

Vanuatu

Questionnaire on criminalization and prosecution of rape

Definition and scope of criminal law provisions

1. *Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.*

See **Annex I** attached below (page 10 onwards).

2. *Based on the wording of those provisions, is the provided definition of rape¹:*
 1. *Gender specific, covering women only* **NO**²
 2. *Gender neutral, covering all persons* **YES**
 3. *Based on the lack of consent of victim* **YES**
 4. *Based on the use of force or threat* **YES**
 5. *Some combination of the above.* **YES**
 6. *Does it cover only vaginal rape?* **NO**
 7. *Does it cover all forms of penetration? If yes, please specify.*
YES. The definition of sexual intercourse includes, *inter alia*, any form of penetration of the anus or vagina by any person or object as well as any kind of penetration by the penis of the mouth of a person, or licking, sucking or kissing of the vulva, vagina, penis or anus of a person.³

¹ Article 90 of the Vanuatu Penal Code: “Rape defined: Any person who has sexual intercourse with another person – (a) without that person’s consent; or (b) with that person’s consent if the consent is obtained – (i) by force; or (ii) by means of threats of intimidation of any kind; or (iii) by fear of bodily harm; or (iv) by means of false representation as to the nature of the act; or (v) in the case of a married person, by impersonating that person’s husband or wife; commits the offence of rape. The offence is complete upon penetration.”

² Section 89A, Vanuatu Penal Code

³ Section 89A, Vanuatu Penal Code.

8. *Is marital rape in this provision explicitly included?*

NO. However, Section 4 of the Family Protection Act of 2008 defines domestic violence as encompassing sexual abuse of a family member. This provision extends protection from domestic violence, *inter alia*, sexual abuse to spouses as well as de-facto partners. Therefore marital rape is recognised as a form of domestic violence.

9. *Is the law silent on marital rape?* **NO**

10. *Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?* **YES**, see Question 2.8.

11. *Is marital rape excluded in the provisions, or is marital rape not considered as a crime?*

NO.

3. *Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.*

NO, but the Family Protection Act is geared to harmonizing relationships within the family unit and encourages counseling, mediation and customary reconciliation.

4. *What is the legal age for sexual consent?* **15 years**⁴ for heterosexual relations and **18 years**⁵ for homosexual relations.

5. *Are there provisions that differentiate for sexual activity between peers? If so, please provide them.*

NO.

6. *Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.*

S. no	Offence	Provision (Article - Act)	Prescribed sanction
1	Punishment for sexual intercourse without consent	Articles 90 and 91 of the Penal Code	Punishable by imprisonment for life

⁴ Section 97, Vanuatu Penal Code.

⁵ Section 99, Vanuatu Penal Code.

2	Punishment for Abduction ⁶	Article 92 of the Penal Code	Punishable by imprisonment for twelve years
3	Punishment for Abduction of a Person under 18 years of age ⁷	Article 92A of the Penal Code	Punishable by imprisonment for seven years
4	Punishment for Sexual intercourse with child under care or protection	Article 96 of the Penal Code	Punishable by imprisonment for ten years
5	Punishment for Unlawful sexual intercourse	Article 97 of the Penal Code	Punishable by imprisonment for life, if the child is younger than thirteen; Punishable by imprisonment for fifteen years, if the child is younger than fifteen and older than thirteen
6	Punishment for Aggravated sexual intercourse with a child	Article 97A of the Penal Code	Punishable by imprisonment for life
7	Punishment for Act of indecency without consent	Article 98 of the Penal Code	Punishable by imprisonment for seven years
8	Punishment for Act of indecency without consent	Article 98A of the Penal Code	Punishable by imprisonment for ten years

7. *What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?*

Vanuatu recognises compensation as a part of the sentencing process. According to Section 38 of the Vanuatu Penal Code, courts are allowed to promote reconciliation and encourage and facilitate settlement according to custom or otherwise, when it comes to

⁶ “A person must not intend to cause another person to have sexual intercourse, either with him or her with any other person, take that person away or detain that person against that person’s will.”

⁷ Section 92A, Penal Code [Cap 135] : 92A Abduction of a person under 18 years of age

(1) A person must not take or cause to be taken an unmarried person under the age of 18 years out of the possession and against the will of his or her father or mother or guardian or any other person having the lawful care or charge of him or her with the intention:

(a) of having sexual intercourse with the person; or

(b) to cause the person to have sexual intercourse with any other person.

the payment of compensation. However this provision does not put a limit on the court's power to impose penalties during sentencing except an obligation to consider any compensation or reparation the offender has made or was due under custom and postpone sentencing accordingly.⁸

In relation to sentencing, the court has an obligation to consider and the power to award economic compensation if the action of the offender somehow resulted in: death or injury; loss of or damage property; emotional harm; loss or damage consequential on any emotional or physical harm of, or damage to, property.⁹ This compensation is different from a fine, which may also be imposed. Furthermore, the court may also make the compensation the sole sanction on the convicted person, i.e., forgo any imprisonment.¹⁰

In awarding compensation as a part of a sentence, the court may require the offender and the victim to arrive at an agreement on the amount of damages the offender must be required to pay.¹¹ The sentence of compensation may also be 'non-monetary', although what that means is not specified.¹² Perhaps most importantly however, the state is "not liable to any person for any error, omission or delay in enforcement of any sentence of compensation."¹³

Aggravating and mitigating circumstances

8. *Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?*
 1. *Is rape by more than one perpetrator an aggravating circumstance?* **NO**
 2. *Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference)* **NO**
 3. *Is rape by spouse or intimate partner an aggravating circumstance?* **NO**

9. *Does the law foresee mitigating circumstances for the purposes of punishment? If yes, please specify.* **NO**

⁸ Sections 38 and 39, Vanuatu Penal Code.

⁹ Section 40(1), Vanuatu Penal Code

¹⁰ Section 40(13), Vanuatu Penal Code

¹¹ Section 42, Vanuatu Penal Code

¹² Section 44(3), Vanuatu Penal Code. See also, Section 48(4), Vanuatu Penal Code. It may also mean 'payment of goods'.

¹³ Section 49, Vanuatu Penal Code

10. *Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES. If so, at what stage and what are the consequences?*

Sections 118 and 119 of the Criminal Procedure Code [136] of Vanuatu are the relevant provisions regarding customary reconciliation. Until 2007, these sections provided that the court may facilitate reconciliation or customary settlement and must, during sentencing, take into account any customary compensation or reparation made by the offender.

Under these provisions custom reconciliation was only recognized for offences punishable by less than 7 years imprisonment, but they were replaced by the Penal Code (Amendment) Act 2006, which contains almost identical provisions for the courts to recognize and assist customary reconciliation. The legislation does not set out how and when customary reconciliations are to be taken into account and this is left to the Courts to develop according to its discretion:

38. Promotion Of Reconciliation

(1) Notwithstanding the provisions in this Act or any other Act, a court may in criminal proceedings, promote reconciliation and encourage and facilitate the settlement according to custom or otherwise, for an offence, on terms of payment of compensation or other terms approved by the court.

(2) Nothing in this section limits the court's power to impose a penalty it deems appropriate for the relevant offence.

39. Account To Be Taken Of Compensation Payment

When sentencing an offender, the court must, in assessing the penalty to be imposed, take account of any compensation or reparation made or due by the offender under custom and if such has not yet been determined, may, if satisfied that it will not cause undue delay, postpone sentence for such purpose.

The Penal Code provisions allow recognition of custom reconciliation for all sexual offences, including incest, sexual intercourse without consent, indecent acts, publishing indecent matters and unlawful sexual intercourse with a child under 13.

Where customary reconciliation competes with penalties stipulated by law it brings about the question of equal and consistent sentencing. Two fundamental freedoms and rights to which all persons in Vanuatu are entitled under Article 5(1) of the Constitution are protection of the law and equal treatment under the law. Sentencing by the courts for criminal offences is an area where both these fundamental rights are very important,

especially where custom reconciliation is also involved. Some research on recent sentences for sexual offences raises some questions about fair and equal treatment.

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

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

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

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

In addition, the divergence of the weight to be given to customary reconciliation is also another issue. Practically the Court must consider that, at most, the custom ceremony could be considered to be worth a deduction from the expected sentencing. However, in assessing the quantum of punishment, there seems to be considerable divergence of practice within the Courts as to the weight that should be given to a customary reconciliation. It is clear that there is a discrepancy in this area given by different Courts in several sexual offence cases where customary reconciliation ceremonies have been

taken into account. Sometimes the Courts do not draw attention to any particular features of the customary reconciliations that might justify the differences in weight – such as the value of gifts exchanged, timing of reconciliation and how closely the offender was involved in reconciliation.¹⁴

1. *Regardless of the law, is reconciliation permitted in practice?* **YES.** Refer above.

11. *Is there any provision in the criminal code that allows for the non-prosecution of perpetrator?* **NO.** If yes, please specify.

1. *if the perpetrator marries the victim of rape?* **NO.**

2. *if the perpetrator loses his “socially dangerous” character or reconciles with the victim?* **NO.**

Prosecution

12. *Is rape reported to the police prosecuted ex officio (public prosecution)?* **YES.**

13. *Is rape reported to the police prosecuted ex parte (private prosecution)?* **NO.** You need special leave of the Public Prosecutor and the Court to prosecute your own case. This has only ever happened once in Vanuatu.

14. *Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?* **YES,** but oftentimes the Victim will not turn up to testify in Court and the case folds on the absence of evidence.

15. *Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?* **YES.**

16. *Please provide information on the statute of limitations for prosecuting rape.*
Sexual intercourse without consent is punishable with life imprisonment and the prescribed period of limitation is 20 years.¹⁵

17. *Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?* **YES.**

¹⁴ Penal Code (Sexual Offences and Customary Reconciliation) – Issues Paper No. 5 of 2013, Vanuatu Law Commission (26 August 2013)

¹⁵ Section 15, Vanuatu Penal Code

18. *Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses? NO. If yes, please specify.*

The elements are that :

- a) The accused penetrated the Victim (digitally or otherwise);
- b) The Victim did not Consent; or,
- c) The Victim consented under duress, threat of violence, actual violence, fear of harm, misrepresentation, impersonation, effect of drugs/alcohol and physical/mental incapacity

Medical evidence bolsters an account of the incident having occurred which would be classed as hearsay but hearsay is not automatically inadmissible.

19. *Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial?*

YES. If the evidence is being led simply to intimidate and shame the victim then it is not allowed. However if it is used in the context where there is no medical evidence supporting the rape contention; the parties had a prior intimate relationship; the accused has denied the charge; and, there is only an account of what he said and she said then evidence of this nature is brought in to tip the burden of proof for the accused to defeat the standard of "beyond a reasonable doubt" which is already a high bar.

20. *Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? If yes, please specify.*

YES. The Court has discretion and has made allowances to ensure the Victim's anxiety and stress are managed. Oftentimes the Prosecution will request that a barrier be erected between the accused who is obliged to be in the courtroom and hear the evidence against them and the victim giving evidence. That way they are not visible to the other and the victim can undertake Examination-in-Chief and Cross Examination. It becomes difficult if the situation arises where the Defence proposes a Site Visit and the "crime scene" is the victim's house which by course of the trial, the accused must enter to part take in viewing all evidence against them. This could trigger distress in the victim who has to return home knowing the accused was there.

War and/or conflict

21. *Is rape criminalized as a war crime or crime against humanity? NO¹⁶*

22. *Is there a statute of limitations for prosecuting rape in war or in conflict contexts? N/A*

¹⁶ <https://www.amnesty.org/download/Documents/20000/asa440012012en.pdf>

23. *Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?* **N/A**

24. *Has the Rome Statute of the International Criminal Court (ICC) been ratified?* **YES**, despite having acceded to the Rome Statute, Vanuatu has not made any changes in its domestic laws to make it compliant with the Rome Statute.

Data

25. *Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.*

According to a 2004 CEDAW Report, Vanuatu had 447 cases of rape reported between 1988 and 2002, which roughly amounts to 1% of the overall crimes reported, but it still ranked as the number one sexual crime against women. More than a third of the sexual crimes committed within that time frame were rapes. In the scope of crimes against morality, rape represented 34% of the crimes committed, while unlawful sexual intercourse was ranked second with 22%, indecent assault at third with 21% and incest with 12%.¹⁷

Other

26. *Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.*

The efficiency and effectiveness of the law enforcement professionals are big barriers to reporting and prosecution of rape. Furthermore, lack of sensitivity of these law enforcement professionals also affects reporting in prosecuting. Overall these result in delays in prosecution of crimes and also provoke a cycle of re-victimisation on the survivors.

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<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsl2Y0YMjGrSfy7wV721E18WgRPABNqIYQUnIP0pXOaBI2rw%2Bk%2FmqJm6C08u6q0IP4u5wB3TAqMc5m7deYHXsgtHKRxHAKI84iEORAnP0ArQm> pp. 27-28

Annex I: Criminal Law provisions on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification)

Vanuatu Penal Code

In Vanuatu, rape was called such until a 2016 Amendment to the Penal Code when the term was replaced with “Sexual intercourse without consent”.

90. Sexual Intercourse Without Consent:

Any person who has sexual intercourse with another person:

- (a) without that person’s consent; or
 - (b) with that person’s consent if the consent is obtained:
 - (i) by force; or
 - (ii) by means of threats of intimidation of any kind; or
 - (iii) by fear of bodily harm; or
 - (iv) by means of false representation as to the nature of the act; or
 - (v) in the case of married person, by impersonating that person’s husband’s wife;
 - (vi) by the effects of alcohol or drugs; or
 - (vii) because of the physical or mental incapacity of that person;
- commits the offence of sexual intercourse without consent.

92. Abduction

A person must not intend to cause another person to have sexual intercourse, either with him or her with any other person, take that person away or detain that person against that person’s will. Penalty: Imprisonment for 10 years.

92A Abduction of a person under 18 years of age

- (1) A person must not take or cause to be taken an unmarried person under the age of 18 years out of the possession and against the will of his or her father or mother or guardian or any other person having the lawful care or charge of him or her with the intention:
 - (a) of having sexual intercourse with the person; or
 - (b) to cause the person to have sexual intercourse with any other person.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction to a term of imprisonment not exceeding 7 years.

95. Incest

- (1) Incest is sexual intercourse between –
 - (a) parent and child (including an adopted child);

- (b) brother and sister, whether of the whole blood or of the half blood, and whether the relationship is traced through lawful wedlock or not; or
 - (c) grandparent and grandchild, where the person charged knows of the relationship between the parties.
- (2) No person of or over the age of 16 years shall commit incest.
Penalty: Imprisonment for 15 years.
- (3) Upon the conviction of any male of an offence or attempted offence under subsection (2) against any female under the age of 18 years, the court may divest the offender of all authority over such female and if the offender is the guardian of such female, remove him from such guardianship and in such case appoint another guardian in his place.
- (4) A person must not commit incest consensually with a person over the age of 16 years.
- (5) A person who contravenes subsection (4) commits an offence punishable on conviction to a term of imprisonment not exceeding 15 years.
- (6) A person must not commit incest without consent with a person over the age of 16 years.
- (7) A person who contravenes subsection (6) commits an offence punishable on conviction to a term of imprisonment not exceeding 20 years.
- (8) A person must not commit incest with a person under the age of 16 years.
- (9) A person who contravenes subsection (8) commits an offence punishable on conviction to life imprisonment.

96. Sexual intercourse with child under care or protection

- (1) A person must not have or attempt to have sexual intercourse with any child, not being the person's spouse, who is under the age of 18 years and who –
- (a) being the person's stepchild or foster child, is at the time of the intercourse or attempted intercourse living with the person as a member of the person's family;
or
 - (b) not being the person's stepchild or foster child, and not being a person living with him as the person's spouse, is at the time of the intercourse or attempted intercourse living with the person as a member of the person's family and is under the person's care or protection.
- Penalty: Imprisonment for 10 years.
- (2) It is no defence to a charge under this section that the child consented.

97. Unlawful sexual intercourse

- (1) No person shall have sexual intercourse with any child under the age of 13 years.
Penalty: Imprisonment for life
- (2) No person shall have sexual intercourse with any child under the age of 15 years but of or over the age of 13 years.
Penalty: Imprisonment for 15 years.

- (3) It is no defence to a charge under this section that the child consented or that the person charged believed that the child was of or over the age in question.
- (4) The child shall not be charged as a party to an offence under this section.

97A. Aggravated sexual Intercourse with a child

- (1) A person must not have sexual intercourse with a child under the age of 15 years in circumstances of aggravation. Penalty: Imprisonment for life.
- (2) In this section, "circumstances of aggravation" means circumstances in which –
 - (a) at the time of, or immediately before or after, the commission of the offence, the alleged offender maliciously inflicts actual bodily harm on the alleged victim or any other person who is present or nearby; or
 - (b) at the time of, or immediately before or after, the commission of the offence, the alleged offender threatens to inflict actual bodily harm on the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument; or
 - (c) the alleged offender is in the company of another person or persons; or
 - (d) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender; or
 - (e) the alleged victim has a serious physical disability; or
 - (f) the alleged victim has a serious intellectual disability.

98. Act of Indecency Without Consent

A person must not commit an act of indecency on, or in the presence of another person:

- (a) without that person's consent; or
 - (b) with that person's consent if the consent is obtained:
 - (i) by force; or
 - (ii) by means of threats of intimidation of any kind; or
 - (iii) by fear of bodily harm; or
 - (iv) by means of false representations as to the nature of the act; or
 - (v) in the case of a married person, by impersonating that person's husband or wife; or
 - (vi) by the effects of alcohol or drugs; or
 - (vii) because of the physical or mental incapacity of that person.
- Penalty: Imprisonment for 7 years.

98A Act of Indecency With a Young Person

A person must not commit an act of indecency upon, or in the presence of another person under the age of 15.

Penalty: Imprisonment for 10 years.

101B. Promoting or engaging in acts of child prostitution

- (1) A person must not –
- (a) by any means, cause or induce a child to participate in an act of child prostitution; or
 - (b) participate as a client with a child in an act of child prostitution.
- Penalty: Imprisonment for 10 years or, if the child is under the age of 14 years, to imprisonment for 14 years.
- (2) The consent of a child is not a defence to a charge relating to an offence under this section.

101D. Children not to be used for pornographic purposes

- (1) A person must not –
- (a) use a child for pornographic purposes; or
 - (b) cause or procure a child to be so used; or
 - (c) having the care (but not necessarily entitled by law to have the custody) of a child, consent to the child being so used or allow the child to be so used.
- Penalty: Imprisonment for 5 years or, if the child is under the age of 14 years, to imprisonment for 7 years.
- (2) For the purposes of this section, a child is used by a person for pornographic purposes if:
- (a) the child is engaged in activity of a sexual nature (for example, actual or simulated sexual intercourse or a striptease) for the purpose of the production of pornography by that person; or
 - (b) the child is in the presence of another person engaged in such an activity for that purpose.

Family Protection Act No. 28 of 2008

The Family Protection Act No. 28 of 2008 offers further protection in the family unit against sexual violence. The commission of an act of Domestic Violence defined thereunder is punishable by no more than 5 years' imprisonment or a fine of no more than VT 100,000. A protection may be granted to the victim mandating good behaviour towards the victim and family as well as prohibiting commission of an act of domestic violence, the breach of which is 2 years' imprisonment or a fine of VT 50,000. Other conditions may be attached to said order such as counselling and/or mediation. There is an allowance for compensation in custom or otherwise to be paid where injury damages or loss has arisen:

4. Meaning of domestic violence

- (1) A person commits an act of domestic violence if he or she intentionally does any of the following acts against a member of his or her family:

- (a) assaults the family member (whether or not there is evidence of a physical injury);
 - (b) psychologically abuses, harasses or intimidates the family member;
 - (c) sexually abuses the family member;
 - (d) stalks the family member so as to cause him or her apprehension or fear;
 - (e) behaves in an indecent or offensive manner to the family member;
 - (f) damages or causes damage to the family member's property;
 - (g) threatens to do any of the acts in paragraphs (a) to (f).
- (2) Without limiting paragraph (1)(d), a person may stalk another person by:
- (a) following the person; or
 - (b) watching the person; or
 - (c) loitering outside premises where the person lives, works or frequents for the purposes of any social or leisure activity; or
 - (d) making persistent telephone calls to the person or to premises where the person lives or works.
- (3) For the purposes of this Act, if a person (in this subsection called "the instigator") counsels or procures another person to commit an act that, if done by the instigator, would be an act of domestic violence, then the instigator is taken to have committed the act.
- (4) To avoid doubt:
- (a) a single act may amount to an act of domestic violence; and
 - (b) a number of acts that form part of a pattern of behaviour may amount to domestic violence even though some or all of those acts when viewed in isolation may appear to be minor or trivial.

5. Meaning of spouse

Spouse of a person means an individual of the opposite sex to the person who:

- (a) is or has been married to the person; or
- (b) although not married to the person, is living with the person in a marriage-like relationship or has lived with the person in such a relationship; or
- (c) is a biological parent of a child with the person (whether or not they are or have been married or are living or have lived together)

10. Domestic Violence Offence

- (1) A person who commits an act of domestic violence is guilty of an offence punishable on conviction by a term of imprisonment not exceeding 5 years or a fine not exceeding 100,000 Vatu, or both.
- (2) It is not a defence to an offence under subsection (1) that the defendant has paid an amount of money or given other valuable consideration in relation to his or her custom marriage to the complainant.

- (3) An offence under subsection (1) is in addition to and not in substitution for any other offence constituted by an act of domestic violence.
- (4) If a person (in this subsection called "the instigator") counsels or procures another person to commit an act that, if done by the instigator, would be an act of domestic violence, then the instigator is taken to have committed the act and subsection (1) applies in relation to the instigator.
- (5) If a person is convicted of an offence against this section, a court may, in determining the penalty to be imposed on the person, take into account any compensation or reparation made or due by the person under custom.
- (6) If under custom such compensation or reparation has not been determined and a court is satisfied that a determination is likely to be made without undue delay, the court may postpone sentencing pending the determination.”

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