

Submission to the UN Universal Periodic Review regarding the protection of the rights of LGBTI persons in Vanuatu



Compiled by the Kaleidoscope Human Rights Foundation
and the VPride Foundation

32nd session of the Universal Periodic Review
(January–February 2019)

1. Executive Summary

- 1.1 **Kaleidoscope Human Rights Foundation**¹ has prepared this report with the input and support of **VPride Foundation**.² This report has been prepared for the United Nations Human Rights Council (**UNHRC**) in respect of the rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) people in Vanuatu.
- 1.2 Despite general human rights protections under the Constitution of Vanuatu (**Constitution**), there are very few legal protections against discrimination against a person based on their sexual orientation, and no protections at all against discrimination on the basis of 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.
- 1.3 In particular, Vanuatu lacks laws and policies which:
- (a) 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;
 - (b) protect persons from hate crimes and violence on the basis of sexual orientation, gender identity and sex characteristics;
 - (c) aim to reduce stigma on the basis of sexual orientation, gender identity and sex characteristics; and
 - (d) allow transgender people to change their gender markers on official documents, on the basis of self-determination.

2. Positive steps taken by Vanuatu

- 2.1 Vanuatu has taken several positive steps towards the recognition and protection of LGBTI human rights, including through an acceptance of recommendations at its last Universal Periodic Review (**UPR**), indications of its support of LGBTI rights and through limited anti-discrimination legislation. These steps provide a basis for Vanuatu to continue to improve the human rights of LGBTI persons.

Indicative support of LGBTI rights

- 2.2 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 (**Joint Statement**).³
- 2.3 The Joint Statement expresses concern for acts of violence and related human rights violations based on sexual orientation and gender identity.⁴ The Joint Statement encourages the Office of the High Commissioner for Human Rights to continue to address human rights violations based on sexual orientation and gender identity.⁵ The Joint Statement does not impose obligations on supporting states, but it does contain a

¹ **Kaleidoscope Human Rights Foundation** is a non-governmental organisation that works with local activists to protect and promote the rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) persons in the Asia-Pacific Region.

² **VPride Foundation** is the peak NGO that advocates for the rights of LGBTI people in Vanuatu.

³ Mission of the United States Geneva Switzerland, *Over 80 Nations Support Statement at Human Rights Council on LGBT Rights*, available at <<http://geneva.usmission.gov/2011/03/22/lgbtrights/>> [accessed 8 April 2018].

⁴ Ibid at 2.

⁵ Ibid at 8.

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"⁶ 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...".⁷

- 2.4 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.⁸ 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.⁹ It will also identify and address the root causes of violence and discrimination.¹⁰

Anti-discrimination legislation

- 2.5 Although 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.¹¹

No criminalisation

- 2.6 Since its independence in 1980, there have been no laws criminalising sexual orientation or same-sex sexual conduct in Vanuatu.¹² 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.¹³

3. Discrimination against LGBTI persons

Lack of comprehensive anti-discrimination and hate crime laws

- 3.1 Discrimination and violence against LGBTI persons persists in Vanuatu.¹⁴ Despite some historical recognition and acceptance of LGBTI persons in Vanuatu,¹⁵ Vanuatu faces

⁶ Ibid at 9.

⁷ Ibid at 10.

⁸ Carroll, Aengus and Ramon Mendós, *State-Sponsored Homophobia – A World Survey of Sexual Orientation Laws: Criminalisation, Recognition and Protection*, The International Lesbian, Gay, Bisexual, Trans and Intersex Association, 12th ed May 2017 at page 187, available at <https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf> [accessed 8 April 2018].

⁹ United Nations Human Rights Office of the High Commissioner, *Independent Expert on sexual orientation and gender identity*, available at <<http://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/Index.aspx>> [accessed 8 April 2018].

¹⁰ Ibid.

¹¹ Carroll and Mendós, above n 8.

¹² U.S. Department of State, *Vanuatu 2016 Human Rights Report* at page 14, available at <<https://www.state.gov/j/drl/rls/hrrpt/2016/eap/265384.htm>> [accessed 8 April 2018].

¹³ 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.

¹⁴ Ibid, page 14.

¹⁵ Ministry of Health of Vanuatu, above n **Error! Bookmark not defined.** at page 35.

significant cultural and social hurdles in eradicating discrimination and stigma against LGBTI persons.¹⁶

- 3.2 While the Constitution of Vanuatu (**Constitution**) provides for equal rights under the law for all persons,¹⁷ discrimination based on sexual orientation, gender identity and sex characteristics is not specifically addressed in the Constitution.¹⁸
- 3.3 Aside from the prohibition on “sexual preference” discrimination in the *Teaching Service Act 2013* as mentioned at paragraph 2.5, there is no general prohibition on discrimination on the basis of sexual orientation, gender identity or sex characteristics.¹⁹
- 3.4 In addition, despite violence against LGBTI people remaining widespread, there are no laws or policies that address hate crimes and violence against persons on the basis of sexual orientation, gender identity or sex characteristics (including, for example, laws that provide for an enhanced sentence where a crime has been committed due to hatred against LGBTI people).

Recommendations

Vanuatu should:

- (a) amend Article 5 of the Constitution to add sexual orientation, gender identity and sex characteristics as prohibited grounds for discrimination; and
- (b) 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 and the provision of goods and services;
- (c) conduct public awareness campaigns to reduce stigma against LGBTI people;
- (d) include LGBTI people in the National Gender Equality Policy, 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; and
- (e) enact laws and policies that protect persons from hate crimes and violence on the basis of sexual orientation, gender identity and sex characteristics.

Lack of legal gender recognition for transgender people

- 3.5 There is no administrative or legal procedure in Vanuatu allowing for a change of legal gender or a change of gender markers in official documents.
- 3.6 Accordingly, transgender people are unable to have their gender identity reflected in official documents. This exposes them to significant discrimination in employment, health care and other areas of public life, as their gender identity and expression does not match the sex or gender listed on official documents.

¹⁶ Kaleidoscope Trust, *Speaking Out 2015: The rights of LGBTI citizens from across the Commonwealth* at page 67, available at <<https://kaleidoscopetrust.com/usr/library/documents/main/speaking-out-lgbti-rights-in-the-cw.pdf>> [accessed 11 April 2018].

¹⁷ *Constitution of the Republic of Vanuatu 1980* (rev. 2006) article 5.

¹⁸ UN Human Rights Council, above n **Error! Bookmark not defined.**, page 5.

¹⁹ U.S. Department of State, above n 12, page 16.

Recommendations

Vanuatu should enact legislation that allows transgender people to change their gender markers on official documents, on the basis of self-determination and without any requirement of “sex reassignment surgery”.

4. Summary of recommendations

4.1 The UNHRC should make recommendations that Vanuatu:

- (a) amend Article 5 of the Constitution to add sexual orientation, gender identity and sex characteristics as prohibited grounds for discrimination;
- (b) 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 and the provision of goods and services;
- (c) conduct public awareness campaigns to reduce stigma against LGBTI people;
- (d) include LGBTI people in the National Gender Equality Policy, 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;
- (e) enact laws and policies that protect persons from hate crimes and violence on the basis of sexual orientation, gender identity and sex characteristics; and
- (f) enact legislation that allows transgender people to change their gender markers in official documents, on the basis of self-determination and without any requirement of “sex reassignment surgery”.