

Full Country Report on Dispute-Resolution Practices in Vanuatu

1. Introduction

The Republic of Vanuatu presents a legal and cultural landscape of remarkable complexity, where justice is not administered through a single, monolithic system but rather through a dynamic and often contentious interplay of indigenous custom, colonial history, and modern statehood. To engage effectively with legal matters or mediation in Vanuatu, one must move beyond a purely Western legal framework and appreciate the deep-seated pluralism that defines the nation's approach to resolving disputes. A purely legalistic analysis is insufficient; one must adopt an anthropological lens to appreciate that for most ni-Vanuatu, justice is not a function of the state but a practice of social maintenance. For the majority of its citizens, justice is a local, communal, and restorative process, fundamentally shaped by principles that predate and often supersede those of the formal state. A nuanced understanding of this dual system is therefore not merely an academic exercise but an essential prerequisite for any external legal or mediation practitioner seeking to operate with competence, respect, and efficacy.

1.1. Overview of Vanuatu and its Cultural Composition

The Republic of Vanuatu is a Melanesian archipelago, a chain of 83 islands stretching across the South Pacific. It is distinguished as one of the world's most culturally and linguistically diverse nations, home to 113 distinct indigenous languages, which gives it the highest density of languages per capita of any nation in the world. This profound diversity is layered upon a complex governance structure that shapes the daily life and allegiances of its people. Since achieving independence in 1980, the state has been founded on three foundational pillars: the modern government, traditional customs and practices known collectively as *kastom*, and the Church.

This tripartite structure is further complicated by a unique colonial history. As the New Hebrides, the islands were governed by an Anglo-French Condominium, a dual administration that established parallel and often competing systems of law, education, and public service. This bifurcated colonialism, combined with the archipelago's geography and inherent cultural fragmentation, created a deeply pluralistic governance environment that persists to this day, presenting significant challenges to national cohesion and the uniform application of law.

1.2. Purpose and Scope of the Report

The purpose of this report is to provide a comprehensive, fact-based analysis of the dispute-resolution practices in Vanuatu. Its scope encompasses both the indigenous, customary (*kastom*) system and the formal, state-based legal framework that operates alongside it. This analysis will examine their respective historical foundations, contemporary structures, and the critical points of interaction, friction, and potential integration between them. The report will conclude with practical implications and strategic guidance for international practitioners, particularly those from Australian and other Western legal and mediation traditions.

1.3. Significance of Understanding Dispute-Resolution Practices

Understanding Vanuatu's dual justice systems is of critical importance. For the vast majority of ni-Vanuatu, particularly those living in rural communities which comprise over 77% of the population, *kastom* is the primary, most accessible, and most trusted forum for resolving disputes. Issues ranging from minor theft to serious assault are overwhelmingly managed first through customary channels, led by local chiefs and elders. The formal state system, with its courts and police, is often perceived as a secondary or last resort.

Therefore, any effective engagement by foreign legal or mediation professionals requires a deep appreciation for the coexistence—and in many contexts, the practical precedence—of these customary norms over formal state law. To overlook or misunderstand the power and legitimacy of *kastom* is to misunderstand the social fabric of Vanuatu itself. The historical and cultural context that follows provides the necessary foundation for grasping this complex reality.

2. Cultural and Historical Foundations of Conflict Resolution

Kastom in Vanuatu is not a static collection of ancient rules but a living, dynamic system of social regulation that is central to ni-Vanuatu identity and the maintenance of social harmony. It is a concept that encompasses traditional laws, practices, and a worldview that has adapted and evolved through colonial contact, Christianization, and the pressures of modernity. Understanding its philosophical underpinnings is crucial to grasping its enduring power and relevance in contemporary society, particularly in the realm of conflict resolution.

2.1. Traditional Mechanisms for Resolving Conflict

The primary traditional mechanisms for conflict resolution are deeply embedded in the social and ceremonial life of the community. At the heart of this system are the chiefs and community elders, who act as mediators and adjudicators. Disputes are typically addressed in a public or semi-public forum within the village, often in a meeting place known as a *nakamal*.

The process itself is fundamentally different from a Western court proceeding. It is characterized by community discussion, restorative practices like reconciliation ceremonies, and the payment of fines in the form of pigs, mats, kava, or other items of high cultural value. However, it is crucial to view this not as a romanticized tradition but as a living system under modern pressure. For example, as Vanuatu's economy has changed, some people cannot afford to meet their obligations in *kastom* mediation. Many ni-Vanuatu who could have managed the expense of providing kava or paying fines in a full *kastom* economy can no longer afford them when also faced with modern costs such as school fees. This economic strain illustrates the contemporary challenges facing this enduring system.

2.2. Philosophical and Historical Principles

The core principles that underpin *kastom* justice are fundamentally different from those of Western legal systems. The primary objective is not to assign blame or mete out punishment but to **restore peace, repair damage, and mend broken relationships**. This philosophy is rooted in a worldview based on collectivism, kinship structures, and reciprocity, where the well-being of the group takes precedence over individual rights.

In traditional Melanesian societies, there was no concept of 'crime' as an offense against an abstract state; rather, disputes were "defined and resolved within an elaborate framework of kinship, status and relationships." Wrongdoing was deterred not by a fear of state-imposed sanctions but by the "positive power of social ties" and the need for mutual support within the community. The spiritual dimension is also integral to this worldview; sorcery, for instance, is recognized as a significant and legitimate factor in many conflicts, a reality the secular state system struggles to comprehend or address.

2.3. Function in Pre-Colonial and Early Contact Periods

In the pre-colonial era, social cohesion and the need for consensus were the primary regulators of behavior. While leadership structures varied across the islands, the British colonial administration, finding it an effective tool for governance, introduced the concept of chiefs in many areas where they had not previously existed. This structure, though often an introduced phenomenon, has since become deeply entrenched and is now considered a cornerstone of modern *kastom*.

During the Anglo-French Condominium, the colonial powers largely left indigenous affairs to be managed by custom, without granting it formal legal recognition. This policy of parallel, rather than integrated, systems created a legacy of legal pluralism where the state's legal apparatus and the customary system operated as separate entities. This historical context is essential for understanding the contemporary framework, where two distinct and powerful systems continue to coexist.

3. Contemporary Legal Framework and Formal Dispute-Resolution Systems

Upon gaining independence in 1980, Vanuatu inherited a complex and fragmented legal framework shaped by its dual Anglo-French colonial past. The modern state's formal justice system was established to function as a national, unifying structure. However, in the daily lives of most citizens, it operates alongside—and often secondary to—the ever-present customary system.

3.1. Constitutional and Legal Structure

Vanuatu's formal legal structure is established by its 1980 Constitution. The nation officially has a pluralist system that recognizes both introduced law—a unique mixture of English common law and French civil law—and *kastom*. The legislative branch consists of a unicameral Parliament. A range of formal accountability institutions exists, including the Ombudsman's Office, the Auditor General's Office, and the Public Prosecutor's Office.

In practice, the effectiveness of these institutions is often hampered by chronic political instability, insufficient financial resources, and the highly personalized nature of politics. For example, for decades prior to 2017, government expenditures were never debated in Parliament, despite constitutional requirements. Furthermore, it has been noted that for all of the reports released by the Ombudsman, no prosecutions have been made to date. This demonstrates a significant gap between the intended function and the practical impact of the state's formal accountability architecture.

3.2. State-Sanctioned Courts and Tribunals

The hierarchy and jurisdiction of Vanuatu's formal courts are structured as follows:

- **Court of Appeal:** The highest court, which hears both civil and criminal appeals from the Supreme Court. It is not a permanent body but is constituted as needed, often with non-resident judges from Australia and New Zealand, reflecting the nation's resource constraints and reliance on external legal expertise.
- **Supreme Court:** Possesses unlimited original jurisdiction to hear civil and criminal proceedings. It also hears appeals from the Magistrates' Courts and certain appeals from the Island Courts.
- **Magistrates' Courts:** Handle civil cases where the amount claimed does not exceed VT 1,000,000, landlord and tenant disputes up to VT 2,000,000, and maintenance claims up to VT 1,200,000. Their criminal jurisdiction covers offenses with a maximum penalty of two years' imprisonment.
- **Island Courts:** Established by the *Island Courts Act 1983*, these courts are designed as a bridge between the state and customary systems. They are constituted by at least three justices knowledgeable in custom, one of whom must be a chief. They have jurisdiction over minor civil and criminal matters and are empowered to administer the customary law prevailing in their region, subject to certain limitations.
- **Customary Land Tribunals:** A complex and evolving system has been established to handle disputes over customary land, a major source of conflict in Vanuatu. This system has seen significant legislative changes and challenges to its constitutionality over the years.

3.3. Formal ADR and Mediation Provisions

The formal state legal system in Vanuatu includes several provisions for Alternative Dispute Resolution (ADR) and mediation, though their practical application remains limited.

- The ***Vanuatu Civil Procedure Rules No 49 of 2002*** (Part 10) explicitly allows judges to refer cases to mediation, stay proceedings pending the outcome, and register mediated settlements as court orders. However, the use of this provision by judges is currently described as a "trickle."
- The ***Ombudsman Act 1998*** (section 13) authorizes the Ombudsman to deal with complaints through mediation. This has been implemented sporadically, limited by legislative ambiguities and capacity constraints.
- The ***Criminal Procedure Code*** (section 118) empowers courts in criminal cases to promote reconciliation, including through customary processes, and may subsequently stay or terminate the proceedings.

While these formal ADR mechanisms exist on paper, they are not yet a widespread or integral feature of the state justice system. This creates a significant gap that is overwhelmingly filled by the ever-present and highly active customary system, highlighting the complex and often disconnected relationship between the two.

4. Relationship Between Customary Practices and the Modern Legal System

The relationship between *kastom* and the state legal system in Vanuatu is best characterized as one of co-existence and parallel operation rather than seamless integration. As one observer noted, they often operate like "ships in the night," passing over and through each other with surprisingly little synthesis. This section dissects the formal recognition, practical interaction, and inherent tensions between these two powerful justice systems.

4.1. Formal Recognition of Customary Law

Customary law is formally recognized in Vanuatu's legal framework, but its position is explicitly subordinate.

- The **Constitution** acknowledges *kastom* as a source of law but positions it below the Constitution itself and laws passed by Parliament.
- The judiciary is obligated to resolve proceedings "whenever possible in conformity with custom," but only when no other rule of law applies.
- The ***Island Courts Act 1983*** explicitly directs Island Courts to apply the customary law of their region. However, this is subject to a significant "repugnancy clause": custom can only be applied if it does not conflict with any written law and is not "contrary to justice, morality and good order."

This legal hierarchy ensures that while *kastom* is acknowledged, its application within the formal system is conditional and limited, creating a structural barrier to its full integration.

4.2. Hybrid Approaches and Parallel Operations

In practice, the two systems operate in parallel. For a large percentage of ni-Vanuatu, especially in rural areas, a chief is the first stop for resolving a dispute. A case typically only enters the formal system if a customary resolution fails, if one party is dissatisfied, or if the police are involved from the outset.

Despite their separation, some hybrid mechanisms and points of creative interaction exist:

- **Island Courts** are designed as hybrid forums, constituted by justices knowledgeable in custom.
- The Supreme Court and Court of Appeal are required to sit with **customary assessors** when hearing appeals from Island Courts.
- In an innovative procedural development, the Supreme Court has formally referred a matter concerning a chiefly title dispute to a **nakamal meeting**. The court later adopted the recommendations of this meeting as the basis for its final orders,

demonstrating a potential pathway for creative and cooperative integration between the two systems.

4.3. Identified Frictions and Limitations

The co-existence of these two systems is marked by significant friction, stemming from deep-seated philosophical and procedural differences.

1. **Conflict with Constitutional Rights:** Customary rulings that infringe upon fundamental rights guaranteed by the Constitution have been overturned by the state courts. In the notable case of *Public Prosecutor v Kota*, a chiefs' decision to forcibly return an estranged wife to her home island was found to be a violation of her constitutional right to freedom of movement, and the chiefs were convicted of inciting kidnapping.
2. **Tension with Human Rights Standards:** Certain customary norms conflict with contemporary international human rights standards, particularly regarding gender equity. *Kastom* law may, in some instances, "prevent or discourage the participation of women in decision-making processes pertaining to land management." There is also significant social pressure for issues like domestic violence to be resolved outside the formal system, which can leave victims vulnerable. Stark data illustrates this gap: an estimated 98% of women and children who experience violence do not access the formal justice system.
3. **Judicial and Procedural Barriers:** The formal courts face significant challenges in applying *kastom*. This stems from an epistemological clash between a common law tradition that demands singular, provable "facts" and customary systems built on flexible, oral, and community-validated truths. Proving oral custom in a court that relies on rigid rules of evidence is notoriously difficult, a challenge compounded by the non-homogenous nature of *kastom*, which varies from island to island and cannot be applied as a uniform body of law.
4. **Divergent Philosophies:** A fundamental tension exists between the individual-focused, often punitive nature of the state system and the group-oriented, restorative philosophy of *kastom*. The former seeks to determine individual guilt and impose a penalty; the latter seeks to restore collective harmony and repair relationships. This philosophical divide is a primary source of misunderstanding and conflict.
5. **Challenges with Sorcery:** The secular, Western-style legal system is ill-equipped to address conflicts where sorcery is a central element. Belief in sorcery is a significant social reality in Vanuatu, and conflicts involving such claims continue to increase. The inability of the formal system to engage with this spiritual dimension represents a major gap in its capacity to deliver what is perceived as justice by many communities.

These frictions illustrate the profound philosophical and practical divides that must be navigated, which are thrown into even sharper relief when *kastom* is compared directly with Western mediation models.

5. Comparative Analysis: Customary Practices vs. Australian and Western Mediation

For Australian and other Western mediation practitioners, a direct comparison of methodologies is essential. It is the key to avoiding the pitfall of cultural imperialism and to appreciating *kastom* mediation as a distinct, valid, and contextually appropriate system of dispute resolution. A failure to recognize these fundamental differences can lead to ineffective or even harmful interventions. This analysis deconstructs the core components of each approach to reveal profound differences in values, process, and objectives.

5.1. Foundational Principles and Objectives

The two systems are built on opposing philosophical foundations.

***Kastom* mediation** is primarily **relationship-driven**. Its central objective is the restoration of collective harmony, the mending of the social fabric, and the preservation of face for all parties involved. The health of the community and the continuity of relationships are paramount, often taking precedence over the specific details of the dispute itself.

In contrast, **Western mediation** is primarily **outcome-driven**. It is focused on achieving an efficient, voluntary, and often legally binding agreement that satisfies the articulated interests of the individual parties. The process is designed to produce a tangible, documented resolution to a specific problem.

5.2. A Comparative Framework

This table systematically compares the key operational elements of the two approaches, drawing on the distinct characteristics identified in the source materials.

Feature	<i>Kastom</i> Mediation in Vanuatu	Western / Australian Mediation
Role of Third Party	An authority figure (chief, elder); deeply involved in the community; not expected to be neutral; can impose a decision.	A neutral, impartial facilitator; guides the process but has no decision-making authority; external to the parties' relationship.
Communication Style	Often indirect, ambiguous, and reliant on parables or silence to maintain relationships and avoid direct accusation.	Encourages direct, explicit communication of interests, needs, and positions to achieve clarity and resolve issues.
Core Process	Public, ceremonial, and flexible; often held in a <i>nakamal</i> ; focuses on community participation and restorative rituals.	Private, confidential, and structured; follows defined stages (e.g., caucus, joint session); focuses on procedural fairness.
Key Concepts	Concepts like neutrality and voluntariness are understood differently; participation is often a social obligation.	Confidentiality, neutrality, and voluntariness are non-negotiable pillars of the process.
Nature of Outcome	A community-driven solution, consensus, or authoritative decision focused on reconciliation, often sealed with ritual apology and compensation (pigs, mats).	A written, private agreement focused on individual rights and interests; success is signaled by the signing of the document.

Underlying Worldview	Often spiritual and holistic, acknowledging factors like sorcery and the importance of collective well-being.	Primarily secular and analytical, applying problem-solving models to tangible issues and interests.
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These profound differences in worldview, process, and purpose have significant implications for any external mediator engaging with ni-Vanuatu parties or disputes.

6. Implications for Mediators Working with People from Vanuatu

This section serves as a practical guide for Western mediators. Moving from theoretical comparison to applied practice requires a fundamental shift in mindset—from that of a process expert imposing a universal model to that of a culturally sensitive facilitator co-creating a contextually appropriate solution. The following analysis translates the preceding comparisons into actionable strategies and recommendations for culturally safe and effective practice.

6.1. Cultural Sensitivities and Risk Factors

A Western mediator, unaware of the cultural context, faces several significant risks that can undermine the entire process.

- **Imposing Direct Communication:** Pushing for direct, explicit communication, a hallmark of Western mediation, can be perceived as aggressive and disrespectful. This may cause ni-Vanuatu participants to withdraw and resort to silence as a way to maintain relationships and signal their discomfort with a forceful approach.
- **Misinterpreting Western Concepts:** Introducing concepts like "voting" to determine a group's preference can be deeply offensive, as it signifies a "white man's process" that is antithetical to the traditional value placed on achieving consensus through discussion.
- **Ignoring the Spiritual Dimension:** A failure to respectfully acknowledge the spiritual dimension of a conflict, including deeply held beliefs about sorcery, represents a critical failure of cultural competence. The documented example of Australian counterparts responding with silence when the issue of sorcery was raised illustrates how a secular, analytical approach can be perceived as dismissive and alienating, damaging the trust necessary for collaboration.

6.2. Guidance for Conducting Culturally Safe Mediation

To mitigate these risks and conduct a culturally safe mediation, practitioners should adhere to the following principles:

- **Adopt a Dialogical Approach:** Act as a catalyst for co-creation rather than a prescriptive expert. The mediator's role is to help create a safe space where local and

introduced knowledge can be shared and explored, validating local expertise and empowering participants to craft their own solutions.

- **Deconstruct Western Models:** Practitioners must "hold their expert knowledge lightly." Western problem-solving models are not culturally universal and should not be presented as such. They reflect a specific worldview and should be offered as one possible tool among many, not as the definitive path to resolution.
- **Prioritize Relationship Building:** Recognize that maintaining relationships is often more important to the parties than the specific outcome of the dispute. Building rapport and trust must be the first priority, as the process itself is a means of repairing the social fabric.
- **Work with Local Partners:** Whenever possible, engage local co-facilitators. Local partners can enhance the legitimacy of the process, build rapport with participants quickly, and provide essential cultural navigation, interpreting nuances of communication and protocol that an outsider would miss.

6.3. Strategies for Adapting Processes

Mediators must be prepared to adapt their standard processes to align with ni-Vanuatu cultural norms. This requires a high degree of flexibility and a willingness to deviate from structured, linear models. To counter the Western process's reliance on direct communication (see Section 5.2), mediators must be prepared to allow for indirect communication, including the use of parables, storytelling, and long periods of silence. Instead of adhering to rigid, formal process stages, a mediator should embrace narrative, allowing parties to air grievances fully as a prerequisite for reconciliation. Finally, process adaptations should incorporate culturally congruent practices, such as involving respected elders, acknowledging the importance of ritual apologies and compensation, and respecting community hierarchies.

These adaptations are not merely cosmetic; they are essential for maintaining procedural fairness in a culturally appropriate manner and for creating a process that the parties find legitimate, meaningful, and effective.

7. Conclusion

This report has detailed the complex and deeply pluralistic justice landscape of Vanuatu, an environment where indigenous *kastom* remains the most vital and accessible system of dispute resolution for the majority of its people. The formal state legal system, a legacy of a unique dual-colonial history, operates in parallel, creating a dynamic of co-existence marked by both cooperation and significant tension. For external practitioners, navigating this landscape requires a profound appreciation for the cultural, historical, and philosophical foundations of ni-Vanuatu society.

7.1. Summary of Key Insights

The most critical insights from this analysis are:

1. **The Dominance of *Kastom*:** Despite the presence of a formal state legal system, *kastom* is the dominant force in the daily lives of most ni-Vanuatu. It is a

comprehensive system of social regulation that prioritizes the restoration of collective harmony and the mending of relationships over the individualistic, often punitive, justice of the state.

2. **A System in Tension:** The state and customary systems operate largely as parallel entities. While there are points of interaction and hybridity, their relationship is characterized by significant philosophical and procedural friction, creating ongoing challenges for legal coherence, integration, and the uniform application of law.
3. **Incompatibility with Western Models:** *Kastom* mediation is fundamentally different from Western ADR models in its core values, processes, and objectives. The direct application of Western problem-solving frameworks is therefore culturally inappropriate and likely to be ineffective, if not counterproductive.

7.2. Future Trends and Emerging Issues

The future of dispute resolution in Vanuatu is likely to be shaped by an ongoing dialogue about reform and integration. There is a clear desire among customary leaders, such as the Malvatumauri (National Council of Chiefs), to strengthen the role of *kastom* within the national framework, as evidenced by proposals to establish integrated "customary courts." Concurrently, the government's decentralization policy presents a significant opportunity to strengthen local-level justice mechanisms and create more formal linkages between chiefs and state institutions at the area council level. These trends suggest a continuing evolution of Vanuatu's unique brand of legal pluralism.

7.3. Final Recommendations for Practitioners

For Australian and other Western legal and mediation practitioners, effective cross-cultural work in Vanuatu demands a fundamental departure from culturally-bound assumptions about law and justice. Success is not contingent on imposing a "better" model but on facilitating a process that is seen as legitimate and meaningful by the participants themselves. This requires humility, flexibility, and a deep-seated respect for local expertise. Ultimately, success hinges on adapting processes to prioritize the restoration of relationships and community harmony, and on acknowledging the profound influence of culture and spirituality in the pursuit of justice in this unique Melanesian nation.

8. Full Citations

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