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2009 Human Rights Report: Vanuatu

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2009 Country Reports on Human Rights Practices

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Vanuatu is a multiparty parliamentary democracy with a population of approximately 235,000. The head of government, Prime Minister Edward Natapei, governed with a seven-party coalition. The most recent elections, held in September 2008, were considered generally free and fair. Civilian authorities generally maintained effective control of the security forces; however, police officials on occasion acted peremptorily or at the direction of senior politicians.

The government generally respected the human rights of its citizens, but there were problems in some areas. These included poor prison conditions, arrests without warrants, an extremely slow judicial process, government corruption, and violence and discrimination against women.

RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

The government or its agents did not commit any politically motivated killings; however, in March police officers reportedly beat 21-year-old escaped prisoner John Bule after recapturing him. Bule later died at Vila Central Hospital, where he had been brought by police after sustaining multiple injuries. At year's end no one had been charged in the case, and a coroner's inquest was continuing.

Court hearings reportedly were carried out during the year in the case of the 2007 mob violence in which three persons were killed and 20 injured in the Blacksands and Anabrou squatter settlements in Port Vila, with one outstanding case awaiting trial at year's end. No further information was available.

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, and there were no reports that government officials employed torture; however, there were reports of police and correctional officer abuse of criminal suspects and prison inmates respectively.

Prison and Detention Center Conditions

Conditions at the three prisons in Port Vila improved slightly during the year with foreign donor funding but remained below international standards. In December 2008 inmates set fire to the main Port Vila prison, allegedly due to their frustration over the poor conditions there, and approximately 70 prisoners escaped. Security at all facilities was poor, and there were frequent prisoner escapes.

At year's end the prison system held a total of 190 inmates, including 158 convicted prisoners and 32 pretrial detainees. There were four female prisoners and five male juvenile prisoners (defined by law as persons under age 16). Although there is no legislated maximum capacity for existing prison facilities, the total prison capacity during the year was 210. This included two men's facilities in Port Vila, one men's facility in Santo, and one women's facility in Port Vila. Male inmates were incarcerated in overcrowded facilities. Persons deemed mentally unfit to stand trial were held with the general prison population.

Following the December 2008 release of a report detailing prisoner complaints about the poor conditions at the main Port Vila prison, the government established a commission of inquiry to investigate prisoners' allegations. The commission prepared a report, but it had not been publicly released as of year's end.

In April a Supreme Court judge expressed the court's concern about treatment of inmates and ordered the public prosecutor to investigate and report back to the court, among other things, the names of all prisoners hospitalized since January 1, details of their injuries and illnesses, and information on prison escapees. According to the public prosecutor, only one case was received from the police by year's end and was under investigation. At year's end no report had been released.

The government permitted prison monitoring visits by independent human rights observers. During the year the prisons in Port Vila were visited by representatives from the UN High Commissioner for Human Rights and by members of the country's judiciary.

There were some improvements reported in prison conditions during the year. In September the nongovernmental organization (NGO) Impunity Watch reported that the country had implemented separation of juveniles from adult prisoners in its correctional facilities. Previously some juveniles had been held with adults. According to the director of correctional services, prison food was improved to include protein three times per week, which was not the case previously.

Following the December 2008 fire, a major refurbishment was undertaken of the Port Vila prison facilities during the year, with foreign assistance. New infrastructure in the form of a temporary "high risk" unit was constructed to create more appropriate accommodations for inmates who had committed violent offenses and inmates with a previous record of escapes. Health-care services were procured from the Red Cross to supplement services available through the public health system, and a Red Cross nurse was assigned to deliver health care services to inmates. Specialist cook positions were created to assist in ensuring appropriate food preparation, and a joinery workshop was established to add to the range of activities available to inmates. The technical advisor of the Vanuatu Corrections Project stated that with foreign government assistance significant progress was made toward construction of a new correctional center, with the acquisition of a site and the development of a concept design accomplished by year's end.

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 commissioner of police heads the police force, including a police maritime wing, the paramilitary Vanuatu Mobile Force, the Immigration Department, the National Disaster Management Office, and the National Fire Service. Police effectiveness was hampered by a lack of resources and involvement in ancillary activities such as search and rescue operations, immigration, and national disaster response. During the year foreign assistance continued to be provided to address some of the problems confronting the force. Actions taken under the assistance projects included recruitment of new officers, establishment of additional police posts on outer islands and in rural areas, and police building repairs and maintenance. Under a five-year capacity-building project begun in 2006, seven Australian Federal Police officers were attached to the Vanuatu Police Force as advisors.

Corruption and impunity were not major problems; however, there were instances of corruption and instances in which police acted without proper authorization at the behest of politicians. In October 2008 four police officers suspended in 2007 for their implication in a fraud case returned to full duty pending the return to the country of an Indo-Fijian who was the prime suspect. During the year the police commissioner confirmed that one of the officers had committed suicide in relation to the case, and the other officers continued on duty as the prime suspect had not returned to the country, and there was insufficient evidence against the accused officers.

Arrest Procedures and Treatment While in Detention

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

A system of bail operated effectively; however, some persons not granted bail spent lengthy periods in pretrial detention due to judicial inefficiency. The ratio of pretrial detainees to the total prison population was relatively high. Judges, prosecutors, and police complained about large case backlogs due to a lack of resources and limited numbers of qualified judges and prosecutors. Years could pass before a case was brought to trial. Detainees were allowed prompt access to counsel and family members. The Public Defender's Office provided counsel to indigent defendants.

e. Denial of Fair Public Trial

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

Magistrates' courts deal with most routine legal matters. Island courts are present at the local level, with limited jurisdiction in civil and criminal matters. The Supreme Court, an intermediate-level court, has unlimited jurisdiction over criminal and civil matters and considers appeals from the magistrates' courts. The Appeals Court is the highest appellate court. Judges cannot be removed without cause.

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, 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 reluctant to enforce domestic court orders.

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 of the press, and the government generally respected these rights in practice.

On January 17, four correctional service officers assaulted Marc Neil-Jones, publisher of the *Vanuatu Daily Post* newspaper, in his office. The *Post* had published articles reporting prisoners' allegations of poor treatment. At year's end one of the four officers was charged in the assault, and the case was pending a court hearing. In February freelance *Post* reporter Esther Tinning was assaulted by Collen Litch, a young man about whom she had written a feature story, as she took her children to school. Although the story was positive, Litch allegedly stated that he did not like a newspaper story being written about him. Litch was convicted of assault; he received a suspended sentence and a fine. The *Post* reported that Tinning, who was pregnant at the time, had a miscarriage as a result of the assault.

Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail; however, cost and lack of infrastructure limited public access to the Internet. The International Telecommunication Union reported that approximately 7 percent of the country's inhabitants used the Internet in 2008.

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

The constitution provides for freedom of religion, and the government generally respected this right in practice. The government provided some financial assistance for the construction of churches affiliated with member denominations of the Vanuatu Christian Council (VCC), provided grants to church-operated schools, and paid teachers' salaries at church-operated schools in existence since the country's independence. These benefits were not available to non-Christian religious organizations.

Government schools scheduled weekly religious education classes conducted by representatives of VCC churches. Students whose parents did not wish them to attend the classes were excused. Non-Christian religions were not permitted to give religious instruction in public schools.

Societal Abuses and Discrimination

There were no reports of societal abuses or discrimination against religious groups, although some churches and individuals objected to missionary activities of nontraditional religious groups. The country's Jewish community was limited to a few foreign nationals, and there were no reports of anti-Semitic acts.

For a more detailed discussion, see the *2009 International Religious Freedom Report* at www.state.gov/g/drl/rls/irf/.

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

The constitution provides for freedom of movement within the country, 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).

The law does not address forced exile, but the government did not employ it.

Protection of Refugees

The country is not a party to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol. The law does not provide for the granting of asylum or refugee status, and the government has not established a system for providing protection to refugees. The government did not grant refugee status or asylum. In practice, during the year there were no cases of refugees being returned or expelled to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. According to the principal immigration officer, at year's end there were three Sri Lankans and one Indonesian from West Papua in Port Vila awaiting resettlement in a third country by the UNHCR office in Canberra, Australia.

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 in practice through periodic, free, and fair elections held on the basis of universal suffrage.

Elections and Political Participation

The most recent national parliamentary elections were held in September 2008 and were considered generally free and fair. Allegations of bribery and electoral fraud were raised against Foreign Minister Bakoa Kaltongga, two other politicians, and a former ambassador to the UN. The allegations against them were that some voters were turned away from polling booths because their names were not on the roll. According to the chief electoral officer, 13 petitions were filed alleging irregularities in the elections. Of these, six were upheld in court, resulting in three recounts and three by-elections. At year's end two additional petitions were pending court decisions, and the remaining petitions were withdrawn.

Political parties could operate without restriction or outside interference.

Traditional attitudes regarding male dominance and customary familial roles hampered women's participation in economic and political life. There was one woman in the 52-member Parliament. There were no women in the cabinet. In March Viran Molisa was appointed solicitor general, the first woman to hold that position, the second-ranking position (under the attorney general) in the Office of the State Law.

There were no minorities (non-Melanesians) in Parliament or the cabinet.

Section 4 Official Corruption and Government Transparency

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

There were reports of government corruption during the year. The law provides for the appointment of public servants on the basis of merit; however, in practice political interference at times hampered the effective operation of the civil service.

A report by the Office of the Ombudsman released in 2008 revealed allegations of corruption and fraud in the Vatumaui Bay land deal. A new member of Parliament (MP) and a former lord mayor of Port Vila were allegedly implicated in the case. Although the case was referred to the Public Prosecutor's Office for further action, during the year that office sent it back to the police for further investigation, citing lack of sufficient evidence to prosecute.

Public officials are subject to a leadership code of conduct, which includes financial disclosure requirements. The Ombudsman's Office and Auditor General's Office are key government agencies responsible for combating government corruption.

No law provides for public access to government information. In practice governmental response to requests for information from the media was inconsistent. In June the Prime Minister's Office released a memorandum to all government ministers instructing them to engage proactively with the media on issues where their areas of responsibilities were brought into question, in order to avoid negative media reporting.

Section 5 Governmental 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.

The government cooperated with international governmental organizations and permitted visits by UN representatives and other organizations. There were a number of reports issued by or with the support of UN agencies during the year.

The president appoints a government ombudsman to a five-year term in consultation with other political leaders. Since its establishment, the Ombudsman's Office has 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. Cases reported to the ombudsman and deemed to be valid were referred to the Public Prosecutor's Office for further action, but there were few prosecutions.

In April a new NGO, the Advocacy of Legal Advice Center, was established with the stated goal of working to hold officials more accountable, including following up on public complaints about officials and building a database of cases.

Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

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

Women

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. In 2008 Parliament passed the Family Protection Act, which covers domestic violence, women's rights, children's rights, and family rights. Violators could face prison terms of up to five years or pay a fine of up to 100,000 vatu (approximately \$1,040) or both. By year's end a national task force for implementation of the law had been appointed and a framework for implementation approved, but the law had not yet been implemented.

Most cases of violence against women, including rape, went unreported because women, particularly in rural areas, were ignorant of their rights or feared further abuse. There were no government programs to address domestic violence, and media attention to the abuse was limited. The Department of Women's Affairs played a role in the process for implementing the Family Protection Act, and the department's 2009 budget provided for increases in staffing and other resources to improve its capacity to carry out its responsibilities. The Police Academy provided training in the handling of domestic violence and sexual assault cases. Police have a "no drop" policy under which they do not drop reported domestic violence cases; if the victim later wishes to withdraw her complaint, she must go to court to request it be dropped.

Churches and NGOs operated facilities for abused women. NGOs such as the National Council of Women and the Vanuatu Women's Center also played an important role in educating the public about domestic violence but did not have sufficient funding to implement their programs fully.

Prostitution is illegal and was not regarded as widespread. However, in 2008 and again during the year, the *Vanuatu Daily Post* reported that prostitution was increasing; poverty appeared to be the main cause.

Sexual harassment is not illegal and was a problem.

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 in practice. 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 country is predominantly a patriarchal society, 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. The ministry cooperated with the Department of Labor on the Male Involvement in Reproductive Health Project, which worked to sensitize men in the workforce about reproductive health issues. The country's geographical layout in relation to service delivery points, both between islands and inland, sometimes made it difficult to obtain access to contraception, essential 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.

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. In practice women also generally were barred by tradition from land ownership. Many female leaders viewed village chiefs as major obstacles to social, political, and economic rights for women.

In practice women experienced discrimination in access to employment, credit, and pay equity for substantially similar work. Vanuatu Transparency, Limited 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

Citizenship is derived both through birth in the country and through one's parents.

The government stressed the importance of children's rights and welfare, but there were significant problems in education. Although there is a free and universal education policy, all children paid school fees, which served as a barrier to education.

School attendance is not compulsory. Less than 35 percent of all children advanced beyond elementary school due to a shortage of schools and teachers beyond grade six. Boys tended to receive more education than did girls. Although attendance rates were similar in the early primary grades, fewer girls advanced to the higher grades. A significant portion of the population, perhaps as high as 50 percent, was functionally illiterate.

Child abuse was not believed to be extensive; however, 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. In January police charged Efate MP Joshua Kalsakau with indecent assault and unlawful sexual intercourse with a minor; the offense allegedly took place at a resort on New Year's Eve in 2008. Kalsakau was released on bail pending trial. However, before the trial date, the victim withdrew her complaint and refused to testify, and the charges were dismissed due to lack of evidence.

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.

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.

Section 97 of the penal code addresses statutory rape. It provides for a maximum legal penalty for violators 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 13.

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

Trafficking in Persons

The law does not specifically prohibit trafficking in persons; however, there were no reports that persons were trafficked to, from, through, or within the country.

The Department of State's annual *Trafficking in Persons Report* can be found at www.state.gov/q/tip.

Persons with Disabilities

There is no law specifically prohibiting discrimination against persons with physical 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 special programs to assist persons with disabilities and no legislation mandating access to buildings for them. Their protection and care were left to the traditional extended family and NGOs. Due to a high rate of

unemployment, few jobs were available for persons with disabilities. Persons with mental illness generally did not receive specialized care; members of their extended families usually attended to them.

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 was increasingly leased to others. Within the limits of this system of land tenure, there generally were no reports of discrimination against ethnic minorities; however, 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.

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. The Right of Association

The law provides all workers with the right to organize and join unions, and workers exercised this right in practice. Approximately 15,000 persons participated in the formal economy as wage earners. Combined union membership in the private and public sectors was approximately 1,900. The two existing trade unions, the Vanuatu Teacher's Union and the Vanuatu National Worker's Union, were independent of the government and grouped under an umbrella organization, the Vanuatu Council of Trade Unions. The high percentage (approximately 70 percent) of the population engaged in subsistence agriculture and fishing precluded extensive union activity. Unions require government permission to affiliate with international labor federations, but the government has not denied any union such permission.

Workers have the right to strike, and this right was exercised in practice. The law prohibits retaliation for legal strikes. In the case of private-sector employees, complaints of violations are referred to the Department of Labor for conciliation and arbitration. In the public sector, the Public Service Commission handles complaints of violations. Unions are required by law to give 30 days' notice of intent to strike and to provide a list of the names of potential strikers.

In March some workers at the sole electric utility, UNELCO, went on strike to protest the termination of another staff member, Gremson Valua, who was also their spokesperson and a member of the Vanuatu Workers Union. The one-day sit-in strike prompted a court hearing the same day; the court ruled the strike illegal and ordered the workers to return to work. Staff resumed work, and Valua was not reinstated. UNELCO did not give a reason for his termination but, according to the Department of Labor, paid out all the entitlements due him under the Employment Act. The union continued to maintain that Valua was terminated because he was a union member.

b. The Right to Organize and Bargain Collectively

Unions exercised the right to organize and bargain collectively. They negotiated wages and conditions directly with management. If the two sides cannot agree, the matter is referred to a three-member arbitration board appointed by the minister of home affairs. The board consists of one representative from organized labor, one from management, and the senior magistrate of the magistrates' courts. While a dispute is before the board, labor may not strike and management

may not dismiss union employees. However, unions and management generally reached agreement on wages without arbitration.

While the law does not require union recognition, it prohibits antiunion discrimination once a union is recognized. Complaints of antiunion discrimination are referred to the Department of Labor. There were no known employee complaints of such discrimination received by the department during the year, other than workers' allegation of discrimination by the UNELCO electric utility against a union member.

There are no export processing zones.

c. Prohibition of Forced or Compulsory Labor

The constitution prohibits forced or compulsory labor, and there were no reports that such practices occurred.

d. Prohibition of Child Labor and Minimum Age for Employment

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. The Department of Labor effectively enforced these laws.

e. Acceptable Conditions of Work

In 2008 the Department of Labor increased the minimum wage to 26,000 vatu (approximately \$270) per month. The department reviews the minimum wage in consultation with employers and unions, as and when directed by the minister for labor. The minimum wage was enforced effectively, but did not provide a decent standard of living for an urban worker and family. However, most families were not dependent solely on wages for their livelihood, supplementing their incomes through subsistence farming.

Various laws regulated benefits such as sick leave, annual vacations, and other conditions of employment, including a 44-hour maximum workweek that included 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. A 2008 amendment to the act increased maternity leave pay from 50 percent of salary to full salary for up to 12 weeks.

The Employment Act, enforced by the Department of Labor, includes provisions for safety standards. Workers have the right to remove themselves from dangerous work situations without jeopardy to their continued employment. However, the safety and health law was inadequate to protect workers engaged in logging, agriculture, construction, and manufacturing, and the three inspectors attached to the Department of Labor could not enforce the law fully. Laws on working conditions and safety standards apply equally to foreign workers and citizens.