



NATIONAL INTEGRITY SYSTEM STUDY

LAW ENFORCEMENT AGENCIES

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About the Transparency Vanuatu National Integrity System Study Discussion Papers Series

The National Integrity System (NIS) study follows a methodology developed by the Transparency International Secretariat in Berlin. This methodology provides the structure of the report and identifies the questions to be addressed. The Vanuatu NIS study examines 13 key institutions, or “pillars”: legislature, executive, judiciary, ombudsman, auditor general, public service, law enforcement, media, private business, customary authorities, electoral commission, political parties and civil society. The research aims to develop consensus of the key recommendations for change. Each pillar discussion paper is based upon review of laws, documents and interviews. Discussion papers are released to the advisory group, external reviewer and the public. The discussion paper is a work-in-progress. All comments, corrections or additions are welcome. Comments are requested by the end of March 2014. Comments can be returned to Transparency Vanuatu in writing or in person (contact details above). They can also be sent to the lead researcher at anita.jowitt@gmail.com. If you would like to be added to the email list to be notified when further discussion papers are released or when public meetings on the report are held please contact Transparency Vanuatu.

SUMMARY

Previous NIS reports in 2004 and 2006 observed that the operation of the Vanuatu Police Force was undermined by instability and politicisation in the post of the Commissioner of Police. In 2010 amendments were introduced to reduce the scope for interference in this appointment and there is some confidence that these measures have worked. Another longstanding issue is that police culture has allowed for cronyism in investigations and brutality to replace sound investigation techniques. In December 2013 the government signed an agreement to establish an independent police complaints authority which may go some way to addressing these underlying police culture issues.

Whilst there have been positive developments in respect of the police, the Office of the Public Prosecutor is in disarray. In December 2013 the Public Prosecutor resigned rather than participate in a Commission of Inquiry that had been established to investigate allegations of corrupt practice and poor management. No Acting Public Prosecutor has been appointed and the Port Vila Office of the Public Prosecutor is currently closed, with all prosecutors acting out of the State Prosecutor’s Office.

RECOMMENDATIONS

- 1) At the time of writing this report the Office of the Public Prosecutor appears to be in disarray, and no person holds the position of Public Prosecutor. It is recommended that:
 - a) the government re-establish the Commission of Inquiry to examine the activities of the Office of the Public Prosecutor, with the aim of developing recommendations to improve the processes and functioning of the Office and reviewing the relationship between the Office of the Public Prosecutor and State Prosecutors;

- b) these recommendations should include the development of a Code of Ethics for prosecutors and a requirement to appoint a Deputy Public Prosecutor as well as recommendations relating to practical procedure manuals;
 - c) the report of the Commission of Inquiry be made public; and
 - d) the implementation of these recommendations, by the new Public Prosecutor when he or she is appointed, is closely monitored by a body to be recommended by the Commission of Inquiry.
- 2) An independent review of the Vanuatu Police Force is undertaken to address broad issues relating to the structure of the police including human resource development and management issues, the role of the Vanuatu Mobile Force and police culture issues raised in the Coroner's Report into John Bule.

STRUCTURE AND ORGANISATION

The head of the Vanuatu Police Force (VPF) is the Commissioner of Police. The Commissioner of Police is appointed by the President acting on the advice of the Police Services Commission. The Vanuatu Police Force (VPF) includes three arms; Police Headquarters, the Vanuatu Mobile Force (VMF) and the Maritime Wing. Within Police Headquarters there is a Criminal Investigations Department (CID) which has special units for Serious Crimes, Family Protection, Fraud and Drugs.

The Public Prosecutor's Office constitutes part of the Ministry of Justice. The Public Prosecutor is supported in her work by the Deputy Public Prosecutor, Assistant Public Prosecutors and State Prosecutors, who are all appointed by the Public Prosecutor to conduct, and appear in prosecutions on behalf of the Public Prosecutor.¹ Whilst State Prosecutors are police officers they are independent from the police and fall under the supervision of the Public Prosecutor.²

RESOURCES (PRACTICE)

To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Law enforcement agencies receive funding through an allocation of a proportion of the annual state budget. The VPF also receives significant support from AusAID. The Office of the Public Prosecutor is currently challenged by limited human and financial resources.

The proportion of the budget allocated to law enforcement has been criticised in the past as not reflecting the importance of security, and high ranking officers have previously pointed this out as a main constraint to maximising the effectiveness of law enforcement.³ In 2013, the overall budget expenditure of the Vanuatu Police Force (VPF) was VT 734,759,488 (US\$7,350,000) of which 87% was spent on salaries and allowances. Only 13% was left for operational expenses.⁴ It was further

¹ Sections 20-23, Public Prosecutor Act [Cap 293].

² Section 24, Public Prosecutor Act [Cap 293].

³ Thompson Marango, 'Separation of VMF Police hinged on budget' *Vanuatu Daily Post Online*, 25 May 2013 <http://www.dailypost.vu/content/separation-vmf-police-hinged-budget> [accessed 24 February 2014].

⁴ Ibid.

reported that in 2013, the VPF had a debt of more than VT 80,000,000.⁵ Another issue is that that very little to none of the funding received by the government is being allocated to police stations outside of Port Vila, with officers in the outer islands at times having to ask clients to drive them to places in order to conduct investigations due to a lack of fuel.⁶

There has been no salary increase for the VPF since 1997. Although many receive significant allowances for driving, or the status of inspector and detective on top of their base salary, their wages are poor compared to other public servants.⁷ A salary increase has been pending since October 2012 in response to which the Prime Minister in late 2013 announced that raises to VPF subordinate officers were to be facilitated by January 2014.⁸ However, as there have been no budget increases made to accommodate for this change, the funds will need to come out of the operational budget and further decrease it.⁹ Despite low salaries the VPF has not had significant difficulty in attracting staff, and currently has over 600 employed officers. Whilst recruitment is strong there are no clear career pathways for police, with set criteria based on education and experience for progressing up the ranks.¹⁰

A significant source of out-of-budget funding is from the support of international partners such as UNICEF¹¹ as well as AusAID through the Vanuatu Australia Police Project (VAPP) which aims to provide for the training and professionalisation of the VPF, infrastructure, assets and logistics, workforce renewal and internal VPF governance.¹² The VAPP has been providing funding for operational activities that approximately matches the current operational budget, which has been managed through the Australian Federal Police (AFP) liaison office. It has also been providing significant resource support through training programs for police officers, computer equipment for every province to improve case management systems, as well as building 8-10 new police posts and stations in various islands in the past decade.¹³ Whilst the VAPP assigns advisors to the VFP this has not been without difficulty with 11 advisors being expelled from the country in 2012 due to changes in political power.¹⁴

Likewise of concern is the severe lack of funding and resources experienced by prosecutors which hinders their ability to work effectively. Often prosecutors are required to travel to various parts of the island to attend court, however because there has either been no vehicle available, or no funds for fuel, there have been instances where they were forced to walk in bad weather conditions carrying all their files.¹⁵ Furthermore, when the Magistrate and Supreme Courts are undertaking their tri-annual circuits around the country to the remote islands, prosecutors have, at times, been unable to attend court for these cases due to insufficient funds for travel.¹⁶ Offices are also lacking

⁵ 'Police debts of 80 million may affect salaries in December' *The Vanuatu Independent*, 26 October 2013, 3.

⁶ Interview of AusAid Senior Program Manager Helen Corrigan with Jessica Kim, Port Vila, 30 January 2014.

⁷ Interview of AusAid Senior Program Manager Helen Corrigan with Jessica Kim, Port Vila, 30 January 2014.

⁸ Jane Joshua, 'Prime Minister wants salary increase soon for police subordinates' *Vanuatu Daily Post Online*, 17 October 2013 <http://www.dailypost.vu/content/prime-minister-wants-salary-increase-soon-police-subordinates> [accessed 24 February 2014].

⁹ Interview of AusAid Senior Program Manager Helen Corrigan with Jessica Kim, Port Vila, 30 January 2014.

¹⁰ Comments by Mark Bebe, Advisory Group Meeting 6 March 2014.

¹¹ Interview of Corporal Lily Joel with Jessica Kim, Port Vila, 31 January 2014.

¹² 'Vanuatu Australia Police Project continues its support with training, infrastructure, assets and logistics' *News4us.com Online*, 29 March 2011 <http://www.news4us.com/vanuatu-australia-police-project-continues-its-support-with-training-infrastructure-assets-logistics/228829/> [accessed 24 February 2014].

¹³ Interview of AusAid Senior Program Manager Helen Corrigan with Jessica Kim, Port Vila, 30 January 2014.

¹⁴ Interview of AusAid Senior Program Manager Helen Corrigan with Jessica Kim, Port Vila, 30 January 2014.

¹⁵ Interview of Legal Practitioner Eric Molbaleh with Jessica Kim, Port Vila, 29 January 2014.

¹⁶ Interview of Legal Practitioner Eric Molbaleh with Jessica Kim, Port Vila, 29 January 2014.

sufficient computer equipment and general supplies¹⁷ and because there been no electronic database system developed for filing cases, paper files have been stored in cabinets which make it very hard to find and follow up on matters.¹⁸ During January 2014 both the Public Prosecutor's office and the State Prosecutor's office in Port Vila suffered from a prolonged electricity cut due to a failure to pay electricity bills which severely affected their ability to continue working. This was not a lone occurrence.¹⁹ Frequently in the past the two offices have shared facilities to accommodate such circumstances.²⁰

The Public Prosecutor's office and State Prosecutor's office have also had difficulty in retaining trained lawyers as they have been tending to move to other legal arms of the government. This is partly attributable to the challenging work environment faced by prosecutors due to the nature of criminal proceedings and partly attributable to poor working conditions and low salaries compared to that being offered elsewhere such as the State Law Office whose budget is six times larger than the Public Prosecutor's office.²¹ The Office of the Public Prosecutor was provided some external support from AusAID in the past through the provision of some office supplies²² and the assignment of external advisors to the Public Prosecutors Office and to the State Prosecutor's Office. Many of the staff in the Public Prosecutor's have relatively few years of experience and although there have been requests for an external advisor within the Office of the Public Prosecutor, this has not been provided due to concerns about internal mismanagement within the office.²³

In December 2013 the Public Prosecutor resigned rather than face a Commission of Inquiry into allegations of mismanagement and inefficiency within the Office of the Public Prosecutor.²⁴ As of February 2014 no Acting Public Prosecutor has been appointed.

INDEPENDENCE (LAW)

To what extent are law enforcement agencies independent by law?

Whilst laws have been amended to reduce the scope for political interference in the operation of the Police Services Commission there is still scope for interference to occur. Whilst prosecutors are guaranteed independence from external agencies, there is some scope for internal interference.

The law requires that every candidate for appointment to the Vanuatu Police Force (VPF) shall be a citizen of Vanuatu and possess any further qualification prescribed by the Minister after consultation

¹⁷ State Prosecution Office, *Vanuatu: Sanma Annual Report for 2012 25 March 2013*.

¹⁸ Interview of Legal Practitioner Eric Molbaleh with Jessica Kim, Port Vila, 29 January 2014.

¹⁹ 'Public Prosecution Office Power Cut' *Vanuatu Daily Post Online*, 8 October 2013

<http://www.dailypost.vu/content/public-prosecution-office-power-cut> [accessed 24 February 2014].

²⁰ Observations by Jessica Kim on visit to Port Vila Public Prosecutors Office and brief conversation with Greg Takau, Assistant Public Prosecutor, 28 January 2014.

²¹ Royson Willie, 'Vanuatu facing difficulties finding Ni-Vanuatu prosecutors' *Vanuatu Daily Post Online*, 26 November 2010 <http://www.dailypost.vu/content/vanuatu-facing-difficulties-finding-ni-van-prosecutors-0> [accessed 24 February 2014].

²² Interview of Legal Practitioner Eric Molbaleh with Jessica Kim, Port Vila, 29 January 2014.

²³ Interview of AusAid Senior Program Manager Helen Corrigan with Jessica Kim, Port Vila, 30 January 2014.

²⁴ Jane Joshua, 'Public Prosecutor Resigns' *Vanuatu Daily Post Online*, 31 January 2014

<http://www.dailypost.vu/content/public-prosecutor-resigns> [accessed 24 February 2014]; 'Vanuatu Public Prosecutor Resigns over Commission of Inquiry Plan' *Radio New Zealand International*, 17 February 2014 <http://www.radionz.co.nz/international/pacific-news/236455/vanuatu-public-prosecutor-resigns-over-commission-of-inquiry-plan> [accessed 24 February 2014].

with the Council of Ministers.²⁵ The Police Rules outline further requirements for recruitment, and include criteria related to age, physical and mental fitness and education. There is also a requirement that recruits be of good moral character.²⁶ The Police Services Commission may, acting on the recommendation of the Commissioner of Police, approve the dispensing of one or more of the abovementioned criteria when they consider a candidate to have special qualifications of value to the VPF.²⁷

The Commissioner of Police is appointed by the President acting on the advice of the Police Services Commission. Three Deputy Commissioners are also appointed by the President acting on the advice of the Police Services Commission.²⁸ Other senior and subordinate officers are appointed by the Police Services Commission acting on the recommendation of the Commissioner.²⁹ In 2010 the law was amended to provide criteria that the Commissioner of Police must meet in order to be eligible for appointment. These criteria include that '(a) the person is a citizen of Vanuatu; and (b) has served in a senior position within the Force for a period of at least 7 years; and (c) preferably has a tertiary qualification in the area of policing, military, management or Law.'³⁰ The citizenship criterion means that it is no longer possible to consider recruiting the Commissioner of Police from overseas. This limits the pool of possible applicants, and may make it harder to find a suitably qualified and experienced individual who is independent.

The Police Services Commission is comprised of 5 members who are appointed by the President acting on advice of the Prime Minister after consultation with the Council of Ministers.³¹ Whilst the Chief Justice and Public Service Commission nominate two representatives onto the Police Services Commission as the appointments are determined by the Prime Minister this body is not guaranteed independence in law. In 2010 the law was amended to provide that the Police Services Commission is not subject to the direction and control of any other person or body.³² The amendment also provided that 'the Commission must have regard to the policies of the Government as communicated in writing to the Commission from time to time by the Minister.'³³ Whilst there is some potential for political interference in the operation of the VPF it is a disciplinary offence for members of the VPF to participate in politics.³⁴

In contrast the Constitution provides that the Public Prosecutor shall not be subject to any external influence or control.³⁵ The Public Prosecutor is appointed by the President on the advice of the Judicial Services Commission.³⁶ The Judicial Services Commission is also guaranteed independence in the Constitution.³⁷ The Deputy Public Prosecutor, Assistant Public Prosecutors and State Prosecutors are all appointed by the Public Prosecutor.³⁸ There is no express requirement that the Public Prosecutor must appoint a Deputy, or a minimum number of Assistant and State Prosecutors.

²⁵ Section 11(2), Police Act [Cap 105].

²⁶ Section 3(1), Police Rules.

²⁷ Section 3(2), Police Rules.

²⁸ Section 7B Police Act [Cap 105].

²⁹ Section 10(1)-(3), Police Act [Cap 105].

³⁰ Section 7A(7) Police (Amendment) Act 2010.

³¹ Section 9(2), Police Act [Cap 105].

³² Section 1B(1), Police (Amendment) Act 2010.

³³ Section 1B(2), Police (Amendment) Act 2010.

³⁴ Section 50, Police Act [Cap 105].

³⁵ Article 55, Constitution of the Republic of Vanuatu.

³⁶ Section 5(1) Public Prosecutor Act [Cap 293]; Article 55, Constitution of the Republic of Vanuatu.

³⁷ Article 48(2), Constitution of the Republic of Vanuatu.

³⁸ Sections 20-23, Public Prosecutor Act [Cap 293].

The only requirements in respect of qualifications of the Public Prosecutor is that he or she must be a person who has been admitted to practise as a legal practitioner in Vanuatu, or any other country or countries, for a period in total of at least 7 years. The Deputy Public Prosecutor must have 5 years of experience. Assistant Public Prosecutors must have a law degree.³⁹ The law further provides that appointment must be made on merit following a fair and transparent selection process however does not specify anything further. There is no legislation or formal procedure by which prosecutors are promoted and as such there is no prosecutorial career based on objective criteria. There is only one Public Prosecutor's office which is located in Port Vila and two State Prosecutor's offices, one in Port Vila and one in Luganville. Therefore there are only a small number of prosecutor positions available and it is often the case that once appointed that person will remain in that position for a long time.⁴⁰ For this reason, promotions are rare and it is difficult for prosecutors to progress through the hierarchy.

The law provides that the Public Prosecutor may issue directions or guidelines with respect to the prosecution of offences to the Deputy Public Prosecutor, Assistant Public Prosecutors, State Prosecutors, any other person acting on behalf of the Public Prosecutor and any person who conducts investigations in relation to offences.⁴¹ Although these guidelines are advisory in nature, and thus not binding,⁴² if a prosecution in respect of an offence has been instituted by a person other than the Public Prosecutor, the Public Prosecutor may take over and assume the conduct of the prosecution,⁴³ regardless of whether the person otherwise responsible consents.⁴⁴ The Public Prosecutor may then decline to proceed further in the prosecution.⁴⁵

INDEPENDENCE (PRACTICE)

To what extent are law enforcement agencies independent in practice?

The independence of law enforcement agencies is often compromised in practice due to both external political interference, internal factionalisation and personal connections.

Although this was not always the case in the past, recently the appointment process of the VPF has generally been perceived to be in adherence with the legal and professional criteria.⁴⁶ However, an area of ongoing concern is the extent of politicisation of the police force. There have been instances of direct external interference, for example of officers being told by higher authorities not to investigate a case.⁴⁷ Furthermore, there is a longstanding culture of politicisation within the VPF with noticeable divisions amongst members dependent upon allegiances to different senior officers or political powers.⁴⁸ For example, during the transition between former Commissioner Bong and current Commissioner Caulton there was a taking of sides amongst members of the VPF which caused internal tensions and hindered their ability to maintain independence in their work.⁴⁹

³⁹ Sections 6(1), 20(3) and 21(3) Public Prosecutor Act [Cap 293].

⁴⁰ Interview of Legal Practitioner Eric Molbaleh with Jessica Kim, Port Vila, 29 January 2014.

⁴¹ Section 11(1), Public Prosecutor Act [Cap 293].

⁴² Section 11(3), Public Prosecutor Act [Cap 293].

⁴³ Section 10(1), Public Prosecutor Act [Cap 293].

⁴⁴ Section 10(3), Public Prosecutor Act [Cap 293].

⁴⁵ Section 10(4), Public Prosecutor Act [Cap 293].

⁴⁶ Interview of Corporal Lily Joel with Jessica Kim, Port Vila, 31 January 2014.

⁴⁷ Interview of Corporal Lily Joel with Jessica Kim, Port Vila, 31 January 2014.

⁴⁸ Interview of AusAid Senior Program Manager Helen Corrigan with Jessica Kim, Port Vila, 30 January 2014.

⁴⁹ Interview of AusAid Senior Program Manager Helen Corrigan with Jessica Kim, Port Vila, 30 January 2014.

The appointments of prosecutors have been made on the basis of the prescribed legal criteria. Although political or other external interference is not as profound as with the police, it nevertheless remains a relevant issue. For example in 2011, the Public Prosecutor alleged the then Minister of Justice and Daily Post Publisher of using blackmail-style tactics to pressure her to allow an independent prosecutor to prosecute a case involving the alleged assault of the Daily Post Publisher by the former Minister of Public Utilities and a group of his supporters. She reported being pressured by the Minister to step aside from the case for conflict of interest reasons and claimed she was blackmailed with front page claims on the Daily Post newspaper that she had been having an extra-marital affair with someone who is a very close friend of the accused former Minister of Public Utilities.⁵⁰ The Public Prosecutor also maintained that the Commission of Inquiry established to investigate her was an interference with her independence, and this is why she chose to resign.⁵¹ However, it should also be noted that by instituting a Commission of Inquiry the government were following a process which would have allowed fair consideration based upon interviews and investigation before determining whether to terminate the Public Prosecutor.

A recent report by Transparency International Vanuatu into the functioning of the judicial system noted conflicts of interest affected the actions of police and prosecutors in some examined cases, with conflicts leading to non-appearance at court by Prosecutors.⁵² Failures of police to execute summonses are also, sometimes, attributable to conflicts of interest.⁵³ In Vanuatu's close knit society it is very easy for personal connections to undermine the independence of law enforcement agents.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?

There are very limited provisions in the law that ensure the transparency of law enforcement agencies and personnel and grant public access to relevant information.

There is no requirement in law for the public disclosure of certain aspects of police or prosecution work. Furthermore, there are no specific legal provisions for victims of crimes to access their case files. The Commissioner of Police, Deputy Commissioners, members of the Police Services Commission and the Public Prosecutor are leaders for the purposes of the Leadership Code Act [Cap 240],⁵⁴ so are required to file annual returns disclosing assets under that Act.

The law does require that the Public Prosecutor must, within 3 months after the year's end, prepare and give to the Minister of Justice an annual report with respect to the operations of the Office. The Minister must cause a copy to be laid before Parliament as soon as possible and the Public Prosecutor must cause copies to be distributed to the public within 3 months after it is tabled in Parliament.⁵⁵

⁵⁰ Tony Wilson, 'Betrayed and Bullied' *Vanuatu Independent*, 13 June 2011.

⁵¹ 'Vanuatu Public Prosecutor Resigns over Commission of Inquiry Plan' *Radio New Zealand International*, 17 February 2014 <http://www.radionz.co.nz/international/pacific-news/236455/vanuatu-public-prosecutor-resigns-over-commission-of-inquiry-plan> .

⁵² Transparency International Vanuatu, *Vanuatu Judicial Monitoring System Report* (Port Vila: Transparency International Vanuatu 2013) 18 – 21.

⁵³ Comments by Marie Noelle Ferrieux Paterson, Advisory Group Meeting, 6 March 2014.

⁵⁴ Section 5, Leadership Code Act [Cap 240].

⁵⁵ Section 30, Public Prosecutor Act [Cap 293].

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

There is limited public disclosure of the activities and decision-making processes of law enforcement agencies although victims of crimes may be able to gain access to information on files related to their complaint if files proceed to prosecution.

Some disclosure on general activities of the police is being done in practice. The VPF have a media department which publishes news on recent police activities as well as updates on administrative changes in a weekly column via the Daily Post newspaper.⁵⁶ However, widespread access to information remains limited due to the newspapers being circulated primarily only in the urban centres and because there is no alternative source such as a website. It has also been difficult for victims to access their case files from the VPF in practice due to severe mismanagement. Allegations of files frequently being intentionally misplaced are common.⁵⁷

In contrast to the VPF the Public Prosecutor's office does not independently publish any information on their activities nor do they participate within the media. Annual reports are not made available to the public. The judgements of most cases are available as public documents either on the Pacific Islands Legal Information Institute (PaLII) website or for receipt upon request to the courts, although this is a function of the judiciary, rather than of the Public Prosecutor. In practice, if requested by the victim, prosecutors allow them access to their own files.⁵⁸

Sometimes journalists attend court and report on high profile matters and the Independent newspaper has recently instituted a regular "court watch" column, although this appear to focus on sexual abuse cases.

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

There are limited legal provisions to ensure accountability of police and prosecutors.

There is no independent mechanism for citizens to complain about the misconduct of police officers and the only complaint reporting mechanism in this regard is through the Internal Investigations Office (IIO) which is a department of the VPF.

In most cases there is no legal requirement for prosecutors to give reasons to relevant stakeholders regarding their decision to prosecute or not. However, if a Public Prosecutor decides not to prosecute a Leadership Code case following a recommendation by the Ombudsman, she must both notify the Prime Minister and publish a notice in the gazette explaining her decision.⁵⁹

⁵⁶ Interview of Corporal Lily Joel with Jessica Kim, Port Vila, 31 January 2014.

⁵⁷ Interview of AusAid Senior Program Manager Helen Corrigan with Jessica Kim, Port Vila, 30 January 2014.

⁵⁸ Interview of Legal Practitioner Eric Molbaleh with Jessica Kim, Port Vila, 29 January 2014.

⁵⁹ Section 37(3), Leadership Code Act [Cap 240].

The law permits victims of crimes to take a criminal action to court by way of private prosecution. This provides access to the justice system in the event that the Public Prosecutor is not able or willing to act.

There is no complaint mechanism for prosecutors specifically. However, pursuant to section 8 of the Legal Practitioners Act [Cap 119] any complaint concerning the conduct of a legal practitioner may be lodged in writing to the Secretary of the Law Council containing specific allegations of misconduct which may consist of acts or omissions. The Secretary shall investigate and report on the complaint to the Disciplinary Committee who has the power to strike off, suspend, impose a fine or reprimand a legal practitioner.⁶⁰

Corrupt activities engaged in by law enforcement officials who are defined as leaders including the Commissioner and Deputy Commissioner of Police, Solicitor General, Public Prosecutor, Public Solicitor, members of the Police Service Commission and the Commander of the Vanuatu Mobile Forces (VMF), constitute a breach under the Leadership Code Act [Cap 240].⁶¹ Complaints regarding these allegations can be reported to the Ombudsmen who then must investigate and report on the conduct of the leader.⁶² The Public Prosecutor must then consider the report and either refer it to the Commissioner of Police within 14 days of receiving the report if of the opinion that further investigation is required,⁶³ or ensure the police force investigates the complaint and forwards the results within 60 days of the complaint being made.⁶⁴ The Commissioner must then decide, within 3 months of receiving the report, whether there are sufficient grounds for prosecution, or that the complaint is vexatious, frivolous or trivial. If deciding not to prosecute, the Prime Minister must be notified within 7 days of the decision and a notice published in the gazette within 14 days stating the decision and its reasons.⁶⁵

There is no immunity of law enforcement officials from criminal proceedings. However the law does provide that 'no suit or other legal proceedings shall be instituted in any court of law against the Minister or the Commission or any other member of the VPF... in respect of any act, matter or thing done or purported to be done or omitted to be done, in good faith, in the performance or exercise of any duty or power imposed or conferred under the Act'.⁶⁶

ACCOUNTABILITY (PRACTICE)

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

In practice, there is almost no external accountability of law enforcement agencies for their actions. This issue is widespread across officers and prosecutors of all ranks and is primarily attributable to embedded police culture and prosecutorial culture which is antithetical to accountability and lack of disciplinary mechanisms.

⁶⁰ Section 9, Legal Practitioners Act [Cap 119].

⁶¹ Article 67, Constitution of the Republic of Vanuatu; Section 5, Leadership Code Act [Cap 240].

⁶² Section 34, Leadership Code Act [Cap 240].

⁶³ Section 35, Leadership Code Act [Cap 240].

⁶⁴ Section 36, Leadership Code Act [Cap 240].

⁶⁵ Section 37(1)-(3), Leadership Code Act [Cap 240].

⁶⁶ Section 40, Police Act [Cap 105].

The lack of an independent complaint reporting mechanism is a serious issue within law enforcement in Vanuatu. Essentially, the only avenue to make a complaint against a police officer is to a police officer, and not surprisingly this system has not been effective. It has been uncommon for these complaints to progress through to investigation, instead often being ignored or the file being intentionally misplaced. Stemming from this is the further issue that most victims make the mistake of not requesting a copy of their complaint statement from the police and as such when the police fail to take action, the victim is unable to provide any material proof of such misconduct.⁶⁷ This has created an environment where police officers have little to no accountability for their actions in practice. Although some internal discipline is adopted, this normally involves suspension at its most serious, and officers are rarely dismissed or charged in criminal proceedings.⁶⁸

An example of this is the case of escaped prisoner John Bule, who died after sustaining multiple injuries while in police custody following his recapture in March 2009. A report of a coroner's inquest was conducted by New Zealand Justice Nevin Dawson highlighting police abuse by the VMF. The report further noted instances of intimidation during the inquest including a death threat against Dawson from a senior VMF officer. At year's end no one had been charged in the case, and the government has not set up any commission of inquiry into the matter.⁶⁹

The issue of lack of accountability of law enforcement has not seen improvement since and it seems now that even the words of the Court of Appeal have been ignored by the Police. For example in April 2013, the Court of Appeal gave judgment awarding damages to Mrs Dornic, Mr McNicol and Mr Warte for an incident that occurred in late 2001 involving several police officers acting out of their lawful powers to assist their friend in a private dispute.⁷⁰ Not only did this take 11 years for final determination in Court, as of 2011 the police officers involved were still employed. Further examples can be found in a recent Transparency International Vanuatu report into police brutality and torture.⁷¹

In response to these issues, the VAPP have developed a new initiative to replace the IIO with an independent Profession Standards Unit (PSU). This was signed off by the Prime Minister in December 2013 and involves a new name, phone number, email address, office, signage and procedure to promote awareness and greater access by victims. An advisor will be assigned and new policies, training and assistance will be provided to improve accountability measures within the VPF via the PSU.⁷² It is, as yet, too early to assess the impact that this will have in practice.

There has been longstanding controversy surrounding the independence of the Public Prosecutor herself. Several complaints were formally conveyed to the Public Prosecutor Kayleen Tavoia in writing during December 2013 following which a Commission of Inquiry was set up to investigate whether there were grounds to substantiate her removal pursuant to section 18 of the Public Prosecutor's Act. During a preliminary conference when she was asked whether she wished to dispute the complaints or to resign, she chose the latter. Consequently, the Commission of Inquiry deemed her resignation removed the need to advance the complaint⁷³ and no further action was

⁶⁷ Interview of Legal Practitioner Eric Molbaleh with Jessica Kim, Port Vila, 29 January 2014.

⁶⁸ Interview of Corporal Lily Joel with Jessica Kim, Port Vila, 31 January 2014.

⁶⁹ US Department of State, U.S.A.: *Vanuatu 2010 Human Rights Report 8 April 2011*.

⁷⁰ *Warte v Republic of Vanuatu* [2013] VUCA 10.

⁷¹ Anita Jowitt, *Vanuatu: Documenting and reporting human rights abuses (violence against women and torture/ill-treatment) around Efate – Research report* (Transparency International Vanuatu, Port Vila, 2013).

⁷² Interview of AusAid Senior program Manager Helen Corrigan with Jessica Kim, Port Vila, 30 January 2014.

⁷³ Jane Joshua, 'Public Prosecutor Resigns' *Vanuatu Daily Post Online*, 31 January 2014

<http://www.dailypost.vu/content/public-prosecutor-resigns> [accessed 26 February 2014].

taken. This incident further demonstrates that it is rare for cases of improper conduct by police and prosecutors to be properly investigated or for those allegedly responsible for improper conduct to be brought to justice.

INTEGRITY MECHANISMS (LAW)

To what extent is the integrity of law enforcement agencies ensured by law?

The legal framework does provide for some integrity mechanisms for law enforcement agencies; however this is not as strong as required, particularly with regard to prosecutors.

There is a VPF Code of Ethics which states that each member shall uphold the law, have high moral values, act with fairness, exercise self-discipline and be responsible for their actions and treat all persons equally regardless of their gender, religion or birthplace etc. This code is provided to officers alongside human rights and ethics training that is undertaken before commencing work as a police officer. However, this code acts as a guideline and there is no formal procedure in place to ensure this is adhered to. It can also be observed that as the Police Training College is not registered as a training provider with the Vanuatu National Training Council, so there is no oversight by this body of the training provided.⁷⁴

The Police Act [Cap 105] does contain certain provisions outlining offences triable by the courts such as mutiny, failure to suppress riot or desertion, for which an officer may be arrested without warrant.⁷⁵ It also provides for disciplinary offences including engaging in any employment of office other than in accordance with his duties, involvement in a trade union or associated body, participating in a strike, accepting any gift of money or moneys-worth offered as payment for any service rendered or promised, losing or damaging arms and accoutrements and being absent from duty.⁷⁶ There are no specific rules regarding conflict of interest of police but the Police Rules (Joint Rules 7 of 1980) prohibit any act or omission likely to bring discredit upon the Force or any conduct, disorder or neglect to the prejudice of good order and discipline as a disciplinary offence.⁷⁷ The law also provides that a member of the Police Commission, including the chairperson, must not be involved in any matter before the Police Commission in which he or she has a conflict of interest.⁷⁸

In regards to prosecutors, the law states that after consultation with the Law Society and the Law Council, the Public Prosecutor is required to issue a Code of Practice and Ethics for Prosecutors and must publish this in the Gazette.⁷⁹ The Public Prosecutor's employment may be terminated by the President in accordance with the advice of the Judicial Services Commission if absent for 14 consecutive days in any period of 12 months without approval, engages in practice as a legal practitioner outside the duties of the office or any paid employment without the consent of the Minister, or is convicted of an offence for a breach of the Leadership Code.⁸⁰ There is also a provision that states that the Public Prosecutor may make a request to other prosecutors to perform his or her certain functions and powers because of the existence or possible existence of a conflict of

⁷⁴ Email from Francis Bryard to Anita Jowitt, 11 March 2014.

⁷⁵ Section 46-49, Police Act [Cap 105].

⁷⁶ Section 51-56, Police Act [Cap 105].

⁷⁷ Section 57, Police Act [Cap 105; Section 19(z), Police Rules (Joint Rules 7 of 1980).

⁷⁸ Section 9E, Police (Amendment Act) 2010.

⁷⁹ Section 29, Public Prosecutor Act [Cap 293].

⁸⁰ Section 18, Public Prosecutor Act [Cap 293].

interest.⁸¹ However, this is not mandatory provided the Public Prosecutor maintains independence as required by the Act.⁸²

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of members of law enforcement agencies ensured in practice?

Existing codes of conduct, conflict of interest policies and integrity bodies have not been effective in ensuring ethical behaviour by law enforcement officials.

Despite the existence of integrity mechanisms for the police in law, they have not been upheld in practice due to a severe lack of accountability. There has been a persistent culture of impunity within the VPF. Because improper activities by senior level officers occur, despite new recruits receiving training on human rights, ethics and their duties and responsibilities as a member of the police force, it does not take long for them to adapt or become influenced by the culture of politicisation and corruption.⁸³

With regards to prosecutors the laws, policies and training programmes are not as comprehensive. No Code of Ethics has been established. As indicated by the establishment of a Commission of Inquiry in late 2013 to inquire into the activities of the Office of the Public Prosecutor, there is concern about the integrity of this office. This suggests that the current, limited, laws relating to integrity of the Office of the Public Prosecutor are ineffective.

CORRUPTION PROSECUTION

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

Members of the Vanuatu Police Force and the Public Prosecutor are granted sufficient powers in law to undertake corruption detection effectively, however in practice, there are often political or otherwise external interferences as well as a misuse of power by law enforcement officials themselves which hinders their effectiveness.

An essential duty of the VPF is to maintain unceasing vigilance for the prevention and suppression of crime.⁸⁴ They are employed throughout Vanuatu for the preservation of peace and maintenance of order, protection of life and property, enforcement of laws, prevention and detection of offences and the production of offenders before the court.⁸⁵

Police are granted the use of reasonable force in order to prevent crime or to effect or assist in effecting a lawful arrest; power to take photographs and fingerprints; power to inspect licences, power to lay information before a court and apply for a summons, warrant, search warrant or such other legal process; power to erect barriers and the power to enter premises in the case of threat to life or property.⁸⁶ Section 12(1) of the Criminal Procedure Code [Cap 136] further empowers any police officer to, without an order from a judicial officer, or warrant, arrest any person whom he

⁸¹ Section 13(2), Public Prosecutor Act [Cap 293].

⁸² Section 7, Public Prosecutor Act [Cap 293].

⁸³ Interview of Corporal Lily Joel with Jessica Kim, Port Vila, 31 January 2014.

⁸⁴ Section 4(1), Police Act [Cap 105].

⁸⁵ Section 4(2), Police Act [Cap 105].

⁸⁶ Section 36, 37, 38, 39, 41 and 42, Police Act [Cap 105].

suspects upon reasonable grounds of having committed a cognisable offence, including corruption-related offences of corruption and bribery of officials under section 73(1) of the Penal Code Act [Cap 135].

The functions of the Public Prosecutor are to institute, prepare and conduct preliminary enquiries on behalf of the state and if requested by the Attorney General to do so; to discontinue prosecutions regardless of who instituted them; give advice to any member of the VPF and any investigators in relation to investigations, proposed prosecutions or prosecutions if requested; provide assistance in obtaining search warrants; and prosecute breaches of the Leadership Code Act [Cap 240].⁸⁷

There have been several noteworthy prosecutions of corruption-related charges in the past 12 months. In February 2013, through collaboration between the Public Prosecutor's office and the Department of Custom and Inland Revenue, a prosecutor was allocated to the Department to assist in the investigation of cases of bribery, fraudulent evasion of duties and other tax related offences. This resulted in the first charge of bribery being laid with respect of the Value Added Tax Act [Cap 247]. The prosecution was successful and the court imposed a VT100,000 (US\$1,000) fine.⁸⁸ Another example is the prosecution of the Chief Executive Officer of the Vanuatu Airport for nine separate charges of obtaining money by deception in breach of section 130B(1) of the Penal Code Act [Cap 135].⁸⁹ However, despite the numerous allegations of breaches of the Leadership Code Act [Cap 240], to date there have been no prosecutions under this Act.

⁸⁷ Section 8(1), Public Prosecutors Act [Cap 293].

⁸⁸ Public Prosecutor v Chen Jian Lin [2013] VUSC 189.

⁸⁹ Public Prosecutor v Henry Tony Joewangeh [2013] VUSC 55.