

CIVIL STATUS (REGISTRATION)

ACT 01/15

LEGISLATIVE REVIEW





**Civil Status
(Registration)
Act**

LEGISLATIVE REVIEW

No. 01/15



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FOREWORD

To date the Vanuatu Law Commission (VLC) has reviewed the *Public Health Act*, the *Dangerous Drugs Act*, the *Water Supply Act*, and the *Water Resource Management Act*. Reports have been published distributed to respective institutions and recommendations within these reports are taken on board whilst amending these laws.

As outlined in the *Law Commission Act [CAP 115]* which mandates the office; the Vanuatu Law Commissions' primary functions are to:

- a) remove anachronisms and anomalies; and
- b) reflect within the laws the distinct concepts of custom, the common and civil law legal systems and also reconcile where appropriate differences which may occur between the afore mentioned concepts; and
- c) develop new approaches to new concepts of the law whilst taking into account the responsive changing needs of Vanuatu Society, and of groups within the society as well as individual members of that society.¹

On the 14th of April 2014, the VLC received a reference from the Civil Status Department to review and reform the *Civil Status (Registration) Act [CAP 61]* as well as the *Marriage Act [CAP 60]* taking into account other correlating Acts which may also require changes should these two Acts be reviewed. Other Acts which were highlighted in the reference were the *Education Act No.21 of 2001*, the *Public Health Act No.22 of 1994*, and the *Statistics Act [CAP 83]*.

Two separate issues papers were formulated to highlight the issues addressed in the reference forms with regards to the *Civil Status Act* and the *Marriage Act*. The issues papers paved questions to be raised and addressed during the consultation phase for the *Civil Status Act* and *Marriage Act* Reviews throughout Vanuatu.

Areas which needed to be addressed, as highlighted within the reference form, were with regards to the registration of various vital events, licensing,

¹ Section 7 the *Law Commission Act [CAP 115]*

fees, penalties, newly introduced terms and also taking into account the **country's legal obligation under the WHO assessment framework**. Preliminary discussions with the Director of the Civil Status office also highlighted the need for introducing and also implementing an identity management system which would provide each citizen of the country with a national ID number as well as formally establishing an information system that would be able to be accessed by relevant stakeholders such as those in the Health as well as the Education sector.

The Law Commission has finalised the report with the hope that the results and recommendations clearly reflect the views of those whom participated in the reform process. In hindsight the customs and **country's international** legal obligations have also been considered whilst writing up the report. Issues relating to social, cultural and economic developments for the improvement of the Civil Registry processes have been highlighted **respectfully so as to ensure that the changes reflect Vanuatu's current** situation with respect to the people and **country's needs**.

Bertha Pakoasongi

Secretary of the Law Commission

AAV	<i>UK Adoption Act 1976</i> of Vanuatu
ACA	<i>Adoption of Children Act 1968</i> of PNG
AAM	<i>Adoption Act 2002</i> of Marshall Islands
BDMRAS	<i>Births, Deaths and Marriages Registration Act</i> of Samoa
BDMRAT	<i>Births, Deaths and Marriages Registration Act</i> of Tuvalu
CA	<i>Citizenship Act</i> of Vanuatu
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CMA	<i>Control of Marriage Act [Cap 45]</i>
CRC	Convention on the Rights of the Child
CRVS	Civil Registration and Vital Statistics
CSA	<i>Civil Status (Registration) Act [Cap 61]</i>
CSD	Civil Status Department
EA	<i>Education Act [Cap 272]</i>
LTA	Land Transport Authority
MA	<i>Marriage Act [Cap 60]</i>
NUID	National Unique ID
PHA	<i>Public Health Act [Cap 234]</i>
PSA	<i>Public Service Act [Cap 246]</i>
SA	<i>Statistics Act [Cap 83]</i>
TIN	Tax Identification Number
UDHR	Universal Declaration of Human Rights
UID	Unique ID Number

ABBREVIATIONS

In 2014, the Vanuatu Law Commission received a request to review the *Civil Status Act*. This followed a regional meeting of Heads of Planning and Heads of Statistics in New Caledonia in July 2013 and a Civil Registration and Vital Statistics workshop that was conducted by the Civil Status office, with the assistance of the Brisbane Accord Group, gathering together government officials from all across the different Government sectors in November 2013.

Consultations for the *Civil Status Act* legislative review took place in 5 provinces, namely Torba, Sanma, Penama, Shefa and Tafea with community consultations taking place on Mota, Ambae, Efate and Tanna. The main messages to the VLC were that the process of the registration of births, deaths and marriages needed to be improved and more accessible to the public. Furthermore, the fees that are charged for the registration process also needs to be consistent across the border in all the provinces

and especially for the government and provincial departments who are also responsible for registering these events.

This resulted in the VLC carrying out a complete legislative review of major parts of the *Civil Status Act* [Cap 61]. There were also other legislations that were identified that were related to the *Civil Status Act* and that were reported as out dated and needing much improvement and the general recommendation is that any laws for that matter which affects the process of the registration of births, deaths, marriages and divorce should be improved.

With the consultation, there was wide support that the whole process of registration itself should be changed and improved, to suit both urban and rural conditions. This comes as a result of the majority of the people stating that they were not aware of the registration process and even for those who were, there were difficulties in going through with it due to the inaccessibility of registration centres and human resources. The VLC recommends that the Civil Status Department with the help of the relevant stakeholders that constitute the National CRVS committee must provide proper facilities for registration throughout Vanuatu as well as take reasonable measures to provide practical incentives to allow people to register.

It was also found during the consultations that since the current *Civil Status Act* was old and out-dated, as it had been enacted in 1971, some of the terms used under the current Act were no **longer applicable in Vanuatu's current circumstances and needed to be changed and updated to account for Vanuatu's current situation.** The VLC recommends that the all the out-dated terms should be updated and that the Interpretation section of the Act should be expanded to cater for these changes.

Many people throughout Vanuatu raised their concerns regarding the fees that were being charged for the registration of the different events such as births, deaths and marriages. Not only did each event have a different fee but within each Province, the Provincial Government there also had its own registration process relating to the same events and it also charged different fees. To complicate matters even further, people in the rural areas faced the added cost of transport fees especially when they lived far from the registration centres. The VLC recommends that the fees should be set at a standard rate for everyone with offences

provided in the Act for anyone charging any extra fees, and that the Civil Status Department should be the sole department responsible for registration but should liaise with other different departments, especially the Provincial Governments, to ensure the effectiveness of the registration process.

The review found wide support that Vanuatu should have its own adoption law so that there would be better proper procedures put in place to provide for the different types of adoption taking place within the country. Currently while the Civil Status Department is the department responsible for also registering adoptions, there is no proper process that is followed as the Act that is responsible for adoption, *United Kingdom Adoption Act 1958*, is a very out-dated law that does not suit **Vanuatu's situation**. While customary adoption and legal adoption are the two main forms of adoption, a new practice that has emerged within Vanuatu is the adoption of adult foreigners under custom. This in itself has raised controversy, as to whether it is legally accepted or not, and is further compounded by the fact that there is no legislation that deals with this issue. The VLC recommends that **Vanuatu must enact its own adoption law to suit the country's current** circumstances, which will provide formal procedures of legal and customary adoption. Furthermore, the current *Civil Status Act* should also be amended to provide for the detailed procedures and conditions for the registration of legal and customary adoption.

Other recommendations include the amendment of the *Citizenship Act* along with the *Civil Status (Registration) Act* to cater for dual citizenship which was recently introduced in Vanuatu and which the Civil Status office is also responsible for registering. Furthermore in keeping with current practices and strategic measures, the idea of Vanuatu having its own National Identification Card to issue to its citizens has been proposed in order to keep all the information about one individual centralised in one database rather than having to go to the different responsible departments for the same information. The VLC recommends that the amended *Civil Status Act* must provide new provisions for the establishment of a National Unique ID Number and that the reference number in the birth certificate would be recognised and used as the National Unique ID Number.

Overall, this report contains detailed recommendations and drafting instructions for the amending of the *Civil Status Act* and the suggested reviews of a number of related laws such as the *Public Health Act*, *Marriage Act* and the *Citizenship Act*. The drafting instruction provides an overview of what the amended Act would look like.

CONTENTS

I.	Acknowledgement.....	Page 4
II.	Foreword.....	Page 5-6
III.	Abbreviation.....	Page 7
IV.	Executive Summary.....	Page 8-10
V.	Contents	
	1. Introduction.....	Page 12-13
	2. Chapter 1: Registration	Page 14-25

3. Chapter 2: Updating and Incorporating New Terms.....	Page 26-29
4. Chapter 3: Fees.....	Page 30-36
5. Chapter 4: Adoption.....	Page 37-46
6. Chapter 5: Citizenship.....	Page 47-53
7. Chapter 6: Other Laws and Issues.....	Page 54-62
8. Conclusion.....	Page 63-64
Appendix 1: List of Consultation.....	Page 65-67
Appendix 2: List of Sources.....	Page 68-70



Vanuatu comprises of 83 Islands and had gained its independence in 1980. The country is categorized under six different provinces namely TAFEA, SHEFA, MALAMPA, PENAMA, SANMA and TORBA. According to the 2012 Statistics Pocket Booklet, the estimated population for the year 2013 was around 264,652. The majority of the population was estimated to be **dispersed throughout Vanuatu’s rural areas while the remaining one quarter remained within the two main municipal cities namely Port Vila and Luganville.**²

² Statistics Pocket Book 2012, Vanuatu National Statistics Office, Ministry of Finance and Economic Management, Port Vila Vanuatu

The estimates, as highlighted in the statistics pocket book, provide spectators with a probable figure as to where **Vanuatu's population stands. Estimates may only be given as population data's being collected is not accurate and up to date.**

As highlighted by the Director of the Civil Status Department at the Civil Registration and Vital Statistics Meeting³, a rapid assessment carried out by the Civil Status and relevant **stakeholders, placed Vanuatu's current civil registration system as being 'dysfunctional' and thus warranted a review.** Attention was also needed across all aspects of the structure, function and support of this system.

A key aspect which ties in with this notion of review and requires detailed attention was the *Civil Status (Registration) Act* [CAP 61]. This particular Act caters for civil registration within Vanuatu, and is the key factor which validates the legality of civil registration within Vanuatu. This Act primarily focuses on regulating the civil registry system that the government has in place. The Act itself has been divided into seven parts ranging from Interpretations, registration centres, registration, late declarations and so forth.

This particular Act came into effect in 1971 and has undergone two judicial reviews, the first being in 1970 then again in 1975. It has also undergone reviews both pre and post-independence, and the most recent review was in 2009, which focused mainly on the appointment perspective with regards to the registrar general, assistant registrar general and the subordinate staffs⁴.

Apart from these appointments, there are other areas which require a review and they are namely; the effective registration of vital events⁵, licensing, fees, and penalties, newly introduced terms and also taking into **account the country's legal obligation under the WHO assessment framework⁶**

³ Civil Registration and Vital Statistics (CRVS) Meeting- Vanuatu, 12-14 November 2013

⁴ Civil Status (Registration) (Amendment) Act No. 24 Of 2009

⁵ The term vital events refer to events such as births, deaths, marriages, dissolution of marriages, adoptions and so forth.

⁶ Improving the quality of and use of births, death and cause-of-death information: guidance for a standards-based review of country practices, World Health Organization, 2010.

After five years since the last amendment, it is timely to review this important piece of legislation, and this is the purpose of this report. Attention will be drawn to relevant issues surrounding Civil Registration and Vital Statistics which are relevant to this Act and key areas requiring improvement will also be highlighted. The report will identify the limitations in the current law in this regard and further provide recommendations for possible and practical changes.

Discussions within the report will be structured under specific headings and in a format so as to address the following limitations and the issues under each of the following headings:

- Registration of Births, Deaths, Marriages and Divorces
- Updating and Incorporating new terms
- Fees
- Adoption
- Citizenship
- Other Laws

In addressing these issues, the Vanuatu Law Commission undertook consultation of this review on six islands. These islands were Sola (Vanua Lava), Mota Island, Santo, Ambae, Efate and Tanna respectively. Seven communities were visited. This report **considers Vanuatu's obligations** internationally, nationally and traditionally and recommendations made are based on findings made in the communities, provinces and with all the stakeholders that were consulted.



REGISTRATION

BACKGROUND

Civil registration systems is defined as a government administered system which is used to permanently record vital events including live births, deaths, marriages and divorces. In Vanuatu, this system of registration is facilitated by the Civil Status Department and is mandated by *the Civil Status (Registration) Act* [CAP 61]. **Within the country's' six provinces there** are sub registration offices in place within the provincial headquarters as

CHAPTER ONE

well as within the two municipal cities; Luganville and Port Vila, to assist with the task of registration⁷.

A meeting held by the Vanuatu Civil Registration and Vital Statistics task force brought together relevant stake holders with the help of the Brisbane Accord Group to discuss ways to improve the civil registration and vital statistics within Vanuatu as well as implement changes where necessary to accommodate the necessary legal framework. From this particular meeting it emphasized a few key areas which needed improvement. Firstly data on births, deaths and causes of death was dubbed a key and central component. Through these key areas being addressed, core health priority plans may be identified. Furthermore government delivery of services is maximized across a range of sectors, to promote community safety, and ensure individuals and families have access to their legal rights. Countries that can identify changes in population and thus changes in need are in a better position to plan for and seek needed resources⁸.

As part of improving Civil Registration and Vital Statistics (CRVS) in Vanuatu, the CRVS taskforce prioritized improving all current relevant legislations as one of its primary goals, as it ties in with improving CRVS in Vanuatu. The taskforce recommended in its assessment report that drastic changes need to take place with regards to the current law as it is out-dated⁹ and such changes should be extended to other relevant laws.

A few keynote areas in the current *Civil Status (Registration) Act* which are deemed as out-dated are the terms being used. For **example term 'districts'** is no longer used as Vanuatu is now **categorized by 'provinces'**. Another key area which somewhat renders the Act out-dated is with regards to the mode of entries into register which the Act states may only be done by handwriting. However, currently the Civil Status Department is also using computers to electronically enter entries.

⁷ United Nations International Children's Emergency Fund, 'Regional Workshop on Enhancing Birth Registration in the Pacific: Fiji, Kiribati, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu and Timor-Leste Report' (Workshop held in Jovili Meo Mission Centre, Pacific Theological College, Suva, Fiji from 25-27th May, 2005).

⁸ CRVS Taskforce with the assistance of the Brisbane Accord Group, Civil Registration and Vital Statistics (CRVS) Meeting– Vanuatu, (held from 12-14 November 2013)

⁹ Karen Carter, Vital Statistics and Civil Registration Specialist, Secretariat of the Pacific Community , 'CRVS assessment results- Vanuatu' (March 2013), pg.9 &10

Moreover a recent global summit on civil registration and vital statistics held in Bangkok, Thailand highlighted a few key issues and addressed the issue of civil registration as being an inter-governmental responsibility between each departments and Ministries namely the Ministry of Health, Ministry of Justice and National Statistics Office.¹⁰ It was also noted that Civil registration contributes to public administration and governance by providing individuals with a legal identity and civil status and by generating information that can be used as the source of civil registries and population databases.¹¹

Moreover Fiji, like Vanuatu, has taken the necessary steps to also improve its CRVS. A working paper compiled in 2013 emphasized the need for Fiji to develop a country plan after having underlined its strengths and weaknesses in its CRVS system. A country plan was mapped out for Fiji and one of the key recommendations for this plan was for Fiji to improve its legal sector. It was recommended that it review its legislations as well as strengthen its data sharing. It should also define roles of each agency as well as review certain policies especially with regards to compliance and litigation purposes¹².

Lastly the CRVS taskforce in Vanuatu highlighted other key areas which also required addressing which were registration practices as well as the establishment of provincial CRVS committees which are to help administer and carry out registrations within the rural areas.

WHAT PEOPLE SAID

Registration of Births, Deaths, Marriages and Divorces must be compulsory

- *During the consultation, the majority of the people in the rural areas were not aware of the importance of registering these vital events and that it was a legal requirement to register.*
- *The percentage of those whom knew about registration failed to register because of financial difficulties coupled with the remoteness of villages and communities which meant an increase in expense and*

¹⁰ <http://www.globalsummitoncrvs.org/crvs.html>

¹¹ <http://www.globalsummitoncrvs.org/crvs.html>

¹² Shivnay Naidu, Michael Buttsworth & Audrey Aumua, 'Strengthening civil registration and vital statistics systems in the Pacific: the Fiji experience,' (Working paper No. 35, University of Queensland School of Population Health Working paper series, 2013)

an added struggle for the those in the remote areas to get to nearest registration centres thus causing an obstacle which most opt to avoid and not register all together.

- *Most people have also pointed out that there are not enough proper registration facilities being put up in place in most rural areas as well as not enough human resources to carry out registrations.*
- *As the majority of the population thrives on customary practices, it has been acknowledged by most that such practices may also be a reason as to why registration of such vital events are not being carried out effectively. An example would be with regards to naming a baby whilst abiding by the traditional customary practices. After a baby is born, most parents would not name the baby until after a custom ceremony has been carried out. Thus once a baby is born he or she is taken home, whereby a custom ceremony is to be performed before naming the baby. Custom ceremonies as such vary within custom communities and the length of time before such ceremony is to take place after birth is unknown and not always consistent. Such instances may greatly affect the accuracy of data being collected with regards to births.*
- *Most of the stakeholders whom were consulted stressed the importance of having a clearly defined chain of command in the current law and also that registration forms need to be revised. An example of the chain of command would be that the National Committee being the parent administrator with regards to CRVS and the Director of Civil Status is to be the Chairperson. Being the parent administrator the national committee is to oversee works carried out by the provincial CRVS committees. Any administrative matters must be dealt with by the relevant committees accordingly.*
- *The stakeholders also emphasized on the urgency for relevant Government Departments and Ministries such as the Ministry of Education, Health, the National Statistics office and other relevant Departments to work together to improve CRVS.*
- *The general consensus from the consulted populace was that awareness on the importance of registering needed to be carried out throughout the country and that incentives had to be made available for those registering.*

- *Some of the incentives provided by both stakeholders and those in the rural areas was a decrease in fees or free registration to be afforded to those in rural areas.*

Re-registration of Birth, Marriage, Divorce and Death of Individuals abroad

- *The majority of the populace that was consulted agreed with the notion of re-registration of births that have occurred overseas. However adults whom have migrated overseas and have either attained citizenship or permanent residency status in a different state may not return to re-register. The general consensus with regards to re-registration of marriages, deaths and divorces that have occurred overseas is that such events should not be re-registered in Vanuatu. With regards to marriages they should not be re-registered but the laws in Vanuatu should acknowledge them as being valid if they were deemed valid by the state in which the marriage occurred.*
- *The people express their view that marriages which have occurred overseas should only be deemed valid if there is actual certified documentation that the marriage is valid. Similarly with regards to births there should only be re-registration if there is valid certified documentation.*
- *The majority of the people that were consulted disagreed with the notion of registering same sex marriages.*

Recognized entries for registration

- *During the consultation majority of the people agreed that entries into registers should be extended to also include entries done through any means of technological devices or done electronically.*

Provincial Committees for Civil Registration and Vital Statistics

- *The populace that was consulted during the consultation agreed with the idea that there should also be a provincial committee for the CRVS.*
- *The majority of the people agreed that the composition of the committee should be made up of;*

- *Relevant subordinate stakeholder offices within the provincial headquarters such as the Education office, Civil Status, Health and other relevant departments.*
- *The Area Secretary in each of the provinces.*
- *Respectable community leaders such as chiefs and pastors.*
- *Most of the people suggested that these provincial committee members should be appointed by the people.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That the *Civil Status (Registration) Act* [CAP 61] of 1971 must have a provision clearly stating that registration of births, marriages, divorces and deaths are compulsory.
2. That the Civil Status Department with the help of the relevant stakeholders that constitute the national CRVS committee, must provide proper facilities for registration throughout Vanuatu as well as take reasonable measures to provide practical incentives in order to allow people to register.
3. That the *Civil Status (Registration) Act* be amended to cater for different modes of registration entries as well as specify the types of vital events which can and cannot be re-registered.
4. That a new part 3 be inserted into the *Civil Status (Registration) Act* to cater for Civil Registry Vital Status (CRVS) and its committees.
5. That the *Civil Status (Registration) Act* must have a provision which details and establishes a CRVS Provincial Committee.
6. That the current part 3 of the *Civil Status (Registration) Act* on Registration will be considered as the new part 4 of the *Act*.

DRAFTING INSTRUCTIONS

The Vanuatu Law Commission has been looking at the law of other South Pacific regional countries as an example and make these following drafting instructions to take in the above recommendations:

1. Amend the paragraph under Part 1- General in Section (1) Application to read:

All registration of births, acknowledgements, deaths and marital status of persons are compulsory and shall be conducted according to the provisions of this Act.

2. Add a new Section 17 to go under part 3 of registration which will read:

(17) Procedures with regards to registrations

(1) Procedures as to how registration of births, acknowledgements, deaths and marital status is to be carried out in respect of the different areas and different circumstances which may arise, are at the discretion of the Civil Status Department to determine such procedures.

(2) Such procedures are to be outlined in a regulation by the Director of Civil Status with the approval of the Minister of Internal Affairs.

3. Add a new section to be Section 22 with its heading as Registration for Dual Citizenships. Sections that follow are to be amended accordingly.

A person whom has been granted dual citizenship may register themselves with the Civil Status Department given that they provide proper certified documents required by Civil Status.

4. Amend section 23 to be section and add the following new subsection (4)

(4) Any marriage that was celebrated in a country apart from Vanuatu can only be registered in Vanuatu as long as such registration would not contravene any of the provisions in the Control of Marriage Act [CAP 45] .

5. Amend section 24 and introduce subsections with the current paragraph as subsection 1 with a new subsection 2 which states:

24. Registration of Marriages

(1) Lawful dissolution or nullification of marriage shall be declared within a period to be prescribed by the Minister by Order to the Registrar or Provincial Registrar concerned, who shall make an entry in the appropriate register. Every such entry shall state the measures taken for the care of any children born of such marriage.

(2) Any dissolution or nullification of marriage done in a country apart from Vanuatu cannot be registered in Vanuatu.

6. Amend section 25 and insert the following new subsection (3):

(3) Any death of a citizen of Vanuatu that has occurred in a country apart from Vanuatu can be registered in Vanuatu provided that the appropriate procedures are followed as instructed by the Civil Status Department.

7. Amend section seven (7) Entries in registers to be handwritten to **'Entries in registers shall be handwritten then electronically entered and stored or directly electronically entered'** and add the following:

- a. Every entry in these registers shall be written out by hand in the appropriate form prescribed by the Schedule and entered electronically by registrars and any other authorized person.
- b. When the entry is made by a Registrar or the authorized person they shall submit the handwritten forms to the central registry. The registrar or authorized persons must issue a certified document certifying the registration of the vital events before sending all handwritten forms to the central registry.
- c. Every entry made by a Registrar or any authorized person shall **be considered as Vanuatu's authorized official records.**
- d. Any person apart from a registrar or authorized person found changing authorized records is guilty of an offence.

Penalty: 5 years imprisonment or a fine not exceeding VT200.000 or both.

8. Insert a new term to be defined under section two(2) Interpretation:

"Vital Events" means births, deaths, foetal deaths, marriages and divorces.

9. Insert and provide a new part titled Part 3 Civil Registration Vital Statistics Committees for the establishment of the Civil Registration Vital Statistics Committee. The titles of these various parts are to be also changed accordingly. The current part 3 to be part 4 and so forth.

PART 3- Civil Registration and Vital Statistics Committee

18. National and Provincial Civil Registration and Vital Statistics Committee

This provision is to establish a National and Provincial Civil Registration and Vital Statistics Committee.

19. The National Civil Registration and Vital Statistics

- a. The National Civil Registration and Vital Statistics Committee shall consist of six members and should have representatives from the following government department or ministry;
 - i. one from Ministry of Education
 - ii. one from the National Statistics Office
 - iii. two from the Ministry of Health
 - iv. two from the Civil Status Department
- b. The terms of each national committee member depends solely on the period of employment of each member within their respective offices and positions to which they occupy.
- c. The functions of the national committee are to:
 - i. ensure civil registration and vital statistics are updated regularly throughout Vanuatu
 - ii. conduct and coordinate national improvement plans throughout the country
 - iii. devise and implement national improvement plans with regards to improving civil registration and vital statistics plans
 - iv. ensure that national improvement plans are being adhered to as well as obtain high level endorsement plans and support with regards to such improvement

- v. appoint relevant stakeholder representatives within the provincial governments in order to constitute the provincial civil registration and vital statistics committee.
- vi. oversee that the provincial committees are effectively carrying out their relevant duties within the provinces.
- vii. the CRVS committee shall receive applications for late registration from the Registrar or any Sub-Registrar within Port Vila or from the persons concerned. They shall hear the evidence of any person called by the applicant or by the committee to give sufficient proof of the alleged facts. They shall, if satisfied thereof, order the entry of the particulars in the appropriate register. They may for this purpose make any enquiry they think necessary.

20. Provincial Civil Registration and Vital Statistics Committee

- a. The members of the provincial civil registration and vital statistics committee are to be appointed by the National Civil Registration and Vital Statistics Committee.
- b. The functions of the provincial committee are to:
 - i. oversee registration practices within respective provinces
 - ii. ensure that every vital event which occurs within the provinces are registered
 - iii. liaise with area secretaries within each respective provincial areas in order to provide for effect registration of vital events
 - iv. provide updates and report to the National Civil Registration and Vital Statistics Committee
 - v. carry out any tasks set by the director or National Civil Registration and Vital Statistics Committee.
 - vi. receive applications for late registration from the Registrar or any Sub-Registrar from the provinces or from the persons concerned. They shall hear the evidence of any person called by the applicant or by the committee to give sufficient proof of the alleged

facts. They shall, if satisfied thereof, order the entry of the particulars in the appropriate register. They may for this purpose make any enquiry they think necessary.

- c. The terms of each member of the Provincial Civil Registration and Vital Statistics are to be determined by the National Committee.

10. Amend Sections 31, 32 and 33 of Part 4: Late Declarations to allow for CRVS committees to deal with late declarations instead of the proposed **'late committees'**.

31. Late registration to be dealt by CRVS committees

(1) The CRVS committees are responsible for verifying the accuracy of late declarations. The national CRVS committee deals with late declaration issues in Port Vila and oversees any related late declaration issues nationally. The provincial CRVS committee deals with late declarations within each respective province.

(3) The Committees shall receive applications for late registration from the Registrar or any Sub-Registrar of the province or from the persons concerned. They shall hear the evidence of any person called by the applicant or by the committee to give sufficient proof of the alleged facts. They shall, if satisfied thereof, order the entry of the particulars in the appropriate register. They may for this purpose make any enquiry they think necessary.

(4) In the case of oral evidence, the averment of two adult witnesses shall be considered sufficient proof, provided that they have first sworn an oath administered by the chairman, who is hereby empowered for that purpose. The administration of such oath shall be recorded in the report of the committee.

(5) A copy of an entry issued by any church which maintains registers of births, deaths and marriages or dissolution or nullification of marriages shall be considered sufficient evidence provided that the date of the event recorded is shown on the register and that the copy is certified as correct by the minister of religion who keeps the registers.

32. Form of late declaration

(1) A late declaration may be made by any person authorized to declare a birth, death or marriage under the provisions of this Act. It may be made either to the Registrar or Sub-Registrar or to the CRVS committee of the Province. It may be made in writing or verbally. In the latter case, the authority receiving the declaration shall make a written report of it, which must be signed by the authority and the declarant.

(2) Every declarant shall state, as fully as possible, its object and the supporting evidence. Notwithstanding the foregoing provisions of this Act, a person not less than 15 years of age may himself make a late declaration of his birth. For persons less than 15 years of age, the declaration may be made by any person, in addition to the persons specified in section 18, who is at the time responsible for the child.

33. Particulars to be entered following decision of late registration committee

(1) Following the decision of the CRVS committee, the Registrar or Sub-Registrar shall enter the particulars of the birth, marriage or death in the appropriate register and shall send the original copy of the entry to the Director of Civil Status in accordance with the provisions of section 7.

(2) The Director shall authenticate the original copy and file it according to its date in the register for the year in which the event took place.



UPDATING AND INCORPORATING NEW TERMS

BACKGROUND

The *Civil Status Act* is an old piece of legislation that was enacted in 1971, before independence. Due to the condominium governing system that was in place prior to independence, most of the laws that were enacted and used were adopted from the two colonial governments. Since its enactment, only one amendment has been made to the Act and this was done in 2009 with regards to the appointment of the Registrar-General and subordinate staff, such as the sub-registrars. Apart from this amendment, the provisions and sections have basically remained the same for 43 years.

The terms in the Act are out-dated and are dubbed archaic and of foreign context which do not reflect the current situation in Vanuatu. Circumstances and times have changed since and the current Act does not cater for this.

In the Pacific region, Samoa has one of the most updated Acts with regards to births, deaths and marriages registrations. Prior to independence in 1962, Samoa had two systems of Birth Registration, one for foreigners and one for Samoans. In 2002, the original 1961 Registration Ordinance was repealed and replaced with the *Births, Deaths and Marriages Registration Act* which was later supplemented by Regulation 2004. **Samoa's registration process is at an advanced stage as the legal framework is in place and also the mechanism.**¹³

CHAPTER TWO

¹³ UNICEF 'Part II- Regional Workshop on Enhancing Birth Registration: Fiji, Kiribati, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu and Timor-Leste' http://www.unicef.org/pacificislands/BR_Report_Part2.pdf (Accessed 21/08/2014)

WHAT PEOPLE SAID

Updating of Terms

- *Some of the terms used in the current Act are no longer applicable in Vanuatu's current circumstances or conditions.*
- *These terms should be changed and updated to account for Vanuatu's current situation.*
- *To cater for these changes, the Interpretation section of the Act must also be expanded to provide for these new terms.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. **That the term "Home Affairs" be changed to the current one that is being used now which is "Internal Affairs".**
2. **That the term "districts" should be changed to suit Vanuatu's current situation where the islands have been split up into Provinces.**
3. **That the term "district registrars" should be changed to "Provincial registrars" or "Authorised registrars".**
4. **That the term "Registrar-General" should be changed to "Director".**
5. **That the term "Civil Status Department" should be changed to "Civil Registry Department".**
6. That the Interpretation section of the Act should be expanded to include any new terms that would be included in any amendments made to this Act.

DRAFTING INSTRUCTIONS

THE Vanuatu Law Commission have been looking at the laws of other South Pacific regional countries as an example and make these following drafting instructions to take in the above recommendations:

11. Amend the last line of the Interpretation section of the Act:

“Minister” means the Minister responsible for Internal Affairs.

“Director” means the Director responsible for Civil Registry Department.

12. Amend ‘district’ in section 4 (3) to ‘province’:

“The Minister may subdivide registration areas in the 6 different provinces.”

13. **Amend “Registrar-General” and “Assistant Registrar-General” in Part 2, section 3 to “Director” and “Deputy Director” of the Civil Registry Department. This amendment is to apply to this term in the proceeding chapters of the Act.**

3. Appointment of Director

- (1) The Public Service Commission is to appoint a person in writing to be the Director of the Civil Registry department after consultation with the Minister.
- (2) A person must not be appointed as a Director unless he or she has a degree or a higher qualification from a recognized institution.
- (3) The Director is responsible for the maintenance and verification of the central register of the Civil Registry in accordance with the provision of, and generally for the administration of this Act.

3A. Appointment of Deputy Director

- (1) The Public Service Commission is to appoint in writing one or more person as Deputy Director.
- (2) The Director may in any case where he or she is prevented by any cause from the exercise of his or her functions or

powers under this Act, delegate the same to the Deputy Director.

14. **Amend "District Registrars" in section 4 to "Provincial Registrars".** This amendment is to apply to this term in the proceeding chapters of the Act.

Provincial Registrars

- (1) Appointment of Provincial Registrars shall be made in accordance with the Public Service Act.
- (2) The instrument of appointment of a Provincial Registrar for Civil Status shall declare the Province within which he may register matters of civil status.



FEES

BACKGROUND

The Civil Status Department, under the Ministry of Internal Affairs, has the responsibility and duty to register all births, deaths, marriages and divorces. Section 40 of the *Civil Status Act* provides the Minister the discretion to impose

fees on the service delivered by the Department. The Act also makes reference to a time limit within which after a **child's birth, nurses or parents or family members should** ensure that a child is registered. Once that time period has elapsed, then a fee must be paid known as a late registration fee.

However Vanuatu has its complications when it comes to the registration of these vital events as there are a number of departments that actually carry out registrations as well. In all the Provinces, the Provincial Offices also carry out their own registrations and have a different fee to that charged by the Civil Status Office. In most cases, it is usually higher. In the two urban areas, Port Vila and Luganville, the Municipal also does registrations and it too has different fees. Furthermore, the current Act does not have a section or schedule that provides for the amount of fees that are charged.

Vanuatu being a member state of the United Nations, automatically allows it access to the various UN relief programmes which this particular international organizational body administers. UNICEF being one of these programmes has set up an office in Vanuatu and it advocates that birth registration, should be free whether or not it be a late registration. UNICEF also states that fines or charges for late registration are counterproductive and an obstacle to birth registration. However, civil registration cannot be delivered adequately unless they are sufficiently

CHAPTER THREE

resourced and the functioning of the whole civil registry depends entirely on these resources.¹⁴

Within the Pacific region, Tuvalu's *Birth, Deaths and Marriages Registration Acts* provides in its Schedule 2 that names shall be free for ascertaining the age of the applicant for Judicial or Educational purposes.

Fiji has a very well established registration system. No penalty is incurred for late registration until after one year. Births registered after two months must be made by a solemn declaration. Registration is free, but issuing a birth certificate incurs a prescribed fee.¹⁵

WHAT PEOPLE SAID

Fees

- *Even though the fees are low, for the majority of those consulted in the remote areas, it was still a bit high for them as they also have to consider the cost of transport to get to the offices to register these vital events.*
- *A lot of the people consulted felt that with a lot of offices responsible for overlooking the issue of births, deaths and marriage registration, it was a bit confusing and duplicating.*
- *Only one department should be responsible for the registration of these vital events to cut down on costs, fees and confusion associated with a number of departments looking after one issue.*
- *There should be a standard fee used by all departments and in all the provinces.*
- *Any government officer or responsible provincial officers, who charge more than the standard fee, as is the case in some of the remote areas, should be disciplined.*
- *The first registration of babies should be made free.*

¹⁴ United Nations Children's Fund (UNICEF) 2013 'A Passport To Protection: A Guide to Birth Registration Programming' http://www.unicef.org/protection/files/UNICEF_Birth_Registration_Handbook.pdf (Accessed 4/9/14)

¹⁵ Shivnay Naidu, Michael Buttsworth and Audrey Aumua, 'Strengthening civil registration and vital statistics systems in the Pacific: the Fiji experience' (2013) Number 35, Working Paper Series http://www.uq.edu.au/hishub/docs/WP35/WP35_civil%20reg_fiji_web.pdf (Accessed 4/9/2014)

- *Consideration should be taken into account when setting the standard fees, for those living in remote areas and where money is hard to come by.*
- *In relation to the above point, those consulted felt that a late registration fee should not be charged for at least the first year instead of the 21 days provided for in the current Act.*
- *That the different departments dealing with the registration of these vital events should cooperate and work together.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That the fees should be set at a standard rate for everyone and by the Minister by form of regulation and all the offices dealing with the registration of these vital events should abide by this.
2. That the fee with regard to birth registration, Ni-Vanuatu Marriages and foreigners marriages in Vanuatu shall comply with the 2009 *Civil Status (Registration) Act* Amendment.
3. That the fee with regard to Divorce and Death registration shall be regulated by the Minister.
4. That for late registration fees, no penalty should be incurred until after one year.
5. That only one department, Civil Status Department, should be responsible for the registration of the vital events such as births, deaths and marriages.
6. That the Civil Status department should be the central and administrating department and is to oversee registrations carried out by different departments.
7. That there should not be any extra fee or amount added onto the standard rate by the officers in charge of registering these vital events. Any officer guilty of doing so should be penalized.

DRAFTING INSTRUCTIONS

THE Vanuatu Law Commission have been looking at the laws of other South Pacific regional countries as an example and make these following drafting instructions to take in the above recommendations:

15. Amend section 40 to include a standard rate:

40. Fees

- (1) Fees for copies or extracts from register

Entries in any registers, for the registration of births, shall be made free of charge. A fee may be charged when copies or extracts are issued, the amount of which shall be prescribed by the Minister by Order.

- (2) No extra fees should be placed or charged again in addition to the standard rate.
- (3) A standard rate for each vital event shall be applied throughout Vanuatu by the Minister by form of regulation.
- (4) Any other fees as prescribed by the Minister based on advice from the Director.

16. Amend Part 2-Registraton Centres to insert a new section 3 to provide for the Civil Status office to be the principal sole administrator responsible for registering these vital events:

III. Responsibility of Civil Status Office

The Civil Status office shall be the sole and principal office responsible for registering vital events such as births, deaths and marriages.

17. Amend Part 5-Penalties to include a new section 37 to provide for the offence of a Civil Status officer overcharging a member of the general public.

37. Penalty for non-compliance with section 40(2)

Any Registrar or Assistant Registrar, who contravenes the provision of section 40(2) for the application of the standard rate fee, shall be liable to a fine not exceeding VT10, 000.

18. Amend Part 3-Registration sections 18, 23, 24, 25 and 26 to provide for late registrations for the different vital events:

PART 3- REGISTRATION

18. Registration of births

- (1) All births shall be declared within a period of 3 months by:
- (a) the father or mother of the new-born child; or
 - (b) a member of the family; or
 - (c) the doctor, midwife, or medical officer who was present at the birth; or
 - (d) the person at whose house the birth took place; or
 - (e) the village chief, local leader or clergyman; or
 - (f) any person having knowledge of the birth.
- (2) Any birth not declared within 3 months from the date of birth shall be made subject of a late declaration under the provisions of Part 5.

23. Registration of Marriages

- (1) A declaration of marriage shall be made within a period of 1 month or 31 days to the Director or Provincial Registrar concerned who shall enter the particulars in his register of marriages in accordance with the form prescribed thereof by the Schedule.

24. Registration of dissolutions and nullifications of marriage

Every lawful dissolution or nullification of marriage shall be declared within a period of 1 month or 31 days to the Director or Provincial Registrar concerned, who shall make any entry in the appropriate register. Every such entry shall state the measures taken for the care of any children born of such marriage.

25. Registration of deaths

- (1) Every death shall be declared to the Director or Provincial Registrar of the place where it has occurred within a period of 1 month or 31 days by-
 - (a) a member of the family of the deceased who was present at the time of death or who had attended the deceased shortly beforehand; or
 - (b) any other member of the family, the owner or occupant of the building in which the death occurred, any medical officer or any other person, in particular any village chief, local leader or clergyman, who has knowledge of the death and full and accurate particulars of the civil status of the deceased, as far as possible; or
 - (c) the Area Secretary, nurse, village health worker.
- (2) Every entry in the register of a death by a Director or Provincial Registrar shall state-
 - (a) the civil status of the deceased as fully as possible.
 - (b) the date, time and place of death; and
 - (c) the civil status of the declarant.

26. Registration of foetal deaths

- (1) Every foetal death shall be declared to the Director or Provincial Registrar of the place where it has occurred within a period of 1 month or 31 days by-
 - (a) the mother, or if she is unable to do so, the father or any member of the family of the mother who was present or attended the mother at or about the time of the separation; or
 - (b) any other member of the family, the owner or occupant of the building in which the separation occurred, any medical officer or any other person, in particular any village chief, local leader or clergyman, who has knowledge of the foetal death; or

- (c) the Area Secretary, nurse, village health worker.
- (2) Every entry in the register of a foetal death by the Director or Provincial Registrar shall state-
- (a) the civil status of the mother as fully as possible
 - (b) the date, time and place of the foetal death;
 - (c) the age and sex of the foetus, if known;
 - (d) the civil status of the declarant.



ADOPTION

BACKGROUND

Adoption has been defined as a relationship created between a parent child and that of an individual(s) whom are not related by blood¹⁶. Once an adoption has been completed, the adoptive child is now entitled to all the privileges belonging to that of a natural child of the adoptive parents, and the adoptive parents **in turn acquire all the rights, duties, and obligations of the child's natural parents**¹⁷. There are two types of adoption that are currently practiced in Vanuatu, which are formal and informal adoption. Formal adoption relates to legal adoption through the Court system whereas customary adoption is adoption being carried out according to various procedures and customary practices within the islands of Vanuatu. In order for the adopted child to be formally recognized as part of the adopted family, the child must be legitimized by registering his or her name at the Civil Status Office. However, Vanuatu's *Civil Status (Registration) Act* [Cap 61] and other associated laws do not clearly define procedures one must follow in order to legally validate an adoption.

While Vanuatu recognizes legal adoption, no national legislation has been passed to regulate the procedures of formal adoption. Vanuatu is still using the *United Kingdom Adoption Act 1958*. However this UK legislation is out dated and has been repealed by the *UK Adoption Act 1976*. The 1958 and 1976 Adoption laws were later replaced by *the Adoption and Children Act 2002* which does not apply to Vanuatu¹⁸.

Like legal adoption there is no local legislation that recognizes customary adoption. However Article 95 (3) of the Constitution of Vanuatu recognizes Customary Law. Despite the absence of Laws regulating customary adoption this form of adoption is still practiced in Vanuatu and the procedures being followed vary from one community to another. In addition the increasing inter-marrying of people of different custom groups

¹⁶ Webster's New World Law Dictionary 'adoption –Legal Definition' <http://www.yourdictionary.com/adoption> (Accessed 18 August 2014)

¹⁷ Yosef Jacob (JD, LLM, PHD), 'Revisiting Messina vs. USCIS' (2014) <http://www.ilw.com/articles/2010,1028-yacob.shtm> (Accessed 18 August 2014).

¹⁸ 'Over View Of English Adoption' <http://www.adoptionpolicy.org/pdf/eu-england.pdf> (Accessed 8/10/2014)

and moving from one location to another also causes uncertainty about the status of a custom adoption¹⁹.

There is also an increase in the practice of customary adoptions of indigenous adult which seek to be legally recognized by the Court purposely for inheritance of land property, the passing of title or name and is also used as a ground for granting naturalized citizenship²⁰. The repealed *UK Adoption Act* and the *Citizenship Act* does not provide for adult adoption. Furthermore inter-country adoption is also happening in the country and the *Civil Status (Registration) Act* does not cater for registration of inter-country adoption²¹. The repealed *UK Adoption Act* also does not provide clear procedures for inter-country adoption.

In regards to its international laws and obligation, Vanuatu is a member country of the United Nation Convention on the Rights of the Child (CRC). This convention places international emphasis and obligation to all state parties to enforce their domestic laws in regards to local and inter-country adoption. Article 21 of the Convention is a protection provision for the children and provides that all state parties must take all appropriate legislative and administrative measures to ensure that children have the right to care and protection if they are adopted locally and inter-country²². This international law highlights that the paramount principle for adoption is solely based on the best interest of the child²³. However this international obligation is not fully implemented in Vanuatu as it does not have its own local legislation to cater for the procedures and rights for protection of adopted children.

Whilst the *Civil Status (Registration) Act* is silent on the registration of legal and customary adoption, the Courts do grant legal adoption and recognize customary adoption. In legal and inter-country adoption, the primary consideration for the Courts is whether or not the adoption will meet the best interest of the child²⁴. In regards to customary adoption, the judges of the appellate court of Vanuatu commented in the case of *In re Estate of*

¹⁹ Sue Farran "A Microcosm of Comparative Law: the Overlay of Customary, French and English Family Law in Present Day Vanuatu" (2000) Oxford U Comparative L Forum 1 at ouclf.iuscomp.org (Accessed 4/04/2014)

²⁰ Office of the Ombudsman "Public Report on the unlawful decision of the Citizenship Commission to grant Citizenship to a Latvian national" [2012] VUOM 1; 2012.01 (13 April 2012) <http://www.paclii.org/cgi-bin/sinodisp/vu/ombudsman/2012/1.html?stem=&synonyms=&query=dual%20and%20citizenship> (Accessed 5/08/2014)

²¹ *In re Child M* [2011] VUSC 16; Adoption Case 23 of 2010 (15 March 2011)

²² *Article 21 (Adoption): Children have the right to care and protection if they are adopted or in foster care. The first concern must be what is best for them. The same rules should apply whether they are adopted in the country where they were born, or if they are taken to live in another country.*

²³ *Ibid*

²⁴ *In re Child M* [2011] VUSC 16; Adoption Case 23 of 2010 (15 March 2011)

Molivono that in customary adoption the Courts asserts and recognises customary adoption that was performed in accordance with the custom of that place and its tradition and that the appropriate recognition exist as customary adoption²⁵.

In comparison the Civil Registration laws and Adoption laws of other Pacific Island countries clearly provide for the registration of formal and customary adoption. In Papua New Guinea the *Adoption of Children Act 1968* provides that where a child has been in the custody or has been brought up maintained and educated by any person or jointly spouse as their own child under any custom it is recognised as customary adoption²⁶

The adoption is then registered under *the Civil Registration Act 1963* of Papua New Guinea²⁷. The Marshall Islands *Adoption Act 2002* on the other hand set out in detail what factors the court must take into account in determining the best interest of the child²⁸. Lastly in Kiribati, any person may apply to the Magistrate Court for a certificate of customary adoption. Upon receiving the certificate issued by the Magistrate Court, the registrar enters the particulars of the custom adoption²⁹.

WHAT PEOPLE SAID

Registration of legal adoption by Civil Status

- *During the consultation, the majority of the stakeholders and the people in the villages and communities were not aware and did not understand the procedures of legal adoption.*
- *The majority of the population of the country resides in the rural villages and communities and most have argued that there should be more awareness carried out in the remote villages and islands regarding the process of registration of adoption.*
- *There was general consensus and support from the people that it is about time for Vanuatu to have its own adoption law that will reflect the current circumstances of the country. This new adoption law will clearly outline the process and procedures for the registration of legal adoption.*

²⁵ *In re Estate of Molivono [2007] VUCA 22 Civil Appeal Case 37 of 2007 (30 November 2007)*

²⁶ *Adoption of Children Act 1968 (Papua New Guinea)*

²⁷ *Civil Registration Act 1963 (Papua New Guinea)*

²⁸ *Adoption Act 2002 (Marshall Islands)*

²⁹ *Births, Deaths and Marriages Registration Act 2007 (Kiribati)*

- *The people expressed their views that the United Kingdom Adoption Act 1958 is out dated and difficult to understand. Therefore the Civil Status (Registration) Act should be amended to cater for the registration of legal adoption.*
- *Currently, the Civil Status (Registration) Act does not cater for registration of adoption. Majority of the relevant stakeholders consulted have expressed their support that the Act must be amended to provide detailed procedures and conditions for the registration of legal adoption.*
- *During the consultation, most people support the notion that all applications for an adoption must be determine before the superior courts. Once the courts have granted an adoption, the successful applicant must register the particulars of the legal adoption under the Civil Status (Registration) Act.*

To recognise and register customary adoption

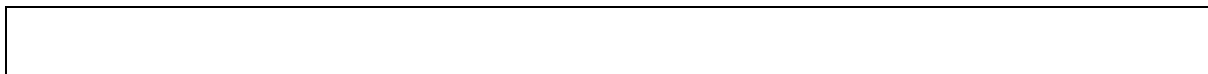
- *The UK Adoption law does not recognise custom adoption. During the consultation there was general consensuses and support from the people that customary adoption must be registered and recognised by domestic laws.*
- *Since 2013 the office of the Malvatumauri Council of Chiefs of Vanuatu had established an administrative practice whereby it monitors and controls customary adoption. The Civil Status Office is now registering customary adoption upon the approval of the Malvatumauri Council of Chief. This administrative practice should be incorporated into the law.*
- *People are of the view that to ensure a fair decision, the Malvatumauri Council of Chief may apply to the court for a certificate of customary adoption. Upon receiving the certificate issued by the court the Director of Civil Status shall register the customary adoption.*
- *The Civil Registration Act must put some limitations and conditions in regards to customary adoption.*

Registration of adult adoption

- *During the consultation the people supported that the law should only provide for adoption of children below the age of 18 years. Any adoption of citizen adults by any means of adoption must be prohibited by law.*
- *The people expressed that the law must prohibit the registration of legal or customary adoption of non-citizen adults.*
- *There was also general consensus that the Civil Status Registration law must not register any customary adoption of non-citizen adults for the purpose of granting a naturalized citizenship.*
- *The law must also penalize any person who allows for the registration of custom adoption of non-citizen adults for the purpose of naturalized citizenship.*

Registration of inter-country adoption by same sex couples

- *Currently, the UK Adoption Act and the Civil Status (Registration) law do not clearly provide for the formal procedures and registration of inter-country adoption. The people support that the Civil Status Registration law should provide for the registration of inter-country adoption.*
- *There was general consensus from the people that the Civil Status Registration law must provide limitations, conditions and procedural **criteria's for inter**-country adoption.*
- *There are unrecorded cases where foreign couples of same sex have adopted indigenous children. In this recorded Supreme Court case of *In re MM Adoption Application [2014]* the Court dismissed the foreign couple of same sex's application to adopt an indigenous child. The people in the villages and communities have agreed that the law should not allow such adoption.*



RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That all relevant institutions and statutory bodies must educate and carry out awareness about their respective laws and regulations in the remote villages and islands of Vanuatu.
2. That the Civil Status Office must include in its administrative responsibilities and functions to carry out awareness and educate the people of Vanuatu regarding the importance and procedures of registrations, particularly registering adoption.
3. **That Vanuatu must enact its own adoption law to suit the country's** current circumstances. That the new adoption law will provide formal procedures of legal and customary adoption and must be consistent and work well with the *Civil Status (Registration) Act* and other laws.
4. That the current *Civil Status Act* be amended to provide for the detail procedures and conditions for the registration of legal and customary adoption.
5. That the Act must be amended in order to work well alongside what the Malvatumauri Council of Chiefs has established with regards to customary adoption and must provide for the formal procedures of custom adoption and how it is to be registered under the new revised Civil Status law.
6. That the new revised law must not allow the registration of ni-Vanuatu children adopted by same sex couple.
7. That the current Act be amended to allow only the adoption of children below 18 years old. Furthermore that the Act be amended to prohibit the adoption of indigenous or non-citizen adults.
8. That the law must not register any customary adoption of non-citizen adult for the purpose of granting them a naturalized citizenship.
9. That the Act must be amended to provide for the procedures and conditions for registering inter-country adoption that has been granted by the Superior Courts.

DRAFTING I NSTRUCTION

THE Vanuatu Law Commission have been looking at the laws of other South Pacific regional countries as an example and make these following drafting instructions to take in the above recommendations:

19. Amend the Act, by inserting these following terms in the long title of the Act.

CIVIL STATUS (REGISTRATION)

To provide for the registration of the births, acknowledgements, adoption, marital status and citizenship of all persons living in Vanuatu.

20. Amend the Act, by inserting these following terms in Section 1- Application

1. The registration of the births, acknowledgement, adoptions, deaths, marital status of persons and citizenship shall be conducted according to the provision of this Act.

21. Amend the Act, by adding this new definition under Section 2- Interpretation

“Adoption” creation of the parent child relationship between individuals who are not naturally related by blood.

“Legal Adoption” to mean adoption made under law.

“Customary Adoption” to mean adoption made under the rules of custom.

Adoption Order” to mean an order for the adoption of a child under this Act.

“Child” to mean a child under the age of 18 years.

22. Amend the Act, by adding new paragraphs in Section 6-

REGISTERS OF BIRTHS, ADOPTION, MARRIAGES AND DEATH

6. Births, acknowledgement, deaths, foetal deaths, marriages, dissolutions and nullifications of marriage shall be entered in the order in which they are declared in 5

separate registers as provided hereafter, by the Registrar or Sub-Registrar. A register for: -

- (a) births and acknowledgements;
- (b) marriages and dissolution and nullification of marriages;
- (c) legal and customary adoption;
- (d) deaths and foetal deaths; and
- (e) dual citizenship.

23. Amend the Act by adding new section 22

22 APPLICATION AND REGISTRATION OF ADOPTION

(1). All application for adoptions must be determined by the Superior Courts in accordance to the courts discretion.

(2). Subject to Subsection (1) only children under the age of 18 years may be adopted.

(3). Upon the determination of the applications, all successful applicants must register the particulars of their adoption under this Act.

24. Amend the Act, by adding new section 23.

23. REGISTER OF LEGALLY ADOPTED CHILDREN

(1) **In the following Sections, “prescribed particulars” means such** of the prescribed particulars of birth as are applicable to a child and his or her adoptive parent or parents, or natural parent, in the circumstances of the particular adoption as provided in the adoption order issued by the Courts.

(2) Upon receiving the adoption order issued by the Superior Courts, the Director and authorised registrars must register the adoptions made in accordance with the *Adoption Act 1958 (UK)* and by binding in a register of adopted children;

(a) the official copy or certified copy of every adoption order forwarded to the Civil Status Office for registration purpose.

(3) Where an order is made that discharges or terminates an adoption order, the Director must make in a register of adopted children and in any register of births such entries and notations as are necessary.

(4) The Director must bind in the register of adopted children a duplicate of the memorandum instead of making an entry in the prescribed form, where it;

(a) causes a memorandum of an adoption order or an interim adoption order to be sent to an officer of another country in accordance with *Adoption Act 1958 (UK)*; and

(b) receives a copy of an adoption order or interim adoption order in accordance with the law of that foreign country.

(5) In circumstances where an official copy, certified copy or memorandum of an adoption order forwarded to the Civil Status Office does not contain any prescribed particulars that are required to be entered in a register, the adoptive parent or parents must give the prescribed particulars to the Civil Status Office within such time as the Director in writing requires.

25. Amend the Act, by adding new section 24

24. REGISTER OF CUSTOMARY ADOPTIONS

(1) Subject to Subsection (6) any person may apply in the prescribed form to the Malvatumauri Council of Chiefs for customary adoption.

(2) The Malvatumauri Council of Chiefs must make application in the prescribed form to the appropriate courts for an order or certificate of customary adoption.

(3) Upon the application by the Malvatumauri Council of Chiefs, the Court may;

- (a) grant a certificate that the adoption has been made in accordance with the custom;
- (b) terminate the adoption in accordance with the custom; and
- (c) any other order that the court deems fit.

(4) Where the Director receives an adoption order in Subsection (3) issued by the Court, must;

- (a) after the time for appeal has expired and all appeals have been determined;
- (b) subject to the results of any such appeals, and
- (c) register the prescribe particulars of the adoption in Subsection (3) in its prescribed form or re-register the prescribed particulars of the adopted child in a prescribe form of register of births.

(5) Notwithstanding the provisions of this Act or other laws, the adoption made in Subsection (3) takes effect in accordance with the custom that is applicable and is subject to;

- (a) any provisions of that custom as to its limitations and conditions;
- (b) limitations and conditions as to the period of the adoption;
- (c) rights of access and return of property rights or obligations; and
- (d) any other limitations or conditions as the court deems fit.

(6) Without limiting the provisions of this *Act* and to avoid any inconsistency with Article 5 of the Constitution, customary adoption

of adult citizens or non-citizens are prohibited under this Act and other relevant laws.



CITIZENSHIP

BACKGROUND

Vanuatu is slowly evolving into the advanced modern technological era and it is gradually enhancing and updating its civil registry with the help of newly introduced strategies and measures. Other Pacific Island countries have taken similar approaches. Key areas the country has focused on improving or have attempted to further elaborate on are centralizing the registry system and the process it entails. It also sheds some light on the newly introduced concept of dual citizenship whether or not they should be registered. A citizen is required to know how to be part of a large communal society sharing a national identity, as well as knowing how to express oneself legitimately. This can only be obtained through centralizing all procedures of registration under one department. Subject to any common law on confidential privilege, in the process of registration each citizen is allocated a unique ID number which is then shared and used amongst government and non-government agencies.

Whilst there is already an existing mechanism in place and formal procedures established for registering citizenships provided under the *Citizenship Act* and the *Civil Status (Registration) Act*, these current laws need to be changed to cater for further amendments which will enhance and improve the Civil Registration and Vital Statistics (CRVS) in Vanuatu.

Firstly, with regards to centralizing the process of registration under one department, which is the Department of Civil Status as generally provided for under the *Civil Status (Registration) Act*. Section 3 of that *Act* provides that the Registrar-General has the responsibility for maintenance and verification of the central register of civil status and the administration of the law³⁰. In addition to the implementation of centralizing civil status entries, national surveillance and monitoring is also a critical component in improving the work of the Civil Status Office in Vanuatu. The idea is to create a national unique ID number for every citizen. This will also help to determine the accurate population for better future development plan within the country.

In the Pacific region, Fiji was the first country to implement and issue a National Identification Card to citizens³¹. This National Identification Card **was issued by Fiji's Ministry of Defence and National Security** and it contained critical personal information of an individual and is also used for identification on occasions such as; Land Transport Authority (LTA), education enrolment, voter identification and Fiji National Provident Fund

³⁰ *Civil Status (Registration) Act [Cap 61]* (Vanuatu)

³¹ Fiji 2010 Human Rights Report 'Fiji Today Fiji Today's Open Forum blog' <http://fijitoday.wordpress.com/why-we-fight-for-freedom/> (Accessed 13/08/2014)

service requirements³². It also contains a microchip containing personal bio data, picture, fingerprint, passport system, ID number, UID number machine, and barcodes for Tax Identification Number (TIN) and LTA watch list verification³³. In addition to Fiji, in Papua New Guinea, the Minister of National Planning is also considering implementing a national identity card system to address the problem of unregistered citizens as about eighty per cent of their population remains unregistered³⁴.

Secondly, in regards to dual citizenship, Vanuatu has amended its Constitution to allow dual citizenship. In the Constitutional amendments, Article 13 provides for the recognition of dual citizenship in which a naturalized citizen or non-citizen may be granted dual citizenship upon meeting the required legal criteria as provided³⁵. The amendments to the Constitution has also led to several amendments being made to the *Citizenship Act*³⁶ where dual citizenship has been defined as a person with the status as a citizen of two countries³⁷. Section 13A of the amended *Act* now allows for any person to apply for Vanuatu citizenship and hold dual citizenship as prescribed under Article 13 of the Constitution³⁸. Prior to these amendments the former provision under Article 10 of the Constitution stated that non-citizens were only eligible to apply for Vanuatu citizenship after residing in the country over ten years and must renounce the other citizenship within 3 months of acquiring Vanuatu citizenship.³⁹

Vanuatu is a State party to several Human Rights Conventions and the country is bound to impose and implement these international obligations and human right standards. The rights of every child to be registered at birth, to acquire a name and nationality are provided in these ratified human rights conventions. Some of these international laws are; Article 15 of the Universal Declaration of Human Rights which states everyone has the right to a nationality⁴⁰. Article 24 of the Civil and Political Rights Convention provides that every child shall be registered immediately after births and must be given a name and that child has the right to acquire a

³² 'Fiji Government Online Portal-National ID card' (2010) <http://www.fiji.gov.fj/Media-Center/Press-Releases/National-ID-card.aspx> (Accessed 13/08/2014)

³³ Ibid

³⁴ Radio New Zealand 'National Identity Card system in sights of PNG's planning minister' (2014) <http://fijione.tv/national-identity-card-system-in-sights-of-pngs-planning-minister/> (Accessed 13/08/2014)

³⁵ *Constitution of the Republic of Vanuatu (SIXTH) (AMENDMENT) 2013* (Vanuatu)

³⁶ [Cap 112] (Vanuatu)

³⁷ *Citizenship (Amendment) Act 2013* (Vanuatu)

³⁸ Ibid

³⁹ Constitution of the Republic of Vanuatu

⁴⁰ Universal Declaration of Human Rights (1948)

nationality⁴¹. And the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) also underlined that women shall be granted equal rights with men with respect to the nationality of their children⁴².

To implement these international obligations, Sections 18 and 19 of the *Civil Status (Registration) Act* provides that all births and entry of births must be registered in the required procedures within the Act. The Constitution also provides in Article 9 for automatic naturalized citizenship where a person by birth has four grandparents belonging to a tribe or community indigenous of Vanuatu. With regards to the amendments a person may apply for dual citizenship as long as legal requirements are adhered to. The current civil status law and the *Citizenship Act* however do not cater for its registration.

WHATPEOPLE SAID:

Centralizing the process of registration under the department of Civil Status

- *During the consultation, there was general consensus from the people that the process of registry of births, deaths, marriages, divorces and citizenship should be centralized under the Department of Civil Status.*
- *The majority of the populace agreed for the Civil Status Department to be responsible for the registration of births, deaths, marriages, divorces and citizenship.*
- *Currently, the Civil Status Office has established a centralised data base system which is distributed in all the provincial headquarters, education offices and health institutions in all provinces. This provides for these other relevant institutions and departments to assist and improve the work of registration throughout the country.*
- *The people in the communities and villages agree with the idea of centralising the data base as long as there is a well-established Civil Status database system in the provincial areas to help those living in the remote villages to have access to registration.*
- *One of the challenges of this centralized data base system in the rural areas and islands is the lack of human recourses and registration*

⁴¹ International Covenant on Civil and Political Rights (1966)

⁴²Convention on the Elimination of All Forms of Discrimination Against Women (1979)

facilities. This causes delay in providing an updated statistic report of registration of births, deaths, marriage or adoption in a particular island or village.

The National Unique ID Number

- *During the consultation, most of the relevant stakeholders support the idea that every individual person should have a National Unique ID Number.*
- *People agreed that this National Unique ID Number would make it much easier to trace the identification of the offenders.*
- *The health officers that were consulted stated that this National Unique ID Number will contain the medical status of every individual person. This makes it easier to trace the medical history of each individual people.*
- *In school, this ID number will help to trace the educational background and performance of individual students.*
- *It was suggested that the serial number in the birth certificate may be used as the National Unique ID Number. This is to give more value to birth certificate than other identification documents.*
- *The people agreed that the personal information in regards to the ID Number must be considered confidential.*

Registration of Dual Citizenship under Civil Status Act

- *Recently, the Constitution of Vanuatu was amended and it now recognises dual citizenship. As such, other relevant legislations and Regulations must also be amended to cater for these Constitutional amendments.*
- *The Citizenship Act of Vanuatu has been amended to cater for dual citizenship. The Act provides procedures and criteria to apply for dual citizenship.*
- *The people agreed that a person who has gained dual citizenship must register their dual citizenship.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That the new revised law must clearly provide for centralizing the process of registration of births, deaths, marriage, divorce and citizenship under the department of Civil Status and must also include adoptions.
2. That the new law must provide new provisions for the establishment of a National Unique ID Number.
3. That the reference number in the birth certificate will be recognised under the Act as the National Unique ID Number.
4. That the new revised law must provide a general provision that every person must register their births in order to have a National Unique ID Number.
5. That the Act must provide conditions and limitations with regards to the information attached to the ID Number.
6. That the new law must clearly provide that the personal information contained in the ID Number is considered as confidential and is privileged information.
7. That the new revised law must provide for the registration of dual citizenship for the purpose of issuing birth certificates and Ni- **Vanuatu's passports to successful applicants of dual citizens.**

DRAFTING INSTRUCTION

THE Vanuatu Law Commission have been looking at the laws of other South Pacific regional countries as an example and make these following drafting instructions to take in the above recommendations:

26. Amend the Act, by inserting these following terms in the long title of the Act.

CIVIL STATUS (REGISTRATION)

To provide for the registration of the births, acknowledgements, adoption, marital status and naturalised citizenship of all persons living in Vanuatu.

27. Amend the Act, by inserting new paragraphs in Section 6.

REGISTERS OF BIRTHS, ADOPTION, MARRIAGES
DEATH AND DUAL CITIZENSHIP

6. Births, acknowledgements, deaths, foetal deaths, marriages, dissolutions and nullifications of marriage shall be entered in the order in which they are declared in 5 separate registers as provided hereafter, by the Registrar or Sub-Registrar. A register for: -

- (a) births and acknowledgements;
- (b) marriages and dissolution and nullification of marriages;
- (c) legal and customary adoption;
- (d) deaths and foetal deaths; and
- (e) dual citizenship.

(2). Upon the approval and granting of a dual citizenship under the Citizenship Act, the dual citizens must be registered under this Act.

28. Amend the Act by, inserting New Section 32 after Part 3 of the Act.

32. NATIONAL ID NUMBER

(1) Notwithstanding the provisions of this Act or any other laws, the Minister may upon the advice and recommendation of the Director, make regulations to regulate for a national unique ID number.

(2) The regulation shall prescribe the:

- (a) reference number in the birth certificate shall be recognised as the national Unique ID number;

(b) required information that the Unique ID number must contain

(c) purpose and function of the National ID Number;

(d) responsible authority for the creation and implementation of the National ID Number;

(e) conditions and limitation of sharing information;

(f) authorised procedures and process of sharing information; and

(g) offences and penalties.

(3) The personal information or other related information contained in the ID number is considered as confidential information.

(4) Any person who shares any personal information without the required authorisation from the Minister, Director or any authorised figure commits an offence under this Act.

(5) Personal information of any individual that is to be shared must be made known to that particular individual prior to receiving required authorisation.

CHAPTER SIX



OTHER LAWS AND ISSUES

BACKGROUND

The issue of Registration on its own is a cross-cutting issue which affects a lot of sectors within the government as well as that of non-government. During the consultation, it became

apparent that there are other laws and Regulations that ties in or should tie in with the issues surrounding registrations of births, deaths, marriages and divorce in Vanuatu. These other laws include the *Marriage Act*, *Control of Marriage Act*, *Education Act*, *Statistics Act*, *Citizenship Act*, *Public Health Act*, the laws involving elections, passports, municipal and provincial bylaws with regards to registration of deaths as well as laws involving Health. Apart from the other laws discussed in the earlier chapters, this chapter will highlight some of the main concerns regarding the issue of registrations with these core legislations namely; the *Education Act*, *Control of Marriage Act*, *Citizenship Act*, *Public Health Act* as well as the *Marriage Act*.

From the consultation it became apparent that most of these core legislations are silent when it comes to the registrations issues, most of which do not agree with each other, work together, or even work alongside each other. The procedures of which to enhance the work of birth registrations, death registrations and so forth have been lacking in some of the legislations. This has resulted in lack of information sharing between the main stakeholders dealing with registrations, poor record keeping of data collection and most of all poor out-come of birth, death, marriage and divorce registrations through the country.

The ongoing review of the *Education Act* caters for birth registration of students (who have not been registered during birth) to happen in schools, data of which will be sent to the Civil Registry Department for record keeping and data updating purposes. A new birth certificate will be issued once the information is shared with Civil Registry Department. The review will also have a confidential clause to protect the sharing of information between the two departments, the Education

Department and Civil Registry Department.

The *Statistics Act*, the *Marriage Act*, *Control of Marriage Act*, *Citizenship Act* and the *Public Health Act* on the other hand are currently silent when it comes to the issue of registering births, deaths, marriages or divorce in the country. Although these are seen as laws to deal with issues concerning registration, prior amendments made to these laws were of no priority to registration issues. The amendments made to the Acts were made following other priorities.

The *Public Health Act* apart from the *Health Practitioners Act* and the *Nursing Act*, for instance can be seen as the best legislation to cater for birth and death registration along with the issue of causes of death for death registrations. However, the Act has been silent on the issue ever since it came into effect in Vanuatu although many of the births and deaths throughout the country are reported by the hospitals, health care centres and even clinics throughout the country. These health facilities are the first to know of the events therefore it will be more appropriate to allow them the opportunity to conduct the registrations, data of which will be shared with the Civil Registry department.

Since the *Control of Marriage Act* and the *Marriage Act* of Vanuatu both deal with issues concerning marriages, it would also be more appropriate to have a provision in both Acts to cater for registration of marriages and divorce. Considerations should also be given to the different types of marriage celebrated throughout the country and the responsible authorities involved in performing the marriage. Civil marriages are coordinated by the Municipality or Provincial government to which registrations should and can be done accordingly. Church ministers, pastors or priest are responsible for church marriage and in cases where marriage is celebrated in custom, chiefs under the Malvatumauri National Council of Chiefs are responsible. Registration of such marriage should be made once the marriage has been celebrated and information may then be directed to the Civil Status Department for proper record keeping.

From the consultation it became apparent that the *Statistics Act* and the *Citizenship Act* should also have the confidentiality provision regarding the sharing of data or information on registrations.

Vanuatu's current laws that are and should be dealing with the issue of registrations of births, deaths, marriages, adoption or divorce must and should agree and work alongside each other in order for better registrations and record keeping of births, deaths, marriages and divorce in Vanuatu.

WHAT PEOPLE SAID

All laws must agree with each other

- *Every laws currently dealing with registrations must agree and work alongside each other.*
- *All laws that are and should deal with registration must have provision to cater for registrations and issues alongside.*

Confidentiality and Provision re-sharing of information

- *All laws dealing with registrations should have a confidentiality provision and a provision for sharing of information.*
- *The confidentiality clause should be attached to that of sharing of information.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That the *Civil Status (Registration) Act* on its own should have a confidentiality clause to provide for safe information sharing between all relevant stakeholders and the Civil Status Department and that the information shared will be treated as privilege information.
2. That a confidentiality clause to provide for safe information sharing between all relevant stakeholders and the Civil Status Department must be incorporated into all the other relevant laws dealing or associating with registrations in Vanuatu.
3. That a new section should be inserted into the *Public Health Act* to cater for registration of children born at the hospitals, clinics or any other public and private medical centres and facilities through-out Vanuatu.
4. That a new provision be inserted into the *Public Health Act* to cater for death registrations and certification of the cause of death at any medical facility through-out Vanuatu.
5. That a new section be inserted into the *Marriage Act* to cater for registration of marriages and divorce taking into consideration all

types of marriages celebrated in Vanuatu and all authorities responsible for performing marriages.

6. That a penalty provision be incorporated into the *Civil Status Act* together with all the other relevant laws dealing with registrations to penalize any person who is or maybe in breach of the confidentiality clause.
7. That a new provision be inserted into the *Citizenship Act* to cater for information sharing between the Citizenship office and the Civil Status office to assist with registrations of unregistered identified births or deaths.

DRAFTING INSTRUCTIONS

Civil Status Act

29. After section 30, insert a new section 31 and 32 to read;

Part 3 – Registration

Section 31. Liaising with other Stakeholders

Subject to the provisions above, the Civil Status department shall liaise with the Education department, Health department, Statistics department, Provincial Government, Municipality, Malvatumauri, Churches and other relevant stakeholders in the course of births, deaths, adoption, marriages and divorce registrations throughout the country.

Section 32. Confidentiality and Sharing of Information

Subject to section 31, every officers under responsible authorities who are responsible for registrations must:

- (a) preserve and keep confidential all matters which have come to their knowledge except in the performance of their professional duties;
- (b) share the birth and death information collected, to the nearest registrar or the registration officer.

Section 33. Penalty for non-compliance with section 32

Any person who contravenes section 32 of this Act commits an offence and shall be liable to a fine not exceeding VT50.000 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

Public Health Act

30. After section 111 insert a new part 15 to read;

Part 15 – Births and Deaths Registrations

Section 112. Births Registrations

Subject to the provisions of the *Civil Status (Registration) Act*, the doctor, nurse, medical assistant or in case of rural areas any medical officer may register the birth of:

- (a) a child born at any time and at any health facility in the country;
- (b) a child born at any time and at any place in the country; or
- (c) a child born outside the country if –
 - (i) the child is not registered under a law of a state; and
 - (ii) the child is residing in the country with a parent; and
 - (iii) the child had not attained the age of six years when he or she commenced to reside in the country.

Section 113. Death registrations

Subject to the *Civil Status (Registration) Act*, the doctor, or in case of rural areas any health practitioner may in his discretion register the death of a person who dies at any time and at any health facility or any place in the country.

Section 114. Certificate as to Cause of Death

Subject to section 113, a medical practitioner who;

- (a) attended a person who died in the country immediately before his death or during the illness terminating in his death; or
- (b) viewed after death the body of a person who died in the country without being attended by medical practitioner immediately before his death or during the illness terminating in his death,

Shall forward to the registrar or registration officer a medical certificate or post-mortem certificate, in the prescribe form, as to the cause of death.

Section 115. Confidentiality in Sharing of Information

Subject to sections 112, 113 and 114, every health practitioner, doctor, nurse or health worker must:

- (a) preserve and keep confidential all matters which have come to their knowledge except in the performance of their professional duties;
- (b) share the birth and death information collected to the nearest registrar or the registration officer.

Section 116. Penalty for non-compliance with section 115

Any person who contravenes section 115 of this Act commits an offence and shall be liable to a fine not exceeding VT50.000 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

Marriage Act

31. After section 15 subsection (1), insert a new subsection (2) and (3) to read;

Part 4 – Formalities After Marriage

Section 15. Registration of Marriage

- (1) Immediately upon the celebration of any civil, religious or custom marriage, it shall be registered in conformity with the provisions of the Civil Status Act, Cap 61.
- (2) Immediately after the celebration of any civil, religious or custom marriage, all responsible authority must forward to the nearest registrar or nearest registration officer all necessary information required.
- (3) subject to subsection (2) above, every responsible authority must:
 - (a) preserve and keep confidential all matters which have come to their knowledge except in the performance of their professional duties;

- (b) share the celebrate marriage information to the nearest registrar or nearest registration officer.
- (4) where the marriage is performed by a minister for celebrating marriages, the person performing the ceremony of marriage and, in the case of a custom marriage, the bridegroom or the head of his family or the head of the bride's family or the chief of the village of either of the parties or an assessor, who was present at the marriage, shall thereafter forward to the District Registrar on the first occasion possible a notice as prescribed in Form C in Schedule 1.
- (5) In all cases, the parties to the marriage shall be issued by the Registrar-General with a certified copy of the page of the Central Register relating to their marriage.

Section 16. Penalty for non-compliance with section 15

Any person who contravenes section 115 of this Act commits an offence and shall be liable to a fine not exceeding VT50.000 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

Citizenship Act

32. After section 11, insert a new section 12 to read;

Part 3 – Citizenship by Adoption and Naturalization

Section 12. Unregistered Adopted Child and the issue of confidentiality

Subject to section 11 of this Act, the Citizenship Office;

- (a) shall have the power to register an adopted child if the child upon applying for his or her citizenship has not been registered to the adopted parents;
- (b) shall forward to the civil status department the registration information obtained for record and data update purposes; and

(c) shall treat all information obtained and shared as privilege information.

Section 13. Penalty for non-compliance with section 12

Any person who contravenes section 115 of this Act commits an offence and shall be liable to a fine not exceeding VT50.000 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

This review was done to assist the Civil Status department and other responsible authorities such as the Education department, the department of Statistics, Health department and other authorities that work with the *Civil Status (Registration) Act* in Vanuatu. From the review it became apparent that the *Civil Status Act* needs to be urgently revised. With a law that is over 33 years old it is clearly seen as out dated and there are many gaps in the law that need to be addressed to suit Vanuatu's current situation.



It has also become apparent that the law is unsatisfactory. The law had failed to fully address the issues surrounding registrations specifically issues regarding birth registrations, death registrations, registrations of marriages as well as divorce registrations. There has been a lack of control over the issue of fees which give rise to variation of fees charged by different stakeholders with regard to certain registrations made throughout the country. Very little was mentioned in the current law with regard to the issue of re-registrations. Also the issue of late registration was way out of date and needs to be revised and strengthened.

From the consultations it became apparent that the law to an extent does not meet current international requirements and fails to address and gain control over the issue of different types of adoption and its registrations and different kinds of marriages practiced in Vanuatu and their registrations thereof.

This review has highlighted the areas that need to be amended in order to deal with the increasing issues surrounding registrations and record keeping of registrations in Vanuatu. Other laws that are connected with the *Civil Status (Registration) Act* will also be affected should the current law be amended. These laws have been taken into consideration in the course of this review.

The recommendations put forward by this report shows that there is much to be done with the system or the law if Vanuatu wants to have a better registration and record keeping of registrations of births, deaths, marriages and divorce. The Vanuatu Law Commission hopes this review has covered all aspects that

CONCLUSION

need to be addressed and will assist the Civil Status department in the advancement of its responsibilities.

APPENDIX 1: LIST OF CONSULTATION

	Name/Community	Office
1.	Joe Johson Iati	Director of Civil Status Office
2.	Ettienne Rovo	Senior Civil Status Officer
3.	Andy Calo	Civil Registry Vital Statistic Secretary
4.	Gideon Mael	Civil Registry Vital Statistic Member
5.	Fabiola Bibi	Senior Education Statistics Officer/ CRVS Member
6.	John Niroa	Director Policy and Planning Department of Education
7.	Nego Alwin	Health Information Officer, Vila Central Hospital
8.	Eware J	Secretary General Citizenship Commission
9.	Pastor Shame	Vanuatu Christian Council (VCC)
10.	Eton Community	Efate Island
11.	Wailengi Community	Ambae Island
12.	Hensley Roe	Civil Status Officer, Penama Provincial Government
13.	Georgewin Garae	Secretary General Penama Provincial Government
14.	Helen Vusi	Penama Education Officer, Penama Provincial Government
15.	Godfrey Daruhi	Planner, Penama Provincial Government
16.	Navonda Community	Ambae Island
17.	Hason Tari	Area Secretary, Ambae
18.	Hikal Natnaun	Health Information System Officer , Northern District Hospital, Santo Island
19.	Sarsoum Xavio	Health Information System Officer , Northern District Hospital, Santo Island

20.	Fabienne Tura	Heath Information System Officer , Northern District Hospital, Santo Island
21.	Mariu Community	Mota Island, Banks
22.	Tanasul	Area Council, South West Tanna
23.	Aron Tebi	Health Information System Officer, Lenakel Hospital, Tanna Island
24.	Pastor Allan Nafuki	Secrtary of Presbryterian Church of Vanuatu, Port Vila
25.	Lynda Hango	Port Vila Sub Registrar/ Supervisor
26.	Harkuk Vocor	Education Office, Santo Island
27.	Joshua Tari	Statistics Officer, Santo Statistics Office
28.	Moan Korikalo	Vanuatu Bank Manager, Westpac
29.	Sailosi Rezel	Manager, IT Support and Services Department, VNPF
30.	Reginald Tarilaka	Banks Island Coordinator, STARS Health Program, Save the Children
31.	Christion Tukunamoli	Santo Island Coordinator, STARS Program, Santo
32.	Mike Joshua Tarinako	Assistant Statistic Officer, Sanma Statistic Office, Santo Island
33.	Anna Toara	Civil Status Officer, Luganville Municipality, Santo Island
34.	Viran Molisa	Counsellor, Sanma Women Centre, Santo
35.	Davina Buleuru	Office Assistant , sanma Women Centre, Santo
36.	Chief Lufus Tamata	Chairman Tavuemasana Island Council, Sanma Provincial Government
37.	Doctor Sala	Northern District Hospital,

38.	Maurice Tekevu	Catholic Church, Cathedrale, port Vila
39.	Ivel Middle Bush Community	Tanna Island
40.	Gloria Tarileo	Provincial Women's Desk, Department of Women Affairs, Sanma Provincial Government
41.	Christion Tuku	Santo Island Coordinator, save The Children, Lunganvile Santo

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29. CRVS Taskforce with the assistance of the Brisbane Accord Group, Civil Registration and Vital Statistics (CRVS) Meeting– Vanuatu, (held from 12-14 November 2013)
30. **United Nations International Children's Emergency Fund, 'Regional Workshop on Enhancing Birth Registration in the Pacific: Fiji, Kiribati, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu and Timor-Leste Report'**
(Workshop held in Jovili Meo Mission Centre, Pacific Theological College, Suva, Fiji from 25-27th May, 2005).

