

Brief Summary of Legal Background on SOGIE rights in Vanuatu

Yogyakarta Principles

The Yogyakarta Principles address a broad range of international human rights standards and their application to SOGIE issues. On 10 Nov. 2017 a panel of experts published additional principles expanding on the original document reflecting developments in international human rights law and practice since the 2006 Principles, The Yogyakarta Principles plus 10. The new document also contains 111 'additional state obligations', related to areas such as torture, asylum, privacy, health and the protection of human rights defenders. The Yogyakarta Principles plus 10 are a universal guide to human rights which affirm binding international legal standards with which all States must comply.

VPride has adopted the Yogyakarta principles as one of its core values and also uses the YP+10 to inform its strategic planning and project design.

International Human Rights Law

In *BORN FREE AND EQUAL: Sexual Orientation and Gender Identity in International Human Rights Law*ⁱ, the United Nations Office of the High Commissioner for Human Rights (OHCHR) notes that "(t)he case for extending the same rights to LGBT persons as those enjoyed by everyone rests on two fundamental principles that underpin international human rights law: equality and non-discrimination. The opening words of the Universal Declaration of Human Rights are unequivocal: 'All human beings are born free and equal in dignity and rights.' Therefore, the protection of people on the basis of sexual orientation and gender identity does not require the creation of new rights or special rights for LGBT people. Rather, it requires enforcement of the universally applicable guarantee of nondiscrimination in the enjoyment of all rights"ⁱⁱ

The document sets out five core legal obligations that member States have towards LGBT persons:

1. Protect individuals from homophobic and transphobic violence
2. Prevent torture and cruel, inhuman and degrading treatment of LGBT persons
3. Decriminalize homosexuality
4. Prohibit discrimination based on sexual orientation and gender identity
5. Respect freedom of expression, association and peaceful assembly

These obligations are guaranteed by international standards, to which Vanuatu is a signatory, including articles 2, 3, 5, 7, 9, 12, 19 and 20 of the *Universal Declaration of Human Rights*, articles 2, 6, 7, 9, 17, 19, 21, 22 and 26 of the *International Covenant on Civil and Political Rights*, articles 1 and 2 of the *Convention against Torture*, and article 2 of *Convention of the Rights of the Child*ⁱⁱⁱ.

Furthermore, Vanuatu is a signatory to the *Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, which promotes the equality of women and specifies legally binding steps that must be taken to ensure the human rights and equality of women in private and public life. While the Convention does not explicitly include sexual orientation, it states that discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Vanuatu has also ratified the *Convention on the Rights of Persons with Disabilities (CRPD)*. CRPD protects the rights and dignity of persons with disabilities. The aim of this binding Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all

persons with disabilities, and to promote respect for their inherent dignity. The General principles of the Convention include non-discrimination and respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women.

VPrude's strategic plan adopted this international human rights framework and the Vanuatu commitments to the framework as the basis for focusing its legal advocacy work, and for informing some of the specific support strategies.

Global Sustainable Development Goals

The Sustainable Development Goals are the overarching framework for international development. The UNDP notes that "(i)n September 2015, 193 Member States of the United Nations unanimously adopted the Sustainable Development Goals (SDGs) as the global framework for efforts to end poverty, fight inequality and injustice and tackle climate change by 2030.



Central to this agenda is the pledge that *no one should be left behind*. Achieving these goals will be impossible if LGBTI people, like other marginalized people, are not included.^{iv}

The 2015 Sustainable Development Goals (SDGs) contain multiple targets of relevance to LGBT human rights. SDG 5 calls on states to take action towards the achievement of gender equality and the empowerment of all women and girls, which by definition includes lesbian, bisexual and trans women and girls. SDG 10 on reduced inequalities urges states to promote the social, economic and political inclusion of all, and to eliminate discriminatory laws and promote appropriate legislation. SDG 16 on peace and justice calls for promotion of the rule of law and equal access

Achieving the SDGs requires good, solid data and evidence-based research to inform the legal, policy and programmatic frameworks needed to achieve results. Currently, however, there is a huge gap in the global data available on the inclusion of LGBTI people. To fill this gap, and as a contribution to support the implementation of Agenda 2030, on 10 December 2015, UNDP announced its commitment to lead the development of an LGBTI Inclusion Index that can inform evidence-based development strategies to advance the inclusion of LGBTI people^v.

The UNDP index and key dimensions - political and civic participation, economic well-being, personal security and violence, health, and education – were adopted as the general framework for VPrude's strategic plan.

LGBT Rights throughout the Commonwealth

A number of provisions of the Commonwealth Charter are directly relevant to LGBT human rights^{vi}. Article 2 provides that member states are committed to equality and the protection of civil, political, economic, social and cultural rights for all without discrimination on any grounds. Article 4 accepts that

diversity and understanding multiple identities are fundamental to the Commonwealth's principles. Article 12 recognises that gender equality is essential for human development and basic human rights. Multiple domestic courts in the Commonwealth have confirmed that criminalisation of and discrimination against LGBT people violate constitutional human rights norms. *Speaking out: The rights of LGBTI citizens from across the Commonwealth* provides further background on the Commonwealth.^{vii}

VPride uses this Commonwealth support as a component of its partner and resource development strategies.

Pacific Region Context

The Pacific region commitments provide another important context for LGBT rights. The Pacific Platform for Action on the Advancement of Women and Gender Equality (PPA) has advocated for women’s rights since 1994^{viii}. In 2017, Ministers for Women endorsed *The Pacific Platform for Action for Gender Equality and Women’s Human Rights 2018-2030*^x.

It is significant to mention here the PPA vision that “(a)ll people, of all genders of all diversities, enjoy their fundamental human rights, are empowered and benefit equally from development outcomes in all areas of their lives” (emphasis added). The PPA also:

- “provides a roadmap for achieving gender equality and enhancing the well-being of all women and girls of all diversities in all their diversity, inclusive of young women, older women, rural women, women with disabilities, women with diverse sexual orientations and gender identities, and indigenous women
- supports action on national, regional and international gender equality commitments made by Pacific Island countries and territories (PICTs), particularly under the Pacific Leaders’ Gender Equality Declaration (PLGED) and the Sustainable Development Goals (SDGs);
- guides PICTs, regional agencies and development partners in prioritising strategic approaches to achieve gender equality”^x.

VPride was represented at the 2016 Forum and plans to continue to strengthen this connection over the coming 5 years, as it present valuable support for its mission.

3.1.1.2 Vanuatu Context

Since Independence in 1980, Vanuatu joined the United Nations and the Commonwealth of Nations, and as noted earlier, became a signatory to a number of key Agreements and Conventions. This is important because it potentially provides support for increasing LGBT protection in Vanuatu and a counterpoint to the generally negative position taken with regard to VPride’s mission and vision. *Vanuatu 2030*

Vanuatu has developed its National Sustainable Development Goals, better known as the *Vanuatu 2030 The People’s Plan*. Like many such documents, LGBT and other so-called vulnerable groups are not mentioned specifically, but the plan uses inclusive language. Of particular relevance is the Society Pillar,



which seeks to “ensure we maintain a vibrant cultural identity underpinning a peaceful, just and inclusive society that is supported by responsive and capable institutions, delivering quality services to *all citizens*” (emphasis added).

Within the Society Pillar, three goals are particularly relevant to VPride:

- Goal 2: *Quality Education*: An inclusive, equitable and quality education system with life-long learning for all.
- Goal 3: *Quality Health Care*: A healthy population that enjoys a high quality of physical, mental, spiritual and social well-being
- Goal 4: *Social Inclusion*: An inclusive society which upholds human dignity and where the rights of all Ni-Vanuatu including women, youth, the elderly and vulnerable groups are supported, protected and promoted in our legislation and institutions

Vanuatu Law and Human Rights

In 2011, Vanuatu was one of 96 UN member states that signed the “*Joint Statement on Ending Acts of Violence and Related Human Rights Violations based on Sexual Orientation and Gender Identity*”. The statement includes condemnation of violence, harassment, discrimination, exclusion, stigmatization and prejudice based on SOGIE that undermine personal integrity and dignity. It also includes condemnation of killings and executions, torture, arbitrary arrest, and deprivation of economic, social, and cultural rights on those grounds.

In November 2016 at the UN General Assembly, Vanuatu also voted in support of the mandate of the *Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity*. An independent expert’s role would be to assess the implementation of international human rights instruments with a view to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity and identify and address the root causes of violence and discrimination.

In spite of taking these positive steps towards the recognition and protection of SOGIE human rights in the UN arena, Vanuatu has very few actual legal protections in place for a person, based on sexual orientation and gender identity.

The Vanuatu *Constitution* offers general human rights protections but does not specifically prohibit discrimination on the basis of sexual orientation, gender identity or sex characteristics. While consensual same-sex activity is legal in Vanuatu under the Penal Code, the only prohibition on “sexual preference” discrimination is in the *Teaching Service Act 2013*. The *National Youth Authority Act* is the only bill that recognizes persons with diverse sexual orientation and gender identity by affirming that “youth means any person aged between 12 to 30 years of age, including those with disabilities and of diverse sexual orientation and gender identity.”

This year in January, Vanuatu underwent its Universal Periodic Review (UPR) in Geneva^{xi}. The UPR is a unique process created by the UN General Assembly and involves the review of the human rights situations of all UN Member States once every four and half years. It is a state driven process and an opportunity to for each state to identify key human rights issues and challenges as well as to periodically declare what actions it has taken to improve human rights situations and fulfil human rights obligations.

VPride provided input and support into a report prepared by Kaleidoscope Human Rights Foundation for the United Nations Human Rights Council regarding the rights of lesbian, gay, bisexual, transgender and intersex people in Vanuatu. The report highlighted a lack of Vanuatu laws and policies that aim to reduce stigma on the basis of sexual orientation, gender identity and sex characteristics. that protect persons against hate crimes and violence and that prohibit discrimination in employment, education,

health care, housing and the provision of goods and services on the basis of their sexual orientation and gender identity. The report recommended among other things an amendment to the Constitution to add sexual orientation, gender identity and sex characteristics as prohibited grounds for discrimination, enact anti-discrimination legislation and conduct public awareness campaigns to reduce SOGIE stigma.

Recommendations to Vanuatu from other countries included an amendment to the constitution to incorporate the prohibition of discrimination based on sex and gender, to put in place a comprehensive strategy to eliminate discriminatory gender stereotypes and patriarchal attitudes and to put in place measures to eliminate discrimination and violence against lesbian, gay, bisexual, transgender and intersex persons, including anti-discrimination measures and awareness-raising campaigns,

While Vanuatu accepted many recommendations to strengthen its overall human rights policies and implementation mechanisms, it noted but did not accept the specific recommendations mentioned above. The next UPR of Vanuatu will take place in 2024.

ⁱ UN <https://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>

ⁱⁱ UNOHCR *Born Free and Equal*. <https://www.ohchr.org/documents/publications/bornfreeandequallowres.pdf> (2012)

ⁱⁱⁱ A useful fact sheet is provided by Free and Equal, entitled *International Human Rights Law and Sexual Orientation & Gender Identity* <https://www.unfe.org/wp-content/uploads/2017/05/International-Human-Rights-Law.pdf> Also useful is Eurasian Commission on Male Health's *International standards and principles related to SOGIE and HIV* <https://ecom.ngo/wp-content/uploads/2018/07/SOGIE-ENG-1.pdf>

^{iv} The UN and the Rights of LGBT people <https://www.pgaction.org/inclusion/background/united-nations.html>; quoted from LGBTI Inclusion Index Concept Note, June 2016.

^v UNDP, *LGBTI Inclusion Index Concept Note, June 2016*.

^{vi} : <https://www.equalityjusticealliance.org/about/lgbt-rights/>

^{vii} Kaleidoscope. *Speaking out: The rights of LGBTI citizens from across the Commonwealth* <https://kaleidoscopetrust.com/usr/library/documents/main/speaking-out-lgbti-rights-in-the-cw.pdf>

^{viii} . <https://www.spc.int/sites/default/files/wordpresscontent/wp-content/uploads/2017/09/PPA-2018-Part-I-EN2.pdf>

^{ix} PACIFIC PLATFORM FOR ACTION ON GENDER EQUALITY AND WOMEN'S HUMAN RIGHTS 2018–2030 Endorsed by the Ministers for Women's on 5th October 2017 <https://www.spc.int/sites/default/files/wordpresscontent/wp-content/uploads/2017/10/PPA-Gender-Equality-Womens-Human-Rights.pdf>

^x <https://www.spc.int/sites/default/files/wordpresscontent/wp-content/uploads/2017/10/PPA-Gender-Equality-Womens-Human-Rights.pdf>

^{xi} See report at https://sustainabledevelopment.un.org/content/documents/23336Republic_of_Vanuatu_VNR_2019.pdf