

Introduction

The booming mining and gas industries in Papua New Guinea have brought problems and opportunities for crime, particularly transnational crimes that overwhelm the capabilities of already weak law enforcement agencies. This *In Brief* discusses the legislation that was adopted in 2005 as part of the government's response to dealing with the problem of transnational criminal activities affecting the country. However, it also questions the level of political support that exists in order to realise the effectiveness of this legislation.

Transnational Crime

There is widespread agreement that transnational crime exists, however, there is less agreement on a common definition. In its most basic sense, the term has come to mean criminal activities that extend into, and violate the laws of several countries (Henshaw 2008). Transnational crime transcends national boundaries and jurisdictions, generally involves a diverse mix of players, and is usually driven by organised criminal groups. These loosely structured, flexible, and highly adaptable organisations are difficult to define and understand (Shelley 2004), and infiltration by law enforcement agents is problematic. Given its transnational quality, a single state acting on its own cannot adequately address this form of crime. Effective policing requires concerted efforts from multiple jurisdictions using diverse approaches.

Prevalence in Papua New Guinea

Transnational criminal activities are driven by rational economic considerations (Fiorentini and Peltzman 1997). Perpetrators calculate the opportunities of earning income offered by various illegal methods, the probability of being apprehended, and the probable punishment should they be caught. Papua New Guinea, like other South Pacific neighbours, offers a conducive and fertile environment for transnational criminal activities to thrive. Law enforcement capacity is weak, corruption is rife, and governance is poor (McCusker 2006). Moreover, the country's booming petroleum and minerals sector provide opportunities for both legal and illegal businesses. Opportunities for business and employment created directly and indirectly through

spin-off businesses by this sector attracted foreigners who sometimes flout immigration laws to get into the country. Illegal migration, document and visa fraud, bribery and corrupting officials, human smuggling, prostitution, and money laundering (*Post Courier* 23/03/2012; *TN* 10/7/2012) are some of the illegal activities attributed to the booming gas and mining industry. Trafficking in persons, has become a subject of growing international concern. According to a report published by the US Department of State in 2013, Papua New Guinea is a source destination, as well as transit country for men, women, and children subjected to sex trafficking and forced labour. The country was grouped in 'Tier 3', indicating that the Papua New Guinea government does not comply with the minimum standards and is not making significant efforts to do so (US Dept of State 2013). This report highlights the lack of government support in addressing trafficking in persons.

Legislation

Most offences that fall under the label of transnational crimes are dealt with under the Criminal Code Act 1974. Until 2005, there were no specific laws to deal with transnational crimes. Legislation relating to serious offences is also often outdated; for example, the Dangerous Drug Act 1952 does not provide an effective deterrent to those involved in the drug trade. It does not adequately address the very serious drug trafficking problems that are affecting Papua New Guinea today. The government enacted three Acts of parliament in 2005: the Proceeds of Crime Act, the Extradition Act, and the Mutual Assistance in Criminal Matters Act to complement the existing laws.

The Proceeds of Crime Act 2005 provided measures against money laundering. It sanctioned the forfeiture of property alleged to have been fraudulently obtained or obtained by the proceeds of crime. The Extradition Act 2005 provided for the extradition of criminals wanted for crimes committed in other countries before fleeing into Papua New Guinea. The Mutual Assistance in Criminal Matters Act 2005 called for Papua New Guinea to provide assistance to foreign countries who request evidence for the investigation and prosecution of transna-

tional crimes. Information relating to evidence that is vital for investigation and prosecution of offenders is passed to the requesting country, based on the understanding that they will receive assistance in return when the need arises. All these Acts depend on external support to be effective.

Flouting Treaties and Legislation

Papua New Guinea's obligations to international treaties concerning repatriation of fugitives have faltered in recent years. This is evident in Papua New Guinea's obligations under the Interpol extradition treaties to assist in the fight against crime by reporting, prosecuting, or extraditing those responsible for crimes in one jurisdiction and fleeing to another for refuge. Papua New Guinea's failures to enforce its legislation can be illustrated by the case of Joko Tjandra, a businessman with vast economic interests in Papua New Guinea. His business credentials, however, are masked by the darker side of his life. He is an international fugitive wanted by Interpol on corruption-related charges (Interpol 2009) and by the Indonesian government for tax fraud (*The Jakarta Post* 2/4/2002). Despite his criminal past, he has been given VIP treatment since he arrived in Papua New Guinea. He was flown in the official government jet from Malaysia to Papua New Guinea on 29 November 2011 and was granted Papua New Guinean citizenship (Callick 2012) despite his ineligibility (TN 14/8/2012). Diplomatic (TN 19/7/2012) and ministerial (TN 31/10/2012) efforts to have him repatriated to Indonesia were futile. Tjandra was closely protected by ministers and members of the Papua New Guinea parliament. The failure on the part of the government to take appropriate action presented a negative image of the country abroad, particularly its failure to observe the obligations and requirement under the Extradition Act and Interpol treaty to repatriate international fugitives. The political inaction and support for the fugitive in this saga has inevitably undermined Papua New Guinea's attempts to deal with transnational crime in a manner consistent with international obligations.

Conclusion

Papua New Guinea's fight against transnational crimes cannot be won by simply introducing or adopting new legislation — the legislation and treat-

ties must also be enforced. The determination to fight transnational crime must come from within the domestic environment. Political will and support, and respect for the rule of international law are critical to combating transnational crimes. The prevalence of transnational crimes, particularly the trafficking in persons, is facilitated as much by the compromised character of the country's political elite as by prevailing economic conditions.

Author Notes

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References

- Callick, R. 21/6/2012. PNG Takes in Jakarta Fugitive Joko Tjandra. *The Australian*.
- Fiorentini, G. and S. Peltzman 1997. *The Economics of Organised Crime*. Cambridge University Press.
- Henshaw, C. 2008. Strengthening the Rule of Law in the Pacific through International Crime Cooperation. *Australia International Law Journal* 15:109–28.
- Interpol 2009. Tjandra, Joko Soegiarto: Wanted by the Judicial Authorities of Indonesia for Prosecution/to Serve a Sentence. <<http://www.interpol.int/notice/search/wanted/2009-21489>>, viewed 9/5/2014.
- The Jakarta Post* 2/4/2002. Mulia Group Boss is Charged with Tax Fraud.
- McCusker, R. 2006. Transnational Crime in the Pacific Islands: Real or Apparent Danger? *Trends and Issues in Crime and Criminal Justice* 2006/308. Canberra: Australian Institute of Criminology.
- Post Courier* 23/3/2012. Filipinos in Visa Racket Arrested.
- Shelley, L. 2004. Unholy Trinity: Transnational Crime, Corruption, and Terrorism. *Brown Journal of World Affairs* 11:101–11.
- (TN) (*The National*) 10/7/2012. Address Influx of Foreigners.
- TN 19/7/2012. Indonesia Asks PNG to Send Tjandra Packing.
- TN 14/8/2012. Panel Member: Tjandra Did Not Qualify for Citizenship.
- TN 31/10/2012. Tjandra Took Our Laws for a Ride.
- US Department of State 2013. *Trafficking in Persons Report 2013*. <<http://www.state.gov/documents/organization/210741.pdf>>, viewed 9/5/2014.

