

# CRIME, LAW AND ORDER IN PAPUA NEW GUINEA

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## INTRODUCTION

Thirteen years after independence 'law and order' remains the single most important issue on the agenda of public debate in Papua New Guinea. There is a widely held feeling, both at home and overseas, that the law and order situation is getting progressively worse and that the state is incapable of remedying the problems.

Whilst it can hardly be denied that Papua New Guinea has a serious crime problem, it is clear that beneath the rhetoric of law and order debate lie a number of different issues that extend well beyond empirical questions about the extent and nature of criminal activities. The terrain of law and order debate in the country today is extensive and varied. In addition to questions about the extent and nature of law-breaking, it includes concern about the effectiveness and appropriateness of state institutions; the calibre and integrity of leadership; and a complex of issues concerning the direction and impact of social, cultural and economic changes.

Concern with law and order is not a new phenomenon in Papua New Guinea and was characteristic of much of the colonial period. It is rare, however, for current commentaries to acknowledge this history although the 1984 Institute of National Affairs (INA) Report stated that:

Through the entire colonial period and a full decade of independence, the problem of 'law and order' has been under active (sometimes almost paranoid) consideration by government and people alike.<sup>1</sup>

During the colonial period (from 1884-1975 in Papua, and 1888-1975 in New Guinea) criminal law was an important instrument in the 'civilising mission' undertaken by the authorities in the two territories of Papua New Guinea. The *Criminal Code* was supplemented by an extensive array of restrictive *Native Regulations* and both played a key role in the establishment and promulgation of the colonial social order. The Regulations were a comprehensive body of restrictions, applying exclusively to indigenes, which covered most aspects of daily behaviour ranging from standards of personal hygiene to a night-time curfew in the European sections of town.

This earlier history reveals a persistent concern with indigenous criminality that is all too often ignored in contemporary accounts. The racial and sexual anxieties of the small European community that constituted the colonial elite, led directly to such draconian and discriminatory legislation as the *White Women's Protection Ordinance 1926* which made it an offence punishable with death to rape or attempt to rape a European female.<sup>2</sup>

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1 The Institute of National Affairs (INA) and the Institute of Applied Social and Economic Research (IASER) 1984 Report of the Joint Study on Law and Order in Papua New Guinea, vol.1, p.1

2 A. Inglis, *Not a White Women Safe Sexual Anxiety and Politics in Port Moresby 1920-1934*, Australian National University, Canberra, 1974

Such concerns served to legitimate a system of 'native administration' characterised by paternalism and authoritarianism.<sup>3</sup> The law played a key role in the pursuit of colonial objectives in Papua New Guinea as in most other colonial situations.<sup>4</sup> The *White Women's Protection Ordinance* is thus to be understood against the background of sexual and racial politics prevailing in the colonial context. Likewise, current concerns and responses are best understood within the context of contemporary social, political and economic change in Papua New Guinea. It should also be noted that many of the attitudes, values and institutions of the colonial period remain intact today. An analysis of the current law and order situation thus benefits from an appreciation of both the continuities and discontinuities from the earlier colonial history.

Whilst appreciating the specific context of law and order debate in Papua New Guinea, an examination of current discourse reveals many similarities with law and order debate elsewhere. Perspectives on crime and crime-control derived from the industrialised countries have had a considerable impact on Papua New Guinea. Although it is useful to be able to draw upon the experiences of other countries in this area, it is also wise to proceed with caution given the different circumstances in each country and given the marked lack of success elsewhere of many of the policies currently being advocated in Papua New Guinea.

This article identifies and discusses some of the major characteristics of contemporary law and order debate in Papua New Guinea. The first section looks at the nature of the state response to crime and lawlessness in the period since independence. The second identifies distinct concerns in contemporary media discourse. In the third section some of major similarities and differences between law and order discourse in Papua New Guinea and in the metropolitan countries will be examined.

## THE STATE RESPONSE

In the period since independence the issue of law and order has consistently remained an important subject of official and media concern.<sup>5</sup> State responses have been essentially pragmatic. Numerous policy reviews have been undertaken, some changes have been made in relevant state institutions and a number of reports have been published. Neither the level of concern, nor the level of crime, however, has noticeably diminished, although changes in emphasis are apparent. A further review is currently underway at the request of the newly appointed Minister for Justice, Mr. Bernard Narokobi. Recent history establishes that few of the recommendations made are adopted in this, as in many other, areas of policy.

The two most comprehensive Reports on law and order since independence have been the Morgan Committee Report<sup>6</sup> and the INA/IASER Report 1984 (sometimes referred to as the Clifford Report).<sup>7</sup> The latter was the result of a joint project between the Institute

3. E.P. Wolfers, *Race Relations and Colonial Rule in Papua New Guinea*, (Sydney: ANZ Book Co., 1975).
4. A. Paliwala, J. Zorn, and P. Bayne, 'Economic Development and the Changing Legal System of Papua New Guinea', (1978) *16 African Law Studies* 3-79.
5. L. Morauta ed., *Law and Order in a Changing Society*, (Department of Political and Social Change, Research School of Pacific Studies, Australian National University, Canberra, 1986).
6. Department of Provincial Affairs, 1983 Report of the Committee to Review Policy and Administration on Crime, Law and Order, (Morgan Report).
7. See above note 1.

of National Affairs, a private-sector funded research organisation, and the Institute of Applied Social and Economic Research, a parastatal research agency. In addition, there have been a number of Reports which look at specific crimes. The Law Reform Commission, for example, produced a series of studies on domestic violence between 1985 and 1986 and, more recently, the IASER published an empirical study of juvenile gangs in Port Moresby. There have also been several books including *Crime in Papua New Guinea* published by the Australian Institute of Criminology in 1976 and, recently, *Law and Order in a Changing Society* published by the Australian National University in 1986.

Despite the wealth of policy recommendations generated by this burgeoning literature, the state has reacted to each new 'crisis' in isolation, with little evidence of any co-ordinated approach. In recent years state initiatives have included minimum penalties legislation, the imposition of states of emergency in selected parts of the country, a number of special police operations, and additional controls over the sale of alcohol. Whilst it is difficult to evaluate the impact of each measure, informed opinion would tend to agree with Morauta's conclusion that, despite such interventions, 'successive governments have failed to contain the increase in crime... or to reassure citizens that they will shortly do so'.<sup>8</sup> The fate of most of the measures would tend to bear such a conclusion out.

The minimum penalty legislation which was introduced into the national Parliament in 1983 and passed in the space of two hours, ran into immediate judicial opposition. The judiciary perceived the measures as a curtailment of their discretion.<sup>9</sup> One senior judge referred to the new provisions as 'ill-conceived, ill-advised, ill-considered, inherently illogical and draconian'.<sup>10</sup> The enactment of this legislation served to increase tension between the judicial and executive arms of the state and to emphasise significant differences in their respective approaches to the wider law and order issue. At a more practical level, the minimum penalty policy had the effect of worsening the already critical state of over-crowding in the country's prisons and further extend delays in court hearings. In the face of such problems the legislation was gradually repealed between 1985 and 1986.

A state of emergency was imposed in the National Capital District in June 1985 and the overall impression, shared by public and authorities alike, was that of a significant decrease in crime. Such a measure is however, by definition, a temporary and last resort one and there is little evidence that it has had much long-term impact on the incidence, perceived and actual, of crime in the areas affected. States of emergency and special police operations are very often accompanied by widespread allegations of police brutality. The short-term benefits of such measures must therefore be weighed against the long-term damage to police-community relations that often eventuates.

It is also difficult to assess the impact of measures designed to curb consumption of alcohol. Current measures in force in the National Capital District do not appear to have significantly affected overall beer sales according to the South Pacific Brewery based in Port Moresby.<sup>11</sup> The real beneficiaries of such controls are the thriving black market and

8. See above note 5, p.8.

9. S. Dinnen, 'Minimum Penalties in P.N.G.: A Case Study in Crime and Development', (1985)13 Mel. LJ, 51; also D. Weisbrot, 'Papua New Guinea Minimum Penalties Legislation', (1985)18(3) *Australia and New Zealand Journal of Criminology* 164-188.

10. Per Pratt J., in *Lakea Sareaka v. Simon Pipi* (1983) N488(M), 5.

11. R. Grynberg, 'Why N.C.D.I.C Liquor Ban Is a Flop', *The Times of PNG*, 14-20 July, 1988, 6

the owners of licensed beer outlets in adjoining Central Province.<sup>12</sup> The National Capital District Interim Commission finally decided on December 13, 1988 to lift the liquor restrictions in the light of widespread illegal liquor trading throughout the city.<sup>13</sup>

Recent years have seen the elevation of law and order as an important political issue at both national and provincial levels. The current Namaliu Government has gone further than its predecessors, making law and order a central plank of its domestic policies. Thus on August 25, 1988, Mr. Namaliu announced his Government's decision to allocate K10 million for law and order policy for the four years between 1989 and 1992.<sup>14</sup> The exact nature of the policy interventions contemplated and their impact in practice, however, remains to be seen.

## CURRENT CONCERNS IN LAW AND ORDER DISCOURSE

This section identifies distinct areas of criminality that have recently been attracting regular media coverage. Media coverage is considered an important indicator of current concerns for two main reasons. First, because of the problems in quantifying crime empirically, and, secondly, because of the important role of the media in setting the agenda for public debate and policy on law and order issues.

Quantifying the extent of crime in any country is a daunting task and reliance is usually placed on statistics compiled by the police of crimes known to them. Such statistics often tell us more about the operation of the police than they do about the actual incidence of crime. Moreover, the quality of data available in Papua New Guinea has been described as 'immeasurably less reliable than comparable statistics in most other jurisdiction'.<sup>15</sup> Official statistics tell us nothing of those crimes committed which are never reported to the police - the so-called 'dark figure' of crime. The INA/IASER. Report estimated that in Papua New Guinea only 20% of all crimes are reported to the police, leaving a dark figure of approximately 80%.<sup>16</sup> Given this state of affairs it is impossible to gauge with any degree of accuracy the extent of crime committed.

The quality of the Papua New Guinea media - newspapers, radio, and television - as a source and disseminator of information should be qualified by noting their limited and elitist nature in terms of language and circulation. In the absence of a more developed and effective communications system, however, newspapers and radio, and increasingly television, continue to play an important role in informing people of developments in other parts of the country. Certainly, there is plenty of evidence that media coverage of law and order issues is taken seriously by both the ordinary people and those in authority. The 'Port Moresby Riots' in early December 1988, for example, where youths took to the streets in Boroko and caused minor damage to commercial premises was allegedly triggered off by newspaper claims of involvement of a number of prominent public figures in locally produced pornography.<sup>17</sup> Moreover it was concern over the media's crime coverage, amongst other things, that led to the unsuccessful attempt by the Wingti

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12. *Ibid.*

13. *Post Courier*, PNG, 14 Dec. 1988, p.2.

14. *Post Courier*, PNG, 26 Aug. 1988, p.1

15. See above note 1. p.28.

16. See above note 1. p.15.

17. *Post Courier*, PNG, 12 Dec 1988, p.1

Government to enact the *Media Tribunal Bill* in 1988 designed to impose tighter controls over media ownership and output.<sup>18</sup>

A review of media, particularly newspaper, coverage over the past twelve months reveals five broad categories of crime attracting regular attention

## I. Crimes Against Women

Women's groups throughout the country have for long been expressing concern about a perceived growing level of violence against women and, in particular, sexual violence. For example, at a recent public seminar on rape the Port Moresby based Women and Law Committee claimed that the number of rapes had increased by 170% since 1985 and that there had been a significant rise in the number of 'pack rapes', involving more than one rapist.<sup>19</sup> The Committee also proposed a number of reforms including: the establishment of a forensic laboratory in Papua New Guinea which would enable forensic testing of samples to be done in this country rather than in Australia as at present; increasing the number of women police officers; more effective censorship controls over the importation and distribution of films and videos; amending the *Bail Act* to make clear that rape is a crime of violence and that alleged rapists are not, therefore, eligible for bail.

Although the police subsequently questioned the Committee's figures they acknowledged an increase in 'pack rapes'. The most recent police figures are as follows:<sup>20</sup>

| Year                    | Rapes Reported | No. of Victims |
|-------------------------|----------------|----------------|
| 1985                    | 889            | 485            |
| 1986                    | 774            | 413            |
| 1987                    | 1,322          | 443            |
| 1988 (first six months) | 744            | 271            |

The apparently dramatic increase in 1987 and 1988 was attributed by the police to a new method of recording rapes, whereby a 'pack rape' by say, four men now counted as four rapes, whereas previously, it would only have been recorded as one.

The media has played an instrumental role in focusing public attention on a number of particularly brutal rapes, most recently the rape and murder in Lae of Australian helicopter pilot, Heather Mitchell, in July 1987. Such coverage, particularly when the victim is an expatriate, is often picked up in the foreign media and further fuels the Government's anxiety about Papua New Guinea's image to potential foreign investors and tourists.

Between 1985 and 1986 the Law Reform Commission (LRC) published two Occasional Papers and one Monograph on domestic violence in Papua New Guinea. Whilst acknowledging the particular difficulties of quantifying domestic violence, the LRC concluded that '(t)here is considerable violence within many marriages in Papua New Guinea'.<sup>21</sup> The publication of these reports was followed by a nationwide publicity

18. J. Millett ed., *Seminar on Development and the Media*, Institute of National Affairs (INA) Port Moresby, 1988.

19. *Post Courier*, PNG, 25 July 1988, p.3.

20. *Post Courier*, PNG, 26 July 1988, p.2

21. The Law Reform Commission of Papua New Guinea (LRC), 'Domestic Violence in Urban Papua New Guinea' Occasional Paper No.19. Waigani: L.R.C. 1986, 48

campaign aimed at broadening awareness about the extent and illegality of violence in the family.

Whatever the empirical reality might be, violence against women remains one of the most widely shared concerns expressed in law and order discourse in Papua New Guinea today

## 2. Violent Group Crime

This category relates to crimes of violence, against persons or property, committed by groups of two or more people. It would include, for example, the criminal behaviour involved in armed robberies and gang crime. Concern here relates to the perceived increase in such crimes, the amount of property and/or the degree of violence and level of organisation involved. The organised nature of such behaviour is equated with a high level of efficiency and a correspondingly low level of detection.

Gang crime is understood as increasing and becoming more sophisticated in the urban context. It is also sometimes presented as a parody of legitimate business operating within disciplined and hierarchical structures with an ability to diversify criminal activities as the 'criminal market' changes. Concern is also expressed about the consequences of links between organised crime and political groupings. Several of these themes are evident in Harris' portrayal of the contemporary rascal gang:

Today, gangs are efficient criminal organisations which operate with little fear of apprehension.... They have strong links with other criminal groups in the country for the distribution and sale of stolen goods; they are heavily involved in the drug trade; and they have close links with some politicians and businessmen who use them for political purposes and to "pay-back" their enemies.<sup>22</sup>

The political dimension of an activity was illustrated by events occurring in February 1988, when it was reported that two Port Moresby gangs had threatened to burn down the National Parliament building and had also threatened the lives of Prime Minister Wingti and his Defence Minister, Mr. James Pokasui.<sup>23</sup> The threats were taken seriously enough to justify an immediate police investigation. Similar concerns were recently aroused when the judge presiding over the Forests Inquiry was brutally attacked outside his Port Moresby home on 10 September 1988, although the police were quick to deny any political motivation on the part of the youths subsequently arrested, describing it as a 'normal rascal activity'.<sup>24</sup>

Concern has also been expressed about an alleged rise in armed robbery. The occasional bank robbery and, more frequent, armed hold-ups of coffee buyers, wage deliveries, tourists and ordinary members of the travelling public, particularly in the Highlands provinces, usually attract media publicity. Concern is expressed primarily in terms of the use of firearms (often homemade) and the disruption such activities have upon commercial enterprise in the areas concerned.

## 3. Tribal Fighting

22. B.M. Harris, 'The Rise of Rascalism - Action and Reaction in the Evolution of Rascal Gangs', Institute of Applied Social and Economic Research, 1988, p.1.

23. *Post Courier*, PNG, 15 Feb. 1988, p.1.

24. *Post Courier*, PNG, 21 Sep. 1988, p.2.

Tribal fighting or intergroup violence was common to most Papua New Guinea societies prior to the beginnings of colonisation in the late 19th century. Fighting was one of a range of dispute-settlement options available in the event of conflict between different groups. The practice was successfully suppressed in the coastal and island areas as a result of the pacification policies pursued by the early colonial authorities. Its incidence today is largely confined to the five Highlands provinces in particular Enga, Western Highlands and Chimbu.

Although tribal fighting is another kind of group crime it is generally understood as having its own special, essentially cultural, characteristics. It is also primarily a rural, as opposed to an urban phenomenon. As a category of crime it provides a good illustration of the difference in perceptions about disputes and dispute settlement that can arise between the state and significant sections of the population in the situation of legal pluralism that characterises Papua New Guinea.

Whereas for the state it is the tribal fighting that constitutes the problem to be resolved, for the participants the fight is itself part of the traditional mechanisms for resolving a dispute over land, pigs, an earlier killing etc. Consequently attempts by the state to suppress fighting by force have not noticeably met with much success if the underlying causes of the dispute remain unresolved. Tribal fighting is thus best understood, as in the case of all forms of warfare, as symptomatic of underlying conflicts. As the INA/IASER Report puts it:

Tribal fighting is a response to disorder, to a dispute or a breach of a norm not a problem in itself. For participants the law and order problem is the offence or dispute, not the fighting.<sup>25</sup>

Tribal fighting was investigated by the Paney Committee which reported in 1973.<sup>26</sup> The report led to the enactment of the *Inter-Group Fighting Act 1977* which allows for the declaration of 'fight zones' and created a number of new offences, associated with tribal fighting, that could only be committed in declared 'fight zones'. Although the immediate impact of the *Act* was to reduce the incidence of tribal fights, this effect did not last and tribal fighting is still perceived as a significant law and order problem in parts of the Highlands. A revival of tribal fighting and other forms of violent crime led to the declaration of a state of emergency in all five Highlands Provinces in 1979. The state of emergency was to last for two months but was later extended in Enga for another four, until February 8, 1980.<sup>27</sup>

There have been a number of special police operations mounted in the Highlands Provinces, usually involving the mobile squad. These do not appear to have had any lasting impact on the occurrence of fighting and, as mentioned above, regularly generate accusations of police brutality. On September 10, 1988, a combined police/defence force operation, codenamed 'Lo-Met 88' (Law and Order, Murders, Escapees and Tribal Fights), was launched in Madang, Morobe and the five Highlands Provinces, aimed at capturing escapees and suppressing criminal activities, including tribal fighting.

Current concerns about tribal fighting include the increasing resort to modern weaponry and the consequent rise in death and serious injuries, the economic damage sustained to

25. See above note 1, p.92.

26 Report of the Committee Investigating Tribal Fighting in the Highlands (Paney Report), Papua New Guinea Government Printer, 1973

27 R.J. Gordon, and M.J. Meggit, *Law and Order in the New Guinea Highlands*, (Hanover: University Press of New England 1985) 27-37

property, disruption to commercial and agricultural activities, the unfavourable international image arising, and, most significantly, the challenge posed by such behaviour to the authority of the state

#### 4. Crimes Against Public Order

A fourth category of crime which has recently generated considerable media and official concern is public order crime

Rioting by youths in Lae in August 1988 occasioned substantial damage to property and resulted in the temporary closure of the town's commercial centre. In September 1988 striking workers at the giant Ok Tedi mine at Tabubil in Western Province inflicted considerable damage to property and were responded to by a joint police/defence force operation. In November/December 1988 violence erupted at the Bougainville copper mine at Panguna in the North Solomons Province. In this latter instance sophisticated acts of sabotage by dissatisfied landowners disrupted mining operations, allegedly causing more than K850,000 damage to property and K6.5 million in lost production.<sup>28</sup> As mentioned above, youths took to the streets of Boroko, Port Moresby in December 1988 causing minor damage to property, allegedly in response to media claims of involvement of prominent public figures in locally produced pornography.<sup>29</sup>

Clearly the reasons lying behind each of these disturbances are distinct, concerning, amongst other things: unemployment among urban youth; industrial conflict and multinationals; mineral extraction and land policy; the integrity of the national elite. They do, however, high-light a number of significant problems currently facing the state. One of these is the growing body of alienated youth in the urban centres. The spectre of unemployed youth increasingly resorting to crime and social disorder is a potent image in contemporary law and order discourse in Papua New Guinea.

The sheer demographic size of the 'youth' constituency accentuates this concern. The last national census, conducted in 1980, indicated that 53% of the population was under the age of nineteen, and that 19% was aged between fifteen and twenty five years, which is the age group generally considered to be most involved in criminal activities. Both the Morgan and the INA/IASER Reports emphasise this demographic trend and link it to an education system that raises expectations as to employment and lifestyle that cannot be satisfied by the economy. The potential politicising effects upon alienated youth of this state of affairs provides a common thread running through all the relevant Reports - notably, the IASER Report on Rascal Gangs - and was recently expressed by veteran politician, Sir John Guise, in the context of the Lae disturbances, as follows:

The disturbances at Lae may only be the tip of an iceberg of what may happen should we continue to be complacent.<sup>30</sup>

Another more practical concern here is the ability of the state to contain and quell large scale social disorder. In both the Ok Tedi and Panguna incidents the local police were incapable of containing the disturbances and had to be reinforced with outside police and defence force personnel. In both cases allegations of excessive force were made against the authorities, with one academic commentator describing an early morning raid against striking miners in Tabubil as 'Gestapo-type'<sup>31</sup> The likelihood of escalating disorder in

28 *The Times of PNG*, 8-14 Dec. 1988, p.1

29 *Post Courier*. PNG, 12 Dec. 1988, p.1

30 *The Times of PNG*. 18-24 Aug. 1988, p.10

31 B Brunton 'The Miners Strike at Tabubil' *The Times of PNG*. 20-26 Oct., 1988, p.13.

such circumstances is considerable. Related to this is the need to appease foreign investors whose confidence has been undoubtedly shaken by recent events at the two giant mine sites. The task of reconciling the various interests involved represents a formidable political challenge for the state.

Concern with public order offences is ultimately expressed in political terms. The behaviour in question is attributed to the failure of the state to adequately address the socio-economic grievances of significant portions of the population, for example, unemployed youth, landowners, miners, and the occurrence of social disorder is presented as a foretaste of events that will follow unless remedial action is taken. In respect of the youth constituency this diagnosis coincides with the 'Social protest and Revolution Scenario' envisaged by Harris in his study of 'rascal gangs'.

## 5. 'White Collar' Crime

Whereas the first four categories concern the criminal activities of grassroots people, the final category concerns the behaviour of those in positions of power and influence. In recent years there have been a number of investigations into allegations of corruption on the part of well known public and political figures. These investigations have occasionally led to the laying of criminal charges, have sometimes been successfully challenged in the courts, and have, on occasion, been ignored. Below is a brief account of the main investigations undertaken recently.

The so-called 'Diaries Affair' led to the establishment of an inquiry undertaken by the Ombudsman Commission which reported in 1982 and recommended the prosecution of a number of senior public servants implicated in the events surrounding the purchase of some 15,000 executive diaries from a Singaporean businessman.

The Pelair Inquiry Report<sup>32</sup> was submitted to the then Prime Minister, Paiaf Wingti, on 30 December 1986. The original terms of reference were to look at the circumstances surrounding the sale of the government's executive jet and the purchase of Israeli aircraft for the Defence Force. These terms were later broadened to include the circumstances surrounding the proposed joint air-freight venture between an Australian company, the Wings Australia Pty. Ltd., and Air Niugini. The new terms also covered an alleged drug ring operating between Papua New Guinea and Australia and involving the successor to the bankrupt Wings company, Pelair. Although no findings of malpractice were established, the Commission investigated the involvement with Pelair of former Prime Minister, Michael Somare, and one of his ministers, Karl Stack.

A Committee of Inquiry was also established to investigate whether there had been any breaches of the *Leadership Code* involved in the purchase of shares following a float by the Placer Pacific Pty. in 1986. A number of well known public figures, from all three branches of government, including the then Minister of Finance, Sir Julius Chan, made substantial profits as a result of their share acquisitions. Sir Julius Chan successfully challenged the findings of the Committee through judicial review and no further proceedings, either under the criminal law or the *Leadership Code* have ensued. The findings of the inquiry have never been officially released.

In May 1987, a Commission of Inquiry into aspects of the Forests Industry, presided over by Supreme Court judge, Mr. Justice Barnett, began its hearings. The inquiry was established in the light of persistent rumours of ministerial misconduct, official corruption and transfer pricing in the forests industry. Although the Inquiry has yet to publish its final report, it has raised serious allegations against a number of public

32 Reports of the Commission of Inquiry into Pelair and Other matters Waigani, 1986

figures, including former Minister for Forests and current Minister for State and Parliamentary leader of the People's Action Party, Ted Diro.<sup>33</sup>

The setting up of numerous inquiries has done little to alleviate the widely held concern that corruption and malpractice remain widespread amongst the higher echelons of Papua New Guinea society. Popular scepticism about the integrity of leadership and a visibly widening gap between an affluent elite and the majority of the population presents yet another significant problem of legitimacy for the state.

On October 12, 1988, the Namaliu Government announced the setting up of an anti-corruption squad. The squad will conduct independent investigations into all forms of corruption and bribery, and complaints to the police. It is also to consult, liaise and work, closely with the Ombudsman Commission, the Auditor-General's Office, the Public Prosecutor and other relevant organisations and agencies. Finally, the new squad will report to the Police Commissioner through the office of the Assistant Commissioner for crimes on a monthly basis - all cases reported, investigated and persons charged.<sup>34</sup> How effective the new squad will be, remains to be seen.

### **SIMILARITIES AND DIFFERENCES BETWEEN LAW AND ORDER DEBATE IN PAPUA NEW GUINEA AND ELSEWHERE**

Common to most of the Reports and commentaries are a number of themes characteristic of current discourse. Whereas some of these are exclusive to law and order debated in Papua New Guinea, others are characteristic of discourse in the metropolitan countries. We shall now briefly examine some of the main themes, identifying similarities and differences between law and order discourse in Papua New Guinea and the metropolitan context.

Crime in both contexts is almost invariably presented in developmental terms. In the United Kingdom, for example, crime is discussed against the wider background of economic decline, de-industrialisation and that country's diminished stature as a world power.<sup>35</sup> In Papua New Guinea it is related to questions of economic growth and, currently, questions about the priority of economic growth over redistribution. Paradoxically, while the Morgan Report sees crime as a consequence of development, the INA/IASER Report sees it as an obstacle in the way of development. Other voices in the law and order debate also rely on the developmental context. Thus, for the cultural nationalist, crime is symptomatic of the erosion of traditional values and their replacement with Western ones. For the Christian, crime is symptomatic of the decline of Christian values and the ascendancy of secular ones, and so on. The concept of 'development' is used loosely to incorporate all forms of social, cultural and economic change. From this point of view, law and order discourse becomes a way of making sense, however abstractly, of the forces of change at work in Papua New Guinea today.

Again, in both contexts young males, whether as 'rascals', 'muggers' or whatever, are identified as the principal criminal actors. Positivist criminology, which originally isolated 'juvenile delinquency' as a distinct category of crime, has developed an extensive range of causal explanations, including: subculture pressure; anomie; urbanisation; unrealistic expectations as a consequence of inappropriate education;

33 The Commission of Inquiry into Aspects of the Forests Industry: Interim Report No.2, 1988, also *Times of PNG*, 21-27 July; 28 July-3 Aug. and 4-10 Aug. 1988.

34 *Post Courier*, PNG, 13 Oct. 1988, p.1

35 S. Hall, C. Crichton, T. Jefferson, J. Clarke, and B. Roberts, *Policing the Crisis - Mugging, the State and Law and Order* (London: MacMillan, 1978).

individual maladjustment; and so on. The influence of such explanations is evident in number of the post-independence Reports in Papua New Guinea.<sup>36</sup> Thus, for example the INA/IASER Report emphasises the role of education in raising employment expectations unrealistically and thereby discouraging educated youth from taking jobs they consider beneath them.<sup>37</sup> Likewise Harris's Report locates the development of early gangs in Port Moresby in a familiar environment of urban migration and culture clash.<sup>38</sup> The causal analyses of positivist criminology continue to prevail in both contexts despite the forceful critique of the so-called New Criminology<sup>39</sup> and despite and more particularly a critique of the role of positivist criminology in the neo-colonial context.<sup>40</sup>

The crime-control remedies proposed following such diagnoses are similar in both metropolitan and non-metropolitan contexts. 'Hard' remedies include, 'the short, sharp shock', the use of corporal punishment in schools and flogging for juvenile offenders. 'Soft' remedies concentrate more upon incorporating youth and include national service, vocational education and training, non-custodial sentences, and employment generation. In both contexts the concentration of resources on youth does not appear to have significantly reduced juvenile crime and, moreover, diverts attention away from the less visible and structural aspects of crime: for example, the extent of white collar and corporate crime, 'domestic violence', and police crime.

In both contexts unemployment, whether presented as structural or voluntary, is related causally to crime, although the emphasis differs. Thus, in Papua New Guinea the Morgan Report identifies structural unemployment as a major cause of crime<sup>41</sup> whilst the INA/IASER Report stresses the contribution of voluntary unemployment caused by inappropriate education.<sup>42</sup> The metropolitan countries, on the other hand, place emphasis upon making education more 'relevant' in the context of de-industrialisation or post-industrialisation and have developed a variety of employment and training programmes designed to incorporate unemployed youth.

Again, in both contexts, great emphasis is placed upon the destructive influence of foreign values and their impact on crime and other forms of anti-social behaviour. The significance of the complex relation between crime, race and immigration is most evident in contemporary understandings of crime in Australia and in the UK. In Papua New Guinea the influence of western values and institutions in combination with the

36. S. Dinnen 'Perspectives on Law and Order' in L. Morauta ed., *Law and Order in a Changing Society* (Department of Political and Social Change, Research School of Pacific Studies, Australian National University, Canberra, 1986).

37. See above note 1, pp.83-88.

38. See above note 22, pp.5-10.

39. I. Taylor, P. Walton, and J. Young, *The New Criminology - For a Social Theory of Deviance* (Routledge and Kegan Paul, 1973); also eds., *Critical Criminology* (Routledge and Kegan Paul, 1975).

40. G.H. Boehringer, 'Imperialism, Development and Under-development and Criminology', (1976)4(2) *Melanesian Law Journal*, 211-241; also 'Criminology in the Third World: Crime Control or Class Control?' in A. Mamak, and G. McCall eds., *Paradise Postponed. Essays on Research and Development in the South Pacific* (Rushcutters Bay: Pergamon Press, 1978) 33-48.

41. See above note 6, p.6.

42. See above note 1, pp.83-88

breakdown of traditional social controls are considered important in creating the conditions for crime. In a recently published handbook on law and order policy, the Minister for Justice, Bernard Narokobi remarked that:

As people move away from traditional societies, they become uncommitted to the new urban way of life. They have no part to play in decisions affecting society. The majority are alienated, disempowered and whatever they say or do makes no impact on who gets what prime piece of land, or what business enterprise; or what job in government or industry.<sup>43</sup>

In the same document, the Minister, whilst discussing 'the collapse of the old society', comments on the low quality of the majority of foreigners and naturalised citizens living in Papua New Guinea, alleging that '(t)heir relationship with Papua New Guineans is racist, motivated by arrogance, superiority and distrust'.<sup>44</sup>

In Papua New Guinea and the metropole 'law and order' has become a major political issue, capable of playing a significant role in national elections. The new government of Prime Minister Rabbie Namaliu, as mentioned above, has prioritised spending on law and order as a major element of its domestic policies. A paradox in both metropolitan and non-metropolitan contexts is that, whilst seeking to reduce public expenditure, increasing amounts of money are being allocated to youth programmes and the maintenance of law in order. As Hogg recently remarked in relation to Australia:

At present, with cutbacks and demands for efficiency in the public sector, no other area of state administration enjoys the same lack of scrutiny and the same disregard for the tax-payers dollar.<sup>45</sup>

The relationship between state and community is an underlying theme in law and order debate in both situations. There is an emphasis upon devolving a greater role in crime-control to community-level structures, away from formal state mechanisms. Cohen refers to this trend as the 'destructuring impulse'.<sup>46</sup> Emphasis is placed upon community policing, neighbourhood watch programmes, non-custodial punishment and, generally, community involvement projects. A powerful strand of 'community revivalism' runs through the discourse that seeks to restore community values to the beleaguered urban dweller.

This 'destructuring' approach is exemplified in the INA/IASER Report's 'non-state' option. The Report recommended a fundamental shift away from the formal state agencies of law and order - the police, the courts and the correctional services - to a greater reliance upon existing community-based informal structures such as local government officials, village moots, churches, voluntary organisations and, notably, the village courts. These informal agencies would be used to supplement, not as an alternative for, formal state agencies. It is worth noting here, as Cohen points out that the inevitable result of increasing community control whilst maintaining the same level of formal state controls, is that the overall system of social control increases rather than

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43 B.M. Narokobi, *Policy on Law and Order*, (Papua New Guinea Government Printer, 1988), 38-39.

44 *Id.*, 39.

45 R. Hogg, 'Law and Order Policy - A New Direction', (1988)65(5) *Current Affairs Bulletin*, 14.

46 S. Cohen, *Visions of Social Control* (Polity Press, 1985), 31.

decreases.<sup>47</sup> After reviewing research from the USA, Britain and Canada, Cohen concludes:

The obvious inference then, strongly supported by correlational evidence, is that the use of community alternatives actually causes an overall expansion which might not otherwise have occurred.<sup>48</sup>

Underlying the recommendations of the INA/IASER Report is a concern to diminish the perceived gap between the state and the people which is seen as contributing to lawlessness. This is a similar concern to that expressed in the Morgan Report, although it is expressed primarily in terms of a dichotomy between state and community.

Law and order in Papua New Guinea depends therefore on the government regaining its position and prestige with ordinary people and forging links that will build confidence and community.<sup>49</sup>

In Papua New Guinea 'community revivalism' is also discussed in terms of the breakdown of traditional social values, Christian values and the Melanesian family - the essence of Justice Minister Narokobi's concept of 'integral human development'.<sup>50</sup> In the metropole the discussion concerns the breakdown of the traditional, usually working class, community or neighbourhood and, as always, the family.

Whereas the above discussion identifies the main similarities between law and order debate in Papua New Guinea and elsewhere, below we identify some of the main distinguishing features characteristic of the Papua New Guinea context. One of these is Papua New Guinea's colonial history and its current state of underdevelopment. The Morgan Report located crime:

In a mixture of the country's chronic under-development, the nature of its history, the colonial legacy, and in a host of pressures resulting from the modernisation process.<sup>51</sup>

The colonial background and neo-colonial nature of Papua New Guinea's current economic position are factors which distinguish it from most metropolitan countries. It is paradoxical that whilst blame for crime is placed on 'foreign' and 'alien' values and influence, successive governments have done their utmost to appease the anxieties, real or imagined, of foreign investors.

Another factor which, although by no means unique to this country, underlies much of the law and order debate in Papua New Guinea is a scepticism about the ability of many existing state institutions to perform effectively. The poor performance of the criminal justice system is attributed in populist fashion by the INA/IASER Report to the formalism of state institutions and their remoteness from grassroots people.

From a different perspective cultural nationalists have opposed the 'foreign' and 'colonial' institutions inherited from the colonial past and called for reconstruction on the

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47. Cohen, *op.cit.* 48-49.

48. Cohen, *op.cit.* 49.

49. See above note 1, p.107

50. Narokobi, *op.cit.* 3.

51. See above note 6, p.4

basis of Melanesian values. This latter approach is illustrated in the recommendations of the Constitutional Planning Committee which was established to devise an autochthonous Constitution for Papua New Guinea. The Final Report of the committee expressed in metaphorical language the decision to break from the colonial past and to reconstruct society on the basis of traditional values:

We must rebuild our society, not on the scattered good soil the tidal wave of colonisation has deposited, but on the solid foundations of our ancestral land.<sup>52</sup>

Similar sentiments were expressed in respect of criminal law reform in the Law Reform Commission's 1977 Report on the Role of Customary Law in the Legal System.<sup>53</sup>

For the state, the issue is understood primarily in economic terms as undermining the policy of attracting foreign investment. Reliance on foreign investment and aid has been central to the economic policies of all post-independence governments. As such, successive governments have gone to great lengths to avoid offending foreign investors, actual and potential, and the private sector in particular. From this point of view an orderly environment is a prerequisite to economic development.

Lawlessness is also understood in political terms as a challenge to state legitimacy and its ability to maintain order. The dilemma for successive governments has been whether to concentrate on long-term policy designed to alleviate the assumed pre-conditions for crime or whether to engage in short-term, more visible, measures directed at those assumed to be involved in criminal activities. Whereas the Wingti Government preferred the first approach, the Namaliu Government appears to favour the second.

Another factor distinguishing law and order discourse in Papua New Guinea from most metropolitan contexts is the situation of legal pluralism prevailing. The failure of the state criminal justice system to effectively engage with traditional forms of dispute settlement procedures has been addressed in different ways by both the INA/IASER Report and the Law Reform Commission's Report: 'The Role of Customary Law in the Legal System', 1977. The state system has only had a partial impact upon Papua New Guineans for whom customary dispute settlement procedures, as they have been developed, continue to provide an important form of dealing with grievances.

The real extent to which traditional procedures prevail over the state system is difficult to evaluate. The INA/IASER Report expressed the view that the state system prevails in coastal areas, although even there the belief in and practice of sorcery remains widespread. In many parts of the Highlands, on the other hand, traditional forms of dispute settlement, particularly tribal fighting, continue to be widely resorted to, leading the latter Report to conclude that 'there is minimal influence of the state in rural order'.<sup>54</sup> The state in Papua New Guinea is weak and fragmented and this is a clear difference from the strong and authoritarian state normally associated with law and order policies in the metropolitan context.<sup>55</sup>

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52. Constitutional Planning Committee (C.P.C.), 1974: I,2/13.

53. LRC, *The Role of Customary Law in the Legal System*, (Waigani: Law Reform Commission of Papua New Guinea, 1977).

54. See above note 1, p.235.

55. See above note 35.

In addition, much of the discourse in Papua New Guinea is conducted with reference to religious values. Organised religion, specifically Christianity, wields considerable influence throughout the country and the churches and their advocates have long been active in law and order discourse. Justice Minister Narokobi's handbook on law and order policy is framed in terms of Christian doctrine:

Order is developed and preserved by adherence to customs, moral values and written laws. In a christian country like Papua New Guinea, we say that all moral laws come from God. Accordingly, when we break these laws, we disobey God.<sup>56</sup>

The churches also provide institutional care for juvenile offenders, notably at Boystown in Wewak, and pastoral care for probationers and discharged prisoners. In recent debates over rehabilitation, the churches have consistently supported the development of rehabilitative programmes and alternatives to imprisonment. Their opposition to capital punishment has been instrumental in preventing its re-introduction. The role of organised religion is thus much more significant in Papua New Guinea than in the increasingly secular metropolitan context.

A final issue is that of gender. In Papua New Guinea crime is seen as almost exclusively a male domain, with females appearing only as victims. Concern is expressed, as we have seen, about the extent of violence against females. It's not clear, however, how specific this is to Papua New Guinea because of universal problems in the reporting of such offences. Certainly, the level of violence against women is generally felt to be extremely high and it is also more visible than in most metropolitan contexts.

## CONCLUSION

It is difficult to predict future developments in an area as broad and ill-defined as 'law and order'. Harris concluded his study of Port Moresby gangs by suggesting that the most likely future direction is for the gangs to become increasingly co-opted into the political arena:

In practice this means that the political powers have to allow certain illegal activities on the part of the rascals to go unpunished, in return for which the rascals will guarantee political success for the party.<sup>57</sup>

The role of criminal gangs in the political systems of many other developing countries, notably Jamaica, makes this a sombre and depressing outlook.

There is no evidence that a tougher stance by government in terms of police activity or penal policy is likely to meet with much success. The special operations mounted by police and, increasingly, the defence force appear to generate more ill will and allegations of brutality than feelings of security and order. Resort to repressive measures, however, remains a popular and politically expedient way to respond to pressure, both internal and external. The temptation to opt for the short-term benefits of such measures, whilst ignoring the longer-term damage to state/community relations, remains high. Moreover, a peripheral economy still largely dependent on overseas aid, particularly Australian aid, which is increasingly targeted at the law and order area, reduces the scope for independent initiative.

The Namaliu Government's serious approach to law and order policy is welcome. It should be noted, however, that money alone will not overcome the diverse problems

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56 Narokobi, *op.cit* 1

57 See above note 22, p.49

underlying current concerns. It is important to recognise the significant limitation of criminal justice agencies in crime control. Our examination of law and order debate in Papua New Guinea has shown that there are significant similarities with law and order debate elsewhere. The temptation to opt for policies of crime control developed elsewhere and to adopt the rhetoric of the latest penological trends is real. There is little evidence, however, that such policies have had much significant impact on crime in their countries of origin.

Whatever the real rate of crime, anxiety about crime is likely to continue because, as we have shown, it reflects a variety of other contemporary concerns about state and society in Papua New Guinea.