

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 **energy/electricity market**?
- 4) Do potential project developers have a **guaranteed income** for a specific period, if they enter the **energy/electricity market**?
- 5) How does the country secure **energy/electricity affordability**

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.

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

Energy Industries Association of the Pacific Islands (SEIAPI) and the Sustainable Energy Association for Vanuatu,⁴ 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~~ cause(s) or are likely to cause significant environmental, social, and/or custom impacts ~~or~~ or cause impacts relating to several specific vulnerable environments. However, social and cultural impact assessments should also

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recently become the first province to adopt an MSP.⁸

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

