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CHAPTER 123

LAND REFORM

JR 31 of 1980
Act 6 of 1981
Act 32 of 1985
Act 6 of 1992
Act 35 of 2000

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(Part 1 – Functions, Part 2 – Powers)

LAND REFORM

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

PART 1 – INTERPRETATION

1. Interpretation

In this Act 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 –

- (i)
 - (a) 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 Act;
 - (b) one alienator may represent himself and the other alienator or alienators by agreement among them for the purposes of this Act;
 - (c) the Minister may appoint an alienator to represent his co-alienator or alienators for the purposes of this Act;
- (ii) a person shall not be an alienator of land unless –
 - (a) there is a person in physical occupation of it being an alienator or a licensee, tenant or lessee of an alienator; and
 - (b) 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; and, where applicable,
 - (c) rates or taxes due in respect of the land are not in arrears for 6 months or more on the Day of Independence;
- (iii) 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 (ii) because of the deliberate act or omission of another person or persons;
- (iv) 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 seaside of any offshore reef but no further;

"the Minister" means the Minister for the time being responsible for land 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

2. Encumbrances

Subject to section 22 land shall be held subject to encumbrances created before or after the coming into operation of this Act.

PART 3 – ALIENATED LAND

3. Entitlement of alienator to remain on land

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:

Provided that where such land is undeveloped land, an alienator, without prejudice to his right to enter into a lease of that land, shall not be entitled to remain on such land.

4. Referrals to Supreme Court on identify of alienator

- (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 shall not be the subject of an appeal to the Court of Appeal.
- (3) The Chief Justice may make rules of procedure for the purposes of this section.

5. Applications to Island Court where identity of custom owners in dispute

- (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 an Island Court established in accordance with section 1 of the Island Courts Act [Cap. 167] 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.

PART 4 – NEGOTIATIONS AND AGREEMENTS RELATING TO CUSTOM LAND

6. Certificate of registered negotiator

- (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.
- (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.

7. Void agreements

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.

PART 5 – MANAGEMENT OF LAND

8. Minister to have general management and control of certain land

- (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 sections 6 or 7 or the ownership is disputed; or
 - (b) not occupied by an alienator but where ownership is disputed; or
 - (c) not occupied by an alienator, and which in the opinion of the Minister is inadequately maintained.
- (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

9. Vesting of state land

- (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 of Vanuatu.
- (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 81 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.

PART 6A – COMPENSATION

9A. Application of Part

This Part applies in relation to custom owners of land who had a right to compensation under section 11 of the Land Reform Act [Cap. 123] immediately before the section was repealed by the Land Reform (Amendment) Act No. 6 of 1992.

9B. Government to determine compensation

- (1) The Government is to determine the amount of compensation payable to the custom owners of the land.
- (2) In determining the amount of compensation, the Government must take into account the market value of the land and any other matters that it considers relevant.
- (3) A determination must be in writing and a copy of it must be given to the custom owners of the land.

9C. Market value of land

The market value of land is to be determined by the Government valuer who is to carry out such investigations as are necessary to determine the market value.

9D. Identity of custom owners and payment

- (1) A compensation payment must not be made to a person unless the Minister is satisfied that he or she is a custom owner of the land.
- (2) A compensation payment may be made to a particular custom owner on behalf of the other custom owners of the land.
- (3) A compensation payment is to be made as soon as practicable after the appeal period under section 9E expires.

9E. Appeal rights

Any custom owner of the land who is dissatisfied with the amount of compensation determined by the Government may appeal to the Supreme Court within 30 days after the date on which the determination is made.

10. *(Repealed)*

11. *(Repealed)*

12. *(Repealed)*

13. *(Repealed)*

PART 7 – REGISTERED LEASES

14. Guarantee of registered lessee

- (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 8 – RIGHTS OF ENTRY

15. Right of entry of officials and valuers

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 9 – LAND CORPORATIONS

16. Establishment of corporate bodies by the Minister

- (1) The Minister may by Order establish corporate bodies for the better carrying into effect of the purposes of this Act.
- (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 Act 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 10 – ROADS

17. Public roads

- (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 11 – USE OF FORCE AND DAMAGE

18. Prohibition of use of force

- (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 VT 200,000 or to both.

19. Prohibition of damage or destruction of improvements

- (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 VT 200,000 or to both.

PART 12 – REGULATIONS AND OFFENCES

20. Regulations

- (1) For the better carrying into effect of this Act the Minister may by Order make regulations not inconsistent with this Act.
- (2) Without derogating from the generality of subsection (1) the Minister in such regulations 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 Land Records Office;
 - (d) for the forms to be used for applications under this Act and the fees payable on such applications;
 - (e) for the occasions when and the manner of carrying out surveys of land.

21. Offences

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

22. Saving and transfer of mortgages

- (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 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 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.

23. Saving of rights of lessees and tenants

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.

SCHEDULE

(section 16)

CORPORATE BODIES

PART 1 – FUNCTIONS

A corporate body formed under this Act 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 Act 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.

Table of Amendments (since the Revised Edition 1988)

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|---------|------------------------------|
| 9 | Substituted by Act 6 of 1992 |
| 9A - 9E | Inserted by Act 35 of 2000 |
| 10 - 13 | Repealed by Act 6 of 1992 |