



WAN SIP, PLANTE KAPTEN* LEASING ON TANNA ISLAND, VANUATU

ROD NIXON, LEISANDE OTTO AND RAEWYN PORTER

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* *Wan Sip, Plante Kapten*: The oral history of Tanna likens the population of the island to the crew of a ship, all led by the captain (the *Iani*) and ultimately the ship's owner (the *Iaramara*). Reflecting the findings of this research report, the title "One ship, many captains" conveys the reality that when it comes to contemporary land practices, custom governance is less harmonious, with substantial competition over power and access to lease benefits.

Wan Sip, Plante Kapten: Land Leasing on Tanna Island, Vanuatu

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*This work is dedicated to the late Douglas Kalotiti,
who enriched the Jastis Blong Evriwan's program with his extensive cultural
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Acronyms

BVL	Ballande Vanuatu Limited
CDC	Commonwealth Development Corporation
COIF	Custom Owner Identification Form
COTA	Custom Owner Trust Account
CLT	Customary Land Tribunal
CLTU	Customary Land Tribunal Unit
DAO	District Administration Officer
DoL	Department of Lands
EIA	Environmental Impact Assessment
GoV	Government of Vanuatu
J4P	Justice for the Poor
JBE	Jastis Blong Evriwan
JBERG	Jastis Blong Evriwan Reference Group
L&NRM	land and natural resource management
LMPC	Land Management Planning Committee
NC	Negotiator Certificate
PIA	Preliminary Impact Assessment
PFD	Program Framework Document (JBE)
SAS	Site Acquisition Services
SFNH	Société Francaise des Nouvelles Hebrides
TCDC	Tanna Coffee Development Company
TCP	Tanna Coffee Plantations
TVL	Telecom Vanuatu Limited
UNELCO	Union Electrique du Vanuatu Limited
VLSF	Vanuatu Land Sector Framework
VFSC	Vanuatu Financial Services Commission
VNSO	Vanuatu National Statistics Office
Vt	Vatu

Executive Summary

Jastis Blong Evriwan (JBE) is part of a World Bank research and development program called Justice for the Poor (J4P), which supports analytical and programmatic work in countries where legal pluralism presents a central development challenge.

This study of leasing on the island of Tanna in Vanuatu is the second JBE research activity to examine land and natural resource management (L&NRM) and access to justice on particular Vanuatu islands. In March 2010, similar research was done on the island of Epi and the research report, *Wan Lis, Fulap Stori: Leasing on Epi Island* is available at www.worldbank.org/justiceforthe poor. As the second major component of the J4P L&NRM research program, this report is intended to contribute to the development of an empirical basis to inform policy discussions about land leasing in Vanuatu in response to ongoing concerns. Historically, land issues have had a high profile in Vanuatu, and significant land loss during the colonial period was a unifying factor and mobilizing force for the 1970s independence movement, which demanded the return of alienated land to the rightful custom landholders.

More recently, concerns regarding actual and perceived problems of land alienation through leasing in postindependent Vanuatu triggered the 2006 National Land Summit. In response to the summit resolutions, the government prepared a comprehensive Vanuatu Land Sector Framework 2009–2018 (VLSF) for achieving the vision of “a prosperous, equitable and sustainable land sector for Vanuatu.” Despite this progress, the government has limited capacity to conduct research to inform policy discussions on this important area and it is here, as part of the J4P L&NRM research program, that it is hoped this report will make a contribution. As the third component of the research program, a future policy note will distill the findings and analysis of both the Epi and Tanna research reports and present specific policy points for the consideration of stakeholders and policy makers.

The research informing this report was undertaken in August 2010. The research team aimed to investigate all cases of leasing on Tanna, and based on information provided by the Department of Lands (DoL) and community members, 64 lease cases were investigated. In the vast majority of cases, interviews were conducted with listed lessors, although in several cases where this was not possible, interviews were conducted with their close relatives. The interview process was based around capturing the narrative of the leasing story, in some cases from different perspectives. A checklist was used to ensure that the narrative format of the interviews covered all required areas. Interviews were conducted only when respondents were willing to share their stories and see them recorded. In the interests of confidentiality, the names of respondents do not appear in the text.

The body of this report consists of five sections. Section 1 is an introduction to the JBE program and the context for the lease research on Tanna. Section 2 provides a profile of some of the relevant historical and economic features of the island and aspects related to the structure of governance and civil society organization. This is followed in section 3 by a summary of key findings regarding the 64 leases studied on Tanna. Section 4 presents more detail on the real uses of the land by analyzing the leases according to seven themes or categories: commercial/commercial tourism, schools, infrastructure, securing custom land, communications towers, agribusiness, and churches. Finally, section 5 discusses a small

sample of non-lease-based enterprises as a preliminary study into investment decision making. Further details of the research methodology are included in the annex to the report.

Key Summary Findings

The total number of leases studied on Tanna was 64, comprising 35 special, 23 commercial/tourism, two rural residential, three agricultural, and one industrial. Special leases are the dominant lease category on Tanna, as this group covers a range of different lease purposes such as schools, infrastructure, churches, and telecommunications facilities. Commercial/commercial tourism is the second-largest lease category, which reflects the growing tourist interests as well as other commercial activities, such as the Lenakel wharf, the Vanuatu Post (the island's postal service), and coffee processing.

The area of land under lease (1,486.80 hectares) is approximately 2.6 percent of the total land area of Tanna (57,070 hectares) (Simeoni 2009) and is the sum of the land area of 59 leases. Five leases were excluded from the calculation, as they had been superseded by new leases on the same land, surrendered, or expired. Note also that the calculated percentage of land under leasing is likely to err on the high side, as the number includes several leases that have been effectively abandoned but not yet cancelled. Moreover, approximately two-thirds of the lands under lease remain under the direct control of customary landholders, and in some cases, leases have been registered specifically for this purpose.

Lease creation and lease administration

Custom land claimants are the lessors on 58 out of 64 registered leases. None of the listed lessors are women. The Minister of Lands has signed as the lessor on five leases, yet only one of these leases is over formerly alienated land. In the remaining four cases, according to a 2002 determination by the Court of Appeal and the 2006 Land Summit recommendations, it is questionable whether the minister should have signed as lessor. However, the Ministry of Lands and Natural Resources¹ and the Council of Ministers have not yet made a policy decision regarding this matter.

The lease formation process contains a number of weaknesses, particularly in relation to the Custom Owner Identification Form (COIF). What is apparent is that the existence of a COIF does not in itself ensure that a lease will be free from disputes, although this may well reflect the lack of rigor commonly associated with the preparation of COIFs. Although 62 percent of the leases for which there was no COIF on the lease file were subject to dispute, approximately one-half (51 percent) of the leases that *did* have a COIF on file were still subject to dispute. This suggests that while the process of identifying and confirming custom landholders and ensuring understanding of the advantages and disadvantages of leasing in the landholding group is critical to the creation of uncontested leases, there is little evidence at present that a signed COIF confirms that such a process has taken place. This points to the need for increased attention to informed, consultative, and transparent lease creation procedures in order to reduce misunderstanding, dissent, and other possible causes of future disputes. In addition, understanding of lease conditions within custom land claimant groups is

¹ The Ministry of Lands and Natural Resources oversees the functions of the Department of Lands, the Department of Geology, Mines and Water, the Department of Environment and Conservation, and the Energy Unit.

often limited, highlighting the need for improved, informed decision making in connection with the lease creation process.

The overwhelming majority of leases studied were for a term of 75 years, whereas at Vanuatu's independence in 1975, 75-year leases were intended only for major developments involving joint ventures. Eight leases, while remaining on the DoL lease file database, have been superseded, expired, or surrendered; in effect, they cease to exist. A further 10 leases are inactive in that there is no contact between the lessor and lessee and no rent paid. On a number of occasions during the Tanna research, respondents inquired about how to cancel a lease. It is unclear, however, whether a lease can be cancelled through the office of the Land Referee (since 2002 the Valuer General) as provided for in the lease agreement, or whether a civil court must determine whether a lease can be cancelled. There is a need for clarification on this issue.

Lease benefits

Premium payments have been made in the case of 12 leases out of 62. Although 25 leases were registered in the 2006–10 period, only eight had premiums paid, though it is possible that other informal payments were made between parties to the lease. Premiums paid per hectare on Tanna vary considerably. While it is normal for land values to vary according to location, the land market on Tanna is not sufficiently deep to inform reliable estimates of land values in different areas. A general trend for increased land value per hectare since 2007 could be discerned.

Even though very few (nine) rent reviews were conducted (despite provisions for five-yearly reviews stipulated in lease agreements), the rent received by most lessors is not great, especially when it must be shared between multiple members of lessor groups. Furthermore, rents do not reflect current land values. Commonly, rent payments are used for school fees, small household items, and pigs and goats for ceremonial occasions. In a few cases, the money is put into an account for a future purpose to be decided by the lessor's wider custom group.

Significant employment opportunities were provided in the five operating tourist accommodation facilities and some vegetation-clearing work was available from telecommunications tower leases. A large agricultural lease that is no longer directly managed by the lessee has provided cash income opportunities for smallholders. In two cases, special provisions pertaining to employment for lessor family members were included in leases; however, a lack of attention to lease administration and enforcement has meant that these provisions have been poorly observed. In other cases, expectations of employment have not been realized due to less robust business growth than predicted.

Landholders who travel to Port Vila to facilitate land transactions appear to reap disproportionate rewards. In the Vt 73 million land acquisition discussed under the "Securing Custom Land" section of this report, a senior landowner who travelled to Port Vila to facilitate the transaction is reported to have received around half the payout. Some of this was reportedly spent on vehicles and some distributed among relatives, but it is not clear that the remainder will be invested in any constructive trust or savings arrangements. Such cases raise the question of whether the government should attempt to regulate the ways in which

payments are invested and benefits shared with broader landholder groups on a sustained basis.

Lease disputes

Of the 64 leases studied on Tanna, 37 were reported to have some level of dispute (outlined in the thematic findings of this report), the majority (27) of which were between custom landholder claimants. Five were between lessor and lessee, and a further five involved disputes between custom landowner claimants coupled with lessor and lessee disputes. The frequency with which lease-related disputes are conceded to a court for decision appears to be at odds with the emphasis placed on the importance of *kastom* in Tanna. Of the 64 leases in the study, for example, 13 leases involved hearings either at the Supreme Court, the magistrate's court, or the island court. In the case of two other leases, respondents indicated that they intended to take a lease-related matter to court, and an additional five other leases were reportedly linked or influenced in some way to disputes over intertribal boundaries that were in the process of being heard by courts.

As opposed to these 20 leases associated with court cases, the number of lease-related disputes heard by village or custom forums *only* are far fewer, numbering just four. As discussed under "Church Leases," bias is said to be a feature of some customary forums. Accounts of the "*nakamal*"² environment suppressing people who voice their views or land claims are an example. In contrast, others see the presentation of "fabricated" documentary evidence as a feature of the civil courts.

This information suggests that the majority of lease-related disputes arising on Tanna are ultimately destined to be taken to court, perhaps by parties hoping for an outcome they could not expect to achieve in a village/customary forum. Some respondents argued that people will make use of whatever forums are available, customary and/or civil, to advance their claims, and there is a case for reducing the number of forums available. Processing these cases in the various state dispute-resolution forums is costly, and there are questions about the opportunity costs of dedicating such a level of resources to the formal legal system. However, the availability of multiple forums for absorbing disaffection in a context where disputing parties are reluctant to accept determinations against them may play an important role in preventing the levels of violent conflict experienced in other Melanesian countries. The issue requires further investigation, but it is evident that land disputes are costing the state and the claimants a good deal of money.

Key Thematic Findings

Analysis of the 64 leases was conducted by sorting the leases into thematic categories that would provide a better understanding of how leased land is actually used under different arrangements. The resulting seven lease groups are commercial/tourism, school, infrastructure, securing custom land, communications towers, agribusiness, and churches. The findings for each category are summarized below.

² A *nakamal* is an area (often under a large tree) where men from a village gather to drink kava and talk about current issues. Village disputes are often mediated or judged by the chief(s) in the *nakamal*. Traditional *nakamals* are a men-only domain and this tradition continues in many villages of Tanna today.

Commercial tourism leases

Only five of the 16 leases in this category have operational accommodation and tourism facilities, and one of these is barely functioning. However, these five tourist facilities currently provide the best hospitality training and employment opportunities on Tanna. Two leases underscore the importance of the lease formation process. These leases were formed in Port Vila without adequate provision of information and consultation with the custom landholder group, and both developments were stopped by the chiefs and/or high levels of conflict. Generally, disputes are a major issue for commercial/tourism leases on Tanna.

The presence of a signed and witnessed COIF is not always proof of agreement of the correct custom landholders. For example, the signatories on the COIF on one lease subsequently “changed their minds” about the “correct” identity of the custom landholder. The seriousness of fraudulent behavior in the lease creation process is not emphasized and action is rare if not nonexistent. The practice of transferring leases without the knowledge or benefit of a percentage of transfer prices to the lessors has now been addressed in the *Land Leases (Amendment) Act No 5 of 2007*, and there is evidence that this amendment has been inserted into at least one lease agreement.

Lease administration processes need to be developed to ensure lease files are updated and accurate. In this group of commercial/tourism leases, five should be cancelled (two have been superseded and three were abandoned in the 1990s by the lessees). A further three leases where lessees have abandoned the lease due to serious opposition from the community need to be dealt with. Conditions and processes for lease cancellation should be clear and conveyed to lessors and lessees as part of a package of information developed for custom landholders considering land leasing.

School leases

There are 14 special leases for schools (12 primary and two secondary). One school has been closed for a number of years. Most commonly, land was provided by custom landholders through “goodwill” during the preindependence period in order to facilitate children’s access to education. At the time, land was considered plentiful and there was no forethought that the land given in “goodwill” would be alienated, for all intents and purposes, in perpetuity. After independence, the agreements with custom landholders were gradually replaced with leases, the majority in the 1980s and backdated to 1980.

A yearly rental payment of Vt 3,000³ seems to have been the standard applied when preindependence agreements were being converted into lease agreements during the 1980s. For seven of the leases, rent has remained at Vt 3,000 for a 30-year period (1980–2010). Four lessors have received rent increases and three lessors are still within the first five years of their lease and are therefore not eligible for a rent review. Lessors are mostly unaware of the provision for a five-yearly rent review in the lease document.

Premium payments were not the practice during the 1980s and 1990s period of lease formation. Since the September 2007 *Land Leases [CAP 163] (Amendment) Act No. 5*, a premium payment has become mandatory; however, two registrations in 2008 did not result

³ During 2010, 100 Vatu (Vt) was equivalent to approximately US\$1.

in premium payments for the lessors. The first premium payment for a school lease was made in 2010.

The now mandatory payment of premiums, as well as the government's payment of Vt 73 million for the purchase of land for the White Grass airport extension in 2010, have increased the awareness of landholders to the value of land and raised their concerns as to whether they are getting a fair deal. The conduct of five-yearly rent reviews would help to ensure that land leasing benefits were more equitable between old and new school leases. What is clear is that mandatory premium payments and, if implemented, regular rent reviews will have a significant impact on government capital and recurrent expenditures.

Neither the DoL nor the Department of Education appears active in lease administration postregistration. Accordingly, special clauses included in school leases may be overlooked. In one case, special provisions granting employment to members of the lessor group were ignored.

Nine of the 14 school leases have experienced disputes, but these either have been managed within local dispute forums or are grievances between lessor/family members over relatively small issues.

Infrastructure leases

There is great disparity in the benefits (premium payment and yearly rental) received by lessors of the 12 infrastructure leases (nine of which are special leases, two commercial, and one an industrial lease). The nonpayment of premiums and the absence of five-yearly rent reviews have meant that leases formed in the 1980s and 1990s have comparatively lower returns than those registered in the 2000s. To improve parity, leases should be for a shorter period of time and/or rent reviews should be conducted on a regular basis.

The increased awareness by landholders that land can bring considerable cash windfalls will put significant pressure on the government's (national and provincial) budget for acquiring and leasing land required for infrastructure and services. As provincial budgets are typically almost fully accounted for by recurrent administration costs, this is a substantial capital cost to retaining existing infrastructure.

The recipients of large payments are reported to rarely manage this money in ways that provide long-term benefits for custom landholder groups. As outlined below under Securing Custom Land Leases, there is also reason to believe that a contributing factor to large payouts in recent years has been "facilitation payments" to government members, public officials, and lawyers, in addition to the payments received by the landholder(s), suggesting one area where improvements in transparency are required.

The upfront payment of large premiums for leasing or acquiring land for public infrastructure has made land "ownership" very desirable. It has also increased both the number of land disputes and the number of custom landholder claimants involved in any one dispute. Of significance are the costly and protracted multiple-claimant disputes over tribal custom landholdings (Lowinio, Isla, and White Grass land claims) that are currently being heard by the civil courts. The land claims cover a number of existing leases.

Five leases no longer have the infrastructure that the lease was intended to secure. These leases should be cancelled to ensure that lease file data reflects active/current leases and thereby provides an accurate picture of leasing and the requirements for lease administration.

Securing custom land leases

A number of leases were initiated by custom landholders/claimants either to substantiate their claims to land or to increase security of access to the land until disputes are resolved. Five of the leases were registered within the same family (for example, one family member as lessor, another as lessee). In the remaining two cases, custom landholders successfully sought to be registered as lessees, with the Minister of Lands signing as lessor as a backup strategy for maintaining access to their land in the face of intertribal land disputes affecting the area. Three of the leases appear to have been primarily motivated by the desire to maintain access to and use of ancestral land in the midst of claims or potential claims over the land by other parties. The use of leases for this purpose challenges perspectives that associate lease registration with the alienation of land from customary tenure, since in these instances, leases have been initiated for the purpose of enabling the *continuation* of customary associations with land.

The two cases in which the Minister of Lands signed as lessor were registered in 2009, three years after the Government of Vanuatu (GoV) Council of Ministers endorsed the 2006 Land Summit recommendation to remove the Minister of Lands' power to approve leases over disputed lands.⁴

Whatever the security that claimants associate with leases, it is clear that due to lack of enforcement capacity in Vanuatu, the registration of a lease over one's custom land does not automatically enable one to exercise proprietorship over this land. However (see the section on telecommunications below), a lease *may* in some cases assist in reducing conflict through reducing the latitude for contestation over rights to land.

In one case where a lease had been registered over ancestral land to protect it from newcomers, the ancestral claimants had themselves gained rights to land, located elsewhere, to which *they* were newcomers. This case suggests that economic advantages will flow to those who manage to both secure rights over ancestral land and *simultaneously* maintain rights over areas to which their family has moved more recently. Conversely, as demonstrated by this example, groups forced to return to their ancestral land after a long period of absence may experience difficulties and provoke tensions stemming from the demographic growth and resulting land pressure that has developed during their absence.

One case included in this theme involved a Vt 73 million transaction in which land was acquired by the GoV. A Vt 700,000 payment was reportedly made by a custom landholder to a senior member of the government to facilitate this transaction, suggesting the need for greater transparency in relation to public land payouts and the possible impact (see the section on infrastructure leases above) of "facilitation payments" on increased land values. The fee demands of lawyers in the same case also appear excessive, again raising the question of the possible impact of these various irregular or excessive payments on land values.

⁴ The Minister of Lands is also listed as lessor in relation to a telecommunications lease registered in 2007.

There are some indications, discussed in greater detail below, to suggest that 75-year leases are perceived as little different than permanent alienation of land.

Five of the seven cases profiled in this section have experienced some level of dispute, with two involving either violence or the threat of it. Assault and property destruction have featured in the most serious case and the conflict has the potential to escalate if the dispute is not resolved. Multiple forums and strategies (customary, hybrid, and state, including lease registration) have been utilized in the most serious cases profiled, but so far without success. As also identified in the Epi study (Porter and Nixon 2010), there is a need for procedures to secure, where possible, the acceptance of court or other determinations to prevent disputes dragging on indefinitely.

The frequency of resort to state forums and mechanisms (including leases) for securing rights to customary land contradicts the claimed relevance of *kastom* institutions to Tanna. As population pressure grows on the island, the use of leases for strengthening customary rights over land is likely to increase.

Communications tower leases

Nine leases are profiled, three for the Telecom Vanuatu Limited (TVL) towers and nine for the Digicel towers. In eight of the nine cases, the lessors are custom landholders, and for the remaining lease, the lessor is the Minister of Lands. Once again, as with the two leases profiled above, this lease was registered after the GoV Council of Ministers endorsed the 2006 Land Summit recommendation to remove lease-approving power from the Minister of Lands.

Two of the communications leases have been characterized by serious disputes in the past, one resulting in conflict (violent clashes and assault). In each case, local initiatives were eventually implemented to address the situation, including, in the most serious case, an effort to determine the legitimate landholders of the site. This latter effort involved the organization of a hearing witnessed by a range of relevant parties (including representatives of TVL and the province) and presided over by four senior community members (“judges”) agreed on by both sides. In the other case, the experience of a serious dispute associated with the lease led to a local tribal council requirement that all proposals for development be submitted to it for evaluation prior to project commencement. The development of these local initiatives is evidence of the existence of local capacity to adapt to and manage change and is worthy of further investigation.

TVL and Digicel have different approaches to paying benefits to landholders. On average, Digicel pays higher rents (the highest is Vt 150,000 per year), but TVL contracts community members to undertake routine vegetation-clearing work on sites and access roads, therefore providing employment. Neither company has paid premium payments in the past, although sometimes advance payments (for five years) are made.

It appears that payments related to communications towers are sometimes made to custom claimants outside of leasing agreements. Although telecommunications operators may try to stick to firm policies concerning payments, flexibility is deemed necessary (at least by one

operator) to safeguard personnel and equipment. It is understood that the need for additional payments is necessary on Tanna more than elsewhere.

In one case, a provincial councillor (who was not a landholder) was included as a listed lessor. Although this practice may be seen as a gesture of goodwill, it could increase the risk of a future dispute, as future generations may interpret the reference to their ancestor on a lease as evidence of landholding rights. In two other cases documented under this theme, the inclusion of nonlandholders as listed lessors had been considered but rejected.

Of the nine leases, only five have COIF documents on file and only one has an negotiator certificate (NC) on file. No single communications lease has both an NC and a COIF on file, suggesting the need for attention to improved record-keeping systems by relevant agencies (including DoL).⁵

The findings support the need also for an audit of the Custom Owner Trust Account (COTA) and an investigation into missing funds. According to custom landholders who eventually succeeded in becoming listed lessors in connection with a telecommunications site that had been subject to a lengthy dispute, most of the funds that should have been held for them in the COTA were missing when they attempted to collect them. Experience with TVL also indicates that funds sometimes go missing from the COTA, such that TVL now simply holds payments associated with disputed leases and then distributes the funds following the resolution of the dispute and the determination of the legitimate lessors.

In addition to these concerns, several lessors reported difficulties, with regard to both TVL and Digicel, receiving rent, pointing to a need for telecommunications operators to develop more foolproof methods of making rental payments. TVL reported a preference for paying rent into lessors' bank accounts, but if these accounts are closed for any reason, lessors may have to expend time and money travelling to Port Vila to pick up checks that are held at the office (unless payments can be delivered via technicians). In one case, a *non*lessor was reported to have collected rent money at a telecommunications office in Port Vila, suggesting the need for improvements in procedures for verifying the identification of rent claimants.

Educational programs aimed at promoting understanding about the broader benefits that developments can bring to the community (for example, services, employment, and training opportunities) could help to increase acceptance of benefit streams that flow to others and reduce the jealousy that sometimes arises once a particular group of landholders starts to benefit from a development initiative on their land. In two of the cases profiled, jealousy over benefit flows associated with leases appears to have been a factor contributing to land disputes,⁶ as in each case, parties appear to have expressed interest in the sites once they realized that significant benefits would accrue from the leases. The accounts of the lessors of these two leases suggest that the process of registering a lease can, in some instances, play a role in reducing the likelihood of dispute over land, presumably through substantiating the lessor group's rights to the land and reducing the space for contestation available to other parties.

⁵ TVL reports that it always completes NC and COIF documentation, suggesting that at least several complete sets of these documents should have been on file.

⁶ See also section 5 on non-lease-based enterprises for further examples of this phenomenon.

Competition between ancestral claims and long-term “newcomer” claims (of possibly more than a century in duration) feature in one lease. This case suggests that due to the historic mobility of groups from an area of “origin” to another area and then back again, possibly centuries later, and the use rights granted to or assumed by others during the interval, attributing tenure rights to any one group is not always a realistic option (especially in the absence of enforcement capacity). The case study highlights the need to encourage negotiated rather than winner-take-all outcomes in certain situations.

Agribusiness leases

Four leases are included in this section, of which only two remain current. Both of these are associated with the Tanna Coffee Development Company (TCDC), originally established by the Commonwealth Development Corporation (CDC) in the early 1980s. The first of the leases is a 461.16-hectare agricultural lease originally intended as the “nucleus” of the TCDC estate coffee project. The second lease is a 4.85-hectare lease associated with a processing site near Lenakel.

The original TCDC project established by CDC was reportedly an initial success that created considerable employment opportunities for locals (with tensions developing as people competed for positions). However, progress was seriously affected by a series of disasters (cyclone, leaf rust disease, and volcanic fallout) in the second half of the 1980s, and eventually the project was transferred to the private sector in the early 1990s.

Although the TCDC agricultural lease has remained registered since the enterprise became privatized, capital has been in short supply, resulting in a shift of focus from the development of the estate to working with smallholders. The lease area is now controlled by smallholders, raising the question of the purpose of the lease for the TCDC enterprise. According to TCDC, the enterprise has been asked by landholders to keep the lease so that younger members of landholder groups do not “sell” it again in such a way that it passes out of the control of the community.

The TCDC business approach, which involves engaging with smallholders and purchasing coffee from them whether they operated on or off the estate lease area, worked for the enterprise as long as there were no other buyers active on Tanna. Since 2010, however, new buyers have become active on the island, leaving the future of the current TCDC business approach uncertain. It is questionable if TCDC will find it worthwhile to contribute to the improvement of the coffee plantation without any certainty that the company will be able to purchase the crop from the smallholders.

A number of disputes have occurred in the period after the privatization of the TCDC enterprise, including a rent dispute that was followed by discord within an organization (the Inik Cooperative) that was subsequently established to manage TCDC’s benefits. Several unrealistic compensation demands were also reported to have been made or threatened in connection with the TCDC project. The largest of these was reportedly a Vt 900 million claim against the GoV, initiated by the Inik executive for environmental issues associated with the estate. Although unrealistic, this claim may have alerted the attention of the government to the importance of rehabilitation work in the estate area.

Rent paid in relation to the estate lease is Vt 200 per hectare for the “unimproved” area and Vt 350 per hectare for the “improved sections” (a small proportion of the whole). However, the main benefit of the project to members of the lessor group and others in the area would appear to be the development of coffee as a cash crop and the provision of market linkages enabling smallholders to sell produce.

There is some dissatisfaction among the lessors with the TCDC processing site near Lenakel. This dissatisfaction stems from the project’s failure to generate the levels of local employment originally anticipated, despite attempts involving the GoV, donors, smallholders, and TCDC to advance the rehabilitation and development of the coffee estate area. On this basis, the lessors believe there is cause for reducing the area of the lease over the processing site.

Church leases

Two leases are profiled under this theme, both of the same denomination (which requires leases for sites on which church infrastructure is established). One appears to be the outcome of good lease creation practice. In the second case, the creation of the lease was beset by conflict, poor attention to administrative detail, and weak consultation practices, with few community members knowing that a lease existed over the site. No NC or COIF documentation is on file in for the second case, and the original lessor (now deceased) may have travelled to Port Vila to process the lease secretly.

In the case of the church lease characterized by conflict, temporary church buildings were destroyed by fire at one point in an apparent protest against the church development (including the creation of the lease). The perpetrators later claimed to be landholders of the site, although they reportedly failed to mention their claim at a *nakamal* meeting held to discuss the proposed church development prior to the erection of the temporary buildings. Accounts suggest that this claimant group felt unable to articulate its claim at the meeting because the group’s members had lower status within the customary administrative system than the proponent of the church development, so they instead vented their frustration by destroying the buildings. The case indicates that initiatives should perhaps be introduced to promote more inclusive village decision-making forums, in which the grievance of all community members can be aired, to forestall the expression of opposition to decisions in destructive and potentially life-threatening ways.

Hostility encountered from members of other churches was a factor in the creation of the good case lease example. This hostility was a reason why the church was moved from an original location near a population center in east Tanna to the new site in a more remote location. This information raises the question of whether interdenominational church bodies could be doing more to ensure harmony between the followers of different denominations at village level to reduce the possibility of conflict in this area.

One case in this category provides an example of how the profits from leases can be wasted with little or no benefit to extended families and the broader community. In this instance, the money was said to have been spent by a senior community member (the original lessor) on an extended visit to Port Vila. Given their interest in good community outcomes, churches engaging in leasing arrangements with community members might consider strategies to encourage lessors to maximize the long-term gains of benefits that accrue from leases.

Non-lease-based enterprises

Further research into non-lease-based enterprises represents a possible future direction for JBE research endeavors, with the aim of identifying effective strategies for promoting economic development on customary land with reduced risk of land alienation. In order to obtain more information on this possibility, preliminary research was undertaken focusing on three non-lease-based bungalow (commercial/tourism) enterprises located in west Tanna. Two of the businesses have been in operation since 2004 and the third since 2007.

All three businesses were situated on land belonging to relatives of the respective proprietors. While none of the sites has a lease registered over it, two have been surveyed. In one case, the land was surveyed to substantiate the claim to the land and prevent it from being claimed by another family, and the process may ultimately lead to a lease. In the second case, the female proprietor intended to register a lease over the land (which belongs to the family of her husband) to use for accessing credit, but her husband's elder brother opposed this strategy on the basis that a lease would lead to a dispute. In the final case, it appears that no survey had been conducted and there was no intention of registering a lease over the land.

Despite not having leases, two of the three businesses had succeeded in accessing credit. In all three cases, one of the proprietors had worked in the past for an outside employer and this factor appeared critical in accessing capital. Being able to mobilize family labor was a factor in at least one other case.

In all cases, it appeared important for the proprietors to pay careful attention to family and community-relations strategies (for example, attention to family and community needs and strategic decisions concerning employment and procurement contracting) in order to maintain harmony and prevent jealousy from growing in relation to the developments. The attention that the proprietors of non-leased-based enterprises have been paying to family and community-relations strategies highlights the vulnerability of all enterprises to disputes, regardless of whether they are lease-based.

1. Introduction

Jastis Blong Evriwan (JBE) is part of a World Bank research and development program called Justice for the Poor (J4P), which supports analytical and programmatic work in countries where legal pluralism⁷ presents a central development challenge.

The JBE Project Framework Document (PFD) for Vanuatu outlines a number of priority research areas in land and natural resource management (L&NRM) and access to justice (JBE 2009). The research undertaken on Tanna island during August 2010 investigated the way customary groups negotiate and engage in land lease dealings and the type and effectiveness of mechanisms and strategies people used to resolve disputes. This approach combined the L&NRM and access-to-justice research areas in order to: (i) document ways in which customary groups engage with the formal system and (ii) increase understanding of the type of justice problems citizens face and the procedures people use to enforce their rights. Integrating these two research interests supported a more holistic understanding of the ways in which custom landholder groups operate in the context of legal pluralism.

The JBE program supports two key government sector strategies. These are the Law and Justice Sector Strategy, which seeks to enhance coordination between the various law and justice institutions and adopt a coherent approach to justice reform, and the Vanuatu Land Sector Framework (VLSF), which provides a roadmap for achieving “a prosperous, equitable and sustainable land sector for Vanuatu.” The mission of the VLSF is “to provide an enabling environment for multi-stakeholder participation in the effective use, management and stewardship of Vanuatu’s land resources.” The vision and mission statements of the VLSF are underpinned by five themes or strategic objectives:

- Enhancing the governance of land;
- Engaging customary groups;
- Improving the delivery of land services;
- Creating a productive and sustainable sector; and
- Ensuring access and tenure security for all land groups.

The current sector strategies and reform efforts are the outcome of a long period of Ni Vanuatu grievance over the alienation of their lands. This is discussed in section 1.1.

1.1 Overview of Land Alienation in Vanuatu

Land alienation has a long history in Vanuatu, from the extraction of sandalwood trees, to the establishment of cotton plantations and Christian missions in the 1860s, to the development of copra plantations in the 1900s and the agricultural, residential, and tourism developments

⁷ Legal pluralism manifests itself as a development challenge in at least three ways in Vanuatu. First, strong *kastom* (in its many variations) and a weak state exist in a parallel but undefined relationship, which makes the management of development processes extremely difficult. Second, *kastom* systems, while internally coherent, accessible, legitimate, and relatively well understood, are nonetheless being asked to address issues that stretch their capacity (for example, the sale of land for foreign investment). Third, processes whereby traditional and modern systems of property rights and contracting interact can have seriously inequitable and/or destabilizing effects. Key development problems experienced by Ni Vanuatu, especially the more marginalized, stem from these three issues. See JBE (2009) for further information concerning the JBE approach.

that followed. Significant land loss was a unifying factor and mobilizing force for the independence movement in the 1970s that demanded the return of alienated land to the rightful custom landholders.

At independence in 1980, the Constitution (art. 73) stated that all land in the Republic of Vanuatu belongs to the indigenous custom landholders and their descendants and that the rules of custom shall form the basis of ownership and use of land (art. 74). Thus the Constitution effectively reversed previous alienations but provided for their replacement in certain circumstances.⁸ The *Land Reform Act* allowed “alienators” having a freehold or other beneficial interest in land, and who were in occupation of the land and had maintained the land and improvements in reasonably good condition, an entitlement to remain in occupation of the land until a lease agreement was negotiated with the custom landholders or payment was made for improvements to it.

While these new leasing arrangements were originally intended to restore investor confidence and maintain agricultural development, they soon evolved into the method for negotiating new leases over custom land. The *Land Leases Act 1983* was for the registration of and dealings in leases. However, as Lunnay et al. point out, it might have been drafted in any country for the registration of landownership, as it was not nuanced for Vanuatu’s special features, namely, that land in Vanuatu is either under custom landholding (if in a rural area) or government landholding (if in an urban area). The term “lease,” for example, is defined to mean the grant “by the owner of the land of the right to the exclusive possession of *his* land,” and the term “lessor” is defined as “the person who has granted a lease or *his* successors in title” (Lunnay et al. 2008, 12). This wording created uncertainty as to the nature of custom landholding: is it by customary group or by individuals? The lease research conducted on Epi and Tanna provides evidence of the continuing uncertainty and implications for group decision making around land leasing and benefit distribution.

Amendments were made to the *Land Leases Act in 2004* that attempted to provide a fairer return for custom landholders when the value of their land is increased by, for example, a subdivision or strata title development. Nonetheless, many land leases have been created without the custom landholder’s full understanding of the law, the lease covenants, or the market value of the land.

Such was the concern about the scale of land alienation⁹ and the threat that this posed to the livelihoods of Ni Vanuatu, the authority of government, and the country’s social and political stability that the Vanuatu Cultural Centre organized a National Self-Reliance Summit in 2005 that identified land as one of the key development issues. This led to the convening of a National Land Summit in 2006, which produced a set of 20 resolutions, the development of an interim transitional strategy, and the establishment of a steering committee to advance the resolutions. The 20 resolutions endorsed by the Land Summit participants underscored the serious problems in such areas as agreements to lease custom land, lease conditions, land-use planning, subdivisions, registration procedures, public access to beaches and rivers, and the public’s awareness of land rights and laws. Four years on, the Vanuatu Land Sector

⁸ State land previously owned by the French and British Condominium powers was not returned to custom landholders but preserved as public land. This was mainly urban land on Efate and Santo.

⁹ Research by Farran (2002) on Efate leases revealed that 25 percent of the island was under lease.

Framework, which builds on the recommendations of the Land Summit, was publicly released in June 2010.

1.2 JBE Support for the Land Sector Framework

Despite the Land Summit consultations and recommendations for action, there has been limited capacity in the governmental or nongovernmental sector to conduct research that would provide an empirical base to understanding land leasing and inform policy decisions. JBE is currently conducting two research projects that will help address this gap.

National lease profiling project

To inform this broader context of land leasing in Vanuatu, JBE, in collaboration with the Government of Vanuatu (GoV), has begun collecting and analyzing land leasing data. The National Lease Profiling Project will use existing lease data to profile land leasing in Vanuatu, enabling us to answer questions such as what area of land is leased, where the leases are located, what the percentages of different lease type are, what average rents are, what the length is of the lease period, and what the trends in leasing are. The analysis of national lease data will provide a baseline for ongoing monitoring of leasing activity in Vanuatu, highlight areas where there are gaps in the data or the data are unreliable, and support land leasing policy development.

Locality studies on Epi and Tanna

The national lease profiling project will be supplemented by in-depth studies of leasing on Epi and Tanna. These include an examination of all leases for these islands, as well as field research on the leasing process. This report is based on the Tanna island research undertaken in August 2010. The research on Epi was carried out in March 2010 and the findings published in September 2010 by J4P (Porter and Nixon 2010).

1.3 JBE Reference Group

In implementing the program, JBE established a stakeholder reference group consisting of government and nongovernment representatives. This takes into account the importance of engaging with both the government and civil society organizations, and of finding ways to provide them with the information and support they need to advocate for policy advances in the areas of legal empowerment. The aim of the group is to provide advice on research design and implementation, offer feedback on research findings and policy considerations, and ensure that ongoing activities are relevant to the needs of local communities.

The first JBE Reference Group (JBERG) meeting was held in February 2010 to seek feedback on the proposed JBE research on leasing in Vanuatu. In May 2010, the second JBERG meeting was held, at which the findings from the Epi research were discussed. The third meeting was held in December 2010 to discuss findings from the leasing study on Tanna and a number of policy considerations that emerged out of the land leasing research.

A significant feature of the JBERG meetings has been the debate on whether leasing of land should be occurring at all, given that return of land to customary landholders was a key part of the Vanuatu independence struggle. The diversity of views expressed during the meetings reflects the passion Ni Vanuatu feel for the land and the complexities that have arisen over

the last decade as new land alienations have increasingly undermined the 1980 independence land reforms.

The body of this report comprises four additional sections. Section 2 provides a profile of some of the relevant historical and economic features of Tanna and aspects related to the structure of governance and civil society organization. Key points regarding the 64 leases studied on Tanna are summarized in section 3. Section 4 presents more detail on the real uses of the land by analyzing the leases according to seven thematic categories: commercial/commercial tourism, schools, infrastructure, securing custom land, communications towers, agribusiness, and churches. Finally, section 5 discusses a small sample of non-lease-based enterprises as a preliminary study into investment decision making.

2. Tanna Context

This section provides a brief description of the history of Tanna, and the way in which tribal wars, missionary work, trade, and cultural movements have influenced current land development practices on the island. This is followed by overviews of economic and demographic aspects, social principles pertaining to landholding rights on Tanna, and local governance structures.

2.1 History

There are several important events in Tanna's history that have had a substantial impact on the development of the island. These include the tribal wars, the arrival of missionaries, the influence of traders, the development of the John Frum custom movement, and the more recent growth of tourism.

Tribal wars

The works of Van Trease and Vani refer to two distinct tribal groups that occupied the whole island of Tanna in the precolonial period: the Nimrukwen and the Kouiameta.¹⁰ Although the function of the tribal division is unclear (Vigestad 1986, 27), the groups were connected to "particular geographical" sites (Van Trease 1983, 207). Vigestad refers to the work of Humphrey, who noted that the Nimrukwen tribes dominated the east of the island and the Kouiameta the west (Vigestad 1986, 27). In the present day, Nimrukwen tribes are reported to live inland and the Kouiameta tribes on the coast. As discussed further in section 2.3, reciprocal rights generally prevail such that coastal groups are able to cultivate inland areas and inland groups are able to access coastal resources.¹¹

Tribal fighting was a common feature of the precolonial period. According to Vani, "claiming authority over the whole island" was a main cause for tribal wars during the sixteenth and seventeenth centuries (2006, 101). During this time, ambushes were common,

¹⁰ Vigestad (1986, 27) recounts that his own "informants had very vague ideas about the origin of the division between the numrukwen [underline in original] and koyameta and what the function of the division was." See also Van Trease (1983) and Vani (2006).

¹¹ References to present-day aspects are based on information provided to the research team by respondents in August 2010.

resulting in the extinction of certain groups.¹² Tribal wars also contributed to population mobility (Van Trease 1983, 213). Evidence of relocation remains in the present day, and reports received by the field teams reflected the understandings of some tribal groups that they continued to reside on their ancestral lands (or had returned to these after a period of absence), while other groups understood that they were “newcomers” to particular areas. In some places, multiple groups claim to have ancestral rights over land.

All of these historical events have impacted on the way in which Tannese tribes relate to one another today. As a way to promote reconciliation and the establishment of links between former tribal enemies, Van Trease refers to an important Tannese custom involving the cross-tribal exchange of women through marriage (Van Trease 1983, 217). The Tannese marriage exchange system receives further attention in section 2.3.

Missionaries

The arrival of missionaries on Tanna began in the first half of the nineteenth century (Nizette 2010, 2). In the early twentieth century, the Presbyterian missionary William Watt moved to Tanna and served for 42 years, during which time the Presbyterians came to dominate the mission areas (Whimp n.d., 1). In addition, Catholic missionaries from the French Condominium administration began to establish schools on Tanna in 1887 (Tyron 1999, 16). Both churches initiated educational activities at that time, and continued to operate schools until the GoV took over education following independence.

The lasting influence of the Presbyterian and Catholic missionaries on Tanna is reflected in the number of followers these denominations have in the present day. Although *kastom*¹³ religious groups (see section 2.1 on the John Frum movement) recorded the highest number of followers in Tanna in the 1999 census, the Presbyterian and Catholic denominations had the second and third highest numbers of followers, respectively. The Seventh-Day Adventist Church (SDA), which was established in the early to mid-twentieth century (1932), formed the next highest church denomination after the Presbyterians and the Catholics. In the years leading up to independence, Assemblies of God and the Church of Jesus Christ of the Latter Day Saints were among some of the new churches established on the island.¹⁴

Early traders

The involvement of traders on Tanna began in the early nineteenth century, and Nizette notes that a Captain Dillon visited Tanna in 1825 to search for sandalwood (2010, 2). Most traders aimed to acquire land and establish plantations on Tanna, and the first settlement sites were in the Port Resolution area. By the mid-1860s, most traders were engaged in buying copra and planting cotton and coffee.¹⁵ There were also traders interested in sulphur mining, leading to

¹² See Nizette (2010, 5), drawing on Guiart (1952). See also Van Trease (1983, 213), who notes that in some locations, fighting “wiped out” clans or tribes.

¹³ *Kastom* is the mixture of values, beliefs, institutions, and practices perceived as traditional in Vanuatu.

¹⁴ According to the Vanuatu National Statistics Office (Vanuatu 1999), followers of *kastom* groups numbered 8,295, Presbyterians 4,497, and Catholics 2,446. The total population at that time was 25,840.

¹⁵ According to Weightman (1989, 177–78), coffee was introduced to the then New Hebrides in the nineteenth century. Experiments in commercial production are reported to have been undertaken by the trader Worthington in the west Tanna area in the late nineteenth century, with further scattered attempts made throughout the twentieth century. See section 4.6 for a discussion of the Tanna coffee industry in the present day.

instances of land speculation. Also in the nineteenth century, “blackbirders”¹⁶ came to Tanna to take laborers to the sugarcane plantations of Queensland. Notwithstanding the various activities of the traders, “contact with the West” is reported to have resulted in the alienation of “relatively little land.”¹⁷

John Frum custom movement

In the late 1930s, a number of island social movements emerged on Tanna. One of the more influential groups was the John Frum movement, which began on Tanna in the period prior to World War II (Guiart 1952, 165). Considered by some Tannese to be half-man and half-spirit, John Frum is described by Van Trease (1983, 224) as a “spiritual being” who advocated the abandonment of Christianity and a return to custom beliefs (including drinking kava and performing *kastom* dances). John Frum promised “a golden age to come” (Van Trease 1983, 224) to followers who perceived that he would bring them cargo. The movement first began in the South Tanna village of Ipikil in the Sulphur bay area before expanding to the Port Resolution area (Guiart 1952, 168). It gradually spread to other parts of the island, including west Tanna, where a regional headquarters of the movement remains to the present day.

Guiart describes how the movement reached revolutionary proportions in the 1940s, leading to the mass abandonment of the Christian religion and the withdrawal of children from mission schools (Guiart 1952, 167–75). The research undertaken to inform this report indicates that the John Frum movement continues to have relevance in Tanna. One respondent interviewed in the east Tanna area, for example, reported that the opposition to sending children to school did not completely dissipate until around 2000. In west Tanna, meanwhile, several respondents referred to the teachings of the movement that the west of Tanna would one day become a growth area, with future developments including an international airport and wharf. The movement is reported to emphasize that development should be welcomed as long as it is compatible with *kastom* and that followers of John Frum should make sure to participate in decisions concerning that development.

Development of tourism

The history of tourism on Tanna can be traced back to the influential engagement of the trader Robert (Bob) Paul, who arrived in what was then called the New Hebrides in the period following the Second World War (Dunn 1997). Initially establishing himself as an independent copra buyer (following a period with Burns Philp¹⁸), “Mr. Paul” moved to Tanna in the 1950s, where he diversified into new areas of agribusiness (including coffee and peanuts) (Weightman 1989), an airline venture, and tourism and accommodation. A detailed account of Mr. Paul’s contribution to the development of tourism on Tanna in the period after which he visited the Yasur volcano was provided to the research team by a local source who worked for Mr. Paul prior to independence.

¹⁶ “Blackbirding” is a racist euphemism for the forcible enslavement of Pacific islanders from the mid-nineteenth to the early twentieth centuries to work as indentured laborers in the sugar cane fields in Australia, Fiji, New Caledonia, and the Samoan Islands.

¹⁷ For further information, see Gregory (2003, 67–68), who refers to the long-standing hostility of the Tannese towards those who would “alienate or take away land.”

¹⁸ Burns Philp is a company that has been active in the Pacific region in the area of agribusiness. The company began copra trading activities in the New Hebrides during the colonial period.

Realizing the potential of the volcano to draw tourists, Mr. Paul attempted to persuade the Condominium authorities to support the construction of an airstrip on Tanna. When the authorities proved unwilling to assist, Mr. Paul gained the support of local chiefs for airstrip construction to the north of Lenakel. The chiefs mobilized the labor necessary to clear the site and grade it with an old vehicle chassis. When the site was cleared, Mr. Paul asked Tannese community members to invest in shares in a local airline, and then left for Sydney to purchase a second-hand aircraft.¹⁹ Although initially refused permission to bring the aircraft into the New Hebrides, the authorities eventually relented. However, permission was then refused for the new airline to operate commercially, so in the early days, passengers secured return passage between Tanna to Port Vila through the purchase of a packet of cigarettes for the inflated price of one pound.

Following the establishment of the airline, tourist numbers gradually increased, necessitating the construction of bungalows to accommodate them (they had previously been accommodated in Mr. Paul's own house). The business of guiding tourists up the volcano and managing the bungalows provided a number of Tannese with an introduction into the tourism and hospitality industry. Following Mr. Paul's retirement prior to independence in 1980, one of his former employees became a successful tourism and bungalow operator and a leading local advocate of tourism development on the island. The volcano is now an established tourist attraction, drawing dozens of visitors daily and providing work for drivers, tour guides, and those employed in other aspects of the hospitality industry (which comprises a number of locally operated bungalows).

2.2 Economics and Demographics

The topics of population and livelihood, agricultural economy, tourism economy, public services, and cooperatives are covered in this brief discussion.

Populations and livelihood

Tanna has a total land area of 570.7 square kilometers, of which approximately 310, or 55 percent of the total area, is estimated to be arable (Simeoni 2009). In the 10 years between the most recent two censuses (1999–2009), the Tanna population increased by 2,959 (11.5 percent) from 25,840 in 1999 to 28,799 in 2009 (Vanuatu 2009a), showing an annual growth rate of 1.1 percent, thereby raising concerns about the increasing pressure on land. Expanding population pressure is predominantly evident in east Tanna, and reports received by the field team indicated that members of some east Tanna communities were being forced further south to access land for gardening and timber harvesting (for housing construction). Other reports suggested that the land shortage was resulting in firewood theft. Current levels of volcanic fallout were reportedly effecting agricultural production, and east Tanna communities were receiving emergency food supplies provided by the Yasur volcano trust at the time of the field work. Continuing volcanic fallout could force people to seek resettlement sites.

The number of households on Tanna has increased by 360 (7.5 percent) from 4,793 households in 1999 to 5,153 in 2009, an annual growth rate of 0.7 percent. The majority of

¹⁹ Before departing to Sydney to purchase an aircraft, he asked the chiefs to ensure that the airstrip was compacted before he returned. This was reportedly accomplished via the systematic organization of custom dances along the airstrip.

households are dependent predominantly on subsistence agriculture, involving the production of root crops, other vegetables, and fruits (Vanuatu 2007). The results of the 2007 agricultural census indicate that the great majority (97 percent) of households practice shifting cultivation to sustain household consumption and provide cash through sale of surplus (Vanuatu 1999, 2007).

Agricultural economy

The climate of Tanna is cooler than that of more northern parts of Vanuatu, and this and the fertile soil contribute to good growing conditions for cash crops. Temperate vegetables (including carrots and cabbages) produce good yields and contribute to household incomes through sale at the Lenakel (the largest town on Tanna) and Port Vila markets. Other crops contributing to rural household income include kava, coconut, cocoa, taro, and peanuts. Households cultivating kava are said to number 3,630, of which 1,549 sell their kava produce in Port Vila. In the present day, North Tanna and Middle Bush are also used for the cultivation of coffee, which grows well in the area. The recent history of coffee on Tanna begins with the advent of the British Commonwealth Development Corporation (CDC) project in the early 1980s, which resulted in the establishment of the Tanna Coffee Development Company (TCDC). The CDC initiative and the recent history of aspects of the Tanna coffee industry is discussed under section 4.6 on agribusiness leases.²⁰

Tourism economy

As mentioned above, Tanna originally developed as a tourist destination because of the Mount Yasur volcano. The draw of Tanna culture has also contributed to the development of the tourism sector. Today, the island is serviced by a dozen or more accommodation businesses, some of which provide good employment and training opportunities for Tannese. Other opportunities stem from businesses providing transport, custom village tours, and tours to the Yasur volcano. With a daily air connection to Port Vila and road access to the volcano, tourism development has been increasing. In 2006, the tourism sector of the Tanna economy was estimated at around Vt 35 million annually (Rockwell 2006).

Public services

A commercial center known as “Blackman town” is located in Lenakel and the TAFEA²¹ provincial government administrative center is located nearby in Isangel. The provincial administrative area consists of a police station, a provincial administration center, a provincial office of the Department of Education, the University of the South Pacific TAFEA Centre, a court house (for the island and magistrate’s courts), a youth center, and an office of the Department of Cooperative and Business Development Services. In June 2008, the Minister of Internal Affairs created a Lenakel Town Municipality intended to provide security for business investment due to a protracted dispute between landholding groups in the Lenakel area (see section 4.3 for further details). According to the Lord Mayor of Lenakel, the municipality also intends to create a physical plan for Lenakel and provide services to the communities such as water supply and garbage collection.²²

²⁰ For further information on cash crops in Tanna, see Weightman (1989) and Vanuatu (2007).

²¹ TAFEA is an acronym from the names of the islands of the province, namely Tanna, Aniwa, Futuna, Erromango, and Aneityum.

²² The team was advised by officials of the municipality that physical planning work was beginning in the second half of 2010.

There are a number of health facilities in Tanna, including a hospital, four health centers, and eight dispensaries.²³ There are 75 schools in total, comprising 67 primary schools and eight secondary schools.²⁴ Tanna is serviced by the White Grass airport in the west. Air Vanuatu provides a daily flight service, which takes approximately 35 minutes from Port Vila. Tanna has a passable road that runs around the island, linking the south coast to the west coast and the east coast to the north. However, roads can be impassable for vehicles during the wet season. The rest of the island is accessible by walking tracks. Communications are accessed through Digicel and Telecom Vanuatu Limited (TVL) services, although reception is limited in areas remote from telephone tower locations.

A power station is located in Lenakel and reportedly supplies energy to more than 601 customers in the Lenakel and Isangel areas. The energy supplied by the station is limited, thus some households use hurricane lights and others resort to using generators and solar panels. Lenakel town also hosts post, telecommunications, cooperative, and banking service offices. There are also a number of locally operated retail shops and a food market located in the center of town. Observations from field research indicate that demand for goods is often unable to be met by the existing supply arrangements due to the limited number of ship visits to the island (three per week). Fuel, in particular, is often in short supply.

Cooperatives

The one large umbrella cooperative, TAFEA Cooperative, is managed independently by a board under the guidance of the Department of Cooperative and Rural Business Development Services. TAFEA Cooperative was established to help communities of the TAFEA group buy products wholesale and resell them at retail prices, with registered members entitled to obtain annual shares. There are 24 smaller cooperatives in the TAFEA Cooperative, of which 18 are on Tanna. While the *Cooperatives Act* [Cap 152] aims to ensure that cooperatives operate in accordance with its bylaws, the operation of the TAFEA Cooperative was reportedly hindered by board mismanagement in 2006. This impacted on the services provided by the TAFEA Cooperative and the number of active cooperatives on Tanna was reduced to four.

Since 2006, management reforms have been introduced to prevent mismanagement, leading to the revival of the TAFEA Cooperative, which now has a new manager and board. Between 2006 and 2010, the rejuvenated cooperative made progressive advances and supported the various smaller cooperatives with training, supervision, and monitoring, as well as assistance with the organization of monthly meetings. Services have been extended to the promotion of savings and loans through the establishment of village banks, of which there are now 30 operational on Tanna. A TAFEA Cooperative official reported to the research team that with existing operations, the debt of the organization is expected to be cleared by 2013, after which further services will be extended to remote areas.

²³ According to Vanuatu (2004), hospitals are defined as having a complete complement of personnel, “including medical doctors and they provide all services including obstetric, medical, pediatric, surgical, inpatient and outpatient services.” Health centers meanwhile are staffed by “a nurse, a practitioner and midwife” and provide acute care, health promotion, and preventive services, including immunization. Dispensaries are staffed by general nurses and provide “outpatient services with a focus on basic essential health including health promotion and preventive services.”

²⁴ Pers. comm. to the authors, Ministry of Education, July 2010.

2.3 Social Principles of Custom Land Rights on Tanna

This section briefly discusses some of the key principles associated with landholding rights and intergroup relations on Tanna. Specifically, the section covers tribal versus reciprocal rights, “custom roads,” name-sets, and the (bride) “swap” system.

Tribal groupings versus reciprocal rights

As in other regions where coastal and inland peoples develop protocols to allow one another access to the resources of their respective environments, the Tannese have protocols to enable coastal groups (Kouiameta) to cultivate inland areas and inland groups (Nimrukwen) to access coastal resources. As reported to the research team, this reciprocal system appears to involve user rights rather than a more substantial level of custodianship. Increased interest in land, particularly in coastal areas, is placing pressure on this system of reciprocal rights, however, and one member of the Nikoletan Island Council of Chiefs told the research team that “people inland have coastal rights to access sea resources...[but]...these days we have bungalows. It stops these access rights.” While the nature of the reciprocal rights system may be changing, a number of land disputes may have origins in areas used by groups with reciprocal rights. The research team encountered several cases in which claimant groups dismissed the claims of others on the basis that they were from inland areas.

Tribes linked by “custom roads”

As described by Vigestad, the Tannese word *suatu* refers to the “special relations” that exist between individuals in different villages, which facilitate formal interaction between different groups. Providing marriage negotiations as an example, Vigestad notes that “all formal business must go through these established channels” (1986). In Bislama, these special channels are referred to as *kastom rods* (roads) and care must be taken to keep them “open.” Again, using the example of marriage, Vigestad reports that *suatu* have been known to be blocked for several decades due to conflict, such as might arise over a disputed marriage transaction.²⁵ Reports from the field indicate that *kastom rods* continue to play an important role in intergroup relations and negotiations on Tanna.

Name-sets

Unlike other islands, Tanna has a name-set system in which all males born to a family are named after senior male family members or male ancestors. These names are reused within a family line and follow a patrilineal descent.²⁶ Importantly, the various names are each associated with landholding rights over particular areas of land. There is some question about whether the practice of name-giving bestows ownership of land or merely custodianship over it.²⁷

²⁵ As described by Vigestad (1986, 25), “negotiations about the opening of a blocked suatu [underline in original] and arguments about whether the correct *suatu* has been used for transactions between villages take a lot of time and attention. Generally this is an expression of how important it is to maintain to good relationships with other villages in the surrounding area in an environment marked by uncertainty and potential enmity, without an overall political structure.”

²⁶ For further information see Vigestad (1986, 26) and Van Trease (1983, 228–29).

²⁷ Information based on a meeting with a senior GoV official with extensive experience in the land portfolio.

Swap system

Tanna is known to practice a marriage exchange system involving the principle of bride “swapping.” In accordance with this practice, a family lineage that receives a woman through marriage is obliged to return a woman as a replacement (Vigestad 1986, 29). According to Van Trease, the bride “swap” system has played a role in creating “kinship links between former enemies” and “to a certain extent, of validating the exchange of land which had taken place as a result of...[earlier]...fighting” (1983, 217). The practice is probably not as prevalent now as in the past, as today women and men initiate their own relationships, which may later be approved by their elders.

2.4 Traditional and Local Governance Structures

This section looks at the structures of governance and the multiple levels of local authority that exist on Tanna. Following a brief description of the traditional and administrative structures of chiefs, the nature of their relationships and how they interact and work in parallel with each other will be examined. The section concludes with an overview of the local governance structures of the provincial government and their links with the chiefly structures.

Chiefly structures

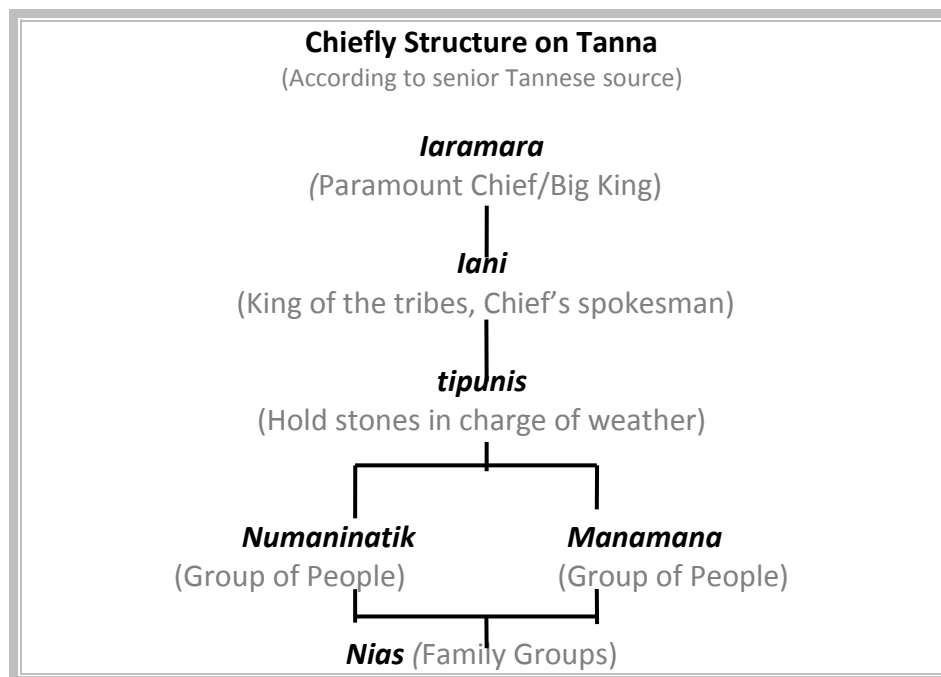
The term “chief” or *jif* is an introduced term and a product of the colonial period now used to refer to individuals occupying various positions within the local-level structures. According to Rousseau, the term “subsumes a broad category of multiple forms of status and diverse roles of chiefs” (2004, 49). Traditionally, however, the Tannese use a range of specific terms to refer to individuals with particular roles and responsibilities within the chiefly structures.

Traditional chiefly structures

Different chiefs on Tanna occupy a range of different roles in accordance with *kastom*. The senior level of the traditional chiefly structure is the *Iaramara*, who is reported to be the paramount chief or the “big king” with supreme authority and spiritual powers (see figure 2.1 below). The *Iaramara* has ritual responsibilities associated with ceremonial occasions, such as planting and harvesting times, food distribution, and weather (Van Trease 1983). The various tribal groups have their respective *Iaramaras*. Below the paramount chief is the *Iani*, who is said to be the most active leader, directing the collective activities of the group and acting as a peacemaker. A senior Tannese respondent²⁸ explained to the research team that below the *Iani* are a number of *tipunis* who each have responsibility for different areas, such as the weather and the harvest. This source likened the responsibility of the *Iaramara* to the owner of a ship, the *Iani* to the captain, and the *tipunis* to those of the ship’s officers. The *tipunis* are said to be responsible for passing messages along the big road to facilitate communication between groups and for performing other necessary activities as instructed by the *Iaramara*. The diagram below illustrates the traditional chiefly structure on Tanna according to senior local respondents.

²⁸ Interviewed on Tanna, November 2009.

Figure 2.1 Traditional Chiefly Structure on Tanna



Traditional chiefly titles on Tanna are passed through bloodline and are reportedly maintained within families through arranged marriages as mentioned in section 2.3. For instance, *Iaramara* are allowed to marry other *Iaramaras* and similarly, the *Iani* are allowed to marry other *Ianis*. These arranged marriages maintain chiefly lines and links among chiefly groups.

Official chiefly structure

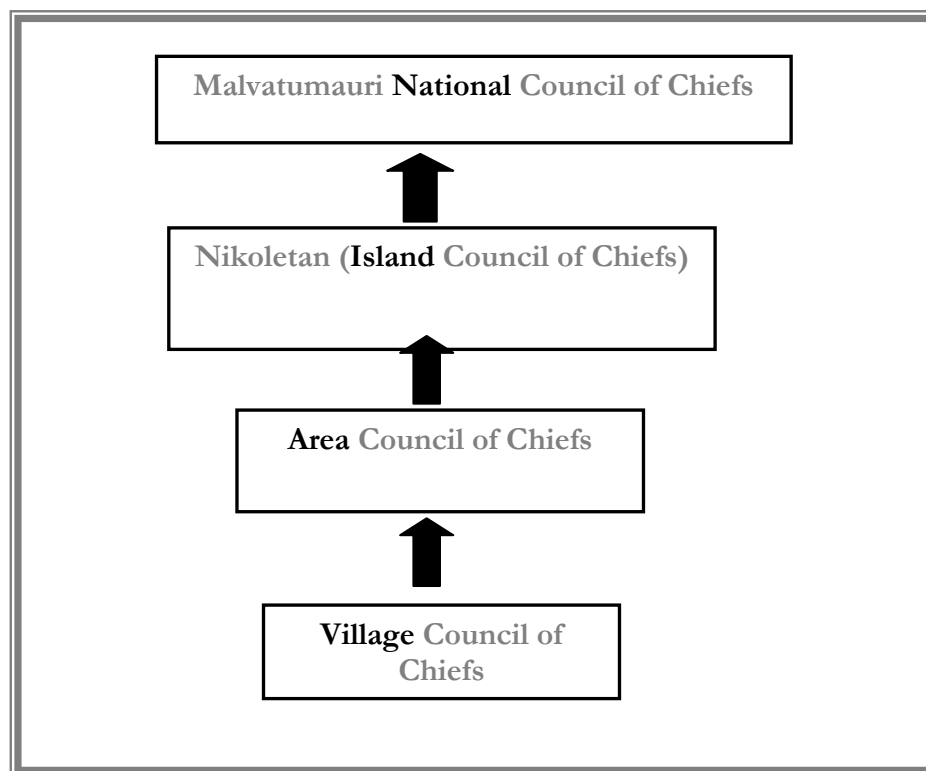
The official chiefly structure begins at the village level. According to field reports, chiefs at this level organize community work and forums that address issues related to relationships, stealing, and damages. When these matters involve individuals from different villages, the resolution processes typically involve multiple villages, with decisions made jointly. Where issues are not resolved at this level, they are taken to the level of the area council of chiefs.

There are seven area councils of chiefs on Tanna (these are distinct from the local government area councils discussed later in this section). These include North Tanna, Middle Bush Tanna, West Tanna, South Tanna, and East Tanna (Neprainetata and Narak). The respective area councils of chiefs are each comprised of village chief representatives, and some also include tribal representatives. Area councils address issues that are not resolved at the village level, including land disputes. An area customary land tribunal (CLT)²⁹ may be set at the area council level and may be overseen by local chiefs with custom land knowledge. These chiefs may have received training from the Customary Land Tribunal Unit (CLTU).

²⁹ The *Customary Lands Tribunal Act* (2001) mandated the establishment of CLTs to ease the backlog of land cases. They replace the island courts in dealing with land issues arising after the passing of the act in 2001.

Appeals from the area council are made to the Nikoletan Island Council of Chiefs (see figure 2.2 below). Members of the Nikoletan see their council as a big *nakamal* that looks after the welfare of the Tannese and provides an administrative structure for the resolution of land disputes (for the required registration fee of Vt 25,000). The island council of chiefs liaises with the Malvatumauri National Council of Chiefs. The Nikoletan council is currently comprised of 10 representatives from the area councils of chiefs (two from South Tanna, three from East Tanna, two from Middle Bush Tanna, one from North Tanna, and two from West Tanna). While the channeling of disputes through the various chiefly levels (village, area, and island councils) makes theoretical sense, representatives of the island council of chiefs report that the multiple levels of dispute resolution present managerial difficulties.³⁰

Figure 2.2 Hierarchy of Chiefly Structure



Unlike the traditional Tannese chiefly structure, the official chiefly structure has its origins in preindependence developments aimed at locating chiefs in the emergent state.³¹ It appears that this official structure may distort traditional power relations on Tanna in subtle ways. According to a respondent, the *Iaramara*, who resides mainly in the sacred paramount *nakamal*, is highly respected yet hardly seen, and therefore may not be represented at the island council level, as his role pertains to *kastom* and “his voice brings death.” The *Iani*, on the other hand, is the organizer who speaks on behalf of the *Iaramara* and would be more eligible to be included in the Nikoletan Island Council of Chiefs. Once again, since the Nikoletan is represented at the national level, it appears that it is the *Ianis* who are likely to represent Tannese traditional society at the level of the Malvatumauri National Council of Chiefs.

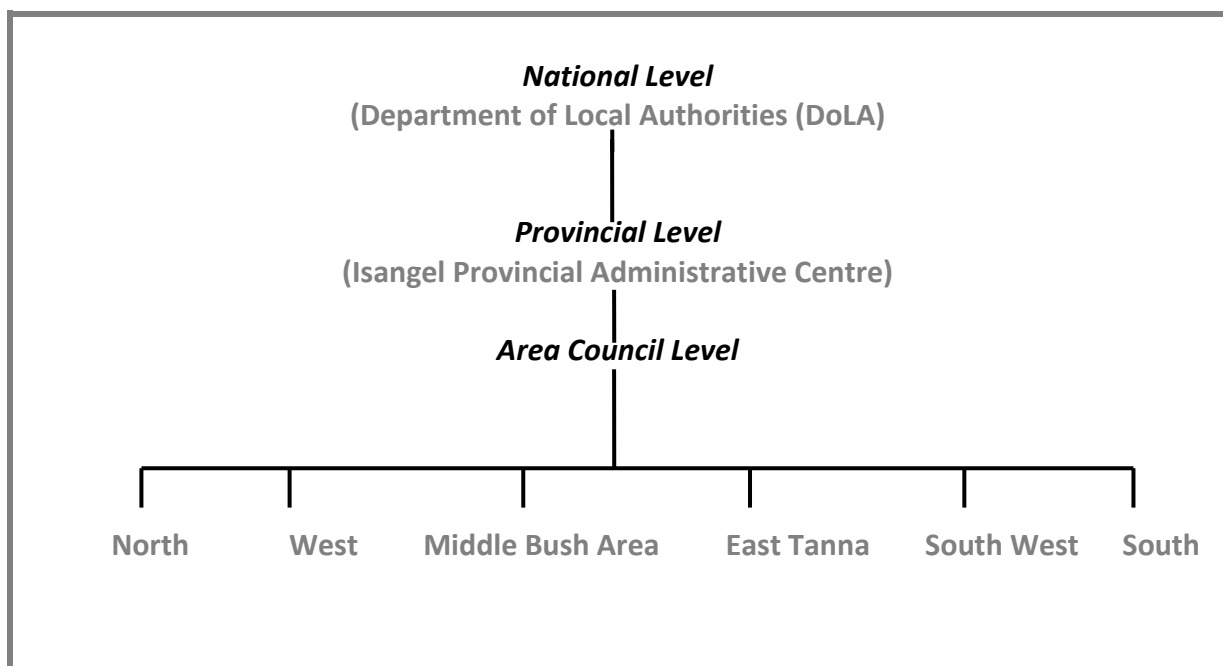
³⁰ A customary land law has been drafted by the Nikoletan Island Council of Chiefs.

³¹ For further reading see Rousseau (2004, 46–71).

Local government

Tanna is part of TAFEA province with the provincial headquarters located at Isangel on a site subject to a land dispute (see section 4.3). There are three levels of government for Tanna as shown in figure 2.3. Tanna shares the TAFEA provincial annual budget of Vt 33 million. The finances are managed by the Department of Local Authorities, and operational funds disbursed monthly are subject to adequate financial reporting. Until recently, the greater proportion of the provincial budget was dedicated to administrative costs. However, TAFEA province is currently undergoing restructuring to free up funding for development projects. As a result, the Isangel-based provincial government now employs only 12 staff (secretary general, assistant secretary general, accountant,³² cashier, provincial planner, area secretary strengthening officer, office manager, assistant office manager, carpenter, driver, gardener, and cleaner/receptionist). The provincial government is administered by the provincial council, which meets twice a year. Administrative matters are discussed in May and budget allocation matters in November.³³

Figure 2.3 Three Levels of Government on Tanna



Role of provincial councillors

TAFEA provincial council consists of 15 elected councillors whose role is to ensure appropriate delivery of government services, assist in advancing community projects through identifying funds, and creating bylaws. The progress of the council with regard to the creation of bylaws, however, is unclear. As of June 2008, the provincial councillors in Tanna were

³² As stipulated by the *Decentralization Act* [Cap 230], the secretary general and the accountant are permanent civil servants. The remaining staff are employed by the provincial government.

³³ Information in this subsection is based on interviews with the former assistant provincial planner for TAFEA province, August 2010.

nominated by the Minister of Internal Affairs as representatives on the new Lenakel Town Municipality.³⁴

Role of area secretaries

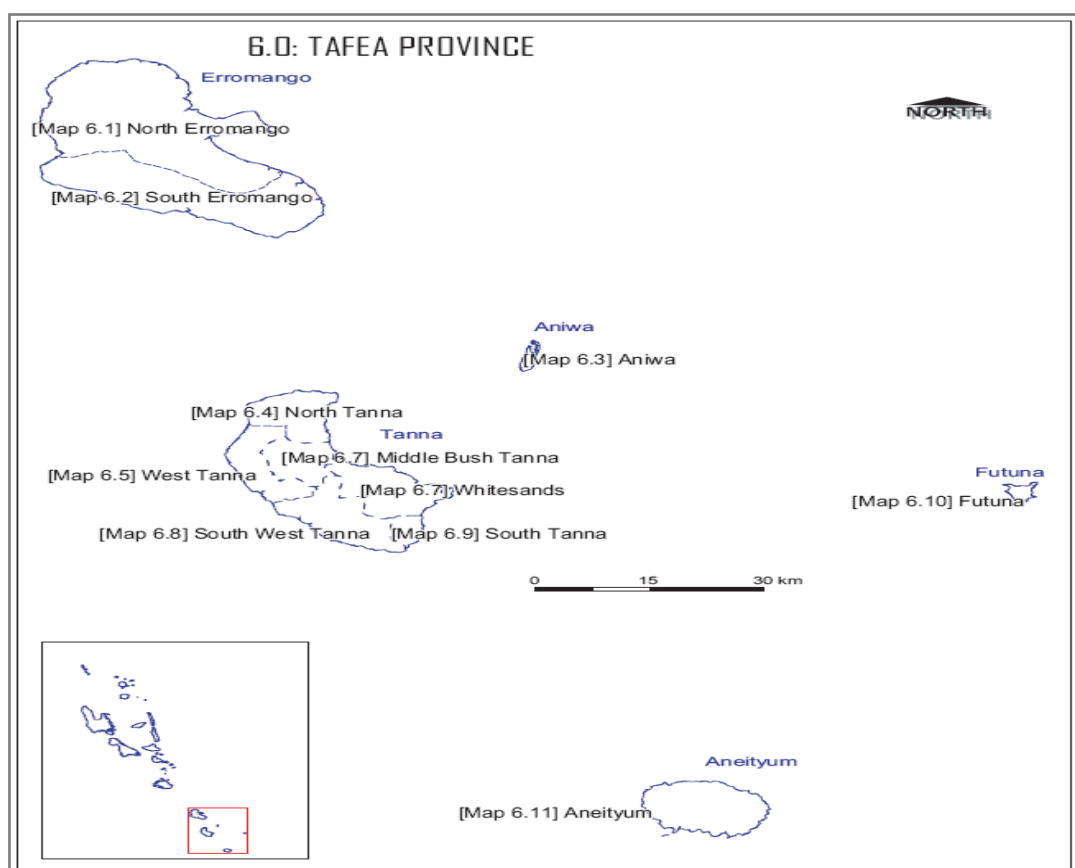
Tanna has six area secretaries administering six area councils as shown in map 2.1. The role of the area secretaries is to collect taxes (airport and business license taxes); assist in registering voters during elections; register births, marriages and deaths; and interface with the chiefly structure in connection with community issues. For example, one area secretary reported that he had recently assisted the Lands Tribunal Committee in organizing a land dispute-resolution forum. Area secretaries also attend meetings with provincial councillors in their respective communities to identify community needs. This information is then submitted at the next meeting of the provincial council.

In most cases, there are no area council offices (for the area secretaries) on Tanna, though it is reported that these have recently been established in the North Tanna and Middle Bush areas. Area secretaries work part-time from home and pay visits to the provincial office as the need arises. Area secretaries have no vehicles or motorcycles to assist with transportation. Although they receive a bi-monthly stipend of Vt 14,000, they sometimes must pay for expenses out of pocket.³⁵

³⁴ Information in this section is based on interviews with three TAFEA provincial councillors during September 2010.

³⁵ Information in this section is based on interviews with two area secretaries during September 2010.

Map 2.1 Local Government Areas in TAFEA Province



Source: 1999 National Population and Housing Census, Vanuatu National Statistics Office

3. Summary of Leasing on Tanna

This section profiles key information concerning the 64 leases in the Tanna study, based on analysis of the Department of Lands (DoL) files and interviews conducted in the field with lessees, lessors, and other local sources. While the DoL lease files are part of the public record, the names of people have been changed to protect the confidentiality of the respondents and to provide some privacy to the lessors and lessees (see the methodology annex for more details). Because the broad lease categories (see table 3.1) do not provide adequate information about the lease purpose, or in a number of cases, the real uses of the land, section 3 is supported in section 4 by more in-depth discussion of the leases under seven thematic categories: commercial/commercial tourism, schools, infrastructure, securing custom land, communications towers, agribusiness, and churches.

3.1 Lease Registration Activity and Area of Land under Lease

Table 3.1 provides an indication of lease registration activity for the period from 1980 to 2010.

Table 3.1 Lease Registration Periods

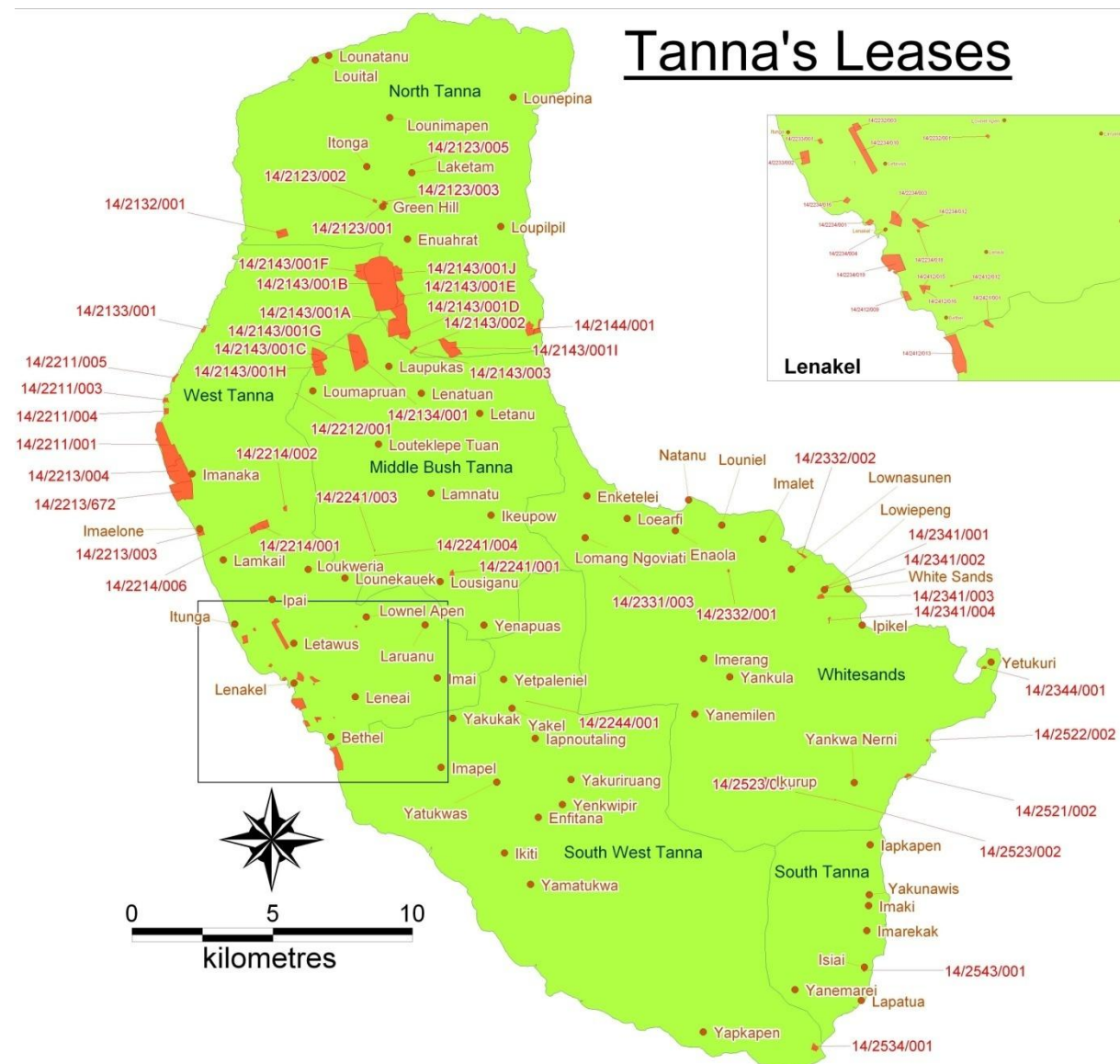
Period of Registration	No. of Leases
1981–1985	4
1986–1990	14

1991–1995	9
1996–2000	9
2001–2005	3
2006–2010	25
Total	64

The relatively high numbers of registrations from 1986 to 1990 can be explained by the fact that nine school leases were registered during this period. The standout feature in table 3.1 is the high number (25) of lease registrations in the period 2006–10. Contributing to the spike in registrations during this time were seven telecommunications leases (see section 4.5), seven leases for securing use rights for custom claimants (see section 4.4), and five commercial tourism leases (see section 4.1). It is unlikely that the registration of telecommunications towers will continue at the same rate, as Tanna now has reasonable coverage. However, there may well be a continuation and even increase in lease registrations for the purpose of securing/safeguarding custom land against other claimants (for own use, future lease transfer, and subdivision).

The area of land under lease (1,486.80 hectares) is approximately 2.6 percent of the total land area of Tanna (57,070 hectares) and is the sum of the area of 59 leases. Five leases were excluded from the calculation: two (leases CT4 and CT11) that were superseded by new leases on the same land, one (lease SCL2) that was surrendered in order that the land could be purchased by the government for an airport extension at White Grass, and two (leases AB1 and AB4) that were surrendered on expiry of the lease period. Note also that the percentage of land under leasing likely errs on the high side, as a number of leases have been effectively abandoned but are still on file or not formally cancelled, and thus are included in the calculation. Moreover, approximately two-thirds of the lands under lease remain under the direct control of customary landholder groups, and in some cases, leases have been registered specifically for this purpose. The distribution of leases on Tanna and the area under lease is depicted in map 3.1 below.

Map 3.1 Leases on Tanna



3.2 Land Leasing Process

Tanna research has highlighted some problems with this lease creation process. Negotiator Certificates (NCs),³⁶ minutes of the Land Management and Planning Committee (LMPC) meeting, Custom Owner Identification Forms (COIFs),³⁷ and minutes of public meetings are

³⁶ In theory, the lease creation process for rural land begins with an Application for Ministerial Consent for issue of a lease. This application is registered in the Planning Unit of DoL and then goes to the Land Management and Planning Committee (LMPC) for consideration. The LMPC is comprised of the Physical Planning Unit, provincial government, Environment Unit, Land Tribunal Office, and DoL. If the application is approved, a Negotiator Certificate (NC) (valid for 12 months) is issued and lease negotiations can proceed.

³⁷ In theory, when the custom landholders have not been identified on the NC, a COIF (*kastom ona blong kraon*) is either provided to the negotiator or sent to a relevant chief in the nominated area via the area secretary (both options have been identified by DoL). A Public Notice is dispatched by the secretary of the LMPC to the area to notify people of the lease interest, asking the chiefs of the village council to hold a meeting to identify the correct custom holders of the land (sketch map provided). Minutes of the meeting are requested. The Notice recommends that any disputes should be referred to the village land tribunal or joint village land tribunal. The

kept separately from the land lease files. JBE efforts to find these documents for Tanna in the Planning Unit files resulted in nine NCs and 27 COIFs for the 64 leases studied.

Lessors and lessees

The low number of NCs can be partially explained by the high number of leases in which the GoV, quasi-governmental bodies, and/or TAFEA province, acting on behalf of the government, are the lessee. Table 3.2 indicates that 26 leases fall into this group. None of these leases have an NC, presumably because the government does not require this certificate to begin the lease creation process.

Table 3.2 Identification of Lessors and Lessees

Lessor	Number	mm	Lessee	Number
Custom Land Claimant	58		Government of Vanuatu	19
Minister of Lands	5		Quasi-government bodies (airport, post, TVL)	5
Government of Vanuatu	1		TAFEA province	2
			Registered companies	19
			Non-Ni Vanuatu persons	6
			Ni Vanuatu persons	8
			Joint Ni Vanuatu and non-Ni Vanuatu	1
			Incorporated groups (church, cooperative)	4
	64		Total	64

As shown in table 3.2, custom land claimants are the lessors on 58 out of 64 registered leases. *None* of the lessors are women, though one Ni Vanuatu woman is a joint lessee with her husband. This is one of the leases where the Minister of Lands is the lessor, as the lease is in an area under tribal dispute.

The Minister of Lands is the lessor on five leases, the earliest of which is a lease registered in 1986 (and backdated to 1980) with Burns Philp (Vanuatu) Limited. The minister was likely named as lessor in the absence of confirmed custom landholders in the Lenakel area to facilitate the continuation of a Burns Philp business presence in Tanna after Vanuatu independence. It appears that a custom landholder was never identified and that the land may have been part of preindependence title 186. Whether rent has ever been paid into the Custom Owner Trust Account (COTA)³⁸ is unknown. The lease area falls within the disputed Lowinio land claim currently being heard by the island court and the present occupant of the land is one of the claimants in that case.

The other four leases for which the Minister of Lands is lessor were registered in 2007, 2008, and (two) 2009 on disputed land. Three of these four leases are in the Lenakel, Isangel, and White Grass areas that are currently in dispute, which are being heard by either the island or Supreme Courts (see “lease disputes“ under section 4.3 below). In all three cases, the lessees are custom claimants for the land and in order to secure and/or maintain a connection with the land while the broader dispute is going through the lengthy court processes, they have chosen to create a lease with the Minister of Lands as lessor. In at least two of these cases, the

COIF should then be filled out and signed by the chiefs and big men. The COIF and minutes of the meeting are then placed on file at the DoL.

³⁸ This is a fund set up for the purposes of receiving rent when the minister is the lessor. The funds should be preserved in order that they can be paid in full to the correctly identified custom land claimant when the lease is rectified and the minister replaced as lessor.

lessees are paying rent into the COTA (see “thematic highlights” under section 4.4). The fourth case is a complex story around a communications tower where it is unclear how the Minister of Lands became lessor.

Two issues arise regarding the Minister of Lands as lessor. The first is that while the land in the Burns Philp lease case had been formerly alienated (that is, registered as freehold prior to independence), in the four latter cases the land is customary land and, according to the Court of Appeal, the Minister of Lands has no right to be the lessor:

The Court of Appeal (*Valele Family v Touru* [2002] VUCA 3, April 2002) held that article 78(1) [of the Constitution of the Republic of Vanuatu] reads ‘Where....there is a dispute concerning the ownership of alienated land, the Government shall hold such land until the dispute is resolved’ and since the land in question was not alienated land, the Court of Appeal held that article 78 (2)³⁹ had no application to it. The Court of Appeal went on to state that all disputes about ownership of customary land, whether alienated or not, must be resolved by the courts, noting that ‘The Constitution establishes the framework for the government of the Republic. It provides for....the administration of justice, including the resolution of disputes, by independent courts.’ (Simo and Van Trease 2010)

Secondly, all four leases were registered after the GoV Council of Ministers endorsed the 2006 Land Summit recommendation to remove the power of the Minister of Lands to approve leases over disputed land. However, the Ministry of Lands and the Council of Ministers have not yet made a policy decision regarding this matter.

According to DoL procedures (May 2010), to have the Minister of Lands removed as lessor from a lease, DoL requires submission of a court declaration showing resolution of the dispute. This also triggers release of funds from the COTA, if the funds have been preserved (see “thematic highlights” under section 4.5 for an example of funds withdrawal).

The GoV is named as the lessor on a lease registered in 2005 to the Vanuatu Post (the postal service). The government makes this claim on the basis that:

The Government of the Republic of Vanuatu by virtue of subsection 9(1) of the Land Reform Act (Cap 123) and article 80 of the Vanuatu Constitution owns all public land within the Municipality of Port Vila and Luganville, Santo. Honorable Paul Telukluk Minister of Lands, Acting on behalf of the Government as the lessors and the Vanuatu Post Ltd [cited from the lease agreement].

How these references provide for public ownership of land in Isangel is unexplained. Furthermore, it appears that the original building was damaged in a cyclone and the lease site abandoned. The area is part of the broader Isangel dispute.

Custom Owner Identification Form

As with lease research on Epi island, there are a number of issues related to the transparency and validity of the COIF process:

³⁹ Note that under article 78 (2) of the National Constitution, “The Government shall arrange for the appropriate customary institutions or procedures to resolve disputes concerning the ownership of custom land.”

- The COIF process encourages the notion of *individual* owners and thus undermines landholding by custom *group* (with the consequent monopolization of benefits by a few male custom landholders).
- In the absence of minutes of a meeting reporting on consultation with custom landholders, the COIF cannot validate a custom landholder agreement.
- COIFs are often completed by individual chiefs without a meeting or discussion occurring.
- COIFs may be completed by people claiming to be chiefs, as there is no process for confirming the chiefs with authority to sign.
- Monetary rewards are allegedly used to encourage chiefs to sign when there is uncertainty or other custom landholder claimants.
- Signatories to a COIF may change their minds and sign a COIF for another claimant.
- Multiple names and spellings are used by people, making it difficult to track them from one document to another or to identify relationships between people.

Examples of the issues listed above are provided in the thematic discussion leases in section 4. What is apparent from table 3.3 is that under existing lease formation processes, the existence of a COIF does not ensure that there will be no lease dispute, although this may well reflect the lack of rigour commonly associated with the preparation of COIFs. Although 62 percent of the leases for which there was no COIF on the lease file were subject to dispute, approximately one-half (51 percent) of the leases that *did* have a COIF on file were still subject to dispute. This suggests that while the process of identifying and confirming custom landholders and ensuring understanding of the advantages and disadvantages of leasing in the landholding group is critical to the creation of uncontested leases, there is little evidence at present that a signed COIF confirms that such a process has taken place.

Table 3.3 COIF and Disputes

COIF	Number	No Disputes	Disputes
COIF on lease file	27	13 (49%)	14 (51%)
No COIF on file	37	14 (38%)	23 (62%)
Total	64	27	37

3.3 Understanding of Leasing and Lease Conditions

Many respondents, particularly those people connected with leases registered in the 1980s and 1990s, did not have a copy of the lease document for a number of reasons. In some instances, they had never had a copy; in other cases, they were the descendents of the original lessors and did not know about a lease document. Still others had once had a document but it had been lost during a cyclone. Respondents who were lessors or lessees on leases registered in more recent years, particularly those relating to commercial/commercial tourism leases and those securing custom land between family members, were more likely to know of the whereabouts of the lease document (for example, held by a lawyer in Port Vila) even if they claimed not to know the details of its contents.

An understanding of lease conditions rarely extends to all members of a custom land claimant group. “Thematic highlights” in section 4.1, which discusses commercial/tourism leases, illustrates the importance of extensive talking in village meetings and public gatherings in order that local discussion and decision making informs the determination to create a lease.

There are a number of examples in which lessee development of the land has been stymied by local chiefs and others because the lease deal was done by Tanna expatriates with access to the institutional machinery in Port Vila. Similarly, land use and resource development planning by the province must be done in conjunction with traditional leaders and local communities to protect exploitation by the Port Vila elite.

Lease term

Table 3.4 confirms the new convention of a standard lease term of 75 years, whereas at independence, 75-year leases were only for major developments with joint ventures. Digicel communications towers have a standard lease term of 10 years, but with a right of renewal and an automatic increase in the yearly rent.

All leases required the lessee to give up the lease on expiration of the said term “peaceably and quietly” and with vacant possession of the demised land, including all improvements. No lease had a clause requiring the lessor to compensate the lessee for improvements on the land.

Table 3.4 Lease Terms

Lease Term (years)	No.	Comment
76	1	Legally cannot be more than 75-year term
75	47	3, possibly 4, have been surrendered after subdivision survey for the purpose of leasing a number of smaller plots
71	1	
50	4	All commercial/tourism leases that have been abandoned or not developed
25	1	Changed to 75 years on lease transfer two years later
10	6	All Digicel telecommunications towers with right of lease renewal and automatic increase in yearly rent
8	1	Expired
6	1	Expired
N/A	2	Superseded by new leases due to (i) boundary alteration and (ii) dispute
Total	64	

Lease cancellation

As shown in table 3.4, two leases have been superseded by new leases on the same land, another two leases have expired because they reached the end of their lease term, and three, possibly four, have been surrendered. Moreover, at least 10 more leases are inactive due to lessor abandonment for reasons such as local opposition to development, destruction of developments by cyclonic events, failed facility (for example school closed and agricultural trials unsuccessful), and lessee health problems. There is clearly room for new processes to be developed to improve lease administration in the DoL. Additionally, in a number of interviews, the lessors expressed the view that they would like to have the lease cancelled but they were unaware of a lease provision that allows for an investigation by a Land Referee.

The DoL, in coordination with government departments that are lessees of these inactive leases, needs to formally cancel the leases via the Valuer General's function as Land Referee. However, for some reason, the Land Referee function has not been advised in the cases outlined below.

The **Land Referee Act 1983** was repealed and replaced with the **Valuation of Land Act 2002**. This act vests the Valuer General with the functions previously performed by the Land Referee, such as determination of rent payable for a lease and any reassessment of rent, disputes over the value of improvements, and any matter relating to the interpretation of a provision in the lease (sec 5).

There are two cases where the lessors have taken action to have their commercial leases cancelled. In the first case (lease CT14), the lessor acted through his lawyer, who approached the lessee's lawyer and was told that compensation for the developments on the land was required. A sum was then nominated and the lessor reportedly tried to raise this money. The lessee left Tanna in 2008 and has not returned. The property is idle.

In the second case (lease CT9), the lessor wrote to the Minister of Justice in 1997 asking for a lease cancellation due to destruction of the environment and the disappearance of the lessee. It took six years for DoL to provide a response to this request. The memo, dated July 31, 2003, said:

We hereby advise that similar cases were brought before this Office which resulted in us seeking legal opinion from the State Law Office on the matter. We were then advised that under no circumstances will our Office forfeit a lease unless there is a court order to that effect. In their view, if any custom owners are not satisfied over the term and conditions of a lease, they have to ascertain their rights by bringing civil suit against the lessee notwithstanding section 45 of the Land Leases Act.

We further advise that the rights of the lessee under section 15 of the Land Leases Act are rights which cannot easily be defeated except as provided by the Act. This is the principle of indefeasible title which provides that however an interest is acquired and registered, it cannot be easily forfeited, cancelled, or annulled in anyway unless by due process of the law.

This memo indicates that court action is required for the cancellation of a lease. This puts into question the function of the Land Referee and becomes a matter that needs further clarification. An administrative procedure for cancelling certain leases (for example, where there is no lessor/lessee conflict) would seem preferable to having to take action via the court system.

Transfer of leases

The Land Leases (Amendment) Act No. 5 of 2007 states that (2) If a proprietor of a registered lease sells that lease, the proprietor must pay to the lessor not more than 10 percent of the difference in amount between the unimproved market value of the land at the time it was purchased and the unimproved market value of the land at the time of the present sale, unless the lessor and lessee have entered into another arrangement.

Transfer or, most commonly, sale of the lease to another interest has occurred in five cases in the commercial tourism category and once for a special lease that was transferred from the GoV to Airports Vanuatu Ltd. In relation to the commercial tourism leases, one was a transfer of lease title to effect a name change and three were lease sales between limited liability companies that appear not to have

provided any benefits (percentage of sale) to the lessors. These sales occurred prior to the 2007 regulation requiring benefits to be paid to the lessor when the lease is sold.

In a 2007 commercial tourism lease transfer between individuals, there was a variation of lease conditions that included the addition of a clause stating that: “in the event of a sale or transfer of the lease, the lessee shall, in addition to seeking the lessor(s) consent, pay to the lessor(s) an amount in accordance with subsection 48 A (2) as included in the Land Leases (Amendment) Act No. 5 of 2007.”

3.4 Benefits of Leases

The potential benefits of leasing to the lessor and custom land group are through lease premiums, annual rent, employment opportunities, percentage of lease sale value, and potential access to bank loans.

Premium payments

Until 2007, the payment of premiums was an optional matter between lessor and lessee. Since 2007 a premium payment has become mandatory:

The **Land Leases [CAP 163] (Amendment) Act No. 5 of 2007** commencing September 10, 2007 requires that:

(2) A new lease is not to be issued unless the lessee or the registered proprietor pays to the lessor a premium based on the full rental value of the unimproved value of the land as determined by the Minister from time to time and the contract rent as agreed to by the lessor and the lessee.

(6) For the purposes of this section, the premium is to be calculated based on the full rental value of the unimproved value of the land and the annual contract rent as agreed by the lessor and the lessee.

Table 3.5 Premiums Paid

Premium	No.
Yes	12
No	50
Not applicable (superseded)	2
Total	64

Premium payments have been made in the case of 12 leases out of 62 as indicated in table 3.5. The lessors of six commercial tourism leases, one school lease, three infrastructure leases (dispensary, airport, and power plant), and two church leases received premium payments. Despite there being 25 leases registered in the 2006–10 period (see table 3.1 above), only eight had premiums paid (see table 3.6 below), though it is possible that other informal payments were made between parties to the lease. For example, there are stories of sums of money being paid for communications tower leases, though formally, neither TVL nor Digicel make premium payments. Whether this policy has changed since the September 2007 amendment is uncertain. Five leases for communications towers were registered in 2007 and

one in 2008. None of the lease files indicate that a premium payment was made (see “overview” in section 4.5 for more details).

Table 3.6 Premium Payments in Order of Year Paid

Lease	Year Registered	Area in Hectares	Premium (Vatu)	Premium per Hectare (Vatu)
CT9	1993	35.74	1,000,000	27,979
CT10	1997	8.91	1,000,000	112,223
IS3	1997	67.89	9,000,000	132,567
IS8	2000	1.13	3,000,000	2,654,876
CT1	2006	2.15	200,000	93,023
CT2	2006	17.12	5,000,000	292,056
CT6	2006	4.46	1,000,000	224,215
CT12	2007	3.04	8,000,000	2,631,578
CH1	2007	0.94	1,415,000	1,505,319
IS1	2008	0.63	1,500,000	2,380,952
CH2	2009	0.62	1,560,000	2,516,129
ED12	2010	1.07	800,000	747,664

Premiums paid per hectare on Tanna vary considerably. While it is normal for land values to differ according to location, the land market on Tanna is not sufficiently deep to inform reliable estimates of land values in different areas. Although a general trend for increased land value per hectare since 2007 could be discerned, the payment of Vt 2,654,876 per hectare in 2000 contradicts this trend and remains the highest per hectare rate paid for Tanna land. For comparison purposes, the GoV *acquired*⁴⁰ 48.29 hectares of land in 2010 to extend the White Grass airport at a per hectare rate of Vt 1,511,700. In both cases, the land was located in the Isangel to White Grass area.

When the premium is paid to several lessors, the sum each one receives is smaller and it is harder to determine how the premium money was spent. Where there is a single lessor, the purchase of a vehicle for transport hire appears to be a favored action. Vehicle purchase was referred to a number of times on Tanna and was also reported to be how Port Vila-based individuals spent premium payments received from leases they probably had no right to sign.

One respondent (lease CT2) told the story of requesting the Valuer General’s Department to conduct a valuation that concluded that the land was worth Vt 25,600,000. However, the lessee said that he would pay a premium of Vt 5,000,000, minus the costs of the survey, valuation, and registration. In the end, the amount paid was less than Vt 3,000,000 and the lessors were not happy, though they still wanted the development of a resort to occur. The lessor, an American, has not returned to develop the lease, though the yearly rent of Vt 100,000 is still paid. The premium was used to buy a vehicle.

Respondents for three leases (lease CH2 church, lease CT12 commercial tourism, and lease SCL3 securing custom land) stated that they had established trusts for the management of the money accruing from leases. In the case of lease CH2, the premium money was used to buy a vehicle as a semi-commercial investment and emergency vehicle for the hospital. The rent money is paid into an account whose signatories are two senior women. A family decision is needed before the money can be withdrawn. In the case of lease CT12, the lease benefits

⁴⁰ A private land valuer reported that in the case of the 75-year leases, the market value of the land is considered equivalent to the market value of the land for outright acquisition, that is, the lease period is sufficiently long to be considered a permanent alienation. Other people experienced with land matters claim that there should be different valuations for each of the purposes of leasing and acquisition.

(premium and rent) were reportedly spent on family needs, including school fees, funeral costs, and ceremonies. In the case of lease SCL3, a trust had been set up by a lawyer in Port Vila and the respondents knew nothing of the arrangements. Further, the money expected from the leasing of a large number of plots (resulting from the subdivision of a single land lease) was not yet flowing, so the respondents have not experienced the management of lease premiums and rents.

Despite the fact that quite complex arrangements were said to exist in two of the cases, reportedly including signed documents, regular meetings of trustees, and regular reports provided to the beneficiaries (lessor family members), these “trusts”⁴¹ are in fact just bank accounts, possibly with multiple signatories. Thus, the trusts are more likely to be private *inter vivos* trusts, which can be established relatively easily without any need to register and therefore with no public disclosure requirements. The trustees are supposed to act only in the interests of the beneficiaries, but enforcement mechanisms are known to be weak in practice.

In addition to land lease trusts is the high profile Volcano Trust that captures the fees charged to visit the Yasur volcano. The trust fund was reportedly created by the custom landholders in 1984 but initially operated without a plan and was subject to poor office holder administration until 2008. Details of the trust are unclear, but a respondent said there are plans in process to improve the performance and accountability of the trust. A meeting of the Volcano Trust in May 2010 discussed the recruitment of a chief executive officer to be based in Tanna, as the present officer is based in Port Vila. The future vision is to have all area councils benefit from the Volcano Trust, with distribution based on custom roads and supplemented by education, women, and youth programs. The amount of Vt 3 million was recently withdrawn from the trust account to purchase and deliver emergency food supplies for the people of White Sands who were affected by volcanic fallout.

Rent and rent reviews

Table 3.7 indicates the average rent paid per hectare for the different lease categories.⁴² Special leases stand out as paying significantly more average rent per hectare than those in any other category. However, this average is misleading in that school leases, for example, have low rents, many of which have not been reviewed since the 1980s, while telecommunications towers have significantly higher rents per hectare because they are on very small plots of land, did not require premiums to be paid, and were registered more recently. The thematic analysis of leases in section 4 provides a more meaningful profile of rent benefits. The industrial rent average is based on one lease that provided a comparatively high premium and rent. The average rent per hectare for commercial/tourism leases, at Vt 69,369, includes all lease rent; however, the fact that many of the commercial tourism leases have been abandoned by the lessees due to violent opposition from local people who were not party to Port Vila-initiated lease agreements, means that in these cases, no rent is being paid (see section 4.1).

Table 3.7 Average Rent per Hectare per Lease Type

Lease Type	Number	Vatu
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⁴¹ There are only three registered trusts in Vanuatu: Botara Trust on Santo and the Efira and Mele Trusts on Efate.

⁴² The seven leases that have been registered to secure land within a family/custom landholder group are not included in this calculation, as yearly rental, if stated in the lease agreement at all, is not paid.

Agricultural	3	1,474
Commercial/Tourism	19	69,369
Industrial	1	100,000
Special	34	239,453
Total	57	

Three commercial tourism leases had a provision for a minimum-agreed rent and a percentage (2.5 percent, 3 percent, and 5 percent, respectively) of gross turnover. Two of these leases were not active: one never got developed and the other was destroyed by a cyclone many years ago. The tourist facility that is active is managed by a couple who benefit from the percentage-of-profits clause and appear to work accordingly, despite there being disputes between groups claiming to be custom landholders.

For the majority of lessors, yearly lease rent payments are not a significant amount of money and often have to be shared between multiple lessors. Commonly, the payment is used for school fees, small household items, and pigs and goats for ceremonial occasions. In a few cases, the money is put into an account for a future purpose to be decided by the lessor's wider custom group.

In the case of rents paid for telecommunications towers, there was greater evidence of savings as well as group decision making on how to invest those accumulated savings (see table 4.14 for details).

Table 3.8 Rent Reviews

Rent Review	No.
Yes	9
No	16
Not due (lease less than five years old)	25
Not applicable (cancelled, superseded, expired)	7
Not applicable (interfamily lease)	7
Total	64

Five-yearly rent reviews are stipulated in all lease agreements and can be activated by either the lessor or lessee. Table 3.8 shows that in the case of 39 leases on Tanna, a rent review is either not due or not applicable. However, in general, rent reviews do not occur on a systematic basis (with the exception of the Digicel communications tower leases that have a provision for rent increases upon lease renewal), but may occur when an event (for example, a lease transfer) occurs. There was an effort to increase school lease rent payments from a low of Vt 3,000 across the board, but this did not succeed, though four schools have had their yearly rent increased (see section 4.2 below).

Employment

Two school leases contained covenants providing the families of the lessors employment opportunities at the school. In the first case, there was an offer of contract work, which was provided for a time to some lessor family members but ceased when a new headmaster came to the school. Following community conflict, the lessors would now like to see the employment clause removed from the lease and replaced with a compensatory yearly rent increase. In the second case, the lease covenant said that any employment opportunities on the land shall be first offered to members of the landowning group, unless no one has the qualifications for the job. No employment for the lessor family has eventuated since the lease

was registered in 2008. These two cases underscore the difficulty of enforcing employment clauses in land lease contracts.

In other cases, employment was not a condition of the lease but was nevertheless an expectation from lease developments, particularly for commercial/tourism leases where respondents said that a motivating factor in signing a lease was the prospect of employment. Expectations were often not realized when development failed to occur or business growth was not as robust as anticipated. In the case of the five operating commercial tourism businesses, training and employment has been provided for 40, 30, 12, and 2 persons, respectively (the number of staff not known for one tourist resort).

Two and possibly more of the telecommunications tower leases provided routine payments to members of the lessor community to maintain access to the tower by clearing vegetation around the site.

Women and land

While there is some evidence that women are involved in land leasing decisions, they are not represented in any formal leasing arrangements. No custom landholder lessors are women. Only one woman is recorded as a lessee, and in this case, she is the joint owner (with her spouse) of a business situated on the lease. The family of her spouse has a strong claim as landholders of the land under lease, but as the lease is in an area subject to a wider land dispute, the formal lessor is the Minister of Lands.

This situation reflects the *kastom* of Tanna whereby a male's name is inherited (namesake) and provides rights to land, magic stones, and position within a village, depending on the titles available to that particular family line. Related to the maintenance of this system of chiefly lines is the sister exchange system (or swap system), whereby when a man marries he must give a female in exchange; when no women are available, a male may be given. This assists with the safeguarding of land inheritance by males within family lines. Although these arrangements are not always observed on Tanna today, the right of males to inherit land is still strong.

A further support to the predominance of men as custom landholders is that as noted above, the COIF process encourages the notion of *individual* owners and thus undermines landholding by a custom *group* (with the consequent monopolization of benefits by a few male custom landholders).

An example of women's involvement in decision making is found in the case of lease CH2, where the rent money is paid into an account whose signatories are two senior women. A family decision is needed before the money can be withdrawn. Respondents report that in some cases, women, as family members, benefit from rent monies used for school fees and household items; however, large sums received as premium payments tend to be used for vehicle purchase. Custom ceremonies are also supported by cash income. There were no reports of significant losses of garden and subsistence agricultural plots that have affected women.

Use of leases to access bank loans

Leases helped to secure bank loans in at least three cases. Two of these cases involved commercial/tourism leases and the third an agribusiness lease. In the two commercial tourism leases, one lessor borrowed from the Agricultural Development Bank to purchase a vehicle for a tour business, and the other was a 1980s loan from the Vanuatu Development Bank to start a bungalow business on the “owner’s” land. This latter arrangement ran into financial difficulties and the land and 75 percent of the business were later leased to an Australian investor. Notwithstanding the fact that the agribusiness company had used its leases to secure a loan in the past (at a time when the business was under different ownership), the present owner stated that the “banks don’t recognize any value on anything outside of Efate or Santo Island, as they see it as being too risky.” The exact role of the leases in securing the loans⁴³ is difficult to gauge, because two of the non-lease-based enterprises studied (see section 5) were also successful in accessing credit.

3.5 Lease Disputes

Of the 64 leases studied on Tanna, 37 were reported to have some level of dispute. Many respondents were unclear (or wished to be ambiguous) on the various dispute forums they had attended, as well as the agreements that had been reached. Section 4 provides a detailed discussion of the 37 lease disputes, using the criteria of “high” for those involving the civil courts; “managed to date” for those that were settled in area chiefly forums; and “low” for those that were resolved in village forums or between the disgruntled parties without recourse to any dispute-resolution mechanisms. Of the 37 leases with disputes, 15 were assessed as high, 9 as “managed to date,” and 13 as low. The description of court costs under section 3.6 provides an overview of a number of court cases recorded during lease interviews.

Disputants

As table 3.9 shows, the majority (27) of disputes were between custom landholder claimants. Five were between lessor and lessee and a further five involved both disputes between custom landowner claimants and lessor and lessee. The latter disputes were predominantly in the commercial tourism category.

Table 3.9 Typology of Lease Disputes

Disputants	No.
Custom Landholder Claimant Disputes	27
Lessee Disputes	0
Disputes between Lessor and Lessee	5
Both Custom Landholder Claimant and Lessee Dispute	5
No Disputes	27
Total	64

⁴³ A loan officer at the National Bank of Vanuatu was asked: In what situations would the bank allow a mortgage over customary land that is leased? The response was that the bank does not allow a mortgage over leased land if the lessor is a customary landholder. It would allow a mortgage over customary land if the government is the lessor, if a trust acts on behalf of the landholdings group with appropriate legal documents and under agreed conditions (for example, Ifira and Mele Trusts), or if a real estate agent is lessor. This is due to risk and the bank’s mortgage security regulations. Interview with the authors, November 2010.

Courts: costs and opportunity costs

As noted in section 4, the frequency with which lease-related disputes are conceded to a court for decision appears to be at odds with the emphasis placed on the importance of *kastom* in Tanna. Of the 64 leases in the study, for example, 13 leases (or, in two cases, pairs of leases)⁴⁴ have been associated with hearings either at the Supreme Court, the magistrate's court, or the island court.⁴⁵ In only one of these cases (lease CT14) did the dispute directly involve an expatriate. In two other leases,⁴⁶ respondents indicated that they intended to take a lease-related matter to court; a further five leases were reported to be linked to, or influenced in some way by, disputes over intertribal boundaries that were in the process of being heard by courts. In contrast to these 20 leases associated with court cases, the number of lease-related disputes heard by village/customary forums *only* are far fewer, numbering four.⁴⁷ One interpretation might be that the majority of lease-related disputes arising on Tanna are ultimately destined to be taken to court, perhaps by parties hoping for an outcome there that they could not expect to achieve in a village/custom forum.

Three of the leases included in the study are known to have been associated with CLTs. In one case, the CLT hearing appears to have contributed to the resolution of the dispute. In a second case, the determination of the CLT was used to secure a lease over the land, but the determination of the court was never recognized or accepted by the losing party. In a third case, the determination of the CLT resolved an earlier dispute regarding correct custom ownership; however, a subsequent contestation has emerged.

In a further case, a group of claimants organized their own version of a "customary land court" in order to resolve a long-running land dispute involving a communications tower lease. This initiative involved a hearing witnessed by a range of authorities and presided over by senior members of the Tanna community (four "judges") agreed on by the disputing parties. The determination of this forum was used to finalize a lease over the area and appears to have played a role in reducing the level of dispute over the land.

The cost of accommodating so many lease-related cases in the various state conflict-resolution forums is reported to be high. For example, land-related island court cases on Tanna are taking years to complete because each yearly court budget is rapidly depleted and the case has to wait for the next budget allocation. This raises concerns about the opportunity costs of dedicating so many resources to courts. As discussed in section 4, however, this might be balanced with consideration of the role the courts play in absorbing disaffection (seemingly never ending in some cases) in a context where disputing parties are reluctant to accept determinations against them. Whereas it might be questioned whether it is the role of the courts to diffuse tensions, this situation nevertheless points to the issue of whether conflict-resolution mechanisms should be integrated into the justice system for land disputes.

Concerning abuses of trust and transgressions of law around land transactions, there is little evidence of fraudsters being called to account through either customary or civil action.

⁴⁴ "Pairs of leases" refer to leases that are linked to one another either because one supersedes the other (one case) or because one concerns a boundary alteration pertaining to the other (one case).

⁴⁵ Specifically, leases CH1, SCL1, IS3, CT3, CT4, TC5, CT14, CT11, SCL3, SCL4, CT9, IS10, and CT16.

⁴⁶ Leases IS1 and AB2.

⁴⁷ Leases AB4, IS6, ED12, and ED13.

4. Analysis of Leasing on Tanna by Thematic Categories

Analysis of the 64 leases was conducted by sorting the leases into thematic categories that would provide a better understanding of how leased land is actually used under different arrangements. We believe the resulting seven groups listed in table 4.1 more accurately reflect the uses of the land under lease. Each category of leases is addressed below, with a summary table of the leases in the group, the thematic highlights of that lease grouping, a table of the leases that have experienced or are experiencing disputes and the type of dispute mechanism used, and examples of that group's leases in boxed text.

Table 4.1 Summary of Leases on Tanna Grouped by Theme

Subsection	Theme	No. of leases on Tanna
4.1	Commercial/tourism Leases	16
4.2	School Leases	14
4.3	Infrastructure Leases	12
4.4	Leases Securing Custom Land	7
4.5	Communications Tower Leases	9
4.6	Agribusiness Leases	4
4.7	Church Leases	2
TOTAL		64

4.1 Commercial Tourism Leases

Table 4.2 Commercial Tourism Leases

Lease No.	Custom Owner Identification Form (COIF) on file	Negotiator Certificate on File	Area (Ha)	Term (years)	Date Lease Registered	Annual Rent (Vatu)	Rent per hectare (Vatu)	Rent Review or Increase Y/N	Premium Payment (Vatu)	Dispute
Lease CT1 Lease development delayed due to illness but good lessor-lessee relationship.	Y	Y	2.15	75	2006	50,000	23,256	N/A	200,000	N
Lease CT2 Lessee has not returned to develop the lease. Lessors disappointed that no development and jobs have occurred. Lessors want to cancel lease.	Y	Y	17.12	75	2006	100,000	5,841	N/A	5,000,000	N
Lease CT3 A successful bungalow/resort business despite land dispute with several claimants. Lease secured by Minister of Lands as lessor.	Y	Y	3.07	75	2008	15,960	5,199	N	Nil	Y
Lease CT4 Lease on this resort superseded by lease CT5 due to boundary alteration.	Y	N	2.50	50	1996	125,000	50,000	N	Nil	Y
Lease CT5 Lease necessary to secure foreign investment in the business. Successful joint venture of good quality and employing 40 local people. Informal tourism training provided. Business mentoring from an international investor is evident.	Y	N	2.54	75	2000	200,000	78,740	Y 25% after first rent review	Nil	N
Lease CT6 Lease initiated by the lessor on basis of future growth associated with international airport. Trusted lessee	Y	N	4.46	75	2006	100,000	22,422	N/A	1,000,000	N

Lease CT7 Land in Lenakel but custom owners never identified during course of lease history. Lease appears to have been abandoned.	N	N	1.39	50	1986	50,000	35,971	N	Nil	N
Lease CT8 Successful bungalows/resort operation with a succession of lessees. Dispute between custom owner claimants.	Y First dated 1996 Second dated 1999	N	1.56	75	1996	31,252	20,033	N	Nil 1,500,000 paid to lessee on lease transfer	Y
Lease CT9 A five-star resort development planned but investor faced hostilities when he began clearing the land and left the country. Lessors want the lease cancelled.	N	N	35.74	75	1993	50,000 for five years then minimum rent and 3% of gross turnover	1,399	N	1,000,000	Y
Lease CT10 <i>Nakamal</i> chiefs stopped the project before land clearing as it was not agreed locally but planned by men in Port Vila.	N	N	8.91	75	1997	50,000	5,612	N	1,000,000	Y
Lease CT11 Dispute led to reissuing of the lease—now Lease CT12.	N	N	3.04	50	1984	100,000	32,895	N	Nil	Y
Lease CT12 Struggling resort operation with new lease being challenged by family members in the Supreme Court.	N	Y	3.04	75	2007	200,000	65,789	N	8,000,000	Y
Lease CT13 Original restaurant business destroyed in cyclone in 1987. Lessee has not lived in Vanuatu for the past decade.	N	N	0.41	50	1986	20,000 Plus 2.5% of gross turnover	48,780	N	Nil	N
Lease CT14 Allegedly community-initiated project but then fall out between lessors and lessee until lessee fled Tanna. Difficulty of accessing finance despite lease. Project and lease abandoned.	N	N	2.95	50	1999	100,000	33,898	N	Nil	Y
Lease CT15	N	N	1.77	50	1998	50,000	28,249	N	Nil	Y

Family dispute. Lease registered but no developments.										
Lease CT16 Bungalow business operating but appears to be very little activity. Lessee caught in a dispute between custom landholder claimants. Supreme Court case but still claims that the lessor is wearing the "right shirt" but has the wrong bloodline.	Y Shown by respondent and dated 2008	N	1.0	25 Agreed change to 75 years on lease transfer in 2007	2005 2007 transfer to Mr. L	30,000 100,000	100,000	Y When lease transferred 60,000 yr 1, 80,000 yr 2, 100,000 yr 3 and thereafter	Nil in registered lease but various sums paid between disputants	Y

Overview of commercial tourism leases

There are 16 leases grouped under the commercial or commercial/tourism theme. However, as shown in the breakdown of lease status in table 4.3, only five of the leases have operational tourist facilities.

Table 4.3 Status of Commercial/Tourism Leases

No	Status of Lease
2	Superseded by another lease over same land.
3	Inactive: lessee lived in New Caledonia for past decade on two and third abandoned during 1990s.
3	All registered in 2006 but no developments have occurred to date.
3	All registered in the 1990s when the lessees were forced to cease development and/or abandon the facilities that were developed; two of these lessees actually fled Vanuatu.
5	Operational tourist facilities in the form of bungalows and restaurants. Four of these tourist operations have foreign investor financing and the lessees are registered companies.
16	

Rent payments per hectare range from a low of Vt 1,399 (but with provision for 3 percent of gross turnover after five years) to a high of Vt 100,000, with a spread of values between these two points. This range reflects both the time period (1984–2008) of lease registration and the lack of information available to lessors regarding land value. Three leases had a provision for a yearly rent payment plus a percentage (2 percent, 3 percent, and 5 percent) of gross business turnover. Only one of these businesses is still operating, and it is reportedly paying rent and a percentage of business turnover to the lessors/managers. Two rent increases have occurred, one on review of rent after five years and the other when the lease was transferred between lessees.

On six leases, premium payments were made, as shown in table 4.4. On another lease (CT16), a premium was agreed between two parties and had been partially paid when another person fraudulently registered a lease over the same land.

Table 4.4 Premium Values for Commercial/Tourism Leases

Lease	Year Registered	Area in Hectares	Premium (Vatu)	Premium per Hectare (Vatu)
CT9	1993	35.74	1m	27,979
CT10	1997	8.91	1m	112,223
CT1	2006	2.15	200,000	93,023
CT2	2006	17.12	5m	292,056
CT6	2006	4.46	1m	224,215
CT12	2007	3.04	8m	2,631,578

Premium payments calculated per hectare have increased over the decade between 1997 and 2007. The Vt 2,631,578 per hectare paid in 2007 was for land in the Lenakel-Isangel area of Tanna that is now estimated to have a market value of Vt 4 million. Lease CT1, with a premium of just Vt 200,000, is a speculative business arrangement between one of the lessors (with others) who is also a lessee with a respected and experienced foreign investor.

Thematic highlights

Only five of the 16 (leases CT3, CT5, CT8, CT12, and CT16) have operational accommodation and tourism facilities and one of these (lease CT16) is barely functioning. Four of the five leases have foreign investor capital and management involvement but in the case of the fifth lease, it is Tannese capital and management expertise. Foreign business

investors and mentors have been important in the development of tourist facilities on Tanna that in turn support an increasing number of visitors to Yasur volcano (see case 1).

Two examples (leases CT9 and CT10) serve to highlight the importance of the lease formation process. These two leases were formed without adequate provision of information and consultation with the custom landholder group and the influential chiefs of the area. Neither lease has an NC or COIF on file, nor does it appear that any environmental impact assessments were conducted, despite the development's location on the foreshore of Port Resolution. Both developments were stopped by the chiefs and/or high levels of conflict. Lessees must ensure that all possible interests are consulted and should expect that jealousy over potential and actual monetary benefits will activate multiple claims of custom landholding. Attempts to hasten the lease registration process through dealing with Port Vila-based Tannese frequently end in a loss of premium and/or investment money and a lease that cannot be occupied without threat of injury. The potential training and employment benefits and/or the potential revenue-sharing benefits of a successful business do not appear to outweigh the interest in short-term premium payment monetary gains (see cases 2 and 3).

The presence of a signed and witnessed COIF is not always proof of agreement on the correct custom landholders. For example, the signatories of the COIF on lease CT3 subsequently "changed their minds" about the "correct" identity of the custom landholder. The seriousness of fraudulent behavior in the lease creation process is not sufficiently emphasized and remedial action is rare, if not nonexistent.

Lease CT8 is an example in which a land and bungalow development was agreed between lessors and lessees whereby no premium was paid to the lessors, but a lease covenant provided for a percentage of gross turnover to be paid when the business was operating. In this case, the lessors believed that they had made a long-term arrangement with the lessee and were surprised and disappointed when they learned that he had sold the business to another foreigner after just three years without village discussion and decision making. The lessors did not receive any of the Vt 1.5 million paid to the lessee on transfer of the limited company. This issue has now been addressed in the *Land Leases (Amendment) Act No 5 of 2007* and there is evidence that this amendment has been inserted into an agreement (lease CT16):

(a) In the case of registered limited companies holding the lease as Lessee, not to assign or transfer 'shares' in the company without the prior written consent of the Lessor(s) which consent shall not be unreasonably withheld; and (b) in the event of the sale or transfer of the lease, the Lessee shall, in addition to seeking the Lessor(s) consent, shall pay to the Lessor(s) an amount in accordance with subsection 48 A (2) as included in the Land Leases (Amendment) Act No 5 of 2007.

Lease administration processes need to be developed to ensure lease files are updated and accurate. In this group of commercial/tourism leases, five should be cancelled (2 superseded, 3 abandoned in the 1990s by lessees). An additional three leases abandoned by the lessees because of serious opposition from the community need still to be dealt with. Some lessors (three cases) believe they can cancel the lease by simply telling the lessee to stop paying rent. Conditions and processes for lease cancellation thus need to be clear and conveyed to lessors and lessees as part of a package of information developed for custom landholders considering land leasing.

Disputes are a major issue for commercial/tourism leases on Tanna (see next section). Despite the Constitution (art. 73) stating that “[a]ll land in the Republic of Vanuatu belongs to the indigenous custom landholders and their descendants” and that (art. 74) the “rules of custom shall form the basis of ownership and use of land,” many disputes are taken to the civil courts. Ironically, custom experts are employed by the courts to assist with the validation of custom-based claims. Bias is said to be a feature of some customary forums, illustrated by accounts of the *nakamal* environment suppressing people who voice their views/land claims. In contrast, others see the presentation of “fabricated” documentary evidence as a feature of the civil courts.

Some respondents argued that people will make use of whatever forums are obtainable, customary and civil, to advance their claims and there is indeed a case for reducing the number of state-sponsored forums available. However, the availability of multiple forums and the long-term nature of dispute resolution may play an important role in preventing the violent conflict experienced in other Melanesian countries to the north of Vanuatu. The issue requires further investigation, but it is evident that land disputes that exhaust all forms of island-based resolutions and numerous civil court procedures are costing the state and the claimants a significant amount of money.

Lease disputes

Ten commercial/tourism leases experienced disputes. Eight leases rate a high level of dispute as reported in table 4.5.

Table 4.5 Commercial/Tourism Lease Dispute Table

Lease	Level of Dispute	Dispute Resolution Forums and Comments
CT3 Tourist bungalows owned and managed by Tannese couple on their own land. Lessor is Minister of Lands due to White Grass dispute.	High	<p><u>Local Forums:</u> COIF was verified by three chiefs but two of these witnesses later changed their minds after seeing the business grow and developing an interest in it. They became claimants in the White Grass land dispute.</p> <p><u>Courts:</u> Restraining order placed over White Grass area in 2000 drew more land claimants into the dispute and complicated the progress of the lease application. Lease eventually registered but with Minister of Lands as lessor. White Grass dispute went to island court and then was appealed to the Supreme Court. Decision of Supreme Court could also be appealed.</p> <p><u>Comments:</u> COIF witnesses should not be able to contest the validity of the COIF later on unless there has been a procedural/administrative oversight. In this case having the Minister of Lands as lessor provided security for the custom landholder’s investment in the bungalow resort.</p>
CT4 Dispute between lessor and Australian business partners.	High	<p><u>Courts:</u> The dispute between the lessor and his business partners went to court and a settlement of Vt 5 million was determined. The debt required the lessor to find another business partner, which he did successfully and no further problems have been experienced.</p> <p><u>Comments:</u> The lease was superseded by lease CT5 after a minor boundary change but the respondents were not aware of this action. The land of this lease is part of the White Grass land dispute.</p>
CT14 Community-agreed tourist development but dispute between lessor and lessee caused lessee to flee Tanna.	High	<p><u>Courts:</u> Dissatisfaction with the pace of bungalow development led to harassment of lessee who took out a restraining order on the lessor’s family. Dispute went to the magistrate’s court and a reconciliation ceremony held; however, the restraining order kept on being renewed by lessee. Lessee then wanted lease cancelled but lessor said lessee would need to compensate him with Vt 5 million.</p> <p><u>Comments:</u> Nine years after the lease was registered and a number of bungalows built on the land, the lessee left Tanna and had not returned. A good quality development remains unused.</p>
CT16 Registration of lease by one land claimant while	High	<p><u>Courts:</u> Supreme Court case in 2006 where the original lessee became the lessor and the lease was transferred to the investor for Vt 300,000. Lease conditions were also varied. Relates to claim over larger area of land around Port Resolution based on historic documents connecting the (now lessor) to an original custom landholder.</p>

another was in the process of lease formation.		<u>Comments:</u> The successful lessor's custom right to the land is disputed by many people and is likely to be subject to further court actions (see below for full story).
CT9 Lessee forced to stop clearing the land. Lease abandoned.	High	<u>Comments:</u> The courts have not been directly involved in this dispute. However, one lessor was killed in relation to this dispute and a person sent to prison. The lease is part of a successful claim to a broad area of land in Port Resolution that is disputed by many people and is likely to be subject to further court actions (see below for full story).
CT10 <i>Nakamal</i> chiefs stopped the project before land clearing began. Lease abandoned.	High	<u>Comments:</u> The courts have not been directly involved in this dispute. The lease is part of a successful claim to a broad area of land by Mr. R, whose custom right to the land is disputed by many people and is likely to be subject to further court actions (see below for full story).
CT11 Lessor refused to share benefits with other lessor.	High	<u>Local Forums:</u> Area and island council of chiefs were appealed to during 1988–89 but without success. <u>Courts:</u> Case taken to the island court and the Supreme Court and there is record of a court of appeal case between the two lessors in 2003. It appears that the lessor who refused to share the lease benefits was ordered to pay Vt 6 million as back payment. <u>Comments:</u> It was reported that a new lease was initiated by a new investor as a strategy for overcoming the dispute between them (see CT12).
CT12 New lease and lessor representatives but new lease allegedly being challenged in Supreme Court.	High	<u>Courts:</u> According to the previous lessor, he is challenging the registration of the new lease with the Supreme Court, as he claims that the land belongs to him. <u>Comments:</u> Adopted and now estranged son of previous lessor negotiated an agreement between the two custom landholder tribes to reconcile their past differences (as there was no money to make a back payment as required by the court). They formed a trust for receipt of the premium payment on the lease and for the annual rental, which provides support to both families.
CT8 Some lessors allege that they have been replaced as lessors and are being denied lease benefits.	Managed to date	<u>Local Forums:</u> Lessor disputants say that they have consulted other <i>nakamals</i> about the issue but have not received a satisfactory answer. Custom ceremonies have been performed and kava and pigs exchanged to improve relations between the second lessee and the disgruntled lessors. <u>Comments:</u> The disgruntled lessors have not taken the dispute to any custom land courts or civil courts. A second respondent alleges that the money is being paid into an account for the potential purchase of the business when the lessee decides to sell but that not all interested parties support this strategy—some would like to buy a truck. There may be an issue of a registered limited company as lessee being transferred without the approval of the lessors and with the lessors receiving no benefit from the transfer.
CT15 Family dispute. Lease has no developments.	Low	<u>Comments:</u> Lease was registered as part of marriage preparations but the marriage plans broke down. The lessee has not lived in Vanuatu for more than 10 years and the lessor has seriously fallen out with the son for whom the lease was intended. The lessor had little recall of this lease. No activity had taken place.

Port Resolution land claim

A large and controversial land claim in Port Resolution has had a direct impact on two leases (a school and a tourist development) and could affect the future of two leases that were stopped by community opposition. Apparently, the CLTU in Port Vila endorsed evidence presented by Mr. R that his great-great-grandfather gave land (from Port Resolution to Nambunga Apsan) to the missionaries in the 1840s and therefore Mr. R, as namesake of his grandfather, was the correct custom landholder. This was allegedly done *without* going through a custom court on Tanna. A respondent said that the information was accurate. However, while the tribes agree that Mr. R has the correct name, they do not believe he has the correct bloodline and they argue that this should be confirmed through a Nikoletan Island Council of Chiefs' customary court. The source said that the island council of chiefs' process for a bloodline to be proved requires five witnesses and knowledge of the songs of the land.

According to one respondent, the people are a bit confused about the matter because after the CLTU endorsed evidence given to them by Mr. R, he obtained a magistrate's restraining

order that said that the people should ask him for permission before making any decisions on the land. In 2009, this order was challenged in the magistrate's court in Isangel by representatives of five *nakamals*. The magistrate's court said that Mr. R had not gone through the correct process and removed the restraining order. The magistrate said that he could not change the CLTU's decision to accept Mr. R's documents and the matter would have to go to the Supreme Court. The respondent said that the five men are organizing a fundraising effort to acquire the money needed to take the case to the Supreme Court.

Commercial tourism lease examples

CASE 1

Mr. T worked for Robert Paul (see section 2) in the initial development of a tourism industry on Tanna that was built around visitors to Yasur volcano. In the period approaching independence, Mr. Paul told Mr. T that he was considering retiring and asked Mr. T what he would do after he retired. Mr. T responded that he would start his own bungalow business on his land in the White Grass area, which at the time was used for growing vegetables.

The establishment of the bungalow business began with a loan from the Vanuatu Development Bank. Securing this loan was difficult but was achieved with the support of the director of tourism. The use of the land was discussed with both local chiefs and women and there was support for the initiative (at this stage without any formal lease for the site). The project began in the early 1980s and the business was opened in 1983 by the first Minister of Finance. Business went well initially.

Problems arose in the late 1980s, a time when Mr. T was investing heavily in improving the bungalows and sometimes not recouping enough from visitors. The difficulties were compounded when Mr. T made a verbal agreement with an overseas couple staying on Tanna concerning a business partnership and joint management agreement. According to Mr. T, however, while this couple drew income from the business for a year they never provided any capital, forcing Mr. T to ask his "boys" to evict the couple and take them to the airport. This action resulted in a court hearing that led to a negotiated settlement in which Mr. T agreed to pay money to the couple.

Around 1990, now seriously in debt, Mr. T sought a business partner through a relative working at the Vanuatu Development Bank. This relative suggested that he discuss going into partnership with an investor, Mr. S. In order to do this, a lease had to be formalized. After becoming a partner in the business, Mr. S secured substantial new capital for the business (apparently by loan) and the business has been developed into one of the highest-quality accommodation and catering establishments on Tanna. Mr. T, his son and daughter-in-law, and a relative retain a share in the business.

Mr. T said that only rent money has been paid since the beginning of the partnership but that the business will pay its first dividend in 2010. Other benefits provided by the expanded business have included employment opportunities for family members: two of Mr. T's daughters, one of his sons, and one other relative are employed by the business.

The land covered by the lease is subject to a land dispute that originated in connection with the White Grass Airport lease (see section on lease disputes below).

This case study is an example of a Ni Vanuatu-initiated business that began on custom land but ran into financial difficulty. The capital required to support this development was dependent on a foreign investor and the registration of a land lease, providing an example of the role of leasing in the development of quality tourist facilities. The business has now developed into a successful joint venture providing high-quality accommodation and catering and the employment of approximately 40 Tannese. This employment also provides hospitality training for potential new entrants in to the tourism industry.

We now turn to two examples where proposed tourism developments were stopped by local action.

CASE 2

The respondents were two lessors. They allege that the idea of the lease was initiated by two men from their village who lived in Port Vila. One of these men had his own business and a connection to a person in a senior position with a supermarket operator in Port Vila. In 1997, these two men discussed a proposal for a big hotel project in Port Resolution. The two men got the lease documents ready and presented them to four other men from the village who were also living in Port Vila at that time. All six men signed the lease as the lessors. The two respondents said that they and the other two villagers signed without fully understanding what they were signing and without consulting their *nakamal* in Port Resolution. They said that they trusted their two more educated co-lessors, even though these two were not custom landholders for the leased area.

A commercial lease was registered in 1997 over 8.91 hectares of coconuts, gardens, and coastal fishing with a registered company. The respondents allege that the two noncustom landholder lessors received the premium payment of Vt 1 million, which they spent on two new vehicles.

The lessors then became aware that people back in Port Resolution were unhappy with their having signed documents about the land without consulting the *nakamal* and going through the correct custom procedures. The *nakamal* chiefs stopped the project from going ahead and this is the way it has stayed.

This case illustrates how readily leases can be facilitated and registered by Port Vila-based Tannese with the support of lawyers due to poor lease creation processes. Neither an NC nor a COIF was on file. The lessee company signed the lease and paid the premium but did not get access to the land. The nakamal chiefs may have no knowledge of the principle of indefeasible title but they can nevertheless effectively prevent development from occurring when they decide that kastom processes have been ignored. Thirteen years have now passed since the lease was registered with no development occurring.

In the next example the lessee had made a premium payment and imported a bulldozer, equipment, and building materials from New Caledonia before having to abandon the lease and resort development plans.

CASE 3

This lease was registered in 1993 between five male custom landholders and a foreigner, Mr. G.

One respondent said that the investor did approach the TAFEA provincial council for lease approval but did not follow the proper custom route for discussing land leasing. This claim is supported by a covenant in the lease that refers to the lessee: “to provide an opportunity for the TAFEA local government council to own a percentage of the capital shares, the amount of which is to be mutually agreed between the lessee and the council officials.”

The lease area is 35 hectares and the lease conditions required the development of no fewer than 10 new bungalows, a water supply, a parking area, and landscaping in the first year; no fewer than 25 additional new bungalows, five new luxury bungalows, a restaurant, and ancillary facilities in the second year; and two tennis courts and a miniature golf course in the third. The lessors were to get Vt 50,000 rent for the first five years and then after five years, 3 percent of gross turnover and a minimum agreed rent.

The lessor, Mr. S, said that Mr. G brought a bulldozer and other building materials and equipment from New Caledonia. He paid each of the lessors' five *nakamals* Vt 20,000 at the start of the project (the lease agreement indicates a premium of Vt 1 million). Mr. S said that the lessors did not know the details of the lease or the development plans because that was arranged in Port Vila; they thought the tourist resort would be a good thing.

Mr. G employed several people to start clearing the land but everyone was shocked when they saw the extent of the damage being done to trees, fruit trees, and gardens. During the period of land clearing, one of the lessors was killed during a custom ceremony. Mr. S said he was killed by a member of a tribe who was included in the lease agreement but was not happy with the distribution of benefits. This tribe believed that the lessor, who was the custom landholder for the biggest proportion of the land, was expecting to get a lot more money from the investor.

The lessors then demanded Vt 5 million from Mr. G as compensation for the loss of trees and so forth. They told him that he could pay the compensation and continue with the development or stop and leave. Mr. G left Tanna around 1994 before any building on the cleared land was started.

In 1997, one of the lessors wrote to the Minister of Justice complaining about the destruction of the environment and the disappearance of Mr. G and expressing frustration that the development did not materialize. He asked for cancellation of the lease.

In 2003 (six years later), a letter of response was prepared that said:
... advise that the rights of the lessee under section 15 of the Land Leases Act are rights which cannot easily be defeated except as provided by the Act. This is the principle of indefeasible title which provides that however an interest is acquired and registered, it cannot be easily forfeited, cancelled, or annulled in anyway unless by due process of the law.

There is no evidence that a cancellation of the lease was sought through a civil court process. The lease may now be under claim by one of the original lessors.

This case highlights a lease creation process that failed to inform custom landholders of the scale of the proposed development and subsequent impact on subsistence food production. It underscores the short-term interest in immediate cash benefits at the expense of longer-term training, employment, and revenue-sharing benefits of a successful development. It points to the difficulties of developing a tourism business when negotiating between local kastom practices (including struggles over power) and a disconnected government lease formation process.

4.2 School Leases

Table 4.6 School Leases

Lease No.	Custom Owner Identification Form (COIF) on file	Negotiator Certificate (NC) on File	Area (Ha)	Term (years)	Date Lease Registered	Lease Commence ment date	Annual Rent (Vatu)	Annual Rent per Hectare (Vatu)	Rent Review or Increase Y/N	Premium Payment (Vatu)	Dispute
Lease ED1	Y	N	0.82	75	1989	1980	3,000	3,659	N	Nil	N
Lease ED2	N	N	1.47	75	1989	1980	3,200	2,177	N	Nil	Y
Lease ED3	N	N	13.81	75	1989	1989	40,000	2,896	Y (from 20,000)	Nil	N
Lease ED4	N	N	2.02	75	1989	1980	3,000	1,485	N	Nil	N
Lease ED5	Y	N	0.43	75	1989	1980	3,000	6,977	N	Nil	Y
Lease ED6	Y	Y	3.51	75	2008	2006	6,000	1,709	N/A	Nil	Y
Lease ED7	N	N	0.72	75	1989	1980	3,000	8,333	Y 6,000	Nil	Y
Lease ED8	N	N	2.0	75	1989	1980	3,400	3,000	Y 2003 6,000	Nil	N
Lease ED9	Y	N	0.57	75	1989	1980	0	0	N	Nil	Y
Lease ED10	N	N	1.0	75	1987	1982	3,000	3,000	N	Nil	N
Lease ED11	N	N	2.96	75	2003	2003	3,000 original agreement	6,756	Y 20,000	Nil	Y
Lease ED12	N	N	1.07	75	2010	1986	6,000	5,607	N/A	800,0000	Y
Lease ED13	N	N	2.01	75	2008	2008	7677	3,819	N/A	Nil	Y
Lease ED14	Y	N	3.85	75	1992	1980	4,600	1,195	N	Nil	Y

Overview of school leases

There are 14 special leases for schools: 12 primary and two secondary (leases ED3 and ED11). The GoV is the lessee for 13 and one lessee is a private community Christian group (lease ED5). All school lessors are custom landholders. One school (lease ED9) has not been functioning for a number of years due to a malaria problem caused by mosquitoes breeding in the underground water tanks. The lessors are dead.

Most commonly, land was provided by custom landholders in “goodwill” during the preindependence period in order to facilitate children’s access to education. At the time, land was considered plentiful and there was no forethought that the land given in “goodwill” would be alienated, for all intents and purposes, in perpetuity. Postindependence, the agreements with custom landholders were gradually replaced with leases, the majority in the 1980s and backdated to 1980.

School lease rent payments are administered by the TAFEA Province Education Officer located in Isangel. This officer said that he had requested copies of the TAFEA province leases from both the DoL and the Department of Education but neither of the responsible departments responded. He then asked the lessors if he could make a copy of their lease, if they had the document. Through this process he was able to get 10 of the approximately 33 schools in the TAFEA province.

There is a different rent payment system for each of the primary and secondary school systems. For secondary school systems, the rent is paid by the principal; for primary schools, the money is paid at the provincial administration office. Prior to 2006, the Ministry of Education paid money into lessors’ bank accounts, but apparently the fees charged by the bank meant that this system was not attractive to the lessors. Between 2006 and 2009, rent was paid in cash for primary schools, but from 2010 the money will reportedly be paid by check. The lessors sign for their payments and the receipt list goes back to the Ministry of Education.

Thematic highlights

A yearly rental payment of Vt 3,000 seems to have been the standard applied when preindependence agreements were being converted into lease agreements during the 1980s. However, there are slight unexplained variations, for example, Vt 3,200 and Vt 3,400, within this flat rate per school. Area of land has never been taken into consideration. One outcome of this quasi-standard rental payment is that rent received by lessors on a per hectare-basis calculation is widely variable: from Vt 1,195 to Vt 8,333 per hectare.

Lessors did not receive any backdated rental payments to match the backdating of the commencement date of the lease. For seven of the leases, rent has remained at Vt 3,000 for a 30-year period (1980–2010). Four lessors have received rent increases and three lessors are still within the first five years of their lease (2008, 2008, and 2010) and are therefore not eligible for a rent review. Lessors are mostly unaware of the provision for a five-yearly rent review in the lease document.

Premium payments, often referred to as “compensation,” were not the practice during the formation of leases in the 1980s and 1990s. Since the September 2007 *Land Leases [CAP 163] (Amendment) Act No. 5*, a premium payment has become mandatory (see “Premium

Payments” under section 3.5); however, two registrations (leases ED6 and ED13) in 2008 did not result in premium payments for the lessors. The *Land Lease Amendment* is reflected in the registration of lease ED12 in 2010 with the payment of a Vt 800,000 premium to the lessor.

The now mandatory payment of premiums and the government’s payment of Vt 73 million for the purchase of land for the White Grass airport extension in 2010 have increased the awareness of landholders to the value of land and raised their concerns as to whether they are getting a fair deal. Seven respondents referred to “small” rent and three of these respondents also referred to the lack of “compensation” and/or the “sacrifice” they had made. Dissatisfaction with the small return on land alienated during the early independence years can only be expected to grow as premium payments and higher rents become the norm.

Provincial education officers recommended a rent increase from Vt 3,000 to Vt 6,000 for all schools but there has been no rise in the education budget to support this recommendation. For a few school lessors, the rent has been increased following direct discussion between the DoL and the lessors. The education officer is very aware of the inequity concerning the various school leases and is expecting pressure to come from other lessors for increased rent. The conduct of five-yearly rent reviews would help to ensure that land leasing benefits are more equitable between old and new leases. It is clear that mandatory premium payments and, if implemented, regular rent reviews will have a significant impact on government capital and recurrent expenditures.

Two school leases contained special clauses relating to employment of the lessors’ family in nonteaching positions. In one of these schools, employment was regarded as a trade-off against low rent payments. However, enforcement of lease special conditions is difficult, as neither the DoL nor the Department of Education is active in lease administration after lease registration.

Responsibility for school lease administration (for example, cancellation of inactive leases, rent increases, inheritance, and special conditions) appears to lie between the DoL and Department of Education. The provincial education officer has applied his own solution in some instances, for example, when a lessor dies, by requiring the next of kin to come in with the headmaster and a chief to verify the change. However, he believes there should be a more robust system.

Lease disputes

Nine of the 14 school leases have experienced disputes.

Table 4.7 School Lease Dispute Table

Lease	Level of Dispute	Dispute Resolution Forums and Comments
Lease ED12 Disputing among family members over who should be named as lessor escalated into another tribe making a claim on	Managed to date	<u>Courts:</u> Custom land court ⁴⁸ convened by the area council found in favor of the original lessor’s tribe.
		<u>Local Forums:</u> Village council of chiefs heard two versions of the land claim before it was appealed to the custom land court
		<u>Comments:</u> All three decisions supported the original lessor’s tribe and this should have settled the issue. However, it is alleged that people in powerful positions that are related to the new claimant are using their influence to have the case reheard.

⁴⁸ Tanna people refer to the custom land court, which is a court conducted under the CLT procedures.

the land.		
Lease ED11 Employment conditions of lease not being fulfilled.	Managed to date	<p><u>Local Forums:</u> A custom ceremony involving the gifting of kava and a pig was performed.</p> <p><u>Comments:</u> A dispute developed when the lessor's family was no longer given employment at the school. They chopped down trees in the school yard to show their dissatisfaction. Police were called to calm situation. Lessor's family performed a custom ceremony. Conflict appears contained at present but resentment at employment conditions of lease not being fulfilled continues to simmer.</p>
Leases ED2 ED5 ED6 ED7 ED9 ED13 ED14	Low	<p><u>Comments:</u> Six disputes are within the lessor(s)' families over such issues as who should be named as lessors, who receives the rent, whether rent is being distributed fairly, and so on. These six disputes have not been to any custom or civil forum for resolution. The seventh dispute involved the village council of chiefs settling a grievance between two lessors.</p> <p>These seven cases indicate how even small amounts of money can cause ill feeling between family members and/or joint lessors. In one example, the respondent said that he wanted the process for receiving rent money and the amount of rent to be transparent so that he could see what his brother was receiving, rather than having to confront him to find out. This suggests the importance of transparency in lease administration processes.</p>

School lease examples

CASE 1

Originally the leased site was used for gardening. In the late 1980s, the government decided to construct the first secondary school on Tanna. The chiefs from Lenakel, South Tanna, and North Tanna all suggested sites for the school. The Minister of Lands came to visit and a meeting was held with the community. Everybody, including the women, agreed with the idea of constructing a secondary school on the site and there were no objections to leasing the site to the Ministry of Education.

The land was surveyed, lease provisions were discussed, and a lease was signed, of which Chief P has a copy. The initial rent agreed upon was Vt 20,000 per year. The landholders were told that this amount might increase in 15–20 years and in fact, the rent was increased in 2009 to Vt 40,000. The rent money for the lease has been paid in cash every year by the school principal to the two lessors. After the money is paid it is considered the business of each of the lessors to decide how to distribute and/or spend the money. Each of the lessors has a grandson attending the school, so typically the money contributes to the school fees. School fees are Vt 90,000 per year because it is a boarding school and thus ensures that the students participate in the full range of curriculum activities.

In recent years, the lessors have realized that they have made a substantial sacrifice for the rent that they each receive. The school occupies a large site, 13.81 hectares in area, and the lessors claim that this is larger than the area they originally understood would be required. Additionally, there was no valuation of, or compensatory payment for, the crops that were on the site prior to the development. The minimal gain from the lease is compounded by the fact that the 13.81-hectare site occupies the bulk of the estates of the two lessors, seriously impacting on their livelihoods.

The recent purchase of land for the White Grass airport extension has alerted community members to the land valuation process that occurs in relation to acquisitions. The lessors were struck by the difference between the Vt 73.3 million payout for the acquisition of that 48-hectare site and the Vt 40,000 annual rent that is paid to the school.

This example illustrates the need for the terms, conditions, and implications of leases to be clearly explained to lessors. It is probably true to say that the larger the lease and the longer the term, the greater the effort that should be put into clarifying the possible implications to lessors. As per good

international practice in relation to such activities as contract farming, effort should be made to ensure that landholders have sufficient land available for their subsistence needs when they enter into agreements leasing large proportions of their custom land. This is especially the case if the rents received are modest. The disparity between the payout for the airport extension and the annual rent for the school site suggests the need for valuations of all sites (not just acquisition sites) to ensure consistency in land leasing premiums and rents.

The next case illustrates the difficulties of enforcing special provisions contained in the lease document.

CASE 2

In 1966, an Englishman who worked for the Condominium government looked around Tanna for sites for a government secondary school. At the time there was a mission (primary) school nearby and the government wanted to establish a secondary school for the graduates of the primary school. After the site for the school was identified, an agreement was negotiated with the three lessors, construction took place, and the secondary school was opened in 1967. The preindependence agreement (no record is on file) reportedly provided for a rent of Vt 3,000 to be paid for 30 years on the three-hectare site, and this is said to have been what transpired.

In 2003, the lessors decided that the annual rent was too small and that they would like a new agreement. As part of the negotiations for a new lease (registered in 2003), it was agreed that the government would pay Vt 20,000 rent per year (without any premium). It was also agreed that all three lessors, or members of their families, would work at the school. The lease agreement provides specifically for “representatives of the Lessor(s) ...to be allowed to work on contract basis for the school.” This was considered an important component of negotiations, as employment would provide compensation for the small amount of the rent. The employment conditions were the result of advice received from a brother-in-law of lessor Mr. K, who worked for the Ministry of Youth and Sport at the time.

Mr. K has a copy of the lease and says he understands some of its conditions, such as the 75-year term of the lease and the special employment provisions. According to Mr. K, once the lease was registered, the Ministry of Education indicated verbally that it would be the responsibility of the school to pay the rent to the lessors. There is no serious problem with this, but Mr. K says the lessors do have to remind the school to pay the rent every July. According to Mr. K, the rent is distributed according to the respective proportions of the site for which the lessors are landholders. Accordingly, Mr. K receives Vt 10,000, Mr. S receives Vt 6,000, and Mr. N receives Vt 4,000.

The employment provisions of the lease appear to have been realized, with all three lessors working at the school until 2007. In 2007, however, conditions changed for three reasons identified by Mr. K. First, the principal, who is also from Tanna, has significant power in the school, as he has worked there since 1998, originally as a teacher. Second, the principal runs the school as a “family business” and gives work to his own family members. Third, the principal thinks that the rent money is sufficient payment for the families of the lessors.

Tensions developed following this loss of employment and in 2008, the lessors’ families went into the school yard and chopped down some young coconut trees to demonstrate their dissatisfaction and anger. The principal called the police at Isangel, who took the members of the lessors’ families involved in the damage to the police station to calm the situation. The next morning, the police drove the lessor family members back to the village and the lessor group decided to resolve the issue in the custom way. A pig and kava were then given to the family of the principal.

During the period of the dispute, Mr. K was in Port Vila but was informed of the developments. Mr. K wrote a letter to the Ministry of Lands, the principal, and the Ministry of Education attaching the lease

and referring to the special employment conditions. Mr. K demanded that one of his brothers be employed at the school within 24 hours. When the principal received the letter, he noticed the conditions and made a decision to dismiss one of the employees and replace that employee with a brother of Mr. K. However, Mr. K's brother was only able to work on contract for one year, finishing in 2009. Since then, no member of the lessors' families have been employed at the school, even though positions have been advertised and applied for, unsuccessfully, by members of the lessors' families.

According to Mr. K, the principal continues to employ members of his family at the school. Originally there were four nonteaching posts (handyman, baker, cook, and boarding master), but the principal has reduced the positions to two (cook/baker and boarding master/handyman). Both these positions are reportedly filled by members of the principal's family. At the present time, the lessor group is taking no action, but it is considering negotiating with the GoV to remove the employment conditions in exchange for increased rent. According to Mr. K, the female members of his family were angry about the failure of the school to meet its employment conditions, and sometimes they confront female members of the principal's family about this matter.

Mr. K said that the three lessors have a large area of land elsewhere for subsistence gardening, so the school site does not pose a land shortage problem. However, the ash-fall from the Yasur volcano is a problem as it inhibits, with the exception of manioc, the growth of crops. Because of the lack of income opportunities in the area, Mr. K said that families commonly rely on remittances from members working in Port Vila. Mr. K has worked in Port Vila in the past and currently his son does the same, sending money every month.

The points illustrated by this case are that employment conditions in a lease are especially hard to enforce when lease administration by the DoL or Ministry of Education is almost nonexistent. Until this situation is rectified, inclusion of special conditions should be avoided. The lessors may have a case to take to the Land Referee for removal of the employment clause and compensation for rent income forgone in lieu of employment. That the lessors reportedly need to chase the school for payment of rent money every year raises the question of why the payment of rent for secondary schools is not coordinated centrally by the Ministry of Education.

4.3 Infrastructure Leases

Table 4.8 Infrastructure Leases

Lease No.	Custom Owner Identification Form (COIF) on file	Negotiator Certificate (NC) on File	Area (Ha)	Term (years)	Date Lease Registered	Annual Rent (Vatu)	Rent per Hectare (Vatu)	Rent Review or Increase Y/N	Premium Payment (Vatu)	Dispute
Lease IS1 Medical dispensary Allegedly wrong person as lessor.	N	N	0.63	75	2008	6,000	9,524	N/A	1,500,000	Y
Lease IS2 Area Council Lessor deceased and no one aware of lease.	N	N	0.77	75	1992	4,000	5,195	N	Nil	Y
Lease IS3 Airport Political influence regarding site of airport. Lease led to wider land dispute area.	Y Four versions	N	67.89	75	1997	80,000 then 250,000	3,682	Y after lease transfer from GoV to Airports Vanuatu Ltd	9,000,000	Yes Rent paid into COTA
Lease IS4 Sports stadium Lease will expire in 2011.	N	N	5.64	25	1986	32,000	5,673	N	Nil	N
Lease IS5 Wharf	N	N	0.24	75	1985	28,000	116,667	N	Nil	N
Lease IS6 Site of old airport Lease transferred to custom owners as cooperative arrangement. No business activity.	N	N	13.28	75	1995	50,000	3,765	N	Nil	Y
Lease IS7 Hospital	Y	N	3.18	75	1995	20,000	6,289	N	Nil	N

Lease IS8 Power generation site	Y	N	1.13	76	2000	113,310	100,274	N	3,000,000	N
Lease IS9 Area Council site Building dilapidated and not used but rent still being paid to son of lessor.	N	N	0.58	75	1992	5,000	8,621	N	Nil	N
Lease IS10 Post Office Lessor is government under questionable circumstances. Probable lease site does not have a functioning post office	Y	N	0.11	75	2005	60,000	545,455	N	Nil	Y
Lease IS11 Agricultural Station Has not functioned since early 1990s. Site now a football field. No rent paid.	N	N	0.37	75	1989	3,000	8,108	N	Nil	N
Lease IS12 Area Council Building destroyed by cyclone. No rent paid.	Y	N	0.50	75	1992	4,000	8,000	N	Nil	N

Overview of infrastructure leases

There are 12 leases grouped as infrastructure leases. Nine are special leases, two are commercial (Lenakel Wharf and the Vanuatu Post) leases, and one, the Union Electrique du Vanuatu Limited (UNELCO), is an industrial lease.

Custom landholders are the lessors of 11 leases and the GoV is the lessor over one lease. The GoV is lessee on six leases (dispensary, agricultural station, hospital, and three area council buildings). TAFEA province is responsible for all lessee obligations on two leases: the wharf and sports stadium at Lenakel. Other lessees are UNELCO, Airports Vanuatu, Vanuatu Post, and Burton Cooperative Society.

Four leases, three for area council facilities and one for an agricultural station, have had no activity for many years. Two area council building are unusable and the condition of the third is unclear. The agricultural station is used as a playing field. No rent has been paid on three of these four leases for a number of years but there has been no formal cancellation of the leases by government.

Thematic highlights

Land value and its relationship to premium payments and yearly rent is the key theme for infrastructure leases. Table 4.9 is illustrative of the increasingly disparate returns that landholders are receiving for their land. In the past (prior to 1997 in this set of leases), premium payments were not made to lessors and yearly rent was not calculated on a per hectare basis. In fact, it is unclear how rent was determined, though it would appear that landholders had little knowledge of leases and even less about negotiating lease conditions. One example is the rent payments for the sports stadium and the wharf, located in close proximity, at Lenakel; both leases were registered in the mid-1980s and yearly rent on both is relatively similar at Vt 32,000 and Vt 28,000, respectively. However, when the area of land in hectares is taken into consideration, the sports stadium lessors receive just Vt 5,673 per hectare in rent, whereas the much smaller area of land for the wharf returns an equivalent of Vt 116, 667 per hectare.

Both are small amounts of money in comparison to the very small amount of land (0.11 hectare) that is leased between the GoV and Vanuatu Post that pays a per hectare equivalent rent of Vt 545,455. However, in this case, it is doubtful that any money is paid between the lessee and lessor for rent, as the post office was damaged in a cyclone in 1987 and now operates from another site. Clearly, leases should be for a shorter period of time and/or rent reviews should be conducted on a regular basis. If it is deemed likely that rent reviews will continue to *not* be conducted on a regular basis, limiting the period of leases should be considered.

Since 1997, when the first premium payment was paid for the White Grass airport lease, premiums have become a more regular feature of the leasing process. Since the September 2007 *Land Leases [CAP 163] (Amendment) Act No. 5*, they have become mandatory. As with rent payments, it is difficult to determine the basis of calculation for the pre-2007 premium payments. UNELCO, in 2000, paid a premium of Vt 2,654,876 per hectare and agreed on a rent of Vt 100,274 per hectare. Even without a rent review since the lease was registered, this is a comparatively good leasing outcome for the custom landholder. The GoV made a substantial premium payment (Vt 2,380,952 per hectare) for the Green Hill dispensary lease,

given that the land is not close to the high demand coastal area of Lenakel, Isangel, or White Grass. The yearly rent payable is, however, modest. There is no COIF on file and there are claims of political influence with regard to the person named as lessor and the completion of the lease paperwork and registration in Port Vila.

Table 4.9 Selected Premium and Rent Payments per Hectare

Lease	Area (Hectares)	Rent (Yearly) Vatu	Rent/per Hectare Vatu	Premium Vatu	Premium/per Hectare Vatu
Lease IS4 Sports Stadium	5.64	32,000	5,673	Nil	Nil
Lease IS5 Wharf	0.24	28,000	116,667	Nil	Nil
Lease IS10 Post Office	0.11	60,000	545,455	Nil	Nil
Lease IS1 Medical Dispensary	0.63	6,000	9,524	1,500,000	2,380,952
Lease IS3 Airport	67.89	80,000	3,682	9,000,000	132,567
Lease IS8 Power Generator	1.13	113,310	100,274	3,000,000	2,654,876
Acquisition of Land for Airport Extension (2010) for comparative purposes only	48.29	N/A	N/A	73,000,000	1,511,700

The 2010 GoV acquisition of 48.29 hectares for a payment of Vt 73 million to extend the White Grass airport has brought new attention to land values on Tanna. According to land valuation experts, the airport extension land was purchased in accordance with the statutory valuation criteria contained in the 2000 *Land Acquisition (Amendment) Act* and has the same value as agricultural land on Efate. Even though on a per hectare basis this payment is lower than the UNELCO and Green Hill dispensary lease premiums, the notion of paying Vt 73 million for land is astonishing for local landholders.

The increased awareness by landholders that land can bring significant cash windfalls will put considerable pressure on the government's (national and provincial) budget for acquiring and leasing land required for infrastructure and services. The sports stadium at Lenakel is an example. The lease held by the TAFEA provincial council over this land will expire in 2011. At current "market rates," suggested⁴⁹ to be Vt 4 million per hectare for Isangel and Lenakel, the provincial council will be looking at a premium payment of Vt 22,560,000 and yearly rent, if set at 10 percent of premium, of Vt 2,256,000. As provincial budgets are typically almost fully accounted for by recurrent administration costs, this is a significant capital cost to retain existing infrastructure. Whether land is compulsorily purchased or leased for national infrastructure, the cost to governments is set to increase substantially; at the same time, the recipients of large payments have little maturity in growing the money in a way that can provide long-term benefits for custom landholders. It is therefore important to question the basis of some recent large payouts that set the "market values" for subsequent land negotiations.

There is reason to believe that a contributing factor to large payouts is the money paid in recent years to government members, public officials, and lawyers, in addition to that

⁴⁹ Interview with the Valuer General, Menzies Samuel, September 3, 2010.

received by the landholder(s). According to the account of the payout recipient for the acquisition of public land for the White Grass airport extension, there was a significant kickback to a senior member of the government to “*stikimneck*” (facilitate) this Vt 73 million payment, suggesting one area where improvements in transparency are required.

The lease between GoV and Vanuatu Post (privatized in 2000) was made in 2005 and backdated to 2000. The land area is very small (0.11 hectares) and is either in Isangel, where the damaged shell of a post office destroyed by a cyclone in either 1984 or 1987 remains, or the TAFEA Cooperative commercial site, where there is a new post office. However, it is understood that Vanuatu Post is a tenant of the TAFEA Cooperative and that the Cooperative holds the lease over this commercial site with the government as the lessor (this lease file was not available). The government makes the claim to be lessor on the basis that:

The Government of the Republic of Vanuatu by virtue of subsection 9(1) of the Land Reform Act (Cap 123) and article 80 of the Vanuatu Constitution owns all public land within the Municipality of Port Vila and Luganville, Santo. Honorable Paul Telukluk Minister of Lands, Acting on behalf of the Government as the lessors and the Vanuatu Post Ltd [cited from the lease agreement].

How article 80 of the Vanuatu Constitution that specifically relates to Port Vila and Luganville is relevant to a government land claim at Isangel is unexplained. The custom landholder claimant for this land alleges that he has a COIF and a ministerial declaration proving that the land belongs to him, but that these documents were ignored when the lease was registered in Port Vila. It is not known whether Vanuatu Post pays the rent to the GoV, and if it does, who in particular is the recipient.

Five leases (three area councils, one agriculture station, and one post office) no longer have the infrastructure that the lease was intended to secure and should be cancelled. This is to ensure that lease file data reflect active or current leases and thereby provide an accurate picture of leasing and the requirements for lease administration in Vanuatu.

Lease disputes

Of the 12 infrastructure leases, there are five with disputes.

Table 4.10 Infrastructure Lease Dispute Table

Lease	Level of Dispute	Dispute Resolution Forums and Comments
IS3 Airport Lease registered but broader land claim over the area arose.	High	<u>Local Forums</u> : A local decision to put the lease in the names of representatives of four tribes. Lease registered and premium payment of Vt 9 million made before the dispute entered the civil courts.
		<u>Courts</u> : A restraining order placed on lease. Then 11 tribes made claim to the White Grass land through the island court. Alleged that one tribe bribed the island court justices. Appealed to Supreme Court. Case concluded in mid-2010 but no judgment handed down yet.
		<u>Comments</u> : See full story below.
IS10 Lease between the Government of Vanuatu and Vanuatu Post but claim by custom landholder that government	High	<u>Local Forums</u> : COIF supported by area council of chiefs.
		<u>Courts</u> : Island court decision on custom owner for Isangel Station made but appealed to the Supreme Court. Still waiting for outcome. See full Isla land claim story below.
		<u>Comments</u> : Respondent claiming custom right over land at Isangel station. Postal services no longer operating from this area. Confused case, as government is claiming ownership by virtue of subsection 9(1) of the <i>Land Reform Act (Cap 123)</i> and article 80 of the Vanuatu Constitution that relate to Port Vila and Luganville.

should not be lessor.		
IS1 Medical dispensary Lease allegedly signed by wrong person to represent the tribe/landholders.	Managed to date	<p><u>Local Forums:</u> The two tribes involved in this case had a meeting once they knew that the "wrong" person had signed the lease. An apology was made but neither side is able to correct the "mistake," as the lessor had adopted the name "lawilik" as a means to stake his claim and then used his political influence to register the lease. Recovery of the Vt 1.5 million premium payment has not been possible due to family relationships.</p> <p><u>Comments:</u> One tribe is attempting to have the lease area enlarged. If successful at negotiating a new lease, they will have the correct lessor put on the new lease and will use the lease premium payment to take the alleged usurper lessor to court.</p>
IS2 Area Council IS6 Old Airport	Low	<p><u>Local Forums:</u> Village council of chiefs</p> <p><u>Comments:</u> These two disputes were minor and related to the early history of the leases. Neither lease is active.</p>

More significant and costly are the protracted, multiple-claimant disputes over tribal custom landholdings that are with the civil courts. The Lenakel wharf, stadium, and hospital leases fall within the Lowinio land claim area, the Vanuatu Post lease within the Isla land claim area, and the White Grass airport within the White Grass land claim area.

Lowinio land claim

The Lowinio land case has 12 claimants. The first claimant's case is that the land belongs to the Namruwerne tribe and the following 11 counter claimants are claiming also to be members of that tribe. The island court hearing started in February 2009 and to date has heard 10 of the claimants. The supervising magistrate is being advised by three justices who are familiar with custom land but are independent of the claim being heard. There are no lawyers involved in island court cases. The claimants have a right to appeal the case to the Supreme Court either for a rehearing of the case or on procedural grounds. The Lowinio case has already cost around Vt 3 million and has absorbed the budget of the island court, which still has 26 pending land cases that date from 1980 to 2000 before the *Customary Land Tribunal Act of 2001* was passed.

Isla land claim

The Isla land dispute started just after independence, when there was a possibility that the government would compulsorily acquire the Isangel station for the TAFEA provincial administration. At this stage the land of the Isangel station was disputed between two tribes: Ramar and Nikimlua.

The dispute went to a council of tribal elders (year unknown) and they decided in favor of Ramar tribe ownership. The Nikimlua appealed this decision to the council of tribal elders of the Lenakel/Isangel area, but the elders supported the earlier decision that the Ramar tribe owned the land. The appeal then went to the Nikoletan Island Council of Chiefs, which agreed that the Ramar tribe was the right tribe to be custom landholders of that area. According to our respondent, all of these hearings were in the 1980s. One year later, the Ramar tribe invited the Nikimlua for a reconciliation ceremony; both parties exchanged pigs and kava. Related to this event was the appointment of Chief K (big chief from the Ramar tribe) to manage the Isangel station area. Chief K appointed three people (one from Ramar,

one from Nikimlua, and one person who was related to both tribes) to manage the area. All was calm for a number of years.

Sometime in the 2000s, a man from the Tafla tribe was clearing some land for gardening inside the Nikimlua land when he was told to stop because he did not have permission. He stopped clearing the land but the issue escalated. Another man from the Noukanemisa tribe (a bush tribe) applied for a restraining order to stop any development of the wider area named Isla land.

The Noukanemisa tribe became a third claimant to the land, first for the land at Isangel station and then over the Isla land. The number of claimants for the Isla land rose to eight. The case was heard by the island court in 2008, which made a judgment in favor of the Tafla tribe in relation to the Isangel station. The Ramar and Nikimlua tribes were given other land that they had not claimed outside of Isangel station. The island court judge had a stroke and died soon after the case. The Ramar and Nikimlua people involved in the case believe that the judge was bribed by a member of the Tafla tribe.

Everyone agreed that these decisions were wrong and totally outside of alleged custom boundaries. The Ramar and Nikimlua tribes came together to reconcile and to focus on the custom boundaries of their land, on which they have now agreed. With the help of a lawyer, they got a suspension on the judgment of the island court. The case—to appeal the island court decision that Isangel station land belongs to the Tafla tribe—is before the Supreme Court and was expected to be heard in 2010.⁵⁰

The TAFEA provincial administration currently has no lease over its administrative facilities. When eventually the time comes to negotiate a lease with the “correct” custom landholders, it may not have the budget to meet the “market land values” expected by the potential lessors.

White Grass land claim

The lessors for the White Grass airport were representatives of the Kouiop-Ne, Nakane, Naihne, and Loune tribes. After the lease was registered in 1997 and a Vt 9 million premium payment made to the lessors, a restraining order was placed over the White Grass area by Mr. I. Mr. I deposes that he is disputing custom ownership of the land where the International Airport is being built at White Grass. He says in his affidavit that various notices have been sent to the DoL and the Ministry of Lands advising that the custom ownership of this land is the subject of a dispute. He deposes also that despite prior notices of his clear intentions that he is disputing the ownership, the government paid out the first installment of the compensation monies to the various alleged custom owners in January 1997.

In due course the number of claimants contesting ownership of the White Grass area numbered 11 and are reportedly all related to one another. According to the key respondent on this lease, the seven tribes not on the original lease have only frivolous claims, as they come either from the Middle Bush area or to the south of the southern creek of the airport site.

The case was initially heard by the island court but this outcome was contested on the grounds that one of the tribes invited one or more of the justices to a *nakamal* and provided

⁵⁰ There is no evidence in the Supreme Court records for 2010 of this case having been heard.

him or them with a goat, a pig, and some kava in an alleged attempt to sway the outcome of the court. The case was appealed to the Supreme Court and hearings were concluded in mid-2010. No ruling has been handed down to date. Already there is speculation that two of the claimants will oppose the determination of the Supreme Court on procedural grounds. In the meantime, the yearly rent (initially Vt 80,000 but later increased to Vt 250,000 under a lease transfer agreement) for the White Grass airport is reportedly paid into the COTA.

One respondent who is a lessee and owner of a tourist development in the White Grass area said that the interest in custodianship of the broader White Grass area has intensified as it has grown into a development area. The respondent reflected that there has never been a land dispute resolved on Tanna; cases just go from forum to forum or sometimes get stopped, for example, in the island court, where there is a backlog of cases waiting to be heard.

Lenakel municipality

To add another layer of competing interest to the Lenakel area, the Minister of Internal Affairs made a declaration in June 2008 on the creation of the Lenakel Town Municipality. The minister appointed 30 councillors and the councillors nominated the mayor.

According to the mayor and municipal administrator, the purpose of the municipality is to look after the businesses of Lenakel, as some businesses are owned by people from other parts of Tanna and are at risk of being chased away by the disputing landholders of the Lenakel area. The municipality is also intended to provide more security for business investment. The mayor and administrator hope to provide services to the community, such as garbage collection and a water supply, and to eventually do physical planning in the town.

The boundary of the municipality is the two dry creeks on either side of the town and inland up to the first hill, thus including the stadium and Lenakel Cove guest house. The problem for the municipality is that the Lowinio dispute must be resolved before a lease can be negotiated with the “correct” custom landholders. Securing a lease over the municipality area (or even small areas of land within the boundaries) for municipal infrastructure will be a very expensive exercise.

Infrastructure lease examples

The first case illustrates the low level of benefits received by landholders for land leased to the government before premiums became mandatory and when there is no regular review of rents to maintain some relationship with increased land values.

CASE 1

Mr. H is one of two lessors for the 3.18-hectare lease for the Lenakel Hospital. Mr. H said that his grandfather was taken to Queensland to work by the “blackbirders.” During the time he was in Queensland, a man called Tao from another tribe gave his grandfather’s land to the missionaries. Mr. H’s grandfather eventually returned to Tanna and got the land back from the missionaries.

Mr. H’s father provided land to the Presbyterian Mission in “good will” to build a hospital (date unknown). In the 1970s, the Condominium government built a new hospital on the same site. Mr. H was unsure whether any document was signed between his father and the Condominium government for the land.

It was in the 1990s that government officials came from Port Vila to acquire a lease over the hospital

site. Mr. H said there was no consultation with the lessors, just the presentation of a lease document for signature. Mr. H. believed the rent was initially Vt 3,000 per year and that it was increased to Vt 20,000 around five years ago. The rent payment is divided equally between the two lessors.

n.b. The lease file indicates that the lease was registered in 1995 and backdated to 1980. The rent was set at Vt 20,000 in 1995.

This example illustrates the disparity in benefits (premium payment and yearly rental) received by lessors of land for infrastructure. The nonpayment of premiums and the absence of five-yearly rent reviews have meant that leases formed in the 1980s and 1990s have comparatively lower returns than those registered in the 2000s. In this example, the rent per hectare is just Vt 6,289, there was no back payment of rent to reflect the backdating of the lease agreement to 1980, and there has been no rent increase. The lessor's land is part of the broader Lowinio land dispute and the outcome of this case could impact on the existing lease. If renegotiated using current land values for Lenakel and Isangel, there would be a better outcome for the lessor but it will be expensive for the government to keep its essential infrastructure.

This following lease example illustrates that lease benefits can be substantial, but there is a need for landholders to receive assistance with investment decisions to prolong these benefits.

CASE 2

Mr. L is one of two lessors for land leased to UNELCO. Mr. L said that in 2001, representatives of UNELCO came to Tanna to look for a site for a power station. Mr. L was working at the TAFEA Cooperative, which ran the guest house where the UNELCO people were staying. Mr. L told them that he had a site. A number of other people also proposed sites, giving UNELCO a total of four to consider. Mr. L's site was the most central and UNELCO began lease negotiations with him. At the time, the land, which was around one hectare (1.13 hectares), was being used to grow coconuts.

The community agreed that the land belonged to Mr. L and a COIF was signed and is on file. UNELCO send a valuer to assess the land and based on his valuation, the premium paid was Vt 3 million and the yearly rent is Vt 113,000. The lease was registered in 2000. The premium was paid by check, which Mr. L put into his bank account. He purchased a new vehicle worth around Vt 3 million by using Vt 2.3 million from the premium payment and borrowing the balance from the bank. The Vt 700,000 balance of the premium he gave to his family. He used the vehicle as a taxi and the business lasted from 2002 to 2007, when the vehicle stopped working. Mr. L now considers that having a truck is not a good business and he would not do it again. He would consider leasing again if the conditions were right but this time, he would use the premium to build a guest house for renting.

Mr. L's yearly rent payment is shared with the male members of his family (five brothers, three sons, and father) in some years and in other years, it is used for custom ceremonies such as marriage and circumcision. It is also used for school fees. Mr. L has a copy of the lease but as no one explained the lease provisions to him, he was not aware of the rent review provision.

This case illustrates a good lease formation process where a COIF was completed and no disputes have arisen with other custom land claimants. A land valuation was done and the premium payment and rent were based on this valuation even before this was a legal requirement. The investment by UNELCO has resulted in a 24-hour power supply to Lenakel Township that has benefitted many people. The lessor received a comparatively (see table 4.9) good premium payment and used it for business purposes but may have been able to extend the benefit with investment and business advice.

4.4 Securing Custom Land Leases

Table 4.11 Leases used for Securing Custom Land

Lease No.	Custom Owner Identification Form (COIF) on file	Negotiators Certificate (NC) on file	Area (Ha)	Term (years)	Date Lease Registered	Annual Rent (Vatu)	Rent Review or Increase Y/N	Premium Payment (Vatu)	Dispute
Lease SCL1 Ancestral land protection lease registered for the purpose of evicting newcomers.	N (no DoL file)	N (no DoL file)	589	75	2010	N/A (family lease)	N/A	N/A	Y
Lease SCL2 Surrendered "sports" lease used for staking claim to airport extension.	Y	Y	48.23	75	2009	N/A (family lease)	N/A	N/A	N
Lease SCL3 Large costal subdivision initiative. May have been surrendered to facilitate the registration of multiple smaller leases.	Y	Y	158	75	2008	N/A (family lease)	N/A	N/A	Y
Lease SCL4 Land claim lease in Lowinio/Isla area. Surrendered with intention to subdivide.	Y	Y	23.05	75	2008 (surrendered in 2009)	N/A (family lease)	N/A	N/A	Y
Lease SCL5 Lenakel/Isangel lease in disputed area, where custom claimant is lessee (with Minister of Lands as lessor) to ensure continued access to ancestral land.	N	N	0.74	75	2009	6,149	N/A	0.00	Y
Lease SCL6 Lenakel/Isangel lease in disputed area, where custom claimant is lessee (with Minister of Lands as lessor) to ensure continued access to ancestral land.	N	N	1.47	75	2009	5,227	N/A	0.00	Y
Lease SCL7 5-star resort speculative lease (inactive).	N	N	18.36	75	2006	N/A (family lease)	N/A	N/A	N (but no development yet)

Overview of leases for securing custom land

There are seven leases included in this category. Technically, these include one agricultural lease, one special sports lease (surrendered to facilitate the acquisition of land for an airport extension), two rural residential leases, one commercial lease, and two commercial tourism leases. In four out of the seven cases, however, the type of lease registered appears arbitrary, as the objective of the lease was to substantiate custom claims to land and secure use rights for custom claimants, even if just as *lessees*, in areas subject to intertribal land disputes. In the remaining three cases, however, the lease type appears relevant to the intended use of the land.

Of the seven leases included here, one (SCL2) was surrendered soon after its registration (in 2009) to facilitate the GoV's purchase of the land from the listed lessors for an airport extension. Two further leases (SCL4 and SCL4) have been surrendered to facilitate eventual subdivision. There is uncertainty about whether a third (SCL3) lease has been surrendered for the same purpose. Although section 12 of the *Land Leases Act* requires that a lease be surrendered to enable the registration of new leases over the same area, it is not clear from the DoL file that this has occurred in relation to lease SCL3. The three remaining leases (SCL1, SCL5, SCL5) are all active.

All of the leases in this category have been initiated by custom landholders/claimants either to substantiate their claims to land or to increase security of access to the land while disputes over it are resolved. For five of the seven leases, therefore, the payment of rent is not a factor, since both lessors and lessees are from the same family (making the lease an *intrafamily* arrangement). Rent is payable on the remaining two leases, as in each of these cases, custom claimants have elected to lease their land from the Minister of Lands due to intertribal boundary disputes in the area (see section 3.3 above). Annual rents for these leases are Vt 6,149 for the 0.74-hectare lease SCL5 and Vt 5,227 for the 1.47-hectare lease SCL6. Given that these leases are in the same vicinity, it is unclear why the rent levels are not proportionate to the lease area and the question of DoL's valuation practices arise (see also sections 3.2 on school leases and 3.3 on infrastructure leases).

As outlined in table 4.11 above, all seven of the leases in this category have been registered since 2006 (one in 2006, two in 2008, three in 2009, and one in 2010). While the cases available are relatively few, it is possible that leases are increasingly being seen as a means of substantiating customary claims to land, either for the purpose of maintaining control of custom land for traditional economic purposes, or for securing the land for future commercial development. The two cases (SCL5 and SCL5) where custom claimants arranged to lease the land from the Minister of Lands even though they had customs rights to it demonstrate the importance of greater certainty to some landholders. For these individuals, leasing the land from the Minister of Lands obliged them to pay rent for land they already had access to and also disclosed that the land was subject to dispute, yet they still perceived value in entering into a lease arrangement. This matter is discussed further in the next section.

For four of the seven leases profiled here (SCL1, SCL5, SCL6, SCL7), no COIF or NC documents appear on file. There is no file at the DoL for SCL1, and the research team heard of the existence of this lease⁵¹ only in the course of discussions concerning other leases.

Thematic Highlights

Breakdown of securing custom land leases

First and foremost, the leases profiled in this section highlight the perceived utility of the lease as a means of substantiating claims to custom land for various purposes or securing access (as *lessee*) to custom land threatened by disputes. In accordance with these objectives, the leases profiled in this section can be grouped into various subcategories as outlined below. A further major highlight of leases is the difficulty of resolving serious land disputes in either the custom *or* the formal system, a subject that is also addressed below.

A. Leases primarily intended to safeguard rights over ancestral land (three cases)

(1) Lease SCL1 is a 589-hectare “agricultural” lease registered to consolidate a claim over ancestral custom land in order to facilitate the eviction of newcomers. The newcomers in question, who moved to the area in the 1960s, have to date resisted the attempts of both customary and formal authorities to remove them. In this case, the land was highly in dispute in the first instance, and the lease is intended as a mechanism for regaining control of the land by ancestral claimants. Both the lessor and the lessee are from the same family. This lease remains characterized by conflict.

(2) “Rural residential” lease SCL5 concerns a 0.74-hectare parcel of land in the Isangel area that is subject to dispute between tribes. The land originally came under dispute following independence, and the current *lessee* is a custom claimant whose claim on the land has been substantiated in successive forums (several local tribal councils and a meeting of the island council of chiefs). Notwithstanding the support of local forums for this custom claimant, he successfully sought to secure a lease over the land, with the Minister of Lands as lessor, in order to retain a connection with his tribal land while the dispute continues to be settled. A determination by the Supreme Court expected in 2010⁵² may favor the current lessee as landholder. This case is of interest as an example of the custom claimant in a disputed area leasing land from the Minister of Lands (on the advice of his lawyer) in order to retain a link with it regardless of the outcome of a local land dispute. The disputed nature of land in the local area is a factor relevant to the creation of this lease.

(3) Like lease SCL5, this “commercial tourism” lease (SCL6) was established at the initiative of the current lessee (on the advice of his lawyer), with the Minister of Lands as lessor, to enable the lessee to maintain a connection with his ancestral land regardless of the outcome of the local land dispute. And as with lease SCL5 (which is next to this lease), the disputed nature of land in the local area is a factor relevant to the creation of this lease.

B. Leases used to substantiate ownership in advance of land sale or business initiative (three cases)

(1) Lease SCL2 was registered, as a special “sports” lease over a 48.23-hectare area marked as an airport extension. Almost immediately, the area covered by this lease was purchased as an airport extension area from the listed lessors for a payment of Vt 73 million, thereby

⁵¹ The research team was shown copies of documentation pertaining to lease SCL1 by the lessor/lessee group.

⁵² There is no evidence in the Supreme Court records for 2010 of this case having been heard.

demonstrating, at least in this instance, the utility of the lease as a means of substantiating claims to land. Lease SCL2 was registered as an *intrafamily* lease, with both lessors and lessees from the same family. No significant disputes have been reported concerning this lease, although field findings suggest little understanding in the community of the financial aspects of the airport payout (see below).

(2) Rural residential lease SCL3 was registered over an area intended for subdivision (thereby ultimately requiring the surrender of the original lease), apparently to substantiate the land rights of the families behind the subdivision proposal. A subdivision plan (featuring in excess of 676 parcels) was developed for the area and the sale of individual parcels is in progress. However, it is unclear if the original lease has been surrendered yet. Contestation has arisen in the form of opposition from another land claimant and from the West Tanna Area Council, which is opposed to the development on the grounds that it may threaten the viability of nearby “Blackman town.” However, these attempts at stopping the development have reportedly failed. Again, this was registered as an *intrafamily* lease.

(3) Lease SCL7 is a 18.36-hectare commercial lease registered to secure land by a family interested in attracting investors wishing to establish a future five-star hotel development. The lease was registered in 2006 but no development has taken place. This is also an *intrafamily* lease. No disputes are reported to have arisen in relation to this lease; however, the fact that no development has occurred may be a factor.

C. Leases used to substantiate ownership over land already being used for commercial purposes (one case)

Lease SCL4 is a 23.05-hectare commercial tourism lease in the Lenakel area that has been used for commercial purposes by multiple proprietors paying rent to the lessor/lessee family that eventually initiated this (now cancelled) lease. The lease was originally registered in order to substantiate the lessor/lessee family’s claim to the land in the face of a claim from a neighboring tribe associated with tribal boundaries. Whereas the magistrate’s court has found in favor of the lessor/lessee family, the remaining business owners using the land have taken sides in the conflict, have ceased paying rent, and are refusing to move. Violence has been threatened. There are plans for new subleases to be issued for businesses and residences following the resolution of the disputes. This lease was registered as an *intrafamily* lease.

* * *

In the case of five of the leases (SCL1, SCL2 SCL3 SCL4, and SCL7), lessors and lessees were all from the same families, with the name of the same individual appearing as both lessee and lessor on one lease (SCL4). In the remaining two cases (SCL5 and SCL6), custom claimants with links to the land endorsed by multiple local forums successfully sought to become lessees (with the Minister of Lands as lessor) to maintain a connection with the land regardless of the outcome of the intertribal disputes. Again, the fact that these custom claimants are prepared to pay rent to maintain rights over their land is a notable point. Whereas the rent that these individuals are paying to the DoL is presumed to go into the COTA and should be repayable to the lessees if/when they finally prove their landholder status, the strategy they are pursuing is not without risk, due primarily to concerns about the management of the COTA. (This issue is discussed in greater detail below.) Also, while securing lessee rights may have suited the needs of the custom owners in this case (at least according to their lawyer), it is a matter of note that the Minister of Lands agreed to act as

lessor in relation to two new leases as late as 2009, three years after the 2006 Land Summit recommendations proposed removing his power to approve leases over disputed land. However, as noted above, the Ministry of Lands and the Council of Ministers have not yet made a policy decision regarding this matter.

Leases as a means of protecting custom land

While registered for different reasons, all of the leases were initiated to provide protection over, and/or access to, land to which the parties held a customary claim. Although in most cases leases appear to have been registered to advance development objectives, in three cases the registration of the lease appears to have been primarily motivated by the desire to maintain access to and use of ancestral land. These cases challenge perspectives that associate lease registration with the alienation of land from customary tenure, since in these instances, leases have been initiated for the purpose of enabling the *continuation* of customary associations with land. In the absence of other mechanisms for registration, landholders are sometimes looking to leases to *safeguard* their customary rights to land. On Tanna, this is most dramatically demonstrated in the case of the 589-hectare lease (SCL1) registered in 2010 to consolidate a claim over ancestral land threatened by the presence of newcomers since the 1960s. As discussed above, however, the registration of a lease over one's custom land does not automatically enable one to exercise proprietorship over this land due to the continuing challenge of *enforcement* in Vanuatu.

The legacy of past displacement on land access

A further matter of interest arising in relation to the 589-hectare lease (SCL1) is that the lessor/lessee group that registered this land on ancestral grounds are themselves newcomers (*mankam*) to the area where they mainly live, having been displaced by intertribal warfare long ago. Moreover, through close links and deference to the tribe recognized as having authority over the area to which they are newcomers, members of this family have even become listed lessors for leases at the invitation of senior members of their adoptive tribes.⁵³ It is difficult to estimate the extent to which household heads in Tanna reside on land other than their ancestral land, but the proportion may be considerable.⁵⁴

The case of lease SCL1 suggests that economic advantages will flow to those who secure rights over ancestral land (although this may not be easy) and simultaneously maintain rights over areas to which their family has moved more recently. Conversely, any groups forced to return to their ancestral land after a long period of absence may well experience difficulties and provoke tensions stemming from the demographic growth and resulting land pressure that has developed during their absence. This certainly appears to be the case for the group of newcomers being pressured to return to their ancestral land in relation to lease SCL1, reportedly for refusing to become part of the tribe having authority over the area where they sought to settle. In this case, the group originates from the White Sands area, which is subject to fallout from the Yasur volcano. Interviews conducted in White Sands underscored the

⁵³ For example, a member of the lessor/lessee group for the 589-hectare "custom land protection" lease (SCL1) was also the listed lessor for the communications lease TC1 located in a different area. According to the story of this individual, his ancestors had exercised deference towards the tribe with authority over the area to which they were newcomers, unlike the newcomers who had settled on his own ancestral land (who he said would have been permitted to remain, had they respected the authority of his tribe). This deference appears to have resulted in a high level of integration of the respondent's family into their adoptive tribal structure, without compromising their own primordial tribal identity.

⁵⁴ See also Van Trease (1983, 207).

concern of local residents with regard to population growth and agricultural productivity. The importance of these considerations was highlighted at the time these interviews were conducted by the severity of the volcanic fallout that had resulted in receipt of emergency rice assistance provided by the Yasur Volcano Trust.⁵⁵

Transparency

As noted in the overview of leases above, lease SCL2 was registered as a special “sports” lease in 2009, apparently to secure the land for an extension to the White Grass airstrip by a lessor/lessee group whose support for development on the west coast of Tanna is consistent with their John Frum beliefs (discussed in section 2). This group appears to associate leases with development, which may be one reason why they registered an intrafamily lease over the land. Knowledge of GoV plans for an airport extension may have been another. The group supports the extension because of the possibility of lower cost travels to New Zealand (for agricultural work) and New Caledonia (family links), and because of increased opportunities for the women to sell vegetables near the airport.

Not long after the 2009 registration of the lease, it was cancelled to facilitate the GoV’s acquisition of the land for the airport extension. The latter transaction was reportedly concluded in August 2010. According to a member of the landowner group, the final payment of Vt 73 million was made following the payment of a Vt 700,000 facilitation (*stickimneck*) “kickback” to a senior member of the government, suggesting the need for greater transparency in relation to public land payouts. Once institutionalized, “kickbacks” can lead to inflated land values and pressure on public expenditure budgets. Vigilance in this area is important, and the Valuer General refers to a 2007 case in which a 400-square meter parcel in Port Vila was valued by a DoL valuer at Vt 10 million. In reviewing this valuation, the Office of the Valuer General determined that the parcel was worth one-twentieth of that amount and found that a senior DoL official had instructed the valuer to price the land “at a good rate” because it belonged to his relatives. (Inconsistent land-related payments and potential public budgeting problems are also discussed in section 4.3.)

Lawyers fees

Another issue raised by this and other cases concerns payments to lawyers. According to a senior member of the landholding group involved in the sale of land for the airport extension, the lawyer working for the group originally quoted a fee of Vt 3 million for facilitating the transaction. At the conclusion of the transaction, however, the lawyer demanded Vt 14.6 million and was eventually paid Vt 7 million. According to the Office of the Valuer General, large legal fees for facilitation transactions are not uncommon, leading to questions of whether these fees influence land values. The field data indicated that lawyers can also charge substantial fees simply for administering leases. In the case of underdeveloped lease CT6, for example, (discussed under tourism), the lessor reported that he paid his lawyers Vt 45,000 of the Vt 100,000 annual rent.

Land transaction aspects

On the matter of distribution and spending practices related to land payouts, it is clear from cases examined in Tanna (see the sections on churches and communications towers, for example), that disproportionate benefits frequently flow to the senior representatives of landholding groups who travel to the national capital, Port Vila, to facilitate transactions. In

⁵⁵ Respondents indicated that that main viable crop during times of serious volcanic fallout is manioc (cassava).

the case of the airport transaction, for example, the total payment was Vt 73 million, of which the main landholder representative appears to have received around half. On another matter, this individual indicated that he perceived little difference between the permanent sale of land and the leasing of land for a period of 75 years. A registered valuer and former DoL official interviewed for this report admitted to the same belief, expressing the view that in valuing land, most valuers would not distinguish any difference between land targeted for permanent alienation and land destined to be leased for a period of 75 years.

Lease disputes

Of the seven leases included in the category of securing custom leases, five have experienced some level of dispute, two of a serious nature involving either violence or the threat of violence. In one of these cases in particular, there remains a real risk of death or further serious injury if reconciliation between the parties is not afforded. Manageable levels of dispute (at least thus far) have surrounded three further leases. In two of these cases, where the lessees are custom claimants and the lessor is the Minister of Lands, local forums have determined in favor of the main custom claimants (current *lessees*) in the past, and the leases have been registered as a bottom-line access strategy in the face of complex intertribal disputes over land in the area. In the third case, opposition to the lease and associated subdivision plans have been addressed by both the magistrate's court and the Supreme Court, with determinations reportedly favoring the lessor/lessee family initiating the development. The two leases reporting no significant disputes are the undeveloped resort site lease and the former special "sports" lease that was cancelled to facilitate the acquisition (from the lessor/lessee family) of land for the airport extension. In the case of the first lease, it is likely that the lack of development on this site is a factor in the absence of disputes.

Table 4.12 Lease for Securing Custom Land Dispute Table

Lease	Level of Dispute	Dispute Resolution Forums and Comments
SCL1 Ancestral land protection lease	High	<u>Local Forums:</u> Multiple local forums, including intertribal meetings and meetings sponsored by the Nikoietan Island Council of Chiefs, have found in favor of those with ancestral claims (who registered the lease) and ruled against the newcomers.
		<u>Courts:</u> The magistrate's court has met to hear property damage claims, but ancestral claimant parties' lawyer failed to attend. Eviction order against newcomers will be processed in either magistrate's or Supreme Court.
		<u>CLT or similar:</u> ⁵⁶ A CLT hearing found in favor of the ancestral claimant party.
		<u>Comments:</u> Newcomer group does not accept decision of either custom or state forums. Destruction of stock and property (including multiple house burnings) and serious assault reported. Risk of death or further serious injury apparent if not addressed.
SCL4 Lowinio/Isla land claim lease Surrendered with intention to subdivide.	High	<u>Courts:</u> Aspects of this case have been heard at the island court, magistrate's court, and Supreme Court. Rulings have favored the lessor/lessee family, with one magistrate's court ruling determining that people occupying the area of the (now surrendered) lease should move. Attempts by the sheriff from Port Vila to execute this ruling have so far failed.
		<u>Comments:</u> Those illegally occupying the area of the (now surrendered) lease have refused to move and threaten "a small war" if forced to do so. The case remains sensitive.
SCL3 Large costal subdivision initiative	Managed to date	<u>Courts:</u> An opponent of the development (also claiming ownership of the land) applied to the magistrate's court for a restraining order over the development in 2007 pending the outcome of a CLT hearing concerning the broader area. This request was denied by the magistrate on the grounds that there was "no case before any tribunals...at this stage." This same individual and the local area council have sought to block the development through the Supreme Court but are reported to have failed.
		<u>Comments:</u> Dispute appears contained at present, but minimal development on the site has occurred to date.

⁵⁶ Refers to the CLT or similar multiparty forum initiated locally.

SCL5 Lenakel/ Isangel lease where custom claimant is lessee and Minister of Lands lessor	Managed to date	<u>Local Forums:</u> Hearings by intertribal and island council of chiefs forums since independence have found in favor of the custom claimant, who has sought security of access to this land (in an area disputed by various tribes) through becoming lessee of a lease over the land (with the Minister of Lands as lessor).
		<u>Courts:</u> The area in the vicinity of this lease is claimed by multiple tribes and was the subject of an island court judgment in 2008. This judgment was criticized by multiple parties and a case to overthrow the island court determination was taken to the Supreme Court (was expected to be heard in September 2010).
		<u>Comments:</u> Dispute appears contained at present.
SCL6 Lenakel/ Isangel lease where custom claimant is lessee and Minister of Lands lessor	Managed to date	<u>Comments:</u> Same as SCL5 above.
SCL2 Surrendered "sports" lease Used for substantiating claim to airport extension land.	No significant disputes reported	<u>Comments:</u> The registration and cancellation of this lease, followed by the acquisition of the land by the GoV, all happened expeditiously within a period of several years.
SCL7 5-star resort speculative lease (inactive)	No significant disputes reported	<u>Comments:</u> No development has taken place on this lease, probably a factor in the absence of any reported disputes.

The two identified cases of high-level dispute in this category demonstrate that although the lease is regarded as a means of substantiating a claim to custom land, possession of a lease by no means equals vacant possession, due to the parties' unwillingness to accept determinations against them and the state's lack of enforcement power. In the case of the 589-hectare lease SCL1 intended to substantiate the rights of ancestral claimants and remove newcomers who do not respect another tribe's recognized authority over the area, for example, the resident newcomers have rejected determinations by both customary and state forums and have responded to orders to move with a series of offenses against property and person. Developments in mid-2010 are reported to include the burning of six houses and a case of mob assault against a woman and her two children (see below).

Notably, this level of criminality is alleged to have occurred as the ancestral party endeavored to resettle its ancestral land following a CLT hearing in their favor in 2007 and the subsequent registration of a lease over the area by the ancestral claimant party in 2010. This case (described in detail below) suggests that the greater the pressure placed on the newcomer group to relocate, the greater their recourse to violence. This pattern also appears in relation to surrendered lease SCL4, located in the disputed Lowinio/Isla area. In that case, attempts by the sheriff's office to remove people from the lease area after a determination by the magistrate's court were met with threats to start "a small war."

The importance of reconciliation

As with land disputes on Epi, the need for greater enforcement of judicial determinations on land issues is clear. This is so not just for leases but for land dispute issues more broadly, although frequently, the fact that a lease has been registered may in itself indicate a dispute. It is significant that the conflict over the 589-hectare ancestral land protection lease has not arisen solely because this land is now under lease. Rather, the conflict developed as a result

of the presence of newcomers in the area and the lease has been merely *one* mechanism used in an attempt to recover vacant possession of the land.

The determinations of custom, state, and hybrid forums all appear equally difficult to enforce, their effectiveness essentially depending on the goodwill and compliance of the losing parties. In the absence of such compliance, as in the cases described above and where victorious parties endeavor to reclaim the land they have been found entitled to, violence becomes a real possibility. This situation highlights the need (also identified in the J4P Epi report) for reconciliation programs aimed at securing the disputing parties' acceptance of determinations made by courts and other dispute-resolution forums. This is especially important for any efforts to streamline dispute-resolution forums in Vanuatu in the interests of efficiency, as the number of such forums may have played a critical role in conflict prevention by providing a channel for absorbing disaffection while simultaneously delaying final determinations, seemingly indefinitely in some instances.

Perceived and real importance of customary institutions

Clearly, disputants have been resorting to the various state dispute-resolution forums (magistrate's court, island court, Supreme Court, as well as the CLT) with a level of frequency that contradicts the claimed relevance of custom institutions on the island.⁵⁷ The use of leases for substantiating custom claims is a further manifestation of the same trend and is seen as a means of establishing more robust claims to land than can be facilitated by custom rights alone. As population density continues to increase on Tanna, especially if volcanic fallout continues to limit the fertility of particular areas, competition over land will steadily increase. In the face of this pressure, demand for a means of strengthening customary rights over land is likely to grow, leading to the increased use of leases for securing custom land.

Securing custom land examples

Case 1 provides an example of *kastom* landholders having registered a lease as part of a strategy to protect their ancestral land from encroachment by newcomers who refuse to recognize ancestral authority over the area.

CASE 1

According to Chief L and Mr. W, the land covered by this lease is the ancestral land of the Nakap tribe, to which Chief L and Mr. W both belong. Although most members of the Nakap tribe were displaced long ago by the tribal wars and forced to reside elsewhere (including the land of the Narapetne in the Middle Bush area),⁵⁸ the Nakap claim to have maintained a connection to their ancestral lands, including using it for raising livestock. While Nakap tribal members are actively seeking to resettle their ancestral lands on a permanent basis, this objective has been frustrated by the presence on the land of newcomers who refuse to recognize Nakap authority over the area, despite the determinations of multiple forums. These newcomers are the extended family of Mr. I, a member of the Nakusi tribe who settled nearby in the 1960s when he was working for a copra-purchasing business. Mr. I reportedly fathered 12 children, of whom 11 now have their own families, thus his

⁵⁷ Tannese commonly stress the importance of custom and the role of chiefs. However, according to the clerk of the magistrate's court at Lenakel on Tanna (interviewed August 13, 2010), this sentiment is often *not* reflected in choices about which forums to use for the resolution of disputes.

⁵⁸ Note that notwithstanding his Nakap origins, Chief L has also acquired rights as a member of the Narapetne tribe (reflected in his status as listed lessor of a lease on Narapetne land), the tribe that the Nakap acknowledge as landholders of the area.

extended family now resembles an entire community and practices extensive gardening activities on Nakap lands. The expansion of Mr. I's family on Nakap ancestral land has led to increasing concern among the Nakap that they are losing control of their land.

Chief L reports that since 1986, 27 meetings have been held between the Nakap and Nakusi tribes to discuss receiving Mr. I's family into the Nakap tribe, in which case Mr. I's family could continue to have use rights in the area where they have settled. However, Mr. I has never agreed and has consistently demanded a reverse arrangement, whereby members of the Nakap tribe would agree to become members of his tribe, the Nakusi. The meeting involved only the Nakap and Nakusi tribes until 2000, but since then the matter has been the subject of a number of reconciliation efforts facilitated by the Nikoletan Island Council of Chiefs. Whereas leaders of Mr. I's tribe have cooperated with the various meetings and reconciliation events, Mr. I himself has consistently refused to cooperate with the process and acknowledge the authority of the Nakap over the land as instructed. Instead, Nakap representatives report that since 2001, members of Mr. I's family have killed livestock on Nakap land belonging to other members of the North Tanna community and engaged in other destructive and violent behavior (see below), thereby escalating the dispute into a serious conflict.

Following an incident in late 2004 when Mr. I's family destroyed a shelter constructed by Nakap members on the disputed land and dispersed Nakap women and children who were using it, Nakap chiefs decided, along with Nakusi chiefs, to return Mr. I and his family to their own ancestral land in the White Sands area. A convoy organized for this purpose was accompanied by a representative of the island council of chiefs and a member of Parliament. However, Mr. I and his family soon returned to the disputed site on Nakap land. As a result of his intransigence, the matter was taken to the CLT, with two hearings held in Laketam in 2006. Mr. I failed to attend the first and failed to cooperate with the second.⁵⁹ After the CLT indicated a (not yet formalized) decision in favor of the Nakap, the custom landholders decided to register a lease over the land. The CLT formally ruled on the case in 2007 and the lease registration process was finalized in early 2010. The Nakap were considering, in the second half of 2010, whether to take the case to either the magistrate's or the Supreme Court to apply for an eviction order to remove Mr. I's family from the land.

Since the registration of the lease in early 2010, tensions have escalated to serious levels, with instances of property destruction and violence reported by Nakap representatives said to include the assault of a Nakap woman and her two small children (in which a toddler was knocked unconscious and a four-year-old sustained a knife wound to the face), the burning of six Nakap houses on the disputed land, the theft of livestock, the destruction of gardens, and the looting of other Nakap houses. Mr. I is aware that the option of going back to the White Sands area is an onerous one for him, as the size of his family and the disaster conditions associated with the volcanic ash fallout mean that finding sufficient land to sustain his family will be difficult. According to Nakap representatives, who admit to little confidence in the capacity of the police to moderate developments, one or more members of Mr. I's family have said that there will be a death before the family leaves the land and returns to White Sands.

This case indicates how ancestral landholders from a first area can become listed lessors in connection with a second area based on longstanding "newcomer" status and deference to the customary authorities in the area to which they have moved. As outlined in this story, such individuals may be simultaneously struggling to have newcomers removed from their own ancestral land on the basis that these newcomers have not demonstrated appropriate respect for customary authorities.

Multiple strategies and forums have been utilized in an attempt to settle this newcomer vs. ancestral rights conflict. Although the position of the ancestral party (the Nakap) has had broad support, the

⁵⁹ Nakap representatives report that at the second hearing, Mr. I indicated only that he "didn't want to waste his time" before leaving.

various determinations issued by custom and state forums have not been accepted by the newcomer party, and it remains uncertain that the rulings of any forums—customary, state, or hybrid—can be enforced. The case is further complicated by the fact that the White Sands area (where the newcomers originate) has reduced carrying capacity due to fallout from the Mount Yasur volcano, such that the local population is already in receipt of food aid provided by the volcano trust.

A long series of criminal activities are reported to have been associated with this case dating back to around 2001, most recently involving assault, property destruction, and looting. It is clear that the case has the potential to escalate, and the alleged threat by the newcomer party that there will be a death before they return to White Sands must be taken seriously. This case appears to need special attention and resources to prevent it from escalating to dire levels.

Case 2 below (one of two similar cases documented) provides an example of a *kastom* landholder seeking to protect his access to his ancestral land, located in an area disputed by multiple tribes, by successfully seeking to have a lease registered over the land in which he is the lessee and the Minister of Lands is the lessor.

CASE 2

The lessee *and* custom claimant of this land, Mr. H, said that his grandfathers were using the land a long time ago. However, the land is in Isangel (the administrative center of TAFEA province) and the area has been subject to dispute. This dispute started between the Ramar and Nikimlua tribes just after independence, when there was a possibility that the government would compulsorily acquire the Isangel station for the TAFEA provincial administration.

The dispute over the area went to the tribal council in the 1980s and the council decided in favor of the Ramar tribe. The Nikimlua appealed this decision to the tribal councils of the Lenakel/Isangel area, which supported the earlier decision in favor of the Ramar. A further appeal was then made to the Nikoletan Island Council of Chiefs, which also agreed that the Ramar owned the land. One year later, the Ramar tribe invited the Nikimlua for a reconciliation ceremony at which both parties exchanged pigs and kava. Related to this event was the appointment by Chief S (a big chief from the Ramar tribe) to manage the Isangel station area. Chief S appointed three people (one from Ramar, one from Nikimlua, and one person who was related to both tribes) to manage the area.

All was calm for some years, but in 2000 a new dispute emerged when a third tribe, the Noukanemisa, claimed land first in the Isla area and then over a much larger area. The greater disputed area is now referred to as the Isla land claim and involves a total of eight separate claimant parties (for details see “lease disputes” under section 4.3). Although there are signs that the resolution of the dispute is progressing, Mr. H’s lawyer and nephew, Mr. D, advised Mr. H that in order to secure his land he should register a lease with the Minister of Lands as lessor. Mr. H said that he arranged for a COIF to be signed by chiefs from the Ramar tribe and also obtained verbal permission from the chiefs from the Nikimlua tribe, going to the Minister of Lands himself to tell him that he did not want to lose his tribal land. The Minister of Lands asked Mr. H when his great-grandparents moved to the area and Mr. H replied that the family had been there for over 100 years. The minister then agreed to become lessor (although the government subsequently changed and it was a new Minister of Lands who ultimately signed the lease).

Although the 2006 Land Summit recommended that the Minister of Lands no longer sign disputed leases as lessor, this is one of two cases where custom claimants (whose rights to the respective parcels have in each case been upheld by a range of local forums) have resorted to registering leases—as lessees—over their custom land in order to secure access to this land in the face of ongoing intertribal land disputes in the area. In this case, the registration of the lease is presumed to require payment of rent into the COTA. Once land disputes in the area are settled and the claims of the lessees are validated, it should be possible for them to recoup the rent they have paid.

Irregularities in the administration of the COTA (see the section on communications towers below), however, suggest that there may be some risks associated with this strategy.

4.5 Communications Tower Leases

Table 4.13 Communications Tower Leases

Lease No.	Custom Owner Identification Form (COIF) on file	Negotiators Certificate (NC) on file	Area (Ha)	Term (years)	Date Lease Registered	Annual Rent (Vatu)	Rent Review or Increase Y/N	Premium Payment (Vatu)	Dispute
Lease TC1 SAS tower.	Y	N	0.06	10	2007	40,000	N/A	0.00	Y
Lease TC2 TVL tower	N	N	0.02	75	1997	10,000	Y (2010) (Vt16,000)	0.00	N ⁶⁰
Lease TC3 SAS tower	Y	N	0.05	10	2008	40,000	N/A	0.00	Y
Lease TC4 SAS tower	N	N	0.25	10	2007	150,000	N/A	0.00	Y
Lease TC5 Radio & TVL towers in area.	N	Y	0.14	75	1995	3000	Y (Vt40,000)	0.00	Y
Lease TC6 SAS tower	Y	N	0.35	10	2007	40,000	N/A	0.00	N
Lease TC7 SAS tower	N	N	0.04	10	2007	40,000		0.00	Y
Lease TC8 TVL tower	Y	N	0.01	75	2007	10,000		0.00	N
Lease TC9 SAS tower	Y	N	0.05	10	2007	40,000		0.00	N

⁶⁰ No land-related dispute is known to have occurred in relation to this site but the lessor claims to have missed out on rent for many years.

Overview of communications tower leases

Nine communications tower leases were profiled on Tanna. Of these, three are Telecom Vanuatu Limited (TVL) installations and the remaining six are leased by Special Site Acquisitions Service (Vanuatu) Limited (SAS), on behalf of Digicel. It is understood from a telecommunications specialist consulted by the research team that SAS is an in-house section of Digicel, possibly intended to limit Digicel's liability in certain circumstances.⁶¹ Eight of the lessors for the communications towers are custom landholders or custom landholder groups. In one case, a former provincial councillor has been included as a gesture of goodwill, even though this individual is not a landowner. The remaining lessor is the Minister of Lands, in relation to the disputed SAS site TC7. This lease was registered in 2007, and as discussed in the section on leases for securing custom land, it is unclear why the Minister of Lands would have signed a lease over disputed land at this time.

Historical aspects

According to TVL, in the early period of independence the GoV managed negotiations for communications facilities and signed "agreements to lease" (as opposed to leases) with custom landholders. Reflecting this postindependence practice, the lessors of two of the (now) TVL towers on Tanna recall initial agreements dating back to the early 1980s, even though the actual TVL leases date to 1995 and 1997, respectively. As outlined by TVL, the organization was formed in 1989, at which time the slow process of formalizing leases began. TVL reports that the current process for establishing a lease involves initial site identification by technicians. TVL representatives then go to the chief, indicate their wish to construct a telephone tower on a particular site, and ask to be introduced to the relevant landowners. In earlier times (until 2000), TVL personnel would speak only to the chiefs, but they soon realized that this frequently led to land disputes. Now, TVL still consults the chiefs but always asks to have all the landholders identified. Previously, TVL also tried to have tower sites declared public land, but in the end accepted that the company had to negotiate with landowners. If landowners do not want to lease, they usually first try to find another location, but most people are happy to talk to TVL about leasing a tower site.

Once landholders and claimants are identified, large meetings are held. If any disputes arise, TVL often stops work until all disputes are resolved. The only exception is when all disputing parties agree that the work should continue and that the community will advise TVL later of landownership aspects. TVL representatives claim that it is more efficient for them to identify landowners and resolve problems themselves than refer issues to either the DoL or the provincial administration. Normally, they go to DoL only to formalize matters once all problems have been resolved; if there is a dispute, TVL tries to work with the community to identify the correct landholders.

TVL reports that now that landowners know the value of land, land issues are very sensitive—more so than in the past. Accordingly, it can take between three and 12 months of repeated meetings and visits before landownership can be established. TVL's perspective is that this level of attention is necessary in order to do the job properly and therefore ensure the safety of technical staff and equipment. Overall, it has been TVL's experience that the south

⁶¹ An attempt was made by the research team to contact SAS using its telephone number. However, TVL Directory Assistance indicated that SAS no longer has a distinct telephone connection. This raises the question of who has legal responsibility for the many leases of which SAS remain the legal lessee.

of Vanuatu—that is, Efate and the islands to the south—are more difficult in terms of land issues than the north.

In mid-2008, TVL gained a competitor. After several years of ground work, reflected in the dates of the SAS leases registered on Tanna between 2007 and 2008, Digicel announced its arrival to the Vanuatu market on June 25, 2008.⁶² As indicated in table 4.13 above, with the entry of Digicel into the market, the number of communications tower leases on Tanna have increased from three to nine. All nine of these leases are presently active.

Approaches to payment

The two telecommunications enterprises have different approaches with regard to payments, with TVL offering lower average rental payments supplemented by routine payments to members of lessor communities to keep the communications tower areas clear of vegetation growth. In the early days of GoV communications towers, the standard rental rate was Vt 3,000 or Vt 5,000; rent levels for the towers are now understood to be Vt 10,000, Vt 16,000, and Vt 40,000. Payment levels to the communities (outlined in table 4.14 below) for clearing vegetation from the tower sites also vary, with one lessor group (for lease TC8) reporting receipt of Vt 15,000 three times per year and a second group (for lease TC2) reporting Vt 30,000 four times per year. In this second case, the lessor group considers that its members should also receive payment for the access road, which they clear as well. In the third case, the lessor group (for lease TC5) reported receiving Vt 30,000 four times per year for the tower site, plus a further Vt 30,000 per year for clearing the access road. TVL reports that although the company tries to maintain a firm policy concerning rent and clearance payments, flexibility is required in order to ensure the safety of personnel and equipment.

In most cases, the rent paid in relation to the SAS (Digicel) leases established during the 2007–08 period is standardized at Vt 40,000 per year. An exception is the SAS tower near Lenakel Hospital for which a rent of Vt 150,000 per year is paid. According to the lessor, this higher level of rent was achieved because of the desirability of the site (located on a hill near Lenakel) for communications purposes and the hard bargaining of the lessor, who had reportedly developed a high level of assertiveness in his career as a police officer.

No premium payments are formally included in any of the communications site leases. However, it appears that both communications operators sometimes pay the first five years rent up front. There is also information to suggest that payments additional to those scheduled in the lease agreements (including where payments are made to the COTA) may sometimes be paid in sensitive cases. This could be so in relation to SAS lease TC7 (see table 4.14 below). Again, TVL indicates (although not in specific relation to Tanna leases) that this is sometimes unavoidable when the safety of workers and equipment is at stake. It is understood that the need for “additional payments” may occur on Tanna more than elsewhere.

Of the nine leases, only five have COIF documents and only one an NC on file. Not one single communications lease has both an NC and a COIF on file. TVL claims to always

⁶² This press release referred to “[i]nvestment of over VT3 billion to deliver unbeatable national coverage, superior first to market services and 24/7 customer care throughout Vanuatu.” See <http://www.digicelpacific.com/en/media-center/press-releases/achievements/digicel-has-arrived-in-vanuatu>.

complete NC and COIF documentation, suggesting that at least some of the files should be complete and that there is clearly a need for improved record keeping systems within DoL.⁶³

Thematic highlights

The Custom Owner Trust Account (COTA)

One of the most significant issues arising from this investigation of communications leases concerns the Custom Owner Trust Account (COTA) and its administration by the DoL. The Tuhu tower lease (TC5), a TVL site, was reportedly dispute-prone between 1985 and 2009. During this time, rent of Vt 3,000 was apparently paid into the COTA annually between 1985 and 2004 (totaling Vt 60,000). After a rent increase, Vt 20,000 is understood to have been paid into the COTA from 2005 to 2009 (totaling Vt 100,000). Accordingly, there should have been Vt 160,000 in the COTA, plus any interest, when the dispute was resolved in 2009 and two local landholders were finally able to replace the Minister of Lands as listed lessors. However, when the newly listed lessors attempted to withdraw the accumulated rent, they say they were told that only Vt 45,000 was available, raising questions about what happened to the rest of the money.

TVL claims that money has gone missing from the COTA in the past and also that DoL has no record of payments made by TVL into the COTA. TVL also states that the experience prompted it (TVL) to obtain receipts from payments into the COTA to demonstrate that TVL is not responsible for any losses. TVL now reports that the company no longer pays money into the COTA at all and that in the event of disputed leases, TVL simply holds relevant payments and then distributes the funds following the resolution of the dispute and the determination of legitimate lessors. TVL is one of Vanuatu's larger lessees with multiple leases throughout the country, and the experience of this telecommunications agency with the COTA suggests the need for more robust auditing of the COTA and an investigation into any missing funds. It is notable that any maladministration of the COTA is likely to have repercussions broader than transparency. The government will have little incentive to facilitate the resolution of land disputes for which the Minister of Lands is the lessor if the resolution of these cases draws attention to transparency issues associated with the COTA.

Rent transfer difficulties

The receipt of rent was also an issue in a number of cases. One lessor (TVL lease TC2) claimed to have received rent from a lease only since 2001, even though the tower was installed in the 1980s. Another lessor (SAS lease TC6) claimed to have received no payment in relation to an SAS lease between 2007 and 2010. Although only one of the communications companies has been interviewed, it appears likely that the problem may relate to payment protocols. TVL reports that its preferred means of payment is to pay the rent into lessors' bank accounts every July (except in cases where a five-year advance payment is being made). However, if lessors do not have a bank account, they may have to come to Port Vila to pick up a check. Since bank accounts are at risk of closing down if they do not have sufficient funds, it is possible that a number of accounts belonging to lessors have been closed and that checks have been waiting for some lessors at the TVL office in Port Vila for some time.⁶⁴

⁶³ Unfortunately, no official Digicel representative was able to be interviewed during the period of the field research.

⁶⁴ Another cause of delayed payment, according to TVL, can be the need for families of deceased lessors to advise of replacement landholder representatives. This is not a factor in the two cases discussed here, however.

TVL reports that it is sometimes, though not always, able to send checks out with technical teams. Given the importance of maintaining good relations with communities hosting expensive telecommunications equipment in remote areas, however, it would appear worthwhile for communications operators to devise more foolproof strategies for the transfer of annual payments to lessors. This conclusion is also supported by a related case (SAS TC1) in which the communications operator reportedly paid rent money to the wrong person after an unauthorized member of the lessor community pressured staff in Port Vila for payment to cover visa costs required for an agricultural labor trip to New Zealand. This development resulted in a dispute back in the community that while manageable in this instance, could have been avoided altogether had the rent been paid to the lessor.

Jealousy over benefit streams and possible role of leases in reducing intensity of disputes

Several leases are of interest in connection with the relationship between conflict and lease creation. In the case of one tower site (SAS TC3), for example, the lessors report that in the course of the lease creation process, there were objections to the development from outside chiefs concerned that while the two landholder groups with rights over the hilltop site would benefit from the development, others would not. The objection, therefore, appears motivated by the desire to either access the benefit stream associated with the development or prevent it from benefitting anybody else. In this case, the actual registration of the lease brought an end to these complaints, perhaps by reinforcing the right of the relevant landholder groups to make decisions concerning the site.

Another example of the reported role of a lease in reducing the severity of land contestation is the long disputed TVL tower site TC5, though the history of this lease also suggests that conclusions about developments should be viewed cautiously. TVL reports that TC5 was an ongoing problem for many years (from the early 1980s to 2009), with the local landholders replacing the Minister of Lands as lessor only in 2009. Until this point, every time that TVL thought that it had all the problems resolved, another party would emerge and the dispute would continue, with access to the site restricted at one point by locals brandishing knives and bows and arrows. As outlined in the profile for this lease (below), the dispute developed into a serious conflict in 2005 after TVL increased the payments to the community for clearing the tower site and the access road. Violent clashes occurred and the police had to be called to stabilize the situation.

One of the claimant parties initiated a multiparty dispute-resolution forum (discussed later in this section) employing “judges” approved by the parties to the dispute and witnesses, including TVL. After a one-day hearing, the judges concluded that the group that initiated the hearing were the rightful landowners, enabling the group to use the minutes of the meeting to have its members listed as lessors on the lease, replacing the Minister of Lands. As related in the story for this lease, this transfer process was not concluded without a further incident of violence, in which a DoL official was attacked in Port Vila (and subsequently hospitalized) by members of the opposing party, still intent on having themselves listed as lessors. This opposing group, according to representatives of the *lessor* group, was a tough opponent, with influential relatives and a number of successful businesses they could draw on for resources. Interestingly, the newly listed lessors claim that now that the lease has been finalized, the level of tension in the community has receded. A main member of the lessor group has a copy of the lease in his house, and refers to it as a “title” that supports his claim to the land.

Nonlandholders as listed lessors

A feature of several communications leases was the decision of landholders to include nonlandholders alongside landholders as listed lessors. This occurs most notably in the case of the Lamapuran tower lease TC3. In this case, a serving provincial councillor from another village introduced the proposal to the landholding families and encouraged them to meet and discuss it. In return, this individual was included on the list of lessors. He is paid a small portion of the rent money from each of the main lessor families and is believed to be the one who holds a copy of the lease. A nonlandholder is also listed as a lessor for Green Hill SAS lease TC1. Here, the reason appears to be because the individual concerned went to some lengths to ensure that the rightful landholder, in Port Vila at the time the tower proposal was initiated, was consulted by the communications operator and ultimately included as a lessor.

In the case of two further leases in the same part of southeast Tanna (TVL lease TC8 and SAS lease TC9), the idea of listing two additional nonlandholder chiefs was proposed by one landholder on the grounds that this would reduce the potential for disputes. However, the brother of this landholder (also a landholder) objected to this proposal and it was dropped (with no adverse consequences in terms of dispute). While the inclusion of nonlandholders as listed lessors has appeal as a gesture of goodwill, it clearly brings with it the possibility of future confusion and dispute. One potentiality might involve descendents of a listed nonlandholder lessor asserting rights over a lease on the basis that an ancestor was listed as a lessor.

Benefit use

Table 4.14 Communications Tower Benefit Use

Lease	Benefits	Use of Benefits
TC1 (SAS)	Rent: Vt 40,000	The rent money is divided every year among church and family members, in about 40 parts. Lessor reports that any attempt to invest in single community investment will inevitably result in dispute.
TC2 (TVL)	Rent: Vt 16,000 Clearing: Vt 30,000 for 1 site 4 times/year	Rent: Unclear Clearing: Unclear
TC3 (SAS)	Rent: Vt 40,000	Rent is divided among two lessor groups. One party intends to invest money in the rehabilitation of a tourist bungalow.
TC4 (SAS)	Rent: Vt 150,000	Rent money reported to be used for Christmas rice handouts, school fees, marriages, and other ceremonies.
TC5 (Radio/TVL)	Rent: Vt 40,000 Clearing: Vt 30,000 for each of 2 sites (tower site & access road) 4 times/year	Rent money mostly saved by lessors. May be put towards small business. Clearing managed by committee (that includes women) and used for ceremonies, funerals, and other community needs.
TC6 (SAS)	Rent: Vt 40,000	All the rent received is saved and there are no plans for spending it.
TC7 (SAS)	Rent: Vt 40,000	Rent paid into COTA but other additional payments (possibly upfront payments) reportedly paid to land claimants by communications operator (either this or the DoL file indicating that the Minister of Lands is lessor is out of date). These funds reported to be saved in an account for a future community project, possibly involving rehabilitation of an old airstrip.
TC8 (TVL)	Rent: Vt 10,000 Clearing: Vt 15,000 for 1 site 3 times/year	Money saved so far and committee established to determine use. Clearing work rotated among different groups and money distributed among workers to spend how they please.
TC9 (SAS)	Rent: Vt 40,000	Money saved so far and committee established to determine use.

As outlined in table 4.14 above, and in a way that perhaps challenges expectations, six of the landholder groups claim to be either saving lease benefits for the future or allocating them in accordance with community priorities. Two committees have been established to decide how to use funds, one for TVL lease TC5 and one for the southeast Tanna leases TC8 (TVL) and TC9 (SAS). In one case (SAS lease TC3), one lessor group reports that it is allocating rent money towards the rehabilitation of a tourist bungalow business and in another (SAS lease TC4), the considerable annual rent payment of Vt 150,000 is said to be used fairly to fund Christmas rice handouts for broad community distribution as well as to pay for school fees, marriages, and other ceremonies. In the final case in which benefit-use information was collected, the lessor representative reported that the rent money was divided equally into around 40 parts and distributed among church and family members. Interestingly, this lessor claimed that any attempt to invest in a single community development project would inevitably result in disputes.

Lease disputes

Table 4.15 Communications Tower Dispute Table

Lease	Level of Dispute	Dispute Resolution Forums and Comments
TC5 (Radio/TVL)	High (historically) but managed at time of research	<u>Courts:</u> A Supreme Court case is on record in relation to this case but details are unknown.
		<u>CLT or similar:</u> TVL reports that this has been a dispute-prone lease for many years, with new land claimants constantly emerging until recently. Eventually, one claimant group initiated (according to both lessors and TVL) a hearing of its claim vs. the claim of opposing claimants, witnessed by a range of authorities and presided over by senior members of the Tanna community (four “judges”) agreed on by both sides. This forum was a local initiative (not a CLT) and the determination of this forum was used to finalize a lease (referred to by the landholders as a “title”).
		<u>Comments:</u> This case involved a number of violent incidents including an attack on a DoL official in Port Vila. The case suggests that sometimes the registration of a lease can effectively contribute to reduced controversy over land (see also TC3 below), since in this case, the violence is reported to have receded following the finalization of the lease in favor of particular landholders (see Case 1 below). The listed lessors state that the long process of registering the lease in their name was complicated by counter claimants who had relatives in TVL and access to cash (from multiple business activities) with which they were able to bribe officials.
TC7 (SAS)	High (historically) but managed at time of research	<u>Local Forums:</u> As a result of the dispute associated with this lease, the local tribal council now requires all development proposals to be submitted to it for evaluation in order to manage change and prevent conflict. According to community representatives, both the provincial administration and the island council of chiefs are aware of this development.
		<u>Comments:</u> As in the case of lease CH1 (see section on churches), the community meeting to determine landholders relevant to this site failed to facilitate the airing of grievances and though three lessors were agreed on, one of these secretly tried to register a lease. Although community members claim to have agreed on the lessors, DoL files indicate that the Minister of Lands is the lessor for this lease. Despite this, there are reports from the community that benefits are paid to claimant groups in relation to this lease. This suggests that either DoL records are out of date or the telecommunications operator may be making payments to placate the community (or both). They may indeed be motivated to do this due to the land dispute-related burning of a nearby radio tower in the past (reportedly because only one of the three landholder families was consulted). This community has limited understanding of land laws and dispute-resolution mechanisms and requested a public information campaign on CLT and leasing. Interestingly, as a result of the troubles caused by land disputes in the past, the local tribal council now requires all development proposals to be passed before it for evaluation. This is a notable local initiative aimed at managing change and preventing conflict.

TC4 (SAS)	Managed to date	<u>Comments:</u> This particular case has not been taken to any specific dispute-resolution forums, but the Lowinio land on which the site is situated is subject to claims by multiple parties, and one other group in particular (who are lessors for the nearby Lenakel Hospital) believe they are the landholders. This case highlights both the tensions between competing claims to an area based on long-term use over different periods of time (ancestral vs. gate-keeping rights) and the need for negotiated rather than winner-take-all solutions.
TC1 (SAS)	Low	<p><u>Local Forums:</u> A local forum was used to resolve a dispute over payment involving collection of the rent from the communications operator by the wrong community member. In this case, individuals close to the listed lessor who were in Port Vila with no money in 2008 had pressured the communications operator to pay them the annual rent money for the site, thereby causing a dispute. The local forum arranged for payment of compensation to the lessor group by relatives of those who had wrongfully collected the payment, and the dispute is now resolved.</p> <p><u>CLT or similar:</u> The lessors did not report that a CLT hearing took place in relation to this case. However, CLT files indicate that a hearing was held in 2009 to resolve concerns about which landholders should be listed as lessors.⁶⁵</p> <p><u>Comments:</u> This case highlights the preparedness of individuals close to lessors to collect rent from leases on an opportunistic basis, and also the susceptibility of the investor to pressure from random members of the lessor community to make payments.</p>
TC3 (SAS)	Low	<u>Comments:</u> Opposition to this site developed because chiefs of nearby tribes were upset that the landholders of this tower site would receive benefits from it and they (the other tribes) would not. The lessor group reports that the registration of the lease over the site prevented the dispute from developing further by substantiating the claims of the landholders of the area (see also lease TC5 for a further case in which this was reported). The fact that a former provincial councilor (nonlandholder) is also listed as a lessor may contribute to confusion or dispute in the future.
TC2 (TVL)	No significant dispute reported	<u>Comments:</u> No land disputes have arisen in relation to this lease, but the lessor group has had difficulty collecting its rent and would like more money for the work it performs keeping the lease area cleared of vegetation.
TC6 (SAS)	"No dispute reported"	<u>Comments:</u> No land disputes have arisen in relation to this lease, but the lessor group has had difficulty collecting its rent.
TC8 (TVL)	No dispute reported	<u>Comments:</u> No land disputes have arisen in relation to this lease. A representative of the lessor group believes that lease should be signed by tribes rather than individuals in order to reduce disputes.
TC9 (SAS)	No dispute reported	<u>Comments:</u> No land disputes have arisen in relation to this lease.

Telecommunications lease examples

The first case profiled below provides an example of a lengthy, drawn-out process for determining the legitimate landowners, and one eventually resolved through a local initiative. This case also provides insights into the management of the COTA and the potential for leases to contribute to a reduction of the intensity of land disputes.

CASE 1

In the early 1980s, GoV representatives informed community representatives that they were interested in setting up a tower on the top of a nearby hill (formerly used for grazing horses) to support the development of the telephone system. Following a meeting with community elders, a verbal agreement was made that the tower could be constructed. However, the tenure of the site was disputed, so the rent money of Vt 3,000 per year was paid into the COTA. At some stage a further arrangement was negotiated whereby the community would be paid Vt 15,000 every three months for keeping the tower site cleared of vegetation, and an additional Vt 15,000 every three months for keeping the access road cleared. This clearing money has been paid into a community account, and a

⁶⁵ The CLT notes with regard to this case are not very detailed, but do indicate that a party to this dispute *also* acted as secretary during the CLT hearing.

committee exists, which includes women, that makes decisions about what this money is spent on (mostly ceremonies and funeral expenses). The two signatories to the account in 2010 were Mr. M and Mr. G.

The original contractual agreement continued until 2005, when Mr. M's grandfather and another elder approached TVL and negotiated an increase to Vt 20,000 every three months for each of the clearing jobs. At the same time, TVL agreed to increase the rent from Vt 3,000 per year to Vt 20,000. The benefits increase extended by TVL in 2005 attracted new claimants to the site and precipitated conflict, with fighting breaking out between groups. Police intervention was required to stabilize the situation but this failed to resolve the dispute. One group of five claimants went together to TVL and told the company that they were the "original landowners"; when Mr. M's tribe found out about this, they decided to resolve the long-running dispute.

Mr. M's tribe invited representatives of the police, the provincial administration, TVL, and the DoL to witness a meeting of the contesting tribes aimed at establishing the true landholders of the site. Four "judges" were selected, each from outside tribes. One judge acted as secretary, the second asked questions, and the two remaining judges listened to the answers to the queries and drafted further questions for the questioning judge. As confirmed by TVL, this forum was *not* a CLT hearing. The meeting went from morning to evening and then the judges ruled in favor of Mr. M's group. Although at least one of the losing parties remained hostile to the outcome of the hearing, the ruling opened the way for the group to finalize a lease with TVL, towards which objective the minutes from the hearing were taken to Port Vila and a lawyer was contracted.

A lease between TVL and Mr. M's group was finally registered in 2009, but when members of the opposing group (who retained visions of becoming the listed lessors despite the outcome of the hearing) heard about the lease they attacked a DoL official in Port Vila, resulting in the hospitalization of the official and the involvement of the police. It is unknown if anybody was charged or prosecuted in this incident; however, a custom ceremony was performed in Port Vila to reconcile the parties. Interestingly, it is reported that on Tanna, the level of tension began to recede following the registration of the lease, although some still remains. Mr. M has a copy of the lease in his house and refers to it as a "title" that supports his claim to the land. He also obtained a restraining order following the registration of the lease to prevent members of the opposing group from visiting the site.

After the lease was registered, Mr. M endeavored to recover the rent money that had been paid into the COTA since the mid-1980s. However, although there should have been at least Vt 160,000 held in the COTA for the lessors (plus any interest),⁶⁶ only Vt 45,000 was available, raising questions about the management of the COTA. While it appears the lessors were unable to recover the COTA funds, TVL did agree to increase the rent from Vt 20,000 to Vt 40,000 and also to increase payments for the clearing work from Vt 20,000 to Vt 30,000. TVL pays the rent directly into another account (additional to the cleaning account) in the names of Mr. M and Mr. G. The money is mainly kept in the account to grow, and the lessors are considering using the money to establish a small business sometime in the future.

This case first demonstrates how land with benefit flows attached attracts attention from those who would otherwise have been unlikely to stake claims. Educational programs aimed at promoting understanding of the broader benefits that development can bring to the community (for example telecommunications and other services, employment and training opportunities) could help to reduce the jealousy that sometimes arises once one group of landholders starts to benefit from a development initiative on their land.

⁶⁶ The sum of Vt 160,000 is based on the sum of Vt 3,000 per year for the period 1985–2004 (totalling Vt 60,000) and Vt 20,000 per year from 2005 to 2009 (Vt 100,000).

This case also provides an interesting example of a claimant group initiating a hearing, witnessed by a range of relevant authorities and presided over by senior members of the local community, for the purpose of determining the legitimate landholders of a land parcel. In this case, this local initiative enabled the legitimate landholders to become listed lessors and access funds held in the COTA. According to the lessors, however, much of the funds were missing, raising questions about the administration of the COTA.

Finally, this case study suggests that in some cases, the registration of a lease (referred to by lessors in this case as a “title”) may lead to reduced controversy over land, since the lease substantiates a claim and leaves less room for contestation than might otherwise exist. The utility of a lease in reducing controversy was also reported in relation to lease TC3 (see table 4.14 above).

The second case is an example of the overlapping claims to land that have resulted from population movement over time, which can complicate the process of granting exclusive landholder rights to particular groups.

CASE 2

According to listed lessor Mr. J, this lease lies within the combined estate of the Lowinio tribes (comprising a narrow corridor of land extending inland towards the mountains from the Lenakel area) and is governed by eight *nakamals*. In 2007, Digicel identified a hilltop within this area (a site near the Lenakel Hospital used for grazing goats) as a suitable site for a telephone tower and wanted to negotiate with the landholders of the area. At this time, Mr. J was acting as a spokesperson for all eight Lowinio *nakamals*, and he says that as an educated Lowinio man, he played the role of negotiator between the chiefs and Digicel. According to Mr. J, the discussions that took place concerning this lease proposal involved the eight chiefs representing the people of the three tribes of Lowinio: the Namal Nataling, the Lowinio, and the Namruer (Mr. J’s tribe and the tribe he reported had custodianship over the coastal area). No women were consulted but because of general concerns about communications on Tanna, it was assumed they supported the development.

Mr. J says that because he is from a family with long traditional links to the proposed site, it was decided that he would be the official lessor, and a letter to this effect was prepared and signed by the chiefs.⁶⁷ Knowing that Digicel was keen to secure this particular site, Mr. J negotiated the high annual rent of Vt 150,000 for the lease (rather than Vt 40,000 paid for other Digicel leases). He believes that the assertive behavior he developed during his policing career helped achieve this outcome. According to Mr. J, there have been no disputes over the lease (see below) and his role in the process has been supported by all *nakamals* and the Lowinio Tribal Council. Mr. J says he understands the terms of the lease and this is indicated by his knowledge of the rent review provisions. He says he has a copy of the lease in Port Vila.

According to Mr. J, the rent for the site is spent in a way that is fair for everyone. During Christmas 2009, for example, bags of rice were brought for all *nakamals*. Money is also distributed according to need, including for such purposes as paying school fees, marriages, and custom ceremonies.

Although Mr. J claims that there have been no outright disputes concerning the lease, he is aware of a level of dissatisfaction among a group of counter claimants to the area. This, says Mr. J, involves members of group I, who had gatekeeping rights over the land in question for some “centuries” during which time Mr. J’s group (group K) were displaced to the east by warfare. After leaving group I to manage the land for this extended period, Mr. J says that his own group returned to the land some decades ago to find that group I had leased out part of the land for the Lenakel Hospital. Mr. J says that his group did not dispute this because group I are also members of group K through connections to female members of group K. Interestingly (given the importance of marriage links between

⁶⁷ Note that no NC or COIF is on file.

different groups on Tanna), group I deny a connection to group K through marriage.

According to counter claimants interviewed, group I is upset that Mr. J is listed as lessor. On the basis of a 1912 agreement with the Presbyterian church said to be related to the area covered by colonial title 181 and which bears signatures of group I representatives, group I claims rights over the hospital tower site. Group I also refers to the fact that its members are listed as lessors of Lenakel Hospital as evidence of their tenure rights in the area, although group K would argue that group I took advantage of their “gatekeeper” rights to process this lease, registered prior to the return of group K from their eastern sanctuary. Group I, meanwhile, argues that Mr. J used his position as secretary of Lowinio lands to have himself listed as lessor on the site, an act that was without basis, as Mr. J is from an inland area (contrary to Mr. J’s own claims). Although group I members are dissatisfied with the present arrangement, they have not taken the matter to any forum. Instead they are hoping that the outcome of the court case over the municipal area will support their claim over the area.

This case demonstrates the difficulties associated with multiple claims based on longstanding links to an area, potentially over different periods of time. The mobility of groups from an area of “origin” to another area and then back again, possibly centuries later, and the use rights granted to or assumed by others during the interval, mean that attributing tenure rights to any one group is not always a realistic option (especially in the absence of enforcement capacity). The situation is further complicated by the absence of definitive records and by links between the groups (suggested in this case study). The case study highlights the need to encourage negotiated rather than winner-take-all outcomes in certain situations.

4.6 Agribusiness Leases

Table 4.16 Agribusiness Leases

Lease No.	Custom Owner Identification Form (COIF) on file	Negotiators Certificate (NC) on file	Area (Ha)	Term (years)	Date Lease Registered	Annual Rent (Vatu)	Rent Review or Increase Y/N	Premium Payment (Vatu)	Dispute
Lease AB1 Agricultural (coffee) trials lease. Expired.	N	N	10	6	1991	2,000 (but now surrendered)	N/A	0.00	N
Lease AB2 Main estate coffee lease. The lease is noncontiguous, comprising a number of different areas.	N	N	461.16	75	1984	46,116 (plus shares in company)	Y (now approx. 97,489)	0.00	Y
Lease AB3 Tanna Coffee Factory Site. This is a preliminary processing site located close to Lenakel.	N	N	4.85	71	1989	20,000	Y (increased to 40,000 10 years ago)	0.00	N ⁶⁸
Lease AB4 Originally SFNH lease, which became Ballande Vanuatu (BVL) lease. Featured copra docks. Surrendered.	N	N	0.97	8	1983 (but original lease dated 1959)	116,400 (but now surrendered)	N/A	0.00	Y

⁶⁸ There is no serious dispute concerning this lease, but by entering into the lease, the lessors were primarily motivated by the desire to contribute to local economic development. Since the level of activity of the site has been lower than anticipated, the lessors are keen to see the area of the lease reduced in proportion to the moderate level of activities that take place on the lease.

Overview of agribusiness leases

As outlined in table 4.16, four agribusiness leases on Tanna have been investigated. Three of the leases relate to the Tanna Coffee Development Company (TCDC) Limited project. This project was established by the British Commonwealth Development Corporation (CDC) in the early 1980s before being transferred to the GoV in 1994 and then to private ownership in 1996. Only two of the three TCDC leases (AB2 and AB3) remain current. Lease AB2 is the main TCDC estate lease covering an area of 461.16 hectares spread throughout the Middle Bush area. Lease AB3, meanwhile, covers a 4.85-hectare site at Lowkatai close to Lenakel wharf used for preliminary processing activities.⁶⁹ The Lowkatai site has the advantages of being close to Lenakel wharf and connected to town power. The third TCDC lease was one of only six-years duration located in northwest Tanna, registered for the purpose of conducting agricultural trials. Although this third lease (AB1) was terminated upon the expiry of the original six-year term, coffee is still grown on the site and TCDC reportedly provided support to the smallholders using the area (as outlined in the discussion on smallholder agriculture below).

The fourth lease was originally leased to the Société Française des Nouvelles Hébrides (SFNH) agribusiness company and featured two copra docks presumably used for the storage of copra purchased from local smallholders (in addition to a store, house, and fuel depot) prior to forward shipping. SFNH became Ballande Vanuatu Limited (BVL) and in 1983, following independence, lease AB4 was registered over the site. At the expiration of this lease, the land was returned to the landholder. In all of these leases, custom landholders or custom landholder groups are listed as lessors. The BVL lease is notable for the amount of rent paid in relation to it, reportedly Vt 15,000 per month (Vt 180,000 per year) for less than one hectare. This is a remarkable level of rent for the early independence period, notwithstanding the lease's location close to the old airstrip near Lenakel.⁷⁰

The Tanna Coffee Development Company (TCDC) leases

Concerning the TCDC leases, the rent paid for the 461.16-hectare agricultural lease (AB2) that commenced in 1984 was Vt 100 per hectare (Vt 46,116 per year). This was later raised to a total of Vt 97,489 per year, based on Vt 200 per hectare for unimproved land and Vt 350 per hectare for improved land.⁷¹ However, as discussed below, the significance of the rent level is questionable since local smallholders are now permitted to use the land anyway. The far greater value to landholders stemming from the existence of the somewhat under-managed estate appears to derive from the money made by smallholders harvesting the coffee and selling it to TCDC. For the six-year trial agricultural lease (AB1) registered in 1991, the rent was set at the greater rate of Vt 200 from the beginning. Again, in this case, the long-term benefit of the arrangement to the landholders appears to have been the establishment of the coffee crop on the lease, since this has contributed to cash income. Reportedly, some hectares of the original lease area are still used for coffee cultivation.

⁶⁹ Activities including wet pulping and drying are conducted at this site. Roasting and packaging are undertaken at Mele on Efate.

⁷⁰ Reportedly the lessor used the money to build a house and pay for the schooling of his two sons (a police officer and an agricultural officer). Some was also shared with the lessor's family.

⁷¹ In the contract documentation there is also reference to the payment to lessors of shares to the value of Vt 663,900.

With regard to the TCDC factory lease registered in 1989, the rent was originally set at Vt 20,000 per year and was increased to Vt 40,000 around 2000. The lessors are not upset with this amount of rent, but they would prefer that the site be more intensively used. They say they agreed to the original lease in the expectation that the factory would employ day and night shifts of 50 workers each, whereas the current labor demand is for three workers, two days per week. The reasons why the Tanna coffee industry has not yet grown to the levels anticipated in the 1980s are discussed later in this section.

No COIF or NC is on file for any of the agribusiness leases. However, extensive lists of landholders are detailed within the actual lease documentation for the large Tanna coffee lease (AB2). The fact that all four agribusiness leases date back to the 1980s and early 1990s is likely to be a factor in the lack of documentation.

Thematic highlights

In present day Tanna, the only active agribusiness leases (at least partially) are those associated with TCDC, hence this section discusses aspects of these leases in the context of the development of the Tanna coffee industry from the 1980s onwards.⁷² This discussion is informed by interviews with lessors, a representative of TCDC, and other sources. Since the discussion includes detailed reference to the development of the main leased area, no separate boxed examples are featured. Instead, the accounts of those interviews are integrated into the discussion.

The Commonwealth Development Corporation (CDC) initiative

In the early 1980s following independence in Vanuatu, the British government through the CDC initiated a 461.16-hectare coffee development project at Middle Bush on Tanna. The project came to be called the Tanna Coffee Development Company (TCDC). One of the surviving lessors, Mr. P, recalls the first CDC Manager (Mr. G) meeting with community representatives to discuss the proposal. Meetings were reportedly organized with representatives of a wide range of *nakamals* and all tribes with interests over the area.⁷³ Mr. B, whose father Mr. S was reportedly heavily involved in negotiations over the development with CDC and the GoV, recalls that although some of the land eventually selected for the plantation was originally used for gardening and cattle raising, most of it was bush used for hunting and the area was only sparsely populated at the time. Mr. B reports that after soil testing by agricultural officers to guide site selection, a first small demonstration plot was established in the 1982–83 period and looked after by Mr. B and his family with the assistance of the agriculture department. Mr. B recalls the establishment of further demonstration plots throughout the Middle Bush area.⁷⁴ According to TCDC information,⁷⁵ the objective of the original TCDC project was to establish a 250-hectare nucleus estate plantation and an additional 750-hectare smallholder plantation, both aimed at producing 1,000 tons of dry green (coffee) bean per year.

⁷² For information on the early history of coffee on Tanna, refer to the subsection on “Agricultural Economy” in the Economics and Demographics section of this report.

⁷³ These comprised the Imanwakas, Kapitlamanatik, Napakas, Iamanuhasul, and Naokaoat Iamanuhailis tribes.

⁷⁴ Further demonstration plots are reported to have been established at Lamenatu (near Fetukai), Lakehap, and Loutamakim. Each of these was about one-half or one-quarter hectare in area and, according to the family of Mr. P, was planted with 1,000 plants per hectare.

⁷⁵ In this profile, “TCDC information” refers to a written history of the Tanna coffee industry provided to the authors by TCDC.

The plantation managers correctly predicted that the coffee plants would begin producing fruit three years after planting, and while the first trial plots matured, negotiations on the lease were undertaken between community representatives, CDC, and the GoV. The lease, which includes extensive information about landholders in the area, was eventually signed in 1984. Mr. P reports that the project was broadly supported, and that as the clearing and planting work proceeded (followed in due course by harvesting), the project provided plentiful work for people from all over Tanna. Following the 1984 signing, preparations were made for large-scale planting and contractors were recruited from the local community to clear the bush.⁷⁶

Rise and fall

Once in full swing, the project employed teams for construction, chain sawing, nursery production, spraying, and logistics, as well as a large office team and a team of managers for the different sites. In 1985, vehicles and equipment arrived and a large fuel depot was established. Harvesting began in 1985 from the original demonstration plots, and then in 1986 and 1987 on a large scale. This is when the decision was made to establish a processing plant at Lowkatai close to the Lenakel wharf. Mr. B recalls that once the equipment began arriving and the level of activity increased, tensions developed within the community and people started fighting for positions.⁷⁷ This was despite the fact that people from all over Tanna had a chance to work.⁷⁸ In early 1987, Cyclone Uma became the first of a series of events to wreak havoc on the project, with much of the plantation reportedly wiped out as a result. According to TCDC information, the coffee plantation was also hit by a leaf rust disease in the period following Cyclone Uma and while efforts to rehabilitate the crop continued into the 1990s, they were complicated by a period of severe fallout from the Yasur volcano as well as by the continued susceptibility of the crop to leaf rust disease.⁷⁹

Privatization of TCDC

Following Cyclone Uma, the period of volcanic fallout, and the resurgence of leaf rust disease, the project gradually wound down. However, TCDC information indicates that a more suitable variety of coffee (*Catimor*) resistant to rust disease was identified with French assistance and introduced into Tanna before CDC finally disengaged in the mid-1990s. According to Mr. A from TCDC, a key factor in the disengagement of CDC was the pro-privatization push during the term of British Prime Minister Margaret Thatcher, in accordance with which CDC attempted to sell TCDC. In the absence of a buyer, the project was transferred to the GoV in 1994 but failed to thrive, with production dropping to low levels. Eventually, in 1996, the project (including the agricultural lease) was transferred to the private sector, but Mr. B reports that the privatized TCDC enterprise was short of capital and

⁷⁶ During this time, Mr. B worked as an assistant to the CDC manager, and his work involved explaining the development to members of the community. Mr. B's father, meanwhile, supervised a clearing gang and also flew between Tanna and Port Vila several times every month to represent landowners on the project board of directors.

⁷⁷ At this time, Mr. B resigned from his position as a team leader (marking planting positions at 1,000 per hectare) and joined the police force. During his work as a planting coordinator, Mr. B reports that he worked on land all over the new estate, not just on his own land.

⁷⁸ It is reported that at this time, the White Sands area on the east of Tanna was experiencing volcanic fallout, and a number of White Sands people moved to Middle Bush to settle and work on the coffee estate.

⁷⁹ The variety of *arabica* that had been planted was known to be vulnerable to leaf rust disease and TCDC information indicates that earlier incidents of crop devastation by leaf rust disease were on record. There are also various local theories about the demise of the crop at this time, including black magic initiated by jealous tribes hostile to the development.

that instead of rehabilitating the estate, the focus shifted to working with smallholders.⁸⁰ This shift appears to mark an important turning point in the history of the enterprise and the relevance of the estate lease to coffee production on Tanna.

Current TCDC ownership and business approach

DoL records indicate that in 1997,⁸¹ TCDC secured a Vt 8.6 million mortgage against the estate lease and the lease for the Lowkatai processing site near Lenakel. Capital still appears to have been tight, however, such that the current expatriate owner, Mr. A, reports that he worked for several years for the original private sector owner for equity instead of money.⁸² Eventually, after a dispute between himself and these original owners, Mr. A won a court case against them and was awarded the business (and its debts). Mr. A reports that he had no capital available following his acquisition of TCDC but struggled to transform it into a viable business. Changes to the management of TCDC at this time included transferring the roasting and packaging facilities from Tanna to Port Vila, a change that remains unpopular with the lessors of the Lowkatai site since it reduced local labor demand.

Since the change of ownership, green bean production on Tanna is reported by Mr. A to have increased to around 40 tons per year (2010 estimate), with 12 tons of roasted coffee sales in Port Vila. The project, however, has remained smallholder oriented, with TCDC working with, and purchasing coffee from, all smallholders regardless of whether they are estate landholders or not. Despite this smallholder orientation, various attempts to rehabilitate the estate area have still been made, and the latest agreement with estate landowners was signed in 2010. According to Mr. B, however, only about 14 hectares of the actual estate area have been rehabilitated to date. One result of the smallholder focus, according to Mr. B, is that landholders again control who can access the estate (lease) area to harvest coffee or for other purposes, including cropping and farming. Accordingly, the project has moved away from the original nucleus estate model and the production of coffee has become disaggregated from the estate lease. This development in itself does not appear to concern TCDC. In fact, Mr. A has communicated that in his view, the main advantage of the lease is to secure the land for the chiefs in accordance with their wishes so that younger members of landholder groups do not “sell” it again in such a way that it passes out of the control of the community.⁸³

From a business perspective, as long as TCDC was the only coffee buyer on Tanna, this particular arrangement presented no problem for the company. TCDC could contribute to extension activities on or off the estate lease area or allow smallholders access to the estate lease and still be confident that TCDC could purchase all coffee cherries produced on the island. This business model faces challenges, however, now that new buyers have arrived on the scene (see below).

⁸⁰ Mr. B also reports that by the second half of the 1990s, the coffee bushes were growing wild.

⁸¹ DoL records indicate that this mortgage was paid off in 2001.

⁸² Mr. A reports that his role was to improve the sustainability, quality, and productivity of the project. According to Mr. A, he succeeded in raising production from 3.5 to 23 tons of green beans per year within 18 months.

⁸³ According to Mr. A (pers. comm.), “I have been told in no uncertain terms by...[the chiefs]...that I must hold onto the lease as tight as I can and never sell it, as I am fairly certain that the Chiefs’ greatest fear comes from their younger, more educated children who would not care too much about the overall agricultural value or their land in terms of the long-term future, but would be far more interested in not having to work too hard and to sell off both their heritage and their inheritance for a much shorter-term gain...Therefore, I am almost like a trustee of their land and while I’ve got hold of the lease, the chiefs must feel fairly secure.”

Rent dispute

Mr. B reports that in the late 1990s, a series of disputes broke out over the lease. The first concerned the rent, causing TCDC to hold payments while landholder representatives decided on one representative and one bank account. The landholders responded in 2004 by establishing the Inik Cooperative. Overseen by a board of seven senior TCDC estate landholders, the Inik Cooperative appointed several executive officers, including Mr. R (secretary/treasurer/president) and Mr. S (chair).⁸⁴ It is alleged by both Mr. B (landholder) and Mr. A (from TCDC) that after being appointed to the Inik Cooperative executive, Mr. R initiated a number of provocative actions on behalf of the Cooperative, including writing a letter to the GoV requesting Vt 900 million in compensation for environmental issues associated with the estate. According to Mr. B, the senior landholder representatives (including Mr. B's father) had a high level of confidence at this time in Mr. R, who holds a university degree. In Mr. B's view, it was unrealistic to expect the GoV to pay this money; however, the compensation demand may have convinced the GoV of the importance of supporting the rehabilitation of the plantation area.

Lease dispute

In 2002, an agricultural development program jointly supported by the GoV, the European Union, and the Government of France was initiated in Tanna, with 350,000 coffee trees provided to farmers. In the following years, production increased to 40 tons of green bean with projections of 100 tons within a further 3–5 years. Mr. A reports that during the period of this project, he donated his coffee factory and almost two-thirds of his time to support the project and that the one group that did not take up this particular rehabilitation opportunity was the landholders of the estate area. However, on October 8, 2008, a series of memorandums of understanding were issued, aimed at initiating further coffee rehabilitation activities that would involve these estate landholder groups.⁸⁵ Specifically, agreements were signed between the GoV and the estate landholders, between the estate landowners and TCDC, and between TCDC and a new organization called Tanna Coffee Plantations (TCP), operated by Mr. M, a new expatriate business associate of Mr. A.

Despite the number of agreements, the redevelopment plans have reportedly hit obstacles. According to Mr. B, the representatives of the Inik Cooperative did not advance the rehabilitation program in good faith.⁸⁶ The estate redevelopment plan also appears to have been affected by a breakdown in relations between TCDC (Mr. A) and TCP (Mr. M). According to TCDC information, after rehabilitating an area of 20 hectares over a period of 12 months, “the new development partner who had been brought in failed to honor the signed agreements and stopped any further development.”⁸⁷

⁸⁴ Following the establishment of this cooperative, the four-years back rent owing to the landholders was reportedly paid to Inik Cooperative and, according to Mr. B, put into savings. It now appears, however, that money from the Inik Cooperative account has been used to support a microcredit program.

⁸⁵ In the signing of these agreements, the GoV committed to supporting coffee rehabilitation, the landowners (represented by Mr. R) agreed to work with TCP to rehabilitate the estate and increase production, TCP committed to overseeing the rehabilitation and development of the estate and to selling the produce to TCDC, and TCDC undertook to process and market the produce.

⁸⁶ Mr. B alleges that Inik Cooperative representatives Mr. R and Mr. S shot livestock grazing in the area targeted for rehabilitation instead of taking measures to move the livestock elsewhere.

⁸⁷ According to Mr. A, the original arrangement with TCP was that it would produce 150 hectares in total and 150 tons per year (presumably either parchment or green beans) and that after achieving these objectives, Mr. P would receive the lease as reward. Reportedly, TCP tried to negotiate a reduction of the deal to 100 hectares and 100 tons, respectively, out of frustration with the time needed to realize the original objective. This was

Mr. B claims he was informed by the Minister of Lands in September 2009 that Mr. R (on behalf of the Inik Cooperative but not necessarily with the knowledge of the board) had written to TCDC (copying the Minister of Lands) demanding that the TCDC lease be transferred to TCP. The basis of this demand is reported to be that Inik Cooperative considered Mr. M a “true” investor but not Mr. A.⁸⁸ According to Mr. B, a senior estate landholder was flown to Port Vila to discuss this letter (at the suggestion of the Minister of Lands) and denied that it had been written in accordance with the instructions of the seven Inik Cooperative board members. It was at this stage that an alliance was suspected between Inik Cooperative representative Mr. R and Mr. M from TCP.

According to Mr. B, the seven Inik Cooperative board members support the principle of keeping the estate lease with TCDC. However, their “representative,” Mr. R, allegedly in league with Mr. M from TCP, is reported to hold an opposing position and has been asked by Mr. B to resign. Even though he is not a landowner of the area, Mr. R is reportedly quite powerful, partly because of his link with TCP and partly because of his own resources.⁸⁹ According to Mr. B, Mr. R has threatened to sue the seven Inik Cooperative board members if they dismiss him and they are intimidated by this threat. Mr. R also reportedly demanded Vt 49 million in compensation from Mr. B for “disruption” to the development of the lease caused through writing letters opposing the transfer to TCP.

Mr. R and Mr. M from TCP (neither of whom are landholders) appear to be of the view that estate landholders represented by the Inik Cooperative are concerned that the lease was transferred from CDC to the GoV and then to private ownership without the consent of the landholders. This is why the lease should be transferred either to TCP, the Inik Cooperative, or some combination of these two organizations. This information is highly at odds with the information provided by Mr. A (referred to above) that senior landholders have pleaded with him to hold on to the lease at all costs to prevent younger generations from leasing the land to other parties who might diminish community members’ access to the land.

Commercial tensions

Now that coffee productivity levels have risen on Tanna, TCDC is facing a new problem, namely the emergence of out-buyers competing for the purchase of produce. These include TCP, allegedly in partnership with Inik Cooperative,⁹⁰ which in 2010 began purchasing parchment (or partially processed coffee beans) on Tanna and shipping it to Port Vila in

followed by demands from Inik for compensation and for transfer of the lease, and Mr. A eventually concluded that Mr. M was linked to the lease transfer demands via an association with Mr. R. Also in 2008, Mr. B reports that he too had a difference of opinion with TCDC and sought advice from the Valuer General and a lawyer on how to have the lease cancelled. Mr. B says that he contracted a lawyer to write to TCDC demanding that it surrender the lease or alternatively provide him (Mr. B) with Vt 15 million as compensation for nonfulfillment of lease conditions. Mr. B claims that had he received this compensation, he would have invested it in the cooperative; however, he never expected to receive it and merely wanted to let Mr. A know that the community wanted more resources invested in estate development.

⁸⁸ Note that according to Mr. B, it was he who delivered the letter to the minister, as the letter had been sent to his post box by Mr. R so that Mr. B could deliver it to the minister.

⁸⁹ Said to include a truck, a business, and a share in a successful resort.

⁹⁰ This, at least, is reported in a feature article referring to a “ground swell of trust...between the Management of TCP/INIK and the small farmers with the joint venture.” However, information presented in the main text provides reason to question whether the partnership is between TCP and Inik Cooperative or between TCP and Mr. R (claiming the involvement of Inik Cooperative). See *Vanuatu Daily Post* (2010, 4).

preparation for export or possibly local trading.⁹¹ It is likely that not all of the produce bought by this alleged TCP/Inik Cooperative partnership is sourced from the estate area, but it is certainly an interesting situation if a cooperative originally set up to share the benefits paid from a lease participates in the trading of produce sourced partly from the lease area in partnership with a business that is operating in *competition* to the lessee. The details of this commercial battle, according to Mr. A, are that TCP is offering to purchase parchment at Vt 200 at the farmer's gate, compared with the Vt 230 offered by TCDC for those who take their parchment to the Lowkatai factory for sale.⁹²

According to Mr. A, TCP has advised TCDC that it will sell TCDC parchment for Vt 450 per kilogram, but TCDC has declined this offer because it has stocks of parchment to process from previous harvests. In future years, however, the company may face difficulties from this new competition and may need to develop a new business model. Since TCDC neither controls activities on its lease nor has exclusive access to produce sourced from it, it is difficult to see what would motivate TCDC to continue to support smallholders with rehabilitation work or other extension activities. Although Mr. A claims to have support for TCDC as the sole legitimate buyer of coffee on Tanna from a broad range of senior national and provincial GoV members and administration officials, it remains to be seen if this status can be enforced. Therefore, apart from senior landholders' wishes that TCDC retain the lease as a form of protection for the land, the relevance of the lease to the success or otherwise of the Tanna coffee business is open to question as long as the area under lease is not being improved and harvested under the control of the lessee.⁹³

Rent and other benefits

According to Mr. B, the current rent for the 461.16-hectare lease is Vt 96,000 per year, and this is reportedly paid into the Inik Cooperative account, where it is available to be borrowed by members of the broader community. The rent level is apparently based on Vt 350 per developed hectare (as per a TCDC development program) and Vt 200 per undeveloped hectare.

It would appear, however, that the development of coffee as a cash crop has been the main benefit for lessors and others living in the vicinity of the estate area. Members of one lessor group, for example, report that they harvest the crop three times every year and either process the fruit to the parchment stage (involving pulping and drying) themselves or take it to the TCDC factory located at Lowkatai for processing. The annual coffee earnings from a motivated family were estimated at Vt 1 million or more. Those interviewed appear encouraged to increase their coffee earnings further and state that they are in the process of independently increasing the area under cultivation.

⁹¹ According to Mr. A, a cooperative based in New Caledonia is also trying to purchase parchment produced on Tanna.

⁹² Mr. A estimated that TCP had purchased 15 tons of parchment by early September 2010 and was aspiring (see *Vanuatu Daily Post* 2010, 4) to purchase around twice this again in total in 2010. Note that the price offered by TCDC for cherries (not yet wet-pulped and dried to create parchment) brought to the TCDC factory is Vt 100 per kilogram.

⁹³ This said, given the proven suitability of the estate area for coffee production based on the CDC soil tests said to have been conducted in the 1980s, it is probably better from the perspective of TCDC that it keep the lease rather than surrender it and open the possibility that a competitor might secure a lease over the same land.

Summary of the TCDC agribusiness project

While the history of TCDC has not been smooth, the enterprise appears to have generated beneficial by-products for community members in the Middle Bush area and elsewhere, including extension programs, seedling provision, access to markets, and cash income. Although the estate lease area was originally central to the project (in accordance with the nuclear estate model), the relevance of the lease to TCDC in the present day is less certain given that (i) the community appears to have free access to the lease area, (ii) TCDC claims to assist and buy from smallholders both on and off the lease area, and (iii) TCDC appears unable to prevent produce from the lease area being sold to other buyers. The TCDC perspective, which has not been confirmed with landholder representatives, is that the main advantage of keeping the lease is to maintain good faith with senior landholders concerned that were they given the opportunity, members of the next generation might lease the land again to maximize short-term gains but place cultural heritage aspects at risk. By this interpretation, the current arrangement would bear some resemblance to the cases discussed in the section addressing leases for securing custom land.

As discussed above, there is also opposition to the continuation of the TCDC lease, though this reportedly originates not with members of the lessor group but with executive officers of the Inik Cooperative formed to represent the lessors of the TCDC estate area. While the research has not been sufficiently detailed to document all aspects of the dynamics associated with this group, it is clear that the Inik Cooperative is not operating to the satisfaction of all senior landholders. The case raises specific questions about the extent to which the senior TCDC estate landholders are being accurately represented by their executive officers and more general questions about whether cooperatives are vulnerable to “hijacking” by educated executive officers with their own agendas. Compared with other leases examined in this report, the TCDC case is distinguished by a number of ambitious compensation demands made at various times, either in an attempt to influence the actions of individuals or perhaps just in the hope of profiting from payouts. Finally, the emergence of new coffee buyers in Tanna threatens the viability of the smallholder agricultural model that TCDC has been implementing since the late 1990s. It remains to be seen whether this development will inspire TCDC to increase its attention on the leased areas or devise another business approach.

Lease disputes

Table 4.17 Agribusiness Dispute Table

Lease	Level of Dispute	Dispute Resolution Forums and Comments
AB2 Tanna Coffee Main Lease	Managed to date	<u>Comments:</u> Disputes have occurred in the areas of rent payment and who should hold the lease, and a number of unrealistic compensation demands have been made or threatened. There is reported to be a difficult relationship between the seven members of the landholder's cooperative board and the executive officers whom they have appointed to represent them. This representative is alleged to be attempting to disencumber the current lessee of the lease, in league with a business competitor of the lessee.
AB3 Tanna Coffee Factory Site	Low (minor grievance only)	<u>Comments:</u> There is no dispute concerning land tenure but the lessors are concerned about the low level of employment generated at this site, as employment for the local community was a reason why they agreed to the lease. They are concerned that roasting and packing is now undertaken on Efate and think that the area of this factory site should be reduced, since the lessee does not appear to need all of it. Then if necessary the lease can be expanded again later.
AB4 Ballande Surrendered	N/A	<u>Local Forums/Comments:</u> It is reported that another family claimed ownership of this land in the 1984–85 period. The case was heard by the local village court, which found in favor of the lessor.
AB1	N/A	<u>Comments:</u> Minor dispute concerning land tenure, but lease expired and original lessors

Tanna Coffee Expired		dead. Some believe that signing this lease led to death by cancer of the three lessors in the decades following registration.
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4.7 Church Leases

Table 4.18 Church Leases

Lease No.	Custom Owner Identification Form (COIF) on file	Negotiators Certificate (NC) on file	Area (Ha)	Term (years)	Date Lease Registered	Annual Rent (Vatu)	Rent Review or Increase Y/N	Premium Payment (Vatu)	Dispute
Lease CH1 Church in North Tanna. Originally opposed by some community members and at one stage burnt. Few people knew of lease.	N	N	0.94	75	2007	41,000	N/A	1,415,000	Y
Lease CH2 Church in East Tanna. Example of good practice.	Y	Y	0.62	75	2009	43,590	N/A	1,560,000	N ⁹⁴

Overview of church leases

This theme comprises two current leases, one in east Tanna (CH2) and the other in north Tanna (CH1). Both leases are for churches belonging to the same denomination, which requires leases for its churches as a matter of policy. Both leases were established on land owned (or majority owned) by senior church members, who in each case became the lessors (the central church administration, based in Port Vila, in each case the lessee). In the case of CH2, the lease was created to enable the relocation of a church established by the same denomination from a previous site where church members had encountered hostility from followers of other denominations (see the dispute section). Lease CH1, meanwhile, was established to meet the needs of members of the congregation who would otherwise have had to travel to the White Sands area to attend church services.

These two leases are similar to one another with regard to the period during which they were registered (between 2007 and 2009), site area, premium and rent provisions, and lease term (in each case 75 years). They differ in that the east Tanna lease (CH2) appears to be an example of good lease creation practice in terms of attention to administrative and consultation requirements, while the north Tanna site (lease CH1) has been associated with conflict, poor attention to administrative detail, and weak consultation practices, with few community members even knowing that a lease existed over the site. Mirroring these major

⁹⁴ No dispute is known to have occurred in relation to the present site of this church; however, this site was chosen due to hostility from another congregation when the church attempted to establish itself on another site.

differences in lease creation practice is the fact that NC and COIF documentation is on file for the east Tanna CH2 lease, yet is missing for the north Tanna CH1 lease.

Thematic highlights

The importance of consultation and adherence to process

The north Tanna lease highlights the disadvantages of insufficient consultation in relation to the lease creation process (a subject also addressed in the dispute section below). No NC or COIF documentation is on file for this lease and no respondents had any recollection of this documentation being completed. There is little awareness that this lease was ever registered outside the family of the (now deceased) listed lessor and senior church administrators, and it is difficult to understand how this could be the case had the NC and COIF process been completed.⁹⁵ This case underscores the need for appropriate record keeping at the DoL and for leases to be declined registration in the absence of appropriate documentation.

The lack of knowledge concerning the north Tanna church lease (CH1) and the absence of documentation suggest the possibility that it was registered secretly by the original lessor in the course of private negotiations undertaken in Port Vila. Although the listed lessor is acknowledged as the main landholder of the site, it is also clear that he was not the only landholder and that it would have been reasonable for two other individuals to have had their names on the lease—and to share in the considerable premium of Vt 1,415,000.

What appears to have happened is that the main landholder, who was also a senior member of the congregation and a *Iani* in the local political structure, finalized the lease in Port Vila and spent the premium money. Allegedly this was largely squandered on a high life in Port Vila prior to the return of the lessor to Tanna where he soon died from “wasting away.” The practice of one or several main landholders travelling to Port Vila to facilitate a land transaction and then spending much of the proceeds before returning is not uncommon (see, for example, the section on leases for securing custom land) and raises questions about the value of land transactions for the families of lessors (and also lessors themselves in the medium to long term) in many cases. On this basis, churches might consider taking steps to ensure that benefits from any leases flow to a broader set of beneficiaries in future. Given the moral authority that churches have within the community, they would be ideally placed to pioneer advances in this area.

A good case example

If the north Tanna case presents poor indicators in the areas of consultation, adherence to process, and benefit distribution, the opposite is the case for the east Tanna church lease (CH2). Here, NC and COIF documentation is on file and the lessor, who is also a senior member of the congregation, says that he met with all those whose land bordered the area of the proposed lease and secured their agreement for the construction of a church on the site. The lessor also reports that he did not ask the church administration (in Port Vila) for a lease over the area but that this was required because of church policy.

The lessor used the premium money to purchase a vehicle used to service the transport needs of his community on a semi-commercial basis and as an emergency vehicle for the hospital. The lessor had owned the vehicle for two years at the time of the interview and it had seen

⁹⁵ In particular, the COIF process should generate awareness of a lease creation process by involving senior community members in identifying landholders.

regular use. However, the lessor reports that competition from other vehicles is tough and that the small profit made from the transport business is not enough to allow him to save for the replacement cost of the vehicle. The rent money from the east Tanna church lease is paid into a savings account belonging to the lessor and his six brothers. No money has yet been withdrawn and to do so would require a family decision. Interestingly, the signatories to this account are two senior women. The lessor indicated that these women have proven their ability to look after their families and therefore it is clear that they can look after the bank account.

Lease disputes

As outlined in table 4.19, several dispute-related themes arise in relation to the church leases. The most important of these is the ability of *nakamal* forums to appropriately facilitate community discussions concerning land use decision making. Another dispute-related issue involves competition and hostility between the congregations of different churches. Neither of these themes relates especially to leasing, but each provides relevant insight into decision making in the village environment.

Table 4.19 Church Leases Dispute Table

Lease	Level of Dispute	Dispute Resolution Forums and Comments
CH1 Church in North Tanna	High	<p><u>Local Forums:</u> Discussions were held at the <i>nakamal</i> concerning this development; however, community members were unwilling to discuss their opposition to the development at this forum. Reportedly this was due to their lower status (compared to the proponent of the development) within the traditional authority structure. Community members with claims to the land and opposition to the lease therefore responded by burning down church buildings. Later, after the case had been heard at court (see below), the case returned to the <i>nakamal</i> forum.</p> <p><u>Courts:</u> The case went to court following the burning of church buildings. This may have been the magistrate's court, but no one remembers. Either at the court hearing or at a further <i>nakamal</i> forum held immediately after, decisions were made concerning landownership and reconciliation.</p> <p><u>Comments:</u> The case highlights both the need for appropriate consultation in the community concerning leases (no NC or COIF on file in this case) and concerns about the ability of village forums to facilitate the airing of grievances by community members.</p>
CH2 Church in East Tanna	No significant dispute (pertaining to current lease) reported	<p><u>Comments:</u> No dispute has been reported pertaining to the current lease. However, it is notable that the reason why the church was moved to the current site is because of hostility encountered at an earlier location. This reportedly involved disruption by members of another church after members of their congregation left to join the church that is the focus of this analysis.</p>

The possible need for more inclusive village forums

As outlined in the profile below of the north Tanna church lease, a meeting to discuss the proposal to establish a church on a site near a population center was discussed at a *nakamal* meeting in the mid-1990s. Although any opposition to the proposal could technically have been raised at this meeting, a family opposed to the development failed to voice its claims and concerns and instead articulated its opposition by burning down the church buildings once they had been constructed on the site. Discussion with community members revealed a possible reason that opposition to the development was unable to be aired at the *nakamal* meeting. The proponent of the church development was a *Iani* in the local political structure, but the family of those opposed to the development was only of *tipunis* status, and reportedly did not feel able to present its concerns. The case suggests that initiatives should be taken to create more inclusive village decision-making forums in which the grievances of all

community members may be aired to forestall opposition that is articulated in destructive and potentially life threatening ways.

Interchurch rivalry

While the actual lease for the east Tanna church (CH2) has not been characterized by dispute, it is of note that the church infrastructure was moved to the present site partly as a result of hostility the church encountered, in portable buildings, at its original location at an east Tanna population center.⁹⁶ At that site, members of another church became hostile after some of their members left and joined the congregation of the church that is the subject of this analysis. Following the aggressive actions, a roundtable meeting was held at which senior members of the victimized church told community elders that they would move the church to another site. This decision was made in the *nakamal* and the church congregation was informed of it later. While no other information concerning interdenomination rivalry and tension was uncovered in the course of the lease research on Tanna, this development indicates that interdenominational church bodies could be working to ensure harmony between church followers at village level to reduce the possibility of conflict in this area.

Church lease example

Most notably, the example included in this section highlights the importance of meaningful consultation in connection with lease creation and development proposals. It also raises questions about the extent to which customary forums are capable of providing space for grievances and differences of opinion to be aired and resolved. Various issues related to the distribution of benefits are also raised by this case.

CASE 1

In the mid-1990s, missionaries came to discuss the establishment of a church in Green Hill to enable local members of this church denomination to attend services without having to travel to White Sands. Initially the missionaries discussed the development of the church with church members Chief J (now deceased) and Mr. I. Chief J was a senior member of the church and also reportedly a senior member (*Iani*) of the local political structure, as well as a main landowner (along with Mr. I and Mr. N, a member of Chief J's family) of a particular area that Chief J proposed as a suitable site for the church. At the time this land was used for gardening by community members and had also been used as the site of a small settlement and soccer field.

Chief J served as the main negotiator for the group in discussions with Port Vila-based representatives of the church. Sometime prior to 1998, Chief J organized a meeting with the community (including women) at the *nakamal* for the purpose of informing the community that a church would be built on the site. There was reportedly minimal discussion at the meeting about landownership. Some respondents say this is because it was already understood that Chief J was the main landholder, with Mr. N a landholder of secondary importance.⁹⁷ It also appears that Mr. I had widely respected rights to the land in question but it is unknown the extent to which his claims were discussed at the meeting.⁹⁸ No one raised any objections to the church proposal at the *nakamal* meeting, but it is now known that the proposal was opposed by the family K, who considered themselves landholders of the area. Members of this family became even more opposed to the proposal when they realized that the church would require a lease over the land in accordance with the policy of this particular denomination.

⁹⁶ A second reason the church was moved from its original site was that that site was an area of ancestral significance and it was believed that the spirits may not have been happy with its use for this purpose.

⁹⁷ Reportedly Chief J had already consulted with Mr. N and could speak on his behalf.

⁹⁸ Prominent community members, including Chief N, have supported Mr. I's claims to the land.

Following this meeting, two bush material buildings were constructed (a church and a missionary residence), and church members began discussing the idea of a future lease over the land. In 1999, members of family K set the church buildings alight and destroyed them.⁹⁹ Family K apparently made no attempt to discuss the matter with the church administration or with Chief J prior to taking this extreme action. This development, and also Mr. I's unwillingness to assert his claim on the land publicly, raises questions about the ability of community members to broach issues of concern at *nakamal* meetings. It is reported, for example, that whereas Chief J is a *Iani*, family K are (merely) *tipunis*, and that as *tipunis* they were unwilling to oppose the *Iani* in the context of the *nakamal* forum. Their only recourse, according to the interpretations of some local sources, was to burn the buildings to demonstrate their opposition to the establishment of the church and the registration of a future lease.

After the destruction of the church buildings, Chief J's supporters chased family K into the bush, where they remained for some time. The aggressive behavior of Chief J and his supporters caused the police to arrest Chief J, Mr. I, and six others and detain them for a day. Members of family K were also arrested and held in a separate cell. One week later the case went to court, although no one is sure which court. Family K members were apparently charged with damage to property, but the one-day hearing was dominated by debates about land. Either in the actual court hearing or in a follow-up meeting heard at the *nakamal*, it was decided that family K had to pay damages to the church community (reportedly never paid), and that Chief J was the main landholder of the site. The *nakamal* meeting facilitated reconciliation to *stretem face*, and each side made reconciliation payments (buffalo, pig, and kava).

Community members recall that in 2006, prior to the construction of a permanent building, the church site was eventually surveyed. However, few outside Chief J's family¹⁰⁰ appear to have been aware that a lease identifying Chief J as the sole lessor had actually been registered. No NC or COIF documentation is on file and no one interviewed recalls these documents being completed, so Chief J may have finalized the lease secretly. Chief J's brother, Mr. W, says that before receiving the premium, the brothers had made a decision to invest the money in a wholesale business in Lenakel, but this never happened. Different sources report that Chief J died in 2007, after "wasting away" following his return from a period in Port Vila during which he is reported to have spent a lot of money (now assumed to be the premium money) on dissolute activities and a bus business. All the respondents suspect that a brother of Chief J, currently resident in Port Vila, is now receiving the money from the rent.

The story of this lease highlights the need for transparent lease creation processes (including the preparation of NC and COIF documentation) and for meaningful and inclusive consultation to be conducted in connection with lease creation and development proposals. Notably, this case suggests that nakamal forums in their current form may sometimes fail to provide space for grievances to be aired and resolved, thereby contributing to the development of tensions in the community that can manifest in destructive ways. Accordingly, this case points to concerns about the decision-making process in villages and how they can be made more inclusive, and raises the question of whether churches, given their commitment to good community outcomes, should give greater consideration to ensuring that long-term benefits accrue from payments associated with church infrastructural development. Finally, the case provides an example of how family members based in Port Vila, temporarily or permanently, appear to obtain the better part of the benefits of leases.

⁹⁹ The belongings of the resident missionary, away at the time, were destroyed along with the building.

¹⁰⁰ The brothers of Chief J must have known because one (Mr. W) recalls a discussion of how to invest the premium money; however, it appears that few outside the family knew about the lease.

5. Non-Lease-Based Enterprises

The various concerns about leasing practices in Vanuatu suggest the need for a greater understanding of enterprises with regard to which leases play *no role* (or at least not yet) in facilitating access to land. In the course of the lease research in Tanna, therefore, some preliminary research was conducted in this area aimed at generating an understanding of the kinds of challenges that non-lease-based enterprises have to contend with and how to address them. Interviews were undertaken with representatives of three bungalow (commercial/tourism) establishments located on the coastal strip between White Grass Airport to the north and Lenakel to the south (see table 5.1 below). Two of the businesses have been in operation since 2004 (one initially as a restaurant) and the other since 2007.

Table 5.1 Notable Features of Non-Lease-Based Enterprises

Business	History & Description of Business	Land Arrangement	Access to Capital	Conflict Prevention/Management
NL1 Bungalows	The business comprises a restaurant and 6 bungalows built between 2004 (when the restaurant opened) and 2009. The (female) proprietor also operates a garden and farm that supplies the restaurant with everything except rice.	The land belongs to the husband of the proprietor. The land was surveyed in 2007 for the purpose of registering a lease to get a loan from the Agricultural Bank. There was consensus that the land belonged to the husband of the proprietor, but the older brother of the proprietor's husband said that if the lease process proceeded, it would result in a dispute.	The (female) proprietor worked for TAFEA Cooperative at the time the business was developed. TAFEA Cooperative lent some money, which was supplemented with savings. The first customer was an Agricultural Department official who stayed 5 months, thereby providing cash for expansion. More recently, the proprietor accessed credit for the purchase of a vehicle, using her bank balance as collateral.	To maintain harmony and avoid problems arising from jealousy over the success of the business, the proprietor must support her husband's family with gifts of soap and sugar. She also employs 2 members of her husband's family. The proprietor avoids siding with parties in community disputes in order to maintain her position in the community and the church. The proprietor gives 10% of earnings (before profit is calculated) to worthy causes including mothers, pastors, and churches (many denominations).
NL2 Bungalows	This business opened in 2007 and comprises 5 bungalows and a restaurant. It was started by a husband/wife team. The husband (who works at the airport, enabling him to attract guests ¹⁰¹) suggested the idea to his brothers (see land aspects), whom, it is planned, will also benefit from the business. Concerning advertising, brochures were introduced in 2009 and a website is planned for 2010.	The land belongs to the brothers of one of the proprietors (the husband) and has been accessed through verbal agreement. At first the land was marked with cornerstones and then a survey was completed in 2010 to prevent another family from claiming the land. They are not sure yet if the survey is going to lead to a lease.	Most of the capital for the business was provided from the earning of one of the proprietors (the husband) who works at the airport. The labor, meanwhile, was provided by the brothers of the other proprietor (the wife). Once profits increase, the proprietors plan to make occasional payments to the families of these brothers as recompense.	The arrangement is that the wife takes care of the business and the husband takes care of conflict prevention/management. In this respect there has been some "jealous talk" on several occasions, which the husband has successfully addressed in the <i>nakamal</i> . According to the female proprietor, helping other family members (on both sides) when they need anything is also an important conflict-prevention strategy.
NL3 Bungalows	This business is owned by 2 male first cousins ("cousin brothers") and comprises 6 completed bungalows and 1 under construction. There is also a restaurant and a conference room. The	The land is owned by one of the proprietors. There have been no disputes about the land but there have been rumors and jealousies associated with the business as outlined in the conflict	The business was established with savings, though a first loan was made in 2005 and a second at a later point. At least one of the loans was from the Vanuatu National Bank. As with the case of	As a conflict-prevention strategy, the proprietors outsource catering for conferences to their extended family and employ their relatives to ensure they have sufficient funds for school fees. This strategy has not

¹⁰¹ The first guests are reported to have stayed at the bungalows when a flight delay occurred at the airport.

	business started after one of the cousin brothers was approached by an expat who wanted to enter into a joint venture. A meeting was held, and when the chiefs opposed engaging with an expat, the 2 cousin brothers decided to start the business themselves. The business opened around 2004.	prevention/management column.	NL1, one of the proprietors previously worked for TAFEA Cooperative.	solved all problems, however, as a cousin of one of the proprietors living in Port Vila reportedly periodically destroys property out of jealousy during visits to Tanna. In the past this has included gardens, electrical equipment, and survey marks. The cycle is that this individual arrives from Tanna, destroys property, apologizes, and then returns to Port Vila.
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As a preliminary study (for which the sample was selected not randomly but on the basis of convenience), it would not be appropriate to draw too many conclusions about non-lease-based business from the examples profiled. However, the three cases do highlight some interesting aspects relating to land, access to capital, and conflict prevention/management. Concerning the land, it is of interest that in two of the three cases, the land on which the businesses are situated has been surveyed. In one of these cases (NL2), the land was surveyed in 2010 to substantiate the claim to the land and prevent it from being claimed by another family. The proprietors of the business may endeavor to advance this process further and register a lease over the land. In the second case (NL1), the survey process was intended to lead to registration of a lease over the land to facilitate a mortgage, but the elder brother of the proprietor's husband opposed this idea on the grounds that the registration of a lease would lead to a dispute. In this case, the proprietor appears to have accessed credit even without the lease (discussed below). In the final case, it appears that no survey has been conducted and that there is no intention of registering a lease over the land.

It is notable that women were central to developing and managing two of the three cases studied, in one case as the main proprietor. In this instance, the business was located on the land of the proprietor's husband's family and there was opposition from the husband's brother to the registration of a lease over the site. This raises concerns about the security of businesses developed by women in the event, for example, of a family dispute or marriage breakdown. In such situations, women's interests may be better secured by a lease in which the female proprietor is named as the lessee.

Two of the businesses included in this preliminary study of non-lease-based businesses succeeded in obtaining credit despite not having leases. In one case (NL1), credit was obtained from the TAFEA Cooperative. In the second case (NL3), credit was obtained from the Vanuatu National Bank (and possibly another source as well). In each of these cases, the proprietor or a co-proprietor either worked for TAFEA Cooperative or had worked for it in the past. In the final case (NL2), no credit is reported to have been accessed. In all cases, outside employment was a critical factor in raising the capital to develop the business. Being able to mobilize labor from within the family was also important in at least one of the cases.

The risk of jealousy developing among other family or community members appears to have been an issue in all three cases. Accordingly, in all cases the proprietors pay careful attention to family and community relations by contributing to church and other community funds and making strategic decisions about employment and procurement contracting. The attention that the proprietors of non-leased-base enterprises have been paying to family and community

relations strategies highlights the vulnerability of all enterprises to disputes regardless of whether they are lease-based.

Further research into these and other issues associated with non-lease-based business represents a possible future direction for JBE research endeavors. A greater understanding of how successful non-lease-based enterprises negotiate access to land and capital, and prevent jealousy among family and members of the broader community from affecting profitability, could assist the development of new strategies for promoting economic development on customary land with reduced risk of land alienation.

Annex: Research Methodology

The JBE action research approach is designed to support and inform an enhanced pluralist process through generating research findings, which are then presented to the JBE Research Reference Group (JBERG) consisting of representatives of civil society and government. During the design of the research approach, it was decided to select two islands on which to undertake an investigation sufficiently broad to reflect a range of research priorities outlined in the Program Framework Document (PFD) and discussed in the introduction. These include leases, lease disputes, principles of customary tenure (as they have an impact on leasing arrangements and equity), benefit-sharing arrangements, women's role in decision making and dispute resolution, justice issues, and legal empowerment needs.

It was decided that the two most developed islands (Efate and Santo) would be excluded from the initial selection to avoid overburdening the research teams during the initial application of the methodology, and also to enable JBE to gain an understanding of land leasing realities in the outer islands. Tanna was chosen because of its standing as a tourist destination as well as the site of some primary industry investments, because of opposition to expatriate investments in some areas (notably "Blackman town"), and because of its location to the south of the Vanuatu islands. Epi, the focus of the first study, was chosen because of its history, along with Efate, Santo, and Malekula, as the site of commercial agricultural activities and because Shefa province views Epi as a suitable site for the development of commercial agriculture. Including both of these islands in the study program was intended to ensure that different sociocultural systems were included in the initial sample. The field work in Epi was conducted in March 2010 and on Tanna in August 2010.

The research team aimed to investigate all cases of leasing on Tanna. Based on information provided by the Department of Lands (DoL) and community members on Tanna, 64 lease cases were identified and investigated. The team was unable to investigate one additional lease pertaining to an agricultural station in north Tanna because the lessors could not be contacted. In the vast majority of cases, interviews were conducted with listed lessors. In several instances, however, where listed lessors were unavailable, interviews were conducted with the lessors' close relatives. The interview process was based around capturing the narrative of the leasing story, in some cases from different perspectives. Interviews were conducted only when the respondents were willing to share their stories and to see them recorded. In the interests of confidentiality, the names of respondents do not appear in references to the cases and the unique identification numbers of the respective leases have been changed. Two research teams operated in the field, each equipped with sheets of butcher's paper and colored markers to enable time lines of events to be depicted and maps of lease areas to be drawn by respondents. In most cases, notes were entered directly into computers, and a checklist was used to ensure that the narrative format of the interviews covered all required areas. The checklist (a summary version of a longer variant that team members had studied) included the following content and referred to the following lines of inquiry.

Preliminaries

The purpose of the research was explained to those whom the team wished to interview. On the matter of confidentiality, respondents were informed that their names would not appear in any reports resulting from the research process.

PART 1: CONFIRMING THE LEASE DATA

1. Names and sex of respondent(s)
2. Details of Lease

PART 2: THE MOTIVES FOR THE LEASE

(The story of why this lease was developed—who started the process and why?)

3. Timeline?
4. Previous use (what for, whom, women)?
5. How did lease start and who initiated it?
6. Were the needs of future generations taken into account?
7. Were women involved in the discussions (i.e., gardening needs)?
8. Year process began?
9. Discussions within custom owner group (if so, who was involved and what was agreed)?
10. Objections?
11. Role of money, payments, and promises/agreements?

PART 3: PROCESS OF ACQUIRING THE LEASE

(The steps for getting the lease document registered)

12. Was it clear which chiefs had authority over the land (MAP)?
13. Source of authority of chiefs (appointed, traditional, other)?
14. Were maps or site visits used to identify the land to be leased?
15. Was there a Negotiator Certificate? If so, who was the Negotiator?
16. Process for deciding lessors (agreements/disagreements)?
17. Was there a Custom Owner Identification Form? If so whose names were on it? (If the lease was after 2006 Land Summit, was there a custom owner group meeting? Were minutes of the meeting attached to the lease application?)
18. Was a Land Valuation completed for the land?

19. Lease provisions (did discussion occur re: No. of years, premium, annual rent, subdivision of the land, special access conditions, joint venture, lease renewal provisions, etc.)?
20. Benefit distribution discussion. Did this occur?
21. Was a TRUST or association or community company set up?
22. Was there a joint venture arrangement with the lessee?
23. Did anyone from any government agency provide information about leasing to the community members?
24. Did the proposed lessee come to discuss the lease before it was signed/registered?
25. Did custom owner group seek legal advice? If so, how much did this cost?
26. Was there ever a dispute? If so how was it resolved?
27. If there was a dispute, was there any threat that the Minister of Lands would sign the lease?

PART 4: EXPERIENCE AFTER THE LEASE WAS REGISTERED

28. Do lessors have a copy of the lease or any related documents?
29. Do the lessors understand the terms of the lease?
30. Are conditions of the lease good or not good?
31. What benefits have been received from the lease (including premium, rent, employment, and training) and how have they been distributed and spent?
32. If the lease is older than 5 years, have there been lease rent reviews?
33. Are the conditions of the lease being maintained? If not, what actions have been taken?
34. Did any disputes develop about the lease after it was registered?
35. Transfer and/or subdivision requests? If so was consent obtained from the lessors?
36. If there was a development after 2000, was a Preliminary Impact Assessment (PIA) done? If so, was an Environmental Impact Assessment (EIA) required? If so, was this completed? Results?

PART 5: LOCAL GOVERNANCE ASPECTS

37. What was the role of: chiefs, church, area secretaries, and the provincial government?
38. Describe any disputes involving any of the above parties and how they were addressed.

PART 6: WOMEN AND LIVELIHOODS

39. Did women/others lose access to economic resources and if so were they compensated?
40. Were there disputes over women's use of land and how were they resolved?

PART 7: FINAL QUESTIONS

41. How do people receive information generally?
42. Are there other land disputes that do not involve a lease?
43. Have there been any other types of issues that have caused concern in the community (disputes) and how have they been resolved?

To obtain a broader perspective of land leasing on Tanna as well as information on governance, justice, and economic development, the team interviewed TAFEA province administrative officials, the secretary of the Nikoletan Island Council of Chiefs, representatives of Lenakel municipality, the Provincial Education Officer for TAFEA province, area council representatives, a provincial representative of the Department of Cooperative and Business Development Services, the clerk of the island court, and the clerk of the magistrate's court. Further interviews were conducted in Port Vila with officials from the Office of the Valuer General, a private valuer, and a representative from Telecom Vanuatu Limited. The report notes where information used by the authors is drawn from interview respondents through terms such as "alleged," "allegedly," and "reportedly."

In addition to the research questions on leasing used to prepare this report, further questions (see the "Final Questions" section above) were aimed at informing the preparation of additional analysis (not included in this report) of justice issues on Tanna. It is expected that this analysis will be forthcoming in 2011.

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Significant land loss was a unifying factor and mobilizing force behind Vanuatu's independence movement, a key demand of which was the return of alienated land to custom landholders. The ongoing alienation of customary land through leasing in contemporary Vanuatu remains an important source of complaint. J4P explores these issues through in-depth locality studies which provide evidence of the continuing inequities in the current land leasing practices and their implications for group decision making and benefit-sharing.

This report investigates lease practices on the island of Tanna, and findings address lease creation and administration, benefit sharing and conflict resolution patterns. The study aims to provide a better understanding of how leased land is actually used, and is intended to contribute to the development of an empirical basis to inform policy discussions about land leasing in Vanuatu.

Justice for the Poor is a World Bank research and operational program aimed at informing, designing and supporting pro-poor approaches to justice reform.

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