



Invoking the Melanesian Way in Resolving Conflict between the Executive and Judiciary in Papua New Guinea: The Rooney and Namah Cases

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Introduction

Practically every Papua New Guinean lawyer believed Mrs Rooney would be convicted. I certainly felt that way, not only because of the composition of the bench, but also I felt certain that public outcry would have influenced any judge of facts to make a show of, or an example of this case against future executive interference in judicial functions. (Narokobi 1980:16)

Shortly before the case was to be concluded, Mrs Rooney asked me about a Manus betelnut ceremony she wanted to undertake to express her sincere apology. On the advice of her learned counsel, she had previously written a letter of apology to the Chief Justice and the Justices of the Supreme Court. The letter was not accepted as a genuine expression of repentance.

Thus she thought a betelnut ceremony would be the Melanesian way of showing that she was truly sorry about the entire affair. I thought this was an excellent idea and mentioned it to her junior counsel. (Narokobi 1980:17)

On 11 September 1979, a majority of four out of five of the all-foreign, all-male bench of judges of the Papua New Guinea Supreme Court handed down their ruling and sentencing in *Public Prosecutor v Rooney (No 2)* (the Rooney case). Rooney was found guilty of three counts of criminal contempt and sentenced to eight months jail with light labour. Indeed, confirming Narokobi's feelings expressed above, one of the judges noted that for her contempt, '[Nahau Rooney] must now be visited with condign punishment as retribution for herself and a deterrent for future would-be offenders' (Saldanha in *Public Prosecutor v Rooney (No 2)*). The bench of all-foreign judges rejected Minister for Justice Nahau Rooney's junior counsel's attempt to invoke the Melanesian way or a customary approach to express her remorse in her role leading to the conflict between the executive and judiciary that led to the case. Rooney spent one night in jail and was released on licence on 12 September 1979 by the prime minister, Michael

Somare. The Rooney contempt case (*Public Prosecutor v Rooney (No 1)*; *Public Prosecutor v Rooney (No 2)*) is a landmark case in executive and judiciary relations in Papua New Guinea (PNG). It is often cited to highlight a range of themes such as threats from the executive to judicial independence, the role of judicial reviews of legislative or executive policy decisions, or the role of foreign judges (see for discussion, Dziedzic 2021; Kama 2024; Logan 2017; Nonggorr 1992).

I will provide more details of the Rooney case in the second part of this Discussion Paper; but first, in this introduction I outline the interdisciplinary conceptual framework for responding to two important questions generated from the opening quotes from the pioneering PNG legal scholar, philosopher, novelist, and politician Bernard Narokobi's (1980) critical analysis of the Rooney case: (i) How has the Rooney case fared in terms of setting an example against 'future executive interference in judicial functions' in PNG?; and (ii) How have customary or Melanesian ways featured in resolutions of conflicts between the judiciary and executive in PNG? These questions are important because PNG's 'home grown' or 'autochthonous' constitution combines the Westminster system of government, which includes the separation of powers, while providing for both written common law and customary law. PNG's Constitutional Planning Committee (CPC 1974) envisioned that at independence PNG would sever its legal ties with its colonial administrator, Australia. To support this, a new Supreme Court was established as the 'final court of appeal [for] final judicial decisions [to be] made within the country' (CPC 1974: ch 8, para 12).

The CPC also envisioned that indigenous PNG values and customs would be reflected in PNG's laws. Subsequently, Section 20 of the constitution provided for the development of the underlying law of PNG and, until this law was enacted, Schedule 2 of the constitution served as the basis for the underlying law. The Law Reform Commission was established in 1975 to, inter alia, develop the underlying law, with Narokobi as its chairperson. In 1976, the Law Reform Commission prepared a draft Underlying Law Bill, but it was not

passed. A revised Bill prepared in 1977 was also not passed. It was not until 2000 that the Underlying Law Act 2000 was enacted. The result after independence was a complex system of laws and legal practice that reflected both imported laws and local customs, but one that was dominated by the imported Western laws and interpreted and practised by judges and lawyers predominantly trained in the more conservative Western common law (see for various discussion Banks 1998; Corrin 2014; Ghai 1997; Narokobi 1980; Regan et al. 2001; Scaglione 1987; Zorn and Corrin Care 2002). The dominance of Western, or English and Australian, legal interpretation and practice in PNG has been discussed, *inter alia*, in terms of absolutist interpretations (Bayne 1980), positivism (Zorn and Corrin Care 2002), legalism (Kama 2023), or the supremacy of English common law (Narokobi 1989). For example, examining the Rooney case, Bayne (1980:124) argued that whereas absolutist interpretations tend to follow a strict literal meaning of written Western laws, PNG's 'Constitution attempts to influence the judiciary to prefer a non-absolutist approach', or what Bayne refers to as a purposive approach. This is evident in the recommendations of the CPC and constitutional provisions that allow for the CPC to be drawn upon to aid in the interpretation (s. 24) and the inclusion of the National Goals and Directive Principles in the constitution (s. 25). Provisions for the development of the underlying law were another avenue to encourage courts not to over rely on absolutist approaches. For Bayne (1980), purposive interpretations of the PNG constitution had taken into consideration the spirit of the CPC, constitution, and the broader political social context at the time. Also commenting on the Rooney case, Weisbrot (1979) argued that, despite the provisions for the development of PNG's underlying law and the diversity in customary practices across PNG, the courts had privileged Western common law as the basis for their judgements while neglecting to use customary law.

In 2012, over three decades after the Rooney case, shocking video footage circulated on social media of another member of PNG's parliament and executive, Belden Namah, violently rushing into the PNG courts and threatening the judge while the court was in session (ABC 24/5/2012). Namah's violent interference with the PNG courts occurred in the context of the 2011-12 Somare and O'Neill political impasse. Details of this incident will be provided later in the paper, but here I draw attention to the fact that PNG's political arena had evolved over those 30 years, and in the Namah case Melanesian norms featured in the court records as a part of the reconciliation process between him and the judiciary. In 2012, I recall asking myself: 'If Rooney was sentenced to eight months jail with light labour for writing a letter to a judge, how will the judiciary respond to this incident?' This question and the above two questions point to the intersection of politics, philosophy, law, and anthropology in scholarly examinations of the relationship between PNG's executive and judiciary. Before continuing, it is important that I disclose that

I am not a lawyer and that a detailed legal analysis of these questions is outside the scope of this paper. My subject positions include that of an interdisciplinary scholar who, *inter alia*, engages in anthropology, culture, and gender studies on issues that cut across policy and law. I am a daughter of Nahau Rooney. The paper was inspired by insights emerging in the process of archiving her records, contained in the Nahau and Wesley Rooney Collection, and writing her political biography. As discussed in Rooney (2024), due to the risk of damage and loss most of her records were moved from Manus, PNG, to Canberra, Australia, where I am currently preparing them for archival preservation. These subject positions afford me the privilege of scholarly reflection as well as access to some of Rooney's archival records that suggest the need to situate and examine these cases in PNG's political and historical context.

Reflecting my subject position and disciplinary background, this paper examines how the Melanesian way was invoked in conflict and conflict resolution between the judiciary and executive by responding to the above questions, first through an interdisciplinary critique of the Supreme Court judgement in the Rooney case and then relating it to the later Namah case. I draw on three intersecting frames of PNG's political and legal framework. First, Bernard Narokobi's 'Melanesian way' refers to a Narokobi philosophy that refocuses our understanding of Melanesia away from colonial tropes to foreground the ways of life of ancient people who are interdependent, value interpersonal dialogue, and have a 'communal vision of the cosmos' (Narokobi 1983:6). Narokobi's philosophy has become a cornerstone for the indigenous Melanesian way, influencing work across legal scholarship, the Law Reform Commission, politics, and other aspects of Melanesian world views (Bablis 2020; Golub 2020; B. Narokobi 1989; V. Narokobi 2020). Rather than being compartmentalised or dichotomised, the Melanesian way is 'a vision of totality, a vision of cosmic harmony' (Narokobi 1983:6). For Narokobi, '[i]n the Melanesian village, everyone is related to everyone else [and one] of the most essential elements of Melanesian society is its close human relations' (Narokobi 1983:13; see also Narokobi 1989). On the doctrine of the separation of powers, Narokobi (1989) argued that rather than a strict theoretical separation of powers, PNG's constitution confers powers of the different arms of the government to other arms. Given the interdependent dynamics of power at different levels of government in PNG, Narokobi recommended 'the abandonment of the theory of separation of powers and the development of theory of interdependent power and mutual self-restraint' (Narokobi 1989:94). Examples of how this interdependency might shape PNG's ability to achieve the National Goals and Directive Principles and Basic Social Obligations outlined in the constitution are discussed by Vergil Narokobi (2016, 2020) and Kama (2024). In this paper, I draw on Narokobi's (1989) ideas of interdependency to examine conflict and conflict resolution between the judiciary and executive arms of government.

The second frame of analysis draws on insights from legal anthropology that examine the intersections between the written Western law and the customary law that characterise PNG's legal system (see for discussion Banks 1998; Corrin 2014; Dinnen 1988; Sack 1987; Scaglion 1987; Zorn 1996). Scaglion (1987) argues that because legal anthropological theory attends to specific contexts and circumstances of individuals, it is a useful tool for examining customary law in which the emphasis is on justice through compromise. Such approaches also require adopting a relational lens to examine conflict and conflict resolution between people or groups as a disruption in the cycle of relations between social groups. Conflicts are resolved through customary practices that emphasise consensus, mediation, compensation, exchange, and other relational approaches of dealing with conflict (see for discussion Banks 1998; Scaglion 1987; Strathern and Stewart 1997). Such relational approaches to conflict resolution can be contrasted with state-centric approaches reliant on the foreign, introduced, police force and courts in which more adversarial judicial approaches are employed.

The third frame of analysis draws on anthropological and political science conceptualisations of the Melanesian big-man model of leadership, conflict, and conflict resolution in Melanesian societies (see for discussion Bablis 2020; Ghai 1997; May 2004; Sahlins 1963; Standish 1978; Strathern and Stewart 1997). PNG's political culture is characterised by its complex and diverse group dynamics including tribal fighting and public-mediated conflict resolution that is highly localised and context specific. As Strathern and Stewart (1997) discuss, such understandings of Melanesian political conflict and conflict resolution can provide insights into contemporary state processes. These three frames allow conflict between the judiciary and executive to be understood like other political relationships in the PNG context; and as a struggle between different cultural understandings of relationships between the socially constructed groups comprising the government.

These three analytical frames are crystallised through insights drawn from Rooney's documents, collected after her death in 2020. I attach three of these archival documents to animate a direct link to voices engaging in this space at the time. Annex 1 is a handwritten note from Australian National University (ANU) political scientist Bill Standish to Nahau Rooney, dated 12 September 1979, and addressed to Rooney in Bomana jail. Standish states:

the Constitution is a delicate creature, and surgery should be well-planned in advance. The judges did not assist the cause of reform at all. (see Annex 1, Standish 12/9/1979)

Standish's words animate the living organic subjectivities among and between the persons, institutions, and the constitution as the body that binds them, the relationships, and the temporality in the significance of the judge's ruling on the

Rooney case. Standish's words outline the specificities and interdependence of the PNG constitution and PNG's political context, suggesting that the Rooney case was significant both in its contemporary context as well as its implications for resolving future conflicts between the executive and the judiciary. Annex 2 is a photocopy, found among Nahau Rooney's documents, of Narokobi's draft letter dated 12 September 1979 that he referred to in Narokobi (1980:19). Narokobi's draft letter animates the shock that he and others felt about the excessive sentence imposed on Rooney and the injustice related to the case (see Annex 2, Narokobi 12/9/1979). Finally, Annex 3 is Nahau Rooney's letter to the Advisory Committee on the Power of Mercy dated 22 September 1979 which provides her first-person account of the case highlighting the cultural differences between her PNG values and those of the judges as a key issue shaping the outcome (see Annex 3, Rooney 22/9/1979). Together, these three perspectives highlight the intersection between Melanesian ways of interdependence and relationality, political power and cultural values, the vision to develop PNG's underlying law, and the constitution as an organic institution.

The second part of the paper outlines the two cases; the third examines the cases through the Melanesian context, ways, relations, and big-man politics. I conclude the paper with a reflection on the implications of customary law in PNG jurisprudence in relation to judicating conflict between the executive and judiciary.

Conflict between the executive and judiciary: Two case studies

1979: Rooney's contempt: Foreignness and sovereignty

'the principle of being a Papua New Guinean'

The Rooney case occurred four years after PNG gained independence from Australia, when issues of national sovereignty, including a functioning democratic state and legal reforms to reflect PNG values, were high in the minds of political leaders. The Rooney contempt case originated in the deportation by an executive order of a foreign academic, Dr Ralph Premdas, who the government felt had become involved in national political affairs. Ordered to leave the country by 4 July 1979, Premdas challenged his deportation in the National Court and was granted an injunction to remain in the country for four weeks pending a constitutional reference to the Supreme Court. On 11 July 1979 Rooney, then minister for justice, wrote a letter, copied to about 45 other government officials, to the chief justice, William Prentice, expressing concerns about the National Court's decision. Rooney noted that:

The recent decision by the National Court to suspend the deportation order for Dr. Premdas can be clearly seen as a case where a narrow and literal interpretation of the written law was used. (Rooney in *Public Prosecutor v Rooney (No 2)*)

The minister went on to note, inter alia, that ministers viewed Premdas's actions as:

detrimental to the sovereignty of the Nation [and that a principle at stake was] whether the Government of Papua New Guinea has the right and power to decide which non-citizens are welcome here ...

I believe the principle of being a Papua New Guinean is basic and transcends any semantic or legalistic argument.

In failing to recognize this principle the court has jeopardized its independence and neutrality by intervening in a matter which is obviously the sole prerogative of the Government. (Rooney in *Public Prosecutor v Rooney (No 2)*)

On 13 July, the chief justice responded with a strongly worded letter requesting the minister to apologise, take back the letter, and copy her apology to the 45 people who received her communication. On 17 July, the minister replied, apologising that her letter had caused upset, while noting that it was 'obvious that this whole misunderstanding has come about because both of us have a deep appreciation of our responsibilities to this Nation' (Rooney in *Public Prosecutor v Rooney (No. 2)*). She also called him to request a meeting to sit down and discuss the matter. On 19 July, after her request to meet the chief justice was declined, Minister Rooney again wrote to the chief justice and 'noted [his] refusal to see [her] with disappointment' due to the 'legal circumstances'. She added, 'I trust that more fruitful dialogue can be established as it is our joint responsibility to the nation' (Rooney in *Public Prosecutor v Rooney (No. 2)*). The chief justice responded, noting that Rooney had not circulated her apology as widely as her original letter. On 20 July, the chief justice convened the Supreme Court and held a press conference to publicise the letters. On the same evening, responding to the Supreme Court's sitting, the minister was quoted in the media as saying:

she had no confidence in the Chief Justice and other judges. Mrs Rooney said it appears that the foreign judges on the bench are only interested in administration of foreign laws, and not the feelings and aspirations of the Nation's political leaders. (*Public Prosecutor v Rooney (No 2)*)

A news report on 23 July reported Rooney as saying that she would not retract her words, 'because the judiciary is no longer doing Justice' (*Public Prosecutor v Rooney (No 2)*). Also on 23 July, the chief justice was reported in the media as calling on 'the Government to defend the Constitution and Courts and dissociate itself from a letter written to him by the Justice Minister, Mrs Nahau Rooney' (*PNG Post-Courier* 23/7/1979). On 24 July, Prime Minister Somare made a press statement affirming the government's support of Minister Rooney and that he would not be removing her from the ministry (*PNG Post-Courier* 24/7/1979). The public prosecutor commenced proceedings, charging

Rooney with three counts of criminal contempt. The first charge was contempt *sub judice* and related to her letter of 11 July. Her letter was viewed by the justices as undue influence on the judges while a case was proceeding. The second and third criminal charges were of contempt for scandalising the courts and referred to the above two statements reported in the media on 20 and 23 July, respectively.

The following subsections reframe the Rooney case away from the legal arguments and towards examining the foreign and Melanesian perspectives. Contrary to the way she was portrayed, Rooney's notes indicate that she was highly aware and respectful of the principle of separation of powers and the independence of the judiciary. I therefore suggest that Rooney's phrase 'the principle of being Papua New Guinean' was a nod to the National Goals and Directive Principles and the Basic Social Obligations contained in the constitution. The principle at stake was sovereignty of PNG as embodied in its citizens, protected by the constitution, and represented through the elected government.

Contempt

At the outset of the Rooney case, the judges considered how to interpret the constitution in relation to charges of contempt, and whether common or customary law should be applied.

Rooney's counsel argued that the judges should apply an American interpretation because PNG's constitutional provisions for freedom of expression (s. 46) resonated with the American laws on freedom of expression which had a narrower definition of contempt of court than England's and Australia's. In response, one of the judges, Justice Saldanha, noted:

the need to strike a balance between the ideal in a democratic society to permit maximum freedom of expression with the need to safeguard the administration of justice from undue interference. (Saldanha in *Public Prosecutor v Rooney (No 2)*; see for discussion Bayne 1980)

In the end, the judges decided that the interpretation of the laws on contempt needed to be found in PNG's jurisdiction. For a PNG interpretation, the judges cited Section 24 of the constitution which allows for the use of certain materials, like the CPC report, to aid in its interpretation. They noted that the CPC report did not contain any 'suggestion that the American approach should be adopted' (Saldanha in *Public Prosecutor v Rooney (No 2)*). With respect to addressing issues outlined in Schedule 2.2.2 of the constitution related to the compatibility of common law and PNG underlying customs, Justice Saldanha concluded that:

I see nothing in the English law on contempt that is inconsistent with a constitutional law or statute or custom and nothing that makes it inapplicable or inappropriate to the circumstances of the country at the present time. I am of the view therefore that the law applicable in the proceedings before us is the English law on contempt of court. (Saldanha in *Public Prosecutor v Rooney (No 2)*)

Despite the constitutional provisions for the underlying law and diverse customs across PNG, the judges privileged an absolutist rather than a purposive interpretation (Bayne 1980) of the British common law on contempt over a consideration for custom (Narokobi 1980; Weisbrot 1979). Bayne (1980) and Weisbrot (1979) both highlighted that by 1979 this use of contempt of court was outdated and only used sparingly in England. To emphasise this, Weisbrot drew attention to an 1899 case which states:

Committals for contempt of Court by scandalizing the Court itself have become obsolete in [England]. Courts are satisfied to leave public opinion attacks or comments derogatory or scandalous to them. But it must be considered that in small colonies, consisting principally of coloured populations, the enforcement in proper cases of committal for contempt of Court for attacks on the Court may be absolutely necessary to preserve in such a community the dignity of and respect for the Court. (*McLeod v St Aubyn* [1899] AC 549 ...). (cited by Weisbrot 1979:240 commenting on the Rooney case)

Arguably, the judges on the Rooney case, who were all foreign judges appointed prior to independence, and likely still influenced by their colonial experience, might have viewed the outdated law on contempt as an opportunity to exert their power and control over a minister who they viewed as wayward.

The ensuing case deliberations, judgement, and sentencing were based on the colonial era foreign judges' interpretation of the constitution that the outdated English common law on contempt of court was the most appropriate law to determine Rooney's case.

Replacing foreign judges

As the Rooney case arose out of a letter related to the deportation of a foreigner, and Rooney's 'scandalizing' statement about foreign judges and foreign laws, the distinction between foreignness and sovereignty was a central theme in the case. This is seen in the foreign judges' interpretations of Rooney's words. For example, in one statement:

The witness said that the defendant made a number of assertions about nationalizing the bench, foreign judges and foreign laws. (Raine DCJ in *Public Prosecutor v Rooney* (No 2))

In Justice Raine's conclusion he noted, inter alia:

[Rooney's] words 'It is up to the Elected Government and *no one else* to decide what criteria are used to deport foreigners' were clearly intimidatory. I might add that I am not easily intimidated, but that was what was clearly intended. (Raine DCJ in *Public Prosecutor v Rooney* (No 2) (original emphasis))

In another example, Justice Saldanha noted:

... what she did was to dare to pit her puny might, not against unimportant foreign judges administering insignificant foreign laws, but against the majesty of law and justice which the

people of this country had freely adopted as their own. And for this she must now be visited with condign punishment as retribution for herself and a deterrent for future would-be offenders. (Saldanha in *Public Prosecutor v Rooney* (No 2))

The focus on foreignness and PNG's sovereignty at the time suggests that it is important to reflect on the policy dialogue that may have shaped the judges' subjectivity leading up to and during the case. At the outset the CPC envisioned a sovereign judiciary and that PNG judges would be appointed (CPC 1974; see Kama 2023 for discussion). Narokobi (1980) noted that when he was the chairman of the Papua New Guinea Law Reform Commission (PNGLRC), with Rooney and others serving as commissioners, the PNGLRC 'made bold recommendations to the government to undertake a scheme to train national judges' (Narokobi 1980:13). Narokobi (1980) highlighted the government's lack of progress on appointing national judges. However, his claim that despite being a commissioner of the PNGLRC, '[w]hen [Mrs Rooney] was appointed Justice Minister, she did nothing to implement any of these proposals' (Narokobi 1980:13) needs a rebuttal. On the contrary, and perhaps unbeknownst to Narokobi, in the short period of Rooney's appointment as minister for justice, her documents contain records of minutes of meetings, correspondence, and official records related to the appointment of Papua New Guinean judges. As minister for justice, Rooney occupied the fine line between the executive and the judiciary. On the one hand, she was part of the government, exercising her responsibility as a member of the executive on policy matters. On the other hand, she and other staff of the ministry regularly engaged with members of the judiciary on matters related to the administration of justice. Rooney's archives show that several of the judges had written letters to either Buri Kidu, who was secretary for justice, or to her on matters related to the appointment of national judges. The incumbent foreign judges also wrote about their annual leave, contract extensions, and the terms and conditions of employment, and, in the case of the chief justice, his potential reappointment. As the chair of the Judicial and Legal Services Commission, she advocated for the appointment of Indigenous judges to the bench, only to be met with resistance from the foreign judges who took a literal reading of the statute for appointment of judges to the bench; that none of the Papua New Guinean lawyers met the required qualification of having four years legal practice.

The following media reports highlight the public interest in this policy dialogue about the appointment of national judges in the weeks leading up to the letter from Rooney that sparked the saga. In May 1979, the *Post-Courier* (29/5/1979:3) reported on the issue of nationalising the judiciary. First, it reported that a Papua New Guinean lawyer, Kubulan Los, had accepted the offer to be appointed as a judge. Rooney had also consulted other lawyers, who all declined for various reasons. In response to a question about 'why no Papua New Guinean lawyer had been appointed to the bench so far' (*PNG Post-*

Courier 29/5/1979:3), Rooney reportedly had said on the floor of parliament that ‘I cannot do anything if lawyers are not prepared to accept this responsibility’ (*PNG Post-Courier* 29/5/1979:3). A follow up article on 1 June (*PNG Post-Courier* 1/6/1979) reported that ‘[t]he Judicial and Legal Services Commission yesterday deferred decision on Mr Los’ application — the only one before it — pending his qualifying for the job’ (*PNG Post-Courier* 1/6/1979). Rooney was reported as saying: ‘It’s up to Mr Los [to complete the four weeks,] but I will continue to encourage Papua New Guinean lawyers to think of sitting on the bench’ (*PNG Post-Courier* 1/6/1979). On 27 June, another story reported that Los ‘withdrew his statement in last week’s Press about his possible appointment as a National Court judge’ (*PNG Post-Courier* 27/6/1979). Los clarified that ‘he offered his services if needed [and that] if there was a genuine interest, the technical qualifications required by statute would not have been emphasised as it was in his case’ (*PNG Post-Courier* 27/6/1979).

It was no secret therefore that the minister for justice was supporting the appointment of Papua New Guinean judges to the judiciary even if this meant coming into collision with the foreign judges. Rooney’s documents reveal correspondence between herself and the acting chief justice, Raine, clashing over the issue (see also Weisbrot 1979). While the minister for justice took public responsibility for these matters, behind the scenes, the minutes of the commission indicate that the sitting foreign judges had considerable say.

The following words in the Rooney case ruling highlight how the judges drew on this policy dialogue to discredit her:

In light of the undisputed opinions held by the Minister regarding the judges, their motives, their performance, and her plans for their replacement, it strains credulity beyond all reason to suggest, as the Minister’s counsel did, that the Minister was sincere and worthy of being accepted as a person of truth when she said:

‘As Minister for Justice I have every confidence in the courts and the judges and I consider the maintenance of their independence and standing of great importance to the future of constitutional government in this country ... I consider ... that destructive criticism that does not respect the dignity of our constitutional institutions is strongly to be deplored.’ (Wilson in *Public Prosecutor v Rooney* (No 2))

Far from being impartial, the foreign judges weaponised the minister’s views on the broader national dialogue about establishing a sovereign judiciary to discredit her and justify the contempt charges in the courts.

Customary law and penalty?

A key difference between Rooney’s and the judges’ interpretation of the legal issues in both the Premdas case and the issue of the appointment of judges, was her view

that the court took a ‘narrow and literal interpretation of the written law’ (Rooney in *Public Prosecutor v Rooney* (No 2)). A key part of the case boiled down to ascertaining her intent and, therefore, whether she passed the common law notion of the ‘reasonable person test’ as being ‘the ordinary person in the environment and culture of the accused’ (for a discussion see Weisbrot 1979). As Weisbrot (1979) argued, Rooney’s letter of 11 July needs to be read in the broader socio-political-legal circumstances of the country at that time when issues of sovereignty were high on the agenda. In addition, the constitution lent itself to the possibility of overlaps in power between the different arms of government, a broad interpretation that included consideration for custom and the CPC (Narokobi 1989; Weisbrot 1979). The country’s circumstances and legal framework meant that it was reasonable for the minister for justice to engage in dialogue with the judiciary (Narokobi cited in *PNG Post-Courier* 28/9/1979; Weisbrot 1979). On such occasions there was considerable scope for the judiciary to set aside, in Rooney’s words, a ‘literal interpretation of the written law’ (Rooney in *Public Prosecutor v Rooney* (No 2)) and to instead engage meaningfully to resolve the issue with a minister with whom they were already in dialogue with (see Weisbrot 1979 for discussion).

In addition, as Weisbrot (1979) argues, PNG laws allow for custom to be taken into consideration regarding the reasonableness of a person’s actions when adjudicating on criminal matters. Specifically, Section 4 of the Customs Recognition Act 1979¹ states that in criminal cases:

... custom may be taken into account in a criminal case only for the purpose of –

[inter alia]

(b) deciding the reasonableness or otherwise of an act, default or omission by a person; or

...

(e) determining the penalty (if any) to be imposed on a guilty party (Customs Recognition Act s. 4).

The judges chose to rely only on the common law on contempt to adjudicate Rooney’s case. They also chose to disregard custom in considering their penalty. Rooney made several attempts to resolve the conflict with the judiciary, through written apologies, including, as Narokobi notes, through the Melanesian way. Discussions around a possible ‘customary way’ to express her remorse are reflected in the transcript of the Rooney case (Rooney 1981). According to the transcript, on 4 September the following interaction took place between the judges and Priestley, Rooney’s defence lawyer, considering the possibility of taking a customary approach:

4th September

Mr. Priestley:	— as to contempt, and take the matter no further. Court would not be demonstrating any impartiality by imposing punishment, than it would by not imposing punishment.
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[...]

Mr. Priestley: We have tried to cover punishment, in case it comes to that.

Raine DCJ: If we were against you, you apprehend we would deal with both conviction and sentence?

Mr. Priestley: Yes.

Raine DCJ: (Refers to usual criminal procedure) Discuss with her? It is her right.

Mr. Priestley: Not intending to bind the Court on this.

[court adjourns and resumes]

Mr. Priestly: Have discussed with Minister, and will leave matter as it is.

Raine DCJ: Court quite happy to follow that course.

Wilson J.: On that basis, should the question of penalty arise, this criminal matter, and generally not uncommon for some enquiry of counsel, as to anything to be put, on custom, or customary laws, on penalty.

Mr. Priestley: We will make our enquiries on that. (Rooney 1981:327–28)

On the day the ruling was handed down, 11 September 1979, the court rejected Rooney's counsel's attempt to seek redress to provide evidence based on custom. Based on Justice Kearney's notes inserted into the transcript of proceedings, the final handing down of the verdict and sentencing unfolded as follows:

Raine DCJ: Order of the Court — 8 months I.L.L.
(Defendant stands, and is sentenced)

Mr. Adams: Seek leave to address. Arising from statement of Mr. Justice Wilson re custom last — before imposing sentence, our understanding was that we could adduce evidence on this, and address.

Greville Smith J.: Put to your leader [Priestley]; he said he did not seek that course to be followed.

Mr. Adams: Not our understanding. We understood we would have a chance to call evidence on custom.

Raine DCJ: I asked your leader specifically if he wanted to roll-up matters; he agreed?

Mr. Adams: Separate question of customary approach, reserved.

Wilson J.: Yes. But that matter was concluded at last day of hearing. No one addressed.

Raine DCJ: Order of the Court, stands.
Court adjourns.

(Rooney 1981:349)

Four out of the five judges found her guilty of contempt *sub judice*. Only one judge, Justice Kearney, dissented, noting that it was not contempt *sub judice*. All five of the judges found Rooney guilty on the two charges of criminal contempt scandalising the courts. Although Justice Kearney agreed on the scandalising charges, his view of the punishment was far more moderate, noting:

As to the verbal attacks which formed the scandalizing charges, were an ordinary litigant to have burst forth in this way, he should simply be ignored. Judges' backs have to be fairly broad; such attacks should be left to public opinion to deal with. Justice is enhanced by tolerance in such cases.

But these scandalizing statements were not made by just anybody; a Minister has considerable credit and authority, especially a Minister for Justice, in relation to the courts. The comments should be strongly disapproved. To mark that, bearing in mind the other factors, I would impose a fine of K200 in respect of each of the second and third charges.

As to the first charge, I would dismiss it, for the reason earlier given. (Kearney in *Public Prosecutor v Rooney (No 2)*)

The decision and sentence were simultaneously handed down, and Rooney was sentenced to eight months jail with light labour. Narokobi was scathing of the court's treatment in denying her the basic principle of justice, noting:

The verdict and the sentence were awarded consecutively, giving no chance to Mrs Rooney or her lawyer, the junior counsel, to make any repentance — whiteman's way or Melanesian way. ... Whatever might be argued, she was prosecuted by foreigners, defended by foreigners and judged by foreigners according to foreign law which PNG has adopted under its Constitution. (Narokobi 1980:18)

Media reports and Rooney's records show that during the court case, the government was also considering the development of PNG's underlying law, including highlighting that where no written law existed, the courts should consider customary law. In a press statement, Narokobi reportedly noted the importance of dialogue between the judiciary and executive and that the judges did not consider customary law in their ruling on the Rooney case (*PNG Post-Courier* 28/9/1979:8).

Advisory Committee on the Power of Mercy

Rooney was released on licence by Somare on 12 September. In the following days, several people, including Narokobi (Annex 2, Narokobi 12/9/1979), wrote letters of support for her application to the Advisory

Committee on the Power of Mercy. In her letter to the Advisory Committee, Rooney, *inter alia*, explained that before she responded to the chief justice on 17 July, she had called him to ask if she could deliver the letter so they 'could sit down over a cup of coffee, to discuss the letters' (Annex 3, Rooney 22/9/1979:4). When the chief justice declined her offer of dialogue, she noted that:

This blew my mind ...

I, in my simple Melanesian way thought, '— well I don't think the Chief Justice understands what I mean and, realizing that I had upset him, I must now sit down with him and sort this out like a true Papua New Guinean way —'

Had this happened on the 17th of July 1979, as I requested the Chief Justice, none of these things would have happened. (Annex 3, Rooney 22/9/1979:4)

Narokobi noted that '[w]hen we visited Mrs Rooney in prison, she had a copy of the Criminal Code and quoted the appropriate provision which entitles the Minister for Justice to release prisoners on licence' (Narokobi 1980:19). Anticipating that she would be sentenced, Rooney's notes indicate a strategy whereby Somare would assume the minister for justice portfolio so that he could release her on licence. In the end, Rooney was legitimately released on licence, after only serving one night in prison. In the media, Somare explained that he did what he did because the penalty was too harsh (*PNG Post-Courier* 19/9/1979; *Canberra Times* 20/9/1979). This highlights one example of Narokobi's (1989) argument about the interdependency between the arms of government in PNG: that the courts are part of a constitutional process, which includes the power granted to the executive branch to intervene in judicial outcomes. Some might also view this as Somare resolving the issue through the Melanesian way, while still adhering to the laws to override the court's decision. Rooney's release catalysed the mass resignation of the bench and set the stage for the appointment of national judges. I now look at the case of Belden Namah storming the courthouse in 2012.

2012: Namah's contempt: Big-man and the Melanesian norm

Legitimate arm of government legitimatising political power?

The Rooney and Namah cases are very different in terms of the times in which they took place and the legal and political issues surrounding them. However, I argue that the two cases can be compared because both involved actions by a member of the executive in relation to the judiciary, which prompted quite different responses. This comparison is also important to contribute towards policy and scholarly debates in PNG about conflict between the arms of government and independence of the judiciary (such as those provided by Bayne 1980; Dziedzic 2021; Kama 2023; Logan 2015; Narokobi 1980; Nonggorr 1992; Weisbrot 1979; and others). While the political and legal issues surrounding

the Namah case are complicated, involve many parties, and involve a long, drawn-out process, I focus here on the legal process relating to Namah's widely reported storming of the court and how the Melanesian way featured in this big-man political environment.

The Rooney case centred around foreignness and foreign lawyers; by the time of Namah's case, over three decades later, foreign judges had become a valued part of the judiciary in PNG, serving in a range of capacities as national and supreme court judges and on leadership tribunals. The theme of foreign judges has attracted a growing body of literature (Dziedzic 2021; Logan 2015; Kama 2023). Indeed, the various court processes in the Namah case involved foreign judges in the leadership tribunals, National Court, and Supreme Court Reference. For example, Australian Justice Canning who presided over the Namah cases was by this time a long-term, widely respected member of PNG's judiciary with a strong record on human rights issues (see for discussion Kama 2023).

Belden Namah's case occurred in the context of the constitutional crisis of 2011–12. PNG's big-man style of leadership, already shaping the independence era political dynamics, had taken root in contemporary political culture. Politics was characterised by cycles of patronage-style manoeuvring: high turnover of elected representatives, high mobility between political parties, and votes of no confidence to oust sitting prime ministers. As part of several reforms, the Organic Law on the Integrity of Political Parties and Candidates (OLIPPAC) and limited preferential voting were introduced in 2001 to address this political instability. Parts of the OLIPPAC were ruled as unconstitutional by the Supreme Court because they violated citizens' rights to engage in political affairs. However, the OLIPPAC did result in stability in terms of longer periods of power being held by one prime minister, enabling Somare to hold the prime-ministerial position for nine years, from 2002 until he fell ill in 2011 and was hospitalised in Singapore (see for discussion Standish 2007).

Somare's long absence prompted questions about whether the prime minister's seat should be declared vacant. On 2 August 2011, members of the Opposition moved a motion invoking Section 142 of the constitution, to declare the seat of the prime minister (PM) vacant. A major realignment of power led to a reconstituted National Executive Council and Peter O'Neill voted in as the new PM. Belden Namah was voted in as the deputy PM. A struggle for control over the PM's seat ensued. Somare's supporters took the matter to court; on 19 October 2011, the Supreme Court ruled in favour of Somare's camp — that he was of sound mind and that his removal was unconstitutional (*Re Reference by East Sepik Provincial Executive*). This Supreme Court ruling meant that O'Neill's claim to the PM's seat was rendered as unconstitutional. The governor general adhered to the Supreme Court's ruling and refused to acquiesce to Peter O'Neill's instruction to swear him in as PM. O'Neill subsequently suspended the governor general, with the speaker becoming the governor general. The speaker then swore in O'Neill as PM. Both Somare and O'Neill claimed they were

PNG's legitimate prime minister, leading to the unusual situation of the country having two cabinets, two governors general, two police commissioners, and two of each of the other key offices (see for discussion Kama 2024; Regan 17/12/2011; Thompson 14/12/2011).

'Not a credible person': Namah's storming of the courts

Amid this political turmoil, an associated conflict between the judiciary and executive escalated, centred on two members of parliament (MPs) of O'Neill's camp, Belden Namah and Allan Marat, and the judges who had presided over the Supreme Court Reference. On 10 November 2011, Namah and Marat held a press conference and announced that the chief justice was suspended for financial misconduct (RNZ Pacific 14/11/2011). Somare's camp viewed the suspension of the chief justice as a politically motivated move to undermine the Supreme Court process (see for discussion ABC News 11/11/2011). In response, and on the same day, one of the judges who had reserved their opinion in the 2011 Supreme Court Reference (SC Ref No. 3 of 2011) ordered police to arrest and detain Namah and Marat while formal charges were laid for contempt of court. The charges included contempt for announcing that the cabinet had suspended the chief justice pending an investigation for misconduct, that the chief justice had not been served a suspension notice, that the chief justice was hearing the SC Ref No. 3 of 2011, and that the cabinet was in contempt of the Supreme Court because it had acted unconstitutionally in suspending the chief justice (*Special Reference Pursuant to Constitution Section 19*: para 80). The courts also 'stayed the decision of the National Executive Council to suspend the Chief Justice' (*Special Reference Pursuant to Constitution, Section 19*: para 81). On 14 November 2011, Marat and Namah handed themselves into the police for investigation for the contempt charges and were released on bail on 15 November. The cabinet subsequently revoked the suspension of the chief justice (*Special Reference Pursuant to Constitution Section 19*: para 82).

On 6 December 2011, the court registrar 'filed a statement of charge alleging that Dr Marat and Mr Namah were guilty of contempt of court in a number of respects', outlined above (*Special Reference Pursuant to Constitution Section 19*: para 83). Their '[b]ail was extended by the Supreme Court on 13 December 2011 on condition that they not ... interfere with these contempt of court proceedings in any manner whatsoever' (*Special Reference Pursuant to Constitution Section 19*: para 83; see also Logan 2015). The chief justice was again suspended on 1 February 2012, and again, the Supreme Court ordered a stay of the suspension (*Special Reference Pursuant to Constitution Section 19*: para 82).

On 23 May 2012, Namah breached his bail conditions by holding a press conference in which he called for three of the supreme court judges to resign. In response:

the Chief Justice ordered that Hon Belden Namah be arrested and brought before the Supreme

Court at Waigani on 24 May 2012 to be dealt with according to law. The order for arrest, issued to all members of the Police Force, stated that Mr Namah had held a media conference on 23 May 2012 and demanded the resignation of [the Chief Justice and two other judges] for reasons to do with the exercise of their judicial functions in giving judgement in SC Ref No 3 of 2011 and SC Ref Nos 1 and 2 of 2012; that Mr Namah's statement constituted a breach of conditions of bail pursuant to existing contempt proceedings against him arising out of SC Ref No 3 of 2011; and that the statement also constitutes contempt of court pursuant to Sections 37(2), 157 and 160 of the *Constitution*. (*Special Reference Pursuant to Constitution Section 19*: para 73 (original emphasis))

However, on 24 May 2012 while the court was in session, Belden Namah, accompanied by other MPs, police and military personnel, stormed into the National Court shouting out:

'Chief Justice, I want your immediate resignation now. Resign now Chief Justice, your immediate resignation. You are not a credible person. You are bringing country down. You have got to respect the people of Papua New Guinea. You are only one man, you are bringing this country down. Arrest him, follow him. Arrest him, arrest him, Arrest him. Enough is enough. Enough is enough. Take him straight to the car. Paitim em [ie seize him]. Arrest him. He asked for it, he will get it.' (Re Namah: para 30 (original emphasis))

Namah threatened violence; the Tok Pisin phrase *paitim em* means 'beat him up' or 'hit him'. He did not have a warrant of arrest. In the process, a staff member of the court was assaulted. In an interview with the ABC the chief justice, Injia, said that 'I fear for my safety and I fear for the safety of judges who are still here and the staff' (ABC 24/5/2012: 00:01:02).

The issue simmered while the country went into the national elections over June and July 2012 and Namah was returned to parliament. On the first sitting day of parliament, 3 August 2012, when Chief Justice Injia was also present as part of the commission to administer declarations, Namah used his parliamentary privilege to apologise and explain his actions. Addressing the newly elected prime minister, Peter O'Neill, Namah stated:

Today, I still believe in change. I even went as far as going into the Chief Justice's Chambers because I wanted to protect you [Prime Minister, O'Neill], myself and the Government that we formed by invoking *Section 142* of the *Constitution*.

... I would like to say sorry to the people of this country. If I had done anything as the Deputy Prime Minister of the then O'Neill-Namah Government and on this Floor of Parliament I would like to apologise to the Chief Justice of this country.

It is very difficult for someone to apologise but as a leader of this country I stand tall for the principles

that I believe in even though others say I am a criminal as they are in Parliament with us and I am afraid that they will charge me as a criminal as well. (Belden Namah quoted in National Parliament of PNG 3/8/2012:19–20 (original emphasis))

In 2013, '[t]he Supreme Court discontinue[d] the charges of contempt laid respectively against [Dr Marat and Mr. Namah]' (*Special Reference Pursuant to Constitution Section 19*: para 85.1). With respect to Namah's storming of the court, the Supreme Court decided 'to make no order as no processes of the Court have yet been initiated in response to that incident' (*Special Reference Pursuant to Constitution Section 19*: para 78).

Namah's violent storming of the court was not addressed until 2015 when the Ombudsman Commission investigated Namah's actions as part of other allegations against him of misconduct in office. The Ombudsman Commission referred him for prosecution to the public prosecutor who then requested a Leadership Tribunal to be appointed. However, that Leadership Tribunal was dismantled after Namah initiated proceedings, arguing that the tribunal was unconstitutionally appointed, that the chief justice had a conflict of interest because of his involvement in the storming event of 2012, and that the tribunal did not refer constitutional questions to the Supreme Court. He also sought 'an injunction to restrain the tribunal from conducting any proceedings' (*Namah v Poole* 2015; *Namah v Poole* 2016). At the request of the public prosecutor, a new Leadership Tribunal was appointed in September 2017 to look at, inter alia, the allegation of:

Improper conduct and abuse of power when the Leader [Namah] stormed the Supreme and National Court building when the court was in session and demanded the immediate resignation and arrest of the Chief Justice. (*Re Namah*: para 21; see also para 6)

Subsequently, a complex series of National Court actions by Namah between 2018 and 2020 unfolded, including Namah seeking a judicial review of the Leadership Tribunal decisions against him. Key references to the ways Melanesian norms were invoked in Namah's case are summarised in the following discussion.

Melanesian norm

Namah's counsel did not dispute the allegations made against him about misconduct, but instead:

advanced two arguments, first, that the Chief Justice had not sought to deal with the Leader or any of his followers or accomplices for contempt. There had been a reconciliation, a Melanesian solution. To proceed now to dismiss the Leader [Namah] would revive the original tense situation and undo the good will that the Chief Justice's forbearance had generated (*Re Namah*: para 43).

Namah's defence counsel also focused on the delay in the submission and the subsequent appointment of

the Leadership Tribunal and the fact that Namah had since been returned as the MP for his electorate. Despite the stated Melanesian resolution, the Leadership Tribunal emphasised that Namah's misconduct:

threatened the very foundations of a free and democratic state which this country is. It is entirely analogous to a military coup ousting a duly elected government. The separation of the arms of government, parliament, executive and judiciary is fundamental to the structure of democratic government. Equally fundamental is the independence within their allotted powers and responsibilities of each arm of government. Those powers and responsibilities are set out in the Constitution. The conduct of the Leader and those who aided and abetted him challenged the rule of the law in this country. (*Re Namah*: para 54)

... the attempt by the Leader to arrest the Chief Justice was not only an affront to the rule of law. It was illegal. It was also a serious contempt of court. (*Re Namah*: para 56)

In summarising their findings, the Leadership Tribunal again noted the arguments of Namah's counsel, that there had been:

a reconciliation between the Chief Justice and the Leader for the best interest of the nation in the Melanesian norm and any penalty to dismiss the Leader would revive the initial situation. (*Re Namah*)

The Leadership Tribunal found Namah guilty of the allegation of misconduct on this category and recommended his dismissal from office (*Re Namah*; *Namah v Higgins* 2018). Namah appealed the Leadership Tribunal's decision, seeking a judicial review of the Leadership Tribunal's decision on some legal technicalities related to the process of appointing the second Leadership Tribunal. He also argued that he was not given the opportunity for his views about the punishment to be heard. Namah was granted leave for a judicial review (*Namah v Higgins* 2018). The matter seemed to subside as life and politics continued to unfold until 11 September 2019 when Namah became the Opposition leader (*Namah v Higgins* 7 July 2020: para 3). When he sought to challenge the appointment of James Marape as PM through a vote of no confidence he was declared by the Supreme Court as being suspended from duties since 18 October 2017, the date of his referral to the second Leadership Tribunal. To overturn this suspension, and thereby to legitimise his actions on the floor of parliament, Namah went back to the court seeking a Judicial Review, arguing that the 'tribunal failed to afford natural justice to the plaintiff, as it failed to give him the opportunity to be heard before recommending that he be dismissed from office' (*Namah v Higgins* 7 July 2020: judgment para (6)).

The judicial review by Justice Cannings noted:

I take judicial notice of it being the usual and accepted practice in the case of a leader who has been found guilty of misconduct in office by a leadership tribunal, to be provided a separate

hearing on penalty. That is the usual and accepted practice gave rise [sic] to a legitimate expectation on the part of the plaintiff [Namah] and his legal advisers that in the event that he was found guilty, there would be a separate hearing on penalty. Denial of that legitimate expectation is in itself tantamount to a denial of natural justice. (Cannings in *Namah v Higgins* 7 July 2020: para 61)

With the judicial review upholding his argument that he was denied natural justice, Namah through his legal counsel sought to quash the decision of the Leadership Tribunal of 9 April 2018 and sought a permanent stay on allegations of misconduct. On 16 July 2020, the court ruled in favour of Namah, quashing allegations of misconduct and granted a permanent stay on the allegations of misconduct investigated by the Leadership Tribunal. His suspension was lifted (*Namah v Higgins* 16 July 2020). Among the reasons given for granting a permanent stay on allegations of misconduct against Namah were the second miscarriage of justice by the Leadership Tribunal and that the delays in initiating the proceedings were not Namah's fault. Namah had been re-elected to parliament twice since the process began. Importantly, the court noted:

the most serious allegation of misconduct against the plaintiff became the subject of a charge of contempt of court in 2012, which was withdrawn on the instructions of then Chief Justice, Sir Salamo Injia, in 2013. (Cannings in *Namah v Higgins* 16 July 2020: para 15.4)

Moreover, the judge noted:

it is incumbent on all constitutional office-holders and institutions involved in administration and enforcement of the Leadership Code to act quickly and decisively when there is clear evidence of very serious allegations of misconduct in office involving a leader — the incident of 24 May 2012 was extremely serious and warranted immediate and decisive action, but that did not happen, justice has miscarried on more than one occasion and in the intervening period the plaintiff has, the evidence suggests, been a paragon of cooperation with the justice system — there comes a time when enough is enough, and that time is now. (Cannings in *Namah v Higgins* 16 July 2020: para 15.6)

Cannings' ruling placed responsibility on both the executive and the judiciary while accommodating natural justice. The lack of decisive action on the part of the judiciary led to multiple occasions of miscarriage of justice. In the meantime, Namah was a 'paragon of cooperation with the justice system'. The long and complex process reflects various conflicts between the executive and the judiciary. Although the Melanesian norm was invoked in the proceedings as part of Namah's argument against the decisions, it was the court that ultimately decided on the outcome. Thus, although the records show that the Ombudsman Commission investigated, recommended prosecutions, and that this was followed up with the public prosecutor requesting two leadership tribunals, in both

tribunals, courts ultimately ruled in Namah's favour to prevent the prosecution from going forward. It is not clear from the the court rulings why the Ombudsman Commission decided not to appeal the court's decision.

Failing Melanesian way?

I now reflect on the two questions addressed in this paper: (i) How has the Rooney case fared in terms of setting an example against 'future executive interference in judicial functions' in PNG? and (ii) How have customary or Melanesian ways featured in the resolutions of conflicts between the judiciary and executive in PNG?

A simple answer is that, in so far as the Namah case is a serious encroachment into judicial functions, the judges in the Rooney case failed in their intention to set 'a deterrent for future would-be offenders' (Saldanha in *Public Prosecutor v Rooney (No 2)*) of judicial functions. It also reveals that while the Melanesian way featured in both cases, ultimately it was the laws that allowed for the very different outcomes. The two issues — failure to deter future offenders and different Melanesian way outcomes — might be understood through distinguishing between the Melanesian way and the Melanesian context in which law and politics play out. I understand the Melanesian way to be an Indigenous ideological view of how things 'should' happen in Melanesia. The Melanesian context, on the other hand, is the specific context in which politics unfolds and, as I discuss later, this includes relationships and the dynamics of Melanesian big-man politics.

I argue that the reason why the Rooney case did not prevent future instances of serious contempt, such as that committed by Namah, is because the judges in the Rooney case failed to situate the case within its Melanesian context. Had they considered the Melanesian context, they would have considered the reasonable person test in relation to what a reasonable PNG politician would do in the environment and culture that shapes their political behaviour. Here, I suggest that Rooney's words 'the principle of being a Papua New Guinean' are important. The judges in the Rooney case could have chosen to consider how conflict would be resolved in the Melanesian context. In their intent to prevent future offenders of judicial functions, they could have also considered how future PNG political dynamics would be shaped by the evolving big-man political culture.

Failing the reasonable person test

Earlier, I suggested that Rooney's reference to '[T]he principle of being a Papua New Guinean' alluded to principles contained in the constitution such as the National Goals and Directive Principles of PNG. These constitutionally enshrined principles include citizens' embodiment of sovereignty and PNG ways, which through democratic elections are vested in the government. The sovereign government collectively comprises, as Narokobi (1989) argues, the three interdependent and interrelated, equal organs of the

legislature, judiciary, and executive. While theoretically these arms of government are separate, as organs of the government they form a relational interwoven fabric that constitutes the sovereign PNG state. This relationality between the executive and judiciary is evident in both the Rooney and Namah cases. So why did the two cases differ in the approaches taken and the outcomes? To understand this, I draw on anthropological notions of Melanesian personhood and relationality, and legal precedent on Melanesian persons to offer possible interpretations of 'the principle of being a Papua New Guinean'.

A widely recognised feature of Melanesian personhood is that people are grounded in their day-to-day social relationships, and they maintain these relationships and resolve any ruptures in relationships through consensus, including customary exchange. Social practices are diverse and locally specific. This means that 'the principle of being a Papua New Guinean' is consistent with the much-acknowledged anthropological notion that Papua New Guinean personhood is 'dividual', meaning that it is made up of all the different relationships that have produced a person since their birth (Strathern 1988). It means that, in general, people and the social groups to which they affiliate are cognisant that they live in an interdependent and diverse world (Narokobi 1980) and that compromise is a daily necessity as Papua New Guineans navigate and reconcile differences and conflicts. Such conflicts are intensified by modern processes, and may also manifest in contradictions in policies, laws, and other contemporary processes. This does not mean that there is no inequality or that Papua New Guineans do not exercise individualised agencies to navigate the changing worlds they live in. In PNG societies, people have always navigated between their individual autonomy, agencies, and independent self-interests and their social relationships (see for discussion Rooney 2024). These dynamics may occur at the individual level or extend into groups and can be seen in the ways clans and tribes interrelate and navigate through their respective interests and relationships. People, land, food, pigs, betelnut, words and stories, orations, mortuary events, bride price, sharing, performance all shape and are shaped by these relational processes. These practices are not hard written, codified rules but led by social practices, often requiring pragmatic solution-based resolutions.

In the Rooney case, these insights into how we might understand diversity and personhood in PNG are important because the foreign judges misrecognised some ways of embodying 'the principle of being a Papua New Guinean'. This can be seen in their descriptions of Rooney and others in the case. As much of the case focused on producing evidence to find her in contempt, Rooney's character was vilified or discredited. Sometimes the judges' language evacuated Rooney from her status as a member of the executive, a minister, to being merely a 'comparatively inexperienced lady [who had] worked herself up into this needless rage, which she is venting on us,

the judges' (Raine DCJ in *Public Prosecutor v Rooney (No 2)*). These included implying that she lacked the intelligence to have written the letter that landed her in court, noting:

The defendant was not called so we will never know [who drafted the letter]. I imagine that the defendant would have had some legal assistance, for she is not a lawyer. (*Public Prosecutor v Rooney (No 2)*)

The demeaning portrayals of Rooney resonated with criticisms against contemporary educated, professional, assertive PNG women engaging in state processes (see for discussion Dickson-Waiko 2013; Johnson 1984; Jolly 1987; Zimmer-Tamakoshi 1993). Descriptions of the men in the case were more favourable, but as seen in the testimony of one of the journalists, Tarcisius Bobola, the judges also mischaracterised Papua New Guineans within a colonial mould. Bobola initially resisted assisting the prosecution but then changed his mind to give evidence against Rooney. He also conceded to Rooney's counsel that 'he might have misunderstood whether or not she was talking off the record' (Raine DCJ in *Public Prosecutor v Rooney (No 2)*). However, when Priestley submitted Bobola's concession in Rooney's defence, Deputy Chief Justice (DCJ) Raine did not accept this, noting:

Bobola, being asked questions in a pleasant and charming way by Mr. Priestley [Rooney's counsel], deferred to senior counsel out of Melanesian politeness and niceness. (Raine DCJ in *Public Prosecutor v Rooney (No 2)*)

Rather than viewing the journalist's actions as the exercise of his agency in navigating a complex situation, the judge's words suggest that journalist's behaviour typified or complied with the judge's view of the Melanesian character as being deferential, polite, and nice to seniority, especially to a white senior lawyer. This description of the Melanesian character resonates with an earlier ruling of one of the justices, Justice Wilson, who had noted:

The average contemporary Papua New Guinean will be one of the average attitudes to matters of life and death and to matters relating to food which is good to eat. He will not be a man given to histrionics or extreme abhorrent reactions, but, on the other hand, he will not be lacking in some emotional feeling and he will have the ability to think. He will be affected by the traditions of his ancestors and he will be aware that he is living in a changing world. He will be a villager at heart and in practice a moderate Melanesian man. (Wilson in *The State v Feama, Auri, Hagima*)

Justice Wilson's description of the 'average contemporary Papua New Guinean [and] moderate Melanesian' (*The State v Feama, Auri, Hagima*) was written for a very different and horrific case: one involving interference with a deceased body and allegations of cannibalism on the part of the defendants. However, this case points to the view of

at least one of the judges in the Rooney case — Justice Wilson — of what a Melanesian person should be (see for discussion Narokobi 1989). Weisbrot (1979) draws on this ruling to highlight that the judges in the Rooney case did not account for the diverse customary practices in PNG that would have shaped Rooney's case, but instead Justice Wilson's ruling 'sought to substitute a new uniform standard: that of the "moderate Melanesian"' (1979:244). Weisbrot's (1979) point was that criminal cases needed to consider the diverse customary practices in PNG to determine what is reasonable sentencing. However, in PNG judges tended not to consider local customs but 'rather the relative "primitiveness" or degree of westernization of the accused in the eyes of the Court' (Weisbrot 1979:244). The courts also took into consideration what was reasonable behaviour by the accused in the local customs, where 'the "reasonable man" standard in Papua New Guinea was unquestioned: "the ordinary person in the environment and culture of the accused"' (Weisbrot 1979:244). As Weisbrot noted, this definition accounted for non-Western models of an individual and for diversity in PNG's local customs. Weisbrot (1979) suggested that this prescriptive framing aims to construct a uniform model of the 'reasonable' Papua New Guinean. It erases the diversity in Papua New Guinean local cultures and ways.

Drawing on this logic, I argue that in the Rooney case the judges' words describing Bobola as deferential, polite, and nice suggest that they saw him as complying with the model of the 'average contemporary Papua New Guinean', a 'moderate Melanesian'. By contrast, Rooney clearly did not meet the judges' expectations of a good PNG person nor was she considered as acting as a member of the executive group. To the judges, Rooney failed the 'reasonable person' test and was instead abhorrent: 'angry', 'assertive', 'inexperienced', 'arrogant and aggressive', 'capricious', 'unrepentant and defiant', and 'wayward'. When the government did not succumb to the judiciaries' bidding to rebuke her strongly and publicly, the judges launched their 'condign punishment' directly towards her, as seen in the following words by Justice Saldanha:

I had expected from the Government of the day not the faint echo of what the Minister had said, not the stale, banal clichés of yesterday, that they respected the independence and integrity of the judiciary, but a clarion call in ringing and resounding tones that would reverberate throughout the length and breadth of the country and echo down the corridors of time and history for future generations to hear and take heed that they stood four-square behind the judges defending the integrity of the Constitution. ... The Constitution is meant to enshrine the highest ideals and the deepest aspirations of the people of this country. It is not to be brushed aside at the capricious whim of a wayward Minister. ...

I do not normally use this type of language in my judgments but we do not normally get this type of

case. It is the only way I know of bringing home to the minister, to the Government and to the people of this country the enormity of the Minister's transgression, that what she did was to dare to pit her puny might, not against the unimportant foreign judges administering insignificant foreign laws, but against the majesty of law and justice which the people of this country had freely adopted as their own. And for this she must now be visited with condign punishment as retribution for herself and a deterrent for future would-be offenders. (Saldanha in *Public Prosecutor v Rooney (No 2)*)

In their wrath, the judges forgot that 'the principle of being a Papua New Guinean' also means the right to natural justice, and where there is no avenue to seek appeal, there is the plea for mercy. It also means considering diversity in people, in customs and that people and groups embody diverse subjectivities. Ironically, the very might of the Supreme Court is also moderated by the powers of the executive to release on licence, and the powers of representatives of the Papua New Guinean community to pardon through a recommendation by the Advisory Committee on the Power of Mercy. Moving away from questions about what and who decides on the universal 'moderate Melanesian', I now consider another form of Melanesian subjectivity, that of the political big-man.

Big-man politics and 'traditional means of resolving disputes'

The judges in the Rooney case erred in thinking that without compromise with the executive, their harsh sentence could replace the government's lack of response to be the 'clarion call ... for future generations' (Saldanha in *Public Prosecutor v Rooney (No 2)*). The judges misread the different Melanesian subjects in the Rooney case. An honourable member of the executive was reduced to being a mere woman, a wayward minister. A senior male journalist was reduced to fit their imagined 'moderate Melanesian', deferential, polite, and nice. In their wrath and their 'narrow and literal interpretation of the written law' (Rooney in *Public Prosecutor v Rooney (No 2)*), the judges failed to understand that in setting any example for future relationships between the executive and judiciary they would be required to consider and anticipate transformations in the dynamics of big-man politics.

Much studied by anthropologists and political scientists, it is the Melanesian big-man, not the 'moderate Melanesian man', who dominates politics. By contrast to the words used to describe Rooney, Namah was always referred to as 'The Leader', 'honourable member of Parliament' or the defendant, never simply as 'this man' or in ways that would demean his big-man status. Anthropological studies of PNG society also highlight that the notion of relational exchange is prominent in mediating relationships which include the characteristic 'big-man' politics and social group dynamics.

Given this cultural political context, the executive and judiciary as part of the broader 'government tribe' can be seen as two groups that are distinct but tied together through various relations. Recognising this, the CPC's recommendations on the administration of justice, inter alia, note that:

1. In Papua New Guinea there have always been traditional peaceful means of resolving disputes and doing what is right in conflict situations, according to traditional notions of justice. ...
2. The courts constitute the third pillar of the government of a country. They have a different function from those of the executive and the legislature, namely that of peacefully determining conflicts that arise between individuals; between levels of government (in some countries); and between individuals and government; in accordance with law and justice. They may also have an important advisory function, through which they can assist in the avoidance of potential disputes. ...
5. The courts do not, however, exist in a vacuum. Like other institutions of the government of a country they are caught up in political realities, and often their decisions have important political consequences.
- ...
9. [In] a situation in which the existing law is either not clear, or alternatively, there appears to be no law which covers the case. In these circumstances, we believe the judge or magistrate who is hearing the case should use judicial ingenuity to do justice as between parties, taking full account of the national goals and principles policy as well as the rights of the individual.
10. We do not underestimate the difficulties with which judges and magistrates are faced. They must on the one hand avoid appearing to encroach upon the role of the legislature or to act as a brake on the executive government's legitimate efforts in trying to promote development; yet on the other hand they must endeavour to ensure that an injustice is not done in a particular case, and that the rights of the individuals or minority groups are not unreasonably overridden. (CPC 1974: ch 8, paras 1, 2, 5, 9, 10)

Following Section 24 of the constitution, had the judges considered the CPC recommendations on the administration of justice, they could have acknowledged that, from time to time, there might be conflict between the different arms of government. They then might have engaged in dialogue towards a reconciliation that was more in tune with PNG's circumstances. It seems counterintuitive to have a system of political organisation where one 'tribe' or social group is able to summon, try, judge, sentence, and place in detention a member of another leading group. In the PNG big-man political context, it is

more intuitive to expect dialogue, including public exchange, to resolve conflict between two houses. Rooney highlights this in her letter to the Advisory Committee on the Power of Mercy:

In our Papua New Guinea way, conflict arising out of differences of opinion and approach between two leaders would not be settled by punishment of one of the leaders by the other leader. We rely on consensus, compromise and mutual understanding. (Annex 3, Rooney 22/9/1979:7)

For Rooney, the relationship between the executive and judiciary was between equals, and the only way to resolve it was through dialogue and consensus. Thus the court case, verdict, and sentencing sat at odds with the PNG cultural understanding that Rooney was more familiar with. When the chief justice refused her offer to meet and reach consensus, and offer an apology, Rooney noted:

From then on any application of our Melanesian way seemed to be out of the question as court proceedings against me were soon started and any direct attempt to communicate would have been misinterpreted again. (Annex 3, Rooney 22/9/1979:7)

Rooney's several attempts at a 'direct equal discussion between the Judiciary and the Ministry' (Annex 3, Rooney 22/9/1979:7) were rejected by the judges who were perhaps already intent on having 'a pound of her flesh'.²

The failure of the judges in the Rooney case to set an example against future encroachments of the executive into the judiciary was vividly demonstrated with Namah's storming of the court, and the court's reticence to pursue contempt charges. In retrospect, we can only speculate how the Namah case would have unfolded had he and his associates been formally charged with contempt against the courts. Instead, what we read in the court records, an account of the history, is that the pathway taken paved the way for the broader political issues to be resolved. This is noted in the summary of Namah's later Leadership Tribunal:

The fact, in the aftermath of this event [Namah's storming of the court], the Chief Justice did not cause contempt proceedings to be instituted is understandable. It had the effect of allowing members of the Executive and of the Parliament to come to an accommodation in relation to the impasse between Mr. O'Neill and Sir Michael Somare. However, that crisis having been settled without damage to the fabric of government does not mean that the kind of intervention the Leader orchestrated and led should go without appropriate sanction. (*Re Namah*: para 60)

Interestingly, no details about the Melanesian reconciliation between Namah and the chief justice were disclosed to the Leadership Tribunal or the courts. This raises questions about how a Melanesian way resolution or political settlement should look. Did it involve the characteristic Melanesian exchange involving public dialogue and exchange of food, pigs,

cash, and other items? It also raises the questions for PNG jurisprudence and whether and how these two cases form precedents for the resolution of conflict between the executive and the judiciary. How does it look in legal terms and how will it inform future events? One thing is clear. In the Namah case, the big-man dynamics were at play between the judiciary and executive. The chief justice ordered Namah's arrest and in retaliation Namah stormed the courthouse, ordering the chief justice's arrest. One might ascertain in the Leadership Tribunal's report that Namah's counsel's argument included a veiled threat when they advised:

[t]o proceed now to dismiss the Leader would only revive the original tense situation and undo the good will that the Chief Justice's forbearance had generated. (*Re Namah*: para 43)

Upon death: Mortuary time and archival spaces

I have critiqued the judgement in the Rooney case and related its legal and political context to the Namah case to explore conflict and conflict resolution between the executive and judiciary in PNG. Bill Standish's words in his letter to Rooney (Annex 1) while she was at Bomana jail capture Narokobi's (1989) argument about the interdependency of the arms of government. The constitution as a living being, a delicate creature, symbolises, and is embodied by, every Papua New Guinean. The different organs of the government are interdependent.

Situating the Rooney and Namah contempt cases in their historical contexts and analysing them through the interdisciplinary frames outlined above reveals changes in the political and legal struggle between foreign and Melanesian legal norms. The obvious differences between these cases are race and gender — white men and a black woman in Rooney's case, and two groups of big-men acting collectively in relation to each other in Namah's case. It was easier for a group of, arguably racist and sexist, foreign white men to prosecute and sentence a Papua New Guinean woman than it would have been for a bench of Melanesian big-man judges to prosecute and punish another group of Melanesian big-man politicians without the kind of political and legal upheaval that occurred in Namah's case. It can be argued that in using the legal provision allowing for the minister for justice to release Rooney on licence, Somare acted legally to apply the Melanesian way. He intervened to overrule the court's harsh decision. On the other hand, should Namah's conduct have been dealt with decisively as a contempt of court case? Justice Cannings in his 2020 ruling thought so, but he also considered the important legal human rights issues of justice and the failures of the court system to act. Although the Melanesian way or norm was cited in the Namah case as one reason why the contempt charges were dropped by the judge, he still faced an

investigation and was referred for prosecution. While the Melanesian way was used to reconcile between Namah and Justice Injia as part of the former's legal arguments in the Leadership Tribunal, it was the judicial review through the courts, rather than the Melanesian way, that ultimately enabled him to avoid prosecution. Namah acted legally to invoke the Melanesian way when he used his parliamentary privilege to openly admit his fault and apologise to the chief justice. These actions by members of the executive, and the judiciary in Namah's case, could be regarded as Melanesian ways of resolving the conflict between these arms of government. They might equally be viewed as contradictions in the laws that enable the executive to undermine the judiciary. The Rooney and Namah cases raise questions about PNG jurisprudence on judications of conflicts between the executive and judiciary. The differences are not only about the time, actors, and context involved in the cases, but also about the different actors' epistemological understandings, their cultural values, and their willingness to reflect upon the nature of the relationship.

I close with words from both Namah and Rooney. Namah's actions between 2011 and 2012 ruptured the balance between the three arms of government. As a key instigator in moving to usurp power from Somare in 2011–12 his actions were condemned as strongly as his storming of the courts. In the occasion of Somare's death in 2021, the Parliamentary Hansard records show Namah again apologising extensively, including the following words:

I am accused of mistreating the Grand Chief during the political impasse of 2011. I am accused of storming into the Court Room of the then Chief Justice Sir Salamo Injia at that time. Some Members made speeches during the Hauscry, and I feel it is only proper that I respond as a matter of Unity during this very special occasion.

I accept the criticisms that have arisen but I will not have them taint the memory of my relationship with the Late Grand Chief or with his family, the people of East and West Sepik and the people of our beautiful country.

...

After the induction to the Eighth Parliament in 2012, I rose on the Floor of Parliament during my Maiden Speech as the Leader of Opposition then and apologized to the Grand Chief Sir Michael Somare ... I also apologized for my behaviour towards the then Chief Justice, Sir Salamo Injia, both in Parliament and personally so if people in this country still have any grudges against me, I take the opportunity of this special occasion of the passing of our Sana — the Peacemaker, to forgive them and I beg them for their forgiveness. (National Parliament of PNG 11/3/2021:4–5)

Namah's Melanesian way oration on the floor of parliament with parliamentary privilege openly admits his wrongdoing and he makes a plea for forgiveness.

Rooney's words in her until now unpublished letter to the Advisory Committee on the Power of Mercy summarise her view:

the Judge and his colleagues are completely mistaken and if my expression of English which is not my own language, gave the impression then I am very truly sorry. God knows what my true intention was, and I hope that the people of Papua New Guinea will also eventually understand.

...

This dispute is not one which involves my personal honesty or questions about my integrity or sincerity as a National Leader.

This controversy has come about because of the difference between the cultural values of the Judges and our own Papua New Guinean cultural values. (Annex 3, Rooney 22/9/1979:3 and 7)

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I thank everyone who has supported the process of the preservation of the Nahau and Wesley Rooney Collection since 2020. I have prepared this paper while holding a position of senior lecturer at the School of Culture, History and Languages, College of Asia and the Pacific, ANU. I thank the DPA editors and three reviewers for feedback and editorial support. Most importantly, I acknowledge Nahau Rooney for her lifetime's work and her vision in preserving some of her records that provide insights into the events discussed in this paper and her political career. All views expressed and errors are mine alone.

Endnotes

1. Customs Recognition Act (Chapter 19); previously Native Customs (Recognition) Act 1963.
2. When collecting Nahau Rooney's papers in 2020, I recall a margin note on one of Rooney's papers that I have since not been able to locate. It stated that one of the judges was overheard saying that they would 'have a pound of her flesh'. Even if my memory is incorrect, I think it aptly describes the judges' wrath that is evident in their ruling.

Author notes

Nayahamui Rooney is a senior lecturer in ANU's Pacific Studies program. She is located in the School of Culture, History and Language, College of Asia and the Pacific. She is the chair of the Pacific Manuscripts Bureau. In addition to writing Nahau Rooney's biography and working on the preservation of the Nahau and Wesley Rooney Collection, her research focuses on a range of cross-cutting topics, including urban land, gender, and social issues in PNG. Drawing on her research, she has examined the gendered social impacts in Manus Province brought about by the Australian offshore detention centre. She holds a PhD from the ANU.

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Mr Nahau Rooney, MP
Bomana *12 September 1979*

My dear Minister, just a brief note to say
that I was shocked and appalled by
the action of the judges in sentencing
you yesterday, as I have been by
the whole affair. I'm not sure how it
will end, but the Constitution is a
delicate creature and surgery
should be well-planned in advance.
The judges did not assist the
cause of reform at all.

With my warmest
personal regards to yourself and
Wes.
Bill Standish

B.M. NAROKOBI
12th Sept; 1979.

The Chairman, Rev Ratu Kenau
Committee On Mercy
Government of PNG.
Port Moresby.

Dear Sir

Mrs Nahau Roney, Citizen
and Minister for Justice

I have had the advantage to read all the judgements of their honours, the judges of the Supreme Court of PNG. I have also known, Mrs Nahau Roney, not in her capacity as a Minister but as a private citizen for 3 years. That was the time when I was the Chairman of the Law Reform Commission and she was a Commissioner.

In my respectful view, the majority of the judges imposed a sentence that was well in excess of anything wrong Mrs Roney might have done. Mrs

The Supreme Court just saved her from disqualification from representing her people by two months. Had she been sentenced to more than 9 months, she would have lost her seat.

The wrong she is convicted of is made to be serious. But in truth, it is a legal wrong only. As a Christian, I think it is fair to say that it is hard to find any moral guilt in her conviction.

One of the basic principles of English Common Law, Australian lawyers forced us to accept is that there must be an intention to do something wrong before one can be punished. There does not appear to be any real intention in Mrs Roomey's case to do any evil deed.

That Mrs Roomey has been convicted by the nation's most Supreme Court, I have nothing to say. But I do believe that the sentence is quite excessive and entirely cruel. Mrs Roomey is a person of impeccable character. She has broken no written law. She is a very dedicated social reformer for the benefit of this country. Her children suffer enormously, as I have visited them twice.

I have had a look at cases in England and Australia where people have been convicted of contempt, perjury or a to pervert cause of justice. In most these cases, the offenders are fined or the sentences suspended.

Every person convicted of a criminal offence by the first court has a right to appeal to a higher court. This is provided for in s 37(15). In her case, there is no room of appeal because there is no higher court. By s 37(16) of the same Constitution, it is stated that no person shall be deprived by law of a right of appeal. Because she has no higher court to appeal to, she has lost that right.

Not only has Mrs. Rooney suffered indignity. But her other constitutional rights have been denied. It is my earnest submission that your Committee should recommend a pardon to Mrs. Rooney to the National Executive Council.

I will be in Warwick as from Thursday, 13th. Should I be required for further submissions, I shall be happy to make further submissions.

Yours faithfully
BORN AND KOOI.

P. O. Box 311,
LORENGAU
Manus Province

22nd September, 1979.

Bishop Ravu Henao,
Chairman,
Advisory Committee on Power of Mercy,
WAIKANI.

Dear Sir,

I have applied to National Executive Council, under section 151 of the Constitution for them to consider pardoning me from my conviction and sentence as handed down in the Supreme court on the 11th of September, 1979.

The Constitution, section 152 requires that a report from the Advisory Committee on the Power of Mercy is considered by the National Executive Council.

Because of the technical nature of the charge, my responsibility as a Minister for Justice at that time and the fact that I had no other way of appeal as is usually the right of a convicted person under section 37, (SS 15) of the Constitution, it is necessary that I present my case to you in detail.

I hereby present the particulars of my case to your committee for consideration at your next meeting.

Yours respectfully,

Nahau Rooney
NAHAU ROONEY

MINISTER AND MEMBER FOR MANUS OPEN

P. O. Box 311
LORENGAU
Manus Province

22nd September, 1979

The Chairman,
Advisory Committee on the Power of Mercy,
Department of Justice,
Central Government Offices,
Post Office Wards Strip,
WAIGANI.

Dear Sir,

In this letter I wish to inform you and your committee about the background events that led to my conviction and sentencing by the Supreme Court, on the 11th of September, 1979 exactly two months from the day I wrote my first letter to the Chief Justice.

Sir, it is most unfortunate that my case has become so political that even while writing this letter, I am weary and anxious as to whether I will have a fair hearing, because of the outcome of events following my release by the Minister for Justice - Mr. Michael T. Somare.

However, I do trust and respectfully request that the committee carefully study all the necessary documents and events which had occurred during the time I first wrote my letter of the 11th July, and the time of my conviction and sentencing on the 11th September, 1979.

WHY DID I WRITE TO THE CHIEF JUSTICE?

Just prior to writing my letter of July 11th, to the Chief Justice, I had been ill and hospitalized. When I heard about the injunction granted by the National Court on July 4th, which allowed Dr. Premdas to remain in the country for a further four (4) weeks, I was most angry. I wrote this letter because I understand that deportation and migration matters are the work and duty of the elected government of the country, regardless of what system of government it has.

The power and responsibility to deport foreigners who may be detrimental to the security and sovereignty of our nation according to our Migration Act, is vested in the hands of the National Executive Council, but specifically the Minister for Foreign Affairs, and his decision may be reviewed by a Review Committee of three Ministers appointed by the Prime Minister.

I, myself as a Minister, have served on the Ministerial Review Committee which is an ad hoc committee. We had to look at all the documents thoroughly and it is not a simple matter of just upholding the decision of the Foreign Minister, or just to rubber stamp his decision.

I am not a lawyer and it is quite possible that the way I constructed my letter offended strict legal principles. However, I stress, I had no intention to offend the judges and I was really distressed when I received the Chief Justice's letter on the 13th of July.

I am particularly upset that the final paragraph in my letter of 11th July was used by the court as one of the main arguments to condemn me. In this paragraph I called upon the Judiciary to -

" use their discretion effectively to develop the National Legal System in the context of a proud and growing National consciousness."

This was taken to be a direction to the Supreme Court telling them how to act in the Premdas case. This interpretation of my letter is completely wrong and I cannot understand how anyone could insist that I was deliberately trying to harm the courts or undermine the judges.

The final paragraph of my letter is very much the same as part of the fifth goal of our Constitution which calls for-

" a fundamental re-orientation of our attitudes and the institutions of Government towards Papua New Guinea forms of participation, consultation and consensus and a continuous renewal of the responsiveness of their institutions to the needs and attitudes of the People."

This was the spirit in which I acted and the underlying intention of all my letters and statements. Anyone who knows me personally, understands the sincerity of my belief in our national goals.

The main argument which led to my conviction was that concerned with my "intention" when I wrote my letter on the 11th July, 1979.

Judge Greville Smith, in agreement with three of the other Judges, has said that my letter was a

" confident, bold and aggressive attempt to constrain the Judges of the Supreme court, when the matter came before them, to decide the Premdas matter in accordance with the clear intimations contained in such letter."

I can only repeat now as my lawyers said in court, that the Judge and his colleagues are completely mistaken and if my expression of English which is not my own language, gave that impression then I am very truly sorry. God knows what my true intention was, and I hope that the people of Papua New Guinea will also eventually understand.

In one of the cases where I was a member of a review committee, we recommended against the decision of the Minister for Foreign Affairs, and that foreigner was re-instated and is now still living in the country.

The Ministerial review committee which met to review Dr. Premdas' case was;

Fr. John Momis	Minister for Decentralization
Mr. Raphael Doa	Minister for Health
the Parliamentary leader for the United Party.	
Sir. Peter Lus	Minister for Commerce.

In reviewing the Ministry decision, the committee has to address itself to such questions as;

- (i) Is the deportee's action dangerous to the sovereignty of P.N.G.
- (ii) Has he broken any laws of the country?
- (iii) What is the deportee's background etc..?

It is only by analysing these questions that the review committee would conclude whether the decision of the Minister is valid or not.

In the Premdas case the Review Committee was satisfied that Dr. Premdas must go and upheld the decision of the Foreign Minister.

Those of us who have had the opportunity to travel and work overseas know how foreigners are treated in these countries, most of us would agree that as long as we do what we went there for e.g. schooling, training, working etc. - we can stay there as long as our visa allows us to stay. But the minute you get involved and take part in the political and government activities of the country, you are deported.

This is because every Independent nation would like to feel that it is they that control their country and the destiny of it's people and not foreigners who may not feel the same way.

The deportation of Dr. Premdas was the first case since we have gained Independence, where direct interference by a foreigner appears to be evident.

When I wrote my letter to the Chief Justice on the 11th of July, 1979, I had no idea what questions were to be put before the Supreme Court and I was in no way concerned with what the Supreme Court would decide. My letter was written about the National Court, decision on the 4th July and about the administration of Justice of general.

After I had received the Chief Justice's letter of 13th of July, a reply to my letter, I was most upset because I truly believe I was misunderstood. After writing my letter on the 17th of July I rang Sir William Prentice and asked him could I personally deliver the letter, so that we could sit down over a cup of coffee, to discuss the letters.

He soundly unfriendly and said "no, thank you but I am anxious to read your letter."

This blew my mind - in fact I went across to Mr. Kidus' office and told him straightaway about it.

I, in my simple Melanesian way thought, ' - well I don't think the Chief Justice understands what I mean and, realizing that I had upset him, I must now sit down with him and sort this out like a true Papua New Guinean way - '

Had this happened on the 17th of July 1979, as I requested the Chief Justice, none of these things would have happened.

I was shocked to receive his confirmation of refusal to see me, when he wrote to me on the 18th July.

Following this I immediately realized that the Chief Justice was up to something more than just being upset by my letter of the 11th July.

On the 20th of July, he called for a special Press conference at which he made public the contents of our letters. These were read on radios throughout the country and the Post Courier printed hundreds of copies which were distributed throughout the country.

Following his press release authorizing the media to publish, I then said to myself, as Minister responsible for administration of Justice in Papua New Guinea, I cannot allow this action to go without saying something.

If he truly believes in the principle that when a case was before the court no-one should talk or comment about it, including the Minister for Justice, then he too should not authorize the publicity.

But because the publicity was authorized by the Supreme Court no-one questioned the Chief Justice. In fact I learned later that this was the first time a Chief Justice had ever convened a Supreme Court for the sole purpose of publicity.

I then issued a statement to the N.B.C. deploring such action by the court - (please read the copies of my own statement titled "Press Release Friday 20th July")

The other two charges were based on the reports by newsmen and journalists Mark Auhova of the N.B.C. and Tarcisius Bobola of Post Courier.

Mr. Auhova's statement was made up by himself after talking to me on the telephone. The third charge was based on the report in the Post Courier by Mr. Bobola - once again based on my press release of the 20th of July, 1979.

The Journalists both had a twist to my statement which carries a scandalizing effect which was not what I actually said.

THE ACTUAL PROCEEDINGS

There are certain factors in relation to the court proceedings that are worth noting.

Even if I did commit the offence of contempt of court I believe that my case should have been heard by another judge or judges.

Although at the beginning of the proceedings when the Deputy Chief Justice announced that the Chief Justice was disqualified to sit on this sitting because of his involvement, it was evident that the matter did not only concern the Chief Justice but the charge was contempt of the Supreme court, which means all the judges were involved.

I now draw your attention to page two (2) of the Chief Justice's letter paragraph 10, last sentence reads

" My brothers and I are affronted by what you have written, which could well be held to have constituted a serious contempt of court".

And page three (3) paragraph 14 last sentence reads

" Perhaps you have not given thought to the possibility that the parties involved, the law officers and even the court itself, might feel it necessary to take action to protect the court against such pressure -----"

On the 20th of July while releasing copies of our letters he called on the Government to take appropriate action.

On the 26th of July, the Chief Justice convened a lengthy meeting of all Judges to discuss the matter.

In a letter to the Prime Minister on the 26th of July, the Chief Justice writing on behalf of all the judges threatened the Government that they would resign if the Government did not take appropriate action.

The National Executive Council in reply to the Judiciary made it quite clear that my letter of the 11th of July did not constitute interference and direction by the Minister for Justice -

When I wrote that letter of the 11th of July, I had acted in accordance with my understanding of the role of the Minister for Justice. This seemed to be totally ignored.

The Constitutional arguments which sought to clarify the role of the Minister for Justice in relation to the administration of justice were not properly taken into account.

This became obvious when the bench finally decided on a penalty.

All of these factors left me with no alternative but to believe that the judges were prejudiced and had already decided my guilt before the hearing commenced.

Realizing this, I asked through my lawyers that the case be heard before a single acting - Judge at the National court level.

In addition, the Supreme court does not normally involve itself in fact finding procedures and in the first instance it would be proper for this case to be heard by one Judge.

Both of these reasons were not accepted by the bench -

In refusing my submission to allow the case to be heard in the National Court the court also deprived me of my rights Under Section 37 sub-section 15 of the Constitution which states:

" Every person convicted of an offence is entitled to have his/her conviction and sentence reviewed by a higher court or tribunal according to law."

I realize that the advisory committee on Power of Mercy is not a court of Appeal - but from the reasons I have stated above, I believe that the judges who heard my case were biased and prejudiced -

Another example to illustrate this is that during the entire period of the court hearing, Parliament was meeting. As Member for Manus and Minister for Justice I had a clear duty and right to attend Parliament, however, my application for an adjournment of the court was rejected.

CONCLUDING REMARKS

In our Papua New Guinean way, a conflict arising out of differences of opinion and approach between two leaders would not be settled by punishment of one of the leaders by the other leader. We rely on consensus, compromise and mutual understanding.

As soon as I received the Chief Justices' letter of July 17th 1979, I realized that I could not have expressed myself clearly and there was some misunderstanding between us. My immediate reaction was to prepare a reply which I would deliver personally and so sit down with the Chief Justice and iron out our problems face to face.

The Chief Justice refused my request to meet with him. This refusal hurt and confused me. It seemed to me that as Minister for Justice I was held responsible for the proper administration of Justice, but as soon as I did something that the Chief Justice did not understand or misinterpreted I was not even permitted to talk to him.

On the 20th July 1979 when the Chief Justice released our correspondence to the public from the bench of the Supreme Court I was completely lost. Rightly or wrongly I saw his action as a deliberate and public attempt to destroy me as a leader of Papua New Guinea.

From then on any application of our Melanesian way seemed to be out of the question as court proceedings against me were soon started and any direct attempt to communicate would have been misinterpreted again.

However on 24th August I made yet another attempt to settle the matter by direct equal discussion between the Judiciary and the Ministry. I did this by making a formal apology in the court. This apology was rejected by the court as being 'insincere'. I include this statement for your committee to consider and to judge my sincerity.

This dispute is not one which involves my personal honesty or questions of my integrity or sincerity as a National leader.

This controversy has come about because of the difference between the cultural values of the Judges and our own Papua New Guinean cultural values.

It is a dispute between two paramount arms of Government, the Executive and the Judiciary.

It should not be seen as a dispute between Nahau Rooney and the Judges but unfortunately this seems to be the case. I was most disturbed when I read through the judgements, to find that the judges have used defamatory words against me personally.

What upset me is that the Judges questioned my personal honesty and integrity as a national leader, and this makes me see the Judges as having no faith in the Independent nation of Papua New Guinea and having no respect for the national leaders.

It is possible that my action could have been wrong technically or legally.

But as soon as I saw this I made an immediate effort to make

I asked for us to discuss the matter personally. I apologised in my second letter and later in court.

Mr. Kidu, the then Secretary for Justice tried to intervene to make peace but the Judges refused to communicate at all.

If I had made a mistake, I have now learned, and in my future dealings I will avoid such mistakes.

However there is no sense at all in which my action, in a dispute between the Judges and myself, morally allows the Judges to imprison me.

If I needed to be punished, I believe that I have been sufficiently punished by the unwarranted publicity which questioned my honesty and integrity as a national leader. I was refused my right as a representative of my people to attend the parliament.

I was humiliated by the long attendance at court.

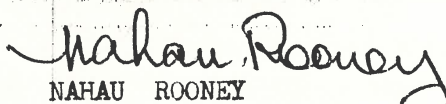
I was denied my rights of appeal.

And I was presumed to be guilty even before the trial began.

Furthermore, neither I nor any other member of my family has ever appeared in court before in connection with any wrongdoing or law breaking.

In view of all the factors raised in this letter I ask that you carefully consider all the submissions before you with a view to recommending to the National Executive Council that I be granted a full pardon of the conviction and sentence imposed upon me.

Yours respectfully,



NAHAU ROONEY

MINISTER AND MEMBER FOR MANUS (OPEN)

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