



**UNITED NATIONS GENERAL ASSEMBLY  
HUMAN RIGHTS COUNCIL**

**SUMMARY UNIVERSAL PERIODIC REVIEW SECOND CYCLE INDIVIDUAL STAKEHOLDER REPORT  
PREPARED BY TRANSPARENCY VANUATU**

**VANUATU**

Transparency Vanuatu (TV), registered as an NGO under the Charitable Associations (Incorporation) Act [Cap 140], was established in 2001. Since 2001, TV has succeeded in raising awareness on governance issues, facilitating public debates on corruption, mainstreaming Civic Education in National Curriculum and assisting victims of corruption, maladministration and injustice through its Advocacy and Legal Advice Centre (ALAC). The main mission for Transparency Vanuatu is to stop corruption and promote transparency, accountability and integrity at all levels and across all sectors within Vanuatu. Corruption is a human rights issue because maladministration of funds in health, education and other public related benefit sections can deprive the public's right to enjoy these benefits. Therefore, Transparency Vanuatu has undertaken certain projects connected with human rights issues and the findings from these projects are hereby put together to contribute to this report. This report focuses on the progress, weaknesses or recommendations that Vanuatu has acted upon since 2009 to comply with human rights laws, treaties and conventions.

**1. INSTITUTIONAL FRAMEWORK**

**a. International Obligation**

Transparency Vanuatu appreciates and congratulates the government of the Republic of Vanuatu for ratifying the United Nations Convention Against Corruption (UNCAC) on 12 July, 2011, which requires that States Parties implement several anti-corruption measures which may affect their laws, institutions and practices. These measures aim at preventing corruption, criminalizing certain conducts, strengthening international law enforcement and judicial cooperation, providing effective legal mechanisms for asset recovery, technical assistance and information exchange, and mechanisms for implementation of the Convention.<sup>1</sup>

**b. Constitutional and Legislative Framework**

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<sup>1</sup> *United Nation Convention Against Corruption (UNCAC) (Ratified by Vanuatu 12 July, 2011) PITS 1.*

In the first review, Amnesty International called on the government to reconsider Article 74 of the Constitution which provides that the “rules of custom shall form the basis of ownership and use of land”. The rules of custom may be discriminatory in some ways where land title is only given to the male without female or given only to the female without male.<sup>2</sup> Transparency Vanuatu continues to call on the government to provide constitutional or legislative framework for this.

Furthermore, Transparency Vanuatu have identified that Article 5 of the Constitution does not mention any discrimination on the grounds of disability<sup>3</sup> and called on the government to reconsider the Constitutional framework to include this under the relevant article.

There is need for some of the provisions of UNCAC to be domesticated into the national laws of the Republic of Vanuatu in order to effectively combat corruption.

### **c. Policy Measures**

With regards to corruption issues, Transparency Vanuatu acknowledges the effort made so far by the government in putting in place the Leadership Code Act which guides the leaders to act within the scope of the Act so as to avoid corruption that would deprive the public from enjoying their rights.<sup>4</sup> However, the implementation of the Leadership Code is another issue which the government needs to strengthen.

Transparency Vanuatu also calls on the government to develop more anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

## **2. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

### **a. Cooperation with Human Rights Mechanisms**

With reference to the ratification of the United Nations Convention Against Corruption, it is understood that “corruption” is a human rights issue because of the negative effects of corruption on the protection of human rights and on development. The United Nations have also commented on the inability of states to comply with their obligations as a result of corruption. The corrupt management of public resources wastes resources and compromises the government’s ability to deliver an array of services, including health, educational and welfare services, which are essential for the realization of economic, social and cultural rights. As such, Transparency Vanuatu calls on the government to raise awareness on this point so that people know that their rights are being breached when corruption arises.

### **b. Implementation of International Human Rights Obligations.**

#### **1. Freedom of Information**

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<sup>2</sup> Constitution of the Republic of Vanuatu (2006, Vanuatu)

<sup>3</sup> See above n 2.

<sup>4</sup> *Leadership Code Act* [Cap240] (Vanuatu).

A key means of fighting corruption is in conducting the operations of government in an open and transparent way, including through providing general access to information. After the government of Vanuatu ratified the UNCAC, it made further initiatives to create a National Media Policy through a Freedom of Information Committee (FOI). This committee is tasked with spearheading the development of the National Media Policy along with the Right to Information Bill, and implementation plan. The Right to Information Bill provides for the guarantee of the right to information for all persons, the establishment of practical and effective mechanisms supportive of that right and for the promotion of maximum disclosure of information in furtherance of greater transparency and accountability in governance.<sup>5</sup> The Vanuatu National Media Policy had also been discussed and approved by the Council of Ministers Meeting but is still waiting for the parliament to pass it into law and to commence effectively. Thus Transparency Vanuatu calls on the government to pass the Right to Information Bill and the National Media Policy so that they become Vanuatu laws and people can follow them effectively.

## **2. Right to Free Education**

Under the Universal Declaration of Human Rights, Article 26 states that *“Everyone has the right to education. Education shall be free, at least in the Elementary and fundamental stages. Elementary education shall be compulsory”*.<sup>6</sup> In 2010, the Government of Vanuatu through the Ministry of Education adopted the Vanuatu Education Road Map (VERM) and one of its core policies was the introduction of the Primary Education Grant Policy. This policy aims to make primary education free from years 1 to 6 as part of the Millennium Development Goals (Goal 2) and to eliminate barriers that restrict children from attending school, thus making education more accessible than before.

However, most people in Vanuatu do not understand the purpose of the Grant Policy and how it operates<sup>7</sup>. Transparency Vanuatu calls on the government to carry out more awareness to parents and Parent Teacher Associations at the commencement of each school year including information on what the Grant can and cannot be used for as well as the application of any additional funding they may be asked to contribute towards the schools running costs throughout the year. Further, the government must also make sure that audits take place every year, to ensure the grant is being applied in accordance with the grant specifications.

The right to Education in Vanuatu remains a major challenge for the country to achieve.

## **3. Civic Education Perspective**

Transparency Vanuatu has been carrying out civic education awareness workshops since 2006 and this aims at enabling the citizens of Vanuatu to know their rights incorporated under the Constitution and thereby participate in leadership roles.

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<sup>5</sup> *Bill for the Right to Information Act (Vanuatu)*

<sup>6</sup> *Universal Declaration of Human Rights (December 10, 1948) PITS 1.*

<sup>7</sup> Transparency Vanuatu's education project; *An Analysis of the use and effectiveness of the Primary School Education Grant Policy in Vanuatu from 2010 – 2012 (2013)*

Apparently, most people in remote areas are not aware of their rights under the Constitution and also the rights under certain Treaties that Vanuatu has ratified. Apart from the Constitution and Treaties, Vanuatu also has certain laws that spell out what international treaties intend to regulate.<sup>8</sup> The Family Protection Act is one of these laws, which was a great achievement in recognizing the rights of women, however, it needs more awareness raising throughout the country so that women know what to do if their rights are infringed. For instance, in the case of getting a temporary protection order, most women do not know where to get the order and who to get the order from.<sup>9</sup> Thus the government needs to allocate more resources and effort for awareness raising purposes.

#### **4. Discrimination on the basis of sex**

Transparency Vanuatu still calls on the government to amend the Constitution and the Citizenship Act so that it avoids discrimination on the basis of sex, especially with the rules of custom. Although there have been slight changes due to the works that CSO's and the Department of Women's Affairs have pushed forward to help women to speak more freely among men in the nakamal or community, more is needed. Furthermore, Vanuatu still discriminates between other countries citizens marrying Ni-Vanuatu. Generally, Ni-Vanuatu men, who marry foreign citizens, can give their spouse and children entitlement to citizenship, but Ni-Vanuatu women cannot. An adopted child is automatically a citizen of Vanuatu if his or her adoptive father is a citizen but not if his or her adoptive mother alone is a citizen. Foreign women can gain citizenship if they marry a Ni-Vanuatu man but a foreign man cannot gain automatic citizenship if he marries a Ni-Vanuatu woman. Ni-Vanuatu women can regain citizenship after a marriage breakdown, but Ni-Vanuatu men cannot which is discriminatory against men.<sup>10</sup>

This involves a violation of the fundamental rights to equality under Article 5 of the Constitution of the Republic of Vanuatu and is also contrary to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is an international convention that has a binding status in Vanuatu.<sup>11</sup>

Thus Transparency Vanuatu calls on the government to amend the Constitution and the Citizenship Act so as to avoid discrimination on the basis of sex.

#### **5. Administration of Justice in Civil and Criminal Cases**

The Justice system plays an important role in stabilizing the balance of power with government, in enhancing public confidence in the government, and in protecting human rights. Article 5 (2) (a) of the Constitution of the Republic of Vanuatu states that everyone charged with an offence shall have a fair hearing, within a reasonable time, by an independent and impartial court and be afforded a lawyer if it

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<sup>8</sup> Civic Education Project, Transparency Vanuatu.

<sup>9</sup> *Family Protection Act, 2008* (Vanuatu)

<sup>10</sup> *Citizenship Act [Cap 112]* (Vanuatu).

<sup>11</sup> *Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)* (Entered into force September 3, 1981, acceded to by Vanuatu 8 September, 1995) PITS 1

is a serious offence. Also article 47 states that “the administration of justice is vested in the judiciary who are subject only to the Constitution and the law”.<sup>12</sup> Furthermore, the right to a competent, independent, and impartial tribunal is articulated in the Universal Declaration of Human Rights (Article 10).<sup>13</sup>

Transparency Vanuatu advises that in the past several years, the operation of Vanuatu’s Courts has steadily deteriorated to the point where more than one hundred cases are simply not being dealt with, or judgments have not been given even years after the case has been heard. All of these problems have increased to the level of constipation in the Judiciary and have created circumstances of loss of faith and respect in the judicial system. Not only that but such delays result in the denial of Justice to the parties concerned as well as miscarriages of justice and a huge potential waste of time and money. This mismanagement of Court cases appears to change from one judge to the other, but the majority of judges and magistrates show the same characteristics of problems from delays and mismanagement of cases. The lower level courts at the Island Court level show not only signs of mismanagement but also serious issues of alleged corruption amongst the Justices and the Assessors seem to affect this level of court.

Transparency Vanuatu underlined that such delays and growing case backlog threatens the Judiciary and are denying victims and accused the basic human rights to a fair and impartial trial.<sup>14</sup>

## **6. Capacity Building and Technical Assistance**

Transparency Vanuatu recommended to the Government of Vanuatu through the Ombudsman’s Office to strengthen its technical cooperation with the Advocacy and Legal Advice Centre (ALAC) and other anti-corruption institutions and ensure those who breach the Leadership Code or other human rights be punished for their actions.

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<sup>12</sup> See above n 2.

<sup>13</sup> See above n 6.

<sup>14</sup> *Vanuatu Judicial Monitoring System Project*, Transparency Vanuatu (2013)