

## PROTECTED AREA MANAGEMENT IN VANUATU

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### I INTRODUCTION

Vanuatu is located in the southwest Pacific Ocean and is comprised of more than 80 islands dispersed over 1 300 kilometres. Its total land area is 12 190 square kilometres of which about 73% is forested, composed of both indigenous hardwood and exotic plantation forests. Approximately 80% of the population is located in rural areas, often located on remote and small islands of the archipelago. The majority of the people are involved in subsistence farming with their limited income usually being derived from copra, cattle, fishing, logging or tourism<sup>1</sup>.

In geological terms Vanuatu is a young country with 20% of its land surface being created in the last 200 000 years. Despite this, it has a range of endemic biodiversity including 130 vascular plant species (of which 39% are orchids), 5 species of butterflies, 5 species of ants, 57 species of land snails, 4 lizards, 2 genera of birds and 5 other endemic species, 12 species of bats and 1 dugong.<sup>2</sup>

Compared to many other Pacific Island countries Vanuatu has not suffered to any great extent from deforestation and loss of habitat. This is partly due to its rugged interior which makes it difficult to log and unsuitable for commercial crops. However, it does face risks from future development including logging for timber and land clearing for agricultural purposes, specifically around lowland areas and small islands where the population is concentrated. Further threats include both

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<sup>1</sup> [http://www.positiveearth.org/vpai/vanuatu\\_map.htm](http://www.positiveearth.org/vpai/vanuatu_map.htm) and *UN Earthwatch System: Island Director: Vanuatu*, 2 March 1998. <<http://islands.unep.ch/CLT.htm>>20 May 2005.

<sup>2</sup> Ibid. A complete list of Vanuatu's biodiversity and protected areas is included in the Country Profile on the EarthTrends web page [http://earthtrends.wri.org/pdf\\_library/country\\_profiles/Bio\\_cou\\_548.pdf](http://earthtrends.wri.org/pdf_library/country_profiles/Bio_cou_548.pdf). Some of these species occur only on the largest island of Espiritu Santo. It may be that other endemic species existed on the main island of Efaté, but due to the pressures on the environment, especially around the capital of Port Vila, the biodiversity has been lost. Much further work needs to be done to identify and catalogue all Vanuatu's species. In the past this itself has proved difficult due to the rugged interior of the larger islands and multitude of smaller islands.

natural and man-made environmental disasters associated with volcanic activities, frequent cyclones, drought, flooding, pollution, deforestation and other disastrous related activities.<sup>3</sup>

Whilst the majority of the population still farm on a small community scale, it is imperative that protective action is taken promptly before serious degradation occurs. The protection of Vanuatu's biodiversity is essential not only for its aesthetic value but also because it is relied upon by local communities for both their subsistence and their livelihoods.

The laws considered in this paper relate to protected area management in Vanuatu with particular emphasis on the Community Conservation Area mechanism provided for under the new *Environment Management and Conservation Act 2002 (EMC Act)*.<sup>4</sup>

## II VANUATU'S LEGAL SYSTEM

From 1906 until 1980 Vanuatu was known as the New Hebrides territory, and was jointly administered by Great Britain and France. Each of those countries made laws for their own nationals and people from other countries who opted to be their subjects. Britain and France also made laws together for the indigenous occupants of the New Hebrides.

In 1980 the country declared its independence and was renamed the Republic of Vanuatu. Under the Constitution the Parliament<sup>5</sup> can make laws for the peace, order and good government of Vanuatu.<sup>6</sup> But the Constitution also provides that British and French laws continue in force until repealed, as well as customary laws.<sup>7</sup>

<sup>3</sup> *State of the Environment Statistics in Vanuatu* by Mr. Trinison Tari, VEU and Mr. Pioni Willie, Vanuatu National Statistics Office, April 2001, 1. <[http://www.unescap.org/drrpad/vc/conference/fl\\_pi\\_27\\_eim\\_va.htm](http://www.unescap.org/drrpad/vc/conference/fl_pi_27_eim_va.htm)> 18 May 2005.

<sup>4</sup> As at 2003 Vanuatu had 28 separate protected areas: *Vanuatu Country Profile*, above n 2.

<sup>5</sup> Vanuatu is a democratic state. All citizens over the age of 18 are entitled to vote for members of Parliament: Article 17 of the Constitution. It is governed by a President, Prime Minister and Cabinet: Articles 33 and 34. The Legislature comprises both Parliament (elected by popular vote) and the National Council of Chiefs (Malvatumauri) (elected by their peers). The Malvatumauri advises parliament on all matters relating to custom and tradition including recommendations for the preservation and promotion of ni-Vanuatu culture and languages: Articles 29 and 30. The judiciary is independent: Article 47. It is comprised of Island Courts, Magistrates Courts, the Supreme Court and Court of Appeal. The Court of Appeal and Supreme Courts have unlimited jurisdiction. The Supreme Court is the court of appeal from Island Courts in relation to land disputes. The Magistrates Courts have a more limited jurisdiction but hear all appeals from Island Courts except those in relation to land disputes. Island Courts deal with criminal and civil matters where the defendant is ordinarily resident within their territorial jurisdiction or the cause of action arose there. In addition they have jurisdiction over all claims in relation to ownership of land within their territorial boundaries. Island Courts are especially empowered to administer customary law prevailing within their territory so far as it is not in conflict with any written law nor contrary to justice, morality and good order: *Vanuatu: Court System*, 2001. <[www.paclii.org/vu/courts.html](http://www.paclii.org/vu/courts.html)> 20 May 2005.

<sup>6</sup> Article 16(1).

<sup>7</sup> Article 95.

Therefore, since 1980 the law applying in Vanuatu comes from a number of sources.

During the colonial period, much of Vanuatu's land was taken over by French and English plantation owners keen to exploit its resources. This resulted in many indigenous people being alienated from their land.<sup>8</sup> Under the new Constitution<sup>9</sup> this position was reversed and ownership and use of all land is now based upon customary law.<sup>10</sup> Although problems were encountered in identifying the rightful owners, today the majority of land is held by traditional owners many of whom live in the biodiversity rich remote rural areas. However, these people were mostly ill equipped to make long term decisions about the sustainable use of their land. Because the vast majority of land is held under customary law the implementation of public education and awareness and community participation programs became essential to achieving sustainable development in Vanuatu. As will be illustrated below, these Agenda 21 principles have been very successfully implemented.

### III VANUATU'S ENVIRONMENTAL LAWS

Vanuatu is a party to a number of international environmental treaties including the *Convention on Biological Diversity*,<sup>11</sup> *Convention on International Trade in Endangered Species*,<sup>12</sup> *World Heritage Convention*,<sup>13</sup> and the *Convention to Combat Desertification*.<sup>14</sup> However, as with many developing countries, Vanuatu has experienced difficulties in fulfilling its obligations chiefly due to a lack of funding and technical resources.

The Constitution of Vanuatu provides fundamental duties that all citizens owe to themselves and each other. Importantly these include the protection and safeguarding of the environment for the present and future generations.<sup>15</sup> However,

<sup>8</sup> *Vanuatu's Land History*, August 2002, 1.

<[http://www.hawaii.edu/hga/ASGI02/anna\\_naupa/land\\_history.htm](http://www.hawaii.edu/hga/ASGI02/anna_naupa/land_history.htm)> 1 June 2005.

<sup>9</sup> Article 74 Constitution. In addition, no land may be bought and sold by outsiders without government approval.

<sup>10</sup> One of the major problems that has plagued conservation projects in Vanuatu is land disputes. Prior to the introduction of Customary Land Tribunals, there were six levels of resolution of disputes. Now although customary dispute resolution means are still available, if they fail then the Customary Land Tribunals are able to resolve disputes. Combined with the decentralisation policy, this system has been able to be introduced into rural areas of Vanuatu: *Environment and Development in Coastal Regions and in Small Islands*, above n 10, 3.

<sup>11</sup> Signed on 9 June 1992 and ratified on 25 March 1993. The domestic legislation being the *Convention on Biological Diversity (Ratification) Act 1992*.

<sup>12</sup> Signed on 17 July 1989 and ratified 15 October 1989. The domestic legislation is in *The International Trade (Fauna and Flora) Act 1989*.

<sup>13</sup> Ratified 13 June 2002 but at present has no listed sites.

<sup>14</sup> Signed 28 September 1995 and ratified 10 August 1999 entering into force on 8 November 1999: <<http://www.unccd.int/>>.

<sup>15</sup> Article 7 Constitution: 'Every person has the following fundamental duties to himself and his descendants and to others – (b) to recognise that he can fully develop his abilities and advance his true interests only by active participation in the development of the national community; ... (d) to protect the Republic of Vanuatu and to safeguard the national wealth, resources and

Article 8 goes on to state that these fundamental duties are ‘non-justiciable’ unless provided by law elsewhere. Although these duties do not mention the words ‘*sustainable development*’ they provide a suitable foundation for the implementation of such laws and strategies.

There are a number of pieces of domestic legislation in Vanuatu that provide for the protection of biodiversity. These include some outdated English and French laws<sup>16</sup>. The first legal basis for protected area management is contained in the *Decentralisation and Local Government Regions Act 1994 (DLGR Act)*. One problem initially encountered in Vanuatu was the colonial centralised governmental system. This was unsatisfactory for a country with a widely distributed population, often located in remote areas with poor communication links. Under the *DLGR Act*, local or provincial governments were established. These provincial councils have power to outline, create and draw up regulations governing environmental protection zones such as reserves, subject to any national legislation covering the area.<sup>17</sup>

Secondly, under the *National Parks Act 1993 (NP Act)* national parks or nature reserves can be declared in respect of areas of outstanding natural beauty, threatened species habitats, environmental significance or containing unique eco-systems.<sup>18</sup> Under s 3 of the *NP Act* a National Parks Board<sup>19</sup> is established whose responsibility it is to determine areas and categories of areas suitable for protection, make recommendations as to the declaration of protected areas and prepare management plans. Before making any recommendations the Board is to consult with community landowners and to place a conspicuous notice in the area in question.<sup>20</sup> However, in relation to the preparation of a management plan, s 10 of the *NP Act* merely provides that the community (including customary landowners) *may* be consulted. There is no reference to the consideration of sustainable

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environment in the interest of the present generation and of future generations; ...’ Interestingly the Constitution contains no definition of environment. However it is defined in s 2 of the *Environmental Management and Conservation Act 2002* as including and land water, the atmosphere, all organic and inorganic matter and living organisms and the interacting natural cultural and human systems involving those element.

<sup>16</sup> However, there is no relevant colonial law relating to protected area management.

<sup>17</sup> *Decentralisation and Local Government Regions Act*, s 20. At the provincial level there are six provinces: Malampa, Penama, Sanma, Shefa, Tafea and Torba. By tradition custom chiefs exercise customary authority within local communities and the Malvatumauri have a constitutional role at the village, island and provincial levels: *Vanuatu: System of Government*.

<sup>18</sup> ‘2. (1) The provisions of this Act shall have effect for the purpose of protecting and preserving in their natural state, as national parks or nature reserves, areas of Vanuatu, which (a) have unique eco-systems, genetic resources or physical and biological formation; or (b) constitute the habitat of threatened species of animals and plants of outstanding value from the point of view of science and conservation; or (c) have outstanding natural beauty; or (d) have any archeological or other scientific or environmental significance; and for promoting scientific study and enjoyment thereof by the public.’

<sup>19</sup> The members of the Board are all government employees with the exception of the Chairman of the National Council of Chiefs, *National Parks Act 1993*, s 4.

<sup>20</sup> *National Parks Act 1993*, s 8.

livelihoods although the management plan is to take into account customary land use including hunting and gathering.<sup>21</sup>

Thirdly, the *Forestry Act* 1982 contains limited provisions in relation to conservation. Firstly, it is an offence to conduct clearing operations within 10 metres of any stream where it is likely to cause soil erosion, without first obtaining Ministerial approval.<sup>22</sup> Additionally, the Minister may forbid or restrict clearing or utilisation operations to preserve ecology, prevent soil erosion, conserve an area of land or provide for public land, and may provide for the management, control and protection of such land.<sup>23</sup>

The limitation of each of these laws is that they provide a top down application of land conservation with little opportunity for community consultation or planning for sustainable livelihoods. Nor do they require consideration of traditional knowledge and conservation practices notwithstanding that traditional methods of land protection such as *tabus* are available. *Tabus* can take the form of restrictions on the use of land or specific resources, which can be imposed by chiefs and traditional landholders or have been preserved due to local custom (*kastom*) and beliefs. Boundaries of protected areas are often marked with stones and landforms and many *tabu* areas are clearly marked by leaves that are highly specific in the meaning they convey.<sup>24</sup> However, the *tabus* are not legally enforceable under Vanuatu's legislation and require people to show respect for chiefs and local traditions. In addition, non-locals who have not been educated in their significance can misunderstand them.

#### IV PROTECTED AREA MANAGEMENT

Historically, forestry protection has been unsuccessful in Vanuatu. This is despite key conservation areas being identified to provide protection of ecologically important biosystems. Principally, this was because of resistance by customary land owners to lease (or otherwise provide control of) traditionally owned land to the government to provide for protected areas. Their, not unfounded, fear was that the establishment of a protected area would deprive them of their consumption of forest resources.<sup>25</sup>

In the 1990's, frustrated by their lack of success and concerned with increasing environmental problems from logging, the Vanuatu Government began a participatory program to determine if the traditional land owners would be

<sup>21</sup> Ibid, s 10(3)(h).

<sup>22</sup> *Forestry Act* 1982, ss 20 and 22.

<sup>23</sup> Ibid, s 21. Under s 23 it is an offence to breach any order under s 21.

<sup>24</sup> Cycad leaves (namele), wild canes and Cordyline leaves (nangaria) are common markers, but by no means the only ones: [www.biodiversity.com.vu/vans\\_biod.htm](http://www.biodiversity.com.vu/vans_biod.htm).

<sup>25</sup> *United Nations ESCAP Virtual Conference: The Vathe Conservation Area*, undated, 1. <[www.unescap.org/drpad/vc/conference/ex\\_vu\\_125\\_vca.htm](http://www.unescap.org/drpad/vc/conference/ex_vu_125_vca.htm)>18 May 2005. *Forest Conservation in Vanuatu*, undated, 1. <[www.tellusconsultants.com/conservn.html](http://www.tellusconsultants.com/conservn.html)>20 May 2005.

interested in setting up conservation areas to protect their resources.<sup>26</sup> Encouragement was given to the chiefs to assess their own conservation needs and wants without the government forcing these ideas on the customary landowners. The issues discussed included logging and also conservation and environmental protection.

This scheme was relatively successful at defining and proclaiming some areas as conservation areas, with the landowners as guardians and monitors. However, the problem with this system was that often the villages targeted as being suitable, were the ones that were easy for forestry staff to get to, rather than the more ideal remote areas. In addition the lack of follow up by governmental staff contributed to the problems, although later plans involved the Department of Forests running training courses to improve the methods of its forestry officers.<sup>27</sup>

It is with this background that the *EMC Act* was passed in 2003.<sup>28</sup> The legislation is described as an 'Act to provide for the conservation, sustainable development and management of the environment of Vanuatu, and the regulation of related activities'.

Although it was originally designed to be a comprehensive legislative framework covering all aspects of the environment, in its present form the *EMC Act* only deals with three areas in detail: Environmental Impact Assessment (*EI Act*), Bioprospecting and Community Conservation Areas (CCA).

For the purposes of this paper I will only consider the CCA provisions. The *EMC Act* provides for the protection and registration of CCAs where a site possesses unique genetic, cultural, geological or biological resources<sup>29</sup> or that constitutes the habitat of species of wild fauna or flora of unique national or international importance. Furthermore, CCAs may be registered in relation to areas that merit protection under the *World Heritage Convention*.<sup>30</sup> If the customary landowners agree to establish a CCA the Director of the Environment Unit may provide assistance to verify land rights and identify and evaluate the area and the conservation, protection and management options proposed.<sup>31</sup> Prior to registration of a CCA the Director must ensure the identification of accurate boundaries of the area, that the conservation, management or preservation objectives are identified and that appropriate consents and approvals are obtained. Most importantly an

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<sup>26</sup> Known as the Participatory Rural Appraisal (PRA) Programme: *Forest Conservation in Vanuatu*, above n 25, 1.

<sup>27</sup> *Forest Conservation in Vanuatu*, above n 25, 1-3.

<sup>28</sup> The *Environment Management and Conservation Act 2002* was assented to on 31 December 2002 and commenced on 10 March 2003.

<sup>29</sup> Under *Environment Management and Conservation Act 2002*, s 2 biological resources includes 'genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity'.

<sup>30</sup> *Environment Management and Conservation Act 2002*, s 35.

<sup>31</sup> *Ibid*, s 36.

appropriate conservation, protection or management plan must be developed prior to registration to ensure that the conservation objectives are achieved.<sup>32</sup>

This approach allows the community to play a significant role in determining the form of the conservation plan thereby taking into account traditional landholders' issues.<sup>33</sup> It permits active conservation management whilst providing for sustainable livelihoods. There is no loss of control over the land, as the chiefs still make decisions about the CCA. Therefore the scheme is superior to both protected area management under the *NP Act* and a simple customary conservation plan.<sup>34</sup> Additionally, the scheme provides a mechanism by which the government can preserve areas of land, which are often remote and would otherwise exceed the resources of the VEU. Rather than the direct imposition of western law on traditional communities the *EMC Act* provides for legal protection to be given to what is basically a customary land conservation agreement.

A further advantage of the CCA is that it allows the incorporation of traditional knowledge and practices into conservation and management plans thereby preserving them for the future. In a country such as Vanuatu with a long history of indigenous knowledge and cultural practices, much of which incorporates sustainability principles and management strategies, this knowledge and practice must be preserved. This knowledge is often under threat due to modernisation, urbanisation, reduced respect for chiefs and imposition of western laws. Although customary law is enforceable under the Constitution, traditional knowledge and practices are not protected.

One criticism of the CCA scheme is that it might lower the chiefs' status and power by interposing a government department (VEU) to protect areas which it would never have the capacity to control. However, as set out above it would only be a matter of time before increased resistance to chiefs' rulings was experienced. Indeed this has been experienced in Vanuatu in those villages closer to towns where Police are often required to enforce customary law.

It is noticeable that the *EMC Act* does not contain a detailed mechanism of how to implement the provisions. The wording is general and fails even to provide a supportive framework let alone specific regulatory mechanisms. From a western perspective this is open to criticism. But, clearly the CCA provisions are being implemented successfully (as discussed below). This is due in large part to the principles of sustainable development and conservation already being part of the

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<sup>32</sup> Ibid, s 37.

<sup>33</sup> Professor D Farrier, *Emerging Patterns in Environmental Legislation in Pacific Island Countries*, (2003) *Journal of South Pacific Law* 5, 8. Professor Farrier notes that this is rare for Pacific Island Jurisdictions. The exception being the *Rarotonga Environment Act 1994-1995* enacted in the Cook Islands.

<sup>34</sup> Declaration of a National Park or reserve would restrict land use by the traditional owners. Alternatively, if a customary agreement were reached in relation to land use it would be open to abuse or inter village dispute without the provisions of the *Environment Management and Conservation Act* to support it and provide for legal enforcement.

cultural heritage and custom of Vanuatu's indigenous people. Therefore, a further benefit of the *EMC Act* provisions is that they actively encourage traditional landholders and communities to practice resource conservation using practices that have evolved over generations.

At this stage it remains to be seen how widely the CCA provisions will be utilised. The main problems likely to be encountered in the implementation of this legislation, are lack of funding and resources. This is not limited to financial issues alone. Suitably qualified technical and administrative staff as well as monitoring and testing facilities are essential. The Vanuatu Environment Unit (VEU) is responsible for administration of the *EMC Act*, which falls under the Ministry of Lands, Natural Resources, Geology, Energy and Environment. The VEU also has responsibility for advising the government on environmental issues, implementation of policies and distribution of environmental information. The VEU appears to have only 3 permanent professional staff and an additional 4 NBSAP Project staff.<sup>35</sup> This is clearly inadequate if further CCAs are to be registered in the future. Clearly, it would be preferable for the responsibility for administration of the *EMC Act*, *NP Act* and *Forestry Act* to fall under one department. Each needs monitoring and enforcement personnel and equipment. As the National Parks Board has responsibility for maintenance of parks and reserves it appears unnecessary to have another department responsible for CCAs. At present the Department of Forests appears to have much greater resources in terms of staff and regional offices which could be jointly utilised.

#### V VATTHE COMMUNITY CONSERVATION AREA

The Vatthe Community Conservation Area (Vatthe CCA), on the island of Espiritu Santo, illustrates the effectiveness of the provisions of the *EMC Act* and institutional arrangements made in relation to the CCAs. The Vatthe CCA covers 2,276 hectares of lowland alluvial rainforest.<sup>36</sup> The land is owned by traditional families living in the Sara and Matantas villages. The Vatthe CCA is of particular significance culturally because it has long been known as a holy place of peace and power guarded by the snake spirit Alawuro.<sup>37</sup> It is also ecologically important as it is home to at least four endemic bird species and one endemic fruit bat species within probably the largest lowland rainforest area in Vanuatu.<sup>38</sup>

The idea of protecting the area originated in 1993, following biodiversity surveys conducted by the Vanuatu Environment Unit and the Royal Forest and Bird

<sup>35</sup> *Vanuatu's Biodiversity – Clearing House Mechanism*, 17 December 2002. <[http://www.biodiversity.com.vu/cont\\_us.htm](http://www.biodiversity.com.vu/cont_us.htm)>18 May 2005.

<sup>36</sup> *Ministerial Conference on Environment and Development in Asia and the Pacific 2000 – The Vatthe Conservation Area*, 18 May 2000, 1. <[www.unescap.org/mced2000/pacific/background/vanuatu.html](http://www.unescap.org/mced2000/pacific/background/vanuatu.html)>18 May 2005.

<sup>37</sup> *History of the Vatthe Conservation Area*. Royal Forest and Bird Protection Society of New Zealand, 2001, 1. <[www.forestandbird.org.nz/vanuatu/history.asp](http://www.forestandbird.org.nz/vanuatu/history.asp)>20 May 2005.

<sup>38</sup> *Vatthe Conservation Area*. Royal Forest and Bird Protection Society of New Zealand, 2001, 1. <<http://www.forestandbird.org.nz/vanuatu/conservation.asp>>20 May 2005



Protection Society of New Zealand.<sup>39</sup> Thereafter, in 1994, the Vatthe Conservation Area Project (VCAP) was launched utilising funding obtained through South Pacific Biodiversity Conservation Programme (SPBCP) under the South Pacific Regional Environment Programme (SPREP). However, due to a fierce land dispute between the traditional owners the project initially lacked community support. But, in 1995 the two families made peace and decided to abandon their plans for logging the area and seek to protect the forests and wildlife. In 1996 the communities formed a joint management committee known as the Conservation Area Community Committee (CACC). The aim of the VCAP was to provide technical assistance to train the communities to manage the conservation area themselves whilst also providing alternative sustainable livelihoods for the people of the villages. At the same time infrastructure was improved for the villagers including the provision of solar powered lighting, a new water well, improved sanitation and radio-telephone communication links.<sup>40</sup> Eco tourism was encouraged by training local guides and construction of a handicrafts centre and tourist accommodation bungalows which were completed in 1997.

In June 2004 Vatthe was officially declared a CCA under the *EMC Act*. It was the first such area to be registered under the Act. The registration required the communities to develop a Conservation Management Plan. The plan provides for biodiversity protection by prohibiting the killing of certain species<sup>41</sup> whilst permitting the limited hunting of other species.<sup>42</sup> All harvesting is overseen by local monitors who have the power to impose fines or order community service work. Persistent offenders can be taken to court. At the same it provides for the controlled continuation of most traditional uses of the forest area including collection of medicinal plants and timber for canoes, firewood and houses.

This project, resulting in the Vatthe CCA, is an excellent example of the incorporation of biodiversity protection measures whilst maintaining sustainable livelihoods. It was brought about by cooperation with customary landowners firstly by educating them, then involving them in conservation and management planning of the CCA, and lastly by empowering them to implement and legally enforce the plan to meet its objectives.<sup>43</sup>

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<sup>39</sup> Although the surveys were designed to cover the whole of Vanuatu, unfortunately the Big Bay area was the only area comprehensively investigated: *UNESCAP Virtual Conference: The Vatthe Conservation Area*, above n 25.

<sup>40</sup> *Ministerial Conference on Environment and Development in Asia and the Pacific 2000 – The Vatthe Conservation Area*, above n 36, 2.

<sup>41</sup> Such as turtles, coconut crabs and megapodes.

<sup>42</sup> The hunting of the pacific flying fox and pacific imperial pidgeon is permitted during a limited season. Bullocks and pigs are also protected. Fishing in the Matantas River is permitted only if a villager is sick or an older person needs meat. Fishing in the Jordan River is also controlled for the first time.

<sup>43</sup> This is an important point as in other areas of biodiversity protection the decisions of Chiefs in village courts are not legally enforceable: *Environment and Development in Coastal Regions and in Small Islands*, above n 10, 4. However, land disputes settled by the Chiefs are enforceable under the *Customary Land Tribunal Act 2001*.

VI THE INCORPORATION OF THE PRINCIPLES OF AGENDA 21<sup>44</sup>

Vanuatu is a signatory to both the RIO Declaration and Agenda 21. However, it is not a country that is required to report on its Agenda 21 status and therefore the United Nations does not hold any significant information in relation to its implementation.<sup>45</sup> However, Vanuatu has attempted to integrate Agenda 21 principles at all levels: The Constitution, legislation, support of key international treaties,<sup>46</sup> integrated environmental policies and strategies,<sup>47</sup> public awareness and education,<sup>48</sup> community participation and government interaction with the indigenous population<sup>49</sup> and other groups within the community such as women.<sup>50</sup>

Agenda 21 is divided into four sections: Social and economic dimensions, conservation and management, strengthening the role of major groups and implementation. In this paper the focus is on Chapter 8 which deals with decision making for sustainable development. In summary, it calls for Governments to create sustainable development strategies to integrate social and environmental policies at all levels. This involves socially responsible economic development whilst protecting the natural resources and the environment for the benefit of future generations. The strategies should be developed through the widest possible public participation.<sup>51</sup>

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<sup>44</sup> Agenda 21 was adopted at the United Nations Conference on Environment and Development (UNCED) held in Brazil in 1992. It is a comprehensive plan of action to be taken globally, nationally and locally by organizations of the United Nations System, Governments, and Major Groups in every area in which human impacts on the environment: <http://www.un.org/esa/sustdev/documents/agenda21/index.htm>.

<sup>45</sup> Environmental Institutions and Governance. *Vanuatu Country Profile*, above n 2.

<sup>46</sup> Agenda 21, Chapter 39.

<sup>47</sup> Ibid, Chapters 8 and 10.

<sup>48</sup> Ibid, Chapter 36.

<sup>49</sup> Ibid, Chapter 26.

<sup>50</sup> The role of women, although not specifically mentioned in the *Environment Management and Conservation Act 2002* has been reflected in *National Parks Act 1993*, s 13(1)(b) which provides that a member of the National Council of Women (NCW) may be appointed to the management committee of a declared area along with a member of the National Parks Board and representatives of the local authority, custom land owner, and chiefs in the relevant area.

<sup>51</sup> '8.1. This chapter contains the following programme areas: (a) Integrating environment and development at the policy, planning and management levels; (b) Providing an effective legal and regulatory framework; (c) Making effective use of economic instruments and market and other incentives; (d) Establishing systems for integrated environmental and economic accounting.' In addition, Chapter 10 encourages an integrated approach to the planning and management of land resources including the promotion of public awareness and community participation<sup>51</sup> and strengthening of information systems. Chapters 14 and 15 promote sustainable agriculture and rural development and conservation of biological diversity respectively. Chapter 22 recognises that indigenous people and their local communities have a vital role in environmental management and development because of their knowledge and traditional practices. Chapter 20 recognises that women have a vital role in environmental management and development and their full participation is therefore essential to achieve sustainable development.

As set out above the Constitution of Vanuatu contains a commitment to sustainable development. At the international level this has been reflected in its ratification of key treaties. Vanuatu is also a member of the South Pacific Regional Environment Programme (SPREP). SPREP is a regional organisation established by the governments of the Pacific region countries to protect and improve the environment and ensure sustainable development. The newly adopted *Action Plan for Managing the Environment of the Pacific Island Region 2005-2009* reflects all the principles of Agenda 21 including development and implementation of national sustainable development strategies and enhancement of integrated planning and management mechanisms and tools for sustainable development, environmental monitoring and reporting, capacity building to manage multilateral environmental agreements, public awareness and education and knowledge management.<sup>52</sup> In addition mechanisms for implementation are dealt with involving both intra member co-operation to address common environmental issues and the active involvement of local communities.<sup>53</sup>

At the domestic level Vanuatu has developed a National Biodiversity Strategy and Action Plan (NBSAP)<sup>54</sup> and prepared a National Biodiversity Report (NBR). This work was undertaken by the VEU with assistance in the form of funding which was obtained from Global Environment Facility (GEF) through United Nations Environment Programme (UNEP). This resulted in a better understanding of Vanuatu's biodiversity including the identification of a new genus of freshwater fish, increased capacity building of local staff and improved multi-sectoral involvement in biodiversity conservation.<sup>55</sup> It also led to a follow on project (Phase II of NBSAP) funded by GEF and UNEP, to identify capacity building needs within four thematic areas identified in the NBSAP.<sup>56</sup>

Vanuatu's National Forest Policy and Statement provides a strategy for action for sustainable forestry management. The Policy was prepared using funding from the UNDP with support from the Pacific Islands Forests and Trees Support Programme. Contributions were sought from representatives of the government (at the national and provincial levels), chiefs and community leaders representing women, youth, churches and the forest industry. The principal national goal for the forest sector is to ensure the sustainable management of Vanuatu's forests to achieve greater social

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<sup>52</sup> Paragraphs 6.1-6.6.

<sup>53</sup> Paragraphs 7.1-7.8.

<sup>54</sup> The strategy had six major objectives including: 1. Protection and wise use of biodiversity. 2. Application of policy, planning and legal mechanisms to enable sustainable management of biodiversity. 3. Research, assessment and monitoring of biodiversity. 4. Capacity building for environmental management. 5. Environmental education, awareness and information sharing. 6. Participation of local communities in the management of biodiversity. It also highlighted terrestrial, freshwater, coastal and marine ecosystem biodiversity.

<sup>55</sup> *National Biodiversity Strategy Action Plan*. Vanuatu Environment Unit.  
<<http://www.biodiversity.com.vu/nbsap.htm>> 18 May 2005.

<sup>56</sup> The four areas are scientific capacity, functional biodiversity management capacity, indigenous knowledge and financial and institutional capacity.

and economic benefits for current and future generations thereby incorporating key principles of Agenda 21.

In relation to protected area management, Vanuatu has enacted effective environmental laws. Although the *EMC Act* is not framework legislation it must be considered in its context: within a combined legal system of western style legislation and customary law. Many customary laws in Vanuatu are not written but support the implementation of conservation and more particularly sustainable development. As Professor Farrier and Hewison have noted, the *need* to enact comprehensive environmental legislation cannot be assumed.<sup>57</sup> Therefore, it remains to be seen whether further framework laws are needed or whether in the long-term legislation in the form of the *EMC Act* will be sufficient. It is possible that the failure to enact specific provisions may result in a lack of widespread utilisation. However, it is clear that within about a year of the enactment of the *EMC Act* the Vatthe Community Conservation Area was declared.

Community education and participation is the key feature of the CCA scheme. Even prior to the enactment of the *EMC Act*, the VEU had been active in environmental education in relation to community conservation projects by conducting community workshops to help people understand the importance of protecting areas of forest and its biodiversity, promoting scientific study and encouraging alternative industries.<sup>58</sup> One of these projects directly facilitated agreement between the Sara and Matantas people resulting in the Vatthe CCA, as outlined above.

The Vatthe CCA and Conservation Management Plan represents an excellent example of the incorporation of the principles of Agenda 21 by integrating consideration of economic, environmental and social factors at the planning and management levels, improving systems, promoting public awareness, strong consideration of sustainable development and maintenance of sustainable livelihoods, appropriate decentralised management, control and enforcement and utilisation of the new CCA provisions of the *EMC Act*. Local landowners have been empowered to enforce the Plan through the use of traditional punishments as well as the force of law.<sup>59</sup> It also illustrates that incentives mechanisms can be used to achieve community based conservation areas. In that case much needed

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<sup>57</sup> Farrier, above n 33, 1. *Environmental Law Reform in Vanuatu - The Challenges facing a Small Island Developing Nation* by G Hewison. 2(1) Asia Pacific Journal of Environmental Law at pages 27-38. Reproduced in in Capacity Building for Environmental Law in the Asia and Pacific Region – Approaches and Resources. Volume I. Craig, Robinson and Kheng-Lian. Asian Development Bank, 2003, 313-314.

<sup>58</sup> Trinison Tari, Vanuatu Environment Unit, *Conservation for Conflict Resolution*, undated, 205 to 223. < [http://www.iges.or.jp/en/pub/eLearning/ee/pdf/case\\_studies\\_Vanuatu.pdf](http://www.iges.or.jp/en/pub/eLearning/ee/pdf/case_studies_Vanuatu.pdf)> 21 April 2005. Trinison Tari sets out in detail the Big Bay project as well as the work done in the Loru Protected Area and Narong Marine Park, and the One Little Bag Theatre. He provides an excellent account of the results, achievements and lessons learnt from the projects.

<sup>59</sup> Traditional punishments might involve fines of one pig, kava root, or other food. Offenders can still be taken to court if necessary. In areas closer to towns the police are sometimes used to enforce the Chiefs' rulings: *Environment and Development in Coastal Regions and in Small Islands. Assessment of village-based marine resource management measures*, above n 10, 4.

infrastructure was provided as well as microfinancing to introduce new sustainable livelihoods.

## VII CONCLUSION

Human beings originally arrived in Vanuatu about 3,500 years ago.<sup>60</sup> However, for the last couple of hundred years the country was the subject of an exploitative period of colonisation. Despite its recent independence, many of the problems facing Vanuatu today are a direct result of its colonial past. These include land disputes (encompassing terrestrial areas, reefs and fishing grounds) and environmental problems caused by prior logging for timber and clearing for plantations. However, from an environmental perspective, Vanuatu remains relatively unscathed. And from an environmental law perspective it is a progressive young country. From its adoption of the principles of sustainable development and intergenerational equity in the Constitution to the newly enacted *EMC Act* it supports the principles of Agenda 21 and the RIO Declaration. Not only are these principles endorsed in words but, as can be seen from the example of the Vatthe CCA, they have been effectively implemented. The challenge for Vanuatu is to utilise the CCA provisions more widely, especially in areas previously identified as rich in biodiversity. In addition the CCA provisions could be used not only for protection of rural areas but also in relation to urban land management.<sup>61</sup> It is imperative that Vanuatu continue to take action now because the environmental degradation is not yet severe. Furthermore, as the ownership of land is in the hands of traditional owners it is imperative that they be involved in the protection of biodiversity. I believe the *EMC Act* CCA provisions provide a sufficient framework for this to occur. This has been facilitated by the strong traditional conservation ethic that existed pre-colonial times. Traditional conservation practices were already in place prior to British and French control and many have been continued, particularly in the area of marine conservation.<sup>62</sup> The power of the *EMC Act* is that it allows the anchoring of new law in the customary knowledge and practices of the past, thereby gaining increased respect with indigenous people and the best possible chance of success.

No doubt it would have been easier for the Government of Vanuatu to commit to economic development through the commercial exploitation of natural resources. It should be congratulated on its efforts to protect non-renewable resources whilst many developed nations continue to log their old growth forests and degrade their environment. The core values and land ethic evident in Vanuatu serve as a valuable lesson to many other countries.

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<sup>60</sup> <http://www.infoplease.com/ipa/A0108132.html>.

<sup>61</sup> *Vanuatu Forest Conservation Area*. Interview with Russell Nari, 6. Russell Nari indicated in 2002 that a park was being considered on Efate in a more urban area. However, at the time of writing, little other information was available.

<sup>62</sup> *Environment and Development in Coastal Regions and in Small Islands*, above n 10, 1.