

VANUATU 2013 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Vanuatu is a multi-party parliamentary democracy with a freely elected government. Following October 2012 national elections, which observers considered generally free and fair, parliament re-elected Sato Kilman as prime minister. On March 21, Kilman resigned, and parliament elected Moana Carcasses Kalosil, who became the first non-Melanesian to assume the role since the country gained independence. Authorities failed at times to maintain effective control over the security forces. Security forces committed human rights abuses.

Discrimination and violence against women remained the most prominent human rights abuses during the year.

Other human rights problems included police violence, poor prison conditions, arrests without warrants, an extremely slow judicial process, and government corruption.

Government efforts to prosecute and punish abuses by the police were minimally effective. Impunity was a problem.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed arbitrary or unlawful killings. The 2009 killing of John Bule while he was in police custody remained unresolved.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution prohibits such practices; however, there were reports of police and correctional officer abuse of criminal suspects and prison inmates.

Prison and Detention Center Conditions

With foreign donor funding, conditions at the three prisons in Port Vila improved slightly during the year but did not meet international standards.

Physical Conditions: At the end of 2012 (the latest statistics available) the prison system held a total of 194 inmates, including 170 convicted prisoners and 24 pretrial detainees. There was one female prisoner and no juvenile prisoners (defined by law as persons under age 16) as of September. The total proper prison capacity during the year was 210. Authorities held persons deemed mentally unfit to stand trial with the general prison population. Prisoners had access to potable water.

Following the 2008 release of a report detailing prisoner complaints about poor conditions at the main Port Vila prison, and a 2009 court order directing the public prosecutor to catalogue prisoner injuries and illnesses, authorities referred only one case to the court. At year's end that case remained unresolved.

Administration: Record keeping was adequate.

The laws allow for alternative sentencing options and supervised parole. The Correctional Services Act makes provision for a sentence of supervision, where an offender remains in the community but is required to attend regular meetings with a probation officer and comply with conditions of the sentence, and a sentence of community work. This involves a probation officer and a voluntary community justice supervisor (usually a chief, pastor, or community leader) supervising community work of not more than 250 hours. Supervised parole is where the community parole board (a Supreme Court judge and two community members) approves release on parole under particular conditions. The parole period of 12 months is supervised by a probation officer and a community justice supervisor.

Officials permitted prisoners and detainees reasonable access to visitors and religious practices. Officials also allowed prisoners and detainees to submit complaints to judicial authorities without censorship and to request investigation of credible allegations of inhumane conditions. The Office of the Ombudsman is mandated to investigate complaints of human rights violations. It received one complaint by a pretrial detainee during the year and requested and received an explanation from the Corrections Department. At year's end the Ombudsman had not taken any further action on the matter. It is not authorized to consider on its own initiative such matters as alternatives to incarceration for nonviolent offenders

to alleviate overcrowding; the status and circumstances of confinement of juvenile offenders; and improvements to pretrial detention, bail, and recordkeeping procedures to ensure that prisoners do not serve beyond the maximum sentence for the charged offenses. The commission can investigate specific complaints received from prisoners relating to such matters.

Supreme Court justices and Ministry of Health officials regularly visited prisons to monitor conditions.

Independent Monitoring: The government permitted visits by independent human rights observers. During the year representatives from the International Committee of the Red Cross and the Office of the High Commissioner for Human Rights visited the prisons. An independent external inspection team was also established under the auspices of the Ministry of Justice and the team completed its first inspection in August. At year's end a full report was yet to be submitted by the team.

d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

The national police (VPF) maintain internal security, and its paramilitary VMF makes up the country's externally focused military force. The commissioner of police heads the police force, including a police maritime wing, the VMF, Immigration Department, National Disaster Management Office, and National Fire Service.

A lack of resources hampered civilian authorities in maintaining effective control over security forces, and authorities did not have effective mechanisms to punish abuse or corruption. There were allegations of police impunity, particularly with regard to the VMF.

The Office of the Ombudsman is mandated to investigate complaints of security force abuses.

During the year foreign assistance continued to address some of the problems confronting the security forces. Assistance projects included recruitment of new

officers, establishment of additional police posts on outer islands and in rural areas, and repair and maintenance of police buildings. On April 5, the government signed an agreement with the Australian government to resume the Vanuatu-Australia Police Project. Under the project two Australian Federal Police (AFP) advisers and an AFP project support officer returned to Port Vila to work with the VPF on a full-time basis. Short-term advisers are to visit Vanuatu from time to time to support priority activities.

Arrest Procedures and Treatment of Detainees

A warrant issued by a court is required for an arrest, although police made a small number of arrests without warrants during the year. Authorities generally observed the constitutional provision that suspects must be informed of the charges against them.

The process for remanding alleged offenders in custody is outlined in the criminal procedure code. To be remanded in custody, a valid written warrant from a magistrate or a Supreme Court judge is required. Warrants are typically issued for 14 days in the first instance and may be extended in writing by the court. In general the Correctional Services Department noticed a marked improvement in the provision of warrants for remanded offenders, and the department's practice is not to accept any detainee into custody without a valid warrant. A system of bail operated effectively, although some persons not granted bail spent lengthy periods in pretrial detention due to judicial inefficiency. Authorities allowed detainees prompt access to counsel and family members. The Public Defender's Office provided counsel to indigent defendants.

Pretrial Detention: Pretrial detainees constituted nearly one-eighth of the total prison population. Judges, prosecutors, and police complained about large case backlogs due to a lack of resources and limited numbers of qualified judges and prosecutors.

A detainee census conducted in mid-September 2012 indicated that 13 percent of the detainee population was remanded in custody awaiting trial. On average the length of time on remand was approximately 12 weeks before being brought to trial. Problems with detainees being convicted but not sentenced for relatively lengthy periods were much less common during the year. Sentencing typically followed conviction by four to eight weeks.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and the government generally respected judicial independence in practice.

Trial Procedures

The constitution provides for the right to a fair trial, and an independent judiciary generally enforced this right. The judicial system is derived from British common law. Judges conduct trials and render verdicts. There are no juries. The courts uphold constitutional provisions for a fair public trial, a presumption of innocence until guilt is proven, a prohibition against double jeopardy, a right to counsel, a right to judicial determination of the validity of arrest or detention, a right to question witnesses and access government-held evidence, a right not to be compelled to testify or confess guilt, and a right of appeal. The law extends these rights to all citizens. The Public Defender's Office provides free legal counsel to indigent defendants.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

There is an independent and impartial judiciary for civil matters, including for human rights violations; however, police were often reluctant to enforce domestic court orders, particularly when the orders concerned their own family or clan members. This contributed to the reluctance of women to lodge complaints with the police.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The constitution prohibits such actions, and the government generally respected these prohibitions in practice.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution provides for freedom of speech and press, and the government generally respected these rights in practice.

Freedom of Speech: On May 6, police arrested *Vanuatu Independent* newspaper journalist Gratien Tiona for allegedly making a seditious comment about the government on Facebook. Police acted following a public complaint by the prime minister about Tiona's Facebook posting praying for an aircraft transporting the country's Council of Ministers to crash. He was charged with terrorist activity, seditious publication, and making threats and was detained for 30 hours before being released after it emerged that no formal complaint had been made about his comment.

Internet Freedom

There were no government restrictions on access to the internet or credible reports that the government monitored e-mail or internet chat rooms without appropriate legal authority. Internet access was available and widely used in urban areas, but rural areas remained inadequately serviced. The International Telecommunication Union estimated that 11 percent of the population used the internet in 2012.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedom of Peaceful Assembly and Association

The constitution provides for freedom of assembly and association, and the government generally respected these rights in practice.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/j/drl/irf/rpt.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation and the government generally respected these rights in practice. The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) in providing protection and assistance to

internally displaced persons, refugees, asylum seekers, stateless persons, and other persons of concern.

Protection of Refugees

Access to Asylum: The law does not provide for the granting of asylum or refugee status, but the government developed an ad hoc system for providing protection to refugees and granted temporary refugee status and asylum to those seeking it while awaiting resettlement by the UNHCR.

Temporary Protection: According to the UNHCR, at year's end two refugees were in the country awaiting resettlement in a third country.

Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government

The constitution provides citizens the right to change their government peacefully, and citizens exercised this right through periodic, free, and fair elections based on universal suffrage.

Elections and Political Participation

Recent Elections: Observers considered the most recent national parliamentary elections in October 2012 generally free and fair. According to the chief electoral officer, voters filed 24 petitions alleging irregularities. At year's end the Supreme Court had dismissed 22 of the petitions due to lack of sufficient evidence, and the two remaining petitions were still going through the trial process. .

Participation of Women and Minorities: Traditional attitudes regarding male dominance and customary familial roles hampered women's participation in economic and political life. Unlike in previous years no women served in the 52-member parliament. The solicitor general--the second-ranking official (below the attorney general) in the State Law Office--was a woman.

A small number of ethnic minorities (non-Melanesians) served in parliament. In March Moana Carcasses Kalosil became the first naturalized citizen and non-Melanesian to be appointed prime minister since independence.

Section 4. Corruption and Lack of Transparency in Government

While the law provides criminal penalties for official corruption, the government did not implement the law effectively, and officials often engaged in corrupt practices with impunity.

Corruption: The law provides for the appointment of public servants on the basis of merit, but political interference at times hampered the effective operation of the civil service.

In March the Supreme Court found former Minister for Education Steven Kalsakau not guilty of misappropriation and released him from proceedings against the directors of Tamau Trading Company Limited. He resumed his parliamentary status. The case against his brother, Yoan Kalsakau, continued.

The Ombudsman's Office and Auditor General's Office are key government agencies responsible for combating government corruption. The Office of the Ombudsman confirmed receiving many complaints of police corruption during the year, mainly for inaction and maladministration. After officials investigated complaints, the results and recommendations provided to the commissioner for police elicited no prosecutions during the year. In 2012 Transparency Vanuatu's Advocacy and Legal Advice Center (ALAC) reported that more than 32 percent of public corruption complaints submitted to ALAC since 2009 concerned the judiciary, while the Ministry of Lands and the police department had, respectively, the second and third highest number of complaints submitted.

Whistleblower Protection: There is no legal or institutional framework to protect whistleblowers.

Financial Disclosure: Members of parliament and elected members of provincial governments are subject to a leadership code of conduct, which includes financial disclosure requirements. The Office of the Ombudsman confirmed, however, that some officials did not comply with these disclosure requirements.

Public Access to Information: No law provides for public access to government information. The government's response to requests for information from the media was inconsistent.

Section 5. Government Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups operated without government restriction, investigating and publishing their findings on human rights cases. Government officials often were cooperative and responsive to their views.

Government Human Rights Bodies: In consultation with other political leaders, the president appoints a government ombudsman to a five-year term. Since its establishment the Ombudsman's Office issued a number of reports critical of government institutions and officials; however, it did not have adequate resources or independent power to prosecute, and the results of its investigations may not be used as evidence in court proceedings. Those cases deemed valid by the ombudsman were referred to the Public Prosecutor's Office for further action, but there were few prosecutions.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

While the law prohibits discrimination on the basis of race, place of origin, language, or sex, women remained victims of discrimination in the tradition-based society.

Women

Rape and Domestic Violence: Although rape is a crime, with a maximum penalty of life imprisonment, spousal rape is not cited specifically in the law, and police frequently were reluctant to intervene in what were considered domestic matters.

Violence against women, particularly domestic violence, was common, although no accurate statistics existed. Police reported an increase in the number of cases of violence against women, but most, including rape, went unreported because women, particularly in rural areas, were ignorant of their rights or feared further abuse.

The Family Protection Act covers domestic violence, women's rights, children's rights, and family rights. Violators could face prison terms of up to five years, a fine of up to 100,000 vatu (\$1,050), or both. During the year the Family Protection Unit at police headquarters in Port Vila issued 302 protection orders. A protection order does not require proof of injury. As long as there is a threat of violence, police can issue an order. Police have a "no drop" policy under which they do not drop reported domestic violence cases. If the woman later wishes to withdraw her complaint, she must go to court to request that it be dropped.

There were no government information programs designed to address domestic violence, and media attention to domestic abuse was limited. As part of the New Zealand government's regional Pacific Prevention of Domestic Violence Program, Radio Vanuatu had a bimonthly program for police to raise awareness and discuss issues relating to domestic violence. The Department of Women's Affairs played a role in the process for implementing the Family Protection Act. The Police Academy provided training in the handling of domestic violence and sexual assault cases.

Churches and NGOs operated facilities for abused women. NGOs also played an important role in educating the public about domestic violence, but they did not have sufficient funding to implement their programs fully.

Sexual Harassment: Sexual harassment is not illegal and was a problem.

Reproductive Rights: According to the country's family planning policy guidelines, couples and individuals have the right to decide freely the number, spacing, and timing of their children. This right was generally upheld. According to the national reproductive health coordinator, the Ministry of Health provides training on and works to raise awareness of human rights and gender equity with regard to reproductive health services and behavior. The society is predominantly patriarchal, and sometimes decisions on family planning and contraceptive use were made by the man in the relationship without taking the woman's views into consideration. According to country indicators published by the Population Reference Bureau, an estimated 38 percent of married women ages 15-49 used some form of contraception, with 37 percent using modern contraceptive methods. The Ministry of Health cooperated with the Department of Labor on the Male Involvement in Reproductive Health Project, which worked to sensitize men in the workforce to reproductive health issues. A regional adolescent health and development program funded by the UN Population Fund worked with schools to strengthen school-based clinics and incorporate counseling and services.

The country's geographic layout in relation to service delivery points, both between islands and inland, sometimes made it difficult to obtain access to contraception; essential prenatal, obstetric, and postpartum care; and treatment of sexually transmitted infections, including HIV. Obstacles included lack of adequate roads and the high cost of transport to reach health care facilities.

Discrimination: While women have equal rights under the law, they were only slowly emerging from a traditional culture characterized by male dominance, a

general reluctance to educate women, and a widespread belief that women should devote themselves primarily to childbearing. The majority of women entered into marriage through “bride-price payment,” a practice that encouraged men to view women as property. Although the law does not prohibit women from owning or inheriting land, tradition generally barred women from land ownership. Many female leaders viewed village chiefs as major obstacles to social, political, and economic rights for women.

Women experienced discrimination in access to employment, credit, and pay equity for substantially similar work. The Employment Act prohibits women from working in certain sectors of the economy at night. Transparency Vanuatu and the South Pacific Commission, through a program of the Pacific Regional Rights Resource Team, worked to increase awareness of women’s legal rights. The government, with the assistance of the UN Development Program, ran the Vanuatu Women’s Development Scheme (VANWODS). VANWODS provided poor and disadvantaged women with microloans to start income-producing activities, with the goal of making these activities progressively more self-financing. Women interested in running for public office received encouragement from the Vanuatu Council of Women and the Department of Women’s Affairs, which also offered training programs and funding.

Children

Birth Registration: Citizenship is derived through one’s parents. Births are usually registered immediately unless the birth has taken place in a very remote village or island. Failure to register does not result in denial of public services.

Education: The government stressed the importance of children’s rights and welfare, but there were significant problems with regard to education. Although the government stated a commitment to a free and universal education policy, school fees served as a barrier to education.

School attendance is not compulsory. Boys tended to receive more education than girls. Although attendance rates were similar in the early primary grades, proportionately fewer girls advanced to the higher grades. A significant portion of the population, perhaps as high as 50 percent, was functionally illiterate.

Child Abuse: Observers did not believe child abuse to be extensive, and the government did little to combat the problem. NGOs and law enforcement agencies

reported increased complaints of incest and rape of children in recent years, but no statistics were available.

Children generally were protected within the traditional extended family system. Members of the extended family played an active role in a child's development. Virtually no children were homeless or abandoned.

Forced and Early Marriage: The legal age for marriage is 21, although boys between 18 and 21 and girls between 16 and 21 may marry with parental permission. In rural areas and some outer islands, some children married at younger ages. The UN Children's Fund reported that from 2002 to 2011 approximately 27 percent of persons were married by age 18. There were no government programs aimed at discouraging child marriage.

Sexual Exploitation of Children: Some children under age 18 were engaged in prostitution.

The law addresses statutory rape, providing a maximum legal penalty of five years' imprisonment if the child is over age 12 but under age 15, or 14 years' imprisonment if the child is under age 12.

Child pornography is illegal. The maximum penalty is five years' imprisonment if the child is age 14 or older, and seven years' imprisonment if the child is under age 14.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

Anti-Semitism

The country's Jewish community was limited to a few foreign nationals, and there were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip.

Persons with Disabilities

No law specifically prohibits discrimination against persons with physical, sensory, intellectual, or mental disabilities. There is a national policy designed to protect the rights of persons with disabilities, but the government did not implement it effectively. There were no specific programs to assist persons with disabilities and no legislation mandating access to buildings, information, or communications. The government relied upon the traditional extended family and NGOs to provide services and support to persons with disabilities. In practice persons with disabilities could not access most buildings. The high rate of unemployment in the general population, combined with the social stigma attached to disabilities, meant that few jobs were available for persons with disabilities. Persons with mental disabilities generally did not have access to services. They usually relied on members of their extended families for assistance. In general school officials rejected many potential students with disabilities.

National/Racial/Ethnic Minorities

Most of the population is Melanesian. Small minorities of Chinese, Fijians, Vietnamese, Tongans, and Europeans generally were concentrated in two towns and on a few plantations. Most of the land belongs to indigenous tribes and cannot be sold, although prime real estate increasingly was leased to others. Within the limits of this system of land tenure there generally were no reports of discrimination against ethnic minorities, although only indigenous farmers may legally grow kava, a native herb, for export.

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

There were no reports of societal violence or discrimination against persons based on sexual orientation or gender identity, and the law is silent on the issue.

Other Societal Violence or Discrimination

There were no reports of societal violence or discrimination against persons based on HIV/AIDS status.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law, including related regulations and statutes, provides all workers with the rights to organize and join unions, to strike, and to bargain collectively. Unions require government permission to affiliate with international labor federations, but the government has not denied any union such permission. The law prohibits retaliation for legal strikes. In the case of private sector employees, complaints of violations of freedom of association are referred to the Department of Labor for conciliation and arbitration. In the public sector, the Public Service Commission handles complaints of violations. The law requires unions to give 30 days' notice of intent to strike and to provide a list of the names of potential strikers. While the law does not require union recognition by the employer or reinstatement of a terminated employee, it prohibits antiunion discrimination once a union is recognized. Complaints of antiunion discrimination must be referred to the Department of Labor, and several referrals occurred during the year. The commissioner for labor said the department had developed a dispute resolution process to manage these grievances.

The government respected freedom of association and the right to collective bargaining. The government effectively enforced applicable laws without lengthy delays and appeals.

In June department officials stepped in to mediate a wage and hour dispute between workers and management, culminating in a half-day strike, at the Warwick Le Lagoon Resort and Spa.

b. Prohibition of Forced or Compulsory Labor

The constitution and the Employment Act prohibit forced or compulsory labor, and section 102 of the Penal Code prohibits slavery and human trafficking. The government enforced the laws and penalties were a deterrent. There were no reports that such practices occurred.

c. Prohibition of Child Labor and Minimum Age for Employment

The Employment Act establishes the minimum age for employment at 15. The law prohibits children under age 12 from working outside family-owned agricultural production, where many children assisted their parents. The employment of children from 12 to 18 years of age is restricted by occupational category and conditions of labor, including employment in the shipping industry and nighttime employment. Children ages 12 through 14 may perform light domestic or agricultural work if a family member is employed with the child and they can do

agricultural work if it is done collectively by the community. Children under 18 cannot work on ships; however, with the permission of a labor officer, a child at age 15 is allowed to work on a ship. Children younger than 16 cannot work at night, and there are restrictions on night work for children between 16 and 18. The government has not established a minimum age for hazardous work, nor does it have a list of hazardous activities or occupations prohibited to children.

There were four inspectors within the Labor Department who were also responsible for cases of child labor. The department confirmed that there were no reported cases of child labor during the year, and department action to address child labor was limited to informal presentations on the topic. There were no credible reports during the year of children employed in agriculture. There were some reports that children were subject to commercial sexual exploitation.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/programs/ocft/tda.htm.

d. Acceptable Conditions of Work

In August 2012, the government raised the minimum wage to 30,000 vatu (\$315) per month from 26,000 vatu (\$273). In addition to the new minimum wage instrument, the minister of labor signed the appointment of wage inspectors, including the commissioner of labor, who has the responsibility to visit companies to enforce a 170 vatu (\$1.80) hourly rate and the new 30,000 vatu (\$315) monthly minimum wage level. The labor commissioner advised that most companies complied with the new wage rate and inspectors conducted routine inspections to monitor implementation. According to the UN Development Fund's human poverty index, more than 46 percent of Ni-Vanuatu live in poverty. According to the Asian Development Bank, 40 percent of all Ni-Vanuatu and 50 percent of the rural population had incomes below the international poverty line.

Various laws regulate benefits such as sick leave, annual vacations, and other conditions of employment, including a 44-hour maximum workweek that includes at least one 24-hour rest period. The Employment Act provides for a premium of 50 to 75 percent over the normal rate of pay for overtime work. Maternity leave pay provides a full salary for up to 12 weeks.

The Employment Act, enforced by the Department of Labor, includes provisions for safety standards. Laws on working conditions and safety standards apply equally to foreign workers and citizens in the formal sector.

The safety and health law was inadequate to protect workers engaged in logging, agriculture, construction, and manufacturing, and the four inspectors attached to the Department of Labor could not enforce the law fully. The Labor Department confirmed that unlike in previous years the department ensured that companies in these sectors paid workers the minimum wage rate, and employees who worked long hours were compensated appropriately. Many companies in these sectors did not provide personal safety equipment and standard scaffolding for workers. There were two deaths from an explosion at a construction site during the year.