LAW REFORMS: FROM COLONIAL BONDAGE TO TRUE INDEPENDENCE

It must be acknowledged that present difficulties encountered by the Government and the people of Vanuatu with regards to land related laws are closely entangled with our colonial past. Most of the initial land related laws in Vanuatu were meant to be transitional to carry the country from colonialism to independence in 1980.

Unfortunately these transitional laws continue to exist. Land Reform Act [CAP 123] is one of these transitional land law which was mostly to deal with the management of alienated land.

Originally came in as Joint Regulations of 1980. Out of the Joint Regulation came Land Reform Act No. 6 of 1981. It was further amended in 1985, 1992, 2000, 2013, and 2014. The major amendments took place in 2013 under the leadership of former Minister of Lands – Hon Ralph Regenvanu (MP) in the hope of advancing Vanuatu. Unfortunately high hopes and expectations were short-lived due to greater uncertainties, high administrative costs, time-consuming and expensive procedures, and contrary to custom protocols and procedures. Immediately in 2014 another lot of amendments were enacted and gazetted as Land Reform (Amendment) Act No. 11 of 2014. Yet these amendments of 2014 were not sufficient enough to enhance the implementation of the laws.

Parallel to major changes to Land Reform Act [CAP 123], there was also a significant setback in the custom owners' and users' determination processes and procedures. The former Land Tribunal Act of 2001 was replaced with Custom Land Management Act No. 33 of 2013 which legally did not add too much value to the processes. In actual fact it created a more lengthy, costly and unsecured custom land owners and/use rights determination processes and procedures.

Consequentially Land Leases (Amendment) Act No. 32 of 2013 was to be in line with the changes in both Land Reform (Amendment) Act No. 31 of 2013 and Custom Land Management Act No. 33 of 2013. However in 2014 there were significant amendments to Land Leases Act which is referred to by many as Land Leases (Amendment) Act No. 35 of 2014. The 2014 amendments have increased insecurity over registered leases being used as leverage to raise funds for investments. With increased insecurities over registered leases as bankable guarantees, financial institutions are not prepared to risk their money as loans. Therefore, loans as source of capital investment in this country has been greatly affected by these amendments.

Acknowledging potential economic and social risks to the country and the clients in terms of land development and investment in Vanuatu, the Government decided to urgently undertake legislative reforms. There will be two parts in this reform process – short and long term. The short-term will focus on improving the existing legal, procedural and cost-effectiveness of the laws. However the long-term reforms will focus on moving Vanuatu as a nation out from transitional laws to more meaningful and practical laws that reflect the true spirit of the Constitution.

TRANSITIONAL REFORMS:

As a transitional measures a number of major proposed changes will need to be immediately addressed. The proposed changes under the existing Custom Land Management Act No 33 of 2013/2014 will strive to accomplish the following outcomes:

- **Separation of custom land owners and/or users determination processes and procedures from negotiator's certificate acquisition and leasing making processes and procedures;**
- **Minimise direct interferences from land administration into custom institutions, authorities and rules;**
- **Reduce levels of both custom and higher courts in the land ownership and use rights determination processes and procedures;**
- **Increase citizens' accessibility and affordability to all services rendered through custom land owners and users' determination mechanisms regardless of distance and costs;**
- **Empower and build capacity of existing institutions and structures such as the active Provincial Area Secretaries,**
- **Maintain right of appeal both on procedures and substances as protected and promoted in the National Constitution;**

- **Eliminate potential of creating groups of landless people in Vanuatu through individual custom land ownership declarations; and**
- **Establish and operate an effective, efficient and credible national custom land ownership and/users rights registration.**

The proposed changes in the short-term will remove complexities, insecurity, time consuming, in-accessibility, and expensive custom owners and/or users' rights determination, negotiator's certificate acquisition and lease making processes and procedures. Also changes will streamline procedures, ensure greater degree of security for both the owners and users, clarify roles of administration, reduce waiting time, and ensure accessibility and ensures cost-effectiveness.

Consequentially the proposed amendments to Custom Land Management Act No. 33 of 2013 must be harmonised with the Land Reform (Amendment) Act No. 33 of 2013. The proposed amendments to Land Reform Act [CAP 163] will strive to accomplish the followings:

- **Separation of custom land owners and/or users determination processes and procedures from negotiator's certificate acquisition and leasing making processes and procedures;**
- **Custom ownership and use rights determination to drive negotiator's certificate and lease making processes and procedures;**
- **Lessen timing to acquire negotiator's certificate and registered leases;**
- **Ensure a more secured negotiator's certificate acquisition and lease making processes and procedures;**
- **Affordable negotiator's certificate acquisition and lease making processes and procedures;**
- **Maintain prior informed consent from declared custom owners and/or users or land claimants as to whether or not they would like to engage in a negotiator's certificate or not; and**
- **Maintain transparency in all the processes and procedures.**

In the same spirit, there will be urgent amendments to Land Leases (Amendment) Act No. 35 of 2014 with the ultimate objective of ensuring that registered leases are secured. Furthermore secured registered leases can be accepted by financial institutions as collaterals for the lessees to access capital investments through loans. This is critical in as far as ni-Vanuatu empowerment and active participation in the market economy of this country.

LONG TERM REFORMS:

In the longer term, the Government is committed to undertake some major reforms in the land sector. Future reforms will revolve around the key pillars of custom governance systems. Amongst many other things, custom governance boundaries, identify custom authorities and restore them to their rightful places, and documentation of customary rules and principles that governs the ownership and use of customary land. This is in-line with Articles 73, 74 and 75 of the National Constitution and also the 2011 Malvatumauri Council of Chiefs 19 resolutions commonly referred to as the Roadmap.

The major legislative reforms within the land sector will encompass five key pieces of legislations. These five pieces of legislation will include;

- Amend National Council of Chiefs' Act to provide mandatory roles to oversee reorganisation of custom governance systems within a custom governance jurisdictions. A special focus will be on the identification of customary governance boundaries, customary authorities and customary rules or principles of land ownership and use in Vanuatu;**
- Creation of a National Land Law as articulated in Article 76 of the Constitution and fulfilment of Article 95(3) which declares that "customary law shall continue to have effect as part of the law of the Republic of Vanuatu";**
- An efficient and cost-effective custom owners and/or use rights determination mechanisms;**
- Fair Land Dealings and Conveyance legal framework to regulate negotiations, dealings and agents to ensure fairness in any contract or registered lease; and**
- Establishment and effective operation of a Sinking Fund which will assist the lessor to pay off the lessee's interests once a lease term comes to an end.**

After 40 years Vanuatu and its people have continued particularly in the land sector to operate on transitional laws whose purposes were to carry the country over from colonial era to independence. Unfortunately these transitional laws continue to exist after 40 years. This Government is committed to bring in the necessary legal frameworks that will be within the spirit of the Constitution and to deliver maximum benefits to indigenous custom owner groups and users in Vanuatu. It is worth highlighting that there are no quick solutions. However it requires political will, traditional leaders support, and cooperation from all citizens of this country to allow the

dreams of our forefathers who stood shoulder-to-shoulder in the struggle for independence to come to pass.

The ultimate goals of the long-term land law reforms are to reduce Government intervention in property markets, reform land administration system to ensure market operates more efficiently, ensure fair and equitable land dealings, and protect and promote rights and long-term interests of both custom owners and users of the land.

All in all the long-term land law reforms will establish firm foundation for decentralisation of power and developments across the islands of Vanuatu. The firm foundation will include tenure security, empowerment of custom owning groups, better planning and development controls to ensure sustainable and equitable development outcomes for all.

The tentative consultation dates are as follows:

GROUP	DATES	PLACE
Sanma Province	7-8 September 2020	Luganville
Malampa Province	11-12 September 2020	Lakatoro
Shefa Province	14-15 September 2020	Port Vila
Tafea Province	17-18 September 2020	Lenakel
Private Sectors	23 September 2020	Port Vila
Malvatumauri Council of Chiefs	October 2020	Port Vila

For further information, please contact the Ministry of Lands and Natural Resources.

Authorised by:



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