

# Vanuatu



CEDAW Legislative Compliance Review



# Legislative Compliance of Vanuatu

## 10.1 Overview

This Chapter examines and assesses Vanuatu's legislative compliance with CEDAW. Vanuatu ratified CEDAW on 8 September 1995 obliging it to work towards the modification of its constitution and legislation to accord with the articles of CEDAW. However, it is recognised that legislative compliance will be achieved through gradual and incremental change. The assessment of Vanuatu's compliance is based on the indicators identified in Chapter One and should be read in conjunction with the commentary on each indicator included in that Chapter. In sum, Vanuatu has achieved full compliance with 34 of 113 indicators, partial compliance with 27 indicators and non-compliance with the remaining 52 indicators. The next section provides a brief synopsis of the findings of the review. Following the synopsis is a series of tables, each related to an article of CEDAW, and each containing the relevant indicators, the level of compliance achieved by Vanuatu (i.e. yes, no or partial compliance), the relevant legislation and finally where required, a brief commentary explaining how the legislation does or does not meet the indicator.

It should be noted that the Vanuatu legislative review was conducted using all materials available at the time, and that although every effort was made to obtain the most recent and up-to-date legal material, it is possible that there will be errors or omissions.

## 10.2 Synopsis of Findings

1. Article 1 (which defines discrimination) in conjunction with Article 2 requires States Parties to guarantee a range of fundamental rights and freedoms in their constitutions including substantive equality and freedom from discrimination on grounds of sex, marital status, sexual orientation, HIV status and disability. The Constitution of Vanuatu guarantees the rights and freedoms of citizens in most of the areas required by CEDAW. However, whilst the Constitution guarantees men and women equal treatment *under* the law, it does not guarantee equal benefits or outcomes as required by CEDAW. The rights and freedoms guaranteed are also subject to the rights and freedoms of others and the public interest in defence, safety, public order, welfare and health. The Constitution of Vanuatu although guaranteeing a range of fundamental rights and freedoms without discrimination on the grounds of sex, falls short of incorporating comprehensive anti-discrimination provisions within the meaning of CEDAW.
2. Articles 2 and 3 together mandate the establishment by legislation of national bodies and machinery to monitor the implementation of law and policy to foster the advancement of women. Vanuatu, to date has not instituted such a mechanism.
3. Article 2 condemns discrimination against women in all its forms and obligates States Parties to eliminate discrimination against women without delay. General Recommendation 19, issued by the CEDAW Committee makes explicit that the definition of discrimination includes gender violence and recommends that 'sanctions, penalties and compensation' be introduced in relation to gender based violence. Sexual assault is a form of gender violence as it is overwhelmingly perpetrated against girls and women, and therefore must be prevented and remedied, as far as possible, through legislative means.

Vanuatu *has* legislated against sexual assault. The sexual assault laws, however, provide inadequate protection for the range of sexual violations perpetrated against girls and women. All sexual offences require penile penetration (except indecent assault which attracts a maximum 10 year sentence). The requirement of penile penetration for most sexual offences excludes many of the ways in which women are sexually violated, and is not compliant with CEDAW. Violations perpetrated against girls under 15 are punished more seriously in Vanuatu, whilst the violation of an older girl is treated less seriously, again in non-compliance. Thus, the penalty for the 'defilement' of a girl aged under 13 is 14 years imprisonment whilst defilement against a girl aged between 13 and 15 is 5 years. Although an assault against a young girl may have more serious consequences particularly if perpetrated by a person in a position of trust, the vast disparity between the sentences appears unjustified and perpetuates an erroneous assumption that it is less serious and harmful to assault a 'more mature' girl. The additional inclusion of an offence for males who violate girls under 20 in their care and protection recognises, however, the power imbalances present in the familial context.

4. Incest is a gendered crime since it is primarily perpetrated against women and girls by men in the context of unequal power relations. Criminalising all parties to an incestuous sexual encounter is contrary to CEDAW and may dissuade a victim of an incestuous sexual assault from reporting it in fear of being charged with an offence. In Vanuatu, in non-compliance with CEDAW, incest is an offence for a girl aged 15 years or above attracting a penalty of 7 years.
5. Three discriminatory common law rules have historically made it difficult for prosecutions against sexual assault offenders to succeed and are contrary to CEDAW. The admission of the prior sexual history of a victim in order to establish that she consented to the sexual act in question is a common law rule which perpetuates the myth that a victim's previous sexual relationship with either the accused or others makes it more likely she consented. Corroboration (independent evidence such as that of a witness that connects the accused person with the crime) is a common law rule that requires a judge to advise the jury that it is dangerous to convict the accused on uncorroborated evidence. Proof of resistance is a common law rule which requires victims to establish that they physically resisted the perpetrator otherwise consent may be inferred. It is discriminatory because physical resistance may be an unrealistic expectation of a victim against a strong or armed perpetrator, and does not take into account how fear and power imbalances may immobilise the victim. Compliance with CEDAW requires that legislation prohibits the use of all three rules. In non-compliance with CEDAW, Vanuatu has *not* legislated against the use of prior sexual conduct, the necessity for corroboration in sexual offence prosecutions or the requirement for proof of resistance by the victim.
6. A defence in sexual assault prosecutions for the accused to claim that he did not know the girl was not of legal age places the onus on the minor to establish her age rather than the perpetrator to ascertain age and is non-compliant with CEDAW. The legislation in Vanuatu does *not* provide such a defence and is therefore fully compliant with CEDAW.
7. Minimum sentences and mandatory

prosecution ensure that sexual violence against women is treated seriously. Vanuatu has introduced minimum sentences, but does not have mandatory prosecution for sexual assault offences. In non-compliance with CEDAW, the legislation specifically provides for customary law to affect criminal sentencing which may reduce a sentence further if there has been forgiveness. The criteria for bail, which should not be granted if there is any risk to a sexual assault victim, is on the basis of 'justice or for the prevention of crimes'.

8. Although General Recommendation 19 (which concerns violence against women) identifies domestic violence as a form of discrimination that inhibits women's ability to enjoy rights and freedoms on a basis of equality with men, Vanuatu has not yet incorporated domestic violence offences into its criminal laws. This is required for compliance with CEDAW.
9. Infanticide refers to the killing of a child by its mother (in contrast to abortion which refers to the destruction of a foetus). Full compliance with CEDAW requires that an offence of infanticide replaces a charge of murder or manslaughter and has a reduced sentence, recognising the societal pressures that lead women to kill their children. Women who do so should not be held accountable to charges of murder or manslaughter. An offence of infanticide is not contained in the Vanuatu criminal legislation and is not compliant with CEDAW as a result.
10. Article 4 requires that special measures provisions be introduced into national constitutions and legislation. Vanuatu *has* incorporated a special measures provision in its Constitution for the 'special benefit, welfare, protection and advancement of females' which is exempt from claims of discrimination on the ground of sex.
11. Article 5 requires States Parties to abolish or modify customary practices that discriminate against women. The Constitution of Vanuatu recognises the legitimacy of customary law provided that it is not contrary to justice, morality and good order. Despite these provisos, the absence of a guarantee that equality between men and women takes precedence over custom, coupled with the absence of comprehensive anti-discrimination provisions in the Constitution, means that traditional practices that discriminate against women may be lawful in some circumstances.
12. Article 6 requires States Parties to suppress all forms of trafficking in women and the exploitation of women in prostitution and Articles 2 and 11 require the elimination of discrimination against women in employment. Cumulatively, these articles mandate both the protection of sex workers from exploitation whilst also affording them the rights and protections of other workers. The act of soliciting is not an offence in Vanuatu for female sex workers, which complies with CEDAW (although there is an offence for male sex workers). However, Vanuatu criminalises the aiding and abetting of sex work and the operation of organised premises. Experience and research shows that organised premises rather than street work is safer for sex workers. Legalising brothels and implementing the work conditions and safeguards that are present in other workplaces (such as regulated standards of occupational safety, standard rates of pay, parental leave, sick leave) would therefore provide greater safety for sex workers and the community. Finally, there is no protection in

the legislation from exploitation for under age or non-consenting adult sex workers, nor any legislation prohibiting trafficking and sex tourism.

13. Article 7 obligates States Parties to take all appropriate measures to eliminate discrimination in women's political and public lives. Universal suffrage and equal legal rights to political representation for women has been achieved in Vanuatu. However, Vanuatu which currently has only 2 female members of parliament out of a total of 52 seats, has not introduced special measures such as quotas to ensure higher numbers of women enter parliament and participate in the governance of their countries.
14. Article 8 requires States Parties to ensure that women have equal opportunities to represent their governments at the international level. Although there is no legal barrier preventing women from representing their governments in Vanuatu, the low numbers of women who do so necessitates the introduction of quotas to raise participation.
15. Article 9 requires States Parties to eliminate discrimination in the areas of nationality, citizenship and domicile. Women and men are treated equally under citizenship law in Vanuatu with one exception. A woman, but not a man, who has surrendered her Vanuatu citizenship upon marriage to a national of another country, must prove the breakdown of her marriage to regain citizenship. The provision does not apply to men presumably based on the assumption that ni-Vanuatu men will not join their non-national wives in another country. Although this provision is intended to 'protect' women who have forgone their citizenship to relocate to their husband's place of residence, the provision is weighted with discriminatory assumptions. It assumes that women will relocate to a non-national husband's place of residence, but men will not. It also assumes that should the marriage break down, a woman will be left without any means of support, but men will not. The opportunity to return to their place of origin should not be contingent on the breakdown of a marriage either for men or women but upon their own choice to return to their place of origin.
16. Article 10 obligates States Parties to ensure women have equal rights and opportunities in education. The provision of compulsory education is essential to ensure girls are equally prioritised and not discriminated against in early education. Compulsory education has been gradually introduced in Vanuatu for females and males aged from 6-14 ensuring that the education of females is not compromised in favour of boys. Further, in a positive move, recent legislation in Vanuatu has explicitly incorporated anti-discrimination provisions which specifically aim to 'eliminate educational disadvantage arising from the gender of a child'.
17. Article 11 obligates States Parties to eliminate discrimination in employment. Women in Vanuatu have many of the same rights in employment as men. However, there are a number of aspects of employment law in Vanuatu which discriminate against women and do not comply with CEDAW, including the absence of anti-discrimination provisions in the employment legislation and the restriction of women's employment choices by banning them from night work. Such protectionist provisions interfere with women's autonomy and place unreasonable restrictions on their right to choose professions and employment.

18. In the area of maternity leave, the public service sector in Vanuatu offers more generous allowances than the minimum standards granted in the private sector. Although neither sector fully meets the standards of 14 weeks paid maternity leave recommended by CEDAW and the International Labour Organisation (the ILO recommends a period of 14 weeks maternity leave and CEDAW recommends that this period be paid) the public service comes close with female civil servants entitled to 12 weeks of maternity leave on full pay. The private sector also provides for 12 weeks leave, although at only 50% of the female worker's wage. Finally, protection from dismissal ends upon the expiry of the approved maternity leave period, leaving women in precarious positions in relation to job security if they require (or choose) to take further leave.
19. Whilst the legislation creates a general duty on employers to provide 'safe' working conditions, Vanuatu has not introduced any specific health protection for pregnant workers. Breastfeeding mothers are provided with breaks of half hour duration twice daily. However, these conditions are insufficient to enable breastfeeding mothers to balance the needs of young children with the demands of work. Similarly, the absence of any state or employer funded childcare facilities in Vanuatu is likely to accentuate the difficulties nursing mothers face in the workplace.
20. The CEDAW Committee in General Recommendations 12 and 19 has identified sexual harassment in the workplace as a form of discrimination against women. General Recommendation 19 defines sexual harassment as unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands whether by words or actions. Such actions can be humiliating for the recipient and are discriminatory when they create a hostile work environment. Protection from sexual harassment is absent in Vanuatu and there is no scope for a remedy under the criminal code as permitted in the Solomon Islands; or in human rights legislation as available in Fiji; or in public sector legislation as provided in Papua New Guinea.
21. Article 12 requires States Parties to ensure that women have access to health care services including those related to family planning. Abortion is criminalised in Vanuatu, although abortion can be lawfully carried out for 'good medical reasons' and the penalty of 2 years is low compared to other Pacific countries. Full compliance with CEDAW, however, requires that abortion is decriminalised and women are guaranteed access to safe abortion facilities as of right.
22. Article 13(b) of CEDAW provides that women should be afforded equal rights to bank loans, mortgages and other forms of financial credit free from discrimination. Although there is no legislative barrier preventing women in Vanuatu from accessing such services, discrimination continues to hinder women from obtaining credit and loans to purchase property or businesses, thus interfering with their autonomy and ability to earn a livelihood. Article 13(c) of CEDAW requires that women have an equal right to participate in recreational activities, sports and all aspects of cultural life and there are no legislative barriers in Vanuatu preventing women from doing so.
23. Article 14 obligates States Parties to put in place measures to ensure the equality of rural women. Rural women often play a significant

role in the economic survival of their families and communities although they are frequently disadvantaged in areas such as land ownership, health, education and housing to name a few. The achievement of substantive equality for rural women and compliance with CEDAW requires temporary special measures provisions to be incorporated into both the constitution and legislation. Vanuatu, in compliance with CEDAW, has incorporated special measures for the 'special benefit, welfare and protection of inhabitants of less developed areas'.

24. Article 15 requires States Parties to guarantee women equality before the law and equal rights to participate in all aspects of civil life. Vanuatu expressly guarantees women equal treatment under the law and there are no legal barriers to women's participation in court and tribunal processes, nor are women denied the right to conclude contracts and administer property.
25. Article 16 obligates States Parties to remove discrimination in family and personal laws including marriage, separation, divorce, maintenance, child custody, property division, paternity and inheritance. Vanuatu, despite this maintains the existence of an unequal marriageable age of 16 for girls and 18 for males and bigamy is not a criminal offence. However, in compliance with CEDAW the Vanuatu legislation requires the registration of all marriages and it also requires the consent of *both* parents in the marriage of minors.
26. Fault based divorces, which requires proof of a matrimonial offence such as desertion or habitual rape, place women in the difficult position of having to provide evidence of situations that may be humiliating, embarrassing, or that may interfere with their dignity and privacy. Women also face

discrimination in proving fault, particularly cruelty and adultery if they choose not to be witnesses or they do not wish to attend court proceedings. Divorce in Vanuatu is based on fault based criteria (including adultery, desertion and cruelty) and is therefore not compliant with CEDAW.

27. The CEDAW Committee in General Recommendation 19(25) (which deals with violence against women, in relation to Articles 16 and 5 of CEDAW) states that a lack of economic independence or an inability to gain custody of their children upon separation forces many women to stay in violent or difficult relationships. Vanuatu *does* provide for maintenance orders during separation and after divorce for both children and spouses. However, the basis on which maintenance is provided is left largely to the discretion of the court with the broad criteria of 'just and reasonable'. The standards recommended by CEDAW, i.e., the needs and means of both parties, the financial commitments of both parties to themselves and others, their respective capacities to earn and the needs of any children for whom maintenance is sought are unlikely to be prioritised. Although unmarried mothers can claim maintenance for children, paternity cannot be established if they were of 'notorious loose behaviour' during the time of conception, a discriminatory provision in non-compliance with CEDAW.
28. In General Recommendation 21, which deals with equality in family relations, the CEDAW Committee states that the division of marital property should include recognition of non-financial contributions during a marriage such as raising children, caring for elderly relatives, and discharging household duties. However, Vanuatu provides no legislative provision for the division of property after

separation and divorce and therefore any determination is left to custom which may discriminate against women.

29. The best interests of the child as the paramount consideration is universally accepted as the principle on which custody determinations should be based, according to Article 16(f) of CEDAW. However, Vanuatu has *not* adopted the recommended standard of the best interests of the child as the paramount consideration in custody disputes after separation and divorce, and instead applies the broad criteria of ‘just and reasonable’.
30. In General Recommendation 21 the CEDAW Committee states that the right to own, manage, enjoy and dispose of property is central to a woman’s right to enjoy financial independence. Women in Vanuatu do not enjoy equality in relation to the ownership, administration, enjoyment and disposition of property since men control of many aspects of land and property.
31. Article 16 requires that inheritance laws should apply equally to males and females. Inheritance laws apply equally to males and females in relation to assets other than land. However, customary rules of inheritance apply in relation to land and may lawfully discriminate against women in non-compliance with CEDAW.
32. A series of tables detailing Vanuatu’s compliance with CEDAW is provided in the following pages. Each table relates to an article of CEDAW and contains the applicable indicator(s), the level of compliance achieved, the relevant legislation and finally where required, a brief commentary explaining how the Vanuatu’s legislation does or does not meet the indicator.

## Vanuatu: Detailed Analysis of Indicators

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATIONS TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.1 Does the Constitution guarantee fundamental rights and freedoms to men and women equally including in the political, economic, social, cultural, civil or any other field?	Partial	<p><i>Constitution of Vanuatu 1980.</i></p> <ul style="list-style-type: none"> <li>s 5(1). All persons are entitled to the following fundamental rights and freedoms.</li> <li>s 5. Life, liberty, security of the person, protection of the law, freedom from inhumane treatment and forced labour, freedom of conscience and worship, freedom of expression, freedom of assembly and association, freedom of movement protection for the privacy of the home and other property and from unjust deprivation of property, and equal protection of the law.</li> </ul> <p>But Subject to legitimate public interest in defence, safety, public order, welfare and health.</p>	<p>The rights protected include most of those required by CEDAW. There is therefore substantial compliance with this indicator but</p> <ul style="list-style-type: none"> <li>The right to the highest attainable standard of physical and mental health is not a guaranteed right.</li> <li>Substantive equality is not a guaranteed right.</li> <li>The rights and freedoms are subject to public interest in defence, safety, public order, welfare and health. This gives courts the discretion to deny the rights and freedoms if they consider it in the public interest to do so.</li> </ul>
1.2 Is there a constitutional guarantee of substantive equality between men and women?	No		
1.3 Does the Constitution contain an anti-discrimination clause on the ground of sex/gender?	Partial	<p><i>Constitution of Vanuatu 1980, s 5.</i> All persons entitled to the fundamental rights and freedoms of the individual without discrimination on the ground of sex.</p>	<ul style="list-style-type: none"> <li>There is no definition of discrimination.</li> <li>The protection applies only to the fundamental rights and freedoms which are limited as above in 1.1.</li> </ul>
1.4 Does the Constitution contain an anti-discrimination clause on the ground of marital status?	No		
1.5 Does the Constitution contain an anti-discrimination clause on the ground of sexual orientation?	No		
1.6 Does the Constitution contain an anti-discrimination clause on the ground of HIV status?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATIONS TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.7 Does the Constitution contain an anti-discrimination clause on the ground of disability?	No		
1.8 Does the breadth of the anti-discrimination clause encompass direct and indirect discrimination?	No		
1.9 Does the anti-discrimination clause bind public authorities and institutions?	Partial	<i>Constitution of Vanuatu 1980, s 6.</i>	Although public authorities and institutions are bound by the Constitution, the absence of a comprehensive anti-discrimination provision means there is only partial compliance with this indicator.
1.10 Does the anti-discrimination clause bind any person, organisation or enterprise?	Partial	<ul style="list-style-type: none"> <li>• <i>Constitution of Vanuatu 1980.</i> No express extension to any person, organisation or enterprise.</li> <li>• <i>Penal Code s 150.</i> Cannot discriminate on basis of sex in the supply of goods or services, to gain or continue employment or to be admitted to any public place.</li> </ul>	The Penal Code provides some limited protection from discrimination by non-state actors but it is insufficient to cover the range of situations in which women can experience discrimination.
1.11 Are sanctions imposed for breach of anti-discrimination clause?	Partial	<i>Constitution of Vanuatu 1980, s 6.</i> The Supreme Court can make orders, issue writs and give such directions including compensation as it considers appropriate to enforce the right.	
1.12 Are there specific domestic violence offences in the criminal law legislation (Penal Code)?	No	No specific domestic violence provisions. <i>Penal Code [Cap 135] 1981, Intentional assault:</i> <ul style="list-style-type: none"> <li>• s 107 (a). If no physical damage - 3 months imprisonment.</li> <li>• s 107 (b). Temporary damage - 1 year imprisonment.</li> <li>• s 107 (c). Permanent damage - 5 years imprisonment.</li> <li>• s 107 (d). Death - 10 years imprisonment.</li> </ul>	These offences do not provide for the complexity and ongoing nature of domestic violence nor are the sentences reflective of its seriousness.
1.13 Is stalking a criminal offence?	No		
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	No		Available in the common law only.
1.15 Is there mandatory prosecution for domestic violence offences?	No		

**ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN  
ARTICLE 2: OBLIGATIONS TO ELIMINATE DISCRIMINATION**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.16 Does the criminal law legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Partial	<i>Penal Code [Cap 135] 1981</i> . Range of offences. <ul style="list-style-type: none"> <li>• s 90. Rape - life imprisonment.</li> <li>• s 96. Unlawful sexual intercourse by male with girl under 20 under protection - 10 years imprisonment.</li> <li>• s 97. Unlawful sexual intercourse under 13 - 14 years imprisonment.</li> <li>• s 97. Unlawful sexual intercourse 13-15 years - 5 years imprisonment.</li> <li>• s 98. Indecent assault under 13 - 10 years, anybody else - 7 years imprisonment.</li> </ul>	Although rape and unlawful sexual intercourse with a girl under 13 are treated seriously, the lighter sentence for unlawful sexual intercourse with a girl aged over 12 and under 16 implies that a sexual assault is not as serious if the girl is older and this is discriminatory. The presence of an offence for girls under the protection of an older male recognises however the power imbalance inherent in such situations and provides partial compliance with this indicator.
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects to anus, vagina and mouth?	No	<i>Penal Code [Cap 135] 1981, s 90</i> . Rape only complete upon penile penetration.	The Penal Code does not allow for penetration other than penile penetration of the vagina. This excludes the variety of ways in which women can be sexually violated.
1.18 Is there an offence of incest for girls and women? If there is an offence of incest for girls and women, then there is no compliance with this indicator.	No	<i>Penal Code [Cap 135] 1981, s 95</i> . Offence if 16 or over.	There is an offence of incest in the Code which means that women and girls over 15 can be charged with an offence. Therefore there is no compliance with this indicator. This offence is discriminatory because: <ul style="list-style-type: none"> <li>• No girl under 18 should be charged with any sexual offence and consent should be irrelevant.</li> <li>• An offence of incest against women and girls fails to recognise the power imbalance between girls and</li> </ul>

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATIONS TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			women and male relatives. Incest is typically perpetrated by men against girls and women in non-consensual and coercive circumstances.
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal law legislation?	Yes		
1.20 Is consent specifically defined in the criminal law legislation outlining coercive circumstances?	Partial	<i>Penal Code [Cap 135] 1981 s 90.</i> It is not consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband.	This definition does not embrace the range of situations in which women may consent with coercion, in particular a threat to a third party. The list should therefore be non-exhaustive.
1.21 Is there a legislative prohibition on the use of prior sexual conduct to establish consent?	No		
1.22 Is there a legislative prohibition on the requirement for corroboration?	No		
1.23 Is there a legislative prohibition on the requirement to provide proof of resistance?	No		
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence of honest and reasonable belief, then there is full compliance with this indicator.	Yes	<i>Penal Code [Cap 135] 1981, s 97 (3).</i> No defence that person charged believed she was of legal age.	To be compliant with this indicator, there should be no defence available to the perpetrator of 'honest and reasonable belief that the victim is of legal age'. The legislation does <i>not</i> provide such a defence and is therefore compliant with the indicator and with CEDAW.
1.25 Is a defence of consent unavailable in relation to a victim under 18?	Partial	<i>Penal Code [Cap 135] 1981.</i> <ul style="list-style-type: none"> <li>• <b>s 97.</b> Consent no defence for girls 15 and under</li> <li>• <b>s 96.</b> Consent no defence for sexual intercourse with girl under 20 under care of male person.</li> </ul>	Full compliance with the indicator requires that consent is not a defence in relation to any girl under 18.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATIONS TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.26 Is there an exemption from prosecution for marital rape? If there is no such exemption then there is full compliance with the indicator.	Yes		To be compliant with this indicator, men should not be exempted from being prosecuted for marital rape. If the Penal Code contains a law which protects men from being charged with marital rape, then there is no compliance with this indicator. The Penal Code does <i>not</i> exempt husbands from prosecution for marital rape and Vanuatu is therefore in full compliance with this indicator and with CEDAW.
1.27 Is there mandatory prosecution for sexual offences?	No		
1.28 Is bail unavailable for sexual offences if there is risk to victim?	Partial	<i>Criminal Procedure Code [Cap 130] 1981, s 62.</i> Bail granted on the basis of 'the interests of justice or for the prevention of crimes'.	No express provision in relation to sexual offences but bail may be refused if re-offending likely.
1.29 Are there minimum sentences for sexual offences?	Yes	All sexual offences have minimum sentences.	Minimum sentences ensure penalties reflect the seriousness of sexual offences.
1.30 Is there a provision in the criminal law legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No		
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	No	<i>Criminal Procedure Code [Cap] 1981.</i> No provision for compensation to victim for personal injury.	
1.32 Does the criminal law legislation allow for infanticide to replace a charge of murder or manslaughter?	No		
1.33 Does the definition of infanticide include environmental and social stresses?	No		

**ARTICLE 3: GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
3.1 Is there legislation establishing national human rights machinery charged with promoting and protecting human rights including women rights?	No		
3.2 Is there legislation establishing a funded body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	No		A Department of Women's Affairs is located in the Ministry for Justice, Culture and Women's Affairs. Although not established by legislation and therefore subject to removal in times of economic or political instability, it is empowered to monitor policy and law for the

**ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
4.1 Does the Constitution contain a temporary special measures provision?	Yes	<i>Constitution of Vanuatu 1980, 5(1)(k)</i> . Can make provision for the special benefit, welfare, protection and advancement of females, members of under privileged groups or inhabitants of less developed areas.	
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, disability sexual orientation and HIV status?	Partial	<i>Constitution of Vanuatu 1980, 5(1)(k)</i> . Exempt on the ground of sex.	

## ARTICLE 5: SEX ROLES AND STEREOTYPES

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	No	<p><i>Constitution of Vanuatu 1980.</i></p> <ul style="list-style-type: none"> <li>• s 51. Parliament may provide for the manner of the ascertainment of relevant roles of custom, and may in particular provide for persons knowledgeable in custom to sit with the judges of the Supreme Court or the Court of Appeal and take part in its proceedings.</li> <li>• s 52. Parliament shall provide for the establishment of village or island courts with jurisdiction over customary and other matters and shall provide for the role of chiefs in such courts.</li> <li>• s 74. The rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu.</li> </ul> <p><i>Island Courts Act [Cap 167] 1983, s 10.</i> Island court can administer customary law that is not in conflict of any written law and not contrary to justice, morality and good order.</p>	Custom in Vanuatu is lawful and there is no constitutional guarantee that equality law takes precedence over customary law that discriminates against women. Although custom cannot be contrary to justice, morality and good order, morality is likely to be defined in ways that perpetuate customary practices and that discriminate against women. Further, the absence of a comprehensive anti-discrimination provision in the constitution leaves women little recourse against discriminatory customary law.

## ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.1 Is the act of soliciting decriminalised?	Yes		
6.2 Is aiding and abetting consensual acts of soliciting decriminalised?	No	<i>Penal Code Penal Code [Cap 135] 1981, s 101.</i> An offence to procure, aid and facilitate prostitution or share in proceeds.	Criminalising those who aid and abet prostitution does not assist sex workers to carry out their work in a non-exploitative and protected environment.
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	No		
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		
6.5 Is the trafficking of women prohibited?	No		
6.6 Is sex tourism prohibited?	No		

## ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.1 Is there an equal right to vote?	Yes	<i>Constitution of Vanuatu 1980, s 17 (1).</i> Provides for 'universal franchise'.	
7.2 Is there equal eligibility for political representation?	Yes	<i>Constitution of Vanuatu 1980, s 17(2).</i>	
7.3 Is there legislative provision for minimum quotas of women in Parliament?	No		Despite equal eligibility to enter parliament, only 2 women have held or currently hold any of the 52 seats in the Vanuatu parliament. Quotas, which have raised numbers of women in parliament in other countries, may assist in achieving substantive equality in this area. Women are poorly represented in Parliament and the use of quotas may assist in achieving substantive equality.
7.4 Do women have an equal right to participate in NGOs?	Yes		No legal barrier to equal participation.
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilise to promote the advancement of women without political interference?	No		<i>Cooperative Societies Act 1982</i> enables the registration of organisations but their purpose must be economic.

## ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
8.1 Do women have equal opportunity to represent government at international level and participate in the work of international organisations?	Partial		Whilst there is no legal barrier preventing women from representing government at the international level few do and the introduction of a quota system would ensure full compliance with this indicator. Full compliance with this indicator would require a quota as few women represent government at the international level.

**ARTICLE 9: NATIONALITY AND CITIZENSHIP**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.1 Do women have an equal right to acquire, change or retain their nationality?	Partial	<i>Constitution of Vanuatu 1980, s 9, s 10, s 11. Citizenship Act 1980, s 12</i> If a woman gives up citizenship for marriage she can regain only if the marriage breaks down, whilst the male spouse cannot.	Although this provision is intended to 'protect' women who have forgone their citizenship to relocate to their husband's place of residence it contains discriminatory assumptions. It assumes that women will move to their husband's residence (and not men to their wife's) and makes her return to her country of origin contingent on marriage breakdown rather than her free choice.
9.2 Does marriage to an alien or change of husband's nationality affect wife's nationality? If there is no change to a wife's nationality after marriage there is full compliance with this indicator	Yes		To be compliant with this indicator, the marriage of a woman to a non-national should not affect her nationality. The legislation does <i>not</i> alter the nationality of female citizen upon marriage and therefore there is full compliance with this indicator and with CEDAW.
9.3 Do both spouses have equal rights to residency, citizenship and employment when married to a non-national?	No	<i>Citizenship Act 1980,</i> <ul style="list-style-type: none"> <li>• <b>S 12.</b> A man applying for citizenship after 10 years residence can include wife but there is no provision for a wife to include her husband and children.</li> <li>• <b>s 10.</b> Any woman married to a citizen after the Day of Independence shall become a citizen. There is no provision for husbands married to Vanuatu citizens.</li> </ul>	
9.4 Do both spouses have an equal right to determine the nationality of children?	Yes	<i>Constitution of Vanuatu 1980, s 11.</i>	
9.5 Do women have an equal right to obtain passport?	Yes	<i>Passport Act [Cap 108] 1980, s 3.</i>	

ARTICLE 10: EDUCATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.1 Does the legislation guarantee women and girls have equal access to education?	Yes	<p><b>Education Act 2001</b></p> <ul style="list-style-type: none"> <li>• <b>s 2(b)</b>. To provide primary and secondary education to a high standard to all children within available resources.</li> <li>• <b>s 2(d)</b>. Object of the Act is to eliminate educational disadvantage arising from the gender of a child.</li> <li>• <b>s 8(1)</b>. Child not to be refused access to school on account of gender.</li> </ul>	
10.2 Is there legislation that creates special measures for the advancement of women in education?	No		
10.3 Is there compulsory primary education for girls and boys?	Yes	<p><b>Education Act 2001</b>. Compulsory from age 6-14</p> <ul style="list-style-type: none"> <li>• <b>s 8(1)</b> Duty on parents to ensure child from 6-14 attends school.</li> </ul>	
10.4 Is there compulsory secondary education for girls and boys?	Yes	<p><b>Education Act 2001</b>. Compulsory from age 6-14</p> <ul style="list-style-type: none"> <li>• <b>s 8(1)</b>. Duty on parents to ensure child from 6-14 attends school.</li> </ul>	
10.5 Is family life (reproductive and sexual health) education compulsory in schools?	No		
10.6 Is there a legislative prohibition on expulsion from school because of pregnancy?	No		

## ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.1 Are there anti-discrimination provisions in employment legislation on the grounds of sex, marital status, pregnancy, sexual orientation and HIV status with sanctions?	No		
11.2 Are there special measures provisions for the advancement of women in employment?	No		
11.3 Do women enjoy equal conditions of work including leave, superannuation and Workers Compensation?	Partial	<p><b>Health and Safety at Work Act [Cap 195], 1987.</b></p> <ul style="list-style-type: none"> <li>• s 2. Excludes domestic servant in private household.</li> <li>• s 58, s 59. Repatriation if more than 50 kilometres at expense to employer includes family – wife and children- but not husband and children.</li> </ul> <p><b>Employment Act [Cap 160] 1983.</b></p> <ul style="list-style-type: none"> <li>• s 27. In an undertaking where only family members are employed 22 days and hours of work conditions do not apply.</li> </ul> <p><b>Vanuatu National Provident Fund Act [Cap 189] 1986.</b></p> <ul style="list-style-type: none"> <li>• Employee includes anyone on a 'contract of service'</li> </ul> <p><b>Workmen's Compensation Act 1987.</b></p> <ul style="list-style-type: none"> <li>• s 3(3)(d). Excludes employment in domestic premises.</li> </ul>	Although women are afforded many of the same rights and protections as men, these provisions all exclude categories of work in which women are typically employed such as domestic work, outwork, casual work and part time work.
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	No		
11.5 Does the definition of sexual harassment include breadth of unwanted behaviours?	No		
11.6 Does the legislation contain equal pay provisions?	Yes	<p><b>Employment Act [Cap 160] 1983, s 8(1).</b></p> <p>Where a woman is employed on like work with a man in the same employment she shall be entitled to remuneration at the same rate as that man.</p>	
11.7 Does the legislation contain pay equity provisions?	Partial	<p><b>Employment Act [Cap 160] 1983, s 8(2).</b></p> <p>A woman is employed on like work if her work and theirs is of the same or a broadly similar nature and the differences between the things she does and the things they do are not of practical importance to the terms and conditions of employment.</p>	This provision provides scope for pay equity.
11.8 Does the legislation provide for an equal retirement age?	No		No legal protection of equal retirement age.

## ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.9 Are there restrictions on women's choice of employment? If there are no restrictions on women's choice of employment then there is full compliance with this indicator.	No	<i>Employment Act [Cap 160] 1983, s 35.</i> Cannot be employed at night 7pm – 6am except raw materials, emergency, responsible management position, nursing and caring for sick, pharmacy, theatre, hotel, restaurant or similar, transport by sea or air, postal or telecommunications.	To be compliant with this indicator, there should be no restrictions on a woman's choice of employment. The <i>Employment Act</i> prevents women from undertaking certain types of work. This is discriminatory and in non-compliance with the indicator and with CEDAW. These protectionist provisions discriminate against women and restrict their choice of employment.
11.10 Does the legislation provide for health protection during pregnancy?	Partial	<i>Health and Safety at Work Act [Cap 195] s 2.</i> No specific protection for pregnant workers but 'duty of every employer to ensure the health, safety and welfare at work of all employees'.	Although there is a general duty to provide medical care there is no particular responsibility on employers to provide health protection for pregnant workers.
11.11 Does the legislation provide for paid maternity leave of 14 weeks?	Partial	<ul style="list-style-type: none"> <li>• <i>Public Service Act [Cap 129] 1981.</i> Paid maternity leave pursuant to regulations.</li> <li>• <i>Employment Act [Cap 160], s 36.</i> 6 weeks before and 6 weeks after but not permitted to work for the 6 weeks following, not less than half pay.</li> </ul>	The prohibition on working during the 6 weeks after childbirth is discriminatory. Although this is intended to 'protect' woman since full pay is not provided it may result in financial hardship and it removes her autonomy to choose when she will work.
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	Partial	<i>Employment Act [Cap 160] s 37.</i> Cannot be dismissed during maternity leave plus 3 weeks as a result of illness with medical certificate.	Although there is protection from dismissal during the period of approved leave, women can be dismissed after this time. Provision for extended leave enables women to spend time with young children whilst retaining their employment.
11.13 Does the legislation guarantee the provision of childcare by employer or state?	No		
11.14 Does the legislation provide reasonable nursing time during work hours?	Partial	<i>Employment Act [Cap 160] s 36(3).</i> Half an hour twice a day.	This is insufficient to realistically allow women to breastfeed young children and continue employment.

## ARTICLE 12: HEALTH CARE AND FAMILY PLANNING

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
12.1 Do women have access to safe and legal abortion facilities?	Partial	<i>Penal Code [Cap 135] 1981, s 117.</i> Abortion is a criminal offence with a sentence of 2 years imprisonment. An exception if 'good medical reasons'.	<p>These provisions are discriminatory to women because:</p> <ul style="list-style-type: none"> <li>The criminalisation of abortion denies women access to safe medical facilities and encourages the use of unsafe methods and facilities.</li> <li>The criminalisation of abortion restricts women's autonomy and right to choose if and when they have children.</li> </ul> <p>Note The penalty is not serious (compared to other Pacific jurisdictions) and there is an exception for 'good' medical reasons, which is broad.</p>

## ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes		There is no system of social security in Vanuatu.
13.2 Do women have an equal right to receive bank loans, mortgages and financial credit?	Yes		No legal barrier to receiving bank loans, mortgages and financial credit.
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes		No legal barrier to equal participation in recreational activities, sports and cultural life.

## ARTICLE 14: RURAL WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
14.1 Is there legislation that provides for special measures advance substantive equality for rural women?	Yes	<i>Constitution of Vanuatu 1980, 5(1)(k).</i> Can make provision for the special benefit, welfare, protection of inhabitants of less developed areas.	Many women in Vanuatu live in rural communities and the incorporation of special measures into the national constitution is a positive achievement for the advancement of substantive equality.

## ARTICLE 15: EQUALITY BEFORE THE LAW AND CIVIL MATTERS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
15.1 Does the Constitution guarantee equality before the law?	Yes	<i>Constitution of Vanuatu 1980, s 5(1)</i> . All persons entitled to equal treatment under the law or administrative action.	
15.2 Do women have equal capacity in civil matters – can women sue?	Yes		No legal barrier to women's right to sue.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes		No legal barrier to women's right to participate in court proceedings.
15.4 Do women have an equal right (regardless of marital status) to conclude contracts and administer property?	Yes		No legal barrier to women's right to conclude contracts and administer property.
15.5 Do women have an equal right to be executors or administrators of estates?	Yes	<i>Wills Act [Cap 55] 1969, s 9</i> .	
15.6 Is there legislation that nullifies all contracts and instruments that limit women's legal capacity?	No		No specific legislative provisions with effect of nullifying contracts and instruments that limit women's legal capacity.
15.7 Do women have an equal right to choose residence and domicile?	Partial	<i>Citizenship Act 1980, s 12</i> . If woman gives up citizenship for marriage she can only regain it if marriage breaks down. There is no similar provision for men.	Women are denied domicile in their country of origin by this provision. Only if their marriage breaks down can they return to their place of origin. Citizenship (and domicile) should be automatic if a woman renounces any other citizenship.

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.1 Does the legislation guarantee entry into marriage with full and free consent?	Yes	<i>Control of Marriage Act [Cap 45] 1966, s 5.</i> No person shall compel another person of any age to marry against his will.	
16.2 Does the legislation allow marriages to be nullified if they took place under force, duress or undue influence?	Yes	<i>Matrimonial Causes Act [Cap 192] 1986, s 1.</i> A marriage is void if induced by duress.	
16.3 Is there an equal minimum age of 18 for marriage?	Partial	<i>Control of Marriage Act [Cap 45] 1966, s 2. 18</i> for males and 16 for females with parental consent; 21 for both without consent.	
16.4 Is there a legislative prohibition on child marriage?	Partial	<i>Control of Marriage Act [Cap 45] 1966, s 2.</i> Marriage under 16 prohibited.	Full compliance requires that marriage of those under 18 is prohibited.
16.5 Does the legislation require registration of marriage in official registry?	Yes	<ul style="list-style-type: none"> <li>• <i>Marriage Act [Cap 60] 1971, s 15.</i> Civil, religious and custom.</li> <li>• <i>Civil Status Registration Act [Cap 61] 1971, s 23.</i></li> </ul>	
16.6 Does the legislation prohibit bigamy?	No		
16.7 Do women have an equal right to choose family name?	Yes		No legal barrier to equal right to choosing family name.
16.8 Is the consent of both parents equal in marriage of minors?	Yes	<i>Control of Marriage Act [Cap 45] 1966, s 3.</i> Permission required from mother and father.	
16.9 Are both spouses equal in ownership, acquisition, management, administration, enjoyment and disposition of property?	No		The legislation does not guarantee equality to both spouses in the ownership, acquisition, management, administration, enjoyment and disposition of property. Property rights are largely determined by custom which has constitutional status and where women are often discriminated against in terms of ownership and access to land use.

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Partial	<p><i>Matrimonial Causes Act [Cap 192] 1986, s 14(1), s 15(1). 'As appears just'.Maintenance of Family Act [Cap 42] 1966.</i></p> <ul style="list-style-type: none"> <li>• s 1. It is criminal offence for mother to desert children and a criminal offence for a husband not to support either his wife or legitimate children.</li> <li>• s 2. Where a conviction is obtained the court may order that 'adequate' provision be made for his wife or children.</li> </ul>	<p>Although there is provision for maintenance during separation, it is not based on criteria such as respective earning capacity and means, needs of both parties and other commitments. The discretionary nature of the provision is insufficient to provide women and children with maintenance. This is a discriminatory provision because:</p> <ul style="list-style-type: none"> <li>• It is an offence for a mother to desert children but not father</li> <li>• It is an offence for a father not to support legitimate children but not illegitimate.</li> <li>• It is an offence for a man not to support his wife but it is not an offence not to support the mother of his child</li> <li>• Maintenance is only available after a conviction.</li> </ul>
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	No		
16.12 Does the legislation provide an order for restitution of conjugal rights? If the legislation does not provide such an order then there is full compliance with this indicator.	Yes		<p>To be compliant with this indicator, the legislation should not empower the courts to provide an order for restitution of conjugal rights. The legislation does <i>not</i> provide for orders for restitution of conjugal rights (which are discriminatory as they take away a woman's autonomy to choose when and with whom she has sexual relations) and therefore is in full compliance with this indicator and with CEDAW.</p>

## ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.13 Does the legislation provide for no-fault divorce?	No	<b>Matrimonial Causes Act [Cap 192] 1986.</b> <ul style="list-style-type: none"> <li>• s 2. Fault based divorce.</li> <li>• s 5. If sexual intercourse since fault event no divorce.</li> <li>• s 6. Cannot apply for divorce for 2 years unless exceptional hardship, will consider interests of child and probability of reconciliation.</li> </ul> <b>Matrimonial Causes Act [Cap 192] 1986, s 4.</b> Customary marriage dissolved on the basis of custom.	Fault based divorce may impact on a woman's ability to leave untenable situations. It also restricts the free choice of women to leave a marriage if they choose.
16.14 Is there a duty on the court to promote reconciliation? If the legislation does not contain such a duty then there is full compliance with this indicator.	No	<b>Matrimonial Causes Act [Cap 192] 1986, s 9.</b> The court shall make enquiries to determine whether parties may be reconciled and will not proceed unless satisfied 'impossible'.	To be compliant with this indicator, there should not be a duty on the court to promote reconciliation between estranged spouses. Such a duty is discriminatory and non-compliant because it removes women's choices or reduces their autonomy to choose to leave a relationship. The legislation <i>does</i> place a duty on the court to promote reconciliation and there is therefore is not compliant with this indicator and with CEDAW.
16.15 Does the legislation provide for equal division of property after divorce including recognition of women's unpaid contribution recognised; future needs calculated; future earning capacity calculated?	No	No legislative provision for the division of property.	The failure to provide criteria for the division of property means common law will be used to determine this and it is unlikely that women's unpaid contributions will be taken into account.
16.16 Does the legislation provide for payment of child support after divorce based on need?	Partial	<b>Matrimonial Causes Act [Cap 192] 1986, s 15.</b> 'As appears just'.	The criteria afforded to the court to determine child support is based on what is 'just'. This does not impart the meaning of the needs of the child and the respective financial resources and capacities of the two parents.

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.17 Does the legislation provide maintenance for ex-spouse based on commitments, income, earning capacity, and assets?	Partial	<i>Matrimonial Causes Act [Cap 192] 1986, s 14(2)</i> . What the court thinks reasonable. Ceases upon remarriage.	The criteria afforded to the court to determine maintenance is based on what is 'reasonable'. This is discretionary and does not clearly articulate criteria based on commitments, income, earning capacity, and assets.
16.18 Is custody and access to children based on best interests of child regardless of relationship of parents?	No	<i>Matrimonial Causes Act [Cap 192] 1986, s 14(2)</i> . 'As appears just'.	The paramountcy of the best interests of the child is universally accepted as the standard to consider in custody cases. Although the term 'as appears just' could be interpreted to mean the best interests standard it remains discretionary and does not comply with this indicator.
16.19 Does the legislation provide damages for adultery? If there is no provision for damages then there is full compliance with this indicator.	No	<i>Matrimonial Causes Act [Cap 192] 1986, s 17(1)</i> . Damages available for both husband and wife.	To be compliant with this indicator, the legislation should not provide damages for adultery. Damages for adultery are discriminatory as they seek to punish the sexual behaviour of consenting adults and interferes with their autonomy. The legislation <i>does</i> provide a right to damages for adultery and therefore is not compliant with the indicator and with CEDAW.
16.20 Does the legislation provide equal rights to guardianship, wardship, trusteeship and adoption?	No		
16.21 Does the legislation recognise de facto rights (including same sex couples) on the same basis as marriage?	No		
16.22 Does the legislation provide an order for establishing parentage?	Partial	<i>Matrimonial Causes Act [Cap 192] 1986 s 3</i> . Paternity can be established only if: <ul style="list-style-type: none"> <li>• An offer of marriage during normal period of conception.</li> <li>• Lived together during conception time as husband and wife.</li> </ul>	The criteria for establishing paternity are discriminatory. The terms 'no cause for 'notorious behaviour' or had sexual intercourse with another

## ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<ul style="list-style-type: none"> <li>Alleged father contributed to child in paternal capacity.</li> <li>Admitted paternity.</li> </ul> But s 4 No cause if <ul style="list-style-type: none"> <li>Notorious loose behaviour during conception period.</li> <li>Had sexual intercourse with another man.</li> <li>Physically incapable.</li> </ul>	man' are designed to protect the man from false claims of paternity rather than safeguarding the needs of the child.
16.23 Does the legislation provide for a contribution to pregnancy and child birth costs by father to unmarried mother?	Yes	<i>Maintenance of Children Act [Cap 46] 1966, s 5(1)</i> 'Expenses incidental to the birth of the child.'	
16.24 Does the legislation provide for the payment of child support for children born outside of marriage?	Yes	<i>Maintenance of Children Act [Cap 46] 1966, s 5.</i> 'Having regard to the interests of the child, the intention of the parties with respect to the maintenance and upbringing by them of child and to the means of the parties' not exceeding VT1,000 weekly periodically but no more than yearly.	Both the interests of the child and the means of the parties are to be considered in compliance with the indicator.
16.25 Does the legislation provide for equal inheritance laws?	Partial	<ul style="list-style-type: none"> <li><i>Administration of Estates Act 1935 (UK).</i> Provides for inheritance other than land and divides intestate.</li> <li><i>Wills Act [Cap 55] 1969, s 3.</i> Preserves customary succession to land.</li> </ul>	Although the inheritance laws for assets other than land are equal, land inheritance is based on custom. In Vanuatu some islands have matrilineal inheritance and others patrilineal. The absence of legislation ensuring that women are equal in land inheritance laws leaves women vulnerable to change in customary practices.
16.26 Is there legislation requiring the courts to apply CEDAW and CRC to domestic family law when relevant?	No		