

Land tenure and resource management: a major challenge in Vanuatu

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In Vanuatu about ninety seven per cent of the land and sea and their resources are under customary tenure. Still, land and resource tenure problems are a major concern and an unresolved issue faced by its people and its leaders. The issue goes back to the early days with the arrival of Europeans and the imposition of the land alienation concept and its regulatory regimes and the cash economy that prevails in Vanuatu.

The increase in conflicts has been seen by many as a major obstacle to the development process in Vanuatu. It is for this reason that both the public and the private sector are investing a lot of time, effort and resources to formulate appropriate strategies and policies to rectify the situation.

This paper is intended to highlight some of the issues that may have contributed to resource management conflicts and offer potential solutions. The issues highlight differences between traditional and contemporary resource management systems. As background, it is crucial to travel back in history to appreciate the roots of the problem.

Culture clash

Tenure rights conflicts have a long history going back into the early contact days between ni-Vanuatu and Europeans. These conflicts led to a joint naval patrol agreement

of 1880 by the British and the French and later in 1906 the establishment of a Condominium administration. One of the incidents highlighted by Van Trease demonstrates the failure of the 1880 agreement

The initial British reluctance during discussions to establish the Joint Naval Commission to allow naval commanders to deal with land matters which they realised too late left the door open to widespread abuses against ni-Vanuatu and the predicted effect. As the case on Epi indicates, French settlers could simply move onto land they claimed and, supported by gunboats there to 'protect' them, forcibly drive out the local inhabitants (1987:41-42).

These conflicts could be categorised into two distinctive groupings. One was the conflict in perceptions and conceptions in tenure rights systems due to different cultural backgrounds. The other was the competition and extent of influence over the tenure rights systems and their management in Vanuatu between the two colonial powers.

The major catalytic agent of these conflicts was a clash between traditional and commercial economic systems. These had led to conflicts in perception and conceptions in valuing resources and interpreting tenure rights systems and management regimes.

With regard to the beginning of the tenure conflicts in Vanuatu, Van Trease stated that: 'Much of the violence in the early contact period was due to lack of understanding or awareness by the Europeans of the complex land tenure systems of Melanesian societies' (1987:2).

Conflicts in perceptions of and approaches to tenure rights

There are three major issues surrounding tenure rights conflicts in Vanuatu: the conflict between traditional and western cultures in their perceptions and conceptions over resource values, ownership, the sale of tenure rights, and the state of confusion that the country and its people were left in as the two colonial powers fought their own agenda—a fight that lingers on twenty years after independence in 1980.

Mismatches of perceptions between traditional and western cultures in resource value, ownership and user rights

Traditionally, land and sea were highly valued as much because of what they symbolised as for what they produced. They were the source of identity as well as the basis from which all subsistence requirements were met. Honourable Sethy Regenvanu, First Minister of Lands and Natural Resources of Vanuatu after independence in 1980 said that

Land to ni-Vanuatu is what a mother is to a baby. It is with land that he defines his identity and it is with land that he maintains his spiritual strength. Ni-Vanuatu do allow others the use of their land, but they always retain the right of ownership ('Land rights', *Vanuatu Weekly*, 20 July 1982:10).

This traditional view was not shared by the Europeans who valued resources, including land, for what they produced rather than what they symbolised. This had resulted in the transformation of most productive and accessible land into

plantations by Europeans. It was the beginning of commercial and monoculture in Vanuatu and a shift from a subsistence economy to a more cash economy.

Traditionally, the notion of ownership did not exist: Crocombe pointed out that '[h]uman beings do not own land: what they own is rights to land' (1972:220). Tenure rights were vested in groups, based on common descent, residence in a particular area or participation in various activities. The words that have been attributed to an African chief: 'I conceive that the land belongs to a vast family of which many are dead, few are living and countless members are still unborn' (Meek 1957:113) are equally applicable to Vanuatu.

The ownership pattern formed the basis of social relationships and offered considerable security, protection and equity in access to resources within the group. Europeans came from a more individualistic background, with perceptions of land and sea and resources as commodities that could be traded in the marketplace.

The rights to land and sea could be acquired in a number of ways over time. Eaton pointed out that

The extent by which potential rights were activated depended on a number of variables in various unwritten codes and custom of the Pacific peoples and potential rights frequently grow over time as a function of participation in particular social activities (1988:67).

Note that these rights are not equally distributed amongst individuals or groups. Through membership, an individual derived his or her social status, power, livelihood, name and rights to the land and sea.

The traditional custodianship principle was challenged with the arrival of Europeans who imposed ownership concepts on the locals. The imposition of contemporary tenure systems and their legal recognition resulted in a shift from a more communal to a more individualistic ownership.

Misconceptions of sale of tenure rights

Before Europeans arrived, land and sea tenure rights did not have monetary value and most evidence indicates that the sale of these rights did not usually occur. While it was true that in many traditional societies in Vanuatu there was a common practice of transfer of rights to others for valuable goods, overall rights still remain with the customary owner. This was not well understood in the early contact days.

Europeans, however, had the opposite views. As entrepreneurs with a strong desire to generate income, resources were perceived as commodities. There were countless incidents that occurred in the pre-contact days that created these conflicts between the Europeans and the locals. Europeans claimed most of the accessible and productive land in Vanuatu in exchange for material goods. But ownership was far from clear.

State of confusion over the tenure rights issues

History has indicated that the two colonies had different interests in Vanuatu. It was these that guided their aspirations and rivalries over the type of tenure rights system each sought. It was said that the French were in the country to stay whereas the British were forced to be around because of their citizens who were in the country. The French government took over businesses in financial difficulties at the end of the nineteenth century. Van Trease pointed out that: 'The need to validate the claims gave France a clear reason for finding a solution to the land problem' (1987:42).

A joint agreement was made between the two powers in 1906 to establish a Commission to deal with conflicts over tenure in Vanuatu. The British developed a proposal for the procedures to guide the commission for French consideration. Realising that the British aimed to establish a system of land registration which would correct past abuses and curtail future European encroachment on ni-Vanuatu land, the French quickly

adopted a system which provided the mechanism to confirm existing claims. It was at this stage that the alienated land concept was superimposed on the locals. All land occupied by the French and British planters were given some legal recognition and protection through registry by the courts.

It was in the 1960s when ni-Vanuatu questioned the inequality in land sharing and the loss of traditional tenure rights over the land, sea and their resources. This was the beginning of the road to independence.

The constitutional fathers of Vanuatu showed the importance of land ownership and tenure rights when in the final report of the Constitutional Drafting Committee, they discussed the basic concept of our society with regard to ownership and use (CDC 1979). Chapter Twelve, Sections 73 and 74 of the Constitution respectively state that

all land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants. The rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu.

The reality is different. The government is yet to develop policies with regard to customary tenure rights other than 'a broad desire to protect the interests and rights of the people with respect to it. Nor does it go about restoring good relationships between customary owners and the people on the land' (Lakau 1988:78). No one has the answer.

The way forward

Most of the concepts and principles being practised today in Vanuatu have been brought forward from the colonial era. It is often referred to as 'white man ways as to custom ways' (Kabutaulaka 1998:147). The government and the people of Vanuatu are left in a state of confusion over how to tackle the issue. The persistence of the cash economy and the need for money has contributed to the changing land forms in

Vanuatu. These changes mean that there is a shift from communal ownership to individual ownership.

Land reform

It is clear that a new direction has to be taken. Comprehensive land reforms may be an answer. For a reform to work in Vanuatu, there has to be political will and support from the people for a change. The people have to be an integral part of the process. It will be a waste of time and resources if the government and the people themselves do not play a leading role through the adoption of such national policies, including public sector reform and private sector development. Therefore, it is crucial that stakeholders from both public and private sectors be involved.

Prior to embarking on major land reform, a number of issues need to be clarified. First, there is a need to clarify whether or not land is owned by individuals or by groups, and second, whether or not the current management system is adequate? Based on these two fundamental questions, a potential land reform framework will be formulated. This author is of the view that land is own by groups such as kinship groups or clans. Under these circumstances, registration of customary land may be necessary based on customary boundaries.

However, these registrations will have to maintain communal ownership and recognition of social relationships, obligations and interactions. A 'corporate family ownership', as suggested by O'Meara for Samoa, may be applicable to Vanuatu (1995:109-56). Registration will only take place after all members of a group have been identified and consulted. Groups have to choose a representative to represent their group with regard to allocation and negotiation within or outside of the group.

Management systems

In Vanuatu, it is necessary to adjust and correct reciprocal rights between proprietors

and users in response to changing economic needs, for example, establishment of statutory committees or land boards to organise the use of common resources and other interests. These committees may be comprised of communal authorities and the respective representatives of the kinship groups. These committees should be responsible for the management and allocation of the land and sea tenure rights.

Representatives of a land board or a specific kinship should not be selected by way of votes but rather through recognition, trust and confidence by the members of that community or kinship. Representatives should be removed in the same manner. The person representing these different groups has to be accountable to the members. These representatives do not own land *per se* but rather they represent the interests of the group to ensure peace, joy, harmony, and development at all times.

Conclusion

The outstanding feature of Vanuatu's traditional society, which binds traditional communities together, is the hierarchy of descent relationships from a tribe of a common ancestry to individuals in the current generation. A prime concern is the relationship to the group to which the individual belongs. Rules governing those relationships impose important reciprocal obligations. Group membership provides the framework of support and security for most ni-Vanuatu.

This communal nature of ownership and its regulatory mechanisms need to be further developed and should form the basis of a new tenure rights system in Vanuatu. The fragmented holdings, multiple rights-holders, and lack of clear title does not encourage easy development prospects in the country. A major land reform and a more efficient and effective land registration that allows the communal nature of the ownership to be recognised legally could be

the way forward for Vanuatu and its people for a prosperous future in resource management and development.

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