

**AusAID**

**Vanuatu Law and Justice Program**

**Concept Paper**

**Final**

**May 2010**

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## **Acronyms**

AFP	Australian Federal Police
AusAID	Australian Agency for International Development
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRCC	Convention on the Rights of Children
CRPD	Convention on the Rights of Persons with Disabilities
DJAG	New South Wales Department of Justice and Attorney General
GoA	Government of Australia
GoV	Government of Vanuatu
MoIA	Ministry of Internal Affairs
MoIA	Ministry of Internal Affairs
MoJCS	Ministry of Justice and Community Services (Social Welfare)
MoJCS	Ministry of Justice and Community Services
NGO	Non Government Organisation
NZAID	New Zealand Agency for International Development
PacLII	Pacific Islands Law Information Institute
PACTAM	Pacific Technical Assistance Mechanism
PPDP	Pacific Police Development Program
PPO	Public Prosecutor's Office
PSO	Public Solicitor's Office
SLO	State Law Office
USP	University of South Pacific
VLSSP	Vanuatu Legal Sector Strengthening Program

## **Executive Summary**

AusAID has commissioned the development of a Concept Paper for the next phase of Australian development cooperation in the law and justice sector in Vanuatu, scheduled to commence in January 2011. The current program of assistance - the Vanuatu Legal Sector Strengthening Program (VLSSP) - commenced in 2000 and its third phase will end in December 2010. The current phase of the Program was budgeted at \$10 million over 5 years (to the end of December 2010).

This Concept Paper sets out a framework for the next phase of Australia's contribution to the Vanuatu Law and Justice sector. It is not intended to be a comprehensive analysis of the sector itself nor a description of a sector wide engagement, but rather a description of a modest program of assistance to the sector, building on experience to date and reflecting the current context. AusAID proposes that the next phase be for the period 2011-14 (four years), to align with Government of Vanuatu's (GoV) Sector Strategy and Plan period. The budget could be up to approximately \$10.5 million, spanning four years. It is suggested at this stage, that around \$2m per year be allocated for the first two years and then a Mid-Term Review is undertaken to ascertain whether increased contributions and a scaling up of support are appropriate. This approach would provide continuity (sought by GoV), a modest program which is appropriate to the current context and the potential to increase support, subject to review. Innovative approaches to minimizing Program management costs, improving the quality of outcome-focused monitoring and maximizing Program benefits with modest inputs are appropriate for the next phase.

VLSSP has been generally well regarded on both sides to date. A range of challenges and diversity of perspectives have arisen over the ten year period, reflecting the complexity of work in the legal sector and other factors. A Mid Term Review of the Program was undertaken in 2008 which noted achievements and issues and made some recommendations which have been implemented since. Overall, contributions have been made to critical public sector legal service delivery and also to technical and institutional capacity in four central Government legal offices, which have been impressive given a relatively modest budget. These agencies are now working much better than they were and the services they provide are of a much higher standard. In addition, the program has supported the Government of Vanuatu's (GoV) new leadership focus on sectoral coordination. A great deal has been learned about how donors can best support Vanuatu's efforts in the law and justice sector, providing an excellent basis for the next phase.

GoV leadership in the law and justice sector overall and in the respective public sector agencies is critical to the effectiveness of policy development and service delivery. The role of the Australian aid program is to support such leadership in a way which enables GoV to achieve its own objectives. This involves maximizing the level of GoV ownership over the program's strategic direction, activities and monitoring, within a partnership context.

The next phase of cooperation will involve a number of decisions as the scope to expand the range of contributions is broad. There has been clear value in the placement of a small number of technically

skilled personnel alongside a range of other inputs to support institutional capacity development. A mix of contributions to capacity development should continue because they are appropriate to the context and are more likely to result in sustainable benefits than reliance on a single method. There is now an opportunity to explicitly assist GoV's leadership in coordinating planning, budgeting, policy development and service delivery across the sector and at agency levels. A key contribution to this will be greater coordination and coherence of Australian funded activities relevant to the sector, as well as coordination with other donor's work, specifically the program of New Zealand Agency for International Development (NZAID) in the correctional services area and the World Bank's program on accessible justice.

# 1. Introduction

The current program of cooperation between the Governments of Vanuatu and Australia - the Vanuatu Legal Sector Strengthening Program (VLSSP) - commenced in 2000. The third phase of this Program will end in December 2010. Collaboration in the law and justice sector remains important for both the Governments of Vanuatu and Australia because of a shared understanding about the critical nature of a functioning sector for Vanuatu's development and security. An effective law and justice sector provides a critical base for economic and social development and is linked to national and community stability. For example in the Vanuatu context, legal certainty is a critical element in ongoing commercial activity which contributes to economic growth and is also highly relevant to community harmony in urban settings where traditional land use approaches do not easily apply. Legal certainty over land use is particularly crucial to all aspects of economic and social development in Vanuatu and land use legislation, policy and processes are therefore fundamentally important. While a poorly performing law and justice sector can have catastrophic implications, it is not feasible to identify the minimum elements required to avoid problems for every context, as specific local circumstances will prevail. The specific circumstances (e.g. political, historical, socio-cultural, economic and financial) in Vanuatu will merge and influence any vision for an appropriate, affordable and effective sector. The rationale for collaborative work in this sector is therefore that stability and security are key elements in the enabling environment for economic growth and social development. This means that a holistic, system-wide response to law and justice is appropriate, even though the contribution to this broader response may be limited.

The Concept Paper/Design process is timely because GoV has recently developed its first Law and Justice Sector Strategy and Action Plan (2009-2014). At the time of the Concept Paper development, GoV is in the process of defining priorities within this comprehensive and ambitious Plan for discussion with development partners. A sectoral approach will increase opportunities for more efficient resource allocation, coordination and synergy between complementary elements. This effort, alongside critical GoV leadership in the sector and of public sector agencies, will also provide the opportunity for donors to increasingly deliver assistance in a way which aligns with GoV planning and budgeting systems. Increasing alignment of donor contributions to the sector and continuing strengthening of GoV leadership are both critical for the next phase, reflecting international commitments and understanding about aid effectiveness.

While GoV sectoral coordination efforts have begun, there is also now an opportunity to improve efficiency and coherence in Australia's support in the sector. In particular a coordinated approach to the design of the next phase of cooperation with the Vanuatu Police Force, managed by the Australian Federal Police, is appropriate. In addition, there is clear scope for greater alignment with other AusAID-funded bilateral programs which are relevant to the law and justice sector, including the *Kastom* Governance Partnership, the *Wan Smol* Bag Partnership, the Lands Program, support for the Vanuatu Women's Centre and the Vanuatu Churches Partnership Program. Finally, there is a need to ensure coherence with AusAID-funded regional programs which directly relate to work in this sector, including

the World Bank's Justice For Everyone Program, the Pacific Judicial Development Program, the Pacific Police Development Program and the Pacific Islands Law Information Institute.

## ***1.1 Concept Paper Development Process***

This Concept Paper was drafted on the basis of a series of meetings in Vanuatu from 15 to 19 March 2010. Consultations were held with a range of Vanuatu and Australian stakeholders in the sector, as well as a NZAID representative and staff of the NZAID funded program in the correctional services area. The common purpose of all meetings was to identify themes with the expectation of further development of these during the detailed design process in June-July 2010. Discussions covered overall policy context and priorities, the nature of the partnership and implementation approaches and options.

A meeting with the Minister for Justice was particularly significant as an opportunity to discuss the overall Government approach to the sector and to collaboration with Australia and other development partners. A number of key sector leaders were not available for meetings during this week. Some, including the Chief Justice, declined to meet because of a justifiable view that a coordinated approach to donors about sector-wide priorities would be preferable, rather than a piece-meal approach.

## **2. Activity origin and rationale**

A fair and functioning law and justice sector is regarded as critical for national and community stability and is thereby linked to economic and social development. The law and justice sector in any country is complex, covering multiple agencies, ideas and relationships. Its relationships with other sectors are also diverse, depending on political, social, cultural and other factors. Legal issues affecting relationships between government, private sector and civil society agencies can also be diverse, with the potential for laws to be used by one group against another in a myriad of ways. The efficiency and effectiveness of law and justice systems and access to legal services are particularly challenging in unstable environments and in any context where there is incongruity between the values underpinning the respective legal systems. While Vanuatu is regarded as more stable than other Melanesian countries, incongruity between community and formal sector values still exist i.e. Vanuatu community values are focused primarily on maintaining harmony at village level whereas Western legal systems are based on punitive justice.

Vanuatu has a long history of diverse and complex community-based conflict management systems based on chiefly systems and other traditional leaders. French and British colonial governments then introduced contrasting law and justice approaches, which largely remained relevant in urban settings and had little impact at village and island levels. Since independence in 1980, the new concept of statehood has brought opportunities for ni-Vanuatu to determine the elements and values which apply to its own law and justice system, although there have been limitations on the extent to which this has occurred. Vanuatu's relatively small population and its wide geographical distribution as well as the low economic base and other factors have meant that public sector legal service organizations have been focused in the urban centres of Port Vila and Luganville. Thus contemporary day-to-day access to and

engagement with formal legal services for most ni-Vanuatu people is limited. Village-based ni-Vanuatu have greater access to and familiarity with community-based justice systems managed by chiefs and other traditional leaders, including church leaders.

Compared with its Melanesian neighbours, Vanuatu has a relatively large private legal sector. This sector has built up around private property development, financial services, foreign investment and tourism industries, but is unaffordable for average ni-Vanuatu people. The size of and funds within the sector has meant that it is able to attract lawyers from the public sector and retain them.

Australia and Vanuatu have collaborated within a development cooperation context in the law and justice sector since 2000. While the rationale is not explicitly defined in current Australian aid program frameworks, it is assumed to be that stable law and justice institutions providing reliable and quality legal services will provide a basis for steady positive economic growth in turn contributing to economic development. In the first three phases of this Program, a strong contribution has been made to the quality of work and capacity of three major public law offices: the Public Prosecutors Office, State Law Office and the Public Solicitor's Office<sup>1</sup>. There are many factors which influence the ongoing capacity of public sector organizations, particularly those which are regularly involved in adversarial conflict with others. Conversely, in collective and relatively small societies, there are also many factors which can potentially undermine ongoing capacity.

A Mid-Term Review of the current phase of VLSSP was undertaken in 2008. This Review identified a range of issues about approaches and progress to date and contributions to higher level goals. The Review found that the Program had not made a substantial contribution to sectoral coordination or to increasing access to law and justice services for the rural population, but that it had contributed to increased capacity and service delivery at central agency levels. The Review team identified Vanuatu leadership and the relevance and type of external contributions to capacity development as critical to the success of the sector. It noted that while there were good relations between the TA personnel and GoV, there was not necessarily a high degree of ownership evident by GoV of the broader Program objectives, including absence of strong leadership of the capacity development agenda. The Review team made a number of recommendations which have changed the ways in which support is provided, for example in terms of the balance between in-line and advisory work of long-term technical advisers. The Review recommended that if GoV leadership of the sector, demonstrated through the development of a Sectoral Strategy, had not materialized before the end of 2010, then Australia should re-consider its support to the sector. In early 2010, the GoV produced its first Sector Strategy and Action Plan 2009-14 and there are good signs of commitment to its implementation across the participating agencies. While sustained leadership of the implementation is less obvious, AusAID has made the decision to consider proceeding to the next stage, albeit with a good understanding of the fragility of the leadership context. The next phase will need to find a balance between the likelihood of and urgency associated with reform

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<sup>1</sup> The Mid-Term Review in October 2008 identified a contribution at this level, but noted a limited impact on improving access to and public confidence in the legal system.



to the sector and the absorptive capacity of Vanuatu. The country is relatively small, so the contribution needs to be modest and appropriate, based on a realistic understanding of what is an affordable and sustainable law and justice sector. A commitment to quality monitoring at the sectoral level will help GoV and AusAID to develop an understanding about progress and outcomes to inform the Partnership overall.

With the signing of the Partnership for Development with the Government of Vanuatu 2005-10 there is a new era of alignment between Australia's aid and Vanuatu's development priorities. The priority outcomes – education, health, infrastructure and economic governance were identified by the Vanuatu Government based on Vanuatu's Planning Long Acting Short 2009 12 policy matrix. The first annual Partnership Discussions will take place in June 2010 to review progress against partnership commitments. Australia's Partnership for Development identifies support to policing and law and justice sector reform as a future "priority outcome" following completion of current programs (in 2010) but does not provide a rationale for cooperation in this sector. The previous Program Design Document (2005) did not provide a rationale for cooperation in the sector either, but rather a rationale for the kind of support provided, based on an understanding of the dominant development approaches of the time.

Ongoing collaboration in the sector is based on the following rationale:

- The Government of Australia considers stability in Melanesia to be critical to broader regional stability and security
- The Government of Vanuatu considers the law and justice sector to be important to its national development priorities, citing that law and justice sector agencies need to play an effective role "in the process of governance, and growth and also in providing effective services to the people and the Nation" (page 1 of Vanuatu Law and Justice Sector Strategy and Action Plan). The GoV also identifies the sector as encompassing all aspects of community and society such that the system "enables equal rights and access of justice for all" (page 6)
- Australia's economic relationships with Vanuatu, including in the areas of financial services, property development and tourism, depend on the provision of quality legal services and a stable socio-political environment
- Australia has made a generally well-regarded<sup>2</sup> and appropriate contribution to the sector and a long-term engagement is essential for sustained capacity development

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<sup>2</sup> GoV regards the contribution highly because of significant savings made to the Government through high quality defence against private sector legal cases and because of the insufficient quality and number of ni-Vanuatu lawyers in the public sector. However the private sector and others who have wanted to seek compensation against the Government do not regard the presence of aid-funded lawyers working for the Government favourably. A number of legal officers in the sector are also not impressed when they lose cases against the aid-funded lawyers.

In addition, the relationships established and lessons learned to date should inform increasingly more sophisticated and relevant cooperation in the sector.

### **3. Context**

#### ***3.1 Vanuatu Law and Justice sector – strengths and opportunities***

The current law and justice context in Vanuatu is characterised by an urban focus on Western-style formal justice institutions and a rural focus on informal or *kastom* governance arrangements to maintain harmony through settlement of disputes. The values underpinning these two systems are so vastly different that the interface between the two diverse systems is neither comprehensible nor clear. It is also not legislated and interpretations vary widely among stakeholders, including between men and women, young people and older people. This is both a strength and source of challenge. For example, one observer noted that the rate of prisoners per head of population in Vanuatu is half that found in similar country contexts, and that a key factor was the presence and vital roles that chiefs play in maintaining harmony at community level. On the other hand, the two different systems have sometimes led to duplication or confusion and at a minimum, varied expectations about what each system could actually delivery.

Since independence the Vanuatu formal justice system has continued as a traditional common law justice system styled on the British model. The key agencies in the system include:

- Judiciary (e.g. Supreme Court, Magistrate’s Courts, Island Courts)
- Vanuatu Police Force
- Ministry of Justice and Community Services
- State Law Office
- Public Prosecutor’s Office
- Public Solicitor’s Office
- Department of Correctional Services

Within the public sector, there are complex, conflicting and powerful webs of incentives and disincentives that drive decision-making, particularly at the political level but also amongst senior managers in the public sector. These are difficult for foreigners to understand but are relevant to perceptions of leadership, risk taking, public sector reform and capacity development, so need to be factored into activity designs and approaches. For example administrative and management arrangements for legal offices are not overseen by the Public Service Commission and this has implications for their leadership and management, for example in relation to managing staff performance issues.

A range of non-government actors are involved in law and justice service delivery such as “legal aid” and victim support services. For the law and justice system to work well, each agency must perform their roles professionally and effectively and in a coordinated, coherent manner. A broader view of the justice or legal system involves both parliamentary and governmental roles in law, policy and decision-making, as well as leadership behavior and handling of complaints and allegations against the public sector. Thus the new Sector Strategy and Action Plan refers to the Leadership Code and the role of the Ombudsman’s Office.

An even broader view of the sector would include customary and community-based justice systems. In particular, these systems include the role of traditional leaders in preventing crime, settling conflicts and maintaining harmony at community levels, particularly in villages, where between 70% and 80% of people live. The roles of chiefs in settling land disputes for example is significant, and recent activities<sup>3</sup> to test the efficacy of chief’s involvement in various village based law and justice systems suggests there is potential for increased use of this approach. The World Bank’s Program, *Justis Blong Evrywan*, should contribute analysis and options in this regard but currently there is little documentation about the roles of chiefs and other community leaders in maintaining harmony and thus avoiding or reducing engagement by community members in crimes and conflicts and the formal justice system. A number of existing aid programs recognize the critical role of traditional values and systems in governance and community development, particularly NZAID’s Corrections Program and AusAID’s *Kastom* Governance Partnership. If donors are to work in this sector in Vanuatu, they need to explicitly increase understanding and include recognition of this element in funded programs.

Overall, public and private sector stakeholders in the sector operate in an environment characterised by:

- cultural diversity throughout the country
- multiple legal and linguistic systems
- a complex constitution that blends custom and common law
- remote areas with limited access to the state-based, or formal, justice system.

The major issues facing the criminal system in 2010 involve violence against women, with reports that around 70% of current prisoners are being punished for sexual assaults against women and children and other domestic violence incidents. In the civil justice system, a large proportion of cases relate to land disputes and fraud. The legal system is also used as part of a package of approaches to improve governance practice, leadership and public sector management, and there is potential to enhance this.

The Government of Vanuatu’s Priorities and Action Agenda 2006-2015 places the legal sector within the objective of “providing stable institutions” and highlights the importance of addressing “the weaknesses

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<sup>3</sup> For example, mention was made of a small pilot by Malvatumauri in Pentecost where chiefs have been supported to monitor and supervise ex-prison detainees after their return from prison in the interests of saving funds associated with travel for urban-based probation officers.

that have been identified in the legal sector.” It notes that “actions will be focused on the judiciary, the role of the Ombudsman’s Office and the three public legal offices of the Public Prosecutor’s office, the State Law Office and the Public Solicitor’s Office.” (p 23). Other than a short list of general strategies, minimal further detail is provided in this document.

There are two Ministries responsible for law and justice services – the Ministry of Internal Affairs (MoIA) is responsible for police and corrections and the Ministry of Justice and Community Services (MoJCS) is responsible for other agencies and overall coordination. The context and reality of public sector resources means that these agencies are relatively small. For example, at the time of this Concept Development, there was only one full-time professional official working within MoJCS. The capacity of these organizations to undertake planning and implementation activities, as well as manage finances, human resources, and other organizational and networking activities is clearly limited in such circumstances. The affordability of a formal sector and of the sector’s development process needs continued discussion. The recent Strategy and Plan is the first step and will require ongoing management, monitoring and revision over time. Donors can play a crucial role in assisting GoV to determine answers in this regard.

The issue of GoV leadership in the sector is important: Program experience confirms that good leadership is key to success and the absence of good leadership, a major brake on progress. Actual leadership and coordination at sectoral level is still fragile, inconsistent and embryonic, but with donor support over the medium term, there is scope for significant potential change. A number of key agency leadership roles remain vacant or are filled by people with limited leadership experience. The “champion” of the new Strategy, who at the time of this Concept Development, holds the role as Director General, Ministry of Justice and Community Services (Social Welfare) is not currently in a position to oversee its implementation, through his appointment to the leadership role in the Lands Ministry. However, there is the likelihood of discussions occurring between agencies to identify priorities and plan collaboratively prior to approaching development partners, which is a positive sign of a coordinated leadership approach.

The significance of sectoral coordination by GoV and the related issue of coordination of development partner contributions to the sector are now much higher on the agenda than previously. The design process and the next phase should give priority to supporting GoV efforts associated with a sector wide coordinated approach. This includes explicit activities which support GoV coordination efforts as distinct from simply a general approach or commitment towards coordination.

Given the reality of the public sector resource envelope and the presence of extensive community-based systems for maintaining harmony at community and national levels, it is clear that some form of hybrid system is worthy of consideration in Vanuatu. While efforts to support GoV agencies at national and central levels can be fruitful, their small size and other socio-economic factors imply there will always be a risk to smooth and quality service delivery at this level. Currently agencies can largely meet demand with limited external support, but there is frequently a sense of vulnerability when staff are absent,

unable to tackle serious or complex cases or attracted to work elsewhere, and when leaders are new, inexperienced or unable to meet the diverse demands of the role.

The first Vanuatu Law and Justice Sector Strategy and Action Plan (2009-2014) was developed in late 2009, with funding support from VLSSP. The Plan is comprehensive and ambitious and represents the shared views of representatives from Government agencies in the sector. It is the first time that a Plan across the whole sector has been prepared and there is evidence that the Strategy is clearly “owned” by many, but not all, GoV stakeholders. It represents good initial collaboration and sector-wide energy, and it is appropriate for development partners to support GoV to lead implementation of the plan where fitting and relevant. The Plan identifies seven pillars of law justice and social welfare:

1. Police and Community Safety
2. Access to Justice for All
3. Correctional Services
4. Anti Corruption and Good Governance
5. Harmonious and Safe Society
6. Service Delivery
7. Judiciary: Administration of Justice

These seven pillars are underpinned by the principles of: custom and tradition; moral and spiritual values and human rights. Within the Pillars, objectives and strategies are identified. Finally, the Plan includes details of actions, responsibilities, dates and results indicators. The document proposes a Sector Coordination and Planning Model and a number of mechanisms to coordinate decision-making and planning across the sector, particularly an Agency Heads Group.

At the time of this Concept Paper development, the Minister for Justice and Social Welfare and senior GoV officials spoke of the planned meeting of representatives from law and justice agencies to identify priorities and plan collaboratively prior to approaching development partners. Such prioritization is expected to occur prior to the full design process in June 2010 and is a positive sign of a coordinated approach and GoV leadership. Decision-making of this kind should help to form the basis for the more detailed planning for Australian support to the sector.

Several GoV leaders identified infrastructure as a priority for donor support in the sector. The GoV is about to commence construction of a large Hall of Justice<sup>4</sup> in Port Vila to replace the Supreme Court building that was burnt down in 2007. Also, the construction of legal sector offices and houses for

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<sup>4</sup> AusAID understands that the EU has discussed the possibility of contributing 450 million vatu (i.e. around 16 percent of stated cost of 2.7 billion) but this is still under consideration.

officials in provincial centres was identified as an area for cooperation. In the design process, GoA should make clear its approach to respond to GoV requests in relation to infrastructure. If GoA intends to support infrastructure development, then clarity is required on how this support would be provided and on what basis. Options include funding for and direct management of construction projects, provision of specialist personnel to support GoV construction processes, funding or establishment of mechanisms for maintenance and refurbishment only etc. Significant issues of recurrent cost financing and asset management capacity need to be considered deliberately. Approaches should be consistent with Australia's approach to infrastructure development in the broader aid program.

In summary, stakeholders identified the following features of the current sector:

- A small population to draw upon for expertise in the sector, with only 3-4 law graduates per year in Vanuatu from USP
- Recent reviews of organizational priorities and plans
- Insufficient numbers of staff in key agencies, particularly the Ministry of Justice and Community Services, with only two professional officers
- Inadequate skills and limited confidence among USP Law School graduates<sup>5</sup>
- A lack of policy development expertise in legal agencies
- An inability of the formal justice sector to reach the dispersed population
- A lack of clarity about the role of chiefs in the sector and the interface between *kastom* and formal justice systems.

### ***3.2 Australian cooperation in the sector – lessons learned and development commitment***

The current Program of assistance has been centred on the placement of five long-term technical assistance (TA) personnel<sup>6</sup> in four agencies in Port Vila<sup>7</sup> and an in-country Team Leader who has coordinated a range of activities and relationships. Other activities have included the provision of funding for the purchase of office equipment, office refurbishments, training in a variety of legal and organizational development issues, internships for ni-Vanuatu lawyers in Australia, production of a Civil

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<sup>5</sup> The poor quality of recent law graduates from USP has been identified consistently as a critical issue and could be addressed at a regional level with USP.

<sup>6</sup> The majority of TA personnel have been in Vanuatu in excess of 3 years and their contracts are due to end in mid 2010, so a turnover is inevitable.

<sup>7</sup> Two in the State Law Office and one each in the Public Prosecutor's Office, the Public Solicitor's Office and the Police State Prosecutions Office

Court Practice handbook and a variety of small-scale one-off events and items. There is currently a commitment to provide funding towards the salary of the Attorney General (to complete in 2010), a decision taken on the basis that it would contribute to attracting a suitably qualified ni-Vanuatu professional from the private sector, as a substitute for funding a foreign person for the position. The issue of salary supplementation needs to be explored in the next phase to provide guidance for decision-making<sup>8</sup>. There is also a current commitment by AusAID, through VLSSP, to funding (Vt18 million = AUD200,000) the construction of a moot court at the University of the South Pacific (USP). While primarily envisaged as a training facility in advocacy techniques, this court will also be a model court within the region as it will be equipped with high level technology such as teleconference facilities and recording/transcription devices. Construction is underway and it is expected the building will be completed in 2010,

After ten years of bilateral cooperation in the sector, including several shifts in direction, relationships between Australia and Vanuatu in the sector are generally mature. There is some anxiety about the role of aid-funded legal officials in high-profile cases, particularly those relating to Australians and ni-Vanuatu leaders. This relates largely to the fact that the Australian personnel placed in the respective GoV legal offices are practising lawyers undertaking direct legal work, with varying degrees of hands-on involvement, depending on emerging policy priorities from AusAID.

Australia's cooperation with the Vanuatu Police Force, managed separately by the Australian Federal Police, is substantial and high profile. Approximately \$28 million has been allocated for this Program for the period 2006-2011, and it provides wide-ranging technical assistance and direct funding for infrastructure, training and other activities. The two separate Programs in the sector have not necessarily been well-coordinated to date, but consistent with GoA policy and the Partnership for Development policy, complementarity and a "joined-up" approach to Government need to be prioritized in the next phase. At minimum there should be coordinated design processes and approaches for both Programs and ideally there should be clear institutional partnership arrangements made between AusAID, AFP and the respective GoV agencies. This will demonstrate the value of coordination, support GoV's improved coordination in the sector and improve the coherence of Australia's contributions.

Contributions have been made to increasing capacity and the quality of service delivery in the agencies which are involved in the Program, largely through the placement of highly experienced long-term personnel in Port Vila, who have divided their time between technical inputs and advisory/capacity development work. There have been varying perspectives on an appropriate balance between in-line and advisory/capacity development work by personnel funded by the Program, but the current situation appears to work well for both sides. This includes monitoring the balance in each office based on

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<sup>8</sup> Broader AusAID advice on the issue of salary supplementation should be provided to the design team but any recommendations in relation to this Program should be based on a clear link with the Program goals, strategies and contextual understanding.

honesty about what is required on a weekly basis and the development of clear criteria to guide decisions about particular tasks. While it could be argued that the agencies involved in the Program are still vulnerable to the risk of decline, given their size, staff turn-over and tentative leadership in some areas, these factors are largely a reflection of the Vanuatu environment and cannot necessarily be overcome through external aid inputs. The presence of highly skilled external legal specialists has occasionally been problematic in the small Port Vila setting, including to the Australian High Commission. It is not always easy to distinguish between diplomatic, political, development and legal aspects of the external adviser's responsibilities and this has been challenging for both sides. Perceptions by those outside GoV involved in high profile and controversial cases and by ni-Vanuatu legal officials and litigants who face aid-funded legal officers in court are also problematic on occasion.

The Mid-Term Review of VLSSP noted that the Program's work has largely focused on GoV agencies in Port Vila and has not reached the rural majority. While some support has been provided to the running of Circuit Courts, they are perceived as expensive and are sometimes poorly coordinated. Information about the current state of services indicates that quality and provision of services is uneven. For example, in Santo, while there are two lawyers based in the Public Solicitor's Office, there is no-one in the Public Prosecutor's Office. In Malekula there is a Magistrate but no lawyers while in Ambae there is a Prosecutor but no-one else.

Australia also supports various regional activities relevant to Vanuatu's law and justice sector including:

- the Vanuatu Justice for Everyone project, a \$3.5 million AusAID-World Bank collaboration over four years (2008-2012) to explore innovative approaches for promoting access to justice by disadvantaged groups. By 2010, after a slow start, this project is currently conducting initial diagnostic work, including the formation of strategic partnerships, community consultation and action-based research around local level justice and dispute resolution
- the Pacific Judicial Development Program, a \$10 million initiative (2006-2010) jointly funded by AusAID and NZAID, to strengthen governance and the rule of law by improving judicial processes and systems (case management in courts, access to courts, knowledge about the law), and provide judicial training at all levels of the judiciary in 14 Pacific jurisdictions
- Pacific Police Development Program (PPDP) to improve the effectiveness of policing in Pacific Island Forum countries through police training, capacity-building, strategic planning, improved human resources and recruitment
- the Pacific Islands Law Information Institute (PacLII). Jointly funded by AusAID and NZAID, based at the University of the South Pacific's School of Law in Port Vila, PacLII promotes access to primary legal resource material through its free on-line database
- support for the Pacific Ombudsmen Alliance, a regional network



More deliberate coordination between Australian-funded activities which are related to law and justice issues is needed. The *Kastom* Governance program, Vanuatu Police Force Capacity Development Program, Wan Smol Bag, Lands Program, support for Justis Blong Evrywan, support for Vanuatu Women's Centre and various regional activities in the sector all need to support a common agenda in the sector. Given the centrality of land disputes and violence against women in the Vanuatu legal sector, coordination with the Lands Program and various gender programs is particularly important. AusAID needs the capacity to broker and support the coordination of engagement by other GoA partners (i.e. AFP, AGD, Commonwealth Ombudsman and others).

The Mid-Term Review of 2008 recommended a re-structuring of Program into three streams, based on its perception that the Program should evolve into a more strategic engagement with the sector as a whole, using more programmatic forms of assistance. The three streams included:

- targeted advisory support for three (now four) public legal offices
- MoJCS managed organisational development
- Cross-sector and thematic initiatives

This approach appears to have been well received by GoV and is working well up to 2010.

In late 2009, AusAID produced a draft paper entitled Australia's Framework for Law and Justice Engagement with the Pacific. This document emphasises a partnership approach and identifies areas of expected priority and policy focus within partnerships with Pacific Governments. The document highlights issues associated with sectoral approaches, government leadership, women's access to justice and others identified as part of this Concept Note.

Another major donor-side policy priority relates to violence against women. In 2008, the Office of Development Effectiveness produced a report entitled Violence against Women in Melanesia and East Timor: Building on Global and Regional Promising Approaches. In response, another paper entitled Stop Violence: Responding to violence against women in Melanesia and East Timor (2009) was commissioned, which sets out Australia's priorities and actions to prevent and reduce violence against women in Melanesia and East Timor. These reports include a long list of recommendations which need to be considered during the detailed design process for this Program and incorporated where appropriate. The latter report includes a framework for action which includes three main strategies for responding to violence against women:

- ensuring women have access to justice
- ensuring women have access to support services
- preventing violence against women.

The first strategy includes the following priorities:

- passing and implementing laws and policies that discourage violence and impose consequences on offenders
- providing women with the means to protect themselves and their children from violence
- providing women with the information necessary to access their rights
- ensuring women are treated humanely and fairly by justice system personnel.

Clearly these are highly pertinent to the next phase of Australian support for the law and justice sector in Vanuatu.

#### **4. Analysis of context as basis for next phase**

Australia's cooperation in the law and justice sector should build explicitly on the achievements made and lessons learned to date through collaboration between GoV and Australia. This reflects the importance of long-term commitment and trusting and respectful relationships to successful collaboration and to the achievement of shared objectives and sustainable development outcomes. Lessons learned about what works well and the factors that contribute to success to date, in combination with an analysis of the contemporary context and policy priorities, should form the basis for planning. The next phase of collaboration should reflect shifts which have already been made in the Program to date in terms of the nature of the engagement and the approaches followed, particularly to the placement of long term technical assistance personnel. Global approaches to improving aid effectiveness, consistent with the principles of the Paris Declaration and the Accra Agenda for Action also need to be taken into account. The most important elements include promotion of greater GoV leadership in the sector and ownership of Program activities and an explicit focus on capacity development rather than the achievement of donor-determined sectoral results. Other lessons learned about management models, the specific agencies involved and forms of technical assistance should inform the way that ongoing cooperation is structured and managed.

Two key realities in this context need to be considered for the next phase of cooperation. First, there needs to be careful consideration by GoV and thus by Australia's aid program of the appropriate size and reach of the formal legal sector and what can be sustained in future. Overall, there is little prospect of the formal system being able to afford to be significantly larger than it currently is in the medium to long term, despite growing population and unmet demand, even with external funding. Second, many rural communities within Vanuatu have access to local informal elements of dispute settlement but the nature and usefulness of these elements are diverse across the country. While Chiefs are recognized in the Vanuatu Constitution and the Chief's Act of 2006, their precise roles in the law and justice sector are not defined. In addition, their role is not consistently respected and often not equally accessible and relevant for young people, women and men.

There is apparently renewed momentum in the sector corresponding with the development in late 2009 of the first Law and Justice Sector Strategy and Action Plan for 2009-2014. The Strategy and Plan are comprehensive and ambitious, so priorities will need to be determined by GoV and then negotiated with donors, preferably on an annual basis to take account of changes and lessons learned. The Strategy and Plan, the first of its kind in Vanuatu, represents the shared views of representatives from Government agencies in the sector. There is evidence that the Strategy and Plan are clearly “owned” by many GoV stakeholders, and the document reflects good collaboration and energy at this early stage.

It is highly appropriate for development partners to support the GoV to lead and implement its Strategy and Plan. The options available for doing so are many, so choices need to be made. Many criteria could be used to determine these choices, for example:

- selection of partner agencies requiring most support or those where there are signs of “champions for change” (leaders who demonstrate a commitment to improving capacity)
- selection of particular activities which would either enable the GoV to meet urgent service delivery imperatives or those which will assist GoV to identify a long-term vision of an affordable sector
- selection of activities which will minimize Australians’ exposure to sensitive disputes and political issues or those which will enable GoV to set a clear agenda about land rights, property development and foreign investment etc.

GoV seeks continuity of Australian cooperation and wants to avoid a gap in the transition between the end of the current phase and the beginning of the next phase. This applies not only in terms of the provision of legal expertise and institutional development in four law offices in Port Vila (Public Solicitor’s Office, Public Prosecutor’s Office, State Law Office and Police State Prosecutor’s Office), but also in terms of the quality of Program leadership and coordination. The quality of existing relationships has been critical to success so far from the perspective of the GoV, therefore efforts to maintain these should be made in the next phase wherever possible. The provision of high level legal experts has been highly regarded by GoV: not only has their presence been estimated to have saved over A\$11 million for the GoV, but their very high level skills and commitment have been commended. The legal profession and the judiciary more broadly may not be keen on aid-funded public sector lawyers given that private sector business have previously profited from cases against poorly defended GoV agencies and the quality of judicial decisions is now subject to greater scrutiny, but from an overall development perspective the Program’s contribution is positive. AusAID personnel hold different perspectives from GoV about some of the individual TA personnel and aspects of the quality of relationships between individual TA personnel and GoV colleagues. This partly reflects sensitivities about individual high profile legal cases, but a range of other personal, professional and management factors are also relevant. The experience suggests that AusAID may wish to consider a more “arms-length” approach to in-line support and this needs to be considered in terms of political implications.

Criminal and civil law issues in Vanuatu which absorb the majority of resources are related to violence against women and children and land disputes, as noted above. The severity of the extent of violence against women demands an explicit response in the next phase (see Section 5 below).

The most appropriate contribution that Australia can make to the quality of the sector is one which:

- Supports Vanuatu leadership in the sector, particularly in terms of a coordinated sector-wide approach (this could range from meetings of agency representatives on a regular basis for planning purposes, to support for greater efficiency of funding for circuit courts)
- Contributes to the quality and stability of public sector legal services in a cost-effective way which promotes sustainability
- Increases access by the majority of rural ni-Vanuatu women and men to affordable, relevant and sustainable services
- Contributes to the capacity of organizations involved in the provision of a range of legal services, from national public sector agencies to groups with expertise and systems aimed at community-based crime prevention and conflict resolution
- Supports Vanuatu's efforts to determine an affordable law and justice sector, taking into account traditional approaches to preventing and managing conflict where agreeable, as well as international commitments relating to human rights, particularly for women, children and people with disabilities (under CEDAW, CRC and CRPD)
- Finds an appropriate balance between short-term service delivery imperatives, sustainable institutional capacity development processes and a long-term vision of an appropriate sector
- Facilitates donor harmonization, including within Australian funded activities.

These elements could take Australia's cooperation down a number of diverse pathways and given the modest budget, decisions will need to be made about which pathways are feasible. As the major donor in the sector, Australia needs to understand the options available, negotiate with GoV and prioritise Vanuatu leadership across the sector, even if direct support cannot be provided across the whole sector. Australia's support for GoV leadership is critical to an effective, efficient, robust and vibrant sector.

## **5. Description of Program**

The next phase of development cooperation should explicitly focus on supporting the GoV to achieve its vision - "a professional, competent and accountable law and judicial system that enables equal rights and access to justice for all" and mission statement - "for all justice agencies to promote justice and provide fair and equitable services to meet the needs of the community, the rule of law and protection of human rights". The GoV vision captures the important roles of cultural values, human rights and customary community-based justice systems by identifying three "fundamental principles" which underpin the work of sector (custom and tradition, moral and spiritual values and human rights). The Australian aid contribution should work to understand the implications of this approach and support the

application of these principles and other shared principles (eg gender equality, capacity development) to work in the sector.

The GoV vision and mission for the sector easily translate into a goal and purpose (high level objectives) to which Australian assistance will make a strategic but relatively modest contribution, as follows:

- GOAL: A professional, competent and accountable law and judicial system that enables equal rights and access to justice for all
- PURPOSE: To support justice agencies to promote justice and provide fair and equitable services to meet the needs of the community, the rule of law and protection of human rights

Thus, the desired outcomes of Australian assistance are proposed as follows:

- GoV leadership of the sector
- Increased coordination across the sector ensuring each and every element is in synergy, overall sectoral capacity is enhanced and the quality of service delivery maximised
- Recognition of a broader definition of the law and justice sector to take into account the critical role of agencies and *kastom* leaders/chiefs beyond urban centres and outside Government
- Increased and more equitable access by ni-Vanuatu women and men to affordable, sustainable and culturally relevant services which promote harmony and justice
- Increased understanding about the interface between formal (including police) elements and *kastom* leaders/chiefly systems in delivering services and maintaining harmonious communities to inform better practice and increased access

Key elements of Australia's assistance should include:

- Modest contributions to GoV efforts to strengthen the capacity of national public sector law and justice agencies, including the Ombudsman's Office, in the form of a selected mix of capacity development inputs (see below for suggested inputs)
- Modest contributions to assist GoV to meet priority short-term service delivery imperatives (see below for suggested inputs)
- Direct support for GoV sectoral coordination processes and systems, to enable GoV to implement key elements of the sector's first plan
- Support for GoV articulation of an affordable, culturally relevant and accessible law and justice sector for women and men, including recognition of the value of community-based activities which prevent crime, respond to conflicts and settle disputes
- Direct support for coordination of regional and other national programs supported by Australia and other donors to maximize synergy and coherence, including programs with police, chiefs, churches and community organizations and those working in the area of lands, violence against women and governance.

Thus, the following inputs are proposed for the next phase:

- Funding for a range of capacity development inputs selected on the basis of the relevant objectives, the appropriate tool for each context and transparent cost-effectiveness comparisons, including but not limited to the provision of short and long term TA personnel where they are deemed the most appropriate contribution. Options could include: in-service training, exchange and study visits, professional development systems/linkages, twinning arrangements etc.
- Funding for the placement of a small number of long-term or short-term legal specialist personnel in primarily in-line roles in central agencies, depending on priorities set through annual discussions between GoV and donor partners
  - these personnel could be Pacific nationals or international personnel – the number of personnel would depend on the choice of recruitment option and source (for example, volunteers, PACTAM, commercial contractors), so perhaps the budget could include a percentage of the total for TA, which could be allocated each year
- Funding for the placement of a small number of long-term or short-term personnel in primarily capacity-development/advisory roles in central agencies, focused on institutional development, depending on priorities set through annual discussions between GoV and donor partners
  - these personnel could be Pacific nationals or other personnel sourced using cost-effective methods) – the number would depend on the choice of recruitment option and source (for example, volunteers, PACTAM, commercial contractors)
- Modest funding for a mix of short-term capacity development inputs for other GoV agencies or other organizations involved with the law and justice sector issues at national or community levels (e.g. USP, Malvatumauri, Department of Women's Affairs, National Council of Women, NGOs involved in youth diversion, crime prevention etc.) subject to negotiations and coordination with other programs Funding for national and provincial level meetings related to sectoral coordination by GoV, to promote greater understanding, coherence and efficiency within the sector
- Funding for a range of research, community-wide consultations by GoV at national and sub-national levels on law and justice issues, organizational development and community liaison activities
- Funding support for coordinated consultations, policy development and program implementation in relation to justice issues for example in relation to land disputes, violence against women, the rights of children and people with disability etc.

## 6. Approaches

As the largest donor in the sector, it is suggested that Australia support a mix of activities, including those which explicitly enable GoV to take a coordinated approach to the sector. A carefully planned combination of activities is recommended including those which:

- support short-term service delivery effectiveness objectives
- support medium-term institutional development objectives
- promote the implementation of GOV's sectoral strategy so that it can achieve its vision for an affordable, coordinated, culturally appropriate and accessible law and justice system
- reflect the shared values and principles relevant to the sector, particularly in relation to human rights, custom and tradition, moral and spiritual values, gender equity etc.
- support alignment of all donor inputs with GoV systems, policy frameworks, budgeting systems, public sector reforms and monitoring systems.

To enable such a mix to be well-targeted and appropriately spread, joint strategic decision-making is necessary. The criteria for such decision-making should be developed and negotiated during the design phase, taking into account GoV and GoA policy and development priorities. Changing priorities over time are likely on both sides, so a flexible approach involving an annual planning process will be appropriate within more broadly agreed parameters and selection criteria. Ideally this process of identifying and responding to changing priorities should include other donors and be led by GoV.

Donor support for GoV's efforts to identify an affordable law and justice sector and to prioritise appropriate development processes is fitting and will need flexible and ongoing inputs. Donors can play a crucial role in assisting GoV to determine responses and set policy agendas in this regard. Appropriately targeted inputs are needed to maximize sustainability of benefits. Contributions to policy development processes may be particularly useful given the lack of experience in this area. For example policies related to GoV's commitments under Conventions such as CEDAW, CRC and CRPD will help ensure the rights of women, children and people with disability are protected.

Greater opportunity for alignment of development cooperation with GoV planning and budgeting systems is now available. This should be prioritized in the next phase of cooperation. With a coordinated sector strategy and increased organisational capacity in administration (including financial management, human resource management and IT – partly the result of the current Program), the next phase should strengthen alignment and minimize the use of separate systems, for example in procurement and recruitment of personnel. The current perception among leaders that the law and justice sector is independent of the public service, beyond the realm of judicial independence, creates some issues in terms of sectoral coherence, which need to be managed carefully and respectfully.

A continued focus on supporting the institutional development of central law and justice agencies is important, while recognizing that capacity development is an ongoing process and it is unlikely that these agencies will be fully “independent” and able to meet all demands for services in the medium to long term. While capacity of the agencies has increased in recent years, there is still clear demand for high quality legal expertise in the public sector which cannot yet be met locally for a variety of reasons as well as scope for appropriate levels of institutional development aimed at developing medium-term self-reliance. Short-term service delivery (with clear parameters and exit strategies) will remain an element of future collaboration, alongside medium-term capacity development and support for longer-term sectoral goals.

A key theme emerging for the next phase relates to broadening the scope of collaboration beyond the PSO, PPO, SLO and the Police Prosecutions Office, to include targeted support for other law and justice stakeholders and issues. While the sector is large, the issue of access to justice for the majority of the population who live outside urban centres is not currently sufficiently addressed through the major focus on central GoV agencies. Since law and justice issues are significantly influenced at community level by the roles of chiefs, churches and other community leaders in settling disputes (particularly relating to land) and maintaining harmony, a program in this sector needs to consider and support efforts relating to these roles. This is a challenging area requiring long-term vision-setting and sustained dialogue between groups with diverse philosophical perspectives. Access to law and justice services by rural communities, especially women and young people, needs particular attention. The rights of women, young people and people with disabilities were issues raised by GoV stakeholders and need to be clearly supported by the next phase of cooperation, including through active coordination with related activities/projects.

As noted in the new Sector Strategy, a key sector-wide issue is the role of chiefs and traditional community leaders, including churches, in community justice, community awareness, settling conflicts and maintaining harmony. There is some interest in determining how this might be manifested in practice, from a formal policy and legal perspective, and how external cooperation might support more effective interaction between the two systems. There is already research work underway by the World Bank, funded by AusAID which will contribute to this area of policy development. Australia’s support to and experience with civil society, churches and *kastom* governance in Vanuatu should make this contribution meaningful and appropriate.

As noted above, the AusAID report “Stop Violence: Responding to violence against women in Melanesia and East Timor” sets out Australia’s priorities and actions to prevent and reduce violence against women in Melanesia and East Timor. The next phase should prioritise opportunities to implement the recommendations of this report, in negotiations with GoV based on trust and respect.

There are clearly opportunities for expanding the type and range of collaborative activities in this sector for the next phase. The level of commitment by AusAID, a shift to a different Program management model and other partnership issues will affect the decisions made about where to focus efforts. Decision-making about priorities should move towards a sectoral approach, allowing for the transition to



take place gradually over time. Decisions about funding allocation and types of donor-funded inputs should be undertaken jointly, transparently, and in a flexible manner, so that assistance is appropriate and timely, as well as consistent with shared objectives. An annual planning process which is in line with GoV's current planning and budgeting systems will be appropriate.

## **7. Proposed institutional arrangements**

### **7.1 *Partners in Vanuatu***

There are many GoV and other agencies involved in law and justice policy and service delivery. If a broader sectoral approach is taken to the sector and to supporting the sector, then the next phase of the Program will need to consider a range of potential partners, even if direct support is provided to a limited number of them. At the national central level, the two primary Ministries are MoIA, which includes policing and correctional services and MoJCS, which coordinates the budget for other elements in the sector and plays a coordinating role from the public sector perspective. A coordinated approach by GoV, GoA and other donors will require a strategic identification of partnership arrangements, and is proposed as one of the expected outcomes of the next phase of assistance.

At this stage it is suggested that primary partners could include these Ministries and other GoV agencies at the central level such as: Vanuatu Police Force, State Law Office, Public Prosecutor's Office, Public Solicitor's Office, Judiciary and Ombudsman's Office. Secondary partners at the national level could include other GoV agencies which may seek support in relation to law and justice policy priorities such as Department of Women's Affairs in relation to violence against women, Department of Provincial Affairs etc. This list of central agencies and decisions about primary or secondary partnerships with the Australian aid program will depend on existing relationships, GoV priorities and negotiations between GoV, GoA and other donors at the design phase and each year of the Program's implementation.

The judiciary operates substantially outside the public sector context, on the basis of Constitutional status and perceptions about judicial independence from public sector reforms. This means that the prospects for inclusive approaches in broader public sector reform are somewhat limited.

The Ministry of Justice and Community Services (Social Welfare) in Vanuatu is responsible for GoV's implementation of its responsibilities under three key Conventions relating to the rights of women (CEDAW), children (CRC) and people with disabilities (CRPD), all of which have legislative and broader GoV policy implications. Given Australia's interests in gender and disability policy and preventing violence against women in particular, cooperation in this Program is an appropriate opportunity to support GoV efforts, thereby contributing to broader development objectives.

Other potential secondary partners in law and justice activities include:

- Malvatumauri, National Council of Chiefs
- Vanuatu Christian Council and other churches

- University of South Pacific Law School
- National Council of Women
- NGOs with programs involving youth diversion programs, such as Wan Smol Bag and Save the Children
- Vanuatu Law Society
- Transparency Vanuatu

Some of the above GoV and non-government agencies are very small in size and may not be suitable for partnering, depending on priorities and negotiations. MoJCS itself has only two professional staff in March 2010, with one of them, the Director General being also responsible for the Lands Ministry, hence not able to provide 100% focus on this role. Others, such as Wan Smol Bag, have several dedicated staff involved in governance and youth outreach programs at community level. Realistic expectations are necessary in this context to ensure appropriate activities are undertaken.

## **7.2 Program Management**

While it is clear that Australia would like to continue to work collaboratively in the sector, it seeks a different way of working, reflecting some dissatisfaction with the current management arrangements from an AusAID perspective. There are strengths and weaknesses with all Program management models and experience has shown that it is often personal qualities of individuals, rather than any particular model, that makes the difference in terms of success. There is therefore a need to identify a way of continuing support to GoV while addressing issues of concern to GoA about delivery approaches. A transition process to the next phase needs to be carefully planned and attention given to the development of position descriptions to maximize the selection of the “right” mix of personnel. In particular, careful consideration needs to be given to the status, role and responsibilities of the Program Team Leader, particularly if a hybrid management model is recommended.

The NSW Department of Justice and Attorney General (DJAG) has been responsible for Program management since its inception, but does not intend to continue this role from the end of the current phase (December 2010). There have been issues associated with the extent of strategic engagement and oversight of the Program by Australia and the lack of dedicated overseas management systems in DJAG. AusAID seeks a new arrangement which provides for greater Program management expertise to be applied and for it to have greater control over Program activities. AusAID also needs the capacity to broker and support the coordination of engagement by other GoA partners (ie AFP, Attorney General’s Department, Commonwealth Ombudsman and others).

A single obvious program management option is not yet clear at the Concept Note stage. A variety of options should be considered, including research prior to the in-country design consultations, and it may be that a hybrid arrangement is possible, if well-designed and coordinated, and if the right institutional links and mix of personal qualities can be found in the Team Leader.

The shift to a different Program management approach could have a significant impact on both the nature and extent of Program activities, including its scope, partnership arrangements and risks to ongoing success. Positive (professional, respectful and trusting) relationships between individuals and groups have been critical to successes achieved to date. Inevitable changes in personnel will involve settling in periods for a new team and the development of shared understanding and trust, which are essential ingredients for cooperative action, takes time. Secondly, on the assumption that the shift of management will be from an Australian Government agency to a commercial contractor, the cost of management and implementation by an Australian Government agency is expected to be less than that of a commercial managing contractor, so potentially fewer activities will be affordable. The design process will need to canvass a range of options for project management, including hybrid AusAID/commercial/Government agency options. The role of Australian Government agencies needs to be considered, consistent with GoA policy and project priorities. While the idea that a GoA agency could manage the project was proposed then dismissed by contributors during the concept development process, there is a need to coordinate whole of Government participation in a way which maximizes benefits to the Vanuatu law and justice sector, not just in a way which suits Australian interests. It will be essential to balance the costs of the various options with the risks and benefits of a comprehensive approach (such as a contractor) compared to a more piecemeal option (such as PACTAM plus an AusAID officer); and to balance efficiency, relevant experience, and flexibility. There may well be other variations to explore too, such as an individual contracted as Team Leader to AusAID instead of an APS posted officer (such as the VTSSP); or the secondment of AusAID O-based staff from Vanuatu or elsewhere in the region. There would also need to be a strong rationale for any continuation of a role for NSW DJAG given the limited institutional inputs to date.

In the next phase, with both AusAID and the DJAG seeking a different management arrangement, it is likely that greater and more dedicated AusAID resources are required at least for the first two years. Within AusAID in Port Vila, resources dedicated to managing the Program have been minimal, although when particular issues have arisen, more senior officers have been involved. The Program Officer with coverage of this Program is also responsible for three other complex Partnerships (with Malvatumauri - *Kastom* Governance Partnership; with Wan Smol Bag – in community theatre and with the Vanuatu Christian Council – for the Vanuatu Churches Partnership). This may in part reflect the history of using another Australian Government agency, DJAG, to implement the Program, on the assumption that adequate management and accountability systems would be in place. However, this arrangement has not reduced AusAID's workload as much as anticipated because DJAG did not have such systems in place. AusAID systems have frequently been called upon, for example in relation to financial management, staff recruitment etc.

All program management and contracting methods have strengths and limitations. The benefits associated with the link with DJAG, including good relationships, detailed reports and papers, including the Civil Court Practice handbook, should be retained if possible, particularly the lessons learned and partnership aspects. Perhaps a low-key ongoing twinning arrangement could be continued and supported for at least one year. There may also be interest from the Australian Attorney General's

Department in building ties with GoV which needs to be ascertained during the design process . The shift to a new approach will need to be carefully managed by AusAID. The key will be to identify an approach which prioritises support for GoV leadership, and which facilitates and supports an effective and efficient partnership between Australia and Vanuatu in the sector.

There are three Program management options which appear possible for the next phase:

- Commercial contractor
- Direct AusAID management
- Use of existing mechanisms, such as Pacific Technical Assistance Mechanism - PACTAM to recruit and support personnel employed by GoV and funding mechanisms for NGOs/civil society for other activities

While the commercial contractor seems a natural default, there will be strengths and weaknesses of this approach, including:

- Dedicated project management systems covering all stages of the project cycle
- Clear contract compliance arrangements consistent with current AusAID requirements
- Potential loss of “partnership” arrangement between GoV and Australian dedicated legal and justice sector agency or potential strengthening of a partnership approach if the contractor is appropriately tasked, skilled and managed
- High costs of personnel and program management because of commercial element (although costs of deploying AusAID staff can often be high but not so transparent for comparative purposes)
- Introduction of a new agency outside the AusAID and GoV partnership, with additional risks associated with relationships and misunderstandings about the context and different organizational values

Direct implementation by AusAID staff working within GoV has been undertaken for a number of other Programs in Vanuatu, such as the Governance for Growth program. This involves AusAID staff working within the Prime Minister’s Office on a program of policy development and activity implementation. This approach would require the use of both GoV and AusAID systems for activity implementation but seems to work well for the Governance for Growth program. More detailed consideration for this model would be worthwhile during the design process, to ascertain feasibility. For example, the idea of an AusAID-recruited office working within MoJCS to support GoV coordination efforts and provide strategic secretariat support for joint Program management and administration could be considered.

The current Program management arrangement involves the recruitment and support for five specialized technical assistance personnel who are placed within GoV agencies. There is ongoing

demand for such service in the future, but an interest by AusAID in changing TA placement arrangements. A cost-effective mechanism to recruit and support personnel will be appropriate otherwise there will not be sufficient funds to undertake any other activities beyond personnel placements. An obvious option is to use AusAID's PACTAM, which has been in place since 1998 and is a means to recruit and support skilled specialists for Pacific government institutions, at all levels. Salaries are paid at Australian equivalent rates and employing Governments are expected to supervise the work of personnel. The quality of personnel recruited through this mechanism is high and well-suited to the respective Pacific public sector contexts: candidates are largely drawn from public sector agencies across Australia and the region and are often those who are committed to public service and uncomfortable with commercial contracting companies. The Program includes ongoing support by the PACTAM contractor (currently a dedicated team in Australian Volunteers International) for personnel. This option needs to be explored further during the design phase. In particular GoV capacity to manage personnel themselves, within agreed Program frameworks would need to be discussed. If this mechanism were to be used, then some other mechanism would be required to coordinate and support other non-TA based activities – this could involve elements of the above-mentioned AusAID-recruited official working within MoJCS.

### **7.3 Donor harmonization**

As the largest donor in the sector, Australia should play a key role in donor harmonization particularly through specific support for GoV leadership. Coordination of its own programs as well as others such as NZAID and World Bank is critical for the efficiency and effectiveness of the sector. As noted above, the sector is only as strong as its weakest link, so all parts of the sector need to be supported evenly.

Specific donor coordination activities are necessary, rather than simply a commitment or an approach to donor harmonization. This may involve funding for regular meetings or the provision of funding for a dedicated person to coordinate activities and encourage a single sectoral plan for all donors to contribute towards. Experience in Papua New Guinea in this sector suggests that sectoral coordination and donor harmonization efforts over time have made a significant difference to the sector's capacity and to the quality of service delivery.

Explicit coordination with the NZAID program in correctional services is particularly important, given its engagement across formal and community-based law and justice perspectives and its experience at the community level. At the time of this Concept Note development, it was not certain whether the NZAID program would continue in the medium to long term, but every opportunity should be made to maximize learning from the program's experience and maximize consistency in the short term and potentially in the longer term.

## **8. Cross-sectoral impact**

The law and justice sector in Vanuatu, if broadly defined, is relevant to all other sectors, as it relates to GoV's ability to operate as a Government overall (in terms of legislation, policy development for

example in relation to International Conventions etc) and to its relationships with the private sector and community. If defined more narrowly (i.e. as including only those public sector legal agencies centred in Port Vila), then the linkages are still important but less comprehensive and wide-ranging.

The Program to date has been noted for its contribution to saving substantial amounts for the GoV, through protection against efforts to sue Government agencies. Thus, indirectly, the benefits of high quality GoV lawyers can be significant for GoV income and thus for service delivery and development activities. However, this kind of outcome cannot be readily planned for or set as an expected result, as it is impossible to predetermine the number of cases where the private sector or individuals attempt to sue the GoV and the extent of their potential costs to GoV or savings, if cases are won by the GoV.

GoV has expressed policy commitments which recognize the role of women and advance gender equality<sup>9</sup>, which are also core features of all AusAID programs in Vanuatu. The new phase of assistance must continue to support GoV's capacity to address gender as a cross cutting issue with a coordinated approach across the sector, ensuring CEDAW compliance in legislative reform. At the national level, priority needs to be given in strengthening the capacity of the Department of Women's Affairs as well as the MoJCS and provincial offices to effectively promote and support the implementation of the CEDAW convention. The severity of the issue of violence against women and Australia's commitment to addressing the situation, particularly in Melanesian countries, means that this should be a key issue in the next phase. This will involve working with GoV and NGOs which are actively engaged in addressing the issue [see recommendations from ODE's report]

A significant milestone has been the passing of the Family Protection Act by the Vanuatu Parliament, providing women and children with strengthened protection from domestic violence. Australia is currently assisting the Vanuatu Government with the development of an implementation strategy and a national media campaign to build understanding of the Act. Specific efforts to promote its positive use and benefits within the law and justice sector are particularly important, including engagement with chiefs and other community leaders.

Capacity for the analysis of gender issues from sex disaggregated data must be supported to promote the equal participation of women and men in decision making. Particular attention should be given to the role of Vanuatu women and their communities in preventing and responding to violence within homes and communities. The role of women in traditional and modern justice settings should also be considered explicitly in Program-supported activities, as lawyers, decision-makers and participants in legal cases. Access by women and young people to formal justice and *kastom* decision-making/dispute settlement processes needs to be considered carefully and respectfully in all relevant consultations, research, and policy development.

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<sup>9</sup> *Pacific Platform for Action on the Advancement of Women and Gender Equality 1994; Beijing Platform for Action (PFA) 1995; Millennium Development Goals 2000; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 2002).*

Particular efforts should be made to ensure the domestic legal system's incorporation of the CEDAW convention priorities and that it safeguards women's enjoyment of their human rights. Increasing equal access to justice for both women and men in rural areas should be prioritized in the next phase of support. Recognition that women are particularly disadvantaged in areas of decision-making and economic empowerment must also be carefully considered in any support occurring in the sector.

## **9. Risk and sustainability**

A number of key risks could affect the achievement of outcomes of this activity, in terms of the design logic, the Vanuatu environment, the shift to a new approach to Program management and new relationships. As noted above, there are risks associated with any Program management approach which will need to be weighed up against expected benefits and considered in terms of sustainability. There are also ongoing risks, which have been managed thoroughly over the past 8 years, relating to the involvement of Australian legal specialists in complex, sensitive and high profile legal cases, particularly those relating to Australian trade, political and other interests and to Vanuatu leadership and critical land disputes etc. This is a particular concern in the small population of Vanuatu, where a lack of understanding about formal legal processes often leads to confusion and potential misinformation.

Another key risk relates to coordination of Australian-funded and other related activities in the sector, which needs to be improved in the next phase. If improved coordination is not demonstrated by Australia, then there is a high risk that GoV will not be able to achieve its own leadership objectives related to coordination across the sector.

The design phase will need to ascertain ways to manage risks in this sector, drawing on past experience of the current Program management team and AusAID.

## **10. Design Process**

The design process, proposed to take place in June 2010, should include the following elements:

### ***Canberra-based meetings (prior to field visit) with:***

- Australian Attorney General's Department in
- AusAID Law and Justice Advisor in Canberra
- International Deployment Group of AFP in Canberra

### ***Port Vila activities as follows (7-18 June):***

- Liaison with Posts and Canberra officials responsible for Pacific regional programs related to the Law and Justice Sector (by email or face-to-face in Canberra)
- Consultations with AusAID officials in Port Vila (in-country)

- Consultations with GoV leaders in the sector
- Workshop with working level officials across the law and justice sector
- Facilitated round-table negotiations between AusAID, AFP and GoV officials on key strategic issues
- Meeting with AFP Program Team to identify specific coordination proposals
- Detailed meetings with selected officials from GoV agencies about detailed planning issues
- Meetings with NGO representatives about potential partnerships and areas of common interest
- Facilitated round-table discussions with other donors and GoV to identify proposed donor coordination options
- Participation by AFP officials in above meetings where possible
- Preparation of a draft design document followed by further in-country consultation to confirm agreement by all parties (GoV, AusAID and AFP) prior to finalization and tender process

The most critical point of interface in Australia's law and justice sector assistance to Vanuatu is between AusAID and AFP, so this needs to be prioritized explicitly. The design presents not only an opportunity for increased complementarity, but should emphasize the absolute need for increased coordination.

## **11. Next steps**

As noted above, there should be greater coordination of the designs of the next phases of this Program and the Vanuatu Police Force Capacity Development Program, managed by AFP. AusAID and AFP should make explicit efforts to increase coordination of principles, approaches and systems, where possible. In particular joint commitment to promoting GoV coordination in the sector should be prioritized.

The design mission in mid-2010 will depend to some extent on GoV prioritization of activities, being undertaken beforehand, preferably through negotiation between agencies themselves, including those outside the GoV. If this has not taken place before the design process, then it will be important for the design process itself to provide such opportunities.