

## Program 9: Justice, Law and Order

**Many Pacific island nations have more than one functioning system of law as they try to integrate customary laws with Western legal systems. So how well do introduced systems of law and justice serve Pacific communities? What is the relationship between people and the legal system?**

ILA GENO: When we talk about rule of law before the colonisers, Papua New Guineans had their own norms and ways of doing things by culture, and it is a multi-ethnic society.

PEARSON VETUNA: Ila Geno, Papua New Guinea's Chief Ombudsman.

Hello I'm Pearson Vetuna from Radio Australia and it's 'Time To Talk', our series on governance issues in the Pacific.

Today, we look at 'Law and Justice'

ILA GENO: Papua New Guinea gained independence some 26 or 27 years ago, then that was the establishment of the Constitution of Papua New Guinea. Now in my honest view the establishment of the Constitution of Papua New Guinea is to modern Papua New Guinea culture, that forms the basis of a common culture for our people in Papua New Guinea.

VETUNA: Respect for the rule of law is one of the guiding principles of good governance. But what rule prevails in multi-ethnic societies, where customary and state laws coexist?

Vanuatu's Chief Justice, Vincent Lunabeck.

VINCENT LUNABECK: We have the Constitution and the Constitution is the basic law, the fundamental law of course. The Constitution provides for justice system to be administered by the tradition. The Constitution provides also that custom shall be part of the laws of the republic. So we have that duopoly legal system as to whether the written law conflicts with the traditional system. First of all before the conflict believe that there are room, big room for the two systems to coexist. The general observation of Vanuatu is simply that on a number of islands there are no police, so the question is who or which institution maintains peace and order in lieu and place of the police? The chiefs - the answer is the chiefs.

HEATHER LINI-LEO: In some islands they are very effective and they can hold customary courts to resolve problems, disputes, even classified as both civil and criminal. In other islands where the chiefs are not effective then they use the Western justice system more often.

VETUNA: Vanuatu's Public Prosecutor, Heather Lini-Leo.

HEATHER LINI-LEO: For example, Torba in the north has scattered islands. Ships don't usually go there and the last criminal court session was three years ago. But then we don't receive any major cases or minor cases, any complaints coming in because the chiefs play a role in trying to keep their people within the customary code of practice let's say, and even the Church plays a bigger role too in trying to keep their church members within the Christian conduct.

CHIEF TOM NUMAKE: Chiefs always had their own custom laws before Christianity arrived in Vanuatu. Actually our custom law, which has been there a long, long time before the Condominium government formed in Vanuatu, and also before we had our independence we had these laws.

VETUNA: Chief Tom Numake from Tanna Island is the President of Vanuatu's National Council of Chiefs, the Malvatumauri.

In Vanuatu, each island has its own custom laws to resolve differences.

CHIEF TOM NUMAKE: For an example if you steal a pig then we say you have to kill a pig and you have to swap the live pig to swap that one you kill. And also for other things like if you murdered a person, if you killed someone, kill him dead according to our custom, we have different customs in each island of Vanuatu and for Tanna, if you kill someone, then you have to give pigs and kava, vegetables, mats and grass skirts, and on top of that you have to swap the person you killed, even by accident or you meant to do it, you have to give a girl and the girl for Tanna is the last peace making equipment we use, but that's the last tool we use for peace making in our islands. So if you give only a pig or kava, that is not enough, you have to give a girl and it has to be over 21 years old so that once it goes with the family of the dead person then she's married at the same time and raise up the family of the dead person. And that's our punishment and people in Tanna they always respect and it's still going on until today.

VETUNA: However what constitutes a settlement under customary law is not always acceptable under introduced state laws.

In some cases, police investigation and criminal proceedings are perceived as double and unfair punishment.

Dr. John Nongorr, constitutional lawyer in Papua New Guinea.

JOHN NONGORR: Well it does at times create confusion and even worsen the situation because people don't understand the system. For example somebody has been murdered, the parties from both sides have paid compensation, they have made up, a lot of compensation is paid through the relatives of the murdered person and they are all settled, they are happy. And then the state takes over and imprisons the person, that doesn't look right. And so there is always that conflict.

VETUNA: Payback or retaliation - which can involve killing to even numbers and restore balance -

is another area of conflict. While the fear of payback in some way 'controls' social order, the 'eye for an eye' approach can lead to endless bloodshed.

Ila Geno, Papua New Guinea's Chief Ombudsman.

**ILA GENO:** We have a situation where we know there is a well-established conflict of the traditional culture with the modern culture with the state's laws and the Constitution. For instance, as a result of tribal fight someone is murdered, policemen go in and arrest the offenders and then have them charged with murder, manslaughter or whatever act you know they've committed in relation to causing that death. But our people think that is not enough, they want to have instant justice. They think that somebody is killed so therefore someone must be killed on the other side. That's the conflict between the cultural tradition and the modern culture. Now somewhere along the line we've got to make it understandable to the people that no, they cannot take the law in their own hands, this authority which represent them to take the law which is the police to take the matter to courts and then we'll prosecute it, and let the justice decide whether sentence to jail, set free, whatever.

**VETUNA:** Vanuatu's Chief Justice Vincent Lunabeck believes there are shared principles between traditional and introduced laws and there should be more research into how customary practices can be used to settle disputes.

**JUSTICE VINCENT LUNABECK:** There are lots of works yet to be done and not only for the courts but for lawyers and for everybody because as you know there's lots of languages here in Vanuatu and different cultures, but at the end of the day deeply are some common underlying principles that emerge from the diversity. It's just a question of finding out.

**VETUNA:** This is 'Time to Talk'. Today, we look at 'Law and Justice'.

Traditional leaders play a crucial role in the administration of law and order in rural areas.

Chief Mark Naboeng is from Buka Island in Papua New Guinea.

**CHIEF MARK NABOENG:** The chiefs are there; they are the first people to settle any dispute that happens in the village. They know what to refer to the police, troubles like murder and all the other things like that; they refer that directly to the police. Small things like somebody drinking and spoiling other people's property, these go to the chiefs and if these things are serious they penalise the young people. So I think the chiefs are really responsible in their own villages and they do not rely on the police all that much.

**VETUNA:** In Papua New Guinea, village courts deal with customary law matters as well as minor civil and criminal affairs. These courts draw on village custom and the introduced laws to settle disputes.

Andrew Tonang from Lemana Koa, a remote village of Northern Buka, is involved in what is called

the 'Restorative Justice Program', which focuses on healing and reconciliation. Restorative justice is similar to the traditional ways of resolving disputes and seeks to repair the damage caused to individuals and communities by crime or conflict.

**ANDREW TONANG:** It's quite a good program to help with punishing of crime in the village level. For a lawbreaker to go to town it will cost him money to get on a PMV or to go to the police station to answer for his charges and with this program, Restorative Justice, it's just a doorstep in the village. I think the main purpose for this Restorative Justice system working in the village is to get the wrongdoers come back to the community. So we see him as a brother or a sister in our community, that's why we do not want to throw these wrongdoers to jail or to prison. After he has been to prison he will still see himself as a rascal or a wrongdoer.

**VETUNA:** By and large, Western-style justice is seen to exacerbate problems in the community.

Chief Tom Numake again.

**CHIEF TOM NUMAKE:** Custom laws is absolutely different because we don't have jails and the difference is that for us once we shake hands, we drink kava together, that's the end of it. But the other laws, if you put someone in jail for an example who is married, has got children, wife and children back at home, once you put that person into jail we say in custom that it looks like you've put more burden on the whole family now because he should be at home to look after the kids, the woman cannot look after the children by herself. So we say in custom, putting people in jail you put more burdens on the whole family.

**VETUNA:** On the other hand, the traditional approach is seen as a way to promote reconciliation and community strengthening, whereas state institutions alienate the law-breakers and entrench differences.

Helen Hakena works for the Leitana Nehan Development Agency, a peace-building organisation in Bougainville.

**HELEN HAKENA:** The difference is in the traditional law people are more respectful of one another when they come together, everything is done, so that both parties come together without saying that this person wins and this person loses. It brings everyone together, so the traditional law is much better than the government law I should say. It's much better because in the government system somebody wins and somebody loses, which will bring a lot of conflict afterwards in communities and a lot of divisions again in communities. I prefer the village law because it brings everyone together.

**VETUNA:** Respect for custom helps maintain law and order in rural areas where traditional networks are still strong. But what happens in urban centres?

Dr John Nongorr from Papua New Guinea.

**JOHN NONGORR:** In urban areas depending on what, which particular urban area you are in and the more smaller ones where the population is basically the population of the local area making up the chunk of the urban population, you find that some of those controls are there because you can find ethnic groups or even families from a particular area living in different parts of the urban area. And therefore there's that sort of control there. But when you get to the bigger urban areas like in Port Moresby or Lae, that's where the troubles start and that's why criminal activity in those areas are pretty high, and most criminal activities are directed towards persons from other areas. And it's not targeted towards, it's not cultural, directed at particular people, it's just random, because there's none of those social control orders. And so what happens is that because of that the state structures try to take over and due to lack of resources and lack of ability by the police to appreciate the issues involved and all, and coupled with all other problems, what the police do is they use heavy handed tactics which only invite heavy handed tactics from those who are doing the wrong in the first place. So a basic escalation of violence in urban areas where rascals for simply going and breaking and enter if they are caught they shoot to kill.

**VETUNA:** Port Moresby's Archbishop Brian Barnes worked as a Police Chaplain for twenty years and has travelled all over Papua New Guinea.

He has observed a great deal of change.

**BRIAN BARNES:** In the early days when I was here crime was not a big problem at all and security was not a problem. Many of the missionaries used to go to bed at night with the house unlocked, but eventually things changed. Part of the reason is the education system which is turning out many young people year by year with some education and there is a belief, a false belief among so many Papua New Guineans that if you're able to go through school you're assured of a job at the other end. That's not true. There are very limited employment opportunities in Papua New Guinea and so there's a lot of frustration when young people find out that that's a reality and a lot of them then turn to crime.

**LAIO POKA:** Like everybody knows stealing is against the law but we have to steal to survive. If other people more educated could work and earn money and like us, we cannot work and stealing is to us is part of a job. You can earn money, we know the risk, it's life and death. But to survive we have to steal, we have no choice.

**ALEX LELE:** Sometimes when I see my fellow mate, school mate, he works, he works for money and in the afternoon, it's day time when he got money he buy beer or something drinks or food and you know I get jealous. And I started thinking of some bad ways you know, so I started to involve him in criminal activities, go stealing and when I get stolen money I come and I buy beer and I want to be just like him you know. Now I'm trying to change, change my life and go in good ways and not bad ways.

**VETUNA:** Former raskols Laio Poka and Alex Lele who now work for Crossroads - a self-help

project for unemployed youths.

When it comes to law enforcement in urban areas, there is sizeable distrust at community level for police intervention and people are reluctant to co-operate.

LADY HILAN LOS: It is so because like police they do not come in and find out first if these were the people who caused the problem. They just come in and start harassing people, so you know then it created mistrust between the communities and the police. So you know in some instances they do not want to help the police because they see the police more as a threat than friends.

VETUNA: Lady Hilan Los from ICRAF - the Individual and Community Rights Advocacy Forum.

LADY HILAN LOS: The community policing have been to see us, to see what other ways we can help to change the police attitude towards the communities so that people can live in harmony, and also with police coming to them they should know where they should go to get this kind of information, rather than going straight with some suspicion that you know so and so has caused this problem, instead of going straight to the person. We see that if the communities are organised they should go through them that way which is within the communities to go and get the elders to deal with those kids or bring them out rather than the police going in and bashing up people in there, in their respective communities. So I think it is up to groups like us and other NGOs is to really have that dialogue between the community and the police so that you know like then it can be harmony in the community.

VETUNA: Archbishop Barnes agrees the heavy-handed approach is not an adequate response for an under-resourced police force.

BRIAN BARNES: The police too are at fault in many ways because strong-armed tactics are not a good idea. The police of course out of frustration fall back on that. Sometimes the courts don't back up their investigative work. They know if a case is thrown out they know very often that those who are charged really did it and so before the work is done of investigation they might take it out on those people themselves, and make sure that justice is done as they see it. But the police really can't handle things in Papua New Guinea these days without community cooperation and assistance, and to get that they really need to work at it and to make sure their relations with the communities are good.

VETUNA: Next week we discuss civil society - what is it and what's its role in the governance debate.

'Time to Talk' is a series about governance issues in the Pacific.

Production by Radio Australia's Isabelle Genoux and Barry Clarke, technical production by Ryan Egan.

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I'm Pearson Vetuna. Bye for now.

## Program Participants:

- Pearson Vetuna, Executive Producer of the Tok Pisin Service at Radio Australia
- Ila Geno, Papua New Guinea's Chief Ombudsman
- Justice Vincent Lunabeck, Chief Justice of Vanuatu
- Heather Lini-Leo, Vanuatu's Public Prosecutor
- Chief Tom Numake from Tanna Island, President of the Malvatumauri (National Council of Chiefs) in Vanuatu
- Doctor John Nongorr, Constitutional lawyer in Papua New Guinea
- Chief Mark Naboeng, Leitana Council of Elders in Buka
- Andrew Tonang, Restorative Justice Program in Northern Buka, Bougainville
- Helen Hakena, Leitana Nehan Development Agency, a peace-building organisation in Bougainville
- Archbishop Brian Barnes, Catholic Church in Port Moresby, Papua New Guinea
- Laio Poka, co-ordinator of the Crossroads shelter project in Papua New Guinea
- Alex Keke, member of the Crossroads project team
- Lady Hilan Los, Director of the Individual and Community Rights Advocacy Forum (ICRAF) in Papua New Guinea

