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REPUBLIC OF VANUATU
CUSTOM LAND MANAGEMENT ACT NO. 33 OF 2013

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REPUBLIC OF VANUATU

Assent: 16/01/2014

Commencement: 20/02/2014

CUSTOM LAND MANAGEMENT ACT NO. 33 OF 2013

An Act to provide for the determination of custom owners and the resolution of disputes over ownership of custom land by customary institutions and for related purposes.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY MATTERS

1 Effect and Application of this Act

(1) The Parliament of Vanuatu has formalised the recognition of customary institutions termed 'nakamals' and 'custom area land tribunals' in this Act to determine the rules of custom which form the basis of ownership and use of land in Vanuatu.

(2) The final decisions reached by these customary institutions, when appropriately recorded, become recorded interests in land which are binding in law and are not subject to appeal to, or judicial review by, any Court of law.

(3) The Act allows for mediation to progress the resolution of land disputes, and for an Island Court (Land) to review the decisions of a nakamal or custom area land tribunal on grounds of an incorrect composition, improper process or fraud. These areas of review are matters of process and not substance within the meaning of Article 78 of the Constitution.

2 Interpretation

(1) In this Act, unless the contrary intention appears:

community land officer means an existing employee of the Government who is, in addition to their usual occupation, appointed by the National Coordinator on a short-term basis to perform some of the functions of a custom land officer as set out in this Act in relation to a specific area of land;

consensus means that the members of the nakamal as a whole, or all the custom owners, agree or consent;

custom area means an island or part of an island having the same language and the same custom;

custom land means land owned or occupied, or land in which an interest is held, by one or more persons in accordance with the rules of custom;

custom land officer means an officer appointed under section 8 of this Act;

custom area land tribunal means a customary institution consisting of chiefs and other persons knowledgeable in custom who will apply the rules of custom of the custom area to determine the custom owners for an area of land. A custom area land tribunal can also be established as a joint custom area land tribunal where the land concerned lies within two or more custom areas;

custom owners means any lineage, family, clan, tribe or other group who are regarded by the rules of custom, following the custom of the area in which the land is situated, as the perpetual owners of that land and, in those custom areas where an individual person is regarded by custom as able to own custom land, such individual person;

determination of custom owners is a decision made by a customary institution as to who the custom owners of an area of land are, and it will be used by the National Coordinator as a basis for notification for any subsequent negotiation certificate applications under the Land Reform Act [CAP 123];

head of a nakamal means the chief or customary leader or leaders who have the authority to convene and preside over meetings of a nakamal;

Island Court means a court established under the Island Courts Act [CAP 167];

Island Court (Land) means an Island Court which is specially constituted under this Act to review decisions of a nakamal or custom area land tribunal on limited grounds;

land dispute means a dispute between two or more indigenous citizens or groups about the ownership of custom land;

Land Leases Act means the Land Leases Act [CAP 163];

Land Reform Act means the Land Reform Act [CAP 123];

membership of the custom owner group means the members including all descendants of a custom owner group who are determined by customary processes and in accordance with the rules of custom to be members of that group and includes all people who hold ownership or use rights over land in accordance with the rules of custom;

Minister means the Minister responsible for Justice;

nakamal means a customary institution that operates as the seat of governance for a particular area. Members of a nakamal include all men, women and children who come under the governance jurisdiction of that nakamal. A nakamal may be related to a single custom owner group or extended family group, or may be related to a number of custom owner groups or extended family groups living in a village or larger area. The vernacular language terms for the customary institutions termed ‘nakamal’ in this Act are different in different localities across Vanuatu and include *Farea* in parts of Efate, *Gamal* in parts of Malekula, *Naumel* in Motalava and *Jaranmoli* in parts of Santo;

National Coordinator means the National Coordinator of the Land Dispute Management appointed under subsection 10(1) of this Act;

recorded interest in land is a decision made by a customary institution as to who the custom owners of an area of land are which when recorded, will be used by the National Coordinator as a basis for:

(a) the identification of custom owners for the purposes of a negotiator’s certificate application under the Land Reform Act [CAP 123]; or

(b) the rectification of lessors in leases in existence prior to the

commencement of this Act,

and to avoid doubt a Supreme Court or Island Court decision made prior to the commencement of this Act is deemed to create a recorded interest in land.

representatives of the custom owners means all representatives appointed by the custom owners (who must be 18 years of age or over), to sign a lease or other document to indicate the consent of the custom owners.

(2) In this Act, references to the payment of sitting allowances, costs, compensation and fines include payments by money and also payments by customary items of exchange such as pigs, kava, mats, yams and taro, if they are acceptable to the recipient.

(3) All timeframes stipulated within this Act are a reference to the number of actual calendar days. However where a natural disaster or custom activity, such as a death ceremony or a marriage ceremony, interferes with the capacity of a nakamal or custom area tribunal to meet this will result in an automatic extension of the time period.

3 Application to sea

This Act extends to the waters within the outer edge of any reef adjacent to custom land including all fringing reefs, and the land below those waters to the extent that they are considered to belong to custom owners under the custom of that custom area.

4 Custom areas

(1) For the purposes of this Act, each island is divided into custom areas. Larger islands are divided into many custom areas. By way of contrast, very small islands may consist of only one custom area. The procedure for resolving disputes about custom land varies depending on whether the land is situated wholly within a custom area or within two or more areas.

(2) If custom areas are not established, all references to custom areas will be interpreted as meaning provincial areas. For the purpose of establishing a custom area land tribunal, custom areas and custom area councils of chiefs should be established, but where this is not possible a provincial area council of chiefs, or where this is not possible the Island Council of Chiefs, will establish a custom area land tribunal.

5 Pending court or tribunal proceedings

(1) If:

(a) a person is a party to a proceeding before the Supreme Court or an Island Court relating to a dispute over custom land; and

(b) the person applies to that Court to have the proceeding withdrawn and the dispute dealt with under this Act; and

(c) the other party or parties to the proceeding consent to the withdrawal and to the dispute being dealt with under this Act; and

(d) that Court consents to the withdrawal and to the dispute being dealt with under this Act,

the dispute must be dealt with under this Act.

(2) The Supreme Court or an Island Court may:

(a) order that any fees paid to that Court in respect of such proceedings be refunded in full or in part to the applicant or any of the other parties; and

(b) make such other orders as it thinks necessary.

(3) To avoid doubt, if, at the time that this Act comes into force, proceedings are pending before the Supreme Court or an Island Court relating to a dispute over a custom land, the dispute cannot be dealt with under this Act without the agreement of all parties to the dispute.

(4) If proceedings relating to a dispute over a custom land are before a single or joint village Customary Land Tribunal, a single or joint sub-area Customary Land Tribunal, a single or joint area Customary Land Tribunal or an island Customary Land Tribunal when this Act comes into force, such proceedings will be suspended, and the dispute will be referred by the custom land officer to the appropriate nakamal or custom area land tribunal for decision under this Act.

6 Individual rights over an area of land

(1) If it can be shown that after the National Coordinator has arranged for notice and that there is a determination by a nakamal or custom area land tribunal that in custom the rights over land are held by an individual, then all references to custom owner group or custom owners must in this case be interpreted as referring to the individual rights of a custom owner.

(2) For the avoidance of doubt, the purpose of this Act is in general to provide that all land in Vanuatu is held by custom owners as a group.

(3) Despite subsection (2), the rules of custom form the basis for determining land ownership. If the customary institutions applying the rules of custom determine that rights over an area of land are held by an individual, all references to custom owner groups or custom owners is to be interpreted to mean an individual custom owner's rights over an area of land.

(4) In the case set out in subsection (3), a recorded interest in land will refer to an individual name and all subsequent dealings in the land will be made with the

consent of the individual custom owner.

PART 2 MANAGEMENT OF LAND BY CUSTOMARY INSTITUTIONS

7 Malvatumauri Council of Chiefs and Island Councils of Chiefs

(1) The Malvatumauri Council of Chiefs and the Island Council of Chiefs are responsible for providing awareness and support for the peaceful and effective determination of custom owners and resolution of land disputes in accordance with the provisions of this Act.

(2) The Island Council of Chiefs is to keep under its supervision, the determination of custom owners and the resolution of land disputes on their island and will report regularly on this matter to the Malvatumauri Council of Chiefs and to the National Coordinator.

(3) The Island Council of Chiefs is to use its best endeavours to encourage and assist the peaceful and effective determination of custom owners and resolution of land disputes by customary institutions.

8 Custom land officers

(1) A custom land officer is to be appointed by the Public Service Commission after consultation with the Malvatumauri Council of Chiefs to serve in each Provincial Government Region in Vanuatu.

(2) A custom land officer is subject to direction of the National Coordinator with regard to the identification of custom owners and the management of land disputes.

(3) The custom land officer, in consultation with members of the:

- (a) Malvatumauri Council of Chiefs; and
- (b) Island Council of Chiefs; and
- (c) Area Council of Chiefs; and
- (d) Custom Area Council of Chiefs,

as the case may be, is to encourage and assist with the determination of custom owners and the resolution of land disputes in accordance with the provisions of this Act.

9 Community land officers

(1) A person who is employed by the Government and based in the area of a nakamal, if requested by that nakamal, may be appointed as a community land officer by the National Coordinator on the advice of the Custom Area Council of Chiefs or where this institution is not in existence, the Island Council of Chiefs.

(2) A community land officer is to perform the functions of a custom land officer and is to assist in recording the decisions of a nakamal or custom area land tribunal. For the avoidance of doubt, a community land officer may not perform any of the functions of a custom land officer listed in Part 3 of this Act, related to the creation of a recorded interest in land or appeals against the process related to creating a recorded interest in land.

(3) Despite subsection (2), a community land officer may perform any or all of the functions of a custom land officer related to resolving a dispute under Part 4 or mediating a dispute under Part 5 on custom land where there is no application for a negotiator's certificate or an existing lease.

10 National Coordinator of Land Dispute Management

(1) The National Coordinator of the Land Dispute Management is to be appointed by the Public Service Commission after consultation with the Malvatumauri Council of Chiefs.

(2) The National Coordinator has the following functions:

(a) to arrange, where necessary, appropriate training programs for chiefs of nakamals and the council of chiefs of each custom area; and

(b) is responsible for providing awareness and training for members of nakamals and custom area land tribunals; and

(c) to record decisions related to membership of custom owner groups or disputes as to ownership of custom land provided for under this Act; and

(d) to arrange for the form in Schedule 3 to be translated into Bislama and such other languages as the National Coordinator thinks is reasonably necessary, and for copies to be distributed to the custom area councils of chiefs; and

(e) to arrange for any guidelines issued by the Minister to be translated into Bislama and such other languages as the National Coordinator thinks is reasonably necessary, and for copies to be distributed to the custom area councils of chiefs; and

(f) to preserve in a confidential, orderly and secure manner the copies of documents which are filed with the National Coordinator; and

(g) compile for each island, a register of the documents related to a recorded interest in land and a determination of custom owners as described in Part 11 and keep the register up to date and strictly confidential; and

(h) such other functions as may be imposed on the National Coordinator under this or any other Act.

(3) The National Coordinator must compile statistics on all determinations by customary institutions and all land disputes throughout Vanuatu, and must record for each year:

(a) the numbers and locations of disputes that have arisen in each island of each Provincial Government Region; and

(b) the number of disputes that have been resolved by customary processes; and

(c) the numbers and locations of determinations of custom owners that have been completed by customary institutions.

(4) The National Coordinator must submit the statistics prepared under subsection (3) to the Minister who is required to present them in Parliament at its next sitting after the Minister has received the statistics.

(5) A copy of the statistics must be published in the Gazette.

11 Joint responsibility for oversight of land issues on each island

The Ministry of Justice, the Department of Lands, the Malvatumauri Council of Chiefs and the Island Council of Chiefs, are responsible to organise such awareness, training and support that they consider will be helpful to ensure the peaceful determination of custom owners and resolutions of land disputes in accordance with the provisions of this Act.

PART 3 DETERMINATION OF CUSTOM OWNERS

Division 1 Negotiator's Certificate and Existing Leases

12 Determination of custom owners in application for a negotiator's certificate

If an application to approve a negotiator's certificate over custom land has been referred to the National Coordinator and the National Coordinator confirms that ownership of the land has not yet been determined by a Court or in accordance with this Act, the National Coordinator must arrange for a notice to be given to identify the custom owners in accordance with the provisions of section 6B of the Land Reform Act.

13 Determination of custom owners where there is an existing lease

(1) Custom owners whose land is already the subject of a lease before the commencement of this Act, including those for which the Minister of Lands is the designated lessor may request the National Coordinator to apply section 6B of the Land Reform Act to create a recorded interest in land.

(2) The written request must:

- (a) be signed by members of the custom owner group; and
- (b) indicate clearly the title number for the existing lease; and
- (c) the location of the leased land.

(3) Upon receipt of a request under subsection (1), the National Coordinator must, as soon as practicable, arrange for notice to be given of the intention to determine the custom owners of the leased land in accordance with the provisions of section 6B of the Land Reform Act.

Division 2 Procedures in relation to determination of custom owners under this Part

14 Expiry of notice period

When the notification period under section 6B of the Land Reform Act has lapsed, the National Coordinator must allocate a custom land officer to attend the meeting to determine the custom owners following the process set out in this Act.

15 Land within jurisdiction of one nakamal or more than one nakamal

(1) If the custom land lies entirely within the jurisdiction of one nakamal, a meeting of that nakamal must be convened as soon as possible in accordance with the custom of that nakamal to determine the custom owners. The head of the nakamal must inform the custom land officer or the National Coordinator as soon as such meeting has been called.

(2) If the custom land lies within the jurisdiction of more than one nakamal, a meeting of those nakamals must be convened as soon as possible to determine the custom owners.

16 Meeting of a nakamal or joint nakamals

(1) The custom land officer must be present at such meeting as an observer and to record all outcomes of the meeting in accordance with section 6C of the Land Reform Act. The custom land officer must not take part in the discussions at the meeting.

(2) The custom land officer must at the commencement of the meeting of the nakamal read out the definition of “custom owners” and “membership of the custom owner group” as defined in section 2 of this Act.

17 Determination of custom owners by nakamal

(1) Any decision by a nakamal to determine the custom owners of the land must be made at a meeting of the nakamal referred to in section 16 and two-thirds of the adult members of the nakamal must be present at that meeting. For joint-nakamals - two-thirds of the adult members of both nakamals must be present at such meeting.

(2) Where the population of adult members of a nakamal or nakamals is more than

300, any decision by a nakamal made to determine the custom owners of the land must include at least one third of the adult members of the nakamal.

(3) A meeting must be convened in accordance with the custom of the relevant nakamal and all decisions of the nakamal must be made according to the rules of custom.

(4) Where appropriate in the custom of the custom area concerned, persons from other custom areas may attend the meeting to witness the decision of the nakamal or speak as requested by the custom owners, following the rules of custom.

(5) Decisions of a nakamal must be made by consensus of the members of the nakamal in accordance with the custom of the custom area in which the nakamal is situated.

18 Custom owners' determination to be recorded in writing

(1) A determination made by a nakamal of the custom owners must:

(a) be recorded in writing and include a sketch map showing the boundaries of the land or survey plan of the land in question (where applicable); and

(b) be signed by the heads of the nakamal and other leaders within the nakamal; and

(c) witnessed by the custom land officer who is to have his or her signature on the written record of the meeting.

(2) A written record must comply with the form prescribed in Schedule 3 and must contain:

(a) the names of all persons who attended the meeting of the nakamal or nakamals; and

(b) the date and place of the meeting or meetings which occurred; and

(c) the custom owners determination including which families, groups or individuals are recognised as having interests in the land, and what interests in the land such families, groups or individuals have, including all ownership and use rights; and

(d) where custom owners have different classes of rights, these different classes of rights; and

(e) if decided by the custom owners, the names of descendants to whom the custom owners' rights will be transferred upon their death.

19 Creation of a recorded interest in land

(1) Where the custom owners are determined by a nakamal, the custom land officer must ensure that the written record of the determination is filed with the office of the National Coordinator.

(2) When a determination is filed with the office of the National Coordinator, the written record of the custom owner determination and the area of land that is owned by the group will become a recorded interest in land that may not be challenged except on the grounds of improper process or fraud.

(3) The National Coordinator is responsible for maintaining a list of all of the decisions that have become recorded interests in land and where requested by a custom owner will provide a certification of the names of the custom owners and the representatives of the custom owners.

20 Allegations against decision of a nakamal

(1) If it is alleged by a member of the nakamal that a decision of a nakamal made to determine the custom owners:

(a) has been made at a meeting that was not constituted according to subsection 17(1) or (2); or

(b) has been made in breach of the process in subsections 17(3) and (5) of this Part; or

(c) has been procured by fraud,

the member must report the allegation to the custom land officer, or the National Coordinator or directly to the Registrar of the Island Court (Land) and provide evidence to support the allegation.

(2) If an Island Court (Land) is satisfied that a decision was made by a nakamal under any of the circumstances set out in subsection (1), the Island Court (Land) is to set aside the decision of the nakamal, and refer the matter back to the nakamal with such directions as it considers appropriate.

21 Failure of nakamal to determine the custom owners within 30 days

(1) The custom land officer must be informed as soon as possible by the head of a nakamal if within 30 days after the notification by the National Coordinator it has not been possible for the members of the nakamal, or nakamals as the case may be, to determine the custom owners.

(2) The custom land officer must record in writing, the circumstances set out in subsection (1) and make appropriate arrangements to invite the custom owner group to resolve the membership of the group by mediation under the provisions of Part 5 of this Act.

(3) Following mediation the custom owner group may attempt to resolve the membership of the group at the nakamal level for a further 30 days period, or may

choose to term the membership of the group a ‘dispute’ and take the dispute to a custom area land tribunal in accordance with Part 6 of this Act.

22 Offences in relation to process of determining custom owners

- (1) A person commits an offence and is liable on conviction to a fine not exceeding VT 500,000 or to a term of imprisonment not exceeding 2 years or both, if the person:
- (a) makes an assertion of fact, opinion, belief or knowledge to a nakamal which is in the process of determining the custom owners, that the person knows is false and misleading; or
 - (b) fabricates evidence to be presented to a nakamal which is determining the custom owners; or
 - (c) conspires with any other person to do anything to obstruct, prevent, pervert or defeat the determination of custom owners by a nakamal; or
 - (d) accuses any person falsely of doing, or attempting to do, anything to obstruct, prevent, pervert or defeat the determination of custom owners by a nakamal; or
 - (e) causes or threatens violence to any person in relation to attempts to determine custom owners.

(2) If a member of a nakamal believes, on reasonable grounds, that a person has committed any offence described in subsection (1), he or she is to report the matter to the custom land officer, who is to lodge a complaint at the nearest police station or Island Court (Land).

PART 4 DETERMINATION OF LAND DISPUTES BY A NAKAMAL

23 Custom owners may request custom land officer to attend meeting

(1) Custom owners intending to resolve a dispute as to ownership of custom land using the customary processes, must write to the National Coordinator and request that a custom land officer attend the meeting of the nakamal.

(2) A nakamal may request the appointment of a government officer who is in the locality or near the land in dispute to be appointed as a community land officer.

(3) A community land officer may only be appointed in disputes that relate to custom land and not matters relating to an area of land where there is an application for a negotiator’s certificate or an existing lease.

24 Land within a boundary of one nakamal or more than one nakamal

(1) If a dispute occurs over a custom land which lies entirely within the boundary of one nakamal, the existence of the dispute must be reported by a party to the dispute to the head of that nakamal. The head of the nakamal must convene a

meeting of that nakamal as soon as possible in accordance with the custom of that nakamal to resolve the dispute in accordance with the rules of custom of that custom area.

(2) If a dispute occurs over a custom land which lies within the boundary of more than one nakamal, the dispute must be reported by a party to the dispute to all the nakamals within which the land is situated. The head of the nakamal must convene a meeting of the nakamal as soon as possible in accordance with the customs of those nakamals to resolve the dispute in accordance with the rules of custom of that custom area

(3) If a head of a nakamal fails to convene a meeting of the nakamal within 14 days of being informed of the dispute, a party to the dispute may report the matter to a custom land officer who must refer the dispute to a custom area land tribunal.

(4) The head of the nakamal must inform a custom land officer as soon as possible, of the calling of a meeting of a nakamal or nakamals under subsection (1) or (2).

(5) To avoid doubt, a custom land officer must be present at a meeting under subsection (1) or (2) as an observer and must not take part in any discussions at the meeting.

(6) Prior to the commencement of a meeting of the nakamal or nakamals under this section, a custom land officer must read out the definition of “custom owners” and “membership of the custom owner group” as defined in the section 2 of this Act.

25 Determination of land dispute by nakamal

(1) A decision by a nakamal to determine the custom owners of the land must be made at a meeting of the custom owners referred to in subsections 24(1) and 24(2) and two-thirds of the adult members of the nakamal must be present at that meeting. For joint-nakamals-two thirds of the adult members of both nakamals must be present at such meeting.

(2) Where the population of adult members of a nakamal or nakamals is more than 300, any decision by a nakamal made to determine the custom owners of the land must include at least one third of the adult members of the nakamal.

(3) A meeting must be convened and held in accordance with the custom of the nakamal and all decisions of the nakamal must be made according to the rules of custom.

(4) Where appropriate in the custom of the custom area concerned, persons from other custom areas may attend the meeting to witness the decision of the nakamal or speak as requested by the custom owners, according to the rules of custom.

(5) A decision of a nakamal must be made by consensus of the members of the

nakamal in accordance with the rules of custom of the custom area in which the nakamal is situated.

26 Custom owners' determination to be recorded in writing

(1) A determination of the custom owners made by a nakamal must:

(a) be recorded in writing and include a sketch map showing the boundaries of the land or survey plan of the land in question (where applicable); and

(b) be signed by all the senior members of the nakamal, including the heads of the nakamal and other leaders within the nakamal; and

(c) be witnessed by the custom land officer, who is to add his or her signature on the written record of the meeting.

(2) A written record must comply with the form prescribed in Schedule 3 and must contain:

(a) the names of all persons who attended the meeting of the nakamal or nakamals; and

(b) the date and place of the meeting or meetings which occurred; and

(c) the custom owners' determination including which families, groups or individuals are recognised as having interests in the land, and what interests in the land such families, groups or individuals have, including all ownership and use rights; and

(d) where custom owners have different classes of rights, these different classes of rights; and

(e) if decided by the custom owners, the names of descendants to whom the custom owners rights will be transferred upon their death.

27 Filing of written record of determination

(1) A custom land officer must ensure that the written record of a determination of the meeting of the nakamal to resolve a land dispute is filed with the office of the National Coordinator.

(2) If a land dispute that is resolved by a nakamal relates to land for which there is an application for a negotiator's certificate or an existing lease, the resolution filed becomes a recorded interest in land that cannot be challenged except on the grounds of improper process or fraud.

(3) If a land dispute that is resolved by a nakamal relates to a custom land that is not subject to an application for a negotiator's certificate or an existing lease, a resolution made by the nakamal on that dispute becomes a determination of

custom owners.

(4) The National Coordinator is responsible for maintaining a list of all of the decisions that have become determination of custom owners and recorded interests in land and where requested by a custom owner will provide a certification of the names of the custom owners and the representatives of the custom owners.

28 Allegation against decision of a nakamal

(1) If it is alleged by a member of a nakamal that a decision of the nakamal made to determine the custom owners:

- (a) has been made at a meeting that was not constituted according to subsection 25(1) or (2); or
- (b) has been made in breach of the process in subsections 25(3) and (5); or
- (c) has been procured by fraud,

the member must report the allegation to the custom land officer, or to the National Coordinator or directly to the Registrar of the Island Court (Land) and provide evidence to support the allegation.

(2) If an Island Court (Land) is satisfied that a decision was made by the nakamal under any of the circumstances set out in subsection (1), the Island Court (Land) may set aside the decision of the nakamal, and refer the matter back to the nakamal with such directions as it considers appropriate.

29 Failure of nakamal to determine land dispute within 30 days

(1) If, within 30 days after a dispute has been reported to a nakamal or to the nakamals, as the case may be, and it has not been possible for the nakamal or nakamals to resolve the dispute within this period the head of the nakamal or heads of the nakamals must inform a custom land officer of the failure to resolve the dispute.

(2) A custom land owner must record in writing the circumstances set out in subsection (1) and make appropriate arrangements to invite the disputing groups to resolve the dispute by mediation under Part 5 of this Act.

(3) If the disputing groups do not wish to attempt to progress the dispute by mediation, or if they have already been through a mediation process and returned to the nakamal and have still been unable to resolve the dispute then the disputing groups must attempt to resolve the dispute through a determination of a custom area land tribunal under Part 6 of this Act.

30 Offences in relation to process of determining land dispute

(1) A person commits an offence and is liable on conviction to a fine not exceeding VT 500,000, or to a term of imprisonment not exceeding 2 years or

both, if the person:

- (a) makes an assertion of fact, opinion, belief or knowledge to a nakamal which is in the process of determining the land dispute that the person knows is false and misleading; or
- (b) fabricates evidence to be presented to a nakamal which is determining the land dispute; or
- (c) conspires with any other person to do anything to obstruct, prevent, pervert or defeat the determination of the land dispute by a nakamal; or
- (d) accuses any person falsely of doing, or attempting to do, anything to obstruct, prevent, pervert or defeat the determination of the land dispute by a nakamal; or
- (e) causes or threatens violence to any person in relation to a land dispute.

(2) If a member of a nakamal believes, on reasonable grounds, that a person has committed any offence described in subsection (1), he or she is to report the matter to the custom land officer, who is to lodge a complaint at the nearest police station or Island Court (Land).

PART 5 MEDIATION OF A LAND DISPUTE

31 Disputing groups or individuals may agree to mediation

(1) If the disputing group or individuals have informed a custom land officer of a province that they wish to resolve their dispute by mediation, the members of the disputing groups must sign a written consent form, provided by the custom land officer, confirming that they agree to undertake mediation.

(2) The disputing groups or individuals must nominate a mediator or mediators to undertake the mediation processes.

(3) A custom land officer must contact the nominated mediator or mediators and obtain confirmation that such person or persons, is or are able to conduct the mediation process.

(4) A custom land officer is to provide such assistance as is necessary to facilitate the mediation process, and must be kept fully informed by the mediators of the progress of the mediation process by the disputing groups.

32 Custom owners' determination to be recorded in writing

(1) A determination of the custom owners made by mediation process must:

- (a) be recorded in writing and include a sketch map showing the boundaries of the land or survey plan of the land in question (where applicable); and

(b) be signed by the heads of the nakamal and other leaders within the nakamal; and

(c) be witnessed by the custom land officer who is to add his or her signature on the written record of the meeting.

(2) In addition to subsection (1), a written record must contain:

(a) the names of all persons involved in the mediation; and

(b) the date and place in which the mediation occurred; and

(c) the details of the outcome of the mediation including, which families, groups or individuals are recognised as having interests in the land and what interests in the land such families, groups or individuals have including all ownership and use rights; and

(d) where custom owners have different classes of rights, these different classes of rights; and

(e) if decided by the custom owners, the names of descendants to whom the custom owners' rights will be transferred upon their death.

(4) The outcome of a mediation only binds the parties to the mediation, as set out in subsection (3).

(5) The details of the outcome of a mediation must be referred back to the nakamal to be agreed to by consensus of all the members of the nakamal according to the process outlined in Part 4 of this Act in order to become either a nakamal determination of custom owners or a recorded interest in land.

PART 6 DETERMINATION OF LAND DISPUTE BY CUSTOM AREA LAND TRIBUNAL

33 List of potential tribunal members and Island Court (Land) Justices

(1) Each custom area council of chiefs in Vanuatu must provide to the custom land officer or the registrar of the Island Court (Land), a list of all chiefs or other persons who are knowledgeable in the custom of the area and who are not disqualified from being, members of custom area land tribunals or Island Court (Land) Justices in accordance with Part 9 of this Act.

(2) A custom land officer must keep a copy of the written record and must provide a copy of such record to the National Coordinator who is responsible for maintaining a list of potential tribunal members and Island Court (Land) Justices.

(3) A copy of the list must be lodged with the President of the Malvatumauri Council of Chiefs.

34 Custom area land tribunal

- (1) If a custom land officer becomes aware that it has not been possible to resolve a dispute in a nakamal, he or she must inform the chairperson of the custom area council of chiefs.
- (2) The chairperson of the custom area council of chiefs must, as soon as possible after becoming aware of the situation in subsection (1), convene a meeting of the custom area council of chiefs to establish a custom area land tribunal to determine the dispute by customary processes in accordance with the custom of the custom area in which the land is located.
- (3) A decision of the custom area land tribunal is to be made according to the rules of custom.
- (4) If a land dispute relates to land which is situated within one custom area, a single custom area land tribunal is to be established to consider the dispute.
- (5) If a dispute relates to a land which is situated within two or more custom areas, a joint custom area land tribunal is to be established to consider the dispute.
- (6) The Chairperson, Secretary and a member of the single or joint custom area land tribunal is entitled to sitting allowances as prescribed in Schedule 2 of this Act.
- (7) A person with legal qualifications, experience or training is not permitted to represent any party or witness before a tribunal, but may appear as a party or as a witness.

35 Single custom area land tribunal

- (1) The single custom area land tribunal consists of:
 - (a) the chairperson of the custom area council of chiefs if he or she is not disqualified under this Act to adjudicate the dispute; and
 - (b) two other persons knowledgeable in custom who may be chiefs from the custom area appointed by the custom area council of chiefs, if not disqualified under this Act to adjudicate the dispute.
- (2) If the chairperson of a custom area council of chiefs of the custom area is disqualified under this Act to adjudicate the dispute, the custom area council of chiefs must appoint another chief from that custom area who is not disqualified as the chairperson.
- (3) If any party disagrees with the appointment of a chairperson or a member of a custom area land tribunal, an objection may be made as provided in Schedule 1 of this Act.

36 Joint custom area land tribunal

(1) The joint custom area land tribunal consists of:

- (a) the chairpersons of the councils of chiefs of each custom area; and
- (b) two persons knowledgeable in custom from each custom area who may be chiefs appointed by the custom area council of chiefs of that custom area.

(2) If the chairperson of the custom area council of chiefs is disqualified under this Act to adjudicate the dispute or is not willing to do so, that council of chiefs must appoint another chief from that custom area as the chairperson.

(3) A person must not be appointed as a chairperson or a member of a joint custom area land tribunal unless he or she is willing to do so, and is not disqualified under this Act.

(4) The chairpersons of each custom area council of chiefs who are members of the custom area land tribunal and any members appointed under paragraph (1)(b) must elect from amongst themselves a chairperson of the custom area land tribunal.

(5) If any party disagrees with the appointment of a chairperson or a member of a custom area land tribunal, an objection may be made as provided in Schedule 1 of this Act.

37 Secretary of custom area land tribunal

(1) A secretary of the single custom area land tribunal established by a custom area council of chiefs or a secretary of a joint custom area land tribunal established by custom area councils of chiefs is to be appointed by:

- (a) for a single custom area land tribunal established by a custom area council of chiefs-the custom area council of chiefs or if the council is unable to appoint a secretary, by a custom land officer of a province;
- (b) for a joint custom area land tribunal established by custom area council of chiefs-the custom area council of chiefs or if the council is unable to appoint a secretary, by a custom land officer of a province.

(2) A person must not be appointed as a secretary under paragraph (1)(a) or (b) if he or she is disqualified for appointment under this Act or does not consent to such appointment.

(3) A person who is not satisfied with the appointment of a secretary of a single or joint custom area land tribunal, may lodge an objection as specified in Schedule 1.

38 Procedure of custom area land tribunal

(1) In conducting the hearing of a land dispute, a single or joint custom area land

tribunal must follow the procedures set out in Schedule 1 of this Act.

(2) A single or joint custom area land tribunal must resolve a land dispute within 30 days from the date on which the tribunal first sits to hear a dispute.

(3) The custom land officer must be present at any hearing by a single or joint custom area land tribunal, but must not intervene directly in the proceedings unless invited by the chairperson to do so.

39 Determination of dispute by single or joint custom area land tribunal

(1) A single or joint custom area land tribunal must make its decision in accordance with the rules of custom of the area in which the land is situated.

(2) The decision of the custom area land tribunal must be recorded and is to include the details of the resolution of the dispute including:

(a) a sketch map showing the boundaries of the land or survey plan of the land in question (where applicable); and

(b) the names of families, groups or individuals who are recognised as having interests in the land, and the description of the interests in the land that such families, groups or individuals have; and

(c) where members of the custom owner group have different classes of rights- these classes of rights.

(3) The secretary of a single or joint custom area land tribunal must record the full details of the tribunal's decision in the form set out in Schedule 3 signed by the chairperson, members and secretary of the custom area land tribunal, and countersigned by the parties.

(4) A custom land officer must witness the signing of a decision under subsection (3).

(5) Custom owners may decide to list descendants to whom their rights may be transferred upon their death.

40 Filing of determination of custom area land tribunal

(1) A custom land officer must ensure that the written record of the decision of a custom area land tribunal is filed with the office of the National Coordinator if a land dispute is resolved by the custom area land tribunal.

(2) If a dispute that has been resolved by a custom area land tribunal relates to land for which there is an application for a negotiator's certificate or an existing lease, the written record of the decision being filed under subsection (1) becomes a recorded interest in land that may not be challenged except on grounds of improper process or fraud.

(3) If a dispute that has been resolved by a custom area land tribunal relates to custom land that is not subject to an application for a negotiator's certificate or an existing lease, the written record of the decision being filed under subsection (1) becomes a custom area land tribunal determination of custom owners.

(4) The National Coordinator is responsible for maintaining a list of all of the decisions that have become a determination of custom owners or a recorded interest in land and where requested by a custom owner will provide a certification of the names of the custom owners and the representatives of the custom owners.

41 Allegations against a decision of a custom area land tribunal

(1) If it is alleged by a person that a decision of a custom area land tribunal made to determine the custom owners:

- (a) has been made by a custom area land tribunal that was not constituted according to section 35 or 36; or
- (b) has been made in breach of the process specified under this Part; or
- (c) has been procured by fraud,

the person must report the allegation to the custom land officer, or to the National Coordinator or directly to the Registrar of the Island Court (Land), and provide evidence to support the allegation.

(2) If an Island Court (Land) is satisfied that a decision was made by a custom area land tribunal under any of the circumstances set out in subsection (1), the Island Court (Land) is to set aside the decision of the custom area land tribunal, and refer the matter back to the custom area land tribunal with such directions as it considers appropriate.

42 Offences in relation to efforts to determine land dispute by custom area land tribunals

(1) A person commits an offence and is liable on conviction to a fine not exceeding VT 500,000, or to a term of imprisonment not exceeding 2 years or both, if the person:

- (a) makes an assertion of fact, opinion, belief or knowledge in a custom area land tribunal which is in the process of determining the custom owners, which that person knows is false and misleading; or
- (b) fabricates evidence to be presented to a custom area land tribunal which is determining the custom owners; or
- (c) conspires with any other person to do anything to obstruct, prevent, pervert or defeat the determination of the custom owners by a custom area land tribunal; or.

(d) accuses any person falsely of doing, or attempting to do, anything to obstruct, prevent, pervert or defeat the determination of the custom owners by a custom area land tribunal; or

(e) causes or threatens violence to any person in relation to attempts to determine custom owners by a custom area land tribunal.

(2) If a member of a nakamal believes, on reasonable grounds, that a person has committed any offence described in subsection (1), he or she is to report the matter to the custom land officer, who is to lodge a complaint at the nearest police station or Island Court (Land).

PART 7 REVIEW BY ISLAND COURT (LAND) OF DETERMINATIONS OF CUSTOM LAND OWNERS BY NAKAMAL OR CUSTOM AREA LAND TRIBUNAL

43 Composition of Island Court (Land)

(1) Each Island Court established by the Chief Justice under the Island Courts Act may sit as an Island Court (Land) to review decisions made by nakamals and custom area land tribunals under this Act.

(2) When sitting as an Island Court (Land) the Court is composed as follows:

(a) a Judge or Magistrate who is to be appointed by the Chief Justice as the Chairperson;

(b) four Justices of the Island Court having jurisdiction in the area where the land is located who are knowledgeable in the custom of the area in which the land is situated, are willing to so act, and are not disqualified under this Act.

(3) If such Justices referred to in paragraph (2)(b) are not available, such other persons who are knowledgeable about the custom of the area in which the land is situated, who are willing to act and are not disqualified under this Act, and who are nominated by the area council of chiefs of the island in which the land is situated and approved by the Judicial Services Commission.

44 Registrar of Island Court (Land)

(1) The Clerk of an Island Court is to be the Registrar of each Island Court (Land), if the Clerk is not disqualified under Part 9 of this Act, and if the Clerk is disqualified, the Judicial Service Commission is to appoint a person to be the Registrar of an Island Court (Land).

(2) Before acting as a Registrar of an Island Court (Land) a person must take the oath set out in section 4 of the Oaths Act [CAP 37].

45 Review of decisions of nakamals or custom area land tribunals on certain

grounds

(1) If it is alleged by a custom owner, a member of a nakamal or a disputing group that a decision of a nakamal or custom area land tribunal to determine the custom owners:

- (a) has been made by a nakamal or custom area land tribunal that was not constituted in according to the provisions of this Act; or
- (b) has been made in breach of the process described in this Act; or
- (c) has been procured by fraud,

the custom owner, the member of the nakamal or the disputing group may lodge an application for review with the Registrar of the Island Court (Land) or with the National Coordinator within 30 days from the date of the original decision and provide evidence to support the allegation.

(2) The application for review must clearly state why the nakamal or custom area land tribunal:

- (a) was not composed in accordance with this Act; or
- (b) has not proceeded in accordance with the provisions of this Act; or
- (c) was procured by fraud.

(3) Upon receipt of an application which complies with this section, the Registrar of the Island Court (Land) must, if there are insufficient Justices of the Island Court who are qualified to sit to hear the dispute, request the council of chiefs of the area where the land is situated to nominate persons knowledgeable in the custom of the area to be members of the Court, and is to inform the Judicial Services Commission of the names of those persons in accordance with subsection 43(3).

(4) The Registrar of the Island Court (Land) is to inform the National Coordinator and the Office of the Land Registry when an application for review of a decision of a nakamal or custom area land tribunal has been filed.

(5) The Island Court (Land), after hearing such witnesses as are available and reviewing the circumstances of the decision subject to review, may affirm or set aside the decision of the nakamal or the decision of the custom area land tribunal, as the case may be.

(6) If the Court is satisfied that the decision of a nakamal or custom area land tribunal was made under any of the circumstances set out in subsection (1), the Court must set aside the decision and refer the matter back to either the nakamal or custom area land tribunal (whichever decision has been reviewed), with such directions as it considers appropriate.

(7) A copy of a decision of an Island Court (Land) made under this section is to be provided by the registrar of the Island Court (Land) to the National Coordinator and the Office of the Land Registry.

46 Offences in relation to decisions by an Island Court (Land)

(1) A person is guilty of an offence and is liable on conviction to a fine not exceeding VT 500,000 or to a term of imprisonment not exceeding 5 years, or both, if the person:

- (a) influences, or attempts to influence, the decision of an Island Court (Land); or
- (b) presents any argument or gives any evidence to an Island Court(Land) which he or she knows is false or misleading; or
- (c) acts as a member of an Island Court (Land) and the person knows, or ought reasonably to know, that he or she is not qualified to do so; or
- (d) appoints another person as a member of an Island Court (Land) and he or she knows, or ought reasonably to know, that the other person is not qualified to be appointed as a member; or
- (e) fails to comply with an order of an Island Court (Land); or
- (f) disrupts or attempts to disrupt the proceedings of an Island Court (Land); or
- (g) causes or threatens violence to any person in relation to the hearing of an application for review.

(2) If any person believes that one or more of the above offences has been committed, that person may report the offence to the Registrar of the Island Court (Land) who is to give notice to the person who is alleged to have committed such offence and must report the allegations to the Island Court (Land) which may order the person to appear before it to answer such allegations.

(3) After allowing the person against whom such allegations are made, a reasonable opportunity to answer such allegations, the Island Court (Land) must decide whether such person should be convicted of the offences alleged.

(4) For the purposes of this section, the jurisdiction of the Island Court (Land) extends to include the power to hear and determine allegations of offences as prescribed under subsection (1).

PART 8 SUPERVISION OF ISLAND COURTS (LAND) MATTERS BY THE SUPREME COURT

47 Supervisory powers of the Supreme Court on limited grounds

(1) If a person, who is not qualified to be a member of an Island Court (Land), participates in a proceeding or influences, or attempts to influence the proceedings of an Island Court (Land), a party to the dispute may apply to the Supreme Court for an Order:

- (a) to discontinue the proceedings; or
- (b) to cancel the decision of the Island Court (Land); or
- (c) to direct that an Island Court (Land) composed of different members is to determine the dispute.

(2) A party to a dispute may also apply to the Supreme Court for any of the Orders set out in subsection (1) if the Island Court (Land) fails to comply with any procedures prescribed in this Act.

(3) A decision by the Supreme Court made under subsections (1) or (2) is final.

(4) To avoid doubt, pursuant to Article 78 of the Constitution, the Supreme Court and all other Courts have no jurisdiction to determine matters related to land ownership or land disputes.

(5) All matters related to land ownership or land disputes must be referred to a nakamal or a custom area land tribunal for determination in accordance with the provisions of this Act.

PART 9 DISQUALIFICATION FROM CUSTOM AREA LAND TRIBUNALS AND ISLAND COURTS (LAND)

48 Disqualification

(1) A person appointed as Chairperson, member and secretary of a custom area land tribunal and Chairperson, member and Registrar of an Island Court (Land) may be disqualified from this appointment if the person:

- (a) is incapacitated; or
- (b) holds a public office; or
- (c) is contesting for an election; or
- (d) holds a position within a political party; or
- (e) has a financial, social, religious, political or other interest that will prevent him or her to perform his or her functions under this Act; or
- (f) is convicted of an offence under this Act or any other Act.

(2) In addition to subsection (1), a person may be permanently disqualified from this appointment, if an Island Court (Land) finds that the person:

- (a) influenced or attempted to influence the decision of a nakamal, custom area land tribunal or Island Court (Land); or
- (b) the person participated in proceedings when disqualified to do so; or
- (c) knowingly appointed or attempted to appoint a person not qualified to be appointed as a Chairperson, member or secretary of a Custom Area Land Tribunal or Chairperson, member or Registrar of an Island Court (Land).

PART 10 IMMUNITY OF OFFICERS

49 Immunity

(1) No action in civil or criminal proceedings is to be brought against the National Coordinator or a custom land officer or a community land officer over anything done or omitted to be done by him or her in good faith in the execution or purported executions of his or her functions and powers under this Act.

(2) Subsection (1) does not apply if the National Coordinator, or a customary land officer or a community land officer acted in bad faith in executing his or her functions or powers or in dereliction of his or her functions and powers, under this Act.

PART 11 MEASURES TO AVOID FUTURE LAND DISPUTES

50 Custom owners' list

(1) The National Coordinator is to keep a custom owners list of all recorded interests in land and determination of custom owners.

(2) The National Coordinator is responsible for ensuring that information in the recorded interests in land and determination of custom owners relating to:

- (a) the identified custom owners of the land including the list of current members of the custom owner group of the land; and
- (b) the names of the nominated representatives of the custom owner group; and
- (c) the location and description of the land; and
- (d) a sketch or survey map showing the boundaries of the land,

is filed in the custom owners' list and any updates to the list are made as required.

(3) The National Coordinator is to ensure that any variation made by the custom

owners to their representatives in accordance with section 6H of the Land Reform Act, is reflected in the custom owners list and, where there is a lease, in the lease instrument.

(4) The National Coordinator is to ensure that the custom owners listed in a determination of custom owners made according to section 6B of the Land Reform Act, are notified if there is an application for a negotiator's certificate for the identification of the custom owners.

51 Alteration to the list by custom owners

(1) A descendant or descendants listed in a recorded interest in land will, on the death of the original member of the custom owner group, acquire rights previously held by the member in accordance with the rules of custom of the custom owner group.

(2) Membership of the custom owner group as detailed in a recorded interest in land may be reviewed by the custom owners at any time. Any review of the membership must be made at a meeting of all living members of the custom owner group and all members previously listed as descendants where original members have died.

(3) A custom land officer must attend a meeting referred to under subsection (2) and record in writing the resolution to give effect to the new membership. The resolution must be signed by all members of the custom owner group and witnessed by the custom land officer who is to sign the resolution as the witness.

(4) The record must be checked to ensure the decision is made under the rules of custom of the custom area and approved by the custom area council of chiefs or in areas with no custom area council of chiefs, the Island Council of Chiefs.

(5) If the custom area council of chiefs or Island Council of Chiefs approves the decision, the custom land officer is to file a written record of the decision with the office of the National Coordinator.

(6) The National Coordinator must upon receipt of the record under subsection (5) must file the record and update the custom owner list.

(7) A written record filed under subsection (6) is termed a new recorded interest in land.

52 Alterations to the custom owner list by the National Coordinator

The National Coordinator may make alterations to the custom owner list as is necessary on the following grounds:

(a) to give effect to an Order of an Island Court (Land) made under this Act; or

(b) to correct a clerical error or an incorrect description of a matter related

to the list.

53 Revision to a determination of custom owners

(1) A determination of a nakamal may be reviewed at any time by a nakamal following the process in Part 4.

(2) The custom land officer is to ensure a written record of the revised determination of custom owners is filed with the office of the National Coordinator to create a new determination of custom owners.

54 Requirement to identify custom owners

(1) A custom land must not be registered under the Land Leases Act unless the National Coordinator confirms by certification of the custom owners list, the names of the custom owners and the representatives of the custom owners, who may sign on behalf of the custom owners.

(2) Where the ownership of land is disputed and the names of the custom owners are not yet determined, the Minister may sign as lessor only with the consent of the disputing parties.

55 Correction of names of lessors of custom land

(1) If any person has reason to believe that one or more of the persons who have executed a lease of custom land as lessors had no authority to execute such lease of that land, such person must report the matter to the National Coordinator.

(2) Upon receipt of a report that a lease has been executed by one or more persons as lessors who had no authority to execute such lease, the National Coordinator must arrange for notice to be given to identify the custom owners in accordance with section 6B of the Land Reform Act.

(3) When the notification period has lapsed the National Coordinator must allocate a custom land officer to attend the meeting and to determine the custom owners in accordance with the procedures set out in Part 3 of this Act.

(4) If the persons authorised to execute a lease have been determined, the National Coordinator is to inform the Director of Lands, who is to, if necessary, correct the names of the lessors in accordance with that information.

(5) This section applies despite the fact that the lease has been registered, and despite the relevant provisions of the Land Leases Act.

PART 12 MISCELLANEOUS MATTERS

56 Guidelines

The National Coordinator may prescribe guidelines that may be used for the purposes of this Act.

57 Existing decisions of Island Court and Supreme Court

Decisions of the Supreme Court and an Island Court which determine the ownership of custom land and which were made before the commencement of this Act are deemed to create a recorded interest in land in respect of the person or persons determined by such Court to be the custom owners and will enable the custom owners so recorded to be identified for the purpose of consenting to an application for a negotiator's certificate or a lease, or is to provide the basis for rectification of an existing lease instrument.

58 Existing decisions of Customary Land Tribunal

(1) Decisions of:

- (a) a single or joint village Customary Land Tribunal; or
- (b) a single or joint sub-area Customary Land Tribunal; or
- (c) a single or joint area Customary Land Tribunal; or
- (d) an island Customary Land Tribunal,

which determined the ownership of custom land and which were made before the commencement of this Act and have not been challenged within 12 months after the commencement of this Act, are deemed to create a recorded interest in land in respect of the person or persons determined by such tribunal to be a custom owner.

(2) The creation of a recorded interest in land under subsection (1) will enable the custom owners so recorded to be identified for the purpose of consenting to an application for a negotiator's certificate or a lease, or is to provide the basis for rectification of an existing lease instrument.

(3) A person may challenge a decision of a Customary Land Tribunal under this section by filing an application with the appropriate Island Court (Land) that the decision of the Customary Land Tribunal be reviewed on the ground that:

- (a) it has been made at a meeting that was not properly constituted; or
- (b) it has been made in breach of the authorised process; or
- (c) it has been procured by fraud; or
- (d) it was wrong in custom or law.

(4) The Island Court (Land) after hearing all relevant evidence may dismiss the application for review, or may order that the decision of the Customary Land Tribunal be set aside and direct that the ownership of custom land be determined in accordance with this Act.

59 Regulations

(1) The Minister may, after consultation with the National Coordinator and the Malvatumauri Council of Chiefs, make regulations not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Minister may, after consultation with the National Coordinator and the Malvatumauri Council of Chiefs, amend Schedules 1, 2 and 3 of this Act.

60 Review of the operation of this Act

Regular reviews on the operations of this Act are to be made every 3 years in consultation with the Malvatumauri Council of Chiefs.

61 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE 1 PROCEDURE OF CUSTOM AREA LAND TRIBUNALS

1 Notice of hearing

(1) Within 21 days after the establishment of a custom area land tribunal, the secretary of the land tribunal must give notice under subsection (2) to the disputing custom owner groups and the custom land officer.

(2) The notice must:

(a) be in writing, be in Bislama or a vernacular language of one or more of the disputing custom owner groups; and

(b) specify the date and time of the meeting of the custom area land tribunal to hear the dispute; and

(c) specify the place of meeting of the custom area land tribunal, being a place which is convenient having regard to the location of the land, the residences of the tribunal's members, the residences of the parties and the availability and security of meeting places; and

(d) specify the name and address of the secretary of the custom area land tribunal.

2 Commencement of hearing and objections

(1) The custom area land tribunal must, so far as practicable, meet to hear a dispute at the time and on the date and at the place specified in the notice given under the clause 1.

(2) Whenever a custom area land tribunal first meets to hear a dispute, the

Chairperson must:

- (a) open the meeting; and
- (b) introduce himself or herself, to the other members and the secretary of the land tribunal; and
- (c) ask if there are any objections to the qualification of the Chairperson, any of the other members or the secretary in accordance with Part 9 of the Act.

(3) Subject to subclause (4), the Chairperson must consider any objection, and if he or she considers that the objection is justified, he or she must disqualify the person concerned and adjourn the meeting to enable another person to be appointed.

(4) If the objection is to the Chairperson of the custom area land tribunal, the other members of the tribunal must consider the objection, and if they consider that the objection is justified, they must disqualify the Chairperson and adjourn the meeting to enable another Chairperson to be appointed.

3 Hearing of dispute

(1) The Chairperson of a custom area land tribunal must:

- (a) invite the first disputing custom owner group to describe their custom relationships, ownership and use rights to the land; and
- (b) on completion of that group presenting their case – invite the other disputing group or groups to describe their custom relationships, ownership and use rights to the land.

(2) In describing their custom relationships, ownership and use rights to the land, each disputing group must be allowed an adequate opportunity to present arguments, produce evidence and call witnesses.

(3) Each party and his or her witnesses may be questioned:

- (a) by each member; and
- (b) by any other disputing group, subject to the consent of the Chairperson of the tribunal.

(4) A land tribunal must inspect the land in relation to which there is a dispute and, if possible, must walk around the boundaries of the land.

4 Disputes to be resolved in accordance with custom

(1) A custom area land tribunal must determine the custom owners according to the custom of the area where the land is situated.

(2) The disputing groups may at any time try to reach a customary settlement of the land dispute, and the tribunal must encourage and facilitate any such attempts.

(3) The Chairperson may adjourn the hearing of a custom area land tribunal for a period not exceeding 10 days to enable a customary settlement to be reached.

(4) However, if there is no customary settlement within that time, the Chairperson must recommence the hearing.

5 Decisions of custom area land tribunals

(1) After the hearing of a custom area land tribunal is completed, the Chairperson must adjourn the meeting of the custom area land tribunal to enable the members to make their decision. The decision must be made within 21 days after the completion of the hearing.

(2) Decisions of a custom area land tribunal are to be made by consensus.

(3) The Chairperson of a custom area land tribunal must announce the decision in public and the custom land officer must be present and, if possible, the disputing groups should also be in attendance.

6 Decisions of Custom Area Land Tribunals

(1) A single or joint custom area land tribunal must give its decision in accordance with the custom of the area in which the land is situated, following the rules of custom.

(2) The decision of the custom area land tribunal must include the details of the resolution of the dispute including:

(a) which families, groups or individuals are recognised as having interests in the land, and what interests in the land such families, groups or individuals have; and

(b) where members of the custom owner group have different classes of rights these differences should also be recorded in the resolution of the dispute.

7 Customary reconciliation ceremony

The disputing groups may enter into a customary reconciliation ceremony after a custom area land tribunal announces its decision.

8 Allowances and costs

(1) Before a custom area land tribunal sits on any day (“the sitting day”) to hear a dispute, the secretary of the land tribunal must work out:

(a) the sitting allowances to which the Chairperson, a member and the secretary is entitled to for the sitting day in accordance with Schedule 2;

and

(b) the reasonable transportation and communication costs of the Chairperson, each other member and the secretary for the sitting day.

(2) Each disputing group must pay to the secretary an equal share of the total of the amounts worked out under paragraph (1)(a) and (1)(b) before the custom area land tribunal meets on the sitting day. For example, if the total amount is VT 9,000 and there are 2 parties, each party must pay VT 4,500.

(3) If any of the parties do not pay the amounts required under subclause (2), the land tribunal must not meet on the sitting day.

(4) If the custom area land tribunal meets on the sitting day, the secretary must, at the end of that day, pay to:

(a) the Chairperson; and

(b) each member; and

(c) himself or herself,

the sitting allowances, and transportation and communication costs, to which he or she is entitled.

(5) Sitting allowances and costs may be paid in kind if this is acceptable to the recipient.

9 Records of decisions

(1) The secretary of a custom area land tribunal must record the tribunal's decision in the form set out in Schedule 3, and arrange for it to be signed by the Chairperson, members and secretary of the land tribunal, and countersigned by the parties and by the council of chiefs which established the tribunal.

(2) The secretary of the tribunal must give a copy of that decision to the custom land officer of the province in which the land is situated, who is to forward a copy to the National Coordinator.

SCHEDULE 2 ALLOWANCES FOR CHAIRPERSON, SECRETARY AND MEMBERS OF A CUSTOM AREA LAND TRIBUNAL

Custom area land tribunal Allowances Table		
Item	Tribunals	Sitting allowances per person per day
1	single custom area land tribunal	Chairperson VT 2000 member VT 1500

		secretary VT 1500
2	joint custom area land tribunal	Chairperson VT 2000 member VT 1500 secretary VT 1500

SCHEDULE 3 FORMS FOR DETERMINATION OF CUSTOM OWNERS
Nakamal Record of Determination of Custom Owners Form

1. Name of all heads of the nakamal, Chiefs and other Leaders present at the Nakamal meeting or meetings.
2. When and where all meetings occurred.
3. Place and time of all meetings.
4. Date of custom owner determination.
5. Description of land in dispute.
6. Sketch plan of land.
7. Identifying customary land marks such as roads, rivers, lakes, coastline, trees and rocks.
8. The custom owner determination includes all details of:
 - (a) the membership of the custom owner group or groups, including which families, groups or individuals are recognised as having interests in the land, and what interests in the land such families, groups or individuals have;
 - (b) all customary rules associated with the rights to hold or use land by members of the custom owner group including rules as to how any rights over the land are passed on to descendants;
 - (c) members may also choose to list descendants to whom their rights may be transferred upon their death.

Certified to be a true and accurate record of the determination of the Nakamal:

Signed by all heads of the nakamal or nakamals and other leaders of the nakamal or nakamals and all other members of the custom owner group Date:

Witnessed by the custom land officer Date:

Details of a Mediated Outcome Form

1. Names of all heads of the nakamal or nakamals and other leaders present at the mediation meeting or meetings.
2. When and where all meetings occurred.
3. Place and time of all meetings.
4. Date of mediated outcome.
5. Description of land in dispute.
6. Sketch plan of land.
7. Identifying customary land marks such as roads, rivers, lakes, coastline, trees, rocks.
8. For the mediated outcome include all details of:
 - (a) the membership of the custom owner group or groups, including which families, groups or individuals are recognised as having interests in the land, and what interests in the land such families, groups or individuals have;
 - (b) where members of the custom owner group have different classes of rights these differences should also be recorded in the resolution of the dispute;
 - (c) members may also choose to list descendants to whom their rights may be transferred upon their death.

Certified to be a true and accurate record of the mediated outcome.

Signed by all heads of the nakamal or nakamals and other leaders of the nakamal and all other members of the custom owner group or custom owner groups Date:

Witnessed by the custom land officer Date:

Custom Area Land Tribunal Record of Decision Form

- 1 Name of Land Tribunal.
- 2 Names of Chairperson and members.
- 3 Name of secretary.

4 Place of meeting.

5 Date of meeting.

6 Date of decision.

7 Description of land in dispute.

8 Sketch plan of land.

9 Identifying customary land marks such as roads, rivers, lakes, coastline, trees, rocks.

10 The custom area land tribunal decision includes all details of:

(a) who was in attendance at the meeting;

(b) when and where the meeting or meetings occurred;

(c) the details of the membership of the custom owner group or groups, including which families, groups or individuals are recognised as having interests in the land, and what interests in the land such families, groups or individuals have;

(d) where members of the custom owner group have different classes of rights these differences should also be recorded in the resolution of the dispute;

(e) members may also choose to list descendants to whom their rights may be transferred upon their death.

Certified to be a true and accurate record of the decision of the custom area land tribunal.

Chairperson: _____ Date: _____

secretary: _____ Date: _____

member: _____

Date: _____

member: _____ Date: _____

Countersigned by all Chiefs and representatives of all disputing groups Date: _____

Witnessed by the custom land officer Date:
