

3 November 2008

Public

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## **Vanuatu**

### **Submission to the UN Universal Periodic Review**

**Fifth session of the UPR Working Group of  
the Human Rights Council**

**May 2009**



## **Executive summary**

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:<sup>1</sup>

In section B, Amnesty International raises concerns over inadequate constitutional non-discrimination provisions, discriminatory customary laws, restrictions on citizenship, gender discrimination and the status of ratification and implementation of international human rights treaties.

In section C, we describe concerns about violence against women.

In section D, Amnesty International makes recommendations for action by the government to protect human rights in the areas listed.

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<sup>1</sup> Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

# Vanuatu

## Amnesty International submission to the UN Universal Periodic Review

Fifth session of the UPR Working Group, May 2009

### B. Normative and institutional framework of the State

#### Constitutional protection from discrimination of marginalised groups

1. Provisions in the Constitution<sup>2</sup> provide for protection against discrimination on the grounds of race, origin, religious or traditional beliefs, political beliefs and sex. It does not, however, include other disadvantages, such as living with HIV/AIDS, disability, economic status or sexual orientation. There is a risk of human rights violations against such marginalised groups if there are no guarantees of protection in the Constitution. The case of Irene Malachi,<sup>3</sup> a health worker who was the first Ni-Vanuatu person whose HIV status was made public and who subsequently suffered gross discrimination by the authorities and society, highlights the importance of guaranteeing protection of people living with HIV/AIDS through the Constitution and relevant laws.

#### Customary land laws and discrimination

2. Section 2 of the Constitution clearly stipulates that it (the Constitution) is the supreme law of the land. On the issue of land use and ownership, section 74 provides that the 'rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu.' Section 47(1) of the Constitution provides that if a matter is before the court where no rule of law is applicable, the court 'shall determine the matter according to substantial justice and whenever possible, in conformity with custom'. Section 93(3) states that customary law shall continue to have effect as part of the law of the country. So when matters dealing with customary land ownership or the sharing of entitlements to land are before the courts, courts use local customary law as the basis for their decision-making.

3. Given the strong patriarchal Melanesian culture, which has contributed to the historical and systemic discrimination against women, customary rules in the context of land ownership are often used to deny women or their direct descendants from sharing land resources equally with those who are descendants from the male lineage. This issue was discussed by the Supreme Court of Vanuatu in *Noel v Toto*<sup>4</sup> where evidence given by clan members argued that, according to their customs, neither female clan members nor their descendants were entitled to any share of entitlements.

4. There is also no clear provision in the Constitution that states that when customary law and domestic legislation law are in conflict, the equality provisions of the Constitution must prevail.

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<sup>2</sup> Section 5, Constitution of Vanuatu

<sup>3</sup> <http://www.pacificaid.org/grafix/MarApr04.pdf> accessed 20 October, 2008, <http://www.rnzi.com/pages/news.php?op=read&id=36862> accessed 21 October 2008

<sup>4</sup> [1995] VUSC 3 (Unreported, Kent J, 19 April 1995) <http://pacific.org.vu/cases/VUSC/1995/3.html> accessed 21 October 2008.

### **Discriminatory legislation on the right to citizenship**

5. The Citizenship Act (Cap 112) is discriminatory against women. Under section 10 of the Act, a foreign woman married to a Ni-Vanuatu man is entitled to automatic citizenship, whereas a foreigner married to a Ni-Vanuatu woman does not have automatic rights to citizenship. In many cases, the foreigner will have to wait for 10 years to become a naturalised citizen.

6. Under section 12, a man applying for citizenship through naturalisation after 10 years' residence in Vanuatu can include his wife and children in his application. However, a woman in similar circumstances cannot include her husband and children.

7. In the case where a child has been adopted, section 11 allows that child to become a citizen if his/her father is Ni-Vanuatu. However, the same does not apply when the mother is Ni-Vanuatu.

8. Despite a review of the Act in 1999 by the Ombudsman in which the above discriminatory provisions were highlighted, there has been little or no commitment from the government to amend the provisions of the Act. In its Combined CEDAW Report,<sup>5</sup> the government outlined that a review of the Citizenship Act was imminent. To date, however, there has been no development on this.

### **Gender discrimination**

9. Section 5(k) of the Constitution lists the prohibited grounds of discrimination, which includes 'sex'. Despite this, laws and government policies have had the effect of being discriminatory against women, even though this appears to be unintentional.

10. As mentioned above, customary law can be used to deny women equality. Until recently, women were not allowed to speak in traditional meeting houses or nakamals when important issues affecting the community were discussed. While this has changed in some areas, there are still parts of Vanuatu where women are banned from speaking in them. Although the Constitution stipulates that it is the supreme law, legal interpretations of law and policy implementation have often had the effect of discriminating against women despite the Constitutional guarantees against such discrimination.

11. In the administration of the island courts (the lowest in the hierarchy of courts), which are community-based and serving the majority of the population, decisions are based on customary laws and practices, which are often discriminatory against women. However, the Island Court Act (Cap 167) specifically states that customary laws are applicable as long as they 'do not conflict with any written law and is not contrary to justice, morality and good order.'

### **International human rights instruments**

12. The government has acceded to the Convention on the Rights of the Child (CRC) and Convention on the Elimination of All forms of Discrimination against Women (CEDAW). Recently, it also acceded to the two Optional Protocols to the CRC, on the Sale of Children and on Armed Conflict, respectively, as well as to the Optional Protocol to CEDAW. Amnesty International welcomes the government's recent signature to the International Covenant on Civil and Political Rights (ICCPR), becoming one of the first Pacific Island countries to do so.<sup>6</sup> Formal ratification through Parliament is now pending. Amnesty International notes that the government is yet to accede to the International Covenant on Economic, Social and Cultural Rights (ICESCR).

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<sup>5</sup> Combined Initial, Second and third CEDAW Report 2007

<sup>6</sup> Vanuatu ratified the two Optional Protocols to the Convention on the Rights of the Child on 17 May 2007 (Sale of Children) and 26 September (Armed Conflict). It acceded to the Optional Protocol to CEDAW on 17 May 2007 and signed the ICCPR on 29 November 2007, but has not deposited the instruments of accession/ratification with the UN.

13. Treaties to which Vanuatu is a party are only applicable in court when they have been legislated by Parliament. Section 26 of the Constitution states that Parliament has the power to ratify international treaties.<sup>7</sup> The position of the courts with regard to domestic application has been somewhat mixed. In the family law case of *Joli v Joli*<sup>8</sup>, the Court of Appeal ruled that the provisions in international treaties need to be domesticated through legislation before they are applicable. However, in a land dispute hearing, *Noel v Toto*, the Supreme Court used CEDAW, which Vanuatu had ratified, to support its decision to grant descendants of the female line equal rights to land entitlements.

### C. Promotion and protection of human rights on the ground

#### Violence against women

14. Violence against women is widespread in the country. Although there is increasing awareness of the issue of violence, mainly due to the work of women's NGOs, Amnesty International is concerned that due to cultural norms, stereotyping, prejudices and lack of access to town centres and health facilities, there is still a high level of under-reporting of such violence.

15. Police data clearly shows that intentional assault ranks the highest in terms of complaints of crimes against the person. The Vanuatu Women's Centre, which works with survivors of violence, has that since its establishment in 1992, in Port Vila, a city of approximately 35,000 people, dealt with 2,954 cases of domestic violence.<sup>9</sup> The SANMA Counselling Centre, a women's refuge NGO serving SANMA Province (there are 6 provinces), reported in 2007 that from 1995 to 2007, it had received 1,466 reports of domestic violence.<sup>10</sup> The population of SANMA province is approximately 30,000 people and the population of Vanuatu is approximately a 210,000.<sup>11</sup> No figures are available for the other five provinces of TORBA, PANAMA, MALAMPA, SHEFA and TAFEA.

16. The prevalence of domestic violence in society is further compounded by social and cultural norms and practices. The culture of the groom or his family giving bride price to a woman's family in exchange for her hand in marriage has often been used to justify violence against the women and their poor treatment in general at the hands of their husbands and in-laws. This practice effectively puts a commercial value on women, leading to an oft heard excuse that 'because I have paid for her, I can do whatever I want with her'. Although the Malvatumauri (Council of Chiefs) revoked the 80,000 Vatu minimum bride price in 2006 and encouraged the exchange of gifts between families instead, the practice of bride price is still widespread.<sup>12</sup>

17. Because of civil society lobbying and campaigning, the Parliament passed the Family Protection Act in June 2008 aimed at protecting family members from violence in the home. The Act clearly states that the custom of bride price is not an acceptable excuse for violence in the home.

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<sup>7</sup> Vanuatu Constitution section 26: Treaties negotiated by the Government shall be presented to Parliament for ratification when they (a) concern international organisations, peace or trade; (b) commit the expenditure of public funds; (c) affect the status of people; (d) require amendment of the laws of the Republic of Vanuatu.

<sup>8</sup> Unreported, Supreme Court of Vanuatu, Matrimonial Case No. 08 of 2002, 25 March 2003.

<sup>9</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/N05/625/04/PDF/N0562504.pdf?OpenElement> p 29 accessed 26 October 2008

<sup>10</sup> *ibid*

<sup>11</sup> <https://www.cia.gov/library/publications/the-world-factbook/geos/nh.html> accessed 3 November 2008

<sup>12</sup> Vanuatu NGO Shadow Report on the Implementation of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) at [www.iwraw-ap.org/resources/pdf/Vanuatu.pdf](http://www.iwraw-ap.org/resources/pdf/Vanuatu.pdf) accessed 23 October 2008.

## **D. Recommendations for action by the State under review**

18. In line with the government's commitment to human rights protection, Amnesty International calls on the government to:

### *Constitutional protection of marginalised groups from discrimination*

Amend Section 5 of the Constitution by adding "disability, health, economic status and sexual orientation" as prohibited grounds for discrimination.

### *Customary land laws and discrimination*

Review the Constitution and add a clear provision that the Constitution (particularly the human rights chapter) prevails when there is conflict between customary law and domestic legislation.

### *Discriminatory legislation on the right to citizenship*

Amend the Citizenship Act without delay so that it complies with Vanuatu's constitutional provisions and its obligations under CEDAW.

### *Gender discrimination*

Review and amend all relevant laws which discriminate against or perpetuate the discrimination and marginalisation of women;

Ensure that there is not only legal equality (equality in legislation), but also de-facto equality, in line with Vanuatu's obligations under CEDAW;

Allocate resources and capacity to provide effective and ongoing human rights and legal training to judicial officers in the lower courts (magistrates and Island courts).

### *Ratification and implementation of international human rights treaties*

Complete in Parliament the process of ratification of the ICCPR in line with the requirements of the Vanuatu Constitution;

Promptly enact enabling legislation to ensure that the principles enshrined in the treaties to which Vanuatu is a party are applicable in the courts;

Accede to the ICESCR and to enact laws through Parliament to reflect the principles of this, and other human rights treaties to which Vanuatu is a party to, in domestic laws.

### *Violence against women*

Ensure greater awareness across the country of domestic violence and means to end such violence;

Fully implement the Family Protection Act and to allocate adequate resources for its effective implementation;

Work with the Malvatumauri (Council of Chiefs) to raise awareness of the revocation of the practice of bride price;

Provide ongoing policing and prosecution training for police and other relevant departments on effective ways to address domestic violence.