United Nations **Human Rights**

Office of the High Commissioner for Human Rights (OHCHR)
Regional Office for the Pacific

Torture prevention in the Pacific: sharing good experiences and lessons learnt

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Introduction

This report focuses on initiatives to prevent torture in the Pacific. It follows a thematic study by the Regional Office for the Pacific of the United Nations Office of the High Commissioner for Human Rights (OHCHR), *A Region-Wide Assessment of Laws on the Prevention of Torture and other Ill-Treatment of Detainees*, which covers the countries of the Pacific Islands Forum (PIF).

OHCHR's work in the area of torture prevention has revealed a number of good practices for preventing torture in the Pacific that had not been shared well among Pacific Island countries, despite the interest for learning through Pacific examples. This report intends to help share some of this experience.

The original thematic study examined the role of legal frameworks as an essential part of any programme to combat torture. In the Pacific, legislatures and judiciaries have created some best practices on the prevention of torture through exemplary legislation and case law. As can be seen from the OHCHR *Region-Wide Assessment of Laws on the Prevention of Torture and Other Ill-Treatment of Detainees,* the Pacific region generally has a good level of legislative compliance with international torture prevention standards. Vanuatu's legislation, along with that of PNG and the Solomon Islands, particularly stands out for compliance.

Laws and regulations are not in themselves sufficient to prevent torture; they also need to be properly understood and rigorously applied. Moreover, torture prevention cannot be limited to just legislation and case law.

In order to advance efforts to prevent torture in any one country, a series of measures have to be taken and these measures need to be backed by political action from the country's leaders. Such measures include the ratification of international instruments, the introduction and implementation of legislation, regulations, rules and policies, including the creation of accountability and protection mechanisms. The General Recommendations of the Special Rapporteur on torture (see annex A) provide guidance to states and others on concrete steps that can be taken to tackle the issue of torture and ill-treatment.

The Special Rapporteur's first recommendation, to ratify the Convention against Torture (CAT) is worth underlining. PIF Countries already have a legal prohibition on torture in place, whether in the Constitution, legislation or case law. However, they have not ratified the Convention.

On 11 August 2011, Vanuatu joined the other 147 countries that prohibit torture through accession to the CAT. Vanuatu was the first Pacific Island nation to accede to the CAT. The accession signalled a clear commitment to develop a legal and policy framework and control mechanisms to prevent torture and other forms of ill-treatment.

This report examines Vanuatu's decision to accede to the Convention against Torture and how the government is using it to forward its justice and security sector reform process.

Ratification of the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment (OPCAT) is another key issue for the region. It has been ratified by only one nation in the Pacific, New Zealand (2007). Australia signed OPCAT in May 2009, but has not yet ratified. This report examines New Zealand's experience with implementing the OPCAT to see what lessons can be drawn from its experience that may be useful for other Pacific nations.

The report then examines three examples of torture prevention activities within the wider justice and security sectors. The first section examines the prevention of torture within the context of penal reform in Vanuatu. The second examines Tonga's experience with torture prevention within police reform. And finally we examine how Papua New Guinea's Ombudsman has developed an oversight mechanism to assist with police reform.

The report then examines the lessons learnt with a particular emphasis on the role of human rights within justice and security sector reform and the important role that can be played by the nongovernmental sector.

Women's prison, Port Vila, Vanuatu. Photo by OHCHR, 2011

Section I: Vanuatu's accession to the Convention against Torture

On 11 August 2011, Vanuatu joined the 147 countries that prohibit torture through becoming a State Party to the CAT. Vanuatu was the first Pacific Island nation to accede to the CAT. In acceding to the CAT Vanuatu made a clear commitment to develop a legal and policy framework and control mechanisms to prevent torture and other forms of ill-treatment.

Background

Vanuatu's decision to accede to the CAT should be primarily understood in the context of Vanuatu's overall justice sector reform. The reforms are a response to violence, human rights and public security concerns raised by repeated mass prison break outs, and the failure of the colonial-era justice system to respond adequately. But the accession can also be seen as a welcome sign of the growing recognition of human rights in the region and growing engagement with the international system.

In January 1998, protests against official corruption deteriorated into widespread rioting, looting and violence in the capital, Port Vila. The riots were triggered by a report of the Vanuatu Ombudsman into the mismanagement of funds by the National Provident Fund. Police responded to the riots with mass arrests. On 13 January 1998, a state of emergency was declared. It lasted until 10 February. In anticipation of the mass arrests, prisoners at Port Vila Central Prison were transferred to a smaller facility, the former British prison, to make way for the newly arrested detainees. During the crisis some 500 suspects were detained in police stations and the Vanuatu Mobile Force (VMF – a paramilitary arm of the police) barracks. The tactics used by the police resulted in widespread allegations of ill-treatment. In September 1998, Amnesty International (AI) published a report alleging widespread human rights abuses of the detainees held in Vanuatu's jails.[1]

View from inside a cell, at the high risk prison, Port Vila, Vanuatu
Photo by OHCHR, 2011

Some ten years later, concerns remained over ill-treatment in Vanuatu's jails. On 5 December 2008, a report written by the prisoners in the main Port Vila jail, documenting ill-treatment was widely disseminated. The report contained a number of demands. The prisoners gave the government fourteen days to respond. The Acting Head of Corrections did not facilitate attempts by two Members of Parliaments (MPs) to broker negotiations. On 19 December, when the government failed to respond, the prisoners staged a mass escape. They burnt down the French prison complex,

1 Amnesty International 'Vanuatu: No safe place for prisoners', January 2008 AI Index ASA 44/01/98 http://www.amnesty.org/en/library/asset/ASA44/002/1998/en/d36fe8b1-d9b4-11dd-af2b-b1f6023af0c5/asa440021998en.pdf

in Port Vila. The two MPs were arrested and charged with a range of crimes including obstruction of police and harbouring a prisoner. The detainees were recaptured and allegedly ill-treated.

The government established a commission of inquiry to investigate the claims of ill-treatment. The commission reported in August 2009 and recommended a review of the Correctional Services Act and the building of new detention facilities.

Death in custody

On 4 March 2010, the report of a coroner's inquest (conducted by a New Zealand Judge) into the death of escaped prisoner John Bule was released. The prisoner died after sustaining multiple injuries while in police custody following his recapture in March 2009. The report found evidence of abuse by the Vanuatu Mobile Force (VMF). It recommended an inquiry into the prisoner's death and a reduction of the VMF's powers.[2] The report noted instances of intimidation during the inquest, including a death threat against the New Zealand Judge in charge of the inquest from a senior VMF officer.[3] The Police Commissioner (who had been suspended from the corrections department following his alleged involvement in the beating of a journalist[4]), had to be recalled twice for failure to produce documents, including a duty roster for the night in question, which appeared to be fabricated.[5] The report exacerbated existing tensions between the security forces and the government. Vanuatu had a poor record of civilian control of the security forces[6] The 2010 US State Department Annual Human Rights report on Vanuatu highlighted domestic concerns over police abuse.

The Government responds to public concern

On 12 May 2009, Vanuatu became the third PIF country to be reviewed by the United Nations Human Rights Council under the Universal Periodic Review process. During its Universal Periodic Review (UPR) in May 2009, the Government of Vanuatu agreed to accede to the CAT and its Optional Protocol.[7] The Government of Vanuatu also committed to implement all UPR recommendations on prison conditions and the practice of torture and ill-treatment in places of detention. These commitments were also reiterated by the Government in May 2010, in Port Vila, during a High Level Meeting on the Prevention of Torture and Ill-Treatment organised with OHCHR.[8]

Vanuatu's reform process

Crime in Vanuatu remains relatively low, compared with other Melanesian states, but appears to be rising as a result of urbanisation, inter-island migration, rapid social and economic change, economic stagnation and high population growth.[9]Perceptions of increasing violent crime, fuelled by prison break outs, and the failure of the Government to respond, have impacted on perceptions of public security.

Like in many other Pacific nations, there is a wide ranging consensus that justice sector reform is needed. There is also agreement that Vanuatu's imported justice system is not the answer. Any system that is going to work will need to respond to Vanuatu's particular geography, cultures and socio-political and economic context.

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2 The Coroner's Report, 4 May 2009. In the Coroners Court of the Republic of Vanuatu, Post Mortem Case no 29 of 2009, Inquest into the Cause of Death of John Bule.
3 Ibid
4 Vanuatu Daily Post Report, ' Minister Suspends Caulton and Bong' 27 March 2009, Print Edition page 1.
5 The Coroner's Report, 4 May 2009. In the Coroners Court of the Republic of Vanuatu, Post Mortem Case no 29 of 2009, Inquest into the Cause of Death of John Bule,
6 For a more detailed history of these relations see for example, Shanahan, Thomas Enhancing security sector governance in the Pacific : a strategic framework / Thomas Shanahan, Eden Cole and Philipp Fluri. – Suva, Fiji : UNDP Pacific Centre, 2010.
7 Paragraph 19 of the Working Group Report for Vanuatu, UPR http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/138/65/PDF/G0913865.pdf?OpenElement
8 May 2010, meeting organized jointly by the Ministry of Justice and Community Services of Vanuatu and the Regional Office for the Pacific of the Office of the High Commissioner for Human Rights (OHCHR).
9 Vanuatu Correctional Services, Project Phase II, Project Design Document,(Supported by NZAID under the NZAID/Vanuatu Bilateral Aid Programme)January 2006

Container style prison quarters, new model prison, Port Vila, Vanuatu
Photo by OHCHR, 2011

Reform and abuse

Law enforcement since colonial times has been based on punitive attitudes that have contributed to an institutional culture of acceptance of ill-treatment of detainees. Abuses by law enforcement officials have traditionally been regarded as a low priority and have been broadly tolerated by the Government.[10] Vanuatu's public, unsurprisingly, has also been tolerant, even openly supportive, of these abuses. The public has tended to view those detained as having brought punishment upon themselves. There has appeared to be limited understanding or concern, amongst the public, that the police have exceeded their powers. Questions of accountability are not necessarily a priority to the victims of crime, as Dinnen, the respected academic, has noted:

'While these issues certainly worry Pacific islanders—albeit the small percentage of them (particularly Melanesians) who actually have access to state institutions—more parochial daily issues such as domestic violence, assault, burglary and sexual violence, rather than corruption and accountability, lie at the heart of their security concerns.'[11]

But this tolerance appears to have limits and there was widespread disquiet over the manner of John Bule's death, which subsequently became a symbol of the need for reform. Government, senior civil servants and other justice sector stakeholders have acknowledged that the practice of torture and ill-treatment has been widespread. Equally, there has been recognition that the current laws, regulations and administrative practices have been failing to prevent these abuses. As President of Vanuatu, His Excellency Lolu Johnson Abil underlined:

'*We must recognise that acts of torture have been happening in our country; some of the conditions under which Vanuatu citizens have been deprived of their liberty can legitimately be described as below the requirements of international standards.'*[12]

There has also been public acknowledgement that abuses need to be addressed as part of reform. As the former Justice Minister Bakoa Kaltongga noted, abuses by the police damage reform efforts:

10 Adam Dudding Star Times, 'A Recipe for Political Instability', 20 June 2010 http://www.pcf.org.nz/documents/articles/Adams%20vanuatu%20story.pdf

11 Sinclair Dinnen and Abby McLeod: The Quest for Integration: Australian Approaches to Security and Development in the Pacific Islands, Security Challenges, Vol. 4, No. 2 (Winter 2008), pp. 23-43, http://www.securitychallenges.org.au/ArticlePDFs/vol4no2DinnenandMcLeod.pdf

12 Statement made by President of the Republic of Vanuatu, His Excellency Lolu Johnson on 12 May 2010. OHCHR jointly hosted a high-level meeting with the Vanuatu Ministry of Justice and Community Services members on the Elimination of Torture and Ill-treatment of detainees. during the 12th May High Level meeting wit then

"Some people think torture of prisoners is permissible as a form of punishment for the misdeeds that they have carried out. However, this way of thinking undermines the rule of law and the dignity of our own Pacific people. It is a judge who must determine a punishment, and not the police, prison officials or others. The law allows only a judge to impose a penalty for a crime and only a lawful penalty, such as imprisonment or a fine. In Vanuatu, a judge is not allowed to order beating or lashing or any physical harm. If a judge cannot order it, then it is clear that a policeman or other official has no right to order or inflict such a punishment." [13]

"Before" *"After"*

Sleeping arrangements in an older low-risk prison and inside a container cell in the new model prison, Port Vila, Vanuatu. Photo by OHCHR, 2011

The message that tackling abuse needs to be a part of reform processes is also underlined in section III on the reforms to the correctional services sector in Vanuatu.

From accession to implementation

The Government of Vanuatu took a practical approach to accession of CAT, not requiring full compliance with the provisions of CAT before its accession, rightly seeing accession as the first step of a process. The treaty provides the aims and framework to work for the eradication of torture and it is for the government, in collaboration with other stakeholders, to take the necessary policy and legal reforms that will ensure compliance.

Ratification of or accession to CAT provides law enforcement bodies with a framework to consider their practices and address issues through training and institutional reform. For example, members of the correctional services management highlighted the very positive responses of staff to the OHCHR training on the Convention carried out in May 2010 and encouraged further such training.

Similarly, Correctional Services has been pushing for the establishment of external monitoring. They have proposed that an external monitoring team, composed of various stakeholders including civil society organizations, monitor

13 On 12 May 2010 OHCHR jointly hosted a high-level meeting with the Vanuatu Ministry of Justice and Community Services members on the Elimination of Torture and Ill-treatment of detainees. The meeting was also attended by the UN Special Rapporteur on Torture, Manfred Novak. During the meeting the Vanuatu Minister of Justice and Social Welfare of the Republic of Vanuatu, Bakoa Kaltongga, committed the Vanuatu Government to acceding to the Convention Against Torture before the end of 2010.

the conditions and treatment of inmates as a way to identified and address problems.[14] It is worth noting, in this regard, that the Ombudsman's office in Vanuatu enjoys a mandate to carry out prison monitoring, but so far has not addressed the issue.

Vanuatu has particular difficulties in applying law as a result of the different legal traditions that were part of its colonial experience. Legal reform is central to justice sector reform. CAT accession adds value to this reform process by providing an opportunity for the country to review existing laws and revise them in line with international standards. A legislative review has begun with support of Australia's Attorney General's Department.

Implementation of CAT and its costs

Implementation can be an expensive process. However, in a context of reform, it need not be. Vanuatu has been engaging in very significant reform of its justice sector. The costs of implementation of CAT, if the sector plan conforms with CAT framework, would be incorporated into existing financial commitments.

OHCHR Training for Correctional Officers on the CAT in Vanuatu. Photo by OHCHR, 2011

Since most countries in the region are also undergoing security and justice sector reform, ratification and implementation of the CAT should similarly be integrated into their larger reform agenda. Donors and development partners in the region are themselves committed to the principles in the CAT, being parties to it, and so should support CAT compliance within justice sector programming.

Further, it is increasingly evident that compensation for abuse is becoming a significant cost to the government. While large amounts of money are paid out in Vanuatu in compensation for the abuses of law enforcement agencies, these remain outside the public purview. In PNG, for example, the government has spent the equivalent of over 43 million US dollars in compensation for police beatings, mistreatment and destruction of property in the last ten years.[15]

Emerging rights discourse in the Pacific

The accession to CAT in Vanuatu may hold lessons for the region. The prohibition against torture is absolute under international law; it does not matter whether countries have ratified CAT or not. As Vanuatu discovered external criticism of Vanuatu's record was already apparent, even though it had not ratified CAT.

In the Pacific islands region, human rights have not yet been widely accepted as reflecting the culture of the Pacific. This perception has fuelled resistance to work on human rights throughout the Pacific and the ratification of international human rights instruments has not been a high priority for most Pacific Island governments. Ratification of human rights instruments has also not been a high profile priority of regional development partners and ratification has traditionally been limited to pressing needs (environment or fisheries) or pressure to respond to external development partners requests to address regional priorities (security and anti-terrorism).

14 The Optional Protocol to the Convention against Torture establishes a national system of monitoring of places of detention (see Article 2 of OP CAT section below). Vanuatu has not yet ratified the Optional Protocol.

15 http://pidp.eastwestcenter.org/pireport/2011/August/08-02-15.htm

However, there has been a growing political recognition of human rights, including at the highest level. Under the Pacific Plan, the strategic document of the Pacific Island Forum, regional leaders committed themselves to creating a region respected for the quality of its governance, the sustainable management of its resources, the full observance of democratic values, and the defence and promotion of human rights.[16]

Vanuatu's ratification can be seen as an early expression of emerging human rights awareness in the region. Human rights are increasingly being understood by reformers, not as a threat, but rather as an instrument of reform toward good governance, security and development.

The centrality of human rights in reform of the justice sector

Vanuatu's decision to accede to CAT does not appear to be a response to external pressure, but rather appears to be home grown. It responds to Vanuatu's needs. The reform of the justice sector is not unique to Vanuatu. The punitive legacy of law enforcement since colonial times and the increasingly evident failure of transplanted models have led to the realisation that justice systems must reflect the particular needs of Pacific Island states.

What is new in the initiatives presented in this report is the increasing recognition of the centrality of human rights in supporting reform and the provision of public security. This is supported by an increasing recognition that human rights abuses perpetrated by law enforcement officers, which may represent a far greater obstacle to reform than was previously thought.

Vanuatu's decision to accede to the CAT is perhaps the most explicit recognition of this linkage. The CAT provides Vanuatu with a clear framework including legal, policy and institutional reform, as well as programmatic and other measures that will allow Vanuatu to effectively address abuses. The ratification of CAT is seen by reformers as an instrument that will help Vanuatu break away from its colonial legacy and enable reforms in the justice sector that respond to Vanuatu's unique characteristics.

16 In October 2005, the Pacific Island Forum leaders adopted the Pacific Plan of Action for strengthening Regional Cooperation and Integration (the Pacific Plan) and they committed to "where appropriate, ratify and implement international and regional human rights conventions, covenants and agreements and support the reporting and other requirements", Good Governance (pillar 3).

Section II: New Zealand and OPCAT[17]

'The Special Rapporteur [on torture] is convinced that there needs to be a radical transformation of assumptions in international society about the nature of deprivation of liberty. The basic paradigm, taken for granted over at least a century, is that prisons, police stations and the like are closed and secret places, with activities inside hidden from public view. The international standards referred to are conceived of as often unwelcome exceptions to the general norm of opacity, merely the occasional ray of light piercing the pervasive darkness. What is needed is to replace the paradigm of opacity by one of transparency. The assumption should be one of open access to all places of deprivation of liberty. Of course, there will have to be regulations to safeguard the security of the institution and individuals within it, and measures to safeguard their privacy and dignity. But those regulations and measures will be the exception, having to be justified as such; the rule will be openness.'[18]

Background

The Optional Protocol to the Convention and other cruel, inhuman or degrading treatment or punishment (OPCAT) entered into force on 22 June 2006.[19] It is designed to help States prevent torture and ill-treatment in places where people are deprived of their liberty. The OPCAT aims to ensure that sufficient safeguards against ill-treatment and torture are in place, and that they work in practice; and where safeguards are not adequate, that there is sufficient transparency, information and means to improve them.

Experience from around the world consistently underlines that regular monitoring of detention can be an effective way to prevent torture, ill-treatment and improve detention conditions. The idea is not new. The International Committee of the Red Cross (ICRC) has been using preventive monitoring since 1915.

There are two levels of detention monitoring provided for by the OPCAT. Firstly, the ratifying country commits to establishing national monitoring systems. Secondly, the State agrees to allow an international monitoring body to inspect its places of detention and recommend reforms. The United Nations Subcommittee on the Prevention of Torture (SPT) is the international monitoring body.

At the national level, the ratifying country establishes what are called 'National Preventive Mechanisms' (NPMs). While the OPCAT allows ratifying countries the freedom to decide which form the NPM should take, there are certain basic requirements contained in the OPCAT. In addition, in 2010 the SPT issued its "Guidelines on national preventive mechanisms" (CAT/OP/12/5), with the purpose of advising and assisting States and NPMs fulfil their obligations under the OPCAT.

NPMs are given powers to regularly and freely visit places of detention. Based on their findings, they make recommendations aimed at strengthening procedures, improving treatment and conditions, and ultimately preventing torture and ill-treatment. The national monitoring bodies must be independent of the State. They must have unconditional access to places of detention. They must have access to all relevant documentation. And there must be adequate protection against reprisals for those cooperating with the NPMs

New Zealand and OPCAT

'New Zealand has taken its OPCAT arrangements forward in ways that emphasise that each nation's model should ideally grow out of its existing structures, culture and political arrangements.'[20]

17 This section draws very directly from the 2010 Annual report of NHRC New Zealand on NPMs.
18 Sir Nigel Rodley, UN Special Rapporteur on Torture; A/56/156 (2001)
19 OPCAT, adopted by the UN General Assembly, UN Doc. A/RES/57/199, 18 December 2002, entered into force 22 June 2006,after twentieth instrument of ratification/accession. Available at http://www2.ohchr.org/english/law/cat-one.htm.
20 Richard Harding and Neil Morgan – OPCAT in the Asia-Pacific and Australasia

New Zealand is one of the larger Pacific nations with a population over four million. It has a mature democracy and rule of law and a well established human rights culture. New Zealand's laws generally reflect human rights standards and it has a range of complaints and monitoring processes. It has a variety of places of detention including: prisons, police cells, court cells, immigration facilities, health & disability facilities, child and youth residences, and military facilities. It has comparatively low rates of abuse within places of detention.

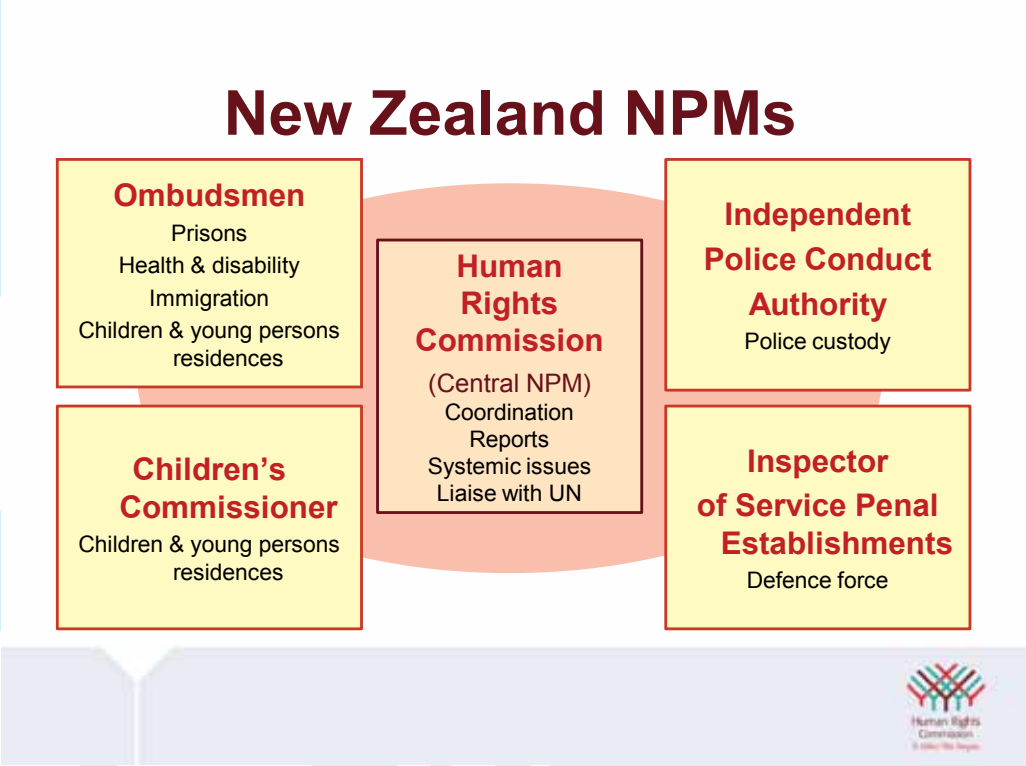
New Zealand is the only Pacific Islands Forum country to have become a State Party to the OPCAT. It signed the OPCAT in 2003 and then carried out an exhaustive assessment of options, existing bodies and legislation. The assessment outlined and guided the reforms and changes required. New Zealand became a party to OPCAT in March 2007, following the enactment of amendments to the Crimes of Torture Act 1989, which provided for detention visits by international and domestic monitoring mechanisms. The NPMs functions were assigned to:

- the Office of the Ombudsmen – in relation to prisons; immigration detention facilities; health and disability places of detention; and Child, Youth and Family residences;
- the Independent Police Conduct Authority – in relation to people held in police cells and otherwise in the custody of the police;
- the Office of the Children's Commissioner – in relation to children and young persons in Child, Youth and Family residences;
- the Inspector of Service Penal Establishments of the Office of the Judge Advocate General – in relation to Defence Force Service Custody and Service Corrective Establishments;

The Human Rights Commission has been given an overall coordination role as the designated Central NPM.

The Central National Preventive Mechanism

The Human Rights Commission of New Zealand[21] is the Central NPM. This entails coordination and liaison with other NPMs, identifying systemic issues and making recommendations, and liaising with the UN Subcommittee.[22]



21 The Commission is an independent Crown entity with a wide range of functions under the Human Rights Act 1993. One of the Commission's primary functions is to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand.

22 The functions of the Central National Preventive Mechanism are set out in section 32 of the Crimes of Torture Act.

Multiple NPMs

New Zealand chose to design its monitoring system to use and build on existing mechanisms. This was done to draw on existing resources, expertise, relationships and profile and avoid duplication. It also recognises the different circumstances and requirements of various detention contexts. In this regard, the Subcommittee has stated that the "NPM should complement rather than replace existing systems of oversight and its establishment should not preclude the creation or operation of other such complementary systems." (Guidelines on NPMs, CAT/OP/12/5)

Monitoring

New Zealand's OPCAT mechanisms have developed procedures applicable to each detention context. The general approach to preventive visits, based on international guidelines, involves:

- Preparatory work, including information collection and identifying specific objectives before a visit takes place.
- The visit itself, during which the NPM visitors speak with management and staff, inspect the institution's facilities and documentation, and speak with people who are detained.
- Upon completion of the visit, discussions with the relevant staff, summarising the NPM's findings and providing an opportunity for an initial response.

Results

The OPCAT ratification has led to improvement in prison conditions. For example, a visit to one prison found that too much time was spent in locked cells, and that the prisoners were eating in cells in close proximity to toilets which was unhygienic and unacceptable. The prison took action on the findings increasing the time that cells were unlocked and prisoners ate their meals in the prison dining room rather than in their cells. During visits to a child and youth residences, children said that they wanted to have more of a say in how residences could be improved. Suggestion boxes have since been installed in all residences.

OPCAT visit findings and NPM discussions have also highlighted some issues around the legislative basis, policies and practices regarding the use of restraints and searches of people in detention. There are indications of variations between agencies, as well as local variations in policy and practice. There are also indications that some powers are being used on a more routine basis than currently provided for in legislation.

The NPMs in New Zealand have continued to receive referrals and requests for input from agencies and institutions that recognise the benefits and potential of the OPCAT mechanism to improve conditions, reduce risks and prevent harm. These positive engagements and the development of strong relationships with agencies are a sign of improved transparency and have also shown the value of OPCAT ratification.

Is New Zealand's experience relevant to the Pacific?

In their paper examining the New Zealand OPCAT experience, Harding and Morgan identify two key challenges facing Pacific states:[23]

- How do OPCAT's expectations fit with each of the Pacific nations' unique cultures and contexts?
- What strategies can best be employed to make OPCAT implementation practical and feasible, especially in places with limited economic resources?

In both cases it would appear that New Zealand's experience of implementing OPCAT offers part of the answer. New Zealand's system is explicitly non-transferable to other countries: it was designed to fit New Zealand's needs and its operating context.

23 Ibid

At first glance, this might suggest that New Zealand has nothing to offer other Pacific nations. However, rather than examine the detail of *what was done*, it may be more important to examine *how it was done*: *'its manner of implementation is an example of politico-cultural realism driving local solutions and, thus, is a regional exemplar of what must be done if the OPCAT is to thrive.*[24]

As with the CAT, the OPCAT is not prescriptive. It is deliberately silent on the detail, in recognition of the need for States to develop monitoring mechanisms that conform with their own context and uniqueness. New Zealand has '*gone about implementation of the OPCAT in ways that should work for New Zealand, rather than conceptualising a new model that may look wonderful on the drawing board but may not work on the ground.*'[25]

In terms of addressing questions of practicality, feasibility and resourcing, it is important to understand that New Zealand did not begin to implement the OPCAT with their systems fully developed and in place. The OPCAT provides at least one year from the time of ratification, which can be extended up to three years, in order to have an NPM in place. New Zealand decided not to create new bodies, but rather adapt those that they already had in place and to draw on existing expertise, skills and working modalities. They recognised that their system was a work in progress. And from the resource perspective the resulting system worked from within existing budget allocations.

It should also be noted that in small countries with limited detention facilities, the implementation of OPCAT is correspondingly simple, compared to its implementation in larger countries with many detention facilities.

It is also important to note that developing countries that ratify the OPCAT also have access to the OPCAT Special Fund, which can finance the implementation of recommendations made by the international monitoring body set-up under the OPCAT, the Subcommittee, following a country visit.

24 Richard Harding and Neil Morgan – OPCAT in the Asia-Pacific and Australasia
25 Ibid

Section III: Torture prevention in the context of justice and security sector reform: Vanuatu and corrections reform

Prior to reform: Prisons conditions and the prevention of torture

'Paradoxically, prison – which is part and parcel of the legally constituted state – is more often than not a no-go area for the rule of law. It is a place where a powerful armed group, vested with the full authority of the law and the full force of the state, wields excessive power over a subordinate population, who are viewed as outlaws and supposedly deserving of whatever they get.'[26]

Even under optimal conditions prolonged detention can lead to serious long-term physical and psychological problems. These are exacerbated in poor conditions. The Pacific's prisons, for the most part, are closed, isolated institutions, outside the public purview. Conditions of detention in many countries are characterized by severe overcrowding, aging infrastructure and inadequate food, drinking water, medical care and sanitary conditions.

Detention under such circumstances can amount to torture and other forms of cruel and inhuman treatment.[27] A 1998 Amnesty International Report on Vanuatu prisons described conditions *'amounting to cruel inhuman and degrading treatment in decaying, overcrowded former colonial prisons.'*[28] These were compounded by the abuses perpetrated by the Vanuatu police. Prior to reform, prisons in Vanuatu were staffed by police officers who brought an institutional culture that allowed abuse (see section I). Police officers were trained and equipped, often inadequately, as police, not for the very different role required for correctional work.

As with many countries in the region, Vanuatu relied on imprisonment as the primary means to combat and prevent crime and did not promote the use of alternatives to detention. The result compounded overcrowding and resulted in the overuse of the amnesty powers of the President[29] and the Minister of Interior. The powers lacked proper process and were subject to concerns over politicised decision making, which did not ensure security and human rights protections. In 2005, for example, the convicted murderer Paul Wari was released by the then Minister, despite having only served less than four years of his sentence. The Judge had ruled at the time of sentence that Wari was a dangerous offender who should not be considered for early release. After his release, Wari then repeated his dangerous offending, murdering a store-owner in early 2008.[30]

The crisis of Vanuatu's penal system

Amnesty International's report provided new momentum to existing pressure for reform.[31] Demands for reform were not new. In 1987, a detailed study into prison conditions was conducted by police and prison officials and urged that new prison facilities be provided.[32] In March 1997, the Minister for Justice stated that: 'Vanuatu's *'prison system is currently in an extremely poor state. There is considerable overcrowding. The buildings are old and require substantial repair and maintenance work. There is no adequate provision for female prisoners and the only schemes for effective rehabilitation programs have been the individual initiatives of prison superintendents.* [...] *Prisoners in some gaols grow their own food to supplement an otherwise meagre diet.'* [33]

26 Ahmed Othmani, Sophie Bessis, 'Beyond prison: the fight to reform prison systems around the world' 2008
27 See for example Amnesty International http://www.amnesty.org/en/detention
28 Amnesty International 'Vanuatu: No safe place for prisoners', January 2008 AI Index ASA 44/01/98 http://www.amnesty.org/en/library/asset/ASA44/002/1998/en/d36fe8b1-d9b4-11dd-af2b-b1f6023af0c5/asa440021998en.pdf
29 Article 38 of the Constitution provides that 'The President of the Republic may pardon, commute or reduce a sentence imposed on a person convicted of an offence. Parliament may provide for a committee to advise the President in the exercise of this function 5 Section 30 of the Prisons (Administration) Act
30 Radio New Zealand International, 'Vatu police arrest suspect in brutal Vila killing', Posted at 23:15 on 27 June, 2008 UTC, http://www.rnzi.com/pages/news.php?op=read&id=40597
31 Amnesty International 'Vanuatu: No safe place for prisoners', January 2008 AI Index ASA 44/01/98 http://www.amnesty.org/en/library/asset/ASA44/002/1998/en/d36fe8b1-d9b4-11dd-af2b-b1f6023af0c5/asa440021998en.pdf
32 Ibid
33 Ibid

In 1999, the Ombudsman published a report on prison conditions. The report found that *'food rations, the type of bedding, the level of hygiene, the need for segregation of prisoners, the lack of exercise, rehabilitation and library all resulted in conditions far below the desired standards.'*[34]

By 2005 the system was near collapse. The Chief Inspector of Prisons told the media that the police had lost control. Poor conditions led to prison break outs and the police could do nothing to stop them, saying '[w]e only counsel them about not running away from jail'.[35]

On 19 December 2008, Vanuatu's penal system reached a crisis point. Following a report by prisoners on their conditions of detention and the failure of the government to respond, the prisoners burned down Vanuatu's main jail and escaped en masse.

The reform process

Reforms had been planned for many years. In 2003, the government issued a *'Report of a Feasibility Study into Vanuatu Prisons and Correctional Services'*.[36] The result was the Correctional Services Project, funded by the New Zealand aid programme (NZAID), which began in 2005.[37] In 2006, the management of the prisons was transferred from the police to the civilian Department of Correctional Services.

An amended Vanuatu Correctional Services Act took effect in August 2006. The purpose of the new Act was to provide for the administration and operation of a correctional services system that would promote public safety and contribute towards the maintenance of a just society by:

- ensuring that sentences are administered in a just and effective manner;
- providing correctional facilities based on internationally accepted standards for the fair and humane treatment of offenders;
- reducing re-offending by managing the rehabilitation of offenders and their reintegration into society;
- providing useful and timely information to Courts and Community Parole Boards to assist them in determining decisions relating to the rehabilitation and reintegration of offenders.[38]

The Act created a new Department of Correctional Services.The philosophy of the new Department aimed to build on Vanuatu 'Kastom' and values, while maintaining consistency with universal human rights principles and United Nations Conventions.[39]

In October and November 2006, over 30 newly hired and trained civilian correctional and probation officers replaced the police in all facilities. Most of the staff had no previous experience in corrections. It was unsurprising that initially conditions and public security did not improve. There were regular complaints that prisoners were being allowed to get drunk in prison, leave the prison premises and used the prison to hold stolen goods.[40]

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34 Ibid

35 Ricky Binihi, 'All Runaway Prisoners Behind Bars', Vanuatu Daily Post (Port Vila), 4 August 2005, 5 quoted from Forsyth Miranda, ' A Bird that Flies with Two Wings: the Kastom and State Justice Systems in Vanuatu', thesis submitted for the degree of Doctor of Philosophy of the Australian National University, July 2007 http://cigj.anu.edu.au/cigj/link_documents/Publications/Forsyth_Bird_Flies.pdf

36 Vanuatu Correctional Services Project Phase II, Project Design Document, (Supported by NZAID under the NZAID/Vanuatu Bilateral Aid Programme), January 2006

37 Ibid

38 Vanuatu Correctional Services Project Phase II, Project Design Document, (Supported by NZAID under the NZAID/Vanuatu Bilateral Aid Programme), January 2006

39 For example, International Covenant on Civil and Political Rights (article 10), Convention for the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child.

40 Forsyth Miranda, ' A Bird that Flies with Two Wings: the Kastom and State Justice Systems in Vanuatu', thesis submitted for the degree of Doctor of Philosophy of the Australian National University, July 2007 http://cigj.anu.edu.au/cigj/link_documents/Publications/Forsyth_Bird_Flies.pdf

Following a deterioration in security, the government brought police back into the prisons, deploying the Vanuatu Mobile Force as correctional officers. On the heels of this decision, allegations of abuses of prisoners resumed in early 2008 (see section I).

Ablution block at the low risk prison, Port Vila, Vanuatu. Photo by OHCHR, 2011

However, by May 2009, it would appear that the reform process began to take hold, with police again removed from the prisons and replaced by correctional officers and the building of a temporary high security unit out of converted shipping containers (now known as "container city") near the ex-'British' prison, supported by New Zealand. These changes, although not stopping all escapes, did mark an end to mass break outs.

Lessons learnt

The lessons learnt in penal reform in Vanuatu would appear relevant for other Pacific nations. The conditions and abuses in Vanuatu's prisons, prior to reform, can be seen in other prisons of the region.

Vanuatu's prison and wider judicial sector reforms have a long way to go. However, in the domain of prevention of torture, the progress must be viewed as a model. Prior to reform torture and ill-treatment were systematic. Post-reform, although there have been incidents reported, there is a consensus view in Vanuatu that torture and ill-treatment appear to have been effectively eradicated from the institutional culture of the correctional department. This can be ascribed, in large part, to the removal of the police and the abusive institutional culture they brought with them and its replacement with a culture underlining modern correctional management that aims to conform with international human rights norms.

From the public security perspective the record is also positive. Vanuatu's experience with prison reform, once again, underlines the negative impact of police abuse on public security. The abuses of the police in the prison system led to two mass prison break outs, both of which constituted two of the most significant threats to public security in Vanuatu's post-colonial experience. Since 2009, however, the number of breakouts has fallen dramatically. As with the other cases presented in this report, the distinguishing feature of the reforms has been the recognition of the link between security and the need to improve human rights compliance through addressing human rights violations carried out by security sector personnel.

While staff replacement may not be feasible or practical in other contexts, the success of Vanuatu's reform underlines the centrality of changing institutional culture and ensuring accountability and zero tolerance for abuse.

Inside the high risk prison, Port Vila, Vanuatu. Photo by OHCHR, 2011

Moreover, the scale of the achievement is underlined in the context of Vanuatu, which at the time suffered no consistent leadership in the correctional services, prison riots, escapes, the burning down of the main prison and public opposition to the direction of reforms. The government of Vanuatu, the staff of the correctional services as well as the New Zealand government and its advisers should be congratulated on the achievement.

Legislation

The reforms were assisted by new legislation, which reflected a more progressive approach to corrections. Having a strong legislative base where the objective is fair and proper treatment of detainees provides an important base for improved human rights compliance and improved security. The law was backed up with a specific Code of Conduct for staff, and with the accession to CAT in Vanuatu, specific references to the Convention are planned to be included in an updated version. This reflects a conscious decision to include reference to human rights as part of the organisational culture.

Parole

The system of parole, or prisoner release, was also included in the reforms. The establishment of a process for paroling detainees appears to have formalised the approach to prison releases. A Supreme Court Judge and two representatives from the community make these assessments, which have made the process clear and transparent. A system of voluntary Community Justice Supervisors who administer Court ordered sentences was also established and has appeared to work well and enjoyed strong public support. Others have noted that it created a useful feedback loop whereby the Parole Board could query the situation of particular detainees.

Role of civil society

The Correctional Services Department actively sought to end its isolation from the wider public. Members of the Supreme Court visited the prisons. Authorities permitted prisoners and detainees to submit complaints to judicial authorities without censorship and to request investigation of credible allegations of inhumane conditions. OHCHR has had access to prisons during visits to the country. The Correctional Services Department encouraged the Ombudsman's office to conduct visits, as it did during the 1990s, but the institution has been subject to capacity and leadership constraints, which is itself a cause for concern.[41]

The Government of Vanuatu has been considering the establishing a national human rights institution (NHRI). This would be an appropriate body to monitor detention facilities, but, as the experience with the Ombudsman institution has demonstrated, monitoring may not be effective. The experience with other countries has tended to show that NHRIs work best in an environment where civil society supports, and in some cases, pushes the NHRIs into action. The roles of CSOs and NHRIs are very different and often complementary. It is strongly recommended any future penal support consider making the modest allocation required to support independent CSO monitoring activities.

The Correctional Services Department has recognised the benefits of external monitoring. The Government of Vanuatu could also consider ratification of the Optional Protocol to the Convention against Torture, which guides the process of establishing monitoring of places of detention.

41 As outlined above, the Correctional Services Department has also been exploring ways for NGOs and independent experts to carry out monitoring of places of detention.

Section IV: Torture prevention in the context of justice and security sector reform: Tonga and police reform

Political context of police reform

Tonga, historically one of the most stable and conservative countries in the Pacific, is currently in the process of making the transition from absolute monarchy to constitutional monarchy. This challenging transition has been accompanied by social upheavals.

Demands for democracy are not new to Tonga.[42] Growing public resentment over social and economic inequities resurfaced in 2005, following privatization of a range of industries that were seen to have enriched Tonga's elite and in particular the Royal family. This led to public unrest, which intensified over the course of the year. Resentment focused on the business activities and wealth of the king and his children, in a country with increasing levels of poverty. In May 2005 there were protests over rising electricity costs and the monopoly control of the electricity company owned by the crown prince.[43]

In July the same year, wildcat strikes turned into a general strike involving over 3,000 government workers. The action was prompted by wages that had fallen behind inflation at the same time as government ministers' salaries were dramatically increased.[44]

On 8 August in the largest ever protest rally in the kingdom, up to 10,000 public servants, their families and supporters, marched through the capital Nuku'alofa to the royal palace. The tone of the strike became increasingly political: economic demands were accompanied by calls for political reform.[45] After seven weeks of protest, on 4 September, the government, fearing a popular democratic uprising, met the demands of the protestors. It was agreed that there should be a Royal Commission '*to review the Constitution to allow a more democratic form of Government to be established.*'[46]

The constitutional commission's report was presented to the then king, Taufa'ahau Tupou IV, shortly before his death in September 2006. The Palace issued a statement that the new King, George Tupou V, supported gradual reform based on 'extensive public consultation.'[47] The statement underlined that the monarchy would be '*an agent of change'* and would accept advice from Parliament about the choice of Prime Minister and that '*Cabinet ministers now come to office only on the advice of the Prime Minister rather than through the exclusive power of the Monarch.*'[48]

The public was not satisfied and sporadic protest continued. On a number of occasions, police detained pro-democracy leaders. The government repeatedly confiscated the Tongan Times newspaper in response to criticism of the government.[49]

42 David Baker 2010, 'Tonga: Crime and Punishment', Crime and Punishment around the World, Vol.3, General editor, Graeme Newman, Greenwood Publishing

43 Encyclopedia Brittanica, ' Tonga: Year In Review 2005', Primary Contributor: Barrie K. Macdonald, http://www.britannica.com/EBchecked/topic/1104377/Tonga-Year-In-Review-2005

44 Ibid

45 John Bradock, 'Public servants' strike deepens Tonga's political crisis' 19th August 2005, http://www.wsws.org/index.shtml

46 Maitangi Tonga, 'TONGA STRIKE ENDS, CONSTITUTION REVIEW EYED', 4 September 2005, http://archives.pireport.org/archive/2005/september/09-05-01.htm

47 David Baker 2010, 'Tonga: Crime and Punishment', Crime and Punishment around the World, Vol.3, General editor, Graeme Newman, Greenwood Publishing

48 Nic Maclellan, ''Elections in Tonga re-affirm call for change', Nautilus Institute for Security and Sustainability, February 2008, http://www.nautilus.org/publications/essays/apsnet/policy-forum/2008/elections-in-tonga

49 David Baker 2010, 'Tonga: Crime and Punishment', Crime and Punishment around the World, Vol.3, General editor, Graeme Newman, Greenwood Publishing

On 16 November 2006, during the final sitting of parliament for the year, several thousand pro-democracy supporters marched to parliament in Nuku'alofa. They demanded a vote on major democratic reforms before the house rose for the year. Parliament adjourned without voting on reform. In response, riots broke out. They escalated into looting and destruction of government buildings, offices and shops. An estimated 80 per cent of the capital's central business district was destroyed.[50] A state of emergency was declared on 17 November. Law enforcement agencies were given wide powers of arrest. The national defence force was deployed to support the police and Australian and New Zealand defence force personnel were flown in to assist. Eight people died in the riots.[51] The police arrested over 900 people.[52] More than 500 were charged with offences including murder, arson, sedition and theft.[53]

Human rights violations during and after the riots

In the period of uncertainty that followed the riots, almost 1,200 people, about three per cent of the population on the main island of Tongatapu, were arrested. A Tongan pro-democracy MP, Clive Edwards, expressed public concern over the ill-treatment of demonstrators and denial of medical treatment.[54]

Central Police Station, Nuku'alofa, Tonga. Photo by OHCHR, 2010

A group of prominent persons, calling themselves, 'The Community Para Legal Taskforce on Human Rights,' monitored human rights violations by law enforcement bodies. Their report, entitled, '*Documenting the Treatment of Detainees and Prisoners by Security Forces in the Kingdom of Tonga*' was published in May 2007.[55] The report was controversial within Tonga, with some feeling that such public disclosure was not the appropriate path to deal with such issues.

The report documented the ill-treatment of those arrested and detained by members of the security forces (Tonga Police Force and Tonga Defence Service). Ten per cent of those arrested and detained were interviewed. The allegations were supported by photographic and medical evidence.[56]

According to the report, 41 per cent of arrested persons were allegedly ill treated. 53 per cent reported that the police used threats of violence and intimidation to extract information and/or confessions. Incommunicado detention was routine. There was widespread abuse of criminal procedures by the security forces.

Abuses from the law enforcement agencies were not new and the courts had previously expressed concern over their frequency. For example, in 1991, the Supreme Court of Tonga stated; '*We know from a depressing series of cases in this court, both criminal and civil, that this sort of behaviour [use of unreasonable force by Police] does occur with some frequency.*'[57]

50 David Baker 2010, 'Tonga: Crime and Punishment', Crime and Punishment around the World, Vol.3, General editor, Graeme Newman, Greenwood Publishing

51 Community Para Legal Taskforce 'Documenting the Treatment of Detainees and Prisoners by Security Forces in the Kingdom of Tonga' was published http://archives.pireport.org/archive/2007/May/report%20-%

52 David Baker 2010, 'Tonga: Crime and Punishment', Crime and Punishment around the World, Vol.3, General editor, Graeme Newman, Greenwood Publishing

53 Ibid

54 Radio New Zealand International, 'Tonga MP says hundreds brutally beaten by soldiers', 28 November 2006, http://www.rnzi.com/pages/news.php?op=read&id=28612

55 Community Para Legal Taskforce 'Documenting the Treatment of Detainees and Prisoners by Security Forces in the Kingdom of Tonga' was published http://archives.pireport.org/archive/2007/May/report%20-%20torture%20in%20tonga.pdf

56 Ibid

57 Ibid

Amongst others, the report recommended a review of police procedures and laws.[58]

The government said it would investigate the allegations, but did not conduct a public inquiry. Both the police and the Tonga Defence Service reported that they were conducting internal inquiries. No results were made public.[59]

From riots to reform

Since the unrest, Tonga has continued to move toward a more democratic political system.

On 29 July 2007, King George Tupou V announced that he would relinquish much of his power. He handed the day-to-day running of government to the Prime Minister. General elections under a new electoral law were held on 25 November 2010. The result was a victory for the pro-reform Democratic Party of the Friendly Islands. They won twelve of the seventeen 'People's Representative' seats.[60] Nine seats remained reserved for unelected nobles and this group managed to join together with the minority of the elected members of parliament to form government and secure the position of Prime Minister.[61]

OHCHR Pacific and a Tongan Police Officer, Nuku'alofa, Tonga. Picture by OHCHR 2010.

Police reform

The riots damaged police credibility. They were unable to control the riots. Widespread criticism of the Tongan Police led to a government request to Australia and New Zealand for assistance. In February 2007, a seven member team (three Australian, three New Zealanders and one Tongan) carried out an extensive assessment of the Tongan Police. This resulted in a cooperation project between Tonga, New Zealand and Australia (2009 – 2013). [62]

The cooperation agreement recognised that there would need to be high levels of understanding, ownership and local participation. It emphasized that reform must be based on Tongan values, strategies and processes. And in 2009 the Tongan Police began an extensive public consultation to guide reform. This process resulted in a new strategic plan. The survey served as a powerful evaluation tool. It provided a baseline for measuring any improvements in policing. Judging by subsequent surveys, the Tongan public support the reforms.

The reforms have invested in staff and equipment. The Police infrastructure has been overhauled. Most perceived a rapid improvement in service and a slower process of regaining public trust.

In 2010, the Tonga Police Act entered into force. The most fundamental change was a clearer separation of powers between the Police Commissioner and the Minister for Police. The Police Commissioner was given the power to manage the day-to-day functioning of the police force. Other changes have included, merit based promotion.

58 Ibid
59 United States Department of State, 2007 Country Reports on Human Rights Practices - Tonga, 11 March 2008, available at: http://www.unhcr.org/refworld/docid/47d92c82dc.html
60 Wikipedia http://en.wikipedia.org/wiki/Tongan_general_election,_2010
61 Ibid
62 See http://www.aid.govt.nz/programmes/tonga-joint-commitment-development.pdf

Accountability and reform

Central to the vision of reform was making the police a service for the public. This underlined an emphasis on public accountability. And as with the other models presented in this report, the reformers recognised the often uncomfortable reality that abuses needed to be addressed. Individual police officers were to be judged by the same laws they sought to uphold. It was clear that if abuse was not addressed, it would undermine reform.

In the past, officers were dealt with internally. There was no public access. Such conditions did not support accountability or transparency. As a part of the reform process, the Police Commander, later to become Commissioner, took a highly public (and hence transparent and accountable) stance on the link between addressing what he has termed '*discipline*' and the success of the reforms. He noted that:

'*Public trust and confidence in Tonga Police is critical and when there is reason to question the actions and integrity of police staff, a transparent process of holding people accountable needs to be in place'*.[63]

In November 2009, the Commander established the Tonga Police Professional Standards Unit to address police conduct both on and off duty. As part of the commitment to accountability, the Commander published and discussed the results of the Unit's work[64]. In April 2011, in a press release entitled, '*No Compromise on Police Accountability,'* the Police Commissioner released figures on the work of the Tonga Police Professional Standards Unit. In its first 18 months of operations, 131 complaints about Police were received and registered.[65] On average the police received 2 complaints per week.[66] The Commissioner noted that, '*The statistics don't look 'pretty' but they do show a growing public confidence in reporting public dissatisfaction and concerns about poor police practice, attitudes and behaviour.*'[67]

The Commissioner underlined that, '*these complaints are taken seriously, they will be investigated and positive action taken to address the concerns of the public and operational practices of the police'*. Eighteen members of the police have appeared before the Criminal Court, ten have appeared before the Civil Court and before a Police Tribunal. The Police also established a domestic violence unit and no-drop policy for prosecution of domestic violence.

Reform challenged

However, the reform process has not been smooth. The police leadership was challenged for letting go of established staff, including some senior officers. On 11 March 2011, a petition signed by about 200 police men and women – about half the police force – was presented to the Tongan cabinet, seeking the termination of the contract of the Police Commissioner. The protest was apparently in response to concerns about the reforms. The petition was believed to have come from officers let go by the Police Commander, and concerns over the introduction of the merit based promotion system and the new disciplinary measures.[68]

On 27 July 2011, the Minister of Police, Hon. Dr Viliami Latu told the media that the government would not renew the Commissioner's contract when it came to an end on 5 August and that he, as Minister of Police, would become Tonga's Acting Police Commissioner. [69] Questions were raised about whether the Minister had the ground to end the contract under the terms of the Act. [70] Rather, it seemed the Act gave the King the power to appoint or to terminate the contract of a Police Commissioner, on the advice of the Judicial Appointments and Discipline

63 Tonga Police Force Press Release, 'No Compromise on Accountability', 1 April 2011, https://www.pmo.gov.to/no-compromise-on-police-accountability.html
64 Ibid
65 Ibid
66 Ibid
67 Ibid
68 Matangi Tonga, 'Police Comm Kelley not allowed to renew contract', 27 July 2011
69 Ibid
70 2010 Tonga Police Act, http://crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/2010/2010-0035/TongaPoliceAct2010_1.pdf

Panel. The Minister himself criticized the 2010 Tonga Police Act.[71] However on 5 August, the Tongan government publicly apologized and underlined that only the King had the authority and the government encouraged the Commissioner[72] to re-apply.[73]

Civil society and sustainability of reform

In Tonga, once again the centrality of the role of civil society in the prevention of torture is reaffirmed. Although the Community Para Legal Taskforce report appeared to have little impact at the time of the riots, it would be difficult to argue that it has not influenced the debate around the need for police reform and the design of the police reform package.

Without the civil society action, it is less than clear how much of priority police discipline would have been. Without the documentation, police abuse would have remained largely an issue of hearsay and would have limited the political space or project logic for making discipline a priority.

For other countries in the region, and indeed bilateral donors, this appears to be a lesson worth, at the very least, examining further. The link between discipline, public accountability and the success of reform is very explicit in the Tongan experience.

Reformist and bilateral development assistance programmes might usefully examine how reform can be buttressed through support to external civil society monitoring and documentation. This might take the form of preventative lay visits to places of detention and/or more assertive monitoring and protection efforts. Future proposals for reform in Tonga include the establishment of an independent oversight mechanism for police disciplinary inquiries. Again this might usefully draw from the experience of the Ombudsman in PNG. Again, there would appear to be a role here for civil society activities to buttress any Ombudsman role.

Reform and torture prevention: mutually supportive

The results of the reform of the Tongan Police appear very positive from the perspective of torture prevention. The strength of the new police legislation would appear to be a useful model for other states in the region considering reform.

Good practice elsewhere demonstrates that successful torture prevention tends to require more than legislation and case law. The law can be undermined by an institutional culture of violence. For the law to function requires wide reform: changes in procedures, investigation and political action.

The police commissioner demonstrated the value of highlighting the prohibition of torture and taking action both on a number of levels, from legislation to day-to-day action. He made it clear that the new law would be applied where a breach was found. He did this in a very practical and applied manner. He very publicly released and promoted a detailed account of the implementation of internal disciplinary measures.

This in itself is a best practice and highlights the commitment to transparency and accountability to the public. Many law enforcement services do not publish any record of internal investigations. Some publish, but in scant detail. Without full disclosure, providing adequate information in the public domain, it is difficult to understand how public accountability is to be achieved.

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71 Matangi Tonga, 'Police Comm Kelley not allowed to renew contract', 27 July 2011

72 Chris Kelley a senior police officer from New Zealand was appointed as the Tongan Police Commander in September 2008. On February 2011 he was promoted to a newly created post of Police Commissioner. Kelly is widely credited with driving the reform process in the police. The government communications Minister Ahongalu Fusimalohi, noted during an interview with the ABC radio that, Commissioner Kelley (...) has been the driving force behind the reinstating of the peoples trust in the Tongan police force. OHCHR's discussions with a wide range of contacts in Tonga confirm this view.

73 ABC Radio interview with Ahongalu Fusimalohi, communications director for Tonga's prime minister 'Fate of Tonga's Police Commissioner up in the air' ABC radio, Fri, 05 Aug 2011 18:39:00 +1200

The Tonga Police Act 2010 has given primacy to criminal charges over internal investigation and the police service cooperated fully with criminal justice processes. The determination of the Commissioner to ensure that the police were held to the same legal standard, equal before the law, as all other Tongans, was fundamental.

The introduction of merit based promotion was another best practice. This represented a significant move away from time served to merit as the basis for promotion. Merit based promotion can act as a strong preventative measure against torture and other forms of ill-treatment. It sends a message to police officers about personal accountability.

The Tongan experience suggests that torture prevention can and, more importantly, should be at the centre of and fully integrated into security and justice sector reform. It is essential to good policing, as well as torture prevention, to put in place clear systems of discipline, command and control and accountability. Good policing is an inherent element of torture prevention: a disciplined and accountable police service that carries out policing operations within the rule of law is an effective police service.

Section V: Torture prevention in the context of justice and security sector reform: Papua New Guinea and the Ombudsman

Ombudsman institutions and the prevention of torture

Ombudsman institutions refer to bodies that have a role *'to protect the people against violation of rights, abuse of powers, error, negligence, unfair decisions and maladministration in order to improve public administration and make the government's actions more open and the government and its servants more accountable to members of the public'*.[74]

Most countries in the Pacific, including Papua New Guinea, Fiji, Vanuatu, Samoa and the Solomon Islands, have ombudsman institutions. In Papua New Guinea and Vanuatu, the ombudsman is the sole independent oversight body.

Ombudsman institutions can function as a useful mechanism for the prevention of torture. All ombudsman institutions in the Pacific are empowered to advise their governments on relevant changes to laws and policies that may impact on the prevention of torture. Some have the power to monitor places of detention. They are empowered to recommend the ratification of international instruments that may have a bearing on the prevention of torture, including the Convention against Torture and other cruel, inhuman or degrading treatment or punishment and it's Optional Protocol. Their mandate means that they can engage with all actors at the national level with regard to the prevention of torture.

In other countries, the role of an Ombudsman Commission is often complemented by a national human rights institution that has a wider human rights mandate, and can work more broadly on torture prevention work.

Background

Any discussion of the human rights situation in PNG must be placed within a context of the high levels of violent crime and conflict, and the negative role that has been played by the police, through corruption, abuse and criminal activity, including through the supply of high powered guns to others. [75] Links between the police, politicians and criminals have been well documented.[76]

The law enforcement agencies

The Royal Papua New Guinea Constabulary (RPNGC) has lacked adequate resources in all areas of policing, from communications equipment to uniforms. It has lacked leadership and has had almost no intelligence gathering capacity. The police have been inadequately paid and accommodated. Corruption has been rife and morale poor.[77] The likelihood of criminals being caught has been estimated at less than three per cent. [78]

The 2011 report of the United Nations Special Rapporteur on Torture noted that the public security vacuum is increasingly being occupied by private security companies.

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74 International Ombudsman Institute: http://www.law.ualberta.ca/centres/ioi/index.php

75 Sinclair Dinnen Building Bridges: Law and Justice Reform in Papua New Guinea. State Society and Governance in Melanesia. School of Pacific and Asian Studies. Australian National University 2005.. Gun-running in Papua New Guinea: From Arrows to Assault Weapons in the Southern Highlands, by Philip Alpers, June 2005, ISBN 2-8288-0062-8http://www.smallarmssurvey.org/fileadmin/docs/C-Special-reports/SAS-SR05-Papua-New-Guinea.pdf

76 For example, in 1997, an Australian Television network broadcast concealed video footage of the then PNG Prime Minister, William Skate, claiming that he was the 'the Godfather' of all PNG's gangs' The Economist Papua New Guinea, 'A cargo from Taiwan' July 8th 1999, http://www.economist.com/node/220639. See also, for example, Gun-running in Papua New Guinea: From Arrows to Assault Weapons in the Southern Highlands, by Philip Alpers, June 2005, ISBN 2-8288-0062-8http://www.smallarmssurvey.org/fileadmin/docs/C-Special-reports/SAS-SR05-Papua-New-Guinea.pdf

77 Report of the Royal PNG Constabulary Administrative Review Committee to Minister for Internal Security Bire Kimasopa. September 2004

78 Sinclair Dinnen Building Bridges: Law and Justice Reform in Papua New Guinea. State Society and Governance in Melanesia. School of Pacific and Asian Studies. Australian National University 2005.

'The RPGNC is unable to provide security and prevent and investigate crime throughout the country, particularly in rural areas. As a result, private security companies have taken over much of the ordinary police work.'[79]

Competition between private and public sector security has further weakened the RPNGC. RPNGC staff members have better employment conditions with the many foreign private security firms that provide security for mining and gas exploitation projects, resulting in many officers supplementing their income 'moonlighting' for these companies.

Police human rights violations

Violent crimes and the inability of the RPGNC to prevent them, propels an emotive security debate in PNG. For example, in 1991, following an upsurge in violent crime involving a series of violent gang rapes, there were calls for the re-introduction of the death penalty. Civil society was at the forefront of calls for more powers to the police and ever harsher sentencing. In 1991, the parliament amended the Criminal Code Act and re-introduced the death penalty for *wilful murder.*[80]

Prisoner in cell, Bomana Prison, Port Moresby. Photo by OHCHR 2010

In 2004, in response to increasing violence and use of firearms in the country, the Minister for Internal Security established a committee to review the RPNGC. The resulting Administrative Review Committee report found that the police committed rape and assault, as well as *'excessive and unprovoked violence.'*[81]

The UN Special Rapporteur on Torture concurred, finding during his visit: *'systematic beatings of detainees upon arrest or within the first hours of detention, including during interrogation. Very often beatings are inflicted by the police as a form of punishment of suspects, reflecting complete disrespect for the presumption of innocence and the dignity of persons suspected of crimes. Widely practiced methods include beatings with car fan belts, bush knives, gun butts, iron rods, wooden sticks, stones, punching and kicking, used mainly to punish and intimidate detainees and to establish authority. While I did not find more sophisticated and brutal methods of torture, understood in the classical sense of this term, there is no doubt that police beatings often reached the level of torture, as defined in the UN Convention against Torture (CAT). This worrying fact has been corroborated by medical evidence in a high number of cases.'*[82]

79 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum Mission to Papua New Guinea*, Human Rights Council Sixteenth session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights,including the right to development, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/106/08/PDF/G1110608.pdf?OpenElement

80 S.299(2) of the Criminal Code Act (Ch. No 262).

81 Report of the Royal PNG Constabulary Administrative Review Committee to Minister for Internal Security Bire Kimasopa. September 2004

82 Press release 10 May 2010, UN Special Rapporteur on Torture presents preliminary findings on his Mission to Papua New Guinea

The Special Rapporteur also expressed concern about the high degree of impunity for police violence and for human rights violations.

Violations in PNG have reached such widespread levels that the government concedes they have been actually feeding crime, insecurity and a breakdown in the rule of law.[83] As the then Governor-General, Sir Paulias Matane noted in 2007, *"the constabulary, instead of protecting and serving the community was being seen more as a threat to our very security."* [84] This was also recognized in the 2004 Police Review, which observed that the *"lawless behaviour of some police had destroyed community confidence and trust."*[85]

Documenting wounds on a prisoner at Boroko Police Station, Papua New Guinea. Photo by OHCHR 2010

Rights abuse and moves to reform

The RPNGC has been a substantial recipient of external assistance to address these concerns. Results, as Dinnen has noted, are hard to discern: '*assistance to the Royal Papua New Guinea Constabulary (RPNGC) from 1989 to 2005 produced little sign of sustained improvement in the organisational and operational performance of the RPNGC and, on the contrary, considerable evidence of progressive deterioration.*' [86]

The 2004 Administrative Review Committee report was an indictment of the RPNGC. The report underlined that the RPNGC was '*close to collapse.*'[87] A key recommendation of the report was the imperative need to establish independent review and accountability mechanisms. The report pointed out that the system was not working. Under the terms of the 1998 Police Act, the internal investigations unit was subject to police hierarchy. This made it difficult to investigate senior officers and could be seen to have compromised the independence of investigations. Internal investigations unit officers were subject to the authority of all senior officers. To address this, senior officers had to be appointed to lead investigations or the Commissioner had to grant authority to more junior officers. This meant that in cases of relatively minor offences valuable senior officers had to be appointed or the Commissioner had to become involved.[88] The 2004 review also noted the high degree of political interference into cases handled by the internal investigations unit. This led to a situation where the RPNGC failed to open an investigation or take appropriate legal action, reflected in the many reports in PNGs media of the failure to address cases of police abuse.[89]

83 Report of the Royal PNG Constabulary Administrative Review Committee to Minister for Internal Security Bire Kimasopa. September 2004
84 The National Newspaper, 4 March 2007
85 Report of the Royal PNG Constabulary Administrative Review Committee to Minister for Internal Security Bire Kimasopa. September 2004
86 Sinclair Dinnen and Abby McLeod: The Quest for Integration: Australian Approaches to Security and Development in the Pacific Islands, Security Challenges, Vol. 4, No. 2 (Winter 2008), pp. 23-43,
87 Report of the Royal PNG Constabulary Administrative Review Committee to Minister for Internal Security Bire Kimasopa. September 2004
88 Joint Discussion Paper of the Office of the PNG Ombudsman and the PNG Constabulary: Implementing Independent Accountability and Review Process for the Papua New Guinea Constabulary, May 2010 (not available digitally).
89 Post Courier Report 'My life of pain, I am sick of being bashed up', Post Courier online edition, 21 August 2011, http://www.postcourier.com.pg/20110819/news01.htm

Even when cases are addressed, the outcomes often appear gravely inadequate. For example, on 7 December 2010 a police investigation found that a policeman attacked his wife using a hammer, an axe and a heated iron causing severe injury and burns. The investigation found the perpetrator in breach of the Police Commissioner's Circular No. 06/2007 in relation to Family and Sexual violence and he was dismissed. However, media reports suggest that he was not charged with a criminal offence even though assault and grievous bodily harm, which includes wife beating, is a criminal offence and has penalties of up to 30 years in PNG.[90]

Figures from the police internal affairs directorate on punishments for misconduct (including ill-treatment amounting to torture) covering a twelve months period until July 2011 showed that 10 police were dismissed, 12 were demoted, 13 were fined and 51 suspended.[91] The police concede that these do not reflect the real levels of violations.

The Ombudsman and the Memorandum of Agreement

On 2 March 2006, in response to the need for improved accountability, the Commissioner of Police sent a formal request to the Chief Ombudsman to oversee the complaints handling process of the RPNGC. The agreement was developed into a Memorandum of Agreement (MOA). The MOA was signed on 1 June 2007.

The MOA sets out the arrangements for the Ombudsman Commission of Papua New Guinea (OC) to have oversight of internal police investigations of complaints made against the RPNGC. It provides for information sharing and referral of complaints. In practice, the Internal Investigation Unit of the RPNGC carries out the investigations. Where evidence of interference is reported or becomes evident the OC becomes involved. Given capacity constraints with the OC, it was decided the OC would oversee only high profile cases.

The initial MOA signed between the RPNGC and the Ombudsman Commission was for a year (1 June 2007 – 31 June 2008). Since 2007, all three Police Commissioners have renewed the MOA. The MOA will lapse when the Police Complaint Handling legislation comes into place. In 2011, the Internal Investigation Unit received 66 matters for investigation of which 53 were progressed to an investigation. Of this total, 15 were cleared and 15 resulted in pending court cases.[92]

Results and challenges

While far from ideal, the MOA does appear to demonstrate potential. Tackling the impunity of law enforcement officers is difficult in any environment and the results of the MOA should be considered in the particularly difficult operating environment of PNG.

The MOA has allowed an independent body to oversee a number of investigations of police abuse. Oversight by an independent body is an essential element of any programme to bring accountability, so in this sense the MOA has been a good step in the right direction. A joint review of the mechanism refers to a 'modest' reduction in the interference of senior officers in the Internal Affairs Unit of RPNGC. Although subjective and difficult to quantify, there appears to be a wide consensus that this is the case.[93]

The MOA appears to have promoted growing acceptance of the need for accountability. This has been demonstrated by the renewal of the MOA by successive Police Commissioners. It has also been demonstrated through the increased public attention to the investigations, as reported in the media. Publicity on action to hold police accountable has a positive effect in preventing abuses, by informing police of potential action that could

90 Ibid
91 Post Courier Report, 'Abusive Cop Dismissed', Post Courier online edition, 7th July 2011, http://www.postcourier.com.pg/20110707/news01.htm
92 Ibid
93 Joint Discussion Paper of the Office of the PNG Ombudsman and the PNG Constabulary: Implementing an Independent Accountability and Review Process for the Papua New Guinea Constabulary, May 2010 (not available digitally).

be taken against them, if they commit abuses, and making the public aware of their right to make a complaint. As the media has been increasingly reporting on the issue of police accountability, we see that the public debate has also moved on to draw the link between police accountability and public trust in the police force.[94]

OHCHR consultants at work. Photo by OHCHR 2010

However, commitment to the MOA appears to be patchy amongst some senior police officers. The joint review notes that there are regions where there are no internal investigation units, where they have been allowed to lapse, where insufficient resources were allocated, and where senior police support for particular investigations has varied.[95]

The overall impact of the MOA has been limited with ill-treatment of detainees, sometimes amounting to torture, remaining widespread. Numerous complaints are lodged with the police and the MOA has not been able to overcome a common reluctance and obfuscation on the part of the police to respond.[96] The police recognise that complaints are well below the actual number of violations.[97]

The joint review of the MOA recommended that the MOA should only exist as a stop gap option. It was established without broader legal reforms or other significant administrative changes and was built on the existing structures. Further reforms were required. These included that there be fully independent review processes established, a separate police ombudsman created, public access to the complaints procedure, and publicity for the processes.[98] Work has been going on since 2008 to legislate a new Police Complaint Handling Mechanism. The current MOA expires in 2014 and it is hoped that the legislation will be in place.

More broadly, the 2004 Administrative Review Committee report provides a clear road map for police reform in PNG that would provide a comprehensive approach to reform. The Special Rapporteur pointed out in his report that few of the recommendations had been implemented, but that they remained relevant. He explicitly recommended that the Government implement them.[99]

94 Post Courier Report, 'Abusive Cop Dismissed', Post Courier online edition, 7th July 2011, http://www.postcourier.com.pg/20110707/news01.htm

95 Ibid

96 Ibid

97 Post Courier Report, 'Abusive Cop Dismissed', Post Courier online edition, 7th July 2011, http://www.postcourier.com.pg/20110707/news01.htm

98 Joint Discussion Paper of the Office of the PNG Ombudsman and the PNG Constabulary: Implementing Independent Accountability and Review Process for the Papua New Guinea Constabulary, May 2010 (not available digitally).

99 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum Mission to Papua New Guinea*, Human Rights Council Sixteenth session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights,including the right to development, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/106/08/PDF/G1110608.pdf?OpenElement

Sleeping quarters at Bamona Prison, Papua New Guinea. Photo by OHCHR 2010

Finally, the scale of violations facing PNG threatens both the institution of the police and public security. The Ombudsman's Commission has a limited mandate to address human rights and very limited resources. A national human rights institution might appear a more robust response given the levels of violations. The Government of PNG has set-up a working group on the establishment of a national human rights institution, which has carried out consultations and developed draft legislation. It is hoped that these initiatives will lead to the establishment of an independent national human rights institution in the near future.

What is also clear is that the absence of human rights monitoring from civil society has hampered the implementation of the MOA, and would hamper the effective operation of any future national human rights institution. Normally civil society plays a role in supporting victims to present their cases to NHRIs and providing legal and other support during the adjudication. The potential impact of civil society on these processes can be seen in the example of the government recognition of the role played by Human Rights Watch, through documenting police abuses on children[100] in influencing the establishment of the MOA.[101] Yet despite the widespread perpetration of human rights abuses in PNG, there are almost no human rights groups within the NGO sector[102].

Given the centrality of addressing rights abuses as a part of police reform it would appear appropriate that donors funding justice sector reform examine the possibility of establishing a grant scheme to promote civil and political rights monitoring.

100 'Still Making Their Own Rules,' Human Rights Watch, report, October 2006.

101 Joint Discussion Paper of the Office of the PNG Ombudsman and the PNG Constabulary: Implementing Independent Accountability and Review Process for the Papua New Guinea Constabulary, May 2010 (not available digitally).

102 There is a number of disparate women's and children's groups which to a greater or lesser extent focus on rights but they are seriously weakened by the absence of the mainstream civil and political rights groups that operate elsewhere.

Section VI: Overall Lessons Learnt

The lessons captured in this report highlight for governments in the region and their development partners how human rights might play a more explicit role in the substantial security and justice sector work underway in the region.

Section I - Ratification of CAT

The accession to CAT in Vanuatu may have lessons for the region. Vanuatu's decision to accede to CAT takes perhaps the most explicit step in recognising the need to address abuses as a central plank of security sector reform. Through its accession to the CAT, Vanuatu recognised that abuse by law enforcement officials creates a significant obstacle to effective law and order and to security and justice sector reforms. Becoming a party to the Convention was the first step of a process. The Convention provided the framework to guide the Government, in collaboration with other stakeholders, to take the necessary policy and legal reforms to ensure compliance. It provided law enforcement bodies with clear standards under which to evaluate their practices and address issues through training and institutional reform. It has also demonstrated to its own people and to the international community that it has made a clear commitment to comply with international standards to improve law enforcement practices. This in turn, helps to garner assistance from partners and ensure a consistent approach to justice and security sector reform.

The costs of implementing CAT can be incorporated into existing financial commitments in the broader context of justice sector reform. It is also important to take into account that preventing abuse by law enforcement officers will make significant savings in a broad range of areas, including through reduced compensation pay outs. Furthermore, reforms that lead to improved rule of law and fewer abuses by law enforcement officials can help to create a stable business environment.

Women's prison, Port Vila, Vanuatu

The value of ratification applies equally to the rest of the Pacific region, given most countries in the region are now undergoing substantial sector wide reforms. Moreover as most of the large development partners in the sector are now committed to human rights standards and their promotion, and all of them have ratified CAT, such support should be designed to align with their own existing commitments under the instrument.

Vanuatu's accession can be seen as an early expression of the emerging human rights awareness in the region. This report has found a growing recognition of the centrality of human rights in supporting reform and the provision of public security. Human rights are increasingly being understood by reformers, not as a threat, but rather as an instrument of reform toward good governance, security and development.

Section II - OPCAT ratification

New Zealand's implementation of the OPCAT demonstrated that the creation of national preventive mechanisms to monitor places of detention can be flexible and relevant to individual country situations. New Zealand used existing structures to take on the role of monitoring a range of places of detention and it did so within existing budget allocations. The monitoring carried out by the national preventive mechanisms resulted in improved prison conditions. Its benefits were recognised by agencies and institutions that saw the benefits and potential of the OPCAT mechanism to reduce risks and prevent harm.

Conditions in places of detention in Pacific Island countries are generally poor and need improvement. The treatment of prisons is not always in line with international standards. Ratification of the OPCAT provides clear mechanisms towards improving conditions and treatment in detention. The New Zealand example shows that such implementation of the OPCAT can be designed to be relevant and cost effective for each Pacific Island country.

It should also be noted that in small Pacific Island countries with limited detention facilities, the resulting national preventive mechanism will correspondingly be smaller and simpler than in the example provided by New Zealand.

Ratification of the OPCAT, as with ratification of the CAT, should be incorporated into broader justice and security sector reforms. Abuses in places of detention, as we have seen in Vanuatu, undermine attempts to reform these sectors and the creation of a national preventive mechanism under the OPCAT helps to prevent such abuses and strengthen the rule of law.

Section III - Lessons for Justice Sector and Security Sector Reform in the region

One of the central questions of this report has been to examine the role of human rights within the wider public security debate. The security discourse in the region has traditionally underplayed the role of human rights. The response to heightened security in the Pacific has tended to be about granting additional powers of arrest and detention.

UNDP has noted that both abuse and the failure to deliver justice are likely to fuel further resentment and, in the long term, instability: '*The security sectors [of the Pacific Region] have occasionally been a major source of insecurity and have committed human rights abuses against domestic populations.*'[103]

The findings of this report suggest that security force abuses have and continue to contribute to state instability and public insecurity in many Pacific countries. In Vanuatu abuse and poor conditions of detention amounting to torture and ill-treatment provoked a public security crisis. In Tonga the abusive mishandling of public security during the democratic movement left the credibility of the police force in tatters.

Violations in PNG have reached such widespread and systematic levels that the government concedes that state human rights violations actually feed crime, insecurity and a breakdown in the rule of law.[104] As the then Governor-General, Sir Paulias Matane, noted in 2007, *"the constabulary, instead of protecting and serving*

103 Thomas Shanahan Enhancing security sector governance in the Pacific : a strategic framework / Thomas Shanahan, Eden Cole and Philipp Fluri. – Suva, Fiji : UNDP Pacific Centre, 2010

104 Report of the Royal PNG Constabulary Administrative Review Committee to Minister for Internal Security Bire Kimasopa. September 2004

the community was being seen more as a threat to our very security."[105] This is also recognized in the 2004 Administrative Review Committee report, which observes that the *"lawless behaviour of some police had destroyed community confidence and trust."*[106]

For the region's governments and their development partners, public security is a key priority for the region. However, the record of reform programmes to deliver public security, even over the long term appears to be, at best, poor.[107]

Vanuatu's corrections reforms and Tonga's police reform, while still incomplete and less than perfect, appear to have delivered improved public security. What distinguishes both reform programmes from others in the region appears to be the unusually high political priority given to changing the internal culture through accountability and internal discipline.

Central to Vanuatu's correctional reform has been the ending of a culture of tolerance for abuse within the correctional service. This can be ascribed, in large part, to the removal of the police from prisons and the establishment of a culture underlining modern correctional management that aims to conform with international human rights norms.

Tonga's police reform suggests similar lessons. Public surveys indicate increased public trust in the police since the reforms and confidence in their ability to serve the public. Again central to the reform process has been a high priority to ending abuse. The Police Commissioner took a highly public and hence transparent and accountable stance on the link between addressing what he termed '*discipline*' and the success of the reforms. He noted that "*Public trust and confidence in Tonga Police is critical and when there is reason to question the actions and integrity of police staff a transparent process of holding people accountable needs to be in place."*[108] Public commitment was accompanied by action: 18 police officers appeared before the criminal courts.

Prisoners in the workshop building desks and chairs. Port Vila low risk prison. Photo by OHCHR 2011

105 The National Newspaper 4 March 2007
106 Report of the Royal PNG Constabulary Administrative Review Committee to Minister for Internal Security Bire Kimasopa. September 2004
107 See for example, Sinclair Dinnen and Abby McLeod: The Quest for Integration: Australian Approaches to Security and Development in the Pacific Islands, Security Challenges, Vol. 4, No. 2 (Winter 2008), pp. 23-43, http://www.securitychallenges.org.au/ArticlePDFs/vol4no2DinnenandMcLeod.pdf
108 Tonga Police Force Press Release, 'No Compromise on Accountability', 1 April 2011, https://www.pmo.gov.to/no-compromise-on-police-accountability.html

The reforms were assisted by new legislation. The legislation in both countries reflected a more progressive approach to corrections and police work. The law in both countries has been followed up with a specific code of conduct for staff. The laws and the codes of conduct have sought to conform with international norms and best practice.

The Memorandum of Agreement (MOA) between the police and Ombudsman's Commission (OC) in PNG, giving the OC oversight of police investigations in police abuses has been a first step in what needs to be a more comprehensive set of reforms of the police service. The OC is genuinely a body that is independent of the police and therefore well placed to carry-out oversight functions. The MOA mechanism appears to have produced a 'modest' reduction in the interference of senior officers in the Internal Affairs Unit of the RPNGC. It has also increased media interest in the investigations into police abuse, which helps to raise police and public awareness around the issue of police accountability.

Human rights NGOs and the Pacific

Another key lesson from the report is that there is a very low level of information on torture and human rights generally within the Pacific. An absence of monitoring makes it hard to substantiate the scale of the problem or its impact. If human rights abuses are not documented, then the problems leading to abuses are unlikely to be optimally addressed and abusers held accountable.

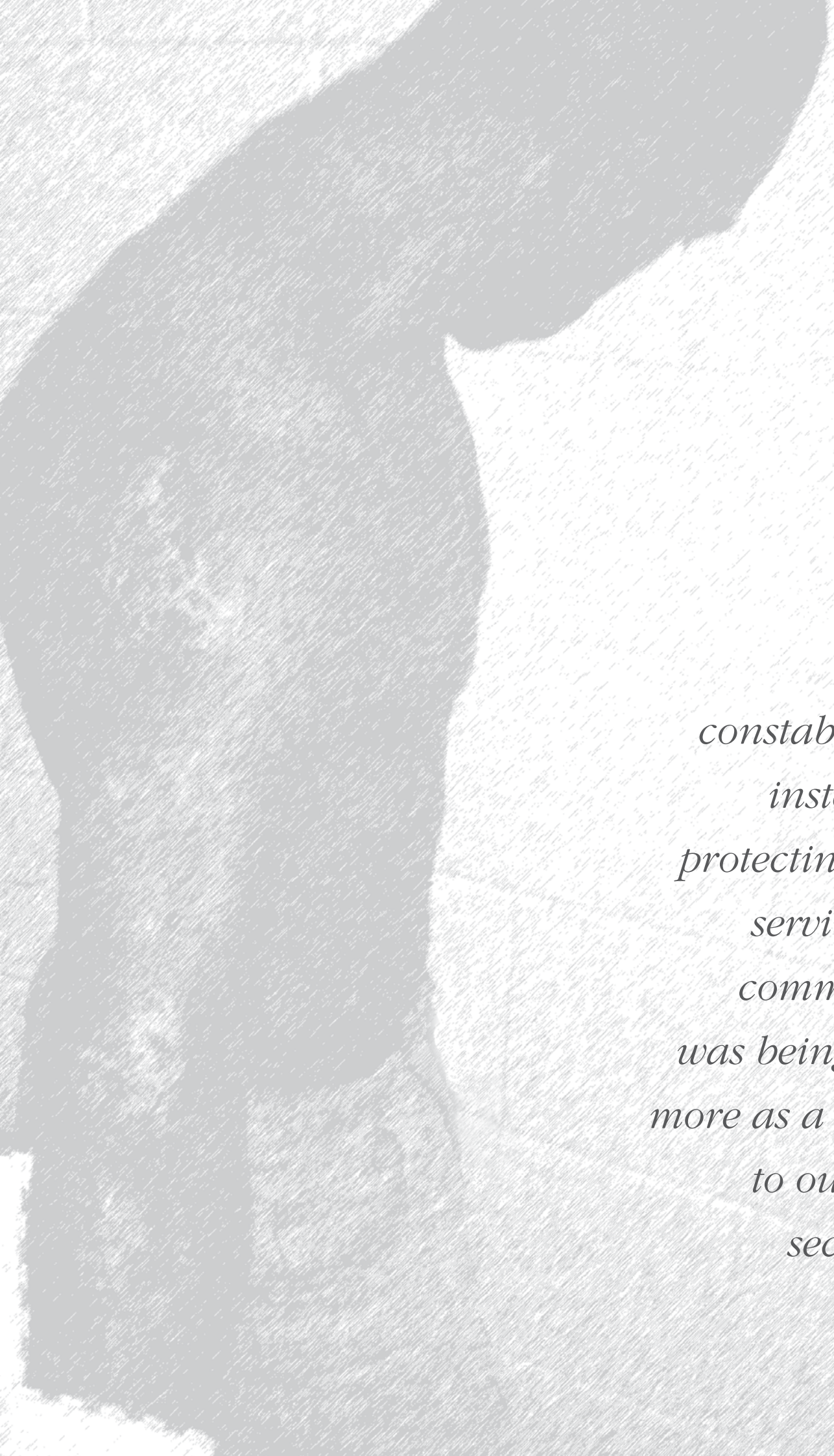
The limited nature of the security debate in the Pacific can be in part explained by an absence of information. The absence of monitoring of abuses in a systematic way precludes a more balanced debate about the causes of crime and conflict. A UNDP report has noted that limited debate has emboldened security forces, allowing them to resist accountability, including reprisals against victims seeking justice and human rights defenders who support them.[109] Put differently, the lack of an empowered, capacitated human rights NGO sector has assisted the security sector across the region to resist reform.

Where there has been human rights monitoring work in the region, it has had considerable impact. In Vanuatu, Amnesty International's report on widespread human rights abuses of detainees held in Vanuatu's jails and the prisoners report were influential in reform of the penal system. In PNG, the government recognised the role played by Human Rights Watch reports on human rights abuses and was influential in attempts to address impunity.[110] In Tonga, the work of the Community Para Legal Taskforce on Human Rights during the riots influenced the shape of reforms in the police.

In order to strengthen NGO participation and support to justice and security sector reform, donors could consider funding grant schemes to support human rights monitoring initiatives; bolstering the role of NGOs within the justice and security sector; and support to initiatives linking national human rights defenders with regional and international NGO partners.

109 Thomas Shanahan Enhancing security sector governance in the Pacific : a strategic framework / Thomas Shanahan, Eden Cole and Philipp Fluri. – Suva, Fiji : UNDP Pacific Centre, 2010.

110 Joint Discussion Paper of the Office of the PNG Ombudsman and the PNG Constabulary: Implementing Independent Accountability and Review Process for the Papua New Guinea Constabulary, May 2010 (not available digitally).



"the constabulary, instead of protecting and serving the community was being seen more as a threat to our very security"

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