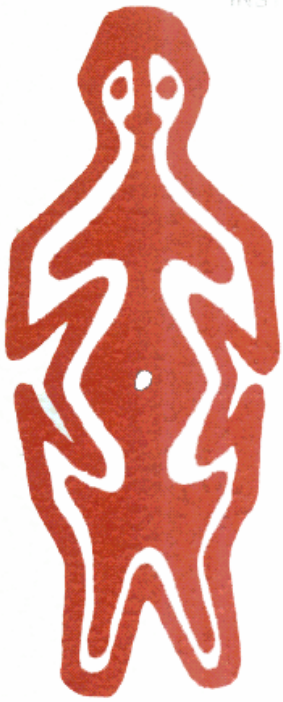

Law and Order in Papua New Guinea

Volume I: Report and Recommendations

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September, 1984

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LAW AND ORDER IN PAPUA NEW GUINEA

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VOLUME 2 APPENDICES

September 1984

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Institute of Applied Social & Economic Research

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FOREWORD

The Papua New Guinea Institute of Applied Social and Economic Research and the Institute of National Affairs present this report to the public of Papua New Guinea as their contribution to the burgeoning debate in this country on the problem of law and order.

As, respectively, research arms of the public and private sectors, we trust that it continues our separate traditions of objective input to public policy discussion. As our first joint endeavour we hope that it demonstrates that our individual strengths, when joined, permit an even more powerful investigation of pressing national economic and social issues.

The study has diverse origins. As the research team point out in their introduction: crime, and law and order are perennial topics of conversation in Papua New Guinea. Behind the occasional paranoia is a deep concern about the impact of lawlessness on the process of social and economic change. Doubts have been expressed at the highest level as to whether the problem could be coped with within the context of available resources, existing institutional arrangements and the cultural and social traditions which have emerged from this country's distant past and recent colonial history.

For various reasons 1983 was a watershed in concern with law and order. After a lengthy debate, the Premiers' Council and the National Government decided to set up a committee to consider the problem and, specifically, to review the history of former attempts to solve it and to summarise previous recommendations. At the same time much discussion within the private sector had focused on the disruptive effect crime was having on existing business and the depressing influence it was exerting on investment plans and business confidence. A major concern here was the impact of crime, or perceptions of it, on the willingness of skilled overseas workers to come to, and remain in, Papua New Guinea and of investors to commit their capital. Indeed in an I.N.A. study in 1982 Professor M. Trebilcock found that of all the concerns expressed by businessmen, the state of law and order topped the list. The Papua New Guinea Chambers of Commerce and Industry held forums and seminars on law and order, and the I.N.A. had decided in reassessing its research priorities that an in-depth study of the economic and social consequences of crime, particularly in a development context, should be a major component of its 1984 program. Finally IASER, with its role recently changed to providing policy-oriented research for the Papua New Guinea Government, was in the process of finalising its study program for 1984.

The project which emerged was conceived by the I.N.A. Council and approved by the government at a National Development Forum. It was funded primarily by I.N.A. contributors and other private sector firms, individuals and organisations, supplemented by a government grant of K20,000 and the input of one research staff from IASER. The I.N.A. employed Mr. Clifford and Judge Stuart and supplied the secretarial and administrative support to the research team.

The project got under way in January 1984, by which time the government's in-house study was already in progress. This purely government initiative, the so-called Morgan Committee, focused on the broad outlines of the problems: emphasising the role of government in moderating crime and incorporating law and order considerations in overall government planning; while the present study has focused on the detail: the minutiae of the justice system and the role of non-government agencies, including the community, in crime control and the promotion of order.

The directors of the two institutes, IASER and INA, would like to thank sincerely the fine research team placed at our disposal - Mr. Clifford, Dr. Morauta and Judge Stuart. They were ably assisted by many people, but Dr. de Albuquerque from IASER and the volunteer staff of The Eastern Highlands Provincial Rehabilitation Committee, the National, District and Village courts, the Correctional Institutions Services, and the Royal Papua New Guinea Constabulary and the PNG Chamber of Commerce and Industry and various regional chambers were especially helpful.

Throughout the project we received unflagging assistance and support from Ms Felicia Dobunaba of the National Planning Office, who was our point of contact with the national government and from the members of the steering committee established to monitor the study. Its chairman, Mr. Bruce Flynn was always available if needed and constantly supportive.

We are sure that members of the research team will join with us in singling out three people for special mention. Mr. Clifford's deep humanity, broad experience and unbounding energy brought coordination skills to the project without which it would not have succeeded The Chief Justice, Sir Buri Kidu became almost a guiding spirit to the study, assuring us that we were on the right track and reassuring us, against the advice of many, that another look at the problems was worthwhile. Finally, Inspector Joseph Kupo, of the Royal Papua New Guinea Constabulary brought a dedication and knowledge of the grass roots, without which we might have gone off on an irrelevant tangent. In so many ways, he epitomises the spirit of our recommendations - a blend of modern and traditional, made possible by thorough understanding and appreciation of both.

Both Institutes are dedicated to assisting in the development of policy in Papua New Guinea through research and publication. We believe this report builds on our traditions. We sincerely hope that, not only will it contribute informed opinion to the current debate on law and order in this country, but that it will also point the way to an agenda for continuing research, without which the recommendations canvassed here would prove self-defeating.

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EXECUTIVE SUMMARY

PART I
PERSPECTIVES ON LAW AND ORDER

The phrase "law and order" is used to refer both to the peace and good order which citizens would like to see in their communities and to the peace and good order that can be established by government. In its approach the team accepts the aspirations of the people for peace and good order but leaves open for investigation what part government has played and should play in achieving this goal. (Chapter 1)

PART II
THE PROBLEM EXAMINED

Available statistics on crime in Papua New Guinea are so inadequate that it is impossible to make informed statements about levels of and trends in crime. What figures are available do not support either the idea that crime is increasing or that crime is a more serious problem in Papua New Guinea than in other countries. However almost no victimization surveys have been conducted. Moreover the team estimates that only 10 to 30 per cent of all crimes are ever reported to police, and that inadequacies within the police system mean that only between 34 and 60 per cent of crimes handled by the police enter police statistics on crime. (Chapter 2)

It is impossible to provide reasonable estimates of the costs of crime in Papua New Guinea, because of conceptual difficulties and because of problems of measurement. For 1984 the government appropriated K56 million, net of receipts, for law and order agencies, more than half of this figure being spent on police. There are other costs of crime in the public sector, notably revenue foregone through corruption and tax evasion, and a reduction in the quality of government services. The study team conducted a survey of companies in the private sector, which estimated their losses as a result of crime to be of the order of K76 million in 1983. Much of this cost was for buying protection for staff and property, protection which was often provided at a profit by other companies in the private sector. Crime also brings many costs, as well as some benefits, to private individuals. (Chapter 3)

Lacking a victim, corruption is not as visible as other crimes and there is little hard evidence of its extent. Nevertheless in Papua New Guinea there is concern about corruption, which seems to be linked to a lack of accountability in government services. The main problems are ineffective middle management and a lack of careful accounting procedures. (Chapter 4)

The education system in Papua New Guinea indirectly contributes to the law and order problem, by raising the expectations of young people past a point where there is much hope of their expectations being realised The limited availability of formal employment contributes to the problem of unrealised expectations. Managing the necessary changes in the education system which can at best come only slowly and can be the subject of much popular as well as political opposition, will require vision, sensitivity and most importantly resolve. (Chapter 5)

There is an association between the consumption of alcohol and certain types of crime in Papua New Guinea. However, the team is cautious about the Morgan Committee's recommendation that the government should take control of the brewing industry, because of the difficulties of running state-owned industries efficiently. As to regulation, experience appears to confirm that this is best exercised by the local community with the state in a supportive role. (Chapter 6)

While tribal fighting is seen as a law and order problem by the government, it is partly a solution to a law and order problem for participants, being their remedy in disputes for which other types of resolution have been unsuccessful. Tribal fighting is restricted to the five highlands provinces and to certain areas within those provinces. Probably only about one-fifth of Papua New Guinea's population lives in census divisions in which fighting occurs. Fighting appears to have some but limited impact on rural communities. The major consequences are for police expenditure, personal property and community services. (Chapter 7)

Law and order problems are to a considerable extent political problems. They stem from poor relations between the state and its citizens, are aggravated by corruption and become the focus of manoeuvres by and conflict between government agencies. This suggests that improvements in law and order depend very much on the integrity, incisiveness and commitment of political leaders. (Chapter 8)

PART III
EXISTING STRUCTURES FOR HANDLING THE PROBLEM

Since the beginning of colonial history in Papua New Guinea government has concerned itself with law and order issues. In the 1970s and 1980s there have been a series of special committees to consider law and order problems. Although law and order should be regarded as a central element in development, planning in this area has been weak, because government has relied on inter-agency negotiation to produce a coherent and coordinated plan. (Chapter 9)

The criminal justice system consists mainly of the police, correctional services and courts. The team's research leads them to conclude that this system cannot cope with existing crime and order problems. The situation is deteriorating, with coordination and efficiency within agencies being as much a problem as coordination between them. Neither is the same system (on which Papua New Guinea's is based) working in developed countries. However, Papua New Guinea's own social and community structure may permit it to lead in law reform. (Chapter 10)

The ability of the National Court to process cases has declined to an unacceptable level, with long delays, a poor conviction rate and a large proportion of cases being struck out. Problems arise because of weaknesses in police investigations and prosecutions, inexperienced lawyers and the inadequate resources available to the court. Recent legislation on minimum sentences can only make the situation worse. District courts, on the other hand, work relatively well with few delays and are an underused asset, largely because cases that could be handled by them find their way

into the higher courts, adding to congestion there. Village courts cover around 65 per cent of the national population and where they are established are well used There are problems in the quality of service provided by village courts because of inadequate training and supervision and often poor relations with the police. (Chapter 11)

The police have a poor record in criminal investigation and prosecution. As a result offenders face little risk of being arrested or, if they are arrested, of being convicted Police problems arise from poor training, employment policies and personnel management, a focus on para-military rather than community-based methods, and low morale in the service. (Chapter 12)

Papua New Guinea has a relatively high proportion of its population in prison (140 per 100,000), but the prisons are badly run. There are inadequate staff for custodial duties, and poor management and administration. Although a probation service was recommended in 1979 and a community work order act passed in 1978, these cost-efficient and more constructive services have not been developed or used. (Chapter 13).

Law and order in Papua New Guinea is maintained largely by informal rather than state structures: by community sanctions, self-help, and informal mediation and arbitration. These informal elements in the system of order are a major national resource, but government institutions often compete rather than cooperate with them. Village courts have the potential to integrate state and informal systems and to support or even develop informal structures. (Chapter 14)

PART IV
CONCLUSIONS AND RECOMMENDATIONS

The team recommends that the National Executive Council adopt a new policy on law and order, a policy based on the importance of informal and community institutions in the maintenance of order. State resources should be used to complement and support these informal institutions. The National Executive Council should itself take control of law and order policy, with a small Law and Order Policy Development Unit providing it with information and advice on implementation. (Chapter 15)

Implementation of this policy depends on the further development of village courts, since these courts are well suited to complementing and supporting informal and community structures. Police and the Department of Provincial Affairs should see themselves as providing a service to the community, and work through village courts in matters relating to law and order. The team recommends a Village Courts Liaison Programme in the police force. Improvements in the services offered by all types of court, police and corrections would complement the proposed change in policy. (Chapter 16)

Making the informal system work requires considerable change in the approach of police to law and order questions. The focus of their activities must shift towards crime prevention and an increased use of discretion to improve their relations with the communities they serve. They must support not undermine the community's own resources for dispute settlement and handling offences. Lawyers need to be more aware of the limitations of the criminal justice system and the value of informal structures. Sentencing should focus more on probation and community work orders than on prisons, because these schemes maintain or develop the links between offenders and their communities. (Chapter 17)

INTRODUCTON

Through the entire colonial period and a full decade of independence, the problem of "law and order" has been under active (sometimes almost paranoiac) consideration by government and people alike. There has always been the responsibility for keeping order amongst warring groups in the highlands but stealing, housebreaking, and personal attacks have heightened the concern with law and order. It is a perennial topic in social and official circles; and this cannot be attributed wholly to dramatisation or increased media coverage - for nearly everyone has his or her own personal tale of danger or victimisation. The miscreants have been no respecters of dignity. The Governor-General, Chief Justice, Prime Minister, ministers and ambassadors and even senior police officers themselves have been victimised. No area seems completely safe, and in some poorer urban settlements, houses are barricaded and guarded as effectively from immediate neighbours as are the dwellings occupied by the more affluent in the fashionable suburbs.

Inevitably, then, on the subject of law and order, reports, action groups, task forces, committees and commissions, research teams, consultants and learned articles have appeared, occupied the stage briefly and then given place to others with either broader or narrower orientations or with special causes to plead. Committees at cabinet level and inter-departmental bodies in consultation with churches and voluntary bodies have all made their contributions.

Looking at this mass of evidence of public consultation, professional guidance, policy recommendations and scholarly opinion it is difficult to maintain that the ground has not been covered - even if it has not always been cultivated There have been historical studies, descriptions of both legal development and its neglect, excursions into law reform and indigenous methods of social control, studies of effective government and the lack of it, of Melanesian culture and the neo-colonial veneer, of youth and unemployment, of housing problems and urban drift. Of course, each of these wound up with a set of recommendations for firm government action. The latest was the Morgan Committee Report (Committee to Review Policy and Administration on Crime, Law and Order 1983) which we were privileged to see prior to publication. These are discussed more fully below but they add up so far to concern without action. A great deal of good advice is offered but implementation has been defective for reasons fully explored in this report. Actually, as this report is written team members have made their individual drafts available to yet another committee, the new medium term development plan sectoral committee on law and order.

Meanwhile there have been misgivings about the rising bill for law enforcement in both public and private sectors. Of course with the subject under such scrutiny by a wide variety of experts there was an appreciation that order was not a simple function of sufficient force. Other related elements have been reviewed. Could crime be a symptom of some deeper socio-economic malaise? Everyone has realised that a country moving through different authority structures - from protective paternalism to proud independence - in barely twenty years is bound to

have become a little confused about the particular limits of customary obligations and the written law. With lawyers able to defeat charges in the courts and village courts having a variable status the regulations were not always clear. The Law Reform Commission's attempts to move back from the Western concepts of justice and responsibility to the more widely understood customary concepts were slowed down in recent years, but at least the village courts were innovative and are showing effectiveness in some areas.

The structure of this project

The aim of this study was to review law and order problems in Papua New Guinea and formulate "feasible proposals for improvements" in government activity in this field. Full details of the terms of reference of the project and the team's response to them are given in Appendix B.1.

The study was designed as a joint project between the Institute of National Affairs (I.N.A.) and the Papua New Guinea Institute of Applied Social and Economic Research (IASER). In 1983 the National Development Forum approved a proposal for a government/private sector study of law and order. The National Development Forum is a consultative body chaired jointly by the Prime Minister and the President of the I.N.A. and includes cabinet ministers and senior representatives of the private sector. The government nominated IASER as the agency to provide the governmental input. The I.N.A. commissioned Mr. W. Clifford, then the Director of the Australian Institute of Criminology, to coordinate the project and Judge Barry Stuart, Chief Justice of the Yukon Territories, Canada who had previously worked in the Papua New Guinea National Planning Office to study the administrative aspects of law and order. To complete the team IASER appointed Dr. Louise Morauta, a sociologist, who had already done considerable work in the urban settlements and rural areas of Papua New Guinea.

Inspector Joseph Kupo of the Royal Papua New Guinea Constabulary was attached to the project to work with Judge Stuart. He is responsible for one of the appendices. IASER also allowed a member of its research staff, Dr. Klaus de Albuquerque to assist in the analysis of National Court records, a task the team could not have undertaken from its own resources. Mr. Ngawae Mitio was engaged by the I.N.A. to compile the records of Dr. de Albuquerque's work.

Mr. Clifford worked on the project for six months, Judge Stuart for nearly four and Dr. Morauta for three months. Due to their various other commitments the team members were working on this report at different time periods from February to August 1984. With only very limited opportunities for more than two members to work together at any given time, there was little work by the team as a whole. With different expertise, team members covered subjects where they had most experience. Mr. Clifford concentrated on the economic and broad dimensions of the problem, corruption, corrections and the personal studies of offenders. He also handled the survey of the private sector. Judge Stuart did most work on police, the Ombudsman and the courts. Dr. Morauta wrote mainly

on informal factors tending towards order, tribal fighting, and village courts. She was also responsible for the analysis of the Law Reform Commission's village dispute data. The greatest area of collaboration was the general policy review and broad recommendations.

In preparing materials team members worked on certain areas in depth where their expertise permitted. From this type of work, longer papers containing description and recommendations arose. Although too long for the main report, these papers are considered useful and have been placed in a volume of ;appendices. Reference is made to all of them in the main text. While the main text contains joint conclusions and recommendations, each appendix reflects the work of only one member of the team.

Between October 1983 when the coordinator made his first visit and January 1984 when he began work, the I.N.A. and the Government decided to set up a steering committee to guide the team and to be in touch with the work as it unfolded It was agreed with the coordinator that the steering committee would not attempt to direct the research or become involved in the technicalities. The steering committee has provided valuable assistance to the team, particularly in the area of the project's relations with government. The method of working adopted by the team was an amalgam of depth interviews, studies of past efforts to deal with the problem and some original work on court records, police methods, offender life histories and costing. Obviously this resulted in a consultant's report more than a specifically research report but this was dictated by the circumstances.

Appreciation

It is impossible to describe adequately the generous cooperation and unstinting practical help which the team has received throughout its work. Both the public and private sectors have gone out of their way to be of assistance. This is all the more remarkable because of the fact that officials, departments, business firms, academics and private individuals have been required for so long to collect data and give informed opinion to different committees, agencies and researchers interested in the law and order question. With us it was as if we were the first on the scene and we were gratified by the confidence placed in us by so many who were going to be affected by anything we wrote. Even the rascals and the criminals both inside and outside prisons shared their time and life histories with us.

It might be invidious therefore to select for thanks certain groups for the special assistance accorded us. However, we would be remiss if we did not record particularly the wholehearted cooperation of the Chief Justice Sir Buri Kidu who opened the files of the National Court to us in a way probably unparalleled by any cooperation between researchers and a supreme court. Secondly, the police who come in for much criticism in this report not only gave us all the help we needed

but supplied much of the criticism of their own service. Similarly the Corrective Institutions Service was anxious to give every assistance with figures and tours of inspection. We had unhampered access to the institutions and to the prisoners themselves. The Commissioner and his staff were most helpful. Staff of the Justice Department were most helpful to us in our enquiries about village courts in Waigani, in the National Capital District and in Enga Province.

Clearly this report could not have been incisive without access to the enormous amount of work done by the Morgan Committee. We are grateful to have been given the opportunity to note the overlap and study its recommendations. The members of the I.N.A. and the chambers of commerce were assiduous in arranging for us to be in contact with the private sector. Whilst we have had the task of drafting a questionnaire and of collecting and analysing the responses received we were entirely dependent on the I.N.A. and the chambers of commerce for the distribution and urging of firms to give us information.

This report owes a great deal to the support of Ephraim Makis, director of the LASER, and of Brian Brogan, the director of the I.N.A. Finally, our sincere thanks go to Mrs. Jocelyn Millett who has word processed every section of this report in between arranging our travel, plying us with reading materials and looking after our creature comforts. To her and her husband John Millett, the Secretary/Treasurer of the I.N.A. who managed our financial affairs with quiet efficiency and understanding, we are grateful for friendship as well as the technical support.

PART 1

PERSPECTIVES ON LAW AND ORDER

Chapter 1

PERSPECTIVES ON LAW AND ORDER

Law and order meanings

This project has been saddled since its inception with the title "law and order study". The phrase "law and order" is on everyone's lips and everyone, it seems, knows what he means. But "law and order" is one of those phrases which has been destroyed by overuse so that there is no longer any clear meaning and the scene is set for misunderstanding rather than clear communication.

In our view there are two basic ways in which the phrase is being used in Papua New Guinea today, with several options and discrepant submeanings within each. First, it is used to mean "peace and good order" and second it is used to mean "peace and goad order established by the state".

The first meaning has its origin for many of its Papua New Guinean users in traditional conceptions of the welfare of small communities. In most parts of the country there was a view that the community as an entity could be in a state of grace, of spiritual and social wellbeing, and that from time to time this state of grace was lost and needed repair until it was restored. In some societies today the Pidgin word lo is used to refer to the state of wellbeing in the community. Usually Papua New Guineans saw sacred offences and disputes as the main causes of a loss of community wellbeing, and saw resolution and restitution as restoring wellbeing. This was, then, a view of peace and good order in the traditional community, a view that was independent of any state participation. It was independent of the state because there was no state. Traditional societies in Papua New Guinea were not only small, they were stateless.

Today when people use the phrase "law and order" some of the time they mean a state of peace and order in the community. One is tempted to add "in the terms defined by that community". Using it this way, they make no assumption about how this is achieved or maintained. Similarly when they talk about a "breakdown of law and order" they mean a disruption of that peace which is the ideal they seek.

In this sense there will always be a law and order problem because no society has ever been known that did not have a problem of non-conformity. There is always a crime problem and, in fact, there are levels of crime with which people live without much concern or fear. When people perceive a law and order problem it is

non-conformity out of control, when it overspills the bounds of toleration, when it engenders fear and undermines security. We can imagine that tolerance of different types of non-conformity is variable within Papua New Guinea. What is acceptable or not particularly disturbing to some is less so to others. People without private cars do not worry about car thefts. Those in safe suburbs are not anxious about break-and-enter. People living on the coast are impatient and unsympathetic about tribal fighting in the highlands.

We can see that there has probably been Borne change in that people are now using concepts derived from small communities and applying them to a nation. But there is no reason to think that this is a mistake. All over the world men and women want peace and good order in their immediate communities and in the wider groupings of which these are a part. Indeed as small communities become elements in districts, provinces and nations, peace and good order within them depend on peace and good order beyond them.

In its essence then this meaning of "law and order" is an aspiration, something people value and want to achieve. It is, we believe, an aspiration encompassed in the National Constitution in the first national goal and directive principle, "integral human development". But it is also an aspiration of the people of this country. Ordinary people believe that law and order in this sense is of fundamental importance to their wellbeing and they want to see it achieved to the maximum extent possible.

The second and quite distinct meaning of law and order is "peace and good order established by the state". Make no mistake, this is a quite different usage. It specifies the means as well as the end; it says not only that there is something called peace and good order but that it is to be achieved with the assistance of the state. The first meaning implied nothing about the means by which an aspiration might be achieved. Confusion between these two meanings in everyday discussion in Papua New Guinea means that people are constantly talking past one another: some talking about the kind of life they want, others speaking of the role of the state.

In this second sense "law and order" means the use of state agencies to bring about good order. But this meaning covers different views on the role of state agencies. Some see the government's role in law and order as benign and in the interests of all members of the nation. Others see the state's role as inevitably repressive and coercive and operating in the interests of a few against the interests of the majority. People regarding the state as benign will regard crime and disorderly behaviour as a sign that the government should more effectively impose its will on the deviants. Those of the opposing view will argue that there is nothing wrong with the offenders, that the only problem is the unjust political, economic and social system which creates the disparities. They might even be extreme enough to suggest that the offenders are really the victims and the true criminals are those enjoying power and authority.

It has become academically fashionable to dub these traditional and radical approaches to crime and its control as the "consensus" and "conflict" theories respectively. Like all such dichotomies it is an oversimplification of a complex field; but there has been convenience sociologically in labelling as the "consensus" group the variety of approaches which accept society as requiring prevention or correction; and then, in contrasting this with the conflict theorists, who see crime as an inevitable consequence of the power elite imposing its will on the rest of society and using law and law enforcement to perpetrate privileges, inequalities and an unjust status quo.

The government needs to be aware of this debate if only because it is already dividing those on whom it may need to depend for advice. For the purpose of this report, however, the point to note is that there is little evidence that changing the political system wilt either eradicate crime or make it possible to dispense with a criminal justice system. No revolution in a society has ever left it without crime or without a machinery of law enforcement to deal with offenders. Maybe the types of crime changed. But even in this respect murder, robbery, stealing and corruption have remained basic crime problems to be dealt with as much after the revolution as they were dealt with before it.

We should note here that "law and order" is used internationally in this latter sense. Across the world "law and order" is frequently contrasted with human rights, more of the one meaning less of the other. It is supposed that reactionary governments are concerned with law and order whilst liberal administrations protect human rights. For the Government of Papua New Guinea to be so exercised by law and order is tantamount for some to an admission of interest by the government in the erection of a repressive regime.

When people use the phrase in this way a "law and order problem" means a problem of and for the government. They mean that a law and order problem in the first sense is caused by the weakness and failure of government, a law and order problem in the second sense. They assume that it is only a question of getting government inputs right and the problem will disappear.

There is a strong theme in the emerging political culture of Papua New Guinea that all problems are government's problems and all solutions lie in the hands of government. This is as true of peace and good order as it is of health and agricultural development. It is an attitude born of the colonial period and of the large discrepancy between the monetary resources of the state and private individuals. It has carried over into the post-independence era not least because today's governments have been concerned to match or surpass colonial achievements. But government and people alike have only begun to consider the limits of government's role, and how best the government might use limited resources. For instance the use, pays" principle is only slowly establishing itself for urban services and massive subsidies to users of roads are not really in question. So, too, in the area of peace and good order, there has been little questioning to date of the limits of government's responsibilities and abilities.

On the other hand, there is not always much confidence in government's abilities. In rural areas and in the Papua New Guinean suburbs and settlements of towns, people are often disillusioned with government and the services it provides. Many services, including rural administrative patrols, agricultural extension, health aid posts, school standards and police performance, are regarded as unsatisfactory. Relations between people and police are often strained and courts are seen as politically suspect or capricious. As a result many if not most Papua New Guineans do not have much confidence that the government can handle whatever problems of disorder they are facing.

The two meanings of law and order are used by different people in different ways. We would like to suggest that the common man, the rural farmer and the man on the urban street, is more concerned with defining the ideal and the problem in the first sense. He is primarily concerned with his quality of life and doubtful about what government can do to assist him. On the other hand the small elite of the country, and public servants and politicians are among their number, are not only concerned about the problem in the first sense but they almost always see it as a government problem in the second sense. Indeed they usually tend towards the view that the problem can be solved by more effectively applying the force of government to what are regarded as recalcitrant elements in the wider society. They are, therefore, in what may be regarded as the more reactionary of positions described in this chapter.

It is essential that our readers recognise where what are sometimes called "the law and order agencies" stand on these issues. The police, the corrective institutions, the Department of Justice, the lawyers and the judges, all see the law and order problem in the first sense as government's and therefore their problem. They see the answers to the problem as lying with them as representatives of the state. They can and must find these answers in their own operations. Nonconformity must be controlled by their resources. It must be clear that such agencies are very unlikely to take any other view. Staff have been trained in this tradition and they see their personal and institutional interests as threatened by any alternative. There is also a wide and widening gap between members of the elite who work in these agencies and the common man. Ignorance, competing interests, different life-styles and, perhaps, in this first generation guilt and sadness, all divide people working in these agencies from the large majority of the country's population.

A word should be said here about the role of expatriates on ideas about peace and good order because whilst they are disproportionately victimised their influence is out of proportion to their numbers. Expatriates are influential in training and educational institutions, promoting ideas and approaches developed largely overseas. They are at best ambivalent about the problem, the University of Papua New Guinea being an example of liberal or left-wing sentiments behind barricaded streets and high security fences. The private sector, except those in the security industries, sees the law and order problem as a threat to its commercial viability. Against the background of highly formal approaches to crime in the West, the sector turns to government for answers.

The approach in this report

We see this report as concerned with law and order in both the senses we have described, but with a major difference between them. We accept the first as defining the scope of our work, and the second as a matter for investigation and determination. We believe our job is to address ourselves to the aspirations of Papua New Guineans for peace and good order in their society. But we want to treat the role that government does and should play in achieving this goal as a matter for investigation and consideration. We do not want to begin by assuming that the government does maintain whatever measure of peace and good order currently prevails. Nor do we want to assume that one particular role for government is the best. Rather we prefer to consider the fundamental policy issue as what part, if any, should the government play in the maintenance of peace and good order and in our recommendations to try to define what that role should be.

We are the latest in a long line of enquiries and reports on this topic. If we have something slightly different to offer, it may be in the following:

1. We offer a review of policy as much as programmes, looking at fundamental approaches and seeing programmes as subservient to these.

2. In the review of policy, we stand further back than our predecessors, questioning the nature of the role of the state in peace and good order.

3. We see policy on law and order not as a function of specialised agencies, acting together or in competition, but as a function of government itself. We therefore address ourselves to government through cabinet and parliament not to a series of agencies or committees of the bureaucracy.

The scope of our study

Since we are concerned with peace and good order in the community and nation we must look initially at all possible elements in the situation. It is clear that there are different views about what is right and wrong and how wrongs should be handled. In Papua New Guinea we often hear about the conflict between customary and Western values or law. This is simply a local form of the more widely occurring phenomenon of disagreement between the state, with its views embodied in the laws of the land, and some or all of its people. More thoughtful commentators on the issue of customary law have also taken this position. For instance in a draft Underlying Law Act a panel of legal specialists defined customary law as "the customs and usages of indigenous inhabitants of the country

existing in relation to the matter in question at the time when and the place in relation to which the matter arises regardless of whether or not the custom or usage has existed from time immemorial" (Law Reform Commission 1977).

In Papua New Guinea, as elsewhere, the views of "the people" are not unified There are several sources of divergence: traditional values and custom, different experiences in contact with missions and government, variations in economic class, education and life-style and place of residence, especially the town/village distinction. While many writers have emphasised the traditional past as a source of diversity, we would like to underline the importance of contemporary economic, educational and social differentiation in producing different attitudes to both law and order.

In a simple model of state versus people there are four possible situations with respect to any action by an individual. These are shown in Figure 1.1.

Figure 1.1

Classification of a single action by state and people

	State's view	People's view
Possibility 1	breach of norm	breach of norm
Possibility 2	breach of norm	no breach of norm
Possibility 3	no breach of norm	breach of norm
Possibility 4	no breach of norm	no breach of norm

While in possibilities 1 and 4, there is no disagreement about the norm or the definition of order, in the other two situations there is. In possibility 2 the state perceives disorder but "the people" do not (as in the case of tribal fighting), while in possibility 3 the state does not feel there is a problem while the people do (as in case of pollution).

Recent studies of attitudes to offences underline the existence of discrepancies of this type. Strathern (1975x) describes how in most rural Papua New Guinean societies the legal offences of sodomy, bestiality, homosexual dealing and bigamy are not regarded as offences at all, while adultery is regarded as a serious offence that infringes the rights of one person in another. A recent survey of attitudes to

legal offences found that rural Papua New Guineans regarded adultery as more serious than murder, although in terms of legal penalties murder is ranked first and adultery twelfth. The views of urban respondents, however, fitted the ranking of legal penalties more closely (Richardson, personal communication).

Other observers have noted differences between state and people in Papua New Guinea over the goals of dispute handling and in the procedures applied to offences. While the state is concerned to achieve justice, many Papua New Guineans are primarily concerned either to restore harmony and patch up relations which have deteriorated (Lawrence 1969 ; Podolefsky 1978) or, as all over the world, to be a winner in a situation of conflict. The emphasis in popular proceedings is often, therefore, on restitution and compensation rather than punishment. There is also a difference between the way the law treats offences and the way many people perceive them. While the law treats an act as an offence regardless of the social relationship between parties, in many situations the relationship between the parties defines the offence in the eyes of the people (Epstein 1973). How an act is viewed and what reaction there is depends on the social relationship between the parties and the political relations between their groups (also Koch 1974).

But we should note at the same time that there are now well-educated and legally trained citizens whose views of norms and appropriate responses to breaches of norms coincide closely with those expressed in the written laws of the country. Such citizens seek Western-type resolutions for many of their problems, are to be found encouraging others to do so and deplore the ignorance of those who do not. Given their better access to the institutions of law, these people are often engaged in using the law to adjust their relations not simply with their peers but with those of lesser means and education, what Black (1976) has called the application of "downward law".

There is also a type of disorder created if you like by the state, in the sense that it would not exist without the institutions of the state. We refer to corruption, the use of public resources for private ends. Attitudes to this type of disorder also vary. Some observers have suggested that people unfamiliar with state institutions may find the use of state resources for private ends acceptable and that such a view is consistent with traditional expectations of leaders (Strathern 1975b). This argument suggests corruption is invisible or acceptable to the common man. We are not certain that this is the case, because there are countervailing pressures on his perceptions. He himself receives little benefit from state actions and in handling state resources is constantly supervised and exhorted to honesty. He has difficulty in getting access to those services to which he feels he is entitled: access to doctors, adequate supplies of simple medicines, primary schooling and so on. Corruption is obviously viewed variously within the public service, with many people accepting practices which a few would find unacceptable.

Where does this study stand in relation to these divergent views of what constitutes peace and good order? We take as our starting point anything regarded as order and disorder by anyone in Papua New Guinea. However, for practical purposes we focus most on two areas:

- order and disorder about which most people and the state agree, and
- order and disorder as perceived by the state, where people may not perceive a problem to exist or are in disagreement with state views.

We take this approach because we are concerned with offering advice to the state and must address ourselves, in the time available to us, to its needs and perceptions. We do not entirely ignore the areas where the people have concerns not of interest to the state and we have a place for these in our final scheme of recommendations.

In looking at peace and good order we are as much concerned with the forces tending towards order as with the definitions of it. What prevents people from breaching norms more often? What happens when a noun is breached? In answering these questions we want to take a position which again distinguishes us from our predecessors in reviews and enquiries. We argue that there may be two types of forces tending towards peace and good order in Papua New Guinea today, state and non-state forces. Alternatively these could be called the formal and informal sectors. The former includes the police and corrective services, the judiciary and the courts, including village courts, and the activities of other government agencies. The latter includes community institutions of self-help and mediation and other informal controls. At the outset we do not assume anything about the relative importance of each sector, the relationship that currently exists between them or what is desirable.

Our presentation follows the approach we have adopted. In the next section of the report, Part II, we look at the extent and nature of the problem of law and order, viewed from the broad perspective outlined here. In Part III we look at the structure and resources that currently respond to the problem, making the distinction outlined between formal and informal structures. In Part IV we present our conclusions and recommendations, first in broad policy terms, second in a series of recommendations for implementation in line with our recommended policy, and third in a review of our proposals in operation.

PART II

THE PROBLEM EXAMINED

Chapter 2

DIMENSIONS OF THE PROBLEM
THE SHORTCOMINGS OF PAPUA NEW GUINEA'S RECORD KEEPING

Part I will have induced some caution about the various attempts which are made to show how great or how relatively insignificant the law and order problem is in Papua New Guinea. The reality is that no country in the world has been able to obtain a satisfactory measure of the extent of its crime or insecurity. Police figures, the usual guide until very recently, are suspect because on the one hand they reflect only what the police do and on the other hand they inevitably fluctuate with the size and activity of the force. That happens even when they are scrupulously maintained: and crime can suddenly rise or fall as policy changes occur in the routine reporting procedures of the police or in the dispositions of manpower, reducing or increasing the amount of paper work. In Papua New Guinea, as demonstrated by this report, the compilation of figures by the police leaves so much to be desired that the statistics available might not even reflect accurately what the police try to do.

Maybe only 20 per cent of the crime is reported to the police. The reporting rates differ of course according to the crime. Stolen vehicles are always reported because they are insured and this is the first step in the approach to the insurance companies. Also, nearly all these vehicles are recovered sooner or later. Murders are unlikely to go unreported or remain unknown to the police to any great extent particularly in a country where the "pay-back" murder may be a follow up or where the desire for compensation is so very great. But the extent to which rape will be reported varies in time and place and there are thousands of other offences which, for one reason or another, remain unknown to the police. This is the so called "dark-figure" for crime which in recent years has been pursued by a variety of "victimisation studies". In these, people are asked to say how many times they have been physically attacked, burgled, robbed or stolen from. In most areas these have confirmed the low rate of reporting to the police. Respondents are also asked why they did not report to the police and the usual answers have been that they did not think that the police would be able to do anything about it. There may have been other reasons of course such as the suspect being a close relative or the offence being so very trivial or the victim having good reason to avoid contact with the police: but it is significant that the extent of non-reporting to the police is about the same in a variety of countries where crime has been studied - and that the reasons for non-reporting are not all that dissimilar.

Yet, as a measure of crime, victimisation studies have their own shortcomings. Without legal sophistication a lot of people confuse robbery with theft and may discount housebreaking for purposes felonious but unconnected with stealing. People exaggerate or lie: and, though sophisticated survey techniques can correct for distortions of this kind, they cannot eliminate them altogether.

The modern tendency is to take the police figures and the results of victimisation surveys together to get a better idea of the crime problem. If such data collections are repeated systematically at given periods of time - every year, every five years or at least every ten years, they provide valuable indicators of the changes which are occurring even when the actual size of the problem is still in doubt. Thus, the United States, in recent years, has been able to use the victimisation surveys conducted regularly to throw doubt on the previous impression from the police figures that crime was constantly rising. In Australia, a more extensive time-series investigation of crime from the beginning of the 20th century to 1980 using the figures for offences heard by the courts and comparing these with changes in police strength and with the economic and social changes shown by a variety of other social indicators, has concluded that (proportionate to population over 10 years of age) the figures for serious crime (and particularly violent crime) have not been rising. This, of course, is a quantitative measure - it says nothing about the quality of the crime e.g. whether it is getting more vicious, more concentrated in some areas more than others or becoming infinitely more sophisticated and technical.

Toleration

Before moving on to an examination of police recording and statistics in Papua New Guinea it is appropriate to observe that the failure by the public to report a crime to the police is to a great extent a function of the degree of tolerance in a community. There are some offences in this and any other country which are accepted as normal behaviour. There are other forms of behaviour not forbidden by the written law which arouse communities to fury - like adultery in some of the rural communities of Papua New Guinea. We refer in the chapter on corruption for example to this being regarded sometimes as a fulfilment of obligations to family and relatives. The fulfilment of the obligation is much more important than the breach of law. Generally speaking property offences may be more tolerated in customary-oriented societies than in capitalist societies where property has more meaning. Thus in Papua New Guinea as in England or Australia the extent to which the public uses the police depends on levels of tolerance. Where the police and community relations are close the police will use discretion to avoid prosecuting tolerated offences. Where they do not use such discretion the flow of public information about the "tolerated" offences will dry up - and the offenders might be protected.

Papua New Guinea crime recording

The statistics are advanced and the computer techniques very refined for this type of analysis. There is no possibility at this stage of applying them to the situation in Papua New Guinea with its suspect data gathering and its geographical complications. This chapter should have been entitled "Why we do not know the dimensions of the problem". Because any confidence in the available data is shattered when the recording system is scrutinised. A broad impression would be that for a population of three million with such a high proportion of the people under 20 years of age, the amount of crime that is officially recorded - or which

has been modestly sampled by the few questions on victimisation inserted into other types of surveys, is not particularly high. Some striking exceptions have been suggested however. According to police reports, the pattern for major criminal offences between 1966 and 1983 is that given by Figure 2.1. This shows that the overall crime rate has not significantly increased since 1975. However, some serious crimes have experienced alarming increases from the year ending 30 June 1976 to 1983[1].

- Homicides and attempted homicides (Figure 2.2)
  44 in 1976 to 274 in 1983, an increase of 523 per cent
  (Note: in 1982 rose to 420)

- Rape and attempted rape (Figure 2.3)
  102 in 1976 to 465 in 1983, an increase of 356 per cent

- Assault - bodily and grievous bodily harm (Figure 2.4)
  156 in 1976 to 500 in 1982, an increase of 233 per cent
  (Note: figures not available in same categories in 1983)

- Unlawful wounding
  66 in 1976 to 179 in 1983, an increase of 195 per cent

- Arson (Figure 2.5)
  47 in 1976 to 197 in 1983, an increase of 319 per cent

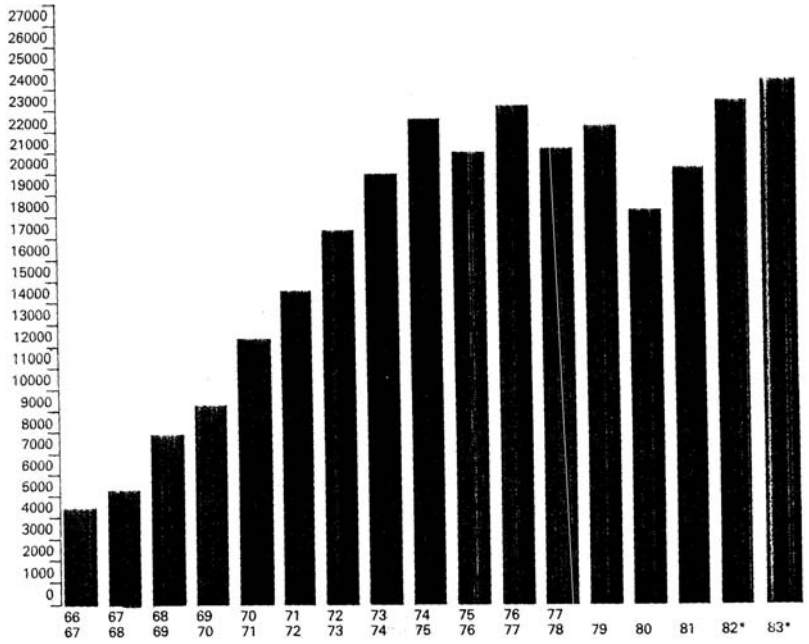
- Dangerous driving causing death (Figure 2.6)
  6 in 1976 to 121 in 1982, an increase of 1917 per cent
  (Note: The inaccuracy of police statistics is highlighted by the impossible drop in these crimes from 121 in 1982 to 18 in 1983!)

- Robberies
  Only statistically recorded separately in 1982. An increase of 38 per cent from 410 in 1982 to 566 in 1983.

However, according to the official account, the alarming "statistical" growth rate in serious crimes except for rape and robbery has been showing signs of stabilising, and some serious offences such as homicide, grievous bodily harm and wounding are supposed to have slightly decreased in the last few years. Moreover, the more common offences such as stealing and break and enter which constitute almost 50 per cent of the total number of all offences are said to have slightly decreased since 1975-76 (Figures 2.7 and 2.8).

1. All figures for 1975-1976 taken from the annual report (Royal Papua New Guinea Constabulary 1976) and 1983 figures provided by National Crime Records Office.

Major Criminal Offences

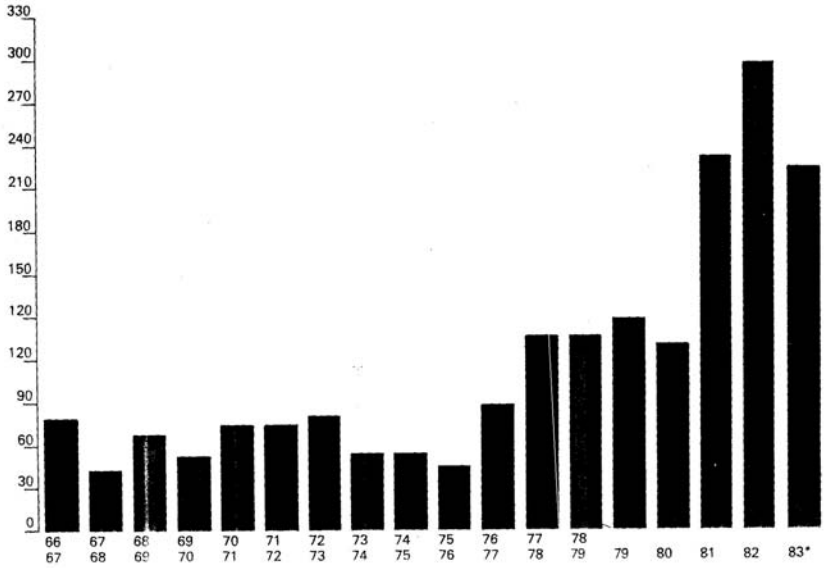


Source — Provided by RPNGC and Based on Annual Police Statistics.
* 1982 Column corrected to reflect Crime Statistics provided by National Crime Record Office of H.P. PNG.

* 1983 — Statistics provided by NCRO

FIGURE 2.2

Homicide

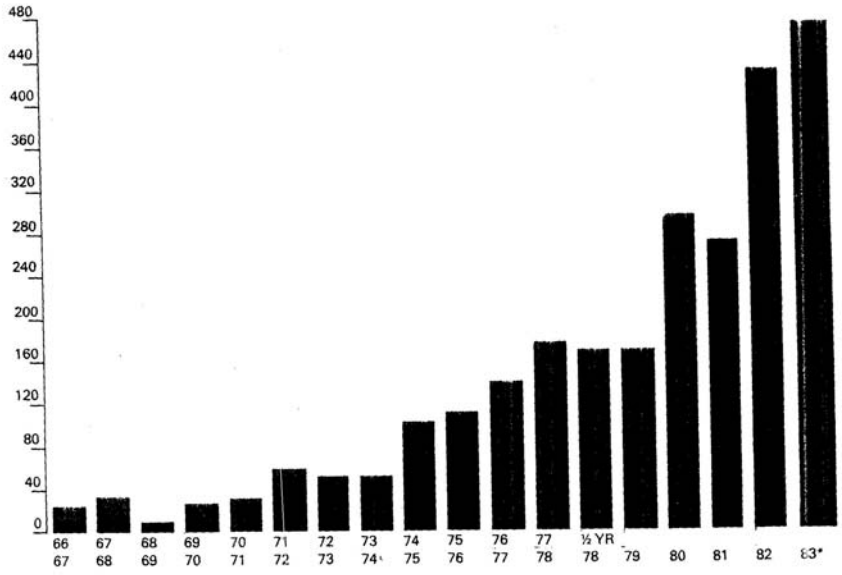


Source — RPNGC — Annual Police Statistics

* 1983 Figures supplied by NCRO of the RPNGC.

FIGURE 2.3

Rape/Attempted Rape

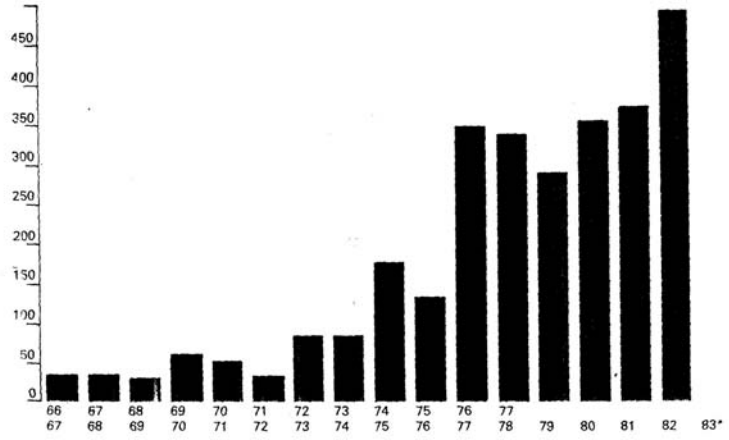


Source — RPNGC — Annual Police Statistics

* 1983 Figures provided by NCRO.

FIGURE 2.4

Assault — Bodily & Grevious Bodily Harm

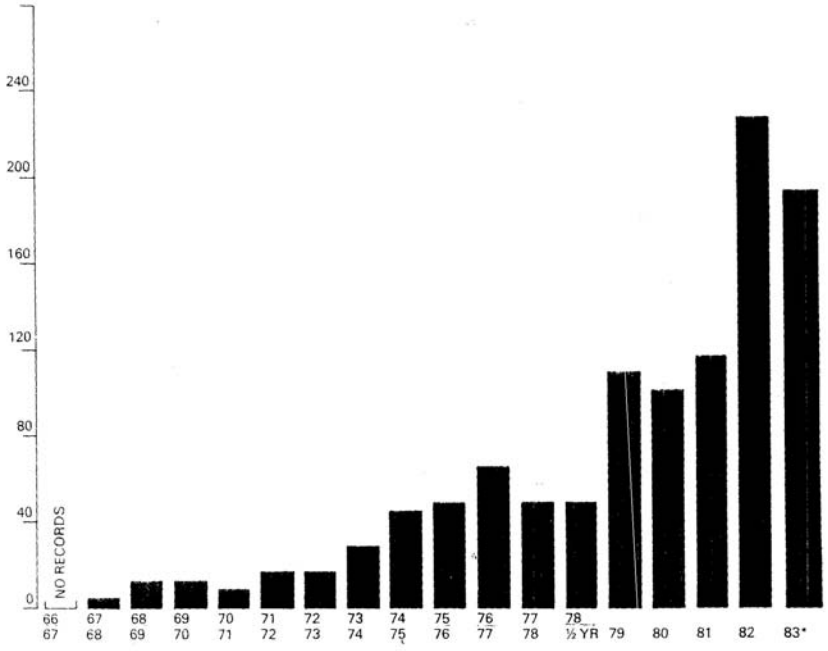


Source — RPNGC — Annual Police Statistics

* 1983 Figures provided by NCRO involve different categories.

FIGURE 2.5

Arson

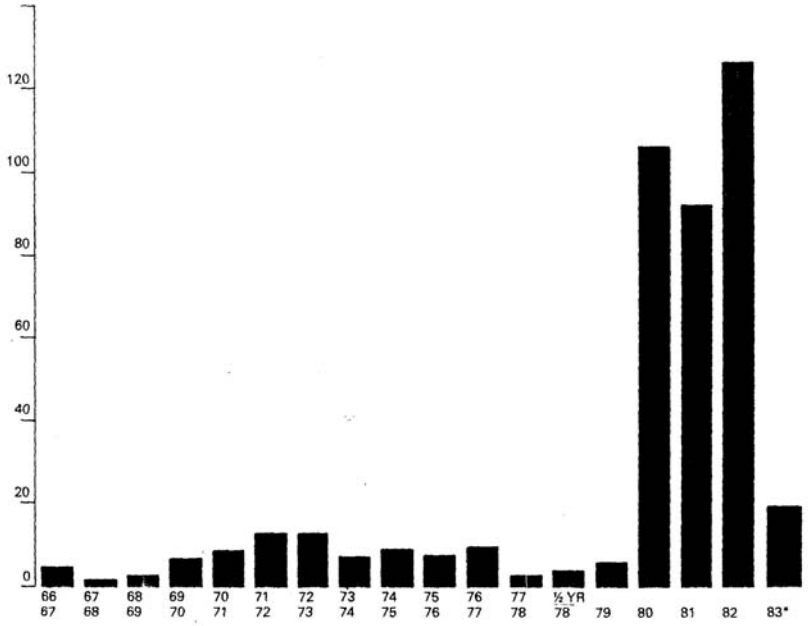


Source — RPNGC — Annual Police Statistics

*1983 Statistics provided by NCRO

FIGURE 2.6

Death Due to Dangerous Driving

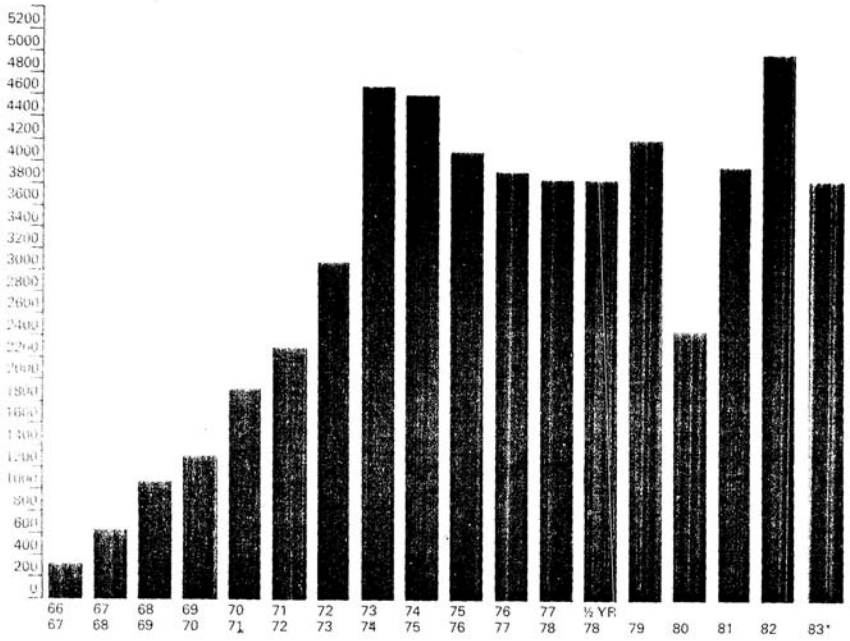


Source — RPNGC — *Annual Police Statistics.*

*1983 Statistics provided by NCRO

FIGURE 2.7

Break & Enter

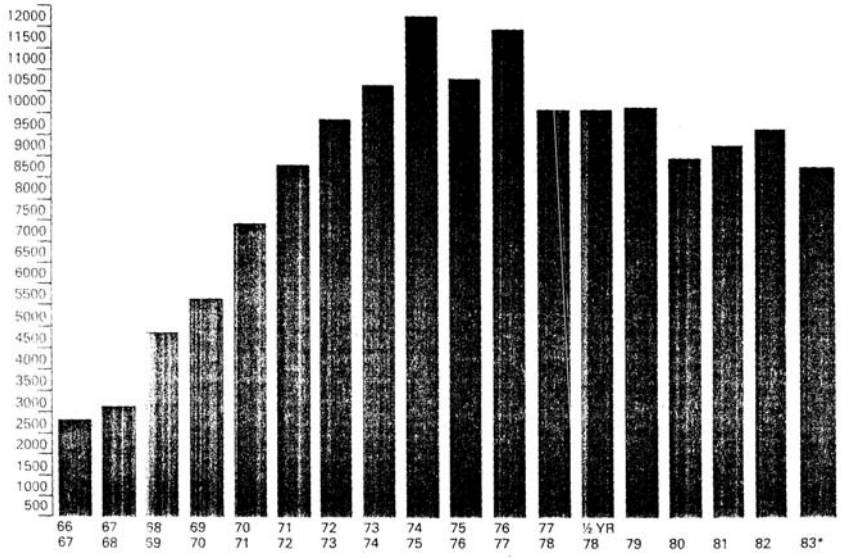


Source – RPNGC – Annual Police Statistics

*1983 Statistics provided by NCRO

FIGURE 2.8

Stealing Offences Recorded



Source — RPNGC — Annual Police Statistics

*1983 Statistics provided by NCRO

If we rely on the available police statistics therefore, the crime rate per capita in Papua New Guinea is not exceptionally high when compared to reported rates in other parts of the world. Though public fears are serious in some quarters, a rough comparison of the overt expression of these with events in some other countries developed and developing is still favourable to Papua New Guinea. There are places where the public fear of uncontrolled crime is already leading to a very violent public reaction.

As this is written, the writer has dined with one United Nations official who has just returned from a visit to Rio de Janeiro where she witnessed the lynching by a mob of angry citizens of a young boy who had been caught in the act of robbery in the street. However the writer remained sceptical until he had this story and many other instances of the public taking the law into their own hands confirmed a few days later by several Latin American officials of the United Nations now working in Vienna but regularly visiting Brazil. It seems that a diplomatic furore was aroused when a prominent German journalist was shot through the heart in Rio de Janeiro whilst he was being mugged; and another German - a tourist - was also shot and killed. Rio's world famous beaches are no longer safe. Special "shock" police are being used to protect bathers from marauding muggers. Warren Duncan writing of Brazil in the Sydney Morning Herald of 18 April 1984 (p.9) talks of crime now being "the way of life for an increasing number of Brazilians". He describes the statistics for reported robberies, armed assault and murder as "terrifying" and says that the police admit that this reported crime is only the "tip of the iceberg".

In Nigeria the government still uses public executions by shooting to deter armed robbers. The International Herald Tribune for 17 May 1984 carried an article by Robert Trumbull dealing with Penembuk Misteria i.e. "mysterious killings" (as the newspapers call it) in Indonesia. Since President Suharto instituted a nationwide anti-crime campaign in that country, known gangsters and notorious criminals have been executed by death squads - in a manner reminiscent of death squad executions of offenders the police could not catch or prosecute in several Latin American states. Suryono Sukanto a sociologist of the University of Indonesia had explained in one of the newspapers Kompao that it takes an average of fourteen months for a criminal case in Indonesia to reach the courts. Whether this is intended as a justification of more direct action against criminals or not, the fact is that about 4,000 of these Penembuk Misteria are said to have taken place in 1983. Further information is difficult to obtain because of the controlled press and the lack of public information on the killings themselves. However, one of the writers of this report has been able to obtain independent information which confirms general impressions. In the Philippines, President Marcos has recently re-instated the secret marshals operating in plain clothes - and with guns to deal with the underground. There are frequent "shoot-outs" in this form of crime control and offenders seem more likely to be buried than tried

Even places which have been peaceful and relatively crime-free have, had more trouble with crime recently than they ever had before. In June 1984 it was announced in Malta that members of the Id Dejma (a local militia) would henceforth be used to control all access roads to and from inhabited areas of the island. This, said the official announcement, was to be done "to reduce the

number of burglaries and crimes committed during the night". And Malta was once considered to be practically crime-free. Yet between 1980 and 1983 (as Appendix A to the Malta Police Report for 1983 shows) offences of carnal knowledge, rape and indecent assault nearly doubled (from 24 to 43 offences), bodily harm went up about 10 per cent and there were 41 cases of receiving stolen property in 1983 as against 23 in 1980.

Australia, Papua New Guinea's developed neighbour and long time mentor is having its own law and order problems which are crystallised by the number of royal commissions being set up to deal with drug trafficking, corruption and organised crime. In fact there the federal government has established a National Crimes Authority to deal with organised crime. The Australian Federal Police in their television programme on Saturday 21 April 1984 announced 60 breakings and enterings in Canberra the previous week. In the Canberra Times, 26 March 1984, (p.3) Detective-Sergeant Rick Ninnes, head of the Australian Federal Police's newly formed "breaking squad" said that between 1 January and 17 March 1984 there had been 537 break-ins in Canberra. In one week in February there had been 69. The Canberra Times for Friday 27 April 1984 mentioned 66 break-ins and thefts in the capital between the 14 and 26 April and said that violent crime had increased dramatically in the previous six months - nine murders, many violent assaults and robberies. Bruce Reid the Liberal Shadow Minister for Police in the State of Victoria was quoted by the Bulletin (8 May 1984) as saying that there had been -

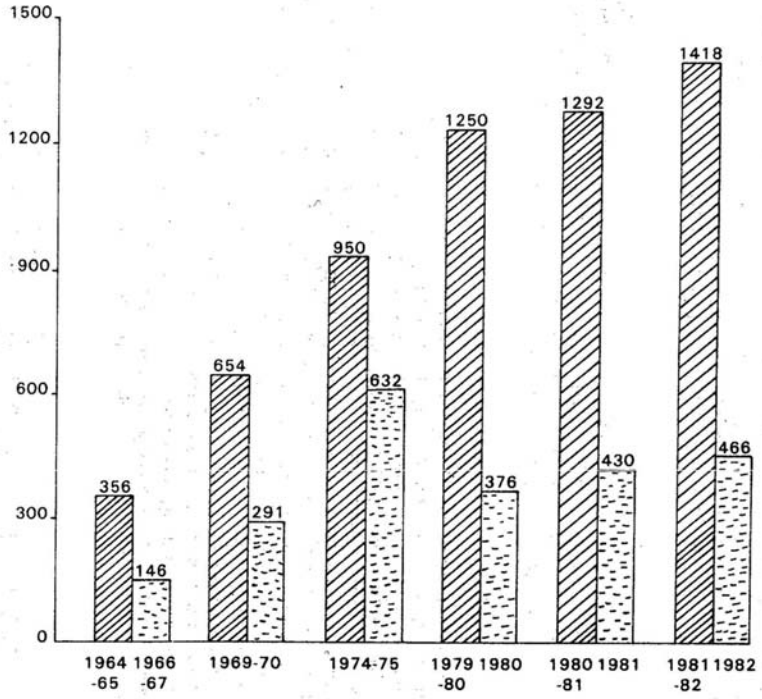
> "a plague of 204,478 serious crimes in Victoria in 1983 and a galloping rate for 1984". (The figures for February 1984 were 20 per cent up on those for the same period in 1983 and there are currently reports of some 600 serious crimes a day committed in Victoria.)

Dr. S. K. Mukherjee of the Australian Institute of Criminology is quoted in the Sydney Morning Herald of 2 April, 1984, as saying that one Australian home will be broken into every four minutes this year and that break, enter and steal offences have reached "epidemic proportions". In 1981 in metropolitan Sydney alone there were 48,465 breakings and enterings reported to the police with property stolen to a value of $46.5 million.

Against a background like this the Papua New Guinea problem of law and order does not loom nearly so large; for example see Figure 2.9. It is significant that it has, so far, been spared the drug problems of so many other countries (except alcohol) and though it cannot hope for ever to escape the attention of the international drug trafficking cartels it should receive the credit, when being compared with other countries for not having the kind of drug problem which aggravates other crimes. Again it would appear to have no real problem of organised crime such as that troubling its southern neighbours.

FIGURE 2.9

NUMBER OF BREAK, ENTER AND STEAL OFFENCES REPORTED TO POLICE PER 100,00 POPULATION AUSTRALIA, 1964-65 TO 1981-82 and PAPUA NEW GUINEA 1966-67 TO 1982



Sources — Mukherjee, S.K., 1984
1966-82 Crime Statistics. Royal Papua New Guinea Constabulary.

So why does the law and order issue loom so large and why does it invoke such public concern. It seems that this is because whether in the form of tribal fighting or urban breaking and entering it tends to victimise the same groups repeatedly. The evidence for its concentration on particular victims in particular places is very clear. The above figures for Canberra for instance are for a population of maybe 300,000 people: but Papua New Guinea's National Capital District with half the population has figures which are not dissimilar. Moreover, as we proceed to demonstrate, the sheer incompetence of the response by the crime control agencies makes the crime problem seem much worse than it is. The boldness of criminals, the disdain they show for authority and the gross ineffectiveness of a law geared more to protect the innocent than to convict the offender all make the victim feel neglected and unprotected He worries because there seems to be little official concern with his problem. But to return to the official figures....

If, contrary to popular conceptions, and contrary to the impression constantly portrayed by the media, crime in Papua New Guinea based on police statistics is not a growing problem, we need to look at this disparity between the statistics and public experience. On two separate grounds, we believe that the suggestion implicit in police statistics and conveyed by some foreign comparisons - that there is no serious or increasing law and order problem in Papua New Guinea is probably wrong, even by its own criteria. Firstly, police statistics as shown cannot accurately describe the level or nature of crime occurring in Papua New Guinea. But neither in this country do they reflect accurately what the police do about the crime they know about. The available police statistics are immeasurably less reliable than comparable statistics in most other jurisdictions. Secondly, the ability of the justice system to cope with crime significantly determines how a community is affected by crime. Arguably, even low rates of crime can be more disruptive to the community, business and safety of all citizens if the justice system fails to properly respond. If criminals are not deterred by the risk of being apprehended, they are likely to become more brazen, more violent and ultimately more inclined to regard crime as a reliable livelihood. Irrespective of crime rates, a lack of public confidence in the justice system's ability to protect them causes the public to feel less secure, and to become less dependent upon formal justice services for protection or justice. If laws are not enforced, some businesses quickly acquire a crucial competitive advantage through illegal practices or corruption. To survive, other businesses will be forced to adopt similar illegal practices. Failure of the justice system to cope with crime will ultimately foster higher rates of crime.

Police statistics on "reported" crimes

The Annual Police Reports feature a table depicting national crime information. Table 2.1 is taken from the 1982 Report (Royal Papua New Guinea Constabulary 1983). The column in this table listing reported crimes has been relied upon for years to assess national crime patterns. In recent years these statistics have indicated a levelling off of total reported crime in Papua New Guinea, and in 1983 the statistics revealed a slight decline. This declining crime trend has posed a perplexing riddle; how can statistics show crime is declining when everyone's experience suggests an exploding increase in crime! Sadly, the solution to this riddle is very simple.

TABLE 2.1

BREAKDOWN — CRIME STATISTICS

CRIMINAL OFFENCE	TOTALS *	DETECTED	ARRESTED	FEMALE	UNDER 9 YEARS	UNDER 9-12 YEARS	UNDER 13-16 YEARS	UNDER 17-25 YEARS	OVER 25 YEARS
Homicide	326	174	179	4			7	70	102
Attempted Homicide	94	55	55	3			5	21	29
Grievous Bodily Harm	206	110	112	8			4	54	54
Unlawfully Wounding	226	106	106	5			10	55	41
Rape and Attempted Rape	414	154	154				24	67	63
Sex Offence (Male Victim)	30	24	24				2	7	15
Sex Offence (Female Victim)	109	71	71				5	42	24
Kidnapping and Abduction	9	2	2				1	1	
Death Due Dangerous Driving	121	115	115					43	72
Arson	214	103	104	3		1	2	56	45
Break, Enter and Stealing	5 014	670	686	2	4	22	90	451	119
Stealing	9 187	5 927	6 079	238	17	183	739		
Robbery	410	57	61			3	5	41	12
Tamper with Motor Vehicle	209	40	41	1			6	24	11
Unlawful Use of Motor Vehicle	950	178	180				36	106	38
Unlawfully on/in/adj. to Prem.	2 403	2 088	2 115	148		21	156		585
Malicious Damage	1 900	1 156	1 376	138	5	13	163	801	394
Possession of Stolen Property	777	777	777	35	2	26	95	417	237
Illegal Use Firearms	87	87	87					40	47
Drug Offences	14	14	14					6	8
Forgery and Uttering	185	71	71	1			4	44	23
False Pretences	335	206	206	5			4	121	81
Valueless Cheques	149	45	45					16	29
Fraud	39	17	17	2				11	6
TOTAL	23 408	12 247	12 677	593	28	269	1 358	7 906	3 116
MISCELLANEOUS OTHER	2 044	1 728	1 728						
GRAND TOTAL	25 452	13 975	14 408						

Note: * Column referred to as "reported crimes"

Source: Royal Papua New Guinea Constabulary Annual Report 1982, p.31

Police statistics are abysmally wrong. The statistics dramatically understate the crime rate throughout the country. The sources and causes of errors in police statistics are multi-faceted and the list of errors set out below perhaps only scrapes the surface. Each opportunity to explore a little deeper into the process of compiling police statistics reveals additional errors. Hopefully others will be inspired by the following expose to dig deeper and help the police to ultimately flush out all errors.

Tracing the evolution of a crime as it progresses through the police system to become a reported crime statistic illustrates why police statistics on reported crimes are so very unreliable. To become a reported crime statistic the crime must travel through four stages. An analysis of the drop-out rate at each stage is necessary to appreciate why many crimes fail to graduate through the system to become a "reported crime" statistic. The process is shown by Figure 2.10 and the details are as follows:

Stage I. Firstly, the police must know about the crime. Thus the crime must be reported to the police or detected by the police.

The following factors suggest a minimum of 50 per cent and a maximum of 70 per cent of all crimes are not reported or detected by the police. (The quotations included are typical of those made in interviews conducted by the team.)

- The Lae Urban Population Survey in 1983 found only 27 per cent of the victims reported household thefts to the police. A similar figure (33 per cent) was obtained from the Urban Population Survey in five towns in 1977 (Bureau of Statistics 1978).

- Property offences constitute 80 per cent of all crimes statistically reported in 1983 (break-ins; stealing; unlawful use; using motor vehicle out consent; possession of stolen property; unlawfully on premises; loiter with intent, and possession of house breaking tools and malicious damage).

- Property offences based on all interviews of police, citizens, and business indicated many offences, especially minor infractions, are rarely reported Some businesses have completely ceased to report any offence where the value taken is less than K200 and no one is seriously injured.

- Interviews with police, lawyers and business people suggest that the vast majority of property offences involve less than K200 worth of goods, and/or property damage. One estimates these minor property offences constituted less than 60 per cent of all property offences. In 1975 Mackellar's study of house breaking offences in Port Moresby found 44 per cent of all offences involved less than K100 (Mackellar 1977). Mackellar also found that in 28 per cent of all offences nothing was taken.

- Interviews of police, lawyers and judges indicated crimes against the person, especially assaults, were not being reported to police as frequently as in the past.

> "Most people - even if badly hurt don't want us (police) in it - they deal with it ...much more now than before...may have something to do with the more (drinking) that goes on now. ..lot of beatings, sexual assaults inside families don't get touched."

There were only 470 serious assault cases statistically reported in 1983 (grievous bodily harm 188; unlawful wounding 179; aggravated assault 103;) . This may represent but a fraction of the number of serious assaults each year.

> "We see the after effects and we hear about assaults - so many just never come to us."

- Often fraud and other thefts within government and corporations are handled by dismissals and restitution.

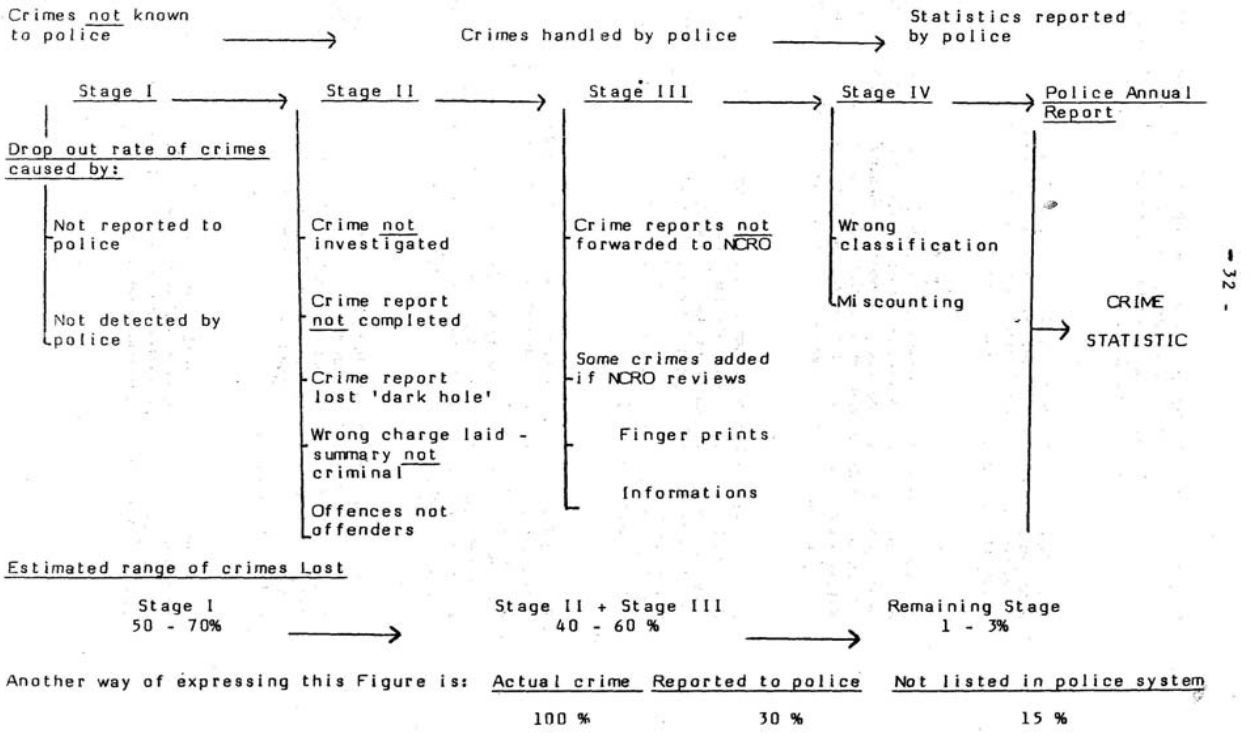
> "Stealing from us every day - lose thousands of dollars every year - but we can't control it (coffee buyers):"
>
> "When we find out who does it (steals from stock) we fire them - that's it."

- Of all persons interviewed by the writer, 44 in all, who were asked to estimate the number of crimes not reported to police the average estimate was 60 per cent; no one estimated less than 50 per cent, and some estimated as high as 80 per cent. Those who estimated in the higher range tended to believe property offences were a more serious problem than violent crimes.

- The police force presence is not extensive throughout rural areas. Robberies, assaults, stealing and domestic crimes occurring in outlying rural areas are rarely, if ever, reported.

Figure 2.10

Flow Chart : Compilation of Crime Statistics - Drop Out Rates in Papua New Guinea



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Stage II. Secondly, the crime must be recorded by the police in a crime report. This documentation process is meant to create a number of copies, one for the National Crime Records Office (NCRO), one for the police station, and one to stay with the investigating officer.

The initial report of a crime to the police should be noted in the occurrence book. In urban centres most crimes called in from the public are noted in the occurrence book. However, in rural police stations it is more likely that crimes reported to the police may never be recorded

If the officer believes any investigation will be fruitless "the paper work will be given a miss". Crimes detected by the police will not be recorded for much the same reason. While a large percentage of minor crimes drop out at this stage it is estimated a relatively smaller percentage of serious crimes disappear due to inappropriate initial entries. Crimes that are not investigated and thereby no crime report is commenced constitute half of all crimes reported to the police.

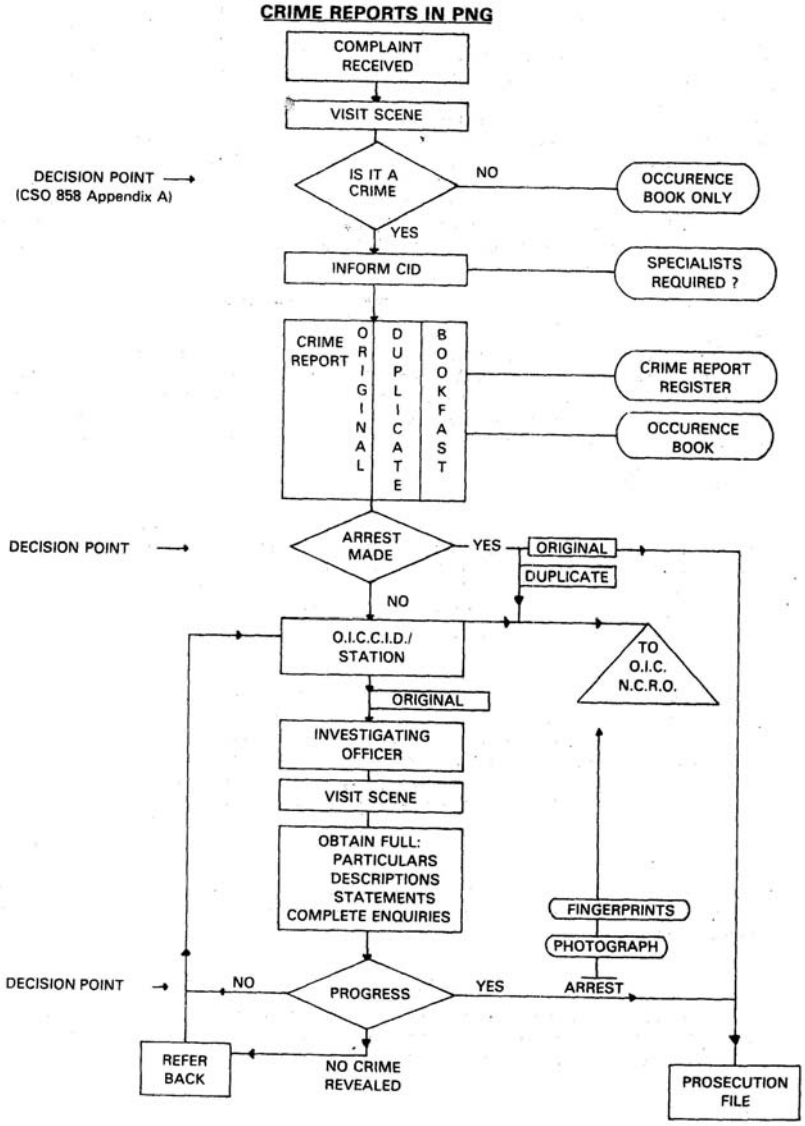
If crime is recorded in the occurrence book, a policeman if not on the scene is dispatched to investigate. The first policeman on the scene, unless specifically relieved of the responsibility by an investigating officer, is charged with the responsibility of completing a crime report. A duplicate copy of the completed crime report should be sent to the National Crime Records Office (refer to Figure 2.11 for a detail description of the procedures employed in completing and distributing crime reports).

Police officers with a working knowledge of investigations conservatively estimate that of all crimes investigated half are not documented as crime reports. The estimate of lost cases is naturally lower for very serious offences such as robbery, homicide or rape. For stealing and break and enter, the estimates ranged from 35 to 75 per cent. Crime reports were thought to be ignored in at least half of all minor criminal cases. All estimates were much higher for rural areas.

Confusion caused by at least three different forms for crime reports currently in use may explain why some reports are not completed. Crime reports prior to independence were simple and straightforward The newer ones are more complicated, less readable and less popular. Forms devised for a recent but abortive attempt to place all data on a computer are still being used and are particularly unsuitable.

Confusion is also caused by the absence of commonly applied standard procedures for processing information on crime. Two attempts since 1975 have been made to regularise procedures. Each attempt has succeeded in rendering the data for the year immediately effected even more unreliable. In 1979 the system was

FIGURE 2.11
MOVEMENT OF CRIME REPORTS IN PNG



Source — NCRO — RPNGC March 1984

substantially revamped and the design for recording and compiling statistics markedly improved. Unfortunately this new design was not fully comprehended in the field where the data is initially recorded and collected. Reports were lost, improperly or partially completed Prior to 1980 police statistics were based on annual police station reports from provincial headquarters. In 1980 for the first time police statistics were based on actual crime reports. This new system introduced many new deficiencies to the crime statistical reports in 1980. Before the bugs could be sorted out of this new system, in 1981 a computer specialist was hired to make police statistics "thoroughly modern". In 1982 when the computer specialist unexpectedly left, the project was abandoned, and a revised version of the old system revived. While attempts were made to outfit the police with a computer system, a parallel manual system of police statistics was not maintained. Consequently when the computer failed to deliver its promises in 1982 a desperate struggle to compile statistics for 1982 required a lot of hard work and a considerable amount of guessing.

New directives detailing procedures for processing crime statistics frequently never reach the men in the field. Internal communication lapses are compounded by inadequate supervision. In the absence of proper supervision mistakes become a habit and essential paper work becomes readily sacrificed as over-worked policemen desperately try to keep abreast of daily duties, patrols, and investigations.

Police, as do most professionals, cling to practices initially learned and mastered. Despite careful instruction in the new methods envisaged by procedural directives issued in 1979 and again in 1981, in the absence of supervision many police persist in using the more familiar and older procedures. There simply is no common system within the police force to report crime data internally!

> "The reportage of crime varies greatly from province to province and even from police station to police station within a province.... Undoubtedly the reason for this is that methods of reporting have, in the main, been worked out independently - and in the absence of any coordinated plan-they have naturally followed some individual's basic idea of how crime should be reported"

The man in the field is confused, by different forms, and different procedures. The data produced from the field is unreliable, inconsistent, often illegible and generally incomplete.

There has not been a standard system for reporting and compiling police statistics since 1975. Different errors, different procedures, and different people make it impossible to assume that police statistics at least reflect a consistent pattern due to consistent deficiencies.

Police investigators around the world possess a "dark hole". The investigation of some crimes becomes persistently procrastinated as the officer's time is devoted to more interesting or compelling investigations. Often the postponed investigations cause the crime to be conveniently lost in the "dark hole". Many crimes especially minor offences disappear into the "dark hole", never to be heard from again. In Papua New Guinea experienced police officers believe many minor property crimes find their way into the "dark hole".

In many areas of Papua New Guinea rural crime is simply not recorded at all by the police.

> "It would be difficult to establish the actual degree of growth of lawlessness in the rural communities. Statistics of reported crime are not kept simply because the statistical machinery is not present in the form of police documentation" (Royal Papua New Guinea Constabulatory 1982 : 39).

Officers investigating rural crime see little use in completing crime reports due to their inability to successfully pursue the investigation. Limited police transportation, the remote location of many rural crimes, lack of police familiarity with the people in the area, all cause crimes to be ignored or superficially investigated By the time some rural crime is reported, police believe investigations will be futile and often do not bother to complete a crime report for the offence. The cumulative effect of these factors cause rural crime statistics to significantly understate the incidence of rural crime.

Based on a random sample of 400 summary offence informations, 167 of these summary informations contained circumstances unmistakingly revealing not a summary offence, but rather that a crime had been committed The crimes reduced to summary offences included rapes, attempted rapes, indecent assaults, unlawful wounding, burglary, stealing, fraud and break and enter (See Table 2.2). Of course none of these crimes were recorded as part of the crime statistics, they were all charged as summary offences which have not been included as part of criminal statistics since 1978.

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1. Many crimes are deliberately undercharged by police officers. Police officers believe the chances of getting a conviction in a district court are higher, certainly faster and involve much less paper work. "We're happy to settle for a sure six month sentence than risk losing the case in the National Court".

In many cases police do not properly record crime information to indicate the difference between persons and cases. It is frequently not shown that more than one offender was involved in a crime. Thus if several people rape one person, the crime statistics will generally record one crime.

Rural and minor property crimes are especially vulnerable to being dropped out at this stage. Confusion over proper charges , forms, procedures, inadequate supervision, and a general lack of appreciation for the importance of criminal statistics by men in the field prevent many crimes from being properly documented in a crime report. In one instance a commanding officer reported he was too busy to forward any crime statistics that year. There are many ways that crimes can drop out of the statistical reporting process at this stage.

The cumulative effect of all these sources of losing crimes at Stage II warrants reasonably estimating a low of 40 per cent to a high of 60 per cent of the crimes are lost at Stage II.

Stage III. Thirdly, the copy for the NCRO must arrive at the NCRO.

The initial completion of a crime report produces three copies. One is kept by the investigator, one is filed in the records of the local police station, and one is sent to the NCRO. The copy slated for the NCRO often never arrives.

Over a six month period in 1983 the Boroko Police Station failed to forward 27 per cent of all crime reports to the NCRO. Boroko, the busiest police station in the country, enjoys a reputation for efficiency in processing of records and documents. This reputation may stand, as other police stations appear to be much worse.

Unfortunately only data for Division A[2] and Division B[3] were available to compare the differences between the crime rates claimed by the divisions and the number of crimes from these divisions that were scored as part of the 1983 Annual

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1. This range of estimates is considerably lower than the range of estimates derived from what all persons interviewed indicated. It is necessary to reduce the estimated range down to 40-60 to offset overlapping categories and to offset the overall inflated impression of many that things are much worse than they really are. By averaging all estimates and adjusting the estimates made on selected areas of crimes to relate to all crimes, the actual range of estimates was 55-82 per cent.

2. A Division includes Western, Gulf, Central, Milne Bay, Northern.

3. B Division includes Chimbu, Enga, Southern Highlands, Western Highlands.

Police Report for "reported crimes". One must remember the life cycle of a crime in evolving to its ultimate destiny as a "reported crime" statistic in the Annual Police Report must progress through the aforementioned stages and arrive at the NCRO as a crime report or by some other fortuitous and inexplicable mystery arrive at the NCRO as an information, or fingerprint document.

Table 2.2

Crimes charged as summary offences
Random sample of 400 summary informations - not recorded as part of crime statistics

Crime if correct charge laid (as revealed by circumstances)	
Stealing	83
Assaults - with wounds	25
Escapes from jail	15
Indecent assaults -rape	13
Possession of stolen property	11
Damage to property	8
Fraud	5
Break and Entering	3
Robbery	1
Burglary	1
Possession of house breaking implements	1
Brothel operation	1
Total crime charged as summary offence	167
This represents 42 per cent of the total 400 informations.	

Source: Random sample conducted by Chief Superintendent, Royal Papua New Guinea Constabulary and reviewed by another, 1984.

Some feeling for the number of crimes that never become a statistic is provided by the discrepancy between the serious crimes Division A and Division B claim occurred in 1983 and the total "reported crimes" in Table 2.12 of the 1983 Annual Police Report. In these serious crimes there is a shortfall of 32.3 per cent between crimes that are recorded statistically and crimes that occurred and were handled by the police. Some crimes may be grossly understated in the annual reported statistics. The annual crime statistics produced by the NCRO fail to report 46.3 per cent of rapes, 43.2 per cent of serious assaults and 34.8 per cent of robberies recorded by A and 8 Divisions. The unreliability of the overall system is starkly revealed by the data far B Division on serious assaults and break-in offences. In these categories the NCRO recorded statistics are slightly higher than the total crimes claimed by B Division!

Some of the inordinate shortfall between the NCRO statistics and the actual crimes in A Division might be caused by Boroko Police Station dealing with crimes that occur outside the National Capital District (NCD) which are in the jurisdiction of A Division. If this is the case, the NCRO statistics for the NCD should be much higher than the crimes claimed by the NCD. This is the case in some crimes, but not in others.

In so many respects the books just don't balance. The system presently employed to harvest crime statistics is so severely fraught with deficiencies that nothing can be relied upon, except that the cumulation of the deficiencies definitely understates crimes known to the police.

Part or all of the reports from some provinces may be so deficient that crime reports are ignored by the NCRO and educated guesses are made to make sense of crime statistics from that province.

> "Because figures are often very, very wrong, I know something is not being done properly - simply have to make adjustments".

The established shortfall for A and B Divisions of all the serious crimes listed in Table 2.3 was 32.3 per cent. These crime categories constitute 74 per cent of all reported crimes. Some police suggest the shortfalls may be worse for other divisions.

Rural areas and the highlands have been singled out by police as particularly deficient in processing information on crime. Given the shortfalls in A and B Divisions the police estimate a 30 to 40 per cent shortfall between crimes tallied by NCRO on the basis of documents forwarded to NCRO and the crimes recorded in each division.

The basis of counting crimes varies from division to division and within divisions from station to station. Consequently some of the shortfall evidenced at Stage III may be a duplication of losses noted at Stage II. If this is the case, the flow chart on Figure 2.10 may involve a double counting of some losses between Stage II and III. For this reason the losses at Stage III have not been counted

Stage IV Finally, at the NCRO all submitted crime reports are read and scored according to the proper crime category revealed by the facts contained in the crime report.

Based on the information contained in crime reports, each crime is scored by the NCRO in the proper crime category. At this stage the staff at NCRO must read approximately 25,000 crime reports each year. Some element of human error may wrongly classify some crimes, lose some others and perhaps miscount total figures. However, the errors at this stage are insignificant. (Estimated to be no greater than 5 per cent by police.)

Table 2.3

Discrepancy between crimes and criminal statistics
Based on 1983 A & B Division reports and the "Crimes Reported" statistics for 1983 for these Divisions

Offence	A Division		B Division		Total		Extent of crime understated in 1983 Annual Crime Reports produced by NCRO Per cent
	Crimes reported by NCRO	Crimes recorded at A Division	Crimes reported by NCRO	Crimes recorded at B Division	Crimes reported by NCRO	Crimes recorded at A & B Division	
Murder	18	42	90	94	108	136	-20.6
Serious Assault	10	112	109	97	119	209	-43.1
Rape	11	36	170	301	181	337	-46.3
Robbery	6	31	71	87	77	118	-34.8
Break-ins	183	294	619	501	802	795	+.1
Stealing	385	698	2290	3112	2675	3810	-29.8
Wilful Property Damage	113	142	356	934	469	1076	-56.4
Drug Offences	-	2	4	7	4	9	-55.6
Unlawful use of Motor Vehicle	9	15	18	88	27	103	-73.8
Totals					4462	6593	-32.3

Source: All information provided from Royal Papua New Guinea Constabulary, Office of Public Relations, and the National Crime Records Office, 1984.

Overall summary stages I to IV

Reported crime statistics include only those crimes that make it through this process. Scattered pieces of data including information and fingerprint documents that arrive at NCRO will be added into the statistics with crime reports. Consequently the first misconception is that police annual statistics on "reported" crime constitute the crimes reported to or detected by the police. The foregoing analysis illustrates the combined effect of the losses at each stage of the evolution of a crime being processed to a "reported crime" statistic. Based on the cumulative effect of losses at each stage the police statistics record from 10 to 30 per cent of all crimes occurring in Papua New Guinea, and record from 34 per cent to 59.2 per cent of all crimes handled by police. To the extent these figures can be relied upon, the total crimes in Papua New Guinea in 1983 range from 80,000 to 240,000 and the total crimes handled by police range from 40,000 to 70,000. By taking the most conservative set of figures which further significantly reduces the evidence and estimates of crimes lost statistically, the crimes in Papua New Guinea were 80,000 in 1983 or more than three times the reported crimes. Further the police handled 40,000 crimes in 1983 or almost twice that indicated by the statistics.

The crime statistics for 1968-1975 appear to be much more reliable than any crime data since that time. It is possible that the trends established in the period from 1966 to 1975 have continued to the present day. The statistically reported decline since 1975 may have nothing to do with actual crime patterns and be solely a function of the deficiencies plaguing the process of producing statistics. If this is so, a very elementary projection of the crime rate in Papua New Guinea based on extending the established trend from 1968 to 1975 up to 1983 suggests the total crimes for 1983 may be as high as 40,000 i.e. may be almost double the statistically reported crime rate.

If one takes the 1968-1975 Police Reports and assumes that the trends then reflected were continued the result would be a crime pattern shown in Figures 2.12, 2.13, and 2.14 for the offences specified. This must remain purely speculative. It does, however, confirm the impressions gained by analysing the process by which a crime becomes a statistic.

Conclusion

It is mild to say that this review vitiates the validity of statistics being produced by the police. It is worse than that in that it reveals a neglect of essential routines and a casualness which confirms the general public impression of police incompetence. We take this up again in the chapter on police in the criminal justice system.

POSSIBLE DIFFERENCES BETWEEN TRENDS
(1966 — 1975) AND ACTUAL (1966 — 1982)

FIGURE 2.12 BREAKING AND ENTERING

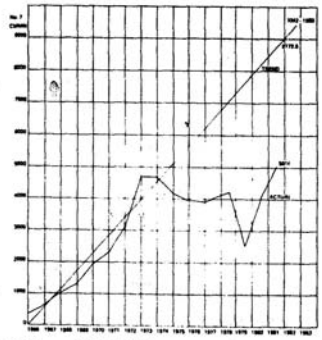


FIGURE 2.13 STEALING

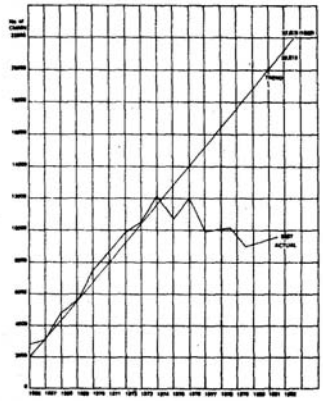
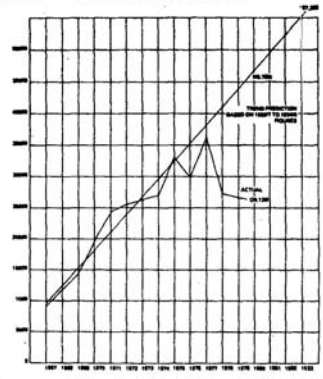


FIGURE 2.14 SUMMARY OFFENCES



Source — Crime Statistics 1966 — 1982 (RPNGC)

NOTE: Trends fitted by Method of Least Squares to Data for Years 1966 to 1975.

Chapter 3

THE COSTS OF CRIME

It is not possible to discuss the costs of crime in this country without prior consideration of the economic significance of crime for the community in general and for the offender, the victim and the taxpayer in particular. 1Here we concentrate on the information which was available -and its limitations.

The notion of costs differs of course according to the angle from which it is viewed. One way of classifying these is as public and private costs and as direct and indirect costs as set out in Table 3.1. Considering public and private costs one is looking at the broad community effects of crime. The direct costs are sustained mainly by the individual families and institutions involved while the indirect costs impact on them and the wider community. Obviously these public and private, direct and indirect costs are not mutually exclusive but they will be treated separately here for the purposes of discussion.

A further division envisaged by the terms of reference of this inquiry was the urban and rural division. As chapter 2 on dimensions has shown, recorded crime is mainly in the urban areas. These are also the areas with most security expenditure and of course the major areas for the collection of taxation. Nevertheless there are extra-ordinary costs attributed to tribal fighting with crops, houses and pigs destroyed - as well as the killings and rapes which occur. The rural areas also have community schools or health centres destroyed - and not only where there is tribal fighting.

These various approaches to costs are discussed below: but we have to reiterate that these "costs" incorporate some benefits. The public expenditure obviously increases the demand for products. It means more spent on physical plant, equipment and consumer goods which stimulate the economy with increased demand. The private sector purchases of security devices, fences and protective services are from firms within the private sector - and in some cases the losses from theft might be covered by insurance premiums which might become a factor in pricing,

1. This chapter should be read in conjunction with Appendix B.2 which discusses the economic background.

Table 3.1

Classification of the different kinds of costs of crime

Public and Private		Direct and Indirect	
Public Sector	Private Sector	Direct individual costs	Indirect costs
(a) Public i.e. Government (police, courts, prisons, legal costs, replacement of stores lost or damaged costs of hospital services, social welfare etc.)	(a) Business losses	(a) Loss or damage to victim	(a) Diminished earning capacity consequences for family
(b) Revenue foregone (tax evasion, reductions in earnings, smuggling)	(b) Extra security	(b) Loss to convicted offender(s)	(b) Loss of earning capacity
(c)Services less satisfactorily performed due to corruption, crime.	(c) Man-hours lost in police investigation or court attendances	(c) Destruction of lives or property	(c) Dependency of family
	(d) Increased insurance	(d) Costs to witnesses (e.g. injury to police or bystanders)	(d) Replacement costs
	(e) Staff losses, cost of replacements	(e) Costs to witnesses of court attendances	(e) Increased security precautions
	(f) Effect on business confidence	(f) Legal costs	(f) Increased taxation
			(g) Increased prices

However, it is important not to lose sight of opportunity costs. If all the resources devoted to security or crime control did not have to be used in this way could they be employed more productively for the country? Whilst at first sight it might seem that they could be alternatively more productive it must be remembered that Papua New Guinea has a huge urban unemployment problem and needs all the employment generating activities it can find in the urban areas. In a general sense we would be inclined to believe that if the employment generated by crime control and prevention activities in public and private sectors were discontinued it could not be absorbed in anything tike the same proportions in alternative, productive activities. This being so the opportunity costs are

probably low in Papua New Guinea. However, they are probably lower in the private than in the public sector, particularly in respect of those specialist private security firms. For other firms for whom providing security is a necessary but nonetheless incidental adjunct to their main business, the opportunity costs are high.

In chapter 9 we examine how crime affects planning, in the context of the government's current review of its planning process. Suffice it to say here that government expects the lift in the economic growth rate that it is seeking to come in the main from private investment. In so far as the formal sector is concerned this can start only with the decisions of the boards of directors of the diverse firms interested in Papua New Guinea, to invest capital and management. In the following pages we estimate the costs to the formal private sector of crime prevention and control. These tie up resources which are therefore not available for the investment calculus of these boards. But mere availability of resources is not the only determinant of investment decisions. Dividends and investments elsewhere are always alternatives to investment in Papua New Guinea. What is more fundamental, though less tangible, is the attitudes generated in these boards by consideration of what are often called the environmental factors in doing business. Crime and its prevention and control in Papua New Guinea is one such environmental factor and, it would appear, one that in recent years has been given greater cognisance. Finally, it must be said, perceptions as well as objective analysis mould attitudes; and as we show later the perceptions of the formal business sector are likely to be those of a victimised minority in the narrow legal sense.

Public Sector

Public expenditures

The government's Estimates of Revenue and Expenditure for 1984 show that the provisions shown in Table 3.2 were made for departments which might be regarded as relevant to law and order.

This collection of services as representative of the government's commitment to crime control needs some explanation. For reasons already discussed some complications in assessing the costs from the figures available should be expected. For instance, the National Court is engaged on a great deal of judicial activities unrelated to crime: but it is impossible on available information and without a good deal of original research to distinguish the funds used in civil from those used in criminal jurisdiction. We decided to take total expenditure. It overstates the amount devoted to crime in the National Court but, as shown, an overstatement on the governmental side still does not match the estimated spending on the private sector side. A similar qualification has to be made for all other items in the table. Not all police activities are concerned with crime; and village courts do far more than dispose of minor criminal cases. However, there was no way of arriving at a figure for governmental expenditure in the time at our disposal without taking the published estimates and providing the explanation already given.

Table 3.2.

Departmental appropriations 1984

Department	Kina
National Court	1,105,100
Justice (Incl. K881,000 for Village Court Secretariat)	17,853,900
Police	36,888,200
Finance (Customs - Prevention & Detection)	302,900
Department of Provincial Affairs (Village Courts - Special Services)	52,200
Departments of the Provinces (Village Courts - Special Services)	1,500,200
Ombudsman Commission	708,700
Extraordinary Items for Crime Prevention (see explanation below)	1,000,000
Total	59,411,200

The Ombudsman may seem like a strange inclusion here. He is added because he has been very active in the investigation of corruption and criminal charges have been laid as a result of his inquiries, not only into corruption but into other abuses of authority.

Our justification for using these available figures is that they provide a generous outside limit for governmental investments on crime controls and prevention - and, if we may say so, they are as accurate as many other figures used to reach economic conclusions of a general nature. Discussions with the Ministry of Finance revealed that hidden expenditure under the various subheads which might conceal expenditure on building protection, watchmen, locks, fences was minimal since it was not government policy to provide funds for the fencing of houses. We felt, however, that this plus the extraordinary votes provided on special occasions like the opening of parliament or the visits of foreign dignitaries and the expenditure when provincial government was suspended were inter alia crime preventative and might reasonably be expected to add another million kina to the public bill. This is included under the general heading of Extraordinary Items for Crime Prevention.

Actually our total of K59,411,200 decreases to K56,226,400 when we deduct a sum of K3,184,800 shown in the Estimates as receipts (see Table 3.3).

Table 3.3

Receipts 1984

Source	Kina
Justice	
Fines	1,700,000
Registration fees	900,000
Liquor licences	200,000
Sundry receipts	10,000
Police	
Arms permits	233,800
Accident reports	90,000
Road safety stickers	6,000
Sundry receipts	45,000
Total	3,184,8000

In previous years an amount of approximately K50,000 had also been received from the Corrective Institutions Services' sales of products: for some reason this did not appear this year but the amount is not significant for the totals. Again it will be observed that accident report receipts and registration fees are not readily linked to crime prevention but it is arguable that road safety stickers and arms permits are related to preventing offences being committed and therefore qualify.

The next question was what proportion of total government expenditure did this figure of around K55 million represent? Could we discover what proportionate interest the government had in the prevention and control of crime? Had this interest changed over time? Whilst it was not possible to work to the precise figure we had abstracted, the National Planning Office was kind enough to supply the study with an account of the amounts for Police, Justice, Corrective Institutions Service, the Legal Training Institute (now amalgamated with the Ministry of Justice) and the Ombudsman Commission as a percentage of total government expenditure for the years 1974 to 1982 (see Table 3.4). It will be seen that though not covering all the same services as represented by our K55 million, the National Planning Office figures cover the bulk of them - and the total figure for law and order expenditure for the last year (1982) is just under K50,000,000. Allowing for inflation and the generosity of our own figure it seemed possible to work on the National Planning Office figures for the purpose of obtaining international comparisons.

Table 3.4

Law and order expenditure as a percentage of total government expenditure 1974-1982
(Amounts expressed in kina)

Year	Grand total	Police amount	%	Justice amount	%	C. I. S. amount	%	Legal Training Institute	%	Ombudsman Commission amount	%
1974	282,813,999	10,803,203	3.82	1,170,609	0.41	3,441,864	1.22	-		-	
1975	400,288,844	13,992,897	3.50	1,713,487	0.43	4,753,000	1.19	-		-	
1976	440,548,563	16,789,000	3.81	3,058,000	0.69	5,253,000	1.19	-		-	
*1977 Jly- Dec	237,860,268	9,435,600	3.97	2,508,500	1.05	3,038,300	1.28	94,000	0.04	52,000	0.02
1978	494,345,943	19,776,675	4.00	5,170,553	1.05	6,164,400	1.25	152,000	0.03	217,000	0.04
1979	537,646,639	21,439,150	3.99	5,389,350	1.00	7,705,100	1.43	157,261	0.03	229,660	0.06
1980	623,471,103	24,416,100	3.92	6,400,900	1.03	8,002,500	1.28	147,600	0.02	353,800	0.06
1981	692,931,500	28,560,000	4.12	7,415,700	1.07	8,418,100	1.21	176,200	0.03	419,300	0.06
1982	732,293,700	31,785,800	4.34	8,277,700	1.13	8,842,100	1.21	170,500	0.02	463,300	0.06

* Fiscal year changed. Source: National Planning Office : Figures provided for this study.

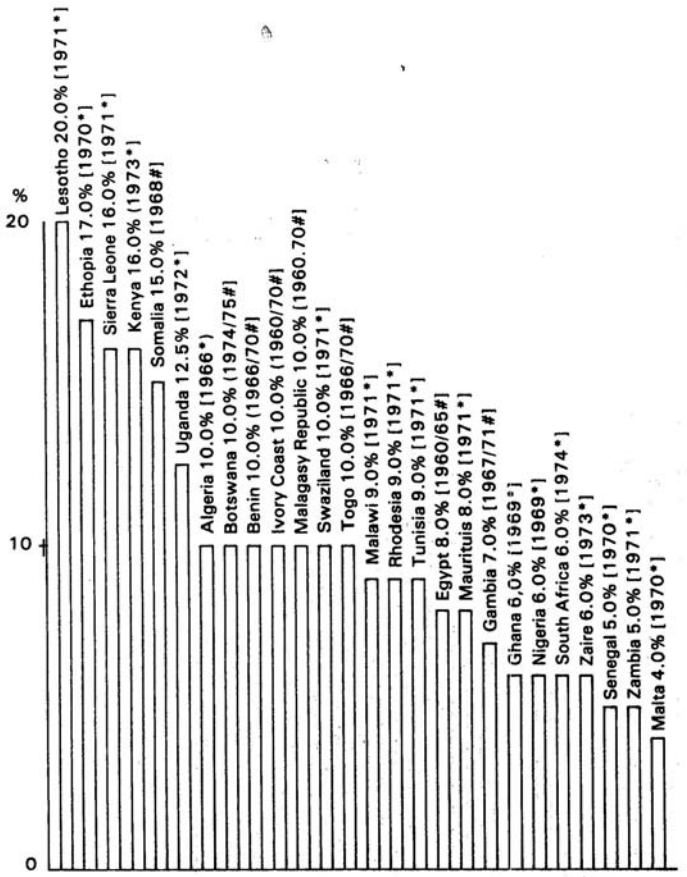
It will be seen that in 1974 the Papua New Guinea Government devoted 5.45 per cent of its total budget to law and order. If we keep the Ombudsman and the Legal Training Institute (not operating in 1974) out of account for purposes of comparability then in 1978 the proportion of the total budget devoted to police, justice and corrections had gone up to 6.3 per cent. By 1982 it had become 6.68 per cent. Of the total of K48,905,600 devoted to police, justice and prisons the K31,785,800 which went to the police in 1982 represented nearly 65 per cent.

Unfortunately, it is not possible to get a precise comparison with other countries either for the years or for the items included in Papua New Guinea. But there are two studies which can provide Papua New Guinea with a rough idea of what other countries are doing. The first of these studies was commissioned by the coordinator of the present Papua New Guinea study whilst he was still with the United Nations. Budgets and development plans lodged with the United Nations were examined for clearly identifiable items of crime prevention and control - usually police, courts and prisons. For other countries (not all other countries) the information and references are reproduced in Figures 3.1 to 3.3.

It will be observed that probably even before independence, Papua New Guinea was spending proportionally more of its budget on law and order than Australia (3.0 per cent in 1971), Japan (3.0 per cent in 1971), Singapore (4.5 per cent in 1973) and New Zealand (2.0 per cent in 1974). Other countries spent more of course: but when the figures get too high one suspects either that the army has been included in crime prevention services e.g. Uganda (12.5 per cent in 1972) or South Korea (11.0 per cent in 1971) or else the percentages are misleading because the government has little else to do besides keeping order e.g. Lesotho (20 per cent in 1971). There are other countries like Ecuador and Nicaragua where recent events show that the budgets did not reflect the amounts going into extraordinary means of ensuring order. What is interesting is that Papua New Guinea appears to follow a markedly Commonwealth pattern with its 6.68 per cent. This puts it in the company of Ghana, Gambia, Nigeria, Malaysia, Pakistan and India with places like Senegal, Zaire, Thailand and Brazil extending the list. Even if this concordance is a function of common budgeting procedures it demonstrates that Papua New Guinea has not neglected law and order.

There is another rough comparison possible from a publication of the Australian Institute of Criminology partly authored by the co-ordinator of this project in 1976-77. Figures 3.4 to 3.6 provide information on the break-down of the total criminal justice system expenditure in the United States, Canada and Australia. This time the periods in years coincide better than in the United Nations Study. It will be seen that with the Australian states spending 69.9 per cent of its total criminal justice budget on the police, Papua New Guinea's 70.073 of the total criminal justice budget by going to the police is in line. Figure 3.7 seeks to provide a comparison with some other countries. Taking Papua New Guinea's proportion for 1978 of 63.58 of the criminal justice expenditure absorbed by the police this seems reasonable. 19.8 per cent going to the correctional side looks also favourable. The conclusion must be that, subject to further information about the precise items being included in these accounts, Papua New Guinea's law and order expenditure by government agencies is neither disproportionately high nor low in world terms.

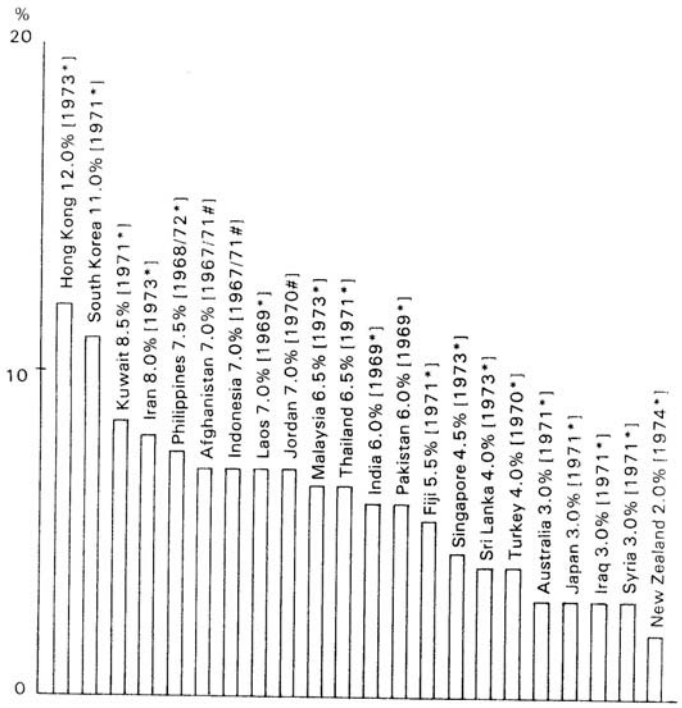
FIGURE 3.1
RECURRENT EXPENDITURE ON CRIME CONTROL AS A PROPORTION OF TOTAL GOVERNMENT OPERATING EXPENSES. AFRICA



KEY
* Budget # Plan

SOURCE
Wickwar, H., **The place of Criminal Justice in Development Planning,** Monograph No. 1 of the United Nations Crime Prevention and Criminal Justice Section, New York University Press, New York, 1977 : pp 106-107.

FIGURE 3.2
RECURRENT EXPENDITURE ON CRIME CONTROL AS A PROPORTION OF TOTAL GOVERNMENT OPERATING EXPENSES
ASIA AND OCEANIA



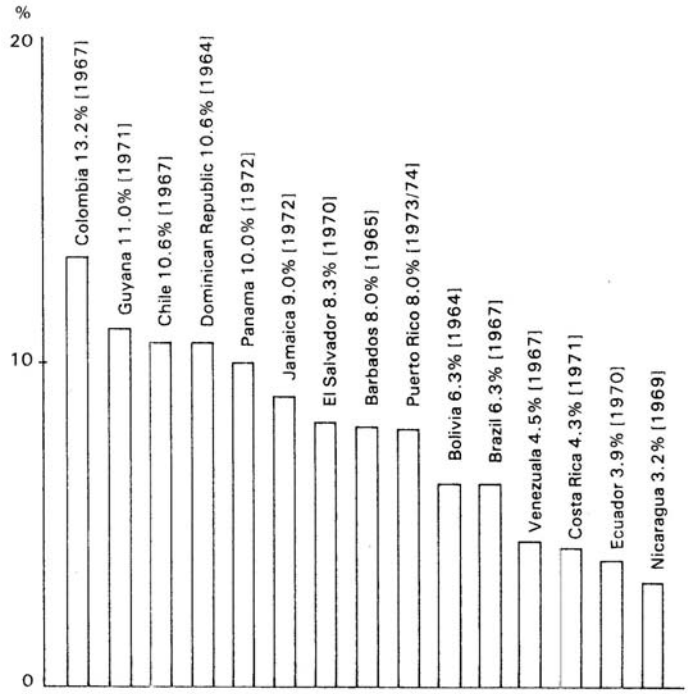
KEY

* Budget # Plan

Source –

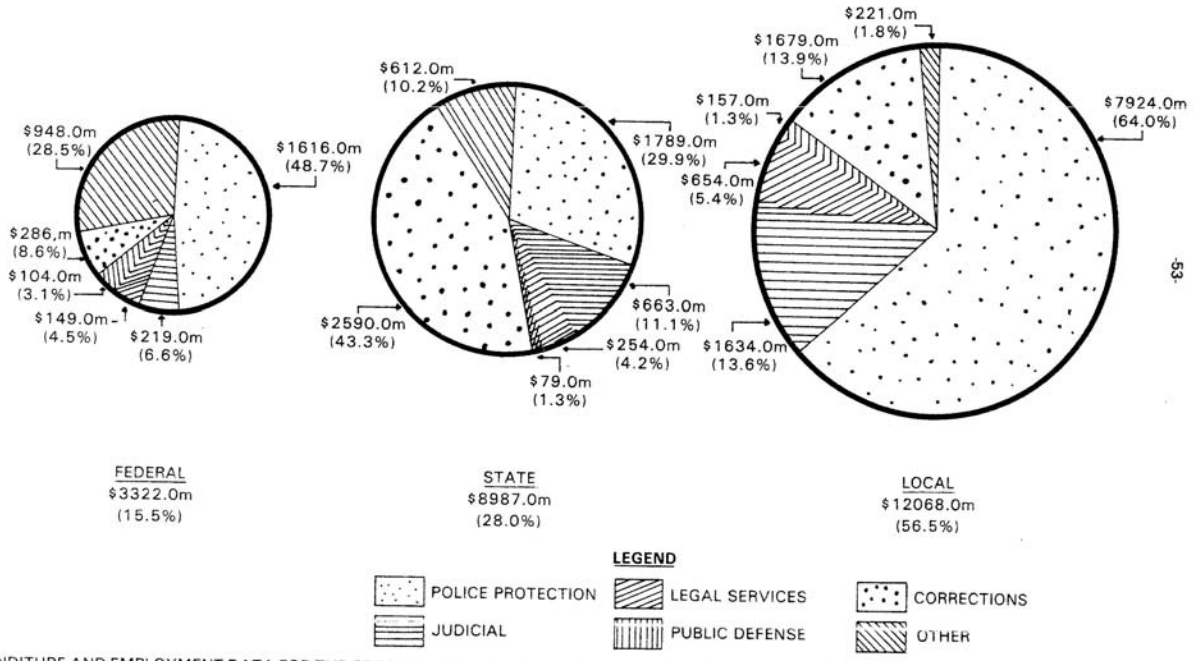
Wickwar, H., **The place of Criminal Justice in Development Planning, Monograph No. 1 of the United Nations Crime Prevention and Criminal Justice Section, New York University Press, New York, 1977**: pp 114-115 and 125.

FIGURE 3.3
RECURRENT EXPENDITURE ON CRIME CONTROL AS A PROPORTION OF TOTAL GOVERNMENT OPERATING EXPENSES
AMERICAS



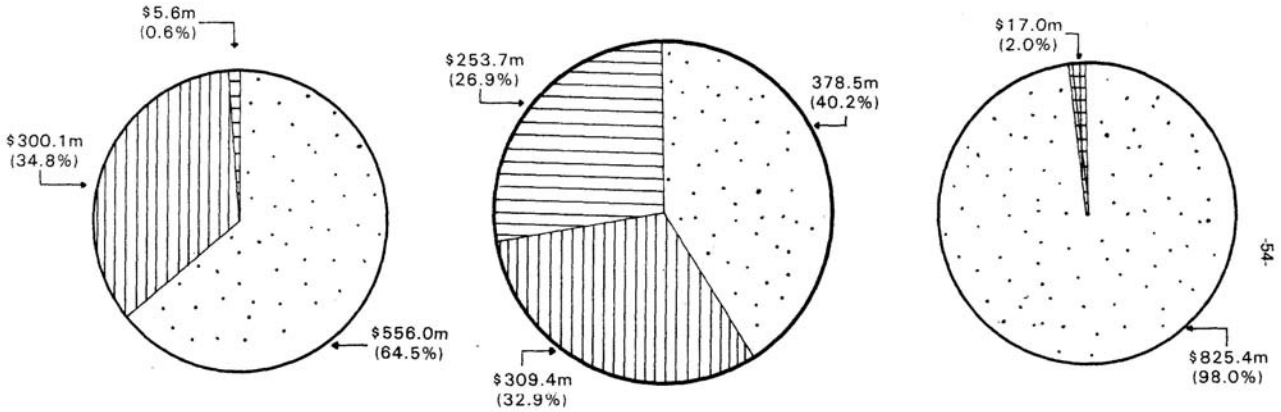
Wickwar. H., **The place of Criminal Justice in Development Planning, Monograph No. 1 of the United Nations Crime Prevention and Criminal Justice Section, New York University Press, New York, 1977: pp 120-121.**

FIGURE 3.4
CRIMINAL JUSTICE SYSTEM EXPENDITURE FOR VARIOUS LEVELS OF GOVERNMENT
UNITED STATES 1975-1976



Source — EXPENDITURE AND EMPLOYMENT DATA FOR THE CRIMINAL JUSTICE SYSTEM 1976, US. GOVERNMENT PRINTING OFFICE, WASHINGTON, D.C. 1978: pp. 7-11

FIGURE 3.5
CRIMINAL JUSTICE SYSTEM EXPENDITURE FOR VARIOUS LEVELS OF GOVERNMENT
CANADA 1976 – 1775/1978



FEDERAL	PROVINCIAL	LOCAL
$861.7m	$941.6m	$842.4m
(32.6%)	(35.6%)	(31.8%)

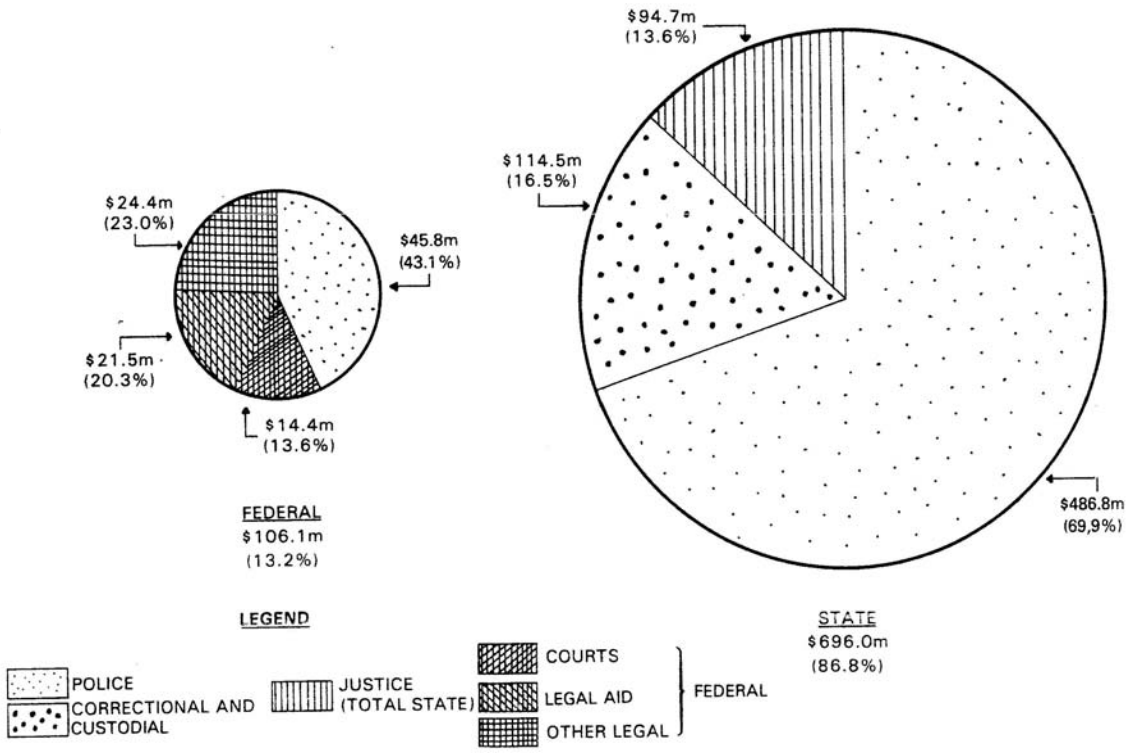
FEDERAL: 1977/78
PROVINCIAL: 1976/77

LEGEND

POLICE
COURTS OF LAW
CORRECTIONS
CORRECTIONS AND COURTS OF LAW

Source – FEDERAL GOVERNMENT FINANCE; PROVINCIAL GOVERNMENT FINANCE; LOCAL GOVERNMENT FINANCE; STATISTICS CANADA, OTTAWA, 1979, p 13; p 20 and p 28 RESPECTIVELY.

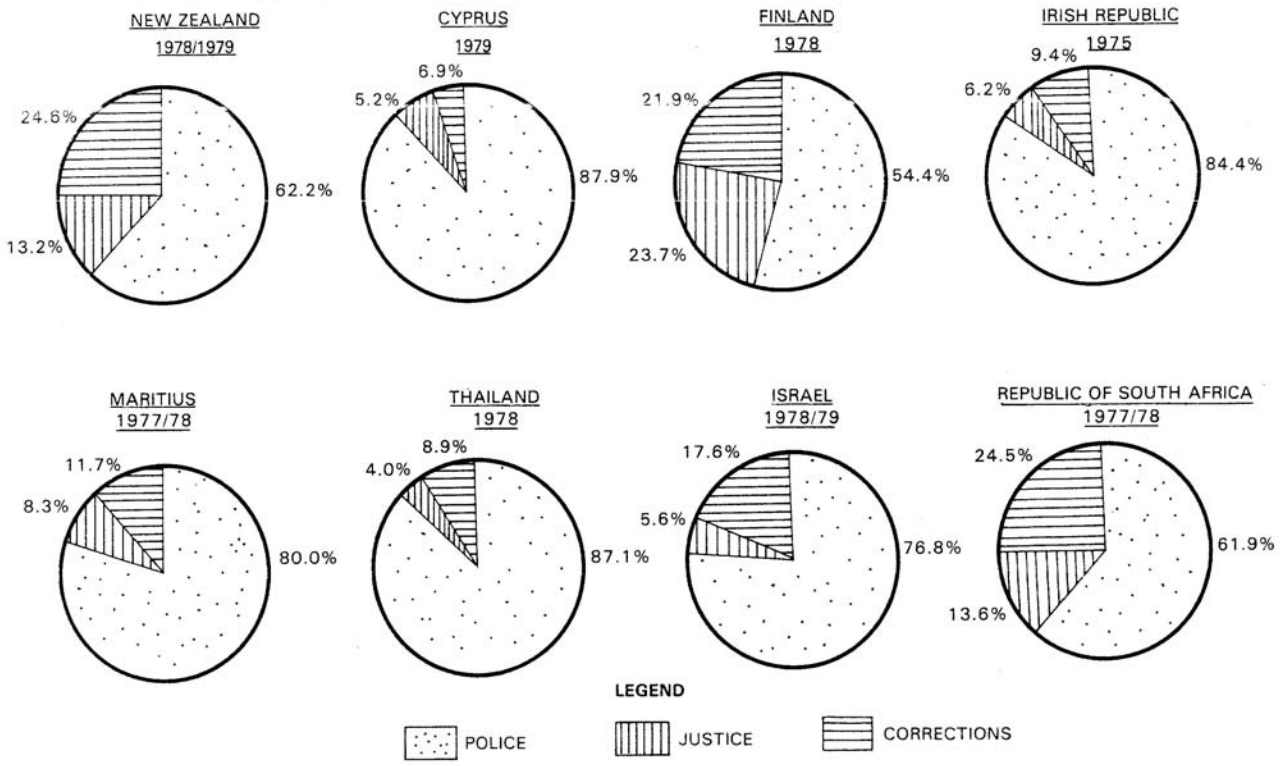
FIGURE 3.6
CRIMINAL JUSTICE SYSTEM EXPENDITURE BY LEVEL OF GOVERNMENT
AUSTRALIA 1976-1977



Source — AUSTRALIAN BUREAU OF STATISTICS; VARIOUS FINANCE PUBLICATIONS AND UNPUBLISHED STATISTICS.

FIGURE 3.7

THE DISTRIBUTION OF CRIMINAL JUSTICE EXPENDITURE — SELECTED COUNTRIES



Source — CLIFFORD W: UNPUBLISHED RESEARCH

Revenue foregone: tax evasion, reductions in earnings, smuggling

We have been looking at public expenditure on law and order: but there is another side of this coin - the receipts denied to the government by offences such as fraud, embezzlement and diversion. Some of these are not easy to trace. It will never be known how much revenue the government loses by smuggling though this is by no means the problem in Papua New Guinea that it is in some other countries. We came across one case of liquor licences being issued illegally with no records kept - 600 of them over a period of two years. A black market in liquor denies the government income and of course where by crime people are rendered unable to earn they cannot pay tax. There is a whole area of white collar crime with transfer pricing or other devices for denying the government the tax it imposes; and cognizance must be taken of a growing underground economy, in the towns particularly, which is structured to evade tax: but again apart from a mention the details of this were beyond the scope of this study. However, the work of the Taxation Office has relevance and this suggests K20 million lost to the government. Since there is so much not known about revenue foregone it would not be excessive to add K50 million to the costs to government.

Offences under the income tax legislation are of several kinds: failure to pay taxes owed, failure to comply with the requirements of the legislation e.g. not furnishing a return of income, and understatement of income.

Measures of the extent of the offences are available from the Annual Reports of the Chief Collector of Taxes. The failure to pay taxes can be measured by the amount owed to the government. Table 3.5 shows the gross amounts outstanding in the years 1978-1982 (the 1983 report is not available). However, the Taxation Office grants extension of time and defers recovery, for technical not humanitarian reasons, reducing the amount actually being sought at any one time to considerably less than taxpayers' total liability. These lower figures, probably a better measure of the offence of default, are given in Table 3.6.

Understatement of income when detected results in additional liability for the taxpayer. This liability is included in Tables 3.5 and 3.6. However, separate tables in the Annual Reports show that additional tax, mainly for omitted income and late lodgement of returns, was about K1 million in both 1982 and 1981 and hence only a small portion of all tax owed to the government.

Failure to comply with the requirements of the Act in furnishing returns etc. cannot be measured by the tax owed. In the five years to 1982, the Tax Office recorded 100-200 cases per annum, with around 300 in 1982. Fines in 1982 amounted to K33,450.

Table 3.5

Total debit, amounts received and tax outstanding

Year	Total debit[a]	Amount received	Amount outstanding at end of year	Per cent outstanding
1978[b]	212,435,508	197,209,904	15,225,604	7.2
1979	127,613,104	110,598,298	17,014,806	13.3
1980	167,970,260	144,196,098	23,774,162	14.1
1981	191,887,135	152,845,311	39,041,824	20.9
1982	207,938,950	157,224,457	50,714,493	24.3

Note: a Includes debit outstanding from previous year at commencement of the reference year.
b Eighteen months to 31 December 1978

Source: Papua Guinea Chief Collector of Taxes Annual Reports

Table 3.6

Outstanding debt for which payment being sought at 31 December

Year	Amount in kina being sought From Companies	From Individuals	Total
1978	2,478,552	7,181,685	9,660,237
1979	3,156,0 53	7,176,092	10,332,145
1980	9,393,399	10,236,050	19,629,449
1981	10,731,858	12,345,276	23,077,134
1982	8,474,015	12,020,501	20,494,516

Source: Papua New Guinea Chief Collector of Taxes, Annual Reports, Table 7.

The Assistant Collector (Management Services) attributed changes in the rate of tax offences to two main factors: the state of the economy affecting the ability of taxpayers, particularly companies, to pay taxes on time and the manpower available in the Tax Office to investigate tax evasion and recover taxes owed quickly. As the economy expanded, the office needed more staff to match the level of economic activity and at a time of growth may lag behind in staffing. The office is also having difficulty recruiting senior expatriate staff.

It is of interest to the study to know who are the offenders in tax cases. Since a PAYE system operates for salary and wage-earners, individuals earning only salary and wages are not by and large offenders under the Act, although sometimes their employers are when they do not remit funds collected to the Tax Office. The main categories of offenders are companies, and individuals deriving income from investment or business activities. At the end of 1982 the Taxation Office was seeking payment of K8.5 million from companies and K12 million from individuals, roughly 10 per cent of the total liability in each category. Since companies are either owned by persons and d,. organisations resident overseas or Papua New Guinea residents who can afford to have investments in them, it is clear that the K20.5 million directly owing to the government at the end of 1982 was owed by members of the economic elite in Papua New Guinea and overseas. In 1982, for instance, only 5,605 returns were received from individuals, of which 761 were salary and wage returns. Thus the individuals who owe money to the government are likely to number less than 5,000 or less than one per cent of the total population of Papua New Guinea This taxation owed is revenue not available to the government for services to the population at large.

The Taxation Office does not provide statistics by citizenship of taxpayers or company shareholders. However, the 1982 Report notes that K6 million of the amount owing by individuals, that is about 40 per cent of the gross outstanding amounts for individuals, cannot be recovered because the people have left Papua New Guinea.

Services less satisfactorily performed due to corruption and crime

There is a vast area of economic loss in productivity - and wastage in government expenditure flowing from the outright illegalities like corruption, pilfering of government materials, embezzlement and falsification of records - and from the less criminal but more generalised inattention to required functions, cheating on time sheets, expense accounts, unauthorised use of official vehicles. We have no doubt that the .costs must be enormous - but to estimate them, even approximately, a measure of tune and money would need to be devised and applied over a wide area of governmental activity. This would take time and ingenuity. Apart from drawing attention to the poor record keeping, the neglect of even the most routine procedures and the extraordinary lack of accountability throughout the government services at central and provincial levels in the appropriate parts of this report, we have not been able to calculate the total cost incurred by government work not being done satisfactorily due to illegalities.

Private Sector

This section covers business losses, extra security costs, man hours lost, increased insurance and staff replacements.

To get some idea of what the law and order situation meant to the firms constituting the private sector in Papua New Guinea a survey was conducted which is discussed in detail in Appendix B.3. Needless to say there are various interpretations of business sector, private sector and commercial sector and there are quasi-governmental institutions which straddle the line between public and private. We can only make clear that the questionnaire used here was circulated to contributors of the I.N.A. and members of the Papua New Guinea Chambers of Commerce and Industry. The answers came from firms privately owned

It was impossible to trace the full costs and we were grateful to those who made the effort. However, in such a situation we conducted the survey with some trepidation preferring always to err on the low side rather than the high side. Where we could not be certain we omitted some amounts altogether.

Table 8 of Appendix 8.3 amalgamates the seven preceding tables each of which gives the estimated figures 1980 to 1983. Looking at Table 8 of Appendix B.3 and comparing it with the National Planning Office figures for total law and order expenditure above we can derive the following.

Table 3.7

Comparison in kina of increased costs 1980-1982

Government			Private Sector		
1980 Km	1982 Km	Percent Increase	1980 Km	1982 Km	Percent Increase
39.4	49.6	25.8	15*	44.5*	196.6

*These figures have been extrapolated from the data collected from a sample of 110 companies which are estimated to constitute about 15 per cent of the private sector.

Source: Table 3.4 above and Table 8 of Appendix B.3 (110 companies).

It will be seen that, assuming that the information contributed to the survey is reliable, the private sector costs over these years have been rising more rapidly than the government expenditure. Moreover the absolute figures have been rising so much in the private sector that they may have overtaken the public sector. As Appendix B.3 shows, a little justifiable extrapolation would seem to suggest that in 1983 the burden on the private sector of an estimated K76 million was about K19 million above the government's own total expenditure for law and order in 1984 (K57 million). However, it should be noted that to take only government expenditure and not revenue lost or foregone is to provide a misleading comparison with the private sector which calculated the losses as well as its expenditure. Unfortunately the information on government revenue foregone is sketchy. It will be noticed however that tax amounts outstanding more than doubled between 1980 and 1982. Yet even if these taxation debits are added to the expenditure figures thus doubling the percentage increase in the government figures, this rate of increase is still lower than that of the private sector. Some companies are more badly hit than others: and although in the aggregate the unevenness of the burden is not shown there are some firms suffering a great deal more than others.

Just as there was an enormous area of loss through work not satisfactorily performed in the public sector, so in the private sector there were incalculable effects on productivity and performance. Here profits dictated whether continuing the business was possible and we came across three firms actually going out of business because of the profits being turned into losses by criminal activity. Of course in other businesses, which were making a profit and increasing it annually, there was the fact that more could have been made without the burden of extra security or the harassment of crime.

Of more concern to the businessmen was the loss of confidence. The pervading idea of general insecurity had localised and general effects which were deleterious to business regardless of precise amounts or dimensions. The confidence fundamental to business is always delicate and overacts to ideas of danger - whether this is justified by the facts or not. A hotel owner complained of a loss in business whenever a tribal fight occurred anywhere near - people were afraid to come out. Teachers or government officials may not want to work in insecure areas. This affects the availability of schools and the availability of government services to businessmen who prefer to avoid such reductions in their quality of life. The wages are now carried in the highlands by helicopter rather than by car because of the activities of highway robbers and hijackers - at extra expense. Tourists hesitate to use such roads, and business which could flourish by using these arteries has at least greatly reduced profits from having to find alternatives. Our study shows a difficulty in private business in getting national staff as well as expatriates. Representatives of outside firms will sometimes not visit Papua New Guinea so that imports may be not the best for the retailer or the customer but simply whatever is available. Naturally such considerations are of professional concern to the tradesmen and businessmen: but if they eventually affect prices or the availability of goods they are of concern to everyone.

If the above review of governmental and private sector costs of crime means anything, it shows -

(a) the government cannot really afford to spend more than its present 67 per cent of total expenditure on law and order, (this is already a higher proportion than many developed countries and further expenditure must cut into resources for growth) ;

(b) the effect on the private sector is calamitous in terms of buying protection; and

(c) the unevenness of the little governmental expenditure on security in government houses and the escalation in the private sector security spending on the houses of their employees is forging residential wedges between the people and the expatriates - even between expatriates who work for the government and those in the private sector.

Incidentally, in this connection the play safe policies of embassies, whilst fully justified by their obligations to staff, helps to set the pace for private security which becomes even more irritating to those who cannot afford it.

Direct Costs

If one thinks of a criminal event as a disturbance in the routines and expectations of people going about their daily work or family activities it has disruptive ripple effects for people directly and indirectly connected with the incident. Each of these has a cost factor. The most obvious people affected are the victims and the offenders. The loss or damage to victims is a cost. Even if it is only a black eye suffered by the victim of an assault it may mean time off work or the purchase of medical supplies. If the injury is worse than that, it involves medical treatment, maybe long periods off work and consequences for the family. In any case the investigation of the case and its presentation in court takes up no little time. A loss due to theft or a breaking and entering usually means replacement costs - if replacement is possible. Windows may need to be replaced or locks repaired At worst the offender is killed and the economic consequences for the family are really severe. At best there are extra security precautions which, as we have seen, can become very expensive. These individual costs spill over into the public and private sectors as these respond to the victim's plight.

In chapter 2 dealing with dimensions of the problem, we suggested there may be 40,000 crimes a year i.e. 40,000 victims more or less. If we assume an average loss of K50 this is K2,000,000 a year. but there is a figure of around 250 homicides. It is difficult to estimate the cost of a human life but assuming

K12,000 as a compensation settlement there is a "cost" of K3,000,000 which might or might not be recovered by compensation.

The offender benefits until he is caught so that the costs to him may be spread over many crimes. However, when he is caught his earning capacity is at once curtailed and if he is married his family must fend for itself. Of course many offenders are young and unmarried so that they do not feel any particular loss. If they are unemployed too the only loss is the loss of freedom of movement but even in terms of opportunity costs these are minimal if one excludes their possible earnings from crime. Where the accused has dependents the costs of his incarceration can be very onerous for them. Just visiting him in prison is expensive. The real offender costs are borne by the victim when he is at liberty and by the state (police work when he is not caught, prison costs when he is).

Total loss to the economy occurs of course when property is actually destroyed (arson, vandalism) or lives are lost. In such cases the victim directly suffers but so does the community. Property stolen is a loss to the victim but a gain to the offender and/or the receivers: it is not lost to the community as a whole.

Just to review these expenses is to itemise a huge bill for Papua New Guinea - both government and the people - which drains off funds that could be better or at any rate more justly applied. It needs calculations of man hours spent and the cost in wages and overtime to be made by someone following specimen cases from reporting to conviction and from imprisonment to release. An assessment could then be made by multiplying the amounts spent on the individual case by the approximate number being dealt with by the courts. Unfortunately this study did not have the time for such depth inquiries.

Then witnesses can spend hours of their time involved in police investigations or attending the court. They meet these costs or they are met by their employers. Finally there are legal costs if the offender is represented or if the state has to pay for the professional prosecution of the case. As already shown costs rise higher if here is such inefficiency in preparing these cases for court, then all the man Fours devoted to the case by the victim, witnesses and others prove to be wasted or abortive

Indirect costs

If the direct costs are difficult to quantify without a close study of each individual case, the indirect costs become more and more elusive the further one moves in the criminal event and the main actors. Generally the indirect costs are the off costs falling on people other than the main actors in the crime drama. If the victim is incapacitated it is likely to be his family which will suffer as much as- or even more than - him. Similarly with the offender who is married, his removal from the home will deprive his family of a breadwinner. Even the

unmarried offender or victim when rendered unproductive by the crime may be unable to contribute to his family. We collected some information on the costs involved for others when in tribal fighting areas crops are burnt, houses, schools and health centres destroyed but again no-one had been monitoring these in such a way that a total figure could be reached. Finally one should not overlook the vicious circle of ever intensifying problems from generation to generation. Due to a victim's demise or the incarceration of a parent, children suffer, their education may be disrupted, they grow up with problems of their own which are acted out on the community. This is a syndrome which has not been monitored in Papua New Guinea but it has been documented time and again in towns all over the world and it would be remarkable if something similar was not happening in Papua New Guinea - with enormous cost implications. We felt that case studies would be suitable to trace such costs but did not have time to do them and we were reluctant to make broad guesses. For those who feel less reticent the figure of 40,000 odd offences per year can easily be multiplied by a notional figure to give a total - as we have done in illustrative cases above.

Then there is another, wider area of indirect costs - the rush of some people to protect themselves more, by buying locks, guard dogs or even firearms in extreme cases (we have partially traced this for the private sector above). The additional hotel costs when some expatriate families refuse to move to ordinary housing and of course the fall in property values when a reputation for insecurity spreads. We discovered a great deal of property owned by affluent nationals in Port Moresby was virtually unrentable because of its location. Then of course there is the eventual increased taxation to meet the higher government expenditures occasioned by increased crime; finally the increased prices as retailers seek to cover their higher costs from stealing or as wholesalers mark up their goods to take account of stealing from stores in the course of delivery. There is an oblique irony in this in that people eventually pay for the crime they do not unite to prevent. Unfortunately the wrong people are usually affected and end up paying more than they should.

The difficulty of calculating these costs is that they are rarely if ever specifically connected with crime. They are an amalgam of taxation or price rises for a number of reasons with increased crime being only one of these.

Diplomatic costs

We sought to obtain details of the additional expenses for security assumed by embassies and high commissions. Of course, diplomatic privilege places the responsibility for the security of foreign diplomatic personnel very squarely upon the host government; and in many countries the host government shoulders a very substantial extra bill to provide a special security service for embassies and diplomats. Papua New Guinea too accepts this responsibility and the Commissioner of Police is charged with the special protection of foreign embassies, high commissions and their personnel.

Actually it has become the practice in recent years for foreign embassies to provide security of their own, over and above what the host government may offer. The attacks on embassies, assassinations of diplomatic personnel and the danger of being taken hostage have caused governments to provide their embassies abroad with specially trained policemen, secret agents and special alarm devices from their own country. In Papua New Guinea we did not try to get information on anything like this but it seems that from this point of view Papua New Guinea is not regarded as being vulnerable to assassination or hostage-taking. It is a situation which can never be taken for granted of course. We did ask ambassadors and high commissioners to try to obtain for us the figures for security which were identifiable as over and above the costs normally assumed by their missions abroad. We sought the Papua new Guinea element in the security provisions. Unfortunately our request proved complicating for most foreign missions but two were able to give a precise breakdown. Nevertheless, it is fairly dramatic to note that one foreign mission has invested over three quarters of a million kina in equipment for security and is assuming a burden of over K51,000 a year to keep it effective. To this must be added the cost of new housing for staff which is nearing completion with many built-in security provisions. Again it has to be remembered that this is over and above the protection provided by the Papua New Guinea government - and is extra to the normal provisions for foreign mission security made by the countries represented by those missions. Another mission has undertaken a new housing complex for staff amounting to about one and a half million kina. Here the annual bill was K88,435. In another case an embassy had moved out its staff from houses which remained empty - and were therefore a considerable cost in addition to the alternative housing. This matter is serious for the government of Papua New Guinea. It highlights the failure of the present government policies to protect diplomatic personnel - and it naturally alarms others who are more vulnerable simply because they are less entitled to such protection.

General

There is so much that just cannot be costed and government's attention is constantly being drawn to the enormous wastage and diversion of public funds which goes on. We are concerned only with that which might be unmistakably attributed to crime and its control. If we only take the figures we have arrived at of I<76 million for the private sector and K56 million odd for the public sector, the planners and accountants have to confront a bill of K132 million a year. This is a sizable hole in the economic bucket - more than a half of the aid received annually from Australia and maybe in excess of other forms of technical assistance which the country is receiving. The point is that this is a very conservative estimate. We would not be surprised when a more thorough study is undertaken if it did nut amount to double this figure. It is a drain the country just cannot afford. We believe that some of it will have to be accepted for some time Lo come there still has to be expenditure on law and order. But here is sufficient incentive to bring past allocations under critical scrutiny. If it has to spend on law and order the country must begin to get better value for money.

Chapter 4

CORRUPTION IN GENERAL AND IN PAPUA NEW GUINEA IN PARTICULAR

From the outset it was agreed by the I.N.A., the Government Steering Committee - and by the National Development Forum - that a study of this kind would have to cover all the various types of crime in Papua New Guinea and not just the breaking and entering, the rapes, robberies or, what might be called, the street crimes. White-collar, corporate and organised crime -and particularly corruption - can have economic and social consequences far exceeding those of the conventional types of crime. Moreover, it would have been hypocritical to have restricted the inquiry to "poor men's crime" whilst ignoring the "rich men's crimes".

To treat corruption with the prescriptions applied to other crimes will not prevent or resolve corruption. To think of corruption as just another form of crime misconstrues the nature of corruption and the magnitude of its impact. Unlike other crimes, the detection and proof of corruption are exceedingly difficult. There isn't usually an immediate victim to register a complaint. The clandestine dealings of corruption remain hidden from public scrutiny; unless someone becomes carelessly loose-lipped there may be suspicion but rarely will there be proof of corruption.

That there is real concern about the spread of corruption in Papua New Guinea can hardly be doubted. In his report for 1983, Mr. Ignatius Kilage, the Chief Ombudsman for Papua New Guinea commented -

> "There has been too much talk about stopping corruption and too little action" (Ombudsman Commission 1984),

and he recommended an amendment to the criminal code making it an offence for any person to offer or give a gift or benefit to a public office holder, an employee of a government department or public body. He has complained on several occasions that even when his office conducted its own investigations and published the results of its inquiries, recommending prosecution, no action at all has been taken to bring the accused before the courts. As he pointed out, gifts apparently unrelated to official duties might be offered and accepted with corruption being difficult to prove but with an obligation being created which would obviously affect decision-making. And, though the country has a leadership code which prohibits the acceptance of gifts by a leader, it does not prevent Leo offering of such gifts. In one of his reports on the misuse of government funds (for the purchase of official diaries in excess of requirements from a firm represented by a foreign agent who had been exceedingly generous to certain officials) the Ombudsman characterised all his own discoveries of corruption as being no more than "the tip of the iceberg".

Mr. Paul Torato, a prominent parliamentarian, has claimed publicly that corruption and bribery are rife among politicians, public servants and among members of the private sector and he has called for K500,000 to be given to the Ombudsman Commission to investigate (Post-Courier, 27 January 1984).

Two months later Mr. Justice Kaputin of the National Court warned public servants, in positions of trust, against defrauding the government. He was jailing a former cashier in the Taxation Office for stealing from the government. In his sentence the judge said that-

> "This offence was prevalent in the public service...". (Post-Courier, 2 March 1984)

The National Court tried a former minister of government alleged to have misdirected the funds he obtained for a public purpose to the purchase of a bus which plied for public hire (Post-Courier, 2 April 1984). They found him guilty and as a consequence he is no longer eligible to sit in parliament. There is a demand in parliament for an inquiry into the way in which prime land sites in Port Moresby have been purchased by influential people. And the Minister of Health has said that he will not tolerate corruption - in response to the exposure of a fee being levied by the morgue attendants at the general hospital on members of the public collecting their deceased relatives' bodies (The Times of Papua New Guinea, 22 March 1984). And just to substantiate Mr. Torato's claim that corruption spreads to the private sector, a company manager has been jailed by the National Court, as this is written for stealing K39,452 from his company (Post-Courier, 11 April 1984).

In June 1983 a tribunal appointed under the Organic Law on the Duties and Responsibilities of Leadership recommended that a member of parliament be dismissed from office because he -

> "tricked the Government by false misrepresentation to giving him the grant of K60,000"

The tribunal said that it was satisified that this member of parliament was -

> "a shameless liar, a thoroughly dishonest man who used government funds of K60,000 for his own personal enrichment and for the benefit of his associates".

The tribunal went on to say that had this matter been properly and thoroughly investigated and considered then -

> "in the tribunal's view criminal charges should have been laid".

On 9 December 1981 a similar tribunal recommended the dismissal of another member of parliament on 16 charges of misconduct including involvement in black market beer operations, falsely renting a house which was not his to rent and not declaring the rent received as income in tax returns, passing forty cheques which were not met on presentation and accepting thousands of kina in gifts from government contractors.

Many people interviewed in the course of this study believed that corruption is epidemic in Papua New Guinea. Unfortunately this is not easy - for the reasons already given - to substantiate in any conclusive way. Yet the absence of the kind of evidence required by the courts should not induce complacency. Too often, in societies overwhelmed by corruption, by the time sufficient evidence emerged to prompt state action, the insidious grip of corruption denied any effective remedial action by the state.

Most people in Papua New Guinea know a great deal more about the real amount of corruption than is ever likely to surface in official reports or newspaper speculation. It must be remembered that when cases are sufficiently provable to be exposed or when those giving evidence feel courageous enough to take the risk of reprisals, the accused are usually arraigned only for those corrupt practices which can be documented and proved to the satisfaction of the ordinary courts - or to a leadership code tribunal. Getting such evidence may be extremely difficult in any country: but in Papua New Guinea with its geographical and linguistic complexity, its regional chauvinism and its fragmentation of clans, the task is especially complex and the available expertise for its effective investigation and prosecution very scarce. Therefore when a case comes to the courts or to the tribunal, the charges brought may be no more than minor examples of a much more extensive pattern of corruption in which the person has been indulging for years. Moreover, the abuse of power and influence and the cornering of business, political or social favours might, very frequently, be quite impossible to connect with the kinds of monetary transactions needed for court proceedings. This is particularly true in Papua New Guinea where obligations, alliances and the cohesiveness of a "wantok" system stand for so much. But, if corruption is difficult to prove to the satisfaction of the courts, it is even more difficult to hide from the public. Eyes are everywhere and there is a ubiquitous curiosity about the life styles of all those who are prominent or influential. This interest is served by channels of communication that are all the more efficient for being personal and close. So much more is known about private lives here and so much more rumoured or suspected that the extent of corruption is difficult to hide. And, if the official cases are no more than the crumbs from a table laden with corruption, the knowledge circulating amongst the public of the true size of this repast is exaggerated to lavish banquet proportions by their imagination. It is

the pernicious consequence of this public belief in the dishonesty and self-seeking of people with access to money and power which has to be counted in any appraisal of the economic and social consequences. For there is something inherently destructive and debilitating about the widespread belief that here is a pot of gold, access to which is obtainable by education and political allegiance. Unfortunately, the well known practices which reinforce such beliefs are both numerous and conspicuous.

Once started, corruption is hard to stop. Honest businessmen cannot remain competitive if other businessmen acquire competitive advantages through corruption. The easy money floating about in a corrupt society intoxicates many honest men tempted by the easy access to wealth. Imperceptibly corruption spreads through society like a cancer. By the time the state mobilises to deal with it the action is often too little and comes too late.

The padding of expense accounts by ministers and officials alike enhances the value of overseas and domestic travel and only attracts attention when it is really excessive; the blatant misuse of official vehicles for family, private or even business purposes is talked about everywhere. The use of such vehicles at weekends or their involvement in accidents in places where they were never intended to be, highlight a general belief that official transport and its personal use is a perquisite of office. There are even reports of official cars (in one case a helicopter) being used either to carry tribal fighters or to warn them of the advent of the police mobile unit.

The abuse of licensing powers, political leverage to obtain all kinds of exemptions and concessions not to mention the liberal application of "slush" funds for political advantage, are by now quite normal and well understood by the public whose representatives manipulate and "wheel and deal" accordingly to get their share. Foreign business interests seeking governmental or political approval are quick to identify those prepared to lend their names and use their contacts for a price. Apart from the usual political patronage endemic to party politics everywhere, there are all kinds of special funds, qualifying procedures and aid schemes which can be exploited and abused. With audits running several years behind in some of the governmental enterprises (national and provincial), with records being badly kept (and indeed just non-existent in some places) the hope of achieving the accountability needed to contain corruption - and to identify it when it does occur - is receding progressively year by year. And it would be a gross underestimation of the intelligence and political sagacity of the people of Papua New Guinea to imagine that much of this milking of the public purse for private advantage, of this twisting of a largely unsupervised general system for particular gain, escapes public attention. That so many more cases of corruption do not clutter the courts may be as much a reflection of the ordinary citizen's realism and resignation as it is a sign of acquiescence or condonation. Maybe they have tried to do something about it and failed; maybe they fear retaliation; maybe they feel powerless. Here, as elsewhere, there is little kudos attached to being an informer. Here, as elsewhere, the powerful have ways of silencing criticism and there are always ways of discouraging such perceived challenges to the established power bases. Here, as elsewhere, the maintenance of an accusation of corruption takes courage

and tenacity of no mean order. In fact, given all the problems in Papua New Guinea attending the ordinary, quite normal and routine criminal investigations and prosecutions, the successful initiation and consummation of so many proceedings for corruption against people in high positions is a great credit to the country. For, the worst that could happen -and that may happen if this disease is not tackled with vigour - is that the realisation and resignation of the public may become so embedded that corruption in Papua New Guinea becomes the norm and integrity a kind of aberration. When that happens the country's days are numbered: for as Cicero once warned

> "Once men grab for themselves human society will collapse" (On Duties, III, v.26)

Perspective

To climb out of its trough of corruption, Papua New Guinea needs political will and models to emulate. Moral indignation is no adequate substitute for practical measures of prevention and control. And there are no legal systems which control corruption without an individual and social commitment to standards of integrity that transcend law enforcement. Where are such examples to be found?

Unfortunately a glance around the modern world is not reassuring. Scandals abound in most of the developed countries. Lobbying, paying off political debts, the use of questionable funds at election time, established links between officials and criminal personalities and the organised syphoning off, via contract "kick backs", of vast amounts of public funds are tiresomely commonplace in the United States. Corruption has plagued the Japanese for years. There it is known as the "black mist" and at least one political party (the Komeito) exists for no other purpose than to combat it. The only brightness in that particular mist is that a study of 300 such cases a few years ago showed that over 60 per cent of the corruption was perpetrated by individuals not for themselves but for the benefit of the companies or organisations to which they belong. Austria has had a huge scandal involving commercial and government personalities concerned with the building of the Vienna Krankenhaus (General Hospital). In the Federal Republic of Germany the damage resulting from collusive tendering in the construction industry alone was estimated in 1979 at seven billion marks annually and as this is written the former Minister of the Economy has been found guilty of corruption by the 7th Chamber of the Bonn Tribunal. This Chamber is responsible for economic cases and decides what is "receivable". The Minister was accused of receiving a sum of money from an industrial group which later benefitted. A study of illicit practices in the European Economic Community a few years ago showed that fifty per cent of all scrap imports were faked imports, some thirty per cent of the subsidised scrap not existing at all. Corruption was an election issue in the Australian State of New South Wales earlier this year where inquiries into its extent continue. Charges have been recommended by a supreme court judge enquiring into allegations that a former minister was involved in releasing prisoners in return for a payment. A Royal Commission has been startling the country with revelations of connections between a certain union and organised

crime: and the federal government of Australia is currently inquiring into the validity of tapes purporting to record telephone converstions between a high court judge and a solicitor, the implications of which it would be unfair to discuss just yet. A study of "black capital" in Sweden in 1976-1980 estimated that the annual amounts denied to the state by tax and exchange control offences alone amounted to ten per cent of the national income. Even Israel where altruism and dedication to the state kept venality at bay for twenty years after independence finally collapsed after 1968 into a series of scandals involving statutory corporations and large banks, touching even the political parties. In 1969 embezzlement and fraud was uncovered in Netivei Neft the government controlled oil producing company in Sinai and the Minister of justice had to resign over the huge fees he had approved paying to the attorney assisting the inquiry. In 1972 a great racket was exposed in the Amidar Housing Company where bribes could influence the distributing of apartments. In 1974 the general manager of the Israel-British Bank was arrested for "huge discrepancies" and that bank collapsed. More seriously this general manager had been a financial backer of a political party - which later tried to intervene on his behalf. In 1975 there were charges of bribery, price-fixing, falsifying bids and embezzlement involving high officials and defence contracts. In 1976 the huge Trade Union Sick Fund was revealed to have received real estate "kick-backs" which had gone partly to the Labour Party's 1973 election campaign. And so on. Of course all of these are protruding tips of larger icebergs of corruption which never surface in the courts but which have profound effects on economic and social life.

In recent years some of the world's most distinguished and impeccable financial institutions, insurance houses, health, education and even charitable establishments have been involved in scandals. Lloyds of London - with collusion between underwriters and some of the insured companies; frauds involving the sale of oil from giant tankers which were later sunk and insurance claimed for both the ship and its oil cargo: the Ambrosian Bank scandal which blew up after the banker Calvi was found hanging under a London bridge. There had been a huge drain off of funds to private accounts in Puerto Rico; the Vatican had been issuing guarantees for funds raised; and it appeared that Italian Freemasonry had some role. On the charitable side there have been allegations that the aid was not reaching the people for whom it was intended: for instance money for helping earthquake victims in Italy was diverted by organised crime. Bribery, according to a recently published book, is the main reason that unsafe drugs get sold in the Third World. Nineteen of the 20 largest United States pharmaceutical companies have admitted corrupt payments to get permission to sell drugs, to get health inspectors to turn a blind eye, or to get government approval for price increases (Canberra Times, 5 April 1984).

Such rampant rapacity has also been reflected in the socialist countries, though here the evidence is scanty because of the control of information. However, in the regular press huge sums have been mentioned in connection with black-marketing, traffic in rations or permissions to reside in the more desirable towns to which migration is controlled. With the long queue for specialist. medical treatment, under the counter payments have become regular. Dentists in Hungary do a roaring trade treating at high prices for them the flow of Austrians who find it cheaper than their own country's dentistry. It can only extend of course the queues of Hungarians entitled to such oral aid. The USSR dismissed a minister

who built her own dacha (summer house) with government funds and has frequently inveighed against corruption. A Reuters report from Moscow dated 19 April 1984 gave an account of the Soviet Union's top judge Mr. Vladimir Terebilov calling for a tougher crackdown on corruption, blackmarketeering and drunkenness as major problems in Soviet society. The report was taken from Pravda (Canberra Times, 20 April 1984). A year before the Minister for Internal Affairs Mr. Fedorchuk had promised in a signed statement on the front page of a major Soviet newspaper to clean up corruption in the police (Canberra Times, 25 March 1984). Ministers and managers of government enterprises have been prosecuted for converting funds to their own use. China published new regulations for municipalities to control smuggling and illegal sales early in 1981 (The Peking Daily, 28 January 1981). It seems that in 1980, in Peking alone, there were 2,200 cases of "speculation and smuggling" which were discovered and goods valued at more than $300,000 had been confiscated (Guangming Daily, 21 January 1981).

In developing countries, corruption came with self-government even before independence. There is a whole series of reports on local government in Nigeria in the middle 1950's revealing widespread corruption in contracting and market stall allocation. When independence came corruption was sometimes encouraged by transnational "carpet-baggers" competing for government contracts and sometimes the politicians and officials were pressured by the need to provide for large numbers of clan or family relations with high expectations. Some of the larger commercial enterprises had invested before independence in the overseas education of a number of political leaders. Others assisted with scholarships or grants for the children. At first, good will only was being sought but it did not take long for the unscrupulous to go beyond this. When large contracts were involved government leaders could hold out for the highest bidders. Reflecting the way that Prime Minister Tanaka in Japan took Lockheed bribes to influence the choice of aircraft for the country, the new military leaders in Nigeria have recently said that the final straw which provoked the coup in December 1983 was a US$450 million contract between British Aerospace and Nigeria for 18 Jaguar ground attack fighters - with a secret US$33 million "commission" to be paid to a "consultant" (Post-Courier, 30 March 1984). Only a few weeks before the coup in Nigeria quite unrelated television documentaries in the U.S. and the U.K. dealt with the problem of corruption in that country - already being openly discussed there and abroad. The U.S. programme "60 Minutes" dealt with the oil millions that should have been used for the development of Lagos which was beginning to look like an expensive sewer because of deteriorating sanitation for which there should have been more than ample money available. The U.K. programme followed around a Nigerian television personality recording her interviews with residents: again the widespread cynicism of the people and their lack of faith in the integrity of leaders was manifest. There was no surprise then that the military leaders should have claimed corruption as their justification for ousting the civilian government.

President Nyerere a leading theoretician of African socialism who created communal villages and sought to eliminate economic privilege has recently been having corruption in his state control boards and has acknowledged that the system is not working well (Post-Courier, 9 April 1984). Kenneth Kaunda of Zambia has called "rampant corruption" in his country "a cancer" and has begun a drive to stamp it out in state and private concerns. He has accused executives of

parastatal marketing boards of having money "stashed in foreign bank accounts", of getting bribes from suppliers and therefore not purchasing economically. He has denounced unscrupulous managers and workers for pilfering (The Times of Papua New Guinea, 1 March 1984). He sees corruption spreading like a cancer as the major contributing factor to this country's poor economic performance.

India had a committee on the prevention of corruption in the early 1960s and it reported in 1964. This Santhanam Committee analysed amongst other things the system of "speed" money (i.e. "greasing palms" to get priority treatment) and concluded that since, very soon, every official had his hand out, it served to delay rather than to expedite the clearance of goods. In the late 1970s a paper prepared for a United Nations meeting showed that in India over a million people were estimated to be living directly or indirectly from the proceeds of smuggling contraband goods. This not only cheated the customs but created "black money" which increased the demand for contraband goods and was a drain on foreign exchange reserves.

The list could obviously be extended. There has been the Myungsung scandal in Korea, and the furore surrounding the president of the Free Church of Tonga who was fined $T1000 for contempt of court. He came before the Supreme Court last December after an official referee found $T20,000 missing from the church income whilst it was "unlawfully" under the president's control. The judgement also found that he has misused hurricane relief funds from the World Council of Churches by giving $T20,000 as a loan to a company of which he was a director - and the loan was not repaid. Hong Kong was rife with corruption before it spent an enormous amount on an anti-corruption organisation the head of which was paid more than the governor of the colony. A great many police were prosecuted. Indonesia, Thailand and the Philippines could provide other examples if these are required: but the point has been made - that Papua New Guinea in setting its course for the future cannot afford to look around and say "we are no worse than the others". It has to observe what has happened to these others when corruption has been allowed to run riot. A prior question frequently raised however is whether corruption serves any development purposes. Can there be a positive side?

The Function of Corruption

It might be argued that with corruption being such a universal phenomenon, it is natural to society and serves a function which gets obscured by the moral outrage it provokes. The Economist for instance has appealed for another look at "corruption" as a Western judgement on societies with very different standards.

> "For Westerners, there is a temptation to assume that politicians in the third world can act within the same framework of custom and law as in the West. They often cannot.

> "There are men of integrity in the third world who can discharge public duties only by bribery and favour. King Ibn Saud the creator of Saudi Arabia was a past master at balancing and buying off the tribes of the desert. So was T. E. Lawrence. Did they lack integrity?
>
> "It is not always easy to say where patronage ends and corruption begins. In the world's poor south, the meritocratic idea by which a man is rewarded purely for ability is more readily put aside in favour of sectional interests than it is in the West.
>
> "The structure of politics is built less with ideological bricks than with the mortar of money and clan alliances. When the minister takes his percentage from an international contract, he spreads the winnings to the party, to the home village, to the tribe, into his own pocket. In many parts of the world the relationship between the individual and the group - the extended family - the clan - the tribe - differs sharply from that in the nuclear-family dominated West.
>
> "In the West two complementary but opposite ideas prevail" loyalty to the rules of the State, but also an allegiance to the idea of individual liberty. In much of Africa and Asia the individual is far more thoroughly subsumed into the group. His individual rights and his personal accountability matter less than his loyalties to clan and tribe.
>
> "The State is often an artificial entity. The flouting of its rules bears little social stigma. Public office is for family gain"
> (The Times of Papua New Guinea, 1 March 1984 from The Economist, 4-10 February 1984).

It is true that there are significant differences between developed and developing countries in an early stage of independent development. For one thing power, wealth and status are not as dispersed in developing countries as in the developed areas. They are concentrated in the hands of the few - especially in the hands of politicians.

> "It is one of the regrettable assumptions among young West Africans today that Ministers are rich, and that they become rich by being Ministers" (Wraith & Simpkins 1963:14).

Also there is an association of status with ostentation which requires wealth; and all these are without the controls usually available in the form of a highly educated electorate, a strict accountability and well established professions with status quite apart from wealth and power. Often the ministers and senior public servants are not only young but operating without the guidance of older and more

experienced politicians or public servants. So inducements for corruption are greater and inhibitions are minimal. Financial rewards attached to success in an election are usually disproportionate and politics are expected to imply economic improvement. Above all loyalty to the clan and the family precedes obligations to the people generally.

There is much in this last sentence which has direct relevance for Papua New Guinea. When Marilyn Strathern, an anthropologist well known for her work in Papua New Guinea, was asked to comment on the danger that the proposed village courts would become corrupt because of local relationships, she replied that the term "corruption" here was a Western concept and that rural people could not imagine justice which was not inextricably entangled with clan obligations and local politics" (Strathern 1975b). Note too in the Economist article the reference to the weakness of the concept of the state, the strength of the "wantok", the preeminence of group obligation and family needs over individual interests. There is a timely reminder that corruption needs a precise definition in societies when gift giving is traditional and alliances are created not by signatures on written treaties but by the public and ceremonial exchanges of gifts which live in the people's memory. Sometimes it has been the transition from the giving of pigs or produce in a public ceremony to the giving of money quietly and unobtrusively which has introduced the element of secrecy associated with corruption. This matter is again discussed below in relation to village courts which are at the junction of older and newer expectations.

Yet, at the same time, it might be observed that there is a theme of moral self-righteousness in the Economist article. One might not unreasonably impute a kind of smugness which distinguishes, so carefully, between the West and the rest of the world. For, if the above survey of corruption in developed and developing countries means much at all, it surely confirms the ubiquity of corruption and its capacity to permeate <u>any</u> society, whatever the culture, the allegiances or the ideology. Whatever the demands of family, clan or party, there is no group in any country actively campaigning to legalise corruption. There may be differences of interpretation it is true; there may be varied levels of tolerance so that outrage is not so easily aroused in some countries as it is in others. But the most striking feature and the most common feature is that corruption is denounced in both East and West and both North and South. Indeed we have the above examples of abuse of position to quote only because it is seen as abuse and denounced wherever it occurs. King Ibn Saud might have bribed the tribesmen but he would not have tolerated people bribing his personal staff. T. E. Lawrence may have bought his alliances: but he would not have relished the Turks doing the same. Actually he might have benefited from the fact that the Turks worked the other way round - they expected to be paid in revenue (bribes?) <u>not</u> to interfere with the <u>satrap's</u> freedom to levy his own taxes and indulge in his own version of exploitation of those under him.

In Nigeria on 26 February 1952 a resolution was moved in the Northern House of Chiefs by the Emir of Gwandu:-

> "That this House agreeing that bribery and corruption are widely prevalent in all walks of life recommends that Native .Authorities should make every effort to trace and punish offenders with strict impartiality and to educate public opinion against bribery and corruption."

This resolution was carried unanimously but gave rise to a study of the customary exchange of presents between "Chiefs and District and Village Heads and their People". This report rejected the idea that customary gifts were justifiable as a form of charity, found most of them to be purely secular and ceremonial and that they merely served the ends of prestige, ostentation or avarice (Wraith & Simpkins 1963).

Corruption is a bit like lying there are all kinds of good reasons for it - and arguments for its justification - until one is subjected to it oneself. To have a bribe used to help out is not terribly disturbing: but to have a bribe used against one is a very different thing. It is the beneficiaries who are most likely to condone corruption. Others - even the group oriented - find no comfort in being victimised. Moreover, some countries can afford more corruption than others. Stealing from or cheating the poor is always more reprehensible.

There have been some non-moralistic, neutral and abstract analyses of corruption however - and a few attempts have been made to calculate objectively its economic and social effects. Corruption has always fascinated the political scientist and it was the developmental and the structural functional schools of political science which questioned, during the 1960s, the usual version of corruption as a sign of political disintegration and social decay. Instead they saw corruption as a "functional dysfunction". It might be a dysfunction but some saw it as having marked advantages for the economy - attracting foreign investment and circumventing hampering regulations - as well as fostering the private as against the public sector (Bayley 1966). It wasn't all bad. It might be a dysfunction: but some saw that it helped to make the bureaucracy more available to the people rather than less. They pointed out that this could actually foster the assimilation of immigrant or parochial groups who could buy their own direct access to government and influences (Bayley 1966 ; Werner 1983). Corruption may be dysfunctional in some ways but it was also instrumental in building up important forms of cohesion and relationships which might not otherwise develop. It was held for instance that an honest, merit-oriented and incorruptible bureaucracy might very well inhibit the rise of strong political parties and effective political leadership. Conversely, an ineffective and corrupt bureaucracy could make political unity necessary and so help to create and nourish the basic political institutions (Braibanti 1963). Or finally, corruption may be a dysfunction but it serves to bring flexibility and humanity to rigid bureaucracies. It might even improve the calibre of public servants because, with corruption there will be all kinds of "extras" which will offset attractions arising in the alternative non-governmental areas of employment (Nye 1967 ; Bayley 1966).

This functional approach to corruption did not seek to justify corruption as an end in itself but only as a means to an end. Again there was the condescension of viewing the sad plight of the developing nations from the Olympian heights of the developed nations. These poorer countries were climbing up and might need devices on the way that would be quite unnecessary once the summit had been reached. With modernisation completed, corruption would evaporate (Varma 19 74).

The 1970's shattered any such complacency; and the global characteristics of corruption - as well as its adaptability to almost any level of technological or cultural development were better understood So maybe corruption is not dysfunctional after all. Maybe it is such an integral part of any society that it has to be expected Maybe it is systemic.

Werner has recently attempted a kind of life cycle study of corruption in Israel in the hope of tracing the "dynamic societal forces" that allow it to prevail (Werner 1983). He reviews Heidenheimer's classification of corrupt behaviour into -

- white corruption - officials and public agree that it is not serious and might be tolerated ;
- black corruption - officials and the public agree that this must be condemned and punished;
- grey corruption - officials and public disagree about condemnation and punishment -or toleration. Heidenheimer argued this was the worst for a democratic political system because the public and officials are either ambivalent towards it - or unconcerned with its restriction (Werner 1983) ;

and the Peters and Welch division of corruption into its four components - donor, recipient, the favour and the pay-off (Peters & Welch 1978:974-84); but he finds these to be too static. He says that they do not clarify the mechanisms by which corruption changes in intensity over time. Werner then turns to a 1964 study of the ways in which delinquents are able to live with themselves by justifying their behaviour to themselves ("I was only doing what everyone else is doing"; "he had it coming to him"; "It was not my fault") and thereby he makes a very important point for the understanding of corruption. He says that whilst every law defines the corrupt act it "carries the seeds of its own neutralisation" (Werner 1983 quoting Matza 1964 : 60) because it does not account for extenuating circumstances. The offender's self justification is always some kind of extenuating circumstance. He is never quarrelling with the law which is obviously a reasonable one. He is only quarrelling with its application to his own particular case. His case, in his own mind, is not the kind of case for which this particular law was ever intended. Thus those involved in corruption in Papua New Guinea may well be amongst the ones who have been most vociferous about the need to

stamp out corruption. They were always thinking of the corruption of others and never feeling that their own conduct qualified for inclusion. That is not to say that they did not understand that they were behaving incorrectly - only that they felt free to stretch a point, given their own special circumstances. In Israel, Werner contends that as the state lost much of its self-sacrificing siege mentality after the 1967 Six Day War (in which Israel was so dramatically successful and finally got control of the whole of the city of Jerusalem, the Sinai and the Golan Heights - all of which had been danger areas), it succumbed to materialism and self-seeking. People began to "turn their attention to personal goals that had long been postponed". Elders complained about the decline of idealism; past values of "halutzivt" (Biblical term meaning "to vanguard") and "hitnadvut" (altruistic voluntarism) were being replaced by self-serving values and overt materialism.

At first there were boom years and a period of full employment and in the euphoria there was a rationalisation and trivialisation of the borderline "white corruption". But, left unchecked, the "white corruption" quickly became "black corruption". As people became more tolerant of the borderline corruption, even the more serious types began to look not so bad. The progression from one to the other was accelerated by a series of set-backs - a combination of the Yom Kippur War of 1973 (which suddenly showed that Israel was not so secure), economic recession and runaway inflation (over 100 per cent) really tested the Israeli will to put country before self. But already, as shown, corruption had been allowed to sap the national essence so that, instead of standing united and resilient before their internal and external problems, the Israelis weakened. Too many looked for escape or to havens of insulation from the economic storm. There were more currency offences, bribery became rampant as public servants sought to keep pace with inflation and, as already indicated above, some of the most respectable institutions in the country were crumbled by corruption. The lessons are clear. Corruption grows when people put self or family or clan before the state or give it more priority than public duty. Corruption decreases with a more vivid appreciation of public responsibility. It goes when the people want it to go. Or else it goes when others, not getting their share, use it as an excuse for revolution and then promote the value of public duty and give it priority over self-interest.

So many developing countries like Papua New Guinea inherited all the Anglo-Saxon laws against bribery and corruption. If these did not always stick it was partly because there were outside investors to pay for favours to an extent they might have hesitated to do in their own countries - and partly because public opinion might not have caught up with the imported standards. As to the first, Wraith and Simpkins argue that corruption in Britain succumbed to a great extent to the upsurge of Christian morality in the late 18th and 19th centuries. Before that the church itself was corrupt. Public opinion, public morality had not kept up (Wraith & Simpkins 1973). We might extend this to demonstrate that the steady disintegration of such standards in the West in the middle 20th century coincided not with the beginning but with the end of colonialism. In its dealings with developing countries the West did not always keep to its own high standards of the 18th and 19th centuries - yet officials did try to control excesses by the traders. Later the traders were less controlled in their dealings with local peoples than they had been before. Indeed, some sharp practices were legalised. Then, as to the second point - the reinforcement of the law by public opinion - there was always the overhang of family or clan obligations already discussed, and law

enforcement generally became weaker as new governments struggled with the problems of localisation and economic dependency. Yet, let it be noted that no developing country has openly condoned bribery or corruption for customary reasons and all have had official policies dedicated to their repression.

The Problems of Papua New Guinea

It has not been easy to deal with corruption in this report. By definition successful corruption escapes detection; and even the few cases prosecuted to which one has access are no more than sparks from a destructive fire raging within the heart of the nation. Provide the means and the competence for widespread investigation and prosecution and the heat of the fire will soon be felt!

A broad comparative approach has been taken because the fire of corruption in Papua New Guinea owes nothing to the national genius for venality. On the contrary it was without doubt a fire ignited by contact with the global fire of corruption which has already consumed some countries and is in the process of destroying others. In fact if anything has been learned about corruption in the last half century it is surely that no country ever escapes the rot without constant vigilance. And, if vigilance is a cost of freedom, then accountability is the cost of integrity and the control of corruption.

There is wild speculation about the extent of corruption in Papua New Guinea because there is a dearth of accountability. More cases come to light in the private sector because, in general, that sector has managed to maintain effective middle management and careful accounting practices. If something is missing it is known. Some forms of white corruption afflict the private sector - pilferage by employees, padding of expense accounts or entertainment expenses, the liberal use of company transport for private purposes: but before it can become black or grey it shows up in the accounts and can be whittled back to size. This does not always happen of course and firms go bankrupt: but, by and large, there is fairly strict accountability in the private sector.

In the public sector the lack of accountability is literally stunning. Prisons sometimes do not know how many prisoners they have or "overlook" the release of some. There are areas of government employment in which the exact number engaged is not known. Crime statistics compiled by the police become impossible to reconcile because cards are lost or systems break down. Files are frequently lost in government offices and in some of the provincial areas there are just no records at. all of transactions which have been going on for several years. There has been no check for some years on statutory returns to be made to the Registrar-General at fixed intervals by companies and, as already mentioned, audits are years behind.

Some of this is attributable of course to a cultural lack of familiarity with written records. Pre-literate societies used public ceremonials for the exchanges of gifts or the marking of events so that these would be recorded in everyone's memory. The transition to an appreciation of written records takes time. However, this lack of skill in keeping - or conscience about losing - records, is intensified at the provincial and local government levels by the fact that the national government, simply because it realises the lacunae of competence and systematic recording, keeps as much as possible under its own control. So, at the local level, the need for precision and accountability just seems to be so much less important. All this is then a kind of confusion compounded by -

- the fact that people can and do change their names (so that some public servants supposedly on leave and still drawing pay are in prison under different names) ;
- the reality that identities go unchecked ; and
- the complication that public servants at all levels are in a fairly constant state of flux - due to promotions, transfers, retirements, suspensions, leave entitlements, or moves into political life, not to mention absences official or unofficial for a variety of reasons.

Obviously it becomes quite impossible to separate incompetence, inefficiency, negligence, mismanagement, malpractice and outright corruption. If we use Heidenheimer's categories of white, black and grey corruption, the white or borderline covers most areas of government, and the black is so geographically widespread but probably so limited (as yet) in extent, that mapped for the spread of corruption the country presents a polka dot appearance which is very difficult to organise conceptually for effective action.

Almost everywhere these forms of incompetence, inefficiency and corruption shade into each other, conveniently neutralising blame and providing double standards which no-one appreciates if he or she happens to be on the wrong end. Those that are caught and prosecuted for corruption are aggrieved by the knowledge of all the others that have done the same and worse but have not been caught. Those that are scrupulous in the observance of their duties and who take care in the handling of public funds soon begin to feel by-passed by the more cunning and devious who are unhampered by either loyalty or a conscience. Even their promotion and recognition may be affected by the fact that their scrupulousness is a danger and a reproach to the irresponsible and corrupt. It is an unsupervised, laissez-faire system so riddled with neglect and opportunities for use that it blatantly encourages the venal and unfairly penalises the honest. Prosecute the offenders therefore but don't forget that the majority were generated by a system too loose for integrity.

When originally we sought to get into the problem of corruption in Papua New Guinea we were afraid that the data would not be available and that we would never be able to get to the depths of venality. It seemed likely that we would be able, like journalists and politicians, to speculate only. On the contrary we soon found that in a broader than legal sense there was just too much data to handle. In one office alone for example we discovered that the liquor licensing board had not met for two years. Yet in that time about 600 licences had been issued - all illegal - and netting thousands of dollars of which there was no record. To have got to the bottom of this one incident alone would have taken the three of us longer than the total time available for this study. Just to review the work of the Ombudsman Commission, the outright corruption he had uncovered - apart from irregularities and the usual bureaucratic excesses - which had not been prosecuted gave us another batch of data exceeding our capacity to process it. Something similar confronted us on every side: It is a violation of the law to allow a government trust account to get into the red: yet a report to the Secretary of the Department of Works and Supply by Price, Waterhouse and Company (a firm of accountants) dated 31st July 1981 showed that Vocabulary Stores Trust Account to be over K1 million in debit at the end of 1980 due to previous mismanagement. At the end of July 1982 it was K3.3 million in debit, One of the most carefully managed departments of government is the Finance Department which keeps a careful log of expenditure and commitments for the departments for which it is responsible. Just following up its own cash deficiencies of aver K1,000 it traced nine cases in 1980 (totalling K94,036), 32 cases in 1981-82 (totalling K207,588: one case was K47,185) and five cases in 1983 (totalling K8,758). This is where there was tight supervision: but several departments are self-accounting e. g. Police, Education, Primary Industry, Health, Works and Supply. And provincial governments which raise some revenue internally are not subject to the central system. So many special funds like the Village Economic Development Fund and its successor, the Development Fund show losses without adequate explanation. As this is written the Enga Provincial Government has been suspended due to allegations by the Auditor-General that it had overspent K400,000 in 1982 and had not kept financial records for 1980, 1981 and 1982. The Auditor-General's report had found that "there were weaknesses in the accounting system particularly unsatisfactory financial accountability, inadequate budgetary control and unauthorised use of ILPOC's" (Post-Courier, 10 February 1984).

No one suggests of course that all such gross mismanagement, incompetence or even dereliction of duty amounts to corruption. There is a very important difference. On the other hand there are such huge amounts involved and the slackness is so pervading that it. requires an equal stretch of the imagination to believe that so much could have been expended so liberally, even irresponsibly, without there being some corruption. How much, would have taken the team a lot longer to estimate than the time at its disposal; but the very absence of records for so very much of the money missing is itself both significant and suspicious. It is known from investigations elsewhere that votes are overspent or applied to purposes for which they were not intended, that "entertainment" can have many connotations, that "authorised' and "unauthorised' journeys can be differently interpreted and that local purchases or telephones, permanent hire, overtime and "special Services" are frequently "adaptable". Of course, whether there would

1. Government purchase orders committing funds to cover items listed

ever be sufficient evidence for a prosecution or conviction is another matter again: but if, in trying to achieve some idea of the size of the crime problem, we do not limit ourselves to reported crime - and even less to convictions for crime then in estimating the possible extent of corruption we can hardly be limited to records which intentionally or unintentionally just do not exist.

But, for argument's sake, even if credulity be specially cultivated and the term "corruption" be denied to anything which has not been the subject of a successful prosecution, the corruptogenic fertility of a rich soil of mismanagement, incompetence and neglect assiduously watered with political ambition and wantok obligations can hardly be denied - and that is the main point of this account of corruption in Papua New Guinea. The extent of corruption anywhere is difficult to assess so that it is necessary to look for conditions more than conclusions. For corruption can flourish without any convictions if the conditions are right. The conditions in Papua New Guinea are favourable for the growth of corruption by any criteria we might like to adopt.

Following the line taken by The Economist (op.cit) it is possible to say of Papua New Guinea that -

> "The State is.....an artificial entity. The flouting of its rules leaves little social stigma".

We leave it for those more knowledgable than we are to decide whether the rest of that paragraph is true - namely,

> "Public office is for family gain"

But it stems not unreasonable to maintain that in Papua New Guinea -

> "It is not always easy to say where patronage ends and corruption begins..... The structure of politics is built less with ideological bricks than with the mortar of money and clan alliances".

Now withdraw accountability at critical levels of government expenditure, reduce government contacts with people at a grass roots level, expect them more and more to govern their own affairs with progressively reducing supervision -and the scene is set for that rationalisation and trivialisation of white or borderline corruption that we observed in the case of Israel. It is fairly obvious that this has already happened on a wide scale in this country. The progress to black corruption - to the serious types of corruption that everyone condemns and wants to see severely punished - has been slower but we have adduced enough serious examples at the beginning of this chapter to demonstrate that it is real if not yet rife.

Chapter 5

EDUCATION AND UNEMPLOYMENT

Education is listed here as part of the problem for reasons fully explored by the Morgan Committee. We are less confident that it lends itself to an easy solution. When the question of crime is under discussion and it becomes obvious that so many of the rascals are unemployed in towns or disconnected from their traditional roles in villages the usual reaction is to blame the government for not developing the economy to provide enough jobs.

A procession of crash programmes have been devised in developing countries over the past thirty years to generate employment. Jomo Kenyatta in Kenya once ordered all employers to take on an additional 5 per cent of workers. It made little or no impact on the hordes of unemployed lying around the urban parks. It is important to appreciate therefore that even those countries which have developed extremely rapidly have not been able to generate enough employment for the young people needing it. Nor was it only that enterprises were increasingly capital-intensive because there have been a number of valuable experiments with labour-intensive schemes.

The debris of all these expedients is strewn over Asia and Africa for all to see and in some cases political tragedy has attended the inability to provide a place in society for this army of young people with what are in effect quite unreal expectations. It is these expectations which are at the root of some of the problems. After all there is not always a problem of unemployment as such. There may be work in the rural areas - or there are menial tasks around the towns for those prepared to accept thorn. It is significant how these are often taken up in Papua New Guinea when a young person moves into his 20's and needs money to get married. So, correctly defined, at least part of the problem is one of "voluntary unemployment". The unemployed are waiting for the kind of jobs they feel they are entitled to expect by virtue of their education. Even a community school education raises expectations of good employment, status and a place in a non-traditional community. This is not to oversimplify . There is of course a problem of structural unemployment with new migrants failing to find any gainful employment. The point here, however, is that the education system we have at present feeds the voluntary type of unemployment.

Dictatorships have "eradicated" unemployment overnight by putting all the young people at work for minimum pay - or even for their rations. The stories of people being marched off into the country to work in the fields has sometimes signalled the clearing up of an urban unemployment problem. In a democracy this is not an available option. In Papua New Guinea where so many young people have a place

and a right to land in their villages the voluntary nature of the unemployment is underlined -and doubly underlined by the evidence of expectations falling when the question of settling down and getting married begins to arise. This is not to suggest for a moment that everyone unemployed could easily find a job: it is to provide a broad perspective for assessing the situation in general. Expectations are an integral part of the problem and these have been raised by forms of education quite unsuited to the realities of Papua New Guinea. It is almost as if the country had an unemployment-producing machine with by-products which are the students who go on to higher education and are able to find the jobs they want. But it is only a matter of time before the university graduates will also face this problem of finding the employment they feel entitled to by virtue of their degrees. Where this dilemma has been handled satisfactorily the expectations have progressively declined.

Thus in Japan over the past thirty years the shop assistants in departmental stores have become more and more qualified educationally although the job has not changed In the 1950s they were elementary school graduates. In the early 1960s high school graduates were hired for such jobs. Now it is difficult to find one - male or female - who did not graduate from a university. They do not feel demeaned by the low level of the employment because their classmates have all the same types of jobs. Obviously this does not always happen - and this is a simplification. But the great problem of expectations is resolved when the notion of constant improvement of conditions and status simply because of education is qualified by the situation in the real world. Let it be said that the problem has not been overcome in most of the developed countries where the number of voluntary unemployed university graduates has been increasing in recent years.

Papua New Guinea is unfortunate in having shared a common heritage of colonialism which began in Africa and Asia with missionaries teaching the three " so that the Bible could be read. Soon the churches had the only people in the country able to read and write. At first these people were satisfied to be catechists and mission aides : but gradually they drifted into commercial or government employment. As the government became more involved in administration it needed local clerks so that the appreciation of the value of primary education spread. The missions were subsidised to run such schools - or else they opened their own without assistance. Telescoping the process of history, as primary schools proliferated with government encouragement and financial support, a few secondary schools were opened However, as independence approached and literacy became a basic expectation, the cry arose for universal primary education. Every civilised nation should guarantee its citizens at least a primary education.

Up to this time all those familiar high expectations of the educated could be handsomely fulfilled - because there were so few who had gone through the schools. Often to get higher forms of education students would apply to enter seminaries to train as ministers, priests or higher church officials. Many of these were genuine and had fine careers in the churches but many others had no intention of persevering in the church and simply wanted the opportunity to carry

their education to a higher stage. Children in the queue for primary education (or their parents) saw all these benefits accruing to those who had preceded them in the classes and thrilled with anticipation. For a long time they were not disappointed but gradually it became difficult to satisfy them all.

It is frequently overlooked that, in comparison with educational development in the developed countries, the developing countries, in choosing universal primary education first, were reversing the process i.e. starting at the most expensive end. That was why so few developing countries could afford it: the burden for everyone to have primary education was crushing for countries with so few resources. For years they depended on technical aid to bring in thousands of teachers at minimal expense to themselves to man the multiplying primary - and the few secondary schools. Typically by this time there might be one university.

The developed countries had taken much longer and had come at it from the other end. The first educational institutions in the West were the universities at Oxford, Cambridge, Paris, Bologne, etc. Here the children of the rich were educated -and the rich families paid for it. There was no state aid. Indeed, in those times there was no state to talk about : the idea of sovereignty had not yet developed

Only in the 16th and 17th centuries did the secondary or public schools begin to emerge. These were the grammar schools often endowed by royalty but they were still private establishments the cost of which was borne by the rich families sending their children there. And after secondary education the students went on to the already established universities. No one suggested that everyone should be literate ; and schooling was a privilege for the elite. The children of the peasants or craftsmen did not need it : they had established places in their family business or on the family land. Those who came at the end of a large family and had few prospects might run away to sea or seek their futures in the town. Even had the idea of primary education been broached there would not have been enough money for it in the country. So apart from the three "r's" sometimes being learned at a mother's knee the great majority of children just did not learn to read and write.

Then at the end of the 19th century when the industrial revolution had made Europe - and especially England - rich, the plight of the poor crowded into the towns pricked the conscience of the wealthy. First they provided "ragged schools" for children wandering the streets and sleeping out. Then the idea was extended, the state entered the arena and the developed world got its universal primary education. Even so, and even when the funds were available, it took a long time to implement and in the north of England well into the 1920s children were "half timers" i.e. they had half a day at school and half a day at work. It so happened that the era of the primary school in Europe at the end of the 19th century and up to the 1920s was the time when the colonies were being opened up by the missionaries. The education of the missionaries might go up to primary teacher level but rarely further. Naturally they did primary school teaching in the developing areas for the denomination they served so that the developing areas

were launched into the educational process from the most expensive end - with no hope of being able to keep up economically with the great flow of expectant youth from, first the primary levels, then the secondary levels. It is no use blaming the failure of the economy to rise to meet such expectations. It could never have done it in the time even if the capital investment and infra-structural improvements had been prodigious. To aggravate the situation expectations rose to loftier heights as independence came and those first educated achieved ministerial status, were knighted or went abroad as ambassadors. At humbler levels there were good jobs in the public service where localisation was proceeding apace. Promotion came quickly. To those lining up in the schools and universities the sky seemed the limit and parents worked even harder to get their children educated for all those benefits.

It is easy now to talk of making education "more relevant". The United Nations has been indulging in such fantasies for years. Trade schools, technical colleges, arts and craft schools, apprenticeship schemes, agricultural training for all primary school children and many other ideas have been promoted in Africa, Asia and Oceania. But they don't really satisfy: the glitter goes with the other formal, established types of education ; and always there is the vision of the benefits awaiting the successful. Can anyone now change direction with parents so convinced of the automatic benefits of an education to the highest level?

The President of Kenya in the late 1960s was perhaps the only one who had the courage to face the reality in his own country. Studying the economic prospects he realised that if he had undreamt of capital investment and great success industrially and commercially he could not get far away from the essential dependence of Kenya on its agriculture. Assuming a GDP of 15 or 20 per cent, which was obviously very unlikely, Kenya would be 85 per cent dependent on its agriculture for a living in the year 2000. After pondering this for some time Jomo Kenyatta decided that no more secondary schools would be built - for these were only swelling the numbers of educated unemployed in the towns. He did not want to interfere with the citizen's right to a primary education and he had almost achieved at that time universal primary education. However, he felt that he had to stop the rot somewhere so, to avoid his human resources continuing to be ruined, he stopped the building of secondary schools.

The result was immediate. Throughout the country parents objected at their sons d daughters being deprived of educational opportunity. They said in effect that all ministers and officials had had their education and reaped the benefit. Now they were trying to stop other children from having the same advantages. Well, they said, it would not work. Almost overnight "Hararnbee" Committees of ;parents were formed to collect money for the erection of their own "Hararnbee" secondary schools. They raised funds to hire their own teachers to prepare their children for the public examinations which of course the President could not stop. Within a few short years there were more well run "Hararnbee" secondary schools in Kenya than government secondary schools. The Kenya Government has never tried since to stem the flow of unemployed from the schools. Education is a magic touchstone which the people will not be denied.

There are other ways more drastic of course. Angered by student demonstrations the President of Zaire recently "sacked' a quarter of a million students aggravating his unemployment but altering the flow. So what are the prospects for Papua- New Guinea. As shown, knowing what is wrong is just not enough. Here, as the Morgan Committee shows, there are the National Goals and Directive Principles in the Constitution and Section 55 of the Constitution to guarantee to everyone equal rights and opportunities - and it cannot be doubted that education would be included. However, the Education Department calculates on national average that only 60 per cent of all children aged 7-12 get primary education and of these only 14 per cent go to high school. It is this flow which is already producing the youthful unemployed : but it may be expected that pressures to universalise primary education and extend secondary education will continue.

Law and order never accounted for more than 7 per cent of budgets but following the Morgan Committee figures the budget of the Education Department absorbs 17 per rent and represents six per cent of GDP. This is not all. There are many votes for education not in the departmental budget e.g. higher education. The total educational commitment of the government is probably nearer 30 per cent of the national budget. The pressures mentioned will, as the Morgan Committee shows, tend to increase the proportion of the budget needed for education, leaving less for other sectors. It says -

> "The Committee believes it is too dangerous to allow the present system to continue as it is..... If change is not brought about the social and political costs will outweigh the economic gains."

So what can he done? Perhaps a slowing down of the planned developments may be the only way to begin i.e. no change of policy - just extending the time. Maybe, as the Committee suggests, a "de-schooling" of the education system with more non-formal education using the National Youth Movement Programme : but this is more controversial and probably could not work on any large scale. We do not agree with the Committee that the National Youth Movement Programme is a suitable base for a massive shift in the educational policy for the country. There is a world of difference between the youth service and youth leadership approach and the basic education of all children. Once the public became aware of what is happening we believe they would demand a return to the formal system.

A more promising approach is the three day a week school - or even the use of the school for evening courses as well. This might help all the unemployed to spend at least part of their time improving their qualifications. We realise that these are not very practical proposals yet. But the first stage is for the public and the government to appreciate the rod for their own backs which they are busily making with every day that the present school system continues unaltered The second stage is to slow it up to allow the other sectors to deal with the unemployed product more effectively. Thirdly, positive shifts in policy and teaching can be gradually introduced.

We believe, with the Morgan Committee, that education is crucial in trying to deal with the law and order problem. If we are more cautious than that Committee and prefer gradualism it is not because we like the delay in meeting this problem but because experience in other countries suggests that changes cannot come too quickly if it is hoped to carry the public along with the change of direction.

Chapter 6

ALCOHOL

We have congratulated Papua New Guinea elsewhere for not having a drug problem. But alcohol is a drug and the consumption of alcohol requires serious attention. The Morgan Committee describes the concern of many people in Papua New Guinea arguing that in Papua New Guinea alcohol and misery are closely linked. It mentions fighting, assaults, damage to property, domestic violence and of course the terrible consequences of drunk driving: and it quotes the Prime Minister Michael Somare in a recent radio broadcast -

> "We are now drinking far too much alcohol. We should cut back before this drinking becomes alcoholism and the whole country suffers." (Post Courier, 14 September 1983).

Whilst our examination of the procedures for collecting police data and our inability to rely on police statistics vitiates the most dramatic graph the Morgan Committee presents at Figure 12.1, we have no doubt at all that an association is there. The law and order problems in Papua New Guinea were almost immediately and very seriously affected when "indigenous nationals" were legally permitted to drink on November 2, 1962. An alcohol consumption-crime correlation may be more difficult to demonstrate than the Morgan Committee supposes but alcohol drinking and committing more crime became typical behaviour in Papua New Guinea after 1962.

The 1971 Commission of Enquiry showed that from about 1964 to 1971 the population of Papua New Guinea increased by one fifth and the incidence of crime ninefold (Commission of Enquiry into Alcoholic Drink 1971). However, the way these figures were compiled is not known and it has been suggested that the apparent crime increase could have been partly a consequence of more police activity at this period. Anyway, as the use of motor vehicles became more common at about this same period the drink-driving situation quickly deteriorated. It has been suggested to us by the pathologists that 85 per cent of all the drivers in cases of fatal road accidents which occurred between 1975 and 1981 were incapable of handling a motor vehicle at the time of the accident. Though again difficult to substantiate without original research it seemed that in some places no less than 70 per cent of all serious crime committed in Papua New Guinea was alcohol related.

We have been made aware of a growing lobby which has the support of a number of rural communities for the prohibition of alcohol altogether. Where a community controls all access and is able to influence its members to maintain a ban on alcoholic beverages we think that this would work but we cannot overlook

other changes in Papua New Guinea society since 1962 e.g. greatly increased mobility in both rural and urban areas, the aimless unemployed for whom drinking is a defiant expression of independence (something to do), the substitution of beer for more traditional types of presents at traditional ceremonies. All this points to an institutionalisation of alcohol which would render outright prohibition ineffective. Mention has been made by others (e.g. Marshall 1980 :13) of the way in which access to alcohol after 1962 became associated with the freedom and autonomy later associated with independence. It is unlikely that total abstinence would be equally accepted. There would be black markets, a greater flow of offenders into the prisons as fines failed to deter, and of course the emergence of "home-brews" to allow the established drinking habits to be indulged. The United States is well-known for its prohibition period which entrenched the large gangs in the underground liquor trade and institutionalised "hijacking": but Finland, Norway, Russia and Iceland (which has an enormous drinking problem) have all tried prohibition with unhappy results.

We have reviewed the work done by IASER on the alcohol problem and we have tried to find the similarities and differences of view at national, provincial and local levels. Some seek to concentrate drinking for control, others to decentralise it for control. Women in the villages of the Western Highlands wanted the proliferation of small taverns to be stopped We have considered the proposals for government to take over brewing - or at least to obtain a large share of the business.

We believe that the Morgan Committee was rightly exercised by the need to ensure a proper control of consumption and to secure a larger share of the profits for the government. We wonder however whether these objectives could not be achieved in other ways. In the light of our observations on the quality of middle management and accountability we are not at all sanguine about the brewing business flourishing under government ownership. In a report some nine years ago one of us recommended nationalisation of the making of beer in Papua New Guinea. It is a measure of changes since then that he is now doubtful about the industry surviving. If it doesn't then the government will lose, the black market trade will flourish and home-brews may give far more trouble than drink does now. As to control, experience since 1962 appears to confirm that this is still best exercised by local community decision. Government's role should be in supporting local communities in their styles of control and in preventing them being circumvented. We do not underestimate the significance of alcohol in the law and order situation: we do feel hesitant about making proposals which we know have not been successful elsewhere. As in so many other countries responsible drinking habits are a function of standards of living.

Chapter 7

TRIBAL FIGHTING

A problem or a solution?

Tribal fighting can be defined for this study as inter-group violence. While there are isolated instances in coastal and urban areas, most frequently violence occurs between groups in the rural areas of the five highlands provinces, with Enga, Western Highlands and Chimbu experiencing more than the others.

It is one thing to say what tribal fighting is and quite another to decide whether or not it is a law and order problem. For it is one of those cases, described in chapter 1, where the state and the people see the same circumstances in two different ways. For the state tribal fighting is disorder because it breaches state laws: it involves interpersonal violence, injury, damage to property, homicide, and public disorder. The state argues also that tribal fighting imposes unacceptable costs in terms of economic and social development. It has been suggested, however, that the underlying reason for government concern about tribal fighting is not that it is illegal behaviour but that it is behaviour which challenges the state's monopoly on force and the government's authority and legitimacy. When government intervenes unsuccessfully in a fight, this challenge is even more evident. In addition the state is under pressure from aid donors who (rightly or wrongly) see tribal fighting as jeopardising development plans and programmes and want action to combat it and its effects (for instance in the Enga Rural Development Project). The state is also concerned more generally with the effect of fighting on its image overseas.

The views and concerns of the common man are sometimes at variance with the views of the state. While tribal fighting is a law and order problem for the state, it is part of a system of maintaining order for participants. Intergroup violence was, of course, common traditionally in both coastal and highlands societies, since each small group of only a few hundred people was in effect a nation state and its relations with neighbours essentially international relations. When disputes occurred between groups, fighting was one of the courses of action open to disputants. Mediation by kin, the intervention of third parties and negotiation between leaders were other alternatives. Intergroup violence was usually one in a series of remedies sought, and was normally followed by some kind of negotiated or mediated settlement.

Today the options open to disputants from different groups have changed (see Part III, chapter 14). In addition to traditional informal remedies, people may take their problems to state agents operating informally (mediation by kiaps,

negotiation between local government councillors) and to state remedies as such: the courts and police. While in the coastal and islands provinces, people have relinquished the tribal fighting option, in parts of the highlands they have not. The basic difference seems to be one of colonial history. In the coastal and islands areas, tribal fighting was harshly suppressed and deterred by an authoritarian colonial regime from the beginning of the twentieth century. By the time more liberal colonial attitudes in the 1960s and an independent government had emerged, there were few alive who had taken part in tribal fighting and a whole generation of people who had lived without it. In the highlands, in contrast, the early suppression of fighting in the highlands in the 1940s and 1950s was followed quite quickly by less forceful, and more democratic forms of government in rural areas. Tribal fighting was still a remembered experience for men of middle age. In addition (but not in this case in contrast to coastal areas) rural administration in the highlands has deteriorated in the 1960s and 1970s, making state mechanisms less valuable in the resolution of intergroup disputes. Hence initial suppression of tribal fighting was followed by its resurgence (Gordon and Kipalan 1982; Paney 1973; Standish 1981).

Studies of tribal fighting in the highlands underline the importance of disputes in the events leading up to fights. Table 7.1 shows the kind of data that can be readily collected on the disputes giving rise to apparently separate incidents of violence. It is not always easy to disentangle root from intermediate disputes from this sort of evidence. Deaths, insults and damage to public buildings are all likely to be part of a sequence of hostilities between groups, with the original dispute taking a separate form. Many of the causes of tribal fighting, marriage problems, land ownership and pigs, were important in traditional times. However changes in man/land relationships, more personal mobility because of roads and migration, and the use of alcohol may have altered the significance of such disputes. New political opportunities for leaders and perquisites to be won, elections and motor vehicle accidents have added new causes for fighting.

So in some circumstances highlanders turn to tribal fighting not to create disorder but to make their relationships with others more satisfactory or more orderly. Tribal fighting is a response to disorder, to a dispute or a breach of a norm not a problem in itself. For participants the law and order problem is the offence or dispute, not the fighting.

Highlanders are by no means unanimous in their views. There are many opposed to aware of government's views and public penalties, but either unable to resist pressures to join in or, holding themselves aloof, unable to dissuade others from participation. The lines of division of opinion are not clear: some young and educated people being very critical of it, others taking an active part. Many political leaders find themselves torn between group loyalties and the state's demands for order. There is a tendency to decry fighting (and demand harsh penalties) when others are involved but to capitulate to group pressure if the dispute involves one's own group.

Table 7.1

Immediate causes of fights reported in
Enga Province situation reports, 1976-1982[a]

Immediate cause[b] of fight	Number of fights: only cause listed	Number of fights: one or two causes listed	Number of deaths reported
Marriage problems	9	1	2
Land or garden ownership	22	2	14
Theft of and disputes over pigs	16	2	2
Compensation payments	5	-	0
Insults	2	2	0
Theft (other than pigs)	4	0	6
Death	24	0	19
Election, political meeting	3	0	0
Wilful damage	5	0	0
Public buildings damaged	2	0	0
Moka debts, arrangements	2	0	0
Court decision	2	0	0
Other	6	1	0
Not known	22	0	14
Totals	124	4[c]	57

Notes:
a From summary notes made by Michael Toke, Enga Law and Order Project
b Incident of group violence, there can be several incidents in one dispute over a period of time.
c Four fights with eight causes listed

In considering these different views of tribal fighting, the team prefers an approach which focuses as much on the disputes as on the fighting arising from them. We agree that it is unacceptable in a modern state for citizens to take up arms against one another. But we suggest that the state would do better to define the law and order problem as "disputes that give rise to tribal fighting" rather than simply as tribal fighting. This both increases the policy options open to the state (see Part IV below) and more closely resembles, while not coinciding with, the problem perceived by many citizens and participants themselves.

The size of the problem

As in all our discussions of the dimensions of the law and order problem, there are difficulties in establishing the size of the tribal fighting problem. This difficulty arises from conceptual problems about what are reasonable indicators and problems of measurement itself. Indicators of any variable are selected because of the interests of the user as well as for their practical feasibility. To measure tribal fighting we might consider the population in affected areas, the number of fights, number of persons involved, number of deaths or injuries, and the costs or costs net of benefits to public and private organisations and individuals. We have not been able in a project of this duration to look into any of these possibilities in depth. However, we will briefly consider each to see if any general estimates of order of magnitude are possible.

There are no reliable statistics on tribal fighting mainly because it is by its nature unregulated and unsupervised by the state. Some figures are available for some areas from "situation reports" from officers of the Department of Provincial Affairs and police records. The coverage of these is suspect and their accuracy depends on reports received as well as first-hand observation. Information on losses, for example, is likely to be exaggerated because of the possibility of compensation.

The population affected by tribal fighting is an attractive indicator in principle, because it does not require information on the nature or consequences of a fight and population data are readily available from official sources. It is most valuable in considering the community impact of fighting (services, quality of life, etc.) and least on economic impact. A good indicator would be based on a specified time period, the number and location of fights, and a definition of an area affected, perhaps a census division as a maximum unit. No such data are available, but we make some estimates in Table 7.2 to illustrate the approach and provide an order-of-magnitude statement across the nation as a whole. While there can be nothing sacred about the figures in this table, it does seem likely that Papua New Guineans affected in this broad way by tribal fighting are very much in the minority, perhaps around 20 per cent of the total population. The dominant factor in the table is that only 37 per cent of the nation's population live in the five highlands provinces. A second factor is that fighting is concentrated in certain of those provinces and in certain areas of the provinces further focusing the impact of the fighting. A narrower definition of area of impact, for instance to census units participating in a fight, would, of course, greatly reduce the population affected.

One measure of tribal fighting is the number of fights, based on the concept of "a fight", such an event being separated from other similar events by a specified period of time such as one month and the persons involved This is the most readily accessible indicator but does not tell us much about the quality of the incident, the numbers involved or the damage sustained. Definitions of "a fight" also vary between authors making it difficult to compare their results. This measure has been used by the police and the Department of Provincial Affairs as well as academic researchers to describe trends in fighting and compare one area

Table 7.2

Rough estimates of population affected by tribal fighting at any time during period 1974-1983

Province	Total Population 1980a	Per cent living in census divisions where a fight occurred	Maximum population affected by fighting
Southern Highlands	236,052	25[b]	59,013
Enga	164,534	89[c]	145,986
Western Highlands	265,656	83[d]	220,469
Chimbu	178,290	80[e]	142,632
Eastern Highlands	276,726	25[b]	69,182
All other provinces	1,889,469	0	0
Total	3,010,727	21	637,282

Notes:
a National Statistical Office n. d.

b Guess on basis of qualitative reports of tribal fighting in this province

c Estimated from Cordon and Kipalan 1982: Table 10.1

d Assuming Tambul and Jimi districts not involved in fighting at all (discussions in Western Highlands Province).

with another. The 1981 Police Annual Report, for example, said police had received information on 96 "tribal clashes" over the year (Royal Papua New Guinea Constabulary 1982 : 6), a figure roughly consistent with analysis of situation reports in particular provinces (e.g. as in Table 7.1 above). The number of fights may be somewhat more or less, but we are probably talking of between 50 and 200 incidents in a population of just over a million in any recent year.

Police records have also tried to show the number of people taking part in the fights police witnessed There is no doubt that this would be a useful measure for looking at the size of a fight and perhaps some aspects of its economic impact. Police estimated (ibid.) that in 1981, 107,746 people "were involved". The team does not feel it is likely that this kind of measure could ever be reliable enough to be of value.

More commonly and more reliably, official records have shown the number of deaths arising from tribal fighting. This is used as an indicator of trends but more importantly as an indicator of the impact or costs of fighting to persons and communities. There can be little doubt that deaths due to tribal fighting are an infinitesimal portion of all deaths in Papua New Guinea or even of all deaths in the highlands provinces. For example, in Enga Province reported deaths from fighting averaged 20 per year in the period 1973-1979, peaking at 77 in 1977, in a population of 64,000 (Gordon and Kipalan 1982). Police reports showed 55 deaths in 1981 and 99 in 1982 for the whole country and a population of 3 million (Royal Papua New Guinea Constabulary 1982, 1983). Injuries received in tribal fighting are another possible indicator of the size of a fight, and figures are supplied in police reports suggesting that perhaps ten times as many people are injured as killed. However this indicator, while obviously desirable for estimating the effects of fighting, is less likely to be reliable than the figure on deaths. There are difficulties in defining an injury and a great deal of room for under-and over reporting. Only some injuries are brought to hospital and the causes may be misreported to hospital staff. These figures, compared to morbidity and mortality from all causes, show tribal fighting as an insignificant cause of death or injury. Even in Enga Province, tribal warfare injuries accounted for only 7 per cent of admissions to the Enga Provincial Hospital in 1977, a total of 187 admissions (Lennox and Pust 1978). Deaths and injuries from tribal fighting are well below even those resulting from traffic accidents. The 1982 Annual Police Report records that over the country as a whole 246 people died and 2,854 were injured in traffic accidents but only 99 and 1,119 in tribal fighting.

Costs and benefits of tribal fighting

Costs and benefits are another measure of the problem and its seriousness. We can look at them in much the same way for tribal fighting as we looked at them for 'law and order generally in chapter 3. As before we note the difficulties of tracing out all the casts and benefits and of attaching values to them. Costs to government are, of course, ultimately costs to citizens but we deal with them, as before, under a separate heading.

The direct costs to government of tribal fighting are to be found in the budgets of the police and the provincial divisions of provincial affairs and in capital works allocations to rural areas. While officers from both police and provincial affairs have multiple duties of which attention to tribal fighting is only a part, special mention must be made of the police mobile squads, numbering 16 in 1981 and 1982, each squad containing one officer and 34 other rank members. These units are mainly deployed in the highlands for dealing with tribal fighting. Logistic support for them includes helicopters, ground transport and field rations. The costs of these units are not known but are largely attributable to fighting. In Enga

Province a special operation of the village courts system (see Part III below) is addressed entirely to the question of tribal fighting and fully funded by the provincial government.

Another cost to government is the destruction of public property constructed with government funding. Community schools, aid posts and market places are often targets for destruction because they are perceived as belonging to one group or another, the group on or near whose land they are built or from which most users come. There is also a pattern of tearing up bridges built at public expense to prevent police reaching the scene of a fight. Such costs are largely to provincial budgets and are not shown separately. Table 7.3 gives estimates of costs of damaged schools in the Western Highlands Province. The value of buildings destroyed should be compared to the province's total budget for 1984 which is well in excess of the K10 million the province receives from the national government.

Table 7.3

Estimated costs of buildings destroyed in schools closed March 1981 in the Western Highlands Province

Name of community schools[a]	Estimated value of classrooms[b]	Teachers' houses[c] Estimated kina value of permanent materials houses[d]	Number of local materials houses
Tsigmal	10,500	18,000	0
Togoba	10,500		not known
Alimp	10,500	9,000	4
Kailge	10,500	nil	6
Keregamp	10,500	nil	5
Koibuga	10,500	13, 500	2
Nunga 1	10,500		not known
Lumis	10,500	13,500	2
Pinyapias	10,500	nil	5
Total	94,500	54,000	24

Notes:
a Ken Logan, personal communication
b Estimate of cost of three double classrooms at K3,500 each (Ken Logan)
c Information on teachers' houses from 1983 Schools Directory
d One teacher's house estimated to cost K4,500 (Ken Logan).

Government services to rural areas are also affected by tribal fighting. It is difficult to attract teachers, provincial affairs and health staff from other provinces to work in areas with a reputation for fighting. This appears to be a situation based largely on ignorance. Headteachers from other provinces working in the Western Highlands told us they did not feel threatened by tribal fighting and found it safer and easier to work in the province than did many Western Highlanders. Staffing problems affect the quality of a service, but fighting can put a complete stop to a service or reduce the use of it. Data made available by the Department of the Western Highlands suggest that currently about 10 per cent of both aid posts and community schools in the province are closed and/or destroyed because of tribal fighting. In other areas, certain groups of users are afraid to travel through enemy territory to use an aid post or school although the services are still operating. It is hard to imagine even in principle in what ways any of these costs to government are offset by benefits. It seems likely that gross and net costs are the same thing from the point of view of the public sector.

The team conducted a survey of 110 companies throughout the country (Appendix B.3) in order to assess the costs of disorder to the private sector. In most respects tribal fighting did not seem to impose as many costs on the companies surveyed as did other types of crime. It rarely threatened the lives or property of senior staff or company property. One plantation reported that fighting had destroyed crops worth K710,000 in 1983 but that was the only incident. Perhaps as more large estates are taken over by highlands groups, their assets will become more often the target of destruction. The major cost to the companies surveyed was in relation to unskilled and semi-skilled labour. Whole groups of workers would run away from the plantations to avoid vengeance attacks or participate in fights. Non-local labour also became involved in intergroup violence, a problem that extends to the coast as well.

Probably the major private sector costs of tribal fighting are borne by small businesses owned by individuals or groups living on or near their traditional land. Trade stores, trucks, piggeries, and coffee pulpers are frequent targets for enemy groups on the rampage. These represent large investments for the owners which are not easily recouped once the asset is destroyed However, firm evidence is not available to support the hypothesis that economic development is impeded by tribal fighting. While fighting has been increasing in Enga, so has production of coffee, vegetables, timber and spices and the ownership of cattle and sheep (cordon and Kipalan 1982 ; Carrad 1982). While figures do not show what might have been the increases in production and assets without fighting, neither do they support the view that development is impeded Indeed, close observers have commented that it is partly because highlanders no longer see pacification as a precondition for material advancement, a view they are said to have held in the 1950s and 1960s, that they feel freer to fight today than in the past (e.g. Talago 1978 ; Strathern 1972). The most likely explanation of the way economic development could go hand-in-hand with destruction of investments is the difference in the scale of each. While there; are probably no more than 200 fights in any year in the five highlands provinces, the census tells us there were 19,229 households involved at one time or another in running trade stores in 1980, and 4,845 in running public motor vehicles (National Statistical Office n.d.: Table 15). Only a small proportion of these or other businesses are likely to be affected by the sporadic and geographically limited fighting that occurs.

We should note, in addition, that such investments are made only by the wealthy few. Even in Western Highlands, with the highest rates of participation in the region, only 11 per cent of households operate a trade store and 4 per cent a public motor vehicle (ibid.). Again there seems unlikely to be any benefits to offset whatever costs the private sector bears as a result of tribal fighting.

When we turn to look at the costs and benefits of tribal fighting to the private citizen, we find a different balance between incomings and outgoings. Private citizens at a distance from fighting areas, and particularly in coastal and islands regions, perceive and indeed bear indirectly the costs of tribal fighting mainly through the national budget. But among warring groups themselves we must conclude that the benefits of fighting outweigh the costs as perceived and borne by the participants. It is only there that benefits from tribal fighting appear, these benefits being the reason for its very existence.

In many highlands' communities traditional groups such as the clan are very strong and private interests are frequently best pursued by support of that group, including support in intergroup fights. There is a positive value placed on fighting for one's group, and material, political and social sanctions face those who do not. The benefits are to be found in retaining group support, especially assistance with labour in production, in continued access to the land of the group, in the support of kin in times of distress and need, in the prestige or political advancement accruing from taking a leading part, and in the possibility of material rewards from helping allies, gaining land in an offensive or plundering overrun territory. Another major benefit to participants is an acceptable response to an insult, dispute or breach of norm, a movement towards resolution and the possibility of eventually restoring good relations with the enemy group.

The costs to private citizens are more likely to be in terms of injury, destruction of useful trees, food crops, houses and livestock than actual death. These costs are borne by a much larger proportion of persons in the population than the costs to businesses. Reports on damage to private property are difficult to evaluate since it is in the victims' interests to exaggerate losses. A very detailed study was made by Wohlt (in press) of one fight in Chimbu involving two groups with a total population of 1,460. This resulted in 62 men wounded, 17 pigs and one cow killed, 112 buildings completely destroyed and extensive garden damage on the land of one group. However Wohlt (personal communication) feels that the value of property lost should not be exaggerated since there was ample labour to rebuild houses with only a limited lifespan at the best of times and gardens could all be replanted.

Participants attempt to minimise their costs by careful conduct in the fight itself, by removing portable valuables and their families to a safe place and, throughout the highlands, by limiting fighting weapons to spear and arrows. It is remarkable that guns are never used. Allies are in a particularly good position to maximise their net benefits: their own land and property are not in danger being at some distance from the fighting zone and they keep mainly to the edges of a skirmish. However their presence may lead to rewards, plunder, compensation for injury or the assurance of assistance if they themselves are later in need of allies.

The costs to people involved in a fight include public sector costs: services withdrawn or inaccessible, public assets destroyed and the effect on other types of government expenditure. However, it is clear that those in a fight experience few of these financial costs directly themselves and, while benefits accrue to a few hundred people at the most in any one fight, the public sector costs are borne by and hence divided among a much wider population. We should note that there is very little chance that anyone involved in fighting will bear the costs of fines or l sentences, since the formal justice system appears to be ill-equipped to bring these costs home to roost (Gordon and Kipalan 1982). Compensation payments are an important item of expenditure for some groups, but benefit others. Net effects must be zero.

Overview

White there is much concern about tribal fighting, especially in the national government and among foreign agencies and observers, the evidence that is available suggests that the problem is confined to certain limited areas of the country and portions of the population. Tribal fighting is very visible, newsworthy and eccentric behaviour in the modern state of Papua New Guinea, but its impact even in the areas where it occurs may be relatively limited. This perspective once again focuses our attention on the question of what is the problem in terms of law and order. The fighting is epiphenomenon rather than phenomenon. It arises from offences and disputes and the perceived alternatives available to parties to these disputes. These are the root of the problem. Fighting sometimes follows on disputes and net costs to individuals and institutions can follow from fighting. But neither type of consequence should obscure the fundamental issue which is the structures and remedies available to people when disputes and offences arise.

Chapter 8

THE POLITICS OF LAW AND ORDER

There is a seething, breathing, political dynamism about Papua New Guinea which dominates the urban areas and seeps to the far corners of the countryside. Any idea that this is a developing country with large numbers of its people politically naive would do less than justice to a people who have absorbed rapidly and only too well the principles of democracy with all its scope for effective lobbying, social mobility, consensus and conflict. Alliances in the legislatures shift as unpredictably as those traditional alliances that the fragmented hamlets made for protection and survival before the days of colonialism. Rural clans will invest in the political advancement of a relative who can enhance their status and ensure benefits. The ambitious seek patronage for election and struggle to serve the vested interests they represent. Even foreigners with commercial, industrial or agricultural investments will encourage hopeful nationals who seem likely to be sensitive and understanding. There is an intellectual tug-of-war between capitalism and socialism not only in the university halls and debating chambers but also in the urbane diplomatic life of the capital. Embassies and High Commissions jockey here for positions of favour and influence as assiduously as in any other capital across the world. And the small media in Papua New Guinea imitates its powerful counterparts elsewhere by dramatising conflict, espousing causes or monitoring trends. In other words, Papua New Guinea has missed nothing good or bad in its graduation to independent democratic status.

This is a country where politics permeates society at all levels and visibly shapes its progress and problems. No child, even at a village school, is unaware of his parents campaign against school fees or of the influence of local politics on his opportunities for further education. It is significant that school houses are sometimes burnt down by the families of students who have failed to pass examinations. The system is blamed - not the child. No subsistence farmer or resident of an urban settlement is oblivious to the pressures being exerted by politicians on the election of local officials, on the appointments to councils or committees and on the distribution of available public funds. Not only tribal fighting but the competition for funds for youth groups and local economic development reflect this conflict. No public servant anywhere operates without one eye on those who can have him dismissed, suspended or transferred. If he doesn't actually play politics, he becomes wary and adaptable. Law and order itself is a political issue and would be misconceived if regarded as a simple question of a united people trying to get its deviants to conform. Crime may be a question of survival and that is political. Crime control may protect privileges - and that is political. Corruption provides a venerable linkage of crime with position.

It doesn't take long in the urban areas or the centres of higher learning to realise that the ideologies, divisions and ubiquitous examples of political in-fighting are no passing phase. They are far more inbred than any mere growing pains. No casual visitor can fail to observe glaring disparities of life style or to sense the feelings generated by the numbers of expatriates in business and government. These feelings may be neither general nor justified Many expatriates have left and few of those remaining are committed to the country. Moreover, the ethnic derivation of the expatriate has been changing so that Africans, Asians and Pacific Islanders are grouped with the Europeans and Australasians. Nevertheless it would be difficult to ignore the feelings of some nationals that they are being "ripped off" by foreigners and the feeling of some foreigners that they are being used, abused or just tolerated. Again these differences are exacerbated by divisive political theorising, slick economic analysis and by an irresponsible dash of either pious altruism or parochial self-interest.

If, therefore, Papua New Guinea is indeed a land of promise and opportunity, it is already being fought over, and with short term interests predominating, the spoils are frequently being spent before they are received. Yet the money economy is small (maybe only 15 per cent of the total population) and the tax base is smaller. Without mining and the largesse of the Australian government it is obvious that the economy would falter. The repercussions would not be serious for the 85 per cent of the people who depend on subsistence agriculture - or who can return to it when cash cropping becomes less profitable: but they would be disastrous for the politically significant 15 per cent who live in towns and work for wages or salaries. It would greatly affect the capacity of the government to employ public servants and would diminish the benefits of political office as these are now enjoyed More seriously, an economic setback of this dimension would intensify the profound conflicts already described and would threaten the future of parliamentary democracy. Something similar could well happen if the limited money economy gets progressively worse than it already is at providing for those young people overcrowding the money sector. With 62 per cent of the population under 24 (85 per cent in the towns) and with enormous numbers of these being half-educated, unemployed, under-employed, without any social role and thoroughly frustrated, the danger of forceful if not violent political change is imminent. The rural areas may have the numbers but it is the young and disillusioned in the towns that have more immediate access to the corridors of power. They will not be neglected for too much longer. Their numbers are growing every year - as is their education and political awareness.

This situation is presented here at greater length than local readers might consider necessary because of the reality that the law and order problem which generates such concern is not usually conceived in political terms. Yet as this report and the Morgan Report before it conclude, the law and order problem of the country is a reflection of its political malaise. The inability of so many political leaders to give an example of integrity and dedication, the corruption in high places, the questionable manipulation of "slush" funds and the quite remarkable complacency which persists in the face of a break-down of governmental accountability - all contribute directly to the country's blatant insecurity. It is possible to discuss law and order problems as if they were due to

a contempt for authority or a reflection of weakness and incompetence in government. Yet both of these flow from the crumbling of integrity in the structure of the state itself. And it will not be possible to plaster over these crevices in the governmental edifice with Draconian laws, increased police manpower and more equipment for law enforcement. This is only to treat symptoms, not the disease. As the "big men" get bigger in the villages or as they are eclipsed by more educated "rubbish men" with political pull there are the seeds of conflict to instigate or exacerbate tribal fighting. As the disparities of life style tantalise the ambitious but frustrated young people in the towns the numbers able to resist the temptation to grab, are decreased As the squabbling and compromise at higher levels paralyses effective government at the lower levels, the opportunities for crime are increased As the national "cake" is divided more for prestige and self promotion than for people and prosperity, the principle of self before service is greatly enhanced In so many ways crime and illegality is a function of political weakness and venality.

Papua New Guineans have moved enthusiastically from the authority of colonialism to the self reliance of democracy; and from the village level to the parliaments. They understand very well the new opportunities for advancement and personal enrichment. The political bandwagon has been crowded with opportunists whom the leaders had a responsibility to restrain and govern. Where this was not done the grabbing became endemic; and it is hypocritical now to imprison vengefully, with blind minimum penalties, the opportunistic "rascals" whilst honouring the ones who did the same thing but with flair and more respectability. There may be differences but the people do not see them.

The interpretation of crime is affected by politics. There are those who are victimised and demand strong government to protect them - they want the criminals to be forced to conform: there are those who believe that it is strong government which defines crime by law, exercising its power to label offenders, enslave the majority and serve the interests of a ruling minority.

The fundamental reality is that it is ultimately the community and not the police that prevents crime. In the rural areas, even in the time of the kiaps, the patrol officers could not be everywhere at once and in their absence their luluais and tultuls were not the sole guardians of the law. Authority succeeded at that time only because it was backed by communities. Now that authority has virtually gone. The scramble for the benefits of democracy is on (without however the concept of national interest being sufficiently developed or understood to regulate the destructive elements in competitiveness). Communities that once cooperated with authority now find ways to pressure governments for their own advantage - and they will fight tribally more readily than ever before to vindicate the rights which they believe to be threatened by the upstarts and the unworthy. Politicians fishing for votes and popularity in these muddy waters frequently do more dividing an un ` g of communities - with obvious law and order consequences.

In the towns the concept of community appears to depend greatly on the homogeneity or heterogeneity of the "wantoks" in particular suburbs. It is important to "belong". A person without relatives or friends is as vulnerable in the towns as he ever was in the countryside. He may be unprotected by neighbours who do not acknowledge him and the police are too far away to be of consequence. Their only excursions into the settlements is to raid when they are looking for criminals or stolen property. They seem to feel that they must always come in strength - which is hardly the way to make friends or influence people.

Thus, the gangs formed by young people in the settlements are a manifest attempt by a generational cohort to demonstrate solidarity in the face of economic and social adversity. That they turn to crime for adventure and gain is as much a reflection of the distance of routine government from the people as it is proof of criminality. As far as the young disconnected youths are concerned, government does not help; but it does chastise - selectively. There are communities but they are disillusioned with officialdom at an intolerable distance from them and from their problems. They are not behind the governmental authority which they feel is being suborned by officials and politicians alike. The powerless that could once depend on the protection of authority are now by-passed and exploited by the wantok exclusiveness on the one hand and on the other hand by the local officials who are elected or appointed to bolster political affiliations or wantok cohesion.

In this ebb and flow of liaisons and affiliations the "rascal" gang is an autonomous entity. It serves no single wantok, looks after its own, rewards those sympathetic to its activities and, if necessary, punishes those that are not. It is recruit able at election time and it represents a power base of young, vigorous, free and community tolerated activitists who can be used positively as well as nefariously by any person with political ambition. This group (or collection of groups) is stealing, robbing, raping and terrorising to fill their time and to generate the money they need for their beer and entertainment. But essentially they are seeking an identity and it would be myopic politically to underestimate their growing potential for political change in Papua New Guinea. In most of the developing countries, unemployed, educated youths mobilised intelligently - and suitably equipped with slogans - have carried some of the current world leaders to power. It did not solve the problem of unemployed youth but it satisfyingly redistributed the power at the top and it brought benefits to those who led the youth in protest. That is the political significance of most gang crime.

Conversely, crime control i.e. the forces of law and order can, and often do, manipulate the public fear of crime in apolitical fashion to obtain more resources and to reinforce their own power and influence at the higher levels of political decision making. As forces of law and order they support those enjoying and exercising power against those who might use unruly elements to depose them. They feel that they have a moral claim on those they are protecting for improved conditions in manpower and equipment. Also those who are being protected feel duty bound to strengthen their protection.

In countries all around the world the cry of "law and order" has been raised by politicians and officials - frequently as much to strengthen their own positions and to ensconce the disciplinary establishments as to deal with a real threat to security. In the United States Nixon was carried to power twice on a "law and order" platform and poured billions into the now defunct Law Enforcement Assistance Administration - which first concentrated on educating, equipping and enlarging police forces until it realised that the effect on the crime problem was minimal. This enormous investment in the police had a feed-back into politics as the better educated policemen began to stand for election as mayors and governors and thereby to reinforce the drive for law and order. Still the effect on crime was not noticeable. Mrs. Thatcher's victorious 1979 election campaign had a vigorous law and order element (Clarke and Taylor 1980) and one of her first acts on taking office was to substantially raise the remuneration of the police and to give them more resources whilst government expenditure generally was being cut back. Yet there was no noticeable effect on crime and two years later the summer riots of 1981 had England heart-searching for the roots of its social decline.

> "Having been one of the most law-abiding countries in the world - a byword for stability, order and decency -are we changing into something else?" (The Daily Express, 6 July 1981.

The question was, of course, had enough resources been devoted to law enforcement? It is never easy to blame the forces of law and order. A worsening situation means that they do not have enough: an improving situation proves that they show valuable returns on investment and therefore need more just to keep on top. There is always an in-built ratchet device which makes it difficult to rationalise the bureaucracy - and there are always the howls of victims that they need protection and more should be given to inefficient law enforcement in order to improve it. For the government trying to allocate resources effectively the law and order question is always a no-win situation. If law enforcement is not working the government has to give more to reorganise it. If it is working it must have more to avoid it losing control.

Even the evidence that the prisons are not working in no way serves to diminish their use so that in Europe and the United States the "get tough" lobby has so overcrowded existing institutions that the courts are now obliging them to squeeze prisoners out at one end long before their normal release dates - to make room for the extras coming in. By now the cost of more institutions is so great that neither governments nor taxpayers can afford them. In the United States the floating of public bonds to finance new correctional institutions fails to attract investors who can see that it is too little too late and it is leading nowhere.

Thus the politicisation of law and order, whether altruistic and born of a genuine concern for the quality of life or calculated to build departmental empires and serve vested political interests, is self defeating. At one extreme it places an impossible burden on the forces of law and order by raising unreal expectations. In a democracy they cannot alone be expected to transform human behaviour. At another extreme it leads to the totally controlled police state in which the crime control itself becomes a crime - a denial of human rights.

It is on this battlefield of crime and its control that a variety of vested and political interests contend. The liberals and the reactionaries label each other outrageously as a threat to peace and good order - and they struggle in the media or the legislative chambers for action to either criminalise or decriminalise, to either punish or reform, to stifle or to amplify the disruptive cries for radical political transformation. Not unconnected - and still in the same arena - the advocates of law and order are opposed by the defenders of human rights. Every concession to the police, every move to increase or extend their power is a nail in the coffin of personal liberty - says one side. Every restraint on the exercise of official discretion, every extension of permissiveness makes crime control more difficult, exposes the law-abiding citizen to the denial of his rights by criminals and ties the hands of the police - says the other side. There are no absolute answers to such question-begging issues. Much depends on the way they are posed. However, the solutions, the compromises and the balancing decisions are always distinctly political. They involve an ultimate position on liberty and its extent; they shape the distribution of power and the allocation of scarce resources; and they will always affect the relative status of the special interest groups. Thus politics are at the heart of law and order just as law and order feeds back into politics. Personally and collectively, politicians are implicated in crime and/or its control. It would appear that in Papua New Guinea the fundamental political nature of law and order has not been fully appreciated. The tendency has been to sidestep the political issues by adopting a succession of ad hoc expediencies like enacting more laws, increasing penalties or funding the police in the hope that these will make the troublesome underlying political questions go away. The law and order problem persists because it has been treated as an abnormality rather than as a normal feature of society, as a legal and social problem rather than as a political challenge.

Unfortunately, as this paper suggests, Papua New Guinea will be hard put to find models from abroad for a dedicated and dispassionate political approach to the problem of law and order. The free-market democracies are riddled with corruption and political manipulation, the police states are struggling with "hooliganism", blackmarketing, and flagrant abuses of power about which they are inordinately defensive. The developing nations are plagued with corruption and traumatised by periodic coups. Yet Papua New Guinea needs leadership to find its own identity. As yet the "state" means little to the vast majority of the people who still rely on the clan or the wantok for protection and support. It will mean less if they find that the political alliances and venality at the higher levels exceeds their own.

Responsible politics, and perhaps even more important, responsible politicians, are needed to bring internal peace and security to Papua New Guinea. As it is now, the people are being misled, the issues confused and the scapegoats multiplied as much by the unthinking as by the unscrupulous politicians, as much by the self-seeking members of parliaments as by the complacent officials who are spending more of their time satisfying the expectations of superiors and seeking preferment than they are spending supervising the work of their subordinates.

In the rarefied atmosphere of high office with all the trappings of power it is easy to be influenced more by rhetoric than by reality, to be more responsive to powerful friends with short term interests than to the needs of millions of faceless beings who require long term consideration. The serious gap between the police and the communities reflects an even more portentous gulf between the government generally and the people which is not being bridged at the grassroots level. It is a chasm of tremendous consequence which appears to have been widened and deepened by decentralisation without accountability. But if there is a widening gap there is certainly no vacuum; for the area from which local government has receded has been occupied by a multitude of hopeful politicians and their entourages. At this stage of Papua New Guinea's development these opportunists may be expected to do much more for themselves and their wantoks than for the country as a whole. In the process they can be relied upon to foster conflict, manipulate grievances and in general to aggravate the law and order problems. Law and order in Papua New Guinea depends therefore on the government regaining its position and prestige with ordinary people and forging the links that will build confidence and community backing. Which is another way of saying that law and order is a political problem which needs resolution by political leadership long before the technical problems are addressed.

PART III

EXISTING STRUCTURES FOR HANDLING THE PROBLEM

Chapter 9

FORMAL APPROACHES

In the first section of this chapter we provide a brief historical perspective and examine the work of the various committees which have put forward a range of proposals to solve the problems created by the transition from traditional to Western law. In the middle section we comment on one proposal which has received substantial support - a national youth service. The final section looks at how the state incorporates the reality of crime in its development planning.

Historical perspective

Perhaps the first written references to "law and order" in what is now Papua New Guinea were not from Papua New Guinea at all. They were from concerned citizens in the United Kingdom and Australia who were anxious to ensure that the people of Papua New Guinea were not victimised by rapacious traders and colonisers. The Aborigines Protection Society based in London wrote to the Colonial Secretary Lord Derby on 14 May 1883 on the proposed annexation of New Guinea objecting to the administration being given to Queensland where -

> "Even the most ordinary legal security against the perpetration of injustice on the weaker race is absent" and where
>
> "the operations of the native police have been conducted with wanton cruelty: that revolting outrages have been committed upon native women: that unoffending blacks have frequently been murdered in cold blood and that sometimes, even when the guilty have suffered punishment, the work of repression has degenerated into a massacre".

A resolution which was moved by a Mr. Stewart a member of the Upper House of the New South Wales Legislature in July 1884 (and which was predictably defeated) had, as a first paragraph -

> "That the annexation, appropriation or conquest of New Guinea by any Government Imperial or Colonial would be very widely regarded as a barbarous and unjustifiable invasion of the rights and liberties of the inhabitants of that island."

These concerned citizens were worthy successors to Edmund Burke, a century before, who had reminded England that its Empire imposed responsibilities for the people brought under the Crown. The over-riding trade interests in colonisation could not be displaced but the Royal Commission of 1906 on Papua concluded that here was an opportunity to prove that it was possible to rule a native race without destroying it. Thus imposing law was to be subject to the constraint of the rights of the people.

In asserting its independence nearly a century later the people of Papua New Guinea seemed to be equally concerned that central authority should not be unrestrained They adopted a strikingly liberal constitution emphasising human rights and stressing individual freedoms - giving further testimony to this continuing concern that those with power should not victimise those without it.

In editing Bernard Narokobi's "The Melanesian Way" Henry Olela had written -

> "The law under colonial administration in Papua New Guinea was an instrument with which the colonialists extended their economic, political and religious institutions as well as their beliefs and idiosyncrasies ....Papua New Guineans were robbed of their unwritten laws, their social organisation, their communal government systems and of their pride, dignity and self respect.
>
> "Political independence for Papua New Guinea has offered it an opportunity to rediscover its soul and to reassert its autonomy. Law reform and law creation are central to that reassertion" (Narakobi 1980).

But already when this was written the new Constitution was four or five years old. It had enshrined international principles of human rights but in its individualism it was inimical to the customary "soul".

This Constitution was adopted from Western laws and based on a distinct tradition of individualism which derived from Greek and Roman patterns of thought incorporated in a Judaeo-Christian ethos. It had little to do with the "obligations orientation" of the Asian and Pacific region or with the "underlying law" of Papua New Guinea which incidentally had been mentioned in the constitution as a frame of reference for future legal development. In fact as later chapters of this report demonstrate there is frequently a serious clash between the two concepts of personal rights and group obligations and the government is continuously

confronted with a dilemma of both principle and practice. Group obligations and individual human rights are dramatically opposed in (for example) a woman's freedom of choice to marry, in the group control of an individual's right to drink, in the imprisonment of people not obeying the village courts, in the legal denial of a customary right to commit a "pay-back" murder if compensation is not satisfactory, in the way group obligations and status are ignored in definitions of crime and corruption. If such principles of the underlying customary law are to inform future legal development then the constitution has to be suitably amended to accommodate tradition.

Alternatively, tradition can be subordinated to the written law of the land: and the rights of individuals, which are enshrined in the constitution can be the ultimate standard: but the present schizophrenic condition of shifting between the old and the new with no recognition of their fundamental conflict contains the seeds of disaster. As this report shows, the village courts are already operating with a foot in both past and future expectations. In applying custom they are not supposed to breach other laws or to abrogate constitutional rights: but, to be modern, they have to over-ride custom on occasions. The whole question of just how constitutional the village courts are may yet have to be decided There is much more to it than this however. The Ombudsman protecting individual rights in prisons may be reducing the area for group treatment which is more traditional. Already group punishment as a traditional corrective to some of the tribal fighting has been declared unconstitutional. The situation will get worse as young lawyers campaign for legality and people find their traditional values overridden by the statute law - sometimes purely technically. Already the high standards of proof required by a Westernised law in criminal cases is exploited by the cunning to the despair of their victims. The Annual Report by the judges for the year 1977 draws attention for the need to clarify the underlying law to be addressed - perhaps by the Law Reform Commission which was entrusted with the main responsibility by the Law Reform Commission Act of 1975 (s.9). The following year there was a similar comment by the judges who were concerned that if they had to wait for custom to be pleaded in individual cases the country might have to wait a very long time for guidance. Of course international standards constrain the "customariness" of a state wishing to be modern: but it could be that a reconsideration of custom in Papua New Guinea could make it more modern than its mentors.

In this respect the government needs to take note of the increasing extent to which developed countries are becoming disillusioned with their own formal criminal justice systems and are moving as far as possible into the wider use of discretion to avoid extended costly and sometimes unnecessary litigation. There is now more interest across the world in informal procedures for dispute resolution and a greater readiness to experiment with diverse forms of mediation. Standards of proof are in heated dispute in common law systems and some have modified them to fit local needs. Nearly everywhere communities are being encouraged to take more responsibility: they are being fostered not only for social control but as better arbiters of disputes than the courts dispensing formal law. The truth is being repeatedly confirmed that in terms of its effect on behaviour informal controls are much more effective than the written law - no matter how strictly it may be enforced Papua New Guinea has enormous advantages in this customary and community area and this report suggests their exploitation i.e. to modernise <u>with</u> tradition.

The Transition

Looking at the other concerns with law and order in Papua New Guinea these may roughly be divided into the "pacification" preoccuption of the colonialists which lasted until the 1970's and the period when independence was approaching and "protectionism" was being regarded as discriminatory.

Bringing law and order to a region of small clans at war with each other and hostile to intruders occupied the colonisers from their earliest to their latest period of influence. Headhunting and cannibalism were widely practised into the 1950s if not later and those in authority were not surprisingly committed to establishing the "rule of law" which they frequently interpreted quite simply as trying to stop people killing each other. They interfered as little as possible with custom, being prepared to rule indirectly through village headmen or their appointed village officials. They held their own courts and according to Dame Rachel Cleland -

> "....they knew jolly well that the good order of their districts ..... depended on whether the people were satisfied with the justice they dispensed. If they were not satisfied, resentment smouldered and the trouble broke out again. So an officer learnt in a hard school to ferret out what had actually happened in a given situation and to see both that the offender accepted his punishment, as a fitting retribution for what he had done, and that the offended people were also satisfied that he had got his deserts".
> (Cleland 1983 : 186).

Of course the people retained their own "kivungs" or village courts which were tolerated by the Administration. So customary law held sway and only when it failed was the kiap involved However, local custom was very definitely limited by the overlay of statute law and "civilised" values were expected to prevail in the event of conflict. Papua New Guineans accepted this odd system with its ritual and irrelevant sanctions only as long as they had to. It was not their law but they respected its authority. The local administrators were also the local judges and police chiefs so that they carried with them their authority and the immediate force to impose it. They even ran local prisons for minor offenders who were required to work on the roads or cleaning the towns. There was no escaping the rule of the kiap.

This system could not survive political freedom however and such all-powerful local administrators had to give way to the popularly elected leaders whose own new status could only be fed by the systematic and progressive diminution of administrative rule. It has been this shift from an outside, all powerful, protectionist, system of government to self-reliance and self-control which has underlain some of the law and order problems of later years. The transition was sudden and the people were confused In the highlands, they met colonisers for

the first time in the 1930s. Forty years later their warrior leaders were being groomed for parliamentary membership. The kiaps who had told them what to do could now be told what to do. From seeking government aid they now found themselves called upon to dispense government aid.

The police role has been ambivalent. On the one hand they were used as a repressive force for pacification. On the other hand, since they belonged to local administration they were available for bridge building, road making and the general odd jobs of administration. They were close to the community therefore - and their authority was respected. This does not mean that they understood their role as community officials: indeed they were jealous of their authority and regarded themselves as imposing community compliance with the law as interpreted by the kiap or district officer to whom they were responsible. In practice, however, though they occasionally took advantage of their local status and the kiap did not always know what they did in his name, they were close to the communities and respected by community leaders.

In the towns, as independence approached there was no such established role and the gap between what could be and what ought to be done was enlarged as crime grew. There, the regular (as distinct from local) police had to patrol, direct traffic and deal with the surge of property crimes as more and more people moved from rural subsistence to wage earning (or urban unemployment). But they had no community role and they lived together in barracks, separated from the people to be controlled The para-military role for which they had been trained had to be re-adjusted to the modern reality of urban policing. Expatriate police were recruited to make this transition but the old habits could not be shed so quickly and with a succession of commissioners and senior expatriate staff the police swung to their own great detriment between a military and civilian posture. Even now, whilst the civilian image is being cultivated in a tradition of modern professional policing, the practice is dominated by action in groups, overt use of force and by an unwillingness to accept individual responsibility. Yet, even as they are still divided in this way the police have been given constitutional autonomy and have withdrawn policing powers from the few rural areas where they remained in the hands of kiaps. The effect of all this on efficiency is dealt with elsewhere in this report.

In pursuit of law and order the colonial government imported Western law. However, at the administrative level and with the vast experience that the kiaps had of local custom it was appreciated that a statute law imbued with common law principles and precedents which had no relevance to the local conditions and traditions in Papua New Guinea would not work. Following colonial patterns in Africa and Asia the colonial governments of Papua New Guinea sought to provide for a recognition of local custom where it was not repugnant to the principles of humanity and natural justice. In effect this meant accepting custom to govern civil cases and reserving to the central authority and the higher courts the criminal offences of. any substance.

Unfortunately here as elsewhere it was not sufficiently appreciated that people governed by their own customs make no neat distinctions between civil and criminal jurisdiction. Apart from sacred offences which endanger the community - and for which an offender might be exiled or put to death - most other offences defined as crime in statute law are redeemable by adequate compensation. As crime grew and as the formal courts had to deal with more and more of the behaviour previously handled by the community the profundity of the conflict between modern and customary law began to emerge. Yet the policies of both the colonial and subsequent independent governments were designed to exacerbate rather than ameliorate the situation. Reference has already been made to the disastrous Derham Report of 1959 -and to the Hasluck "restatement" of his policy in September 1962 which sought to over-ride custom or to fade it out gradually or to act as if it did not exist. It is significant that a noticeable deterioration in law and order occurred about this time: but it is no less significant that liquor laws were also changed at this time. Reference has also been made to the constitution which paid lip service to the underlying law but left running sores of unresolved interpretation for the Law Reform Commission to tackle.

All this was at the conceptual level: but at the grass roots, at the practical day-to-day level of the administration of law in the courts the situation was deteriorating as is detailed elsewhere in this report. Apart from the resources not being available to equip the courts with all the expertise needed for the application of a complicated and fully fledged formal law, apart from the break down of the simple routines on which formal courts depend, the need for community involvement and for a recognition of custom became necessary to avoid the formal courts being overwhelmed. The answer has been the village courts which, as this report shows, have value even when all their defects are exaggerated. Yet the move into village courts was grudging: still is grudging: the appointment of officials brought in politics and, as shown elsewhere, they are equipped for a crucial role.

Corrections were slower to emerge from the colonial era and rural lock-ups have persisted to the frustration of the departmental administrators. All this is explored in other parts of this report and need not detain us here except perhaps to observe that in Papua New Guinea as elsewhere the prisons have had low priority and the unwillingness to provide for well tried alternatives to imprisonment (like probation, community work orders, supervised parole, etc.) has been very difficult to explain. The Australian Institute of Criminology at the instigation of one of us provided an expert on probation soon after independence. As a result of his report and again at the instigation of the same member the United Nations provided a qualified American consultant on probation for a period of two years. The parlous consequences of these efforts to help are retailed in the section of this report on probation.

The Committees and Inquiries

Peace and Good Order Committee. Of course, there have always been knowledgeable people to advise the government that crime is more than a problem of law enforcement. A Peace and Good Order Committee was set up to investigate the rise of crime in the early 1970s and reported to the then Chief Minister in 1974. It must be remembered that restrictions on the sale of liquor to

Papua New Guineans had been removed in the early 1960s so that ten years later when this new committee sat, the urban population particularly was exercised about the disorders which followed heavy drinking and the domestic violence which increased Breaking and entering was becoming a problem of no mean proportions and had been aggravated by the fact that the criminal justice system did not work. Robbery and muggings were not yet so serious however and killings were mostly associated with tribal fighting or the traditional "pay-back" murders. This committee using police statistics concluded -

- Personal assaults etc. outnumbered all other forms of adult crime between 1967 and 1974: and that the single most important factor leading to police action in Port Moresby is the uncontrolled consumption of liquor.

- Amongst juveniles property offences predominated.

- There had been a recent and dramatic increase in the offences against property. Between 1972 and 1974 they had doubled. (However, the committee was careful to say that it did not know to what extent this increase in crime reflected increased police activity.) Of course expatriate opinion at this period was not in any doubt. Whatever increased policy activity there might have been it was not very effective. They knew that they were being victimised more than ever before.

- Most offences of breaking and entering occur in the "well-off" suburbs or at offices and shops where community protection is not available. And the committee speculated that most of the offences against the person were probably perpetrated in settlements and villages, that is arising out of community relations and quarrels..

- There was no evidence to allow the committee to accept or reject the contention that most trouble was caused by juveniles from economically poor or jobless families.

Discrepancies in these figures and others being produced at the time were commented upon by one of us in a report to the government in 1975 (and reproduced in a book later published by the Australian Institute of Criminology). This said -

> "Merely to retail this information is to cast grave doubts upon the system of recording" (Clifford 1976 : 9).

This theme is taken up in other sections of this report where all such discrepancies are accounted for and suggestions made for their elimination.

It is important to observe however that the Peace and Good Order Committee cast a wide net in its fishing for crime causation. Indiscipline, moral decline, lack of education, bad housing, unemployment, broken traditions and the mixing of different communities in the settlements as well as uncontrolled access to liquor were all postulated. However, little attention was paid to the wide extent of behavioural control exercised by custom, to the break down of relations between local settlements and the police, to the growing evidence that a so-called modern legal system could not cope because it required levels of sophistication which were not there and it applied principles sometimes at variance with tradition.

University of Papua New Guinea Seminar 1975. In 1975 the Chief Minister - before independence - sought the aid of the United Nations for a study of the situation. He was referred to the newly established Australian Institute of Criminology. He requested assistance on the law and order situation in Port Moresby in February 1975 in a telex message to the Australian Attorney-General describing the "serious and mounting concern ..... particularly in the urban areas on the apparent lack of a coordinated government plan to deal with the control and prevention of crime" and the leader of this team (in his then capacity as director of that Institute) visited Port Moresby in March 1975. His report to the government remained confidential until it was published by the Australian Institute of Criminology in a book on "Crime in Papua New Guinea" (Riles 1976). This report inter alia advised the government that it did not have a crime problem so much as a police problem.

The book in which this was published also contained the papers delivered at a seminar conducted by the Australian Institute of Criminology in July 1975 at the University of Papua New Guinea at the invitation of the then Minister of Justice, Mr. N. Ebia Olewale. Some world famous experts were invited and a number of local officials presented papers. Malcolm L. Mackellar, a magistrate, gave an interim account of his research on crime in Port Moresby which had been funded by the Australian Criminology Research Council - an organisation administered and technically advised by the Australian Institute of Criminology. Since all these papers are now available it would be tedious to summarise here the recommendations. Suffice to say that in the present report we have had to cover a lot of the same ground simply because either no action or totally inadequate action was taken on the report and the subsequent seminar publication. The gradual run down of the modern criminal justice system was already carefully documented at that time. Very little of practical consequence can be traced to any implementation there might have been of these reports and recommendations. Maybe they inspired the investment in 1977 by the police in its Task Force to define its role and determine its requirements. Essentially this study was a definition by the police of its own role - but it must be noted that it was accepted by the cabinet - since which time there has been constant dissatisfaction by the police with the resources made available to them.

Port Moresby Committee for the Promotion of Law and Order. About half way through 1981 the then Prime Minister suggested the creation of a committee of community leaders in Port Moresby to provide a community contribution to the longer term solutions to the "appalling crime situation in Port Moresby". When suggesting the creation of the committee, the Prime Minister had hoped that the committee members involved would devise programmes in which they and other leaders would directly participate by motivating and drawing upon the skills and goodwill of the people they represented. He undertook to provide up to K20,000 on a kina for kina basis. However, at a meeting on 6 July 1981 between this Port Moresby Committee for the Promotion of Law and Order (PMCFLAO) with members of the National Security Advisory Committee it became apparent that the Committee's recommendations were being directed largely at the government to implement. The committee members took the view that as they paid their taxes they had a right to expect the government to provide a safe and harmonious environment. The Chairman of the National Security Advisory Committee writing to all ministries on 27 August 1981 said -

> "It looks very much as though we are heading towards an NPEP project approach"

and heated comments on the PMCFLAO proposals showing how departments were or could be involved. Those replies contain a wealth of valuable comment but again they did not lead to serious action in either planning or practice. Of course a planning committee was set up, namely the Committee of Review on Law and Order appointed by the National Planning Committee, but it was given a block allocation of funds and the committee became largely a trading exercise by the law enforcement departments for a share of the available financial cake.

The recommendations of the PMCFLAO are interesting -

1. Repatriation of unemployed offenders - with an appropriate amendment of the Constitution to permit this.

2. More low cost housing - and the development of individual ownership.

3. A National Capital Planning Commission to coordinate the development of land use and its supporting infrastructure - with contributions to development by the developers.

4. More employment - more labour intensive industry.

5. A pamphlet in English, Pidgin and Motu setting out the basic laws of Papua New Guinea - to make the written law more understandable.

6. An example to be given by public servants in the use of government property - especially cars. It sought a regular check on the out-of-working hours use of motor vehicles by the police - as had once been done by Plant and Transport Authority inspectors.

7. An attempt to moderate drinking habits. Here there were a series of recommendations including an educational campaign, a waiter service in all bars and the introduction of the breathalyser.

8. Better training of the police to handle youths.

9. More youth services by the government and the community - more community halls for use.

10. Discouragement of magistrates from sending young offenders to prison. The committee was seriously concerned about the lack of sufficient youth detention control.

11. Decentralising of the police - small neighbourhood police stations. Better coordination between police and peace officers aided by telephone and radio.

12. More flexibility in qualifications for police to absorb a number of drop-outs.

13. Support for the Department of Primary Industry in its efforts to encourage subsistence gardening in urban areas.

14. Support for the Department of Minerals and Energy's and the City Council's projects for the planting of fruit trees and flowering shrubs.

15. The more general encouragement of community spirit.

It is important to note here that when such committees or studies have been set up in Papua New Guinea the professional criminal justice services have either been represented on them or have advised - or maybe done research for. them. Such collaboration was necessary but it did sometimes channel the discussions into professional channels - so that perspectives were difficult to achieve. Questions for example as to why police, courts or prisons were not working were likely to elicit professional answers - usually centring round the paucity of resources. Community policing is a perennial recommendation for instance but this is usually

the police conception of community policing which in Papua New Guinea is likely to mean the police being close enough to control the community - or at least to instruct it on how it should behave. Better training, improved equipment, etc. are always welcomed as recommendations to assist the police. On the broader issues of job creation, low cost housing, controls of drinking - these are more hopes than practical expectations.

The Secretary of the Department of Labour and Industry, Mr. Phillip R. Dandi liked the support for the creation of more job opportunities and deplored the fact that proposals for incentives to industry had been allowed to die a natural death due to the indifference of other government departments. He referred to the secretariat provided by his department for the Self-Reliance Scheme (formerly the Urban Areas Activities Scheme) which had emerged out of concern for youths getting into trouble with the law. This apparently was intended to have a limited life span of one to two years and was to constitute the first phase of a more comprehensive law and order strategy which (according to Mr. Dance) "appears to have foundered in government circles unknown". Whilst Mr. Dandi sympathised with all the concerns and recommendations he had reservations about heading for a new NPEP approach. He commented -

> "To make general types of recommendations and not to be bothered about how these can be implemented serves nobody any good."

A Mr. T. Kaiulo writing for the Electoral Commissioner thought disparities and inequalities were at the root of the problem and attributed these to the dual economic system inherited from the colonial times. He felt that the government should take a "round-about-turn" in this superimposed western idealism and apply "an inexpensive and affordable system for all Papua New Guineans". He felt that the' government could provide a more humane and crime free society if it -

> "firstly created wealth before deciding how to spend it. Secondly developed productive capacity and thirdly if it carried out research and improved social and welfare policies behind it."

He could have provided examples, of course, of developed societies which had done all these and were still plagued with rising crime.

The Committees proposals for repatriating offenders, getting low cost housing and beautifying the city were not received without reservations. Paul Songo, the Secretary for Education in a seven page letter written in October 1981 which had many suggestions wrote on page two -

> "Not only is it difficult, policy wise, for a national government to justify increased expenditure in the National Capital District to resolve these problems, given the national policy of priority to rural development but it would also, under present policies of freedom of movement for the individual be counter productive. With all its drawbacks, the city is still sufficiently attractive to attract rural immigrants who increase the population at a rate of 7 per cent per year. Any improvement in employment opportunities, housing, educational and other services will further increase the attractiveness of the city as against the rural areas and so is likely to increase the rate of immigration and expansion of the city, so effectively "swamping" the services intended to solve the problem."

Thus, Mr. Songo said -

> "under the present constitutional provisions the Government is in a 'no-win' situation. The more it does to solve the problems the greater the immigration and therefore the greater the problems."

However, he saw no reason why developers could not contribute more to the improvement of the city and he believed import duties on luxury goods could be raised. For him the money could be raised to provide the urban services necessary - if the political will was there. However, the suggested National Capital Planning Commission might create a new bureaucracy and undermine the very communities which the Committee hoped would improve local discipline.

Actually in the intervening years the evidence has become available that the flow into the cities may have levelled out and the population increases may be largely due to natural increases - to births to families permanently settled in the towns. The government may not therefore be in quite the classical dilemma presented to governments everywhere by the flow to towns - to relieve the appalling living conditions is to attract more people. Mr. Songo supported the Committee's call for control of movement and he believed that a minimum requirement was a system of residence permits and I.D. cards. He believed the schools could be used more to absorb idle youth instead of being used only 10 per cent to 15 per cent of the available time in the year. Teachers could be paid to give extra time for special courses partly by the government and partly by fees charged for the extra courses. Curiously enough, Mr. Songo makes no reference at all to the possible role of education in encouraging the flow of young people to towns or training them for roles in the modern sector which just do not exist.

Mr. Ewing of the Papua New Guinea Banking Corporation observed that the Committee's recommendations on housing and employment were over-simplified He noted that they have been aired time and again "and of course, virtually nothing has happened". He goes on - .

> "Trying to achieve an understanding of the law by hungry and homeless people living in pitiful conditions is surely bordering on the ridiculous."

As regards the recommendations on the police Mr. L. Keith Young, Director of the Legal Training Institute comments that in the early 1970s there was an active "Youth Squad" within the Boroko Police Station headed by a Sergeant or Sub-Inspector Banono which proved very successful at maintaining contact with youth and detecting youthful offenders.

Mr. P. N. Matane, Secretary of the Department of Foreign Affairs and Trade, thought that the repatriation proposal was unrealistic because those sent back would return or else their place would be taken by others. He was also one who thought not only that low-cost housing would attract more to town but that work creation schemes would do the same. He also preferred radio commercials to pamphlets. Mr. Tom Craig, Director of the National Arts School sent comments by his staff. These included -

> A belief that the Committee had not gone far enough in its attempt to obtain activities for the young. There could be -
>
> - the amendment of certain laws to allow informal sector activities such as selling goods on the sidewalk, selling cooked food (properly inspected of course);
> - the allocation of open spaces for the erection of shelter;
> - the establishment of a committee incorporating the Labour Department, business houses, Youth Services, National Planning Office and the community on employment policies.

This submission ends with the comment -

> "Young people are getting tired of band-aid measures and hand-outs which do not provide them with lasting employment or activity."

Nor had the National Arts School staff any time for the repatriation proposal: they thought it a waste of time and money.

The Acting Secretary of the Department of Public Utilities objected to the proposal for lowering the qualifications for entry to the police. He thought this would only degrade the services provided

John Tokunai, Director of the Office of Information did not find the repatriation proposal very helpful when what was really needed was to make the rural areas more attractive. Since housing meant ability to pay and this meant jobs, the proposals for better housing were not too helpful. In general he thought the Committee recommendations dealt with the symptoms more than the disease. However, he liked the National Capital Planning Commission recommendation and thought that developers should pay. On alcohol he said that "Operation Moderation" had gone down as a monumental flop and a waiter service would only make drinks cost more. He thought the police could be tougher but pointed out that the police too had been known to avail themselves of the services of the black market. He wanted a more vigorous approach to the police including training, manpower and equipment - and felt more money was necessary. He didn't like lowering entry qualifications. He made the point about making Port Moresby more attractive that others had made - it would only complicate the issue by attracting more people. He concludes -

> "...it is my opinion that unless much more real support in terms of manpower and financial and technical resources, is given to this problem, then Port Moresby together with other main centres will be shortly forced into a fortress mentality with huge fences, guard dogs, private security forces etc. and there will be a virtual state of war between the "haves" and the "have-nots". Exhausting even more of Papua New Guinea's scarce resources on paper warfare will not help the situation; and on top of all this, it is an unfortunate but inescapable fact that it is always the "haves" who end up making the decisions and the "have-nots" who end up wearing them."

All this demonstrates an understanding of the law and order issue by a wide variety of officials. One calls it not a law and order problem but "a problem of lawlessness and disorder".

Committee to Review Policy and Administration on Crime, Law and Order. Obviously we will have to return to some of these proposals in the course of this report: but first it is necessary to review briefly the work of our immediate predecessor. We believe that this body should be given credit for a rare and comprehensive approach to the law and order issue. It cannot be accused of shirking the issues. However, it covers much ground which it did not have the time or expertise to cultivate.

The National Executive Council Meeting No. 18/83 on 5 May 1983 - held whilst the I.N.A. was already working on the terms of the present study - directed that a committee of senior public servants be established to undertake a detailed and comprehensive review of government policy and administration relating to law and order. The National Executive Council directed that the Committee be chaired by the Secretary for Provincial Affairs, Mr. Leo Morgan. This Committee became known as the Committee to Review Policy and Administration on Crime Law and Order, or more familiarly, taking the name of its chairman - the Morgan Committee.

The Morgan Committee had been set up by the National Executive Council as a direct result of a Premiers' Council meeting at Arawa, North Solomons Province in October 1982 which discussed inter alia an upsurge and spread of crime. There, concern was expressed about-

- Government and public anxiety about the deteriorating law and order situation.
- The lack of coordination at the implementation stage of the reports of previous committees.
- The threat to the standing and status of the country if such a coordinated and unified approach were not adopted.
- The essentially short-term character of past measures by government to deal with the problem.
- That increased funding for the police had not been reflected in any conspicuous improvement in law and order.
- The sentencing policy of the courts which was too lenient.
- The Constitution which provided excessive liberty and freedom that benefitted criminals at the expense of law abiding citizens.
- That, in the context of major social, political, economic and psychological change, government planning and coordination was seen to be weak.

The Premiers' Council identified fifteen sectoral areas as associated with criminal activity-

Police Powers and Administration
The Courts and law enforcement agencies
Correctional Institutions and Administration
Education system
Land Policy and Administration
Investment and Employment
Industrial Development Policy and Incentives
Urban Planning and Rural Development
Agricultural Development and Primary Industry
National Youth Policy and Programmes
Women's Affairs
Non-formal sector and the Churches
Taxation Policy and Incentives
Population Growth and Migration
Public Service and the Machinery of Government.

The comprehensiveness of the list is to be applauded. Probably never before in this country or others had the significance of at first sight unrelated sectors of the economy been brought within a law and order perspective. Moreover, in the course of its work the Committee canvassed as wide a spectrum of public opinion as it could and had its constituent departments conducting in these fifteen sectors as careful research as the time and circumstances permitted

This is not the place to look in detail at the background work and the eventual proposals of the Morgan Committee. Some of these had to cover ground already covered by previous inquiries - just as the present study cannot avoid such issues as remain fundamental simply because they have never been dealt with adequately. However, the key recommendations of the Morgan Committee were -

1. The creation of a Crime Commission to coordinate and plan effectively.

2. The creation of a Commission of Employment and Production to generate more employment for a growing, more educated, young, unemployed population.

3. The creation of a competent Youth management Team to plan and implement youth policy into the 1980s and 1990s. The Committee regarded the present allocation of resources to youth inadequate.

4. Control over the production and consumption of alcohol by Government acquiring a controlling share in the breweries.

5. Establishment of Ward Committees and more urban village courts.

6. Integrity, discipline and efficiency in the Public Service by an extension of the Leadership Code and a toughening of its provisions.

7. The strengthening of party discipline in parliament. "The Parties must develop policies that have the necessary sophistication to deal with crime and with the complex socio-economic base that breeds crime."

Actually the present team was already at work on a number of these issues before it had access to the Morgan Committee Report. However, it acknowledges the value of the Committee's ground work and the crystallisation of the proposals which will be dealt with elsewhere in this report.

Comment

Common to nearly all the enquiries and studies of law and order problems so far is the readiness to accept the present structure of criminal justice services as given - as something within the confines of which it is necessary to work. There are few questions on the relevance of the criminal justice services: other countries have them this way - why shouldn't we? The fact that there are quite similar problems with them in other countries - and that other countries are trying to find or invent informal alternatives gets little attention. Therefore a great asset which Papua New Guinea has, has tended to be overlooked.

Secondly, the possibility that existing services may be defective or inefficient - not because they are starved of resources - but because they are either irrelevant to the situation in Papua New Guinea or refusing to work with communities does not seem to have detained people long.

Thirdly, though freedom of movement frequently occurs and a constitutional change is proposed to get more control, this is rarely addressed within the context of the fundamental conflict between individualism and the group responsibility which is so natural to the people of Papua New Guinea.

A National Youth Service

Much of what we have said about voluntary agencies applies to the services already available for youth. Here we wish to address more specifically the Morgan Committee recommendations and the calls frequently made for a national youth service to use the unemployed in development projects. Some would like to see a form of conscription. We would find it difficult to improve on the presentation of youth problems in the Morgan Committee Report. This draws attention to the 1.6 million persons under 19 (53.3 per cent of the population) its lack of employment opportunities and its pocal impotency: it also blames imbalances in sectoral development for the masses of unemployed youth perhaps giving rather less attention than it might to the fact that such imbalances have fuelled modernisation and development in the developing world: the youth problem, however, is a dangerous by-product which if not dealt with could negate development altogether.

A formal uniformed national youth service

This has been a typical approach to the problem of unemployed urban youth in many developing countries. The coordinator of this project was chairman of a working party which recommended a scheme of this kind for Zambia in the early 1960s. The experience was not encouraging in that country or in many others and its success (where achieved) depended more on a few dec6cated individuals than on the institution of a youth service itself.

The first fact to note is that even if it were successful for a period of two or three years only, the costs are enormous. Uniforms, equipment, some pocket money, transport for thousands at a time adds up to a very large budget. In newly independent Ghana this expense was justified politically and the Pioneers (youth conscripts) were blatantly used for political purposes. The idea did not last long after the collapse of the regime it supported The Zambian experiment was short-lived because the leaders and organisers capable of running the movement were difficult to find and the scheme grew too expensive. Kenya had rather more success because it was founded around one charismatic leader who had an established reputation and a remarkable capacity for administration. However, the thing for Papua New Guinea to note is that the schemes did not last and in all these countries today the urban young unemployed still present a problem as the rates of crime soar. Singapore has been luckier with its army/police conscription plan for young people but it should be noted that Singapore has full employment. There is no problem about placing the conscripts when they are demobilised. Moreover Singapore has a better educated, culturally homogeneous and physically compact society which permits it to do things differently from Papua New Guinea.

The second important point to note is that, in countries where there is still no employment for the young people when they leave the youth service, the uniformed mobilisation for development projects can only be a palliative - a temporary expedient. It buys time and is therefore justified if at the end of that time there are better prospects for employment. If not, then the youthful unemployed are converted by the movement to a more sophisticated less satisfied and better trained army of unemployed which could give more trouble rather than less.

Thirdly, it should not be imagined that even the largest uniformed voluntary or conscripted youth service that Papua New Guinea could afford would absorb the mass of the country's youthful unemployed Usually the advocates of this solution envisage the settlements being cleared of idle youth by their conscription for useful service. The truth is that only a few thousand would be affected From a law and order point of view these may not be the ones who constitute the worst of the rascal gangs. So it cannot be a wholesale solution.

There would appear to be some evidence that in the towns it is the 15-19 year old group which is in need of leisure, a social role and some form of earning capacity. After that they appear to get married and more or less settle down, taking work they might well have scorned when they were younger. We believe therefore that research now on which groups need more attention, a streamlining of the National Youth Movement Programme to make it more effective and attention to both education (which creates the flow into unemployment) and employment generating enterprises would be more effective than a military type uniformed National Youth Service.

National Youth Movement Progamme

The Morgan Committee specifies that the present National Youth Movement Programme (NYMP) is designed to help young people 12-25 years seeking to bring them more effectively into the social, economic and political life of the nation (NYMP 1982 : 2). In 1982 there were about 3000 registered youth groups in Papua New Guinea with some 200,000 members i.e. about a quarter of all young people between 12 and 25. On this basis the Morgan Committee believed that it needed to be extended. It did not say that it should try to cover all the 778,845 young people 12-25 but the implication was that one-quarter was not enough and maybe two-thirds would be better. This is doubtful; given the parlous state of middle management in Papua New Guinea an extension of this dimension would be not only more costly but probably less efficient. In the rural areas we examined there were places where "youth movement" and "registration" had little local meaning. Older people sometimes brought younger people together temporarily to register for the purpose of obtaining a grant - but they had no traditional context for the "youth group" and one local leader said that the same young people were never at the meetings from one year to the next. The shortage of trained staff reported by the Morgan Committee suggests that already the NYMP is over-stretched and might wish both to consolidate and to deepen its work before thinking of expansion. This is particularly the case when some of the problems of NYMP relationships with other bodies and certain limitations of its existing policy - all described by the Morgan Committee - are taken into account. It is particularly important that the field of non-formal education be developed. If education, youth and voluntary bodies are involved in informal education it is a pity that they should be competing for government allocations. There would appear to be scope for them all to contribute and the government money should be an extra. In Kenya, parents collaborated to set up non-formal education centres and technical aid volunteers were brought in large numbers to organise these "self-help" educational schemes. The government contribution was minimal and usually in kind - books, land for the building, technical advice. Work sharing too is an improvement - but it is difficult to develop and apply. We were most impressed by the "universal schooling" proposal. This would absorb large numbers if the funds can be found for teachers.

The challenge which exercised the Morgan Committee - to find rewarding and satisfactory activities for the flow of 36,000 young people a year from the schools in excess of the 4,000 available jobs - is not one which we believe will be relieved by setting up a management team of economists, social planners and managers. So far in other countries such specialist committees have not proved anything like as useful as individuals with their own approaches, who have reached young people by their love for the youths and their capacity for understanding and leadership. The Morgan Committee itself demonstrates that all the relevant information has been compiled for publication. It is repeated at meetings and seminars dealing with the country's problems but if solutions have eluded desperate nations across the world for over 30 years they will not come easily to Papua New Guinea now. This is not to minimise the crisis of youth - only to warn against facile solutions. We give credit to the Morgan Committee members who felt they must do something to get this handled: but this is a problem which has outlived the most hopeful experts, national and international. The problem will not now go away by assembling specialists for more studies. Those who know enough for action are already here to act. Those who aren't will drift along shocking people with figures but ending by spreading their hands. The developed countries are now beginning to have their own problems of unemployed youth largely as a result of education unrelated to employment opportunities. The idea of labour intensive work

creation is at least as old as the late 1960s and early 1970s when the International Labour Organization commissioned teams of experts to help. The results were technically impressive but not conspicuously effective in practice.

There is scope for wide experimentation with land settlement schemes and creative leisure for youth. However, the "kibbutz" idea is peculiarly Israeli and its effective period was that of nation building in the thirties and into the early 1960s. One of us has had the experience of living in the kibbuzim before the State of Israel was founded and at different times afterwards. The kibbutzim movement in Israel has been distinctly less impressive since the relaxation of national effort in Israel after the Six Day War - information on which is to be found in our chapter on corruption. In our experience, no country has succeeded with an attempted transplant of the kibbutz idea -. and it is wilting now in the country that gave it birth. A deep sense of national unity and dedication to a purpose is necessary for success. Actually something not dissimilar operates within a wantok system - though it is nothing like so sophisticated, formalised or politically self-conscious as the kibbutzim.

So what to do? This is one of the areas in which we felt we should avoid pretension. Certainly anything is better than nothing. The National Youth Movement Programme may have its problems but if it can get away from the unfortunate image of a "hand-out" to cooperative youth it could develop some valuable approaches. We support the Morgan Committee in backing this programme even though we hesitate about blowing it up beyond administrative restraints. Development of a wider informal economy to help young people earn and adjustment of the minimum wage will help. We believe all kinds of voluntary groups could get a share of the action. One such group in another country provided a most useful service for homeless children who had drifted to town by keeping a soup kitchen open in a settlement all night - with places to sleep. Social workers often got these children back to rural families. Vocational training centres, informal education and the like are valuable in their own right - but we know we are not being original. At least we can say with so many other writers of reports on youth - that this is the government's major problem - its unemployed youth. Politically, socially and economically it out-distances anything else that preoccupies the authorities.

Planning - Development - and Crime

The Government of Papua New Guinea is in the process of reviewing its approach to national planning. It has inaugurated a procedure for nation-wide consultation on the future of its national development framework. It seems that even the basic orientation like the eight strategic aims and the five national goals will be open for re-appraisal and review.

This will provide the government with an excellent opportunity to publicly recognise that the effective control of crime is not just a condition for development but a consequence of development and indeed is also one of the main indicators of development. For, whatever kind of development may be achieved despite crime, it cannot usually be enjoyed when the levels of security and the

quality of life have deteriorated. Many of the so-called developed countries have learned this to their cost and they now have not only street crime but organised crime spinning out of control.

The first of the government's goals or directive principles is headed integral human development and it seeks to free everyone from domination or oppression. But many in Papua New Guinea who now feel politically liberated are shackled by crime. They dare not leave their families, they cannot walk at night and they have no security for whatever they are able to earn. As always and everywhere the rich raise the cries about crime in influential places but it is the poor and unprotected who suffer most and who most frequently pay with their lives. They are the ones obliged to travel at night on unlighted roads without cars, whose daughters are more immediately exposed to danger, whose homes are violated and who do not have telephones to call the police. In the rural areas the destruction of fields and the destruction of crops due to tribal fighting, not to mention the amounts of capital that have to be raised for compensation, discourage productivity and effectively prevent any enjoyment of benefits. More insidious by far is the creeping paralysis of such crimes as corruption, tax evasion, illegal trading, fraud and consumer exploitation. When this is added to the deleterious effects on overseas recruitment, tourism and business confidence, crime becomes the hole in the economic development bucket draining off resources and ensuring that the country will not have the will to rise to the heights of its ambitious national aims.

World Bank reports, whilst praising the statement of national objectives and the eight aims which have formed the bases far all of Papua New Guinea's statements of development policy, keep returning to the fact that growth was omitted as an explicit goal. In various ways they keep suggesting that it should not be overlooked (World Bank 1981 : 3). The Jackson Committee on the Australian Aid Programme takes up the same theme, make the wealth before you distribute it. Undoubtedly productivity and growth will get more attention in future planning but growth for its own sake inspired a distorted World Bank Report in the early 1960s which embraced the "growth centre" theory and which would have ignored the lesser developed areas in the country and proved inequitable. The idea was to concentrate investment where growth could be accelerated There would be spin-offs for the less developed areas - later! The Papua New Guinea government was not misled. It saw that "later" had to be defined and it opted for a just redistribution rather than the possibility of unequal growth and unfair distribution.

It is obviously a question of emphasis and degree but the government should be cautioned by rising crime about the dangers of going too far in the single minded pursuit of growth to increase the size of the national cake. The cake never grows in a law and order vacuum. There are doubtful as well as upright entrepreneurs. There are commissions on contracts that skirt the ethical if not the legal boundaries and there are tricksters, gamblers and despoilers who will not hesitate to use violence to get a share of the earnings. As the cake grows, illegal profits are made. There is post-war experience in this country to prove it. And when the cake has grown it could well mean nothing to the bulk of the unemployed population or to the 80 per cent or more who still rely on subsistence agriculture.

As Papua New Guinea rightly saw at the time of independence, for the quality of life the size of the cake is secondary to its fair and just allocation. Too many large cakes obtained in other developing countries have been carved illegally before the distribution began - or else lion's shares have gone to the least deserving. Moreover, the unqualified pursuit of "productive" investments has led to the neglect of important deviations from probity which have eventually succeeded in discouraging effort. In other countries striving for growth, an intimate feed-back relationship between crime and growth (without regard for the social consequences) was fostered and progressively enlarged - sometimes to disastrous proportions.

Neglect of crime and the build up of the social disparities which appear to induce crime are typically punished by eventual revolution. The evidence has flowed from Ghana, Nigeria, Uganda and many of the Latin American countries. Usually the military take-over was preceded by rising crime which went unpunished. It was preceded by a generalised insecurity, a loss of confidence in the police, and a conviction of corruption in high places. When the new rulers came they were either welcomed or at least not opposed There was often a relief that their military authority would guarantee law and order even at the expense of democracy. Then, of course, all the technically brilliant five year economic plans had to be rewritten - but this time with new beneficiaries.

So, from a crime prevention or "law and order" standpoint, the moves which have already taken place in Papua New Guinea towards more local ownership, a fairer distribution of benefits and an improved quality of life for more people are quite admirable. The trouble is that they have not been consolidated with an effective control of misbehaviour and a strict accountability so that some of the liberties protected by the Constitution have been allowed to deteriorate into licence. People's fears have been allowed to grow, there has been an inadequate check on the flow of wealth. Even now, seeing law and order as a condition of development is distracting attention from crime as a consequence of the development already promoted since Independence. Instead of fulfilment there has been exploitation; and freedom has engendered fear. Looking back over a decade of redistribution, equality and participation there should be an extended sense of community, a wider caring and drawing together of people in open dialogue and in mutual confidence. Instead, throughout the country, the barricaded houses stand as monuments of public failure. and the proliferating accounts of corruption and mismanagement are urgent signals to the intelligent to seek a more personal and less communal approach to his future advancement. The appalling record of the criminal justice services castigated by this report is a dire warning that the allocation of funds alone, planning for "more of the same" in the hope of buying security can be counter-productive and can widen the law and order hole in the economic bucket. Already in our chapter on costs we have suggested an outflow greatly detrimental to development.

The question has been asked: "What is the form and content of a development model which is economically equitable, socially ennobling and environmentally balanced" (Riddell 1981). The author abandons the materially productive objectives of existing development plans arguing that these are misconceived and

palliative since the so-called "underdevelopment" is a function of the North/South imbalance. If this imbalance provided growth for some, then a similar imbalance (which he equates with exploitation) is necessary to provide it for others. So on what imbalance - unfortunate for some - will Papua New Guinea build its future growth? It is a very profound question for a Melanesian nation founded more on cooperation and on concepts of reciprocal obligations than on an intensive competitiveness. Maybe the original planning in Papua New Guinea was more Melanesian than any new growth-oriented one might be. However, the essential point has been made and there is no intention here of opposing a provision for growth in some new development plan for Papua New Guinea in the next decade. The object is to raise the consciousness of the authorities to the evidence available of a probable (but as yet unproven) link between growing crime and political instability. At the extreme in some Latin American countries it is the affluent criminals who have penetrated the democratic institutions of government. In many places the military have found such a situation intolerable and have sought to control it by seizing power. If this is true then crime prevention or law and order must be an essential part of all development planning for the future; and no diversion to growth should be permitted to reduce the dedication to local sharing of all the benefits likely to accrue.

The police have asked for law and order to be a distinct aim of any development planning: and it is true that not to do this is to encourage the artificial notion that development and crime prevention are separate. However, it is contrary to the positive orientation of development concepts to embrace something as negative as law and order. The problems of the notion of "law and order" for an ex-colonial country like Papua New Guinea have been dealt with elsewhere in this report and needn't be reiterated here. It may be necessary therefore to bring something less innocuous like "crime control" or "crime prevention" under a more general positive heading like "enhancing the quality of life by reducing pollution and improving security". However it is done, the need to give crime prevention a high rating in future development planning is as important as defence - perhaps more so since it is internal defence.

More important by far, however, is the realisation that crime prevention does not just mean spending money on law enforcement. There is a lot more to it than that - and this report should have made those issues clear. Of greatest importance therefore for crime prevention and the development of the country is provision for a "crime impact" study of all major investments being undertaken by the government as part of the development plan. The institutional provisions for this will be set out elsewhere in this report: but it is vital that this concept be grasped. So much of the existing law and order problem is a creation of past mistakes in planning development as if men were always honest and rational. So much is due to an addiction to priorities which largely ignored the effects on other sectors of massive investment in the favoured sectors. Wherever there are flows of money, provisions for sub-contracting, creation of funds to encourage enterprise, housing schemes, expenditures on town planning or changes in land use the opportunities for crime are generated and suitable prophylactics need to be built in. The large share of national resources devoted to education have implications for unemployment and crime. Funds devoted to new mining projects move people, create new communities and generate law and order problems. The most ambitious projects for agricultural or industrial development backed by

enormous capital obtained locally or abroad must fail and must lead to the eventual disgrace or imprisonment of some if the essential accountability at all stages of the handling of the funds cannot be assured.

The method of funding schools in Tanzania made it likely that all school principals would be indicted for mismanagement - because the supervision was inadequate. Likewise funding for cooperatives in Kenya put many of the secretaries in prison for the diversion of funds they were not trained to handle. More seriously with so much money to handle, nepotism and outright corruption are encouraged and need to be countered.

Papua New Guinea should be warned that across the world organised crime has grown way beyond any police control by exploiting unsupervised money flows of this kind and investing in further illegalities. Unlike legitimate operators they have means of recovering their funds with exorbitant interest. Eventually, with enormous wealth they can purchase influence and access to more ambitious schemes for self-enrichment.

Sectoral and inter-sectoral planning

Planning is a complex operation with central ministries designing policies, projects and programmes for the nation as a whole and with their provincial counterparts hopefully combining with the counterparts of other ministries, services or agencies to provide an integrated plan for each province; below this, at district or urban level or even at the village level local people can be induced to participate in the formulation of coordinated projects for their areas. Several ministries or services might be grouped for planning purposes into sectors e.g. agricultural sector, education and employment sector, industrial sector, etc. Then at the meetings to make final allocations the National Planning Office has to look across sectors for coordination, dovetailing, the avoidance of overlap - ordering the priorities to achieve the nation's objectives.

There has been a kind of law and order sectoral committee operating within the National Planning Office for many years; and though its designation may have changed over time the members have frequently been the same. Not infrequently the persons on the law and order sectoral committee have also participated in the committees and study groups set up for law and order. Ideas therefore fed in at one level can be promoted later at the sectoral level. Frequently these members are responsible for or associated with the planning and budgeting units of their own ministries, agencies or services so that, in effect, the law and order sectoral planning committee has been a kind of inter-departmental body with a sprinkling of National Planning Office or outside representatives of voluntary bodies - or the general public to leaven the bureaucratic lump.

This has been the fashion for sectoral planning committees in Papua New Guinea - which is very unfortunate because planning can never be done interdepartmentally. Across the table there are rivalries and conflicts - especially if they happen to know in advance what the total allocation for the sector is likely to be. Sooner or later a kind of horse-trading begins both inside the conference room and outside. The allocations eventually agreed will be a negotiated consensus with references to objectives and priorities being very much a second line justification. Each member's loyalty will be more to his ministry than to any abstract conception of the planning process itself. Government planners living and working in the area will be the only members of the committee who will be more attached to the process of planning effectively than to their departmental share of the available cake. The promotion and future of committee members representing ministries depends to no small extent upon their ability to get money for their own services. They are on the committee representing their services to propose, to request, to plead, to argue, to cajole, to demand the consideration for their ministerial programmes which they consider essential. In such conference discussions on the priorities to be assigned and the relative weights that should be placed on the various constituent services each representative champions overtly or surreptitiously his own cause and he learns to identify and plot against his opposition around the table.

This is not planning - it is negotiating; but the two are not surprisingly confused where a sectoral committee is formed inter-departmentally. Frequently, a planner with some past experience of service on a committee of this kind will chair such a meeting and he might keep the membership to the salient points of the agenda. But he is a moderator rather than a leader and he is hampered in the use of his planning. He will seek as much consensus as possible but eventually the allocations will be a compromise.

Ideally the sectoral committee will not have departmental representatives. It will be limited to three uncommitted members with a knowledge both of planning and law and order - who will hear or receive submissions from the departmental representatives. Then, having gathered all the data, the committee will try to draft their recommendations in camera away from the lobby of vested interests and involved representatives of departments. With such an independent approach by a committee not enmeshed in the ministerial or agency rivalries, the small committee of planning specialists with clear objectives should be able to draw up a suitable design for investment in the 1980s to best attain the sectoral - not departmental - objectives. Much of the law and order planning in Papua New Guinea so far has failed simply because, in the planning process, the departments were enmeshed. It has failed for lack of the committee's independence from the ministries affected - and because a truly critical overview has been excluded by the presence of the parties to be assessed. Of course there needs to be consultation with ministries: but, in the final analysis the hard decisions on resource allocations have to be made independently and without argument with the services affected.

That is the sectoral planning. At the highest level - either just below or actually at the cabinet level - the inter-sectoral planning needs to be done. Here is where all investments over the next few years can be measured in terms of their effect on other sectors. Again it has to be an aloof and independent process with the sectors affected making representations - but not being involved - in the final sharing out of the cake. The new look now possible at the sectoral level can be given meaning within the broader context of inter-sectoral perspectives. For law and order to be tackled effectively there has to be well thought out planning at the sectoral level. Hopefully a two level plan will emerge providing not only a broader measure of coordination sectorally - between police, courts and prisons, etc. - but also providing sectorally for the law and order fall-out from activities in other sectors. Such planning will not be so easily bogged down in the vested interests of unmovable bureaucracies - already committed to perpetuate past failures. It will be able to reorder priorities, to jettison what does not work, to change direction when necessary and to monitor its own performance critically.

Chapter 10

THE CRIMINAL JUSTICE SYSTEM IN ACTION

This study embraces the formal justice system, the role of community based constraints, and the broad impact of all government and non-government agencies on law and order. While community values and customs far monitoring order in an informal way have a direct bearing on law and order, they are part of a broader perspective. They are not included in the definition of the criminal justice system.

For the purposes of this study the criminal justice system is defined to include the police, corrections, village, district and national courts, all agencies and professionals working in the courts and all professionals or institutions such as the University of Papua New Guinea's Law School, Law Reform Commission, and Justice Department whose activities primarily relate to the functions and laws affecting the processing of disputes and crimes by police, courts and jails. There is, of course, another angle to this which should never be overlooked From the point of view of the man in the street a law and order system is broader. He may be less concerned with laws to protect property than with laws to regulate contract or tort i.e. his relations with his employer or his neighbour. In a customary oriented society he will be much more concerned with adultery and the rules governing sexual relationships than with those providing for the prosecution of breaking and entering or the various forms of corruption. This is why the informal procedures are so important. They qualify the meaningfulness of the law to the mass of ordinary people in Papua New Guinea. That is why the working of the formal system needs careful scrutiny. At the heart of this formal structure is the criminal justice system.

It is important to clarify our use of the word "system" in relation to these services. A system implies common objectives and, like an engine, a combination of inter-related parts working to achieve the purpose or purposes of the whole. It is not only unrealistic to expect police, courts, prisons etc. to fit such a mould - it ignores some of their fundamental principles. Courts believe themselves independent and consider it inimical to their character as the impartial administrators of justice for their work to be linked to that of any executive services. For the courts this would be contrary to the doctrine of a separation of powers - judicial, legislative, executive. The police objective of preventing crime could theoretically be achieved without recourse to courts or prisons. The purpose of imprisonment - safe custody, reform, deterrence etc. is in continual dispute. Nevertheless it is equally unrealistic to imagine that the various services here described operate independently. The police can clog the courts with cases. The prisons can negate the work of both: and the court decisions can be nullified when funds for the services to implement them are not available. Therefore, within the context of these limitations it seems reasonable to use the term system to explain their inter-connections. In some general way they should work together to

maintain law and order. For years the government has been pleading the cause of coordination of the constituent departments of the law and order sector. Why this has not been achieved is described in our note on planning in the preceding chapter. In this and subsequent chapters we will look at the separate parts of the system.

In examining in Papua New Guinea how the criminal justice system functions in responding to crime, and in processing offenders through the courts, it is clear that at present -

- The criminal justice system cannot cope with existing crime[1] and order problems.
- The situation is getting worse. The more funds invested in formal services the less efficient they become.
- Getting coordination and efficiency within a single department or agency is sometimes more difficult than getting coordination between departments or agencies.

Our view here is contrary to that expressed by most of those at present responsible for these services who trace their inadequacies not to their lack of relevance for the task but to the lack of resources. They believe that given more money the system would work. We believe that experience has disproved this. Moreover if our analysis of costs has any validity the government will not be able to afford much more. There is a mighty drain of public funds in crime and corruption of various degrees and types and the government has to begin getting full value for the money already invested in criminal justice.

A harsh condemnation of the justice system in this country permeates the ensuing description of the underlying factors generating the three conclusions above. This condemnation is not preconceived. It arises out of an honest attempt to probe what is happening. Simple observation convinces us that the situation is critical - that the criminal justice system is in serious danger of losing the battle to manage and process, let alone constrain, the existing rates of crime. This is not the same thing as saying that the criminal justice system verges on collapse. For the reality is that long after the rate of crime exceeds the processing capacity of the system, the system will continue to function. To any casual observer, an overburdened totally inefficient criminal justice system still appears to operate

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1. Crime - includes all offences against national and provincial laws.
   Criminal offences - includes only offences against Criminal Code of Papua New Guinea.
   Summary offences - includes all offences not included in Criminal Code of Papua New Guinea.

normally....and, superficially, so it does. Police, courts, and jails continue to process offenders through the system. Whether they are the ones who should be processed, whether the majority of serious offenders escape, whether the courts work expeditiously and with justice, whether the prison service aggravates rather than ameliorates the situation - all of these questions arise only for the person affected by this structure or for those who are interested enough to examine it in action.

From the outside it seems to work even when it is not coping with crime. The concern therefore is not whether the criminal justice system has or will collapse, but whether it can cope with the volume of crime in the country. Without collapsing, the criminal justice system may so inadequately respond to crime that, directly or indirectly, its incompetence or deficiencies actually exacerbate the law and order situation. The appearance of a normally functioning system creates the impression that, despite some problems, nothing approaching a crisis in law and order is imminent. The feeling that it works leads to undue reliance on it to solve law and order problems. This is the danger that lulls governments and citizens into relative complacency, or into an indulgence in ill-considered, simplistic solutions to crime (.mandatory minimum sentences, Project 21, mobile squads). By the time the extent of the true demise in law and order is fully appreciated, the state may have neither the will nor the means to initiate just and comprehensive reforms.

There are, however, a number of hopeful signs and promising developments in the criminal justice services of Papua New Guinea. Numerous characteristics of the law and order solutions to crime and conflict in Papua New Guinea represent the most progressive and advanced developments in the western world. Traditional methods of conflict resolution, the vital partnerships between the justice system and communities, the significant contributions of community churches, the role of family and community social controls, and many other unique characteristics involved in preventing and resolving conflict and crime in Papua New Guinea incorporate attributes that other countries with supposedly advanced legal systems but little community life are struggling to achieve.

Other common law jurisdictions facing prohibitively rising costs of law and order programmes are urgently trying to re-engage the community in responding to crime. Village courts, systems of customary control, and the potential to develop meaningful partnerships between communities and the justice system give Papua New Guinea the ability to accomplish what many other jurisdictions have struggled for years to achieve. Oddly, these positive advantages that other common law jurisdictions struggle to achieve are unappreciated and inadequately supported in Papua New Guinea. As one Papua New Guinean (S. Mas, Boroko) wrote to the Post-Courier newspaper (in another connection) as this report was being written (August 7, 1984) -

> "On the subject of deteriorating traditional customs I think politicians and concerned Papua New Guineans are wasting worthwhile time grumbling over spilt milk. What is there to be done about the traditional life-style of a society that is fast westernising."

The inevitability of the drift is hindsight rather than foresight however. It does not look to where the West is going. After losing its own community life and informal controls the West discovered that its new written laws with highly professionalised criminal justice services were not working. They had less impact on behaviour than the older informal controls. So the height of modernisation and sophistication in the West is to be aware of these shortcomings of the criminal justice system and to look for more community or informal solutions. There is real concern about getting community support and a flow of information for the official services whose increasing dependence on techniques and technology is making them ineffective in dealing with crime.

Unfortunately, Papua New Guinea has recently been focusing on developing many criminal justice features that other countries have found unproductive and which they aspire to de-emphasise or even delete. Papua New Guinea seems to catch up on institutions or procedures at a time when other systems are discarding them as not working.

How the system does not work

In Papua New Guinea, the administration of the written law is totally unsatisfactory because at each level of legislation and implementation the expectations are frustrated by the realities. The trained personnel are lacking, supervision is defective, systematic recording is neglected and funds are not controlled

As far as legislation is concerned Papua New Guinea is not alone in believing that a problem will go away if a new or strengthened law is thrown at it. The truth, however, is almost the reverse: the problem appears to get worse as the legislation proliferates. The classic example of this is tax evasion which survives generation after generation of legal draftsmen: but the proof is explicit in the fact that the venerable legal precept -

> "Ignorance of the law is no excuse"

can no longer apply. There are now specialised lawyers who cannot keep abreast of the flow of legislation - even in their own specialisation. Attempts to curb excessive legislation have largely failed. Law reform commissions have frequently added to the stock of statutes rather than streamlining them.

It is important in the criminal area that statutes be limited, clear and capable of unmistakable application. In Papua New Guinea this is not the case. Attention has already been drawn to fundamental conflicts between the constitution and customary law but in criminal legislation there is uncertainty and ambiguity. It

would seem that since independence there has been a habit of picking up bits of legislation from kindred jurisdictions like Australia or the United Kingdom which might be useful.

The law of bail for example - giving bail practically as a right makes sense where there is settled residence and a reliable address. It is a menace when it puts a criminal at large to commit another offence. Similarly certain decriminalisation measures though perhaps good in themselves bear the hallmarks of borrowed statutes not sufficiently researched for their local effects. The minimum penalities legislation was certainly not researched - even minimally: it bears all the characteristics of a knee-jerk reaction to convince constitutents that "something is being done". Greater care is required therefore to vet proposed legislation for (a) its cost in implementation and (b) its effect on other parts of the criminal justice system. Properly applied, this constraint in legislation could save a good deal of money now being wasted on laws that are ineffective or unevenly applied.

Secondly, the courts cannot function because they are sometimes bereft of basic services. The Chief Justice has even been forced to suspend sittings because interpreters were not available when he arrived in one province to hold court. The Chief Justice and his brother judges are sometimes burdened with purely administrative functions which need the attention of a clerk or court manager. So, many cases are struck out of the lists because the accused or the witnesses are not available - or because the documentation is so inadequate that the judges and magistrates are embarrassed. They are then, perhaps unfairly, criticised for supposedly being "soft" or too lenient. Frequently the judges and magistrates feel unable to make appropriate judgements because the facilities for alternative forms of disposal (i.e. other than imprisonment) are just not available.

Thirdly, the police cannot prosecute their cases satisfactorily in the courts. Sometimes the officers bringing cases have not been instructed in the simple elements which it is necessary to prove to establish the charge. When the case is therefore dismissed the police feel frustrated and blame the courts for being too technical and not supporting them against the criminals. However, the police problems are discussed in detail elsewhere and require no more than a mention here.

Fourthly, the prisons - at the end of the system's "production line" - feel saddled with all the problems that others have not been able to handle. They believe themselves underfunded, understaffed and blamed for escapes which are almost impossible to prevent. The courts have laid down the regulations for the use of the maximum security institution at Bomana. Previously a transfer to this tight security was a kind of punishment for the recalcitrant or defiant prisoner. Now the officers feel hampered in the exercise of their authority. The Ombudsman too comes into the institutions often without warning and uncovers institutional shortcomings. Sometimes those in charge are working under difficulties and feel unappreciated and almost more guilty than their charges.

The Department of Justice: not a feasible coordinator

Looking for coordination in the criminal justice system, one is tempted to consider the Department of Justice which already carries administrative reponsibility for the Judicial and Legal Services Commission, the Registrar of the National Court, the Chief Magistrate, the Law Reform Commission, the Public Prosecutor and Public Solicitor, Corrective Institutions Service, the Village Court Secretariat, the Legal Training Institute, and many others. However, the police are conspicuously a separate ministry, Corrective Services are petitioning for independence and the National Court is chaffing at its administration by Justice. Moreover the Justice Department appears to be a hodgepodge of various bits of services which could not be independent and could not go anywhere else, like the Chief Liquor Licensing Commissioner now performing a function which was once that of the police, the Public Curator, and the Registrar-General.

Actually, over time the policy influence of the Department of Justice has waned due to the increasing interest in law and order of the Prime Minister's Office, the power of the police, the publicity given to the independent work of the Law Reform Commission, and the Ombudsman. Also there have been conflicts between some of its constituent offices. It must be remembered that, until just before independence, the Provincial Affairs Department (with different titles before this) had really carried the responsibility for the greater part of the administration of justice touching the lives of the majority of people. The Provincial Affairs Department's kiaps were magistrates who also controlled the rural police and ran rural lock-ups. As the more formal imported law became more deeply entrenched and as independence approached, this colonial type, avuncular style of justice administration gave place to professional specialisation and the widening of the responsibilities of the professional Department of Law (later Justice). As shown this appeared to coincide with the decline in influences and effectiveness of the formal system. It brought more system but less satisfaction.

We find it difficult to believe therefore, given the recent history of this Department and its present encumberances, that it could serve as an umbrella organisation for the coordination of all branches of the criminal justice system.

In the next three chapters we look in turn at the three elements of the system - the courts, the police and the correctional services. But before doing so we complete this chapter with a brief look at a matter that is causing increasing concern in Western systems of justice. As we note in several contexts in this study Papua New Guinea has in its customary approaches to justice some qualities which might enhance Western systems. One such quality is the attitude to the victim.

Victimisation

Papua New Guinea's modern sector, governed by Western derived law, has largely followed the common law tradition of devoting more attention to the offence and the offender than to the victim. The victim might get restitution if he knows how to go about it - and if the offender can pay. But essentially he or she is brought to court as a witness for the prosecution; and the punishment is designed less to satisfy the victim, than to satisfy the state -and to be (abstractly) fair in all the circumstances. The goddess of justice holding the scales over the Old Bailey in London is blindfold. The principle of the law is to be applied not only impartially but impersonally (another word could be blindly). Statutory minimum sentences which are usually set to satisfy the people in a society outraged by crime take no account at all of particular cases of the differences between the extent of victimisation and the victim's opinion as to what ought to happen to the malefactor. lndeed mitigation of the sentence which the offender might have earned by some special consideration he showed the victim is specifically excluded - the judges have no discretion.

Of course modern law grew out of the need to regulate vengeance and to constrain victims from venting their spleen on offenders; but, with its concept of the king's peace, it went too far in the opposite direction and the real interest of the victim in the outcome of the case was grossly devalued. Indeed as the need to protect an innocent accused became more pronounced the victim might be mercilessly attacked by defending counsel in cross-examination - and sometimes the victim was made to feel that he or she was really the one at fault. Whilst this might sometimes have been the case and the law made allowances for provocation or carelessness amounting to undue temptation it was more often a travesty of justice to castigate victims in this way; at times it discouraged people victimised from reporting what had happened to them, made them afraid of coming to court and occasionally when they did insist on their rights, it exposed them to retaliation or vilification by the offender or his relatives and friends. Only recently has this imbalance in common law systems received serious attention. There are now organised services for victims, victims have developed their own interest groups and are demanding legal representation in court, the right to challenge the sentence and far more consideration when they are being questioned by the police whilst still traumatised by the offence. There is now a new scientific discipline of "victimology" with international associations.

The more extensive permeation of Papua New Guinea by customary law offers a striking contrast to the principles of the received law. The victim's concern is the foundation of customary law. His or her complaint is incorporated in a demand for compensation or satisfaction. However, unlike the common law, customary law in Papua New Guinea allows the victim's outrage to be bought off by the offender with appropriate compensation. Except in the case of sacred offences punishment receives little attention simply because of the fact that it does not satisfy the victim. As some have said about imprisonment, the victim "cannot eat it".

It is important to understand how this under-appreciation of the victim by the modern, received, law has aggravated the law and order situation in Papua New Guinea. On the one hand it has fallen so short of customary expectations that dissatisfied victims - or their relatives - have kept alive the pay-back murder and there are times when personal attacks or grievous property offences have been traceable to offenders who in fact regarded themselves as the victims - they resorted to crime to get their own back on someone who had been less than respectful of their legitimate (customary) interests. So revenge has sometimes been taken by way of a breaking and entering and stealing or by more serious personal attack - for the seduction of a girl, the insulting of a relative or a supposed disregard of property rights. On the other hand expatriates and nationals of affluence subjected to housebreaking and personal attack have felt abandoned and abused by the lack of legal interest in their predicament. Conditions described elsewhere in this report show that, in addition to everything else the victim has to put up with, he has little likelihood of seeing the offenders brought to justice. Even when they are caught, if they plead not guilty and delay the case, the victim may have the chagrin of seeing it lost altogether. This only arouses the traditionally oriented Papua New Guineans to take the law into their own hands. It causes expatriates and westernised nationals to despair, to leave the country or to criticise it bitterly.

It would be unwise for the government to disregard the effect of all this on the law and order situation in the country. Those who stay get their own back in one way or another. They demand enhanced protection, better pay, compensation for loss and they are inclined to create ghettoes for their own protection. This happens whether they are locals or expatriates. Those who leave spread rumours about the great dangers and the insecurity in Papua New Guinea which gather new dimensions every time they are repeated. We have already demonstrated that the real extent of the problem is not easy to determine because of poor records: but whatever the real size of the problem its concentration - and its effect on victims repeatedly attacked - means that the government can expect to be under constant pressure from outraged and dissatisfied victims - especially when these have influence in government or commerce or industry. The less influential are tempted to seek their own satisfaction illegally.

For these reasons we believe that the interests of the victims have been less considered in Papua New Guinea than they ought to have been - both in customary but especially in modern law. Indeed we believe that, at the crossroads of modern and customary law, where we have suggested more attention needs to be paid to the conflict between the Constitution and customs, the government and the courts could do much worse than try to resolve at least some of these conflicts by recognising - as customary law does - the paramountcy of the victim. Of course customary law designed for small intimately related communities pays much less attention to proof and to the rules of evidence, assuming not unreasonably that in such a small society everyone knows what happened or can easily find out. The close inter-relationships and the day to day supervision by everyone of everyone else make injustice unlikely even though occasionally the wrong person may be blamed. Modern Western law places a premium on proof and thereby angers and

confuses some local communities who feel no doubt at all about what actually happened. They cannot understand the technicalities and are frequently outraged at the outcome of a court hearing. Yet, allowing even for this kind of conflict the best way to go is still to satisfy the victim as far as possible to repair the damage, to reassure the offended.

There is one way in which this concentration on the victim could aggravate the problem however. Recently in settlements of pay-back killings - or in peacemaking following tribal fighting - the compensation rates have escalated to such an extent that those forced to pay look for opportunities to renew hostilities in such a way that they are the offended and by demanding even higher compensation they can get their own back. Clearly village courts will need to arbitrate to keep claims to compensation within reason.

Recommendations are made elsewhere for the full employment of prisoners. We believe that the best use of this labour is to recompense the victim. The offender working for the offended is morally right, legally equitable and both customarily and in the modern search far answers to crime makes very good sense. Of course it may not be possible in all cases to extract the full restitution but some is better than none and the act of making the offender recompense the victim is more important than the actual amount. We have been impressed by one Papua New Guinea custom of the victim having to give a small gift to the offender when compensation is paid. This underlines the peace making and reconciliatory character of compensation. It should be encouraged.

Where other countries have set up special government funds to compensate the victims of serious violence it has been found that this is less satisfactory than having some link between the offender and offended As a simple applicant for state aid the victim feels rather demeaned and is usually obliged to substantiate a claim with details of the injury. Therefore this is again an area in which Papua New Guinea has built-in advantages: by doing what is customarily understood and supported it can be in the forefront of world developments in the compensation and restoration of victims.

Chapter 11

COURTS

Essentially there are three levels of formal courts in Papua New Guinea - the National Court at the highest level, the district courts handling the bulk of cases brought by the police, and the village courts which provide the link between the formal and informal systems since they are empowered to administer the law in cases of minor offences whilst at the same time dealing with customary disputes. There are also tribunals for the Leadership Code and regular courts to deal with land cases but these are not considered here.

While much of the evidence revealing the justice system's inability to cope with law and order problems is buried by the system long before cases reach court, the processing of cases through court assists in understanding the nature and magnitude of problems plaguing the justice system. As cases are processed through the justice system, deficiencies at one stage compound the deficiencies at subsequent stages. The cumulative effect of these deficiencies can often be evidenced by what happens when the cases reach court.

National Court

The business of the National Court has dramatically changed The National Court is dealing with 30 per cent fewer cases than a year ago and has not processed so few criminal cases since 1978.1 The conviction rate has decreased by 30 percentage points in one year from 84 per cent to 54.5 per cent which is the lowest conviction rate since the court was established. This conviction rate will probably drop further in 1983-84. The number of cases struck out including rape and murders has increased from 3.3 per cent in 1976 to 22 per cent in 1982-83 and will increase to probably at least 30 per cent in 19834 (Table 11.1).

Court delays have exploded The average processing time far all cases in five years has increased by 300 per cent (Table 11.2). This information was obtained from the National Court Diaries generously made available to the study by the Chief Justice. Klaus de Albuquerque and Ngawae Mitio assisted in the analysis of these data, and detailed tables are included in Appendix B.12.

1. The volume of civil cases handled by the Court in 1982-83 appears to have equally decreased.

If the ability of the district courts to process cases remains the same, and the National Court's ability to process cases does not improve, the justice system will continue primarily to prosecute, convict and imprison minor offenders. As the National Court's ability to process cases deteriorates, the chances of serious criminals eluding the law increase. When the full effect of mandatory minimum sentence legislation hits the National Court, the situation will be much worse. Irrespective of the mandatory minimum sentence legislation however all the signs suggest that the court's ability to process serious crimes will continue to decline significantly every year.

Who is to blame for the startling demise in the ability of the justice system to repond to crime? The National Court is certainly the place where most of the problems surface, but this court cannot be held primarily to blame. More evidence must be gathered before blame can be levelled with tolerable accuracy. This study has only begun the work necessary to identify the degrees of responsibility for the demise in the justice system's ability to cope with crime. However, on available evidence, it seems that the deficiencies in every criminal justice agency are reflected in the problems manifested in the National Court. The police and public prosecutor's office appear to be responsible for most of the problems in the National Court: the police, chiefly through their incompetent investigations, and the Public Prosecutor's Office, through their ineptitude in prosecuting cases. To be fair, both of these agencies are severely handicapped by the common ills of the system - no training, no supervision, and consistent overwork.

The dramatic changes in the processing capabilities of the National Court faithfully mirror the accumulation of deficiencies that have plagued the justice system for years. The run down described here is a critical warning that, unless the proper investment in training, resources and planning is properly and promptly made, the justice system will soon be incapable of coping with crime, and particularly with serious crime.

The National Court is the primary trial court. The National Court handles the largest proportion of civil cases, all constitutional cases, all appeals and with few exceptions, processes the bulk of criminal cases. Recent amendments to the Criminal Code designed to channel criminal cases to the Grade 5 District Court magistrates have failed to significantly affect the workload of the National Court. The district courts process all summary offences. The Grade 5 magistrates process some criminal matters, and have civil jurisdiction up to K10,000.

All national court judges live in Port Moresby and service the provinces by an onerous schedule of circuits. These circuits are expensive and difficult. Although circuit courts sometimes process more cases in a shorter time than Port Moresby courts, they are also vulnerable to unavoidable or unforeseen events, and are frequently unable to accomplish very much in the short time spent in each community. Circuit courts create the impression in the community that they are anxious to "do justice" and get back to Port Moresby. The quality of judicial

services provided through them is significantly inferior to the quality of judicial services available in Port Moresby. The excessive reliance for processing the bulk of both civil and criminal cases on a Port Moresby based National Court contributes to the problems which severely hinder the judiciary's capacity to adequately cope with existing case loads.

We turn now to more detailed consideration of National Court performance.

Conviction Rate

Since independence the conviction rate in the National Court has averaged 81 per cent. In 1981-82 the conviction rate was 84 per cent. In 1982-83 the conviction rate fell by almost 30 percentage points to 54.5 per cent (Table 11.1). Obviously the conviction rate does not measure the efficiency of a court but it frequently does suggest delays and ineffective prosecutions. It shows a more effective defence - or an increase in the number of cases that the prosecution need not have brought.

In all categories of crime the conviction rate fell dramatically.

	1981-82	1982-83
	%	%
Offences against the person.	76	51.6
Offences against property	89.1	58.7
Offences against currency	88.2	58.7
Other Offences	83.3	42.6

This dramatic drop in conviction rates is particularly significant as the court in 1982-83 had not yet been affected by mandatory minimum sentence legislation.

The rate of guilty pleas has not significantly changed and still accounts for a very high percentage of convictions. In 1977-78, 72.8 per cent of all offenders who entered pleas pleaded guilty. In 19823 the percentage of guilty pleas had only slightly dropped to 67.9 per cent (see Table 11.5).

What evidence is available for 1983-84 suggests that the conviction rate will continue to drop. In a three month study of court dispositions from October 1st to December 31st 1983 the conviction rate for all offences was 35.3 per cent and for all offenders was 52.6 per cent[1] (see Tables 11.6, Table 11.7, Table 11.8).

1. All National Court annual reports note the number of offences. Thus if one offender is charged with six crimes this constitutes six offences and one offender. Conviction rates should be higher against offenders than against offences as often the prosecution will drop the less serious charges if a lesser one

In all the cases completed from the Port Moresby court list for July 31st 1983 the conviction rate is 36.1 per cent (Table 11.9).

Mandatory minimum sentences and the advent of more sophisticated criminals will significantly reduce the number of guilty pleas. There will be more trials therefore more delays.

Public prosecutors appear to win relatively few contested cases (Tables 11.6,

The culmination of these factors will push the conviction rate down dramatically.

Nolle prosequis

Since independence the percentage of offences struck out has radically risen from 3.3 per cent in 1975-76 to 22 per cent in 1982-83. The rate of cases struck out rose from 6.7 per cent in 1981-82 to 22 per cent in the next year. The cases struck out include murder, rape, and numerous other serious crimes. The evidence available for 1983-84 indicates that the rise in the number of cases struck out will continue. Based on a three month study, the rate of none prosequis for offences was 51.1 per cent and for offenders was 34.1 per cent. (Tables 11.6, 11.7). Based on the cases completed on the July 31st 1983 Court List Report for Port Moresby the rate of cases struck out against offenders was 48.6 per cent (Table 11.9).

Of all the cases outstanding on the Port Moresby court list for July 31st 1983, 6 per cent have been in the courts since committal for more than two years. Of the cases completed on this list the rate of none prosequis of cases over two years old has been 82.9 per cent!

The court's determination in 1982 to clear up the longstanding backlog by striking out cases languishing on the court list for several years partially accounts for some of the dramatic rise of none prosequis. However, the backlog of all cases will continue to be a chronic feature of the court list as long as the present deficiencies in bail, police investigations and the public prosecutor's office persist. Similarly, as long as the National Court monopolises criminal cases, and provides judicial services through court circuits, the backlog and the low conviction rate will continue to characterise the work of the National Court.

If the crime rate continues to grow, the backlog will continue to grow. Striking out cases that linger for two or more years simply encourages more delay as offenders will jockey for delay hoping to postpone their cases until the odds become extremely favourable that these cases will be struck out.

Processing time

Processing is the principal villain in lowering the conviction rate in the National Court. The magnitude of the increases in delay since 1977-78 are staggering.

The mean days required to process all crimes in the National Court from the moment the case is committed for trial until the case is completed has increased by 300 per cent from 86 days in 1977-78 to 344 days in 1982-83 (Table 11.2).

The time required to process rapes through the National Court has increased from 111 days to 350 days or an increase of 215 per cent. Procesing times for property offences have experienced inordinate increases. Break and enter cases took 100 days for the courts to complete in 1977-78, and in 1982-83 processing ti me increased by 342 per cent to442 days.

In 1977-78, of all cases 97 per cent were processed by the court within six months. By 1982-83 only 47 per cent of the cases were completed in six months.

Less than 2 per cent of the cases took more than one year to be processed by the courts in 1977-78. In 1982-83, a greatly increased 26 per cent of the cases were more than a year in the courts, including 49 cases that were more than 3 years old before they were processed through the courts (Table 11.10).

Causes of the problems in the National Court

Backlogs and decreasing conviction rates are caused by common factors and are very much inter-related.

While police statistics indicate an increase of about 11 per cent from 1977 to 1982 the actual increase in crimes based on our assessments is probably closer to 20 per cent. The courts processed 1,000 criminal cases in 1977 and 1152 cases in 1982-83 (an increase of 15 per cent). The difference between the processing capacity of the courts and the increased number of cases brought to the courts' attention by the police accounts for some of the growing backlog.

Even slight decreases in the number of guilty pleas can significantly increase court backlogs. Additional trials caused by more not guilty pleas reduce the court's ability to process a large volume of cases.

All persons interviewed believe the most significant cause for the growing number of cases delayed, withdrawn, struck out, discharged or dismissed could be traced to deficient police investigations. Incomplete, inadequate, or incompetent police investigations principally explain why many cases never get to court, and why those that do are often not. successfully prosecuted A lack of training, improper supervision, and inadequate investigative resources which deny police a fighting chance against most crimes, cause many cases to be dropped out of the system.

In 1977-78 the average time the police took to bring cases before the court was 100 days. By 1982-83 the average time had increased by 62 per cent to 162 days.

More dramatic changes are evident in break and enter offences, where the average time has increased from 72 days to 183 days. In rape cases, the average time has increased from 50 to 105 days (Table 11.2).

The longer the police take to bring the matter to trial, the greater the difficulties besetting the prosecution of the case before the court.

There were 175 offenders listed on the Port Moresby National Court List of July 31, 1983. As of April 1, 1984, of these offenders 103 were still awang trial. Of these outstanding cases, 82 are offenders who have not honoured bail and were still at large. Prosecution, police, and national court judges persistently complain that district court judges award bail too often and on far too lenient terms. Defence counsel consider securing bail as the most important step towards eluding conviction. A lawyer remarked in the course of an interview for this study -

> "Once you get bail, the case can easily be delayed until it is either forgotten or too difficult to prosecute."

Many offenders released on bail never appear for court and can never be found by the police. In time everybody gives up and the case is dropped A spokesman for the Public Solicitor explained -

> "It is pretty well common knowledge now if the police are after you and you get out on bail you disappear up into the hills for six months to a year...when you come out the whole thing will have been forgotten."

Many judges, magistrates and lawyers believe that the clearance rate on outstanding bench warrants is less than 5 per cent. In the National Capital District from August 1982 to March 1st, 1984 of 3,500 warrants issued, only 16 per cent have been executed The number of unexecuted warrants is estimated by the police to be well in excess of 15,000. Warrants float loosely about police stations and can be found buried on or in desks, mixed inadvertently with other papers. Many warrants simply disappear. One police station is reported to have reduced its backlog by burning 2,000 outstanding warrants. Those police who have valiantly tried to make some sense out of the mess believe "there is no way of knowing how many warrants are outstanding...no one keeps track.'!

Police complain they have neither the manpower nor the transportation to execute warrants. The abysmally low rates of executed warrants suggest much m~re than an inability to marshall transportation and manpower. The major causes of the inexcuseably high rate of unexecuted warrants are -

- Police indifference. After the case has dragged on for some time the police lose interest in trying to find the accused

- Pressing concerns. Newer, especially more serious matters take procedence over older, especially minor offences.

- Transfers. When the original arresting or investigating officer has been moved to another job, successors acquire their own cases to take up their time.

- Inadequate system. Most of the time few helpful descriptive details are included with the warrants. The procedures for circulating vital information concerning unexecuted warrants is ineffectual, often nonexistent, and certainly less useful than the practice in the past of including information about wanted persons in the Police Gazette. Now, often the original arresting officer, who has the best knowledge of the offender's habits, appearance and association, is not informed that the offender is at large. Police working in areas where the available information suggests the offender might be located are not thoroughly briefed.

- Failure to follow up information. When information is available about the possible movements of the offender, the information is not thoroughly followed up. As one aggrieved complainant said -

    > "It is well known all over town where he was...I wrote to the police telling them where he was working...still he was never arrested".

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1. Based on interviews with police and public prosecutors.

The failure to devise and implement a coherent attack on the mounting backlog of unexecuted warrants significantly affects the ability of the justice system to function expeditiously.

Many offenders view bail as a fine. They don't expect anything to happen if they don't appear in court as required, except to forfeit bail. This attitude is encouraged by both courts and police, as they are often content to wind up the case by forfeiting bail. Despite recent amendments increasing the penalties for breaching bail conditions, very few prosecutions are initiated

Unlike the offender who fails to appear in court and merely forfeits his bail, (which may have been paid by wantoks) the honest offender who appears to face the charge may be penalised with a criminal record, and with the advent of minimum mandatory sentences, may be stung by a jail sentence. Such patent injustices do little to garner respect for court orders, and eventually even honest offenders will see the imprudence of honouring bail. Offenders who don't honour bail, and manage to elude warrants for their arrest, are frequently rewarded by having their case struck out - and these are sometimes very serious charges. The list of cases struck out include wilful murder, rape, indecent assault, unlawful wounding, break, enter and stealing. According to judges in the National Court, 35 rapes in 1983 were struck out by the entry of a nolle prosequi, apparently because the accused could not be located or because delays had rendered proof difficult, if not impossible.

The deficiencies in the basis upon which bail is granted, as well as the nonexistence of any meaningful police strategy to execute warrants or prosecute bail violators encourages offenders to use bail as an easy means of eluding justice. The direct and indirect costs attributable to allowing criminals to escape justice not because of their innocence, but because of deficient police investigations easily offsets any savings realised by scrimping on training or on resources required for competent investigations. In processing a case through the system, the cost of police, courts, both public prosecutors and solicitors and often the cost of remand as well as all infrastructure costs are wasted when, due to deficient investigations, cases are hopelessly lost from the outset. As the system's reputation for an inability to convict spreads, criminals are encouraged and a discouraged public rapidly loses respect for the courts. A system lacking public confidence, and incapable of general deterrence imposes more costs on society than the identifiable costs in manpower and resources wasted on futile prosecutions.

Lawyers

The quality of counsel, especially in the Public Prosecutor's Office, was repeatedly flagged as the cause of delays, court backlogs, and injustices. In much the same fashion the police prosecutors were blamed for the disastrous standard of prosecutions in the district court, the Public Prosecutor's Office attracts similar criticism in the National Court. The reputation for incompetence attributed to counsel is widely acclaimed. In what must be a dubious and unique distinction, the most recent National Court annual report specifically mentions the unacceptable standard of advocacy.

It is not surprising that counsel are so widely condemned for incompetence, nor that so many quit before attaining a high professional standard. Counsel are neither stupid nor particularly incapable of learning; they are simply inexperienced, unsupervised and grossly overworked.

Prosecutors a few short years out of law school are thrust into criminal litigation with responsibility for prosecuting murder, rape and fraud cases. In other jurisdictions, lawyers with considerably more experience and much better supervision would be considered presumptous to tackle such cases before acquiring at least five years experience in less serious criminal matters. Like many others in the criminal justice system, young prosecutors and defence counsel are expected to do far too much with far too little training, experience and supervision. It is a wonder they cope as well, and as long as they do. Unquestionably they are a major contributing cause to the breakdown in the justice system, but not because they are not trying; they simply do not know how to litigate properly serious criminal cases.

There is no-one with the time, ability or experience to teach young national counsel how to become competent barristers. All senior competent national lawyers have left for government postings, returned to academic life, entered private practice or taken appointments to the bench. Both the Public Prosecutor's and Solicitor's Offices have localised too quickly. Learning how to become an experienced competent counsel barely begins in law school or at the Legal Training Institute. Armed with the fundamentals by academic training, the road to becoming a competent counsel requires many years in the court room, guided, supervised and directed by experienced counsel. The working apprenticeship of young counsel is completely remiss in Papua New Guinea. In the absence of supervision, their court room experience develops bad habits and a distaste for criminal law. Most young counsel leave within 3 years.

Rapid turnovers in staff perpetuate inexperienced, and incompetent advocacy in both the Public Prosecutor's and Solicitor's Offices. In the Public Solicitor's Office (considered more stable than the Public Prosecutor's Office) of 6 new lawyers, 3 or 4 leave in the first year, a further 1 or 2 after the second year, and rarely will anyone stay beyond 3 years. The most senior staff lawyer has 6 years'

experience. Before the young lawyers begin to master criminal litigation they leave and are replaced by yet another raw recruit who in turn will stumble along without supervision, and be assured of winning the relentless criticism of courts, the police and the public. Although such criticism is clearly warranted by the incompetent standard of their work, it is unjustly levelled at people who have been pushed into court to do a professional job with the skills of an eager amateur.

On the whole the Public Prosecutor's Office is considered and appears to be much worse. Both public solicitors and private practitioners frankly admit consistent successes against the Public Prosecutor's Office has less to do with the merits of the case and much more to do with the prosecutor's inexperience and lack of legal skills.

Placing the carriage of the bulk of criminal litigation onto inexperienced counsel has been blamed for contributing to or causing the following problems -

Delays. The Prosecutor's Office receives blame from all quarters for not being ready to proceed with scheduled cases. Many believe they are unable, or are afraid, to proceed because of their inability to comprehend relevant legal issues. This particularly applies to cases involving complex evidentiary issues or complex fact patterns as found in fraud or other commercial crime. A lack of familiarity with criminal law unavoidably adds considerable time to court preparation. Some judges estimate as high as 30 per cent of cases are thrown out because the police or prosecutors are not prepared to proceed with scheduled cases.

Prolonged trials. Inexperienced counsel unable to focus on primary issues, and not sufficiently confident of their ability to delete unnecessary evidence, cause simple trials to be protracted and complex cases to tie up courts for unnecessarily long periods.
Injustices. Inexperience causes cases that should be withdrawn to proceed, and cases which should be prosecuted to be dropped, or bargained down from a guilty plea to a lesser offence. As the onus of proof is carried by the Crown, most of the

Injustices consist of offenders who are patently guilty being acquitted, but some instances are described where convictions should not have been entered (In the latter instance the judges' experience is equally to blame for such travesties of justice according to certain magistrates and lawyers interviewed)

Unfair trials. Gross discrepancies in skills between counsel prevent a fair trial. Judges are deeply concerned by the discrepancies in the skill levels of counsel which may afford one side an undue advantage in litigation. The bench cannot rectify such imbalances in an adversarial system.

Low conviction rates. Overwork, inexperience and a lack of supervision account for decisive errors in processing cases - failing to interview witnesses before trial, failing to ensure witnesses attend court - and for a lack of professional appreciation of the law. The cumulative effect is a drop in the conviction rate. A defence counsel said -

> "We (defence counsel) don't have to do much...they (prosecutors) will usually find a way to lose the case...they simply do not want to take on tougher cases and the others they do take on, the chances are good they will forget to do something important."

The practice of law demands Long hours, painstaking diligence and a high standard of professionalism. Some of the national lawyers have not been trained or prepared for the rigorous demands of the profession.

In some cases their inadequate performance in court may stem from a lack of commitment, laziness and indifference. These traits can be fostered by overwork, poor supervision, and the absence of positive role models. Too much constant criticism and not enough positive encouragement from the bench undermines the will and incentive to be professionally competent.

Owing to the paucity of senior experienced counsel regularly appearing in court, the bench has a heightened responsibility for the continuing legal education of the bar. The new members of the bar could significantly benefit from the experience, concern and encouragement of the bench. Both the sub-standard level of advocacy and the high turnover of young counsel could be positively affected by the earnest participation of judges in the bar's continuing legal education.

Judges

Since the National Court has not significantly changed from 1982 to 1983 the marked change in the disposition of criminal cases cannot be attributed to changes in the composition of the court. The relative lack of court experience in both civil and criminal matters of some judges was often mentioned as a cause of prolonged trials and numerous errors. The background of some judges does suggest limited experience which may inadequately equip them to address the onerous challenges of a national court. Although it is reasonable to expect, that inexperienced judges will allow counsel too much latitude, will exercise less control of the litigation, and will take more time in making decisions, no empirical data was available to discern the effect new judges have had on the court. The most significant increase, over the period from 1977-78 to 1982-83, in the mean time required to process cases from the commission of the crime to completion of the case by the courts, occurred after the police have placed the case before the courts. During this time the carriage of the case rests primarily with the Public Prosecutor's Office.

There is a widespread consensus that prosecutors do not press cases to trial. Prosecutors appear to employ any pretext to adjourn the case and judges may sometimes too readily agree because they know the pressures on counsel. Difficult cases can be easily avoided by inexperienced prosecutors as procrastination in the National Court serves to make difficult cases disappear - struck off after several years languishing on court lists. One lawyer ironically remarked -

> "Delay, delay, that is the secret to success and many prosecutors will let you do just that."

Judges must take some of the responsibility for adjournments. Some judges have a widespread reputation for adopting a "soft policy" on adjournments. If judges easily grant adjournments, counsel will expect trial dates to be flexible and common practice will evolve to adjust to allowing cases to slip along into the future. In the absence of a trial coordinator to keep track of adjourned cases, many cases will tumble along through a series of adjournments until they are struck out.

Court Resources

Not all the problems are attributable to the professional shortcomings of the police, lawyers or judges. There are attendant problems in the support services which were aggravated by the recent recession and the lack of resources.

Court reporters. Court transcripts are solely based on the judges' detailed notes of the proceedings. To our knowledge there are no other common law jurisdictions where court reporters or taping facilities are not regarded as essential services for trial courts of record. At the very least, tape recorders are used in the absence of a court reporter. The tedious time consuming tasks involved in verbatim note taking by judges in the National Court prolongs proceedings and strains the patience of counsel and the perseverance of judges. Measured against the average time in Australia or other common law jurisdictions to hear a criminal case, experienced counsel estimate verbatim note taking by National Court judges easily doubles and in some instances quadruples the time necessary to hear a case. Imagine all members of parliament and the general public relying on the verbatim note taking of the Speaker of Parliament for the official record of parliamentary debates. The business of the House would slow down immensely and perhaps be saddled with the same backlog as the court!

Interpreters. Readily accessible and trained court interpreters are essential for the fair and efficient processing of cases. Cases are adjourned, trial dates lost, and court time wasted in finding appropriate interpreters and in patiently assisting the interpreter to understand haw translations must be handled in court. An untrained interpreter will ultimately make mistakes not so much in translating but

in how translations must be made. Improperly trained interpreters may inadvertently precipitate appealable errors, or unknown to counsel or the court, misconstrue important evidence. Reflection on the fact that Papua New Guinea has some 700 languages gives some measure of this problem.

Lack of a trial co-ordinator. A busy national court cannot function without a trial coordinator to schedule cases, maximise court sitting time and to properly organise court dockets for circuit and Port Moresby sittings. Court time is expensive and the best use should be made of the time of expensive judges and counsel. The court is often idle in Port Moresby and on circuit because cases do not go ahead as scheduled, and no other cases are lined up to fill the gaps. The courts blame the lawyers for not being ready to proceed on time, the lawyers blame the police for not rounding up witnesses, and the police complete the buck passing circle by blaming the courts for delaying cases, and blame the prosecutors and courts for not giving ample warning of pending cases to enable police to find witnesses. Someone should be monitoring all this and making forward preparation far the best use of time.

Often due to overwhelming work loads the detailed nature of a case inadvertently becomes a secret - a secret perhaps known only to the prosecutor and then only known to him in the last stages of the preparation of the court. In the absence of a person to coordinate the different actors and agencies necessary for trial, delays, lost court time, chronic confusion and misunderstandings hinder smooth and efficient court sittings.

Without a court co-ordinator, the prosecutor or judge is beset with innumerable administrative and logistic matters necessary for trials to be processed. Often little tasks get overlooked, causing the court to lose sitting time.

Witnesses

When a court fails to maintain the scheduled timings of cases, witnesses become table, impatient and uncooperative. Witnesses who have been severely inconvenienced by court delays avoid any future involvement with the courts. Abused or ignored witnesses become the very worst ambassadors for the judicial process. Their negative impressions of court proceedings and of the justice system are spread to friends and neighbours.

Failure to secure the presence of witnesses for trials was high on everyone's list of reasons for cases dropping out of the system. In many cases witnesses simply need inform ation about dates of hearings and the progress of the case; but without a trial coordinator they are likely to get conflicting information - or worse, none at all!

Trivial cases

Too many trivial cases that could be more properly dealt with by district courts clog the National Court docket. Most, if not all, minor property offences and many of the offences against the person should be tried by Grade 5 magistrates. These cases presently constitute almost a third of the National Court criminal case load.

Escapes

In listing the causes of court delays and declining conviction rates everyone believed at least 10 per cent of the offenders never came to trial because they had escaped from custody. If the Port Moresby National Court List of July 31st typifies a pattern throughout the country, then these estimates are quite accurate. Of the offenders on this Court List, 21 or 12 per cent of the offenders on the list escaped custody while awaiting trial. Although one escapee has been tried (he was discharged), most other escapees have had their cases struck out. (Police strongly resent being required to find and arrest offenders they had previously arrested and left in jail pending trial. However, it seems several have escaped from police custody.)

Regional differences

The work of the National Court markedly differs within Papua New Guinea. There are a number of anomalies.

On the southern side, conviction rates are significantly higher than the national average in both offences and offenders (Tables 11.6, 11.7, 11.8); and the rate of cases struck out is higher, while the acquittal rate is lower. (Table 11.8). Delay and guilty pleas may explain some of these differences. The higher conviction rate and lower acquittal rate is primarily explained by the higher number of guilty pleas (Table 11.5). Although delays were roughly uniform throughput 1977-78 since then the delays on the southern side have escalated much faster.1 However, the rate of cases struck out has not correspondingly changed, in fact the rate of cases struck out has increased less (see Table 11.8).

As one might expect, this suggests that the rate of "not guilty" pleas has a more significant effect on conviction rates and on the rate of none prosequis than delay. (Accordingly, mandatory minimum sentence legislation by precipitating significant increase in the rate of "not guilty" pleas will profoundly lower

1. The efficiency of the police in getting cases to court deteriorated mare significantly on the Papuan side. (Tables 11.10, and 11.4).

conviction rates and increase the number of cases struck out if the quality of police investigations, and police and public prosecutors do not change.) There are perhaps many instructive answers to the problems in the justice system to be gleaned by examining more closely than we have been able to do, why both police and courts function differently in different areas of the country. As in all aspects of the justice system much more detailed analysis must be undertaken to replace personal biases and guesses with rational planning.

Summary- National Court

The detrimental effects of delay are beginning to undermine the judicial process in the National Court. The longer the delay, the greater the prospect of an acquittal, a discharge, or; that the case will be struck out. Based on the cases dealt with by the National Court on the July 31st, 1983 Port Moresby Court List, the conviction rate within one year of committal is 70.6 per cent, after two years the conviction rate fell to 48.3 per cent. (see Table 11.9). All of the problems in this section contribute to delay, which in turn adversely affects the conviction rate. Further research about regional differences in the performance of courts and police could be useful.

Table 11.1

Offences tried by the Papua New Guinea National Court
1 July 1975 to 1 August 1983

Year	Offences Against									
	Person		Property		Currency		Other		Total	
	No.	Per Cent	No.	Per Cent[a]	No.	Per Cent	No.	Per Cent	No.	Per Cent
1976[b]										
A	433	100.0	403	100.0	56	100.0	15	100.0	907	100.0
B	318	73.4	354	87.8	52	92.6	13	86.7	737	81.3
C	99	22.9	36	8.9	3	5.4	2	13.3	140	15.4
D	16	3.7	13	3.2	1	1.8	-	-	30	3.3
1977										
A	488	100.0	456	100.0	64	100.0	17	100.0	1025	100.0
B	371	76.0	416	91.2	51	79.7	16	94.1	854	83.3
C	60	12.3	21	4.6	2	3.1	-	-	83	8.1
D	57	11.7	19	4.2	11	17.2	1	5.9	88	8.6
1978										
A	494	100.0	426	100.0	66	100.0	14	100.0	1000	100.0
B	383	77.5	367	86.2	57	86.4	10	71.4	817	81.7
C	55	11.1	15	3.5	3	4.5	3	21.4	76	7.6
D	56	11.3	44	10.3	6	9.1	1	7.1	107	10.7
1979										
A	587	100.0	565	100.0	90	100.0	22	100.0	1264	100.0
B	440	75.0	502	88.8	84	93.3	14	63.6	1040	82.2
C	94	16.0	35	6.2	3	3.3	4	18.2	136	10.8
D	53	9.0	28	5.0	3	3.3	4	18.2	88	7.0

1980

A	476	100.0	532	100.0	109	100.0	35	100.0	1152	100.0
B	322	67.6	462	86.8	92	84.4	25	71.4	901	78.2
C	95	20.0	47	8.8	12	11.0	6	17.1	160	13.9
D	59	12.4	23	4.3	5 4	6	4	11.4	91	7.9

1981

A	546	100.0	566	100.0	61	100.0	30	100.0	1203	100.0
B	364	66.6	490	86.6	46	75.4	10	33.3	910	75.6
C	115	21.1	58	10.2	12	19.7	15	50.0	200	16.6
D	67	12.3	18	3.2	3	4.9	5	16.7	93	7.7

1982

A	609	100.0	910	100.0	85	100.0	36	100.0	1640	100.0
B	463	76.0	811	89.1	75	88.2	30	83.3	1379	84.0
C	87	14.3	53	5.8	9	10.6	4	11.1	153	9.3
D	59	19.7	46	5.1	1	1.2	2	5.6	108	6.7

1983

A	506	100.0	472	100.0	92	100.0	75	100.0	1145	100.0
B	261	51.6	277	58.7	54	58.7	32	42.6	624	54.5
C	133	26.3	87	18.4	24	26.1	22	29.3	266	23.2
D	112	22.1	108	22.9	14	15.2	21	28.1	255	22.3

Notes:
- A Charges
- B Convicted
- C Discharged
- D Nolle prosequis

- a Percentage of charges in given year
- b The court year is from 1 August to 31 July.

Source: 160-1983 Annual Report by the judges.

Table 11.2

Papua New Guinea - National Court delays

	No. of cases[a]	Commission to committal (means days)	Committal completion (mean days)	Commission completion (mean days)
1977 - 1978				
All offences	792	100	86	186
Rapes	69	50	111	161
Break and enter	120	82	100	182
1982 - 1983				
All offences	852	162	344	506
Rape	84	105	350	458
Break and enter	102	183	442	626
Percentage change in average time taken 1977-78 to 1981-83				
All offences		+62	+300	+172
Rape		+110	+215	+185
Break and enter		+123	+342	+244

Note: a All cases entered in Court Diaries that did not include all dates were excluded

Source: National Court Diaries 161-78 and 1982-83 - April 1984

Table 11.3

Papua*- National Court delays

	No. of cases[a]	Commission to committal (means days)	Committal to completion (mean days)	Commission to completion (mean days)
1977 - 1978				
All offences	191	112	44	156
Rapes	15	51	109	160
Break and enter	32	59	75	134
1982 - 1983				
All offences	244	213	412	625
Rape	16	169	408	577
Break and enter	30	254	416	670
Percentage change in average time taken 1977-78 to 1981-83				
All offences		+90.2	+836.4	+300.6
Rape		+231.4	+274.3	+260.6
Break and enter		+330.5	+454.7	+400.0

Note: a All cases entered in Court Diaries that did not include all dates were excluded

* Includes Southern Highlands.

Source: National Court Diaries 162-1978 and 1982-1983 - April 1984.

Table 11.4

New Guinea* - National Court delays

	No. of cases[a]	Commission to committal (means days)	Committal to completion (mean days)	Commission to completion (mean days)
1977 - 1978				
All offences	601	96	99	195
Rapes	54	49	112	161
Break and enter	88	91	109	200
1982 - 1983				
All offences	608	141	316	457
Rape	68	91	338	429
Break and enter	72	155	454	609
Percentage change in average time taken 1977-78 to 1981-83				
All offences		+46.8	+219.2	+134.4
Rape		+85.7	+201.8	+166.5
Break and enter		+70.3	+316.5	+204.5

Notes: a All cases entered in Court Diaries that did not include all dates were excluded

* Includes Highlands region (except Southern Highlands), New Guinea coast and Islands region.

Source: National Court Diaries 1977 - 78 and 1982 - 1983 - April 1984.

Table 11.5

Pleas by offenders - National Court - Papua New Guinea

	Guilty pleas	Not guilty pleas	Total	Per cent guilty pleas
Papua				
1977-1978	198	46	244	81.2
1982-1983	235	70	305	77.1
1983 October-December	42	6	48	87.5
New Guinea				
1977-1978	530	227	757	70.0
1982-1983	401	231	632	63.5
1983 October-December	71	42	113	62.8
Totals				
1977-1978	728	273	1001	72.8
1982-1983	636	301	937	67.9
1983 October-December	113	48	161	70.2

Note: Only diary entries indicating pleas were entered are counted thus numerous nolle prosequis were not counted as in many of these no pleas were entered

Source: National Court Diaries - Port Moresby

Table 11.6

Offences - National Court, October 1st - December 31st 1983

	Guilty pleas	Not guilty pleas	Total	Per cent guilty pleas by region
Offences				
Papua	45	15	60	75.0
New Guinea	115	56	171	67.3
Totals	160	71	231	69.3

	Convictions		Acquittals & discharges		Nolle prosequi		Total offences
	No.	%	No.	%	No.	%	
Dispositions							
Papua	52	46.0	6	5.3	55	48.7	113
New Guinea	70	30.0	41	17.6	122	52.4	233
Totals	122	35.3	47	13.6	177	51.1	346

Note: * Per cent of total offences for region.

Source: National Court Diaries - Port Moresby

Table 11.7

Offenders - National Court, October 1st - December 31st 1983

	Guilty pleas	Not guilty pleas	Total	Per cent guilty pleas by region
Offenders				
Papua	42	6	48	87.5
New Guinea	71	42	113	62.8
Totals	113	48	163	69.3

	Convictions		Acquittals & discharges		Nolle prosequi		Total number
	No.	%*	No.	%*	No.	%*	
Dispositions[a]							
Papua	43	55.8	5[b]	6.4	29	37.7	77
New Guinea	85	50.3	28[c]	16.6	56	33.1	169
Totals	128	52.0	33	13.4	85	34.6	246

Note:
* Per cent of total offences for region
a Excludes cases not completed
b Includes 1 discharge
c Includes 10 discharges
d Nolle prosequis not included in pleas as entries in National Court Diaries did not include pleas in most cases struck out.

Source: National Court Diaries - Port Moresby

Table 11.8

National Court of Papua New Guinea - dispositions - offenders

	No. of[a] cases	Convictions		Discharges &[b] acquittals		Nolle prosequi	
		No.	Per cent	No	Per cent	No	Per cent
Papua[c]							
1977-1978	273	239	87.5	9	3.3	25	9.2
1982-1983	375	265	70.7	40	10.7	70	18.7
1983 Oct-Dec.	77	43	55.8	5	6.5	29	37.7
New Guinea[d]							
1977-1978	841	686	81.5	85	10.1	70	8.3
1982-1983	807	497	61.5	122	15.1	188	23.3
1983 Oct-Dec.	169	85	50.3	28	16.6	56	33.1
Papua New Guinea							
1977-1973	1114	925	83.0	94	8.4	95	8.5
1982-1983	1182	762	64.5	162	13.7	258	21.8
1983 Oct-Dec.	246	128	52.0	33	13.4	85	34.6

Note: a Excludes all cases not completed
b Includes acquittals and discharges with probation or good behaviour bonds.
c Includes Southern Coastal Region plus Southern Highlands.
d Includes Highlands region, New Guinea coast and the Islands region.

Source: National Court Diaries - Port Moresby

Table 11.9

National Court Port Moresby criminal list,
July 31st 1983 -as dealt with by April 1st 1984

Disposition of cases	Time since date of committal is more than.....									
	8 yrs.	5 yrs.	4 yrs.	3 yrs.	2 yrs.	18 months	1 year	6 months	Total	% Total[a]
Convictions	-	-	-	-	3	1	20	2	26	36.1
Discharges	-	-	-	-	-	1	2	-	3	4.2
Acquittals	-	-	-	-	3	1	3	1	8	11.1
Nolle prosequi	1	4	7	14	3,	-	6	-	35	48.6
Not dealt with	1	1	7	10	30	15	37	2	103	
Total	2	5	14	24	39	18	68	5	175	

Note: a Percentages do not include cases "not dealt with" accordingly the base for this percentage is 72 cases

Source: Port Moresby National Court list July 31st 168.

Table 11.10

National Court - delays Time to process cases from committal to completion of case

	No. of cases	Mean days 0 to 179	180 to 364	365 to 729	730 to 1094	1095 & over
Papua						
1977-1978	191	163	21	7	0	0
1982-1983	244	49	91	75	25	4
New Guinea						
1977-1978	601	549	40	8	4	0
1982-1983	610	353	138	55	19	45
Totals						
1977-1978	792	712	61	15	4	0
1982-1983	854	402	229	130	44	49

Source: National Court - Diaries 1977-1978 and 1982-1983.

District Courts

District courts, especially at the Grade 4 and 5 magistrate levels are performing very well and show signs of getting even better. These courts are one of the best resources in the justice system, yet are tragically under utilised. The principal work load of district courts, including Grade 5 magistrates, consists of minor, often trivial offences. Far too many cases ere pushed into the National Court. District courts are more accessible, cheaper, faster, and possess greater local knowledge than national courts. If the present jurisdictional allocation of responsibilities is not fundamentally altered, national courts by monopolising criminal cases will exacerbate delays and increase processing costs.

Conviction rate

Overall the information available on district courts for recent years is essentially non-existent. As with all agencies in the justice system a much improved monitoring of each agency's activities requires a vastly improved system of compiling and evaluating information. Most of our conclusions are based on studies of the Goroka District Court, and on observations of district courts in Lae, Boroko, Ela Beach and Port Moresby. The Goroka District Court records show that the conviction rate has averaged about 55 per cent for January 1982 and 1983 (Table 11.11). The drop in 1984 to 40 per cent is explained essentially by the rise in Section 138 discharges from 2 per cent in 1983 to 17.3 per cent in 1984. (The courts adjustment to mandatory minimum sentences.) Given the numerous trivial and incompetently prepared cases taken to court by the police, and owing to the very effective pragmatic problem solving approach adopted by this District Court, a conviction rate of more than 50 per cent is very commendable. The largest portion of the acquittals are based on the failure to establish a prima facie case (41.4 per cent) and the failure of the police to offer any evidence (40.5 per cent) (Table 11.12).

Delay in the district court also significantly affects conviction rates. The conviction rate for first appearances is 73 per cent, on subsequent appearances the conviction rate drops to 24 per cent (see Table 11.13). Beyond the second appearances the chance of a conviction becomes progressively less.

Certainly to a large extent the high conviction rate on first appearances is explained by the high percentage of guilty pleas (almost 50 per cent) that are disposed of on first appearances. When the offender indicates he has a story to explain his conduct, the court may enter a not guilty plea. In telling his story the used may not intend to deny responsibility but rather to justify or explain his conduct. This explanation to the court is tantamount to an admission of guilt. This "slow guilty plea" gives the offender a chance to "tell his side of the story". District court records do not indicate the number of cases ultimately disposed of by way of a guilty plea or "slow guilty plea" but magistrates estimate 60 to 70 per cent of all cases are processed in this manner. However, that is not the whole story - the rest of the story of the dramatically decreasing conviction rate is explained by the inability of police prosecutors to properly process cases through

the court. Aside from acquittals, 17.7 per cent of cases are withdrawn because the police have not been able to collect the evidence, witnesses or the accused, to proceed with the trial (Table 11.12). One magistrate was scathing -

> "When they continually fail to get the cases together - we throw the lot out - they're hopeless at getting the case together - some times the public themselves don't show up."

Delays in the District Court

There is virtually no delay in Grade 4 district magistrate courts outside Port Moresby. Almost 50 per cent of the cases are processed on first appearances and most of the remaining cases are processed within forty-five days of the first appearance (Table 11.12). In Grade 5 magistrates courts processing time is longer. Some cases have experienced intolerable delays in Port Moresby magistrates courts, but nothing comparable to the magnitude of delays in the National Court. Any delay, when it does occur, improves the prospects of the offender being discharged or acquitted, or the charge withdrawn.

Bail

Although offenders failing to honour bail is a problem, in the Goroka District Court the number of bail defaulters is not as significant as commonly assumed. Bail default accounts for only 10.9 per cent of the cases in which a conviction is not registered (Table 11.12).

Sentencing: use of jails

An excessive reliance on jail for minor offences highlights the most significant contribution district courts make to undermining the justice system's ability to cope with law and order. Crowding jails with low risk petty offenders, or with persons unable to pay fines, unnecessarily strains the resources of jails, and mixes essentially non-criminal types, with hardened criminals. This is unfair to the petty offender and also opens him to the risk of criminal influence.

Summary - district courts

Legally trained judges and lawyers constantly deprecate the work of lay magistrates by assuming that magistrates without proper legal training will make numerous mistakes causing untold and intolerable injustices. However, the value of lay magistrates was demonstrated by the kiaps in earlier times and, of course, has a venerable position in the common law.

The commonsense, pragmatic approach of lay judges keeps the court within the fundamental principles of justice. Their notions of justice and "fair play", uncomplicated by inflexible complex legalities, admirably serve the public and the overriding objectives of the justice system. There are, of course, some "horror" stories to tell about errors in magistrates courts but nothing to compare with the travesties of justice caused by the inordinate delays in the National Court.

With improved training, and better supervision in the field by legally trained Grade 5 magistrates, all levels of district court can handle much more responsibility. Below Grade 5 magistrates, there is no need for lawyers to serve on the bench. The invaluable contribution of lay magistrates, whose assets are pragmatism, commonsense, and uncomplicated appreciation of "fairness" has not been fully appreciated. To load the judiciary with lawyers, is an expensive and grievous error. The lay magistrates in Papua New Guinea, as in any country, significantly enrich the ability of the courts to reflect all segments of the society. Legally trained judges and lay magistrates have much to teach each other.

The simplicity, efficiency and practical nature of magistrates courts makes them an invaluable asset to the justice system.

Table 173.11

Goroka District Court (excluding Grade 5 magistrates)
Summary of cases January 1982, 1983, 1984

	January 1982		January 1983		January 1984		February/March 1984	
	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent
Number of cases[a]	360	100	539	100	457	100	628	100
Convictions	190	52.7	299	55.5	186	40.7	254	40.4
Discharges	-	-	10	2	79	17.3	92	14.6
Acquittals and discharges[b]	170	47.2	230	42.7	192	42.0	282	44.9

Notes: a Includes cases completed or adjourned sine die.
b Includes cases adjourned sine die and cases where offender fails to appear and bail was forfeited. Cases in which bail is forfeited constitutes 11 per cent of acquittals and withdrawals.

Source: Goroka District Court records, April1984.

Table 11.12

Goroka District Court - disposition of 478 cases
January 1984

	No.	Per cent[d]
Cases sentenced		
Fine	154	33.6
Jail	32	7.0
Probation	2)	
Discharged w/o Good Behaviour Bond[a]	26)	17.3
Discharged with Good Behaviour Bond	51)	
Total	265	58.0
Acquittals		
No prime facie case	46	
Police offer no evidence[b]	45	
Finding of not guilty	2	
Defective charge	18	
Total	111	24.3
Cases withdrawn		
Police informant fails to appear	19	
Witness fails to appear	20	
Accused fails to appear	21	
Case withdrawn - no reason given[c]	2	
Sine Die	12	
Total	81	17.7
Cases transferred to other courts	21	
Total	478	

Notes:
a Many of these discharges are granted when the accused received other sentences for offences which occurred at the same time.
b Some of these cases may be withdrawn to allow parties to settle their differences through mutual agreement outside of court.
c In some of these cases, magistrates believe police will offer no evidence because they do not have exhibits or key witnesses on hand.
d Percentages do not include cases transferred to other courts.

Source: Goroka District Court Registry, April 1984

Table 11.175

Goroka District Court -impact of court delays on dispositions
cohort of 100 cases - January 1984*

	Appearances					
	First	Second	Third	Fourth	Fifth	Total[a]
Cases Concluded	49	33	6	5	1	94

Second appearances usually within one week
Third appearances usually within 3 weeks
Longest time for any one case was 66 days
Fifth appearance took 40 days - case was struck out.

Disposition of Cases

	First appearance	Subsequent appearance	Total
Conviction	36	11	47
Discharges Section 138	4	6	10
Dismissals	9	28	37
Total	49	45	94

Convictions entered on first appearance 73 per cent drop to 24 per cent on subsequent appearances.

Note: a 6 cases were transferred to other courts.

Source: Goroka District Court records, April 1984.

Village Courts

Although less formal in many ways than the courts so far described in this chapter, village courts are nevertheless a part of the formal justice system. They are set up by act of parliament, their establishment, administration and jurisdiction are regulated by law, and their relationship to other types of court and court official is legally established with respect to jurisdiction, appeal and review.

Village courts are the lowest and newest in the chain of courts, being established under the Village Courts Act, 1973 (chapter 44 in the Revised Laws). The first courts of this type began operating officially in 1975, the year of independence. Courts working in local communities with lay magistrates were not only new, they were, in the view of many observers, also overdue. Although there had been pressure for their establishment since the late 1940s, when local government councils were being established and a draft Act for courts was prepared, their introduction met opposition for many years (see especially Fenbury 1978 and Oram 1979). Village courts were eventually introduced on the eve of independence and thirty years after elected local government councils had been set up. Chalmers (1978) has suggested that in the early 1970s the long-standing arguments about the need for local-level courts and community involvement in justice were supplemented by nationalist feeling among politicians who described village courts as people's courts and by concern for law and order problems among the bureaucrats. The late introduction of village courts has meant that they have been established in a more politically dynamic environment than would have been the case previously and at a time when rural administration was in some disarray and local government weak in many parts of the country. The timing of village courts means also that they are today only in an early stage of development, a fact which must be borne in mind when assessing their record to date.

Interpretations of the main aims of the Act vary among observers. Often people quote 5.16 which declares "The primary function of a village court is to ensure peace and harmony in the area for which it is established by mediating in and endeavouring to obtain just and amicable settlements of disputes". Such observers have stressed the mediatory provisions of the Act, the informality of procedures and the flexibility it allows to incorporate traditional procedures and values (e.g. Paliwala 1977). They see the Act as a bridge between custom and customary law and modern justice. Others, in contrast, have emphasised the way the Act has set up new institutions and officials and uses non-traditional mechanisms and adjudication for settlement of disputes (e.g. Oram 1975). Fines, work orders and sentences may, for instance, be imposed In our view, the second approach, that the Act establishes a new system of formal courts in the villages, better reflects the Act as a whole, while the glowing prose on mediation, appearing as it does only in Division 4 - Mediatory Jurisdiction, describes one aspect of the total operations envisaged for the courts.

The Act provides for the establishment of village courts in local communities and the appointment for each court of lay magistrates, clerks and peace officers who receive an allowance rather than a salary for their services. Magistrates are encouraged to mediate in disputes but also have jurisdiction in a wide range of minor offences and civil matters, excluding disputes involving land and motor vehicle accidents. Serious offences, as specified, are beyond their jurisdiction and there are limits to the fines, compensation, compulsory work and jail terms they can impose. Matters within the jurisdiction of village courts are also within the jurisdiction of superior courts, to whom plaintiffs may go directly by choice or because no village court is established in their area. Appeals against village court decisions are reviewed by a full-time magistrate of the local or district court sitting with at least two village magistrates. Proceedings of village courts are recorded briefly by clerks, and settlements by mediation can also be recorded in this way.

Administrative arrangements

At present the administration of the Act is the responsibility of the Village Courts Secretariat in the Department of Justice. There is a small staff at headquarters in Waigani and 20 provincial village court officers (PVCOs) and 30 village court inspectors (VCIs) in the provinces, all paid by the national Department of Justice. The largest category of staff, however, is the village court officials themselves, numbering 7,653 in May 1984 (see Table 11.14). These officials are largely appointed under the national Village Courts Act and receive allowances from the national government under the budget for the department of each province.

It is not possible from the records of the Village Court Secretariat to establish how much of the population of Papua New Guinea currently has access to village courts. In 1979 the coverage was estimated at 58 per cent (Village Courts Secretariat 1980). In that year there were 738 courts, so we can estimate that the 820 courts in 1984 might cover 65 per cent of the population. This can only be taken as a rough guide showing that the extension process is past half way mark but still has a long way to go. Table 11.14 also shows major differences between provinces. For instance, Milne Bay and Western have few courts, while other provinces, including Enga, West New Britain and North Solomons, report almost complete coverage.

Port Moresby (National Capital District) is the only urban area where village courts have been established, and even there the coverage is only around 25 per cent, with a focus on traditional villages and homogeneous migrant settlements. West New Britain's PVCO told us there were currently difficulties between his province and the national government over the funding arrangements for village courts on resettlement blocks and this had so far precluded establishment of courts in those areas. We are not aware if this has also been a problem in other parts of the country. The national government is committed to an ongoing programme for the expansion of village courts (NPEP Project 225-2-602/84), with a goal of 57 new village courts in seven provinces and the National Capital District in the period 1984-1987 (Papua New Guinea 1983).

Table 11.14

Village courts and village court officials by province, May 1984

	Province	Chairmen	Deputy Chairmen	Magistrates	Clerks	Peace Officers	Total officials	Number of village courts
01	Western	7	7	26	12	14	66	8
02	Gulf	20	19	59	22	39	159	20
03	Central	44	46	166	70	203	529	49
04	Milne Bay	2	3	18	5	12	40	5
05	Oro	15	13	54	17	32	131	14
06	Southern Highlands	72	64	223	98	166	623	79
07	Eastern Highlands	55	48	289	86	222	700	70
08	Chimbu	71	68	315	90	259	803	75
09	Western Highlands	70	56	399	113	295	933	85
10	Sandaun	10	13	29	11	21	84	11
11	East Sepik	54	43	238	84	142	561	71
12	Madang	41	35	131	47	92	346	46
13	Morobe	27	24	88	31	61	231	32
14	West New Britain[a]	32	32	82	50	93	289	32
15	East New Britain[b]	43	43	150	66	131	433	43
16	New Ireland	17	17	66	24	35	159	17
17	North Solomons[c]	40	40	136	42	80	338	40
18	Manus	18	19	113	36	30	216	34
19	National Capital	13	10	39	15	150	227	14
20	Enga	70	72	426	71	146	785	75
NATIONAL TOTAL		721	672	3,047	990	2,223	7,653	820

Notes: a Figures supplied by Noah Tade, Village Courts Office, Kimbe
b Figures supplied by David Linonge, Village Courts Office, Rabaul
c Figures supplied by North Solomons officers.

Source: Village courts payroll system printout for 11/05/84, except as in notes (a)-(c).

The Organic Law on Provincial Government specifies village courts as a "primarily provincial subject". S.39 indicates that establishment and administration can be provincial responsibilities while the jurisdiction of village courts should remain as set out in the national Act. Provincial governments may pass and some have passed provincial village courts act under which they take over establishment and administration functions. In practice few of the provinces with their own Acts have taken over establishment and appointment, although their acts require them to do so. In 1983 day-to-day administration and limited disciplinary powers over PV COs and VCIs were transferred to provincial departmental heads (Secretary for Justice, Circular, 16 March 1983).

The Department of Justice envisages transferring in the near future full administrative and establishment functions to provinces under their own Acts. When that occurs a province will only receive gratuities for village court officials at current allowance and manpower levels. In other words new positions created by an extension of village courts "will have to come from their own financial resources" (ibid. : 7). This provision, if the circular correctly reflects the Department's intentions, would restrict the extension of village courts and advantage provinces with good current coverage and disadvantage others. In fact the current (1984) advantage may not be the relevant one since the Minimum Unconditional Grant formula takes 1976-77 as its base year, a year when there were many fewer village courts than today.

Decentralisation appears likely to bring another change to village courts: administratively a move away from the magisterial services in the province and towards provincial and local government services. Since departments of the province do not have divisions of justice, the Department of Justice (ibid. : 5) has suggested that village courts be housed with local government or provincial affairs. However the legal, review and appeal ties with the magisterial services will remain as before under the national Village Courts Act.

Some provinces are already making contributions to the operation of village courts while others give little support. The establishment procedures for village courts are based on a written agreement between a sponsor and the national government covering support for a village court. Initially most sponsors were local government councils although in many cases provincial governments have now taken over these responsibilities. The national government provides officials' allowances, PVCO and VCI salaries, establishment costs, training and supervision expenses and court stationery and printed materials, while the sponsor provides transport, running costs (including ancillary staff) and housing for the PVCO and VCI. While some provincial governments have not provided housing for even the PV CO, others have put in large financial contributions. Some have increased allowances to officials from provincial funds and some have provided vehicles and housing (e.g. in Enga four vehicles and seven houses), uniforms and equipment and given access to aircharters for inspection in remote areas. While decentralisation brings the possibility of further politicisation to village courts, it can also offer major support and legitimacy to their operation.

In future the role of the Village Courts Secretariat will change. When it no longer has to process establishment, appointments and revocations as these duties pass to provincial governments, it will focus more than now on providing training and advisory services to the provinces. It will possibly have a research and developmental role and hopes to provide legal advice to the provinces and policy advice to the national government. The Secretariat anticipates it will continue to provide the extra staff the provinces need from time to time as they establish new village courts.

The performance of village courts

Do village courts work in the way they were intended to? In what ways is their performance different from what is outlined in the Act? The most important questions are about their method of operation, the types of methods they use and the decisions they give. We have already discussed how the Act provides both far a new level of formal court and encourages mediation outside the court by magistrates.

There have been a few detailed studies of village courts in operation (e.g. Paliwala 1977; Scaglion 1979; Warren 1976; Westermark 1978), some with a broader frame of reference than others. The Law Reform Commission's village dispute data (Appendix B.8) also throws some light on the operation of village courts, and in Appendix B.9, we provide an account by a police inspector seconded to this project, of a court in the Chimbu Province. Several studies suggest that courts have tended towards the more formal aspects of the options open to them under the Act. They often meet in courthouses or public places set aside for meetings. Officials like to have chairs, tables and uniforms if they can, and the general public is sometimes excluded from participation in hearings. Several detailed studies suggest the village courts prefer adjudication in formal hearings to mediation (which would be enforceable by the court if the agreement were recorded). However, the Law Reform Commission's data present a different picture. Table 6 in Appendix B.8 shows that in the study areas mediation by village courts was twice as common as formal hearings, and was the method of settlement in almost twice as many instances. While there seems no doubt about the desire of courts for very formal procedures on certain occasions, there seems some doubt about their role in mediation. The team leans towards the Law Reform Commission's evidence, since several of the other studies did not have a method for uncovering mediation that was not formally recorded, probably the greater part of mediated decisions.

While casual observers have sometimes thought the desire for formality in village courts was caused by officials' ignorance of the Act and lack of training, the detailed studies, particularly Westermark's, suggest there are cogent reasons why, even if they were fully informed of the provisions of the Act, village court officials would still value the formal court aspects of their work. Probably the most important point to grasp, and one made again in chapter 14, is that village courts only handle a minority of village disputes and offences. They are used by the general public and lay officials alike for particular kinds of problems. They are used mainly for cases that have not been solved by other methods available to the community: they are most of the time the remedy of last rather than first resort. By and large villagers use customary procedures including mediation

before they go to a village court. They seek from the court authority and enforceable decisions rather than the mutual agreement which has already eluded them.

The other major reason courts tend towards formality is that officials need to establish their legitimacy and separateness from the community, create respect for their proceedings and associate their actions as closely as possible with the government, the higher courts and the police. They are concerned to emphasise that they have external links and externally-derived authority. It is by establishing this image in the community that they are able to provide the type of intervention in village affairs which the public seeks of them and which augments their own status.

Scaglion's before-and-after study and the Law Reform Commission data suggest that village courts handle some types of cases more frequently than others. Both suggest that village courts are used in a disproportionately large number of cases related to alcohol, council regulations and assault and more rarel~, in proportion to the broader incidence of these disputes, in cases of sorcery, '°petty domestic" arguments and traditional obligations. Thus village courts are being used partly as modern solutions to modern problems.

There are many ways in which village courts today do not follow tie provisions of the Act. Some act beyond their powers, others (through bureaucratic rather than their own fault) are not legally established at all and some officials do not perform their duties properly or use court funds for personal purposes. Marilyn Strathern (1975b) has argued that corruption is not a problem in village courts because village people expect their leaders to look after themselves as well as others. They do not mind officials dipping their hand into the public purse. In our view this is a limiting approach to the issue, since it condemns Papua New Guinea to a past not always appropriate today. While the argument might explain public or official attitudes at any particular point in time, it cannot logically be used to say that these attitudes cannot or should not be changed

Unfortunately village courts were established across the country more quickly than adequate provisions were made for continuing training of officials and their supervision. While magistrates continue to play a part in supervision, the need for more resources has been recognised by the national government with the creation of the 30 village court inspector positions. However, even these may not be enough to cover the needs of existing courts. If we assume that every village court needs an inspection equivalent to one day per calendar month, and PVCOs are available for inspections two days and VCIs four days per week, the present establishment can only supervise 632 of the 820 courts in operation today. Another 12 inspectors would be needed to cover the shortfall. The performance of village court officials is also affected by their training. In many provinces there are no ongoing in-service programmes for officials. Furthermore none of the VCIs has received any formal training in village court work, nor have many of the PV COs. The Village Courts Secretariat has a training unit in Madang, but all posts are currently empty because of recruitment delays.

Another criticism that has been made of village courts is that they are biased towards the interests of the magistrates and their sub-groups in the community be these class, descent, age or sex groups. While we regard the misuse of public money as avoidable corruption, we feel it is less clear that it is reasonable to expect unbiased judgements (if there is any way of objectively establishing such a characteristic) from lay magistrates operating in a community court. To some extent their views will always reflect their own position in the community and their decisions have implications for them outside the court. Nevertheless the Law Reform Commission data tends to refute the hypothesis that village courts are used by men against women. Women were plaintiffs in 32 per cent of village court cases in the study and were less frequently defendants (22 per cent of cases). Thus the courts were more often used by women in complaints against men than vice versa.

Village courts and tribal fighting

The Village Courts Act not only supplies mechanisms of mediation and adjudication but also provides for preventive orders to be issued restraining certain actions. It was thought that such orders might prevent fights but magistrates from one group are usually unwilling to issue an order against their own group when there is a possibility that magistrates on the other side will not do the same (see also Appendix B.9). Existing national and provincial legislation defines a joint sitting as a hearing in which magistrates from the two disputing groups sit together and consider the dispute. Courts are always heard by an uneven number of magistrates which would make a joint sitting appear unfair even when, which is unlikely in a tribal fighting situation, magistrates were regarded as impartial. These provisions do not permit regular village courts to make a direct and official contribution to the tribal fighting problem between clans, although they undoubtedly reduce more generally the number of disputes that are resolved by violence.

In Enga Province the provincial government has sponsored a new type of village court to concern itself only with tribal fighting or the threat of tribal fighting. These courts have been set up at the level of districts and are composed of an uneven number of village court magistrates from regular village courts within the district plus a full-time clerk. The Provincial Government meets all the expenses of this operation (sometimes known as Operation Mekim Save from an earlier multi-agency attack on tribal fighting of which it was a part). The critical feature of this new type of court is that it has overcome the problem of partial magistrates on two sides of a potential fight unable to disregard the constraint of their own position in the hostilities. In Enga the district-level operation brings magistrates from other parts of the district to assist in negotiations and mediation where local efforts are insufficient. In addition their close contact with the PV CO and his with police have at an ad hoc level meant district-level court officials are well supported by police.

In Enga it is generally believed that this district-level court is making a valuable contribution. Nobody expects tribal fighting to cease quickly, but the court officials work several days a week travelling to trouble spots and doing the best they can in individual circumstances. They use preventive orders, issuing them to

both sides simultaneously, and only refer the matter to police in the last resort. They appear to be very moderate in their use of punishments, making clear attempts to single out the instigators of a fight rather than spreading the burden throughout the community. They order compensation where appropriate and agreed by the parties concerned.

This type ,of court in Enga currently faces a major problem with respect to its legal standing. The Village Courts Secretariat drafted for Enga special provisions under Section 9, Appointment of Village Magistrates in the Enga Provincial Courts Act 1983. Unfortunately the Provincial Government passed the standard model provincial act without the additional provisions, so the district-level court is covered neither by the joint sitting provisions of the national Act nor by the provincial Act. The drafting instructions for the proposed Village Courts Bill 1984 do not adequately cover the Enga situation either, allowing only for the inclusion of stranger-magistrates without the exclusion of magistrates on their home court ground.

Another limitation on the effectiveness of village courts in the area of tribal fighting is the limit of K300 for compensation orders relating to damage to property. The proposed Bill will raise this ceiling to K500, but many will undoubtedly feel that this is still inadequate when property destroyed can include trucks, stores and other buildings of permanent materials, and machinery.

Relations between village courts and other parts of the criminal justice system

The question of allowances is one of a number of areas of tension between village court officials and the larger system of which they are a part. Officials complain that their allowances are too low and national and provincial politicians have often taken up their cause. In one sense these complaints are simply about money, but in another they are about unsatisfactory support from government. Officials often feel "the government" does not recognise their work enough and does not back them up with transport, during appeals and reviews, or when they seek police assistance. Inspector Kupo demonstrates this point of view clearly in his account of a court in Chimbu (Appendix B.9).

Relations between police and village courts are variable and, unfortunately, often conflictive and competitive. Both sides can gain much from cooperation. Court officials gain assistance in enforcing their decisions, added status in the eyes of the community and increased legitimacy through positive links to the state. Police extend their contact with communities beyond the capacity of their own resources, improve the information they receive on criminals and receive assistance from community leaders in investigation and arrest. Where such cooperation occurs it has the benefits described. But many times police enter court areas and conduct investigations without reference to the village court. They do not respond quickly (for whatever reason) to requests from court officials to arrest or charge offenders. By ignoring the village court the police diminish its standing in the eyes of the community and create a situation in which court officials are in turn unwilling to cooperate with police.

These problems are nowhere more evident than in the handling of tribal fighting. Village court officials have no control over police actions and police often see their role in isolation from the courts. Even in Enga where village courts have made such an innovative attempt to come to terms with tribal fighting, court officials cannot be certain of police cooperation. They are often anxious that police will either appear unexpectedly when they have succeeded in calming tempers or are at a delicate point in discussions, or will not come when a preventive order has been disobeyed.

The crux of the problem between police and village courts is that cooperation between them is optional and not defined by any structural arrangements. Where relations between police and courts are good, it is a result of informal and ad hoc arrangements that often dissolve when staff changes occur or the workload of police is too high. In so far as their relationship is defined by law, it is the courts that must turn to the police, while there is no requirement that the police have regard to village courts.

A summary assessment

Village courts have been a success in the sense that they have been established in large numbers, although after nine years coverage is far from complete, and they have been widely used The 1979 Annual Report estimates that village courts heard 150,000 cases in that year, the same number of cases as were heard in all local, district and children's courts put together. Micro-studies too suggest a high usage rate. Warren (1976) estimated one in every four or five adults in a court area in the Eastern Highlands was involved in a case in a twelve-month period, while Westermark (1978) estimated one in three. This case load suggests village courts are meeting certain needs in communities and are also protecting the superior courts from involvement in minor cases. Scaglion's study in the East Sepik shows that village courts are used more than local courts were in the past (Scaglion 1979), so the village court case load consists partly of cases that were previously handled by local courts and partly of cases that never previously entered a court at all. Village courts have also provided a reference point for minor cases taken up with the police.

The emphasis on formality in village courts appears to correspond to certain needs in the community and seems to us to illustrate the way flexible legislation permits communities to make what they need out of the broad provisions of the Act. While there are no objective measures, it seems likely that village courts are contributing to the maintenance of order by assisting in the peaceful settlement of disputes and providing quicker and surer punishment for minor offenders. Their potential in more serious offences (through cooperation with police) and tribal fighting (through new kinds of joint sitting) has not been fully exploited as yet. Nevertheless they have provided a spur to the sense of community and involvement in community, and to a sense of the worth of things run by and for common people. In so far as they are successfully linked to other government agencies, village courts contribute to the legitimacy of the state and hence to other sources of order in the country at large.

Chapter 12

THE POLICE

In this chapter we examine in this first section, the workings of the police force, and then, in a later section, look to the underlying causes of the manifold problems facing it.

It will already be clear from our analysis of the courts, that the police role is crucial to the functioning of the criminal justice system. The police by the action they take or refrain from taking determine the volume of criminal work flowing through the courts and the number of inmates in the prisons. The police provide the work for the public prosecutor and indirectly for defense counsel.

The police are typically frustrated and disappointed when cases they have chosen to prosecute are not convicted Whilst experienced officers understand the system and can be self-critical when things do not go all their own way the inexperienced officer feels unhappy and somehow betrayed by the court which does not understand that he was doing his duty. He reacts even more if the court has thrown out the cases after he has been attacked by defending counsel in court. He sometimes feels that he has been made to appear like the offender. They did not believe him but they were not there at the time. He is aggrieved that the court preferred the accused's version of events to his own.

In Papua New Guinea the intrusion of Western type law with its strict impartiality and high standards of proof has always been a problem for the police. Originally, serving the kiaps the police had a friend in court, for the kiaps were also the magistrates: it took an unusual set of circumstances for the magistrate to doubt the word of the policeman; and his position of authority in the villages assured him of support - and a flow of fairly accurate information from the luluai and tultuls.

The decline in the centralised authority of the kiaps, the shift to more and more professional magistrates and the isolated role of the police in barracks in town changed all that. No longer were people compliant. They would dodge the police or defy them. Raided in their settlements by police in force they began to regard the police as alien. Police were not as much a part of the community, so that neither information nor support were readily forthcoming. Then to make life impossible for the police, the magistrates were likely to treat them like any other witness, and a generation of young trained lawyers ran rings round them in court. Yet, to cope with this the police were progressively receiving less training than before.

Behind all this are confusions of policy which are discussed elsewhere in this report. Here it is sufficient to point out that the community did not desert the police so much as the police deserted the community. The barracked police in towns were not at all like the kiaps' rural police. They came under a centralised police authority and when they went to rural areas it was to deal with disorders or to become instruments of pacification. They operated in large groups and quickly developed a "them" and "us" mentality which they maintained back in town. Of course they talked of community policing as the force professionalised but by this they meant the public becoming compliant in obeying their instructions whether these be to "move along" or to give information. When they found that this did not happen they blamed the community.

The Instruction Manual

Since no technician or professional person can operate without reference to his books and manuals - which he turns to when in doubt - it seemed to us natural to ask about such a written guide for the uncertain policeman. In the working world of police forces such manuals are regarded as indispensable tools of the trade. Senior police officers believe every aspect of police operations is adversely affected by the absence of a manual. So what happened in Papua New Guinea? The Administrative Manual of 1975, the Constables Manual of 1976, and the Constabulary Standing Orders of 1977 are all out of date, incomplete and not widely distributed A sampling of the adverse effects caused or compounded by the absence of an appropriate police manual illustrates how minor deficiencies if not properly redressed may over time create numerous problems which cumulatively severely undermine the efficiency of a police force.

Training. The lack of a standard, comprehensive, current, and relatively accessible procedure manual compounds the deficiencies in police training. Information provided in the class room is seldom fully comprehended until training has been tested by experiences in the field

Communication. Without an up-to-date manual, policy changes occasioned by changes in the law, or developed by headquarters, are often not properly communicated throughout the police force. The effects of not communicating changes in police policy or practices are reflected in the contrast between what official police policies suggest the police are doing, and what the police in the field are actually doing. Police manuals properly kept will change all this.

Reference. No police manual means no convenient check list for routine duties. No policeman is expected to know by memory the detailed steps required to process all police responsibilities, but he is expected to know how to properly categorise the problem confronted and to know where to look for the requisite information.

Bad practice Without a manual to guide the police, all kinds of unfamiliar tasks are being avoided or incompetently performed Our police informants, when questioned about observable deficiencies in their work, pointed out that police usually claimed their training had not covered the matter and that they didn't know how to easily determine what should be done. As some senior officers said of subordinates, in the face of not knowing what to do - often nothing is done.

Standard procedure. The lack of a manual combined with the rapid turnover of senior and junior staff exacerbates the difficulties in maintaining standard procedures throughout Papua New Guinea. Each new commanding officer brings to his new position his own version of how things should be done. Consequently often one finds not only different procedures, but different forms being used to process the same information in Papua New Guinea. These differences pose problems for policemen posted from one region to another. The absence of standard procedures for gathering vital information undermines the reliability of national police statistics.

Responsibility. High loss, misuse, or damage to police equipment is difficult to prevent without a manual specifically assigning responsibilities and outlining standard procedures.

Evaluation. Without a manual, police work standards suffer, the performance of individual officers is difficult to evaluate and bad habits may unwittingly develop.

Excesses. The absence of a manual to guide performance may have serious consequences which at first seem unrelated. One senior officer was concerned that when circumstances unavoidably require police to respond, the ignorance of how to respond properly could lead to the use of excessive force.

Awareness. The absence of a current manual covering both procedures and administrative matters is commonly blamed for the shocking rate of annual disciplinary charges levied against all ranks. Officers and men complain they simply did not know until after charges were laid what constituted proper or acceptable behaviour.

Actually the police are aware of the seriousness of this lack of a basic guide and their process of developing training modules through the Systematic Approach to Training (S.A.T.) system will embrace all police functions and commit to writing a detailed description of approved procedures suitable for both training and work in the field. Unfortunately completion of all S.A.T. modules may take several years.

Police-investigations

Crime is prevented and criminals deterred more by the certainty of detection than the severity of punishment - so efficient investigations are important. In Papua New Guinea the risk of being arrested and successfully prosecuted for serious crimes is alarmingly low (see Table 12.1). The notoriety of the justice system's inability to successfully arrest and prosecute offenders will soon, if it has not done so already, generate more crime. As a high risk of being caught deters crime, conversely a notoriously low risk of being caught may induce criminals to become more actively involved in crime, and may entice others into crime who are tempted by the apparent easy access to wealth offered by crime. (Arguably, and ironically, crime may be the business in Papua New Guinea with the best profits and the least risk.)

Competent police investigations are instrumental in arresting, and particularly crucial in prosecuting, offenders. The deplorable quality of police investigations in Papua New Guinea principally explains the inability of the justice system to arrest and successfully prosecute serious crimes. Until the ability of the police to investigate crime is profoundly improved, the law and order problem facing Papua New Guinea will not be resolved.

Exploring the causes of the woeful standard of police investigations illustrates once again the miracle of how some police are relatively successful, despite abhorrent working conditions and abysmal levels of support. Certainly there is little to be cheerful about in appreciating the quality of police investigative capacities, but there is reason to be hopeful in appreciating that simple and relatively inexpensive changes can produce significant improvements.

The majority of police working in criminal investigation divisions throughout Papua New Guinea have never had any training in criminal investigations. In Goroka 10 of 14 police, and in Mt. Hagen 21 of 24 police, assigned to investigations had not received training in criminal investigations. The National Serious Crime Squad specifically established to focus on serious crime has a staff of 7 of which 5 have not received any relevant training. The largest criminal investigation division located in Port Moresby has 72 policemen working on criminal investigations, of whom 60 have had no prior training in criminal investigations. Fraud investigations require very' specialised skills. The fraud squad investigates everything from petty to major frauds, from bad cheques to complex corporate frauds and corruption, from minor government officials to premiers and cabinet ministers. In Papua New Guinea the fraud squad consists of a team of 13 men; 10 have never had any training in criminal investigations.

Table 12.1

Arrest rates in serious crimes - Papua New Guinea -1974-1983
showing change since 1974

	1974 Based on crimes statistically reported	1983 Based on crimes statistically reported		1983 based on low estimated shortfall[b]		1983 based on high estimated shortfall[c]	
	Arrest rate[a]	Arrest rate	change	Arrest rate	change	Arrest rate	change
Attempts & rape	58	31	-27	19	-39	13	-45
Grevious body harm	85	43	-~2	26	-59	17	-58
Attempts & homicide	99	56	~3	34	-65	23	-76
Unlawful wounding	43	42	-1	26	-17	17	-26
Fraud	55	48	-7	30	-25	20	-35
Break & enter	12	12	-	7	-5	5	-7
Stealing	49	67	+18	41	-8	27	-22

Notes: a Rates of arrest to reports by crime
b Low estimate 38.6 per cent of statistics unrecorded
c High estimate 59.4 per cent of statistics unrecorded

Source: Royal Papua New Guinea Constabulary - National Crime Records Office - Arrest Rates 1974-1983.

One must ask where have all those who received training in criminal investigations over the years gone .... gone to other postings almost every one. The number of trained police investigators doing other work provides one of the many examples of the need within the police force to redesign promotion and pay schemes. A policeman with both an interest and talent for a particular police function such as criminal investigation, should be able to advance in pay or rank without being forced to transfer to a different line of police work. As one experienced officer put it, he had a -

> "Need to stay in one line .....to become good or specialised without costing me a promotion or money".

In many instances, specialists should be entitled to significant pay increases due to their skill and experience without the necessity of also being promoted. Promotions tend to move skilled people out of their specialty and into administration.

For the most part, the little training in criminal investigations that has been recently provided has been inadequate. The three month criminal investigation course can only be described as a basic introductory course. Almost no national officer presently employed in criminal investigations has received advanced or specialised training in criminal investigations. Similarly, police investigators or other policemen have not been trained properly how to prepare cases for court or how to give evidence in court. The adverse effects of inadequate training are manifested in many ways.

Substantive law. Not knowing what elements must be proved to successfully prosecute each crime often results in allowing patently guilty offenders to elude prosecution. Cases are withdrawn or lost at trial because police investigators have failed to collect evidence on all essential elements of the offence. For instance rape cases are lost because the investigator was not aware of the need to collect evidence of a lack of consent, or of a recent complaint, or to acquire the requisite corroborative evidence.

Techniques of investigation. A lack of training in basic investigative techniques produces incomplete court briefs. Cases are withdrawn or lost because the court brief was deficient owing to the investigator not properly following up leads, inadequately confirming evidence, overlooking obvious sources of relevant evidence, and simply not knowing how to obtain information from witnesses, from the public, or from records and other sources.

Procedures. In recent years police have come to rely on confessions as the primary if not the exclusive, means of proving their case. Because offenders are not properly warned of their constitutional rights, confessions obtained by the

police are inadmissible in court, and cases are withdrawn or lost at trial due to the absence of other evidence. Frequently the entire prosecution rests on the admissibility of a confession, as the police do not know how, or lack the skills and forensic services, to acquire other incriminating evidence (National Court Annual Report 1983 : 8).

Field supervision. The lack of adequate training equally affects supervisory officers. The few experienced senior investigators are either posted to other functions or buried in the administrative responsibilities incumbent upon division heads or commanding officers. Without experienced field supervision, bad habits develop and the deficiencies arising from inadequate training are compounded

Errors in investigations discovered by public prosecutors or revealed in court are rarely communicated to the investigating officer. The investigator learns little from the experience and generally begins to lose heart believing the courts and prosecutors are to blame. In failing to appreciate what went wrong, mistakes are repeated, others are blamed, and disenchantment with the system intensifies.

> "Despite our work (investigations) the courts or prosecutors will stuff it up - we waste a lot of hard work for nothing."

Community attitudes. We have documented elsewhere the almost complete lack o community support for the police. Yet arguably the most essential ingredient of any successful investigation is community cooperation. Without it, eye witnesses will not come forth, crucial information will not be revealed, offenders will not be located and often crime, even serious crime, will not be reported to the police. We were told -

> There is a sad lack of communication with people/village elders/village court officials. These are the people who generally know in respect of their communities who the criminals are, where they are, what they have been doing."

In the absence of community support certain crimes become difficult if not impossible to prosecute successfully. Computers, radios and swift cars are no substitute for the information which a community can give: Further, even when it is possible, it takes a lot more manpower and a lot more time to investigate or prosecute crime without community support. In some areas, community relationships have deteriorated to such a point that the police are reluctant to enter the community to carry out any investigation unless they go in force. One police informant was succinct -

> "When they (the communities) won't help - why bother - we really are stuffed."

In Papua New Guinea there are large pockets of intense hostility against the police. In each instance examined, the hostility was based on police discourtesies, abuses of their power, violence or repugnant public behaviour. The fact is that the police do not respect the communities. Their arrogance and indifference dries up any cooperation. Sometimes it even generates fear of the police. For wrongdoers to fear the police is appropriate. For communities to feel like this is to kill cooperation and to kill successful investigation, thus providing the criminal with support which in other circumstances he would be denied.

Professional commitment. Investigation means commitment. Several senior national officers believe a lack of professional commitment explains why police do not thoroughly complete investigations or fail to take the extra time necessary to chase down or confirm vital evidence. .A lack of commitment was thought by most people interviewed to be caused by the option all national police express of returning to their village....." if I get the boot," said one "I have got plenty to eat, water and land back in the village, so why bother". Police discipline and professional pride suffer in the absence of commitment. Yet, while many police believed the Force suffers because policemen lack commitment, we were not so sure. In our studies a lack of commitment or interest was detected in only 4 of the 52 policemen talked to or interviewed. Many policemen, because of existing working conditions, gave up a long time ago, but we were impressed by the earnest desire to be professionally competent which was characteristic of most policemen interviewed

While many complaints centered on the inability of police to respond promptly to calls, the most common and certainly the most vigorously asserted complaint by both business people and private citizens centered on the inept manner in which police conducted investigations. Most people witnessing police investigative techniques expected nothing to ever come of it - their expectations were almost always realised. (Public support is readily lost by the police in not advising victims of crime what steps have been taken, and why investigations have not been successful.)

Equipment. Of course police investigators, like government officers everywhere, blame their ineffectiveness on the lack of equipment. Some recent changes vastly improved the ability of police to respond to complaints. A recent police study in Port Moresby indicated that police responded to most calls within ten minutes. Delays were principally caused by a shortage of vehicles or manpower, and a lack of familiarity of the area. The study also found that sector patrols spent 30 to 40 per cent of their time responding to calls.

Cost of evidence. The costs of bringing back a key witness for a trial from overseas or from different parts of Papua New Guinea often force the police to ignore key witnesses. Consequently, cases are dropped or lost at trial. Sometimes it is a cost-benefit decision. As one policeman put it -

> "If the cost of acquiring a witness exceeds the value of the expected penalty the case will be dropped'.

Forensic services. For investigators outside Lae and Port Moresby forensic services are unavailable. Even in urban centres very few forensic services can be utilised There are no facilities for analysis of paint samples, footprints, blood samples, hair samples, skin samples, for matching different materials, ballistics, or handwriting analysis, and the facilities for finger printing are limited and not easily available in many areas of the country. Most attempts to use any laboratory or forensic services are prohibitively expensive or too slow to be of much use to many investigators in Papua New Guinea.

Crime takes much longer to investigate without the assistance of forensic services. Delays often cause cases to die from inattention, from the arrival of new problems and the departure of the original investigator for a new pasting. Similarly, poorly investigated cases keep getting put off and are ultimately dropped because the initial investigator has been transferred or because traces of the crime and key witnesses have disappeared. The absence or lack of effective access to laboratory or forensic services severely restricts investigations. For the most part police are forced to rely on confessions and the testimony of eye witnesses. In the absence of witnesses and confessions many crimes are impossible to prove. Th:o:>e! sophisticated or experienced offenders who have not already done so, will quickly learn not to provide statements to the police. In time, investigations will be primarily successful only in cases of first or unwary offenders. Hardened criminals will enjoy a relative degree of immunity as a consequence of their streetwise understanding of the system coupled with the dire limitations on using forensic services to investigate relatively sophisticated crimes and criminals.

Identification. Police investigations can easily be confounded in Papua New Guinea. Offenders, particularly experienced offenders, can often elude being prosecuted and more easily avoid being sentenced as a prior offender, simply by giving a different name. None of the police records including the finger print records adequately serve to identify arrested persons or track down the proper identity of suspected persons. Despite some recent innovations by the criminal investigations branch in Port Moresby, until major changes such as a national registration system reliant on social security numbers, and the compilation of accessible information on prior offenders, the easy dodge of changing names will successfully continue. (An offender sought for many months for a string of serious frauds was finally arrested and booked into cells to await court. While waiting for court the accused answered to the name of a drunk passed out in the cells. The fraud specialist was taken to court sporting the name of the fortuitously absent drunk. The accused was found guilty of public drunkeness and fined. Upon immediately paying the paltry fine, freedom once again belonged to the successful con man and the fate of the drunk is a story yet to be told.)

Communication of available information within the police farce about the identity and movements of known criminals is essentially non-existent. When criminal intelligence is available, the police have a reputation of not using it. So a magistrate said -

> "Little seems to be made of intelligence sources. Tip-offs are not acted upon or the action taken is slow and ineffective".

Mobility. Much evidence substantiates current police theories that some criminals have become highly mobile. By committing theft in one city, fencing stolen property in a different city, and residing in yet another, criminals can escape detection in the absence of coordination between different investigation branches. Local investigation offices must have the resources to release investigators from working on local investigations to pursue information suggesting offenders from other areas of Papua New Guinea are in their locality. The National Serious Crimes Squad is designed to combat the current ability of offenders to move about the country. For this squad to be effective more resources, training and manpower, and more elaborate systems of coordinating information and manpower must be achieved if the work of the squad is to be successful.

Intelligence. Despite several valiant attempts, the collapse of control over vital data, breakdowns in communication networks, and the demise of administrative systems have persisted in frustrating all attempts to establish a useful criminal intelligence network. There were caustic comments -

> "Impossible to set up a criminal intelligence network as all the information is completely stuffed".

Criminal records for convictions entered from 1968 to 1982 are essentially nonexistent. The documentation for these criminal records is piled head-high in large bundles on basement floors in police headquarters. Other records are lost. Some records were never established as the old system of not starting a dossier on anyone until convicted for a second offence has allowed many offenders for even serious offences to avoid having a criminal record.

Searching police files to obtain vital information for crime investigations produces more frustration than valuable information. Within the force, even within the same province, relevant criminal intelligence information is communicated as much by fortuitous circumstances as by design. What little information is available is often not communicated in any fashion to make it useful.

Inexperience. Usually police do not remain long enough in one area, or in one line of work to acquire the experience for proficiency. Postings and promotions preclude investigators from developing adequate local knowledge and from learning the skills necessary to be a competent investigator; skills only field experience can teach. Inexperience explains many of the bungled, delayed or ignored investigations.

Inexperienced investigators will often charge the first person identified to them by others or by their preliminary investigation. This tunnel vision wastes police and court resources, allows the guilty to evade prosecution, and entangles the innocent in the criminal process. Many people know the importance of getting to the police station first. In an assault case the first person to the police station will be the victim, the second will be the accused. The humour of these anecdotes quickly pales when more serious crimes are not successfully prosecuted owing to deficient investigations. We were told -

> "Investigators develop a first impression, stick to it.....they have a one track mind and are often on the wrong track."

> "It is common for the police to charge the wrong person."

The scrutiny of the court process usually reveals the deficiencies of the investigation. By then, little can be done to rectify the error. Inexperience and a lack of experienced supervision severely hinders the ability of investigators to conclude successfully any investigation that is not completely straightforward. Unless the police get a confession or apprehend the offender "red handed", the investigation is unlikely to result in a successful prosecution:

Resource deployment. The police force, hounded by the public to attend to numerous petty street offences, public drunkenness, public brawling, property damage etc., beset with numerous high profile VIP security tasks, and required to invest extensive manpower in traffic control, has little resources left to invest in the investigation of serious crimes.

The fraud squad provides an excellent example. The fraud squad with a staff of thirteen has neither the manpower, the resources, training or time to cope with their present case load of 146 frauds involving over K1.2 million. In other jurisdictions fraud squads handle fewer cases with much more staff. Except for the expatriate commanding officer (who spends a lot of his time in administration) providing sporadic supervision and handling one or two major investigations, no-one else has any specialised training in fraud investigations. The majority of staff are young, inexperienced, and have had no training at all in any form of criminal investigations. Yet this squad must investigate everything from petty to major frauds, from bad cheques to major corporate frauds and

corruption, from the misdeeds of minor government officials to those of premiers and cabinet ministers. The fraud squad has no accountants, no lawyers, nor one experienced in business, financing, banking or other commercial transactions and records. Handicapped by a lack of the most elementary equipment for fraud investigations (photocopiers, calculators, etc.) and by abysmal lack of training, supervision and experience, despite the desire to do well, the fraud squad is no match for sophisticated crime or criminals.

Inexperience and inadequate supervision result in a lot of time being taken up with the easier or more manageable petty crimes, while the more sophisticated fraud investigations drag on; unlikely ever to be brought to trial. Fully documented cases prepared by the Ombudsman staff gather dust as the policing necessary for criminal prosecutions are delayed, postponed or ignored Most major fraud investigations generally take a long time and a lot of manpower to complete. A single major case may take up all the fraud squad's resources for several months. Lacking the time, resources and skills to become intently immersed in major fraud investigations, these investigations are delayed Delays cause witnesses to leave, become less cooperative and less likely to remember key events, hence evidence, documents, and key records disappear. Even investigators disappear and move to other jobs through transfers or promotions .... all these far too common events increase the prospect of major criminal investigations dying a natural death from the lack of aggressive or skilled attention.

In Papua New Guinea petty criminals face a far greater risk of being arrested, prosecuted and convicted than anyone involved in serious corporate or commercial fraud. Fraud, especially of the sophisticated variety, is rarely processed through the system to conviction. A fraud squad officer remarked -

"We are clearly not dealing with the problem of fraud in Papua New Guinea".

Police prosecution. There are some good national police prosecutors but they are the exceptions. Many who have achieved proficiency were promoted as a consequence and now seldom prosecute because of time consuming administrative responsibilities incumbent with their new senior positions. Lacking basic skills in examination, cross examination and without a working knowledge of evidence, procedural or substantive law, most police prosecutors do not properly process cases through the courts. Inadequate training, inexperience, a lack of supervision, and the inherent institutional limitations of a police force which mitigate against policemen being effective prosecutors, all combine to send police prosecutors woefully unprepared into the battle of criminal litigation. Shoddy, incomplete investigations, uncooperative witnesses who fail to appear, offenders who skip out on bail, and the general lack of resources and manpower to man a successful investigation and prosecution are all contributing factors. However, when the smoke clears from the accusational war seeking to accord blame for the abysmal conviction rates, the bulk of the blame is attributable to the inexperience of police prosecutors.

As already shown above the inadequacies of police prosecutions adversely affect many aspects of the justice system.

- Court cases are prolonged and drawn out by prosecutors lacking the experience to sift relevant from irrelevant evidence.

- Police prosecutors do not, as they should, throw out prosecutions that are unsubstantiated by any evidence in the police court brief or that are proceeding under the wrong charge. These cases which have no hope of being successfully prosecuted waste valuable court time and cause other cases to be delayed. In some areas, the attitude "mi winim kot" is fostered by the number of no-hope prosecutions taken to court. This attitude undermines public respect for the judicial process. Forcing innocent people to court on groundless charges also promotes disrespect for the justice process.

- Police prosecutors, through their inexperience and lack of confidence, plug the court with trivial offences that should be dropped or dealt with informally by the police officer acting as a mediator, or counsellor or offering a timely warning.

- Not the adequacy of the defence, but the inadequacy of the prosecution allows many offenders to avoid conviction. Especially experienced offenders know the advantage of delay. In Goroka District Court, the more appearances, and the longer the delay, the less likely the offender will be convicted. Convictions dropped from 73 per cent on first appearances to 24 per cent on subsequent appearances (Table 11.13 on p. 175).

- A high proportion of dismissals, withdrawals, acquittals, or delays discourage investigators from investing the time and effort required for a proper investigation. This effect is compounded if the investigator is not informed of the reason for losing the case. In failing to appreciate that the case was lost through the mistakes made by the prosecutor, the investigator blames the court. This perception fosters the belief that no matter how hard one works on investigations the courts won't convict. Laboring under this perception the investigator soon loses enthusiasm for earnest and diligent investigative work. Some get frustrated, and the pressure mounts for policemen to use force or violence to deliver on the street the justice they believe is denied in court.

Section Summary

To round up this review of police investigations, a lack of training, or inadequate training is evidenced at all phases. Vital evidence exists but is simply not collected. Crucial evidence is rarely confirmed by other corroborative evidence or cross-checked by other investigations. Readily available means of collecting evidence is overlooked. Evidence that is collected is improperly processed and becomes inadmissible in court. Evidence is simply lost as a consequence of inadequate custody procedures. (National Court Report 1983 : 8). In the absence of specialised training, police are improperly armed to cope with fraud, white collar crime, sophisticated crime, or any crime where difficult questions of evidentiary proof arise. In the absence of eye witnesses and confessions few cases are successfully prosecuted. There are exceptions. Most of these exceptions are apparently attributable to the diligence of exceptional officers, the trust and understanding that some officers have painstakingly developed from a long standing relationship with the community, or the result of national officers working with or under the supervision of specialist expatriate officers.

Despite valiant and conscientious work by many policeman, in the absence of appropriate training, experienced field supervision, and adequate investigatory resources, their success rate in the face of increasingly sophisticated crimes and criminals will deteriorate .from bad to worse. Presently the deficiencies affecting all aspects of investigations principally explain why the judicial system is rapidly falling behind in coping with existing crime rates, and is beginning to manifest an inability to prosecute or deter serious crimes of property and violence. Woefully deficient investigative abilities shift law and order resources from serious crimes to petty crimes, from hardened criminals to first offenders. The full force of the Law thereby increasingly falls upon shoplifters, highway traffic violations, and drunks; while rapists, streetwise and hardened criminals enjoy increasing immunity from justice. Poorly investigated crimes may cause innocent people to be prosecuted and waste court time with cases that have no chance of being successfully prosecuted, and cause delays in processing cases before the courts.

As already indicated, statistics showing high detection, arrest, and conviction rates do not mitigate against this picture. These are artifacts of the way in which the information is recorded. The true picture of police investigation is that given above, one readily corroborated by experienced (and frustrated) police officers.

Some measure of the deteriorating quality of police investigations can be gleaned from the increasing delays in the National Court. Comparisons of the time the police took to process a crime from the date of commission to committal between 1977-78 and 1982-83 provide a crude but relevant reading of the capabilities of police investigations. In 1977-78 in all crimes the mean time for processing a case to committal was 100 days. In 1982-83 the time had grown by 62 per cent to 162 days. Processing rape charges increased by 110 per cent from 50 to 105 days. In 1977-78 the mean time to process break and enter offences was 72 days.' By 1982-83 the police took 183 days; an increase of 154 per cent (See Table 11.2 p. 161).

Certainly more than a demise in the investigative abilities of the police force explain these significant changes in the time required to process offences to the stage of a committal. One can safely accord some of the responsibility for these delays to inadequate resources.

As the crimes and criminals become more sophisticated and as community cooperation dries up, even if the investigative abilities of the police do not change, their success rate will continue to decline. As the public becomes increasingly aware of these failings, public respect for the police deteriorates. Deteriorating public respect fosters frustration, undermines confidence, adversely affects motivation and commitment and in turn intensifies the very causes of public disrespect. Consequently a vicious circle exacerbates the problems and severely handicaps initiatives to improve police investigative services.

Police conviction rates

We should note however that, based on police statistics, police prosecutors enjoy a commendable record. In 1982 the conviction rate for the District Court was 76.6 per cent (Royal Papua New Guinea Constabulary 1983). However, these statistics do not tell the story of police prosecutions and constitute a questionable measure of the effectiveness of police prosecutors for the following reasons.

Guilty pleas. Many convictions arise from guilty pleas. Below Grade 5 magistrates the rate of guilty pleas estimated by persons working in the court ranged from 40 to 80 per cent. Most people interviewed estimated guilty pleas were entered in 60 per cent of the cases. In a study of district court cases in 1975, 90 per cent of all cases in Port Moresby involved guilty pleas (MacKeller 1977: 81).

Not guilty pleas. Many cases involve circumstances where offenders are caught in the act of committing the crime (apprehended by store personnel shoplifting, picked-up by the police for being drunk and disorderly, or for traffic offences, identified by the victim in assault cases, etc.). In these circumstances often the accused wishes to provide an explanation for his behaviour which is tantamount to an admission of guilt. Although the plea is not guilty, the trials are little more than "slow guilty" pleas affording the accused a chance to seek the sympathy of the court based on his reasons for committing the crime.

Contested trials. To properly measure the efficiency of police prosecutions, the rate of successes in contested trials must be known. The prevailing opinion among people with a working knowledge of district courts is that national police prosecutors fare very badly against offenders with previous court experience, do

even worse against educated offenders, and are no match at all for any offender represented by counsel. Against lawyers, the police will often withdraw the charge or lose the case at trial. Amongst the comments we gathered in interviews were the following -

> "Most police prosecutors when they see a lawyer ...fold their case".

> "Very easy work for us against police prosecutors...they simply don't have the knowledge... don't know what to do with the witnesses or the law."

It is commonly believed that offences posing difficult legal and evidentiary problems are not taken to court. Most of the cases that are successfully prosecuted involve minor offences where the accused offers little or no evidence other than his own testimony. If even the pretence of a defence forces the prosecution to prove the case, the chances are remarkably good that some deficiency in the prosecution will secure an acquittal.

If guilty pleas are entered even in only 50 per cent of the cases, then successful prosecutions resulting in the entry of a conviction in a case disputed by offenders could be as low as 10 per cent.

Police arrest and detection rates

Having shown how bad the investigation of crime by the police really is we have to account for the apparent contradiction of an unusually high police rate of detection and arrest. How can this be, if investigations are so bad? The 1983 crime statistics provided by the National Crimes Record Office (NCRO) show a 60.7 per cent arrest rate and a 51.4 per cent detection rate. These figures are impressive. Most police forces around the world would be pleased to boast of such rates. These figures suggest that for every ten offences, six people are arrested, and five offences are cleared by charging someone. However, it depends on how you count.

Methods of scoring arrest and detection statistics. Arrests are commonly counted out of the charge book and figures forwarded to the NCRO. Most crimes are counted through the elaborate procedures previously described However, an arrest means action which has to be reported so that as compared with crimes far fewer arrests get lost in the counting. As previously argued the NCRO statistics for the total crimes in 1983 substantially under-estimate the total number of crimes handled by the police. Certainly some arrests are lost in the counting, however, because of the method used to count arrests, the police believe a relatively insignificant number of arrests fail to be statistically reported

Thus, odd as it may seem, arrests are sometimes recorded in crimes that may not be recorded. This may appear impossible since it would seem strange to take action if the crime is not registered; but it has to be recalled that we are not suggesting that there may be no record of the crime in a case in which an arrest has been made - only that it has not found its way to the NCR.O. Of course if this should happen it inflates the arrest rate.

Number of offenders. If 6 people (offenders) commit one crime (offence) and all 6 are arrested, the crime count is one and the arrest count is 6. Consequently the arrest rate is higher than the crime rate.

Arrest rates and types of investigation. Sometimes, the accused is caught "red handed", and is either arrested on the spot or the identity of the person is made known to the police. Shoplifting, possession of anything illegal, death by dangerous driving, and other similar offences have very high arrest rates because the offender is arrested in the act of committing the offence or at the scene of the crime. In some cases there will not be a crime unless the person was arrested (attempted suicide, perjury, false statements, unlawful assembly). In many offences, the identity of the accused is well known and no attempt is made to avoid apprehension once the crime is reported to the police. A high rate of these arrests tells little about the investigative efficiency of the police.

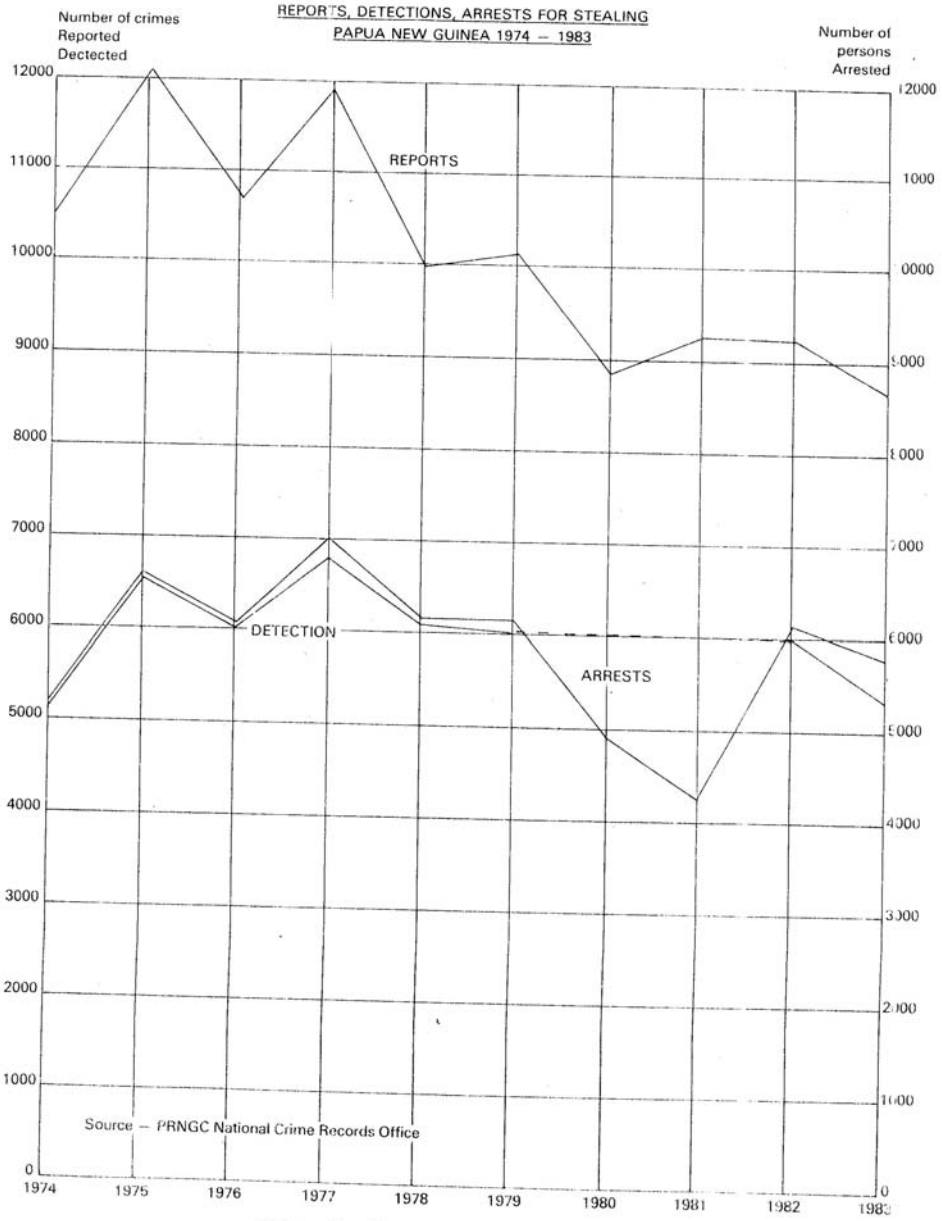
The most telling measure of police efficiency centres on arrest rates in crimes where the victim does not know the identity of the offender. (unlawful use of a vehicle, stealing, break-ins and robberies). This kind of breakdown is not available.

Historical perspective. In several serious crimes the arrest rate since 1974 has declined (Table 12.1). Where some improvement has been noted, for example, in stealing and break and enter offences, the improvement in the arrest rate has not been caused by more arrests but by declines in the statistical rate of crime (Figures 12.1 and 12.2). Arrests in several offences, but particularly in stealing and break-ins, indicate that since 1974 the number of persons arrested has essentially not changed despite fluctuations in the rate of statistically reported crime. This suggests the capacity of the police to effect an arrest is influenced more by the resources committed to the investigation of certain crimes than by changes in the rates of these crimes.

Arrest rates and "actual" crimes handled by police. The demise in the accuracy and consequent shortfalls in statistically counting crimes since 1974 has not similarly affected the ability to count arrests. Consequently if the ability to count arrests has not suffered to the same extent as the ability to count crimes, the statistically reported arrest rates should have significantly improved This may explain the statistical improvements in arrest rates in stealing and the absence of any change in break and enters (Figures 12.1 and 12.2). Both of these offences were singled out by persons interviewed as the offences most likely to be significantly understated

FIGURE 12.1

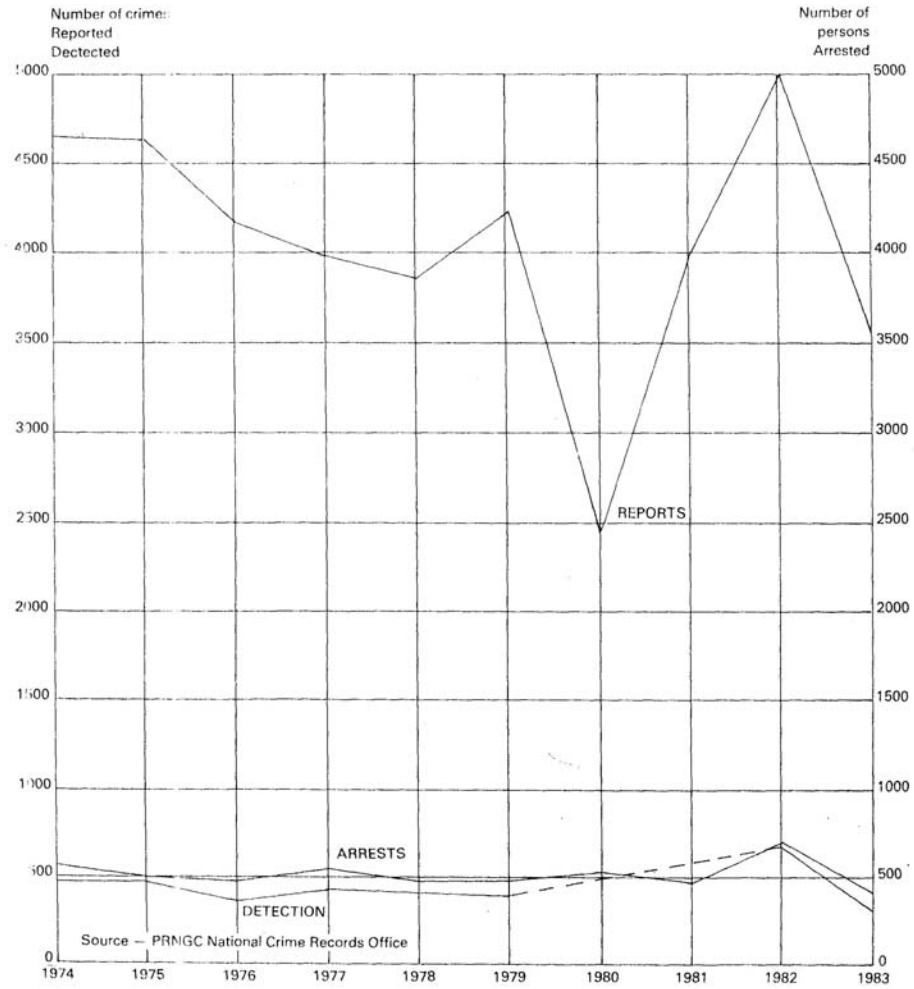
REPORTS, DETECTIONS, ARRESTS FOR STEALING
PAPUA NEW GUINEA 1974 – 1983



Source – Note: Figures not available for 1980 – 1981

FIGURE 12.2

REPORTS, DETECTIONS, ARRESTS FOR BREAK & ENTER
PAPUA NEW GUINEA 1974 – 1983



Source – Note: No Data Arrests 1980 – 1981

Arrest rates drop dramatically if we use our data on the actual number of crimes handled by police in 1983. Our evidence suggests -

- Both crimes and arrests were statistically reported with reasonable accuracy in 1974.

- Arrests continued to be statistically reported with reasonable accuracy while the statistical accuracy of crime data progressively deteriorated.

- The statistical reports for crimes in 1983 understate the actual crimes handled by the police by somewhere in the range of between 40 and 60 per cent. Thus the actual crime figure is more likely to be in the range from 40,000 to 63,000 offences than the statistically recorded 24,144.

In Table 12.2 the statistically reported crimes are corrected to account for estimated shortfalls in column 2 of 38.6 per cent and in column 3 of 59.4 per cent. Then in Table 12.1 based on the corrected crime counts the arrest rates are recalculated for each of the serious crimes using the statistically reported number of arrests made in each crime in 1983.

Column 2 of both these tables based on a shortfall of 38.6 per cent in statistically reported crimes is a more reasonable estimate of the actual number of crimes handled by police for reporting homicides, frauds, unlawful woundings and grievous bodily harm.

All interviews suggested more break and enter and stealing offences reported to police would not be statistically recorded than any other offence. Accordingly the high extent of drop outs may be a reasonable estimate of the number of break and enter and stealing offences. Table 2.3, p. 40, suggests shortfall between each Division's report and what NCRO report as annual crime statistics are only 29 per cent for these crimes. However, the drop out rate for these crimes is high within the procedures the Divisions use to calculate crimes overall. Thus much higher rates of break and enters, stealings and all minor property offences are lost in Divisional crime scoring methods.

Table 12.2

Number of serious crimes

	Statistically reported	Corrected for low shortfall[a].	Corrected for high shortfall[b]
Rapes & attempts	450	732	1108
Grievous bodily harm	179	292	440
Homicides & attempts	240	391	591
Unlawful wounding	153	249	377
Fraud	550	896	1355
Break & enter	3583	5836	8825
Stealing	8662	14108	21335

Notes: a Low shortfall assumes figures under-reported by 38.6 per cent
b High shortfall assures figures under-reported by 59.6 per cent.

Source: Royal Papua New Guinea Constabulary National Crimes Records Office

Underlying Problems

The problems presently besetting the police force are fundamental and, to be fully appreciated, must be placed in the perspective of the past fifteen years.

Para-military policing. A para-military approach dominated the structure, thinking, training and practices of the police force prior to independence. None of the efforts made before independence or since have been able to shake this dominant characteristic. Continuing demands for special mobile police squads, the persistent reliance upon disciplinary charges for misconduct, and all the other trappings of the military force such as the emphasis on rank, uniforms, saluting and a clearly demarked status between officer and non-commissioned officer in pay, benefits and housing, perpetuate the military character of the Papua New Guinea police force. Senior officers severely frown on any fraternisation of junior officers with "the men".

There is a very limited role for para-military policing in Papua New Guinea. In depth policy revisions within the police force concluded in 1978 and again in 1982 that a community based police force was required Thus far the police have grossly underestimated how much effort must be invested in changing the police force to a community based mentality. The police have not appreciated that more than simple policy directives are required. Senior officers must abandon some, and severely temper many, of the other attributes of a commissioned rank. Many class distinctions in pay, benefits and rules of acceptable social conduct between commissioned and non-commissioned officers must be replaced by distinctions based on experience and responsibility. Further, the distinctions cannot be as sharply defined The inflexible, highly structured working environment of a paramilitary force must be replaced by a much more fluid, cohesive system that encourages team work and a higher degree of mutual regard

The persistent military nature of the police is, in part, responsible for the present deficiencies in the police force. For the reasons articulated by the police in their policy reviews of 1978 and 1982 and for many other reasons, until the police become a community based police force they will continue to be progressively less capable of adequately handling crime in Papua New Guinea

The police must begin to think, train and behave like a police force that lives, works and becomes an integral part of the community. More than just moving out of barracks, out of squad cars, out of large fortress-like police stations, it is necessary to change a force which is rapidly becoming an alien invasion force into an integral part of community life. -A military force can never be incorporated harmoniously into a community. A policeman who relies on commonsense, discretion, trust, and uses his legal powers always as a last resort, can become a vital resource in any community.

If the police do not immediately focus on becoming a community-based force they will lose the opportunity to cope with crime within the constitutional framework of a democratic society built upon protecting the rights of each citizen. As law and order problems rapidly escalate, the temptation to resort to "meki m save" tactics becomes progressively less resistible. These tactics mark the beginning of an irreversible march to the destruction of the founding principles of Papua New Guinea.

Some may regard these dire predictions of failing to transform the police into a community based force as alarmist speculation....Sadly the demise of law and order creeps imperceptibly to calamity along many roadways...an inappropriate form of policing is one of the more prominent paths for the collapse of the justice system's ability to deal with law and order.

Career Planning

The careers of senior officers and the turnovers in key positions reveal a startling number of transfers and short postings. Few key positions are held for more than two years and many change every year. With a few exceptions, senior police officers in the past 10 years have averaged a new posting every year. Some postings were as short as 4 months, few were longer than 2 years. The present Commissioner has held 12 different posts in 12 years.

Short term postings profoundly devastate operational efficiency and severely undermine attempts to initiate remedial measures or to implement new policies.

Many transfers call for markedly different skills than required in previous postings. Officers are moved from prosecutions to field commands, from training to unrelated specialist tasks, from administration posts to investigations, and from rural to urban postings. In each new assignment, the officer has insufficient time to become proficient in the specific skills required for his new responsibilities. After ten years of rapid transfers senior officers have neither accumulated useful experience nor significantly developed any professional police skills. Most frankly admit the deficiencies of their experience and earnestly wish for better training. Conversely, officers who have remained in one position for five or more years exhibited a sense of pride in their skills. Their competence was recognised by other police officers, and often by lawyers, judges, magistrates, civil servants, businessmen and in some cases by the community. The officer's morale was high and his enthusiasm for his work was obvious. Having had the opportunity to master professional skills, the officer confident in his ability was encouraged by positive feedback from many different quarters. In contrast officers who perpetually moved from job to job complained they never received any feedback, good or bad.

Senior officers having experienced a very varied police career may be essential for certain command or administrative positions requiring the skills of a generalist. However, even generalists must remain long enough in any one job to acquire more than a superficial understanding. The measure of a good generalist is a working understanding of many different fields. Anything less is akin to a tourist whose hurried visits to different countries provide a fleeting impression of the terrain, climate and the people but provide absolutely no discerning comprehension of the political, economic or cultural dynamics of the country visited. To the unsophisticated, such a tourist may expound nonsense without detection- to anyone with experience his superficial expertise is readily dismissed. The police officer whose career has carried him as a tourist from one posting to another knows his abject limitations and is unlikely to manifest any self-confidence in the company of professional policemen who can easily take the measure of his experience. One officer complained -

> "Before I can do anything worthwhile, I get my marching orders ...I feel silly, people might believe that to move so quickly and so often is because I am always buggering up."

Another said -

> "Lose interest in doing anything because you don't get a chance to see it through...just as you get started you get moved."

An honest self-critical police official said -

> "Last few jobs ...don't really believe I have accomplished anything...except to get promoted...never had the time in any one job to do it well."

These comments by senior officers typify the feelings of many who have been repeatedly transferred in the past ten years. Past experience fosters the prevalent anticipation that transfers are always imminent. Fearing that time is limited in any one job, many senior officers doubted their ability to invest the necessary time to thoroughly assess their new working environment with a view to inaugurating carefully considered improvements. Being realistic about the duration of their tenure, their initiatives to effect changes are often compelled to rely upon superficial assessments and expedient implementation strategies. These practices engender very little job satisfaction and often promote negative responses from others exposed to sudden and ill-considered changes imposed without extensive consultation.

Without adequate time to know, and become known in, local communities, new commanding officers acknowledge they often did not appreciate the particular needs of the area. Without an opportunity to build a network of local contacts and to establish their credibility, they were significantly hindered in realising their objectives. Rapid transfers have become notorious - and so has the criticism from the police themselves, e.g.

> "Just as someone is doing good... they move him out...and we get right back to square one...the same old problems reappear."

Magistrates are equally aware of the deleterious effect of transfers e.g.

> "Some police have been good...but bF-`-)re they can get stuck into the job they're gone."

> "He has been excellent...enormously helpful to us...we are really afraid they will transfer him now."

Removing officers who have begun to develop a posve rapport with local communities adversely affects the momentum of fruitful initiatives between policeman and the community. These initiatives are often built on trust between the individuals involved. Often transfers seem to occur before police linkages with the community have been sufficiently solidified to survive the disruption of key people leaving.

Subordinate officers and non-commissioned ranks whose transfers are less frequent, become acclimatised to the rapid turnover of senior or commanding officers. They realise that as the new officer will likely be re-posted, compliance with his proposed changes may be stalled until he departs. In their view, the old ways will survive the new officer, and subsequent officers will likely attempt new changes or revert to old practices. This view breeds indifference to the initiatives of new officers. Lower level officers told us -

> "Its no matter how I do it the results are the same. Officers come and go... each brings new changes but very little gets changed.. I continue like before and soon he is gone."

> "If we're slow to accept changes either the new officer gives up or is gone before the changes stick."

Important new policy directives become delayed or distorted due to rapid turnovers in key positions. Policy changes of any consequence require sustained efforts to become a working part of police practices. The ability to mount the requisite sustained effort is sapped by frequent changes in key positions. Senior officers seldom remain in one position long enough to comprehend the implications of new policies, to evolve a strategy to implement them, and to make adjustments in related police practices to accommodate the changes. All in all much more than a year must be invested to implement any significant policies. There are numerous examples of widely proclaimed policies being ignored in the field. This is not an act of disobedience, rather a function of the new policies not being communicated and processed down to line positions.

The persons who conceived new policies and the persons who designed implementation strategies are often posted to new assignments before the new policies are translated into practice. Interviews of officers responsible for designing new policies and of their successors revealed markedly different versions of policy objectives, and how the objectives could or should be realised

Endemic to any organisation characterised by rapid turnovers among senior management is widespread confusion about basic objectives and directions. In the absence of any readily accessible comprehensive procedural manual, numerous changes of senior management personnel generate confusion for line personnel as well as for managers. Do-nothing attitudes are often a consequence of this confusion.

Expenditures and losses in manpower involved in rapid transfers are staggering. Most senior officers have families. The relocation costs for the officer and his family drain funds from training and rectifying other deficiencies undermining police efficiency.

If the new position involves relocating a family, the officer will require at least six months to settle in and properly comprehend his new social and working environment. Some positions may require less adjustment time but in all positions, especially those involving fundamentally new skills or requiring local knowledge, the adjustment period may be considerably more than six months. If the officer has any "new broom" ideas a further six months will be required to monitor and fine tune even simple changes. Conservatively, by at least the last several months before a transfer is made or expected, the person has begun to withdraw his involvement. Thus the period of adjustment and withdrawal is almost a year. During this time effective utilisation of manpower is marginal. Senior positions are held for a year and seldom for more than two years. Once holiday, compassionate and training leave are considered, if the officer is moved to new postings every two years the annual wastage of manpower may be quite significant.

Whatever virtue there may be in grooming generalist police officers, the exigencies of modern police work place a high premium on specialists. If not promotion, certainly pay and other conditions of employment must offer attractive rewards to bright and dedicated police officers wishing to develop expertise in one line of police work. Some good officers must be encouraged to become specialists; a police force of generalists cannot cope with the emerging policing problems of Papua New Guinea.

Certainly some transfers are unavoidable and circumstances may prompt immediate re-assignment to protect the best interests of the policeman or the force.

Most re-assignments involve uprooting families from schools, jobs and friends. It is simply short-sighted and counter-productive for the police force to overlook the well-being of the policeman's family. An unhappy family will eventually produce an unhappy policeman. Most police believe the department's position is succinctly summed up by the attitude the force hires the man not the family". If this attitude still governs posting decisions, loyalty to the police force will be chronically in conflict with commitments to family responsibilities. In the final analysis the police force will be the loser. Ultimately this conflict will undermine his morale, precipitate the demise of his loyalty to the force and jeopardise the emotional well being of his family. The wives of some policemen have been forced to abandon their careers due to short postings and re-assignments on short notice. The rapid turnover of postings has caused children to change schools annually; some have changed schools three times in two years.

Police work by itself imposes grave sacrifices on family life. Care must be exercised to avoid adding to these sacrifices by unnecessary additional burdens caused by narrowly conceived posting decisions. The best interests of the police force are synonomous with the best interest of the policeman's family life. Consequently, posting decisions must embrace not only what best serves the force and the policeman's career but equally the consequences to his family must be taken into account. This certainly does not preclude postings to different regions; it does call for longer postings, more advanced notice, and wherever possible preference should be given to postings that impose the least disruption upon family life.

Police morale

There is a widespread feeling that morale in the police force is very low. Those who believe morale has improved point to recent pay increases and a depressed economy that supposedly make police happy just to have a job. The majority view that morale in the police force is still as bad if not worse is much more persuasive. Most policemen and officers interviewed were extremely concerned about the low morale permeating all ranks.

Morale is obviously affected by housing, equipment, promotions and training, transfers and discipline as well as the standing in the community. Deplorable barracks for single policemen and inadequate accommodation for married police create resentment, unpleasant home environments and generally create the feeling that the police force will not or cannot look after the interests of policemen. In some cases essential transfers cannot be made because of housing shortages. Even a casual observation of some of the housing provided for police supports the legitimacy of chronic complaints. A bad home environment creates domestic disharmony, and sends the policeman to work disgruntled and distracted

Inadequate resources precluding competent discharge of responsibilities, depressing work conditions caused by dilapidated, crowded or simply unpleasant office accommodation, and inappropriate personal gear and uniforms, all contribute to a lack of pride, and to frustration, adversely affecting morale.

That promotions are more often given on the basis of seniority than on competence, is a widely held perception and a commonly expressed complaint. Armies, police forces and all other major institutions inevitably experience a lot of internal grumbling about pay, promotions and working conditions. (Perhaps an unavoidable past-time innate to such institutions.) It was not possible to ascertain if any specific significance should be accorded to these complaints. But clearly, such widespread dissatisfaction requires at least some clarification by senior management of the policies that are employed

Constables and officers agree - the training they received at Bomana has not properly prepared them for police work. Many are confused by the differences between training and what they experience in the field. Police know they are often not capable of doing the job required A lack of confidence in their skills to take effective action severely undermines police performance and morale.

Non-commissioned officers do not get transferred as often as they should, and officers get transferred more often than they should. Non-commissioned officers based on police policies expect to be transferred every five years. When they are not moved, and want to be moved, and see officers moving all the time, the policemen feel neglected and conclude that the police force does not regard their interests with the same priority accorded to officers.

Officers seldom hold one position long enough to acquire any job satisfaction or proficiency[1]. For many of them rapid transfers undermine their morale.

1. See Appendix A.212, "Improving the Police".

In 1983 there were 949 minor and 341 major disciplinary charges including 126 criminal charges laid against police officers and men. Since 1969 the rate of disciplinary charges has risen from 21.7 per cent to 28.7 per cent in 1983[1]. The rising level of disciplinary charges indicates that something is very wrong. A lack of discipline and professional pride is commonly credited by officers as the underlying cause of numerous disciplinary charges. Policemen commonly blame inadequate training and a lack of supervision. They claim they were never told or shown properly how to do what is often the subject of charges. The types of conduct constituting disciplinary charges bear out both explanations, but also indicate an excessive reliance on disciplinary charges.

The skills of positive management, reliant on encouragement, supervision and discretion, seem to be less prominent than the penchant to confront indiscretions, mistakes or lapses in standards with disciplinary charges. Relying on disciplinary charges to "whip the men into shape" is a sorry substitute for proper training, supervision and leadership.

A high rate of disciplinary charges is inevitable in a police force trained to employ militaristic management practices, and suffering from overwork. Numerous disciplinary charges inject feelings of hostility between superiors and subordinates and create a pervading fear of sanctions that often promote inaction. A do-nothing attitude is often perceived as the best insurance against disciplinary charges.

Excessive reliance upon disciplinary charges to combat indifference, insubordination, sloppy work habits, and other minor breaches of police standards undermines morale and often precipitates the very problems disciplinary charges are employed to resolve. Disciplinary charges should be employed as a last resort. One senior officer commented

> "It is unfortunate but absolutely true - the discipline in the constabulary has never been as poor as it is today...problems of discipline are much deeper and more complex and cannot be rectified simply by charging someone. As a result of this poor discipline, the morale is at its lowest ebb."

Mounting, aggressive public criticism of the police adversely affects morale. Everyone had a handy horror story to tell about police incompetence; most of them stretched in the telling. There were the exceptions in praise of police work,

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1. RPNGC Annual Reports and Headquarters information.

but the widespread perception of police incompetence signals more public displeasure than is healthy for the force and much more than the usual allegations recklessly thrown at large institutions whether deserved or not. Much more devastating than the widespread reputation for incompetence, is the emerging reputation for discourtesies to the public, for arrogance, for violence and for unseemly, often criminal public behaviour. Nothing will put greater distance between the public and police than a surly, arrogant and violent police force that is disrespectful of the law and the rights of citizens.

Complaints against the police addressed to the Ombudsman are increasing in number, the more so in respect of justified serious allegations of abuse of police powers.

The complaints range from accusing the police of stealing to vicious assaults and rapes. Some of the allegations are infamous and remain unresolved for years. In 1979 the police were publicly accused of many illegalities including the rape of a 10 year old girl during a police raid.

While there may be internal enquiries and stiff disciplinary penalties including dismissal, this is not sufficient. Criminal offences by policemen must be brought to trail. The police force must be clearly seen as being subject to the same laws and punishments as any member of the public.

A disturbing number of allegations suggest that police are involved in a number of property crimes; stealing or handling stolen property for organised gangs. Despite numerous allegations, we found little hard evidence. In a police force of over 4,000 men, some will turn to crime. The corruption and blatant criminal involvement characteristic of some police forces in developed and developing countries is not a problem in Papua New Guinea. Certainly a police force disliked and abused by the public, and improperly supported by government, will find its way, through frustration and poor morale, to apathy and ultimately to corruption. If there is a natural progression, in police forces that are overworked, undertrained, publicly abused and unsupported by government, towards corruption, then certainly the Papua New Guinean police force is at risk.

Unfortunately an increasing number of police lack sufficient professional pride to avoid unseemly and disorderly conduct off-duty. A policeman cannot afford to stop being a policeman. Neither his professional duties nor a highly critical public (with unrealistic expectations for police conduct) will allow it. Public drunkeness and brawling drag down the public image of the force.

Most of the discourteous, arrogant, and even violent police responses to the public stem from poor training. Without knowing how to handle difficult situations in a peaceful and orderly manner, an inexperienced policeman often resorts to force. The police acknowlege that many untrained officers and men are very unprofessional in their attitudes and their approach to the public (Royal Papua New Guinea Constabulary 1983 : 5).

Police deficiencies have been, and will continue to be, compounded by mounting adverse public criticism. Police, especially young and inexperienced police, are often incapable of coping with public criticisms and often over react (ibid.). Until the public attitude changes, efforts by senior police to inspire and motivate policemen will be severely handicapped. Certainly the police must earn public respect; but equally the justice system must educate the public to be more realistic in their expectations of what the police and the justice system can achieve.

Pre-Independence deficiencies

Several of the major problems presently plaguing the police force arise from deficiencies that pre-date independence. All the shortcomings in specialised skills, management, investigations, and prosecutions began before independence. In all the specialised police fields, training programmes were inadequate. In both urban and rural areas police practices did not adjust sufficiently to the changing social and economic conditions that came with independence. The deficiencies in the police force were not readily apparent as the level of crime prior to independence was essentially within the coping capacity of the police and justice systems. A steadily increasing level of crime from 1970 to 1976 began to reveal police deficiencies which had been previously less apparent due to lower levels of crime.

Two crippling blows hit the police force at the same time. From 1973 to 1976 the police force rapidly localised. Coincident with rapid localisation, the steadily increasing crime rate exceeded the coping capacity of the police. The police force had not properly prepared for either.

Absence of long-term planning

Throughout the justice system the delivery of legal services has gradually declined. Deficiencies in one agency have compounded the deficiences in other agencies. Less experienced magistrates, judges and public prosecutors attenuated the deficiencies of the police force. By 1980 a rising crime rate coupled with a general deterioration of legal services in all justice agencies began to foster

severe public criticism. Mounting public pressure for more visibly effective results kept the pressure on all justice agencies and especially on the police to produce immediate results. The symptoms of crisis management began to permeate the police force. Short term solutions reliant upon stern and often questionably legal measures were adopted. Rapidly changing senior positions contributed as much to crisis management as rising crime levels. In this management environment, police concentrated almost exclusively on meeting the exigencies of each day. Planning for the future, ignored before independence, continued to be ignored. Without a proper commitment to planning for the future, police practices have not evolved to keep abreast of changing demands for police services. Training programmes to develop essential skills and long term strategies to implement police policies were sacrificed to the dictates of attending to immediate concerns. Without committing adequate resources to planning for the future, the ability of the police to cope progressively deteriorated Presently even modest improvements will not significantly affect the widening gap between the coping ability of the police and crime.

Chapter l3

CORRECTIONS

The corrective institutional system of Papua New Guinea still reflects the colonial period when longer term prisoners were housed in larger central prisons under the control of a prisons department, and minor offenders were the responsibility of the local administration - which of course also had control of the local courts and of local policing.

Since independence the central professional departments have sought to extend their responsibility for a national system, and the autonomy of the local authorities for law and order has been progressively curtailed

Papua New Guinea has 23 major corrective institutions and its average prison population, at any given time, is between 4,000 and 5,000 inmates. In 1983 there were, in addition to the central institutions, 89 rural lock-ups which the provincial administration formerly used for the short-term punishment of minor offenders who had been caught and prosecuted by the rural police and convicted by the kiaps or district officials. The inmates of these rural lock-ups were then used for local road making or town cleaning.

In recent years, the central government has been closing down the rural lock-ups which were staffed by casual employees and which frequently alternated between total emptiness and hopeless overcrowding. When large numbers were arrested at a period of tribal fighting the rural lock-ups were often crowded and conditions declined to unacceptable levels. At other times they were unused for weeks or months and physically deteriorated

The closing down of rural lock-ups has been vigorously opposed however not only by provincial administrators, but by politicians at provincial and national levels who believe that minor offenders serving short sentences should be held locally and made to do community work of a demeaning nature under the eyes of their neighbours. They believe that this was - and is - a greater deterrent than incarceration in a distant central institution in which they will be brought in contact with more hardened offenders and spared the shame of serving their sentences in their own communities. In the light of our recommendations for a broader use of the informal system it would seem necessary to look again at the value of rural lock-ups from which community work can be organised. No person serving less than two months imprisonment should be moved out of his own area.

The objection of the central corrective department to a perpetuation of the rural lock-ups is that they cannot be maintained or serviced to the levels required by the United Nations Standard Minimum Rules for the Treatment of Prisoners. And it is true that the modern provincial administration has no longer either the local status and authority or indeed the resources to maintain the institutions for which they used to be responsible. On the other hand the geography of the country means transporting inmates over huge distances to attend court or moving them on reclassification, and this imposes a hardship on visiting relatives who have to find fares. This is a consideration not to be overlooked when there are local alternatives to imprisonment.

Another reason why the geography is important is that the Corrective Institutions Service is also seeking to close down some of the smaller of its 23 major institutions. It argues that some of the present major institutions are small and uneconomical to run as well as limiting the self-help projects that can be considered. There is a proposal to reduce the number of major institutions from 23 to 14 with a maximum of 1,000 inmates and a minimum of 300 to permit optimum staffing levels and to allow for each prison to have its own food gardens, cattle, pigs and poultry production. The objective would be to make each institution self-sufficient.

A policy submission to the National Executive Council seeks support for the withdrawal of NEC Decision NG21/82 which amalgamated corrective services and police training facilities and which appears never to have been satisfactorily implemented. Instead over these years the training of both services has deteriorated Indeed the new commandant of correctional training was recruited and took up duty in May 1983 - although funds for separate training had been eli minated in November 1982 by the above NEC Decision.

A Committee of Review in April 1979 and a Commission of Inquiry in August 1980 drew attention to much that needed to be done in the development of the Corrective Services Department. Little was done although administrative action was proceeding as this was written to establish a unified and properly structured prison service. There has also been a three month study of corrections by an ex-army officer commissioned by the Minister. We have not had the benefit of seeing those recommendations.

Organisationally the present service is unsatisfactory to the service itself. The "officer" ranks are in the public service whilst "other ranks" are employed under a separate Act which gives them markedly inferior conditions. In any case the service is conscious that it tends to recruit only those who have failed to achieve entry to either military or police service. Amongst the uniformed services the corrective institutions ranks low in public prestige and status.

The Problems

To suggest that the prisons of Papua New Guinea are not working is not, in itself, a condemnation. Very few prison systems around the world are working in the sense of reforming or deterring offenders. Incarceration is an unfortunate necessity to incapacitate those who are a danger to the community. It is a measure of last recourse and a penalty to be used sparingly, not only because it is the most expensive way of dealing with offenders, but because it has been established nearly everywhere that it does more harm than good Prisons are demoralising academies of crime providing contacts and teaching efficiency in criminal methods that cannot be obtained outside. They are dominated inside by organised gangs or the most vicious inmates who quickly deny the new inmate any personal life or independent decision-making. Trades learned in vocational training courses at the prison are rarely pursued on release; and since not all inmates can be fully employed on meaningful work schemes, a prison sentence is usually a period of idleness and enforced deterioration making the prisoner much less capable of sustaining himself respectably in society when he comes out than he was when he went in. Remands in custody of persons not convicted of crime - even when for brief periods - expose the accused to a prison culture that demoralises more than it deters, and if he happens to be on the edge of criminality he will be quickly sucked in by incarceration. Wherever possible therefore imprisonment is to be avoided - or used sparingly - and this is truer in Papua New Guinea with its compounds, crowded dormitories and minimal surveillance than it might be elsewhere. We argue in other sections of this report for sentencing guidelines and alternatives to imprisonment though we recognise that for all its inherent defects the prison has to be used for those who cannot be dealt with otherwise. Here we are concerned with the penal institutions of Papua New Guinea and the unreal expectations of many who criticise them. However more efficient they may become they will not usually reform or deter and will more often than not make the inmate worse. The prisons are most effectively used when they are not used at all. If that cannot be then it must be axiomatic that they be used as little as possible.

All that is true of prisons generally; but in Papua New Guinea the prisons are worse than the average across the world because they are poorly staffed and deplorably administered Existing conditions are the despair of reasonably trained officers who know what is needed but cannot supply it. As said elsewhere about the police, there are reasonable policies but not a hope in a million that they will be implemented. Middle management in the prisons is practically non-existent. Simple routines are not maintained, the data for decision-making is defective and the fact that senior administrative staff do no shift work at all robs the service of effective leadership. Record keeping is poor, communications grossly inadequate, security is minimal and escapes endemic. Distance alone makes effective centralised administration difficult in Papua New Guinea but both discipline and supervision seem so lax that both the custody and care of prisoners leaves much to be desired It is astonishing that with such a lack-lustre establishment, the failure of supplies, inadequate supervision, and the paucity of leadership that there is not far more trouble in the correctional institutions than there is now. Indeed, as the system has disintegrated, the Ombudsman Commission and the National Court (in one case) have been insisting on minimal standards in prison and they have thereby infiltrated the administration which has become wary of their intervention. The prison officials' reaction to such outside

(but authoritative) intervention has been generally bureaucratic. There is passive obedience of all instructions - but very li mited initiative to stimulate and improve the system. This has all the disadvantages of "working to rule" with the added complication that not all the rules are known or understood - and for those that are, the precise levels of compliance have not been spelled out. It is no exaggeration to suggest that, as now being run, the prisons are not able to comply with either the human rights provisions of the Constitution or a number of the United Nations Minimum Standard Rules for the Treatment of Prisoners.

It would be superfluous for this report to detail the shortcomings of this service. They are notorious and have been the subject of reports, inquiries and complaints substantiated by subsequent investigations by judges, and the Ombudsman Commission. Very simple things undermine effectiveness and efficiency. The telephones are frequently unreliable and there is inadequate radio linkage for emergencies. As with the police, the housing problems mean that some of the best staff may be lost when they marry. Supplies are not always dependable and many prisoners cannot be issued with the minimum of clothing. Risks are taken with prisoners being allowed to go out for work unsupervised. It seems that inmate cooks at Bomana, for example, are let out of the compounds at 5.30 a.m. to walk unaccompanied to their work at the other end of the Bomana complex. With the present system it is impossible for the officers to influence the activities of prisoners inside their compounds. Any organisation or control is provided by the prisoners themselves with gangs obviously dominating. When they decide to escape or break out there is no way that the small numbers of staff on a given shift can prevent them - unless they get substantial reinforcements immediately. This is possible at Bomana where there is the training school and local housing of off-duty staff. It is problematic elsewhere.

The enforced idleness of so many in the prisons is serious anywhere and especially serious in Papua New Guinea. It is understood that the Corrective Institutions Service itself has made detailed proposals for the ways in which prisons might become more industrious and indeed self-supporting. This can be achieved now - but to get the incentives and ingenuity for future developments it is essential that the income generated should not be channelled into consolidated revenue i.e, lost in government receipts. It should go into a rolling fund for correctional institutions to finance further productive projects. Only in this way can officers and inmates combine with the incentive of seeing the movement grow. In addition it might be possible for Papua New Guinea to involve the private sector in the installation of plant for the use of prison labour - the private sector being allowed the prison labour at a discount - say - two thirds of the market rate - to provide an incentive. This would mean the offender earning his keep, the prisons being self-supporting to a great extent and the families benefiting, more than that it would provide incentives and qualifications for work on release. Above all it would tend to break down the gang domination of prisons and help the private sector to obtain more understanding of the prison problem. Models of this kind of business organisation of the prisons are readily available in Malaysia and Singapore - and Japan has recently copied the Singapore approach! The only objection in Papua New Guinea is the huge unemployment problem. Why should prisoners be allowed to earn and therefore have an advantage over non-prisoners? On the other hand why should prisoners be kept in idleness at the expense of taxpayers? We cannot solve these problems - to some extent they are political - but it is fundamental to good order and the success of the prison system that prison industry be well organised and productive.

For the purpose of this study the Corrective Institutions Service kindly produced a comparison between the numbers of persons held for imprisonment and remand in the various institutions coming under the control of the service on 31 August 1974 and on 31 August 1983 i.e. before and after independence. This information has been summarised in Tables 13.1 and 13.2. These are not averages but persons actually in custody on the dates shown. Table 13.3 is the return submitted by the colonial administration to the United Nations up to the 30th June 1973 - with again little change. It seems as if the total inmate population hovers around the 3,900 to 4,000 mark and that this population has remained virtually unaffected by all the concern about law and order in Papua New Guinea during these dramatic years. Though the figure varies this generally gives a rate of imprisonment of about 140 per 100,000 in Papua New Guinea. This is more than double the Australian rate of 60 per 100,000 and is way above the 80 per 100,000 in the United Kingdom and 90 in New Zealand It is more than three times the rate of Japan (46 per 100,000). It is important to add, however, that the Northern Territory of Australia has an imprisonment rate of over 200 per 100,000 and that Fiji and Indonesia have imprisonment rates not too different from Papua New Guinea. Nevertheless any idea abroad that Papua New Guinea is lacking in its use of imprisonment can be dispelled by international comparison.

It should be noted however that the numbers of remands in this same period practically doubled - from 6.18 per cent of the total in 1974 to 12.92 per cent of the total in 1983. This would appear to reflect a decrease in the use of bail or extended periods of remand in custody due to delays in court hearings or failure on the part of the police to process the case expeditiously. At one prison a quick check of 10 of the longer term remands revealed one who had been held on remand for the National Court for 9 months, 6 who had been on remand for 6 months, one for 5 months and another for 3 months.

In Australia in January 1984 the national rate of remandees to convicted persons was 10.9 per cent but South Australia had 17.0, the Northern Territory 14.7 and the Australian Capital Territory 18.2 per cent. Papua New Guinea's 12.92 per cent does not appear disproportionate. However, when one counts the remandees in custody as a proportion of general population then Papua New Guinea with 19.2 per 100,000 exceeds threefold the Australian average of 6.9 per 100,000 and is more than double that of any Australian state except the Northern Territory which had 27.8 per 100,000. The remand rate needs to be carefully watched therefore as an indicator of court delays (already discussed) as a guide to non-guilty pleas and as a problem for the prison authorities. It is not only that remandees are not convicts and have to be treated differently but also that some of them are well known recidivists spinning out their time as remandees with special privileges before they are convicted and become ordinary prisoners.

Figure 13.1 presents an up-to-date picture prepared by the Service of the change between 1978 and 1983 using only the figures for male adults. Once again the doubling of remands is evident and it appears possible to trace the change from 1978 rather than 1974.

Table 13.1

Detainees in custody and remand for month ending 31 August 1974

Institutions	M/A	F/A	M/J	F/J	N/N	Remand	Total
Major Central	1129	36	30	-	4	89	1288
Central	560	17	4	-	-	33	614
Major Area	1030	29	16	-	-	75	1150
Minor Area	762	55	-	-	-	45	862

Table 13.2

Detainees in custody and remand for month ending 31 August 1983

Institutions	M/A	F/A	M/J	F/J	N/N	Remand	Total
Major Central	1290	63	81	-	4	246	1684
Central	1139	94	40	-	-	180	1453
Major Area	598	40	21	-	-	71	730
Minor Area	100	3	10	-	-	20	133
Grand Total	3127	200	152	-	4	517	4000

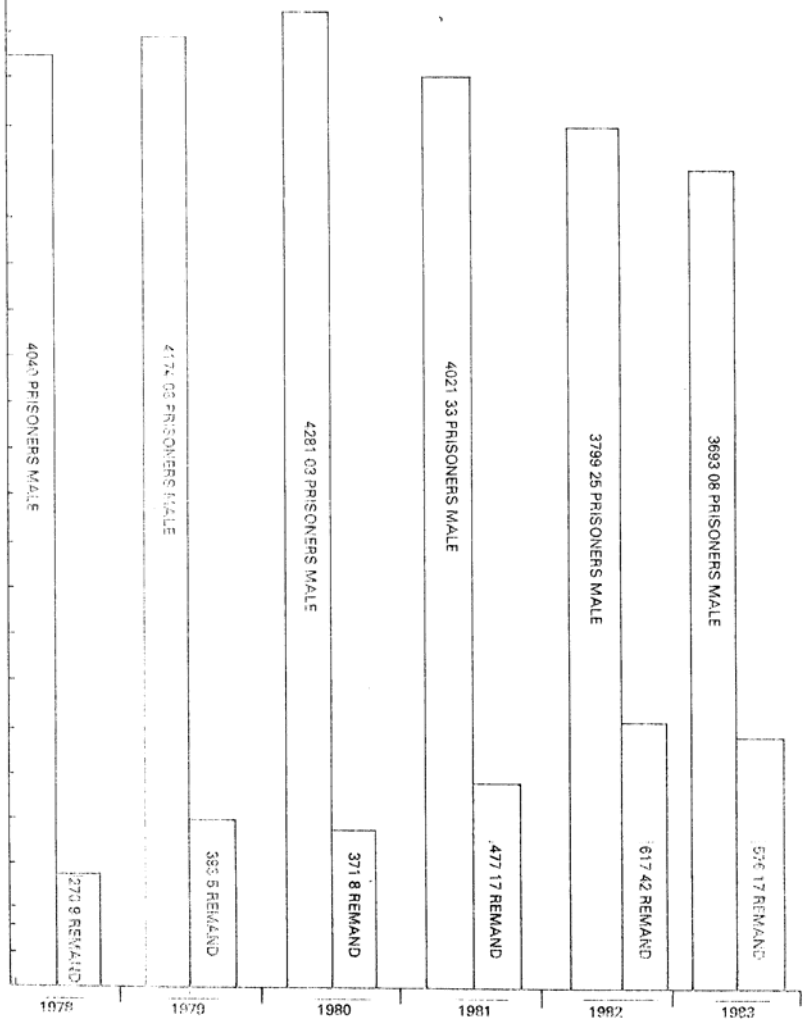
Notes: M/A denotes male adult
F/A denotes female adult
M/J denotes male junior
F/J denotes female junior
N/N denotes non-national.

Source: Figures supplied by Corrective Institutions Services

FIGURE 13.1

ADULT MALE PRISON POP'N

SHOWING DECLINE IN MONTHLY AVERAGE TOTAL
BUT INCREASE IN REMANDEES, 1978 TO 1983



Source:- Figure provided by Corrective Institution Services, PNG.

Table 13.3
Papua New Guinea - Penal organisation during year ended 30 June 1973

1. Persons received into Corrective Institutions from courts

	Papua New Guineans			Europeans			Other expatriates		
Terms of sentence	Males	Females	Total	Male	Female	Total	Male	Female	Total
Under 1 month	3,184	329	3,513	3	-	3	-	-	-
1-3 months	10,010	576	10,586	2	-	2	-	-	-
3-6 months	5,685	134	5,819	6	-	6	-	-	-
6-12 months	2,263	20	2,283	-	-	-	-	-	-
1-2 years	269	2	271	-	-	-	-	-	-
2-3 years	53	1	54	-	-	-	-	-	-
3-5 years	34	2	36	-	-	-	-	-	-
5-10 years	67	-	67	-	-	-	-		-
10-15 years	9	-	9	-	-	-	-	-	-
15 years +	9	-	9	-	-	-	-	-	-
Life imprisonment	1	-	1	-	-	-	-	-	-
Death recorded	-	-	-	-	-	-	-	-	-
Queen's Pleasure	-	-	-	-	-	-	-	-	-
Total first term	20,143	1,013	21,156	10	-	10	-	-	-
Total recidivists	1,441	51	1,492	1	-	1	-	-	-
Grand total	21,584	1,064	22,648	11	-	11	-	-	-

2. Age distribution of persons under sentences in Corrective Institutions

	Indigenous			Europeans			Other expatriates		
Age in Years	Males	Females	Total	Male	Female	Total	Male	Female	Total
Under 14	4	-	4	-	-	-	-	-	-
14 end 15	21	-	21	-	-	-	-	-	-
16 and 17	100	1	101	-	-	-	-	-	-
18,19 and 20	498	19	517	1	-	1	1	-	1
21-24	736	40	776	1	-	1	-	-	-
25-29	983	39	1,022	1	-	1	1	-	1
30-39	1,136	32	1,168	2	-	2	-	-	-
40-49	346	5	351	-	-	-	-	-	-
50-59	79	2	81	1	-	1	-	-	-
60+	6	-	6	-	-	-	-	-	-
Total first term	3,374	122	3,496	4	-	4	1	-	1
Total recidivists	535	16	551	2	-	2	1	-	1
Grand total	3,909	138	4,047	6	-	6	2	-	2

Papua New Guinea - Penal Organisation during year ended 30 June 1973

3. Terms of sentence being served at 30 June 1973

Terms of sentence	Papua New Guineans			Europeans			Other expatiates		
	Males	Females	Total	Male	Female	Total	Male	Female	Total
Under 1 month	175	6	181	-	-	-	-	-	-
1-3 months	1,226	69	1,295	-	-	-	-	-	-
3-6 months	1,170	42	1,212	2	-	2	1	-	1
6-12 months	588	2	590	2	-	2	1	-	1
1-2 years	141	3	144	2	-	2	-	-	-
2-3 years	74	3	77	-	-	-	-	-	-
3-5 years	128	3	131	-	-	-	-	-	-
5-10 years	244	9	253	-	-	-	-	-	-
10-15 years	132	1	133	-	-	-	-	-	-
15 years +	17	-	17	-	-	-	-	-	-
Life Imprisonment	7	-	7	-	-	-	-	-	-
Death Recorded[a]	1	-	1	-	-	-	-	-	-
Queen's Pleasure	6	-	6	-	-	-	-	-	-
Total first term	3,374	122	3,496	4	-	4	1	-	1
Total recidivists	535	16	551	2	-	2	1	-	1
Grand total	3,909	138	4,047	6	-	6	2	-	2

Note: a All sentences of "death recorded" have subsequently been commuted to determinate sentences. There was no sentence of death carried out this year.

Source: Return submitted by colonial Administration to the United Nations up to 30 June 1973. Table 3.

To service this number of prisoners there are 1,489 correctional officers (Table 13.4) and 130 tradesmen (Table 13.5) i.e. a ratio of about one staff member to every two and a half inmates. Actually it does not work out so in reality. For one thing the tradesmen do not concern themselves with custodial duties so that it is actually one to every 2.6 inmates : then the staff is divided into four shifts so that at any given time there are only 370.9 custodial personnel available i.e. one to every thirteen inmates. This ought to give however about 34 staff on a shift for, say, 450 inmates in Bomana prison outside Port Moresby. But in visiting there on several occasions when the total inmate population exceeded 500, we could never find more than 7-9 custodial personnel on duty. In the Post-Courier of 31 July 1984 the Commissioner for Corrective Institutions Services, Mr. Leo Kuabaal, was reported as saying that 24 correctional institution service officers working on four shifts looked after 600 prisoners. "We have only six men in charge of the 600 in every shift" he said. It will be seen from Table 13.4 that the numbers shown as stationed at Bomana are artifically bloated by the 147 at the staff training centre. This reduces the total per shift to 335.5 and the notional number for 450 inmates at Bomana on a shift to 25.7. In fact allowance has to be made for staff distribution, leave, sickness and other duties. To appreciate what has reduced this figure to that given by the Commissioner there have to be the allowances for leave, sickness etc but also consideration given to the fact that the 24 senior staff at Bomana do no shift work. The need for this to be looked at carefully is underlined by the fact that a 4,000 prison population does not reflect the extent of correctional officer's responsibilities. The figures provided in Table 13.3 show that for a prison population of 3,909 in that year (1973) no fewer than 21,584 persons were actually received into custody. And the Services' Annual Report 1977-1978 shows that for 4,212 detainees on 1st July 1977 some 16,000 had been processed through the system. Thus counting the ratio of staff to prisoners is very basic. It does not reflect all the extra duties for which more rather than less staff is required. And in his newspaper interview of 31 July, Mr. Kuabaal complained that his manpower had been reduced by 1,000 since 1982. The newspaper in an editorial supported Mr. Kuabaal and said the figures he gave showed a ratio of 100 prisoners per officer.

As already indicated the fact that commissioned officers do no shift work leaves much to be desired by way of management and has imbedded in it the seeds of a great deal of future trouble. Though housed near or at the prison the senior correctional staff is virtually out of touch with events after 4.00 p. m. each day. The opportunities for staff to neglect work or take risks - to sleep or absent themselves are unnecessarily increased; and when there are mess parties it has not been unknown for those on duty to take time off to attend for a little while to take drinks. The women's compound is manned from 4.00 p. m. to 5.30 p.m. by a civilian employee - the wife of a warder. She then locks the inmates in their dormitories, padlocks the compound and goes away. Apart from a patrol around the outside by the male officers on shift the women are cut-off and without communication in locked quarters for more than twelve hours of every day. What happens about sickness or violence in the middle of the night can only be imagined. B. Division, the maximum security section confines men to limited space with limited air circulation and no lights other than those in the corridor. Here there are two officers on night shift who are expected to inspect occasionally during the night but there are no means of communication for anything going wrong between those patrols - and without middle management supervision the extent to which inspections are faithfully carried out is open to question.

Table 13.4

Correctional officers & assistant correctional officers strength
by institutions by designation

	C.O.	CACO	SACO	Grade 2	Grade 1	Probat-ionary	Recruits	Total
Baisu	7	1	11	30	86	20		155
Barawagi	1	1	8	16	35	6		67
Be'on	2	1	6	10	28	6		53
Bihute	3	1	6	16	41	3		70
Biru	3		1	11	27	2		44
Bomana	11	2	21	26	59	22		141
Boram	4		11	11	40	6		72
Bui/iebi	4	1	13	17	39			74
Buimo	9	1	8	15	52	13		98
Bundair	2	1	4	8	46	2		63
Daru	1	-	6	5	17	5		34
Gili Gili	2		3	8	16	2		31
Headquarters	19	1	6	10	17	14	2	69
Kavieng	3	1	7	10	17	4		42
Keravat	6	2	10	16	35	10		79
Kieta	3	1	6	2	24	7		43
Laigam	2		2	7	17	3		31
Lakiamata	2		3	4	32	6		47
Maximum Security			1	5	8	4		18
S.T.C.	6	1	7	13	20	9	91	147
Tari	1		4	4	22	2		33
Vaniumo	2	1	3	6	9	8		29
Kandrian			1	1	4			6
Ningerum			1	1	6			8
Wabag	1	1	5	9	12	2		30
Recruits								
Course Adcol	3							3
Course UPNG	2							2
Total	99	17	154	261	709	156	93	1489

Notes C.O. denotes correctional officer
CACO denotes chief assistant correctional officer
SACO denotes senior assistant correctional officer

Source: Figures supplied by Corrective Institutions Services.

Table 13.5

Assistant correctional officers by designation by employment
month ending 31 January 1984
Bomana

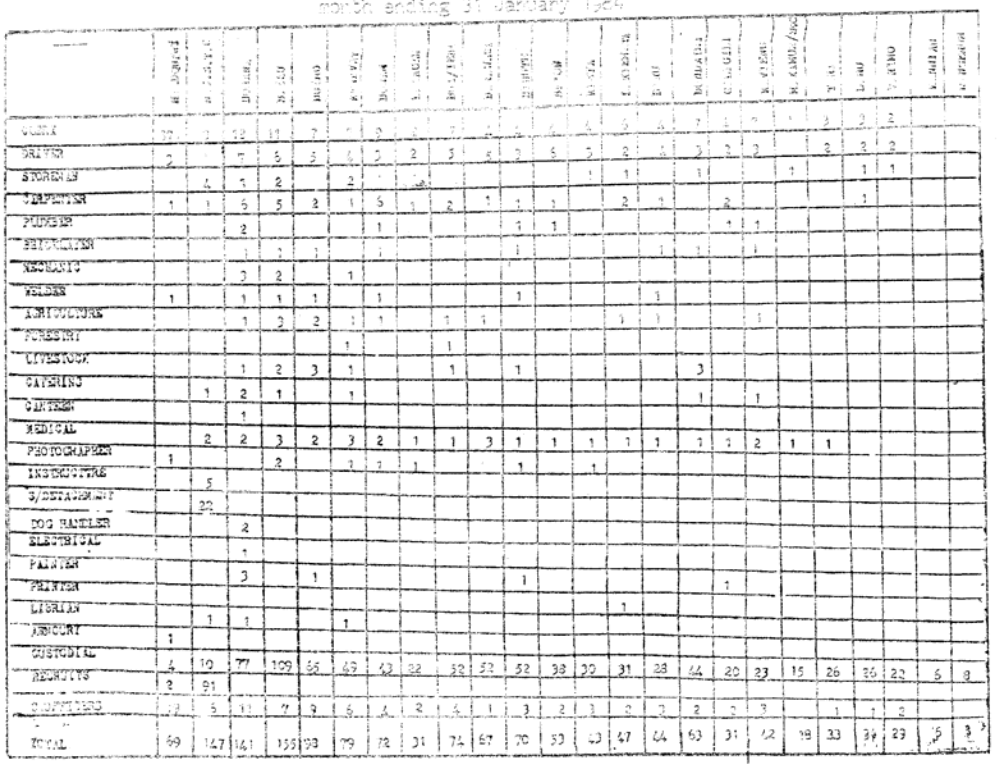
Employment Status	Designation					
	CACO	SACO	Grade 2	Grade 1	Probationary Recruits	Total
Clerk	1	3	4	6	4	18
Driver		2	2	3		7
Storeman		1				1
Carpenter	1	2	2	1		6
Plumber			2			2
Bricklayer				1		1
Mechanic		1	1	1		3
Welder		1				1
Electrician			1			1
Panel Beater						-
Painter		2	1			3
Agriculture		1				1
Forestry						-
Livestock		1				1
Medical			2			2
Photographer						-
Instructor						-
S/ Detachment						-
Radio operator						-
K.B.Q						-
Typist						-
Librarian			1			1
Catering		1		1		2
Armoury						-
Canteen			1			1
Barman						-
Doghandler				2		2
Printer						-
Tea grower						-
Custodial		6	9	44	18	77
Officer cadet						-
Recruits						-

Notes: CACO denotes chief assistant correctional officer
SACO denotes senior assistant correctional officer

Source: Figures supplied by Corrective Institutions Service

Table 13.6

Assistant correctional officers classified by designation and location
month ending 31 January 1984



The role of management, accountability and supervision is crucial in corrections as in all other areas of government in Papua New Guinea The whole Corrective Institutions Service is without people trained in the supervision over other staff which they are expected to exercise. Superintendents do not superintend. Simple tasks are left undone. In the three prisons visited so far routine questions caused unnecessary concern simply because elementary records were either not kept or were not up-dated regularly. Plants died for lack of water, poultry died because they were not fed and the Ombudsman found a store with clothing for the prisoners which had not been distributed. It seems no one checks. We discovered some confusion about how the records should be kept and it seemed that the telexed information on numbers dealt with averages when it should have dealt with totals. Sometimes totals were compiled from averages! The fact that this system does not work well is evidenced by the Ombudsman's discovery of 43 persons at Bomana who should have been released - but whose release dates were overlooked - or maybe just not recorded. Names are a problem here as elsewhere but there appears to be no attempt to match a new inmate with one not long ago released. If the person is known to individual officers he will be connected with a previous file even if he has changed his name: but this does not often happen because the officers themselves change or are transferred or promoted. The Commissioner of Corrective Institutions needs no reminding of all this: he has been badgering the government for improvements. Now the situation is critical and to begin to climb out of a dangerous phase he needs several experienced prison officers from abroad to guide his men. He needs them because this experience is just not available locally.

Perhaps the most single disturbing feature of the correctional services in Papua New Guinea is the number of young offenders held in relatively unsegregated conditions with all other prisoners and detainees. This is recorded in the Annual Report for 1977-78. Admitted for the period 1st January to 31st December 1978 to the prisons of Papua New Guinea were 455 persons between 10 and 15 years of age - and 25 were female! Eight of the males 10-15 were serving sentences of between 18 months and 3 years and 39 were doing 6 to 12 months. Another 90 were there for periods ranging from 3 to 6 months and 159 had been given 1-3 month sentences. Seven days or less was the sentence for 34 of these prisoners! All the girls were there for under 6 months, the majority of them being sent to prison for between 7 days and 3 months. In Bomana we interviewed a boy of 13 who had been given 4 months and was mixed with the older men. At Baisu, Mount Hagen, we spoke to a boy of 14 sent to prison by the village court for not paying a K10 fine - and there was a boy of 8 who had been remanded to the prison in custody and was in a compound with about 500 males of all ages! In this case the age had been guessed and it was not a village court case - a town magistrate had signed the warrant: but with the date of birth unknown this child could well have been under the age of criminal responsibility. He was being charged with stealing from a shop.

It does not require this report to spell out the dangers, quite apart from the inhumanity, of using prisons that are not able to segregate and provide separate programmes for young people. Most of this is contrary to the constitution. Allowing for all the cultural variations and a general acceptance of manhood at puberty it is still obvious that youths are exposed to moral and physical danger when they are mixing in compounds with older inmates. Even if this were not so,

the prisons are notorious training centres for professional criminals and young people can be expected to come out much worse than they go in. The conditions in Papua New Guinea prisons are such that effective control over the hundreds in crowded compounds and over dormitories with 50 or more is exercised not by the correction staff but by the gang leaders who assert their authority and command respect. No young person can insulate himself from this line-up of gangs: and, on release, he is already profoundly committed to the group he has been obliged to in the prison. Looking at the economic and social consequences of the law and order situation in Papua New Guinea, this imprisonment of the young is the most expensive feature of the system designed to cost the country and its citizens much more than can be calculated in the years to come. Whatever other recommendations have to be made in this report it cannot be too strongly stated here that on the grounds of -

- Human rights - and adherence to the United Nations Standard Minimum Rules for the Treatment of Prisoners,

- Constitutional rights to dignity of treatment according to age;

- The economic and social costs which outweigh any conceivable advantages

the practice of imprisoning young people under 16 years of age should be prohibited forthwith. Legislation should be drafted as a matter of urgency by the cabinet denying the power to imprison any person under 16 to village courts, magistrates, district courts and the National Court. Similarly the power to remand in custody such young persons should be withdrawn. Orders for them to be kept temporarily "i.n places of safety" could be made. These "places of safety" could be private homes, schools, church centres, etc. Even if the funds are not available to provide adequate alternative facilities it must be recognised that to release such offenders altogether would be more humanitarian and far more cost effective than imprisonment. There is no sense in magistrates, courts or judges relieving their feelings by sending such young people to prison when the state is burdened at the other end with extending a massively expensive law and order system to deal with serious offenders who have been created by such thoughtless imprisonment.

Of course this naturally raises the issue of alternatives to imprisonment and this is an issue addressed below. From an economic point of view however it should be made clear that every alternative to imprisonment devised - probation, parole, community work orders, attendance centres and special juvenile institutions have been cheaper per head of inmate or person affected than the use of imprisonment. It is therefore not only the juveniles who should be kept out of prison but juveniles are priority number one because, in this area, criminal justice has, so often, in so many countries, rolled a seemingly inoffensive stone out of its way by imprisoning a juvenile only to have it turn into a social avalanche of hardened professional offenders that even the most expensive law enforcement cannot deal with.

Table 13.7

Average prison populations - September/December

Year	On remand	Percentage of general population	Convicted	Percentage on remand to convicted
1983	692.5	23.08	4,344	15.94
1982	687.0	22.05	4,260	16.13
1981	480.5	16.00	4,127	11.64
1980	477.0	15.90	4,726	10.09
1979	442.0	14.70	4,801	9.21
1978	413.5	13.70	4,464	9.26

Source Figures Supplied by Corrective Institutions Service

Probation

In 1976 the National Executive Council approved a recommendation from the Minister of Justice to institute probation services[1]. Based on a consultant's report, the Probation Act of Papua New Guinea was passed in 1979. In March 1982, the Minister of Justice, Mr. P. Torato pledged all provinces would have probation services by the end of 1982.[2] By January 1984, probation services except fur a volunteer service in Goroka were non-existent in Papua New Guinea.

This is quite extraordinary. Probation, one of the cheapest, most efficient, flexible and adjustable methods, appears to be resisted by Papua New Guinea for as shown elsewhere this will be the third time in 10 years that efforts have been made to provide Papua New Guinea with the incalculable advantages of a probation (and perhaps a parole) system. Australian and United Nations expertise has been provided in the instigation of the coordinator of this study - yet the effects are insignificant. The question of probation is fully explored in Appendix A.2. Sufficient to add here that the absence of probation is compounding the confusion already attending the criminal justice system. The opportunity to create a new approach to probation by using the authority inherent in the informal community controls is being lost.

1. For the history of attempts to initiate probation prior to the Act in 1976 and the use of probation in the Children's Courts refer to Bevan 1976: 175.

2. Office of Information Booklet on Probation, 1982

In other common law jurisdictions, probation is extensively used as a supplement, or as an alternative to punitive sanction. Probation's popularity with judges arises from its invaluable flexibility in combining techniques of social control and social support. In contrast to incarceration, probation offers the state a less expensive and more effective means of rehabilitation. In recognising that the protection of society is best secured in the long run by rehabilitation, both police and prosecutors acknowledge its value. By enabling offenders to repay society and victims for their crimes, probation is preferred and accepted by offenders.

Community work orders

If the story of probation unimplemented is incredible, the story of community work orders is even more so. The community work order puts the offender to work locally instead of sending him to prison. It is not difficult to administer and probation officers add this to their other duties in Australia, New Zealand and other countries. The informal customary controls we have been discussing throughout this report would be greatly strengthened if village courts could put people to work as a punishment or as a means of providing restitution. It fits the indigenous scene better than in the West where it has really proved its value.

Yet... Papua New Guinea has had a Community Work Order Act in force since 1978 and no action has been taken to implement it. Keeping people out of prison, making the prisons more effective, bolstering local control of behaviour - all these are served where community work orders can be made. But just nothing has been done!

Chapter 14

INFORMAL STRUCTURES

While government is naturally concerned with its own contribution to order in Papua New Guinea, it must also be informed about the wider context within which it makes this contribution. It must ask not only "how does the state maintain order?" but also more broadly "how is order maintained?". What are the forces in Papua New Guinea society that tend towards peace and good order? It is only against this background that government can properly judge its own role in the orderliness of our society.

We can talk about all the forces tending towards order in Papua New Guinea as constituting a system of social order, and identify the components of this system. These are of two basic types: official (state) structures and informal (non-state) structures. Both can play a part in promoting order and handling disorder. Informal structures contributing to self-regulation include shared values, public opinion, material reciprocity and political interests as well as fear of negative sanctions. Informal institutions for handling disputes include self-help by individuals or groups, negotiation, mediation by kin or leaders and moots. Official structures have been described in chapters 10 and 13 of this part. Components of the system of order are not necessarily well integrated or mutually supportive. The relations between them are a matter for investigation.

In this chapter we review the informal structures in Papua New Guinea in rural and urban areas, with a special section on tribal fighting in rural areas. We consider the relations between informal and formal structures and conclude with an overview of the system of order as we see it working today.

The system of order in rural areas

Values and norms in today's villages cannot properly be described as traditional. Tradition is only one source. Others are economic change in rural areas, population mobility, Christian and secular education, the modern media and new aspirations and tastes. Sanctions for norms resulting in conformity to them include the fear of gossip, public condemnation, shame and ridicule, the perceived benefits of good will and esteem, fear of automatic supernatural reprisals or magic and sorcery, the importance of material and political reciprocity, and the disadvantage of being cut off from it. In addition there are those negative sanctions applied by unofficial and state mechanisms in cases of dispute and offence. However values derived from the experiences of communities and sanctions operating entirely within them are a major source of orderliness in rural society today.

How far is the state a source of self-regulation in rural communities through public acceptance of the values it promotes and of its right to rule? This is of course an impossible question to answer clearly. Some indications are available, however, from situations of potential conflict between state and popular approaches to order. In coastal areas with almost a century of contact with government, missions and commercial interests, the state's view of inter-group violence largely prevails. Whereas in the past disputes between the small polities of traditional times frequently flared into warfare (for example Landtman 1927 ; Williams 1930 ; Young 1971 on Kiwai, Orokaiva and Goodenough societies), today such warfare has ceased as a result of government force used in early colonial times and a long period of church and secular education. Sorcery, however, is another story. While the state and other agencies have consistently opposed sorcery, belief in and recourse to its powers are still widespread in coastal areas (e. g. Belshaw 1957).

In some highlands areas the current influence and legitimacy of the state appears to be at a lower ebb than in the 1950s and 1960s when, observers say, the state's prohibition on inter-group violence was accepted because it was seen as a precondition of development (e.g. Gordon 1983 ; Strathern 1972). However today there has been a resurgence of intergroup violence and, many observers say, there is minimal influence of the state in rural order (see following section on tribal fighting).

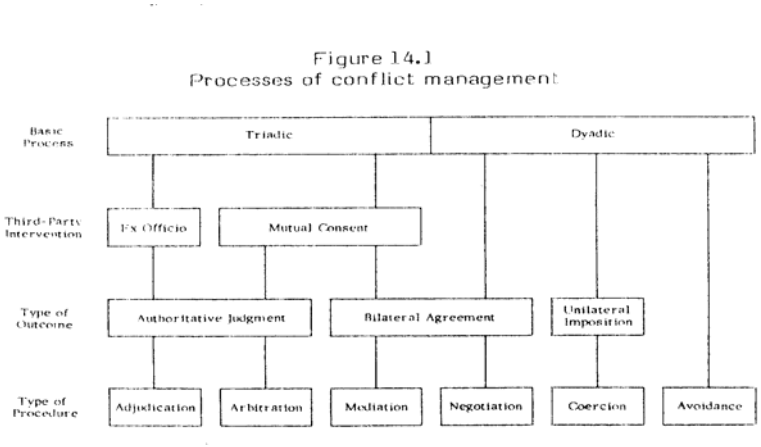
There is in many respects a gap between the state and rural communities, caused only partly by traditional political fragmentation. Another cause is the difference between the concerns of the state and the common man and the virtual absence of administrative or economic links between the two. Local government is in recession in many areas and rural administration has deteriorated from previous levels in some provinces because of localisation, corruption and decentralisation. Education and health services have provided the main point of contact between the state and rural communities. The introduction of village courts (see chapter 11) has provided an important new bridge between the state and villages. With the exception of new values introduced by its educational services, the state appears neither to be the source of many of the values contributing to order in rural communities nor influential enough to force its views upon those communities where there is a conflict of values.

There is a saying that disputes in villages are mainly about women, pigs and land Studies of contemporary rural society support this view, although land seems more critical in tribal fighting situations than elsewhere. Scaglion's study in the East Sepik in 1975 found "sexual disputes" (adultery etc.) accounted for 23 per cent of all disputes and "petty domestic" arguments for 15 per cent. Land was the subject in only 3 and domestic animals in 9 per cent of cases (Scaglion 1979). On the other hand data from a study in Chimbu found 52 per cent of all disputes were over damage to property (particularly gardens) by animals (Podolefsky 1978). The Law Reform Commission's study of village disputes in 30 communities around the country is described in detail in Appendix B. B. These data (cited hereafter as the LRC study) suggest the importance of adultery and suspected adultery in the overall profile of village disputes. Of the 481 disputes recorded, 22 per cent were of this type, 12 per cent were over land (including water rights) and 10 per cent over theft (Table 3 in Appendix B.8).

Disputes in villages occur between close kin and affines as well as between distantly related people and non-kin and within as well as between social groups such as clans and villages. The LRC study found 22 per cent of disputes occurred between close consanguines, particularly over traditional obligations and domestic animals, and 20 per cent between close affines, including spouses. Table 5 in Appendix B.8 shows that more than half the LRC study disputes arose within the same village, and 34 per cent within the clan. Thus the need for mechanisms to handle disputes arises both within and between groups.

There are many unofficial or non-state methods for handling disputes. Koch (1974) provides a useful classification of these in Figure 14.1. He contrasts mechanisms involving only the parties concerned, self-help (which includes the use

Figure 14.1 Processes of conflict management



of violence, magic and sorcery), negotiation or avoidance of any action, with mechanisms involving a third party. The latter may use techniques of mediation, arbitration or adjudication. Around the countryside there are variations in the use of these mechanisms. In some areas there is a long-established tradition of mediation by influential figures, in others the intervention of leaders has tended more towards arbitration. Control of sorcery and public sorcerers enabled some leaders in the past to adjudicate in disputes (e.g. Chowning and Goodenough 1971 on Lakalai).

Moots or public debates are and were important in some areas (e.g. Epstein 1973 on Tolai ; Morauta 1974 on Madang), while these procedures are unknown in other parts. Methods of self-help also vary, with sorcery and other magical procedures more common in some areas than others.

The colonial administration introduced institutions in rural areas which have contributed to the resolution of disputes. Some of these continue today, notably the positions of local government councillor and komiti. These officials play an important part in dispute settlement although the state has given them no powers to do so. In most areas of the country where village courts have not been

introduced, many disputes are taken to local government councillors for mediation. Councillors hold unofficial courts (see Scaglion 1979 ; Strathern 1972; and Warren 1976 describes them continuing in a village court area). Councillors and villagers alike often perceive councillors' courts as having an authority which they do not legally have. They are thus legitimate but outside the law.

A particularly important unofficial contribution of state officials today is the informal work of village court officials (see chapter 11 for more details on village courts). It seems that the informal role of these officials is as important as their formal and recorded decisions. Officials are involved extensively in pre-court mediation and settlement. This activity is outside the state field in so far as it is unrecorded and hence not enforceable under the Act.

Welfare officers play a role in dispute settlement, especially in rural areas with access to towns. This role is largely non-legal, although some aspects of their activities are covered by laws, especially those relating to children. The police too sometimes advise and recommend action other than court action thus acting in a non-legal role. Church leaders and officials within communities can provide assistance in disputes affecting members of their congregations.

How are disputes handled today in rural communities? What use is made of the different mechanisms available? What are the relative contributions of the informal system described above and the formal justice system (courts and police)? The available microstudies and the LRC data emphasise how people move between alternatives seeking a satisfactory solution. If resolution is not available from one method, they turn to another. In the LRC study parties sought a second remedy in almost half the cases, and went to a third remedy in 11 per cent.

The conclusion to be drawn from these studies is that informal mechanisms are more important than police and formal courts in the handling of village disputes. This appears to be the case even in areas where village courts have been established Warren (1976) concludes for an Eastern Highlands community "The formal activities of the village court do not make up a large share of the total of procedures for social control in Kumara". Scaglion (1979) estimates only 30 per cent of cases in an East Sepik village court area go to a formal court hearing. The LRC study found informal mechanisms comprised 61 per cent of all remedies tried. If mediation by village court magistrates is included (there is no information on whether this was recorded or unrecorded settlement) the proportion rises to 77 per cent (Table 6 in Appendix B.8). Self-help was the most frequently used of remedies, especially first remedies, while mediation by council officials and other persons, and moots were also important. In the LRC study village court officials were used twice as frequently for mediation as for formal hearings. The LRC study also provides figures on which agents settled the most cases and had the best success rate in settlement (Table 6 in Appendix B.8). Self-help, moots and all types of mediation dominate, settling 72 per cent of cases. However formal courts settled a higher proportion of the cases they handled than informal remedies.

When and how do rural people use the formal justice system, particularly where village courts have already been established? The studies available (LRC study ; Scaglion 1979 ; Westermark 1978) suggest that the formal justice system is used after other remedies have been tried and failed It is used where defendants will not cooperate in informal discussions and where parties cannot reach an agreement by mediation. Although it has been suggested (Strathern 1972) that formal mechanisms are more important in intergroup disputes where informal agents are scarcer and less effective, the LRC study found that village courts and local courts are commonly used not just in disputes with parties outside traditional groups and networks but in disputes within them.

There appear to be two conflicting themes in the relationship between the formal justice system (village courts, other courts and police) and the informal mechanisms for handling disputes: integration and competition. Some studies emphasise how village people see the formal and informal mechanisms as part of a single system, rather than distinct as they are in the written law (Strathern 1972 ; Warren 1976 ; Westermark 1978). While Strathern emphasises the difference between popular and legal views, and hence popular misconceptions, the operational integration of the two systems can exist without such a gap in perceptions. It is entirely reasonable, and presumably acceptable to government, for people to use a mixture of their own and state resources, whether it be in the field of education, health or disputes. It is not necessarily inconsistent with the law for people to use its formal provisions only when they feel they need them, and to use their own (community) remedies on other occasions.

However referral is not the only source of integration. The formal system can act as a support foe informal mechanisms, whether by being perceived as providing support it cannot legally give (Strathern's point on unofficial courts), or by providing an external point of reference whose behaviour is considered likely to replicate the resolutions proposed by the informal system (Westermark). If villagers feel that the Big Man or local government councillor correctly anticipates what the formal justice system would do and in fact will exert his influence in the direction of his proposed solution, they are more likely to accept his suggestions in pre-court mediation. If police are known to rely on a councillor's account of a dispute or on his judgement of disputed events, there is not much point appealing to the police from a councillor's suggested solution. This effect is particularly likely, as Westermark has shown, where the informal mediator is also part of the formal justice system, that is when he is a village court magistrate. The success of his efforts at informal mediation depend partly on the fact that if people do not voluntarily accept his solution, the same solution is likely to be enforced by a formal court hearing in which he is one of the magistrates hearing the case.

There is, however, another side to relations between informal and formal mechanisms : a story of conflict and competition. The focus of this competition is prestige and influence within the community as a major political arena in rural society today (see Morauta 1974). While externally derived roles are increasingly differentiated, local government councillors and komiti, village court officials, church leaders, school committees, youth club leaders etc., there is still an undifferentiated political field distinct from and in some sense encompassing these other roles. Who is the real leader in the village? Who can command the

most political support and has the most influence? In this field persons with no modern role, Big Men in some areas ascribed leaders in others, compete with their peers and those in modern offices for influence and support. Office-holders of one type may compete with another category of official and so on.

It thus happens that informal leaders can compete with village court officials in the handling of disputes, church leaders disagree with Big Men or magistrates and the mechanisms of orderliness become part of a broader political battlefield. The most common form of competition is between local government and village court officials. Before village courts were established local government officials were the main representatives of the state in rural communities and played a major if unofficial role in dispute settlement. Village courts have brought a second link to the state and a reduction of the council officials' role in dispute settlement. They have as a result reduced the value of the council role in intro-village status and political competition.

There does not seem to be much evidence on whether village courts are in competition with informal mediation and settlement mechanisms other than in their relations with local government officials. The LRC study suggests the two mechanisms are often complementary rather than competitive. Scaglion (1979) shows that village courts took away cases both from the local court case load and the informal mechanisms. However, there is no measure of the level of satisfaction with and without village courts and hence of how far village courts have filled gaps in rather than displaced informal mechanisms.

Another type of competition between formal and informal systems in some areas is in police-community relations. There are many local variations but a common scene is one in which police pursue their business in a community without regard to the informal mediators and leaders who are involved in dispute settlement. For instance, one party to a dispute goes directly to the police. The police visit the village, investigate and perhaps arrest as if community mechanisms for resolution did not exist. Police action of this type reduces the legitimacy of leaders and moots in dispute settlement, and strengthens the hand of those who would ignore them (e. g. Morauta 1974 on Madang). In other areas relations between police (with a formal role) and council officials (with an informal role as far as law and order is concerned) are strained Again because police act independently of councillors and their plans. The other side of the coin is that community leaders may not cooperate with police, partly as a result of relationships already strained

It is difficult to establish in what ways if any the system of social order in rural areas serves the interests of one group of residents at the expense of others. Social and economic differentiation is marked between the sexes and between strata with different access to the means of production, with greater differences in access to labour and capital than to land. Traditional values uphold the distinctions between men and women, while the traditional situation with respect to production is less clear. Nevertheless modern aspirations and values confirm the economic distinctions between households that are undoubtedly greater today than in pre-colonial times (Morauta 1981, 1983).

The LRC study suggests that men dominate village disputes, being plaintiffs in 70 per cent and defendants in 84 per cent of cases (Table 4 in Appendix 8.8). However, these figures show that women do take part in disputes. Counter to a hypothesis that resolution mechanisms are used to assert the superior power of men, the LRC figures show that when they are involved in disputes women are more often asserting their rights against men they claim to have injured them than vice versa. There is no clear evidence on the economic position of plaintiffs, defendants and mediators in rural disputes. It seems likely that third parties are often in economically or politically superior positions and benefit personally in some ways from their intervention. Were there no benefits they would not become involved. The types of disputes that occur most frequently do not suggest in themselves the use of dispute settlement mechanisms to entrench economic advantage. If theft of movable property were more important (e.g. in Table 3 in Appendix B.8) this interpretation would be possible. But in theory adultery, petty domestic problems and land disputes are as likely to afflict the poor and the uninfluential as the rich and powerful.

The system of order as it relates to tribal fighting

In this section we consider tribal fighting as a special issue. It is, among problems of order in rural areas, special in two senses. First, it has been singled out by the state as a problem requiring specific action. Second, it is an issue where the views of the state and some of its citizens diverge widely.

In chapter 7 we described how tribal fighting was one of a number of remedies available when a dispute occurs. It is restricted almost entirely to disputes between clans rather than within them. There is nothing inevitable about fighting in inter-clan disputes. In many areas of highlands provinces it never occurs. In the majority of disputes other remedies contain the dispute before it erupts into violence. Mediation by leaders, councillors and village court magistrates often treats disputes as between two individuals rather than two groups, or outside mediators work between two groups (Kerpi 1976). At every stage there are options and violence or further violence may be avoided (Mackellar 1975 ; Vayda 1976). However the mechanisms available for intergroup mediation are often weaker than those available within groups (Hayano 1972 ; Strathern 1972). Ties of clanship may be more highly valued than those of affinity; leaders may only be heard within their own clans, and disputes between groups may more frequently exacerbate previous disagreements. In the highlands clans are not only the main political and warmaking units but also the land-holding groups, and tensions over territory are common between adjacent groups.

Visiting the Western Highlands and Enga provinces we were struck by the number of rural people we met who decried tribal fighting. While there is always a danger in taking people's statements as a guide to their future behaviour, it is also unreasonable to ignore sentiments which are expressed so freely and strongly. There are many sources of opposition to tribal fighting: young educated people wanting rapid modernisation, Christian congregations, persons who accept the condemnation by the government of the ways of the ancestors. The work of lay elders as magistrates in the Enga village courts concerned with fighting is further evidence of a will to end fighting. We accept that these mechanisms and attitudes

have not been sufficient to bring tribal fighting to an end. But they are a resource for the present and the future, probably containing current levels of fighting to some extent, and having the potential to do more given the right circumstances.

Government approaches to tribal fighting have been of two types: preventative and suppressive. In the preventative approach government efforts have been directed to assisting in the resolution of the type of disputes that lead to fighting. The role of village courts has already been discussed in chapter 11. Land courts have been established to hear disputes over land, although they have been suspended in Enga Province, apparently on the grounds that they created more controversy than they avoided In other provinces there are long lists of registered land disputes suggesting a workload much larger than court resources can handle.

Many observers feel that the government administrative officer, the kiap, provided an effective force against fighting in colonial times by resolving disputes and organising police action to prevent and suppress violence. Today, however, his role has changed with police and village courts having considerable autonomy within his geographical area of supervision, and he himself becoming more of a manager of government services. Simultaneously kiap positions have been localised, training and career planning reduced, and the administrative service of which the kiap is a part weaker (cordon 1983). Today the kiap is often at odds with the police and sometimes with village courts. In nearly all cases his role in dispute settlement has been an informal one with the perceived but not legal backing of the state. Occasionally police have been involved in attempts at mediation between disputing groups. These attempts are again an informal arrangement using the image of the police as authoritative to assist in discussions in which the police have a legal role no different from that of any private citizen. In the Western Highlands until recently a small group of police were involved almost full-time in mediating with a view to avoiding tribal fighting. We should make it clear we believe that this type of intervention from kiaps and police has assisted in reducing tribal fighting and that this way of using official positions to provide third party mediation acceptable to both sides is a reasonable use of state resources. However, the efforts of police and kiaps are constrained by their other duties, limited manpower and the geographical dispersion of the disputes occurring.

At the same time, government has clearly felt it had an obligation to stop tribal fighting or to prevent it by physical force. The police role has developed largely as a para-military one. Special mobile squads are maintained in highlands centres and deployed to tribal fighting areas as needed, using helicopters, teargas and guns to break up fights. Despite small programmes of community contact, the dominant image of the police is of an agency employing force to counter the use of force. When the national government declares a State of Emergency giving the police extra powers in the highlands provinces it reinforces this image. . Police interventions are not markedly successful. They are often unable to reach fights quickly or stay long enough in an area to ensure peace continues. Tactically they are at a disadvantage against fleet-footed local residents who know the area thoroughly and who have learned to pile mud on teargas canisters, rip up bridges on approach roads, and conduct their fights well away from roads.

It is difficult to draw a clear line between state and non-state mechanisms applied to tribal fighting because of the unofficial and sometimes illegal activities of representatives of state agencies. These activities rely on state support but some are apparently taking place without the knowledge of senior officers in the agencies concerned. These illegal actions have arisen to fill what are perceived as gaps in the state response to tribal fighting. Nearly all state agents operate ultra vires in relation to tribal fighting. This is true of police, kiaps and village courts. In interviews officials were disarmingly frank about their actions, regarding their performance as more effective than if they had stayed within the limits of the law. While in some cases the national parliament might regard changes to the law to accommodate such practices undesirable, in other cases there may be good arguments for change. This is particularly true of village court legislation (national or provincial) to legalise the type of joint sitting initiated in Enga which appears to be successful in preventing some tribal fights (see Chapter 11).

The efforts of the state in relation to tribal fighting are uncoordinated, confused and confusing. Kiaps, police and village courts operate independently and often competitively with relations between police and kiaps being particularly bitter. Efforts at coordination at the provincial level have usually been short-lived and ad hoc. The root of the problem appears to be that the police cannot be required to cooperate with other agencies and appear to have not been aware of the advantages of doing so voluntarily. State inputs are internally confused, simultaneously encouraging self-reliant, community-based solutions, state mediation and suppressive action by external force. A lack of integration between the approaches in the field makes them competitive rather than complementary. This is all most confusing for the common man. It is not clear to him whether the state thinks the main responsibility lies with the people or with itself. He can be forgiven for generally regarding the state as the agency which ought to stop tribal fighting and demanding more coercive action at this end.

Nobody we talked to in the Western Highlands or Enga provinces thought tribal fighting could be stopped or would stop inside a decade. Nobody thought the state could suppress fighting completely through the use of force and everyone believed fighting was too closely linked to other social and economic conditions to change overnight. Effective physical suppression is beyond the means of government as well as beyond its capabilities and is incompatible with the democratic political climate. The social and economic forces underlying the disputes and recourse to fighting will not change quickly, which will prevent an early solution by other types of development.

The system of order in urban areas

The system of order in towns operates in a rather different environment from rural areas, and these differences account for variations between the systems in villages and towns. First, towns are largely composed of people who have migrated to them rather than of people who have always lived in the same place. The 1980 census found 68 per cent of urban residents were migrants either from

another town or a rural areas (standard table M008). But although most townspeople are migrants, many look on the town as their permanent home, having lived there for long periods. In 1980 sixteen per cent of migrants had lived in the same town for ten or more years.

Second, economic organisation in towns relies heavily on wage employment for personal income and cash for consumption. There is little interdependence between households in production and large differences between them in consumption patterns and levels.

Third, the social organisation of towns is very different from rural areas. Residential arrangements are commonly not based on ties of kinship and affinity but on the allocation of housing by bureaucratic or market mechanisms. There are major differences between urban suburbs in the relationship between residence and kinship. Table 14.1 shows the population in different types of census unit. Only in settlements and urban villages is residence linked to other social ties. In urban villages most residents are landowners and members of traditional social groups that have been engulfed by town. In settlements migrants have chosen to live next to one another in homes they have built themselves. Most settlements contain groups of kinsmen and affines from a particular rural area, although there are sometimes groups from different provinces living close to one another. In all other areas, containing 62 per cent of the citizen population, neighbours are likely to have been strangers when they first occupied their present homes.

Table 14.1

Citizen population[a] in 1980 in different types of census unit in urban areas

Census unit type	Number of persons	Per cent of persons
High covenant	38,870	12
Low/mixed covenant	115,148	36
Settlement	94,430	30
Urban village	25,108	8
Industrial/commercial	19,147	6
Corrections/defence/police	11,869	4
Educational/religious	9,774	3
Hospitals	2,362	1
Total	316,708	100

Note: a. Excluding vacant and special dwellings.

Source: 1980 Census standard table HO10.

Neighbourhood and community are not therefore such pervasive forms of social organisation as in rural areas. In urban villages and settlements community ties are usually strong although households can be more independent than in rural communities. There are differences between new and long-established settlements, especially when new settlements contain relative newcomers to town. Such new settlements are rather like frontier towns in the middle of more settled neighbourhoods. They have a high proportion of single adult male residents, fewer families and less well-developed community structures. Community pressures and sanctions and even order within the neighbourhood are more problematic. As things stand at the moment, such settlements are often occupied by highlands migrants, while many of the longer established settlements in towns belong to other groups. Neighbourhood ties are much weaker in all other types of suburb, and people usually have stronger social and economic ties with kinsmen in other parts of towns than with their stranger-neighbours. Churches and ethnic associations provide formal occasions for kin from different parts of town to gather.

All employed urban residents have formal and informal relations with workmates, providing a stronger focus for men than women outside the home and neighbourhood. Local government based on wards and elected councillors exists in some towns, but has recently been abandoned in favour of bureaucratic government in Port Moresby and Lae, the two largest towns, containing 47 per cent of the urban population.

There have been few sociological studies in the towns of Papua New Guinea and none that has focused primarily on the system of order. Oram (e.g. Oram 1976) is the writer who has paid the greatest attention to these questions. I rely in the following account mainly on my own research experiences in towns in a recent study of low-income neighbourhoods (Morauta 1984), a study which was not itself focused on law and order as a prime concern.

Norms and values in urban areas reflect both rural origins and urban experience, with probably a greater appreciation of the formal legal system and its values than in rural areas (see the study by Richardson and others cited earlier). However some common offences in urban areas, especially "drunk and disorderly", are not regarded by many people as causing any sort of problem of themselves, and there is more of a criminal subculture in towns than villages, where groups of young people or others positively value disorder and theft.

Many of the sanctions of community living do not apply or do not apply to the sa me extent as in rural areas. Much of the time people are not under the surveillance of kin or other people with whom they have the closest ties, because they do not live near these people. Even in settlements and urban villages people are mobile from day to day, moving outside the view and knowledge even of members of their household for work, marketing and sport. There is little interdependence in ownership of assets or production, which releases the individual household from many of its rural obligations. Nevertheless depending

on relatives for help in times of need provides sanctions for expected behaviour in many kinship ties. Sorcery and magic are much feared in towns and dampen many disputes. Healers and diviners diagnose sicknesses as caused by offences and disputes and recommend resolution and compensation.

Informal mechanisms for the settlement of disputes are varied. In settlements and urban villages there are usually acknowledged community leaders who mediate in disputes. Local government officials, sometimes called town councillors and komiti, are active in dispute settlement and the handling of offences, but as already mentioned many urban neighbourhoods have no such officials. Moots occur and scattered kinsmen may join in group compensation payments. For people in mixed ethnic neighbourhoods, disputes among kinsmen are likely to be considered by other not necessarily coresident members of the same network (e.g. Iamo 1980). Weekends rather than weekdays are the time for scattered kin to gather and discuss problems. Churches and voluntary organisations provide some assistance particularly in marital disputes and personal problems. All these mechanisms are least effective in disputes between non-kin and strangers and, generally speaking, where ties within the neighbourhood do not reinforce them.

These informal and community-based mechanisms provide valuable surveillance of public places in many homogeneous neighbourhoods, making them havens of safety even at night, with people able to sleep outdoors if need be and leave washing on the line to all hours. The same kind of surveillance is not available in mixed neighbourhoods and is least available in areas where many houses are unoccupied for several hours each day (Mackellar 1977). None of these mechanisms is particularly effective in offences involving people unknown to the plaintiff or offences committed by kinsmen or community members while absent from the neighbourhood or household. They have almost no impact on order in public places (roads, markets, sports grounds) beyond the immediate neighbourhood. These limitations are a function of the physical size and anonymity of towns. Informal mechanisms face a more differentiated community or network of kin than in rural areas, with discrepancies in age, wealth and education making certain types of mediation even within the community or network more problematic.

These social structural considerations help us to understand why some parts of town are safer and more orderly than others and why people from some areas are more likely to be offenders in the eyes of the law than others. Table 14.2 shows that migrants from the highlands are more likely to be involved in breaking the law than people from other areas. Mackellar found that highlanders were frequently involved in public order offences, consistent with the high proportion of single males in their group. Community sanctions and pressures are usually weak in the settlements where such highlands migrants live. A study of juvenile offenders arrested January to June 1980 in Port Moresby found that the large majority of offenders came from formal subdivisions such as Hohola and Gerehu, that is mixed ethnic neighbourhoods rather than settlements and urban villages (Sundeen 1981). (In both these studies it is, of course, possible that rates of arrest rather than rates of offence are responsible for the patterns in the data.)

Table 14.2

Offences and origin of offenders in National Capital District (NCD)
Offences in lower courts April - September 1975

Province of birth	Number of offences[a]	Offences per 1000 males[b]
Western	142	122
Gulf	628	127
Central	1,902)	105[c]
NCD	38)	
Milne Bay	117	79
Northern	132	129
Southern Highlands	220	444
Enga	206)	599[c]
Western Highlands	134)	
Chi mbu	449	336
Eastern Highlands	416	205
Morobe	302	122
Madang	64	138
East Sepik	70	162
West Sepik	16	103
Manus	20	90
New Ireland	21	92
East New Britain	46	96
West New Britain	26	170
North Solomons	19	73
Other countries	1,106	122
Not known	1788	-
Total	7,862	173

Notes:
a Mackellar 1977 : Table 3 which considers "ethnic origin" rather than province of birth.

b 1971 Census male population by province of birth, including non-indigenous males.

c Census combined these categories.

State mechanisms in the urban system of law and order are the same as in rural areas with the important exception of village courts. There are only 14 urban village courts in Port Moresby covering approximately 8 per cent of the urban

population across the nation as a whole. The limited number of village court and local government officials in urban areas prevents the development of the unofficial courts and mediation activities apparently supported by the state which characterise the rural system of order. Where village courts have been established in Port Moresby they are considered mainly successful. Norwood (1982) has suggested that they have been well accepted in mixed urban settlements because the people are "conscious of the need to create and enhance respectable institutions in the towns to which they have recently migrated". In Nine Mile settlement in Port Moresby where one of us has done fieldwork, most residents liked the court because it provided police back-up for community leaders, especially in handling uncooperative defendants.

The state has, however, a much larger number of laws that apply to townsmen than apply to rural residents, giving it potentially a larger role in the regulation of their lives. Laws peculiar to town residents cover "vagrancy", house-building, town planning, public health, and industrial safety, health and welfare (Norwood 1982). Many of these laws are not enforced and in practice do not restrict the activities of most urban residents, but the Vagrancy Act is from time to time invoked in moves by certain groups to oust unemployed residents from other groups from urban land, and many of the health laws appear to hamper small busi nesses.

Despite the physical accessibility of police and courts, most urban residents turn to them rarely for help in disputes and offences. In 1984 the Urban Population Survey found people in Lae reported only 32 per cent of thefts to the police. People either did not think the police could do much about their problem or were reluctant for other reasons to go to the police. The 1977 Urban Population survey found the proportion reported overall was similar, but showed settlements reported only 16 per cent and villages none compared to 40 per cent of thefts reported from other areas (Bureau of Statistics 1978). These figures underline the gap between townspeople in settlements and traditional villages and the formal justice system.

Relations between the informal and state mechanisms in the urban system of order are almost entirely negative and competitive. In some cases there have been violent confrontations between police and residents of traditional villages when police have attempted to pursue their activities without the cooperation of elders and leaders. It is one thing for police to confront groups of criminals, it is quite another for them to be in a conflictive situation with the leaders and ordinary members of urban communities. As in rural areas, the problems arise from a struggle for power in a particular social field and the way the success of one party is seen as diminishing the influence of the other.

Police are often reluctant to go into villages and settlements fearing (at best) non-cooperation. When there are no councillors or village court magistrates, it is hard for police to make contact with respected community members and fewer people in the community have an incentive to cooperate with police. As has often been noted, police do not at present have the organisational arrangements or the

skills to have good contacts with urban communities and their leaders and to make their efforts complementary to those of others also concerned to maintain order. In the formally subdivided areas of towns, the non-state mechanisms tending towards order are even more dispersed (kin networks, ethnic associations) and harder for police to link up with even if they wished to. When people do not associate the police with the other elements in their lives preserving and upholding order, police lose legitimacy in the eyes of the public. Weaknesses in police performance exacerbate this negative image. Even the law-abiding townsman does not like the police and sees himself and his own sense of order as opposed to theirs.

An overview of the system of order

The discussion in this chapter can be summarised by looking at the relative influence of state and non-state elements across the country as a whole. Table 14.3 underlines the importance of non-state mechanisms in the system of social order. For only a small proportion of the nation's population (although most readers of this report will be found among their number) does the state play a major role in the orderliness of their lives. Furthermore the different elements in the system of order often do not work smoothly together but seem to be in competition and conflict.

Table 14.3

Non state mechanisms in the system of social order

Type of area	Population at 1980	Per cent of	Major elements in system of
A. Rural areas	2,617,596	87	Informal and community elements dominant; village courts supportive of these; state in background
B. Urban areas:			
B1 Urban villages and migrant settlements	119,538	4	Informal and community elements dominant; state in background and not supportive of informal mechanisms
B2 Other suburbs	273,593 [a]	9	State mechanisms important; weaker community structures; some informal elements

Note: a Urban non-citizen population of 27,584 and citizen residents of special dwellings numbering 48,839 included under B2 (National Statistical Office, n.d.)

Black (1976) has suggested the hypothesis that "law varies inversely with other social control", in other words that where state mechanisms are strong, other elements are weak and vice versa. He is not concerned to explain why this is so nor to consider its implications for policy. The hypothesis seems to be helpful in looking at Papua New Guinea. Where informal mechanisms are strong, as in rural areas or urban villages and settlements, people do not need or use state mechanisms a great deal and the state is prepared in most cases except tribal fighting to stand back.

But in situations where informal elements of social control are ineffective or run counter to the state's wishes, as in urban crime and tribal fighting, the state endeavours to take a more active role.

Black's hypothesis and the observations in this chapter suggest several points for the state and policy-makers:

- Informal elements in the system of social order are a major resource in Papua New Guinea today.

- State policy on its own system of law will influence the future of this informal resource, either enlarging or diminishing IL.

- The state can choose between two modes of relationship between the state and the non-state resource :integrative or conflictive.

- Village courts appear to have considerable potential for integrating state and informal elements and supporting or even developing informal structures.

PART IV

CONCLUSIONS AND RECOMMENDATIONS

To promote peace and good order and tackle law and order problems the government of Papua New Guinea needs to do three things.

1. Government needs to decide what is it trying to achieve in the field of law and order, what are its goals, and the broad outline of the means it chooses to achieve them. In other words it needs a law a i order policy.

2. Government needs to structure its bureaucracy and political personnel so that it can tackle law and order issues in a coordinated and coherent way.

3. Government needs to develop a series of activities and programmes consistent with its goals in the long as well as the short and medium term.

In presenting our conclusions we offer the government a number of alternatives under these headings and discuss the advantages and disadvantages of each. We also, and we know some consultants are reluctant to do this, say which path we would choose and why.

In chapter 15 we consider the first two issues, policy and structure, addressing ourselves to a broad audience and our recommendations to the National Executive Council. In chapter 16 we consider implementation of the policy we propose, making more detailed recommendations on both existing and new activities. In chapter 16 we are addressing ourselves to the people who would be charged with implementation, were our policy recommendations accepted. In that chapter our audience is mainly staff of the law and order agencies and the coordinating bodies: Budget Priorities Committee, Department of Finance and the National Planning Office. In chapter 17 we provide a more qualitative account of our approach, the spirit behind it and the ways we think our proposal might work out in practice.

Chapter 15

POLICY REVIEW AND RECOMMENDATIONS TO THE NATIONAL EXECUTIVE COUNCIL

A law and order policy

Any law and order policy in Papua New Guinea could state its goal in general terms as being

> "to preserve and increase order and the rule of law among the people of Papua New Guinea."

But a policy also has to say in broad terms how this is to be achieved. The government has three alternatives -

- to carry on as it has been doing, perhaps with more resources and/or improvements in performance, "the more-of-the-same option";
- to increase the role of the state and the sanctions of the state in the maintenance of law and order, "the state option"; or
- to decrease the role of the state and support and complement non-state elements tending towards the maintenance of order, "the non-state option".

"The more-of-the-same option" is attractive because it does not require government to do very much at all. It can leave things as they are, or simply spend more money on existing activities to satisfy taxpayers and voters. Doing nothing means that nobody has to change the way they think about things, there is no cause for dispute among politicians or bureaucrats and no agency or person takes offence at changes that are made. In busy cabinets and bureaucracies and in sometimes troubled national-provincial or intro-cabinet relationships, doing nothing is particularly attractive. When people do not appreciate the magnitude of the existing deficiencies in the formal justice system or where these may lead in the future, they can see no reason to change.

On the other hand, dissatisfaction with present approaches and programmes may incline the government as it does us towards a change. It could be argued that the existing approach per se (as opposed to implementation problems) has not achieved an acceptable level of order, and that by its very nature it cannot do so. The government simply can never put enough resources into police and courts for them to perform their current functions properly and to offer a service across the country. Strain on these institutions is making them increasingly less effective. The long-term side effects of present policy may be unacceptable, in that the policy erodes or conflicts with institutions that are regarded as worthwhile, institutions such as community leadership and self-reliance. It can also be argued that the present approach is not a policy at all but a grab-bag of bits and pieces, which work against one another, thus using public resources inefficiently. For instance, the national parliament apparently supports both states of emergency and village courts as ways of combating tribal fighting. Inconsistencies in government policy confuse the man on the street and make it hard for him to know what government wants of him.

"The state option" is to increase state inputs and the role of the state, relying on the state's coercive powers to produce improvements in order. Such an approach relies on more regulation external to social groups and communities for more order. It means more police and tougher penalties. It is an attractive approach when we seek solutions from the state and from the state's own resources. The state must be stronger than thieves, rapists, criminal gangs, football crowds on a rampage or warring clans. All it needs to do is to apply the force it possesses and these problems can be suppressed. "The state option" also goes with an assumption that the government must teach offenders a lesson and establish its legitimacy by the powers it can wield independently of the people.

The main argument against "the state option", and one to which we subscribe, is that it does not work out very well in democratic states. It seems from overseas experience that the more force a state uses, the more it needs. More police appear to create a need for even more police, prisons and punitive sanctions. A simple example is the effect of mandatory minimum sentences on courts, police and prisons. Meanwhile the state loses the goodwill of its people and rules more by force than consent. The state finds itself increasingly in conflict with its citizens as it rules against rather than with them. This kind of effect is particularly likely in a developing country such as Papua New Guinea where the state begins with a wide gap between its perceptions and structures and those of the people. Simultaneously the heavy-handed state approach erodes non-state resources and reduces the other elements in society tending towards order.

"The non-state option" emphasises the role of non-state mechanisms in the maintenance of order and the handling of disorder. It aims to preserve these mechanisms where they exist and develop them as needed "The non-state option" does not mean that the state has no role, but that it sees its role as to support and complement non-state mechanisms, rather than appropriating a larger share of the

action for itself. The role of the state is not to go first but to go last, reducing to a minimum its direct role in law and order. The resources of the state are to be used where informal resources are inadequate and in areas in which the formal system is best suited to help. This approach is the one we recommend.

Papua New Guinea is fortunate in having so many viable communities within which informal mechanisms operate, traditions of dispute settlement and public recognition of the value of this resource. Some developing countries who have lost their community courts, and some western jurisdictions which legislated these courts out of existence hundreds of years ago, are now struggling to re-establish community participation in law and order problems through community-based systems of conflict resolution. By their nature informal institutions cannot be directly supported by government however important they are to national welfare. Rather government has to adopt two strategies. It must avoid undermining these institutions and it must support among those agencies directly under its control those which most complement and enrich the informal institutions. In our view village courts are the best mechanism available to government to strengthen and support informal resources. They place reponsibility in the hands of the common man (lay officials) while giving him access, when needed, to resources outside the community. In the non-state option we see other agencies of the state, including police, as reaching the common man through the village courts rather than independently of them.

This is not a policy option for rural areas or traditional-type problems alone. It is, we suggest, a national policy applicable to all types of law and order problems and the basis for a nationwide search for peace and good order. The principle is the same in rural and urban areas. The difference, where it exists, lies in the relative weakness of informal institutions in urban areas and hence the need for extra government support to them. We mention here the need we see for the reestablishment of some form of urban local government (presently under consideration by the National Capital District Interim Commission for Port Moresby). Similarly, the policy can also apply to tribal fighting. It implies continued and increasing support for the role of village courts and informal institutions in the resolution of tribal fighting. It implies that kiaps and police will work to complement and strengthen these mechanisms and not work independently of them.

The main argument in favour of the non-state option is that it is the one most likely to work in a democratic state. It seems improbable to us that the Papua New Guinean state, with its uncertain grip on towns and its fingers barely touching rural communities, can ever hope to rule the country by force. Nor should it wish to given the nature of its constitution. Second, the approach is the most economical, using available resources to best effect. It recognises the existence, current contribution and potential of non-state resources and uses state facilities only where these other resources are insufficient on their own. In our view this approach is also the one most consistent with the constitution of this country and its present political and social structure.

Arguments against this approach are of two types. First, some people will think it is too much of a risk or will not work. Communities or the people do not have the capacity to regulate their behaviour properly and a reduction in the role of police and most courts will mean less not more order. On the whole, we would reply, people are maintaining what order there is now without state intervention and police and courts are not doing very well because of a lack of integration with informal mechanisms. Second, it could be said that the non-state approach will be very hard to implement, mainly because it requires the subordination of all state law and order agencies to the goals of this policy. It also requires changes which may well be perceived as a diminution in the role of some agencies and requires cooperation with people and communities where it has been weak or non-existent before. Informal institutions have no advocates in the bureaucracy. Village mediators, the kinsman go-between and the community meeting will get short shrift in discussions among public sector agencies. Our answer to this type of objection is that the problems could be overcome by strong political commitment to the policy and control of government over its own agencies. We discuss our proposals below.

We do not want to pretend the non-state approach will be easy. It is in some respects the hardest option. But we also feel it is the most worthwhile. Many of the implementation problems will be overcome if it is pursued in the framework of a long-term plan giving ample time for redirection and adjustment. We suggest below that structures and legislation must be changed so that the desired relations of complementarity and integration are mandatory rather than optional.

This is all very awkward and difficult. But what does the government want? An easy and fundamentally self-defeating and undemocratic option or one it will be proud to have chosen and one worthy of its people and their resources?

Political and bureaucratic structures

This report has made it clear that the many attempts to obtain improvements in the law and order situation in Papua New Guinea have foundered on the lack of a political will to bring together and direct the various services offered by government. As regards the formal services, we have been exercised by the need for administration, policy, money and resources to be coordinated within a group of services some of which are constitutionally independent of one another. In addition, a new policy requiring adjustment of government's overall role and of the contributions of different agencies to it, places particular demands on government for implementation.

We see three possible structures for the management of the government's activities relating to law and order -

1. Bureaucratic coordination, an inter-departmental committee consisting of heads or representatives of the law and order agencies, negotiating and managing their programmes in collaboration with each other. One possibility would be a council of the heads of law and order departments to formulate policies and programmes with its own secretariat.

2. Political coordination, with support from line agencies. This would mean going higher, using the National Executive Council (NEC) as a whole and/or a committee of ministers from the relevant ministries as the coordinating body, serviced by a bureaucratic committee of the type described in 1.

3. Political coordination, with an independent servicing agency. The option here would be the NEC as a whole and/or a committee of ministers, serviced by an organisation independent of the agencies of government concerned with law and order.

The first of these structures is familiar. It has been tried in various forms. We have noted the attempts in Papua New Guinea so far to bring together the line departments in inter-departmental committees (option 1 above) both at national and provincial level. We are not surprised that these have not worked here, because they have not worked anywhere else. Sectoral committees at the centre and law and order committees in the provinces allow exchanges of information and perhaps a degree of cooperation at the personal level: but they fall far short of coordination. They fail because the members of such committees are asked to do too much - to subordinate their own agency's interests to a more general plan - perhaps even to forego an existing budget. Not only have they no incentive to do so but if they do become enthusiastic their professional inclinations lead them to forms of coordination which their own services can lead. This is no reflection on the valuable expertise of the departmental heads or representatives involved: but each member represents a service with its own budget and its own budget constraints, with its own priorities and responsibilities which other services cannot share.

Budgets are fixed; there are established commitments and in the final analysis no departmental representative is in a position to subordinate the interests of his department to others. Each will happily coordinate the work of others but finds it difficult to be coordinated. For our proposed new policy, "the non-state option", this structure has a further problem: it requires people trained and experienced in one system to voluntarily become involved in another. As a policy-making

mechanism inter-agency committees cannot arrive at an optimum solution in terms of national development goals but only at an optimum solution acceptable to all parties. It is the reliance on voluntary coordination which is the central weakness of this structure. In Papua New Guinea a further problem is the constitutional position of the police. While line departments are part of the public service the police are not. Under section 196 of the constitution they are subject only to the control of the NEC through a minister. At the bureaucratic level they can only be invited to coordinate, they cannot be required to do so.

The second and third options place law and order policy and programmes in the hands of the NEC. We appreciate that almost every report on anything seeks to involve the cabinet to get authoritative implementation. We equally understand that overloading busy ministerial bodies can be counter-productive. In our case we have no alternative. The NEC's involvement is rendered necessary by the fact that no body at a lower level has the authority to formulate an overall law and order policy and plan. The NEC therefore is the only body to be able to direct the ministers and agencies concerned with law and order in policy matters. Voluntary cooperation is needed but there has to be final authority for the implementation of our recommendations.

As will be seen there are two possible ways of feeding policy advice to the NEC. The NEC is a busy organisation relying heavily on public servants for advice and for all implementation of policy. Therefore one way would be to have the NEC served in the law and order area by an interdepartmental committee of the line departments making recommendations and monitoring implementation. Such a structure (option 2 above) would cost nothing in terms of new resources and would give all the agencies involved an opportunity to express their opinions and participate in the policy process. Its disadvantages however have already been shown. Although the NEC had set the policy, this committee would drift into the same problems of departmental loyalties and departmental priorities.

We therefore prefer option 3. This leaves line agencies to develop their own programmes in accordance with the declared NEC policy but sets up a separate agency to advise the NEC and line agencies on law and order policy, to evaluate programmes and to monitor the implementation of NEC decisions in this area. Such an agency might be called the Law and Order Policy Development Unit. It would be responsible directly to NEC and would not consist of staff in or seconded from existing law and order agencies. If required, an interdepartmental committee could advise the unit but not direct it. The unit could be in the Prime Minister's Department, the Finance Department or the National Planning Office. The disadvantage of this option is that it will cost money, but in our view it is an essential expense to enable the NEC to take control of government activities in this area, to assist line agencies, to use public resources to their best effect, and to take the country in a direction which the NEC has determined to be the best.

Recommendations to the National Executive Council

We therefore recommend that the NEC considers the following four motions to establish and implement a new law and order policy.

1. "The Government of Papua New Guinea recognises the importance of informal and community institutions in the maintenance of order. The government intends, within the provisions of the constitution, to use its own resources to complement and support these informal institutions. Amongst the nation's resources the government recognises the value and significance of village courts."

2. "The National Executive Council directs all agencies of the government concerned with law and order to implement the policy set out in 1 above."

3. "The National Executive Council will establish a Law and Order Policy Development Unit to advise it on law and order policy and implementation", and

4. "The National Executive Council through the National Planning Committee requires submissions at least annually from the policy unit set up in (3) above on all government expenditure in the field of law and order."

Chapter 16

RECOMMENDATIONS FOR IMPLEMENTATION

We see the recommendations for implementation of the policy we have proposed as falling under five headings -

1. Policy advice and monitoring
2. Further development of village courts
3. Adjusting relations between village courts and other agencies
4. Improvements to existing services and programmes
5. Other related issues.

1. Policy advice and monitoring

The Law and Order Policy Development Unit, which we propose, would be a small group of high level officers. It will need to bring together academic and planning expertise of a high order which is not available in the professional departments. We envisage perhaps three professional staff from a range of disciplines, one more senior than the others and a back-up staff of the same number. The unit could report to the National Executive Council through the Prime Minister. The unit's independence of line agencies is intended to permit an overview of all departments and services. However, advising the NEC on the inter-relationships which are needed for effective coordination, it is not intended to supercede or assume authority over any existing departments or services. Indeed it will be specifically denied any authority beyond the right to obtain the information it needs. It will need to develop the image of a service agency to which other agencies can turn for help. Its value to NEC will be its capacity to look across the whole sector without commitments to any one part of it. Its value to constituent departments and services will flow from the "outside" view of the problems faced by the services. The unit will concern itself with information for policy and planning and will coordinate, commission or initiate research. The new unit must concern itself with informing the general public about the new government policy on law and order, and ensuring that existing school, informal education and other programmes reflect the change of emphasis. One of the first tasks of such a unit will be to review all government expenditure on law and order, to identify the changes in quantity and quality which might be possible with existing allocations and to work on a five year plan to implement medium term government policy in this area.

2 Further development of village courts

Since village courts are a key element in our proposed policy, we see an urgent need to develop and extend them . The quality of village court performance needs to be improved mainly through improved training programmes for public servants and officials and better inspection and supervision. This is an immediate need which requires attention. Village courts in disarray or disrepute cannot carry the weight of responsibility accorded to them in our proposed policy.

Furthermore village court coverage must be extended Almost all citizens must have access to these courts if the aim of the policy is to be achieved. A programme of extension to full coverage in rural areas is needed, but the team recommends making haste slowly and places priority on improvements in quality.

We would however recommend that a special urban village courts programme be set up as soon as possible to give village courts an opportunity to contribute to urban law and order. The urgency arises from public dissatisfaction with the level of order in towns, and the need to make a start as soon as possible. Community members must actively participate in the maintenance of order and take responsibility for it in a large number of cases. The introduction, re-introduction or continuance of local government in towns can be used to support urban village courts. Local government can provide logistic support, community participation in establishment and appointments, and independently contribute to the development of urban community or neighbourhood spirit where it is lacking or weak at present. Government inputs to village courts in towns will need to be relatively greater at least in the initial stages to achieve the same results as in rural areas. A more sophisticated population will require a very precise knowledge of and performance under the Act, implying better quality courts. The problems of apprehending offenders and getting people to court hearings are greater in towns and the need for liaison with police greater.

We recommend special attention to the role of village courts in tribal fighting. District-level courts in Enga are making a substantial contribution to peace, and we would like to see these supported and extended There needs to be provision in the proposed new Village Courts Act for this level of village court, such courts to concern themselves with tribal fighting or the threat of fighting. In addition police relations with courts need adjustment in relation to tribal fighting (see 3 below).

We propose in the long term that village courts, once available to the entire rural and urban population, should become the courts of original jurisdiction in a certain range of cases. In specified matters everyone, rural or urban, citizen or non-citizen, must go first to a village court. The aim of this proposal is to place a large number of minor offences and disputes within the community sphere of influence, to emphasise the importance of community norms, to encourage commonsense and lay solutions, to emphasise mediation and negotiation and to

conserve the scarce resources of higher courts for matters most requiring their attention. Village courts cannot be optional or they will become poor men's courts, Everyone must use them, and the more litigous, sophisticated or wealthy be prevented from using higher courts at their own convenience. Details of all these recommendations are provided in Appendix A.6.

3. Adjusting relations between village courts and other agencies

The aim of this part of our recommendations is to bolster the community role of village courts, and provide them with the support of the state when required. It attempts to replace the frequently conflictive and competitive relations between village courts and other agencies of the state, a situation which undermines both village courts and the informal mechanisms of social control to which they are linked. The government agencies most concerned are police and provincial affairs. The theme is that these agencies should see themselves as providing a service to the community and its lay officials in the area of law and order.

We recommend that where village courts exist, police and officers of provincial affairs be required to work through the courts in matters relating to law and order, This requirement would mean that these other officers must inform village court magistrates when they visit the court area on law and order business and consult the magistrates whenever appropriate. All cases falling within the jurisdiction of village courts must be referred to them by police and kiaps.

To facilitate coordination between village courts and police we recommend the police set up a Village Courts Liaison Programme. In every police station in the country one officer should have special duties for liaison with village courts. Village court officials would then know who to see and establish personal relations with some police officers. This role is particularly important in urban areas, probably requiring more police manpower than elsewhere. This process of promoting village courts is so foreign to present police and other personnel that special training courses and on-the-job programmes to help them adjust to their new relationship with the courts and community will be needed

As far as tribal fighting is concerned, we see an urgent need to place village courts at the centre of government activity, either single courts or ones established at the district level (see 2 above). It is essential that kiaps and police do not undermine the capacity of communities to resolve disputes peacefully themselves, Ideally village court officials should summon police when they feel they cannot handle the situation themselves. In any event, police and kiaps should be required to inform village court officials of their presence and consult with them on the best possible course of action before making any moves on their own, except, possibly, in cases where fighting is actually in progress.

We do not support the present proposals by the Ministers for Justice and Police to appoint village peace officers as special constables of the Papua New Guinea Constabulary. Regardless of the legal status of this proposal, we oppose it on the grounds that it will undermine the operations of both village courts and informal community institutions. It would place village peace officers outside the control of village courts and make them responsible primarily to the police rather than the community.

4. Improvements to existing services and programmes

The shift to a policy of using more community resources to achieve law and order underlines the need to improve the performance of the official services. Indeed the informal approach which we recommend does not supersede or circumvent formal or official services -it really depends to a great extent on the official services having the insight to make the best of informal resources so far largely neglected. This they really cannot do if the parlous conditions described in the chapter on criminal justice are allowed to continue. We therefore draw out here some of the obvious needs and provide in the 'A' appendices more detailed accounts of the way we think improvements can be achieved

Coordinated criminal statistics. Criminal statistics flow not only from the police but also from the courts and the prisons. It should not be too difficult to get uniform crime statistics for Papua New Guinea with each service supplying information in a form readily computerized. This presupposes efficient data collection in each of the criminal justice services with an overall service - either the Law and Order Policy Development Unit or the National Statistical Office processing the material for publication. We recommend that the machinery for this routine data collection be discussed at an early stage by the Law and Order Development Unit and the National Statistical Office and a plan submitted to NEC. However, the plan will be less important than the improvement in training, supervision and performance in the respective services. Efficient collection and processing is vital to the analysis of data for policy-making.

Personnel and management practices. The law and order problem is aggravated by formal services which as this report shows do not perform well and which suffer from a lack of supervision. This is only one example of a problem running throughout government services at central and provincial level; and which makes law-breaking - especially corruption and white collar offences easier - to commit and more difficult to prevent. The great gaps in so many official services of effective middle management and strict accountability is bad enough - but it plays havoc with the law and order services. Nat only in the police but in the courts and in corrections this gap has to be filled with competent personnel and the systematic checking of routine tasks firmly established If we are repeating the obvious it is because the country has a law and order problem partly because it has a law and order services problem. To deal with the former it is essential to deal with the latter.

Here as elsewhere in the government, appointments will have to be for periods long enough for the skills to be developed and for pride in the work to be engendered. Advancement should be possible without specialist staff having to be transferred: and appointments should be based on qualifications for the job and on proven performance, all other considerations such as seniority or localisation being secondary to the successful establishment of the essential basic procedures for accomplishment of the task.

A more specialised police force. To improve the performance of police in tasks which they alone can perform, we recommend divesting them of other tasks in a number of areas where police skills per se are not required We think here of prosecutions, VIP security, bailiff services, typing, accounting and public relations. These jobs all need doing but they can be done either by other organisations or by civilians employed by the police. At the same time better and more appropriate training and personnel management practices are needed

An anti-corruption agency. Corruption is a problem in Papua New Guinea but we think it has not yet reached unmanageable proportions. With the problems of investigation in the police which will take some time to surmount - and the ramifications of corruption beyond the ord<nary fraud cases - we recommend the establishment of an anti-corruption agency. This has been done in Hong Kong, Singapore and many other countries but we have taken note in this country of the Ombudsman's involvement in corruption inquiries. Accordingly we provide in Appendix A.5 a detailed proposal for the use of the Ombudsman in this type of work. It will of course change to some extent the role of the Ombudsman but each country adopts the model for anti-corruption work best suited to its own institutions.

Improved sentencing practices. The team believes there should be a move towards rehabilitative sentences rather than punitive sanctions, and more links between sentencing and the offender's community. We are aware of the rejection of the rehabilitation approach in some Western countries and the move to "just deserts", but we are also aware of the extent to which this has grossly overcrowded prisons, caused the release of serious offenders earlier than necessary, and reduced the levels of security. Asian and Pacific countries have already reacted against this in favour of rehabilitative approaches because these seem more hopeful than the harsh variations on the "just deserts" theme famili?r to this region (Australian Institute of Criminology, 1980-1984). We therefore recommend Papua New Guinea should work towards the improvement and rehabilitation of offenders. In this connection we recommend the repeal of the mandatory minimum sentence legislation, the institution of suspended sentences, the development of an expanded parole programme and the use of a wider range of sentencing options in the courts, including village courts. We recommend more use of community work orders, intermittent sentences, house restrictions and probation. We suggest a pilot project in Goroka to test wider use of probation and legislative amendments to support probation.

Restructuring the role of the courts. To overcome the present delays, overload and poor performance of the court system, we recommend changes in the role of different courts to focus scarce resources on the types of case that most require them. A number of quasi-criminal and regulatory offences can be taken out of the criminal law all together and the jurisdiction of lower courts increased at each level.

Reform and extension of Corrections. Law and order will never be achieved if penalties are not appropriate, judiciously applied and effectively executed for the benefit of the offender and society - and, in a country like Papua New Guinea, to the satisfaction of the victims. We suggest that the whole area of correctional work receive far more governmental attention. The prisons should not be treated as the receptacle for all the problems society cannot handle. At the moment they are overused, underfunded and they are dangerous academies of crime where the young are groomed for recidivism.

To implement a broader and more effective programme we recommend the establishment of a Correctional Services Commission with responsibility for institutions (including a new special training centre for young adults 17-21 years), probation and parole, a community service order scheme, pre-release hostels for prisoners (to seek jobs and avoid re-entry to gangs), and improved prison industry.

There should be a Commissioner for Institutional Services and a Commissioner for Non-Institutional Services. Both should be members of the Correctional Services Commission which would include politicians, a member of the police, representatives of the churches, and a judge as the independent (part-time) chairman. The purpose of the Commission would be to review the field of corrections, monitor conformity with the United Nations Standard Minimum Rules for Prisoners and organise the establishment of the extended services suggested here. It should not hesitate to be an advocacy group for the improvements in corrections which have been neglected for years. The rearing of hard core offenders may be traced back to this neglect.

Since the aim would be to avoid the perpetuation of crime by the over-liberal use of imprisonment, the aim of the Commission would be to ensure that alternatives are provided for the courts as quickly as possible (see "sentencing practices" page 262 and Appendix A.2).

Data for policy formulation. This report has emphasised the poor data base on which the departments in the law and order sector and the proposed Law and Order Policy Development Unit will be forced to rely at the beginning of their work. We deal above with the routine collection of uniform crime statistics but, there is also a need for victimisation studies, an annual prison census and on-going studies of the economic and social consequences of crime.

Victimisation studies should be the responsibility of the National Statistical Office. "Soundings" of these have already been made as part of the first round of the Urban Population Survey conducted in Port Moresby, Lae, Rabaul, Madang and Popondetta in 1977 and in a similar survey in 1984. We would like to see them conducted at the time of census (every 10 years) and continued in future urban population surveys.

An annual prison census would involve a count of all persons in penal institutions on a fixed day. This could be at the end of the calendar year. It would show all details of offenders (except names) e.g. where born, age, married or single, offence (s) committed, previous convictions, length of sentence, etc. This would have to be carried out by the Corrective Institutions Services.

Further studies of the economic and social consequences of crime are also needed. Detailed and in-depth studies could provide insights into statistics. Examples are detailed life-histories of offenders (see Appendix B.4), recidivist studies, studies of white collar, sexual and violent crime, studies of robbery and breaking and entering in both rural and urban areas. Studies of neighbourhood structures and village courts in the towns and of the organisation and structure of urban gangs would also be valuable. These studies lend themselves to special projects for students and staff at IASER, the UPNG and Adcol but they might also attract the attention of suitably qualified or interested police officers, correctional officers, magistrates, judges, lawyers or social workers.

Private sector support for village courts. It would be valuable if private sector organisations were to be well-informed on the role of village courts. Employers could refer personal disputes and problems of employees to the court in their neighbourhood and release workers to attend hearings and, perhaps, to act as part-time officials.

5. Other related Issues

It will be seen that in this study we have focused on a few areas which seemed to us critical. We were aware that any law and order problem is a reflection of deeper political, economic and social conditions and that many other factors contributed to the situation. We sought to avoid the pretension, however, of trying to be expert in all fields. We accordingly looked at subjects like education, alcohol, a national identification system , and the national youth services. We did not think that any of , these lent themselves to simple statements of recommendation. They will be found briefly discussed in the appendices. We were painfully conscious however that no countries have yet found satisfactory solutions to some of these problems which are frequently linked to the need for a boosting of the economy.

Chapter 17

MAKING THE INFORMAL SYSTEM WORK

We have said that the "informal" option is not an easy one for the government to implement. That is because it runs counter to most of the professions that make up the formal system - the lawyers, the police and the authoritative use of the power of the state. We hope that we have demonstrated that as crime control mechanisms these are just not working - that making them more technically efficient means destroying even further the informal controls on crime. These formal professions are pledged to uphold the law as enacted by parliament without fear or favour - regardless of consequences - and they are exponents of the adversary system of trial which awards the decision to the forensically skilful rather than the righteous or the truthful.

It is the formal system which the Papua New Guinean constitution supports with its guarantees of individual rights. This system is fine for the prevention of exploitation and blatant injustice and it has to be invoked by people who have not lived or been brought up in customary conditions, where the primacy of clan obligations qualifies ideas of individual rights. However, where some people understand and can manipulate the formal system, they use it to exploit or suppress others who do not understand it. This is why the formal system has, throughout history and in all countries, served best the interests of those who could afford the trained lawyers. The mass of the people (even in Western countries) depend more on local community controls of behaviour - going to court only when they could not avoid it. Wherever these local community controls have broken down, the inability of the formal system to control behaviour has been exposed. Even police states across the world know that they have to place more reliance on community controls exercised by street-committees, factory committees, courtyard committees, school committees - using the formal system to back these up. That is why it is essential in Papua New Guinea where community links are still strong to try to make them work.

We began Part IV with a chapter outlining the policies we recommend to the government on law and order. In chapter 16 we set out in brief our recommendations for implementation. In this chapter we try to give readers a feel of the spirit of our proposals, and how making the informal system the centre of government policy might work out in practice.

Police

The police have to enforce the law of the land but in doing this they have always been permitted a measure of discretion, and they have always been expected to pay as much attention to crime prevention as to crime control. Our recommendation is that this discretion be extended and the crime prevention role

given much greater weight. Minor charges should be replaced with warnings. No raids of urban settlements or rural villages should take place without prior consultation with village court officials or local councillors. Obviously if state security is in jeopardy and there has to be an unannounced search for weapons this is different. But we are concerned here with crime prevention and control: whatever evidence is unearthed in such unannounced settlement searches is really not worth the community hostility to the police which the searches generate. For each piece of material evidence discovered in such raids for the prosecution of one offence, the police lose community goodwill which could bring them the information about a hundred other offences. Operating without the community is always counter productive - and inimical to good police work.

The police, whether living in the community or not, have to develop self-restraint and toleration, using their authority as little as possible where the local people can look after an affair themselves. All policemen close to communities have to become accepted, trusted and respected. Only then will essential information about crime and criminals begin to flow. This might sometimes mean the policeman helping with local community activities, turning a blind eye to offences which the people themselves tolerate (illegal drinking, the informal economy which breaches local by-laws, minor assaults, children's cases, etc.) and concentrating on helping village court magistrates, peace officers and local officials to maintain their authority. He should always be available to help these local officials when he is needed but he must scrupulously avoid intervening until they have called him. For him to act before they have sought his help is to undermine their authority. At all costs he has to maintain their authority: to allow them to control their own affairs.

The policeman's patrols around the neighbourhood should be exercises in friendship. He should get to know people personally, listen to their problems and help them with his knowledge of the government even when it may seem to have nothing to do with police work. He should become a friend and confidant. Moreover, he should be patient. It will take time to overcome the present fear and distrust of police. But it can be done and the quality of police work will quickly improve. The point is - don't press it, don't be in a hurry - getting trust takes time.

The police officer should never disdain village court peace officers nor treat them as mere aides to the police. They are not his inferiors: and in their own way they know far more than he does about local affairs. Instead he should build up their authority and local status, show that he respects them and he should praise them whenever they have proved capable of handling situations on their own without calling upon him.

Similarly, in tribal fighting, the police role should be supportive of community discussions and consultations. Prevention should be regarded as more important than the forceful use of mobile units. Police intervention again should never be unilateral but should respond to a call from the village court which should have the primary authority for settling the disputes. Seeing the police acting in support

of village courts will strengthen the authority of those courts and make them more effective. Where district-level courts are established village court work should be more effective.

The informal option means that in thousands of cases the police should use discretion and restraint serving the cause of peace-making rather than the abstract majesty of the law. Sometimes having to lay a charge will be an admission of failure. Only when all else has failed should the law be involved and even then care needs to be taken to avoid making the situation worse by charging some and not others - or by taking precipitous action before all the evidence is available to support the action in court.

Obviously, the climate of restraint and the use of authority only when everything else has failed needs to permeate all ranks of the constabulary. It has to become a precept for good police work - a kind of philosophy that all police must learn. They should take no action at all without first consulting community members and asking about its community effect. Before the action is taken they should explore the possibility of the community being allowed to deal with the matter itself - informally.

If our belief in the informal approach is correct then the improvement in police community relations will increase the flow of information to the police across the country. As this is analysed, interpreted and processed, the stock of criminal intelligence will grow apace. This will make police action against the major professional and dangerous offenders much more incisive and effective. Lesser offenders will be efficiently handled by the village courts strengthened by police support: but the police themselves will be less involved with minor offenders. To keep community support they will have to respect what the community will tolerate.

The most important change that has to take place is in the police conception of the meaning of community support and community relations. Generally, and not only in Papua New Guinea, police regard good community relations as the community cooperating with the police in what they (the police) want to do. It is assumed that everyone wants to enforce the law so that the public should cooperate with the police. When the public does not do this it is being uncooperative and hostile. This shows a very inadequate understanding of (a) the amount of crime in any society which is never reported, and (b) the role of the police as public servants. The police are there essentially to do what the public wants them to do. When the police do not fit this community picture, the people withdraw their support for police action and refuse the information without which the police cannot enforce the law anyway. In any community a certain level of crime will be tolerated and the police have to understand this. If they don't then again the community will withdraw and the majesty of the law will look ridiculous as crime soars.

This is not to deny that there are certain serious offences like a pay-back killing or arson which a community might condone (because it knows what is behind the offence) but which the law of the land cannot permit. But more generally it is quite possible for discretion to be exercised by the police where local controls will work better. If such restraint and discretion buys goodwill and information for the police to deal with the more serious offenders, it is well worth it. Actually this kind of consideration for community expectations is nothing new. It has been practised by village police in other countries for years. But somehow it has got lost in Papua New Guinea where there is now community hostility. Confidence has to be re-established

If all this means improved training and a revamping of the police image it is not only desirable but absolutely necessary. There is no other direction for the police to go if they wish to prevent and control cri me.

Courts and lawyers

The legal profession, brought up to respect deeply if not indeed to adulate the strict impartiality and well-tried fairness of the common law, as received by Papua New Guinea, is generally concerned to vindicate individual rights. Investigations of crime must never deny the rights of the accused. Charges must be proved beyond reasonable doubt. The credibility of witnesses can be challenged. Since process is so important to the trial procedures, a defect in process can invalidate the hearing, even where the guilt of the accused is not in doubt. All this is justified only within the fixed limits of the formal legal system.

The first thing for modern lawyers to appreciate is that the growth in the sophistication of this kind of formal law has been correlated with increases in crime. However theoretically just the rules of the courts are, they are not very effective as rules of behaviour. Where they have superseded informal social controls, behaviour in society has deteriorated almost in proportion to the grandeur of court buildings. This is not to question the great value of the British legal tradition or the necessity of the support it provides for the rights of the individual: it is merely to suggest that it works best where it is sparingly applied and where the courts recognise that the real controls of behaviour are rooted in the community. This is particularly true of Papua New Guinea. That is why the higher national and district courts should be supportive of village courts where the procedures are necessarily less strict and where there is more emphasis on the fulfilling of obligations rather than the vindication of rights. The results are not necessarily less just because the standards of proof are different. If the village courts are likely to err by following what the people believed happened, the formal courts are likely to err by an overscrupulous application of the "beyond reasonable doubt" rule. If in the village courts the individual's interest is likely to be subordinated to the group's, the formal courts confuse many communities by allowing the individual interest to supersede group needs and group expectations.

As far as possible, therefore, recognising the greater effectiveness of village courts, the national and district courts should try to avoid taking over cases which can be properly dealt with by village courts. Where higher courts have to confirm judgements of village courts they should not overturn decisions where some detriment to the individual can be shown to be necessary to support the group.

As modern lawyers become better acquainted with the limitations of formal law as an instrument for solving social problems they will become more respectful of the lay tribunals and the essential peace-making qualities of customary law. They will then support rather than destroy the informal procedures.

Corrections

The rationale and effectiveness of the correctional services, whether institutional or non-institutional, are always going to depend upon the support and understanding of the community for those sentenced and on community action when they are released. If the offender by his offence totally alienates his community then, when he has served his sentence, he will have difficulty finding others with whom he can live satisfactorily. If he doesn't fit back into a group this means he is totally without control and he may soon be expected to re offend. At least the prison community will not reject him and the more outrageous his criminal exploits the higher status he will enjoy in the compounds and dormitories of the jails.

The stress laid on probation and community work orders in this report is because, though these are more recent to Western legal systems, they have venerable customary roots. The principles of giving a second chance or of keeping a person under community observation are very ancient. Even with certain sacred offences there were forms of purification rites by which an offender who had endangered the group by angering the gods or spirits could redeem himself. He could be readmitted to the group if he made amends and performed the ceremonies. Community work was well known not only as a punishment but as an obligation. Working to pay off compensation was not unknown- and the giving of wives or children to labour for the offended party frequently occurred. It is therefore important to use the probation and community work orders in a creative way within local communities.

Probation has worked in all cultures around the world because its principles are so well understood. However, the probation officer does not always have to arrive in a car for supervision. A local dignitary, or indeed anyone locally respected, may be appointed as a probation officer (a temporary, an assistant or a voluntary probation officer), and there can be thousands of such people working under the guidance of the full-time probation officers at the centre. There has to be ingenuity to adapt the system to Papua New Guinea conditions, but it can be done at no great expense if community resources are mobilised. Similarly, probation officers could supervise community work, or the local resources of government

construction work supervisors could be used to ensure that the offender puts in the required number of hours. Magistrates who may have to deal with cases cannot be used as either voluntary probation officers or community work order supervisors, but peace officers or informal leaders ("big men" etc.) could be used Incidentally though the word "voluntary" is used here to signify unpaid or part-time, it is appreciated that in Papua New Guinean conditions it may be preferable for such duties to be carried by someone chosen and appointed by the official services rather than by someone who offers himself or who is elected In the latter case it may be difficult for the necessary authority to be exercised.

The Corrective Institutions Service needs to develop many more community links - not only for prisoners but also for the prison officers who can easily become a separated, isolated group. Closer community involvement with the daily work of the prisons should be sought and talented prisoners might be able to put on occasional performances for outsiders. More important, however, is the need for sophisticated research to be carried out on the community structures and controls which develop and maintain themselves in the prison compounds and dormitories. Too much has been taken for granted about the singificance of imprisonment for inmates (e.g. "It's no deterrent", "They don't mind imprisonment"). We need to know more about how the gangs are formed, how they exercise their power, how the structures accommodate newcomers who have never been to prison before, and how they receive the newly-arrested hardened offender who comes in with an established reputation. We need to know why, if escape is really so easy, the gangs do not permit it more often; or why some prisoners will lose the confidence of others when they cooperate with the authorities whilst others do not; or the particular meaning of a prison record in the outside community; or whether some exercise a dominance over others; or why some individuals without tribal or community status achieve positions of authority in the compounds, amongst other prisoners. When things like this are known it might be possible to use them to the advantage of the prisoners and the prison authorities: to improve prisoner classification; to know when to segregate certain offenders; or to hamper abuses of the prison environment by the highly organised gangs inside.

If the attitudes of correctional workers are to change and they are to understand better what they must do there is a need for some follow-up studies of the prisoners they have handled What has become of them? Care would need to be taken here to respect the privacy of the ex-offender but his subsequent life history needs to be known. Such information can then be fed back into the training of prison staff, without the persons concerned being identified. It is vital for the refinement of future correctional work to know in great detail how different types of released prisoners are received by the outside community. What is done (if anything) to help them? What is expected of them? What group obligations (if any) do they have? Above all, with recidivists it is essential to know whether they have any outside community at all beyond the criminal associations which they have formed.

Legislators

Parliamentarians, legal draftsmen and those concerned with the formulation of new statutes will be at the centre of the move from formal to informal procedures. As they draft what are apparently unrelated statutes they can affect authority, perhaps unwittingly destroy a community control which is working well and shift power to a formal service which has no hope of becoming effective without community backing. Legislators at all levels need to be alerted to the new approach to control by trying to leave as undisturbed as possible the "underlying law".

Reference has already been made to the dichotomy of interests of the written constitution on the one hand and the "underlying law" on the other. If indeed the "underlying law" is intended to guide future legal development then it becomes important that group interests and group obligations be carefully preserved and, where possible, extended in future statutes, whatever their purpose. This, of course, will be a departure from the Western criteria for legal drafting; but just as the village courts legislation and the law specially enacted against sorcery were more oriented to the realities of Papua New Guinea, so should all new legislation be drafted to support custom rather than to destroy it. It should be realised that customary controls and group obligations are easily destroyed by statutes which emphasise individual rights or which make responsibilities totally individual. Most Western legislation does this, and in the process has atomised institutions like the family. Great care must be taken to avoid this happening in Papua New Guinea and the care should come at the drafting stage of a law, with increased sensitivity to the needs of local groups, communities and networks of kin in Papua New Guinea.

Universities and legal training establishments

It is important that wherever possible statutes should specify that in disputes if an informal, group or community settlement can be reached, the courts may endorse or refuse to hear the case at all unless satisfied that other customary or informal measures have been tried and failed. Above all statutes should empower the courts to dismiss any case in which the judge forms the opinion that one or both parties by engaging modern lawyers and using the formal law are seeking to circumvent the normal informal processes within their communities or as provided in that locality.

If the best use is to be made of the informal system it has to become a basic part of the legal education of every student of law. It will be necessary to introduce courses on the informal procedures, where these are not already being taught. Customary law now has its own literature and this needs to be extended by research on customary law and its application in the various societies of Papua New Guinea. The focus must be on working contemporary institutions rather than on the past or on substantive norms. Field observation of informal settlement procedures and village courts should be compulsory.

The bureaucratic elite

It is important that members of the elite appreciate that their future security will depend more upon the informal system working and on the communities controlling the rascals than on the technical superiority of the formal system. The approach proposed in this report is sufficiently novel for it to require reeducation of public servants and other members of the elite, before their support can be gained. In addition, they need to learn to use the informal system and the village courts themselves, referring problems to elders in their neighbourhood and showing a willingness to participate in mediated and informal solutions. The public education campaign we propose must direct itself to specific elite audiences as well as to the general public. Police must refer complaints of a minor nature to the village courts and for community mediation if they are not to submerge themselves in a floodtide of trivia on behalf of the wealthy and powerful.

Overview

The informal system will not work if it continues to be disdained as a form of second-class law, as a poor-man's law or as something greatly inferior to the modern written law and the formal system. Throughout government there has to be a lively awareness of the ineffectiveness of the modern law and a determination to preserve what works. This needs constant support and reinforcement from those occupying high political office.

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