VANUATU LAW COMMISSION

Issues Paper No. 05 of 2013

A Review of the Penal Code [Cap 135]
(Sexual offences & customary reconciliation)

You are invited to make a submission or comment on this Issues Paper.

26 August 2013 (4:30pm)

About the Vanuatu Law Commission

The Vanuatu Law Commission was established on 30 July 1980 by the Law Commission Act [CAP115] and was finally constituted in 2009.

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Making Submissions

Any public contribution to an inquiry is called a submission. The Vanuatu Law Commission seeks submissions from a broad cross-section of the community as well as those with a special interest in a particular inquiry. Comments and submissions from the public are welcome.

The closing date for submissions is **26 August 2013**. There are a range of ways that a submission can be made and you can respond to as many or as few questions and proposals as you wish. You can write a submission, send an email or fax, or ring the Commission and speak to one of our staff at the Commission office or elsewhere to talk about your submission

You must indicate in your submission whether you wish your submission to be confidential as in the absence of such an indication your submission will be treated as non-confidential.

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Introduction and Background

Vanuatu is one of the most culturally diverse countries in the world. Custom and tradition is one of the most important aspects of life as a Ni-Vanuatu. The importance of custom is recognized in Vanuatu's Constitution. Section 51 provides that parliament may pass laws to help identify rules of custom and allow people who are knowledgeable in custom to sit with judges in court. Additionally, section 95 (3) states that custom law continues to have effect as part of the law of Vanuatu, and finally, section 5 provides for the fundamental right of protection under the law meaning that no one may be convicted of an offence that was not known to custom or written law at the time it was committed.

Amongst the 83 islands of Vanuatu, there is a very well established custom for a wrongdoer to perform a formal reconciliation with the victim. The term reconciliation in its simplest custom sense means restoring harmony and peace between the members of the community who have been affected by the wrongdoing or dispute. Usually the restoration of peace and harmony requires a victim to accept words of remorse and regret, with valuable custom items such as mats, food, kava, pigs and money.

This practice is widespread and applies to all kinds of wrongdoings. Custom reconciliation ceremonies are usually performed as soon after the offence or wrong have been committed. Often, custom reconciliation ceremonies are ordered by chiefs to ensure the maintenance of law and order within the community.

It seems that disputes over some sexual behaviour, such as adultery and fornication – have always been accepted as suitable for custom reconciliation ceremonies at a community level. However, Vanuatu has now extended recognition of custom reconciliation to all forms of sexual assault, as well as incest and other criminal behaviour where advantage is taken of young or disabled victims.

ISSUE ONE

How should custom reconciliation be recognized by courts when judging criminal actions - especially sexual offences?

Sexual assaults, incest, child prostitution and pornography, and other criminal ways of taking advantage of young or disabled people are particularly personal offences under our laws. They are deeply personal in their impact on the victims and their families, and the guilty mind of the offender is almost always focused on one specific person or victim. While 'random', group, or 'mob' sexual assaults do occur in Vanuatu they are uncommon. This deeply personal aspect of these crimes does not fit well with the communal focus of most custom reconciliation ceremonies, where not only families but often village representatives and chiefs take a leading role.

Sections 118 and 119 of the Criminal Procedure Code [136] of Vanuatu are the relevant provisions regarding customary reconciliation. Until 2007, these sections provided that the court may facilitate reconciliation or customary settlement and must, during sentencing, take into account any customary compensation or reparation made by the offender. Under these provisions custom reconciliation was only recognized for offences punishable by less than 7 years imprisonment, but they were replaced by the Penal Code (Amendment) Act 2006, which contains almost identical provisions for the courts to recognize and assist customary reconciliation. The legislation does not set out how and when customary reconciliations are to be taken into account and this is left to the Courts to develop according to its discretion. The Penal Code provisions now allow recognition of custom reconciliation for all sexual offences, including incest, sexual intercourse without consent, indecent acts, publishing indecent matters and unlawful sexual intercourse with a child under 13.

Should custom reconciliation continue to be recognized by courts when judging criminal action especially sexual offences?

Does custom reconciliation punish an offender or is it a way to settle things out of court?

Is custom reconciliation just a way for offenders to get away without punishment or with a lighter sentence, especially if the offender does not mean anything or the offender is not involved in the custom reconciliation?

Should the courts also have to take into account a refusal or failure by the victim to agree to reconciliation? How should this be done?

Should the courts also be required to recognize forgiveness by a victim or victim family, even where no custom reconciliation has occurred?

Are crimes against our weaker, younger or disabled community members best dealt with by apologies, compensation and reparation?

Should there be special limits or tougher rules when courts consider custom reconciliation for this type of sexual offence?

Has this change been for the benefit of women and children in Vanuatu?

Are custom reconciliation ceremonies better suited to resolving community issues such as land ownership, or communal misbehavior like riots, arson, destruction of property, blockades, group assaults and perhaps theft or robbery?

Should the law be amended to set out the details as to how and when customary reconciliations are to be taken into account?

Should the law take into account when customary reconciliation occurred, and whether it was the offender's decision or following the orders of chiefs and community leaders or the courts?

Should the law allow for the victim to ask the courts to terminate the offender's sentence if the victim feels that the offence committed is truly forgiven?

For example, should the law recognize that reconciliation should occur as close as possible to the event, and reduce the effect of delayed or pending reconciliation ceremonies when an offender is sentenced? Rather than being a reason for a court to defer sentencing indefinitely, as under the current law?

If peace and harmony has been restored to the community, as appears to have happened in a few sexual assault cases, what further interest does the State have in the matter?

If those who are most closely connected with the incident are willing to allow relations in the community to return to normal, does the State have any reason to rupture those relations again by taking members away from that community, and punishing them again beyond what the community has accepted as legitimate?

Should custom reconciliation be seen as a Ni-Vanuatu way of showing forgiveness as well as remorse and a need for restoring good relationships between the offender and the victim?

Should the courts take into account forgiveness and remorse by offenders as well as through custom reconciliation?

How can victims be protected from being forced to accept reconciliation, or even forced to marry the offender, to save their family or community embarrassment?

What about the danger that the victim and her family may be pressured into accepting a custom reconciliation that is inadequate or incomplete or inappropriate? Or that the offender may be pressured into making a customary reconciliation that was excessive and unnecessary?

Should the law require that courts obtain direct evidence of the circumstances of the customary reconciliation ceremony, and be satisfied that both the victim and offender were truly agreeing to take part?

Should courts be able to take an offer of custom reconciliation into account even if it has not been accepted? Or should the law only take reconciliation into account where it has been accepted by the victim? Or should acceptance by the family or the chief of the victim's community be enough?

Should reconciliation not be considered at all if the victim is mentally disabled or under a certain age, perhaps 12 years or 10 years at the time of the offence?

Should reconciliation be taken into account for repeat offenders, especially sexual offenders? Should there be a time limit for reconciliation and/or forgiveness to occur before an offender is sentenced? If so, should that limit be as short as 1 month, or longer – perhaps 6 months?

Should reconciliation only be taken into account where it has occurred before the offender is charged? Or where reconciliation occurs before the offender admits guilt in court or is found to be guilty by the court?

ISSUE TWO

Equal and consistent sentencing

Two fundamental freedoms and rights to which all persons in Vanuatu are entitled under Article 5 (1) of the Constitution are protection of the law and equal treatment under the law. Sentencing by the courts for criminal offences is an area where both these fundamental rights are very important, especially where custom reconciliation is also involved. Some research on recent sentences for sexual offences raises some questions about fair and equal treatment.

In a 2004 case involving a sexual offender the Court of Appeal of Vanuatu ruled that:
"*It is a fundamental aspect of the rule of law that like cases are treated and responded to in a consistent and uniform way. There should be transparency in process and consistency in the treatment of all who have offended against the criminal law. Courts are required to articulate the factors which have been weighed and what issues have been considered including mitigating and aggravating factors in reaching a decision.*"

However, in the two year period 2006-2007, out of the 57 sentencing judgments recorded by PacLII, in the majority of cases (60%) there is no mention of customary reconciliation at all. This leaves a balance of 23 sentencing judgments (40%) in which customary reconciliation is mentioned in the judgments as having been made or promised by the defendant. This shows a discrepancy by courts in exercising their discretion in regards to Section 118 and 119 of the Criminal Procedure Code. The legislation makes it clear that customary settlements must be taken into account by courts when they are considering the quantum of the punishment, but practically section 119 has been interpreted as exclusionary or complementary by the courts in exercising their discretion.

Sentences in the period 2011 – 2013 recorded on PacLII also show discrepancies, especially in relation to sexual offences. Almost 90% of judges' reasons for sentencing sex offenders refer to custom reconciliation in some way, even if the custom reconciliation was an offer by the offender's family or community, which had been refused or not yet accepted by the victim. In those cases recognition for custom reconciliation was around 55% of the sentences but not in 20% of the sentences with the remainder being silent or ambiguous.

Reasons for refusing recognition were where the judge was not satisfied that custom reconciliation had occurred, and where the victim had refused to accept custom reconciliation and indicated that she preferred the case go to court. On the other hand, many sentences took into account the offender's offer of custom reconciliation, even if it had not yet occurred, although this benefit was rarely given in sentencing for other criminal offences such as assault, homicide, arson or theft.

The interpretation of "quantum of penalty or sentence" is also an issue before the court of law in relation to customary reparation or compensation as mitigating factors. That is - whether the quantum of sentencing only relates to the length of imprisonment, or whether it also relates to the nature of the sentence, or whether or not it should be suspended.

Should the law provide a procedure on how the courts should exercise their discretion in regards to customary reconciliation?

If the law has provided that the courts take customary settlements into account then perhaps the court should have full discretion to decide on the nature of punishment and the length of sentence for serious sexual offences as in the appeal case of *Public Prosecutor v Gideon* [2002]. Should this provision provide a clear interpretation of quantum of sentencing, or should it be the court's discretion?

Should the law be amended to provide criteria in regards to how much weight given to customary reparation, compensation and reconciliation? Or should the current law be retained and left to the courts discretion?

In addition, the divergence of the weight to be given to customary reconciliation is also another issue. Practically the Court must consider that, at most, the custom ceremony could be considered to be worth a deduction from the expected sentencing. However, in assessing the quantum of punishment, there seems to be considerable divergence of practice within the Courts as to the weight that should be given to a customary reconciliation. It is clear that there is a discrepancy in this area given by different Courts in several sexual offence cases where customary reconciliation ceremonies have been taken into account. Sometimes the Courts do not draw attention to any particular features of the customary reconciliations that might justify the differences in weight – such as the value of gifts exchanged, timing of reconciliation and how closely the offender was involved in reconciliation.

ISSUE THREE

Do the laws in the Penal Code <u>give enough</u> protection to women, girls and young children in our communities?

Vanuatu's Constitution sets out a number of fundamental freedoms and rights of all persons in Article 5. These includes the freedom of and rights to liberty, security of the person and protection of the law as well as equal treatment under the law 'except that no law shall be inconsistent with this ….. insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons'.

Vanuatu is also a state party to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). These conventions provide for all member countries to undertake all appropriate legislative, administrative and other measures for the implementation of the protection and rights of women and children as recognized in the conventions. In the conventions Vanuatu is bound by the terms and international obligations that are provided in these conventions regarding the rights and protection of women and children.

Article 19 of the Convention on the Rights of the Child provides for member countries to take all appropriate legislative and other measures to protect a child from physical or mental violence, injury, or abuse, neglect, negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardians or any other person. The Convention on the Elimination of all forms of Discrimination Against Women provides for women's equality with men before the law and that women and young girls should enjoy the same legal protection provided by law or competent courts and other public institution, as do men.

The Family Protection Act 2008 and the Penal Code CAP 135 of Vanuatu provide some means of protection to women girls and young children in the community. The Family Protection Act 2008 enables victims of domestic violence to seek protection orders. The Act states that the custom of bride price is not an acceptable excuse for violence in the home. The Police Department has also established an internal Family Protection Unit to address the high levels of domestic violence and other related matters. The Penal Code CAP 135 provides a range of offences to protect women, girls and young children including unlawful sexual intercourse by male with girl aged under 20 who is under protection; unlawful sexual intercourse with a girl aged under 13; unlawful sexual intercourse with a girl aged 13-15 years; and indecent assault of a girl under 13.

However there are several areas and aspect of life in regards to the protection to women, girls and children that the Penal Code CAP 135 and other relevant laws need to provide for. These areas are:

A) Proof of consent

Does Vanuatu also need better laws to protect its citizens from sexual assault?

Also should Vanuatu protect its children and mentally disabled in the same way? One way is by laws that provide that mentally disabled persons and children under the age of 10 or 12 or 14 cannot ever give free and voluntary agreement to sexual intercourse. Is this the type of law that Vanuatu should adopt too?

Should section 117 of the Penal Code be amended to include unlawful intercourse, incest or rape as 'good medical reasons' in the same way as the common law in Australia and other countries recognizes that a woman's mental, emotional and psychological health can be 'good medical reasons'?

Or is it better to enact Regulations to provide for access to reproductive and sexually transmitted diseases health information, counseling (whether provided by the Ministry of Health, schools or non-government organizations) and services?

Should there be a Regulation to regulate quality condoms to comply with international condom standards, and other preventive health measures?

While the law in Section 90 tries to protect women and children whose 'consent' to sexual intercourse has been obtained by force, trickery, threats or the effect of alcohol this gives only limited protection of a person's right to choose whether or not to have sexual intercourse, especially when this is seen under the Constitution as a fundamental right to liberty, security of the person and equal treatment under the law. In Papua New Guinea the law states that an adult person must give free and voluntary agreement to sexual intercourse. Free and voluntary agreement cannot be presumed just because the person did not protest or resist, was not injured, or had on other occasions agreed to sexual intercourse.

B) Improving women and children's health, treatment, counseling and information

The Penal Code and other relevant laws which deal with health, education and family do not provide any provisions that guarantee access to sexual and reproductive health services. Should the law be amended or is it better to enact Regulations to provide for access to reproductive and sexually transmitted diseases health information and services? However, it is an offence under Penal Code, section 117 for a woman to procure her own abortion, or a person to procure an abortion for a woman, unless for good medical reasons. Under Vanuatu law, a woman who becomes pregnant after unlawful intercourse, incest or rape may not obtain an abortion, except on medical grounds. Women and girls need to have access to sexual and reproductive health information in regards to abortion and medical matters.

Articles of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) provide for nations to repeal national penal provisions which constitute discrimination against women, and to ensure access to all health care services, including family planning. The Constitution of Vanuatu also specifically protects fundamental rights including equal treatment under the law.

In addition there is no legislation regulating the quality of condoms and treatment for sexual and reproductive health conditions.

C) Protection of young children

While custom law applies to the protection of young children within the community, there are no provisions in the Penal Code CAP 135 and other related laws requiring children to be

Should the Ministries of Health and Education be required to specially protect the Constitutional rights of Vanuatu's children by a law or a Regulation to provide all children under 15 with age-appropriate information, education and means of prevention? Should the law also enable children and adolescents to be involved in decision-making as set out under Articles 12 and 24 of CRC in regard to informed consent to voluntary testing with pre- and post-test counseling, and access to confidential sexual and reproductive health services?

Should the law be amended to provide clear and specific provisions prohibiting coercion of adults or children into sex work, or prohibiting trafficking or sex tourism? Or does the current provision in section 101(B) (C) and (D) give enough protection in this area? Should the law specifically punish any person deliberately or recklessly transmitting HIV/AIDS or any other life threatening STI?

provided with information or education about Human Immuno-deficiency Virus (HIV) and Sexually Transmitted Infections (STI's), or to be provided with condoms or other means of prevention. Furthermore there are no expressed provisions in the laws specifically addressing children and young people's rights of informed consent and access to confidential sexual and reproductive health services.

In addition, section 101 of the Penal Code CAP 135 prohibits the procuring, aiding or facilitating the prostitution of another person, or sharing in the proceeds of or being subsidized by the prostitution of another person. However, there are no provisions prohibiting coercion of adults or children into sex work or prohibiting trafficking or sex tourism and thus the Penal Code does not comply with Article 6 of CEDAW nor enforce the fundamental rights of its young people. Other countries such as Kenya (in its Sexual Offences Act) punish child sex tourism and benefitting from child prostitution or prostitution of disabled persons with prison terms of 10 years. Kenya also punishes any person who - knowing they are infected with HIV/AIDS or any other life-threatening STI - intentionally does anything or permits the doing of anything which is likely to lead to another person being infected.

The Penal Code does not provide temporary protecting measures to protect the accused until they are arrested and tried by a court of law. Should the Penal Code to make provision for temporary measures to protect sexual offenders and better comply with Article 2, 4 and 7 of CAT?

ISSUE FOUR

Do the laws in the Penal Code give enough protection to defendants who are charged with sexual offences?

In Vanuatu, there are cases of sexual offences where the defendants are assaulted by police or prison guards or severe assaults by the relatives of the victim which is a breach of Article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). This violates the Bill of rights which is enshrined in the Constitution of Vanuatu.

Vanuatu has ratified the CAT and has an obligation under the CAT to take effective legislative, administrative, judicial measures to prevent the act of torture. Torture in the conventions includes the "punishing a person for an act him or a third party person has committed or is suspected of having committed..."

ISSUE FIVE

Does the Penal Code Act provide sufficient protection to defendants in regards to imprisonment and sentencing?

Imprisonment is the main means of achieving incapacitation of violent and sexual offenders purposely for the protection of the community. Balancing the severe and harsh punishment on sexual offenders are the human rights provisions which limits arbitrary and excessive punishment and detention.

A) Alternative Imprisonment & Sentencing

Section 37 of the Penal Code CAP 135 provides that all offenders convicted of an offence punishable by imprisonment must have alternative sentences considered by the court. So far that is practicable and consistent with the safety of the community but imposes community sentencing or suspended sentencing. Courts often suspend sentences for sexual offences, but not normally for rape or sexual intercourse without consent. The courts also take into account the protection of the community and public as a factor in determining the length of sentencing.

Under the Penal Code CAP 135 the maximum sentence for sexual offences ranges from life imprisonment to 2 years. In sentencing sexual offenders the courts usually exercises its discretion taking account of customary reparation and reconciliation and other mitigating factors to impose a lower sentence.

B) Protection of Young Sexual Offenders

The Penal Code CAP 135 gives protection for young offenders which includes sexual offenders under the age of 16 years by requiring that those under 16 years of age not be imprisoned 'unless no other method of punishment is appropriate' (section 54). This reflects Article 37 of the Convention on the Rights of the Child, where Vanuatu must ensure that imprisonment of children under 18 is only a last resort and for the shortest appropriate period of time. Vanuatu's Courts have been criticized in the past for being reluctant to comply with this provision (or its predecessor) as in the case of *Public Prosecutor v Ben and others* [2005] VUSC 108, where 5 rape offenders, including three boys who were 15 years old, were sentenced to 5 years imprisonment by the Supreme Court. More recently in 2012 and 2013, sentences in the Supreme Court have generally given more weight to the offenders' ages, for example in cases of intentional assault, unlawful assembly and wilful damage to property (see *Public Prosecutor v Kepal and others* [2013] VUSC 54; *Public Prosecutor v Philip and others* [2013] VUSC 24). The Court has also avoided sentences of imprisonment for juveniles aged 16 or under convicted of sexual intercourse without consent in 2012 – in the cases of *Public Prosecutor v Sam* [2012] VUSC 173, *Public Prosecutor v Vuti* [2012] VUSC 154 and *Public Prosecutor v Aruel* [2012] VUSC 158. In each of these cases custom reconciliation had been offered or accepted.

The Solomon Islands provides a detailed procedure regarding protection of offenders under the age of 16. It provides that if in the opinion of the court the defendant is of need of control,

Should Vanuatu amend its law to provide similar provisions as in Solomon Islands and New Zealand?

Should Vanuatu amend section 54 so that young offenders do not get special leniency for more serious offences such as murder or sexual intercourse without consent?

protection and care then the court may make order for the defendant to be in care or protection of any fit person. The Act defines "fit person" as including any local authority, religious institution, welfare association or other organisation that is able and willing to undertake the care, protection or control of persons under the age of eighteen years.

A similar approach is also practiced in New Zealand where they carry out "community based programs" to protect adolescent sexual offenders where offenders receive treatment, counseling, special programs for adolescents with intellectual disabilities and developmental delay, and social work services.

ISSUE SIX

Should Vanuatu's criminal laws be improved so that they treat every victim equally, irrespective of gender and whether they are married or single or widowed or divorced?

Should it be better for Vanuatu to amend section 90 of the Penal Code to provide a fairer provision for all victims of impersonation or trickery as in New Zealand?

Should section 97A be amended to protect victims of aggravated sexual intercourse who are over the age of 15 years? If so, what should be the relevant penalty?

Should there be a separate penalty such as a harsh penalty of life imprisonment for offenders who commits aggravated sexual intercourse to vulnerable victims who are under 15 years and a less penalty for offenders against victims over the age of 15 years?

Or should it be amended so the current penalty of life imprisonment will apply to any offender(s) who commits aggravated sexual intercourse with any child under the age of 18?

Section 90 of the Penal Code CAP 135 provides that any person who has sexual intercourse with another person in the case of a 'married person', by pretending to be that person's husband or wife commits the offence of sexual intercourse without consent is also discriminatory. It is discriminatory as it will be only an offence if the victim was married.

This provision does not protect or apply to victims where the offender has impersonated the de facto partner, boyfriend or girlfriend of the victim and tricked the victim into sexual intercourse, because the victim was not married.

The laws of other Pacific Island countries have similar provision of sexual intercourse without consent. However the Crimes Act of New Zealand has provided a general provision that encompasses all cases, where the offender tricks the victim. It states that one person does not consent to sexual activity if he or she **allows** the sexual activity because he or she is mistaken about who the other person is. In this provision "**allows"** includes acquiesces in or consent, submits to, participates in, and undertake.

Contrary to the fundamental rights and freedoms set out in Article 5 of the Constitution, there are some provisions in the Penal Code CAP 135 that are currently discriminatory and need to be improved so that everyone, both offender and victim, will be treated equally.

Section 97 of the Penal Code CAP 135 which provides for the criminal offence of unlawful intercourse is discriminatory as it only protects children or victims under the age of 15. Young people of age 15 or over but below 18 years are also considered as child in accordance to CRC and laws of Vanuatu.

In addition, section 97A provides the criminal offence of aggravated sexual Intercourse with a child under the age of 15 years in circumstances of aggravation. This section is discriminatory in that it only protects children under the age of 15 years from any form of aggravated sexual intercourse. Children over the age of 15 years are also likely to be victim of this offence but are not protected under this provision. According to the Convention on the Rights of the Child (CRC) and the law of Vanuatu a child is every human being below the age of 18 years old. Article 2 of the Convention provides an international obligation for state parties of the convention to take all appropriate measures to protect every child against all form of discrimination.

Should it be lawful to have sexual intercourse with any child of or over the age of 15 years but below 18 years given that the child consents to have intercourse? If so, is it lawful for female child over the age of 16 years old who has entered into a marriage? Or should the law be amended so it is unlawful to commit sexual intercourse with a child of or over the age of 15 years but below 18 years regardless of the child's consent?

In that case should young offenders be protected – and not liable to prosecution -when their partner has consented to have intercourse?

Should intercourse with a person between 15 and 18 be unlawful where the partner consents and is married to the person or is less than 3 years older?

In a similar way should intercourse with a partner between 13 and 15 who has consented be unlawful where the person is not more than two years older?

Should Section 97 of the Vanuatu's Penal Code be retained, but provide a definition of 'Child' in that section as in New Zealand?

Should it be a criminal offence to commit an act of indecency on or in the presence of another child who is or over the age of 15 but below 18 years old?

The Crimes Act of New Zealand has the similar provision and further define 'young' person under the relevant section to be person under the age of 16 years. Should Vanuatu retain Section 98A, but provides the definition of young person to be person under the age of 16 years as in New Zealand?

Should young offenders be protected in the same way as for indecent acts as for sexual intercourse where their partner is not more than two or three years younger than them?

According to this section, it is unlawful for a person to have sexual intercourse with a child under the age of 13 years and also below 15 years old. The penalty of imprisonment of this offence is set at 14 and 5 years respectively. The interpretation of this provision interprets that it is not a criminal offence nor unlawful in Vanuatu to have sexual intercourse with a child of 15 years and over but below 18 years old unless it can be proved that there was no consent. This does not comply with the rights of the child under the Convention on the Rights of the Child (CRC) to protect child from all forms of discrimination which includes sexual abuse.

The Penal Codes and Crimes Acts of other Pacific Island countries and New Zealand have similar provision to section 97 of the Penal Code CAP 135 of Vanuatu. Under section 132 of the Crimes Act 2005 of New Zealand it provides that it is a criminal offence to have sexual intercourse with a child under 12 and further provides the definition of "child" under that section, meaning a person under the age of 12 years. That is to provide a clear and specific meaning of the child as those above 12 but below 18 years cannot be a victim of the offence.

Section 98A of the Penal Code CAP 135 provides for the criminal offence of act of indecency with a young person is also considered discriminatory. It states that a person must not commit an act of indecency upon, or in the presence of another person under the age of 15. This section only provides for children less than 15 years of age but there is a gap for children between the ages of 15 and 18 years old as there is no provision in the Penal Code that provides for this age group.

Opinions and Submissions

Any opinions expressed in this paper do not represent the policy position of the Government of Vanuatu or the Vanuatu Law Commission.

You are invited to make a submission on any matter raised in the Paper or anything you think is relevant to the laws in Vanuatu. Information on where and how to make submissions is found on page 2 of this Paper.