

# Vanuatu Electoral Commission

## Vanuatu Electoral Office



### Main Initiatives proposed for new Electoral Act

**Introduction:** The Electoral Commission (EC) has embarked on a process of strengthening the legal framework underpinning the elections in the country. For that purpose, it has created the Electoral Reform Working Group, which has proposed to replace existing electoral laws with a single electoral Act, which will regulate parliamentary, provincial government council and municipal council elections in a single harmonised law. Additionally, innovations in the electoral process have been proposed, in order to modernize the institutions and practices in Vanuatu. The purpose of this paper is to outline the main innovations proposed, in no particular order.

**1. Strengthening independence of the Electoral Commission:** One of the guiding principles for an efficient electoral authority is “*independence*”. This principle relates to “independence of action”, that is, the possibility of doing the job without any undue influence from whatever source, including government, political parties, or any other source, including the international community. International practice shows that “independent” electoral bodies are more likely to generate confidence in the institutions and practices in regards to elections. While the current EC tries to conduct itself in an independent manner, the current legal provisions do not mention the “independence” of the EC. The EC/VEO is under the administrative tutelage of the Ministry of Internal Affairs and does not have its own budget that can be managed independently; in short, legally the EC does not have an administrative nor financial independence, which has often impacted negatively on the preparation and conduct of the elections. Additional issues regarding the independence of the EC are the modalities for appointment and dismissal of the electoral commissioners. The new electoral Act will try to introduce those measures that consolidate the independence of the EC.

**2. Provincial Electoral Officers.** Currently, there is no permanent presence in all of the Vanuatu Electoral Office (VEO) in the provinces. Despite the fact that presence in the provinces is not a feature present in the legal framework, lessons-learned have shown the importance of having a permanent presence of the electoral authorities in the provinces, particularly with the introduction of the new model of continuous voter registration (open all year around). There have been efforts to increase the number of permanent provincial electoral officers to all provinces, so far without success for a number of reasons (including Covid 19). But it has been recommended that this feature be included in the legal framework to guarantee its implementation.

**3. Voter Registration:** Voter registration is one of the most important functions given to the EC, which in turn has relied on the work of the VEO to register voters. The traditional model for voter registration was to have a stand-alone voter registration conducted by the VEO. The voter register was established exclusively from the data collected by the VEO. In Vanuatu, efforts have been made targeting the efficiency, as well as the integrity, of the voter registration process. In 2017 the government decided to introduce a “national ID card” to all its citizens. At the same time, the government also decided to link the civil and voter registration database, in order to improve the quality of the voter register and build trust around it, as well as creating synergies among various government agencies. The result has been a change in concept and conduct of voter registration model in the country. The (VEO) is no longer be responsible for collecting the information for “registration of electors in the field”. Instead, the VEO is now responsible for the “establishment and maintenance of the Voter

Register” relying on information (“secondary information”) originating from the Central Civil Register. Additionally, the EC/VEO are no longer issuing “electoral cards” and the “national ID card” will fulfill the necessary proof of identity and eligibility at polling. In order to ensure the legislation is in line with the current practices, it is necessary to rehaul the electoral provisions.

**4. Electoral lists:** The current legislation provide for “electoral rolls” for each polling district. In fact, “electoral rolls” will no longer be necessary. As mentioned, a national Voter Register will be established and updated as necessary from the Civil Registry information; the VEO will allocate voters to polling stations based on the address information in the Voter Register and “electoral lists” will be prepared, for each specific polling station and will be available for public inspection before being finalised. Electoral data can be updated all year round through provincial offices or CRIM Department in Port Vila.

**5. Campaign financing disclosure:** Around the world, the issue of campaign financing constitutes an important element legitimizing the electoral process and its results. Vanuatu is one of only two countries in the world that have no specific regulations for political parties. It is certainly one without any kind of requirements for political party registration measures. One of the provisions widely used around the world is financial disclosure for parties and candidates, particularly during the campaign period. Once again, at the moment Vanuatu is one of the very few countries in the world without any provisions to regulate campaign financing. Monitoring and control of money in elections has become a major feature around the world to maintain the integrity and credibility of the electoral process. Despite the lack of political party regulations, and in order to ensure transparency, accountability and a level playing field, the new Act proposes to introduce basic campaign financing disclosure provisions to improve oversight of campaign contributions and donations, and expenditures. This is a “light” measure, as it doesn’t regulate campaign finances, but deals only with reporting of the campaign finances.

**6. Electoral campaign and code of conduct.** At the moment, there is no clear indication of the electoral campaign period in any of the laws. It is therefore recommended to make explicit the length of the electoral campaign period. Obligatory codes of conduct for political parties and candidates have already been approved by the EC and gazetted in 2021. Additionally, it is international good practice to have compulsory codes of conduct for political parties and candidates to comply with during the electoral campaign periods. The current EC regulation in regards to codes of conduct for parties and candidates can be relied upon until the codes of conduct are updated under the new Act.

**7. Single ballot paper:** The design and structure of the ballot paper used in an election has multiple impacts. Ballot paper design has an impact on two important aspects of the election process: (a) the ability of voters to understand the choices of candidates or parties running in the election and select their choice in a valid manner and (b) the accuracy of counting of votes. With the current ballot structure in Vanuatu, voters are faced with a selection of different ballot papers, each representing a different party or candidate; in this case, voters have to choose which ballot they prefer, usually sealing their choice of ballot in a ballot envelope before placing it in the ballot box. While this is a legitimate model, the ballot structures most used around the world is that of a “single ballot paper”, containing all the parties or candidates in the election, and where the voters have to indicate on the ballot paper which of these is preferred before placing the ballot in the ballot box. This modality is considered more user-friendly and much more cost-effective. The new Act proposes the use of a single ballot paper with all candidates on it for each constituency. This is a cost saving measure to move away from the current, and more cumbersome, ballot paper structure: printing of a single ballot paper will certainly result in savings to the electoral budget, among them to do away with the procurement of envelopes (one for each voter). The current “waste” of ballot papers would also be avoided as would issues in regards to different ballots being glued together, which effectively invalidates the vote. The adoption of a single

ballot paper, which would do away with the need to produce a booklet of ballots per voter, would also significantly facilitate the electoral logistics, simplifying the production, distribution and retrieval of ballots. A single ballot paper would also enhance the secrecy of the vote: as there would be no ballots left over in the polling booth, the open bin next to the ballot box or outside polling station, the secrecy of the vote would be better preserved. Transparency in the counting of the votes would also be improved. A single ballot paper will also facilitate expanded out of country and out of constituency voting.

**8. By-elections:** The RPA says that should there be a vacancy for a seat in the national Parliament, a by-election is required to replace that seat. The electoral authorities have long tried to have this legal provision modified, as by-elections are costly, take up a lot of time and resources that could be used more efficiently. There was a proposal in a COM paper in 2016 to allow for the runner-up of an election to take the seat of an elected member of Parliament that has passed away. The acting attorney general at the time said this was not possible, as the “electoral system includes an element of proportional representation”, (where it clearly doesn’t). Problematically, the COM paper proposed a change not only to the RPA, but also to the Constitution, which would of course require a national referendum. Many would argue that there is no need to change the Constitution, only the law, to abandon the system of by-elections, which from an administrative and financial perspective would make a lot of sense. Therefore, it is proposed that serious consideration should be given to doing away with by-elections. In their place, the EC could be given a power to declare the candidate who obtained the second highest number of votes at the last election (from same party where possible) as the candidate to fill a vacancy. This has been used in municipal council elections in the past.

**9. Special measure for Internally Displaced Persons (IDPs):** Currently, there are no special measures allowed by law to facilitate the electoral participation of IDPs resulting from natural disasters (a common occurrence in Vanuatu). It is therefore proposed to introduce special measures, in terms of voter registration and polling, for IDPs resulting from natural disasters and civil disturbances within flexible, pre-determined timeframes set by the Electoral Commission.

**10. Special voting (remote voting):** The electoral system currently in use in Vanuatu is that of First Past the Post (FPTP) and Single Non-Transferable Vote (SNTV) in 18 single and multiple-member constituencies. The current arrangements are adapted to the demographics of the country. These 18 constituencies are the basic “electoral unit” for the general elections and the legal framework is clear in requiring voters (and candidates) to be residents in their constituency in order to register to vote and to be nominated as candidate. Any measures significantly affecting this system in a major way could create operational and logistical issues, but limited measures could be introduced that would be beneficial and easier to control. In that context, the request to explore out-of-voting constituency involves introducing “limited”, feasible and effective measures to allow voters to vote outside their place of residence (“absentee” or “remote voting”) instead of the one assigned to them through the voter registration process. Already Vanuatu uses a modality of “absentee” voting, which is the proxy vote. But proxy is a sensitive modality, often accused of being easily manipulated and therefore it is always accompanied but various restrictions and forms of control (as is the case in Vanuatu). In that sense, it is an “exceptional” voting modality. Another common modality for out-of-constituency voting is the postal vote (as is done in Fiji). For this modality to work, there needs to be a highly efficient and trusted postal system in the country, which is not currently the case. It is also often discouraged because of its extremely high costs (born by the electoral authorities) and its often very cumbersome procedures for verification of voters. Out-of-constituency registration is already allowed within the current legal framework, but in order to increase electoral participation, it could be beneficial to examine the possibility of introducing out-of-constituency voting. As mentioned, this could be done in a limited manner, such as establishing out-of-constituency polling stations in Port Vila and Luganville;

again, this arrangement could be facilitated only by the adoption of a single ballot-paper per constituency. In that context, the new Act proposes to provide limited voting measures for certain voters to cover polling outside their allocated polling stations. These are voters who are working for the election during polling day and limited out of constituency voting, including out-of-constituency polling stations in Port Vila and Luganville.

**11. Out of country voting:** Out-of-country voting (also called external voting, absentee voting or voting from abroad) is a modality that allows citizens of a country residing abroad to implement their right to vote. Yet many issues arise from the idea of citizens living abroad being allowed to vote. International IDEA has identified four “basic building blocks” for OCV, including: a) eligibility requirements; b) voter registration requirements; c) types of elections; and d) polling procedures. There are NO international standards for OCV. Many countries implement it (under various modalities) and many others do not. It is acknowledged that OCV enhances the citizens’ right to vote, but it is also recognized that OCV presents many procedural and operational challenges. Not least, it should be noted that many OCV modalities include only national elections, only sometimes provincial elections and almost never municipal elections. The Representation of the People Act, in its Part 4, allows for the Electoral Commission (EC) “acting on the advice of the Principal Electoral Officer given after consultation with both the Prime Minister and the Minister responsible for foreign affairs, and subject to the agreement of the foreign Government concerned”, to designate one or more polling stations in a foreign country. In fact, to this day the only polling station overseas is the one in Noumea, whose votes go to a seat in the Port Vila Constituency. In the last couple of years, there have been serious discussions to add supplementary polling stations in Fiji, Australia and New Zealand (which is allowed by the current legal provisions). Given the heavy cost of OCV and the great operational challenges, it is recommended that additional OCV be implemented through an in-person voting modality only, with polling stations being set up in the corresponding consulates. However, it would be problematic to add any additional polling stations to the Port Vila constituency, without noting that such practice does contradict Part 6 of the Act (CAP 146). Regulations can be made under the new Act to expand out-of-country voting to include countries other than New Caledonia. Out-of-country votes should go to the constituencies where the out-of-country voters have been registered, for national parliamentary elections only. Finally, as in the case of out-of-constituency voting, expansion of out-of-country voting would be feasible only if a single ballot paper per constituency is adopted.

**12. Electoral petitions:** The current system whereby the Supreme Court determines electoral petitions for parliamentary elections will be retained. However, it is proposed that electoral petitions for provincial and municipal council elections be determined by the Magistrates Court rather than relying on election committees which is the current situation.

**13. Constituencies:** There are to be national constituencies, provincial constituencies and municipal constituencies (wards) as is the current situation. However, it is proposed that the Electoral Commission be given the power to determine the provincial and municipal constituencies. Currently, the Minister has this power. The President will continue to determine national constituencies on the advice of the Electoral Commission.

**14. Expanded electoral offences:** The new Act plans to provide for the expansion of electoral offences and higher penalties for electoral offences. A major vacuum in the RPA is that no penalties are established for committing electoral offences leaving little “teeth” to the authorities to enforce their mandate in that regard. It is therefore proposed that the new Act introduce increased penalties for an expanded range of electoral offences.

**15. Regulations to provide for electoral procedural and operational details:** An attribution of the EC is to come up with its own regulations. Despite the adoption in 2021 of 16 EC regulations, in the past these regulations have been few and far between, not least because of the overly detailed nature of the legal texts, which define operational procedures that normally can (and should be) determined by regulations, allowing more flexibility and suppleness to the electoral administration. Pertinent examples of issues that can be solved through EC regulations are the 3-month residency requirements for registration and the development of specific, separate procedures for the nomination of political party nominees and independent candidates. Regulations under existing electoral laws will be revoked following a transitional period and replaced by new regulations under the new electoral Act. The new regulations will provide for electoral procedural and operational details rather than overloading the new Act with such details.

**16. Special temporary measures for women's voting:** It is a known fact that the Pacific region is an area of the world with the lowest representation of women in elected posts. Thus, the discussion regarding the introduction of temporary special measures (TSM) for women for different types of elections is appropriate. Given that social and political contexts around the world do not favor the election of women and therefore hamper women's representation in elected bodies, many states have adopted the use of TSM. TSM are a set of positive or proactive affirmative action measures to narrow gender disparities and promote gender equality and women's empowerment. Gender quotas represent one type of TSM related to a country's electoral system that is intended to promote women's representation in elected bodies. Despite the fact that Vanuatu ratified the Convention on the Elimination of Discrimination against Women (CEDAW) in 1995, the idea of enforcing legal measures that are meant to benefit women's representation is still controversial in the country. Critics argue that the preferential treatment that measures such as quotas given to women is undemocratic and unfair towards men. Ni-Vanuatu lawmakers and politicians, who often want to uphold the status quo, feel that such treatment gives women a free pass, regardless of their qualifications. Nevertheless, the introduction of TSM has proven successful in many places. In Vanuatu, when discussions were held regarding the political reform process in 2016, the possibility of introducing TSM was quickly abandoned, as there was clearly no political support. Nevertheless, TSMs have been introduced for the municipal elections, with a 30% quota for women in Port Vila and Luganville municipal councils, with good results. It seems the political mood might be changing regarding TSM and it is therefore worthwhile to put the issue at the discussion table. While majoritarian systems (such as FPTP and SNTV) are not ideal for the introduction of TSM, it is still possible, particularly in multiple member constituencies, with the use of reserved seats. It is recommended that, in the new electoral Act, reserved seats for women that apply in municipal council elections be expanded so as to apply in parliamentary and provincial elections in certain multiple member constituencies e.g., multiple member constituencies with 3 or more members. Some provinces may not benefit from such a measure e.g., Torba and further consideration will be required for such provinces.

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