



Kam Pushum Hed Building , Wan Smol Bag Complex , Mele road , Port Vila , Vanuatu.
Email : gillio.baxter@vpridevanuatu.org. Phone (678) 27119 .Extensions 3810

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1. About V- Pride

1.1 V- Pride is a Vanuatu, community-based organisation, founded in 2007, to help educate, advocate and mobilize around diverse Sexual Orientation, Gender Identity, Expression (SOGIE).

1.2 The VPride network includes NiVanuatu Men who have Sex with Men (MSMs), Transgender (TGs), and other Lesbian, Gay, Bi-Sexual and Transgender (LGBT) populations, as well as sex workers (SW). It has members in Shefa, Malampa and Sanma Provinces, with outreach planned to the other 3 provinces: Torba, Penama and Tafea.

1.3 Over the past 10+ years, VPride has worked to strengthen community leadership, mobilization, and advocacy in the areas of sexuality and gender identities with respect to sexual health including STI's, HIV and AIDS, well-being and human rights. Activities have included sensitizing communities and institutions around the definitions of diverse SOGIE and providing a safe space for key actors to discuss the key human rights issues associated with SOGIE.

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1. Introduction

1.1: Vanuatu, a Pacific Island nation, has taken significant steps in the promotion and protection of human rights. However, when it comes to the rights of the LGBT community, the situation remains challenging, especially when it comes to acceptance, protection and inclusion. Vanuatu Government ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995, demonstrating its commitment to gender equality. However, the country's policies and legislation do not explicitly include, and often explicitly exclude, LGBT rights, which raises concerns about the level of protection and recognition afforded to this marginalized group.

1.2: In *Born Free and Equal*, UNOHCR noted:

The legal obligations of States to safeguard the human rights of LGBTI people are well established in international human rights law on the basis of the Universal Declaration of Human Rights, international human rights treaties, and customary international law. All people, *irrespective of sexual orientation, gender identity or sex characteristics*, are entitled to enjoy the protections provided by international human rights law, including rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination, equality before the law, and the right to freedom of expression, association and peaceful assembly (emphasis added).

1.3: Following this recognition, various the United Nation bodies have called for States parties to ensure that their laws prohibit discrimination on the basis of sex, sexual orientation, and gender identity. This is an important step for the augmentation of human rights for LGBT individuals, which the UN Human Rights Council identified as a key concern when it passed Resolution 17/19, *Human rights, sexual orientation, and gender identity*, in June 2011. Even though Vanuatu was a signatory to that resolution and other related legislation, it has not ensured the legal or other protection of SOGIE diverse people in Vanuatu.

1.4: The Vanuatu Government has taken several positive steps towards the recognition and protection of LGBTI human rights, which provide a basis for Vanuatu to continue to improve the human rights of LGBTI persons.

UPR Recommendations:

1.5: In the *1st cycle*, Vanuatu accepted recommendation 56.25, but did not act on it during the subsequent cycles:

- 56.25. Take necessary measures to ensure that discrimination on the basis of disability, economic status, sexual orientation or living with HIV/AIDS is prevented (Netherlands).

In the *2nd cycle* Working Group review it was noted that

The Constitution (Article 5) provides equal rights under the law for all persons including People with Disabilities (PWD). The National Disability Framework provides for equal status of persons with disabilities and equal protection of their rights. Discrimination based on sexual orientation or HIV/AIDS status has not been specifically addressed by the Constitution. In this regard, a National Aids Committee was established in 2011. Vanuatu has recently launched a standard guide for counseling services. Currently, Vanuatu has no counseling services or HIV/AIDS testing facilities.

1.6: In the 3rd cycle, Vanuatu noted but did not support 5 recommendations specific to LGBTI discrimination (A/HRC/41/10 - Para. 91):

- 91.24 Put in place measures, including anti-discrimination measures and awareness-raising campaigns, to eliminate discrimination and violence against lesbian, gay, bisexual, transgender and intersex persons (Canada); A/HRC/41/10 - Para. 91
- 91.26 Enhance the rights of lesbian, gay, bisexual, transgender and intersex people by protecting them effectively from violence and discrimination (Germany); A/HRC/41/10 - Para. 91
- 91.27 Make further efforts to protect lesbian, gay, bisexual, transgender and intersex persons and integrate them into society (Iceland); A/HRC/41/10 - Para. 91
- 91.28 Continue working to consolidate the civil rights of persons belonging to the lesbian, gay, bisexual, transgender and intersex community (Spain); A/HRC/41/10 - Para. 91
- 91.29 Implement specific measures to combat all forms of discrimination, including discrimination based on sexual orientation and gender identity, in order to guarantee the enjoyment of rights by lesbian, gay, bisexual, transgender and intersex persons (Uruguay).

1.7: The following 3rd cycle recommendations that *include coverage of LGBT persons, directly or indirectly*, were supported:

- 90.16 Implement the measures on climate change and disaster risk reduction, guaranteeing a focus on human rights, the incorporation of the gender perspective and the prioritization of vulnerable groups (Chile);
- 90.55 Expand measures to address violence, including sexual violence, especially against women and children, by enforcing the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child and incorporating the human rights obligations into domestic legislation (Germany);
- 90.9 Amend all relevant legislation so as to incorporate fully the principles of gender equality and prohibition of discrimination based on gender, covering direct and indirect discrimination in both the public and private spheres, and take all necessary measures in order to enforce such principles (Portugal);
- 90.62 Expand its existing partnership and collaboration with community leaders to reduce domestic and gender-based violence in rural areas (Singapore);
- 90.61 Continue efforts to eliminate gender-based violence, including domestic and sexual violence, by, for example, allocating adequate resources for the training of law enforcement and medical personnel, for investigations and the prosecution of perpetrators of these crimes, and for access to services for victims (Canada);
- 90.63 Continue to strengthen measures to combat gender-based violence and domestic violence (Maldives);
- 90.5 Continue to promote gender equality, and protect the rights of women, children, persons with disabilities and other vulnerable groups (China).

Indicative support of LGBTI rights

1.8: Vanuatu supported the joint statement entitled "Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity" delivered by Colombia to the Human Rights Council on 22 March 2011.

- The Joint Statement expresses concern for acts of violence and related human rights violations based on sexual orientation and gender identity. It encourages the Office of the

High Commissioner for Human Rights to continue to address human rights violations based on sexual orientation and gender identity. The Joint Statement does not impose obligations on supporting states, but it does contain a recognition of the states' broader responsibility to "...end human rights violations against all those who are marginalised and take this opportunity to renew our commitment to addressing discrimination in all its forms" and requests that states "...take steps to end acts of violence, criminal sanctions and related human rights violations against individuals because of their sexual orientation or gender identity...".

1.9: In November 2016, Vanuatu voted in support of the mandate of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity at the UN General Assembly. The role of the independent expert is to assess the implementation of international human rights instruments with a view to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity. It will also identify and address the root causes of violence and discrimination.

Anti-discrimination legislation

1.10: There is no general prohibition on discrimination based on sexual orientation, gender identity or sex

characteristics, there are some very limited protections in section 18(2)(f) of the *Teaching Service Act*

2013, which makes it an obligation for the Vanuatu Teaching Service Commission not to discriminate

on the basis of "sexual preference" in the recruitment, promotion, professional development, transfer

and all other aspects of the management of its employees.

No criminalisation

1.11: Since its independence in 1980, there have been no laws criminalising sexual orientation or same-sex sexual conduct in Vanuatu. Following amendments to the *Penal Code (Cap 35)* in 2006, the age of consensual sex in Vanuatu has been 16 years regardless of sex or sexual orientation.ⁱ

This submission made by V- Pride brings to the United National Human Rights Council the voices of People with their diverse SOGIE in Vanuatu, focusing on two key issues which are:

Issue 1: Lack integration of SOGIE terminologies into the exiting legal and policy frameworks.

Issue 2: Lack of safety and security for People with diverse SOGIESC.

2. Issue 1: Lack integration of SOGIE terminologies into the exiting legal and policy frameworks.

2.1: V-Pride noted that despite general human rights protections under the Constitution of Vanuatu, there are very few legal protections against discrimination against a person based on their sexual orientation, and no protection against discrimination based on gender identity and sex characteristics. While consensual same-sex activity is legal in Vanuatu, LGBTI persons face legal challenges and discrimination not experienced by non-LGBTI persons.

In particular, Vanuatu lacks laws and policies which:

- protect persons from discrimination on the basis of sexual orientation, gender identity and sex characteristics in employment, education, health care, housing, and the provision of goods and services;
- protect persons from hate crimes and violence on the basis of sexual orientation, gender identity and sex characteristics;
- aim to reduce stigma based on sexual orientation, gender identity and sex characteristics.

2.2: In spite of Vanuatu's general commitment to human rights, LGBTI persons in Vanuatu are not effectively covered through its legal and policy frameworks:

- While the *Constitution* of Vanuatu provides for equal rights under the law for all persons,ⁱⁱ discrimination based on sexual orientation, gender identity and sex characteristics is not specifically addressed in the Constitution.
- Aside from the prohibition on “sexual preference” discrimination in the *Teaching Service Act 2013*, there is no general prohibition on discrimination on the basis of sexual orientation, gender identity or sex characteristics.
- The Vanuatu Gender Equality policy does not include *any* coverage of sexual orientation, gender identity or sex characteristics.
- The Vanuatu Department of Women's Affairs, as part of the Ministry of Justice, has jurisdiction over all gender and gender-related human rights issues, including the Gender Equality Policy, but it has refused to include LGBT issues or rights.
- None of the government agencies collect any data related to gender diversity – this includes the Vanuatu National Statistics Office, the National Disaster Management Office, and the

Ministries of Justice, Education, and Health.

- Issues of gender diversity are not addressed in any of the Ministry plans or policies, including gender desks, gender focal points, and gender mainstreaming.

Recommendations:

V- Pride recommend the Vanuatu government to:

1. Urgently develop and adopt a clear policy statement for all its Ministries, making it clear that its commitment to human rights extends to all people, irrespective of sexual orientation, gender identity or sex characteristics, and that it prohibits all forms of discrimination on the grounds of sexual orientation, gender identity and sex characteristics in all areas of public life, including employment, education, health care, housing and the provision of goods and services;
2. Enact anti-discrimination legislation that prohibits all forms of discrimination on the grounds of sexual orientation, gender identity and sex characteristics in all areas of public life, including employment, education, health care, housing, disaster response, and the provision of goods and services;
3. Amend the National Gender Equality Policy to include LGBTI people, so as to proactively address discrimination against LGBTI people in all areas of public life and allow for a better understanding of patterns of discrimination against LGBTI people.
4. Take steps to ensure that LGBT individuals have access to legal protections, and that they can seek legal remedies for human rights violations.

3. Issue 2: Lack of human rights protection

3.1: The equal access of SOGIE diverse people in Vanuatu to Health, Education, and Safety and Security is not protected and promoted. In addition, there are no measures to protect them from violent and discrimination to guarantee their enjoyment of their human and civil rights and to effectively integrate them into Society, economically, socially, or politically.

3.3: Limited progress has been made in several areas in Vanuatu. With the support of VPride, the Vanuatu Police Force has begun training of some of its forces in awareness. This has also been the case in a few of the health sectors. In Education, the new Family Life Education curriculum, which has not yet been published or implemented, includes some sections on SOGIE diversity. These are important steps that need to be continued and reinforced.

3.4: As documented in VPride’s study on SOGIE diversity and related reportsⁱⁱⁱ, discrimination and violence against LGBTI persons persist in Vanuatu. Issues faced include:

- *Violence* in the form of physical attacks, beatings, verbal abuse, insults, slander, and cyber-attacks. Selected examples from 2023 includes:
 - On May 17th, 2023, the British High Commission raised the rainbow flag to honour LGBT lives lost due to violence in all its forms. The Vanuatu Minister of Foreign Affairs was appalled by this gesture and instructed the removal of the flag.
 - In June 2023, VPride launched a Pride month social media campaign to advocate for equality, human rights, and inclusivity of SOGIE-diverse people in Vanuatu. Unfortunately, the social media campaign failed to gain traction and was met with extensive backlash and threats from conservative and religious groups. VPride filed an official complaint with the Cyber Safety and Crime Prevention Unit of the Vanuatu Police Force in June. No action was taken as of the writing of this report.
 - Reports of increased physical violence, resulting in serious harm and death. Due to social stigma, official reports and complaints are often not filed, and when they are, there is often no follow-up.

3.5 : *Discrimination and exclusion from key services and sectors, including:*

- The VPride report on SOGIE exclusion in times of disasters documented problems in accessing services during and after disasters, including lack of safety in shelters, lack of inclusion in key aid projects such as cash aid for vulnerable populations, and more. The VPride COVID-19 study documented the disproportionate impact of COVID-19 on SOGIE-diverse people and the lack of support received.^{iv}
- The VPride social accountability in health documented key issues faced in accessing health care and in receiving relevant and appropriate health care.^v
- There are no official requirements for schools to have anti-bullying policies and protections. A few schools have their own policies in place but they rarely include LGBT issues.^{vi}
- As noted above, no data are collected by any of the government agencies on issues related to gender orientation or gender characteristics, making it even more difficult to track or assess effective inclusion.

Recommendations:

V- Pride recommend the Vanuatu government to:

- Ensure that LGBT individuals have access to healthcare, education, and safety and justice services without discrimination.
- Verify equal access through enhanced data collection
- Support SOGIE awareness training of public officials and service providers
- Conduct public awareness campaigns to reduce stigma against LGBTI people

ⁱ Ibid; *The Penal Code (Amendment) Act 2006* repealed section 99 of the *Penal Code (Cap 135)* which prohibited homosexual acts with a person under the age of 18.

ⁱⁱ *Constitution of the Republic of Vanuatu 1980* (rev. 2006) article 5.

ⁱⁱⁱ SOGIE Diversity in Vanuatu: A preliminary study <https://www.vpridevanuatu.org/sogie-diversity-in-vanuatu-preliminary-study/>; Oxfam Gender and LGBTIQ+ Policy And Programming In Vanuatu <https://www.vpridevanuatu.org/gender-and-lgbtqi-policy-and-programming-in-vanuatu/>

^{iv} Effective SOGIE inclusion in times of disasters. <https://www.vpridevanuatu.org/a-guide-for-humanitarian-agencies-in-vanuatu-and-the-pacific/> and The impact of COVID-19 on SOGIE diverse people in Vanuatu.

^v Improving Vanuatu SOGIE inclusive health care <https://www.vpridevanuatu.org/improving-vanuatu-sogie-inclusive-health-care/>

^{vi} See forthcoming VPride social accountability study in education.