

Strengthening  
**democratic  
policing**  
in the Commonwealth  
**Pacific**

Commonwealth Human Rights Initiative  
2006

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# Commonwealth Human Rights Initiative

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# **Strengthening democratic policing in the Commonwealth Pacific**

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# INTRODUCTION

Nine island countries make up the Commonwealth Pacific – Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. Across the region, issues around policing and importantly police reform are key governance priorities, as well as being human rights concerns. Policing is a central and vital function of the state, vested with the duty to ensure an environment of safety and security. Policing in this particular region contends with large geographical distances within countries often spread over many islands, heterogeneous societies, violent crime, and sporadic political crises. The police must be equipped to meet these myriad challenges in support of democracy and human rights.

The only legitimate policing is policing that helps create an environment free from fear and conducive to the realisation of people’s human rights, particularly those that promote unfettered political activity, which is the hallmark of a democracy. Unfortunately, the post-independence histories of many Pacific countries have shown that the police are not consistently unbiased and rights-affirming. Police agencies in many of these countries have played a central role in violent government overthrows, protracted internal conflicts, and suppression of democracy. These experiences have led to extensive police reform initiatives across the Commonwealth Pacific, some led by international donor agencies and others by national governments. In this way, this region offers varied examples of policing problems as well as insights into reform of the police.

Democratic nations need democratic policing. The police reform initiatives occurring across the Pacific are tremendously encouraging and have set an immensely important precedent for strengthening good governance and democracy across the region. But entrenching sustainable police reform requires a shift from “regime” policing to “democratic” policing. Regime policing, embedded as a tool of colonial rule, is characterised by the police answering predominantly to the regime in power and not to the people; controlling rather than protecting the public; and steadfastly remaining outside the community. In contrast, democratic policing grounds itself in an approach founded on principles of accountability, transparency, participation, respect for diversity, and the protection of individual and group rights. Democratic policing not only protects democratic institutions and supports an environment where democratic rights and activities can flourish, but also demonstrates democratic values in its own institutional processes and structures. On-going police reform initiatives in the Pacific are going some way to democratise the police from within, but perhaps a greater push is needed to imbibe the protection of democratic and human rights as a central practice of policing.

This report seeks ways to strengthen democratic policing in Commonwealth Pacific countries. It outlines the legal frameworks, and institutional processes and mechanisms already in place to hold the police accountable – a key element of democratic policing. With the information available and analysis provided, focusing mainly on police accountability, this report describes how entrenched democratic policing is in the countries of the region, and also highlights strategies to better solidify democratic policing.

## **PROBLEMS IN POLICING**

Larger challenges to cementing democratic policing in the region are complex and sizeable. Many of the Commonwealth Pacific countries are struggling with chronic crime and violence, fuelled by the widespread circulation of illegal small arms. Many of the countries in the region have had turbulent post-independence political histories. Just a tiny snapshot include: Fiji has experienced three coups d'état since the late 1980s; the Solomon Islands government was toppled in 2000 by paramilitary police acting with militia groups; violent crime and endemically bad governance haunt Papua New Guinea; the stability of democracy in Vanuatu repeatedly contends with shifting political alliances; and democracy has yet to take root in Tonga. Across the region, governance and oversight institutions are weak, while the security sector tends to be powerful and highly militarised, resulting in fragile democracies prone to crises. Alarming, during the most turbulent periods in Fiji and the Solomon Islands, civilians were largely abandoned and left to fend for themselves with any semblance of police protection conspicuously absent. There is unfortunately little detailed documentation of police misconduct in the region, however, the following section provides some indicative examples of problematic policing – a brief description of the role of the police in the political crises in 2000 in Fiji and the Solomon Islands, a glimpse of the culture of police brutality and impunity in Papua New Guinea and occasions of political instability linked to the police in Vanuatu.

### **The coup of 2000 in Fiji: Police complicity**

Fiji has experienced three military coups since 1987. All three illegal government takeovers have been backed by hard-line indigenous Fijians troubled by a growing political influence of the Indo-Fijian community, though of course a detailed examination of the reasons behind the coups reveal more complex problems and historical legacies. They have largely been military-dominated, though the most recent coup in 2000 had murmurs of police participation or at least police complicity.

On 19 May 2000, businessman George Speight and a group of soldiers from the Counter Revolutionary Warfare (CRW) unit stormed Parliament and took Indo-Fijian Prime Minister Mahendra Chaudhry hostage along with several members of his coalition government. The date was particularly significant as it was the first anniversary of the election of Fiji's first non-indigenous Prime Minister. Following the coup, hundreds of Indo-Fijian families were targeted in racially motivated attacks by coup supporters throughout Fiji. Indo-Fijian settlements, especially in rural areas, were terrorised. Reports of police complicity in these attacks abound. In June, Indo-Fijian homes were assailed in area called Muaniveni, "according to press reports, the police assisted ethnic Fijians in the area to steal crops, kill cattle and transport items to supporters of George Speight in Suva".<sup>1</sup> Amnesty International's 2001 Annual Report reiterated that some police officers aided and abetted terrorising Indo-Fijian farmers and robbing them of crops, cattle and valuables.<sup>2</sup> This campaign of violence by indigenous Fijians included looting, beatings, rapes, and destruction of homes and property. Many Indo-Fijian families were forced out of their homes

and had to escape into the surrounding jungles, “some of the displaced said the police were no help”.<sup>3</sup> In fact, it was largely citizens and non-governmental organisations, particularly Fiji’s Human Rights Group, which helped to evacuate the displaced.

After the coup, the military assumed power temporarily and instated a predominantly indigenous government. The military commander passed Emergency decrees, drafted by the indigenous Chief Justice, giving the police sweeping powers of arrest. Several judges and magistrates resigned as a mark of protest. Once all the hostages were released in July, hundreds of coup supporters were arrested. The police were cited for using excessive force in the arrest of the Speight rebel group.

The possibility of police participation and complicity in these events is made more real by the controversy surrounding the acting Police Commissioner at the time. After the interim civilian administration (installed only by military backing) announced it would prosecute those involved in the takeover of Parliament, the police force and the acting Police Commissioner, Isikia Savua, were criticised for not charging high profile senior figures, particularly ethnic Fijian chiefs, who were allegedly involved in criminal acts. A government accountability body, the Public Service Commission, initiated an investigation into the Police Commissioner’s possible involvement in planning the coup, as well as claims of negligence. At that time, rumours were circulating that Commissioner Savua turned a blind eye to the civil unrest that played out following the coup, and may have given orders to police officers to assist in looting Indo-Fijian farmers to send supplies to Speight’s rebel group during the hostage crisis. In a closed disciplinary hearing, Commissioner Savua was cleared of any offence and reinstated by a tribunal led by Chief Justice Timoci Tuivaga. The deposed Prime Minister, Mahendra Chaudhry, called the inquiry a “farce, the whole investigation was held in secret by the Chief Justice whose own conduct has been questioned by the Fiji Law Society and the High Court”.<sup>4</sup> Here, Chaudhry was referring to the fact that the Chief Justice himself had drafted decrees annulling the 1997 multiracial constitution and declaring the termination of Chaudhry’s position as Prime Minister. Several civil society groups echoed Chaudhry’s concerns about the Commissioner’s conduct during the attempted coup and subsequent events, and the manner in which he was “cleared”. By the end of 2000, details of the investigation had not been released.

### **The protracted conflict in the Solomon Islands: Elements of the police role**

The Solomon Islands are divided into 9 provinces, including the main island of Guadalcanal (where Honiara the national capital is located) and Malaita (the most populous island). Post World War II, the US established Honiara as a military base, and Malaitans began moving to Guadalcanal to find work. Over two generations, Malaitans ended up dominating Guadalcanal’s agricultural economy and the majority of jobs in Honiara itself, including the public service. Simmering tensions over jobs and land erupted into armed conflict between these two main ethnic groups in October 1998 in Honiara.

In October 1998, armed groups of Guadalcanal men organised into burgeoning militias, initially called the Guadalcanal Revolutionary Army and later the Isatabu Freedom Movement (IFM), began to use violence and intimidation to force Malaitan settlers out of Guadalcanal.<sup>5</sup> Amnesty International records that in the year 2000, the IFM was made up of between 300 to 2000 fighters, mainly from impoverished villages along the rugged Guadalcanal south coast. At times, at least 100 child soldiers (aged 12-17) have also been IFM fighters, armed with hunting rifles, some stolen police guns and explosives, traditional weapons and home-made pipe guns or refashioned World War II rifles.<sup>6</sup> Throughout 1999, the Guadalcanalese kept up their intimidation campaign, and predictably, Malaitan men living in Honiara and those fleeing IFM operations in rural Guadalcanal formed their own vigilante group – the Malaitan Eagle Force (MEF).

On January 17 2000, the Malaita Eagle Force raided the police armoury at Auki (the capital of Malaita), and officially began its own “military offensive” against the IFM, using police weapons, uniforms and equipment.<sup>7</sup> There is no evidence that the MEF was at all challenged, and no arrests were made. This signalled the beginning of the battle between the two militias, as well as the full-fledged disintegration of the police force. Police protection for the civilian population became a thing of the past and armed militias ruled, roaming around Honiara and rural areas.

The decisive day was June 5<sup>th</sup> 2000 when the MEF, “supported by paramilitary police officers acting without authorisation, seized control of Honiara, forced then PM Bartholomew Ulufa’alu to resign, pressured Parliament to elect a successor, and used captured police weapons and equipment to step up its military operations against the IFM and Guadalcanal civilians”.<sup>8</sup> Due largely to the fact that approximately 75% of the country’s 897 police officers were Malaitans, the MEF drew on this natural advantage particularly with the relatively well armed paramilitary Police Field Force. Most police officers actively involved in the armed conflict were from two national paramilitary police units dominated by Malaitan officers – the Police Field Force and the Rapid Response Unit. The complicity of the paramilitary police officers in the coup and ethnic rift was so complete by the time of the coup that MEF spokesperson Andrew Nori termed the MEF the “Joint Paramilitary Police Malaita Eagle Force” on that day.<sup>9</sup> Following the coup, the MEF controlled Honiara.

Law and order completely collapsed. Guadalcanal and Malaitan vigilante groups, as well as random criminal opportunists, committed serious human rights abuses, including hostage-taking, killing, torture, rape, looting and burning down villages.<sup>10</sup> The elements of the Malaitan-dominated police service willingly co-opted into the ethnic strife are implicated in serious human rights violations, including indiscriminate firing into villages occupied by women and children, and ill-treatment of child suspects.

Crimes against women at this time were hugely underreported and once the law enforcement machinery broke down, women were denied any access to justice or redress. There are no statistics or precise estimates available reflecting the number of women who were injured, ill treated, or



raped in the course of the conflict. In April-May 2000, Amnesty International visited communities in rural Guadalcanal and Malaita (specifically to talk to women) and their testimonies reflect that during the conflict women suffered as much from abuses by the Malaitan joint police-militant forces as they had under Harold Keke's GLF (a prime Guadalcanalese militia group).<sup>11</sup> Amnesty International's interviews with 60 Guadalcanal women and girls reveal that 18 of them reported being raped by a total of 40 militants and police officers. The others suffered other forms of torture, ill-treatment or displacement, mostly attributed to militant activities.

Throughout, the police failed to apprehend perpetrators of glaring human rights abuses, and both the major armed groups maintained their operations with virtually no risk of arrest – which invariably meant that civilians were being attacked with no protection or redress. Allegations of rape by police officers and extra-judicial killings have gone without investigations. Amnesty International paints a grim picture:

Since the MEF coup, most civilians on Malaita and Guadalcanal have had no protection against human rights abuses, internal displacement or ordinary crime. The police service is effectively no longer functioning on these two main islands, as MEF members have deprived it of almost all weapons, most vehicles and equipment. Officers still attending to their posts are reportedly further limited in their functions due to MEF intimidation.<sup>12</sup>

Clearly, following the coup, the police disintegrated as a functioning organisation and police officers were being pulled in different directions – either officers were biased, co-opted into the ethnically driven militancy, or just entirely unable to take action. Leaders of the coup within the police inducted many MEF members as *special constables*, who were hugely culpable in human rights violations. The charged environment meant that police officers could not carry out investigations in territory controlled by a rival ethnic group, or simply did not act due to fear of reprisal.

### **Papua New Guinea: Police brutality, culture of impunity**

The police organisation of Papua New Guinea, called the Royal Papua New Guinea Constabulary (RPNGC), has consistently come under the radar over the last five years due to incidents and allegations of brutality, excessive use of lethal force and cover-ups leading to impunity for its officers. Worryingly, much of the police brutality in Papua New Guinea seems to occur in the course of routine policework, as reflected in the reports of international observers and human rights organisations. Consistently, according to the annual US State Department Country Reports on Human Rights Practices, most of the shootings by police in Papua New Guinea occur during gunfights with criminal suspects resisting arrest. Amnesty International reports that criminal suspects, including those without guns and only suspected of non-violent crimes, are frequently shot dead by police, many times in disputed circumstances.<sup>13</sup>

At times, legitimate and peaceful opposition to government is also stifled by police highhandedness. In June 2001, there was a glaring incident of excessive force by the police when at least four

people were shot dead during a police operation against anti-government protestors. Amnesty International reports that Steven Kil, Peter Noki, Thomas Moruwo and Matthew Paven died from gunshot wounds, and at least 28 others were allegedly injured when paramilitary police fired automatic weapons at protestors in the capital, Port Moresby on June 26. The police action brought to an abrupt end a week of non-violent protests led by university students against government economic reform programs. For two months following the shootings, a night-time curfew was imposed in Port Moresby. The government ordered an independent inquiry into the shootings to be carried out by a former judge.

National critics are equally condemning. In September 2004, an Administrative Review Committee tasked to review the Royal Papua New Guinea Constabulary (for the Minister of Internal Security) published its findings and conclusively asserted that there is "widespread misuse and abuse of police power throughout the country".<sup>14</sup> In conducting research, the Committee received reports of various trends characteristic of police misconduct:<sup>15</sup>

- drunken behaviour, especially on afternoon and night shifts
- extortion and theft from motorists by way of illegal on-the-spot fines
- bailing prisoners without issuing a bail receipt
- excessive and unprovoked violence when arresting suspects
- disregard of the law by, for example, conducting raids and seizing property without a search warrant
- rape or sexual assault, in some cases in police stations or cells
- misuse of police vehicles
- absence without leave
- destruction and theft of the property of citizens
- destruction and theft of police property

Such excesses on the part of the police are compounded by the lack of accountability for their actions. The Review Committee notes, "there is evidence that some members of the Constabulary use police powers, weapons and equipment to commit criminal offences, secure in the knowledge that they will not be investigated in any serious manner. Inadequate investigations are characterised by insufficient evidence (often because it was not collected), procedural faults, and delays".<sup>16</sup>

More largely, an intense level of crime (involving power struggles between different tribal groups), a booming drug trade, and the circulation of illegal firearms have engulfed Papua New Guinea in recent years. In its report, the Review Committee wrote that it believes that "armed violence and the use of illegal firearms in present-day PNG are far worse than they were in the Solomon Islands before the intervention of the Regional Assistance Mission".<sup>17</sup> Lack of resources, fear, low morale, complicity and seriously endemic corruption, have all served to disable the police in the face of unprecedented crime and violence: "In Mendi, Southern Highlands police commissioner Simon Negi admits police have lost control of much of this vital region, with most posts having

been abandoned during the widespread violence surrounding the 2002 elections”.<sup>18</sup> Gangs of heavily armed criminals, known as *raskols*, are terrorising the capital Port Moresby and self-proclaimed warlords are wreaking havoc all over the country. In the Southern Highlands particularly, the situation is bleak: “Many areas are reverting to violent tribalism, self-styled warlords are heavily armed and rampant corruption diverts practically all funding from essential services such as education and medical care”.<sup>19</sup>

### **Vanuatu: Political instability and the police**

Compared to Fiji, Papua New Guinea and Solomon Islands, Vanuatu has had a more stable record of democratic government post-independence. However, various factions of the police have played a hand from time to time in brewing dissent leading to political instability.

In 1996, coming on the heels of a burst of political uncertainty, members of the Vanuatu Mobile Force (the paramilitary arm of the police) briefly kidnapped the President to demand outstanding pay. In 2001, the 26 members of the VMF accused of the kidnapping were released after 3 months of detention and charges against them were dropped. A few were not allowed to remain in the VMF but others continue to serve in the force.

Interestingly, experience from Vanuatu also demonstrates that where accountability is weak or marginalised, strength of conviction and personal integrity can trump political machinations geared to subvert democratic policing. In April 2001, the incumbent Prime Minister of Vanuatu, Barak Sope, was unseated through a parliamentary vote of no confidence, and the leader of the Opposition, Edward Natapej, became Prime Minister. Sope did his best to prevent the vote from taking place, including attempting to stage a coup with the police’s help. He tried to persuade the police force, including the paramilitary riot unit, to support him in getting the President to declare a state of emergency.<sup>20</sup> Given that the deputy leader of Sope’s Party was a former commander of the paramilitary Vanuatu Mobile Force, Sope may have succeeded with his plan, if not for the integrity of the Police Commissioner. Commissioner Peter Bong refused to cooperate with Sope’s plan. The parliamentary vote went through and order was maintained.

## **POLICE REFORM INITIATIVES**

Along with grave policing problems, the Commonwealth countries of the Pacific also provide lessons in police reform. Many of the reform programmes are driven by international donor assistance, particularly from the Australian and New Zealand governments, though there are specific domestic initiatives too. Whether as an external donor-driven programme or a national government initiative, police reform is usually included as one aspect of a broader sector-wide reform programme, and is often couched with reform of the judiciary or key government oversight bodies such as the Ombudsman or Auditor General. The agenda for police reform in the region includes replacement of outdated police acts with legislation that provides a sound basis for modern democratic policing; organisational restructuring to make the police less militaristic and hierarchical; revamping the training curricula to reflect new skills requirements and human rights standards; and providing technology to police officers to enhance their performance, among other things. Below, we provide a general overview of some features of the police reform programmes currently in the region. As always, these initiatives for reform must be underpinned by the guarantee of improved accountability – both internally in police organisations, and through external means.

### **Law & Justice Sector Reform: Initiatives of the Australian Agency for International Development (AusAid) in Vanuatu and Fiji**

Beginning in 2004, Australia has just completed a police support program in Vanuatu, which has refurbished the Southern Command police headquarters in the capital Port Vila, reviewed and refined police administration, policy and procedures, and established a Community Legal Clinic. Starting in February 2006, AusAid will provide \$28 million to help the Vanuatu Government reform its police force and \$10 million to strengthen the country's justice system over the next five years. The Vanuatu Government pledges to build "a professional, accountable and community-oriented police force while enhancing existing crime prevention and victim support services", with Australian support.<sup>21</sup>

The Australian Government's Law & Justice programme in Fiji is geared to maintain law and order and uphold the rule of law effectively. Managed on a rolling annual plan basis, through existing systems and structures wherever possible, advisors are actively working within the courts, police, prisons and Ministry of Justice to enhance capacity and build processes.

### **Pacific Regional Policing Initiative (PRPI)**

The PRPI has been established for all of the Pacific Forum Island (the regional inter-governmental body) country members, which include all of the Commonwealth Pacific countries. This is funded by the Australian and New Zealand governments. It is slated to run until December 2008. The PRPI is designed to bolster the capacity of Forum Island country governments to respond to both domestic law and order problems and regional security challenges. In terms of strengthening policing in-country, the numerous components of the PRPI include building the capacity of police

leaders in supervisory and management roles, widening basic operational and investigative skills, supporting the development of better trainers and training programs, and improving the police's forensic skills. At the same time, PRPI staff will work closely to support the South Pacific Chiefs of Police Conference and its Working Groups to enhance regional policing.

### **The Regional Assistance Mission to the Solomon Islands (RAMSI)**

In the midst of the severe internal conflict, successive leaders in the Solomon Islands government regularly requested international – though particularly Australian – assistance to help deal with the country's internal problems, and in 2003, the Australian government finally agreed. In response to an appeal for help from the Solomon Islands Prime Minister Sir Allan Kemakeza, an Australian-led pan Pacific contingent began operations in Honiara, Solomon Islands in July 2003. RAMSI was sent in to restore peace and order from the violence and chaos, "What began as an ethnic conflict had degenerated into the effective capture and paralysis of the Solomon Islands' state by a small cohort of armed ex-militants, including renegade police officers, and corrupt leaders".<sup>22</sup> As so much of the militancy effort was supported by police complicity or on the other hand police helplessness, much of RAMSI's work revolves around policing and reform issues with reference to the Royal Solomon Islands Police.

While Australian led, RAMSI is a regional effort involving New Zealand, Fiji, Papua New Guinea, Tonga, Samoa, Vanuatu, Kiribati and the Cook Islands, endorsed by the Solomon Islands government as well as all Pacific Island Forum member states. In its first phase, RAMSI was a police led operation, with about 330 police officers (called the Participating Police Force) backed by around 1800 military personnel working to disarm the militants and cleanse the Royal Solomon Islands Police Force (RSIP) of its criminal members. The Participating Police Force (PPF) moved quickly to repossess the guns and ammunition stolen largely from police armouries through a nationwide gun amnesty campaign, which ran for three weeks all over the country. All guns were to be handed in, including all police weapons. As a result, 3,738 firearms including high-powered military-style weapons were removed from circulation and 306,851 ammunition rounds were seized. Principal militia leaders were arrested and brought to book for violent crimes. At the same time, the PPF in collaboration with the Professional Standards unit of the RSIP carried out investigations leading to the arrest of 114 Royal Solomon Islands Police and Prison Service officers on 466 charges – charges laid against RSIP officers included official corruption, murder, assault, intimidation, and inappropriate use of firearms and robbery.<sup>23</sup> In the space of one year, over 50 RSIP members were arrested and over 400 (approximately 25% of the workforce) were removed from the police.<sup>24</sup> In this way, RAMSI used accountability structures and processes within the Royal Solomon Islands Police to clean up the country's police, setting a precedent for better use of internal police accountability processes. In the longer term, Deputy Commissioner of the Royal Solomon Islands Police and Commander of the PPF, Ben McDevitt, is spearheading the efforts to bolster the investigation and accountability functions of the Professional Standards Unit of the Solomon Islands Police. As the security situation has substantially improved, the military component of RAMSI has gradually been reduced.

Interestingly, RAMSI's second phase involves a more holistic reconstruction and development program, including economic, financial, and justice assistance. The goal is to provide the Solomon Islands Government with the institutions and expertise that will equip it to function effectively and responsibly. The mission has a Special Coordinator and experts in the Ministry of Finance and in the Law and Justice sector, amounting to about 100 civilian advisors tasked with broad nation building and development objectives. It is envisioned that the civilian contingent of RAMSI will remain on the ground for up to 10 years, to pursue criminal investigations and to help develop Solomon Islands institutions, including the police.<sup>25</sup> A Business Plan 2004 was developed to address corruption and six key service delivery areas – professional standards and public accountability, border security and national security, family violence, crime prevention and investigation, youth, traffic management and road safety. In September 2004, the Ministry of Police and Justice announced the launch of a Strategic Review of the Royal Solomon Islands Police, to be jointly implemented by RAMSI and local police officers. The Review concentrated on 15 key priority issues identified by the Police Commissioner and the recommendations form the basis for the future direction of the country's police.

In addition, RAMSI is providing advisory and personnel support for key justice agencies, including four police prosecutions advisors. RAMSI is also working with the Solomon Islands Government to rebuild key accountability institutions (the Leadership Code Commission, Ombudsman, and Auditor General) to shape an efficient and accountable public service.

### **The Solomon Islands Government's National Economic Recovery, Reform and Development Plan (NEERDP) 2003-2006**

The Solomon Islands government has prepared a National Economic Recovery, Reform and Development Plan (NEERDP) of its own to address the chronic breakdown of law and order and government services. The Plan was devised following consultation with a range of stakeholders including parliamentarians, provincial premiers and governments, all government departments, donors, private companies, NGOs and individuals. Written as a strategic framework, "The Plan sets out the immediate tasks for economic recovery and social restoration as well as those for rebuilding the basic economic and social infrastructure and re-establishing the foundations for sustainable economic growth and human development in Solomon Islands".<sup>26</sup> The NEERDP has set out five strategic areas within which to achieve its stated objectives:

- Normalising law and order and security situation
- Strengthening democracy, human rights and good governance
- Restoring fiscal and financial stability and reforming the public sector
- Revitalising the productive Sector and rebuilding supportive infrastructure
- Restoring basic social services and fostering social development

One of the strategies employed to normalise the law and order and security situation is to enhance the capacities of the police force to better deal with militancy and retrieval of illegal weapons,

investigate crime and apprehend criminals and cleanse the police and prison services. Some of the specific measures mentioned involve elements of accountability, such as:

- investigating and apprehending all who break the law regardless of position or status, family and other connections (including members of the police force), or when the crimes have been committed
- dealing effectively and swiftly with police officers who act beyond their authority and jeopardise the rights of individuals, including disciplining, suspension, expulsion and prosecution
- providing human rights training for all officers in the disciplined forces and promoting human rights practices at all levels in the disciplined forces
- demobilising special constables who were ex-militants from the police force and rehabilitation and reintegration of demobilised special constables and other ex-combatants into their communities<sup>27</sup>

### **Papua New Guinea and the Enhanced Cooperation Program (ECP)**

In 2004, Australia launched the Enhanced Cooperation Program in Papua New Guinea, a series of collaborative initiatives to improve policing, law and justice, and border management (immigration, customs, transport security), as well as economic and public sector management. Over a five year period, the policing component was slated to cost approximately \$AU800 million, in addition to the existing \$350 million a year Australian aid program to Papua New Guinea. The funding for the programme's policing elements was directed specifically to enhance police infrastructure, training, equipment and recruitment. The ECP was put in place primarily in response to growing insecurity in Papua New Guinea and geared to address serious law and order problems, and reform aspects of the weak public sector.

The ECP was agreed to at the annual Ministerial Forum between the governments of Australia and PNG for Australian officials to work in key areas of the PNG government, including the police, courts, correctional institutions, central economic and public administration agencies. In terms of the police, up to 230 Australian police personnel (drawn mostly from the Australian Federal Police but also state police forces) were deployed in Port Moresby, Lae, Mt. Hagen, along the Highlands Highway and in Bougainville, working within the Royal Papua New Guinea Constabulary to heighten personnel and training expertise as well as bring in enhanced equipment.

The ECP was unprecedented in that it brings in Australian officials to work as employees of domestic government agencies, rather than as technical advisors or consultants working for Australian-based bodies. In fact, Australia demanded blanket immunity from prosecution under PNG law as a condition for employment of police personnel operating under the ECP – the same type of legal immunity granted by the Solomon Islands government to RAMSI. The Joint Agreement on Enhanced Cooperation between Australia and Papua New Guinea, the document that lays down the legal framework of the ECP, justifies the need for immunity by arguing that Australian police have to be protected from “vexatious claims” against them by any citizen of Papua New Guinea. On the other hand, senior Papua New Guinea government officials regarded the Australian stance as an attack on the sovereignty of their country.

For a period, there was firm opposition to the ECP within local ruling circles and negotiations between Papua New Guinea and Australian officials reached an impasse, with some PNG officials threatening to find other sources of foreign aid. The impasse was further prolonged by the PNG administration's fear of a possible vote of no-confidence in Parliament, which could have arisen out of debate around passing legislation to grant legal immunity to Australia. The period of trouble did come to an end, Australia's demand was finally met and Australian police were put in position in PNG by the end of 2004. However, the resistance to features of the ECP continued to simmer. In early 2005, the Governor of Moreby province, Luther Wenge, brought a legal challenge to the immunity granted to Australian officials under the ECP and to other legal elements around the ECP. On 13 May 2005, a five-judge bench of Papua New Guinea's Supreme Court ruled that several features of the legislation that enacted the ECP breached Papua New Guinea's Constitution, particularly the immunity provisions for Australian police officials. Following the court ruling, all of the Australian police were withdrawn and that component of the programme has been discontinued.

#### *Other law and justice aid packages*

It is important to note that the support through the Enhanced Cooperation Program compliments the work already being done through AusAid's existing Law and Justice Sector Program. Australia's aid program professes to foster a sector wide approach, working in priority areas in police, village courts and prisons. Australian assistance to policing in PNG has supported training, systems improvement and operations in specific areas including the fraud squad, investigations, and logistics. Attention has also been directed toward activities to improve the performance of legal and judicial systems, as well as increase community understanding and trust in the role of the Ombudsman Commission.

#### *RPNGC Development Project Phase III*

This is a five year project building on 12 years of Australian assistance to the Royal Papua New Guinea Constabulary – the key areas of support include community policing, human resource management including discipline processes, updating infrastructure, improved systems and training to enhance RPNGC capacity to analyse, prevent, investigate and prosecute crime.

### **The National Law and Justice Policy and Plan of Action 2000-2005**

The reformist Morauta government, elected in 1999, committed itself to an extensive reform programme to restore the integrity of state institutions and improve overall government performance specifically in relation to the law and justice sector. A small working group of senior law and justice officials was formed to prepare a draft national policy – extensive consultation with a wide group of stakeholders took place and earlier reform proposals were reviewed. A policy was devised which provides a vision statement, while the plan of action was written to set out a detailed set of proposals to achieve this vision. The proposals are organised around three main focus areas – improving the efficiency of the deterrence system, coordination, and prevention and restorative justice.



The first reform area focuses on improving the efficiency of the formal criminal justice system and parallels the ongoing institutional capacity building activity headed by AusAid. The PNG government plan includes strategies to refresh the juvenile justice system as well as the Law Reform Commission, to frame a national rehabilitation policy and develop multi-agency approaches to tackle corruption.<sup>28</sup> The second crucial aspect of effective coordination between criminal justice agencies involves strengthening devolved law and justice as well as bolstering capacities at the centre to properly guide the working of the criminal justice system. *The Organic Law on Provincial and Local Level Government* calls for a major redistribution of functions and responsibilities from national to provincial, district and local level authorities. At the national level, the policy recommends the creation of a National Coordination Authority made up of the chief executives of the law and justice agencies, related government departments and other members. This body would be tasked with monitoring and review of sector-wide policy, budgeting, and coordination of law and justice research and data. The third is the most distinct from past initiatives as it seeks to enhance the capacity of informal community-based and other non-government structures to mitigate and prevent conflict at local levels, drawing from indigenous dispute resolution methods.

A renowned researcher on the Pacific, Sinclair Dinnen, writes that there are many examples of restorative justice institutions and practices in Papua New Guinea today: “some of these operate independently of the state and are, in part, responses to the perceived failings or absence of state solutions”.<sup>29</sup> Dinnen goes on to emphasise that since these are informal practices that take place in rural areas, they are “often invisible to the planners and officials based in the central government offices in Port Moresby or in provincial headquarters, though they provide a rich reservoir of experience and innovation with much to offer the current reform process”.<sup>30</sup> He identifies mass surrenders and gang retreats as burgeoning restorative justice practices, which if melded appropriately with formal policy and practice, could help the police work more efficiently and less brutally. For instance, he describes gang retreats as forums where criminals come together with state officials, business and political leaders to frankly discuss their grievances and describe what is required to help them abandon crime. Retreats can result in a commitment to leave crime in return for access to legitimate opportunities. Dinnen also points out “unlike criminal justice practice, these informal institutions are potentially restorative with the capacity for breaking the reinforcing pattern of retributive violence between *raskols* and police”.<sup>31</sup>

### **Administrative Review of the Royal Papua New Guinea Constabulary for the Minister for Internal Security**

An Administrative Review Committee to appraise all aspects of the RPNGC was established by the Minister for Internal Security, in response to increasing unrest and violence in Papua New Guinea fuelled by the growing use of firearms. An extensive report has been produced by the Committee with an assessment of the present state of the Constabulary followed by the Committee’s recommendations linked to the extensive terms of reference. The Committee found systemic failures in the working of internal police accountability mechanisms, as well as significant evidence of illegitimate political interference. Several of the Committee’s recommendations speak specifically to strengthening police accountability.

## THE NUTS AND BOLTS OF DEMOCRATIC POLICING

The on-going reform programmes are contributing to bring elements of democratic policing to the Pacific police organisations. Democratic policing is both a process – the way the police do their work – and an outcome. The democratic values of the Commonwealth lay down a sound framework for this.

A ‘democratic’ police organisation must:<sup>32</sup>

- be accountable to the law, and not a law unto itself. Democratic police institutions demonstrate a strong respect for the law, including constitutional and human rights law. The police, like all government agencies and employees, must act within the law of the country and within international laws and standards, including the human rights obligations laid down in international law. Police abide by the law, they do not make it – their actions and decisions must be subject to approval by the courts. Police officials who break the law must face the consequences, both internally through the discipline systems of police organisations, and externally, in the criminal justice system.
- be accountable to democratic government structures. The police are an agency of government, and must account to the government for their adherence to government policy and for their use of government resources. In a democratic system, the police account to elected representatives of the people – for example, parliaments, legislatures or local councils – for their performance and use of resources. However, the police are expected to remain politically neutral and to enforce the law without bias. They remain primarily accountable to the law of the country, and not merely to the political party, which holds power. Democratic police institutions also account ‘horizontally’ to other agencies of government, such as to Treasury or Finance Departments, for their financial performance, and sometimes to Public Service Commissions or Departments of Administration, for their adherence to civil service codes and administrative policy.
- be transparent in its activities. Accountability is facilitated by greater transparency. In a democratic system, most police activity should be open to scrutiny and regularly reported to outside bodies. This transparency applies to information about the behaviour of individual police officers as well as the operation of the police organisation as a whole. This will enable interested parties to understand the basis on which police decisions are made and resources are allocated.
- give top operational priority to protecting the safety and rights of individuals and private groups. The police must primarily serve the people. The police should be responsive to the needs of individual members of the community – especially to people who are vulnerable; instead of merely to orders issued by the government. In contexts

marked by diversity and fragmentation, police organisations must be accountable to all people, across social divides, including accountability to the powerless and the marginal. The police must account to the people, and not just to governments, for their decisions, actions and performance.

- protect human rights, especially those that are required for the sort of unfettered political activity characteristic of a democracy. Democratic policing implies policing in a manner which is supportive and respectful of human rights, and which prioritises the protection of life and dignity of the individual. This requires that the police abide by democratically made laws, as well as by the international standards. It also requires the police to make a special effort to protect the freedoms that are characteristic of a democracy – freedom of speech, freedom of association, assembly and movement, freedom from arbitrary arrest, detention and exile, and impartiality in the administration of law. A democratic approach can place the police in a difficult position, if, for example, they are required to enforce repressive laws, and simultaneously also to protect human rights. These situations call for the skilful exercise of professional police discretion, which should always lean towards the prioritisation of human rights.
- adhere to high standards of professional conduct, while delivering a high-quality service. Police are professionals, with huge powers, in whom the public place enormous trust. Hence police behaviour must be governed by a strong professional code of ethics and conduct, against which they can be held accountable for the way that they conduct themselves. At the same time, the police are a service organisation, and they must deliver their services to the community at the highest possible level of quality, and be accountable for the results they deliver.
- be representative of the communities it serves. Police organisations, which reflect the populations they serve, are able to better meet the needs of those populations. They are also more likely to enjoy the confidence of the community; and to earn the trust of vulnerable and marginal groups who most need their protection. Recruitment by the police must therefore aim to create a more representative and diverse police institution, especially where the communities are heterogeneous.

Critical to strengthening democratic policing is the principle that the police should be held accountable: not just by government, but by a wider network of agencies and organisations, working on behalf of the interests of the people, within a human rights framework. An effective system of police accountability – in line with the checks and balances that shape democratic systems of governance – is characterised by multiple levels of accountability. Commonly, accountability over police organisations comes from four sources:

**Government (or 'state') control** – The three branches of government – legislative, judicial and executive – provide the basic architecture for police accountability in a democracy. In fact, across the Commonwealth, police leaders answer directly to elected public representatives in the executive branch, for instance Ministers responsible for police. Police chiefs are often required to appear in the legislature and answer questions. Where there is a strong and independent judiciary, cases may be brought against the police in courts that can result in fresh jurisprudence and policy guidance on accountability issues or increased channels for redress.

**Independent external control** – The complex nature of policing and the vast powers accorded to the police require that additional controls are put in place. In any democracy, at least one independent civilian oversight body adds tremendous value in extending accountability of the police closer to those outside police and government circles. Institutions such as Human Rights Commissions, Ombudsmen and public complaints agencies can play a valuable role in overseeing the police and limiting police abuse of power.

**Internal control** – Within the police organisation, in the form of disciplinary systems, training and supervision, proper systems for recording performance or crime data are required in any police organisation. The challenge in many Commonwealth jurisdictions is that internal policies and procedures are simply not implemented properly, or in some cases, implemented at all.

**Social control or 'social accountability'** – In a democracy, the police are publicly held accountable by the media, as well as by individuals and by a variety of groups (such as victims of crime, business organisations, local civic or neighbourhood groups). In this way, the role of holding the police accountable is not merely left to the democratic institutions that represent the people, but ordinary people themselves play an active part in the system of accountability. There are few institutions that facilitate this type of accountability in the Commonwealth, rather, it is expected that police and communities will negotiate appropriate – and diverse – arrangements.

## **POLICE ACCOUNTABILITY IN THE REGION**

The police agencies of Commonwealth countries in the region are centralised forces; they are all constitutionally established and governed by Police Acts. All of them are led by a Commissioner of Police, who in turn reports to a designated Minister responsible for police. Importantly, the Commissioner of Police is responsible for day-to-day administrative, operational and financial matters. It is only in Tonga where this may not be the case – Section 8 of Tonga’s Police Act vests the “command, superintendence and direction” of the police in the Minister of Police, “who may depute the Superintendent of Police to exercise this responsibility on his behalf”.<sup>33</sup> In this case, the Minister is responsible to Cabinet.

By and large, this region’s police agencies come under the purview of the Ministries of either Home Affairs, Internal Security or in the cases of the Solomon Islands and Tonga, a specific Minister for Police. Before delving into the details of laws and accountability systems, there are a few interesting features to point out about some of Pacific police organisations. Currently, the Police Commissioners in both Fiji and the Solomon Islands are Australian citizens. Following the severe and endemic compromise of the police agencies in both countries based on ethnic divisions, both governments decided to install foreigners as police chiefs as one way to re-build the police into an impartial and accountable service. In the Solomon Islands and Vanuatu, the police is the sole internal security force in the country – and this may well be the case in Kiribati and Tonga as well. In fact, in Vanuatu, the police is organised into three principal groups – the police officers on general duties, the mobile force (often referred to as the Vanuatu Mobile Force or VMF), and the Police Maritime Wing. Before 1997, the VMF was a separate entity with a quasi-military role, and since then has been effectively subsumed within the Vanuatu Police Force, though it has exerted itself on two distinct occasions by acting outside the law. Incidentally, in many rural areas “village police” assist the chiefs in preserving law and order in their communities.<sup>34</sup>

### **Legal Frameworks of Accountability**

The need for the police to be accountable is clearly recognised in international law. Numerous United Nations declarations and treaties have defined norms of accountability, and these are reflected in Commonwealth, regional and domestic standards. The Commonwealth countries in the Pacific are all members of the United Nations and thereby recognise the UN system of international laws and standards along with Commonwealth declarations and communiqués. While the Pacific does not have regional standards that speak directly to police accountability, a regional organisation called the Pacific Islands Forum that seeks to enhance cooperation between member states, of which almost all are also Commonwealth members, has produced Forum declarations to strengthen regional governance and security, with implications for policing.

While international instruments provide a significant framework for democratic policing, in day-to-day practice, national Constitutions, Police Acts and other relevant legislation are more immediately pertinent to the conduct of individual officers and police organisations as a whole.

Across the Commonwealth, Constitutions are the supreme law of the land, establish the structure of states, and reflect national aspirations. In fact, Constitutions often establish the police; lay down a set of fundamental rights and liberties that the state (and thereby the police as an agency of the state) is obligated to protect; and in some cases also define specific arrangements and mechanisms for police accountability. Notably, across the region, by and large, the police, through the Police Commissioner, are accorded operational autonomy through the Constitution (with Tonga as the exception). Police Acts and supporting legislation (such as Police Rules or Regulations) set out the objectives of policing, create the structure and hierarchy of the police organisation, and importantly define the functions and powers of the police. As such, it is vital that national legislation establishes a sound and sturdy foundation of accountability to entrench democratic policing domestically.

#### *International, Commonwealth and Pacific regional standards*

Various United Nations conventions and standards provide clear principles to moderate the conduct of police officers, by placing specific legal obligations on law enforcement officials, providing channels for accountability and redress, and guiding the exercise of difficult police powers such as the use of force. The Universal Declaration of Human Rights (UDHR) is a holistic human rights policy document that *all* Commonwealth countries have agreed to. Although it is not enforceable, governments are expected to use the UDHR to guide their legislative, judicial and administrative practice. In particular, police organisations must uphold, defend and protect people's civil and political rights, as well as foster an environment that will promote their economic, social and cultural rights.

Unfortunately, Commonwealth Pacific governments have not exhibited a good track record of signing on to international human rights treaties. Nauru is the *only* country in the Commonwealth Pacific that has signed both the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment (CAT). Taken together, the provisions of the ICCPR and the CAT provide an extremely strong basis for holding police officers to account if they commit or permit torture. Solomon Islands is the only signatory in the Pacific to the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has been signed by Fiji, Vanuatu, Kiribati, Papua New Guinea, Samoa, the Solomon Islands, and Tuvalu – leaving out Tonga and Nauru. Fiji, Papua New Guinea, Nauru, the Solomon Islands and Tonga have signed the Convention on the Elimination of All Forms of Racial Discrimination (CERD). While Fiji has not signed on to many core international human rights treaties, the domestic Bill of Rights allows the application of international human rights conventions where relevant, and perhaps without ratification.

Unlike the legal conventions and standards of the United Nations, the Declarations and Communiqués of the Commonwealth offer only broad objectives and promises for the creation of a more equitable and democratic society. Commonwealth governments have committed themselves to strive for many ideals - including accountability and good governance - but these commitments

are not legal obligations. Collective action by the Commonwealth does not take legal form, but relies on peer review and consensus building. The 1991 Harare Commonwealth Declaration, the most significant of the Commonwealth statements (membership of the Commonwealth requires countries to abide by this declaration), includes promises to work for "...fundamental human rights, including equal rights and opportunities for all citizens...[and]...entrench the practices of democracy, accountable administration and the rule of law".<sup>35</sup> The Commonwealth, as expressed in the documents since the Harare Declaration, is committed to the development of democratic institutions that respect the rule of law and principles of good governance. Democratic policing is one such institution.

Existing regional declarations, which have all come out of the Pacific Islands Forum, do not address accountability or human rights standards; their focus is largely on facilitating cooperative, trans-national law enforcement. The Honiara Declaration (1992) provides a regional framework for cooperative law enforcement, particularly to tackle trans-national crime. The Aitutaki Declaration (1997) recognises the internal factors that drive conflict and supports regional security. The Biketawa Declaration (2000) is more proactive as it lays out practical methods to coordinate regional responses during security crises. This could involve, for instance, deploying multinational police contingents, as in the Solomon Islands, which is increasingly becoming a trend across the region. The Nasonini Declaration on Regional Security (2002) promotes a regional response to counter terrorism.

### **Constitutional framework around police**

In Commonwealth tradition, the Constitutions of the countries in this region represent the supreme law of the land. Most of the Constitutions have been amended numerous times, resulting from political tensions or crises, or the introduction of new states in growing federations. For instance, the Constitution of Fiji was significantly amended in 1997, and the Constitution of the Solomon Islands is currently undergoing a thorough review.

Importantly, the Constitutions of this region establish accountability frameworks – made up of both processes and structures – that apply directly to the police. In addition to establishing specific accountability mechanisms, constitutional provisions also guide such important processes as the appointment of the police chief, pinpoint responsibility for certain disciplinary actions, and lay down legal and rights guarantees which must be respected by the police. For instance, almost all of the Constitutions establish *Service Commissions* that are designed to be an independent voice in matters of police governance and administration. Fiji's 1997 Constitution creates the Human Rights Commission – the only one in the Commonwealth Pacific, and most of the other Constitutions set up Ombudsman Offices. It is tremendously important that human rights are constitutionally protected and independent oversight institutions such as human rights commissions and ombudsman offices are given a constitutional basis, as Constitutions are more difficult to amend than other legislation.

### *Fundamental rights and liberties*

The Constitutions of this region entrench fundamental rights and liberties, and require that they are protected by all agencies of the state. Relating to the exercise of police powers, in Fiji, Papua New Guinea, Vanuatu, Kiribati, and Tuvalu, the Constitution includes the rights to life, personal liberty, protection from inhuman treatment, and protection of law as fundamental rights, among others. Notably, in the interest of a smooth criminal justice system, the right to secure the protection of law sets out internationally accepted fair trial principles, such as the presumption of innocence until proven guilty, the right to an adequate defence, and fair, impartial proceedings. The Constitutions of Fiji, Papua New Guinea, the Solomon Islands, and Kiribati contain a specific section on the rights of arrested or charged persons, which include such necessary directives to law enforcement officials as informing a person of the reasons of their arrest, that they be promptly released if not charged, allowing access to a lawyer of their choice, and to be treated with dignity and respect. Freedom from arbitrary search and seizure is also enshrined in almost all of the Constitutions. These kind of constitutional safeguards go further in directing the police to practice democratic policing.

Concurrently, virtually all these Constitutions contain “state of emergency” provisions. The Head of State can unilaterally declare a state of emergency, and is granted sweeping emergency powers, including the power to override certain constitutional protections in specified circumstances. Some constitutions temper the derogation to an extent, by prescribing the cutting off of rights and freedoms only in limited circumstances, or in the case of the Solomon Islands, allowing for compensation to anyone whose rights have been contravened during a time of emergency.<sup>36</sup> In all of these countries, law allows the police to be co-opted by the military during emergencies. There is a greater possibility that in an environment where security agencies may exercise greater force than in peacetime, and key rights and liberties are curtailed, democratic policing will be seriously eroded.

### **Police Acts**

Many of the Police Acts across the region are in the process of being revised, as part of the Law & Justice sector reform programmes conducted by international donor agencies. This is entirely necessary, as the current Acts retain colonial and heavily militaristic underpinnings. The concept of democratic policing implies an approach based on norms and values derived from democratic principles and a Police Act that is shaped by these democratic norms and human rights standards can lay a firm foundation for democratic policing. In effect, it is the Police Act that creates the structure and hierarchy of the police organisation, and generally defines the scope of police responsibilities and powers. International standards on human rights, use of force, and effective accountability should ideally be incorporated into Police Acts and supporting legislation to provide for a greater range of assurances of democratic policing. Modernising Police Acts and supporting legislation will also involve abolishing any provisions that legalise impunity for police officers. Taking examples from the most progressive police legislation in the Commonwealth, key elements of a strong legal framework for democratic policing and effective accountability include:



- A human rights mandate in the definition of police duties and functions
- Fair, adequate and strong internal disciplinary systems inside police organisations
- Cooperation between internal and external mechanisms of police accountability
- At least one independent, preferably civilian-dominated, agency to investigate public complaints against the police
- Multiparty oversight over the police by elected representatives in parliaments, legislatures or local councils
- Mandatory interaction between the police and the public

Generally, the Police Acts in the Pacific do not make reference to the protection of human rights and civil liberties but focus on the functions of the police related to colonial style “maintenance of law and order”. As stated above, basic fundamental rights and liberties are enshrined in the Constitutions of the region, but this is only one step in the protection of human rights. It is equally important that violations of human rights by police officers in the course of their duty are held as offences in the Police Act. The current Acts all predate the creation of external, civilian dominated oversight bodies, which means that the law governing the police relies almost exclusively on internal police disciplinary systems to investigate police misconduct.

### **Working of disciplinary regimes**

Internal processes of accountability represent the first line of defence against police misconduct and also the degree of commitment of a police force to maintain accountability and exert effective supervision. Disciplinary offences for police officers appear in the Police Acts and supporting legislation such as Police Regulations, Police Rules, or Police Service Commission Regulations – in fact, the supporting legislation usually holds a more exhaustive list than the Police Act. Notably, while more or less the same offences apply across ranks, the exercise of discipline differs according to rank, and select offences are also rank-specific. In almost all of the police organisations of these countries, disciplinary processes follow a similar pattern – discipline for junior officers is imposed primarily through senior officers and the Commissioner of Police, and the “gazetted” or senior officers are dealt with through the Service Commissions. Papua New Guinea is one exception where the disciplinary regime appears to be uniform irrespective of rank; and in Tonga, the Minister of Police exercises full disciplinary control over the police. Discipline is largely realised through police investigating and punishing other police and civilian oversight is marginalised due to overburdened external oversight bodies. All police forces have procedures and processes in place for conducting internal inquiries and disciplinary proceedings, with disciplinary action ranging from oral warnings, fines, demotions, suspensions, to dismissals. An abiding rule across most jurisdictions is that an officer equal or senior in rank to the officer in question must carry out the inquiries, and also that the officer is given a fair hearing. In addition to disciplinary action, criminal prosecution can also be initiated depending on the nature and severity of the offence.

One major problem that runs through all the Police Acts is they do not always articulate distinctions between “minor” and “major” offences, leaving that distinction up to the discretion of officers themselves. For instance, in Vanuatu, the Police Act states the punishments – a fine, confinement to barracks for 14 days, reprimand<sup>37</sup> - which can be imposed by senior officers when dealing with disciplinary offences by junior officers without prescribing which offence fits each punishment. The Police Commissioner can review the decision, and has the power to impose even harsher punishments, though only after giving the implicated officer the opportunity to be heard, including dismissal from the Force, reduction in rank, loss of seniority, or a fine not exceeding 15 days pay.<sup>38</sup> This basic pattern stands in Fiji, Kiribati, and the Solomon Islands – though there are provisions for officers to appeal any final decision externally, generally to the Service Commission. In Papua New Guinea, the Commissioner and assigned “disciplinary officers” are accorded the discretion to decide what constitute minor and serious offences for junior officers, seemingly on a case-by-case basis<sup>39</sup> - though the *penalties* for “minor” and “serious” offences are at least laid down in the Police Act. Within a strict hierarchy which is defined largely by perceptions of higher and lower ranking officers, the considerable discretion given to senior officers in disciplining junior officers can be left open to abuse without a clear and fair legislative basis outlining the severity of different offences. It is important to streamline definitions and categories of misconduct, and the corresponding disciplinary sanction in law and policy, as well as install channels for appeal. Rachel Nield, a renowned international expert on police, emphasises “disciplinary regulations should be clear and precise in their definition of misconduct and establishment of appropriate disciplinary processes for distinct types of offences”.<sup>40</sup>

In addition, in particular areas, disciplinary provisions are harsher for junior officers. Almost all of the Police Acts contain a section which holds any police officer “other than a gazetted officer” liable for punishment for the commission of an offence under the Act. The implicated officer can be arrested without a warrant by any officer of a rank higher than his own and brought before a more senior, preferably gazetted, officer. In Fiji, the Commissioner of Police is vested with the power to impose punishments for any inspectorate officer<sup>41</sup> and any subordinate officer<sup>42</sup> – including dismissal – following proper investigation by designated gazetted officers and subject to the agreement of the Disciplined Services Commission. In contrast, Section 21 of the Police Service Commission Regulations allows gazetted officers some leeway to escape formal proceedings with respect to minor acts of misconduct. If the Commission decides that disciplinary proceedings are not required, the officer will simply receive a letter of warning. A copy of the letter will be attached to the officer’s annual confidential report, which carries weight in internal decisions around promotions. In Papua New Guinea, Section 27 of the Police Act denies junior officers any right to appeal findings of guilt or penalties imposed for serious offences.

There are also larger contextual problems with these disciplinary regimes as they appear on paper. For instance, the Police Acts of Fiji, the Solomon Islands, Vanuatu, Kiribati, and Tonga list desertion and mutiny as major disciplinary offences for police officers. The section is similarly worded in all of the Police Acts. To give a few examples, Section 29(1) of the Fiji Police Act lists causing, joining and allowing a mutiny or sedition to spread among the force, desertion and

persuading or assisting any police officer to desert, knowing of another officer's intentions to desert and not informing a superior officer, striking a superior officer, and not exerting a full effort to contain a riot as offences liable to imprisonment. The Police Act of Vanuatu brands the offences of mutiny, desertion, and failing to suppress a riot as triable by courts. Virtually the same provisions appear in the Police Acts of the Solomon Islands, Kiribati and Tonga - pointing directly to the colonial leanings of the region's Police Acts. Military-style offences like mutiny and desertion have no place in a modern, accountable and democratic police service. The offences are a hangover from the regime-style policing employed by colonial governments and indicate both a disturbing tendency towards partiality and an inappropriate level of militarisation within the police.

The Police Acts of Fiji, Vanuatu, Kiribati, and the Solomon Islands<sup>43</sup> all contain a provision that allows the Head of State to *unilaterally* declare, when faced with what s/he considers a grave threat to the defence or internal security of the country, that the police will be used as a military or internal security force and in doing so will comply with military orders. A danger here is that the decision to invoke a state of emergency is left to the sole discretion of the executive, with no input from Parliament or any other agency of government. In light of the experience of political turmoil in many countries of the region, it does not come as a complete surprise that a provision to co-opt the police in internal defence matters, as a means to buttress the military during a state of emergency, exists. But taking the vast differences in the roles of the military and police into account, subjecting the police to military rules and law (even for a short time) may inadvertently "militarise" individual officers and perhaps instil a greater proclivity in officers to resort to brute force. Inevitably, there will also be complications over the lines of accountability and supervision when the police falls within the military fold.

The police disciplinary regimes in the region do have appeals channels in place for aggrieved police officers. In the Solomon Islands, a junior officer aggrieved by a disciplinary decision from the Commissioner has the power to appeal to the Police and Prisons Service Commission. Section 63(1) of the Vanuatu Police Act allows junior officers to appeal disciplinary decisions of senior officers, within 7 days of the decision being handed down, to the Commissioner and additionally if a junior officer is unhappy with a decision by the Commissioner, Section 63(2) allows for recourse to appeal (again within 7 days of the decision being handed down) to the Police Service Commission. The decision of the Commission is final. For senior officers, the Police Service Commission carries out disciplinary proceedings, and their channel to appeal any decision is the Minister responsible for police according to Section 69(1) of the Police Act. While it is encouraging that the disciplinary system in Vanuatu has appeal mechanisms in place at every level, it could be argued that vesting the Minister responsible for police with disciplinary power, and fairly expansive power at that, could lead to undue political interference and flooded appeals. This kind of scenario reiterates the importance of an independent appeals mechanism.

## **Accountability processes and mechanisms**

The success of police reform initiatives rests on the institutionalisation of accountability with effective methods. Meaningful transformation will only be sustained if accountability systems are powerful and function properly. Police accountability is not absent in the Commonwealth Pacific, and there are processes and mechanisms in place that work to hold the police accountable in the different countries of the region. CHRI advocates that the basics of sound accountability are vigilant internal processes coupled with the necessary oversight by other branches of government and at least one independent civilian oversight body. The following section contains an appraisal of the extent to which this model of sound accountability has developed in the Commonwealth Pacific.

### *Accountability to Government*

The Commonwealth Principles on the accountability of, and the relationship between the three branches of government, specifically state that “each Commonwealth country’s Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights, and the entrenchment of good governance based on the highest standards of honesty, probity and accountability”.<sup>44</sup> Each branch of government must be independent, in order to collectively enforce accountability for each other, and across the entire machinery of governance. The police, like any other agency of state, are accountable to the government. It is the government’s role to set the strategic direction and priorities for the police, on behalf of the people they represent. Each branch of government – the Executive, Parliament and the Judiciary – has a responsibility to contribute to democratic oversight and police reform.

### *Police account to the Executive*

Across the Commonwealth Pacific, key representatives of the executive branch of government play specific and important roles in governing and overseeing the police. Importantly, the highest position in the police hierarchy – the Commissioner of Police - is appointed by the Head of State. As mentioned above, the police in all of these countries answer directly to a specially designated Minister, who is part of the executive wing of government and can be seen as the political spokesperson, or head, of the police. In addition, the structure of Pacific states includes Service Commissions, autonomous government bodies dominated by representatives of the executive branch who exercise disciplinary control over senior police officers, and also have input in the appointment of the Police Commissioner. Through these processes and mechanisms, the police leadership particularly shares a close relationship with the executive branch of government. It is important to scrutinise select aspects of the police-executive relationship, to determine how far truly democratic oversight is practiced.

### *Appointment of the Commissioner of Police*

The power to hire and fire the head of the police is a key accountability device and must be supplemented by transparent and fair procedures, and oversight by effective accountability

instruments, to prevent any inappropriate relationships of patronage from developing. In this light, it becomes important that the Head of State is not granted *sole power* to appoint the Commissioner. Across the Pacific, one trend in appointment procedure is that the Head of State decides either in consultation with or at the recommendation of the Service Commission, but this is by no means the only procedure employed to appoint the Commissioner. In the Solomon Islands and Vanuatu, the Head of State appoints the police chief after consulting the Police Service Commission. In Kiribati, the President, acting in accordance with the advice of Cabinet after consultation with the Public Service Commission, appoints the Police Commissioner. In Tuvalu, the Chief of Police is appointed by the Head of State on the advice of Cabinet, given after consultation with the Public Service Commission. There are other sources of appointment as well. In Fiji, the Constitutional Offices Commission appoints the Police Chief following consultation with the Minister responsible for Police. In Tonga, the Minister of Police with the approval of Cabinet recruits and appoints every police officer, including the Superintendent of Police. And in Papua New Guinea, the Commissioner of Police is appointed by the National Executive Council (NEC), which is a constitutionally established body representing the executive. Unlike the Service Commissions, the NEC is not an independent entity with a specific mandate related to the police.

On a positive note, the legal basis of the appointment procedure in much of the Pacific does not grant the Head of State sole discretion to pick the police chief, requiring consultation with other entities. Tonga and Papua New Guinea are the exceptions here, where appointment is made by only one source. In Tonga, it is a dangerous precedent that the Minister is empowered to basically handpick not just the Superintendent of Police, but also all police staff. This leaves room wide open for police officers finding their job security is crucially tied to the patronage of the Minister. Serious breaches of law and accountability arise out of precisely these kinds of inappropriate relationships of patronage. With reference to the practice in Papua New Guinea, Transparency International (an international anti-corruption organisation) argues that since the appointment comes from the National Executive Council, this implies the Commissioner is a political appointee.<sup>45</sup> Between 1997 and 2002, the Papua New Guinea police had five different police commissioners. Division 4 of the Constitution that contains special provisions in relation to the police force specifically states that the police force is subject to the control of the National Executive Council through a Minister, further diluting the independence of the police leadership.

Even in the other countries where at least the decision is collaborative, and the police is accorded operational autonomy in the law, appointment of the Commissioner is still made only by government bodies representative only of the executive branch, with the complete absence of any civilian, public input. In other Commonwealth jurisdictions, appointment of the Commissioner is significantly more collaborative, requiring input from civilian oversight bodies. In the Australian state of Queensland for example, the Commissioner of the Queensland Police Service is appointed by the Governor, "on a recommendation agreed to by the chairperson of the Crime and Misconduct Commission".<sup>46</sup> The agreement of the Minister for Police for the State also has to be sought. In New South Wales, the Governor appoints the police chief on the recommendation of the State Police Minister, but only after the Police Integrity Commission and internal disciplinary department

of the New South Wales Police have done a background check on the shortlisted candidate.<sup>47</sup> The Commission and the internal department have to submit a report of their findings to the Minister, and the Minister must then obtain a statutory declaration from the candidate that s/he has not knowingly engaged in any form of misconduct. While there are no universal formulas, the power to appoint the Commissioner must, at minimum, be prescribed by clear and fair procedures, and where possible, the input of independent institutions such as Service Commissions or civilian oversight bodies integrated. The highest police post must also be protected by secure tenure.

### *Service Commissions*

Service Commissions, predominant in the Commonwealth Caribbean and Pacific small states, are autonomous government bodies that oversee disciplinary and management matters in public sector – and in some cases specifically police – agencies. Experience in many Commonwealth countries reflects that many instances of illegitimate political interference in policing arise through politicians manipulating disciplinary or management powers for political purposes. Service Commissions were established precisely to limit undue political interference in selection, promotion, transfer and removal of police officers – and thereby act as mechanisms of accountability. In some cases, they also double as appeal mechanisms for police officers seeking redress from internal disciplinary or labour disputes.

The Disciplined Services Commission of Fiji is mandated to make appointments, remove officers and take disciplinary action against police officers – for all officers above the rank of senior inspector (as the Police Commissioner has the equivalent powers for officers below this rank). If the Commissioner removes an officer or reduces an officer's rank, the Disciplined Services Commission must approve. The Police and Prisons Service Commission of the Solomon Islands, the Police Service Commission of Vanuatu, and Tuvalu's Public Service Commission follow Fiji's pattern. Interestingly, the Solomon Islands Commission is also tasked with the general regulation of the Police Promotion Boards, which advise the Commissioner of Police on any questions around the promotion of officers. Finally, the Commission can hear appeals of any officer aggrieved by the Commissioner in respect of any punishments s/he has meted out involving reduction in rank or removal. The Commission is empowered to either confirm or alter the Commissioner's decision, providing another layer of accountability to this aspect of the Commissioner's powers.

Service Commissions were envisaged as government bodies with an independent voice. Their role involves appointing, dismissing and generally disciplining *senior-level* police officers. In this respect, their appointing authority and composition – as measures of independence - become important in gauging the extent to which they can truly represent buffer bodies. Wherever they exist in the Pacific, members of Service Commissions are appointed by the Head of State, and are predominantly from government. In almost all cases, there is space for what are seemingly independent members, though there are no given criteria to match the best people to the job. Without objective criteria, there is a greater possibility that personal equations will carry too much weight. In Fiji for instance, the Disciplined Services Commission consists of a chairperson and

two other members appointed by the President. In Tuvalu, the Public Service Commission consists of a chairperson and three other members. In both cases, the law is silent on the desired qualities and experience of the “other members”. In the Solomon Islands, the Police and Prison Services Commission is a small, exclusive body consisting of the chairperson of the Public Service Commission, the chairperson of the Judicial and Legal Service Commission, and one other member appointed by the Governor-General, acting on the advice of the Prime Minister. The makeup of Vanuatu’s Police Service Commission is similar in size and scope to the Solomon Islands model, consisting of a member of the Public Service Commission nominated by its chairman; a member nominated by the Chief Justice; and a member nominated by the Minister (in charge) who shall be its chairman.<sup>48</sup> There are minimal safeguards in place to “widen” the decision-making in some cases, but again the decision is ultimately a government prerogative. In Fiji, the appointments to the Commission must be made on the nomination of the Minister-in-charge, and each nomination must be approved by the appropriate sector standing committee of the House of Representatives before they are submitted to the President. In Tuvalu, the appointees to the Public Service Commission are appointed by the Head of State acting in accordance with the advice of the Cabinet. In all of the Pacific countries, a constitutional provision to maintain the independence of Service Commissions does exist, which says a person is disqualified for appointment to any Service Commission if s/he is a Member of Parliament, holds any public office, or a position deemed to be of “a political nature”. This is an important provision and makes good on the envisaged design that the Service Commissions are not subject to any other control or authority.

In comparison with newer models of Service Commissions in Commonwealth countries like Nigeria and Sri Lanka however, the Pacific model does fall short. In both Nigeria and Sri Lanka, the Police Service Commissions include citizen representation and have wider powers to shape policy. Importantly, both Commissions can invite public complaints against the police and have the power to conduct their own investigations into complaints. This is a key benchmark in strengthened democratic policing. None of the mandates of the Pacific Service Commissions allow them to take complaints from the public, which means acts of police misconduct which affect the public (more serious acts, such as brutality and corruption will also be human rights violations) are not “disciplined” by the Commissions.

#### *Accounting to the Judiciary and Parliament*

The judicial system is entrusted with the protection of human rights and freedoms. Courts also ensure that acts of the executive and laws of the legislature comply with and promote international human rights standards.<sup>49</sup> Courts also protect citizens from the excesses of the state and its agents, by making sure perpetrators of human rights violations and breaches of law are brought to book, and that victims obtain sufficient remedies. Police come under the scrutiny of courts in a variety of ways, either for individual acts of wrongdoing, or when judges interpret law and procedure to direct the police to implement their functions in consonance with constitutional rights, or when police officers bring their own grievances to the attention of the courts.

Three vital functions of Parliament are to make and review laws, represent citizens, and hold the executive arm of government accountable for policy implementation. Parliaments play a policy-making role insofar as they refine and pass legislation and approve budgets. They also monitor policy implementation by hearing the views of the electorate and assessing government performance. Parliament has the power to question police wrongdoing, to correct systemic faults by passing new laws, to seek accounts of police performance, and to keep policing under constant review. Members of Parliament (MPs) - or of State Legislatures or Local Councils - have many routine opportunities for police oversight through question time, annual departmental reviews (particularly at budget allocation time), and examination of issues of public interest through the parliamentary committee system. For instance, MPs can directly question the police response to specific areas of crime, call for inquiries into cases of police misconduct, or demand reasons for non-implementation of a police review committee's recommendations. In fact, the committee system is a key oversight mechanism at the hands of legislators. In many Commonwealth countries, committees have matured into quasi-autonomous watchdog bodies themselves. Their oversight role is further strengthened by the fact that committees are non-partisan and made up of members from various political parties, and "unlike in the parliamentary chamber, a culture of 'constructive cooperation rather than routine disagreement' often develops".<sup>50</sup> In addition to multi-party membership, a robust committee should be able to work independently, invite public consultation, and expect a timely government response to their reports. Times of constitutional or legislative reform, or times when public interest in policing is deeply engaged may provide legislators with opportunities to radically reform police systems, as in South Africa's Constitutional Assembly or Northern Ireland's peace process.

In the Pacific context, it becomes especially important that the judiciary and Parliament are vigilant in holding the executive accountable, as it is the executive that directly oversees the police in so many aspects.



## **INTERNAL ACCOUNTABILITY MECHANISMS**

In addition to addressing police discipline and misconduct specifically through the chain of command, some of the Pacific police organisations also have specialised internal disciplinary units. These units provide a forum to receive complaints from the public against police officers; and importantly also facilitate police complaining about and investigating other police. Known as either offices of professional responsibility, internal affairs, or ethical standards departments, these units generally receive complaints from the public and police officers and carry out investigations to decide what, if any, disciplinary action to take in individual cases. Some may examine only specific categories of misconduct complaints, such as corruption or brutality.

In the Solomon Islands, it was previously the Criminal Investigation Department (CID) that handled all allegations of corruption by police officers. Throughout its tenure, CID investigators experienced political pressure and even direct threats by investigated individuals during the course of corruption investigations. During the prolonged internal conflict which radically factionalised the police force, the CID was absolutely railroaded and disabled in its work. In the four years of crisis, the entire department was subject to constant threats to personal security and life, including being held en masse at gunpoint by militants following the signing of the Townsville Peace Accord, and ordered to cease all investigations into militant criminal activities.<sup>51</sup> The CID was refashioned into the Professional Standards Unit, which was established in 1998 within the police. The Unit investigates complaints and allegations and recommends disciplinary action to be taken by the Police Commissioner or senior officers, as well as the Police and Prison Services Commission. The Fiji Police also has a Professional Standards Unit, and in Papua New Guinea a dedicated Internal Affairs department investigates shootings by the police and addresses public complaints.

It is difficult to make conclusive comments on the strengths and weaknesses of the working of internal disciplinary units due to lack of information. But as demonstrated in the Solomon Islands, larger conflicts can drastically impede police internal accountability. In other cases, it may be that disciplinary processes and procedures are just not adhered to. In Papua New Guinea, the Review Committee states that the Constabulary's Disciplinary Manual as well as the disciplinary provisions of the Police Act are simply not enforced, which means the disciplinary processes in place are not being utilised – the Committee proceeds to recommend that the Commissioner issue a directive to instruct all Constabulary staff to immediately put the existing Disciplinary Code into effect.<sup>52</sup> This negligence leads only to the complete ineffectiveness of the disciplinary system and severe lack of public faith - as many as 85% of complaints against the police go unresolved.<sup>53</sup> In the Pacific, shortcomings within internal discipline systems result from political pressure exerted to protect certain individuals. Problems may also stem from a serious lack of capacity within the police themselves, including a shortage of good investigators to collect evidence. For instance, the Administrative Review Committee in Papua New Guinea recommended strengthening the resources and skills available to the Internal Affairs department staff, particularly by recruiting individuals with significant experience in conducting investigations. Looking across similar jurisdictions across the Commonwealth, in the Pacific, it may be that the most common problems stem from the way discipline is managed within the police. Three interrelated factors play the biggest part in this: lack of commitment to disciplinary systems among senior officers, opacity about the way these systems work, and a clash between disciplinary systems and the prevailing “culture” in many police organisations which is often negative towards questions of discipline.

## **EXTERNAL OVERSIGHT: HUMAN RIGHTS COMMISSIONS AND OMBUDSMAN OFFICES**

Internal management mechanisms – if well implemented – can be a powerful way of holding police organisations to account. But on their own, they are not enough. No internal discipline system can completely prevent incidents of police misbehaviour, and even the best-managed systems will never command the full confidence of the public. Recognising this reality, many countries across the Commonwealth have sought to balance internal accountability mechanisms with some system of external, non-police (civilian) oversight. With one system complementing and reinforcing the other, this approach creates a web of accountability in which it becomes increasingly difficult for police misconduct to take place without consequences. External accountability systems also create avenues for public complaints to be pursued independently of the police, helping to end impunity for corrupt and abusive elements within Commonwealth police organisations.

In the Pacific, there are no established agencies dedicated solely to the investigation and oversight of complaints against the police. Existing oversight bodies - human rights commissions and ombudsman offices - investigate cases of police misconduct as part of larger mandates to uncover human rights abuses, corruption and maladministration on the part of government agencies. In Fiji, there is a Human Rights Commission and Office of the Ombudsman, while Papua New Guinea, the Solomon Islands and Vanuatu all have Offices of the Ombudsman. All of these bodies are constitutionally established, and some are additionally governed by their own legislation. The Human Rights Commission of Fiji is the only national Human Rights Commission among the Commonwealth Pacific countries. The draft Constitution of the Solomon Islands makes provision for the creation of a Human Rights Commission, though the constitutional reform process is still in progress.

The Paris Principles<sup>54</sup> – a set of internationally recognised standards laid down to guide states in the setting up of strong and effective national human rights institutions – provide minimum requirements for a truly empowered National Human Rights Institution, and also apply equally to any oversight agency. The Commonwealth Secretariat has also compiled a manual on National Human Rights Institutions Best Practice. Much of how effectively Ombudsman Offices and Human Rights Commissions perform their oversight functions depends on an autonomous and well-embedded status for them in national legal architecture. According to the Paris Principles, their effectiveness will also hinge on the width and clarity of their mandate, the scope of their investigative powers, the composition and competence of their leadership and staff, and the adequacy and sources of financing. A particularly crucial factor is their ability to compel adherence to their recommendations by police and government agencies generally, enhanced by the clear support their reports and findings receive at the hands of the government and police.

Section 42 of Fiji's 1997 Constitution establishes a national human rights commission, and the Fiji Human Rights Commission Act was passed in 1999. The Fiji Human Rights Commission has emerged as a leading player among civil society in the Pacific by proving itself to be independent and active. In part, this is due to the fact that the legal basis accorded to the Commission abides by the minimum requirements prescribed by the Paris Principles.

Fiji's Human Rights Commission Act 1999 is designed to ensure the Commission's independence and effectiveness by prescribing a broad, flexible mandate, equipping the Commission with extensive powers and meeting the necessity of adequate funding. Under this legal framework, the Fiji Human Rights Commission is mandated to protect and promote the human rights of all persons in the Fiji Islands, following from the Paris Principles. As mentioned earlier, the full gamut of human rights to be enjoyed by every person in Fiji is laid down in the constitutional Bill of Rights. The Bill of Rights is progressive, covers a full range of civil and political, as well as economic, social and cultural rights, and also stipulates that any other consistent rights and freedoms conferred by common and customary law, even if they do not appear in the Bill of Rights, must also be protected. This means the Commission is obligated to protect and promote a wide range of human rights. The 1999 Act assigns both reactive and proactive powers to the Commission – which is again a very positive legal precedent for entrenching vigilant oversight. Section 7 of the Act requires the Commission to promote human rights in several important ways, such as making public statements on the state's human rights obligations, educating public officials on their human rights responsibilities, to promote better compliance with international standards, to encourage ratification of international human rights instruments and advise the Government on its reporting obligations under these instruments, to make recommendations on the implications of any proposed legislation or policy for human rights, and to publish guidelines for the avoidance of acts or practices that may be inconsistent with human rights. More directly in terms of overseeing police and other government agencies, under the same section, the Commission has the following proactive powers:

- to invite and receive representations from members of the public on any matter affecting human rights;
- to inquire generally into any matter, including any enactment or law, or any procedure or practice whether governmental or non-governmental, if it appears to the Commission that human rights are, or may be, infringed thereby;
- to investigate allegations of contraventions of human rights and allegations of unfair discrimination, of its own motion or on complaint by individuals, groups or institutions on their own behalf or on behalf of others
- to resolve complaints by conciliation and to refer unresolved complaints to the courts for decision;
- The Commission may, from time to time, in the public interest or in the interests of any person or department, publish in any manner it thinks fit reports relating generally to the exercise of its functions or to any particular case or cases investigated under this Act.

The Commission is accorded full investigative capacity – it is allowed to make any enquiries it believes to be fit, and can summon any person or demand any piece of information it may require in the course of investigation. For the purposes of an investigation, the Commissioner and Commission have the same powers as a judge of the High Court with respect to the production of documents, and the attendance and examination of witnesses.

Importantly, the Act is also designed to ensure independence of the Commission’s staff. The appointing authority is informed by diverse voices - the members of the Commission are appointed by the President on the advice of the Prime Minister, following consultation with the Leader of the Opposition and the standing committee of the House of Representatives for matters concerning human rights. Section 8 of the Act specifically states that in advising the President, the Prime Minister must have regard not only to the personal attributes of applicants, but also to “their knowledge or experience of the different aspects of matters likely to come before the Commission”. Further, a person is not qualified to be a Commissioner if s/he is a Member of Parliament, a member of a local authority, or an office holder in any political party. All Commissioners are legally prohibited from actively engaging in politics or business for profit.

From 1999, Fiji’s Human Rights Commission has received approximately 700 requests for assistance, most complaints involving alleged abuse by police and prison officers.<sup>55</sup> In a speech in May 2002, the Director of the Fiji Human Rights Commission described the performance of the Commission, *“The Commission has dealt with a wide variety of complaints since 1999, for example, complaints against public officials, including the police, army and prisons officials, complaints about public access for people with disabilities, complaints about racial and sex discrimination, including sexual harassment at work, complaints about work conditions; in fact, I can say with some confidence that the Commission has dealt with just about every single right protected in Chapter 4 of the Constitution. In most cases we have been able to resolve these complaints through conciliation conferences, and in a number of cases we have also gone to court when we saw that conciliation was going no-where”*.<sup>56</sup> The Human Rights Commission has conducted many training sessions with the police to spread awareness of human rights within the force. Recently, the Commission launched a handbook for the disciplined forces of Fiji (including the police) entitled *“National Security and Human Rights”*<sup>57</sup>, and provides guidelines on the legal obligations and accountability arrangements relevant to the conduct of the country’s security agencies.

### *Ombudsman offices*

The general mandate of Ombudsman offices across the region is to investigate complaints of maladministration across government agencies, and by and large, these agencies are empowered with sufficient powers in law. The existing Offices of the Ombudsmen consistently do their best to live up to their role as watchdog bodies and guardians of government accountability, but they face an acute shortage of resources, funding, technical knowledge, and at times government obstruction. Papua New Guinea, Fiji, Vanuatu and the Solomon Islands all have an office of the Ombudsman. In countries like Papua New Guinea and Vanuatu, the Ombudsman is the sole

independent oversight body and thereby an important channel for members of the public to access accountability and redress.

In Papua New Guinea, the Ombudsman Commission includes both the office of the ombudsman and the office implementing the Leadership Code<sup>58</sup>. The recent move of the Papua New Guinea Ombudsman to set up a dedicated Human Rights Unit points to the trend of Ombudsman bodies enlarging their traditional anti-corruption, maladministration mandate to include complaints of human rights violations. On paper, the Ombudsman in Papua New Guinea, Vanuatu and the Solomon Islands has the power to initiate investigations on its own, and has jurisdiction over a wide range of official bodies, as well as substantial powers of investigation. In Vanuatu, the Ombudsman can investigate all public servants, public authorities and ministerial departments, except the President of the Republic, the Judicial Service Commission, the Supreme Court and other judicial bodies. Constitutional provisions allow for inquiries to be initiated on the discretion of the Ombudsman, upon receiving a complaint from a member of the public, or at the request of a minister, a Member of Parliament, of the National Council of Chiefs or of a local government council. The Ombudsman has full authority to request any Minister, public servant, administrator, and authority concerned to provide any information or documents related to an inquiry. The Ombudsman in the Solomon Islands holds the power of summons accorded to a magistrate. In Papua New Guinea, the Office can consider deficiencies in the law and challenge official decisions.

In some ways, the law also limits the scope of Ombudsman powers. For instance, the Ombudsman Commission of Papua New Guinea cannot inquire into the “justifiability” of National Executive Council (NEC) decisions<sup>59</sup>, ministerial policy or court decisions<sup>60</sup>. The NEC is the body that appoints the Police Commissioner, and the sole external watchdog over the government is prevented from challenging this decision. In all of these countries, the Ombudsman has no powers to enforce its recommendations, though in Vanuatu the Office can submit special reports to Parliament concerning action taken on its findings. The watchdog function of the Ombudsman is also hampered by a severe lack of resources, in terms of funding, staff, infrastructure and the required technical knowledge, particularly for the Ombudsman and Leadership Code Commission of the Solomon Islands and the Ombudsman Offices in Fiji and Samoa.<sup>61</sup> Lack of investigative skills, legal capacity, or essential personnel means most Ombuds offices cannot cope with the caseload. Limited operational autonomy can also play a part in crippling independent oversight. The Ombudsman of the Solomon Islands has been sorely disabled due to being administered by the Prime Minister’s Office. After repeated and ignored appeals to the Prime Minister’s Office for separate office space, the Solomon Islands Ombudsman closed its own office for the bulk of 2003. At that time, there was a massive backlog of cases dating from 1999. In 2004, Transparency International commented: “At present the Leadership Code and Public Service Commissions and the office of the Ombudsman are all administratively within the Prime Minister’s Office. This makes them all extremely exposed to political pressures, either direct and immediate, or more gradual, such as the resource pressure that has been applied to all of them over a period of years”.<sup>62</sup>

As a fiercely individualistic office in these countries, the efficacy of the Ombudsman is often dependent on “personality”. The first Ombudsman of Vanuatu, Marie Noelle Ferrieux-Patterson, the first Ombudsman of Vanuatu, enjoyed tremendous public confidence for her fierce campaign against corruption, despite strong opposition. During her tenure, not only did the Office of the Ombudsman vigorously publish public reports, it used innovative ideas to ensure that they were disseminated widely. As Vanuatu’s literacy levels were at 50-60%, the Office of the Ombudsman used radio and public speaking to disseminate information contained in the published reports. Since 1996, the release of every new public report was followed by a press release and an interview with the official(s) implicated in the report on Radio Vanuatu. She also initiated radio campaigns against domestic violence by encouraging women to report incidents to the police and also to report police inaction to the Ombudsman’s Office. In a 1997 report, she criticised the police as incompetent and doing too little too late.<sup>63[i]</sup> This report revealed persistent slackness, indiscipline, arrogance and ignoring of legitimate duty by members of all ranks of the police. Despite her good work and public support, the government refused to renew her contract in 1999. After her successor finished his term in August 2004, it took the government over eight months to fill the vacancy for the sole external oversight agency in the country.

In contrast, one Ombudsman in the Solomon Islands did not produce an annual report between 1991 and 1995, though the office did deal with complaints. An Ombuds office is also sometimes flooded with administrative matters, which can mean less time and resources to spend on complaints against the police. In the Solomon Islands, an estimated 60% of the 8062 cases handled by the Ombudsman’s office since establishment in 1981 have been brought by public servants as grievances of employment and workplace relations within the public service.<sup>64</sup> In practice, most complaints come from public service employees themselves. While this is a positive step to clean up the endemic corruption steeped in most Pacific governments, it deflects the attention of the Ombudsman from overseeing agencies such as the police, which is increasingly being relegated to external donors rather than to national bodies.

It is heartening that many Pacific governments recognise the need for an external, independent civilian agency, even if many are yet to function as effectively as they could. The existence of such bodies mandated to carry out autonomous investigations into allegations of police abuse can send the message that the police will be held accountable for wrong doing. It is clear that a clear and wide legal mandate is important to cement the independence and powers of an effective oversight body. However, the most essential factor is the necessary political will to truly bring about reform and the strong leadership of both the police and oversight bodies to build an accountable and responsive policing system.

## CONCLUSION

Clearly, policing in the Commonwealth Pacific cannot be seen in isolation from the larger political, economic and social context of each country. The complexity of the problems of political instability, chronic violence and crime, and social strife all impact on policing. In some cases, this combined effect led to serious breakdowns in policing and required external intervention to restore peace and a climate of security.

Fortunately, police reform has reached the Pacific, and many governments have demonstrated their commitment by putting reform initiatives into motion, whether through domestic strategies or international donor assistance. These are very encouraging moves toward entrenching elements of democratic policing, but there remains much work to be done to establish *the practice* of democratic policing in the Commonwealth countries in the Pacific.

To truly achieve democratic policing in practice, accountability mechanisms particularly will have to be implanted in legal and policy frameworks. Reform will not be durable without the establishment of new, independent accountability institutions, legal reform to consolidate the values and processes of democratic policing, and invigorated internal accountability procedures. With the requisite will and effort, and using the current momentum to move forward, democratic policing can become a reality for citizens of the Commonwealth Pacific.

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- <sup>57</sup> Fiji Human Rights Commission (2003), *National Security and Human Rights Handbook*: [http://www.humanrights.org.fj/pdf/inside\\_pages\\_changes.pdf](http://www.humanrights.org.fj/pdf/inside_pages_changes.pdf) as on 10 March 2006
- <sup>58</sup> The Leadership Code is an anti-corruption tool set up to monitor the wealth and assets of public figures, compelling particularly leaders in the public service to submit an annual return to a delegated Leadership Code Commission detailing sources of income and a statement of wealth. This is an accountability instrument particular to the Pacific countries, and is hugely relevant for the endemic corruption in ruling circles in most countries of the region. Generally, police chiefs fall under the definition of leader.
- <sup>59</sup> Section 219(3)
- <sup>60</sup> Section 219(5)
- <sup>61</sup> Centre for Democratic Institutions and Tony Regan of the State, Society and Governance in Melanesia Project, *Evaluation of the Accountability and Corruption in Melanesia Workshop*, pg. 1
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# CHRI Programmes

CHRI's work is based on the assumption that for the realisation of human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, as well as a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

## Human Rights Advocacy:

CHRI makes regular submissions to official Commonwealth bodies including the Commonwealth Ministerial Action Group and Commonwealth member governments. From time to time CHRI conducts fact finding missions to investigate human rights concerns in member countries and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their capacity and collective power to advocate human rights issues in the Commonwealth. CHRI's Media Unit also ensures that crucial human rights issues are in the public consciousness.

## ACCESS TO INFORMATION

### Right to Information:

In promoting the right to information, CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local organisations and officials throughout the Commonwealth, building government and civil society capacity as well as advocating with policy makers to ensure that laws reflect the real information needs of the community. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

### Constitutionalism:

CHRI believes that constitutions must be made and owned by the people. Towards this end, it has developed guidelines to inform the making and review of constitutions through a consultative process. In addition, CHRI promotes knowledge of constitutional rights and values through public education programmes. It has developed web-based learning modules for the Commonwealth Parliamentary Association aimed at informing legislators of the value of human rights to their work. In the run up to elections, CHRI has created networks of citizen's groups that monitor elections, protest the fielding of criminal candidates, conduct voter education and monitor the performance of local representatives.

## ACCESS TO JUSTICE

### Police Reforms:

In too many Commonwealth countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread human rights violations and denial of justice. CHRI promotes systemic reforms of police organisations so that they may act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

### Prison Reforms:

The closed nature of prisons makes them prime centres of human rights violations. CHRI aims to open up prison working to public scrutiny. This programme is sharply focused on ensuring that the near defunct lay visiting system is revived. CHRI examines prison visiting and undertakes capacity building programmes for visitors.

### Judicial Colloquia:

In collaboration with INTERIGHTS, CHRI has held a series of colloquia for judges in South Asia on issues related to access to justice, particularly for the most marginalised sections of the community.