

## Chapter 3

### Building law enforcement capacity in Pacific island states

3.1 In Chapter 2, the committee acknowledged that the most serious threats to Pacific security come from within states. The committee considered how unemployment, inter-ethnic tensions, land ownership, gender inequality and political instability have manifested in conflict in the form of serious crime, rioting, coups, land disputes, property damage and violence against women. This chapter examines the capacity of Pacific island law enforcement agencies to respond effectively to these forms of civil unrest on a day-to-day basis. Moreover, because it is critical that all aspects of the law and justice sector work together, from policing through to prosecutions, the committee also considers the effectiveness of the region's justice sector. In so doing, it is necessary to consider the relationship between the formal and informal justice sectors, common in many Pacific island states.

#### Policing capability across the Pacific

3.2 There are 14 police forces operating across the Pacific, not counting forces in Australia and New Zealand. The total number of police officers is approximately 8,500. Some states have police forces that are relatively large, while others maintain forces with significantly smaller numbers. PNG, for example, has a force of approximately 4,700, while Niue has a force of only 15. PNG has approximately one police officer for every 1406 head of population, while on aggregate, Pacific island states have approximately one police officer for every 359 head of population (see following table).<sup>1</sup>

3.3 A further aspect of regional policing is that many police forces require an ocean-going naval/policing capacity. Assistant Commissioner Frank Prendergast, Australian Federal Police (AFP), noted, for example, that because Solomon Islands is a chain of islands, 'any sustainable policing model in the Solomon Islands has to have a maritime component'.<sup>2</sup> This will also be the case for other archipelago states like Vanuatu and Tuvalu.

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1 Looking elsewhere in Melanesia, Solomon Islands has a ratio of one police officer per 522 head of population and Vanuatu has one per 451 head of population. While both Solomon Islands and Vanuatu are below the whole-of-Pacific average (1:359), this should also be measured against their larger populations.

2 *Committee Hansard*, 21 November 2008, p. 79.

**Figure 3.1 Police force numbers in Pacific Islands Forum states (estimates only)<sup>3</sup>**

Country	Population	Police
Cook Islands	15,600	150
Federated States of Micronesia	111,000	300
Niue	1,200	15
Kiribati	98,900	300
Tonga	103,000	450
Republic of Marshall Islands	54,000	165
Samoa	182,500	560
Palau	20,400	170
Tuvalu	10,000	80
Nauru	11,100	100
Solomon Islands	535,000	1024
Vanuatu	239,000	530
Papua New Guinea	6,610,000	4,700
Totals	7,991,700	8,544

\* Estimates suggest that Fiji will have 3097 police officers by 2010.<sup>4</sup>

3.4 With respect to the law enforcement capability of these forces, the AFP explained that because police forces are resourced in different ways, and may come from different traditions, it is difficult to offer a 'broadbrush assessment' of their capability:

The sovereignty of these nations ranges through republics and federations to traditional custom regimes and as such, the character of policing varies extraordinarily across the region. Common to most is that at the community policing level, the police forces have the capacity to deal with general crime but are often limited in their ability to respond and investigate due to resourcing and development issues.<sup>5</sup>

3.5 The lack of human capacity across all sectors of the economy was a dominant theme in Volume I. In brief, the committee found weak, inefficient or poorly resourced government agencies unable to deliver essential services effectively. It also

3 Australian Federal Police, Answers to written questions taken on notice, 8 September 2009. These figures have been provided by Pacific Police Chiefs and should only be regarded as an estimate. Fiji is currently suspended from the Pacific Island Chiefs of Police.

4 Fiji Village, National Budget, <http://www.fijivillage.com/?mod=events&eid=24110983d413bc71afe3d9213d9f07> (accessed 16 December 2009).

5 Assistant Commissioner Prendergast, *Committee Hansard*, 21 November 2008, p. 73; Australian Federal Police, answers to written questions on notice, 8 September 2009.

found that ill-equipped bureaucracies in the region had difficulties providing important services where technical and advanced technology was required.<sup>6</sup>

3.6 Consistent with this broad finding, the committee received evidence suggesting that some states struggle to resource adequately domestic policing organisations and do not have the capacity to maintain effective law and order within the community on a day-to-day basis.<sup>7</sup> With regard to PNG, DFAT advised that law and order remained a significant problem and that police capacity was limited.<sup>8</sup> Mr Garry Tunstall, Australia and New Zealand Banking Group, suggested that PNG required considerably more personnel on the ground:

...policing has just had an increase in funding by the PNG government to help support it. But it was only minor—of some 3 million kina, I think. The reality is there are a very small group of people on the ground compared to what we would require in Australia...<sup>9</sup>

3.7 Mr Tunstall also identified the need for the private sector to make their own provisions for security:

As an organisation, in the last 18 months we have had two kidnappings of groups of staff, which is quite serious. We have also had rumours of robberies. We have to employ armed security guards for all cash shipments. The cost of doing business up there is quite horrendous in terms of having those armed security guards and also from a timing perspective. So it is quite difficult.<sup>10</sup>

3.8 Mr Tunstall proceeded to explain that while criminal activity also affects business investment in other countries of the Pacific, he felt that policing operations in Vanuatu, Samoa and Fiji were 'much sounder and stronger' than in PNG.<sup>11</sup>

3.9 Across the Pacific, policing and law enforcement agencies are required to operate in parallel with other community norms, social structures and cultural traditions. Pacific communities place high value on kinship ties and communal rights and in many instances the rights of the individual may be subordinate to the needs of

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6 See Volume I, paragraphs 4.36–4.38; 7.18–7.19; 9.15–9.16; 9.39–9.40; 10.2; 10.55–10.59; 12.1; and 14.7–14.21.

7 Australian Federal Police, *Submission 62*, pp. 5–6, Pacific Island Forum Secretariat, *Submission 69*, pp. 25–26.

8 *Submission 68*, p. 12. DFAT added that the PNG Government is placing a high priority on increasing police numbers and other resources, with Australian support.

9 *Committee Hansard*, 24 March 2009, p. 55.

10 *Committee Hansard*, 24 March 2009, p. 54. QANTAS informed the committee that because of 'a perceived security problem' they do not let their crews stay overnight in PNG, *Committee Hansard*, 24 March 2009, p. 73.

11 *Committee Hansard*, 24 March 2009, p. 55. Australia's High Commissioner to PNG Chris Moraitis suggested: 'As a rule of thumb... a business in PNG spends up to 15 per cent of its budget on security', *Committee Hansard*, 19 March 2009, p. 5.

the community. These communities may therefore prove more responsive to a community policing model.

3.10 The AFP informed the committee that many Pacific island states favour a community policing model whereby community members bring law and order problems to the attention of police:

Community policing is a major focus of Pacific island law enforcement agencies, and the community focus of Pacific communities lends them to being receptive to this type of law enforcement engagement. The Pacific island peoples are resilient and traditional social structures often serve as an alternative or additional mechanism to ensure community harmony and to engage criminal offenders outside the formal justice processes...Members of law enforcement and border security agencies must be aware of customary laws and cultural diversity while still enforcing government legislation.<sup>12</sup>

3.11 While the AFP acknowledged that community interaction and support could help control crime, it also expressed concern that traditional social structures may impede effective law enforcement, particularly when kin loyalties are involved:

Whilst acknowledging the strength of community conflict resolution mechanisms, it must be noted that in many countries such mechanisms are inequitable, involving practices which conflict with human rights standards and basic rule of law principles. High rates of domestic violence are tolerated throughout the region, impacting upon the participation of women in social, economic and political life, as well as upon the national economy, by placing high demands on health and legal services.<sup>13</sup>

3.12 In some communities, modern policing models also operate in parallel with customary law and traditional notions of justice like 'shame' and 'payback'.<sup>14</sup> The interaction between the traditional and formal justice sector is explored in more detail below.

### **Regional efforts to improve law and order**

3.13 The Pacific Islands Chiefs of Police (PICP) is responsible for addressing policing issues across the Pacific. Police services from 21 countries and territories across Melanesia, Polynesia and Micronesia belong to this organisation, including Australia and New Zealand. Within member countries and territories, there are more than 75,000 serving police officers (this includes Australia and New Zealand). New Zealand Police supports the permanent PICP Secretariat which provides advice and

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12 *Submission 62*, p. 5.

13 *Submission 62*, p. 5.

14 Customary or traditional law/lore affects policing and law enforcement but also commercial arrangements and attitudes towards landownership, which themselves have emerged as causes of conflict in the Pacific.

assistance to members.<sup>15</sup> The PICP works to enhance and improve policing and communication in the Pacific by promoting and providing a voice on law enforcement and social policy concerns. It also convenes an annual forum at which Chiefs of Police share information and intelligence to counter transnational crime in the region and seek to promote cooperation in the region. In addition to its information sharing, awareness raising and strategic planning initiatives, the PICP also contributes to police training.<sup>16</sup>

3.14 At the 38th Pacific Islands Chiefs of Police meeting, held in PNG in September 2009, chiefs discussed matters including: the development of use of force policies, armouries projects, HIV, domestic violence, forensic fingerprinting, deportees and future directions in policing. The theme of the conference was 'Youth in the Pacific' and chiefs resolved to complete an assessment of youth programs currently being used in the Pacific in order to make that information available to all jurisdictions so they could adapt those programs to their own environment.<sup>17</sup>

3.15 There have been other regional initiatives to help develop the policing capacity of Pacific island states. Under the Pacific Plan, emphasis is placed on the strengthening of law enforcement training and coordination.<sup>18</sup> Within the Pacific Islands Forum Secretariat, the Law Enforcement Unit also provides policy, coordination and capacity development advice to the Pacific law enforcement agencies.<sup>19</sup>

### **Australian efforts to improve law and order**

3.16 Australia's official development assistance (ODA) was discussed in detail in Chapter 16 of Volume I of this report, noting that Australia's spending on governance in the Pacific accounted for approximately half of the total ODA for the region.<sup>20</sup> The table below provides a breakdown between security and non-security related governance sector spending expenditure for years 1998–2008.

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15 About Pacific Islands Chiefs of Police (PICP), <http://www.picp.org/about-us/> (accessed 5 November 2009).

16 For a fuller description of Pacific Islands Chiefs of Police, see <http://www.picp.org/> (accessed 14 October 2009).

17 Resolutions, 38th Pacific Islands Chiefs of Police Conference, Port Moresby, 1–3 September 2009, <http://www.picp.org/2009/10/01/2009-picp-conference-resolutions/> (accessed 15 October 2009).

18 The Pacific Plan: For Strengthening Regional Cooperation and Integration, p. 7, [http://www.forumsec.org/UserFiles/File/Pacific\\_Plan\\_Nov\\_2007\\_version.pdf](http://www.forumsec.org/UserFiles/File/Pacific_Plan_Nov_2007_version.pdf) (accessed 13 July 2009).

19 Pacific Islands Forum Secretariat, *Submission 69*, p. 27.

20 AusAID, answer to written question on notice 2, 19 June 2009. 2007–2008: \$395,287,186 from a regional total of \$850,826,693; 2008–2009: \$524.8 million from a regional total of \$992.8 million.

**Table: 3.2 Australian ODA expenditure for governance sector in the Pacific and PNG<sup>21</sup>**

Year	1998–1999	2000–2001	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008
<b>Total</b>	102,134,419	157,603,502	2252,112,239	388,586,365	364,992,358	385,947,354	395,287,186
<b>Security-related</b>	39,597,118	71,738,483	147,589,314	238,766,409	212,718,489	205,896,787	246,875,592
<b>Non-security related</b>	62,537,301	85,865,019	104,522,925	149,819,956	152,273,869	180,050,567	148,411,594

3.17 This breakdown shows that expenditure for security-related governance programs has risen substantially since 2003 and makes up a significant proportion of Australia's governance ODA. Of that, security-related governance aid amounted to nearly two thirds (62.5 per cent) in 2007–2008. The security-related expenditure includes: legal and judicial development programs; police force capacity building; corrections services capacity building; assistance for customs services and border management; and defence cooperation activities.<sup>22</sup> It should be noted the amount of security-related aid has been substantially increased as a result of Australia's commitment to RAMSI. Through RAMSI, Australia provides assistance for policing, corrections and various aspects of the criminal justice system.<sup>23</sup>

### ***International Deployment Group***

3.18 The AFP's engagement with the Pacific takes place through International Deployment Group (IDG).<sup>24</sup> It maintains a body of permanent officers across the Pacific. At the time of its submission, the AFP maintained Senior Liaison Officers (SLOs) in Port Moresby (PNG)<sup>25</sup>, Honiara (Solomon Islands), Port Vila (Vanuatu) and until September 2008 had a Law Enforcement Capacity Development Advisor at the Pacific Islands Forum Secretariat in Suva (Fiji). The AFP also maintains an SLO and Liaison Officer (LO) in Suva whose countries of responsibility include: American Samoa, Cook Islands, French Polynesia, Nuie, Kiribati, Samoa, Tokelau, Tonga, Tuvalu, Wallis and Futuna. Additionally, the AFP also allocates advisors to the Pacific Transnational Crime Coordination Centre (Apia, Samoa) and the Micronesia Transnational Crime Unit (Pohnpei, Federated States of Micronesia) and a Project

21 AusAID, answers to written questions on notice, 12 March 2009.

22 AusAID, answers to written questions on notice, 12 March 2009.

23 AusAID, *Australian Aid: Promoting Growth and Stability—White Paper on the Australian Government's overseas aid program*, 2006, p. 43.

24 The increased incidences of breakdowns in law and order across the Pacific have coincided with the growth of the AFP's International Deployment Group.

25 The AFP also maintains a strong relationship with the PNG police force cooperating on transnational crime, money laundering, customs, immigration and border security issues. DFAT, *Submission 68*, p. 20.

Manager to the Pacific Islands Chief of Police Secretariat (Wellington, New Zealand).<sup>26</sup>

3.19 From 1 January 2009, the Pacific Police Development Program (PPDP) became the primary vehicle for AFP engagement with the Pacific. The PPDP is responsible for Australia's ongoing police capacity building activities in the Pacific. The AFP described the PPDP as a 'policing development program' aimed at 'strengthening bottom-up capacity development of policing agencies'.<sup>27</sup> The program will work closely with the Pacific Islands Chiefs of Police (PICP) through the PICP Secretariat. The PPDP works with the Transnational Crime Network (outlined in the following chapter) that offers a top-down focus on sophisticated and organised crime. This is explored further in Chapter 7.<sup>28</sup>

3.20 The 2009–2010 Budget Papers explained the way this assistance is delivered on both a bilateral and multilateral basis:

The Pacific Police Development Program provides capacity development and development assistance to Nauru, Samoa and Papua New Guinea. The program also incorporates a multilateral program of support to all other members of the Pacific Islands Forum, with the exception of Fiji. The principal deliverable is to establish a robust policing capability in the Pacific region.<sup>29</sup>

3.21 The AFP further explained that the program has been developed in close consultation with Pacific nations. Funding for the PPDP until 2011–2012 is as follows:

Year	2009–10	2010–11	2011–12
Funding	\$10,008,000	\$11,489,000	\$12,637,000 <sup>30</sup>

3.22 Currently, the IDG is involved in regional and bilateral missions in Solomon Islands (RAMSI), PNG, Nauru and Tonga. The committee's 2008 report into Australia's involvement in peacekeeping operations examined the role of the IDG in detail, noting that the IDG has been designed, in part, to ensure regional stability and

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26 *Submission 62*, p. 9.

27 Australian Federal Police, answers to written questions taken on notice, 8 September 2009. The AFP also described it as 'representing one of the most innovative and comprehensive attempts in the world at supporting the rule of law through regional police development', *Committee Hansard*, 21 November 2008, p. 67.

28 Australian Federal Police, Answers to written questions taken on notice, 8 September 2009.

29 Attorney-General's *Portfolio Budget Statements 2009–2010*, p. 198.

30 Attorney-General's *Portfolio Budget Statements 2009–2010*, p. 195.

enhance the policing capacity of Pacific island states.<sup>31</sup> At that time, the committee recognised the 'pioneering nature' of the IDG and formed the view that the AFP was:

...at the forefront in developing a broad-based capability to assist other countries to deliver an effective policing service.<sup>32</sup>

3.23 In offering evidence to this inquiry, the AFP described the role of the IDG in the following terms:

...the AFP IDG represents a maturing example of a fully deployable international policing capability, and probably one of the only examples of a fully deployable international policing capability in the world which has expertise in both peace and stability operations and police capacity building. Through the IDG and the international network, the AFP is supporting our Pacific neighbours as they face a range of security, crime and development challenges.<sup>33</sup>

3.24 Assistant Commissioner Prendergast further suggested that, in undertaking this work, it was critical that the IDG work closely with indigenous policing agencies to create the type of police force that is appropriate for each jurisdiction:

So there is no point building a First World police force in a country that just does not have the budget to sustain that. You need to find an appropriate model, but also based on cultural issues and sovereignty issues, so it is a complex process and one that, I have to say, over the last five years through RAMSI and through our involvement in East Timor, we think we have learnt a fair bit about. One of the things we have learnt is that we need to continually keep revisiting the issue and researching and working with our partners to come up with better solutions.<sup>34</sup>

3.25 The committee continues to support strongly the AFP and the development of the IDG. Later in the report, the committee gives further consideration to this deployable capability when it considers Australia's recent efforts to respond to emergencies across the region.

### ***Defence Cooperation Program***

3.26 As suggested in Chapter 2, arms management and weapons security have been poor in many Pacific island states. The proliferation of large numbers of arms throughout communities has had serious repercussions for law and order and has on occasion resulted in the rapid escalation of violence. The submission from the Pacific Islands Forum Secretariat suggested:

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31 See Senate Standing Committee on Foreign Affairs, Defence and Trade, *Australia's involvement in peacekeeping operations*, August 2008, pp. 129–130, 138–139. According to the *2008–09 Annual Report*, the annual budget for the IDG is \$264 million.

32 Senate Standing Committee on Foreign Affairs, Defence and Trade, *Australia's involvement in peacekeeping operations*, August 2008, paragraph 10.17.

33 *Committee Hansard*, 21 November 2008, p. 68.

34 *Committee Hansard*, 21 November 2008, p. 74.



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While these weapons have been supplemented by home-made fire arms, and small scale trafficking, the majority of weapons to date have been obtained due to the lack [of] adequate control and stock-take of legitimate stocks of weapons in Pacific Island communities.<sup>35</sup>

3.27 The Defence Cooperation Program (DCP) is the primary means for Defence engagement in the Pacific. It is primarily concerned with helping states manage external threats to security and is examined in more detail in the following chapters. In terms of its approach to helping improve domestic security across the region, the DCP has been involved in several arms management projects, particularly through major infrastructure projects undertaken in PNG and Samoa. The DCP has improved weapons security through programs assisting Pacific states secure armouries and munition stores. The PNG Defence Force (PNGDF) Armouries and Magazines Project has seen seven high security armouries built for the PNGDF.<sup>36</sup>

3.28 The Samoa Police Project, a five-year \$6.3 million project, which was jointly funded by the DCP and AusAID, focused on the construction of an armoury and broader institutional strengthening. When he opened the Samoa Police Headquarters in February 2008, the Parliamentary Secretary for International Development Assistance, the Hon Bob McMullan MP stated:

The armoury to the rear, along with training in the management and accounting of weapons and ammunition, will contribute to improved security in Samoa. The armoury, funded under Australia's defence cooperation program, also supports weapons training for police officers proceeding on overseas deployments in the Pacific region. The armoury recognises the United Nations' focus on security of small arms in the Pacific, and the increasing need for training for the Samoan Police being deployed to East Timor and the Regional Assistance Mission to Solomon Islands.<sup>37</sup>

3.29 Defence has also funded the upgrade of armoury and magazine facilities in Tuvalu in 2007. In Nauru, Tonga and Vanuatu, bilateral assistance has been provided to enhance the capacity of police services to implement legislation to control the flow of small and light weapons.<sup>38</sup>

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35 *Submission 69*, p. 25.

36 Department of Defence, *Submission 18*, p. 5.

37 The Hon Bob McMullan MP, 'Opening of Samoa Police Headquarters', 1 February 2008, [http://www.ausaid.gov.au/media/release.cfm?BC=Speech&ID=572\\_3045\\_7536\\_5774\\_3080](http://www.ausaid.gov.au/media/release.cfm?BC=Speech&ID=572_3045_7536_5774_3080) (accessed 18 February 2009).

38 Implementation of the United Nations Program of Action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects, National Small Arms Statement—Australia, <http://disarmament.un.org/cab/bms3/1National%20Reports%202008.html> (accessed 30 October 2009), pp. 11–13. In 2003, RAMSI held a 21-day firearms amnesty and over 3,000 firearms and 300,000 rounds of ammunition were surrendered.

## **Recommendation 1**

**3.30 Given the success the Department of Defence has had in improving weapons security in the Pacific, the committee recommends the Australian Government continue to assist Pacific island countries secure their armouries and munition stores.**

### *Committee view*

3.31 The committee received limited evidence about the new PPDP (in operation since January 2009). In its previous report into Australia's involvement in peacekeeping operations, the committee acknowledged the important contribution that the AFP was making in the region and in particular the excellent work done at the Wanggirrali Ngurrumbai Centre training facility at Majura (ACT). It noted how this venue had been used to provide joint education, training and support to police officers from the Pacific prior to development through RAMSI.<sup>39</sup> The committee considers that there may be benefit extending the PPDP bilateral engagement beyond the current agreements with Nauru, Samoa and Papua New Guinea.

## **Law and justice sector**

3.32 In order to maintain effective law and order, domestic policing organisations must be supported by robust justice systems. The Pacific Islands Law Officers' Meeting review of 2007 identified a range of law and justice challenges faced by Pacific island states including: limited access to legal training, lack of judges, poorly resourced court systems, a lack of drafting resources and reconciling European legal traditions with traditional systems of justice.<sup>40</sup>

3.33 This review found that there were significant constraints in the court system:

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39 This IDG training facility was profiled in the committee's recent report on peacekeeping, Senate Standing Committee on Foreign Affairs, Defence and Trade, *Australia's involvement in peacekeeping operations*, August 2008, pp. 138–140. The AFP advised the committee that, to date, 467 Pacific police from 13 countries have undertaken pre-deployment training at the IDG training facility, adding 'This training is unique in that it is the only training of the type, outside that of military institutions, that has been accredited by the United Nations. It has got a heavy focus on capacity building skills, human rights and similar issues', *Committee Hansard*, 21 November 2008, p. 67.

40 Pacific Islands Law Officers' Meeting (PILOM) Review, January 2007 [http://www.pilonsec.org/www/pilon/rwpattach.nsf/PublicbySrc/Pacific+Islands+Law+Officers+Meeting+\(PILOM\)+Review.pdf/\\$file/Pacific+Islands+Law+Officers+Meeting+\(PILOM\)+Review.pdf](http://www.pilonsec.org/www/pilon/rwpattach.nsf/PublicbySrc/Pacific+Islands+Law+Officers+Meeting+(PILOM)+Review.pdf/$file/Pacific+Islands+Law+Officers+Meeting+(PILOM)+Review.pdf) (accessed 4 November 2009).

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The Court systems in the Pacific are under similar pressure, under-resourced and facing growing difficulty handling the number and diversity of cases before them.<sup>41</sup>

3.34 The Attorney-General's Department suggested that there was an 'entrenched lack of capacity' within the PNG judicial system that has resulted in 'large numbers of backlogged cases':

The Solicitor-General's office is under-resourced in terms of being able to actually attend court hearings. Often people will take advantage of that and make vexatious claims against the PNG government and, when the Solicitor-General's office litigators cannot get to a court because they are booked in five other courtrooms at the same time, the court has no choice but to award in favour of the claimant.<sup>42</sup>

3.35 The problems in the justice system due to a lack of resources and capacity, access and cost are further complicated by the coexistence of a traditional and formal justice system. The Pacific Islands Law Officers' Meeting noted:

In addition to the many institutional challenges facing the public legal systems in the region, there are particular thematic issues which stand out as common challenges for Pacific island jurisdictions. Possibly the most significant of these is the difficult interaction between legal traditions and institutions inherited or adopted from European systems, and indigenous forms of decision making and justice. Some Pacific jurisdictions have established customary courts or arbitration mechanisms which operate alongside the formal justice system, with varying records of success. For most, finding a harmony and consistency between the indigenous and imported in both the legal institutions and the laws themselves, remains a significant challenge.<sup>43</sup>

3.36 According to Dr Tony Murney, AFP, around 80 per cent of the population in PNG and Solomon Islands rely on traditional justice systems rather than formal justice systems.<sup>44</sup> Dr Murney added, therefore, that traditional justice plays a significant role in remote Pacific communities as they 'end up restoring a level of order over a whole

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41 Pacific Islands Law Officers' Meeting (PILOM) Review, January 2007 [http://www.pilonsec.org/www/pilon/rwpattach.nsf/PublicbySrc/Pacific+Islands+Law+Officers+Meeting+\(PILOM\)+Review.pdf/\\$file/Pacific+Islands+Law+Officers+Meeting+\(PILOM\)+Review.pdf](http://www.pilonsec.org/www/pilon/rwpattach.nsf/PublicbySrc/Pacific+Islands+Law+Officers+Meeting+(PILOM)+Review.pdf/$file/Pacific+Islands+Law+Officers+Meeting+(PILOM)+Review.pdf), paragraph 13 (accessed 4 November 2009).

42 *Submission 16*, p. 2; *Committee Hansard*, 21 November 2008, p. 64. Dr Tony Murney stated: 'we have justice systems in the Pacific that just do not have the capacity to handle the volume of issues that would be normally dealt with', *Committee Hansard*, 21 November 2008, p. 76.

43 Pacific Islands Law Officers' Meeting (PILOM) Review, January 2007 [http://www.pilonsec.org/www/pilon/rwpattach.nsf/PublicbySrc/Pacific+Islands+Law+Officers+Meeting+\(PILOM\)+Review.pdf/\\$file/Pacific+Islands+Law+Officers+Meeting+\(PILOM\)+Review.pdf](http://www.pilonsec.org/www/pilon/rwpattach.nsf/PublicbySrc/Pacific+Islands+Law+Officers+Meeting+(PILOM)+Review.pdf/$file/Pacific+Islands+Law+Officers+Meeting+(PILOM)+Review.pdf), paragraph 14 (accessed 4 November 2009).

44 *Committee Hansard*, 21 November 2008, p. 76.

range of issues'.<sup>45</sup> The constitutions of Solomon Islands and Samoa officially recognise traditional justice.<sup>46</sup>

3.37 This reliance on the traditional or informal justice sector is a result of a number of factors. The informal system provides for community-based resolutions for conflict to many islanders living in remote areas of the Pacific. Moreover, because of the cost, slowness and complexity of the formal system, many Pacific islanders consider the informal system more suitable for solving local and community disputes.<sup>47</sup>

3.38 As suggested by the review of the Pacific Islands Law Officers' Meeting, a major challenge facing the region is the need to reconcile the two justice sectors. In comparing them, Dr Murney stated:

The concepts of justice are very different. Many of them would not comply with international conventions in that, for example, children are silent in these sorts of arrangements all too often. So are women. But what the systems do principally is deliver a form of order and they provide for an order that basically sustains the society at a certain functional level.<sup>48</sup>

3.39 This conflict between customary and statutory law becomes a particular problem with matters of child sexual abuse and domestic violence. Assistant Commissioner Prendergast observed:

What I am talking about is, say, a village-level justice system where difficult issues may not be confronted in the way that they need to be—getting the calibration right between the formal system and the informal system, which does have a real role to play in the Pacific, and ensuring the mechanisms are in place to draw out the issues in the informal justice sector where they are required to be drawn out.<sup>49</sup>

3.40 The AFP explained that it is important that such issues are brought out of the traditional justice sector and into the formal justice sector.<sup>50</sup>

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45 Dr Tony Murney, *Committee Hansard*, 21 November 2008, pp. 76–77. According to Dr Sinclair Dinnen, within a traditional justice system the settlement process may involve protracted discussions and negotiations and a payment of compensation or an exchange of gifts, 'Interfaces between Formal and Informal Justice Systems to Strengthen Access to Justice by Disadvantaged People', Research School of Pacific and Asian Studies, The Australian National University, November 2003, pp. 4–5. Often, a person with a certain status and authority, such as a local police officer, may perform the role of an impartial arbiter in settling disputes, Dr Tony Murney, *Committee Hansard*, 21 November 2008, p. 78.

46 Dr Tony Murney, *Committee Hansard*, 21 November 2008, p. 77.

47 Assistant Commissioner Frank Prendergast, *Committee Hansard*, 21 November 2008, p. 75; Ms Lucinda Atkinson, *Committee Hansard*, 21 November 2008, p. 64.

48 AFP, *Committee Hansard*, 21 November 2008, p. 76.

49 *Committee Hansard*, 21 November 2008, p. 72.

50 *Committee Hansard*, 21 November 2008, p. 72.

3.41 Traditional justice systems have attracted criticism for a number of other reasons. Dr Sinclair Dinnen, ANU, has suggested that these systems are dominated by older men; they are 'prone to nepotism and corruption' and are often seen to discriminate against women and young people.<sup>51</sup>

### **Capacity building in the justice sector**

3.42 Senior law makers of the Pacific make up the Pacific Islands Law Officers' Network (PILON). The Australian Attorney-General's Department currently hosts the PILON Secretariat in Canberra on an interim basis. The network focuses on legal issues that are not covered in other Pacific policy environments and provides a forum for addressing law and justice issues common to countries within the Pacific region. PILON holds an annual meeting at different locations in the Pacific at which delegates present a report on relevant law and justice policy and developments in their respective countries. These reports provide an overview of the law and justice sectors in the region and are useful in identifying common issues facing members.<sup>52</sup>

3.43 PILON is supplemented by the Pacific Islands Forum Secretariat's Law Enforcement Unit which provides law enforcement agencies with policy, coordination and capacity-development advice in all areas of law enforcement activity.<sup>53</sup> The Forum has also sought to develop model legislation that can be drawn upon to assist with reform.<sup>54</sup>

3.44 A number of Australian government departments and agencies also assist in helping Pacific island states to reform their judicial systems. The Attorney-General's Department assists in the provision of legal policy and legislative assistance on police and crime related issues; supports in the drafting of legislation and the training of

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51 Sinclair Dinnen, 'Interfaces between Formal and Informal Justice Systems to Strengthen Access to Justice by Disadvantaged People', Research School of Pacific and Asian Studies, The Australian National University, November 2003, pp. 2–3. AusAID's *Violence against women in Melanesia and East Timor* suggests that many women lack knowledge of their legal rights and have found it difficult to have grievances addressed through traditional justice models that are dominated by males and are frequently biased towards men. See AusAID, Office of Development Effectiveness, 'Violence against women in Melanesia and East Timor: building on global and regional promising approaches', 2008, p. 110.

52 Pacific Islands Law Officers' Network (PILON) [http://www.pilonsec.org/www/pilon/pilon.nsf/Page/About\\_PILON](http://www.pilonsec.org/www/pilon/pilon.nsf/Page/About_PILON) (accessed 4 November 2009). At the 25th meeting in Kiribati in February 2007, PILON changed its name from the Pacific Islands Law Officers' Meeting (PILOM), reflecting members' desire for emphasis to be placed on the information-sharing role of the organisation.

53 *Submission 69*, p. 27.

54 Pacific Islands Forum Secretariat, Thirty-fourth Pacific Islands Forum, Forum Communiqué, Item 24, p. 4, <http://www.forumsec.org/resources/article/files/2003%20Communique.pdf> (accessed 18 February 2008).

drafters in the region; and seeks to improve access to legal information.<sup>55</sup> The department informed the committee that its Pacific Section, funded as part of the PPDP, provides legislative and policy support to Pacific Islands Forum member countries in partnership with the AFP.<sup>56</sup>

3.45 The Pacific Judicial Development Program (PJDP), jointly funded by AusAID and NZAID since 2007, aims to increase the professionalism of judicial and court officers. For example, the Federal Court of Australia provides workshops and training, assists in the development of new policies and procedures and provides technical assistance.<sup>57</sup>

3.46 Judicial officers from Papua New Guinea and Solomon Islands have recently participated in orientation programs run by the National Judicial College of Australia through the PNG Law and Justice Sector Program and the RAMSI Law and Justice Program. The Attorney-General's Department hosts Pacific prosecutors during their short-term placements with the Commonwealth Director of Public Prosecutions (DPP).<sup>58</sup> In addition, the Law and Justice Sector Program in PNG aims to improve community access to justice through the building or restoration of infrastructure or improvement of 'legal and support services for victims of domestic violence and sexual assault'.<sup>59</sup>

3.47 The Australian Government Solicitor (AGS) has also been engaged in assistance programs in Samoa and Solomon Islands where its activities relate to Australian prison officers working in the Solomon Islands prison system.<sup>60</sup> AGS has agreed in principle to 'provide pro bono legal assistance' to Pacific island countries, including legal training, legislative drafting and potentially commercial law advice and training in legal advice writing.<sup>61</sup> AusAID, NZAID, EuAid and the University of

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55 *Committee Hansard*, 21 November 2008, p. 50. The Attorney-General's Department currently has 11 officials with agencies in Papua New Guinea, *Committee Hansard*, 21 November 2008, p. 63.

56 *Submission 40*, p. 8.

57 There are 15 participating Pacific Island countries that participate, including: Papua New Guinea, the Federated States of Micronesia, the Fiji Islands, Kiribati, the Marshall Islands, Tonga and Vanuatu.

58 *Submission 40*, pp. 6, 9.

59 *Submission 65*, p. 15.

60 Australian Government Solicitors, International Consultancies, <http://www.ags.gov.au/whatweoffer/recentprojects/international.htm> (accessed 25 September 2009).

61 Pacific Islands Law Officers' Network, Pacific Law and Justice News, [http://www.pilonsec.org/www/pilon/pilon.nsf/Page/Pacific\\_Law\\_and\\_Justice\\_News](http://www.pilonsec.org/www/pilon/pilon.nsf/Page/Pacific_Law_and_Justice_News) (accessed 25 September 2009).

the South Pacific have funded online portals, or online information networks such as Pacific Islands Governance Portal and Pacific Legal Information Institute (PacLII).<sup>62</sup>

### ***Mobile court initiative***

3.48 It is worth noting attempts made by other nations of the region to improve access to justice through a mobile court. In Timor-Leste, where the justice system faces similar challenges to that experienced in the Pacific, a 'mobile court' is being piloted. The aim of this initiative is to improve access to justice for people living in remote communities. In 'taking justice to the people', magistrates travel to remote locations and use local police stations to set up court room.<sup>63</sup> This process is similar to the mobile banking initiative trialled by ANZ Bank in the Pacific, as outlined in Volume I.<sup>64</sup>

### **Policy coherence**

3.49 In Volume I, the committee commended the many Australian agencies engaged in helping Pacific island countries improve their administrations and develop a more transparent and accountable public sector. These included agencies and departments such as ANAO, Commonwealth Ombudsman, APRA, Centre for Democratic Institutions, Treasury, Attorney-General's and Customs. It noted, however, that the work of all those engaged in promoting good governance in the region would benefit from having a framework that integrates their individual activities into a more coherent, unified effort. It fully endorsed the findings of the OECD peer review and AusAID's own findings that Australia's governance program would benefit from having a single strategic policy framework that would guide the activities of its many separate components.

3.50 Australia's contribution to policing and law and justice is a major sub set of Australia's assistance to improve governance in the region and also involves a number of agencies—AFP, Defence, Attorney-General's, and the Australian Government Solicitor. Thus, the committee's observation about the importance of having a coherent and well-integrated policy framework that links the diverse but interconnected activities engaged in governance applies with equal force to the security component of governance.

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62 Pacific Islands Governance Portal: <http://www.governance.usp.ac.fj/>; <http://www.paclii.org/> (accessed 27 October 2009).

63 UNDP, East Timor, 'Justice on Wheels: Timor-Leste's justice sector sends mobile court to hear case of sexual assault in Laclubar', <http://92.39.118.48/justice/index.php?mod=newsarchive&id=128> (accessed 14 October 2009).

64 See Volume I, paragraphs 15.45–15.50; 18.20.

***Committee view***

3.51 The committee notes that numerous government departments and agencies, individually and in cooperation with each other, provide capacity building assistance to strengthen the formal justice sector in the Pacific. The committee appreciates the objectives of these programs and acknowledges the need for them but, as it noted in Volume I, there is often room for consolidation and cooperation between departments—and countries for that matter. The committee considers that there is opportunity to ensure that justice sector programs do not overlap and are better coordinated and suggests that the Australian Government develop ways to achieve this objective.

3.52 In addition, the committee notes the comments made by academics and the AFP regarding the role of traditional justice systems. The committee acknowledges the complexities involved in reconciling the formal and informal justice systems. Based on the evidence taken for this inquiry, it would appear that any reform of criminal justice systems must take into account the role of the informal justice sector.

3.53 In its report on peacekeeping, the committee dealt extensively with the importance of developing a sound understanding of, and respect for, local custom and norms and taking account of the capacity, capability and willingness of communities to embrace change.<sup>65</sup> Thus, any Australian initiative to help improve justice sector governance must therefore recognise that law enforcement should be consistent with the socio-economic realities of Pacific island states and must give due recognition to traditional justice mechanisms. Because of the capacity constraints faced by Pacific island states, it is worth exploring ways that the two systems could complement each other. It is also critical that traditional justice systems are consistent with international human rights standards and that they afford adequate protection to women and children.

3.54 The committee considers the mobile court pilot a worthy initiative that could be trialled in Pacific islands to enhance access to justice. Such an initiative would also further educate citizens of the Pacific about the formal justice system.

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65 Senate Standing Committee on Foreign Affairs, Defence and Trade, *Australia's involvement in peacekeeping operations*, August 2008, paragraphs 16.25–16.32.