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ACCESS TO THE FORMAL
JUSTICE SYSTEM FOR
WOMEN AND CHILDREN
WITH DISABILITIES



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[W]omen and girls with disabilities are at greater risk of all forms of violence: at home, in their community and in institutions. In particular, women with intellectual disabilities and women with mental illness are particularly vulnerable to physical and sexual violence. They are also less likely to access support, refuge or legal redress.¹

Global evidence indicates that children and adults with disabilities are among the most marginalized and excluded groups in society, lacking access to education, public places, community events, health and other services and formal justice mechanisms. This exclusion is the result of physical barriers, such as inaccessible infrastructure, as well as discriminatory attitudes, policies and laws.

Vanuatu does not have reliable data on the prevalence of violence against women and children with disabilities. However, global studies, including from the Pacific region, consistently show that women and girls with disabilities are targeted for violence and abuse,² and that they experience physical and sexual violence at about twice the rate of non-disabled women.

These studies also show that women and girls with disabilities face multiple and intersecting forms of discrimination on the basis of their sex or gender,³ their disability and the fact that they are likely to be poor. This multiple burden of discrimination further heightens their risk of experiencing abuse and violence,⁴ isolation and exclusion.

Vanuatu disability rights advocates interviewed for this research supported these studies with anecdotal evidence from their own experience. They reported many cases of sexual, family and other violence against women and children with disabilities in Vanuatu but with very few reported to police or prosecuted in the courts.⁵

Vanuatu has committed itself to address discrimination against women and children with disabilities and to safeguard their rights, consistent with its obligations as a state party to the *UN Convention on the Rights of People with Disabilities* (CRPD). Its National Disability Policy and Action Plan 2008–2015 stated that the “Government recognizes that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law”.⁶ The National Action Plan recognized that women with disabilities face double discrimination, and provided that the government “[e]nsure that anti-discrimination measures, where appropriate, which safeguard the rights of women with disabilities are in place”.⁷ However, the Plan was not fully implemented.

1 *Pacific Sisters with Disabilities: At the intersection of discrimination*, D. Stubbs, S. Tawake, Suva, Fiji: UNDP Pacific Centre, 2009 (“Pacific Sisters Report”).

2 For example, *Pacific Sisters Report*. Also, *A Deeper Silence: The Unheard Experiences of Women with Disabilities and Their Sexual and Reproductive Health Experiences: Kiribati, the Solomon Islands and Tonga*, Joanna M. Spratt, Suva, Fiji: United Nations Population Fund Pacific Sub-Regional Office, 2012 (“A Deeper Silence”).

3 “Sex” refers to biological differences between male and female. “Gender” refers to the roles assigned to, and the relationship between, men and women based on socially or culturally constructed and defined identities, statuses, roles and responsibilities. See, UN Women, <http://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>

4 *A Deeper Silence*, p. 31; *Vanuatu’s National Disability Policy and Plan of Action 2008–2015*, p. 27; Also reported in *Women, Children and Men*

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with Disabilities: What do the data say?, Vanuatu National Statistics Office and UNICEF Pacific, 2014, (“Vanuatu Disabilities Report”), at <http://www.vnso.gov.vu/index.php/special-report/disabilities-in-vanuatu-what-do-the-data-say>; *Convention on the Rights of People with Disabilities* (CRPD), Preamble, para. q.

5 They did not report any cases of violence against boys with disability, but this does not mean they do not occur.

6 National Disability Policy and Plan of Action 2008–2015, p. 21.

7 *Ibid.*

In March 2016, the CEDAW Committee called on Vanuatu to adopt a new National Disability Policy and Plan of Action which include mechanisms to protect the rights of women and girls with disabilities, including effective and accessible complaint mechanisms, and ensure their right to inclusive education and their equal access to employment, health care and other services.⁸ It is understood that the Government of Vanuatu is currently developing a new Disability Action Plan.

Gender and disability perspectives should be fully integrated into any new Disability Action Plan and all other government programmes and policies. This “twin track approach to ensure the inclusion of the rights of women and girls with disabilities”, recommended by the Vanuatu Disability Promotion and Advocacy Association, must be allocated the necessary financial resources for coordination of these actions across the whole of government.⁹

a. Prevalence of violence against women and girls with a disability

As reported in Part Two of this Report, Vanuatu’s Disability Pilot Survey 2014¹⁰ found that approximately 5% of the population had a disability. However, there is no data on the causes of disability, including from family, domestic or sexual violence.

There is also no data on the prevalence of violence against women and children with a disability. The National Women’s Survey researched the prevalence of intimate partner, family and sexual violence against women and girls, but did not address violence against women and girls with disability.



Although the study has clearly shown that violence against women results in disability, it has not been possible to determine whether disabled women experience physical or sexual violence at higher rates than other women; nor is it possible to draw conclusions about the impact of violence on the health of disabled women and girls ... The prevalence of partner and non-partner violence against disabled women and girls in Vanuatu, and its impacts on their health, is also worthy of future research.¹¹

b. Data on women and children with a disability accessing the formal justice sector

As reported in Part Three of this Report, Vanuatu does not have disability-disaggregated data from the formal justice sector. Therefore, it is not possible to determine:

- the number of people with a disability entering the formal justice system;
- the proportion of those people who are women or children; or
- the proportion of women and children with a disability seeking remedies in family violence, sexual violence or matrimonial cases.

Anecdotal evidence from interviews conducted for this research, indicate that only a very small number of litigants with a disability have accessed the formal justice system, but there has been no systematic inquiry into the reasons for this.

⁸ CEDAW Concluding Observations 2016, above Part 4, n. 29, para. 35.

⁹ *Submission of the Disability Promotion & Advocacy Association, Vanuatu, to the Committee on the Elimination of Discrimination against Women, 63rd Session* (15 February – 4 March 2016). Copy on file with the authors. CEDAW Concluding Observations 2016, above Part 4, n. 29, para. 35(b).

¹⁰ *Vanuatu Disabilities Report*, above n. 4, p. 24. See also, *Vanuatu Disability Pilot Survey, Findings and Recommendations Report, 2014*, Ministry of Justice and Community Services (*Vanuatu Disability Pilot Survey*). The Survey gathered information on prevalence and types of disabilities, as well as needs, skills and access to services, to identify further research needs and establish a centralized Government Disability Database.

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¹¹ *Vanuatu National Women’s Survey 2001*, above, Part 2, n. 22, p. 124.



c. “Women and children with disabilities are simply not turning up”

When asked how they assisted women and children with disabilities to access the justice system, including gaining access to court and police buildings, police, court staff and judicial officers typically responded that “this had never happened” or only happened extremely rarely. They said that *women and children with disabilities are simply not turning up* at Magistrates Courts or police stations to report violence against them or to seek orders in matrimonial matters. The reasons for this require further research.

The development of a disability inclusive strategy for the formal justice sector, with an integrated gender perspective and in consultation with women’s and disability non-government organisations, should be prioritised. It should address, with practical measures, the reasons why women and children with disabilities do not, or cannot, access the formal justice system. The formal justice sector disability inclusive strategy should endorse the principles expressed in the National Disability Policy and Plan of Action on treatment, respect for and equal access for women and children with disabilities.

Discrimination as a barrier to justice

Women and girls with disabilities face a double, or triple burden of discrimination: being female, having a disability and being among the poorest of the poor. This heightens their risk of experiencing abuse and violence.¹²

*When disability discrimination combines with sex discrimination, disabled women can be more disadvantaged than not only able-bodied women, but also men with disabilities. Where disability and poverty intersect, women and children face increased vulnerability and exclusion.*¹³



As stated in Part Four of this Report, gender discrimination acts as a barrier to women and girl’s participation in all areas of life in Vanuatu, including the formal justice system. As women and girls with a disability face multiple and intersectional discrimination they are often profoundly more disadvantaged than men with disabilities in similar situations,¹⁴ as well as women without disabilities: they are likely to be poorer, more isolated, have less autonomy and less education.

*If women and girls occupy a very lowly status in Vanuatu, “women and girls with disabilities are the lowest of the low”.*¹⁵

Disability discrimination is not prohibited by law in Vanuatu. Section 5 of the Constitution guarantees certain civil and political rights without discrimination on a number of grounds but does not expressly include disability.

The government should fast track the current review of legislation for consistency with Vanuatu’s obligations under the CRPD and repeal or amend discriminatory laws. It should enact legislation to prohibit discrimination on the ground of disability and other grounds and consider amending the Constitution to prohibit discrimination on the basis of disability, sex, gender and other grounds.

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¹² *A Deeper Silence*, above n. 2, p. 31.

¹³ *Ibid*, p. 9.

¹⁴ *Pacific Sisters Report*, above n. 1, p. 15.

¹⁵ Interview with ni-Vanuatu disability rights activist, 2016. On file with authors.



Photo credit: Cate Sumner



Judge's cars blocking the disabled access ramp.
Photo credit: Cate Sumner

Physical barriers to the formal justice system

Disability access to the spaces where the formal justice system operates is very limited. None of the buildings housing justice sector agencies visited during this research in Port Vila, Luganville, Tanna and Malekula were fully accessible to people with limited sight or mobility, including wheelchair users. A few buildings have ramps, but these were invariably too narrow, too steep, or had no safety rails. For example, at the Supreme Court registry in Port Vila, the “disabled access” ramp is considerably narrowed in several places by air conditioning units and has no railing. Staff cars and trucks routinely park in front of it, blocking access.

Many offices are located at the top of stairs, including the main entrance of the Port Vila police station, which is accessible only by stairs, and the Family Protection Unit, which is on the top floor of the station. When asked about accessible interview rooms in the station, the Family Protection Unit officers indicated that there were none available but that they had never asked for one to be made available. There are no plans to retrofit the station to make it accessible or to identify an appropriate ground-floor room that could be used for an interview if a person with a mobility disability sought assistance from the FPU.

All justice sector agencies should review accessibility of their buildings, including premises in temporary use, with reference to best practice building standards for disabled access. This review should be done as a matter of priority.

Practical measures to improve accessibility, such as the identification of accessible rooms on the ground floor, the use of video conferencing and the provision of accessible transport for people with disabilities needing to visit the police or courts, should be explored.

Implement the Vanuatu Disability Pilot Survey recommendation that the government strengthen services that meet the needs of people with a range of disabilities in all urban, peri-urban and rural locations.



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Communication and advocacy support

*The [CEDAW] Committee is further concerned about the lack of procedural accommodation of the justice system for women and girls with disabilities, such as accessible information, provision of sign language interpreter, alternative forms of communication.*¹⁶

Studies in other Pacific countries have shown that barriers to legal redress in the formal justice system are exacerbated for women and children with disabilities by a lack of advocacy support. For example, women who are deaf or have a hearing impairment will not be well represented in court due to a lack of qualified interpreters, let alone interpreters sensitive to issues of women with disabilities.¹⁷

This finding was confirmed in interviews for this report with police officers, prosecutors and court staff in Vanuatu. They all said that it was difficult to communicate with people with disabilities and pointed to the lack of experts to assist them, a Bislama sign language, trained signers, braille technology or other technological aides.

One prosecutor said it would be helpful, at a minimum, to have a directory of experts that could be called on to assist in such cases.

The justice sector and disability civil society organisations in Vanuatu should consult on which simple, low-cost aides can be developed without delay, including signboards, for use by the police, the courts and prosecutors.¹⁸ They could seek information and advice on effective tools used in other jurisdictions or other sectors, such as health. Donors should consider funding the development of different aides, and supporting their use.

Apart from family members, the courts and the police in Vanuatu seem to rely only on one or two known individuals in the disability sector to “interpret” for women and children with disabilities in court and in police interviews. This approach is not sustainable and is limited geographically to the areas in which these individuals live.

A formal justice sector disability inclusive strategy should include a programme to train paralegals and others to work with, and support women and children with disabilities accessing the formal justice sector, starting with the four provinces where the Magistrates Courts sit.

The Vanuatu Women’s Centre, which provides counselling, support and legal representation to most women and children in the formal justice system for family violence and family law cases, does not have

¹⁶ CEDAW Concluding Observations 2016, above Part 4, n. 29.

¹⁷ *Pacific Sisters Report*, above n. 1, p. 18.

¹⁸ One disability advocate reported using a handmade signboard to assist people to report crimes, give statements to police or give evidence in court.

employees who are qualified or have specialised training in working with women and children with disabilities. However, they reported that in the next phase of their work they plan to develop this capacity.¹⁹

Donors should continue to provide ongoing financial support to the VWC to enable it to further develop its capacity to deliver its services to women and children in all sectors of Vanuatu's society. They should also consider funding VWC to recruit counsellors and paralegals with qualifications and expertise in working with women and children with disabilities, including trauma specialists.

A disability inclusive strategy for the formal justice sector should include measures to improve access to justice through the adoption of technological supports to aid communication and accessible materials on rights and how to access justice.

All measures should be developed in consultation with government and non-government women's rights and disability rights agencies. Their availability and how to access them should be widely publicised, including in posters and other materials displayed in formal justice sector agency buildings and other locations.

d. Raising awareness and combatting discriminatory stereotypes in the formal justice sector and general community

Justice sector actors and the disability sector interviewed for this research all reported a lack of awareness of the rights of disabled people in the general population and in the formal justice sector. Very few of the more than fifty justice sector interviewees had received training on the rights of disabled persons or how to assist them to access justice.²⁰

The research also showed that a number of discriminatory attitudes about the capacities of people with disabilities prevail. It is not possible to provide a more accessible justice service for women and children with disabilities without also addressing discriminatory beliefs about disability and the associated stigma. Making the infrastructure of the sector accessible will not be sufficient to ensure women and children have

19 Interview with VWC, Port Vila and Luganville, February – March 2016. Interview records on file with authors.

20 Article 8, CRPD: "States parties shall take all appropriate measures to raise community awareness about persons with disabilities, to foster respect for their rights, and to combat discriminatory stereotypes".



We could all do with training and a greater awareness of how to work with people with a disability.

We need to build empathy and awareness amongst the judiciary of issues faced by people with a disability.²¹

equal access to it. Targeted training and awareness raising for all justice sector actors is needed to undermine discriminatory attitudes that act as a barrier for women and children with a disability.

All justice sector actors should receive targeted training on the nature of disability, how it impacts on women and children's access to justice, and how to support and work with women and children with a disability. Training should also include the rights of persons with disability under the CRPD and address stigma and discrimination.

Raising understanding about disability and the rights of disabled people is also urgently needed at the community level. In 2014, The Vanuatu Disability Pilot Survey Report found that "[g]reater disability inclusion requires stigma and discrimination to be addressed, so that positive attitudes towards people with disability prevail" and recommended a focus on community awareness-raising.²²

The Disability Promotion and Advocacy Organisation of Vanuatu (DPA) identified a need for legal literacy and awareness raising campaigns and strategies designed specifically for women with disabilities to inform them of their rights and how to access the formal justice sector.²³

Government and donors should fund the development of materials that are accessible to women and children with different kinds of disabilities (e.g., cognitive, sight etc.) to explain their rights, the formal justice system and how to access it, taking into account the likelihood of low literacy in this demographic. These materials should be developed by, or in consultation with the DPA, VWC and other expert non-government organisations.

21 Interview with a judicial officer, Port Vila, March 2016. Record on file with authors.

22 "... any investment in inclusive education, service provision or economic activities [be] accompanied by awareness raising of the rights of people with disability ... undertaken in conjunction with people with disability themselves." *Vanuatu Disability Pilot Survey*, above n. 10, p. 19.

23 Submission of the Disability Promotion & Advocacy Association, Vanuatu, to the Committee on the Elimination of all Forms of Discrimination against Women, March 2016.



Photo credit: Indira Rosenthal

Reliable national-level disability data enables policy formation, evidence-based decision making and the efficient and effective direction of resources. Reliable disability data can play a pivotal role in the development, implementation, monitoring and evaluation of disability inclusive development programs.²⁴

e. Data collection

The formal justice sector does not collect disability-disaggregated data. The Vanuatu Police Force does not record the numbers of women and children with disabilities who file incident reports with police in relation to sexual violence and/or other forms of physical violence. It is not possible to assess how many women with disabilities apply for a Family Protection Order, child maintenance or the dissolution of their marriage with the courts.

²⁴ Vanuatu Disability Pilot Survey, above n. 10, p. 5.

New case management systems being introduced in 2015 and 2016 for the judiciary, police and prosecutors should include mandatory fields in relation to people with disabilities. This will enable the formal justice system to disaggregate the information it collects on formal justice sector users and outcomes in relation to people with disabilities.

The VNSO has acknowledged that the data it has collected on disability prevalence in Vanuatu is incomplete and deficient in a number of respects.²⁵ The Disability Pilot Survey recommended that, before proceeding to a national survey, the government carry out a follow-up study to identify why the data collected is questionable, as well as a thorough review of the survey tool.²⁶ These recommendations should be implemented without delay.

Consideration should also be given to conducting pilot surveys into the prevalence and nature of family and sexual violence against women and children with disabilities, the impact of the violence on them, their ability to access, and their experience of, the formal justice system, and whether they can obtain remedies.

Given the prevalence of violence against women and children with disabilities identified in global studies, and the very small number of these cases in the formal justice system in Vanuatu, it seems that these crimes are under-reported.

f. Access to the formal justice system for children with disabilities

In its 2008 Baseline Report for Vanuatu on Child Protection, UNICEF made a number of recommendations for child-friendly investigative and court processes. These recommendations, including the need for measures and targets for improving children's access to formal justice, have not been fully implemented and are still pertinent in 2016. (See Annex 1). They should be reviewed and implemented without delay.

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²⁵ Ibid. p.11 on the limitations of the methodology used in the Survey.

²⁶ Ibid, p. 19.