



Research School of Pacific and Asian Studies

# *State* Society and Governance *in* Melanesia

## LAW, ORDER AND STATE IN PAPUA NEW GUINEA

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Law and order issues feature prominently in public debate in Papua New Guinea. Concerns centre around criminal violence and the limited effectiveness of state controls. High levels of interpersonal violence are apparent in the activities of criminal gangs (rascals), the tribal fighting occurring in parts of the Highlands, as well as in everyday gender relations throughout the country. The continuing escalation of disorder in many areas is indicative of the limitations of state authority in Papua New Guinea, most dramatically demonstrated in the bloody and unresolved secessionist conflict on Bougainville (May and Spriggs 1990; Spriggs and Denoon 1992). Burgeoning corruption among elements of the political and administrative élite provides another significant strand to current debate.

Addressing a National Crime Summit in Port Moresby in 1991, Rabbie Namaliu, then Prime Minister, stated that law and order problems were the greatest threat facing Papua New Guinea (*The Australian* 12 February 1991:5). Almost five years later, the incumbent Prime Minister, Sir Julius Chan, declared 1996 to be 'the year of law enforcement', claiming that his government would lead Papua New Guinea out of its 'crime nightmare', reduce fear and violence, and invigorate public and investor

confidence in the country (*Post-Courier* 11 January 1996:1). Despite these bold pronouncements, 1996 ended with the imposition of a nationwide curfew following a series of violent and highly publicised crimes.

Widespread concern with personal security manifests itself in the elaborate security precautions routinely adopted by individuals, households and businesses. National planners, on the other hand, have been preoccupied with the serious economic repercussions of law and order problems, notably their effects on investor confidence, as well as their impact on Papua New Guinea's fledgling tourist industry. In 1993 the Asian Development Bank bluntly warned that

Failure to secure an improvement in peace and order will have a major adverse impact on the performance of the economy over the next few years (*The Saturday Independent*, 9 September 1995:22).

This paper outlines the principal law and order concerns and the policies thus engendered in Papua New Guinea since Independence in 1975. The first section looks at state responses, while the second examines specific areas of concern.

## STATE RESPONSES

The setting for current law and order concerns lies in the profound changes wrought by decolonisation, nation-building and integration into the international economy over the past three decades. While numerous reports and reviews have been written on different aspects of the situation, relatively few recommendations have been implemented in practice. Even where legislative and institutional reforms have taken place, the levels of concern and lawlessness have not noticeably decreased. Beyond the reassuring rhetoric of political leaders, most observers agree that lawlessness continues to increase, along with a corresponding diminution in the capacity of the PNG state to provide effective deterrence or control.

The two most comprehensive reports on law and order since Independence have been the Morgan Report (Department of Provincial Affairs 1983) and the Clifford Report (Clifford *et al.* 1984). There have also been a number of inquiries into particular kinds of crime. The Law Reform Commission, for example, has published a series of studies of domestic violence (LRC 1985a; 1985b; 1986a; 1986b; 1992). A study of the evolution of juvenile gangs in Port Moresby was produced in 1988 (Harris 1988). Criminal justice institutions have been the subject of a separate investigation (Dinnen 1993a). Law and order issues have also generated a growing volume of academic articles, as well as a small number of specialist books including *Crime in Papua New Guinea* (Biles 1976), *Law and Order in the New Guinea Highlands* (Gordon and Meggitt 1985) and *Law and Order in a Changing Society* (Morauta 1986). General books on Papua New Guinea have also devoted increasing coverage to law and order issues (Dorney 1990:286–318, Turner 1990:162–80).

The instruments of state charged with controlling crime—the police, courts and prisons—have been progressively overwhelmed during the post-Independence period through 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). This situation has, if anything, worsened in the intervening period. A telling sign of the limited effectiveness of criminal justice is the massive growth in private policing that has taken place in recent years. Private security organisations now operate throughout the country. These range from large and sophisticated operations affiliated with international companies to small firms providing security services for households, commercial enterprises and government departments. Concerns are often raised about the unregulated character of this major growth industry and the potential for human rights abuses on the part of its more cavalier members. Such concerns were accentuated by the recent murder of four youths at Dogura beach outside Port Moresby, allegedly by security employees carrying out a ‘payback’ on behalf of their employer (*Post-Courier* 28 October 1996:1). For the majority of Papua New Guineans who cannot afford these services, security is provided by kin and ‘wantoks’<sup>1</sup>, utilising a variety of methods, some of which may involve violence.

The inadequacies of state controls also provides the basis for the substantial amount of Australian aid directed at PNG’s law and order sector. The single largest project is the Police Development Project which started in 1987 and is now approaching the end of its second five-year phase. Assistance is aimed at improving the administrative, managerial, operational and technical capacities of the PNG police. A Correctional Services Project is also underway and seeks to strengthen the management and training capacity of the Corrective Institutions Service (CIS), improve prisoners’ rehabilitation and upgrade prison infrastructure.

The limited success of the criminal justice system in general, and policing in particular, has led to the supplementing of ‘normal’ criminal



justice processes with extraordinary measures such as curfews<sup>2</sup> and special policing operations. These have sought to restore order in designated areas through a combination of restrictions on movement, police raids and orchestrated displays of militaristic strength. These public displays belie the actual capacity of PNG's security forces to control crime or disorder on any scale. In practice, police personnel are often joined by defence force soldiers and CIS employees. Such operations have attracted criticism from human rights and non-government organisations (NGOs) who complain about the 'militarisation of society' (*Post-Courier* 7 August 1992:7). In this report, these critics claim that state responses amount to a 'normalisation of extreme emergency measures in the form of the Curfew Act'; the 'increasing use of military and CIS personnel in police 'duties' and the 'increasing use of police mobile or riot squads in ordinary crime situations'.

While reactive responses of this kind usually have an immediate—albeit temporary—impact on lawlessness in the area affected, they also tend to have a number of distinctly counter-productive outcomes. Special policing operations conducted on their own, or under the cover of a curfew, entail raids on villages or settlements in search of suspects or stolen goods. Raids are often followed by allegations of serious human rights abuses, including fatalities, rapes, assaults, destruction of property and livestock, and theft. The accountability of police for fatalities inflicted under these circumstances is diminished by the irregular holding of coronial inquiries, as well as the long delays involved (*Post-Courier* 5 April 1995:1–2). Criticisms have also been levelled at the slow workings and closed character of the internal police complaints system (UNDP/ILO 1993). In 1990 police statistics indicated that investigations had been completed in only thirteen per cent of the total complaints made in that year (RPNGC 1990:41). An increasingly popular course of action is for citizens aggrieved as a result of such actions to initiate civil actions in the courts for substantial damages against the

state. In August 1996, for example, the National Court reportedly awarded K103,800 to Wiliri and Awari people in Pangia, in the Southern Highlands, for personal injuries and damages inflicted during several police raids in early 1990 (*Post-Courier* 14 August 1996:4).

Apart from the monetary cost to the state of large-scale militarised operations, including any damages awarded in subsequent civil actions, retributive policing contributes to high levels of mutual suspicion between police and local communities in many parts of Papua New Guinea. This, in turn, undermines the trust and cooperation necessary for effective investigative police work. These hostile encounters tend to develop their own destructive momentum in practice, whereby lack of local cooperation is used to legitimate the use of aggressive police tactics, which leads to further local antagonism.

Reactive policing can also inadvertently strengthen criminal organisation and commitment. Curfews and special policing operations, for example, often lead to the displacement of hardened criminals from one place to another, thereby contributing to the dispersal of criminal networks. Harris has also observed how Port Moresby gangs became more professional as a result of the restrictions imposed under the 1985 state of emergency (1988:34). Violent encounters with police have become an integral part of the rituals of rascal induction in the urban centres. Imprisonment, too, has been incorporated into the constitution of rascal identity, providing another means for achieving high criminal status.

Legislative responses to law and order problems have had mixed results. Judicial interpretation of the rights provisions in PNG's liberal Constitution has effectively put a brake on some of the more draconian statutes and restrictive provisions passed by Parliament. This was the case, for example, with the minimum penalties legislation (Dinnen 1992) and parts of the Inter-Group Fighting Act<sup>3</sup> and Internal Security Act (Dinnen 1993). Other legal enactments, such as the controversial

reintroduction of capital punishment for wilful murder in 1991, have yet to be given full effect.

### **CURRENT CONCERNS IN THE LAW AND ORDER DEBATE**

According to Police Commissioner Bob Nenta, the major categories of crime in Papua New Guinea today are those committed by rascal gangs, violence against women, tribal fighting, corruption and white collar crime (Nenta 1996).

#### **GANG CRIME**

The rascal gang remains the most potent symbol of PNG's law and order problems. From its relatively benign origins as a mechanism for enhancing self-esteem among young male migrants in Port Moresby in the 1960s (Harris 1988:4-10), rascalism has evolved into the most threatening face of contemporary lawlessness and has gradually spread to other towns, as well as to many rural areas. Groups of predominantly young males engage in criminal activities ranging from shoplifting, bag-snatching, and breaking-and-entering to sophisticated armed robberies, rapes and homicides. The organisation and *modus operandi* of these groups varies enormously between different parts of the country. In rural areas, rascal groups are likely to be ethnically homogenous, speaking the same local language and often coming from the same village. The most common form of criminal activity is likely to be banditry, involving the hold-up of vehicles travelling along the highways (*Post-Courier* 26 July 1995:1-2). The incidence of offences will be episodic and affected by factors such as the need for cash (to pay school fees), the availability of suitable victims (coffee buyers), the presence of experienced criminals in the locality (prison escapees), and the activities of law enforcement agencies.

The most lucrative opportunities for acquisitive crimes are in the towns and other areas of high development, such as around the vicinity of the large-scale mining operations

scattered around the Highlands and Islands regions (*Business Review Weekly* 14 August 1995:26-7). Well-organised gangs target payrolls, banks, business premises and cash-in-transit. Urban groups are likely to be ethnically heterogenous, reflecting the plural composition of the town population. Criminal participation will usually be more regular and group organisation correspondingly more sophisticated. The last available annual police report, published in 1990, confirms the concentration of criminal opportunities in urban areas. A total of 664 armed robberies occurred in the National Capital District (NCD) in 1990—that is, 42.4 per cent of the national total of 1,566 reported robberies (RPNGC 1990:8). The same report stated that 27 per cent of all reported breaking, entering and stealing offences for that year were recorded in the NCD.

The use of modern firearms has greatly added to the menace of rascalism. Weapons include high-powered automatic rifles, as well as assorted home-made guns. There have even been recent reports of rascal groups armed with grenades (*Post-Courier* 22 August 1996:4). While generally carried to intimidate victims, weapons will be used in the case of resistance by victims or pursuit by police. The brazenness of criminal operations has become increasingly pronounced, with robberies being carried out in busy shopping areas in the middle of the day. Shoot-outs between criminals and police are regularly reported (*Post-Courier* 5 November 1996:9). The growing threat of criminal violence has, in turn, encouraged the public to acquire, and occasionally use, firearms for self-defence. In 1995, for example, a foreign businessman, who was among a group of diners at a Port Moresby restaurant, reportedly shot dead four criminals involved in an attempted armed robbery (*The Bulletin* 21 November 1995:27). During curfew operations between November 1996 and January 1997, the police allegedly recovered more than 45 factory-made pistols, shotguns, military and sporting automatic assault weapons and ammunition, as well as military-style



fragmentation grenades (*National* 22 January 1997:3).

There has been much speculation in recent years about the sources of the increasing number of illegal weapons in circulation in Papua New Guinea. A recurring claim is that consignments of marijuana, grown mainly in the Highlands, are being exported to Australia via the Torres Strait in return for firearms and ammunition. While conclusive evidence is hard to find, a joint operation between Australian and Papua New Guinea police in 1994 netted drugs worth an estimated street value of K3 million, along with eleven suspects (10 Australians and 1 Papua New Guinean). According to a confidential national intelligence brief published by the *Post-Courier* newspaper, the drugs-for-guns trade has become big business and fuels PNG's law and order problems (*Post-Courier* 9–11 August 1996). A number of the weapons being used by criminals originate with the security forces themselves. In addition to weapons stolen by outsiders, certain security personnel appear prepared to sell or hire weapons in order to supplement modest wages. In November 1996, Prime Minister Sir Julius Chan ordered an urgent stocktake of defence force weapons amid concerns that such weapons were being used in serious crimes (*Weekend Australian*, 9–10 November 1996).

## **VIOLENCE AGAINST WOMEN**

Violence against women, including domestic violence and gang rape, is a major area of concern in Papua New Guinea. The Law Reform Commission (LRC) has documented the regularity of violence against women within marital and *de facto* relationships in urban and rural areas, as well as among both prosperous and relatively poor households respectively (LRC 1985a, 1985b, 1986a, 1986b, 1992). As with many of their counterparts elsewhere, law enforcement agencies in Papua New Guinea have been reluctant to intervene in what is viewed as 'private' or 'domestic' matters. Serious sexual assaults and incidents of harassment are regularly reported throughout the country.

Women's groups, the churches and other NGOs have been at the forefront in publicising the growing level of violence against women (Zimmer 1990).

Available criminal justice data on this form of crime is generally of poor quality and has to be interpreted with care. Sexual offences are likely to be among the most under-reported of all criminal offences in Papua New Guinea. Factors such as shame, fear of the perpetrators, apprehension about police questioning and a scepticism about the likely effectiveness of police investigations contribute to this under-reporting. Rapes in Papua New Guinea often involve multiple assailants—so-called 'pack rapes'. A premeditated rape may occur as 'payback' for a perceived slight on the part of the victim or those associated with her. Serious sexual assaults also appear to take place, as crimes of opportunity, during the commission of other offences, such as breaking and entering or armed hold-ups. One of most disturbing features about these incidents is evidence of their increasingly sadistic and deliberately humiliating character. It is the degree of violence involved in assaults upon women today, as much as their frequency, that is a cause for such concern. Where violence occurs between women it is usually connected to marital matters. It is not uncommon for women to engage in violence as a result of adultery allegations. Polygamous marriages, still practiced in many parts of Papua New Guinea, provide another source of conflict and violence between women. In recent years there appears to have been a discernible increase in the number of women charged with murdering a co-wife within polygamous relationships.

Despite the existence of Constitutional rights and the proscriptions of the criminal law, many Papua New Guinean women and girls continue to experience high levels of personal insecurity on a daily basis. This insecurity translates into intolerable restrictions on their freedom of movement and expression in everyday life. Under-resourced law enforcement agencies have had success in reducing the level of violence

against women. Police action in urban areas often consists of warning women that they should not visit certain parts of town, be out after dark or wear 'provocative' clothing. Police personnel have themselves been subject to periodic allegations of having committed serious sexual assaults. Reported incidents have involved female suspects in police custody (*Post-Courier* 16 May 1994:2), as well as women assaulted during police raids (*National* 17 October 1994:4). A 1994 survey has also confirmed the extent to which domestic violence is pervasive within police families (*National* 15–19 September 1994:1–2), as it is in the wider community.

The factors underlying current patterns of violence against women in Papua New Guinea are complex. Changing household relations, high levels of societal tolerance of violence, alcohol abuse, the breakdown of traditional restraints, and the persistence of male dominance in all fields, all play a significant role. Many of the mechanisms designed to settle disputes at local levels reinforce gender inequalities in practice. Village courts, for example, often punish women accused of adultery more severely than their male counterparts. Institutions of polygamy and brideprice accentuate a view of women as the property of men. Human rights groups recently campaigned over the case of a young woman in the Western Highlands who had reportedly been offered as part of a compensation payment arising from the death of a man in a shoot-out with police. Relatives of the deceased were demanding payment of two young women, pigs and K20,000 cash. The young woman in question was allegedly offered in settlement—against her will—along with 24 pigs (*Asia Pacific Network* 21 May 1996:1–3).

Issues of gender and violence, then, are critical concerns in Papua New Guinea today. The quality of life for half the population, as well as their potential contribution to national development, remains seriously devalued as a result of male violence. Contrary to the impressions given in media reports, violence against women is by no means the preserve of

rascal gangs, and is dispersed throughout all levels of Papua New Guinea society.

## TRIBAL FIGHTING

Although common to many Papua New Guinean societies prior to colonial intrusion, the incidence of tribal fighting today is largely confined to parts of the Highlands, particularly in Enga, Western Highlands and Simbu provinces. Tribal fighting is essentially a rural phenomenon and, in practice, often results in high casualties, extensive damage to property, and serious disruption to government services and commercial activities. The destruction of schools, aid posts, market gardens, and business premises can have disastrous long-term effects upon development in the areas affected. The likelihood of fatalities and personal injuries has been greatly enhanced as warriors blend traditional methods with modern technology, including the use of high-powered firearms (Burton 1990). Between 1988 and 1996 fights in the Tsak-Wapenamanda area of Enga province alone reportedly claimed more than 300 lives (*National* 23 January 1997:8). The increasingly costly outcomes of inter-group conflicts contribute directly to a cycle of retaliatory actions or 'payback' that becomes ever more difficult to break.

This phenomenon illustrates significant differences in the perception of conflict and conflict-resolution embodied in state law, on the one hand, and among large sections of the Papua New Guinea population, on the other. Whereas state law views fighting as the problem—a clear challenge to its proclaimed monopoly over violence—participants tend to view the situation quite differently. For them, fighting is viewed as a legitimate strategy for resolving some underlying dispute between local groups over, for example, a piece of land or an earlier homicide. As the Clifford Report summarised

Tribal fighting is a response to disorder, to a dispute or a breach of a norm and not a problem in itself. For participants the law and order problem is the offence or dispute, not the fighting (Clifford *et al.* 1984:92).



Tribal fighting was effectively suppressed throughout much of the colonial period. The success of the colonial peace—*Pax Australiana*—was as much a consequence of the material and other positive inducements offered local communities under the colonial administration, as it was a result of the repressive impact of colonial controls. The revival of this practice in parts of the Highlands since the early 1970s broadly parallels the decline in government services, including official procedures of conflict resolution, during the post-Independence period. In this sense, the re-emergence of tribal fighting represents a growing withdrawal from state and reversion to older strategies of conflict resolution in the areas concerned.

State responses in the post-Independence period have generally been of the familiar law and order variety, including the imposition of a state of emergency in 1979 and a succession of special policing operations. These responses have met with little lasting success. In the words of one observer

While police interventions in fights have temporarily halted them, ultimately they have prolonged battles, and possibly have made matters worse (Mapusia 1986:68).

The strategies with the most positive impact in practice have often had little active state participation. These have involved local leaders, often acting through intermediary brokers, in prolonged negotiations and compensation settlements that seek to address the disputes underlying particular conflicts (*National* 23 January 1997:8).

## CORRUPTION

The current Governor-General, Sir Wiwa Korowi, stated in 1995 that corruption had become 'deeply rooted' in Papua New Guinea (*Australian* 14 June 1995:17). Former Governor of the Bank of Papua New Guinea, Sir Mekere Morauta, has gone so far as to describe it as being 'systemic and systematic' (*The Press* Christchurch, 3 July 1995:26). Respected Parliamentarian, Sir John Momis, has also claimed that bribery and

corruption have become an economic system in themselves and warned of dire political consequences if they are left unchecked (*Post-Courier* 1 August 1996). Allegations of corrupt behaviour on the part of public figures have contributed to growing levels of popular disillusionment with political leadership and the integrity of government processes. They have also become a recurring theme in the legitimating rhetoric used by rascals to justify their own criminal activities (Dinnen 1993b).

Most incidents of corruption that become public knowledge do so as a result of formal inquiries or the deliberations of leadership tribunals. These tribunals are the mechanisms for investigating alleged breaches of the Leadership Code. The Code is administered by the Ombudsman Commission and applies to designated national leaders, including politicians and other public office holders. Under Section 27 of the Constitution, leaders are to conduct themselves in public or private life so as not to cause conflicts of interest, demean their office, bring their personal integrity into question, or diminish respect for the government. Moreover, leaders should not use their office for personal gain or to raise doubts about the discharge of their office.

Politicians' privileged access to state funds (often in the form of discretionary funds) and the limited effectiveness of existing controls has facilitated the spread of corrupt practices at the highest levels. Opportunities for corruption are greatest in the case of government ministers who wield considerable powers of patronage in practice. The processes of awarding licenses and lucrative government contracts have been particularly vulnerable to abuse on the part of unethical politicians and unscrupulous business leaders. Former Ombudsman Commissioner, Sir Charles Maino, has recently classified the four most common forms of economic crime in Papua New Guinea as: the abuse of licensing regimes, the 'hands in the till' syndrome, political corruption and vote buying, and kickbacks and other improprieties in the decision-making

process for government contracts (Maino 1994).

Between 1975 and 1991 a total of 18 leaders and public office-holders appeared before leadership tribunals. Apart from those who resigned before their hearings (thereby evading the jurisdiction of the tribunal), six of those who did appear were dismissed from office, one was suspended, another reprimanded, three were fined and the rest found not guilty (*Post-Courier* 30 September 1991:3). At a National Crime Summit in 1991, Prime Minister Namaliu revealed that the Ombudsman Commission was investigating allegations against 90 of the 109 members of the national parliament (*The Australian* 12 February 1991:5). By 1995 the Commission had referred a total of 19 members of parliament (including one Prime Minister) to leadership tribunals, as well as nine senior public servants (*Post-Courier* 31 August 1995:1). A brief chronicle of some of the more significant cases follows.

The Ombudsman Commission Report into the so-called 'Diaries Affair' in the early 1980s recommended the prosecution of a number of senior public servants implicated in illegal dealings relating to the purchase of some 15,000 executive diaries from a Singaporean businessman (Ombudsman Commission 1982). In 1986 a Commission of Inquiry reported on the sale of the government's executive jet and the purchase of Israeli aircraft for the defence force (Report of the Commission of Inquiry 1986). Prime Minister Michael Somare and one of his senior Ministers were among those investigated. No findings of illegal behaviour were established. Another inquiry was set up in 1986 to determine whether there had been any breaches of the Leadership Code involved in the purchase of shares after a float by Placer Pacific Pty. Many prominent public figures, including then Minister of Finance, Sir Julius Chan, made substantial profits out of their share acquisitions (Dinnen 1993b). The findings of this inquiry have never been officially released.

A Commission of Inquiry was established in May 1987 as a result of persistent rumors of

ministerial misconduct, corruption and transfer pricing in Papua New Guinea's forest industry. The commission, under the leadership of Judge Barnett, presented its final report to the Prime Minister in July 1989. The voluminous report documents endemic corruption and mismanagement in the forest industry. Among the long list of leaders implicated in the inquiry were former Prime Minister Michael Somare and one-time Deputy Prime Minister Ted Diro. A leadership tribunal eventually found Diro to be in breach of the Leadership Code on 83 counts, mainly arising from what the Barnett inquiry had described as 'the reckless destruction of forests and a plan to systematically cheat (the landowners) of their rightful profits' (quoted in *The Saturday Independent* 9 September 1995:22).

Other investigations of alleged abuses relating to the award of government contracts have included the Spring Garden Road/Poreporena Freeway Project in Port Moresby (Ombudsman Commission 1992) and the Disciplined Forces Institutional Project (Ombudsman Commission 1994). In both cases, the Ombudsman Commission highlighted 'the flagrant disregard of public tender procedures and numerous other breaches of laws dealing with the award of contracts for public works projects' (Ombudsman Commission 1994:96). Summing up the findings of the 1994 report, the Commission asked

When are the leaders of our country going to learn that the laws of Papua New Guinea must be respected and followed?  
(Ombudsman Commission 1994:96)

The most recent investigation examined the awarding of contracts for the Upgrading of the Port Moresby Water Supply Project (Ombudsman Commission 1996). Among the findings, the report declared the selective tender process adopted by the local authority in question to be 'fundamentally flawed, unfair and prone to corruption' (Ombudsman Commission 1996:468).

The unstable, often volatile, character of national politics in Papua New Guinea provides



other opportunities for corruption on the part of individual politicians. An illustration is found in the findings of guilt delivered in the 1992 case of two former ministers, Peter Garong and Melchior Pep. Both had sought substantial sums from the Prime Minister's discretionary fund in the face of a proposed vote of no confidence in the government of the day. The clear implication being that their political loyalty could be guaranteed in return for these payments (Maino 1994). The provision of large discretionary funds to each of the 109 national parliamentarians for the development of their constituencies provides another obvious opportunity for corruption. At the beginning of 1995 each member was eligible for a K300,000 electoral development fund (EDF) and K200,000 in minor transport funds (Economist Intelligence Unit 1995:12). Such funds have commonly been used to buy votes, as well as to reward supporters after elections and consolidate local power bases through the strategic dispersal of a variety of development projects. They have also been increasingly used to build up the private wealth of individual politicians. Despite the existence of guidelines on how to spend and account for these funds, few politicians document their expenditure as required. Chief Ombudsman Commissioner Simon Pentanu has stated that only one member of parliament provided a full account of EDF expenditure in 1994 and, moreover, that it was 'normal' for about 85 of the 109 members to fail to account funds charged in their care in any one year (*National* 22 March 1995:1).

While the Ombudsman Commission continues to put up a valiant struggle against corrupt practices, its efforts are seriously affected in practice by an acute shortage of resources, as is faced by other government agencies (*Post-Courier* 31 August 1995:1).

## CONCLUSION

The range and gravity of law and order problems, alongside the weaknesses of state controls, provides the basis for the apocalyptic

tone found in many recent commentaries on Papua New Guinea. An implicit invocation of social disintegration pervades these commentaries. The poor performance of criminal justice agencies has been documented at length in the Clifford Report. That Report recommended that greater use be made of community-based regulatory structures such as local government officials, village moots, churches, voluntary organisations and, in particular, the village courts. These informal mechanisms would be used to supplement the workings of formal state agencies.

Underlying the Clifford recommendations was the desire to diminish the perceived social gap that has developed between state and local-level institutions in recent years. One manifestation of this gap, according to the authors, lay in the widespread disrespect for state law. Such a view was expressed, somewhat simplistically, in terms of an implied 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 (Clifford *et al.* 1984:107).

The 'community revivalism' of the Clifford Report's non-state option also connects with nationalist critiques of 'western' values and their adverse impact upon traditional values and social institutions. The critique of state law from this perspective reached its apogee in the rhetoric of decolonisation at the time of Independence. The appropriateness of institutions of colonial (foreign) origin as instruments of social regulation in the distinctive and socially diverse PNG environment was questioned by many early national leaders (Kaputin 1975; Narokobi 1977). These views found strong expression in the Final Report of the Constitutional Planning Committee (CPC 1974), the Independence Constitution, and the early work of the Law Reform Commission (see, for example, Law Reform Commission Report No. 7, 1977). Law

and order problems are viewed, in part, as a consequence of the failure of state law to accord with Melanesian perceptions of justice and, thereby, to secure the respect and allegiance of indigenous people (Narokobi 1988).

Papua New Guinea's criminal justice system, as with other areas of state activities, is undoubtedly in need of capacity-building and institutional reform. There is also little doubt that the performance of the present system could be significantly enhanced through being given a more explicit community orientation. At the same time there is a need to recognise the inherent limitations of any system of criminal justice—no matter how well resourced or socially adapted. International experience provides ample testimony to these practical limitations. Indeed, many aspects of PNG's crisis of criminal justice—such as the patent failure of prison to deter or reform—are shared with other countries. Expectations of criminal justice also need to be modified in light of the broader context of rapid social and economic change that frames current patterns of lawlessness. Emergent marginalisations affecting particular social groups (such as urban youth), growing divisions in wealth between groups and regions, expanding criminal opportunities, rising material needs and expectations, rapid urbanisation, population growth, additional stresses on profoundly inequitable gender relations, the availability of firearms, and the abuse of alcohol, are among a host of factors at play in the current law and order environment. Just as there are no straightforward explanations of the current law and order situation, there are no simple solutions.

Change in Papua New Guinea has not occurred in a social vacuum but within an environment made up of numerous small-scale societies, each with their own distinctive systems of social ordering that have evolved over the course of thousands of years. The resilience of these older traditions in the face of the transformations of recent history provides one of the most distinctive features of the contemporary

PNG social environment. Even among 'modern' urban rascals, we can discern the unmistakable influence of more enduring patterns of 'traditional' leadership, as well as the distributive practices upon which they are constituted (Goddard 1992, 1995). The continuing subordination of women in all social contexts despite the equity provisions embodied in constitutional, statutory and institutional frameworks provides further illustration. For the vast majority of Papua New Guineans, primary allegiances continue to reside in non-state social organisations, with local-level customary contexts exerting a greater regulatory impact upon the conduct of everyday life than state law. In practice, institutions and processes of relatively recent origin have interacted in numerous complex ways with those they were intended to replace. Conflict and institutional dysfunctionality in modern Papua New Guinea are more often than not the outcome of processes of cultural and institutional interpenetration, rather than being a product of the uniform processes of disintegration and collapse depicted in the more alarmist commentaries.

The growing reliance on militarised solutions to problems of order, noted earlier, can, at one level, be viewed as an attempt to disguise state weakness by relying upon its ostensibly strongest aspect. In practice, however, the violence employed by sections of the state is often indistinguishable from the wider problems of violence in PNG society. Growing levels of state violence have, in effect, promoted the legitimacy of violence as a political strategy among both state and non-state constituencies. In this respect, the conventional western distinction between legality and illegality fails to capture what is going on in both state and non-state coercive action. The question of a monopoly of violence neither characterises the PNG state nor legitimates its actions.

The postcolonial state in Papua New Guinea has in many ways become the object of a process of upward colonisation, whereby social forces emanating from the most local levels have



penetrated even the commanding heights of the modern state. This is illustrated in the redistributive activities of political leaders, most apparent during elections. It is also evident in the growing entanglement between the obligations of kinship and those of public service that, in turn, underlies much of the behaviour currently designated as corruption. In the process, the boundaries between state and society have become increasingly blurred, and the state itself has become less coherent. This stands in contrast to the over-simplified polarisation between state and society underlying the analysis of the Clifford Report. Evidence suggests that it is not so much the gap separating state and society that underlies current problems of order in Papua New Guinea, as the processes of interpenetration between them.

## NOTES

<sup>1</sup> The term 'wantok' (one talk) in Melanesian Pidgin literally means someone who speaks the same language. In popular usage it refers to the relations of obligation binding relatives, members of the same clan or tribe, as well as looser forms of association.

<sup>2</sup> Prior to the Curfew Act 1987 curfews could only be imposed during a formally declared state of emergency. A state of emergency—which provides security forces with additional powers—was declared in the National Capital District in 1985 in response to an outbreak of violent crime in Port Moresby (Dinnen 1986).

<sup>3</sup> Section 11(3) of the Inter-Group Fighting Act, for example, which reversed the burden of proof in respect of those suspected of participating in tribal fighting, was struck down as unconstitutional by the Supreme Court in *Constitutional Reference No. 3 of 1978; re Inter-Group Fighting Act 1977* (1978) PNGLR 421.

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