

**DOCUMENTING THE TREATMENT  
OF DETAINEES AND PRISONERS  
BY SECURITY FORCES IN THE  
KINGDOM OF TONGA**

**Community Para-Legal Taskforce on Human Rights**

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# **DOCUMENTING THE TREATMENT OF DETAINEES AND PRISONERS BY SECURITY FORCES IN THE KINGDOM OF TONGA**

## **Community Para-legal Taskforce on Human Rights**

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## FOREWORD

The Community Para-legal Taskforce advocates for the protection of the human rights of ALL Tongan citizens, even those alleged to have committed criminal offences. This is a fundamental of our society under the *Constitution*, the Laws of Tonga and Tonga's international law obligations.

The Community Para-legal Taskforce is currently preparing a number of reports on human rights issues emerging from the civil unrest in Nuku'alofa on Thursday 16<sup>th</sup> November 2006. This report is the first in this series.

This report documents allegations of ill-treatment of detainees and prisoners by members of the Tonga Police Force and Tonga Defence Service.

Torture and other cruel, inhuman or degrading treatment or punishment is prohibited at all times and in all circumstances under international law. Not only is this a requirement under the international human rights conventions to which Tonga is a party, but as a member of the international community, Tonga is bound by the rule of customary international law, which recognises the prohibition of torture and ill treatment as binding on all states whether or not they are parties to treaties which contain the prohibition.

This prohibition is a fundamental value of a democratic society and is absolute in terms that no derogation is permissible even during war or in the event of a public emergency threatening the life of a nation.

The Government and the people of the Kingdom of Tonga must stand tall to protect the moral values of society and respect for the inherent dignity of the human being despite the feelings of anger, revenge and disappointment that we may hold towards the alleged perpetrators of the destruction of Nuku'alofa on 16<sup>th</sup> November 2006.

The Community Para-legal Taskforce strongly supports the Government of Tonga in its efforts to rebuild Nuku'alofa in accordance with the rule of law and is committed to working with the Government and communities in this respect. The Community Para-Legal Taskforce hopes that the findings of this report will serve as a starting point to commence and further a range of strategies and programs to improve the rights and welfare of persons arrested and detained by Security Forces.

## EXECUTIVE SUMMARY

This report documents the ill-treatment of persons arrested and/or detained by members of the Security Forces (Tonga Police Force and Tonga Defence Service) since civil unrest in Nuku'alofa, Tonga on the 16<sup>th</sup> November 2006 through the completion of structured interviews with 84 released detainees and prisoners. At the time of undertaking these interviews, this sample size represented approximately 10% of all persons arrested and detained since the 16<sup>th</sup> November 2006. Photographs and medical records were also collected to support allegations.

Statistical analysis was conducted to quantify the extent of ill-treatment, and revealed inter alia:

- 41% of arrested persons said that they suffered physical violence during arrest by Security Forces. All of these persons suffered head and facial injuries ranging from bruising and swelling to broken teeth, bones and eye damage. The predominant perpetrators of violence during arrest were members of the Tonga Defence Service.
- 30% of arrested persons reported that they were interviewed by Security Forces with violence and/or threats of violence and intimidation intended to elicit information and/or confessions prior to reaching the Central Police Station.
- 53% of persons interviewed by Police at the Central Police Station reported that they had suffered violence and/or threats of violence and intimidation intended to elicit information and/or confessions during interview by Police Officers.
- All detainees and prisoners reported sordid conditions in the cells of the Central Police Station including: overcrowding of cells to more than six times their maximum holding capacity; hot and humid conditions during the day, cold conditions during the night which combined with no bedding resulted in some detainees and prisoners contracting pneumonia; filthy cells containing urine and faeces which was often caused by widespread denial of access to toilet facilities and broken sanitary facilities which resulted in toilets overflowing with urine and faeces, which subsequently became infested with maggots and cockroaches.
- 19% of detainees and prisoners claimed that they were handcuffed while inside a prison cell for varying periods of time, ranging from 2 hours to 10 days, often resulting in agonising wrist and arm injuries.
- Incommunicado detention including denial of access to families, lawyers and in many cases medical attention was reported by all detainees and prisoners.
- 21% of detainees and prisoners who had been held at the Central Police Station and interviewed for this report were children.

Concerns have also been raised in relation the widespread neglect of standard criminal procedures by Security Forces, the psychological impact of violence and detention, issues associated with judicial oversight, identification of perpetrators of violence and the integrity of formal complaint procedures.

Recommendations have been provided to assist the development of strategies to address the issues raised in this report.

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## I INTRODUCTION

On Thursday 16<sup>th</sup> November 2006, widespread rioting which included property damage, looting and fires occurred throughout Nuku'alofa, the capital of the Kingdom of Tonga.

On Friday 17<sup>th</sup> November 2006 central Nuku'alofa was cordoned off pursuant to the *Public Order (Preservation) Act* [Cap. 38] and the *Emergency Powers (Maintenance of Public Order) Regulations 2006* were passed which gave members of the Tonga Police Force and Tonga Defence Service (hereinafter referred to collectively as "Security Forces", unless identified separately) wide ranging powers, including the power to arrest any person suspected on reasonable grounds of threatening public order and to detain any person so arrested for a period not exceeding 7 days.<sup>1</sup>

In the 3 months since 16<sup>th</sup> November 2006, almost 1,200 people on the main island of Tongatapu have reportedly been arrested by Security Forces. This figure represents approximately 3% of the total population on Tongatapu.

Allegations of the ill-treatment of persons arrested and detained by the Security Forces since the 16<sup>th</sup> November 2006 have been raised in public discourse.

This report will attempt to collect and document allegations of ill-treatment and furthermore present statistical analysis to quantify the extent of these allegations. The findings of this report are based on research conducted of 84 detainees and prisoners in Nuku'alofa between the 28<sup>th</sup> November 2006 and 22<sup>nd</sup> January 2007. During this period approximately 700 people had been arrested and detained by Security Forces.<sup>2</sup>

The *Constitution of Tonga* contains fundamental legal safe guards, including the right to challenge the lawfulness of detention,<sup>3</sup> the right to be free from the imposition of arbitrary punishment,<sup>4</sup> and the right against self incrimination.<sup>5</sup> These safeguards apply to the detainees and prisoners interviewed for this report, including at all times during their detention.

Under the *Police Act* [Cap. 35], the Tonga Police Force, under the Minister of Police, Prison and Fire Services, is responsible for the maintenance of law and order throughout the

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<sup>1</sup> *Emergency Powers (Maintenance of Public Order) Regulations 2006*.

<sup>2</sup> On 12 January 2007 Acting Commander of Police Taniela Faletau reported that 678 persons had been arrested since 16<sup>th</sup> November 2006; as reported by Matangi Tonga Online "Two prominent Tongans charged with sedition, and abetting damage or arson" [accessed online: [www.matangitonga.to](http://www.matangitonga.to) on 12 January 2007].

<sup>3</sup> *Constitution of Tonga*, clause 9.

<sup>4</sup> *Constitution of Tonga*, clause 10.

<sup>5</sup> *Constitution of Tonga*, clause 14.

Kingdom of Tonga. In the event of a civil emergency<sup>6</sup>, or where a proclamation is made pursuant to the *Public Order (Preservation) Act* [Cap. 38],<sup>7</sup> the Tonga Defence Service (TDS) maybe called out in aid or support of the civil authorities. The *Emergency Powers (Maintenance of Public Order) Regulations 2006*, while providing equal powers to the Tonga Police Force and TDS, do not affect this legislative structure.

While the *Police Act* [Cap. 35]<sup>8</sup> contains a number of safeguards in relation to the arrest of members of the public by police, these safeguards may not apply to arrests made under the *Emergency Powers (Maintenance of Public Order) Regulations 2006*. Common law safe guards applicable to arrests remain.

The United Nations Code of Conduct for Law Enforcement Officials (hereinafter the “Code of Conduct for Law Enforcement Officials”)<sup>9</sup>, including the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter the “Basic Principles on the Use of Force and Firearms”)<sup>10</sup> which the Government of Tonga has asserted its international commitment<sup>11</sup>, are international standards which apply equally to both members of the Tonga Police Force and TDS.<sup>12</sup> These standards prescribe the responsibilities of law enforcement officials in their interactions with the community.

The Minister of Police, Prison and Fire Services is also responsible for the supervision and direction of all prisons and prisoners pursuant to the *Prisons Act* [Cap. 36]<sup>13</sup>, the *Prison Rules* [Cap. 36A]<sup>14</sup> and as stated in the 2005 Annual Report of the Minister, the United Nations Standard Minimum Rules for the Treatment of Prisoners<sup>15</sup> (hereinafter referred to as the Standard Minimum Rules).<sup>16</sup>

The *Prisons Act* [Cap. 36]<sup>17</sup> and the *Prison Rules* [Cap. 36A] apply to prisoners. The Standard Minimum Rules apply to both detainees and prisoners.<sup>18</sup> In this report the terms

<sup>6</sup> *Tonga Defence Service Act 1992* s 7(1).

<sup>7</sup> *Tonga Defence Service Act 1992* s 6(1).

<sup>8</sup> *Police Act* [Cap. 35] s 22.

<sup>9</sup> United Nations Code of Conduct for Law Enforcement Officials adopted by General Assembly resolution 34/169 of 17 December 1979.

<sup>10</sup> United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>11</sup> Member States Questionnaire on the Code of Conduct for Law Enforcement Officials including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, was submitted by the Government of Tonga to the Crime Prevention and Criminal Justice Division of the United Nations Office at Vienna. This questionnaire was pursuant to Economic and Social Council resolution 1993/34.

<sup>12</sup> Under Article 1 of the Code of Conduct for Law Enforcement Officials the term “law enforcement officials” includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. Where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of “law enforcement officials” includes officers of such services.

<sup>13</sup> *Prisons Act* [Cap. 36] s 3.

<sup>14</sup> *Prison Rules* [Cap. 36A] r 1 - 7.

<sup>15</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted August 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the U.N. Economic and Social Council by resolution 663 C (XXIV), July 31, 1957, and 2076, May 13, 1977, para. 8(d).

<sup>16</sup> Minister of Police Prison and Fire Services, *Annual Report 2005* (2006) 3 (Prisons Department Section).

<sup>17</sup> *Prisons Act* [Cap. 36] s 3

<sup>18</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners para 4.

“detainee”<sup>19</sup> (persons in detention who have not been charged with an offence) and “prisoner”<sup>20</sup> (persons in detention who have been charged with an offence and are awaiting trial – under remand) will be used together (unless specified) to describe persons arrested and held in custody since the 16<sup>th</sup> November 2006 for the reason that both classifications of persons were held in the same cells at the Central Police Station.<sup>21</sup>

Members of the Tonga Police force and TDS are trained in the Code of Conduct for Law Enforcement Officials, the Basic Principals on the Use of Force and Firearms and the Standard Minimum Rules.<sup>22</sup>

While there are other international laws<sup>23</sup>, guidelines<sup>24</sup> and jurisprudence<sup>25</sup> concerning the responsibilities of law enforcement officials and the treatment of persons in detention; legal analysis of the issues raised in this report will not be conducted. Instead the abovementioned Tongan laws and international standards identified by the Government as being applicable to the Security Forces of Tonga will merely be presented to give context to the issues raised.

The names of all detainees, prisoners and Security Force personnel in this report have been changed or withheld and, in some instances, place names or other identifying information withheld. This is done to protect privacy and preclude retaliation.

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<sup>19</sup> The Laws of Tonga do not provide a definition of a detainee, but in this report this term will refer to a person who has been arrested and detained but not charged.

<sup>20</sup> The *Prison Rules* [Cap. 36A] rule 113 divide Prisoners into three classes. Persons awaiting trial or under remand are classified as “Second Class Prisoners”.

<sup>21</sup> By way of example of the 513 persons arrested between 16 November 2006 and 30 December 2006, 82 people (16%) had been remanded by a Magistrate and were being held at the Central Police Station and other Police Stations around Tongatapu.

<sup>22</sup> Interview with Acting Commander of Police Taniela Faletau, Tonga Police Force, 15<sup>th</sup> March 2007; Interview with Lt Col. Tongapo’uli Aleamotu’a, Tonga Defence Service, 16<sup>th</sup> March 2007.

<sup>23</sup> See for example the International Covenant on Civil and Political Rights (1966) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

<sup>24</sup> See for example the Body of Principals for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988), the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) (1990), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (1985), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).

<sup>25</sup> See for example: The European Court of Human Rights, the Inter American Court of Human Rights, the African Court of Human Rights, the United Nations Human Rights Committee and the United Nations Committee against Torture.

## II METHODOLOGY

This report is based on research conducted in Nuku'alofa between the 28<sup>th</sup> November 2006 and 22<sup>nd</sup> January 2007.

During this period a team of researchers<sup>26</sup> made random enquiries in villages throughout Tongatapu or were made aware of persons who had been arrested and/or allegedly assaulted by Security Forces. The research team would locate these persons and with their consent, conduct a structured written interview using a standard survey instrument<sup>27</sup>. All interviews were conducted on the understanding that they were voluntary and anonymous.

This methodology was used because the research team did not have access to a list of all persons who had been detained during the study period from which purely random selections could have been made.

84 people who alleged to have been assaulted and/or arrested and detained by Security Forces since 16<sup>th</sup> November 2006 were interviewed by the research team. At the time these interviews were completed, this represented approximately 10% of all persons who had been arrested and detained since 16<sup>th</sup> November 2006.<sup>28</sup> Where appropriate, photographs were taken and medical records collected to document claims of ill-treatment. Statistical analysis of the data collected was undertaken. The completed interviews were translated into English for the presentation of qualitative data in this report.

Commanding Officers of the Security Forces and a Police Magistrate were also interviewed by researchers.

### **Data limitations:**

When assessing certain statistics presented in this report, some issues regarding the sampling technique used should be considered:

- The targeted identification of persons arrested and/or assaulted by Security Forces may potentially cause a bias in the data, in that persons who have suffered visible injuries may be more readily identifiable by the community and hence more likely to be reported to the research team.

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<sup>26</sup> Research team consisted of: Gus McLean, Community Para-Legals and 2 former high school teachers whose names have been withheld to protect their identity.

<sup>27</sup> Refer to Appendix 1 for survey instrument sample.

<sup>28</sup> On 12 January 2007 Acting Commander of Police Taniela Faletau reported that 678 persons had been arrested since 16<sup>th</sup> November 2006; as reported by Matangi Tonga Online "*Two prominent Tongans charged with sedition, and abetting damage or arson*" [accessed online: [www.matangitonga.to](http://www.matangitonga.to) on 12 January 2007].

This potential bias was limited by researchers when making random enquires in villages by asking for assistance to identify people who had been arrested (not specifically assaulted) by Security Forces. In these situations, the tight knit nature of Tongan villages often meant that most persons who had been arrested, whether they were assaulted or not, were identified by local residents.

- Reliance upon the community to assist with identification of persons arrested and/or assaulted by Security Forces made it difficult to identify female victims. Culturally it is seen as more of an embarrassment on a family if a female member is arrested for criminal activity than a male. While females made up a minority (approximately 8%) of all persons who had been arrested and detained since 16<sup>th</sup> November 2006<sup>29</sup>, only 2 females (2% of total interviewees) were interviewed for this report. The majority of female suspects were believed to be held at a separate facility in Nuku'alofa and the treatment of women and girls requires further research.

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<sup>29</sup> On 12 January 2007 Acting Commander of Police Taniela Faletau reported that 54 of the 678 persons arrested since 16<sup>th</sup> November 2006 were women; as reported by Matangi Tonga Online "*Two prominent Tongans charged with sedition, and abetting damage or arson*" [accessed online: [www.matangitonga.to](http://www.matangitonga.to) on 12 January 2007].

## III FINDINGS

### A Violence during arrest

Under the *Emergency Powers (Maintenance of Public Order) Regulations 2006*, members of the Security Forces have the power to use “such force as may be *reasonably necessary* to preserve public order” (emphasis added)<sup>30</sup>. There is no standard measure of what constitutes “reasonably necessary” force; instead it is a fluid and flexible concept. Reasonableness must be determined on a case by case basis by a court of law. In making this decision the judge, jury or magistrate can be guided by their own experience or knowledge of community standards, as well as by past court cases.

The Courts of Tonga have held that;

...when dealing with offenders ...[ Police officers]... may only use such force as is reasonably necessary to restrain them [suspects]. A number of police officers still appear to believe that they have the right to exercise discipline over the public as a parent would over a child - by physical beating.<sup>31</sup>

The Code of Conduct for Law Enforcement Officials requires that; “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”<sup>32</sup> This provision emphasises that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorised to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

The Basic Principals on the Use of Force and Firearms require that Law enforcement officials, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.<sup>33</sup> Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall, inter alia:

- “(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimise damage and injury, and respect and preserve human life;...”<sup>34</sup>

<sup>30</sup> *Emergency Powers (Maintenance of Public Order) Regulations 2006* r 4(xvi).

<sup>31</sup> *Akau'ola v Fungalei & Ors* [1991] Tonga LR 22.

<sup>32</sup> United Nations Code of Conduct for Law Enforcement Officials, art 2.

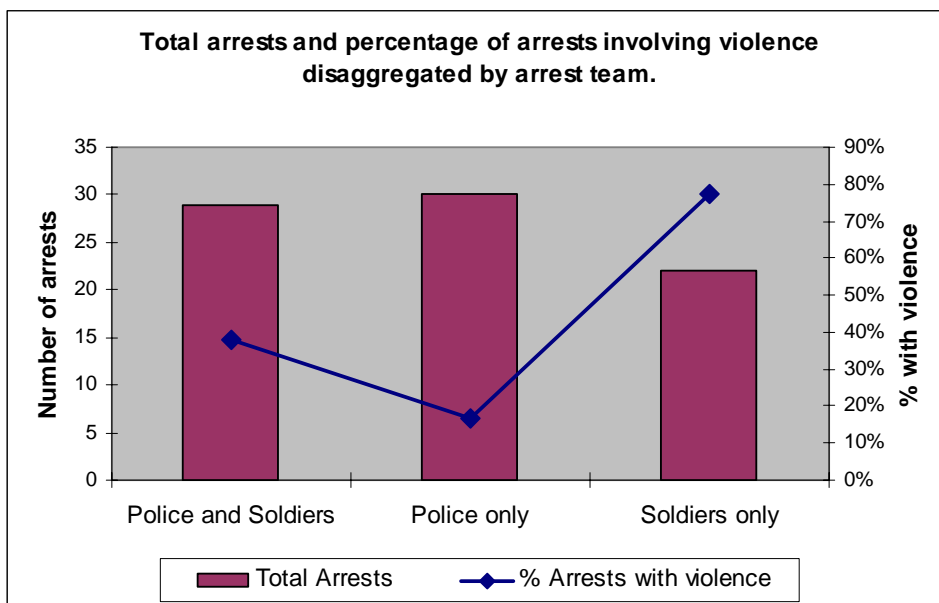
<sup>33</sup> United Nations Basic Principals on the Use of Force and Firearms by Law Enforcement Officials para 4.

<sup>34</sup> United Nations Basic Principals on the Use of Force and Firearms by Law Enforcement Officials para 5.

Arrested persons reported that Security Force arrest teams consisted of:

- Combined teams of Police Officers and TDS soldiers (the average combined team consisted of 4 Police Officers and 8 TDS soldiers); or
- Police Officers only (the average Police team consisted of 6 Police Officers); or
- TDS soldiers only (the average TDS team consisted of 6 TDS soldiers)

Of the 81 people who were arrested by Security Forces, 41% said that violence was inflicted on them during arrest. Disaggregating violent arrests by arrest team identified that TDS soldiers were the predominant perpetrators of violence during arrest. Figure 1 below shows that 77% of people who reported being arrested by TDS soldiers only claimed that their arrest involved violence. This compares with 34% of people arrested by combined arrest teams and 17% of people arrested by Police only who claimed that their arrest involved violence.



**Figure 1:** Comparison between different arrest teams of total arrests and percentage of those arrested who reported being victims of violence.

All (100%) persons suffering violence during arrest reported that they sustained injuries. These injuries ranged in severity from swelling and bruising to broken teeth, bones and eye damage. Disaggregating injuries by the area of body affected revealed that all (100%) persons suffered head and facial injuries. In addition 30% of persons suffered injuries to the upper body and torso area, particularly the ribs.

'Manu' a 24 year old male, said that he was the victim of an unprovoked assault by TDS soldiers during his arrest. He was detained at the Central Police Station for 48 hours and then released without charge:

*"Three Soldiers ran into the property pointing guns at us...a soldier then walked up to me swung his gun ['Manu' makes similar actions to someone swinging a baseball bat] and smashed me in the face with it. I lost consciousness, woke up in the police station sitting against the wall at the front desk covered in blood and with 3 broken front teeth and a broken nose."<sup>35</sup>*



**Figure 2:** Injuries to 'Manu's' face allegedly inflicted by TDS Soldiers during arrest. This photograph was taken 3 days after the injuries were alleged to have occurred. Photograph by (Name withheld) on 28<sup>th</sup> November 2006.

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<sup>35</sup> Interviewed on 7<sup>th</sup> December 2006.



**Figure 3:** Injuries to 'Manu's' head allegedly inflicted by TDS Soldiers during arrest. This photograph was taken 3 days after the injuries were alleged to have occurred. Photograph by (Name withheld) on 28<sup>th</sup> November 2006.

A Medical Report on Police Case of 'Manu's' injuries by Dr. V. Vao of the Ministry of Health on 28<sup>th</sup> November 2006 states:

Examination and Finding: Bruises (left eye, both forearms, back, left calf muscle); Scalp laceration (occipital area); Difficulty breathing at night, pleuritic chest pain.

Opinion: Above findings consistent with assault, according to patient, was attacked and beaten at Police station while under interrogation.<sup>36</sup>

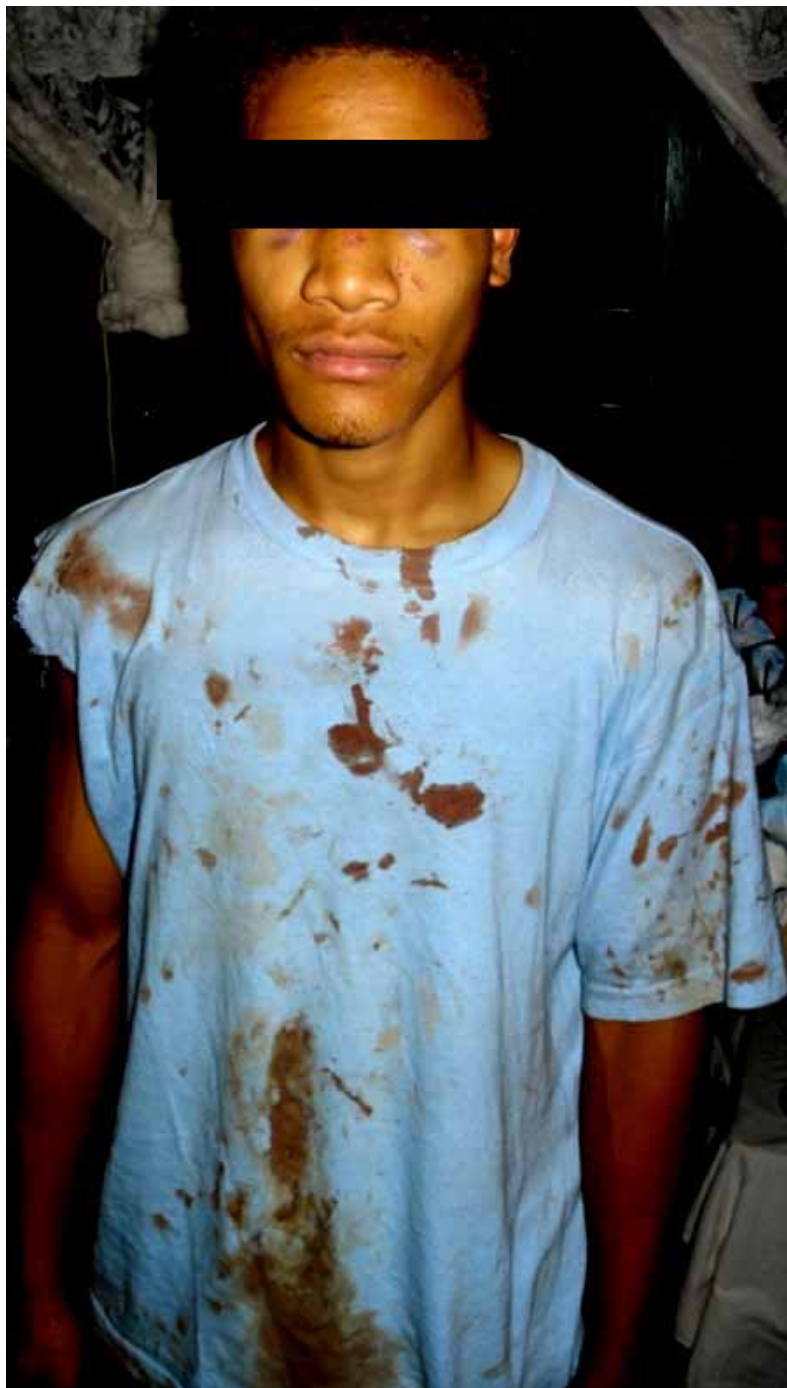
'Tevita' a 15 year old boy said that he was the victim of an unprovoked assault by TDS Soldiers during his arrest. He was detained at the Central Police Station for 48 hours and then released without charge:

*"I was walking home on my own at about 5 p.m. ... [s]ix soldiers approached me, three from the front and three from behind. One soldier walked straight up to me and without saying anything smashed the butt of*

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<sup>36</sup> Dr. V. Vao, Ministry of Health, *Medical Report on Police Case*, 28 November 2006, on file with author.

*his rifle into my forehead. I fell to the ground ... As I got out of the truck at the police station I was beaten by the police ... blood was gushing out of a cut between my eyes, black eyes and my swollen face ... as I was being processed.*<sup>37</sup>



**Figure 4:** Injuries to 'Tevita's' face and head allegedly inflicted by TDS Soldiers during arrest. This photograph was taken upon 'Tevita's' release, almost 3 days after the injuries were alleged to have occurred. Note: Lacerations to the right eyebrow and nose have been obscured in the photograph for this report by the black strip designed to protect 'Tevita's' identity. Photograph by (Name withheld) on 28 November 2006.

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<sup>37</sup> Interviewed on 7<sup>th</sup> December 2006.

A Medical Report on Police Case of 'Tevita's' injuries by Dr. V. Vao of the Ministry of Health on 28 November 2006 states:

Examination and Finding: Bruises (under both eyes, forehead, nose); Headache; X-ray: Fractured nasal bone (hairline).

Opinion: Above findings consistent with assault using a blunt object. According to patient he was attacked and assaulted by defence officer. Antibiotics given to him to prevent abscess formation.<sup>38</sup>

'Sione T.', a 22 year old male said that he was physically assaulted with rifle butts by TDS soldiers during arrest and then physically assaulted by Police officers with their fists during interview at the Central Police Station. He was detained for 29 hours before being released without charge.<sup>39</sup>



**Figure 5:** This injury to 'Sione T.'s' forehead and others not shown were allegedly inflicted by TDS Soldiers during arrest and by Police Officers during interview. This photograph was taken 25 days after the injuries were alleged to have occurred. Photograph by Gus McLean on 21<sup>st</sup> December 2006.

<sup>38</sup> Dr. V. Vao, Ministry of Health, *Medical Report on Police Case*, 28 November 2006, on file with author.

<sup>39</sup> Interviewed on 21<sup>st</sup> December 2006.

A Medical Report on Police Case of 'Sione T's' injuries by Dr. K. Ahdieh of the Ministry of Health on 28 November 2006 states:

Examination and Finding: Subcconjunctival haemorrhage (L) [left] eye; Periorbital bruising (L) [left] eye; graze (L) [left] maxilla; 5 mm laceration (R) [right] upper lip; tender (L) [left] TMJ [jaw joint]; tender ribs.

Opinion: Findings consistent with assault as alleged by patient.<sup>40</sup>

'Sila', a 17 year old boy alleged that he was punched in the face by a Police Officer and when he fell to the ground he was further kicked and hit with a stick by Police Officers. A Medical Report on Police Case of 'Sila's' injuries by Dr. E. 'Akau'ola of the Ministry of Health on 17<sup>th</sup> November 2006 states:

Examination and Finding:

1. Laceration and haematoma over occipital region.
2. Linear haematoma over (R) [right] cheek extending to behind (L) [left] ear. This causes restricted ROM [range of movement] of mandible (X-Ray – [report appears incomplete here])
3. Laceration and swollen both upper and lower lip
4. Haematoma (R) arm, (L) arm and (L) forearm
5. Scratch marks over his back and haematoma.
6. Haematoma and bruises over (R) subcostal region associated with pain when he coughs.

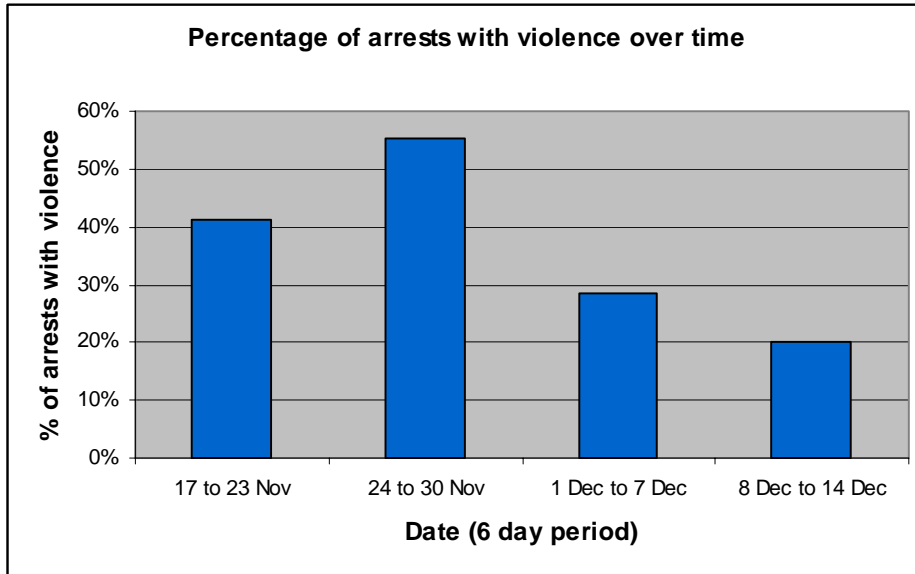
Opinion: The above injuries are consistent with the alleged assault.<sup>41</sup>

Between the 17<sup>th</sup> and 23<sup>rd</sup> November 2006, TDS only arrest teams were responsible for 44% of arrests, combined TDS and Police teams for 33% of arrests and Police only teams for 22% of arrests. After the 23<sup>rd</sup> November 2006, 85% of all arrests were carried out by Police only teams and combined TDS and Police arrest teams.

Figure 6 shows that arrests occurring between 7 and 13 days after the 16<sup>th</sup> November were reported to be 15% more likely to involve violence inflicted by Security Forces than arrests made in the week immediately after the riots. Arrests in December were considerably less likely to involve violence.

<sup>40</sup> Dr. K. Ahdieh, Ministry of Health, *Medical Report on Police Case*, 28 November 2006, on file with author.

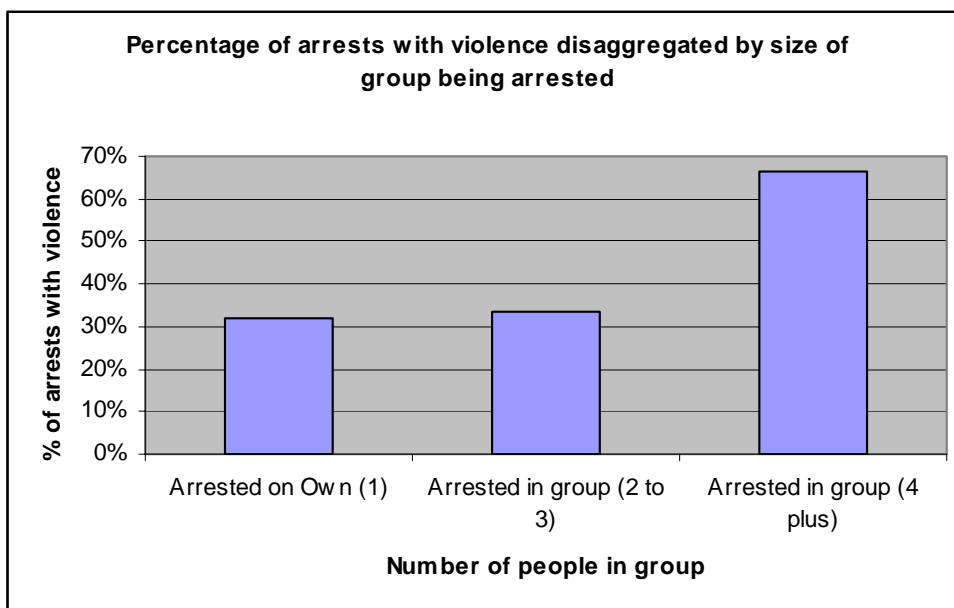
<sup>41</sup> Dr. E. 'Akau'ola, Ministry of Health, *Medical Report on Police Case*, 17 November 2006, on file with author.



**Figure 6:** Percentage of total arrests in four 6 day periods after 16<sup>th</sup> November 2006 that were reported to involve violence inflicted by Security Forces.

Persons who were arrested on their own were less likely to suffer violence than those arrested as part of a group. Figure 7 shows that persons arrested in a group of 4 or more people (average number of people in group was 5) were more than twice as likely to have violence inflicted upon them during arrest than those arrested alone or in smaller groups.

The average number of Security Force members in arrest teams was more than double the average number of persons being arrested, whether they were arrested alone (average of 7 Security Force members) or in a group (average of 9 Security Force members for both categories of groups).



**Figure 7:** Comparison of the percentage of arrests with violence disaggregated by size of group being arrested.

Of the 81 people arrested, 4 (5%) admitted to resisting arrest, this included 2 boys who said that they ran away from Police Officers on the first occasion and 2 males who claimed that they fought back after TDS soldiers started punching and kicking them.

'Fanga' a 43 year old male who was arrested by TDS soldiers and detained at the Central Police Station for 24 hours before being released without charge said:

*"I was getting out of van and ordered to stand still. A soldier approached me and punched me in the face. Another soldier followed him and was about to hit me too but I hit him first. The soldiers then restrained me and started beating me until their superior officer came over and stopped them."<sup>42</sup>*

## **B Violence during arrest - transport**

Violence was also reported to have been inflicted upon arrested persons in vehicles during transport. Similar trends to those displayed in Figure 1 were observed in this data. 27% of arrests made by TDS Soldiers were alleged to have involved violence during transport. This compared with 24% of arrests made by combined TDS and Police arrest teams and 7% of arrests made by Police Officers.

'Inoke' a 22 year old male said that he was physically assaulted by TDS soldiers during transit to the Central Police Station, where he was detained for 48 hours before being released without charge;

*"They made us lie down so no one could see us. They beat us all the way from Ha'ateiho to the checkpoint in town. Some of them [TDS soldiers] would hold my hands to the back while another soldier was repeatedly punching me in the face. I couldn't move anywhere I couldn't protect myself. They [TDS soldiers] would always reach for their weapons in the car to intimidate us. My eyes had swollen up really bad. Once at the checkpoint they said lets take these boys on a joy ride so we can beat them till they confess."<sup>43</sup>*

<sup>42</sup> Interviewed on 15<sup>th</sup> December 2006.

<sup>43</sup> Interviewed on 13<sup>th</sup> December 2006.

'Stiveni', a 28 year old male said that while he was arrested in front of his family and friends without any violence, once inside a TDS vehicle in transit to the Central Police Station he was the victim of unprovoked assaults by a TDS Officer:

*"I was seated just behind the driver. The front passenger was a TDS Officer, he took out his pistol, told me to bend forward and then smashed me twice on the top of my head with the flat side of his pistol ... They made me duck below the window line as we drove through town because my head was gushing blood."<sup>44</sup>*



**Figure 8:** 'Stiveni' alleged that these injuries to his head were inflicted by TDS Soldiers during his transport to the Central Police Station. This photograph was taken 10 days after the injury was alleged to have occurred.

Photograph by Gus McLean on 28<sup>th</sup> November 2006<sup>45</sup>

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<sup>44</sup> Interviewed on 28<sup>th</sup> November 2006.

<sup>45</sup> This photograph also appeared in *The Systematic Torture and Abuse of Prisoners by the Government of Tonga following Civil Unrest in November 2006* released on 30 November 2006.

A medical assessment of 'Stiveni's' injuries by Dr. A. 'Akauola of the Friendly Islands Medical Clinic on 18<sup>th</sup> January 2007, two months after the injuries were alleged to have occurred, states:

There are two scars on top of... ['Stiveni's'] ...head. Larger of the two scars is 'Y' shaped with measurements given. A smaller 1 cm long scar in the left parental region is also seen. Both these scars are consistent with a blow to the head with a blunt instrument.<sup>46</sup>

### C Violence and Interviews during arrest

Under the Code of Conduct for Law Enforcement Officials, no law enforcement official may inflict, instigate or tolerate any act of torture<sup>47</sup> or other cruel, inhuman or degrading treatment or punishment.<sup>48</sup> Exceptional circumstances such as a threat to national security, internal political instability or any other public emergency can not be used as a justification of torture or other ill treatment.<sup>49</sup>

Of the 81 people arrested, 24 (30%) reported that they were interviewed by Security Forces prior to reaching the Central Police Station. The majority of these persons claimed that they were interviewed in a vehicle while in transit. All of these interviews were reported to involve either violence or threats of violence and intimidation intended to elicit information and/or confessions.

Arrest teams comprising of TDS soldiers only were reported as being responsible for 38% of all interviews conducted prior to reaching the Central Police Station.

'Paula', a 19 year old male who was arrested by TDS soldiers and detained at the Central Police Station for 48 hours before being released without charge said:

*"I was walking home and stopped on the road by a truck of soldiers. They [TDS Soldiers] asked for my name and then started punching me. A*

<sup>46</sup> Dr. Ana 'Akauola, Friendly Islands Medical Clinic, *Medical Report* 18 January 2007, on file with author.

<sup>47</sup> According to the United Nations Code of Conduct for Law Enforcement Officials ". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

<sup>48</sup> According to the United Nations Code of Conduct for Law Enforcement Officials the term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

<sup>49</sup> United Nations Code of Conduct for Law Enforcement Officials, art 5.

*soldier pointed his gun at the side of my stomach, then I was hit in the back of the head with a rifle butt. I was arrested and then beaten by the soldiers all the way to the [location name removed] checkpoint. At the checkpoint I was bashed and interrogated for about half an hour by the soldiers. The soldiers said that they were going to beat me until I confessed to a crime.*<sup>50</sup>



**Figure 9:** This scar on 'Paula's' head was allegedly caused by a TDS Soldier hitting him with the butt of a gun during arrest. This photograph was taken 26 days after the injury was alleged to have occurred.  
Photograph by Gus McLean on 13<sup>th</sup> December 2006

A medical assessment of 'Paula's' injuries by Dr. E. Fonua of the Ministry of Health on 2 December 2006, 1 week after the injuries were alleged to have occurred, states

Initially seen by Dr. V. Vao on 25/11/06, no report required at the time. Small wound to (L) [left] side of the occipital, healing. (L) [left] eye slightly swollen and a little red.

Head wound and swelling/redness in (L) [left] could support given history.<sup>51</sup>

<sup>50</sup> Interviewed on 12<sup>th</sup> December 2006.

<sup>51</sup> Dr. E. Fonua, Ministry of Health, *Medical Report on Police Case*, 2 December 2006.

'Viliami', a 33 year old male who was arrested by a combined arrest team of TDS Soldiers and Police Officers said:

*"One of the Police officers who came to pick me up asked me who I saw in town on that Thursday [16<sup>th</sup> November 2006] and I said that I didn't see anyone. Then the officer yelled out to have me beaten up with the gun and so two soldiers came over and I was beaten inside the vehicle and repeatedly asked to name those I saw on Thursday in town and I still answered that I did not see anyone.*

*I was taken to [location name removed] near the water. I was taken out of the vehicle and dragged outside onto the street and was beaten with a gun to my head and was told that they will shoot me. They continued to beat me up with the gun to my face and my chest and my head was severely injured and my back and I was still being asked to name those I had seen on Thursday and I still told them that I did not see anyone.*

*So they put me back into the vehicle again and took me to the quarry at [location name removed] and I was beaten there again with the gun all over my body and then I was put again into the vehicle and taken to my home and dropped off there and was told by one of the Police officers that they will come back again in the afternoon and by then they expect me to tell them those that I saw [participating in the riot] on Thursday [16<sup>th</sup> November 2006].<sup>52</sup>*



**Figure 10:** 'Viliami' claimed that this injury to his chest was inflicted by a TDS Soldier who hit him with the butt of his rifle during an interrogation in a quarry. This photograph was taken 1 day after the injury was alleged to have occurred. Photograph by (Name withheld) on 28<sup>th</sup> November 2006.

<sup>52</sup> Interviewed on 16<sup>th</sup> January 2007.

A medical assessment of 'Viliami's' injuries by Dr. A. 'Akauola of the Friendly Island Medical Clinic on 18<sup>th</sup> January 2007, seven weeks after the injuries were alleged to have occurred states:

Scar tissue at left upper chest measuring 4cm x 1cm...appears to have been from an abrasion most likely from a blunt instrument scraping the skin.<sup>53</sup>

'Kolo' a 20 year old male who was arrested by 8 TDS Soldiers, and detained at the Central Police Station for 31 hours and then released without charge said:

*"They beat me all the way to the station...I was threatened to confess to something I did not do with a gun to my head and a gun pointed into my back whilst being repeatedly punched."*<sup>54</sup>

'Latu', a 22 year old male who reported that he was taken to Longo Longo Police station for 1 hour where he was interviewed with violence before being transferred to Central Police Station said;

*"I was bashed with a police baton in the head and legs. They were yelling at me to confess to being an arsonist. A second Police Officer came over and started beating my head as well with his fists while the other officer kept hitting my legs with the baton."*<sup>55</sup>

'Vai' a 12 year old boy who reported that Police entered his family home when both his parents were at work said that Police officers threatened him with violence to reveal the location of suspected stolen items in the house.

*"Police asked me if I and others in my family took part in the looting of [location name removed]. They threatened that they would beat me if I didn't tell them where the stolen things were in the house. I asked them if they could wait until my mum came home. Police then started confiscating things from my house. Police told me to get into the van to be taken down to the Police station to get a statement..."*<sup>56</sup>

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<sup>53</sup> Dr. Ana 'Akauola, Friendly Islands Medical Clinic, *Medical Report* 18 January 2007, on file with authors.

<sup>54</sup> Interviewed on 30<sup>th</sup> December 2006.

<sup>55</sup> Interviewed on 22<sup>nd</sup> December 2006.

<sup>56</sup> Interviewed on 20<sup>th</sup> December 2006.

Of the 24 people who said that they were interviewed by Police Officers and TDS soldiers prior to reaching the Central Police Station, 7 alleged that they were threatened and intimidated into giving information and/or confessing to a crime with a gun pointed at them.

'Tani', a 31 year old male who telephoned the Police to admit to possessing stolen goods from the riot and wanted to make arrangements to return the goods alleged that during an interview by TDS soldiers and Police Officers:

*"They asked me questions and I answered back. They were not satisfied with my answers. So a soldier cocked his rifle and pointed it at me and told me to lie. But I refused to change my story even with a gun pointed at me."<sup>57</sup>*

'Siale', a 17 year old boy, reported that a Police Officer pointed a gun at him and threatened to kill him if he did not confess to a crime:

*"I was thrown into truck and taken to Akilisi's house [referring to Akilisi Pohiva, the Number 1 People's Representative in Parliament] and forced to say "Akilisi, it's me 'Siale' and I love you".*

*Then on the way to the Police station the Police threatened to beat me if I didn't confess to some of the crimes they said I was involved in. Then a police man took out his gun, cocked it in front of me and then threatened to kill me if I didn't start making some admissions. I admitted to everything that I had done."<sup>58</sup>*

## **D Violence in TDS Controlled Areas**

32% of people arrested by TDS Soldiers reported that they were not taken directly to a Police Station or transferred into Police custody but instead to Military controlled areas such as Masefield Navy Base and Taliai Military Camp. While this may have been necessary for operational reasons, it is of concern that all but one of these persons alleged that they were the victims of further violence by TDS soldiers at these locations.

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<sup>57</sup> Interviewed on 29<sup>th</sup> December 2006.

<sup>58</sup> Interviewed on 18<sup>th</sup> December 2006.

'Vilimo' a 23 year old male reported that TDS soldiers took him to the Masefield Navy Base for 2 hours before being handed over to Police;

*"We were then taken to the Navy base. There I was punched in the mouth and my front tooth was chipped. I was thrown into the cell so that my head would smash against the wall. I nearly passed out again. Soldiers then grabbed a bucket of cold water and tipped it over me, then they dragged me by the feet into the hallway and kicked and punched me some more."<sup>59</sup>*

Police later detained 'Vilimo' at the Central Police Station for 48 hours and then released without charge.

'Havea', a 27 year old male reported that TDS Soldiers took him to Tailai Military Camp where he was detained for 3 hours before being handed over to Police. During this time he alleged that he witnessed another detainee being brutally beaten by TDS soldiers;

*"...I heard a van arrive outside the cell. Someone was taken out and I could hear them being beaten up. Then a guy was thrown into the cell with me covered in blood. In the cell the soldiers beat him with fists again. Then their Sergeant came in. He told the guy to stand up. Then he punched him straight in the head and the guy just fell to the floor. About 15 minutes later the police showed up and took both of us to Central [Central Police Station]."<sup>60</sup>*

The TDS were aware of suspects being taken to TDS Controlled Areas and in addition to the information collected from detainees and prisoners, reported that suspects were also taken to the TDS Headquarters in Kolomotu'a where "discussions" ("*talanoa*") took place.<sup>61</sup> No further information was given on the typical form or content of these "discussions". The TDS reported that it approved of its members bringing suspects to the TDS Headquarters because it was "well supervised".<sup>62</sup>

The TDS reported that they were aware of a number of members who had taken suspects to Tailai Army Camp. The TDS said that this action was not condoned and TDS members identified as responsible for such actions were disciplined with the removal of privileges.<sup>63</sup>

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<sup>59</sup> Interviewed on 7<sup>th</sup> December 2006.

<sup>60</sup> Interviewed on 22<sup>nd</sup> December 2006.

<sup>61</sup> Interview with Lt Col. Tongapo'uli Aleamotu'a , Tonga Defence Service, 16<sup>th</sup> March 2007.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

The Tonga Police Force and TDS acknowledged that they were both responsible for restoring law and order during the Emergency Period.<sup>64</sup> However, it was not clear from interviews with both Police and TDS senior officers which agency had ultimate responsibility for the arrest and detention of suspects.

The Tonga Police Force said that they were responsible for the investigation of suspects and detainees.<sup>65</sup> The TDS reported that they conducted assessments of tapes of speeches from *Pangai Si'i* and the riots with a view to identifying persons of interest or risk.<sup>66</sup> The TDS reported that if they find persons suspected of criminal offences then they take them to the police, but if as a result of collecting intelligence and information, they feel that a suspect will be a risk to public safety then the TDS "handle them".<sup>67</sup>

## E Arrest and detention procedures

Under the common law of Tonga a person being arrested without warrant must be told by the arresting officer why he or she is being arrested unless by the circumstances he or she must know the general nature of the alleged offence.<sup>68</sup> If Security Forces fail to so inform the person, the arrest may be held to be unlawful, with the consequence that if the person is taken into custody, then he or she will have an action for wrongful imprisonment.<sup>69</sup>

Of the 81 people arrested, 60% said that they were not advised of the reason why they were being arrested. Many detainees and prisoners said that they were just told to get in the police van, or were asked to accompany officers to take down a statement under the false pretence that they would be returned home later that day.

Disaggregating this data by arrest team in Figure 11 indicates that the lowest prevalence of persons being informed of the reason for their arrest were those people arrested by TDS only arrest teams.

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<sup>64</sup> Interview with Acting Commander of Police Taniela Faletau, Tonga Police Force, 15<sup>th</sup> March 2007 and Interview with Lt Col. Tongapo'uli Aleamotu'a , Tonga Defence Service, 16<sup>th</sup> March 2007.

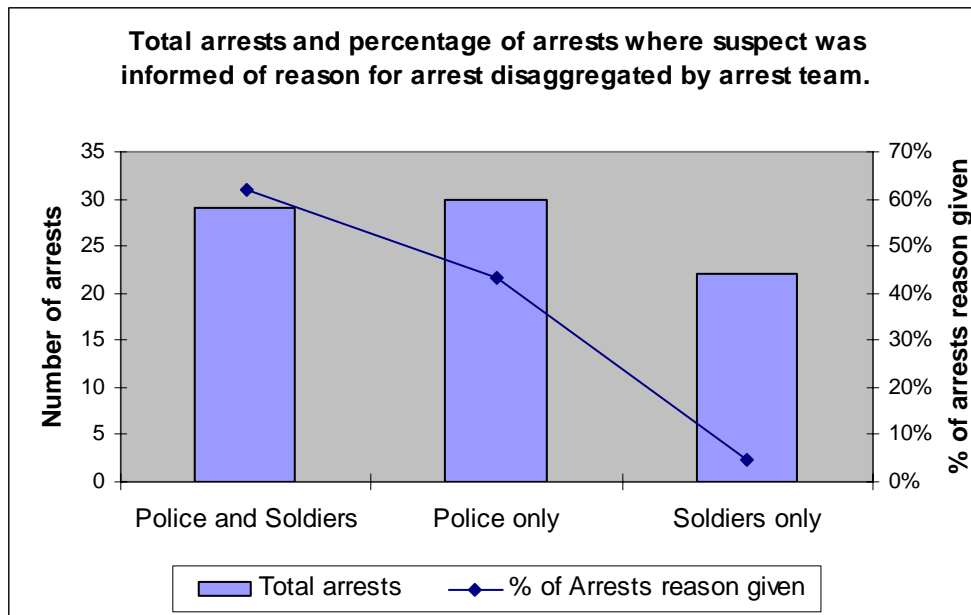
<sup>65</sup> Interview with Acting Commander of Police Taniela Faletau, Tonga Police Force, 15 March 2007.

<sup>66</sup> Interview with Lt Col. Tongapo'uli Aleamotu'a , Tonga Defence Service, 16<sup>th</sup> March 2007.

<sup>67</sup> Ibid.

<sup>68</sup> See for example: *Fainga'a v Lelea* [2005] TOSC (Unreported, Webster CJ, 6 January 2005).

<sup>69</sup> *Christie v Leachinsky* [1947] 1 All ER 567 (HL).



**Figure 11:** Comparison between different arrest teams of total arrests and percentage of those arrests alleged to have involved officers advising the arrested person of the reason for their arrest.

The TDS stated that they were not required to inform an arrested person of the reason for their arrest.<sup>70</sup>

The TDS reported that while its members had not received training in civil law enforcement, they had undergone training in the operational procedures for the arrest of suspects.<sup>71</sup> When asked if TDS members were trained in criminal procedures under the laws of Tonga relating to the arrest, detention and questioning of suspects, the TDS advised that they were operating under Rules of Engagement during the Emergency Period.

Under the *Emergency Powers (Maintenance of Public Order) Regulations 2006*, any person suspected on reasonable grounds of threatening public order maybe arrested by Security Forces. The test as to whether reasonable grounds for the suspicion to justify an arrest exist is partly subjective, in that the arresting officer must have formed a genuine suspicion that the person being arrested was threatening public order, and partly objective, in that there has to be reasonable grounds for forming such a suspicion.

A number of detainees and prisoners complained that they were arbitrarily arrested by TDS soldiers who they said appeared to be just driving around picking up people.

'Sean', a 17 year old boy who was arrested and detained for 24 hours before being released without charge said:

<sup>70</sup> Interview with Lt Col. Tongapo'uli Aleamotu'a , Tonga Defence Service, 16<sup>th</sup> March 2007.

<sup>71</sup> Ibid.

*“We were walking home. A group of soldiers and police turned up – aimed their guns at us. They told us to ‘freeze stay where you are’. Then they came over 8 policemen 5 soldiers, just started punching, kick throwing us around, hitting us with their guns. This went on for two or 3 minutes. Then they arrested us and took us in.”<sup>72</sup>*

‘Vilimo’ a 23 year old male who said he was not told why he was being arrested by TDS soldiers and was detained at the Central Police Station for 48 hours before being released without charge said:

*“I think there had been a report of a fight in the [location name removed] area. Two TDS trucks arrived and the soldiers jumped out and just started fanning out over the whole area grabbing anyone off the street. A soldier walked up to me and punched me in the face. I must have been knocked out because I woke up in the back of the TDS truck with another friend who had been loaded on top of me.”<sup>73</sup>*

Of the 81 people arrested, 53% were not charged with an offence. Disaggregating this data further by arrest team showed that 77% of the people arrested by TDS soldiers were eventually released without charge. This compares with 55% of people arrested by combined arrest teams and 37% of people arrested by Police only teams.

The TDS stated that they were not required to have reasonable grounds to arrest a person under the emergency powers.<sup>74</sup>

Under the Standard Minimum Rules, in every place of detention a bound registration book with numbered pages in which information concerning a detainee’s identity; the reasons and authority for his or her commitment and the day and hour of his or her admission and release must be kept.<sup>75</sup>

Police Officers appeared to be diligent in recording the names of persons brought into custody at the Central Police Station. 12% of detainees and prisoners reported that they did not observe their name being entered into a register upon their arrival at the Central Police Station, however it is possible that these details may have been recorded once the arrested person was placed into a cell.

<sup>72</sup> Interviewed on 10<sup>th</sup> December 2006.

<sup>73</sup> Interviewed on 7<sup>th</sup> December 2006.

<sup>74</sup> Interview with Lt Col. Tongapo’uli Aleamotu’a , Tonga Defence Service, 16<sup>th</sup> March 2007.

<sup>75</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, para 7.

International guidelines on the detention of children<sup>76</sup> require that a parent or guardian be notified immediately when a child is apprehended.<sup>77</sup> Of the 19 children arrested, all were brought to the Central Police Station. Only 2 of these children reported that they were asked if they wanted to contact a parent to advise them of their current situation. 3 of the children said that while their names were recorded into a register by Police, they were not asked their age or dates of birth. These children were aged 11, 15 and 17 years.

Procedural errors were apparent in a concerning incident that resulted in the arbitrary arrest and detention of a witness for 24 hours at the Central Police Station on 13<sup>th</sup> December 2006. 'Kali', a 35 year old male alleged;

*"The Chinese owner of the store across the road had named me to Police as a potential witness to the looting that had taken place there during the riots. The Police came to my house and I gave them a statement about what I had seen. The next day the Police came again and asked me to come down to the station to fill out another statement.*

*At the station [Central Police Station] they [Police Officers] asked me to wait on the bench outside the front desk while they went and got their paper work. About two hours later a Police Officer who I did not know came up to me and led me into a cell. I was kept there all day and over night and was released the next morning when I made a complaint. The Police didn't even end up taking the statement from me!"<sup>78</sup>*

## **F Violence during interview at the Central Police Station**

Under the *Constitution of Tonga*, "[n]o one shall be intimidated into giving evidence against himself...".<sup>79</sup> Any admission made under illegal compulsion can not be submitted as evidence in a Court of law.<sup>80</sup> In any prosecution, the Crown has the onus of establishing beyond reasonable doubt that a confession or statement from an accused was obtained without the use of inducement, threat or promise.<sup>81</sup>

<sup>76</sup> In this report, the terms "child" and "children" refer to anyone under the age of eighteen years.

<sup>77</sup> See for example: The Beijing Rules, para. 10; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 16(3).

<sup>78</sup> Interviewed on 18<sup>th</sup> December 2006.

<sup>79</sup> *Constitution of Tonga*, clause 14.

<sup>80</sup> *Evidence Act* [Cap. 15] s 19 "No evidence shall be given of any admission which was made under illegal compulsion."

<sup>81</sup> *Evidence Act* [Cap. 15] s 21 "No evidence shall be given of any confession in any criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat or promise relating to the charge, and proceeding either from the prosecutor or from some other person having authority over the accused person and sufficient in the opinion of the Court to afford the accused person reasonable grounds for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in regard to the proceeding against him"

Of the 68 persons who were interviewed by Police at the Central Police Station, 53% reported that they had suffered violence and/or threats of violence during interview by Police Officers.

Actual violence was reportedly inflicted upon 22% of persons who were interviewed by police at the Central Police Station. This violence was reported to have ranged from being slapped across the face to brutal assaults with weapons. In all cases persons reported that this violence was used to intimidate and extract or attempt to extract information and/or force confessions.

'Siale', a 21 year old male who was interviewed twice by Police said that he was subject to physical violence by the interviewing Police Officers because he would not admit to a crime that he had not committed;

*"Because I stood my ground three of them punched me to the floor then they got into me on the floor punching and kicking me telling me to say I had set it [location name removed] on fire. The beatings got worse and worse. They said they have photos of me that prove I set it on fire. I asked to see the photos but they said that they were not there at the moment. Somebody hit me in the back of my head and I almost lost my mind. Somebody hit me in the face and I was almost blind. But my ribs were the worst I had been beaten so bad I could not lie on each side. They could not find a reason to keep me - so they said that the hat I was wearing, my sunglasses and my watch were stolen."<sup>82</sup>*

After this interview, 'Siale' reported that he was not given medical treatment and was held in detention for another 7 days before being released.

'Lisiate', a 24 year old male who was interviewed twice by Police said that during his first interview, which lasted 8 hours, the following occurred:

*"I was lead up stairs by ["Officer 1" (name removed)], then interviewed by him. The cuffs were so tight that my hands were numb. My hands were dark and black; the cuffs had already eaten into my flesh at this time. They told me that I had set the warehouse on fire. ["Officer 1"] then went to another room.*

*Another police officer, ["Officer 2" (name removed)], came up to me from behind and punched me in the head - knocked me to the ground and I*

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<sup>82</sup> Interviewed on 28<sup>th</sup> December 2006.

*landed on my face. I lost consciousness and woke up being kicked in the back. I was covering my face. Then ["Officer 2"] took a metal chair and smashed me with it seven times on my side. He then pinned me to the ground with the chair and picked up a car battery and held it above my head ready to drop it on me. Another police officer yelled out that that was enough and he put the battery down. Then ["Officer 1"] came back in and the interview went on. ["Officer 2"] would walk in and out of the interview and punch and slap me from behind each time.'*<sup>83</sup>

Eight days after this interview, 'Lisiate' was taken to hospital by Police Officers because he was coughing up blood. The Vaiola Hospital Admission Notes state "...referral from OP [Outpatients] with fever, vomiting blood and GBA [general body aches]"<sup>84</sup> No where on his medical file, including the separate notes of both doctors and nurses is any reference made to visible injuries on 'Lisiate's' body, such as bruising.

'Lina', 'Lisiate's' mother, arrived at the hospital several hours after 'Lisiate' had been admitted and remained at his side in hospital until his discharge, 8 days later. 'Lina' described her son's injuries:

*"He had a black eye, there were bruises on his back. There was an 'L' shaped bruise on his shoulder blade, I could tell from that he'd been beaten with a chair or a bench. He had difficulty breathing and had a very uncomfortable cough. He couldn't move for the first three days.'*<sup>85</sup>

'Lina' said that 'Lisiate' was shirtless while in hospital and that the bruises on his back were obvious. She said:

*"I complained to medical staff that he had been assaulted but they paid no attention, they just ignored it."*<sup>86</sup>

Of the persons interviewed by Police at the Central Police Station who did not suffer actual violence, 30% reported to have been threatened with violence by their interviewers. In all cases persons reported that these threats were used to intimidate and extract or attempt to extract information and/or force confessions.

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<sup>83</sup> Interviewed on 7<sup>th</sup> January 2007.

<sup>84</sup> Vaiola Hospital, Admission Notes 4<sup>th</sup> December 2006.

<sup>85</sup> Interviewed on 26<sup>th</sup> February 2007.

<sup>86</sup> Interviewed on 26<sup>th</sup> February 2007.

This violence was reported to have ranged from threats of observing someone else in the interview room being beaten, to direct threats of beating for not answering questions, to death threats with firearms.

'Feleti' a 19 year old male said that during his initial interview at the Mu'a Police Station he was verbally threatened by Police Officers to make a confession:

*"They were forcing me to admit that I was involved in the riots. They were really abusing me. After half an hour I had to save myself by admitting that what they were telling me was right. They were really threatening to hurt me. There was no one else in the prison [Mu'a Police Station] at this time. In the evening I was transferred to Central [Central Police Station]."*<sup>87</sup>

'Loui', a 19 year old male said that during his interview at the Central Police station:

*"I was told that if I did not start admitting to stuff they would hang me upside down and beat the shit out of me."*<sup>88</sup>

'Vuna', an 11 year old boy, said that before his interview at the Central Police Station:

*"A male Police Officer came in and threatened to beat me up with a stick and that I was going to be taken outside, but then I started crying then a woman police officer yelled out not to beat me up."*<sup>89</sup>

'Latu' a 42 year old male said that during his interview at the Central Police Station he witnessed an assault of another person being interviewed by Police in the same room:

*"I saw a prisoner made to lie face down on the floor, he had a mattress placed over him and a police man jumped up and down on him."*<sup>90</sup>

Of the 68 persons who were interviewed by Police at the Central Police Station only 6% reported that they were informed prior to their interview that they did not have to answer any

<sup>87</sup> Interviewed on 28<sup>th</sup> December 2006.

<sup>88</sup> Interviewed on 28<sup>th</sup> December 2006.

<sup>89</sup> Interviewed on 20<sup>th</sup> December 2006.

<sup>90</sup> Interviewed on 15<sup>th</sup> December 2006.

questions put to them by Police Officers. Of the 19 children interviewed by police, 1 was advised that they did not have to answer any questions put to them by police.

As alleged by 'Palu', however, who said he was formally cautioned by Police before his interview:

*"I was advised of my right to remain silent. I then had a gun stuck in my face and was told that I had to speak while I was being questioned."*<sup>91</sup>

## **G Conditions of Detention at the Central Police Station**

The average length of detention for persons not charged with an offence was 35 hours (this figure does not include a 26 year old male who reported that he was detained for 29 days without charge). The average length of detention for persons who were charged with an offence was 16 days. The maximum period of detention reported was 48 days. This person was 16 years of age.

In 2003, the National Report on Contemporary Issues in Corrections reported that Tonga's prison facilities were "proved unsafe, unhygienic, inadequate in floor space and does not meet requirement of the United Nations Minimum Standard Rules for Treatment of Prisoners [sic]."<sup>92</sup>

Under the Standard Minimum Rules, all accommodation provided for the use of detainees and prisoners and in particular all sleeping accommodation shall meet all requirements of health, particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.<sup>93</sup> Other specific requirements in relation to sanitation and bedding will be examined further below.

### ***Overcrowding:***

Overcrowding was reported by 96% of detainees and prisoners held at the Central Police Station. In most cases cells were reported to be holding five times their maximum capacity of people. Table 1 below shows the average daily number of detainees and prisoners held in each cell between 17<sup>th</sup> November 2006 and 15<sup>th</sup> January 2007. The maximum number of

<sup>91</sup> Interviewed on 28<sup>th</sup> December 2006.

<sup>92</sup> Acting Superintendent of Prisons Moleni F. Taufu, *National Report on Contemporary Issues in Correction*, 23rd Asia and Pacific Conference of Correctional Administrators, 2003, 1. Accessed online 4<sup>th</sup> December 2006 [http://www.apcca.org/Pubs/23/Tonga/Discussion%20Paper%20\(Tonga\).PDF](http://www.apcca.org/Pubs/23/Tonga/Discussion%20Paper%20(Tonga).PDF)

<sup>93</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners para 8.

persons that each cell should hold is also shown to provide an indication of the extent of overcrowding.

	Cell 1	Cell 2	Cell 3	Cell 4	Cell 5	Cell 6	Cell 7
Daily average number of persons held in custody <sup>94</sup>	16	19	22	25	6	20	20
Maximum suitable holding capacity of cell <sup>95</sup>	4	4	4	4	4	4	8

**Table 1:** Comparison of the average daily number of persons held in the seven cells of the Central Police Station between 17 November 2006 and 15 January 2007 with the maximum holding capacity of these cells.

The total daily average of persons held in custody in Table 1 is 128. The Tonga Red Cross Society, in their inspection on 1<sup>st</sup> December 2006, estimated the number of persons in custody on that day to be approximately 140 people. (This estimate was spread across the Central Police Station and the two smaller Police stations at Mu'a and Nukunuku.)<sup>96</sup>

'Alu', a 33 year old male detained for 43 days between the last week of November 2006 and second week of January 2007<sup>97</sup> said:

*"The air was filthy as there were too many of us packed into one cell, often we could not sleep as we were very overcrowded in the cells."<sup>98</sup>*

'Mailau', a 21 year old male detained for 10 days between the third week and fourth weeks of November 2006<sup>99</sup> said:

*"Only 8 could sleep on bunks, with two per bunk, the other 20 of us had to try and lie down on the bare cement floor."<sup>100</sup>*

### **Cell living environment:**

Detainees and prisoners held at the Central Police Station described sordid conditions.

'Stiveni', a 28 year old male detained for 9 days between the third and last week of November 2006<sup>101</sup> said:

<sup>94</sup> Number of observations: Cell 1 n=7; Cell 2 n=13; Cell 3 n=10; Cell 4 n=11; Cell 5 n=3; Cell 6 n=1; Cell 7 n=28.

<sup>95</sup> Pers. Comm Mr. Semisi Tapueluelu, Former Superintendent of Prisons (1992 to 1998), Government of Tonga.

<sup>96</sup> As reported by the Government of Tonga: Prime Minister's Office *Tonga Red Cross Society recommends housekeeping measures after visiting prisons*, 21 December 2006 [accessed online: [www.pmo.gov.to](http://www.pmo.gov.to) on 22/12/06].

<sup>97</sup> Exact dates of detention were provided, however they have been omitted in this report to protect identities.

<sup>98</sup> Interviewed on 16<sup>th</sup> January 2007.

<sup>99</sup> Exact dates of detention were provided, however they have been omitted in this report to protect identities.

<sup>100</sup> Interviewed on 28<sup>th</sup> December 2006.

*“The cells were filthy. There were puddles of urine under the beds and dried shit on walls. The smell of piss and shit was so overpowering that it gave me headaches.”<sup>102</sup>*

The overcrowding of cells contributed to a very unhygienic cell environment, which resulted in many detainees and prisoners complaining of stomach infections, skin boils and rashes, all of which were promoted by the hot and humid conditions and a lack of ventilation and natural light during the day.

Under the *Prison Rules* [Cap. 36A], convicted prisoners are entitled to be provided with and must wear a complete prison dress.<sup>103</sup> Under the Standard Minimum Rules, every detainee and prisoner who is not allowed to wear their own clothing must be provided with an outfit of clothing suitable for the climate and adequate to keep him or her in good health.<sup>104</sup>

5 detainees (including 1 child) reported being stripped of their clothes upon arrival at the Central Police Station and were forced to remain in their cell in only their underwear. The maximum period of detention reported by these detainees was 3 days.

‘Tupou’, a 21 year old, detained for 3 days before being released without charge said:

*“I had all clothes removed - except my boxers. They interrogated me. They threatened me with beatings during interrogation. Then my clothes were returned.”<sup>105</sup>*

‘Sean’, a 17 year old, detained for 24 hours before being released without charge said that when he arrived at the Central Police Station, a Police Officer;

*Asked our names, where we live. Took my clothes, I was just in singlet and boxers.”<sup>106</sup>*

Under the Standard Minimum Rules, every detainee and prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient

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<sup>101</sup> Exact dates of detention were provided, however they have been omitted in this report to protect identities.

<sup>102</sup> Interviewed on 28<sup>th</sup> November 2006.

<sup>103</sup> *Prison Rules* [Cap. 36A] r 129(1).

<sup>104</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, para 17(1).

<sup>105</sup> Interviewed on 28<sup>th</sup> December 2006.

<sup>106</sup> Interviewed on 10<sup>th</sup> December 2006.

bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.<sup>107</sup> Under the *Prison Rules* [Cap. 36A] prisoners shall sleep on the floor and shall provide themselves with the number of mats authorised. No mention is made of bedding material.<sup>108</sup>

Bedding material or mats were not provided to any detainees or prisoners. Detainees and prisoners reported a rotating system of sharing bare bunks with another person for a number of nights and then swapping with someone sleeping on the bare concrete floor.

Detainees and prisoners reported cold conditions during the nights. The lack of bedding materials, and in some cases clothing, resulted in detainees and prisoners being susceptible to illness. 'Eua' a 35 year old male detained for 24 hours during the second week of December 2006<sup>109</sup> said:

*"Many prisoners were falling sick because of the poor living conditions inside the cells, especially from the cold at night, there were no blankets and on bare concrete floor some guys just wore boxer shorts."*<sup>110</sup>

Two prisoners said that they were coughing up blood while in custody and were taken to hospital by Security Forces and subsequently admitted with pneumonia.<sup>111</sup> Upon discharge from hospital these persons reported that they were returned to their cell and subjected to the same conditions which had perpetuated their illness.

Another four prisoners, including a 16 year old boy, reported that they had consulted doctors and a pharmacist since their release from the Central Police Station complaining of pneumonia like symptoms.

Detainees and prisoners reported that the cells were thick with mosquitos. Requests for relief in the form of mosquito coils were reported to have been denied by Police Officers. 'Sefo', a 28 year old male detained for 9 days during the last week of November 2006<sup>112</sup> said:

*"There were mosquitos everywhere. At night you would just see guys covered in them, a thick cloud over each person. Their noise alone would keep you awake some nights. We never got any coils."*<sup>113</sup>

<sup>107</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, para 19.

<sup>108</sup> *Prison Rules* [Cap. 36A] r 129(2).

<sup>109</sup> Exact dates of detention were provided, however they have been omitted in this report to protect identities.

<sup>110</sup> Interviewed on 18<sup>th</sup> December 2006.

<sup>111</sup> 'Sini' who was arrested on 14 December 2006 was in custody at Vaiola Hospital on 22<sup>nd</sup> December 2006 when he was interviewed. 'Lisiate' who was detained for 38 days, was admitted during this period to Vaiola Hospital for a period of 8 days. His hospital records are on file with the author.

<sup>112</sup> Exact dates of detention were provided, however they have been omitted in this report to protect identities.

**Sanitary facilities:**

Under the Standard Minimum Rules, sanitary installations must be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.<sup>114</sup> All toilets regularly used by detainees and prisoners must be properly maintained and kept scrupulously clean at all times.<sup>115</sup>

The cells of the Central Police Station do not have toilets; instead two toilets are located in a central toilet block to the side of the cell complex. Detainees and prisoners must be let out of their cells by Police Officers to use the toilet facilities. Denial of access to toilet facilities as a form of discipline (discussed further in Section I) resulted in urine and faeces being spread throughout the cells.

In the central toilet block appalling sanitary conditions were reported by all detainees and prisoners. Two toilets were required to service approximately 140 people. However, one toilet apparently broke on the 19<sup>th</sup> November 2006 and as a result all prisoners and detainees were required to use a single toilet.

'Leni', a 31 year old male described the condition of the toilet during his 27 day detention between the fourth week of November and the fourth week of December 2006<sup>116</sup>:

*"Maggots were overpowering the toilet. Maggots and shit came out of the toilet and covered the toilet seat and the whole floor when you flushed. We got used to walking over maggots and wiping the maggots off the toilet seat. I used sleeves of my shirt for toilet paper. Some guys would go into the yard, lay out foil and paper and shit in this instead of walking into the toilet over the maggots."<sup>117</sup>*

'Malakaj', a 36 year old male, described the condition of the toilet during his 20 day detention between the first and third weeks of December 2006:

*"Only one [toilet] was working – maggots were growing all over the shit in the broken toilet. There were cockroaches everywhere. The working toilet was filled up with shit almost all the way up to the top of the bowl."<sup>118</sup>*

<sup>113</sup> Interviewed on 10<sup>th</sup> January 2007.

<sup>114</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, para 12.

<sup>115</sup> Ibid, para 14.

<sup>116</sup> Exact dates of detention were provided, however they have been omitted in this report to protect identities.

<sup>117</sup> Interviewed on 3<sup>rd</sup> January 2007.

<sup>118</sup> Interviewed on 30<sup>th</sup> December 2006.

No toilet paper was provided in the toilet block. 77% of detainees and prisoners reported that they had to use either: nothing, bread crusts, their own clothing or water from the drinking tap to clean themselves after using the toilet.

In their inspection on 1<sup>st</sup> December 2006 the Tonga Red Cross Society described the conditions of the toilet as very poor and unhealthy<sup>119</sup>. On or shortly after the 1<sup>st</sup> December 2006 the Tonga Red Cross Society provided toilet paper to the Tonga Police Force.

The Tonga Police Force reported that maintenance was conducted on the toilet facilities in the Central Police Station. The Tonga Police Force claimed that the problem with the toilets overflowing was unavoidable due to the Central Police Station being located within close proximity to the sea, which results in sub-surface water pressure affecting the level of the toilet systems.<sup>120</sup>

Under the Standard Minimum Rules adequate bathing and shower installations shall be provided so that every detainee and prisoner may be enabled and required to have a bath or shower as frequently as necessary for general hygiene, but at least once a week.<sup>121</sup>

There were no operating shower or bath facilities in the cells of the Central Police Station. Instead detainees and prisoners reported that they were required to wash in a hand basin.

### ***Food and drinking water:***

Under the Standard Minimum Rules every detainee and prisoner must be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.<sup>122</sup> Drinking water shall be available to every detainee and prisoner whenever they require it.<sup>123</sup>

Under the *Prison Rules* [Cap. 36A] morning, lunch and evening meals are to be provided to prisoners,<sup>124</sup> with the diet scale being set in Schedule 1 of the Rules.<sup>125</sup>

35% of detainees and prisoners claimed that the food they were provided with while in custody at the Central Police Station was poor (i.e: just bread), including some days where

<sup>119</sup> As reported by the Government of Tonga: Prime Minister's Office *Tonga Red Cross Society recommends housekeeping measures after visiting prisons*, 21 December 2006 [accessed online: [www.pmo.gov.to](http://www.pmo.gov.to) on 22/12/06].

<sup>120</sup> Interview with Acting Commander of Police Taniela Faletau, Tonga Police Force, 15<sup>th</sup> March 2007

<sup>121</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, para 13.

<sup>122</sup> *Ibid*, para 20(1).

<sup>123</sup> *Ibid*, para 20(2).

<sup>124</sup> *Prison Rules* [Cap. 36A] r 126

<sup>125</sup> *Prison Rules* [Cap. 36A] r 127. Diet for prisoners under Schedule 1 includes: Taro, Yams or Kumalas 1.81 kg daily; Coconut, taro tops, green vegetables as available; Meat 227 grams weekly.

they received no food. The majority (75%) of these complaining detainees and prisoners were held in custody during the first week after 16<sup>th</sup> November 2006.

Most detainees and prisoners reported one or two meals a day being provided which consisted of bread and tinned fish.

'Ofa', a 46 year old male detained for 6 days during the third week of December 2006<sup>126</sup> before being released without charge said:

*"We had 1 loaf of bread and 1 tinned fish to be shared between 4 prisoners. One prisoner was screaming at the police 'we are not dogs, we are human beings'."*<sup>127</sup>

8% of detainees and prisoners reported that they received food from their families, however an equal number of detainees and prisoners reported that their families had brought food to the Central Police Station for them but they never received it.

23% of detainees and prisoners reported that at some stage they received food from the outside from people other than their family. It was claimed that this food was "from the people's representatives".

Access to clean drinking water was a concern of the detainees and prisoners who reported that their only source of water was from the hand basin in the central toilet block. This was the same hand basin that detainees and prisoners were required, in the absence of toilet paper, to wash their backsides after using the toilet, to shower in and to do their washing.

In their inspection on 1<sup>st</sup> December 2006 the Tonga Red Cross Society reported that there was ample food, while the quality of drinking water needed to improve.<sup>128</sup> On or shortly after the 1<sup>st</sup> December 2006 the Tonga Red Cross Society provided a quantity of drinking water to the Tonga Police Force.

#### ***Exercise and Recreation time:***

Under the Standard Minimum Rules, every detainee and prisoner shall have at least one hour of suitable exercise in the open air every day if the weather permits.<sup>129</sup> Under the *Prison*

<sup>126</sup> Exact dates of detention were provided, however they have been omitted in this report to protect identities.

<sup>127</sup> Interviewed on 31<sup>st</sup> December 2006.

<sup>128</sup> As reported by the Government of Tonga: Prime Minister's Office *Tonga Red Cross Society recommends housekeeping measures after visiting prisons*, 21 December 2006 [accessed online: www.pmo.gov.to on 22/12/06].

<sup>129</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, para 21(1).

*Rules* [Cap. 36A], prisoners shall have the means of taking exercise on every week-day in the open air within the precincts of the prison.<sup>130</sup>

97% of detainees and prisoners reported that they were confined to their cell for 24 hours of each day. The only time they were permitted to leave the cell was to go to the toilet.

'Stiveni', a 28 year old male detained for 9 days between the third and last week of November 2006<sup>131</sup> said:

*"As we were lining up to go to the toilet we would stick our hands out into the courtyard just to touch the sun's rays. We would linger as long as we could in this line because this was our only opportunity to feel the sun on our skin."*<sup>132</sup>

The 2 prisoners who reported that they were given exercise time estimated that they had 20 minutes each for the entire duration of their time in custody (both were remanded for 1 month).

## H Women in Detention

While females made up a minority (approximately 8%) of all persons who had been arrested and detained since 16<sup>th</sup> November 2006<sup>133</sup>, only 1 detained female (1% of total detainees interviewed) was interviewed for this report. This female was held in her own cell at the Longo Longo Police Training Complex during her 27 hour period of detention.<sup>134</sup>

The Tonga Police Force reported that one of the issues arising from the detention of suspects at the Central Police Station was that while a separate cell was allocated for females, this was not always utilised and male and females were sometimes mixed in the same cells.<sup>135</sup> This raises serious concerns and requires further research.

<sup>130</sup> *Prison Rules* [Cap. 36A] r 170.

<sup>131</sup> Exact dates of detention were provided, however they have been omitted in this report to protect identities.

<sup>132</sup> Interviewed on 28<sup>th</sup> November 2006.

<sup>133</sup> On 12 January 2007 Acting Commander of Police Taniela Faletau reported that 54 of the 678 persons arrested since 16<sup>th</sup> November 2006 were women; as reported by Matangi Tonga Online *"Two prominent Tongans charged with sedition, and abetting damage or arson"* [accessed online: [www.matangitonga.to](http://www.matangitonga.to) on 12 January 2007].

<sup>134</sup> Interviewed on 20<sup>th</sup> December 2006.

<sup>135</sup> Interview with Acting Commander of Police Taniela Faletau, Tonga Police Force, 15<sup>th</sup> March 2007.

## I Children in Detention at the Central Police Station

There are no statutory provisions under the laws of Tonga that specifically relate to the arrest and detention of children. The Kingdom of Tonga is a party to the Convention on the Rights of the Child (CRC)<sup>136</sup> which has a number of articles that relate to the arrest and detention of children including article 37 which includes inter alia: the arrest and detention of a child shall be used only as a measure of last resort and for the shortest appropriate period of time<sup>137</sup>; every child deprived of liberty shall be separated from adults; have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;<sup>138</sup> and have the right to prompt access to legal and other appropriate assistance.<sup>139</sup>

The Supreme Court of Tonga has incorporated the safe guards of article 37 of the CRC into the common law of Tonga and has stated:

...when it comes to any issue relating to the detention of a child, this court, in the exercise of its discretion, will be guided by the safeguards provided for in article 37 of the International Convention on the Rights of the Child.<sup>140</sup>

The Tonga Police Force reported that its members have not received training on the CRC.<sup>141</sup> The TDS reported that its members have received training on the CRC.<sup>142</sup>

19 children were interviewed for this report. The average age of these children was 15 years. 16 children reported being detained in the cells of the Central Police Station for a period. This represented 21% of total detainees and prisoners interviewed for this report.

The average period of detention of a child was 41 hours (This average does not include a 16 year old boy who was detained for 48 days). Of the 16 children detained by police, 9 (56%) were charged with an offence.

All 16 children detained reported being held in cells with adults. The average number of adults that the children reported sharing a cell with was 16 adults. The maximum number of adults in one cell with children was reported to be 25.

<sup>136</sup> Convention on the Rights of the Child opened for signature on 20 November 1989 1588 UNTS 530 (entered into force 2 September 1990) ('CRC').

<sup>137</sup> Ibid article 37(b).

<sup>138</sup> Ibid article 37(c).

<sup>139</sup> Ibid article 37(d).

<sup>140</sup> *R v Vaioleti* [2006] TOSC (Unreported, Ford J, 31 July 2006) [9].

<sup>141</sup> Interview with Acting Commander of Police Taniela Faletau, Tonga Police Force, 15<sup>th</sup> March 2007.

<sup>142</sup> Interview with Lt Col. Tongapo'uli Aleamotu'a, Tonga Defence Service, 16<sup>th</sup> March 2007.

'Hamoā', a 12 year old boy detained for 24 hours before being released without charge reported that he was the only child in a cell containing 16 adults. He said:

*"I'm still a young child, I don't think I am old enough to be held in a prison together with adults."*<sup>143</sup>

The anecdotal accounts of children during arrest and detention have been incorporated throughout all sections of this report.

## **J Discipline at the Central Police Station**

Under the Basic Principals on the Use of Force and Firearms, law enforcement officials, in their relations with persons in custody or detention, must not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.<sup>144</sup>

17% of detainees and prisoners held at the Central Police Station reported that they were the victims of, or witnessed Police Officers imposing physical discipline on detainees and prisoners.

'Leni' a 31 year old male detained for 27 days said:

*"On Sunday we were having a hymn. Two Police Officers came in with rifles trying to hit people through the bars with the butt of the rifle."*<sup>145</sup>

'Manu' a 25 year old male reported that as he was being released from the Central Police Station a Police Officer struck him from behind with a Police baton and threatened that if he got into further trouble after his release he would receive more of this treatment. Figure 12 shows an injury to 'Manu's' back allegedly caused by this strike.<sup>146</sup>

<sup>143</sup> Interviewed on 14<sup>th</sup> December 2006.

<sup>144</sup> United Nations Basic Principals on the Use of Force and Firearms by Law enforcement Officials, para 15.

<sup>145</sup> Interviewed on 3<sup>rd</sup> January 2007.

<sup>146</sup> Interviewed on 7<sup>th</sup> December 2006.



**Figure 12:** Injury to 'Manu's' back allegedly inflicted by a Police Officer who hit him with a baton in the Central Police Station. This photograph was taken 1 day after the injury occurred. Photograph (Name withheld) 28 November 2006.

An Australian Prisons and Tactical Weapons Expert who viewed Figure 12 was of the opinion that:

the trauma may have been caused by a strike from a traditional type of intermediate impact weapon.<sup>147</sup>

Detainees and prisoners reported that due to the large numbers of persons in custody, Police Officers would impose discipline in ways other than by using physical force which did not require them to enter the cells.

'Sateki', a 26 year old male who was detained for 19 days described that he was forced to clean the toilet area as punishment, imposed on him for being noisy:

*"Police made me scoop all the shit and maggots up off the floor with my bare hands."<sup>148</sup>*

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<sup>147</sup> Mr. Kevin Collister, Prisons and Tactical Weapons Expert, Victoria, Australia. Advice received on 10th January 2007, on file with author.

<sup>148</sup> Interviewed on 21<sup>st</sup> December 2006.

The most common form of discipline, however, was denial of access to toilet facilities. All detainees and prisoners reported that they could not go to the toilet when they wanted to. Despite repeated requests to Police Officers, many said they were forced to wait for excruciating long periods of time before being permitted out of their cells.

This resulted in many detainees and prisoners simply using the floor in the corner of their cell to relieve themselves. Persons held in cell number 7, which had a barred window to the outside, reported that in a desperate attempt to keep their cell clean they would stand on the top bunk in front of the window and urinate out of the window.

'Tau', a 16 year old boy who was detained for 48 days said:

*"They tried to keep us quiet by not paying attention when we would ask to be taken to the toilet..."<sup>149</sup>*

'Soni' a 21 year old male detained for 3 days said:

*"At times when we needed to go to toilet, Police officers would just come in abuse us and then leave."<sup>150</sup>*

'Vailanu' a 30 year old male held for 28 days said:

*"One time the police would not open the cell and one guy poohed his pants."<sup>151</sup>*

'Stiveni' a 28 year old male detained for 9 days said:

*"Prisoners would urinate in the corner of the cells as guards would not let them out to the toilet in time. One guy had asked so many times to be let out to go to the toilet that he shat in his hand and through it on the wall of the corridor in protest."<sup>152</sup>*

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<sup>149</sup> Interviewed on 21<sup>st</sup> January 2007.

<sup>150</sup> Interviewed on 28<sup>th</sup> December 2006.

<sup>151</sup> Interviewed on 30<sup>th</sup> December 2006.

<sup>152</sup> Interviewed on 28<sup>th</sup> November 2006.

## **K The use of restraints at the Central Police Station**

Under the Standard Minimum Rules restraints must not be applied to detainees or prisoners except as a precaution against escape during transfer or on medical grounds.<sup>153</sup> Restraints must not be applied for any longer time than is strictly necessary.<sup>154</sup>

Under the *Prison Rules* [Cap. 36A], handcuffs may only be used on a prisoner whose conduct is so violent as to render such action necessary.<sup>155</sup>

The use of handcuffs in detention as a form of punishment has been held by the Supreme Court of Tonga to be unlawful.<sup>156</sup>

Of the 77 people who were detained in the Central Police Station and other areas for more than 5 hours, 19% claimed that they were handcuffed while inside a prison cell for varying periods of time, ranging from 2 hours to 10 days.

'Palu', a 43 year old male reported that he was handcuffed by Police Officers for an uninterrupted period of 4 days between 17<sup>th</sup> and 21<sup>st</sup> November 2006. 'Palu' said that because his hands were handcuffed behind his back he did not eat anything or go to the toilet for these four days. During this time he said that the handcuffs had worked themselves so tight that;

*"...the cuffs were cutting through my flesh I could see my bones, my hands were swollen up like boxing gloves..."*<sup>157</sup>

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<sup>153</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, para 33.

<sup>154</sup> *Ibid*, para 34.

<sup>155</sup> *Prison Rules* [Cap. 36A] r. 170.

<sup>156</sup> *Lolohea v Police* [2004] TOSC (Unreported, Ford J, 9 June 2004).

<sup>157</sup> Interviewed on 28<sup>th</sup> December 2006.



**Figure 13:** Scars to 'Palu's' wrists were allegedly caused by Police Officers applying handcuffs unreasonably tight for an uninterrupted period of 4 days. This photograph was taken 41 days after the injury was alleged to have occurred. Photograph by Gus McLean on 28<sup>th</sup> December 2006.

A Medical Report on Police Case of 'Palu's' injuries by Dr. E. Fonua of the Ministry of Health on 8 January 2007, 52 days after the injuries were alleged to have occurred, states:

Above wounds are consistent with given history. Wounds are healing. Apparently patient requested to be brought to hospital at time of injury for proper treatment but was not. Now has slightly reduced range of motion in left thumb as a result of injury.<sup>158</sup>

Other detainees and prisoners who were handcuffed for extended periods of time complained that they were unable to eat, wash or clean themselves after going to the toilet.

'Havea' a 27 year old male who was detained for 29 days said that:

*"The guys who were cuffed inside couldn't clean themselves after going to the toilet. The police officer would take down the guys pants, then just pull*

<sup>158</sup> Dr. E. Fonua, Ministry of Health, *Medical Report on Police Case*, 8 January 2007.

*them up when he was finished. Guys who were cuffed behind their backs couldn't even eat properly.*<sup>159</sup>

Of persons who were handcuffed inside the cells, 88% believed that the restraints were used as a technique to intimidate detainees and prisoners into providing more information and/or to confess to a crime. The remaining 12% of persons believed that they were being restrained so as to be inflicted with extra punishment for serious crimes that they were suspected of committing.

'Mata', a 30 year old male who reported that he was handcuffed by Police Officers for an uninterrupted period of 5 days during the last week of November 2006<sup>160</sup> said that during his interview with Police:

*"They threatened to bash me if I didn't admit to things they wanted me to be involved in. Towards the end of their interview they threatened me that if I didn't speak more they would put my cuffs back on."*<sup>161</sup>

'Viliami', a 33 year old male who was interviewed by Police said:

*"I was questioned and told to confess to the burning of EM Jones they had said to me that if I didn't tell them they were going to kick my balls and have my testicles opened and that they were going to handcuff me for the night."*<sup>162</sup>

'Telefoni', a 32 year old male, who went to the Central Police Station on his own accord when he was advised by his family that TDS soldiers and Police had attended his house in his absence, reported that he was restrained in handcuffs in his cell for 24 hours. He said that the handcuffs were applied so as to cause maximum pain in an attempt to get him to provide names of suspects to the Police.<sup>163</sup> 'Telefoni' complained that he has numbness in his left hand and fingers since his release.

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<sup>159</sup> Interviewed on 22<sup>nd</sup> December 2006.

<sup>160</sup> Exact dates were provided, however they have been omitted in this report to protect this persons identity.

<sup>161</sup> Interviewed on 30<sup>th</sup> December 2006.

<sup>162</sup> Interviewed on 16<sup>th</sup> January 2007.

<sup>163</sup> Interviewed on 21<sup>st</sup> December 2006.



**Figure 14:** Scars to 'Telefon's' wrists were allegedly caused by Police Officers applying handcuffs unreasonably tight for an uninterrupted period of 24 hours. This photograph was taken 21 days after the injury was alleged to have occurred. Photograph by Gus McLean on 21<sup>st</sup> December 2006.

A medical assessment of 'Telefoni's' injuries by Dr. A. 'Akauola of the Friendly Island Medical Clinic on 31<sup>st</sup> March 2007, almost four months after the injuries were alleged to have occurred states:

Has thin scar over radial aspect of Lt [left] wrist and wider mark (4 x 1 cm) on ulnar aspect of wrist. The appearance is consistent with given history of being prolonged hand cuffed (especially 3 months past now). The numbness is in keeping with nerve injury most likely due to poor blood supply during the time of being handcuffed.<sup>164</sup>

'Filipe', a 17 year old boy who was detained for 58 hours before being released without charge reported that he was handcuffed in the cells for the entire period of his detention. 'Filipe' said that one handcuff would be removed by Police Officers when he was required to eat or use the toilet. He did not know why he was singled out to be handcuffed while in custody.<sup>165</sup>

<sup>164</sup> Dr. Ana 'Akauola, Friendly Islands Medical Clinic, *Medical Report* 31 March 2007, on file with author.

<sup>165</sup> Interviewed on 21<sup>st</sup> December 2006.



**Figure 15:** This scar to 'Filipe's' right wrist was allegedly caused by Police Officers applying handcuffs unnecessarily tight for an uninterrupted period of 58 hours. This photograph was taken 27 days after the injury was alleged to have occurred. Photograph by Gus McLean on 21<sup>st</sup> December 2006.

## L Incommunicado Detention

Under the Standard Minimum Rules, detainees and prisoners must be allowed to immediately inform their family of their imprisonment and must be given all reasonable facilities for communicating with family and friends subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.<sup>166</sup> Communication includes both correspondence and by receiving visits.<sup>167</sup>

Under the *Prison Rules* [Cap. 36A] prisoners must be allowed to receive visits from their friends on any day except Sundays, Good Friday or Christmas Day.<sup>168</sup> Prisoners awaiting trial or under examination may also receive and write letters whenever they desire to do so.<sup>169</sup>

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<sup>166</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, para 92.

<sup>167</sup> *Ibid*, para 37

<sup>168</sup> *Prison Rules* [Cap. 36A] r 144.

<sup>169</sup> *Prison Rules* [Cap. 36A] r 147.

Under article 37 of the CRC, children have a right to maintain contact with their family through correspondence and visits, save in exceptional circumstances.<sup>170</sup>

The majority (74%) of detainees and prisoners commented that the most difficult part of their detention was being cut off from their families.

'Sefo' a 31 year old male who was detained for 24 days at the Central Police Station said;

*"I was worried sick about my family on the inside because I had been incarcerated for way too long, I just wanted to see them at least once."*<sup>171</sup>

'Salesi', a 31 year old male detained for 27 days at the Central Police Station said:

*"I worried all the time about my family because I was the only one working. I didn't know if they were going to survive."*<sup>172</sup>

Only 2 of the 19 children arrested by Security Forces were asked by Police upon their arrival at the Central Police Station if they wanted to contact a parent to advise them of their situation. In 4 cases, where the children were arrested away from the family home, or were not in the company of friends or relatives, this resulted in the children's parents not knowing the whereabouts of their children for almost the entire duration of their child's detention.

According to 'Ke', a 17 year old boy, who was arrested with his 20 year old brother and detained for 48 hours at the Central Police Station before being released without charge said;

*"I was arrested on the Saturday night. My mum didn't find out until Monday morning that we'd been arrested and were in prison. She only found out because she rang the Police on Monday morning to report us missing and was advised that we were in custody."*<sup>173</sup>

Only 2 of the 19 children who were interviewed by Police at the Central Police Station said they were asked if they wanted a parent or guardian present for their interview.

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<sup>170</sup> CRC article 37(c).

<sup>171</sup> Interviewed on 29<sup>th</sup> December 2006.

<sup>172</sup> Interviewed on 30<sup>th</sup> December 2006.

<sup>173</sup> Interviewed on 5<sup>th</sup> December 2006.

The practice of incommunicado detention also affected children whose parents had been arrested and detained. 'Fine', a 39 year old female who was arrested and detained for 27 hours while her husband was at sea on an extended fishing trip said:

*"I told the police that my children had been left on their own and there was no one to look after them. Oldest girl was 14 years old, had to look after 5 kids including a 1 yr 9mth baby. I wasn't allowed to ring the kids to tell them about the situation."*<sup>174</sup>

Of the 77 people who were detained in the Central Police station and other areas, only 1 person, 'Tau', a 16 year old boy, was permitted to have a family visit while in custody. He described the arrangements of his family contact:

*"I was inside for 3 weeks before I could see my mum. After that I was allowed a 3 minute visit with my mum twice a week in front of a policeman. Once I was allowed to have a 2 minute phone call to my parents."*<sup>175</sup>

Under the laws of Tonga there is no right of a detained person to contact a lawyer. The Courts of Tonga have, however, held that:

...there may be circumstances when fairness may require the interviewing officer to advise or even encourage the person to be interviewed to seek the advice of a lawyer, or to have present during the interview a lawyer, family member, or friend.<sup>176</sup>

While contact with a lawyer provides for legal fairness of a person in detention, it may also act as an important part of assisting and facilitating a person to exercise their fundamental legal right under the *Constitution*, to issue a writ of Habeas Corpus (challenge the legality of their detention).<sup>177</sup>

Under article 37 of the CRC, children have a right to a lawyer.<sup>178</sup>

Under the Standard Minimum Rules, detainees and prisoners shall be allowed to receive visits from their legal adviser.<sup>179</sup> Under the *Prison Rules* [Cap. 36A] prisoners shall be allowed

<sup>174</sup> Interviewed on 20<sup>th</sup> December 2006.

<sup>175</sup> Interviewed on 21<sup>st</sup> January 2007.

<sup>176</sup> *Teisina v Rex* CA [1999] 3/99 (Unreported, 23 July 1999) 7.

<sup>177</sup> *Constitution of Tonga*, clause 9.

<sup>178</sup> CRC article 37(d).

<sup>179</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, para 93.

to see their legal advisers for the purposes of their defence on any day except Sundays, Good Friday or Christmas Day.<sup>180</sup>

Both detainees and prisoners were denied access to lawyers. Of the 68 detainees and prisoners who were interviewed by Police at the Central Police Station, only 9% said that Police Officers asked them prior to interview if they wanted to contact a lawyer. However, none of these detainees and prisoners reported that they were actually permitted to contact or attempt to contact a lawyer. Only 2 of the 19 children interviewed by Police at the Central Police Station said that they were asked if they wanted to have a lawyer present for their interview.

'Havea', a 27 year old male who was detained for 29 days and was facing serious drug possession charges said:

*"I only asked to see a lawyer about 8 times a day. Sometimes the Police Officers would say 'Ok I'll just go and organise one for you', but they were just messing with you. I never spoke to a lawyer the whole time I was in there."<sup>181</sup>*

'Stiveni' a 28 year old male said that as he was being released from custody:

*"The other guys were begging for me to get a lawyer for them. That was all they wanted. Just someone who could get them out of there, someone who could stand up for them."<sup>182</sup>*

According to the Tonga Police Force in every prison there is a notice which states "Prisoner's Rights – Call a Lawyer".<sup>183</sup> However, the Tonga Police Force advised that detainees and prisoners were not permitted to contact a lawyer or family members because the Central Police Station had only one operational telephone line.<sup>184</sup> This telephone line was to be reserved for members of the public to call into the Station. The large numbers of detainees and prisoners in the cells was also a reason why access to a telephone could not be granted.<sup>185</sup>

<sup>180</sup> *Prison Rules* [Cap. 36A] r 145.

<sup>181</sup> Interviewed on 22<sup>nd</sup> December 2006.

<sup>182</sup> Interviewed on 28<sup>th</sup> November 2006.

<sup>183</sup> Interview with Acting Commander of Police Taniela Faletau, Tonga Police Force, 15<sup>th</sup> March 2007.

<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.*

## M Access to Medical Treatment

It is the policy of both the Tonga Police Force and TDS that a suspect physically injured during arrest shall be taken to hospital for medical treatment.<sup>186</sup>

The Courts of Tonga have held that where a person is in police custody there is a duty of care on the police to provide or obtain medical assistance where the need for assistance is or ought to be apparent.<sup>187</sup>

Under the Code of Conduct for Law Enforcement Officials, law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.<sup>188</sup> The Basic Principles on the Use of Force and Firearms require that that assistance and medical aid are rendered to any person injured or affected by violence during arrest at the earliest possible moment.<sup>189</sup>

The Standard Minimum Rules require that every detention facility must have available the services of at least one qualified medical officer.<sup>190</sup> The medical officer shall see and examine every detainee and prisoner as soon as possible after their admission and thereafter as necessary.<sup>191</sup> The medical officer should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.<sup>192</sup> In addition, detainees shall be allowed to be visited and treated by their own doctor or dentist if there are reasonable grounds for the application and the detainee is able to pay any expenses incurred.<sup>193</sup>

Under the *Prison Rules* [Cap. 36A] a Medical Officer is required, inter alia, to assess prisoners upon their admission to prison,<sup>194</sup> enter in a journal an account of the state of each prisoner on admission<sup>195</sup> and at least once a month inspect every part of the prison and enter in the journal observations relating to any matter which may concern the health of prisoners.<sup>196</sup>

Prisoners must also be allowed to see their registered medical practitioner for the purposes of their defence on any day except Sundays, Good Friday or Christmas Day.<sup>197</sup>

<sup>186</sup> Interview with Acting Commander of Police Taniela Faletau, Tonga Police Force, 15<sup>th</sup> March 2007; Interview with Lt Col. Tongapo'uli Aleamotu'a, Tonga Defence Service 16<sup>th</sup> March 2007.

<sup>187</sup> *Kaufusi v Lasa* [1990] TOSC (Unreported, Webster J, 16 February 1990).

<sup>188</sup> United Nations Code of Conduct for Law Enforcement Officials, art 6.

<sup>189</sup> United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials para 5(c).

<sup>190</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, para 22(1)

<sup>191</sup> *Ibid*, para 24.

<sup>192</sup> *Ibid*, para 25(1).

<sup>193</sup> *Ibid*, para 91.

<sup>194</sup> *Prison Rules* [Cap. 36A] r 41.

<sup>195</sup> *Prison Rules* [Cap. 36A] r 42.

<sup>196</sup> *Prison Rules* [Cap. 36A] r 43.

<sup>197</sup> *Prison Rules* [Cap. 36A] r 145.

None of the 77 detainees or prisoners who were held in the Central Police Station for more than 5 hours reported observing a doctor present.

Of the 33 people who reported that they suffered injuries during arrest, only 2 were taken to hospital for medical treatment. 20 other detainees and prisoners alleged that they had injuries that required medical attention, but it was not offered; or they had requested medical attention for their injuries and it was denied by the Security Forces.

Of the 17 people who reported that they suffered injuries during interview at either the Central Police Station or TDS facilities, none were taken to hospital for medical treatment.

'Siosifa', a 21 year old male who reported that he was punched numerous times by a TDS soldier during his arrest, resulting in a serious eye injury said that upon arrival at the Central Police Station;

*"I was really worried about my eye. I could feel it was almost sticking out of the socket I was afraid I was going to go blind, I begged them to take me to hospital to get my eye fixed but they wouldn't listen."<sup>198</sup>*

'Siosifa' was detained for 48 hours before being released without charge.

A member of the research team observed 'Siosifa' 2 days after his release from detention and noted that he had serious dark coloured swelling and inflammation around his left eye. The same eye was also heavily blood shot. The researcher advised 'Siosifa' to seek medical attention and requested to meet with him the next day to interview him and photograph his injuries. Unfortunately 'Siosifa' did not seek medical attention or meet with researchers until another 44 days after his injury was reported to have occurred.

Detainees and prisoners speculated that denial of medical treatment was due to a fear that hospital medical staff would record and document the injuries inflicted by Security Forces. 'Viliami' who claimed he was the victim of a brutal assault by TDS soldiers (refer to Section H - Interviews with Violence at Other Locations for description and photograph) and was detained in the Central Police Station for 43 days said:

*"...when we feel sick and we ask if we could be taken to a hospital they do not let us because the Doctors would see the injuries they have imposed on us so they just leave us inside until our injuries have healed and then they take us to the hospital. If they had allowed us to get medical attention*

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<sup>198</sup> Interviewed on 7<sup>th</sup> January 2007.

*immediately after when we were beaten there would be a lot of evidence to our injuries and to Police and TDS beating.”<sup>199</sup>*

‘Tau’, a 16 year old boy who reported that he suffered serious facial injuries during his arrest as a result of being punched and kicked in the face by 3 police officers and also having a roll of barbed wire dropped on his head while he was on the ground said:

*“4 weeks after I had been in prison then four Police officers took me to the hospital. But I had been asking to see a doctor from the day I was put into the cell but they had refused to take me.”<sup>200</sup>*

A more serious allegation from prisoners and detainees was that denial of medical treatment was used as a form of punishment. ‘Viliami’ who was complaining of blackouts, headaches and neck pain as a result of alleged strikes with a rifle butt to the base of his neck during arrest and interview said:

*“So many times I requested for the Police officers to take me to see a Doctor to get an x-ray but they said that no, I should just put up with it and heal myself in prison. So I was never taken to the hospital.”<sup>201</sup>*

‘Tevita’ a 15 year old boy who said he had serious facial injuries as a result of violence inflicted during his arrest (refer to Section A – Violence during arrest for description and photograph) said:

*“Blood was gushing out of a cut between my eyes, black eyes, swollen face. One Policeman asked for me to be taken to hospital but another said no and went and got a bandaid. A Soldier was pinching the cut on my head shut as I was being processed. I had to use my shirt to stop the bleeding.”<sup>202</sup>*

Of concern was that denial of medical treatment, through the failure to provide personal medication or follow up care for injured persons, was often described to be due to the incompetence of Police Officers supervising detainees and prisoners.

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<sup>199</sup> Interviewed on 16<sup>th</sup> January 2007.

<sup>200</sup> Interviewed on 21<sup>st</sup> January 2007.

<sup>201</sup> Interviewed on 16<sup>th</sup> January 2007.

<sup>202</sup> Interviewed on 7<sup>th</sup> December 2006.

'Eutate' a 48 year old male who was detained for 9 days said:

*"I am diabetic. My family brought my tablets to the prison and gave them to Police. I am supposed to take them 3 times a day. Tablets were given to me twice. I asked and asked to receive my tablets but was never given them. I became really sick, felt really bad, lethargic, tired and nauseous. The police still have my tablets."*<sup>203</sup>

'Vaka' a 25 year old male who was detained for 33 days and taken to the hospital by Police because he was suspected to be suffering from pneumonia said:

*"The Red Cross told me to tell the Police to go to the doctor...they [Police Officers] took me to hospital and I was provided with medication [Antibiotics]. But it [the medication] was controlled by the guards on the front desk. After one administration of drugs they [the tablets] were handed out to other prisoners [by the Police Officers] and I became more sick."*<sup>204</sup>

'Luto' a 42 year old male detained for 13 days said:

*"In custody I passed out 3 times and was rushed to hospital. I told Police so many times that I was diabetic and could not manage my blood sugar properly due to lack of food but I continued to get treated the same as everyone else."*<sup>205</sup>

'Paula', a 22 year old male who was suffering from a serious head wound as a result of an alleged strike to the side of his head with a rifle butt (refer to Section C – Violence and interrogations during arrest for description and photograph) said:

*"I was taken to hospital by 2 Police Officers and got tablets for my headache and the pain. The Doctor instructed that I should report back to the hospital first thing the next day for stitches to the wound on the back of my head but the Police never took me back."*<sup>206</sup>

<sup>203</sup> Interviewed on 18<sup>th</sup> December 2006.

<sup>204</sup> Interviewed on 21<sup>st</sup> December 2006.

<sup>205</sup> Interviewed on 15<sup>th</sup> December 2006.

<sup>206</sup> Interviewed on 12<sup>th</sup> December 2006.

In their inspection on 1<sup>st</sup> December 2006 the Tonga Red Cross Society noted that about 10 detainees and prisoners needed immediate medical attention by a doctor.<sup>207</sup> At least one person interviewed for this report who had been recommended by the Red Cross to receive medical attention said he was taken to the hospital by police (refer to account of ‘Vaka’ above.)

One detainee reported being actively intimidated by the Police not to seek medical attention upon his release. ‘Inoke’ a 22 year old male who claimed that he suffered serious facial injuries as a result of TDS soldiers assaulting him during transit to the Central Police Station (refer to “Section B: Violence during arrest – transport” for description), reported that as he was being released without charge after 48 hours in detention a police officer said to him “If you file a law suit against us we’ll bring you right back here.”

‘Inoke’ was of the belief that if a doctor examined his injuries then the doctor would be obliged under law to commence legal proceedings against the perpetrator. As a result he did not seek medical assistance;

*“I was scared of going to the doctor because I thought that the doctor would write a report or sue the person that had done this to me. I didn’t want to get put back inside again.”<sup>208</sup>*

## **N Psychological Effects of Violence and Detention**

Of the 77 people held in detention 26% said that the detention had some form of psychological effect on them.

‘Ofa’, a 46 year old male explained that he was arrested by TDS soldiers as he was about to depart Tonga on a commercial airline with his four children aged 11, 10, 6, and 1 year to be with their mother in New Zealand for Christmas. The children were forced to travel on their own, while ‘Ofa’ was detained for 6 days before being released without charge. ‘Ofa’ said:

*“I lost my family. Inside my heart is heartbroken. I can’t describe the pain I felt being separated from my children like that. Most of the time inside I cried because I missed my family.”<sup>209</sup>*

<sup>207</sup> As reported by the Government of Tonga: Prime Minister’s Office *Tonga Red Cross Society recommends housekeeping measures after visiting prisons*, 21 December 2006 [accessed online: [www.pmo.gov.to](http://www.pmo.gov.to) on 22/12/06].

<sup>208</sup> Interviewed on 13<sup>th</sup> December 2006.

<sup>209</sup> Interviewed on 31<sup>st</sup> December 2006.

'Palu', a 43 year old male who was detained for 34 days and alleged that he was assaulted by TDS soldiers during his arrest and handcuffed by Police Officers for an uninterrupted period of 4 days in which he was not given any food (refer to Section J The use of Restraints at the Central Police Station for description and photograph) said:

*"I am psychologically damaged. I almost went insane not eating for four days, not being able to see a family member and just being in there for too long. I had deep cuts from the cuffs and could not get any assistance from the doctor."*<sup>210</sup>

'Nafe' a 27 year old male who alleged that he was assaulted by TDS soldiers during his arrest and was detained at the Central Police Station for 10 days said:

*"I'm paranoid. Like I'm scared when people come to the front door. Sometimes I can't get to sleep."*<sup>211</sup>

'Moi' a 21 year old male who alleged that he was assaulted by TDS soldiers during his arrest and was detained at the Central Police Station for 3 days claimed:

*"I am scared of soldiers when I see them I don't feel comfortable. I think I am being watched by them."*<sup>212</sup>

'Taani' a 17 year old boy detained at the Central Police Station for 56 hours said:

*"First experience in prison has deeply affected me, will never forget the taste of fear I had in there. I'll never forget it again."*<sup>213</sup>

'Fotu', a 24 year old male who reported that he was arrested by TDS soldiers from his place of work on two separate occasions and taken to Masefield Navy Base where he was punched, kicked interrogated and threatened with further beatings if he had not provided them with certain information in 2 days time said:

<sup>210</sup> Interviewed on 28<sup>th</sup> December 2006.

<sup>211</sup> Interviewed on 30<sup>th</sup> November 2006.

<sup>212</sup> Interviewed on 28<sup>th</sup> December 2006.

<sup>213</sup> Interviewed on 18<sup>th</sup> December 2006.

*“Yes it has made me feel very insecure and scared. I have skipped work because I don’t want the soldiers to come back and bash me up.”<sup>214</sup>*

‘Stiveni’ a 28 year old male who reported that he was assaulted by TDS soldiers during his arrest and was detained at the Central Police Station for 9 days said:

*“After 3 days in there I was going crazy. We were openly informed by Police that legally they could have you until the 20<sup>th</sup> [December 2006]. You just didn’t know when it was going to end.*

*After I was released I could not sleep properly. I would always have these nightmares about being killed by soldiers. I was paranoid. When I would go out and see soldiers I would get panic attacks, I think it was fear that I could just be bashed again if they felt like it.”<sup>215</sup>*

‘Stiveni’ was the only person interviewed for this report who consulted with a psychiatrist.<sup>216</sup> The report of Dr. Mapa Puloka dated 24<sup>th</sup> January 2007 on his assessment of ‘Stiveni’s’ condition states:

...[‘Stiveni’s’] symptoms (examples: persistent feeling of fear, floating anxiety, not able to sleep, feeling of apprehension and impending doom, also distress on exposure to reminders of the traumatic event) were consistent with a diagnosis of Acute Stress Disorder.

I gave ... [‘Stiveni’] ...some advice, psychological intervention and tab [tablets] Diazepam [Valium] 10mg and to see him if required.<sup>217</sup>

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<sup>214</sup> Interviewed on 14<sup>th</sup> December 2006.

<sup>215</sup> Interviewed on 28<sup>th</sup> November 2006.

<sup>216</sup> There is only one Psychiatrist in Tonga, based at the Ministry of Health Vaiola Hospital.

<sup>217</sup> Dr. M. Puloka, Ministry of Health, *Psychiatric assessment*, 24 January 2007, on file with author.

## O Delays in the interview and release of detainees and prisoners

Of the 77 people who were detained at the Central Police Station and other areas for more than 5 hours, 10% alleged that they were never interviewed by Police and then released, on average 46 hours later, without charge. The maximum length of detention of a person who was not interviewed and released without charge was 4 days.

Of the 68 people who were interviewed at the Central Police Station, 16% estimated that there was a delay of 2 or more days from the time of their arrest to the time of their first interview by Police. The average delay was 4 days. The maximum delay reported was 1 week.

In relation to children, much stricter limits were applied to the data. Of the 19 children interviewed at the Central Police Station, 53% estimated that there was a delay of 12 or more hours from the time of their arrest to the time of their first interview by Police. The average delay was 34 hours. The maximum delay of 4 days was reported by a 16 year old boy.

While it is recognised that the resources of the Tonga Police Force have been stretched since 16<sup>th</sup> November 2006, and there is statutory authority to detain a person without charge for up to seven days, an interview is an important chance for an arrested person to answer allegations and for the Police Officer to collect more information and to assess the need for continued detention (within the statutory time limit) while investigations continue. 27% of detainees who said that there was a delay of on average 4 days from the time of their arrest to the time of their interrogation were released without charge after their interview.

Delays in the release of detainees and prisoners were also alleged to occur due to the presence of visible injuries on their bodies. 'Samu', a 27 year old male said that during his arrest he was brutally assaulted about the head and body by TDS soldiers with rifle butts causing major facial swelling, bruising and redness in his left eye. 'Samu' was charged with the possession of an illicit drug after four days in detention; however he was not released for another 6 days. He claimed:

*"I was charged on the 21<sup>st</sup> of November, but then wasn't released until the 27<sup>th</sup>. I just sat around in my cell for that extra week. They didn't want to release me with my face looking like it did."*<sup>218</sup>

'Semisi', a 41 year old male who said that he was punched by TDS soldiers during an interrogation at the Masefield Navy Base before being transferred to the Central Police

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<sup>218</sup> Interviewed on 4<sup>th</sup> December 2006.

Station where he was held for 4 days, was not interviewed and then released without charge speculated:

*"I had a swollen black eye, a locked jaw and couldn't open my mouth or talk after my interrogation at the Navy Base. Then I was held for 4 days for nothing. Maybe the Police were scared that if I came out with the injuries people would think that they [the Police] had done them."*<sup>219</sup>

## **P Judicial procedures and oversight**

Every person arrested for or charged with a criminal offence is entitled to bail.<sup>220</sup>

The *Bail Act 1990* prescribes the reasons that a person maybe denied bail, including:<sup>221</sup>

- (i) there are substantial grounds for believing that, if released on bail a person will:
  - (a) fail to surrender to custody;
  - (b) commits an offence while on bail; or
  - (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
- (ii) the person should be kept in custody for their own protection or welfare;
- (iii) the case has been adjourned for inquiries which it would be impracticable to make unless the defendant is kept in custody;
- (iv) the person is already in custody pursuant to a sentence of a court; or
- (v) the person has already been released on bail in connection with the present proceedings and has been arrested pursuant to section 9 of the *Bail Act 1990*.

Of the 31 persons charged by Police, 61% said they were taken before a Police Magistrate for a bail hearing. The majority of these detainees and prisoners were not able to provide detailed information regarding the legal process undertaken at these hearings as they claimed that they did not understand the process and none were represented by a lawyer.

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<sup>219</sup> Interviewed on 14<sup>th</sup> December 2006.

<sup>220</sup> *Bail Act 1990* s 3.

<sup>221</sup> *Bail Act 1990* s 4.

Some comments made by detainees and prisoners who went before a Police Magistrate identify a need for further investigation to be conducted into the procedures of these bail hearings.

'Malakai', a 36 year old male, detained at the Central Police Station for 20 days said:

*'[The Police Magistrate] (Name withheld) said because of the magnitude of what has happened [referring to the destruction of Nuku'alofa] we have to keep you in here until the 20<sup>th</sup> [December 2006]. I told him that I had absolutely nothing to do with the events and that the Police had no evidence on which to hold me. All he said was 'I understand that but there's nothing we can do about it'.<sup>222</sup>*

'Leni', a 31 year old male, detained at the Central Police Station for 27 days, said:

*'[Police Magistrate] (Name withheld) told me that he had been given an order by the TDS not to let me out until the 20<sup>th</sup> December so I was held till then.<sup>223</sup>*

Police Magistrate Salesi Mafi, who said that more than 200 suspects appeared before him at bail hearings, initially reported to researchers that no detainee or prisoner had complained to him about being assaulted by Security Forces.<sup>224</sup> Later in the interview Police Magistrate Salesi Mafi reported that some detainees and prisoners had complained to him about injuries inflicted by the Security Forces, however he said that when he summoned the alleged perpetrator(s) of the violence before him and the detainee or prisoner, the complaint was dropped and the detainee or prisoner then said that no assault had taken place.

When asked if he thought these changed responses from the detainees and prisoners could be as a result of intimidation or fear of retribution by the Security Forces, Police Magistrate Salesi Mafi replied "no".<sup>225</sup>

Police Magistrate Salesi Mafi reported that he had received requests from both Tonga Police Force and the TDS to deny particular persons bail. He said that he followed these requests because most of them related to suspected "ringleaders" of the riots and there was evidence

<sup>222</sup> Interviewed on 3<sup>rd</sup> January 2007.

<sup>223</sup> Interviewed on 30<sup>th</sup> December 2006.

<sup>224</sup> Interview with Police Magistrate Salesi Mafi, Magistrates' Court of Tonga, 16<sup>th</sup> March 2007.

<sup>225</sup> Ibid.

to support that.<sup>226</sup> Police Magistrate Salesi Mafi also reported that he denied many (“lahi”) detainees and prisoners bail to avoid more violence and destruction and to maintain peace.<sup>227</sup>

Under article 37 of the CRC the detention of a child must be used only as a measure of last resort and for the shortest appropriate period of time.<sup>228</sup> Of the 19 children interviewed, 1 was remanded in detention for 48 days.

Police Magistrate Salesi Mafi reported that he had approximately 20 juveniles appear before him for bail hearings. He said that he didn’t need to give special treatment to these children on the basis of them being children because the jurisdiction of the law covers all equally, including children.<sup>229</sup>

Police Magistrate Salesi Mafi, who initially confused “CRC” with “CEDAW” (Convention on the Elimination of All Forms of Discrimination against Women to which Tonga is not a Party) was not aware of the provisions of the CRC that related to children in the justice system and requested a copy of the Convention text. Police Magistrate Salesi Mafi advised that the Chief Justice had issued a memo providing advice on the special treatment of children in the justice system but he could not recall the contents of this memo.<sup>230</sup>

Other comments made by detainees and prisoners regarding their interactions with a Police Magistrate also identify a need for further investigation to be conducted into the impartiality of judicial oversight.

‘Stiveni’ a 28 year old male who was charged with offences un-related to the events of 16<sup>th</sup> November 2006 but appeared before a Police Magistrate at the Nuku’alofa Magistrates court on 20<sup>th</sup> December 2006 with persons charged with offences on that day said:

*There were 10 of us [accused] lined up in front of the Judge [sic]. Before the court even started, like before the Police had got up to say anything he [Police Magistrate] looked at us all and then said to the Court “What are these faces doing in my court, they should all be locked up.” I thought he was then going to smile or laugh or something like it was a joke but he didn’t.<sup>231</sup>*

<sup>226</sup> Interview with Police Magistrate Salesi Mafi, Magistrates’ Court of Tonga, 16<sup>th</sup> March 2007.

<sup>227</sup> Ibid.

<sup>228</sup> CRC, article 37(b).

<sup>229</sup> Interview with Police Magistrate Salesi Mafi, Magistrates’ Court of Tonga, 16<sup>th</sup> March 2007.

<sup>230</sup> Ibid.

<sup>231</sup> Interviewed (2<sup>nd</sup> interview) on 24<sup>th</sup> December 2006.

### Q Violence against non-suspects

Violence was also alleged to have been inflicted upon people who were not suspected of having committed a crime, nor were being arrested or under arrest. Of the 3 people (4%) who alleged to be victims of such violence, the perpetrators in all cases were reported to be TDS soldiers.

'Mele', a 38 year old female, who is an Australian citizen and had returned to Tonga for Christmas holidays with her 9 year old daughter alleged that she was the victim of an unprovoked assault:

*"I was driving through the airport checkpoint. A soldier directed us through and we moved on through checkpoint. Then soldiers at the other end started shouting and swearing at us to stop. They were yelling "Don't move otherwise I'll smash your face!" I asked them to please show me some respect. The soldier came round to my side and went to smack me in the face through the open car window but I blocked it. Then he opened the door and went to slap me in the face again but I blocked it. I was begging with him not to hit me. Then another soldier came in from the side and punched me in the face. I felt like blacking out. I thought that I had lost some teeth. In the car were my 9 year old daughter and a 3 year old boy. The soldier then brought his gun from behind his back across his chest. I freaked out because of my children in the car. I reversed back out of the checkpoint."<sup>232</sup>*

A Medical Report on Police Case of 'Mele's' injuries by Dr. K. Ahdieh of the Ministry of Health on 28 November 2006 states:

Examination and Finding: Swollen upper lip, especially (L) [left] side. Torn phrenulum – bleeding.

Opinion: Above injury is consistent with alleged history of events and injury.<sup>233</sup>

Of concern in this case is that young children were witnesses to this violence. 'Mele's' 9 year old daughter, 'Salote', who was born in Australia and was visiting Tonga for the first time,

<sup>232</sup> Interviewed on 28<sup>th</sup> December 2006.

<sup>233</sup> Dr. K. Ahdieh, Ministry of Health, *Medical Report on Police Case*, 13 December 2006, on file with author.

witnessed the events described in her mother’s account. ‘Salote’ was asked to describe how it made her feel when she saw her mother being hit:

*“I felt sick; I felt like I was going to throw up and I felt sad. I have never ever seen anyone hit my mum before.”<sup>234</sup>*

‘Taniela’ a 28 year old male reported that he was assaulted by two TDS soldiers as he was leaving a local night club. ‘Taniela’ who was knocked unconscious and does not remember any events surrounding his assault was advised by witnesses that the TDS soldiers approached him and dragged him out of his car. He struggled and the TDS soldiers commenced hitting and kicking him. The TDS soldiers then left the area, leaving ‘Taniela’s’ unconscious body on the ground. Night club security guards then called the Police, who upon their arrival took ‘Taniela’ directly to hospital. At no stage was ‘Taniela’ under arrest. ‘Taniela’ did not regain consciousness for another 24 hours and remained in hospital for 3 days.<sup>235</sup>



**Figure 16:** These injuries to ‘Taniela’s’ face and other injuries not shown were allegedly inflicted by TDS Soldiers as he was leaving a nightclub. These photographs were taken 3 days after the injuries were alleged to have occurred.

Photograph by Gus McLean on 22<sup>nd</sup> January 2007.

<sup>234</sup> Interviewed on 28<sup>th</sup> December 2006.

<sup>235</sup> Interviewed on 22<sup>nd</sup> January 2007.

## R Identifying the Perpetrators of Violence

Of the 33 people who alleged to suffer physical violence during arrest, 7 could identify the perpetrators by name.<sup>236</sup>

- 6 TDS soldiers were named, with one of these soldiers alleged to be responsible for separate assaults on two different people.
- 2 Police Officers were named.

Of the 15 persons who alleged to suffer physical violence during interview, 3 could identify the perpetrators by name.<sup>40</sup>

- 2 Police Officers were named. One was a Chief Inspector of Police and the other an Inspector of Police who was alleged to be responsible for separate assaults on two different people.

Identification of perpetrators by their victims was made difficult for a number of reasons, including inter alia, Police and TDS soldiers do not wear name badges while performing duties.

Of concern is that hooding and blindfolding techniques were used by some TDS soldiers in a concerted effort to avoid identification. 'Sefita', a 48 year old male who reported that he was arrested by TDS soldiers and then taken to the Central Police Station by the TDS soldiers but was released 3 hours later without charge said:

*"I was dragged out of my van [by TDS Soldiers] and had a rifle pointed into my ribs. I was told to take off my shirt and to blindfold myself with it. They said to me "Blindfold yourself because we know each other". The soldiers then punched and kicked me. I pleaded with the soldiers to stop because I had a brother in the TDS. I asked to remove my blindfold, but soldiers would not allow me."<sup>237</sup>*

<sup>236</sup> The names of these TDS soldiers and Police officers have been withheld in this report but are available to a Government or other formal authority responsible for the investigation of military and/or police discipline upon request.

<sup>237</sup> Interviewed 14<sup>th</sup> December 2006.

‘Semisi’, a 41 year old male who said that he was arrested by TDS soldiers and taken to Masefield Navy Base for 2 hours where he was blindfolded and interviewed with violence by TDS soldiers before he was handed over to Police:

*“They [TDS soldiers] took me upstairs and seated me on a chair then they blindfolded and cuffed me then I was taken into another room. I was interrogated by someone and asked to make a statement about what had happened in Pangai [si’i] and in town. After I said I was not there and he said it contradicted what he has in the picture in front of him I was slapped and hit about the face. I never saw the picture.”<sup>238</sup>*

Both the Tonga Police Force and TDS are aware that a number of their members are alleged to have used unreasonable force against suspects.<sup>239</sup> The Tonga Police Force said that;

*“Police Officers needed to inform us [Superior Officers] if things went wrong [use of unreasonable force on a suspect]. They should not hide it; they should report it to superiors.”<sup>240</sup>*

This system of reporting clearly places the obligation on subordinate officers (who may have been the perpetrators of unreasonable force on suspects) to report such actions, rather than an obligation on superior officers to provide proactive oversight of subordinate staff.

Both the Tonga Police Force and TDS reported that internal investigations into allegations of the use of unreasonable force on suspects by their members are ongoing.<sup>241</sup>

## **S Complaints procedures**

Under the Basic Principles on the Use of Force and Firearms, Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence.<sup>242</sup> Governments and law enforcement agencies must establish effective reporting and review procedures for all use of force incidents and shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances.<sup>243</sup>

<sup>238</sup> Interviewed 14<sup>th</sup> December 2006.

<sup>239</sup> Interview with Acting Commander of Police Taniela Faletau, Tonga Police Force, 15<sup>th</sup> March 2007; Interview with Lt Col. Tongapo’uli Aleamotu’a, Tonga Defence Service, 16<sup>th</sup> March 2007.

<sup>240</sup> Interview with Acting Commander of Police Taniela Faletau, Tonga Police Force, 15<sup>th</sup> March 2007.

<sup>241</sup> Interview with Acting Commander of Police Taniela Faletau, Tonga Police Force, 15<sup>th</sup> March 2007; Interview with Lt Col. Tongapo’uli Aleamotu’a, Tonga Defence Service, 16<sup>th</sup> March 2007.

<sup>242</sup> United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials para 7.

<sup>243</sup> Ibid, para 22.

Furthermore, Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and they did not take all measures in their power to prevent, suppress or report such use.<sup>244</sup>

The majority of persons who reported that they had been injured by the Security Forces said that they had consulted, or intended to consult a lawyer with a view to commencing legal proceedings. However, only two persons reported making formal complaints to Security Forces regarding their treatment. Both of these persons were overseas Tongans who had returned to Tonga for the Christmas holiday period.

'Mele', a 38 year old female, an Australian citizen who did make a complaint (refer to "Section P – Violence against non-suspects" for description of incident) raised concerns about the efficacy of reporting procedures. 'Mele' said that after having her injuries recorded in a doctor's report, she went to the Police and attempted to lodge a formal complaint:

*"... I then went to the Mu'a Police Station where I spoke to an Inspector and told him what had happened. I gave him copy of the Doctor's report and told him that I wanted to lodge a formal complaint. He said to me that he couldn't take my statement. He told me to go to the Army [Taliai] Camp to complain to the TDS. He then said to me, 'You shouldn't have spoken to the soldiers in English' as though this was my fault. Then I was crying. I was saying 'I thought you were going to help me'."*<sup>245</sup>

The Tonga Police Force expressed disappointment that persons who claimed that they had been assaulted by Security Forces had not come forward to the Police, but instead had taken their allegations to the media.<sup>246</sup> The Tonga Police Force does recognise that members of the public may have reservations about coming forward with allegations and considers the establishment of an independent complaints board as important to promoting public confidence in its complaint procedures.<sup>247</sup>

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<sup>244</sup> United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials para 24.

<sup>245</sup> Interviewed on 28<sup>th</sup> December 2006.

<sup>246</sup> Interview with Acting Commander of Police Taniela Faletau, Tonga Police Force, 15 March 2007.

<sup>247</sup> Ibid.

## IV DISCUSSION

Violence during arrest, interview and detention is not a recent issue in the Kingdom of Tonga.<sup>248</sup> As early as 1991, the Supreme Court of Tonga stated;

We know from a depressing series of cases in this court, both criminal and civil, that this sort of behaviour [use of unreasonable force by Police] does occur with some frequency.<sup>249</sup>

In 2001, comparative UNICEF studies in Tonga<sup>250</sup>, Vanuatu<sup>251</sup>, and the Federated States of Micronesia<sup>252</sup> found that children in Tonga reported the highest level of violence inflicted upon them by police in the 12 months prior to the studies.

Since early 2000 the Ministry of Police, Fire and Prisons has identified that prison facilities throughout Tonga do not meet the United Nations Standard Minimum Rules for Treatment of Prisoners. As succinctly stated in 2003 by the then Acting Superintendent of Prisons, “[t]his problem locks our road to success.”<sup>253</sup>

While the use of violence by Security Forces and the poor quality of detention facilities have been ongoing issues, they have until now received very little attention. It has taken the magnitude of people subjected to these issues since the 16<sup>th</sup> November 2006 to raise the necessary awareness and concerns regarding violations of human rights and fundamental liberties.

An important finding of this report regarding violence perpetrated by Security Forces is that this issue has been exacerbated by the involvement of the Tonga Defence Service in civil law enforcement since the 16<sup>th</sup> November 2006. This is an issue that must be addressed by the Government if it is to continue the use of military personnel in this role.

The sordid conditions of detention at the Central Police Station presented in this report must form as a call to action for the Government of Tonga to immediately strategise and implement remedial measures. While it is recognised that the resources of the Tonga Police Force have been stretched since 16<sup>th</sup> November 2006, it is of concern that it appears that many of the

<sup>248</sup> *Akau'ola v Fungalei & Ors* [1991] Tonga LR 22; *Uhila v Tatola & Ors* [1992] Tonga LR 9; *Tonga (A minor) v Ministry of Police* TOSC (Unreported, Finnigan J, 28 April 2000); *Lolohea v Police* [2004] TOSC 29 (Unreported, Ford J, 9 June 2004); *Tone v Police* [2004] TOSC 36 (Unreported, Ward CJ, 28 June 2004).

<sup>249</sup> *Akau'ola v Fungalei & Ors* [1991] Tonga LR 22.

<sup>250</sup> UNICEF *The State of Health Behaviour and Lifestyle of Pacific Youth; Kingdom of Tonga Report* (2001) 72, 97.

<sup>251</sup> UNICEF *The State of Health Behaviour and Lifestyle of Pacific Youth; Vanuatu Report* (2001) 68, 93.

<sup>252</sup> UNICEF *The State of Health Behaviour and Lifestyle of Pacific Youth; Pohnpei State, Federated States of Micronesia Report* (2001) 60, 88.

<sup>253</sup> Acting Superintendent of Prisons Moleni F. Taufa, *National Report on Contemporary Issues in Correction*, 23rd Asia and Pacific Conference of Correctional Administrators, 2003, 1. Accessed online 4<sup>th</sup> December 2006 [http://www.apcca.org/Pubs/23/Tonga/Discussion%20Paper%20\(Tonga\).PDF](http://www.apcca.org/Pubs/23/Tonga/Discussion%20Paper%20(Tonga).PDF)

issues regarding the conditions of detention could have been ameliorated by prison management duties being performed in a professional manner or by making minor improvements to service delivery.

Widespread breaches of fundamental legal safe guards and norms have been identified, such as the right against self incrimination and denial of contact with lawyers, medical officials and family. These safeguards are primarily to ensure reasonableness and fairness in the legal system. Of concern is that the widespread nature of these breaches appears to be predominately due to the Tonga Police Force failing to follow established legal procedures. The Courts of Tonga will play an important role in independently assessing the extent to which Security Forces have satisfied these legal requirements.

The ill-treatment of children in accordance with international standards in the justice system is another significant issue raised by this report. This highlights the imperatives of developing an all encompassing juvenile justice system and requiring Security Forces and Magistrates to undertake specific training in relation to the treatment of children under arrest and in detention.

To some extent the historic use of violence by police appears to have perpetuated a community acceptance; that arrest is synonymous with violence. This made documenting alleged injuries for this report a more difficult process. Often persons who claimed they had received injuries had simply not thought to take photographs of the injuries or to have an examination and report completed by a doctor; or they did not bother because they thought nothing would come of any complaint. The lack of photographs was also attributable to a lack of access to cameras and interestingly 12% of persons stated that a fear that doctors would be 'sided with the government' was the reason why they did not seek a medical examination of their injuries.

On average the period between a person's assault or release from detention and their interview for this report was 16 days. In this time, visible signs of injuries in almost 50% of cases were reported to have diminished or healed.

It was observed that two overseas Tongans (who reside in Australia and the United Kingdom), in Tonga for the Christmas period, who said they were assaulted by Security Forces, independently documented their injuries with photographs and a medical report and lodged formal complaints with the Security Forces immediately after their alleged assault occurred. This may indicate a different level of tolerance between Tongans living overseas and those living in Tonga regarding issues of violence by Security Forces.

While there maybe a somewhat tacit acceptance of police violence in the community; irrespective, the laws of Tonga and international laws and standards to which the Kingdom is a Party, apply.

These laws and standards must be unequivocally upheld.

## V RECOMMENDATIONS

### *Independent inquiry mechanisms*

1. That the Government of Tonga immediately establishes a public and independent board of inquiry into allegations of ill-treatment of detainees and prisoners by Security Forces. This board of inquiry should have administrative disciplinary powers over both Police and Tonga Defence Service members including such measures as suspension and dismissal and the ability to recommend the initiation of criminal proceedings.
2. That the independent board of inquiry include in their scope of investigations senior officers of the Tonga Police Force and Tonga Defence Service who know or should know of such acts of ill-treatment and who failed to take action to prevent and punish them. Administrative disciplinary powers and the ability to recommend the initiation of criminal proceedings should equally apply in these cases.
3. That members of the Tonga Defence Service, or any other person subject to military law, who are recommended by the independent board of inquiry for criminal proceedings in relation to the ill-treatment of members of the public are prosecuted before a civil court pursuant to section 75(1) of the *Tonga Defence Services Act 1992*.
4. Following the completion of the independent board of inquiry investigations, a Police Ombudsman is appointed to receive future public complaints and to oversee future independent investigations into allegations of police ill-treatment or misconduct. The office and mandate of the Police Ombudsman should be structured in accordance with proposals for an Ombudsman under the Government's anti-corruption direction.
5. That any member of the Tonga Defence Service performing law enforcement duties as an aid or support to the civil authorities is also considered to be under the jurisdiction of the Police Ombudsman.
6. That the independent board of inquiry and subsequent Police Ombudsman issue regular public statements and reports on the establishment, proceedings and outcomes of the board and the Ombudsman respectively.

***Capacity of the Tonga Police Force and Tonga Defence Service***

7. That the Minister of Police form and direct a multi-agency taskforce (including Non-Government Organisation representatives) to conduct an immediate review of Police lock-up facilities at, but not limited to, the Central Police Station, Nuku'nuku Police Station, Vaini Police Station, Mu'a Police Station and Houma Police Station and all prison facilities in accordance with international standards.
8. That the findings from the aforementioned review be incorporated into a report of recommendations and requirements to present to international donors with a view to seeking the development and implementation of strategies and programs to bring the standard of Police lock-up facilities and prison facilities into line with international requirements.
9. That the Government of Tonga form and direct a multi-agency taskforce (including independent representatives) headed by the Attorney General to conduct an immediate review of Police criminal procedures, including but not limited to, procedures upon arrest, interview and detention of suspects.
10. That the Minister of Police and Minister of Defence review and issue guidelines to all Tonga Police Force and Tonga Defence Service members on the use of force and treatment of persons in custody consistent with international legal standards, including the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Treatment of Prisoners the United Nations Code of Conduct for Law Enforcement Officials, and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
11. That a formal system of accountability at all levels of the Tonga Police Force and Tonga Defence Service be implemented in relation to the use of force and treatment of persons in custody.
12. That training on the above guidelines, international standards and accountability system on the use of force and treatment of persons in custody be incorporated into all basic recruit and ongoing training courses for both the Tonga Police Force and Tonga Defence Service.
13. That senior officers of the Tonga Police Force and Tonga Defence Service, particularly those in direct supervision (eg: Sergeants and Lieutenants) of operational members be provided with specific training on their responsibilities in relation to the monitoring, documenting and reporting of violations of the above guidelines on the

use of force and treatment of persons in custody under the proposed accountability system.

14. That the Minister of Police issues and ensures that police officers in uniform wear official name badges on their uniforms while on duty.
15. That the Minister of Defence issues and ensures that Tonga Defence Service soldiers and officers in uniform involved in civil law enforcement support duties wear official name badges on their uniforms while on duty.

### ***Children***

16. That the Government of Tonga ensures the Youth Diversion Program established after 16<sup>th</sup> November 2006 is developed into a nation-wide Children's Justice System.
17. That the Children's Justice System be established under authority of statute which includes provisions governing the treatment of children in all aspects of the legal system, including inter alia: arrest, detention, interview, access to family and legal advice, appearance in court, representation, protection of identity, sentencing including diversion strategies and imprisonment and rehabilitation strategies
18. That the Government of Tonga, in accordance with article 39 of the Convention on the Rights of the Child, take all appropriate measures (including the support of appropriate Non-Government Organisations) to promote the physical and psychological recovery and social reintegration of child victims of ill-treatment by Security Forces.

### ***International missions and donors***

19. That the Tonga Police Joint Assessment Mission from the Australian Federal Police and New Zealand Police Force consider the issues and recommendations raised in this report when preparing and designing a framework of assistance for the Tonga Police Force.
20. That international donors to the Kingdom of Tonga prioritise financial and technical assistance to the Government of Tonga for the improvement of police lock-up and prison facilities and the development of a nation-wide children's justice system.

***Further research***

21. That independent research is undertaken into the treatment of girls and females during arrest and detention.
  
22. That independent research is undertaken into the impartiality of judicial procedures and oversight by Police Magistrates.

## VI PUBLICATION DETAILS

### Community Para-Legal Taskforce on Human Rights

Community Para-Legals are community leaders, qualified through intensive training delivered by the Regional Rights Resource Team (RRRT), to bring the principals of human rights and good governance to the community level. Over 130 Community Para-Legals are operating across the Pacific, including Tonga, the Solomon Islands, Kiribati and Vanuatu.

#### *Taskforce Members*

##### **Betty Blake**

Betty has been working as a Legal Rights Training Officer in the Kingdom of Tonga for over a decade. She is a qualified Teacher, Counsellor and Para-Legal. Betty has been a tireless campaigner for human rights in Tonga and throughout the Pacific. In 2005 she was nominated for the 1000 Women for the Nobel Peace Prize.

##### **Emily 'Esau**

Emily is the Project Co-ordinator for various Community Development Projects in the Kingdom of Tonga. She is a qualified Community Para-legal.

##### **'Ofakilevuka Guttenbeil-Likiliki**

'Ofa has an extensive background in media communications and also has experience in social and economic impact assessments in Tonga. 'Ofa has carried out various research commissioned by NZAID, Pacific Islands Forum Secretariat, UNDP and the International Labour Organisation (ILO). She is a qualified Community Para-legal and trainer.

##### **Vanessa Marie Heleta**

Vanessa has worked for over 5 years as a community leader in campaigns to end violence against women and HIV / AIDS awareness and prevention programs. She has a Bachelor of Arts, is a trained counsellor and is a qualified Community Para-Legal and trainer. Vanessa is currently working as a Program Officer for various women's rights programs in the Kingdom of Tonga.

##### **Lisia Hifo**

Lisia has worked as a community worker in domestic violence prevention programs for three years. She is a qualified Community Para-Legal.

##### **Kaufo'ou 'Isitolo-'Amato**

Kaufo'ou has worked for almost 7 years as a human rights monitor and advocate with the Friendly Island Human Rights and Democracy Movement (FIHRDM). She is a qualified Community Para-legal and trainer.

##### **Latu Koloamatangi**

Latu is the Director of Share and Care Mission for Family Centre. She is an Executive Advisor of the Tonga Pro-democratic movement and Church worker for Anglican Church in Tonga. Latu has a Diploma in English/Business and is a qualified Community Para-legal and trainer.

##### **Rev. Tevita 'Ita Koloamatangi (MACM)**

Rev. Koloamatangi is an Anglican Priest. He is the Vicar of St. Barnabas Church, Chaplain and Chairperson of the Tonga Anglican Mission to Seafarers, Co-ordinator of Share and Care Mission for Family Centre, Tonga, Chairperson of the Community Para-Legals, Tonga. He is a qualified Community Para-legal and trainer.

**Vanessa Joy Lolohea**

Vanessa is a qualified community development trainer and Community Para-legal. She is also a trainer for Civic Education concerning Electro Education / Voter Education

**AnnMarie Mokofisi**

AnnMarie has been a Legal Rights Administration Officer for more than 2 years and is a qualified Community Para-legal and trainer.

**Timi Ngalufo'ou Naeata**

Timi has been a youth worker in Tonga for the last 6 years. He is a qualified Community Para-legal and trainer.

**Lineni Talanoatau**

Is youth worker, currently on study leave. She is a qualified Community Para-legal and trainer.

**Meleane Tonga**

Meleane is a qualified Community Para-legal. She is currently the Program Manager for Tupou Tertiary Institute and is one of the Pacific Trainers for the UNITEC Graduate Diploma in Not For Profit Management. She is also actively involved in community projects and training for volunteers.

**Rev. Simote M. Vea**

Rev. Vea is the Chairman of the Friendly Island Human Rights and Democracy Movement (FIHRDM). He is the former General Secretary of Tonga National Council of Churches and is currently serving as Parish Minister of the Fua'amotu District for the Free Wesleyan Church of Tonga. He is a qualified Community Para-Legal and trainer.

**Valeti S. Vea**

Valeti is a member of the Member of the Friendly Island Human Rights and Democracy Movement (FIHRDM). She is the Ecumenical Church Loan Fund's Credit Loan Officer and is a qualified Community Para-Legal and trainer.

## **Report Author**

**Gus McLean** B.For.Sc (Hons), M. Pub Int Law

Gus has worked in various legal advisory positions in the Kingdom of Tonga for the last 3 years, including as a Legal Technical Advisor for the Initial Report of the Government of Tonga to the United Nations Committee on the Rights of the Child.

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## **Funding**

This research was self funded by the report author and individual members of the Community Para-Legal Taskforce.

## **VII APPENDIX**

**- Sample survey instrument -**

## Survey on treatment during arrest and detention

Detainee  
Code:

This survey aims to investigate the treatment of persons under arrest and held in detention by Police and Soldiers since the Nuku'alofa riots on 16th November 2006.

*'Oku taumu'a 'a e Savea ko 'eni ke hiki fakamatala mo fakatotolo I he founga hono tauhi 'o e kau popula kuo fakahu hili 'a e fakamoveuveu 'Nuku'alofa 'I he 'aho 16 Novema 2006, 'a ia'oku tauhi 'e he Kau Polisi pea mo e kau Sotia .*

1. Are you:  Male or  Female  
*Ko koe: Tangata pe Fefine*

2. What is your age? \_\_\_\_\_  
*Ko ho'oku ta'u fiha 'eni?*

3. What date and time were you arrested?  
*Koe 'aho fe moe fiha nai na'e taki popula ai koe?*  
Date/'Aho: \_\_\_\_\_ Time/Taimi: \_\_\_\_\_

4. What date and time were you released?  
*Koe 'aho fe moe fiha nai na'e tukuange mai ai koe?*  
Date/'Aho: \_\_\_\_\_ Time/Taimi: \_\_\_\_\_

### Arrest

#### Taki popula

5. Please describe what you were doing before your arrest.  
*Kataki 'o fakamatala 'I mai pe koe ha ho'oku me'a na'e fai kimu'a pea taki popula koe.*  
\_\_\_\_\_  
\_\_\_\_\_

6. Where were you arrested? \_\_\_\_\_  
*Ko fe 'ae feitu'u na'e puke ai koe 'o taki popula?*

7. When you were arrested were you on your own or with a group?  
*'I hono puke koe 'o taki popula, ko koe tokotaha pe na'e toe 'iai mo ha taha kehe?*  
 I was on my own  
*Ko au tokotaha pe*

I was with a group (How many in your group? \_\_\_\_\_)  
*Ko au mo kinautolu kehe (Na'a mou tokofiha katoa?)*

8. Who arrested you?  
*Ko hai na'a ne puke koe 'o taki popula?*

Police and Soldiers (How many Police \_\_\_\_\_ and Soldiers \_\_\_\_\_?)  
*Polisi moe Sotia (Na'e toko fiha 'a e kau Polisi moe Sotia na'a nau hange 'o taki popula ko e?  
Polisi \_\_\_\_\_ Sotia \_\_\_\_\_)*

Police only (How many Police \_\_\_\_\_?)  
*Polisi pe (Na'e toko fiha 'a e kau Polisi pe na'a nau hange 'o taki popula ko e? \_\_\_\_\_)*

Soldiers only (How many soldiers \_\_\_\_\_?)  
*Sotia pe (Na'e toko fiha 'a e kau Sotia pe na'a nau hange 'o taki popula ko e \_\_\_\_\_?)*

9. Were you told why you were being arrested?  
*Na'e fakaha atu kiate koe 'ae 'uhinga na'e puke ai koe 'o taki popula?*  
 Yes (If, yes why? \_\_\_\_\_)  
*'Io (Koe ha nai?)*  
 No / 'Ikai

What is your full name: \_\_\_\_\_  
*Koe ha ho hinga kakato?:*

What is your date of birth: \_\_\_\_\_  
*Koe ha ho 'aho fa'ele'i*

These personal details will be removed from your survey and secured in a safe place to protect your identity.  
*Koe ngaahi fakamatala fakatautaha ko 'en 'e to'oku ia mei he savea ko 'eni ke malu 'I koe mo ho 'o fakamatala.*

10. Please describe in detail what happened during your arrest.  
*Kataki 'o fakamatala 'I faka'auliliki mai 'ae me'a nae hoko 'I hono puke koe 'o taki popula.*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Were guns pointed at you during your arrest?  
*Na'e fakahanga atu ha me'afana kiate koe lolotonga hono puke koe 'o taki popula?*  
 Yes/'Io  No/'Ikai

12. Were any guns fired during your arrest?  
*Na'e fana 'I ha me'afana 'I hono puke koe 'o taki popula?*  
 Yes (If yes please describe below) / 'Io (Kataki 'o fakamatala 'I mai 'I lalo)  
 No / 'Ikai

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Did you resist arrest at any stage?  
*Na'e 'iai ha Taimi 'I hono puke koe na'a ke fakafepaki ai kia kinautolu na'a nau taki popula koe?*  
\_\_\_\_\_  
\_\_\_\_\_

14. Were you handcuffed or restrained?  
*Na'e kii 'I ho nima?*  
 Yes (If yes, how \_\_\_\_\_)  
*'Io*  
 No / 'Ikai

15. If you were placed into a vehicle for transport please describe in detail what happened to you while in the vehicle.  
*'Okapau na'e fakaheka koe kiha me'alele, kataki 'o fakamatala 'I faka'auliliki mai e me'a ne hoko kiate koe 'I he loto me'a tele.*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. Were you taken directly to the Central Nuku'alofa Police Station after your arrest?  
*Na'e 'ave hangatonu pe koe ki he 'Apitanga Polisi Nuku'alofa hili hono puke koe 'o taki popula?*  
 Yes (Go to question 25) / 'Io (Hoko atu ki he fehu'1 25)  
 No / 'Ikai

### Other location

#### Feitu'u kehe

17. If no, where were you taken? \_\_\_\_\_  
*'Okapau koe 'ikai, na'e 'ave koe ki fe?*

18. Who took you there?  
*Ko hai na'a ne 'ave koe ki ai?*  
 Police and Soldiers / Polisi moe Sotia  
 Police only / Polisi pe  
 Soldiers only / Sotia pe

19. Please describe in detail what happened to you at this location.

*Kataki 'o fakamatala 'I faka'auliliki mai 'ae me'a na'e hoko 'I hono 'ave koe ki he feitu'u makehe ko'eni.*

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20. Did you see any other prisoners at this location?

*Na'e toe 'iai mo ha kau popula kehe ange meia te koe 'I he feitu'u makehe ko'eni?*

Yes (If yes, how many prisoners? \_\_\_\_\_)

*'Io (Toko fiha nai?)*

No / 'Ikai

21. Did you see any children (people under the age of 18 years) at this location?

*Na'a ke fakatokanga 'I ha longa 'ifanau (si'I ange he ta'u 18) 'I he feitu'u ko'eni?*

Yes (If yes, how many children? \_\_\_\_\_)

*'Io (Koe toko fiha nai?)*

No / 'Ikai

22. How long were you at this location before you were released or taken to another location? \_\_\_\_\_

*Ko e ha e fuoloa hono tauhi koe 'I he feitu'u makehe ko eni pea toki tukuange mai koe pe 'ave koe ki ha toe feitu'u ange?*

23. If you were taken to another location – where was it? \_\_\_\_\_

*Ko Je feitu'u na'e toe 'ave koe kiai?*

### Central Nuku'alofa Police Station

#### 'Apitanga Polisi Nuku'alofa

24. What date and time did you arrive at the Central Nuku'alofa Police Station?

*Koe ha e 'aho moe Taimi na'ake a'utaki atu ai ki he 'apitanga Polisi Nuku'alofa?*

Date/'Aho: \_\_\_\_\_ Time/Taimi: \_\_\_\_\_

25. Please describe what happened on your arrival at the Central Nuku'alofa Police Station.

*Fakamatala 'I mai ange 'ae me'a na'e hoko 'I ho'o a'u atu kihe 'Apitanga Polisi Nuku'alofa.*

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26. Did you see your name being entered into a register?

*Na'a ke sio 'o fakatokanga 'I na'e jakahu pe tohi ho hinga ha tohi?*

Yes / 'Io

No / 'Ikai

27. Were you asked your date of birth or how old you were?

*Na'e 'eke atu kiate koe ho 'aho fa'ele 'I pe ko ho ta'u motu'a?*

Yes / 'Io

No / 'Ikai

28. If you are under 18 years of age, did the Police ask you if you wanted to contact your parents?

*Kapau 'oku na'a ke 'I he ta'u motu'a 'oe 18 ki lalo lolotonga hono tauhi popula ko e, na'e fakangofua ko e k eke fetu'utaki ki he matu'a?*

Yes / 'Io

No / 'Ikai

29. Please describe any injuries you had at this stage.

*Fakamatala ange ki ha ngaahi lavelavea ki ho sino 'I hono puke mai koe 'o taki popula?*

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30. If you had injuries, did you receive any medical treatment for your injuries?

*Na'u 'iai pe faka'ata atu ha tokoni fakatoketa ki he ngaahi lavelavea ho sino?*

Yes (If, yes please describe below)

*'Io (Fakamatala 'I mai 'I lalo)*

No / 'Ikai

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31. Was there a doctor or any medical attention made available to you at any time?

*Na'e 'I ai ha toketa pe ko ha toe tokoni fakafalemahaki kehe na'e faka'ata atu kiate kimoutolu?*

Yes (Please explain below)

*'Io (Fakamatala 'I mai 'I lalo)*

No / 'Ikai

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32. What cell number were you in? \_\_\_\_\_

*Koe loki pilisone fika fiha na'e tauhi koe ai?*

33. How many people were in your cell? \_\_\_\_\_

*Na'e tokofiha fakakatoa 'I he loki pilisone na'e tauhi koe ai?*

34. Please estimate how many people in your cell were under the age of 18 years \_\_\_\_\_

*'I ho'o fakafuofua, koe took fiha 'ihe loki na'e tauhi ai koe na'e si'isi 'I hifo honau ta'u motu'a he 18?*

35. Please describe the conditions of your cell in relation to:

*Kataki 'o fakamatala mai 'ae tu'unga na'e 'iai 'ae loki pilisone na'e tauhi ai koe fakatatau kihe.*

a) Hygiene

*Ma'a 'ae loki*

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b) Ventilation

*'Ea*

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c) **Sleeping**  
*Feitu'u fai'anga mohe*

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d) **Toilet facilities**  
*Falemalolo*

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e) **Food**  
*Me'akai*

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36. How many hours of each day were you confined to your cell? \_\_\_\_\_  
*Koe houa 'e fiha 'ihe 'aho na'e tauhi malu ai koe 'I ho'o loki pilisone?*

37. How many minutes were you allowed to undertake outdoor exercise during the entire duration of your custody? \_\_\_\_\_  
*Koe ha e lahi e taimi na'e fakangofua atu ke ke hu ai ki tu'a 'o faofao lolotonga hono tauhi popula koe?*

38. Were prisoners disciplined by Police while in custody?  
*Na'e akonaki 'I 'ehe kau polisi 'a e kau tauhi popula?*  
 Yes (Were you disciplined?)  Yes  No  
*'Io (Kataki 'o fakamatala 'I mai 'I lalo)*  
 No / 'Ikai

a) If yes, please describe how discipline was imposed?

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39. Were you ever handcuffed or restrained while in custody?  
*Na'e kii 'I tu'otaha nai ho nima lolotonga hono tauhi popula koe? Poutele uasila 'a?*  
 Yes / 'Io (If yes, how long were you restrained for / *Koe ha hono loloa?* \_\_\_\_\_)  
 No / 'Ikai

40. Did you see any other prisoners in handcuffs while in custody?  
*Na'a ke sio pe fakatokanga 'I ha taha kehe lolotonga ho'o 'I pilisone na'e kii 'I hono nima?*  
 Yes (If yes, please estimate how long they were restrained for \_\_\_\_\_)  
*'Io 'Oku ke fakafuofua koe ha hono loloa hono kii 'I hono nima?*  
 No / 'Ikai

41. Why do you think prisoners were restrained in custody?  
*'Oku ke pehe koe ha e 'ahinga 'oku kii 'I ai 'ae kau popula 'e ni'ihii 'I pilisone?*

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42. Were you interviewed by Police Officers during the duration of your custody?  
*Na'e faka'eke'eke nai koe 'eha kau Polisi lolotonga hono tauhi popula koe?*  
 Yes (How many times were you interviewed? \_\_\_\_\_)  
*'Io (Na'e faka'eke'eke tu'o fiha koe?)*  
 No / 'Ikai

43. What was the date of your first interview? \_\_\_\_\_  
*Koe 'aho fiha nai na'e fuofua faka'eke'eke ai koe?*

44. Were you asked by police officers before your interview if you wanted to contact:  
*Na'e 'eke atu 'ehe kau Polisi fai faka'eke'eke kimu'a 'I ho'o faka'eke'eke pe 'oku ke fie fetu'utaki ki ho'o:*

A lawyer / *Loea:*  Yes / 'Io  No / 'Ikai  
A parent / *Ongomatu'a:*  Yes / 'Io  No / 'Ikai

45. Before your interview did the Police advise you of your right to remain silent or that you did not have to answer any of their questions?  
*Kimu'a hono saka'eke'eke ko e na'e sakaha atu 'e he kau Polisi 'oku 'I tonu ke ke sakalongotongo pe tea 'oku 'I ai ho totonu ke 'oua teke tali 'enau ngaahi fehui?*  
 Yes / 'Io  No / 'Ikai

46. Did you experience any physical or verbal violence or threat of such violence from Police during your interview(s)?  
*'I hono faka'eke'eke koe, na'e fai atu ha ngaahi lea pe koha ta fakamanamana pe fakailifia kiate koe?*  
 Yes / 'Io (If, yes please describe below / *Kataki 'o fakamatala 'I mai 'I lalo)*  
 No / 'Ikai

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47. Were you ever threatened or intimidated into giving information or confessing to Police?  
*Na'e 'I ai ha taimi na'e fakailifia 'I ai koe keke foaki ha fa'ahinga fakamatala ki he kau Polisi?*  
 Yes / 'Io (If, yes please describe below / *Kataki 'o fakamatala 'I mai 'I lalo)*  
 No / 'Ikai

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48. Please describe any injuries you received during Police interview.  
*Fakamatala 'I mai ange ha ngaahi lavelavea fakasino na'e hoko kiate koe lolotonga hono faka'eke'eke koe.*

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49. Were you charged with any offences?  
*Na'e faka'ilo koe kiha hia?*  
 Yes / 'Io (If, yes please describe below / *Fakamatala 'I mai 'I lalo)*  
 No / 'Ikai

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50. Were you taken before a Magistrate?

*Na'e 'ave koe kiha fakamaau'anga?*

- Yes / 'Io (If, yes what date and time / Koe 'aho fe nai? \_\_\_\_\_)  
 No / 'Ikai

51. What was the decision of the Magistrate?

*Koe ha e tu'utu'uni 'ae fakamaau'anga?*

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52. Did you ever see any Foreign Police Officers during the duration of your custody?

*Na'ake sio nai pe fakatokanga'i ha taha 'oe kau Polisi muli lolotonga hono tauhi popula koe?*

- Yes / 'Io  No / 'Ikai

53. If yes, where did you see them and what were they doing?

*Kapau 'oku 'io, koe ha 'enau me'a na'e fai?*

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54. If you know the names of any Police Officers and Soldiers who were responsible for physical and/or verbal violence or threats of such violence against you please complete the following:

*'Okapau 'oku ke 'ilo 'ae hingoa 'oe kau 'ofisa Polisi moe kau Sotia na'a nau fakahoko atu kiate koe 'ae ngaahi lea moe ta fakamanamana pea ke kataki 'o faka fonu mai 'a e tepile 'I lalo.*

Officer's name (or description)	What did this person do to you?	When did this incident happen?	Where did this incident happen?	Who did it happen in front of?
<i>Hingoa 'oe 'Ofisa</i>	<i>Koe ha 'ene me'a na'e fai kiate koe?</i>	<i>Na'e hoko 'eni 'ane fe?</i>	<i>Na'e hoko 'eni 'I fe?</i>	<i>Ko hai ha toe kakai kehe na'e 'iai?</i>

55. If these Officers were to be investigated for what you have said they have done to you, would you be prepared to give a statement to an Investigator?

*'Okapau 'e fakatotolo 'I 'ae kau 'Ofisa Polisi pe Sotia tau malu 'I fonua 'oku ke fakahingoa 'I 'olunga, teke mateuteu nai ke hiki ha 'o fakamatala ki he me'a na'e hoko?*

- Yes / 'Io  
 No / 'Ikai (If, no why not? / Koe ha nai hono 'uhinga? \_\_\_\_\_)

56. What did the Police say or do to you upon your release?

*Koe haeme'a 'ae kau Polisi na'e talaatu pe toe fai atu kiate koe pea tukuange mai koe?*

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57. What has been the effect of your arrest and custody on your body and mind?

*Koe ha nai ha ngaahi uestia fakaesino pe 'atamai kuo hoko kia tupunga mei hono tauhi popula koe?*

- Nothing  
 The problems described below

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58. Have you sought medical advice or treatment since your release?

*Kuo ke fekumi ki ha ngaahi tokoni fakatoketa talu hono tukuange mai koe?*

- Yes (If yes, please describe below)  
*'Io (Fakamatala 'I mai 'I lalo)*  
 No (If, no why not? \_\_\_\_\_)  
*'Ikai (Koe ha nai hono 'uhinga?*

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59. Have you ever been arrested by the police before?

*Kuo 'osi puke nai koe 'ehe kau polisi 'o taki popula?*

- Yes (How many times? \_\_\_\_\_ and; What for? \_\_\_\_\_)  
*'Io (Koe tu'io siha 'eni? \_\_\_\_\_ Pea moe ha hono 'uhinga? \_\_\_\_\_)*  
 No / 'Ikai

60. Do you have any other comments you wish to make?

*'Oku toe 'iai ha toe me'a kehe 'oku ke toto ke fakaha?*

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**MALO 'AUPITO**

Date of survey: \_\_\_\_\_

Enumerator identification: \_\_\_\_\_