

Public Health Act

2013

LEGISLATIVE REVIEW



STRETEM ROD BLONG JASTIS
VANUATU LAW AND JUSTICE PARTNERSHIP



Australian AID

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Abbreviations

1. AIDS – acquired immune deficiency syndrome
2. HIS – health information system
3. HIV – human immunodeficiency virus
4. IHR – international health regulations
5. MDG – millennium development goals
6. MOH – Ministry of Health
7. MOU – memorandum of understanding
8. NCD – non-communicable diseases
9. NGO – non-governmental organization
10. PAA – priority action agenda
11. PNG – Papua New Guinea
12. RRRT – Regional Rights Resource Team
13. SARS—
14. STI – sexually transmitted infection
14. VLC – Vanuatu Law Commission
15. WHO – World Health Organization



Since the establishment of the office in August 2011 the Vanuatu Law Commission (VLC) has been striving toward achieving that goal set out in the Law Commission Act (Cap 115). The Law Commission's function is stipulated under section 7 as follows;

"The function of the Commission is to study and keep under review the laws of Vanuatu and to recommend reforms particularly in respect to:

- (a) the removal of anachronisms and anomalies; and*
- (b) the reflection in the law of the distinctive concepts of custom, the common and civil law legal systems and the reconciliation where appropriate of difference in those concepts; and*
- (c) the development of new approaches to and new concepts of the law in keeping with and responsive to the changing needs of Vanuatu Society, of groups within that society and of individual members of that society."*

On June 4, 2012, the VLC entered into a partnership with the Ministry of Health (MOH) to undertake a review of the Public Health Act and the Health Committees Act, which was unsatisfactory, unduly complex and out-dated, according to the terms of reference made by MOH. The VLC with its partnership with MOH has been a big achievement for both institutions as the Health legislation has been in much need of reform and the VLC was honoured to be able to do this for MOH.

The VLC commenced working on the Public Health Act review in August 2012. Considerable thought and processes were put in place to carry out the review, as best as possible. However, as with all reviews and consultations we were not without the occasional shortfalls but we were able to proceed on with the review. The team prepared questions for the various groups who were to be consulted in Port Vila and in the provinces. Consultation took place on several different islands around Vanuatu, namely, Tanna, Malekula, Ambae and Santo.

The VLC review and all the information gathered from its review will help the MOH to achieve the objectives set out in the Health Sector Strategy 2010 – 2016: Moving Health Forward. This review provides a direction for the MOH to deliver better health care services to the people of the Republic of Vanuatu.

I am very proud of what my office has been able to achieve in a short period of time and am very pleased to hand this report over to the MOH in the hopes that the recommendations will help see that the Public Health Act and the Health Committees Act be reformed for the betterment of the people of Vanuatu.

I would like to thank the AUSAID Stretem Rod blong Jastis program who have helped the office of the VLC tremendously to fulfill its obligations under the Law Commission Act.

We look forward to carrying out more reviews on legislations in Vanuatu.

Bertha Esau Pakoasongi

SECRETARY

FORWARD

Executive Summary

In June 2012 the Vanuatu Law Commission and the Ministry of Health entered a partnership to review public health laws in Vanuatu. Following consultations covering all six provinces, including community consultations on Efate, Tanna, Malekula, Santo and Ambae, the main messages to the VLC were that health services in Vanuatu have deteriorated and that more notice needs to be taken of community needs and concerns.

The VLC also had regard to Vanuatu's international obligations (as a member of the World Health Organization) under the International Health Regulations, and with the UN Millennium Development Goals. The Ministry of Health's Health Sector Strategy 2010-2016 also reflects these factors.

As a result the VLC has completed this review of major parts of the Public Health Act [Cap 234] and the Health Committees Act [Cap 296]. Other parts of the laws, which were generally outdated and difficult to use, are part of a general recommendation that the whole Public Health Act should be improved.

The review found wide support for our laws to include principles acknowledging the importance of community involvement in health, respect for traditional values in health matters and the role played in public health by non-government partners and the churches. The VLC recommends that the goals and vision of its people for public health be set out as Principles of the Public Health Act.

Consultations also showed the people wanted the Minister and the Ministry in Vila to be busy with health strategy and policy, leaving day to day administration and management of health risks to be handled at provincial and community level. The VLC recommends that all decisions made by the Minister and the MOH Executive affecting communities be thoroughly consulted beforehand, and that health partners from the non-government sector only be engaged after satisfying the Minister and those communities of the benefits of the partnership.

Despite many attempts it is clear that the Ministry policy of decentralization has not really happened. The VLC recommends that the new administrative structure of the Ministry be adopted quickly with responsibility for decisions and finance in each province given to the 3 Provincial Health Managers to work in conjunction with Area Council Secretaries, provincial health and hospital committees and other local and community health bodies. The SANMA Provincial Government's pilot program in Sarede, South Santo, should be adopted as a model for decentralization. As a first step the Department of Finance must set up a Finance Bureau in each province.

Other recommendations to support decentralization include requiring senior administrators in the Ministry to have a medical background, requiring newly qualified doctors to serve at least 2 or 3 years in the provincial health system, and including a Monitoring and Evaluation Unit in the Ministry so that community ideas and experiences, from health workers up (such as the Sarede program) can be raised and considered at higher levels for everyone's benefit.

People across Vanuatu were also confused and unaware of the health powers available to the Government for managing risks. The VLC recommends that all Vanuatu laws dealing with health, such as Immigration, Quarantine, Food Control and Plant Protection be made consistent so that the powers needed to control and defeat health risks within Vanuatu and at its border entry ports are available to all

properly qualified officials. We also recommend that minimum standards for health should be established and enforced by these officials through penalty notices or on the spot fines for more minor matters, or health nuisances with search and entry warrants and court action reserved for more serious threats to public health.

Many people spoke of the need for recognition of custom rules including caring for community members, chiefs' community work days, and payment of charges and fines by custom. The VLC recommends that these concerns be reflected in the new public health laws – particularly custom rules on village hygiene and sanitation, caring for the sick and disabled and respect for community elders and chiefs.

The VLC recommends that individuals be allowed to pay fines for up to 2 minor breaches by way of custom mats, food, animals or community work. This should also be available for payment of village health workers.

Vanuatu has been very fortunate with recent health crises such as bird flu, but people feel there is much room for improvement. The VLC recommends that the Director of Public Health in Vila have special health emergency powers working with a Standing Emergency Advisory Committee including the Commissioner of Police, member of Malvatumauri, Director of the National Disaster Management office and health professionals. The law should recognize this committee and the role of international aid donors and the UN in emergencies. All health officials should have increased powers during an emergency, to be reviewed and supported by the Minister and the Parliament.

Disease notification in Vanuatu is seen as slow and unreliable. The VLC recommends a new disease notification system flowing from health clinics to provincial health managers, and including non-government health partners. Rather than a list of notifiable diseases the system should rely on a syndromic approach, such as recommended by the SPC e.g. continuing numerous patients with diarrhea or strong flu.

In terms of non-communicable or chronic disease, our people see that Vanuatu faces the early loss of much of its working people because of diabetes, heart disease and stroke. The VLC recommends that the Ministry and Government reinforce healthy foods and exercise through schools, parents, encouraging early screening at clinics and first aid posts, and by helping cultural centres and health workers to inform people of custom foods and food preparation and to warn against excessive use of kava, tobacco and marijuana. Schools and hospitals should only sell healthy food, VAT and other charges should be reduced for drugs, medicines and diagnostic equipment, and the Government should look at increasing revenue from 'sin taxes' on tobacco, alcohol and processed salty or sugary food and drinks.

There is still much ignorance about HIV/AIDS in the community and workplace resulting in discrimination and suffering for victims. The VLC recommends that confidentiality for all health records be improved, as unreliable or missing data is badly hurting Vanuatu's ability to respond to many health issues. Voluntary counseling, accurate information about infection rates and risks and early treatment also needs to be more widely available to protect everyone as much as possible.

Similarly people expressed worries about the increasing burden of violent injuries on health programs and finance in their communities. The VLC recommends that more confidentiality and counseling be provided, supported by the laws and by ex-

tension through the provinces of the Family Protection Community Training and Education program of the Department of Women's Affairs.

Finally the frustration expressed by many at the current hospital committee system in Vanuatu should be addressed. The VLC recommends a new health service delivery law for Vanuatu, adopting the model of PENAMA's hospital council for the whole country. The council should include the 3 provincial managers as well as representatives of local chiefs, youth, women, nurses or doctors and non-government organizations.

The hospital council should oversee the functions of each health facility in its area and be responsible for providing accurate records and collecting fees, fines and other charges in the area and for expenditure on health services, including the payment of nurses and health workers. Hospital councils would also be responsible for staff matters such as hiring and firing, training, community disputes as well as for vaccinations, infant health, and referral of patients to and from hospitals. Their members would be paid an allowance for regular attendance, but removed for non-attendance or failure to carry out their duties.

The VLC with the Ministry of Health will provide more detailed recommendations and drafting instructions for these changes to public health laws in a separate report to the State Law Office.



School children at Lamlu, Middle Bush, Tanna.

In June 2012 the Vanuatu Law Commission (VLC) entered into a partnership with the Ministry of Health (MOH) to carry out a review of three pieces of health legislation, namely, the Public Health Act CAP 234, the Health Practitioners Act CAP 164 and the Health Committees Act CAP 296. The VLC was assigned to carry out this review within three months, however, after further reflection it was agreed that the VLC would focus only on the Public Health Act CAP 234 and the Health Committees Act CAP 296, given the time and resources available, and based on MOH priorities.

Introduction

The VLC was contracted to cover only four provinces in the review, although the team managed to cover all six provinces of Vanuatu in the consultation. The team consulted with individuals, communities, non-government organizations, government departments and provincial headquarters. Consultation was also carried out with health care providers (**Appendix 2**). The review is comprehensive and strove to reflect the diversity of circumstances that are faced by the people of Vanuatu. With the different locations selected to carry out this review, the report depicts the reality of health care and services throughout Vanuatu.

Through the consultation process the VLC aimed to take into account the customs and traditional ways of the people, as they pertain to public health, and attempted wherever possible, to incorporate these practices as a way to make the Public Health Act more accessible and as a way of valuing traditional practices. Given the geographical location of the islands, however, customary laws are seen to be very diverse and for these reason the VLC found that it could not endorse a particular set of custom rules or customary laws for Vanuatu as a whole but rather aimed to provide support for some customary approaches and in some cases incorporated community rules as a way forward in some of the provisions of the Act.

The consultations on the Public Health Act indicated that, in the minds of the people consulted, health services have deteriorated over the years. In many places, this was identified as a key reason why people resort to traditional practices in trying to meet their health needs. Consultations also revealed the facts that non-communicable diseases are becoming the biggest health issue in the country, and are identified by many as a "silent killer" and one of the greatest health care challenges currently facing the country. Administratively, the consultations revealed several weaknesses in the MOH and this may be the most significant area that must be sorted out before health care and services can be best improved in the communities.

Beyond informing key revisions to the Public Health Act and the Health Committees Act this review also aims to illustrate what some of the public health "realities" are in Vanuatu, and how the MOH can improve its services and/or facilities to achieve its objectives. Thus, each part contains a background to assist the reader to understand why this particular area is under review, and highlights what people have said on the main issues that were brought forward during the consultation. This material will, in turn, assist the reader to understand the recommendations the VLC has come up with in the review.

It must be noted that only some parts of the Public Health Act were given priority focus in this review. This does not mean that the other parts have been disregarded. The areas that this review has covered were the areas that were previously identified by the MOH as areas of focus. Any parts of the Act that are not mentioned in this review will still remain in the Act (or have been removed because they are now covered by other pieces of legislation). However, the VLC is separately recommending changes to update the language used in the whole Act.

It is worth noting that the VLC strove to reflect the diversity of views encountered throughout the consultation process in this review, and took all opinions and comments into consideration. There were contradictory interests expressed in some cases (some of which are reflected in this document), and in other cases there was an effort made to ensure that more than reflecting a populist approach, the law provided leadership in certain areas. We thank all individuals, communities and stakeholders for their time and their candour. If you do not see your opinions reflected explicitly in this document, we hope that you appreciate that the VLC must strive to provide a balanced view. The key thoughts reflected in this review were derived from people who were interviewed during the consultations, and the recommendations stem from the consultations.



Malampa Market house, Lakatoro, Malekula

Objects, Purposes and Statements of Principle

Background

Objects, purposes and statements of principle are sets of governing ideas that give a broad overall view on what the Public Health Act should achieve and why it should achieve it, and the values underlying these ideas. These ideas and values would touch on issues like health planning, health

promotion, protecting the public health, addressing health inequalities and balancing public good and private rights.

Objects are the aims or goals that the Public Health Act sets out to achieve. Objects may be to promote, protect and improve public health, to control the risks to public health, to promote the control of infectious disease, to prevent the spread of infectious diseases and to recognize the role of local government in protecting public health. In other jurisdictions, the section on objects may be longer, depending on the situation of the country.

Purposes are the reasons why the Public Health Act must achieve the objects it sets out. In the reference made by the MOH to the VLC in June 2012, the reasons given as to why the MOH wanted the Public Health Act to be reviewed were that the current Public Health Act was unsatisfactory, unduly complex and outdated. In this regard, a thorough consultation needed to be carried out to find out what exactly the situation within the health sector currently is in Vanuatu and what can be done to ensure that any new legislation is a better fit.

Statements of principle establish how the Public Health Act should operate, and how it should be interpreted and administered. These are the underlying values upon which the Act will base its rules. These principles can be derived through rules that are based in traditions, or that arise from the national context or the international sphere. These statements of principle direct the Act according to what is acceptable within the context of Vanuatu, but in a way that also does not go against any international standards that Vanuatu has ratified.

The current Public Health Act of Vanuatu does not contain a provision for Objects, Purposes and Statements of Principle. Although this does not pose any serious defects to the current law in terms of its day-to-day function, the addition of such a provision will ensure that the new Public Health Act will express, in a more holistic way, Vanuatu's broader objectives, goals and guiding principles when it comes to the health of the nation.

According to the Vanuatu Health Sector Strategy, 2010-2016, the mission of the MOH is to protect and promote the health of all people in Vanuatu. The vision is to have an integrated and decentralized health system that promotes effective, efficient and equitable health services for the good health and general well-being of all people in Vanuatu. There are four broad objectives. These are to:

- i. Improve the health of the population

Chapter One

- ii. Ensure equitable access to all levels of health services
- iii. Improve the quality of services delivered at all levels
- iv. Promote good management and the effective and efficient use of resources

The MOH makes further attempts to fall in line with the government's Priority Action Agenda (PAA), the Millennium Development Goals (MDGs), the Healthy Island Declaration and the international obligations that Vanuatu is a signatory to, with the following objectives:

- i. Ensure that the whole population has access to a range of evidence based and affordable health promotion and preventive services
- ii. Ensure universal equitable access to emergency, curative and rehabilitative services
- iii. Ensure that quality Primary Health Care remains pre-eminent as the central strategic health priority for the country, and that this is reflected in the budget
- iv. Ensure that the health systems necessary to provide such services, which are accountable to clients and are cost effective, are developed and strengthened in line with international best practices
- v. Actively engage in partnerships with donor agencies, the private sector, civil society groups and other development partners to assist in optimizing health service delivery
- vi. Adopt a 3 year strategic planning framework (Corporate Plan), with rolling yearly implementation plans (Business Plans) that should drive the budgeting process
- vii. Ensure that all significant external funding is in line with the priorities and directions of the MOH.

"We, in leadership positions, must uphold these values – integrity, self-respect, traditional values. We cannot be the same as others. We have to be different, clear headed, and sober to be able to lead."

It is also the MOH's aim to improve specific priorities, such as maternal and child mortality and morbidity.

During the consultations a large number of people expressed a range of broader objectives, goals and guiding principles when it came to health and the provision of health care in Vanuatu. A provision outlining the Objects, Purposes and Statements of Principle around health in Vanuatu would be worth adding to the new Public Health Act.

What people said

There should be a holistic approach to health

- *Health and health care must take into consideration the physical, mental, social and spiritual aspects of health and well-being.*

Free and equal access to health services

- *In order for health services to be accessible they must be free and everyone must benefit equally regardless of gender, age, ethnicity, disability etc.*

Millennium Development Goal

- *There are 8 Millennium Development Goals. Goals four, five and six focus on health such as child mortality, maternal health, HIV/AIDS, malaria and other diseases.*
- *The Millennium Development Goals should be reflected in the Objects, Purposes and Statements of Principle of the Act.*

Local ownership of programs

- *Health programs that are run in the communities must be carried out in a way that gives ownership of the projects and programs to the people in the community if it is to be effective and to benefit the people.*

Diversity in health issues

- *The geographic and cultural diversity of Vanuatu means that health issues are different from province to province and island to island. There are also significant differences in health issues in rural and urban communities. This diversity must be acknowledged in the Act.*

Diverse partners in health

- *Non-governmental organizations (NGO's), churches, the private sector, municipal governments and donors play an important role in the health sector in Vanuatu. It is important that a good working relationship is maintained with all the partners in health.*

Principles

Traditional values

- *Respect is an important traditional value that must be upheld at all levels.*

International Health Regulations

- *Vanuatu is a signatory to international treaties and conventions that must be taken into account and implemented in the country's laws, including within the Public Health Act.*

Siracusa Principles

- *Public Health may be invoked as a ground for limiting certain rights in order to allow a State to take measures dealing with a serious threat to the health of the population or individual members of the population. These*

“Health is everyone’s business. Bad health will lead to bad development.”

measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured.

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission recommends the following:

1. Amend Part 1 (Preliminary) of the Public Health Act by inserting a section for Objects, Purposes and Statements of Principle.
2. The positive contributions made to public health in Vanuatu through cooperation and collaboration of non-government partners and churches should be formally recognized in the Act.
3. The new Act should include a provision that encompasses all of the above comments to capture a realistic goal and vision of the public health in Vanuatu.
4. The new Act must also state that it takes into account traditional values, any international treaties/conventions ratified by Vanuatu, and Siracusa Principles.



Role/Power of Minister,

Director Generals and Directors

Background

A Minister is a politician who holds significant public office in a national or regional government, making and implementing decisions on policies in conjunction with other ministers. In different countries the role or power given to the Minister, Director General and Directors of Health can be quite different. Ministers look at issues from many points of view. They should hear from the people in their electorate, departmental chief executives, policy advisers, other Ministers in Cabinet and Cabinet committees, backbenchers in their caucus, lobby groups, media, coalition partners, Ministers in other governments and members of the public. Ministers should also act as the Cabinet's eyes and ears about trends in the community.

In some Public Health laws the Minister's powers are to preserve, protect or promote public health, promote proper standards of public and environmental health, develop policies or codes of practice that are relevant to the legislation, to advise the Government on health preservation, protection and promotion and any other functions assigned to the Minister. In New South Wales, Part 2 of the Public Health Act gives power to the Minister and to the Director General. The Minister has the power to deal with public health risks generally, during states of emergency and public health risks. The Director General has the power to close public premises on public health grounds, and to direct disinfection or destruction of noxious articles.

In Papua New Guinea and Fiji, the responsibilities of the Minister are narrower, presumably due to the existence of health boards. For example, in PNG the powers conferred upon the Minister are the same as powers conferred on Local Medical Authorities or on inspectors. In Fiji, the Minister has the power to appoint six of the seven members of the Central Board of Health, can approve various actions of the Board and can appoint medical officers of health.

In the current Public Health Act in Vanuatu, the Minister plays a very comprehensive role. He or she is responsible for promoting the health and well-being of the people in Vanuatu. The Minister of Health is also responsible for the implementation, administration and enforcement of the Act and is also given general powers of supervision and inspection over local authorities for maintenance and promotion of public health. In addition, the Minister may delegate powers to any officer of the Department of Health. The Minister is generally granted strong powers, which often include powers to administer and manage the day-to-day work of the Ministry. At times of political transition or instability this can have a detrimental impact on the work of the MOH and ultimately the effective provision of health care in Vanuatu.

The consultation in the provinces and communities suggested that the role of the Minister should be more strategic and policy oriented, with less day-to-day administration, and less power to directly manage public health issues. Addressing this

Chapter Two

in the new Public Health Act will ensure that any day-to-day administrative and health management decisions will be made by a suitable officer of health with medical training and/or significant experience in health sector management.

What people said

Specific powers given to people with medical background

- *People in key administrative positions should have medical backgrounds in order to make more informed decisions about health care issues.*

Consultative policy making

- *The Minister/Ministry/Executive needs to consult more with the communities. A consultative approach that more actively involves key players at the provincial and community level should be utilized in health so that the management and provision of health care can be decentralized more effectively.*

Memoranda of Understanding (MOUs)

- *In order to improve health services the Executive should be looking for ways to enter into MOUs with various health partners to act on the information provided through a decentralized consultative process.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission recommends the following:

1. Any person who is to be appointed to a key or high level administrative position should ideally have a medical background.
2. Any decisions to be made by the Minister/Ministry/Executive under the Public Health Act must be reasonably consulted at the provincial level and, ideally, the community level before they are put into effect.
3. Any health partner who wishes to carry out a health program in the communities should work through a consultative process as well. Community level health projects and programs should go through the Area Secretaries/Committees, the provincial health authority and the province (e.g. the Secretary General or his/her designate).
4. The Executive must explore ways in which to engage health partners to carry out health programs through the use of MOUs.
5. The MOH should consult with provincial health authorities, Area Secretaries/Committees, and health practitioners and traditional authorities such as chiefs within the area, before proposing or making any MOU with non-governmental organization or church.

Chapter Three



School girls at Lamlu French Primary School, Tanna

Administrative Functions of the Law

A] POLICY OF DECENTRALIZATION

Background

Administrative decentralization seeks to redistribute authority, responsibility and financial resources for providing public services among different levels of government. It means the transfer of responsibility for the planning, financing and management of public functions from the central government and its agencies to field units of government agencies, subordinate units or levels of government, semi-autonomous public authorities or corporations, or area-wide, regional or functional authorities.

An important function of the Public Health laws is to grant powers to local authorities. These authorities carry out daily public health functions and operate close to the people, they inspect and advise on matters of basic health and hygiene, gather data and report to the national government, identify minor risks to the public health and take action to abate such risks. The roles of local authorities are more important in the Pacific as most people live in rural areas.

Decentralization is one of the three administrative functions of the law. It is an important priority of the Government of Vanuatu, and it is reflected in the Health Sector Strategy. During the consultation it became apparent that decentralization has not happened in many key areas. It is crucial that the relationship between policy makers at the national level and those governing close to the people in towns, communities and villages is strengthened and that key powers are devolved in order for public health programs to succeed, particularly at the community and provincial level. Experience in Papua New Guinea, as reported by the Constitutional and Law Reform Commission in 2009, showed that in some provinces delivery and maintenance of basic health services had suffered, after decentralization began without proper guidance or preparation.

What people said

Involvement in decision-making affecting responsibilities

- *Communities and health partners with MOUs must be involved in decision-making. It is important that the will of the community is there. This shows motivation from the community which will lead to their commitment.*
- *Many of the decisions from the MOH are influenced by politics. This has a negative impact on the decisions that are made, which in turn affects people's lives.*

Decentralization of funds to the provincial and area level

- *Financial constraints in the provinces stops work to be carried out efficiently. Any projects in the provinces are operated on project money as the*

budget given by the government is never used. Everything is centralized in Port Vila.

- *There is too much political interference that hinders service delivery to the communities.*
- *The devolution of finances must go hand in hand with an adequately resourced system in terms of human resources. There must be enough appropriately trained and qualified people in the positions from the community to the national level.*
- *Decentralization is a government policy. It can only work if there are trained people in the provincial level who know how to use the finance system.*

Health Partners must work through a decentralized process

- *A bottom up approach is the preferred approach. Health programs must be carried out in the area and provincial levels so views from the rural areas can be included.*

Health zones must be in line with the area and municipal council boundaries

- *Zoning of municipalities needs to be legislated and gazetted so that municipal jurisdictions, and associated responsibilities, are more clearly delineated.*
- *At the provincial level health zones (and education zones) are, in most cases, different than the area council zones. If health zones are brought in line with Area Council boundaries it will ensure maximum efficiency of planning, consultation, and service delivery.*

Village health workers must be formally recognized as key partners in the community health system

- *Village health workers are viewed as the first point of contact in communities. They are included in the planning of health but they are not paid any salary or allowance.*
- *They should be given a monthly allowance to compensate them for their work and to recognize the contributions they make to health care in Vanuatu. It was also recognized that their work, as with many other community health workers, often makes it more difficult for them to be engaged in food cultivation and harvesting.*

Doctors to practice in rural centres

- *There was a sense that doctors are concentrated in the hospitals in Port Vila and Luganville. Newly graduated doctors tend to return and work in urban areas only. It was suggested that there should be a clause in doctors' contracts that provides that doctors must practice in rural centres for a period of two to three years before settling in an urban area.*

“Decentralization only works in some places but is not effective. It looks good on paper but it doesn't work.”

- *There should be at least two doctors each provincial centre, one focused on clinical duties in the provincial hospital, and the other with the ability to visit rural communities on a regular basis.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission recommends the following:

1. Any decisions that are to be made by the MOH regarding community health must be thoroughly consulted at the provincial and community level before that decision is carried out.
2. The Department of Finance must set up a Finance Bureau in each province, as soon as is practicable, with Smartstream financial system functioning.
3. The Department of Finance must have trained personnel manning the Finance Bureau in the provinces, so access to funds is easier.
4. Any health partner who wishes to run any health programs in the provinces must work with the communities and the Provincial government of the respective province in which it wishes to work.
5. In order for health services to be effective and manageable, health zones must correspond with area council boundaries.
6. Village health workers must be provided with a monthly allowance to help them to meet their basic needs. The provision should also include local food items for village health workers and nurses, or community work on their homes or gardens should be encouraged in communities as a way of "paying back" the health worker (this should not take the place of adequate financial compensation.)
7. Doctors' contracts must be amended to provide that doctors must serve/practice in rural centres for a period of two to three years before settling in urban areas.
8. There must be two doctors serving in all provincial centres.

B] DECISION-MAKING

Background

Decision making can be regarded as the processes resulting in the selection of a course of action among several alternative scenarios. Every decision making process produces a final choice. The output can be an action or an opinion of choice. It is argued that problem analysis must be done first, so that information gathered in that process may be used towards decision-making.

Decision-making is another administrative function of public health laws in Vanuatu. It is an important role that should ideally involve consulting with people at all levels of society, particularly if the decision has broader ramifications. In Vanuatu, tradition and custom still dominate the rural setting and this must also be taken into account if decisions are intended to be received and accepted at the community level. With 80% of Vanuatu's population still living in rural communities, any decisions made at the national level, without consultation with this segment of the population, will most likely not be followed through, or taken up at the community level.

“The best interventions should come from the community or province.”

A key challenge faced in Vanuatu when it comes to community level governance is that there are diverse approaches to custom in every part of Vanuatu. As well, in some places custom governance has been identified as weak, sometimes because there are too many chiefs or disputes around chiefly authority, and in other places the because chiefs are seen to be inactive and/or ineffective. Therefore, the VLC was cognizant of the fact that there could be a danger in the PHA of instituting custom governance models that are based on assumptions or on approaches or practices that are not applicable to all communities.

One interesting approach to custom governance in Vanuatu can be seen in SANMA province whose government has taken the lead in incorporating custom governance systems into the provincial structures. An example of this can be seen in Sarede village, South Santo, where an area council has been set up to oversee work carried out in that area. Their governing structure consists of a village committee with sub-committees for different sectors or areas of work, including health. The SANMA provincial government uses the Area Secretary in that area as its “eyes and ears” to the communities of this part of south Santo. Although newly established, this illustrates an effective devolution and already, it shows some positive results in better channels of communication, devolution of power and authority to the area and community level and the establishment of semi-autonomous local area councils that are not wholly controlled by the central government, but ultimately accountable to it through the provincial authority.

During the consultation it was stressed by people at all levels that decisions made at the national level were not based on the realities or the input of people in the communities. For this reason, there was no sense of ownership of programs that were happening at the community level and often programs and approaches were a poor fit for community needs. In order to achieve a sense of ownership, and a better fit with the diversity of community realities in Vanuatu, numerous people identified the need for a more bottom up approach that can potentially be carried out with the assistance and leadership of Local Area Secretaries and committees.

What people said

Input from the community

- *Area Secretaries, as they are increasingly established across Vanuatu, can and should play a significant role in facilitating decision-making that engages more at the community level, as they are based in the communities. The MOH should work more closely with communities through local and provincial government and use a more consultative approach to decision making, planning and service provision.*

Health committees in the area level

- *Health committees should be formed at the area level so that they can address health issues in that area. An area health committee, as such, should typically and ideally consist of a chief, a church leader, a women's representative, a youth representative, a health worker and a teacher.*

Decision-making and policy making must be based on information

- *There must be two ways communication from the national to the community level. Health partners and community health workers must send information back up the chain through area committees and provincial health authorities. Provision of this information could be part of the efficiency standards of an area health committee.*

Key managers and decision-makers should be trained in management and administration

- *People who are selected to occupy managerial positions must be trained for this role. Being a qualified clinician must not be seen as the sole qualification for managerial positions.*

Partnership between traditional leaders and health worker

- *Any decisions about health at the community level should ideally be made by a chief or community leader/s in consultation with and the health worker/s. It is important that the health worker/s maintains a good working relationship with the community leaders including chiefs and church leaders, as they are the gateway to any community.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission recommends the following:

1. Area Secretaries should be employed and paid by the Public Service Commission. This will serve to compensate them for their important role in a more decentralized government and will help to ensure that their positions are free from political influence.
2. An overarching area health committee should be developed in each area, as a requirement under the Health Committees Act. Its purpose would be to address all health issues in the area and will be answerable to the Hospital Committee, as recommended in Chapter 13.
3. A simple reporting template must be designed for quarterly/bi-annual reports from Area Secretaries to Provincial governments, in order for the

Provincial government be kept informed of what is happening in the communities.

4. Health workers must strive to work closely with the existing governance structure in the village/community.
5. Managers and key administration should have some health background or training, or should be able to consult with those who do, in order to make informed decisions around medical/health issues and that they should all have some kind of management training/ability.
6. Communities should have more control over the management of the health care worker in their community and should be able to report issues like prolonged absences through the Area Secretaries, and up to the provincial level.

C] PLANNING

Background

Planning is the process of thinking about and organizing the activities required to achieve a desired goal. Planning involves the creation and maintenance of a plan. As such, planning is a fundamental element of effective health care delivery.

Planning is the third administrative function of the law. If the decentralization process is working well, planning should also be carried out in a way that involves consultation with the people. This will result in more effective planning for public health.

Currently, planning tends to be carried out in a highly centralized and often a very ad hoc way in Vanuatu. This may be partly because the Public Health Act has had no requirement for public health planning. As was identified in the previous two administrative functions of the law, where decentralization and decision-making processes are not currently being carried out as effectively as possible, planning cannot be practical nor implemented in an effective manner if communities and provincial authorities are not consulted.

During the consultation process, many people referred to planning, decision-making and decentralization in the same way. It was stressed many times that although health planning should take into account community needs and realities, the plans are often constructed at the top, with little regard for what people actually need at the community level. Again, in consultations, people expressed the fact that any plans regarding their health needs and community health services must involve the input of communities.

“The top will know what is needed, but do they know what the people need?”

What people said

Relationship with health committees

- *Health committees must be developed in order to address health issues and to support health planning in the communities. A good working relationship must be maintained between the health committee and the community and the health committee and Area Secretaries and provincial authorities.*
- *Health care planning must engage the communities it strives to serve.*

Healthy settings in the Healthy Islands Initiative

- *The healthy settings approach is a very effective approach to community planning. Healthy settings include healthy communities, healthy markets, healthy schools and healthy clinics. The suggestion was also made that “healthy families” should be added to the healthy settings approach.*

Village Sanitarians

- *There was great support for reviving the role of Village Sanitarian at the community level. A person who is selected for this position must be capable of looking at all sanitation and hygiene issues in the community. Their role should also cover the environment and other areas that are relevant to a more holistic view of community health.*

Monitoring and Evaluation

- *Currently there is no Monitoring and Evaluation Unit within the MOH that can monitor and evaluate work in the community. Due to this, ideas that health workers put forward are never adhered and attended to, so they keep putting the same ideas forward in every meeting.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission recommends the following:

1. Health committees that are set up must have a good working relationship with the community/ies they are working in.
2. The healthy settings approach should consider the inclusion of healthy families.
3. In the event that health facilities are fully staffed, it would be ideal for one of the staff to work on awareness and advocacy and on health promotion more generally.
4. Village sanitarians should be reinstated into the health structure as soon as is feasible.
5. MOH must set up a unit for monitoring and evaluation of work in communities by village health workers and others.
6. The Objects provisions of the Public Health Act should include planning and should be updated every three to five years. As a statutory requirement it may have a strategic value to get sufficient allocation of funds to the health portfolio. With a statutory planning requirement in the Act, this can help to elevate the planning requirement, and add status to the matters included in the plan.



Patients at Port Olry Health Centre, Santo.

Powers

Background

In the current Public Health Act a wide range of powers is conferred on the Minister and Director General. They include:

- Requisitioning medical stores, food and drink;
- Destruction of livestock;
- The compulsory examination, removal, isolation and vaccination of any person; and
- Restrictions on movement of people, livestock, vehicles and ships.

These powers are listed along with a specific power to delegate these powers and functions to any officer of the Ministry of Health, any public servant or any municipal officer.

The Minister also has power to appoint 'environmental health officers' from the Ministry and approve appointments by local authorities, as well as a power to appoint meat inspectors and fisheries officers (from the Ministry of Agriculture and Fisheries), medical practitioners, and medical officers and 'any suitable person' to be an 'authorized officer under the Public Health Act.

Environmental health officers and persons authorized by the Minister or a local authority also have powers of entry to premises at reasonable hours, or with a warrant issued by a Magistrate's Court, under an absolute immunity.

However, a number of other national laws also deal with public health risks. These include the:

- Ports Act (discharges from ships in port),
- Plant Protection Act (plant pests, and plant produce which is diseased, contaminated or unfit for human consumption),
- Food (Control) Act (food unfit for human consumption and unhygienic premises equipment or utensils),
- Immigration Act (visitors or travelers with contagious or infectious diseases),

One type of public health issue which was raised in consultations but is not currently addressed in the Public Health Act is border control. Public health risks, whether in the form of disease or some other form of medical condition, may arise when people – as well as goods, food, plants, animals or other material – arrive in Vanuatu from overseas, or depart for an international destination. Apart from the

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Public Health Act, a number of laws are used to meet these risks such as the Customs Act, Quarantine Act, Immigration Act and Plant Protection Act.

As a member of the World Health Organization (WHO), Vanuatu also has obligations under the International Health Regulations (IHR). Recent studies have identified a number of conditions which can be transmitted from animals to humans under natural conditions ('zoonosis'), which the IHR see as requiring 'increased collaboration with the agricultural, animal health, wildlife and food safety sectors'.

Some methods of dealing with public health risks facing Vanuatu are examined in Chapter 7 on Emergency Powers. One of the main principles for member states is the provision of routine inspection and control activities at international airports and ports to prevent international disease transmission. In Vanuatu, all the Acts mentioned above contribute to these control and inspection activities, although perhaps they are directed more at prevention of transmission to Vanuatu than transmission from this country.

Other health laws in Vanuatu generally appear to meet the requirements of the IHR and the WHO. However, this issue should be specifically analyzed as part of the review by the Law Commission of other laws relating to public health risks recommended in the later part of this review headed "Other".

The Law Commission's consultations confirm that duplication, inconsistency and confusion in the operation and effect of public health laws are widespread within Ministries as well as among the people of Vanuatu.

What people said

Proper training and qualification

- *Environmental officers and Municipal officers must be properly trained and have the right qualifications for the job.*
- *Any officers appointed by the Director General must be gazetted so they can carry out duties such as entering premises, inspection, closing down establishments with unsanitary conditions, serving compliance notices etc.*

Simple and consistent powers

- *Nuisance powers need to be simplified using more accessible language. Any old legal terms should be done away with.*
- *Powers should be given in different areas as there are different areas of compliance in different laws. These powers should not override the other.*

Appointment of officers

- *Persons appointed by the Director, or other persons employed or appointed by the Public Service Commission, or employed or appointed by a local council under the Municipalities Act or Decentralization Act, must be medical officers appointed under the Public Health Act. All should be suitably qualified or trained to be environmental health officers or authorized officers, and the written appointment must set out the training or qualifications which satisfy the Director General.*

Border Control Powers

“If power is given to Area Secretaries they will be able to monitor health facilities and planning in their area.”

- *Border control on foodstuff that is imported into the country need to be strengthened.*

Minimum Public Health standards

- *There should be a minimum standard for health risks and threats, such as, sanitation, food quality, clean water, factory and industrial pollution, marine pollution, keeping diseased or unhealthy animals, uncovered or untreated garbage refuse and sewage discharges.*

Land laws must comply

- *Land laws regarding subdivisions must ensure that land that is subdivided has the basic facilities such as water supply. There are subdivisions which does not have water supply. This becomes a public health risk when people use bush toilets. Some subdivisions are situated on swampy areas that are not fit for people to live on. This poses a greater public health risk on people during wet season.*

Power to issue penalty notices or on the spot fines

- *Fines should be reasonable, especially for the grassroots. Customary fines should be encouraged, by using mats, chickens, pigs or local produce. This should be stated clearly in the Act. The working class group should be fined in monetary terms. The background of a person must be considered as that can determine the type of fine that is suitable for them.*

Additional powers – supervisors and executives

- *Officers must have the power to apply for search warrants to enter, search and seize anything that is related to a public health risk.*
- *Officers that use the Public Health Act must be able to destroy any contaminated, diseased, or noxious or pest affected goods, material or property, or any food or goods which are unfit for human or animal consumption.*

“We work together with other institutions. If there is a situation where there is confusion as to who will execute their powers it is usually discussed.”

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission recommends the following:

1. The new public health law must set out powers which may be exercised to reduce or eliminate public health risks, whether under the Public Health Act itself or under any of the other specified laws.
2. The new law should also specify that the persons who may exercise these powers be suitably trained and qualified to exercise public health powers, before their appointment by the Director of Public Health.
3. Health powers must be simplified into more accessible language that is suitable and appropriate within the context of Vanuatu and categorized – low, medium and high public health risks.
4. The Director give priority to the appointment of the following officers to exercise powers as authorized officers under the Public Health Act:

- a. Quarantine and plant protection officers appointed under the Quarantine and Plant Protection Acts
 - b. Customs officers appointed under the Customs Act
 - c. Harbormasters and Port officers appointed under the Ports Act
 - d. Immigration officers appointed under the Immigration Act
 - e. Veterinary officers appointed under the Animal Quarantine and Importation Act, or the Meat Industry Act
5. The process of authorized officers using powers under the Tobacco Control Act be adopted for using powers under other health laws as well.
 6. Border Control officers must have full powers under the Public Health Act to seize, inspect, retain and destroy any items or material they suspect of being a public health risk, so as to carry out good inspection on imported foodstuff.
 7. Minimum standards (**Appendix 3**) in relation to water and food, shop and retail, factories, industrial and commercial premises, and discharges and emission or release of waste, refuse, odour or material which is offensive must apply.
 8. In investigating possible breaches of these standards or ensuring that they are met, the current powers of entry available to an environmental health officer or authorized officer should include the issue of improvement notices (to fix the problem causing the risk) and prohibition notices (to stop the activity causing the risk).
 9. Land laws must be amended to require approval by environmental health officers before any subdivision can be registered.
 10. That the power to issue penalty notices by an officer be added to the enforcement powers under the Public Health Act. The issue of a notice should be subject to internal review only.
 11. Section 122(2) of the Public Health Act be retained allowing a warrant for entry, search and seizure of anything related to a public health risk, by force if needed, to be approved by a Magistrate's Court on the application of a senior environmental health officer or authorised officer – i.e. a manager or supervisor.
 12. That the officer's power of destruction of goods, material or property, if challenged by any proprietor, partner, manager, supervisor, employee, contractor or supplier of an affected business undertaking or enterprise, should also be subject to internal review by the officer's supervisor or manager as recommended above for penalty notices.
 13. That a certificate by the supervisor that specified goods, material or property, or any food is reasonably suspected of being contaminated, diseased, pest affected, or otherwise unfit for human or animal consumption should be sufficient evidence under the new Public Health Act that destruction was

warranted to eliminate or reduce a public health risk, subject to any review by the courts. Otherwise the supervisor should advise the person challenging the original decision in writing that the decision has been reviewed and will no longer be acted upon.



A child at Lamlu, Tanna, minding his sibling.

Enforcement and fines

Background

This section should be read with, and as a follow on from, Chapter 4 on Powers particularly in relation to the recommendations for on the spot fines, penalty notices or fines.

The Public Health Act contains a number of punitive and penalty laws for breaches of the Act. Section 126 of the Act, the general penalty provision, provides for a fine on conviction of up to 100 000 vatu – or if the fine is not paid, imprisonment for up to 12 months. There have been few, if any, prosecutions under public health laws in Vanuatu, and no one has been sent to prison for a public health offence.

The enforcement provisions of the PHA are very rarely used, as all proceedings must be instituted by the Public Prosecutor and indeed authorized officers are required to report 'offences committed under this Act or any regulations ... directly to the Public Prosecutor', under s126(3). It seems that a local authority or one of its officers may prosecute any offences alleged to have been committed within its jurisdiction under s126 (2). No prosecutions by local authorities were mentioned by any of those consulted in this review.

This section focuses on two recommendations, firstly setting out a penalty system of points with repeated breaches attracting higher points – and the option for individuals of payment in customary items such as mats, livestock or community work such as cleaning up or repairing fences for livestock or gardens. The second recommendation is that payment of penalties be linked with renewing licenses for individuals and businesses where possible.

What people said

On the spot fines

- *There is difficulty within the Environmental Health Unit to enforce the Public Health Act as there are no lawyers to assist them with their cases. It was felt that it will it would be good to have a lawyer in the Unit to give them legal assistance. It will also help ensure that cases are dealt with quickly.*
- *Any cases go to public prosecution's office but this takes too long so there have been very few cases due to this.*
- *On the spot fines are seen as a way for the Environmental Health Unit to enforce the law. It will also get people to adhere to what the law states.*
- *There should be a provision for on the spot fines on breaches of minimum public health standards, refusal to allow entry, be interviewed, produce food, goods, material etc that is suspected of posing risk to public health.*

- *If we have a provision for on the spot fines it should be reviewed regularly by the manager or principal officer of the Unit.*

Difficulty in following up on fines

- *Currently the fines and penalties provided for in the Public Health Act are difficult to be enforced so it is hardly done or not done at all.*

Minimum standards

- *Any standards that are set out in the Public Health law on sanitation, food and water purity, shops and factories, liability for noxious or diseased plants and animals, marine pollution, industrial and waste hazards, must be simple.*
- *If we want people to follow the law we must make it simple for them to understand so they know what the consequences are and can make that connection.*

Serious and complex cases

- *On the spot fines are good if there are breaches of minimum standards, but if there are serious cases we should have an avenue to put it through to the Public Prosecutor.*

Fines

- *There should be a penalty points system that we can use for different levels of infractions that can be updated regularly.*
- *Customary items should be used for fines in whatever cases and contexts they are appropriate. Items such as mats, livestock, root crops and even community work, should be provided for as alternative penalties under the law.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission recommends the following:

1. A system of on-the-spot fines or penalty notices, such as the Customs (Penalty Notice) Regulation [Cap 257] system of penalties be added and varied to suit the Public Health Act.
2. The new procedure be formalised by regulation or a Schedule to the Public Health Act, so that review and updating can be done regularly, by managers and the Principal Environmental Health Officer in the MOH.
3. That business and commercial licensing requirements under Vanuatu's laws be changed so that the payment of all outstanding fines and penalties is mandatory for renewal of a licence, or any other permit allowing business to be carried on in Vanuatu.
4. That Section 4 of the Business Licence Act be amended to make it an offence to fail to disclose any outstanding or unpaid fine, charge or penalty when applying for renewal of a business licence. That section currently deals with making false statements in applications for licences, which may

not extend to catch anyone who simply does not disclose or admit to an unpaid fine.

5. That an express provision be included in Section 9 of the Business Licence Act along the lines of Section 10(4) of the current Health Committees Act – so that in carrying out duties under Section 9 the Director of Customs and local councils are permitted to seek information and assistance from the Ministry responsible for Health.
6. That for a first and second offence an option be available for 'custom payment'. That is, the individual may pay the custom equivalent of the fine to the Provincial Health Administrator by way of mats, livestock, food items or community work hours. The custom equivalent of the fine should be measured by the Provincial Health Administrator and the chief of the offender or until the Malvatumauri has developed its custom currency list.
7. That this option not be given to companies and businesses, since their breach is likely to involve commercial considerations rather than any custom or tradition, and so should be paid for on a commercial basis. Third or subsequent breaches by an individual should also not be offered this option as a custom payment is proposed to assist individuals, particularly in the more remote provinces and islands, to gradually adjust to the public health requirements of the community.



Dispensary and staff quarters at laonanen, Tanna.

Rules

Background

Community rules are rules that are created by chiefs and/or community leaders for the governance and well-being of communities. During the consultation it became clear that most community rules set up by the chiefs generally correspond well with the health teachings.

In the current Public Health Act, there are no provisions relating to community rules. However, although there are no provisions in the current Act, there are some aspects of the Act that relate to community rules, and community rules are a vital element that must be addressed in the Public Health Act. With existing rules it seemed apparent in the consultations that some rules are working, however, they need to be enhanced. By using existing rules at the community level people will be more ready to receive and accept similar or advanced rules introduced to them.

The Public Health Act should support these rules in order to ensure that the legislation is enforceable and to support healthy communities. The consultation revealed that to better enforce legislation in the community, the chief's and/or community leaders' involvement is essential. The community of Litzlitz, on Malekula, has a very good model for this. The community has its council of chiefs. The council has a chief for each respective area health, education, water supply, agriculture, forestry, fisheries etc. Each of these chiefs is responsible to create and enforce community rules under their respective areas in the community. One of the health rules followed in the Litzlitz community is keeping all pigs in a fenced enclosure. Any pigs seen walking around the community shall be reported to the health chief and will be killed within three (3) months if the pig's owner does not have his/her pig fenced in. This is the same for other community rules. A somewhat similar governing structure is found in Sarede area, South Santo.

Wider consultation revealed that the idea of community rules has considerable resonance with most stakeholders. Most of the people interviewed made the point that the Act needs to be able to be used in the community. A number of people suggested that it would be good if the community could enforce some of the rules themselves.

As identified in the section on Decision-Making, above, customary laws are very diverse, in Vanuatu. For this reason the PHA cannot endorse a particular set of custom rules for Vanuatu. Custom approaches to health including the use of leaf medicine and traditional bone surgery, were identified as needing further research in terms of proper dosing and interactions with western medicine. Issues around hygienic practices in traditional approaches to health (e.g. bone surgery and practices of traditional birth attendants) were also identified. Rules such as keeping menstruating women away from food preparation/serving of food or isolating a

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person with HIV/AIDS appear to affect the constitutional rights of people and therefore the Public Health Act cannot support such rules.

What people said

Community rules on hygiene and sanitation

- *In the past, health inspectors visited villages to make sure that the general rules on hygiene and sanitation were followed. This does not happen now.*
- *Churches and NGOs play a big role in hygiene and sanitation. They work with the chief to set rules such as where to throw rubbish, keeping animals away from main living quarters etc. The church leaders also help to make sure that people follow these rules.*
- *In some villages the chief doesn't see the significance of hygiene and sanitation as something that connects with the health of the people. It is basically left to the individual to make their own hygiene and sanitation rules.*

Community rules/custom approaches to caring from sick/disabled/aged members of the family

- *There are no set rules or custom approaches to caring for sick/disabled/aged members of the family. It is an unwritten responsibility that is taken up by able members of the family. It is seen as a privilege to do this because it gives a sense of reciprocating what they have done for them.*
- *Disabled members are cared for by everyone in the village. It is the duty of family members and other villagers to look out for disabled members and make sure that they are a part of the community.*
- *Aged members of the family are the responsibility of the immediate family members. Other people may also take care of them. They must have food to eat, live in clean houses, have clean clothes to wear etc.*
- *Church groups have a visitation routine to visit the sick/disabled/aged members of the family and they make sure that their needs are provided for.*

Custom respect

- *In the communities custom respect is big, but it is slowly losing. In the urban areas there is almost no custom respect left.*
- *Where there is respect for the elders, you will notice that the community has a strong governing system compared to a community that has little or no respect.*

“In the communities people respect chiefs and nobody else . They listen to chiefs.”

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission recommends the following:

1. Chiefs and/or community leaders must be given powers in the provision to enforce sanitation and waste disposal for better management and enforcement in the communities.
2. Community rules on hygiene and sanitation (e.g. fencing livestock, keeping the village clean, and keeping toilets away from water sources etc.) must be enforced by chiefs and or community leaders at the community level.

3. Other community rules/custom approaches that should be supported through the Public Health Act include:
 - a) Chiefs day - once a week the chief has people in the community do a community clean up, and
 - b) Caring for sick and disabled members of the community.
4. Custom respect is a community rule that is valuable and must be supported in the Public Health Act.



Litzlitz wharf, Malekula.

Emergency Powers

Background

The Public Health Act includes broad powers for managing various types of health risks and concerns. However, there is no particular emergency power under the current Act to deal with epidemics such as the recent SARS or bird flu crises. The success of a multi-sectoral response to these crises seems to demonstrate that there should be laws to support this kind of approach, in Vanuatu. Also, as a member of the World Health Organization, the **International Health Regulations** of 2005 require Vanuatu to co-operate with the WHO and other countries in reporting, assessing and responding to the international spread of disease.

Consultations throughout Vanuatu suggested general agreement that emergency powers should be part of the law, so that they may be used quickly and decisively in the event of a major public health emergency, and to allow the people of Vanuatu a say in how these powers are exercised. One suggestion was for occasional well-publicized simulated emergency response exercises in Port Vila and the provinces to raise the public awareness around emergency powers and procedures.

At present Vanuatu has a National Disasters Act [Cap 267] in operation since 2000, which provides for a National Disaster Committee including the Commissioner of Police and the Director General of the Ministry of Internal Affairs as chairman. The Act also established a National Disaster Management Office headed by a Director who is also a member of the National Disaster Committee.

Under the National Disasters Act, on the declaration of a state of emergency by the President, on the advice of the council of Ministers, both the Minister and the Director have very broad powers including closure of streets and public and private areas, disconnecting water power or gas supplies, and evacuating or removing any person from the area.

What people said

Policies and arrangements in place for coordinating health emergencies

- *The Minister should make sure that there are good policies and arrangements in place for coordinating other sectors and institutions during any health emergencies.*

Minister should not have a hands-on operational role

- *It was felt that the Minister should give out Orders, as advised by a health emergency committee that is set up, but the Director of Public Health*

should have special powers to respond to health emergencies and play a hands-on operational role, as these types of situations are more technical.

Awareness on best approaches

- *Awareness in the communities and government agencies will be more effective if emergency exercises replicating a real situation are carried out in Port Vila and in the provinces. This will help people to understand what to do in real life situations.*

International support

- *It is important to maintain international support and engagement during health emergencies as it will permit ease of international access. This was seen during the SARS outbreak. There was good international support for evacuations of anyone suspected of having SARS who entered the country.*
- *Siracusa principles should be reflected in this part of the Act.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission recommends the following:

1. That direct powers should not be exercised by the Minister but by a qualified and senior health official, such as, the Director of Public Health. The Director's emergency powers should be exercised following agreement with the Standing Committee and consultation with the Minister. The Minister should be required to advise the President, the Council of Ministers and Parliament of a state of emergency arising from a serious risk to public health in Vanuatu or any specified part or parts of Vanuatu.
2. The Director should be convenor and chair of a Standing Emergency Advisory Committee which includes the Commissioner of Police, a representative of the Malvatumauri, a practising health professional in Vanuatu, the Director of the National Disaster Management Office and at least one representative of a non-government agency which is a partner of the Ministry of Health in Vanuatu.
3. The Director should be responsible for advising and alerting the Minister and the Council of Ministers of any matters relevant to public health emergencies, including strategies and policies proposed or in place for public health emergencies, any proposal for international and donor aid and any other measures necessary to plan for or respond to a public health emergency.
4. Should the state of emergency continue for a period of more than 4 weeks, it may be extended by the Minister or Director with support of Parliament, which may also revoke or vary the state of emergency at any time.
5. All authorised officers and environmental health officers exercising any powers under the *Public Health Act* (including those officers from other agencies appointed by the Director) be given express powers once a state of emergency is declared.

6. Simulation exercises and appropriate trainings should include Provincial Health Administrators, who are then responsible for ensuring that chiefs and other community leaders are trained and ready to prepare their people for health emergency situations.
7. Consistent with the Siracusa Principles, as well as the ***International Health Regulations*** of 2005, it is recommended that any new public health laws, and these emergency provisions in particular, should be expressly set out as most limited and least restrictive available.



Little girl at laonanen, Tanna.

Disease Notification

Background

A notifiable disease is any disease that is required by law to be reported to government and or health authorities, usually within a very tight timeline, so that appropriate

follow up and any necessary action can be taken. Health authorities depend on medical practitioners and or health workers for information on the incidence of infectious diseases, and particularly those that are considered “notifiable”.

Notification is vital in the efforts to prevent or control the spread of infection, particularly around certain types of communicable disease. It also allows the authorities to monitor a disease, and provide early warnings of possible outbreaks. Thus, it is crucial to have an effective and responsive notification system.

The Public Health Act requires that certain scheduled medical conditions and notifiable diseases be notified to specified people within the health care system by health workers. A list of notifiable diseases is found in a schedule of the current Public Health Act (**Appendix 4**).

Currently, in Vanuatu disease notification is not working in the islands or in the towns. Very few health practitioners were aware of the Notifiable Disease List in the current Public Health Act. Upon showing them the list they indicated that they had seen a similar list of these diseases, but this was found in the Health Information System (HIS) form (**Appendix 5**). The HIS form was the only place that health workers in Vanuatu identified currently notifying health officials about disease occurrences. In many places it was reported that there was a time lag of several months for the HIS forms to reach provincial and national health workers, and in some cases HIS forms were not returned. In some cases of a suspected outbreak nurses and Village Health Workers indicated that they would contact the area hospital or Provincial Health Manager, but the pathways of reporting and response were very unclear.

A further issue around disease notification had to do with the highly technical nature of disease notification, and the lack of access, particularly in rural areas, to necessary clinical/laboratory back up. Several health workers noted that in order to diagnose several of the diseases on the list, a health worker would need to have highly specialized medical training, and laboratory testing available as back up. In other cases there were diseases on the list that were so common (e.g. Yaws) that the necessity and feasibility of notification was highly questionable.

In order to address these issues, other jurisdictions have introduced a syndromic approach to disease notification. For example, instead of a list of diseases, a much shorter list of specific syndromes or clinical presentations are included in the list (e.g. rashes, fever, cough) and health workers are required to notify if and when a certain syndrome passes various thresholds (e.g. days of fever, number of people

etc). This approach, when outlined to health workers across Vanuatu, was identified as a much more effective approach to disease notification for Vanuatu.

What people said

Disease notification system

- *During an outbreak of diseases patients who are at risk are isolated and treated. The Provincial Health Manager is then notified. This is not very effective because it takes a long time for those in authority to act, and by the time they respond it is already late.*
- *The HIS form is filled out every month. For most health workers this is the only way of notifying the authorities of the different cases that have been treated in a month. There is no other effective system of notifying diseases.*

Health partners must be part of the disease notification system

- *In reproductive health clinics data on how many sexually transmitted infection (STI) cases that is being dealt with is given to the hospital. This informs them on the different types of STIs that is treated. A record of the cases is kept so it can be referred to in the event that the MOH needs assistance on any information.*

Syndromic approach to disease identification

- *A syndromic approach to identify diseases will assist health practitioners, nurses and doctors greatly.*
- *Currently, the notifiable disease list in the Public Health Act is hardly used. However, the nurses have a similar guideline that is used to treat patients. It is helpful and would be good if such an approach is used.*

Review of list of diseases

- *The list of diseases listed in the schedule of the Public Health Act was recognized by health workers as diseases that they come across in their work. It was felt that if they were to notify all the diseases it would be time consuming and they would not have time to treat patients.*
- *HIV cannot be on a list of diseases because of the confidentiality component that must come with the nature of the disease.*
- *This list must be reviewed regularly because some of the diseases on the list do not have to be on that list.*

Development of chain of reporting

- *If a case that is beyond what a health worker is mandated to do come before the health worker, the case is referred to the hospital. Health workers are only allowed to do certain things. Child birth or serious injuries are referred to the hospital.*
- *In most places there are no doctors, so there have been numerous times when a doctor in the nearest hospital must be called to get their authority to use certain medicines for serious cases.*

Response process on disease outbreak

“There is no system of disease notification on the islands. There might be something on paper but the reality is that there is no system.”

- *During the SARS and bird flu outbreak, the ports of entry were secured. One or two cases were detected and quarantined while arrangements were made for evacuation of the person was carried out.*
- *In situations where there is a disease outbreak an ad hoc committee is set up. In the past everyone involved cooperated well.*
- *There were some disease outbreaks that were not addressed at all by the health system. For example, on one island a doctor identified a cluster of cholera outbreaks in several villages, probably originating from a contaminated water source, but when it was reported, there was no follow up from the health system.*
- *In the Public Health Act nothing specific is stated on a response process on disease outbreak.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission recommends the following:

1. A disease notification system, separate from any data collection systems, should be put in place in Vanuatu's public health laws.
2. All of the health partners (NGOs, private clinics, Municipal health facilities) and hospitals must be part of this disease notification system. They must be part of the reporting chain and the nationwide response process, referred to in Recommendation 8.
3. A syndromic approach to disease identification, similar to one developed by SPC should be used. This could be used in conjunction with a disease list, or could be used instead of a disease list. This syndromic surveillance system is designed to provide early warnings of outbreaks and other important public health events, so that immediate action can be taken. There should be a Disease Surveillance person at the provincial level and national level to oversee the system down into the communities.
4. If a notifiable disease list is used in addition to the syndromic approach, the list of diseases mentioned in the Act must be reviewed and updated on a yearly basis, by the Executive of MOH.
5. The Act shall not make reference to HIV/AIDS as a Notifiable disease because of the confidentiality issue, as set out in the Part on HIV/AIDS.
6. A chain of reporting and response needs to be developed. From the community/clinic/hospital to the Provincial Health Manager to the Director of Public Health. A flow chart should be developed for this two way system reporting up and response down.
7. The flow chart must show everyone from the village level up where/who to report it to, including the doctors in the hospitals, and people up the chain need to take action for a disease notification system to work.
8. A nationwide response process around disease outbreak should be developed in line with the Siracusa principles that targets all ports of entry (e.g. airports and wharfs).



Inside a shop at Lakatoro, Malekula

Non-communicable diseases

Background

Only two parts of the current Public Health Act have dealt with non-communicable disease issues. In 2008 Part 13 of the PHA ('Control of Smoking') was repealed with the passing of the **Tobacco Control Act**, which was a reflection of Vanuatu's membership in the World Health Organisation (WHO) and its ratification of WHO's *Framework Convention on Tobacco Control*. Part 12, dealing with control of baby foods and promotion of breastfeeding remains in the Public Health Act although its provisions are vague and outdated.

Currently the Public Health Act does not deal directly with chronic diseases or non-communicable diseases. Major non-communicable diseases include:

- cardiovascular disease, (heart attacks, stroke, high blood pressure)
- diabetes (common cause of heart, circulatory and kidney failure),
- high blood pressure,
- cancer and
- chronic respiratory diseases (asthma, emphysema and bronchitis).

Rather the PHA's major emphasis is on communicable and infectious diseases and issues of sanitation, clean water, contaminated or offensive waste and refuse as risks to public health. Infectious diseases, and maternal and child health are certainly a huge challenge for Vanuatu's health system. For example, neonatal deaths make up about 25% of total deaths in Vanuatu.

In 2012 the World Bank commissioned a consultant's technical assistance report titled "The Economic Costs of Non-Communicable Diseases in the Pacific Islands". It found that in Vanuatu 70% of deaths were attributable to non-communicable diseases, and over one quarter of these deaths were premature. Further, most of the working population (those over 15 years old) was found to have established, or developing, risk factors for non-communicable or chronic diseases.

Vanuatu currently treats about 2000 hypertension patients and 1000 diabetics with drug regimes. Most of these patients have been diagnosed at the later stages of their disease – too late to contain the cost to the individual and the community of their condition. Any significant increase in the numbers of chronically ill patients cannot be funded without major reductions to other health risk areas, including malarial, tuberculosis and infant disease programs.

Preventative disease programs targeting non-communicable diseases are much cheaper and may even be self-funding to some extent if government charges and levies on major health risks such as tobacco, alcohol and processed salty and sugary foods are increased.

Chapter Nine

What people said

Health burden of NCDs must be a priority of MOH

- *The Ministry must focus on NCDs as it is a silent and deadly killer in Vanuatu. In the last five to ten years NCDs have risen drastically. Most of the patients that are admitted in hospital are surgical cases, which are results of NCDs.*
- *NCD patients use up most of the health budget because of the medication an NCD patient uses. If the MOH can focus on the preventive side rather than the curative/treatment side it will save the hospital a lot of money that can be used on other health needs.*

Practical education in the community

- *The education curricula should have a component on custom practices such as gardening, and on food preparation and cooking to ensure that people are using the most healthy and balanced foods and food preparation processes possible.*
- *Primary school children are at the best age to grasp issues. It is good to educate them on NCDs so they will grow up to be responsible adults.*

“It’s not only an epidemic, it’s a crisis.”

NCD and poor diet and exercise

- *There are a higher percentage of NCD patients in urban areas than in rural areas because people in the urban areas do not eat healthy and balanced meals and hardly do any sort of physical activity. NCDs are hitting the urban workforce the hardest.*

Breastfeeding

- *Mothers must be encouraged to breastfeed their babies up to two years of age as this is healthy for babies and mothers. This gives the mothers’ bodies a chance to rest and it keeps babies healthy for the first two years of their lives.*
- *Some mothers stop breastfeeding early and start feeding their children with food that have a lot of carbohydrates resulting in malnourished children because their meals are not balanced.*

Healthy settings approach

- *Schools should not encourage foods that give way to NCDs later on in life. Most schools are situated near shops and this gives access to school children to go to these shops and buy food that we try to discourage children from eating. Many shops also stock alcohol and tobacco next to sweet and salty foods, making them more noticeable and attractive to children.*
- *School canteens and hospital shops sell only processed food that is often rich in sugar and salt. In one province vendors are banned to sell donuts in the market because donuts are not healthy. Women at the market are encouraged to sell only local produce that is healthier.*

Sin taxes

- *Imported foods that are not on the Food Fortification Standards should be taxed higher than others and monies from these taxes should go into the NCD Unit of the MOH. This will help with the hospital budget to pay for medication and equipment needed for NCD patients. Taxing imported foods that cause NCDs will also help to discourage high consumptions of these kinds of food.*

Kastom/local foods

- *Having a year for local food will encourage people to eat local healthy foods, but in the past this has not been too successful. Benefits of preparing and eating garden food must be taught to families in our communities or people will divert to easier, quicker and unhealthy ways. Vanuatu's traditional diet was identified as very "starch and carbohydrate" based, and for both babies and adults this needs to be balanced with other nutritional intake.*
- *Rice and tinned food are eaten in a lot of homes. This should be discouraged and local foods should be promoted. Rice is seen as a prestigious food. Any family that eats rice is seen to be well off. During feasts there must be rice. If there is no rice it shows that the family is not a wealthy one.*
- *Parents find it easier to cook a packet of noodles and serve it to the family, compared to collecting food from the garden, preparing and cooking it for the family.*

"We don't take physical activity seriously in the urban centres . The food we eat must be burned out, if not it can lead to cardio muscular diseases."

Research on certain foods and NCDs

- *If we want to encourage people to eat a healthy diet researches must be carried out on our local foods so when we carry out awareness programs in the communities we can use findings from the research to back up what is being said.*

NCDs in urban areas

- *People living in the urban areas do very little physical activity and their diet is mostly store bought food. Most of them work in offices so the unhealthy food they eat is not burned up. Instead it is stored in their bodies and becomes harmful and affects their health.*
- *The "walk for life" program was introduced as a way to get people in the offices to, at least, do some exercise. Some people abused it by not doing any physical activity resulting in the Public Service Commission stopping the program.*

NCD screening for communities

- *Early screening will help to delay or reduce the incidence of fully developed NCD. This can be done by the MOH upon the request of government offices and church groups, or anyone who thinks seriously about their health.*

NCDs vs HIV and communicable diseases

- *NCDs are a much bigger risk than HIV. In most communities it is an even bigger health burden than communicable diseases but they are being over-*

looked. It was felt by a lot of people that there is so much emphasis on HIV, but not as much on NCDs when it is the biggest killer in Vanuatu. There are only a few HIV cases, but when it comes to NCDs there is a whole ward full of patients in the hospital, and many patients in the communities. There was even a suggestion of legislation just for NCDs as it covers a broad range of issues.

Excessive use of substances

- Substances such as kava, alcohol and smoking contribute to NCDs when consumed excessively. In the past, men who were older and had set up a good home for their families could drink kava. Nowadays, young people start drinking kava and develop a habit that lasts them a lifetime. Men are dying young and leaving their wives and children behind because of excessive use of these substances. There are more widows in Vanuatu now than before.
- It was suggested that a law on the control of kava should be developed as a way to reduce the excessive use of it.

“Vanuatu’s lifestyle is changing immensely. We are eating too much processed foods in the shops and we don’t understand what the contents and ingredients are.”

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission recommends the following:

1. Health Ministry should adapt its *National Policy and Strategy for NCDs 2010-2015* to focus on promotion of nutritional food preparation and best cooking practices, using local and garden food and exercise to avoid or reduce diabetes, high blood pressure and cancer in the community.
2. Nutrition and health be formally taught at all schools under Vanuatu’s national education policy. The model currently being used in TORBA province around malaria awareness could be studied and adapted to non-communicable disease issues for all Vanuatu school children.
3. Information and education about healthy lifestyles, healthy foods and diets should be provided through schools to children and parents.
4. Breastfeeding should be promoted and recommended throughout Vanuatu for children up to two years old.
5. The Ministry, government and public institutions such as schools, hospitals and markets should follow the Healthy Settings approach and sell healthy local food instead of processed imported food. Hospital fees and charges may also be paid by local food items.
6. Subsidies or VAT exemptions for drugs, medicines and diagnostic equipment should be considered and if possible introduced on a trial basis in Vanuatu. The trial could be implemented, together with a trial of subsidies for locally produced food.
7. Duties and charges on tobacco and tobacco products should be increased to levels which reflect the **WHO Framework Convention on Tobacco Control**, and increased duties and charges should be introduced on a trial basis for alcohol and alcohol products and processed food and drinks, based on their level of sugar, alcohol and salt content.

8. Kastom institutions such as cultural centres should be engaged in
 - informing communities about kastom foods and food preparation, warnings against excessive use of kava, tobacco and marihuana, and reinforcing the continuing importance of care for sick in communities; and
 - also be invited to reinforce the goodness of local and kastom food over rice and other imported food, as well as the best ways of preparing kastom food.
9. Early screening and testing by health workers and nurses at first aid posts and dispensary level for symptoms of these diseases should be encouraged;
10. Provision of information and statistics by provincial and area health committees, hospital committees and provincial managers to the Ministry should be audited and analysed as strictly as financial accounts.
11. That community based initiatives such as Walk for Life which is still used in some public service workplaces, and models using village committees for regular exercise and health talks, be fully supported by the Ministry.
12. The ***Tobacco Control Act*** should be enforced, especially by the appointment of authorised officers and issuing of penalty notices.
13. Excessive use and consumption of tobacco, marijuana, alcohol, kava, processed foods such as rice, canned fish and sugary drinks should be identified in Ministry promotions and campaigns as risky to individual health and well-being and healthy communities.
14. All media advertisements (including print media) and promotions for alcohol and sugary or salty food and drinks should be required to carry health information with a direct levy on advertising budgets imposed for any advertisements that do not include this information.



Sign outside Whitegrass International airport, Tanna.

HIV / AIDS

Background

Beyond the effects of HIV/AIDS on health, it can also be seen as a complex development and human rights issue which impacts on personal relationships, gender relations, community life, national politics and economic and social development. HIV/AIDS typically affects the most produc-

tive segment of society, young people, women and girls.

Currently Vanuatu has approximately five confirmed HIV positive cases. There was a sense in the consultations, however, that actual numbers might be significantly higher than this. But although it is still a relatively small number, it is a serious issue which needs to be legislatively addressed in order to have control over the long term effects on Vanuatu's social and economic development, and the wellbeing of its population, included those who are infected with HIV.

Currently there is no specific legislation in Vanuatu that recognises the rights of the people of Vanuatu to the highest attainable standard of health. Similarly there is no legislation that protects against HIV/AIDS specific discrimination. Stigma and discrimination associated with HIV infection represent the single most important barrier for the uptake of HIV prevention and care services.

The only legislation that makes reference to HIV/AIDS is Vanuatu's current Public Health Act which identifies HIV/AIDS as a Notifiable Disease under the Notifiable Disease List. As detailed above in the section on Disease Notification, HIV/AIDS should be removed from this list in order to protect the confidentiality of people who are identified as HIV positive.

While there is currently no law in Vanuatu which specifically sets out and/or deals with HIV/AIDS, the request from the MOH to the VLC indicated the need to either develop stand-alone HIV/AIDS legislation or to incorporate an HIV/AIDS provision into an existing law such as the Public Health Act.

Consultation with communities, NGOs and health workers at all levels throughout Vanuatu revealed widespread interest in relation to developing a piece of stand-alone HIV/AIDS legislation. Most people, including the HIV unit at the MOH and the National AIDS Committee, felt that the best approach was to amend the Public Health Act to include provisions for HIV/AIDS.

What people said

Aspects of policy paper to be inserted into the Public Health Act

- *It was felt that AIDS is not a threat in Vanuatu yet as there is only a few cases. The issues addressed in a policy paper prepared by the Regional Rights Resource Team (RRRT) can be used to form a part of the Public Health Act, as currently the Public Health Act does not address HIV/AIDS issues well. This would also help with awareness programs.*

Chapter Ten

Awareness of HIV/AIDS still needed

- *Despite the amount of awareness that has been carried out there are still a lot of people who have very little knowledge about HIV/AIDS. Most people relate it to sexual intercourse only, but there are other ways of transmission. We need to run more awareness programs on it.*

Stigma, discrimination and human rights approach

- *Rights of a victim need to be stressed. Because people relate it to sexual intercourse, when there is a known case the victim becomes a subject of ridicule and taunt. It is difficult for the victim's child to go to school because they get shunned, ridiculed and humiliated. This is something that still requires a lot of work on.*

Workplace safety and staff safety

- *Most workplaces do not accommodate staff who may have HIV/AIDS or ensure that the workplace is safe for anyone coming in who may have HIV/AIDS. Staff in workplaces do not have safety precautions in place to manage risk of exposure to HIV/AIDS.*

Voluntary confidential counselling testing

- *Testing is carried out in the reproductive health clinics. It is very important to talk it through with each client and address their fears so they can go through this test.*

RECOMENDATIONS

THEREFORE, the Vanuatu Law Commission recommends the following:

1. The legislation shall make reference to workplace safety. All sectors should have some policy in place to regulate for safety in the work place.
2. The MOH shall promote and encourage education and awareness programs, and look at using HIV positive individuals as peer educators, if they are comfortable doing so.
3. The new law should take a human rights approach to access and rights for victims and their families. Discrimination is most often found in education and employment, largely based on ignorance and panic about the risk of infection.
4. Staff safety should also be addressed in the law. Legislation should look into what is to happen if a staff member, through the course of his or her duty, mistakenly is injected with an infected needle.
5. The legislation to ensure equal treatment in all areas of life and activity irrespective of gender.
6. The issue of confidentiality between doctor and client and or HIV counsellor and client shall be strictly maintained and covered in the legislation.
7. People infected and/or affected by HIV/AIDS will have access to affordable, appropriate, quality counselling, care and treatment services, including appropriate Anti-Retroviral Therapy.

8. Voluntary Confidential Counselling and Testing shall be made available to anyone who wishes to take HIV/AIDS counselling and testing.
9. Handling of test results and disclosure must be in line with strict privacy and confidentiality guidelines in the new law. These guidelines are to ensure that the common law right to privacy is enjoyed by persons vulnerable to or persons living with HIV or affected by HIV or AIDS and will include the use of coding to protect identity. The Privacy Guidelines shall cover the recording, collecting, storing and security of information, records or forms to be used in respect of HIV testing, related medical assessments and the reporting to the relevant authorities, including the reporting of AIDS-related deaths.



Women at Iaonanen, South West Tanna

Violence

Background

Violence is defined by the World Health Organization (WHO) as the intentional use of physical force or power, threatened or actual, against a person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, mal-development or deprivation.

Violence is preventable. Evidence shows strong relationships between levels of violence and potentially modifiable factors such as poverty, income and gender inequality, the abuse of alcohol, and the absence of safe, stable and nurturing relationships between children and parents.

Violence must be taken into account in the new Public Health Act, as violence touches the lives of people of all ages, and carries with it a significant health burden. In Vanuatu, the rate of violence is reportedly quite high, in particular, domestic violence. Although domestic violence is treated as a “tabu” issue, as more women are becoming aware of it, more cases are being reported. Assaults in communities occur during festivals and ceremonies. They also occur when a person causes a problem and other people are sent to beat him/her up, as a form of retribution. In semi-urban and urban areas there is a high rate of violence cases.

Beyond the criminal implications of violence and assault, there are also significant health burdens associated with violence that a new Public Health Act should address. Both victims of violence, and even sometimes their perpetrators, often present as cases within the medical health care system. This has an impact on the use of health services, on issues around health planning and also has significant financial and budgetary implications. It is also hoped that by addressing health burden of violence, this will reinforce the implementation of other pieces of legislation that directly addresses violence. It will also highlight the importance of reducing violence at the community levels, and in urban areas.

During the consultation, people talked about violence more generally. Many women identified domestic violence as a significant health issue in their community. They felt that because of the male dominated society, domestic violence cases were not handled with the attention that it should get. Often issues of domestic violence are hidden in families and communities and are not openly talked about; as women are seen as “the property” of their husbands, the implication is that injuries should be dealt with privately and out of people’s sight.

Chapter Eleven

What people said

A health issue

- *Violence and fighting is a health issue in many communities. There is violence between men and women, young people and when young people cause problems they get beaten up by other people who are authorized by others to beat them up. Mostly, women are the victims of violence in the community. Violence and fighting has an impact on family, police and custom matters by draining personal and public resources, as well as, the well-being in Vanuatu.*
- *Domestic violence is a regular occurrence and health workers treat cases on a regular basis. Vanuatu is a male dominant society and it is difficult for health workers to give the right treatment as domestic violence is seen as a 'tabu' and private issue.*

Records and statistics

- *Records and statistics are not reliable on the disease burden of violence. It is not treated as important; however, it is important to have clear records and statistics as it will be useful for health policies and planning.*

Confidentiality

- *Patient confidence must be granted if it the patient requests it. Violence, in particular, domestic violence is seen as a private matter and is shameful for the victim when they have to publicize it by going to a clinic.*

“Domestic violence is a significant health load here, but it’s kept quiet as people see it as a private family matter.”

RECOMMENDATION

THEREFORE, the Vanuatu Law Commission recommends the following:

1. The family protection community training and education program proposed by the Department of Women’s Affairs should be supported by the MOH and extended throughout the provinces to enable effective participation in reducing the impact of violence, as a public health issue.
2. That MOH reporting and recording requirements for non-governmental organizations, partners, Area committees and hospital committees include numbers of patients treated as a result of violence and extent of treatment provided.
3. Violence cases should be coded, for confidentiality purposes, in the same way as HIV cases.



An outrigger canoe on the beach at Uripiv, Malekula

Other Considerations

Background

During the consultation, it became apparent that there are other laws, including other pieces of legislation and municipal and provincial bylaws in some jurisdictions that also deal with public health matters. This legislation and these bylaws must be consistent with the Public Health

Act. For instance, some of the municipal bylaws and other national legislation have lesser fines than the Public Health Act, or other legislation may have similar provisions as those in the Public Health Act.

During the consultation the key health officers who work with other line agencies in regards to public health stated that it would be ideal for the Public Health Act to refer to and allow for interaction with the other legislation, and to ensure consistency.

Other legislation with Public Health matters

- Other line agencies are governed by their own legislation. This legislation must be synchronized with the Public Health Act, in particular the provisions on powers and enforcement.

RECOMMENDATION

THEREFORE, the Vanuatu Law Commission recommends the following:

1. Amend and insert a section that provides for interaction with other Acts.
2. A review of other laws be done to ensure consistency and clarity in their application to public health. The laws under consideration are
 - a. Food (Control) Act [Cap 228]
 - b. Quarantine Act [Cap 1]
 - c. Plant Protection Act [Cap 239]
 - d. Ports Act [Cap 26]
 - e. Meat Industry Act [Cap 213]
 - f. Immigration Act 2010
 - g. Animal Importation and Quarantine Act [Cap 201]
 - h. Animal Disease (Control) Act 1989
 - i. Tobacco Control Act 2008
 - j. Fisheries Act 2005

k. Environmental Management and Conservation Act [Cap 283]

l. Maritime Act [Cap 131]

m. Municipalities Act [Cap 126]

n. Pesticides (Control) Act [Cap 226]

o. Road Traffic (Control) Act [Cap 29]



Health

Committees Act

Background

While there is currently no law in Vanuatu which specifically sets out or defines health service delivery, the request from the Director of Public Health to the VLC on 4 June 2012 to review the Public

Health Act also referred to 'laws governing health service delivery' and 'health service delivery legislative arrangements'. The VLC considered that the Health Committees Act, which commenced on 14 February 2005, was the relevant health service law.

That Act established a process for the appointment of health committees throughout Vanuatu. Each province in Vanuatu had a provincial health supervisor appointed by the Ministry of Health, who was to appoint a health committee for each 'health area' in that province. The health committee members - appointed in writing for two years - included the head nurse, as well as representatives of the chiefs, youth and women of local communities in the health area.

The functions of the health committees did not cover hospitals. They included the provision of primary health care services, maintenance of health facilities (that is health centres, dispensaries or aid posts), oversight of community sanitation, and the collecting and spending of health fees in the 'health area' for these purposes. The health committees had strictly defined liability for the accounting of all monies received - particularly on the part of the provincial health supervisor and head nurse - and account books were to be regularly audited.

What people said

Set up of health committees

- *In several jurisdictions there were very different interpretations of where health committees should be established, and how many there should be. Some identified health committees as being located only at the level of health centres, with subsidiary dispensaries and aid posts accountable to this committee.*
- *In other cases, the interpretation of the Act was that there should be one health committee for each aid post, dispensary and health centre that would result in more than eighty health committee in some provincial jurisdictions.*
- *In some places, the Act was interpreted to require a complete replacement of all committee members every one to two years, which led to community volunteers in these positions feeling as if they hadn't carried out their duties effectively.*

- *Given the voluntary nature of membership in the health committee (the Act specifies that committee members cannot be compensated for their work), it placed an inordinate burden on community members who volunteered for the committee, who were taken away from their duties in their gardens or in income generating activities.*
- *The implications that monies would be audited placed a substantial burden on healthcare workers and community members, who were hesitant to spend the monies generated (sometimes as little as a few thousand vatu per month) on necessary items, because they were unsure what would be acceptable, and what would not, and that their choices could now have legal ramifications.*
- *The Act specifies that all health committees will be audited. The burden that this places on the state or provincial authorities to carry out these audits on a regular basis is unmanageable at best and could result in a further lack of faith or trust in the system, when the audits are not carried out.*
- *Given all of the confusion surrounding the requirements and roles and responsibilities of health committees and health committee members, at least two provincial jurisdictions indicated not having any health committees, as specified in the Act. Ad hoc, community level health committees are present at differing levels of capacity and function throughout Vanuatu, and often come and go based on the interests and leadership of local actors.*
- *As a way to handle health committees, one province has recently set up a hospital council to oversee all aid posts, dispensaries and health centres in its province.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission recommends the following:

1. Hospital councils should be responsible for hiring, training, and payment of all nurses and health workers in their area, providing regular and reliable health information to the Ministry, as well as, the collection and expenditure of all monies received.
2. Establishment of health committees must clearly set out the hospital council system based on the system in PENAMA.
3. Where the MOH's new structure has been implemented its three provincial managers (with the Public Health Manager, as secretary) should be on the council, as well as a nominated representative of chiefs, youth, women, non-governmental organizations offering health services, a local nurse or health practitioner and the hospital manager.
4. Members of the health committees must be changed after a three year term in the committee.
5. A simple way of audit or another solution to this must be provided for in the Health Committees Act. This must be set up by the Finance Bureau for easy transactions and records.

6. The extreme burden on hospital outpatient clinics should be limited by requiring a referral from a health centre, dispensary or aid post for any outpatient services, except where the patient is directly admitted for treatment – when no fee or hospital charge is payable. Referrals from hospitals back to health centres, dispensaries and aid posts should also be covered.
7. Where the new structure has not yet been introduced it is recommended that the provincial health manager and the Secretary-General of the province should be temporarily appointed to the hospital council, with the hospital manager as secretary.
8. The hospital council members representing the community should receive an allowance on attending a minimum of 4 meetings in a year.

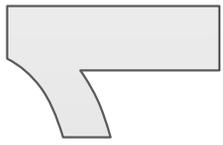


MV Makila anchoring in Lolowai Bay, Ambae

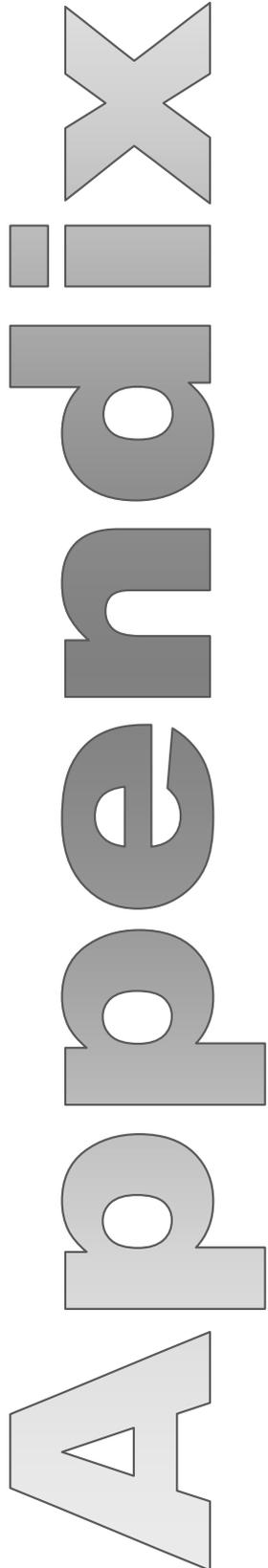
Conclusion

In conclusion, it is clear that the Public Health Act needs to be significantly revised. Beyond the fact that the current Public Health Act is significantly out of date, the Vanuatu Law Commission's review of this Act, along with the Health Committees Act CAP 296 identified significant support for changing the Act among communities and health care workers and administrators who work in public health and health care delivery every day. It also became clear through the review, and in the MOH's own contributions, that there are many key pieces of health legislation, including the Health Practitioners' Act that are also in need of review and revision.

There is still much that the MOH needs to do, therefore, if it is to achieve its objectives. The fact that the MOH has undertaken to review some of its laws is a positive step forward to address a key area of weakness. It is the sincere hope of the Vanuatu Law Commission that the recommendations in this review will assist the MOH in its efforts to strengthen and improve health care delivery for its partnership in this important endeavor, and mostly the dedicated, talented, and hardworking members of Vanuatu's health system, from Village Health Workers to key administrators in the provinces. While the legislative environment in health is weak, and there are significant issues that will need to be addressed in the health care system, the Vanuatu Law Commission was privileged to speak with and learn from a team of health care workers and administrators at the provincial and community level who on a daily basis go above and beyond the call of duty to attend to the needs of the sick and more vulnerable members of Vanuatu society.



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3. Animal Disease (Control) Act No. 29 of 1992 of Vanuatu
4. Animal Importation and Quarantine Act CAP 201 of Vanuatu
5. Business Licence Act CAP 249 of Vanuatu
6. Customs Act CAP 257 of Vanuatu
7. Customs (Penalty Notice) Regulation CAP 257 of Vanuatu
8. Environmental Management and Conservation Act CAP 283 of Vanuatu
9. Fisheries Act CAP 315 of Vanuatu
10. Food (Control) Act CAP 228 of Vanuatu
11. Health Committees Act CAP 296 of Vanuatu
12. *Health Sector Strategy 2010 – 2016: Moving health forward*, Ministry of Health, 2010
13. Howse, G. 2012: *Public Health Law in the Pacific: A Reviewer's Companion*
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19. Immigration Act CAP 66 of Vanuatu
20. Luganville Municipal By-laws on:
 - a. Prohibition of disposal of refuse and collection of refuse,
 - b. Control of the breeding and keeping of farm animals and poultry,
 - c. Prohibition of deposition of litter and rubbish,
 - d. Prevention and suppression of nuisances, and

e. Cleaning of premises

21. Maritime Act CAP 131 of Vanuatu
22. Meat Industry Act CAP 213 of Vanuatu
23. Municipalities Act CAP 126 of Vanuatu
24. *National Policy and Strategy for Non-Communicable Diseases (NCDs) 2010 – 2015*, SPC & WHO, 2010
25. National Disasters Act CAP 267 of Vanuatu
26. National Health Administration Act No. 35 of 1997 of PNG
27. *Operational Guideline for VCCT Centres in Vanuatu (2012 – 2016)*, World Health Organisation, SPC, AusAid and UNICEF, 2012
28. Pesticides (Control) Act CAP 226 of Vanuatu
29. Ports Act CAP 26 of Vanuatu
30. Port Vila Municipal By-laws on:
 - a. Cleaning of premises,
 - b. Food hygiene control,
 - c. Prohibition of pit-latrines facilities
 - d. Public cleansing and prevention of nuisance, and
 - e. Public nuisance
31. Public Health Act CAP 111 of Fiji
32. Public Health Act CAP 234 of Vanuatu
33. Public Prosecutions Act CAP 293 of Vanuatu
34. Plant Protection Act CAP 239 of Vanuatu
35. Quarantine Act CAP 1 of Vanuatu
36. Sanburg, A. 2012: *Hypertension Costing Analysis: Drug therapy costs only*, MOH/World Bank
37. Road Traffic (Control) Act CAP 29 of Vanuatu
38. Sanburg, A. 2010: *Siksuga Costing Analysis*, MOH/World Bank
39. Tobacco Control Act No. 19 of 2008 (Vanuatu)
40. *Vanuatu HIV/AIDS Policy Paper*, Council of Ministers Paper, Comments and inputs by Regional partners, 16 August 2012

Appendix

2

Consultation list

3

Minimum Public Health Standards

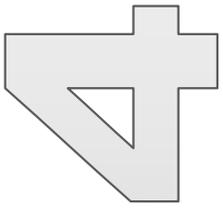
The following minimum standards should apply to any premises, activity, refuse, food or water, discharge or emission, animal, bird, insect or fish capable of carrying disease, and any other matter or thing that is or could be dangerous to public health, offensive or noxious to any person or persons.

- In relation to water and food is that the officer reasonably believes it be fit for human consumption and not to constitute a risk to public health.
- In relation to premises (including land, vehicles, vessels and aircraft) is that they are clean and free from refuse, vermin, diseased or contagious animal life and otherwise not insanitary or a risk to public health.
- In relation to any factory, industrial and commercial premises where food or drink intended for consumption by humans or animals is stored, prepared, manufactured or sold the minimum standards (in addition to those immediately preceding) are that they are hygienic, and have adequate sanitation facilities provided, including proper ventilation.

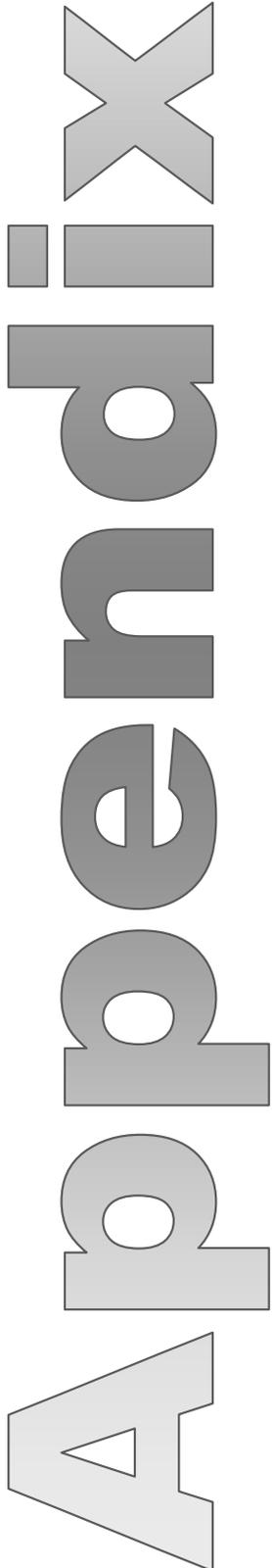
In relation to discharges and emissions the recommended standard is by way of strict prohibition on discharge, emission or release of any waste, refuse, odour or material which is offensive or a risk to public health

- in any public place, or
- in any premises or place not owned by the person responsible for the discharge or emission, or
- in any private lane, footway, alley or thoroughfare to which the public has access, or
- in any waterway, river, watercourse, reservoir, lagoon, lake swamp, or coastal, territorial or offshore waters over which Vanuatu claims rights

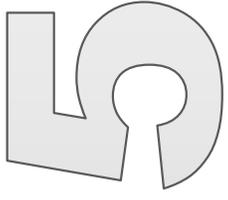
Appendix A



Disease Notification List



- Acute anterior poliomyelitis
- AIDS/HIV seropositive
- Amoebiasis
- Bacillary dysentery (Shigellosis)
- Brucellosis
- Cholera
- Conjunctivitis
- Dengue fever; Dengue shock syndrome; Dengue hemorrhagic fever
- Diarrhoea, presumed infectious (children 1 – 4 years); Diarrhoea, presumed infectious (children 0 – 11 months); Diarrhoea presumed infectious (adult)
- Diphtheria
- Encephalitis
- Fish poisoning
- Gonorrhoea
- Hepatitis, unspecified; Hepatitis, viral type A; Hepatitis, viral type B
- Acute respiratory infection (0 – 1 year); Acute respiratory infection (1 – 4 years); Acute respiratory infection (5+ years)
- Leprosy
- Leptospirosis
- Malaria
- Malnutrition
- Measles
- Meningitis, bacterial (non-meningococcal); Meningitis, eosinophilic; Meningitis, meningococcal; Meningitis, viral/unspecified
- Pertussis
- Pesticide poisoning (e.g. paraquat)
- Plague
- Poliomyelitis
- Rabies
- Relapsing fever (Epidemic Louse-borne)
- Rheumatic fever, acute
- Ross River virus infections; other arboviral diseases
- Salmonella infections (non-typhoid fever)
- Smallpox
- Syphilis
- Tetanus
- Tuberculosis, pulmonary; Tuberculosis (other forms)
- Typhus (Epidemic Louse-borne); Typhus (Flea-borne); Typhus (Mite-borne)
- Typhoid
- Yaws
- Yellow fever



Health Information System form

Appendix