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BARRIERS TO WOMEN  
AND CHILDREN'S  
ACCESS TO THE FORMAL  
JUSTICE SYSTEM

The right of access to justice for women is essential to the realization of all the rights protected under the Convention on the Elimination of All Forms of Discrimination against Women. It is a fundamental element of the rule of law and good governance, together with the independence, impartiality, integrity and credibility of the judiciary, the fight against impunity and corruption, and the equal participation of women in the judiciary and other law implementation mechanisms.

The right to access to justice is multidimensional. It encompasses justiciability, availability, accessibility, good-quality and accountability of justice systems, and provision of remedies for victims.<sup>1</sup>

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<sup>1</sup> CEDAW Committee General Comment No. 33, Women's Access to Justice, 2015, (CEDAW General Comment, Women's Access to Justice), CEDAW/C/GC/33.CEDAW.

# BARRIERS TO WOMEN AND CHILDREN'S ACCESS TO THE FORMAL JUSTICE SYSTEM

## a. Background

In its 2015 General Comment on Women's Access to Justice, the CEDAW Committee said that failure to eliminate gender stereotyping and discriminatory laws, and to provide women with physical and affordable access to good quality formal justice services, curtails their access to justice and constitutes a persistent violation of their human rights.<sup>2</sup>

All formal justice sector actors interviewed for this research made it clear that they are very aware of the high rates of family violence and sexual violence in Vanuatu and the need to improve the sector's ability to respond to this level of criminal violence and to deliver effective justice. There have been a number of initiatives in recent years to address the high rates of gender-based violence and to increase women and children's access to the formal justice system.

Importantly, in 2009, the Family Protection Act came into force in Vanuatu, providing for a protection order scheme for people facing physical and non-physical violence from partners and other family members. It also creates a "domestic violence offence" with a maximum penalty of 10 years imprisonment.

The Vanuatu Police Force set up the Family Protection Unit (FPU), now present in five provinces. It is the specialised police unit for domestic and family violence and sexual offences.

The Vanuatu government has also partnered with the Australian and New Zealand governments to strengthen its institutional responses to family violence. For instance, the Australian government's aid programme funds the Justice and Police Programme, which, among other things supports the Family Protection Units.<sup>3</sup> The New Zealand Government

provides technical capacity on policing and domestic violence through its Police Prevention of Domestic Violence Programme (PPDVP).<sup>4</sup>

Civil society organisations, especially the Vanuatu Women's Centre, are playing a crucial role in a number of ways to ensure that women and children have access to the formal justice system when they face family and sexual violence and in matrimonial matters.

Nonetheless, women and girls in Vanuatu experience some of the highest rates of violence, including sexual violence, in the world. As Part Three of this Report shows, only 2 in 100 cases lead to the police charging alleged offenders,<sup>5</sup> and an even smaller number make it to the courts. The reasons for this are complex and are explained below.

Interviews with over fifty formal justice sector actors and civil society representatives confirm that women and children in Vanuatu continue to face many barriers that prevent them from accessing the formal justice system for family violence and matrimonial matters and obtaining remedies. The Government of Vanuatu has signalled its commitment to protecting the rights of women and children set out in the Constitution of Vanuatu, CEDAW and other international human rights treaties that it has ratified, yet these rights are not currently being promoted and protected in practice. Some of the barriers are the same as those experienced by women and children the world over,

<sup>2</sup> Ibid.

<sup>3</sup> The Australian aid programme also supports the Police through the provision of technical support and by funding 36% of the Police Force operational budget (See Ch. 5). Much of this funding goes to the Family

Protection Unit. The Australian aid programme is also funding primary research into informal dispute mechanisms, including in relation to family violence and the Pacific Women for Pacific Development programme, with a focus, among other things, on ending violence against women and ensuring women's access to justice.

<sup>4</sup> Vanuatu Police Force has partnered with the New Zealand police force in PPDVP, which is run in several other Pacific states as well. The PPDVP supports the police force, especially the Family Protection Units and state (police) prosecutors, to develop better procedures and adherence to best practice in handling family and sexual violence cases. The first Vanuatu Police Force Policy and Standard Operating Procedure (SOP) on Family Violence (2015), discussed below, was drafted by the PPDVP.

<sup>5</sup> See 2011 VWC Survey. Refer to Part 3 on Data.

and include both systemic factors – principally gender inequality, discrimination and lack of trust in the formal justice system – and non-systemic factors such as insufficient state funding for the formal justice sector and specialised assistance to facilitate women and children’s access to it.

For women and children in Vanuatu who live away from urban centres, where the four Magistrates Courts are located, access is extremely limited. For women and children with disabilities, the barriers are more complex. (See Part Six.)

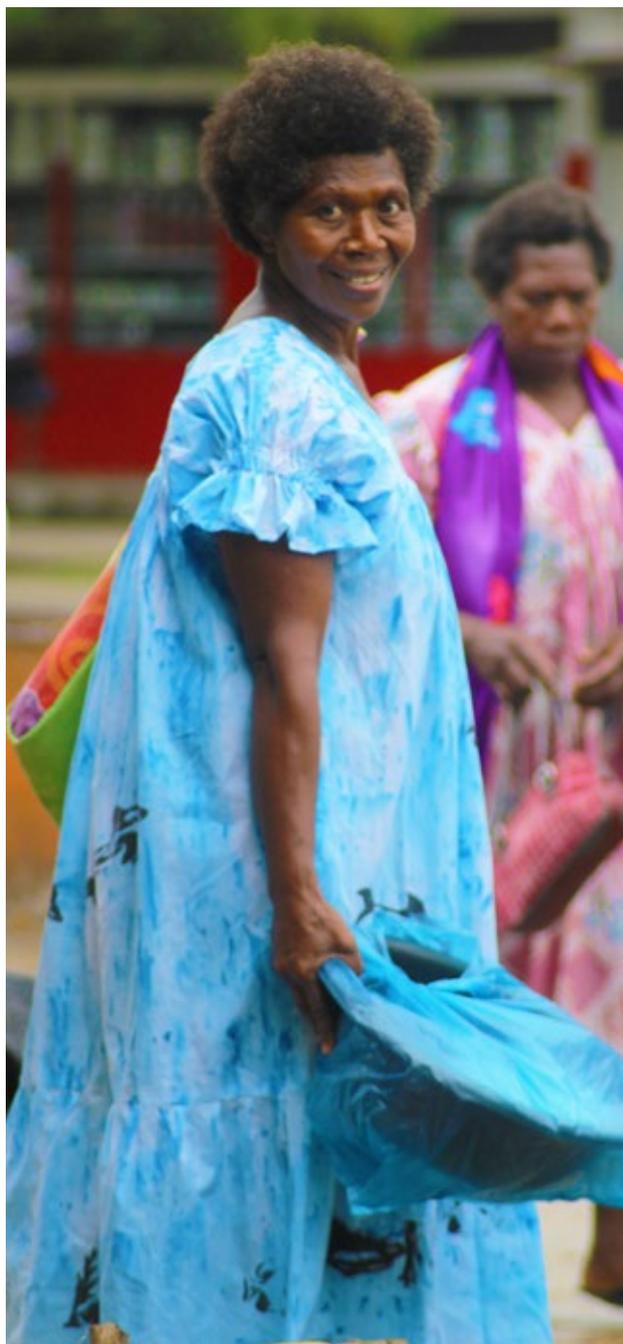


Photo credit: UN Women/Olivia Owen

## Gender inequality is a barrier to access to justice

Systemic gender inequality in Vanuatu, as in other countries, is both a cause and a consequence of the violence committed against women and girls, and prevents their full enjoyment of fundamental human rights, including the right to equal access to formal justice mechanisms and remedies. This means they are less likely to know about their rights, the formal justice system and how to access it, or have the opportunity and means to do so. (Also see Part Two on the socio-demography of Vanuatu.)

Women and girls in all parts of the world, including Vanuatu, may also be subject to multiple and intersectional discrimination on a number of grounds including ethnicity/race, minority status, socio-economic status, religion or belief, political opinion, marital and/or maternal status, age, urban/rural location, disability, and being lesbian, bisexual, transgender women or intersex persons.

These intersecting factors make it even more difficult for women from these groups to gain access to justice.<sup>6</sup>

## Need for an Accessible and Available Formal Justice System

In its General Comment on Women’s Access to Justice, the CEDAW Committee observed:

*... that the centralization of courts ... in the main cities, their non-availability in rural and remote regions, the time and money needed to access them, the complexity of proceedings, the physical barriers for women with disabilities, the lack of access to quality, gender-competent legal advice, including legal aid, as well as the deficiencies often noted in the quality of justice systems (gender-insensitive judgments/decisions due to the lack of trainings, delays and excessive length of proceedings, corruption, etc.) all prevent women from accessing justice.*

*Six interrelated and essential components — justiciability, availability, accessibility, good-quality, accountability of justice systems, and the provision of remedies for victims — are therefore necessary to ensure access to justice.<sup>7</sup>*

<sup>6</sup> CEDAW General Comment, *Women’s Access to Justice*, above n.1, para. 8. See also Part Six of this report on discrimination on the ground of disability. Examination of the possible impact of multiple and intersecting grounds of discrimination on women and children’s access to formal justice in Vanuatu was outside the scope of this research, but is an important area for further study.

<sup>7</sup> CEDAW General Comment *Women’s Access to Justice*, above n.1.

## Legislative framework: Family violence, sexual violence and family law

Family Protection Act	<ul style="list-style-type: none"> <li>• Family Protection Orders (FPO) (“family violence” is defined to include emotional violence and controlling behaviour; “family” is defined to include extended family members).</li> <li>• Domestic Violence Criminal Offence punishable by up to 5 years in gaol.</li> </ul>
Penal Code (CAP 135)	<ul style="list-style-type: none"> <li>• Offences against the Person (e.g., assault, homicide).</li> <li>• Offences against Morality (E.g., rape, sexual offences against children).</li> </ul>
Matrimonial Causes Act	<ul style="list-style-type: none"> <li>• Fault divorce.</li> <li>• Child custody.</li> <li>• Alimony and child maintenance.</li> </ul>
Maintenance of Family Act	<ul style="list-style-type: none"> <li>• Criminal offence: <ul style="list-style-type: none"> <li>– A man fails to provide for his wife and “legitimate” children;</li> <li>– A mother deserts her children for more than 1 month;</li> </ul> </li> <li>• Punishable by up to 3 months imprisonment or VT 20,000 fine.</li> </ul>
Maintenance of Children Act	<ul style="list-style-type: none"> <li>• Unmarried women over the age of 21 years can seek an order for child maintenance for children.</li> <li>• Parents/guardians of unmarried women under the age of 21 years can apply on her behalf.</li> <li>• Breach of a child maintenance order is a criminal offence.</li> </ul>

**Availability and accessibility** of formal justice sector agencies in Vanuatu. Here, two key components to ensuring access to justice need to be met:

*Availability requires the establishment of courts and other quasi-judicial or other bodies across the State Party in both urban, rural and remote areas, as well as their maintenance and funding.*

*Accessibility requires that all justice systems ... are secure, affordable and physically accessible to women, and are adapted and appropriate to the needs of women including those who face intersectional or compounded forms of discrimination.<sup>8</sup>*

75% of Vanuatu’s population live in rural areas.<sup>9</sup> Not every community has a police station and there are only eight magistrates sitting in four provinces. For most people, travelling across an island or to another island to visit

a Magistrates Court or a police station is very difficult. Transport is expensive and there are few vehicles, often no money to buy fuel, and poor roads, as well as infrequent flights and boats for inter-island travel.

Neither the Courts nor the police have sufficient funding to bring their services to people living in rural areas. The annual circuit court calendar proposes that each Magistrate Court travel to outer islands and more remote locations to hear cases, four times a year. However, the budget allocation for judicial circuit tours is insufficient and the percentage the Magistrates Court receives, approximately 8.5% of the circuit tour budget for 2015, falls far short of what is required for all circuits to take place. (See Part Five for further discussion of the budget for the judiciary.)

<sup>8</sup> Ibid, pp. 24–25.

<sup>9</sup> 2009 National Census, above Part 2, n. 5.

The police do not have the operational budget to travel outside the vicinity of their station to visit communities without a police station or post.

Indeed their operational budget has been in decline over the past four years. In 2015 it represented only 6% of the total police budget, which does not allow them to carry out core duties in many parts of the country, including investigating domestic violence and sexual offences, serving Family Protection and other court orders and arresting suspects. Australia's aid programme funds 36% of the police operational budget.

As a result, women and children living in rural and remote areas can wait months, even years, to have sexual and/or other physical violence, or matrimonial cases dealt with by the Courts. It is not uncommon for Family Protection Orders to lapse before the required hearing by that Court to extend, review or rescind the Order can take place.

One magistrate reported that women and children from some islands, which have not had a circuit court visit for years, no longer apply for Family Protection Orders or report sexual and/or other physical violence. This does not mean that there are no cases of violence occurring there, the magistrate explained, but rather that the delays have been so long that women and children have given up on the formal justice system.

All of the Family Protection Units pointed to the fact that there were many unexecuted warrants for arrest, including for serious charges, as well as a backlog of cases. Outstanding warrants for arrest were raised by the Public Prosecutor and judicial officers as a serious impediment to the formal justice system delivering a just outcome for women and children in criminal matters involving violence.

Similar problems of delays were reported with Island Court hearings for child maintenance, with insufficient budget allocated for the Court to have hearings in more remote areas. A number of interviewees pointed out that some Island Courts have a considerable backlog of child maintenance applications.

A review of the Island Court practice on scheduling and hearing child maintenance cases could identify the reasons for these delays and ways to address them. For example, listing all child maintenance applications for hearing on a set day or days each month could increase case finalisation.

## The Family Protection Act – “A Largely Urban Service”

The Family Protection Act provides that an application for a protection order can be made if a person experiences domestic violence at the hands of a family member. Orders can include restraining the offender from committing further violence, requiring them to leave the family home for the duration of the order and interim child custody arrangements. The Act contains two mechanisms to address the fact that many people have difficulty travelling to a Magistrates Court to make an application in person: (1) it allows a person to make an oral application for a protection order, for example by telephone or radio; and (2) it provides for the appointment of “Approved Persons” authorised to make temporary protection orders for up to 14 days if the applicant is in danger, and if *“because of distance, time or other circumstance ... it is not practicable to apply to a court ... and for it to be heard and determined quickly by the court.”*

There is no reliable data on the number of phone applications made since the Act came into force. However, interviewees indicated that oral applications are rarely received. For example, over a 12-month period in 2014–2015 in Tanna, the Magistrates Court received only 2 or 3 phone applications. There is no information on why so few people make oral applications. This is an area requiring further research.

### Telephone Access



In 2009, 4% of all households in Vanuatu had a landline phone available, while 11% of urban households had a landline.

The majority of households in Vanuatu (76%) had access to mobile phones, while 91% of urban households owned a mobile phone compared to 71% of rural households.

However, the 2009 national census did not collect gender-disaggregated data on this matter, so it is not possible to determine whether women have access to a phone, the money to use it, and stable network coverage to make an oral application for a Family Protection Order. There is no information on children's ability to access a telephone.<sup>10</sup>

<sup>10</sup> 2009 National Census.



Photo credit: UN Women/Ellie van Baaren

Section 17, allowing for Authorised Persons to make a temporary protection order instead of a Magistrate, has not been implemented. The Department of Women's Affairs, which conducted a two-year programme to try to identify suitable candidates, and others interviewed for this report, outlined a list of challenges in implementing section 17. The principal difficulty has been in finding candidates who are literate, can be relied on to apply the law rather than traditional custom, and can act impartially.

Consideration should be given to researching whether, in practice, these mechanisms would facilitate women

and children's access to the formal justice system, and, if so, how best to implement them. This could be done as part of the overdue review of the Family Protection Act to assess how well it is working and how it can be improved.

As a first step, however, it is essential that reliable sex and disability disaggregated data be collected on the number of Family Protection Orders sought and granted and the number of oral applications made and granted.

## The Vanuatu Women's Centre

The Vanuatu Women's Centre is the leading women's civil society organisation working with women and children. It provides free counselling, legal advice and legal representation. It also runs a community awareness campaign and delivers training to formal justice sector actors, especially the VPF.

Through its Client Support Fund, the VWC pays for women and children's transport, accommodation and daily subsistence when they have to travel to the police, courts or hospitals. It also pays for court filing fees, for example in the Island Court for child maintenance orders, and for hospital fees for medical examinations and reports in cases of sexual violence. Most women and children who access the formal justice system do so with support from the Vanuatu Women's Centre.

VWC funds emergency accommodation for women and children at risk of further violence. Vanuatu does not have any state funded refuges for women and children fleeing violence.

It also funds Family Protection Unit operational activities, principally through the purchase of fuel and payment of other expenses associated with investigating crimes of violence against women and children. This support allows the FPU to travel to investigate offences, arrest and transport suspects, serve Family Protection, Child Maintenance enforcement and other court orders. (See Part Five on the police operational budget.)

The VWC office in Port Vila, branch offices in Luganville, Tanna and Sola, as well as the network of rural Committees Against Violence Against Women (CAVAWs), assisted 4594 women and children who experienced violence during July 2014 – June 2015.<sup>11</sup> This represents 20% of the 22,901 women who, based on the Vanuatu National Women's Survey referred to above, were estimated to have experienced sexual and/or other physical violence in the previous 12 months.

The VWC, including its Client Support Fund, is 100% supported by the Australian aid programme.

(See Part Five for more information)

## 22,901 WOMEN

WHO WERE ESTIMATED TO EXPERIENCE SEXUAL AND/OR OTHER PHYSICAL VIOLENCE

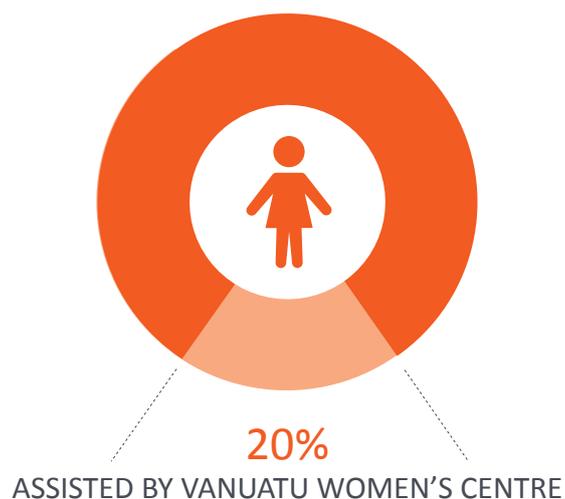
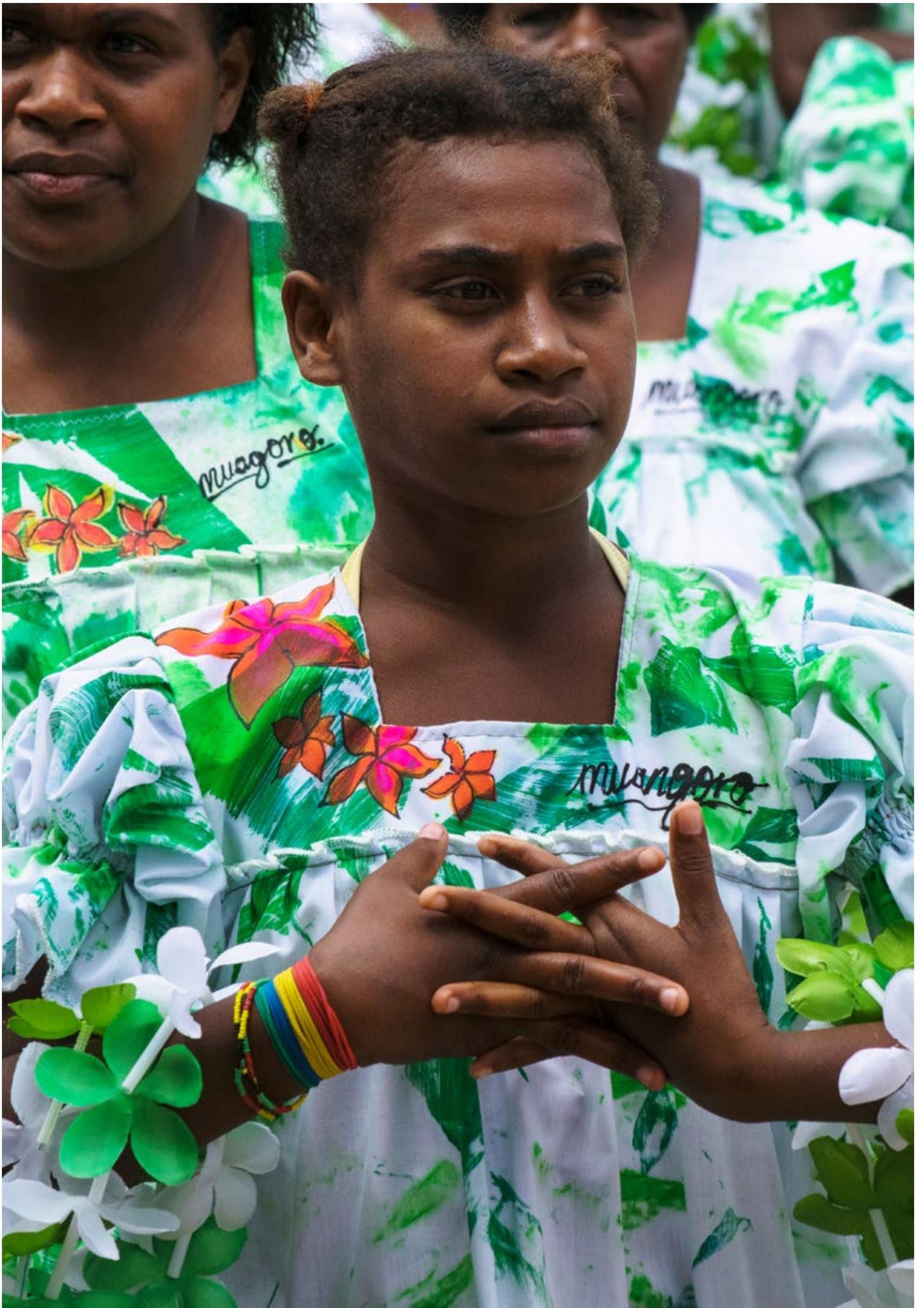


Photo credit, next page: UN Women/Nicky Kuautonga

<sup>11</sup> Vanuatu Women's Centre, *VWC Program Against Violence Against Women: Progress Report 4*, December, 2015, (VWC Progress Report 4, 2015), p. 45. On file with authors.



## Community Women – The Vanuatu Women’s Centre and the “CAVAW” Model

VWC’s Committees Against Violence Against Women (CAVAW) are comprised of local women from rural communities across Vanuatu. They receive basic training and are charged with assisting women and children facing violence to find safety, to give information about their rights and where to get help and to connect them with one of the VWC branches. The VWC then provides counselling, supports those women who want to make a police complaint, apply for a Family Protection Order, or make an application in a family law matter, and gives free legal representation. Through the CAVAWS, the VWC is able to assist many women and children living in rural and remote areas who would otherwise have no access to the formal justice system or any counselling services.

### The High Costs of Accessing the Formal Justice System

As outlined in Part Two of this Report, one fifth of Vanuatu’s urban population live below the Vanuatu Basic Needs Poverty Line (BNPL). For people with disabilities living in Port Vila, this number goes up to nearly a quarter (23.3%). 44% of the Port Vila population and 50% of the Luganville population are considered as very vulnerable or vulnerable to poverty.

Part Two also outlines how the costs associated with the formal justice system are well beyond the means of many women in Vanuatu. It is clear that without financial and other support from the VWC, most women and children would not be able to access the formal justice system, as the costs are too high.



### Court fees

All matrimonial and child maintenance cases are civil matters for which court fees are payable. There is no publicly available fee waiver policy in cases of hardship.

An applicant party, usually a woman, in a matrimonial, adoption, child maintenance or other civil case must pay a court filing fee of VT 1,000 in the Island Court, VT 8,000 in the Magistrates Court and VT 20,000 in the Supreme Court. There are no fees for an application for a Family Protection Order. As shown in Part Two of this Report, these fees constitute a very high proportion of per capita adult expenditure.

Currently, the VWC pay the court filing fee and the cost of medical reports out of its Client Support Fund when their clients are unable to pay these amounts. During 2015, VWC’s court filing fee annual budget has more than doubled from an expected expenditure of VT 200,000 to VT 415,540. From July 2012 – November 2015, the VWC supported women and children with court filing fees in 535 cases and the costs of medical reports in 98 cases. The court filing fees included 465 child maintenance cases (87%), two Child custody cases, 28 matrimonial cases (5%), five civil cases (1%) and 35 other matters (7%). (See also Part Five on Budget).

**Table 4.1: VWC Network Court Fees Fund July 2012 – November 2015<sup>13</sup>**

Year	Child Maintenance	Medical Fees	Child Custody	Matrimonial	Civil Claim	Others	Total
July 2012 – June 2013	114	19	0	5	2	2	<b>142</b>
July 2013 – June 2014	158	22	0	5	2	4	<b>191</b>
July 2014 – June 2015	132	38	1	10	1	18	<b>200</b>
July 2015 – Nov 2015	61	19	1	8	0	11	<b>100</b>

<sup>12</sup> UN Women Fact Sheet No. 1, *The Feminization of Poverty*, at <http://www.un.org/womenwatch/daw/followup/session/presskit/fs1.htm>

<sup>13</sup> VWC Progress Report 4, 2015, above n. 11, p. 200.

As the Australian aid programme funds the VWC Client Support Fund it is effectively paying court filing and medical fees for women and children in family violence and matrimonial matters. If fees are abolished or consistently waived, as recommended below, Australian Government development assistance funding could be applied in other ways to address systemic and other structural barriers to women and children's access to justice, undertake crucial research and data collection as recommended elsewhere in this Report or support the expansion or strengthening of the VWC's capacity.

The Government of Vanuatu should abolish court fees for all applications, including enforcement, under the Maintenance of Children Act and Matrimonial Causes Act. At a minimum, the Government should adopt a policy on waiver of fees in cases of financial hardship and provide clear information to both clients and court staff on the policy.

If court fees are not abolished, the Vanuatu Judiciary Annual Report should include data on the number and type of cases in which fees are waived, as well as the gender and home location of applicants.

The Government should also provide free health services, including the provision of medical reports for criminal investigations, to victims of domestic, family and sexual violence.



*... the [CEDAW] Committee recommends that State parties [r]emove economic barriers to justice by providing legal aid and by ensuring that fees for issuing and filing documents as well as court costs are reduced for women with low income and waived for women living in poverty.<sup>14</sup>*

<sup>14</sup> CEDAW General Comment Women's Access to Justice, above n.1, para., 17(a).

## Legal Aid

### Office of the Public Solicitor

Vanuatu provides legal aid for both civil and criminal matters through the Office of the Public Solicitor (OPS). The Office applies a means and assets test to determine eligibility and can waive its basic fee of VT 1,125 in cases of financial hardship.<sup>15</sup> It is the only publically funded legal aid service in Vanuatu.

As of March 2016, the Public Solicitor had not provided data on the number or gender of clients the office represents in civil, criminal, family law or family violence matters. Nor are copies of its annual reports available online. However, anecdotal evidence from interviews indicates that in family violence and family law matters, the OPS usually defends the respondent/defendant.

One senior legal officer from the OPS interviewed for this research indicated that approximately 97% of criminal cases handled by the office involved sexual offences, while about 40% of civil cases related to matrimonial issues. In the latter, the OPS might give legal advice to the women applicants, but the Office usually acts for the respondent – appealing decisions and defending them from actions for breaches of family law related court orders.

The Government should review the case management system used by the OPS to ensure that the Office collects gender-disaggregated data on the number of clients it represents and the kinds of legal matters involved. This data should be reported in the OPS's Annual Report, which should be published online.

The OPS should report on the percentage of its annual budget it uses to promote women's access to justice. (See Table 5.8 on public accountability in Part Five.)

Consideration should be given to conducting an independent review of the practices of the OPS to assess whether public funds are being appropriately allocated to ensure women's access to legal advice and representation in family law and family violence cases as needed. The assessment should include a review of practices and policies, if any, that may prevent women from accessing OPS services on an equal basis with men.

<sup>15</sup> Currently, a person cannot earn more than VT 50,000 to qualify for legal aid.



Malampa Counselling Centre (VWC). Photo credit: Indira Rosenthal

### Vanuatu Women's Centre

The VWC has two in-house lawyers who provide legal advice and representation for clients. The counselling staff assists clients to apply for Family Protection Orders and supports them to give evidence in criminal trials. A number of court staff and judicial officers confirmed that without the VWC's support, almost no women or children would access formal justice and virtually no cases of violence against them would be prosecuted. (See Box 4.1 for more information.)

### The University of the South Pacific, Community Legal Information Centre

The University of the South Pacific (USP) Community Legal Information Centre (CLIC) is due to commence in the first half of 2016 and will provide free legal information and assistance, including on family law and violence matters. (See Box 4.2 for more information.)

Not all of the Magistrates Courts in Vanuatu are able to assist women wishing to make an application for a Family Protection Order or give them information about their legal rights. For example, the Magistrates Court staff in Port Vila typically sends women coming to the Court for this kind of assistance to the VWC. This is another potential barrier for women seeking access to the formal justice system because they may not have the funds to travel to and from the Court to the VWC offices, or they may simply give up on seeking redress in the court after being sent away to the VWC.

In some other countries, similar law clinics visit local Magistrates Courts on a particular day each week and are available to help people on the spot. The USP Community Legal Information Centre and the Vanuatu judiciary should explore whether CLIC could offer community legal services on certain days at Magistrates Court locations and, possibly, when the Supreme or Magistrates Court goes on circuit. This would be in addition to their current operations from the offices at the USP campus.

## Increasing Access to Community Legal Information Services: USP Community Legal Information Centre (CLIC)<sup>16</sup>



Photo credits: Cate Sumner

### USP opens Law Information Centre

**THE UNIVERSITY OF THE SOUTH Pacific** will open a "Community Law Information Centre" (CLIC) at Emalus Campus to provide legal information to the public on May 4.

The service will be open from Mondays to Thursdays from 8am to 12pm except for public holidays and the semester breaks.

The information will be provided by law students working under the supervision of the Centre Manager, Naomi Nawasaitoga.

The Head of the School of Law, Professor Eric Colvin

said, "We are delighted to be able to launch this initiative.

"It will give our students valuable practical experience.

"It will also enable the University to make a direct contribution to the community."

CLIC will provide general information about the law, explain how the law applies to the problems of individual clients, and may be able to assist in completing forms.

However, CLIC will not undertake any casework, appear in Court or represent clients in any proceedings.

From 2002–2014, the USP Community Legal Centre (CLC) operated as the first student based community legal centre in the South Pacific region. From 2002–2005, the CLC shared office space with the Office of the Public Solicitor (OPS) in Port Vila and was considered an extension of the OPS. It handled 60%–70% of the civil cases in the Magistrates Court in Port Vila based on referrals from the OPS and a means test. The CLC did not represent clients in court but would draft documents and support the Public Solicitor's lawyers in court.

After being closed for 18 months, USP will reopen its community legal services as the Community Law Information Centre or CLIC in the first half of 2016.

Like the CLC before it, CLIC will serve a dual purpose of providing: (i) free legal information to the community who have little understanding of the formal justice system and how the laws of Vanuatu can provide protection; and (ii) an opportunity for students to learn professional legal skills and ethics in a practice environment.

The Centre will also give advice, prepare letters of demand, assist with mediation and prepare court and other legal documents.

It has produced a series of information brochures on the legal system and contemporary legal issues in Vanuatu. These are available in English, Bislama, and French.

CLIC is offered by USP as a semester-long, elective subject for students in the final year of their law degree. Up to 20 students may be admitted to the CLIC subject if they meet the selection criteria.

When the CLIC is launched in the first half of 2016, radio talk back presentations are planned to inform the community that there is a free legal service operating at USP able to assist with a range of legal issues, including family law and family violence.

<sup>16</sup> Source: Interview with Manager of the USP CLIC, Naomi Nawasaitoga; *The USP Community Legal Centre: Combining Legal Education And Legal Services in a Developing Island Country*, Edward R. Hill *Journal of South Pacific Law*, Volume 8, 2004, Issue 1.



Photo credit: UN Women/Murray Lloyd

### Need for Good-Quality, Accountable Formal Justice Systems, and Remedies for Victims

*Good quality of justice systems requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women. It also requires that justice systems are contextualized, dynamic, participatory, open to innovative practical measures, gender-sensitive, and take account of the increasing demands for justice by women.*

(CEDAW Committee, General Comment on Women’s Access to Justice)

### Improve justice sector practices

Most interviewees in the formal justice sector said that they needed more training, awareness raising and professional development to respond to family violence, including sexual violence. Many also said that filling in gaps in internal practice standards or bench books

**On good quality justice systems, the Committee recommends that State parties: (a) Ensure that justice systems are of good quality and adhere to international standards of competence, efficiency, independence and impartiality, as well as to international jurisprudence;**

(CEDAW Committee, General Comment on Women’s Access to Justice, para 18.)

would improve the sector’s responses to family violence by clearly setting out, and requiring adherence to best practice standards. Clear, mandatory guidelines, protocols, practice directions and policies would increase the likelihood that formal justice sector actors would implement the law in Vanuatu rather than rely on their own beliefs and biases about gender-based violence.

However, adopting best practice guidelines will only be of assistance if they are widely disseminated, if users are properly trained in them and if compliance is monitored and enforced.

# EXAMPLE

## The VPF Family Violence Policy and Standard Operating Procedure

In June 2015, the VPF adopted the Family Violence Policy with accompanying Standard Operating Procedure (FV SOP). These were drafted under the New Zealand Pacific Prevention of Domestic Violence Programme (PPDVP) and represent a significant advancement.

### The “no-drop” policy



The FV SOP includes a “no-drop” policy in cases of family violence. FPU officers interviewed for this project were clear that the FV SOP, although quite new, has changed police practice on dropping violence cases at the request of the victim or complainant. When asked directly, all the officers interviewed said that they no longer dropped cases at the request of a complainant. Instead, they advised the complainant that they could not withdraw a case that had been opened and that the complainant would have to tell the Magistrate that they did not want to proceed.

However, police, prosecutors and civil society interviewed for this research also said that there were many allegations of police failing to follow the FV SOP.

### Duty to Investigate



The FV SOP requires police officers to investigate every credible allegation of a domestic violence offence or breach of a family protection order. If there are reasonable grounds to believe that an offence has been committed, the police must charge the suspect and, if they represent an ongoing threat to the complainant, arrest the person. The suspicious death of Annie Joseph in Port Vila in January 2016, referred to earlier in this Report, is one recent example in which there appears to have been a failure by the police to investigate.<sup>17</sup>

Some individual police officers interviewed in February – March 2016 did not know of the FV SOP. Others said they had received training on it, but could not identify some of its key features. Some officers, including in the FPU, are following processes that may be inconsistent with the SOP and Policy, which could cause harm to complainants or undermine investigations and successful prosecution of domestic violence offences.

### Police “roundtables” to “resolve” domestic violence



For example, the routine use of “roundtables” by some Family Protection Units in the VPF to try to resolve the conflict between the parties in a domestic violence case can be contrary to the FV SOP, violate women’s fundamental rights and act as a barrier to women’s access to the formal justice system. Use of the roundtables can be based on gender discriminatory attitudes and a misunderstanding of the nature of domestic violence and should not be used instead of, or cause a delay in investigating allegations of domestic violence or charging and arresting a suspect.

Family Protection Units using roundtables reported that they do so in approximately two-thirds of domestic violence reports they receive. After the roundtable the parties are sent away to try to “work it out”. However, it was reported that at least 50% of complainants return later to report further violence against them.

<sup>17</sup> Vanuatu Daily Post, 9 January 2016, *Alleged domestic violence behind mother’s death*, by Jonas Cullwick; PNG Today 12 January 2016, *Tongan Mother’s Suspicious Death In Vanuatu Rocks Family, Tongan Community*.

The full implementation of the Family Violence Policy and SOP will need a cultural change across the police force. This will take some time but will require, at a minimum, strong leadership from senior police ranks, effective training for all police officers, monitoring compliance and the implementation of disciplinary procedures for breaches.

The VPF should review the practice of using roundtables in family and domestic violence cases for consistency with the VPF Policy and SOP on family violence.

The review should identify the circumstances, if any, in which it is appropriate for police to use roundtables. Once the review is concluded, the VPF should issue a clear directive explaining when roundtables are inconsistent with the VPF Policy and SOP on family violence and cannot be used. If the review identifies any circumstances in which roundtables may be appropriate, strict protocols for their use must be developed and enforced to guarantee the safety, well-being and rights of victims of violence. This review should be conducted in consultation with women's rights and disability organisations.

Senior police officers need to articulate to all ranks their expectation that the Family Violence SOP is to be followed in every case, to monitor compliance with it and to intervene when necessary to ensure it is followed.

There is also clearly a need for additional and more targeted training on the Family Violence SOP and testing of the understanding and ability of officers of all ranks to apply it in practice.

### **Attitudes of formal justice sector actors as a barrier to justice**

The attitude of police, judicial officers, court staff, prosecutors and public solicitors towards gender equality, women's rights and violence against women and girls is key to an accessible justice sector for women and children. High-level leadership, training, monitoring and guidance are key for changing attitudes.

### **Training and professional development**

There is a need for ongoing training of all police officers and recruits in gender equality, women and children's human rights, the rights of people with disability, and the causes and impact of gender-based violence.

Police officers and NGOs recounted in interviews that sexist beliefs held by some police interfere with their duties. For example, uniform desk officers at stations sometimes turn women away and refuse to record their complaint of domestic violence, especially if the police officer is related to, or friendly with, the alleged perpetrator. The woman is blamed for the violence and told to go home to resolve things with her husband or partner. Allegations were made of police officers assaulting women who sought to report domestic violence. Other allegations concern police officers siding with the alleged perpetrator and refusing to investigate allegations of domestic violence.

Consideration should be given for specialist training for officers in the Family Protection Unit and in other Units with responsibility for the investigation of sexual offences to strengthen their knowledge and skills, and develop expertise.

One issue identified as detracting from the ability of police to respond properly to family and sexual violence was the transfer of trained and experienced officers to other units. For example, transferring an officer with many years of experience investigating crimes of sexual violence to general duties or the traffic division.

Expertise in handling family and sexual violence cases needs to be retained in the police units responsible for investigating them.

### **Formal justice sector protocols, Court directives, rules and policies**



*On good quality of justice systems, the Committee recommends that State parties: (e) Implement mechanisms to ensure that evidentiary rules, investigations and other legal and quasi-judicial procedures are impartial and not influenced by gender stereotypes or prejudice;*

(CEDAW Committee, General Comment on Women's Access to Justice, para 18.)



Photo credit: Indira Rosenthal

Continuing training and gender sensitization for all staff is essential, but a lasting shift away from gender discriminatory attitudes in the sector will take time. This process can be supported by the adoption of additional policies, protocols and practice directives requiring staff to carry out their duties in a non-discriminatory manner.

A review of existing court practice directives, bench books, protocols, operating procedures, rules and policies in the justice sector should be undertaken to ensure they are consistent with the Family Protection Act, are not discriminatory against women, including those with a disability, and give clear guidance on compulsory practices and standards to be adhered to. For example, interviewees considered that clarification of the following issues would be valuable: a practice directive confirming that corroboration of the testimony of a victim of rape is not required; and guidance for magistrates on how to prioritise the safety and well-being of complainants when considering motions for adjournment in family violence cases.

## EXAMPLE

### The Island Court Filing Rules



The Efate Island Court recently announced that a statement of claim, including for child maintenance, must be filed at the office of the Island Court within whose jurisdiction the defendant ordinarily resides or carries on business.<sup>18</sup> This approach seems to be inconsistent with the Rules of Civil Procedure. Rule 1(2) of the Island Court Civil Procedure Rules requires that statements of claim be filed *either* at the office of the Island Court within whose jurisdiction the defendant ordinarily resides or carries on business, *or within which the cause of action arose*. “The cause of action” in a child maintenance case would clearly include where the mother and children requiring the maintenance reside.

Misapplying the rule in this way will place an unreasonable burden on women and girls who do not live in the same place as the defendant and will prevent many from making a claim for child maintenance.

Rule 1(2) needs to be clarified as a matter of urgency to ensure that women and girls can assert their rights under the Maintenance of Children Act.

Consideration could also be given to amending the rule to provide that a person can file a statement of claim at the office of the Island Court within whose jurisdiction *either the defendant or applicant* ordinarily resides or carries on business, as well as within which the cause of action arose.

The correct interpretation and application of the Rule should be made clear to all Island Court staff.

<sup>18</sup> On file with the authors.

# EXAMPLE

## Couples Counselling in the Magistrates Courts



Interviews with all magistrates revealed that in cases of family violence they believe they are expected to “counsel” the parties to assist them to resolve the differences that led to the

violence. Each magistrate gave a different emphasis to counselling *vis à vis* their judicial duties and the requirements of the law. They each said that counselling hearings, for which they had not received any training, took up a lot of court time.

For example, one magistrate routinely refers parties to a Family Protection Order to their chiefs for “counselling”. This is done with the consent of both parties, the referral is part of the orders made and specifies the chief, what the chief is expected to do, and requires minutes of the counselling to be taken and given to the court. In another example, the magistrate reported that they routinely conduct lengthy hearings with both parties to a Family Protection Order for the purpose of “counselling”.

The use of judicial proceedings to try to mediate between parties in cases of domestic violence potentially exposes victims, who are usually women, to further violence and can reinforce discriminatory attitudes, including that the victim is partially or fully to blame for the violence against her. It also blurs the line between judicial duties and non-judicial duties and can create a perception of bias on the part of the magistrate.

A review of the practice of “counselling” by magistrates should be conducted as a matter of priority, and clear practice directives issued on whether, when and how such counselling might be appropriate. The review should be conducted in consultation with the VWC, disability advocate groups and other relevant non-government organisations.

## Guidelines for mandatory autopsies when domestic or family violence causes death

The Vanuatu Police Force Family Violence SOP does not include guidelines on when police should request a pathologist to conduct a forensic autopsy in cases where they have reasonable grounds to believe an act of domestic violence has led to death.

As is evident from the Annie Joseph case study (see Executive Summary), the police do not appear to be following in all domestic violence cases the requirement set out under the Criminal Procedure Code to report suspicious deaths to the coroner. There is no trained forensic pathologist in Vanuatu, although the practice is to fly one in, as happened in the case of the death of Mr Kating, also referred to above in the Annie Joseph case study.

Formal justice sector agencies, Port Vila hospital staff and the coroner should review the circumstances surrounding the death of Annie Joseph in January 2016 and make recommendations on how the response of the formal justice sector agencies might be improved.

The Vanuatu Police Force should develop an SOP on when a forensic autopsy is mandatory. This should include cases where the police have reasonable grounds to believe an act of domestic violence caused death. It should also establish who is responsible for ensuring that the arrangements for an autopsy are made and the timelines to be followed.

The Ministry of Health should clarify the responsibilities of medical officers and medical institutions in relation to reporting a death where there is a reasonable suspicion that an offence has been committed.

The VPF and the Ministry of Health should consider collaborating with expert organisations in the Asia-Pacific region, such as the Victorian Institute of Forensic Medicine and the Asia-Pacific Medico-Legal Agencies Network on the development of an SOP, as well as of a roster of international forensic pathology services to support local doctors in Vanuatu conduct forensic autopsies until such time as there is a national forensic pathologist based in Vanuatu.

## Remedies: Sentencing and enforcement

The provision of remedies, another key component needed to ensure women's access to justice, "requires the ability of women to receive from justice systems viable protection and meaningful redress for any harm that they may suffer".<sup>19</sup>

### Sentencing

Inappropriately low sentences that do not reflect the seriousness of the crime, are not "meaningful redress" and they can undermine trust in the ability of the formal justice system to deliver impartial and effective justice. They deny women equal protection of the law and can promote a culture of impunity.

There is a lack of data on sentencing in family violence and sexual violence cases so it is difficult to determine trends in Vanuatu. However, many interviewees across the sector pointed to the very low sentences given for these crimes, including against children, and the failure to take into account the harm caused to the victim. They pointed out that many perpetrators are given a suspended sentence.

However, many interviewees also said they believed that many women did not want to pursue criminal charges against the perpetrator because of the possibility of a custodial sentence and the loss of all financial support for themselves and their children.



Photo credit: UN Women/Murray Lloyd

19 CEDAW General Comment Women's Access to Justice.

### Gender discrimination and sentencing trends in the Pacific: *An Analysis of Judicial Sentencing Practices in Sexual and Gender-Based Violence Cases in the Pacific Island Region*<sup>20</sup>

A recent Pacific regional study that included Vanuatu looked at sentencing practices in sexual and gender-based violence (SGBV) cases and examined the extent to which certain factors that discriminate against a victim on the basis of her gender are used in sentence mitigation by courts, including:

- gender stereotyping and rape myths,
- the consideration of customary practices which may be imbued with gender discrimination,
- “other factors which unjustly privilege the interests of the perpetrator over the interests of the victim”

#### The study looked at the trends in sentencing for sexual and gender-based violence cases when these factors were taken into account and found that:

*Gender stereotypes and customary reconciliation play a significant role in determining the nature and length of sentencing in SGBV cases in the [Pacific]. The discriminatory nature of gender stereotypes and customary reconciliation has meant that victim/survivors of SGBV are denied equal protection under the law.*<sup>21</sup>

#### The study found that:

- Gender-discrimination affects sentence outcomes in more than 50% of SGBV cases in Pacific Island Countries.
- The consideration of gender discriminatory factors led to sentence reductions in over 60% of domestic violence cases and 50% of sexual violence cases.
- Almost half of the domestic violence cases led to a non-custodial sentence.
- Where more than one gender discriminatory factor was considered, perpetrators were four times more likely to receive a non-custodial sentence than in cases where no such factors were considered.<sup>22</sup>

#### However, the study also showed that:

*Judicial officers, when equipped with the proper tools and information, can and do identify and reject [discriminatory] factors raised by the defence.*

#### It recommended:

*Legislative and policy reform, as well as education and training ... to ensure that the victim/survivors are placed at the centre of the judicial process and that discriminatory sentencing practices which breach the obligations of [Pacific Island Countries] under [CEDAW], are eliminated.*<sup>23</sup>



Photo credits, left: UN Women/Murray Lloyd;  
next page: UN Women/Nicky Kuautonga

<sup>20</sup> *An Analysis of Judicial Sentencing Practices in Sexual and Gender-Based Violence Cases in the Pacific Island Region*, ICAAD & DLA Piper, 2015, (Pacific Judicial Sentencing Study) <http://www.icaad.ngo/womens-rights/promote-access-to-justice/combating-vaw-in-pics-reports/an-analysis-of-judicial-sentencing-practices-in-sexual-gender-based-violence-sgbv-cases-in-the-pacific-island-region-pics/>

<sup>21</sup> *Ibid* pp. 6–7.

<sup>22</sup> *Ibid* p. 45.

<sup>23</sup> *Ibid*. Also, see recommendations at p. 38–44.



Consideration should be given to developing guidelines or a protocol on sentencing for sexual and other physical violence cases against women and girls, in consultation with the Chief Justice, Public Solicitor and Public Prosecutor, the Ministry of Justice, the VWC and other civil society organisations. Guidelines should identify gender discriminatory factors used by the courts in Vanuatu to determine sentences and expressly prohibit their application. Guidelines of this nature could also assist with consistency in sentencing. However mandatory minimum sentences are not recommended as they have been found to be counterproductive.

Judicial officers should receive training on identifying gender discriminatory factors and their impact on sentencing in sexual and other violence cases against women and children.

Donors should consider funding a comprehensive review of sentencing in sexual, domestic and family violence cases in Vanuatu to identify trends. It could build on the research and findings of the Pacific Judicial Sentencing Study and could inform the development of guidelines and training for judicial officers.

Donors should also consider supporting research into the impact of custodial sentences in family violence cases on women's confidence in the formal justice system. Research could also look at effective, alternative penalties used in other jurisdictions.<sup>24</sup>

Court case management systems should include mandatory fields for details of penalties imposed by the courts in these cases.

## Enforcement of Court Orders

It was also reported that enforcement of court orders, especially Island Court child maintenance orders, was very weak. There is no system in place to monitor compliance and the onus is on the applicant woman or girl to go back to the Island Court to seek an enforcement order. She must pay a further VT 1,000 for this application on top of any other costs, such as transport to the court, the production of documents to show non-compliance etc.

The review of the *Maintenance of Children Act*, recommended below (see section on Law Reform) should include consideration of how to improve

compliance with child maintenance orders and strengthen their enforcement. The review should take into account best practice from other countries and be conducted in consultation with the Island and Magistrates Courts and women's and disability government and civil society organisations.

## Monitoring



*On good quality of justice systems, the Committee recommends that State parties: (b) Adopt indicators to measure women's access to justice;*

(CEDAW Committee, General Comment on Women's Access to Justice, para 18.)

To ensure the formal justice system is equally accessible to women and children, it must monitor whether its services are available, accessible and of good quality, and if it is providing effective remedies for victims. It must supervise the actions of its justice sector actors for compliance with laws, policies, directives and procedures. More stringent monitoring, especially of the police force, is needed in Vanuatu.

Consideration should be given to how to strengthen monitoring of compliance by justice sector actors with relevant policies, practice directives and laws and that they act impartially at all times.

This could include the development of indicators to measure women's access to the formal justice system, as recommended by the CEDAW Committee.<sup>25</sup> The extent to which indicators are met in a given year should be reported in the annual reports of the formal justice sector agencies.

High-level stakeholder meetings, including justice sector agencies, the Department of Women's Affairs and civil society, convened on a regular basis, should also report on whether indicators are being met and to troubleshoot obstacles to women's access to justice as they arise.

<sup>24</sup> See, for example, *Pacific Judicial Sentencing Study*, above n. 19, p. 44.

<sup>25</sup> Ibid.

## Safety and well-being of women and children victim/survivors in the formal justice system

There is limited infrastructure in the formal justice sector to ensure the safety and well being of women and children victims and witnesses. Courthouses and police stations are not set up to ensure the privacy of a woman or child who may have experienced violence. For example, there are often no separate rooms for witnesses or complainants waiting to give evidence or make a statement. Family Protection Units are housed within police stations or in the case of Luganville, in the middle of the main street. Women and children may be seen entering or waiting by family members and friends, including of the alleged perpetrator. Many interviewees said that in a small place like Vanuatu, this was a significant reason women did not want to report violence against them to the police.

The Chief Justice's draft *Practice Directions in relation to children who are in contact with the court process*, 2013, provides for the use of protective measures for child victims and witnesses, including protecting their privacy, as well as means to facilitate their giving of evidence, such as via CCTV or from behind a screen. The Practice Directions also provide that specific attention be given to a child with special needs or disability so that they can give evidence if required. In all cases, the best interests of the child must be a paramount consideration.<sup>26</sup> However, these measures cannot be employed in all courts because of the lack of infrastructure. Some justice sector interviewees also said that they did not know how to work with young child victims and witnesses and that there was a lack of experts able to assist. They also said that some cases of violence against young children in particular, were dropped because of this.

Judicial officers and prosecutors reported trying different methods to protect witnesses, especially children, from re-traumatization, including hanging curtains or using a whiteboard to divide a court room and shield the witness from the defendant. Most courtrooms are not equipped with CCTV or video-linking technology to allow a person to give evidence without having to sit in sight of the alleged perpetrator. Some reported closing hearings to protect child witnesses and victims, but this is not always possible. For example, the courtroom in Tanna is in the open air.



Photo credit: UN Women/Murray Lloyd



Open air courtroom in Tanna. Photo credit: Indira Rosenthal

The proposed purpose built courthouse in Port Vila, if built as planned with secure areas for women and children, will address some of these concerns. However, there is a need for the courts and the police force to develop policies and rules to ensure safety and avoid re-traumatization. Practical steps, such as providing private areas, the use of video-conferencing and other protective measures, should be prioritised.

<sup>26</sup> The Chief Justice's draft *Practice Directions in relation to children who are in contact with the court process*, 2013. On file with authors.



## Lack of awareness about the formal justice sector

Low levels of education, legal literacy and a lack of awareness of the services available and their legal rights inhibit women's ability to access the formal justice system. Many women don't know about the formal justice system or how to access it. Justice sector actors conduct limited formal awareness raising and educational activities with the general community primarily because of a lack of financial and human resources.

There is very limited printed material on display in courts, police stations, prosecutors' offices and other public places that explain, using simple language, charts, pictures and diagrams, the services and support that are available to assist women and children to access the formal justice sector to enforce their rights and seek remedies. There are no materials of this nature that are accessible to women and children with sight and other disabilities. (See also Part Six on disability).

The provincial branches of the Vanuatu Women's Centre conduct awareness-raising workshops in communities around the country. They are the largest provider of training and awareness-raising on domestic violence and the requirements of Vanuatu's laws.

Court circuits can potentially provide a cost-effective opportunity to raise awareness about the formal justice system, how to access it, and about Vanuatu's laws criminalising violence against women and children. Judicial officers and court staff recounted in interviews how, in small communities, everyone comes to watch the proceedings.

The Government should consider, in consultation with all justice sector agencies, the Ministry of Justice and Community Services and the Department of Women's Affairs, implementing a pilot programme using court circuit tours to disseminate information about the formal justice system and how to access it. Women's and disability organisations should be consulted and involved.

## Interaction between the formal justice system and traditional dispute resolution

Traditional or informal dispute resolution conducted by chiefs, church leaders or others was outside the scope of this research. However, interviews across the sector and with the VWC showed that a lack of accessible formal justice mechanisms, combined with cultural and religious beliefs, leads most women and children, whether by choice or circumstance, to depend on informal justice in family law and sexual violence cases.

Interviewees reported that some chiefs and religious leaders are opposed to the system playing a role in family law and sexual violence cases. They may prevent women from accessing the formal justice system in the belief that these matters are best dealt with in the family or community,<sup>27</sup> that violence against women is justified in some circumstances, or that it is wrong to break up a family through divorce.

On the other hand, a number of chiefs and religious leaders have joined VWC training sessions on violence against women and gender equality and support women and children's access to the formal justice system. For example, in a recent rape trial in the Supreme Court, it was reported that the community chief assisted the victim by contacting the local CAVAW member who was then able to help the victim make a statement to police and give evidence in court.<sup>28</sup>

Research into informal dispute resolution in Vanuatu is being conducted by the *Stretem Rod Blong Jastis* project funded by the Australian Government aid programme. The findings from that research will be an important complement to the findings in this report.

The CEDAW Committee said of Vanuatu that it was concerned about the difficulties women face in obtaining effective remedies and redress in both the traditional and the formal justice systems, and *at the lack of study on this dual legal system*.<sup>29</sup> The Research into informal dispute resolution in Vanuatu supported by the Australian aid programme and this Report focussing on women and children's access to the formal justice system supported by UN Women will address the lack of research in these areas identified by the CEDAW Committee.

27 See findings on attitudes in the 2011 Vanuatu National Women's Survey, above Part 2, n. 22.

28 *PP v Weleghabit*, [2016] VUSC 19; CR 111 of 2014 (10 March 2016).

29 CEDAW Committee *Concluding Observations on Vanuatu's Combined Fourth and Fifth Periodic Report*, 7 March 2016, CEDAW/C/VUT/CO/4-5, para 10.

## Law reform

Interviewees in different justice sector agencies and civil society pointed to the need for review of Vanuatu's legal framework on family violence, sexual violence and matrimonial issues.

### Review the Family Protection Act

A number of people pointed to the fact that review of the FPA is overdue. The Act provides that it should be independently reviewed after 3 years of operation (section 52). The review was due in 2012 but has not yet begun. A thorough review of the FPA would highlight those areas in which the Act is working well and those aspects that are not effective, and could identify ways to strengthen the family protection regime.

### Rules of Evidence

Some justice sector interviewees, including prosecutors, said that Vanuatu needs an Evidence Act to codify common law rules and ensure that only rules which are consistent with the rights of the accused to a fair trial, and the rights of complainants to access good quality, non discriminatory and effective formal justice, are applicable in Vanuatu.

Consideration could be given to the elaboration of rules of evidence, in an Evidence Act or in Rules of Procedure and Evidence, that exclude evidence that is discriminatory on the basis of gender, including confirming that corroboration of a rape victim's testimony is not necessary and excluding evidence on any past sexual activity of the victim.<sup>30</sup> It could also provide for the giving of evidence by video-link and other measures to protect the well-being and safety of a victim or witness while protecting the rights of accused persons.

### The Maintenance of Children Act

The VWC pointed out that the *Maintenance of Children Act 1966* is out-of-date. The amount prescribed for maintenance has not been revised in decades and has not kept up with inflation and increases in the cost of living. The Act provides for applications for maintenance of up to VT 1,000 per week. It was reported that this



is not enough to feed a child of any age, let alone pay for school fees, health care and other expenses. It was suggested that VT 10,000 per month would be a more appropriate amount.

The *Maintenance of Children Act* should be reviewed in its entirety without delay. The review should look at increasing the amount of maintenance payable, and other matters related to its effectiveness, including whether it is discriminatory on any ground. Such a review should be done in consultation with women's and disability organisations.

### A Specialised Family Law Court?

There is a widespread view in the sector that the creation of a specialised court for family law would greatly assist women and children's access to the formal justice system by reducing delays and providing expert and dedicated judicial officers to hear family law and family violence cases.

Consideration be given to the establishment of a separate, specialised division within the Magistrates and Supreme Court specifically for family law and family violence cases with appropriate numbers of trained judicial officers and court staff, and a dedicated budget and human resources.<sup>31</sup>

Photo credit, above: UN Women/Murray Lloyd

<sup>30</sup> *Pacific Judicial Sentencing Study*, above n. 19, p. 43.

<sup>31</sup> See also Recommendations of the Royal Commission into Family Violence (Victoria, Australia), 29 March 2016, at <http://www.rcfv.com.au>



Photo credit: UN Women/Nicky Kuaatonga

## Prohibit discrimination

The CEDAW Committee’s Concluding Observations on Vanuatu recommended that the country “amend its Constitution as well as other appropriate legislation to incorporate fully and without delay the principle of equality between women and men, as well as a prohibition of discrimination on the basis of sex and gender”.<sup>32</sup> (See also Part Six on Disability.)

### b. Lack of confidence in the formal justice system as a barrier

This research has shown that there is a complex matrix of barriers restricting women and children’s access to the formal justice system in sexual and/or other physical violence cases in Vanuatu. This Part has focussed primarily on barriers to an accessible, affordable and good quality formal justice system. However, the VWC has reported that even when they have provided the assistance necessary to overcome many of these barriers by paying court fees and medical reports, supplementing the police budget for investigations, training police and raising women’s awareness of the formal justice system and how to access it, only 21% of their clients wish their case to be reported to police and only 13% want to apply for a Family Protection Order.<sup>33</sup>

In other words, two out of three VWC clients choose not to access the formal justice system to seek redress for violence against them or their children. This is consistent with VWC research that shows that *women only tell someone about the violence when it becomes unbearable or life-threatening, and VWC’s experience over many years is that it can take a very long time for women to recognise the cycle of violence, and even longer to take action to protect themselves.*<sup>34</sup> This finding is supported by the experience of the magistrates, most of who reported that women only came to their court for assistance when they had tried everything else to stop the violence and it had not worked.

It seems that women in Vanuatu lack confidence in the formal justice system, or believe that it is not the appropriate forum for addressing violence and matrimonial matters. There will be many reasons for this, some of which will be specific to Vanuatu, while others are likely to be universal. The implementation of the changes recommended in this Part must be accompanied by strong, public and high-level political leadership on ending violence against women and children, a focus on victim safety and redress, as well as cultural change in attitudes towards women and girls and violence against them.

<sup>32</sup> CEDAW Concluding Observations 2016, above n. 28, at para 9.

<sup>33</sup> VWC Progress Report 4, 2015, above n. 11, p. 47.

<sup>34</sup> Ibid.

# CASE STUDY – RAPE CASE

## Rape case from Banks Islands

In 2012, a woman from a small community on an outer island reported that her father had raped her. She ran away from home but her father sent the local chief to bring her back. When she refused the chief pressed her to give a reason. She told him about the rapes and asked him to call the local CAVAW<sup>35</sup> to come and help her.

The woman came from the CAVAW, advised her to go to the police to make a statement and assisted with sourcing funds for travel to the police station. From that point on, VWC supported the woman, who gave evidence on three separate occasions against her father who was convicted of two charges of rape and one of indecent assault. The conviction was overturned on appeal and a fresh trial ordered. In March 2016, the defendant was convicted once again on all counts.

At both the trial and the re-trial, the presiding Supreme Court justice found the woman's testimony to be entirely credible and persuasive. The defendant was convicted on the basis of her evidence.

This case was unusual in a number of ways. A Key Finding from this Report shows that it is rare for violence against women to be prosecuted. Data from the courts and police indicate very low levels of such cases proceeding to trial. In the patriarchal culture of Vanuatu, it is also unusual and takes considerable courage for a woman to give evidence of this kind against her father. The financial, emotional and legal support provided by the VWC was critical to the success of this case. The case demonstrates both the possibility of, and the difficulty for women accessing the formal justice system in Vanuatu. It shows that access is possible if:

- people are aware of the formal justice system;
- they know where to get information and advice about the formal justice process and how to access it. In this case, it was through the local CAVAW member.



Photo credit: Cate Sumner

- chiefs/community leaders understand the law and support victims accessing it,
- financial support is given,
- free counselling, support, legal representation is available,
- police conduct thorough and prompt investigations,
- complainants are willing to testify, and
- Courts are willing and able to fund unplanned hearings in remote locations without undue delay.

<sup>35</sup> Source: *PP v Welegtabit*, [2016] VUSC 19; CR 111 of 2014 (10 March 2016).

Photo credit, next page: UN Women/Ellie van Baaren