

Status of Human Rights in Vanuatu for the 46th Session of the Universal Periodic Review

Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to discuss the status of human rights in the Republic of Vanuatu (Vanuatu) for the 46th session of the Universal Periodic Review (UPR).

Background

2. Vanuatu consists of a group of Islands in the South Pacific Ocean.¹ The vast majority of the population is Christian: 70% identify with various forms of Protestantism, including Presbyterian, Anglican, and Seventh Day Adventist; 12.4% identify as Roman Catholic; 3.7% have customary beliefs; 12.6% identify as “other”; 1.1% have no religious identification; and 0.2% are unspecified.²

3. Vanuatu’s last UPR was held on January 24, 2019.³ As a result of the review, Vanuatu received 135 recommendations, 96 of which were supported by Vanuatu.⁴ Iceland recommended, and Vanuatu noted, that Vanuatu should “[r]evise legislation so that women can access legal, safe and voluntary termination of pregnancy and guarantee the provision of the relevant medical services.”⁵ Vanuatu supported Angola’s recommendation to “[a]dopt a comprehensive health policy, and increase support to reproductive health and family planning services.”⁶ Both Ukraine and Montenegro recommended, and Vanuatu noted, that Vanuatu should “[r]atify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.”⁷ Additionally, Guyana recommended, and Vanuatu supported, Vanuatu “[creating] the necessary legislation to address trafficking in persons, in particular women and girls.”⁸ Serbia recommended, and Vanuatu supported, that Vanuatu implement a child trafficking national action plan.⁹ Lastly, it was recommended by Netherlands, and noted by Vanuatu, to “[a]bolish child, early and forced marriage by setting the minimum age for marriage for both men and women at 18 years.”¹⁰ Iceland made a similar recommendation which Vanuatu noted.¹¹

Legal Framework

Abortion

4. Under Article 5 of Vanuatu’s Constitution, “all persons are entitled to . . . fundamental rights and freedoms . . . [including] life.”¹²

5. Currently in Vanuatu, abortion is permitted only to preserve health.¹³ Section 113 of the Vanuatu Penal Code states:

No person shall, when a woman is about to be delivered of a child, prevent the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have

unlawfully killed a child.¹⁴

6. Under Section 117 of the Vanuatu Penal Code, no person “shall intentionally procure [a] miscarriage.”¹⁵ The penalty for inducing such a miscarriage is two years imprisonment.¹⁶ However, Section 117 also provides a defense to the charge: “if the person charged shall show that the miscarriage procured constituted a termination of pregnancy for good medical reasons.”¹⁷

7. Vanuatu is a party to the International Covenant on Civil and Political Rights (ICCPR).¹⁸ Under Article 6 of the ICCPR, “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”¹⁹

Human Trafficking

8. Under Article 5 of Vanuatu’s Constitution, “all persons are entitled to . . . fundamental rights and freedoms . . . [including] liberty; security of the person; . . . freedom from inhuman treatment and forced labour; . . . [and] freedom of movement.”²⁰

9. Section 5 of the Vanuatu Penal Code provides that “[t]he criminal law of the Republic shall apply to . . . traffic in persons, slave trading . . . committed within or beyond the territory of the Republic.”²¹

10. Section 101 of Vanuatu’s Penal Code provides that “[n]o person shall procure, aid or facilitate the prostitution of another person or share in the proceeds of such prostitution whether habitual or otherwise, or be subsidized by any person engaging in prostitution.”²² Moreover, Section 101B states that “[a] person must not . . . cause or induce a child to participate in an act of child prostitution . . . or . . . participate as a client with a child in an act of child prostitution.”²³ The penalty for the crime is imprisonment for ten years or, if the child is under the age of fourteen years, imprisonment for fourteen years.²⁴

11. Additionally, under Section 102 of Vanuatu’s Penal Code, “[n]o person shall . . . take or keep another in slavery; or . . . engage in any traffic in persons.”²⁵ The penalty for violation is imprisonment for twenty years.²⁶

12. Under Article 8 of the ICCPR, “[n]o one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. . . No one shall be held in servitude.”²⁷

13. Vanuatu is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).²⁸ Under Article 6 of the CEDAW, “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”²⁹

Child Marriage

14. Under Vanuatu’s Control of Marriage Act 2006, the legal age for marriage without third-party consent is twenty-one, but boys aged eighteen and girls aged sixteen can be married with parental consent.³⁰

15. Vanuatu is a party to the Convention on the Rights of the Child (CRC).³¹ Article 9 of the CRC defines a child as “every human being below the age of eighteen years.”³²

16. Article 16 of CEDAW states that “[t]he betrothal and the marriage of a child shall have no legal effect . . .”³³

Abortion

17. Although the Vanuatu Penal Code does not specify a limit on the period during pregnancy when an abortion may be legally performed for “good medical reasons,” under English law, from which Section 113 of the Penal Code was derived, that time period is considered to be up to twenty-eight weeks of gestation.³⁴ Additionally, the phrase “good medical reasons” is also not defined within the code, but a U.N. report from 2017 interprets the language as permitting an abortion in order to save the life of a pregnant woman or preserve her mental or physical health.³⁵

18. The Guttmacher Institute reports that between 1990-1994 and 2015-2019, the abortion rate in Vanuatu has increased seventy percent and the share of unintended pregnancies ending in abortion rose from thirty percent to forty-five percent.³⁶

19. Vanuatu’s current stance on respecting preborn human life should be applauded. However, terminating the life of an unborn child simply for the “mental health” of the mother, which could be loosely interpreted to include most any form of negative mental effect, does not value or respect the life and dignity of the child. As such, unless Vanuatu broadly defines “mental health” or “physical health” of the mother as valid reasons for abortion, its laws on abortion are in line with various international documents that protect the sanctity of life. One such document is the report from the 1994 Cairo Conference on Population and Development, which established that abortion may not be used as a method of family planning.³⁷ Additionally, both the UDHR and the ICCPR recognize the inherent dignity of every human being. Both international instruments expressly state that every human being has the inherent right to life.³⁸

20. Clearly, Vanuatu’s current laws on abortion (with the exception of the possibility of abuse of the “good medical reasons” exception) fulfill the obligations and duties under these international documents as far as recognizing, respecting, and protecting the dignity and life of the preborn child. However, because the language “good medical reasons” can be broadly interpreted to include almost anything, Vanuatu must be careful in defining such reasons to only include protecting the life of the mother.

21. Vanuatu should also consider defining the phrase “good medical reasons” because instead of protecting women’s health, abortion often results in physical and psychological harm to the mother. There are many health benefits that come from carrying a baby to term, including protection against breast cancer. Sadly those benefits are lost when the pregnancy is terminated by abortion.³⁹ Abortion can also mask other dangerous symptoms like an undiagnosed ectopic pregnancy.⁴⁰ It has been well-documented that abortion procedures can result in the perforation of the uterus or the laceration of the cervix.⁴¹ These complications are so disconcerting that even the World Health Organization acknowledges the risks of abortion in its abortion supporting guidelines.⁴² As Vanuatu recognizes that right to life is a fundamental freedom, it surely is concerned that its laws protecting that freedom are not misused or misconstrued in a manner that completely undermines life.

22. Furthermore, women who have undergone abortions have also been reported to experience negative psychological side effects in addition to the negative physical side effects, which may include shame, drug abuse, and suicidal thoughts.⁴³ All of these reasons contribute to the negative and even devastating effects abortion has on both the mother and

the preborn baby. Accordingly, permitting abortion for mental health reasons is contradictory as abortion may cause negative health effects on a pregnant woman.

23. Despite other countries pressuring Vanuatu to revise legislation and expand access to abortion, Vanuatu has more than enough reason to uphold its moral and legal obligations to protect life.

Human Trafficking

24. Cases of human trafficking in Vanuatu, tend to be isolated, and overall, the human trafficking market is relatively limited.⁴⁴ Vanuatu is mainly considered to be a transit country for human trafficking from South-eastern Asia to Fiji.⁴⁵ There is evidence to support that there are both foreign and domestic actors involved in human trafficking in the area, and examples of human trafficking within the country might come in the form of victims being trafficked from one island to another for sexual or labor exploitation.⁴⁶

25. Although cases tend to be limited, there was one case spanning the last two years that garnered significant attention. This case, considered the biggest human trafficking case ever in the Pacific, consisted of four Bangladeshi nationals trafficking more than 100 Bangladeshis into Vanuatu with the promise of employment and then enslaving them.⁴⁷ In November 2021, the four defendants were convicted by the Vanuatu Supreme Court on trafficking, slavery, and money laundering charges.⁴⁸ In June 2022, the four defendants were sentenced to fourteen, seven, seven, and six years imprisonment, respectively, with additional small fines.⁴⁹ However, they were also ordered to pay \$1.6 million as compensation to the victims.⁵⁰ Chief Justice Vincent Lunabek noted that “[i]n Vanuatu, the seriousness of trafficking and slavery offending is indicated by the maximum sentence of 20 years imprisonment for both offences, making them two of the most serious offences in the legislation after the offences of premeditated homicide and sexual intercourse without consent . . .”⁵¹

Child Marriage

26. With human life being respected in regard to abortion, and human trafficking being dealt with when present, child marriage appears to be the main issue of concern in Vanuatu. It is reported that three percent of Vanuatu girls are married by fifteen years of age, and twenty-one percent are married by eighteen.⁵² Additionally, five percent of boys are married by the age of eighteen.⁵³ Overall, child marriage is driven by gender inequality, and the belief that females are inferior to males.⁵⁴ However, there are also various factors that appear to impact the likelihood of child marriages occurring. For instance, available studies suggest that “[w]omen from Vanuatu’s poorest households are likely to marry about half a year earlier than women from the richest households.”⁵⁵ Also women with secondary level education tend to marry two years later than those with only primary level education.⁵⁶ Lastly, arranged and forced marriages are still practiced in some parts of the country, which encourages families to marry off their daughters in exchange for gifts.⁵⁷

27. Arranged marriages are especially prevalent in the more rural areas of Vanuatu where “bridewealth” can serve as an important investment in the future of the parents involved.⁵⁸

28. While Vanuatu has committed to eliminate child, early, and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals, and The National Gender Equality Policy, there still needs to be actual enacting of the goals established.⁵⁹

Recommendations

29. Vanuatu should consider removing the exceptions of physical and mental health for abortion as these terms can be broadly interpreted. At the very least, Vanuatu should consider providing a definition as to what constitutes physical or mental health. In any case, allowing abortion for a woman's mental health cannot be a good reason to take another life. Despite external pressure from various countries to increase access to abortion and further expand the breadth of circumstances under which an abortion may be legally obtained, we urge Vanuatu to take the opposite approach and protect life at all stages. Protecting and respecting human life at all stages is a quintessential principle to uphold for any morally sound country, consistent with what is required by various international human rights documents.

30. Vanuatu's current stance on human trafficking is encouraging. However, there is definitely room for improvement. Vanuatu should ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and also adopt more legislation specifically addressing human trafficking, particularly regarding women and children. Ultimately, greater action could be taken to prevent an increase in trafficking and stifle what trafficking activity is already occurring.

31. Additionally, Vanuatu should enact a simple change of raising the minimum age required for a girl to be married with parental consent from sixteen to eighteen, to correspond with that of the minimum male age, and align with commitments under the CRC and CEDAW. Obviously, such a legislative change would also have to be paired with increased enforcement to actualize the proposed change.

¹ *Vanuatu*, THE WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/countries/vanuatu/#people-and-society> (Aug. 29, 2023).

² *Id.*

³ *Universal Periodic Review – Vanuatu*, OHCHR, <https://www.ohchr.org/en/hr-bodies/upr/vu-index> (last visited Sept. 5, 2023).

⁴ *Vanuatu Infographic*, OHCHR, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session32/VU/Infographic_Vanuatu.pdf (last visited Sept. 5, 2023).

⁵ OHCHR, UPR of Vanuatu (3rd Cycle – 32nd Session): Thematic List of Recommendations 21, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session32/VU/UPR32_Vanuatu_Thematic_List_of_Recommendations.docx (last visited Sept. 6, 2023).

⁶ *Id.* at 4.

⁷ *Id.* at 19.

⁸ *Id.* at 2.

⁹ *Id.* at 5.

¹⁰ *Id.* at 25.

¹¹ *Id.* at 22.

¹² CONSTITUTION OF VANUATU 1980 (amended 2013), chapter 2, part I(5)(1), https://constituteproject.org/constitution/Vanuatu_2013.pdf.

¹³ *The World's Abortion Laws*, CTR. FOR REPROD. RTS. (Sept. 27, 2022), https://reproductiverights.org/wp-content/uploads/2022/09/WALM_20220927_V1.pdf.

¹⁴ PENAL CODE § 113 (Vanuatu), <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88512/101229/F1616956608/VUT88512.pdf>.

¹⁵ *Id.* § 117.

¹⁶ *Id.*

¹⁷ *Id.* § 117(3).

¹⁸ *Chapter IV Human Rights: 4. International Covenant on Civil and Political Rights*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en (Sept. 6, 2023, 9:15 AM).

¹⁹ International Covenant on Civil and Political Rights art. 6, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

[hereinafter ICCPR].

²⁰ CONSTITUTION OF VANUATU 1980 (amended 2013), chapter 2, part I(5)(1).

²¹ PENAL CODE § 5 (Vanuatu).

²² *Id.* § 101.

²³ *Id.* § 101B.

²⁴ *Id.*

²⁵ *Id.* § 102.

²⁶ *Id.*

²⁷ ICCPR art. 8, *supra* note 19.

²⁸ *Chapter IV Human Rights: 8. Convention on the Elimination of All Forms of Discrimination against Women*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en (Sept. 6, 2023, 9:15 AM).

²⁹ Convention on the Elimination of All Forms of Discrimination Against Women art. 6, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> [hereinafter CEDAW].

³⁰ *Vanuatu*, GIRLS NOT BRIDES, <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/vanuatu> (last visited Sept. 6, 2023).

³¹ *Chapter IV Human Rights: 11. Convention on the Rights of the Child*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en. (Sept. 8, 2023, 9:15 AM).

³² Convention on the Rights of the Child art. 9, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

³³ CEDAW art. 16, *supra* note 29.

³⁴ *Abortion Policy*, SISTA LIBRARY, <https://www.sistalibrary.com.vu/abortion-policy> (last visited Sept. 8, 2023).

³⁵ U.N. Dep't of Econ. & Soc. Affs.: Populate Div., *World Population Policies 2017: Abortion Laws and Policies*, 428, U.N. Doc. ST/ESA/SER.A/447 (2020)..

³⁶ *Vanuatu*, GUTTMACHER INST., <https://www.guttmacher.org/regions/oceania/vanuatu> (last visited Sept. 8, 2023).

³⁷ International Conference on Population and Development, *Report of the International Conference on Population and Development*, ¶¶ 7.24, 8.25, U.N. Doc. A/CONF/F.171/13/Rev.1, https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/icpd_en.pdf.

³⁸ G.A. Res. 217 (III), at preamble, art. 3 (Dec. 10, 1948), [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_217\(III\).pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_217(III).pdf) (emphasis added); ICCPR art. 6, *supra* note 19.

³⁹ See Justin D. Heminger, *Big Abortion: What the Antiabortion Movement Can Learn from Big Tobacco*, 54(4) CATH. U.L. REV. 1273, 1288-89, 1290 n.119 (2005), <https://pubmed.ncbi.nlm.nih.gov/17115504>.

⁴⁰ See generally *Physical Effects of Abortion: Fact Sheets, News, Articles, Links to Published Studies and More*, THE UNCHOICE, <https://www.theunchoice.com/physical.htm> (last visited Sept. 8, 2023) (listing sequelae and referencing sources).

⁴¹ *Women's Right to Know: Abortion & Pregnancy Risks*, LA. DEP'T OF HEALTH, <https://ldh.la.gov/page/915> (last visited Sept. 8, 2023).

⁴² *Abortion Care Guideline*, WORLD HEALTH ORGANIZATION & HUMAN REPRODUCTION PROGRAMME 79 (2022), <https://apps.who.int/iris/rest/bitstreams/1394380/retrieve>.

⁴³ Priscilla K. Coleman et al., *Women Who Suffered Emotionally from Abortion: A Qualitative Synthesis of Their Experiences*, 22 J. OF AM. PHYSICIANS & SURGEONS 113, 116-17 (2017), <https://www.jpands.org/vol22no4/coleman.pdf>.

⁴⁴ *Vanuatu*, GLOBAL ORGANIZED CRIME INDEX 3 (2021), https://ocindex.net/assets/downloads/english/ocindex_profile_vanuatu.pdf.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Vanuatu Court Sentences Four Bangladeshis for Trafficking and Slavery*, RNZ (June 26, 2022, 3:57 PM), <https://www.rnz.co.nz/international/pacific-news/469710/vanuatu-court-sentences-four-bangladeshis-for-trafficking-and-slavery>.

⁴⁸ *Id.*

⁴⁹ Sanjeshni Kumar, *Justice for Mr Price's Human Trafficking Victims in Vanuatu*, PINA (June 24, 2022), <https://pina.com.fj/2022/06/24/justice-for-mr-prices-human-trafficking-victims-in-vanuatu>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Vanuatu*, GIRLS NOT BRIDES, *supra* note 30.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Alice Servy, 'We've Paid your Vagina to Make Children!': Bridewealth and Women's Marital and Reproductive Autonomy in Port-Vila, Vanuatu, 90(3) OCEANIA 292, 296 (2020), <https://onlinelibrary.wiley.com/doi/pdf/10.1002/ocea.5280>.

⁵⁹ Vanuatu, GIRLS NOT BRIDES, *supra* note 30.