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#### ABSTRACT

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 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. This paper seeks ways to strengthen democratic policing in Commonwealth Pacific countries, by examining accountability over the police in particular. It outlines the legal frameworks, and institutional processes and mechanisms already in place to hold the police accountable - a key element of democratic policing. Focusing mainly on police accountability, the aim of this paper is to describe how entrenched democratic policing is in the countries of the region, and also highlights strategies to better solidify democratic policing.

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#### KEYWORDS

Accountability – Human Rights – Democratic Policing



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# STRENGTHENING DEMOCRATIC POLICING AND ACCOUNTABILITY IN THE COMMONWEALTH PACIFIC

Devika Prasad

## 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 concerning policing and, importantly, police reform are key governance priorities, as well as 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 one that helps create an environment free of fear and conducive to the fulfilment of people's human rights, particularly those that promote unfettered political activity, which is the hallmark of 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.

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*See the notes to this text as from page 129.*

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 in many Commonwealth countries, 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 on 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 embodies democratic values in its own institutional processes and structures. Ongoing police reform initiatives in the Pacific go some way to democratise the police from within, but perhaps a greater push is needed to establish the protection of democratic and human rights as a central practice of policing.

This paper seeks ways to strengthen democratic policing in Commonwealth Pacific countries, by focusing police accountability in particular. It outlines the legal frameworks, 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, this paper describes how entrenched democratic policing is in the countries of the region, and also highlights strategies to better solidify democratic policing.

## **Problems in policing**

Challenges to cement 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 superficial overview: 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 control 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 the Fiji and the Solomon Islands, civilians were largely abandoned and left to fend for themselves, with any semblance of police

protection conspicuously absent. In the Solomon Islands particularly, following the coup in 2000, the police disintegrated as a functioning organisation and police officers were pulled in different directions – either officers were biased, co-opted into the ethnically driven militancy, or just entirely unable to take action. 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. 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.

### **Police reform initiatives**

Along with grave policing problems, the Commonwealth countries of the Pacific also provide lessons in police reform. There are a number of police reform projects in place at present, domestically in some countries, as well as region-wide. 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 as well. 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 associated with reform of the judiciary or key government supervision bodies such as the Ombudsman or Auditor General. The agenda for police reform in the region includes, among other things, 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. As always, these initiatives for reform must be underpinned by the guarantee of increased accountability – both internally in police organisations, and through external means.

### **The nuts and bolts of democratic policing**

The ongoing 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>1</sup>*

- **be accountable to the law, and not a law unto itself.** The police, like all government agencies and employees, must act within the law of the country and within international laws and standards, including human rights obligations. Police officials who break the law must face the consequences, both internally through the disciplinary systems within police organisations, and externally, in the criminal justice system.
- **be accountable to democratic government structures.** The police are an agency of government, and must report to the government their adherence to governmental policy and for their use of government 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, that holds power.
- **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.
- **give top operational priority to protecting the safety and rights of individuals and private groups.** The police must be accountable to the people, and not just to governments, for their decisions, actions and performance. 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.
- **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. 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. Prioritising the protection of human rights in policework calls for the skilful exercise of professional police discretion.
- **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, and to earn the trust of vulnerable and marginal groups who most need their protection. Recruitment by the police must 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 before the legislature to 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 supervision body adds tremendous value in extending accountability of the police towards 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, not 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 only a small number of 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>2</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.

### *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 direct for 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. 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 define the functions and powers of the police. As such, it is vital that national legislation establish 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. Unfortunately, Commonwealth Pacific governments have not exhibited a good track record of signing on to international human rights treaties, which means, largely, they have not adopted international standards into domestic practice.<sup>3</sup> The Commonwealth, as expressed in the documents since the 1991 Harare Declaration (the most significant of the Commonwealth statements, membership to the Commonwealth requires countries to abide by this 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.

### **Constitutional framework around police**

Most of the Constitutions of the region have been amended numerous times, due to 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 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. 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 normal legislation.

### **Fundamental rights and liberties**

The Constitutions of this region entrench fundamental rights and liberties, and require that they be 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 indicted persons, which include such necessary directives to law enforcement officials such as informing persons 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. This kind of constitutional safeguard goes further in directing the police to practice democratic policing.

### **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. 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;
- 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 supervision 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 supervision 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 as laid down in Police Acts: problems and challenges**

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 of 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. 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 (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). 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 supervision is marginalised due to overburdened external oversight bodies. All police forces

have procedures and processes in place for conducting internal and disciplinary inquiries, 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 that 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 establishes punishments – a fine, confinement to barracks for 14 days, reprimand – <sup>4</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>5</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 authority to decide what constitutes a minor or a serious offence for junior officers, seemingly on a case-by-case basis – <sup>6</sup> though the **penalties** for “minor” and “serious” offences defined in the Police Act. 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 establish definitions and categories of misconduct, and the corresponding disciplinary sanctions in law and policy, as well as to implement channels for appeal.

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 to 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>7</sup> and any subordinate officer – <sup>8</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 involving 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. 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. Military-style offences like mutiny and desertion have no place in a modern, accountable and democratic police service. The offences are leftovers from the regime-style policing employed by colonial governments and indicate both a disturbing tendency towards partiality and an inappropriate level of militarization of the police. In a similar vein, the Police Acts of Fiji, Vanuatu, Kiribati, and the Solomon Islands<sup>9</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 governmental agency. Also, taking the vast differences in the roles of the military and the 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.

### *Accountability processes and mechanisms*

The success of police reform initiatives rests on the institutionalisation of accountability with effective methods. 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 control by other branches of government and at least one independent civilian supervision body. The following section contains an appraisal of the extent to which this model of sound accountability has developed in the Commonwealth Pacific, by examining a selection of key accountability processes and mechanisms.

## Police accountability to the Executive

Across the Commonwealth Pacific, key representatives of the executive branch of government play specific and important roles in governing and supervising 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. 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 control 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 supervision by effective accountability instruments, to prevent any inappropriate relationships of patronage from developing. In this light, it becomes important that the Head of State be 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.

It is positive to note that 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 basically to handpick, not just the Superintendent of Police, but also all police staff. This leaves room wide open for police officers depending for their job security on 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 that the Commissioner is a political appointee.<sup>10</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 control 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>11</sup> which is an independent police supervision agency. The agreement of the Minister for Police for the State also has to be sought. 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, by the input of independent institutions such as Service Commissions or civilian control bodies. 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 supervise disciplinary and management matters in the public sector and in some cases specifically police agencies. Experience in many Commonwealth countries shows 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.

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 public servants. 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 preferences 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”. It is also true that in all of the Pacific countries, a constitutional provision to maintain the independence of Service Commissions does exist, establishing that 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 that strengthens the envisaged objective 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 the corresponding investigations. This is a key benchmark in strengthened democratic policing. None of the mandates of the Pacific Service Commissions allow them to accept complaints from the public; therefore, acts of police misconduct which affect the public (more serious acts, such as brutality and corruption and other human rights violations) are not “disciplined” by the Commissions.

### **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.<sup>12</sup> Some may examine only specific categories of misconduct complaints, such as corruption or brutality.

It is difficult to make conclusive comments on the strengths and weaknesses of internal disciplinary units due to lack of information. The Solomon Islands experience reveals how larger conflicts can drastically jeopardize internal policy accountability. In other cases, it may be that disciplinary processes and procedures are just not adhered to. In Papua New Guinea, a Review Committee tasked to appraise the police found 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>13</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>14</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 in 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) supervision. 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 channels 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 supervision of complaints against the police. Existing control 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 project of the Constitution of the Solomon Islands makes provision for the creation of a Human Rights Commission, though the constitutional reform process is still in progress.

Section 42 of Fiji's 1997 Constitution establishes a national human rights commission, and the Fiji Human Rights Commission Act was approved in 1999. The Fiji Human Rights Commission has emerged as a leading player among civil societies 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 – <sup>15</sup> a set of internationally recognised standards laid down to guide states in the setting up of strong and effective national human rights institutions – providing minimum requirements for a truly empowered National Human Rights Institution, and also applying equally to any supervision agency. Much of how effectively Ombudsman Offices and Human Rights Commissions perform depends on an autonomous and well-embedded status for them in national legal architecture.<sup>16</sup>

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 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. Thus the Commission is obliged 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 establishing vigilant control. 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 to advise the Government on its reporting obligations also, 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 supervising 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 necessary, 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>17</sup> The 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>18</sup> and provides guidelines on the legal obligations and accountability arrangements relevant to the conduct of the country's security agencies.

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 control body and thereby an important channel for members of the public to seek 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>19</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 at 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>20</sup> ministerial policy or court decisions.<sup>21</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>22</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 supervision. The Ombudsman of the Solomon Islands has been sorely disabled by 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>23</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>24</sup> This report revealed persistent slackness, indiscipline, arrogance and ignorance 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 control agency in the country.

In contrast, one Ombudsman in the Solomon Islands did not produce any 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>25</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 controlling agencies such as the police, whose supervision 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 should. 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 well defined and broad legal mandate is important to cement the independence and powers of an effective supervision 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 control 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, 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 establishing 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.

## NOTES

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1. This section is adapted from D. Bayley, *Democratising the Police Abroad: What to Do and How to Do It*, National Institute of Justice, US Department of Justice, Washington, 2001, pp 11-15; Bruce D. & Neild R., *The police that we want: a handbook for oversight of police in South Africa*, Center for Study of Violence and Reconciliation, Johannesburg, and Open Society Justice Initiative, New York, 2004; and C.E Stone & H.H. Ward, *Democratic policing: a framework for action*, *Policing and Society*, Vol. 10, number 1, 2000, p 36.

2. Tonga Police Act, Section 9.

3. 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). 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.

4. Vanuatu Police Act, Section 59(1).

5. Vanuatu Police Act, Section 62(1).

6. Papua New Guinea Police Act, Section 21(1), entitled *Dealing with minor offences*, reads "Where the Commissioner, or a disciplinary officer, has reason to believe that a member of lesser rank has committed a disciplinary offence which, in the opinion of the Commissioner or that officer, could properly be dealt with under this section..." and Section 23(1), *Dealing with serious offences*, states "where there is reason to believe that a member of the Force has committed a disciplinary offence other than an offence that is or is intended to be dealt with as a minor offence, it shall be dealt with as a serious offence".

7. Fiji Police Act, Section 32A(a).

8. Fiji Police Act, Section 32A(b).

9. Kiribati Police Act, Section 8; Vanuatu Police Act, Section 5; Solomon Islands Police Act, Section 6; Fiji Police Act, Section 6.

10. Transparency International, *National Integrity Systems 2003: Papua New Guinea*, p. 27.

11. Police Service Administration Act 1990 (Queensland, Australia), Section 4.2(1).

12. In the Solomon Islands, it was previously the Criminal Investigation Department (CID) that handled all allegations of corruption by police officers. During the prolonged internal conflict which radically factionalised the police force, the CID was absolutely railroaded and disabled in its work. 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.

13. Government of Papua New Guinea and the Institute of National Affairs, *Report of the Royal Papua New Guinea Constabulary Administrative Review*, 2004, p. 78

14. S. Dinnen, "Building Bridges: Law and Justice Reform in Papua New Guinea", *State, Society and Governance in Melanesia*, Discussion Paper 02/2, Canberra, 2002.

15. United Nations, Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (The Paris Principles), 1993, available at <<http://www.ohchr.org/english/law/parisprinciples.htm>>, access on March 10, 2006.

16. 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.
17. United States of America, Bureau of Democracy, Human Rights and Labour, *Country Reports on Human Rights Practices 2002: Fiji*, United States Department of State, 2003.
18. Fiji Human Rights Commission, *National Security and Human Rights Handbook, 2003*, available at <[http://www.humanrights.org.fj/pdf/inside\\_pages\\_changes.pdf](http://www.humanrights.org.fj/pdf/inside_pages_changes.pdf)>, access on 10 March 2006.
19. 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.
20. Section 219(3).
21. Section 219(5).
22. 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*, p. 1.
23. Transparency International, *National Integrity Systems: Solomon Islands*, 2004, p. 11.
24. Transparency International, *National Integrity Systems: Solomon Islands*, 2004, p. 24.