

Vanuatu: Limitations to the Independence of the EMB

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Background

The independent Republic of Vanuatu has a Westminster-style constitution and a 52-member unicameral Parliament elected by the Single Non-Transferable Vote (SNTV) election system. In parallel to Parliament there is an elected 22-member Malvatumauri National Council of Chiefs, which has a solely advisory role in areas relating to Melanesian indigenous values, custom and tradition. This body has no women members, despite the existence of women chiefs in many communities.

The independent Electoral Commission is responsible for the conduct of parliamentary, provincial and municipal elections and has a supervisory role for elections to the Malvatumauri. The six provinces and two municipalities of the country are delimited into six single-member and 11 multi-member electoral districts, containing altogether over 309 polling stations. There are severe disparities between the electoral districts in terms of size of population, resources and geographical features. Out of a total population of 205,754 as of July 2005, 133,497 people were registered electors.

The rate of re-election of incumbent members of Parliament is high. Some members have retained their seats since the first-ever general election in 1979, held in preparation for independence in 1980. Four women have been elected to Parliament, including two elected in 2004.

Historically, the first elections for the Port Vila and Luganville municipal councils were held in August 1975, followed by elections in November 1975 for the Representative Assembly, which replaced the earlier Condominium Advisory Council. Universal suffrage was achieved on 29 November 1979: article 4(2) of the constitution gives the franchise to all citizens reaching the age of 18. A voter can stand for election at the age of 25. The general election of 7 July 2004 was the seventh conducted by the Electoral Commission, which was established by the constitution at independence on 30 July 1980.

There are two types of voting, the ordinary and the proxy vote. Proxy votes can be obtained upon application up to 72 hours before polling day. Each voter can be the proxy for two electors who are unable to cast an ordinary vote.

Institutional Framework, Powers and Functions

The 1980 constitution, signed on 5 October 1979, and the 1982 Representation of the People Act (CAP 146) as amended provide for all matters relating to democracy, its institutions and elections. Article 20 of the constitution specifies the powers and functions of the Electoral Commission to oversee the conduct of voter registration and elections to Parliament, the Malvatumauri National Council of Chiefs, and provincial and municipal councils; to announce election results; to promote public awareness and the provision and development of information for the citizen and voter education; to provide policy advice to the Minister of Internal Affairs, the government, the Parliament, and other departments and agencies; and to conduct research into electoral issues. The Electoral Commission has powers to override the decisions of the principal electoral officer (PEO) or dismiss a voter's appeal on his registration; to declare candidates endorsed for elections; to declare a candidate elected unopposed; to declare a vote null and void at the official count; to declare recounts for contested results and appeals; to declare candidates duly elected as members of Parliament; and to make appropriate orders for the conduct of voter registration and elections. The Electoral Commission has a chair and two other members who are appointed by the president for a term of five years on the advice of the Judicial Service Commission (JSC). All members were men until 1998 when a woman was appointed and another serves on the current commission. Members receive sitting allowances appropriated by Parliament under the Electoral Office Budget.

The Electoral Commission is assisted by a secretariat, called the Electoral Office, headed by the PEO. According to article 19 of the constitution, the PEO and all other electoral officers are public servants. Their duties and responsibilities are set out in the constitution and the Representation of the People Act. Staff capacity has always comprised a PEO, a compiler, an assistant compiler and an office assistant. Although these positions are permanent the former PEO occupied it on a temporary basis for six years (1997–2003). The current PEO and office assistant are permanent staff, while the compiler and his assistant are on acting appointments since 1 January 1999.

Under article 4(3) of the constitution, political parties are free to form and contest elections. Registration is not mandatory and there is no legal provision for the registration of political parties, although the PEO maintains a register. Some political parties choose to register under the Charitable Organizations (Incorporation) Act, and in the 2004 general election only five out of 17 political parties were registered. Eligible candidates for parliamentary, provincial, municipal and Malvatumauri elections are considered and endorsed by the commission through a legal instrument.

For voter registration, the PEO appoints provincial and municipal executive officers as registration officers (ROs), who through their administrative structures appoint area council secretaries (ACS). The ACS appoint their assistants to undertake registration. The ROs and their assistants claim hourly allowances which are paid by the Electoral Office. In this way, the Electoral Commission and the PEO are able to effectively oversee the conduct of annual registration and elections from a distance. Voter registration takes six months to complete before the electoral register for each polling district is established by the PEO on 1 July of each year, as specified by section 20(2) of CAP 146. Eligibility to vote and registration are not automatic. Each voter is required to produce two witnesses to confirm their eligibility in the polling district of their residence to the ROs. The provisional electoral list is established about mid-May and dispatched to the provincial, municipality and area council headquarters for public inspection at the request of voters for a period of not more than 14 days, which must end on 15 June each year (CAP 146, section 16(2)(c)). Electors have an opportunity to inspect the provisional register, petition the PEO for wrongful omission, and/or appeal against the decision

to the Electoral Commission. Registration and voting are voluntary.

Under the constitution, the Electoral Commission is independent. It is not easy for any government to direct its work or abolish it as it does with other government departments. The commissioners work independently of the government. Despite its statutory independence, however, significant limitations exist, caused by issues of access to budget funds and the recruitment and termination of the appointment of electoral officers. The government may take the opportunity to try to compromise the neutrality of the Electoral Commission through ministerial pressure, or directly inhibit its operations, for example through the budget process. The overlapping and multiple lines of authority for reporting also impact on the good intentions of the Electoral Commission and the PEO in ensuring effective electoral management (see the section on accountability below).

Financing

The Commission and its Electoral Office are financed through an annual appropriation from Parliament. Budget submission requirements and procedures are covered under the Vanuatu Government Financial Regulation Act. While this budget is substantial in an election year, it is never adequate to cover all election costs. As the Vanuatu Elections Observer group put it in their 2002 report, the Electoral Commission was significantly under-resourced and lacked sufficient funding to undertake a national public education campaign informing citizens of their basic democratic rights and freedoms.

There is also a tradition of donor funding of certain aspects of the election process. For the 2002 general elections the European Union funded the printing of ballot papers to the sum of 10 million vatu (VUV) as the initial election budget of 40 million VUV was reduced by the Ministerial Budget Committee (MBC) to 30 million but only 25 million VUV was appropriated by Parliament. In 1998 the Electoral Commission entered into a partnership with the Wan Smol Bag Theatre in producing and performing the Election Play throughout Vanuatu in villages and schools, with funding from the British Government. The play and the radio slots were developed after consultation with the PEO and in collaboration with the Electoral Office.

Accountability

In terms of financial accountability, the PEO is accountable, as required by the Vanuatu Government Financial Regulation Act, to the Ministry of Internal Affairs, the Ministerial Budget Committee and the Parliament. As a public servant the PEO is also accountable to the Public Services Commission (PSC). There are thus overlapping and multiple lines for reporting. The PEO reports to the Electoral Commission, the PSC, and the minister and director-general of the Ministry of Internal Affairs. These arrangements have had a negative impact on long-term capacity-building and institution-strengthening initiatives because they create confusion and conditions that are conducive to conflict, duplication of effort and political interference.

The Professionalism of Electoral Officers

Electoral officers are qualified public servants in their own right prior to becoming electoral officers. Professionalism is acquired on the job. Electoral officers gain in competence and improve

their performance as a result of gaining knowledge and understanding of the constitution and the electoral legislation and by actually performing their registration and polling duties.

Recruitment and Training of Polling Officers

Returning officers for each province and municipality are appointed by the PEO, and they in turn appoint polling officers for polling stations in each electoral district. Polling officers are recruited on a voluntary basis following open appeals to interested citizens on the national radio and newspapers, and are confirmed after attending half-day training sessions on the voting procedures and rules conducted by the Electoral Office. The polling team comprises the presiding officer and two polling clerks. The use of teachers and community leaders as polling officers helps in promoting public interest in the election process. However, polling officers tend to be recruited along political party lines depending on which party dominates the province or the municipal council, and there have been allegations of lack of independence, transparency and accountability. The Electoral Office is currently developing a more independent and transparent recruitment system.

Relationship with the Media

There is almost no formal recognition of the role of the media as a forum that can contribute positively to effective electoral administration, voter education and credible elections. The radio is the main medium for communication and the dissemination of election information. Weekly and daily newspapers and television are restricted to the urban centres of Port Vila and Luganville where the percentage of the educated and literate in the population is high. However, over 80 per cent of the population live in rural areas, and indigenous mechanisms for transmitting important election and campaign information have proved more reliable than state facilities, which have often failed.

Politicians and candidates have equal opportunities to use the media. However, those who can afford to publish and to pay for screen and air time have greater access and use it to their advantage. There has been no research to verify allegations of partisan reporting or unbalanced reporting in news coverage.

On polling day, only those with accreditation from the PEO may enter polling stations. The media – like the international and domestic observers – were able to observe the official count for the first time ever in the general election of 2 May 2002.

Relations with Other Institutions and Agencies

The Electoral Commission has cordial relationships with other state, corporate and civil society organizations (CSOs). However, engaging other institutions in electoral development initiatives has not been easy, even with those that have general responsibility for certain services; for example, the Ministry of Education has not been able to develop appropriate curricula for school children and young adults in secondary schools. This may be due to a lack of understanding on the ministry's part that it has a joint responsibility, together with the Electoral Commission and other stakeholders, to promote civic education.

Some positive relationships have, however, been established over the years. For example, in the absence of ongoing voter education programmes, political parties, CSOs, candidates and

voters have taken on the responsibility of educating their members and families, and the EMB has cooperated with other stakeholders in such initiatives.

In 1998, the Ombudsman's Office issued official statements on freedom of movement, choice, speech and association, supporting human rights and democracy, in connection with concerns raised by community leaders and political parties and candidates in some communities on restrictions imposed on campaigning.

Transparency International (TI) Vanuatu and the Electoral Commission cooperated with international and domestic observers during the 2002 elections. Since 2003, through European Union funding, TI Vanuatu has been collaborating with government departments and CSOs in developing citizen awareness curricula and materials. In 2004 the Vanuatu Education Policy Advocacy Coalition (VEPAC, a loose coalition of NGOs, CSOs and individuals who seek to bring about changes to education policies to meet the education needs of all members of society) initiated and staged an Education Forum where parties and candidates presented their education policies to voters and the public in Port Vila.

The Sustainability of the EMB

Minimal effort has been put into ensuring the sustainability of the EMB. Political will is difficult to secure and budgets for long-term development and reform, although realistic, have not been approved. The political culture in place lends itself to criticism of politicians as being only readily available to negotiate a supplementary budget for elections if the result will promote their own careers. Capacity building in terms of setting institutional priorities, training, mentoring and feedback is adversely affected by consistently inadequate annual budgets and lack of trained and available human resources. A restructured permanent Electoral Commission would be needed, with the powers and the human and financial resources to undertake reforms to strengthen and improve electoral administration.

Electoral Reform Management

No major reforms have occurred over the past 25 years, although the Electoral Commission has endorsed several proposals for reforms aiming to serve the voters and introduce impartiality, transparency, accuracy and professionalism into electoral administration. Political will on the part of both government and Parliament is lacking.

In particular, it has been difficult for government to secure the funding required for a computerized voter registration system – a European Community (EC) initiative of 1990 to improve the voter registration system and the maintenance of the electoral register. The project has been on the Electoral Office's annual budget submission since 1997 and every year so far it has been deferred.

Vanuatu has a history of inflated electoral registers since the 1970s, when they were compiled under the Condominium administration for two municipal council elections, for the Representative Assembly elections in 1975, and in preparation for the 1979 general elections. They remained heavily inflated at independence in 1980 and were updated in 1983. In preparation for the 1987 elections they were totally redone in 1985 and 1986, and they were updated each year until the 1991 elections. In 1992 new registrations were undertaken for the purposes of computerizing the electoral registers. The registration system was grossly abused in the colonial period and has been so since 1991 – and even more so now in this era of the

splintering of political parties and factions – to ensure that certain parties and leaders retain their seats in Parliament.

Three days after the 7 July 2004 elections, the ballot boxes and papers for two constituencies (Tanna and Other Southern Islands) were seized, even though under police escort, at the air terminal on Tanna and burned by frustrated voters and supporters of two losing candidates. The episode was associated with the anomalies of multiple registration of voters and abuse of the proxy vote.

A computerized system might ensure concise and accurate electoral registers, with each voter registered only once. It could also tackle the problem of abuse of the proxy vote, and the government would save on the cost of printing the ballot papers associated with the SNTV system. Another reason advanced for computerizing the electoral registers was to increase the turnout on polling day in the urban constituencies of Port Vila and Luganville. The government endorsed a system that would have been similar to the computerized government payroll, but funds were diverted elsewhere. Since then, while the Ministerial Budget Committee has claimed that the new system is important and is appropriate for Vanuatu, it has deferred parliamentary consideration each year.

Many issues of the credibility of elections thus remained outstanding in 2006.