

# Dangerous Drugs Act

No. 02/13

# LEGISLATIVE REVIEW



**STRETEM ROD BLONG JASTIS**  
VANUATU LAW AND JUSTICE PARTNERSHIP



**Australian AID**



**VANUATU LAW COMMISSION**

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**Australian  
AID**



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Authors: Nadya Robert, Sammy Aron, Powrie Vire, Beverleigh Kanas and Bill Clarke

Editors: Nadya Robert, Sammy Aron, Powrie Vire, Beverleigh Kanas and Bill Clarke

Design and layout: Beverleigh Kanas

Printing: Colorite Printers

For further information and request for copies, contact:

Vanuatu Law Commission

Top Floor, Melitco House

PO Box 3380, Port Vila, Vanuatu

Tel: +678 33 620

Email: [lawcommission@vanuatu.gov.vu](mailto:lawcommission@vanuatu.gov.vu)

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**Communities:**

Mele (Efate), Lanvitvit (Aulua, Malekula), Tisman (Malekula), Mosina (Vanualava, Banks), Fanafo (Santo), Sarede (South Santo), Analcauhat (Aneityum).

**Vanuatu Police Force:**

Kelson Bule (Inspector)  
Uriel Leo (Senior Sergeant, Drugs Unit)  
Gray Vuke (OIC, State Prosecutions Department)  
John Edmanley (Inspector, Forensic Unit)  
David Bong (Sergeant-in-charge, MALAMPA Province)  
Dudley Hinge (SANMA Province)  
Judah Silas (Inspector-in-charge, TORBA)  
George Richard (Corporal, Aneityum)  
Kalpeau Nawi Kilman (State Prosecutor, MALAMPA)

**Others:**

The staff in some of the provincial administrations, municipalities, non-governmental organizations, government departments, and statutory bodies, as listed in Appendix 1.

**Vanuatu Law Commission Team:**

Bertha Pakoasongi (Secretary), Nadya Robert (Legal Researcher), Sammy Aron (Legal Researcher), Powrie Vire (Senior Legal Researcher), Beverleigh Kanas (Senior Legal Researcher), Bill Clarke (Volunteer Advisor), Lessy Joel (Administrative Assistant).

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# Foreword



*The need to reform the criminal law in Vanuatu was one of the driving factors for the establishment of the Vanuatu Law Commission as much of the laws had remained relatively unchanged from pre-independence and post-independence. One of those laws is the Dangerous Drugs Act. It came into force in 1939 and is the current legislation used in Vanuatu today.*

*In 2012 the Vanuatu Law Commission received a request from the State Prosecutions office to review the Dangerous Drugs Act 1939. According to the request the legislation is unsatisfactory and out-dated.*

*The Vanuatu Law Commission prepared an Issues Paper on the topic and started its first phase of the review by inviting stakeholders to a workshop in March 2013. Different issues were presented to the stakeholders to invoke thoughts on their views of what needed to be changed in the legislation. An excerpt of the Issues paper states:*

*“Since the 1960s all countries in the Pacific region have experienced a marked increase in the use and supply of illegal narcotic and pharmaceutical drugs. Vanuatu has not escaped this drug culture, although to date local drug activity has largely been with cannabis or cannabis derivatives, also known as marijuana and Ganja, which has been locally cultivated.*

*Drug use raises serious concerns among local and international communities and causes enormous costs to individuals, families and their communities. As a mark of Vanuatu’s concern, in 2003 it adopted the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. (‘2003 Convention’)*

*Vanuatu has come a long way since independence in 1980, and as with all developments, comes problems. The problem that Vanuatu is now facing is that of illegal use of cannabis and other illicit drugs as a prohibited substance. Development has altered the situation from 1939 and with a growing demand in the society the current legislation begs to be reviewed in order to be able to combat the abuse of illegal drugs within the community.*

*Therefore, it is with great pleasure that I would like to present this report. It contains the findings and recommendations on the areas within the legislation that needs reform.*

*I would like to take this opportunity to thank the Ministry of Justice and Community Services and Stretem Rod Blong Jastis (AusAid) project and the Government of Vanuatu for without their support this would not have been possible. To all stakeholders and the people out in the communities and provinces that we consulted we are grateful for their input. This report would not have been possible without you.*

Yours sincerely,

Bertha Pakoasongi

Secretary



In 2012 the Vanuatu Law Commission received a request to review the Dangerous Drugs Act. This followed a joint paper on developing a National Drugs Policy issued by the Vanuatu police Force and the Ministry of Justice & Social Welfare in 2009.

After consultations in the provinces, including community consultations on Efate, Vanualava, Malekula, Santo and Aneityum, the main messages to the VLC were that police and other authorities should be given stronger powers to deal with illegal drug use and that prevention, counselling, improved education and health services should be the focus of Vanuatu's laws and policies on all drugs – whether narcotics, pharmaceutical or therapeutic.

The VLC also had regard to Vanuatu's international obligations (as a member of the UN), having ratified both the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the Convention on the Rights of the Child.

As a result the VLC has completed this review of major parts of the Dangerous Drugs Act [Cap 12]. Parts of other laws, which were also identified as generally outdated and difficult to use, are part of a general recommendation that laws affecting all drugs in Vanuatu should be improved.

The review found wide support for our laws to acknowledge the importance of the principles of precaution and prevention in dealing with drugs issues, and to support community involvement, respect for traditional values and the role played by non-government partners in meeting the challenges of new and illegal drugs. The VLC recommends that these goals and vision be set out as Principles of the new Drugs laws.

Consultations also showed the people wanted the current Act to be changed so that marijuana and other illegal narcotic drugs were dealt with separately from medical and pharmaceutical drugs and substances. The limited co-operation between Police, Customs, Biosecurity and the Ministry of Health in Vila was a common complaint. The VLC recommends that co-operation between Government agencies be required under the new laws. A further recommendation is that an independent committee provide advice to the Minister and Director-General of Health on any new drugs or substances which are imported into Vanuatu, before sale, use or advertising is permitted.

Many people throughout Vanuatu are worried about the increasing number of new 'medicines' and treatments which can be obtained in Vanuatu, and our lack of technical resources to test and analyse these new drugs. The VLC recommends that anyone seeking to import, sell or advertise a new drug or substance bear all the costs of establishing that it is harmless, and undertake to provide all relevant information on the composition, strength and effects of the new drug to the independent committee. Also the new law should prohibit any medical or pharmaceutical drug or substance which is listed by the World Anti-Doping Agency on its website.

Other recommendations to protect Vanuatu against new or unknown drugs and substances include obtaining donor funding for safe high temperature incinerators at Port Vila Central, Norsup and Lenakel hospitals, providing more information and education to communities about the dangers of cheap, new and untested medi-

# Executive Summary

cines and treatment cures, suspending doctors, nurses or pharmacists who wrongly prescribe drugs or fail to record drug prescriptions and giving the Director-General power to recall and seize any drug or substance on advice that it may be a risk to human health or may not be harmless to human health.

People across Vanuatu were also confused and unaware of the laws on drug possession, and whether drugs like marijuana are treated differently under the law from heroin, speed or cocaine. The VLC recommends that the laws dealing with possession include controlling, giving, sending, receiving or hiding drugs, instruction manuals or implements such as bongs and pipes. We also recommend that possession, cultivation and supply of illegal drugs be punished according to how dangerous the drugs are to human health. Manufacturing, production, advertising and procuring of drugs or drug ingredients should be heavily punished on the same basis.

Many people spoke of the need for harsher penalties for serious offenders, including those involved in cultivating large quantities of marijuana or manufacturing or producing hard narcotic chemical drugs, often using a business or corporate cover. Police and Customs officers involved in drug offences were seen as deserving longer prison terms as were adults who use young people to prepare or sell drugs. On the other hand people recognised the need for juvenile courts for young offenders – with a stress on community work and counseling for using marijuana. The VLC recommends that these concerns be reflected in the new drug laws, and that the courts be able to include parents of young offenders in requirements for counseling and abstinence. Protection of local communities and young people should be reinforced by the Ministries of Education and Health informing people of the dangers of kava, tobacco marijuana and other drugs.

Almost everyone agreed that police and customs needed clear powers to use listening and tracking (GPS) devices, controlled deliveries of drugs and medical examinations when investigating drug suspects. The VLC recommends that these powers be included in the new drugs law, with heavy penalties against officers who misuse their powers for any other purposes.

Many were also worried that people who give information to police and other authorities about illegal drugs, as well as undercover officers and police informants, were not properly protected by Vanuatu law. Police confirmed to the VLC that many successful prosecutions only come to court because of this information. The VLC recommends that the new laws make special provision to reward and protect the identity of anyone giving information to the authorities.

Many police and communities in the provinces thought that Vanuatu's laws should allow small or minor drug offences to be punished without going to court. A number of other countries do this through cautions, community work, penalty notices or on the spot fines for more minor matters. The VLC recommends a new graded system of recording punishments for minor drug offences such as smoking or possessing 1 or 2 rolls of marijuana, especially or youth and first offenders. Police should be able to caution to issue on the spot fines for these matters and the courts should also be able to give small offenders a chance to show they have learned their lesson, without a criminal record. Magistrates should be able to deal with this type of offender, and small cannabis cultivation, under the new drugs law

assisted by communities and chiefs – rather than involving a Supreme Court judge in every drug case.

Consultations showed wide support for confiscating all proceeds and profits of illegal drug supply and production. People were frustrated with delays and technical problems in having this done. The VLC recommends that the new drugs law provides for the judge or magistrate who sentences a criminal to make orders for confiscation and seizure of all profits, property and proceeds of those drug offences. We also recommend that all police be trained to identify and test marijuana and that the laws allow for safe destruction of illegal drugs seized by authorities – including use of the safe high temperature incinerators at hospitals recommended on the previous page

The VLC will provide more detailed recommendations and drafting instructions for these new drug laws, and the suggested review of a number of related laws such as Sale of Medicines, Customs, and Police acts in a separate report to the State Law Office.



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The current Dangerous Drugs Act has been effective in Vanuatu for over 70 years. It commenced 41 years before Vanuatu became independent, on 1st December 1939. So it is highly likely that the Act would become outdated and inappropriate in this day and age. The current law has many limitations which poses difficulty to authorities to implement the law fully.



In 2009 a national drugs policy was prepared by the Vanuatu Police Force and the Ministry of Justice & Social Welfare. This policy paper was prepared as a step forward to amending the Dangerous Drugs Act. It explained what a drug is and gave a situational analysis of drugs in Vanuatu and it further examined the current legislative framework recommending 13 separate steps towards legislative and policy reform as the best way to address the drugs situation in Vanuatu.

Vanuatu is a party to the Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances 1988 and the Convention on the Rights of the Child. Article 3 of the Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances 1988 commits party states to establish criminal offences for the intentional possession, purchase or cultivation of narcotic drugs or psychoactive substances for personal consumption. This means that the Vanuatu Government have agreed at an international level to implement domestic laws to control and prevent the export and manufacturer of drugs to protect its young people from exposure to or use of drugs and to assist the international community to prevent drug trafficking.

Limitations in the current law are:

- There are only a few provisions on offences. One offence provision covers importation of drugs, sale of drugs, supply of drugs and possession of drugs. Another offence covers offences relating to cannabis only.
- Modern drugs that are cited in the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances are not listed in the current law.
- The power of search and seizure are limited and the law does not contain surveillance provisions to allow for covert operations and detection methods such as phone tapping or tracking devices.
- Seizure and forfeiture powers are limited with no specific legislation allowing police or customs to target the proceeds of crime.
- The difficult evidentiary provision and analysis procedure currently require most drugs to be sent to Australia or New Zealand for analysis.
- There is no evidentiary provision relating to "possession" and "proof of fact" regarding plant type drugs such as Cannabis Sativa.
- Penalty provisions are not linked to the quantity or type of drug e.g 1 roll of cannabis has the potential to carry the same maximum penalty as 5kg of cocaine. There is only one maximum penalty provided for in the law. The penalty is 20 years imprisonment or VT100 million fine, or both.
- No diversion provision to caution youth and minor offenders and direct them away from the criminal system.
- There are no provisions within the current framework to protect informants who may give confidential information to authorities about drug

# Introduction

supply and manufacture.

Areas that were suggested for reform are:

- Law and enforcement; possession, possession of utensils used to smoke/administer drug, supply, produce (including chemical based drugs), trafficking, possession of instrument.
- Police power; surveillance, improved seizure and forfeiture laws to allow for targeting of proceeds of crime, provision for police to officially caution or warn offenders for possession of small amount of cannabis or other form of diversion.
- Analysis; option to improve current process.
- Penalties; increased penalties to reflect the seriousness of the type and weight of drugs located (consider implication for judiciary), diversion and alternative sentencing model (on the spot fines, referral to chiefs, referral to a drug course, community service etc).
- Different types of drugs; the current law also covers all drugs – narcotic and pharmaceutical drugs. This was explored in the review to find out if the current arrangement of having all drugs together is a good arrangement or is it better to separate narcotic drugs from pharmaceutical drugs.
- Liaising and good communication; police and chiefs should work with Ministry of Health and Ministry of Education to increase community awareness of the use and effects of illegal drugs, especially cannabis.

The Vanuatu Law Commission undertook consultation of this review on four islands. These islands are Malekula, Santo, Vanualava and Aneityum. Eight 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 stakeholders in Port Vila.

# Objects, Purpose and Statement of Principle

## BACKGROUND

Objects, purposes and statements of principle are sets of governing ideas that give an overview of what the new laws on Dangerous Drugs should achieve and why it should achieve it, and also outlines the values underlying these ideas. These ideas and values address issues such as balancing the rights of offenders and their punishment and protecting our people, especially our youth, from drug problems and setting out the responsibilities of our families and communities in addressing the use of illegal drugs.

Objects are the aims or goals that the new drug law set out to achieve. This may be to separate illegal drugs from pharmaceutical drugs, to balance the public good with allowing individual offenders the chance to show they have learned from their mistakes, protect the public especially informants, to control the dangers and risks of drug use to the public at large, to prevent the further cultivation and sale of drugs and to highlight the role that the community and public has in dealing with drug issues by directing police, court and community resources to the areas where they are most needed and most beneficial.

Purposes are the reasons why the new drug law must achieve the objects it sets out. In the reference made by the Vanuatu Police Prosecution and the Police Drugs Unit to the Law Commission, it stated that the current Dangerous Drugs Act was unsatisfactory and outdated and needed to be reviewed. The reference acknowledged that law reform alone would not effectively reduce the criminal, social and physical impact of drugs in society and it called for a holistic approach to be taken by the Government and the community to enable the successful implementation of a national drugs policy in Vanuatu. In this regard, a thorough consultation was carried out within the country, to find ways to ensure that if there is a need for a new legislation how it can be a better fit.

Statements of principle establish how the new drug law should operate, and how it should be interpreted and carried out. From these, the Act will base its rules. These rules can be derived from either traditions or rules that arise from the national context or the international sphere. These statements of principle must be set out in a way that is acceptable within the context of Vanuatu but at the same time, does not contravene any international standards that Vanuatu has ratified.



# Chapter One

The current Dangerous Drugs Act does not contain a provision for Objects, Purposes and Statements of Principle. Many people felt that such provision would make the new law more relevant and will help to ensure that the new drug law will express Vanuatu's broader objective, goals and guiding principles in a holistic way.

During the consultations, a large number of people expressed their views on what should be included as part of the objectives, goals and guiding principles when it came to dealing with the drugs issue in Vanuatu.

## **WHAT PEOPLE SAID**

### ***Educate people of drug issues and raise awareness about it***

- *The public must be made fully aware of the harmful effects of drug use, especially the younger generations. The use of certain drugs, such as marijuana, has side effects but not enough is being done to inform people or bring awareness about this to the people.*
- *Educating the public, but most importantly parents and communities, by way of raising awareness and advertisements on TV, radio, posters, t-shirts etc. Theatrical groups are an effective way to educate public.*

### ***Partnership is critical***

- *The issue of drugs affects everyone in the country from the grass roots level to the government level .It is important that a good working relationship is maintained with all the different key partners in society to help address this issue.*
- *Prevention is better than cure, empower chiefs and police to stop drugs and educate children about drugs.*

### ***Health services to be provided for those who are affected by the use of drugs***

- *Currently, there are no proper health services that are available for those who have been affected by the use of drugs. This issue should be addressed as it will go a long way in helping to resolve some of the problems associated with drugs use.*

### ***Traditional Values***

- *Respect and custom values are important and must be upheld and maintained at all levels but more so in the communities. In communities where respect and custom values are lacking there is an adverse effect on the younger generation where it is seen that there is no control by the community leaders and the people.*

***“The issue of drugs affects everyone in the country from the grassroots level to the government level.”***

## **International Regulations and Conventions**

- *Vanuatu has ratified the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 2003. Its domestic laws such as the Dangerous Drugs Act must comply with the international requirements.*

### **RECOMMENDATIONS**

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That Part 1 (Preliminary) of the Dangerous Drugs Act is amended by inserting a section for Objects, Purposes and Statements of Principle.
2. That due to the harmful effects that the use of drugs has on people, the principles of precaution and prevention should be included. That is:
  - A) Lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control a public health risk from use or access to drug or substances.
  - B) The prevention of disease, illness, injury, disability or premature death from imported drugs or substances, especially new or unknown narcotic, psychotropic and psycho active drugs is preferable to remedial measures.
3. That the non-government organizations, civil society organizations, government departments such as Customs and Internal Revenue, Ministry of Health, Ministry of Education, Biosecurity Vanuatu and other partners in the society, cooperate and work in collaboration with Vanuatu Police force to address the issues of drugs in the communities.
4. That the work of non-government organizations, civil society organizations and other partners in the society are recognized in the new drugs law.
5. That the new law should provide for proper health services for those affected by the misuse of drugs. These health services include a ward set aside in the hospital for those affected by the misuse of drugs, counseling and a rehab facility for those recovering from or wanting to stop drug use.
6. That the new law must provide for traditional values such as respect for chiefs to empower the chiefs and community leaders in

***“Vanuatu’s domestic laws such as the Dangerous Drugs Act must comply with the international requirements.”***

governing their people at the community level in relation to drugs issues.

7. That the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and any other treaties and conventions that have been ratified by Vanuatu, be complied with.

# Should all dangerous drugs be covered by one law?

## BACKGROUND

The current Dangerous Drugs Act provides for all drugs in Vanuatu. This includes drugs that are prescribed for medical or pharmaceutical reasons or illegally prepared, enhanced and sold such as narcotic or mind altering substances.

Within the region, other countries such as Samoa and Australia have separate laws and regulations for the two types of drugs. The advantage of having separate laws for the two types of drugs is that illegal drugs are usually dealt with by the criminal law, police, customs officers and the courts while misuse of pharmaceutical and prescription drugs are usually dealt with by professional boards

In addition, it is quicker and easier to add any new illegal drugs to the prohibited list of illegal drugs. In Tonga and Fiji, they have more simplified lists of illegal or prohibited drugs and this can be followed as an example by Vanuatu. The simplified list, as used by Tonga and Fiji, is still long enough to cover the importing or bringing of many new chemical drugs and other addictive substances into Vanuatu.

Vanuatu has ratified the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 2003. Apart from just dealing with narcotic drugs, this convention also applies to narcotics derived from medical and pharmaceutical drugs. By ratifying this convention Vanuatu is making an international commitment to seriously address the issues of illegal drugs, whether it is narcotic drugs or illegal drugs that have been made from medical and pharmaceutical drugs.

## WHAT PEOPLE SAID

### *Narcotics drugs vs Pharmaceutical drugs*

- *The current Dangerous Drugs Act lists all the narcotics and pharmaceutical drugs together. Although pharmaceutical drugs can be abused there is control by the pharmacist and doctors on its usage. This prevents it from being abused. Narcotic drugs, on the other hand, are damaging to the health and there is no control.*
- *Some people felt that with the separation of the laws, it would be harder to get the different departments concerned to work together. However, it was suggested that if there is only one law for both types of drugs it is better to have separate parts of the law to address each*



Chapter Two

one. This would make it easier to handle and deal with. It was suggested that the part addressing narcotic drugs have separate offences to the part addressing pharmaceutical drugs.

**A committee or responsible body should be set up to deal with issues that arise from the two types of drugs**

- *With a rising trend in drug abuse there is the risk of abuse of powers by people who are in charge of looking after drugs, such as police officers and pharmacists, as they have all the information and access to such drugs. The drug law must provide for the disciplinary of officers who abuse their powers to misuse drugs that are in their control or supervision.*

***“Some people felt that with the separation of the laws, it would be harder to get the different departments concerned to work together.”***

**RECOMMENDATIONS**

THEREFORE the Vanuatu Law Commission makes the following recommendations:

1. That the current Dangerous Drugs Act should have a separate Part dealing with narcotic and psychotropic drugs, including marijuana and the Act’s name should be changed and cater for a name that applies to both illegal and pharmaceutical drugs.
2. That the part that addresses narcotic drugs must have separate offences to the part that addresses pharmaceutical drugs.
3. That the new revised law should clearly provide a definition for the different drugs i.e. narcotic/illegal drugs and pharmaceutical drugs.
4. That the part for pharmaceutical drugs should provide strict measures on how pharmaceutical drugs can be prescribed and by whom, whether it is medical practitioners, pharmacists or nurses.
5. That an expert committee can be appointed to advise the Director General and Minister on any new substances or drugs which are promoted or claimed to have any medical, preventative, curative, therapeutic or palliative benefits.
6. That there should be collaboration and cooperation between the Vanuatu Police, Ministry of Health, Customs Internal Revenue and Biosecurity Vanuatu when dealing with the two different types of drugs and it needs to be formally recognized in the Acts.

# New drugs and pharmaceutical substances

## BACKGROUND

The Dangerous Drugs Act sets out in section 2 a list of over 300 substances and materials and prohibits their importation, sale supply or possession in Vanuatu - with 5 exceptions. Those exceptions include medicines prescribed overseas, permitted or authorized imports, drugs and substances specified in the Sale of Medicines Act, medicines dispensed or prescribed by a qualified pharmacist or medical practitioner and drugs excluded from section 2 by the Minister of Health.

As a small island nation Vanuatu lacks many of the resources available to its larger neighbours Papua New Guinea, New Zealand and Australia, particularly in the scientific and health fields. Vanuatu does not have the laboratories and the highly refined instruments and equipment needed to fully test, analyze and identify the benefits or attributes of new drugs or substances, nor does it have enough fully trained pharmaceutical, pathological and scientific experts to properly use these facilities and resources. Vanuatu also lacks enough safe high temperature incinerators to properly dispose of illegal drugs or of the large quantities of unwanted pharmaceutical drugs and expired stocks of medicine, which often deteriorate and turn toxic to human health over time.

Therefore Police, Customs, and Biosecurity officers in practice use the list in section 2 of the Dangerous Drugs Act to determine whether or not any new or unknown substance is allowed to enter Vanuatu. This means that, even if their precise name and description is not known or disclosed by the person importing or supplying the substance or does not appear on any label or package, many new and untested drugs, substances, materials and synthetic derivatives are permitted to come in to Vanuatu.

While section 6 of the Dangerous Drugs Act allows the Minister of Health to 'vary the list of substances and materials included in section 2' at any time, in practice this mainly occurs when the UN International Narcotic Control Board determines that a new drug or substance is either a narcotic or a psychotropic substance. Currently the Minister has no specific power to withdraw, suspend or cancel any approval or exemption under the Act.

In recent years many new substances claiming to be therapeutic, medicinal or 'healthy' have emerged. In New Zealand and Australia these have included synthetic cannabinomimetic substances laced with herbal material



# Chapter Three

which mimics the effects of cannabis, and a synthetic replacement for ecstasy which - when eventually analysed by expert chemists - contained a prohibited drug methcaninone. In Canada in May 2013 Montreal police issued an alert about desmethyl fentanyl, a derivative of a legal painkiller fentanyl but said to be 40 times more powerful than heroin. Vanuatu has also been exposed to untested and unapproved substances including derivative or synthetic amphetamines as well so-called therapeutic substances including Miracle Mineral Solution (MMS), which are not currently covered by the Dangerous Drugs Act or any other Vanuatu law.

As the New Zealand Law Commission reported in 2011:

*"The experience overseas also shows that as one [synthetic cannabinomimetic] substance is regulated, manufacturers move to replace it with an unregulated one."*[p116]

***"Vanuatu needs laws that prohibit any new substance until it has been approved and allow for the withdrawal, suspension or cancellation of any approvals or exemptions previously given."***

In their report the NZ Law Commission recommended that anyone wishing to manufacture, import or distribute a new substance would be required to apply for an approval, and to provide all available information about the composition of the substance and its known health effects. This would include accurate information on the composition and strength, and its effects (including any adverse effects) on the human body AND a continuing obligation to report any new information they acquire on the adverse effects of these substances.

Lacking even the resources available in New Zealand, Vanuatu cannot pretend to be able to detect or identify dangerous or unhealthy new substances. Indeed at present any pharmaceutical or therapeutic testing is paid for by the World Health Organization, rather than by Vanuatu or by the user or manufacturer seeking permission to sell and make money from the new 'medicine'. Using the resources and published prohibited drug lists of international bodies such as the International Narcotic Control Board or the World Anti-Doping Agency would also give Vanuatu more protection against new drugs and materials.

Like its Pacific neighbours, Vanuatu is fully committed to the protection of public health, particularly of its young people. It seems that this can only realistically occur under a new system where the user or manufacturer not only pays for any necessary testing and analysis but must prove that their product is harmless or therapeutic to humans (and/or animals).

To reflect this Vanuatu needs laws that prohibit any new substance until it has been approved and allow for the withdrawal, suspension or cancellation of any approvals or exemptions previously given. Other countries' laws specifically permit the immediate recall of any substance, drug or material if a manufacturer or person involved in importing or supplying it fails to provide all available information on the substance, or if any labeling, storage, warning, or dosage information appears defective, misleading or in-

sufficient for public health purposes. Other countries allow the power to recall to be exercised where the Minister is advised that because of contamination, damage, deterioration or for any other reason the substance is a risk to public health or unfit for human consumption.

Vanuatu has had a 'National Medicines Policy 2012 – 2016' in draft for some time. The draft policy provides for the appointment by the Director-General of Health of a National Drug & Therapeutic Committee, including the medical superintendent of Port Vila Central Hospital and the Principal Pharmacist as senior members. Adoption of a National Medicines Policy would reinforce and support a consistent approach to new drugs and substances, whether pharmaceutical, therapeutic, narcotic or psychotic in its effects. New Zealand and Australia also have codes for the advertising and promotion of all these substances and products – and setting out a minimum standard by Schedule or Regulation would certainly fill the large gap in managing marketing and sale of these products in Vanuatu.

## WHAT PEOPLE SAID

### *On Testing and Approving New Drugs*

- *It is important that people know about the laws that apply to new substances and drugs. New substances and drugs are manufactured constantly, but because it doesn't happen here, people in Vanuatu do not know about them.*
- *Currently in Vanuatu approvals and exemptions are not regulated and no testing is carried out on new drugs. Often new substances are sold and marketed without any control or approval. If any medical drug is not safe, clear of side effects and reliable it should never be approved in Vanuatu.*
- *There are not enough laboratories or resources for Vanuatu to test new substances, which is dangerous. When tourists bring herbs and other things in, sometimes unlabeled and some labeled but not in English, then unless we can find them on the prohibited list we have to release the goods.*
- *Vanuatu has no national Food and Drugs Administration like the US to control new substances that are marketed and sold. This leaves Vanuatu at a high risk of exposure to new substances that may be dangerous.*
- *The lists under World Anti-Doping Agency are renewed each January 1 for prohibited medical and pharmaceutical drugs, as these drugs are only exempted for therapeutic use by the World Anti-Doping Agency after proper analysis and storage.*
- *Currently, there is no process for new pharmaceutical drugs. Any new pharmaceutical drugs cannot be monitored or censored. The existing*

***“Currently, there is no process for new pharmaceutical drugs. Any new pharmaceutical drugs cannot be monitored or censored.”***

expert committee can only approve pharmaceutical drugs that are on the essential drugs list. (Chapter 2, recommendation 6).

- Authorities concerned, such as the Ministry of Health, Customs and Biosecurity need to liaise regularly about new drugs and substances. At the moment these authorities are working individually. Some collaboration will help to monitor new drugs and substances (Chapter 2, recommendation 7).

### **Powers to Regulate Medicinal Therapeutic and Pharmaceutical Drugs**

- The Ministry of Health has a problem disposing of unwanted donations of drugs and expired drugs as well as illegal substances through safe high temperature incineration. This stops many unlabelled, unidentified and incompletely labeled goods and substances being seized and destroyed.
- New laws need to ensure the Act does not need updating every time a new chemical substance is introduced or abused.
- At the moment the Vanuatu Police works independently of the Ministry of Health. However, records of all illegal and dangerous drugs should be reported to the Ministry of Health so that complete records –so it can be included in the reports to the UN International Narcotic Control Board.
- There are grey areas for overuse of some therapeutic drugs. There are no proper records that are kept if therapeutic/pharmaceutical drugs are being overused.
- Pharmaceutical drugs that are dangerous can be misused if there are no approvals or certificates. The law must regulate controls over prescription of dangerous drugs so there is strict control of its use between nurses, private doctors and pharmacists.

***“There are no proper records that are kept if therapeutic/ pharmaceutical drugs are being overused.”***

### **Advertising and Promoting New Drugs and Substances before Approval or Exemption**

- Currently there is no control on new drugs being advertised. This can allow for new drugs that have harmful substances to enter the country. Such advertisements can be harmful if the new drug contains harmful substances and can put people’s lives at risk. In Australia there is a Therapeutic Goods Advertising code which prohibits and suspends advertising of pharmaceutical or medicinal products.
- Minister on advice of an expert and non-political Committee must be able to prohibit or suspend advertising of pharmaceutical or medicinal products.

- *The public need to know how dangerous these new untested or unhealthy herbs and treatments can be. Retail shops take advantage of this by selling cheap, expired or deteriorated drugs and medicines.*

## **RECOMMENDATIONS**

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

### Testing and approving new drugs or substances

1. That the law provide that any new drug or substance that is imported, supplied or transported to Vanuatu for use as a medicine drug or pharmaceutical treatment may only be approved or exempted by the Minister of Health if advised by an expert and non-political Committee that the drug or substance is harmless to humans and and/or animals when used as directed by a health professional. To enable proper advice to be given urgently, until the Director-General is able to appoint this Committee it should consist of the Medical Superintendent of Port Vila Central Hospital or their nominee, the Principal Pharmacist or their nominee and at least 3 other members of the National Drugs & Therapeutic Committee.
2. That the law provide that the manufacturer importer or promoter of any new drug or substance bear all costs of establishing that the new drug or substance is harmless to the satisfaction of the National Drugs & Therapeutic Committee; and further that the manufacturer importer or promoter of any new drug or substance must undertake to disclose to the National Drugs & Therapeutic Committee all available information on the composition, strength, and effects on the human body of the new drug or substance as soon as is reasonable after becoming aware of that information
3. That the law prohibit the import, supply, sale or possession of any new medicine drug substance or material which is to be used or is capable of use in connection with the treatment, prevention or cure of any disease ailment or health condition except where it is the subject of an import certificate under section 7 of the Dangerous Drugs Act or is separately specified in the Sale of Medicines (Control) Act.
4. That the new law provide for the prohibition of any medical or pharmaceutical drug or substance which is listed by the World Anti-Doping Agency on its website
5. That officers of the Ministry of Health, Biosecurity Vanuatu, the Vanuatu Police Force and the Departments of Customs and Internal Revenue meet every quarter to report and review any new drugs

and substances which have come to their attention and provide training to their staff in applying the new laws

Powers to Regulate Medicinal Therapeutic and Pharmaceutical Drugs

6. That the law provide that the registration of any person who fails to keep proper records of patient dosages or fails to properly prescribe any drug or substance as required by the Dangerous Drugs Act must be suspended upon conviction of that contravention of the Act; and that registration may only be restored by the offender's professional body.
7. That the law provide that any court convicting a medical practitioner, pharmacist, nurse, health worker or veterinarian of any offence under the Act must notify the Director General of Health, the offender's employer and the offender's professional body in writing within 7 days of the conviction, irrespective of whether an appeal is lodged.
8. That donor funding be urgently sought to establish and maintain safe high temperature incinerators at Port Vila Central, Norsup and Lenakel hospitals for the disposal of illegal, unwanted or expired drugs, medicines and pharmaceutical products as well as hazardous health waste.
9. That sale, supply or advertising of any prohibited substance or material before or without approval or exemption be punished as a criminal offence under section 17 of the Dangerous Drugs Act.
10. That the law provide that any substance or material which is unlabeled in English, French or Bislama and cannot be adequately identified by the person seeking to import, supply or transport it may be seized by Customs, police and Biosecurity officers and forfeited for destruction without compensation.
11. That the Vanuatu Police Force report all seizures of illegal or dangerous drugs, substances or materials to the Ministry of Health (including where the drug substance or material has not been satisfactorily identified or named).
12. That the law specifically provide the Minister with power, on the advice of the expert Committee in Recommendation 1 , to order the recall and seizure of all or any drugs materials or substances upon receiving information that the drug, substance or material may not be, or may no longer be harmless to human health or may be a risk to human health;

OR if the expert Committee advises the Minister that relevant information about the new drug material or substance has not been punctually disclosed or provided;

OR if any labeling, information, warning or advertising appears misleading, defective or insufficient for public health purposes.

13. That the law specifically provides that a refusal, failure or omission to punctually provide relevant information about a new drug material or substance to the expert Committee is a contravention of the Act and subject to the pecuniary penalties provided in section 17 of the Dangerous Drugs Act.

#### Advertising and Promoting New Drugs and Substances before Approval or Exemption

14. That advertising of any drugs, substances or material, whether by words, pictures or moving images, which have not been approved or exempted by the Minister under the Dangerous Drugs Act or the Sale of Medicines (Control) Act be a criminal offence for persons, companies and businesses.
15. That the Minister have the power, on the advice of the expert Committee, to prohibit or suspend the advertising of any drug, substance or material, and/or to direct that any such advertising include specified advice of the recall or seizure of the product.
16. That the law includes provisions generally regulating the advertising of any drug substance or material with financial penalties for any breaches by an advertiser.
17. That the Ministry of Health provide information and education at community and village level about the dangers and risks of new and untested substances and materials as cheap medicine –so that people understand the difference between custom medicine cures or leaf medicine and these foreign drugs and materials.



# Possession of drugs, drug equipment, utensils, manuals and instructions

## BACKGROUND

It's not just drug dealers who will be arrested if they get caught in the act. Carrying drugs for personal use, distribution, sale or otherwise can land you a large fine or time in prison too.

Drug possession is the crime of having one or more illegal drugs on the person or in the clothing, vehicle or premises of the offender, either for personal use, manufacturing, distribution, sale or otherwise. Illegal drugs fall into different categories and sentences vary depending on the amount, type of drug, circumstances, and jurisdiction. A person has possession of drugs if he or she has actual physical control of the drugs (they have the drugs in their hands) or if the drugs are on that person. A person also has possession of drugs if he or she has the power and intent to control their disposition and use. In other countries, a person can also be liable of possessing drugs if drugs are found on his or her land, vehicle, boat or any premises occupied by him or her.

Vanuatu's Dangerous Drugs Act makes possession in Vanuatu of a prohibited substance or material, a criminal offence. Thus, there is no definition or explanation of the word possession in the current law which makes it harder to prove drug offences. Definition of the term 'possession' is the most crucial part of proving drug offences therefore, it is important to have a clear definition of the term possession.

The Dangerous Drugs Act of Vanuatu also does not mention or deal with any aids to drug preparation or use. Common tools or utensils include pipes or crack pipes and bongs or water pipes, as well as needles or syringes. The current law also does not deal with use of the post office or national mail to convey or provide drugs or drug utensils, instructions, manuals or drug equipment.

The definition of the term possession varies according to jurisdictions. In some countries of the Pacific, possession is not defined in the legislation. The *Drugs, Poisons and Controlled Substances Act 1981* of Victoria defines possession as "without restricting the meaning of the word possession, any substance shall be deemed for the purposes of this Act to be in the possession of a person so long as it is upon any land or premises occupied by him

or is used, enjoyed or controlled by him in any place whatsoever, unless the person satisfies the court to the contrary”.

Drugs laws in Australia and New Zealand presume that any drugs on property which is under a person’s control are treated as if the person possesses those drugs and it is up to the offender to prove that he or she did not have possession of drugs by showing that he or she did not know they were there or what they were. The laws in Fiji, Tonga and Niue make possession of drug equipment, utensils and or chemical a crime unless the person can show they were not for use with illegal drugs.

## WHAT PEOPLE SAID

### *Definition of the term Possession*

- *The term possession must be defined. There should be a clear definition of the term possession in the legislation in order to be able to charge people with drugs.*
- *Currently, the police officers charge offenders with possession of drugs if he or she has actual physical control of the drugs. They cannot charge a person if drugs are found on their property or vehicle.*
- *When defining possession we must make sure that knowledge should not be an element of possession as it closes up cases.*

### *Definition of other terms apart from possession*

- *In the current law some of the terms are not defined. It is important to have such terms defined in order to avoid ambiguity.*

### *Different types of Possession*

- *There are different types of possessing drugs. Possession can mean that a person has actual physical control of the drugs, if the drugs are on the person or if he or she has the power and intent to control its disposition and use. Different types of possession can be for the following:*
  - a) actual physical control of drugs (in the persons hand)*
  - b) drugs on person (in the person jacket)*
  - c) drugs on his premises*
  - d) drugs on his land*
  - e) the person has the power and intent to control the drug disposition and use*

***“There should be a clear definition of the term possession in the legislation in order to be able to charge people with drugs.”***

## **Classification of Drugs**

- *Different kinds of drugs are introduced into the societies today. Some are not as dangerous and harmful as others. So the risks are different for each one. It would be ideal if drugs are classified according to the risks they have on a person and different penalties can be applied to the different categories of drugs.*
- *On the other hand, many people felt that all drugs are dangerous and pose risk to people's lives so possession of either drug should be charged equally.*

## **Possession of Materials**

- *Currently, the Dangerous Drugs Act does not have any provision that holds a person liable for possession of equipment, utensils, manuals or instructions that are used for drugs, if these tools are found on the person's property. This is a concern for police as such tools indicate that the person whose property or vehicle the tools are found on must know the purpose of these tools. If they do not know they must prove otherwise.*

## **Sender or Receiver and mailing of instruments, manuals drugs, utensils**

- *Vanuatu's situation in drugs has also advanced over the years. There have been cases where a person mailed a manual on how to mix certain ingredients and chemicals to form a drug. The police were not able to intercept this as the Dangerous Drugs Act does not provide for situations such as this.*
- *As this is not provided for in the current law people can use this gap as a way to send instructions to others to obtain drugs in an indirect way.*

## **Marijuana parcels sent from islands**

- *There have been a few cases recently where parcels of food items containing marijuana have been intercepted by the police. People on some of the islands that were consulted raised the concern that people on other islands who inter-married with their relatives "brought" marijuana to their communities. Inter-marriages have been provided a network for the young people to send marijuana to other parts of the country.*
- *Some people said that the receiver of the parcel is the one to be charged with possession of drugs unless he or she proves otherwise.*

***“There have been a few cases recently where parcels of food items containing marijuana have been intercepted by the police.”***

## **RECOMMENDATIONS**

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That the term possession must be clearly defined in the new Dangerous Drugs legislation.
2. That the definition must gather for all types of possession
  - actual physical control of drugs;
  - drugs found on person;
  - drugs found on his or her premises, vehicle, boat or on his or her land (including gardens of marijuana);
  - the person has the power and intent to control the drug disposition and use; and
  - if a person feels that the drug on property is not his, then he must prove it in the court of law.
3. That the definition of possession to include name of person on a parcel containing marijuana.
4. That knowledge should not be an element of possession when it comes to defining the term possession.
5. That a person should be held liable for possessing drugs so long as it is upon his land or premises occupied by him or is used, enjoyed or controlled by him in any place whatsoever, unless the person satisfies the court to the contrary.
6. That the terms supply and cultivation be clearly defined.
7. That drugs must be classified into different classes according to how dangerous they are and their effect or impact on human and the society. Class A – hard drugs and Class B – for marijuana and other drugs.
8. That a provision be inserted to hold people liable for possession of drugs if drugs equipment, utensils, manuals or instructions are found on any of their property unless they prove otherwise.
9. That advertisements of drugs especially marijuana on clothes and pictures must be banned as it encourages the existence and the use of marijuana.
10. That senders and receivers of marijuana parcel or other drugs must be charged with possession if found.
11. That the law be changed to punish any person or company who sends or delivers any manuals or written instructions or guides on cultivation, preparation or manufacture of illegal drugs whether through the post or in any other way.

# Longer prison terms for drug dealing, drug trafficking, manufacturing or supplying drugs

## BACKGROUND

Drugs have been part of our culture since the middle of the last century. Popularized in around the 1960s by music and mass media, they invade all aspects of society until today. Drug dealers, drug traffickers, drug distributors or otherwise are commonly found everywhere in the world.

People are into drugs for a whole lot of reasons. People take drugs because they want to change something about their lives. Some people are into drugs just to fit in or rebel, others for pleasure, business, relaxation, and to seem grown up or experiment. Without considering the effects, they think drugs are a solution. But eventually, the drugs become the problem.

Drugs have a lot of side effects on humans. It affects the mind of an individual as well as the creativity of a person. It also affects the other aspects of the human body's functions. Drug laws should be strengthened to address the seriousness of drugs issues.

Vanuatu's current Dangerous Drugs Act only has a standard penalty for all drug offences. It states that "every contravention of the Act constitutes an offence punishable by a fine not exceeding VT 100 million or to a term of imprisonment not exceeding 20 years or to both such fine and imprisonment."

In other countries in the Pacific the law varies when it comes to drugs and longer prison terms. Some Australian laws provide that if an offender possesses more than a certain quantity of a drug then the offender is treated as if he is trafficking or selling the drug, and a much heavier prison term is given. In New South Wales possession of more than 300 grams of cannabis leaf is treated as drug trafficking unless proven otherwise and the prison term may go up to 10 years instead of 2 years imprisonment. Possession of 100kg of cannabis leaf is treated as commercial drug trafficking and the prison term may be up to 20 years imprisonment.

The law in Tonga defines manufacturing as carrying out any process by which an illicit drug or controlled chemical is produced, and includes extracting, refining, formulating, preparing, mixing, making an illicit drug or controlled chemical into dosage form and packing or transforming it into another drug or chemical. It also punishes anyone possessing, importing or



Holding cell of the TORBA police station

# Chapter Five

supplying chemicals or equipment that may be used in manufacturing or producing drugs.

The standard penalty in the current Dangerous Drugs Act shows the seriousness of the offence. However, as there can be many different types of drug offences this penalty is too broad and general.

## **WHAT PEOPLE SAID**

### ***Higher penalties for hard drugs***

- *The penalty in the current Dangerous Drugs Act is too broad. There are different types of drug offences and it should be reflected in the law. There are different categories of drugs that give different effects on a person.*
- *However, some people raised that all drugs were the same, and that marijuana should be classified as hard drugs and should be given the same penalties.*
- *It was generally felt by people in the communities that more younger people were using marijuana, especially in the islands. Although the Dangerous Drugs Act exists there is not enough enforcement of it. In communities where custom governance is weak there is a high usage of marijuana amongst the young people. In some parts of the country where government services do not filter down to the community level people plant marijuana to sell as an income to pay for school fees, food and other basic necessities.*
- *Additionally, the current drugs law does not provide for cultivating, dealing, manufacturing or trafficking of hard drugs. There have only been a few cases of this but with development and exposure to the global world hard drugs will infiltrate our society and if our drugs law does not provide for this it will become a problem in the next 5 – 10 years.*

***“Although the Dangerous Drugs Act exists there is not enough enforcement of it. In communities where custom governance is weak there is a high usage of marijuana amongst the young people.”***

### ***Trafficking, manufacturing, cultivating and selling***

- *Currently trafficking, manufacturing, cultivating and selling of illicit drugs carry the same punishment as using or smoking, especially marijuana. People felt that using or smoking is not the same as trafficking, manufacturing, cultivating and selling and should carry an imprisonment penalty of 2 – 5 years. However, if there is only one offender for a small quantity or the offender is not the principal offender the penalty should not be high.*
- *The new law must take into consideration fertilizers and chemicals that can be used to cultivate marijuana or make other drugs. The current law does not provide for this and with advanced technology and young*

people are exposed more and more, to new techniques and methods to manufacture and cultivate illicit drugs.

- As more and more people are becoming aware of the high demand of marijuana among the young people marijuana is grown in gardens with other crops as a way to conceal it. This practice is done a lot in the island where police presence is lacking. The current law does not provide for this.
- Sending manuals or instructions for cultivating, preparation and manufacturing through post is a serious offence too which is not provided for in the current law. As police presence is lacking in the islands, methods and techniques to manufacture, prepare and cultivate drugs can be a way to distribute drugs.
- Cultivating, planting and possessing seeds of illicit drugs or psychoactive plants for the purpose of drug consumption and use can help towards the rise of illicit drug use in the society. The current law does not provide this.

***“Young drug offenders should have the same laws and punishments applied by the court, except that their age is taken into consideration.”***

#### ***Minors should not be punished if proven to have no knowledge***

- There was much controversy on this issue. A lot of people said that minors should not be punished for involvement in dealing drugs, drug manufacturing, and drug trafficking or otherwise unless proven to have knowledge of what he or she is in to. However, some said that minors should be treated separately from adults when it comes to the issue of drugs and they should receive lesser penalty than adults.
- An issue that was raised in this part was that the age of a minor is different to the age of responsibility. Under the Convention on the rights of the Child, which Vanuatu is a party to, it states that a minor is anyone below the age of 18, however under the Penal Code CAP 135, the age of responsibility is 16 years old. There is an inconsistency between our international obligation and our domestic law. This must be addressed in the new drugs law so there is consistency between the domestic laws and international requirements.
- As the penalty in the Dangerous Drugs Act is general, it means that if children are involved in drug activities the penalty must be applied to them regardless of their age. Some people felt that parents must be held accountable for the actions of their children who are involved in drug activities.
- Young drug offenders should have the same laws and punishments applied by the court, except that their age is taken into consideration. It was felt that if they were involved in selling and transporting drugs they must face the same punishment. This is seen as a way to stop young people from getting involved in drug activities. If the penalty is reduced

*because of their age, adults may use young people in their drug dealings.*

- *Youth need counseling through schools, Sunday schools, youth groups so as to raise awareness and educate families about drugs. Awareness and education is important for families and communities and they can be used to deal with young offenders in their community, as a way to balance protection and enforcement. Enforcement can be done in villages for first offences by getting the young people to be involved in community work or programs run by organizations such as Wan Smol Bag.*
- *Unfortunately substances such as kava have contributed negatively in family life when there is an abuse of it. This has made parents neglect their responsibilities and duties to spend time with their families. Communities need to educate and look after the children; and parents must encourage good health, sport, play, sense of identity by working in gardens, carpentry, fishing instead of forgetting their children.*
- *Tourists' and other people encouraging minors or asking for drugs from minors should also be punished.*

#### **Adults who uses minors should be punished higher than minor**

- *There are some cases where adults use minors in drug activities. This does not happen frequently however it is foreseen that with the current rise in trend of marijuana use it is likely that Vanuatu will come to this stage. During consultations, people agreed that adults who use minors in drug activities must be charged with serious penalty or longer prison terms.*

#### **Yachts and cargo vessels must be checked by customs/police**

- *There are some parts of the country where there are no custom officers, immigration officers or police officers. This poses a high risk for drug activities. With a lack of these human resources it is difficult to monitor drug activities throughout the country. These officers are not present in all islands and only some islands are notorious for drug activities.*
- *In some rural areas, police officers are given the power to do the full checks in the absence of any customs officer, immigration officer or quarantine officer. These officers have had some form of training but these trainings need to be done regularly as new methods and ways of drug activities evolve over time.*

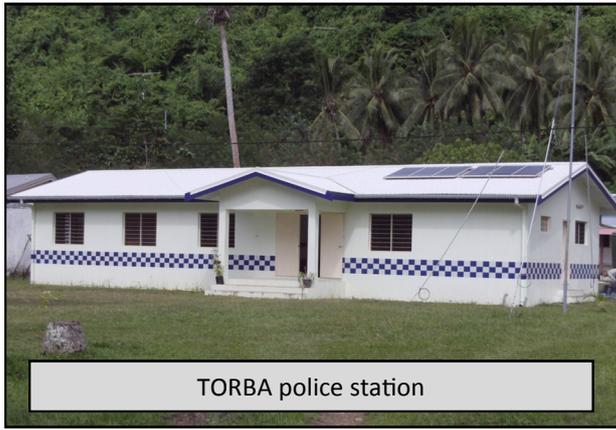
***“In some rural areas, police officers are given the power to do the full checks in the absence of any customs officer, immigration officer or quarantine officer.”***

## **RECOMMENDATIONS**

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That a new section is incorporated into the new law for longer prison terms for hard drugs including Marijuana.
2. That a standard longer prison term for cultivators, distributors, traffickers or suppliers of hard drugs including Marijuana.
3. That the law be changed to punish the purchase and use of fertilizers, chemicals and agricultural or pharmaceutical products to assist in the manufacture or production of illegal drugs.
4. That a Juvenile Center be built for minor offenders.
5. That the new law provide for minors and imprisonment with a presumption that young offenders be sentenced to community work and counseling for possession and use of cannabis, pending the establishment of youth or juvenile courts.
6. That the term 'Minor' will refer to any person under the age of 18 years. This is to comply with the Convention on the Rights of a Child to which Vanuatu is a party to.
7. That Section 38 of the Penal Code be changed to correspond with the Convention on the Rights of a Child.
8. That adult who use minors in drug activities are liable to longer prison terms.
9. That these laws should include tourist who encourage or procure young people to supply them with drugs and any business or commercial advertising or encouraging of illegal drug use to young people, including the use of pipes or bongs.
10. That both adult and minor be charged if they both have knowledge of the drug. Minor will be charged with lesser penalty compared to adult.
11. That a minor with no knowledge or intention of using or distributing drugs, should not be charged with an offence.
12. That all yachts and cargo vessels must be checked by customs, immigrations, or police officers in every port of entry. In the absence of any customs, quarantine or immigration officer, a police officer on the ground is given power to do the checks.

13. That sniffing dogs are used by Police officers or any other officer who carry out checks and searches on yachts or internal cargo vessels for drugs.
14. That the Department of Corrections and Ministry of Education provide information and feedback to students, parents and communities on health realities of drug use.
15. That the law be changed to provide heavy prison terms for manufacturing, producing or supplying illegal hard drugs, and cultivating and supplying large quantities of cannabis or marijuana over 1 kilo.



# Police powers

## BACKGROUND

Police powers are special powers that are needed by the police and customs officers to catch drug offenders. Because of the increase in drug use in most countries, including Vanuatu, there are many laws which give police and customs officers increased powers in drug cases. Currently, in the Dangerous Drugs Act police powers provided in the Act are not sufficient for police to address drug offences.

In the region some countries provide for police to have special powers in order to be able to handle drug offences. For example, in Tonga the *Drugs and poison Act* [Cap 79] allows senior police to apply to a Magistrate for permission to secretly record telephone conversations, meetings and other activity where they suspect that drug laws are being broken. The Tongan law also provide the police to use tracking devices, and search vehicles, boats, planes and any person suspected of involvement. Another special power is that senior Tongan police can order that a 'controlled delivery' of drugs occur and that they be held legally responsible if controlled delivery goes wrong and the drugs are supplied to the communities and villages or sold by the police.

In Australia, New Zealand, Niue, Fiji and Tonga allow police to contact internal and strip body searches, or to arrange for medical examinations of people suspected of concealing drugs. The police may apply to a Magistrate or Judge for permission to conduct an internal search and medical examination.

This increase of special powers for police and custom officers in the laws of Tonga, Fiji, Niue, Australia and New Zealand are not provided in the Dangerous Drug Act of Vanuatu to assist police and custom officers in regards to the increase of drug use within the country. In Vanuatu, sections 11 and 12 of the Dangerous Drugs Act provide that police may search a person suspected of concealing drugs or other precursor substance connected with drugs. Section 10 of the Criminal Procedure Code also provides that the mode of searching a person must be made by a person of the same sex. Police and custom officers can search a place or premises, a boat, car or truck if the courts issue a search warrant, however, the courts do not have any power to allow controlled deliveries of drugs, or surveillance or tracking devices to be used.

# Chapter Six

## WHAT PEOPLE SAID

### *Police and other law enforcers must have special powers*

- *Currently in the Dangerous Drugs Act the powers given to police officers are not sufficient for them to investigate and search drug offenders for suspected drug activities. Police and customs officers need to have special powers such as the power to record telephone conversation, the power to use and place tracking devices, able to carry out controlled deliveries, carry out surveillance and strip searches. These powers will assist them in successfully investigating suspected drugs offences.*
- *There is a general support from communities and villages that Vanuatu should have special powers for police investigating only drug offences due to the rapid increase of drug offences, especially marijuana.*
- *There were some controversy on who should apply for these special powers or if the law should provide for any officer working with the law to have these powers. However, it was strongly felt that to have some control and to reduce the risk of abuse of power these special powers should be applied for in the different courts.*

### *Importation of Dangerous Drugs*

- *During the consultation it was stressed that powers such as surveillance and controlled delivery in some drug cases were found to be very useful in investigating or punishing importation of dangerous drugs. However, in the current law there is no provision on this and authorities investigating drug activities find it difficult to do a thorough investigation with the limited powers provided for under the current law.*

### *Obtaining Special Powers*

- *As there are no provisions in the current law for special powers the law also does not provide for ways to obtain these powers. This means that if it is believed on reasonable grounds that a drug offence has been or will be committed, at the moment the investigating Police and customs officers must apply to the court in order to carry out these special powers to search properties and assist investigation of any person suspected of involvement. This is the same if the officer wants to carry out an internal search on the offender if drugs are swallowed or hidden inside the offender's body.*

### *Direct powers provided in the legislation*

- *In remote islands of Vanuatu there is a poor access to Magistrates or Judges, therefore, a direct legislative provision should be given police and customs officers to have these special powers without having to apply to the courts. These applications can be approved by the senior officers.*

***“Police and customs officers need to have special powers such as the power to record telephone conversation, the power to use and place tracking devices, able to carry out controlled deliveries, carry out surveillance and strip searches.”***

- *A mandatory requirement that the investigating officer must report to the Magistrate or Supreme Court Judges and senior officers after the investigation.*
- *In some parts where police presence is lacking due to human resources members of public, for example, community leaders may be able to assist police given that they are equipped with the authority.*

### **Misuse of special powers**

- *There have been instances where police and other law enforcers have misused their powers in the past. Although these special powers will assist them in drug offences there is a fear that this can be misused.*

***“Community leaders may be able to assist police given that they are equipped with the authority.”***

**RECOMMENDATIONS**

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That the new drugs law provide for extra powers such as listening devices, tracking devices, surveillance, controlled delivery and strip search to be given to police or customs officers on reasonable grounds to efficiently carry out their drug investigations.
2. That any investigating police or customs officer must apply to the appropriate court for these special powers. For special powers like controlled delivery, approval must be obtained from senior officers or by the appropriate Courts.
3. That direct powers be given to any senior police officers on the ground to provide approval and instruct police officers to use such powers in remote areas.
4. That the procedure and manner to conduct strip searches or intimate body searches must be carried out by same sex officers.
5. That any investigating police or customs officer must apply to the court to be granted an order to use a wider range of medical imaging techniques and technologies if an examination is carried out to determine whether or not drugs are secreted such as an x-ray or an ultrasound scan.
6. That any investigating police and customs officers be penalized for misuse of these special powers for other purposes.

# Protecting informants

## BACKGROUND

The laws of other countries provide that the identities of police informants are privileged information. This means that police or prosecutors are not required to

disclose the identity of the police informants. Such protection laws protect those who give information about drugs to the police or other authorities.

This protection is to encourage citizens, and even criminals, to give information to police without being scared off.

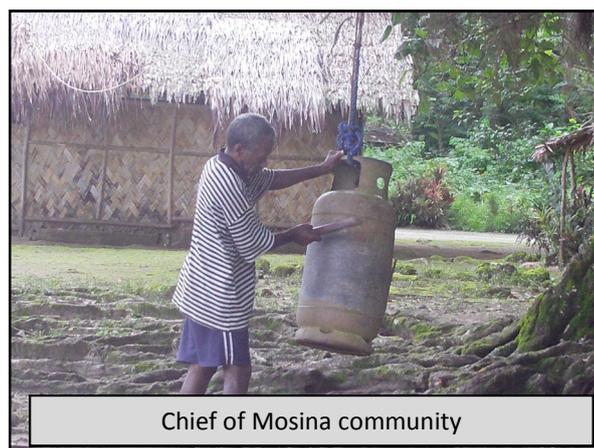
Currently, there is no legislative provision in the Dangerous Drugs Act to provide for privileged information by police informants. In other regional countries such as Tonga and Fiji, their laws protect police or customs officers or any witness in court from having to identify them or to provide the personal details of an informer or undercover police or customs officer.

During the consultations a large number of people expressed the strong view that police informants and members of the public who provide relevant information of drug and drug offenders should be protected by the law. The villagers and communities report that they are threatened by drug offenders for providing information to the police or local authorities.

## WHAT PEOPLE SAID

### *Safety of informants*

- *Police have informants in the communities. These informants assist the work of the police by informing the police on drug offenders. Without these informants the police will not be able to carry out their duties well.*
- *There have been some occasions when informants were revealed to the public. Some of them have been beaten up by disgruntled members of public or families of those offenders.*
- *There have been instances where informants or witnesses have been threatened by unhappy members of public. The current law does not provide for the protection of informants and yet they play an important role in the work of the police, especially when police presence is lacking as is the case in most parts of the country.*



Chapter 8  
Even

- *A legislative provision should protect the informant's identity, but does not protect the information provided by the informer or undercover and members of the public.*

#### **Reward for Informer**

- *People who are used as informants to the police do this work voluntarily. They do not get paid although the work they do greatly assists police investigations.*

#### **RECOMMENDATIONS**

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That there should be a provision in the drugs law to protect the identity of police informants or undercover officers and members of the public that provide relevant drugs information to police and custom officers.
2. That informant should be rewarded, as provided in other laws in the region.
3. That the drugs law provides for penalty fines and imprisonment for any drug offenders, who obstructs, molests, threatens or assaults any police informant or witness' in providing information to police before and after conviction of the offenders.
4. That the drugs law should recognize the identity of police informants as privileged information.
5. That the drugs law comply with Article 32 Protection of witnesses, experts and victims of the United Nations Convention against Corruption which Vanuatu ratified in 2010.

***“Without these informants the police will not be able to carry out their duties well.”***

# Cautions and alternative sentences

## BACKGROUND

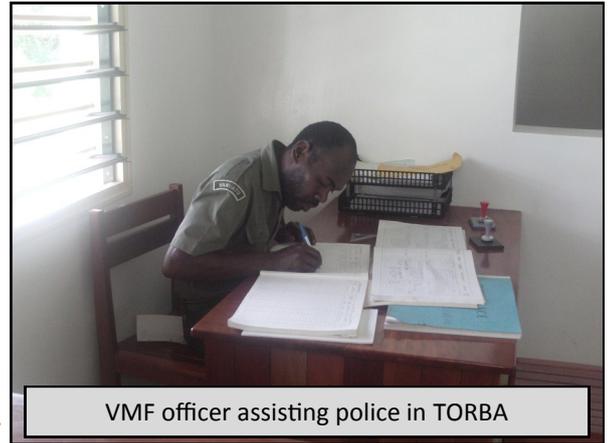
The Dangerous Drugs Act reference from the Vanuatu Police Force mentions a number of alternative sentencing models such as infringement notices or on the spot fines, warnings or cautions and diversionary programs. Investigating and prosecuting minor drug offences, particularly for cannabis, is very time consuming and costly for police and the court system in most countries in the Pacific region.

This is even more wasteful in Vanuatu, especially outside Port Vila and Luganville, because the Dangerous Drugs Act requires every breach, offence or contravention, no matter how small, to be heard in the Supreme Court. Many drug sentences from the Supreme Court, especially for youth or for small offences, are within the range for a Magistrate's Court. Cautions, on the spot fines and diversionary programs may also reduce the number of drug cases which now go to court, mostly minor cases such as possession of one or two joints or rolls.

In some countries decisions whether to issue cautions and infringement notices, or refer a drug offender to chiefs or community elders are left up to police; in other countries there are laws setting out rules for when the police MAY decide to take these steps. Having the rules written out in a law means that everyone knows how the rules are applied, so there is no favouritism or corruption when some drug offenders are taken to court while others are given a chance to avoid court.

Laws that require the police to properly record every caution, infringement notice or referral for community work make sure that no drug offenders are 'let off' or allowed to cheat the system. If the laws are followed then punishment for drug offenders is more likely to fit the crime – minor punishment for minor offences and more serious punishment through the courts for serious offences.

Another alternative sentencing approach for minor offences is a diversionary program offered on the first Court appearance. Before the offender has entered a plea to the charge, the Magistrate can grant bail on the condition that the defendant complies with the treatment regime. This allows defendants to focus on drug treatment without deciding on a plea.



VMF officer assisting police in TORBA

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Fight

Participating offenders are granted bail by the Magistrate on the condition of being assessed before taking the treatment program.

Those proposed for the program would be released into the supervision of the chief and other named elders of the defendant's village or community for an initial period of at least 3 and up to 6 months. This supervised treatment is to be decided on a case by case basis and may include total abstinence from drug use, detoxification, residential drug rehabilitation, attending the Wan Smol Bag program for prisoners, community work and formal or informal counselling. Additional court appearances are also used to monitor the defendant's progress.

After the initial period, the chief and other elders or community leaders prepare an assessment which is provided to the Magistrate recommending whether or not the defendant should continue to be monitored and supervised for a further period of up to 6 months.

It is important that the diversionary process is properly recorded through the court system in all cases - whether or not the diversionary program succeeds.

***“The law needs to clearly set out which drug offences may be dealt with by cautions, on the spot fines or diversionary programs.”***

The law needs to clearly set out which drug offences may be dealt with by cautions, on the spot fines or diversionary programs. Generally cannabis or marijuana offences are the only drugs covered -although Australia and New Zealand have also extended this program to possession or use of very small amounts of heroin and amphetamines.

The main way of deciding whether possession or use of cannabis or marijuana is a minor offence is by quantity – that is the number of seeds or plants or joints or rolls that the offender has, or the weight of the cannabis seized. In the Pacific region the number of plants or rolls for minor drug offences may range from 2 to 20, and the weight of the cannabis from 5 grams to 25 grams.

Also some countries only allow cautions and diversionary programs for young offenders – less than 18 years of age – following the UN Convention on the Rights of the Child. Other countries allow cautions and diversionary programs for first offenders or any offenders who have never been to prison. These details should be clearly set out in the law for everyone to know, so that there is no confusion about which offenders may receive a caution, on the spot fine or be diverted to the supervision of chiefs or elders.

To qualify for any of these alternative sentences the offender must admit the offence, surrender the drug (and also any bong or pipe) to police and have no prior convictions for violence or serious drug crimes. Many other countries add extra conditions, usually that the drug must be cannabis or marijuana for personal use and that the offender was not also involved in any other criminal offence or activity, such as theft.

## WHAT PEOPLE SAID

### *On the spot fines /infringement notices*

- *On the spot fines are good in theory but if police lose contact with offenders they get away. All drug cases should go to court because if the offender has no money they will not pay. If they can pay it is just 'buying your way out of trouble'. On the spot fines is one way of punishing adults with no criminal record. It gives the offender a second chance.*
- *A minimum fine of VT2,000 is a good amount that will be seen as a deterrent – to stop people spending more money on drug.*
- *Youth cannot afford to pay on the spot fines, and will benefit more from counselling and community support. These methods should be used for juvenile and youth offender.*
- *In the outer islands and villages on the spot fines should be used more, because they have less police and courts, but the amounts should be higher – VT 10,000 for first offence – and even up to VT50,000.*
- *If an offender has only 1 or 2 joints that offender should be fined but harvesting is different. Cultivating plants pays VT50,000 so everybody who is harvesting should have to go to court.*

### *Diversiónary Programs*

- *Police must be trained in guidelines set by Ministry of Justice for cautions and diversionary programs as these programs will help reduce the number of detainees and court cases.*
- *These programs are best suited to young offenders and first offenders for minor possession offences. Chiefs and community leaders also need to be properly trained to avoid conflicts of interest and use their powers to direct community work and service. A supervisor must be selected by the magistrate to report back to police and court after a set period has elapsed.*
- *Where the offender does not accept or complete the community diversion program he must go through the court process and appear before the magistrate for sentence.*
- *Need a supervisor/mentor appointed as Department of Corrective Services does for probation – the chief and community must report on offender to supervisor.*
- *Work for community should be supervised by pastor and chief for youth and first offenders but if offender does not change should go back to court*

***“Chiefs and community leaders also need to be properly trained to avoid conflicts of interest and use their powers to direct community work and service.”***

- *Education is the most effective diversion for young offender but it will be more effective if parents and caregivers are involved and educated along with offenders.*

### **Cautions**

- *People who have only one roll or joint should get one or two cautions, but after that should have to go to court. Second offenders should go to court – the court should decide whether to order community work or diversion if offender admits offence. Cautions are another way of reducing the amount of minor drug offences in court. As all drug offences must go to the Supreme Court, the judges’ time is taken up to hear minor drug offences. This is time consuming and most of these cases get sentences that are within the sentencing range of the magistrates’ court.*
- *Educating first offenders is an option that can be explored. Communities felt that there is not enough awareness and education and it was felt that such options can really help the youths and first offenders.*

*“As all drug offences must go to the Supreme Court, the judges’ time is taken up to hear minor drug offences.”*

### **RECOMMENDATIONS**

Therefore the Vanuatu Law Commission makes the following recommendations:

#### On the spot fines /infringement notices

1. That the law provide that police may issue infringement notices to adult first or second time offenders charged with possession of 2 joints or under 50g of cannabis.
2. That the law prohibits the issue of an infringement notice to any offender who does not admit the offence, is charged with any other offence, or does not surrender the drug and any utensils at the time of arrest.
3. That a first infringement notice must require the payment of an amount of not less than VT2,000 and not more than VT5,000 by bank deposit to the Department of Finance within 15 days and may require attendance at a specified time and place for drug counselling and education within 28 days.
4. That a second infringement notice must require the payment of an amount of not less than VT5,000 and not more than VT20,000 by bank deposit to the Department of Finance within 15 days together with attendance at a specified time and place for drug counselling and education within 28 days.
5. That if required by police the offender must provide the deposit slip, and proof of attendance if required, within 30 days. Once this has

been done the offence shall not proceed to court, and police records of the offence should be marked 'discharged without conviction'.

6. That if the offender refuses or fails to provide the deposit slip and proof of attendance the offence should proceed as a charge to be dealt with in the magistrate's court.

#### Cautions

7. That the law provide for police to issue a written caution to a first or second offender, whether youth or adult, who admits possession of one or two joints or of a bong or pipe for personal use - and surrenders the joints and/or utensils.
8. That the offender must sign the written caution, which is to contain information on health and drug treatment provided by the Ministry of Health. If the offender accepts the caution the police cannot charge the offender.
9. That a caution must be recorded by police and cannot be given to a third time offender.

#### Diversionsary Programs and Community Work

10. That the law provide a presumption in favour of educating offenders with no criminal record and young offenders through diversionsary programs and community work.
11. That the law encourage police to refer for community work and counselling
  - first second or third time offenders under 18 years old, and
  - adult first or second time offenders arrested for possession of 2 joints, a pipe or bong or under 50 g of cannabis.
12. That the law provide that the offender may not be referred where the offender does not admit the offence, or is charged with any other offence, or does not surrender the drug and any utensils at the time of arrest.
13. That the police confer with the chief and elders of the offender's village and appoint a supervisor for the offender during his or her community work, counselling, abstinence from drugs and other treatment for a period of at least 3 months and less than 6 months.
14. That if the offender refuses or fails to accept or carry out the supervisor's program the offence shall proceed as a charge to be dealt with in the magistrate's court.

15. That if the supervisor reports to the chief and police that the offender has successfully completed the program the offence shall not proceed to court and police records of the offence should be marked 'community diversion'.
16. That the law provide that a magistrate may, on the first court hearing of any charge of possession or cultivation of cannabis (including possession of drug utensils), grant bail and refer an offender for community work and counselling and adjourn the hearing of the charge.
17. That the police confer with the chief and elders of the offender's village and appoint a supervisor for the offender during his or her community work, counselling, abstinence from drugs and other treatment for a period of at least 3 months but less than 12 months.
18. That the supervisor must report to the court every 3 months on the offender's progress and compliance with the diversion program.
19. That if the offender refuses or fails to accept or carry out the diversion program the supervisor must advise the court and the police and the charge must be dealt with in the magistrate's court.
20. That if the supervisor reports that the offender has successfully completed the program the magistrate may discharge the offender without conviction
21. That the magistrate must either discharge the offender or proceed to hear the charge within 12 months of the first court hearing.
22. That the Ministry of Justice provide training for police and chiefs on guidelines for diversionary programs and cautions, and avoiding conflict of interest in supervising or cautioning offenders.

# Range of penalties

## BACKGROUND

Currently section 17 of the Dangerous Drugs Act contains the only power to punish drug offenders. It sets a maximum fine of VT100 million and/or up to 20 years imprisonment.

Vanuatu's drug laws have occasionally been used where drugs such as cocaine or heroin were found, but for large quantities of those drugs even 20 years is not a big prison term compared with other countries like Fiji or Australia which have life sentences.

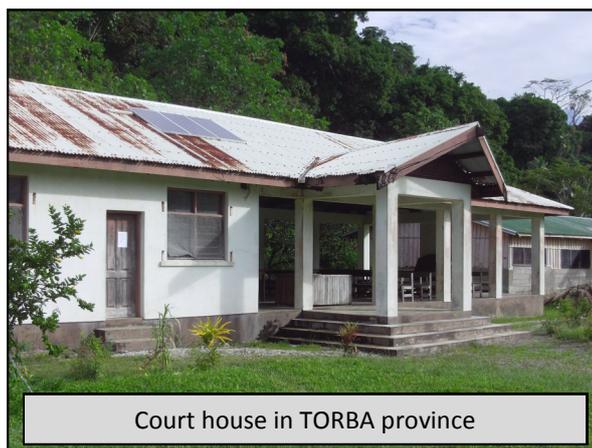
In comparison a fine of VT100 million is a big fine by international standards, even when dealing with drugs like cocaine, heroin or amphetamines.

Other nations have drug laws with a range of penalties depending on the type of drug, amount of drug, whether the offender was supplying or trafficking (selling) the drug or using it themselves, manufacturing or producing the drug, providing or offering to provide drugs to young people (under 16) and so on. Both the UN Convention on the Rights of the Child and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances require member states to protect children from the use, production and supply of narcotic drugs.

For example, in Fiji while there are several general penalty provisions setting life in prison and fines of up to \$1 million - growing or 'cultivating' up to 10 cannabis plants may be punished by 3 months in prison; growing or cultivating over 50 plants may be punished by up to 14 years in prison. Selling or trafficking in opium or coca leaf weighing under 10 grams may be punished by up to 2 years in prison; selling or trafficking over 10 grams may be punished by up to 20 years in prison.

In Australia there are similar laws so that supplying a small quantity of cannabis, under 30 grams may be punished by up to 2 years in prison but supplying large 'commercial' quantity of 100 kg may be punished by up to 20 years in prison. Supplying or offering to supply drugs to a person under 16 years, or cultivating selling or manufacturing drugs in their presence can result in an increase of 20% in the court's penalty.

Until recently in New Zealand there were also different penalties for 'supplying' marijuana, where no money or other benefit is gained by the offender, as opposed to 'selling' it - where money or some benefit is ex-



Court house in TORBA province

# Chapter Nine

changed. 'Selling' has been punished as more serious, but there seems to be no good reason for this – especially if the main principles of the law are providing reliable information, protection and punishment to our communities.

It is not always easy to decide whether an offence is minor or more serious. As the New Zealand Law Commission said in its Report on Controlling and Regulating Drugs

“There is a vast difference in the amount of cannabis that may be extracted from a seedling by comparison with a fully matured plant.”

Earlier this year the Vanuatu Supreme Court judge imprisoned a first offender [Boe] who planted 6 seeds (which grew into 6 cannabis plants weighing 293 grams) for 2 years. On the same day the judge imprisoned another first offender [Columbus] who had cultivated 9 cannabis seeds (resulting in 9 plants weighing 6.8 kg) for 2 years 4 months. A few weeks later, the Court of Appeal set aside the prison sentences for both offenders and ordered their immediate release.

The Court said that there should be 3 categories of cannabis cultivation. First –for a small number of plants grown for personal use with no intention of selling. Second – for small-scale cultivation with the intention of deriving a profit. The third category was large scale commercial growing usually an organised and sophisticated operation. The Court also recommended that instead of referring to the numbers and size of plants charged, prosecutors provide evidence of likely turnover and profit from the cultivation. This would help the proper punishment of drug operators whose intensive cultivation produced plants with higher narcotic levels

***“The Court said that there should be 3 categories of cannabis cultivation.”***

In making its orders for release, the Court of Appeal was conscious of the increase in cannabis cultivation and sale on the islands of Vanuatu. However the offender Boe was clearly in the first category and did not deserve a prison sentence for a first offence. The offender Columbus was at the bottom of the second category and had already served 2 months in prison for a first offence.

Some laws require that imprisonment be a last resort for minor drug offences with marijuana, but set minimum prison sentences for the more serious drug offences such as trafficking large commercial quantities of an illegal drug, or manufacturing or producing illegal drugs. This approach reflects the view that cultivating, importing manufacturing and producing are more serious crimes because they bring the drugs themselves into existence. The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances binds member nations to ensure that factors such as this

are taken into account when considering the early release or parole of those imprisoned for these serious offences.

A related issue is that there is no reference in Vanuatu laws to drug offences by a company or corporation, although it is arguable that a company could be fined up to VT100 million if drugs were found on company premises.

Australia and New Zealand have laws which can charge companies or corporations with drug offences – which are usually connected with importing or manufacturing drugs, rather than cultivating or selling marijuana. For example, any director or other person involved in managing the affairs of the corporation or company is also personally liable to imprisonment and fines for any breach of the law by that corporation or company.

This responsibility can only be avoided if the director or manager proves that the breach of the law occurred without their knowledge, or that they did all they could to prevent it, or that they had no say in the company's conduct.

Some Vanuatu laws have similar provisions for criminal offences by corporations, for example, section 124 of the Public Health Act, but the Dangerous Drugs Act does not.

## **WHAT PEOPLE SAID**

### *Less serious drug offences*

- *Possession of small quantities should get small punishment and be dealt with in the magistrate court. It is time consuming for the Supreme Court when they have to hear drug offences of small quantities. If drug penalties are classified on the effect or harm of the drug it can be separated for the different courts.*
- *Drug laws need to have a range of penalties because in the islands the courts set lower fines for rape and assault than for using marijuana. Using small quantity of marijuana should not go to court but be dealt with at village or community level by chief.*
- *Police need to punish all drug trafficking – more police needed for drugs in villages and islands and communities and chiefs need to be able to enforce parts of the law. We hear of other drugs from yachties but cannabis is increasing and it is still the only one we see here.*
- *Planting is always illegal and serious because if cannabis is not planted here it will not be sold and used. Marijuana planting must be stopped and hard penalties can help to do this as too much cannabis is grown outside of Port Vila.*
- *During consultation some people felt that maybe cannabis should be legalized as in Amsterdam and New Caledonia. This might help to reduce*

*“If drug penalties are classified on the effect or harm of the drug it can be separated for the different courts.”*

*criminal cases. A few people mentioned that if there are beneficial aspects of cannabis then it should be legalized but controlled similarly to pharmaceutical drugs that are dangerous.*

### **Companies, business and commercial enterprises**

- *The current law does not provide for companies, businesses and commercial enterprises. During consultations people felt that the law should have separate penalties for companies. At least VT500,000 vatu up to VT10 million for drug involvement depending on seriousness or they should just be fined double the amount of profits for narcotic drugs. Importing or dealing in drugs should be punished by closing down business.*
- *Currently, if a company makes money or profits of drug sales or that imports went through the company there is no penalty that specifically addresses this. If companies are not involved in such activities they should prove it however, any involvement in illegal drugs for pharmaceutical or industrial use should be punished by seizure and destruction.*
- *There are companies which use or import chemicals medicines and pharmaceuticals as base for narcotic drugs. These companies must be fined, and individuals involved should be sentenced according to quantity of the drug. This is an aspect that the current law does not address. Companies that sell chemicals which can be used for manufacturing drugs have to show that in their records and that the drugs are sold or used for that. The law must provide a penalty for this.*
- *Advertising by businesses through sale of clothes, accessories or pictures encourages drug use. This is found in almost all retail shops in Vanuatu. Sale of pipes or bongs is done in some shops. If the law provides for this it will be seen as commercial crimes and should get hefty penalties. Shops or businesses that sell or display products encourages use of marijuana and makes it much harder for our youth to resist peer pressure to use drugs.*

**“Currently, if a company makes money or profits of drug sales or that imports went through the company there is no penalty that specifically addresses this.”**

### **Offences involving police**

- *There is some fear that police officers are in a good position to misuse the information they get or the power they have as the current law does not provide for this. There must be very strict punishment for police who are involved in importing, transporting or selling drugs because they have the information and the power to misuse it. One suggestion made during consultation is that police officers should not work in one place for too long and should never work in their own island or village. This will prevent police from getting involved with any drug activities, or making connections.*

- *Because the current law does not provide that a police must investigate drug complaints or if a police officer has connections with a drug activity and a complaint is made the officer can ignore this complaint and do nothing.*
- *One bad tomato spoils the whole basket – police who get involved in selling drugs should have double the fines and penalties. Law enforcement officers and people in authority who use drugs should also be punished by getting demoted or sacked.*

## **RECOMMENDATIONS**

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

### Less serious drug offences

1. That the law should be changed to provide a range of penalties for drug offences depending on the type of drug and the amount or weight of the illegal drug.
2. That the law should be changed so that the Magistrate’s Court hears charges of possessing or cultivating cannabis rolls or joints and marijuana plants up to a maximum of 500 grams or 10 joints, plants or seeds.
3. That criminal charges for all other illegal drugs, including cannabis resin and cannabis oil, and larger quantities of cannabis or marijuana should continue to be heard by the Supreme Court.
4. That the law provide that a magistrate may, on the first court hearing of any charge of possession or cultivation of cannabis, grant bail and refer an offender for community work and counselling and adjourn the hearing of the charge. (Chapter 8, Recommendation 16)

### Companies business and commercial enterprises

5. That all companies, businesses commercial enterprises and their directors and managers be criminally liable for illegal drug offences as provided under the Public Health Act, unless the individuals can prove they did not know and could not reasonably have known about the offences.
6. That the law set minimum fines for companies of double the amount of any monies received by the company or business or payments made to the company relating to illegal drugs.
7. That the law provide that the Supreme Court may order that the company or business be closed and placed into liquidation upon conviction for any drug offence, in addition to any other penalty.

***“Law enforcement officers and people in authority who use drugs should also be punished by getting demoted or sacked.”***

8. That the law prohibit that advertising or encouraging of illegal drug use, or of pipes or bongs, by any person, company or business is a serious criminal offence.

Offences involving police

9. That the Police Regulations provide that police officers should not serve or be sent to their home provinces or villages, except for the municipality of Port Vila.
10. That the law provide for additional heavier prison terms for any police or customs officer committing any drug offence, whether in the course of official duties or employment or otherwise.
11. That the law provide that a police officer or customs officer who suspects that an illegal drug offence is being or has been committed must investigate the alleged offence, or if the offence may involve a colleague or fellow worker must report the alleged offence to a superior officer.
12. That the laws and regulations relating to employment and engagement of police officers, customs officers and civil servants expressly provide that any admission of or conviction of an illegal drug offence is grounds for demotion, suspension from office without pay and/or dismissal.

# Seizing and forfeiting the proceeds of drug offences

## BACKGROUND

In Vanuatu there are laws which provide for the seizing and forfeiture of the proceeds of drug offences. This is provided for in the current Dangerous Drugs Act and

the Proceeds of Crimes Act CAP 277. As it is dealt with in separate legislation there is the concern that as an offender is convicted under the Dangerous Drugs Act, the charge laid under the Proceeds of Crimes Act always takes time to be heard by the courts as it is a civil matter. This can lead to the money or property being misplaced or forgotten, or even losing its value. If the issue of seizing and forfeiture of the proceeds of drug offences can be dealt with simultaneously, rather than separately, it would be ideal.

Sections 10 and 16 of the Dangerous Drugs Act, provide for seizures and for forfeiture of vessel etc used for carrying drugs. It allows for police or custom officers to seize and confiscate any prohibited substance or material or preparation containing any prohibited substance that contravenes the Act. Section 16 provides for the forfeiture of any aircraft, ship or vehicle that is used for the unlawful importation, landing, removal, carriage or conveyance of dangerous drugs. This section addresses the dangerous drugs substances only. Both sections do not address seizing and forfeiture of proceeds of the drug offence.

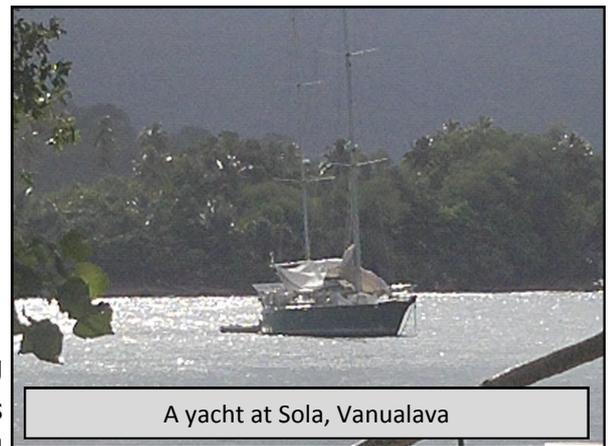
The Proceeds of Crime Act CAP 284 provides for the civil recovery of the proceeds from crime from convicted individuals. Its principal objects are:

- (a) To deprive persons of the proceeds of, and benefits derived from, the commission of serious offences;
- (b) To provide for the forfeiture of property used in, in connection with, or for facilitating, the commission of serious offences; and
- (c) To enable law enforcement authorities to trace such proceeds, benefits and property.

Section 5 of Proceeds of Crime Act defines "proceeds of crime" as:

"property derived or realized directly or indirectly from a serious offence, including:

- (a) Property into which any property derived or realized directly from the offence is later successively converted or transformed; and



A yacht at Sola, Vanualava

Chapter Ten

- (b) Income, capital or other economic gains derived or realized from that property since the offence.

In Niue, Part 2 of the Proceeds of Crimes Act deals with forfeiture orders, confiscation orders and other related matters. Section 9, which provides for the procedure on application, states in section 9(2) that an application can be made for a forfeiture or a confiscation order before the court sentences the person for the offence. The court may defer passing sentence until it has determined the application for the order.

The issue in Vanuatu is whether the criminal offence can be dealt with simultaneously with a civil case that is brought forward for seizing and forfeiture of property.

## WHAT PEOPLE SAID

### *Criminal and civil case*

- *Currently, a drug offence is dealt with separately. When the offender is convicted of a drug offence a separate case is put before the courts for proceeds of the drug offence.*
- *When a case for proceeds of a drug offence is put before the courts it takes a long time before it is heard. Sometimes the proceeds may have been diverted and it can be hard to trace.*

### *Exhibits and evidence*

- *Currently, exhibits and evidence of drug offences are held in the custody of the police. This is not practical as there is the risk of police officer abusing their positions to access this evidence.*
- *There are some cases where the courts have asked for the evidence to be produced in court after it has been held by the police and the courts are told that the evidence is lost.*

***“Sometimes the proceeds may have been diverted and it can be hard to trace.”***

## RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That the sentencing in a criminal case of a drug offence be dealt with simultaneously with the civil case of proceeds of the drug offence.
2. That the provisions on seizure and forfeiture must be in compliance with the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
3. That any exhibit and evidence of drug offences must be kept in a room made specifically for exhibits and evidence.

4. That any exhibit and evidence of drug offences that are ordered by the courts to be held in the custody of the police must be monitored in order to lower the risk of police officers abusing their powers.

# Analysis and disposal of seized drugs

## BACKGROUND

### Analysis

In Vanuatu the Drugs Analysis unit in the Vanuatu Police can carry out tests on drugs, however, this is limited to marijuana only. Analysis on any other drugs must be done in Australia or New Zealand. Such analysis is done by a scientist of the Australian or New Zealand government who must be approved by the Ministry of Health. Evidence given by this scientist only can be used in court proceedings.

There is currently no police officer or a local expert who can analyse other drugs apart from marijuana. This means that any case of a drug that is not marijuana must be sent overseas. This takes a few weeks to months before a result is reached by the Vanuatu Police to proceed with the case in court, if the result shows that the suspected substance is indeed a dangerous drug.

### Disposal of seized drugs

Disposal of seized drugs, in particular marijuana, are currently an issue in Vanuatu. Other drugs are not regularly dealt with at this stage. However, when marijuana is seized by the Vanuatu police it is disposed of by burning. This poses health risks to people living in the area where the substance is burned.

As Vanuatu does not have a room specially designed to keep evidence and exhibits any drug seized is locked in a room in the police station. Marijuana, which is the common drug seized by the police, can pose health risks when kept in a room in the police station as when it starts to deteriorate its toxic fumes and strong smell can affect officers.

In such instances other countries have tried to address this issue by providing for a presumption of fact that a sample of seized drug or other substance has the same properties as the remainder of the illegal drug or substance. This allows for the rest of the substance to be destroyed while the sample can be used in court to prove its illegality. Vanuatu does not have this presumption.

In Fiji, the courts may order that the drugs be destroyed (incinerated) if the Commissioner of Police makes an application to court. This differs in some Australian states where a senior police officer may order that drugs



An officer in Forensic Unit analyzing substances

be destroyed if he is satisfied that the drug cannot be reasonably secured while court proceedings take place. In New South Wales a magistrate may order the destruction of drugs if the quantity exceeds 50 cannabis plants or 1 kg of cannabis leaf.

In Vanuatu if a farm of cannabis plants are seized all the plants must be kept in storage till the case is completed in court before it is ordered to be destroyed. There is currently no proper storage area for drugs within the police station or with the courts and if the case takes a long time the area with which it is stored can affect people. Once the case is completed, in the case of cannabis plants, it is usually burned. This also poses health risks if it is not done properly.

## WHAT PEOPLE SAID

### *Giving evidence in court*

- *Police officers in the drugs unit have been trained to use drugs testing equipment to test drugs. Currently, they are able to confirm marijuana but hard drugs such as heroin, cocaine etc. must still be analysed overseas.*
- *Some police officers in the province have undergone training to test drugs, particularly marijuana. They are able to identify cannabis plants and marijuana joints.*
- *These police officers should be allowed to give evidence in court. The training should be substantive to enable them to give evidence in court.*

### *Destroying and burning of marijuana*

- *Currently, the court makes the order to destroy dangerous drugs. This is seen as a good practice and provides control. It was raised that due to no proper storage area for dangerous drugs, a room in the police station is used to store such substances. There is no proper security for such places, however, in the past such evidence were kept in a storage area of the court.*
- *At the moment police and other law enforcers destroy marijuana by burning the plants. Destroying of marijuana is usually done by burning of the cannabis plants. In one of the first incidents that the police destroyed cannabis plants its seeds were distributed more widely than before resulting in widespread growth of the plant in the area. It is often the case that illegal drugs seized by police and customs are burnt. Burning is hazardous to the health of people. Other safer options should be sought, to destroy illegal drugs.*
- *Currently there is no operational incinerator for disposal of drugs and unwanted or expired stocks of medicines. This is essential for the work*

***“In one of the first incidents that the police destroyed cannabis plants its seeds were distributed more widely than before resulting in widespread growth of the plant in the area.”***

*carried out during drug investigations and also for the Ministry of Health.*

### **Safety gear and equipment**

- *Burning of cannabis plants poses health risks to the officers who are burning the plants and to residents around the area where the plants are being burned. In one incident residents were exposed to the toxic fumes of the plants.*
- *Officers and other law enforcers do not wear proper safety gear when disposing drugs, especially cannabis plants.*

### **RECOMMENDATIONS**

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That all police officers should be trained to test drugs.
2. That a proper storage area is designated for dangerous drug substances with proper security. If it is at the police station or with the courts it must be constructed to ensure that there is good ventilation and drainage so toxic fumes do not intoxicate officers.
3. That destroying of cannabis plants by way of burning cannabis plants must be re-visited after the first burning to burn a second time if seeds have been distributed during the course of the first burning.
4. That other options of destroying cannabis plants must be explored as burning poses health risks. Other options may include using weedkiller or drowning in the sea.
5. That during the destruction of any dangerous drugs the police, prosecutor and the sheriff must be present, and any other person the court deems fit.
6. That law enforcers who are to execute the destruction of any dangerous drugs must wear protective and safety gear and use appropriate equipment.
7. That should there be funds to establish and maintain safe high temperature incinerators, as recommended in Chapter Three, these incinerators must be made available for the disposal of marijuana, medicines and pharmaceutical products as well as hazardous health waste.

# Psychoactive plants and substances



## BACKGROUND

Psychoactive plants are plants that contain hallucinogens which are non-addictive substances that cause hallucinations, meaning perceiving or sensing things that have no reality; for example, perceiving objects which have no reality, or seeing or hearing or smelling or feeling things which are not present. In Vanuatu, a common psychoactive plant is marijuana.

There are various psychoactive plants in Vanuatu that can be manufactured with other chemicals to produce dangerous drugs. Currently the Dangerous Drugs Act is silent on the manufacturing and preparation of psychoactive plants into other psychoactive drugs and substances. The Act also does not cater for sale and supply of locally grown psychoactive plants which are capable of being manufactured into psychoactive drugs and substances.

The Act only provides for sale, importation, supply or possession of any psychoactive drugs and substances that are listed by the United Nations International Narcotic Control Board.

The laws of other regional countries such as the Dangerous Drug Ordinance of Fiji prohibit the cultivation of psychotropic plants namely; opium poppy, Indian hemp or coca leaves. These three psychoactive plants are also included in Section 2 of the Dangerous Drug Act of Vanuatu, however, there are other psychoactive plants which are not listed in the current law.

As a State Party to the United Nation Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vanuatu must ensure that its drug law reflects the Articles of the Convention.

## WHAT PEOPLE SAID

### *Supply and sale of psychoactive plants*

- *It is a concern that psychoactive plants in the country can be manufactured to produce a drug that has the same or similar effect as narcotic drugs. These plants are not monitored or controlled so there is a high risk of people using these plants if we do not provide for it in our laws. Some of these plants are also used for traditional medicinal purposes.*
- *There is no control on the sale and supply of psychoactive plants. These plants can be used to manufacture other harmful drugs and products*

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*that give the same effect as drugs that are listed in the law. The new law must have a provision that prohibits the sale and supply of psychoactive plants used to manufacture other harmful drugs and products.*

#### **No penalty for manufacture and preparation of psychoactive plants**

- *As there is no provision for psychoactive drugs in the current law there is also no penalty for such an offence. The new drugs law must provide a penalty for this provision as people can take advantage of this gap in the law.*

#### **RECOMMENDATIONS**

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That a clear definition of the term psychotropic or psychoactive must be clearly spelled out in the new drugs law.
2. That the new drug law must cover any future psychoactive plants and substances that contain hallucinogens.
3. That the new drug law must cover the sale and supply of psychoactive plants for the purpose of preparing and manufacturing psychoactive drugs and other harmful products.
4. That the new drug law must establish a special body, such as National Drug Committee or consisting of botanists or appropriately trained people to monitor and control any psychoactive products that are locally manufactured.
5. That the new drug act must regulate sales of any local products that are made from psychoactive plants, such as the products must be first approved by the National Drugs Committee or consisting of botanists or appropriately trained people.
6. That the new drug law must provide for a penalty clause to include imprisonments and fines of sale, manufacture, possession of chemicals, equipment and instructions to manufactured psychoactive drugs.

***“As there is no provision for psychoactive drugs in the current law there is also no penalty for such an offence.”***

# Other laws and issues



## BACKGROUND

During the consultation, it became apparent that there are other laws that also deal with drugs, medicines and pharmaceutical matters. This other legislation (which includes laws covering police, medicines, customs and quarantine and is referred to further in Recommendation 8) needs to be consistent with the new Drugs Act. For instance, a National Medicines Policy for Vanuatu (which is currently in draft form only) needs to be adopted in the new drugs law as it will cover a number of the matters discussed in earlier Chapters.

Ideally provision for this national policy should appear in the Sale of Medicines (Control) Act, [Cap 148] in the same way that for example the Forestry Sector Plan is supported by sections 10 – 14 of the Forestry Act 2001, and the National Disaster Plan is supported by section 9 of the National Disaster Act 2000.

Many chemicals and ingredients in pesticides are capable of being used in the manufacture and production of harmful or dangerous drugs, so that the provisions on pesticides should ideally be consistent with the approach of the new Drugs law.

The laws on drugs and medicines do not require any particular information about new medicines, drugs or pharmaceutical substances before it can be imported sold or distributed in Vanuatu. But section 10 of the Pesticides Act requires any application for registration or import of pesticides to include information on 13 separate matters and section 27 of that Act sets out minimum requirements for pesticide advertisements. These provisions have no equivalent in Vanuatu's current drugs, medical and pharmaceutical laws. If similar provisions to the Pesticides Act were included in new drug laws it would provide a more effective and consistent approach to regulation of any new substances.

Chapter 8 of this Review shows that many people spoke of the need for strong punishment for any police or customs officers who used dangerous drugs or were involved in any drug offences. However the current disciplinary laws applying to police and customs officers make no reference to drug use. (In contrast the Police Rules at section 19, (c) (e) and (f) creates disciplinary offences for drunkenness, drinking or seeking alcohol

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while on duty or entering licensed premises except in the course of police duty.)

Similarly neither the Health Practitioners Act, the Nurses Act [Cap 262] nor the Control of Pharmacists Act provides for the disciplinary and licencing sanctions which have been recommended in Chapter 3 of this review. These laws need to have a consistent approach to misuse and over prescription of all drugs, so as to clearly interact with the new drugs law. Without this consistency, innocent people can be infected or harmed by health professionals who misuse dangerous drugs. (See *R v Peters* [2013] VSC 93 paras 1–10) The penalties set out in each law are also inconsistent with drug laws – setting a maximum prison term of only 1 month (for health practitioners and pharmacists only) and maximum fines of between VT30,000 and VT100,000.

### ***Parental Responsibility***

In Chapter 5 many people commented on parents taking responsibility for their children’s behavior, and being punished for their youth’s drug offences. This is not something that is found in any Vanuatu law – instead an individual’s responsibility for their own criminal actions is the basis of our laws.

In Vanuatu, section 95 of the Penal Code provides that girls under the age of 18 years may be removed from the authority of their male parent or guardian by the Supreme Court if the male is convicted of incest against the girl. This is a very serious step to take against a male parent or guardian and is not done often (perhaps once in the last two years – see *PP v Sam* [2012] VUSC 173, 17/8/12 at paragraph 20).

However Vanuatu currently has no laws that **punish children** for their own criminal actions by removing them from parents. Other countries including Australia, Ireland, Britain and the United States have laws which punish or direct the behaviour of parents in many other ways which include fines and having their children removed from them. The laws are based on research showing that parental neglect, and lack of parental support and supervision may lead to youth crime.

These other countries also have funded youth workers and counselors in every town or city, as well as juvenile courts and juvenile detention which are separate to those for adult offenders. Courts in these countries may order that

- Parents attend court proceedings against their child;
- Parents undergo family, drug and/or alcohol counselling
- Parents pay any fine, compensation or penalty imposed on their child

***“Vanuatu currently has no laws that punish children for their own criminal actions by removing them from parents.”***

- Parents ensure the child attends school, counselling or training
- Parents promise not to take illegal drugs or drink alcohol while the child is doing community work for a specified period ( but not after the child turns 18)
- Parents be convicted of contributing to the child’s crime by neglecting the child

These laws have been controversial and most judges and magistrates in New South Wales did not use them. Many people in these countries have said that forcing parents to do these things only makes family and child relationships worse and makes their financial struggle harder. They have pushed their Governments into giving more money to counselling, churches, youth groups and family support – for example trained youth and drug counsellors regularly visiting all schools and provincial communities.

## WHAT PEOPLE SAID

### *Other legislation dealing with drug and pharmaceutical matters*

- *The current draft National Medicines Policy will provide better safety, effectiveness and quality of essential medicines once it is finalized and endorsed by the Council of Ministers for implementation throughout Vanuatu.*
- *Currently, there is a Committee that approves and exempts drugs that are essential in Vanuatu. However, if there are any new medical drugs that may have a harmful effect to people in Vanuatu there is no control in importing it into the country. This poses the danger of importing new drugs that may have a harmful effect to people. All approvals for medical drugs and exemptions from Dangerous Drugs Act should also go through an independent advisory body to the Director General of Health for review.*
- *A number of health practitioners and officers who work with narcotic, medical and pharmaceutical drugs stated that it would be ideal for the drugs law to refer to and allow for interaction with other legislation, and to ensure consistency.*
- *The responsibilities of Departments of Customs and Biosecurity are inter-related. Officers from both departments are present in the ports of entry in urban centres and some rural centres and they need to work together.*
- *Medical and pharmaceutical rules for prescription drugs must be strictly enforced.*

***“If there are any new medical drugs that may have a harmful effect to people in Vanuatu there is no control in importing it into the country.”***

### **Enforcement and penalties in other laws**

- *There are currently no controls on shops which import drugs from overseas by police, customs or quarantine. This means that shop owners may import a range of so-called medicines, miracle cures and other substances to sell in their shops if they think that can bring a profit.*
- *As there are no controls it poses the risk of medical and pharmaceutical drugs being misused or mis-prescribed unintentionally. These offenders should be fined, but repeat offenders should lose their licence and reported to the police.*
- *These laws are significant in the control and management of medical and pharmaceutical drugs. However, if they are to be consistent with any changes made in the drugs law the responsible authority that works with the law must ensure that it has the capacity to enforce the law.*
- *There are not enough people who enforce these laws.*

### **Young offenders and parental responsibility**

***“Punishment for young people should start within the village for first offences because they are unemployed.”***

- *In some instances some people said that parents must be held accountable for their child’s involvement in drug offences.*
- *There is a need to involve family and community when dealing with young offenders to balance protection and enforcement; awareness of marijuana and law enforcement helps control smoking.*
- *Unfortunately substances such as kava have contributed negatively in family life when there is an abuse of it. This has made parents neglect their responsibilities and duties to spend time with their families. Communities need to educate and look after their children; and parents must encourage good health, sport, play, sense of identity by working in gardens, carpentry, fishing etc, instead of neglecting their children.*
- *Punishment for young people should start within the village for first offences because they are unemployed. This will help their lives instead of ruining it. Community work or programs that are organized by non-government organizations such as Wan Smol Bag, gives urban youth something to do and keeps them out of gangs.*
- *Parents are responsible for children under 15 and must be involved in diversion and “klin fasin” practices in custom.*

## **RECOMMENDATION**

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That the law should be amended to provide for interaction with other Acts.
2. That the law provide for and support the endorsement of a National Medicines Policy to ensure access to essential medicines throughout Vanuatu, and ensuring the safety, effectiveness and quality of essential medicines
3. That the law provide for strict disciplinary punishment for police and customs officers who use or are affected by dangerous drugs while on duty
4. That the law provide for strict disciplinary punishment and removal or suspension of licences and registration for pharmacists, health practitioners and nurses who misuse or misprescribe medical pharmaceutical or narcotic drugs
5. That police investigate repeat offenders who are nurses, pharmacists or health professionals for contravening criminal laws, in addition to any professional misconduct or disciplinary action taken
6. That the law be amended so that any person importing or wishing to import new substances or drugs must provide specified information to quarantine, customs or police officers, or have their goods seized and destroyed
7. That the law be amended to provide minimum requirements for advertising any drugs, medical or pharmaceutical substances along the lines set out in the Pesticides Act
8. That a general review of other laws be done to ensure consistency and clarity in their application to narcotic, medical and pharmaceutical drugs. The laws under consideration are:
  - a. Sale of Medicines (Control) Act CAP 228
  - b. Quarantine Act CAP 1
  - c. Sale of Medicines Regulations
  - d. Health Practitioners Act CAP 164
  - e. Police Act CAP 105
  - f. Police Rules
  - g. Customs Act CAP 257

- h. Customs Regulations
  - i. Pesticides (Control) Act CAP 226
  - j. Control of Pharmacists Act CAP 23
  - k. Nurses Act CAP 262
9. That Magistrates hearing drug charges against young offenders under the age of 18 be able to order that,
- a. Parents attend court with their child,
  - b. Parents also attend any counseling or community work program that their child is ordered to attend,
  - c. Parents abstain from use of any illegal drug, alcohol or kava while their child is attending any court ordered counseling or community work program, and
  - d. Parents are legally responsible to ensure that the child attend school, counseling, community work, training or any other event that the court requires.

This review was done to assist the work of the Vanuatu Police Force and other responsible authorities that work with the Dangerous Drugs Act. From the review it is apparent that the Dangerous Drugs Act needs to be urgently revised. With a law that is over 70 years old it is clearly outdated and there are many gaps in the law that needs to be addressed. The situation that faces Vanuatu in dealing with narcotic, medical, pharmaceutical and psychoactive drugs has changed vastly since 1939.



During the consultation it became apparent that the law is unsatisfactory. For example, one offence provision covering four different types of offences makes it difficult for the police officers to lay clear charges on the offender. Unlike some other Pacific countries, police and other authorities have no powers to track suspects, arrange controlled deliveries of drugs, or protect drug informants and uncover officers. Another problematic area of the current law is the penalty. With a penalty of VT100 million or 20 years imprisonment for all offences, no matter how small or big, it means that all cases must go to the Supreme Court. This takes up valuable time of Supreme Court judges. With very little powers for the police officers and other authorities using this law, work cannot be carried out efficiently.

This review has highlighted the areas that need to be amended in order to deal with the increasing incidence of illegal drugs in Vanuatu. Other laws that connect to the Dangerous Drugs 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 made in this review show that there is much to be done if Vanuatu wants to establish a system that protects our youth and reduces the use of illegal and dangerous drugs here. The Vanuatu Law Commission hopes this review has covered all aspects that need to be addressed and will assist the Vanuatu Police Force.

# Conclusion

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z