

Report of Country Visit to Vanuatu

26 and 27 March 2012

Introduction

A preliminary review of Pacific Island countries identified Samoa, Vanuatu and the Cook Islands, as a suitable primary focus for possible capacity development measures by the ABS Capacity Building Initiative in the Pacific to support ratification and implementation of the Nagoya Protocol on ABS. Following the success of the Pacific ABS Workshop in Fiji from 19 to 22 March 2012, other suitable countries were identified. These are Palau, the Federated States of Micronesia and the Marshall Islands. Thus each of the Pacific sub-regions can be covered by the ABS Initiative.

The team's country visit to Vanuatu was undertaken back-to-back with the regional workshop in Fiji and was the second country visit after Samoa.

The team consisted of:

- Dr Andreas Drews, Manager ABS Capacity Development Initiative, GIZ;
- Mr Geoff Burton, Adjunct Senior Fellow United Nations University Institute of Advanced Studies; and
- Dr Daniel Robinson, Senior Lecturer, Institute of Environmental Studies, University of New South Wales

Purpose

The purpose of the visit was four fold:

1. To assist the responsible country representative to introduce the Nagoya Protocol to key Ministries.
2. To better understand the complexities and challenges faced by Vanuatu in ratifying the Protocol and in its domestic implementation. This includes its land tenure and governance structures and technical assistance needs.
3. To better understand the scope for suitable case studies based on activities undertaken in Vanuatu.
4. To gain an appreciation of the scope of assistance Vanuatu requires to implement the Protocol.

Host

The visit was organized and coordinated by the Department of Environment Protection and Conservation. Mr Trinison Tarivonda (ICNP ABS National Focal Point and GEF Operational Focal Point) and Ms Donna Kalfatak (former CBD National Focal Point). These two officers were generous with their time and organized two days of meetings with senior officials. Mr Tarivonda also provided explanations in the national language where this was required to provide greater clarity.

Agency meetings were arranged with:

- Department of Environment Protection and Conservation
- Ministry of Trade, Tourism and Industry
- Department of Forests
- Department of State Law

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- Department of Foreign Affairs
- Department of Agriculture

Time constraints and the unavailability of key personal prevented intended meetings with representatives of the Vanuatu Cultural Centre and NGOs.

Overview

Vanuatu signed the Nagoya Protocol late last year and is well-positioned to move to early ratification. It has provision for ABS in its Environment Protection and Conservation Act 2002 at Section 45. This provision enables the government to proceed with ABS by way of Regulations. However, Vanuatu officials made it clear that it has considerable challenges in securing the technical skills to undertake a successful stocktaking and consultation process to enable it to develop a domestic implementation process that suits the unique circumstances of Vanuatu.

Vanuatu has a system of customary-law based land tenure, decentralized local authority at village level and a National Council of Chiefs married with a western political system strongly influenced by an Anglophone and Francophone sensibility. This suggests that care must be taken in accommodating a variety of interests without brokering a system that is too complex or liable to breakdown. Into this governance mix must also be added a strong concern to protect Vanuatu's cultural heritage and the traditional knowledge of its communities.

A variety of legislation exist requiring technical examination to avoid conflicting provisions or duplication of administration. These include:

- Constitution of the Republic of Vanuatu
- Convention on Biological Diversity (Ratification) Act 1992
- Copyright and Related Rights Act 2000
- Environmental Management and Conservation Act 2002
- Forestry Rights Act 2000
- Forestry Rights Registration and Timber Harvest Guarantee Act 2000
- International Trade (Fauna and Flora) Act 1989
- Land Leases Act [Cap 163]
- National Parks Act 1993
- Patents Act 2003
- Plant Protection Act 1997
- Trademarks Act 2003
- Water Resources Management Act 2002

Other relevant legislation identified included the draft National Scientific Research Council Bill, the draft National Biodiversity Advisory Council Bill, the Bill on the Protection of Traditional Knowledge (TK) and Expression of Culture (EC) and the Melanesian Spearhead Group Treaty on the Protection of TK and EC.

Meeting Summaries

1. Department of Environmental Protection and Conservation (DEPC)

The team met with Ms Donna Kalfatak (former CBD National Focal Point) and Mr Trinison Tarivonda (ICNP ABS National Focal Point and GEF Operational Focal Point).

Mr Drews explained the purpose of the ABS Initiative, its initial work programme and length of engagement in the Pacific. He reviewed the Regional ABS Workshop in Fiji and Mr Tarivonda explained in some detail its relevance to Vanuatu. Ms Kalfatak explained her role as National Focal Point and the funding and staffing limitations faced by her agency.

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Mr Burton outlined the function of the Protocol and the likely timing of its implementation. Ms Kalfatak outlined, in turn, the earlier legislative work undertaken in Vanuatu and the two draft bills currently sitting in abeyance. She welcomed the involvement of the ABS Capacity Development Initiative and AusAid and saw a strong role for it in assisting Vanuatu, especially in the areas of technical and legislative assistance.

Dr Robinson discussed the case studies he was engaged on and sought more detail of local activities. Specifically he asked about the IRD supported project on the 'Natural History of Santo'. Ms Kalfatak indicated that the researchers had obtained permits from their department and conducted much of the research in 2006. Initially there was interest in documenting traditional knowledge, however local concerns were raised about what this knowledge would be used for and the research team agreed not to pursue any systematic documentation of traditional knowledge. Ms Kalfatak noted that a documentary had been made about the research in which it appeared that some traditional knowledge had been collected and communicated without sufficient local *informed* consent.

The national coordinator for the project was Mr Ruffino Penado – currently a resident in Vanuatu, but not a citizen. He had recently received copies of the report from the research team and made them available to Ms Kalfatak and her colleagues. Only a few copies seem to be currently available and they indicated that it would be useful to obtain more copies.

Fabien at the Cultural Centre made a documentary after the study. This is where some of the local concerns about disclosure of traditional knowledge have arisen. The documentary also identifies that some local people are not happy because they were not paid for their labor in assisting the researchers. Dr Robinson was not able to obtain a copy of the documentary or report from the Vanuatu Cultural Centre or from the 'Alliance française' store at the French Embassy.

Ms Kalfatak showed the copy of the book she had received:

Bouchet, P., Le Guyader, H., & Pascal, O. (2011) *A Natural History of Santo*. National Museum of Natural History, Paris; IRD, Marseille; Pro-Natura International.

Some details of the project can be found at the IRD website

http://www.ird.fr/recherche/santo2006/pdf/santo_project_us.pdf

Contacts for the main researchers were found from the report and will be contacted in the coming months:

Philippe Bouchet pbouchet@mnhn.fr

Hervé Le Guyader herve.le-guyader@snv.jussieu.fr

Olivier Pascal ol.pascal@freesurf.fr

Rufino Pineda learn@vanuatu.com.vu

2. Department of Forestry

The team together with Mr Tarivonda met with Mr Jude Tabi, Regional Forest Officer, Southern Region, and colleagues.

Mr Drews gave a presentation on the ABS Initiative/AusAid role in the Pacific to support ratification and domestication of the Nagoya Protocol and sought to get a better picture of Vanuatu's needs. Mr Burton in turn discussed the nature of the Protocol and its implications for small island states.

Mr Tabi explained that there were 5 to 6 indigenous priority plant species growing in Vanuatu among them whitewood and sandalwood. Support for research on medicinal properties is needed based on TK of local communities. They wanted assistance as samples go out but nothing comes back. Some of the earlier research partners were identified. The existing Research Permit of the DEPC is used for

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issuing research permits on forest resources. The Forestry staff noted that there needs to be better awareness at the provincial and local government levels about monitoring research and collecting activities.

3. Department of Fisheries

The team together with Mr Tarivonda met with two fisheries officers.

Mr Drews gave a presentation on the ABS Initiative/AusAid role in the Pacific to support ratification and domestication of the Nagoya Protocol and sought to get a better picture of Vanuatu's needs. Mr Burton in turn discussed the nature of the Protocol and its implications for small island states.

The Fisheries officials explained that many marine resources are being collected and taken abroad for research purposes among them sponges and sea cucumbers. Lack of information what happens to the material and the outcomes of the research is a source of concern to them.

They further highlighted that the Fisheries Act provides for scientific research permits. It must be assumed that fisheries related research is addressed by these permits.

4. Department of Trade, Tourism & Industry

The team together with Mr Tarivonda met with Ms Merlyn Leona Temakon, registrar at the Vanuatu Intellectual Property Office.

Mr Drews gave a presentation on the ABS Initiative/AusAid role in the Pacific to support ratification and introduction of the Nagoya Protocol. Mr Burton in turn discussed the nature of the Protocol and its implications for small island states.

There followed a lively discussion on the traditional knowledge aspects of ABS, the issue of disclosure and the role of the WIPO IGC. Mr Burton spoke to published research on the disclosure issue for the WIPO IGC and the NP negotiations and subsequently provided a copy to her. Ms Temakon subsequently provided copies of Vanuatu's IP laws to the team. She advised that she saw the Initiative as an opportunity to create and formulate for Vanuatu regulatory standards for transparency monitoring, compliance and development to facilitate ABS to the benefit of Vanuatu. She followed up this meeting with three suggested areas of cooperation:

- Training and capacity building for the Vanuatu Intellectual Property Office officers particularly understanding the development of biological and genetic resources within the context of ABS in intellectual property.
- Provide financial assistance for national consultations on the draft Bill on the Protection of Traditional Knowledge (TK) and Expression of Culture (EC) and the Melanesian Spearhead Group Treaty on the Protection of TK and EC if these legal instruments will assist in achieving the ABS.
- As part of identifying owners of biological and genetic resources, there is a need to provide assistance to this office (VanIPO), the National Council of Chiefs and the Vanuatu Cultural Center under Section 42 (9) of the Vanuatu Copyright Act No.42 of 2000 for the creation of guidelines for the purposes of identification of traditional owners.

5. Department of Foreign Affairs

The team together with Mr Tarivonda attended the Department of Foreign Affairs and met with Mr Sylvain Kalsakau, UN Desk Officer and MS Roline Lesines, Acting Director of Conventions and Treaties Division and Mr Johnety Jerette.

Mr Drews gave a presentation on the ABS Initiative/AusAid role in the Pacific to support ratification and introduction of the Nagoya Protocol. Mr Burton in turn discussed the nature of the Protocol and its

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implications for small island states. A general discussion followed about the method of signature undertaken and the process for ratification. Ms Lesines thought that a decision on the formal ratification process might have been taken in March by the DCOs but was not sure whether the ratification bill could be presented to Parliament in its April or August session. She raised the issue of complexity and the need for parliamentary action in that time frame. The foreign affairs staff noted the need for assistance such as model legislation to aid implementation.

6. Department of State Law

The team together with Mr Tarivonda met with Mr Jason Pakoasongi, Senior State Counsel.

Mr Drews gave a presentation on the ABS Initiative/AusAid role in the Pacific to support ratification and introduction of the Nagoya Protocol. Mr Pakoasongi advised that he saw the matter as a simple one of process as the decision to sign had been made and taken. Mr Burton and Mr Drews were advised that the process was broadly:

- Instructions from Foreign Affairs to proceed
- Two printed hardcopies of the Nagoya Protocol in English and French (as many additional copies in A4 as needed could be photocopied or down-loaded).
- A Bill for ratification would be introduced (or added to an existing list of treaties requiring ratifications).
- Once passed it would go to the Head of State for assent
- Before introduction of the Bill there would be a meeting of officials to be followed by a meeting of the Council of Ministers (ie Cabinet) at which agreement would be reached for it to proceed.

If the policy decision to proceed has been taken this could happen in April or shortly after. Otherwise, it might occur in perhaps August, subject to the Parliamentary Calendar.

Mr Burton undertook to obtain hard copies of the Protocol on English (min 37 and French (min 25) from the SCBD. (This has been done and SCBD are sending - subject to a short delay as corrected version of the French copies are being printed.)

Mr Tarivonda undertook to check with Ms Donna Kalfatak at Foreign Affairs to see if the policy decision had been indeed made.

Mr Burton undertook to assist with drafting descriptions of the Protocol if such explanation would be required for the ratification documentation.

7. Department of Agriculture

The team met together with Mr. Tarivonda with Mr Vincent Lebot, Deputy Director as the Director was unavailable.

Mr Drews gave a presentation on the ABS Initiative/AusAid role in the Pacific to support ratification and domestication of the Nagoya Protocol and sought to get a better picture of Vanuatu's needs. Mr Burton in turn discussed the nature of the Protocol and its implications for small island states including cooperating with the PGRFA.

Mr Lebot said that the ITPGRFA had not been ratified. It needed the Minister's signature and the agreement of the Council of Ministers but this had not happened - although the paper work had been prepared. He also reiterated the variety of research permits given by different agencies and that this would be a challenge to rationalize or coordinate.

The main Agriculture issue for Vanuatu was food security and the narrow range of genetic diversity among its (imported) traditional crops. This was made worse by changing dietary habits leading to less traditional crops being grown.

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He alerted the team and Mr Tarivonda to the fact that an EU team was visiting Vanuatu to advance an overarching Productive Sector Policy and this involved a review and development of national development outcomes. He suggested that ABS was likely not included and should be. He left this for Mr Tarivonda to follow-up.

Conclusions

In some agencies there is a working knowledge of the Nagoya Protocol. In others they were hearing about it for the first time.

Considerable internal consultation with stakeholders is required. The level of complexity on governance in Vanuatu represents a challenge and requires review and analysis. As does existing legislation and draft laws on TK and EC as well as policy ideas developed to draft legislation ie the National Scientific Research Council proposal. Nevertheless Vanuatu is advanced in the process and may take early ratification and is keen to use the period before coming into force to settle its own system.

This requires considerable technical assistance to be successful. As Vanuatu shares many of the challenges of other Pacific Island States its solutions will be useful to other small island states in the Pacific.

Next Steps

- Preparation of a stocktaking analysis of the ABS relevant existing regulatory framework in Vanuatu with options/recommendations for domesticating the Nagoya Protocol – Geoff Burton