

# OVERLAPPING AUTHORITIES: GOVERNANCE, LEADERSHIP AND ACCOUNTABILITY IN CONTEMPORARY VANUATU

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## ABSTRACT

International development agencies are increasingly paying attention to the challenge of improving governance outcomes in the Pacific region. Studies have been completed exploring ways to augment ‘state building’ and a number of donor-funded projects have been established with the aim of improving civil society *leadership* as means of holding governments accountable. This paper explores some of the contemporary discourses of ‘good governance’ and ‘developmental leadership’ that have informed recent development praxis.

This paper then situates recent thinking about leadership in the unique and complex context of Vanuatu—a young post-colonial state encompassing culturally and linguistically diverse communities scattered across an archipelago of 83 islands. In Vanuatu today, orthodox and universal prescriptions for ‘good governance’ need to be understood as they interact with a particular lived experience of hybrid modernity in which Western notions of rationality and ethics co-exist with resilient indigenous ways of knowing and being. Unique and localised systems of community governance and dispute resolution remain central to people’s lives, alongside introduced models of church leadership and even more recent systems of state government.

This paper explores areas of tension and compatibility between contemporary systems of *kastom* governance and dispute resolution, and models of leadership and accountability that constitute the nation state (and its corresponding rule of law). These are not abstract considerations. In 2013 the Vanuatu government signalled a willingness to give the Ombudsman’s Office new ‘teeth’ to prosecute leaders for breaches of Vanuatu’s constitutionally mandated Leadership Code. At the same time, donor organisations like AusAID and the World Bank are implementing programs aimed at strengthening *kastom* governance in communities across the country. This paper reflects on these developments and poses questions about how Vanuatu citizens and civil society organisations might hold leaders accountable across distinct but overlapping realms of authority attributed to *kastom* leaders and state lawmakers.

## INTRODUCTION

In recent years increasing attention has been paid to the notion of ‘leadership’ in the postcolonial states of the Pacific. A number of international agencies have established regional and national programs with the stated aim of fostering particular forms of

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<sup>1</sup> This paper is based on a literature review conducted in May 2013 for Oxfam and Leadership Vanuatu, drawing together existing research regarding *Governance, Leadership and Accountability in Vanuatu*. Any comments or queries can be emailed to [wtmpacific@gmail.com](mailto:wtmpacific@gmail.com).

‘developmental leadership’, intended to strengthen demand for accountable government and an effective delivery of state services. This paper explores concepts of ‘good governance’, ‘developmental leadership’ and ‘civil society’ as global discourses emergent from transnational debates on aid effectiveness. This paper attempts to elucidate the complex intersection of these changes in global discourse and development praxis and increasing concern about corruption in Vanuatu, and Ni-Vanuatu disillusionment with political processes more generally.

Vanuatu’s unique colonial experience, so recently ended, has bequeathed a lived reality of post-colonial hybridity. Relationships of power and authority in contemporary Vanuatu are defined by distinct but enmeshed realms of state government and *kastom* governance. While these spheres are often portrayed as discrete, both realms are important for decision-making at all levels of society.

Vanuatu’s complex systems of governance face significant challenges: state services do not extend far outside urban centres in Port Vila and Luganville; women have almost no representation in leadership positions in any sphere of governance; processes of government are frequently opaque; and incidences of overt corruption are both common and poorly prosecuted. Improving health and education outcomes are a perennial concern. Furthermore, disputes about land are rife—particularly arising from the leasing, subdivision and sale of customary land by unscrupulous foreign investors (often in conspiracy with self-interested members of custom land owning groups). In the context of Vanuatu’s unique governance challenges a key question is: what role, if any, might be played by civil society? Can civil society organisations help to hold community and government leaders more accountable for their actions and decisions, and if so how?

## **GLOBAL DISCOURSES: ‘GOOD GOVERNANCE’ AND ‘DEVELOPMENTAL LEADERSHIP’**

Increased concern with governance and leadership in Vanuatu is in many ways tied to changes in thinking among influential donor institutions. During the 1990s the concept of ‘good governance’ emerged as a key discourse of international organisations like the World Bank and donor institutions like AusAID.<sup>2</sup> Here ‘good governance’ was explicitly conceived as the development of transparent and accountable state institutions. It was assumed the private sector would drive economic growth, ultimately providing the most sustainable, effective and efficient means of reducing poverty. However, during the 1990s there was a relative consensus among donor institutions that the private sector would require an enabling policy environment supported by transparent and accountable state institutions: what would be required was ‘good governance’.

An influential report that embodied this new global discourse on ‘good governance’ was the World Bank’s *Assessing Aid: What Works, What Doesn’t and Why*, which recommended aid be directed to promoting good governance.<sup>3</sup> Subsequently, at the turn of the millennium, AusAID adopted ‘guiding principles’ for the implementation of good governance that emphasised the promotion of private sector-led economic growth.<sup>4</sup> AusAID also refocussed

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<sup>2</sup> See P. Larmour, ‘Making sense of good governance’ (Discussion Paper, State, Society and Governance in Melanesia (SSGM) Project, Australian National University, 1998); E. Huffer and G. Molisa, ‘Governance in Vanuatu: In search of the Nakamal Way’ (Discussion Paper, State, Society and Governance in Melanesia (SSGM) Project, Australian National University, 1999).

<sup>3</sup> See World Bank, *Assessing Aid: What works, what doesn’t and why* (1998) 9–16.

<sup>4</sup> Australian Agency for International Development (AusAID), *Good Governance: Guiding principles for implementation* (2000). AusAID’s ‘Good Governance Implementation Principles’ were listed as: 1. promotion

its aid program toward ‘governance’ and by 2004 governance-related projects constituted 33 percent of the Australian aid program, by far the largest single sector of expenditure.<sup>5</sup> Governance issues were seen to be particularly important in the Pacific region. Indeed much of the literature on development in the Pacific from the past 20 years has included ‘some commitment to the idea that there is an urgent need to improve governance in the Pacific if development problems of the region are to be surmounted’.<sup>6</sup>

Into the new millennium *leadership* (or more specifically ‘developmental leadership’) emerged as a new discourse among donor institutions, related to the pursuit of ‘good governance’. When, for example, AusAID commissioned a literature review of leadership models in the Pacific the review explained simply that ‘leadership is a central component of “good governance” which is a key determinant of development’.<sup>7</sup> This new emphasis on leadership reflected a view that improving governance was not simply a *technical* project, but would require an appreciation of the *political* factors that determine policy priorities in given country contexts).<sup>8</sup> A 2007 paper produced by the AusAID-funded ‘Leaders, Elites and Coalitions Research Program’ neatly explained the new focus on leadership. It reiterated that ‘economic growth remains the fundamental and necessary condition for poverty reduction’ and that ‘sustained growth only occurs within stable and effective states which implement locally appropriate policies through locally negotiated institutions and organisations of sound governance’.<sup>9</sup> However, what was *also* required was the nurturing of new leaders across the private and public sectors who might themselves demand good governance:

For it is leaders who establish and sustain locally relevant and effective organisations, who negotiate, establish and consolidate over time the fundamental institutions of an effective state, who forge the rules and practices of economic and political governance, and who shape and ensure the implementation of sound and appropriate policies for growth, poverty reduction and social development.<sup>10</sup>

Over the past decade AusAID has increasingly focussed on nurturing new leadership (ie. ‘coalitions for change’) through its aid program. The 2005 White Paper on Australia’s development assistance suggested that ‘for reform to be successful and sustained, it must be driven by local champions’.<sup>11</sup> The paper spelt out the establishment of a Pacific Leadership Program that would ‘target’ current and emerging leaders:

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of trade and investment opportunities, 2. promotion of more clearly defined property rights, 3. helping partner governments create an efficient and equitable taxation system, 4. strengthening the banking sector and financial markets, 5. improving corporate governance, 6. supporting the development of micro-enterprises, 7. improving the delivery of basic services, 8. strengthening the rule of law and improving legal systems; and 9. promoting respect for human rights, and strengthening democratic process. Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> E. Laws, ‘Governance, Politics and Development in the Pacific’ (Background Paper 14, Developmental Leadership Program, 2013) 12.

<sup>7</sup> A. McLeod, ‘Literature review of Leadership Models in the Pacific’ (Discussion Paper, State, Society and Governance in Melanesia (SSGM) Project, Australian National University, 2007) 2.

<sup>8</sup> For discussion in the Pacific context, see Laws, above n 6.

<sup>9</sup> A. Leftwich and S. Hogg, *The case for leadership and the primacy of politics in building effective states, institutions and governance for sustainable growth and social development* (2007) 4.

<sup>10</sup> Ibid 4.

<sup>11</sup> Australian Agency for International Development (AusAID), ‘Australian Aid: Promoting Growth and Stability’ (A White Paper on the Australian government’s overseas aid program, 2005) 16.

Australia will help develop the current leadership cadre in the Pacific, focus on the next generation of regional leaders and build the demand from within countries for improved governance performance.<sup>12</sup>

The approach of fostering empowered coalitions of informed individuals to demand reform again reflected a global discourse that has been embraced by donor institutions as a key part of their interventions in developing countries. The World Bank has again been important for the dissemination of ideas, creating a Leadership for Development training program and commissioning studies on Development as Leadership-led Change.<sup>13</sup> In 2007 AusAID funded a new ‘Leaders, Elites and Coalitions Research Program’, subsequently renamed the ‘Developmental Leadership Program’ and, as recommended in the 2005 white paper, also established a Pacific Leadership Program (PLP). The PLP is intended to ‘build the capacity of individuals, organisations and coalitions to exercise leadership for developmental change in the Pacific’.<sup>14</sup>

In regards to Vanuatu itself, AusAID commissioned a report exploring the ‘drivers of change’.<sup>15</sup> This report described development as a ‘fundamentally political process’, arguing that development assistance to Vanuatu would be more effective if guided by a sound understanding of the country context. It also suggested civil society could help to build demand for better governance in Vanuatu.<sup>16</sup>

<i>From ‘developmental leadership’ to poverty reduction: Perceived links in a causal chain</i>
Poverty reduction – needs – economic growth – needs – a dynamic private sector – needs – an ‘enabling’ policy environment – needs – effective state institutions – needs – good governance – needs – coalitions that foster demand for change – needs – ‘developmental leadership’.
‘Developmental leadership’ – leads to – coalitions that foster demand for change – leads to – good governance – leads to – effective state institutions – leads to – an ‘enabling’ policy environment – leads to – a dynamic private sector – leads to – economic growth – leads to – poverty reduction.

This returns the discussion squarely to the role of civil society. Both the ‘good governance’ and ‘developmental leadership’ discourses discussed here have implicitly envisaged a greater role for civil society in holding governments to account and demanding change. The emphasis on governance, as opposed to plain ‘government’, not only ‘implies that other actors besides the state or government are also responsible for political, economic and social development, but actually encourages them to take on a more dynamic role’.<sup>17</sup> Within more recent discourse about leadership-led development an even greater emphasis has been placed on the role that elite coalitions, including individuals from across public and private sectors,

<sup>12</sup> Ibid 43.

<sup>13</sup> See M. Andrews, J. McConnell and A. Wescott, ‘Development as Leadership-led Change. A report for the “Global Leadership Initiative”’ (World Bank, 2010).

<sup>14</sup> S. Henderson and C. Roche, *Pacific Leadership Program: Independent Progress Report* (2012) 1.

<sup>15</sup> M. Cox, H. Alatoa, L. Keni, A. Naupa, G. Rawlings, N. Soni and C. Vatu, *The Unfinished State: Drivers of Change in Vanuatu* (2007).

<sup>16</sup> Ibid 64–6.

<sup>17</sup> Huffer and Molisa, above n 2, 2.

can play in demanding reform and building a more effective and accountable state. It has been suggested that ‘in some developing countries there are too few leaders and elites with wider “national” goals and hence a lack of the critical leadership mass, and with few incentives to form positive coalitions for growth’.<sup>18</sup> The implication here is that civil society actors can help to develop the ‘critical leadership mass’ required for affecting change.

In 2005 an Australia-Vanuatu Joint Development Strategy explained that Australia’s aid program would include ‘increased engagement with civil society to promote demand-led governance’.<sup>19</sup> Reflecting this role for civil society actors in developing national leadership coalitions, the AusAID-funded Pacific Leadership Program has, since 2007, provided support to a number of CSOs in Vanuatu—including the Vanuatu Association of NGOs (VANGO), Vanuatu Bible Society, Vanuatu National Youth Council, Wan Smol Bag, Youth Challenge Vanuatu and more recently Oxfam and Leadership Vanuatu.<sup>20</sup> While this support is informed by global development discourse—including orthodox prescriptions for ‘good governance’—the nature of on-the-ground activities undertaken by these organisations is shaped at least as much by the political and cultural landscape of Vanuatu. Seemingly universal concepts like ‘governance’, ‘leadership’, ‘accountability’ and ‘civil society’ have a unique articulation in local contexts. To understand some of this context a brief and imperfect history is necessary, for the recent past has indelibly shaped the systems of governance and leadership in Vanuatu today.

### **GOVERNANCE IN VANUATU: A TRUNCATED HISTORY OF A HYBRID MODERNITY**

In much of the literature on Vanuatu, and the Pacific more broadly, traditional cultures or customary ways of doing things are frequently presented as being in opposition to modernity and development. In this conception:

Development, along with phrases such as ‘good governance’, is contrasted to ‘culture’ and ‘tradition’, implicitly posed as its enemies; failures of development are caused, somehow, by the darker irrational influences of tradition/culture as well as the supposed conservatism, stubbornness and inflexibility of intransigent indigenous peoples.<sup>21</sup>

However, and despite a frequently pessimistic prognosis from outsiders that indigenous cultures are a brake on development or a barrier to ‘good governance’, the reality is that traditional cultures (and systems of governance) are crucially important to people’s lives and are not simply going to *go away*. Furthermore, any simple division between tradition and modernity is misleading. Indigenous cultures, as with all cultures, are ever changing. In Vanuatu, from even before the time of contact with Europeans, cultural life across the archipelago has been shaped by new circumstances and is both resilient *and* adaptable. In the recent post-colonial era people in Vanuatu have continued to create their own way of doing things through a process that Sahlins describes as an ‘indigenisation of modernity’.<sup>22</sup>

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<sup>18</sup> Leftwich and Hogg, above n 9, 5.

<sup>19</sup> Australian Agency for International Development (AusAID), ‘Australia-Vanuatu Joint Development Cooperation Strategy 2005-2010’ (AusAID Country Program Strategy, 2005) 7.

<sup>20</sup> More broadly, AusAID also provides support to other civil society organisations, including the Vanuatu Christian Council, the Vanuatu Women’s Centre, the Malvatamauri National Council of Chiefs and the Pacific Institute for Public Policy.

<sup>21</sup> J. Connell, ‘Islands, idylls and the detours of development’ (2007) 28 *Singapore Journal of Tropical Geography* 116, 117.

<sup>22</sup> M. Sahlins, ‘On the anthropology of modernity; or, some triumphs of culture over despondency theory’, in A. Hooper (ed.), *Culture and Sustainable Development in the Pacific* (2005) 62, 48.

What does all this mean? It means that there are systems of governance and leadership in Vanuatu that exist alongside more recently introduced models associated with the ‘ideal type’ of a modern, democratic, nation-state. It also means that much economic activity in Vanuatu occurs in a cultural context that is alien to Western models of a liberal marketplace supported by the legal regime of the state. Contemporary Vanuatu can be understood as a ‘bird that flies with two wings’.<sup>23</sup> Just as a bird cannot fly with only one wing, in Vanuatu social and economic activity is governed both through the authority of the modern State, and through diverse and complex systems of customary or ‘cultural’ authority. For many people in Vanuatu, particularly in rural areas, the state has an almost non-existent role in their day-to-day existence, while ‘informal customary and traditional institutions, practices and norms are central to much of their social and political life’.<sup>24</sup> It is increasingly recognised by donor institutions that contemporary Vanuatu is home to a ‘hybrid political order’, one that ‘incorporates both customary approaches to governance and the post-independence Westminster system’.<sup>25</sup>

It is not only in regards to governance that Vanuatu displays a distinct hybridity. In the realm of economic activity the country is also unique. To external observers Vanuatu is a very poor country, with low per-capita incomes and extremely high rates of unemployment. It is estimated that just 15 percent of the population is engaged in formal employment.<sup>26</sup> However, subsistence or semi-subsistence food production is central to national economic activity in Vanuatu. This production is generally characterised by village farmers who, with access to communally held land, grow and distribute a large quantity and varied range of fresh vegetables, root crops, nuts and fruits.<sup>27</sup> While much produce is consumed directly by families, or shared through extended kin and clan networks, food crops are also sold in village or urban markets. The exchange value for food is often socially embedded, with food ‘traded’ within complex cultural systems of mutual obligation without an exchange of money.

Because orthodox conceptions of development tend to focus on economic growth and market economics—specifically the trade of goods for monetary value—the centrality of food production (and traditional land ownership) is shifted to the periphery in many accounts of wealth in Vanuatu. In such accounts the most productive sector of the economy is referred to somewhat dismissively as the ‘informal sector’ or the ‘subsistence sector’. These accounts downplay the ways in which the traditional economy of Vanuatu involves processes that are both culturally embedded and in dynamic interaction with the ‘modern’ cash economy. Indeed the traditional economy is a very important source of economic resilience in Vanuatu today, providing secure livelihoods for the majority of the population.<sup>28</sup>

In recent times attempts have been made to more meaningfully account for the value of communal land, subsistence agriculture and even traditional cultural practices to Vanuatu

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<sup>23</sup> This phrase is from the title of Miranda Forsyth’s 2009 book: *A Bird that flies with two wings: The kastom and state justice systems in Vanuatu*. As used by Forsyth, the phrase refers to state and non-state justice systems. This paper uses the phrase to refer to the legal and institutional framework of state governance on the one hand, and complex informal *kastom* methods of governance on the other. The phrase should not suggest that either ‘wing’ of the bird is static. Both systems of governance are undergoing constant change, are sites of contested meaning, and are subject to social challenge.

<sup>24</sup> Laws, above n 6, 25.

<sup>25</sup> A. Kenyon and E. Rudland, *Vanuatu Kastom Governance Partnership: Case Study Report* (2010) II.

<sup>26</sup> Cox et al, above n 15, i.

<sup>27</sup> See H. Bamman, ‘Participatory value chain analysis for improved farmer incomes, employment opportunities and food security’ (2007) 22(3) *Pacific Economic Bulletin* 113.

<sup>28</sup> See R. Regenvanu, *The traditional economy as a source of resilience in Vanuatu* (2009).

society. In 2012, for example, a report surveyed ‘alternative indicators of well-being’ for the country.<sup>29</sup> This report aimed explicitly to ‘modify the existing progressive measures accepted internationally by governments and aid agencies in order to better track the factors that contribute to, specifically, ni-Vanuatu well-being’.<sup>30</sup> The report highlighted a range of wealth indicators—such as access to customary land, forest and marine resources, and participation in traditional cultural practices—that are often under-accounted by key development agencies.

To better understand the co-existence of the modern state and capitalist economy alongside indigenous governance and a productive traditional economy, it is important to understand contemporary Vanuatu in a historical context.<sup>31</sup> In the era before contact with Europeans, people in what is now known as Vanuatu were governed by ‘diverse systems of local authority’.<sup>32</sup> Unlike elsewhere in the Pacific (particularly in parts of Polynesia, where hereditary chiefs ruled across large geographical areas and demanded tribute from distant islands), in Vanuatu ‘traditional society consisted of small, scattered communities, with extremely high levels of cultural and linguistic diversity’.<sup>33</sup> These communities were ‘linked by complex kinship and trading networks, but not by any common political structure’.<sup>34</sup> Importantly for considering governance in Vanuatu today, there were few ‘institutional structures above village level, and no common identity attached to the territory of contemporary Vanuatu’.<sup>35</sup>

Prior to the colonial era, at the village level, there existed across the islands a complex array of overlapping pathways to political and social power. There was no universal model of hereditary rule, though in some parts of the central and southern parts of Vanuatu hereditary leadership was common. Authority was rarely considered divine and even hereditary leaders were generally dependent to a degree on consultative decision-making. Many communities eschewed hereditary positions altogether, preferring more elective models of authority, with men chosen for leadership based on charisma and wisdom. In parts of northern Vanuatu, men could also gain higher social rank through diverse grading systems that awarded power based on the completion of a series of sequenced rituals. Across the islands leadership positions tended to be reserved for men. However women did assume traditional leadership roles and had their own grading systems in some parts of Vanuatu.<sup>36</sup> Some have pointed out that women were less likely to take on these leadership roles after the arrival of European missionaries and colonial administrators.<sup>37</sup>

While it is common today to refer to ‘chiefs’ and chiefly authority in Vanuatu, it is likely that the term does not accurately encompass the diverse systems of governance that existed before

<sup>29</sup> Malvatamauri National Council of Chiefs, *Alternative Indicators of Well-being for Melanesia: Vanuatu Pilot Study Report – 2012* (2012).

<sup>30</sup> *Ibid.* i.

<sup>31</sup> For an excellent overview of ‘leadership structures and conflict management’ outside of formal State administration during the three distinct eras of Vanuatu’s recent history—namely pre-contact, during the Condominium era, and in the post-independence era. See M. Forsyth, *A Bird That Flies With Two Wings: Kastom and state justice systems in Vanuatu* (2009) 61–93.

<sup>32</sup> *Ibid.* 3.

<sup>33</sup> Cox et al, above n 15, 20.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> See, eg, R. Tor and A. Toka, *Gender, Kastom and Domestic Violence: A research on the historical trend, extent and impact of domestic violence in Vanuatu* (2004) 25.

<sup>37</sup> See B. Douglas, ‘Women and Governance from the grassroots in Melanesia’ (Discussion Paper, State, Society and Governance in Melanesia (SSGM) Project, Australian National University, 2000) 4; L. Bolton, *Unfolding the Moon: Enacting Women’s Kastom in Vanuatu* (2003).

Europeans arrived in the region. During the colonial era, however, village-level authority was increasingly reified, first by missionaries and church organisations which actively *created* ‘chiefs’ to help them proselytise to the unconverted, and later by the British/French colonial administration which relied on chiefly authority to maintain law and order.<sup>38</sup>

During the 19<sup>th</sup> century most contact between Ni-Vanuatu and Europeans was through missionaries, traders and plantation owners.<sup>39</sup> Of these it was primarily the missionaries that were interested in governance in local communities. Church representatives established new systems of authority to help cement Christianity in the islands and to broker between communities and outsiders.<sup>40</sup> European conceptions of ‘chief’, based in part on the colonial experience in Pacific islands to the east of Vanuatu, were *introduced* by missionaries. These notions of community chiefs ‘to some extent replaced or incorporated the diverse systems of local authority that existed across the archipelago’.<sup>41</sup>

During the 20<sup>th</sup> century, chiefs and local systems of governance became *even more* important alongside the establishment of colonial administration. In 1906, after years of lobbying by French and English plantation owners who had already established themselves in the islands, France and the United Kingdom agreed to jointly administer the territory. They established a Condominium administration for what was then known as the New Hebrides. The Condominium—which lasted until 1980—was a unique state of affairs that saw two separate government systems (with separate laws, police, prisons, hospitals, and education systems) that came together only in a notoriously ineffectual joint court. The Condominium was later described by Vanuatu’s first Prime Minister Walter Lini as ‘pandemonium’. Whatever its state of affairs was, the reality is that the colonial administration had limited reach across the islands. By the time Europeans carved up much of the Pacific in the late 19<sup>th</sup> century, attitudes toward colonialism had moved away from earlier approaches based on outright conquest.<sup>42</sup> British metropolitan governments in particular were concerned about the *cost* of new colonial acquisitions in the Pacific. To save money, colonial administrations relied on existing authorities, as Fraenkel explains:

The most cost-effective forms of colonial government were thought to allow the continuation of local forms of government.... Most Pacific islanders, particularly in Melanesia, continued to reside in rural areas with little or no contact with threadbare colonial administrations...<sup>43</sup>

This ‘minimalist’ form of state administration typified colonial government in the New Hebrides. While French and British district agents toured the islands periodically, the administration relied on ‘indigenous leadership structures and conflict management mechanisms’ to maintain good order.<sup>44</sup> The colonial authorities banned warfare and coercive violence, while in many places missionaries actively fostered new chiefly councils to help

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<sup>38</sup> Bolton, above n 37, 69.

<sup>39</sup> For an excellent and accessible history of this time, see S. Lightner and A. Naupa, *Histri blong yumi long Vanuatu: An educational resource* (2005) vol 2.

<sup>40</sup> See Forsyth, above n 31, 69.

<sup>41</sup> Kenyon and Rudland, above n 25, 3.

<sup>42</sup> Most European colonial acquisitions in the western Pacific occurred in the latter part of the 19<sup>th</sup> century. For example, France took control of New Caledonia in 1854; Fiji ceded to the British in 1874; the Solomon Islands came under British control in 1899 and it wasn’t until 1906 that British and French authorities made formal claim to what was then known as the New Hebrides.

<sup>43</sup> J. Fraenkel, ‘How relevant are European models of government to Pacific island states?’, in D. Hegarty and D. Tryon, *Politics, Development and Security in Oceania* (2013) 195, 195.

<sup>44</sup> Forsyth, above n 31, 69.



resolve conflicts. In this context, and over time, ‘communities started to adopt alternative conflict resolution approaches, including public meetings and the impositions of fines or resolution through private agreement’.<sup>45</sup> This method of dispute resolution, later referred to as the *kastom* system, developed alongside the formal institutions of the colonial administration.<sup>46</sup> In most communities it was only when serious crimes were committed (such as murder, violent assault or rape) that they might be referred to a district agent, as Forsyth explains:

Although village meetings were not officially recognised by the state, they were tolerated, and even encouraged, to fill the judicial vacuum that the state, through lack of resources or will or both, had created.<sup>47</sup>

During the latter part of the colonial era, *kastom* dispute resolution was increasingly linked with chiefly authority such that ‘the notions of “chiefs” and “*kastom*” became indistinguishable’.<sup>48</sup> It should be noted that while the colonial administration relied on traditional leadership to maintain order, Ni-Vanuatu did not play any part in the political/administrative processes of the Condominium itself, and were not citizens (officially they were ‘stateless’).

At independence, Vanuatu adopted a Westminster model of parliamentary democracy. However, this did not lead to the instruments of the new state replacing localised *kastom* governance. In fact there was formal recognition of *kastom* authority in the new nation’s constitution, which mandated that the Malvatamauri National Council of Chiefs (established in 1977) may be consulted on any question, particularly ‘relating to custom and tradition’ and that the Council may be consulted with regard to national land law.<sup>49</sup> In more recent times chiefs have continued to play an important governance and dispute-management role in rural and urban communities across the country.<sup>50</sup> Indeed in some respects Ni-Vanuatu view chiefly authority and the *kastom* system as more legitimate and ‘representative’ than the political processes of the state itself. As Kernot and Sakita argue:

Whilst a democratic system of government has been in place since independence in 1980, the parliamentary system continues to be widely perceived as a foreign

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<sup>45</sup> Kenyon and Rudland, above n 25, 4.

<sup>46</sup> Note that here ‘*kastom*’ refers to chiefly authority and leadership, and community governance and dispute settlement mechanisms. This does not by any means encompass the full usage of the term ‘*kastom*’ in contemporary Vanuatu. There is much literature on the emergence of the term ‘*kastom*’, which generally rose to prominence after the 1960s, and its shifting usage in popular discourse (particularly its usage in opposition to European culture, legal systems and ‘politics’). See, eg, Huffer and Molisa, above n 2, 7; A. Brown, ‘Gender and Customary Governance in Vanuatu’ (Paper presented at the 10<sup>th</sup> Pacific Islands Political Studies Association (PIPSA) Conference, Port Vila, Vanuatu, 1–8 December 2007) 11; and B. Rousseau, ‘Shifting others: *Kastom* and politics at the Vanuatu Cultural Centre’, in J. Taylor and N. Thieberger, *Working together in Vanuatu: Research histories, collaborations, projects and reflections* (2011) 225, 225.

<sup>47</sup> M. Forsyth, ‘Leadership structures and dispute management systems in Vanuatu’ (2007) 30 *Journal of Pacific Studies* 63, 83.

<sup>48</sup> Kenyon and Rudland, above n 25, 4.

<sup>49</sup> At independence *all* land in Vanuatu was returned to ‘the indigenous custom owners and their descendants’, *Constitution of the Republic of Vanuatu* art 73, and that ‘the rules of custom shall form the basis of ownership and use of land’. *Ibid* art 74.

<sup>50</sup> See V. Boege and M. Forsyth, ‘Customary conflict resolution in a state environment: Cases from Vanuatu’ (2009) 13(2) *Journal of South Pacific Law*; S. Kernot and L. Sakita, ‘The role of chiefs in peacebuilding in Port Vila’ (Discussion Paper, State, Society and Governance in Melanesia (SSGM) Project, Australian National University, 2008).

imposition. In contrast, chiefs have claimed and now possess widespread support for their work at the community level.<sup>51</sup>

These distinct and overlapping spheres of authority—of parliamentary democracy and *kastom* governance—are explored further below.

## **OVERLAPPING AUTHORITIES: KASTOM GOVERNANCE AND STATE GOVERNMENT**

Vanuatu today is ‘governed by an indelible mix of customary and modern influences’.<sup>52</sup> Traditional systems of *kastom* governance exist alongside modern systems of leadership and accountability that constitute the nation-state and its corresponding rule of law. These systems are considered here in turn.

Contemporary *kastom* governance in Vanuatu centres on the role of chiefs as a focal point for consensus decision-making within local communities. Contemporary models of *kastom* leadership do not represent tradition that has existed unchanged for eons across the islands of Vanuatu. Instead, contemporary chiefly systems have emerged out of a complex interplay between long-observed local traditions and leadership structures, and the influences of Christianity, nearly a century of colonial administration, and a cultural renaissance tied to the independence movement.<sup>53</sup>

*Kastom* governance refers to processes of dispute resolution and decision-making led by chiefs. Paterson refers to chiefs as ‘those persons who are recognised by the custom of a community as entitled to exercise powers of social control over members of that community’.<sup>54</sup> Almost overwhelmingly chiefs are men.<sup>55</sup> The specific and local processes of *kastom* governance vary considerably across Vanuatu; however they all involve a symbiotic relationship between local chiefs and their communities: while the chief ‘attempts to ensure that the spiritual, environmental and economic needs of the community are met’ the community in turn recognises and upholds the authority of the chief.<sup>56</sup> Ideally, processes of decision-making are by consensus, with grievances aired in public forums and subject to community discussion before chiefs make adjudication. A key feature of *kastom* governance is dispute resolution through a *reconciliation* process which aims to restore peace to the community. Reconciliation often requires the payment of reparations to ‘achieve a “balance” between opposing parties’.<sup>57</sup>

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<sup>51</sup> Kernot and Sakita, above n 50, 2.

<sup>52</sup> Ibid 9.

<sup>53</sup> For an excellent overview of how models of customary leadership have changed over time, see Forsyth, above n 31. See also Kernot and Sakita, above n 50; L. Bolton, ‘Chief Willie Bongmatur Maldo and the role of chiefs in Vanuatu’ (1998) 33(2) *The Journal of Pacific History* 179; L. Bolton, ‘Chief Willie Bongmatur Maldo and the incorporation of chiefs into the Vanuatu state’ (Discussion Paper, State, Society and Governance in Melanesia (SSGM) Project, Australian National University, 1999); L. Lindstrom, ‘Chiefs in Vanuatu today’, in G.M. White and L. Lindstrom (eds), *Chiefs Today: Traditional Pacific Leadership and the Postcolonial State* (1997) 211.

<sup>54</sup> D. Paterson, ‘Customary chiefs in Vanuatu’s electoral politics’ (Paper presented at the Conference on Political Culture, Representation and Electoral Systems, Port Vila, Vanuatu, 2004) 2.

<sup>55</sup> Note that ‘women can achieve chiefly status on some islands, although female chiefs are rarely considered to have equal status with their male counterparts’. Kernot and Sakita, above n 50, 2. For extended discussion of the interplay between *kastom* leadership and gender in Vanuatu see Bolton, above n 37, and M. Jolly, *Women of the Place: Kastom, Colonialism and Gender in Vanuatu* (1994).

<sup>56</sup> Kernot and Sakita, above n 50, 2.

<sup>57</sup> Forsyth, above n 31, 68.

In Vanuatu today ‘the state relies on the involvement of chiefs in the maintenance of law and order’.<sup>58</sup> Chiefs oversee day-to-day community life, dealing with common infractions such as alcohol abuse, marijuana use, fighting, theft, relationships not approved by parents or communities, and sometimes more serious issues like domestic or sexual violence. Generally serious crimes are referred to state authorities.<sup>59</sup> However there has been some concern that when domestic violence issues are resolved through customary dispute resolution, women are less likely to receive a fair hearing.<sup>60</sup>

*Kastom* governance is ‘linked indelibly with place’ and it is ‘chiefs working at the village level that are perceived to most closely represent a customary system of chiefly authority’.<sup>61</sup> Generally the authority of chiefs is associated with rural communities—where most Ni-Vanuatu live—but in recent times chiefs have also assumed important governance roles in the urban centres of Port Vila and Luganville. Chiefs proved to be extremely important for mitigating violence during rioting in Port Vila in 1998 and again in 2008. Indeed, when tensions between the Tannese and Ambrym communities in Vila erupted into violence in 2007 the then-Prime Minister sent pigs and mats to the chiefs from Tanna, a move ‘which was understood as a plea for peace’.<sup>62</sup> This event illustrates neatly the *coexistence* of state and *kastom* authority in Vanuatu.<sup>63</sup> Chiefs have also played a major peacekeeping role in other conflict situations, including a stand-off between the Vanuatu Police and Vanuatu Mobile Force in 1998, and a prison escape in 2006.<sup>64</sup>

While clearly important for maintaining public order, chiefs themselves have at times been a source of tension in Vanuatu, acting as protagonists in conflicts between rival groups. The 2007 Vila conflict involving people from Tanna and Ambrym, for example, which left three people dead, was fanned by inflammatory proclamations from Tanna chiefs in particular.<sup>65</sup> There are also instances of conflict arising from uncertainty about who is the rightful chief. Chiefly authority is in many places an amalgam of indigenous political structures and formal title designated by colonial administrations, partly because of this in many communities ‘there is considerable confusion and disagreement about who has the right to be the chief’.<sup>66</sup> Indeed some argue that there are *too many* chiefs in Vanuatu altogether.

*Kastom* governance tends to be oriented toward the arbitration of disputes and maintenance of peace in the community, and is not generally concerned with the development of policy per se. Many chiefs distinguish their power, authority and governance activities from *politik*, the remit of politicians and the ‘imported’ nation state.<sup>67</sup> However others argue that chiefs could have a greater role addressing social issues like unemployment, poverty reduction, environmental management and economic development.<sup>68</sup> It should be noted that most Ni-

<sup>58</sup> Kernot and Sakita, above n 50, 4.

<sup>59</sup> See D. Evans, M. Goddard and D. Paterson, ‘The Hybrid Courts of Melanesia: A comparative analysis of Village Courts of Papua New Guinea, Island Courts of Vanuatu and Local Courts of Solomon Islands’ (No. 13/2011, Justice and Development Working Paper Series, World Bank, 2010) 7.

<sup>60</sup> See Forsyth, above n 31, 122.

<sup>61</sup> Kernot and Sakita, above n 50, 4.

<sup>62</sup> *Ibid* 7.

<sup>63</sup> Lindstrom argues that in Vanuatu chiefs have ‘provided for the state two main services: a warrant of traditional legitimacy and, grossly, a mechanism of crowd control (most particularly a means by which to keep belligerent land disputes and wayward adolescents in line).’ Lindstrom, above n 53, 222.

<sup>64</sup> See Kenyon and Rudland, above n 25, 4.

<sup>65</sup> See Forsyth, above n 31, 118.

<sup>66</sup> *Ibid* 114.

<sup>67</sup> See Huffer and Molisa, above n 2; M. Morgan, *Politik is poison: The politics of memory among the Churches of Christ in northern Vanuatu* (Doctoral Thesis, Australian National University, 2003).

<sup>68</sup> See, eg, Kernot and Sakita, above n 50; Cox et al, above n 15.

Vanuatu themselves distinguish between distinct realms of responsibility for chiefs and for the state. When, for example, custom chiefs have stood for national election they have not received a significant degree of electoral support.<sup>69</sup>

While *kastom* governance is generally local in its application, chiefs do have broader national representation through the Malvatamauri National Council of Chiefs, established in the lead up to independence.<sup>70</sup> The Malvatamauri does play a role fostering national discussion regarding issues of land, culture and community well-being.<sup>71</sup> In 2006 a *National Council of Chiefs Act* was passed by parliament, setting out in law some of the roles and responsibilities of chiefs. The Act states that chiefs should help to ‘promote and encourage sustainable social and economic development’. This suggests that in future there may be a greater role for chiefs in development, and broader national policy debates.

In contrast to *kastom* governance, formal state government in Vanuatu is young—barely a generation old. During the colonial era, when the islands were governed by a French/British Condominium administration, Ni-Vanuatu were technically a state-less people.<sup>72</sup> They ‘did not play a major role in the colonial administration’<sup>73</sup> and it wasn’t until the 1970s that Ni-Vanuatu had anything to do with ‘national’ politics at all—with the emergence of a nationalist movement that helped drive the country to independence.<sup>74</sup> In 1980 the Republic of Vanuatu was established, and key features of state government are as follows. Formal government is derived from the British Westminster system of parliamentary democracy with the exercise of state authority constrained by the Constitution of Vanuatu. The nation is governed through a single-house parliament, with 52 seats. The archipelago is also divided into six regions with provincial government councils. However, these councils have ‘no significant financial or other resources of their own’ and undertake few initiatives independent of central government.<sup>75</sup> Vanuatu’s head of state is a president, a largely ceremonial role as executive power lies primarily with the prime minister and cabinet. The prime minister is appointed by an absolute majority of sitting members in parliament. The prime minister then appoints a ‘Council of Ministers’ constituting no more than a quarter of all parliamentarians (currently 13 MPs), and all ministers are collectively responsible to parliament. Independent scrutiny of executive government is provided by the Office of the Ombudsman (established in 1995) and the Auditor General. Leaders in parliament and the public service are also bound by a Leadership Code outlined in the Vanuatu Constitution, though prosecution of breaches of the leadership code is rare.

Vanuatu’s formal judiciary consists of a Supreme Court and Court of Appeal (both mandated by the Constitution) as well as subsidiary courts established by legislation, namely the magistrates courts, which hear ‘minor to intermediate civil and criminal proceedings’ and island courts, which hear ‘some minor civil and criminal cases’.<sup>76</sup> Customary Land Tribunals

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<sup>69</sup> See Paterson, above n 54.

<sup>70</sup> For an excellent explanation of how the Malvatamauri ‘re-framed’ the role of chiefs in a national setting, see Bolton, ‘Chief Willie Bongmatur Maldo and the role of chiefs in Vanuatu’, above n 53; and Bolton, ‘Chief Willie Bongmatur Maldo and the incorporation of chiefs into the Vanuatu state’, above n 53.

<sup>71</sup> See, eg, Malvatamauri National Council of Chiefs, *Alternative Indicators of Well-being for Melanesia: Vanuatu Pilot Study Report – 2012* (2012).

<sup>72</sup> M. Ntomy, *South Pacific Islands Legal Systems* (1993) 369.

<sup>73</sup> Cox et al, above n 15, 20.

<sup>74</sup> See H. Van Trease, *The politics of land in Vanuatu* (1987); S. Regenvanu, *Laef Blong Mi: From village to nation* (2004).

<sup>75</sup> D. Paterson, ‘Vanuatu’, in S. Levine (ed), *Pacific Ways: Government and Politics in the Pacific Islands* (2009) 249, 256.

<sup>76</sup> *Ibid* 254. See also Forsyth, above n 31, 139–40.

were also established in 2001 to help chiefs resolve disputes involving customary land. These tribunals, which are not commonly used, are distinct from the formal court system. As explained above, many local disputes and minor infractions are resolved through *kastom* processes and are not dealt with by formal courts at all. In practice the relationship between the formal judiciary and *kastom* processes can be described as ‘fluid, informal and largely involving the two operating in parallel with each other’.<sup>77</sup> Enforcement of state law is provided by the Vanuatu Police Force, which also has a paramilitary wing, the Vanuatu Mobile Force (VMF). Police officers are concentrated in urban centres and many islands have a poor or non-existent everyday police presence.<sup>78</sup>

In the immediate post-independence era Vanuatu’s national politics was dominated by a division between major political parties representing major constituencies, with the Anglophone and Presbyterian ‘Vanua’aku Pati’ (VP) on the one hand, and the Catholic and Francophone ‘Union of Moderate Parties’ (UMP) on the other.<sup>79</sup> During the 1980s the Vanua’aku Pati, which had led the nation to independence, maintained a grip on power, in part reflecting the Anglophone majority of the population. By the early 1990s however the party was riven by ‘leadership disputes, factionalisation and eventually splits’.<sup>80</sup> These splits divided the vote of the VP constituency and in 1991 the party lost the national election to the UMP. In the two decades since, Vanuatu national politics has been characterised by a continuing fragmentation of larger political groupings, a process coined by Morgan as ‘political centrifugalism’.<sup>81</sup> The Vanua’aku Pati has split at least five times since 1988<sup>82</sup>, while the UMP has also had a number of splits (and subsequently-formed parties have in turn split again). In recent years, new, smaller parties and independent candidates have played an increasing role in national politics, reducing further the sway of major political parties. Today it is only possible to form government through frequently unstable coalitions of smaller parties and independent MPs.<sup>83</sup>

State government in contemporary Vanuatu is marked by a hybridity of social and cultural forms. Just as *kastom* authority has been shaped by external influences—particularly during the colonial era—so has the form of parliamentary democracy become undeniably local: the state has taken on a uniquely Melanesian flavour. Morgan suggests that ‘pre-existing social forms pervade the state at almost every level’<sup>84</sup> and that parliamentarians frequently find

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<sup>77</sup> Ibid 175.

<sup>78</sup> Ibid 150.

<sup>79</sup> For an excellent discussion of Vanuatu politics in the lead up to independence and in its first decade, see Van Trease, above n 74; H. Van Trease (ed), *Melanesian politics: Stael Blong Vanuatu* (1995); H. Van Trease, ‘The Colonial Origins of Vanuatu Politics’, in H. Van Trease (ed), *Melanesian politics: Stael Blong Vanuatu* (1995)

<sup>80</sup> For a first-hand account, see Regenvanu, above n 74.

<sup>81</sup> Cox et al, above n 15, 22.

<sup>82</sup> M. Morgan, ‘Cultures of Dominance: Institutional and cultural influences on parliamentary politics in Melanesia’ (Discussion Paper, State, Society and Governance in Melanesia (SSGM) Project, Australian National University, 2005) 5.

<sup>83</sup> Cox et al, above n 15, 22.

<sup>84</sup> Note however that the centrifugalism of Vanuatu national politics has been reversed somewhat in very recent times. In late 2013 ‘reconciliation’ ceremonies were held between the leader of the Vanua’aku Pati, Edward Natapei, and leaders from the National United Party, the People’s Progressive Party, and the Iauko Group. Plans were also underway for reconciliation talks with the Melanesian Progressive Party. R. Bihini and G. Ligo, ‘PM Carcasses confident of defeating motion’ *Vanuatu Daily Post* (Port Vila, Vanuatu) 18 December 18, 2013. The impetus towards rapprochement among these political factions remains unclear, as do prospects for formal reunification. It is possible that the strong showing of the Land and Justice Party (headed by popular Minister for Land Ralph Regenvanu) at the 2012 elections may have stirred veteran party leaders to work closer together to maintain their political clout.

<sup>84</sup> Morgan, above n 81, 4.

themselves enmeshed ‘in networks of social and financial obligation’ which influences their actions as elected officials.<sup>85</sup> Over time a coincidence of ‘indigenous socialities of kinship and community’ and state departments which do not have the resources or skilled staff needed to deliver services has led some people to view national parliamentarians not as responsible for enacting law, providing nation-wide services, representing political parties, or even advocating particular policies, but as a direct means of accessing state resources.

The technical aspects of parliamentary governance are less important to people than access to resources and materials or having approachable leaders, enmeshed within social networks, in office. MPs who fulfil these obligations are more bankable sources of support than state institutions.<sup>86</sup>

In turn some national politicians, and governing coalitions, are increasingly driven ‘by the pragmatic considerations of attaining access to state resources’, because development funds, projects and policies, as well as employment, education and travel, offers one of the most viable means for MPs to cement local support.<sup>87</sup> Morgan argues that the increasing fractionalisation of political parties, a high turnover of elected members, and the development of ‘patron-client’ dynamics between politicians and communities have all served to undermine the oversight and accountability of state government.

Herein lies the crux of the matter, that of holding leaders *accountable*. The primary challenge to Vanuatu citizens holding elected leaders to account is the ‘awkward fit of imposed Westminster models of government’ with ‘organic indigenous socialities of kinship and community’.<sup>88</sup> A key issue is that of *scale*, for traditional governance tends to be very localised. As White explains, ‘political action is highly participatory, worked out in group discussions, village meetings, and public gatherings of all sorts ... the scale of Melanesian social organisation implies that all adults ideally have a voice in matters of significance to their community’.<sup>89</sup> In contrast to localised systems of authority, in which leaders might be held to account by relatively transparent processes of community discussion, leaders in national government are often seen as ‘a distant presence with uncertain relevance’ to their day-to-day lives.<sup>90</sup> In the gap between the local and the national, between *kastom* governance and state government, oversight is often lost.

A related issue is that of finding accessible means of *redress*. To challenge leaders regarding their actions and choices requires access to often unfamiliar processes, whether they are debate and oversight by elected representatives in parliament, the processes of the state legal system, or even through the media. Leaders have resisted formal oversight of their activities and it is not unusual in Vanuatu for national politicians to contravene their own leadership code, or even to break the law, with little visible repercussions. The experience that followed the appointment of Vanuatu’s first ombudsman is illustrative in this regard. The Ombudsman’s Office investigated claims of corruption, fraud, nepotism and repeated violations of Vanuatu’s leadership code, producing almost 80 reports between 1996 and 2000. These reports, relating to serious breaches of the leadership code and/or illegal activity,

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<sup>85</sup> Ibid 5.

<sup>86</sup> Ibid 12.

<sup>87</sup> Ibid 4–5.

<sup>88</sup> Douglas, above n 37, 3.

<sup>89</sup> G. White, ‘Indigenous governance in Melanesia’ (Discussion Paper, State, Society and Governance in Melanesia (SSGM) Project, Australian National University, 2006) 9.

<sup>90</sup> Ibid 6.

indicated that some government ministers felt they were effectively above the law.<sup>91</sup> The most egregious allegations included theft of monies allocated to a cyclone relief fund, preferential treatment for housing loans, the illegal acquisition of land leases, and electoral fraud. Without the power to prosecute, the Ombudsman's Office has not been able to mete out punishment for wrongdoings committed. It should be noted however that the government of Prime Minister Moana Carcasses—which came to power in April 2013—has signalled a renewed willingness to give the Ombudsman's Office 'teeth'.<sup>92</sup> Amendments may include giving the Office the power to 'prosecute a leader for breach of the Leadership Code if the Public Prosecutor has not commenced proceedings three months after issuing of a Report alleging breaches'.<sup>93</sup> Vanuatu's only daily newspaper reports that 'if the Ombudsman is given powers to prosecute and if its implementation is retroactive, some past and current leaders will not be sleeping well at night'.<sup>94</sup>

Even while consideration is given to making processes of state government more accountable, increasing attention is also being given to strengthening *kastom* governance. The World Bank has funded a community governance project undertaken by researchers from the Vanuatu Cultural Centre in Lamap, Malakula.<sup>95</sup> AusAID funded a 'Kastom Governance Partnership' between the Australian Centre for Peace and Conflict Studies (ACPACS) and the Malvatamauri National Council of Chiefs—completed in 2013—which aimed to 'help chiefs and other community leaders in Vanuatu reflect on their roles and manage rapid social change in their communities'.<sup>96</sup> The 2013 annual conference of fieldworkers from the Vanuatu Cultural Centre focussed explicitly on 'different forms custom governance and service delivery' in Vanuatu—past and present.<sup>97</sup>

Key questions remain about how the seemingly discrete realms of *kastom* governance and state government intersect. How might traditional leaders help to hold elected politicians accountable and play a role in national policy discussion? How might national and provincial governments support and bolster effective *kastom* governance? What, if any, role might be played by civil society? These questions are considered further below.

## **IMPROVING ACCOUNTABILITY AND AFFECTING CHANGE: WHAT ROLE FOR CIVIL SOCIETY?**

Considering the role of civil society in relation to governance and leadership in Vanuatu first requires some reflection on what constitutes 'civil society'. Much of the recent discourse around 'good governance' and 'developmental leadership'—at least among aid donor organisations—makes implicit assumptions about what civil society is, or should be, in

<sup>91</sup> See K.J. Crossland, 'The Ombudsman role: Vanuatu's experiment' (Discussion Paper, State, Society and Governance in Melanesia (SSGM) Project, Australian National University, 2000); G. Rawling, 'Regulating Responsively for Oversight Agencies in the Pacific' (Discussion Paper, State, Society and Governance in Melanesia (SSGM) Project, Australian National University, 2006); and E. Hill, 'The Vanuatu Ombudsman', in A. Jowitt and T.N. Cain (eds), *Passage of Change: Law, Society and Governance in the Pacific* (2010) 71.

<sup>92</sup> 'To empower the Ombudsman or not: Politicians' *Vanuatu Daily Post* (Port Vila, Vanuatu) 6 May 2013.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

<sup>95</sup> Vanuatu Cultural Centre, 'Project Report: Helping the Lamap Community move towards Good Governance' (Nambang Community Governance Project, 2012).

<sup>96</sup> Australian Agency for International Development (AusAID) and the Australian Centre for Peace and Conflict Studies (ACPACS), *Kastom Governance is for everyone: Activities and impacts of the Vanuatu Kastom Governance Partnership 2005-2012. A partnership of the Malvatamauri National Council of Chiefs, University of Queensland and AusAID* (2012) 7.

<sup>97</sup> B. Makin, 'VKS fieldworkers debate custom governance' *Vanuatu Daily Post* (Port Vila, Vanuatu) 22 August 2013.

developing countries.<sup>98</sup> First it is assumed that an informed, engaged and active civil society is needed to ensure accountability in the operation of an ‘ideal type’ liberal-democratic state. As Morgan explains, ‘Westminster systems of government predicate oversight of the executive at least partially on an informed and active civil society’.<sup>99</sup> There are further assumptions that civil society consists of non-state actors which serve to strengthen parliamentary democracy by encouraging public debate, campaigning on key issues and exposing wrong-doing by elected politicians. This conception of civil society privileges formal institutions—such as NGOs, church groups, trade unions, think tanks and chambers of commerce—and understands civil society largely in relation to the functioning of state institutions. However, Huffer and Molisa suggest that, just as the state has a limited involvement in peoples’ lives in Vanuatu and informal customary traditions are often more important for local governance, so too are informal forms of civil society more significant than formal civil society organisations.<sup>100</sup> They explain that:

Civil society in the Pacific finds its roots in local communities that are kin-based and subsistence oriented. It is only recently that non-government organisations (NGOs) which are legal, contractual entities, have played a role in Pacific polities, and although they are a useful link between rural and urban communities, they should not replace a direct dialogue between communities and the state.<sup>101</sup>

Huffer argues that non-government organisations in Pacific countries ‘tend to constitute an artificial urban-based, contractual “civil society”, disconnected from peri-urban and rural communities, if not from society at large’.<sup>102</sup> These reservations notwithstanding, the acknowledgement that NGOs can provide a useful link between rural and urban communities may point to an important role for civil society organisations in relation to improving governance outcomes: that of *facilitating informed discussion* about contemporary policy issues, *building bridges* between local and national conversations, and *mediating dialogue* between traditional systems of governance and processes of state government.

In 1999 Huffer and Molisa argued for a ‘Nakamal way’, which they described as ‘a process of dialogue in which knowledge from the different components of society is distributed and commented on to be used in decision-making for the benefit of the community ... it is a way of sharing customary and contemporary experiences in an inclusive and educational manner’.<sup>103</sup> The key implication here is that inclusive dialogue would help to develop new forms and processes of governance appropriate to contemporary Vanuatu. This is a commendable goal, and one that civil society organisations are well placed to help pursue.

A number of civil society organisations in Vanuatu already seek to share information about Vanuatu’s processes of government—to facilitate dialogue and encourage greater participation by all members of society. Notably the Wan Smol Bag theatre group has undertaken a range of civic education projects aimed at providing ‘accessible and appropriate’ information about ‘governance, politics and legal and constitutional issues’ in Vanuatu.<sup>104</sup> This material has been in the form of pamphlets at election time (in Bislama), radio shows and documentaries, public forums to discuss key issues, and videos and theatre

<sup>98</sup> Huffer and Molisa, above n 2, 3.

<sup>99</sup> Morgan, above n 81, 9.

<sup>100</sup> Huffer and Molisa, above n 2.

<sup>101</sup> Ibid 4.

<sup>102</sup> Huffer 2005:126

<sup>103</sup> Huffer and Molisa, above n 2, 10

<sup>104</sup> Morgan, above n 81, 9.



aimed at encouraging discussion of the role of government, parliamentarians and political parties. Another good example is the work of the Pacific Institute for Public Policy (PiPP). In the lead up to the 2012 national election PiPP organised a series of ‘MP Face-to-Face’ events ‘as a way of bridging the gap between politicians and voters’.<sup>105</sup> These forums—which saw parliamentarians asked questions directly from members of the public—were broadcast live across the country and on radio and television. Organisers posited that this question-and-answer form of direct political engagement was more familiar to people across the country, explaining that: ‘the mix of respect and candour during the [Face-to-Face forums] bore a striking resemblance to what you’d see in village level meetings that have been a dominant element of Vanuatu *kastom* for thousands of years’.<sup>106</sup>

These examples (and a number of others not covered here) show that civil society organisations *can* help to foster more inclusive and educational dialogue on governance issues, and help to link conversations in urban and rural communities in Vanuatu. The country’s vibrant media—particularly the national daily and weekly newspapers, and a number of talk-back radio programs—indicate a growing appetite for such discussions. There remain considerable opportunities to foster further considered debate around the nation’s myriad governance and development challenges. These discussions should aim to make processes of governance in Vanuatu more inclusive and accountable.

## **CONCLUSION: FROM UNIVERSAL DISCOURSE TO LOCAL CHOICES**

In recent years donor organisations have placed an increasing emphasis on fostering ‘developmental leadership’ and ‘good governance’ in Vanuatu, and in the Pacific more broadly. In many respects this emphasis on *leadership* has reflected evolving approaches to international development advocated by globally influential institutions. In the context of seemingly universal prescriptions for development—envisaged ultimately as economic growth—‘leadership’ refers to coalitions of individuals who generally constitute an emergent elite who might *demand* more transparent and accountable governance, which might in turn underpin an effective delivery of state services and lead to an enabling policy environment for the private sector (as a secure liberal marketplace is generally assumed to be a prerequisite for economic growth).

Because transnational discourses of ‘good governance’ and ‘developmental leadership’ are universal in nature they are, perhaps necessarily, blunt instruments which make assumptions about the ‘first-best’ path to ‘ideal-type’ outcomes. Being global in nature, they fail to accommodate the nuance and complexity of the local. A key challenge for civil society in Vanuatu, then, is that of adapting seemingly universal assumptions and prescriptions to suit the lived reality of a postcolonial nation-state regulated by both indigenous and State authorities.

Vanuatu is a young and unique nation, governed through distinct but overlapping systems of localised customary governance and an imported system of state government. Together these systems of governance should help Ni-Vanuatu citizens tackle a range of significant challenges, from maintaining peace and good order, to securing livelihoods and material well-being for a growing population, to managing internal migration to urban centres and improving health and education outcomes for all. Ultimately, the development of appropriate and accountable governance that will help to meet these challenges is dependent on

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<sup>105</sup> Pacific Institute for Public Policy (PiPP), ‘PiPP pioneers direct dialogue between MPs and electorates in Vanuatu’ (Press Release, 8 July 2011).

<sup>106</sup> Pacific Institute for Public Policy (PiPP), ‘Facing the nation’ (Press Release, 23 August 2012).

participation and legitimacy—on a sense of community *ownership*. In many ways there is nothing fixed or closed about the nature of contemporary governance in Vanuatu. In December 2013, for example, the Vanuatu parliament passed reforms—including constitutional amendments—which stripped powers from the Minister for Land and returned decision making over land to chiefs and local *nakamals* (meeting houses). While the authority of the state is embodied in a recently-drawn-up constitution, consensus regarding the best *forms* of government remains far from secured, and is subject to ongoing discussion. Perhaps it will ever be thus, for the form and function of governance—both traditional and state—should always reflect informed discussion by Ni-Vanuatu citizens.

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