

REPUBLIC OF VANUATU

BILL FOR THE LAND REFORM (AMENDMENT) ACT NO. OF 2021

Explanatory Note

This Bill amends the Land Reform Act [CAP 123] (“the Act”).

The Land Reform (Amendment) Act of 2013, and subsequent amendments of 2014, 2017 and 2020 have amalgamated the following functions into a single process:

- (a) the physical planning functions under the Physical Planning Act [CAP 193]; and
- (b) the issuing of a negotiator’s certificates under the Land Reform Act [123]; and
- (c) the custom land owners determination under the Custom Land Management Act; and
- (d) the lease creation under the Land Leases Act [163],

This has created a lot of administrative and legal challenges in the last six years.

The main objectives of this Bill are:

1. To streamline and separate the processes

The Act will only be responsible for issuance of a negotiator’s certificate, consent of parties who may wish to engage in a new lease agreement, and the terms and conditions of a lease negotiations. This Bill will return:

- (a) the physical planning functions to the Local Authorities in accordance with the Physical Planning Act [CAP 193]; and
- (b) the custom land owners’ determination to the CLMO (“CLMO”) under the Custom Land Management Act; and
- (c) lease creation and other lease transactions to the Director of Lands under the Land Leases Act [CAP 163].

2. To reduce significantly the operational costs for the Government

The financial implication studies undertaken at a very later stage of the land law reforms of 2013 indicated that, in order to fully implement the amendments of 2013, by the Ministry of Lands and the Ministry of Justice, it would require an estimated additional funding of VT87,019,605 and VT96,920,000 respectively. These estimated additional costs represented 27% and 23% increase to the budget of these Ministries. However, from 2014 to 2020 the total operational budget for the Ministry of Lands and Ministry of Justice combined was only VT37,000,000 which only represented 20% of the estimated additional costs.

For example, there are two sets of public notices required under the existing negotiator’s certificate, custom land owners’ determination and lease creation process under the Act. The first lot of notices is

for the custom land owners' determination process, and the second lot of notices is for the intention to register a lease. From the experiences of the last six years, the public notice costs of an application were roughly VT122,000. As 571 applications were referred by the Land Management and Planning Committee ("the Committee") to the CLMO over the past 6 years, it would cost the Government a total of VT69,662,000 assuming that all applications are over undetermined custom land. This cost excludes the additional traveling costs and other associated costs to the officers who will be facilitating the processes.

In addition, the Act created additional institutions such as the Land Management and Planning Committee (Committee) and the Land Ombudsman. The Land Ombudsman position was created with an intention to monitor and regulate the negotiator's certificate process, custom land owners' determination process and the lease creation process under the Act. The annual budget for the Land Ombudsman Office is roughly VT15,000,000. Since 2014 to 2020 a total of roughly VT90,000,000 was appropriated and used by the Office of the Land Ombudsman. At the end of 2020, the Office of the Land Ombudsman had not even dealt with a case under the procedures stipulated in the Act. Therefore, the output of the Office of the Land Ombudsman is very low and warrants removal from the structure.

This Bill will reduce the cost significantly from the negotiator's certificate and lease creation processes.

3. To reduce significantly the turn-over time for negotiator's certificate and lease creation process

Over the period of 2014 to 2020, a total of 1,392 applications were received and processed by the Committee. Of the 1,392 applications, 751 were approved by the Committee and referred to the CLMO for custom owners' determination process and lease creation process. Of the 751 applications referred to CLMO only 73 which represents about 10% were completed and sent back to the Committee. The balance of 678 applications are still pending which represents about 90% in the last six years. On average in the last six years, each application referred to the CLMO can take up to two years to be dealt with.

Of the 751 application referred to the CLMO by the Committee over the last six years, only 58 new rural lease applications required issuance of negotiator certificates. Of the 58 applications, only 5 were approved by the Committee to be granted leases. Only 3 leases were registered on rural customary land. The low land lease registration on rural land is due to a lengthy and inefficient land lease making process, weak custom governance system, and limited capacity and resources to fully support the implementation of the 2013 land law reforms.

This Bill will restore the confidence to parties who wish to engage in the lease making processes. The Bill will also provide the platform for the Government policy of developing the productive sector and utilising lease as a tool for development.

Minister of Lands and Natural Resources



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(AMENDMENT) ACT NO. OF 2021**

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BILL FOR THE LAND REFORM (AMENDMENT) ACT NO. OF 2021

An Act to amend the Land Reform Act [CAP 123].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Land Reform Act [CAP 123] is amended as set out in the Schedule.

2 Commencement

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

SCHEDULE

AMENDMENTS OF LAND REFORM ACT [CAP 123]

1 Section 1 (Definition)

Insert in their correct alphabetical positions:

“negotiator’s certificate” means a certificate issued by the Minister under subsection 6C(1);

“recorded interest in land” has the same meaning as under the Custom Land Management Act;

2 Section 1 (Definition of “custom owners”)

Repeal the definition, substitute

““custom owners” has the same meaning as under the Custom Land Management Act;”

3 Sections 6, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 6I, 6J, 6K, 6L, 6M, 6N, 6O, 6P, 6Q, 6R, 6S, 6T, 6U, 6V, 6W, 6X, 6Y and 6Z

Repeal the sections, substitute

“6. Negotiator’s certificate

- (1) A person must not enter into negotiations with the custom owners or the disputing parties of a land over which no lease has been registered, unless that person has been issued with a negotiator’s certificate under subsection 6C(1).
- (2) The person under subsection (1), must not survey that land of interest, unless that person has been issued with a negotiator’s certificate.

6A. Application for a negotiator’s certificate

- (1) A person who intends to commence negotiations with the custom owners or the disputing parties of a land over which no lease has been registered, must apply to the Chairperson of the Committee for a negotiator’s certificate.
- (2) The application must:
 - (a) be made in Bislama, English, or French; and

- (b) be in the prescribed form; and
- (c) be accompanied by the prescribed application fee; and
- (d) contain the following information:
 - (i) the name of the individual or group or other entity applying for a negotiator's certificate; and
 - (ii) a detailed description of the land to which the approval to negotiate relates, including a sketch map showing the boundaries of the land, size of the proposed lease area and the location of the area; and
 - (iii) a copy of a certificate of the recorded interest in land showing the appointed representatives of the declared custom owners or the disputing parties.

6B. Consideration of application by the Committee

- (1) The Chairperson must as soon as practicable, upon receiving an application made in accordance with section 6A, submit the application to the Committee for its consideration.
- (2) The Committee must consider the application as soon as practicable, upon receiving the application from the Chairperson.
- (3) In considering an application for a negotiator's certificate, the Committee must take into consideration the following matters:
 - (a) any planning implications related to the land of interest, such as road access, sufficient water supply, sewage and waste disposal; and
 - (b) any potential natural hazard risk areas; and
 - (c) any possible access issues, including the access that the custom owners and members of the public will have to roads, foreshores, gardens, beaches, sea, rivers, lakes, cultural sites and places of historical interest after the lease is registered.
- (4) After considering an application under subsection (2), the Committee is to recommend to the Minister the names of the applicants who are to be issued with a negotiator's certificate under this Act.

6C. Issuing of negotiator's certificate

- (1) The Minister is to, upon receiving a recommendation from the Committee under subsection 6B (4), issue a negotiator's certificate to an applicant.
- (2) The Minister must only issue a negotiator's certificate under subsection (1), on the recommendation of the Committee.
- (3) A negotiator's certificate issued by the Minister must be in the prescribed form and must contain the following information:
 - (a) name the individual or group or other entity who are the registered negotiators; and
 - (b) describe the boundaries of the land in which the approval to negotiate relates, by a sketch map.
- (4) If there is a dispute over the area of interest, the Minister must not issue a negotiator's certificate to the applicant unless, the disputing parties have provided their written consent for the Minister to Act on their behalf.
- (5) A negotiator's certificate issued by the Minister in contravention of subsections (2), (3) and (4), is null and void.

6D. Refusal of an application

- (1) If the Committee is not satisfied that the application should be approved, the Committee may either:
 - (a) request additional information from the applicant; or
 - (b) refuse the application and state the reasons for refusal of the application.
- (2) The refusal of an application by the Committee is final, however, the applicant may re-apply for a negotiator's certificate in relation to the same area of land.
- (3) The Committee must give to the applicant, a written notice of its decision within 10 days after making the decision.

6E. Conditions of a negotiator's certificate

- (1) A negotiator's certificate is subject to the following conditions:

- (a) a period, not exceeding 12 months, within which an agreement to lease a land is to be completed; and
 - (b) the registered negotiator cannot not make any direct payments to the custom owner group or the disputing parties, before the execution of the lease; and
 - (c) any other conditions that the Committee considers fit to impose.
- (3) Despite paragraph 1(b), the registered negotiator may make payments for any reasonable costs such as convening meetings, transport costs or any other associated costs.

6F. Negotiation process and consent

- (1) Upon issuing of a negotiator's certificate under section 6C, the registered negotiator may begin negotiations about the size of the land required and the term of the lease with the declared custom owner representatives or the Minister.
- (2) Once the land size and the term of the lease have been agreed upon by the registered negotiator and the declared custom owner representative or the Minister, an agreement in principle is to be signed by the parties in the negotiations.
- (3) Upon signing the agreement in principle between the registered negotiator and the declared custom owner representatives or the Minister, the following activities are to be carried out:
- (a) a survey is to be taken by a registered surveyor to determine the actual survey plan, which must be approved by the Director; and
 - (b) based on a registered survey plan, a valuation report must be prepared by a registered valuer to determine the unimproved value of the land and share it with the custom owner representatives or the disputing parties; and
 - (c) access to legal and financial advice by the declared custom owner representatives or the disputing parties.
- (4) Once negotiations are completed and the terms of the draft lease have been finalised, the registered negotiator must inform the Chairperson of the Committee to take steps to confirm the lease agreement.

- (5) A lease agreement must not be executed until such time an authorized officer of the Department of Lands is satisfied that both parties agree to the terms as set out under the lease agreement.”

4 Paragraph 8A(2)(f)

Delete “.”, substitute “; and

- (g) the National Coordinator of the Customary Land Management Office, or his or her senior representative.”

5 Subsections 8A(2A), (3), (4), (5) and (6)

Repeal the subsections, substitute

- “(3) If the Committee is to consider an application relating to land that is located in a Province or Municipality, the Senior Planner from the relevant Province or Municipality must be present at that Committee, whenever required to do so.
- (4) The Committee is to meet at least 10 times a year and may hold such other meetings as are necessary for the proper performance of its functions under this Act.
- (5) The quorum for a meeting of the Committee is 5 members of the Committee, present at the meeting.
- (6) The Minister may prescribe, by Order, the sitting allowances for the members of the Committee.”

6 Paragraph 8B(b)

Repeal the paragraph, substitute

- “(b) to ensure that the process for issuing a negotiator’s certificate set out under Part 4 and the registration of a lease set out under Part 5 are followed; and
- (ba) to ensure that all terms and conditions of any lease proposed for registration are legitimate; and”

7 Section 8D

Repeal the section, substitute

“8D. Chairperson of the Committee

- (1) The Minister is to appoint, by Order, a Chairperson of the Committee.
- (2) The person appointed as the Chairperson under subsection (1) must:

- (a) not be an officer of the Government; and
 - (b) have a legal background on the laws of Vanuatu.
- (3) The Chairperson is to hold office for a period of 3 years and may be re-appointed for another term.”

8 Subsection 8E(2)

Delete “or of a lease for registration”

9 Subsection 8E(6)

Repeal the subsection.

10 Subparagraph 8F(2)(c)(iii)

Repeal the subparagraph.

11 Transitional Provision

The Committee is to make a decision on applications submitted to it, immediately before the commencement of this Act, in accordance with the provisions and processes that existed immediately before the commencement of this Act.