

Leasing in Vanuatu: Findings and Community Dissemination on Epi Island

By Milena Stefanova, Raewyn Porter, and Rod Nixon

Introduction

Under the Vanuatu Constitution, the “rules of custom shall form the basis of ownership and use of land.”¹ Implementing this principle after decades of land alienation,² however, has proved to be challenging. While the leasing arrangement was originally intended to restore investor confidence and maintain agricultural development in newly independent Vanuatu, it soon evolved into the method of acquiring new leases over previously unalienated land. Tourism, business, agriculture, industry, urbanization, and the desire to use land to secure financial loans are some of the driving forces behind the creation of leases.

The upsurge of land alienation through leasing in postindependent Vanuatu triggered the convening of the National Land Summit in 2006 to address the many problems that had emerged.³ In response to the summit resolutions, the government has put together a comprehensive land reform agenda for achieving the vision of “a prosperous, equitable and sustainable land sector for Vanuatu.”⁴

Despite these efforts, however, the government has had only limited capacity to conduct the research necessary to better inform Ni-Vanuatu about the contemporary leasing situation and thereby facilitate local and national decision making on the future direction of land use and development. While valuable research has been carried out on leasing for the island of Efate,⁵ there is a lack of empirical data about leasing across Vanuatu as a whole.



Coconut Plantation in Valesdir, Epi.

¹ Article 74 of the Vanuatu Constitution.

² Both prior to and after independence, land could be alienated through leases, which, since independence, have been limited to a maximum duration of 75 years, either to Ni-Vanuatu or to foreigners.

³ The Land Summit produced 20 resolutions, which highlighted the need for strengthening group customary ownership; ensuring the participation of all groups in decision making about land use; removing the Minister of Land's power to approve leases over disputed land and imposing a temporary moratorium over lease granting; maintaining public access to the sea; promoting the government's unbiased role as intermediary in negotiations between parties; and increasing public awareness of land rights and laws.

⁴ Vanuatu Land Sector Framework 2009–18.

⁵ Sue Farran, “Myth or Reality: Case Study of Land Tenure in Efate, Vanuatu” (Paper presented to FAO/USP/RICS Foundation South Pacific Land Tenure Conflict Symposium, University of the South Pacific, Suva, Fiji, April 10–12, 2002).

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The World Bank's Jastis Blong Evriwan program (JBE)⁶ is currently conducting two sets of research projects (one nationally and one in two specific localities) that will help address this gap, focusing particularly on one of the key concerns identified by the Land Summit: *the need for fair dealings with respect to land*. In collaboration with the government of Vanuatu, JBE runs a National Lease Profiling Project that analyzes existing lease records to profile land-leasing patterns nationally. In addition to this national-level work, JBE is carrying out comprehensive locality studies on Epi and Tanna islands to investigate the way customary groups engage in land-lease dealings in Vanuatu. These studies combine desk reviews of lease files with in-depth qualitative field work that records the story behind the leases.

This briefing note summarizes the findings of the research conducted on Epi island⁷ and discusses methodologies for disseminating research findings to affected communities.

Summary of Research Findings

The island of Epi is located in the northern part of Shefa province, one of the six provinces of the Republic of Vanuatu. The provincial authorities rely heavily on the role of chiefs⁸ for maintaining peace and harmony at the community level through the application of *kastom*;⁹ however, chiefly authority is not recognized in the formal local government system.¹⁰

According to preliminary counts of the 2009 Census, Epi has a population of 5,207 people (2,580 males and 2,627 females). Most households are dependent on agriculture. During the colonial period from the mid-1800s, Epi experienced considerable land alienation for the purpose of planting coconut and producing copra. Cattle production became more prevalent around the mid-1960s. This preindependence land alienation experience shapes land leasing on Epi today.



Epi village.

Government of Vanuatu national lease data indicate that there are 22 leases on Epi. Hard-copy files were available from the Department of Lands for 20 leases. A further three leases, for which there were no Department of Lands files, were identified during field research. Therefore 23 leases formed the database for the Epi lease analysis, seventeen of which were created on land previously alienated by preindependence titles.

Of the 23 leases, eight are agricultural, eight are commercial, four are special (including an airport, a school, and two communications facilities), one is residential, and two are of unknown type (both are likely to be special, as one is a navigation/communications installation and the other a provincial administration lease). Twenty leases (minus one for no data, one cancelled, and one surrendered) comprise 6,317 hectares and cover approximately 14.2 percent of Epi land area (44,534 hectares).

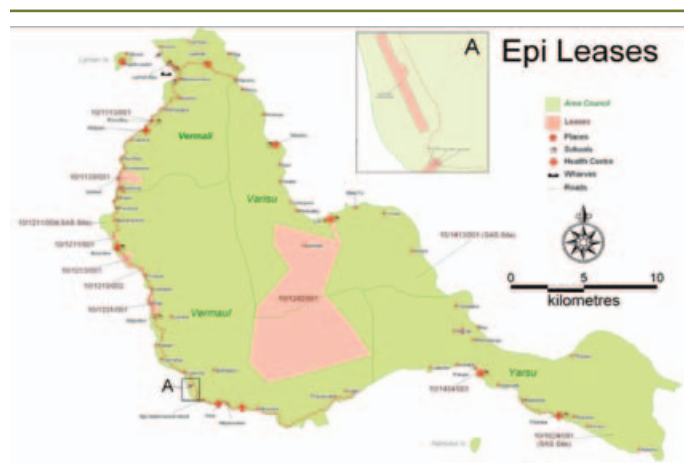
⁶ Jastis Blong Evriwan (JBE), Vanuatu, is part of the World Bank's research and development program Justice for the Poor, which supports analytical and programmatic work in countries where legal pluralism presents a central development challenge.

⁷ Raewyn Porter and Ron Nixon, "Wan Lis, Fulap Stori: Land Leasing on Epi Island" (JBE Research Report, Justice for the Poor, World Bank, 2010).

⁸ Today the term "chief" encompasses a broad category of authorities, indicating the multiple sources of power present within the archipelago, as well as the divergent roles of those who are proclaimed chiefs (by themselves and others), both in the past and present. Benedicta Rousseau, "The Achievement of Simultaneity: *Kastom* in Contemporary Vanuatu" (PhD Thesis, St. Edmond's College, University of Cambridge, 2004).

⁹ *Kastom* is a form of indigenous morality given expression not only through the exercise of chiefs, but also through the evaluations made by all Ni-Vanuatu of the correctness (or otherwise) of particular courses of action, ways of behaving, and means for bringing resolution to conflict. (See Rousseau, "The Achievement of Simultaneity," 1.)

¹⁰ On Epi several *nasaras* (family groups) form one *nakamal*—a sacred place where meetings, dances, ceremonies, and celebrations are held. If a problem arises within one *nasara*, the chief of the *nasara* is responsible for resolving the matter by applying local *kastom*. If different *nasaras* are involved, the dispute is resolved at the *nakamal* by the paramount chief or the village council of chiefs. 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 matter could be taken to the area council of chiefs. The same can happen with area council of chiefs' deliberations, where the dispute is taken to the island council of chiefs.



The research highlighted a number of inequities concerning the current lease creation and lease management processes:

- *Identifying custom landholders can be problematic.* The process whereby custom landholders are identified (and thus have the right to negotiate a lease) is open to abuse by individuals or small groups of people who pursue registration of leases without due consultation among holders of custom land rights or the local council of chiefs. In most cases, the consultations with the custom landholder groups were not recorded and very likely never occurred. Two cases were identified of the secretive registration of leases without consultation with custom landholders and possible claimants, and without the involvement or approval of the island council of chiefs. A further case of minimal consultation and the noninvolvement of the island council of chiefs occurred in relation to the registration of a large agricultural lease.
- *Systems for benefit sharing are weak.* Leasing tends to concentrate benefits in the hands of a small number of senior men, and cash payments are often quickly dissipated on consumables with little sustainable impact. Land trusts are being created to provide rights to a wider custom group as beneficiaries; however, there is little evidence that these structures improve outcomes in practice. In the process of transition from custom landholding to formal lease registration, important user rights (for example, women's rights to gardening, access to coastal areas, fishing rights, and so forth) are vulnerable. Women, in particular, appear to be largely excluded from any decision-making processes associated with land leasing.
- *Environmental and social impacts of development are not well mitigated.* Preliminary impact and environmental impact assessments are not systematically carried out, despite legislative requirements—even in the case of large lease areas that affect such issues as subsistence living and food security. For example, a recent agricultural lease was granted without the required impact assessments, despite concerns that the arrangement could cause the displacement of people from the gardens they cultivated.
- *Custom landholders generally negotiate from a position of disempowerment.* Little support or information is available to custom landholders to guide decisions on whether to lease or pursue alternative development paths. If they do decide to lease, there is no support for negotiating the terms and conditions of the lease. The practice of writing leases in English and not Bislama further undermines the understanding of rights and responsibilities in relation to leases. This often results in poor leasing outcomes, such as low rents, lease clauses

“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.

that require compensation for improvements on expiry of the lease, and poor benefit distribution, all resulting in minimal long-term benefits for communities. Rental rates for agricultural leases are approximately VT 200–250¹¹ per hectare per annum, for commercial leases approximately VT 3,500–4,000, and for special leases VT 14,000. Reviews of annual rent payment and the monitoring of lease conditions are not systematically done and custom landholders expressed frustration at the lack of development of leases by lessees who had promised to undertake improvements. In only one case, however, had a lease been cancelled.¹²

- *Poor lease creation processes also drive prolonged land disputes, mainly between custom claimants over the ownership of the land.* The lack of monitoring and enforcement of lease conditions has led to unresolved grievances over unrealized lease benefits (for example, unpaid annual rents or unfulfilled promises of tourism development or employment for local communities). Of the 23 leases studied, 10 had been subject to dispute. Conflicts between locals over custom ownership are common, with disputants pursuing the issue through chiefly forums and, where knowledge and resources exist, the formal court system. Research suggests that the island council of chiefs represents an appropriate forum for the administration of lease applications through the acceptance or rejection of Custom Owner Identification Forms (COIF) and the resolution of custom landholder disputes, but it does not have sufficient formal authority to enforce its decisions. Moreover, there are no measures to ensure that the deliberations of the island council of chiefs are considered by the formal courts.

¹¹ 100 Vatu (VT) is equivalent to approximately US\$0.98 (exchange rate May 2010).

¹² This followed a situation in which the lessors applied for a determination from the Land Referee regarding the nonpayment of rent and the land's not having been preserved, fenced, or generally developed as required in the lease covenants.

Community Dissemination: Epi Legal Aid Days

In July 2010 JBE held workshops to disseminate research findings to communities and provide legal awareness and legal aid services. Teaming up with a local theater group, the Natantong theater, JBE experimented with innovative methodologies to disseminate findings to affected communities on Epi in three villages: Sara, Burumba, and Rovo Bay. Community drama presented an opportunity to bring villagers together in an informal setting where they could debate sensitive land issues.

The dissemination was combined with a legal awareness program, conducted in collaboration with a Ni-Vanuatu lawyer and a representative of the Department of Lands, aimed at enhancing understanding of custom landholders' rights with regard to land leasing. Most people on Epi island can rarely afford to see a lawyer, and participants appreciated the opportunity to receive free legal advice on the many problems the current leases present.



Workshop in Sara village.



Play scene: A tourist taking picture of local villagers

Play Narrative: Unfulfilled Promises of Lease Benefits

The drama story performed by the team begins with a song that describes the beauty of the island and its natural resources as the ultimate source of life for every Ni-Vanuatu.

An investor comes to the island and seeks to buy a huge piece of land (3,000 hectares) through a local middleman. The investor sweetens the middleman with money, a plane ticket, and promises of benefits for local communities. He asks the middleman to convince the chief of the village and its inhabitants to grant the lease.

A village meeting takes place at which the middleman and the investor talk the chief and the community into the proposed plan. The investor also hands out an amount of money to the community as an initial payment, which the chief accepts on behalf of everyone.

The next day the chief, the middleman, and the investor visit the project area and an agreement is reached for the chief to lease the land for 75 years. The chief signs the lease agreement without reading it and promises to pay every landowner later once the venture starts making a profit.

A bulldozer then clears the land, destroying trees, gardens, and the village water source. An angry group of villagers tries to stop the bulldozer from cutting down the trees but the workers chase them off the land. When asked where the investor is, they are told he is gone and the land is being subdivided. In the quarrel, a tree falls and kills an old woman. Work stops and the chief rushes back to the scene. Realizing the mistake he has made, the chief pulls out the money he received and offers it to the villagers who shake their heads in denial.

The play ends with a song about the importance of land and the need to protect it.

Objectives, Format, and Content

Given the sensitivities around land disputes in Vanuatu, the team decided to use drama as a powerful tool for communicating with and educating local communities. The play's narrative was developed in close collaboration with the Natantong theater. The JBE research team also took part in performing the play. Taking care not to reenact specific cases from Epi that might provoke confusion or tensions, the team developed a story portraying common problems that occur in the lease negotiation and management process throughout Vanuatu.

Following the drama, the facilitator invited the participants to share reflections on the story presented. In most places the chiefs spoke first by saying that what was portrayed in the drama was very true, as chiefs are sometimes the ones who enter into deals with investors on behalf of the community. They also noted that respect for *kastom* is diminishing and that they are finding it hard to bring people back to their roots.

The workshops then continued with a local chief describing how land is held, transferred, and used under *kastom*. He explained that in the past, before “white man” came to Vanuatu, in this area the chief held the land on behalf of his tribe, allocating pieces of land to different groups to make gardens and feed their families, thereby ensuring that there was a fair distribution among tribal members. In return they would pay tribute to the chief by offering fruits from the garden as a form of rent. In the event of marriage, the daughter would leave her parents’ home to go and live with her husband’s family, but her father would reserve a piece of land for her in case she needed to come back to her island (*basket blong kakae*).

Epi is divided into five *kastom* boundaries. According to the chiefs, however, the people do not respect the boundaries and this is causing many land disputes. After the arrival of “white man,” the role of the chiefs in land distribution was undermined, with newcomers from other islands assuming chiefly responsibilities. Now, land alienation occurs as a result of land being leased by people claiming to be chiefs and custom landholders of the tribal land. The chiefs reported that *kastom* landholding principles have been weakened and there has been a transition from “group” to “individual” ownership, which is at the heart of land problems on the island today.

The workshops continued with a presentation by the lawyer, who stressed the importance of group ownership over land and being clear on the custom principles of landholding—something that people on Epi know best. She mentioned that in the case of court proceedings, the burden of proof is on the claimant to establish his or her right to custom land ownership. The Supreme Court is concerned that proper parties are named in land claims (for example, all elders representing a family or clan claiming land) in order to avoid further claims by individuals within the same family or clan. The lawyer also discussed legal provisions related to the rights and responsibilities of the lessor and lessee, lease conditions, rent reviews, and the right of forfeiture.

The presentation by the representative of the Department of Lands focused on explaining the various steps in the leasing process (negotiation certificate, custom ownership declaration form, survey, preparation of lease agreement, registration of leases), types of leases, valuation (determination of premium and rent), lease transfer, sublease, and subdivision. Finally, the JBE team presented a summary of the research findings, pointing to specific pitfalls in the lease creation and lease management process. This was followed by questions from the audience. Participants also had the opportunity to receive legal advice on the issues they face with particular leases.

The workshops closed with a discussion of population growth and the importance of taking the needs of future gen-



Chief talking about “*kastom*” use of land in Burumba area.

erations into account when making decisions to lease land, especially as Epi has been marked as the next development site by Shefa province.

Attendance and Participation

Attendance and participation varied from location to location and included chiefs, church leaders, and youth and women’s group organizers, as well as other community members.

The number of men attending the event was much higher than the number of women. Many of the women joined the workshop in the afternoon sessions, as they were involved in preparing lunch for the participants. Women did not speak, despite being encouraged to do so by the presenters. This reflects many *kastom* attitudes toward women that often prevent them from speaking at public meetings and clearly demonstrates the need for targeted workshops with women’s groups, allowing them to get a greater benefit from the legal aid days.

Discussion Points

The awareness materials provided at the workshop were well received and participants had numerous questions on the leases they had signed or had some interest in. The focus of the awareness-building activities on addressing the information gaps encountered during the research helped the audience members relate to the problems they are experiencing and ask for specific advice on actions they can take to resolve them.

There was a general feeling among the group that the *kastom* way of using land is influenced by “new opportunities”—that is, people selling land for cash or claiming to be chiefs in order to get authority over certain land areas. Respect for custom landholding and usage principles is diminishing and most people felt that this is due to the changing roles of chiefs, who are no longer coming together to preserve *kastom* or resolve problems.



Lawyer providing advice to participants.

There seemed to be considerable confusion about what Epi *kastom* is with regard to landholding and usage. A number of people sought advice on how to address problems they face in using land in *kastom* or dealing with *kastom* boundaries. For example, if someone plants trees in a plot that belongs to someone else, who now owns the trees—the person who planted them or the person who holds the land? The lawyer did not provide advice on matters related to *kastom* but stressed to participants that no one knows their *kastom* better than they and that the chiefs should clarify the custom boundaries and the *kastom* rules related to land use on Epi.

Advice was also sought in the case of a lease being signed by a person who was not part of the custom landholding group. The lawyer clarified that in this situation, the lease can be challenged before the Supreme Court for fraud or mistake, in which case the Court can rectify the lease by ordering a cancellation or amendment of the lease register. In relation to this matter, representatives of the island council of chiefs stressed the importance of the council's having a role in approving every lease on the island to prevent unauthorized persons from signing custom ownership declaration forms.

A number of questions concerned the fulfillment of lease conditions and lessors' rights in relation to lessees. For example, what happens at the expiration of a lease—would custom landholders be able to get back their land? It was clarified that land returns to the hands of custom landholders with all improvements made unless a condition was included in the lease requiring that compensation for improvements be paid by the lessor. Participants were strongly encouraged to read carefully any agreement they are asked to sign to ensure that no such clause is inserted in the agreement.¹³ Another question involved the lack of development on the leased land—

particularly on those agricultural leases that were converted from preindependence titles. In these cases, participants were advised that they could serve a notice to the lessee demanding that he or she comply with the conditions of the lease. If no action is taken by the lessee, the lessor has the right to refer the case to the Valuer General for forfeiture. In several cases, the lessors have followed up with a lawyer to assist them in taking such actions. Concerns were also raised about the low rents being paid on leases and the role of government in controlling the rent values. Participants requested that the Department of Lands set up standard market values for custom land to ensure that people get adequate benefits for the leased land.

There were a number of questions on local-level dispute-resolution mechanisms. In one case, an island court determined that a specific land area belongs to a custom landholding group; now, however, the chief of that area is demanding that the group lease the land from him in order to use it. The lawyer advised that the chief has no right to take this action, given the group nature of custom ownership, but that it is a matter of the chiefs upholding the rules of *kastom* and not recognizing individual claims to the land. In another instance, the island council of chiefs reviewed a case two times and each time declared a different person to be the custom landholder. The lawyer clarified that the only possible resolution would be to refer the case to a land tribunal that the Department of Lands and the Epi chiefs would need to jointly establish. However, no such land tribunal has yet been set up on Epi. The Supreme Court recognizes decisions made by the island court only for claims submitted before 2001 or by the Custom Land Tribunal for claims submitted after 2001. This points to an urgent need for the Department of Lands to set up a land tribunal on Epi.



Department of Lands representative explaining the lease registration process.

¹³ Research revealed that in only one out of the 23 leases studied did compensation for improvement form a condition of the lease agreement.

Conclusion

The Epi study reaffirms the validity of the 2006 Land Summit recommendations, as well as the need to focus on lease-benefit distribution and benefit-prolonging efforts. It is critical that community members become empowered to make informed decisions about leasing land to improve outcomes. With the potential for generating jobs and business opportunities, leasing land for development can clearly be desirable, but it can also be disruptive and should therefore be appropriately managed to ensure that Ni-Vanuatu are able to participate in the ensuing profits. Furthermore, there remains a substantial gap between demand and action in developing strategies for custom landholders who want alternative development options to formal land leasing.

The use of legal aid days provided a highly engaging and effective medium for the JBE team to receive feedback from the communities and provide them with awareness of and legal advice on issues related to leasing. The use of drama in an informal setting helped to break down barriers and stimulate dialogue on sensitive issues in the community.

To have a lasting impact, it is vitally important that local dialogues ensure the participation of all members of the community. In preparation for the community workshops, JBE asked for the assistance of the area secretaries and chiefs in announcing the legal aid days, a strategy that proved successful. The use of local radio and the arrival of a team member a day or two in advance to introduce the team, clarify the objectives of the workshop, and help local residents with logistics might help publicize the event even more widely. To make certain that women are able to fully benefit from the dialogues, researchers should allow for extra time in each location and include targeted discussions with women's groups on these issues.

JBE will continue to explore creative dissemination techniques that reflect the social and cultural background of the intended audience to ensure that research findings are shared and discussed with local communities.

Other Justice for the Poor Briefing Notes

- *The Lay of the Land: Land Access and Dispute Resolution in Timor-Leste / Tetum Version*
By Pamela Dale, Kristen Himelein, Denis Nikitin and Angie Bexley, Volume 5, Issue 3, June 2010
- *Youth Perspectives on Community, Trust and Conflict*
by Pamela Dale, Kristen Himelein, Denis Nikitin and Angie Bexley, Volume 5, Issue 2, June 2010
- *Trust, Authority, and Decision Making: Findings from the Extended Timor-Leste Survey of Living Standards*
by Pamela Dale, Kristen Himelein, Denis Nikitin and



JBE team member presenting research findings in Sara Village.

Angie Bexley, Volume 5, Issue 1, June 2010

- *Women, State Law and Land in Peri-Urban Settlements on Guadalcanal, Solomon Islands*
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Participants in Rovo Bay Area.

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JBE team member facilitating discussion with Burumba participants.

- *Promoting Women’s Rights by Indigenous Means: An Innovative Project in Kenya*
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- *Working with Local Researchers*
by Ryann Manning, Volume 1, Issue 1, June 2007

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Justice for the Poor (J4P) is a global research and development program aimed at informing, designing, and supporting pro-poor approaches to justice reform. It is an approach to justice reform that:

- Sees justice from the perspective of the poor or marginalized
- Is grounded in social and cultural contexts
- Recognizes the importance of demand in building equitable justice systems
- Understands justice as a cross-sectoral issue

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