INTERNATIONAL CLIMATE INITIATIVE

Regional project

Climate Protection through Forest Conservation in Pacific Island Countries

On behalf of:

Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety

of the Federal Republic of Germany

Vanuatu:

Legal Framework for REDD+

updated version, August 2014

SPC Secretariat of the Pacific Community

giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

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On behalf of:
Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety
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Executive summary

Vanuatu is an archipelago of more than 80 islands in the South Pacific region of Melanesia. It has a small population of approximately 245,000, of which about 75% live in rural areas, mostly based on a subsistence economy. Ni-Vanuatu, or indigenous people from Vanuatu, makes up the majority of the population.

Vanuatu has a land area of approximately 1.2 million hectares with a forest area of 440,000 hectares, being 36% of its land area. It has reported a zero rate of deforestation over the 2000-2010 period (**FAO 2011: 117**),although this figure is based on out-dated data from 1989-1992. The main drivers of deforestation are land clearance and conversion to coconut plantations and cattle-grazing, and small-scale shifting subsistence agriculture. The main drivers of forest degradation are invasion by introduced invasive vines, and timber harvesting through portable sawmills in areas close to urban centres. Vanuatu has significant potential to take advantage of the "plus" part of REDD+ through reforestation and afforestation.

As is the case in all Melanesian countries, Vanuatu does not yet have a dedicated legislative framework for REDD+. Despite this, it already has a relatively suitable legal framework that could be used to facilitate REDD+ activities. Vanuatu is proposing to take a programmatic approach to REDD+ that will not involve cash payments to landowners. While REDD+ projects will be permitted (subject to government approval), Vanuatu proposes to implement its National REDD+ Scheme by channelling REDD+ revenues to provincial-level government who will be responsible for on-the-ground implementation, and by providing in-kind support to landowners to incentivise changes in behaviour.

The main law regulating forest use in Vanuatu is the Forestry Act [Cap. 276] (2001), which regulates commercial forestry operations. However, as there are no commercial logging concessions in Vanuatu (the last large scale logging operation ceased in 2004), the legal framework for land management and land use planning is likely to play a much more important role in facilitating REDD+ activities than the **Forestry Act**.

Almost all land in Vanuatu is held under customary tenure (99%), being either leased (9.3%) or un-leased (89.7%). Customary land is held communally by the tribe or clan, and cannot be alienated (i.e. sold or mortgaged) except to other ni-Vanuatu in accordance with customary law. As customary land is unregistered, it can sometimes be difficult (for outsiders) to identify the true custom owners of land, and disputes between and within communities over land ownership and boundaries are common.

Extensive reforms to the land laws in 2013 which provide for customary institutions to make final and binding decisions on land ownership are intended to address this problem. If implemented effectively, these reforms will improve the integrity and transparency of the process for identifying the true custom owners of customary land, as well as improving the leasing process – making both processes potentially much more suitable for use in REDD+ activities. Further consultation with customary institutions and landowners are required to identify the possibilities of using the new land laws to facilitate REDD+ activities, and in particular whether the new process for leasing land is accessible to custom landowners and provides acceptable safeguards.

Vanuatu is the only country in Melanesia which already has a statutory framework for forest carbon rights (**Forestry Rights Registration and Timber Harvest Guarantee Act 2000**). However the Act only applies to lease customary land, and has never been used. Identifying who owns the forest carbon rights on un-leased customary land can be very difficult because land use and ownership is very fragmented between different groups. however the recent 2013 Land Law Reforms may present an mechanism which can help to clarify who owns the forest carbon rights in a particular area of land as it sets out a process for traditional institutions (nakamals) to make binding decisions as to which families, groups or individuals own custom land (or are entitled to lease custom land), as well as deciding and recording who has use rights. This decision then becomes a recorded interest in land (**Custom Land Management Act 2013**).

Vanuatu does not have existing legal structures to facilitate cash-based benefit-sharing to customary communities, such as through incorporated land groups. However, as Vanuatu intends to adopt a programmatic approach to REDD+ which does not involve cash transactions, such structures may not be

necessary as benefits are likely to be delivered through subsidies for agricultural activities and in-kind support offered by the government. Care will need to be taken to ensure this approach does not breach the Constitutional protection enjoyed by custom landowners against the 'taking' of property without fair compensation.

In terms of legal mechanism for protected areas, the **Environmental Protection and Conservation Act 2003** provides a workable option for providing legal protection for forest areas to be conserved. Landowner communities who wish to conserve their land as part of a REDD+ activity can request that their land be declared as a Community Conservation Area under this Act.

Vanuatu also has a well-structured hierarchical system of customary governance, mainly delivered through councils of chiefs, and recognised by statute, which can be used to facilitate free, prior and informed consent (FPIC) processes for REDD+ activities. The new statutory processes introduced by the 2013 Land Law Reforms for determining land ownership and consulting and obtaining landowner consent for land leasing could potentially form the basis for effective FPIC processes for REDD+ at the local-level, although consideration will need to be given to how effectively these reforms are implemented.

On the whole, legal frameworks for REDD+ safeguards are weak in Vanuatu. Legal safeguards to ensure that gender impacts are considered and gender equity and equality is achieved in REDD+ activities are currently lacking in Vanuatu. The legal framework establishing anti-corruption measures is also relatively weak, and enforcement of existing anti-corruption mechanisms is poor. Although Vanuatu has ratified the Convention on Biological Diversity, it does not have a comprehensive legislative framework for the protection of biodiversity or vulnerable and threatened species and their habitat.

2013 Land Law Reforms

The original version of this Paper was published in January 2014. This current update has been prepared to incorporate the extensive changes to the land laws passed by the Parliament in November 2013, as amended in June 2014 (referred to as the "**2013 Land Law Reforms**").

The 2013 Land Law Reforms contain three main changes:

1. Amendments to the **Constitution** to formally recognise customary institutions (called nakamals), and to require the Parliament to consult the Malvatumauri Council of Chiefs (formerly referred to as the National Council of Chiefs) on any proposed changes to land laws.
2. A new Custom Land Management Act 2013 which empowers local-level customary institutions (nakamals) to make final determinations as to determine land disputes and to identify who are the true custom owners of an area of land. Appeal rights through formal court processes are limited to procedural issues. A central land register is created which lists the names of all custom owners of each land area – a process which is similar to that of Fiji.
3. Improvements to the land leasing process which introduce a more open and transparent process for identifying the proper lessor of land, and imposing new requirements for public consultation and consent before a lease can be granted. The discretionary powers of the Minister for Lands to grant leases over customary land have been repealed and will now be exercised by a new seven-member Land Management Planning Committee which will receive and assess all lease applications.

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1 Background

Vanuatu, formerly New Hebrides, is a small archipelago of more than 80 islands in the South Pacific region of Melanesia. Vanuatu has a small population of approximately 245,000, of which about 75% live in rural areas, mainly engaged in traditional economies characterised by subsistence land use. Ni-Vanuatu, or indigenous people from Vanuatu, makes up the majority of the population. The national language is Bislama (a form of Pidgin English) spoken by about 95% of people, and the official languages are Bislama, English and French.

Vanuatu began preparing for REDD+ in 2006 with the Vanuatu Carbon Credits Project. Vanuatu has prepared a REDD+ **Readiness Preparation Proposal** (dated 7 October 2013) (R-PP 2013) for the implementation period 2014 – 2018 in which it refers to its proposed REDD+ programme as the "National REDD+ Scheme". It has received an in-principle grant from the FCPF of US$3.6 million and expects to sign its REDD+ Readiness Preparation Grant Agreement with the FCPF in September 2014.

Capacity to undertake REDD+ activities in Vanuatu is also being strengthened by the SPC/GIZ Regional Project *"Climate Protection through Forest Conservation in Pacific Island Countries"*. Under this project, SPC/GIZ is supporting consultation processes on REDD+ at national and provincial levels, as well as supporting personnel engaged in REDD+ in Vanuatu to participate in regional REDD+ capacity building activities.

As is the case in all Melanesian countries, Vanuatu does not yet have a legislative framework specifically for REDD+. However the **National Forest Policy 2013-2023** (p. 26) identifies the need to develop national REDD+ policies, strategies and legislation as part of its REDD+ initiative.

2 Vanuatu's approach to REDD+

2.1 Project-based approach

Vanuatu already has a relatively suitable legal framework that could be used to facilitate a project-based approach to REDD+. For example, the system for the leasing of customary land could be used to identify custom landowners and land boundaries, with benefit-sharing taking place under the leasing structure. However, the leasing mechanism has been widely abused in the past, with allegations being made of unfair lease dealings and that land has been leased without proper landowner consent. The process has been particularly susceptible to corruption (see **Daley 2010**, and **Stefanova et al. 2012**). Consequently, consultations with customary landowners in 2012/2013 indicated that an approach to REDD+ that relies on land leasing is unlikely to be acceptable.

However since these consultations, the 2013 Land Law Reforms have been passed which include significant changes to improve the integrity and transparency of the process for identifying the true custom owners of customary land, as well as improving the leasing process – making both processes much more suitable for use in REDD+ activities. Further consultation with customary institutions and landowners will thus now be required to investigate the suitability and acceptability of the new land laws for use in REDD+ activities.

2.2 Vanuatu's preferred programmatic approach

While REDD+ projects will still be permitted (**National Forest Policy 2013-2023**:26), subject to government approval under proposed REDD+ project guidelines (R-PP 2013:66), Vanuatu is likely to implement its National REDD+ Scheme primarily on a programmatic basis, in part due to the constraints posed by its customary land tenure system (see *section 5 Land tenure* below). An activity-based approach will use land use planning and sectoral policies to incentivise the required changes in behaviour, in a manner that will not involve cash payments to landowners. Rather, the government will use REDD+ revenues to invest in sustainable land use activities in different sectors. REDD+ programmes and activities will be developed at the

national level, in close consultation with each of the six provinces, which will be responsible for implementing REDD+ activities on the ground.

Possible REDD+ strategies include: the government offering provinces and landowners in-kind support, investment and extension services to encourage sustainable land use activities such as afforestation and reforestation; responding to requests from landowners for assistance for forestry and agriculture projects which affect the carbon balance; and encouraging landowners to enter into conservation agreements (see *Section 11.3 Community Conservation Areas* below) (**R-PP 2013**, 66-72).

3 Constitutional framework

Formerly known as the New Hebrides, Vanuatu gained independence in 1980, after being jointly ruled by the British and French. It has a democratic parliamentary system of government, governed by a Prime Minister with a President as Head of State.

On Independence, freehold land was abolished and all land in Vanuatu was restored to "the indigenous custom owners and their descendants" (Art. 73). Consequently, almost all land in Vanuatu (99%) is held as customary land. Only Ni-Vanuatu can have perpetual ownership of land (Art. 75). Government consent is required for all land transactions between ni-Vanuatu and non-indigenous citizens or non-citizens (Art. 79).

The ***Constitution*** allows three legal systems to operate concurrently: common law (British law); civil law (French law); and customary law (Art. 95(2)). However, in relation to land, the rules of custom apply to land ownership and use in Vanuatu (Art. 74). Under the 2013 Land Law Reforms, customary institutions (and not courts) now have primary responsibility for resolving land ownership disputes (**new Art. 78**).

The **Constitution** also establishes the Malvatumauri Council of Chiefs (the "*Malvatumauri*"), a body of custom chiefs who are elected by District Councils of Chiefs (Ch. 5). Under the 2013 Land Law Reforms, the Council of Chiefs **must** be consulted on any proposed law which relates to land, tradition and custom before it is presented to Parliament (Art. 30, **Constitution (Sixth)(Amendment) 2013**; s. 19A, *Land Reform (Amendment) Act 2013*).

The **Constitution** also protects a broad range of human rights (Art. 5). Of particular relevance to REDD+ is the right to protection of property and from unjust deprivation of property, the right to protection against discrimination on the ground of sex, and the right to equal treatment under the law.

4 Forest sector and REDD+

Vanuatu has a land area of approximately 1.2 million hectares with a forest area of 440,000 hectares, being 36% of its land area. It has reported a zero rate of deforestation over the 2000-2010 period (**FAO 2011**:117), although the accuracy of this figure is unclear as Vanuatu is still relying on data from a single National Forest Inventory carried out in 1989-1992. Vanuatu has some natural forests that are still largely intact on its smaller islands, and also on the inland and mountainous areas of the larger and more densely populated islands. In the 1980s and 1990s, useful timber species were over-harvested and today Vanuatu imports most of its timber and no longer has a significant forest product export industry (**Mele 2011**: 44) (see ***Fehler! Verweisquelle konnte nicht gefunden werden.***).

At present there are no timber concessions in Vanuatu, with most timber extraction taking place on a small scale using mobile sawmills, resulting in annual harvests of approximately 10,000 m3.

Box 1: A brief history of logging in Vanuatu

Vanuatu experienced high levels of unsustainable logging in the mid-1990s which severely depleted its forests. In 1993, the Government issued several large-scale logging licences (timber rights agreements) to foreign companies, allowing a total harvest of over 300,000 m³ per year, despite the Department of Forests having previously identified a sustainable yield of only 52,000 m³ per year. This logging led to severe degradation of the forest. In mid-1994, landowners on Erromango disrupted a planned log shipment objecting to the process used to obtain landowner consent for the logging operation. Subsequently, the Government of Vanuatu banned the export of logs in 1993, and, subject to limited exceptions, the ban remains in place today (***Forestry Act***, s. 61).

Processing facilities were then established in Vanuatu so that higher value wood products could be exported instead. Between 1990 and 2004 an average of just over 30,000 m³ of wood was harvested each year, of mainly Whitewood and milk tree. In 2004 the industry was scaled back because of dwindling timber supplies, with many of the major logging companies ceasing activities.

Source: Livo Mele, (2011). ***Forests of the Pacific islands: Foundation for a sustainable future****, Vanuatu chapter, p. 46).*

4.1 Forest definition and forest cover

Vanuatu is an archipelago of more than 80 islands and has a land area of over 1.2 million hectares, with its six largest islands each forming a province. About 36%, or 440,000 hectares of Vanuatu has forest cover (FAO 2011:117), although this figure could be as high as 74% of land area, or 900,000 hectares, if different forest types such as areas of agroforestry, fruit plantations, mangroves, bamboos and palms are included in the definition of forests (R-PP 2013: 50). "Forest" is defined under the *Forestry Act* as "any area … predominately covered by trees, and includes areas planted with trees except where such trees are for agricultural purposes" (s. 3). Vanuatu is considering adopting a more appropriate legislative definition of "forest" which reflects its national circumstances, on which a National REDD+ Scheme can be based (R-PP 2013: 50).

4.2 Administrative arrangements

The Ministry of Agriculture, Forestry and Fisheries (MAFF) has overarching responsibility for coordinating land use and productive sector strategies, including forestry. Under this Ministry, the Department of Forests has administrative responsibility to manage the forestry sector in Vanuatu, which includes: administration of the *Forestry Act 2001*, its regulations and orders; ensuring compliance with the Code of Logging Practice; and implementation of the Vanuatu Forest Policy 2013-2023.

The Department of Forests is the national REDD+ focal point and will have day-to-day responsibility for the implementation of Vanuatu's National REDD+ Scheme. The Director of Forests is the head of the Department of Forestry, although this position has been vacant since 2012.

4.3 Drivers of deforestation and forest degradation

Vanuatu's R-PP 2013: 51-53 has identified the main drivers of deforestation as being:

a. Land clearance for coconut plantations and the conversion of land for cattle-grazing; and

b. Small-scale shifting subsistence agriculture, compounded by infrastructure and tourism development and agriculture which is forcing more people to move inland and to convert forest for subsistence living.

The main drivers of forest degradation are:

a. Invasion by introduced invasive vines such as *Merremia* spp, which has taken over large areas of logged-over forests and abandoned agriculture areas, impeding the natural regeneration of the logged forest; and

b. Timber harvesting with the use of portable sawmills in areas close to urban centres.

5 Land tenure

Almost all land in Vanuatu is held under customary tenure (99%), being either leased (9.3%) or un-leased (89.7%), whilst the remaining 1% is state-owned land (see *Fehler! Verweisquelle konnte nicht gefunden werden.*). There is no freehold land in Vanuatu, which was abolished on Independence, with the closest thing to freehold being leased customary land.

Table 1: Land tenure categories in Vanuatu (source: **Corrin, 2012**: 31)

Category	%	Sub-category	%	Purpose	Observations
Customary land	99%	Un-leased	89.7%	Customary land	No mechanism for registration of un-leased customary land. Can only be alienated to ni-Vanuatu, in accordance with custom. Cannot be alienated to foreigners, except by lease.
		Leased	9.3%	Agricultural (82%); commercial / tourism (9%); industrial (1%); residential (4%); special (4%)	Max. term: 75 years Registration confers indefeasible title
				Public land	Max. term: 75 years
Public land	1%			Land vested in Government at independence : public roads, etc.	Government can acquire public land from land 'owners', but must pay compensation

5.1.1 Un-leased customary land

This is by far the largest category of land tenure in Vanuatu (89.7%). Customary land is held communally by the tribe or clan, on trust for present and future generations. Customary land enjoys strong protection under the ***Constitution*** which provides that customary land cannot be transferred to foreigners and may only be alienated (sold, mortgaged or otherwise burdened) to other ni-Vanuatu if customary law permits, and the transfer must be done in accordance with customary law (Arts. 74 and 75). These restrictions have implications for REDD+ projects as a contract or agreement which requires particular land management activities to be carried out, or which purports to deal with carbon rights (as an interest in land), may constitute an 'alienation' of customary land in breach of the ***Constitution***, unless the contract is negotiated between ni-Vanuatu and is negotiated according to custom (**Corrin 2012**: 32).

As customary land is unregistered, it can sometimes be difficult (for outsiders) to identify the true custom owners of land. Disputes between and within communities over land ownership and land boundaries are common in Vanuatu, and are often exacerbated or reignited when proposals to develop land or natural resources arise.

The 2013 Land Law Reforms have sought to address these problems by empowering customary institutions to make final decisions on land ownership and boundaries (rather than the courts), and creating a central land register which lists the names of all custom owners of each land area – a process which is similar to that of Fiji (see

). This new process, if implemented effectively, could provide a faster, cheaper and more equitable means for identifying landowners and land boundaries on which REDD+ programmes and activities can be based.

Box 2: Customary institutions now determine land ownership and boundaries

Land is a highly sensitive issue in Vanuatu. Under the *kastom* view of land, land defines identity, custom and culture. It is held on trust for the community, and cannot be bought and sold by individuals. The Independence movement in the 1980s was driven in part by concerns over the extent to which land had been alienated to foreigners. Subsequently, the ***Constitution*** abolished freehold land and returned all land to the custom owners, stating that there should be "a national land law" to implement these provisions. Shortly thereafter, the *Land Reform Act* [Cap. 123] was passed as an interim measure, allowing custom owners to lease their land to foreigners, but it was never replaced with a comprehensive land scheme.

By 2005, land alienation, mainly through leasing, had again emerged on a scale that threatened the subsistence livelihoods of many ni-Vanuatu, particularly on the main island of Efate. This led to a National Land Summit in 2006 which called for more transparent processes for recognising and regulating customary land ownership, the need to ensure fair dealings in leases, the removal of the power of the Minister to approve leases over disputed custom land (not yet implemented), and the need for a zoning and land use policy.

In November 2013, the Parliament passed a raft of reforms to Vanuatu's land laws, intended to implement the recommendations from the National Land Summit. The 2013 Land Law Reforms, which came into force on 30 February 2014, significantly altered the leasing process by reducing the discretionary power of the Minister of Lands to grant leases and imposing new requirements for identifying the true custom owners, consulting the community and obtaining their consent.

The reforms also introduced a new **Custom Land Management Act 2013** (amended in June 2014) which repealed and replaced the *Customary Land Tribunal Act 2001*. Under the new Act, customary institutions (called *nakamals*) are now empowered to make final decisions as to who are the true custom owners of particular land areas and can also resolve boundary disputes. The decision must include a sketch plan of the land and identify landmarks for boundaries.

Once a *nakamal* makes a final decision on land ownership and sets down its decision in writing, this is recorded on a central land database and becomes a recorded interest in land. The decision is binding in law and cannot be appealed to higher courts except on very limited grounds, e.g. fraud (see S*ection* ***Fehler! Verweisquelle konnte nicht gefunden werden. Fehler! Verweisquelle konnte nicht gefunden werden.***).

The Act also establishes a National Coordinator of Land Dispute Management (s. 10) whose task it is to keep a list of all the final decisions on land ownership made by customary institutions, all recorded custom interests in land, and the names of the nominated representatives of the custom owner group (s. 50). Existing decisions on land ownership made by Island Courts and the Supreme Court are deemed to be recorded interests in land (s. 57).

The land reforms are summarised in a booklet: ***Plan blong ol jenis***, Septemba 2013 (Bislama).

Source: ***Lunnay 2007****, and* ***McDonnell 2014****.Source:* *Corrin 2012.*

5.2 Leased customary land

There is no mechanism for registering (un-leased) customary land. The only way that customary land can be released from its constraints against alienation and made available for a (non-customary) planned use is through the creation of a lease (Land Leases Act [Cap. 163]). Consequently, most development takes place on leased land (**World Bank 2012**).

The legal effect of creating a lease over customary land is very similar to land registration in that the person named as lessor hands control of the land to the lessee, removing control of the land from the custom owners . Since independence, the leasing process in Vanuatu has been highly problematic and subject to abuse, leading to widespread dissatisfaction by customary landowners, including claims that land had been leased without the consent of the custom owners (**Stefanova et al. 2012**; and **McDonnell 2014**). As a consequence, during national consultations in 2013 regarding REDD+, customary landowners indicated that a REDD+ mechanism that requires the leasing of land is unlikely to be acceptable (**R-PP** 2013: 51).

The 2013 Land Law Reforms introduced extensive changes to make the leasing process more open and transparent (see ***Fehler! Verweisquelle konnte nicht gefunden werden.***). If implemented effectively, and if adequate support is provided to landowners to access the new process (e.g. to pay for signage and consultation), leasing could provide a suitable mechanism to underpin REDD+ activities which require long term security of land tenure.

Box 3: 2013 Reforms to land leasing process

The 2013 Land Law Reforms have made major changes to the process for leasing land, including:

1. **Identification of custom owners or disputing groups:** A "custom owner group" can now be the lessor of land. The person or custom owners entitled to lease the land (as lessor) must now be identified through the register of recorded interests in land, or if there is no owner listed, the *nakamal* (traditional local institution) must determine the true custom owners of the land.
2. **Public notification of proposals to lease:** Public notification of any proposal to lease land must be given by erecting public signage on the land, radio broadcasts, newspaper notices and village notices. Public consultation meetings must be held.
3. **Consultation and consent of custom owners:** Stringent requirements for consultation with and consent (by consensus) of custom owners to lease their land have been introduced.
4. **The discretionary powers of the Minister for Lands to grant leases over customary land have been repealed.** The reforms establish a new seven-member Land Management Planning Committee which will now receive and assess all lease applications.

Custom owners or any other indigenous citizen who are not satisfied that the proper process has been followed to obtain the consent of landowners to a new lease can lodge a complaint with the Land Ombudsman (s. 6N). Leases which are not issued in accordance with the statutory process (e.g. because of corruption) are void and of no effect (s. 7).

Source: Land Reform (Amendment) Act 2013; ***Custom Land Management Act 2013***

5.3 Dispute resolution mechanisms for customary land

Under the 2013 Land Law Reforms, customary institutions (*nakamals*), rather than the courts, are now responsible for resolving disputes over customary land ownership and boundaries (Part 4, ***Custom Land Management Act 2013***). If the nakamal cannot resolve a dispute within 30 days, a disputing group can request that the matter be resolved through mediation (Part 5). If mediation fails, the dispute can be referred to a custom area council of chiefs who will establish a custom area land tribunal to decide the dispute according to custom (s. 29(3), Part 5).

Decisions of the *nakamal* (or Custom Area Land Tribunal), once recorded in writing, are final and binding in law and cannot be reviewed by or appealed to a Court except on grounds of improper process or fraud (**new Art. 78, Constitution**; ss. 19, 28, ***Custom Land Management Act 2013***) (see ***Fehler! Verweisquelle konnte nicht gefunden werden.***).

This new structure for resolving land disputes is intended to restore authority to traditional decision-making bodies and to stop the costly and time-consuming rounds of legal challenges and appeals to courts over land disputes. The effectiveness of the new system will depend in part on the extent to which the administrative bodies, such as the National Coordinator of Land Dispute Management, and local communities, are supported to implement the changes.

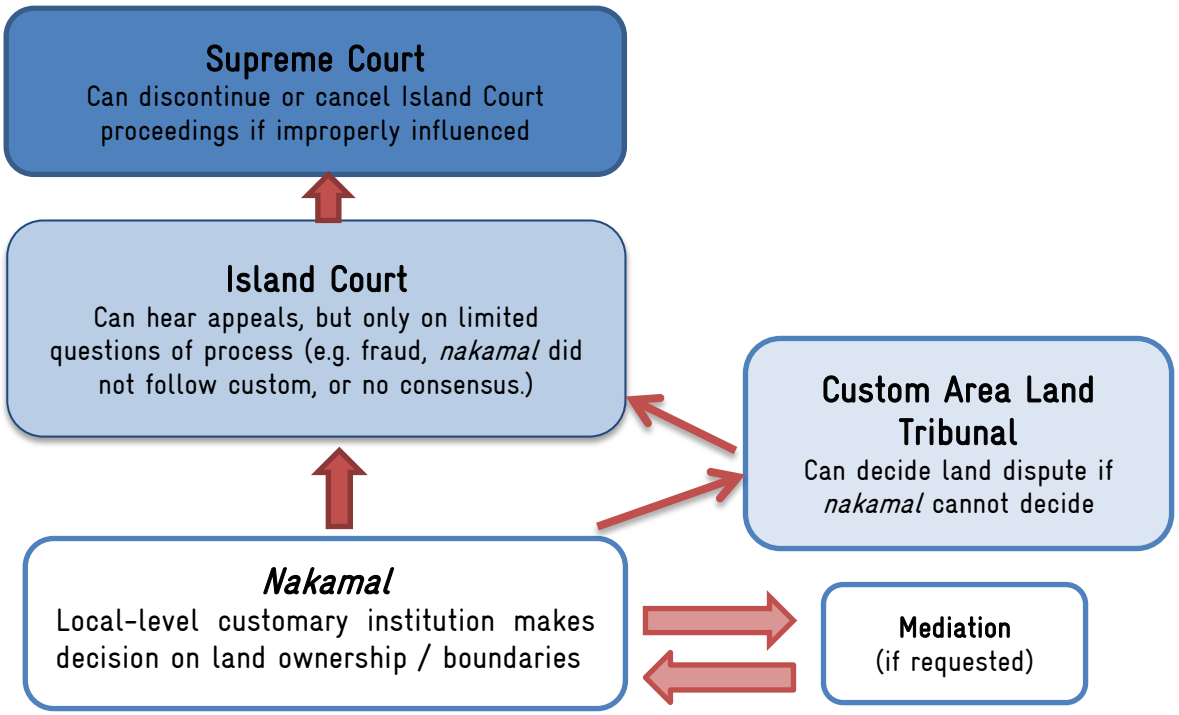

Figure 1: : New appeal process for land disputes

6 Forestry law

The main law regulating forest use in Vanuatu is the *Forestry Act* [Cap. 276] (2001). The Act only regulates commercial forestry operations. The felling of trees or removal of timber or other forest products by custom owners for sale to ni-Vanuatu in accordance with customary usage is expressly excluded from the Act [s. 3 "commercial forestry operations"], and is regulated instead by customary law (**Constitution**, Art. 78(2)).

6.1 Forest sector planning

Although Vanuatu's *Forestry Act* contains a requirement to prepare a Forestry Sector Plan, these provisions have not been used due to the difficulties of consulting with, and obtaining the consent of, custom owners across large forest areas. Consequently, Vanuatu does not have an area defined as permanent forest estate or production forests.

6.2 Approvals for forest use

All commercial forestry operations require both an agreement and a licence (except for sawmill, sandalwood and special licences).

There are three kinds of **agreements**:

- Timber rights agreement
- Timber permit
- Forestry lease

There are four kinds of **licence**:

- Timber licence (s. 44)

- Mobile sawmill licence (s. 46)
- Sandalwood licence (s. 47)
- Special licence (s. 48)

6.3 Timber agreements (logging concessions)

The ***Forestry Act*** establishes the Forests Board of Vanuatu whose main task is to supervise negotiations for Timber Rights Agreements (s. 7). The maximum period for a timber rights agreement is 10 years and is renewable. The Act sets out a complex process for entering into a timber rights agreement (Sch. 2) which involves obtaining approval from the Board to negotiate, the appointment by the Board of a Forest Investigation Officer to consult with the custom owners, and the appointment by landowners of a Management Committee to monitor the logging agreement and recording of payments.

Where the value of timber does not justify the expense of a timber rights agreement, a Timber Permit can be issued for up to one year (s. 29).

A third alternative for large scale logging is a Forestry Lease. Under the ***Forestry Act***, custom owners can grant a forestry lease for up to 75 years which entitles the lessee to 'establish, maintain and harvest timber from a crop of trees' (s. 30). This process follows the usual leasing process under the *Land Reform Act* (e.g. approval needed to negotiate, and Minister must approve lease) and would be registered under the *Land Leases Act*.

At present, there are no logging concessions in Vanuatu, with the last large scale logging operation ceasing in 2004. Timber harvesting is mostly done on a small scale using mobile sawmills. For the last 3 – 4 years, the Department of Forestry has only issued mobile sawmill licences. Plantations are being harvested as well, but a legal framework for plantations is only now being introduced in 2014 with the proposed introduced of the Plantation Forestry Act.

6.4 Licences

Commercial forestry operations must not be conducted without a licence (s. 31). All licences are subject to the Code of Logging Practice and to certain environmental protection provisions, such as refraining from logging protected species of plants and not logging in buffer zones around watercourses or on land with a slope of more than 30 degrees (s. 33(1), Part 6).

Most licences issued today are for mobile sawmills (s. 46). A mobile sawmill licence must not exceed 5 years. The maximum annual volume of logs which can be cut under a mobile sawmill licence is 500 cubic metres. Mobile sawmill operations are further regulated under the **Forestry (Control of Mobile Sawmills) Regulations** [Cap. 276] made under Order No 9 of 1996. The Forestry Department keeps a register of Mobile Sawmilling Licences. However, the register is not accessible by the public without the permission of the Director of Forestry.

A Special Licence can be issued for forestry operations where the use of the other forms of licence is not practicable or desirable. Special licences are used to authorise the clearing of land for agricultural or other development purposes, and for hazard removal. While a Special Licence could theoretically be used to authorise REDD+ activities, this would not be practicable as the licence cannot be issued for more than one year (s. 48(3)(a)).

6.5 Plantations

Forest plantations cover a relatively small area (approximately 4,800 hectares) and are found on several of the larger islands and include sandalwood, whitewood, canarium nut, tropical almond and mahogany, although these are relatively small given the amount of timber owned by customary landowners. Commercial plantations are usually located on leased land.

6.6 Reforestation and afforestation

Although Vanuatu has significant potential to take advantage of the "+" part of REDD+ through reforestation and afforestation given the large areas of cleared land - both degraded farmland and under-utilised pasture land – available, it lacks a clear legal framework to facilitate these activities, particularly if they are to take place on un-leased customary land. At present, reforestation requirements are generally included as conditions in timber agreements or timber licences. The **National Forest Policy 2013-2023** sets a target to establish 20,000 hectares of planted forests by 2020.

6.7 Mangroves

Vanuatu has about 2,500 hectares of mangroves (**FAO 2010**:8), 90% of which are found on the island of Malekula. Mangroves are valued for timber for housing, canoes and fuel wood, and provide habitat for crabs and fish that generate income and improve food security. Vanuatu is mapping mangroves as part of its National Forest Inventory and intends to include mangrove forests under its National REDD+ Scheme. The main anthropogenic drivers of deforestation for mangroves are overharvesting of timber as firewood and for building houses and boats, overfishing, and encroachment of leased land for conversion to housing and agriculture (**MESCAL 2013**: 18).

In accordance with the ***Constitution*** which vests all land in the indigenous custom owners (Art. 75), mangroves on the foreshore in Vanuatu, and the carbon in them, are generally owned by the indigenous custom owners of the land. This position is reflected in a Court decision which held that 'land' under Art. 75 of the **Constitution** includes the waters below low water mark and includes the seabed (**Terra Holdings Ltd v Sope**, 2012). Following the 2013 Land Law Reforms, it would appear that foreshore land and water below high water can no longer be leased (s. 3, *Land Leases (Amendment) Act 2013*).

Vanuatu does not currently have a dedicated legal framework for the protection and management of mangroves. However, mangroves can be protected under the following Acts:

- All development on foreshore land (land below mean high water mark) requires the written consent of the Minister (**Foreshore Development Act** 1976 [Cap. 90], s.2).
- In accordance with amendments to the Foreshore Development Act in 2010, all development on foreshore areas must now be assessed and approved under the Environmental Impact Assessment provisions of the ***Environmental Protection and Conservation Act*** 2003 (s. 12A).

7 Implementation and enforcement

7.1 Code of Logging Practice 1998

The ***Forestry Act*** (s. 54) contains mandatory restrictions on commercial forestry operations not to log near watercourses, within 100 metres of the coast, and on land with more than 30 degrees slope. In addition, the Code of Logging Practice 1998 (Vanuatu Code of Logging Practice Order No. 26 of 1998) applies to all commercial forestry operations in Vanuatu and is legally enforceable (s. 43).

7.2 Enforcement powers

It is an offence to carry out commercial forestry operations without the required agreement and/or licence (s. 70). Licences can be cancelled for non-compliance with the terms of the licence or a provision of the Act (s 37(2)). The Director can suspend a licence if there is a serious dispute between the custom owners of land and the conduct of the commercial forestry operations for up to 3 months (s. 38).

Since the islands of Vanuatu are widely scattered, it is very expensive to monitor the operation of sawmills given the limited budget of the Department of Forestry (FAO 2010:18). There are not enough forestry officers to monitor the saw mill operations, and their fuel budget is extremely very limited.

8 Forest carbon rights

The Constitution guarantees the right to protection from deprivation of 'property of any description' and of any 'interest or right over property …" (s. 8(1)), a provision which is likely to extend to carbon rights as a property right attracting compensation if arbitrarily taken. Allocation of carbon rights and benefits under the national REDD+ Scheme will therefore need to be done equitably, respecting landowner property rights, to avoid breaching this provision.

Vanuatu is the only country in Melanesia which already has a statutory framework for forest carbon rights (***Forestry Rights Registration and Timber Harvest Guarantee Act 2000***), although the Act has never been used.

8.1 Un-leased customary land

Vanuatu does not have any laws which specifically address the ownership of carbon rights on un-leased customary land. Given that nearly 90% of land and forest is owned by customary owners and governed by customary law, the ownership of carbon rights will be determined by the customary laws relating to the land in question. As customary laws vary from place to place and are not written down, it will be unclear (to outsiders) who owns the forest carbon on any particular area of un-leased customary land without undertaking a thorough study of genealogy and customary law. In addition to this, ownership and use rights over land can often be highly fragmented, making it very difficult to identify who might own the forest carbon rights.

The recent 2013 Land Law Reforms may present an mechanism which can help to clarify who owns the forest carbon rights in a particular area of land as it sets out a process for traditional institutions (*nakamals*) to make binding decisions as to which families, groups or individuals own custom land (or are entitled to lease custom land), as well as deciding and recording who has use rights. This decision becomes a recorded interest in land (ss. 18, 19 ***Custom Land Management Act 2013***).

8.2 Leased customary land

Where a standard form lease is in place forest carbon rights are likely to remain with the lessor (see **Corrin 2012**). However, this situation can be varied under the *Forestry Rights Registration and Timber Harvest Guarantee Act* 2000, which expressly deals with carbon rights, but only on leased land. Under this Act, the carbon rights on leased land can be separated from the underlying land title and granted to a third party. No such rights have yet been granted. The Act follows the carbon rights model used in many states in Australia.

For a comprehensive review of forest carbon rights in Vanuatu, see **Corrin 2012.** This paper was commissioned by SPC/GIZ and identifies how the ownership of carbon rights can be derived from existing law, including recommendations for law reform. The paper does not consider the effect of the 2013 Land Law Reforms which came into force after the paper was written.

9 Land use planning

Vanuatu does not yet have any national land use legislation under which can be used to reconcile land use in different sectors, such as forestry and agriculture.

The main law in Vanuatu for land use planning is the ***Physical Planning Act 1986.*** This Act only applies to local-level planning processes and does not establish a framework for land use planning and zoning at the provincial or national levels. Under this Act, local councils can make a plan which specifies when planning permission is required for certain types of development. 'Development' is defined broadly to include 'the carrying out of … operations in, on, over or under the land', and so in theory the Act could be used to

achieve REDD+ objectives by requiring landowners to obtain local council permission for certain activities such as the keeping of live-stock, agriculture and forestry (s. 1, Sch. 1.6).

However, in Vanuatu, customary control of land is paramount and external or "top down" attempts to control or regulate land use are likely to be resisted. Land use plans made under the Physical Planning Act 1986 are therefore unlikely to be followed by local communities unless the process is linked to customary decision-making structures to facilitate a 'bottom-up' approach to planning.

The Government is currently developing a national land use policy through the Department of Physical Planning within the Ministry of Lands, in accordance with Vanuatu's *Land Sector Framework 2009 – 2018*, which may provide a useful entry point for REDD+ planning.

10 Benefit-sharing

Vanuatu does not have a legal framework for benefit-sharing for REDD+ activities or payments for environmental services more generally.

One particular challenge for Vanuatu is how to identify the proper custom owners of an area (as well as custom boundaries) on un-leased custom land for the purpose of distributing benefits. Vanuatu does not have a mechanism which allows custom owners to form an incorporated group through which benefits can easily be channelled (see, for example, Incorporated Land Groups in Papua New Guinea). An alternative may be to channel funds through co-operative societies, groups of seven or more people who register an incorporated body to carry on an industry, business or trade (**Co-operative Societies Act** [Cap. 152] (1982). Early consultation with landowners indicates that using the land leasing (e.g. to clearly identify title and to distribute benefits to landowners) is unlikely to be popular due to the widespread abuse of this mechanism in the past (**Stefanova et al. 2012**).

The 2013 Land Law Reforms may present an opportunity to form a clearer basis on which a benefit-sharing mechanism can be built as the Act sets out a process for traditional institutions (nakamals) to make binding decisions on which families, groups or individuals own custom land (or are entitled to lease custom land), as well as use rights (s. 18, *Custom Land Management Act 2013*).

In any event, it may not be necessary to develop a legal framework for sharing cash revenues given that the National REDD+ Scheme intends to deliver benefits through in-kind government support (e.g. seedlings, agricultural extension services), and will not involve cash transactions. However, care will need to be taken to ensure that this approach, which is likely to see REDD+ revenues paid by the national government to provinces or delivered in the form of subsidies, does not breach the Constitutional protection enjoyed by custom landowners against the 'taking' of property (i.e. land, forest and carbon) without fair compensation (Arts. 55(1) (j) and 77). To ensure that this does not occur, Vanuatu's Measurement, Reporting and Verification (MRV) system will need to have the capacity to demonstrate that benefits are being fairly returned to those provinces (and landowners) where the emission reductions and removals are occurring.

Of relevance to benefit-sharing at the local level is a decision by the courts in Vanuatu which held that men and women are equally entitled to a share in the proceeds from land, which customary law did not allow (**Noel v Toto**, [1995] VUSC 3). This is based on the provision in the Constitution which prohibits discrimination on the basis of sex (Art. 5). The design of the benefit-sharing system for REDD+ in Vanuatu will need to be consistent with this court decision.

11 Protected area options

Protected area laws can play an important role in achieving emission reductions and removals from the forest sector by providing long-term legal protection for forest areas that are set aside for conservation. While there is only about 3% of forest area currently protected, Vanuatu has set a target of actively managing and protecting 30% of Vanuatu's natural forests (**National Forest Policy 2013-2023**:24).

There are three legal mechanisms under which land can be set aside for conservation:

- *National Parks Act*,
- *Forestry Act*, and
- *Environmental Protection and Conservation Act* 2003.

11.1 National Parks Act

The *National Parks Act* [Cap. 224] was introduced in 1993 and allows areas to be declared as a national park or nature reserve. However the conservation area provisions of this Act are not well-suited to the customary land tenure found in Vanuatu, and consequently they have never been used. There are plans to repeal the Act.

11.2 Conservation Areas (Forestry Act)

Under the *Forestry Act*, the custom owners of a forest area can request the Minister to declare an area to be a Conservation Area (ss. 50-52). Before making such a declaration, the Minister must consult the relevant local government council and Island Council of Chiefs or Area Council of Chiefs. A declaration can be cancelled by the Minister on the request in writing of the custom owners of the land. Under the Act, commercial forestry operations are prohibited in a Conservation Area, which would provide an element of protection for land which is set aside for REDD+ activities. In practice, the Conservation Area provisions of the *Forestry Act* are not widely used, with many communities preferring to use the conservation mechanism under the **Environmental Protection and Conservation Act** (Hecht, B., 2014 *pers. comm*).

11.3 Community Conservation Areas

The *Environmental Protection and Conservation Act 2003* provides the most workable option for enabling conservation of forests and forest carbon on un-leased customary land. Landowner communities who wish to conserve their land as part of a REDD+ activity can request that their land be declared as a Community Conservation Area under this Act. Indeed the Act was amended extensively in 2010, including a provision to clarify that Community Conservation Areas could be created for the specific purpose of providing ecosystem services, including climate mitigation (s. 35(ba)), and it is intended that this provision be used to support REDD+ activities (**National Forest Policy, 2013-2023**:24).

Community Conservation Areas are administered by the Department of Environmental Protection and Conservation. The process for declaring a Community Conservation Area is as follows: the Director can register a site as a Community Conservation Area on the request of an applicant, but only after obtaining the consent of the custom land owners (ss. 35 – 40). Once the boundaries are identified, a management plan is developed, the area is registered in the Environmental Registry, and a certificate of registration is issued to the landowners. The Director can provide technical or financial support to landowners to implement the management plan. A landowner can apply to cancel the registration, or the Director can deregister the area if the management plan is not implemented within the agreed time.

There is currently only one registered conservation area, the Erromango Kauri Reserve (3,205 hectares of Kauri rainforest at South Erromango), with another five areas being considered for registration. The Vatthe Conservation Area, which was established in 1994, was deregistered in 2006 due to a landowner dispute (see ***Fehler! Verweisquelle konnte nicht gefunden werden.***).

Box 4: Revocation of the Vatthe Community Conservation Area

The experience in Vatthe Conservation Area provides an important example of the need to resolve underlying land disputes in order to ensure the sustainability of conservation areas.

The Vatthe Conservation Area was established in 1994 as Community Conservation Area under the **Environmental Protection and Conservation Act**, with a management committee and management plan which included eco-tourism activities. It is located in Big Bay on Santo, the largest island in Vanuatu and covers the only remaining extensive area of alluvial and limestone forest (2,720 hectares).

Shortly after the project was proposed for the area, it was realised that the area had been subject to an on-going land dispute for more than a decade between various claimants, including the Sara and Matantas communities. Although the Supreme Court had previously declared the two communities to be the rightful owners of the area, this result had not been widely accepted. The effect of the conservation project was to re-ignite the simmering land dispute, resulting in loss of some infrastructure for the eco-tourism project. Consequently, Vatthe's Conservation Area status was revoked in 2006. The area is currently being reconsidered for re-registration in 2014.

*Source: **McIntyre 2008**: 147-169; and Hecht, B. 2014 pers. comm.*

12 Safeguards

12.1 Free, prior and informed consent

Given that nearly 90% of land is owned by ni-Vanuatu (Constitution, Art. 74), there will be both a practical and legal obligation to obtain the free, prior and informed consent (FPIC) of custom landowners for most REDD+ activities.

In all islands of Vanuatu, and at the national level, there is an existing hierarchical system of customary governance, mainly delivered through councils of chiefs (see ***Fehler! Verweisquelle konnte nicht gefunden werden.***. This hierarchy is well-placed to facilitate FPIC process relating to proposed legislative, administrative and programmatic proposals concerning REDD+ activities.

Box 5: Statutory framework formalising chieftain system

At the **national level**, the Constitution (Chapter 5) establishes the Malvatumauri Council of Chiefs (formerly referred to as the National Council of Chiefs) whose operation is regulated under the ***National Council of Chiefs Act 2006***. The 2013 Land Law Reforms amended the Constitution to require the Government to consult the Malvatumauri Council of Chiefs on any proposed law which concerns land, custom and tradition, before the draft law is presented to Parliament.

At the **province level**, the ***National Council of Chiefs Act* 2006** (Part 3) also establishes Island Councils of Chiefs, which consist of custom chiefs elected by area councils. The functions of an Island Council of Chiefs include resolving disputes according to local custom, and promoting sustainable social and economic development (s. 13). Island Councils do not resolve land disputes, which under the new **Custom Land Management Act 2013** are determined by local-level nakamals or Island Courts (see

).

In terms of **local-level consent processes**, the 2013 Land Law Reforms require that decisions by traditional institutions (*nakamals*) on land ownership be made by consensus (***Custom Land Management Act 2013***). The Act provides that decisions of a *nakamal* must be made "by consensus of the members of the nakamal in accordance with … custom", and "consensus" is defined to mean that "the members of the *nakamal* as a whole, or all the custom owners, agree or consent" (ss. 2, 17 and 25). In addition, more stringent

requirements for public consultation and landowner consent have been adopted for land leasing, including a requirement that custom land can only be leased by consensus (*Land Reform (Amendment) Act 2013*).

Given that these reforms have only just come into force, it is still unclear how the requirements for consultation and consensus will work in practice. The leasing reforms have also introduced an important grievance mechanism which permit custom owners to lodge a complaint with the newly established Land Ombudsman where there are concerns that the proper process was not followed (s. 6L-S, Land Reform (Amendment) Act 2013).

These new statutory processes could be built upon and could form the basis for FPIC processes for REDD+ at the local-level, although consideration must be given to how effectively they are implemented.

12.2 Gender equity and equality

Legal safeguards to ensure that gender impacts are considered and gender equity and equality is achieved in REDD+ activities are currently lacking in Vanuatu.

Vanuatu ratified the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) in 1995. However in reviewing Vanuatu's compliance with the Convention, the Committee on the Elimination of Discrimination against Women expressed concern that the Convention has not been fully incorporated into domestic law, and noted that customs and practices were perpetuating discrimination against women (CEDAW 2007, para. 10).

Vanuatu's **Constitution** guarantees certain fundamental rights to all people, such as the right to property and the right to equal treatment before the law, without discrimination on the basis of sex (Art. 5). Thus, a law which discriminates against women would be unconstitutional. Based on this provision, the courts in Vanuatu have held that customary laws which give men preferential rights over customary land are unconstitutional (**Noel v Toto**, [1995] VUSC 3). In that case, the Supreme Court held that men and women were equally entitled to a share in the proceeds from land (generated by a tourist development), which under customary law were not payable to women who had married outside the clan.

Notwithstanding the clear legal position that equal rights take precedence over any discriminatory laws, in practice women in Vanuatu often experience discrimination under customary law. This is of particular relevance to REDD+ as the rules of custom govern land ownership and land use, and the first recourse for local-level disputes is usually through the *nakamal*, which applies customary law (Constitution; CEDAW 2007, Para. 6).

Provisions to ensure that women are included in land decisions have not been widely incorporated into the 2013 Land Law Reforms, despite a recommendation from the 2006 National Land Summit that all landowners, including women, should be consulted on land issues. The Reforms which empower *nakamals* (customary institutions) to make final decisions on land ownership do not require women to be consulted or included in customary institutions, a matter of some concern given that most chiefs in Vanuatu are men, and participation of women in the *nakamal* (also called the "*nasara*", or meeting house for chiefs) is often very limited (**CEDAW 2007**, paras. 2.25, 7.12, 14.2; ***Custom Land Management Act 2013***).

By contrast, the reforms to the land leasing provisions do include some references to women, e.g. at least one woman must be personally notified of a proposal to lease land; and women and young people living in an area which is to be leased must be consulted. However, in a total of 15 representatives that custom owners may appoint to negotiate and sign a lease on behalf of a community, there is no legal obligation to include any women representatives (s. 6C(2)(a), 6G., and 6 J., *Land Reform (Amendment) Act 2013*).

Box 6: Matrilineal custom land ownership in Vanuatu

While the social structure in Vanuatu is principally patriarchal featuring men as administrators of societies, there are some areas where land is inherited and held along matrilineal lines. These can be found in some parts of the Banks Islands, on the east coast of Espiritu Santo, and on the east coast of Erromango. In these societies, women can and do attain chiefly titles and decorations but do not normally play a role of an administrator or talking chief of her clan, a role which is generally delegated to her brother.

Vanuatu has noted in its report to CEDAW that in the same way that customary laws often discriminate against women (e.g. by excluding them from inheritance once they marry into another clan), customary laws of inheritance in matrilineal societies may have the effect of discriminating against male children.

Source: ***CEDAW 2007.***

12.3 Environmental impact assessment

Vanuatu has comprehensive legislation which requires the environmental impacts of most development to be assessed, and this could potentially extend to REDD+ projects (***Environmental Protection and Conservation Act 2002,*** formerly referred to as the *Environmental Management and Conservation Act* [Cap. 283], ss. 11-28).

Under this Act, all developments (except for residential or custom structures) must be submitted to the Director, who will then undertake a preliminary environmental assessment to determine whether a full environmental impact assessment is required. Projects that cause or are likely to cause significant environment, social and/or custom impacts, will require an EIA. Under these provisions, REDD+ projects or programmes may require an EIA if they are likely to affect important custom resources, such as forest resources. A flowchart showing the steps in the Environmental Impact Assessment process can be found **here**.

12.4 Biodiversity protection

Although Vanuatu has ratified the *Convention on Biological Diversity*, it does not have a comprehensive legislative framework for the protection of biodiversity or vulnerable and threatened species and their habitat.

It does, however, have the following laws which relate to biodiversity:

- Under the ***Forestry Act*** (s. 53), the Minister can prescribe species of plants as protected species which must not be logged unless expressly authorised by a licence.
- ***Wild Bird (Protection) Act*** [Cap. 30] (1962). This Act prohibits the killing, wounding, capturing or taking of eggs of certain listed bird species without a permit to do so, but the Act does not contain any provisions requiring the habitat of the listed species to be protected.
- ***International Trade (Fauna and Flora) Act.*** This Act enacts the provisions of the Convention on International Trade in Endangered Species, to which Vanuatu is a party.

12.5 Anti-corruption framework

Transparency International reports that in 2013, 63% of people in Vanuatu considered corruption to be a serious problem, including in the public sector. Types of corruption reported to occur include political appointments, conflicts of interest, not following formal procedures, and lack of enforcement (**Jowitt 2014**:29-31). Land leasing is one area that appears to be particularly susceptible to corruption (**Stefanova et al. 2012**).

The legal framework imposing anti-corruption measures is relatively weak in Vanuatu, and enforcement is poor. Although Vanuatu ratified the 2004 United Nations Convention against Corruption (UNCAC) in 2011, there is no comprehensive anti-corruption law reform agenda and Vanuatu does not yet have a permanent anti-corruption agency, as required under UNCAC (Art. 6). Alternative mechanisms for investigating and prosecuting corruption include: the Ombudsman's Office, which can investigate and report

on the conduct of leaders and government agencies and can review defective legal or administrative processes (**Ombudsman Act [Cap. 252]**). The Ombudsman has no power to prosecute alleged corruption offences, which is the responsibility of the Vanuatu Police Force to investigate and which must be prosecuted by the Office of the Public Prosecutor.

The key anti-corruption law which regulates the ethical behaviour of leaders is the ***Leadership Code Act*** [Cap. 240] (1998). Although the Ombudsman's Office has investigated numerous allegations regarding conflicts of interest and abuse of power (approximately 871 investigations have been undertaken), no prosecutions have been brought under the Code by the Public Prosecutor. The Leadership Code requires leaders to file annual declarations of assets and liabilities, but these are not scrutinised by any regulatory body nor are they made public. The Code only applies to Ministers and Members of Parliament, the National Council of Chiefs, local councils and senior public officers (Chapter 10, Constitution; s. 5, ***Leadership Code Act***). The Committee reviewing Vanuatu's compliance with UNCAC has recommended that the **Leadership Code Act** be applied to all public officials (**UNCAC 2013**:3-8).

Vanuatu does not have a Freedom of Information law, although a Right to Information Bill has been proposed which would significantly improve transparency in public administration if adopted (Jowitt 2014:33).

The 2013 Land Law Reforms include some provisions intended to address corruption risks in land dealings. For example, public officials responsible for recording land ownership decisions and managing land dealings no longer have immunity from suit if they act in bad faith in carrying out their duties (i.e. act corruptly), and can therefore be sued by people affected by their actions (s. 9; Land Leases (Amendment) Act; s. 49, ***Custom Land Management Act 2013***). In an attempt to increase the integrity of customary authorities, decisions of custom institutions must often be witnessed by a community land officer and recorded in writing. In land leasing, the discretionary powers of the Minister for Lands to grant leases have been repealed and are now largely exercised by a seven-member Land Management Planning Committee, and leases which have not been issued in accordance with statutory process are void and of no effect (ss. 6(4) and 7, *Land Reform (Amendment) Act 2013*).

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[Note: The laws of Vanuatu are not readily available. Although some legislation and case law is available in hard copy or online, there is no comprehensive collective available. Some legislation for Vanuatu is available on PacLII, although these laws are not consolidated beyond 2006. Where possible, amending Acts after 2006 are listed below. An alternative source for legislation can be found at FAO LEX, **the legislative database for the FAO Legal Office**. While the author has taken all due care to identify up-to-date legislation, it is not possible to guarantee that all amending and subsidiary legislation has been cited.]

Constitution of the Republic of Vanuatu 1980

- Constitution (Sixth)(Amendment) 2013

Cooperative Societies Act [Cap. 152]

Custom Land Management Act 2013

- Custom Land Management (Amendment) Act 2014 – commenced 19 June 2014

Customary Land Tribunal (Repeal) Act 2013

Environmental Management and Conservation Act [Cap. 283] (2002): English / Bislama

- Statute Law (Miscellaneous Provision) Act, No 2 of 2010
- Environmental Management and Conservation (Amendment) Act, No 28 of 2010
  - Environmental Impact Assessment Regulations Order No. 175 of 2011
  - Environment Impact Assessment Regulations (Amendment) Order No. 102 of 2012

Foreshore Development Act [Cap. 90]

- Foreshore Development (Amendment) Act No. 17 of 2013

Forestry Act [Cap. 276] (No. 26 of 2001)

- Forestry (Amendment) Amended by Statute Law (Miscellaneous) Provisions Act, No. 17 of 2012
- Forestry Regulations [Cap. 276]
- Forestry (Control of Mobile Sawmills) Regulations [Cap. 276]
  - Ban on Log Exports 1993
  - Forestry (Control of Mobile Sawmills) Order, No 9 of 1996
  - Forestry (Amendment) and (Control of Sandal Wood Trade and Exports) Order No. 3 of 1997
  - Forestry (Vanuatu Code of Logging Practice) Order No. 26 of 1998
  - Forestry (Restriction on Felling of Sandal Wood) Order No. 84 of 1999
  - Forestry (Setting of Minimum Price for Sandal Wood) Order No. 85 of 1999
  - Forestry Regulations Order No. 46 of 2003
  - Forestry (Control of Mobile Sawmills)(Amendment) Order No. 21 of 2004
  - Forestry (Amendment) Regulations Order No. 41 of 2004
  - Forestry (Management and Control of Sandalwood Trade and Exports) Amendment Order No. 46 of 2004
  - Forestry (Amendment) Regulations Order No. 41 of 2004
  - Forestry (Maximum Annual Quantity for Harvesting Sandalwood)(Repeal) Order No. 24 of 2006
  - Forestry (Restriction on the Felling of Sandalwood)(Repeal) Order No. 25 of 2006
  - Forestry (Management and Control of Sandalwood Trade and Exports) Order No. 62 of 2008

Forestry Rights Registration and Timber Harvest Guarantee Act, No. 28 of 2000

- Forestry Rights Registration and Timber Harvest Guarantee (Amendment) Act No. 8 of 2012

International Trade (Fauna and Flora) Act [Cap. 210]

- International Trade (Fauna and Flora) Regulations [Cap. 210]

Leadership Code Act [Cap. 240] (1998)

Land Leases Act [Cap. 163] (No. 38 of 1989)

- Land Leases (Amendment) Act No. 11 of 2004
- Land Leases (Amendment) Act No. 35 of 2006

Land Leases (Amendment) Act No. 5 of 2007
Land Leases (Amendment) Act No. 32 of 2013
Land Leases Prescribed Forms
Land Leases General Rules [Cap. 163]
Land Leases General Rules (Amendment) Order No. 49 of 2009
Full Rental Value of different classes of Leases Order No. 86 of 2009

Land Reform Act [Cap. 123] (1980)
Land Reform (Amendment) Act 2013
Land Reform (Amendment) Act 2014 – commenced 24 June 2014
Land Reform (Rural Alienated Land) (Regulations) [Cap. 123]

Mines and Minerals Act [Cap. 190] (No. 11 of 1986)
National Council of Chiefs Act 2006
Ombudsman Act [Cap. 252] (1999)
Physical Planning Act [Cap. 193] (No. 22 of 1986)
National Parks Act [Cap. 224] (1993)
United Nations Convention Against Corruption (Ratification) Act 2010
Wild Bird Protection Act [Cap. 30] (1962)

At a glance: Legislation passed under 2013 and 2014 Land Law Reforms

1. **Constitution (Sixth) (Amendment) 2013**
2. **Land Reform (Amendment) Act 2013**
   - Land Reform (Amendment) Act 2014
3. **Land Leases (Amendment) Act 2013**
4. **Custom Land Management Act 2013**
   - Custom Land Management Act 2014

Source: **Ministry of Lands and Natural Resources** (accessed 11 August 2014)

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Case law

Noel v Toto, unreported, Supreme Court, Vanuatu, Kent J, 19 April 1995
Terra Holdings Ltd v Sope [2012] VUCA 16.

International treaties, conventions and declarations ratified by Vanuatu

Treaty or convention	Date of ratification
Convention on Biological Diversity 1992	1993
Convention on the Elimination of All Forms of Discrimination Against Women 1979	1995
Optional Protocol	2006
United Nations Framework Convention on Climate Change 1992	1993
United Nations Convention Against Corruption 2004	2011