

# SIDS ENERGY TRANSITION LEGAL AND REGULATORY BRIEF



WCEL  
WORLD COMMISSION ON ENVIRONMENTAL LAW  
CONSTITUTIONAL, ENVIRONMENTAL, AND HUMAN RIGHTS

## VANUATU

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This brief introduces the **legal and regulatory environment** surrounding the energy sector governance on the South Pacific Ocean archipelago of Vanuatu.

Particular attention is paid to **incorporating renewable energy sources (RES)** in electricity generation.

This brief addresses **five questions**:

- 1) If renewable energy is being developed **onshore** (i.e. solar or wind), who owns the land? Does ownership of the land need to be transferred in order for the renewable energy project to take place, or can it take place with the land remaining in the hands of the original owner?
- 2) If renewable energy is being developed **offshore**, who has the right to use the seabed or the sea?
- 3) How do **potential project developers** come into the country's energy/electricity market?
- 4) Do potential project developers have a **guaranteed income** for a specific period, if they enter the country's energy/electricity market?
- 5) How does the country secure **energy/electricity affordability**, especially for the most vulnerable in society?

The [Islands, Nature & Renewable Energy Law Project \(INRELP\)](#) is a project of the IUCN World Commission on Environmental Law Climate Change Law Specialist Group. Working closely with island climate change and energy stakeholders INRELP develops policy recommendations with the goal of enhancing renewable energy, preserving nature, and engaging local island communities.

As recommended by the International Renewable Energy Agency (IRENA) in 2015, a large-scale regulatory review to identify gaps and barriers is strongly advised for Vanuatu to reach its renewable energy ambitions: “**An overall review of existing legislation and policies is needed**, with the aim of proposing required changes and additions. This will **clearly define the necessary DoE and URA institutional authority and responsibility** to properly carry out the actions to achieve the NERM [*National Energy Road Map*] targets. The review can be carried out jointly with other key stakeholders.”<sup>1</sup>

This large-scale regulatory review is particularly important considering the high climate ambition of Vanuatu. In fact, the government holds **ambitious energy transition policy targets**, including affordability for all, 100% electricity access, and 100% reliance on renewable energy by 2030.<sup>2</sup>

### 1. IF RENEWABLE ENERGY IS BEING DEVELOPED ONSHORE, WHO OWNS THE LAND?

### DOES OWNERSHIP OF THE LAND NEED TO BE TRANSFERRED IN ORDER FOR THE RENEWABLE ENERGY PROJECT TO TAKE PLACE, OR CAN IT TAKE PLACE WITH THE LAND REMAINING IN THE HANDS OF THE ORIGINAL OWNER?

#### Fundamental Provisions

Vanuatu holds remnants of both **Commonwealth and French property law systems**, for example in the granting of leasehold interests, within its **overarching customary legal system**.

Article 95(3) of Vanuatu's *Constitution* provides that “customary law shall continue to have effect as part of the law of the Republic of Vanuatu.” Article 47(1) provides that **custom is a source of law in dispute resolution** and the application of colonial-era laws should, wherever possible, take custom into account.

Regarding land transactions, Art 74 of the *Constitution* enshrines **rules of custom form the basis of ownership and use of land in Vanuatu**. The Custom Land Management Office under the *Custom Land Management Act* is empowered to resolve land ownership and disputes over customary land.

### Land Acquisition and Use

In Vanuatu, the powers to **acquire land in the public interest** are set out in the *Land Acquisition Act 1992*. The first step is a decision by the Minister for Lands that land is required for a public purpose, in other words, “**necessary or expedient in the public interest**” as defined in Article 80 of the *Constitution*. Compulsory acquisition in the public interest is a theoretical possibility concerning the acquisition of land for renewable energy development and associating proprietary interests, such as easements.

It is also important to note that Chapter 5 (Articles 29 to 32) of the *Constitution* refers to the **National Council of Chiefs** which holds the power to discuss, and may be consulted on, any issue related to customs, culture, and its preservation in any matter, as required by the National Government. This includes matters related to renewable energy siting.

The *Land Leases Act 1983* details the rights and obligations of persons or entities entering into an arrangement or agreement with another person and/or entity for the use of land under a lease or rent agreement. **Land can be leased for up to 75 years, administered by the government on behalf of the customary landowners**, and registered in the Land Leases Register. Renewable energy leases for development on customary land must be obtained according to the international legal standard of **free, prior, and informed consent** of the custom owner group.



Assembly building of the National Council of Chiefs, Port Vila.

Source: PhillipC, CC BY 2.0,

[https://commons.wikimedia.org/wiki/File:National\\_Council\\_of\\_Chiefs,\\_Vanuatu.jpg](https://commons.wikimedia.org/wiki/File:National_Council_of_Chiefs,_Vanuatu.jpg)

The *Alienated Land Act 1982* enables customary owners to lease parts of their land. However, *Alienated Land Act 1982* **requires the lessee to apply for a Certificate of Registered Negotiator**. This certificate is issued by the Minister for Lands and entitles the lessee to negotiate with customary owners for a lease.

Renewable energy developers must enter into a **leasehold agreement with the relevant landowners for renewable electricity generation and transmission**. However, a separate land use and planning system specifically for renewable energy facilities does not appear to be expressly regulated pursuant to the *Environmental Management and Conservation Act 2022*.

In rural areas, custom land may be held via community title. Thus, it is important to ensure energy developers adequately consult and gain **free, prior and informed consent** from co-owners of rural land to the site to enter into a leasehold agreement. In some instances, World Bank Operational Policies have also provided options for “**land donations**” in rural areas to host microgrids.<sup>3</sup> However, these provisions were unlikely to be triggered. Microgrids will also require the consent of neighbouring third parties, where transmission infrastructure crosses between property boundaries.

Following Article 79 of the *Constitution*, any land transaction between an indigenous and non-indigenous citizen must be consented to by the government of Vanuatu with a **positive bias towards consent** unless it is “prejudicial” to the interests of the custom owner, their community, and the Republic of Vanuatu. Regulatory guidelines concerning consultation procedures for renewable energy and storage siting could be enacted via planning regulation.

### Other Provisions on Land Relations

There is a clear necessity for local content provisions to upskill local communities. While local content provisions are often inherent in aid-funded renewable energy projects, such a requirement should be made mandatory enabling **participation in the ongoing operation and maintenance (O&M) of renewable energy projects**, coupled with training to understand standards and guidelines for renewable energy installations. **Programmes for the training and certification of solar technicians exist within the Sustainable**

Energy Industries Association of the Pacific Islands (SEIAPI) and the Sustainable Energy Association for Vanuatu,<sup>4</sup> in collaboration with the Pacific Centre for Renewable Energy and Energy Efficiency. These could be the key stakeholders in local content provision regulation.

The *Environmental Protection and Conservation Act* and its surrounding regulatory framework may also be relevant for new renewable energy development in Vanuatu. **The Environmental Protection and Conservation framework** provides, amongst others, the guidelines for **Environmental Impact Assessment (EIA)** for projects and developments other than residential developments, traditional or custom structures, and any other listed activity. EIAs, when successfully and equitably executed, represent a key instrument to **disseminating energy justice principles**. Following Section 7(2) of the *Environmental Management and Conservation Act*, an EIA will be triggered for solar energy developments where they “cause(s) or are likely to cause significant environmental, social, and/or custom impacts,” or cause impacts relating to several specific vulnerable environments. However, social and cultural impact assessments should also be mandated for proposed renewable energy developments.

## 2. IF RENEWABLE ENERGY IS BEING DEVELOPED OFFSHORE, WHO HAS THE RIGHT TO USE THE SEABED OR THE SEA?

### Fundamental Provisions

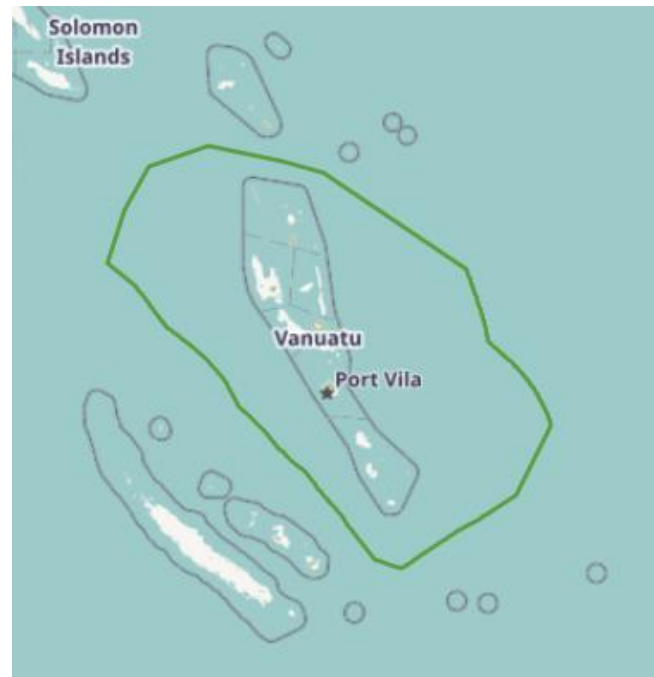
Under the United Nations Convention on the Law of the Sea (UNCLOS), Vanuatu has rights and responsibilities over approximately 600,000 km<sup>2</sup> of maritime area - roughly **54 times its land area**.

The *Maritime Zones Act of 2010* vests sovereignty in Vanuatu of all islands within the archipelago, as well as Umaenupne and Leka islands, and any islands or reefs forming within its exclusive economic zone (EEZ). The EEZ comprises the maritime zone contiguous to the territorial sea, extending to a distance of 200 nautical miles. Pursuant to Part 5 of the *Maritime Zones Act of 2010*, Vanuatu **holds exclusive rights to exploit and explore natural resources in the continental shelf**.<sup>5</sup>

The **territorial sea** of Vanuatu extends to a distance of 12 nautical miles. The **contiguous zone** of Vanuatu comprises the maritime zone

adjacent to the territorial sea, which extends to a distance of 24 nautical miles from the baseline. It is from here that the breadth of the territorial sea is measured, pursuant to Part 3 of the *Maritime Zones Act of 2010*.

**Customary marine tenure (CMT)** also exists in Vanuatu. All reef flats are thus customarily owned, and Vanuatu’s *Constitution* upholds these traditional rights.<sup>6</sup>



The Vanuatu EEZ. Source: Pacific Data Hub, 2022, CC BY 4.0, <https://pacificdata.org/data/dataset/vanuatu-exclusive-economic-zone-200-nautical-miles/resource/f22914ff-84db-4a28-a2b1-df393ee91430>

### Marine Resource Management

Vanuatu holds an active *National Ocean Policy* “to achieve an ocean governance framework that supports traditional marine resource management practices and knowledge and manages all line agencies with responsibility for maritime and ocean affairs, and harmonizes national actions in relation to the marine resources of the Republic of Vanuatu.”<sup>7</sup>

Although Vanuatu seeks to adopt an ecosystem-based management approach to its *National Ocean Policy*, **currently no legal marine spatial planning (MSP) regulatory framework considering renewable energy is present in Vanuatu** at the country level, despite the previous goal of adopting an MSP regulatory system by 2020 in the *National Ocean Policy*. It is highly recommended to adopt an MSP system to encourage the orderly, sustainable, and effective operation of offshore renewable energy and storage technologies. A precedent exists for MSP framework adoption in Vanuatu, as **Penama has**



recently become the first province to adopt an MSP.<sup>8</sup>

### 3. HOW DO POTENTIAL PROJECT DEVELOPERS COME INTO THE COUNTRY'S ENERGY/ELECTRICITY MARKET?

#### Tendering and Public Procurement

The majority of developers are selected via **competitive tendering** to renewable energy proponents, in conjunction with the government of Vanuatu and funding agencies or countries, with the oversight of the Tenders Board. **The criteria for project selection differ between each bespoke electrification project, with some fundamental commonalities.** For example, procurement policies typically call for national open tenders and all complaints to be resolved and governed in the *Project Operation Manual* in conjunction with the *Government Contracts and Tenders Act 1998* (CTA). The CTA seeks to “ensure the contract is fiscally responsible, prudent, cost effective, and is a necessary obligation for Government to assume” pursuant to Section 3(b), and “use a **competitive and transparent process** when deciding who to award the contract to including where applicable, a tender process as may be prescribed by this or any other Act or regulation” pursuant to Section 3(f).

#### Related Initiatives

Other **Pacific-wide initiatives** are evident to attract funding and investment in Vanuatu's energy transition. For example, the Pacific Greenpreneurs 2022 Incubator Programme<sup>9</sup> will commence in 2023, following a competitive application process in 2022.

### 4. DO POTENTIAL PROJECT DEVELOPERS HAVE GUARANTEED INCOME FOR A SPECIFIC PERIOD, IF THEY ENTER THE COUNTRY'S ENERGY/ELECTRICITY MARKET?

#### Primacy of Power Purchase Agreements

There is currently **no bespoke legislation dedicated to feed-in tariffs** for renewable energy installations in Vanuatu. Rather, the URA

publishes final decisions and orders for net-metering and feed-in tariffs. Predominantly, **power purchase agreements (PPAs) are directly negotiated between the Vanuatu government and the utility concessionaire.** Broader PPA regulation, particularly concerning PPA transparency, is essential to an equitable energy transition.

Regarding large-scale or community-scale solar installations, guaranteed income from projects would need to be **individually negotiated** with the relevant funding body.

#### Tariff Regulation

The URA sets the **minimum monthly tariff for concessional areas.** Subsidised and tiered tariff systems are in place for customers who have a low usage rate. This **does not guarantee customer payment of electricity bills.** In the past, electricity prices have increased due to volatile international energy markets and prices.

### 5. HOW DOES THE COUNTRY SECURE ENERGY/ELECTRICITY AFFORDABILITY, ESPECIALLY FOR THE MOST VULNERABLE IN SOCIETY?

Over the past two decades, several public-private partnerships and development aid projects have been rolled out with mixed success across Vanuatu.

The most recent NERM 2016-2030 targets the need to **increase energy accessibility.** In response, international aid organisations regularly engage in securitised loans with the relevant departments in Vanuatu. One example is the current **Energy Accessibility Project**, funded by the Asian Development Bank Energy Access Project, which seeks to increase energy access and renewable energy generation on the islands of Espiritu Santo and Malekula through the use of hydropower.

Recent efforts to develop energy efficiency targets are also notable. However, a **legal framework mandating energy efficiency certification for appliances, buildings, and larger developments remains missing.**

## RELEVANT LEGISLATION

- Electricity Supply Act 1972
- Constitution of the Republic of Vanuatu 1980
- Alienated Land Act 1982
- Land Leases Act 1983
- Land Acquisition Act 1992
- UN Convention on the Law of the Sea 1994
- Contracts and Tenders Act 1998
- Maritime Zones Act 2010
- Environmental Protection and Conservation Act 2017
- Environmental Management and Conservation Act 2022

## RELEVANT POLICIES

- Environmental Impact Assessment Regulations (2011)
- Environmental Protection and Conservation Act (2011)
- National Energy Road Map 2016-2030
- National Ocean Policy (2016)
- Environmental Code of Practice for Solar Home Systems and Solar Microgrid Systems (2017)
- Project Operation Manual (2018)

## RELEVANT PROJECTS

- VREP I & II
- Pacific Greenpreneurs 2022 Incubators Programme
- Energy Accessibility Project
- ADB Energy Access Projects

## RELEVANT STAKEHOLDERS

- Department of Energy
- International Financial Institutions (WB, ADB, etc.)
- IRENA
- National Council of Chiefs
- Pacific Centre for Renewable and Energy Efficiency
- Pacific Greentrepreneurs
- Sustainable Energy Industries Association of the Pacific Islands
- UNELCO
- Utilities Regulatory Authority
- Vanuatu Government
- Vate Electrics
- VNPF
- VUI Ltd.

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- <sup>2</sup> See for example: Government of Vanuatu, *Vanuatu Low Emissions Development Strategy* (Government of Vanuatu 2022), available at <<https://gggi.org/report/vanuatu-low-emissions-development-strategy/>> 38-43. See also: Government of Vanuatu, *Updated Vanuatu National Energy Road Map 2016-2030* (Government of Vanuatu 2016), available at <<https://policy.asiapacificenergy.org/node/2985>> 45.
- <sup>3</sup> See in general: World Bank, *Resettlement Policy Framework for the Vanuatu Rural Electrification Project Stage 2 (VREP II)* (World Bank 2016), available at <[https://ewdata.rightsindevelopment.org/files/documents/58/WB-P160658\\_pvscwWs.pdf](https://ewdata.rightsindevelopment.org/files/documents/58/WB-P160658_pvscwWs.pdf)>.
- <sup>4</sup> See in general: Pacific Centre for Renewable Energy and Energy Efficiency, *Sustainable Energy Association of Vanuatu* (Pacific Community 2019), available at <[https://prdrse4all.spc.int/sites/default/files/sustainable\\_energy\\_association\\_of\\_vanuatu.pdf](https://prdrse4all.spc.int/sites/default/files/sustainable_energy_association_of_vanuatu.pdf)>.
- <sup>5</sup> Pursuant to Section 12, the natural resources consist of: (a) the mineral and other non-living resources of the seabed and subsoil, together with living organisms belonging to sedentary species, and (b) organisms which, at the harvestable stage, either are immobile on or under the seabed, or are unable to move except in constant physical contact with the seabed or the subsoil. Thus, it is recommended this definition is expanded to encapsulate the generation and transmission of renewable energy.
- <sup>6</sup> See in general: Amos M, 'Traditionally based marine management systems in Vanuatu' (1993) 2 SPC Traditional Marine Resource Management and Knowledge Information Bulletin 14.
- <sup>7</sup> Government of Vanuatu, *Vanuatu's National Ocean Policy: Our Ocean, Our Culture, Our People* (Ocean Sub-Committee 2016), available at <<https://www.climate-laws.org/geographies/vanuatu/policies/vanuatu-s-national-ocean-policy#:~:text=The%20purpose%20of%20the%20National,the%20marine%20resources%20of%20the>> 10.
- <sup>8</sup> Bule H, 'Penama Approves Provincial Maritime Spatial Plan' (*Daily Post Digital Network*, 10 December 2022), <[https://www.dailypost.vu/news/penama-approves-provincial-marine-spatial-plan/article\\_f916ff75-173c-5c5c-a6f1-4ebc9de3f1db.html?utm\\_source=dailypost.vu&utm\\_campaign=%2Fnewsletter%2Foptimize%2Fdaily-headlines%2F%3F-dc%3D1670795853&utm\\_medium=email&utm\\_content=headline](https://www.dailypost.vu/news/penama-approves-provincial-marine-spatial-plan/article_f916ff75-173c-5c5c-a6f1-4ebc9de3f1db.html?utm_source=dailypost.vu&utm_campaign=%2Fnewsletter%2Foptimize%2Fdaily-headlines%2F%3F-dc%3D1670795853&utm_medium=email&utm_content=headline)> accessed 9 February 2023.
- <sup>9</sup> Pacific Green Entrepreneurs Programme, 'Incubator Program' (*Pacific Green Entrepreneurs*, 2022), <<https://www.pacificgreenpreneurs.com/incubator>> accessed 9 February 2023.

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