

LAND REFORM REGULATION

1980

Explanatory Note

The purpose of this Regulation is to provide interim measures to deal with land from the Day of Independence until a National Land Law is enacted.

Persons who before Independence have freehold or perpetual ownership of land become "alienators" on the Day of Independence with entitlement to remain on the land until they have reached an agreement with the custom owners for leasing the land to them or for the payment for improvements.

Where there is doubt as to who are the alienators of land the matter may be referred to the Supreme Court for decision (Section 4).

Under Section 5 where the identity of custom owners is in doubt the matter is referred to a lands court by custom owners who claim the land. Where no claims have been made the Minister can apply to the Court.

Under Section 6 no one may negotiate with custom owners unless he has a certificate as a registered negotiator. This is for the protection of custom owners and of alienators who as a matter of law and policy will have a first claim to negotiate with custom owners in respect of the land they once owned.

Again under Section 7 the Minister has to approve all agreements respecting land between custom owners and persons who are not indigenous citizens.

Section 8 provides that the Minister shall manage land where there is no agreement between the alienator and the custom owners or where ownership is disputed.

Under Section 9 all State land shall become public land. This will be land owned by the British and French Governments and the Condominium and Municipality on 1st January 1980. The Minister will be able to declare land not to be public land and also transfer it to indigenous citizens or communities.

Custom owners under Section 10 will continue to use undeveloped public land except that they will require to get the Minister's permission for putting up buildings making improvements or planting crops which are not of an annual nature.

Under Section 11 the Minister will have to give six months notice of intention to use public land and will have to agree compensation for the use of the land and for its improvements.

Compensation to custom owners can take the form of a payment, the transfer of land, the provision of free services or of services at special rates, shares in companies or an agreed share of income from land. If there is disagreement on compensation the matter may be referred to the Land Appeals Tribunal.

Alienators occupying public land will have similar rights of occupation of land and compensation as those occupying other custom land (See Section 13).

A Land Records Office is established under Section 14. It will contain registers of alienated land and custom land and such other registers as the Minister shall decide.

There will be a provisional register of custom land. Disputed custom land will be in a special register (Section 16).

Under Section 17 leases are guaranteed by the State. If a person registered as owner of a lease through no fault or fraud on his part is found not to own the lease he is compensated.

Section 18 provides for rights of entry of officials on behalf of the Minister.

Under Section 19 the Minister can establish corporate bodies which may have the functions set out in the Schedule. The bodies will carry out certain functions with regard to land management either on behalf of the Government or for custom owners.

Section 20 provides that public roads will vest in the Government on Independence Day on behalf of the people.

Section 21 and 22 are extremely important. Section 21 forbids the use of force in relation to land both by custom owners and alienators.

Section 22 forbids wilful damage to improvements on land. This is to prevent persons attempting to frustrate the purposes of the law.

Section 24 should be noted. It provides for offences.

JULY 1980

S. REGENVANU
MINISTER OF LAND

DRAFTSMANS NOTE

The Resident Commissioners Joint Regulation bringing this Resolution into force as a law will provide that this resolution will be cited as the Land Reform Regulation and that it will come into force on the Day of Independence.

LAND REFORM REGULATION

1980

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RESOLUTION No. OF 1980

To make interim provision for the implementation of Chapter 12 of the Constitution.

The Representative Assembly at its sitting on the day of 1980 hereby resolves and decides in accordance with Article 23 of the Schedule to the Exchange of Notes of 15th September 1977 to adopt the following measures :-

PART 1 - INTERPRETATION

Interpretation.

1. In this Regulation unless the context otherwise requires :-

"alienator" means a legal or natural person or persons who immediately prior to the Day of Independence and whether or not their rights were registered in the Registry of Land Titles provided for in the Anglo/French Protocol of 1914 -

- (a) had freehold or perpetual ownership of land whether alone or jointly with another person or persons; or
- (b) had a right to a share in land by inheritance through will or operation of law where no formal transfer of that land had taken place; or
- (c) had a life interest in land; or
- (d) had a right to land or a share in land at the end of a life interest; or
- (e) had a beneficial interest in land;

Provided that :-

- (1) (i) where there is more than one alienator in respect of a piece of land they shall be included in the expression "the alienator" for the purposes of the provisions of this Regulation;
 - (ii) one alienator may represent himself and the other alienator or alienators by agreement among them for the purposes of this Regulation;
 - (iii) the Minister may appoint an alienator to represent his co-alienator or alienators for the purposes of this Regulation;
- (2) a person shall not be an alienator of land unless -
 - (i) there is a person in physical occupation of it being an alienator or a licensee, tenant or lessee of an alienator; or

- (ii) the land and improvements thereon have in the opinion of the Minister been up to the Day of Independence maintained in reasonably good repair and condition; or
- (iii) rates or taxes due in respect of the land are not in arrears for 6 months or more on the Day of Independence;
- (3) a person shall be an alienator within the meaning of this definition if the Minister is satisfied that he has been unable to satisfy any of the conditions in paragraph (2) because of the deliberate act or omission of another person or persons;
- (4) A person shall be an alienator within the meaning of this definition if he has been substituted for an alienator with the consent of the Minister in accordance with Section 8 (2) (a).

"custom owners" means the person or persons who, in the absence of a dispute, the Minister is satisfied are the custom owners of land;

"custom group" means a person or persons who claim custom ownership of disputed land;

"disputed land" means land the ownership of which is claimed by more than one custom group;

"encumbrance" includes a mortgage a lease, licence to use land for payment, a right of way or any customary or other rights over land not being rights of ownership of that land;

"land" includes improvements thereon or affixed thereto and land under water including land extending to the sea side of any offshore reef but no further;

"the Minister" means the Minister for the time being responsible for matters the subject of this Regulation or any Minister acting on his behalf;

"state land" means all land in Vanuatu which on the 1st day of January 1980 was owned in freehold or perpetual ownership by the British Government, the French Government the Condominium or a Municipality.

PART 2 - ENCUMBRANCES

Encumbrances.

- 2. Subject to Section 25 land shall be held subject to encumbrances created before or after the coming into operation of this Regulation.

PART 3 - ALIENATED LAND

Entitlement of alienator to remain on land.

3. Every alienator shall be entitled to remain on land occupied by him on the Day of Independence until such time as either he enters into a lease of the land or a part thereof with the custom owners of the land or receives payment for improvements to or on that land.

Referrals to Supreme Court on identity of alienator.

4. (1) In any case where there is doubt as to who is an alienator in respect of land or to what proportion of a valuation of improvements an alienator is entitled, the matter shall be referred to the Supreme Court for decision either by an alienator, the custom owners or the Minister.
- (2) A decision of the Supreme Court under subsection (1) shall be final and not be subject of an appeal to the Court of Appeal.
- (3) The Chief Justice may make rules of procedure for the purposes of this Section.

Applications to land court where identity of custom owners in dispute.

5. (1) In any case where there is doubt as to who are the custom owners of land occupied by an alienator one of the custom groups who claim the land may apply to a court established in accordance with section 15 (c) of the Courts Regulation 1980 to decide on the ownership of the land.
- (2) Where no claim has been made to custom ownership of land or the custom groups who dispute ownership have not made an application to the Court in accordance with subsection (1) the Minister may make such application in respect of such land.
- (3) An appeal from a decision made by a court to which a matter is referred in accordance with subsection (1) shall be heard by a Lands Appeal Tribunal established in accordance with Section 11 (3) of the Courts Regulation 1980.

PART 4 - NEGOTIATIONS AND AGREEMENTS RELATING TO CUSTOM LAND

Certificate of Registered Negotiator.

6. (1) No alienator or other person may enter into negotiations with any custom owners concerning land unless he applies to the Minister and receives a certificate from the Minister that he is a registered negotiator.
- (2) A certificate issued in accordance with subsection (1) shall -
- (a) state the names of the applicant and of the custom owners;
 - (b) give brief details of the land in respect of which negotiations are registered; and
 - (c) state the object of the negotiations.

Land Reform Regulation

Correction to English text

Section 9(1)

Add words "under Section 11 (1)" after the word
"notice" in sixth line.

- (3) If negotiations are completed without compliance with subsection (1) the Minister may refuse to approve the agreement between the Custom owners and the unregistered negotiator and if he is an alienator may declare the land unsettled land.

Void Agreements. 7.

All agreements between persons who are not indigenous citizens and custom owners relating to land shall be void and unenforceable in law unless they have been -

- (a) approved by the Minister; and
(b) registered in the Land Records Office established under Section 17.

PART 5 - MANAGEMENT OF LAND

Minister to have general management and control of certain land.

8. (1) The Minister shall have general management and control over all land -
- (a) occupied by alienators where either there is no approved agreement in accordance with Section 3 and 9 or the ownership is disputed; or
- (b) not occupied by an alienator but where ownership is disputed.
- (2) Where the Minister manages and controls land in accordance with subsection (1) he shall have power to -
- (a) consent to a substitution of one alienator for another;
- (b) conduct transactions in respect of the land including the granting of leases in the interests of and on behalf of the custom owners;
- (c) take all necessary measures to conserve and protect the land on behalf of the custom owners.

PART 6 - PUBLIC LAND

Vesting of State Land.

9. (1) On the Day of Independence all state land shall vest in the Government and be public land and be held by it for the benefit of the Republic and Section 11 shall apply to such of that land as is not included in an order under subsection (2) of this Section as if a notice had been *under s. 11(1)* given by the Minister six months before the Day of Independence.
- (2) The Minister, on the advice of the Council of Ministers, may by Order declare that any land described in the Order ceases to be public land.
- (3) In accordance with Article 79 of the Constitution the Minister may, on the advice of the Council of Ministers, by order vest any public land in indigenous citizens or communities referred to

in the Order for such payment by them and on such terms and conditions as may be referred to in the Order.

- (4) When an Order is made under subsection (3) it shall provide for payment of compensation to the custom owners by the Government and the amount of such compensation shall be set out in the order.

Use of Public
Land by Custom
Owners.

10. Until such time as the Government may require to use undeveloped public land for development or other public purposes the land may be used by the custom owners for any purpose except that the consent of the Minister shall be required for :-

- (a) the construction of any building;
- (b) the planting of any crops not requiring annual replanting; or
- (c) any other improvements of a permanent nature.

Notice by
Minister of
use of public
land.

11. (1) The Minister shall give the custom owners not less than six months notice of the intention of the Government to use public land described in the notice for development or public purposes.

- (2) The Government shall agree compensation with the custom owners for the use of the land and loss of any improvements thereon which depending on the nature of the intended use of the land may be in the form of -

- (a) a lump sum payment which may be paid; in instalments over not more than 30 years;
- (b) the transfer to them of other public land;
- (c) the provision of free services at specially agreed rates by the Government, public utilities or municipalities;
- (d) shares in a company established by the Government alone or with other persons for developing the land;
- (e) an agreed share of net income received by the Government from the land.

- (3) In addition to the compensation referred to in subsection (2) the Government may give the custom owners such minority representation on bodies that may manage the land as shall be agreed.

- (4) If the Government and the custom owners fail to reach an agreement under subsection (2) either party may refer the matter to the Land Appeals Tribunal for settlement. The decision of the Tribunal shall be final.

- (5) The Government may at any time pay a sum to custom owners in commutation of the custom owners share of income under subsection (2) (e).

Declaration of
Land as Public
Land.

12. The Minister may at any time on the advice of the Council of Ministers and after consultation with the custom owners declare any land to be Public Land.

Right of
alienator to
remain in
occupation
land.

13. Every alienator occupying public land shall have a right to remain in occupation of that land from the time it becomes public land until he enters into a lease of the land or a part thereof with the Government or he receives payment for improvements to or on the land.

PART 7 - LAND RECORDS OFFICE

Land Records
Office.

14. (1) There is established a register of lands, land titles and transactions to be known as the Land Records Office.
- (2) The Land Records Office shall contain a register of alienated land and record changes of alienators, and custom owners, and contain such other registers and records as the Minister may prescribe.
- (3) The form of the registers in the Land Records Office shall be prescribed by the Minister.
- (4) All leases, transfers of leases and other transactions with regard to leases shall be recorded in the Land Records Office.
- (5) The Registry of Land Titles maintained in accordance with the Anglo/French Protocol of 1914 and Joint Regulation No.3 of 1930 prior to the Day of Independence shall form the basis of the Alienated Land Register and the entries therein shall be considered the first entries in the Alienated Land Register.
- (6) The Director of Land Records shall have power to amend bona fide errors in Registers in the Land Records Office and shall make such other changes as the Supreme Court may direct.

Director of
Land Records.

15. (1) There shall be a Director of Land Records who shall be a public officer and responsible to the Minister for the proper functioning of the Lands Records Office.
- (2) The Director of Land Records shall maintain the Registers referred to in Section 14 and register all leases and other transactions that shall require to be registered under any order made by the Minister under Section 23.

Provisional
Custom Land
Register and
Surveys.

16. (1) There shall be a Provisional Custom Land Register in the Land Records Office in which the Director of Land Records shall enter upon application by Custom Groups such information as is available to provisionally establish their ownership of the land described in the register.
- (2) The Director of Land Records shall not register disputed land in the Provisional Custom Land Register but may register the land and details of claimants and claims to it in a Register of Disputed Land.
- (3) The Minister may provide in consultation with the chiefs for such surveys of land and boundaries of land for the purposes of establishing the boundaries thereof as he shall consider necessary.

PART 8 - REGISTERED LEASES

Guarantee of
Registered
Lessee.

17. (1) When a lease is registered in a register in the Land Records Office the registration of that lease shall be evidence of the validity of the lease and the details thereof.
- (2) If a person registered as a lessee is proved in a court not to be the lessee and such person was not registered as a lessee through fault or fraud on his part he will be entitled to receive compensation from the Government for any loss suffered by him as a result of the finding of the Court.

PART 9 - RIGHTS OF ENTRY

Right of
entry of
officials
and valuers.

18. Persons bearing the written authority of the Minister shall have a right to enter upon any land occupied by an alienator in order to carry out the functions vested in the Minister by Section 8.

PART 10 - LAND CORPORATIONS

Establishment
of corporate
bodies by the
Minister.

19. (1) The Minister may by order establish corporate bodies for the better carrying into effect of the purposes of this Regulation.
- (2) A corporate body established in accordance with subsection (1) may have such of the functions and powers referred to in the Schedule as may be set out in the order establishing it or an order amending the order.
- (3) Subject to subsection (4), the Minister may delegate any of his duties or functions under this Regulation to a corporate body established under this section.

- (4) The Minister may not delegate his powers to consent to transactions between custom owners and other persons.

PART 11 - ROADS

Public Roads.

20. (1) Public Roads in existence or under construction on the Day of Independence shall vest on that day in the Government on behalf of the people.
- (2) No person other than the Minister may close a public road or take a toll from persons using a public road.

PART 12 - USE OF FORCE AND DAMAGE

Prohibition of force.

21. (1) No custom owners or members of a custom group whether or not such persons believe they own such land shall enter on land by force or attempt to eject any persons occupying that land by force.
- (2) No alienator shall use force against custom owners peaceably entering the land occupied by him.
- (3) Any person who contravenes this section shall be liable on conviction to imprisonment for 10 years or a fine of FNH 200,000 or both such imprisonment or fine.

Prohibition of damage or destruction of improvements.

22. (1) No person whether an alienator or custom owner and whether or not ^{he} believes himself to be the owner of the improvement shall wilfully damage or destroy any improvement on land without the consent in writing of the Minister.
- (2) A person who contravenes subsection (1) shall be liable on conviction to imprisonment for 10 years or a fine of FNH 200,000 or both such imprisonment and fine.

PART 13 - ORDERS, OFFENCES, REFERRALS

Orders.

23. (1) For the better carrying into effect of this Regulation the Minister may make Orders not inconsistent with this Regulation.
- (2) Without derogating from the generality of subsection (1) the Minister in such orders may provide -
- (a) for anything that may be prescribed;
 - (b) for fees payable on registering transactions in the Land Records Office;
 - (c) for the manner of applying to make entries in registers in the Lands Records Office;
 - (d) for the forms to be used for applications under this Regulation and the fees payable on such applications.
 - (e) for the occasions when and the manner of carrying out surveys of land.

offences.

24. (1) Any person who obstructs any person in carrying out his duties or functions under this Regulation commits an offence.
- (2) Any person who commits an offence under this Section or contravenes any provision of this Regulation shall where no other penalty is provided be liable on conviction to a term of imprisonment of 3 years or a fine of FNH 60,000 or both such imprisonment or fine.

saving and
transfer of
mortgages.

25. (1) Subject to the Constitution and subsections (2) and (3) the rights of mortgagees and other persons who have lent money with land given as security for repayment of the money lent by them shall continue in full force and effect from the Day of Independence.
- (2) When an alienator enters into a lease of land with the custom owners or Government in accordance with Section 3 (1) or 13 any mortgages entered into by him at any time prior to the lease in respect of that land shall be deemed to have been made in respect of that lease and shall be construed with such adaptations as shall be necessary.
- (3) When an alienator receives any payment or enters into an agreement to receive any payment for improvements to or on land in accordance with sections 3 (1) or 13 the payment or agreement shall be charged in order of priority with payment of the amounts due under any mortgages entered into by him at any time prior to the payment or the agreement.

saving of
rights of
lessees and
tenants.

26. The rights and obligations of lessees and tenants subsisting on the Day of Independence shall remain in full force and effect for the full term of their tenancies and leases.

repeals.

27. The following are hereby repealed :-
- (a) The New Hebrides Land Registration Regulation No 3 of 1930;
- (b) The Joint Control of Land Sub-Division Regulation No 15 of 1971;
- (c) The Land Trust Board Regulation QR No 14 of 1973.

SCHEDULE

(Section 22)

CORPORATE BODIES

PART 1 - FUNCTIONS

A corporate body formed under this Regulation may :-

- (a) manage land, plantations or residential properties;
- (b) act as an agent for the Government or any other body or person;
- (c) carry on business as an investment manager;
- (d) manage any kind of business enterprise;
- (e) engage in any business relating to land including its development, for residential, industrial or commercial purposes;
- (f) undertake the business of farmers, ranchers, cultivators of timber, sawmillers and timber merchants;
- (g) undertake the business of builders or civil engineers;
- (h) process any crops grown on land including copra, cocoa and rice.

PART 2 - POWERS

A corporate body formed under this Regulation shall have power for the purpose of carrying out its functions to :-

- (a) hold, buy and sell real or personal property including houses for employees of the corporate body;
- (b) lease land to or from any person;
- (c) sue and be sued in its corporate name;
- (d) promote or finance any undertaking;
- (e) subject to such specific or general conditions as the Minister may make borrow money by the issue of Debentures or in any other manner including overdraft;
- (f) lend money and guarantee loans;
- (g) establish or participate in any pension schemes for the benefit of its employees and their dependents;
- (h) carry out programmes of research;
- (i) charge fees;
- (j) employ any persons, firms or bodies;
- (k) enter into agreements, leases conveyances or transfer of land on behalf of the Government or any custom owners and a recital in any such agreement, lease, conveyance or transfer that the corporation is acting on behalf of the Government or custom owners as the case may be shall be sufficient to indemnify any other party to such agreement, lease conveyance or transfer;

- (l) invest funds not immediately required for the purposes of its functions in bank deposits and such other investments as may be authorised by the Minister;
- (m) such other powers as may be incidental to the above mentioned powers or necessary to enable the corporate body to carry out its functions.