

**ASIAN DEVELOPMENT BANK**

**TAR: VAN 34273**

**TECHNICAL ASSISTANCE**  
**(Financed from the Japan Special Fund)**

**TO THE**

**REPUBLIC OF VANUATU**

**FOR**

**CAPACITY BUILDING OF THE LEGAL SECTOR**

**December 2000**

## **CURRENCY EQUIVALENTS**

(as of 30 November 2000)

Currency Unit	–	Vatu (Vt)
Vt1.00	=	\$ 0.006822
\$1.00	=	Vt 146.59

## **ABBREVIATIONS**

ADB	–	Asian Development Bank
AusAID	–	Australian Agency for International Development
CRP	–	Comprehensive Reform Program
FIU	–	Financial Intelligence Unit
SLO	–	State Law Office
TA	–	technical assistance

## **NOTES**

- (i) The fiscal year (FY) of the Government and its agencies ends on 31 December.
- (ii) In this report, "\$" refers to US dollars.

## I. INTRODUCTION

1. The Asian Development Bank (ADB) has provided advisory support to the State Law Office (SLO) in Vanuatu under two technical assistance (TA) grants<sup>1</sup> since August 1999. Continued advisory support is essential for the Government of Vanuatu (the Government) to enhance the capacity of its legal sector and the overall level of governance, support the implementation of the Comprehensive Reform Program (CRP),<sup>2</sup> and deepen its legal sector reform.<sup>3</sup> In October 2000, the Government asked ADB to continue providing TA for strengthening the capacity of SLO, a central Government legal office. The ADB Fact-Finding Mission visited Vanuatu between 27 November and 5 December 2000.

## II. BACKGROUND AND RATIONALE

2. A stable legal system affects the effectiveness of government and the strength of the economy. Vanuatu's legal sector is under pressure because it lacks capacity to tackle legal challenges that stem from historical, cultural, political, and economic factors. The Vanuatu Government has been implementing an ambitious economic and public sector reform program, the CRP, since 1998. Although many new legislations have been implemented, enforcement requires substantial support from SLO and the new measures to counter money laundering and fraud require that SLO take a much stronger role. The need to continue ADB's TA support to the legal sector is clearly stated in the recent letter from the Prime Minister.<sup>4</sup> The new TA is expected to support economic development and poverty alleviation through the rule of law, strengthen governance, and sustain the reform process.

3. The legal system in Vanuatu is under considerable stress and is not performing to its capacity. People generally recognize the importance of accepting and enhancing the rule of law, but they lack confidence in the current system. This has negative impacts on government, business, and the people. In particular, the court system's inability to adjudicate disputes in a reasonable time is deterring business from investing in Vanuatu, hampering economic development. The three Government law offices—SLO, the Public Prosecutor's Office, and the Public Solicitor's Office—appear to operate in a self-contained way, despite their many common interests. The offices are located separately and maintain little formal or informal liaison among them on the matter of common interest.

4. ADB's earlier TA grants have provided advisory support for the new Judicial Services and Courts Bill that aimed at reforming the judiciary and for the five intellectual

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<sup>1</sup> TA 3197-VAN: *Strengthening the State Law Office*, for \$150,000 approved on 20 May 1999 and TA 3366-VAN: *Legal Reform and Capacity Building*, for \$300,000, approved on 23 December 1999.

<sup>2</sup> ADB is supporting the Comprehensive Reform Program through a program loan (Loan 1624-VAN: *The Comprehensive Reform Program*, for \$20 million, approved on 16 July 1998).

<sup>3</sup> The TA was first listed in *ADB Business Opportunities* (Internet version) on 14 December 2000.

<sup>4</sup> The Prime Minister, Barak Sope Maautamate, in a letter to ADB dated 18 October 2000, requested ADB to extend the legal advisory assistance provided under TA 3366 (footnote 1). In the letter, the Prime Minister mentioned the "importance of the contribution made by the legal adviser to capacity building and skills transfer within SLO." The Prime Minister also noted "it is a fundamental and an ongoing requirement to ensure that the Ni-Vanuatu legal officers gain maximum benefits from the TA" and that "the TA is indispensable with regards to the implementation and efficient functioning of the Financial Intelligence Unit."

property bills that will reform this area of the law in Vanuatu. Beyond these reforms, many laws within Vanuatu provide for significant discretion that leads to a lack of transparency. Selected legislation has been inappropriately amended. Introducing laws to reduce monopolies and promote competition in the public utilities, banking, and trade sectors is also considered an urgent need.

5. Training of the directors general, directors, and senior members of the public service on recent and developing law reforms must be continued so they can fully understand the reforms and work within them.

6. Several agencies are supporting the legal sector. The Australian Agency for International Development (AusAID) began its assistance to Vanuatu's public legal sector in 1996, and recently completed a project mainly for the strategic review of the legal sector. In addition, AusAID has funded advisers in the Public Solicitor's Office and promotion of human rights conventions, and provided scholarships in legal studies. The New Zealand Official Development Assistance Programme recently funded a judicial committee project to revise the rules of court in Vanuatu. The British Department for International Development has funded a regional rights resource team for two years, and Agence Francaise de Developpment is funding a number of scholarships in legal studies. ADB has provided a legal adviser to SLO since mid-1999 and funded several international conferences and domestic training workshops.

7. The implementation of the CRP requires increasing legal advice for all ministries. Recently, several interest groups and individuals, most of whom are politically connected, have legally challenged the implementation. Being an island state with a thin, small economy, Vanuatu is very vulnerable to illegal activities that may impinge on economic investment or the rights of the people. In addition, several serious incidents involving fraud and money laundering activities have transpired recently in Vanuatu's offshore financial center, one of the largest tax havens in the Pacific. The Government has been making strong efforts to resolve such matters and restore the reputation of the offshore financial center. The Financial Transactions Reporting Act was promulgated at the end of September 2000 and the Financial Intelligence Unit (FIU) was formed within SLO to carry out the requirements of the law.

8. SLO is responsible for preparing new legislation and amendments to existing laws, assisting the Public Prosecutor's Office and Public Solicitor's Office, and advising the Government on legal matters including implications of reform measures. A number of laws and regulations promulgated under the CRP may need improvement or modification. In addition, the CRP implementation process is identifying new priorities that must be addressed in an appropriately sequenced manner, and many of them must have new legislation as their basis. However, SLO currently remains severely understaffed, and particularly lacks senior staff with experienced legal capacity. Qualified senior staff, including the Solicitor General, departed suddenly in November 1999. Vacant positions have been filled with young legal staff with very little work experience.

9. Since ADB's TA program for SLO commenced, SLO is functioning much better than in 1999. SLO's operations have improved, with the provision of more timely advice, litigation control, and some training by the legal adviser. Money laundering considerations have been brought to the forefront and FIU was established within SLO in September 2000. FIU is primarily involved in protecting Vanuatu's economy from fraud

and money laundering and provides assistance and advice to the Government on a daily basis.

10. While the responsibilities of SLO have significantly increased recently, it needs continued support to fill the staffing gap and train the young officers. FIU needs support, staff training, and development. Since its formation, FIU has provided vital assistance to the Government and internationally, on international money laundering and frauds. Counteracting money laundering is an important agenda for Vanuatu and ADB.<sup>5</sup>

11. SLO has developed and distributed a service manual to all Government clients to assist in their knowledge of SLO's services and how and when to access them. SLO is encouraging the clients to consult it at the earliest point of occurrence to minimize legal risks. This is part of a new strategy of risk management in legal matters generally, and an attempt to reduce the exposure of the Government to claims. The risk management strategy includes a legal education component, with seminars for members of Government ministries, and departments being provided with details of how the acts that they administer are structured, and what their duties and powers are concerning the identification of problems. Access to copies of the laws has also become difficult. SLO, under current ADB TA, is producing the Statute Law of Vanuatu in disk format for general distribution. The first volume will be available by the end of December 2000 and will include the laws as amended up to November 2000. Three more volumes are to be completed. Under the current TA, standard form Government contracts are being drawn in order to improve the efficiency of contract management for the Government. This will also affect the efficiency of the Government's expenditure of money. The TA has also provided legal advice to the Prime Minister, ministers, and key senior officials on a regular basis or on request.

### **III. THE TECHNICAL ASSISTANCE**

#### **A. Objective**

12. The TA will help the Government enhance governance through providing a capacity building program for the legal sector. The TA will support the objectives of the CRP and improve the efficiency of SLO's operations through providing adequate legal advice, training legal staff, and streamlining processes. A logical framework is provided in Appendix 1.

#### **B. Scope**

13. The TA will (i) provide an awareness heightening program to public sector officials on the law and their rights and obligations under it; (ii) assist the Government to meet international standards with respect to money laundering and international fiscal responsibility; (iii) provide capacity building and skills transfer training to legal officers in the SLO and other legal offices, including the capacity to monitor and prevent fraudulent activities and ensure the Government complies with legislative requirements; (iv) provide

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<sup>5</sup> ADB continues to support efforts in judicial training in the Pacific to provide judges in the region with an opportunity to upgrade their knowledge and access to judicial information. ADB is also providing assistance to address money laundering in the region. Some Pacific developing member countries have been suspected of protecting such money laundering. This has become a major international issue.

high quality and timely advice to Government ministries; (v) assist the Government to improve the quality of its action in defense of its legal obligations; (vi) assist the Government to provide public awareness campaigns; and (vii) help SLO establish and operate a public law information center.

### **C. Cost Estimates and Financing Plan**

14. The total cost of the TA is estimated at \$420,000 equivalent, comprising \$295,000 in foreign exchange cost and \$125,000 equivalent in local currency cost. ADB will finance \$330,000 equivalent covering all the foreign currency cost and \$35,000 equivalent of the local cost. The TA will be financed by ADB on a grant basis from the Japan Special Fund, funded by the Government of Japan. The Government will provide the remaining \$90,000 equivalent through counterpart staff, support services, and office facilities. Appendix 2 provides detailed cost estimates.

### **D. Implementation Arrangements**

15. SLO will be the Executing Agency for the TA. The TA will commence by March 2001 and be carried out over 18 months, until September 2002.

16. The TA will finance the services of one individual, internationally recruited consultant with significant legal experience. The consultant will provide up to 11 person-months of services during an 18-month period. Appendix 3 provides the outline terms of reference for the consultant, who will be engaged by ADB in accordance with ADB's *Guidelines on the Use of Consultants*.<sup>6</sup> The day-to-day performance of the consultant will be closely monitored by the Attorney General. The TA will also finance the cost of training programs for staff in line ministries, the general public, and SLO and other legal officers. The TA will support part of the production cost of the CD-ROMs, computer disks, printed copies of laws, and relevant materials to be used by the public law information center to be set up in SLO. The TA will involve modest on-the-job type overseas training by sending the legal adviser and a counterpart staff person to about four major international conferences and workshops on money laundering and fraud issues. Attendance of the consultant and the counterpart at selected conferences and workshops to be organized by key international organizations such as the International Monetary Fund, Asia Pacific Group on Money Laundering, the Forum Action Task Force, and G-7 Finance Ministers Meeting will help Vanuatu by educating and training the counterpart in this particular new and sophisticated area.

## **IV. THE PRESIDENT'S DECISION**

17. The President, acting under the authority delegated by the Board, has approved the provision of technical assistance, on a grant basis, to the Government of the Republic of Vanuatu, in an amount not exceeding the equivalent of \$330,000, for the purpose of Capacity Building of Legal Sector, and hereby reports such action to the Board.

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<sup>6</sup> In response to a request from the Government, the services of the individual consultant under the ongoing TA-3366 for *the Law Reform and Capacity Building* will be retained for this TA pursuant to the special selection procedures under the *Guidelines on the Use of Consultants*. The Government, including the Prime Minister and the Attorney General, has been fully satisfied with the quality of the services provided by the current legal adviser and supports a continuation of his services. The consultant was originally recruited through a process of competitive selection acceptable to the Bank.

### TECHNICAL ASSISTANCE FRAMEWORK

Design Summary	Performance Indicators/Targets	Monitoring Mechanisms	Assumptions and Risks
<b>Goal</b> <ul style="list-style-type: none"> <li>• Support economic development and poverty alleviation through the rule of law.</li> <li>• Strengthen governance and sustain the reform process.</li> </ul>	<ul style="list-style-type: none"> <li>• Timely and appropriate law reform and legislation.</li> <li>• Increased skill base of legal staff.</li> </ul>	State Law Office (SLO) corporate/ business plan.	Appropriate staff selection and staff continuity.
<b>Purpose</b> <ul style="list-style-type: none"> <li>• Heighten the awareness of public sector officials of the law and their rights and obligations under it.</li> <li>• Vanuatu's adherence to international standards with respect to money laundering and international fiscal responsibility.</li> <li>• Strengthened capacity in SLO and other legal offices.</li> <li>• Better legal judgment and defense ability by government ministries.</li> <li>• Enhanced public awareness of law.</li> </ul>	<ul style="list-style-type: none"> <li>• Timely legislation.</li> <li>• Ministers appropriately briefed on a timely basis.</li> <li>• Legislation of consistent quality.</li> <li>• Local counterparts' dependency.</li> </ul>	SLO corporate/ business plan.	A stable government that can pursue the required legislation.
<b>Outputs</b> <ul style="list-style-type: none"> <li>• Effective operation of SLO and the Financial Intelligence Unit.</li> <li>• Heads of departments and statutory authorities in law are advised, laws developed, and law reform made.</li> <li>• More capable and independent legal staff in SLO and other legal offices.</li> <li>• A new bar admittance supervision system.</li> <li>• Strengthened systems and processes for the provision of legal advice.</li> <li>• New inventory of Vanuatu's laws.</li> <li>• Better liaison with police on fraud and economy crime.</li> <li>• Heightened public awareness of law.</li> <li>• Sustaining law information center.</li> </ul>	<ul style="list-style-type: none"> <li>• 150 workshops, 30-40 public awareness programs.</li> <li>• Number of new bills prepared.</li> <li>• Number of legal advice provided to ministries.</li> <li>• Number of money laundering and frauds handled.</li> <li>• Number of international conferences attended.</li> <li>• Number of copies distributed by the public law information center.</li> </ul>	<ul style="list-style-type: none"> <li>• Monthly reports.</li> <li>• Training and information system.</li> <li>• Management information system.</li> <li>• Regular consultation with attorney general.</li> </ul>	<ul style="list-style-type: none"> <li>• Attorney general is supportive.</li> <li>• Staff continuity remained.</li> </ul>

(Reference in text: page 3, para. 12)

Design Summary	Performance Indicators/Targets	Monitoring Mechanisms	Assumptions and Risks
<b>Activities</b> <ul style="list-style-type: none"> <li>• Training of staff of SLO and line ministries.</li> <li>• Legal advice to attorney general, Prime Minister, and ministers.</li> <li>• Provision of public awareness programs.</li> <li>• Establishment and operation of a public law information center.</li> <li>• Participation in senior-level conferences.</li> </ul>	<ul style="list-style-type: none"> <li>• Consultant fielded by early March 2001.</li> <li>• By end-March 2001, key constraints identified and training and institutional strengthening plans developed.</li> <li>• By September 2002, training and public awareness programs and institutional plans implemented.</li> </ul>	<ul style="list-style-type: none"> <li>• TA reports.</li> <li>• Regular consultation with attorney general.</li> </ul>	<p>Consultant effectively communicates with counterparts and receives support.</p>
<b>Inputs/Resources</b> <ul style="list-style-type: none"> <li>• Recruitment of consultant.</li> <li>• TA support to the public law information center.</li> <li>• TA support to various training and public awareness programs.</li> </ul>	<ul style="list-style-type: none"> <li>• Consultancy (11 months): \$236,000.</li> <li>• Training, workshops, public awareness program: \$40,000.</li> <li>• Government (in-kind): \$90,000.</li> </ul>	<ul style="list-style-type: none"> <li>• TA reports.</li> <li>• Regular consultation with attorney general.</li> </ul>	<p>Consultant effectively communicates with counterparts and receives support.</p>



# **COST ESTIMATES AND FINANCING PLAN**

(\$)

<b>Item</b>	<b>Foreign Exchange</b>	<b>Local Currency</b>	<b>Total Cost</b>
<b>A. ADB FINANCING*</b>			
1. International Consultant (11 person-months)			
a. Remuneration and Per Diem	236,000	0	236,000
b. International Travel	15,000	0	15,000
2. Reports and communications		9,000	9,000
3. Training, Seminars, and Public Awareness Programs and Information Center	10,000	20,000	30,000
4. Contingency	34,000	6,000	40,000
<b>Subtotal (A)</b>	<b>295,000</b>	<b>35,000</b>	<b>330,000</b>
<b>B. Government Financing</b>			
1. Counterpart Staff	0	60,000	60,000
2. Office Accommodation, Equipment, Supplies and Support Services (including local transport and communication)	0	20,000	20,000
3. Contingency	0	10,000	10,000
<b>Subtotal (B)</b>	<b>0</b>	<b>90,000</b>	<b>90,000</b>
<b>Total</b>	<b>295,000</b>	<b>125,000</b>	<b>420,000</b>

\*Financed from the Japan Special Fund

(Reference in text: page 4, para. 14)

## OUTLINE TERMS OF REFERENCE FOR CONSULTANTS

### A. Terms of Reference

1. The specific task of the legal adviser will include:
  - (i) providing an awareness heightening program to public sector officials on the law and their rights and obligations under it;
  - (ii) assisting the Government to meet international standards with respect to money laundering and international fiscal responsibility;
  - (iii) providing capacity building and skills transfer training to legal officers in the State Law Office (SLO) and other legal offices, including the capacity to monitor and prevent fraudulent activities, and ensuring the Government complies with legislative requirements;
  - (iv) providing quality and timely advice to Government ministries;
  - (v) assisting the Government to improve the quality of its action in defense of its legal obligations;
  - (vi) improving the quality of Government action in defense of its legal obligations;
  - (vii) training legal officers as part of skills transfer and capacity building;
  - (viii) providing public awareness heightening programs that include mass media campaigns and public seminars and meetings involving financial institutions, nongovernment organizations, women's groups, disadvantaged groups, and provincial people;
  - (ix) assisting in SLO's establishment and operation of a public law information center that will provide to the public CD-ROM, computer disk, printed, and internet versions of laws and relevant materials at a low cost;
  - (x) improving the ability of Vanuatu to respond to requests for extradition and mutual assistance in criminal matters, particularly in relation to money laundering;
  - (xi) helping SLO prepare a law inventory system;

(Reference in text: page 4, para. 16)

- (xii) presenting, at the end of the technical assistance, to the Financial Intelligence Unit a sustainable education program on good governance concerning financial issues and frauds; and
- (xiii) other matters agreed between the attorney general and the Asian Development Bank (ADB).

2. The legal adviser will be required to produce an inception report, monthly progress reports, and a completion report on the conclusion of the assignment for submission to the Government and the Asian Development Bank (ADB). The legal adviser will prepare other reports as required by the attorney general or ADB.

#### **B. Skills and Qualifications**

3. The legal adviser will have a degree in law or an equivalent subject, extensive experience in law reform and litigation, relevant experience in legal practice within the public service and development in a developing country, and experience in human resource development in the legal sphere. The adviser will also have excellent communication and interpersonal skills, the ability to perform effectively in a multidisciplinary team, and the proven ability to perform effectively in a cross-cultural context.

#### **C. Administrative Arrangements**

4. The legal adviser will be in Port Vila, Vanuatu for 11 months, commencing in March 2001. The adviser will report directly to the attorney general.