

An Overview of Crime, Law and Justice in the South Pacific Islands

Dr Tess Newton Cain surveys crime in the South Pacific.

The South Pacific island region is a part of the world about which little is written, particularly in the area of criminal justice and particularly in journals and publications outside Australasia.

Many people in other parts of the world have only a hazy idea of where these countries are or what they are like generally, let alone what might be the crime problems in such countries. Here, 'South Pacific islands' refers to those countries that own and are served by the University of the South Pacific. They are Cook Islands, Fiji Islands, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

Within this group there are countries from each of the three broadest divisions of the Pacific region based on language, ethnicity and culture. These groupings are Melanesia, Polynesia and Micronesia. All of these countries, with the exception of Tokelau, are independent states. All of the countries are in various stages of post-colonial transition (although Tonga and Solomon Islands were never actually colonies), having recently attained independence (Vanuatu, for example, became independent in 1980).

The countries of the region have small populations both in relative and absolute terms (the 1999 census for Vanuatu recorded the population of the country as 186,678). These populations are often spread over a large geographical area.

Criminal law in the South Pacific Islands

Unlike other areas of law (such as family law and land law), the criminal law of the countries of the region is largely codified.

Each country has a principal Act, which contains substantive offences, defences and principles of criminal liability. Similarly, issues of criminal procedure are also codified into a single Act in each jurisdiction. However, it remains the case that the legal pluralism that characterises other area of law is also evident in the field of criminal law and procedure (Newton, 2000a).

Of particular significance is the role of customary law and practice in the field of criminal law and procedure. It is not possible to generalise about customary law and practice across the region as a whole as there are very significant differences between, for example, Polynesian custom and Melanesian custom. Further, in some countries, most notably the Melanesian countries, the principles of custom and customary law vary from one community or language group to another. Whilst it is the case

that customary law is enunciated and enforced by chiefs or other community elders outside the introduced/adopted court system, there are also instances of the introduced/adopted system taking account of customary principles in particular areas.

Perhaps the clearest example of this convergence (if indeed this is what it is) arises in relation to sentencing decisions (Newton, 2000b). This is an area that we can expect to see develop more in the near future as the interest in the use of restorative justice techniques for dealing with crime grows in the region.

The picture of crime

It is instructive to examine the nature of crime in the South Pacific. A starting point is the information that is presented in the official crime statistics prepared by police forces in the region. It should be noted that the collection and maintenance of accurate and detailed crime statistics is not necessarily accorded as high a priority as may be the case in Northern/Western jurisdictions. Also, due to differences in methods of recording, it is not always possible to make meaningful comparisons between one jurisdiction and another.

Furthermore, at present there is no means of ascertaining the 'dark' figure of crime in the countries of the region by means of victimisation studies. It is also the case that many disputes, some of which may involve criminal offences, are dealt with through 'informal' systems in villages or communities by chiefs or other community elders. It is generally the case that these disputes would not find their way into the official crime statistics. These caveats in place, the following information has been collected about the 'crime context' in which the police forces of the region operate.

For the year of 1997, the police force of **Fiji Islands** recorded a total of 22,149 reported criminal offences. This represents a 5% increase on the number of reported offences in 1996. Of these offences, 69.6% were designated as crimes against property. A further 22.6% were offences against the person, representing an 18% increase on the previous year.

Although the **Vanuatu** police have compiled statistics for 1999 and 2000, the reports prepared by the Criminal Records Office (CRO) explicitly state that the statistics are considered to be flawed. These 'disclaimers' echo the problems associated with recording crime that were identified above. A particular concern is with the collection of statistical

Thanks to all who contributed to our last issue, CIM 44. The theme of international perspectives on criminal justice continues here with Dr Tess Newton Cain's article on crime in the South Pacific Islands. Those interested in learning more about the work of Adalah, The Legal Centre for Arab Minority Rights in Israel, described in our last issue, can now refer to Adalah's newly launched website: www.adalah.org

information from the more remote police stations and police posts in the country. Communication problems make the collection of statistics a slow process.

There are also concerns that new crime report forms are more complex than those that were used previously and this has led to forms not being fully or correctly completed by recording officers. This in turn means that the CRO have to send back the forms with a request for them to be done again. This also contributes to the length of time it takes to prepare this statistical information. In 1999, a total of 1,537 offences were reported to the police and in 2000 the total number of crimes reported was 1,423.

Crimes against property were the most common, representing 48.79% and 48.99% of 'established' crimes in 1999 and 2000 respectively. 'Established' crimes are those that are reported, investigated and put forward for prosecution.

In Vanuatu, and in particular in Port Vila (the capital), thefts from residential premises probably constitute the largest number of property offences. Some of these may be accompanied by breaking and entering. Whilst there are also instances of thefts from cars, the theft of cars is not extensive.

In the **Solomon Islands**, in the six months ending on the 31st July 1998, a total of 1,583 criminal offences were reported. Of these, 47.4% were property offences and a further 28.9% were offences against the person. This was recorded as an overall drop of 24% compared to the same period in the previous year.

According to the United Nations Surveys of Crime Trends and Operations of Criminal Justice Systems, the total number of reported crimes in 1990 for **Tonga** was 1,434. Of these, theft offences were the most numerous at 50.4% followed by assaults at 30.2%. In 1997, there was a reported decrease in crime in **Cook Islands**. Of particular note was the drop in alcohol related offences from 50 in 1996 to 28 in 1997. In addition, the number of female offenders had dropped from 31 in 1991 to 5 in 1997 and the number of male offenders had dropped from 138 in 1991 to 116 in 1997.

A particular aspect of the context of these figures is that massive migration from Cook Islands has resulted in the population decreasing from 22,400 in December 1995 to 18,000 in 1997. This information indicates that the nature and level of crime occurring in the South Pacific region may differ significantly from what is observed elsewhere in the world. However, it is important not to think of the Pacific island region as homogenous in this or any other respect. The information presented here indicates that there are significant differences in the amount of crime or the type of crime between Pacific countries. In addition, there are aspects of social and economic structures that exist in the South Pacific that may make the incidence or the risk of certain sorts of crimes more of an issue than might be the case elsewhere. A particular example is that of money laundering, the risk of which is associated with the establishment or maintenance of tax havens. There are a number of

such financial centres in the South Pacific region and dealing with international pressure to counter money-laundering presents more challenges to these countries.

Customary law and procedure

All of the countries in the South Pacific region make some provision, usually in a constitutional document, for customary law to be recognised as a source of law. However, the impact of customary law in relation to issues of criminal law and procedure is possibly more limited than is the case in other areas of law, most notably land law. It is particularly the case in rural areas that most wrongs are resolved through customary procedures at the village level rather than by recourse to state agencies and procedures.

In relation to customary law, it is not always possible to distinguish clearly between what might otherwise be described as 'civil' or 'criminal' matters. Customary law is enunciated and enacted by community elders or chiefs.

In some countries, customary laws and procedures have been incorporated into the state justice system by virtue of legislation. For example, in Samoa the *Village Fono Act* 1990 makes the incorporation and application of custom central to the functions of the *fono*. The Act has the effect of placing on a legislative footing pre-existing systems of community administration and governance. It is not possible to make many useful generalisations about customary methods of dispute resolution across a region so culturally diverse as the South Pacific. However, it is accurate to say that the customary imperative is one based around restoration and reintegration of offenders into the community. This contrasts with the more retributive approach often exhibited in the state courts.

However, there are instances of the courts incorporating customary methodologies, such as compensation and reconciliation, into sentencing decisions in some of the countries in the region (Newton, 2000b).

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References

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Newton, T. (2000b), 'The incorporation of customary law and principle into sentencing decisions in the South Pacific region' in *History of Crime, Policing & Punishment*, Conference Proceedings (published on disk), Canberra: Australian Institute of Criminology.

Tackling Youth Crime

Joined-up Solutions



Thursday 8th – Friday 9th November 2001
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The Annual Convention of the Youth Justice Board is *the* annual event for decision-makers in youth justice. This year's convention will examine the progress that has been made in tackling youth crime since the launch of the Youth Justice Board and Youth Offending Teams.

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Krishnan Guru-Murthy,
Broadcaster and Journalist

Ian Blair QPM,
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