

# Criminal justice reform in Papua New Guinea

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Lawlessness and violence in many parts of Papua New Guinea in the form of *raskolism*, tribal fighting and threatening compensation demands present a growing challenge to the authority of the state. State controls have been progressively overwhelmed by a combination of escalating demands and diminishing resources. In 1984 the Clifford Report warned that the Papua New Guinea criminal justice system was ‘in serious danger of losing the battle to manage and process, let alone constrain, the existing rates of crime’ (Clifford et al. 1984:136). Many observers claim that the battle has since been lost. Traditions of police violence and frustrations with the perceived limitations of the western model of criminal justice have contributed to growth in retributive and

militaristic responses to crime and social disorder. Distinctions between state and non-state violence blur when violence becomes an acceptable, and anticipated, response to conflict. This reinforcing cycle of violence—fed by both criminals and the state in parts of Papua New Guinea—has become difficult to break.

### Criminal justice system

As with many other former colonies, Papua New Guinea inherited the key elements of the western criminal justice model upon Independence in 1975. Among these were

- central state control of criminal justice
- the idea of crime and a universal body of codified criminal law

- the notion that crimes are committed against the state (rather than against victims or supernatural forces)
- the establishment of a professional police with a monopoly over the use of legitimate force in domestic conflict
- a move away from compensation as the dominant way of dealing with wrongdoing to imprisonment of individual offenders
- a narrow focus on individual responsibility during criminal process and denial of the broader social context of crime
- an offender-centred process in which crime victims are largely ignored
- the idea that fundamental human rights should be protected dur-

ing criminal process (due process).

### Policing change

The Royal Papua New Guinea Constabulary is the most visible criminal justice agency and the one most directly involved in routine responses to crime and disorder. Its institutional shortcomings preceded Independence in 1975. In that year estimated police coverage extended to only 10 per cent of the total land area in Papua New Guinea and 40 per cent of the population (Dorney 1990:296). Reflecting, in part, their origins as a paramilitary colonial force, performance in conventional policing tasks such as investigation, apprehension and prosecution, has been consistently poor. A growing population, limited economic opportunities and shortage of resources associated with fiscal crises, have all contributed to the challenges of police work in Papua New Guinea.

At Independence the national population was slightly more than 2 million, the police force had approximately 4,100 personnel and crime rates were generally low. This translated into a police/population ratio of 1:476. By 1996, however, the population had doubled to approximately 4 million, police numbers remained at 5,000 uniformed staff and approximately 300 civilian support staff, while lawlessness had become a major concern in urban, and some rural areas. These later figures provide a police/population ratio of 1:800. New South Wales, with a similar population to Papua New Guinea, has approximately 13,000 police.

According to former Police Commis-

sioner Bob Nenta not all the 5,000 uniformed police were available for general duties in practice (Nenta 1996). On a three shift basis, there would be approximately 1,600 uniformed personnel on duty at any one time to cover the entire nation. Former Commissioner Nenta has claimed, however, that in practice there are only ever about 2,100

**In 1996, with a population of 4 million, Papua New Guinea had only 5,000 police. New South Wales, with a comparable population, had 13,000 police.**

uniformed personnel available for police work on a three shift basis. This works out at about 700 police officers per shift for the whole of Papua New Guinea. Another remarkable figure relates to the number of personnel per police station. Mr Nenta states that the average number of police at each of Papua New Guinea's 362 police stations is approximately 5.8. Divided into three shifts, this works out at 1.9 personnel per station at any one time! These shortages have been exacerbated in recent years as a result of the deployment of police mobile squads from mainland Papua New Guinea to security duties on Bougainville.

The widespread availability of firearms in Papua New Guinea and their increasingly brazen use by criminal groups has added significantly to the challenges facing police. Shoot-outs between so-called *raskols* and police have become commonplace in many urban centres, where the latter are often outgunned in

practice. Many firearms are believed to be coming into the country via the drugs-for-guns trade. A related concern is the growing quantity of police and defence force issued weapons and ammunition ending up in criminal hands.

### Retributive practice

The shortcomings of criminal justice in general, and policing in particular, have led to the supplementing of 'normal' criminal justice processes with 'extraordinary' measures such as curfews (prior to 1987 curfews could only be imposed under a state of emergency) and special policing operations. These have been aimed at restoring order in designated areas through a combination of restrictions on movement, police raids and orchestrated displays of militaristic strength. Police personnel are often joined by defence force soldiers and Corrective Institutions Service employees. As well as being regularly used in urban centres, curfews and special policing operations have also been resorted to in rural areas. Non-government organisations have complained of the 'militarisation of society' in this context (*Post-Courier* 7 August 1992).

In practice, retributive policing generates a destructive, reinforcing momentum in police/community interactions whereby lack of local cooperation is cited by police as a reason for using retributive force which, in turn, results in further local antagonism towards police and so on. In rural areas this can lead to the police being viewed as a hostile army of occupation. Retributive justice can also strengthen criminal organisation and commitment (see Harris 1988). Curfews and special operations may

also serve to displace hardened criminals from high crime areas to other parts unaffected by such measures. At a macro level, retributive justice can be viewed as contributing to crime through its aggravation of the very marginalisation underlying the generation of *raskolism* in the first place.

The monetary cost of large-scale militarised operations, as well as the damages awarded victims of police raids in subsequent civil actions, contributes to the fiscal crisis of the Papua New Guinea state, further weakening its capacity for service provision (see Filer 1997).

The ongoing conflict on Bougainville has also reinforced the militarisation of state responses. Police mobile squads are returning from service on Bougainville and applying techniques evolved in the context of civil war to mainland policing. Special equipment issued on Bougainville, including black uniforms and face camouflage, continues to be used by some of these units upon their redeployment (Standish 1994:80). The working culture of the mobile squads, particularly in the Highlands, revolves around an unbridled machismo and preference for ‘Rambo-like’ solutions. Intimidation and violence (including a high level of violence against women) provide the most frequent response to problems of order in this situation. The participation of all three disciplinary forces—the defence force, police and the Correctional Institutions Services—in joint operations on Bougainville and special operations on the mainland, contributes to the strengthening of this culture across

agency lines. Militaristic strategies have also attracted strong political support from leaders who, despite evidence to the contrary, view them as the best prospect for countering growing problems of order.

### **From retributive to restorative justice**

Over the past decade there have been numerous reports calling for criminal justice reform in Papua New Guinea. These have been based on the failure of existing strategies and have usually advocated a more community-oriented approach, as well as the incorporation of informal local structures.<sup>1</sup>

The inadequacies of state-provided criminal justice provides the basis for the substantial amount of Australian aid directed at Papua New Guinea’s law and order sector, mostly aimed at improving the administrative, management, operational and technical capacities of the constabulary.<sup>2</sup> Australian aid to the law and order sector, however, has now moved some way beyond an exclusive focus on state institutions. For example, AusAID has recently initiated a Community Law and Order Initiatives Survey to identify ways of supporting the work of community-based and non-government organisations in reducing law and order problems and in developing services for victims and perpetrators.

For successive Papua New Guinea governments, however, as well as for the police themselves, practical responses to lawlessness have remained the familiar western ones. In essence, these entail calls for ‘more of the same’—more police, increased

police powers, more prisons, heavier penalties and so on. While the crisis of criminal justice is clearly a global one, policymakers elsewhere have generally been more open than their Papua New Guinea counterparts to the findings of criminological research exploring alternative strategies for the management of crime. Ironically, many of the restorative justice initiatives being developed internationally expressly draw on traditions of conflict management attributed to small-scale indigenous societies (Maoris in New Zealand; native Americans in North America).

A variety of labels are found in the international literature to describe what is most frequently referred to as restorative justice.<sup>3</sup> The concept focuses on the need to restore individuals who have been injured or otherwise suffered loss as a result of crime. Other formulations extend to the need to restore the perpetrators of crime whose offending is viewed as symptomatic of personal or social problems, usually treated as peripheral under the western criminal justice model. At an institutional level, restorative justice involves the development of a more victim-centred process, as well as one that actively seeks to reintegrate offenders into ‘a wider web of community ties and support’ (Braithwaite and Mugford 1994:139).

A distinguishing feature of restorative justice is its espousal of deliberative democracy as the appropriate process for resolving conflict. Victim and offender are encouraged to participate actively in a discursive process in which the wrongdoing, its consequences and the prevention of further

offences are fully and openly explored.

### Exiting crime

Although in practice restorative initiatives rarely achieve their ideals, it remains the case that the most promising strategies for dealing with *raskolism* in Papua New Guinea have been restorative in character, notably criminal surrenders and gang retreats.

Mass surrenders of self-professed criminals are negotiated through third parties, often religious organisations. Large group surrenders are ceremonial occasions attended by government officials, community leaders, local dignitaries and clergy. Weapons and other implements of crime are handed over, criminals commit themselves to reformation and non-criminal participants accept the surrender and commitment to reconciliation. Gang retreats are large meetings where solutions to gang activity are negotiated. In two major retreats, government has agreed to significant material concessions in return for gang members' commitments to exit crime.

While it is impossible to quantify, there are grounds for believing that these informal institutions have diverted a significant number of youths from crime, albeit temporarily. Informal initiatives have drawn upon institutions of civil society—notably the churches—to mediate between criminal groups and the state. Dialogue, negotiation and reconciliation have been integral to the processes followed. They have sometimes involved offenders publicly acknowledging their wrongdoing, expressing contrition and asking for forgiveness. Negotiations have also sought to

address the marginalisations underlying *raskolism* and link the exit from crime to exit from marginalisation.

This has most often involved linkages to economic opportunities—small-scale projects, employment, micro-credit facilities. Perhaps their most striking feature has been the high level of deliberative democracy entailed. Outcomes have usually been the product of protracted discussion and negotiation. These incipient institutions of restorative justice are distinctively Melanesian and have generally been initiated beyond the state, partly in response to the failings of state justice itself.

There are a number of important limitations affecting these incipient institutions. Not least is the problem of moral hazard, relating to the risk that individuals commit crime in order to access the benefits of particular reform strategies. More significant is their failure to address the grievances of individual victims. Another problem lies in the limited follow-up, which invariably undermines their long-term sustainability. While it is important to recognise these and other difficulties, it is equally important to recognise their potential and to consider ways in which they might be developed into sustainable responses to crime. More attention also needs to be given to the regulation of surrender agreements.

Both surrenders and retreats provide a glimpse of how the strengths of civil society in Papua New Guinea can be nurtured and drawn upon through the provision of socially attuned resolutions to crime. In the process they also hold out a prospect of exit from the marginalisations underlying *raskolism*.

Unlike current criminal justice practice, these informal institutions are potentially restorative processes that may have the capacity for breaking the vicious cycle of retributive violence. The mass surrender, in particular, falls squarely within the reintegrative tradition that explicitly 'shames the sin and not the sinner'. Surrenders can also empower individuals and groups to utilise their considerable entrepreneurial talents and energies in socially less harmful ways. Urgent attention is needed on how to institutionalise major concerns with the level of criminal violence against women in this context. One possibility might be to link these two incipient institutions of restorative justice. Part of a surrender agreement could thus be a retreat, upon completion of the agreement, in which women of the relevant communities would assess how well the agreement had been honoured from their perspective.

The surrender provides the gift of amnesty or leniency and, possibly, material resources in the form of jobs and projects to the surrendering group. As such, the surrender provides a point of entry into legitimate economies (gift and commodity) for marginal people. In this way it addresses one of the major sources of marginalisation most frequently voiced by *raskols* themselves.

Surrenders and retreats are distinctively Papua New Guinean modalities of restorative justice. They have sprung up in the Papua New Guinea environment, against the background of the country's institutional failures and its critical material needs. They also show the possibility of a local response to these needs. In many cases, at least in

the short term, they have helped marginal people. In practice, non-state responses will continue to evolve irrespective of what is happening at the state level. There is no guarantee, however, that such responses might not add to existing marginalisations and gender inequities.

Existing state responses to crime and violence in Papua New Guinea are failing in terms of deterrence and control, are consuming large amounts of scarce resources, and are often leading to counter-productive results. The challenge is to develop a system of socially appropriate restorative responses that avoids these disintegrative outcomes. Surrender and

retreat provide some clues in that direction.

### Notes

An expanded version of this paper is published in Peter Larmour (ed.), 1998. *Governance and Reform in the South Pacific*, Pacific Policy Paper 23, National Centre for Development Studies, The Australian National University, Canberra.

1. Reforms of this kind were, for example, proposed during the 1991 National Crime Summit (FLOJ 1991) and the 1992 Crime Prevention Week (FLOJ 1992a). Institutional proponents have

included the Foundation for Law, Order and Justice (FLOJ 1992b), the joint Papua New Guinea/Australia Law and Order Sectoral Review (Papua New Guinea/Australia Development Cooperation Programme 1993), the National Law, Order and Justice Council (NLOJC 1993), as well as a number of external Reports. See also, UNDP/ILO, 1993:257–75.

2. The largest single project is the Police Development Project which is now in the second of its two five-year phases.
3. These include: reconciliation (Dignan 1992; Marshall 1985; Umbreit 1985), peacemaking (Pepinsky and Quinney 1991), redress (de Haan 1990), reintegrative shaming (Braithwaite 1989), republican criminal justice (Braithwaite and Pettit 1990).

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