Integrating Community-Oriented Policing
and Traditional Justice Systems as Police Reform
and Development in Post-Conflict Countries

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Abstract

Police reform in post-conflict countries has seen the increasing implementation of the community-oriented policing model as a means to introduce democratic policing as a component of the peace building process. However, in many post-conflict countries the situation of legal pluralism exists, where multiple justice systems operate in the same space. Many communities often rely on customary or traditional forms of justice as the formal state justice system does not extend to their location or have any real influence or authority.

This research project used document analysis to investigate the contribution community-oriented policing can make to those communities that rely on traditional justice systems. This report introduced two community-oriented policing mechanisms, *tara bandu* ceremonies in Timor-Leste and the Community Officer Project in Solomon Islands, as case studies. These two mechanisms were analysed and compared with a specific focus on their respective levels of community participation and how they responded to raising awareness of the principles of human rights.

The case study analysis found that the *tara bandu* ceremonies had high levels of community participation and support due to them being an endogenous social structure and the extensive involvement the communities had in developing their respective *tara bandu* ceremonies. This was in contrast to the Community Officer Project which is an introduced structure and one in which the community appeared to have no real input into the design and implementation process. These findings led to the conclusion that in integrating community-oriented policing and traditional justice systems, consideration should be given to utilising pre-existing traditional structures that have the support of the community.

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Glossary

Arbakai	Pashtun tribal security system in Southeast Afghanistan
Horok	Symbol of prohibition, hung from a tree
Kastom-law	Customary law
Maklehat	Person who holds the highest authority in *tara bandu* ceremonies
Nehe biti	Traditional resolution process
Suco	Village
Tara bandu	Traditional community resolution ceremony
Xefe suco	Head of village

Acronyms

CAP	Community Auxiliary Police
CO	Community Officer
COP	Community-Oriented Policing
BCPP	Bougainville Community Policing Programme
IMF	International Monetary Fund
NGO	Non-Governmental Organisation
NZAID	New Zealand Agency for International Development
PLA	Participatory Learning and Action
PNTL	Policía Nacional de Timor-Leste
PPF	Participating Police Force
RSIPF	Royal Solomon Island Police Force
RAMSI	Regional Assistance Mission to Solomon Islands
UN	United Nations
UNCIVPOL	United Nations Civilian Police (prior to 2003)
UNMIT	United Nations Integrated Mission in Timor-Leste
UNPOL	United Nations Police (post 2003)
UNTAET	United Nations Transitional Administration in East Timor

x

Table of Contents

Chapter one- Introduction

1. Introduction

This research report investigates the implementation of community-oriented policing as part of the process of police reform in post-conflict locations. When working as a New Zealand police officer deployed to Solomon Islands, I was a small cog in a large machine of security sector reform and police development and reform. My role was to advise host-state police in how to carry out criminal investigations and therefore I experienced police reform and development at an implementation level. My pre-deployment training did not teach me much about traditional Solomon Island life or the widespread use of *kastom law* in the more remote areas of the country. However, when I was deployed to an isolated village, accessible only by boat or air, I found that the formal state legal system was largely irrelevant and that the local community, as well as the host-state police, relied heavily on traditional justice structures and systems in resolving conflict and crime. This appeared to be the case because of a number of reasons; the difficulty for the police and judiciary in accessing remote villages, the lack of resourcing for the formal system in rural areas, the unfamiliarity of the formal system and a community preference for customary law. While I could see that the police reform and rebuilding programmes were having some success in urban areas it was less so in the rural areas. Even when police officers were involved in conflict resolution, the actions of the police officer often mirrored that of the village chief or they assumed a coordinating role. Very rarely did the host-state police prosecute people according to the state laws, instead they relied on traditional methods of resolving disputes.

The continued use of traditional and customary justice systems have however been questioned by members of these communities and outsider actors. Issues in terms of the treatment of women and children were not consistently of concern, as traditional systems do not always adhere to certain principles of human rights. I became interested in how judicial systems could be developed that were considerate of the cultural context and of traditional values yet also protected all members of the community equally and recognised the rights of individuals. A possible solution to this predicament is the integration of existing

traditional justice systems with the principles of community-oriented policing, and therefore democratic policing, in a manner that recognises not only cultural diversity and non-Western concepts but also recognises and adheres to the principles of human rights (Chopra & Hohe, 2004; Hohe, 2003; McLeod, 2009).

Security sector reform can be considered a development issue as the success or otherwise of the overall internal security and stability of a country can have an impact on economic and social development (Holm & Eide, 2000). Community-Oriented Policing (COP) has been introduced to many police services including in Timor-Leste and Solomon Islands as part of the process of police reform, the rebuilding and reforming of the states police services. This research project aims to carry out a literature review of the implementation of COP in post-conflict and developing countries as part of the process of police reform by focusing on two particular mechanisms, the Community Officer Project in Solomon Islands and *tara bandu* ceremonies in Timor-Leste, which have been developed and used to integrate the principles of democratic policing with traditional or customary justice systems.

1.2 Research Project Aims

To analyse systems used to integrate Community-Oriented Policing with traditional justice systems as part of the process of police reform in post-conflict countries.

1.3 Research Question's

1. What contribution can Community-Oriented Policing bring to post-conflict countries?

Objectives:

- To demonstrate Community-Oriented Policing as part of police reform in post-conflict countries
- To describe the contribution of Community-Oriented Policing in the development context.

2. What processes have been used to introduce Community-Oriented Policing to communities that use traditional or customary justice systems?

Objectives:

- To contrast the traditional or customary justice systems of Timor-Leste and Solomon Islands in the post conflict environment after international and State involvement.
- To compare the mechanisms used to integrate Community-Oriented Policing with traditional or customary justice systems in Timor-Leste and Solomon Islands.
- To identify the mechanism most suitable for development.

1.4 Methodology

This literature review will be carried out through content analysis and examination of a combination of different literature sources. They are:

- academic literature
- grey literature and reports from police services, international organisations such as the UN and the Regional Assistance Mission to Solomon Islands (RAMSI), non-governmental organisations (NGOs) and governmental departments such as The New Zealand Aid Programme.

The limitations of this research are that it is desk bound and I am therefore reliant on research previously carried out by others and their interpretation of that research.

1.5 Ethical Considerations and Biases

Throughout the research process there is a responsibility to examine all the processes through an ethics lens so as to ensure that the integrity of the entire research is fundamental throughout (O'Leary, 2013). In this case the ethical considerations are guided by the Massey University Code Of Ethical Conduct For Research, Teaching And Evaluations Involving Human Participants, which

in turn is guided by section 6 of the Education Act 1989 (Massey University, 2013). As this is a desk based research project there is no requirement to seek approval from the Massey University Human Ethics committee.

One area of ethical consideration is related to my positionality and the disclosure of potential conflicts of interest. I am a New Zealand Police officer who has worked on a Community Policing program in Timor-Leste and my husband is also a New Zealand Police officer employed by the police division of the United Nations (UN). With regards to the obtaining of documents or reports, official channels will be used to obtain such documents so all literature is gathered in a transparent manner.

1.6 Research Project Structure and Development Theory

Alternative approaches to development, such as participatory development, include those approaches that have a focus on bottom up and sustainable development that include the subjects of development in the design and processes of development (Potter, 2002). Participatory development is carried out in an attempt to ensure that the focus of development is on those who are to benefit from it (Peet & Hartwick, 2009). The inclusion or the participation of the beneficiaries of development has become common place within the development discourse since the 1970s and is now so widespread that it is considered by many to be the new orthodoxy (Mohan, 2008; Peet & Hartwick, 2009; Simon, 2006). Participatory development can mean many things to many people; however, it is characterised by an increasing recognition that the involvement of the beneficiaries of a development project is important if that project is to succeed (Mohan, 2008; Peet & Hartwick, 2009). Other qualities of participatory development include learning from each other, understanding each other's values and transformative participation, where development itself is seen as flawed and that beneficial change can only occur when other viewpoints are valued (Mohan, 2008; Peet & Hartwick, 2009). The implementation of COP as part of police development and reform could be considered a form of participatory development in that the state, represented by the police, relinquish some degree of power and authority to the community and in turn the

community assumes greater responsibility for regulating and maintaining social order. The community is placed in the position of determining how social order should be maintained and what the appropriate response to transgressions of the agreed rules should involve. However, there is also the possibility that the state's endorsement or encouragement of a mechanism that incorporates COP serves an ulterior motive and as a result could be viewed as an example of anti-politics.

The concept of anti-politics, as conceptualised by James Fergusson, is not a position of being hostile or oppositional to politics but rather it examines the actual role and outcomes that development projects have (Ferguson & Loman, 1994). The basis of Ferguson's critique of development, that he calls the anti-politics machine, is that development projects tend to define what are essentially political problems as technical problems, therefore changing them into a form that can be seen to be solved through technical assistance or intervention (Ferguson & Loman, 1994). This results in a situation that "seems to suspend "politics" from even the most sensitive political operations at the flick of a switch" (Ferguson & Loman, 1994, p. 180). The other aspect of the anti-politics machine as described by Ferguson is the role that development practices have in strengthening and extending the reach of the state (Ferguson & Loman, 1994, p. 176 & 181). The (unintended effects) of development, further summarised by Paul Nadasdy, are that it "obscures the political dimensions of poverty and state intervention while simultaneously facilitating the expansion of state bureaucratic power" (Nadasdy, 2005, p. 218). Pieter de Vries discusses the role of anti-politics in participatory development in his argument that people desire development and that "the promise of participatory development and empowerment has been banalised into simplistic technologies for the management of change" (De Vries, 2007, p. 30). The idea that COP, *tara bandu* and the Community Officer Project may serve a purpose other than exclusively addressing the justice needs of communities will be discussed with reference to anti-politics, in that the implementation of COP may distract from issues around

effective and representative government and the development of policing and judicial structures that meet the needs of the population.

The following chapter, Chapter two, examines COP, how and why it developed and what COP as a policing model can contribute towards development, specifically in post-conflict countries. Chapter three discusses how COP has been implemented in post-conflict environments as part of the process of security sector reform and more specifically, police reform. This is followed by a brief discussion on the police reform process that has taken place in Timor-Leste and in Solomon Islands. Chapter four examines the intersection of traditional justice systems and formal justice systems and how the two different forms operate. This chapter also examines the existence of legal pluralism, a situation where both traditional and formal justice systems operate within the same space. Legal pluralism occurs in both post-conflict and developing countries and exists in Solomon Islands and Timor-Leste. Chapter five analyses two mechanisms, means or techniques, by which to integrate formal state justice systems with traditional justice structures. Although these mechanisms are systems in themselves, the term here is used to describe them as a means or process in which to facilitate a certain result. One mechanism is *tara bandu,* a Timorese customary ceremony that aims to re-establish peace through reconciliation. The other mechanism is the Community Officer Project in Solomon Islands in which a community member is selected to act as a link between the formal state justice system and traditional justice systems. These mechanisms are examined and compared in how they address the issue of legal pluralism and whether access to justice structures is improved for those people who might otherwise be marginalised. The final chapter discusses whether *tara bandu* and the Community Officer Project are examples of COP and participatory development and if there are aspects of anti-politics in either.

Chapter two- What is Community-Oriented Policing?

2. Introduction

This chapter aims to address the first objective of the first research question in that it will describe what community-oriented policing is and what part it plays in police reform in post-conflict countries. This chapter will briefly discuss the origins of COP, how it has been defined and interpreted, criticisms of COP and the benefits that COP brings to development.

The Cambridge Dictionary defines police as "the official organization that is responsible for protecting people and property, making people obey the law, finding out about and solving crime and catching people who have committed a crime" (Cambridge Dictionaries Online, 2014). Similarly, The Oxford Dictionary defines police as "The civil force of a national or local government, responsible for the prevention and detection of crime and the maintenance of public order" (Oxford Dictionaries, 2014). While these definitions would accurately describe the functions of police services in Western countries, all societies and communities have some way of ensuring public order and resolving acts or behaviours that the collective community deems unacceptable (HPCR International, 2008). There are many different models of formal policing ranging on one hand from that of a civil police force which has a high level of independence from the state and acts in accordance with established laws and not at the direction of the state. On the other hand is the state police model where police are not autonomous of the state but rather their actions can be directed or controlled by the state. At the extreme end of the spectrum there is the military police model and martial law model in which the military and police carry out much the same functions and are used by an authoritarian or totalitarian state to control the population (Wright, 2002). COP, as will be discussed in this chapter, has been described as a model of democratic policing in that it acts independently of the state and is responsive to the needs of the community (Carty, 2008; Grabosky, 2009a).

2.1 Community- Oriented Policing Origins

In the late 1980s police managers in Western countries were realising that conventional methods of policing had limitations and that there was a point where increasing the number of police or improving response times did not correlate to a reduction in crime or to an increase in the number of crimes solved (Skolnick & Bayley, 1988b). There were also other factors that police did not have control over that had a significant effect on crime types and resolution rates, such as social heterogeneity and population, income levels and employment rates   (Skolnick & Bayley, 1988b). With these limitations in conventional policing methods, police managers had to develop new ideas to reduce and solve crime with the result that police and communities "have to become co-producers of crime prevention" (Skolnick & Bayley, 1988b, p. 3). It is from these new ideas that the concept of COP arose. Although the COP model developed because of a particular set of circumstances at a particular time in Western countries, COP is being implemented in a wide range of environments and how it is defined or conceptualised in those environments depends on the context. The following section will look at how COP is being defined in diverse environments.

2.2 How is the Community- Oriented Policing Concept Defined?

The concept that people consent to having controls placed on them in order to ensure public order and avoid anarchy is apparent in the social and legal reforms of the 19th Century (HPCR International, 2008). The first modern police force as such was created in 1829 by Sir Robert Peel, the then British home secretary. It is the prototype for Western democratic policing in that the prevention of crime and disorder was to be achieved not through force but by having the respect and cooperation of the public (Wiatrowski & Goldstone, 2010). Peel established principles that were to govern the actions and behaviours of police officers which included that they were to be fair, impartial, incorruptible and accountable for their actions and that any use of force must be the minimum necessary to effect compliance with the law. He recognised that the use of excessive force would be counterproductive in establishing trust with

the public. Their role was also to be restricted to enforcing the law and not be involved in judgment or punishment as that was the role of the courts (Wiatrowski & Goldstone, 2010). These principles, in a sense, allow for the situation where the public are willing to give their consent to being policed (Wright, 2002).

It is this consent by the community to being policed and therefore their acceptance of the existence and functions of a police force that is an important aspect of COP, a model of policing that has its origins in Western countries and one that Grabosky (2009a) states is a model of democratic policing as envisioned by Robert Peel . However, Bayley (2005b) argues that democratic policing is not COP but that COP shares some elements of democratic policing. The objectives of a democratic policing model is that police maintain law and order, prevent and solve crime and are responsive to the requirements and expectations of the public (Carty, 2008), whilst being accountable to the law which has been established through the process of democratic deliberation by a government which is representative of society (Bayley, 2005b). The authority of the state should only be used in the interests of the public. Police should not then be directed by the government or its members but only by the established rule of law and then their actions are endorsed or otherwise by the courts. Values attributed to democratic policing include that it is impartial, fair, independent, transparent and accountable (Bayley, 2001, 2005b; Carty, 2008; Grabosky, 2009b).

The concept of COP is increasingly being implemented in post conflict environments as part of the process of police reform. So widespread and popular has COP become that now the majority of Western police services practice some form of COP and it is a strategy that is generally supported by the public, academics and politicians (Grabosky, 2009a). While there are accepted universal descriptors around what COP is or what it is meant to be, COP is a term that has been used to describe many and somewhat different styles and tools of police work. How it is interpreted depends on the context in which it is being implemented (Newburn, 2005; Skolnick & Bayley, 1988b). Maguire has

described COP as the "new orthodoxy" and also more cynically as the "new rhetoric" of policing (Maguire, 1997, p. 554). Grabosky (2009a), along with Bayley (2005a), provides a universal descriptor of COP as the encouraging or mobilising of the public or community to engage with the police in responding to crime. This is achieved through consultation with the wider community as well as at an individual level, responding to community needs and using problem solving tools to address recurrent crime issues. How COP differs from other previously used or more traditional Western styles of policing is that the police are no longer considered to have the sole responsibility for maintaining law and order and ensuring the safety of the community. The community in its entirety should be partners with the police to achieve this (HPCR International, 2008).

COP has been further defined as a means or vehicle to give the community greater control and responsibility for solving and preventing crime and developing strategies and tactics to do so through the decentralisation of authority and the empowerment of communities (Davis, Henderson, & Merrick, 2003; Trojanowicz & Bucqueroux, 1990). It has been suggested that a partnership of the public and the police provides a more humane and effective means of ensuring public safety and order (Skolnick & Bayley, 1988b). Another method of defining COP, as described by Brogden and Nijhar (2005), is to describe what it is not. It is not measured by efficiencies such as arrest rates nor is it a military style of policing or one that has no accountability to the public and is only reactive to crime. COP is policing that requires the police to have the trust of the community that is being policed, which is in turn closely related to legitimacy, that the police hold a mandate given by the community to carry out their role (Goldsmith, 2005). Four broad components of the COP model that are community centric have been identified by Mathias (2006) as being integral to implementing COP. The first is that the philosophy of COP should be the foundation of all COP programmes and that COP is consultative with the community, applies problem solving approaches and promotes community-police partnerships that share a mutual responsibility for ensuring

safe communities. The second is the requirement for the organisational structure to delegate authority and commit to local needs. The third component is the management policy which emphasises a grass roots approach with little deference to rank. The fourth component is that the operational strategy must identify the existing relationship the police have with the community and implement COP through pilot initiatives (Mathias, 2006).

However, some definitions of COP have assumed that the police are in some way separate from the community and even though police officers may be members of that community only some members of the community are police officers. Police officers are people specifically employed and tasked with the role and are given legislative powers to carry out their functions (Bayley, 2001). There are, however, other situations which have been termed as community policing, also referred to as community based policing, indigenous policing, public self-policing or informal policing, where the actual community itself carries out the tasks and functions of a police service due to a lack of access to a formal state police service. Vigilante groups, militias or community self defence groups may provide security (HPCR International, 2008) or as in the case of the Arbakai in Afghanistan, suitable members are selected by the community as the need arises to carry out a specific task that relates to security or resolving crime problems (Schmeidl & Karokhail, 2009; Tariq, 2008). The existence of groups such as the Community Patrollers in New Zealand demonstrate another aspect of community policing, in that a group of volunteers independent of the New Zealand Police but who work alongside them, carry out patrols of their local community to prevent and report criminal activity (CPNZ, 2014). For a community to successfully police itself certain conditions should exist such as there being an environment where there is trust and stability in terms of societal relationships with consensus on what are deemed to be acceptable standards of behaviour and that people will conform to those standards (Somerville, 2009).

Several key factors which can influence the success of COP implementation exist. They are that there must be a political will and strong leadership to override any institutional resistance, that the COP initiatives adopted are

adapted to meet the local context and interact with local institutions and that there is ownership of the initiatives by the community and police (Mathias, 2006). Inhibitors to the success of COP include a lack of trust between the community and police which can affect the establishment and sustainability of partnerships. Also, incompetence or corruption within other sectors of the justice system can undermine the effectiveness of COP (Casey, 2010; Mathias, 2006). Mathias (2006) argues that COP working with existing traditional or customary judicial systems should be encouraged. However, practices that are contrary to the law or principles of human rights should be acknowledged as such and should cease (Mathias, 2006). This aspect of COP and traditional judicial systems will be discussed in Chapters four and five. However, while COP is a model of policing that has a broad level of support there are criticisms of the concept, specifically how and why it has been implemented in some locations as will be discussed in the following section.

2.3 Criticism of the Community- Oriented Policing Concept

Despite its growing popularity in terms of its widespread implementation, COP is not always practiced well (Grabosky, 2009a) and sometimes what has been termed a COP approach is in actuality not a COP approach (Maguire, 1997; Skolnick & Bayley, 1988a). While COP can be seen as a means to improve relationships between the public and the police (Skolnick & Bayley, 1988a), another view is that it can be more a case of a public relations programme to improve the image of the police (Maguire, 1997). Another criticism of the approach is that community engagement may result in power differences or inequalities, resulting with those who have the resources and ability to having a greater say or control over what happens in their community than those who are already marginalised (Grabosky, 2009b; Skolnick & Bayley, 1988a). This could also mean that a "shrill minority" might dominate an apathetic or indifferent majority (Grabosky, 2009b, p. 34). In the same vein, COP could allow for the emergence of a majority tyranny, a situation where the majority of a community hold beliefs and advocate for resolutions that are exclusory to a minority group or that fall outside the law (Grabosky, 2009b, p. 34). Also raised is the issue of

overly democratising a police force, a situation where the police become intimidated and ineffective or paralysed due to overly fervent civilian oversight and which could also lead to police not developing their own effective oversight processes (Celador, 2005).

Problems arise when it comes to assessing the successfulness or effectiveness of COP. Vagueness of a definition in different contexts and the many and varied interpretations of COP make it difficult to determine what actual practices or activities lead to favourable results (Coquilhat & New Zealand Police, 2008; Reisig, 2010). Reisig (2010) writes that there is a lack of recently published ethnographic studies or qualitative accounts on how police officers actually manage disorderly individuals or become familiar with the cultural and social behaviours of particular communities and what effect COP interventions actually have on the collective efficacy of a community. Reisig (2010) questions if these COP interventions do encourage a shared sense of engagement or commitment for community members and does this lead to communities having lower incidents of crime and disorder and increased feelings of safety.

Brogden (2005) raises a number of criticism's of COP in relation to its implementation as a tool of police reform. COP is often transplanted directly from a Western model developed in a Western context into post-conflict and transitional states which do not take into account the actual reasons why police reform may be necessary or the context into which a new policing model is being introduced. Brogden (2005) and others also question the motivations for donor countries in promoting police reform and COP, comparing it to colonialism where policing structures were installed, not to protect the local populations, but to ensure the security and safety of trade structures (Stenning & Shearing, 2005). The donors, who may also be trading partners, customers or neighbours, may have a vested interest in the establishment and maintenance of the social and economic stability of a state. This can be reflected in the focus they give on the type of training or resources they provide to the recipient country; for example, there may be particular attention given to training and resourcing around people smuggling, drug trafficking, terrorism or other

transnational crimes as these are problems which can adversely affect the donor countries (Brogden, 2005).

2.4 The implications of Community-Oriented Policing for Development

The significance or importance of COP towards development will be discussed in more detail in the following chapters in relation to the particular context. However, this section will discuss in more general terms how COP can benefit development. Police reform and COP can contribute towards economic development, the recognition of and adherence to international human rights standards and the recognition and implementation of judicial systems and processes that are culturally relative and that have legitimacy for the population (HPCR International, 2008; Leith, 2014; Marenin, 2005b; United Nations, 2000; Wiatrowski & Goldstone, 2010). More Specifically, for post-conflict countries, the benefits can be summed up in the statement that the Prime Minister of Solomon Islands, Gordon Darcy Lilo, made to the Royal Solomon Islands Police Force (RSIPF) in January 2014 "that without good law and order economic development is jeopardised and investors will be reluctant to come" (Office of the Prime Minister and Cabinet, 2014). Similarly, the former director of The World Bank's Development Research Group, Paul Collier, has explained that economic development is important to post-conflict countries as there is a 40 percent chance that those countries will return to a state of conflict within ten years if they have a low per capita income (Leith, 2014, p. 160). Holm and Eide (2000) argue that peace building efforts in West Africa have resulted in the security first approach in which it is considered essential that a sufficient level of security is present before social and economic progress can occur. The emergence of an effective civil society is impeded if people are otherwise occupied with struggling to survive and are in constant fear for their lives and their property. Further to this, the perceptions of fear and security and how "a 'climate' or 'culture' of security is necessary in order to effectively promote a process of development" (Holm & Eide, 2000, p. 3). The International Monetary Fund (IMF) and The World Bank invariably place conditions on post-conflict or transitional countries receiving economic

assistance and one of these conditions typically is that the policing institutions of that country must undergo reform and further that the shape of the reform should be moving towards that of a community policing model (HPCR International, 2008). However, the value of police reform is not limited to economic development. Police reform is also linked to the global spread of democratic and liberal principles and standards in that in implementing police reform the values and standards of one country can be introduced to another where they might not have previously been known (Greener, 2009).

The introduction of liberal democratic ideals relates to what Holm and Eide (2000) discuss in *Peacebuilding and Police Reform,* that police reform in terms of development in post-conflict countries is more concerned with managing change than it is about returning a state to the systems that were in existence prior to or during the conflict, systems which may have contributed to that conflict. Democratic policing as an institution should therefore be considered in terms of a wider strategy of human, economic and democratic development (Pino & Wiatrowski, 2012, p. 5). Police reform is usually undertaken initially with the help of outside police organisations, for example the UN Police (UNPOL), and these police services are expected to not only develop an effective police force in terms of crime fighting and maintaining law and order but also one that respects international human rights standards (Holm & Eide, 2000). Whereas the police force that was operating before and during the conflict may have been acting as a repressive tool of the state and in doing so harming the civilian population, the impartial international force has a duty to ensure that the same police force is reformed and takes a lead in investigating allegations of war crimes and human rights abuses and bringing those who committed abuses to account (Wiatrowski & Goldstone, 2010). This process is necessary to reassure the population that injustices will be recognised and dealt with, allowing for a move towards a national reconciliation (Holm & Eide, 2000; Ziadeh, 2014).

Two questions can then be asked; firstly, can the structures of a democratic police model that incorporate the concepts of COP, a Western model, be sustainably implemented in a context that is culturally and politically very different, in that there is a absence of democratic principles (HPCR International, 2008), and secondly; what legitimacy will these new structures have with the population? If new security or judicial structures are introduced to communities that have previously be policing themselves independently of the state, what is there to ensure that their established systems are taken into account in the new structures? Further to this, the legitimacy and democratic principles of those established systems, such as what values are being enforced and who decides how infractions of those values are to be resolved, need to be examined (Marenin, 2005a).

Police reform and COP has been implemented in post conflict environments and transitional nations with the assistance or guidance of external organisations, such as the UN, Non-Governmental Organisations (NGOs) or donor nations as part of bilateral agreements (Brogden, 2005; Greener, 2009). However, no doctrine or agreed model of COP has been formulated and if this reform or restructuring is to be sustainable in the long term there must be widespread support from the government, the population and civil society organisations (Carty, 2008; HPCR International, 2008). This in turn provides a degree of legitimacy to the resulting reformed structures. A COP model developed in partnership with all stakeholders may provide social stability that can contribute to social and economic development. The participation of the largest stakeholder group, the community that the police are going to serve, is particularly important if the policing style and structure is going to have legitimacy and a true mandate to operate. *Tara bandu,* an example of a grass roots participatory approach to developing COP in a post-conflict environment will be discussed in Chapter five.

2.5 Chapter Conclusion

In this chapter COP has been defined as a mechanism to create community-police partnerships so that policing is no longer the sole responsibility of the police but rather that the maintenance of law and order and ensuring the safety of the community is shared between the police and the community. COP is a form of democratic policing in which the police act independently of government, adhere to democratic principles such as respecting human rights and are accountable to the rule of law of the state. There are however criticisms of COP, in that it can lead to communities being manipulated or misrepresented by certain social groups who have the means to be able to dominate the rest of the community, resulting in marginalised or minority groups being further marginalised. In relation to development, COP has been implemented as part of the process of police reform in developing and post-conflict environments as it is seen as a method to empower communities and to help develop and foster democratic principles. It can also contribute towards the establishment of a secure and stable environment in which economic and social development can flourish. The following chapter will examine further the role that COP has in security sector reform and more specifically police reform in Timor-Leste and Solomon Islands.

Chapter three- The Implementation of Community-Oriented Policing and Democratic Policing as Part of Police Reform

3. Introduction

In continuing on from Chapter two in answering the first research question, this chapter will outline how COP has been implemented in post-conflict countries as part of the process of police reform. What police reform actually is will be discussed first along with the motivations for carrying out police reform by various actors and stakeholders. The benefits of implementing COP as part of the police reform process is then discussed as are any potential negative aspects and in doing so will address the second research objective. The last section of this chapter will look at the process of police reform in two contexts, Timor-Leste and Solomon Islands.

3.1 Police Reform and the Role of Police in Post-Conflict Countries

COP has been promoted as a panacea for the problems faced by police services in Western countries, however, it has also been implemented in non Western countries as a component of the process of police reform (Brogden, 2004; de Heyer, 2012; Grabosky, 2009a; Groenewald & Peake, 2004; Neild, 2001). Police reform itself is often part of the peace building process in post conflict environments where security and judicial systems need to be reconstructed or developed (Celador, 2005; Grabosky, 2009a; Greener, 2009; Holm & Eide, 2000). The Brahimi Report, commissioned by the United Nations Secretary General, describes peace building as the processes and activities that occur after conflict has ceased in a state or region in order to establish a strong base for a sustainable peace, ensuring that the conflict does not return (United Nations, 2000). Peace building is not restricted to activities such as strengthening the rule of law, but extends to developing democratic processes and improving human rights as well as acknowledging and investigating past and present abuses. Conflict resolution and reconciliation are important factors in peace building (Celador, 2005; United Nations, 2000).

The Brahimi Report analysed peace keeping missions and found that to succeed in transitioning an area from a state of war to one of peace, peace building initiatives should be an essential element of the complex process of peace keeping (United Nations, 2000). The fundamental principles of

peacekeeping intervention should be that the peacekeepers carry out their duties with the consent of the local population, advocating for a focus on advancing a respect for human rights and strengthening the institutions that deal with the rule of law (United Nations, 2000). The development of a respect for the principles of human rights is found within the broader umbrella of police reform and more specifically within the concept of COP as discussed in Chapter two.

The Brahimi Report also makes a distinction between the roles of the military and police, which Greener expands upon. She writes that there are fundamental differences in the way police and military use force, levels of the decision making abilities of individuals and the degree of independence each institution holds in relation to the government (Greener, 2011). Greener (2009), in analysing the changing roles and functions of police in peacekeeping missions around the world, argues that the importance of using police in the maintenance of law and order instead of relying on the military is now receiving greater recognition.

The global expansion of democratic and liberal principles in general is reflected in current policing practices around the world, for example, in how the concept of the state having a monopoly over controlling policing is shifting with communities and civil society now having greater input into how policing is carried out (Stenning & Shearing, 2005). Marenin (2005a) states that the existence of a democratic, fair and effective police force is not just a result of a democratic political system but is rather a prerequisite to one and that the establishment of democratic governance relies on a democratic police force.

How police reform is carried out has been the subject of debate with the emergence of what has been described as the police reform industry. While international organisations such as the UN play a crucial function by taking a significant responsibility in intervening in crisis situations and re-establishing policing functions, whether on its own or in partnership with the host-state, police reform is also carried out as a component of international assistance and

foreign aid programs (Stenning & Shearing, 2005). For example, The New Zealand Aid Programme provides funding for police development programs in Timor-Leste, Bougainville and Solomon Islands (NZAID, 2012). Three questions around this form of aid concern firstly the suitability of the models of policing that are being exported into a transitional country, secondly in whose interest it is that the reform takes place, and thirdly who benefit's from the intervention (Brogden, 2005; Groenewald & Peake, 2004; Marenin, 1998; Stenning & Shearing, 2005). It is accepted by many that donor assistance is often in line with their own interests and donors fund programmes that they have identified as being beneficial to them even though the recipient country has prioritised other issues that they require assistance with (Groenewald & Peake, 2004).

3.2 The Role of Community-Oriented Policing in Police Reform and Peace Building

In terms of peace building and police reform, COP has been proposed as a preferred model for police in future peacekeeping missions (de Heyer, 2012). Yet for COP to succeed as a component of police reform there must be a certain level of peace and stability so that civil society and the community are able to be involved without the distraction of threats to their lives and property. There must also be a real and demonstrated political will for change and donor support must be co-ordinated and effective (Casey, 2010; Groenewald & Peake, 2004).

The most prevalent definition used to describe COP in the environment where peace building is being carried out draws heavily on the Western model of COP in that it is both an organisational strategy and a philosophy that seeks to integrate the police into the community. This creates an environment where the community and the police work collaboratively to solve and prevent crime and disorder. It is meant to lead to the community having a greater say in how to improve their quality of life (Bayley, 2005b; HPCR International, 2008). The role of COP in a peace building and police reform context is viewed as COP being a mechanism that is able to transform police forces in post-conflict,

transitional and fragile states into organisations that have legitimacy, value and practice democratic principles and contribute towards the overall stability of the state (HPCR International, 2008). The role of the police is transformed from that of a tool of a non-representative government to a fair and impartial organisation that maintains order. COP, through consultation with the community, aims to de-politicises the police, establishing a clear demarcation between the role of the military and police (Bayley, 2005b; HPCR International, 2008). COP has been included as a component of the police reform programmes in Timor-Leste, Solomon Islands, Bougainville, Serbia, Sierra Leone, El Salvador, Northern Ireland, South Africa and Kenya (Bayley, 2005b; HPCR International, 2008).

There is a general consensus that COP is a model of democratic policing, though not all agree (HPCR International, 2008). For example, Bayley (2005b), as mentioned in Chapter two differentiates democratic policing from COP. There is significant enthusiasm for the concept of COP as a component of police reform by both donors and partners as explained in Chapter two, but there are also those who are questioning its effectiveness and it's appropriateness in a non-Western environment (Brogden, 2005). This doubt concerns not just the implementation of COP but the exporting of Western policing models and judicial structures in general (Brogden, 2004, 2005; Marenin, 1998). Marenin (2005b) and de Heyer (2012) explain that the issues around implementing COP as part of police reform in post-conflict environments are that it is a Western construct and even in Western countries the effectiveness of COP is uncertain and debatable. The relevance or appropriateness of a COP approach in a post-conflict country must be examined before implementation and a definition of community policing must be agreed upon (de Heyer, 2012). Both de Heyer (2012) and Brogden (2004) point out that for COP to be effective it must have a high degree of local ownership and knowledge, be contextualised and sensitive to the local culture and its history. The following section will briefly outline the

police reform processes that have been undertaken in two post-conflict countries, Timor-Leste and Solomon Islands, both with the assistance of external international organisations.

3.3 Police Reform in the Context of Post-Conflict Countries

The police forces of Timor-Leste and Solomon Islands are two examples of police services that have undergone reform as part of the peace building process in a post-conflict state. Both countries have endured recent civil strife and have a history of colonisation and the process of police reform has been carried out with a significant amount of assistance by external organisations and states. They also have in common the use and often reliance on traditional justice systems which operate outside of the formal or state judicial and policing structures.

3.4 Timor-Leste

Timor-Leste is one of the youngest states in the world with a history of Dutch and Portuguese colonisation, Indonesian and Japanese occupation and internal civil conflict. It's population of just over one million people are some of the poorest in the world, however they have a deep cultural and spiritual heritage which is reflected in traditional customs and social structures (Belo & Koenig, 2011; Hohe, 2003; The Asia Foundation, 2013; Wassel, 2014). The Policia Nacional Timor-Leste (PNTL) which has 3,500 officers, was developed from scratch with an exceptional level of international input from the UN and development programmes by donor nations (Wassel, 2014). Its present structure is a result of this input as well as historical political manoeuvring that had taken place prior to and after the Indonesian occupation (Belo & Koenig, 2011; Wassel, 2014). The transition from Portuguese rule to independence and the subsequent Indonesian occupation saw the rise of what would become the two main political parties (International Crisis Group, 2006; Wassel, 2014). Political manoeuvrings between the two groups led to hostilities and uneasy alliances and the relationship that the military has with the police today, along with the present day organisational structure of the PNTL, is heavily influenced by the informal and formal relationships of key players (Belo & Koenig, 2011).

During the Indonesian occupation, a military styled police force was established and Indonesian law, based on Dutch civil law, was imposed (Hohe, 2003; Wassel, 2014). When the Indonesians left Timor-Leste in 1999 after a UN run referendum they destroyed much of the infrastructure, both physical and administrative, creating a situation where there was a total absence of any formal judicial systems (Hohe, 2003; Wassel, 2014). The UN began a mission to Timor-Leste, the United Nations Transitional Administration in East Timor (UNTAET) which was charged with transitioning the country to independent rule and included establishing the administration for the rule of law. Existing Indigenous traditional judicial processes and structures were not considered or incorporated into the developing model which itself was based on the former Indonesian model (Hohe, 2003).

The PNTL was established in March 2000 by UNTEAT and it included 370 officers who had served in the Indonesian Police during the occupation. The rest were recruits who had no previous policing experience (Belo & Koenig, 2011). Criticisms of the development of the PNTL in these early years include that strong institutional structures were not established with no effective strategic planning, administrative or management systems put in place. Both the PNTL and the Timorese military were designed to strengthen the political networks of newly elected politicians such as Roberto Lobato (Belo & Koenig, 2011; Wassel, 2014). In 2006, a political and civil crisis caused by rivalries and informal networks that had developed outside of the PNTL and the military led to the near total collapse of the PNTL. This necessitated the return of the UN in the form of the UN Mission to Timor-Leste (UNMIT) (Wassel, 2014). Lobato was seen to be using the PNTL as a political tool which caused many Timorese to distrust the PNTL and members of the military were beginning to see the PNTL as a threat to their own authority and power (Belo & Koenig, 2011).

UNMIT took over the policing mandate and held the executive policing authority with over 1000 police officers from around the world deployed until 2012 when the UN withdrew (Wassel, 2014). There has been a perception

amongst many in Timor-Leste that the PNTL has become more militarised in recent years with the language of the 2008 PNTL Organic Law using military terms to describe the structure and chains of command, the increase in the carriage of powerful weapons and the development of specialised units (Belo & Koenig, 2011). This in conjunction with the political instability of both the PNTL and the Government was not conducive to local communities taking ownership of or having significant influence in how the PNTL developed its community policing model, which appeared to take a backseat to more security focused approaches to policing (Belo & Koenig, 2011; Wassel, 2014). Also, it has been argued that a COP model was introduced partly as it was deemed acceptable by military leaders who thought that a community-oriented police force was less of a threat to their own organisation and powerbase (Belo & Koenig, 2011). Due to the remoteness and isolation of many communities in Timor-Leste, the PNTL and the formal state judicial system does not have significant influence outside of the capital Dili and as a result traditional or customary systems still play the greatest role in resolving disputes (Wassel, 2014).

In retrospect the PNTL could be said to have gone through both police development and police reform and has done so with considerable outside or international assistance and direction, with many different national police forces having contributed towards how the PNTL are currently organised and operate. The PNTL have released their strategic plan for 2014 to 2018 which outlines their strategic vision which is to achieve high standards in relation to security and public tranquillity in the state of Timor-Leste (Policia Nacional Timor-Leste General Command Department, 2013). Amongst their principles are that the government, state and community have a high level of confidence in the PNTL which is ready to serve their community (Policia Nacional Timor-Leste General Command Department, 2013). The document states that the model of policing that the PNTL have adopted is that of community policing and that it is a philosophy that underpins the entire organisation not just certain groups. All police officers must adhere to the principles of visibility, involvement and

professionalism. (Policia Nacional Timor-Leste General Command Department, 2013).

The operational objectives of the PNTL, as described in the strategic plan, are to be achieved through integrating the concepts of community policing into all aspects of the PNTL training curriculum and by strengthening the protection of all Timorese citizens, particularly vulnerable people such as children and the elderly by applying community policing approaches in police operations (Policia Nacional Timor-Leste General Command Department, 2013). The success of the PNTL and this strategic plan is to be measured in part by the levels of trust and cooperation that the community has with the PNTL and community feelings of safety (Policia Nacional Timor-Leste General Command Department, 2013). The PNTL are developing mechanisms that are designed to integrate the formal justice system and policing functions into traditional dispute resolution systems in recognition that many of Timor-Leste's population are still reliant on customary systems in the absence of access to the state systems (Everett, 2010). Amongst those mechanisms being developed is the customary resolution process of *tara bandu* which will be discussed in greater detail in chapter five.

3.5 Solomon Islands

In 2000 ethnic tensions in Solomon Islands boiled over resulting in the collapse of the government and leading to what effectively was a civil war (Bennett, 2002; Leith, 2014). With the subsequent breakdown of law and order the police force were unable to cope and were in some cases complicit in the violence (Liloqula & Pollard, 2000). The causes of the conflict have been attributed to the history of Solomon Islands and colonisation, the Solomon Island constitution, the imposition of the British style of government as well as migration and land disputes (Liloqula & Pollard, 2000). An international intervention to halt the crisis began in 2003 as a result of the Townsville Peace Agreement and the Regional Assistance Mission to Solomon Islands (RAMSI) was established (Hegarty, 2004; Leith, 2014; RAMSI, 2014). RAMSI is a police led operation and the police involved come from around the Pacific region (Hegarty, 2004).

An important aspect of the RAMSI intervention is that it was a police led rather than a military led mission, although a military presence did allow the Participating Police Force (PPF), a component of RAMSI, to operate more effectively (HPCR International, 2008; Leith, 2014).

The Royal Solomon Islands Police Force (RSIPF) has been undergoing reform and the process of rebuilding since 2005 (Dinnen & Haley, 2012) and the process of reform has been undertaken in conjunction with the PPF. The PPF were initially given executive policing powers, much like UNPOL in Timor-Leste, and carried out their functions with autonomy from the RSIPF (HPCR International, 2008). The reform process for the RSIPF involved capacity development of RSIPF officers, instilling human rights and democratic principles and identifying and prosecuting corrupt officers and those who had been complicit in the violence during the tensions (HPCR International, 2008; RAMSI, 2014).

The initial intervention focused on security and the establishment of peace and in its planning identified the importance of custom and local level reconciliation as a form of judicial process (Hegarty, 2004). It was recognised that if a sustainable peace was to be achieved, Solomon Islanders should participate in the decision making processes (Hegarty, 2004). The question of the development of an appropriate justice system that incorporated the needs of the different sectors and cultures of Solomon Islands was raised, querying if *kastom-law* could be effective and fair (Hegarty, 2004). It was acknowledged that the traditional social structures and forms of governance were incompatible with the Westminster model of governance and the centralisation of government. Also, the concept of the nation state had not been widely accepted by the population (Hegarty, 2004; Rohorua, 2006). The importance of public consultation and debate over the constitution was another aspect of political reform highlighted by RAMSI (Hegarty, 2004). However the importance of the state and it's stability was emphasised by RAMSI and the views of many local people that power should be restored to local communities or that indigenous *kastom* practices or other more culturally relevant forms of policing should

replace introduced law's were dismissed as being extreme or romantic views and were deemed infeasible (Hegarty, 2004; HPCR International, 2008). Even though RAMSI identified the role of politics in the country's failures, the government and judicial structures have remained the same and the intervention seems to focus on repairing the existing flawed structures.

The failure of Solomon Islands political structures and therefore a need to address these failures in order to attain a sustainable peace and stability was recognised and acknowledged. Yet some have argued that the peace achieved has only be maintained because of the continued presence of RAMSI and that if RAMSI withdraws Solomon Islands will return to civil unrest (Rohorua, 2006). After elections in 2006 there were riots due to what many believed were corrupt results and the Solomon Islands Government-RAMSI People's Survey 2010 found that eighty four percent of respondents supported RAMSI, forty nine percent believed that law and order would break down if RAMSI left and twenty nine percent thought that civil strife would return if RAMSI left (RAMSI, 2014).

In 2009 the then RSIPF police commissioner Peter Marshall, presented the strategic directions plan for the police and in doing so stated that the priority for the RSIPF was to reduce crime thereby reducing fear felt by the community and increasing the communities confidence (Solomon Times Online, 2009). In 2012 the RSIPF commissioner, John Langsley, stated that his goal while in the position was to further develop the community policing strategy by increasing partnerships between the police, community, government and business, as dealing with law and order was a community function. The Solomon Islands Government -RAMSI partnership framework written in 2009 and the RSIPFs Strategic Directions Plan 2010-2013 outline how the RSIPF are dedicated to developing a community policing model for Solomon Islands (Dinnen & Haley, 2012). The strategic plan outlines the mission of the RSIPF as "Working in partnership with the community; building confidence in the RSIPF for a safe, peaceful and prosperous Solomon Islands" (RSPIF, 2010, p. 1). The plan lists the goals of the RSIPF which includes improving the communities confidence

in the RSIPF and reducing crime and the fear of crime so that people think their communities are safe and peaceful (RSPIF, 2010). In 2010 the development of a new police act began and the final document was presented to the Solomon Islands Government in 2014. This new act, as well as setting out clearly the duties and responsibilities of the RSPIF, describes the aim of encouraging community involvement and partnerships with other agencies to enable the police to improve their relationships with the community, gaining their confidence and trust (Office of the Prime Minister and Cabinet, 2014). In developing the new police act, the wider community was also consulted, including members and leaders of churches, women's and youth groups as well as traditional leaders (Office of the Prime Minister and Cabinet, 2014; Radio Australia, 2012).

3.6 Chapter Conclusion

This chapter has outlined what police reform entails, that it should not only result in a change in the organisational structures and functions of a police force but also of the underlying fundamental basis for the existence of that police force and to whom is it accountable and answerable to. For police reform to be successful there must be an understanding of the actual type of police force that is to be reformed as well as a real political will for the reform to succeed. As a component of many police reform programmes, COP is viewed as an ideal method of introducing democratic principles and a respect for human rights to policing where previously they were unknown. However, the implementation of COP in post-conflict environments should be contextualised to the history and culture of the location and have high levels of local ownership. Both the police in Timor-Leste and Solomon Islands have adopted a COP model and both models appear to have their origins in Western COP models rather than having been developed endogenously as a result of extensive consultation with those communities they will serve. The police reforms also appear to have been conducted in a manner that are compatible with existing political structures even though those structures may be unstable or have previously failed.

Chapter four - The Intersection of Traditional Justice Systems and Formal Justice Systems

4. Introduction

This chapter, in examining the intersection of traditional and formal justice systems, aims to answer the second research question and its associated objectives. This chapter will examine how traditional or customary justice systems differ from formal or state justice systems as found in Western societies and whilst all traditional justice systems are different there are similarities that can be found across a wide range of traditional justice structures. Many traditional justice systems have a focus on the wellbeing of the community as a whole or as a collective group rather than on the rights or wellbeing of the individual. This is in contrast to most Western judicial systems where the rights of the individual are important. The second section of this chapter will look at the existence of legal pluralism, in which both traditional and formal state judicial structures operate in the same space. Examples of legal pluralism in Timor-Leste and Solomon Islands will be given as well as the reasons why legal pluralism exists.

4.1 Traditional or Customary Justice Systems

The current Anglo-American and Western styles of policing are derived from that envisioned by Sir Robert Peel who has been credited with developing the first modern police service, as discussed in Chapter two (Wiatrowski & Goldstone, 2010). However, beyond the influences or pressures of Western culture and dominance there are many societies or groups of people who police themselves without any or minimal involvement of the state and formal judicial systems that may or may not exist in their countries (Dinnen, 2009; Dinnen & Braithwaite, 2009; McLeod, 2009; Tariq, 2008). Traditional systems, also referred to as customary systems and non-state systems, that in this context refer to non-Western traditional systems, are unique to the cultures and societies they have developed in and are therefore highly contextual (Dinnen, 2009; Dinnen & Braithwaite, 2009; Hohe, 2003; McLeod, 2009; Melton, 1995; Tariq, 2008). They are systems, processes, beliefs and customs that were established prior to the development of modern state systems characterised by a centralised form of government, often a result of colonisation (Bennett, 2002; Dinnen, 2009; Dinnen & Braithwaite, 2009; Hohe, 2003; Rohorua, 2006). Even though the roots or origins of traditional and customary judicial systems may be very old they have not necessarily remained

unchanged over time as they can be dynamic, flexible and adaptable to the changing circumstances of the people who use them (Dinnen, 2009). They may also have been influenced in part by colonisation and globalisation (Wallis, 2012). In recognising that alternative forms of policing are practiced in what could be considered traditional societies, there should also be an understanding that there is much variety in how these different societies and cultures practice judicial processes (Babo-Soares, 2004; Dinnen, 2009; Dinnen & Braithwaite, 2009; Hohe, 2003; McLeod, 2009).

The importance of recognising the existence and prevalence of traditional justice systems in terms of development and police reform initiatives in post-conflict environments can be connected to participatory development practices and the need to include the recipients or beneficiaries of development in the development process (Mohan, 2008; Peet & Hartwick, 2009; Stenning & Shearing, 2005). The disintegration of centralised government and the failure of state functions such as the police and judiciary, as was the case in Solomon Islands and Timor-Leste (International Crisis Group, 2006; Liloqula & Pollard, 2000) as well as in other locations, has seen a call for the use of alternative judicial processes that have a more restorative or reconciliatory focus than many Western models of law which have retributive and punitive characteristics (Stenning & Shearing, 2005). Traditional systems have demonstrated their ability to be durable and able to withstand civil strife and still be able to function if the formal state systems fail (Dinnen, 2009). This in part could be due to the traditional systems being relevant and familiar to people as they are endogenous and contextual (Bennett, 2002; Dinnen, 2009; Dinnen & Braithwaite, 2009; Rohorua, 2006).

It is also important to consider the role of colonisation in examining how some traditional societies police themselves as many have been subjected to both overt and passive control and domination that included the imposition of laws and processes that were foreign and often irrelevant to those people and which actually worked to maintain them in a state of subjugation (Dinnen & Allen, 2013). Not only were the colonisers laws and systems strange but they sometimes disrupted the social order. For example in the Timor-Leste context, Dikur (2012) writes that the European colonisers who arrived in Timor-Leste in the 16th Century either

misinterpreted or ignored the Timorese concepts of feminine and masculine power and authority and imposed their own concepts of gender roles. Timorese women and men were traditionally not restricted from social, ceremonial or political functions because of their gender but more for reasons concerned with their individual capacity to perform such tasks. However, the colonisers placed their own gender biases on such roles and excluded women from their interactions with the Timorese and placed often inappropriate people in positions of political power therefore upsetting the social balance (Dikur, 2012). There is also an element that many cultural groups were forced to become members of a larger state as a result of colonisation, an example being Solomon Islands. Prior to the establishment of Solomon Islands as a protectorate of the British Empire in 1893, the inhabitants of the hundreds of islands that make up Solomon Islands did not identify as a group comprising a single nation but rather as many entirely different groups of people each with their own language and customs (Bennett, 2002; Dinnen, 2009; Rohorua, 2006).

Whilst traditional systems are by no means homogenous and in fact have a very broad spectrum of types, even within relatively small populations and geographical areas (Babo-Soares, 2004; Bennett, 2002; Dinnen, 2009; Dinnen & Braithwaite, 2009; Rohorua, 2006), there are some aspects which are common amongst many traditional systems, and not just within the Pacific region (Dinnen, 2009). Of these are the concepts of resolution, reconciliation and restoring the community to a state of harmony (Dinnen, 2009; Hohe, 2003; Melton, 1995; Rohorua, 2006). For example, Native American traditional justice systems share with traditional Timor-Leste systems a holistic structure where disputes or conflicts are not between individuals but families or communities. Wrongdoings are not seen to have been committed against an individual but against the group and the resolution process aims to bring harmony and peace back to the entire community (Hohe, 2003; Melton, 1995; Wallis, 2012). Another common feature of traditional systems is that all those involved in the process are members of the group. Those people who hold a role that could be compared to a judge or arbitrator, such as village chiefs, do not necessarily have the same function as a judge in Western countries as they might not make unilateral decisions as to guilt but act more as facilitators to help

the parties involved reach a consensus to resolve the matter (Babo-Soares, 2004; Dinnen, 2009; Dinnen & Braithwaite, 2009; McLeod, 2009). They are also known to the parties involved and are aware of their history (Dinnen, 2009). Other commonalities between traditional justice systems are that they are consented to by the parties involved and are participatory in that all the parties are involved to some degree in the decision making process which is consultative (Dinnen, 2009). Traditional systems in Papua New Guinea, Timor-Leste, the South Pacific and the South Eastern region of Afghanistan share a common feature in that dialogue between the parties in conflict is seen as an essential part of the resolution process (Dinnen, 2009; Hohe, 2003; McLeod, 2009).

Unlike Western systems where rules are written into codified laws which are separated into criminal and civil matters, these traditional systems do not distinguish between the two. Knowledge of what is wrong and how transgressions should be dealt with is passed on through oral traditions to elders and people who have a knowledge and understanding of the complex social systems and the people involved (Dinnen, 2009; Dinnen & Braithwaite, 2009; Hohe, 2003; Melton, 1995). Traditional judicial systems will deal with all aspects of social strife and issues, not just those that would be considered a criminal matter in a Western system (Chinn & Everett, 2008). Another aspect of traditional justice systems that differs significantly from Western systems is the distinction of offenders and victims as individuals in Western criminal judicial systems, whilst in traditional systems problems or transgressions are considered more communal and offence is not caused against a single person but their family (Hohe, 2003). For example, in traditional Timor-Leste society, rape is not recognised as a crime against the individual, the woman who was assaulted, but against her husband or family. Compensation is paid to the male members of the victim rather than to the victim herself (Hohe, 2003). These are considered legitimate structures by the community in general. In the Pashtun tribal area of Afghanistan and inTimor-Leste, due to a collective or communal rights approach, peace or harmony between groups is considered more important than the rights of individuals (Schmeidl & Karokhail, 2009). This can pose a problem in relation to human rights as traditional justice systems have been described as weak when it comes to protecting the rights of the

marginalised or less powerful in a community, often women and children (Dinnen, 2009).

Actions or behaviours that in the West would be recognised as a crime, such as domestic violence or child sex abuse, are not necessarily recognised as such in other societies and traditional systems can serve to reinforce unequal power dynamics (Dinnen, 2009; Hohe, 2003; The Asia Foundation, 2013). An example of traditional systems superseding human rights are processes of resolution that involve the payment of compensation which in the case of Pashtun tribes may require that a female member of the offender's family is given as compensation to the victim's family (Tariq, 2008). Other issues or problems that relate to the execution of traditional justice systems are that there is often a lack of accountability in a formal sense and that there may not be available mechanisms that allow a person to appeal a judgement or protest at a decision made by someone who is incompetent or corrupt (Dinnen, 2009). People, likely to be those who lack power or influence, may also be coerced into agreeing to a resolution in order to appease other people (Dinnen, 2009).

The above discussion on traditional justice systems has focused on the totality of the judicial systems, including not only the processes but the end result. However in the context of police reform, policing in Western countries typically has more of a focus on the investigation and prosecution of criminal offences and the courts and judiciary are responsible for determining guilt and imposing sanctions (Bayley, 2001; Skolnick & Bayley, 1988b; Wright, 2002). The delegation of the role of identifying those who have offended to specific people, like police officers, might not be necessary in small localised communities where everyone knows everyone else and where they live.

Many traditional justice systems share not only the processes of justice but also what the ultimate goal or outcome should be. These features of traditional justice systems are a result of the practicalities of life in a village setting or in a small community where people live in close proximity to each other and are often reliant on each other to survive. There is a need for conflict to be settled so that everyone can resume a harmonious existence as there is no facility for people to be

incarcerated. Restoration of the social balance and harmony of a community is a common goal and sanctions against the wrongdoers often involve a form of reparation or compensation (Babo-Soares, 2004; Bennett, 2002; Dinnen, 2009; Dinnen & Braithwaite, 2009; McLeod, 2009; Wallis, 2012). In traditional Timor-Leste communities, the concept of incarcerating a person for committing a crime can be viewed as alien as in prison a person does not work and grows fat, something that happens to rich people. Also a person who cannot work cannot pay compensation to their victims, a process necessary to achieve resolution (Hohe, 2003). Instead traditional Timorese reconciliation customs such as *nahe biti,* which has the literal meaning 'stretching the mat,' involves the essential world view and cosmology of the Timorese people. This entails that there must be a balance between the world of the living and the world of the spirits and ancestors and if this balance is upset there will be harmful repercussions and conflict for those in the living world (Babo-Soares, 2004; Hohe, 2003). *Nehe biti* is the process of bringing together people who are in conflict to dialogue and facilitate a reconciliation. The people involved sit on a woven mat in a designated venue and discuss the problems with the goal of healing mistakes. Prior to beginning and taking part in the process the participants must commit to seeking a solution to the issues (Babo-Soares, 2004). Similarly, in Solomon Islands where kinship is the traditional basis of social order, *kastom-law* is the traditional system used to regulate behaviours and it is described as practices that embody the important values and principles of Solomon Islanders. It is a system that aims to mend or strengthen relationships through a process of restorative justice and the payment of compensation (Bennett, 2002; Dinnen & Haley, 2012; Rohorua, 2006).

4.2 The Existence of Duel Judicial Systems or Legal Pluralism

Legal pluralism is a term used to describe the occurrence of two or more legal or judicial systems that exist and function within a state (Dinnen, 2009). In post conflict or transitional states the implementation or rebuilding of a Western based judicial system by external organisations can create a situation where there is legal pluralism or dual judicial systems operating; a formal state legal system and the traditional informal dispute resolution processes that are carried out at a local community level (Dinnen, 2009; McLeod, 2009). However, in Timor-Leste and

Solomon Islands legal pluralism existed prior to the conflict that saw the breakdown of government and state structures. Legal pluralism existed as soon as formal state laws and judicial systems were introduced by the colonisers, and this is the case in many other Pacific countries (Babo-Soares, 2004; Bennett, 2002; Dinnen, 2009; Dinnen & Braithwaite, 2009; McLeod, 2009). With post-colonisation, many newly independent countries adopted the judicial systems of their former colonial masters, including their policing styles even though they were far from what existed or were practised prior to colonisation. These systems are often still foreign to people and often, though not always, ineffective for the majority of the population (Dinnen & Allen, 2013; Dinnen & Braithwaite, 2009).

There are many reasons why legal pluralism occurs, some of which have already been mentioned, such as preference for the traditional systems due to their relevancy and familiarity. In Papua New Guinea, many communities do not consider a matter resolved unless it has been dealt with by the non-state or traditional resolution process as the state legal process is seen as irrelevant (McLeod, 2009). Another reason is that state authority and resources do not always extend into remote or isolated communities. This may be due to limitations experienced by the state in operating in remote regions due to a lack of resourcing for police and the judiciary or a lack of political will to do so (Dinnen, 2009; Dinnen & Braithwaite, 2009; McLeod, 2009; Tariq, 2008). The situation of a lack of policing and judicial structures in the remote areas of Solomon Islands and Timor-Leste could be an example of what Menkhaus (2010) describes as hinterland failure when discussing a typology of failed states. Hinterland failure is a situation where a weak government has some level of control in areas of strategic importance but does not have either the political will or capacity to exercise this control in remote or unimportant areas (Menkhaus, 2010, p. 90).

In countries undergoing peace building and reform and in which legal pluralism exists, Chopra and Hohe (2004) and Wallis (2012) argue that instead of introducing liberal democratic structures consideration should be given to developing local-hybrid peace structures. Local or traditional practices could be incorporated into state building processes and as such would allow recognition of the particular needs of those living in communal societies where customary

practices are considered an integral part of life. Legal pluralism in Timor-Leste and Solomon Islands will be discussed in greater detail in the following sections.

4.3 Legal Pluralism in Timor-Leste

A 2008 community and police perceptions survey carried out by The Asia Foundation in Timor-Leste revealed that although the public in general believed that the security situation in Timor-Leste had improved and that they had high levels of confidence in the national police force, the PNTL, the majority of people considered elders and community leaders as responsible for law and order issues. In most cases the majority did not consider the PNTL as their first option when reporting a crime or if dealing with a dispute of some sort (Chinn & Everett, 2008). For example, when asked who they would seek assistance from if their cow was stolen, only 26% of the public said that they would seek assistance from the PNTL. The majority said that they would seek assistance from the their village chief or elder (Chinn & Everett, 2008, p. 45). In cases of domestic violence where a female friend or relative was assaulted by her husband, only 19% said that they would seek assistance from the PNTL while 40% said they would negotiate directly with the husband (Chinn & Everett, 2008, p. 47), perhaps demonstrating that domestic violence is viewed as a private matter that does not involve community resolution (Hohe, 2003; Wallis, 2012). What the survey revealed was that there was a lot of diversity amongst the Timorese population as to what constituted a 'crime' and who was involved in resolving the problem (Chinn & Everett, 2008). Disputes seemed to fall into the category of either 'small' or 'big' problems with big problems potentially leading to situations that extended beyond the village and could threaten the security of the community, such as murder or the theft of large numbers of cattle. In the case of a 'big' problem the village chief might seek assistance from the formal or state judicial system, as in part, they would be unable to act as an impartial arbitrator or it was not in their mandate (Chinn & Everett, 2008).

The survey also revealed that levels of education and where a person lived, for example a rural or urban location, had an influence in determining who Timorese would seek help from to resolve a problem. Of the survey respondents who were victims of a crime and who had a post-secondary education, 94% reported the crime to the PNTL whilst 60% of those victims who had a secondary education or

lower reported the crime to the PNTL (Chinn & Everett, 2008, p. 41). People were also more likely to report a crime to the police if they lived in Dili, the capital, than if they lived in rural areas (Chinn & Everett, 2008). There was, however, a lack of consistency or agreement across the survey respondents as to which organisation or structure was principally responsible for their communities security maintenance and many people indicated they would seek help from both traditional structures and state structures, which is indicative of the complex nature of Timorese judicial systems (Chinn & Everett, 2008).

Another example of legal pluralism in Timor-Leste are the grassroots and state reconciliation processes that took place after the 1999 independence referendum which saw pro-Indonesian supporters flee to West Timor (Babo-Soares, 2004; Wallis, 2012). When the Indonesian military withdrew from Timor-Leste, then known as East Timor, they caused a significant amount of destruction and violence, as did anti-independence Timorese militia. The anti-independence militia and their families were then forced to flee to West Timor by pro-independence militia (Babo-Soares, 2004). The reconciliation processes involved the return and reintegration into communities of those people who became refugees in West Timor after fleeing there following the referendum. There were also reconciliations carried out to resolve conflict between groups caused by killings committed during the brief 1975 civil war and during the period of occupation by Indonesia. UNTAET and Timorese political leaders initiated the Commission for Reception, Truth and Reconciliation in which political leaders from opposing factions would be brought together to reconcile in the hope that it would encourage the supporters of the different factions to also reconcile (Babo-Soares, 2004). At about the same time 'grass roots' reconciliation ceremonies were being held at the local level, officiated over and initiated by local community leaders such as village elders and chiefs. These local level reconciliation ceremonies were aimed at bringing back refugees that were not part of the political elite but who nevertheless had affiliations with the various factions involved in the violence perpetrated. It was realised that even though the political leaders may have reconciled, this reconciliation had not always extended to the local community level. Further to this local leaders believed that each community had its own particular

circumstances and therefore each ceremony should be contextualised to those circumstances (Babo-Soares, 2004).

4.4 Legal Pluralism in Solomon Islands

The formal state legal system in Solomon Islands is determined by the Solomon Islands Constitution which has regulated the country's laws and judicial structures since independence was gained in 1978. The system of governance that was adopted is that of the British Westminster style of government that ensures that the police and judiciary have independence from the government (Bennett, 2002; Dinnen, 2009). Little or no consideration was given to the traditional judicial systems that were, and still are, practiced by Solomon Islands populations when the state system was established. However there was the establishment of the Native Courts Ordinance in 1942 by the British in which native courts were given jurisdiction to apply customary laws to matters of a minor criminal or civil nature (Dinnen, 2009).

It is the case in Solomon Islands, like Timor-Leste, that the majority of people especially in remote rural locations rely on traditional or customary laws and justice systems, known as *kastom-law*. *Kastom-law* has a strong focus on restorative justice, intending to resolve disputes within a community with the payment of compensation being the method used to help reconcile the disputing parties (Bennett, 2002; Dinnen, 2009; Rohorua, 2006). Like the Timorese traditional justice systems, the Solomon Islands *kastom-law* has developed so that conflict is resolved in a manner that re-establishes the social balance and harmony of a community (Dinnen, 2009; Rohorua, 2006). Although *kastom-law* is still the primary justice system used in Solomon Islands, for many people it has evolved over time and some practices that were acceptable in the past, such as vengeance killings and the kidnapping of women from other clans, are no longer practiced (Bennett, 2002).

The preference for *kastom-law* over the modern state law by Solomon Islanders was revealed in the outcomes of the Peoples Survey 2010 conducted by RAMSI. When people were asked how justice and resolution processes could be improved, 46% suggested that greater respect be given to chiefs and 26% suggested that there

should be a greater role for *kastom* in proceedings (RAMSI, 2014). Less than 10% suggested that greater access to modern judicial processes would be an improvement (RAMSI, 2014). When RAMSI began to assist in rebuilding the state structures of Solomon Islands there was a recognition that there should be participation and decision making by Solomon Islanders in the processes of state reconstruction and peace building if those processes were to be sustainable. Local customs and local level reconciliation was acknowledged as an important part of the process and the question of the development of an appropriate justice system that incorporated the cultural values and practices of the different communities that compose Solomon Islands was raised (Hegarty, 2004). Further, it was accepted by some that traditional social structures and forms of governance were largely incompatible with the Westminster model, that has a centralised style of governance and the prospect of incorporating *kastom-law* into the state system was raised by local people. These views, as previously mentioned, were however dismissed by RAMSI as being overly romantic, extreme or infeasible and the stability of the state was deemed more important (Hegarty, 2004).

4.5 Issues of legal pluralism for police reform and development

The existence of duel justice systems pose problems to police officers from donor countries who are working as advisors as part of the process of police reform and development. McLeod (2009), in writing about Australian police officers working in Papua New Guinea, discusses how local customs and traditional practices can be problematic for officers who are accustomed to working within a structured legal framework that is designed to be impartial. For example, Papuan police officers are not averse to using violence, which is acceptable to many in the police and the community who view it as a valid and acceptable form of dispute resolution and discipline (McLeod, 2009). Papuan officers demonstrate high levels of discretion in how criminal acts or disputes are settled, with discussion amongst the parties involved seen as far preferable to formal criminal procedures (McLeod, 2009). The visiting police are challenged by either accepting the traditional processes as that is what is accepted by the community or attempting to alter it so it conforms to Western norms and values (McLeod, 2009).

In situations where legal pluralism has been accepted and traditional processes have been incorporated into the formal justice system, criticism exists that this may result in an undermining of the established rule of law if there is inconsistent decision making or application of the law (Wallis, 2012). Other concerns centre around the lack of established appeals processes and therefore levels of accountability (Wallis, 2012). These challenges are not insurmountable and there are ways in which the issues described above can be resolved, as will be discussed in Chapter five. This involves realising and acknowledging the issues by all the parties involved and establishing parameters around how and who will adjudicate certain issues.

4.6 Chapter Conclusion

This chapter has examined how traditional justice systems differ from those found in Western countries and how even though there are similarities between different traditional judicial structures, they are not necessarily structures that have remained unchanged for long periods of time but are dynamic and adaptable. Legal pluralism occurs when two or more judicial systems operate within the same location, as is the case in Solomon Islands and Timor-Leste. COP has been implemented in Solomon Islands and Timor-Leste, both countries where legal pluralism exists. The following chapter will discuss and analyse two mechanisms or means by which COP processes have been implemented with the goal of integrating the formal state justice system with traditional justice systems.

Chapter five - Mechanisms to Engage Communities with Formal Policing in Timor-Leste and Solomon Islands

5. Introduction

This chapter will critically discuss two mechanisms or means by which to develop a process or system with which to introduce and integrate the formal state policing system with communities that use traditional judicial systems. Both mechanisms have been implemented in rural communities as a result of police reform initiatives in a post-conflict environment and as a response to communities that have relied on and have a preference for their traditional justice systems. These systems are in contrast to formal state policing and justice structures, which are for many people unfamiliar and inaccessible. However, although both mechanisms have emerged from similar circumstances they are quite different in their approach. The first example, *tara bandu,* is from Timor-Leste, and is a traditional community resolution process which has been adopted and formalised by the state as a method of preventing conflict. The second mechanism, from Solomon Islands, is the Community Officer Project which involves the selection of a suitable member of the community to act as a mediator for disputes within the village environment while acting as a bridge between traditional conflict resolution processes and the formal state police structures.

5.1 A Comparison of Two Mechanisms to Engage Traditional Justice Systems with Formal Justice Systems: *Tara Bandu* and the Community Officer Project

The Community Officer Project in Solomon Islands and *tara bandu* in Timor-Leste are two means or mechanisms that have been implemented to varying degrees to integrate traditional justice systems with the formal state system. "Tara Bandu is a traditional Timorese custom that enforces peace and reconciliation through the power of public agreement" (The Asia Foundation, 2013, p. 7). It is a form of traditional law and an institution that predates the Portuguese colonisation of Timor-Leste although it was banned during the Indonesian occupation (Cardinoza, 2005). It is a system that encompasses all aspects of communal life, not just crime and conflict but also the management of natural resources and the protection of the environment (Cardinoza, 2005;

Kovar, 2012; The Asia Foundation, 2013). *Tara* means to hang and *bandu* means prohibition (Cardinoza, 2005). *Tara bandu* ceremonies differ between different cultural groups within Timor-Leste but typically function through a series of processes, the first process being a village feast where the community selects the *Maklehat,* the highest authority in *tara bandu.* The community then decides what the regulations or prohibitions will be in regards to people, property and the environment, how long these will be in place and what the punishment will be if the regulations are broken. These regulations are announced to the community and *Horok,* symbols of the prohibition are hung in prominent locations (Cardinoza, 2005).

Tara bandu ceremonies have seen an increase in use since the 2006 conflict and NGOs and bi-lateral development programs are becoming involved in the implementation of *tara bandu* ceremonies. *Tara bandu* is increasingly being recognised by the state and NGO's operating in Timor-Leste as an appropriate method of conflict prevention and resolution and as a way to regulate environmental practices as it has the support of the community and therefore has legitimacy. Also the principles of *tara bandu* and COP have been described as being very similar in that the community identifies and prevents problems (Cardinoza, 2005; Everett, 2010; The Asia Foundation, 2013). It's relevance is also tied to the reality that many rural communities do not have ready access to formal state judicial systems, nor do those community members necessarily understand the legal processes in what could be viewed as foreign laws written in a language (Portuguese) they cannot read (Kovar, 2012; O'Reilly & Jevtovic, 2008; The Asia Foundation, 2013; Wallis, 2012). This has raised questions over the legitimacy of Timorese law, the constitution and the general understanding of liberal forms of democracy, which to many, contradict Timorese values of consensus and the prevention of the 'loss of face' (Wallis, 2012). The engagement of the state with local social structures is not only a pragmatic attempt to extend the government's presence throughout the country but is also written into the Constitution in that the state must recognise and

respect the cultural norms and customs of Timor-Leste (Kovar, 2012; Wallis, 2012).

Reflecting the dynamic and flexible nature of traditional justice systems, many *tara bandu* now incorporate the Timorese police, NGOs and the church in their processes (The Asia Foundation, 2013). PNTL community police officers are playing an increasing role alongside village chiefs and elders in organising and regulating *tara bandu* and are a link between the traditional and formal justice systems (Everett, 2010; The Asia Foundation, 2013; Wallis, 2012). Community Police Councils have been formed in some areas which are made up of police officers and Suco Chiefs (Everett, 2010; The Asia Foundation, 2013) and regulations and the penalties for breaches of those regulations are being developed after wide consultation with the community which are now recorded in writing (Kovar, 2012; The Asia Foundation, 2013). The PNTL officers who attend *tara bandu* ceremonies act as a representative of the state and will generally have a passive role and agree to whatever the community decides unless it is incongruent with the formal Timorese law (Brennan, 2012). This demonstrates that the COP model that the PNTL have adopted and developed is consistent with the concept that COP can empower communities by decentralising authority and allowing them to take greater control in solving problems and reducing harm (Davis et al., 2003; Trojanowicz & Bucqueroux, 1990). More specifically it is an example of police power sharing in that they are relinquishing control and power to those people they are serving and allowing the community to take responsibility for themselves (HPCR International, 2008).

Tara bandu has also been used as a process to introduce regulations and penalties for social problems that were not previously recognised as a crime in the traditional systems, such as domestic violence (The Asia Foundation, 2013). The introduction of formal state laws into a non-state system links both justice systems and recognises that women and children can often be better served under formal systems that recognise human rights more than traditional systems do (Dinnen & McLeod, 2009; Everett, 2010; Schmeidl & Karokhail, 2009).

Differing from *tara bandu,* the Community Officer Project is not an extension of a traditional structure that has adapted to meet the needs of the community but rather acts as a link between two different worlds. The Community Officer Project in Solomon Islands has its roots in neighbouring Bougainville and colonial policing structures such as the Area Constables (Dinnen & Braithwaite, 2009; Dinnen & Haley, 2012; McGovern & Taga, 2009; Perry, 2010). Although the Area Constables are a colonial structure, they did have a high degree of support throughout Solomon Islands while they operated (Dinnen & Braithwaite, 2009). After a period of civil strife in Bougainville, an autonomous region of Papua New Guinea, peace was declared in 1997 and the process of restoring civil authority began. Community policing was identified by the Autonomous Bougainville Government as a mechanism for maintaining stability in the area and a year later the Community Auxiliary Police (CAP) was established (McGovern & Taga, 2009). The CAP consists of police officers who are chosen from the communities they live and who work collaboratively with the courts and village leaders and it is a component of the Bougainville Community Policing Project, a bilateral aid programme with NZAID (McGovern & Taga, 2009). The CAP are not employed full time as police officers but perform their duties as the need arises. They do not typically have a policing background and are paid only a small monthly allowance. The CAP system was designed to provide some level of security and stability for communities in the absence of an actual police service and would in a sense be a conduit between local level governance, tribal elders and village chiefs, and the new Bougainville Police Service (McGovern & Taga, 2009).

The Community Officer Project began in 2009 and was initiated by RAMSI and like the CAP in Bougainville it seeks to link the RSIPF with communities and their traditional justice and leadership systems (Dinnen & Allen, 2013). The Community Officer Project was designed to strengthen access for Solomon Islanders living in remote areas to the justice system whilst also allowing them to be able to resolve minor village issues or *kastom* matters that could otherwise escalate to violence (Dinnen & Allen, 2013; Dinnen & Haley,

2012; Perry, 2010). The 2010 Peoples Survey conducted by RAMSI revealed that nearly all the respondents thought that customary law or *kastom-law* should be formalised in conjunction with the state laws and that the power held by chiefs and elders should be recognised in an official capacity (RAMSI, 2014). This demonstrates the importance that traditional justice systems have for many Solomon Islanders. Also many women's groups spoken to during the survey said that they wanted to receive training around what matters should be referred to the police and what should be dealt with by the communities elders and chiefs, perhaps showing that there needs to be a link between the formal and traditional structures (RAMSI, 2014).

The first Community Officers (COs), all of which were men, were selected through consultation between the community, community leaders and the RSIPF. They were selected because of their standing in the community and community leadership abilities, lending legitimacy to the project (Perry, 2010). However, some communities were critical of the appointment process saying they had no involvement in choosing their CO or that the RSIPF replaced the person they wanted as their CO (Dinnen & Haley, 2012). The first COs envisioned their role as one of mediation, education and awareness which would lead to their respective communities having respect for each other. They also saw themselves working closely with village chiefs and the RSIPF to resolve issues and to develop relationships that would build upon the capacity of the community to deal with problems (Perry, 2010). An evaluation of the Community Officer Project carried out in 2012 found that there was strong support amongst the communities involved for the COs and their role. It also found that strong relationships had been formed with existing community structures such as churches and government organisations like health clinics and schools. The local RSIPF officers were very supportive of the project and the COs they worked with and thought that the project should be extended throughout Solomon Islands (Dinnen & Allen, 2013; Dinnen & Haley, 2012).

Both the contemporary forms of *tara bandu* and the Community Officer Project have been used as agents to introduce the formal state legal system into

communities that otherwise rely on traditional justice structures to resolve conflict and breaches of customary law. Both mechanisms have been implemented with varying levels of assistance by outside actors and they have been developed out of a necessity for the state to provide some level of policing and judicial oversight to communities that would otherwise remain isolated from formal state justice structures. However, although *tara bandu* and the Community Officer Project have both developed in post-conflict environments for similar reasons, their forms are very different as *tara bandu* has evolved out of a pre-existing traditional institution whilst the Community Officer Project has attempted to replicate in part a component of a colonial policing structure. Positive and negative aspects of both mechanisms will be discussed in the following sections, with a focus on how each one responds to and deals with the occurrence of domestic violence with their respective communities.

5.2 The benefits of *Tara Bandu* and the Community Officer Project

The COP approach that the police have adopted in Timor-Leste in some way reflects the traditional values of the Timorese people in that an important component of their strategic plan is to achieve a high standard of public tranquillity (Policia Nacional Timor-Leste General Command Department, 2013). The involvement of PNTL officers in *tara bandu* processes, as well as the Community Police Councils, recognises that traditional values and justice processes are still highly relevant to communities. It also demonstrates that formal and traditional justice systems are not mutually exclusive but can and do operate in co-operation with each other and that traditional structures can support and reinforce formal laws (Dale, Himelein, Nikitin, & Bexley, 2010; The Asia Foundation, 2013). In Solomon Islands, the RSIPFs Strategic Directions Plan 2010-2013 and the Solomon Islands Government's Police Act both envision that the RSIPF will work in partnership with the community to build a peaceful and safe country and this is consistent with the aims of Community Officer Project (Office of the Prime Minister and Cabinet, 2014; RSPIF, 2010; Solomon Star, 2014).

Contemporary *tara bandu* are a bottom up participatory process that requires community consensus to develop and therefore they have legitimacy as a regulatory structure (Cardinoza, 2005). They differ from historical *tara bandu* practices in terms of the sanctions imposed on those who have transgressed and human rights principles are now being applied to *tara bandu*. The sanctions that were imposed in earlier times that would have breached human rights principles have been banned. However this respect for human rights also needs to greater recognise the individual rights of women and as Timor-Leste has high levels of domestic violence the processes of dealing with incidents of domestic violence and violence against women in general need to be addressed. The overwhelming majority of victims in domestic violence cases are women and the Timor-Leste Demography and Health Study 2009-2010 found that 36% of married Timorese women have suffered some form of domestic violence (Kovar, 2012; The Asia Foundation, 2013, p. 29). When these incidents are dealt with by traditional methods the goal is to address the imbalance that the conflict has created amongst those concerned and to return the situation to one of harmony and balance. The traditional processes recognise that a marriage is not just a bond between two people but is also a union of two wider family groups, reiterating the communal as opposed to the individual nature of Timorese life (Hohe, 2003; Kovar, 2012; The Asia Foundation, 2013).

Typically if an incident of domestic violence occurred it would initially be dealt with by family members and if a resolution could not be reached the family would request that it be dealt with by the village chief. Resolution processes attempt to establish fault and then some form of compensation is ordered to be paid by those at fault to restore the balance (Cummins & Guterres, 2012; Kovar, 2012). A victim of domestic violence could be attributed some level of blame due to an action that could be perceived to have contributed to the incident, for example not having prepared a meal, and conceivably be ordered to pay compensation or alternatively just be considered an equal party within a dispute regardless of whether or not they were the aggressor (Kovar, 2012; The Asia Foundation, 2013).

Other issues in dealing with domestic violence include to whom the compensation is paid to as it often goes to the victims family rather than the woman who was assaulted. There is also the question of whether the matter has really been resolved, whether the woman truly consented to the resolution, or whether she has been pressured to agree due to social conventions and gender power imbalances (Cummins & Guterres, 2012; Kovar, 2012; O'Reilly & Jevtovic, 2008; The Asia Foundation, 2013). The paying of compensation as a penalty may also not be a deterrent to reoffending if the offender is wealthy and there are no other repercussions (Kovar, 2012; O'Reilly & Jevtovic, 2008).

One advantage of introducing the Timorese police and the COP approach into the traditional *tara bandu* system is that since the introduction of the Domestic Violence law in 2009, as an amendment to Timor-Leste's Penal Code, some communities have amended their *tara bandu* regulations in respect of that and now recognise domestic violence as a public crime. Where the *tara bandu* had specific sections on domestic violence these were replaced by the formal legislation on domestic violence. Whereas previously it was standard that domestic violence cases be dealt with through *tara bandu* ceremonies and the imposing of sanctions, the new regulations state that they should now be referred to the PNTL to deal with (Cummins & Guterres, 2012; Kovar, 2012; The Asia Foundation, 2013). Some communities categorise domestic violence cases into serious and non serious cases, with incidents that result in injury to either party being referred to the police and non-injury cases or arguments being dealt with through *tara bandu* processes and local leaders (The Asia Foundation, 2013). In another example, referral systems have been set up in which the *xefe suco* or village chief refers complaints of domestic violence to the PNTL and support agencies, demonstrating the dynamic nature of traditional justice structures and the changing role of village chiefs. One *xefe suco* described his role as changing from that of resolution to referral and that he also has a responsibility to work towards preventing domestic violence, in delivering domestic violence awareness training to not only women but also to

men in an attempt to change their attitudes and behaviours (Cummins & Guterres, 2012).

Kovar (2011) explains that *tara bandu* can contribute to reducing the harm felt by those suffering from domestic violence as well as exposing domestic violence as the real danger that it is. Therefore the systems play a role in decreasing a cultural acceptance of such crimes. Further to this some women interviewed were in favour of being able to report a domestic violence incident to police, even if it did not result in a prosecution, as they thought that the threat of being arrested would prevent further abuse from occurring (Kovar, 2012).

Positive outcomes have been achieved in the Solomon Islands Community Officer Project as well, with some improvement in how domestic violence incidents are dealt with. A 2012 review of the Community Officer Project has found favourable results in that the COs are valued by their communities who see them as an important link between their own customary systems, local governance actors and broader political structures. Their roles have developed contextually within the communities they serve so are flexible and dynamic and could be viewed as a grass roots approach to justice reform and development (Dinnen & Allen, 2013; Dinnen & Haley, 2012). The COs are also helping to build community alliances and partnerships that serve to enable them to better cope with and manage social tensions that could otherwise lead to violence (Dinnen & Haley, 2012). The RSIPF view the COs as having several important functions, one of which is to settle minor problems or disputes therefore preventing greater problems from developing. They are also seen as being a mechanism to impart safety and legal information to the community and to assist the RSIPF in investigating more serious crimes and locating offenders (Dinnen & Haley, 2012).

In terms of human rights in colonial and post-colonial Solomon Islands, the voices and contribution's of women in decision making processes have diminished over time (Scheyvens, 2003). However, the results of the 2013 Peoples Survey conducted by RAMSI showed that 89% of people surveyed

thought that there should be female ministers in Parliament and 65% said that women helped to resolve problems in their community (RAMSI, 2014). These results perhaps demonstrate that Solomon Islanders are open to women taking a greater role in leadership positions. This is consistent with the views of many people interviewed as part of the evaluation of the Community Officer Project, that women's participation in decision making could be improved if women COs were appointed and worked alongside a male CO as they would be participating in a leadership role (Dinnen & Haley, 2012). In all the groups interviewed, the women spoken to suggested that the appointment of women COs would be good as they felt they could talk to a female about their problems much easier than to a man. (Dinnen & Haley, 2012). Most communities thought that the main problems they faced were disorderly behaviour type offences such as public drunkenness, fighting and assaults stemming mainly from substance abuse and a breakdown of traditional values (Dinnen & Haley, 2012). These results are supported by the 2013 Peoples Survey where 91% of respondents thought that their communities main problems were caused by alcohol and drugs (RAMSI, 2014).

In terms of domestic violence, a reluctance to talk about or acknowledge domestic violence as a problem became apparent, yet many commented that women suffered violence at the hands of their partners when the men were drunk (Dinnen & Haley, 2012). This reluctance to report cases of domestic violence as well as cases of sexual abuse and child abuse to those in authority could change if women were able to speak to another woman who would be in a position to address the issue in a public manner. In Leona village in Vella Lavella, the women spoken to as part of the evaluation of the Community Officer Project thought that the CO position was having a positive effect as the chiefs were no longer able to monopolise the decision making process. They now had to work with other actors, such as the church and the CO, which has resulted in a broader consensus (Dinnen & Allen, 2013). The women in this village acknowledged domestic violence as an issue, mainly as a result of male drunkenness and some had reported the incidents to their CO. They thought

that the rates of domestic violence had fallen since the CO's appointment (Dinnen & Haley, 2012). Likewise many youth who were spoken to thought that having younger COs would be good as they might be able to relate to and address the problems that younger people have (Dinnen & Haley, 2012). The Community Officer Project was able to, in some locations, improve the access to justice for women and the community felt this would likely improve if there were a gender balance amongst the COs appointed (Dinnen & Allen, 2013; Dinnen & Haley, 2012).

The implementation of the contemporary forms of *tara bandu* in Timor-Leste and the COs in Solomon Islands can be viewed as having a positive influence on changing societal attitudes towards issues such as domestic violence. In Timor-Leste the exposure of the problem of domestic violence has led towards the development of processes to deal with domestic violence that take into account the victim, though there is still much more to be done. In Solomon Islands there has not been as much progress in terms of addressing domestic violence, however, the existence of a person, who to some degree represents the state, has provided the community with an additional resource when it comes to addressing problems and conflict. Power to resolve community issues are no longer monopolised by a few people and therefore marginalised groups have greater opportunity to voice their concerns or opinions.

5.3 The Negative Aspects of *Tara Bandu* and the Community Officer Project

There are problems with having two justice systems operating, as can be demonstrated by the examples of how domestic violence has been handled. The traditional system may be that which is the most accessible to many women and is often what they prefer. However, issues raised include that there is a potential for a person to be penalised twice for the same offence or that a reliance on traditional systems can undermine formal laws (Kovar, 2012; The Asia Foundation, 2013). Another issue identified in both Timor-Leste and Solomon Islands is that there can often be a lack of co-ordination and understanding around who has responsibility for dealing with specific problems.

Some women have made complaints to the police over domestic violence issues only to be referred back to the village chiefs or COs and only a small percentage of reported domestic violence offences have been prosecuted through the courts (Dinnen & Haley, 2012; Grenfell, 2009; Kovar, 2012; O'Reilly & Jevtovic, 2008). Some women in Timor-Leste have been criticised by their village chiefs for going to police rather than consulting them first and as a consequence women have been made to pay a penalty to village chiefs for showing a disrespect for their authority (Kovar, 2012; Swaine, 2003). Another issue is that the patriarchal culture of Timor-Leste and in many parts of Solomon Islands has led to men dominating traditional leadership roles and then displaying their biases in their decision making, discriminating against women (Kovar, 2012; O'Reilly & Jevtovic, 2008; The Asia Foundation, 2013). Relying heavily on a system based on traditional values can result in select males maintaining control, and therefore power, at the expense of other groups, such as women.

In relation to the Community Officer Project in Solomon Islands, the issues that were identified as part of the evaluation of the project are mainly around the involvement, or lack of, the RSIPF. Many communities and their COs had envisioned that they would be working closely with the RSIPF and that they would see an increase in the responsiveness and support of police in dealing with issues (Dinnen & Haley, 2012). This has failed to materialise in most cases and when matters have been reported to the police they have been referred back to the COs to manage and resolve. There has also been confusion over what the actual role of a CO is with three different models having been envisioned by different stakeholder groups: a policing model, a justice model, and a community governance model (Dinnen & Haley, 2012). Some communities thought that a CO would in effect be a de facto police officer, and this is in line with the model that the RSIPF support, which would see COs carrying out some of the duties that a police officer normally would. The justice model describes the CO's role more as a mediator in disputes and as liaising with formal justice structures such as courts. The community governance

model would see COs being a link to government structures, recording information such as births and deaths, mediating disputes, providing information and developing community structures to empower them (Dinnen & Haley, 2012).

In Timor-Leste it has been recognised that if the contemporary forms of *tara bandu* are to be effective they must be developed and designed by their respective community, not by external organisations or actors and that there must be a broad level of consultation amongst community members in the design process. This means that marginalised groups, which can include women, youth, the disabled, the elderly and those living in remote locations, must play an active role in designing and implementing *tara bandu* (The Asia Foundation, 2013).

In theory, both *tara bandu* and the Community Officer Project offer effective and pragmatic mechanisms to provide people living in remote locations access to justice and resolution processes that have relevance and legitimacy to their respective communities. They also recognise the formal justice sector and allow for issues to be resolved in a manner that is fair to all and recognises human rights principles. It has, however, been acknowledged that both *tara bandu* and the Community Officer Project should not be viewed as an alternative to the development and implementation of an effective and functional police service (Dinnen & Haley, 2012; The Asia Foundation, 2013). It would appear though that the Solomon Islands Government and the Timor-Leste Government are not providing sufficient support to both these mechanisms for them to be truly effective. In the case of Solomon Islands most of the COs interviewed had received little or no follow up assistance or engagement from the RSIPF, with many feeling that they had been abandoned by the RSIPF (Dinnen & Haley, 2012). Many communities thought that the CO positions would result in much higher levels of engagement with and responsiveness from the RSIPF and other government structures. This, however, has failed to materialise, resulting in lowering levels of trust and support for the RSIPF (Dinnen & Allen, 2013; Dinnen & Haley, 2012). In fairness, the RSIPF has been hindered in its

support of the COs by a lack of resourcing from the Solomon Islands Government (Leith, 2014). The RSIPF lacks the ability to access many communities as transport is not available and communication links such as radios are limited if they exist at all. For the Community Officer Project to be truly effective and responsive to the population it needs to be entrenched into the Solomon Islands Government systems and resourced properly (Dinnen & Haley, 2012; Leith, 2014).

This sentiment is echoed in Timor-Leste, that for *tara bandu* to be considered a truly legitimate process it has been suggested that it should be formalised by the Ministry of Justice. The ministry should in turn research the *tara bandu* design and ceremonies that have taken place to establish what has been successful and what has not and the reasons for that. There is also a need to examine if or how *tara bandu* has worked to complement the formal legal structures and laws (The Asia Foundation, 2013). Further to this, the Timor-Leste Government should establish a national framework around the design and implementation of *tara bandu* to ensure that all *tara bandu* ceremonies are consistent with the formal laws of Timor-Leste and do not contravene any laws or any conventions that the Government is a signatory of. The framework should include who must be consulted in a communities *tara bandu* design so that those who are often marginalised are included (The Asia Foundation, 2013).

5.4 Chapter Conclusion

Both *tara bandu* and the Community Officer Project are mechanisms that are attempting to unite formal justice structures with traditional justice systems as part of a COP police reform process. The mechanisms, although having developed out of similar circumstances, are quite different to each other and seem to have different levels of success. *Tara bandu* contains many elements of the characteristics that COP advocates for as well as allowing for the recognition and acceptance of formal legislation designed to protect all members of a community. It is an endogenous structure that relies on extensive community consultation and agreement to be successful and is recognised and supported by formal state structures such as the police and government. Although different

tara bandu are similar they are contextualised by their respective communities and are an example of a grass roots process. In contrast the Community Officer Project has drawn on a colonial structure, albeit a popular one, that still places authority and decision making power in the hands of a limited number of people. There has been no community re-examination of social rules or traditional laws that goes towards recognising human rights principles or issues faced by those community members who are often marginalised. This is demonstrated by how issues, such as domestic violence, are being handled. Domestic violence is now recognised as a public crime by many communities in Timor-Leste. However in Solomon Islands domestic violence is still under acknowledged and there is a reluctance to talk about it. There is also a contrast in the levels of political, state and civil society support that each mechanism receives. The Community Officer Project initially received support from RAMSI and the RSIPF, but this has since diminished and many COs feel abandoned in their roles. *Tara bandu,* however, has strong support possibly due to the broad range of actors involved, with police and civil society groups engaging with communities who themselves embraced the concept and designed their own *tara bandu.* The following chapter will further analyse and discuss *tara bandu* and the Community Officer Project in the context of participatory development and anti-politics theory as well as determining if these mechanisms are examples of COP.

Chapter six - Analysis and Evaluation of *Tara bandu* and the Community Officer Project and their Ability to Integrate Community-Oriented Policing with Traditional Justice Systems

6. Introduction

This research project has aimed to analyse the implementation of COP in post-conflict countries as part of the process of police reform with specific reference to two mechanisms that have been used in an attempt to integrate a COP model with traditional justice systems. These two mechanisms, *tara bandu* in Timor-Leste and the Community Officer Project in Solomon Islands, were examined and analysed as to their effectiveness and ability to introduce aspects of the formal state justice system to communities that rely predominately on traditional justice systems. This chapter will discuss these two mechanisms further in relation to the theories of participatory development and anti-politics as well as in relation to the wider concepts of security sector reform and police development in an attempt to determine their respective levels of success or otherwise and what are the characteristics that make them successful.

6.1 Evaluation of the Community Officer Project and *Tara Bandu* Ceremonies

In analysing and comparing the Community Officer Project and *tara bandu* ceremonies it was possible to evaluate their respective levels of success as measured by the levels of community support and engagement. It appears that the use of *tara bandu* ceremonies has greater community support and participation than does the Community Officer Project and this could be due to the following reasons. The *tara bandu* ceremonies are existing traditional structures that developed endogenously within a specific context. The practice of using them is familiar to the communities that developed them and their contemporary forms are the result of extensive community consultation. In contrast to this, the Community Officer Project, although modelled on a previously successful colonial policing structure, was designed and implemented by actors outside the communities it was to be implemented in. Those communities had limited or no input into who would be their CO and how the COs would operate. Although most groups involved in the project support their COs they were disappointed in the level of interaction that they and the COs have had with the state police. The COs themselves generally wanted to

receive more training and support from the police and some felt abandoned in their role.

The role the police, as representatives of the state, play in *tara bandu* ceremonies and the Community Officer Project are also a point of difference. The role that police officers would play was incorporated into the design of each *tara bandu* ceremony, resulting in a greater understanding of what their role would be and what matters should be referred to the formal legal structures such as the Courts. In contrast the COs and their communities in Solomon Islands are uncertain of what role a CO should take and the extent of their power's. This lack of consultation with the community has also led to a situation where power and control still remains largely in the hands of the same people because those people who are often marginalised were not involved in the design process of the Community Officer Project. This is reflected in how domestic violence is dealt with. In Timor-Leste, domestic violence was an issue specifically identified by those designing many *tara bandu* ceremonies, which resulted in directives in how domestic violence issues should be dealt with. However in Solomon Islands the lack of participation of community groups in the design and implementation of the Community Officer Project is demonstrated by the lack of a coordinated approach to dealing with issues of domestic violence.

6.2 The Effectiveness of *Tara bandu* and the Community Officer Project

The previous chapter examined the Community Officer Project and *tara bandu,* both mechanisms implemented that to varying degrees integrated traditional justice systems with the formal state justice system. I have concluded that of the two, *tara bandu* appears to be the more effective in providing rural communities with access to justice structures that are legitimate and relevant and are also beginning to recognise the rights of individuals and groups who were previously marginalised or who held less power. Further to this, *tara bandu* would seem to be a better example of COP being implemented in a post-conflict environment for a number of reasons. The contemporary forms of *tara bandu*

that are being developed and used by communities in Timor-Leste have come about as those communities needed some form of judicial structures in the absence of a formal justice system being available to them. These communities revitalised a traditional structure, one that was familiar, culturally relevant and accessible and therefore had legitimacy. The Community Officer Project was, however, modelled on a COP project operating in a neighbouring country and a previously used colonial structure. It was also implemented by actors external to the communities it functions in. The high level of participation by the Timorese communities in all aspects of the implementation of *tara bandu* ceremonies could be one of the reasons that it has received good levels of support.

Both the Community Officer Project and the revival of *tara bandu* ceremonies could be described as participatory development that have strong aspects of a grassroots approach (Mohan, 2008; Peet & Hartwick, 2009). Although both *tara bandu* and the Community Officer Project were implemented by varying degrees with outside assistance, they have developed into systems or structures that are contextualised to their socio-cultural environments. The proposal to develop a national framework around the design and implementation of *tara bandu,* which includes that *tara bandu* ceremonies should be designed by the communities who will practice them, is an example of the beneficiaries of development having a strong voice in how these systems are to be constructed. It is in keeping with participatory learning and action, in that community groups and those within those groups who may otherwise be excluded, are empowered to make decisions and contribute to matters that affect their lives (Chambers, 2007). In the situation of the Community Officer Project, although each community had little input into the design of the project, the roles that the COs perform have adapted to the context in which they are working, possibly as a result of the individual CO identifying the particular needs of their respective communities. This process of communities being integrally involved in the process of institution building and therefore, by extension, state building is discussed by Chopra and Hohe (2004). They argue that in terms of state

building in post-conflict areas, engagement with the local population must extend beyond emerging political leaders or armed factions and include those at the village level in an attempt to understand the causes of conflict at all levels. Further to this, that in order to avoid a disconnect between grassroots communities and an emerging government, those grassroots communities must be integrated into the state and institution building process. This integration will in turn cultivate a shared sense of identity as well as more stable and sustainable institutions and this process can be achieved by utilising existing social structures (Chopra & Hohe, 2004, p. 291 & 292). The inclusion or participation of communities in the design and development of institutions, such as policing organisations, is an integral component of the COP model.

COP, as discussed in chapters two and three, is a model of policing that aims to engage communities in identifying and resolving crime and problems in their community, representing a shift from police having the sole responsibility for maintaining the safety of the community to a situation where communities are empowered and have greater input into how their communities are policed (Bayley, 2005b; Davis et al., 2003; Trojanowicz & Bucqueroux, 1990). *Tara bandu* achieves these objectives of COP in that communities have taken the initiative and developed a structure that is culturally relevant in order to resolve conflict and crime. Further to this, for COP to succeed there must be trust between the police and the community and a high degree of legitimacy for the way in which policing is structured and implemented (Goldsmith, 2005). This legitimacy can be achieved by the community being involved in the implementation of COP initiatives and for police to take a grassroots approach in developing an appropriate style (Mathias, 2006). Mathias (2006) also writes that when implementing COP, the inclusion of traditional justice systems should be supported. In the example of *tara bandu* this legitimacy is well grounded as it is based on a pre-existing traditional structure that is familiar and culturally relevant.

Chapter five's analyses of *tara bandu* ceremonies, found that each one is unique to the social group that developed it and the worth of this uniqueness is formally recognised by all the actors participating in the development of the ceremonies, including the state. The importance of unique and context specific development has been recognised in the discussion around development as a "wicked problem", in that a means to deal with a development problem must be specific to the context it is applied to (Spratt, 2011, p. 6). Further to this, Brogden (2004) and de Heyer (2012) have argued that COP should be sensitive and contextualised to the communities culture and history as well as having a high level of local ownership if it is to be effective. The state, represented by the police, has also had involvement in the development of *tara bandu* ceremonies, demonstrating that there is support from state institutions for *tara bandu.* The Timorese police have adopted COP as a police model and have demonstrated in many locations that police officers are working in partnership with community structures such as is the case in *tara bandu* ceremonies. This demonstrates some degree of political will for COP to succeed, something described by Mathias (2006) as a key factor to the successful implementation of COP, as discussed in Chapter one. Community participation in policing can be viewed not only as a component of COP but also as a benefit. As discussed in Chapter three, another benefit of the implementation of COP in post-conflict environments is the introduction of liberal and democratic processes as well as principles of human rights. The recognition of human rights was also examined in Chapter four, in examining issues around how traditional justice systems can sometimes be weak when protecting the rights of less powerful or marginalised community members.

COP has been implemented as a component of police reform in many post-conflict countries under the broader umbrellas of security sector reform and peace building (Brogden, 2004; de Heyer, 2011; Grabosky, 2009a; Groenewald & Peake, 2004; Neild, 2001). Chapter three discussed how COP could contribute to peace building processes, which include strengthening the rule of law, improving human rights and developing democratic processes, as it is a

model of policing that encourages the participation of the community in policing processes (Brahimi, 2000; Celador, 2005; Grabosky, 2009b; Greener, 2009; Holm & Eide, 2000). Contemporary *tara bandu* ceremonies, as a form of COP, could be seen to be a mechanism by which a traditional structure adapts to a changing social environment in which the rights of individuals are recognised. For example, in analysing traditional justice systems, practices that may have breached certain principles of human rights, such as how incidents of domestic violence are dealt with, have been identified as contrary to Timorese law and have undergone change in how the traditional justice process manages them. This is consistent with what Mathias (2006) discusses in relation to the use of existing traditional structures when implementing COP, that practices that are a breach of human rights or are contrary to the law are no longer condoned and cease. *Tara bandu* ceremonies are also an example of the dynamic nature of traditional and customary structures and *tara bandu* ceremonies demonstrate that traditional structures can adapt to a changing socio-cultural environment.

Chapter's two and three discussed how COP is considered by many to be a form of democratic policing in Western countries, resulting in COP being considered a method by which to introduce liberal and democratic principles to post-conflict societies, as it encourages the participation of communities in the design and implementation of their policing structures, leading to ownership and therefore the legitimacy of the police (Goldsmith, 2005; HPCR International, 2008; Mathias, 2006). In comparing The Community Officer Project in Solomon Islands to *tara bandu* in Timor-Leste, the Community Officer Project to some degree increased the participation of the community in decision making processes. The CO has been described as a person who can speak up and represent those people who would otherwise not have a voice as well as altering the situation where power is monopolised by a few select people (Dinnen & Haley, 2012). In Timor-Leste, it is evident that the use of *tara bandu* ceremonies had greater levels of community and individual participation in making decisions. Timorese communities are being encouraged to develop their own *tara bandu* ceremonies. Recognition exists of a need for widespread

consultation amongst the community as to what issues or problems will be dealt with through *tara bandu* and what will be referred to the formal state structures, such as the police. As discussed above, Chopra and Hohe (2004) explain that the integration of local communities with state structures nurtures a shared sense of identity. This idea of fostering a shared sense of identity can be linked to the concept of citizenship which is in turn linked to the participation of people in political processes. Processes that allow people who were previously marginalised to gain the right and ability to participate in institution building processes, such as developing judicial structures, can be an example of a grassroots process of claiming citizenship (Chopra & Hohe, 2004; Gaventa, 2002; Mohan, 2008).

Communities in Timor-Leste who have developed their own *tara bandu* ceremonies could be said to have claimed their rights as citizens to participate in state and institution building processes. As examined in Chapter five, they have incorporated their own traditional justice processes into the wider state system which has in turn formally accepted and recognised these processes. This is evidenced by some communities in Timor-Leste identifying domestic violence as a crime, as it is defined by the Timor-Lest Penal Code, and agreeing that it is therefore a matter to be dealt with by the formal state justice system and not *tara bandu* ceremonies. This example demonstrates that the victims of domestic violence, people often marginalised and treated unfairly by the traditional justice structures, have been able to participate in an institution building process.

Both mechanisms, the Community Officer Project and *tara bandu* ceremonies, would appear to have an aspect of anti-politics, although more so in Solomon Islands, in that both mechanisms could appear to blur what are essentially political and governance issues and transform them to technical issues around access to justice structures (Ferguson & Loman, 1994). Anti-politics, as discussed in Chapter one, is the theory that development projects often treat what are essentially political problems as technical problems and that these projects appear to offer participation and empowerment to the recipients. In reality, however, they offer only technical solutions which ignore the existing

political situation that underlies the problems (De Vries, 2007; Ferguson & Loman, 1994; Nadasdy, 2005).

In this respect, the Community Officer Project should be viewed as an extension of RAMSI which has been criticised as ignoring the need to develop culturally relevant forms of policing as well as other governance structures and is instead working to restore the institutional structures that previously failed (HPCR International, 2008). The lack of sound governance and political structures, free from corruption and nepotism, in the Solomon Islands Government have not been effectively addressed by RAMSI, which in the beginning ignored suggestions that the existing political structures should be reviewed (Hegarty, 2004; HPCR International, 2008; Leith, 2014). Leith (2014) has argued further that the processes of police reform alone will not restore a sustainable peace and security to Solomon Islands if there is not also a corresponding reformation of the political culture and processes of Solomon Islands. The continuance of the culture of cronyism, nepotism and corruption within the Solomon Islands Government and civil service will continue to cause the country to be a fragile state. Until there is real political reform and corrupt practices become unacceptable to Solomon Islanders, the stability and prosperity of the state are at risk (Leith, 2014).

How anti-politics theory applies specifically to Solomon Islands is that the Community Officer Project is designed to provide a link for rural communities to the formal state institutions pertaining to justice. Yet COs could also be viewed as a means to provide the bare minimum of justice services to those populations at little cost. Instead of investing in culturally appropriate formal policing and judicial structures that are able to serve the entire population, the Solomon Islands Government has not provided sufficient resources to the RSIPF to allow them to provide those services. A single unpaid, under resourced and often unsupported CO has essentially been designated the task of not only policing large areas but also for adjudicating on community issues (Dinnen & Allen, 2013; Dinnen & Haley, 2012). The CO could be seen as a short term technical solution in response to hinterland failure, as discussed in

Chapter four, a political inability to govern effectively in remote areas of Solomon Islands.

As discussed in Chapter three, a possible example of anti-politics in the implementation of COP in Timor-Leste is the broader political acceptance of the COP model. The 2006 crisis was caused by rivalries between the police and military and the manipulations of political leaders led to a situation where the community began to distrust the police and some members of the military began to view the police as a threat to their power and authority (Belo & Koenig, 2011). It has been suggested that the COP model was seen by many in the military as an acceptable form of policing that would not infringe on the powerbase of their own organisation. Therefore COP was supported by members of the Government whose own powerbase was made up of members of the military and veterans (Belo & Koenig, 2011).

It is not being suggested that the above described scenarios are the reasons for which COP has been implemented in either the Solomon Islands or Timor-Leste. However, it could be that the COP mechanisms involved are a convenient means by which to circumvent other issues that are of a political nature. Instead of addressing a lack of political will to adequately resource the police and other judicial structures or resolve lingering political and social rivalries, COP has been implemented in a manner that goes some way towards providing remote communities with access to judicial structures. Yet it appears this implementation is more of a stopgap measure, particularly in Solomon Islands, where greater engagement with local communities and investment in the police and other judicial structures would provide greater access to justice for those communities.

6.3 Conclusion

This research project has investigated the contribution COP can make to post-conflict countries and what processes or mechanisms have been used to introduce COP to those communities that use traditional justice systems. As discussed in the previous chapters, police reform in post-conflict countries has

seen the increasing implementation of COP as a means to introduce democratic policing as part of the peace building process. However, in many countries there exists the situation of legal pluralism, where communities predominately rely on traditional forms of justice as the formal state justice system does not have any real influence for a number of reasons. This research project examined the resurgence of *tara bandu* ceremonies in Timor-Leste and the implementation of the Community Officer Project in Solomon Islands as to how these mechanisms attempt to integrate traditional justice systems with a model of democratic policing by using the principles of COP.

The *tara bandu* structure could be considered as a more appropriate method of introducing elements of a formal COP model to a post-conflict community that is relying predominantly on traditional or customary judicial systems. The levels of participation of the communities and the state in developing the structures of the *tara bandu* ceremonies has resulted in a greater acceptance and understanding of the role and functions of the ceremonies in comparison to that of the COs in Solomon Islands. In saying that, communities in remote areas of Solomon Islands have indicated their willingness to have the state play a greater role in their daily lives, including an enhanced police presence. Yet the current situation has not proved to be entirely adequate as communities and the COs themselves have been left in doubt over the role and responsibilities of the CO, with some people feeling abandoned by the state. Therefore it would appear that when planning is carried out for the implementation or development of police reform or development programmes in locations where legal pluralism exists, consideration should be given to using a COP model in conjunction with a pre-existing traditional structure that already has the support of the community. This allows the community to fully participate in the process as they have knowledge and understanding of their own systems which they can then adapt so that they respect and adhere to the principles of human rights.

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