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# **LAW AND ORDER IN A CHANGING SOCIETY**

**Papers prepared for a conference on law and order in Papua New  
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Change, Research School of Pacific Studies, Australian National  
University.**

**LOUISE MORAUTA**

**EDITOR**

**Department of Political and Social Change  
Research School of Pacific Studies  
Australian National University  
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Louise Morauta

Port Moresby

September 1986



## CONTRIBUTORS

*Peter Bayne.* Senior Lecturer, Faculty of Law, Australian National University

*Brian Brunton.* Doctoral student, Faculty of Law, Australian National University

*Sinclair Dinnen.* Lecturer, Department of Law, University of Papua New Guinea

*Lynn Giddings.* Secretary, Eastern Highlands Provincial Rehabilitation Committee

*Michael Hess.* Doctoral student, Department of Industrial Relations, School of Economics,  
University of New South Wales

*Peni Keris.* Secretary, Village Courts Secretariat, Department of Justice

*August Kituai.* Doctoral student, Department of Pacific and South East Asian History, Research  
School of Pacific Studies, Australian National University

*Mike Mapusia.* Assistant Research Officer, Research and Development Section, Royal Papua New  
Guinea Constabulary

*Louise Morauta.* Associate Professor, Department of Anthropology and Sociology, University of  
Papua New Guinea



## CONTENTS

Contributors	iii
1. Introduction <i>Louise Morauta</i>	1
2. Law and Order : a tenth anniversary report <i>Louise Morauta</i>	7
3. Papua New Guinean policemen of the colonial period <i>August Kituai</i>	20
4. Crime, politics and economics <i>Brian Brunton</i>	30
5. Law, order and rights <i>Peter Bayne</i>	41
6. Police policy towards tribal fighting in the highlands <i>Mike Mapusia</i>	57
7. The role of village courts <i>Peni Keris</i>	70
8. Perspectives on law and order <i>Sinclair Dinnen</i>	76
9. Industrial law and order <i>Michael Hess</i>	90
10. Some alternatives to states of emergency <i>Lynn Giddings</i>	96
References	110
Index	116

## LIST OF TABLES

4.1	Net private capital inflows to Papua New Guinea, 1976-1984	32
4.2	Advances outstanding to commercial banks by borrower, at last Wednesday of May 1983	34
6.1	Statistics on tribal fighting, 1982-1983	61
6.2	Comparative crime rates for the highlands provinces, 1984	62
9.1	Workdays lost, 1978	93
9.2	Workdays lost per striker, 1978-1981	94
9.3	Method of settlement of industrial disputes, 1978-1981	94
10.1	Probation and good behaviour bonds in the Eastern Highlands Province	106



## CHAPTER 1

# INTRODUCTION : LAW AND ORDER IN A CHANGING SOCIETY

**Louise Morauta**

The papers in this volume were prepared for the 1985 annual conference on Papua New Guinea organized by the Department of Political and Social Change in the Research School of Pacific Studies at the Australian National University. The conference, entitled 'Law and order in Papua New Guinea', was held on 17 and 18 October 1985 and was convened by Ron May of the Department of Political and Social Change. The authors of two of the papers in this volume, Giddings and Keris, were not able to attend the conference but submitted papers *in absentia*. The papers are arranged in their order on the conference programme, with Giddings' paper, written as background to the conference discussions, placed at the end.

The convenor had given participants a relatively free hand in writing their papers, but a consistent theme appeared in nearly all of them. The theme is reflected in the title of this volume: the perspective that looks at the law and order situation in the context of changes in the wider society.

This changing society theme took several forms. First, many speakers were concerned with understanding law and order problems by looking at the context of the wider society, rather than by looking only at the government institutions formally concerned with law and order matters. Second, several papers considered recent changes in Papua New Guinea society, looking particularly at changes between independence in 1975 and the present. Third, a number of writers while looking at the direction of social change, also looked forward to what the future might hold for Papua New Guinea, at where current trends are likely to take us, and how far these trends may be reversible or susceptible to government influence.

### **The context of the wider society**

The first element in the changing society theme can be seen in discussions of the economic environment, the political context, relations between people and the state, social inequality, and the international context within which Papua New Guinea is situated.

Brunton describes how public demand for modernization and the nature of the economy produce unemployment problems and unfulfilled expectations for rural incomes. Brunton and Giddings both

underline the gap between what people want and what they can achieve, although Giddings' account is focused on communities and families in one particular part of the country.

Several writers consider the political environment and the role of the state in modern Papua New Guinea. Dinnen finds similarities between Papua New Guinea and the United Kingdom. He argues that when there is a crisis of hegemony (using Gramsci's phrase), when a government finds diminished support and acceptance among the people, then the government's approach to law and order problems is likely to change, usually in the direction of more use of force.

Morauta describes a widespread lack of confidence in government, and in some highlands areas open conflict between members of the public and state agencies. This point is also made by Mapusia when he looks at police policy on tribal fighting. Mapusia finds that many people see the police as an 'army of occupation' in their territories, as enemies rather than as allies in times of trouble.

While in some parts of the country there is conflict between state and people, in other parts there is more of a breakdown of communications or contact between government and people. According to Morauta most rural communities conduct their affairs independently of government services or intervention. Brunton argues that throughout the nation there is a low level of political consciousness beyond the community, and little interest in or understanding of governmental processes. Thus public opinion provides little check on or guidance to policy makers. Much of the discussion of the political environment was, then, in terms of public attitudes rather than in terms of institutions and their performance.

The paper by Hess presents an apparent contrast to such arguments. Hess describes the record of peaceful industrial relations in Papua New Guinea and relative harmony between unions, employers and government, especially the Department of Labour. He suggests that workers trust the Department of Labour and that this trust facilitates negotiations between employers and employees. Thus Hess describes a situation of legitimacy, while others talk of a lack of legitimacy for government.

The contrast between Hess and other writers may be illuminated by the discussions that took place on crime, social inequality and class. Dinnen, Morauta and Brunton all consider the conflict of interests on law and order questions between people in positions of power and economic advantage, and the rest of the population. Dinnen particularly emphasizes the way law and order policies serve the rulers at the expense of the ruled. It may be that Hess' study provides an illustration either of the closing of ranks among those with certain advantages, or of the coopting of the workers, and a blurring of their conflict of interests with their employers, by a more sophisticated ruling class.

Bayne, Dinnen and Brunton also look at the international context of the law and order situation in Papua New Guinea. Bayne considers some of the influences, by no means all of them either 'colonial' or mindlessly adopted from overseas, on the present legal system. Dinnen and Brunton consider in broader terms than Bayne the impact of the international polity and economy, especially in relation to underdevelopment.

## **A changing society**

The second element in the changing society theme is expressed in various ways in the papers of Kituai, Morauta, Bayne, Brunton and Dinnen. Several explicitly contrast the changes over the decade with the ideals and aspirations of independence.

Of course, many recent changes have grown out of changes that began prior to independence. Kituai's paper takes us back as far as the period before the Second World War, and the Papua New Guinean policemen who worked in that period and in the 1940s and 1950s. We see the times and the work of these policemen through their eyes. The old policemen present a picture of effective policing in difficult situations. But the end of Kituai's paper reminds us that it was an authoritarian regime that provided an essential backup for this kind of policing. By the time of independence, such policing was a thing of the past.

Bayne and Morauta contrast the ideals of independence with the realities of the 1980s. Bayne looks at the development of the basic rights provisions of the Constitution and the ideals that these expressed. He describes how actively these provisions have been used in the period since independence but sees pressure on them now in the face of growing social disorder. This agrees with Dinnen's view on pressures towards more coercive law and order policies. Morauta makes a more general statement on the same lines as Bayne: on the contrast between the democratic ideals of the Constitution and the realities of a state out of touch with many of the people, widely disregarded, and in open conflict with some groups. Morauta sees the deteriorating relationship between state and people as a more serious threat to the ideals of the independence period than inefficiency within government or the law and order services.

Dinnen, assisted by his comparison with the United Kingdom, sees the emphasis on a law and order crisis as not only permitting more power to the government, but as diverting public attention from other social and economic changes tending to concentrate power and wealth in the hands of a few. Brunton traces changes in economic policy in the independence period: from an emphasis on maximum employment in small-scale activity and support for the smallholder sector, towards large-scale agriculture, mining and urban development.

One of the contributions of Kituai's paper is that it gives us a longer time perspective. Alongside the others it draws our attention to patterns of change in law and order policy over several decades. From authoritarian colonial beginnings, there was a move towards more democratic ideals in the 1970s and the vision of the Constitution. But in the 1980s we see renewed interest in authoritarian measures in the face of what is seen as a crisis in law and order.

## **Looking to the future**

Not surprisingly writers who describe trends in social change are also interested in what these trends mean for the future. What do the events of today tell us of tomorrow? One of the difficulties in answering this question is to disentangle social features that are transient, part of a move from one situation to another, from those that are permanent, likely to persist or become further established in the future. There is also the difficult question of how far government or other purposeful action can influence or alter the processes of social change.

The main areas of agreement at the conference were that Papua New Guinean society is moving towards greater inequalities of power and wealth, and that the state is likely to become increasingly coercive in its relations with the people it governs. Class inequality is particularly marked in towns according to Morauta, but Brunton and Dinnen emphasize that this should not obscure the position of the ruling class and the state in Papua New Guinean society as a whole. Brunton looks at underlying changes in the economy, and sees the education system and urbanization as leading inevitably to greater disillusionment and dissatisfaction.

Mapusia and Morauta, from observations of tribal fighting in the highlands, see the social and political situations in highlands and lowlands as diverging and continuing to diverge in the future. They argue that, as a result of different colonial experiences, the highlands and lowlands have taken different roads in the relationship between people and the state. Morauta contrasts the strengthening or continued strength of lineage and clan in the highlands, with the growing emphasis on household and individual in the lowlands. Mapusia asks: 'Where is Papua New Guinea heading?'. He concludes that unless there is a change in government policy the highlands provinces will see the police as an enemy 'to be driven out through mass insurgency and possibly cession from Papua New Guinea'.

Two writers in particular emphasize that the law and order situation is not simply an indicator of social change but a catalyst for the changes they anticipate. Dinnen and Bayne agree that the perception of a law and order problem among politicians inclines them towards more coercive and less democratic government, and provides a justification acceptable to the public for such changes.

How far do our authors see these changes, which they unanimously regard as unwelcome, as inevitable? On this point they are not agreed. Some, like Bayne, Brunton and Dinnen, see the trends as inescapable. Brunton argues that the odds against a change of direction are too high, even were there to be political will for change. The international economy, the underdevelopment of the domestic economy and the lack of local skills and expertise make the prospects for a change of direction bleak. Dinnen draws on international experience to arrive at the same conclusion.

On the other hand, several writers seem to think that there is room for change, that acknowledging problems is the first step to solving them, and that changes in government policy could result in a different scenario for the future. While Giddings, Mapusia and Morauta want to warn government about current trends and their implications for the future, they also want practical changes to policy as a response to the warnings.

These three writers, together with Keris, emphasize community responsibility and greater cooperation between law and order agencies and private citizens as the key to a better future. Giddings argues strongly for community involvement with young offenders and, more generally, community problems, based on experiences in the Eastern Highlands Province. Keris emphasizes the role of village courts in involving private citizens in solving law and order problems, and the need for more sensitive and community-oriented policing. Mapusia is highly critical of the use of police mobile squads to (literally) combat tribal fighting, and argues that the state should increase its role as mediator and negotiator and relinquish that of combatant.

## Overview

In concluding this introduction, it is perhaps useful to consider why discussions at this conference developed in the way they did, and focused on the theme of law and order in a changing society.

The choice of contributors and the environment of the conference obviously had an influence. The conference was hosted by a research wing of a university, was aimed at informing members of that university and drew on the wider academic community for many of its contributors. Of the nine papers, six were given by people holding full-time academic positions, while three were given by people who were at that time practitioners in the law and order field. However, of the six academic contributors several had had experience as advisers to government or as public servants in Papua New Guinea. While academics naturally tend to consider abstractions and underlying causes, they could do so equally by focusing on deviance, explanations of crime, or an examination of formal institutions. The conference focus thus seems to me to require some further explanation.

We must also take account of the stage that had been reached in late 1985 in the debate on law and order within Papua New Guinea. Five of the nine paper-givers were resident in Papua New Guinea at the time of the conference, and a different five were citizens. Most were affected by the climate of informed opinion in the country at that time. After many years of government reports and enquiries (summarized in Morauta's paper), 1984 had seen the appearance of two major overview studies of law and order questions. Dated 1983 but available only in mid-1984, the Morgan Report was the fruits of the work of the government's committee to review policy and administration on crime, law and order (Department of Provincial Affairs 1983). Another study, jointly sponsored by the Institute of National Affairs and the Institute of Applied Social and Economic Research, the INA/IASER Report, was also published in 1984 (Clifford *et al.* 1984). These two reports had rather exhausted the topic, at least temporarily, of what was wrong with the government's law and order institutions and its overall policy on law and order.

However, at the end of 1984 the law and order situation had appeared to deteriorate even more rapidly, there was great public concern and in mid-1985 a state of emergency was declared in the national capital. The conference was held while the state of emergency was still in progress, at a time when police morale and public relations were at something of a high point, and when, as a result, many people were asking not what was wrong with the police, courts or prisons, but what was wrong with their society. Thus public attention itself had partly shifted to the issues of the social context of crime, law and order.

Nevertheless, there are probably less temporary reasons for the theme that emerged in the conference. One such reason might be that questions about law and social order in any country are essentially questions about the nature of a society: its values, its institutions and its politics. In Papua New Guinea, this kind of question is both intriguing and hard to answer. The social science tradition in Papua New Guinea focused until the 1970s on small-scale societies. Neo-Marxist writers drew our attention to the structure of Papua New Guinea society as a whole, but there are still relatively few country-wide studies and almost none that address the nature of social change since independence.

Finally, the papers in the conference seem to me to reflect the mood of many well-educated Papua New Guineans in the mid-1980s. Theirs is not the optimism of the 1970s. Rather it is a disillusionment with the processes of government, policy-making and administration. Many educated Papua New Guineans now want to find personal satisfaction or public commitment outside these processes, while others try to define the possibilities and capabilities of government and their own roles more narrowly than in the past.

Their eyes, too, are turned to their changing society, and few like what they see. However, as was apparent in the conference, people respond in different ways to what they observe. There are some who feel that the unwelcome trends are inevitable, while others, in their own spheres, want to challenge the direction of social change, and, if with more modest goals, to rekindle the optimism of the independence period.

For the first type of person, this volume will only serve to confirm his fears and pessimistic predictions about Papua New Guinea. For the second kind of reader, the restrained optimist, it may do more. It may provide him with a little more understanding of the problems he perceives, and place him in a better position to make whatever personal contribution he can to their solution.

## CHAPTER 2

# LAW AND ORDER IN PAPUA NEW GUINEA : A TENTH ANNIVERSARY REPORT

Louise Morauta

Papua New Guinea celebrated the tenth anniversary of its independence with banners, fireworks, visiting dignitaries, and a state of emergency in the National Capital District. Whatever else may have been achieved, the country had little to rejoice over in relation to law and order.

In this report I shall briefly review the law and order situation in Papua New Guinea in September 1985. I shall then look at what might be described as the links between the law and order situation and the tenth anniversary : the relationship between law and order and the changing national society. I shall consider crime and inequality, the nature of the state, relations between state and people, certain features of contemporary social structure, and conclude with some comments on policy options and prospects.

### **The situation today**

Because of the limitations and deficiencies of official statistics, there is no reliable evidence on trends in crime in Papua New Guinea. Only a minority of offences are reported to the police. For instance the 1983 Urban Population Survey found only 27 per cent of victims in Lae reported household thefts to the police. The figure was 33 per cent for the five towns surveyed in 1977 (Bureau of Statistics 1978). The report arising from the study by the Institutes of National Affairs and Applied Social and Economic Research (the INA/IASER study) suggested that around half of the cases reported to police were lost before they could enter official crime records (Clifford *et al.* 1984). All things being equal rural crime rates are less likely to be reflected in official statistics than urban ones. So we have no reason to accept official police statistics which show a slowing rate of increase in crime in the 1980s.

Public opinion, however, is that crime has been increasing and that particular types of offences, crimes of violence and rape, have been increasing faster than others. All over the country people in different walks of life feel that there is a law and order problem that has worsened during the years of independence. Rural and urban people alike see towns as the worst places for crime, and see crime spreading into the countryside along the roads and under the influence of urban models. Rural visitors to town probably see urban problems as more severe than urban residents themselves see them. Like any stranger or newcomer, the rural visitor has to make a safe adaptation to a new

environment, an adaptation based on the experience and information relayed to him by urban residents. Naturally enough he has a greater interest in identifying the maximum risks and in erring on the side of caution.

As far as tribal fighting in the highlands goes, there seems little doubt that there has been an upsurge in recent years (see, for instance, Gordon and Kipalan 1982). Public opinion on tribal fighting is divided. Among people from the coastal and island provinces it is widely condemned, and seen as a major law and order problem. It is regarded as backward, foolish and destructive, and is prominent in ethnic stereotypes of highlanders. There is an impatient attitude that assumes highlanders could stop fighting any time they wished. Coastal people are quick to point out that their ancestors also engaged in tribal fighting but they have accepted the new ways of the government and left such foolishness behind.

But within highlands provinces views are more varied. There is some public condemnation of tribal fighting, but also an appreciation of the factors that give rise to it. In particular it is regarded as a response or a solution to a law and order problem, for instance a dispute or longstanding grievance, rather than a law and order problem in itself. For highlanders tribal fighting is as much an epiphenomenon as phenomenon, and their attention is focused on the problems that give rise to it.

### **Government response**

The response of the governments of independent Papua New Guinea to law and order problems has been undistinguished. Although it is impossible to say what might have occurred without what government activity there has been, it is certain that successive governments have failed to contain the increase in crime or tribal fighting or to reassure citizens that they will shortly do so. Certainly the seeds of today's social and institutional problems were sown well before 1975. But if independence means anything, it must mean some opportunities to diverge from the colonial past and some responsibility for present circumstances.

Over the past decade governments have set up a series of policy reviews, established various new mechanisms for coordination and attempted to improve the services of particular agencies. Government response to law and order problems has frequently been a response to crises in public opinion or particular events, and is marked by fluctuations of interest. It also reflects the dispersed nature of government efforts : with a considerable number of different agencies making rather independent contributions. There has also been uncertainty about appropriate coordinating mechanisms. These characteristics are illustrated in the following list of law-and-order-related actions:

- 1977 task force on Royal Papua New Guinea Constabulary;
- 1979 state of emergency in five highlands provinces (in Enga until 1980);
- 1980 National Planning Committee policy hearing on village courts;
- 1981 Port Moresby committee for the promotion of law and order established;
- 1981 committee of review on law and order appointed by the National Planning Committee (NPC);
- 1982 review of Royal Papua New Guinea Constabulary operations, management and administration for the NPC;



- 1983 committee to review policy and administration on crime, law and order, the Morgan Committee, established (Department of Provincial Affairs 1983);
- 1984 the INA/IASER study of law and order (Clifford *et al.* 1984);
- 1984 appointment of a sectoral committee on law and order to assist with the drawing up of the Medium Term Development Strategy;
- 1984 National Executive Council Decision 176/84 'Measures to combat the breakdown in law and order', the forty-nine measures (Papua New Guinea 1984a);
- 1984 implementation task force for forty-nine measures appointed;
- 1985 law and order task force established; and
- 1985 state of emergency in the National Capital District.

The report of the Morgan Committee and the INA/IASER study were first available in 1984 (although the Morgan Report is dated 1983). The Morgan Report was to hand and the INA/IASER Report in its final stages of preparation when the pack rape of a New Zealand woman and her daughter in Port Moresby gave rise to a public outcry and demonstrations. The National Executive Council met in Madang in October and passed a package of forty-nine measures 'to combat the breakdown of law and order'. It was a mixed package with something for everyone in cabinet, some measures drawn from the Morgan and INA/IASER recommendations, and no clear overall theme. The measures included changes to laws, strengthening law and order agencies, support for village courts and urban local government, improvements in community-police relations, and some general measures such as identity cards, street-lighting and a review of urban settlement policy. Hard-line measures were prominent with proposals for mandatory corporal punishment for rape and violent crimes, reactivation of the police squad used in community raids, boom gates outside all towns of more than 10,000 people, a review of the Vagrancy Act, and a rejection of any reduction in the minimum penalties for less serious offences. Police and corrective services were to be strengthened.

Measure number 49 established a small part-time implementation task force to report to the ministerial committee on law and order and to follow up on implementation. This group, chaired by the secretary of the Prime Minister's Department, was replaced in January 1985 by a small full-time law and order task force. By the end of June 1985 this second group had prepared a cabinet submission reviewing implementation of the forty-nine measures and recommending funding priorities and a package of projects for commencement in 1985. This submission was not, however, considered by cabinet.

Meanwhile public pressure on the government mounted as a result of violent crime, and a state of emergency was declared in the National Capital District in June. At one level the state of emergency was popular with the general public in Port Moresby, providing what was commonly agreed to be a marked reduction in break-and-enter offences and violent crimes. A number of wanted persons and escaped criminals were arrested. The police have on the whole conducted themselves with discretion and sensitivity, and there has not been a backlash of community opposition.

Port Moresby residents today are anxious about what will happen in November [1985] when the state of emergency comes to an end. Will it be business as usual for the gangs and other criminals? There are arguments for and against optimism. On the one hand, police may feel that they have captured a sufficiently large number of criminals during the state of emergency to improve the

crime situation after it ends. There is also a possibility that young people on the fringes of crime and gangs have moved away from crime, because of increased risk of arrest, negative attitudes among relatives, or a swing against them in public opinion. Perhaps the clearest gains in the long run will be seen to be in the minds of the general public in Port Moresby. Confidence in the police has been boosted.

On the other hand, many people believe that criminals have been lying low during the state of emergency, and are ready to resume their normal activities as it ends. Improvements to prisons and holding cells have not been great, and many of those arrested by police will soon again be at large. Brought to court, many will not be convicted because of inefficiencies in prosecution and court processes.

### **Crime and inequality**

It is often argued that crime in Papua New Guinea is a result of inequalities of power and income : that poor people turn to crime as a result of poverty and unemployment. The view is not expressed just by academic observers, but also by politicians and criminals themselves (in letters to the papers, speeches, and even in court). Further support for the argument comes from reports that gangs rob the rich to give to the poor (see Reay 1982 on highlands gangs). There can be no doubt either that there are disparities of income in Papua New Guinea, or that many criminals come from poor homes or were unemployed before they took to a life of crime. On the other hand, the exact connection between unemployment, poverty and crime needs further examination.

Most urban teenagers who left school at Grade 6 and have been unable to find jobs do not become criminals or join gangs. A large number may be dissatisfied or underemployed, but they do not turn to crime. In rural areas an even smaller minority are involved in crime. At the best poverty could be a necessary but not a sufficient condition for crime.

Are rich people more frequently the victims of crime than the poor? The 1977 Urban Population Survey found the number of thefts per hundred households in settlements (fifteen in three months) much the same as the number in the presumably more prosperous homes in suburban areas (sixteen in three months), although the figure for urban villages was lower at eight (Bureau of Statistics 1978 : Table 3). The survey suggests that thefts from homes are as much a problem for some of the poorest areas of towns as for at least the average suburban area. Theft in poor neighbourhoods are often the work of fellow residents. During urban fieldwork in 1982 and 1983 I found that victims commonly suspected members of their own community. One unfortunate member of my household expenditure sample in Madang had the 25kg bag of rice that I gave him at the end of the survey taken from beside his bed the same night. It is neighbours who have the knowledge and opportunity to commit such offences.

The poor are in several ways more exposed to crime than the affluent. It is they who have to walk home after dark if they cannot find public transport, live in flimsy homes without security bars, and cannot afford private security services or telephones. They bear the brunt of violent crime in public places, and are not spared murder, rape or injury. Police figures for the six months to April 1985 show that proportionately as many Papua New Guinean women as expatriates reported cases of rape in Port Moresby (Smith 1985). While there is no information on the economic status of Papua New

Guinean victims, the figures at the least show that the wealthiest segment of the urban community, the expatriates, are not the only targets of violent crime.

What can we make of reports that gangs steal from the rich to give to the poor? I suggest that these are primarily statements of ideology. Criminals have learned that academics, bureaucrats and politicians find poverty and unemployment partly acceptable excuses for crime. They are justifications which remove some of the guilt of antisocial behaviour, and may even attract government resources to fund employment schemes for ex-criminals. This was in fact one of the themes of a retreat sponsored by the law and order task force in 1985 to which many gang members came. Such justifications for crime are not, of course, likely to cut much ice with equally disadvantaged neighbours who have not themselves turned to crime.

Gifts from criminals to the poor, apparently in the tradition of Robin Hood, may be designed to gain approval and support from those least likely to be impressed by the theoretical arguments about poverty and crime. For all its strengths, the gang may not be enough for its members, either in terms of tactical support or social and emotional rewards. Members still seek the approval and respect of kin and neighbours. So criminals give radios, food, clothing and money to family and friends, in the Papua New Guinean idiom of expressing and creating social solidarity with material transactions.

This is, however, a very different kind of giving from the largesse of Sherwood Forest. It is not recorded that Robin Hood lavished his gifts on parents, aunt, sister-in-law and girl friend. He gave to the faceless poor, the poor as a class. But the Papua New Guinean criminal makes his gifts to particular individuals, strengthening and marking personal rather than class relationships. While he may be able to articulate the idea of 'giving to the poor', it is most unlikely that transactions are perceived or understood that way by the recipients or the communities in which the criminal lives. The personal networks and kinship groupings outweigh the class relationship.

Alongside these benefits to individuals, we must look at the costs of having criminals in one's community or locality. While the benefits of crime accrue largely to individuals, the costs accrue to individuals and to a neighbourhood as a whole. Law-abiding citizens complain that criminals living amongst them 'spoil the name of our community, *ol i bagarapim nem bilong mipela*'. Their main concern is not with pride in neighbourhood but with more practical issues. Many of the urban communities who suffer most from the presence of young criminals are communities of migrants. They may have uncertain rights to the land on which they live, or feel that they depend on the goodwill of non-migrant groups to remain and prosper in town. Relations between urban migrants and the descendents of those who originally owned the land on which the town was built are commonly strained if not hostile. Provincial governments frequently appear to support the non-migrants.' Anti-migrant moves have included eviction from customary land, relocation of settlements, escalating land rents, enforcement of the Vagrancy Act, and police raids and searches.

Many public servants and politicians believe that migrant settlements are the main base for urban criminals. Accordingly the National Executive Council's forty-nine measures

Approved the immediate review of Vagrancy Act and the National Constitution to permit its effective operation with regard to human criminals

and

Directed the review and implementation of Government Settlement Policy. It is further directed that the Department of Lands and Physical Planning to immediately identify land from Bomana to Laloki and inform National Executive Council in its next meeting, once the land has been identified and sub-divided to build Standard Housing (*sic*) (Papua New Guinea 1984a : 2-3).

The aim of these measures is to drive from the towns 'vagrants' who must in effect always be migrants since unemployed permanent residents in urban villages cannot be sent home to a rural area. Another aim is to break up informal settlements and remove them wholesale to a safe distance from the national capital's main residential areas. These measures are in effect anti-community measures. It is thus that a criminal minority endangers the security and wellbeing of the law-abiding citizens among whom they live or with whom they are identified by outsiders.

The area in which social and economic inequality has perhaps its greatest impact on law and order is in the attitudes of the upper class, since it is upon these attitudes that many cabinet decisions and bureaucratic actions are based. There is a growing gap in perceptions and attitudes between the upper and the remaining strata of urban Papua New Guinean society. The well-to-do public servant, businessman or politician knows little about the lives of the majority of urban residents. Ignorance among national and provincial politicians is aggravated by the fact that nearly all of them come from rural electorates.

As a result the upper class sees ordinary people as squalid, dangerous, criminal and almost non-human. They are people to be moved at will into 'standard housing' on the fringes of town, without regard to their incomes, social ties or personal inclinations. Troublemakers must be removed from towns by the Vagrancy Act and boom gates constructed to keep them and other undesirables out of towns. Politicians and public servants do not appreciate the realities of life at the bottom of urban society and fail to see the distinction, understood by the ordinary man, between the criminal and the law-abiding citizen. The police often fall into the same trap for the same reasons. They label certain neighbourhoods as tough or uncooperative and treat all residents with suspicion. The unfortunate effect is that a crucial resource for improving urban law and order is overlooked : the law-abiding citizen in every street and cluster of homes in our towns.

The same communication gap is much less apparent in the highlands in relation to tribal fighting, or in any rural area in relation to crime more generally. In the highlands members of the upper class are commonly as involved as poorer neighbours in tribal fighting. Indeed they often have more to gain than the ordinary man. The fighting is based on traditional-type groups that cut across economic strata. In rural areas more generally the well-to-do and the politicians live alongside peasant and subsistence farmers, and see themselves as having common interests in the face of criminal or gang activity. So rural politicians are much less likely to confuse the criminal with the law-abiding citizen in their own rural electorates.

## **The state in modern Papua New Guinea**

Several observers have commented that the formal institutions of the state in Papua New Guinea have less impact on the ordinary man than in many countries. Connell reviewing divergent approaches to the political economy of Papua New Guinea writes: 'Indeed there is something of a consensus about the fragility of the political system, resulting from the absence of mobilised support...' (Connell 1982:517).

The law and order issue raises the question of the relationship between the state and the people in independent Papua New Guinea, and allows us to look more closely at certain aspects of the fragility that Connell describes.

The phrase 'law and order' is used in two different ways in Papua New Guinea. As we argued in the INA/IASER Report, it is used to refer to the peace and good order in their communities and nation to which citizens aspire, and also to refer to the peace and good order which is established or maintained by the state. These two things are not necessarily synonymous. In the first sense there is peace and good order or a degree of it in the community at large, but it is a matter for investigation and debate what has been and ought to be the contribution of the state (in the second sense). The distinction opens up the question : what other forces apart from the state promote good order and peace in Papua New Guinea?

The main link between the state and law and order is in people's minds. Many people, including public servants and politicians, regard law and order as exclusively the state's business. This view is partly based on the Constitution. The state makes the laws and its institutions support these laws. Law and order problems are, therefore, seen as problems for government to solve: with new laws, with more resources, and with adjustments to law and order institutions.

This view is something of a contrast to a gradual shift in government policy in fields such as housing, transport and agriculture. In these areas the government view is that people must do more for themselves, expect less from public funds, and take the initiative to satisfy their own needs. The government role is being defined more narrowly. This is partly because of government's poor revenue prospects, and partly because of a reappraisal of what has been and can be done by government. But a similar shift in government thinking has not occurred in relation to law and order. Law and order functions are seen to be much more of the essence of state activity than agricultural or commercial ones. If a state does not control law and order and foreign relations, is it a state?

Popular views about the state and law and order are more diverse. While members of the rural and urban elite from which politicians and bureaucrats come think along the lines just indicated, the majority of ordinary people are more ambivalent. At one level many appear to think that it is up to the state to solve law and order problems : they ask for stronger laws, tougher penalties, and better police services. But in practice people may not place much faith in government interventions. They may be able to articulate what improvements they want to see, without believing either that these will come about, or that the improvements will really help.

The law and order issue highlights the current weaknesses of the state in Papua New Guinea. Many of the problems arise from the nature of the cabinet system as it has evolved. It appears that

cabinet's ineffectiveness arises in part from the absence of policy formulation within political parties, the poor quality of advice available to ministers, and the paucity of countervailing critical forces in the community at large. The educational and employment backgrounds of ministers have in few cases prepared them for cabinet posts, and insecurity both in cabinet and parliamentary positions focuses their attention on preserving those positions. Ministerial office provides economic and status benefits very much higher than those available by any other means to most ministers, so the enjoyment and securing of these benefits is naturally a high priority. The public service and other government agencies also face problems of management and low levels of expertise and experience.

Law and order seems to have brought out the worst in the cabinet and public service system. In some fields strong policy review within the public service and interaction with well-informed ministers has produced more decisiveness and a consistent theme in policy. But in the law and order area the government has received no such support from the public service. The main reason is a structural one. While police, courts, corrective services, justice and welfare services all depend on one another for effective performance, they are not linked together institutionally or even through a single ministry. Nobody in the public service or cabinet is responsible for the overall law and order effort or for looking at policy for the system as a whole.

At the cabinet level this is partly a result of the effort to create as many ministries as possible to gain political support, and a reluctance to produce two levels of ministers, for instance ministers and assistant ministers. Within the public service, the separation of institutions was inherited from colonial times, but has been reinforced by a heavy-handed interpretation of the constitutional independence of certain offices and functions. For example, the judiciary has often appeared to believe that its independence with respect to particular cases (the crux of its constitutional independence) would be jeopardised if it engaged in discussions with other agencies about the nature of the system within which all of them operate. By isolating itself, and relying on critical public statements to influence other agencies, the judiciary has contributed considerably to the suspicion and antagonism that exists between law and order agencies.

Cooperation between agencies is voluntary and *ad hoc*. Sometimes it works, sometimes it does not. There have been frequent instances of hostility between police and officers of the Department of Provincial Affairs over law and order functions, between village courts and police, and between the judges and the corrective services. The achievements or initiatives of one agency are sometimes viewed with suspicion and received less than warmly by others. Such has been the experience with the major initiative of the independence period (enacted in 1974), the village courts. Many of the problems of village courts today stem from an initial failure to explore in detail their relationship with the wider justice system. For example, in 1985, just over ten years after the Act was passed, the first steps have been taken towards the design of instructions on village courts for the police manual.

Decentralization has probably made coordination between agencies more difficult, with some functions - police, courts and corrective institutions - remaining national, while others - village courts, welfare services and provincial affairs - are concurrent or provincial functions. Provincial law and order committees can only request the cooperation of national agencies.

As a result of the separation between the parts of the government's law and order system, funding is allocated agency by agency. In the rough and tumble of the allocation process some small but crucial parts of the system have been starved of funds in a way which has brought the whole system to its knees. An example is the failure to provide the relatively minor funds required to relieve judges of the necessity to take their own long-hand records of court hearings.

### State versus people

The problems discussed so far have been features internal to the system of government itself in Papua New Guinea. But the law and order problem also raises questions about the relationship between state and people. This issue has been considered by several writers who have discussed tribal fighting (Gordon 1983; Gordon and Meggitt 1985; Wormsley and Toke 1985). Many highlanders do not find the state's mechanisms for solving disputes satisfactory, they do not respect the courts, and as a result they turn to their own solutions for resolving disputes. In doing so they effectively deny the state's claim to a monopoly of the use of force. By engaging in tribal fighting highlanders show that 'those who make laws do not necessarily control society' (Gordon and Meggitt 1985 : 240).

Gordon (1983) also argues that government's position has worsened since independence, because of increasing differentiation and hence confusion in government services, because of localization, because of a political climate hostile to intimidation, and because people no longer depend on the state for the material goods of the western world. Although people may be dissatisfied with government performance in health, education, agriculture or urban services, their dissatisfaction does not have the same implications as in the field of law and order. By rejecting the state's law and order services and resorting to violent self-help, highlanders have come into conflict, and in some cases physical confrontation with the state.

Nevertheless there is probably a link between dissatisfaction with government law and order activities and with its other functions. If the state were successful in raising living standards and meeting people's economic aspirations, no doubt villagers would find other aspects of its performance more acceptable. But dissatisfaction with many government programmes today compounds the problem. To be fair, many people expect more than is reasonable given limited public means, for example, in primary and secondary education. Whether reasonable or not, however, there appears to be widespread dissatisfaction with government performance at the grass roots, both in villages and towns.

This theme runs through every aspect of the law and order problem, not just tribal fighting. The essential points of the argument as applied to tribal fighting are:

- the people in some respects define crime and disorder differently from the state;
- state activity does not meet the problems perceived by the community;
- the state does not support or approve non-state solutions to law and order problems; and
- the state is prepared to use force to impose its definitions of crime and in support of its own institutional arrangements.

This same pattern can be discerned in relation to crime in rural areas. In rural areas popular and state definitions of disorder do not always coincide. Villagers regard some matters more seriously and others less seriously than the Criminal Code. People rely very largely on their community institutions to solve disputes and handle minor offences. Data from a scattered sample of villages in a Law Reform Commission survey suggest that the majority of remedies tried by villagers are informal and not part of the state apparatus (Clifford *et al.* 1984:1/237). Self-help was the most common response; almost three quarters of the disputes in the study were settled by informal means. People elect to use state mechanisms according to their perception of their own best interest. It is in a tiny minority of cases that the state takes the initiative to bring matters before a court. Despite the vigour and apparent effectiveness of many community mechanisms, the state gives them little recognition or support. Indeed from time to time police appear to operate in opposition to or in conflict with community leaders and opinion. The picture is not uniformly bad throughout the country. Generally in lowlands areas and wherever there is no tribal fighting the door is wider open for state-community cooperation. But accommodation and cooperation are not built into the state system, they are *ad hoc* and therefore fragile.

Village courts are right in the middle of this tension between state and people. Manned by lay officials they are very close to the community and rather far removed the other agencies of the state system, despite the fact that they are the lowest of a nation-wide hierarchy of courts. Village courts in many respects lack the support of the state - because they lack the support of the police, their supervising magistrates, and local government sponsors. Other state agencies find them amateur, undisciplined and subject to local political influence, in other words they are too much of the people. Villagers on the other hand sometimes experience village courts as too autocratic, as too much of the state.

In towns the gap between state and people is often more marked than in rural areas. Popular perceptions of disorder do not coincide with those of the government, for instance in relation to laws on vagrancy, street-vending, traffic and building regulations, and the sale of alcohol. Meanwhile government does not provide the security of person and property that people want. Community mechanisms for solving disputes are weaker in town and do not address the problem of offences beyond the small community but within the town as a whole. These mechanisms are strongest in migrant settlements and urban villages. As in rural areas they are unrecognized and unsupported by the state. Police often operate in such a way as to undermine these institutions, providing a service which is a competitor. While working in a community of East Sepik migrants in Madang town, I found settlement elders working hard to send home to the village a young man who was apparently on the fringes of crime. They raised money for his ticket and after weeks of effort had manoeuvred him into a position where he was ready to board the boat for home. At that point the police came to the settlement, never spoke to any of the leaders and arrested the young man for a minor offence. Thus state action works against community initiatives and builds up hostility between law-abiding residents and the police.

The underlying conflict between state and people is the main law and order problem in Papua New Guinea. In a democratic state the government cannot rule by force, it must rule by consent. If it does not rule with the cooperation and good will of the people, in many ways it does not rule at all. In Papua New Guinea there are the formal institutions of the state, but these are largely irrelevant to the internal workings of the society.



## Corporate groups in modern Papua New Guinea

If the state is not a major integrating force in Papua New Guinea, how best can we characterize relations between people and groups within the society? We have to say that Papua New Guinean society is still very fragmented. Although there are differentiating class relationships across the country, the law and order question directs our attention to the role of corporate groups in contemporary social structure.

In pre-colonial lowlands societies tribal fighting was in many places endemic. It was the way in which, as in the highlands today, relations between groups were adjusted. The contrast with the highlands today is not so much of traditional culture as of colonial history. By the time of independence there was nobody alive in the first-contacted coastal communities who had witnessed warfare first hand and remembered it. Even in the late 1960s in Madang I found it very difficult to piece together accounts of particular wars all of which had taken place before 1910. In the highlands some pre-contact wars are still being fought today, and there is still alive a generation of men who can teach their sons the ideology, the technology, and the tactics of traditional warfare. I do not want to paint a crude picture of contrast between highlands and lowlands, but to emphasize that features of contemporary social structure are likely to be associated as much with colonial experience as precontact culture.

In the absence of strong state institutions many highlands people have sought security and identity in groups such as clans. In other parts of the country strong group identity and inter-group fighting have not been the response. People have remained nominally in their traditional kinship and quasi-traditional residential groups, but have responded to disputes and offences in a more individualistic way. They seek community-based remedies, often of a traditional type, but not those requiring group action. The balance between residential, landowning and descent groups on the one hand and household, small family and networks of kin and affines, on the other has changed.

The contrast between an emphasis on the household and an emphasis on a wider corporate group is also apparent in urban social structure, although for different reasons. In 1980, 30 per cent of the urban population lived in census units classified as urban villages or migrant settlements (National Statistical Office n.d.) In these areas ties of neighbourhood and kinship link residents, and informal leadership and dispute-settlement mechanisms are relatively strong. Group boundaries are important to residents who would otherwise feel insecure in the town environment. During fieldwork in the Nine Mile settlement in Port Moresby in 1982, I became very aware of the importance of the residential community for physical safety. Within the settlement people moved around freely after dark. Women and children could walk anywhere on their own with safety. While there was a certain amount of theft within the community, people were not afraid to sleep outside at night if the house was too crowded. One elderly widow told me how the settlement was 'her village', the place she regarded as home and security. The residents of Nine Mile are from the Malalaua District of the Gulf Province, but there is a smaller cluster of houses belonging to people from the Goilala District of the Central Province on the fringes of the settlement. During my stay members of this Goilala group got into a serious dispute over brideprice with some of their kinsmen. An attack was expected. The Goilala people moved into the main housing area, and slept in the open air or under the house of a United Church elder. As they explained to me, nobody would dream of attacking them in the middle of Nine Mile settlement.

The remaining 70 per cent of urban residents live in suburbs where neighbours are strangers and ties of kinship, affinity and friendship are largely with people in other suburbs. The residential community is not a social or political group. People in such areas have much less opportunity to seek community-based solutions in cases of dispute or offence. Their residential group is not a significant social group.

Similarly local politics take different forms in different parts of the country. Throughout Papua New Guinea leadership roles have become differentiated through the colonial period, while some semi-traditional and more generalized roles also continue. Somebody has remarked that rural villages today are all chiefs and no Indians, there are so many different official and informal leadership roles. But in areas of tribal fighting there appears to be an ordering or ranking of roles, such that the leader in warfare and ceremonial exchange is in some senses the most important. In other parts of the country where there is no warfare, different leaders operate in their own separate arenas, and there is no clear ranking of one against the others.

Relations between the state and people also vary. In some areas the conflict is overt. In others it is more subdued or takes the form of a gap in communications rather than hostility. Overt hostility with the state may be more likely where group boundaries are strong : in tribal fighting areas, and in urban villages and migrant settlements in towns. In rural areas without tribal fighting and strong corporate groups, people go their own ways independent of the state, but conflict is less likely. In the urban suburbs where strangers are neighbours, residents are more dependent on the state. They have more to gain and less to lose by identifying with the objectives of the state and accepting its rule. Nevertheless, in this most favourable of environments for legitimacy, we find much criticism of government, and little cooperation with the state's law and order agencies.

### **The cooperation of the people**

It has not escaped the attention of politicians or law and order agencies that there is a lack of cooperation between the state and the people. Police appreciate that they depend on information and assistance from the general public and that, for example, rehabilitation programmes are often most effective in the hands of volunteers. Prime Minister Somare has frequently exhorted the public to assist the government in the war on crime and disorder.

What is not appreciated is that the state is as much to blame as the people for the absence of cooperation. Law and order problems are in some senses created by the state. Acceptance of state authority cannot grow from cooperation with the state, it is a precondition for cooperation. The change has to come in state policies and approaches.

In the INA/IASER Report we said that the government had three options as far as an overall law and order policy was concerned :

- a continuation or perhaps improvement of present services;
- increasing reliance on the coercive power of the state; or
- what we called 'the non-state' option : an approach which placed community resources at the forefront and used state resources to complement these (Clifford *et al.* : I/251).

The third option would certainly be an about-face. It would require strong leadership and some hard decisions. It would be difficult and slow to implement. But it is the one option that recognizes and uses the strengths that the people can bring to bear on the problem of law and order, and it is the one option that is likely to overcome the problem of legitimacy that underlies the ineffectiveness of state efforts to date.

Thus on the tenth anniversary of independence, disregarding the fireworks and the banners, it seems as if we in Papua New Guinea need to pause. The Constitution accepted immediately prior to independence sets out democratic ideals and the kind of state Papua New Guineans wanted to have. However, as we look back over the decade since 1975 we find important parts of these ideals have not been realized. The Papua New Guinea state is not only ineffective and inefficient, which was perhaps to be expected, it is also out of touch with the people and trying to rule without their support. In some senses it is their adversary. The problems of legitimacy are much more serious than the problems of efficiency. Perhaps, once recognized, these problems will be seen as one of the main challenges of the second decade of Papua New Guinea's independence.

## CHAPTER 3

### PAPUA NEW GUINEAN POLICEMEN OF

### THE COLONIAL PERIOD

#### August Kituai

During Papua New Guinea's colonial period, from 1884 to 1975, a lot of people, both white and black men, were appointed to work as agents of the colonial government. Those appointed performed a variety of tasks within the colonial service: as administrators, teachers, doctors, missionaries, anthropologists, patrol officers, policemen and village officials.

In this paper I shall discuss the work of some Papua New Guinean policemen, particularly those who enlisted after the 1920s and who continued to serve until the late 1960s and early 1970s. Some unfortunately have died and, without written records, we will never know much about their work. Of those who are still alive, a few are now living in urban centres either independently or with their sons and daughters. The majority, however, have returned to live in their villages. Wherever they are they are continuing to maintain an avid interest in the developments that are taking place within the force, in which they were once proud members. This is because, as one former member stated, 'once you are a policeman, you will always be one' (interview, 9 February 1985). Their perception of what being a policeman was all about might help us to understand the joys and tribulations that the policemen of today experience in their endeavour to bring peace and good order to the community.

The paper is based on interviews conducted over a seven month period in 1985 with men who had served either as members of the Papuan Armed Constabulary or the New Guinea Native Police Force between 1920 and 1952. The number of men interviewed at the time of writing was twelve. More interviews are planned and an analysis of police views will make up a substantial part of my doctoral dissertation on 'The experiences of the Papua New Guinean policeman 1920 - 1952'.

Most of the able-bodied men who were recruited into the then Armed Native Constabulary of Papua and the New Guinea Native Police Force came from those areas which had the longest contact with the colonial government<sup>1</sup>. A lesser number were recruited from areas which had only recently been

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<sup>1</sup> The term 'Royal' was not used for the Armed Native Constabulary of Papua New Guinea until 1939 when King George VI 'assented to the prefix "Royal" being granted to the force, which then became known as the Royal Papuan Constabulary' (Royal Papua New Guinea Constabulary 1966). The combined police force of Papua and New Guinea was not known as the Royal Papua New Guinea Constabulary until 1955 (Grimshaw 1972:919).

brought under control. A few were from areas not under complete government control (Townsend 1933:424). In most cases the latter recruits were either ex-prisoners or men who had been convicted of some notorious acts against either colonial government officials or other tribal groups.

Before final selection all recruits had to satisfy certain requirements as laid down in the police force regulations, the first of which had been enacted in 1890 in Papua and 1896 in New Guinea. A potential candidate therefore had to be:

- of superior physique and intelligence;
- of good character: before enlisting, prisoners and ex-prisoners had to make a commitment to be loyal to the government;
- 5 feet 4 inches or more in height (reduced from an original minimum of 5 feet 6 inches) (Territory of New Guinea 1932-33:497);
- with a chest measurement of 33 inches;
- 17 to 40 years of age;
- able to converse in any one, or a combination of three languages: English, Police Motu and *tok pisin*; and
- knowledgeable about the work of the colonial government.

Although the normal police squad on an outstation would often contain men from four or five administrative districts, some areas consistently provided more recruits for the police than others. The communities most favoured by government recruiters were probably the Binandere, Orokaiva and Waria. As a result, people who were culturally closely related made up a high proportion of the police.

### Introducing some policemen

Sir John Guise was born on 29 August 1914 and was recruited into the Royal Papuan Constabulary in 1946 at the age of thirty-two by Colonel Elliot Smith. Prior to his recruitment he had worked for the Burns Philp Company in Samarai for sixteen years. At the time of his recruitment he had been educated up to grade four. Of his physique he recalled in interview, 'I was thirty-two years; I was a sportsman. I am damned sure that I had a good physique because I was a very strong sportsman'. Among a number of sports, his favourite was cricket. In 1946 he considered himself a Papuan. None of the other ex-policemen had considered themselves as either Papuans or New Guineans. It is possible that Guise identified himself as a Papuan because of his educational background.

Joe Naguwien, a Sepik man, enlisted into either the New Guinea Native Police or the New Guinea Volunteer Rifles in Morobe in 1942 at the age of about twenty-two (interview, 14 March 1985). When news of the Second World War reached the goldfields in Bulolo and other areas, his employers left in a great hurry for Australia or elsewhere, leaving practically everything behind. Naguwien and his compatriots were left to fend for themselves. They walked to Lae with their meagre possessions and upon arrival were told to enlist and help fight the Japanese or walk back to the Sepik. The odds were against Naguwien walking back to Dagua through unfamiliar territory, so he enlisted with a fellow villager and 580 other Sepik men. As he could neither read nor write he placed a mark beside his name on a white piece of paper as evidence of his enrolment. Whether or not he had first signed on to work for the NGVR he subsequently formally enlisted in the war time

police. In 1942 Naguwien did not consider himself to be a New Guinean but only a man from Dagua. This tends to confirm my suggestion about the influence of education on regional and national identities.

Talasea proved to be a strange place for young Amero Bega when he was brought in from his village on Nukakau Island in the southwest of West New Britain, to work as a kitchen hand in about 1929 (interview, 20 March 1985). This was his first exposure to a European settlement and he decided quickly that he could not adjust himself to a clock-orientated life-style so he returned to Nukakau.

In about 1934 a recruiting team from Rabaul came and, after much persuasion from both the government officer and the government-appointed *luluai* and *tultul* of the village, he placed his mark on the enrolment paper. Two days later he travelled by canoe to Talasea station and the following day boarded a ship for Rabaul with fifteen others from the Talasea Sub-district, for training at the police depot.

### **Police training**

So the police came from a wide geographic area and were recruited in very different circumstances. They were adventurous men. They were prepared to leave what was familiar to them. And they knew something about the work that they would be doing once they joined the police force, because they all had seen policemen at work in their villages. They were not like men going to unknown plantations and mining jobs. To them all policemen were men of prestige and authority. If the new recruits themselves were not warriors and men of authority within the villages, their fathers certainly were, and hence they were aspiring to inherit positions of prestige and authority when they grew older. Therefore, the recruits went into the police expecting to command; it was an expectation to influence behaviour.

For the new recruits police training, whether in Rabaul or, from the late 1930s, Sogeri, was hard and long. For six days a week they got up at six in the morning and went to the parade ground to begin their daily exercises. They did not return to the barracks (except for an hour for lunch) until about half past four in the afternoon. A lot of emphasis was laid on physical exercise so that they would be fit and mentally alert for patrol work, if they were selected for this work, in unfamiliar and hostile territories.

The training lasted from seven months to a year and if a recruit was unable to shoot the target or the bull's eye with a rifle, then he had to painstakingly start all over again. The non-commissioned officers who trained them showed no mercy, regardless of the situations they were in. Guise recalled, 'if you disobeyed any sergeant major, you knew what you would get: a full-pack on your shoulders, and you were made to run for about fifteen to sixteen miles'. Amero in Rabaul recalled the officer who was training them using a stick to hit them around the legs if they showed any sign of fatigue or clumsiness. The toughness of their training was something that all the police had in common. It helped bind them together as comrades-in-arms, and it strengthened their belief in themselves as superior men.

Several months before the end of their training, they were lectured every day on how they should perform when out in the field. Guise, with his normal fluency, described police training as a great moral force:

We had a teacher there who taught us about law and order and the various laws of the country which we as policemen had to uphold. We were told about the protection of weak people, those who were not able to defend themselves. If we saw them in trouble, we were to defend them. We were told to be friends of the people. We were told that it was our duty to work as policemen and that meant we were available for duty on a twenty-four hour basis .... And we were told emphatically that even if a member of our family broke the law we would have no other course but to arrest that person, whoever he or she may happen to be: your wife, son or grandfather.

Guise recalled an incident in which his son was caught swimming at Ela Beach at a time when 'natives' were forbidden to do so. His son pleaded with him to consult his superiors in his capacity as the sergeant major of police, to make an exception for him. Guise's reply was simple and straightforward: 'being a policeman I am serving within the system. I can hardly kick against it, because I am bound by an oath of loyalty'.

Both Amero and Naguwien recalled similar instructions about caring for the weak and defending those who were unable to defend themselves, particularly those who were employed by the government. This was what the colonial government demanded of the policemen. And that was what they did, most of the time, even if they as individuals felt no compulsion to do so.

At the conclusion of their training the three men were posted to different areas of Papua and New Guinea. Guise finished as the regimental sergeant major and was sent to work at police headquarters in Konedobu. Amero, after a short spell in Salamaua, was posted to Kundiawa. Naguwien served in the army during the war years and was posted to Rabaul after the cessation of hostilities.

Was this training necessary? To the participants it was vitally important in three respects. First, we must remember that, with only a few exceptions, a great number of these men were drawn straight from their villages. A lot of them may have been well versed in their own tribal laws and therefore may have known what remedial steps they had to take to punish or reprimand the wrong-doers in their own community (see, for example, Malinowski 1940, especially p. 59). But in this case they were recruited to become the ears and spokesmen of a people whose legal codes and ways of behaviour were poles apart from their own.

For their own peace of mind, then, they needed to be educated in the ways of the white men. Regardless of how scanty this education may have been, it nonetheless prepared them in their task of translating this *nupela pasin* for the villagers. What this *nupela pasin* entailed would require a complete study in itself. Generally stated, it involved instructing policemen to go out into the field and assist in putting a stop to the practices of homicide, immolation of widows, warfare, headhunting, cannibalism and infanticide, as well as murder and manslaughter; in other words, practices which the whiteman found to be 'particularly repugnant to his ethical code' (Todd 1935:443-4).

However, it is interesting to note from Wolfers' book, *Race Relations and Colonial Rule in Papua New Guinea*, that, as a result of the 1906 Royal Commission on Papua, members of the Armed Native Constabulary could not arrest Europeans who had committed offences of a similar nature against other Europeans or against members of the indigenous population (Wolfers 1975:18-19). Indigenous policemen could be part of a contingent to track down an offender, but only a European officer could actually make the arrest. In almost all cases, the prisoner was sent to Queensland to serve his term. So the Papuan and possibly the New Guinean police were not directly involved in enforcing European law among other races, particularly not among those of Caucasian origin. This arrangement continued into the 1960s.

The other type of action policemen had to take was preventive. It was their duty to put an end to 'crimes' which were considered to be 'native torts' (Todd 1935:443) so peace and good order would be maintained in the villages.

Second, the training was necessary because police were made to understand the need to develop a strict work ethic, leaving behind what was considered to be the leisurely lifestyle they had known in the villages. Their new way of life, they were told, required discipline, punctuality and commitment. Wherever they were posted, either to headquarters or to the outstations for patrol work, they were to carry out their duties with dedication and loyalty. If they carried out their responsibilities as required, they would be rewarded with promotion and other privileges.

For a Papua New Guinean at that time, the highest rank he could achieve was a sergeant major first class. Sir John Guise recalled:

When we were in the police, we were told we were the mainstay of any government whether colonial or otherwise. The police was the most important body because it carried out law and order on behalf of the government. Therefore, we were to be extremely loyal to the officers whether they were white or brown... From the ranks respect and discipline was demanded: a constable had to stand attention for a lance corporal ... We were told to be loyal to our NCOs, loyal to our officers, to be friends of the people and when on patrol, going into restricted areas, we were not to mistreat the people, and also not to steal from their gardens but to ask for any food and not to sort of throw our weight around and be cruel to the people. Those sort of things were told to us on the parade. And furthermore, they told us that we should always be loyal to the government of the day.

Most of the ex-policemen that I interviewed seemed to have been overly loyal, almost to a fault. Joseph, the son of Naguwien, made the following statement about his father:

I think one of the most important things about my father was that he was a very loyal servant of the administration. At no time did he go against an administrative order. When he was told to go on patrol he went wholeheartedly - putting his family priorities at the bottom. So in that sense, I would say his loyalty was towards the government. There were no two ways about it.

Third, it was during police training and subsequent years of service that a sense of police identity developed. Policemen soon realized that there was little value in their continuing to emphasize



where they came from. They began to look upon themselves as policemen first and foremost: as a group of Papua New Guineans who had been brought together to work and live as a team. And so an *esprit de corps*, a feeling of brothers-in-arms, grew within the police force. Guise remembers:

Although Papuans could say 'I am a Papuan' and a New Guinean could say 'I am a New Guinean', yet at the same time, you could see a New Guinean sergeant major taking a group of Papuan recruits and there was complete obedience to the superior officer - complete obedience. There was none of this, 'you don't do this thing to me because I am a Papuan'. No. That was not allowed ... and in that sense, as I declared before, my nine years in the force were my happiest years because it showed me the spirit of comradeship which no other organization had taught me but the police force.

The type of work the policemen performed depended on their rank and the centre in which they were stationed. Whatever it was that they did, they never lost sight of the fact that they were employees of the government, trained to maintain law and order within the administrative centres and among the indigenous communities. Generally the most senior members, with the rank of sergeant major, worked close to the central administration or at the main stations. Occasionally they ventured beyond to the remote outstations. Otherwise their regular duties involved supervising other policemen below them in rank. Officially they were also the communication link between the European officer and his subordinates.

Thirty policemen in the headquarters detachment, and all office staff dealing with records and criminal investigations, were responsible to Guise:

The other duty that came under me was going through the court returns: courts of native matters, courts of native affairs and the court of petty sessions, returns of which were coming in from the districts ... My job was to go through these court returns and try to locate any miscarriage of justice. I managed to pick out a couple ... of a magistrate exceeding his powers in jailing a policeman under Section 14 of the Police Act. I then pointed this out to the headquarters officer. An appeal was then made to the Supreme Court and the matter was quashed ... then at half past five I took the parade and marched up to the government house with the band and lowered the flag and then paid our respects to the Administrator ... In the night I was in charge of the night guards in the Konedobu area.

No responsibility pleased a policeman more than to be selected for patrol duties. Sir Hubert Murray wrote in a Papua annual report: 'As regards this part of their duty, they are almost too keen, they weep bitterly when a patrol goes out and they are left behind' (Commonwealth of Australia 1908 : 8). It was on patrol that a policeman could shine and show his natural ability; it was a task he performed with courage and determination. While in the bush, on patrols, a policeman was one step away from the trappings of the colonial establishment. If outwardly he still felt bound by his responsibilities to the government, he nonetheless experienced a temporary psychological release which allowed him, in part, to relive his traditional lifestyle.

As described by Amero Bega for Simbu and Joe Naguwien for Talasea, patrolling was by no means an easy task. Elaborate preparations had to be made in assembling food supplies, equipment,

recruitment of carriers and logistical support, before a patrol was considered to be ready. Even then the patrolling party would discover in the middle of some thick jungle that an important item had been overlooked. During the patrol impromptu shelters had to be built, food cooked for the weary carriers, tracks cleared, security provided, and the party had to trudge over rough and unfriendly country. The environment could be as hostile as the tribes.

Sometimes the party would miscalculate their route, perhaps because of the antiquated instruments used by an officer. They might not discover that they were heading in the wrong direction for several days; and only then because they had not reached their anticipated destination. Food shortages were a common problem, coupled with attacks from communities fearful of strangers.

Tribal fighting and other similar disturbances were normally quelled quickly. Recurrences were rare. Initially police went in and fired shots either into the air or at objects nearby to scare the villagers away. But if they persisted, Naguwien said: 'The police kicked, punched or even used the rifle butt to hit people just to knock some sense into them ...'.

Guise had a high regard for the policemen who served with him in the force and the 'noble tradition' they had established within it. He was therefore careful not to make statements that might blacken that image. By the same token, he himself admits to using force when necessary. This suggests that the use of force was common throughout the police force. Guise describes his experience at Konedobu in relation to the use of force:

It's a natural thing for any policeman to do, especially when you know that that man is telling you lies. And I will admit ... that in cross examination, when I knew the facts as had been revealed, when I had a witness to prove that this man did something and he kept on denying it, and continued to glare at me and say, '*O lau diba las, o lau diba las,*' [Oh I do not know, oh I do not know], I have struck a few on the face, make no mistake.

The majority of the policemen I spoke to agreed that a little force was necessary to keep belligerent individuals and tribes under control. They were convinced that the people they dealt with were 'primitives', who would only respond to more stringent measures. To Naguwien, for example, 'primitives' were people who were scantily dressed, and those who continued to engage in traditional practices, such as tribal fighting, headhunting, cannibalism and sorcery. It is interesting to note, however, that police regulations forbade the use of excessive force and that policemen were to use force only under instructions from their superior officers. In the event of a policeman using violence beyond that required of him by the regulations or his superior officers, he was punished just like anyone else. Naguwien said:

There were instances when policemen disobeyed orders. If it was a minor offence they would be disciplined. If they were sergeants a stripe was taken off them and they would be demoted to corporal. If you were a constable, you had to undergo military drill with your full pack for four hours every Saturday until such time as your officer was satisfied that you had learnt your lesson. If the matter was of a very serious nature, his [the offender's] contract was terminated.

A number of both secondary and primary sources testify to the extent to which a policeman was punished if he seriously exceeded the powers given to him. I shall cite three of them, if only briefly. In 1929 Constable Karo Araua, a Toaripi man from the present day Gulf Province, received a five year gaol sentence for the murder of a policeman companion in the vicinity of Kokoda (Inglis 1982:24-30). During the 1930s another policeman, Constable Sipi of Vanimo, was hanged in Ambunti after he was found guilty of wilful murder of Assistant District Officer Colin McDonald (McCarthy 1963:132-134). According to Amero Bega's oral testimony, Sergeant Awai of Manus was given a life sentence for damaging government property and inciting relatives of his Chimbu wife to attack a government patrol in the area.

However, despite the fact that some policemen were punished for breaking the colonial government's law, others escaped punishment simply because their officers, both black and white, denied allegations of murder or other acts of violent behaviour by policemen. In almost all cases the reasons the officers advanced for the untoward behaviour of their men was that they had acted in self-defence. For example, after the arrest of Sergeant Awai and some men from his wife's clan, Constable Amero shot dead two of these men and hung the third upside down on a nearby *yar* tree. He did this, not because the arresting party had been in any danger, since the men's bows and arrows had already been disposed of, but because they attempted to run away from police custody. The European officer congratulated him for his 'bravery' and nothing more was said of the murder.

The communities that they tried to pacify and control held a variety of views about police. Generally it was a love/hate relationship. Like the beachcombers of the 1800s, the policemen were the interpreters of European culture to the indigenous people. Many villagers were confused about this *nupela pasin*. What did it mean? Why did they have to stop fighting their enemies and abandon their cannibalism, sorcery and head-hunting? They were told that it was because of the new law that had come into their midst. An end to these activities would ensure that: they made bigger and better gardens; wives would no longer wait anxiously for the return of their husbands from their hunting; children would, if they did not die from natural causes, live to inherit their parents' possessions; and peace would reign within their communities. If anyone committed an offence against them, villagers were not to deal with the matter themselves but to report it to the *kiap* (see Read 1943:174) or the resident policeman, and he would deal with the offender on their behalf.

Policemen took an interest in what villagers were doing and lived amongst them. Sergeant Major Naguwien, for instance, lived in Rabaul for twelve years, from 1946 to 1958. During this period he served under three different European officers. This suggests that patrol officers were posted to other districts more frequently than policemen. Naguwien's long stay in Rabaul allowed him to learn the Tolai language, and he was always available to listen to people's grievances and problems. As a result he described himself as their unofficial 'resident magistrate'.

Other policemen, as a consequence of their lengthy stay in particular communities, married local girls. The marriage was not only physical but also symbolic: it was a bridge built over a sea of fear and suspicion. It confirmed the close relationship the policemen had established with the people, and demonstrated the people's trust, confidence and acceptance of their presence.

To a lot of these village people, the policemen had been 'cruel to be kind'. Naguwien's view was:

One of their best and most notable achievements was that their efforts ensured that people lived in peace and no longer lived a life of continual belligerence against their neighbours ... Policemen lived close to the community and through the community's own observation of their actions and behaviour, they [the community] felt encouraged to follow their example, and became law abiding citizens. In almost all cases, no major civil disturbance occurred once the policeman had established a station in the area and brought people under the control of the government.

Perhaps that is an old man's romantic memory of the past; but it does express the old policemen's pride in their group and their work.

On the other hand, there still remained recalcitrant people. These were suspicious and unforgiving. Why should they put an end to practices which had been handed down to them from time immemorial? Why should they sit and watch their wives and daughters procured to satisfy the lust of the policemen and his *kiap*?<sup>1</sup> Why should they not be allowed to kill the sorcerer whose magic killed their children? Where people with these sentiments lived, it took the policemen a long time to win their confidence.

#### **What can we learn from the old policemen?**

Some of these old policemen, once the beloved sons of colonial governments and of villagers, have now become senile and live destitute in their villages. While fellow villagers are now reaping benefits from his years of toil, the old policeman if he had served his twenty years or more, wanders off to the nearest bureau of management services office to collect his monthly pension cheques from the government.

Some policemen did not marry; the children of others passed away during the course of their duty. A few wives remained in their villages refusing to accompany their husbands to their home areas. On their return at retirement, these policemen were too old to remarry. The children of these marriages, now already mothers and fathers themselves, look upon themselves as half-castes. While a few returned or have intentions of returning to their father's province, the majority opted to remain with their mother's people, since they had already established physical and mental attachments with them.

If all else is forgotten about them, at the least these old policemen would like to be remembered as the men who helped the colonial government bring peace to many of the people of Papua New Guinea. They have grown old with the changes, and have observed what they see as a general

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1 Tawi of Bundi in the Madang Province was a young man when a *kiap* and his policemen arrived from Chimbu and demanded both married and single girls for the night. He remembers selecting, after much struggle, the prettiest girl for the *kiap* and the rest of the women were forced to spend the night with the policemen. Had he refused to obey he would have been caned (interview, 14 July 1985).

deterioration taking place within the Papua New Guinea society, particularly in relation to law and order. Naguwien tells the story:

Comparatively speaking, the conditions were much better in those days than today. Now you see tall grass, litter etc. around stations. Before people kept these places clean. Also law and order has broken down. It wasn't like this when we were in the force. Everyone took notice of the law and the regulations - tins were removed, rubbish was out of sight and generally the town area was very clean ... There were hardly any break and enter [problems]. If there were, they occurred once or twice in a year. Crimes were few ... but in those days it was generally peaceful ... People could walk freely - because police were there doing patrolling during both day and night ... mind you, on foot. And they were always there whenever trouble emerged so they were invariably able to control a situation before it got out of hand. But this, of course, doesn't mean that there were not any crimes or instances of criminal activity in the past, because there were instances of rape, murder etc. ... but it wasn't as bad or as widespread nor did it occur with such regularity as nowadays.

In conclusion, I should perhaps ask myself: were they better policemen? They had prestige and they had confidence. They were violent, but they were also interpreters between white officials and villagers. In their considered view the people of that era were law-abiding: they took heed of the warnings of the policemen not to engage in criminal activities and they respected the colonial government and the policemen as the enforcers of law and order.

In the final analysis only one definite conclusion can be drawn about the state of law and order then and in our times. The policemen of that era worked hard and they contained the law and order problem but only in so far as they were able to receive prompt assistance from an authoritarian colonial regime. Had it been otherwise, the society of that era may have been no more law-abiding than the one that exists today.

## CHAPTER 4

# CRIME, POLITICS AND ECONOMICS

Brian Brunton

### Introduction

The general view of this paper is that crime in Papua New Guinea is a symptom of a society with internal conflicts and contradictions. Crime cannot be seen as a phenomenon on its own, but must be related to its economic, social and political context. Government and planners dealing with crime face a number of competing pressures that influence the decisions of people to engage in anti-social or criminal behaviour. Some of these pressures are direct but many of them are indirect and at first appear quite tenuously linked with the incidence of crime.

With the International Monetary Fund warnings that Papua New Guinea should not increase foreign borrowing, with the predicted fall in net private capital inflows as Ok Tedi's loan needs are reduced, with internal revenue down, and with unemployment up, the policy of the Papua New Guinea government to fight the root causes of crime with an increase in employment through economic growth appears doomed.

The economics of the exercise are complicated by irresolute and unprincipled politics. The tone of national politics is illustrated by the decision in 1985 to introduce television, and by the case of the Minister for Industrial Development, who has a 25 per cent interest in a joint Singapore-Papua New Guinea venture to import spirit essence, add industrial alcohol and water, and sell 350 ml sachets of liquor on the domestic market.

If the government's long-term policies of solving crime by economic growth of the capitalist brand and by employment are failing, and the population is growing, the conclusion must be that Papua New Guinea's overall quality of life, including rates of crime, will deteriorate.

In this paper I take a closer look at the economic and political context of crime in Papua New Guinea. I consider a number of factors in this context: the origins of crime in the wider society; economic trends in modern Papua New Guinea; the role of youth today; the quality of political leadership; bureaucratic weaknesses; and development prospects.

The theme is that all these factors influence the level of lawlessness in Papua New Guinea. Hence remedies for lawlessness must be sought in these areas as much as within the formal justice system. This was very much the message of the Morgan Report (Department of Provincial Affairs 1983). This paper can be seen as an elaboration on the Morgan Committee's message. However it goes

further by suggesting in its conclusion that the message of the Morgan Committee is likely to a considerable extent to fall on deaf ears.

### **The origins of crime**

What is the source of the crime problem in Papua New Guinea? I do not propose to quantify the elements of the social, political, and economic milieu in which crime arises. But a listing of the elements of the mix may be useful.

First, we have a country that suffers from underdevelopment. It is a country with one of the highest average rates of population growth in the region. It is a country where the bulk of the population lives according to traditional customs, influenced only marginally by modernization. As far as infrastructure, roads, bridges, and communications are concerned, the country lacks the linkages necessary to facilitate development. Further, the workforce is underdeveloped : there is a lack of managerial and technical expertise among the national population. This results in a costly importation of foreign expertise.

Second, and in contrast to the country's chronic underdevelopment, is the desire for modernization. Much of the country's political energy is concerned with the distribution of goods and services. There is a strong desire for improvement in the material conditions of life. As the people, and in particular the young people, become exposed to the education system and to educational processes, so they obtain an appetite for intellectual satisfaction and other material comforts. Rural villages appear quiet and dull places when contrasted with the bright lights and the fascination of the towns.

Third, the whole modernization process must be seen against the background of Papua New Guinea's international status. Papua New Guinea has become an international entity; it can no longer hide away and remain, as it once was, a collection of introverted communities. International competition and international cultural influences are now a fact of life.

Finally, the country's underdevelopment and the pressure for modernization have a historical context. Colonialism bequeathed to Papua New Guinea a number of features that contributed to the conditions that give rise to the law and order problem. One of these conditions is the dislocated economy. This can be seen in the contrast between the modern and the traditional sectors of the economy, with the traditional sectors being very much a backwater. Approximately 30 per cent of the Papua New Guinea government budget has to be provided in the form of Australian aid. The economic model adopted by successive Papua New Guinea governments since independence assumes that development depends on foreign investment.

Another feature of the colonial legacy is the failure of government to develop a self-supporting food industry. The cities and towns of Papua New Guinea are, by and large, dependent upon imported food. The underdevelopment in domestic agriculture and in food production was a direct result of a colonial policy that emphasized tree-crop production and encouraged the formation of a class of small peasant cash-crop producers. Significant urban markets for food within Papua New Guinea were neglected and became the monopoly of Australian and Japanese exporters.

A further aspect of the colonial legacy is the education system. This system is geared to produce manpower for the small modern sector. It ignores significant numbers of children, either by not providing for them at all, or by 'pushing them out' at the end of primary school. The final bequest of colonialism that I wish to mention is the bureaucracy. Papua New Guinea is burdened with a large, expensive and inefficient salaried bureaucracy. One third of the national government budget is allocated to public service salaries.

### The economy

The private sector holds the key to economic prospects in Papua New Guinea, since it is government policy that development should be led by private investment. However, there are numerous disturbing features about the private sector in Papua New Guinea, features which are significantly linked to employment levels and the extent of economic activities available for youth. These employment levels and opportunities for young people are important elements in the context of crime (see also the next section on youth).

Private capital inflows in the late 1970s and early 1980s appear on the surface to be quite promising (see Table 4.1). The massive increases in private capital inflows during 1981 and 1982 are associated with the Bougainville copper project, the Ok Tedi project, petroleum exploration and timber projects. Although these inflows at this time appear promising, they suffer from a defect in that they are mainly into capital intensive, export-oriented resource industries.

Table 4.1

Net private capital inflows to Papua New Guinea, 1976-1984

Year	Value of flow Millions of kina
1976	20
1977	31
1978	-20
1979	11
1980	30
1981	189
1982	283
1983	262
1984	220

*Source:* Bank of Papua New Guinea various dates.

Part of the problem of the Papua New Guinea economy is the limited amount of capital available for reinvestment within the country. Bank of Papua New Guinea figures give some indication of



problem. The total value of loans, advances and bills discounted denominated in kina and held by commercial banks as at the last Wednesday in 1983 was K395 million (Bank of Papua New Guinea 1986 : Table 3.2). This figure can be compared with the value of funds employed by Bougainville Copper Pty Limited in its operations during 1983 : a total of K781 million (Bougainville Copper Pty Ltd 1984 : 24).

The distribution of commercial bank lending by industry should also be a matter for concern. Table 4.2 sets out the figures supplied by the Bank of Papua New Guinea for May 1983. First, loans to agriculture, forestry and fishing accounted for only 19 per cent of the total, and were almost entirely to coffee, cocoa, and palm oil producers. No significant loans were apparently made for food production projects. Second, wholesale and retail trade (commerce) accounted for one quarter of all commercial bank lending. Third, advances to private individuals were 7 per cent of all loans and larger, for example, than loans to any single industry in the agriculture, forestry and fishing sector, excluding coffee which received K28.8 million. This pattern does not bode well for the development of the rural sector or for the opportunities that section can offer for the useful employment of Papua New Guineans.

Nor do figures from the Development (now the Agriculture) Bank bring much cheer, since the Bank's resources are relatively small compared to those of the commercial banks. For example, while the commercial banks had loans, advances and bills discounted worth K395 million at the end of 1983, the comparable figure for the Development Bank was K50 million (Bank of Papua New Guinea 1986 : Tables 3.2,4.1).

### Youth and crime

Both police and corrective institutions statistics show that young people are more often in trouble with the law than other groups in the population. In 1980 60 per cent of all persons arrested were aged 17 to 25 years (Department of Provincial Affairs 1983 : 240). Inmates of prisons are also more likely to be young people in the age group 18 to 25 years than people of other ages. Rates of imprisonment per 100,000 persons in the population in 1983 were 924 for aged 18 to 25 years, 287 for males over 25 years and 73 for males under 18 years. A similar trend was evident among females, although the rates were lower in all age groups (*ibid.*: 91).

The Morgan Report projected the likely increase in the 15 to 24 year age group over the period 1983 to 1990 (*ibid.* : 95). In 1983 it was calculated that there were 559,000 persons in this age group; by 1990 it was estimated that the number would be some 736,000 and thereafter the size of the age group would continue to increase by about 20,000 young people annually. The report concluded

If economic growth is as limited over the next few years as in the past then the conclusion is inescapable : over 700,000 young persons will be without any form of employment by 1990 (*ibid.* : 96).

Table 4.2

Advances outstanding to commercial banks by borrower, at last Wednesday of May 1983

Type of borrower	Value of advances in millions of kina	Percent of all advances
<b>BUSINESS</b>		
Agriculture, forestry and fishing	66.2	18.6
Manufacturing	44.4	12.5
Transport, storage and communication	24.8	7.0
Finance --	4.6	1.3
Commerce (wholesale and retail trade)	87.6	24.6
Building and construction	23.5	6.6
Mining and quarrying	7.5	2.1
Other business	61.2	17.1
Total advances to business	320.0 <sup>a</sup>	
<b>GOVERNMENT</b>	3.9	1.1
<b>PERSONS</b>	25.6	7.2
<b>NON-PROFIT ORGANIZATIONS</b>	6.8	1.9
<b>NON-RESIDENT BORROWERS</b>	0.2	0.1
<b>ALL BORROWERS</b>	356.5	100.1

*Source:* Bank of Papua New Guinea 1986: Table 3.5.

*Note:* <sup>a</sup> Discrepancy in total due to rounding.

The problem of the young is spectacular. In 1982 there were some 3,000 registered youth groups. These youth groups were thought to have about 200,000 participating members. The 1984 budget indicated that the Office of Youth, Women, Religion and Recreation had a 1984 appropriation of K1.9 million (Papua New Guinea 1983a : 112). The National Public Expenditure Plan for 1984 to 1987 indicates that in 1984 the National Youth Movement (NYM) has been allocated K1 million, the development fellowship scheme K69,000, the National Youth Movement Corporation K50,000, and the rural sports programme K30,000 (Papua New Guinea 1983 : 279). These funds represent a per capita allocation of K10.97 for each person in the 15 to 24 age group.

The overall imbalance between government resources allocated to youth and young people's expectations is well known to government. In the 1979-1990 national manpower assessment we read:

... more than 130,000 students will emerge from the Papua New Guinea secondary school and university system over the period 1979-89, of whom more than 75,000 will be at grade 10 level or above (National Planning Office 1981 : 45).

The assessment also noted that on current trends only about 4,000 new formal jobs would be created each year over the 1980s whereas the active labour force would increase by about 40,000 per year over the same period. This means that for every new worker who finds a job in paid employment over the next decade there will be roughly nine others who will have joined the subsistence sector (*ibid.* : 1-4).

The inescapable conclusion from these projections is that the government must make more resources available to youth if the country is to avoid serious disruption in the late 1980s and early 1990s. The government may also like to consider new options when formulating youth policy. The Morgan Report suggested several, including : encouraging labour-intensive work; work-sharing programmes; early retirement schemes; universal schooling; national service; youth land settlement schemes; and the creation of kibbutzim. All of these options involve major policy departures for the government, and major reallocations of resources within the country. I shall discuss briefly four of these : universal schooling; national service; land settlement schemes; and kibbutzim.

The Morgan Committee tended to take the view that although the present education system was not a cause of crime, it was closely related to the problem of crime and youth. The committee thought that present policy, which is linked to satisfying demands for skilled employees, neglects far too many children in Papua New Guinea, and needs to be changed in favour of those children who are at present pushed out. One option for government is to increase resources made available to the present school system, in order to expand its capability to the point where there is universal schooling. Another option would be to achieve greater coverage through a de-schooling of the education system : placing more emphasis on non-formal education, through institutions like the NYM, the College of External Studies and vocational training centres. The Morgan Committee thought that the NYM was worthy of far more government attention. Given limited resources and the needs of youth outside the formal system, the youth development model as adopted by the NYM appeared to the committee to be far more appropriate to the circumstances of the country. The report noted: 'Youth development is cheaper than schools and in the circumstances is capable of reaching more people' (*ibid.* : 130).

There are basically two models of national service being debated within Papua New Guinea. The first is a model that depends on current government infrastructure and costings. There is no doubt that this is an expensive exercise. However, a second model is also being discussed which involves ordinary school-leavers associated with their own local communities, with an emphasis on rural development, construction, agriculture, fishing, and forestry. This model need not be as expensive as a national service which envisages the quasi-employment of undergraduates either in public service activities or in association with the disciplined forces.

At present when the government establishes land settlement schemes based upon nucleus estates, land is generally allocated to married persons above the age of 25 years. Selection criteria give priority to applicants who are between 26 and 35 years old, and who are married and have children (Peter Eaton, personal communication). Land settlement schemes, nucleus estates and integrated agricultural projects could be of great benefit in absorbing rural youth and channelling their energies into productive activity, if these selection criteria were amended and younger people were able to take part.

The Morgan Committee recommended that the government consider the establishment of cooperative settlements which in Israel are known as *kibbutzim*. Two concepts were offered. The first was to encourage young people to engage communally in modern agriculture, both for cash and subsistence, in their own areas, and integrating with this agricultural activity cottage industry, service industry and agriculture-related manufacturing. The second idea put to government was that *kibbutzim* could be established in underpopulated parts of Papua New Guinea for the particular purpose of encouraging young people from different parts of the country to join these communities.

### **The quality of leadership**

Perhaps for the first time in an official report in Papua New Guinea, the Morgan Committee attempted to make some assessment of formal party political platforms on crime, law and order. The report examined individually each party's manifesto, and arrived at the conclusion that in general political thinking on crime in Papua New Guinea lacked sophistication. There is a serious political vacuum in the country. There is no official policy on crime, law and order. Because of the lack of political direction, policy on crime, law and order is left in the hands of the bureaucracy.

This lack of direction is compounded by the fact that many of the public service departments which were questioned by the Morgan Committee, and which were thought to have a major role in justice administration, stated that they did not have a policy function at all. The standard response from these departments was to the effect that they were responsible for implementing the law; it was for the politicians to make policy. It follows that much of the policy, such as it is, that is administered by the justice system is based upon values contained in statute law (still largely colonial in origin), or reflects colonial policy unchanged since independence.

There is in Papua New Guinea a great deal of political fragmentation. National-level politics is split between a number of parties, some of which are little more than vehicles to assist in the election process. There are also further divisions, now becoming important, within provincial politics.

On the whole the country suffers from low levels of political consciousness. While the public associate crime and unemployment, thinking about crime tends not to go any deeper. Undoubtedly political parties have responded to this superficiality in their platforms. The parties do not see the need to educate the people, or to build membership on the basis of political education. Voting in Papua New Guinea is still more associated with the status of candidates than with party-political platforms, although some changes in party consolidation can be detected.

The Morgan Report was concerned with the general need to inform the people about crime, and the links that exist between crime and the lack of economic development. The report also drew

attention to a lack of concern about crime amongst those government departments which had an economic function.

The committee recommended that the government should open dialogue with the people based upon the values expressed in the national goals and directive principles with the purpose of allowing the people to become aware of the nature of their own society, the impact of history, and the need to work hard to produce and to engage in socially acceptable activities (Department of Provincial Affairs 1983: 357).

The report also directed attention to an important aspect of the political system in Papua New Guinea that has a direct effect upon the nature of society. This political system tolerates a number of undemocratic features. The most noticeable is the political inequality that exists between men and women. The report notes:

While the Constitution calls for 'Integral Human Development', equal opportunities and participation for both men and women, in practice women fare much worse than their male counterparts' (*ibid.* : 135).

The participation of women in national politics has dropped recently. While there were previously three women members in the national parliament, there is only one in the current parliament. In 1978 there were only seven women local government councillors out of a total of 4,313 (*ibid.* : 139). Women constitute a little less than half of the national population. However, if we consider that leadership in Papua New Guinea is primarily in the hands of men aged between 35 and 75 years, the country is effectively ruled by some 12 per cent of the population.

A further aspect of political inequality is the political isolation of youth. Young people under the age of 18 years do not have a vote but constitute about 35 per cent of the total population. These people have little say in the government of the country or in the formulation of policies and programmes which affect them.

Politics in Papua New Guinea are often the politics of avoidance. They take place against a background of a dependent economy, rapid urbanization, rapid population growth, the emergence of classes and deteriorating social conditions. These are the realities of the second half of the 1980s and the beginning of the 1990s. Political leadership and planning have tended to follow colonial models, and to take soft options. In particular there has been a reluctance to offend foreign investment and the private sector. It is questionable whether such policies can be maintained owing to population pressure and the social dynamics which flow from the increasing numbers of young people. The strategy of avoiding issues by pretending they do not exist will become impossible as the decade proceeds.

### **Bureaucratic weaknesses**

The Morgan Report was particularly concerned with the impact of the public service on the law and order situation. This impact takes a number of different forms.

First, the size of the public service and, more generally, the costs of running public sector institutions inhibit national development. The public service consumes approximately one third of the national budget and around 12 per cent of gross domestic product. It thus takes up resources that could be used more productively in terms of national goals to develop infrastructure and services.

Second, inefficiency in the public sector has an impact on law and order in two ways : it inhibits the work of the formal justice system, and it reduces the ability of the government to achieve its more general goals for economic development.

There are many weaknesses in the police, justice, correctional and courts services of Papua New Guinea. In addition to inefficiencies in particular departments or agencies, there are also inefficiencies caused by a lack of coordination between them. At present they are loosely gathered together through the National Planning Office. There is no statutory framework by which the different components of the legal system are coordinated. There is of course a particular problem with the administration of justice in that the Constitution requires the decision to prosecute, the decision to give legal aid, and the decision to decide guilt or innocence to be kept separate. However, while not interfering with any of these individually constitutionally protected institutions, there is a need for coordination at the level of statistical analysis, statistical collection, operations, funding submissions, and the allocation of resources. To this end the Morgan Committee recommended the establishment of a crime commission. This would be an independent statutory body with powers to advise government on budgetary planning, resource allocation, statistics and research in relation to crime, law and order.

There was considerable debate within the Morgan Committee as to whether or not the form of coordination should be left to inter-departmental committees or whether a statutory form should be adopted. In the end the committee recommended a new statutory body because it was 'concerned about accountability and continuity, both of which in its experience tend to deteriorate within the context of less formal inter-departmental committees' (*ibid.* : 361).

The more general administrative weaknesses of the public sector are well known and have been documented in several reports. Many recommendations have been made, but the ability of the public service to right the imperfections within it is probably limited. Not only are there material interests which may persuade public servants to be less than enthusiastic in implementing changes, but there are substantial impediments to upgrading efficiency within the public service. A lack of necessary conceptual skills within the service and of management training lies at the root of the efficiency problem. The history of education in Papua New Guinea is a short one: the secondary school system is barely thirty years old; the universities are not yet twenty years old. It is not surprising, therefore, that the skills available to run the public sector are something less than appropriate.

Third, the public sector, especially in the area of justice administration, tends to discourage public participation and to encourage reliance on initiatives from the bureaucracy. There is a need to increase public participation in the solution of law and order problems.

The village court system has substantial economic advantages over the formal court system and encourages public participation in decision-making. However, the Morgan Committee made no

recommendation for further democratizing the judicial decision-making process, for example by the use of juries or assessors. What the report did do was to recommend the extension of the local government council ward committee system down to suburb level in urban areas. One of the problems in the towns is that urban government stops at the level of the town authority.

### The prospects for economic and social development

The Morgan Committee was aware that amongst the public at large there was a widely-held view that the crime rate and unemployment are closely linked. This became apparent from an examination of the written submissions that were sent in to the committee (Department of Provincial Affairs 1983 : Appendix 4). This view also figured prominently in a survey of prison detainees, although there were some problems about the validity of this survey (*ibid.* : Appendix 5). After examining all the available information on unemployment the committee concluded

... that unemployment, 'having nothing to do', 'not being involved in any worthwhile activity', and the feeling of purposelessness and alienation are closely associated with the choices people make to indulge in anti-social behaviour (*ibid.* : 355).

The committee then recommended that two steps be taken. The first was to involve more people in the process of creating employment and increasing productivity, and generally making people aware about the link between unemployment, productivity, social alienation and crime. The second step was to establish a mechanism to enhance rational coordination, planning, and communication across the public and private sectors. Hence the committee recommended that the government should establish a statutory body to be known as the commission for employment and production, which would have the functions of planning and coordinating employment and production to ensure the maximum involvement of people in the productive process and to ensure that resources, including capital, were utilized in an economic manner to increase employment opportunities.

However, even with a propaganda campaign and an improvement in coordination and implementation capacity, I am pessimistic about economic development and the prospects for formal employment in Papua New Guinea. There are two problems. The first concerns the direction of current economic policy. The second is the nature of existing institutions involved in economic development.

Although formal emphasis in the strategic objectives is on rural development, in fact it is the towns that appear to be offering the greatest inducement to businessmen. Real estate, retailing and service industries appear to be the boom areas. The post-independence development strategy argued that Papua New Guinea does not have the resources to stimulate industry to the extent that would produce the necessary increases in wage employment, and that therefore development strategy should promote self-employment in rural areas as opposed to wage employment in industry (National Planning Committee 1976). This general approach was reiterated in the national manpower assessment (National Planning Office 1981 : xv).

However, current government thinking seems to ignore these propositions. The thrust of planning in the departments of Industrial Development and Primary Industry appears to be centred on large-scale nucleus estate activity and the development of capital-intensive manufacturing. The dilemma

in which the government finds itself is familiar enough for developing countries. Rural development using traditional modes of production is not dynamic and is not likely to create the surplus which is needed for reinvestment in job-creating activities. On the other hand, the advice received by government appears to be that in the foreseeable future, formal employment is not likely to be sufficient to absorb all the potential labour-force.

In the long term there would appear to be a choice between, on the one hand, involving more people in some modest levels of economic activity and, on the other hand, creating sufficient surplus to reinvest and develop infrastructure to create formal employment. But there are real restrictions on the sorts of choices that Papua New Guinea can make about economic development. The Papua New Guinea market is fragmented and limited in size. The workforce is relatively underdeveloped and unproductive. There is virtually no metal-based industry in the country.

The second problem for economic development concerns the institutions for economic development as they presently stand. The lack of political cohesion in Papua New Guinea and the absence of a common view of national destiny restrict the ability of the government to lead the people in the task of economic development. The political life of Papua New Guinea is fraught with tensions and contradictions. First, there is a low level of political debate in the country. What debate occurs centres on parochial issues of resource allocation and personal aggrandisement of the most basic form. Second, there are low levels of political consciousness, and yet public awareness is needed to release the energy within the community for productive purposes. Any sharpening of the political consciousness is also likely to sharpen criticisms of the inequalities that exist within Papua New Guinean society and of its neo-colonial nature. Third, urbanization and industrialization create a working class which will begin to confront its own class enemies as it becomes increasingly organized.

Finally, there is the problem of ineffective administration already described. Ineffectiveness within the bureaucracy limits the impact of the political will to pursue economic and social development. Furthermore the bureaucracy has emerged as a cohesive class within the past decade or so. It has generally low levels of productivity, but nevertheless it is a significant interest group. It functions as a privileged elite with access to scarce urban resources such as housing, schooling, and medical facilities. This privileged elite consumes a large proportion of the national budget and thus diverts resources from reinvestment in infrastructure and economic development.

In sum, the political and economic context of crime problems in Papua New Guinea is not only the source of many of these problems, but also contains many impediments to their solution. My review suggests that the current economic and political environment of Papua New Guinea is unlikely to produce activities that would satisfy even the limited reformist notions of the Morgan Report, much less lead to the more major changes many observers believe are necessary.



## CHAPTER 5

# LAW, ORDER AND RIGHTS

Peter Bayne

The Constitution of the Independent State of Papua New Guinea is located squarely within the recent western tradition of democracy and liberalism. Democratic elements are found in the guarantees of a universal adult franchise and of regular elections held on boundaries fixed by an independent Electoral Commission. The relationship between the national legislature and the national executive follows the Westminster model, and there is quite detailed provision for the transfer of executive power from one group of parliamentarians to another according to the will of the parliament. A significant departure from that model is the system of checks and balances which constrain executive power, in part found in the creation of independent office-holders such as the ombudsman, the public prosecutor, and the public solicitor, and the independence of action allowed to various offices in the public, police and defence services (Deklin 1982; Fry 1982).

Liberalism is reflected first and most fundamentally in the principle of constitutionalism and the role given to the courts to enforce the principle. The Constitutional Planning Committee (CPC) accepted that the notion that the people should be governed by law underlay 'the very idea of having a constitution at all' (CPC 1974:8/1). Amongst other things, the Constitution sets legal limits to the power of government to affect the lives of Papua New Guineans, and distributes power between governmental bodies, including a distribution between national and provincial bodies (Goldring 1978; Regan 1984a, 1984b). Following the CPC's recommendations, the Supreme and National courts are granted power to determine whether governmental bodies have stayed within the boundaries of the powers allocated by the Constitution (see generally, Bayne 1981). The Constitution attempts to ensure that the independence of the courts will not be compromised.

### The basic rights provisions of the Constitution

The basic rights provisions of the Constitution also reflect the liberal tradition. The Constitution allows for qualification of the rights, but in ways which are more narrowly expressed than in comparable constitutions, and generally only by means of a 'manner and form' parliamentary procedure (S.38). Most but not all of these rights can be qualified or displaced in times of emergency, but again there are many restrictions.

Significant limitation of the power of both national and provincial governments is found in the detailed provisions of the Constitution (SS.32 to 58) that limit their power, out of concern for the rights of both citizens and non-citizens. The Constitution gives to all persons in Papua New Guinea the protections of the right to life and the right to privacy; and the freedoms of conscience, thought,

religion, expression, assembly, association, and employment. It provides guarantees of freedom from inhuman treatment, forced labour, and arbitrary search and entry. There is also a right to liberty section, and the section providing for the protection of the law contains a comprehensive code of protections for persons who are charged with offences. In addition, citizens of Papua New Guinea must be treated equally, and are given protection in respect of their rights to property, to vote and stand for public office, to information and to movement. Almost all of these rights and freedoms are qualified. This means that laws which fall within these qualifications will be valid notwithstanding conflict with the protected rights and freedoms. Generally, however, these qualifications must be 'reasonable', which allows some degree of judicial supervision.

In addition, S.38 provides that some of the protected rights are subject to a general qualification which permits laws made to protect the public interest in such matters as defence, public safety, public order and public welfare, but only where such laws are 'reasonably justifiable in a democratic society having a proper respect for the rights and dignity of mankind'. There is a political check in that a law which must be justified under the general qualification must have been expressed to do so, and must have been passed by an absolute majority of the national parliament. The practical effect of this is that if it appears that a proposed law could conflict with any of the freedoms mentioned above, that law must be passed by an absolute majority of the parliament, and it must contain a declaration that it is intended to override the protected right.

Further erosion of the basic rights may occur during the period of a declaration of national emergency under Part X of the Constitution. Such declaration may be made by the National Executive Council and is subject to periodic review by parliament. During an emergency, emergency acts passed by the parliament are not limited by most of the basic rights protections. Those which continue to operate are the right to life, freedom from inhuman treatment, freedom of conscience, thought and religion, and the citizen's rights to vote and stand for public office and to be treated equally. There is limited scope for the National Executive Council to make emergency regulations, and in addition to the protections mentioned immediately above, regulations may not be in breach of the freedoms of expression, of assembly and association, of privacy, or of information.

Part X also contains a close definition of the circumstances in which a person may be interned without charge or trial during an emergency. Internment is permitted only by virtue of an act of parliament which is passed by an absolute majority. In addition, such an act can operate during a particular emergency only after parliament, by an absolute majority vote taken after the emergency has commenced, resolves that it should take effect. Section 245 provides a comprehensive scheme for the protection of persons who are detained, to ensure that their cases are promptly and fairly reviewed by an independent tribunal. There have been occasions when a state of emergency has been declared, but the provision has not yet been employed on a regular basis. A lack of detailed studies of the declarations which have been made has precluded a review of them in this paper.

The National and the Supreme courts are given ample power to enforce the basic rights. Section 57 of the Constitution extends considerably the common law rules concerning standing, and the courts may award damages to remedy a breach of the rights.

There has been a considerable number of cases (for an early survey, see O'Neill 1982 and for details see Brunton and Colquhoun-Kerr 1985). Most have been concerned with various of the

protection of law paragraphs of S.37, and have had consequences primarily for the system of criminal procedure encompassing arrest, trial and correction. That most cases are of this kind is hardly surprising. Those charged with criminal offences have a vital interest in asserting their rights, and such persons are more easily able to obtain legal aid from the public solicitor. There have not been many cases concerned with the political freedoms of expression and so forth, although the recent case relating to electoral deposits marks an important exception. The courts have enforced the rights without regard to political considerations, and some decisions such as the two Inter-Group Fighting Act cases, have created problems for government policy. The courts have nevertheless been cautious in cases dealing with criminal procedure, and demonstrate a tendency to interpret S.37 as if it stated the common law (Bayne 1982a).

Although the courts have not resiled from enforcing the basic rights, we need to acknowledge that there are other factors at work, which can render the rights of little meaning. A constitutional statement of a right cannot guarantee that a person can exercise the right. Freedom of movement (S.52) means little to a person without the means to travel. The purpose of the Constitution is to prevent state action which restricts the potential for the exercise of such rights. In this respect, an assessment of the efficacy of the rights must take into account both the extent of state violation of rights, and the inability of the state to control violations of the rights by others. It is apparent that there is not only widespread violation of the protection of law provisions by the police, but violence by them which breaches the right to property (S.53) and which, by physical violence to the person, undermines the concept of the right of the individual to freedom (S.32) (see Brunton 1980).

The inability of the state to control personal and property violence more widely in the society creates a more fundamental problem. It is the extent of this violence which is leading to pressure for solutions which would limit the basic rights and which constitute the greatest challenge to their continued operation. This problem is taken up in the concluding section of this paper.

The development of administrative law also deserves attention. Administrative law encompasses the body of principle and the system of remedies relevant where a challenge is made to the validity of governmental action. Its fundamental premise is that to be valid such action must be authorised by a law. A clear illustration is to be found in *Schuiling v Krau* [1977] PNGLR 176. In this context, 'action' refers to a wide variety of activity; common examples are the grant or refusal of a licence, or the dismissal of a person from a public office. 'Government' refers to both the political executive and to any part of the administrative arms of the national or provincial governments. It is of course the Constitution which is the ultimate source of all governmental power, but in a particular case the source is usually an act of parliament, or some kind of subsidiary legislation.

In the pre-independence period, there was only infrequent resort to the courts. The past few years have revealed the potential for judicial control of administrative action, as the courts have demonstrated their willingness to declare governmental action invalid, even in cases with political overtones. In the two school-fee cases described below, the Supreme Court found that an economic fee which the governing bodies of schools purported to impose was invalid for the reason that there was no statutory authority to levy the fee. In this case the action taken by the bodies concerned followed a National Executive Council decision to impose such a fee. In *Okuk v Fallscheer* [1980] PNGLR 274 the Supreme Court held that a minister was obliged to accord natural justice to the general manager of the National Airlines Commission before taking action to dismiss the manager. In this context, natural justice required that the manager be given reasons for the dismissal, and an

opportunity to be heard in his own defence. The Constitution recognizes that the principles of natural justice form part of the underlying law (SS.59, 60), and this may have provided a filip for judicial recognition that they apply in a variety of contexts (see Mitchell 1981).

Administrative law principle generally is part of the underlying law, and may be displaced by statute. The Constitution has however entrenched some of the fundamental principles. Section 155(4) has been employed to liberalize the law concerning the remedies that a court may award to restrain invalid governmental action. As finally drafted, S.41 is difficult to comprehend, but it has been taken to provide a means whereby the courts may apply some basic standards to judge validity of governmental action. A statute cannot of course displace the authority of the courts to adjudicate on the constitutional validity of such action (*Premdas v The State* [1979] PNGLR 329). A statute may, however, displace judicial review where questions other than constitutional validity are at issue, and the deportation cases provide example (the *Premdas* case and *Perryman v Minister for Foreign Affairs and Trade* [1982] PNGLR 339). The courts have shown that they are willing to adopt as part of the underlying law principles of government accountability which are more extensive than those recognised by the common law. In *Kofewei v Siviri and Others* (Ramage A.J., National Court, 21 December 1983), it was held that the State was liable for damages as a result of actions of the police which breached constitutional rights.

Judicial control is of course dependent on the willingness or ability of a litigant to pay for the expense of a court action. Most cases of corrupt activity by government officials probably involve unauthorised action, but it passes without remedy by the courts. The potential for judicial remedy is demonstrated by *Gorio v National Parks Board* [1982] PNGLR 364, in which the National Court held that the statutory power of the National Parks Board to acquire and dispose of land did not authorise it to sell a house to a staff member at a price grossly below a real valuation level. It must be acknowledged, however, that there have been many such cases where abuses of power go unchecked.

### The Supreme Court and constitutional review

The Constitution is, according to its terms, 'supreme law' (SS.10, 11), and thus any laws inconsistent with it are to that extent void. To reinforce this supremacy, the Constitution vests in the superior courts the function of constitutional review. Thus they may review the constitutionality of legislative and other governmental (or private) action to determine whether it conforms to the supreme law of the Constitution. The CPC was prepared to accept constitutional review and the consequent political role of the courts if they would take account of the National Goals and Directive Principles of the Preamble (CPC 1974: 8/15; now incorporated in SS.25 and 63). Further, it recommended that the legal tie between the Papua New Guinea legal system and Australia should be cut (*ibid.* 8/2). This was to be achieved by devices that made the Constitution legally autochthonous. It also recommended that the courts be permitted to take account of the CPC's report and the debates on it in both the House of Assembly and the Constituent Assembly (see now S.24). The Constituent Assembly added provisions designed to ensure that the common law of England should be applied only if conformable to the Constitution (Schedule 2.2). While such provisions are useful signposts, they do little more than restate the fundamental problem of how the courts should justify the exercise of their function.

The Supreme Court has exercised its function of review in a variety of situations, several of which concerned matters of political controversy. A list of the issues involved in the major cases illustrates the point:

- the legality of the 'economic fee' imposed by the boards of multi-racial schools: held invalid (*Mari v Tololo (No. 2)* [1976] PNGLR 125, and *Mileng v Tololo* [1967] PNGLR 447);
- the legality of part of the Organic Law on the Duties and Responsibilities of Leadership (held invalid) *Ex parte Moses Sasakila* [1976] PNGLR 491);
- the extent to which the Ombudsman Commission could investigate complaints against the public solicitor: held no substantial power to investigate (*Constitutional Reference No. 1 of 1978* [1978] PNGLR 345);
- the validity of provisions of the Inter-Group Fighting Act 1977 which affected the onus of proof: held invalid (*Constitutional Reference No. 3 of 1978* [1978] PNGLR 421 and *Supreme Court Reference No. 1 of 1981* [1981] PNGLR 151);
- the scope of the discretion of the Public Solicitor to decline to provide legal aid: held valid in circumstance (*Evertz v The State* [1979] PNGLR 1974);
- the validity of an order of deportation: held valid (*Premdas v The State* [1979] PNGLR 329);
- whether the Minister for Justice committed a contempt of court: held guilty (*Public Prosecutor v Rooney (No. 2)* [1979] PNGLR 448);
- the application of the constitutional provision (S.53) for the payment of 'just terms' upon the acquisition of property, where a coffee plantation was acquired from a naturalized citizen: held applicable (*Frame v Minister for Lands* [1980] PNGLR 433);
- a dispute between a provincial government and the national government concerning the grant by the latter of a fishing licence: held not justiciable at that stage of the dispute (*Milne Bay Provincial Government v Evara* [1981] PNGLR 63);
- the legality of treatment accorded to prisoners in the Bomana Corrective Institution: held violation of the right to freedom from inhuman treatment (S.36(1) ) and other rights (*Pau'a and Susuve* [1982] PNGLR 7);
- the validity of a resolution of the national parliament to commit troops to Vanuatu, and of the act which supported the resolution: held valid (*Supreme Court Reference No. 4 of 1980 (No. 2)* [1982] PNGLR 65);
- the extent of the power of the head of state, the National Executive Council and the Minister of Police to give directions to and to discipline the Commissioner of Police: held the minister could not in the circumstances (*Supreme Court Reference No. 1 of 1982* [1982] PNGLR 178);
- the validity of an amendment to the Organic Law on National Elections which increased the deposit required of candidates for an election to the national parliament from K100 to K1000: held invalid (*Supreme Court Reference No. 2 of 1982* [1982] PNGLR 214);
- the validity of the appointment of a secretary to the Department of the Morobe Province: held invalid (*Morobe Provincial Government v Papua New Guinea*, Supreme Court, 2 August 1984);
- the validity of legislation which required the courts to impose minimum penalties: held valid (*Supreme Court Reference No. 1 of 1984*, 2 November 1984); and

- the validity of provisions of the New Ireland Provincial Constitution concerning qualification to stand for elective office: held invalid (*Supreme Court Reference No. 2 of 1984* 27 April 1984).

There have, in addition, been many cases in which the Supreme and National courts have found invalid legislation or governmental action (by the police, in particular) on the ground that it breached the protection of law provisions of S.37.

This list is an impressive one. Very few constitutional courts in the world have been called upon in such a short period to adjudicate on such a diverse range of significant governmental action. The Supreme Court has facilitated challenge by its willingness to expand the law of standing. In *Supreme Court Reference No. 4 of 1980* [1981] PNGLR 265 Kidu C.J. and Kapi J. held that any citizen could challenge the validity of legislation (the other justices in the majority did not go so far but allowed standing to Mr Michael Somare as leader of the opposition). The ability of persons and bodies such as the Ombudsman Commission to seek an advisory opinion has been important in allowing critical constitutional issues to come before the court (see the electoral deposit case, *Supreme Court Reference No. 2 of 1982* [1982] PNGLR 215). The Supreme Court has further facilitated judicial review by a more liberal attitude to the manner of pleading and reception of 'constitutional facts' (*ibid.*), and by a liberal interpretation of its power to award remedies. The court has also been willing to offer advice on constitutional issues or as to how laws might be drafted so as to avoid unconstitutionality (Bayne 1981:19).

The independence of the courts and the quality of judicial appointments are of course critical factors in the courts' efficacy. Section 157 of the Constitution provides that, except as provided in the Constitution, 'no person or authority (other than the Parliament through legislation) outside the National Judicial System has any power to give directions to any court, or to a member of any court, within that System in respect of the exercise of judicial functions or powers'. Acts of parliament must, of course, conform to the Constitution, and the Supreme Court has employed separation of powers theory to restrict the extent to which parliament can withdraw judicial functions from the courts (see Bayne 1982a:232-235; *Supreme Court Reference No. 1A of 1982* [1982] PNGLR 123, 134-136).

The Constitution regulates the manner of appointment of justices, and in this respect, as in several others, restricts substantially the scope of executive power compared to the pre-independence position. The chief justice is in effect appointed by the National Executive Council after consultation with the minister responsible for national justice administration (S.169(2) ). The other justices are appointed by the Judicial and Legal Services Commission (S.170(2) ), which consists of the minister, the chief justice and deputy chief justice, the chief ombudsman, and a member of parliament appointed by the parliament. There is no evidence that the government has attempted to make appointments for political advantage, although one Minister of Justice did make an attempt to have the Commission appoint a lawyer who did not have the necessary qualifications. Those Papua New Guineans appointed have generally been drawn from the ranks of senior lawyers with reasonable experience. The Australians appointed have held senior appointments in the service of the government, and in some cases have come from the Australian profession (although in one case the Commission apparently failed to take into account that the appointee had been criticised by an Australian Royal Commission).

The Supreme Court has not demonstrated any undue deference to the executive or to the legislature, as its record in its review jurisdiction illustrates. The court would undermine its legitimacy were it to make a political decision, in the sense of one which was influenced by immediate political outcomes, or which sought to influence the immediate political situation. On the other hand, a concern for the stability of the constitutional polity as a whole is a matter for consideration. There is also a risk that a decision which reflected hostility to a current government policy, or to a current government, could undermine the authority of the court. From this point of view the curial and extra-curial statements of some of the justices at the time of the Rooney case posed a serious problem (Weisbrot 1979, 1980).

A report prepared in May 1981 by Barnett (Barnett 1981) identified a range of problems faced by the independent office-holders. Briefly, these were: a lack of proper servicing of the institutions and of cooperation between them, so that they often worked at cross-purposes with one other and came into sharp conflict with the government and parliament; threats of violence to particular individuals such as judges, magistrates, prosecutors and defenders; improper directions from ministers and provincial government leaders to judges, Leadership Code Tribunal members, and others; the problem of bribery and corruption of and by the staff of office-holders; and an inadequate level of funding, staff, and facilities.

So far as funding is concerned, there is obviously a limit to what the country can afford, but within this limit the choices made seem to give insufficient attention to the need to maintain the financial viability of the office-holders. The 1982 Ombudsman Commission's report noted that the Government Flying Unit received an allocation of funds not much less than the combined total allocated to the Ombudsman Commission, the public solicitor, and the National Court (Ombudsman Commission 1982:22).

A recent episode demonstrates that the problem of improper directions persists. On 10 February 1985, *The Times of Papua New Guinea* revealed that a month earlier Mr Lambakey Okuk had written to the prime minister, Mr Somare, urging him to instruct the electoral commissioner to issue writs for a forthcoming by-election immediately, or face dismissal. The prime minister was further advised to hold such a conversation alone with the electoral commissioner, and to advise the commissioner that any report of it by him would be denied by the prime minister. The purpose of this stratagem was said to be to procure Mr Okuk's return to parliament in the by-election, so that he could support Mr Somare against a minister, Mr Paias Wingti, from Mr Somare's Pangu Pati, who was thought to be planning a vote of no confidence in the prime minister.

The course of events which followed point up the distinctive character of Papua New Guinean politics and the ambivalent respect paid to constitutional proprieties. The prime minister denounced the suggestion (*The Times of Papua New Guinea*, 17 February 1985), and the by-election was not held as Mr Okuk had wanted. On the other hand, it is not likely that the incident has caused Mr Okuk any loss of standing with his electorate, and his own National Party president was more concerned with who leaked the letter (*ibid.*).

It is debatable what conclusions should be drawn from this episode. Politics being the art of the possible, politicians of all countries are prone to disregard constitutional form. In developed polities such as Australia the problem of independent office-holders is often dealt with by making the right kind of appointments, and if the occasion arises to say anything it is not put on paper. Of

course, in many systems there is no semblance of constitutional propriety. Certainly this stage has not been reached in Papua New Guinea, and the prime minister's affirmation of the principle of independence of constitutional office-holders, just as that of the Supreme Court in the Rooney case in late 1979, may be part of what will be a long process whereby these principles come to be understood and generally accepted.

### **The Constitution in retrospect and in prospect**

The CPC Report is infused with a strong commitment to liberal and democratic values in which the rights of the individual are of prime importance. The Somare Government of 1974 and 1975 initially opposed strong basic rights provisions, but the National Constituent Assembly eventually adopted the CPC position. The reason for exploring further this dimension of the Constitution is that it has in recent years come under criticism from a number of quarters. The major elements of the critique are revealed in a report entitled *Law and Order in Papua New Guinea* (Clifford *et al.* 1984). The three elements are: that these provisions of the Constitution are adopted from western legal systems (*ibid.*: I/110); that the Constitution failed to recognize the conflict between them and customary values (*loc. cit.*), citing ironically the writing of Bernard Narokobi, one of the CPC's legal advisers); and that the rights stand in the way of an effective strategy for dealing with the law and order problem (*ibid.*: I/110-111,123,130,139,265).

The first element emerged in a rather harsher form in the controversy which surrounded the Premdas and Rooney cases. One Australian journalist argued that the affair reflected 'widespread frustration at the limitations of a coloniality influenced constitution and the adopted Queensland criminal code' (*The Age*, 30 July 1979). This journalist also quoted Mrs Rooney as saying that the Constitution and the laws had been 'inherited'. An editorial in *The Sydney Morning Herald* saw as the fundamental problem 'that Australia transplanted a British legal system and traditions to Papua New Guinea's alien soil' (12 September 1979). A letter written to the Port Moresby *Post-Courier* of 28 September 1979 by 'National Lawyer' noted that 'various people, mostly Ministers and other Members of the Parliament, have been reported as saying that "the Constitution was written by foreigners and it has foreign notions"'. National Lawyer went on to refute this claim, and detailed the stages of the making of the Constitution and stressed the heavy involvement of Papua New Guineans at every stage. This response was not confined to Papua New Guinean lawyers. Mr Thomas Kavali (MP for Jimi) wrote 'it is not a white man's Constitution, it is the constitution which we prepared ourselves and which our Parliament supported' (*Post-Courier*, 13 September 1979).

The historical record belies an argument that the basic rights provisions were an inheritance from the colonial period. The colonial style was indeed in direct opposition to such guarantees, and neither the Australian nor the English constitutional systems make such provision. Nor is it true to say that the CPC adopted the provisions from western law. The CPC's approach to the question is a fair reflection of the way the Committee formulated its proposals generally. It looked for inspiration in a number of directions: to the western democratic experience; to the experience of Third World countries with constitutional governments, such as Tanzania, Trinidad and Tobago, and Zambia; to Papua New Guinea's own experience, and in particular to the recent political experience of resistance to the Australian administration; and to the opinions it had gathered in its tours around the country.



In parts of its report, the Committee relied on what it perceived to be the custom of the country, but not often, and there was no pretence that its recommendations would somehow restore the customary ways of doing things. The Committee stressed the need to draw from both the colonial and the customary experience, recognizing the limitations of both:

We should use the good that there is in the debris and deposits of colonisation, to improve, uplift and enhance the solid foundations of our own social, political and economic systems. The undesirable aspects of Western ways and institutions should be left aside. We recognise that some of our institutions impose constraints on our vision of freedom, liberation and fulfilment. These should be left buried if they cannot be reshaped for our betterment (CPC 1974:2/13).

The CPC's human rights recommendations reflect clearly the western and Christian traditions, and make few concessions to customary traditions, but it would not be correct to characterize these recommendations as merely copying from other constitutions.

The CPC was not alone in advocating strong basic rights provisions. Conferences on this subject in 1965 and 1970, sponsored by the International Commission of Jurists, had involved leading Papua New Guineans, and the notion of constitutional guarantees always received strong support from them. It is true that in the latter half of 1974 the Somare Government's position was that the Constitution should state only a programme for rights protection, to be implemented in law after independence, but support for this view was not very strong. It hardly surfaced in the period May to June 1975 when, as a result of discussions between the political parties and the work of Papua New Guinean lawyers in the Department of Law, the CPC's recommendations were substantially reinstated. In the end of course the Constitution was adopted by the National Constituent Assembly, and a great deal of time was spent in informal sessions in explanation of the effect of the basic rights (see Bayne 1982b).

So much might be acknowledged, but the critics then argue that Papua New Guineans (and lawyers in particular) had assimilated western values and that they were instruments for the transfer of these values into the post-independence period. Put in this way the critique is unanswerable. If there had not been a colonial experience, it is highly unlikely that for many decades, if not centuries, the many societies of Papua New Guinea would have evolved into a nation. The colonial experience created the national boundary and national institutions. It also created a class of educated Papua New Guineans who necessarily became acquainted with the values and traditions of the metropolitan power. Thus the ideas held by this group about the kind of national institutions desirable for an independent Papua New Guinea were drawn from the traditions of the metropolitan power and of other national entities. There was very little in the pre-colonial experience, and such of that as had continued after colonisation, that could serve as a guide to the constitution-makers.

However, it is not correct to take the further step and argue that the Constitution is necessarily a product of the colonial experience. To do so would be to miss the possibility that Papua New Guineans were making choices about what parts of the western experience would be incorporated in their Constitution and in what form. The history of the basic rights clauses indicates that they were making such choices. The result was that there was a sharp break with the colonial pattern and that on some important points of detail the Constitution adopted a solution unique to Papua New Guinea.

To proceed to the second element of the critique, Papua New Guineans were also aware that the notion of individual rights ran counter to customary ways. While it is true, for example, that leaders such as members of parliament may take part in tribal fighting, most articulate opinion is that it should stop. The point that customary ways should change is often made in other contexts.

The third element of the critique - that basic rights provisions hamper effective law enforcement - is not so easily dismissed. On the evidence presented in the INA/IASER Report (Clifford *et al.* 1984), the problem seems to lie primarily in the poor resources and the poor training of the police and prosecutorial services. There is ample substantiation of these facts, but none for swingeing condemnations of the constitutional provisions such as that 'some of the liberties protected by the Constitution have been allowed to deteriorate into licence' (*ibid.*: I/130). The report recommends that the informal system of social control, centred around the village courts, should be strengthened. Its critique of the Constitution seems to proceed upon an assumption that the emphasis on individual rights makes this difficult (*ibid.*: I/265). The report, however, overlooks the fact that SS.37(21) and 37(22) provide specifically that the provisions which provide guarantees concerning the burden of proof and the criminal process generally do not apply to village courts. These courts are required to abide by natural justice, but that is a flexible concept and no doubt allowance would be made for the informal nature of the courts.

The considerable body of current opinion that there should be change to the rights provisions will no doubt at some point result in change. It would, however, be unfortunate if wholesale change were to proceed upon a false revision of the historical record and a misunderstanding of what the Constitution does provide. Certainly any criticism which denigrates the contribution which the courts have made to the maintenance of the values expressed in the basic rights, and of the principle of constitutionalism, fails to understand the primary purpose of the Constitution.

## APPENDIX

### THE BASIC RIGHTS PROVISIONS: AN HISTORICAL NOTE

#### The metropolitan tradition

If the Westminster system is taken as that system which operates in the United Kingdom, in the several constitutional systems in Australia, and in New Zealand, it is apparent that it is not part of this system to restrain by constitutional limitations the power of the parliament to infringe on the rights of individuals. In these systems, the extent of an individual's rights is, with few exceptions in the case of the Commonwealth of Australia, the residue of that right left to the individual after the sum of the legal restrictions upon it are taken into account.

It is often argued in justification that the common law and the common law tradition embody the principles reflected in bills of rights, and that this law and tradition are adequate to restrain state

power. But this is clearly not so. There are some substantial differences between the law concerning individual rights in these Westminster systems on the one hand, and the law in a country such as the United States of America on the other. Moreover, the absence of a bill of rights in, for example, the Constitution of Australia cannot be explained simply by the English tradition. Such provisions were omitted from that constitution precisely because they might work to the advantage of minority racial groups in the Australian colonies.

### The colonial pattern

For almost all of the pre-independence period in Papua New Guinea, there were no laws which, in general terms, protected civil rights. There was no legal bar to a statute or other law reducing the residue of a person's rights, and such reductions occurred frequently. The only possible exception to this was S.116 of the Constitution of Australia, which guaranteed freedom of religion. However, the High Court of Australia held that the right to trial by jury (S.80) and the protection against compulsory acquisition of property except on just terms (S.51(xxxi) of the Constitution) did not apply in Papua New Guinea: *R v. Bernasconi* (1915) 19 CLR 629; *Teori Tau v. Commonwealth* (1969) 119 CLR 564.

The body of pre-independence law which placed restrictions on the significant personal freedoms followed much the same pattern as similar laws in other British-influenced legal systems. Compared to the situation in many of the British colonies, the law was less draconic in the limits it placed on the political rights of speech, association and assembly, but the colonial situation did produce a variety of laws which imposed limits on personal freedoms. Restriction of movement was authorized by the Native Regulations and laws such as the Restricted Areas Act 1950. Land has never been constitutionally protected from acquisition and some of the early acquisitions were probably illegal even in terms of the law that did apply. In addition, the Native Regulations permitted a wide range of interferences by the administration in the use of land. These Regulations and other statutory law also embodied racial distinctions (Bayne 1975; Wolfers 1975). For example, the concern with race produced laws such as the Criminal Code (New Guinea) Amendment Ordinance 1934, which punished miscegenation between a white woman and a 'native man'. This provision was not repealed until 1958, and a provision of the New Guinea Marriage Ordinance 1935 which permitted a marriage between a 'native' and 'any other person' only with the written consent of a district officer was not repealed until 1963.

Administrative practice limited civil rights in greater measure than the law allowed. Field administration officers were virtually uncontrolled by the legal system and the exigencies of particular situations were often seen as justifying departures from the law. For example, forced labour and illegal punishments were fairly widespread and in the late colonial period there were allegations that the police commonly exceeded their powers (see generally Adams 1974; Bayne 1975; Hamilton 1974).

### The background to the Constitution

In 1965 and in 1970 the Australian section of the International Commission of Jurists, which in Port Moresby was supported strongly by the judiciary, organized conferences in Port Moresby which

considered the legal system of Papua New Guinea. The 1965 conference was not much concerned with constitutional matters, although a paper delivered by Mr Justice Smithers, a former judge of the Territory Supreme Court, did consider the bill of rights in the Nigerian Constitution at that time. The judge was sceptical about the value of such provisions, but there was an airing of the issues and some of the Papua New Guineans who attended may have learnt something about the idea of a bill of rights.

The 1970 conference was of greater significance, and was concerned primarily with the kind of constitutional system that might be adopted to facilitate independence. The conference was held in late August 1970, a time when Papua New Guinean opinion was becoming more articulate and when there were challenges to the authority of the Australian administration in the Gazelle and in Bougainville. Professor Enid Campell delivered a paper which was in favour of a bill of rights along the Nigerian lines, and recommended that the judiciary be empowered to enforce the protections. Only one Papua New Guinean, Mr Joseph Aoa, spoke in the plenary session, and he favoured the adoption of such a bill of rights. Mr Percy Chatterton, then a member of the House of Assembly, also spoke at length in favour of a 'justiciable and legally and constitutionally entrenched' bill of rights, although he favoured one which was in 'the simplest possible terms with a minimum of provisos and exceptions'.

Professor Campbell's paper was considered by a number of working groups. These groups favoured an introduction of a bill of rights, but apparently there was substantial support for the view that the judiciary should not be responsible for its enforcement. Of the forty participants in these groups, only seven were Papua New Guineans, although there were in addition five of the expatriate members of the House of Assembly). Some Papua New Guineans obtained first-hand knowledge about the bill of rights, and there was no doubt some press reporting of the conference proceedings. But perhaps the most significant aspect of the conference was that this discussion was held at a time when many Papua New Guineans were beginning to assert their rights against the Australian administration.

It was the strength of the opposition in places such as the Gazelle and Bougainville which led to the introduction into the house by the administration's secretary of law, Mr Lindsay Curtis, of a draconian Public Order Bill. This bill attracted widespread criticism (Aisa 1974; Ball 1971) and was withdrawn. It was resubmitted in a modified form, although it was still very restrictive of the political rights of assembly and of association, and passed as the Public Order Ordinance 1971.

Out of opposition to the Public Order Bill, and perhaps stimulated by the discussion at the 1970 conference, came the proposal for a Human Rights Bill. This bill was introduced into the house by Percy Chatterton on 12 November 1970. The matter was put in abeyance until May of 1971 when the debate resumed on a redrafted version. In the committee stage, Lindsay Curtis successfully moved an amendment which restricted substantially the effect of the bill on existing or even subsequent legislation, and thus the Human Rights Act of 1971 was a very weak form of a bill of rights. It may be surmised that the opposition of the Australian administration to an effective act stemmed from their concern that such laws would hamstring their efforts to deal with the growing opposition to Australia in Papua New Guinea. Nevertheless, there were several cases in the pre-independence period in which the courts were able to give some effect to the act, and thus by independence there had been established some tradition that the courts could protect individual rights.

## **The Constitutional Planning Committee**

In mid-1972 the then House of Assembly approved the establishment of an all-party committee of fifteen comprised only of members of the house, to make recommendations for a constitution for a self-governing Papua New Guinea with a view to eventual independence. It should be noted that according to Woolford, Mr Andrew Peacock, the Australian Minister for External Affairs, advised Somare against establishing the committee (Woolford 1974:158). The chairman of the CPC was Somare, but the responsibility for the work fell largely to the deputy chairman, Father John Momis. No expatriates were members of the CPC. The CPC toured the country and in other ways consulted with Papua New Guineans.

The CPC report included proposals for a detailed bill of rights along the lines of the 1959 Nigerian model, although the protections under the CPC version were somewhat greater. These recommendations are now substantially reflected in the Constitution. The report indicates that the CPC was influenced by a number of factors. It cited, as historical background, the western tradition of protecting individual rights, and mentioned developments in England, the United States of America, France and other European states. The report then argued that 'since the establishment of the United Nations Organisation, there has been general agreement internationally that there are a number of basic rights and freedoms which all people everywhere are entitled to have recognised' (CPC 1974: 5/1/1). The committee then outlined the experience in Papua New Guinea which led to the Human Rights Ordinance of 1971, and recorded that the submissions it had received 'were heavily in favour of incorporating the substance of the provisions of the Human Rights Ordinance in our Constitution and making these provisions legally enforceable ...' (*ibid.*: 5/1/4).

The committee canvassed objections to a bill of rights, but it came to the conclusion that legally enforceable protections were necessary. So far as the form of these provisions was concerned, the CPC was influenced by the Constitutional Commission of Trinidad and Tobago. This commission reported in January 1974, and one of its members, Mr Justice Telford Georges, had visited Papua New Guinea in April 1973 and had spoken to the CPC. The commission's report recommended a means for limiting the general qualification clause that is found in many bills of rights and in the Nigerian model. This means was recommended by the CPC and is now reflected in S.38 of the Constitution.

The CPC report was tabled by Father Momis in parliament on 15 August 1974, and at the same time the chief minister, Mr Somare, and deputy chief minister, Dr John Guise, who were both members of the committee, tabled a minority report. This minority report was shortly withdrawn and replaced by the 'Government paper: proposals on constitutional principles and explanatory notes' (Papua New Guinea 1974).

## **The government paper**

This paper took issue with the CPC on every chapter of the CPC's report, although in many instances there was no substantial disagreement. In the early stages of its preparation at least, some of the young Pangu Pati officials such as Rabbie Namaliu and Moi Avei, were influential in shaping its content, but it is likely that some of the expatriate lawyers close to Somare's office, in particular

T.E. Barnett and probably to a lesser extent C.J. Lynch, the parliamentary counsel, had more influence.

The major point of difference between the government paper and the CPC emerges in the first paragraphs of the paper:

- (a) As far as practicable, the Constitution itself should be a short document which clearly sets out a statement of the main principles about the nation's structure of government and major goals and social principles.
- (b) Where necessary, the Constitution should contain directions that more detailed statements implementing these principles should be enacted by the National Parliament as separate Organic Laws (*ibid.*:1).

This difference led to the government paper position on human rights:

The Government supports the CPC recommendations . . . [but] the Government proposes that only main principles should be stated in the Constitution and that it should direct that the elaboration of the principles and any qualifications to them should be set out in an organic law (*ibid.*:18).

The notion that the Constitution might be supplemented by organic laws appeared for the first time in the government paper. The paper cited the experience of Israel as an example of this approach. The basic justification was that organic laws, which could be amended by an absolute majority of the parliament, would allow for easier amendment of the constitutional laws. The government, the paper said, was 'conscious that Papua New Guinea was going through times of rapid and substantial social, economic and political change', and did not wish to 'tie the hands of this or the next government too much in advance' (*ibid.*:2).

However, it is also possible to see the notion that there should be only a short and simple constitution, with organic laws to be added later, as a response to the opposition to early independence that Mr Somare had struck in the House of Assembly. On 25 June 1974, Somare had moved that Papua New Guinea should achieve independent status on 1 December 1974. This was widely opposed: the United party, and particularly the highlands members, wanted the matter put to a referendum; the newly formed Nationalist Pressure Group (NPG), which comprised most of the former CPC members and some others, together with a small Country Party of indeterminate objectives but which was allied to the NPG, opposed independence until the Constitution was adopted; and several of the Peoples Progress Party were also wary of early independence for reasons similar to those of the United Party. Thus on 8 July, Somare moved that the date of 1 December 1974 be replaced by a date 'as soon as practicable after a constitution has been enacted by this House'. Tei Abal, the United Party leader, moved an amendment that the house must endorse any date proposed, and with these two amendments the original motion was passed. Faced with this resolution, the Somare government seems to have adopted the idea of a short and simple constitution.

There was, nevertheless, some thinking in government circles that the human rights protections recommended by the CPC were too extensive. The government paper said that time was needed to

assess their effect upon possible group punishment provisions in tribal violence cases and the effect on a possible national youth service (*ibid.*:16). The government was concerned also that the recommendations concerning emergency powers might not allow for the government to get extra power quickly enough after an emergency was proclaimed (*ibid.*:18). However, on some crucial points the Government agreed with the CPC: for example, that preventive detention should be introduced only by an act of parliament (*ibid.*:19).

### **Resolution of the differences between the CPC and the government**

Debate on the CPC Report began in the house on 16 August 1974, and on the sitting days up to 27 September the debate was confined to a general debate on the report. On this latter date, the house constituted itself as a Committee of the Whole, and Somare began proceedings by a motion that Chapter 1 of the CPC Report be accepted as drafting instructions for the Constitution, subject to the modifications in the government paper. In the debates which followed, the United Party and the Nationalist Pressure Group moved amendments to Somare's motion, to counter the Government Paper or to introduce new proposals. This was the form of the debate on each chapter of the CPC Report, and it had the important consequence that unless expressly amended by the adoption of a part of the government paper or by some other motion for amendment, the CPC Report stood as the drafting instructions.

Debate on Chapter 5, the recommendations on human rights, took place on 15 October 1974. Tei Abal moved an amendment that reinstated the CPC recommendations and overrode the government paper. The CPC's recommendations on emergency powers were amended, but not in any substantial sense. These motions were agreed to by the government before debate began as a result of prior discussions that had occurred between the parties.

The matter rested there for some months until the piecemeal release from early January 1975 of the second draft of the Constitution prepared by the parliamentary counsel, C.J. Lynch (the first draft was not made available outside government). On the question of the human rights recommendations, as indeed on many other questions, the second draft differed significantly from the CPC recommendations. The change of nomenclature to basic rights was not troublesome, but what did give rise to considerable opposition was a provision which allowed for much greater qualification of the rights, and the allowance that some important matters were to be left to future organic laws. These differences to the CPC recommendations were carried over into the third draft.

In the first two weeks of March 1975, Tei Abal, the leader of the United Party, Father Momis of the NPG, and Sinake Giregire of the Country Party, wrote letters to the chief minister protesting about the substantial departures from the drafting instructions set by the House of Assembly. These protests led to the establishment of an inter-party working group of politicians, party officials, and legal advisers from the opposition groups and from the government. Their task was to examine the third draft and to resolve, as far as possible, the differences that existed as a result of the third draft. By this time, Ilinome Tarua had become acting head of the Constitutional Development Section of the Chief Minister's Office, and he became responsible for representing the government's view and for maintaining liaison with the parliamentary counsel. Two other young Papua New Guinean lawyers were also constantly involved in these meetings. Pokwari Kale participated in his capacity as a legal officer of the House of Assembly, and Bernard Narakobi attended as an adviser to the

NPG. The three non-Papua New Guinean legal advisers who attended these meetings throughout were John Ley, who was the counsel to the house but in this respect was acting as an adviser to the NPG, C.J. Lynch, and Peter Bayne, who was a consultant to the chief minister but who was acting on a brief to assist the United Party. At various points others, both Papua New Guinean and expatriate, participated in these meetings. By early April it had been agreed that most of the CPC recommendations on what had now become the basic rights would be reinstated, although there was still much argument over detail.

During April 1975, a committee was formed within the Department of Law to examine in detail the basic rights provisions. The committee comprised only Papua New Guinean lawyers. Its main participants were Buri Kidu, Mari Kapi, Charles Maino, and Bernard Sakora. Once this group began, it took over policy making on the basic rights provisions, and the results of their deliberations were conveyed to the parliamentary counsel by Tarua.

What was called the fourth draft (revised) of the Constitution was circulated after 10 May 1975 and it was this draft that went to the Constituent Assembly. There were still, however, points of controversy, and again meetings between the various political groups and their advisers were held in an attempt to resolve differences before the debate. At meetings in late May several points were settled. By early June, the carriage of the government position in the Constituent Assembly had fallen to Ebia Olewale, and he was now receiving advice on matters related to the basic rights from a group of Papua New Guinean lawyers employed in the Department of Law, in particular from the two senior lawyers, Joseph Aoa and Buri Kidu. These officers were present at several meetings of the Constituent Assembly.

As a result of this process the CPC recommendations were almost wholly adopted, and in the end the support given by the Department of Law lawyers was crucial in overcoming the narrow approach of the drafts. The variations that may be found do indeed somewhat broaden the coverage of the Basic rights provisions from those recommended by the CPC. The emergency provisions appear in a form different to the CPC's recommendations but in substance the CPC view prevailed.

One point of difference that deserves mention is the qualification in the protection of property clause: for five years after independence it should apply only in respect of automatic, rather than naturalized, citizens (S.68(4)). This amendment was supported strongly by the CPC, whose recommendations that non-Papua New Guineans could not become naturalized at independence had been defeated. There was opposition, of course, from the expatriate plantation owners who were members of the United Party and the Peoples Progress Party, but on this issue the CPC group received strong support from government members. It was two ministers, Iambakey Okuk and Thomas Kavali, who moved the amendment which qualified the property protection provision.



# CHAPTER 6

## POLICE POLICY TOWARDS TRIBAL FIGHTING IN THE HIGHLANDS

Mike Mapusia

### Introduction

Tribal fighting in the highlands has gained widespread publicity both within Papua New Guinea and abroad. Many people have expressed their concern over its rate of increase and its effect on the economy of the highlands. Responding to the calls for action, the colonial administration took the matter up in 1972 and established a committee of inquiry, the Paney Committee. Tribal fighting was seen then not only as a problem affecting the people and the supply of government services, but also as a challenge to the power monopoly of the government.

Before that time the police had been engaged in trying to combat the problem at the local operational level. In other words the problem had been left to the police to handle. The administration, which wanted to lead the colony peacefully into independence, had no tested policy at hand. Thus its first step was the deployment of the police mobile squads early in 1973, following the advice of the Paney Committee. This repressive approach continued from then to the present time. This paper examines the effectiveness of this policy and approach.

The sequence of measures employed was as follows:

- the committee of inquiry was set up to investigate tribal fighting in 1972 (Paney 1973);
- police mobile squads were deployed for the first time in early 1973;
- the Inter-Group Fighting Act was passed by parliament in 1977;
- a state of emergency was declared in the highlands in 1979;
- a special police operation was set up in the highlands for the 1982 national elections;
- a more general special police operation was mounted in the highlands in 1983;
- the INA/IASER Report, including a chapter on tribal fighting, was published in 1984 (Clifford *et al.* 1984).

The police and courts have been the main implementors of the state's policies. This paper discusses only the police side of the story. It is divided into four main sections. The first is a case study of a tribal fight. The second presents statistical information on fighting and crime in the highlands. The

third reviews police and civilian views on tribal fighting. The last section deals with governmental approaches to tribal fighting at the local level, with particular reference to 'Operation Mekim Save' initiated by the Enga provincial government. The paper is based on experiences in Enga and interviews in the highlands provinces.

### **A tribal fight in the Tsak valley in 1982**

Following a national election campaign rally in 1982, two large tribes, the host of the rally (Tribe A) and another (Tribe B), fell into dispute over the honouring of a particular candidate, and after further 'bad blood' went to war.

The fighting took place in the Tsak valley in the Wapenamanda District of the Enga Province. The valley has a total population of nine to ten thousand people from six large tribes, seventeen medium-sized tribes and eight smaller ones. Tribes A and B are two of the six large tribes in the valley. Within this area there are no police stations except for a base-camp, Yogos Base-Camp, with five general duty policemen under the control of a *kiap* or officer of the Division of District Administration. The nearest police station is Wapenamanda, about twenty kilometres from the Tsak valley. The police mobile squad is based in Wabag which is one and half day's walk away.

A small fight had broken out at the election rally when a splinter group from Tribe A tried to honour a rival candidate. Then a few days later a young girl was found dead in suspicious circumstances on Tribe A's land. Tribe B demanded the votes of Tribe A in compensation for the girl's death. In the event the votes were not given.

It was on 11 July 1982 that the actual battle broke out around mid-morning. Tribe B initiated the attack after having given warning the day before. The first victim in Tribe A was one its two leaders, who was a clergyman and politically influential. Because of his popularity in the Tsak valley, and more widely in Enga, the news of his death brought to the battle hundreds of warriors; both formal allies and friends. Tribe B, which was then on the defensive, had quickly to recruit more men from its own allies and friends.

The battle was one of the largest staged in the area since 1977, when two others of the six larger tribes had fought. The estimated number of warriors involved was between 1,500 and 2,000. The battlefield covered a whole clan territory which had been vacated in an earlier fight. This was the first battle between these two large tribes since before the colonial intrusion into Enga Province. According to older men from Tribe A, those previous battles between the two were small and did not include allied clans and friends, as in this battle.

The total number of men killed was nine: two from Tribe A and seven from Tribe B. Of Tribe B's seven victims, five were from allied tribes. The number of men injured (generally with arrow wounds) was in hundreds, while four men had serious spear wounds. Many food gardens, trees and coffee-gardens were destroyed. Tribe B itself lost no property. However, its two allied tribes, whose territories were in the battle zone, lost ten to fifteen houses, several food gardens and seven coffee gardens. Tribe A lost one house, two coffee gardens, and three sweet potato gardens.

It was not until the beginning of the second week of fighting that the mobile squad of twenty-three men from Wabag intervened. The call to intervene, which had been made by the *kiap* at Yogos Base camp through the Wapenamanda police station, had been delayed for some unknown reason, possibly because the mobile squad was said to be engaged at three other tribal fights in the province at that same time.

On its first day of intervention the squad arrived in two ten-seater four-wheel drive trucks, plus the police helicopter based in Mount Hagen. The first tactic they employed was to chase and disperse warriors with tear-gas. The effect of this operation was such that the warriors ran in confusion, struggling to escape from the tear-gas, the police, and any enemy who might take advantage of the situation.

The day's fight ended when the mobile squad withdrew, heading for Wabag after a stay of a few hours. On the following days the helicopter came and went. Sometimes it came two or three times a day. The use of tear-gas and rubber bullets from the helicopter was frequent, but most warriors had already dispersed into hiding places upon hearing the engine noise of the helicopter. However, on one of those days the helicopter had come in very low along a river valley and caught the crowd by surprise on the battlefield. Rubber bullets, tear-gas, and a gun were fired from the helicopter, killing one man and injuring two others. The death of this man added to the number of men killed in the battle. The victim was of an allied clan of Tribe B, and the two injured with rubber bullets were from Tribe A. One of the two injured was admitted to the Mount Hagen hospital, while the other stayed back in fear of being arrested. The police action in this fight was more extreme than in some earlier fights.

The fighting continued day after day. However, the warriors became careful to avoid fighting at a time when the police might attend. Men who had previous experience of police interventions were the key figures in this response. Two of the first raids were dawn raids and two were night attacks. In these dawn raids one man was speared to death and hundreds were injured. Coffee and food gardens were destroyed and houses burnt. It appeared later that the police knew about the sporadic raids and weekend battles, but were unaware of the dawn raids and the night attacks.

These skirmishing tactics were developed in the Tsak valley and then spread to other parts of the Wapenamanda District. As a consequence of the forceful mobile squad intervention in this case the style of further fighting in the valley changed greatly. The change had begun to take place soon after the first day of police intervention. To avoid the police, the warriors of Tribe A had launched dawn raids, night skirmishes, early morning and late-afternoon fights, plus large-scale attacks on weekends.

This battle went on for almost seven weeks. Then an attempt was made by the provincial police commander (PPC) to mediate between the clans. The PPC, although accompanied by the mobile squad in the two vehicles and the helicopter, indicated that his approach was that of a peacemaker. Promising not to arrest any warriors on that day, the PPC arranged for two separate meetings in which he asked the two tribes not to do battle again. The visit was respected to the extent that there was no fighting on that day. The PPC talked for several hours to each side, promising both sides that a mobile squad from outside the province would camp in the area to prevent further trouble.

This proved to be the first successful mediation by a police officer in that area. The words of the PPC were respected, not out of fear but with understanding, and brought an end to the fight. Probably the PPC's intervention occurred when the clans were ready to stop if they could be assured that the other side would not resume the fight. The PPC placed a mobile squad camp between the territories of the fighters to give that assurance.

There was a payback killing some months later by the brother of the leader killed early in the battle. This, however, did not lead to any further killings. A compensation settlement was arrived at between the tribes in 1985, over two years after the election incident.

### **The statistical background**

From data at police headquarters, it appears that at the peak of fight activity in 1982 and 1983, new fights were occurring at the rate of about two a week (see Table 6.1). The largest number of fights occurred in Enga Province, followed by Chimbu. The Western Highlands and Eastern Highlands came next, with fewer fights taking place in the Southern Highlands Province.

When the general state of lawlessness was examined, it was found that police crime statistics showed significantly less serious crime in some highlands provinces than for Papua New Guinea as a whole (see Table 6.2). In 1984 rates were considerably lower in Southern Highlands and Enga provinces, while in Chimbu and Eastern Highlands they were above the national average.

### **Police and civilian views on tribal fighting**

I conducted a survey in 1985 to obtain the views of police officers who had experience of intervening in tribal fights, and of civilians, including local officials and educated villagers, living in fighting zones. I interviewed thirty-eight policemen and fifty-one civilians. A structured interview guide was prepared for each group, using a number of hypotheses drawn from the literature as the basis for questioning. There was a general perception among civilians interviewed that lawlessness was worsening. Tribal fighting itself was not perceived as an example of lawlessness, but it was felt that criminal offences were associated with fights. Tribal fighting was seen as an attempt at solving a problem. It can be viewed as a procedure consistent with respect for custom and law. Serious conflicts between groups have customarily been resolved by group fighting.

The prime cause of fighting traditionally was land disputes. In the recent past, election disputes, particularly over allegations of bribery, have become another major cause. On the face of it, these election-related fights concern promises of resource allocation. They are generally instigated by the losing candidates.

Customarily fights were settled through third-party negotiation to restore a power-balance, usually involving the defeated party receiving compensation. Election-related fights are not readily resolved in this manner unless deaths occur.

Table 6.1  
Statistics on tribal fighting, 1982-1983

Item	P r o v i n c e					Total
	Enga	Chimbu	Western Highlands	Eastern Highlands	Southern Highlands	
Clan fights	84	47	26	30	13	200
Warriors involved	27,000	24,000	13,900	4,200	8,000	77,100
Men injured	352	102	84	107	145	790
Men killed	31	8	8	5	16	68
Houses destroyed	794	153	36	60	190	1,233
Coffee trees cut down	3,000	1,420	0	1,400	666	6,486
Yar trees cut down	60	0	0	0	40	100
Banana trees cut down	30	0	0	0	0	30
Pigs killed	15	5	6	14	8	48
Trade stores destroyed	9	0	6	7	3	25
Food gardens destroyed	222	25	8	6	25	286
Vehicles damaged	0	0	4	0	0	4
Government buildings destroyed	12	4	0	0	0	16

Source: Royal Papua New Guinea Constabulary (RPNGC) headquarters records.

Note: For population figures see Table 6.2.

Table 6.2

Comparative crime rates for the highlands provinces, 1984

Province	Estimated population <sup>a</sup>	Estimated persons per sq km <sup>a</sup>	Serious crimes reported <sup>b</sup>	Serious crimes per 1000 persons
Southern Highlands	251,500	10.6	1,097	4.36
Enga	175,100	13.7	793	4.53
Western Highlands	289,300	34.0	2,061	7.12
Chimbu	183,400	30.1	1,678	9.15
Eastern Highlands	298,100	26.6	2,900	9.73
All highlands provinces	1,197,400	19.2	8,529	7.12
All Papua New Guinea	3,259,400	7.0	24,937	7.65

Sources: a Department of Industrial Development 1984;

b RPNGC headquarters records

Other causes of recent fights have included theft, road accidents, brideprices, drunken brawls, common assault, unacceptable court decisions, *moka* (traditional exchange) disputes, murders, and gambling debts. Traditional clan alliances remain strong, but may have weakened as party politics have induced splits within clans. As yet there is little evidence of tribal fighting for party political purposes.

When interviewed, policemen said that in a week of fighting there would frequently be many injuries, but seldom deaths. At most there might be one or two deaths. From Table 6.1 it can be seen that in 200 fights a total of sixty-eight men were killed. In other words, a warrior died in one fight in every three. Note, however, that there were some 77,000 participants. Hence the chance of being killed in a fight is one in 1,134.

In a year, police interviewees suggested, one or two deaths would be the result of police action either with rubber bullets or with firearms. Policemen interviewed claim that they find it necessary to use firearms when they are outnumbered by thousands of warriors, and for self-defence in other extreme situations.

Police interviewees had noted changes in tactics and weaponry over the years. Traditional weapons have been superseded to some extent. Now iron spears are used, and corrugated-iron shields, steel axes, and, increasingly, shotguns. Motor vehicles sometimes transport warrior's to the battlefield. Wet cloths are used against tear gas. Battle locations are selected that are difficult for police access. Watch towers are used to look out, not for the enemy, but for the police. Set-piece battles are being replaced with raiding, looting, and ambushes. Lone victims are selected. Women are attacked. Educated individuals have become actively involved.

In imitation of the police, dawn raiding is being practised by the warriors too. Battles are arranged when the police are least likely to be on hand: typically, late afternoon and early morning. Weekend battles are arranged to bring in employed persons to assist. Unexpected night raids and sudden attacks without warning take place on occasions. The coffee season is favoured to inflict the maximum damage on the enemy.

It may be over-simplifying to view the changing battle tactics as a direct response to police intervention. However, it is reasonable to argue that the death rate in Table 6.1 is the result of increasing sophistication. Deaths in the past, when customary weapons and tactics were employed, may have been less common.

The civilian perception remains that clan fighting is the best method of handling group conflicts: it is effective, and not normally costly in life or material goods. The villagers involved rarely show reluctance to fight.

Opposition to fighting comes from the churches and government representatives primarily, plus some educated villagers and local businessmen. Villagers who are not directly involved, but are connected in some way, often call for police action.

To the fighters, the police have only nuisance value. They are, in effect, another enemy, but unpredictable and interfering, as well as irrelevant.

Police interviewees admitted to instances of misbehaviour at fights, but put it down to poor discipline by squad commanders. However, they maintained that most public allegations are maliciously motivated and false.

The civilian interviewees claimed that there was considerable evidence of violent misbehaviour by the mobile squads, including arson, malicious damage, murder, grievous bodily harm, rape, stealing, and wrongful arrest. It was further alleged that squad commanders could be bribed, and that they were easily influenced by powerful politicians.

The police view was that the squads are normally competent and calm when handling fights, but that they become exasperated and angered by certain clans who persist with repeated and sustained fights. Police misbehaviour arises as a result of this exasperation.

Civilian interviewees were generally critical of the police approach to tribal fighting. Some could see no policy behind the police approach, only, as they put it: force, misbehaviour and general ineffectiveness. Others saw the police use of mobile squads as 'futile'.

In particular, the police were accused of the following errors:

- not seeking to negotiate peace;
- not trying to improve relations with communities;
- not cooperating with the local authorities;
- not investigating offences associated with fights;
- not acquiring intelligence on clans and disputes; and
- not consulting with village leaders.

Police interviewees confirmed that the police only learned of a dispute after a fight had started, and that normally mobile squads had no information on which clans were fighting until they arrived at the scene of the battle. The police explained their inadequacies in terms of lack of manpower and other resources.

Civilian interviewees generally were aware of police initiatives in starting a 'mediation squad' in Chimbu, and a similar activity in the Western Highlands. These police initiatives met with almost unanimous approval. Only a small number of interviewees felt that mediation was not a proper role for the police.

Most civilians wished to see the police identify more closely with the highlands people. They referred to the need for more rural police stations and more manpower in the highlands provinces. They wished to see the police trained both for the highlands environment and for negotiation and mediation roles.

The police were thought to lack sensitivity and respect for villagers. It was suggested that there should be community relations officers based in the highlands provinces. Several civilians, however, felt that there was still a need for a tough mobile squad to be held in reserve and used in the last resort, when negotiation and mediation had failed.

In interviews, the police view on mediation was that it was frequently undertaken by individual police officers, but that this was not a proper police role. At the same time, many of the police interviewees recognized that stopping fights and dispersing the fighters was not a solution either. The only changes in police tactics that were noted over the years since independence were the forced abandonment of mass arrests and the increased use of firearms.

The policemen interviewed generally would prefer:

- to have good community relations;
- to have good local intelligence;
- to not use firearms;
- to cooperate with local officials and village leaders;
- to investigate offences properly;
- to undertake law-awareness campaigns; and
- to see the police negotiation role officially recommended.

The Chimbu tribal fight mediation squad goes some way to realizing these preferences.



### Police policy towards tribal fighting

One must assume that the objective of police policy is to end tribal fighting. It has been clear for some years that the police are signally failing to achieve this objective. In fact material presented so far shows that police interventions have been counter-productive. They have prolonged fights, increased fatalities, and obstructed negotiations and settlements. Essentially the police have made matters worse. One must question, therefore, why the police persist with their current approach. Perhaps the police are pursuing some covert policy objective, or there is some structural failure which could explain the persistent use of paramilitary force in tribal disputes.

It is instructive to review the history of the police mobile squads. Their origins lie in civil rioting which occurred in Buka in 1962. As a result, part-time mobile units were established at main police stations. The first full-time squad was set up at Bomana Police College in 1966. Initially it was intended that this should handle any form of emergency anywhere in the territory. Civil unrest in Bougainville and the Gazelle Peninsula in 1969 led to the establishment of the main depot at Tomaringa. The squad was subsequently much involved in combating the activities of the dissident Mataungan Association.

By 1975 there were twelve mobile squads, comprising nearly 600 men and posted to eight locations around the country. A 'primary role' had been defined as 'tasks associated with civil unrest and internal security' (RPNGC 1976a:17). Thirty-five tribal clashes were attended that year. The training of the squads was based upon that of similar squads established in Fiji (*ibid.*).

The 'Riot and emergency procedures manual' was revised in 1975 and 1976 and is in use currently (RPNGC 1976b). It contains no reference to tribal fighting but is the basis for mobile squad operations. However, tribal fighting is neither civil unrest nor a threat to the security of the state. It is manifestly a dispute between two villager groups. The state and the concept of civil obedience are not relevant.

It is difficult to believe that tribal fights were ever seen in these terms. It is plausible to see the mobile squads being deployed due to the lack of police manpower resources in rural areas. It may have been their availability rather than their suitability that determined their use. Hence the recommendation of the Paney Committee of 1973, when seen in the context of the development of the mobile squads between 1969 and 1975, may have been more opportunistic than well-considered: the availability of mobile squads was a 'gift' to the committee.

It was clear from my police interviews that the mobile squads, in practice, are invariably successful in halting battles by disrupting the action. Police interviewees did not believe that the effect of the disruption was to prolong the fight or to make the dispute worse.

Since the discovery of the defect in the Inter-Group Fighting Act in 1978, which meant groups could not be charged, warriors are arrested and charged individually with various summary offences, including carrying offensive weapons, intending to fight, organizing and aiding a fight, and fighting itself. Note that these are the same charges that are applied to urban street brawling. The cases are prosecuted before the magistrate's court, with custodial sentences of up to twelve months being imposed.

Since these offences are not crimes under the Criminal Code, no formal advice is passed to police headquarters. Only incident reports are made. Any police officer may prepare an incident report. Thus several reports may be prepared independently on the same fight. From those interviewed it was clear that there is uncertainty as to responsibility, and that monitoring of fighting is unreliable. Furthermore, it was clear that deaths and serious injuries are not always investigated. One must assume, therefore, that police homicide statistics do not include deaths in tribal fights.

One component of uncertain reporting relationships is the semi-autonomous status of the mobile squads. By design, these squads operate independently of the line management of the constabulary. They enter a situation, achieve a set objective, and withdraw. There is no continuity of involvement.

Police policy-makers are faced, therefore, with decision-making data which are unreliable, and with disrupted lines of command between the rural police (who might be under the control of a division of provincial affairs) and operations management at headquarters. They are not well placed to evaluate the effectiveness with which police policy is implemented, or to direct changes in the field. Conceivably this explains the persistent use of the paramilitary approach to tribal fighting throughout the ten years since the mobile squads were first established.

In sum, in the thirteen years since the Paney Committee recommended the use of police mobile squads to combat tribal fighting, the frequency and ferocity of fighting has increased. No review of police policy, strategy and tactics appears to have been attempted. Within the police force itself there appears to be a structural weakness whereby lessons are not learnt, and inappropriate actions persist to the general detriment of the highlands, and ultimately of Papua New Guinea.

### **Provincial-level approaches**

Under the Constitution the police force is a national function. In this section I give a brief account of various local or provincial initiatives that have occurred since the early 1970s. A special reference is made to the 'Operation Mekim Save' initiated by the Enga provincial government in 1981.

From the early 1970s, the responsibility for enforcing the law in the highlands was shared by the police and the Department of District Administration. However, tensions and conflicts emerged between the two as to who should do what. Since 1950 the *kiaps* have been limited in their control of police detachments by two instructions from police headquarters, Konedobu. There were certain areas where the *kiap* was to take charge of police detachments, while areas closer to towns became police zones. There was not much cooperation or coordination between the two groups, which resulted in confusion and inactivity.

District-level law and order committees were set up in 1973, with district commissioners as chairmen in each of the districts (now provinces). Included in these committees were the most senior police officers in each district. However, inter-departmental bickerings continued. In effect, these committees did not in any way provide a solution.

With the introduction of the Inter-Group Fighting Act in 1977, new committees were set up. These were the peace and good order committees for each of the highlands provinces. Section 5 of Part II of the Inter-Group Fighting Act was amended to allow for these committees to be established. Their role was to declare fighting zones, if situations warranted. This would then make it easier for the police to make arrests. In 1979, the Emergency Committee had noted 'Several of these Committees already function effectively and have declared a number of areas as fighting zones under the Act' (Guisse 1979:28).

Special attention should be given to the Enga provincial government's effort in initiating a measure to combat tribal fighting. This was known as 'Operation Mekim Save', approved by the provincial executive council in 1981. The aim was to have a third party group mediate and negotiate for peace between warring tribes at district level. This operation was initiated, funded and controlled solely by the provincial government of Premier Tindiwi. This government felt that it was necessary to mobilize its own resources towards curbing the problem. The move came about at a time when all other resources and ways had been fully tried, and tribal fighting was increasing. For instance, '... from 1/1/80 to 3/3/81 .... there were more than 50 cases of tribal fights in which police attended under difficult conditions' (Enga Provincial Government 1981:3). The operation was initially staged in only three of the five districts of Enga, Wabag, Wapenamanda and Laiagam, these being the most prone to fighting.

The operation consisted of three district-level mediating teams headed by three assistant secretaries of the Department of Enga. The total strength of the operation was about forty-eight with sixteen members in each team, including five policemen. The groups were made up of public servants, police, provincial government personnel, village and local court magistrates, and local government councillors. Normal working hours and services were disrupted. Of the team members, the village court magistrates were the most influential in mediation and negotiating for peace.

One of the mediations took place in early 1982, between the Waiminakuni-Kepe and the Aluni clans who had fought a few months earlier. In this mediation the Aluni clan was asked to give fifty pigs while in turn the Kepe clan was to give fifty pigs plus a few more. The agreement created a mutual understanding between the two clans after much discussion on the issue. The exchange took place in a second round of talks at a set date. The Kepe clan was asked to give extra because the Aluni clan had been defeated, with the loss of several of its warriors, and they had been driven out of the territory. The Aluni clansmen who feared a second defeat by the powerful Kepe clan accepted the mediation and exchange. Similar mediations followed. Most of the mediations were successful, with an estimated success in forty to fifty cases according to the deputy provincial secretary, Luke Kembol.

Unfortunately, the whole operation halted when it was declared unconstitutional early in 1983 by the Justice Department. It appeared that the force behind the halting was political, rather than a genuine concern for the Constitution by the Justice Department. According to the deputy secretary of Enga, the operation had been welcomed by a majority of the public; although it was an expensive exercise. By 1984, Operation Mekim Save was again at work, although this time it came entirely within the framework of the village court systems (Clifford *et al.* 1984:1/182). The message of Operation Mekim Save seems to be that traditional mediation should be looked to for the answer to tribal fighting. Customarily in times of tribal war it was the duty of a third party, usually a

neighbouring tribe, to intervene as a peacemaker between warring tribes. The mediating tribe usually requested that the battle be stopped. When it was, the mediator followed to negotiate for peace and compensation payments.

## Conclusion

Police policy to combat tribal fighting has been neither wholly successful nor has it entirely failed. It has been a policy that has proved to be simply inappropriate. While police interventions in fights have temporarily halted them, ultimately they have prolonged battles, and possibly have made matters worse.

The INA/IASER Report argued that

... highlanders turn to tribal fighting not to create disorder, but to make their relationships with others more satisfactory or more orderly. Tribal fighting is a response to disorder ... not a problem in itself (*ibid.*:192).

The nature of tribal fighting does not warrant the counter-insurgency approach of the mobile squads. Neither is it civil unrest to be given anti-riot treatment. The special and emergency operations have failed to provide any long-term solution, and have proved to be hugely expensive operations. While the economic cost of tribal fighting has been high, the cost involved in combating fights is believed to be much higher (although the data are not available to confirm this view).

The performance of the constabulary, as an organization, has been inadequate throughout the years since the first preparations for independence. The police can be criticized on four grounds: poor crime management; poor organization; poor policing; and poor integration into the overall justice system.

In their approach to crime management, the police have perceived their role to be that of law-enforcers, not peace-keepers. They have acted as the coercive arm of government, without seemingly providing professional advice to that government on the appropriateness or effectiveness of their operations.

As far as their own organization is concerned, the police have not been effective in acquiring adequate resources for their requirements. Further they have not developed reporting and communication channels so that the decision-makers and policy formulators can monitor performance. Organizationally, they have failed to integrate fully the rural police detachments into the command and control structure of the constabulary. Similarly, the mobile squads operate as largely autonomous units without adequate accountability to headquarters.

In relation to 'on the ground' policing, the police have weak intelligence in rural areas. They do not conduct proper investigations of crimes that are incidental to tribal fights. They have poor disciplinary control over the members of mobile squads. Worst of all, they do not recognize that

they are as much the servants of the village people as of the government: they have appalling community relations in rural areas.

As a part of the bureaucracy, the Police and Justice departments have not collaborated in formulating and implementing workable laws, with a notable example of their failure being the Inter-Group Fighting Act.

In view of this record of failure throughout the ten years of independence, one must ask the disturbing question: where is Papua New Guinea heading? Unless present policies are changed, the conclusion must be that the people of the highlands provinces will increasingly perceive the police as an army of occupation to be driven out through mass insurgency and possibly cession from Papua New Guinea: an ironic outcome for a misguided policy.

## CHAPTER 7

### THE ROLE OF VILLAGE COURTS

#### Peni Keris

In October 1984 the Papua New Guinea government, due to escalating criminal activities in some of the major urban centres, formulated the much-publicized forty-nine measures to curb lawlessness and other anti-social activities in the country, particularly in the rapidly growing urban centres (Papua New Guinea 1984a). Of the forty-nine measures formulated for both the short and medium term, four were centred on how village courts could help in maintaining law and order. These four measures were:

- improved cooperation and coordination between village courts and police (Measure 19);
- improved supervision and inspection of urban village courts, and the establishment of new village courts in some urban communities (Measure 20);
- a direction to the public and private sectors to support the use of village courts by employees (Measure 29); and
- an increase in the number of urban village courts to assist dispute settlement within communities, reduce pressure on the formal justice system, and provide a cost-effective means of dispute settlement (Measure 40).

The report entitled *Law and Order in Papua New Guinea* and published in September 1984 (Clifford *et al.* 1984) contains a very detailed and comprehensive section on village courts, their jurisdiction, functions and general operations over the nine years since their introduction. I would like to say a few things about that report since the forty-nine measures were more or less formulated along the lines it recommended.

In their final recommendations on village courts the authors suggested a three-phase strategy aimed at 'improving the quality of service provided by village courts' over the next decade (*ibid.*:II/80). The importance of the village courts is that they form a vital part of the system for maintaining order in Papua New Guinea because they are based on community involvement. 'Village courts are run by officials within communities and are responsive to community needs and opinions' (*ibid.*:II/79). As the team notes:

Village courts are the best mechanism available to government to strengthen and support the most fundamental element in the overall system of order in Papua New Guinea: the informal structures of the community (*ibid.*:II/80).

A strategy for village courts was suggested in the INA/IASER Report: the government was to

support among those agencies directly under its control those which most complement and enrich the informal institutions ... other elements of the formal justice system are best linked to the community through village courts rather than by inadequate and inept direct contact (*ibid.*:II/80).

Many people would like to see village courts strengthened and extended to other parts of the country where there are no village courts established. In line with this the INA/IASER Report recommended the following:

- strengthening existing programmes;
- extension to full coverage in rural areas;
- a special urban village courts programme; and
- changes in jurisdiction and function.

The authors further pointed out that each step is a precondition for the next, except in the case of the urban programme, which they regarded as a necessity not to be delayed.

It is anticipated that more urban village courts will be established when funds are made available. For the other recommendations, it will take some time before they are implemented. Since village courts are primarily a provincial function, it really depends on what the provinces want and whether or not money can be made available from provincial budgets to establish, supervise, inspect and undertake related administrative duties.

### Activities and performance of village courts

Village courts are staffed by lay officials who are mostly uneducated, illiterate village elders. The system is part of the formal justice system through the Village Courts Act (Chapter 44 of the Revised Laws). However, village courts are more informal and apply relevant custom to settle disputes (S.20). Village courts have jurisdiction to hear minor cases as specified in the act and regulations, except a matter involving the ownership of land, a dispute involving the driving of a motor vehicle, and any matter involving a prescribed offence (S.20). While being more informal than the other courts, village courts have access to government services outside the community. In fact, many of our village court officials see themselves as representing the government, rather than just being lay officials, and seek external validation whenever they run into any conflict or problem with the community they serve.

As of August 1985 there were 856 village courts in Papua New Guinea, with a few more to be established by the end of the year. Further expansion has been temporarily deferred. Provinces like Milne Bay and Western in the Papuan region have very few courts while North Solomons, East and West New Britain, Enga and Western Highlands are almost fully covered. Over the whole country we estimate that 70-75 per cent of the population is served by village courts. On a regional basis the highlands and New Guinea islands are better served by village courts than the Papuan and New

Guinea mainland regions. Of the total of 7,674 officials who are currently on the national payroll, more than half (4,386) are in the five highlands provinces.

The general administration and day-to-day running of village courts is the responsibility of the Village Courts Secretariat, which has a small staff in Waigani and forty officers based in the provinces. Even though the secretariat operates separately, village courts are linked to the higher courts through the magisterial services, since provincial village courts officers (PVCOs) and their village courts inspectors (VCIs) report to the senior magistrate in each province. Appeals and reviews of village court decisions are referred to the local and district court magistrates.

The role village courts play in the community can best be seen in what they do. The village courts are a mechanism of dispute settlement to which the people refer as a last resort, when other methods have been exhausted in the community. The people go to village courts to seek external assistance when other informal methods of settling disputes outside of a court fail to yield a satisfactory answer or solution. While village courts play the role of adjudicating over cases, their mediating function has been encouraged, and officials are instructed to mediate in every case before their compulsive jurisdiction is used.

The role village courts seem to be playing now is very similar to the traditional means of maintaining peace and good order in the community. But today I see a shift, although a very slight one, towards the system of village courts as a whole complementing the work of other law-enforcing agencies in pursuit of the objective of peace and good order in the community.

Generally speaking, the village courts system is working satisfactorily. People have accepted the courts. The general popularity of village courts can be witnessed in areas where they have been established, particularly in the highlands. The use made of village courts cannot be accurately calculated, because of late return, damage, and loss of used order books and other records. However, it is believed that there has been a marked increase in the number of cases being heard by village courts in the areas where they have been established: an increase, that is, from the estimated 150,000 cases heard in 1979, this being the same number of cases as was heard in all local, district and children's courts put together (Village Courts Secretariat 1980). Micro-studies also suggest a high usage rate (e.g. Warren 1976; Westermarck 1978).

The village courts system has not avoided criticism over the last ten years. Politicians as well as the ordinary people, sometimes without establishing any real fault, have made allegations of bribery, nepotism, corruption and other forms of improper dealings by our officials. Still others have claimed that village courts are becoming too legalistic, particularly village courts in Port Moresby, where they operate just like the higher courts with a bench, flag, and those who appear before the village magistrates having to bow before proceedings begin. Some of these allegations are true, although not everything is as bad as it is sometimes made out to be. Corrective measures have been employed to counter the problems.

If there was anything the independent government did to help people live in peace and harmony in the many rural communities of Papua New Guinea, it was the introduction of village courts. Village magistrates are drawn from the communities they serve and are generally well aware of local customs and ways of settling disputes and any other problems that come up in the village.



If the general public realises the importance of village courts as community-oriented courts, and makes regular use of them, the village courts system, I believe very strongly, can contribute to social harmony in our society. Village courts are not poor men's courts, as some well-to-do people think. They are courts which anybody, big and small alike, can use. The more village courts are used, particularly by big people, the more they will be accepted. So far no government minister nor senior public servant has either used or appeared before a village court.

### **Relations with police and other agencies**

Cooperation between the police and village courts has been minimal. Any relationship that exists is on an *ad hoc* basis, which leaves a lot to be desired. There is no formal, well-formulated programme for the two organizations to work together to achieve what is their common aim: to maintain peace and good order in the community, be it in a rural or an urban setting. Many a time village courts orders have been left unenforced for long periods because police do not carry out their responsibilities. Some orders for imprisonment have never been executed. PVCOs and their police counterparts, the provincial police commanders, need to work together with the senior provincial magistrates to remedy this shortcoming. Orders that are not enforced put the officials and the system as a whole in a position where they can be ridiculed. This lowers the standing of the courts, and any later decisions can be affected. It has happened in some village courts that the community has lost confidence in the officials and the system.

Police do not realize that, with over 7,600 officials chosen for certain qualities they possess and the respect in which they are held, village courts are a vast manpower resource. Frankly this resource has not been fully utilized either by police or by any other law-enforcing agency. In cases where police and village court officials have cooperated and worked together, it is a story of success.

Very recently a pilot project was started at Badili police station in the National Capital District to formalize cooperation between police and the Village Courts Secretariat. The two organizations met on a regular basis to discuss problems and how they would help each other. The chairman of each village court in the Badili area had to report to the station commander at Badili and the provincial village courts officer, so that problems could be attended to, and criminals and possible trouble makers could be watched carefully. Unenforced orders were to be dealt with more quickly. Matters that were referred to police but over which village courts had jurisdiction were to be referred back to village courts for hearing. It is still too early to make any statement on the success of this project. If it does succeed, it will be extended to other areas in the country.

The relationship with magisterial services is that the provincial village courts officer has to report to the senior provincial magistrate. He oversees the operations of village courts in the province, even though administrative and other responsibilities are performed by the PVCO and his inspectors in each province. Sometimes, when directed by the Minister for Justice, magistrates from local and district courts carry out inspections and do other administrative duties. As more village courts inspectors are recruited, more of this responsibility will pass to the officers of the secretariat.

Staff from the divisions of provincial affairs in each province help with inspections, general supervision of village courts and any other administrative duties. As village court functions are

transferred to the provinces, these same officers will work more closely with the village courts inspectors. The Village Courts Secretariat will only play an advisory role in relation to the provinces.

### **Problems facing village courts**

There are certain constraints which hinder the operation of village courts in Papua New Guinea. There are not enough inspectors to cater for the needs of the system with regard to training, inspections, supervision, and first-hand assistance to village courts and their officials. At the moment the secretariat tries to do all it can within its limited resources.

Village court officers (PVCOs and VCIs) are not adequately trained to meet the demands of their jobs. Their legal background is very scanty and this can create complications in the executing of their duties. This shortcoming has been realized and arrangements have been made with the University of Papua New Guinea for training programmes so that officers are better prepared to carry out their duties.

Existing village courts need to be improved so that they provide better services to the community. More urban village courts need to be established, for they have a part to play in settling disputes and conflicts in the urban community, particularly in settlements. Expansion programmes need to be carefully monitored so that only a few village courts are established at a time, and only after there has been close scrutiny of whether or not they will be well maintained. In the past many courts were established with insufficient officers to supervise them.

Long-term prospects appear to be quite good. Village courts will not be done away with; they are here to stay because they have already become an integral part of the people's life. In cases where village courts were temporarily suspended, the people have been very bitter and have urged their politicians to restore the courts. The importance of village courts cannot be over-emphasized.

I would like to see educational qualifications for some of the officials, such as chairman and village court clerk, raised, as more young and educated village leaders come to take their place in community concerns. General operations will improve as a result of this new wave of officials. Remuneration is another matter requiring attention.

The mediatory jurisdiction of village courts (S.16) should be encouraged and emphasized more, so that disputes are mediated before a court can exercise its compulsive jurisdiction (Div. 5). All peaceful means should be exhausted, both outside and within the area of the village court, before a full court can hear a case.

As village court functions are transferred to the provinces, village courts will come under provincial departments. Each province has to pass its own legislation to control the operations of village courts. Appropriate changes will have to be made to suit the needs of individual provinces.

Police and the higher courts should refer people who go to them to village courts on matters that come under the jurisdiction of village courts. Police and the higher courts should only deal with matters that come before them that are beyond the jurisdiction of village courts.

There is more to be done in the area of research into village courts and their general operations in Papua New Guinea. This matter is raised as a challenge to members of Australian universities who may be interested in doing research on village courts. The results of such research could benefit both the researcher, the Village Courts Secretariat and the people of Papua New Guinea.

## CHAPTER 8

### PERSPECTIVES ON LAW AND ORDER

Sinclair Dinnen

The issue of law and order has assumed central importance in Papua New Guinea. It is not obvious, however, that the incidence of crime, or particular crimes, is disproportionately high in Papua New Guinea today as compared to the colonial period. As the INA/IASER Report recently remarked:

Through the entire colonial period and a full decade of independence, the problem of 'law and order' has been under active (sometimes almost paranoid) consideration by government and people alike (Clifford *et al.* 1984:1/1).

Nor is it obvious that crime rates are significantly higher than in other countries, nor that they are presently on the increase (*ibid.*:1/Chapter 2).

Evaluating the extent of Papua New Guinea's 'problem' is not as straightforward as it is often presented. The measurement of crime is a notoriously difficult task and most criminologists handle official criminal statistics with considerable caution. Moreover, the quality of data available in Papua New Guinea has been described as 'immeasurably less reliable than comparable statistics in most other jurisdictions' (*ibid.*:1/28).

Despite these difficulties of quantification, crime and lawlessness are seen by the Papua New Guinea government as constituting a major problem adversely affecting the nation and its international image. The government has become increasingly sensitive to the perceived economic consequences of such an image and has taken what it sees as drastic measures to control the problem and assert its commitment to restoring social order. The most recent of these was the imposition of a state of emergency in the National Capital District between 17 June 1985 and 4 November 1985.

In view of the complexity of empirically evaluating the nature and extent of the problem, the manner in which it is understood is of considerable significance. By this I mean the way the government perceives and defines the problem; the kind of evidence it treats as serious; and consequently the range of solutions it can conceive of and contemplate implementing.

This paper identifies some of the main characteristics and assumptions of the current law and order debate in Papua New Guinea. In doing so, it discusses some of the similarities in the understanding of crime and crime-control strategies between Papua New Guinea and other countries and the problems inherent in such a perspective. The debate on law and order in the United Kingdom is introduced to illustrate some of these similarities, and also to indicate the possibility of constructing a more adequate theoretical understanding of crime and crime control.

### The Morgan and INA/IASER reports

In the first section of the paper I shall examine two recent reports on law and order in Papua New Guinea. The first of these is the report of the Committee to Review Policy and Administration on Crime, Law and Order established by the National Executive Council under the chairmanship of senior public servant, Leo Morgan (Department of Provincial Affairs 1983). The second is the result of a joint project between the Institute of National Affairs (INA), a privately funded research organization; and the Institute of Applied Social and Economic Research (IASER), a parastatal agency (Clifford *et al.* 1984). This latter project was carried out by William Clifford, formerly director of the Australian Institute of Criminology, Louise Morauta, presently associate professor in the Department of Anthropology and Sociology at the University of Papua New Guinea, and Judge Barry Stuart of the Yukon Territories Supreme Court (Canada), who had previously served as a lawyer in the Central Planning Office.

The Morgan Report originated in a recommendation made by a sub-committee on law and order established at a meeting of the Premiers Council at Arawa, North Solomons Province, in October 1982. The terms of reference laid down by the National Executive Council (National Executive Council Meeting No.18/83, 5 May 1983) were extremely wide. They called for a comprehensive review of government policy and administration relating to law and order. The report is consequently wide-ranging. As well as examining the law and order agencies of the state it deals with many economic and social factors in discussing the wider genesis of lawlessness.

The Morgan Report gives prominence to the effects of social and economic change. Crime and lawlessness are located:

in a mixture of the country's chronic under-development, the nature of its history, the colonial legacy, and in a host of pressures resulting from the modernisation process (Department of Provincial Affairs 1983:4).

The report identifies three crucial factors. First, there is unemployment. Second, there is the large proportion of young people in the population. Third, there are major problems of formulating, planning, coordinating, and implementing economic policy in Papua New Guinea.

Underlying Part I of the report is the relationship between crime and unemployment. The analysis is highly economic. Thus it is urged that investment policy be informed by the need to generate employment opportunities, and that capital available within the economy be used to 'maximise productive activity and participation by the largest number of people' (*ibid.*: 29). Land and rural development policy are also said to be linked to crime. This is because land shortages in rural areas

and population expansion are seen as contributing to social tension and urban drift. In turn acute land shortage in urban areas creates major housing problems and further fuels social tension.

The report is cautious about the benefits of industrial development and points to the likely social consequences, particularly the emergence of an urban working class which, according to the report, would generate further tension:

This class, if organised into labour unions, creates pressure groups with interests that may well conflict with the interests of ownership (*ibid.*:58).

The recommendations on the non-formal sector are based on the somewhat contentious assumption 'that people engaged in worthwhile productive activity tend not to commit crime' (*ibid.*:70). The conservation of this sector is advocated to provide some kind of employment for a large section of the population.

Part II considers a number of social factors related to law and order. Concern is expressed about the significant proportion of youth in the overall population and the perceived link between unemployment among youth and crime. This concern is related to the possible politicising consequences of this state of affairs:

In other countries, neglect can be seen to encourage the involvement of youths in extreme politics and the formation of political parties both of the far right and far left (*ibid.*:112).

The remedies suggested are similar to those proposed in the United Kingdom and other metropolises, and include work-sharing programmes, employment generation, and early retirement.

Part III examines the main agencies of law enforcement and legal administration. A number of concerns underlie this section. First, there is concern to provide an integrated approach to the management of crime control. The establishment of a Crime Commission is recommended to plan and coordinate the work of individual agencies. In addition, an integrated approach must also be pursued in respect of employment generation and productivity.

Second, there is concern to improve the public image of the legal system in general and the criminal justice system in particular. Failure to prosecute successfully so-called white collar offenders has adverse consequences for the public attitude to law and criminal justice.

Finally, there is an underlying populist theme to the recommendations. This stresses the need to involve 'the people' more in the processes of job creation and productivity, and the need to educate people about the perceived links between economic development, social alienation and crime.

The focus of the INA/IASER Report is narrower than that of the Morgan Report and it pays more attention to ways of improving techniques for maintaining social order.

In a short discussion of perspectives the report identifies two broad meanings of the phrase 'law and order'. The first is the notion of peace and order generated and maintained within a community.

Secondly, there is the view of law and order as imposed by the state. This latter view accords with theory and practice in most industrialized societies: it is the state, through its law and order agencies (police, courts, prisons etc.), that plays the dominant role in the maintenance of social order. The report believes that the first view, which it sees as being that of the ordinary people, should provide the guiding philosophy for law and order policy in Papua New Guinea. This belief stems from the perceived failings of what the authors call 'the state option', as well as the better established roots of the 'non-state option' (Clifford *et al.* 1984:1/15).

The INA/IASER Report's examination of the problem, like that of the Morgan Report, has an economic dimension. However, the emphasis is quite different and is markedly less reductionist. Whilst the economism of the Morgan Report manifests itself in concern with the causes of crime, that is unemployment, the economism of the INA/IASER Report stems more from concern about the impact of crime upon economic development, and in particular upon production, business confidence, and foreign investment. Whilst acknowledging the problems of quantification the report concludes that crime represents a significant drain upon the country's resources:

If we only take the figures we have arrived at of K76 million for the private sector and K56 million odd for the public sector, the planners and accountants have to confront a bill of K132 million a year. This is a sizeable hole in the economic bucket - more than a half of the aid received annually from Australia and maybe in excess of other forms of technical assistance which the country is receiving (*ibid.*:1/65).

Whilst acknowledging a relationship between unemployment and crime, the INA/IASER Report emphasizes the factor of education in its brief causal analysis. The view of the report on education is similar to that of the Thatcher government in the United Kingdom (see, for example, Hall 1983). Namely, it is seen as raising employment expectations unrealistically and thereby discouraging educated youth from taking on work they consider beneath them:

The unemployed are waiting for the kind of jobs they feel they are entitled to expect by virtue of their education. Even a community school education raises expectations of good employment status and a place in a non-traditional community. This is not to oversimplify. There is, of course, a problem of structural unemployment with new migrants failing to find any gainful employment. The point here, however, is that the education system we have at present feeds the voluntary type of unemployment (*ibid.*:1/83).

A central theme of the INA/IASER Report is the concern to diminish the gap between the state and the people which is seen as contributing to social disorder. This concern is similar to that expressed in the Morgan Report, although it is presented primarily in terms of a dichotomy between the state, on the one hand, and the community on the other:

Law and order in Papua New Guinea depends therefore on the government regaining its position and prestige with ordinary people and forging the links that will build confidence and community backing (*ibid.*:1/107).

The law and order issue is thus understood primarily in political rather than economic terms. The performance of state institutions and their relationship with the citizen are seen as related to social disorder. For example, abuses of public position are seen as destructive not only in terms of the economic cost to the nation but also as generating popular disrespect for state authority. Maladministration, inefficiency and corruption in the workings of the state system are seen as indirectly fuelling the law and order problem. Like the Morgan Report, the INA/IASER Report warns of the risk of political instability:

Neglect of crime and the build up of the social disparities which appear to induce crime are typically punished by eventual revolution (*ibid.*:1/130).

Examination of the formal agencies of social control reveals their apparent inability to cope with the demands being made of them. Therefore the recommendations are informed by an appreciation of informal structures in the maintenance of social order in Papua New Guinea. These include the work of local government officials, village moots, churches, voluntary organizations, and, notably, the village courts. Using Black's hypothesis that law varies inversely with other forms of social control, the report reasons that the recognition and development of these informal mechanisms is more likely to be effective in maintaining social order than the further development of formal state structures (*ibid.*:1/249; Black 1976). This is because at present Papua New Guinea's informal community structures continue to play a far more significant role in the maintenance of social order than the law and other formal mechanisms.

### **Crime, development and positivist criminology**

Both reports are based on a correctionalist perspective: the problem to be corrected is that of crime and lawlessness. Whilst they look for the wider causes of social disorder, the reports treat crime and lawlessness as unproblematic categories, as commonsense and without need for further specification.

The INA/IASER Report recommends a shift in state policy as a consequence of the poor performance of the inherited formal state mechanisms of social control. The recommended shift entails enhancing reliance upon informal (non-state) structures whilst reducing reliance upon official (state) structures:

‘The non-state option’ emphasises the role of non-state mechanisms in the maintenance of order and the handling of disorder. It aims to preserve these mechanisms where they exist and develop them as needed. ‘The non-state option’ does not mean that the state has no role, but that it sees its role as to support and complement non-state mechanisms, rather than appropriating a larger share of the action for itself. The role of the state is not to go first but to go last, reducing to a minimum its direct role in law and order. The resources of the state are to be used where informal resources are inadequate and in areas in which the formal system is best suited to help (*ibid.*:1/252-253).



This recommendation is based on an over-simplified distinction between formal/state mechanisms of social control on the one hand, and informal/community mechanisms on the other. This dichotomy implies that the state cannot act through informal/ community mechanisms. Such an implication is clearly untenable in view of the significant inroads into informal dispute-settlement procedures already made by the state through, for example, the village courts. It has been argued by Paliwala that the enactment of the Village Courts Act 'rather than the mere strengthening of existing dispute-settlement machinery... is a further encroachment by the state into village life to preserve law and order' (Paliwala 1982:210). Likewise, the emphasis upon the informal sector in the INA/IASER Report would, if enacted, entail an extension rather than diminution of state influence through community institutions.

Both reports are ultimately concerned with adapting existing institutions and relations of social authority, whether state-imposed or community-based, to the correctionalist cause: the protection of the existing social order. In the causal analysis, problem social categories, most notably youth, are identified and then linked to crime through the explanatory framework of positivist criminology as developed in the metropolitan context. Thus, juvenile crime is explained in terms of: alienation; sub-cultural theory (gangs); unemployment; and unrealistic expectations generated by education (the 'blocked opportunities' theory). All these are familiar in positivist criminology's explanation of the disproportionate representation of urban working class youth in crime in the metropolises.

Several writers have warned of the parochialism of western criminology in its neglect of underdevelopment (see, for example, Boehringer 1978; Sumner 1982). This neglect is most apparent when the concepts of that science are applied, with minor modification, to developing societies. The resulting analyses have a tendency to identify discrete categories of crime and criminal (juvenile crime, tribal fighting, white collar crime) which are then treated largely in isolation from one other.

Important and awkward questions about the nature of law, crime and state response, and their location within the wider political economy of development/underdevelopment are sidestepped, obscured or distorted. And yet a historical understanding of crime and crime control demonstrates that these conflicts have often been integral in the establishment of new political and economic formations (see Fitzgerald *et al.* 1981; Thompson 1977). Moreover, this wider context for crime and its control can hardly be denied in respect of post-colonial societies, given the predominantly instrumental nature of law and its enforcement during the colonial period (see, for example, Paliwala *et al.* 1978).

Both reports attempt to situate crime within the overall processes of development, but neither undertakes any sustained analysis of what these processes entail. The Morgan Report, for example, talks of the 'colonial legacy' but nowhere does it proceed to analyse what this legacy is and what decolonization might mean. In both reports white collar crime or corruption appear as the product of individual greed or overbureaucratization. In the absence of an analysis of the role of the state in Papua New Guinea, alternative understandings of corruption, for example as manifestations of a transitional state form combining the features of both patrimonial and modern bureaucratic modes of administration (Sumner 1982:29), are understandably difficult to conceive of.

Underlying both reports is a criminological variant of the modernization thesis associated with conservative development theorists. The underdeveloped nation (in this case Papua New Guinea) is seen as undergoing in an extremely short period of time the same social and economic transformations that have taken considerably longer in presently industrialized societies. A consequence of this accelerated, and seemingly inevitable, process of growth is the generation of significant social tension that is likely to manifest itself in crime. The American criminologist, Marshall Clinard, speaking at a crime prevention seminar in Port Moresby in July 1975, put it in the following way:

As the less developed nations attempt to bring about transformation in one or two generations that have culminated from several centuries of more gradual development in most of the industrialised nations, severe social repercussions become apparent... [T]he rapid increase in crime, particularly property crime, [is] a concomitant to the developmental process (Clinard 1976:48).

The modernization approach is most evident in the causal analyses of both documents. Thus the Morgan Report concentrates upon the relationship between youth, urbanization, unemployment and crime, whilst the INA/IASER Report highlights the role of education in raising employment expectations amongst youths. In addition, an inevitable and natural link between modernization and crime is seen in a number of factors: growing social and economic inequalities between the 'haves' and the 'have nots'; major housing shortages in urban areas; increased alcohol consumption; growing numbers of educated youth with no employment prospects; corrupt politicians and bureaucrats; and a decline in traditional values and authority matched by a growth of western hedonism. The resultant forecast is gloomy:

As the second-half of the 1980's approaches it is likely to become apparent that if young people are not satisfied then tensions will increase. These tensions are likely to manifest themselves in increased levels of crime, and probably in increases in the seriousness of offences (Department of Provincial Affairs 1983:111).

The solutions proposed by the Morgan Committee follow the diagnosis: employment generation; development of youth programmes; control of migration; promotion of rural development; state control of alcohol production; review of national education policy; and so on.

Modernization theory and its criminological derivative are widely acknowledged as failing to appreciate or, as in the case of the Morgan and the INA/IASER reports, as understating the structural nature of underdevelopment and its international context. More particularly, modernization theory tends to ignore the economic and social dislocations of the colonial experience upon developing countries. Set against the background of the colonial legacy the recommendations of positivist criminology, such as restrictions on urban migration, are not only unlikely to succeed on their own terms (i.e. to reduce criminality) but are likely to accentuate the social and economic inequalities of post-colonial society:

Unless proposals are offered which face up to the facts of rural stagnation and little industrialisation, facts intimately bound up with the international economy, such liberal interventions could be worse than useless: they would simply work to protect

capitalism from the threat of the urban mass and to make rural misery compulsory (Sumner 1982:26).

The nature of the imperialist relationship is not discussed in either report. Whilst both acknowledge the wider roots of social disorder in Papua New Guinea, including reference to the colonial legacy, these roots are understood as being firmly implanted in Papua New Guinea soil. The internationalism of the INA/IASER Report, for example, tends to be restricted to an unquestioning desire to foster and protect foreign investment for the purpose of economic development.

Both reports, and the INA/IASER Report in particular, identify the inappropriateness and ineffectiveness of the formal criminal justice system, inherited from the colonial period, in the Papua New Guinean context. Their concern, however, leads not to an examination of the nature of the colonial legacy but to a narrower focus upon alternative techniques of control. In discussing the options available to the government, the INA/IASER Report suggests that it can either: continue with its present policies; increase the role of the state and state sanctions in the maintenance of law and order; or decrease the role of the state and develop existing 'non-state' mechanisms. The last option is the one preferred, and is consistent with the deregulatory approach proposed by the INA in relation to land tenure (Knetsch and Trebilcock 1981) and private enterprise (Trebilcock 1982).

The assumptions of positivist criminology underlying the reports frame the manner in which the problem is understood and the solutions proposed. They also forestall alternative explanations. Thus the issue of who is being controlled and why is largely taken for granted. The nature of the post-colonial state, its laws, and the pattern of economic and social development that these laws encourage and protect are not subjected to critical scrutiny. Ultimately both reports are based on an uncritical acceptance of the state's own definition of the problem.

### **State response to 'the problem'**

The response of the state to the law and order problem has been primarily opportunist: hastily conceived measures have been imposed in the face of crisis.

Pressure on the government to act has come from both inside and outside the country. An image of Papua New Guinean towns as dangerous and lawless places has been cultivated in the Australian media, following extensive news coverage given to a number of assaults and rapes committed against expatriate residents. Domestic pressure has come from the parliamentary opposition, the local media, the business sector, churches, women's groups, educational institutions and from concerned residents, mainly in urban areas, demanding tougher government action. For example, in October 1984 there was a public demonstration of an estimated 25,000 people (or about one in five of the entire urban population) outside the Central Government Offices in Waigani, Port Moresby, calling for government action to restore order.

Measures that have been taken in recent years include the enactment (and recent partial withdrawal) of the controversial minimum penalties legislation in May 1983, the establishment of a Law and Order Task Force in 1984 to oversee the implementation of forty-nine measures designed to

upgrade law and order agencies, and, most recently, the imposition of the state of emergency in the National Capital District that commenced on 17 June 1985.

The incoherence and pragmatism of the state response is evident in the fate of these measures. The minimum penalty legislation, which was introduced into the national parliament and passed in the space of two hours, ran into immediate judicial opposition. The judiciary perceived the measures as a curtailment of their discretion. One senior judge referred to the new provisions as 'ill-conceived, ill-advised, ill-considered, inherently illogical and draconian' (in *Lakea Sareaka v Simon Papi* (Pratt, J., National Court, 15 December 1983) ). The initial judicial response was to identify loopholes in existing legislative provisions that enabled the judges to by-pass the new provisions. Parliament responded by closing these loopholes thus leaving the judges with no choice but to impose the minimum penalties. The entire episode served to increase tension between the judicial and executive arms of the state and to emphasize major differences in their respective approaches to the wider law and order issue. The chief justice wrote:

Although Parliament has exercised its power to make these laws, we think it is in the spirit of the Constitution and most of our laws relating to the criminal justice system, that independent tribunals be given a proper sentencing discretion in order to do proper justice. We appreciate the concern of the Parliament with problems relating to law and order. We are disappointed that the concern we have expressed in previous reports coupled with observations as to what is presently going wrong in the administration of criminal justice, has been ignored in favour of a very narrow legislative thrust at the problem (Papua New Guinea 1984b:para.10).

At a more practical level, the minimum penalty policy served to further overcrowd the corrective institutions by preventing judges from imposing non-custodial sentences. Opposition to the measures has gradually spread beyond the judiciary and the government has responded by passing the Summary Offences (Amendment) Act of 1985 which abolished minimum penalties in respect of many less serious offences.

The Law and Order Task Force has not fared much better. Since its inception it has been involved in bureaucratic conflict, most notably with the Youth Department over funding. Its long-awaited report recommending ways of implementing the forty-nine crime-control measures selected by the cabinet was submitted to the prime minister's office on 17 June 1985, and has not been heard of publicly since. Recently the chairman of the Task Force, Mr. Pious Kerepia, suggested that the National Executive Council had decided to shelve the measures despite having been responsible for their original formulation (*Niugini Nius*, 19 September 1985).

The imposition of a state of emergency in extreme circumstances is provided for by Part X of the Constitution (SS.226-246) and has been used previously. In July 1979, the government declared a state of emergency in the highlands, in an attempt to suppress tribal fighting. The emergency provisions that were recently in force in the National Capital District enabled the government, amongst other things, to deploy the Defence Force in a policing role, to increase existing police powers, to prohibit demonstrations, and to impose a curfew. Although there are problems in quantifying the impact of the state of emergency there is an overall impression, shared by public and authorities alike, that there was a significant decrease in crime.

## 'Law and Order' in the United Kingdom

Concern with law and order in the United Kingdom is no more a creation of the 1980s than the concern expressed and experienced in Papua New Guinea today. Commentators on current events remind us that concern with street crime and social disorder has a long history. For instance, Geoffrey Pearson denies that street crime and hooliganism are the product of the permissive revolution of the 1960s. He finds:

If this long, connected history of respectable fears tells us anything at all, then it is surely that street violence and disorder are a solidly entrenched feature of the social landscape (Pearson 1983: 242).

Law and order resurfaced as a major focus of public concern and debate in the late 1970s and remains today a central paradigm in the understanding of Britain's economic decline.

As in Papua New Guinea the task of quantifying the problem is impossible with any degree of accuracy. Factors other than real changes in levels of crime affect the form of official statistics. As Pearson puts it:

The growing size of the police force and its supporting apparatus is the most obvious and general factor. Changes in the routines of law enforcement, the increased inability of the police, changes in what the law counts as crime, fluctuations in the vigour with which the law is applied, and shifts in public attitudes and tolerance - these must all be counted within the hidden dimensions of the manufacture of crime figures (*ibid.*:213).

Even taking the official statistics at face value international comparison shows that the United Kingdom has a low crime-rate compared with other comparable developed nations (as, indeed, does Papua New Guinea when compared with similar developing nations).

The fact remains, however, that public concern is high and that the state has responded to the perceived law and order crisis in an unequivocal manner. Before going on to discuss the presentation of the crisis and the nature of the state's response to it, I will attempt to say what I mean by 'law and order'.

In the United Kingdom context there are two related ways in which law and order can be understood: one is an instrumental way, whilst the other is primarily ideological. First, there is criminal justice policy and the state's agencies of law and order, notably, the police, the courts, prisons and other penal agencies. These agencies fall within Althusser's category of repressive state apparatuses: those agencies of the state that operate primarily through coercion rather than consent (Althusser 1971). In the United Kingdom less obvious agencies such as immigration control, the social security administration, and the secret service can also be seen as repressive apparatuses.

Second, there is the ideological character of the law and order debate. This entails an appeal for discipline in social and economic life. References to the legitimate authority of the state are

accompanied by warnings of the dire consequences, for the individual and nation alike, of ill-discipline, flaunting of authority, and, more generally, permissiveness (the approach to pornography in Papua New Guinea in the context of the crackdown on law and order, is instructive in this respect). These appeals are addressed to social units and agencies in the non official sector - the family, educational institutions, churches, and the workplace. Such agencies fit into Althusser's category of ideological state apparatuses: those agencies that operate primarily through consent rather than coercion. The ideology of law and order attempts to legitimate coercive state action and is, according to Hall and others (1978), how the state prepares for the 'routinization of control'.

Whereas research into law and order in Papua New Guinea has tended to be characterised by a narrow empiricism, many observers of the United Kingdom's law and order crisis have attempted to develop a more theoretical understanding of the issues. A burgeoning literature attempts to locate the issue of law and order within the wider context of the economic crisis and the response of the British state.

One of the most important theoretical contributions to date has been that of Hall and others (*ibid.*). They analyse the social construction of a moral panic around a particular form of street crime, mugging, in the early 1970s, and the manifestly disproportionate 'crime control' campaign that this generated. They see the problem of mugging against the wider background of political, economic and racial problems that have increasingly confronted the British state over the last fifteen years.

Hall and his colleagues use Gramsci's concept of 'hegemony' in their analysis (Gramsci 1971). This concept may be of use in understanding the wider background to the law and order phenomenon in Papua New Guinea. It acknowledges the ideological dimension of law and order, whilst recognizing the centrality of the state in the processes of definition and response.

'Hegemony' is used by Gramsci to describe the processes whereby a ruling class or alliance attains and maintains a consensual authority in a given society. Hegemony is established and maintained through a range of mechanisms for the production of consent. Hegemonic domination disguises the partisan nature of social and political authority. There are, however, periods in history when profound economic and political contradictions result in a crisis of hegemony. In such a crisis, existing social and political authority is divested of its neutral and consensual disguise. Such a crisis induces drastic modifications in the modes of hegemony of the dominant group or alliance whose class nature has been exposed and challenged.

If the state does not collapse, a crisis of hegemony is likely to lead to a shift away from rule through consensus towards rule through coercion:

In such moments the 'relative autonomy' of the state is no longer enough to secure the measures necessary for social cohesion or for the larger economic tasks which a failing and weakened capital requires. The forms of state intervention thus become more overt and more direct ... The masks of liberal consent and popular consensus slip to reveal the reserves of coercion and force on which the cohesion of the state and its legal authority finally depends (Hall *et al.* 1978:217)

Hall and his colleagues try to locate the mugging phenomenon squarely within the historically developing crisis of hegemony facing the British state. The response to crime, they argue, is and continues to be one of the forms in which this critical crisis of hegemony manifests itself.

## Conclusions

How far do the analyses and recommendations of the Morgan and INA/IASER reports resemble official explanations of crime in the United Kingdom? I shall consider a number of themes common to the debate on law and order in both countries: youth; development; the state and the community; and politics, legitimacy and hegemony.

In both countries young males, whether as 'muggers' or 'rascals', are identified as the main criminal actors. Positivist criminology explains juvenile delinquency in a number of ways: sub-cultural theory; anomie theory; urbanization; unrealistic expectations as a consequence of inappropriate education; individual maladjustment; and so on. Clinard and Abbot provide a standard example of such a formulation in the context of their examination of crime in East Africa:

Increased crime in less developed countries can be expected primarily because in these countries young people predominate, the growing cities attract the young, and it is the young who are most noticeably affected by the way of life in the city and who are drawn more easily into criminal activity (Clinard and Abbott 1973:101).

The crime-control remedies proposed following such a diagnosis are similar in both metropolitan and non-metropolitan contexts. 'Hard' remedies include, 'the short, sharp, shock', the use of corporal punishment in schools, and flogging for juvenile offenders. 'Soft' remedies concentrate more upon incorporating youth and include national service, vocational education and training, non-custodial sentences, and employment generation schemes.

In both contexts the focus upon youth may divert attention away from the less visible and structural aspects of crime: for example, the extent of white collar crime and corruption in the higher echelons of the power structure, and police crime.

Crime, in both metropolitan and non-metropolitan contexts, is officially understood in developmental terms. Whereas in the United Kingdom crime is discussed against the wider background of economic decline and the country's diminished stature as a world power, in Papua New Guinea it is related to questions of economic growth and, currently, questions about the priority of economic growth over redistribution.

In both contexts unemployment, whether presented as structural or voluntary, is related causally to crime, although the emphasis differs between commentaries. Thus, in Papua New Guinea, the Morgan Report identifies structural unemployment as a major cause of crime, whilst the INA/IASER Report stresses the contribution of voluntary unemployment caused by inappropriate education. In the United Kingdom a major strand in the Thatcher government's education policy has been to make education more 'relevant' in the context of de-industrialisation. In addition, a wide range of job creation schemes has been devised to incorporate unemployed youth.

Both countries are part of the same international economic system and appear committed to a deregulation of the economy. An interesting paradox in both contexts is that, while seeking to reduce state expenditure, increasing amounts of money are being allocated to youth programmes and the maintenance and expansion of law and order agencies.

The relationship between the state and the community is important in the law and order debate in both countries. There is an attempt to devolve a greater role in crime-control to community-level structures, away from formal state mechanisms. The emphasis is placed upon community policing and, more generally, upon community development/involvement projects. This approach is characterized in the INA/IASER Report as the 'non-state option'. Whereas in Papua New Guinea the community approach tends to be couched in terms of the breakdown of traditional social values, in the United Kingdom the favoured analysis revolves around the breakdown of the working class community or neighbourhood and, more generally, the breakdown of the family.

Both the Morgan and INA/IASER reports acknowledge that 'the law and order problem of the country is a reflection of its political malaise' (Clifford *et al.* 1984:I/102). In both Papua New Guinea and the United Kingdom law and order campaigns have been associated with political crisis: the demise of the Labour government and election of Margaret Thatcher's Conservative government in 1979; the crisis in the Pangu coalition in mid-1985.

The concern expressed in both reports with the wider politics of law and order is an important departure from the assumptions of positivist criminology that inform much of the analyses in both documents. In so far as the INA/IASER Report deals with the legitimacy of the state, however, it does so in a strikingly moralistic way, seeking remedies in greater personal integrity and accountability:

The inability of so many political leaders to give an example of integrity and dedication, the corruption in high places, the questionable manipulation of 'slush' funds and the quite remarkable complacency which persists in the face of a breakdown of governmental accountability - all contribute directly to the country's blatant insecurity. It is possible to discuss law and order problems as if they were due to a contempt for authority or a reflection of weakness and incompetence in government. Yet both of these flow from the crumbling of integrity in the structure of the state itself (*ibid.*:I/102-3).

In the absence of any sustained analysis of the nature of this state and its international context, the problem is ultimately identified in local and personal failures and weaknesses.

A fundamental question raised by these similarities between the analysis of crime in the United Kingdom and Papua New Guinea is: how far can the remedies flowing from such conceptualization be expected to work in the Papua New Guinea context when they have not met with much success in the United Kingdom? Another question is about the extent to which these law and order perspectives serve to divert attention from the particular characteristics of crime and crime-control in post-colonial Papua New Guinea and, thereby, reinforce the emergence of a new political and economic order. This second question was forcefully made by Boehringer and Giles in their critical review of positivist criminologists in the developing world:



Their unwillingness to investigate the relationship between political economy and law makes them incapable of understanding the nature of crime under neo-colonialism and thus legitimates the political-economic status quo (Boehringer and Giles 1977:61).

Neither of these two questions is adequately addressed in the Morgan and INA/IASER reports.

## CHAPTER 9

# INDUSTRIAL LAW AND ORDER

Michael Hess

This paper looks at industrial law and order in Papua New Guinea. Its starting point is the observation, based on Department of Labour statistics, that Papua New Guinea has a generally 'good' record of industrial conflict. In other words, Papua New Guinea experiences relatively few and generally short strikes. Furthermore most of these overt manifestations of industrial conflict are resolved within the framework of the industrial relations system. There seems to be a trend away from use of the system's elements of compulsion and towards acceptance of voluntary conciliation in the settlement of disputes.

In general such a 'good' conflict profile and this trend towards a more cooperative form of dispute resolution indicate that the Papua New Guinea industrial relations system is working to limit and settle strikes. There are, of course, many factors which contribute to this situation. In this paper, however, I want to focus narrowly on the contribution of the institutional arrangements of the industrial relations system. In particular I suggest that this relatively successful form of dispute settlement owes much to compromise between the agencies of the state and the organizations of workers. The Department of Labour has been successful as a regulator of industrial conflict because it has been seen by workers to act in a fair and reasonable manner. There is considerable trust between those whose grievances give rise to industrial conflict and the state agency responsible for dealing with such conflict. There may well be lessons in this situation which other state agencies can take to heart.

Industrial law and order issues are not a new concern of government in Papua New Guinea. Labour regulation was a principle focus of the colonial administration from its early days. As in most colonial environments, government and investors needed local labour. In Papua New Guinea, because of the success of subsistence economies, such labour was not readily available. It had to be coerced or coaxed from subsistence production without destroying the associated kinship structures, which were preserved to meet many of the costs of producing and reproducing labour. In order to achieve this the Australian colonial administration developed a plethora of labour regulations. This has been well documented by others (Fitzpatrick 1980; Jackson 1924), and elsewhere I have described the long-term aims of the colonial government in seeking to create a local labour force in the cash economy (Hess 1983).

The problem with such a labour force, of course, is that it must be controlled. As long as labour in Papua New Guinea meant indentured, and hence unfree, plantation or mine employees the excessive detail of colonial labour regulation generally performed this control function, although at

considerable administrative cost. Even in the late 1960s, Douglas Parish has suggested that 'kiaps and District Officers spent more time on labour regulation than on all their other work'<sup>1</sup>. Nevertheless the enormous effort put into labour administration was not entirely successful in creating and controlling this indentured workforce. Individual withdrawal of labour, unwillingness to renew contracts, and the many management complaints of 'malingering' are all pointers to its failure (see Rowley 1968).

In this paper I want to consider more recent attempts to control free urban labour. Given the difficulties experienced historically with unfree labour in Papua New Guinea, it might be expected that the more independent workforce of today's towns would prove impossible to control. In fact this has not been the case and the country's record of industrial disputes is not a bad one. Strikes tend to involve few workers, are short in duration, and are solved within the framework of the industrial relations system. This success in dealing with industrial disputes might be taken as an indication that the independent state is not necessarily doomed to failure in its more general attempts to ensure law and order. Working with the limited data available, I attempt to suggest the parameters of this success as well as the reasons for it.

### **Historical background**

Some historical background is necessary on Papua New Guinea's industrial relations system (see Daly 1983 for a detailed account). In the early 1960s the Australian Minister for Territories, Paul Hasluck, imposed on a generally unwilling Territory administration legislation which remains the basis of Papua New Guinea's industrial relations system today. This legislation largely copied Australian provisions and established a system of compulsory conciliation and arbitration. Such a system involves a degree of democratic participation on the part of the workforce and in particular legitimizes trade unions. For these reasons it was bitterly opposed by Territory business interests and was not generally favoured by the colonial administration. Both of these interest groups expressed their concern specifically in terms of control, claiming that 'unions for natives' would undermine colonial authority. Elsewhere I have described Hasluck's response: that unions legalized within the context of a compulsory conciliation and arbitration system were preferable to unions organized outside the framework of state control (Hess 1982a:50-61).

The fact that it was imposed from above undoubtedly posed severe difficulties for the system. In 1963, when the legislation came into effect, there were no unions of Papua New Guinean workers capable of fulfilling the representative function allotted to them in the system. The result was that the Department of Labour took on itself many of these representative functions, either directly or through its efforts to create the necessary unions. Both of these actions represented a compromise with Papua New Guinea's emerging working class. On the one hand, government officers worked hard to establish the 'right sort' of unions (see, for example, Hess 1982b on Milne Bay). On the other hand, government-appointed arbitrators, who were also usually public servants, were sympathetic to union pressure for long overdue improvements in wages and conditions. For instance, Tom Bellew, who was seconded from the Australian Stevedoring Industry Authority,

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<sup>1</sup> Former District Officer and one-time Secretary of the Territory of Papua New Guinea Department of Labour, interview, 10 March 1983.

acted as arbitrator in a number of important waterfront disputes in the mid 1970s. He recalls having been 'appalled' at the conditions of work which he said 'weren't fit for human beings' (interview, 15 June 1985).

While unions in Papua New Guinea have remained overall extremely weak, the fact that they are protected by legislation and are aided by elements within the bureaucracy goes a long way to explain the low level of industrial discord. This has meant that the unions are secure, their existence is not at issue in industrial conflict. Where unions are strong enough to play a genuinely independent role, the lack of discord is even more remarkable. For instance, workers in the strongest union, the Waterside Workers and Seamen's Union, are involved in fewer strikes than those in the non-unionized plantation industries.

### **Evidence on industrial conflict**

In describing industrial conflict, I consider the period 1978 to 1981, since 1981 is the last year for which employment statistics are currently available in a consolidated form. The statistics I present have a number of limitations. First, the figures are those provided by the Department of Labour and Industry. This means that the industry categories are those used by the Department, while the measure I have used of industrial conflict is limited to strikes reported to the Department. Figures for other manifestations of conflict, such as days taken as sick leave, lateness, industrial accidents and low productivity, are not available. Furthermore there are undoubtedly some strikes which are not reported. Nevertheless I believe the available figures do provide a sufficient basis for identifying general trends in industrial disputation over the period.

A second limitation is that the employees included in these figures are workers in the private sector and state instrumentalities. They are those whose industrial grievances are dealt with under the general provisions of the arbitration and conciliation system. Permanent public servants directly employed by government departments, police and teachers are not included. They have their own tribunals and are prohibited from strike action. The statistics then look at the strike record of those workers who, in Papua New Guinea, are most likely to be involved in industrial disputes.

Table 9.1 shows how few workdays are lost in strikes in Papua New Guinea. In 1978 strikes cost the industries shown slightly more than one day for each ten workers employed. Only in the building industry was the rate significantly higher than the average, with the relevant figure being half a day for each employee. As annual figures go these are extremely low. Australia's average annual rates for workdays lost per employee in the decade 1972-82 were: mining 8; manufacturing 2.5; and building 1.5 (Deery and Plowman 1985:45).

These figures are all the more remarkable because of the method by which strikes are recorded in Papua New Guinea. In many countries strikes have to lead to a given loss of work days before they are entered in official statistics. In Australia, for instance, a strike must result in the loss of ten workdays before it is included. The Papua New Guinea figures include every strike, no matter how minor. In the case of the 'others' category in Table 9.1 the Department recorded one strike of twenty workers which resulted in no loss of working days.

Table 9.1  
Workdays lost, 1978

Industry group	Mean workdays lost per employee
Primary production	0.122
Mining and quarrying	0.003
Manufacturing	0.058
Utilities	0.022
Building	0.004
Commerce	0.004
Transport and communication	0.110
Finance	0.000
Community services	0.091
Others	0.000
All workers in these industries	0.107

*Source:* Department of Labour and Industry 1980.

Not only were very few workers involved in strikes but those who did go on strike lost relatively little work time. Table 9.2 shows that in the same industry groups the mean number of days lost per strike in each year was less than two. The average, inflated by a number of particularly long strikes, was slightly over three.

A final set of figures in Table 9.3 reveals how disputes were resolved. Over the four years several trends can be identified in the means by which the disputes were settled. The percentage of disputes settled by direct negotiation fell from 33 in 1978 to only 12 in 1981. Compulsory arbitration and conciliation decreased even more, from 38 in 1978 to 7 per cent in 1981. The compensatory increase was in the number of disputes settled by voluntary conciliation which rose from a mere 3 to 57 per cent. The number of disputes which remained unresolved at the end of each year also fell sharply.

In summary these statistics should offer considerable comfort to Papua New Guinea's labour administration. The overall picture which emerges is that Papua New Guinea has relatively few strikes, that those strikes tend to be short and to occur in predictable areas, and that strikes are increasingly resolved by voluntary conciliation. I imagine that the Department of Labour would justifiably claim some credit for these figures and might also claim that the figures show how Papua New Guinea's industrial relations system has matured. A hidden factor in the data is the success of the Minimum Wages Board in its role as the central wage fixing tribunal. Under the competent chairmanship of A.K. Joel, this tribunal has provided basic wage increases and has had the effect of removing a potentially major source of industrial conflict from the workplace.

Table 9.2  
Workdays lost per striker, 1978-1981

Industry group	Workdays lost per striker			
	1978	1979	1980	1981
Primary production	2.71	4.49	3.10	2.23
Mining and quarrying	0.80	a	2.00	3.19
Manufacturing	2.55	2.14	0.74	5.22
Utilities	1.50	a	1.00	0.75
Building	7.88	2.61	3.74	2.66
Commerce	3.52	2.47	1.34	1.44
Transport and communication	3.52	2.47	1.34	4.72
Finance	a	a	1.61	3.53
Community services	1.32	3.43	1.08	a
Others	b	0.73	1.00	1.78
Total	3.23	3.90	1.89	3.45

Sources: Department of Labour and Industry 1980, 1983.

Notes: a No strikes. b No loss of workdays.

Table 9.3  
Method of settlement of industrial disputes, 1978-1981

Settlement method	1978		1979		1980		1981	
	No.	%	No.	%	No.	%	No.	%
Direct negotiation	21	33	31	40	15	28	7	12
Voluntary conciliation	2	3	4	4	11	21	33	57
Compulsory arbitration & conciliation	24	38	33	37	17	32	4	7
No negotiation or negotiation not known	7	11	14	16	10	19	14	24
No settlement	9	14	2	2	0	0	0	0
Total	63	99	84	99	53	100	58	100

Sources: Department of Labour and Industry 1980, 1983.

An additional point which should not be overlooked is that the system works because it is seen to be fair by the participants and particularly by workers. The trend from direct negotiation and compulsory arbitration towards voluntary conciliation shows how pivotal and fragile the Department's role has been. In the limited period covered by the figures I have used, management and labour showed increasing dissatisfaction with both direct negotiation and arbitration. Rather than being content to reach resolution of disputes themselves or rely on official judgements they increasingly opted for conciliation. In this process Department of Labour officials have played the crucial role of bringing the parties together and helping them reach a mutually acceptable solution.

If figures for the years since 1981 indicated that the preference for conciliation had continued, some interesting conclusions would suggest themselves. The principle one, and the one which is most likely to provide lessons for areas in which dispute settlement has been less successful, is that conciliation by a respected and authoritative state agency may be a practical way to settle disputes. While my understanding of dispute settlement procedures in Papua New Guinea's rural communities is limited, I suspect that these procedures may have played a part in the trends in industrial dispute settlement. It may be that the success of conciliation in industry reflects workers' familiarity with this approach, workers who still have substantial links with rural communities and many of whose attitudes are informed by factors in the rural mode of production.

## **Overview**

This paper has not attempted to address all the issues in industrial conflict in Papua New Guinea. What it has sought to do is focus attention on particular aspects of that conflict. It has shown that workers in those industry groups in which conflict is most likely to occur are involved in relatively few and short strikes. It has also pointed to a trend towards resolving strikes by a process of voluntary conciliation, a process in which the Department of Labour is accepted as a legitimate mediating agency. Underlying this state intervention in dispute settlement is a history of compromise between one particular state agency and an emerging working class.

By providing organizational security for unions and legal protection for their officials to engage in collective negotiation, colonial industrial relations legislation laid the basis for bringing the country's previously unrepresented workers into a system of industrial decision making. The results of this have been mixed. At the very least, however, it has provided an avenue for the articulation and resolution of grievances. The trend towards more conciliation is a reflection of how Papua New Guineans are altering this basically Australian-style system to suit themselves. It also shows the extent to which the Department of Labour has been able to establish its authority through being seen to act in a fair and reasonable manner. The vital elements in this relatively successful approach to industrial conflict have been the representative function of unions, the sympathetic approach of the Department of Labour to unions and to workers' grievances, and the consequent willingness of workers to channel their grievances through the Department and the established industrial relations system.

## CHAPTER 10

# SOME ALTERNATIVES TO STATES OF EMERGENCY

Lynn Giddings

### Introduction

No one living in Papua New Guinea in 1985 would deny that the country has a law and order problem, although there would be varying opinions as to how bad the problem really is. The media have made a negative contribution by giving prominence to dramatic headlines and sensational stories, almost making heroes of the criminals. They do not balance their reporting with stories of positive developments and signs of hope. This paper is designed to show that the problem, as seen from the Eastern Highlands Province, is not beyond repair. Indeed, there may be simple, inexpensive solutions.

The philosophy in this paper overlaps in many ways with the community-based recommendations of the INA/IASER Report (Clifford *et al.* 1984). But in areas of community development the work of the Eastern Highlands Provincial Research Committee (EHPRC) goes beyond the report.

The paper has four sections: a description of the EHPRC; a case study from the Unggai area of the province; a discussion of the possibilities of a probation service for Papua New Guinea following a pilot project and its success in Goroka; and a review of the work of the EHPRC, and the message its work may have for other parts of Papua New Guinea.

### The Eastern Highlands Provincial Rehabilitation Committee

The EHPRC was formed in 1981 as the result of pressure applied by various gangs on the town of Goroka. Goroka, the administrative headquarters for the Eastern Highlands Province, had felt the consequences of the growing law and order problems. The town had responded defensively, as had other urban centres around the country. High fences had been erected around many residences in the town, savage dogs were kept near premises floodlit by powerful lights, and a new business had developed in the form of security services. Signs such as '*Lukaut dog i save kaikai man*' (Look out, the dog bites people) and '*Sori no gat wok*' (no job vacancies) had sprung up everywhere.

As elsewhere in the country, the bulk of the population of the Eastern Highlands Province, approximately 260,000 people, is rural, while the town of 18,000 hosts a comparatively wealthy group of national and expatriate workers and entrepreneurs who enjoy the envied lifestyle which a thriving centre of this kind provides. Stretching away from the town boundaries into the rural areas



and reaching the remotest pockets of the province are large numbers of young people, men in particular, who are unemployed and underemployed, without the means of acquiring money to afford what the town offers. It is among this group, alienated in part by reason of their education from their own culture and traditions, yet not absorbed into the western-style cash economy, that frustration and discontent abound.

Prior to 1981, gang forays into the town leading to offences against life and property were a common occurrence. In February 1981 contact was made with one of these gangs and within a space of six months, six gangs came out of hiding to seek assistance. In September of that year the pressure by the gangs was so great that the EHPRC was formed with seventeen inaugural members.

To give these young people something to do, and to keep them out of further trouble, contract work, permanent jobs, or economic projects had to be found. Before long it was evident that it was dangerous to assist only those who had been in conflict with the law. That approach was saying to the law-abiding youth: the way to get help is to become a 'rascal', surrender, and then help will come. Within three months the EHPRC decided that its assistance would be directed to all school-leavers without a job. Those who were not 'rascals' today were potentially trouble-makers tomorrow in any case, and joining a gang must not appear to youth to be a 'rite of passage', as many seem to think. Too many school-leavers 'graduate' into a rascal gang, filling the vacuum left by the decrease in tribal fighting and the discontinuation of prolonged initiation ceremonies - pursuits which traditionally occupied the young men of the warrior class.

A document, 'Operation Rehabilitation', was drawn up stating that the EHPRC was a community response to the problem of law and order, particularly as it affected youthful offenders who were not old enough to be considered mature criminals, but who were too old to come under the jurisdiction of the children's court. There were two purposes in mind in assisting these people: to help them rehabilitate themselves, and to assess the problem which predisposed them to get into trouble and to offer advice and assistance to overcome it.

To help young people rehabilitate themselves, the EHPRC provides juvenile delinquents with the opportunity to surrender with dignity and without fear of reprisal, and to answer any charges which might be preferred against them. It also advises them how and where to obtain legal assistance and representation. Where free legal aid is not available, being a service reserved for the more serious crimes, and where young people cannot afford the services of a private lawyer, members of the EHPRC are willing to act as guarantors for their future behaviour if the courts allow them reduced sentences pursuant upon their entering into bonds of good behaviour or being placed on probation.

The second purpose was, and still is, more difficult to achieve. Invariably the problem which predisposes young people to get into trouble is rationalized or expressed as an economic one. The reality is that economic deprivation is only part of the problem, but it is the easiest to articulate: it is easier to blame the economic situation than to search for more abstract, underlying causes. The EHPRC felt that what young people needed, rather than handouts, was encouragement to tap their own potential, to become creative with their own resources, and to develop a sense of responsibility, pride and dignity in themselves.

The EHPRC recognized that young people had an uphill battle to break out of their stagnating situation. The town community was pushing them out through lack of job opportunities, and their rural communities were doing the same for a variety of reasons, one being that parents had no substitute of offer for the obsolete traditional roles. Banks and lending societies see young people as a poor investment risk, having no assets such as vehicles or coffee gardens which can be repossessed upon default of repayment of loans. Young people are a 'trapped' segment of society with few (if any) doors opening for them before marriage.

Having no model on which to build, the EHPRC has developed its own philosophy and methods through trial and error. It recognized from the outset that in traditional Melanesian society, wealth was more equally and evenly distributed than it is today, and that the seeds of discontent have taken root as society has become divided between the urban elite and the peri-urban and rural people. Rural school-leavers, having been educated to the same expectations as their urban neighbours, are often unable to participate in the opportunities that economic development should provide. However, it did not take the EHPRC long to realize that while economic problems were paramount, more income was not a panacea. When money was injected into a community, it brought new problems with it.

The EHPRC saw the wisdom in what at times can appear to be no more than an idle catch-cry, integrated human development: the need for economic, social, political and spiritual development to go hand-in-hand. The term 'drop-out', for instance, was rejected: school-leavers have neither 'dropped', nor should they feel 'out'. Here was the root of one of the problems: young people needed to be 'in', to be included in their communities, to feel that they belonged and had a contribution to make. A sense of belonging was an important factor facilitating the exercise of social control.

The EHPRC accepted the government's assertion that crime prevention is a community responsibility, holding the opinion that the answer to the problem did not rest entirely with increased police vigilance and harsher court penalties. Part of the answer lay with the communities' own ability to redirect their young people away from viewing crime as a legitimate means of obtaining a share in the prosperity to which they have otherwise been unable to gain access. But if the constant call for community involvement was valid, it did not mean simply the urban community buying off the rural offenders (urban or peri-urban settlement gangs) with kindly gestures; rural communities must also shoulder their responsibilities. But they needed help, and they needed information and re-education away from an attitude of dependency. This meant that communities had to have a political awareness of the likely consequences of the law and order problem getting completely out-of-hand (see Clifford *et al.* 1984:1130).

When making contact with groups, the EHPRC ensured that the whole community from which the young people come (particularly its leadership) was involved. Rural leaders without criminal records were asked to join the EHPRC and sustain the work in the rural areas. To this end, we aimed to work as informally and with as low a profile as possible, so there was a minimum of difficulty in assimilating rural people as active members in the work. The EHPRC did not wish to become part of the bureaucracy, although we accepted some funding from provincial and national government. We were keen to preserve our image of community involvement at the most local level. We did not wish to appear like another government department, dispensing a service, but

rather as a bridge between the community in crisis and representatives of government. Being a voluntary organization provided a position of strength from which to motivate communities to respond to the situation, and the ability to view the problem not as a youth problem but as a community one.

### The Unggai surrender: a case study

On 15 March 1982 a large number of young people from the Unggai area of the Eastern Highlands Province marched through Goroka town carrying placards asking for forgiveness, and finally surrendering themselves at the police station. They handed a stolen shotgun and house-breaking equipment to the police. Prior to the surrender a week's work had gone on behind the scenes with a district services officer (*kiap*) and several members of the EHPRC. Between eighty and one hundred young people surrendered, but charges were preferred against only eight of them.

The build-up to the surrender began with a number of attacks on Goroka High School which resulted in an emergency meeting of the board of governors to discuss the problem. The Unggai people feared that government services might be cut off in their area, and police might raid their villages in reprisal, if law and order were not restored to the town. This fear became the catalyst to the surrender. Regrettably, people only seem to become creative under pressure.

It is difficult to know if the work of the EHPRC had also had some impact on the Unggai people. For six months prior to the surrender, the EHPRC had been putting out a message that the community must own its own crime. People had been warned through newsletters and radio broadcasts that it was useless to close their eyes and ears to what was happening about them. It was explained that communities who enjoy the spoils of robberies are accessories to the crime and receivers of stolen goods, for which actions there are also criminal charges. Appeals had been made to responsible members of the community to bring pressure to bear upon their young offenders.

Following the meeting of the board of governors, Unggai leaders made contact with the EHPRC through an officer of the Department of Provincial Affairs. The EHPRC agreed to offer its services as intermediary between the Unggai people and government authorities. By the end of the week, provincial government authorities, including the officer-in-charge of the Criminal Investigation Division (CID), had agreed to meet with Unggai people on Unggai land.

An information sheet had been prepared by the Unggai people and was handed to the police. It listed the various gangs coming from the Unggai area and identified the gang members and the villages from which they came. It was clear from the sheet that the Unggais' intentions were to plea bargain with the police. In return for identifying themselves, returning the stolen gun and turning police informers on other gangs, they anticipated that they would be pardoned and found employment in town. Typically they suggested security services, which allow the old gang mentality to continue to operate on the 'right' side of the law rather than the 'wrong'. Most rascals consider themselves special people and expect to be rewarded with special work in return for their good behaviour.

The officer-in-charge of the CID read out a list of names of wanted people from the Unggai. Fifteen people stepped forward from a list of approximately sixty. The leaders explained that the Unggai is a large area extending into the Chimbu Province, crossing political boundaries, and that they only had influence over one quarter of the total language group - the people who lived on top of the mountains overlooking Goroka valley, and in the eastern foothills. This accounted for the proportion of young people answering their names to the police list.

The stolen shotgun from the raid on the abattoir, bolt cutters and house-breaking equipment were handed to the police. In typical Melanesian style, the law-abiding representatives applauded the criminals with a hand-clap.

The young people wanted to march to town immediately while the euphoria lasted, but the authorities suggested that it would be better to wait until Monday morning when a government truck could be sent out to the Unggai to collect 'volunteers for prison'. The sensitive handling of the situation by police and government authorities was commendable.

The following Monday morning a truck drove around the Unggai and brought the youth and their leaders to town. During the afternoon they marched through Goroka in an almost carnival-like atmosphere, carrying placards asking to be forgiven and voluntarily surrendering themselves into the hands of the police.

Tension, however, built up at the police station. The 'wanted' list was read again and approximately twenty-five people answered to their names. The police asked the others, whose names were not on the list, if they wanted to own up to the break-and-enter offences committed against Collins and Leahy, Sullivans, the high school or the abattoir. Group solidarity being very strong, the whole 'mob' surged forward. The police were dismayed and said they did not want all the supporters, only those who actually broke into and entered these premises.

The situation became confusing as no one wanted to appear inconsequential in the robberies, and the police were starting to feel hassled and pressured. When a young police informer from the Unggai appeared on the back verandah of the police station, placards were dropped, the mob again surged forward and momentarily it seemed as if the young man would be lynched! Police and Unggai leaders anxiously restored order before the surrender collapsed.

Twenty-eight people were detained for questioning that night, but by the next morning, fourteen had been released. Presumably with much of the evidence being their own confessions, the police did not think their charges would hold in court and it was not worth the time and effort of the paper work to have the cases dismissed by the court.

The reaction of the group was one of disappointment: they had all wanted to go to gaol together. Because of this situation, many of the parents and elders were ill at ease. The parents of youths not arrested felt embarrassed about the situation, and parents of those arrested felt bitter that their children had been singled out and used as scapegoats for the others. In retrospect it would have been better to have charged all of them, remanded them in custody until the National Court sitting, and had the cases dismissed a month later. In this way, everyone would have had a taste of prison.

Of the fourteen arrested youths, one came before the Children's Court the same week and the EHPRC was unable to assist him as the Children's Court is a closed court. Another had only one charge to answer which could be heard in a lower court. The EHPRC spoke on his behalf in court and his sentence was reduced to a quarter of what could have been expected. Charges were dropped against three other lads, and by the time the committals came before the lower court there were nine young men left. Members of the EHPRC visited these people in Bihute Corrective Institution and conducted interviews to assist the lawyer defending the case. Typical of the interviews is the story of Mr Imo, the gang leader:

I am nineteen years of age and the fourth child of a family of six. I went to the Faniufa Community School until standard 2 when I was taken away because my parents could not afford the school fees. I was nine years old when I left school and my parents and I were disappointed that I could not continue.

My village is in the foothills of the Unggai and my father grows coffee. The coffee has not been very good as it seems to be too dry. My father earns about K30 per year from the coffee.

The two eldest children in the family did not go to school at all. They are now both married. The third child, a son, went to high school and now has a job in Lae. When he was accepted into high school, my father removed my sister and me from community school because he could not afford three sets of fees. He told me that as my brother had passed the hurdle of the grade 6 exam and had a place in high school, he would back the winning horse, but my brother would compensate my sister and me when he got a job in town.

I was so angry at being taken away from school I ran away to my uncle in another part of the Unggai. I stayed there doing nothing in particular for many years. I did not have access to ground to commence a coffee garden of my own, but I helped my relatives in their garden from time to time.

I got a job for six months at Linupa Motors and was very satisfied with the fortnightly wage of K75, but Linupa Motors ran into financial difficulties and I was laid off.

I found a second job selling eggs for K22 a fortnight, but this only lasted for two months when I was laid off again. Neither time was I sacked for misconduct.

Meanwhile my brother got a job in Lae, but in two years he made no effort to compensate me for my loss of education. I was so frustrated at the bad luck I was having, I formed a gang and broke into the Kamaliki abbatoir. I later stole a car parked close to a house and I was arrested for this offence, but at the time the police were not aware that I had also broken into the abbatoir. This was my first time in prison and in October 1981 I escaped before completing my time.

The same themes - a smattering of education, withdrawal from school because of school fees, the general economic recession making employment elusive, and relative poverty at home - pervaded the other interviews.

Between the March surrender and the National Court sitting in April, the EHPRC was able to obtain short-term contract work for sixty of the remaining seventy-seven youths who had indicated they wanted work. Money from the contracts enabled many of them to buy some seed potatoes. The EHPRC held a training course for them on growing English potatoes, and potatoes became the most successful of all Unggai projects.

In April 1982 several members of the EHPRC attended the National Court sitting over three days to hear the cases against the eight Unggai youths. The EHPRC told the court about the work of the EHPRC, the voluntary surrender of the young people, and its concern that the eight youths in court did not become scapegoats for the dozens of Unggai youths who were not arrested and charged. The EHPRC recommended that the people be sentenced to jail, but that the bulk of the sentence be suspended with the EHPRC being a guarantor for their good behaviour.

The court in its wisdom passed sentences of three years of which eight months were to be served in gaol and the remainder was suspended. The suspended sentence expired on 19 April 1985. During the three years, seven of the eight responded to rehabilitation. The eighth, who appears to be unbalanced with no psychiatric assistance available for him, has been rearrested for being in possession of a pair of police handcuffs.

In assessing the problems which predispose young people to get into trouble with the law, the EHPRC found that quite often the problems were as much with the parents as with the children. Many parents did not seem to understand that their young people genuinely could not find work in town. The parents' expectations had been that if they sent children to school, the children would send money back to the village when they found a job, ensuring a certain security for the parents in their old age. The young people claimed that their parents 'punished' them for not finding work by withholding access to land. The parents explained it differently by saying 'It is not traditional to give land to people before they are married'.

Most young people claimed that they were humiliated in front of the community by their parents when they returned home, and in some instances even beaten. The EHPRC realized that communities need help to understand the school-leaver problem, to realize that it is a world-wide problem, and to be persuaded to be more flexible with their customs and tradition. If custom can adjust to the introduction of beer, it can surely make adjustment for its youth to have access to land.

The overriding problem as viewed by the Unggai people was an economic one. They saw their area as depressed and lacking the development of surrounding areas. Because of the higher altitude of the Unggai, their coffee trees took longer to bear fruit, and did not bear in the same abundance as the trees of the fertile Asaro valley. Most income for the people came from vegetable growing: selling cabbage, potato, sweet potato and sugar cane. There were difficulties here, too, as much of their soil is clay, and when they do produce good quality food and carry it to the market, frequently it is not sold by the end of the day and is thrown away. While there were cattle projects in the foothills of the Unggai, cattle have not been successful in the higher country. The Department of

Primary Industry has not encouraged livestock projects there because of poor roads and inaccessibility. Chickens and goats had their own different problems, and trade stores are not viable when people do not have much money.

The next concern most often expressed by the people was for more and better roads. Most roads are only dry-weather roads and are neither safe nor serviceable during the wet season.

A third concern was education and the rise in school fees. Education remains a high priority, but school fees have been very difficult for families to raise. Parents have experienced real hardship in this area, and many of the young people are taken out of school because of it. The aggressive attacks against the high school may well have been related to this factor.

A fourth concern was the violent and pornographic films which are allowed into Papua New Guinea and are shown at the town cinemas. Most parents link unsuitable films and comics with the escalation of the law and order situation. Some ask, 'Why, when schools set a good example, does the government allow that example to be undone by a lax censorship board?'

The EHPRC was assured by the Unggai parents that they were trying to be responsible. They said they gave many lectures to their children and the young troublemakers. The parents laid the blame almost entirely at the feet of the young people saying that education diminished their respect for illiterate elders. The young people would only learn through the bitter experience of going to gaol. The elders felt they had no 'weapons' at their disposal to control young people, make them work, or bring sanctions to bear upon them. When asked if they could not withhold brideprice from the troublemakers, they said it was not a good idea as marriage settled them down. There was a feeling of real helplessness in looking for solutions to their problems.

Village councillors have become less active as they have seen their influence waning. It has become a vicious circle with loss of prestige and strength producing inactivity, lack of confidence and further lack of respect. The lack of traditional community sanctions and powerful, active leaders has led young people to believe they have little to fear from their home communities.

There was a feeling that the government no longer comes to the people. People have to come to town to find government. Then when they do, they seldom receive satisfactory replies, but are referred from one department to the next.

Their own answer to the problem was that rural areas should be made more attractive for young people. Young people are looking for the 'good life' which they believe can only be found in town: they desire picture shows, live bands, socials and liquor outlets, and in particular, sporting events. Many young people said, 'We do not care if we live or die'. Whether this is mere bravado or the actual truth, it is a sad indictment on the present state of affairs (or, maybe, affairs of state!). It does, however, reflect the general feeling of helplessness and hopelessness among both young and old.

The EHPRC presented a report to the provincial government drawing its attention to some of the grievances of the people and making some general recommendations. The report suggested that the government should create short-term employment for young people and guard against unnecessarily

replacing men by machines, investing less in heavy equipment and more in tractors and trailers which could be sent out to rural areas to assist youth to repair their own roads. Too often bulldozers repair roads while teenagers sit on the side of the road playing cards. The landscaping of the new provincial government building was given as 'another case in point. An Unggai group had landscaped the gardens at the side of Yanepa House for K300 for two weeks' work, while the front was contracted out to a company for K50,000 and incorporated a sealed car park and decorative fountain which could be regarded as luxuries in a small town.

Second the report recommended that people should be made aware of the value of supporting local products to assist the country to minimize its import of goods, and so create employment at home. Stores in Papua New Guinea have 'Made in Britain' weeks, 'Made in Australia' and 'Made in New Zealand' weeks, but we never see a 'Made in Papua New Guinea' week. Imports such as honey, biscuits, toilet rolls and frozen vegetables should be banned when there is an abundance of these products in the country. It was suggested that feasibility studies be done on snap-freezing our own fresh vegetables and bottling our own fruits.

Third, the report pointed out that there was a genuine feeling by both young and old in rural areas that they had been neglected and forgotten. They had to start a tribal fight before any notice was taken of them. It was a sad indictment of the independent state of Papua New Guinea that some people felt nostalgic for the colonial days. It was recommended that government departments re-establish a link with villages by patrolling rural areas more frequently and camping out in the villages, building up people's confidence in the services offered.

Three years later the Unggai is probably the quietest part of the Eastern Highlands Province. The more remote areas which are not causing rascal trouble are pursuing traditional tribal fights. The courts in Goroka tell the EHPRC that hardly ever does an Unggai person pass through the courts even on a minor offence. When one does, it is usually for a traffic offence. In 1982, the Department of Public Health offered a contract to thirty-six Unggai youths to spray the villages of the province as a malaria control measure. Other than that there has been no obvious improvement in job opportunities in the district. Bulldozers still grade and level Unggai roads while young people remain idle, and the stores continue to stock their freezers with frozen peas, beans, broccoli and corn. Stores have had another 'New Zealand Week', another 'Made in Britain Week' and have continued to import luxury items from America, the Philippines and Japan. We can buy anything from boiled bracken and seaweed jelly from Asia to pure maple syrup from Canada.

Meanwhile, the Unggai District has shown that it is highly suitable for growing English potatoes. The extra altitude reduces disease. The potato projects have been so successful that the provincial government and the EHPRC has set up a marketing cooperative with a Swiss volunteer supervising it. The cooperative employs an urban youth group without access to land to sell the potatoes from wheelbarrows around the town. The national government has made an effort to ban some competitive items. Imported honey has been banned and there is a promise of a ban on imported fresh vegetables from Australia in 1986. Meanwhile the peanut butter factory has gone broke, while a striped version of peanut butter interlaced with guava jelly from America is available in the stores!



## **Probation and its possibilities**

One of the aims of the EHPRC was to assist first offenders to keep out of gaol and support them in their rehabilitation. The EHPRC saw the need for a formal probation service.

Probation is a system which allows some offenders to serve their sentence, either in part or full, in their community. It does not apply to people who have committed a serious offence such as murder, rape or armed robbery. It applies rather to people who have committed a petty offence, particularly first offenders or people who cannot afford to pay a fine and would otherwise go to gaol in default. Nevertheless, it must not be forgotten that probation is a sentence, and any restrictions the court may lay down as conditions of a probation order must be obeyed.

Initially the courts in Goroka did not want to take up the offer of the EHPRC to assist with first offenders as we had no official recognition. Also, owing to the poor standard of police records it was difficult to determine who was a genuine first offender: the vast majority of people passing through the courts would appear from police information to be first offenders. Only criminals with outstanding criminal records are well-known to the police under their various aliases.

Official gazettal for a probation service was received in January 1983 after fifteen months of discouraging response from government. During the first year the courts made cautious use of the service in Goroka. Fifty-four people were referred to the probation office either on probation or under a good behaviour bond.

Impetus for the service came from the introduction of the mandatory minimum sentences legislation in July 1983. Although the EHPRC opposed this legislation as causing unnecessary suffering and hardship, ironically the legislation gave the spur the probation service was seeking. Magistrates were unhappy at the minimum sentences which frequently affected ordinary people such as married women who, when assaulting their husband's girlfriend in a public place (a traditional response to a marital problem), were facing a minimum gaol sentence of six months. Six months in gaol only ensured that the marriage was ruined as the husband and girlfriend were not similarly imprisoned. The children's court in Goroka showed, like children's courts around the world, that broken homes breed the next generation of criminals. With this dilemma confronting them, the courts in Goroka were indeed grateful to have a probation service in the wings.

However, the Probation Act 1979, written before the introduction of the new minimum penalties legislation, precludes the offering of probation if a minimum penalty applies. When the act was written, the only minimum penalties were for murder, rape and treason, offences for which probation was unsuitable in any case. To overcome the new dilemma, the courts in Goroka used S.138 (now S.132) of the District Courts Act which permits the court, where the case is for an indictable offence triable summarily, to release the offender 'conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour...'. Offenders, particularly married women, have been offered a good behaviour bond on the condition that they submit to the services of the Probation Office. In effect they receive the same service from the office as people placed on probation under the Probation Act. With the successful passing of Sir Barry Holloway's private member's bill to repeal the minimum sentences on the Summary Offences Act, this back-door

approach will be no longer necessary after November 1985. Table 10.1 provides figures on the numbers of people placed on bonds and probation.

Table 10.1

## Probation and good behaviour bonds in the Eastern Highlands Province

	1982	Year 1983	of 1984	commencement 1985 (to 30 June)	All years
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Good behaviour bonds					
males	0	17	220	65	302
females	0	6	170	50	226
total	0	23	390	115	528
Probation					
males	2	26	47	70	145
females	0	5	13	27	45
total	2	31	60	97	190
All cases	2	54	450	212	718
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*Source:* Eastern Highlands Provincial Rehabilitation Committee records.

To ensure that probationers comply with court orders, to support them through their test of good conduct, and to encourage a positive attitude rather than merely 'keeping out of trouble' for the duration of the probationary period, the probationers are instructed to report on a regular basis to a probation officer, or are visited in their homes and communities. To assist a probation officer with this task, a team of voluntary probation officers (VPOs) is essential. The members of the EHPRC became that pool of VPOs, thus involving grass-roots support for the service. This support should not be underestimated. Law and order is a community responsibility and requires a community response.

Among the many advantages of a probation service, four stand out as being most significant: financial viability, social viability, equity, and the importance of reconciliation.

Financially, a no-frills probation service with community participation has much to offer government. Probation must reduce the spending of the Corrective Institutions Service. Prisons in this country are full of petty offenders or people unable to pay fines, and these people are being detained at great cost to the government. It appears to cost approximately K6-K8 per day for each prisoner in gaol. In 1984, the Goroka Probation Service dealt with 450 probationers. Most of these people would otherwise have had prison sentence of between six months to one year. The Probation Service in 1984 saved government at least half a million kina.

The probation service appears to be what could be termed 'socially viable'. In 1982 and 1983 nobody on a bond or on probation was re-arrested. In 1984 only eleven were re-arrested out of several hundred in the care of the EHPRC, and by June 30 1985 only another seven had been re-arrested.

Although most referrals to the service have not been high-risk people to date, the low number of recidivists indicates that the vast majority of petty offenders will respond positively to the interest and attention of a probation officer. Whereas violence will often create more violence, goodwill will generate goodwill. It is therefore important that a probation service picks up the first offenders, for whom jail is still an unknown quantity and an intimidating deterrent, so that they can be encouraged to reject anti-social behaviour before crime becomes a habit. When a person is put on probation, families and communities are alerted to the problem and become involved in the rehabilitation process. Probation then becomes an educating experience for the entire community. Whereas a prison sentence may often provoke a desire for revenge, probation can invoke a sense of obligation for the friendship and attention the probationer has received during the period of probation.

A probation service increases equity before the law. In Papua New Guinea many poor people have been going to gaol because they cannot afford fines for minor offences, that people with more money can pay easily. Many married women are also gaoled because they cannot pay fines. Of the 105 women on probation in Goroka in 1984, one was sentenced for prostitution, one for stealing clothes; the rest were women either directly or indirectly involved with a marital problem. The probation service provides a more appropriate alternative to fines than gaol in such cases. It is more equitable because it does not exacerbate the poor offender's problems by removing him or her from his livelihood and family.

In his book, *Sana*, Michael Somare extolled the value of reconciliation above that of retribution in those halcyon days of optimism preceding independence (Somare 1975). Of all the sentencing options open to the district court in its criminal jurisdiction, probation seems to be the one most suited to reconciling people with one another. A sentence which allows reconciliation through compensation to or work orders in favour of the victim can only have a positive influence towards peace and social stability. For the majority of people, justice is seen to be done and relationships are restored when compensation is made, and thus reconciliation comes about.

An example of this was a case heard in the Goroka District Court in 1984. A young tradesman, who was a family man, was the victim of a minor motor accident. His children were shaken and frightened but otherwise unhurt. He assaulted the offending driver in the heat of the moment and his conduct encouraged some of his fellow clansmen to come to his support.

The offending driver in the accident, a professional worker from another province, was bruised and shaken. The tradesman was charged with assault, which at that time carried a minimum penalty of six months in gaol. He made it known to the court that he was willing to compensate the complainant and the court allowed him the opportunity to do so. Upon compensation being paid, the accused was placed on probation through the use of a good behaviour bond. The accused was grateful that he was not committed to gaol which would have caused hardship to his family and probably cost him his job. The complainant was gratified that the wrong done to him had been

appropriately adjusted and that he could continue to live and work in the same neighbourhood as the accused without risking retribution and ostracism from the accused's clansmen. Examples such as this highlight the flexibility of probation and its value in having the punishment fit the crime.

At the time the Probation Act 1979 was passed, government could be accused of 'playing' with the concept. Only two public service positions were created and funding was totally inadequate. A chief probation officer was placed in Port Moresby and a senior probation officer in Lae. Without adequate funding, and with no vehicle in Lae to supervise the probationers, the courts ignored the service and did not take it seriously. As the EHPRC was asking for a probation service for Goroka in 1981-82, the government was trying to bury probation. The chief probation officer returned to his old position in Magisterial Services, and the senior probation officer was transferred to the Welfare Department. The EHPRC was told there were no funds to establish a service.

Through the assistance of the Eastern Highlands provincial government a rent-free office was obtained with telephone, and an Austrian volunteer social worker was employed as the first probation officer. The EHPRC raised money elsewhere. Of the seven posts in the Goroka office in 1985, three are funded by the national government, one by the provincial government, and one each by funds for non-government organizations (from within the country), the Lutheran Church of West Germany, and a Canadian volunteer organization, Canadian University Service Overseas.

Meanwhile Madang and Lae have become interested in opening probation services in their provinces, and once again they have had to find private funding for their work. The Goroka office has trained probation officers for Madang, and their office opened in August this year. An office is expected to open in Lae in 1986. A proposal was before government in 1985 for a five-year plan to cover the country with a probation service by 1990. The future of probation now rests entirely with the acceptance or rejection of this proposal.

### **Simple and inexpensive solutions: lessons from the Eastern Highlands**

The membership of the EHPRC has grown from seventy inaugural members to 170 scattered throughout the Eastern Highlands Province. Approximately sixty are from Goroka town, with the remainder coming from the rural areas. The EHPRC has extended its work far beyond the Unggai and beyond the probation service. But wherever it has worked, it has shown that law and order is dependent not on injections of money, but rather on injections of time and effort.

Although the EHPRC has assisted with projects, taken information to the people, provided training in agriculture and bookkeeping and helped youth to find short contract work, we believe the one overriding factor in our success has been the relationships we have built with people and their communities. By building relationships rather than putting up barriers, by showing youth they have a place in their community and a role to play in our society, we have demonstrated that the prospects for law and order need not be as dismal as our daily newspapers would have us believe.

Traditionally Papua New Guineans had a great respect for strength. Today too the strong man not the gentle saint is the bigman. The bigman can be generous but there is a day of reckoning when debts are recalled. The EHPRC has followed in the steps of the bigman. On the one hand we work

with a spirit of generosity; but on the other hand we have our day of reckoning. If we did not work from a position of strength, we would receive no respect. We are dealing with hard-headed people, people who will pressure and push for their own ends. When the wheeling and dealing is over and a dignified relationship is established, the hardest part of the work is over. We call our approach 'the strong arm and the hand shake', or 'firmness with kindness'.

Building relationships is not an expensive exercise. The resources are already present in the community. It is true that an inertia has struck down many people, particularly public servants. And many expatriates, who would have the competence and vitality to take the reins in their hands, are suffering from post-independence reticence to 'throw their weight around'. Others are looking over their shoulders at the political consequences of standing up for integrity: the visa and work permit cloud their vision. But the resources are here; what is needed is remotivation and a little courage.

Government and church have the resources, but these resources need a change in emphasis and redirection. There are so many simple issues with which people need help: issues such as learning to handle alcohol in a responsible way, saving this year's coffee money for next year's school fees, understanding that parents are responsible for their young people beyond the mere raising of school fees, and deciding which 'noble traditions' to strengthen and which to adapt to the changing times. Government extension officers and church workers could be addressing these problems at a minimum of cost, just by a redirection of their duty statements.

The experience of our committee has been that the majority of young people who come in conflict with the law do respond if they see some hope. Young people are seeking an identity and when society denies them that inevitably a small proportion of them find it as members of a gang.

Amongst the various tatoos on young people one sees stars on foreheads and two links of a chain on arms. There is something symbolic in these motifs. They seem to say: 'We want to be a star, to be somebody, we want to be linked with something else'. The towns push young people out with '*Sori no gat wok*' signs, and their communities push them out by denying them land. Both sections of society are pushing the young people of the nation down a one-way road to a life of crime. The challenge is to give these people an identity and purpose in their youth, and to link them with people and resources who can provide that purpose.

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## INDEX

- Abal, T., 54, 55  
administrative law, 43, 44  
Aoa, J., 52, 56  
Araua, K., 27  
Australian National University, 1  
Awai, Sgt., 27  
Badili pilot project, 73  
banks, lending policies, 33  
Barnett, T., 54  
basic rights, Chapter 5 *passim*; background to constitutional provisions, 49, 53, 56; in colonial period, 51; constitutional provisions, 3, 41-44, 48-56; exercise of, 43; government paper view, 53; and law enforcement, 56; Nigerian model, 52, 53; opposition to provisions in constitution, 55; pressures to limit, 43, 50; views of educated Papua New Guineans, 49 (*see also* Bill of rights)  
Bayne, P., 56  
Bega, A., 22, 23, 25-27  
Bellew, T., 92  
*Rex v. Bernasconi*, 51  
Bill of rights, proposal for, 52, 53  
Bomana Corrective Institution, 45  
Bomana Police College, mobile squad base, 65  
Campbell, E., 52  
Chatterton, P., 52  
Chimbu, police mediation in fighting, 64  
churches, opposition to tribal fighting, 63; resources to assist in law and order problems, 109  
colonial legacy, bureaucracy, 32; economy 31; education 32  
common law tradition, 51  
Constituent Assembly, 49  
Constitution, background to, 48, 49, 54; democratic ideals of, 3; fourth draft, 56; freedom of movement, 43; government paper on, 54, 55; individual freedom, 43; inter-party working group, 55; and mandatory minimum sentences, 105; National Goals and Directive Principles, 44; police, 66; protection of law, 43, 46; protection of property, 56; remedies against government, 44; state of emergency, 42, 84  
constitutional office holders, improper directions to, 47, 48; problems of, 47  
Constitutional Planning Committee, 41, 44, 48, 49, 53; debate on report, 55; minority report, 53; recommendations adopted, 56  
*Constitutional References, No.1 of 1978*, 45; *No.3 of 1978*, 45  
coordination between state agencies, 14, 78  
corruption, 44  
costs of crime, to neighbourhood, 11  
Country Party, 55  
courts, appointments, 46; independence of, 46 (*see also* District Court, National Court, Supreme Court, village courts)  
Criminal Code (New Guinea) Amendment Ordinance 1934, 51  
Curtis, L., 52  
custom and the law, 50; views of CPC, 49  
Department of District Administration, *see* kiaps  
Department of Labour, role in industrial relations, 91, 92, 95  
Department of Provincial Affairs, and village courts, 73, 74  
deportation, 45  
Distraction Courts Act, 105  
Eastern Highlands Provincial Rehabilitation Committee, history, 96-98, 108; philosophy, 98, 102, 108-109; and probation, 104, 105; services provided, 97; Unggai surrender, 99-102; and youth, 102, 103

- economic development, impact of crime on, 79; prospects, 39, 40
- economic policy, 3, 39-40
- employment, prospects, 39, 40
- elections, national, 45; police operations during, 57; provincial, 45; and tribal fighting, 58
- emergency, state of, in Constitution, 42, 84; in highlands (1979), 56, 57, 68; in NCD (1985), 9, 10
- Enga Provincial Government, 67; *see also* Operation Mekim Save
- Evertz v The State*, 45
- forty-nine measures to combat breakdown of law and order, 9, 11, 12, 84; and village courts, 70
- Frame v Minister for Lands*, 45
- Georges, T., 53
- Giregire, S., 55
- Gorio v National Parks Board*, 44
- Guise, J., 53; experiences in police force, 21-26
- Hasluck, P., 91
- highlands, compared to lowlands, 4, 17; relations with police and state, 69; warfare compared with lowlands, 17
- INA/IASER Report, 5, 7, 9; background to, 77; basic rights, 48, 50, 57; community-based solutions, 96; causes of law and order problems, 77, 81; education 79, 88; effects of crime on economic development, 79; law and order defined, 13, 78, 79; mechanisms of social control, 80, 81, 87; modernization, 82; policy options for government, 18; public responses to law and order problems, 76; relations between state and people, 79, 88; risk of political instability, 80; treatment of colonial legacy, 83; tribal fighting, 68; village courts, 70, 71
- independence, opposition to, 54; tenth anniversary of, 7
- industrial conflict, Chapter 9 *passim*; conciliation, 95; record of, 90, 92; settlement, 93, 94; statistics, 92-94
- Inter-Group Fighting Act 1977, 43, 45, 57, 65-67, 69
- International Commission of Jurists, conferences (1965 and 1970), 49, 52
- international influences on PNG, legal system, 2; underdevelopment, 2, 31
- Joel, A., 93
- Kale, P., 55
- Kapi, M., 56
- Kavali, T., 48, 56
- Kembol, L., 67
- kiaps, and labour regulations, 91; relations with police, 66; and tribal fighting, 66
- Kidu, B., 56
- Kofewei v Siviri and Others*, 44
- labour policy, 90, 93
- Lakea Sareaka v Simon Papi*, 84
- land settlement schemes, 36
- law and order, defined, 13, 85-86; research in United Kingdom, 86
- law and order committees, 66
- 'Law and order in Papua New Guinea' conference, 1; contributors to, 5; themes, 1
- law and order problems, catalyst for change, 4; comparison with United Kingdom, 87, 88; government perceptions of, 76; government responses to, 8, 9, 11, 12, 30, 83, 84; policy history, 3; pressures for government action, 83; solutions, 5, 109; in United Kingdom, 85; *see also* statistics
- Law and Order Task Force, 9, 84
- law of standing, 46
- Ley, J., 56
- liberalism, 41
- Lynch, C.J., 54-56
- McDonald, C., 27
- Maino, C., 56
- Mari v Tololo No.2*, 45
- May, R., 1
- mediation, in tribal fighting, 67, 68; and village courts, 74; *see also* police
- Mileng v Tololo*, 45
- Milne Bay Provincial Government v Evara*, 45
- minimum penalties legislation, 45, 84; 105

- modernization, demand for, 1, 31
- Momis, J., 53, 55
- Morgan Report, 5, 9, 30; background to, 77; benefits of industrial development, 78; on causes of crime, 77, 81; colonial legacy, 83; coordination between government agencies, 78; crime and economic development, 36, 37; government policy on law and order, 36, 37; inequality between men and women, 37; kibbutzim, 36; modernization, 82; national service, 35; public service, 37, 38; recommendations, 37, 39; urban ward system, 39; youth and youth policy, 33, 35, 78, 87; relations between state and people, 78; rural development and crime, 77, 78; unemployment and crime, 39, 77, 78
- Morobe Provincial Government v Papua New Guinea*, 45
- Naguwien, J., senior, 21, 23, 25-29
- Naguwien, J., junior, 24
- Narokobi, B., 48, 55
- National Court, 42
- National Executive Council, appointments by, 46; decisions on school fees, 44
- national service, 35
- Nationalist Pressure Group, 54-56
- naturalized citizens, 56
- Okuk, I., 56
- Okuk v Fallscheer*, 43, 47
- Olewale, E., 56, 47
- Ombudsman Commission, 45, 47
- Operation Mekim Save, 67, 68
- organic laws, 53
- Organic Law on the Duties and Responsibilities of Leadership, 45
- Organic Law on National Elections, 45
- Paney Committee, 57, 65, 66
- Pangu Pati, 47, 54
- Parish, D., 91
- Pauta and Susuve*, 45
- peace and good order committees, 67; *see also* Inter-Group Fighting Act
- Peacock, A., 53
- Pearson, G., 85
- Perryman v Minister for Foreign Affairs and Trade*, 44
- police, cause of casualties, 59, 62; internal management, 68; mediation in tribal fighting, 59, 60, 64; misbehaviour, 63; mobile squads, 57, 59, 64-66, 68; perceptions of own role, 68; performance in highlands, 68; police zones, 66; policy on tribal fighting, 64-66, 68, 69; public views on, 63, 64; 'riot and emergency procedures manual', 65; and village courts, 73
- Police Act, 25
- police in pre-war period, Chapter 3 *passim*; comparison with today, 29; current position of, 20, 28; discipline, 26, 27; duties and responsibilities, 23-25; *esprit de corps*, 25; expectations, 22; loyalty of, 24; public attitudes to, 27, 28; recruitment, 20, 21; relations with community, 27, 28; relations with expatriates, 24; research on, 20; training, 22-24; use of force, 26-27
- political consciousness, levels of, 36
- political leadership, 37
- Premdas v The State*, 44, 45, 48
- private sector, economic activity, 32, 33
- probation, 105; advantages of, 104, 106, 107; and EHPRC, 104-106; in Goroka, 105, 106, 108; in Lae, 108; in Madang, 108
- Probation Act 1979, 105, 108
- provincial government, Supreme Court cases referring, 45, 46
- prisons, treatment of prisoners, 45; *see also* Bomana Corrective Institution
- public opinion, on development, 5, 6; on government, 15; on crime, law and order, 7, 15-16; legitimacy of state, 87, 88; on state of emergency, 9, 10; on tribal fighting, 8
- public service, and law and order problems, 14; weaknesses of, 37, 38; *see also* cooperation between state agencies
- Public Order Ordinance 1971, 52
- Public Solicitor, 45
- Restricted Areas Act 1950, 51

- 'Rooney case', 45, 47, 48  
 Sakora, B., 56  
*Ex parte Moses Sasakila*, 45  
 school fees, and Supreme Court, 45  
*Schuiling v Krau*, 43  
 Sipi, Constable, 27  
 Smithers, J., 52  
 social change, susceptible to intervention, 4;  
 trends, 3  
 social inequality, 2-4; as cause of crime, 10;  
 class attitudes, 12; as justification for  
 crime, 11  
 social science tradition in PNG, 5  
 social structure, lowlands compared to  
 highlands, 17; urban and rural, 17  
 Somare, M.T., 46, 47, 53-55; government of,  
 49  
 state, allocation of resources to law and  
 order, 14; definition of disorder, 15, 16;  
 dissatisfaction with, 15; law and order  
 seen as state responsibility, 13;  
 legitimacy in PNG and UK, 87, 88;  
 relations with people, 2, 12, 13, 15, 16,  
 18, 69; role of, 2; weaknesses, 13, 14  
 statistics, on crime, law and order,  
 deficiencies of, 7; problems of  
 measurement, 76, 85; in highlands  
 provinces, 60, 62  
 Summary Offences Act, 105  
 Supreme Court, 42; and constitutional  
 review, 44-48; references, 45, 46  
 Tarua, I., 55  
*Teori Tau v Commonwealth*, 51  
 Tindiwi, D., 67  
 trade unions, legalization policy, 91  
 tribal fighting, Chapter 6 *passim*; account of,  
 58, 59; casualties and damage, 58, 62, 63,  
 66; causes, 62; compensation following,  
 60; and inter-group disputes, 63; police  
 views, 60, 63, 64; public opinion, 8, 60,  
 63; reporting of, 66, 68; statistics, 60, 66,  
 68; tactics, 59, 63; *see also* police  
 troops to Vanuatu, 45  
 Tsak valley, Enga Province, 58-59  
 underdevelopment, 2, 31; and law and order,  
 81  
 unemployment, 39, 77, 78; as a cause of crime,  
 11  
 Unnggai, surrender of young criminals, 99-  
 102  
 United Kingdom, compared to PNG, 87, 88;  
 law and order, 85-87  
 United party, 55  
 urban-rural differences, political and social  
 structure, 17, 18; public opinion on crime,  
 7, 8; relations between state and people,  
 18  
 Vagrancy Act, 9, 11, 12  
 village courts, Chapter 7 *passim*; and  
 community, 72, 73; criticisms of, 72;  
 distribution, 72, 73; and higher courts, 72,  
 73; magistrates, 73; mediation, 14;  
 numbers of, 71, 72; and police, 73; policy  
 issues, 74, 75; problems, 74; and  
 Provincial Affairs 73, 74; tension  
 between state and people, 16; and tribal  
 fighting, 67; use of, 72  
 Village Courts Act, 71, 74  
 Western Highlands, police mediation in tribal  
 fighting, 64  
 Westminster system of government, and  
 basic rights, 41, 50, 51  
 Wingti, P., 47  
 women, political inequality, 37  
 youth, budget for, 34; and crime, 33, 78, 87;  
 political isolation, 37; problems in  
 Eastern Highlands, 102-103;  
 unemployment, 33, 35

