



PACIFIC CHOICE

Vanuatu Legal Sector Strengthening Program

Asian Development Bank

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by Henry Vira

Asian Development Bank

Capacity Development Series

This subseries is published by the Asian Development Bank to provide the governments of its Pacific developing member countries (PDMCs) with analyses and insights on key issues and lessons learned with respect to capacity development. Cases studied highlight a range of experiences throughout the region by sector, theme, and source of external support, revealing approaches to capacity development that work best and the conditions that have been conducive to their success. They also explore the unique challenges faced by PDMCs in addressing capacity constraints as well as some opportunities facing governments and the people in the Pacific islands. Among other things, the case studies underline the importance of PDMC leadership, engagement of local partners, strategic attention to long-term capacity issues, and effective use of external resources. We hope that the findings in these reports will help guide future capacity building efforts in the Pacific.

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Printed in the Philippines.

Cataloging-In-Publication Data

Publication Stock No. BBK198508
ISBN 978-971-561-770-3

Vira, Henry.
Vanuatu Legal Sector Strengthening Program.
Mandaluyong City, Phil.: Asian Development Bank, 2008.

1. Capacity development. 2. Vanuatu. I. Asian Development Bank.
ii. Capacity development case study – Vanuatu.

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ACRONYMS

ADB	-	Asian Development Bank
AusAID	-	Australian Agency for International Development
CRP	-	Comprehensive Reform Program
DFID	-	Department for International Development of the United Kingdom
NSWAGD	-	New South Wales Attorney General's Department
PPO	-	Public Prosecutor's Office
PSO	-	Public Solicitor's Office
SLO	-	State Law Office
USP	-	University of the South Pacific
VLSSP	-	Vanuatu Legal Sector Strengthening Program

FOREWORD

Despite 50 years of aid in the Pacific region, including some S\$17 billion invested over the past 25 years, overall results in terms of sustainable improvements in capacity have been mixed, at best. This raises questions, not only in the Pacific but also throughout the developing world, about approaches to capacity development—what works, what doesn't, and why? The Asian Development Bank (ADB) recognizes the importance of capacity development, having officially embraced it as a thematic priority in 2004. ADB's commitment is consistent with the Paris Declaration on Aid Effectiveness and the Pacific Principles on Aid Effectiveness. The programs of a number of other funding agencies, including the Australian Agency for International Development (AusAID), New Zealand's International Aid & Development Agency (NZAID), United Nations Development Programme (UNDP), and the World Bank also embrace the importance of more effective capacity development.

Increased interest in capacity development in recent years reflects an acknowledgment of the shortcomings in development assistance over the past 50 years. This has led to calls for approaches that are more systematic and integrated, and which focus more on developing country ownership and achievement of sustainable results. Capacity amounts to the policy, procedures, personnel, organizations, institutions, and supporting environment required to effectively deliver development outcomes. In particular, ADB has focused on the ability of public sector capacity to deliver essential services, thereby strengthening the compact between government, civil society, and the private sector. Capacity development is much more than just training or skills transfer. It is really about effective organizations and institutions, a sound unpoliticized policy environment, accountability systems, effective relationships, and appropriate incentives. And as noted in this study, capacity development should be firmly rooted in a country's political economy.

To gain a better understanding of what works in terms of approaches to capacity development, ADB's Pacific Department (PARD) commissioned a regional study in 2007. The study was rooted in 20 case studies from 11 countries across the region, prepared mainly by Pacific islands consultants. The case studies covered a range of programming experiences—from economic planning, to infrastructure development, health and legal sector reform, and civil society enhancement, as well as different modalities for supporting capacity development. ADB's intent in commissioning the overall study was to draw upon the individual findings and recommendations to help guide future capacity building efforts in the Pacific, including institutionalizing a more focused and effective approach to capacity development in ADB's country programs and operations.

The case studies in this subseries and the overall study report are the result of collaboration among a number of consultants working with ADB under the direction of Steve Pollard, principal economist, PARD. The team leader for the overall study was Joe Bolger, and the authors of the studies were Helio Augusto, Kevin Balm, Brian Bell, Ron Duncan, Ben Graham, Ueantabo Mackenzie, James McMaster, Samson Rihuoha, Cedric Saldanha, Tom Seta, Paulina Siop, Esekia Solofa, Kaveinga Tu'itahi, Henry Vira, and Vaine Wichman. The study also benefited from the input of a number of resource persons, including Tony Hughes (Solomon Islands), Lynn Pieper (Timor-Leste), Tim O'Meara (Samoa), and Patricia Lyon, senior capacity development specialist, AusAID. The case studies represent the situation at the time of writing in 2007.

In conclusion, this report seeks to enhance understanding and dialogue on capacity development and its potential for contributing to poverty reduction and improvements in the quality of life of all Pacific islanders. I trust that you will find it both thought-provoking and practically helpful in advancing our collective commitment to development in the Pacific.



Sultan Hafeez Rahman
Director General
Pacific Department



The Pacific Choice



NORTH PACIFIC OCEAN



VANUATU

SOUTH PACIFIC OCEAN

BACKGROUND

When the Government of Vanuatu embarked on its Comprehensive Reform Program (CRP) financed by the Asian Development Bank (ADB) in 1997, one of its priorities was to strengthen the country's legal sector to ensure that the "rule of law" is upheld at all times. There was a widespread perception that justice was not being served because of a slow and ineffective legal system that lacked appropriately-skilled people as well as the political will to commit the resources required to strengthen the sector.

A reliable legal system was also seen as necessary to attract foreign investment that would form the backbone for an economic boom through "private sector-led growth." Furthermore, *ni-Vanuatus*⁽¹⁾ saw peace and security in the country as being dependent on an effective legal system.

ADB's support to the legal sector came in the form of technical assistance provided to the State Law Office (SLO) and financed by the Government of Japan. Advisory support to the SLO was provided through two grants beginning in August 1999. In addition, ADB funded other initiatives, including participation in international conferences and domestic training workshops as part of its investment.

Several other agencies also supported legal sector reforms during this period. The Australian Agency for International Development (AusAID) began its assistance to Vanuatu's legal sector in 1996, and recently completed a strategic review of the sector. In addition, AusAID has funded advisers in the Public Solicitor's Office, promoted human rights conventions, and provided scholarships in legal studies. The New Zealand Official Development Assistance Programme funded a judicial committee project to revise the rules of court in Vanuatu. The Department for International Development of the United Kingdom has funded

1 The term *ni-Vanuatu* refers to all Melanesian ethnicities originating in Vanuatu (Wikipedia).

a regional rights resource team for 2 years, and Agence Française de Développement is sponsoring scholarships in legal studies.

This case study focuses mainly on AusAID-funded capacity development efforts, especially phase II of the Vanuatu Legal Sector Strengthening Program (VLSSP).

Box 1: Vanuatu Profile

Vanuatu is located in the South Pacific on the New Hebrides Islands. The country comprises more than 80 mostly mountainous, volcanic islands with narrow coastal plains. The total land area of Vanuatu is 12,200 square kilometers, but only about 65 of the islands are inhabited. About 80% of the total population of about 200,000 lives on the eight largest islands. Most live in rural areas, mainly along the coast. About 98% of the population is indigenous Melanesian, with French, Vietnamese, Chinese, and other Pacific Islanders making up the rest.

The islands were settled by both British and French subjects in the 1800s and in October 1906, the United Kingdom and France signed an agreement establishing a Condominium arrangement (the only one of its kind in the world) under joint management of both nations. At the end of 1978, this arrangement ceased, elections were held in November 1979, and the nation became independent on 30 July 1980. Before independence, there were two education systems, two health systems, and two judicial systems (English and French)—people could choose the system they were more comfortable with.

Economic development is hindered at present by dependence on relatively few commodity exports, vulnerability to natural disasters, and the long distances to markets and between the country's islands. The high-cost structure and underdeveloped infrastructure are also serious constraints. In addition, infrastructure managed by the Government often fails because of little incentive for efficiency, political interference, and a tendency to overstaff and neglect maintenance. Private services, such as telecommunications and utilities are deficient because private suppliers have been granted nontransparent, poorly regulated, long-term monopolies. The result is costly, inefficient services in the capital Port Vila and Luganville (the second largest center), and hardly any service in rural areas.

Source: ADB Country Information – Vanuatu.

THE INTERVENTION

The outcomes of the June 2000 strategic review of Vanuatu's legal sector formed the basis for interventions by various development partners. One such initiative was the Australian-funded Vanuatu Legal Sector Strengthening Program (VLSSP), which was to help ensure a stable and responsive government through building sustainable administrative and legal capacity within the judiciary, particularly State Law Office (SLO),^[2] Public Prosecutor's Office (PPO)^[3] and Public Solicitor's Office (PSO).^[4]

Phase I of the VLSSP began in mid-2000 and was implemented by the New South Wales Attorney General's Department (NSWAGD) under a management contract with Australian Agency for International Development (AusAID). NSWAGD structured phase I project activities to correspond with the findings of the 2000 sector strategic review.

VLSSP's phase II began in April 2002 and ended in December 2005. Based on a recommendation from the phase I review, phase II was divided into three separate projects to improve the operational functions of SLO, PPO, and PSO.

According to Hillary Toa, the current public solicitor, "VLSSP came at the right time when the public was calling for a revamp of the whole judiciary; public outcries against perceived ineffectiveness of the judiciary, particularly through the ombudsman's office and members of civil society, was a sure sign that something must be done to regain public confidence in the judiciary and the legal system more broadly."

2 The function of SLO is to provide advocacy and litigation services to the Vanuatu Government and the courts in defense of the constitution and the laws of the Republic of Vanuatu.

3 The mandate of PPO is to enforce the penal laws under Vanuatu's Constitution, specifically the prosecution of criminal offenders.

4 PSO is a constitutional post established to provide legal assistance to needy persons.



WITHOUT CAPACITY DEVELOPMENT

WITH CAPACITY DEVELOPMENT

VLSSP INITIATIVES AND ACHIEVEMENTS

Throughout phase II of Vanuatu Legal Sector Strengthening Program (VLSSP), considerable progress was made toward restoring the functions of State Law Office (SLO), Public Prosecutor's Office (PPO), and Public Solicitor's Office (PSO); and in establishing relationships conducive to the professional development of ni-Vanuatu staff.

The main areas addressed by each of the legal offices through VLSSP were

- (i) support and development of staff,
- (ii) relationship building,
- (iii) administrative reform,
- (iv) review of existing structures and laws, and
- (v) improvements in office facilities.

Support and Development of Staff

The most important output under VLSSP was professional development of ni-Vanuatu staff, which was seen as necessary to ensure the continuing viability of the three offices after all major assistance had been completed. Initiatives to support professional development of staff included participation of senior personnel in an executive development program, placement programs for legal officers, and an internship program.

Phase II of the Executive Development Program provided professional development opportunities in business, financial, and people management. It also sought to ensure executive staff had the capabilities to lead and manage in a diverse and complex public sector environment; provide knowledge, skills, and techniques that result in the attainment and maintenance of executive leadership competencies; and enhance legal professional skills.

Under the Executive Development Program, the attorney general, public prosecutor, deputy public prosecutor, acting public prosecutor, assistant prosecutor, parliamentary counsel, and legislative drafter traveled to Australia and New Zealand a number of times from 2003 to 2005. During these visits, they strengthened links with relevant institutions, attended conferences, and undertook training courses. Specific activities ranged from training on strategic decision making to conferences or workshops on public prosecution, legislative drafting, counter-terrorism, money laundering, restorative justice, human rights, and mental health.

VLSSP also helped Vanuatu's legal offices to develop professional networks by facilitating executive meetings. These meetings provided an opportunity for exchanges on issues facing individual offices, as well as the law and justice sector in Vanuatu more broadly, such as sharing of resources, secondment of staff, and job rotations in the legal sector.

In addition, Phase II of VLSSP included provisions for ni-Vanuatu staff to take part in an overseas placement program to expand their skills through work experiences in a large public sector legal organization with mandates similar to their own. During placements, staff learned valuable skills, observed management and legal practices, and were mentored in their work. The placement program also allowed legal staff to attend the Victorian Bar Readers Course to enhance advocacy skills. Aside from these direct benefits, the program was also seen as a way of attracting and retaining professional staff for the Government of Vanuatu's legal offices.

Internships were also supported under phase II. Like the placement program, they were designed, at least in part, to attract and retain quality ni-Vanuatu law graduates to the Government's legal sector.^[5]

5 Jack Semeno coordinated the intern selection in April 2003. Three applicants—John Stephens, Abel Kalmet, and Christopher Tavo—were selected and undertook a 2-year internship, rotating between the SLO, PPO, and PSO. During the initial period of rotation, the interns were employed under the SLO Act as trainee legal officers and their salaries and incidental costs were funded by VLSSP. At the end of the two-year rotation period, the interns entered a contract to work for the Government's legal sector for a further two years during which time the Government was responsible for funding their full-time employment. Under the program, each participant was also eligible for an overseas placement after successful completion of the initial rotation period.

Training needs assessments were conducted in phase II with the legal and administrative staff in each office. Areas covered included record systems, computer skills, writing skills, customer service, secretarial and reception skills, managing finances, and continuing legal education. In conjunction with the University of the South Pacific, a series of workshops was designed and delivered quarterly to all legal staff. Topics included the new supreme court rules, evidence, civil procedure, and legal ethics. According to Hillary Toa, “Legal officers and staff of the State Law Office, Public Prosecutor’s Office, and Public Solicitor’s Office gained significantly from the assistance provided.” He added, however, that “the Vanuatu Government is currently in a dilemma as many of the local lawyers trained through the Government funding system have left for the private sector where conditions are far better” As Toa noted, “You can’t really blame them as the cost of living in the country is so high.”

On the issue of overseas attachments and attendance at international meetings, Toa underlined the need for more consistency and annual budgetary allocations, adding that, “proper staff development programs need to be in place and implemented to ensure that everyone benefits equally.”

Relationship Building

In phase II, strong focus was placed on relationships within and between the three government law offices supported under the program. Phase II also encouraged cooperation among all agencies in Vanuatu’s legal sector and the establishment of international relations. More specifically, attempts were made throughout phase II to

- (i) strengthen internal office relationships through weekly team meetings at both a unit and office level;
- (ii) increase communication between offices and others in the law and justice sector on matters of common interest, e.g., court user groups;
- (iii) combine community awareness initiatives, such as law week and domestic violence workshops;
- (iv) identify and use opportunities to participate in information and training seminars that explain their role to other public sector agencies and the community;

- (v) encourage staff to regularly attend forums, user groups, and information sessions held by other agencies; and
- (vi) develop cooperative relationships with equivalent Australian organizations.

In terms of building relationships with Australian organizations, strategic links were formed, for example, with the New South Wales Crown Solicitor's Office, Office of the Director of Public Prosecutions, and the Legal Aid Commission. Each signed a memorandum of understanding that creates an ongoing relationship between relevant offices. These relationships include sharing of precedent documents, library and training resources, and placement opportunities for staff.

One of the challenges in the attempts to strengthen relationships has been the frequent shifting of legal sector personnel. As Hillary Toa noted, "It is quite difficult to build and maintain meaningful relationships within and between the Public Solicitor's Office, the State Law Office and Public Prosecutor's Office given the high turnover of staff... you get disillusioned when you find out that a staff member or colleague has suddenly left for greener pastures within the private sector." Over 20 government-trained legal officers have left the public sector since independence in 1980. This has been a huge drain on the country's limited resources.

Administrative Reform

Key administrative reforms supported under VLSSP included the following:

- (i) Auditing and reviewing of key administrative processes, including the development of records management plans and procedure manuals. These manuals relate to processes such as file management, collection and distribution of statistics, and allocation of workloads. They were intended to ensure effective controls for recording and storage of data.
- (ii) Information technology needs of each office were assessed and New South Wales Attorney General's Department (NSWAGD) assisted in acquiring information technology equipment and establishing databases. Staff were also trained in basic computer skills.

- (iii) In consultation with the Public Service Commission, VLSSP assisted each office to develop human resource processes, including developing a staff manual. The program also supported a review of staff duty statements, revision of staff entitlements, and new performance standards relating to completion and quality of work.

Review of Existing Structures and Laws

In January 2002, the final report prepared under phase I, *Review of Legislation Affecting the Vanuatu Legal Sector*,¹⁶¹ was submitted to the Government. The review sought to help the Government identify priorities for legislative action to improve the functioning of Vanuatu's law and justice system. As a result of this report, the Evidence Bill, Legal Profession Bill, SLO Act, Public Prosecutor's Act, Criminal Procedure Code, and Penal Code were drafted, amended, or passed in phase II.

Another significant advance during phase II was in the area of customary law research. A customary law research team was engaged in April 2004 as a joint initiative between two Australian-funded projects (VLSSP and the Vanuatu Police Force Capacity Building Project) to explore appropriate ways in which the formal legal system and customary law in Vanuatu could interact more effectively and complement each other. The ultimate objective of these activities was to help the Government facilitate a fairer and simpler justice system with an acceptable role for both the formal legal system and customary law.

Improvements in Office Facilities

The main achievement of the phase II project in this area was the relocation of PSO in Port Vila. According to Hillary Toa, "The lack of suitable premises had impeded the institutional strengthening of the office and as a result, the PSO was lagging behind the other offices in terms of efficiency and development. Since relocation, a vast improvement has been seen not only in staff morale but also in the administration and functioning of the office."

6 26th Pacific Islands Law Officers Network. 2007. *Republic of Vanuatu Country Report*. Rarotonga, Cook Islands.

The new facilities have given PSO more visibility and an increase in the number of clients. More legal officers joined the office and were allocated adequate space for their work. According to Leah who works as secretary to the public solicitor, “Moving to this location has made our lives much easier as there is definitely more space for all of us to do our work. We have a separate kitchen, bathroom, conference room, and plenty of space outside for clients. We were sharing facilities with other tenants prior to moving here. I like it better now because we have new and reliable office machines, such as computers, printers, photocopy machine, Internet connection, etc.”

The office is situated on a hill near the Port Vila municipal office, Reserve Bank of Vanuatu, and the Ministry of Prime Minister. It is in the center of town and near other offices and essential services. The Community Legal Center⁷⁾ shares the facility with PSO, providing much needed free legal advice and services to the public.

Despite the improvement in facilities, provision of legal services by PSO is still seen as inadequate. According to the public solicitor, Hillary Toa, “There are too many cases to handle nationwide and we do not have the resources to do justice to this need; the PSO does not have any branches in any of the other islands of Vanuatu.” Asked why his office is helping repeat offenders, and taking on too many cases, he said that, “The PSO is bound by law to provide legal service to anyone in need, particularly those who lack the financial means to engage private legal services. ...the Government of Vanuatu also does not have adequate financial resources to build offices in other centers around the country so legal officers from the PSO have to travel to the outer islands to provide services to those in need. Unreliable transport in the outer islands and complexities in many cases mean delays, frustrations, and disappointments in a few cases... the PSO definitely needs more legal officers and branches throughout the six provinces.”

7 The Community Legal Center is coordinated through the University of the South Pacific’s Law School, which is based in Port Vila.

CAPACITY LESSONS: WHAT HAS BEEN LEARNED?

The following capacity lessons, among others, have emerged from the experience with **Vanuatu Legal Sector Strengthening Program (VLSSP)**. They point to key issues that are likely to require attention when addressing legal sector capacity issues in developing countries like Vanuatu. The lessons suggest a particular need for sector stakeholders to work toward sustainable solutions based on well-informed capacity strategies that build on existing strengths and traditions and maximize benefits associated with technical assistance and other support from development partners.

Ownership of Programs

As noted previously, the outcomes of the strategic review of Vanuatu's legal sector, undertaken in June 2000 by the Government of Vanuatu, formed the basis for interventions by development partners, including **Australian Agency for International Development (AusAID)** through VLSSP. This process demonstrated the potential for developing-country governments, such as Vanuatu, to initiate their own plans, based on their own analyses, and using that as a basis for determining needs for external assistance.

Despite this, efforts to strengthen Vanuatu's legal sector still appear to have been spearheaded at times by external partners. For example, a review of the sector in VLSSP's first phase that called for continued assistance was perceived to be led mainly by outside professionals with very limited input from local stakeholders. Ni-Vanuatus have also had limited involvement in selecting advisors and preparing terms of reference. These experiences suggest that despite leadership on the strategic review, domestic capacity remains a potential constraint to effective operational ownership of sector reforms in Vanuatu.

VLSSP and the Broader Reform Processes

VLSSP was a critical component of the ADB-sponsored Comprehensive Reform Program (CRP). Being situated within the broader CRP process lent credibility to the legal sector reforms and helped to ensure ongoing support from various stakeholders—an important consideration given the wide ranging and long-term nature of such reforms. At the same time, reforms such as VLSSP or CRP require continuous dialogue and coordination among the partners, which can be challenging given capacity limitations in government and potentially conflicting priorities. For example, the government was anxious to attract and retain professionally qualified staff in a competitive market while trying to contain overall personnel costs.

Use of External Advisors

The appointment of two expatriates as public prosecutor and attorney general was not widely accepted by ni-Vanuatu stakeholders and was seen as a slight to both public and private local practitioners who believed that local capacity to fill these positions was adequate. When local lawyers finally assumed the two positions after the contracts of the expatriate officers ended prematurely because of opposition from local leaders, AusAID withdrew its funding for the positions. This was not well received by the ni-Vanuatu professionals who accused the Australian Government of double standards.

This experience would appear to underscore, once again, the importance of developing-country actors taking the lead in determining needs for technical assistance as well as in the selection process. It also suggests that when relying on advisors, priority should be given to their role in enhancing the capacity of local professionals to carry out their tasks more effectively rather than turning too quickly to external advisors to fill gaps.

Despite the experiences noted above, research for this case study revealed that VLSSP advisors did largely focus on their advisory role. For example, ni-Vanuatu respondents pointed out that foreign advisors showed restraint in not taking on legal cases, rather making themselves available to support and advice local legal officers who assumed a lead role. This reinforced a

sense of ownership for local officers and was also consistent with the view expressed by ni-Vanuatu stakeholders that technical assistance should be supportive in nature, time-bound, and cease once local capacity is adequate.

Individual Competencies, Incentives and Remuneration

The assistance under VLSSP gave confidence and much needed support to legal officers in the Public Solicitor's Office, Public Prosecutor's Office, and State Law Office. However, while numerous training opportunities were provided, they were not guided by an overall training strategy. Furthermore, the fact that the Government has been unable to retain many legal staff, including some who benefited from training or support from technical advisors, suggests that other strategies (i.e., beyond training, internships, or placements) might have been needed to address that concern.

An important lesson arising on this aspect of the reforms is the need for governments to be aware of the incentives required to attract and retain legal officers. Incentives can include training, professional development, and career advancement opportunities, or even improvements in the work environment. The experience in Vanuatu although suggests that remuneration packages were particularly important in that context and that they needed to be competitive enough to encourage lawyers to establish and sustain legal careers in the public sector.

Broad-based Approach

While VLSSP, along with other sector interventions, involved a fairly wide range of interventions—from training to administrative reform, review of laws, and infrastructure development—arguably a more holistic approach could have been pursued to ensure benefits were realized more broadly across the sector. This could have included, for example, additional support for extension of legal services outside the main centers. Such support would not only have responded to a real need for decentralizing legal capacity but would also have broadened domestic support for and the perceived legitimacy of the sector reforms.

Technical legal skills in such areas as trade, drug issues, money laundering, and legal drafting are also seriously lacking in Vanuatu's legal sector and could have benefited from capacity development support as part of the sector reform process.

Strengthening Relationships

VLSSP was instrumental in connecting the Vanuatu legal sector with the University of the South Pacific's (USP) Law School. However, more planning would have been required to maximize the capacity benefits from this relationship. The USP Law School has also supported the Vanuatu Community Legal Center. Formalizing this arrangement could help ensure sustainable support to Vanuatu's legal sector and the public at large for years to come. Other partners, such as the United Kingdom-based Voluntary Service Overseas and the International Center for Not-for-profit Law are also interested in providing assistance to the sector. Further solidifying relationships with Vanuatu's development partners through these and other links could help ensure that capacity in the sector is strengthened on an ongoing basis. It could also help ensure that future initiatives are based on a sense of trust, confidence, and respect among a broader range of sector stakeholders.

Sustainability

Governments need to mobilize their own resources to sustain capacity that is developed or strengthened through programs sponsored by funding agencies. Based on the experience from VLSSP, the Vanuatu Government could have encouraged more ni-Vanuatus to take up legal studies by providing bonded scholarships and other assistance to students contemplating studies at the USP Law School in Port Vila. More broadly, the implementation of VLSSP also highlighted the necessity of budgetary allocations by the recipient government, not only as a sign of local commitment and ownership, but also to practically ensure continuity and sustainability. In various instances, provision of such commitments beyond the term of the program seemed uncertain given financial constraints, which, once again, calls into question the sustainability of some of the reforms being supported.

Traditional Governance

Vanuatu's traditional system of redress has existed for hundreds of years and is a widely practiced aspect of the country's governance system. Consistent with Vanuatu's commitment to equity, fairness, and justice, it is in the country's best interest to ensure that traditional institutions for reconciliation and justice are sufficiently accommodated in the legal sector. A prerequisite is an in-depth understanding of the diverse traditional governance systems practiced in Vanuatu. This was recognized in phase II of VLSSP, which supported customary law research activities. At present, more than 80% of Vanuatu's

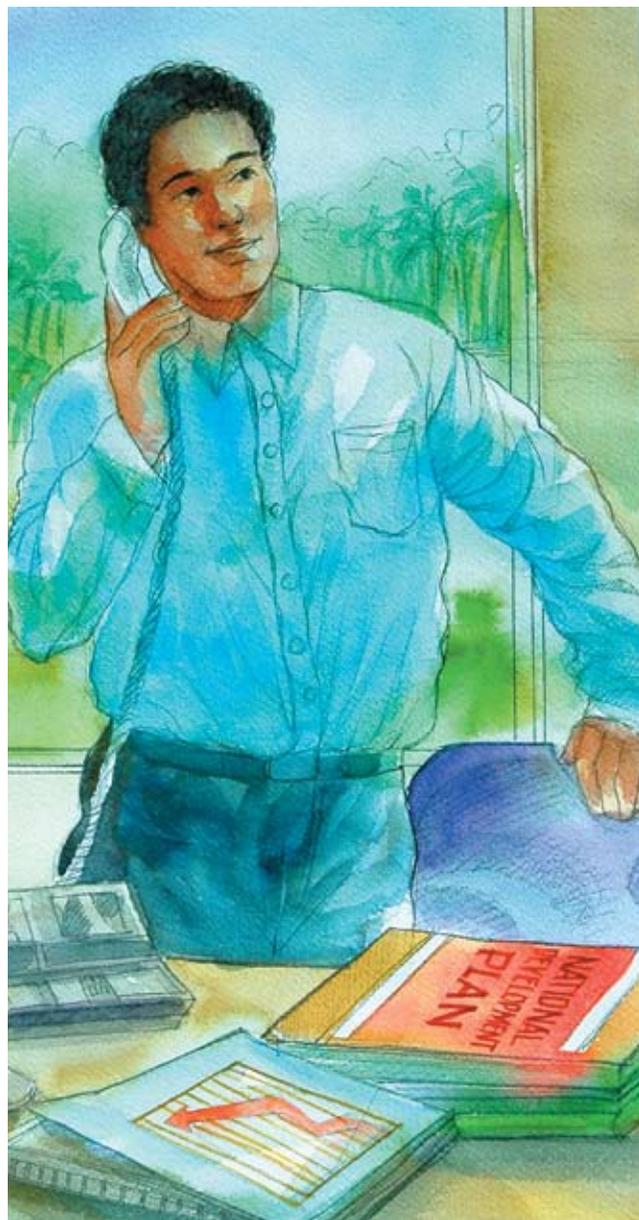
Box 2: Traditional Governance in Vanuatu

In Vanuatu, the involvement of chiefs in the maintenance of law and order emanates from their role as keepers of the peace. While this is undoubtedly their primary responsibility, the specific role of chiefs in peacemaking is not defined. The constitution recognizes a limited role for the customary justice system, but in practice its usage is far more significant. However, the relationship between the customary and state justice systems is impeded by a number of factors: a lack of communication between the systems, no clear guidelines as to which system should be used when, an undermining of each system by the other, and the problem of issues being dealt with by both systems.

The National Council of Chiefs Act 2006 says that, "The *Malvatumauri* was established in the lead up to independence and represents a significant point in the evolution of chiefship. It formally recognized chiefship as a characteristic of the country; it created a new role for chiefs, allowing them to operate at a national level for the first time; and it created a name for itself that reinforced the notion that chiefs represent pre-colonial traditions. The *Malvatumauri* was subsequently included in the constitution with the mandate of advising the Government on matters relating to custom, language and tradition (Constitution of Vanuatu 1988). The functions, powers, and structure of the *Malvatumauri* were later given greater clarity in the National Council of Chiefs Act of 2006. Although the act does not extend the powers of chiefs, it is the culmination of their efforts to achieve greater formal recognition from the state. According to the act, the function of these councils is to: 'resolve disputes according to local custom; prescribe the value of exchange of gifts for a custom marriage; promote and encourage the use of custom and culture; promote peace, stability and harmony; and promote and encourage sustainable social and economic development.'"

Source: Kernot, S. and L. Sakita. 2008. *The Role of Chiefs in Peace Building in Port Vila. State, Society and Governance in Melanesia Discussion Paper No. 2008/04.* Australian National University.

population lives in rural areas and relies primarily on traditional governance systems. Supporting efforts in this area was not only an appropriate response to local priorities, it also increased prospects for reducing demand on capacity in the country's formal justice institutions—a viable capacity strategy (see Box 2 for more on Vanuatu's traditional governance systems).



CONCLUDING THOUGHTS

This case study highlights some of the successes in Vanuatu's legal sector reforms, as well as some of the ongoing capacity challenges. For example, it demonstrates the potential benefits associated with enhancing individual competencies, e.g., for government lawyers. However, it also points to the difficulties of institutionalizing change and ensuring long-term, sustainable benefits for the sector and the country. This inevitably leads to questions about what combinations of capacity inputs and incentives are required, in what sequence, and over what period of time to realize enduring results?

The case also demonstrates how training, and other professional development opportunities are necessary but not sufficient by themselves to ensure sustainable change. While the **Vanuatu Legal Sector Strengthening Program (VLSSP)** and other initiatives did offer inputs beyond training, e.g., support for legislative changes and administrative reforms, questions remain as to whether efforts to enhance individual competencies could have been linked more effectively to broader sector and governance reforms. The issue of incentives seemed to be especially important in this respect.

The study also brought to the fore a number of lessons regarding use of technical assistance. One specific conclusion to be drawn is that one-on-one mentoring can yield real benefits in terms of capacity strengthening, provided that local counterparts are given as much space as possible and are actively encouraged to strengthen their own skills. However, the experience with VLSSP also speaks to the importance of the host agency assuming responsibility for deciding on the terms of advisor assignments before approaching development partners about a placement.

Ensuring access to legal services for Vanuatu's rural-based population continues to be a serious challenge facing the country. The sector reforms discussed in this paper focused primarily on initiatives at the central level but, as noted, they failed to deal

adequately with broader challenges in the sector, particularly those affecting the rural majority. Support for traditional systems is one capacity strategy employed which appears to have yielded benefits, but clearly others are required to respond to the bigger challenges facing the bulk of the population.

Finally, enhancing the efficiency and effectiveness of the Vanuatu legal sector has been one of the core priorities of the ADB-sponsored Comprehensive Reform Program introduced in 1997. Looking forward, it is critical that the Government of Vanuatu builds on these reforms and solidifies its relationship with development partners, such as ADB, Australian Agency for International Development (AusAID), and New Zealand's International Aid & Development Agency, to ensure that there is mutual confidence and trust and that the views and aspirations of all entities are adequately understood and taken into consideration when developing future initiatives for the sector.

Vanuatu Legal Sector Strengthening Program

The Vanuatu Legal Sector Strengthening Program (VLSSP) was launched in 2002 at a time when “the public was calling for a revamp of the whole judiciary.” This case study describes how VLSSP, which was funded by the Australian Agency for International Development (AusAID), contributed to Vanuatu’s legal sector capacity through professional development of staff, relationship building, administrative reforms, review of laws, and infrastructure improvements. It highlights a number of factors which contributed to the success of the program, as well as some of the challenges in sustaining reforms, including retaining trained staff in a competitive job market.

This subseries is published by the Asian Development Bank (ADB) to provide the governments of its Pacific developing member countries (PDMCs) with analyses and insights on key issues and lessons learned with respect to capacity development. Cases studied highlight a range of experiences throughout the region by sector, theme, and source of external support, revealing approaches to capacity development that work best and the conditions that have been conducive to their success. They also explore the unique challenges faced by PDMCs in addressing capacity constraints as well as some opportunities facing governments and the people in the Pacific islands. Among other things, the case studies underline the importance of PDMC leadership, engagement of local partners, strategic attention to long-term capacity issues, and effective use of external resources. We hope that the findings in these reports will help guide future capacity building efforts in the Pacific.

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Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
www.adb.org/pacific
Publication Stock No. BBK198508



Printed in the Philippines