JASTIS BLONG EVRIWAN

VANUATU PROGRAM FRAMEWORK

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INTRODUCTION AND CONTEXT

Jastis Blong Evriwan (JBE) is part of a World Bank research and development effort called Justice for the Poor, which supports analytical and programmatic work in countries where legal pluralism presents a central development challenge. For maximum impact the program aims to mainstream justice\(^1\), accountability and conflict management considerations into broader reform processes.

JBE is funded under the East Asia and the Pacific Justice for the Poor Initiative (EAP-J4P) – a collaboration between the World Bank and AusAID. The Initiative builds on the experience of the Justice for the Poor program to date, while also drawing on AusAID’s vast experience in justice reform in the region. The program is aligned with the strategic priorities of both organizations, while providing a platform for effective collaboration and donor harmonization.

This Program Framework outlines the rationale, objectives and approach of the JBE program, along with initial activities and implementation arrangements for the period 2009-2012. It is not intended to serve as a detailed program design document, but, as the name suggests, a strategic framework within which iterative and flexible program development will take place. Specific concept notes\(^2\) for analytical and operational work will be drafted and reviewed throughout the life of the Vanuatu country program.

BACKGROUND TO A COMPLEX LEGAL ENVIRONMENT

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

The state system is characterized by political instability, limited capacity and interlinked systems of patronage. Geographical constraints present additional challenges, making classical modes of service delivery prohibitively costly. Other than primary education and basic medical care, most ni-Vanuatu have little contact

\(^1\) Justice for the Poor sees justice as an issue that cuts across all sections of socio-political and economic life, and that the ‘rules of the game’ in any given context have a direct impact on the effectiveness of different development interventions.

\(^2\) A concept note is a World Bank tool for planning and approval of new projects/activities. The scope of the concept note includes a description of the context, rationale, objectives, research questions and methodology, risk factors, stakeholder analysis, outputs and dissemination, budget and work plan.
with the state. Local governments remain under-resourced and have limited reach outside their respective headquarters. The formal justice system is based largely on the pre-independence regime, with courts concentrated in the two main urban areas – Port Vila and Luganville. Despite being presided over by ni-Vanuatu judges and magistrates, the state court system is perceived by many as “foreign”. Though the courts maintain a sitting schedule which includes circuit tours, many islands see visiting magistrates only once or twice a year.³

While the state system has some relevance at the national level, particularly in relation to foreign investment, “kastom” plays a dominant role for the majority of the population.⁴ Kastom is a form of indigenous morality, given expression not only through the exercise of chiefs, but also through the evaluations made by all ni-Vanuatu of the correctness (or otherwise) of particular courses of action, ways of behaving, and bringing resolution to conflict. Kastom also informs the actions of ni-Vanuatu operating within the state legal system. Overlaps occur in terms of personnel – for instance, many police officers and magistrates are also chiefs – and kastom informs ni-Vanuatu perceptions of the legitimacy of decision-making.⁵

In the political sphere, state and non-state systems intertwine to produce hybrid institutions and practices. Formally modeled as a Westminster democracy, the modern political system of Vanuatu is also infused with traditional elements of reciprocity between leaders and their communities. The state is often regarded as a distant “big man” with elected politicians expected to provide material benefits to their constituencies in exchange for their votes.⁶ Political coalitions are built around a pyramid of patronage with politicians competing for key posts that provide opportunities for distribution to coalition supporters down to the constituency level. As a consequence, the political system provides few incentives for the delivery of national policy and instead encourages frequent policy shifts and consequent inconsistency in policy analysis, formulation and application. This combination of factors, while reflecting local political realities, does not live up to ideals of how a modern bureaucratic state should function.⁷

Customary Land Tribunals and the Island Courts are both the creation of national legislation but are meant to apply kastom and follow customary processes to varying degrees. With respect to the Land Tribunals, they were reportedly established to institutionalize the role of the chiefs in the land dispute resolution

⁶ AusAID. 2007. The Unfinished State: Drivers of Change in Vanuatu.
⁷ Id.
process, yet some chiefs contest their legitimacy. Others argue that they are performing functions of state without the necessary funding and support.

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

Christianity forms a major part of the country’s identity, and churches are a key area of social interaction for many ni-Vanuatu. Christian morality is also often seen to dovetail neatly with kastom and can serve a mutually reinforcing role in relation to gender inequality; at the same time, church-related activities offer women opportunities for status and solidarity. The beliefs of some denominations can limit members’ ability to participate in kastom practices, and therefore contribute to a multiplicity of structures in the community.

LEGAL PLURALISM AS A KEY DEVELOPMENT ISSUE

The above describes a context in which legal pluralism is a major development issue. This manifests itself primarily in three ways. First, strong kastom (in its many variations) and weak state exist in an ill-defined relationship, which makes the management of development processes extremely difficult. Second, kastom systems, while internally coherent, accessible, legitimate and relatively well-understood, are nonetheless being asked to address issues which stretch their capacity (e.g. the leasing of land for foreign investment). Third, processes whereby traditional and modern systems of property rights and contracting interact, have seriously inequitable and/or destabilizing effects. Key development problems experienced by ni-Vanuatu, especially the more marginalized, stem from these three issues.

All this is said without romanticizing either kastom or the formal system. As with formal systems of governance, kastom may not function in the interest of all members of the community. Some groups, such as women and youth, are often excluded from decision-making processes and from sharing benefits derived from use of assets. Such disadvantaged populations often fall between the cracks of the

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law, with no recourse to either kastom or formal alternatives. Where the state and development processes do impact upon communities, they often entrench and elevate those with power whilst further excluding marginalized groups. Reforms are also inherently conflict-ridden and likely to cause further disruption of community life.

**LAND DEVELOPMENT**

One of the areas where Vanuatu’s legal pluralism is at its most acute relates to land. The Constitution (Art. 74) provides that “the rules of custom” form the basis of land ownership in Vanuatu and all land was nominally returned to customary ownership at Independence in 1980. Today over 98% of land is still officially under custom ownership, though much of this land is in fact held in the formal system under long term leases. Economic growth for example, which has been predominantly driven by land exploitation to build luxury vacation homes and resorts, is believed to have had little ‘trickle-down’ effect - with kastom groups frequently dispossessed of their land and with little or no access to development benefits.\(^9\)

A clash of concepts (customary landholding v. individual property rights) has a tendency to cause conflict which can be destructive for societal harmony, growth and equitable development outcomes.\(^10\) Land disputes are thus the most commonly noted source of conflict affecting both rural and urban areas. Conflict emerges at a number of levels: (i) within the land owning group – over who is a member of the group, who has authority to deal with land, for what purpose, and under what terms; (ii) within the land owning group – over the distribution of development resources; (iii) with neighbouring landowners – who either claim the land in question or that the activities agreed to affect their interests; (iv) with the government – over the exercise of regulatory authority; or (v) with outside interests – over the terms of lease agreements and their implementation.

Vulnerable groups, such as women and youth, are being caught in the process of discrimination caused by the transition to market-based land management. In instances where protection of women’s role in decision-making about land has been traditionally afforded by kastom, manipulation of kastom to favor personal interests is slowly eroding it. The management of customary land is becoming more centrally controlled than it has been traditionally. The trend to view land-management as a male-only domain is further aggravated by the growing pressure to make land readily available for private sector development.\(^11\) The resulting imbalance itself becomes an impediment to economic growth. With the potential for generating jobs and business opportunities, foreign investment in land development is clearly

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\(^10\) Id.

desirable, but it can also be highly disruptive and needs to be managed properly to ensure that more ni-Vanuatu are able to participate in its benefits.

**URBANIZATION**

The penetration of the cash economy into rural areas is changing the dynamics of production and governance, both of which have been inherently tied to land. Poor infrastructure and a lack of basic services are placing major strains on households, raising inequality and widening the gap between urban and rural populations. The appeal of a modern lifestyle is increasingly driving urbanization, with urban population now amounting to 30% of the nation’s total. Growing migration alters the connection of individuals to their ancestral communities, its rules and their decision makers. An increasing proportion of the population lives in urban communities which contain a mix of people from throughout the country, bringing together different local governance structures, processes and authority figures. A weakening of traditional relationships of authority, as well as poor economic conditions, in urban areas leads to social dislocation. Youth, particularly in urban areas, feel less constrained by traditional social mores and are claiming rights to be involved in decision making structures. Women are seeking different roles in society and also increased roles in decision making. Chiefs are being asked to take on new and more varied roles, yet at the same time societal change is undermining their power and control over communities.

Most peri-urban land continues to be in the hands of *kastom* owners and rapid rural-urban migration is leading to pressure on such land, as well as increasing the number of people who reside on land they do not own. Inhabitants of informal settlements often pay a good portion of their income in rent, or work in the gardens of the *kastom* owners, but lack formal documentation of tenure. Insecurity of tenure and the location of peri-urban lands outside municipal boundaries contribute to a lack of services. Poor living conditions and economic insecurity add to problems of migrants who bring different, often conflicting traditions and practices, which can complicate the resolution of disputes – now governed by multiple layers of traditional and formal rules. Tensions among different island groups over land use pose considerable risk to urban social dynamics and have occasionally sparked violence.¹²

**AID FLOWS**

Aid assistance, while central to the political economy of Vanuatu, can also pose challenges to Vanuatu’s development. Without proper consideration of the socio-

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legal context, development effectiveness can be seriously undermined. The introduction of new resources into communities is often associated with a shift in local power dynamics, which can be a source of conflict (e.g. disputes over land use, control of assets or benefit sharing). The proliferation of new institutions at the community level is blurring the lines of authority with many people reportedly confused about whom to turn to for help. Community-based programs in Vanuatu are reported to have had low success due to community misunderstandings about the nature of interventions and a failure of project proponents to engage with local governance structures.

Many ni-Vanuatu argue that non-state governance and dispute resolution mechanisms should be strengthened. However, there is little concrete discussion about how this would look in practice; how functions would be shared; how support would be provided; or what impact this would have on the state building agenda. For example, even when police are willing to support chiefs and custom, ‘there is no legislation or established practice that defines the respective roles of police and the chiefs with regards to matters that are both offences in kastom and wrongdoings under the state law’. These issues are exacerbated by a lack of accessible data on how the various institutions actually work at the local level. In addition, the capacity to design and implement responses to this context is lacking. Finally, when it comes to reforming the law, the views of kastom actors are often seen to be inadequately incorporated.

At present, justice issues are rarely seen by the government or donors in a cross-sectoral manner. They are instead viewed as concerns specific to the law and justice sector, within which the focus is predominantly on national institutions. There has been limited analysis on how to practically link reforms of the state with non-state justice mechanism. Development projects outside the law and justice sector do not commonly include analysis of existing rights and power relations nor incorporate informed dispute resolution mechanisms to address conflict. There exists real opportunity to inform state centered reform efforts, as well as development projects outside the law and justice sector, with analysis of community understandings and the way in which decisions are made and disputes resolved.

GOVERNMENT PRIORITIES

The Government of Vanuatu’s Priorities and Action Agenda 2006-2015 (PAA) seeks to promote private sector led economic growth and ensure sustainable development. The PAA acknowledges the importance of engaging with the social

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15 Paterson, Customary Law Research Project, p.29
and cultural systems of Vanuatu as part of the development process and stresses the
importance of good governance as a prerequisite for the effective implementation of
all other strategies.\textsuperscript{17} The Agenda further highlights the need for improved service
delivery (especially in rural areas), participation of all sections of the community in
policy formulation,\textsuperscript{18} and makes special mention of the need to give women and
youth the chance to contribute fully to growth and development.\textsuperscript{19} To embark on
this long-term national development agenda, the Government has developed an
initial four-year matrix to guide the development of reform policies initiated under
the PAA. Among other things, the matrix prioritizes strengthening security and the
rule of law, equitable and sustainable development of land, rural service delivery
and urban management.\textsuperscript{20}

In the specific areas relevant to the JBE program, the key sector strategies are:

- The \textit{Law and Justice Sector Strategy}, which seeks to enhance coordination
between the various law and justice institutions and adopt a coherent
approach to justice reform.\textsuperscript{21}

- The \textit{Land Sector Framework}, which provides a roadmap for a ‘prosperous,
equitable and sustainable land sector for Vanuatu’.

In addition the Government of Vanuatu through the Prime Minister’s Office has
sought assistance of the World Bank in responding to questions of how best to
deliver \textit{community level infrastructure} to rural areas. As a result, the World Bank
is conducting a review designed to generate options for a more consistent and
sustainable approach to channel increased government and donor support to rural
infrastructure. The \textit{kastom} governance and local accountability aspects of this work
are of particular relevance to the JBE program.

\section*{PROGRAM DESCRIPTION}

\section*{OBJECTIVES}

The JBE program will focus its work around two objectives.

\textsuperscript{17} Government of Vanuatu, “Priorities and Action Agenda: 2006-2015”, p.1. The PAA outlines seven
strategic priorities for reform: (1)Private Sector Development and Employment Creation;
(2)Macroeconomic Stability and Equitable Growth; (3)Good Governance and Public Sector Reform;
(4) Primary Sector Development (natural resources and the environment; (5)Provision of Better
Basic Services (especially in rural areas); (6)Education and Human Resource Development;
(7)Economic Infrastructure and Support Services.
\textsuperscript{18} Ibid, p.31.
\textsuperscript{19} Ibid, p.32.
\textsuperscript{20} “Planning Long, Acting Short: Action Agenda for 2009-2012”.
Engaging with the context of legal pluralism in three identified areas of priority for the government, the program will:

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

Around the Law and Justice Sector Strategy the JBE program will support:

i. Enhanced understanding of the type of justice problems citizens face, the ways in which citizens and local-level institutions define rights and entitlements, the types of mechanisms and strategies people use to enforce their rights, resolve disputes and access development benefits; and
ii. Enhanced capacity within the Ministry of Justice and key stakeholders to conduct research, and develop policy and programs that contribute to legal empowerment.22

Around the Land Sector Framework the JBE program will support:

i. Enhanced documentation of the principles of customary land ownership and the ways in which customary groups engage with the formal system; and
ii. Enhanced capacity within the Ministry of Lands and key stakeholders23 to conduct research, and develop policy and programs that contribute to equitable development in the context of legal pluralism.

Around the theme of community level infrastructure:

i. Enhanced understanding of the structures of local governance, accountability and conflict management mechanisms.

**ACTIVITIES**

JBE will adopt an iterative and phased-cycle approach to programming, with each phase informing the other. The program is planned to operate for 4 years, focusing first on a period of intensive action research. Findings from the action research will lead to the development of legal empowerment strategies and pilots which will be closely monitored and evaluated.

JBE is commonly faced with an inherent tension between the need to invest time in developing research methodology, capacity building of local researchers, and undertaking field work to underpin the design of activities with the demands for an

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

23 Malvatumauri and the Vanuatu Cultural Center have been identified as members of a working group on land research under the Land Sector Strategy.
up-front plan of interventions and quick ‘results’. While the first year of the program will focus predominantly on action research and capacity building, this research will be complemented by other activities that provide an immediate impact such as awareness campaigns, legal aid days (which can also be used as a research tool), and activities aimed at the building of awareness through the dissemination of findings.

The following diagram presents a schematic model of the schedule of JBE activities:

RESEARCH & ANALYSIS

As indicated in the program objectives set out above, the JBE program will explore the larger question of managing change in the context of legal pluralism through the lens of (i) access to justice; (ii) land and natural resource management; and (iii) local governance and service delivery. While there is a reasonable amount of cross-over between these areas, the proposed thematic delineation provides a framework for examining a range of issues at the nexus of kastom, economic growth and legal empowerment. Findings from one research area will have multiple applications and will be used to inform reform efforts in the other areas.
JBE’s working hypothesis is that more equitable resource distribution and the development of socially relevant means of redress in the inevitable transition from tradition to a modern state system, will help to prevent violent conflict and contribute to more equitable development outcomes. The proposed work will directly assist the Government’s key sector priorities as outlined above and complement existing and planned donor programs, which are predominantly carried out from a state-building perspective. It will also support the Bank’s renewed focus on managing the impact of external political and economic forces in the Pacific.24

**Access to Justice**25

The PAA stresses the importance of stable law and justice institutions and the importance of engaging with the social and cultural systems of Vanuatu in developing these.26 While the PAA focuses largely on core state institutions, it does include a priority to ‘examine options for the creation of a dispute settlement outside the current court system’.27 It further seeks ‘to ensure that all Vanuatu citizens can exercise their fundamental rights and freedoms, and confidently participate in nation-building.’28

With support from AusAID, the Ministry of Justice is leading the development of a *Law and Justice Sector Strategy 2009-2014* in consultation with key government and non-state stakeholders. Among other things, the proposed strategy seeks to (i) improve legal awareness and access to legal, paralegal and community-based advocacy services; (ii) strengthen locally-based, non-violent dispute resolution; (iii) integrate peaceful traditional systems to work with and complement the formal legal system; and (iv) encourage civil society oversight of the justice sector.29

JBE will support the development and implementation of the *Law and Justice Sector Strategy* through a program of research and technical assistance aimed at ensuring that reform efforts reflect community perspectives on justice. Initial activities will focus on conducting locality studies on dispute resolution mechanisms.

**Locality Studies on Dispute Resolution & Local Governance**

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25 For J4P purposes, “access to justice” is defined as: “access to fair, effective and accountable mechanisms for protection of rights, control of abuse of power and resolution of conflicts. This includes the ability of people to seek and obtain a remedy through formal and informal justice systems and influence law-making and law-implementing processes and institutions.”
27 Ibid, p.25.
28 Ibid., p. 23.
Locality studies on dispute resolution will be the cornerstone of the JBE program's initial research. These studies will take particular islands or parts of islands as their unit of analysis. The aim of the studies will be to enhance understanding of the type of justice problems people face and how they attempt to resolve these disputes or claims.

Methodologically the locality studies will do two things: (a) track the trajectories of particular claims or disputes that reach or originate in both customary and formal settings; and (b) map local power structures, sources of authority and legitimacy. While recognizing the specificity of the contemporary situation, the locality studies will also include an historical analysis of past institutions and processes and will consider the ways in which history can be used as a motivator for future actions when formulating options for reform. Selection of research localities will be based on data gathered in the course of the development of the JBE program including (a) visits to sites selected by the joint AusAID-World Bank review of rural infrastructure (see below); (b) further discussions with stakeholders and (c) the results of the land research program set out below.

Given the interests of the JBE program these studies will include but not limit themselves to land disputes.

This research will clarify the role of custom leaders in land issues; customary land custodian roles and responsibilities; the trajectory of land disputes originating in both customary and formal settings; the way customary groups are represented in land dealings and share the benefits of land leases (currently and potentially); and women's role in local level dispute resolution and decision-making.

The outcome of the research will assist with: (i) infusing both the land and justice sector reform efforts with an evidence base; (ii) identifying legal empowerment needs and appropriate responses; (iii) targeting effective forms of implementation for legal empowerment initiatives through the Justice Sector Strategy; and (iv) building working relationships between government and non-government actors on policy development and advocacy.

**FY 2009-10 Outputs**

- Report on findings from the locality studies on access to justice drafted and disseminated.

**Land & Natural Resource Management**

Concerns over the rapid alienation of land together with the use of ministerial power to lease land on behalf of kastom groups led to the organization of a National
Land Summit in 2006. The Summit resulted in a number of resolutions.\(^{30}\) The Summit was followed by the development of an Interim Transitional Implementation Strategy and the commissioning of a National Land Review which set out the landscape of land legislation and administration, with a view to guiding both short-term and long-term assistance in the land sector.\(^{31}\) This formed the basis for the Vanuatu short-term Land Reform Initiatives Project funded by AusAID, which began in 2007. Activities undertaken by this project to date include: support to Government for the development of the Land Sector Framework; a compliance audit of the Land Leases Act; zoning activities; a review of the sub-division legislation; and public awareness activities.

The *Land Sector Framework* provides a 10-year roadmap for land reform and establishes expectations for donor assistance. The Framework identifies key areas to which development partners will be invited to contribute. It refers to the following five areas in need of reform: (i) enhancing the governance of land; (ii) engaging customary groups; (iii) improving the delivery of land services; (iv) creating a productive and sustainable sector; and (v) ensuring access and tenure security of all groups.

Notably, the Land Sector Framework includes a focus on research in the thematic areas outlined above. The priority, scope and content of the specific studies will be determined by a multi-stakeholder working group and managed by the Land Sector Coordination Unit within the Ministry of Lands. The government has requested that the JBE program assist with regard to this research agenda, both in terms of designing and executing specific research tasks and in terms of providing assistance to the multi-stakeholder working group on land research.

Research priorities as expressed by the Ministry of Lands include:

i. The roles and responsibilities of traditional leaders with regard to land issues;

ii. The nature of customary land tenure, including identification of (a) fundamental rules, principles and values pertaining to customary land tenure, and (b) the roles and responsibilities of land custodians;

iii. The representation of custom groups in different forms, including trusts and other legal frameworks;

iv. Safe negotiation options ('development without having to sell') for custom groups, including analysis of the benefits and risks associated with ni-Vanuatu using land leases as collateral in relation to access to credit;

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\(^{30}\) The resolutions included: strengthen group customary ownership; participation of all groups in decision-making about land use; remove Minister’s power to approve leases over disputed land and impose temporary moratorium over lease granting; ensure public access to the sea; ensure the Government’s unbiased role as intermediaries in negotiations between parties; and increasing public awareness of land rights and laws.

v. Identifying sources of external support for custom groups ('what is needed and where will it come from'), including scoping of independent agencies with the capacity to provide expert investment advice to land-users and landowners to insure maximum safe returns on benefits from lease agreements.

As a way of embarking on what is clearly a much larger program of work, three initial exercises are proposed: (i) lease profiling, (ii) case-file analysis of land conflicts, (iii) locality studies on land disputes - which will allow for a more detailed description of the principles of customary land tenure and the role of chiefs in particular locations (part of the locality studies on dispute resolution and local governance described under Access to Justice above), and (iv) an informal settlements study. The locality studies will inform many of the areas outlined above - associated with customary land tenure arrangements, the representation of custom groups and the roles and responsibilities of custom leaders.

Lease Profiling

Sue Farran's 2002 paper entitled 'Land Holding and Land Management in Efate, Vanuatu', is the most detailed known analysis of leasing in Vanuatu, and demonstrates the value of profiling exercises providing an overview of leasing patterns. Based on December 2001 data this paper provides information on the number and types of leases on Efate (excluding the Port Vila area), organizations involved in leasing land on behalf of customary owners, some of the major lease-holders (others are unknown) and other areas. Farran's paper indicates that the Minister of Lands is the lessor in relation to around one quarter of all leases in Efate and raises a number of questions relating to the management of trust funds, the overall benefit to landowners of land leasing arrangements and the transparency of ministerial leasing arrangements.

The first stage of JBE research will replicate aspects of Farran’s lease profiling exercise across several new sites. The profile will facilitate analysis of a range of areas related to leasing conditions, categories of lessor and lessee, benefit distribution arrangements, land owner identification aspects and the geographic distribution of leases across each of the sites. This stage of the research will also enable preliminary assessment of land conflicts, including the identification of any disputed leases for which the Minister of Lands is the lessor. This information will facilitate the identification and monitoring of leasing trends in the various areas outlined above, and provide an evidence base to support (i) improvements to the integrity and transparency of lease creation processes and arrangements, and (ii) improvements to the structures whereby custom owners are represented in the lease creation process.
Land Dispute Case-file Analysis

The second stage of the land research will involve a case-file analysis of land dispute cases from each of the target sites. The key characteristics of all land cases which have come before the Island Courts, the Magistrates Courts, the Supreme Court, the Land Tribunal or the Valuer General will be profiled according to type of dispute, parties involved, outcomes and time taken to reach resolution (where this has occurred), and the extent to which local and national power structures are manifest in the dispute. This exercise will also facilitate the identification of a range of categories of land dispute, thereby enabling the development of a framework for further research and analysis, including in-depth qualitative studies of selected case studies.

The results of the research will provide an evidence base for recommendations on improving those processes of conflict resolution which operate at the interface between customary systems of administration and the state, and for the formulation of recommendations for improved lease creation processes and arrangements which reduce the incidence of disputes across key dispute categories (as identified in the research process).

The proposed research will study the disputes related to informal settlements, the forms and conditions of informal leases and identify possible venues for reform. The study will seek to inform Land Sector Framework implementation with respect to urban land management and the development of the Urban Policy, supported by UNESCAP and UNHABITAT, through the Department of Local Authorities. The study will be undertaken in late 2010.

FY 2009-10 Outputs

Interim outputs for Year 1 will include:

- Lease profiling report drafted and disseminated.
- Case-file analysis of land disputes drafted and disseminated.
- Report on findings from locality studies re: land disputes drafted and disseminated.

Local Governance & Community Level Infrastructure

Providing stable governance institutions and ensuring access to basic services are two of the key PAA policy objectives.32 While decentralization has been a regular topic of political debate, there has been little progress over the last few years in expanding state services into rural areas. One attempt by the state to provide basic services at the local level was the Rural Economic Development Initiative (REDI),

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which through Area Secretaries provided grants for small community-development projects. Limited capacity at the local level, coupled with inadequate planning, resource limitations and lack of monitoring has seriously affected its success.33

The Kastom Governance Partnership, an AusAID regional research and training program, is one of the few donor initiatives focusing on the non-state governance sector. The Australian Centre for Peace and Conflict Studies has been working with the National Council of Chiefs and the Vanuatu Cultural Centre to conduct research on customary governance in Vanuatu and also to undertake mediation and conflict resolution training with chiefs. AusAID is also supporting a Church Partnership program focusing on institutional strengthening and capacity building for improved service delivery.

JBE will seek to support the Government’s work on service delivery by exploring ways of linking state and kastom authorities at the local level and opening space to discuss how marginalized groups such as women and youth, can be more fairly represented in community decision-making processes. Initial activities in this field will include (i) case studies on local level decision-making pertaining to community-level infrastructure (part of the World Bank-AusAID review of processes for delivering community level infrastructure); (ii) studies mapping local governance structures including the role of churches (part of the locality studies on dispute resolution and local governance described under Access to Justice above); (iii) an urban governance study

Case Studies on Local Level Decision Making around Rural Infrastructure Projects

In the area of local governance, the JBE program will support the World Bank-AusAID review of processes for delivering community level infrastructure. As part of the review team the JBE program will ensure that the research (and any recommendations) accommodate the legally pluralist nature of village governance in Vanuatu and its impacts on locally implemented projects.

Urban Governance Study

The study will be combined with the study of informal settlements described in the LNRM section above. It will include an in-depth exploration of the interaction and relationship of kastom systems in urban areas. It will also include an analysis of youth organizing initiatives in urban settlements: the reasons behind these successes and failures, and impacts on broader governance outcomes. The study will contribute to the development of strategies for improving community governance in the context of growing urbanization.

FY 2009-10 Outputs

33 Soni, N., Alatoa, H. and B. Harries. 2007. 'REDI Stocktake'.
• Inputs into World Bank-AusAID community infrastructure review.
• Report on findings from locality studies regarding legal pluralism and its impacts on local governance, accountability and decision making drafted and disseminated.

**DIALOGUE & CAPACITY BUILDING**

A country’s ability to undertake empirically based policy reform is directly impacted by local understandings of the policy process and local capacity to conduct rigorous policy-oriented research and analysis. The JBE research and operational activities are informed by this ongoing need and an understanding of the primary importance of engaging local organizations in policy reform and social change. Local organizations need the capacity to research and contextualize research findings to properly own the development process.

Establishing partnerships to increase research capacity is especially important in Vanuatu, where the capacity to conduct research, analysis and policy advocacy is particularly constrained. Both NGO and government representatives identify a lack of ability to develop policy based on sound empirical evidence as a crucial brake on Vanuatu’s development. Most local NGOs focus on advocacy and service delivery rather than empirical research and analysis. Consequently, law making and reform efforts are often undertaken with insufficient preparatory research or public debate. Formal research experience is limited and there are few graduates of social sciences or law to draw upon.

There are, however, existing teams and networks of local volunteers and researchers who have coordinated or collaborated in research exercises and have developed innovative and participatory methods. J4P will develop and expand upon this pool of researchers to conduct empirically-based work and rigorous monitoring and evaluation. Through partnership with these organizations, JBE will invest significantly in developing the skills and capacity of both the institutions and their staff through direct training and more importantly, by facilitating horizontal peer learning between JBE implementing partners on the ground. Fostering local capacity to undertake rigorous research may require the investment of substantial amounts of time and other resources but is ultimately likely to increase the impact of the research.

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34 For example, the Young People's Project and the Field Workers Program with the Vanuatu Cultural Center; Wan Smol Bag; the Foundation of the South Pacific; the Pacific Institute of Public Policy, and the University of the South Pacific.
A number of government agencies and civil society organizations have expressed interest in participating in research training and implementation. JBE will continue discussions with the National Council of Chiefs, the University of the South Pacific, the Foundation of the South Pacific (FSP), the Pacific Institute for Public Policy (PIPP), Wan Smolbag, the Vanuatu Church Council, the Vanuatu National Youth Council and the Vanuatu Rural Development Training Center Association (VRDTA) on the substantive research agenda and the formation of a research reference group.

Inherent in the JBE approach is the promotion of equitable spaces for dialogue and negotiation so grievances and conflicts can be aired and managed. Facilitating equitable multi-stakeholder participation and managing conflicts arising out of processes of change are fundamental aspects of the program itself. Starting before the establishment of the JBE country program, covering the period of program design and continuing through operations, dialogue with partner governments, non-government organizations, donors and citizens has and will continue to form the basis of JBE engagement. The success of the ongoing program is dependent in large part on the ongoing involvement of all key stakeholders.

The Government of Vanuatu is the key driver of JBE's work and will continue to direct the ongoing development of the program as well as lead its implementation. J4P will utilise existing consultation structures in the law and justice sector, the Land Steering Committee, the donor land coordination group and the gender donor coordination group to access feedback on program results, seek guidance on project activities and ensure that ongoing programming remains most relevant to government priorities.

JBE will also form a Reference Group (JBERG) comprised of relevant government, donor, civil society and academic representatives to provide advice on program design, strategic priorities and implementation modalities. In addition to having input into the development of the JBE research agenda and providing researchers to work on the various research activities, the team also plans to have findings from the JBE research program presented to the reference group at regular intervals. Informed by the information generated from the various research activities, it is hoped that the reference group will be in a position to contribute to the advancement of public policy outcomes on the various issues addressed in the course of the research. The group will be equipped with a small secretariat (via a contracted partner organisation) which will assist with the organisation of the meetings and presentations, help prepare press releases for distribution to the media and organize other public outreach activities. The idea is to 'value add' the research data to get the maximum benefit for public debate and policy advancement.

FY 2009-2010 Outputs
- Partnership with local organizations established.
- A team of local researchers recruited and trained in qualitative research methods.
- Series of JBERG dialogues.
- Series of press releases on dialogue outcomes.

**DESIGN & PILOTING OF LEGAL EMPOWERMENT STRATEGIES**

Based on the initial analytical findings, JBE will develop legal empowerment strategies which, along with the research and analytical findings, can be trialed through small operational pilots to test their efficacy in assisting people to achieve successful outcomes. The pilots will be conducted with a view to scrutinizing components for future scaling up (such as creating a national plan for legal services - this could include a mix of: strengthening traditional dispute resolution authorities; community paralegals; increasing legal awareness; links to and outreach from state services; and developing pathways to the state system for certain matters).

Following pilots, successful elements can be scaled up either through expanded operations or inclusion in national policy. Research and analysis can also inform the design of justice or conflict resolution mechanisms that can be appended on to (and/or incorporated into) a range of development projects (e.g. future Bank work on rural service delivery). JBE will seek to use the powerful incentives associated with accessing material resources for key development priorities as a basis for establishing new precedents and procedures for decision making and priority setting. In this way, JBE operations will draw the link between legal empowerment and poverty reduction (e.g. by equipping custom groups with tools to understand and assert their land rights; empowering women to participate in community decision-making processes, and ;assisting marginalized members of communities to benefit from infrastructure development).

**IMPLEMENTATION ARRANGEMENTS**

Overall supervision of the program will be under the Task Team Leader for the EAP–J4P Initiative, based in Washington, DC. The program will be managed by a Vanuatu J4P Program Coordinator based in Port Vila. As mentioned earlier, the program will be implemented in partnership with a local organization and supported by JBERG.

The Ministry of Justice will be the key overall counterpart ministry, with both the Minister and the Director General displaying a desire to work with the Bank in this area. Close partnerships will also be continued with the Ministry of Lands, Ministry of Internal Affairs and the Prime Minister’s Office.
REPORTING

As part of the Regional Initiative, the overall program will be monitored through the use of an electronic Bank standard reporting system for trust fund activities. Reporting will include:

- Monthly email updates
- Yearly progress reports that include questions and ratings on the achievement of grant objectives, implementation of the grant, expected follow-up activities and issues for management attention; and
- A completion report that includes information on progress and additional assessment of lessons learned and outcomes.

Official reporting to the Government of Vanuatu will occur in accordance with the requirements of the Department of Prime Minister. While official reporting to AusAID will take place between Washington and Canberra, informal discussions will occur between the Vanuatu JBE team and AusAID post as necessary. AusAID post has also committed the time of an AusAID staff member for research design and implementation.

MONITORING & EVALUATION

The Regional J4P M&E Framework (currently being developed) will guide the structure and approach of the JBE M&E process. Because of the difficulties of measuring the impact of research activities (the initial focus of the program), monitoring will form the bulk of the M&E activities for the start of the JBE program. This monitoring will primarily consist of documenting existing program activities, rather than undertaking separate M&E activities. Preliminary indicators to measure the achievement of the overall program objectives have been identified in the Results Framework (see Annex III). The framework will be directed by the principles and parameters described below and revised periodically. Specific M&E plans will be developed for each activity and included in individual concept note.

A more thorough independent review will be undertaken within three years of program initiation to evaluate progress towards objectives and the effectiveness of program activities.

Guiding Principles

The following principles will guide the M&E activities:
• **Monitoring and evaluation will be participatory**

Local stakeholders are best positioned to anticipate what impact an intervention might produce and the indicators to best gauge this. Additionally, involving local stakeholders in the process of gauging progress helps foster a sense of ownership. This will include using local advisors to guide project design, implementation and monitoring and facilitating a recurring dialogue with local partners on project progress through the JBERG. At the sub-national level, communities will be actively engaged in monitoring and evaluating program activities, thus becoming the “question-makers” and end users of the information rather than just respondents and subjects of surveys and interviews.

• **Monitoring and evaluation will be part and parcel of project design and implementation**

M&E workshops and training events will be incorporated into the ongoing program as part of the development effectiveness and capacity development foci. These activities will allow the JBE team to fine-tune different aspects of the M&E system and to further develop the local capacity to design and manage such systems. The M&E activity plan will be reviewed periodically by JBERG to encourage the use of the M&E information for policy reform and advocacy work by decision-makers.

• **Monitoring and evaluation will be a composite of various information sources**

JBE will use both quantitative and qualitative methods in order to address the range of processes and interventions planned under the project. Using mixed-method research (triangulating data) will allow the team to get a range of different type of evaluation questions and ensure that results can be integrated, cross-checked, and verified. The inherent flaws in different approaches to empirical research mean that more diversified data sources can enhance the robustness of findings.

• **Evaluation findings, recommendations and lessons will be made public and disseminated to all stakeholders**

M&E results will be disseminated broadly accommodating diverse information needs of different groups, including policy-makers, program managers, program beneficiaries, the general public, the media and academia. JBE’s public website will be maintained to ensure that key statistics, important studies, and progress reports are accessible to the public at large in electronic form. Electronic newsletters/email updates will also be distributed periodically to local stakeholders. Many target groups may not have access to information technology and/or more formal systems of communication, thus the use of
alternative dissemination methods – such as community dialogues, pamphlets, posters, drama, etc will be adopted.

**Indicative JBE M&E framework**

<table>
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<tr>
<th>Objective</th>
<th>Indicators of Success</th>
<th>Means of Verification</th>
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</table>
| **Contribute to evidence-based policy dialogue through improved knowledge** | • Enhanced stakeholder understanding of local level justice, land and governance issues  
• JBE knowledge communicated to relevant stakeholders  
• JBE knowledge integrated into policy dialogues and reform processes | • Series of research reports and policy notes  
• Level of participation in JBE knowledge-sharing forums  
• Workshops, conferences, newsletters, briefing notes, radio talks, media articles, drama performances  
• Reference to JBE work in government and development partner planning and strategy documents |
| **Build capacity within key government agencies and other stakeholders to manage/conduct research, and develop policy and programs based on empirical evidence** | • Number of local researchers trained in mixed-method research techniques  
• Increased level of demand-driven research projects undertaken by local stakeholders  
• Increased understanding and ability of key stakeholders to articulate demands to policy-makers | • Training reports; pre- and post-training surveys, training evaluations, capacity assessment reports  
• Number of research outputs produced  
• Participatory monitoring reports; consultation and knowledge-sharing reports, newspaper articles, radio talks  
• Government, World Bank and development partners’ program design and strategy |
SUSTAINABILITY AND RISK MANAGEMENT

The JBE Program has been designed with a number of features that promote sustainability including:

- A commitment to progressive and long-term engagement.
- An inherently flexible mode of operating which allows the program to adapt to changing priorities.
- A focus on documenting impacts to encourage government buy-in and mainstreaming into national poverty programs.
- A focus on understanding and supporting local institutions and existing initiatives, ensuring J4P is embedded in the environment in which it operates.
- A commitment to capacity building and to the empowerment of reform-minded actors to carry out reform beyond program completion.
- An explicit principle of working with and through government systems to develop ownership and trigger policy change.
- A participatory approach to monitoring and evaluation providing a basis for sustained reform movement.

A Risk Management Framework is provided below.

<table>
<thead>
<tr>
<th>Risks in Operating Environment</th>
<th>Risk Mitigation Measures</th>
<th>Risk Rating*</th>
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<tbody>
<tr>
<td>Political change</td>
<td>Identify key advocates for JBE at national level,</td>
<td>M</td>
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</table>
| leads to instability or decline in the reform agenda undermining impact of program (e.g. current leadership issues within the Ministry of Lands or limited capacity within the Ministry of Justice) | including senior bureaucrats, and ensure government buy-in.  
Ensure program supports government priorities including the Priorities and Action Agenda.  
Work at the local level to support key actors, institutionalize program at community level and increase demand for reform from the bottom up (e.g. through the JBE Reference Group). |
| Suspicion created amongst traditional holders of power as program activities challenge power dynamics and trigger resistance to reform at both the local and the national level | Ensure that reform is engineered from within, the program reflects and strengthens local traditions and enjoys the legitimacy of relevant actors. Both Malvatumauri and the National Council of Chiefs has been invited to participate in the JBE Reference Group.  
Strengthen the capacity of reformist actors both within the government and the community by helping them to constitute coalitions that press for change. |
| Negative Perception of World Bank impacts on program effectiveness | Ensure buy-in from government and civil society stakeholders at both national and local level.  
Stress the grant nature of the project and work on community level participatory research and non-state perspectives of justice.  
Ensure that the program addresses priorities identified by the government. |

**Program Implementation Risks**
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<tr>
<td>Low capacity of local partners impacts on program implementation</td>
<td>Build capacity of local institutions and researchers through training and mentoring. Integrate transfer of knowledge into program activities so that partner organizations are strengthened.</td>
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<tr>
<td>Potential for discord between research outputs and the prevailing status quo</td>
<td>Research activities will adequately reflect local dynamics and transition processes in design and implementation. The JBE Reference Group will provide a forum for key stakeholders to discuss research findings and their translation into policy recommendations.</td>
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<tr>
<td>Tension between research and pressure to show results quickly impacts on quality of interventions</td>
<td>Ensure clear understanding on program phasing and JBE’s iterative approach. Ensure intermediate and periodic analytical outputs, able to be operationalized and targeted at key stakeholders.</td>
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*Risk Rating – H (High Risk), S (Substantial Risk), M (Modest Risk), N (Negligible or Low Risk).*
## ANNEX I: TIMELINE 2009/10

<table>
<thead>
<tr>
<th>Area of Engagement/Activity</th>
<th>August 09</th>
<th>September 09</th>
<th>October 09</th>
<th>November 09</th>
<th>December 09</th>
<th>January 10</th>
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<td>Concept note on locality studies (detailed research design incorporating all three areas of research)</td>
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<td>Preparation of field research guides and training materials</td>
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<td>Concept note peer review</td>
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<td>Training of local researchers</td>
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<td>Field Research (locality studies includes all three areas of engagement)</td>
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<td>Informal settlements concept note</td>
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<td>Local Governance &amp; Service Delivery</td>
<td>Community infrastructure projects site visits (jointly with the Rural Service Delivery team)</td>
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<td>Locality studies – field research and write up on local governance issues</td>
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### Partnership & Capacity Building

- Initial partnership arrangements with local organization (expression of interest, selection, contract negotiation)
- Ongoing training and mentoring of local research team
- JBERG Dialogues