

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 38<sup>TH</sup> SESSION (NEW YORK, 14 MAY- 1 JUNE 2007) VANUATU (1<sup>st</sup> - 3<sup>rd</sup> PERIODIC REPORTS)

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### Information Submitted to the Committee

On 18 May 2007, Vanuatu submitted its combined initial, second and third periodic reports<sup>1</sup> under the *Convention on the Elimination of All Forms of Discrimination against Women* (the Convention), as well as written responses<sup>2</sup> to the list of issues and questions<sup>3</sup> raised by the Committee on the Elimination of Discrimination against Women (the Committee). Honourable Isabelle Donald Sikawonuta, the Minister for Social Welfare and Justice, led the delegation from Vanuatu.

Vanuatu signed and ratified the Convention, with no reservations, on 13 April 1995. The initial report, due to the Committee in 1996, was not submitted because of a misunderstanding of reporting obligations. Vanuatu ratified the Optional Protocol on 17 May 2007.

<sup>1</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/N05/625/04/PDF/N0562504.pdf?OpenElement>.

<sup>2</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/N07/207/98/PDF/N0720798.pdf?OpenElement>.

<sup>3</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/N06/555/41/PDF/N0655541.pdf?OpenElement>.

Vanuatu's report provides an overview of Vanuatu's national and international commitments to the advancement of women and describes developments under each article of the Convention. The Committee's reporting guidelines<sup>4</sup> require that a country's initial report deal specifically with every article of the Convention. Preparation of the report was an inclusive and transparent process incorporating non-governmental organisations (NGOs).

The Committee's list of issues and questions addresses the implementation of the specific provisions of the Convention. It includes concerns regarding violence against women and the Vanuatu Family Protection Bill, discriminatory provisions in other Vanuatu legislation, the confusing use of the terms “equality” and “equity” in the Constitution, healthcare and education, citizenship, low representation of women in the political arena, and ownership of land. The clash between human rights and traditional Vanuatu customs such as the bride-price<sup>5</sup>, which are discriminatory in nature, was also raised as a serious concern. The Committee asked the delegation to provide more information on the size of the budget and the capacity-building steps taken in the Department of Women's Affairs.

The Vanuatu Rural Development and Training Centres' Association, representing several Vanuatu NGOs, submitted a shadow report<sup>6</sup> commented on Vanuatu's progress and made recommendations to the Government of Vanuatu. The shadow report focuses on discrimination against women within the relevant legal framework; violence against women; political participation; law and justice; education; and employment. The shadow report describes in detail the ongoing conflict between Vanuatu's Constitution and traditional customary law, and the need to reform discriminatory laws to be in line with international human rights agreements.<sup>7</sup> Lastly, finding major fault with the outdated Family Law,<sup>8</sup> the Committee urges law reform supported by full financial and personnel resources. The shadow report reinforces the substance of the combined initial, second and third periodic reports, and describes them as accurate and transparent.

## Themes and Issues<sup>9</sup>

### Law Review /Discriminatory Practices and Provisions

The Committee repeatedly expressed its concern with the Government's failure to eliminate those traditional customs, practices and mindsets standing in the way of advancing women's rights, and sought further information about implementation of the Convention. The Committee noted that establishing a Law Reform Commission, although admirable, held little significance for women unless it were to become operational.

Referring to the delegation's written responses, a Committee member asked for further clarification on the delegation's use and understanding of two distinct concepts: equity and equality. The Committee stressed that the Convention is about equality, and not equity. It was explained that the concepts are not properly interchangeable as used in the report.

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<sup>4</sup> Overview of the working methods of the Committee,

<http://daccessdds.un.org/doc/UNDOC/GEN/G03/417/51/PDF/G0341751.pdf?OpenElement>.

<sup>5</sup> Bride price is a custom, recently changed, in Vanuatu requiring that money be paid to the women's relatives, often in the form of pigs, cattle, money or traditional mats with the view to reinforce the relationship between families.

<sup>6</sup> Vanuatu NGO Shadow Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) available at <http://www.iwraw-ap.org/resources/pdf/Vanuatu.pdf>.

<sup>7</sup> Vanuatu ratified the Convention on the Rights of the Child on 7 July 1993, <http://www.ohchr.org/english/law/crc.htm>.

<sup>8</sup> Vanuatu's Family Law provides little opportunity or choice for those women who leave violent marriages and makes it very difficult for women to seek redress.

<sup>9</sup> For a more detailed description of the dialogue between the Committee and the State, please see the press release of the proceedings, available at <http://www.un.org/News/Press/docs/2007/wom1627.doc.htm>.

Although Committee members repeatedly enquired whether the Vanuatu Constitution, the Convention, or traditional customs and practices would prevail in the case of a conflict, answers from the delegation did not shed much light on this question. Delegation member Mr. Dudley Aru, the Attorney General of Vanuatu, explained that the Constitution would always prevail over custom, noting that the provisions of the Convention were evident in domestic law. He also explained that the Convention is directly applicable in Vanuatu's domestic law and can thus be invoked in the courts, although to mixed reaction on the part of judges who are often not well versed in its provisions.

In a further line of questioning, Committee member Ms. Ara Begum, while recognizing the principle of Vanuatu's incorporation of the Convention into domestic law, expressed her concern regarding the current clearly discriminatory property and land ownership laws. Other Committee members noted that customary law clashes repeatedly with formal law because Vanuatu's Constitution identifies land issues as a matter of custom which prohibits ownership by women. Current application of property law was therefore identified as contravening the Convention. The Committee suggested amending the Constitution to resolve this inconsistency. The delegation admitted that amendments to the Constitution were under discussion, however at this time, the Parliamentary Committees have not taken any steps to bring any amendments before Parliament.

The Attorney General of Vanuatu explained that of 208 current laws under the Gender Equality Policy<sup>10</sup>, 12 contain discriminatory provisions. The Attorney assured the Committee that these 12 laws are currently under review. He also provided a step by step explanation of the process of amending laws in Vanuatu. One Committee member emphasised balancing Vanuatu's reluctance to undermine traditional practices with the need to identify those practices, which are harmful to the advancement of women so that steps may be taken to address them. A number of the Committee members conveyed their distress with 'the bride price' and strongly urged it to be abolished. The payment of fees in connection with this practice is banned, however the traditional forms still exist.

### **Temporary Special Measures and Representation of Women in Public and Political Life**

The Committee raised concerns over the low representation of women in the areas of education and politics, particularly in Parliament. Committee member Ms. Shopp-Schilling suggested that Vanuatu possibly misunderstood the concept of temporary special measures, and recommended that it review General Recommendation No. 25<sup>11</sup> very thoroughly and use this recommendation to encourage women to participate in educational and political life. Institutions continue to be patriarchal and discrimination of women in political life remains prevalent. The delegation referred to planned gender equality training to address the problem but did not offer information on how it would be implemented. Questions regarding prospective trainees or how it would be financed were left unanswered, adding further uncertainty about the reoccurring and overarching question of insufficient resources for implementation. Vanuatu rejected mandatory quotas for female candidates in political parties as culturally unacceptable and applied a voluntary quota instead, stating that formal quotas would possibly be considered in the future. It was widely agreed that there is a need for programs that will develop the skills of women so they can fill high-level decision-making roles in formal power structures.

An unpromising discussion over land ownership rights took place within this particular exchange of ideas. Land ownership falls under customary law and is especially disadvantageous to women, again highlighting the conflict between traditional customs and the Convention. The delegation again referred to the Parliamentary Committees as finalising their reports regarding amendments to the Constitution, in this case

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<sup>10</sup> In 1997, Vanuatu adopted nine benchmarks under the Gender Equality Policy in response to the lack of a clear policy on women's issues. The mechanisms for implementation of these benchmarks remained unclear.

<sup>11</sup> [http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf).

concerning land rights, before they can come before Parliament. The dialogue was not fruitful and Committee members seemed unsatisfied with apparent lack of desire for change.

## **Education and Employment**

Vanuatu has made education a priority and much progress has been made. The Committee did, however, express some concern about ensuring that girls who live in remote areas are able to access the school system, including having the money for school fees. The 2002 – 2008 National Plan, intended to guarantee access for education for all girls, remains unimplemented. At present, education in Vanuatu is provided free of charge up to the sixth year. Admitting that the country has widespread gender stereotyping that needs to be overcome, the delegation stated that they are looking at how to provide young girls with positive role models to overcome these negative stereotypes. The Committee stressed the importance of increasing the number of female teachers in secondary school as one way of providing these positive role models, in particular in rural areas. A taskforce was appointed to tackle stereotyping in the curriculum but when pressed on what had been done to improve textbooks, the delegation mentioned funding problems and did not directly answer the question. The idea of separating secondary schools by gender was touched upon, but the delegation stated no action would be taken until a comprehensive study was completed to assess the effectiveness of such schools.

In light of Vanuatu's low usage of contraception and high levels of teenage pregnancy, Committee member Ms. Pimentel encouraged that this issue be addressed and integrated into the curriculum, along with HIV/AIDS prevention.

The legal framework for employment is not clearly described in the report. Committee members posed many questions, seeking clarification on various issues such as the general level of women's awareness of their rights under the labour laws, protection against sexual harassment in the workplace, protective measures in the informal sector and the private sector, maternity leave, gender pay gaps and legal aid. The delegation had insufficient information to answer many of these questions, and stated they would work on improving the system of data collection, in particular, disaggregated data so that they would be better prepared to answer questions more fully in the future.

After stating that a draft workers' compensation law will hopefully go before Parliament before the end of the year, or early next year, the delegation failed to clarify its contents. The delegation also mentioned the existence of a Commissioner of Labour who handles complaints of employees against their employers and mediates in disputes. Vanuatu's Employment Act does prohibit sexual harassment in the workplace and provides for maternity leave and compensation during leave. What is lacking, however, is any overarching initiative to eliminate sexual harassment in the workplace and the ministries are each responsible for creating their own internal procedures to raise awareness of this issue. The delegation was unable to answer many of the questions posed to it, openly acknowledging many shortcomings, such as a gender-driven wage discrepancy in Government employment.

## **Trafficking, Prostitution and Citizenship**

Committee members expressed concern over the lack of available data on trafficking and prostitution and questioned the delegation on what is being done by Vanuatu to meet its obligations under Article 6.<sup>12</sup> The delegation explained that they were addressing this issue by concentrating on microfinance for disadvantaged women and agreed to look into the possibility of undertaking studies in this area.

The Ombudsman, described in the State's report, conducted a review of Vanuatu's Citizenship Act and identified several issues regarding nationality and the transfer of nationality to children as discriminatory.

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<sup>12</sup> Article 6 provides that States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Currently, men can pass on Vanuatu citizenship to a foreign wife but the same is not true of a Vanuatu wife married a foreign man. Although the List of Responses provides information on amendments to be drafted and would be approved this year, the delegation when probed admitted that the drafts had yet to come before the Council of Ministers..

## **Health**

Strong concern was expressed by the Committee regarding the provision of health services in terms of its accessibility to women in rural areas, the elderly, and the disabled. The Committee also mentioned as issues of concern respiratory illness, women's health, HIV/AIDS and, in particular, high infant and maternal mortality rates. The Committee further emphasised the need for and value of disaggregating collected data by gender. Although the delegation explained that they are working on a data segregation policy, it was clear that they are largely counting on NGOs to promote sexual health. When questioned why health services are not offered free-of-charge, the delegation pointed out that there is a free health policy for maternal health and family planning.

## **Stereotyping and Violence against Women**

Deeply ingrained traditions stand as obstacles to tackling both violence against women and negative stereotypes of women in Vanuatu. Committee member Ms. Shopp-Schilling pointed out that culture cannot serve as justification for violations against women. Another Committee member expressed appreciation for the candid nature of the report but was distressed that it portrays women as being in a significantly inferior position. The Committee recommended a strategy to tackle such negative stereotyping, including changes to the education system, awareness-raising activities and involvement of media. The delegation highlighted the conflict between traditional values and what was referred to as a 'new western-introduced system' but remained vague on government remedial measures. Another delegation member made passing mention of the hope that Parliament would approve the Family Protection Bill, which addresses gender stereotypes and domestic violence, by the end of the year. So far the political will required to pass this bill has been inadequate. It is noted in the report that no distinction is made between assaults within or outside the domestic sphere, and that few protective measures currently exist to assist victims of gender-based violence.

## **Conclusions and Next Steps**

Several issues continue to encumber the process of bringing Vanuatu in line with the Convention, the most serious being insufficient mechanisms and resources. The Attorney General of Vanuatu took a long time answering the questions posed and Committee members seemed slightly exasperated with the often rambling and circular nature of his responses. However, Vanuatu did demonstrate that many improvements have been made and steps are being taken in the right direction. The issue of paramount concern to the Committee was bringing an end to the many customs perpetuating discrimination and impeding the advancement of women. Positive steps need to be taken in the form of improved legislation and increased allocation of resources to address practices that hinder the full implementation of the Convention.

In its Concluding Comments,<sup>13</sup> the Committee expressed its appreciation to the Government of Vanuatu for sending a high level, gender-balanced delegation. The Committee however was unsatisfied with the scarcity of data disaggregated by sex provided in the report. The Committee's Concluding Comments demonstrated deep concern with the equal status given to cultural and religious norms and the Convention. The Committee urges Vanuatu to immediately and fully incorporate the Convention into its domestic legal system. It calls for Vanuatu to 'clarify the primacy of the principle of equality of women and men and the prohibition of discrimination, over customary law,' and for the State to adopt a definition of discrimination which takes account of both direct and indirect forms of discrimination. The Committee requests that the State party

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<sup>13</sup> <http://www.un.org/womenwatch/daw/cedaw/cedaw38/cc/Vanuatu.pdf>.

complete its legislative reform and set definite time frames for particular reforms; such as the Family Protection Bill and the Citizenship Act. It also recommends that the Government of Vanuatu work on strengthening the Department of Women's Affairs and National Machinery generally through ensuring adequate human and financial resources. This should be done alongside strengthening measures to increase the number of women in public and political life.

A common theme throughout the dialogue that received a good deal of attention in the Concluding Comments is the role that cultural practices and traditions play in perpetuating negative stereotypes of women, discrimination against women and violence against women. The Committee calls on the State party to adopt without delay a strategy, including legislation, which will change or eradicate the wide spread cultural practices and stereotypes which discriminate against women. It also strongly urges Vanuatu to place combating violence against women as a top priority and to immediately adopt measures such as awareness raising of the public through education and media programmes. In order to fully address violence against women, the Committee requests that the Government of Vanuatu enacts legislation ensuring that violence against women and girls constitutes a criminal offence, remove obstacles to women accessing justice and guarantee legal aid to all victims of violence. Finally, the Committee advises that special attention be given to improve the situation of women living in rural areas, by improving access to healthcare, education and literacy programmes and credit programmes.

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