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Technical Assistance to the Vanuatu Law and Justice Sector Strategy
Jastis Blong Evriwan, Vanuatu

Concept Note

Context

Vanuatu is a country of great linguistic and cultural diversity, with a population of approximately 230,000 spread over 83 remote islands. The majority of the population still practices subsistence agriculture. The acute material poverty found in many other developing countries is virtually unknown in Vanuatu. In common with other Pacific islands nations, Vanuatu faces governance challenges associated with its small size, disbursed population, and the complex mix of state, non-state and hybrid systems that make up the legal/institutional landscape.

The state system is characterized by political volatility, limited bureaucratic capacity and interlinked systems of patronage. Geographical constraints present additional challenges, making classical modes of service delivery prohibitively costly. Other than primary education and basic medical care, most ni-Vanuatu have little direct contact with state institutions. Local government remains under-resourced and has limited reach outside headquarters.

In Vanuatu justice is sought through multiple levels of authority at both the state and non-state levels. In addition to the formal justice structures of the state, a multitude of informal rules based systems exist. These informal systems and actors manifest in various forms and include the decisions of chiefs, councils of chiefs, elders and church leaders. The degree of legitimacy that such individuals and bodies possess in Vanuatu has varied historically as it continues to do geographically and culturally.

The formal justice system, comprising modern, state-based institutions including the police, courts and prisons, has limited reach within Vanuatu. Typically the state extends only as far as the capital, Port Vila, and the main provincial centers. Despite being presided over by ni-Vanuatu judges and magistrates, the state court system is perceived by many as “foreign”. Though the courts maintain a sitting schedule which includes circuit tours, many islands see visiting magistrates only once or twice a year.¹

For the vast bulk of the populace, day-to-day interactions are governed by a mixture of kastom², cultural norms and religion.³

¹ Paterson. 2004. Customary Law Research Project. *See also* Supreme Court of the Republic of Vanuatu, Chief Justice's Chambers. Year Planner 2009.

² *Kastom* is used here to describe forms of neo-traditional authority based on indigenous identity, given expression not only through the mandate of chiefs, but also through the evaluations made by ni-Vanuatu of the correctness (or otherwise) of particular courses of action, ways of behaving, and bringing resolution to conflict etc

State and non-state systems intertwine to produce hybrid institutions and practices. Formally modeled as a Westminster democracy, the modern political system of Vanuatu is also infused with patrimonial elements. The state is often regarded as a distant “big man” with elected politicians expected to provide material benefits to their constituencies in exchange for their votes.⁴ Political coalitions are built around competitions for key posts that provide opportunities for distributing benefits to supporters down to the constituency level. The dispensing of largesse is seen as a legitimate means of obtaining status and influence. As a consequence, the political system provides few incentives for the delivery of national policy and instead encourages the use of public office for personal gain, leading to frequent policy shifts and consequent inconsistency in policy analysis, formulation and application. This combination of factors, while reflecting local political realities, does not live up to ideals of how a modern bureaucratic state should function.⁵

Customary Land Tribunals and the Island Courts are both the creation of national legislation but are meant to apply *kastom* and follow customary processes to varying degrees. Land Tribunals, = were reportedly established to institutionalize the role of the chiefs in the land dispute resolution process, yet some chiefs contest their legitimacy. Others argue that they are performing functions of state without the necessary funding and support.

The institution of chiefs is another ‘hybrid’ example, emerging out of the interaction between traditional power structures, colonial governments and missionaries who were looking for influential intermediaries between communities and outsiders.⁶ The National Council of Chiefs (Malvatumauri) was established in 1976 to provide advice to Parliament on *kastom* matters, but with no real decision-making power. According to the National Council of Chiefs Act 2006, the Malvatumauri structure should extend from the national to the island, area, and village levels, but in practice its establishment and operation has been hampered by unresolved disputes over chiefly titles. The institution enjoys high legitimacy both among local communities and state institutions. In some areas, chiefs deal predominantly with minor cases and refer more serious criminal cases to be dealt with by the court. In other parts of the country, chiefs deal with a whole range of problems faced by their communities but see their authority threatened by the ability of the state to overrule their decisions.

Christianity forms a major part of the country’s identity, and churches are a key area of social interaction for many ni-Vanuatu. Christian morality is also often seen to dovetail neatly with *kastom*.

The existence of multiple rule systems with competing claims to legitimacy is a hallmark of Vanuatu’s institutional landscape. The resilience of local systems, the limited reach of central

⁴ AusAID. 2007. The Unfinished State: Drivers of Change in Vanuatu.

⁵ *Id.*

⁶ Bolton, Lissant. 1999. “Chief Willi Bongmatur Maldo and the Incorporation of Chiefs into the Vanuatu State”, Discussion Paper 99/2. ANU.

institutions and the rhetorical support of state actors for *kastom*, present an opportunity to think creatively about governance in Vanuatu and to develop innovative tools and methods to manage the impact of development in a way that is beneficial for local communities.

The Vanuatu Priority Action Agenda 2006-2015 stresses the importance of stable law and justice institutions as a prerequisite for good governance.⁷ It focuses largely on the core state institutions but does include a priority to “examine options for the creation of a dispute settlement [process] outside the current court system”.⁸ It further seeks ‘to ensure that all Vanuatu citizens can exercise their fundamental rights and freedoms, and confidently participate in nation-building.’⁹

In support of these priorities, the Ministry of Justice has developed a *Law and Justice Sector Strategy 2009-2014*, which seeks to enhance coordination between the various law and justice institutions and adopt a coherent approach to justice sector reform.¹⁰ Among other things, the proposed strategy seeks to (i) improve legal awareness and access to legal, paralegal and community-based advocacy services; (ii) strengthen locally-based, non-violent dispute resolution; (iii) integrate peaceful traditional systems to work with and complement the formal legal system; and (iv) encourage civil society oversight of the justice sector.¹¹ Jastis Blong Evriwan (JBE) will support the development and implementation of the *Law and Justice Sector Strategy* in accordance with the objectives set out below.

Objectives

- i. Contribute to evidence-based policy dialogue through improved knowledge; and
- ii. Build capacity within key government agencies and other stakeholders to manage/conduct research, and develop policy and programs that respond to this context.

Outcomes

1. Enhanced understanding of the type of justice problems citizens face, the ways in which citizens and local-level institutions define rights and entitlements, the types of mechanisms and strategies people use to enforce their rights, resolve disputes and access development benefits; and
2. Enhanced capacity within the Ministry of Justice and key stakeholders to conduct research, and develop policy and programs that contribute to legal empowerment.¹²

Scope/Methodology

⁷ “Priorities and Action Agenda: 2006-2015”, p.22.

⁸ Ibid, p25.

⁹ Ibid.,p. 23.

¹⁰ Law and Justice Sector Strategy 2009-2014. Workshop Presentation, May 28, 2009. The proposed strategy focuses on seven pillars: police and community safety; access to justice; correctional services; anti-corruption; harmonious and safe society; service delivery, administration of justice.

¹¹ Ibid.

¹² Legal empowerment here is understood broadly as the use of legal rights, services and institutions to help reduce poverty and injustice.

The proposed technical assistance to the Law and Justice Sector Strategy 2009-2014 will comprise of several activities. This will include:

(i) Locality studies on dispute resolution and local governance

These studies will take particular islands or parts of islands as their unit of analysis. The aim of the studies will be to enhance understanding of the type of justice problems people face and how they attempt to resolve these disputes or claims. Methodologically the locality studies will do two things: (a) track the trajectories of particular claims or disputes that reach or originate in both customary and formal settings; and (b) map local power structures, sources of authority and legitimacy. While recognizing the specificity of the contemporary situation, the locality studies will also include a historical analysis of past institutions and processes and will consider the ways in which history can be used as a motivator for future actions when formulating options for reform.

Given the interests of the JBE program these studies will include but not limit themselves to land disputes. This research will clarify the role of custom leaders in land issues; customary land custodian roles and responsibilities; the trajectory of land disputes originating in both customary and formal settings; the way customary groups are represented in land dealings and share the benefits of land leases (currently and potentially); and women's role in local level dispute resolution and decision-making.

(ii) Case Studies on local level decision making, dispute resolution and benefit-sharing around rural infrastructure projects

JBE program will support the World Bank-AusAID review of processes for delivering community level infrastructure. As part of the review team the JBE program will ensure that the research (and any recommendations) accommodate the legally pluralist nature of village governance in Vanuatu and takes into account the justice and conflict resolution aspects of locally implemented projects (e.g. access to information, participation in decision-making around community infrastructure projects, benefit-sharing, accountability and dispute resolution/complaints' handling).

The outcome of the proposed research program outline above will assist with:

- a. Infusing both the justice sector and broader development efforts (e.g. land reform, resource development, rural service delivery work) with an evidence base;
- b. Identifying legal empowerment needs and appropriate responses;
- c. targeting effective forms of implementation for legal empowerment initiatives through the Justice Sector Strategy; and
- d. Building working relationships between government and non-government actors on policy development and advocacy through regular Jastis Blong Evriwan Reference Group meetings.

Consultations with Client and Other Stakeholders:

The proposed scope of technical assistance has been developed in consultation with the Director General of the Ministry of Justice who is the program's main counterpart, Director General of Lands, Department of Local Authorities, Prime Minister's Office, AusAID Legal Sector Strengthening Project, AusAID Short-Term Land Reform Initiatives, key civil society organizations and community members.

Throughout program implementation, J4P will utilise existing consultation structures in the law and justice sector, the Land Steering Committee, the donor land coordination group and the gender donor coordination group to access feedback on program results, seek guidance on project activities and ensure that ongoing programming remains most relevant to government priorities.

JBE will also form a Reference Group (JBERG) comprised of relevant government, donor, civil society and academic representatives to provide specific advice on program design, strategic priorities and implementation modalities. In addition to having input into the development of the JBE research agenda and, the team also plans to have findings from the JBE research program presented to the reference group at regular intervals. Informed by the information generated from the various research activities, it is hoped that the reference group will be in a position to contribute to the advancement of public policy outcomes on the various issues addressed in the course of the research. The idea is to 'value add' the research data to get the maximum benefit for public debate and policy advancement.

Key Outputs & Dissemination

- i. Report summarizing research findings from the locality studies
- ii. Inputs into the community infrastructure service delivery review
- iii. Knowledge-sharing forums on policy implications

The program will utilize a wide variety of dissemination techniques reflecting its diverse audiences. Government officials, World Bank country program teams, and civil society will be engaged through targeted policy briefing notes, multi-stakeholder workshops, and ongoing engagement through policy dialogue. At the community level, workshops will be accompanied by presentation of findings and case studies through a variety of media, such as radio, community theatre or newspaper articles. Other innovative mechanisms, such as support for legal aid days could be supported in an effort to link dissemination with wider rights awareness campaigns.

Timeline

Study	Date	Activity	Status as of June 2010
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Locality Studies on local governance and dispute resolution	June-December, 2009	<ul style="list-style-type: none"> - Literature review on local governance structures, dispute resolution mechanisms, and the role of churches in local governance - Background paper on the role of women and youth in local level decision-making 	- Completed
	January-February, 2010	<ul style="list-style-type: none"> - Literature review (background information for Epi) - Preparation of field guides - Logistics for field visits 	- Completed
	March, 2010	<ul style="list-style-type: none"> - Classroom and field-training of local researchers - Epi field work 	- Completed
	April – May, 2010	<ul style="list-style-type: none"> - Analysis and write-up of research findings 	- Completed
	June, 2010	<ul style="list-style-type: none"> - Dissemination of research findings - Literature review (background information for Tanna) - Logistics for field visits 	- In preparation
	July, 2010	<ul style="list-style-type: none"> - Tanna field work 	-
	August, 2010	<ul style="list-style-type: none"> - Analysis and write up of research findings 	-
	September, 2010	<ul style="list-style-type: none"> - Dissemination of research findings - Discussion with stakeholders about further research and possible pilots 	
	October-December, 2010	<ul style="list-style-type: none"> - Policy note delivered to Government 	-

Case studies on rural infrastructure service delivery	November, 2009 –January, 2010	<ul style="list-style-type: none"> - Consultations with stakeholders to select case studies - Development of research methodology - Field testing of research questionnaire - Preparation of field guides - Logistics for field visits 	- Completed
	February – March, 2010	<ul style="list-style-type: none"> - Field work 	- Completed
	April – May, 2010	<ul style="list-style-type: none"> - Analysis and write-up of case studies 	- Completed
	June, 2010	<ul style="list-style-type: none"> - Input into the policy note on rural infrastructure 	- In preparation
	July, 2010	<ul style="list-style-type: none"> - Consultations with Government to discuss findings and refine policy recommendations 	-
	August, 2010	<ul style="list-style-type: none"> - Final delivery of the review 	-

Risks

Risks	Risk Mitigation Measures
Political change leads to instability or decline in the reform agenda undermining impact of program (e.g. limited capacity and resources in the Ministry of Justice)	<ul style="list-style-type: none"> • Identify key advocates for JBE at national level, including senior bureaucrats, and ensure government buy-in. • Dialogue takes place with new Ministers/DGs and the JBE's activities 'fit' with new government policy. • The research methodology and consultation remains sufficiently flexible so as to incorporate changes to relevant policies. • Ensure program directly supports government priorities outlined in the Law and Justice Sector Strategy 2009-2014. • Work at the local level to support key actors, institutionalize program at community level and increase demand for reform from the bottom up (e.g. through the JBE Reference Group).
Negative perception of World Bank impacts on program effectiveness	<ul style="list-style-type: none"> • Ensure buy-in from government and civil society stakeholders at both national and local level.

	<ul style="list-style-type: none"> • Stress the grant nature of the project and work on community level participatory research and non-state perspectives of justice. • Ensure that the program addresses priorities identified by the government.
Low capacity of local partners impacts on program implementation	<ul style="list-style-type: none"> • Build capacity of local institutions and researchers through training and mentoring.
The research does not adequately capture the complexities of the local justice/governance dynamics.	<ul style="list-style-type: none"> • Sufficient time is spent in field research localities. • A sufficient number and diversity of people are consulted.
Tension between research and pressure to show results quickly impacts on quality of interventions	<ul style="list-style-type: none"> • Ensure clear understanding on program phasing and JBE's iterative approach. • Ensure intermediate and periodic analytical outputs, able to be operationalized and targeted at key stakeholders.

Resources

The proposed TA will be led by Daniel Adler, Governance Specialist (EASTS) and coordinated by the in-country Program Coordinator, Milena Stefanova (LEGJR). Fieldwork will be conducted by a mix of international and ni-Vanuatu researchers reflecting the program objective of building local capacity to carry out in-depth qualitative research.

Indicative Budget

Allowable Restriction Group	Amount in USD
Consultant Fees	180,000
Equipment costs lease	7000
Extended Term Consultants	12,000
Associated Overheads	5000
Media & workshop costs	21,000
Staff Costs	25,000
Travel Expenses	100,000
Total cost	350,000