



WOMEN AND CHILDREN'S ACCESS TO THE FORMAL JUSTICE SYSTEM IN VANUATU



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UN WOMEN

May 2016



CONTENTS

Report Contributors	8
12 Key Findings	10
Sexual Violence Info-graphic by Gender of Victim	12
Population Map – girls, boys, women and men in Vanuatu	14
Quick Facts Vanuatu Info-graphic	15
Executive Summary	19
Key Findings and Recommendations	24
Abbreviations	38

1. METHODOLOGY AND TIMELINE 39

2. OVERVIEW OF SOCIO-DEMOGRAPHIC INDICATORS FOR WOMEN AND CHILDREN IN VANUATU AND THEIR IMPACT ON ACCESS TO JUSTICE 47

a. Access to Justice	49
b. Women and Multidimensional Poverty	49
c. Education levels of women and children and their Access to Justice	52
d. Access to Information and Communication Technology and Access to Justice	55
e. Vanuatu National Survey on Women’s Lives and Family Relationships	56

3. VIOLENCE AGAINST WOMEN AND CHILDREN IN VANUATU: THE DATA 59

a. Overview	61
The Courts	62
b. Supreme Court of Vanuatu	62
c. Magistrates Court of Vanuatu	73
d. Island Courts	85
e. Vanuatu Police Force	90
f. Department of the State Prosecutor	103
g. Office of the Public Prosecutor	105
h. Office of the Public Solicitor	106
i. Vanuatu Women’s Centre	106
j. Access to justice for people with a disability	111
k. Understanding court users and improving data collection	111
l. Interviews with Judges and Magistrates	112
m. Recommendations	113

4. BARRIERS TO WOMEN AND CHILDREN’S ACCESS TO THE FORMAL JUSTICE SYSTEM 117

a. Background	119
b. Lack of confidence in the formal justice system as a barrier	143

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5. BUDGETARY AND HUMAN RESOURCES SUPPORTING WOMEN AND CHILDREN'S ACCESS TO THE FORMAL JUSTICE SYSTEM	145	7. ANNEXURES	175
a. Vanuatu Police Force	147	a. Annex 1: Recommendations made in selected reports on women's access to justice in family law and family violence cases:	176
b. Vanuatu Judiciary	153	VWC/VNSO Family relationships Survey (2009 reported in 2011)	176
c. Office of the Public Prosecutor	158	UNICEF A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Vanuatu (2009)	178
d. Office of the Public Solicitor	159	PJDP and Judiciary of Vanuatu on family law (2013)	180
e. Ministry of Justice and Community Services	162	Committee for CEDAW (2016)	182
f. Vanuatu Women's Centre	163	b. Annex 2: Stretem Rod Blong Jastis Stage 2 Design Background Paper on Women's Pathways to Action When Experiencing Family Violence (2013)	187
g. Public Accountability	164		
6. ACCESS TO THE FORMAL JUSTICE SYSTEM FOR WOMEN AND CHILDREN WITH DISABILITIES	165	8. REFERENCES	189
a. Prevalence of violence against women and girls with a disability	168	Legislation	191
b. Data on women and children with a disability accessing the formal justice sector	168	Annual Reports	191
c. "Women and children with disabilities are simply not turning up"	170	Datasets	192
d. Raising awareness and combatting discriminatory stereotypes in the formal justice sector and general community	173		
e. Data collection	174		
f. Access to the formal justice system for children with disabilities	174		

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12 KEY FINDINGS

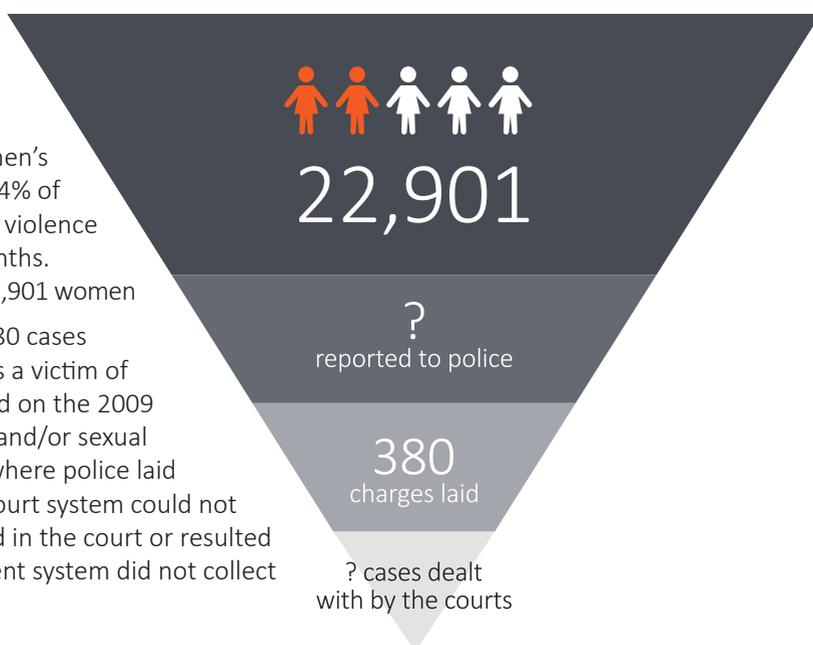
The Government of Vanuatu has signalled its commitment to protecting the rights of women and children set out in the Constitution of Vanuatu and the international human rights treaties that it has ratified, yet these rights are not currently being promoted and protected in practice.

Vanuatu has alarmingly high rates of violence against women by husbands/partners as reported in the Vanuatu National Survey on Women's Lives and Family Relationships undertaken in 2009 by the Vanuatu Women's Centre in partnership with the Vanuatu National Statistics Office:

- > "60% of women in a relationship experienced physical and/or sexual violence by their husband/partner in their lifetime, and 44% suffered from either or both of these forms of violence in the last 12 months."
- > "The prevalence of sexual violence against girls under the age of 15 is one of the very highest in the world. Almost 1 in 3 women (30%) were sexually abused before the age of 15 years."

1 98% of women and children experiencing violence in Vanuatu do not access the formal justice system

- > The 2009 Vanuatu National Survey on Women's Lives and Family Relationships found that 44% of women experienced physical and/or sexual violence by their husband/partner in the last 12 months. Based on the 2009 Census, this equates to 22,901 women
- > During 2012–2014, police laid charges in 380 cases (on average) in which a woman or child was a victim of sexual and/or other physical violence. Based on the 2009 survey of women who experience physical and/or sexual violence, this equates to only 2% of cases where police laid charges. During 2012–2014, the Vanuatu court system could not identify how many of these cases were filed in the court or resulted in a judicial decision as the case management system did not collect gender disaggregated data



2 92% of women and children who access the Magistrates Court are assisted by Vanuatu Women's Centre or the Family Protection Unit of the Vanuatu Police Force



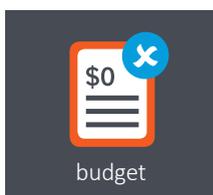
3 Women and children's access to the formal justice system is highly contingent upon support from the Australian Government aid programme

- > 100% of the budget of the Vanuatu Women's Centre and 36% of the operational budget of the Vanuatu Police Force (including the Family Protection Unit) is supported by the Australian aid programme

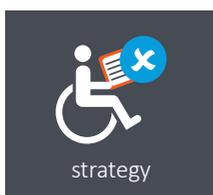


4 Without financial and other support from the Vanuatu Women's Centre, women and children will not be able to access the formal justice system

- > 44% of the Port Vila population and 50% of the Luganville population are considered as very vulnerable or vulnerable to poverty
- > Court fees, transport and/or medical costs involved in violence and family law cases are too high and affect women and children's ability to access the formal justice system



5 The lack of an adequate and available budget for the Vanuatu Police Force limits their ability to investigate, arrest, summon, serve and enforce orders in cases of violence against women and children



6 Women and children with a disability are not visible in the formal justice sector

- > There is no clear disability inclusive strategy to assist women and children with a disability to access the formal justice system in Vanuatu
- > There is no disability disaggregated data collected or published by any justice sector agency in Vanuatu



7 There is a lack of a coordinated response from formal justice sector agencies, medical and counselling services for children experiencing violence



8 Whether a woman or child lives in a rural or urban area affects their ability to access the formal justice system

75% of the population lives in rural areas, yet only:

- > 8% of violence cases (on average during 2013–2015) were decided in the Magistrates Court in rural areas outside Port Vila or Luganville
- > 23% of criminal cases (on average during 2013–2015) were decided in the Supreme Court in rural areas outside Port Vila or Luganville
- > 3% of adoption and 4% of matrimonial cases (on average 2013–2015) were decided in the Supreme Court in rural areas outside Port Vila and Luganville



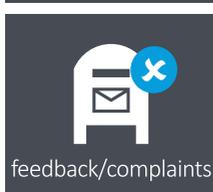
9 Women and children on islands without a Magistrates Court can face considerable delay in having their case heard

The lack of an adequate budget affects the number of circuit courts implemented annually by each of the Supreme Court, Magistrates Court and Island Courts.

- > In 2016, the planned circuit court budget is allocated between the court jurisdictions as follows: 20% to the Magistrates Court, 33% to the Island Courts and 47% to the Supreme Court. This is despite the fact that of all jurisdictions, the Magistrates Court hears the majority of violence cases involving women and children. In 2015, the Magistrates Court received 8.5% of the circuit court budget



10 Poor circuit court coordination wastes government human and financial resources



11 There is a lack of client feedback and complaint mechanisms for the formal justice system agencies on the quality of services provided to women and children

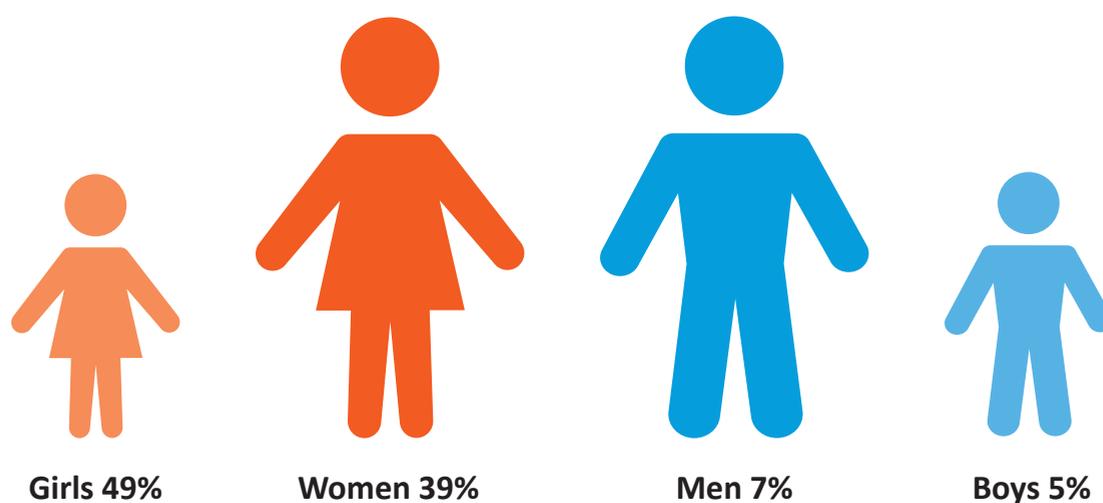
- > there are no court user surveys, regular court-stakeholder discussions or other mechanisms to review public satisfaction with the quality of justice services or to identify systemic weaknesses in the sector with a view to remedying them



12 There is a lack of clear and consistent information on the fundamental rights of women and children, the laws that protect them and how they can access the formal justice system for family law or violence cases

PREVALENCE OF SEXUAL VIOLENCE AGAINST WOMEN AND GIRLS IN VANUATU

Sexual violence by gender of victim N = 310 (2012–15)



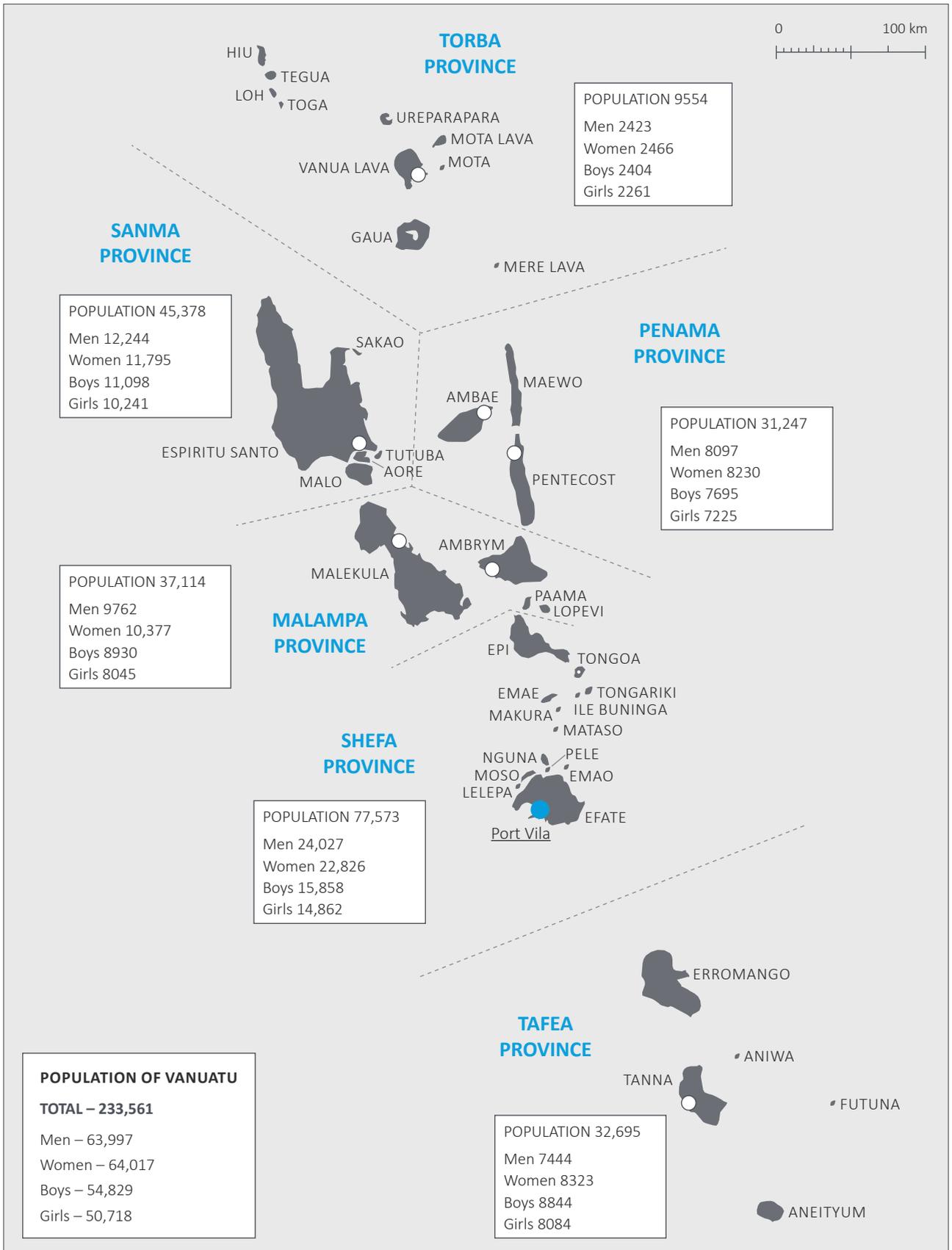
Female Perpetrator – 7%, Male Perpetrator – 93%

93% of sexual violence involves male perpetrators. Girls (49%) and women (39%) are the overwhelming victims of sexual violence in Vanuatu.

Photo credit, next page: UN Women/Murray Lloyd



POPULATION OF VANUATU



QUICK FACTS VANUATU¹

LAND MASS

12,281.25 KILOMETRES SQUARE
83 ISLANDS
(65 OF WHICH ARE INHABITED)

GDP

PER CAPITA 2015 USD 2,872.1³



HUMAN DEVELOPMENT INDEX RANK (2014)

134 OF 188 COUNTRIES

PEOPLE LIVING WITH A DISABILITY



5%

POPULATION²

233,561

ADULTS

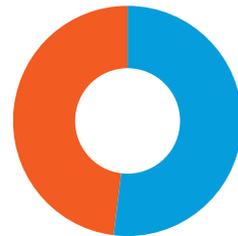
128,014 OR 55%

CHILDREN UNDER 18 YEARS

105,547 OR 45%



48%



52%

FEMALE POPULATION 48%

MALE POPULATION 52%

POPULATION LIVING IN

RURAL AREAS 75%



POPULATION LIVING IN PORT VILA

19% OF THE POPULATION

POPULATION LIVING IN LUGANVILLE

6% OF THE POPULATION

POVERTY HEADCOUNT RATIO

12.7%

1 Source: 2009 Census unless otherwise referenced.

2 Vanuatu's population measured 249,853 at the time of the 2010 Household Income and Economic Survey.

3 <http://dfat.gov.au/trade/resources/Documents/vanu.pdf>

Women comprise 48% of the population but are:

Gender Balance in the Parliament, Judiciary, Police, Public Solicitors and Prosecution Services

Agency	Male	Female	Total
Parliament	52 (100%)	0	52
Supreme Court: Justices and Master	6 (75%)	2 (25%)	8
Magistrates Court: Magistrates	4 (50%)	4 (50%)	8
Island Court Justices	112 (83%)	23 (17%)	135
Vanuatu Police Force ⁴	595 (87%)	91 (13%)	686
Family Protection Unit Police Officers ⁵	7 (50%)	7 (50%)	14
Department of the State Prosecutor	11 (100%)	0	11
Office of the Public Prosecutor: Prosecutors	4 (57%)	3 (43%)	7
Office of the Public Solicitor: Lawyers	8 (73%)	3 (27%)	11

Legislative framework

<i>Family Protection Act 2008</i>	<ul style="list-style-type: none"> Family Protection Orders (“family violence” is defined to include emotional violence and controlling behaviour; “family” is defined to include extended family members). Domestic Violence Criminal Offence punishable by up to 5 years in gaol.
Penal Code	<ul style="list-style-type: none"> Offences against the Person (e.g., assault, homicide). Offences against Morality (E.g., rape, sexual offences against children).
Matrimonial Causes Act	<ul style="list-style-type: none"> Fault divorce. Child custody. Alimony and child maintenance.
Maintenance of Family Act	<ul style="list-style-type: none"> Criminal offence: <ul style="list-style-type: none"> A man fails to provide for his wife and “legitimate” children; A mother deserts her children for more than 1 month; Punishable by up to 3 months imprisonment of VT 20,000 fine.
Maintenance of Children Act	<ul style="list-style-type: none"> Unmarried women over the age of 21 years can seek an order for child maintenance for children. Parents/guardians of unmarried women under the age of 21 years can apply on her behalf. Breach of a child maintenance order is a criminal offence.

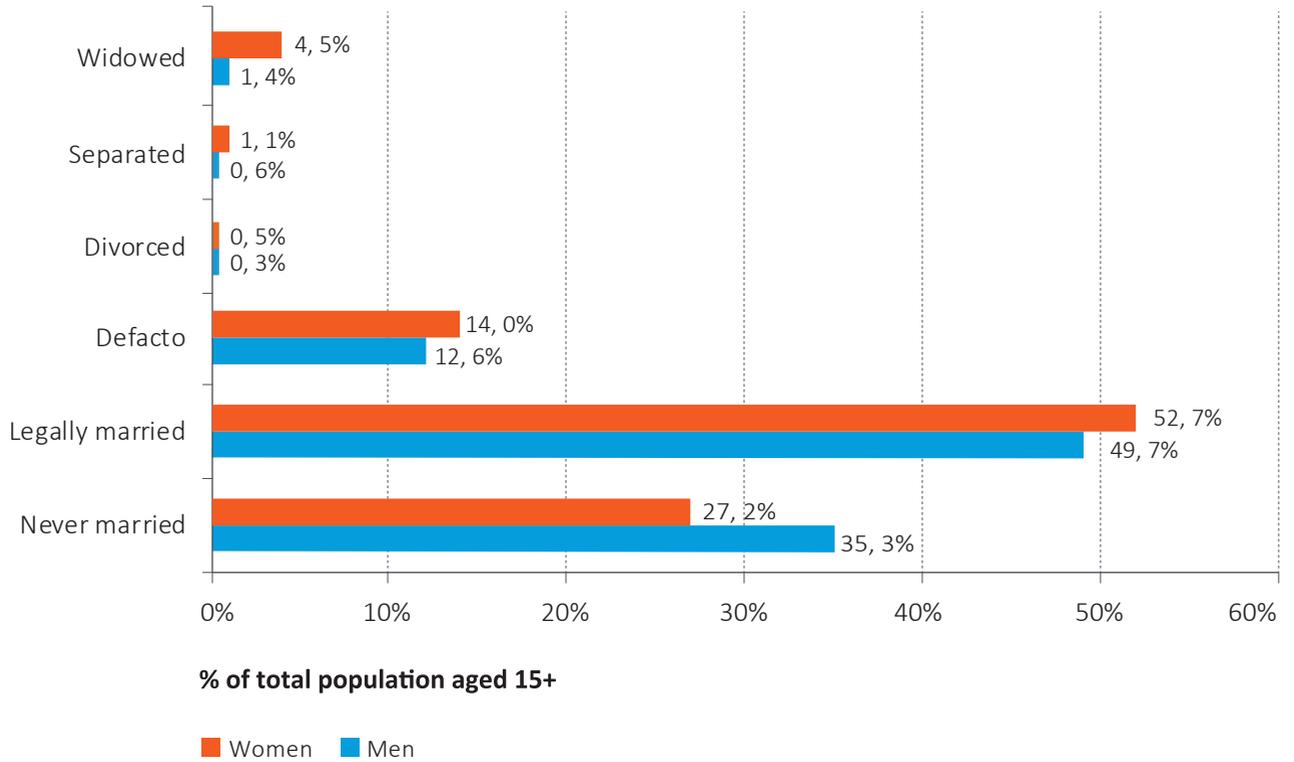
⁴ 2014 Annual Report of the Vanuatu Police Force p12.

⁵ As of 1 January 2016.



Photo credit: Cate Sumner

Marital status of people aged 15 and above, by sex, as % of total population, Vanuatu, 2009





Portrait of [Name] [Title]
Portrait of [Name] [Title]

PRESIDENT

SECRETARY

TRESURER

MEMBERS

EXECUTIVE SUMMARY

In 2009, the Vanuatu Women's Centre (VWC) in partnership with the Vanuatu National Statistics Office (VNSO) completed the first Vanuatu National Survey on Women's Lives and Family Relationships.

This survey found alarmingly high rates of violence against women and girls in Vanuatu:

- 60% of women in a relationship experienced physical and/or sexual violence by their husband/partner in their lifetime, and 44% suffered from either or both of these forms of violence in the previous 12 months.
- The prevalence of sexual violence against girls under the age of 15 is one of the very highest in the world. Almost 1 in 3 women (30%) said they had been sexually abused before the age of 15 years.

Seven years after this ground breaking study, UN Women commissioned research into *Women and Children's Access to the Formal Justice System in Vanuatu*.

This Report analyses why an estimated 98% of cases of violence against women and children do not reach the stage of being charged by the police, let alone prosecuted by the courts.⁶ Why the recent death of the woman referred to in the case study that follows, is not an isolated incident.

The Report opens by summarising 12 Key Findings on why women and children's access to the formal justice system in Vanuatu is so low and makes some recommendations on how this situation might be improved. The findings align with the views of most justice sector actors and civil society representatives interviewed for this Report. The recommendations indicate probable timeframes for implementation: (i) immediately, (ii) under twelve months, and (iii) over a longer time frame.

Part One

of the Report outlines the methodology and timeframe followed in conducting the research.

Part Two

analyses certain socio-demographic indicators for women and children in Vanuatu and the implications these have for their access to the formal justice system.

Part Three

analyses case data from the police, prosecution, courts and the VWC over the past 3–5 years and presents a picture of the 2% of violence and matrimonial cases that are dealt with by the formal justice system. This section also makes recommendations on improving the quality of (i) data captured by formal justice sector agencies, and (ii) public reporting on violence against women and children by formal justice sector agencies in their Annual Reports.

Part Four

of the Report gives an overview of the barriers women and children face in accessing the formal justice system and how these may be addressed. This Part is based on structured interviews with judicial officers, police officers, the prosecution service, state lawyers, as well as counsellors and program officers of the VWC.

Part Five

presents existing budget and human resources allocated to formal justice sector agencies. It shows the impact of inadequate resourcing of the sector on access to justice for women and children.

Part Six

addresses disability inclusion issues for women and children's access to the formal justice system.

⁶ See Part Three of the Report for an explanation of these statistics.

Photo credit, previous page: UN Women/Fiona Morris

Recommendations on women and children’s access to justice in family law and family violence cases made by civil society, UN treaty bodies, donors and International NGOs in earlier reports are included in the Annex to this Report. Since 2009 there have been a number of significant studies that have addressed the barriers facing women and children in accessing the formal justice system in Vanuatu conducted by: the Vanuatu Women’s Centre and Vanuatu National Statistics Office (2009), UNICEF (2009), *Stretem Rod Blong Jastis* (2013) and the Pacific Judicial Development Programme (2013). Also, in March 2016, the Committee for the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) issued its Concluding Observations on Vanuatu’s latest periodic report on CEDAW. There have also been several important reports on violence against women and children with disabilities in the Pacific region, notably by UNDP in 2009 and UNFPA in 2013.

Informal justice approaches conducted by chiefs, church leaders or others were outside the scope of this research. However, interviews across the sector and with civil society organisations showed that a lack of accessible formal justice mechanisms, combined with cultural and religious beliefs, leads to most women and children, whether by choice or circumstance, depending on informal justice in family law and violence cases. 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.

All formal justice sector actors interviewed for this research are aware of the high rates of family violence in Vanuatu and the need to improve the sector’s ability to respond to this level of criminal violence. This research acknowledges the efforts being made by the formal justice sector, donors and civil society to address the high rates of violence and improve women and children’s access to the formal justice system.

In recent years, the Vanuatu Government and the justice sector agencies have taken some significant legislative and other steps to address the large-scale problem of violence against Vanuatu’s women and children. The *Family Protection Act* entered into force in 2009, and the police established the Family Protection Unit, dedicated to investigating family



violence. The police have also issued policies and standard operating procedures to protect women and children experiencing violence by specifying how police should investigate domestic violence offences. It is clear, however, that these steps are not enough.

It is hoped that as a result of this UN Women Report, Vanuatu’s political leaders, heads of formal justice sector agencies as well as civil society leaders, will:

- Make ending all forms of violence against women and children in Vanuatu a national priority;
- Increase the Government of Vanuatu budget allocation to the justice sector, as well as to counselling, legal advisory and health services to ensure that all women and children victims of violence, wherever they live in Vanuatu, can access the formal justice system; and
- Ensure all perpetrators of violence against women and children are held accountable for their actions in fair trials before the formal justice system.

Photo credits, above: Leisha Lister; next page: UN Women/Nicky Kautonga



VIOLENCE AGAINST WOMEN AND ACCESS TO JUSTICE IN VANUATU

Case Studies from Port Vila and the Banks Islands

On 7 January 2016, a woman died after being admitted to the Port Vila hospital with injuries arising from a suspected domestic violence incident.



Photo credit: Leisha Lister

On Saturday 9 January, the Vanuatu Post ran a front-page story under the headline: *Alleged domestic violence behind mother's death*.⁷ In the same edition of the Vanuatu Post,⁸ the Director General of the Ministry of Justice and Community Services remarked:

"Unfortunately, this incident is not isolated. Violence is a major issue that women and families from all over Vanuatu face. Most women who are subjected to violence by husbands/partners experience multiple forms of violence. Violence from husbands/partners occurs in all provinces and islands, and among all age groups, education levels, socio-economic groups and religions.

...This is an issue that goes against everything the Ministry of Justice and Community Services stands for, and something that we as a society need to change. When I say 'society', I mean every single one of us. The law and justice sector, chiefs, faith-based organisations, civil society organisations, teachers and all men and women."

Concerned to make sure that this death was properly investigated, the Vanuatu Women's Centre wrote to the Vanuatu Police Force on 11 January referring to the 2015 Vanuatu Police Force's Family Violence Policy (Part 4) which places a high priority on effective policing and investigation of Family/Domestic Violence cases and specifically referred to Part 3 of the Vanuatu Police Force Standard Operating Procedures: Family Violence Prevention and Response:

7 Vanuatu Daily Post, 9 January 2016, p1, Alleged domestic violence behind mother's death by Jonas Cullwick.

8 Vanuatu Daily Post, 9 January 2016, p3, Violence against women must be eradicated by Mark Bebe, Director General of the Ministry of Justice and Community Services.

IF A POLICE OFFICER HAS REASONABLE GROUNDS TO BELIEVE THAT A PERSON HAS COMMITTED A DOMESTIC VIOLENCE OFFENCE OR HAS BREACHED THE CONDITIONS OF A FAMILY PROTECTION ORDER, THE OFFICER MUST INVESTIGATE THE ALLEGATION.’

The Vanuatu Women’s Centre (VWC) in partnership with the Vanuatu National Statistics Office (VNSO) completed the first Vanuatu National Survey on Women’s Lives and Family Relationships in 2009 and these important findings on the devastating effect of high levels of violence against women and children are now informing family violence policies across Vanuatu. Formal justice sector agencies in Vanuatu have since taken important steps toward responding to this level of criminal violence with the 2008 Family Protection Act and the Family Violence Policy and Standard Operating Procedures issued by the Vanuatu Police Force in 2015.

Nonetheless, as this case study shows, there are still significant gaps in the investigation and prosecution of perpetrators of family violence. This case presents an opportunity for all justice sector actors, as well as the medical and coronial services, to examine whether Vanuatu’s laws and procedures could be strengthened when a person has “died under circumstances raising a reasonable suspicion that somebody has committed an offence” under the Family Violence Standard Operating Procedures and the Criminal Procedure Code provisions (Articles 224–225).

Part Four of this Report contains a second case study outlining the successful prosecution and conviction in March 2016 in the Banks Islands of a father found guilty by the Supreme Court of Vanuatu of the rape of his daughter.⁹ The Case Study in Part Four demonstrates the difficulties facing women in accessing the formal justice system in Vanuatu and the powerful impact that follows if access to the formal justice system is made possible through:

- Women and children knowing where to obtain information and advice about the formal justice process and how to access it. In this case, it was through the local CAVAW member.
- Chiefs and community leaders understanding the law and supporting victims to access the formal justice system,
- Financial support being provided, in this case through the Vanuatu Women’s Centre,
- Free counselling, support and legal representation being available, again through the Vanuatu Women’s Centre,
- Police conducting thorough and prompt investigations,
- Complainants being willing to testify, and
- Courts being willing and able to fund unplanned hearings in remote locations without undue delay.



Vanuatu Women’s Centre, Port Vila. Photo credit: Indira Rosenthal

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

KEY FINDINGS AND RECOMMENDATIONS

A

COSTS OF ACCESSING THE FORMAL JUSTICE SYSTEM

KEY FINDINGS

Key Finding 1

One in five people living in urban areas in Vanuatu lives below the Vanuatu Basic Needs Poverty Line (BNPL).

Key Finding 2

44% of the Port Vila population and 50% of the Luganville population are considered as very vulnerable or vulnerable to poverty.

Key Finding 3

In Port Vila, nearly a quarter of people living with a disability live under the BNPL (23.3%)

Key Finding 4

Women bring most matrimonial, adoption, child maintenance and other family law civil cases and must pay the court filing fees in these civil cases. Island Court fees are VT 1000, which is more than half (52%) the weekly per capita expenditure of an adult whose income was in the lowest three deciles (VT 1933). The Magistrates Court fee of VT 8000 is four times the weekly per capita adult expenditure, while the Supreme Court fee of VT 20 000 is more than ten times the weekly per capita adult expenditure.

Key Finding 5

The VWC pays for the court filing fees and other costs of accessing the formal justice system for many women and children. Without financial and other support from VWC, women and children will not be able to access the formal justice system as the court filing fees, transport and/or medical costs involved are too high.

Key Finding 6

There is no clear procedure for the waiver of court fees in family law cases where the applicant faces financial hardship.

RECOMMENDATIONS

■ Recommendation 1

With close to half of the urban population in Vanuatu living below the Basic Needs Poverty Line or considered vulnerable to poverty, the Government of Vanuatu consider abolishing court fees for all family law applications, including enforcement, under the Maintenance of Children Act and Matrimonial Causes Act.

● Recommendation 2

Courts should make a clear policy for waiving court fees for those cases of financial hardship (until abolished by Government of Vanuatu). Clear information on fees and fee waivers should be publicly displayed in all justice sector facilities.

■ Recommendation 3

Hospitals and health clinics abolish medical report fees [or fees for treatment] in cases where women or children have experienced sexual and/or other physical violence.

● Recommendation 4

The courts should include in the Annual Report data on the number and type of cases in which fees are waived as well as the gender of applicants.

● Can be implemented quickly ■ Can be implemented within 12 months ◆ Can be implemented in a timeframe longer than 12 months

B THE FORMAL JUSTICE SYSTEM IS INACCESSIBLE TO MANY WOMEN AND CHILDREN IN RURAL AREAS

KEY FINDINGS

Key Finding 1

In Vanuatu, 75% of the population lives in rural areas outside Port Vila and Luganville. Women and children living in rural areas have less access to the formal justice system.

Key Finding 2

The Magistrates Court hears the majority of cases involving women and children (e.g., Family Protection Orders, enforcement of child maintenance, family violence). There are Magistrates Courts in only four Provinces and they do not circuit to other locations to hear cases frequently enough. In 2015, the Magistrates Courts only conducted 11 of the 24 scheduled circuit courts and received only 8.5% of the total 2015 circuit court budget.

Key Finding 3

The measures in the Family Protection Act aimed at assisting women who cannot physically access a Magistrates Court are not being used. The facility for making oral applications for protection orders under section 28 is very rarely used.

Key Finding 4

The FPA 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.

RECOMMENDATIONS

● Recommendation 1

The Supreme Court should increase the proportion of the budget for circuit courts that is directed toward enabling the Magistrates Courts to hold the 23 circuit courts published in the 2016 judicial calendar of events from the 8.5% received in 2015.

● Recommendation 2

Courts to use existing video conferencing facilities in the courts in Port Vila and Luganville and in all provincial government offices to hear family protection and matrimonial cases, and to ensure that Family Protection Orders are made within the statutory time limits.

● Recommendation 3

Court to implement guidelines for Section 28 of the Family Protection Act (2008) to clarify the process for phone applications made directly to the court and, if necessary, seek additional budget funds to provide independent legal advisory services at all courts to assist clients to complete an application form.

◆ Recommendation 4

Review the Family Protection Act to highlight those areas in which the Act is working well and those aspects that are not effective, and identify ways to strengthen the Act.

C LACK OF ADEQUATE OPERATIONAL BUDGET FOR THE VANUATU POLICE

KEY FINDINGS

Key Finding 1

The Vanuatu Police Force operational budget has been declining over the past four years (2012–2015) and currently represents just 6% of the overall police budget.

Key finding 2

The VPF does not have the operational funds required for officers to travel outside the vicinity of their station to carry out core duties. The lack of funds limits their ability to investigate sexual and family violence offences, arrest suspects and serve summonses and court orders, including family protection and maintenance orders. This has serious consequences for women and children's access to justice for violence committed against them, for their safety and for the rule of law in Vanuatu.

RECOMMENDATION

◆ Recommendation 1

Government of Vanuatu increase the operational budget of the VPF so that police across Vanuatu have the capacity to investigate, arrest, summon, and serve orders in cases of violence against women and children.

● Can be implemented quickly ■ Can be implemented within 12 months ◆ Can be implemented in a timeframe longer than 12 months

Key Finding 1

Women and children may experience poor quality justice services due to a lack of training, gender sensitization and non-compliance with existing policies, protocols and laws by formal justice sector agencies. Gaps in policies and protocols also act as barriers to women's access to justice.

Key Finding 2

Some Family Protection Units of the VPF use "roundtables" to try to "resolve" the conflict between parties in a domestic violence case rather than opening an investigation and charging and arresting the suspect.

Key Finding 3

The use of judicial proceedings in Magistrates Courts for "counselling" of parties in cases of domestic violence potentially exposes victims, usually women, to further violence. It can also reinforce discriminatory attitudes and compromise the impartiality of judicial officers.

Key Finding 4

Inappropriately low sentences that do not reflect the seriousness of the crime or the gravity of the harm suffered by women promote a culture of impunity. They also undermine women's trust in the ability of the formal justice system to deliver impartial and effective justice and to protect them from violence.

Key Finding 5

There is a lack of client feedback and complaint mechanisms for the formal justice system agencies on the quality of services provided to women and children. There are no court user surveys, regular court-stakeholder discussions or other mechanisms to review public satisfaction with the quality of justice services or to identify systemic weaknesses in the sector with a view to remedying them.

● **Recommendation 1**

Vanuatu Police Force (through Commander North and Commander South) fully implement the 2015 Family Violence Policy and Standard Operating Procedures and ensure they are followed in every case.

■ **Recommendation 2**

The VPF, as a matter of urgency, and in consultation with the VWC, should review the practice of roundtables in family violence cases for consistency with the VPF Policy and SOP on family violence.

● **Recommendation 3**

Supreme Court, in consultation with the VWC, conduct a review of the practice of "counselling" by magistrates and issue clear practice directions.

● **Recommendation 4**

Courts ensure that the existing time standards for hearing Family Protection Orders are adhered to through the development and implementation of a Benchbook or Best Practice Guidelines for judicial officers.

◆ **Recommendation 5**

Donors consider funding a comprehensive review of sentencing in sexual offences and domestic violence cases to identify trends and to inform the development of sentencing guidelines.

● **Recommendation 6**

Court registry staff to receive training on how to provide clients with consistent and appropriate procedural information and how to refer clients to external service providers to assist with applications for Family Protection Orders.

◆ **Recommendation 7**

The Vanuatu Government, in consultation with the Chief Justice of the Supreme Court, consider 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.

◆ **Recommendation 8**

The Government of Vanuatu, as a matter of priority, make adequate funding available for a purpose built courthouse in Port Vila to house the Supreme and Magistrates Court. This courthouse should include secure areas for women and children, space for legal and victim support services, be fully accessible and have available technologies to assist people with a disability.

■ **Recommendation 9**

Reasonable steps should be taken by the formal justice sector agencies to ensure that female judicial officers, court staff, police officers, and other justice sector agency staff and civil society organisations dealing with violence cases are protected and have a safe working environment.

● **Recommendation 10**

Each formal justice system agency introduce a client feedback and complaint mechanism to measure the quality of justice services provided to women and children.

● **Recommendation 11**

Formal justice sector agencies conduct regular user satisfaction surveys to inform their policies, procedures and practices.

Key Finding 1

Nationally, seven out of ten women (71%) aged over 15 years of age have either no education or have only completed primary education. Low levels of education, a lack of awareness of legal services as well as their legal rights inhibit women and children’s ability to access the formal justice system. Most women and children therefore need free legal advisory services (for example from the Vanuatu Women’s Centre, VWC), including to complete application forms required to access the formal justice system.

Key Finding 2

Very limited Information, Education and Communication material, including for people with poor literacy levels, explaining how to access the formal justice sector to enforce rights and seek remedies are displayed in courts, police stations, and prosecutors’ offices.

Key Finding 3

There is limited infrastructure and inadequate policies and rules in the formal justice sector to ensure the safety and privacy of women and children victims and witnesses of violence, and to avoid their re-traumatization.

Key Finding 4

100% of the budget of VWC and 36% of the operational budget of the Vanuatu Police Force (including the FPU) is supported by the Australian aid programme. Women and children’s access to the formal justice system is highly dependent on funding support from the Australian government aid programme. Without this financial support, almost no cases of family law, family violence and sexual violence would be brought to the formal justice sector in Vanuatu.

Key Finding 5

From 2002–14, the University of the South Pacific (USP) Community Legal Centre (CLC) operated as the first student based community legal centre in the South Pacific region. CLC was considered an extension of the Public Solicitors Office and handled 60–70% of the civil cases in the Magistrates Court in Port Vila. USP will reopen its community legal services as the Community Law Information Centre or CLIC in the first half of 2016.

◆ **Recommendation 1**

Government of Vanuatu to introduce a specific budget line item within the MOJCS budget that is directed to counselling, legal advice and legal representation for women in violence cases. This new budget could supplement the funding for existing government agencies (i.e. public solicitor) and civil society organisations such as VWC.

◆ **Recommendation 2**

Establish a Victim Support Unit located at each Magistrates and Supreme Court building for women and children, including those with a disability. The Government of Vanuatu should support this through the national budget. Vanuatu Women’s Centre could be supported under this budget to expand their current victim support work.

■ **Recommendation 3**

The Vanuatu judiciary and the Police Force develop policies and rules to ensure the safety, and avoid re-traumatization of victims/witnesses, and prioritise implementation of practical steps, such as providing private areas and the use of video-conferencing and other protective measures in courtrooms.

● **Recommendation 4**

Formal justice sector agencies, as well as CSOs and USP, support the development of appropriate Information, Education and Communication (IEC) materials and approaches including but not limited to: print, radio, plays.

● **Recommendation 5**

Donors continue support to VWC to enable them to continue to support over 4500 women and children a year to receive counselling, legal advice and legal representation.

■ **Recommendation 6**

Donors consider ways to support VWC and other free legal and violence advisory services to strengthen their services that support women and children living with a disability.

● **Recommendation 7**

USP Community Legal Information Centre and VWC work with the Family Court of Australia to adapt some of their existing legal information materials into more accessible “How-To-Guides” with infographics, in order to assist women to complete an application for a family protection order.

● **Recommendation 8**

USP Community Legal Information Centre work with the Vanuatu judiciary to explore the possibility of establishing a community legal service located in the Magistrates Court on set days (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.

● **Recommendation 9**

The new Manager of the USP Community Legal Information Centre (CLIC) be supported to observe how similar clinical legal education programmes operate at Monash University including the community legal centres that the School of Law supports on campus and at the Dandenong Registry of the Family Law Courts of Australia and the Dandenong Registry of the Magistrates Court of Victoria.

● **Recommendation 10**

Justice sector agencies, together with health and other related services, identify in a cross-agency plan ways to implement coordinated and improved services to girls and boys experiencing sexual, physical and other forms of violence.

■ **Recommendation 11**

Government of Vanuatu introduce into the national curriculum for primary and secondary students modules on the rule of law as well as how to seek protection from physical and sexual violence [including from teachers and school staff].

● Can be implemented quickly ■ Can be implemented within 12 months ◆ Can be implemented in a timeframe longer than 12 months

Key Finding 1

The 2009 Vanuatu National Survey on Women's Lives and Family Relationships found that 44% of women experienced physical and/or sexual violence by their husband/partner in the last 12 months (N=22,901 based on 2009 census). However, it is estimated that on average only 2% of these cases (N=380) resulted in charges being laid by the police.

Key Finding 2

The court databases could not provide data on the final number of violence cases involving women and children that were filed or finalised in court, or the number of Family Protection Orders sought and granted.

Key Finding 3

The 2009 Vanuatu National Survey on Women's Lives and Family Relationships found that the prevalence of sexual violence against girls under the age of 15 is also one of the very highest in the world. Almost 1 in 3 women (30%) were sexually abused before the age of 15 years, and the majority of perpetrators were male family members and boyfriends.

Key Finding 4

The court databases analysed could not provide data on the final number of cases involving sexual violence against girls that were filed or finalised in court.

Key Finding 5

The VPF does not have crimes statistics for each of the regional Commands, it cannot show which Command has the highest level of reported family and sexual violence cases or estimate the operational funds required to respond to these cases.

Key Finding 6

There is inconsistent reporting on financial statements and budget data across the justice sector.

Key Finding 7

The formal justice sector does not collect disability-disaggregated data. It cannot identify the number of family and sexual violence cases in which women or children with disabilities are the victims. Not can it identify the number of matrimonial cases brought by women with disabilities. Therefore, it cannot evaluate their ability to access remedies in the formal justice system.

■ Recommendation 1

Each Justice Sector Agency ensure that their case management system is able to track a single case and offender from the time of an incident report to a final court decision and enforcement.

■ Recommendation 2

Each Justice Sector Agency ensure that gender disaggregated data is a mandatory field in their new case management system in order to identify women as an applicant in civil cases and women as a victim of violence in criminal cases.

● Recommendation 3

The case management systems of each Justice Sector Agency should also collect data on the following mandatory fields: age of offender/victim; nature of the criminal offence; disability; legal representation, waiver of court fees, outcomes in a case.

● Recommendation 4

Annual reports of justice sector agencies should include more gender disaggregated data on the proportion of cases in which women or children access the formal justice system as an applicant in civil cases or as a victim of violence in criminal cases. This data should be further disaggregated to identify cases that involve women or children in urban/rural settings and whether they live with a disability.

● Recommendation 5

Justice sector agencies should report on the number, types of cases and outcomes in cases involving girls and boys in their annual reports.

■ Recommendation 6

The case management systems of each Justice Sector Agency should include mandatory fields for the collection of disability-disaggregated data. This data should inform the development of an inclusive formal justice sector strategy and should be reported in annual reports.

G GUIDELINES FOR INTERACTION BETWEEN MEDICAL, POLICE AND CORONIAL SERVICES IN DOMESTIC VIOLENCE CASES

KEY FINDINGS

Key Finding 1

The Vanuatu Police Force introduced Standard Operating Procedures: Family Violence Prevention and Response in June 2015. However, these Procedures do not include guidelines on when police should request that a pathologist conduct a forensic autopsy in cases where the police have reasonable grounds to believe an act of domestic violence has caused death.

Key Finding 2

The provisions of the Vanuatu Criminal Procedure Code dealing with a Coroner's Report and post-mortem examinations are not being followed in all cases where there is a reasonable suspicion that an offence has been committed, including in a domestic violence context.

Key Finding 3

There is no trained forensic pathologist in Vanuatu although the Government of Australia Pacific Regional aid program includes the development of a new post graduate course in Pathology at the College of Medicine, Nursing and Health Sciences at the Fiji National University.

RECOMMENDATIONS

● Recommendation 1

Formal justice sector agencies, Port Vila hospital staff and the coroner 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.

■ Recommendation 2

The Vanuatu Police Force should develop a Standard Operating Procedure (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.

● Recommendation 3

Ministry of Health clarify 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.

■ Recommendation 4

VPF and Ministry of Health 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.

H OVERCOME CULTURE OF IMPUNITY AND PUBLICISE FAMILY VIOLENCE CASES IN THE FORMAL JUSTICE SYSTEM

KEY FINDINGS

Key Finding 1

There is a lack of consistent and committed political leadership to advance gender equality, condemn all forms of violence against women and children and prioritise funding for accessible, high-quality formal justice responses.

RECOMMENDATIONS

● Recommendation 1

Leaders in all justice sector agencies agree to introduce multi-sectoral quarterly meetings to identify challenges and develop coordinated responses for women and children experiencing violence by health, counselling and justice sector agencies. Consider using video conferencing facilities in provincial government offices to allow the participation of people outside Port Vila.

■ Recommendation 2

Leaders in all justice sector agencies commit to holding regular community information sessions across Vanuatu to emphasise that violence against women and children is a crime and inconsistent with the values of Vanuatu society. The message should focus on the high prevalence of sexual violence against children by family members and the damage that this does to Vanuatu's citizens.

● Recommendation 3

The Magistrates Court should publish on PACLII suitably anonymised judgments and sentencing decisions in s. 10 FPA (2008) domestic violence cases.

● Can be implemented quickly ■ Can be implemented within 12 months ◆ Can be implemented in a timeframe longer than 12 months

Key Finding 1

There is no disability inclusive strategy to assist women and children with a disability to access the formal justice system.

Key Finding 2

Discrimination on the ground of disability is not prohibited by law.

Key Finding 3

All formal justice sector actors requested awareness raising and training on the rights of people with disabilities.

Key Finding 4

Offices of justice sector agencies are inaccessible for many women and children with disabilities.

Key Finding 5

There is no Bislama sign language or braille technology in Vanuatu. The police and judicial officers do not have access to technological aides, nor do they widely use picture boards to assist communication with people with disabilities. There are no materials on rights and court services in braille.

Key Finding 6

Apart from family members, the courts and the police 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. They are not professionally qualified, although they do have considerable experience working with people with disabilities.

Key Finding 7

The Vanuatu Women’s Centre is the only organisation providing counselling support to women and children who have experienced family violence and sexual violence. They are also the principal organisation providing legal advice and support for women accessing the formal justice system. The Centre’s counsellors and legal staff do not receive specialised training in working with women and children with disabilities.

■ Recommendation 1

Under the leadership of the MoJCS, justice sector agencies work with disabled persons organisations and civil society organisations who work with women and children to identify the particular barriers faced by women and children with a disability in accessing the formal justice system in Vanuatu and to develop a disability inclusive justice strategy.

● Recommendation 2

The Director-General of the MoJCS should strengthen the National Disability Committee and ensure that it has a clear mandate with key performance indicators, meets regularly, includes representatives from women’s and disability civil society organisations and reports annually. A report from the Committee on its activities should be included in the Annual Report of the Ministry.

■ Recommendation 3

Under the leadership of the MoJCS, justice sector agencies, in consultation with women’s organisations and disability advocacy groups, develop and implement a training programme for the judiciary, court staff, prosecutors, public solicitor and the all police units on:

- the Convention on the Rights of People with Disabilities,
- the nature of different kinds of disability;
- the specific impacts of disability and gender on women and children’s experience of family violence and sexual violence; and
- the specific barriers that women and children with disabilities face in trying to access the formal justice system.

◆ Recommendation 4

Donor countries consider working with Vanuatu formal justice sector agencies to fund upgrades to the courthouses and police stations to enable full access by people with disabilities.

■ Recommendation 5

Under the leadership of the MoJCS, justice sector agencies, in consultation with Vanuatu disability advocacy groups and women’s organisations, and other experts (e.g., other court jurisdictions), develop a strategy to improve access to justice through the use of technological supports to aid communication, accessible materials on rights and how to access justice, and for training sign language interpreters.

■ Recommendation 6

Consider a programme to train paralegals 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.

■ Recommendation 7

Donor countries and VWC to discuss training for all VWC staff members on how to support women and children with disabilities access the formal justice system. More advanced and specialised training for counsellors and legal staff should be provided.

● Can be implemented quickly ■ Can be implemented within 12 months ◆ Can be implemented in a timeframe longer than 12 months

ABBREVIATIONS

BNPL	Basic Needs Poverty Line
CAVAW	Committee against Violence against Women
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CLIC	Community Legal Information Centre (of the University of the South Pacific)
CMS	Case management system (for the judiciary and other justice sector agencies)
CRIMS	Criminal Information Management System
CRPD	Convention on the Rights of People with Disability
CSU VPF	Corporate Services Unit, Vanuatu Police Force
DSP	Department of the State Prosecutor of the Vanuatu Police Force
DOJCS	Department of Justice and Community Services
DPA	Disability Promotion and Advocacy Organisation of Vanuatu
DPO	Disabled persons organisations
FPA	Family Protection Act 2008
FPO	Family Protection Order provided under the Family Protection Act
FPU	Family Protection Unit (of the Police Force)
FV	Family violence
FV SOP	Family Violence Standard Operating Procedure
IFCE	International Framework for Court Excellence
INGO	International non-government organisation
NGO	Non-government organisation
OPS	Office of the Public Solicitor
PacLII	Pacific Island Legal Information Institute
PJDP	Pacific Judicial Development Programme
PPDVP	Police Prevention of Domestic Violence Programme
SCC	Sanma Counselling Centre, a branch of VWC at Luganville on Santo island
SGBV	Sexual and gender-based violence
SOP	Standard Operating Procedure
TCC	Tafea Counselling Centre, a branch of VWC at Lenakel on Tanna island
ToCC	Torba Counselling Centre, a branch of VWC at Sola on Vanualava island
UN	United Nations
UNDP	United Nations Development Program
UNICEF	United Nations Children’s Fund
UN WOMEN	United Nations Entity for Gender Equality and the Empowerment of Women
USP	University of the South Pacific
VNSO	Vanuatu National Statistics Office
VPF	Vanuatu Police Force
VT	Vatu (Vanuatu local currency)
VWC	Vanuatu Women’s Centre



1

METHODOLOGY AND TIMELINE



METHODOLOGY AND TIMELINE

a. Research Aim and Scope

The aim of the UN Women research project is to:

- Consider the extent to which women and children are able to access the formal justice system in Vanuatu,
- Understand the barriers that currently impede women and children's access to the formal justice system, and
- Together with Vanuatu formal justice sector agencies, consider approaches that would increase the proportion of women and children accessing the formal justice system, particularly in violence cases, and the quality of the services provided.

UN Women and Vanuatu justice sector agencies agreed that the research project would consider women and children's access to the formal justice system in Vanuatu in the following types of cases:

Supreme Court

- **Criminal cases:** Serious Crimes (including sexual offences)
- **Civil Cases:** Family law/matrimonial
- **Adoption cases.**¹

Magistrates Court

- **Criminal cases:** Family Protection Act (domestic violence offences) and Penal Code (preliminary investigation) cases
- **Criminal:** Maintenance of Family Act (desertion)
- **Violence cases:** Family Protection Act: Protection order cases
- **Civil Cases:** matrimonial/family law (uncontested petitions for divorce etc.)

Island Court

- **Civil cases:** Maintenance of Children cases (applicant is a woman).



Photo credit: UN Women/Murray Lloyd

b. Research Approach

It was agreed with the heads of justice sector agencies that the research would include analysis of the following sources of information on how women and children access the formal justice system in Vanuatu:

- I. Agency² Data 2012–2015
- II. Agency Budget Documents – Budget Proposals and Appropriations 2013–2015
- III. Interviews with Justice Agency Stakeholders
- IV. Individual Case Studies highlighting various aspects of the delivery of justice for women and children.

In addition, the research team has conducted a literature review and considered previous recommendations made by researchers, formal justice sector agencies, civil society, INGO's and the Committee for CEDAW.

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previous page: UN Women/Nicky Kuautonga

1 Adoption cases are dealt with as a separate category of case by the Supreme Court.

2 Police, Prosecution, Courts and Vanuatu Women's Centre. The Office of the Public Solicitor made no data available.

c. Research Timeline

This research project was undertaken over five months from mid-November – mid-April.

Month	Research Activities
Mid-November – December 2015	<ul style="list-style-type: none">• Desk review of literature concerning women and children’s access to the formal justice system in Vanuatu.• Met with heads of justice sector agencies to agree upon the methodological approach to the research.• Research commenced in Port Vila and Tanna.
February 2016	<ul style="list-style-type: none">• Research continued in Luganville, Malekula and Port Vila.
March	<ul style="list-style-type: none">• Initial key findings and recommendations discussed with heads of justice sector agencies in Vanuatu.
April	<ul style="list-style-type: none">• Draft final report presented to UN Women.



Photo credit: UN Women/Olivia Owen

d. People Interviewed

After receiving the agreement from the head of each justice sector agency to interview judicial officers and agency staff, the research team mapped the justice sector agencies, civil society organisations (CSOs), disabled persons organisations (DPOs),

donor programmes and other organisations that it would be important to interview. For each formal justice sector agency a structured interview was developed. Prior to interviewing each judicial officer and agency staff member a summary of the aim of the research programme was read out and each interviewee was asked if they wished to proceed with the interview.

Supreme Court

	Interviews were conducted with:
Port Vila	<ul style="list-style-type: none">• Chief Justice• 2 of 6 Justices• Chief Registrar

Magistrates Court

	Interviews were conducted with all eight Magistrates:
Port Vila	<ul style="list-style-type: none">• Chief Magistrate• Senior Magistrate• 2 Magistrates• Deputy Registrar
Santo	<ul style="list-style-type: none">• Senior Magistrate• Magistrate
Malekula	<ul style="list-style-type: none">• Senior Magistrate
Tanna	<ul style="list-style-type: none">• Senior Magistrate

Island Courts

Port Vila	Island Court Coordinator
	Interviews were conducted with Island Court Clerks from:
	Efate Island Court
	Santo/Malo Island Court
	Malekula Island Court
	Tanna Island Court
	Ambae Island Court

Police

Interviews were conducted with:

Acting Police Commissioner

Commander North

Family Protection Unit

- 8 of 13 FPU officers:
Port Vila (3/5); Tanna (1/1); Santo (3/4); and Malekula (1/2)

State Prosecutor

- 5 of 11 State Prosecutors:
Port Vila (1/6 – Officer-in-Charge), Tanna (1/1), Santo (2/3) and Malekula (1/1)

Other Police

Criminal Investigation Department CID

- Deputy Director, Port Vila

Tafea Area Command

- Officer-in-Charge

CRIMS, Port Vila

- Officer-in-Charge
- Data Officer

Serious Crimes Unit

- A senior officer in Port Vila and the two officers in Tanna.

Morality Offences Unit

- Three of the four police officers in the Morality Offences Unit in Santo.

Forensics

- Officer-in-Charge of the Unit in Santo.

Public Prosecutor

Interviews were conducted with:

Port Vila

- Public Prosecutor
- Assistant Prosecutors 3/5
- Note: Deputy Prosecutor role and 3 Assistant Prosecutor posts were vacant at time of the research.

Santo

- Assistant Prosecutor (1/1)

Vanuatu Women's Centre

Interviews were conducted with:	
Port Vila	<ul style="list-style-type: none">• Director• Legal Adviser and Legal Assistant• Research Officer• Counsellor
Sanma	<ul style="list-style-type: none">• Project Officer• Community Educator• Counsellor
Malampa	<ul style="list-style-type: none">• Project Officer• Volunteers
Tafea	<ul style="list-style-type: none">• Project Officer
Torba	<ul style="list-style-type: none">• Project Officer• 2 Counsellors

Public Solicitor

Interviews were conducted with:	
Santo	<ul style="list-style-type: none">• Senior Legal Officer (1/2)

Ministry of Justice

Interviews were conducted with:	
Port Vila	<ul style="list-style-type: none">• Director General• Director of Department of Women's Affairs and 2 staff members.• Disability Desk• Child Protection Officer

Others

Interviews were also conducted with:

Port Vila

- Policing and Justice Support Program
- Vanuatu-Australia Police Programme
- Australian High Commission
- Save the Children
- UNICEF
- University of the South Pacific Community Legal Information Centre
- Vanuatu National Statistics Office
- New Zealand High Commission
- New Zealand Pacific Prevention of Domestic Violence Programme (PPDVP)

Santo

- Sanma Frangipane
 - National Coordinator, Disability Promotion and Advocacy Association (DPA)
 - Sanma Provincial Disability Officer
 - Medical Superintendent, Northern District Hospital, Luganville
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2

OVERVIEW OF SOCIO-DEMOGRAPHIC INDICATORS

for Women and Children in Vanuatu and their Impact
on Access to Justice

Fairness, transparency and access to justice are also the foundational characteristics of Vanuatu's legal system.

...

The law is there to facilitate the well-being of the people of Vanuatu and society. It is not to be seen as somehow obstructing them.

Some basic fundamentals are necessary. Laws regulate the activities and the often complex interactions between persons or institutions. The object is to enable Vanuatu people and their families to realise their ambitions as best as possible, and to achieve mutual respect between all those within the community. To realise these objects, it is necessary to have in place an infrastructure to ensure that those objects can be fulfilled¹.

The Hon Vincent Lunabek, Chief Justice of Vanuatu at the Opening of the Law Year 2016

1 Official Opening of the Courts of Vanuatu by The Hon Chief Justice Lunabek, 2016. <http://www.paclii.org/vu/other/speeches/2016.html>

OVERVIEW OF SOCIO-DEMOGRAPHIC INDICATORS

for Women and Children in Vanuatu and their Impact on Access to Justice

a. Access to Justice

*“Human lives are battered and diminished in all kinds of different ways, and the first task ... is to acknowledge that deprivations of very different kinds have to be accommodated within a general overarching framework”.*²

Multidimensional poverty analyses look at a range of factors that affect the lives of women, men and children including poor health, lack of education, inadequate living standards, lack of income, disempowerment and the lack of a voice in the decisions that shape their lives, poor quality of work and the threat of violence in their lives³.

In the context of access to formal justice systems, multidimensional poverty affects all aspects of a woman’s ability to access the formal justice system, from limited education and a lack of financial autonomy, through to not having sufficient funds (i) for court filing fees in civil matters such as child maintenance, family law and adoption cases, (ii) for transport costs to and from the court for themselves and witnesses, (iii) for copying of documents or other formalities or (iv) to afford the time lost at work/potential salary foregone to file documents and attend court hearings.

In Vanuatu, as elsewhere in the world, poverty also has an impact on a woman’s ability to access legal information that will help her navigate the formal justice system, including knowing her rights, where and how to report an incident of violence, file an application for a Family Protection Order, or bring a family law matter to the courts for resolution.

This Part reviews the available data in Vanuatu on poverty and hardship, educational attainment,

access to information and communication technology and the prevalence of violence against women and children, to analyse the extent to which these factors affect women and children’s access to the formal justice system. How these barriers to accessing the formal justice system might be overcome is dealt with in more detail in Part Four of the Report.

b. Women and Multidimensional Poverty

The Vanuatu National Statistics Office (VNSO) is the agency responsible for compiling and analysing poverty and socio-demographic indicators in Vanuatu.

The key VNSO documents referred to in this section⁴ are:

- the 2009 National Population and Housing Census⁵
- the Vanuatu Hardship and Poverty Report: Analysis of the 2010 Household Income and Economic Survey⁶
- the Vanuatu Socio-Economic Atlas⁷ (2014).

The Vanuatu Hardship and Poverty Report analysed the proportion of Vanuatu’s population that was vulnerable to poverty. This includes the population that has a per capita adult equivalent expenditure that is above the basic needs poverty line (BNPL) but less than 50% above the BNPL. When this is taken into account, close to half of Vanuatu’s urban population either lives below the BNPL or is vulnerable to poverty.

2 Sen, A. (2000), “A Decade of Human Development”, *Journal of Human Development*, 1(1), 17–23.

3 Oxford Poverty and Human Development Initiative <http://www.ophi.org.uk/policy/multidimensional-poverty-index/>

4 There are slight variations between the figures presented in these three documents. The majority of the analysis is drawn from the Vanuatu Hardship and Poverty Report: Analysis of the 2010 Household Income and Economic Survey (2014). Where more detailed analysis at the lowest district unit of an area council is required, the data from the Vanuatu Socio-Economic Atlas (2014) is used.

5 Vanuatu National Statistics Office (2009) National Population and Housing Census.

6 Vanuatu National Statistics Office and UNDP Pacific Centre (2013) Vanuatu Hardship and Poverty Report 2012: Analysis of the 2010 Household Income and Economic Survey.

7 Vanuatu National Statistics Office (2014) Vanuatu Socio Economic Atlas.

Table 2.1: Incidence of Basic Needs Poverty

	Percentage of the population with weekly per capita equivalent expenditure less than the basic needs poverty line ⁸	Percentage of the population with weekly per capita equivalent expenditure less than 50% above the basic needs poverty line (includes groups classified as very vulnerable or vulnerable to poverty) ⁹
Port Vila (urban)	18.4%	44%
Luganville (urban)	23.6%	50.5%
Rural	10%	27.4%
Vanuatu	12.7%	31.7%

Table 2.1 shows that in 2010 one in five people living in urban areas in Vanuatu lived below the Vanuatu BNPL and that vulnerability to basic needs poverty was significantly higher in urban areas with 44% of the Port Vila population and 50% of the Luganville population considered as very vulnerable or vulnerable to poverty.

Nearly one in four (24%) households are headed by a woman.¹⁰ The Vanuatu Hardship and Poverty Report states that:

*Gender-based inequality is deeper in urban areas, compared to rural areas, and, to some extent, reflects wage inequality. Women’s share of the benefits from economic growth has been less than men’s with more of the growth being in male dominated jobs such as construction. More women are vulnerable to falling below the poverty line than are men. The unemployed poor, elderly and people with disabilities are more vulnerable in urban areas than in rural areas.*¹¹

The Vanuatu Hardship and Poverty Report calculated that the weekly per capita adult expenditure for the poorest 30% of the population was VT 1933 and dropped to VT 1772 in Luganville, and VT 1839 in rural areas.¹² Women bring most matrimonial, adoption, child maintenance and other family law cases to the courts and, as the applicant party, must pay court fees. Court filing fees are VT 1000 in the Island Court, VT 8000 in the Magistrates Court and VT 20,000 in the Supreme Court. There are no court fees for a Family Protection Order application. There is no clear and public procedure for the waiver of court fees in family law cases.

To file a civil case in the Island Court would consume over half (52%) of the weekly per capita expenditure of an adult whose income was in the lowest three deciles (VT 1933); a Magistrates’ Court case would consume over four times the weekly per capita adult expenditure; and a Supreme Court case more than ten times the weekly per capita adult expenditure.

Vanuatu’s Disability Pilot Survey 2014¹³ found that approximately 5% of the population had a disability. The Vanuatu Hardship and Poverty Report identified that nearly a quarter of people living with a disability in Port Vila lived under the BNPL (23%).¹⁴

The Vanuatu Hardship and Poverty Report presents data showing a strong three-way relationship between gender, low or no education, and poverty in urban areas. The report documents how vulnerability to poverty and the incidence of basic needs poverty is higher among females than males with limited or no schooling.¹⁵ Part Six of this Report discusses the impact of vulnerability to poverty and low educational and social status on access to justice for women and children with disabilities.

8 Vanuatu National Statistics Office and UNDP Pacific Centre (2013), p. 10.

9 Ibid, p. 49.

10 Vanuatu National Statistics Office (2011) Gender Monograph, Women and Men in Vanuatu, p. 16.

11 Vanuatu National Statistics Office and UNDP Pacific Centre (2013) p. 17.

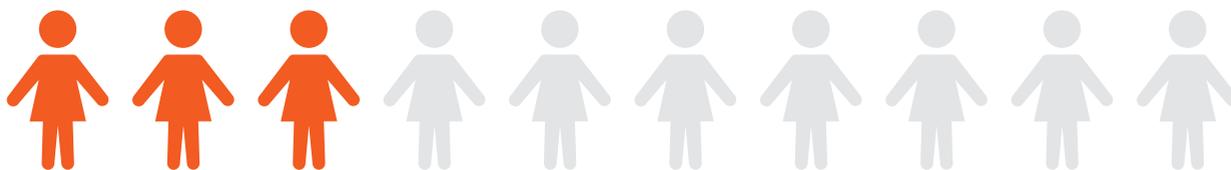
12 Ibid p. 25.

13 Vanuatu Disability Pilot Survey, Findings and Recommendations Report, 2014, Ministry of Justice and Community Services. The Pilot 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. The 2009 census found that approximately 12% of people with a disability (Vanuatu National Statistics Office (2011), p. 26). The Census asked each person if they have any difficulties in four functional areas: seeing, hearing, walking or climbing stairs, remembering or concentrating. For each of these areas, people are asked whether they have (a) no difficulties; (b) some difficulties or (c) cannot do at all. Any difficulty should be of a permanent nature and not due to temporary illness or injury. Those that answer (b) “some difficulties” are considered to have some form of disability. Those that answer (c) “cannot do at all” are considered to be severely disabled. This approach is based on international standards for collecting data on disability prevalence through population censuses.

14 Vanuatu National Statistics Office and UNDP Pacific Centre (2013), p. 14.

15 Ibid p. 17.

Figure 2.1: Court filing fees as a percentage of weekly expenditure in the poorest households



WEEKLY PER CAPITA ADULT EXPENDITURE =  VT 1933
FOR THE POOREST 30% OF THE POPULATION



COURT FEE IN
THE SUPREME COURT = 10x WEEKLY EXPENDITURE



COURT FEE IN
THE MAGISTRATES COURT = 4x WEEKLY EXPENDITURE



COURT FEE IN
THE ISLAND COURT = 0.5x WEEKLY EXPENDITURE



Photo credit: UN Women/Olivia Owen

c. Education levels of women and children and their access to justice

Nationally, 7 out of 10 women (71%) aged over 15 years have either no education or have only completed primary education. Slightly more women (71%) than men (67%) have never been to school or only completed primary education.¹⁶ This rises to almost 81% of women in Malampa province, and to 84% and 86% of women in, respectively, Tafea and

Torba provinces, who have never been to school or have only completed primary education.¹⁷

Most of these women therefore will need to be supported by free legal advisory services to access the formal justice system for cases involving family law and family violence.

Fourteen percent of children in Vanuatu aged 6–13 years of age do not attend school.

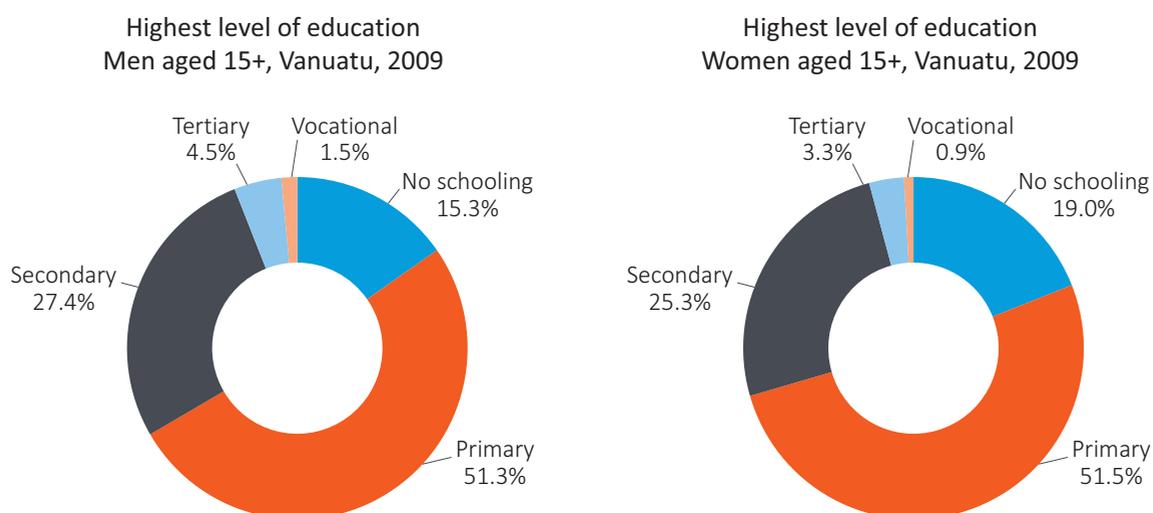
¹⁶ Vanuatu National Statistics Office (2011), p. 32.

¹⁷ Ibid p. 33.

Table 2.2: Percentage of the population aged 15 years and over and educational attainment by province¹⁸

Province	No Schooling	Primary Education	Secondary Education	Tertiary Education
Torba	26%	59%	12%	2%
Sanma	22%	55%	17%	2%
Penama	19%	54%	21%	3%
Malampa	13%	63%	18%	2%
Shefa	13%	55%	22%	5%
Tafea	39%	38%	14%	2%
Port Vila	5%	35%	45%	10%
Luganville	5%	42%	41%	6%
Vanuatu	17%	49%	25%	5%

Chart 2.1: Highest Level of Education for Men and Women Aged 15+



	Vanuatu, 2009	
	Men (aged 15+)	Women (aged 15+)
Percentage with no schooling	15.3%	19.0%
Percentage with primary schooling	51.3%	51.5%
Percentage with secondary schooling	27.4%	25.3%
Percentage with university degrees	4.5%	3.3%
Percentage with vocational certificates	1.5%	0.9%
Total	100%	100%

¹⁸ Vanuatu National Statistics Office (2014), Vanuatu Socio Economic Atlas, pp. 142–150.



d. Access to Information and Communication Technology and Access to Justice

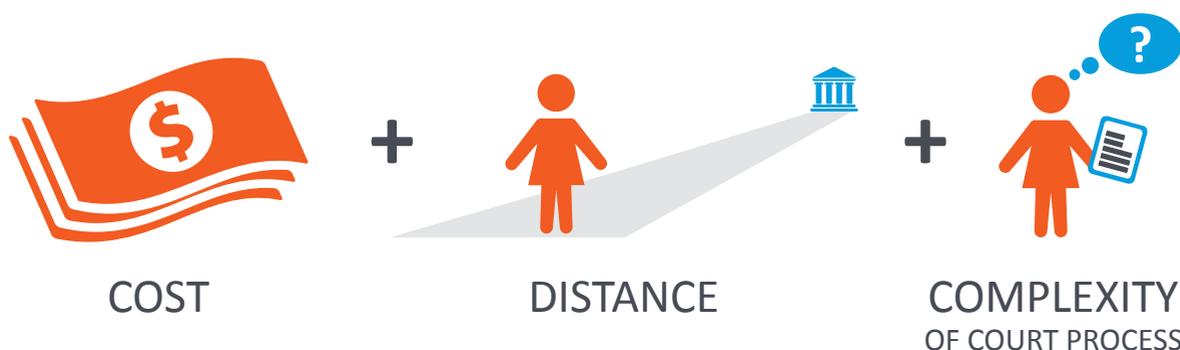
In addition to low levels of education, the 2009 Census findings on information technology provide some insight into how women and children might best access information about the formal justice sector. It found that:

- Although internet use and computers are not widespread, almost every household has at least one mobile phone. However, there is no gender-disaggregated data on mobile phone access so it is not possible to determine the extent to which women can access a mobile phone within their household. It is also not possible to determine from this data whether children (under 18 years of age) can access mobile phones or the internet.
- More men than women use the internet.¹⁹
- 15% of urban women used the internet in the week before the census.²⁰
- 88% of all households, and 66% of households in rural areas reported owning mobile phone(s).²¹

Given women's vulnerability to poverty and their low levels of education it is unlikely that legal information conveyed in written formats on the internet or by smart phone technology would be effective.

More accessible formats might include pictorial or simple language materials, and step-by-step diagrammatic guides on the fundamental rights of women and children, the laws that protect them and how they can access the formal justice system. These legal materials should be available in all justice sector agency buildings, hospitals and health clinics, and other public service locations that women and children regularly visit.

Part Four of this Report looks in more detail at how barriers of cost, distance and complexity of formal justice system processes faced by women and children in Vanuatu can be addressed.



19 Vanuatu National Statistics Office (2011), p.3.

20 Ibid, p. 54.

21 Ibid, p. 56.

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

e. Vanuatu National Survey on Women's Lives and Family Relationships

In 2009, the Vanuatu Women's Centre (VWC) in partnership with the Vanuatu National Statistics Office (VNSO) implemented the Vanuatu National Survey on Women's Lives and Family Relationships (Vanuatu National Women's Survey).²² VNSO technical expertise was used to design the survey sample to ensure that it was nationally representative. The report findings were published in 2011.

The aim of the Vanuatu National Women's Survey was: to conduct a population-based study to provide a reliable benchmark of the prevalence and incidence of violence against women in Vanuatu, and on attitudes to violence including: health and other effects of violence on women and children; risk and protective factors in the family and the community; coping strategies of women; and the implications for prevention and support services.²³

Seven years after the survey was undertaken and five years after the key findings were published, many of the Report's recommendations on access to the formal justice system are yet to be implemented (see Annex 1 to this Report). The Recommendations that relate to the formal justice sector are discussed in more detail in Part Four of this Report. Some key findings from the Vanuatu National Women's Survey Report are:

This survey opens a door to women's lives: it challenges Vanuatu's view of itself as a happy nation that values and protects family and children. It explodes myths about who suffers from violence, the severity of violence and its impacts, and where it occurs. It reveals an intense web of intimidation, threats, humiliation, controlling behaviour and acts of physical and sexual violence imposed on the women who suffer from violence by their husbands and partners. It shows pervasive patterns of gender inequality in Vanuatu society, including widespread beliefs and attitudes that directly undermine women's human rights; and it shows that violence against women cannot be prevented unless these patterns of unequal power between women and men (gender power relations) are transformed ...

The complex pattern of intimidation and multiple forms of violence experienced by so many women needs to be taken into account by all service providers, the law and justice sector, chiefs, faith-based organisations, civil society organisations and families who are asked to help women deal with violence ...

The prevalence of sexual abuse against girls under the age of 15 is also one of the very highest in the world. Almost 1 in 3 women (30%) were sexually abused before the age of 15 years, and the majority of perpetrators were male family members and boyfriends. For more than 1 in 4 women (28%), their first sexual experience was forced. These findings are disturbing because the survey has also shown that non-partner physical violence and child sexual abuse are both significant risk factors which increase the likelihood that women will be subjected to violence by their husbands and partners later in life.²⁴

...

The findings show very high rates of violence against women by husbands/partners. Overall, 60% of ever-partnered women experienced physical and/or sexual violence by their husband/partner in their lifetime, and 44% suffered from either or both of these forms of violence in the last 12 months.²⁵



Photo credit: UN Women/Olivia Owen

22 Vanuatu Women's Centre (2011), Vanuatu National Survey on Women's Lives and Family Relationships.

23 Citation above p. 14.

24 Ibid, selected passages from pp. 14–17.

25 Ibid, p. 56.



Photo credit: UN Women/Olivia Owen

Table 2.3: Prevalence of sexual and/or other physical violence experienced by women in the past 12 months

	Women in some form of relationship aged 15 years and over ²⁶	Prevalence of sexual and/or other physical violence in the past 12 months
Vanuatu	52, 048 women	44% suffered from sexual and/or other physical violence in the past 12 months = 22, 901 women

The Vanuatu National Women’s Survey found that 44% of women experienced sexual and/or other physical violence by their husband/partner in the last 12 months. Based on the 2009 Census, this equates to 22,901 women.

During 2012–2014, police laid charges in 380 cases a year (on average) in which a woman or child was a victim of sexual and/or other physical violence. Based on the prevalence findings in the Vanuatu

National Women’s Survey, this equates to only 2% of cases of violence against women where police laid charges.

In the period 2012–2014, the judiciary’s case management system did not collect gender-disaggregated data, so the courts could not identify the number of cases of violence against women or girls that were filed in court or the number of such cases that resulted in a judicial decision.

²⁶ Vanuatu National Statistics Office (2011), p. 73 from Table 3: Marital Status of people aged 15+ by sex, urban/rural locations, Vanuatu 2009.

Photo credits, next page: UN Women/Nicky Kuautonga; page 59: UN Women/Ellie van Baaren





3

VIOLENCE AGAINST
WOMEN AND CHILDREN
IN VANUATU: THE DATA



VIOLENCE AGAINST WOMEN AND CHILDREN IN VANUATU: THE DATA

a. Overview

There is no statistical system for crime and justice statistical reporting in Vanuatu, with the sector consisting of the Vanuatu Police Force, the Ministry of Justice and Community Services (MJCS), the Judicial Services Commission, State Law Office, Public Solicitor and Public Prosecutor, Correctional Services and traditional chiefs. Each agency produces statistics but these are not disseminated and collection, compilation and reporting systems range from databases to manual compilation from registers. (Vanuatu National Strategy for the Development of Statistics: A Strategy for the Agenda of Building Capacity in Statistics 2016–2020, p.45).¹

Since 2010, the *Stretem Rod Blong Jastis* (Clear Path to Justice) program has been assisting the law and justice sector to improve criminal statistics from the Police, the Public Prosecutor and Supreme Court, with the sector-wide assessment of institutional and individual capacity forming the basis of development for the sector.

At the time of this report a new case management system (CMS), developed by LexisNexis, was being implemented in the Supreme Court and the Magistrates Court. A different case management system is being introduced in the Police force, State Law Office, and Offices of the Public Solicitor and Public Prosecutor. The extent to which these case management and reporting systems can, and will interact with one another in the future, is not clear.

As there was no sector-wide dataset available, this research relied upon the following justice sector agency's individual datasets:

- Supreme Court of Vanuatu – included data for the Magistrates Court and Island Courts. Case management systems have only been in place in the courts since November 2015. Prior to that, the courts' maintained a statistical database via Microsoft Excel. The dataset dates back to 2001 and had been "cleansed" in preparation for migration to the new CMS to be implemented in January 2016.
- Magistrates Court of Vanuatu – this additional Microsoft Excel dataset contained specific data about family protection order cases in the Port Vila, Santo and Tanna Magistrates Courts from 2008 to 2015 (2015 was incomplete). Some of the fields within this dataset were not migrated into the new CMS and were therefore not available in the "cleansed" Supreme Court dataset noted above.
- Vanuatu National Statistics Office (VNSO) – For all national statistics, this report relied upon the 2009 National Census.
- Vanuatu Police Unit (CRIMS) – this Excel dataset was obtained from the Criminal Information Management Systems (CRIMS) Unit in Vanuatu. The dataset dates back to 2009. The 2015 data is incomplete and has therefore been omitted from the analysis.
- Vanuatu Office of the Public Prosecutor – This dataset dates back to 2003. As the 2015 data was incomplete it was omitted from the analysis.
- Vanuatu Department of the State Prosecutor (DSP) – This dataset only contains data from Port Vila between 2012 and 2015. Other islands either rely on manual record keeping or maintain a separate database which is not integrated into the Port Vila (DSP) system. The 2015 data was incomplete and was omitted from the analysis.
- Vanuatu Women's Centre (VWC) – VWC rely upon manual data collection methods. This report used the findings from the 2009 VWC "National Survey on Women's Lives and Family Relationships" report and the "Mid-term review of the Vanuatu Women's Centre phase 5 July 2007 – June 2012" report to the Australian Department of Foreign Affairs.

¹ Vanuatu National Statistics Office (2015) Vanuatu National Strategy for the Development of Statistics: A Strategy for the Agenda of Building Capacity in Statistics 2016–2020, p.45.

While reasonable care has been taken in analyzing the datasets and preparing this report, the analysis is limited due to the quality of the data entry, the limited data fields and subsets and the fact that the sector does not follow standardized methods for recording information.

The Courts

b. Supreme Court of Vanuatu

The Supreme Court of Vanuatu has unlimited jurisdiction to hear and determine civil and criminal proceedings. It has jurisdiction to hear questions concerning elections, as well as any cases from citizens about emergency regulations made by the Council of Ministers. Appeals from the Supreme Court, both in the exercise of its original and appellate jurisdiction (civil and criminal appeals from the Magistrates Court and appeals from Island Courts as to ownership of customary land), are heard by the Court of Appeal. The Court of Appeal is constituted under s.48 by two or more Supreme Court judges sitting together. The Court of Appeal's decision is final as there is no longer any appeal lying to the Privy Council.²

The Supreme Court currently consists of the Chief Justice and Justices appointed on local terms and conditions. One justice is seconded on a rotating basis from the New Zealand District Court to the Vanuatu Supreme Court for a period of up to 2 years. At the time of writing there were seven justices: Chief Justice Vincent Lunabek, Hon. Justice Oliver Saksak; Hon. Justice Stephen Harrop; Hon. Justice Mary Sey; Hon. Justice David Chetwynd; Hon. Justice Dudley Aru; Hon. Justice Daniel Fatiaki, on the Supreme Court bench.

This section of the report relied upon the migrated and "cleansed" data of the Supreme Court of Vanuatu dating back to 2001. The dataset was very limited and of those data fields collected, many were incomplete. Many important data fields did not exist (e.g., gender and age of defendant; gender and age of victim; whether either had a disability, were represented by council or self-represented etc.). In 2016 the Supreme Court migrated this data to a new case management system referred to as the "CMS" where it is understood that a more complete dataset will be collected.

² New Hebrides Act 1980, s. 2(2), sch. 2, repealing New Hebrides (Appeals to Privy Council) Order 1975.

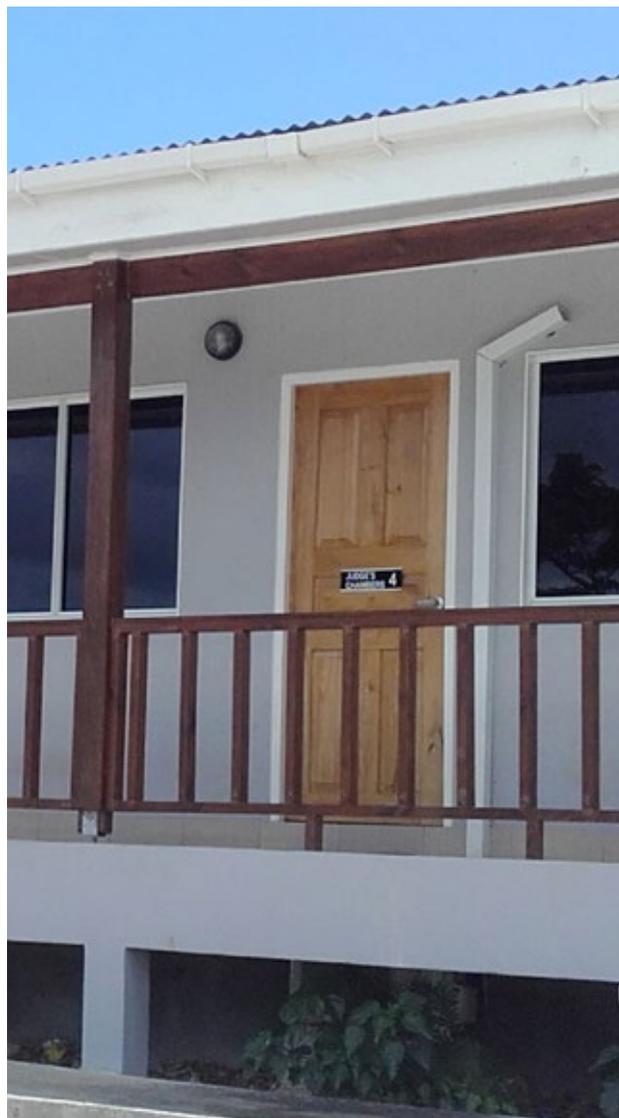
Vanuatu Judiciary – Vision and Mission Statement

Vision Statement

A judiciary that is independent, effective, efficient and worthy of public trust and confidence, and a legal profession that provides quality, ethical, accessible and cost-effective legal service to our people and is willing and able to answer to public service.

Mission Statement

To dispense justice speedily, fairly, independently and with improved quality of external inputs. To improve access to justice by effective, efficient and continuous improvements of judicial institutions. To be a Judiciary that conducts its business with dignity, integrity, accountability and transparency."



Supreme Court offices, Port Vila. Photo credit: Indira Rosenthal

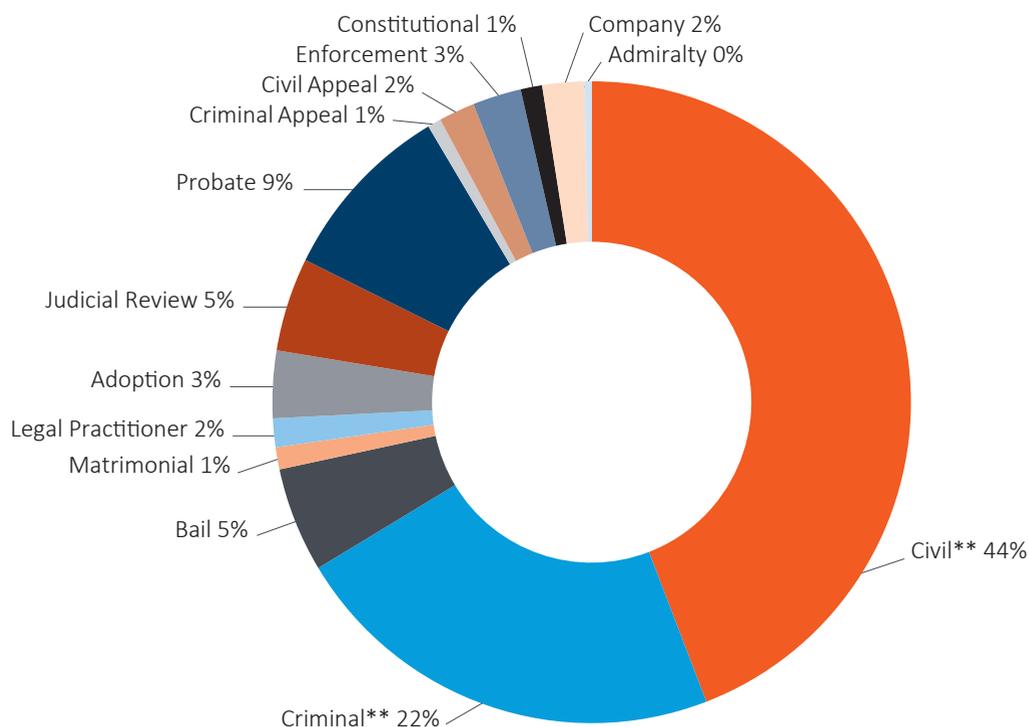
Supreme Court Locations



Figure 3.1: Process map for serious offence cases in the Supreme Court



Chart 3.1: Percentage of filings 2012–2015 (by case type) in the Supreme Court of Vanuatu



Process map for serious offence cases in the Supreme Court

Figure 3.1 above is a general process map for serious offence cases in Vanuatu. Serious offences include all sexual offences and other criminal offences, including domestic violence, where the maximum penalty exceeds two years imprisonment.

Supreme Court workload 2012–2015³

Cases filed 2012–2015

Over the last four years, on average, the Supreme Court of Vanuatu has had 752 cases filed each year. Of these cases, the majority were civil (44%) and criminal cases (22%). From interviews with the Supreme Court Justices it appears that the majority of criminal cases filed in the Supreme Court relate to violence against women and children and in particular sexual violence against girls. This is explored later in this Part in the CRIMS dataset (which looks at charges laid by the Vanuatu Police Force). Chart 3.1 above illustrates the breakdown of the types of cases filed in the Supreme Court of Vanuatu.

³ Data from 2015 is incomplete and only includes data entry up to and including September 2015.

Chart 3.2: Rate of filing in the Supreme Court 2012–2015

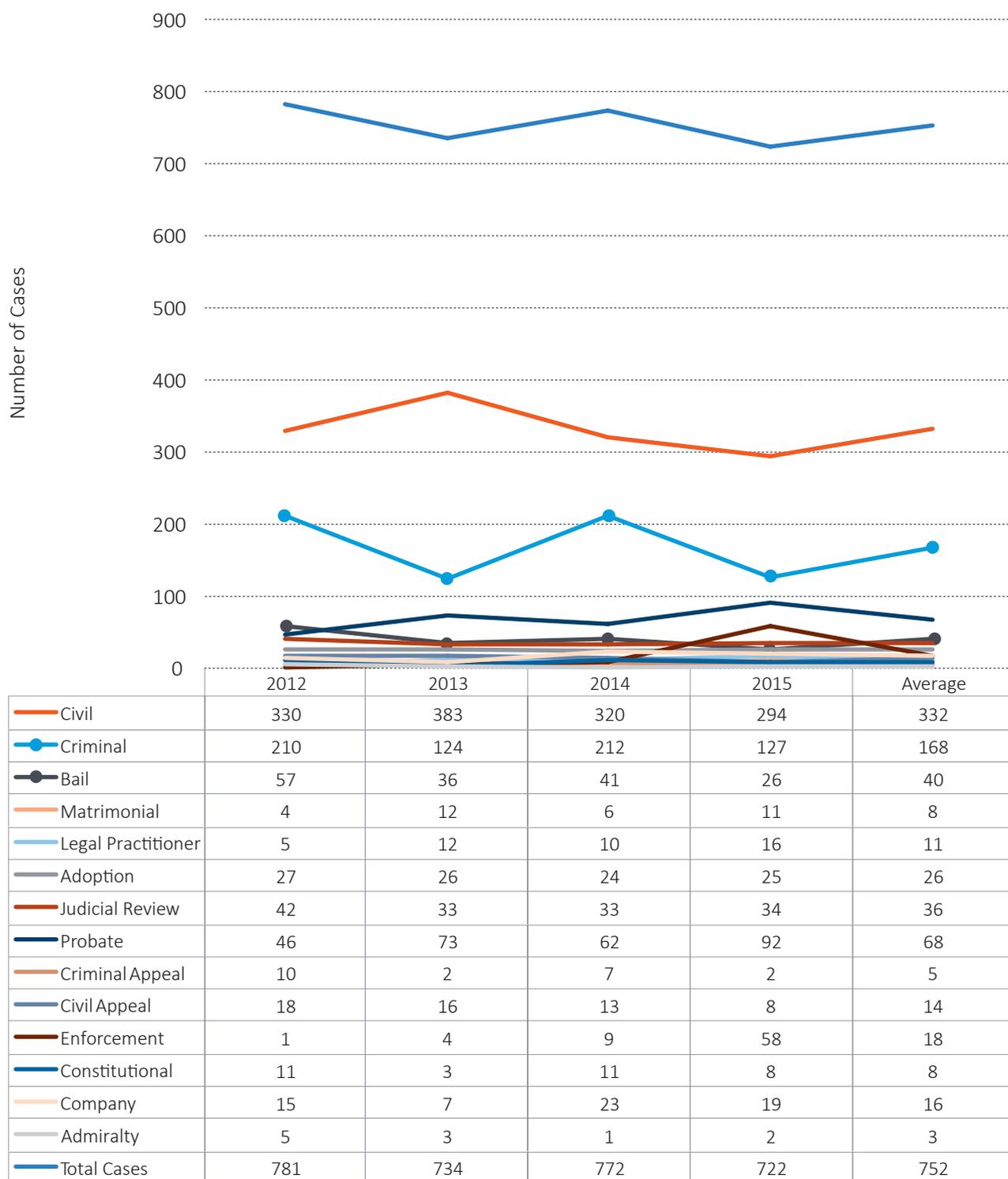


Chart 3.2 above shows the total number of cases, by case type, filed between 2012 and

2015. It further shows that the rate of filing in the Supreme Court remains fairly stable.

Table 3.1: Finalised Cases in the Supreme Court 2012–2015

Case Type	2012	2013	2014	2015	Average
Civil	253	350	322	258	296
Criminal	178	155	146	158	159
Bail	48	40	39	25	38
Matrimonial	6	9	6	6	7
Legal Practitioner	5	0	2	28	9
Adoption	22	29	28	18	24
Judicial Review	18	30	21	20	22
Probate	38	69	59	63	57
Criminal Appeal	3	4	8	0	4
Civil Appeal	8	6	17	11	11
Enforcement	0	2	3	21	7
Constitutional	8	3	4	13	7
Company	23	9	19	17	17
Admiralty	0	6	3	2	3
Total Cases	610	712	677	640	660



Supreme Court reception, Port Vila. Photo credit: Indira Rosenthal

Finalised cases 2012–2015

For the years 2012–2015, the Supreme Court of Vanuatu finalises on average 660 cases annually. The table above shows the number of cases finalised by file type.

Table 3.2: Clearance rate in the Supreme Court of Vanuatu

Case Type	2012	2013	2014	2015	Average
Civil	77%	91%	101%	88%	89%
Criminal	85%	125%	69%	124%	101%
Bail	84%	111%	95%	96%	97%
Matrimonial	150%	75%	100%	55%	95%
Legal Practitioner	100%	0%	20%	175%	74%
Adoption	81%	112%	117%	72%	95%
Judicial Review	43%	91%	64%	59%	64%
Probate	83%	95%	95%	68%	85%
Criminal Appeal	30%	200%	114%	0%	86%
Civil Appeal	44%	38%	131%	138%	88%
Enforcement	0%	50%	33%	36%	30%
Constitutional	73%	100%	36%	163%	93%
Company	153%	129%	83%	89%	113%
Admiralty	0%	200%	300%	100%	150%
Total Cases	78%	103%	88%	89%	90%

Clearance rate 2012–2015

The clearance rate, expressed as a percentage, compares the number of cases that have been finalised with the number of cases that have been initiated or filed. The clearance rate is an indicator of efficiency, which measures how well the Court uses its resources to manage its caseload. The internationally accepted target applied by courts is 100% (the number of cases finalised equals the number of cases filed), which aims to ensure there is no increase in the backlog of cases.

The Supreme Court of Vanuatu, on average, has a clearance rate of 90% overall. Areas of concern are enforcement cases (30%), that involve an application for the enforcement of orders, made in either the Magistrates Court or the Supreme Court, and judicial review cases (64%) involving the review of decisions in the Magistrates Court. Both types of cases have an impact on cases related to violence against women and children.

Cases related to women and children 2012–2015

As previously noted, the current dataset does not capture details about the gender or age of the offender/victim or the applicant/respondent in a case in the Supreme Court. Supreme Court justices have stated that in cases before them, women and girls are most likely to be the victim and the offender is most likely to be a male in a criminal case.⁴ In matrimonial cases, the justices reported that the respondent is most likely to be a woman. This differs from other studies that show that applicants in family law matters are generally more likely to be female. In adoption cases, the applicant is also most likely a female. The following data has therefore focused on the three categories of cases – criminal, matrimonial and adoption cases – in the Supreme Court that are most likely to affect women and children in the formal justice system in Vanuatu.⁵

⁴ This claim is supported by the CRIMS data in relation to violence cases.

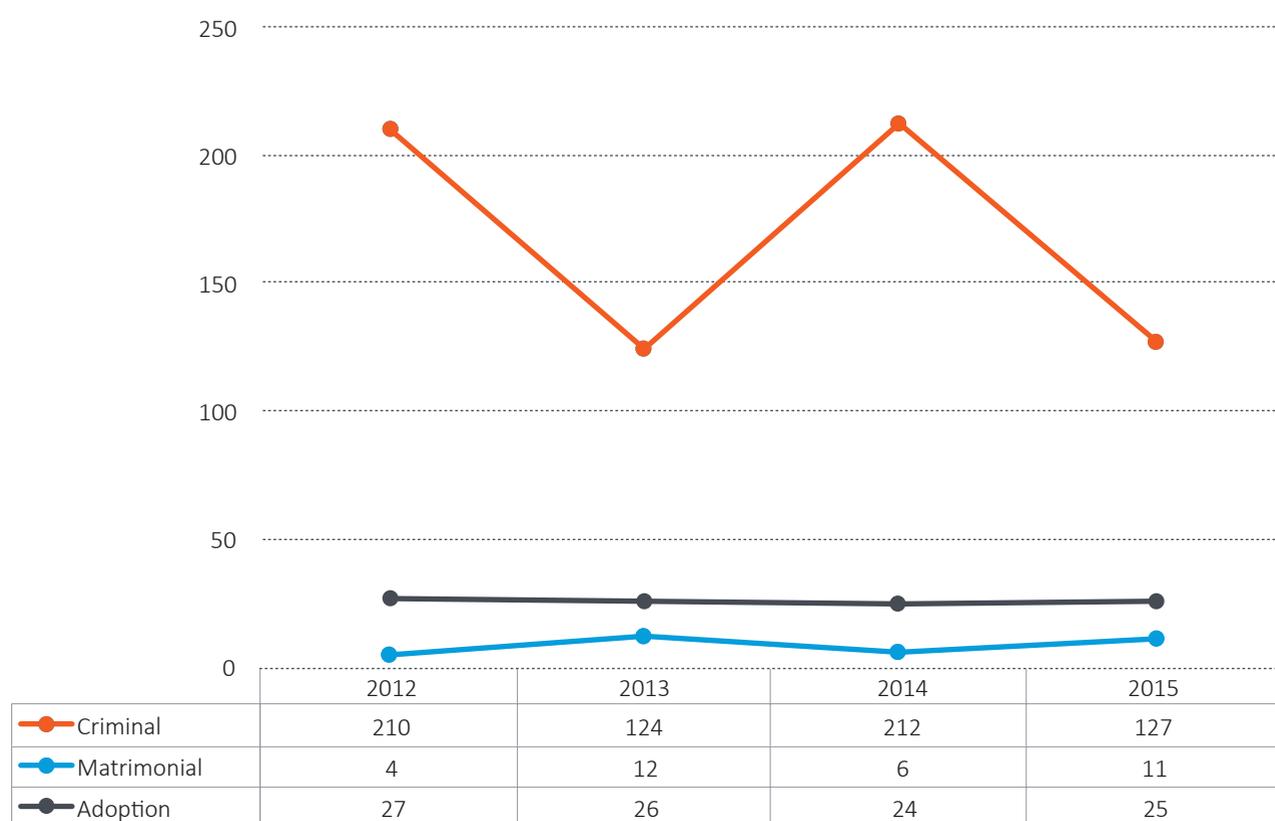
⁵ In the dataset provided by the Supreme Court, all civil cases had been removed, therefore no information could be provided about this set of cases.



Table 3.3: Rate of filing, finalisation and clearance in the Supreme Court of Vanuatu

Case Type	2012 Filed	2012 Finalised	Clearance Rate	2013 Filed	2013 Finalised	Clearance Rate	2014 Filed	2014 Finalised	Clearance Rate	2015 Filed	2015 Finalised	Clearance Rate	Average
Criminal	210	178	85%	124	155	125%	212	146	69%	127	158	124%	101%
Matrimonial	4	6	150%	12	9	75%	6	6	100%	11	6	55%	95%
Adoption	27	22	81%	26	29	112%	24	28	117%	25	18	72%	95%

Chart 3.3: Rate of filing (subset of cases) 2012–2015



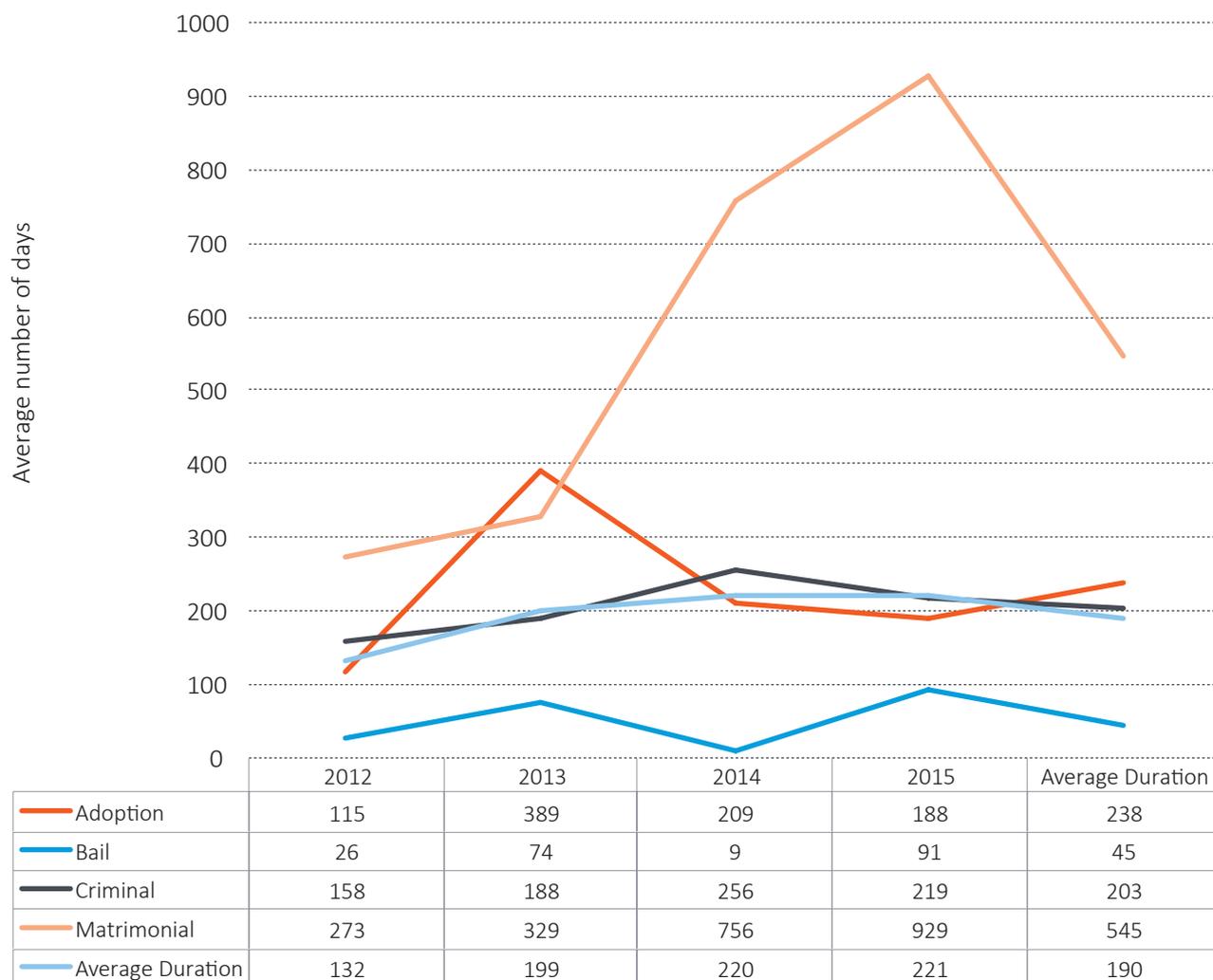
Subset of cases in the Supreme Court where women and children are most likely to be involved in a case

Table 3.2 above shows the filing, finalisation and clearance rates for the subgroup of cases most likely to affect women and children in the Supreme Court.⁶

⁶ The 2015 data from the Supreme Court was incomplete. It has been used here to assist with averages.

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

Chart 3.4: Supreme Court average duration of a case in days 2012–2015



Average duration of a case 2012–2015

Chart 3.4 above details the average duration (in days) of the subset of Supreme Court cases where women and children are most likely to be involved in a case. It clearly indicates that although the number of matrimonial cases is relatively small, they take considerably longer than other cases to finalise in the Supreme Court. In comparison, the Chief Justice noted in the 2014 Supreme Court Annual Report, that the average time from filing to finalisation in relation to civil cases was 694 days.



Supreme Court, Judges Chambers, Port Vila.
Photo credit: Indira Rosenthal

Location of cases 2012–2015

The following tables detail the filing locations and hearing locations of Supreme Court cases. They illustrate that

while 75% of the population resides in “rural”* areas of Vanuatu (areas outside of Port Vila and Luganville), the overwhelming majority of cases are filed and heard in urban locations.

Table 3.4: Filing location 2012–2013

		2012	2013	2014	2015	Total	% rural location
Adoption		27	26	24	25	102	3%
Sanma Province	Luganville	8	4			12	
	Santo – Unspecified			3		3	
Shefa Province	Port Vila	19	22	21	25	87	
Criminal		210	124	212	127	673	26%
Penama Province	Ambae			3	6	9	
	Penama – Unspecified	5				5	
	Pentecost			4	2	6	
Shefa Province	Epi			3	5	8	
	Port Vila	149	75	103	45	372	
	Tongoa	2		1		3	
Tafea Province	Isangel		1	1	4	6	
	Tanna	2		10	2	14	
Malampa Province	Lakatoro			1	5	6	
	Malekula – Unspecified	1	1	23	14	39	
	Paama	2	1		1	4	
Sanma Province	Luganville	45	39	22	18	124	
	Santo – Unspecified			39	22	61	
Torba Province	Torba – Unspecified	3	6	2		11	
	Gaua				1	1	
Matrimonial		4	12	6	11	33	3%
Sanma Province	Luganville	1				1	
	Santo – Unspecified				1	1	
Shefa Province	Port Vila	3	12	6	10	31	
Total		241	162	242	163	808	32%

* Rural for the purpose of this report refers to all locations apart from the two main settlements towns of Luganville and Port Vila.

The table below shows that on average (during 2013–2015) only 23% of criminal cases, 3% of adoption and 4% of matrimonial cases were decided in rural* areas

outside Port Vila and Luganville in the Supreme Court of Vanuatu despite the fact that 75% of the population lives in rural or remote areas of Vanuatu.

Table 3.5: Hearing location 2012–2013

		2012	2013	2014	2015	Total cases	% heard in rural area
Adoption		22	29	28	18	97	3%
Sanma Province	Luganville	7	4	1		12	
	Santo – Unspecified			2	1	3	
Shefa Province	Port Vila	15	25	25	17	82	
Criminal		178	155	147	158	638	23%
Torba Province	Unknown	3	2	4	1	10	
Penama Province	Ambae		1	2	7	10	
	Unknown	3	1	1		5	
	Pentecost			1	5	6	
Sanma Province	Luganville	45	49	13	18	125	
	Santo			26	28	54	
Malampa Province	Ambrym		1			1	
	Malekula	1		2	33	36	
	Paama		2		2	4	
Shefa Province	Epi			3		3	
	Tongoa	2		1		3	
	Port Vila	120	99	89	56	364	
Tafea Province	Erromango				1	1	
	Tanna	4		5	7	16	
Matrimonial		6	9	6	6	27	4%
Sanma Province	Luganville		1			1	
	Santo				1	1	
Shefa Province	Port Vila	6	8	6	5	25	
Total		206	193	181	182	762	30%

* Rural for the purpose of this report refers to all locations apart from the two main settlements towns of Luganville and Port Vila.



Magistrates Court, Malekula. Photo credit: Indira Rosenthal

c. Magistrates Court of Vanuatu

Magistrates Courts operate under section 12 of the Judicial Services and Courts Act as first instance courts exercising summary jurisdiction over certain civil matters, where jurisdiction has been expressly conferred on them by statute. Section 1 of the Act provides for Magistrates to have a general jurisdiction in matters where the total claim does not exceed VT 1,000,000,000 (A\$ 12,116) except claims relating to permanent physical damage to a person. Magistrates also have jurisdiction to hear cases relating to:

- a. Disputes between landlords and tenants where the amount claimed does not exceed VT 2,000,000;
- b. Undefended petitions for divorce or nullity of marriage;⁷ or
- c. Maintenance of children or wives;⁸ or any other law providing for the maintenance of children, mothers of children or wives by the fathers of children or husbands as the case may be where the annual sum claimed does not exceed VT 1,200,000.

Under s. 2, Magistrates cannot hear cases concerning wardship, guardianship of minors and persons of unsound mind, interdiction, appointment of a *conseil judiciaire*, adoption, civil status, succession, wills, bankruptcy, insolvency or liquidation of corporate bodies.

In its criminal jurisdiction, the Magistrates Court hears cases that concern any criminal proceedings for an offence for which the maximum penalty does not exceed 2 years imprisonment. It has jurisdiction to hear appeals from civil decisions from Island Courts, except decisions as to ownership of land, where appeal is to the Supreme Court.

The Magistrates Court is also the principal jurisdiction to hear cases under the Family Protection Act 2008.

7 Subject to such directions as may be made by the Chief Justice.

8 See s.1(d) relating to claims made under the – (i) Maintenance of Family Act [Cap. 42] (ii) Maintenance of Children Act [Cap. 46].

Location of Magistrates Courts in Vanuatu



Figure 3.2: Process map non-serious offences



Figure 3.3: Process map for Family Protection Order



Process map for cases in the Magistrates Court

The process for all “non-serious” criminal offences, that is those where the maximum penalty does not exceed 2 years imprisonment, which includes cases such as breaches of family maintenance orders and Family Protection Orders, is shown in Figure 3.2.

Part 4, s. 28 of the Family Protection Act (2008), sets out the procedure in Figure 3.3 for an application for a Family Protection Order in the Magistrates Court.

Magistrates Court cases filed 2013–2015

The majority of cases heard in the Magistrates Court are criminal and violence cases. Unless otherwise specified, the Supreme Court of Vanuatu provided the data used for this analysis. It is the “cleansed” data used for the migration to the new case management software. The dataset provided only included data from 2013 to 2015. Within the dataset, only data relating to criminal, juvenile, matrimonial, preliminary investigations and violence cases was provided.

In particular, the Magistrates Court data does not currently allow for the breakdown of:

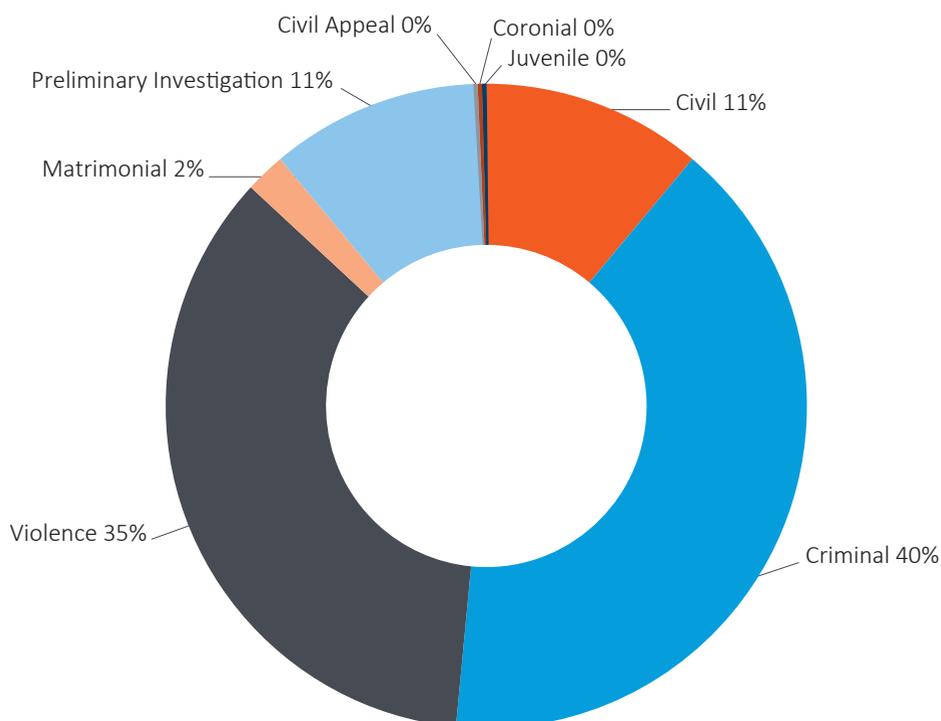
- Total number of temporary protection orders granted (although s 28 (4) of the Family Protection Act 2008 requires the Magistrates Court to keep a register of all applications for family protection orders received and granted).



- Total number of final protection orders granted;
- Number of criminal cases brought under s 10 of the Family Protection Act 2008;
- Number of other criminal cases of violence involving family member/intimate partner;
- Number of other criminal cases of violence not involving family member/intimate partner.

Magistrates Court, Port Vila. Photo credit: Indira Rosenthal

Chart 3.5: Percentage of cases filed 2013–2015 in the Magistrates Court of Vanuatu (by case type)



On average, the Magistrates Court of Vanuatu has 2196 cases filed each year. Of these cases, 37% related to family law and family violence, 40% to criminal cases heard and decided in the Magistrates Court and a further 11% being criminal cases referred to the Supreme Court. For these 51% of criminal matters it is not possible to determine whether they involve violence against women and children, as this subset of information is not currently captured.

Anecdotal evidence from interviews with Magistrates and the Deputy Registrar and other justice sector actors suggests that the data is counted in the following way:

- Matrimonial – includes uncontested applications for dissolution of marriage, applications for child custody and property.
- Preliminary Investigations – includes all serious offences within the jurisdiction of the Supreme Court including all sexual offences, domestic violence offences under the FPA, other serious assaults, and other offences where the penalty is more than two years imprisonment.
- Violence – relates to applications for Family Protection Orders.
- Criminal – includes all offences within the jurisdiction of the Magistrates court. These matters may involve cases of violence against women and children.

There will be a certain margin for error as it is not clear if registry staff categorise cases in the same way. An example is whether all registry staff list domestic violence criminal offences under s10 of the FPA as “Violence” or “Criminal” cases.



Courthouse and registry, Sanma. Photo credit: Indira Rosenthal

Chart 3.6: Rate of filing in the Magistrates Court 2013–2015

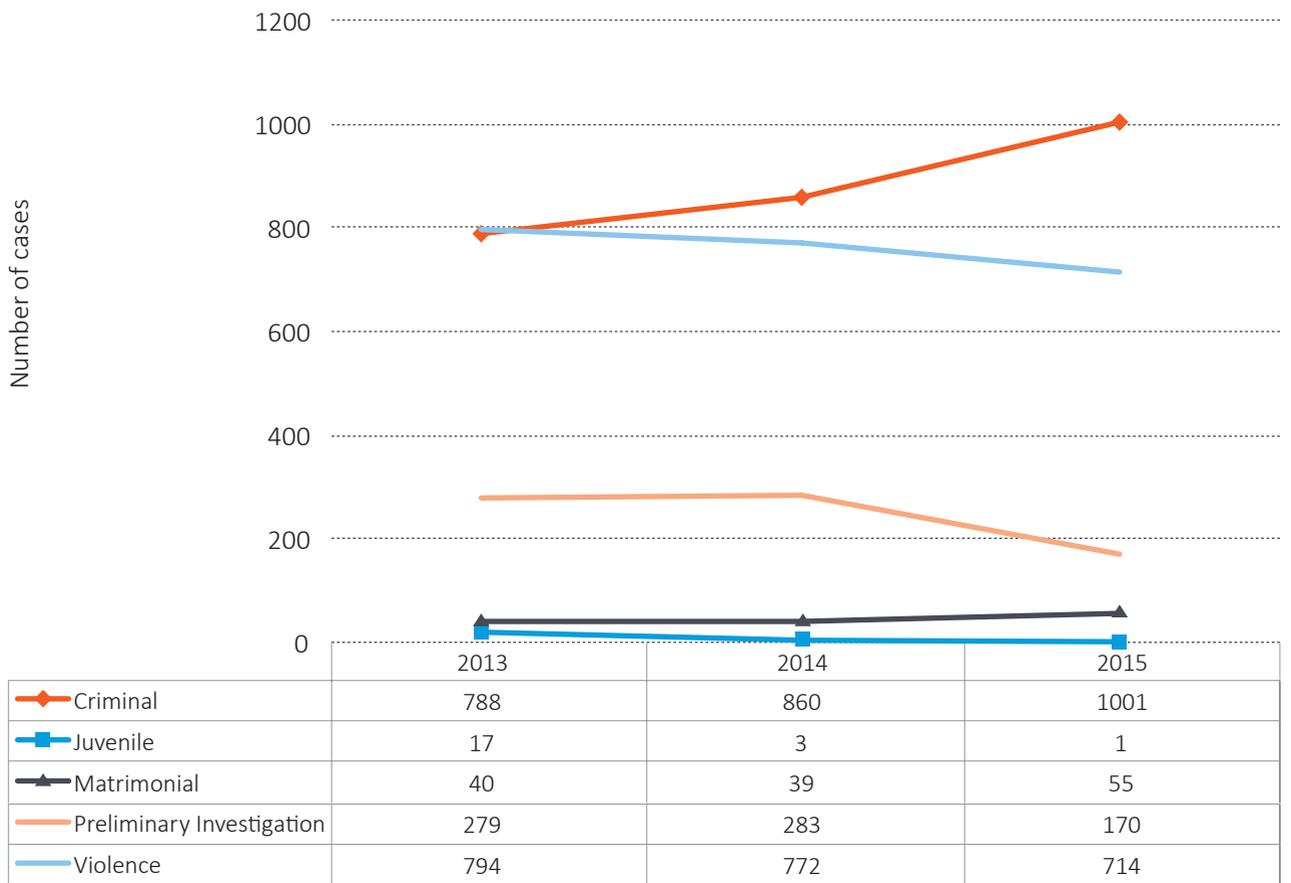


Chart 3.6 above shows the total number of cases filed, by case type, in the Magistrates Court between 2013 and 2015.⁹



Inside the courthouse at Malekula. Photo credit: Indira Rosenthal

⁹ The rate of filing for civil cases is not contained in this line graph, as the raw data was not provided.



Open air courthouse, Tanna. Photo credit: Indira Rosenthal

Table 3.6: Magistrates Court filing, finalisation and clearance rates 2013 – September 2015

Case Type	2013 Filed	Finalised	Clearance Rate	2014 Filed	Finalised	Clearance Rate	2015 Filed	Finalised	Clearance Rate	Average
Criminal	788	652	83%	860	971	113%	1001	889	89%	95%
Violence	794	706	89%	770	820	106%	714	660	92%	96%
Matrimonial	40	28	70%	39	32	82%	55	37	67%	73%
Preliminary Investigation	278	204	73%	281	314	112%	169	175	104%	96%

Family law and family violence cases in the Magistrates Court

As previously noted, the current dataset does not capture detail about the gender or age of offender/victim or applicant/respondent in a case in the Magistrates Court. In interviews with Magistrates and court staff, it was noted that in violence cases women and girls are most likely to be the victim and in both Family Protection Order (“violence”) and domestic violence (“criminal”) cases, the offender is most likely to be a male. In matrimonial cases, the Magistrates reported that the applicant is most likely to be a

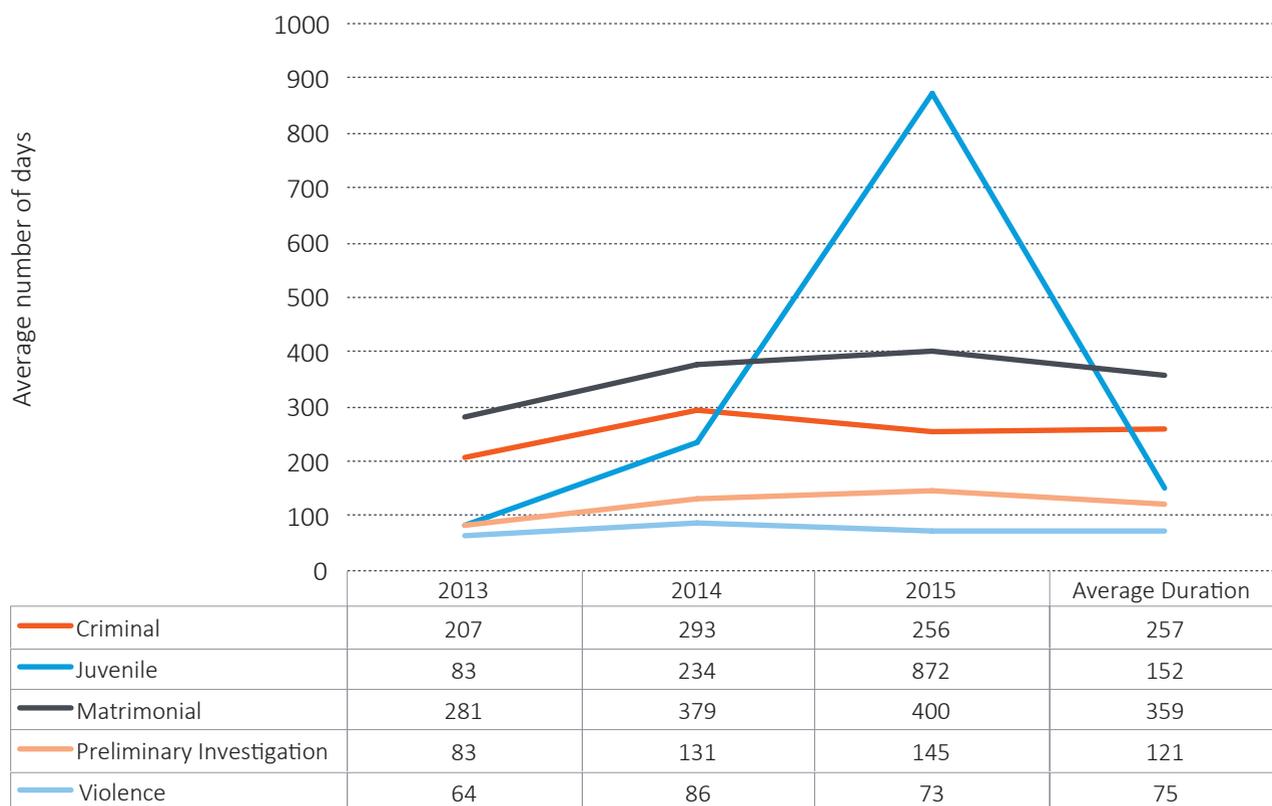
woman. The following data has therefore focused on four categories of cases (criminal, matrimonial, preliminary investigation and violence cases) in the Magistrates Court that are most likely to affect women and children in the formal justice system in Vanuatu.

The table above shows the filing, finalisation and clearance rates between 2013 and 2015 for the subgroup of cases most likely to affect women and children in the Magistrates Court.

Photo credit, next page: UN Women/Murray Lloyd



Chart 3.7: Magistrates Court average duration of a case (in days)



Of this subgroup, Chart 3.7 above details the average duration (in days) of finalised cases. It illustrates that the time taken to finalise matrimonial cases is on the rise with it currently taking on average 400 days. It further highlights that the time taken to hear preliminary investigations is also increasing, with it currently taking 145 days.

Location of hearings

The majority of cases in the Magistrates Court were heard in either Port Vila or Luganville, despite 75% of the population living in rural areas. The data shows that:

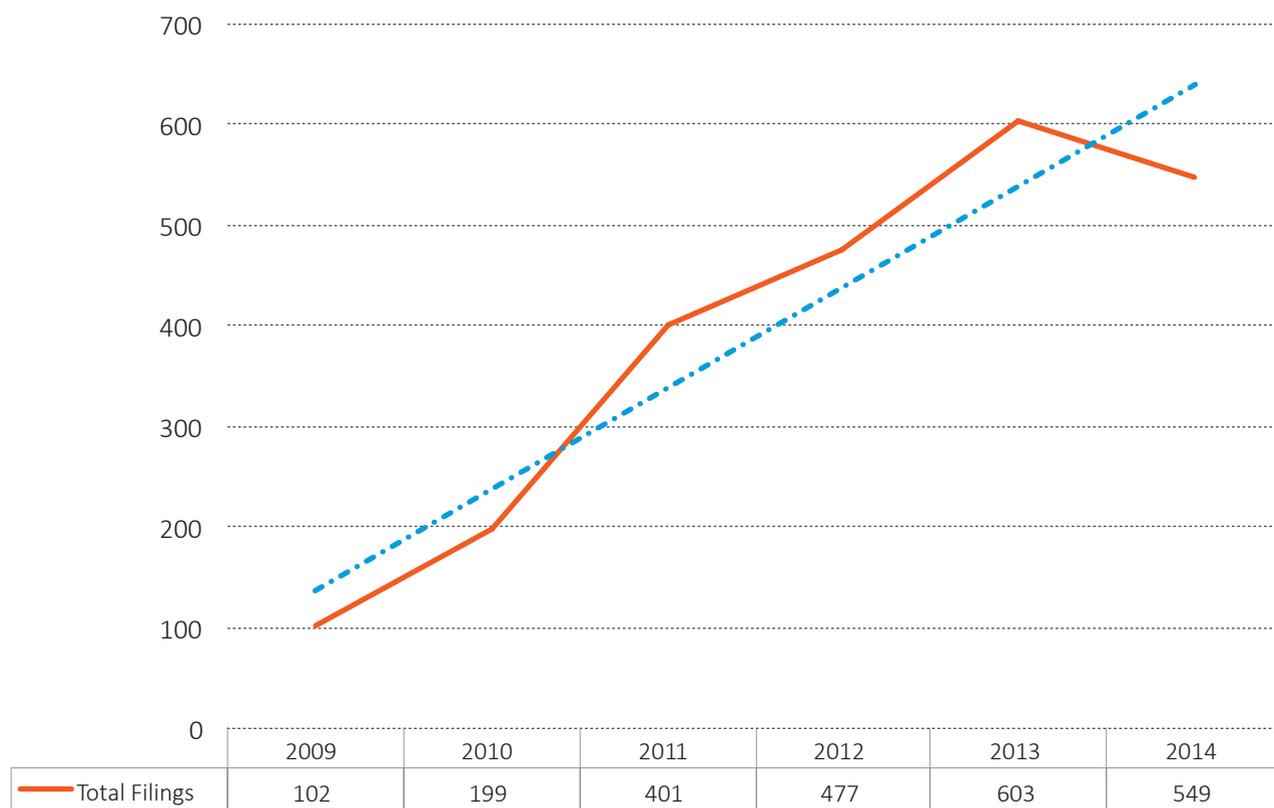
- Only 8% of violence cases (on average during 2013–2015) were decided in the Magistrates Court in rural areas outside Port Vila or Luganville.
- 98% of matrimonial cases are decided in Port Vila or Luganville.

Table 3.7: Location of hearings 2013–2015

	2013	2014	2015	Total	% heard in a rural area
Adoption	29	28	18	75	4%
Luganville	4	1		5	
Port Vila	25	25	17	67	
Santo		2	1	3	

	2013	2014	2015	Total	% heard in a rural area
Juvenile	14	3	1	18	6%
Luganville	1			1	
Port Vila	12	3	1	16	
Tongoa	1			1	
Maintenance	97	172	110	379	14%
Isangel		24	10	34	
Lakatoro	7	10	1	18	
Luganville	23	26	8	57	
Port Vila	66	112	90	268	
Sola	1		1	2	
Matrimonial	37	38	43	118	2%
Lakatoro		1		1	
Luganville	3	4	2	9	
Port Vila	34	33	40	107	
Santo			1	1	
Violence	706	821	664	2191	8%
Ambae			1	1	
Ambrym	1	1		2	
Erromango		1		1	
Isangel		14	26	40	
Lakatoro		25	12	37	
Luganville	121	189	161	471	
Maewo			1	1	
Malekula			21	21	
Pentecost			2	2	
Port Vila	570	549	429	1548	
Sola		2		2	
Tanna	14	40	8	62	
Torba			3	3	

Chart 3.8: Total Family Protection Order filings 2009–2014



Total filings of Family Protection Orders 2009–2014 (pre CMS migration data)

Between 2009 and 2014 court administration staff kept a separate manual dataset to record information related specifically to Family Protection Orders. Data from this manual collection shows the number of applications for Family Protection Orders filed in Vanuatu.

In an interview at the Port Vila Magistrates Court, the Court Administrator mentioned that:

In 2008, 100% of applications for Domestic Violence Orders were from female applicants. These applications attracted a fee of VT 3000. [NB. The Family Protection Act 2008 replaced Domestic Violence Orders with Family Protection Orders for which no fees are payable].

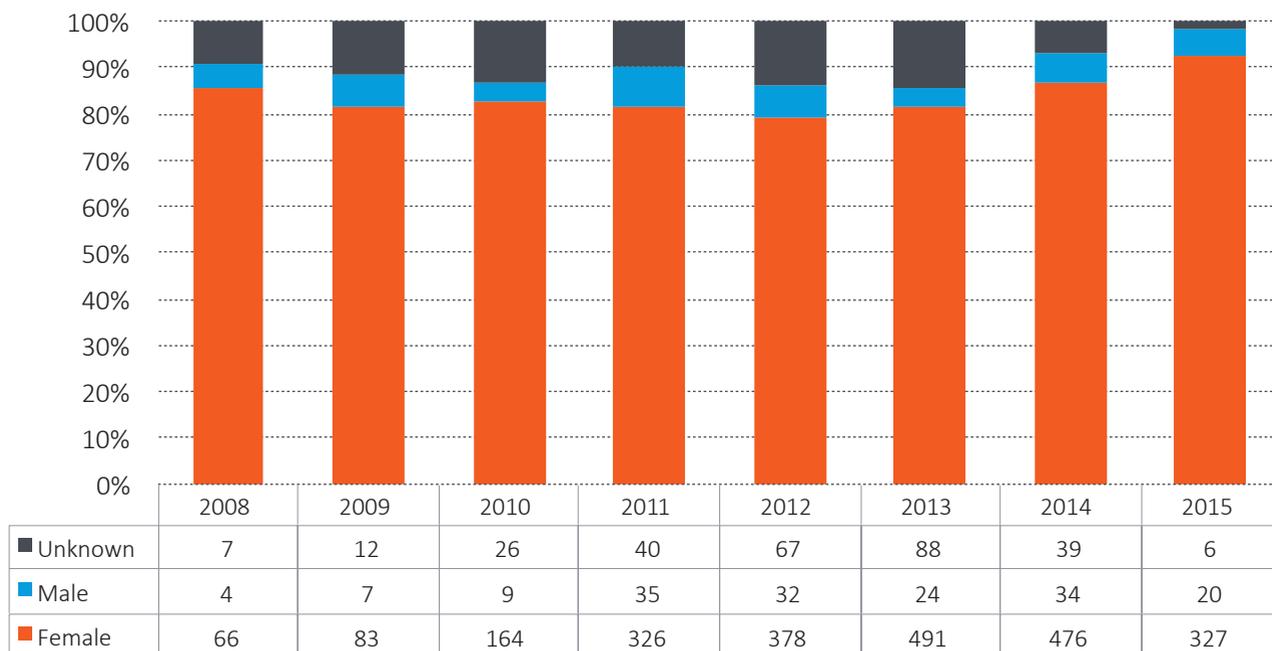
From 2009 to 2010, women filed 99% of applications filed in the Magistrates Court. There was no Court fee associated with these

applications. The number of Protection Order cases increased from 2011 onwards with the VWC filing the majority of applications. The parties involved in these applications were mainly husband and wife, children and parents, boyfriend and girlfriend.

The Court Administrator said on average the Port Vila registry receives an application for a Family Protection Order every day and, on some days, up to 6 applications a day.

The linear forecast illustrates that there continues to be an increase in the number of these applications filed in the Court, with an average of 389 applications for Family Protection Orders in the six years since the Family Protection Act came into force. However, the number of applications for Family Protection Orders remains extremely low compared with the figures on family violence reported by women in the 2009 Vanuatu National Survey on Women’s Lives and Family Relationships.

Chart 3.9: Gender of applicant for Family Protection Order 2008–2015



Gender of applicant and assistance with Family Protection Orders in the Magistrates Court 2009–2014

From 2008 to mid-2015, the Port Vila Magistrates Court recorded gender disaggregated data in its register of Family Protection Orders. These records indicate that the overwhelming majority of applicants for a protection order in the Magistrates Court were women (94% where the gender is known). This is consistent with anecdotal evidence from interviews with all Magistrates and their court staff.

The Magistrates Courts CMS is unable to provide reports on assistance provided to the applicant in making a Family Protection Order. However, the Magistrates Court register in Port Vila (kept prior to 2015) recorded information about who assisted the applicant to bring an application for a Family Protection Order to the Magistrates Court. This “pre-migration data” provides a greater level of information and the table below illustrates that between 2009 and 2014 (the final year data was recorded), there was:

- a steady increase in the number of women filing applications for a Family Protection Order;
- on average, 9 in 10 women (93%) sought assistance to bring an application for a Family Protection Order to the Magistrates Court;
- 92% of women who sought assistance for a Family Protection Order were assisted by the Vanuatu Police Family Protection Unit (FPU) or the Vanuatu Women’s Centre (VWC); and
- there has been a steady increase in the number of women seeking assistance from the VWC to obtain a Family Protection Order. This may be attributed to a number of factors, but especially to the VPF Family Protection Unit in Port Vila deciding in early 2014 to cease assisting applicants with their Family Protection Order applications and, instead, to focus their resources on investigating serious domestic violence and sexual offences.

Table 3.8: Provision of assistance for Family Protection Orders

Family Protection Orders	2009	2010	2011	2012	2013	2014	Total 2009–2014	Average	Percentage Seeking Orders
Vanuatu Women’s Centre	83	113	83	96	149	324	848	141	38%
USP Community Legal Centre	2	3	1	0	0	0	6	1	0%
Self-Represented Litigant	8	28	21	32	42	17	148	25	7%
Public Solicitor’s Office	4	2	5	5	3	4	23	4	1%
Family Protection Unit	0	45	286	344	401	132	1208	201	54%
Other	5	8	5	0	2	3	23	4	1%
Total Applications	102	199	401	477	597	480	2256	376	100%
Unknown	0	0	0	0	6	69	75	13	
Total where assistance sought	94	171	380	445	555	463	2108	351	



Photo credit: UN Women/Ellie van Baaren



Efate Island Court Clerk, Alida Tchivi and Ambae Island Court Clerk, Nailyn Abel. Photo credit: Indira Rosenthal

d. Island Courts

Arrangements have been made for Island Courts by the *Island Courts Act 1983*¹⁰ enacted pursuant to s. 50 of the Constitution. The Courts, of which there are currently twelve, are set up by the Chief Justice who also determines their geographical and subject-matter jurisdiction.

The *Island Courts Act*,¹¹ which sets up and regulates the Island Courts, provides that the President of the Republic, with the advice of the Judicial Service Commission, appoints not less than three justices to each Island Court. It further requires that:

- At least one of the three Justices sitting in each Island Court shall be a Custom Chief (with a possibility of his being a member of the National Council of Chiefs);¹²
- A supervising magistrate be appointed for each court;
- Appeals from the Island Courts, which lie to the Magistrates or Supreme Court, must be heard with at least two assessors knowledgeable in custom.

Criminal jurisdiction is limited to offences committed within the geographic jurisdiction of the Island Courts, or those cases in which the defendant is ordinarily resident within their territorial jurisdiction.

The maximum penalty is a fine of VT 24,000 (A\$290) or six months imprisonment. Where a fine is ordered, the Court may order it to be paid in goods up to the value of the fine.

Civil jurisdiction arises in the place where a defendant is ordinarily resident, or the cause of action arose. In civil matters jurisdiction is limited to claims up to VT 50,000 (A\$605), however claims for maintenance are not limited in amount.

Section 10 provides that the customary law, which prevails within the territorial jurisdiction of the Island Courts shall be applied provided that this is not in conflict with any written law or contrary to justice, morality, or good order. Where the Court applies a prevailing customary law, the proceedings shall be recorded by a clerk of the Court and thus become a precedent for the Island Courts.

The Courts are not bound by the rules of evidence and legal representation is not allowed. Appeal lies to the Magistrates Court, except in relation to disputes as to land, where appeal is to the Supreme Court. The Court hearing the appeal must sit with two or more assessors knowledgeable in custom.

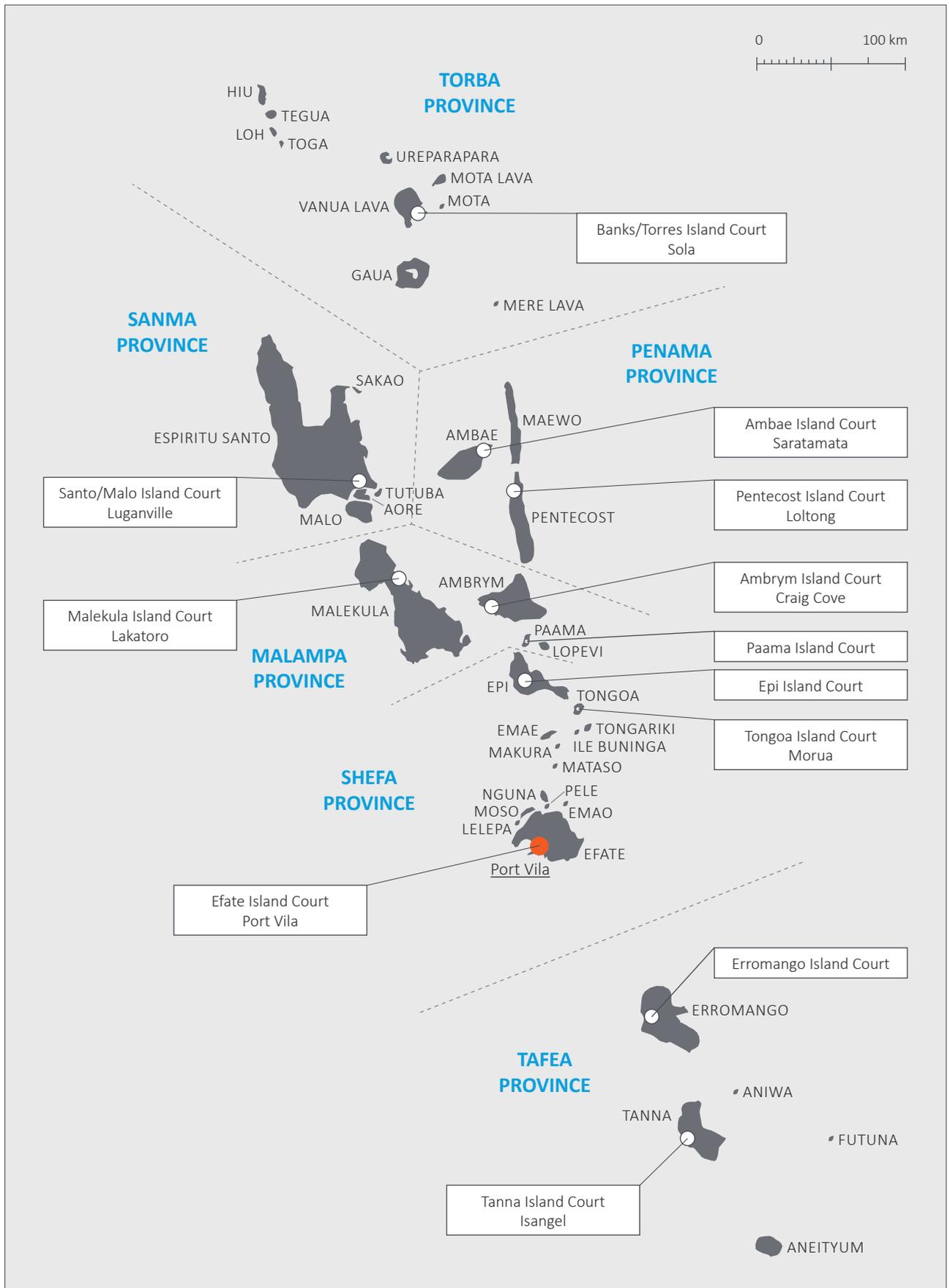
The twelve operational Island Courts are located in the each of the six provinces.

¹⁰ Act No. 10 of 1983.

¹¹ Island Courts Act No. 10 of 1983.

¹² The overwhelming majority of Chiefs in Vanuatu are male.

Location of Island Courts in Vanuatu



Process map for cases in the Island Court

Figure 3.4: Process map for cases in the Island Court

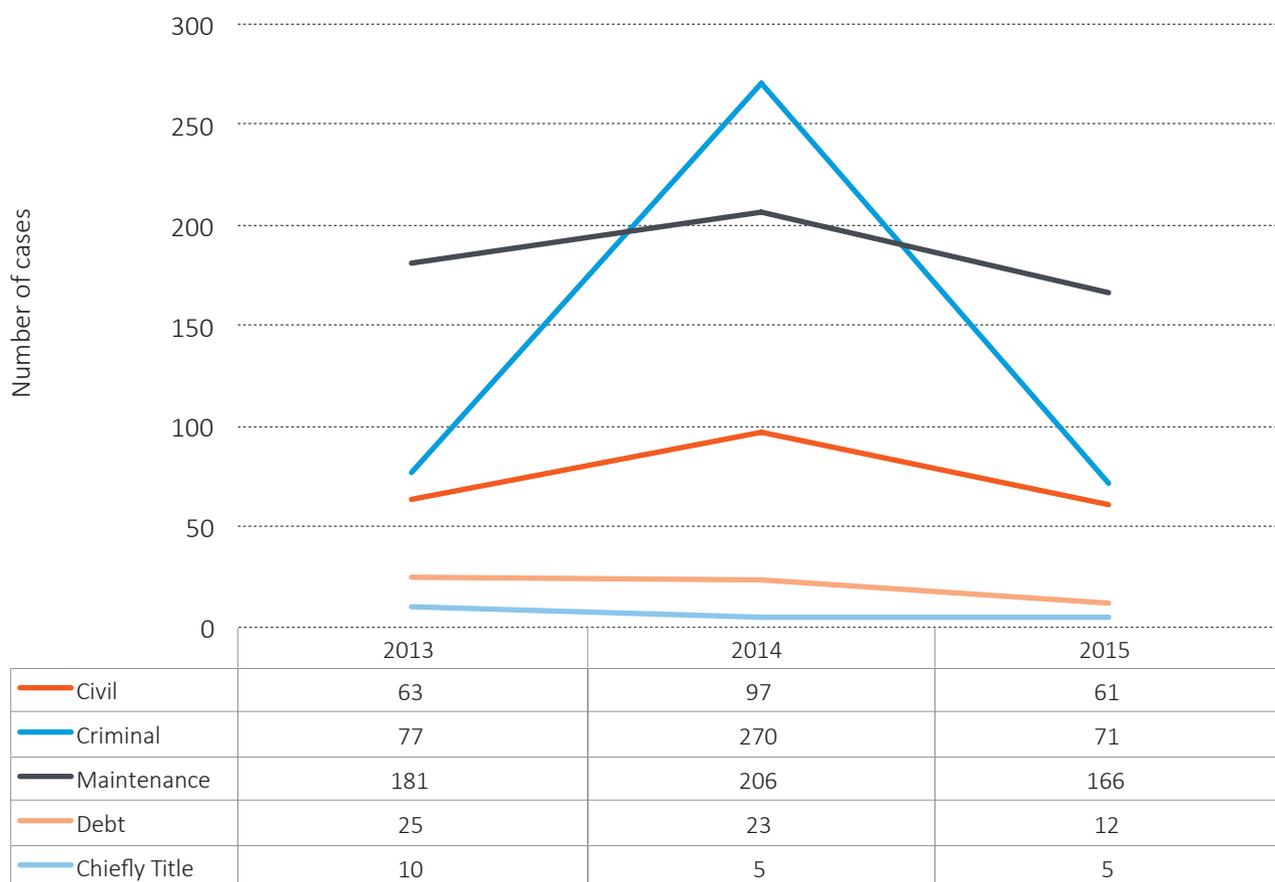


Cases filed 2013–2015

The dataset from the CMS for the Island Courts is very limited and it is not possible to ascertain who brings civil, maintenance or debt related cases to the Court, nor what the outcomes were in these cases.

On average, 424 cases are filed in the Island Courts of Vanuatu each year. A significant percentage of these cases relate to child maintenance applications (46% on average), criminal matters (30%) and civil cases (18%). Only women can seek child maintenance orders in the Island Court. (See section 1, *Maintenance of Children Act*.)

Chart 3.10: Island Courts cases filed 2013–2015



Percentage of total filings 2013–2015

Chart 3.11: Island Courts – percentage of total filings

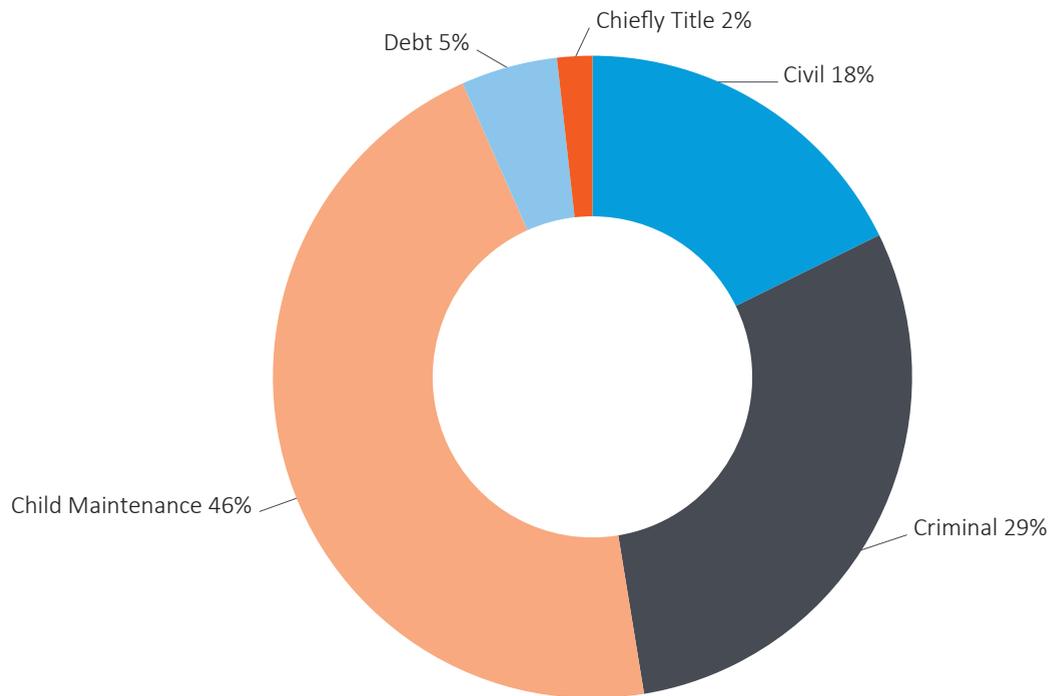
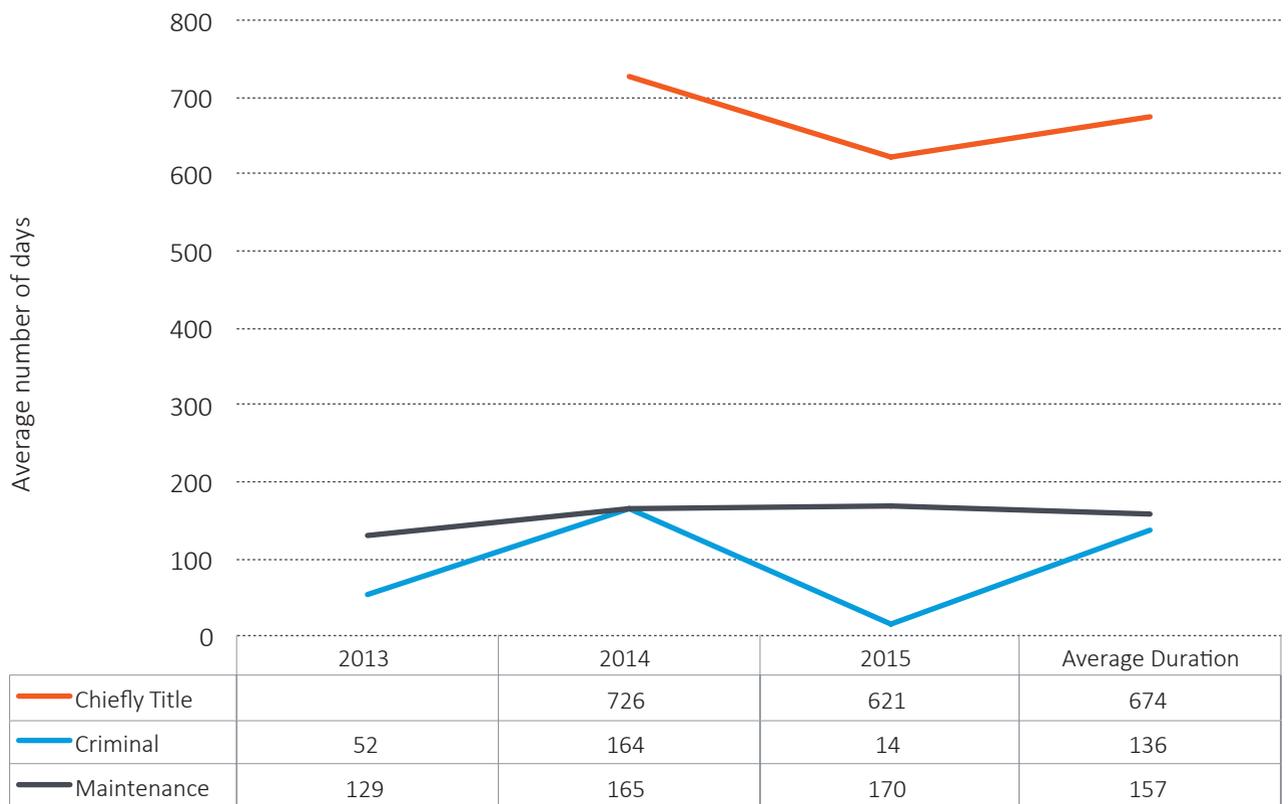


Photo credit: UN Women/Olivia Owen



Island Court Administrator Office, Port Vila. Photo credit: Indira Rosenthal

Chart 3.12: Island Courts average duration of a case (in days)



Average duration of cases (days)

The average duration of all cases in the Island Courts is 149 days. However, individually it takes 674 days on

average for chiefly title, 136 days for criminal matters and 157 days for maintenance cases.

Table 3.9: Island Court clearance rates 2014–2015

	2013 In	2013 Out	Clearance Rate	2014 In	2014 Out	Clearance Rate	2015 In	2015 Out	Clearance Rate
Civil	63	39	62%	97	31	32%	61	57	93%
Criminal	77	35	45%	270	310	115%	71	46	65%
Maintenance	181	97	54%	206	172	83%	166	110	66%
Debt	25	21	84%	23	20	87%	12	13	108%
Chiefly Title	10	0	0%	5	2	40%	5	2	40%
Total	356	192		601	535		315	228	

Clearance rate 2012–2015

The clearance rate for cases in the Island Court is detailed in the table above. The clearance rate of chiefly title, criminal and maintenance cases remains well below 100% which means that the number of cases pending will be increasing.

e. Vanuatu Police Force

The Vanuatu Police Force Family Protection Units are specialised units for the investigation of family and domestic violence offences under the Family Protection Act and sexual violence offences under the Penal Code. FPU also serve Family Protection Orders made under the FPA.

Vanuatu Police Force – Vision and Mission Statement

Vision Statement

A modern and professional Police Force united in delivering an effective policing service, in partnership with our communities for a safe and secure Vanuatu.

Mission Statement

To protect and defend our people, property and borders by the detection and prevention of crime through law enforcement in partnership with our national and international communities.

We enable this through strong leadership by:

- Developing a disciplined, skilled and capable workforce;
- Using modern equipment, systems and facilities;
- Continuously striving toward best practice in management and policing.



Northern District Police Headquarters, Santo. Photo credit: Indira Rosenthal

Location of Vanuatu Police Force Family Protection Units



Table 3.10: Charges laid per year

Crime Description	2012	2013	2014	Grand Total
Act of indecency with a young person	7	16	8	31
Act of indecency without consent	14	3	7	24
Aggravated sexual intercourse with a child	3			3
Domestic violence offence	121	114	153	388
Incest	14	14	6	34
Indecent act in public place	1	5	6	12
Indecent matter	2	5	9	16
Intentional assault	496	508	488	1492
Intentional homicide	5	12	4	21
Kidnapping	10	5	3	18
Sexual intercourse with child under care and protection	3	6	6	15
Sexual intercourse without consent	45	53	60	158
Unlawful sexual intercourse	19	22	9	50
Grand Total	740	763	759	2262

CRIMS dataset

The analysis above is based on the data from the “CRIMS” database and provided to the research team by the Vanuatu Police Force (VPF). This dataset is the only one in the formal justice sector that contains information about the gender of the offender and victim, the age of the offender and victim and their nationality. Importantly, it is also the only dataset in Vanuatu’s formal justice sector that records subtypes of crimes.

It is understood that the VPF will introduce a new case management system during 2016 and that migration

of the old data has started. It is recommended that the full breadth of data currently collected by the VPF continue with the new CMS. As the 2015 dataset was incomplete, it has only been used in some analysis to indicate averages.

Total charges – sexual and other physical violence 2012–2014

The CRIMS dataset shows that police lay, on average, 754 charges per year for sexual and other physical violence offences.

The following table shows the gender of the victim for each of the charges.

Table 3.11: Gender of victim

Charge	2012	2013	2014	Grand Total
Act of indecency with a young person	7	16	8	31
Female	4	12	8	24
Male	3	4		7
Act of indecency without consent	14	3	7	24
Female	4	3	7	14
Male	10			10
Aggravated sexual intercourse with a child	3			3
Female	3			3
Domestic violence offence	121	114	153	388
Female	103	82	117	302
Male	18	30	36	84
Unknown		2		2
Incest	14	14	6	34
Female	14	12	6	32
Male		2		2
Indecent act in public place	1	5	6	12
Female	1	4	6	11
Male		1		1
Indecent matter	2	5	9	16
Female	1	3	8	12
Male	1	2	1	4
Intentional assault	496	508	488	1492
Female	146	151	219	516
Male	350	347	268	965
Unknown		10	1	11

Charge	2012	2013	2014	Grand Total
Intentional homicide	5	12	4	21
Female	1	2	1	4
Male	4	10	3	17
Kidnapping	10	5	3	18
Female	9	4	3	16
Male	1	1		2
Sexual intercourse with child under care and protection	3	6	6	15
Female	3	6	6	15
Male				0
Sexual intercourse without consent	45	53	60	158
Female	41	49	56	146
Male	4	4	4	12
Unlawful sexual intercourse	19	22	9	50
Female	19	18	8	45
Male		4	1	5
Grand Total	740	763	759	2262

The following should be noted:

1. The police reported that they do not inquire into whether there has been a history of domestic violence when investigating cases of intentional homicides of women by their partner/husband or ex partner/husband. They also reported that they do not record any history of domestic or family violence in cases of intentional homicide of women.
2. Anecdotal evidence from interviews across the formal justice sector and the 2011 VWC National Women's Survey indicate that the prevalence of sexual offences against women and girls is much higher than these figures suggest.

Total sexual and other physical violence offences against women and girls 2012–2014

The 2009 Vanuatu National Survey on Women's Lives and Family Relationships found that 44% of women surveyed experienced sexual and other physical violence by their husband/partner in the 12 months prior to the survey. Using population figures from the 2009 Census, this 44% of women, equates to 22,901 women experiencing family violence in the previous 12 months.

The CRIMS dataset shows that on average, 380 charges (50%) per year relate to sexual and other physical violence against women and girls (see Table 3.12). Based on the 2009 survey of women who experience physical and/or sexual violence, this equates to only 2% of cases where police laid charges.

Table 3.12: Percentage of cases involving violence against women and girls

Charge	2012	2013	2014	Grand Total
Act of indecency with a young person	7	16	8	31
Female	4	12	8	24
Per cent of total				77%
Act of indecency without consent	14	3	7	24
Female	4	3	7	14
Per cent of total				58%
Aggravated sexual intercourse with a child	3			3
Female	3			3
Per cent of total				100%
Domestic violence offence	121	114	153	388
Female	103	82	117	302
Per cent of total				78%
Incest	14	14	6	34
Female	14	12	6	32
Per cent of total				94%
Indecent act in public place	1	5	6	12
Female	1	4	6	11
Per cent of total				92%
Indecent matter	2	5	9	16
Female	1	3	8	12
Per cent of total				75%
Intentional assault	496	508	488	1492
Female	146	151	219	516
Per cent of total				35%
Intentional homicide	5	12	4	21
Female	1	2	1	4
Per cent of total				19%

Charge	2012	2013	2014	Grand Total
Kidnapping	10	5	3	18
Female	9	4	3	16
Per cent of total				89%
Sexual intercourse with child under care and protection	3	6	6	15
Female	3	6	6	15
Per cent of total				100%
Sexual intercourse without consent	45	53	60	158
Female	41	49	56	146
Per cent of total				92%
Unlawful sexual intercourse	19	22	9	50
Female	19	18	8	45
Male				90%
Total Sexual and other physical violence	740	763	759	2262
Total Violence Against Females	349	346	445	1140
% of total violence charges	47%	45%	59%	50%

Total sexual violence offences against women and girls 2012–2014

On average, 88% of charges were for sexual violence cases perpetrated against females (see Table 3.13),

44% of charges related to other physical violence and 78% of charges were for domestic violence offences (see Table 3.14).

Table 3.13: Total sexual violence offences against women and girls 2012–2014

Charge	2012	2013	2014	Total
Act of indecency with a young person	7	16	8	31
Female	4	12	8	24
				77%
Act of indecency without consent	14	3	7	24
Female	4	3	7	14
				58%

Charge	2012	2013	2014	Total
Aggravated sexual intercourse with a child	3			3
Female	3			3
				100%
Incest	14	14	6	34
Female	14	12	6	32
				94%
Indecent act in public place	1	5	6	12
Female	1	4	6	11
				92%
Indecent matter	2	5	9	16
Female	1	3	8	12
				75%
Sexual intercourse with child under care and protection	3	6	6	15
Female	3	6	6	15
				100%
Sexual intercourse without consent	45	53	60	158
Female	41	49	56	146
				92%
Unlawful sexual intercourse	19	22	9	50
Female	19	18	8	45
				90%
Total sexual violence offences charged	108	124	111	343
Total charges for sexual violence against females	90	107	105	302
Percentage of total charges for sexual violence against females				88%

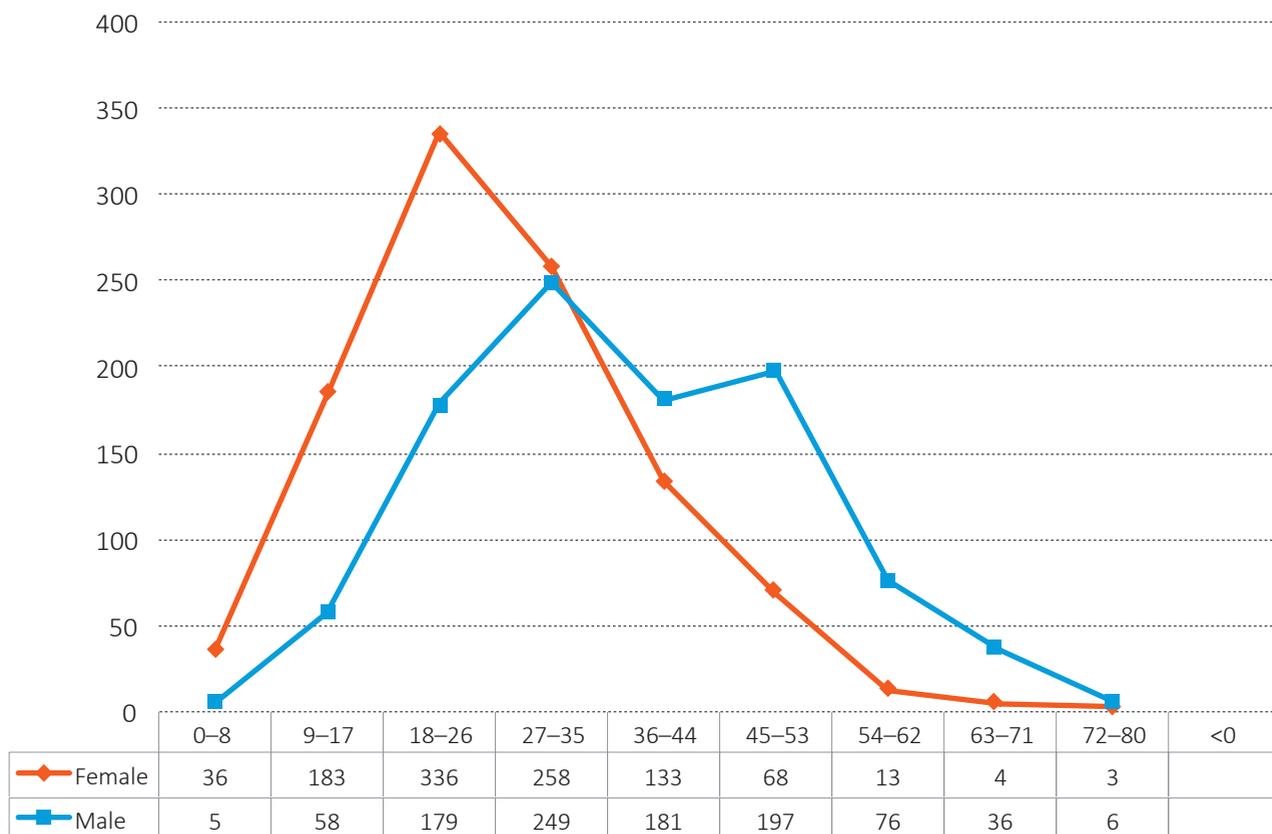


Photo credit: UN Women/Olivia Owen

Table 3.14: Total non-sexual physical violence offences against women and girls 2012–2014

Charge	2012	2013	2014	Total
Domestic violence offence	121	114	153	388
Female	103	82	117	302
				78%
Intentional assault	496	508	488	1492
Female	146	151	219	516
				35%
Intentional homicide	5	12	4	21
Female	1	2	1	4
				19%
Kidnapping	10	5	3	18
Female	9	4	3	16
				89%
Total physical violence offences charged	632	639	648	1919
Total charges for sexual violence against females	259	239	340	838
Percentage of total charges for sexual violence against females				44%

Chart 3.13: Age of victim sexual and non-sexual offences



Age and gender of victim in sexual and non-sexual offences

Between January 2012 and December 2014 there were 2262 charges related to sexual and/or other physical violence. Of these, 241 did not have data on the gender of the victim or the offender, or the age of the victim. For the purposes of this research these cases have been removed from the analysis below.

Chart 3.13 above shows (where recorded) the age and gender of the victim for all sexual and other physical violence charges; sexual violence charges only and other physical violence charges only.



Photo credit: UN Women/Olivia Owen

Chart 3.14: Age of victim sexual offences only

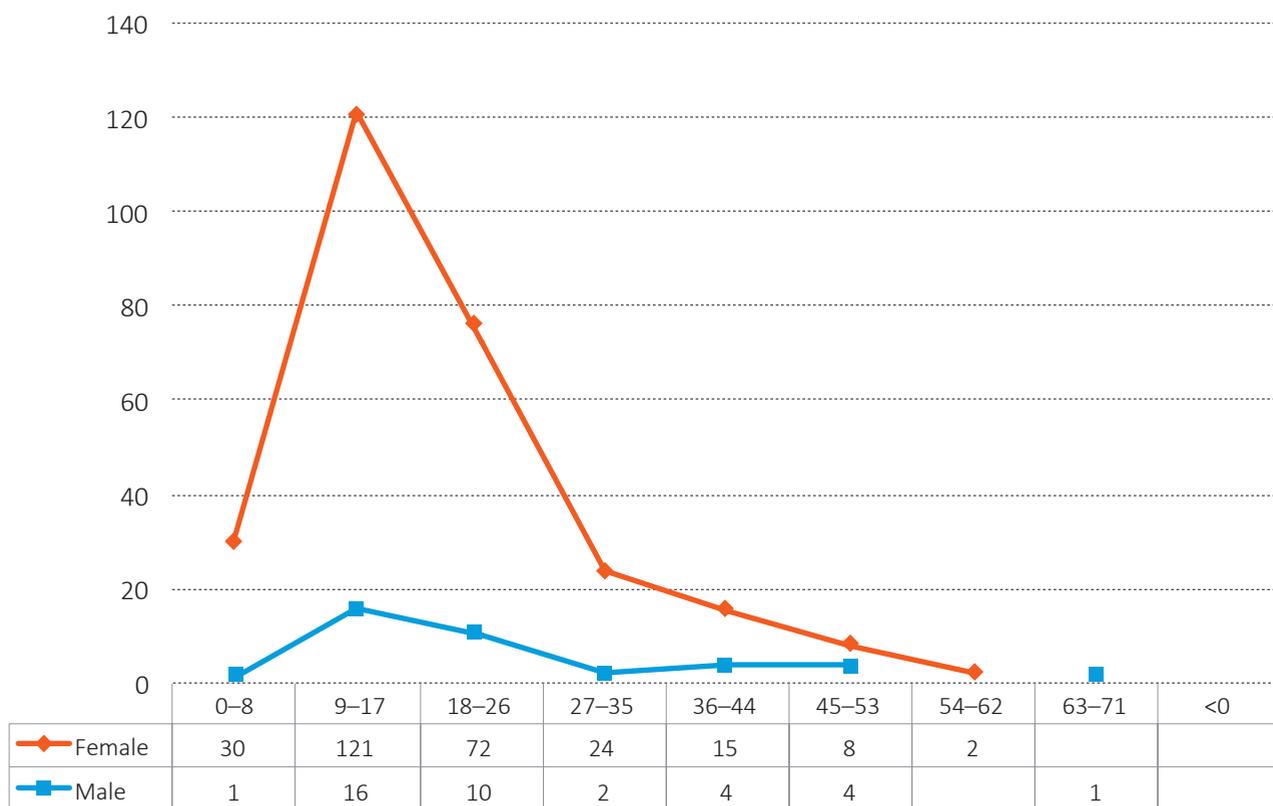


Chart 3.14 above highlights that the majority of charges for sexual violence offences relate to offences perpetrated against girls under the age of 18. Of 310 cases involving sexual offences, 272 cases involve female victims and 38 cases involve male victims.

Photo credit: UN Women/Olivia Owen



Chart 3.15: Age of victim non-sexual offences only



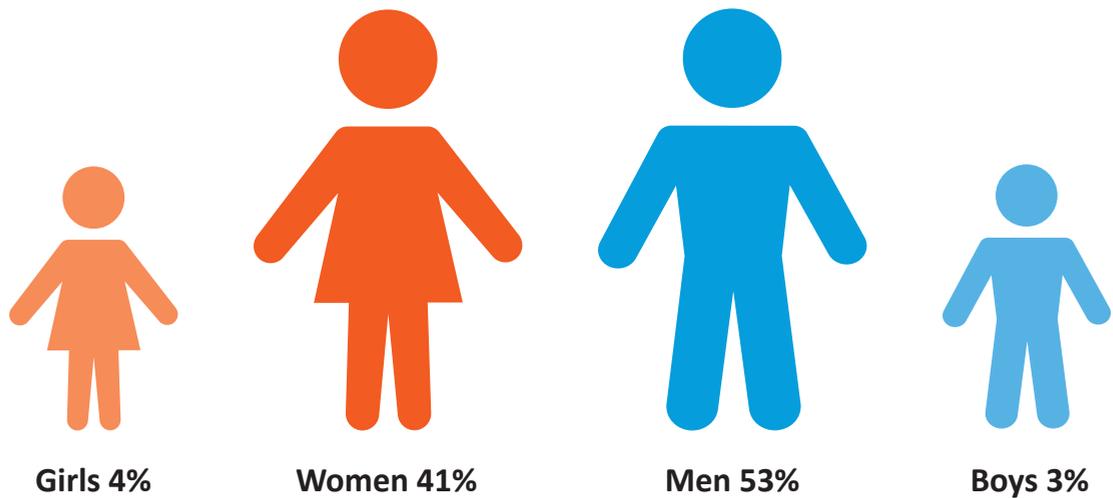
Chart 3.15 above highlights that the majority of charges laid for non-sexual violence offences relate to victims between the ages of 18 and 35 years of age. Of 1711 cases involving non-sexual offences, 762 cases involve female victims and 949 cases involve male victims.

Photo credit: UN Women/Olivia Owen



Figure 3.5: Percent of non-sexual violence by gender

Non-sexual violence by gender of victim N = 1711 (2012–15)

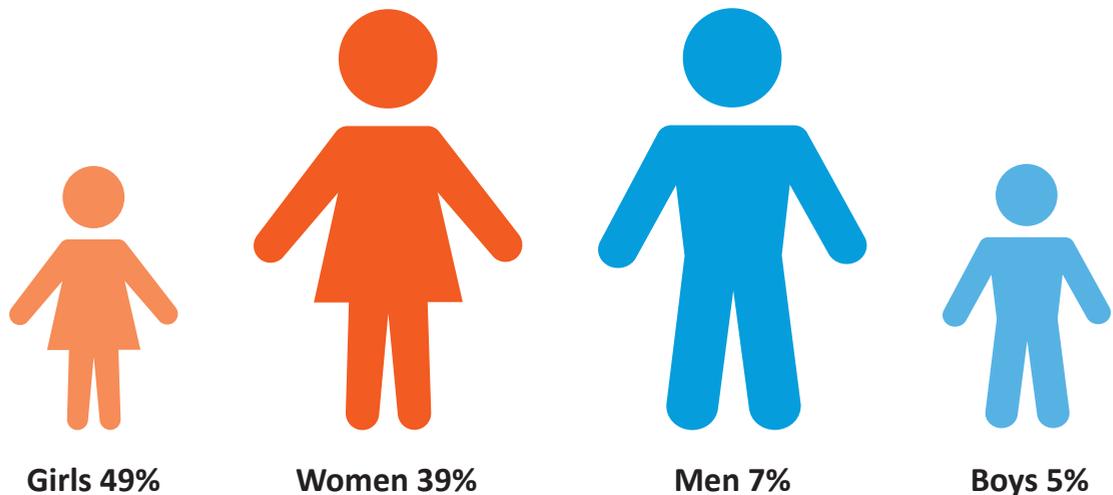


Female Perpetrator – 10%, Male Perpetrator – 90%

90% of non-sexual violence is perpetrated by men. 53% of victims were men, 41% women.

Figure 3.6: Percentage of sexual violence by gender

Sexual violence by gender of victim N = 310 (2012–15)



Female Perpetrator – 7%, Male Perpetrator – 93%

93% of sexual violence is perpetrated by men. Girls (49%) and women (39%) were the overwhelming victims of sexual violence in Vanuatu.

f. Department of the State Prosecutor

The Department of the State Prosecutor Office (DSP) operates from four venues in Vanuatu: Luganville, Santo, Saratamata, Ambae, Lakatoro, Malekula, and Port Vila.

The data provided by the DSP was limited to the following data fields collected between 2012–2014:

- Province of the offence
- Date of offence (although this is mostly incomplete)

- Nature of the offence
- Offender origin
- Date file is received by DSP
- Court hearing date
- Court outcome.

The DSP does not keep gender disaggregated data on the offender or any information about the victim. The data relating to court outcomes and sentencing was very limited.

Table 3.15: Cases in the Department of the State Prosecutor 2012–2014

	2012	2013	2014	Total Number of Cases By Type
Act of indecency with a young person		2	10	12
Act of indecency without consent		2	5	7
Domestic violence offence	11	24	43	78
Family maintenance offences	1	13	14	28
Incest		1	3	4
Indecent act in public place		2	5	7
Indecent matter	1	2	6	9
Intentional assault	19	120	205	344
Intentional homicide		2	5	7
Sexual intercourse with child under care and protection		5	3	8
Sexual intercourse without consent	3	14	38	55
Unlawful sexual intercourse		6	4	10
Total Cases Per Year	35	193	341	569

Table 3.16: Cases by province

Province	2012	2013	2014	Total Number of Cases By Type
Malampa	9	48	137	194
Unknown	15	88	49	152
Sanma			2	2
Shefa	10	57	151	218
Tafea	1		2	3
Total Cases Per Year	35	193	341	569



g. Office of the Public Prosecutor

The Constitution establishes the Office of Public Prosecutor (OPP), with posts for the Public Prosecutor, a Deputy Prosecutor and Assistant Prosecutors. Currently there is a Public Prosecutor and seven Assistant Prosecutors – four located in Port Vila, one in Santo and a further three to be recruited as at the time of this report. The position of Deputy Prosecutor is currently vacant.

Vision

“Upholding the rule of law”

Mission

We achieve our vision by being:

“A robust prosecution service that supports national aspirations of peace and good governance.”

Between 2012 and 2014 the Office of the Public Prosecutor dealt with 686 cases. 319 cases (46%) related to family protection and sexual offences (categorised as Morality cases). All other cases (54%) relate to violence against the person, which potentially includes violence against women and children, however the data is not age or gender disaggregated.

Table 3.18 details a further break down of the cases within family protection and morality cases.

Photo credit, previous page: UN Women/Olivia Owen

Table 3.17: Cases in the Office of the Public Prosecutor 2012–2014

Offence Category	2012	2013	2014	Total Number of Cases by Type
Family Protection	55	12	78	145
Morality	57	37	80	174
Offences against the person	86	94	187	367
Total Cases Per Year	198	143	345	686

Table 3.18: Offences by type 2012–2014

Offence	2012	2013	2014	Total Number of Cases by Type	Percentage of Total Cases
Family Protection	55	12	78	145	21%
Breach of Family Protection Order	4		2	6	
Contempt Of Court Order	1			1	
Domestic Violence	41	9	60	110	
Domestic Violence and Kidnapping	1			1	
Failure to Maintain Family	8	3	16	27	
Morality	57	37	80	174	25%
Act of Indecency with a Young Person	9	1	12	22	
Attempted Sexual Intercourse Without Consent	5	1		6	
Cross Indecency		1		1	

Offence	2012	2013	2014	Total Number of Cases by Type	Percentage of Total Cases
Domestic Violence			1	1	
Incest and Sexual Intercourse Without Consent	3	2	4	9	
Incest and Unlawful Sexual Intercourse with a Young Person	1			1	
Incest and Unlawful Sexual Intercourse	1			1	
Indecent Act in Public Place	1	1	4	6	
Indecent Assault	1	1		2	
Rape	1			1	
Sexual Intercourse with a Child Under Care and Protection		7	7	14	
Sexual Intercourse without Consent	33	20	35	88	
Unlawful Sexual Intercourse	1	1	10	12	
Unlawful Sexual Intercourse and Sexual Intercourse Without Consent	1	1	3	5	
Unlawful Sexual Intercourse with a Child Under Care and Protection		1	2	3	
Kidnapping and Sexual Intercourse without Consent			2	2	
Offences against the person	86	94	187	367	53%
Total Cases Per Year	198	143	345	686	

h. Office of the Public Solicitor

The Office of the Public Solicitor (OPS) is established under Article 56 of the constitution¹³ and its role is to provide legal assistance to needy people or to any person on being directed to do so by the Supreme Court.

The Public Solicitor is the only government funded legal service in the country.

Regrettably a dataset was not provided by the OPS, so the research team could not identify the volume or types of cases it handles or the gender of its clients.

From discussions with actors in the formal justice sector however, the Office of the Public Solicitor

faces significant budgetary constraints which makes it difficult for lawyers to circuit to other islands to provide advice, legal representation to litigants or defend accused persons.

See also the discussion in Part Four of this Report.

i. Vanuatu Women's Centre

Vanuatu Women's Centre goal

The Vanuatu Women's Centre's program goal is "to eliminate violence against women and children throughout Vanuatu".

¹³ Section 5(1) of the Public Solicitor's Act (Cap 177).

Location of Vanuatu Women's Centre Services



The following data on the operations of the VWC, a non-government organisation, is included in this Part as the VWC is the primary organisation in Vanuatu delivering counselling, support and legal advice and representation to women and children experiencing family and sexual violence, as well as in divorce, child custody and maintenance proceedings. Its services are offered from its Port Vila headquarters and from four provincial branches in Sanma, Torba, Malampa and Tafea. It also runs 43 community-based Committees Against Violence Against Women (CAVAWs) around

the country, providing basic counselling and referral services.

Chart 3.16 shows the increase in the total number of new clients and repeat counselling sessions provided by VWC, its Provincial Branches and CAVAWs from 2007–2015.

In 2015, the VWC provided a total of 4595¹⁴ counselling sessions at VWC Port Vila, Provincial Branches and CAVAWs with 1667 sessions for new clients (see Chart 3.17).

Chart 3.16: Total clients 2007–2015

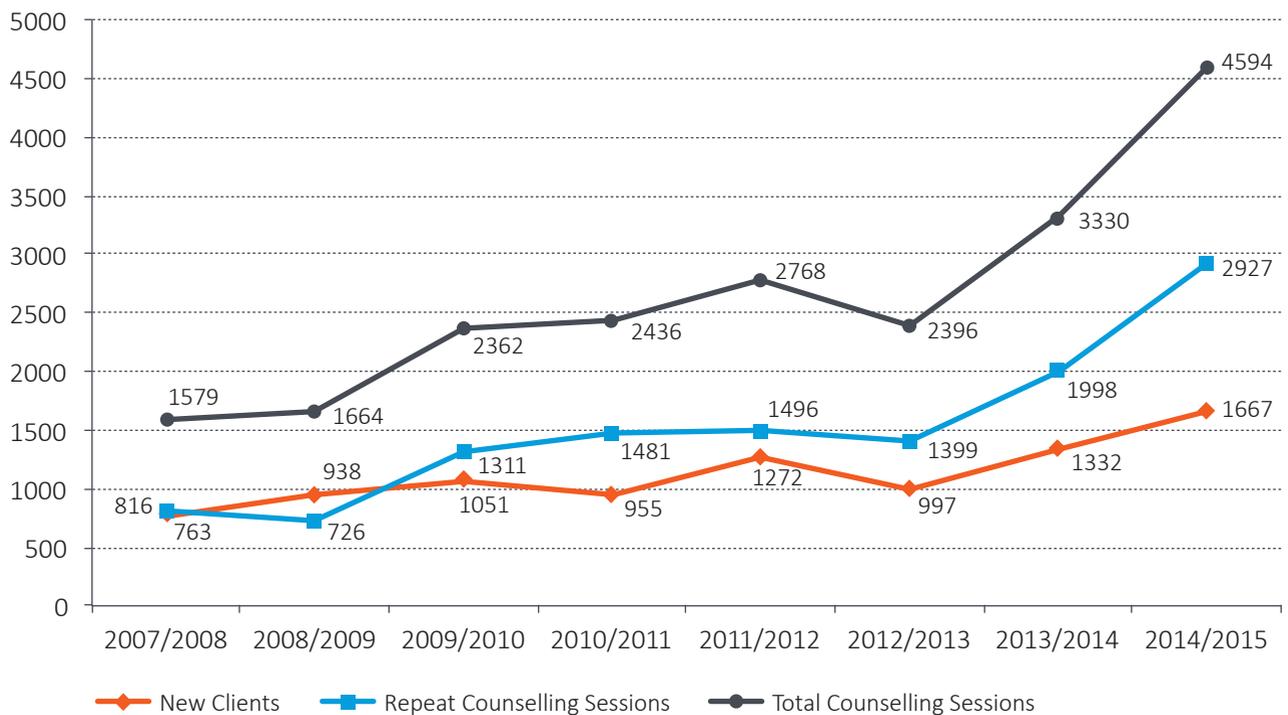
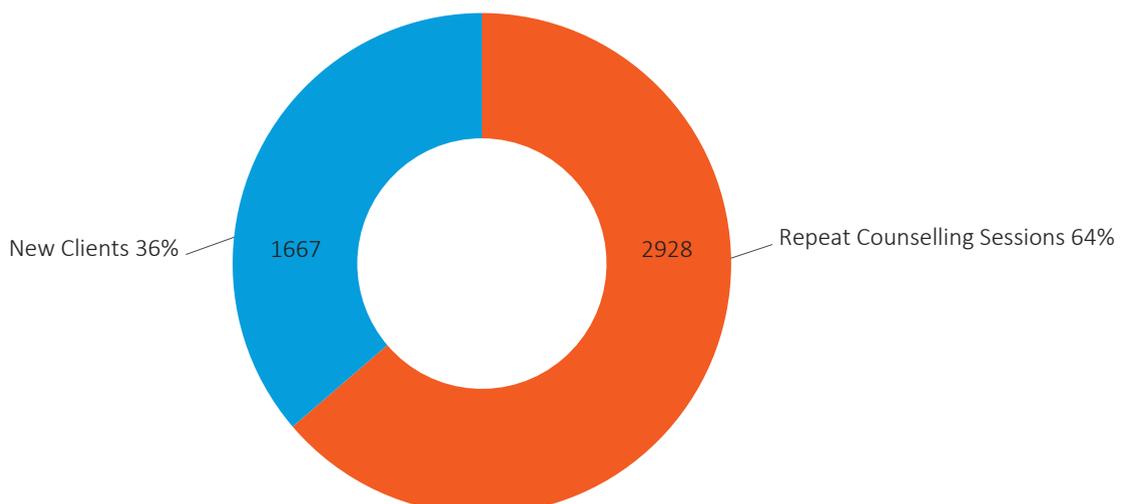


Chart 3.17: Total counselling sessions in 2015



¹⁴ 14 December 2015 Progress Report for the Vanuatu Women’s Centre.

Chart 3.18: Breakdown of new clients

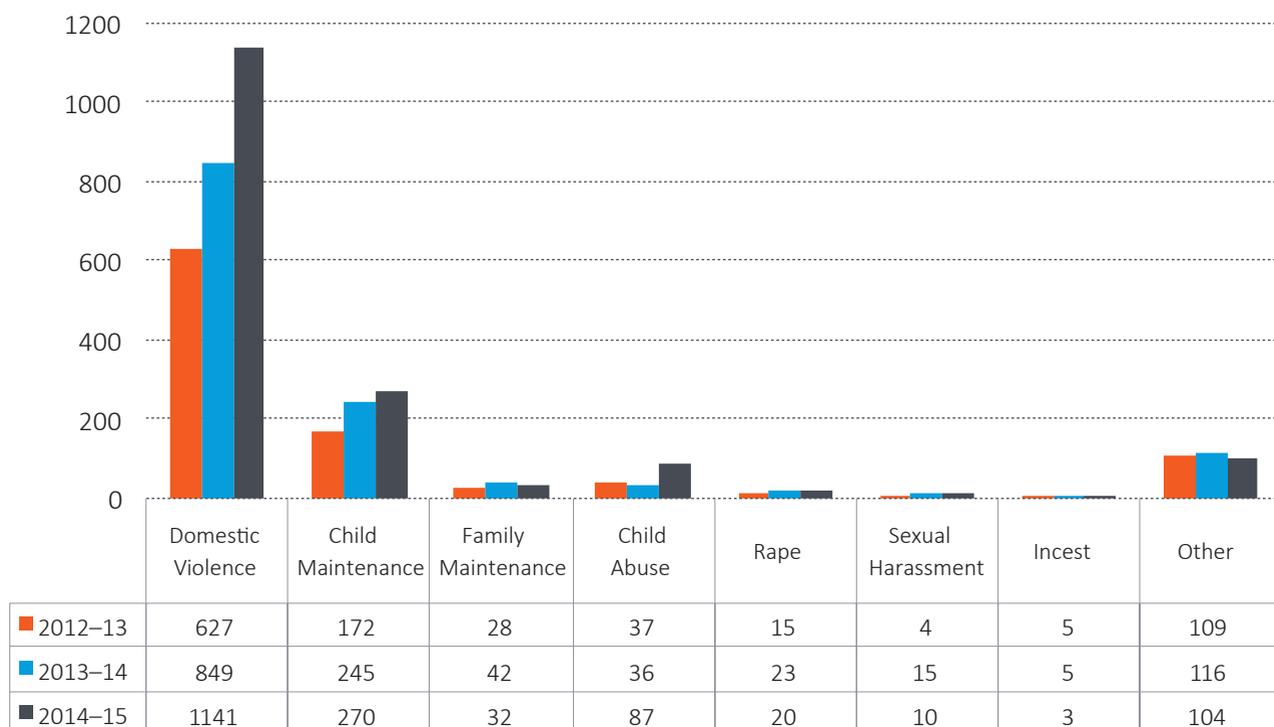
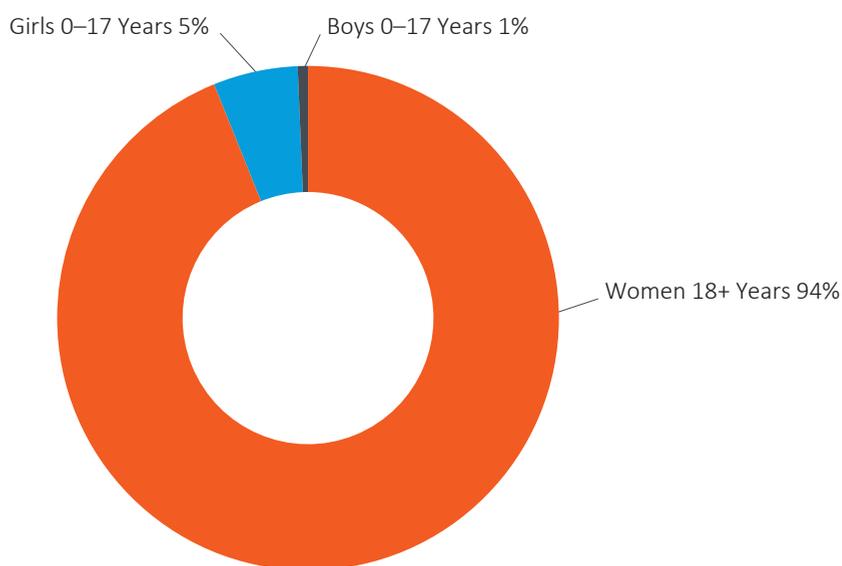


Chart 3.19: Age group of new clients 2014-15



The vast majority of new clients who accessed the Vanuatu Women’s Centre sought domestic violence related support and counselling.

Of those 1667 new clients who accessed VWC in 2014-15, the vast majority were women 18 years and older. Only 6% of new clients were 17 or younger (5% girls and 1 % boys).

Chart 3.20: Repeat clients 2012–2015

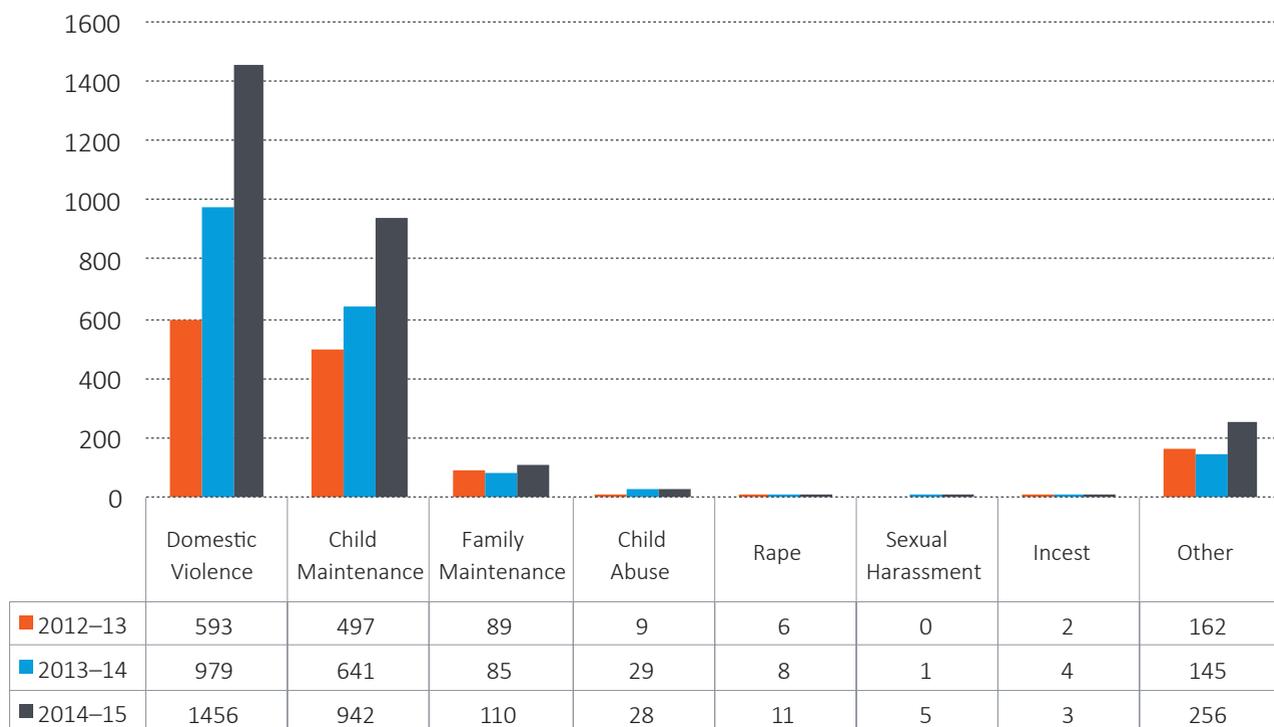
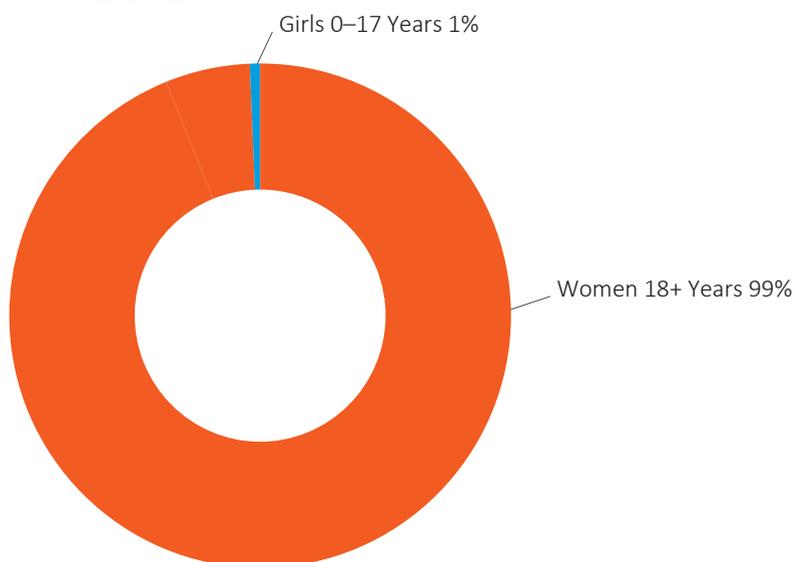


Chart 3.21: Age group of repeat clients 2014–15



The majority of repeat clients to VWC accessed the service for domestic violence and child maintenance related issues.

Almost all repeat clients to VWC in 2014–15 were women 18 years and older with only 1% girls 17 and younger accessing the service.

j. Access to justice for people with a disability

The Disability Desk in the Ministry of Justice and Community Services (MJCS) is responsible for compliance with the Convention on the Rights of Persons with Disabilities (CRPD) to which Vanuatu is a state party. It also has responsibility for implementing the national disability policy, with oversight from a national committee, and valuable support from NGOs as implementing partners.

The 2009 National Census reported that approximately 5% of people in Vanuatu live with a disability.¹⁵

The research team was unable to find disability disaggregated data collected or published by any justice sector agency in Vanuatu. The research found that there is no formal intersection between the formal justice sector and disabled persons organisations (DPOs). There is no clear disability inclusive strategy to assist women and children with a disability to access the formal justice system in Vanuatu.

Part Six of this Report looks in more detail at access to the formal justice system for women and children with disabilities.

k. Understanding court users and improving data collection

The lack of demographic information about justice seekers adversely affects the Courts' ability to respond to the needs of women and children, including those with a disability, and inhibits the effective functioning of, and equal access to the Courts.

An essential pre-requisite for tackling the barriers faced by women and children in their interaction with the courts is to better identify these individuals, to fully understand the particular barriers they face, and to ensure an effective flow of information between court administrators and judicial officers about the needs of these clients.

Courts should introduce or improve the collection of data in the following areas to appropriately determine a woman or child's:

- Disability, if any;
- Literacy levels;
- Bislama language proficiency;
- Whether an interpreter or other communication assistance is required, including sign interpretation.

The benefit of collecting this information is that it would assist the Courts to ensure they are responsive to the needs of their users. In particular, it would enable the Courts to tailor their responses to the needs of women and children.

Courts should introduce or enhance mechanisms to assess satisfaction levels among court users. Regular court user satisfaction surveys and complaints mechanisms help to assess satisfaction levels among court clients and to measure responsiveness of courts to the needs of diverse communities. They also demonstrate that courts, judicial officers and staff are open and accountable in their operations.

Courts have traditionally focused on quantitative measures of performance and outcomes to assess client satisfaction. However, research indicates that perceptions of the court system by court users are influenced more by a fair process than a favourable outcome. Courts should adopt processes to include qualitative assessments as part of their framework for assessing quality of service, as well as quantitative factors such as the time taken for a case to proceed to a full hearing. Qualitative indicators should include questions that related to how women and men perceive the service they received when attending court, their treatment by judicial officers and court staff and whether their legal issues were satisfactorily resolved. Client satisfaction surveys should explore the conduct of court staff, the quality of court administrative processes and the conduct of judicial officers in court. Client satisfaction surveys do not consider the judicial decision a client received in a matter, as this can only be determined through an appeal process. Survey indicators could include:

- Whether the user found the court to be accessible;
- Perceptions of safety and privacy;
- Whether staff were courteous, friendly and helpful;
- The extent of the client's understanding of court processes;

¹⁵ UNICEF Pacific and Vanuatu National Statistics Office (2014) *Children, Women and Men with Disabilities in Vanuatu: What do the data say?* p. 24.



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

- The timeliness and convenience of those processes; and
- The client's perceptions of fairness.¹⁶

More specific information that could be sought includes:

- The availability of plain language forms and documents;
- The availability of translated forms and information documents;
- Distance travelled to get to court;
- Time spent in court;
- Availability and use of audio-visual technology;
- The availability of interpreter assistance and qualifications of interpreter.

I. Interviews with Judges and Magistrates

The International Framework for Court Excellence (IFCE), is a quality management system designed to help courts improve their performance. It represents an all-encompassing approach to achieving court excellence, rather than a more limited focus on particular aspects of court governance, management, or operations, which includes a framework of core

values that are aligned with seven areas of excellence¹⁷. It has an important role in assisting courts to improve the quality of their services. Many courts around the world regularly assess their performance against the IFCE to ensure they are tracking well in their application of the model.

Part of the IFCE is a self-evaluation process using the Court Excellence Self-Assessment Questionnaire. This Questionnaire evaluates a court's performance against the seven areas of excellence, and provides guidance for courts to improve their performance.

The IFCE questionnaire was adapted for this research and the following table illustrates the results from 17 interviews in total including those with the Chief Justice and two Justices of the Supreme Court of Vanuatu, the Chief Magistrate and all other Magistrates (7 in total), the Deputy Registrar, the Magistrates Court Administrator, the clerk at the Tanna Magistrates Court and three Island Court Clerks. It shows that the majority of respondents felt that they listened to, and communicated well with the court user and treated them with respect. The majority agreed that the court did not produce or distribute information about the court to the public, however 53% felt that the court provided information to assist litigants without representation. All acknowledged that the website, and the publishing of the court's complaints procedure and policy did not exist or it could be improved.

¹⁶ International Framework for Court Excellence, 2nd edition, March 2013 <<http://www.courtexcellence.com/Resources/The-Framework.aspx>>

¹⁷ <http://www.courtexcellence.com/>

Table 3.19: International Framework for Court Excellence self assessment

	No		Can Improve		Yes	
We listen to court users and treat them with respect.			2	12%	15	88%
We communicate clearly to defendants and their lawyers			1	6%	16	94%
We produce and distribute information to the public about the court	11	65%	4	24%	2	12%
We provide people with disabilities with support and easy access to the court and our services	9	53%	4	24%	4	24%
Our hours of operation make it easy for users to get their business done	1	6%			16	94%
We provide information to assist litigants without representation	4	24%	4	24%	9	53%
We can demonstrate that people leaving court understand the court programs and services they have experienced	3	18%	5	29%	9	53%
People are able to get their business with the court done in a reasonable time			16	94%	1	6%
We make it easy for people to find the relevant courtroom in which a hearing is taking place	2	12%	1	6%	14	82%
Our website is easy to negotiate and contains relevant information	16	94%	1	6%		
Our website is useful to users	16	94%	1	6%		
We treat members of minority groups the same as everyone else			1	6%	16	94%
We publish information on court procedures and our complaints policy	14	82%	3	18%		

m. Recommendations

The availability and accessibility of good quality statistical information is integral to actors in the formal justice sector so that they can effectively design and implement quality services that are non discriminatory and meet the needs of users and justice seekers. It is critical that these actors are able to quantify and examine what cases are in the system and whether there are groups/cases that require specific attention. This must include the cases in which women and children are disproportionately represented as victims or applicants in Vanuatu, namely domestic and family violence, sexual violence and other physical violence, sexual and non-sexual violence against children and matrimonial matters.

A number of actions are recommended:

1. Gender disaggregated information about the applicant/victim and the offender/respondent should be collected in the following cases:

- i. In the Supreme Court:
 - Adoption
 - Civil
 - Criminal
 - Matrimonial
- ii. In the Magistrates Court:
 - Civil
 - Criminal
 - Juvenile
 - Matrimonial
 - Preliminary Investigation
 - Violence

iii. In the Island Courts:

- Civil
- Criminal
- Maintenance

2. Age disaggregated data:

The current dataset from the Courts does not provide for age disaggregated data, although it is available in the CRIMS dataset. Given the extremely high rate of sexual violence offences against girls reported in the CRIMS dataset it is recommended that this data be collected for both the victim and offender by all Courts, the Public Prosecutor and the State Prosecutor.

3. Case type data

Under s. 28(4) of the FPA, the Magistrates Court is required to keep a written register of all applications for Family Protection Orders made and all Family Protection Orders granted. However, it is not possible to accurately determine the number of these orders as the Court does not use “Family Protection Orders”, in its records but instead uses several other terms which can have more than one meaning. Most often the Court appears to use “domestic violence” to refer to Family Protection Orders. However, as this term can refer to other matters within the Court’s jurisdiction, the data are unclear. Given this, the CMS for the Courts should use the term “Family Protection Order” for clarity.

The CMS also needs to be able to provide a deeper analysis of the various case types within each Court. It is therefore recommended that all the Courts collect case sub-type information including:

- i. For Criminal proceedings – what type of crime (i.e., sexual violence; domestic violence; incest; arson etc.)
- ii. For Violence cases– (i.e., Interim Family Protection Order; Final Protection Order; Enforcement of Protection Order etc.)
- iii. Civil cases be categorised together with a subtype (i.e., matrimonial, property, maintenance etc.)

4. Legal representation data

- i. In criminal cases, whether the victim and offender are legally represented and by whom (e.g. NGO, justice sector agency or private lawyer)
- ii. In civil cases, whether the applicant and respondent are legally represented and by whom (e.g. NGO, justice sector agency or private lawyer)

5. Court fee waiver

Between July 2012 – November 2015, the Vanuatu Women’s Centre supported women and children with court filing fees in 535 cases including 465 child maintenance cases (87%), two child custody cases, 28 matrimonial cases (5%), five civil cases (1%) and 35 other matters (7%). These women were unable to afford the court filing fee in these civil cases and without support from VWC (and the Australian Government Aid Programme) would have been excluded from the formal justice system. In future, all Courts should collect data on:

- i. the number of cases in which a party requests that the court waive a fee,
- ii. the number of cases where a court fee is waived,
- iii. the gender and age of the applicant and
- iv. the case type for which the court fee is waived.

6. Geographical information

In order to assist with planning and management of the court’s cases, and to ensure parties, their representatives and witnesses are able to access the court and hearings it is recommended that the CMS record the following location data:

- i. Details of offence location
- ii. Where the case was filed
- iii. Where the case was heard
- iv. Was the case heard on a circuit
- v. Were teleconference or videoconferencing facilities used

7. Outcomes and access to results in a case

The quality of data recorded as to the outcome of each individual case was not sufficient to determine the actual outcome in a case. Accordingly, the Court CMS should require the Courts to record the precise penalty, if any, in criminal cases.

Reasons for decision should be produced, published and readily available. Judgments should be in writing and published (sufficiently anonymised to protect victims) on PACLii and any notable judgments should be reported in the Court Annual Report.

8. Standard monthly court reports prepared for the Chief Justice, Justices and senior court administrators:

- a. General court performance reports to assist the court with measuring timeliness and delay, clearance rates, attendance, rate of appeal, number of complaints etc.
- b. Summary workload by application type – this should also provide a further breakdown of those criminal cases that affect women and children e.g. Sexual violence, violence against women and children
- c. More specific reports that relate to the types of cases that have an impact on women and children such as:
 - i. Gender of applicant in all Family Protection Orders and other civil matters
 - ii. Information about who assisted the applicant party to bring an Family Protection Order or other civil matter to court
 - iii. Percentage of cases with fee waiver and non-fee waiver in all civil cases but particularly child maintenance and family law matters
 - iv. Geographical information that details:
 - offence location
 - Where the case was filed
 - Where the case was heard and whether the case was heard on a circuit and whether teleconference or videoconferencing facilities were used
 - v. Outcomes in a case
 - Number of cases finalised
 - Number of judgments delivered and published
 - Number of appeals lodged
 - vi. Client feedback and complaints

9. Integrated data systems in the formal justice sector

Where law and justice case management systems work in conjunction with one another they can provide essential information to ensure that women and children are able to access the formal justice system and realise their human rights. The formal justice sector should consider the following:

- i. Using identical terminology for data collected, including the name of offences, any category of offender or victim, such as “child” for a victim under the age of 18 years, and “juvenile” for an accused or convicted person who was under the age of 18 years at the time of the offence, etc. to improve transparency and analysis of women and children’s access to the formal justice system.
- ii. Consider the introduction of a “Unique Identification Code” for each case and offender that is used across all justice sector agencies so that the sector is able to conduct a Case File Attrition Analysis at a later date.
- iii. Develop a range of regular reports related to women and children’s access to the formal justice system (with a specific focus on violence against women and children’s cases) that form the basis for discussions at a strategic level.

10. Accessibility for justice seekers with special needs

- i. None of Vanuatu’s justice sector agencies are currently able to determine if people with a disability are accessing the formal justice system. It is strongly recommended that all datasets capture whether an applicant, respondent, plaintiff, victim or suspect has a disability and, where possible, the nature of that disability using standard categories developed in consultation with the Disability Desk of the Ministry of Justice and Community Services (MJCS).
- ii. There is currently no formal intersection between the formal justice sector and DPO’s. Regular stakeholder meetings should be held with DPO’s (among others) to ensure that the formal justice system is meeting the needs of this group of justice seekers.
- iii. A report in the annual report on the extent, quality and ready availability of facilities and services for and information on:
 - Access for persons with disabilities
 - Access to interpreter services
 - Access to help and information
 - Access for unrepresented litigants



Photo credit: UN Women/Olivia Owen

11. Vanuatu National Strategy for the Development of Statistics (2014–2020)¹⁸

At the time of writing, the following recommendations in relation to the crime and justice sector in Vanuatu were yet to be implemented. It is strongly recommended that they be implemented without delay.

- i. MJCS to continue to implement a programme to improve statistics collected across the law and justice sector and by NGOs engaged in the formal justice system;
- ii. MJCS develop a coordination system for centralised access to regular statistical data on crime and justice;
- iii. Crime and justice statistics are compiled and analysis disseminated annually and made available online.

12. Client feedback, complaint mechanisms and measuring user satisfaction

There is a lack of client feedback and complaint mechanisms for the formal justice system agencies to ensure that the services provided are accessible to all, in particular, services to women and children. There are no court user surveys, regular court-stakeholder discussions or other mechanisms to identify and remove barriers to accessing the

formal justice system or to review public satisfaction with the quality of justice services with a view to improvements. It is therefore recommended that the formal justice sector agencies consider:

- i. Publishing practices and procedures so they are readily available to the public.
- ii. Adopting and implementing client feedback and complaint mechanisms for court users and others to make complaints concerning the service provided by judicial officers, court staff, prosecutors, police and lawyers.
- iii. Conducting regular user satisfaction surveys to inform the strategies and practices of the justice sector agencies.
- iv. Introducing multi-sector quarterly meetings to identify challenges and develop coordinated responses for women and children experiencing violence by health, counselling, justice sector agencies, women and children's CSOs, Disabled Persons Organisations and professional bodies. Consider using video conferencing facilities in provincial government offices to allow the participation of people outside Port Vila. Justice sector agencies would consider and implement suggestions (where appropriate) and report back to the stakeholder group, and through their Annual Report, as to any action taken.

¹⁸ Vanuatu National Strategy for the Development of Statistics: Final Draft Strategy for the Agenda for Building Capacity in Statistics 2014–2020 pp.45–46.

Photo credit, next page: UN Women/Olivia Owen



4

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.¹

¹ 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.²

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.³ The New Zealand Government

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

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,⁵ 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,

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.

4 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.

5 See 2011 VWC Survey. Refer to Part 3 on Data.

2 Ibid.

3 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

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.)

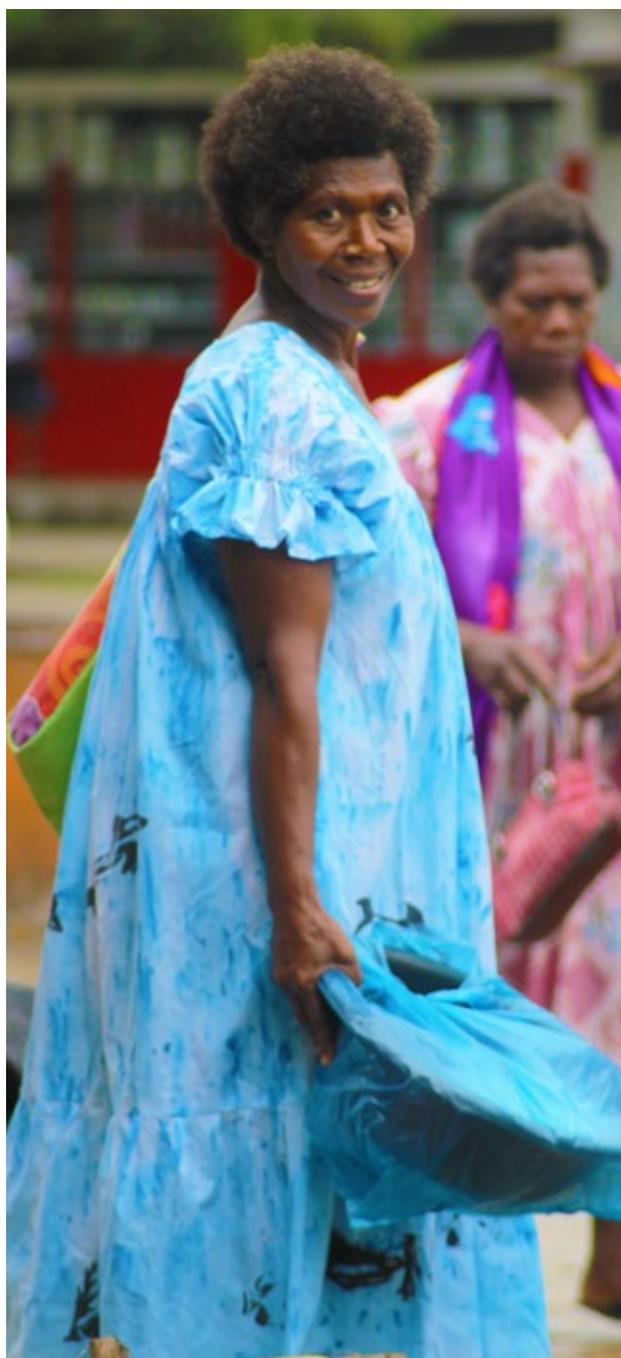


Photo credit: UN Women/Olivia Owen

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.⁶

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.⁷

⁶ 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.

⁷ 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"> • Family Protection Orders (FPO) (“family violence” is defined to include emotional violence and controlling behaviour; “family” is defined to include extended family members). • Domestic Violence Criminal Offence punishable by up to 5 years in gaol.
Penal Code (CAP 135)	<ul style="list-style-type: none"> • Offences against the Person (e.g., assault, homicide). • Offences against Morality (E.g., rape, sexual offences against children).
Matrimonial Causes Act	<ul style="list-style-type: none"> • Fault divorce. • Child custody. • Alimony and child maintenance.
Maintenance of Family Act	<ul style="list-style-type: none"> • Criminal offence: <ul style="list-style-type: none"> – A man fails to provide for his wife and “legitimate” children; – A mother deserts her children for more than 1 month; • Punishable by up to 3 months imprisonment or VT 20,000 fine.
Maintenance of Children Act	<ul style="list-style-type: none"> • Unmarried women over the age of 21 years can seek an order for child maintenance for children. • Parents/guardians of unmarried women under the age of 21 years can apply on her behalf. • Breach of a child maintenance order is a criminal offence.

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.⁸

75% of Vanuatu’s population live in rural areas.⁹ 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.)

⁸ Ibid, pp. 24–25.

⁹ 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.¹⁰

¹⁰ 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 2015.¹¹ 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)

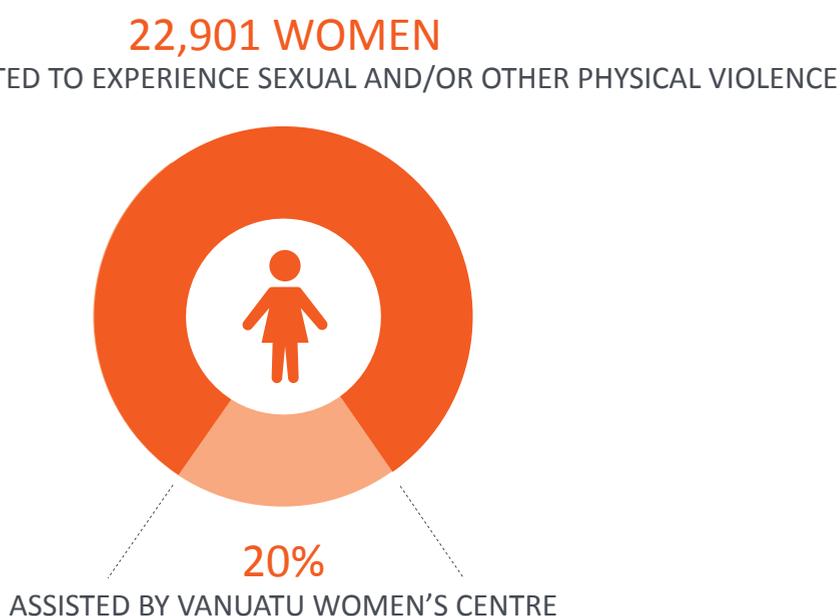


Photo credit, next page: UN Women/Nicky Kuautonga

¹¹ 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.



Women make up the majority of the 1.5 billion people [in the world] living on 1 dollar a day or less.¹²

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 2015¹³

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

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

¹³ 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.¹⁴

¹⁴ 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.¹⁵ 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.

¹⁵ 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)¹⁶

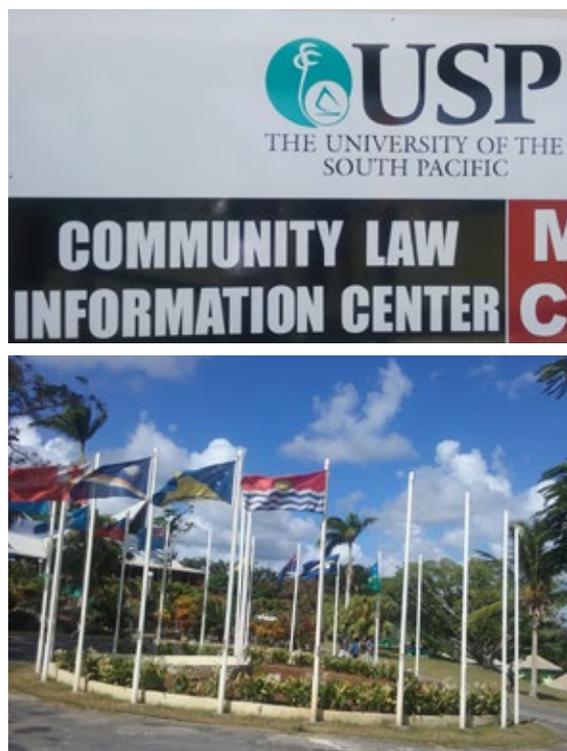


Photo credits: Cate Sumner

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.

¹⁶ 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.

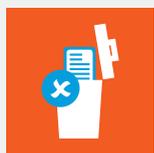
However, adopting best practice guidelines will only be of assistance if they are widely disseminated, if users are properly trained in them and if compliance is monitored and enforced.

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

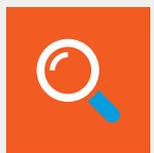


The FV SOP includes a “no-drop” policy in cases of family violence. FPU officers interviewed for this project were clear that the FV SOP, although quite new, has changed

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.¹⁷

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.

¹⁷ 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.¹⁸ 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.

¹⁸ 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".¹⁹

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*²⁰

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.*²¹

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.²²

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.*²³



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

²⁰ *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/>

²¹ Ibid pp. 6–7.

²² Ibid p. 45.

²³ 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.²⁴

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.²⁵

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.

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

²⁵ 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.²⁶ 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.

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

MILLO



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,²⁷ 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.²⁸

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*.²⁹ 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 Welegtabit*, [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.³⁰ 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.³¹

Photo credit, above: UN Women/Murray Lloyd

30 *Pacific Judicial Sentencing Study*, above n. 19, p. 43.

31 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 Kuautonga

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”.³² (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.³³

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.*³⁴ 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.

³² CEDAW Concluding Observations 2016, above n. 28, at para 9.

³³ VWC Progress Report 4, 2015, above n. 11, p. 47.

³⁴ 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 CAVAW³⁵ 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.

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

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



5

BUDGETARY AND HUMAN
RESOURCES SUPPORTING
WOMEN AND CHILDREN'S
ACCESS TO THE FORMAL
JUSTICE SYSTEM



BUDGETARY AND HUMAN RESOURCES SUPPORTING WOMEN AND CHILDREN'S ACCESS TO THE FORMAL JUSTICE SYSTEM

This Chapter outlines the annual budgets allocated by the government of Vanuatu for the formal justice sector for the years 2012–2015. Where available, the total budget allocation for each agency is shown with the breakdown for payroll and operations and the proportion of budget provided by donor countries. It also shows budget information for the Vanuatu Women's Centre as the lead civil society organisation assisting women and children to access formal justice.

As a least-developed country, Vanuatu faces severe budgetary constraints across all sectors of government and is heavily reliant on donor aid. In the justice and police sectors, the Australian government, through its aid programme, is the largest donor. Through its direct funding of the Family Protection Units and the Vanuatu Women's Centre, it is, in effect, paying for most, if not all, women and children who access the formal justice sector in family law and sexual and/or other physical violence cases. (See Part Four for more detail.)

a. Vanuatu Police Force

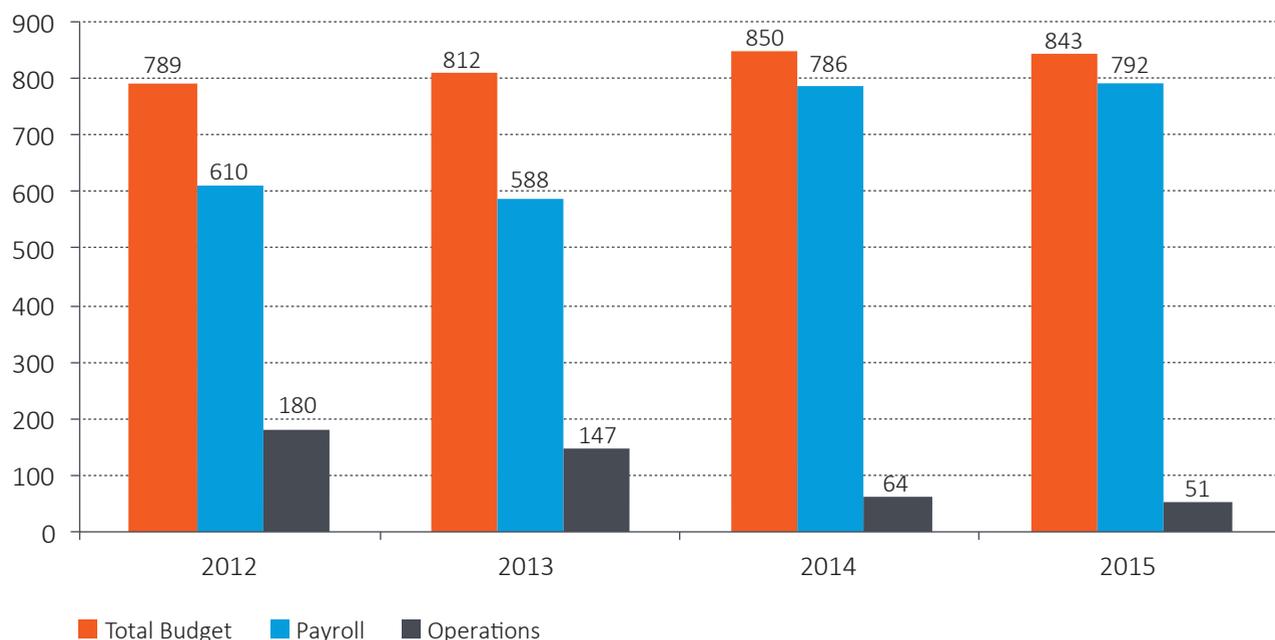
The Vanuatu Police Force has a total of 676 sworn and civilian officers, including the Vanuatu Mobile Force and the Maritime Wing. The Vanuatu Police Force Corporate Services reported that there were 93 female police officers of whom 15 are civilian and 78 are sworn. Of the sworn officers, eight women are in the Vanuatu Mobile Force and the Maritime Wing.



Photo credit: Indira Rosenthal

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

Chart 5.1: Vanuatu Police Force Budgets 2012–2015 (Figures in VT millions)



Sources: 2012 – Financial Summary, CSU, VPF; 2013 – Government of Vanuatu Budget 2013; 2014 – VPF Annual Report 2014; 2015 – Government of Vanuatu Budget 2015.

Overview of Police Force Budgets 2012–2015

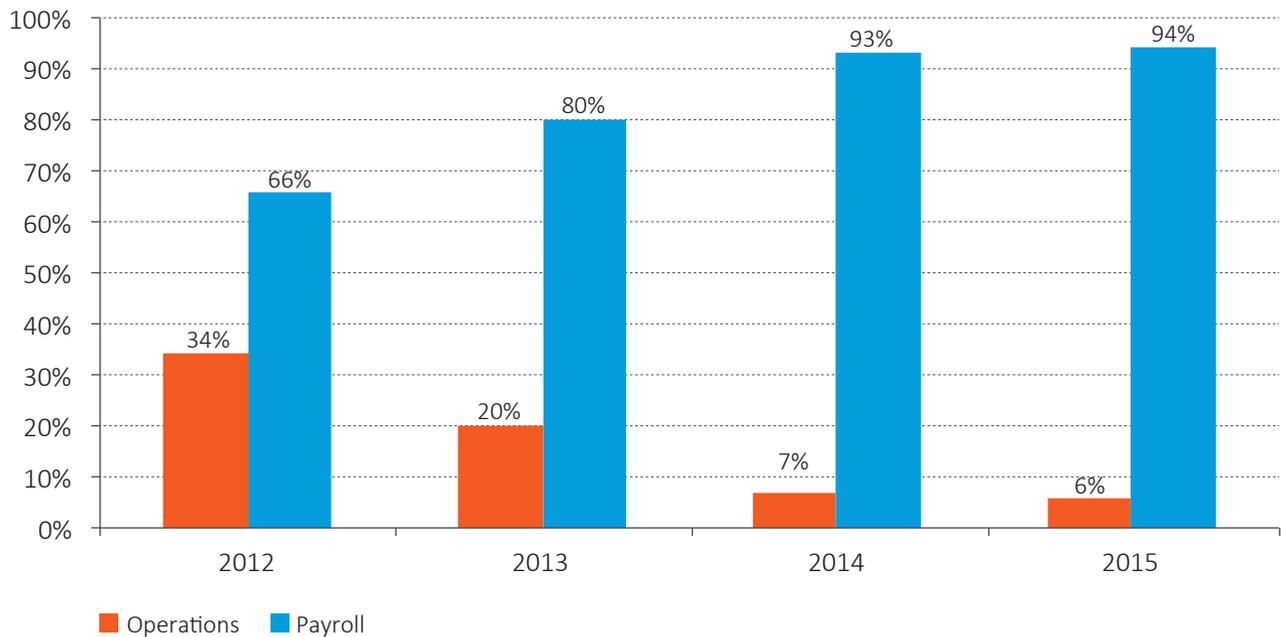
The Vanuatu Police Force (VPF) budget has been highly constrained over the past 4 years, especially for operational activities. In 2015, payroll consumed 94% of the total budget with the remaining 6% for operational costs (Part Four of this Report outlines the impact of the lack of operational budget on women and children’s access to the formal justice system).

75% of the population lives in rural areas without a police presence and are reliant on police travelling to investigate crimes and protect their communities. Many interviewees in the justice sector and non-government organisations reported very few

women and children have the resources to travel to the police to report crimes committed against them.

On 3 March 2016, the Police Commissioner delegated management of the operational budget to the four regional Commanders of the VPF, namely Commander North, Commander Central, Commander South and Commander Mobile Force. This is a positive development as police officers of all ranks, interviewed for this research, had identified the centralisation of budget control and the lengthy process for the release of even small amounts of money, for example to pay for vehicle fuel, as a significant challenge to the timely and effective performance of their duties.

Chart 5.2: Police Operations and Payroll Budgets by Percentage 2012–2015



Sources: 2012 – CSU VPF; 2013 – Government of Vanuatu Budget 2013; 2014 – VPF Annual Report 2014; 2015 – Interview with Senior Program Manager, Law and Justice, Australian High Commission, Port Vila.

Operations and Payroll Budgets, 2012–2015

In 2015, the VPF budget for operations was only 6% of the total budget following a downward trend in budget for police operations over the previous three years.

This means that the VPF, while employing and paying for a large force, does not have the operational budget to enable them fully to carry out their duties. The lack of operational budget has a significant impact on women and children who are victims of crimes of violence in Vanuatu.

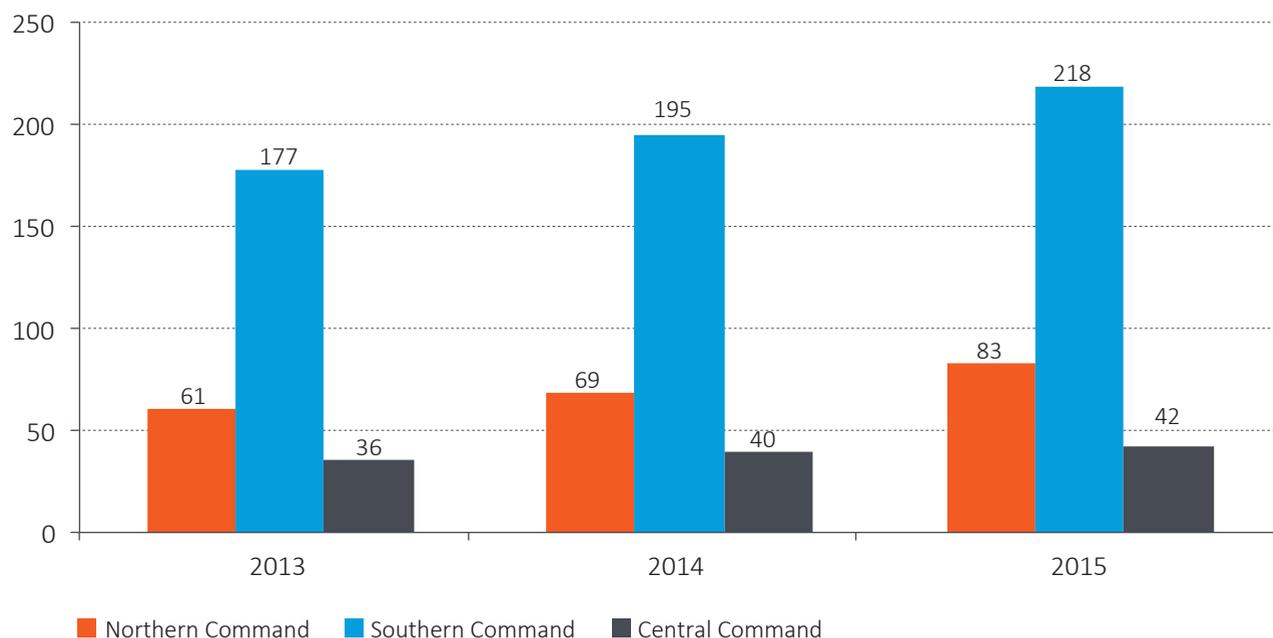
Without an adequate and accessible operations budget, police officers in Family Protection, Serious Crimes and Criminal Investigations Units, reported that they are frequently unable to carry out core police duties as required under the Police Act, including crime investigation and prevention activities. Police of all ranks reported that they do not have funds for transportation to crime scenes to investigate and collect evidence, to arrest and transport suspects, or to serve and enforce summonses and court orders, including Family Protection Orders.

Donor countries, Australia in particular, significantly augment the police operations budget. Through the Law and Justice Programme, Australia contributes approximately VT 48 million for police operations annually,¹ with some of this money going to the Family Protection Units in five locations across Vanuatu to cover fuel for police vehicles and other transport costs. Even with this significant support, the police operations budget is inadequate for a national police force facing some of the highest rates of domestic and sexual violence in the world. All the Family Protection Officers and other officers interviewed for this research said that they did not have access to the funds they needed to carry out their duties and that they regularly used their own funds, without reimbursement, to pay for transport and other costs, or to assist a complainant of family or sexual violence.

If the Australian government were to reduce or withdraw its financial support, the low numbers of women and children currently able to seek redress in the formal justice sector for serious criminal offences would be significantly reduced.

¹ Source: Interview with Senior Program Manager – Law and Justice, Australian High Commission, Port Vila, February 2016.

Chart 5.3: Police Budget by Command* 2013–2015 (Figures in VT millions)



Source: 2013 & 2015 – Vanuatu Government Budgets 2013 & 2015, 2014 – Pacific Institute of Public Policy <http://pacificpolicy.org/2013/11/vanuatu-budget-2014>. *Excludes Mobile Force and Maritime Wing.

Police Budget by Command

The chart above shows the allocation in VT millions for three of the four Commands, Northern, Southern and Central. The fourth command, Vanuatu Mobile Force is not represented, as it does not investigate crimes of sexual or family violence.

Northern Command has operational responsibility for the provinces of Sanma and Malampa, as well as delegated responsibility for the Central Command provinces of Penama and Torba. These four provinces cover a vast geographical area, including many of the country's most isolated islands and communities. According to the 2009 national census, 52% of Vanuatu's population live in these four provinces. Chart 5.3 above shows that in 2015, Northern Command received 24% of the police budget while having

responsibility for policing more than half of Vanuatu's population. However, VPF finance officers reported that the operations budget allocated to Central Command is shared with the Northern Command to cover operational costs in the two delegated provinces. The Southern Command covers Tafea and Shefa Provinces, with 48% of Vanuatu's population.

The Vanuatu National Women's Survey² reported that Malampa, Penama and Sanma provinces have the highest rates of domestic and sexual violence in the country.³ However, as the VPF does not have crimes statistics for each of the regional Commands, it cannot show which Command has the highest level of reported family and sexual violence cases or estimate the proportion of operational funds that would be required to respond to these cases.

Photo credit, next page: UN Women/Olivia Owen

2 Vanuatu National Women's Survey, above Part 2, n. 22.
3 Ibid., pp 57–59.



Family Protection Unit

The Family Protection Unit has 14 officers based in the following locations:

Table 5.1: Vanuatu Police Force Family Protection Unit – Total Numbers

Family Protection Unit					
Province	Island	Location	Total	Female	Male
Command South:					
Tafea	Tanna	Isangel	1	0	1
Shefa	Efate	Port Vila	6	3	3
Command Central:					
Malampa	Malekula	Lakatoro	2	1*	1
Penama	Ambae	Saratamata	1	1	
Command North:					
Sanma	Santo	Luganville	4	2	2
Torba	N/A	N/A	0	0	0
Total			14	7	7

*On maternity leave at the time of writing.

Family Protection Units are funded from the budget of the Criminal Investigations Department. Their operational budget is supported by the Vanuatu-Australia Police Programme and the VWC Client Support fund, which is wholly funded by the Australian aid programme. In the 10 month period of July 2014–April 2015, 63%, or 1,713,965VT, of the VWC Client Support Fund was spent on police operations, especially fuel, transport, accommodation and other costs associated with serving Family Protection and other orders and summonses to appear in court, investigating family violence and sexual violence, and arresting suspects and transporting them to correctional facilities and the courts.⁴

Some Family Protection Units interviewed for this research reported that they organised funds for fuel and other costs from the VWC Client Support Fund on request from other Units investigating sexual offences.

Department of the State Prosecutor

Vanuatu's Department of the State Prosecutor prosecutes minor offences in the Magistrates Court. These include prosecution of breaches of Family Protection and family maintenance orders, less serious domestic violence offences under the *Family Protection Act* and crimes under the *Penal Code*.

The State Prosecutor has eleven State Prosecutors based in the following locations.

⁴ Source: Interview with Senior Program Manager – Law and Justice, Australian High Commission, Port Vila, February 2016.

Table 5.2: Department of the State Prosecutor – Total Numbers

Department of the State Prosecutor					
Province	Island	Location	Total	Female	Male
Shefa and Tafea	Efate	Port Vila	6	0	6
Malampa	Malekula	Lakatoro	1	0	1
Penama	Ambae	Saratamata	1	0	1
Sanma and Torba	Santo	Luganville	3	0	3
Total			11	0	11

The State Prosecutor’s Office does not have its own budget. It is funded by the Ministry of Justice and Community Services out of the Public Prosecutor’s budget for operational activities. The Police Force funds payroll costs.

The State Prosecutor’s Office also receives some funds and technical support from donor countries, for example through the New Zealand government’s Pacific Prevention of Domestic Violence Programme (PPDVP).

b. Vanuatu Judiciary

Vanuatu has four levels of courts in its formal justice system: Court of Appeal, Supreme Court, Magistrates Court and Island Court.

Supreme Court

There are seven Supreme Court justices, including the Chief Justice, Vincent Lunabek. As of March 2016, Justice Mary Sey is the only woman justice of the Supreme Court.

Magistrates Court

There are eight Magistrates, including the Chief Magistrate, and four Senior Magistrates who have additional responsibility to supervise, and enforce the orders of Island Courts. There are four female and four male magistrates. Three of the four women are Senior Magistrates.

Magistrates Courts are only in four locations: Port Vila, Luganville (Santo), Lakatoro (Malekula) and Isangel (Tanna).

Table 5.3: Vanuatu’s Magistrates – Total Numbers

Magistrates						
	Port Vila	Luganville	Malekula	Tanna	Female	Male
Chief Magistrate	1	0	0	0	0	1
Senior Magistrate	1	1	1	1	3	1
Magistrate	2	1	0	0	1	2
Total	4	2	1	1	4	4

Table 5.4: Island Courts – Total Numbers

Island Court	Judges	Female Judges	Male Judges
Shefa Province:			
1. Efate	11	1	10
2. Tongoa	4	0	4
3. Epi	5	0	5
Tafea Province:			
4. Tanna	8	3	5
5. Erromango	4	0	4
Penama Province:			
6. Ambae	14	1	13
7. Pentecost	12	2	10
Malampa Province:			
8. Ambrym	10	4	6
9. Malekula	14	4	10
10. Paama	7	2	5
Sanma Province:			
11. Santo/Malo	26	3	23
Torba Province:			
12. Banks/Torres	20	3	17
Total	135	23	112

Island Courts

As of March 2016, there were twelve Island Courts, each with its own clerk. There were 135 Island Court Judges appointed. However, interviews with Island Court clerks suggest that due to illness, infirmity, advanced age, as well as the remoteness of their homes, not all appointed Island Court Judges are

active. For example, out of 14 appointed Judges for the Malekula Island Court, only five or six are active and available for hearings. This makes it difficult to hold hearings, which require three Judges.

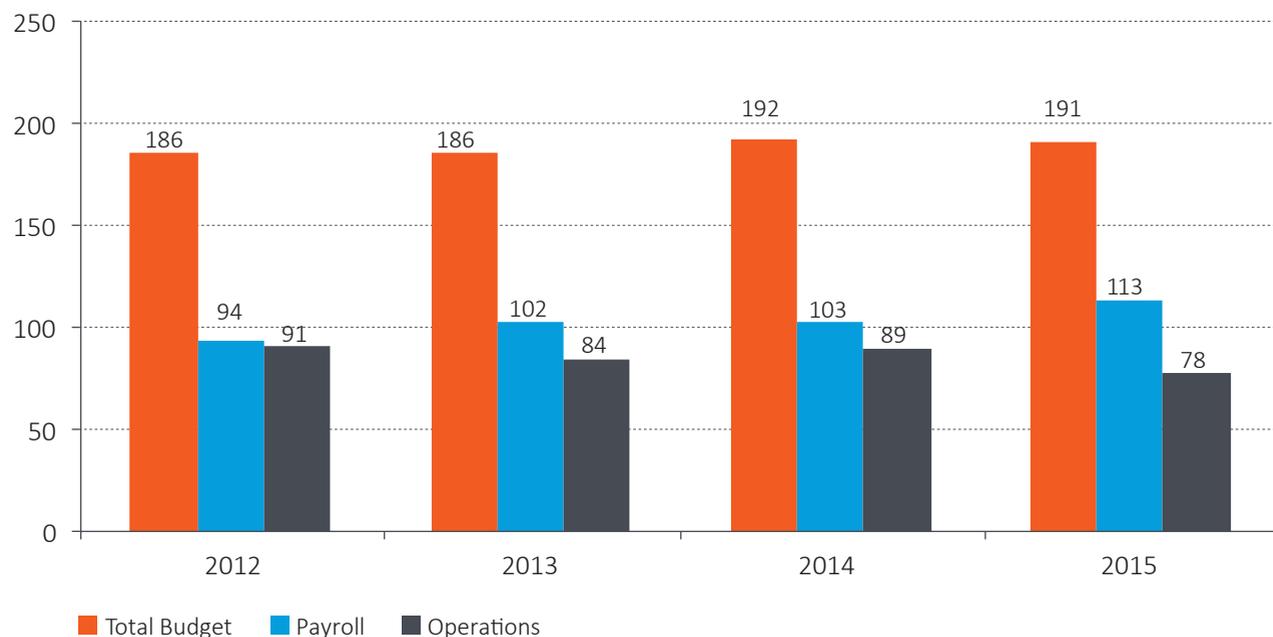
There are 23 female Island Court judges, or 17% of the total number of Island Court judges.

Vanuatu Judiciary Budgets 2012–2015

The budget for the judiciary remained at a consistent level over the four-year period 2012–2015. Chart 5.4

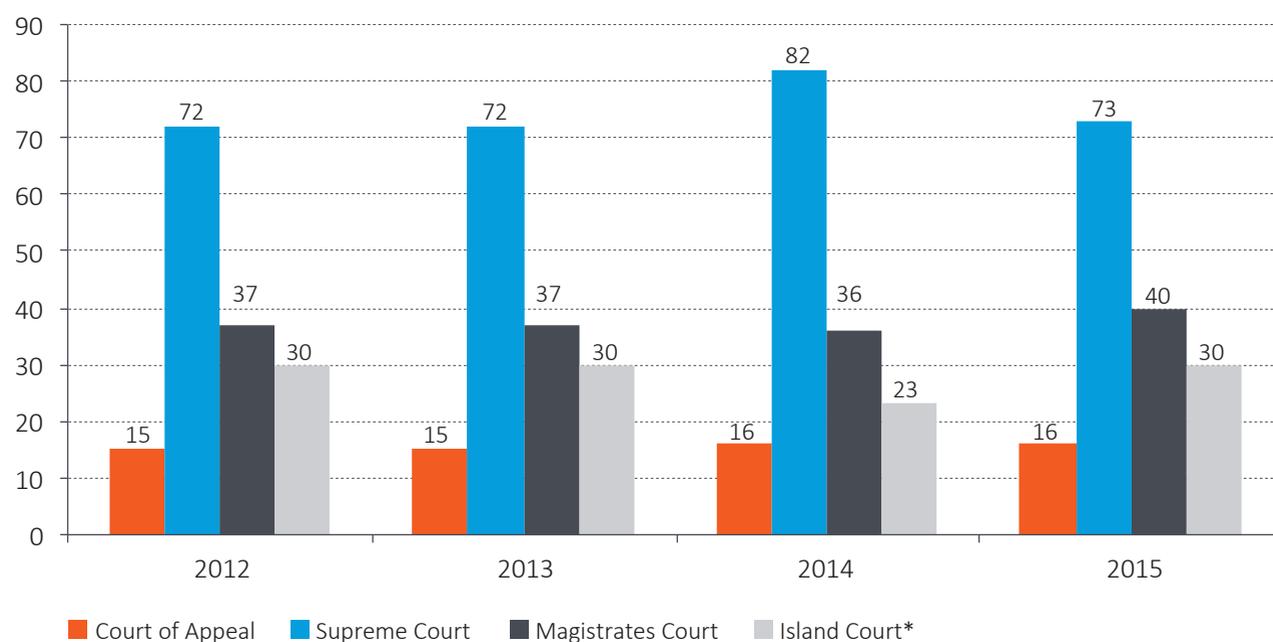
below shows that in 2015 approximately 41% of the Supreme Court budget was directed towards operational costs.

Chart 5.4: Vanuatu Judiciary – Budget 2012–2015 (Figures in VT millions)



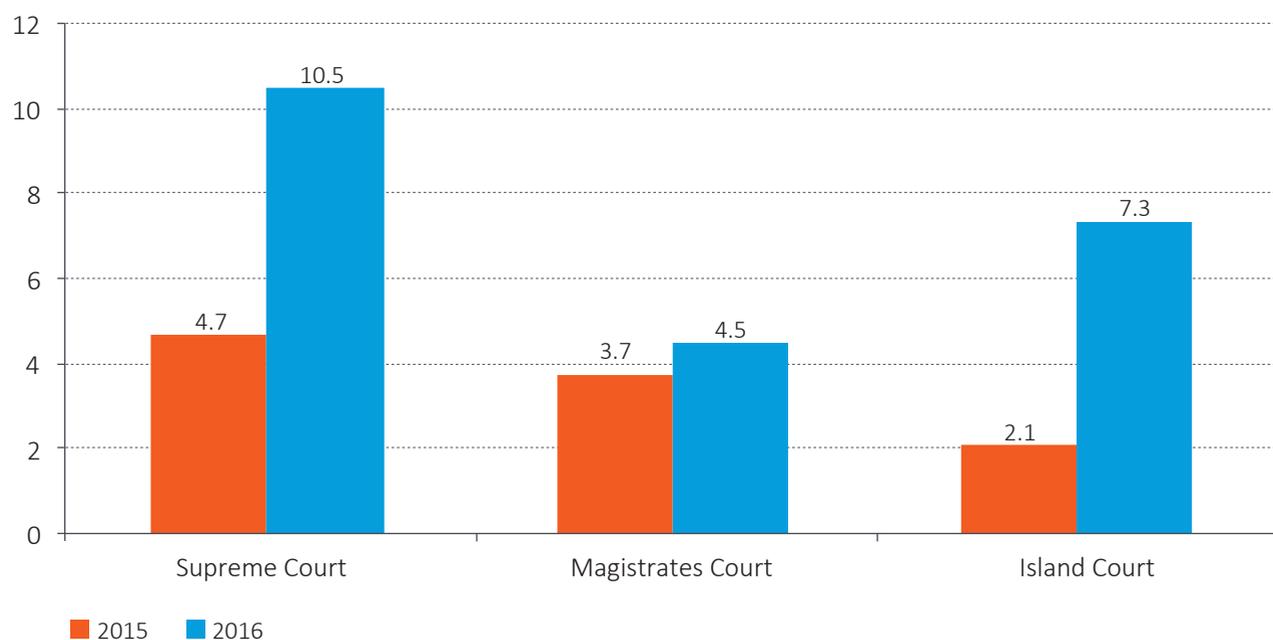
Sources: 2012–2014 Judiciary Annual Reports, 2015 Judiciary Financial Statement.

Chart 5.5: Budget Allocation by Court 2012–2015 (Figures in VT millions)



Source: 2012–2015 Vanuatu Government Budgets. *Note that the Island Court allocations represented include the budget allocation for the Island Court sitting as the Land Court.

Chart 5.6: Supreme, Magistrates and Island Court Circuit Tour Budgets Allocated for 2015 and 2016 (Figures in VT millions)



Source: Supreme Court Budget Documents on file.

Court Circuits

The Magistrates Court hears the majority of cases involving women and children (e.g., Family Protection Orders, enforcement of child maintenance, family violence). In 2015, it was only able to conduct 11 of the 24 scheduled circuit courts and received only 8.5% of the 2015 Supreme Court budget allocated for court jurisdictions to conduct circuit tours (see Chart 5.7 on the next page).⁵ With 75% of the population living in rural areas outside Port Vila and Luganville, the Court’s lack of budget to conduct circuit courts has a significant adverse impact on women and children’s access to justice. It means they face considerable delays in having their cases heard, including on family protection matters.

Circuit Court Budgets – 2015–2016

Chart 5.6 above shows the circuit court budget for the Supreme, Magistrates and Island Courts for 2015 and 2016 prepared by the judiciary. The total budget for 2015 was VT 10.5 million. The estimated budget for 2016 is VT 22 million, a 112% increase in the budget allocated by the judiciary for circuit courts. Of this estimated VT 22 million for circuit courts, the Supreme Court has been provisionally allocated 48%, the Magistrates Court 20% and the Island Courts 32%. If the Magistrates Court were to receive its provisionally allocated percentage in 2016, it would significantly increase its ability to circuit to remote areas, compared to 2015 when it received only 8.5% of the total circuit court budget.

⁵ Vanuatu Judiciary Calendar of Events for 2015, p. 9; and data supplied by the Supreme Court Finance Office for circuit courts in 2015.

Chart 5.7: Number of Planned and Actual Circuit Court Tours 2015

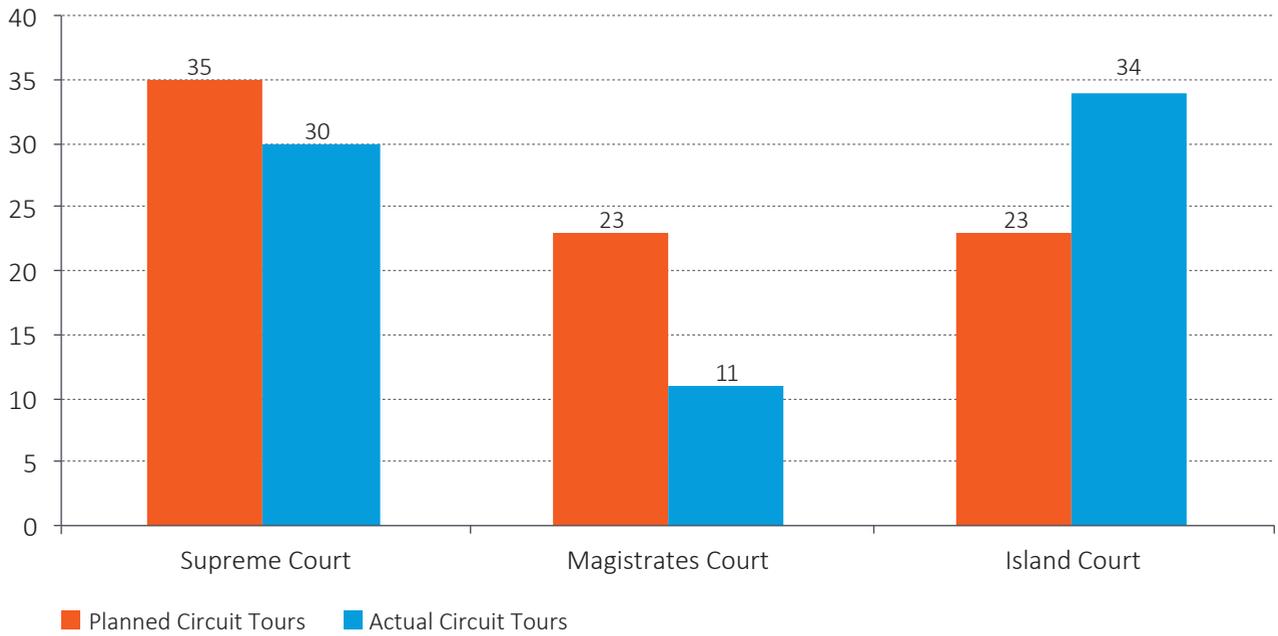
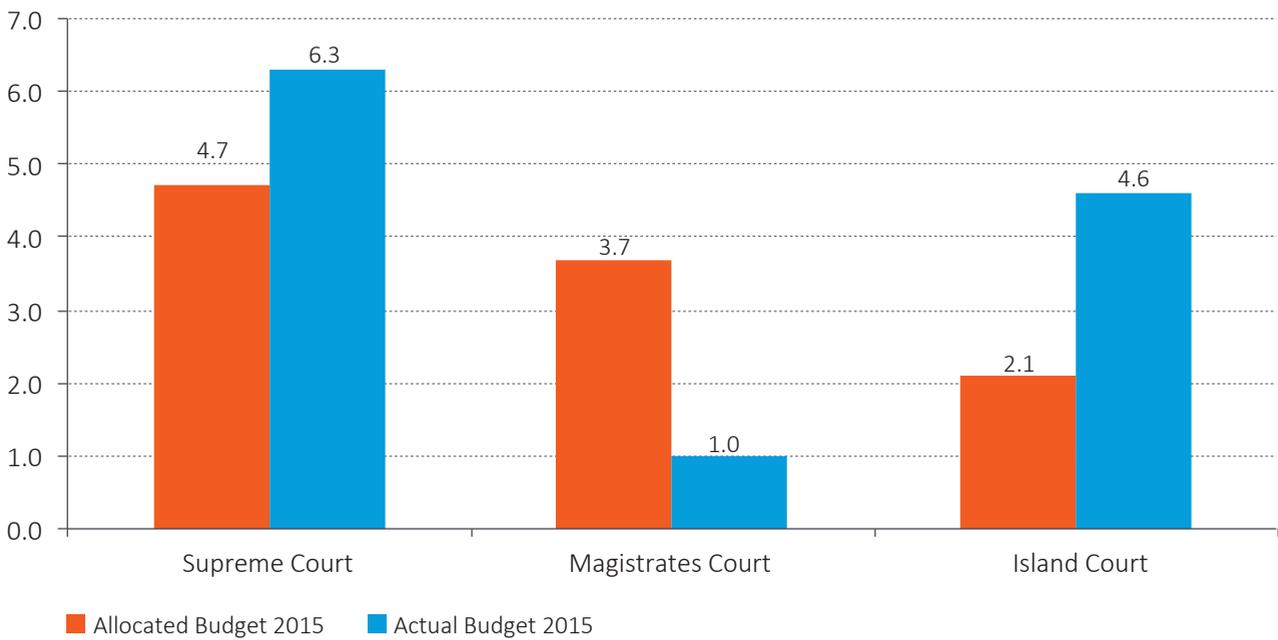


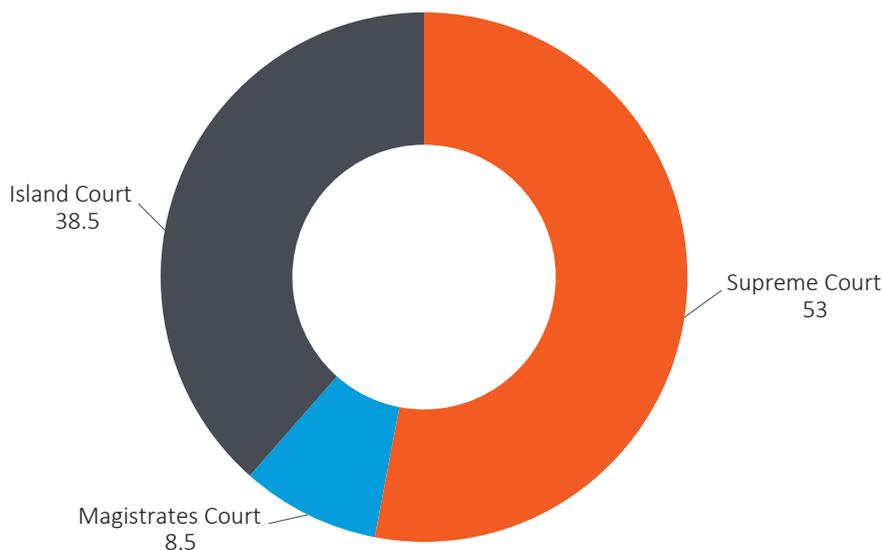
Chart 5.8: Allocated versus Actual Budget: 2015 Circuit Court Tours (Figures in VT millions)



In 2015, the Supreme Court completed 86% of planned circuit tours, including criminal plea tours;

the Magistrates Court completed 46%; and the Island Court 147%.

Chart 5.9: Percentage of the Actual 2015 Circuit Court Budget Received (by Jurisdiction)



The Supreme Court should increase the proportion of the budget for circuit courts that is directed towards enabling the Magistrates Courts to hold the 23 circuit courts published in the 2016 Judicial Calendar of Events from the 8.5% received in 2015.

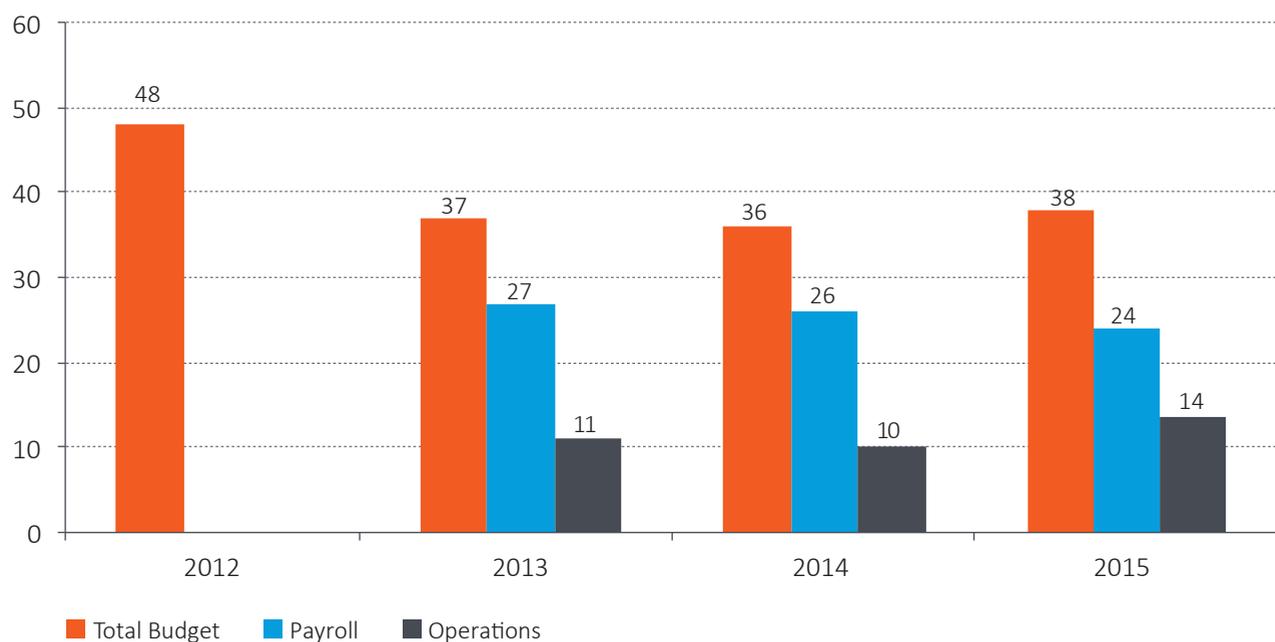
c. Office of the Public Prosecutor

The Office of the Public Prosecutor is constitutionally established as an independent body. In addition to the Public Prosecutor, Vanuatu has seven Assistant Prosecutors.

Table 5.5: Office of the Public Prosecutor – Total Numbers

Office of the Public Prosecutor			
Location	Total	Female	Male
Port Vila			
Public Prosecutor	1	0	1
Assistant Prosecutor	6	3	3
Luganville			
	1	0	1
Total	8	3	5

Chart 5.10: Office of the Public Prosecutor: Budgets 2012–2015 (Figures in VT millions)



Source: Government Budgets 2012–2015. Keep last sentence in the source for 2012 breakdown.

The Public Prosecutor is funded from the budget of the Ministry of Justice and Community Services. It, in turn, funds the operations of the Department of the State Prosecutor. The Office of the Public Prosecutor reported that its budget is insufficient and has not changed for the past few years. The Office lacks key information and data to assess the extent to which it is underfunded. For example, there is no accurate data on the cost of running a prosecution. The Office has

not published an annual report for the past ten years. Limited information is included in the Annual Reports of the Ministry of Justice and Community Services.

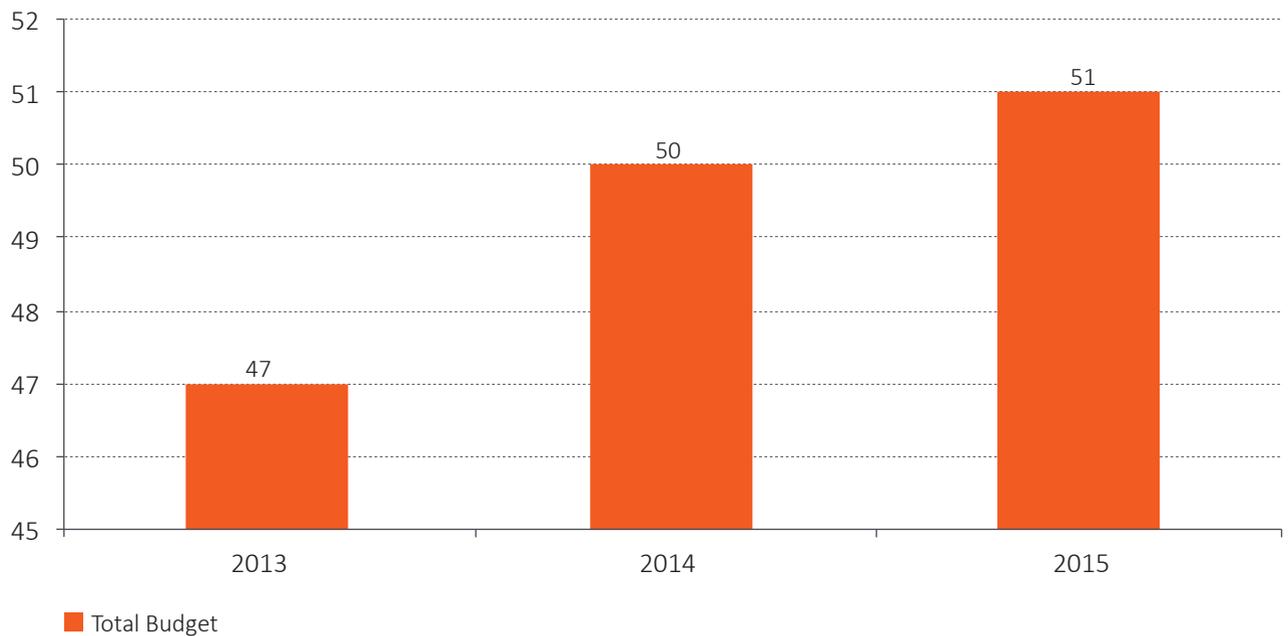
d. Office of the Public Solicitor

The Office of the Public Solicitor is also established under the Constitution.

Table 5.6: Office of the Public Solicitor – Total Numbers

Office of the Public Solicitor – Legal Officers			
Location	Total	Female	Male
Port Vila			
Public Solicitor	1	0	1
Legal Officers	5	2	3
Luganville, Santo			
	2	1	1
Tanna			
	1	0	1
Malekula			
	1	0	1
Total	10	3	7

Chart 5.11: Office of the Public Solicitor Total Budgets 2013–2015 (Figures in VT millions)



Source: 2013 and 2014 Annual Report, Ministry of Justice and Community Services; 2015 Government Budget.

At the time of reporting, legal officers for Tafea and Malampa had not taken up their posts but were working from the Port Vila office.

The Public Solicitor is the only government funded legal service in the country.

Public Solicitor – Budgets 2013–2015

As of March 2016, no data on the breakdown of the Office’s budgets were available. There was also no information provided as to the Office’s total number of clients per annum, its clients disaggregated by gender, the number and type of legal matters handled, including the percentage of cases involving family violence/sexual violence and matrimonial matters, or the number of clients represented who were defendants in criminal matters or applicants and respondents in civil matters.⁶

The Office should prepare an Annual Report that includes this information and publish it online for easy public access.



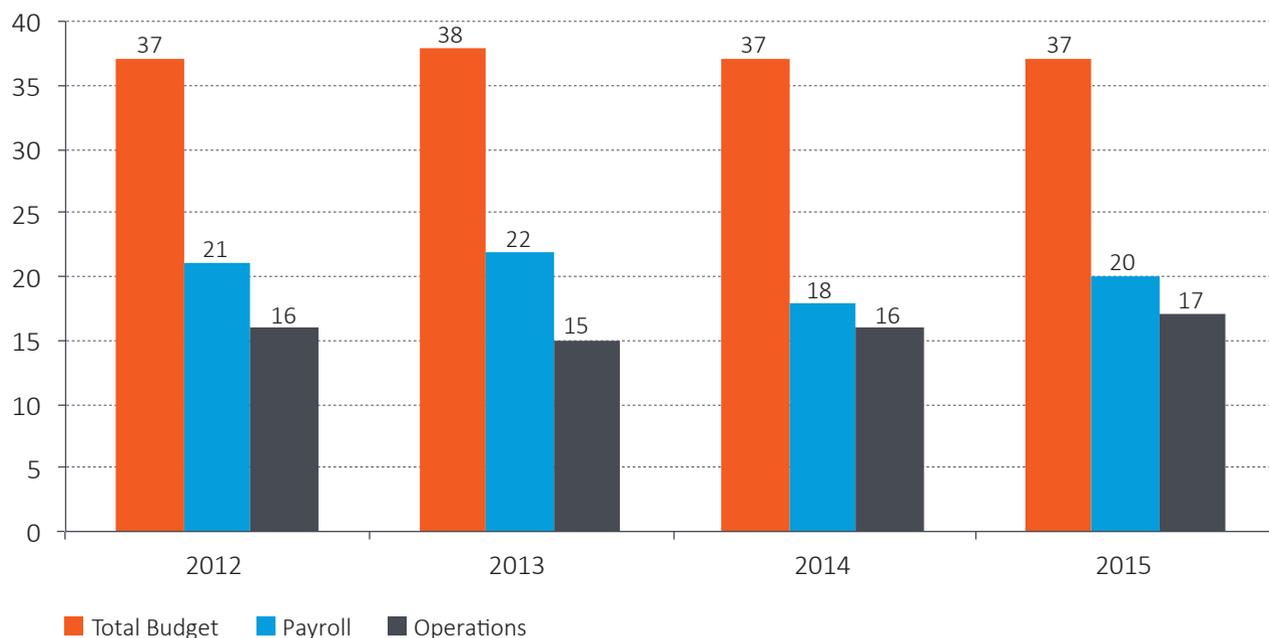
Public Solicitor, Port Vila. Photo credit: Indira Rosenthal

⁶ Attempts to interview the Public Solicitor for this Report over the research timeframe were unsuccessful.

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Chart 5.12: Department of Women’s Affairs: Budgets 2012–2015 (Figures in VT millions)



Source: Ministry of Justice and Community Services Annual Reports 2013 and 2014, Financial Summaries, 2012 & 2015, Department of Women’s Affairs.

e. Ministry of Justice and Community Services

Department of Women’s Affairs

As of year-end 2014, the Department of Women’s Affairs had ten staff members.

The Department of Women’s Affairs reported in 2014 that the annual budget allocation does not cover the implementation of activities under the prioritised strategies for the Department and, as a result, the Department relies heavily on development partner funding to carry out its activities. The Department of Women’s Affairs has received several grants, including technical assistance to progress implementation

of the FPA, however they have faced challenges in progressing this work. Further analysis of the challenges faced is required in order to assist the Department of Women’s Affairs, and other government departments, in progressing implementation.

Budget for operations covers only operational management and not programme activities, which are fully funded by external funding sources. Both the Child Desk and Disability Desk in the Ministry are funded from the Department’s budget allocation and funds from the Department’s budget have been reallocated to cover shortfalls in the Ministry of Justice and Community Services overall budget. For example, the Department reported that in December 2014, VT 3 million was taken to meet additional costs incurred by the Ministry.

f. Vanuatu Women's Centre

The Vanuatu Women's Centre has four provincial branches, with headquarters in Port Vila. It employs

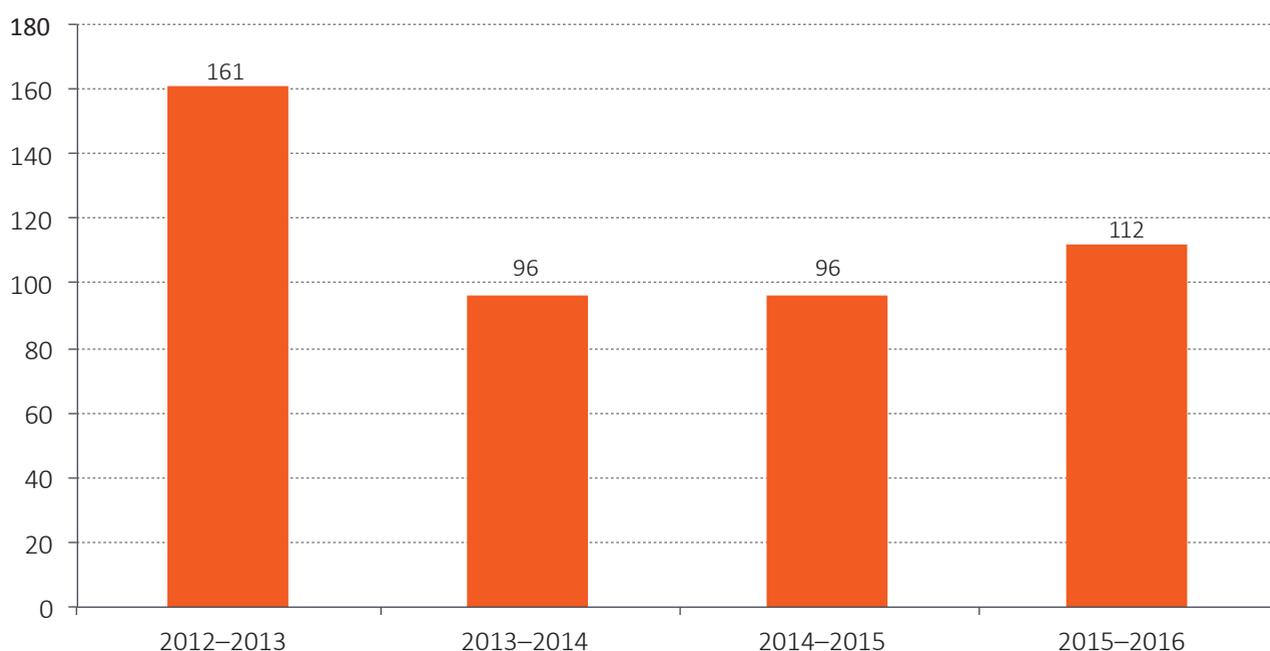
legal staff, counsellors, community educators and administrators. It also benefits from the services of volunteers. All professional staff are women.

Table 5.7: Vanuatu Women's Centre – Total Numbers

Vanuatu Women's Centre Staff						
Location	Coordinator/ Project Manager	Legal Officers	Counsellors	Community Educator	Research Officer	Finance and Admin
Port Vila	1	2	5*	1	1	4
Sanma Counselling Centre, Santo	1	0	4	1	0	1
Tafea Counselling Centre, Tanna	1	0	2	0	0	1
Malampa Counselling Centre, Malekula	1	0	2	0	0	1
Torba Counselling Centre, Banks	1	0	2	0	0	1
Total	5	2	15	2	1	8

*Includes one volunteer counsellor.

Chart 5.13: Vanuatu Women's Centre Annual Budgets 2012–2016 (Figures in VT millions)



Source: Interview with VWC Director, May 2016. In 2012, the higher budget amount included funds to purchase the VWC building in Port Vila.

The Vanuatu Women’s Centre is 100% funded by the Australian aid programme, which has allocated VT 465,798,789 for the period of 2012–2016 for the VWC.

A reduction in, or withdrawal of Australian aid support would have a severe negative impact on women and children survivors of family and sexual violence and their access to the formal justice system. The VWC is the primary provider of free counselling, support, legal advice and representation. Without them, very few women and children would be able to access the formal justice system in family and sexual violence cases and matrimonial matters.

Donors should continue to provide multi-year programme support for the VWC to ensure that women and children continue to have access to the formal justice system in relation to family law and violence cases.

g. Public Accountability

The Table below shows public reporting of financial and operational information for Vanuatu justice sector agencies and the Vanuatu Women’s Centre.

Table 5.8: Public Accountability of Vanuatu Formal Justice Sector Agencies

Agency	Produce Annual Report	Annual Report Online ⁷	Financial Statements in Annual Report	Financial Statements Show Payroll and Operations	Report on % Of Budget to Promote Women’s Access to Justice
Judiciary	●	●	●	●	◆
Police	●	◆	■	■	◆
Public Prosecutor	■	■	■	■	◆
Public Solicitor	Unknown	◆	Unknown	Unknown	Unknown
Ministry of Justice and Community Services	●	●	●	●	◆
Vanuatu Women’s Centre	●	●	●	●	●

◆ Red = No ● Green = Yes ■ Orange = Partly

⁷ Vanuatu Judiciary Annual Reports are available on PaCLII at <http://www.paclii.org/vu/other/court-annual-reports/index.html>. Annual reports for the Ministry of Justice and Community Services are on its website at <http://www.mjcs.gov.vu>. The Vanuatu Women’s Centre Annual or Progress Reports are available on the website of the Australian Department of Foreign Affairs and Trade.

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6

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



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

[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.

Photo credit, next page: UN Women/Murray Lloyd

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



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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.

Photo credit, above: UN Women/Olivia Owen

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.



Photo credit: UN Women/Olivia Owen

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.

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.

Photo credit, next page: UN Women/Olivia Owen

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

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

²⁶ Ibid, p. 19.



7

ANNEXURES

ANNEX 1

Implementation of Selected Recommendations by the Government of Vanuatu on Family Violence, Access to Justice & Related Matters: 2009–2016

Vanuatu National Survey on Women's Lives and Family Relationships 2011		
Rec. No. in Report	Selected Recommendations	Implemented Yes/No/Part
14	A Victim Support Unit urgently needs to be established within the Vanuatu Police Force with staff trained and experienced in responding to crimes of violence against women and sexual and physical abuse of children.	No
15	The Police Family Protection Unit must be adequately resourced to respond effectively to cases of violence against women and child abuse throughout the country. At provincial level, police stations should have officers trained and dedicated to family protection cases, with adequate resources for transport and accommodation costs for cases to be followed up in remote areas.	No (Some police training from VWC.)
16	The findings of this report should be included in police training curricula including refresher training for officers at all levels. Mandatory and refresher training should also be provided for all judicial officers and others in the law and justice sector on violence against women, human rights, gender equality and the findings of this survey.	Unknown
Strengthening the legal and policy framework		
17	Urgent action is needed to recruit and train authorised persons and registered counsellors to facilitate implementation of the Family Protection Act (FPA) throughout the country. Implementation of the FPA needs to be expedited in rural areas and its implementation needs to be carefully monitored, including provisions related to the criminalisation of offences of violence against women.	No
18	The FPA needs to be reviewed to strengthen its focus on the protection of pregnant women and women with disabilities. Violence against pregnant women and violence against women with disabilities should be highlighted as aggravating factors for conviction, and these cases must be prioritised when Family Protection Orders are issued.	No

■ Yes
 ■ No
 ■ Partly
 ■ Unknown

Vanuatu National Survey on Women's Lives and Family Relationships 2011

Rec. No. in Report	Selected Recommendations	Implemented Yes/No/Part
19	A no-drop policy should be introduced by the Vanuatu Police Force for all cases of physical and sexual violence against women by husbands or intimate partners; implementation of the policy should be closely monitored.	Yes (June 2015 FV SOP) Need implementation to be monitored
20	The Marriage Act should be amended to raise the minimum of age of marriage for women from 16 to 18 years.	No
21	The Vanuatu Government should urgently develop comprehensive family law legislation, which takes into account the prevalence, severity and impacts of violence against women and children.	No
22	The Vanuatu Government should establish a Social Welfare Department within the Ministry of Justice and Community Services to strengthen child protection measures.	No
23	Recruitment criteria for all government staff appointed to gender-related adviser and child protection positions should include knowledge and experience in the area of violence against women and child protection.	Unknown
24	The Correctional Services Act should be reviewed to ensure that women's and children's safety is given the highest priority when restorative or alternative justice approaches are implemented, including the use of community service for offenders convicted of physical and sexual crimes of violence against women and children.	No
General recommendations for all stakeholders and development programs		
27	All government agencies and service providers, particularly those in the law and justice sector and health agencies, need to systematically collect and report sex-disaggregated data on the problem of violence against women and children, to inform future policy development and programs and assist with monitoring prevention activities.	No

UNICEF: Protect me with love and care; A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Vanuatu, 2008

Rec. No. in Report	Selected Recommendations	Implemented Yes/No/Part
Child welfare/child protection system		
1.1-R1.1	Establish an inter-agency protocol/guidelines between the police, Ministry of Justice and Community Services, Ministry of Health, the Ministry of Education and any other relevant departments or organisations for: a) responding to reports of child abuse, neglect or exploitation; b) referrals and inter-agency cooperation in cases of children in conflict with the law. The finalized protocol should be implemented with appropriate training support, and copies of the protocols should be widely disseminated throughout the relevant services and stakeholders. This protocol will act as the overarching guideline for responding to child protection and child offender cases, from community level upwards and will include chiefs and CSOs. Any additional, more detailed sets of guidelines and protocols, which need to be elaborated at a later stage (in order to respond more concretely to the specific contexts of each stakeholder group) must conform first and foremost with this overarching protocol so as not to cause confusion amongst stakeholders.	Partly
1.1-R1.2	Create a simple and minimalist Child Protection Act that empowers government agencies to undertake crisis intervention, with provision for judicial review of actions. The legislation should be supported by a comprehensive training process for all implementing agencies and departments, and its implementation further supported by clear internal and inter-agency protocols, policies and guidelines.	No
Child-friendly investigative and court processes		
1.1-R7.1	Review and reform the Criminal Procedure Code 1981.	Partly
1.1-R7.2	Issue a Court Direction which regulates and restricts the application of the reconciliation discretion available to Magistrates under the Criminal Procedure Code 1981 and the recognition of customary law processes under the Penal Code in matters involving the abuse, neglect or exploitation of children.	No
1.1-R7.3	The Public Solicitors Office and Public Prosecutors Office to develop a clear, written policy for the handling of matters involving child witnesses, both inside and outside of the courtroom. The policy must conform with the overarching inter-agency protocol outlined in Recommendation 1.1-R1.1 above.	No
1.1-R7.4	Develop clear courtroom procedures for matters involving child witnesses for insertion into the existing judicial bench book, accompanied by comprehensive training for all judges, magistrates and court clerks in the new provisions. Such procedures should conform with the overarching inter-agency protocol outlined in Recommendation 1.1-R1.1 above.	No

■ Yes ■ No ■ Partly ■ Unknown

UNICEF: Protect me with love and care; A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Vanuatu, 2008

Rec. No. in Report	Selected Recommendations	Implemented Yes/No/Part
1.1-R7.5	Develop and implement police protocols for the handling of matters involving child victims/survivors of abuse, neglect or exploitation with an accompanying training package. The provisions should be incorporated into the Force Standing Orders at the first opportunity and must conform with the overarching inter-agency protocol outlined in Recommendation 1.1-R1.1 above.	No
1.1-R7.6	All agencies dealing with child victims/survivors of neglect, abuse and exploitation to put in place clear privacy and confidentiality policies, supported by institutional/departmental training and awareness raising, copies of which are provided to all service users. All such policies must conform with the overarching inter-agency protocol outlined in Recommendation 1.1-R1.1 above.	No
1.1-R7.7	Establish an inter-agency protocol as per Recommendation 1.1-R1.2 above.	Yes
1.1-R9.9	Undertake further research into the accessibility of the current justice system and the impact of its procedures on children with disability with a view to informing appropriate law and policy reform for this especially vulnerable group.	No
Violence against children		
1.1-R3.1	Undertake a comprehensive review and reform of the Penal Code 1981. Existing work in the region can be drawn on to support this process.	Partly
1.1-R3.2	Develop training and policies for implementing agencies to ensure the recently gazetted Family Protection Act 2008 is exploited to its fullest potential in the field of child protection.	No
Sexual abuse and sexual exploitation of children		
1.1-R4.1	Reform the Penal Code 1981 as per Recommendation 1.1-R3.1 above	Partly
Police		
1.2-R8	Increase resources of the Family Protection Unit for investigation of sexual assault and abuse cases, including resources to work on other islands so that sexual crimes against children can be investigated by a specialised unit	No
1.2-R10	Victims/survivors with disabilities need trained interpreters and the police need access to these professionals. Identify possible support people and interpreters in the community for children with disabilities at police interview.	No
1.2-R11	Develop a police procedure manual (or adapt existing international manuals to suit the Vanuatu context) for matters relating to children.	No
1.2-R12	Explore options to provide police with ... training and child-friendly techniques, including basic counselling techniques.	No

PJDP MOU Family/Domestic Violence in Vanuatu (2013)

Rec. No. in Report	Selected Recommendations	Implemented Yes/No/Part
Agency and interagency action outcomes under the act that could be improved		
i	Offences for which offenders have been charged and brought to court do not define whether the offence is family/domestic violence or not. By means of the charge sheet or by other classification charges should be defined in this way. Family violence offences will be distinguished from other criminal offences by means such as use of a specific colour file.	
ii	Magistrates wish to provide both family violence offenders and also victims with counselling but in the absence of registered counsellors undertake this themselves. It is recognised that this is wrong and unacceptable, and is inconsistent with judicial function. The judiciary wishes to be able to refer people to counselling and/or mediation as provided for in Section 16. Appointment of counsellors is a court operational matter not a ministerial function and the judiciary will now ensure that qualified and appropriate counsellors/mediators are appointed.	
iii	Until the appointment process in Section 8 is changed, the judiciary will compile a list of suitably qualified counsellors for the purpose of Section 16(2). The judiciary acknowledges that the payment for the counsellors/mediators is an issue for further discussion.	
iv	When police attend a family violence incident, consultation with the victim including the victim's safety and available options, will occur with the assistance of a trained family violence worker such as a member of the Women's Crisis Centre.	
v	Magistrates would be assisted if offenders are charged under Section 4, with the nature of the alleged violence clearly stated and with the reference to Section 10 being included merely as the punishment section.	
vi	It is accepted that a priority for use of counsellors is appropriate training in a specialised area of family violence.	

■ Yes
 ■ No
 ■ Partly
 ■ Unknown

PJDP MOU Family/Domestic Violence in Vanuatu (2013)

Rec. No. in Report	Selected Recommendations	Implemented Yes/No/Part
vii	<p>When a protection order is made, it is an operational matter for the court to effect service on the defendant. For the most part the police are asked to undertake service. Existing service arrangements are unsatisfactory. We therefore recommend:</p> <ul style="list-style-type: none"> a. the court decides in each case bearing in mind issues of safety who is best placed to effect service, b. if police are asked to effect service, they will give it utmost priority. Police will immediately communicate with the court as to whether service has occurred or whether there is a problem and if so what it is, c. the court will then direct who should serve and by what means considering the options available in Section 36(3), d. at the regular court users group meetings the operational aspects of service of protection orders will form part of the agenda, e. we acknowledge that in order to achieve a proper process for service there will be resource implications. 	
viii	<p>It is important for victims of violence that their immediate safety is given priority. If victims are forced by circumstances to return to a violent setting the objects of the Act are not being achieved. The workshop accordingly regards it as important that safety houses or safe accommodation for victims of violence are available.</p>	
Issues for legislative action or ministerial attention		
i	<p>Section 8 provides for the appointment of registered counsellors by the Minister responsible for women’s affairs. Appointment of such counsellors is considered an operational concern not requiring ministerial decision. The workshop recommends the repeal of Sections 8 and 9 and the provision of a new process where in the appointment of counsellors is undertaken by the court.</p>	
ii	<p>Section 7 sets out the process for the appointment of “authorised persons”. No appointments have been made to date. We also consider this an operational matter and recognising that “authorised persons” are quasi judicial officers we recommend that their appointments be made by the Judicial Services Commission.</p>	

CEDAW Concluding Observations on Vanuatu's Combined Fourth and Fifth Periodic Reports, 7 March 2016

Rec. No. in Report	Selected Recommendations	Implemented Yes/No/Part
Constitutional and legislative protection of women from discrimination		
No. 8	The Committee welcomes the information provided by the delegation during the dialogue that the Convention has been incorporated into the State party's domestic legal system and can be directly applied by the courts. However, it notes with concern that the State party has taken no steps to amend its Constitution with a view to incorporating the principle of equality of women and men and defining and prohibiting all forms of sex- and gender-based discrimination, including direct and indirect discrimination by private and public actors.	No
No. 9.	The Committee reiterates its previous recommendation (CEDAW/C/VUT/CO/3, para. 11) that the State party give central importance to the Convention as the basis for the elimination of all forms of discrimination against women and the achievement of gender equality. It recommends that the State party 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, in line with article 1 and 2 of the Convention, that cover direct and indirect discrimination in both the public and private spheres.	No
Access to Justice		
No. 10.	The Committee recalls that the Constitution recognises customary law as part of the State party's law, and hence customary law and the formal justice system coexist side by side. It notes the establishment of the high-level working group to address women's access to justice, and that legal assistance is provided through the Public Solicitor Office. The Committee remains concerned, however, about women's limited access to justice, in particular on the outer islands, due to their limited knowledge about their rights and limited access to legal assistance. It is also 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. The 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.	No
11(a)	The Committee recommends that the State party raise women's awareness of their rights and of the means to enforce them, in cooperation with civil society organizations, in particular on the outer islands;	Partly

■ Yes
 ■ No
 ■ Partly
 ■ Unknown

CEDAW Concluding Observations on Vanuatu's Combined Fourth and Fifth Periodic Reports, 7 March 2016

Rec. No. in Report	Selected Recommendations	Implemented Yes/No/Part
11(b)	The Committee recommends that the State party establish effective remedies in both the formal and traditional justice system to enable women to obtain redress for violations of their rights, provide capacity building to judges, lawyers and law enforcement officers on women's rights, and undertake research on the impact of the dual justice system on women's access to justice;	Partly
11(c)	Develop a strategy with clear time frames to ensure that traditional justice mechanisms comply with the human rights standards set forth in the Convention when addressing complaints by women. The strategy should include capacity-building and training programmes on the Convention and on women's human rights for traditional justice authorities.	No
11(d)	Allocate further resources to enhancing the infrastructure, quality and accessibility of the formal justice system, especially on outer islands.	No
Stereotypes and harmful practices		
19(a)	The Committee urges the State party to: Put in place, without delay, a comprehensive strategy to eliminate patriarchal attitudes and stereotypes that discriminate against women, in conformity with the provisions of the Convention. The strategy should include education and awareness-raising campaigns targeting women and men at all levels of society, including council chiefs and community leaders, and focus particular attention on the recognition of the importance of women's contributions to society, their empowerment and their participation in decision-making processes, including at the community level. The strategy should engage civil society organizations and the mass media to combat discriminatory stereotypes and negative social attitudes towards women, and promote positive and non-stereotypical portrayals of women;	No
19(b)	The Committee urges the State party to: Integrate the principles of non-discrimination and gender equality into mandatory and continuing education for teachers, health-care professionals and service providers;	No
19(c)	The Committee urges the State party to: Set up a system of monitoring and evaluation to assess the impact of the measures taken to eliminate stereotypes.	No

CEDAW Concluding Observations on Vanuatu's Combined Fourth and Fifth Periodic Reports, 7 March 2016

Rec. No. in Report	Selected Recommendations	Implemented Yes/No/Part
Violence against women		
20	The Committee welcomes the adoption of the Family Protection Act (2008) which criminalizes domestic violence and provides for protection orders. However, it is deeply concerned at the pervasive levels of domestic violence in the State party and the lenient sentences for perpetrators regardless of the severity of the offence. The Committee is equally concerned that the prevalence of sexual abuse of girls under 15 years is one of the highest in the world, and that nearly one in three women have been sexually abused before that age, mostly by male family members and partners. It is further concerned about the persistence of harmful practices such as bride price and accusations of witchcraft against women that subject them to violence or murder	
21(a)	The Committee urges the State party to: Ensure that women victims of domestic violence have full access to protection orders and legal remedies;	Partly
21(b)	The Committee urges the State party to: the State party to: Provide assistance to victims of gender-based violence, including medical and psychological support, as well as shelter, counselling and rehabilitation services, throughout its territory;	No
21(c)	The Committee urges the State Party to: Ensure that perpetrators are prosecuted and adequately punished with sentences that are commensurate with the seriousness of their crimes, in accordance with the Committee's general recommendation No. 19 (1992) on violence against women;	Partly
21(d)	The Committee urges the State party to: Put an end to the application of customary law that provides for payment of bride prices;	No
21(e)	The Committee urges the State party to: Take immediate and effective measures to investigate the incidences of violence and murder of women and girls based on accusations of witchcraft or sorcery, to prosecute and punish the perpetrators of such acts and to prevent their reoccurrence in the future.	Unknown
Education		
27(c)	Adopt a zero tolerance policy as well as a protocol for school authorities and teachers for handling cases of sexual violence against women and girls in schools in a gender-sensitive manner;	No

■ Yes ■ No ■ Partly ■ Unknown

CEDAW Concluding Observations on Vanuatu's Combined Fourth and Fifth Periodic Reports, 7 March 2016

Rec. No. in Report	Selected Recommendations	Implemented Yes/No/Part
Health		
30(b)	Develop protocols to support response, management and referral of cases of physical or sexual violence, and ensure the provision of skilled medical aid to women and girls victims of violence;	No
Women with Disabilities		
35	The Committee calls upon the State party 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.	Partly
35(a)	It also calls upon the State party to promote the full inclusion of women and girls with disabilities by: Establishing a formal consultation mechanism to ensure that women and girls with disabilities across the country and their representative organisations are meaningfully consulted in decision making processes that affect their rights and interests;	No
35(b)	Taking concrete steps to mainstream the rights of women and girls with disabilities across all laws, policies and programmes regarding gender equality.	Partly



ANNEX 2

Stretem Rod Blong Jastis Stage 2 Design Background Paper on Women’s Pathways to Action when experiencing Family Violence (2013)

The research highlights a range of key strengths and assets that exist currently in Malekula and also identifies the following four “intervention/entry points” that relate specifically to the context of women’s access to justice and violence against women on Malekula:

1. Backing up and strengthening existing assets

The case study identifies several “key assets” that currently exist in Malekula. The key assets comprise state bodies (such as the Magistrates Court and representatives from the State Prosecutor’s Office, the Public Solicitor’s Office and the Family Protection Unit) and non-government bodies and individuals (including existing networks such as the CAVAWs; some Regional Rights Resource Team-trained Community Paralegals; the Malampa Women’s Council; the Vanwoods Microcredit Scheme; the Malampa Technical and Vocational Education and Training centre; and initiatives like Just Play).

Building on the research the case study recommends:

Formalising the existing support networks by setting up a Task Force on Malekula to oversee work on improving women’s access to justice in situations of family violence. Assessing and developing a plan to strengthen and extend the current network of CAVAWs in Malekula.

Engaging actors and building on existing networks outside of the justice sector, which include women’s organisation (e.g. women’s church groups) and other government (e.g. Ministry of Health) and non-government (e.g. TVET and Vanwoods) bodies.

Ensuring a basic level of strategic resourcing by filling key gaps that currently exist to increase women’s access to justice (e.g. engagement of a second female Family Protection Unit Officer; increased budget for operations and CAVAWs). Accelerating the establishment of key assets including the Vanuatu Women’s Centre’s Male Advocacy Program and a Malampa Women’s Counselling Centre.

2. Strengthening the formal justice sector on Malekula

The case study acknowledges that there are significant resources currently available on Malekula in the formal justice sector, including an Island Court, a Magistrates Court, a Public Solicitor, a State Prosecutor and police services including a Family Protection Unit Officer. However, the case study research indicated that

that there can be limitations to formal justice sector interventions. Examples of these limitations include: high levels of bureaucracy and instances of corruption; the prevalence of victim-blaming; and lack of trust in, and fear of, the police. Under entry point 2, the case study recommends that the formal

justice sector personnel could be strengthened through training in areas such as gender equality, domestic violence and basic counselling services. Furthermore, the case study identified that the formal justice sector would be strengthened through greater collaboration and sharing of resources, best practices and innovative approaches.

Within intervention 2, specific entry points within the formal justice sector identified by the case study research include extending existing justice mechanisms through:

- I. Legal literacy (e.g. developing simple Bislama legal forms, undertaking an audit of existing domestic violence related legal literacy materials and using non-written communication methods such as radio messages) and legal empowerment (e.g. through the use of community paralegals – Vanuatu already has close to 100 community paralegals trained by the Fiji-based Pacific Regional Rights Resource Team).
- II. Implementing and enforcing the Family Protection Act through the piloting of Authorised Persons and Registered Counsellors.
- III. Delaying further engagement on these issues with Island Court Justices until an assessment is carried out to determine current levels of knowledge and responsibilities.

3. Building up communities and community resources

This third intervention again looks at what already exists “on the ground” on Malekula, focussing on communities and community resources and building up what is there.

Specific entry points identified by the case study research are:

- I. Strengthening the engagement of churches on Malekula by identifying church leaders to undertake further training by the Vanuatu Women’s Centre and to then assist these leaders to undertake training and awareness raising activities in Malekula with their church members.
- II. Strengthening the engagement of kastom leaders (including chiefs) by providing them with training from the Vanuatu Women’s Centre in the areas of family violence referral processes and legal literacy information.
- III. Potentially piloting the idea of a “Village of Non Violence” within a community on Malekula that would involve intensive training on human rights, the laws of Vanuatu (including the Constitution and the Family Protection Act), gender equality and gender-based violence.
- IV. Supporting the engagement of other community leaders (e.g. Area Secretaries) through training and awareness activities and community mobilisation activities.
- V. Paying attention to children and the impacts of violence on children through community level interventions (e.g. school based programs including Just Play).
- VI. Using community mobilisation approaches to create spaces for sustained dialogue in order to shift community norms and behaviours.

4. Transforming social norms and supporting gender equality as a basic bottom line

Within this fourth and final intervention, the case study recognises that interventions 1 to 3 listed above are based either explicitly or implicitly on the assumption that human rights and gender equality form a non-negotiable and unequivocal bottom line, and focuses on transforming social and cultural norms where these are in conflict with this understanding.

It was revealed through the case study research that the majority of women advocating for and supporting women through situations of family violence on Malekula believed their work could only be carried out from a starting point of gender equality. The case study argues that based on the experiences of women on Malekula in their efforts to access justice in situations of family violence and supported by international literature, it is clear that the practice of prioritising culture over gender equality needs to be discontinued.

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8

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Civil Procedures Rules No. 49 of 2002, Schedule 1.

Criminal Procedure Code

Family Protection Act

Island Courts Act

Maintenance of Children Act

Maintenance of Family Act

Annual Reports

	Annual Report or Year of data referred to in the Report (hardcopy or e-copy on file)	Institution Website	Annual Report on website; if Yes what is the latest year
Vanuatu Judiciary	Annual Reports 2009–2014	NO	YES 2009–2012 on PaCLII website 2013 and 2014 Annual Reports are not on PaCLII but available in hardcopies.
Ministry of Justice and Community Services	Annual Reports 2013 and 2014	YES	2014
Vanuatu Police Force	Annual Reports 2012–2014	NO	Hard copies only

Datasets

Supreme Court of Vanuatu – Included data for the Magistrates Court and Island Courts of Vanuatu. The dataset dates back to 2001 and had been “cleansed” in preparation for migration to the new CMS case management system to be implemented in January 2016. The 2015 data was incomplete at the time of writing and has therefore been omitted from the analysis.

Magistrates Court of Vanuatu – This additional dataset contained specific data about family protection order cases in the Port Vila, Santo and Tanna Magistrates Courts from 2008 to 2015 (2015 was incomplete). Some of the fields within this dataset were not migrated into the new CMS case management system and were therefore not available in the “cleansed” Supreme Court dataset noted above.

Vanuatu National Statistics Office (VNSO) – For all national statistics, this report relied upon the 2009 National Census.

Vanuatu Police Unit (CRIMS) – This dataset was obtained from the Criminal Information Management Systems (CRIMS) Unit in Vanuatu. The dataset dates back to 2009. The 2015 data is incomplete and has therefore been omitted from the analysis.

Vanuatu Office of the Public Prosecutor – This dataset dates back to 2003. As the 2015 data was incomplete it was omitted from the analysis.

Vanuatu Department of the State Prosecutor (DSP) – This dataset only contains data from Port Vila between 2012 and 2015. Other islands either rely on manual record keeping or maintain a separate database which is not integrated into the Port Vila (DSP) system. The 2015 data was incomplete and was omitted from the analysis.



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