

Dispute Resolution Mechanism in Fiji Police Force

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Abstract

There is a rising volume of literature on dispute resolution mechanisms (DRM) in a number of sectors. However, globally not much has been documented on DRM in police forces in different jurisdictions. This paper contributes to the literature on DRM by providing an assessment of the DRM in the Fijian police force. The analysis shows that the Fijian police force is still without a clear, transparent, independent and efficient DRM.

Introduction

Employment and industrial relations issues have been a major area of concern globally. One important area of IR concerns solving grievances and industrial disputes. Globally, there is a lot of literature on how conflicts, grievances and industrial disputes are solved both in private and public sectors, in both developed and developing countries (Walker and Hamilton, 2011a). However, there is scant on the issue of dispute resolution mechanism in police forces. Even in large developed and developing countries, there is limited documentation on grievance resolution systems in the police force from an IR perspective. There is also no scholarly study of dispute resolution system in the police force in small island countries. Perhaps, the police sector has not generated enough interest among the scholars, resulting in lack of literature on this important sector in a society. This paper attempts to fill this gap by examining the grievance resolution system in the Fiji Police Force.

Therefore, the aim of this paper is to explore and critically analyse

the grievance resolution system in the Fiji Police Force. It focuses on the grievance resolution policy, legislation and practices in the Fiji Police Force, and tries to find out whether the system can be effectively used to resolve grievances emanating from the employer and employees. It also compares the past and present grievance resolution legislation, procedures and practices with a view to improve the DRM in the Fiji Police Force. The paper also provides recommendations to improve and have an effective method for a grievance resolution to address the current problems and gaps. The aim is to improve the process of grievance resolution so that it helps in improving employment relations of the Fiji Police Force.

Fiji has a progressive labour legislation (the ERP, 2007) which contains a grievance resolution mechanism (DRM) for resolving grievances and industrial disputes for both private and public sector. However, it does not cover DRM in the Fiji Police Force. In other words, the ERP (2007) does not have any jurisdiction over employment and industrial relations in the Fiji Police Force.

Police Force Grievance Resolution System in Selected Countries: Britain, USA, Australia, NZ

The police sector has not attracted much attention from the academics and thus there is little literature on Dispute Resolution Mechanism in the police force. There is some literature on Dispute Resolution Mechanism in the police force in the developing countries such as the United Kingdom, USA, Australia and New Zealand. Since, Fiji is a former colony of the United Kingdom and geographically near Australia and New Zealand, it would be appropriate to discuss the literature on grievance resolution systems from these countries (namely the United Kingdom, Australia and NZ). For one, the structure and governance of the Fiji police force was established based on models from these countries. In addition, these countries provide continuous interactions with the Fijian police force, and have often come to its aid on a number of technical, operational, and management matters.

DRM in the United Kingdom Police Force

Dick and Metcalfe (2001) have studied police welfare in the United Kingdom and argued that the working experiences, working conditions and the overall welfare of the United Kingdom police officers have largely been ignored in management literature. They found that how

police officers feel about their work has a strong bearing on organisation commitment. The review of the legislation (Laws of Britain, Police Reform Bill) shows that the United Kingdom police service has also undergone significant reforms particularly on grievance resolution. The legislation highlights the machineries of conciliation and arbitration that are commonly used to resolve grievances arising between the police employees and management. The legislation establishes a Police Negotiating Board which is the negotiating machinery for determining wages and working conditions of the police service in the United Kingdom. There is also a Police Advisory Board which provides an avenue for the resolution of industrial relations issues in the police force (Police Negotiating Board Annual Report, 2010). The first step is conciliation and if it fails then the grievance is referred to the Police Arbitration Tribunal (Laws of Britain, Police Reform Bill, 2002: 42). The tribunal, comprising a panel of three arbitrators, hears submissions from the Commissioner of police and the police officers association (Association of Chief Police Officers) before making a consensus decision. After making the decision, the arbitrators pass the decision to the Police Negotiating Board. The Home Secretary then scrutinizes the agreement and makes the final decision after carefully considering how and why the arbitrators arrived to that decision (Laws of Britain, Police Reform Bill, 2002).

DRM in the USA Police Force

Researchers have examined issues affecting the police force in the USA. Bloom (1981) discussed the use of arbitration in solving grievances on salaries for New Jersey's Municipal Police Officers. His study found that pay agreements through negotiations by using 'final-offer arbitration' awards were significantly lower than those through negotiations conducted by the 'conventional arbitration' awards. Feuille and Delaney (1986), on the other hand, studied the use of 'collective bargaining' and 'interest based arbitration' in settling matters of police salaries; they analysed police salaries data in 900 cities during the 1971-1981 period and they found that cities that used collective bargaining had positive effects on increasing the salaries of police officers, but cities that used the arbitration option saw little increase of salaries.

DRM in the Australian Police Force

The police force in Australia can use the national Australian

Industrial Relations Commission (AIRC) to solve industrial grievances (Bamber, Lansbury, Wailes, 2014). The AIRC is the federal tribunal that is tasked with resolving industrial grievance. It can intervene to arbitrate and endorse collective agreements, if it believes that the parties are not engaged in good faith negotiations and there are less chances of reaching an agreement (Ruskin and Smith: 1997: 314-25). The AIRC provides the services of conciliation, mediation, and arbitration services and is the main institution to solve industrial relations grievances. The Australian police force can use their services (Police Federation of Australia Annual Report (2002:15-21). The AIRC has a broad coverage over all employees and makes decisions that are legally binding (Bamber, Lansbury, Wailes, 2014).

DRM in the NZ Police force

In New Zealand, the police force normally uses the Mediation and Arbitration model to resolve grievances regarding wages and conditions of employment between the management of the New Zealand Police and the Police Union representing the police officers (William, Paul, Alexander (2014: 276). The Mediation-Arbitration model is a system that combines negotiation, mediation, and arbitration. This has been in place since 1990 for determining police pay and conditions. However, police officers are not allowed to take industrial action (such as strike); instead they need to go through the Med-Arb to resolve grievances. If there is a grievance, then the Department of Labour appoints the Mediator or Arbitrator who gets involved in the negotiation process between the parties to resolve the grievance, rather than waiting for a deadlock to occur and then referring it to the Tribunal (William, Paul, Alexander, 2014: 276). This system tends to be more proactive as well as successful in the resolution of grievances.

For Fiji Chand and Lako (2014) have studied the DRM at the national level. Furthermore, Chand (2015) did a comparative study of DRM between Fiji and the Cook Islands. However, there is no literature on DRM in the Police Force. This research utilises qualitative research methodology to analyse the DRM in the Fiji Police force. A qualitative research is done basically to find out in-depth what is going on in a particular situation (Bouma, 2000: 35). The research data was collected through primary document review, review of legislation (such as Police Ordinance, 1966, Police Amendment Act 2003), literature review, archival research, and in-depth interviews (by using semi-structured

questionnaires) with police officers. The personal experiences of one of the researchers, who was an Assistant Police Commissioner earlier has also been relied on in this paper.

Background of Fiji Police Force

The Royal Fiji Police Force was formally established by the Governor His Excellency Sir Hercules George Robert Robinson on the 10th of October 1874 (Laws of Fiji, Royal Gazette: 1874:1-4). The institution of the Fiji Police Force is enshrined in the constitution, which grants authority for the establishment of the Office of the Commissioner of Police and other matters relating to policing (Constitution of Fiji, 2013). By and large, the Fiji Police Force is responsible for 'public safety and public order' in the Republic of the Fiji Islands (Constitution of Fiji, 2013).

Structure of the Fiji Police Force

The Fiji Police Force has a centralized organisational structure. The structure is quite complex due to different levels and the size of the organisation. Appendix 1 shows the organisation chart of the Fiji Police Force. The Commissioner of Police is the Chief Executive Officer. To him report the Deputy Commissioner and the four Assistant Commissioners. The directors, divisional commanders, divisional crime officers, officers in-charge of districts, station officers, non-commissioned officers, police constables and police support officers come directly under the commands of Assistant Commissioners. In accordance with the Constitution of Fiji (2013), the Commissioner of Police has the sole authority on all aspects of policing. He delegates' powers to the subordinates to execute police duties. The police force is structured in such a way that it adopts a 'top-down' approach; the subordinates need to strictly follow the chain of command while communicating to officers, ascending through the vertical hierarchy while strictly adhering to formal instructions in the cause of their normal police duties.

Workforce in the Fiji Police Force

The Fiji Police Force had an establishment of 4,176 police officers in 2006. This included 2,643 regular police officers and 1,533 Police Support Officers (PSO) employed as un-established staff to strengthen

and supplement police operations in all major divisions (Police Administration Section, 2006). On average, one police officer is responsible for 213 people in every tour of duty. The police see this as an enormous task to perform for the safety and security of people. The Fiji Police Force is regarded as a service-oriented organisation; police officers are classified as public servants.

Parties to Industrial Relations

The three main parties to industrial relations in the Fiji Police Force are the employer (Government), the Commissioner of Police, and the Police Association.

Employer (Government of Fiji)

Similar to other countries, the government (state) is the employer for the Police officers. As per the Constitution of Fiji (2013), the Fiji Police Force comes under the jurisdiction of Minister for Home Affairs. The Minister for Home Affairs provides the budgetary allocations to fund all police operations and administrations costs. Furthermore, the Minister for Home Affairs makes the regulations, guidelines, and procedures governing the affairs of the Fiji Police Force. He/she gives general policy directions with respect to the maintenance of public safety and public order. Therefore, the Minister for Home Affairs holds the ultimate power over the Police Force. This is similar to the UK, where after the Police Reform Act, the Home Secretary has substantial powers to intervene in the management of police forces (Laws of Britain, Police Reform Bill: 2002:42).

The Commissioner of Police (Senior Management)

The Commissioner of Police is in charge of the police force. His powers are considerable. The Commissioner frequently consults the Minister for Home Affairs who has even greater powers of policy making. The Fiji police has a Board of Management's (BOM), chaired by the Commissioner of Police, and comprising the Senior Management team, which includes the Deputy Commissioner of Police, Assistant Commissioner of Police and Senior Chief of Staff. The BOM meets on a monthly basis to discuss all important issues concerning the Force. The BOM advises the Minister for Home Affairs in regards to policy matters. The Commissioner of Police looks after the day-to-day administration

of the Force; he has complete power and influence over the Fiji Police. Since the Commissioner of Police is vested with the powers to manage the Fiji Police Force in regards to its organizational structure, administration, deployment of staff, and control of all its operational matters, he is the most powerful person in the Police Force. The Commissioner has the powers to hire and fire police officers from the rank of Inspector and below, while for officer plus ranks, the Police Commissioner has to seek prior approval from the Minister for Home Affairs. The Police Amendment Act (2003) mentions that no police officer can resign without the approval of the Police Commissioner. The Police Commissioner has the authority to promote officers, give rewards and at the same time demote officers who breach the code of conduct and behave unprofessionally. All employees (police officers) have to obey the command the Commissioner of Police and their senior staff (the Police Amendment Act, 2003, clause 12).

The Police Association

The Police Association represents the employees (police officers). Between 1953 and 2003, three separate associations were formed to represent all police officers in different categories. The main purpose of these three associations was to raise concerns regarding police officer's wages, working conditions, grievances, etc. The first Police Association was established in 1953 during the colonial British government and was initially formed by the Sub-Inspector rank staff. After 1966, with the enactment of the *Police Act, 1966*, this association ceased to exist. Instead three new police associations were allowed to be formed by the colonial administrators (Police Act, 1966, 1-10). On the 9 January 1978, the first police association, named the *Gazetted Officers Association (GOA)*, was established. This represented police officers between the ranks of the Assistant Superintendent and the Senior Superintendent. On 21 January 1966, the *Subordinate Officers Association (SOA)* was formed; this represented officers between the ranks of Police Constable and Sergeant Major. On 26 January 1966, the *Inspectorate Officers Association (IOA)* was established; this represented the Inspectorate officers. These Police Associations represented the interests of police officers (Police Association Records).

The formation of the three separate Police Associations was a strategic move by the colonial government to segregate the three different classifications of police officers to avoid the formation of a single large and powerful association. This reflected the 'divide and rule' philosophy

the British colonial government had adopted in various colonies. It should be noted also that the Police Associations were formed as 'safety valves' to maintain colonial control. The government did not want to create systematic disruptions which arise where there is no mechanism for release of tensions arising from unheard grievances. By allowing for police associations the colonial regime also required that grievances and conflicts had to be channelled through the police associations. By doing this, the colonial administrators *institutionalized* grievance handling so that conflicts could be aired, resolved and contained within the system without threatening of stability and order of the whole system.

In 2003, the Police Act (1966) was amended by the Police Amendment Act (2003). The amendment eliminated the three Police Associations and instead provided for a single association. In theory, the function of the Police Association is to negotiate with police management on matters affecting pay and conditions of service, but issues relating to *discipline and promotion* were dealt by police management and were left outside the scope of the association.

Regulating Employment Relations in Fiji and the Police Force

Employment Relations Promulgation (2007)

Currently, the main labour legislation that regulates and governs employment and industrial relations is the Employment Relations Promulgation (2007) (hereafter referred as ERP). This covers employment relations in almost all organisations, both in the private and public sectors. Under the ERP Fiji's industrial relations system provides well-established procedures for grievance handling and resolution. However, 'the Fiji Police Force and Fiji Prisons and Correction Services, the Republic of Fiji Military Forces are not covered by ERP' (ERP, s2).

Legislation Regulating Employment Relations in Fiji Police Force

Prior to 1970: The Fiji Police Act (1966) did not have any provision on a DRM for the Fiji Police Force. Thus police officers had no mechanism for airing their grievances. The three police associations at that time only informally raised grievances with the Commissioner of Police, but very little was done to address grievances. The Commissioner was the judge, jury and executioner in the Force.

After Independence: Force Standing Order (1972): After Fiji's

independence in 1970, one regulation was passed to govern and regulate employment relations in the Fiji Police Force; this was the Force Standing Order (FSO) of 1972. The 'Force Standing Order' (1972) prescribed the general rules which guided the day-to-day work of police officers. It also included the general standard operating procedures for police officers and the conditions of employment (such as leave entitlements, allowances, sick leave, long service leave, etc.) (Force Standing Order 1972, s3).

The Police (Amendment) Act (2003): Currently, the main legislation that guides the police force is the Police Amendment Act (2003). Under this, two important changes were made to the 1966 act. First, it allowed the three Police Associations to be amalgamated into a single body, and second it provided some steps of solving grievances in the Police force, be it only a quasi-method for addressing grievances. Although, the Police Amendment Act (2003) is not a strong progressive labour legislation, compared to the old Police Act (1966), it is slightly better in the sense that at least it provides for some DRM processes which was entirely absent in the old 1966 act. Since 2003, successive governments in Fiji have continued to use this amendment act to guide the police force.

Police Association Regulation 2006: The 'third' regulation that governs and regulates employment relations and DRM is the Police Association Regulation (2006). This was a consequently regulation from the 2003 Police Amendment Act. In 2006, the Minister for Home Affairs signed the Police Association Regulation of 2006 (Laws of Fiji; Police Association Regulation, 2006). This was done to clarify and add to the Police Amendment Act (2003). For example, the Police Amendment Act (2003) was vague regarding how to resolve a grievance; this was added in the Police Association Regulation (2005). In the Police Association Regulation (2005), the Minister for Home Affairs specified all the processes (steps) to be used to resolve grievances.

Essential National Industries (Employment) Decree (ENI-2011): The fourth regulation is the Essential National Industries (Employment) Decree (ENI-2011). Under this, the police force is classified as an essential service. Thus, the ENI Decree also governs and regulates employment relations in the Fiji Police Force. Under the ENI Decree (2011), strikes by police personnel are illegal, trade unions are banned, and all grievances are to be solved internally between the 'Bargaining Unit' (representing employees).

DRM in Fiji Police Force

The Police Act (Cap 85) clearly stipulates that the discipline, promotion, training and transfer decisions are the prerogative of the Commissioner of Police based on the administrative and operational policies of the Fiji Police Force. No one can interfere or influence the operational and administrative decisions of the Commissioner of Police. The Minister for Defence can only direct and support the Commissioner of Police on policy and legal aspects; not on operational matters of the force. Operational matters include all elements of human resources management. It is within this overall legal perimeter that DRM within the police force is to be considered.

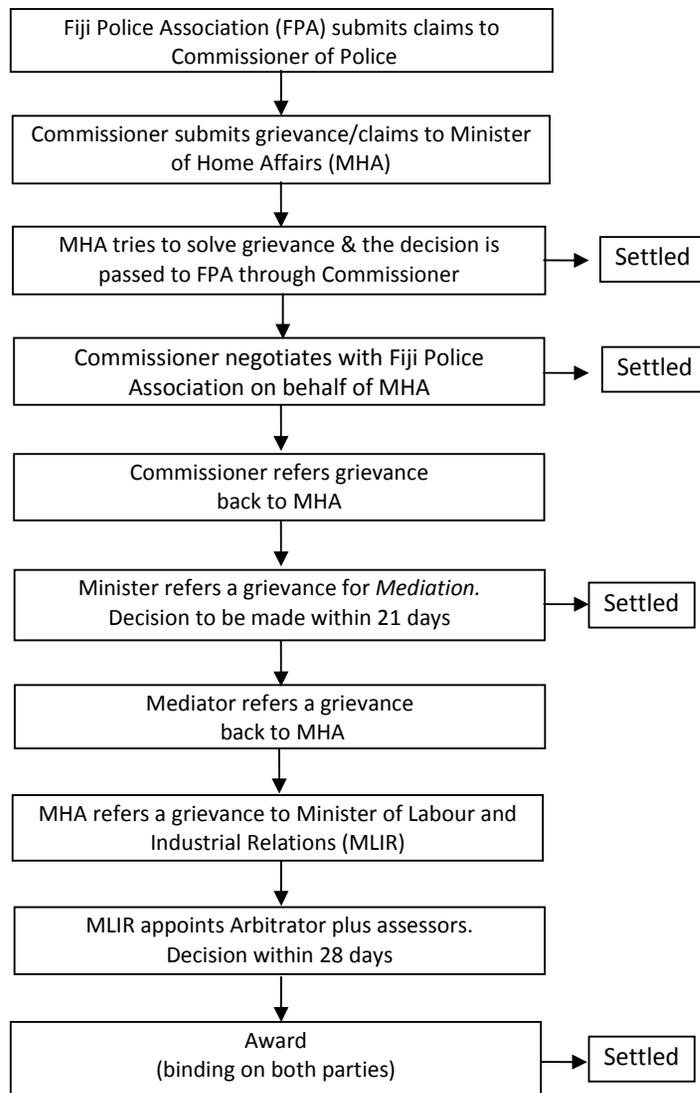
Figure 1 illustrates the four steps of resolving grievances in the Fiji Police Force under the Police Association Regulation. It should be noted that the DRM steps are to be understood within the context of the objectives of the association. S3 of the Regulation states the objects of the Association as follows:

- (a) to enable police officers to bring to the notice of Government any matter affecting their welfare and efficiency; and
- (b) to provide professionalism in policing and to negotiate with the Government on any matters affecting their pay and conditions of service within the Force.

The regulation further states (s3(2)) that 'The object of the Association or any matter brought by it shall not cover or relate to any matter of discipline and promotion within the Force'.

The matters to be considered under the DRM, however, are not clearly defined. More specifically, the terms 'any matters affecting their pay and conditions of service within the Force' in the regulation need to be defined. Does this include matters of an individual pay, placement within a salary band (as distinction from promotion), demotion, transfer, allowances, work load, resources at hand for performance of the specified duties, and the like? So far, no matter has been taken to the courts for a definitive statement on this. The current operating guidelines is that the matters for DRM are only those relating to the pay and conditions of service (log of claims), thus of the entire police force rather than individual grievances..

Figure 1: 'Grievance' Procedure under Police Association Regulation



Source: Authors. based on Fiji Police Association Regulation (2006).

Step 1: The Police Association refers the matter to the Commissioner of Police

The first step is the requirement that the executives of the Police Association refer the matter to the Commissioner of Police. Note that an individual police officer cannot report a grievance himself/herself (unlike the provisions under ERP). The Commissioner of Police will make his recommendations and forward it to the Minister for Home Affairs. After making a decision, the Minister for Home Affairs will inform the Commissioner of Police and the Commissioner of Police will then inform the executives of the Police Association.

There are two points to note. First, at this stage the Commissioner of Police does not attempt to solve a grievance but only refers it to the Minister for Home Affairs to make a decision. Second, there is no direct communication between the executives of the Police Association and the Minister for Home Affairs, and vice versa, as all communication is via the Commissioner of Police.

If at step 1, there is a deadlock, i.e., the police officers and the Police Association do not accept the decision of the Minister for Home Affairs, then the matter is unresolved. If a grievance remains unresolved, then the next step (two) kicks in. Under this the executives of the Police Association will have to refer the grievance back to the Commissioner of Police.

Step 2: Negotiation with the Commissioner of Police

The second step of resolving a grievance is the 'negotiation' process between the Commissioner of Police and the executives of the Police Association (Police Association Regulation, 2005: 6-7). In this stage, the Commissioner of Police is required to negotiate with the executives of the Police Association. Under the Regulation the Commissioner of Police is required to enter into negotiations in 'good faith' to resolve a grievance. The 'good faith' requirement is similar to the requirement under the ERP. At this stage the Commissioner of Police gets actively involved in solving a grievance (in contrast to step 1). If the executives of the Police Association are still not satisfied with the outcome of the negotiation and the grievance remains unresolved, then a deadlock is reached. If a grievance remains unresolved, then the next step (three) is for the Commissioner of Police to (for the second time) refer the grievance to the Minister for Home Affairs.

Step 3: Mediation Process

The third step of resolving a grievance is the requirement for the Minister for Home Affairs, in consultation with the executives of the Police Association, to appoint a mediator to resolve the grievance. The mediator could be either from the Ministry of Labour and Industrial Relations or someone from outside the government. The mediator is required to conduct the mediation process and attempt to resolve the grievance and make a decision within 21 days from the date of his/her appointment (Police Association Regulation, 2005: 6).

To date, however, no case has been referred by the Minister for Home Affairs to a mediator. Hence this stage of resolving a grievance is yet to be tested. The fact that so far no case has been referred by the Minister to a mediator, underscores the point that the Minister for Home Affairs and the Commissioner of Police can either resolve grievances or suppress them. Police generally believe that the latter is the norm in the Fiji Police Force, largely because the Fiji Police Association is very weak on industrial relations issues as it does not act as a trade union. It cannot do much, but accept the decision of the Minister for Home Affairs and the Commissioner of Police, although the Fiji Police Association may not be happy with the decision.

The Fiji Police Association stipulates that if the mediation process ends in a deadlock, then the Fiji Police Association can pursue the next step, which is to inform the Minister and the Minister can refer a grievance to an arbitrator (Police Association Regulation, 2005: 7).

Step 4: Arbitration

Arbitration is supposedly the fourth step of resolving a grievance in the Fiji Police Force. The Police Association Regulation (2005: 7-8) requires the Minister for Home Affairs to request (in writing) the Minister for Labour and Industrial Relations (MLIR) to appoint an arbitrator for the purpose of determination of a grievance. Upon receiving the request the Minister for Labour and Industrial Relations is obliged to appoint a person with extensive experience in law, economics or industrial relations to be an arbitrator. The Regulation is silent on whether the arbitrator will be same as those under the ERP. The arbitrator will be assisted by one or more assessors appointed and/or as approved by the MLIR. The criterion for the appointment of the arbitrator and assessors is that they must be residents of Fiji and not from outside. The arbitrator will have to determine the procedures for the arbitration proceedings using his/her

discretionary powers; this includes determining whether to hear submissions in writing or in person from the two parties. The arbitrator is obliged to make determination on a grievance within 28 days from the date of reference of a grievance (Police Association Regulation, 2005: 8). An extension can be granted if the Minister for Labour, in his/her opinion, feels that a grievance is complicated enough to warrant more time to make a decision (Police Association Regulation, 2005: 8).

Weaknesses and Challenges of DRM in Police Force

Compared to developed countries, the DRM in the Fiji Police Force is in its infant stage. It is weak and underdeveloped. The most critical problem is that the Fiji Police Force is excluded from Fiji's national labour law - the Employment Relations Promulgation (2007). The Police Association Regulation, 2005 is weak and underdeveloped. There are a number of weaknesses and challenges of DRM in Police Force

Power of the Commissioner to control the Police Association

The Fiji Police Association is not a trade union. It is a weak organisation, which police personnel liken to a 'toothless tiger'. One of the reasons why the Fiji Police Association is weak is because the Commissioner and the Minister for Home Affairs have the power to control the Police Association. The Commissioner has the power to suspend the Executive Council of the Police Association anytime he feels that the interest of the police force is jeopardized (the Police Amendment Act, 2003). This provision curtails the democratic rights of the Police Association to effectively represent the interests of police officers. The implication of this provision is that the Police Association cannot apply IR-type pressure on the Commissioner or the Minister for Home Affairs during industrial negotiation (collective bargaining) or when dealing with a grievance. If the Police Association applies too much pressure during the process of collective bargaining they ultimately face suspension; the fear of suspension limits what the Police Association's demands in the log of claims as well as in pursuing to the full grievances of members (Interview with an Executive of the Police Association, January 2017). If the Police Association executive is suspended then there is no negotiation between the Police Commissioner and the Police Association.

The Police Association is in a precarious position; their hands are always 'tied', preventing them from taking legitimate claims on the welfare of police officers up the ladder. The Police Association is, in

practice, constantly threatened with regulatory measures so that the executives or representatives do not have an upper hand during the bargaining process (Interview with an Executive of the Police Association, January 2017).

Furthermore, in most cases the police officers are under pressure to accept the decision of the Commissioner of Police and the Minister for Home Affairs. Both the Commissioner of Police and the Minister for Home Affairs can pressure the Police Association to accept their decision even though the Police Association may not agree with the decisions coming from the top. The threat or even perceived threat that the Police Association could be de-registered and/or their officials terminated from work, creates a form of self-defeatism in the Association. Under such constraints it will be quite difficult for any association to effectively function to advance the interests of its membership.

Furthermore, if there is deadlock after the negotiation between the Commissioner of Police and the Police Association (i.e. after step 2 explained earlier), then technically only the Minister for Home Affairs can make recommendations to the Minister for Labour and Industrial Relations. The Police Association does not have this right. If the Minister for Home Affairs refuses to take the matter to the Minister for Labour and Industrial Relations, then the matter reaches a dead-end; the Police Association does not have any further recourse or remedy on this. The powers of the Minister are, ultimately, deemed to be discretionary. This is the final nail in the coffin of DRM for the police force.

Deficiencies and Contradictions

There are a number of contradictions, deficiencies and issues in the legislation and the procedures of resolving a grievance in the Fiji Police Force.

The first contradiction is between the Police Amendment Act (2003) and the Police Association Regulation (2006). Under the Police Amendment Act 2003, the grievance procedure was not very transparent. There was the possibility the Minister for Home Affairs/Defence intervening to reinforce the negotiation process and later referring the dispute to mediation and arbitration. The latter could be held back or delayed. This created a conflict of interest. The Police Association Regulation (2006), however, is more specific with time frames and states that the Minister for Defence only refers disputes to a Mediator and appoints the Arbitrator, without interfering in the negotiation processes between the employer and employee

It ought to be noted, however, that the 2003 Amendment Act provides for the formation and operation of the Police Association Regulations (PAR). S2(b) of the Amendment Act provides that the Minister may make regulations:

- (a) for the establishment and regulation of a police association (including the regulation of office bearers) for the purposes of enabling police officers to negotiate with the Government matters affecting their pay and conditions of service of the Force, other than discipline and promotion;
- (b) for the rules and procedures for negotiation of pay or conditions of service of the Force;
- (c) for the rules and procedures relating to the determination of grievance for disputes relating to pay and conditions of service of the Force.

This provision, and the drafting of the PAR, show that the conflict of interest situation has been eliminated. But to date, the only regulation made is that dealing with (a) above. There is no separate regulation on the rules and procedures for negotiation of pay or conditions of service of the Force', or on the 'rules and procedures relating to the determination of grievance for disputes relating to pay and conditions of service of the Force'.

The PAR, however, contains sections on procedures for negotiations and determination of disputes (s14-16). Whether provisions on these in a Regulation on establishment of the association is compliant with s2(b) of the Amendment Act is a critical matter. Under the normal rules of interpretation, the provisions of an Act takes precedence over Regulation.¹ The Act requires that the minister make 'rules and procedures' for negotiation and dispute resolution. The Regulation provides specific objectives of the Association as quoted above.

A contextual interpretation of the above could provide convincing arguments that that Regulation on Police Association can not substitute for the requirement of regulations on rules and procedures on negotiation and disputes. This confusion or deficiency in clarity, needs to be dealt it.

In the absence of clarity on this, one could still resort to s18 of the Police Act. S18 of the Act has not been repealed. It can also not be overtaken by a regulation made under an amendment act. The effect is that S18 of the principal act continues to be valid. Unfortunately, this

¹ We acknowledge Dr. Ganesh Chand for pointing out this and the discussion contained in the remainder of this section of the paper.

critical point was not picked up by any trade unionist in Fiji, or by the then former or current trade union leaders who were in Parliament. S18 of the Police Act provides that:

every inspectorate and subordinate officer and every special constable shall be entitled to make any complaint or application, either orally or in writing, to his superior officer who shall, on the request of the officer or special constable making such complaint or application, forward the same to the Commissioner without delay.

But there is a limit to this: s18(2) states that no inspectorate or subordinate officer or any special constable shall 'prepare or initially sign any complaint, petition or statement of grievances in relation to any matter concerning the Force'. Matters relating to personal welfare, for example, promotion, training, transfer, discipline, etc., ultimately relate to matters which concern the police force. The lack of clarity in the 2 subsections is a matter which neither the stakeholders nor the legal drafters, thought necessary to clarify. It is the position of this paper that s18 of the Act continues to remain effective; it has not been affected by the 2003 amendments.

The second limitation is that the law (Police Act, 1985, s18(c)) disallows any inspectorate or subordinate officer or any special constable to petition the President or the Minister in

relation to any complaint or grievance unless such complaint or grievance has been previously communicated in writing through his superior officer to the Commissioner and the reply of the Commissioner relating to such complaint or grievance has been communicated to the officer or special constable making the same.

Thus, if a grievance has been communicated and the Commissioner does not reply on it, the employee is left with no recourse. He/she could seek a writ of mandamus, under which a court could order the Commissioner to reply. But this would be an extreme step which will with all certainty seriously jeopardise the employment of the complainant.

Thirdly, the Act makes no provision for grievances on employees above the inspectorate rank. This gap can be arguably filled by the 2003 amendments and the provisions of the Police Association, barring the obvious confusions listed above.

Arbitrator

There is another set of confusion in the laws. This concerns the

appointment of the arbitrator. The Police Association Regulation is silent on whether the Minister for Labour can appoint an arbitrator from the arbitration mechanism under the ERP. Under the ERP the Labour Minister does not have the jurisdiction to appoint a mediator or an arbitrator to resolve a grievance in the Fiji Police Force for any dispute lodged with the Labour Ministry by an individual police officer or an association of police officers. But if the grievance came through the Minister for Home Affairs, could the Minister for Labour then appoint the arbitrator under the rules of the ERP? In essence, the question on whether the rules of arbitration under ERP would apply to the police grievance, needs a clear answer. Without that, the DRM in the Fiji Police Force remains vague, underdeveloped and possibly un-operational. One possible way to address this is to amend the relevant laws and regulations and/or provide for the clarity in a separate legislation.

Police Association Regulation (2005) and the ERP (2007)

While the Fiji Police Force is excluded from the scope of the ERP (2007), there are similarities between it and the provisions under the Police Association Regulation. Firstly, the notion of 'good faith' bargaining is mentioned in the Police Association Regulation. Under this, the Commissioner of Police is required to enter into negotiations with the Police Association in 'good faith'. In reality, however this never happens (Interview with an Executive of the Police Association, January 2017). Good faith needs to be demonstrated. The Police hierarchical culture and discipline needs to be re-oriented to allow for 'good faith' dealings. This is not likely to be an easy exercise.

Secondly, the 'mediation process' is included in the Police Association Regulation. To date, however, no grievance has been referred to mediation and it is unlikely that in future any case will be referred to mediation. Mediation is a useful process for individual grievances. The latter is, supposedly, outside the scope of the Association. For completeness, it should be noted that there is a difference on who could be a mediator. Under the ERP, only a staff from the Ministry of Labour and Industrial Relations could be a mediator, whereas in the case of the Police Association Regulation, a mediator could be either from the MLIR or someone outside the government ministries.

Thirdly, the Arbitration system is included in the Police Association Regulation and in certain important respects, is similar to the provisions under the ERP. However, the procedures and processes of how the arbitration is supposed to function, is not clearly spelt out. Numerous

questions arise. Will the MLIR use the Employment Relations Tribunal to resolve disputes in the Fiji Police Force? Will the arbitration structure be the same as the Employment Relations Tribunal under ERP or have a different structure? Will the arbitration have the status of a magistrate's court under the ERP? Will the arbitration function in a legal manner with each party being allowed to be represented by a lawyer and allowed to call experts to support their cases? Since no case so far has been referred to the arbitration by the Minister for Home Affairs, these questions remain unanswered.

The Police Association cannot act as a Trade Union

The Police Association is not allowed to be registered as a trade union. Nor is it allowed to take up grievances under the ERP. But when the Minister for Home Affairs refers an unresolved matter to the Minister for Labour and Industrial Relations, who then resorts to the resolution process, the Police Association will have to play exactly the same role as a trade union would. One way to replace the de-facto behaviour required of the Association by a non-pretentious one, is to allow the Association to register as a trade union. The other method is for the Association to employ full time employees of its own in capacities like Industrial Relations Officer(s), who will report to the Association executives. The IRO could, under their JDs, be mandated to carry out all IR work required of the Association, including advancing the Association's case with equal rigour as a trade union would. This method would shield the police, who as employees of the state would be hesitant to take matters with the energy and vigour likened to that of a union official. There is no provision in the Regulations disallowing the Association from employing its own staff.

The above, however, would not solve the fundamental problem: the Regulation disallows anyone to take up grievances on individual IR matters like promotions, demotions, transfers, discipline, and the like. These are fundamental human rights matters, which under the current laws, are dis-availed to the police force employees.

Minister for Home Affairs: Independence and Neutrality

The Police Association Regulation is silent on situations where the Minister for Home Affairs could himself/herself be a party to the grievance. This potential for 'conflict of interest' needs to be addressed in the Regulations.

Appeal System

There is no provision for an appeal system in the Police Association Regulation. Hence police officers do not have the opportunity for further redress if they are not content with a decision of the Commissioner or the Minister for Home Affairs. Normally, a good grievance resolution mechanism should have an appeal mechanism which provides an aggrieved party an opportunity for further redress.

Recommendations

Since the DRM system in the Fiji police force has major flaws and deficiencies, the following recommendations are suggested to improve the DRM system.

Both the Police Amendment Act (2003) and the Police Association Regulation (2005) are obsolete vis-à-vis the demands of police force worker rights. It is likely that thorough consultations were not done while developing the DRM for the Fiji police force. The whole system is designed with strict regulatory measures to deny police officers recourse to an efficient and fair grievance mechanism. There is an urgent need to bring about a major reform for police employment and industrial relations laws, guidelines, procedures, and processes. There is a need for streamlining employment relations issues in the police force. In this context, the Police Act, the Police Amendment Act and the Police Association Regulation need thorough reviews, with the overriding objective being the need to provide the police workforce a quality grievance and dispute resolution mechanism.

An alternative approach would be to allow the police workforce the same rights and privileges which other workforce have under the ERP. This approach will prevent the development of separate legislation for the police force, and also allow for equal application of laws in Fiji.

Yet another approach would be to establish an independent *Police Arbitration Tribunal* that will handle all grievance, mediation and arbitration matters concerning the police workforce. This could be along similar lines as the Police Arbitration Tribunal of the United Kingdom.

There is a genuine need for an independent appeals system in the Police force, which is equivalent to that of the Public Service Appeals Board. This mechanism will provide an opportunity for an appeals service granted to police officers, who have issues on management's decision, particularly in matters of promotion and discipline.

The matter of allowing the Police Association to be registered as a

trade union needs to be revisited. Equal application of human rights would require that restrictions on the freedom of association of the police workforce be repealed from all laws.

A matter of immediate concern is that of deadlocks. At present, if there is a deadlock between the Commissioner of Police and the Executive Council of the Police Association in the negotiation stage of the process, the Commissioner of Police has the right to report the matter to the Minister for Home Affairs. The Police Association does not have such a right. A fair system would empower both the parties to report the deadlock. Second, presently only the Minister for Home Affairs has the right to refer an unresolved matter to the Minister for Labour and Industrial Relations for mediation or arbitration. This restriction needs to be repealed to allow for equal application of laws in Fiji.

Finally, the Police Association should become independent from the management of Fiji Police Force. While there is an appearance of independence in the Regulation, in effect the Police Association is under direct control of the management of the police force. Punitive measures are the norm in the Force. This needs to end if the police workforce is to be provided an equal opportunity for the resolution of their employment related grievances..

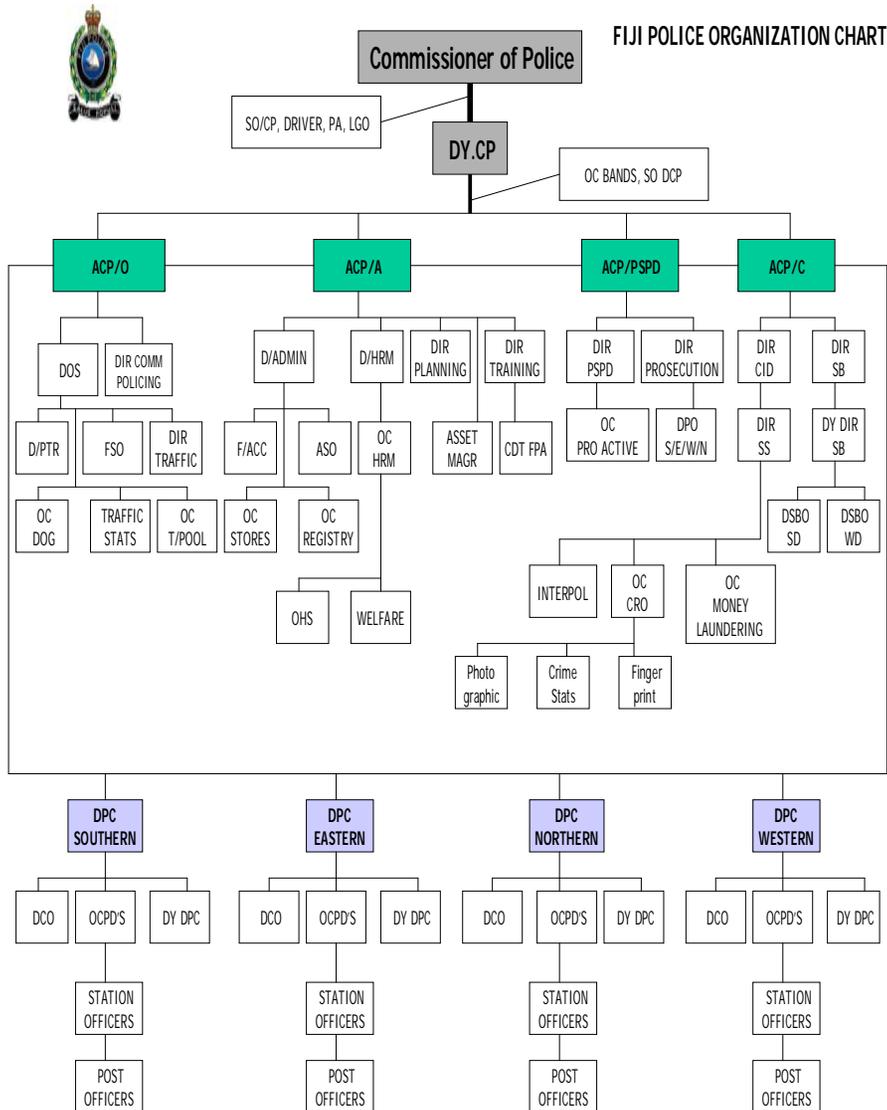
Conclusion

This paper has examined the grievance resolution machinery in the Fiji Police Force. It has discussed some of the problems and weaknesses in the current dispute system. Overall, the employment relations legislation in the Police Force are old and still under/undeveloped. The whole process of solving grievances is riddled with uncertainties and inconsistencies. There is still uncertainty on the definition of a 'grievance' within the police force. A large part of the documentation seem to imply that there is no procedure for dealing with 'grievances' of personal or individual nature, for example those dealing with promotions, demotions, transfers, training opportunities, bullying, harassment, discrimination, and the like., with the view that all these are to be dealt only by the Commissioner of Police without reference to any process or procedure. But some sections of the law and regulations provide scope for one to interpret that individual grievances can be dealt with through the DRM. There has so far not been any definitive legal interpretation of the scope of the process and procedures outlined in the *Police Act*, the *Police (Amendment) Act*, and the *Police Association Regulation*.

While the *Police Association Regulation 2006* is more specific in

terms of dealing with certain types of grievances, there also remain confusion on aspects of this. A number of these issues have been discussed in this paper. The fundamental issue remains that of the lack of any independent and efficient system of individual and collective grievance resolution mechanism in contrast to a wider industry-level grievance matter (like overall terms and conditions of employment). An organisation which employs over 4,000 persons needs a clear, transparent, independent and efficient system of grievance resolution. Despite the 2003 amendment to the Police Act, this remains the main human resource challenge for the Fijian police force.

Appendix 1: Fiji Police Organisation Chart



(Source: Fiji Police Administration Section, 2006)

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