

Vanuatu's Family Protection Act: Contextualisation, Resistance and Implementation

Lindy Kanan

In Brief 2019/7

Introduction

Over the past 10 years, many Pacific Island countries and territories have been amending their laws to address the issue of domestic violence. Vanuatu was the first Pacific Island country to put in place targeted legislation (Jalal 2009:3) with the passage of the Family Protection Act (the Act) in 2008. The Act was controversial, however, and took 11 years from drafting to being passed by the parliament. The purpose of the Act is to (a) preserve and promote harmonious family relationships, and (b) prevent domestic violence in all levels of society in Vanuatu. The Act is both civil and criminal: it creates a criminal offence for committing an act of domestic violence and also provides for civil protection orders (Forster 2011). Under the Act, domestic violence offenders can be sentenced for up to five years in prison or fined up to VUV100,000 (around AU1250) or both. Family protection orders can also be issued if the defendant has committed or is likely to commit an act of domestic violence against the complainant. This In Brief discusses how the legislation responds to the Vanuatu context, the resistance to its introduction and some challenges regarding its implementation.

Responding to the context

The legislation has three main elements that respond to the distinct context of Vanuatu:

1. **A broad definition of family:** The Act includes broad meanings of family, which are common in Vanuatu and throughout the region (Forster 2011). For example, the definition of a family member in the Act (s. 3) includes 'any person who is treated by the person as a family member', which recognises the communal relationships and inclusive definition of family in Vanuatu. Although not unique to Vanuatu, it is also worth noting the inclusion of de facto relationships under the definition of a spouse, which provides protection for people who are living in a marriage-like relationship (or have done so in the past) but who are not formally or customarily married. The definition of spouse also includes a person who is a biological parent of a child with the other person even if they have never been married nor lived together, thus providing protection for a wider range of relationship types. The Act does not, however, recognise same-sex relationships.
2. **Reference to bride price:** Bride price is a widespread customary practice in Melanesia, including Vanuatu, and the payment of bride price by the husband's family to the wife's family can be used to justify domestic violence (Jalal 2009:9). The Act (s. 10) states that it is not a defence against a domestic violence offence that the defendant has 'paid an amount of money or given other valuable consideration in relation to his or her customary marriage to the complainant'. The Act uses similar language to ensure that payment of bride price is not considered when deciding whether to issue a family protection order and also cannot be used as defence against the breach of such an order. Commentators such as Jalal (2009:11) suggest that the treatment of bride price in the legislation is part of the reason that the Act was so controversial and took so long to pass.
3. **The use of 'authorised persons':** The majority of Vanuatu's population live in rural and remote areas and are dispersed across 63 of the nation's 83 islands. In order to overcome the geographical challenge of accessing the formal justice system, the Act (s. 7) provides that 'authorised persons' are able to make temporary protection orders. Authorised persons can be chiefs, assistant chiefs, church and community leaders, teachers, health workers nominated by the chief, police officers (ranked inspector or above), or anyone else who applies in writing to the minister responsible for women's affairs to be recommended for appointment. In addition to authorised persons, the Act also provides for the declaration of registered counsellors who can provide

counselling or mediation in relation to domestic violence.

Resistance to the Act

As noted earlier, the legislation was controversial and took many years before it was enacted. Much of the opposition was from powerful groups, including the Malvatumauri Council of Chiefs and the Vanuatu Christian Council, who argued that the legislation contradicted Melanesian and Christian values, would erode the authority of chiefs, and would promote the breakdown of families (Forster 2011:140). The opposition to the new law culminated in an unprecedented court case, pitting the Office of the President (which challenged the new law on constitutional grounds) against the Office of the Attorney General (supporting the new law, together with the women's movement), with the latter finally triumphing (Jalal 2009:11).

Implementation of the Act

Although it was passed in 2008, limited resources were allocated to implement the Act. In 2016, the Pacific Islands Forum Secretariat (PIFS) stated that there was now the political will in Vanuatu to expand the provision of domestic violence services for communities, but that the Government of Vanuatu was not allocating specific budgets and was instead relying on development partners (PIFS 2016:76). It took until 2015 for funds to be allocated to the Department of Women's Affairs to support awareness on the Act (ibid.).

There is evidence of uptake of family protection orders in Vanuatu, with a steady increase in the number of orders issued from 2009 to 2014 (UN Women 2016:82). The number of orders issued is extremely low, however, compared to national domestic violence prevalence data (ibid.) and there is also evidence that knowledge of the Act's provisions has not reached women in some rural areas. For example, a study carried out in 2015 found that 74 per cent of the 379 women interviewed on Malekula had never heard of or did not know what a domestic violence protection order was (compared to 38 per cent of chiefs) and only 6 per cent had used one (PJSPV 2016:127).

The authorised persons and registered counsellors part of the Act, while innovative and designed for the Vanuatu context, is also complex and has proven challenging to implement on a national scale. The Act contentiously states that authorised persons are not to be remunerated, and there are also unanswered questions regarding how their safety can be assured when carrying out their duties. A pilot project began in January 2018 involving 12 authorised persons and seven registered counsellors across six rural and urban communities on Santo and Efate. An evaluation of the pilot is planned for 2019.

Conclusion

Vanuatu has made great strides in attempting to advance women's rights and respond to domestic violence through the Family Protection Act 2008. Criminal offences are now in place and civil protection orders are available through courts as well as through 12 authorised persons in six communities across two provinces. The legislation is laudable for its efforts to take into account some of the cultural and geographical challenges specific to Vanuatu, such as excluding the payment of bride price as a ground for defence. Although Vanuatu has made significant progress in using the law to protect survivors of domestic violence, many practical challenges remain when it comes to the application of the law.

Acknowledgements

The author would like to thank Heidi Tyedmers and the two anonymous reviewers who provided feedback.

Author notes

Lindy Kanan is an independent researcher.

References

- Forster, C. 2011. Ending Domestic Violence in Pacific Island Countries: The Critical Role of Law. *Asian-Pacific Law and Policy Journal* 12(2):123–44.
- Jalal, I. 2009. [Harmful Practices against Women in Pacific Island Countries: Customary and Conventional Laws](#). Expert Paper for UN Expert Group Meeting on Good Practices in Legislation to Address Harmful Practices against Women, Addis Ababa, Ethiopia, 25–28 November.
- PIFS (Pacific Islands Forum Secretariat) 2016. [Pacific Leaders Gender Equality Declaration Trend Assessment 2012–2016](#).
- PJSPV (Policing and Justice Support Program Vanuatu) 2016. [Conflict Management and Access to Justice in Rural Vanuatu](#).
- UN Women 2016. [Women and Children's Access to the Formal Justice System in Vanuatu](#).

