

Land Leases: Research: Misterial Leases in Efate, Vanutau

by Sue Farran^[*]

Introduction

This working paper is part of a much larger research project, funded by the University of the South Pacific, which has two aims. First it seeks to establish the extent to which land is leased in the island of Efate, Vanuatu, twenty-two years after independence and to ascertain what percentage of land is left to Ni-Vanuatu to use for themselves under customary land tenure. Secondly, to undertake a case study of Mele Land Trust – which is one of the major trusts administering customary land on the island of Efate, to consider the management structure and operation of such a trust, in order to determine what issues and problems arise when land becomes cash. If these two aims are achieved it is hoped that the data will be helpful to those charged with the onerous and essential task of managing land now and in the future for the benefit of all the people of Vanuatu. This paper focuses on the first aim and only a part of that, which is consideration of leases granted by the government through the Minister of Lands.

The research excludes land falling within the boundary of the Port Vila Municipal area, much of which is public land. The research only considers registered leases and therefore omits leases less than three years which do not require to be registered. It also does not include any information about the areas of land settled informally. All information has been obtained from records and data available to the public.

The context of the research

In 1980, under the Constitution of the Republic of Vanuatu, land was returned to the custom owners. ^[1] Where land had been alienated to non-custom owners, including Ni-Vanuatu but in particular non indigenous people, legislation allowed for the occupant of land to apply to have it transferred by way of a lease. ^[2] Until such time as the alienator entered into a lease with the custom owners or received payment of compensation for improvements to the land he could remain on the land. Only where the land was unimproved could an alienator not remain on the land, although he might still apply to enter into a lease. An alienator is defined under the Land Reform Act as a legal or natural person who prior to independence had either freehold title to land – whether or not registered under the Anglo-French Protocol of 1914 – or other interest in land, such as a life interest, beneficial interest or inheritance right. ^[3] No time limit appears to have been stipulated in the Act, and it may have been the case that a number of alienators remained in occupation in a legal limbo, not yet having a lease and yet not entitled any longer to hold the freehold title to land. ^[4] The lease was to be entered into by the custom owners. In a number of cases it was unclear who these were. In a number of cases title had been acquired by unscrupulous means. ^[5] Although the Joint Court during the Condominium period had endeavored to sort out disputes relating to title in the years 1906-1980 and had indeed resolved a number of cases, it nevertheless remained the situation that at independence some land was without ascertainable custom owners, or that the search for the appropriate custom owners led to disputes. ^[6] Under s.78(1) of the Constitution if the consequences of returning title of all land to custom owners resulted in dispute, then the Government was to hold such land until the dispute was resolved. Where title to land was not in dispute than the land reverted to the custom

owners as intended under the Constitution. The result is that post-1980 leases may be granted by individuals – where they have individual title to land, representatives of communally held land – such as Chiefs, trusts and village councils, and the Minister of Lands.

Leases in Efate

Under the Land Leases Act (CAP 163) leases of land have to be registered. Data collected from the Lands Registry Office in Port Vila indicates that there are around 1,070 registered leases for land in Efate, outside the municipal area of the capital of Vanuatu, Port Vila. This number is approximate owing to the back log of leases waiting to be processed, missing leases, and some cases where there seem to be more than one lease for the same parcel of land. These leases can be broken up into very broad categories.

Ifira Trust	89
Mele Trust	211 ^[7]
Erakor Land Trust	53 ^[8]
Erakor Holdings Ltd	238 ^[9]
Minister of Lands	233
Others ^[10]	250

Table One

The Minister of Lands and Land Leases

As can be seen, one of the categories refers to leases granted since 1980 by the Minister of Lands, and this paper is concerned with that category of leases. The Minister of Lands has power under the Land Reform Act (CAP 123) for the management and control of land under s.8 of the Act. Land coming within his control will be:

That occupied by alienators where there is no approved agreement or the ownership is disputed, ^[11] or

- Land not occupied by an alienator but where ownership is disputed
- Land which is not occupied by an alienator and which in the opinion of the Minister is inadequately maintained

In the first two cases there is the possibility that the matter will be resolved and the custom owners ascertained. Once this is done then the custom owners may of course not wish the land to be leased. However in the mean time the Minister has the power to control and manage the land and may among other things *conduct transactions in respect of the land including the granting of leases in the interests of and on behalf of the custom owners.* ^[12] The Minister has a duty under the same section to: *take all necessary measures to conserve and protect the land on behalf of the custom owners.*

The meaning of “Minister” under the Land Reform Act *means the Minister for the time being responsible for land or any Minister acting on his behalf.* ^[13] Thus one finds a number of ministerial titles referred to, predominantly the Minister of Lands, or the Minister of Natural Resources, or Lands, Energy and Water Supply, or a combination of these. ^[14] The activity of Ministers has presumably depended on government policy for development. Very little sub-division is evident in the early 1980s and leases granted tended to be of fairly large areas of land for agricultural purposes. ^[15] However Ministers became much more active and sub-division grew during the 1990s.

In the period between 1980 and 2000 over 10,000 hectares have been leased by a succession of Ministers.

[16] Of the total land mass of Efate of 980,000 hectares, this is a very small percentage. [17] However most of the land in question is what might be described as prime land, fairly flat, accessible and not too far from roads.

The land in question is represented by 233 registered leases. The breakdown of activity by Ministers in this regard is as follows:

Year	Number of leases	Minister [18]	Total Land Area
1980	14	Hon. D Kalapokas/ Hon. M. Carlot Korman	3,533h 42a 10ca
1983	1	Not stated	33h 44a 40ca
1984 [19]	1	Not stated	135ha 48a 47ca
1985	4	Not stated	314h 38a 30ca
1986	2	Not stated	961h 22a
1987	3	Not stated	756h 85a 83ca
1988	9	Not stated	1,079h 06a 60ca
1989	8	Not stated	685h 80a 9ca
1990	2	Not stated	21h 26a
1991	2	Not stated	1h 98a 48ca
1992	5	Not stated	159h 86a 16ca
1993	56	Not stated	581h 82a 80ca
1994	12	Hon. S Hakwa/ Hon Telukluk	1,179h 74a 76ca
1995	10	Not stated	162h 98a 12ca
1996	5	Not stated	2h 09a 35ca
1997	27	Not stated	552h 32a 95ca
1998	4	Not stated	51h 60a 22ca
1999	42	Hon. M Carlot Kormann/ Hon S Hakwa/ Hon.D. Kalpokas	62h 28a 53ca
2000	26	Hon. M Carlot Korman	43h 79a 08ca

Table Two

From this table it is evident that activity in the granting of leases increased in the latter 1990s, especially in the latter part of the decade. The nature of leases granted has also changed. The early years indicate few leases but larger agricultural areas. Later leases tend to be rural residential and generally smaller. The shortest period of time for a lease granted is 40 years – in both cases these are rural residential leases, one granted in 1989 and one in 1991. The maximum permissible term for a lease is 75 years and mostly leases are granted for this maximum period. Of the remaining leases only 12 are for less than 75 years and none for less than 50 years. Given the number of leases granted between 1993 and 2000, barring the termination of the lease, most of this leased land is not going to come to an end and possibly revert to custom owners until well into this century.

Increased Lease Activity

If the particularly highly active years of 1993 and 1999 are considered there are some interesting features which may warrant further consideration.

In 1993, 55 leases were granted. Of these 46 were granted to Copravi Ltd. This represented a total land area of 539h 64a 99ca. All these leases were registered as being for agricultural use or rural agricultural use – these two terms seem to be used interchangeably – although the actual parcels of land were relatively small for any large scale agriculture. Who or what was or is Copravi Ltd. And why was the Minister granting the majority of leases at this time to this company? Copravi Ltd. appears to be the local trading name of an ex-patriate land owner. Much of the land had been formerly owned by the French company SFNH. [20] As title to this land would have reverted to the custom owners had they been ascertainable, it is probably that there were either no custom owners who came forward, or that the title was disputed. Whatever the situation, the land came under the Minister's control, and was in turn subdivided and transferred to Copravi Ltd.

Of the 46 leases originally granted to Copravi Ltd, 45 have been subsequently transferred either to private individuals or trustees. Whether the land is being used for agricultural purposes cannot be ascertained from the Lands Registry only from enquiry and local knowledge. From this latter it would appear that certainly a number are not and should possibly be re-classified as to use. Many are not in the hands of Ni-Vanuatu leaseholders. In any case a rural agricultural lease permits of the building of one residential house and necessary outbuildings and no doubt these plots, which average about 10h 49a make pleasant small holdings for those wealthy enough to afford them.

The area of land leased to Copravi Ltd ranks among the largest land holdings leased by a Minister. Below is a table representing the twelve largest landholdings [21]

Year of Grant	Lessee	Area	Purpose
1980	HFA Russet	2,077h 62a	Agricultural
1986	Gilbert Dinh	765h 70a	Agricultural
1993	Copravi Ltd	539h 64a 99ca	Agricultural
1988	N Van Tang	534h	Rural Agricultural
1987	JP Virelala	507h 78a 84ca	Agricultural
1980	Ranch de la Bouffa	489h 33a	Agricultural
1986/87	Joseph Jacobe	372h 06a 96ca	Agricultural
1989	Simone Dinh	342h	Agricultural
1980	Societe d'Exploitation Enam Ltd	300h 76a	Agricultural
1994	Harry Kalpram	242h 20a	Agricultural
1997	Jean Ferrai/Primavera Ltd	242h 14a 96ca	Rural Residential
1997	Drogheda Ltd	177h 05a 90ca	Agricultural

Table Three * Also trading as Stella Mare [22]

While fairly sizeable agricultural land holdings have been granted to either individuals or agricultural companies, the two companies which stand out in terms of residential land leases are Jean Ferrari trading as Primavera Ltd or Stella Mare, and Beverly Hills Estates [23]. This latter hold the greatest number of leases for residential land, although its total land area is small compared to that of Ferrari. [24] In 1999 out of 42 leases granted by the Minister, 32 were granted to Beverly Hills Estate, a trend which continued into 2000 when 16 of the 26 registered leases for that year were granted to Beverly Hills Estate. All of these were rural residential – being outside Port Vila urban area – or simply residential. At the outset it was clear therefore that this land would be developed and no doubt built on. Most of these leases have

since been transferred to new owners. On transfer the money that changes hands is considerably more than the annual rental fixed at the time the Minister granted the lease. The profit therefore would appear to lie with the property developer. This is to be expected but does raise questions as to whether the land is being properly valued, what market sector is the property developed catering for, and whether the use of middle men in this way is the best option for the management of customary land.

Comment

It is difficult from the Lands Leases Register to ascertain whether indigenous people are benefiting from the exercise of the Minister's power to grant leases. If one goes simply by the names of transferees – which is acknowledged is not infallible – certainly some Ni-Vanuatu appear to be acquiring individual title to land, usually by way of leases transferred from the original transferee such as Copravi or Beverley Hills Estate. However, a number of non-Ni-Vanuatu names also appear as transferees. Of course even non-Ni-Vanuatu may be citizens of the country although citizenship is certainly not a requirement for holding land.

Whatever the identity of the leaseholders there is the issue of what happens if the custom owners want the land back? There are two possibilities here. If the land has been leased by the Minister exercising his power to deal with land under dispute, then if the dispute is resolved – for example by one of the new Land Tribunals – can the land be handed back to the person or group identified as the rightful custom owner?

If so, who pays what compensation, especially where land has been improved or buildings erected? The law is not clear on this point. Under the Alienated Land Act there is provision for the payment of compensation for improvements by custom owners to alienators. The legislation provides that if the value of improvement is more than Vt1,000,000 the custom owners may pay it in installments over a period of ten years. ^[25] This provision was probably intended to apply to compensation payable to alienators who lost their land at independence. It is not apparent that this applies to current leases and there is no express provision in the Land Leases Act of the Land Reform Act. It may be that this matter is left entirely to the parties to the contract. Alternatively this may be a matter for the Land Referee to determine under the Land Referee Act. ^[26]

If the dispute over the land is not resolved then the Minister will still have power to deal with the land at the end of the lease term.

The other serious issue is what happens to the rents and premiums paid for land administered by the Minister? Where land is leased by the Minister the initial financial benefit is in stamp duty and registration fees – which presumably go to the Ministry. If duties are calculated on a percentage of value basis there is the question of how the land is value – especially its unimproved value. Except for agricultural land premiums paid for the granting of the lease rarely appear on the Land Registry documents. Does this mean none are paid? Thereafter the benefit lies in the annual rental charge. What happens to this income which is accumulated over the years? Is it held on trust by the Minister pending such time that the dispute as to who is beneficially entitled to the land is resolved? As the Minister is bound by statute to *conduct transactions in respect of the land ...in the interests of and on behalf of the custom owners* then presumably the accumulated income is held by the Minister in a fiduciary capacity. If this is the case what trust structures are there in place and to what degree is the Minister ultimately accountable to the rightful beneficiaries? Must he file annual or bi-annual accounts – as would be required with a private trust? At a rough calculation per annum rents for the year 1997 would have totaled 471,823 vt – and 1997 was a quiet year for granting leases. Premiums – and these are not always payable or indicated on the Register – for the same year paid to the Minister totaled 399,468 vt. So the total sum generated by the granting of leases in 1997 was 871,291 vt. These are sums which should be held on trust for the custom owners. However

there have been indications in the reports of the Ombudsman of Vanuatu that Ministers are not always acting in the best interests of custom owners. [\[27\]](#)

Besides the potential benefit to the custom owners, there is also the financial consequence of land development for developers. If one considers the sums realized on re-sale of leases granted in 1997 – again in so far as the sums are indicated on the Land Register – this was 37,500,000 vt. Of course this is only realized once as a capital sum whereas the annual rent is regular annual income. Nevertheless it is apparent and perhaps unsurprising that those who acquire land from the Minister are able to turn it to sizable financial advantage. This could be of financial benefit to the country depending on what happens to this money, whether it is re-invested in the country or subject to high taxation etc. What is questionable though is how much this is benefiting custom owners of land? Certainly there are advantages for a developer in dealing with the minister rather than directly with custom owners. Dealing with the minister avoids the necessity to deal with disputes or uncertainties as to title, boundaries or beneficiaries. Indeed developers are open in declaring that often problems regarding leasing land from custom owners means that proposed developments fall through and that it is preferable to deal with the Minister, who is managing disputed land.

It should also be noted, that the resale of land invariably involves mortgage finance, especially where land is changing hands for the second or third time. This means that banks and finance houses have a vested interest in title to land. Will these lending institutions be happy for land to be restored to custom owners if title disputes are resolved or the lease is surrendered? [\[28\]](#) Will custom owners be happy to take back land against which a charge or caution is registered? A related aspect is that where a lease is purchased with mortgage finance – especially where Ni-Vanuatu purchase the land under a lease - there is a tendency to sub-lease the property once a house is constructed in order to repay the mortgage and to make a profit. This leads in turn to high prices in the rental sector putting much residential rental accommodation out of reach of the person being paid local rates. It is also notable that the growing number of Ni-Vanuatu holding leases are those who have been active in politics or government service. While this is not altogether surprising in a country where around 80% of the work force is employed in the public sector, it does raise questions of vested interests in government policy as regards land development.

Conclusion

One only has to look at Fiji to appreciate that problems can arise once leases come to an end. [\[29\]](#) In Vanuatu most leases still have a number of years to run. Nevertheless it is essential that those responsible for the management of land are given a clear picture of the situation and take cognizance of what is happening and plan ahead in order to prevent possible conflict. Although this paper only deals with a proportion of the leases currently granted over land in Efate and some of the conclusions may need to be modified once all of these have been considered, the following observations may be made.

First, it has to be accepted that leasehold is very much a feature of land tenure in Vanuatu and it is on the increase. Secondly, it must be recognized that most leases are granted to individuals or small family units such as husband and wife. [\[30\]](#) Thirdly, increasingly land is being subdivided and built on. Fourthly, although further investigation has to be done into the identity of major stakeholders, especially companies, there are indications that land holding by French residents in Vanuatu remains significant. Also, with increasing sub-division, post-independence acquisition by other ex-patriates is growing. Fifthly, leased land is an important feature for raising mortgage finance and lending houses have a vested interest in land as security while borrowers may have an interest in keeping rental prices high to meet borrowing costs.

It is clear that the Minister has considerable powers to manage land which is not public land but customary land. There may be advantages to this centralised management of land, particularly for developers, but also because it can take into account government policy on land and development.

However the Minister's powers are wide and measures for accountability and transparency – especially to custom owners themselves – seem poorly defined. It is suggested that in the light of the factual material ascertained to date that the following questions need to be addressed:

Are long term leases in the best interests of the custom owners?

- Should leases be longer in order to attract more investors seeking longer term security of investment?
- Does subdivision and building development conserve and protect the land on behalf of the custom owners?
- Is there sufficient regulation and policing of use, building and development of land?
- Is the money generated by land transactions going to the custom owners or is it being managed in their best interests?
- Are the interests of Ni-Vanuatu being served by the current pattern of land acquisition?
- Will there be land in peri-urban areas and profitable agricultural areas for Ni-Vanuatu mid-century?
- Will custom owners be able to afford to compensate leaseholders for improvements to land?
- Will custom owners be able to choose whether to renew leases or not?
- Are Ministers sufficiently accountable for land transactions given their extensive powers to manage and control land under the Land Reform Act?
- Does Vanuatu have an adequate statutory trust law framework to protect trust moneys for lawful beneficiaries?

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[1] S. 73 – 75 Constitution of the Republic of Vanuatu.

[2] The Land Reform Act CAP 123, s.3.

[3] Cap 123 s. 1. The same definition is found in the Alienated land Act Cap 145, by cross –reference to the Land Reform Act.

[4] This may still be the case, especially with land occupied by churches, very few of who appear on the registered as the holders of leases.

[5] See Van Trease H The Politics of the Land in Vanuatu 1987 Institute of Pacific Studies, University of the South Pacific

[6] Some land was also left abandoned or had never been developed despite being alienated.

[7] Major transferees of Mele Trust are Société Familiale Mitride Greppo (72 leases); South Pacific Properties and Investments Ltd (51 leases); T& J Hannam (11 leases). In the case of Ifira Trusts there are no outstanding transferees as regards number of leases.

[8] This includes 3 leases granted by Erakor Community. It has not yet been ascertained whether this is the same as or different from the Erakor Land Trust.

[9] This is listed separately because it is not clear if Erakor Holdings Ltd is part of the Erakor Land Trust. Although both company directors and trustees are in a fiduciary position as regards any money made in land dealings, their relationship to shareholders/beneficiaries is different as are the remedies these may

have against them. Moreover whereas trustees are jointly and severally liable for the administration of trust funds, company directors may hide behind the legal personality of the company and the “corporate veil”. It is interesting to note that the main transferees of Erakor Holdings Ltd. are Beverley Hills Estates (156 leases); Bellevue Estates (45 leases); Pacific Homes Ltd (27 leases) and Terra Mares Properties Ltd. (9 leases). Although this latter has acquired the smallest number of leases, and these are all agricultural, they represent the largest land area.

[10] This includes individuals, a number of small trusts and committees – for example Eratap Land Committee, Eton Land Committee and the custom owners of Pango Hill – and chiefs – who may be dealing with land in a representative capacity or as individuals.

[11] Cross reference is made to s.6 / 7 of the Act which deal with the agreements which may be made regarding alienated land.

[12] S.8 (2) (b) Land Reform Act.

[13] s.1.

[14] This reflects changes in portfolios for Ministers and the Land Reform Act provides for flexibility.

[15] A number of the early applicants for leases may well have been alienators in occupation of the land at independence – largely French – seeking to convert their freeholds into leaseholds but unable to find the right custom owners.

[16] The exact figure is not known because some lease details on the register are missing. The closest estimate based on figures available is 10,319h. 51a 24ca.

[17] However it is interesting to bear in mind that in 1973 the French SFNH held 11,245 hectares of land in Efate, a fact which was used to stimulate the movement towards independence and the return of the land to the people – Van Trease p.115.

[18] Ministers do not hold office in accordance with Calendar years so the Minister responsible may change in any one year. In some instances the Minister for Lands is also the Prime Minister. Further research would need to be done to look at the activity of individual Ministers – which is not the purpose of this paper.

[19] There are no records of leases registered for the years 1981, 1982.

[20] Société Francaise de Nouvelle Hebrides, which at one stage owned nearly 30% of land in the New Hebrides.

[21] 290h was granted to H E Russet – the year is unclear – and leased back to the government for Bauerfield Control Tower. Nevertheless Russet remains the largest single grant of land by a Minister to an individual and if other holdings granted by Ministers to the Russet family are included (1994 T M Russet 106h 47a 83ca and 1995 TM Russet 106h 47a 83ca) the family land holding is certainly quite a percentage of total land granted under lease by Ministers.

[22] Land held by Jean Ferrari on his death was transferred from his estate to his wife and from her to two companies, Primavera Ltd and Stella Mare Ltd. Whether these two companies represent family interests is not known.

[23] A break down of leases granted by Erakor Holdings Ltd (See Table One) reveals that 156 leases were granted to Beverley Hills Estates of a total of 239 leases.

[24] Total land granted in 1999-2000 to Beverley Hills Estates by Ministers is only 11h 98a 73ca.

[25] S. 17 Cap 145.

[26] Cap 148. For a long time there has not been a Land Referee but at last, after over ten years, in 2002 one has been appointed. The Land Referee has the power to determine fair rents and other terms and conditions of leases.

[27] See reports 98-10; 099-09; 99-06, all available on the Law School web site.

[28] It is not the purpose of this paper to speculate on the consequences of insecure land tenure for lending purposes but it would be interesting to know to what extent banks take such matters as customary land claims into account in the cost of borrowing.

[29] In the case of Fiji these are largely agricultural leases granted under ALTA, which started to come to an end in 1997 and will continue to do so over the next few years. The land question has been part and parcel of the political unrest which has beset the country in the last decade.

[30] The majority of titles are registered in men's names, very few in the name of women unless they are a widow, or a spouse.

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