Law and Order in Papua New Guinea

Volume II
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

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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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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.

APPENDIX A.1

The following recommendations in detail for the courts, judiciary and criminal procedures and the magistracy were compiled by the team member who did an in-depth study of court procedures

Appendix A. 1

COURTS, JUDICIARY AND CRIMINAL PROCEDURES

Recommendations affecting the judiciary fall into the following major themes.

Decriminalise

To maximise the effectiveness of the expensive judicial process, quasi-criminal, and regulatory offences must be taken out of the criminal courts, and where possible out of the formal judicial process and into informal and less costly systems of enforcement and conflict resolution.

Increased jurisdiction of lower courts

At each step in the judicial hierarchy the courts are handling cases that could be more appropriately processed by lower courts. The jurisdictions of all lower courts must be increased.

Upgrade training

At all court levels, the training of judges and magistrates has been sadly remiss. Much greater emphasis on training before and during service on the bench is required. Without training and continued training throughout the career of every magistrate and judge, the judicial system will not function properly.

Less arbitration more mediation

Both in the national and district courts, more formalised procedures must be established to increase the use of mediation in both civil and criminal cases.

Judicial independence

In a state heavily reliant on regulations and statutory control of all activities, the capacity of the court to act as an independent arbitrator in resolving disputes between the state and individuals becomes crucial. In this environment the courts must assume greater responsibility over their operations. Their independence in administration and financial matters forms an essential part in creating the appearance and fact of judicial independence.

Administrative support

The resources necessary to operate efficiently must be provided for the courts to keep pace with burgeoning court lists. The costly investment in law and order suffers due to the inability of the courts to process cases effectively. Many of the problems arise because resources are inadequate for existing case loads.

District Courts

District courts do, and should be able to, process more cases, more efficiently with less delay and considerably less cost than the National Court. In not making greater use of district courts, the justice system severely misallocates its scarce resources. Both increasing costs and delays can be avoided by channelling fewer civil and criminal cases to the National Court and more to district courts.

The district courts are under-utilised and the national courts are over-utilised. To make the district courts the backbone of the criminal justice system much of the national court jurisdiction should be allocated to district courts. The National Court should hear only the most serious crimes and civil matters and principally serve as a court for constitutional cases and appeals. All major commissions of enquiry should be conducted by national court judges. By increasing the district court jurisdiction the National Court will eventually be rid of intolerable backlogs and could be reduced to seven judges. The National Court composed of a majority of national judges, through its appellant and constitutional jurisdiction, can shape the jurisprudence of all Papua New Guinean courts.

<u>Recommended jurisdiction of grade 5 magistrates</u>

- All offences except sedition and treason not dealt with by lower courts.
- Civil matters not dealt with by lower courts up to K20,000 or higher with the consent of both parties.
- All appeals from grade 1 to grade 3 magistrates.
- The delegation of the following matters to grade 3 and 4 magistrates with grade 5 magistrates retaining primarily a supervisory function:

  Coroners inquiries
  Village court supervision and appeals
  Police appeals
  Land courts
  Juvenile cases

Recommended jurisdiction of grade 4 magistrates[1]

- All crimes bearing a maximum sentence of 5 years or less not dealt with by lower courts.

- All civil matters up to K5,000, not dealt with by lower courts, or up to K10,000 with consent of both parties not dealt with by lower courts.

- Maximum sentencing powers of grade 4 magistrates to consist of:

  jail up to 5 years
  fines up to K5,000
  community work up to 300 hours
  probation up to 3 years.

Recommended jurisdiction grade 1 to grade 3 magistrates

- All offences up to a maximum sentence of one year

- All civil matters up to a maximum of K1,000 or up to K5,000 with consent of both parties.

- Maximum sentencing powers: -

  jail one year,
  fine K1,000,
  community work 200 hours,
  probation 3 years.

Although the National Court has jurisdiction to hear all criminal matters, it should refrain from hearing any cases assigned to lower courts unless the circumstances make it impractical to adjourn the case for hearing by a lower court. Similarly the grade 4 and 5 magistrates may hear any matter within the jurisdiction of courts below them but should only do so in special circumstances. The court within its statutory jurisdiction and not the prosecutor should decide what courts will hear the case. Neither the prosecutor nor defence counsel should be able to "forum shop" for a court to their liking.

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1. Contrary to popular belief the non-graduate district court magistrates grade 4 do not appear to have higher conviction rates than the National Court.

District court magistrates should retain the power to refer to a higher court, including the National Court on circuit, any matter which, in their view, would be best heard by that higher court in the interests of justice. In particular, politically sensitive matters or conflicts of interest may thus be handled by circuit courts or other non-resident judges.

This shift in jurisdiction will beneficially impact on the following problems –

Delays

The National Court backlog will be reduced to four months or less within two years of appointing grade 5 magistrates in each province. The possibility of the accused to delay his case until witnesses disappear or everyone loses interest will be eliminated.

Circuits

The onerous burden of circuits on the National Court can be significantly reduced Circuits will be less frequent and of shorter duration. Circuit courts cannot deliver legal services as effectively as local courts. Members of circuit courts are less familiar with local problems, have less time to spend interviewing witnesses, trying cases or sentencing offenders. Circuit courts generally leave the impression they are "anxious to do justice" and be on their way. Collapsed trials, missing witnesses, a lack of interpreters, illness striking key personnel, or any number of mishaps can wipe out much of the business of any circuit, wasting court time and justice resources. Neither their inefficiency, high cost, or the severe emotional and physical strain imposed on court circuit members makes the case to minimise court circuits as much as the inferior quality of legal services delivered by court circuits as opposed to locally resident courts. Local courts possess a much greater awareness of local problems which is crucial in rendering viable decisions in both civil and criminal matters. A sentence or decision eminently suitable to the dynamics of the business or social conditions of Port Moresby may be disruptive in Mt. Hagen, creating more problems than it solves. This is not an argument for different standards of justice. To believe it is, ignores both the importance of local conditions and the multi-faceted subtleties inherent in how decisions are delivered, explained and imposed

Sentence discrepancies

With the bulk of sentencing falling to local magistrates and not to a series of different National Court circuit judges a more consistent sentencing pattern should emerge in each province.

More legal resources in local areas

The expanded jurisdiction and work load of resident district courts will attract more private and government lawyers to reside in different centres throughout Papua New Guinea.

Better training

The presence of a grade 5 magistrate will provide greater accessibility to a legally trained judge for other lay magistrates to upgrade their knowledge and training. Similarly grade 5 magistrates in each province operating a busy criminal court will increase the opportunities for young counsel to get court room experience before a legally trained magistrate.

Grade 5 magistrates

District court magistrates at the grade 5 level should be legally trained and have at least five years of practice, or its equivalent, in law related work in government or teaching.

For the next several years the district court magistrates bench will have to be significantly enlarged. This will necessitate hiring experienced expatriate lawyers, as few national lawyers are either adequately qualified or apparently desirous of taking a judicial appointment. Nationals should be discouraged from taking an appointment to grade 4 or 5 magistrates or to the National Court until they have had at least ten years experience in practice. The pressures, social, political and economic restrictions upon judges are too onerous for young professionals to assume early in their careers. They, and the bench, will benefit from waiting for at least ten years before contemplating a judicial appointment.

Some may be dismayed by the number of expatriates that must be hired to swell the ranks of grade 5 magistrates to handle the increased work load of this court. Some comfort should be afforded by the dominance of good national judges on the National Court which, through its role as an appellant court, can shape the common law jurisdiction of Papua New Guinea. To build a strong base for the future of the Papua New Guinea judiciary, it would be counter-productive to entice too many bright, young national lawyers onto the bench. The bench and the law profession need these lawyers actively involved in the legal community as lawyers and academics. In time, and with a wealth of practical experience behind them, their judgements will be seasoned by experience. The bar will be more inclined to acknowledge this competence, and overall they will find the responsibilities of the bench much more satisfying. If the goal is competence as opposed to rapid localisation, appointing sufficient expatriate magistrates for each province can be easily justified If localisation occurs before a pool of experienced and skilled nationals can assume key positions, the necessary resource pool of expertise will not be established for a long time to come.

The first generation of nationals to replace expatriates, if they assume responsibilities beyond their skills run themselves and institutions down. The inability to operate effectively creates indifference or a restless search for another - "more suitable job". Lacking the assistance of anyone in the field to help them properly develop, their mistakes mould the working environment for subsequent generations of nationals. Each new generation of professionals is subjected to a progressively deteriorating system with fewer experienced expatriates or nationals to guide its professional development. In time, the deficiencies in the system will cause inordinate expense and begin to affect related agencies, rendering the system increasingly incapable of coping.

To revive the system to an acceptable operating standard, the localisation process must begin again. Only in beginning again, there will be fewer, if any expatriates with a working knowledge of Papua New Guinea. The plan to enlarge the jurisdiction of the District Court must be carefully considered to attract qualified expatriates through attractive salaries, benefits and pension schemes so as to phase in the replacement of expatriates with qualified national magistrates at a manageable rate.

The emotionalism of the debate on localisation must be replaced with a rational plan for phased localisation.

Magistrates training

All grade 4 magistrates should have completed a two year training programme with a balance of practical and academic training. Ideally, it should contain no more than eighteen months of class room instruction. Upon completion of this basic training course the graduate could be appointed as a grade 1 magistrate. All grade 1 magistrates should spend at least one year working directly under the supervision of a grade 4 or grade 5 magistrate. For most of this first six months the grade 1 magistrate should sit on the bench as an observer. After six months the grade 1 magistrate can begin to take charge of the proceedings while sitting with a senior magistrate. By the end of the first year the new magistrate should be able to handle his own cases. However, until he reaches the level of a grade 2 magistrate he should always be posted to a place where other grade 3, 4 or 5 magistrates also preside. At least two years should be spent as a grade 2 magistrate before being elevated to the grade 3 level. Depending on the progress made by each magistrate, they should be ready for appointment as a grade 4 magistrate after two years at the grade 3 level. Through the early years of a magistrate's career, continuing education and supervision are vitally important.

Improper initial training and the lack of continuing training once again explains the deficiencies of most magistrates. Although in recent years magisterial training has improved, there is still much more to be done to ensure that the level of training is commensurate with the level of responsibilities which magistrates assume.

Mediation

While statutory provisions exist in the Local Court for mediation, magistrates do not actively offer mediation services. (Local Court Act Section 32 to 33). In most cases, the training and experience of most magistrates has not provided the skills to mediate disputes. In the absence of established procedures to divert cases to mediation, magistrates primarily rely on what they know best - the formal adversarial processes of the court.

While most jurisdictions are discovering the advantages of mediation at all levels of court, in Papua New Guinea the ability for mediation has atrophied from neglect.

Mediation has been used for centuries throughout the world as an informal means of conflict resolution. Recently, corporations and individuals have increasingly turned to mediation rather than formal judicial procedures. Mediation's informal, inexpensive and expedient ability to resolve conflict has been "rediscovered" by formal courts which now attempt to steer litigation to mediation. In Ontario, over 70 per cent of all small debt disputes are resolved through a pre-court mediation process. Other jurisdictions have required litigants to try mediation before being given a court date. Many courts have installed mediation techniques as part of their procedures and try to use mediation at different stages of litigation. Mediation has been seized upon by many jurisdictions as a means of reducing the cost of litigation and as a means of cutting down the intolerable backlogs that cause delays in excess of two years before cases can be heard.

In a dispute where the parties have an on-going relationship (continue to do business together, live in the same community, etc.) they share a common goal in desiring to reach an equitable solution to outstanding disputes. Mediation does not work unless both parties desire to reach an equitable solution. If one party does not want to mediate, the process will not work. Mediation involves the use of a third neutral party (the magistrate, judge or acceptable lay person) to help the parties reach an agreement. Unlike arbitration, the focus is on consensus as opposed to competition between the parties. Unlike court cases, both past and likely future relationships of the parties are important in mediation. If the parties cannot mediate the dispute they can always resort to the adversarial processes of the court. Normally mediation requires two or three sessions of less than 30 minutes each to reach a consensus. If the parties come to a settlement the agreement can be filed in court and take on the same binding effect as a judgement of the court.

In Papua New Guinea, informal mediatory "peace-maker" systems are much more in tune with customary norms than is common law. Ironically, Papua New Guinea aspires to develop the highly adversarial procedures of other countries, while

these same countries attempt to develop the mediation skills previously prominent in Papua New Guinea. Many of the problems of the modern justice system, notably the delays, would disappear if greater reliance were placed on traditional dispute settling techniques rather than legalistic, adversarial approaches.

Training and procedures must be established to incorporate mediation services as a principal component of the judicial process in Papua New Guinea.

Administration

Judicial independence, administrative efficiency and good management principles require all administrative matters related to district court operations to be placed under the supervision of the Office of the Chief District Court Magistrate. Accountability for public funds is maintained through the budgetary process and through the accounting procedures imposed by government regulations. The court can only spend its budgetary allocation on what has been approved and even then only in a manner consistent with approved government procedures. Similarly, the control of all staff except for magistrates must be in accord with civil service regulations. Through these techniques the government achieves all the necessary controls over the personnel, finances, and administration of district courts. In all other respects, except for the appointment of magistrates, and the sitting of courts, the operation of district courts must be left entirely to the direction of the Chief Magistrate.

To create a clear distinction between the District Court and the National Court, the former should be renamed, the Provincial Court. Subsequently all grade 5 magistrates should be called provincial court judges and those from the lesser levels of provincial courts referred to as provincial court magistrates. This change distinguishes the jurisdiction and training of the judiciary. To no small degree the ability to recruit good nationals and expatriates to the provincial courts will be enhanced by changing the title from magistrate to judge for all judicial officers appointed to the proposed jurisdictional responsibility of a grade 5 magistrate.

Judicial remuneration

Remuneration and benefits for grade 5 magistrates (provincial court judges) and national court judges should be identical. Any distinctions should be based on experience and length of service, not on the name of the court.

This is only fair because if provincial courts become the primary trial courts for most criminal cases and assume a proportion of the civil cases, provincial judges' work loads will be at least as strenuous, if not more so, than those of national

court judges. The National Court case load should consist mainly of appellant, constitutional and civil cases as well as all criminal cases waived to the National Court by provincial court judges.

The trial court and the appellant court call upon different interests and different skills. A good trial court judge should not be enticed to leave what he can do best simply for the extra pay and status of the National Court. As in some European systems the prudence of attracting the most experienced judges to trial court work, leaving appellant court work to lesser experienced judges is compelling. The public, through their role as litigants, witnesses or as part of a court room public gallery see much more of trial court judges. The reputation of the judiciary is essentially based on the performance of trial courts. If the least experienced judges sit on the trial courts the appeal benches will be much busier. Trial court judges cannot adjourn to consider each new legal point that arises in litigation, they must rely on experience to make numerous decisions in every trial. Appeal court judges have research assistants, the assistance of fellow judges sitting on the same case, the thoroughly researched legal arguments of counsel, time to study the law, and the time to write a decision. Certainly one could argue the most cost effective judicial system would place its most senior, experienced judges in the busiest trial courts, leaving appellant work to younger, less experienced judges. The argument need not be taken to that extreme. It is simply necessary to make the point that both courts need the best legal talent the country can produce, and that each court should appeal to good legal minds on the basis of the nature and unique challenge offered by each court and not by a distinction in benefits or status. This will require similar terms and conditions of remuneration.

The skills of a good judge take many years to develop. The advantages of attracting and keeping good people on the bench has been thoroughly argued and documented in both civil and common law jurisdictions. Some jurisdictions have developed career paths exclusively for judges from the moment of entering legal training. The primary basis for attracting and especially for keeping good people on the bench is a rich variety of challenges. By maintaining the same level of benefits for provincial and national court judges, movements from one to the other bench would be dictated by interest and skill, not by economic considerations.

To establish an equitable system of remuneration for both national and provincial court judges the remunerative scheme should stress the importance of experience, tenure as a judge, and ability. The scheme must be attractive to senior lawyers, who should not suffer any major financial sacrifices, on taking up a judicial appointment after a successful career at the Bar[1]. Remuneration should be based on the following categories:

1. Grants and tax advantages should assist any senior national lawyer in moving from private practice to the bench.

Junior judges

Level 1 - five years minimum out of law school.

Level 2 - (a) eight years out of law school, or
(b) seven years out of law school of which at least two must be as a judge.

Level 3 - (a) ten years out of law school, or
(b) nine years out of law school of which at least two must be as a judge.

Intermediate judges

Level 1 - (a) twelve years out of law school, or
(b) ten years out of law school of which at least three must be as a judge.

Level 2 - (a) thirteen years out of law school, or
(b) eleven years out of law school of which at least three must be as a judge.

Level 3 - (a) fourteen years out of law school plus at least one year as a judge, or
(b) twelve years out of law school of which at least three years must be as a judge.

Senior judges

Level 1 - (a) fifteen years out of law school plus at least two years as a judge, or
(b) fourteen years out of law school of which at least three years must be as a judge.

Level 2 - (a) seventeen years out of law school plus at least three years as a judge, or
(b) sixteen years out of law school of which at least four years must be as a judge.

Level 3 - (a) twenty years out of law school plus at least four years as a judge, or
(b) nineteen years out of law school of which at least six must be as a judge.

This scheme slightly favours anyone accepting judicial appointments earlier than others. At each level the salary should increase incrementally until the senior level where it should increase significantly from one level to the next. Partial pensions should be available on attaining fifty years of age with ten years or more of service as a judge. Full pension should be available on the completion of ten or more years of service at the age of sixty.

In other respects the benefits and conditions of employment should be the same for all judges whether sitting on the provincial or national court.

The above principles should be seen as guidelines for the future, not necessarily as hard and fast rules during the early years of localisation of the judiciary. Some distinction in benefits should be made to adjust to the cost of living in certain areas. Senior judges who as administrative responsibilities as chief or deputy chief judges should be accorded additional benefits. No chief judge should hold his position for more than five years and should not be eligible for two successive terms. By rotating senior positions, opportunities will be provided for other judges to assume administrative responsibilities and keep senior judges current with the law. Using a system of rotation will ensure the cooperation necessary to develop a cohesive bench as each senior judge, knowing he will be back in the ranks, will be sensitive to the needs of all other judges.

In the next twenty years the administration of provincial courts (district courts) should be under the authority of a chief provincial court judge in each province. In time, financial and administrative support should be channelled through provincial governments. While this ultimate step may be many years away, it must take place to ensure the provincial court, to the extent possible in a national system of criminal and civil law, is sensitive to provincial values and concerns. The appointment of provincial court judges and the terms and conditions of their employment should remain with a national body subject to consultation with provincial governments.

To accommodate the increased responsibilities of district courts and the incorporation of the Village Court Secretariat, proper planning must be developed to reorganise the Office of the Chief District Court Magistrate. The administration should be carried out by competent administrators, subject to the supervision of the Chief Magistrate.

The thrust of all recommendations regarding the courts requires up-grading the importance and responsibility of the District Court. To unclog the judicial system, the District Court must be called upon to play a much larger role in processing both civil and criminal cases.

To maintain interest and a high degree of professionalism, the vital importance of continuing training cannot be overstated. Sabbaticals consisting of further legal studies, stints on Law Reform Commission studies or extended visits to study judicial systems in other jurisdictions should be available to judges after every seven years of judicial service.

National Court

By increasing the jurisdiction of the District Court, most of the delays in the National Court will be resolved. Similarly the National Court conviction rate should improve as the number of nolle prosequis will be significantly reduced Reforms narrowly pertinent to the National Court would also improve the efficiency and consistency of that court. Among the most important are the following -

Trial co-ordinators would vastly improve the use of court time and maintain supervision of all cases. Trial co-ordinators can keep on top of cases which otherwise tend to get postponed until dropped out of the system. The National Court requires a trial co-ordinator to manage the Port Moresby sittings and circuits (the District Court could also use a trial co-ordinator in the busier centres such as Port Moresby, Lae, Mt. Hagen and Goroka).

Trial co-ordinators by improving the delivery of legal services achieve cost savings that offset any extra funds required. (The savings in terms of court time, lawyers and police have been found in other jurisdictions to be substantial.)

Without court reporters neither the District nor the National Court, dependent as they are upon the judge for transcripts, can operate efficiently. The problems and delays imposed by this practice are not fully appreciated in Papua New Guinea. Either a tape recording system or court reporters must be provided to the district court grade 5 magistrates and the National Court. All other courts can function solely on the basis of a simple tape recording system.

Freed from the need to take verbatim notes of proceedings, judges would be able to increase their capacity substantially, possibly by as much as fifty per cent.

To maintain a competent, up-to-date processing of criminal and civil cases, and to keep all court records current, a properly trained National Court Registry staff is essential. The training and experience of present registry staff are not sufficient to maintain the work load of the present National Court registry. All positions should be up-graded and proper training courses established to ensure that the civil and appellant work of the courts is properly administered

A core of properly trained interpreters under the auspices of the Director of Judicial Services must be available for use by the national and district courts throughout Papua New Guinea.

National Court circuits should be fewer and shorter. The work of the National Court circuit should consist of -

Criminal cases waived by the relevant district court judge due to a conflict of interest or because the matter is too volatile for the resident judge, and

Civil cases involving in excess of K20,000 or civil cases waived to the National Court by
district court judges, and

Preliminary motions and appeals.

With all the above changes and especially with the expanded jurisdiction of the District Court, the National Court will be free to play its proper role as a National Court; shaping Papua New Guinean jurisprudence through appellant decisions, establishing sentencing policies through sentencing appeals, and taking a leading role in the continuing judicial training of all judges. National Court judges should be used throughout Papua New Guinea to conduct enquiries, and to head commissions as required by the government. Through this variety of work, the National Court should be able to attract and keep highly qualified people on the bench.

Criminal procedures

In keeping with the spirit of past Law Reform Commission proposals, we heartily endorse all changes designed to simplify criminal procedures. Many significant changes can be made without destroying the requisite balance between the interests of the state in protecting individual rights and the interests of the state in protecting the public by successfully prosecuting offenders.

While complex procedures may be justified for major crimes and for all offences involving mandatory minimum sentences, for all other offences criminal procedures, and rules of evidence should be significantly less complex.

If an evidentiary or procedural error does not constitute a substantial miscarriage of justice when viewed against the totality of the proceedings and evidence in the case, the error should be ignored. The trend to deny any successful basis for an appeal based on technical or trivial evidentiary procedural errors should be firmly entrenched by statute and govern all court proceedings.

Recent amendments to committal procedures, designed to simplify the process and save court time, may have complicated procedures, thus extending the time required to secure a committal.

Under the amended scheme committals require the sworn statements of key witnesses. The process of collecting sworn statements may be inordinately prolix even if carried out without errors that either necessitate repeating several steps or in denying the committal for procedural error. Presently, once the investigation has been concluded to the point that the witnesses required have been identified, the investigating officer must locate the witness, type out the statement, (which may often require translating the statement from Pidgin or ples tok into English) and then take the witness before the requisite judicial official for the statement to be sworn. These procedures may by themselves take as much time to complete as the entire investigation of the crime.

> "If nothing goes wrong, the committal procedures double the time the investigating officer takes to investigate ..... but 75 per cent of the time something goes wrong ..... and the time required may be significantly increased ..... it may take five days to re-locate one witness." (National Serious Crime Squad).

In complicated cases involving many witnesses, the police may spend weeks getting statements, typing them out and carrying out the numerous related procedural steps necessary to complete the committal process. The protections afforded the accused by ensuring that the decision to commit is based on reliable evidence and the advantage of arming the accused with the sworn statements of all witnesses before trial can be achieved by alternative means that involve less wastage of justice resources.

We recommend that committals be based upon the informant's or policeman's sworn statement which sets out the grounds for his reasonable belief that the accused committed the crime charged The judicial officer after receiving the sworn statement of the informant or police officers, and after interviewing the deponent will only commit the accused to stand trial if reasonably satisfied that -

> all necessary elements of the offence have been properly and clearly alleged; and
>
> significant particulars have been alleged to identify the offence to accused; and
>
> that the evidence alleged is sufficiently reliable and persuasive for the judicial officer to reasonably believe an offence was committed as alleged

The magistrate may refuse to accept the charge if not satisfied that all the elements are reasonably present. Through this process the accused requires the same protection afforded by the present complicated committal procedures that unduly tax scarce resources.

Further, if the prosecutor is required to provide statements of all state witnesses to the accused or his counsel in criminal cases as soon as possible and in no case less than fifteen days before trial, the same protection presently available to the accused arising from receiving all sworn statements of witnesses will be achieved. (If the accused receives the initial statement of all the prosecutor's witnesses the accused's defence may be better served than by requiring a sworn statement that constitutes a rectified or enhanced version of the initial statement the witness gave the police.

In all aspects of criminal procedure, Papua New Guinea, should not be bound by criminal procedures that have evolved in other jurisdictions. In most jurisdictions fundamental changes to criminal procedure would be extensively undertaken except for the entrenched nature of legal traditions and the difficulty in securing agreement on reform in the legal community. Many jurisdictions are presently struggling to change and adjust criminal procedures to meet the contemporary needs of criminal justice.

A panel of lawyers, judges and legal scholars balanced with equal representation of lay people should be given the task of restructuring criminal procedure to suit Papua New Guinean needs. The committee must be given an adequate research staff and a full year to complete its work. A team of seven, consisting of a judge, a lawyer, a legal scholar (law professor) and three lay people chaired by a non-legal person (preferably a person with established analytical skills in other fields) could make significant headway in making criminal procedures relevant to the needs of Papua New Guinea. An abiding sense of fairness, common sense and an eye to practical solutions should guide the work of this committee to develop criminal procedures that balance the competing interests of the state in developing a justice system that protects individual rights and protects society by efficiently prosecuting crime.

A significant portion of the blame for court delays can be traced to deficiencies in the bail system. A number of changes to the Bail Act are urgently required as follows:

> Courts must be given broader discretion to remand serious offenders in custody;
>
> Courts must have a greater range of alternatives to custody to ensure the appearance of the accused, or to keep the police regularly informed of the offenders movements;

Strict time requirements must be established for the trial of any offender remanded in custody. All offenders remanded in custody must be given a pre-emptive court date;

Statutorily mandated court reviews must be established for any offender kept in custody awaiting trial beyond 30 days. After 30 days the prosecution must prove on a balance of probabilities why alternatives to custody should not be granted;

If the offender is not convicted, the court should be empowered to award compensation to the offender for any unreasonable period of time spent in remand. The compensation award should not automatically accrue, but should be based on evidence of unnecessary delays caused by the prosecution, and the strength of the case against the accused.

All time spent in remand should be set off against any jail sentence. Remand time should be credited against any jail sentence or fine at the rate of two days for each day in remand.

In all criminal cases the courts must become more creative and resourceful in establishing conditions of release. There are numerous conditions that will improve the likelihood of either the accused appearing for his trial or of the police being able to locate the accused.

As much information as possible about the accused should be determined, verified and made a part of any documentation ultimately used in warrants. Any doubt about the personal details of an offender should be verified Adjournments of up to 48 hours should be given to police or the offender to confirm key information or to develop credible plans for the offender's release.

In some instances information about past employment, past residences, friends, family and origins will not be easy to determine. However, the effort and time invested in gathering information about the accused during the bail hearing will be recouped by the time and resources saved in finding bail defaulters.

By restricting the movements of the accused to significant areas, or by requiring the accused to report to a police station at specified times a more current accounting of the accused's movements can be achieved.

Cash and other valuables should be received as bail deposits. As often as possible other people should be listed as guarantors, or required to put up bail. Building up the obligations to others will build up the incentive to report to court as required

The police must realign their priorities. The police must recognise the importance of executing warrants to the overall successful functioning of the justice system. Similarly all bail defaulters should be prosecuted. Forfeiting bail and winding up the case encourages disdain for court orders. There is no reason why a dutiful offender who honours bail, should be punished by criminal sanctions while the bail defaulter simply loses his bail. This practice can only be tolerated for minor traffic violations where the matter is presumably a civil or regulatory matter and not a crime.

By using civil as opposed to criminal sanctions against minor traffic violations the constitutional limitations on expedient enforcement procedures against traffic violators can be avoided It is difficult to justify the extensive costs incumbent upon using criminal bail proceedings for minor traffic violations. There are numerous less expensive, and more effective alternatives that rely on civil sanctions in the first instance to process and punish minor traffic violations.

Some of the civil schemes will drastically reduce demands on justice resources and can be designed to be self-supporting based on fine revenues. In maintaining the civil nature of the enforcement proceedings, fines cannot be enforced by jail sentences but only by other civil recourse.

Licences, suspended or terminated should be reissued only upon payment of a new licence fee determined by the person's record of traffic violations.

If all government issued licences of any kind were entered on a computer, they could all be jeopardized by the failure of the offender to pay fines imposed for violations of any laws governing the use of his licence. Only when the offender is caught operating after his licence has been suspended should criminal proceedings be instigated.

APPENDIX A.2

The following recommendations in detail for sentencing were prepared by the member of the team with special experience in this area

Appendix A. 2

SENTENCING AND PROBATION

Integral to the process of moving away from excessive reliance upon formal criminal justice systems is the substitution of rehabilitative sentences for punitive sanctions. Sentencing options must be expanded, judges and magistrates must be trained to explore more creative sentencing options, and the community and victims must be allowed to participate in much more meaningful ways.

Sentencing plays a pivotal role in determining the usefulness of all state investments in law and order resources. Much greater attention should be given to sentencing.

The courts must be given feedback on the effectiveness of different sentencing powers. More information about the offender must be made available to the court. More training and sentencing seminars must be made available for judges and magistrates.

By engaging the resources of the community and probation offices, the courts should be able to reach beyond their present excessive reliance on fines and jail sentences.

Jail, the most costly sentencing tool, and generally regarded as the least effective deterrent must be reserved as a last resort and only for the most serious offenders who pose a danger to the public.

Repeal of Mandatory Minimum Sentence Legislation

The most pressing recommendation calls for the repeal of mandatory minimum sentence legislation. If this is now politically impossible, it will soon be politically impossible to maintain mandatory minimum sentences.

Whatever the wisdom of mandatory minimum sentences, the oppressive costs and potentially dangerous conditions of crowded jails, will necessitate at least a retreat from simplistic "get tough" mandatory minimum sentence policies. There are several innovations that enable a dignified retreat, and some which offer a better means of accomplishing what the legislature desired to achieve with mandatory sentences.

The following schemes may be instituted to mitigate the worst effects of mandatory sentences.

Parole

Inmates facing a long bout of jail have nothing to motivate good behaviour. Their despair turns to the only hope possible - escape. Those who don't escape, due to their sinking morale and bitterness create a negative and hostile prison environment polarising wardens and inmates, and creating the volatile conditions which lead to prison riots. Parole offers the best carrot to induce a positive attitude among "long termers". Properly structured parole can improve the jail environment, and release, under supervision, low risk rehabilitated prisoners. The supervision of parole is not only necessary to improve the prison environment and to reduce jail populations, but is particularly valuable in helping inmates to adjust to freedom without returning to crime. (Remission unlike parole is almost automatically granted and doesn't provide the same incentive as parole.) It is noted that a Parole Bill has already been drafted but never submitted to parliament.

Pardons

A cheaper, more arbitrary and less useful means of reducing jail populations involves pardoning individual inmates or classes of inmates.

Expanded sentencing options

Community work, intermittent sentences, restrictions on movements, house custody and probation, all provide methods of punishing or restricting the movement of offenders without resorting to jail. These techniques have an established reputation for being cheaper, more effective in deterring crime and more successful in rehabilitating offenders. They are applicable to all offenders but particularly useful for minor offences or for offenders who do not pose a security risk. Many of the underlying objectives of mandatory minimum sentences can be accomplished without the cost and aggravating influence on crime rates caused by excessive reliance on jails. Probation by itself, or in combination with fines and short jail sentences opens up many of these sentencing alternatives to the court.

Fine options

District courts have a notorious reputation for imposing irrationally long default periods of 30 to 100 days for small fines of less than K100. The practical significance of this sentence is not a fine, but a jail sentence. If the court in the first instance determined jail was not an appropriate sentence, then there is

nothing to be gained by imprisoning the offender simply because he cannot pay the fine. The resultant jail sentence is imposed not for the criminal offence but for the offender's poverty.

To avoid these inequities district court judges must significantly tone down their heavy handed default periods. Secondly, a fine option programme allowing offenders to work off the fine through community work, significantly reduces the population of defaulters in jail and removes the injustice of incarcerating impecunious offenders. Debtor's prisons have been surreptiously revived by the criminal courts excessive reliance on jail sentences to enforce fine payments.

Minor offences

If mandatory minimum sentences are designed to deter the most serious crimes, then all summary and several minor criminal offences should be exempted from mandatory minimum sentences. If minimum sentences continue to apply to minor offences, then for reasons previously noted, jails will be crowded with minor offenders. The rehabilitative resources of the jail will be gobbled up by the cost of more warders, more security measures, and more jails. Consequently the more serious criminals will not be rehabilitated, and may become more hardened to crime, drawing through association, some minor offenders into more serious criminal activities.

Jail should be reserved for only serious offenders and hardened criminals. A first step to this end requires removing all minor offences from mandatory minimum sentence legislation. The second step involves expanding the sentencing options available to the courts. The third step involves seminars to introduce the judiciary to sentencing options that provide alternatives to their present penchant for jail sentences.

Reintroduce flexibility

To remove the arbitrary injustices in mandatory minimum sentences and to provide an incentive to plead guilty, several schemes are possible without removing the concept of mandatory sentencing.

Lower Minimum Sentences: If all mandatory minimum sentences were lowered to a level that allowed them to truly function as minimum sentences and not maximum sentences, the court could exercise its discretion, reflecting both mitigating and aggravating circumstances. Presently, the high level of mandatory minimum sentences precludes any court discretion in most cases.

Discharges: Courts must always have the ability to settle a case by either discharging the offender or putting him on a good behaviour bond, otherwise minor criminal infractions are unduly harshly dealt with.

Suspended Sentence: If the passing of sentence is postponed, and a period of probation is imposed for up to 4 years, the accused can be brought back to court if he breaches the probation order or commits another offence. At that time the court may impose a sentence for the original offence, for which the passing of sentence was suspended, and may also impose a penalty for the breach of the probation order as well as for any new offence that has been committed. This technique of "suspending the passing of sentence" allows the scope to give the accused a chance to pursue rehabilitation and yet retains in reserve a punitive sanction if the offender's rehabilitative promises are only sufficiently earnest to convince the court, but not sufficiently earnest to be successfully realised. However, if the accused proves up to a measure of his professed remorse and rehabilitation then the state is saved the expense of incarceration and it avoids the risk of losing the offender to criminal activity as a consequence of criminal associations developed in jail.

Mandatory minimum sentences and second offenders

If mandatory minimum sentences must remain a part of the sentencing regime in Papua New Guinea, they ought to apply only to offenders who have committed the same serious crime in the recent past. Mandatory minimum sentences could be triggered by the prosecutor giving notice of his intention to invoke the statutory minimum period This procedure reserves mandatory minimum sentences to persons who have not been deterred from crime through their first brush with the law. Placing the discretion to invoke the mandatory minimum provision in the hands of the prosecutor incorporates some flexibility to avoid patent injustices. If properly monitored the use of prosecutorial discretion based on established guidelines would minimise but not completely eradicate the possible abuses of such a potent discretionary power.

The primary, if not sole value of this scheme is its relative advantage over the existing comprehensive mandatory minimum sentence scheme.

Legislated sentencing guidelines

Legislative sentencing guidelines offer a greater flexibility for the legislature to express its views on sentencing without imposing the arbitrary injustices of mandatory sentences. Sentencing guidelines enable the legislature to define the principles and objectives they believe should guide sentencing practices. Sentencing guidelines are viewed as a middle course between the wide discretion afforded judges by common law principles of sentencing and the narrowly defined discretion of statutory mandatory minimum sentences.

Refinements to guidelines can be made to facilitate different degrees of control over sentencing practices. Written reasons for the sentence may be required any time a judge steps outside the sentencing guidelines. Based on these reasons either side may appeal the sentence. The party favoured by the departure from the guidelines could be required to prove that the facts of the case did involve sufficient exceptional circumstances to justify departing from legislated sentencing guidelines.

Sentencing guidelines offer many advantages in contrast to mandatory minimum sentences.

> Sentencing guidelines foster consistency without imposing inequities. Sentencing guidelines direct the judiciary to recognise the same priority of factors in assessing the circumstances of each case. Yet each judge retains sufficient discretion to recognise exceptional circumstances that warrant a departure from sentencing guidelines.
>
> Sentencing guidelines provide the public with a clearer picture of what to expect in sentencing different offences and offenders.
>
> Sentencing guidelines allow the experience of the courts to be blended with the legislature's expectations in using sentencing resources.
>
> Presently courts function without any feed-back on the utility of any sentencing policy. Judges and magistrates presently can only guess if the sentence prescribed killed or cured the patient. The wisdom shaping most sentencing decisions is a hodge podge of precedents, isolated personal experiences, assumptions about the value of different sanctions, a host of untested sentencing principles, and a large dollop of gut reactions, all held together by the personal value structure of the sentencing judge. The court in attempting to gloss over the shaky assumptions inherent in most sentencing decisions calls upon the rationalisation of precedent. In law, once a principle has survived the storms of time, it acquires the respectability of acknowledged wisdom. Sentencing principles have never been rigorously tested, but they are commonly paraded out to justify sentencing decisions. Sentencing guidelines provide a framework within which consistent monitoring of sentencing practice can be used to control the direction which sentences take, rather than depending in an ad hoc fashion on tradition and precedent.
>
> If follow-up studies monitor what happens to the offender, the courts will acquire valuable feed-back.

Discrepancies in sentencing

The causes of disparate sentences in recent times have been vigorously pursued by students of sentencing practices. Many simple and expensive techniques can be utilised to remove some of the causes of sentence discrepancies.

In Papua New Guinea as in all other common law jurisdictions much more attention is paid to the question of guilt than on choosing an appropriate sentence. Yet deciding which sentence will best serve conflicting sentencing objectives constitutes one of the most important, if not the most important decision, in the criminal justice system. All the resources expended in preventing, detecting, prosecuting and punishing crime are directly or indirectly affected by the magistrate or judge's sentencing decision. Magistrates and judges in their sentencing decisions make investment choices affecting millions of kina every year. Sentencing decisions are intended to educate the public by reflecting social values and to usefully employ expensive justice resources for the protection of society and the rehabilitation of offenders. Hopefully no other decisions of such importance are made as quickly, are based on so many unproved assumptions, or founded on such skimpy evidence.

At least as much time, effort and evidence must be invested in determining the proper sentence as a court presently invests in determining guilt. To maximise the use of justice resources sentencing decisions must be given higher priority by government counsel, and courts.

No one has ever determined whether the justice resources required to administer and enforce fines and jail sentences have accomplished any of the stated objectives - protection of society, rehabilitation of the offender and general deterrence. No one knows the impact of jails or fines on different types of offenders. The judiciary continues to use these tools, the jails and police continue to enforce them, but no one has any idea of what is being achieved. Imagine a hospital completely equipped with all the paraphernalia to perform like a hospital but without any appreciation of whether its facilities and programmes cure or kill its patients.

A study of the impact of sentencing should be instituted immediately and the results made available to the judiciary.

Sentencing will never become a science, but science could do a lot to improve the rational footings of sentence decisions. By establishing studies of sentencing practices now, sentencing decisions of the future will make much better use of justice resources.

The introduction of probation officers, para-legals and volunteer community workers will significantly improve the quality as well as the amount of information fed to the court in sentencing hearings. (See Section of the paper on each of these resources.) Pre-sentence reports are particularly valuable reference sources for the courts, but as long as mandatory minimum sentences are set so high, pre-sentence reports are questionably useful. In the absence of judicial discretion the specific aggravating or mitigating circumstances revealed in pre-sentence reports serve no purpose. In any case where judicial discretion can be exercised and the case involves a young offender or anyone facing a serious offence with a high prospect of being sentenced to jail for the first time, a pre-sentence should be made available to the court. By providing detailed information about the accused, the court can evaluate what public resources are necessary to supplement the offender's personal support system in maximising his rehabilitation prospects. The more the court can know about the offender, the less likely is it that the facts of the offence will completely dominate the sentencing decision. Sentencing only of the offence and not the offender will often grossly misuse sentencing resources.

A danger lurks, posing a serious conflict between police and the courts. Arresting and investigating officers seldom get any useful feedback on why particular sentences were issued by the court. The police primarily focus, as they must, on the offence. From this focus they conclude what a just sentence ought to be. The court apprised of both the circumstances of the offence and offender may be reasonably persuaded by the particular facts that are presented in court that a lenient sentence is appropriate. These circumstances are significantly different from the information available to the arresting policeman. In most cases the arresting police are never informed of the factual basis for the court's sentence. Thus they retain their original view of the case and see the courts as being far too lenient. This perception may lead the police to combat what they regard as judicial leniency by charging offenders whenever possible with the offence carrying the most onerous mandatory sentence[1]. To avoid this senseless, destructive conflict between the police and judiciary, prosecutors must take pains to brief arresting officers of the basis of sentencing decisions. Courts must provide cogent reasons for sentencing in all cases, and in the more serious cases, or in cases where a unique sentence is warranted by exceptional circumstances, if not written reasons, at least coherent oral reasons for the sentence must be given by the judge.

Sentencing councils have been successfully instituted in several jurisdictions (New York, Michigan, Illinois). These councils attempt to bring a greater measure of consistency to sentencing by bringing together several sitting judges to discuss cases presently before the court. The judge seized with the case explains the basic facts of the case. Other judges mark down proposed sentences which serve as discussion points of sentencing objectives. Although the final responsibility resides with the presiding judge, the sentencing councils promote interaction among the judges which moulds a consensus about general principles and objectives. Most importantly, the sentencing judge has an opportunity to weigh his emotional or personal reaction against the relatively more objective views of other judges. This process promotes greater consistency and a cogent body of jurisprudence on sentencing.

1. Presently the police appear to under charge many offenders (see Table 2.2 p. 38, Volume 1).

In both courts, sentencing councils should become a regular part of the court routine. Meeting at least once every two weeks, judges in every city may focus on typical sentencing fact patterns, recent cases or pending cases that have been adjourned for sentencing. If all judges and magistrates earnestly undertake this task, they will mutually discover many new and refreshing approaches to sentencing. In the process some of the causes of sentencing discrepancies disappear.

Since 1975 there has been only one judicial conference that has had anything to do with sentencing. The pivotal importance of sentencing in the criminal justice system demands constant attention to ensure that sentencing decisions are fair, consistent, and utilise the justice system and community resources to the maximum advantage in deterring crime and rehabilitating offenders. To this end the continuing education of all members of the judiciary on sentencing laws and practices must be diligently pursued

At least once every year a national conference jointly sponsored by the national and district courts should be organised to cover a range of subjects relating to sentencing over a 4 day period. At least 2 or 3 district court magistrates from each province should attend.

Both the university law school and the practising bar should be involved in preparing materials for the conference. While panel discussions and lectures on specific topics are important, a lot of the time must be devoted to small workshop sessions of 6 to 8 judges and magistrates working through different hypothetical fact situations and discussing their respective approaches to sentencing. These workshops will help all members of the judiciary understand different approaches to sentencing throughout Papua New Guinea. Similarly these workshops facilitate the evolution of a broader base of consensus about approaches to sentencing.

Sessions on the preparation and delivery of sentencing judgements designed to improve the ability of judges to communicate their reasons for sentences will vastly improve the relevancy of courts to the litigants. By video taping magistrates and judges issuing reasons from the bench in a dramatised case, all magistrates and judges through constructive criticism can improve an essential skill which is too often taken for granted: the delivery of oral reasons for judgement.

Different agencies, institutions and interested persons from within the justice system and from the community at large should be invited to share their experiences through specific panel discussions or workshops at the national conference.

- Churches should be invited to explain the kinds of services they offer juveniles and other offenders.

- Probation officers should be invited to explain how probation services can be effectively utilised by the courts.

- Officials from the jail should be invited to explain the programmes and functions of the jail, (a field trip to visit the jail may be an enlightening experience for many judges and magistrates).

- Any community, professional or government service providing rehabilitative programmes relevant to sentencing should attend to describe how the courts can use their services.

Within each province or region, workshops should be held twice a year. One of the local workshops should be timed to coincide with the first national "circuit" to the area after the annual national sentencing seminar. The National Court judge and other justice officials on circuit plus any district court magistrates who attended the annual conference can run a smaller version of the national seminar for the magistrates in the area.

A second provincial or regional seminar each year should deal with other aspects of judicial training. The law school and practitioners should be called upon to develop a set of materials or perhaps even a travelling one day intensive course to tour the country as an invaluable supplement to each province or regional district court conference.

The quality of the judiciary instrumentally affects the ability of the justice system to fairly and efficiently process cases. The education and training of judges and magistrates who perform such vital functions in the criminal justice system must never cease. Every year judges and magistrates must invest a significant portion of their time in upgrading their knowledge about law, and particularly in the various skills required to be competent judicial officials.

The judiciary should develop and produce their own sentencing handbook. Based on the sentencing jurisprudence of the national and district courts, the handbook should be regularly updated to include statutory changes and new case law. An editorial team of national and district court judges could select cases and keep the handbook up-to-date. The judiciary, but equally the practising bar, will immeasurably benefit from a sentencing handbook. By keeping all persons within the legal community abreast of current sentencing practices the courts will be more consistent in sentencing and more judges will be prompted to develop and enrich the sentencing jurisprudence of Papua New Guinea through reasoned and carefully considered sentencing judgements.

Intermittent sentences allow offenders to serve a jail sentence without losing their job, disrupting their studies, or missing crucial events in their lives. Intermittent sentences can be served at times and places ordered by the sentencing court, or by the warden of the jail. The jail sentences can be served on weekends or on every day during certain hours such as from 6.00 p.m. to 8.00 a. m. Any combination of times that ensures the offender does not lose his employment can be embraced by an intermittent sentence. Similarly if employment is seasonal the jail term can work around the seasonal employment.

To make intermittent sentences work properly the following conditions should apply:

- Offenders should be placed on probation for the full term of the intermittent sentence.

- Probation order should include the following conditions

  a) report to jail as required on time, and

  b) refrain from consumption of any alcohol 24 hours prior to reporting to jail, and

  c) any other condition necessary to regulate the activities of the offender when not in jail.

- Any breach of the conditions should be prosecuted

- The jail term to be served intermittently should not exceed one year.

In some cases the intermittent sentence can be served in the offender's home by requiring him to remain in his residence subject to conditions of movement, visitors and other conditions. Such sanctions require the co-operation of the public or community to supervise the conditions. In some areas the village court peace officers may be called upon to report any breaches of the court order.

Attempts at sentencing reform in Western Europe have been to reduce reliance on incarceration, to lessen the length of jail sentences and to increase reliance upon alternatives which allow offenders to be punished or rehabilitated in community settings. Jail sentences should only be used as a last resort, when the court is satisfied all other alternatives would not meet the sentencing objectives in the light of the circumstances of the case. The expense and potential adverse consequences of jail, warrant reserving its use as a last resort and generally only for offenders who threaten the lives and property of others, or offenders who refuse to be deterred by other sanctions and offenders who commit highly reprehensible crimes that demand a clear denunciatory sentence.

Judges and legislators operating on the premise that a bigger stick is the answer to crime face the moral and practical problem of explaining why bigger sticks seem to ineffectively deter crime, and may foster increasing crime rates. The expense of bigger stick solutions absorbs scarce resources and gives precedence to the role of corrections over police. As a consequence of the excessive reliance upon jail, the only proven effective deterrent resulting from increased certainty of apprehension is sacrifice for the dubious achievement of increased severity of sentence.

No more than 10 per cent, and probably closer to 5 per cent, of all serious offenders are successfully prosecuted through the system to conviction and ultimately to incarceration. It is hard to imagine how increasing the severity of sentence on the one offender in twenty who is incarcerated can appreciably deter the other nineteen.

Positive penalties such as probation, compensation, community work, and other rehabilitative sentences whenever possible must be employed in lieu of the negative, counterproductive, warehousing of jails.

Victims

The plight of most victims is essentially ignored by the criminal justice system. The only meaningful exceptions occur in village courts where the victim generally receives compensation and has an opportunity to participate directly in court proceedings. This laudable practice must be encouraged in the village courts and wherever possible the interests and concerns of the victim should attract much greater attention in the national and district courts.

There are several obvious and easily overlooked reasons to give greater prominence to the victim in the criminal justice system. If the courts hope to peacefully resolve conflict in the community, the victim must, in the very least, understand the basis for court decisions. In many instances the victim is not informed of the result and if the result is known, no explanation is provided Acquittals as well as light sentences, if not properly explained, will commonly be perceived by victims as proof that the courts cannot be relied upon for justice.

During the sentencing hearing, the victim's views are not customarily sought by the court. Consequently the sentence is imposed with little regard to what will appease the victim. Some sentencing decisions may inadvertently inflame the underlying conflict between victim and offender. If the court was more aware of how the victim perceives the harm arising from the crime, the sentence may be less disruptive and more constructive in fostering better relationships between the victim and the offender.

In taking pains to address the concerns of the victim either through the sentence imposed, or by explaining the limitations of the system, the victim will not feel ignored. If the concerns of the victim are completely ignored, the victim leaves the court harbouring disrespect for the judicial system and probably contemplating how to get his "pound of flesh". In either case the courts have not achieved a peaceful resolution of the conflict.

Several easy and inexpensive means of improving the victim's lot in the criminal justice system can be developed.

- Better information to the victim - at all levels of court the police should take pains to apprise all victims of the progress of the case in court, especially of the dates of court hearings and of court decisions.

- Better information from the victim - police and prosecutors must determine the concerns of the victims, and where appropriate, present these concerns to the court. Similarly the courts must endeavour to inquire if compensation is desired, or if any other matters should be contemplated in sentencing. With training and experience magistrates can handle difficult or impossible demands made by the victim. It is better to be aware and respond to the impossible expectations of the victim, than simply to ignore him by denying him an opportunity to speak or be represented in court.

- Better results - in most cases the least damaging, and most inexpensive state intervention as far as the victim is concerned may be simply the encouragement of restitution or other means of reconciliation with the offender. In this regard compensation or restitution should be pursued wherever possible. If the accused cannot cover the entire cost, partial payments and community work may at least promote the beginnings of reconciliation. Many crimes do not lend themselves at all to such solutions but courts, often too readily, assume that restitution and other forms of reconciliation with offenders are inappropriate.

- Mediation - the adversarial process tends to polarise parties. Examples abound of court cases leaving in their wake disappointed litigants and heightened acrimony. Courts should steer the parties to mediation resources within the community or attempt to employ mediation techniques as part of the court processing of the case.

There is no universal magic in formal court procedures. With an eye to reaching a fair and just reconciliation, the court should be prepared to seek the consent of both parties to remove the dispute from the adversarial process dominated by the judge to a mediating process wherein the parties dominate the search for solutions. The courts can often be an invaluable catalyst to create the conditions for the parties to find their own way to a solution.

Summary - Sentencing

Sentencing guidelines, sentencing councils, handbooks and seminars enhance the knowledge and skills of all members of the judiciary in dealing with the most arduous challenge facing the court - determining the appropriate sentence. From these activities and techniques judges may resolve many of the causes of disparate sentences, which are often due to the physical and intellectual isolation of members of the bench. Studies of individual sentencing patterns of judges have discovered that the personality and values of the judge significantly influence the sentence imposed.

In exposing judges to the thinking of other judges as expressed in written judgements or communicated through sentencing councils and seminars, the discrepancies flowing from different values may be mitigated to some extent. Sentencing guidelines may provide an invaluable framework for each judge to measure the uniqueness of his views and to what extent his values have carried him outside the mainstream of thinking as reflected by the sentencing guidelines. Equally all these techniques are relevant to upgrading training and to encouraging the creative use of sentencing resources.

Probation and Probation Services

With the possible exception of abolishing mandatory minimum sentences, nothing can improve the effectiveness of sentencing as quickly, or as significantly, as establishing a fully operational probation service. By vastly improving the flexibility and range of sentencing options, probation will improve the impact of courts on recidivist rates more effectively and certainly at much less cost than long jail sentences.

All countries employing probation as a sentencing option recognise its value in achieving the primary aims of sentencing; rehabilitation and punishment. When appropriately used, probation can be more successful than jail or fines in reducing recidivism.

Probation serves as a vital means of giving life to the popular wish expressed by politicians, policemen and judges, that the justice system must be more responsive to community needs and must engage the community in a productive partnership with the justice system to work cooperatively on law and order issues.

Probation enables the resources of the justice system to be expanded through community participation and allows the courts more appropriately to fit the sentence to the facts of each case.

In this section, the argument will be made that probation has not been given a chance in Papua New Guinea, that there is much evidence to suggest the multifaceted advantages of probation and probation services are urgently needed in Papua New Guinea and finally that pilot projects in Enga and Goroka should be immediately implemented to develop a model for probation services to work in conjunction with district and village courts.

Probation suitable for all types of offenders is particularly suited to rehabilitating first offenders before they become immersed in serious crimes.

History of probation in Papua New Guinea

In 1976 the National Executive Council approved a recommendation from the Minister for Justice to institute probation services (Bevan 1976 : 175). Based on a consultant's report, the Probation Act of Papua New Guinea was passed in 1979. In March of 1982, the Minister for Justice, pledged all provinces would have probation services by the end of 1982 (Office of Information 1982). By January 1984, probation services except for a volunteer service in Goroka were nonexistent in Papua New Guinea.

It seems necessary therefore to devote rather more space in this report to probation because it is a convenient and cheap sentencing option. Moreover, as shown elsewhere, this is at least the third time the leader of this study has sought to provide Papua New Guinea with the incalculable advantages of a probation (and perhaps parole) system.

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.

Since the passage of the Probation Act in 1979, probation has only been used in Lae, Port Moresby and Goroka.* In Lae and Port Moresby, probation has not been extensively utilised by the courts. In comparison to other jurisdictions the usage of probation in Papua New Guinea is best described as non-existent (refer Table A.2.1). (Probation has been used since 1980 approximately once in 100,000 criminal and summary cases). The following factors partially explain why probation has not become a working part of the justice system in Papua New Guinea.

* only 3 areas gazetted for probation.

Presently there are no permanent probation officers in the country. In 1984 the Chief Probation Officer joined the magisterial services, and the Senior Probation Officer in Lae transferred to welfare services. A court clerk seconded to work with the Probation Office in Goroka represents the last vestige of probation services in the country. Since 1979 the probation staff has never grown beyond two officers, the chief in Port Moresby, and the senior probation officer in Lae. Although probation officers are not essential for probation to be used, the failure to provide staff and gazette probation officers in other centres explains why probation has not been used throughout Papua New Guinea.

To introduce probation as a sentencing option, probation officers must be visible and well known to the courts. Rather than spending time in court, probation officers were involved in time consuming bureaucratic struggles necessary to keep probation services alive from year to year in a justice system that has been unreceptive to probation services. Probation in Papua New Guinea was never given a fair chance to demonstrate its valuable contribution to criminal justice; two probation officers simply cannot by themselves implement probation services. The probation officers had not received any formal or on-the-job training in the skills necessary to implement and maintain a viable probation service. Lacking experienced supervision, and with little support from other segments of the justice system, probation officers invested most of their time trying to educate the justice system about probation. Their valiant struggles undertaken without experience or training, and with limited resources, encountered many setbacks.

What progress had been made by 1981 was largely lost in 1982 when budgetary restrictions left probation service without transportation from January to June. Without transportation, probation services could not be effectively offered, clients could not be visited, vital information for pre-sentence reports could not be gathered, probation conditions could not be properly monitored or enforced, and volunteers could not be supervised Due to these limitations the few judges that had used probation services in the past lost confidence in the ability of probation officers to enforce probation orders. The courts feared probation orders would not be properly enforced allowing probationers to "make a mockery of the courts" (Probation Annual Report 1982, 5).

Since 1975 only one judicial conference has dealt with sentencing. This conference in 1983, did not comprehensively examine the powers or purposes of probation. Most magistrates and judges are unfamiliar with the law governing the use of probation, and how probation can be usefully employed in sentencing. None of the magistrates interviewed could recall any significant instructions during their training in the use of probation. Public solicitors, public prosecutors and police prosecutors were equally unfamiliar with probation. The few who were aware of the concept lacked previous experience. Many could not envisage any practical use for probation.

Table A. 2. 1
Probation in Papua New Guinea

	1980	1981	1982	1983	1984 to May 16
Persons on probation					
Port Moresby	4	-	5	-	-
Lae	40	19	22	2[a]	5[b]
Goroka	-	-	-	31	8
Totals	44	19	29	33	13
Pre-sentence reports					
Port Moresby	1	-	2	-	-
Lae	28	21	1	-	-
Goroka	-	-	-	11	5
Totals	29	21	3	11	5
Breaches of probation					
Port Moresby	-	-	-	-	-
Lae	2	2	2	-	-
Goroka	-	-	-	-	-

Notes: a Since March 1983 no new cases placed on probation in Lae
b Probation cases in Lae based on probation cases referred from Highlands.

Sources: 1980 Probation Annual Report
1981 No report completed*
1982 Probation Annual Report
1983 No report completed*

* Data supplied by senior probation officer

It is important to note in the light of the later provision for minimum sentences that section 16, (2)a of the Probation Act 1979 precludes the use of probation for any offences "for which a mandatory or minimum sentence is provided for by any law". Since the mandatory minimum sentence legislation in July 1983, courts have been precluded from using probation for many offences. In Goroka, where probation was beginning to be actively employed, the courts significantly shifted from using probation to good behaviour bonds (Table A. 2. 2).

Table A. 2.2
Probation Services – Goroka

	1982	1983	1984 to May 16	Total
Probation orders	2[a]	31	9	42
Good behaviour bonds	-	23[b]	143	166[c]
Total Offenders supervised by probation office	2	54	119	175
Offenders who subsequently have committed offences	-	3	1	4

Note: a Issued before probation office gazetted 1983
b No good behaviour bonds were issued prior to October 1983
c All probation orders and 72 per cent of all good behaviour bonds were supervised by probation services.

Success rate to date $\frac{171}{175} = 97$

Source: Information provided by probation staff at Goroka and by examination of court records.

Despite the above noted difficulties besetting the use of probation, the experience of probation services in Goroka stands out as an example of what pluck, persistence, an abiding concern for the welfare of others, and the combining of community and justice resources can do to prompt a conservative justice system into accepting an innovative sentencing option.

The resounding speeches and policy statements of politicians, bureaucrats, academics and senior police officials extolling the virtues of community involvement in justice have been mostly wistful thoughts without meaningful commitments of resources and manpower. While others speculate about what should be done, the community in Goroka translated dreams into reality. Community initiatives, and a positive reception from local magistrates and a few key local policemen, forged a cooperative working relationship between the

community and the justice system in Goroka. The probation office, and volunteer probation officers have played an instrumental role in developing and sustaining this vital partnership between the community and the justice system. The Goroka Probation Office represents the most promising prospect in Papua New Guinea to control law and order problems without inordinate government expenditures.

The Eastern Highlands Provincial Rehabilitation Committee consists of volunteers from all sectors of the urban and rural community. The Committee numbering over 40 active volunteers has focused on trying to help young offenders rehabilitate themselves and to assess the problems which led them into trouble with the law. To assist with village development projects, the Committee raised K40,000 from private funding agencies around the world. The money is loaned to village-based projects which are designed to provide useful employment for the young people. All the work of the Committee is premised on the belief that crime prevention is a community responsibility and that the "answer does not rest entirely with increased police vigilance and harsher court penalties...communities must also shoulder their responsibilities" (Giddings 1984 : 19).
Under the auspices of the Eastern Highlands Provincial Rehabilitation Committee funds were secured in 1982 to begin a probation office in Goroka with a national and a volunteer social worker from Austria. The national officer was a school leaver. The Austrian volunteer had been professionally trained as a social worker but had no previous experience in probation. Assisted by local churches, the provincial government and private donations, sufficient funds were secured for an office, transportation, housing and salaries.

When almost 30 rascals, many wanted for serious crimes, decided to voluntarily turn themselves in to police, the probation staff were suddenly engaged in a daring experiment. The police and courts agreed to impose jail sentences on the ringleaders, if the ringleaders and other gang members would agree to be bound by the terms of an agreement struck between the courts and the Eastern Highlands Provincial Rehabilitation Committee. This agreement, imposing restrictions on all ringleaders and on several gang members, required the Rehabilitation Committee to provide adequate supervision to ensure the terms of the agreement were carried out. Working with other volunteers, the newly constituted probation office accepted the responsibility of ensuring the conditions of the agreement were obeyed. This marked the beginning of an impressive success story (Giddings 1984).

Of the 8 "rascals" who surrendered to police and were placed under the supervision of the probation office, only one has committed a subsequent offence. Since being officially gazetted in 1983, the Goroka Probation Office has handled 160 offenders placed by the court on probation, or placed on a good behaviour bond and assigned to the probation office for supervision. Of all these cases, four offenders have committed further offences. This record is particularly impressive as almost half of all cases supervised by probation services in 1984 involved offences deemed by the legislature to be sufficiently serious to be covered by the recent mandatory sentence legislation.

Presently the probation officer in Goroka, who was previously a court clerk and has had no formal training as a probation officer carries an active case load of 129 cases. Through an extensive network of 40 volunteer probation officers all cases are regularly serviced. Each new client attends two interview sessions a week for the first month. The frequency of interviews after the first month is varied to meet each client's need. Usually, after the first month each client reports once d week to a probation officer. At least once a month the probation officer visits the client in his or her home. Through the probation office, offenders receive counselling, guidance, help in finding work, and assistance in getting treatment for alcohol abuse or other problems requiring professional help. For the first time many offenders find in their probation officer a friend they can trust and a person genuinely interested in their plight; consequently many offenders visit the probation office more frequently than required to do so.

Despite the indisputable success experienced by the Goroka Probation Office, the Goroka courts are still not using probation services as fully as they could. Pre-sentence reports are rarely requested. In 1983 only eleven requests were made by all district court magistrates and no requests came from the National Court during circuit court sessions. National courts have not yet made any significant use of probation services in Goroka. District court magistrates are only beginning to regularly employ probation services, and only in 1984 have probation services been used in a significant proportion of sentencing dispositions - 21 per cent (Table A. 2. 3). Past successes with probation services in Goroka coupled with the extensive network of volunteers offers the courts a reliable, inexpensive, and proven valuable sentencing option that is not being fully utilised. In addition to the under-utilisation of probation services two other phenomena mark the courts' tentative acceptance of probation services.

In Goroka since the beginning of 1984, probation has been used only eight times whereas good behaviour bonds have been used in 143 cases (119 of these cases were directed to probation services for supervision). While the Probation Act excludes the use of probation for mandatory minimum sentence offences, the courts may use good behaviour bonds by invoking the discharge provisions of section 138 of the District Court Act. Consequently section 138 discharges and good behaviour bonds have been employed by the courts to avoid the hardships imposed by mandatory minimum sentence legislation (Table A. 2. 4). Ninety per cent of all good behaviour bonds were issued in cases involving offences covered by this legislation.

Discharging the accused and placing him on a good behaviour bond seems to offer magistrates an acceptable compromise between what parliament intended in passing the mandatory minimum sentence legislation and what justice requires on the specific facts of the case before them. In this vein calling upon probation services incorporates a little more clout to a good behaviour bond However, this use of probation services is principally restricted to avoiding hardships or injustices and does not reflect an acceptance of the value of probation services in achieving either rehabilitative or punitive objectives.

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1. Based on study of all sentencing dispositions Goroka District Court January to May 1, 1984.

Table A. 2. 3
Goroka District Court - sentencing dispositions
(excluding grade 5 magistrate)

	January 1982 (396 cases)		January 1983 (617 cases)		January 1984 (469 cases)	
	Percentages					
	Total cases	Total cases Sentenced	Total cases	Total cases Sentenced	Total cases	Total cases sentenced
Dispositions						
Sentencing						
Jail	6.8	14.8	6.5	12.9	6.4	12.9
Fine	41.2	85.2	42.0	83.8	32.8	66.0
Probation	-	-	-	-	0.02	1.0
Good Behaviour Bond	-	-	1.6	3.2	10.4	20.9
Total	48.0	100	50.1	100	49.62	100
Other						
Struck out	40.4		32.4		35.2	
Case Withdrawn	2.5		4.0		1.7	
Finding of not Guilty	-		0.8		0.4	
Not Finalised	9.1		12.6		12.8	
Total	52.0		49.8		50.1	
Grand Total	100		100		100	

Note: All cases noted appeared for the first time within the month and were processed in the same month, except for cases scored as "not finalised".

Source: Compiled by reviewing court documents for each case in the month.

Table A. 2. 4
Goroka District Court (excluding grade 5 magistrate)
Dispositions in mandatory minimum sentences offences

	January 1984			February 1984			March 1984		
	Prob-ation	Good behaviour bonds	Fines or jail	Prob-ation	Good behaviour bonds	Fines or jail	Prob-ation	Good behaviour bonds	Fines or jail
Mandatory minimum Sentence offence									
Assault	-	21	7	-	13	-	-	17	6
Provoking breach	-	8	2	-	2	2	-	1	5
Fighting	-	8	-	-	5	4	-	-	-
Possession stolen Property	-	9	3	-	1	2	-	1	-
Carrying weapons	-	2	-	-	-	1	-	-	-
Unlawfully on premises	-	2	-	-	-	1	-	1	1
Damaging property	-	-	1	-	-	-	-	-	2
Total cases	-	51	13	-	21	10	-	20	14

Percentage of discharges issued in mandatory minimum sentence offences

January 80 per cent February 68 per cent March 59 per cent

Source: Goroka court records.

Another factor suggesting the courts tentative acceptance of probation services comes from the number of female offenders placed on good behaviour bonds. In stark contrast to the survey that found that no more than 7 per cent of all offenders processed through the Goroka District Courts are women, since January 1984, 52.7 per cent of all persons placed on good behaviour bonds have been women (Table A. 2. 5). The all male District Court bench may regard female offenders as less serious threats to society. A more plausible explanation arises from the large number of assaults, fighting or breach of peace charges levied against women for attacking their husbands' mistresses. Several magistrates decried the injustice of incarcerating the wife while the husband and mistress escape sanction. The common scenario envisaged by magistrates portrays the wife fuming in jail very bitter about her plight while husband and mistress enjoy ample freedom to pursue their affair. The inherent injustice, as well as the possible grievous crime the wife may commit upon her release, prompts magistrates to avoid the mandatory minimum sentence required for these offences by resorting to discharges and imposing good behaviour bonds. Of all the probation or good behaviour bonds ordered against female offenders 75 per cent involved assault, breach of peace or fighting offences. Once again probation services are used to avoid a specific injustice, and not as a useful sentencing option or supplement to fines or jail.

Potential of probation services

The Probation Office in Goroka illustrates some of the ways probation and probation services can contribute to improving the justice system's response to law and order problems. The scope for probation is limited essentially only by the creativity of the judge and the resourcefulness of the probation officer. No other sentencing tool offers the same ability to address the multi-faceted circumstances confronting judges in sentencing.

The court can mould probation conditions to suit the circumstances of the offence and the offender. Counselling, guidance, community work, specialist treatment for alcohol abuse, mental or emotional disorders, curfews, restitution, compensation, restriction on activities or movements, reporting additions; a wide variety of terms suitable either to punishment or rehabilitation and as diverse as the creativity of the judge and circumstances will bear can be employed through probation. With the flexibility to tailor sentences to suit young or old offenders, rich or poor, educated or illiterate, no other sentencing tool offers the same scope to realise sentencing objectives by matching the sentence to the offender and offence.

Short adjournments for a few hours or days will enable probation officials to provide vital information to the courts, and thereby assist the court to tailor probation to the needs of the offender, to maximise the use of available resources and to ensure that the order will be properly supervised and enforced.

Table A. 2. 5
Goroka Probation Office
persons placed on probation or
on supervised good behaviour bonds

	January 1984	February 1984	March 1984	April 1984	Total
Male	14	6	14	17	51
Female	22	14	11	10	57

Note: These figures include only offenders ordered by the court to report to probation office for supervision. Magistrates often failed to instruct the accused placed on a good behaviour bond to report to probation. For example in January, 51 persons were placed on good behaviour bonds but only 36 were told how and when to report to the probation officer.

Source: Data provided by Goroka Probation Office.

Probation officers can be used to verify information provided by offenders. Seasoned or confident offenders may stretch the truth to secure an undeserved lenient sentence. A busy court often follows instinctual reactions which if wrong may unjustly reward the liar or con man, and unjustly disadvantage a reserved, but honest offender.

Most offenders who appear before magistrates of lower than level 5 are unrepresented. Confronting magistrates and prosecutors who are immeasurably more comfortable with the court environment, unrepresented offenders can be very reticent to speak out. Some unrepresented accused may hide their fear or nervousness behind false confidence, even disdain. Whether swaggering with false bravado, or silenced by fear, most unrepresented offenders fail to place pertinent and essential facts before the courts. In such cases courts impose sentences with little or no understanding of what may best suit the offence or the offender.

Sentencing decisions reflecting little regard for the offender become mechanical. Whether the mechanical nature of sentencing is caused by mandatory minimum sentence legislation or by busy courts relying on insufficient information, the effect is the same; mechanical sentencing which tends to produce unjust sentences. Probation can significantly help unrepresented

offenders place relevant facts before the court, thereby measurably enhancing the quality of sentencing decisions. They can also be useful to offenders with pre-trial counselling.

For centuries law has been condemned for its inherently substantive and procedural bias against the poor. Primary reliance upon jail to enforce payment of fines exemplifies the same bias of the law.

For the rich a fine may be of little consequence. The same fine for the poor may be of great consequence. In Papua New Guinea, if an offender can not pay a fine, he must serve a jail sentence for his default. The usual fine in Goroka for a first offender convicted of shoplifting goods valued at less than K20 is K50 fine or in default five weeks in jail. In the majority of cases, the offender unable to pay the fine, or unable to get help from his wantoks will serve all or part of his default time in jail. As much as a third of the jail population may be serving time for their failure or inability to pay a fine, or a debt imposed by the village court. In most if not all of these cases, the offender goes to jail not for his crime, but for his poverty. In the first instance the court imposed a fine as the fair and just punishment on the facts of the case. The poverty of the offender dramatically shifted the sentence from a fine to a jail sentence. This is anomalous because in theory jail sentences are generally reserved for more serious crimes.

As long as jail continues to provide the means of enforcing payment of fines, the poor, especially the urban poor without wantoks or the rural poor without wealthy wantoks, will be unjustly punished by a fine. In Papua New Guinea where the justice system heavily relies on fines for minor offences (see Table A. 2. 4) and where the majority of the population are outside, or on the periphery of the market economy, the poor are inordinately prejudiced in the criminal courts.

In Papua New Guinea, this injustice should not and need not be tolerated Probation can significantly reduce the unwarranted hardships now regularly imposed upon the poor.

Those who cannot afford to pay a fine under the auspices of a probation order can be ordered to do community work at minimum hourly wages. In this way fines can be worked off. Similarly restitution or compensation could be worked off through community work. Community work, as an alternative to jail, if properly supervised and satisfactorily completed serves the best interests of the victim, the community, the offender, and the justice system and is less expensive.

What may appear a suitable sentence at the time of sentencing may be unsuitable several months later. Probation empowers the court to adjust a sentence to changing conditions. At the initiative of the court, the offender, or probation officer, the case may be brought back to court and the probation order adjusted to current circumstances. A contrite probationer who diligently satisfies the terms of probation may be rewarded and encouraged by removing all, or some of the' outstanding obligations imposed by a probation order. Conversely a recalcitrant probationer may be subjected to more restrictive conditions or ultimately prosecuted for a breach of probation, or if the sentence had been suspended, be sentenced for the original offence. Being able to reach beyond the sentencing hearing to make fine tuning adjustments to the initial sentence enables the court to give offenders genuinely seeking to change their lives a chance to do so, while testing the sincerity of those whose ambition to change their lives may simply be a masquerade to secure lenient sentences.

If any rehabilitative benefit accrues from incarceration, it is often readily lost when the offender returns to the same place, conditions and lifestyle, he knew before jail. To maximise any rehabilitative effect that jail offers, some follow up services after jail are often necessary.

Probation is particularly important in providing continuing supervision of the offender when he returns to his home. A fully developed National Probation Service allows probation supervision of offenders sentenced in Port Moresby when they return home to other parts of Papua New Guinea.

Offenders serving short term sentences may need continuing guidance and direction to avoid lapsing back into crime. Conditions of probation can commence upon the offender's release from jail. The offender can be required to report immediately upon his release to a specified probation office. The probation service can be notified in advance of the offender's release and might in some cases visit the offender in jail before his release. On the offender's release from jail, by assisting him to find employment, to develop new relationships, to discover positive role models, and generally by providing support and encouragement to develop a positive lifestyle, the probation office can immeasurably augment any rehabilitative value derived from a jail sentence. A combination of a short jail term followed by a long period of supervised probation in the community may be more beneficial and certainly less expensive than a long jail term.

By extending probation services through volunteers, village leaders, church groups, peace officers, and, where appropriate, police officers, the probation office can ensure all courts have access to probation as a supplement or alternative to jail and fines.

Through curfews, confinement to specified residences, barring access to defined places, or prohibiting movement beyond certain boundaries, probation orders can accomplish with much less cost many of the same restrictions realised by jail. If the offender breaches the restrictions imposed by probation, the court may then resort to a jail sentence.

Village and district courts too frequently and too easily resort to jail sentences for minor offences or to enforce payment of fines, compensation or debts. The high costs of incarceration raise doubts about its utility in achieving either punishment or rehabilitation. Short term offenders on a per diem basis are the most expensive prisoners for the jail to process.

Short jail terms, especially for young offenders, may be counter productive. Young offenders may view jail as a rite of passage to gang leadership, may develop new relationships, and may receive a dubious education in crime.

Long jail sentences tend to foster dependence upon institutional lifestyles. To develop a purposeful role in the community, many long serving prisoners need help in making the transition from a highly regimented institutionalised lifestyle to the independent and self reliant lifestyle required to survive outside jail. Acting as a parole service, the probation officer can assist long serving offenders in making this difficult adjustment. Timely guidance, counselling and encouragement will often be essential for long serving offenders to find their way back into a purposeful life in the community. While a long jail sentence protects the community by removing the offender for an extended period of time, eventually such sentences may seriously endanger the community when the offender returns hardened to crime, more desperate, less caring, significantly more skilled in avoiding detection, arrest and prosecution, and without any stabilising or supportive personal contacts. Many jurisdictions have sadly discovered that long jail terms undermine the essential qualities of positive citizenship by isolating offenders from community and friends, by rendering them unemployable, by destroying all acceptable socialisation skills, by restricting all significant social relationships to persons inclined to crime, by implanting a festering anger, a lack of pride and a sense of hopelessness. If long jail terms are to do more than harden offenders to lives of crime then something must be done before and immediately after the prisoner is released from jail to undo the insidiously destructive influences of extended incarceration.

Using the probation officers as a parole service in cases recommended by judges or by prison officials will offset some of the negative influences universally ascribed to long term jail sentences. In providing post-jail services the probation office can foster integration and coordination of resources in the notoriously fragmented justice system.

Probation simply by reducing the number of short term jail sentences, releases jail resources to be more appropriately invested in rehabilitative programmes for serious offenders. Whereas the jail may be a better environment to control and rehabilitate serious offenders, the community is a better environment to control and rehabilitate minor and young offenders.

Methods of social control exclusively reliant upon punitive sanctions such as incarceration and fines cater to a narrow view of stereotyped offenders. This view of offenders fails to recognise the broad range of diverse people reflecting different personal, social and cultural traits that for an infinite variety of reasons become caught up in the criminal justice process as offenders. Probation through the diversity of probation conditions that may be employed, incorporates the much needed flexibility to fit the sentence to the offender and to the crime.

Criminal justice responses to the diversity of offenders, crimes, and causes of crime, must be equally diverse to avoid imposing sentences that are ill-suited to the crime or offender. Such sentences waste scarce criminal justice resources and are usually counter productive. Such sentences may be viewed by the offender as unjust. A sense of injustice breeds contempt for the system and displaces remorse and motivations for rehabilitation with anger and resentment.

Probation allows techniques of social control (jail, fines, restrictions on movements, etc.) to be combined with techniques of social support (counselling, community support, alcohol treatment, job skill training, etc.). Probation facilitates the necessary amalgamation to realise a more effective integration of sentencing resources.

In being processed through the justice system, offenders pass from one official to another. The impersonal nature of the justice system is institutionally ingrained and is reinforced by the volume of cases pouring through the system. The arresting police officer, police prosecutors, lawyers, judges, court clerks, and prison officials all superficially come in contact with the offender as he is processed through the system. None of these officials have either the time or skills to be more than professionally objective and impersonal. Probation brings the offender directly into contact with someone who has the skills and concern to provide personal attention to the problems of the offender. Often the success of probation is simply the personal relationship developed between the offender and probation officer. Knowing that someone cares and can be trusted to provide assistance and support and simply knowing someone whose life is not immersed in crime can significantly influence law-abiding conduct. Through counselling or talking with the offender a probation officer can foster an appreciation of the impact of crime on others and may in some cases arrange for the offender to meet the victim. Interjecting a personal dimension may significantly alter the offender's perception of crime.

Much of the Goroka Probation Office's success is attributable to personal contacts and relationships built up between offenders and probation officers. In many instances offenders visited the probation office more often than required to seek help on a number of personal matters and to seek the support and understanding offered by probation. Volunteer probation officers have been very effective. Commonsense, patience and an abiding concern for others constitute the primary ingredients in a successful probation officer. In some instances where the offender realises that volunteer probation officers care enough to invest their time to help the offender without any remuneration, a positive personal relationship is more easily developed.

Probation allows continual monitoring of the offender's progress and the ability to respond to problems not addressed by the court or known at the time of sentencing. In many instances the elements causing the offender to return to crime are never either revealed to the court, or subsequently arise. Continuing contact by a probation officer assures the requisite help to monitor law abiding conduct is always available.

Often long after the probation period has expired, a personal relationship established with a probation officer may be used by offenders in countering personal problems.

The continuous support system probation offers "helps keep people on the straight and narrow long enough to make it a habit". If probation can work long enough with some youth "they can be made to realise there is something in being good.. and they can be introduced to things to be done to change their boredom and hopeless view of the world" (Giddings 1984).

Probation offers an additional resource for crime control with the prospect of providing a better result at less cost. Savings to the community arise from spending less on penal institutions and from spending less in providing the social service assistance often necessary to support the families of serving prisoners.

Probation affords the community an opportunity to become meaningfully engaged in criminal justice. At relatively minimal cost state resources in coping with crime can be significantly enhanced if volunteers are used and organised through probation services. Numerous community based organisations have expressed a willingness to assist with probation (Korare 1981). The successful involvement of 40 volunteers (national and expatriate) in Goroka exemplifies the untapped community resources that can be successfully harnessed to spread the remedial resources of the justice system through community participation.

A valuable and often overlooked benefit of community participation, especially through probation services, is the insight gained by the community of the justice system. An uninformed public displeased with the capacity of the justice system to cope with law and order problems becomes frustrated Quite understandably it turns to simplistic solutions such as mandatory minimum sentences. Such solutions create greater difficulties, law and order problems intensify, and mounting public displeasure and disrespect widen the rift between the community and the justice system. Consequently good people leave the justice system, less good people are attracted into the system, and for those who stay the level of frustration spills over into either a lack of caring for their responsibilities or as has been recently experienced precipitates increasing police violence against people suspected of crime, and at times, the general public.

Probation provides an invaluable window for the community to see how the justice system works. In the absence of appreciating how the justice system works, the police and the judicial process are widely condemned for what they don't and often can't do, and rarely appreciated for what they can do.

Through their involvement, the community loses their largely superficial and predominantly emotional view of the justice system. When lay members of the community through their involvement begin to comprehend the underlying causes of crime, their impossible expectations for law and order solutions imposed upon the justice system become inescapably obvious. Better understanding of what police and courts can do, coupled with a recognition that police and courts are severely handicapped without community support fosters a much improved working environment for the police especially, and for the courts. Through community involvement in justice a much broader constituency develops to work towards involving all state and private agencies in a holistic response to law and order problems.

Recommendations

To test probation's relevance and appropriateness in Papua New Guinea, a two year intensive pilot project should be established in Goroka. If the pilot project receives adequate support and is properly monitored valuable knowledge will be generated.

- The pilot project will provide a comparative evaluation of the effectiveness of fines, jail and probation in preventing short term recidivism.

- The cost of operating a model probation office will be determined.

- The problems of establishing and maintaining a probation office will be identified and a model detailing procedures, techniques and programmes will be developed to assist other areas seeking to develop probation services.

- A core of trained volunteers and two trained full time national probation officers will be available to train and assist others aspiring to work in probation.

Goroka is the obvious site for such an experiment for a number of reasons –

- A core of volunteers has been established, and many have already had experience working with probation.

- There is at present a full time person working on probation in Papua New Guinea who is fully acquainted with the Goroka community.

- District court magistrates in Goroka after two years have just begun to develop a sufficient working familiarity with probation to appreciate its potential and to purposefully employ both probation and probation services in sentencing.

- Two years developing a new probation service is hardly enough time. In any other area but Goroka much time would be lost in building up trust between courts and probation and in developing the community contacts necessary to field an adequate volunteer force.

- Many expensive start-up costs can be avoided in Goroka. Most of the infrastructure necessary to launch a two year pilot project is already in place.

- As many cases are presently being processed in Goroka (an active case load of 129 cases) invaluable data and experience are already in hand.

- Finally, not to pursue the important initiative pioneered by the justice system and the community in Goroka would adversely affect the relationships between that community and the justice system and would make it very difficult for any future attempts to rally the community to work in cooperatively with the justice system there. The pioneering work of the Eastern Highlands Provincial Rehabilitation Committee is an invaluable asset that should be built upon to develop probation services.

- Throughout the pilot project, key justice officials in the police and courts must remain the same. Much of the success of the project depends on establishing lines of communication on a personal level. Police and judges must trust and know the probation staff. Equally the probation staff must know and understand what police and judges expect. Consequently in the police force the provincial police commander must not as in the past be constantly changing. At least for the duration of the pilot project, the senior officer should not be transferred. Similarly police prosecutors, public prosecutors, public solicitors and magistrates should not be changed during the pilot project. The same national court judge should be sent for the national court circuit in Goroka for the duration of the pilot project.

- Adequate funding for transportation and the operation of the office must be made available. The pilot project should not be hindered by inadequate facilities. A vehicle is essential for the probation office to adequately service the needs of the court and to successfully extend probation services equally to urban and rural residents.

- All probation services, but especially the pilot project in Goroka should embrace both adult and children's courts. The number of occasions young children (from age 10 to 14) are remanded or sentenced to jail is appalling and constitutes the harshest indictment of the justice system's deficiencies. Probation services by supervising, or by coordinating efforts with welfare can locate parents, relatives or arrange for volunteer foster parents to avoid remanding in custody children charged with crime. Village courts as well must be provided with probation services to offer alternatives to sending children to jail. Presently courts often lock children up because they have no other option to control children awaiting a court hearing.

In the past, probation has been bounced from one department to another like an unwanted puppy. To properly nurture the development of probation services, probation must be permanently attached to a department that has both the resources and concern to assist probation become a meaningful part of the justice system. Although in the past the Department of Justice has not adequately supported probation, if properly made aware of the savings an effective probation service can generate, perhaps Justice will be motivated to provide the necessary support. Of all departments, Justice is best suited to carry the overall responsibility for probation.

Several legislative changes are necessary to afford the scope and flexibility for the full complement of probation services to be used.

Changes to the Probation Act:

1. Section 13 (3) should be deleted It is curious when the most severe sentences will be imposed, this section precludes the court from using the most effective source of information about the offender. In some jurisdictions prisoner's reports are mandatory in serious offences (see Wisconsin and Michigan). The Canadian Corrections Association recommended that in every case involving a person under 21 and any first offender over that age who is liable to be imprisoned for two years or more a presentence report should be mandatory (Canadian Corrections Association 1967).

   Without the services of a probation officer, both the public solicitor and the public prosecutor must gather all the necessary background information about the accused The reliance upon a probation officer for this information allows a neutral report by someone who is more experienced and less expensive.

2. (a) Section 16 (1). Add to this section, 16 (1) C - "after a period of imprisonment not exceeding three years the Court may add a period of probation to the sentence".

   This condition enables a probation order to follow a jail sentence and provide important continuous follow up assistance to offenders released from jail.

   (b) Section 16 (1). Delete "not being a minor". Probation should be available for all ages and should be administered out of one office.

3. Section 16 (2) should be deleted and the following section substituted. "For any offence for which a mandatory minimum sentence is provided for by law, the probation order may either

   (a) apply after the jail sentence, or

   (b) if the circumstances warrant all or a part of the mandatory minimum sentence may be suspended and a probation order substituted for the suspended period of imprisonment or for whatever additional period the court deems necessary."

Ideally, all mandatory minimum sentences should be abolished. At least, this amendment to the Probation Act will import some flexibility without denying the express legislative desire to control certain offenders for prolonged periods of time. This amendment substitutes the control of a probation order for part or all of the mandatory minimum sentence. The scheme allows an unremorseful, recalcitrant offender to be returned to jail for the full jail. term and allows a remorseful and rehabilited offender anxious to pursue a positive lifestyle an opportunity to do so. The chance to return to his community under the auspices of a probation order will save some offenders from the hopeless despair often fostered by long jail sentences.

4. Section 16 (3) should be deleted. A probation order is a court order and as such should be binding on the accused whether he consents or not. If the accused breaches the conditions of probation, punishment for the breach may be imposed and the breach condition of the probation order removed.

5. Section 16 (5). The following words should be added - "or from such time as the courts may order". This allows the court to tie the commencement of probation with the accused's release from jail.

6. Section 16 (6). It is necessary to add to this section adequate powers to enable probation to be used when the court deems it appropriate to exercise the powers provided by section 138 of the District Court Act. Thereby instead of a good behaviour bond the court may retain a greater measure of control over the accused by imposing specific probationary conditions.

7. Section 17 (1). In this section the phrase - "a probation order <u>shall</u>" should be replaced with the phrase - "a probation order <u>may</u>"

This allows greater flexibility and simplicity. Similarly it avoids imposing unnecessary probationary conditions. All conditions may be imposed if the court is persuaded they are necessary. Only conditions (b) and (c) should be mandatory conditions of probation. Except for these two mandatory conditions, by leaving all other conditions to the court's discretion the court may design the probation order to fit the evidence. If the court can exercise its discretion to change all except the statutory conditions, the court can reward the accused for obeying probationary conditions by removing some or all of the conditions upon a probation review.

8. Section 18 (2). This section should be deleted and the following substituted "The court may impose any other reasonable condition that the court deems necessary to ensure the good conduct of the accused."

This "catch all" provision is necessary to enable the court to tailor the conditions of probation to serve the specific needs of each case.

The good sense of the sentencing court, appeal courts, and the Constitution, will in Papua New Guinea as in other jurisdictions prevent any illegal or excessive conditions.

9. Section 20 (2). A further section 20 (2) (f) should be added to allow a person who has received a probation order in lieu of part of a mandatory minimum sentence to be sentenced for part or all of the sentence initially suspended upon breach of the probation order.

APPENDIX A.3

The following recommendations in detail for the police were compiled by the team member who did an in-depth study of the police service

Appendix A. 3

IMPROVING THE POLICE

Fewer, not more police, are required to cope with present and future criminal justice problems. Recommending reductions to the size of the police force, conflicts with the thrust of all recent police submissions for sizeable increases in manpower. However, opposing increases in the size of the police force does not conflict with the principal concerns clearly, repeatedly and patiently articulated by the police force for many years.

More police will not significantly improve the capacity of the police to properly carry out essential police services. A better trained, better equipped, better managed, and better paid police force will be much more capable of coping with contemporary and future law and order problems than can ever be realised by more of the same style and quality of police services. This will be a gradual process in accordance with budget and police procedures outlined in chapters 12 and 16 in Volume 1.

Integral to the recommendation to reduce the size of the police force lies the belief that governments and communities have unrealistic expectations of what the police can and ought to be doing. Police should do a lot less, and the government and community should do a lot more in addressing both the causes and symptoms of crime. If police are solely directed to work on what they are best suited to do, the overall capacity of the justice system will markedly improve. For the justice system to function effectively all segments must competently carry out their respective functions. Presently much of the justice system's ineffective response to present levels of crime can be traced to the police failure to perform their essential role properly. This has been caused mainly by the police not concentrating on what they should and can do well. The police have been pushed into responsibilities that can more effectively be done by other agencies, or by communities.

The strategies necessary to reduce the size of the police force embrace three concepts: deleting some police responsibilities entirely; stretching existing police resources through viable partnerships with others; and replacing some policemen with civilians. Deleting, reducing, and sharing police functions must be a gradual process, but must be carried out with determination in planned stages. In the transitional period some disruption of legal services must be tolerated. Ultimately many of the functions removed from the police will be performed more economically and more efficiently by others, enabling the police to do what they must do more efficiently and economically.

Replacing police with civilians

Employing civilians in the police force for functions presently conducted by police releases policemen for activities only trained police can perform.

The use of civilians can realise significant savings. Unlike police, civilians do not require expenditures on uniforms, police equipment and basic police training. Employing civilians allows local hire which reduces transfer and relocation costs. For some jobs, the pay rate for civilians may be significantly less than police must be paid for the same job, especially long serving or senior policemen.

Resorting to civilians for jobs requiring special skills such as typing, public relations, forensic analysis, data collection and analysis, accounting, cooking, and training will generally produce more suitable people as the selection of the best candidate is not restricted to the existing police force. Many tasks in the police force can be done as efficiently, and some more efficiently by civilians. Many clerical jobs are unpopular with police. As some said "Policemen did not join the police force to be clerks-they signed up to be policemen." Other jobs requiring specialist skills and interest are unsuitably matched with the skills and interests of policemen enticed to join the force by traditional notions of police work. The high degree of specialised training essential for some tasks in the police force necessitate attracting suitable civilians by offering competitive salaries to similar positions in the private sector. The feasibility to do so requires building into the force the capacity to employ civilians in key positions without disturbing the command structure or career path of professional policemen.

The police force must be empowered to control the work, hiring and firing of all civilian staff. The Public Service Commission working with the police should establish special procedures to govern the employment of civilians in the police force. The special nature of police work requires a special set of conditions. Within the framework of these conditions the police must have a free hand to utilise their civilian staff.

A creative and extensive use of civilians in the police force holds the prospect of improving the quality of police work and reducing costs. A thorough assessment of all positions suitable for civilians should be undertaken and a strategy for phasing police out of these positions developed for immediate implementation.

Prosecutions - delete as a police function

Once the full significance of mandatory minimum sentences permeates the justice system, the number of not guilty pleas will profoundly increase. Noticeable increases in sophisticated crimes equally marks the increasing sophistication of

criminals. Experienced criminals will confess less and plead not guilty more often. Minimum sentences and sophisticated criminals will increase the number of not guilty pleas and import more defence lawyers into the fray of criminal litigation in district courts.

These factors will drastically alter the working role of police prosecutors. Forced into more trials, the strain imposed by the increased complexity of their work will vividly reveal their deficiencies in training through rapidly declining conviction rates, longer delays, and unnecessarily prolonged trials.

An intensive training programme buttressed by recruiting experienced police prosecutors and lawyers may render them less woefully prepared for the battles of criminal litigation. For the most part their conviction record will become increasingly lopsided. They will do better against naive first offenders and worst against experienced criminals.

However, it is not simply the present or projected poor performance of police prosecutions that underlies the need to remove this responsibility from the police. As many police forces have discovered the prosecution function can be better performed at less cost by a separate agency. The organisational structure of a police force is ill-suited to properly using, developing or keeping competent prosecutors. Reference here may be made to the separation of prosecutorial from police functions in many civil law jurisdictions but common law systems are going in the same direction as is shown by the latest criminal procedure legislation in the United Kingdom and the transfer of the prosecutorial function from police to civilians in the Australian Capital Territory.

Any policeman desirous of getting into the mainstream of promotions in the police force knows he must transfer out of prosecutions. The opportunity for normal rates of promotion are considerably less there.

Some national police stayed in prosecutions for five years and some for as much as ten years before transferring to other aspects of police work. Certainly the tenure of police as prosecutors is commendably longer than tenure in most other operations. However, to be proficient in criminal prosecutions at least two years of training and several years of supervision by experienced prosecutors on the job is required. After five years a police prosecutor will begin to perform competently. By his seventh year he will be able to assist others and be confident in dealing with all district court matters. Unfortunately within five years and certainly before seven years many police prosecutors will be, or will want to be, transferred to other police duties. One prosecutor told us -

"Prosecution is given a very low priority...we don't get the training we need and what we do get is inadequate ... also when an officer is beginning to come good they move him out of prosecutions."

Where does a police prosecutor who has spent five years or more working in the courts and principally on his own fit into the police force? After five years or more of prosecuting his immediate experience and training is not really suited to any other police function except for criminal investigations. His initial general police training is probably too dated to be of much value. Consequently for any useful police work the prosecutor may require additional training. The expenditures on his initial basic training as a policeman and on his training as a prosecutor are all of questionable value in his future work in the force.

Police prosecutors armed with woefully deficient training in criminal law are cast adrift in the sea of criminal litigation with no continuing useful guidance or direction. Senior prosecutors, if there are any around, are either too busy, buried in administration, or lack the comprehensive knowledge of the system to offer any meaningful instruction or direction. At best, senior police prosecutors guide new prosecutors in the mechanical tasks of how to complete court documents, when and where to file documents, and when, where and why to appear in court for different stages of court procedures. More experienced prosecutors share their experiences in avoiding embarrassing or difficult situations. Armed with this knowledge, experience soon enables police prosecutors to have the edge on unsophisticated and first offenders. Even against such offenders the prosecution often fails because the wrong charge is laid or the charge is erroneously drafted Judges, police and counsel all believe that from 10 to 30 per cent of district court cases are thrown out because of deficiently drafted charges.

The point is not that police prosecutors are stupid or lazy. On the contrary they are earnestly intent on learning and courageously try to perform competently. Until the criminal process receives it's long overdue overhaul and thereby becomes simplified and workable, criminal litigation is far too complex for police prosecutors armed with only minimal training, and without comprehensive supervision by qualified criminal litigators. Qualified lawyers blessed with a working environment of experienced senior litigators struggle for several years before realistically being considered competent. Gaining familiarity with procedures, evidence, examination and cross-examination and the conduct of a trial requires skills that elude qualified lawyers for years.

In summary the structure and function of the police force is ill-suited to undertaking prosecutions competently. Necessary police organisational dynamics will persistently prevent police prosecutors from developing the competence to conduct criminal litigation. Using police to prosecute, constitutes a misuse of scarce manpower and a waste of training resources. For these and other reasons many police forces have divested responsibility for prosecutions to the public prosecutor or equivalent officers. (Many police officers, some with over ten years of experience as police prosecutors heartily endorse removing police from prosecutions.)

Shifting responsibility for prosecutions to the public prosecutor does not and should not necessitate all prosecutions being conducted by trained lawyers. In most instances the existing work of police prosecutors can be conducted by para-legals. There are many benefits derived from placing para-legal prosecutors in the public prosecutor's office.

- The para-legal can accumulate experience which will serve a career path in law, to probation, magisterial service, or to law school.

- Immediate access and exposure to persons experienced in criminal litigation will provide essential supervision and guidance.

- Para-legals placed in the Public Prosecutor's Office will not be as easily exposed to pressures from police officers to use prosecution powers for inappropriate purposes. Further the problems of superior ranking investigators and subordinate prosecution will be avoided, giving the lay prosecutor a freer hand to do what he feels necessary in the case.

- The use of para-legals enables all training and related work to be exclusively focused on developing skills as a prosecutor.

- Using para-legals as prosecutors facilitates recruitment of persons solely interested in prosecutions or in the law.

At the very least as a starting point, all police should be replaced by para-legals in major urban centres. The para-legal branch of the Public Solicitor's Office should attract retired ex-police prosecutors and others interested in law, who cannot, or do not wish to, become lawyers. Most importantly the use of para-legals provides an opportunity to provide local employment in different areas of Papua New Guinea without the expense of recurrent transfers common to the present use of police prosecutors.

Bailiff services

The police are primarily relied upon to serve all civil processes emanating from both national and district courts. The backlog of unserved civil documents rivals the number of unexecuted criminal warrants. Based on a survey of recent national and district court records, the majority of writs and other court orders available to successful litigants have not been served by the police. The value of civil litigation in both National and district courts is severely affected by the deplorable ineffectiveness in serving court documents.

Bailiff services are accorded the lowest priority by police and are regarded as a demeaning task. The police don't want to do it, are not very good at doing it, and should not be dung it.

There is no reason why the state, through the police, should subsidise the service of documents required in private and civil litigation. There are a number of alternatives that do not involve the police to the same extent.

Fees for the service of court documents should be raised to either allow the police to do the work at a profit, or to invite more participation by the private sector in offering bailiff services. The rules of court, fee structures and legislation should be amended to require less service, fewer and more simplified documents, simpler steps in meeting court service requirements, and where possible different forms of service. Whatever is required to make bailiff services attractive to private companies should be done. In some remote areas the police may be required. For service in remote areas the village court might be utilised The government could include a simple course in the service of court documents with training materials for village court officials to enable them to earn for themselves or for the court the fees involved in bailiff functions. The chairman of the village court could be trained to swear affidavits of service. Clerks could be trained to process and forward the necessary paper work, and the peace officers to serve the documents. If the fees for bailiff services earned by the village court were directly applied to either their salaries or operational costs of specific village courts (transportation facilities, etc.) the necessary incentive would be provided for village court involvement.

Prisoner escort

Correction officers, not police, should be responsible for the movement of all inmates once they are received into the custody of the corrective institution. Transporting prisoners from jail to court should always be carried out by the correction officers. Police should be involved as little as possible in escorting prisoners once they are remanded or detained in custody by the court. It is appreciated, of course, that this cannot be done without the Corrective Institutions Services expecting more staff for their extra responsibilities.

Police reserve force

Until recently, civilians trained by the police served as a back-up for the police, contributing their services to supplement police manpower resources. The reserve force in 1968 consisted of 224 men.

It is our recommendation that the police reserve force be re-established Young people interested in police work, retired policemen, and others interested in community service, could be recruited to serve in a police reserve. The police reserve can be called upon to do many tasks that assist the police and spread police services. Traffic control, the visits of important State leaders, internal administrative services, bailiff functions, communication, transportation, compiling and distributing criminal intelligence information, handling enquiries from the public, public relations work, etc. The list is as long as the imagination of any police force anxious to enlist the services of interested citizens.

The use of a reserve police force recycles the skills of retired policemen, develops better links to the community and stretches existing police resources without straining police budgets. In 1983 at a town meeting in Goroka, upon realising the police could not stretch their manpower to provide the services the community desired, hundreds of citizens volunteered their services to help in any way they could. Through public meetings and sensitive public relations many police stations will experience similar public responses.

Stability in senior management positions

To instill a capacity to conceive, initiate, implement, monitor, and fine tune the policies required to improve the police operations, key management positions must not be constantly changing. How long a manager expects to be in one job significantly influences his approach to the job. Aware that he may be moved to another position in three years or less, the strategies employed to realise his objectives, as well as the objectives themselves will be significantly different than if he expects to be five or six years in the same position. Neither the objectives nor the strategies moulded by three year tenures appropriately serve the management and planning needs of the police force. Arguably, even a police force without the extensive problems confronting the Royal Papua New Guinea Constabulary is ill-served by short term senior management appointments. The changes necessary to raise the standards in the police force have been, and will continue to be, frustrated by rapid turnovers in key management positions.

In the past a parade of new policies, changing priorities and ineffectual attempts to implement new policies have produced widespread scepticism that any constructive changes will ever transpire. Many policemen have grown indifferent to announcements of new policies, and are convinced that new senior managers can do very little to change the deficiencies of the police force. Convincing policemen that changes will be made and that the ability exists to move steadfastly towards implementing these changes is a pre-condition to acquiring the support of all ranks. Stablising senior management positions for periods of up to six years will help to convince many policemen that the long road to a new police force can be mastered

Appointment of commissioners

Tenure - The Commissioner and deputy commissioners should be appointed for six year terms. Anything less will preclude the sustained leadership required to unify the force in accomplishing its objectives.

Appointment of police commissioners is the prerogative of the National Executive Council. In exercising this right the NEC ought to be searching for candidates not only with narrowly pertinent skills but also with experience and aptitudes in management and an ability to work within the context of the entire justice system, not simply the police. Deputy Commissioners require similar talents.

It is important not to lose commissioners or assistant commissioners after their term of office. The police force cannot afford to lose its most senior officers every three to six years. Commissioners should be eligible for re-appointment. However, to keep ex-commissioners in the Force the level of pay and benefits of the commissioner's position should be continued as long as the ex-commissioner remains in the Force. Stability in the police force and longer tenures in senior positions will raise the time horizons of senior managers from two to at least six years.

Promotions are often sought less for the sake of new responsibilities than for the sake of increased remuneration. Policemen should be encouraged to stay at what they are uniquely skilled to do instead of being encouraged by financial incentives to seek higher positions. To encourage and keep skilled policemen in positions where they are needed, pay and other benefits must be less dependent upon rank and more dependent upon experience and levels of training. After the rank of chief superintendent there should be little distinction in pay based on rank.

All positions below the rank of deputy commissioner should be appointed by a committee chaired by the Police Commissioner consisting of senior officers and a representative of the Public Services Commission. The appointments should be made in accord with standards and procedures established in conjunction with the Public Services Commission and be subject to the same grievance procedures as any senior management position in the civil service. The standards and procedures for promotion should emphasise training and experience. The rate of promotions for all positions should favour promotion after no less than five years in a rank or position. The specialist must not be prejudiced by being excluded from easier promotion streams available to policemen with broader general experience. By relating pay primarily to experience and training, incentives will be directed to developing expertise instead of pursuing higher responsibilities.

Political input should not be involved in promotions below the level of deputy commissioner. Promotions in these ranks must be exclusively based on merit in accord with clearly enunciated policies and procedures.

Police training

All present deficiencies can be partially or completely traced to the lack of, or inferior, training of policemen in all ranks. In the past ten years the standard of training has dramatically declined. In some key areas such as investigations and prosecutions, training has been virtually non-existent in recent years. In management skills, both middle managers and senior managers have been left to flounder with very little useful training. The lack of comprehensive management training is readily manifested by deficiencies in all aspects of management. Poor supervision, noted by all ranks, adversely affects every police activity. The absence of administrative, planning, and organisational skills is most prominently evidenced by the inability of the police force to effectively implement new police policy. Both senior and middle managers have been left to discover through trial

and error the basic principles of management from personnel management to budgeting, from basic administrative skills to long term planning. In re-inventing the wheel of management techniques, most managers have learned bad habits and many have been defeated or frustrated by simple problems that basic management skills could easily have hurdled.

From small police stations to the most senior positions of command, the force cannot mobilise its forces to meet the challenges of the next decade without comprehensive management courses.

Except for a few old hands, the vast majority of police investigators simply haven't had any training in criminal investigations. The lack of training, more than any other reason, explains the acknowledged and abysmal reputation of police investigations, and the rapidly declining conviction rate. The same story can be repeated about prosecutions.

From matters as fundamental as management and investigations to simple skills like driving*, the past level of training at Bomana and in the field has repeatedly been blamed for the intolerably deficient police services. The first validated examinations in 1982 provide a telling measure of the level of training offered in the past at Bomana. Some of the examination results according to one official indicated "a total lack of knowledge-by students of a subject recently taught".

Training, competent relevant training, holds the key to the future of the police force. Nothing is more important in raising police services to the standards necessary to ensure that the police and the justice system can stem the rising tide of crime in Papua New Guinea. The importance of training cannot be over-stated. In 1978 the police force admitted that their training programmes needed upgrading, and by 1981 they began to appreciate the extent of the deficiencies in all aspects of police training. In police headquarters a training section was established which began the important journey to establish a Systematic Approach to Training (S.A.T.). Under this approach, for the first time, police training will contain the ingredients vitally required to field a competent and skilled police force.

Unlike past courses which varied in content, quality and relevance from one instructor to the next the (S.A.T.) system will produce standardised courses matched to the skill level of the student. After 1975 a new wave of trainers almost annually descended upon the police force. The courses, like the expatriate

* In Boroko the writing off of 30 new police cars each year was blamed on the deficient training police drivers had received at Bomana.

trainers, lacked any significant connection to the practical skills needed in Papua New Guinean police work. The courses offered drew heavily on the background of the instructor. The courses usually reflected police concepts developed in New Zealand, Australia, South Africa, Ireland and other common law jurisdictions. Since there were no standard course materials passed from one instructor to the next, the invitation for originality was irresistible. Successive generations of recruits graduating from Bomana had uniquely different training in many basic aspects of police work. The rich variety of their training compounded deficiencies in the management and supervisory skills of field officers, and thereby frustrated attempts to mould a cohesive team approach to policing.

S.A.T. promises to ring in a new era of training characterised by the development of consistent course content tied to the practical needs of policing in Papua New Guinea.

In the past, Bomana Training College operated as an essentially autonomous body feeding training courses to the police in response to such amorphous directions from police headquarters that the College staff enjoyed a relatively free hand in designing the structure, content and emphasis of the courses. In recent years the courses gradually drifted away from the real world of policing in Papua New Guinea. Under S.A.T. the curriculum, course content and even the materials will be closely supervised by two boards of line officers and men; a training advisory board designed to ensure training reflects the priorities of the force and a curriculum advisory board designed to ensure that the course content relates to the practical knowledge police need in the field. If these boards falter in maintaining a diligent supervisory role over training, the vital nexus between training and police work will be lost, causing training once again to become progressively irrelevant to operational needs. These boards cannot become just another superfluous committee that periodically casts a cursory glance at training. Their importance warrants the highest priority by all members and points to the need for a very senior officer to be a permanent member of both boards to ensure the committee work is not sacrificed to the perpetual parade of crises that threaten to drag board members into their respective line responsibilities.

Training in the past did not seem to fit into any coherent system. Subsequent courses did not build upon prior courses. Field training failed to polish class room instructions. Exams were poorly designed and provided little feed-back for students. A passing grade told the student that he knew more than half the material covered by the exam; which half he knew and which he didn't remained largely a mystery. What skills or knowledge areas must be improved were either not pointed out or were not followed up.

Under the S.A.T. system, with its more individualised instruction, especially in the field, and a progression of courses designed to mix field experience with class room instruction, the policeman will have a better idea of his progress and a better grounding in fundamentals at each stage. Similarly the S.A.T. approach provides a better sense of the purpose and benefits of training. In appreciating the relationship of training to his career path as a policeman, interest in training

will be vastly enhanced. The follow up provided by training in the field, the provision of a comprehensive manual that embraces the techniques covered in courses, and a clear timetable for subsequent follow up courses will dispel current police perceptions that the police force either doesn't care, or can't do anything about the professional development of police skills.

Many police are frustrated by the lack of training. Presently most are resigned to the belief that training will never be more than a promise. This belief breeds a dangerous sense of despair which emerges as indifference, and a declining commitment to professional standards. The S.A.T. system has the potential to change many of these negative attitudes immeasurably.

"If a policeman knows his stuff ... he can teach it." This common assumption is a recipe for disastrous training courses. The skills of a good teacher do not naturally coincide with a mastery of a particular subject area. In the past, both expatriate and nationals have been shoved into class rooms and expected to teach. Many past instructors had neither the skill nor aptitude for teaching. Perhaps the worst of the teachers did not realise how badly they were communicating information.

The quality of instruction, so widely condemned by police, had as much to do with the calibre of instructors as with the quality of materials.

Teachers must be taught how to teach. Professional educators must be a key part of the training programme. Their input is required not only in developing the overall structure of training, but they are also needed to run instruction programmes to train teachers and to monitor the work of teachers to hone the teaching skills of all instructors. In many areas professional educators can take part of the course load. A good teacher can communicate and instruct in many basic subjects much more effectively than an "expert". Anyone with little aptitude for teaching, despite his profound mastery of the subject matter should not be used as a teacher, but only as a resource person to give guest lectures or more appropriately to assist in developing course materials.

To harvest fully the benefits of training in the field, courses must be offered in methods of instruction to improve the ability of officers in the field to provide upgraded courses.

Full-time police instructors should not be drawn from the ranks of junior police officers. Any particularly gifted teacher who is a young policeman should be left to develop his field experience before being assigned to a full time teaching role.

The basic courses that young officers have been required to teach in the past are much better handled by professional educators. More advanced courses should be taught by instructors with extensive field experience and competent teaching skills.

The point cannot be overstated: teaching is much more than a warm body in a class room acting as a conduit for information. Marginal returns will be realised from the inordinate and necessary investment of funds, time and resources poured into training if the "trainers" are not properly trained to teach. The medium is as important as the message.

These are the essential elements that must become an inherent part of all police training:

- Consistency and standardisation of materials.

- Maintaining the relevance of training to current police needs through the meaningful involvement of line officers in curriculum development and supervision of training.

- Follow up courses in the field, and through a rational plan of professional courses timed to fit the career path of a policeman through the establishment of a comprehensive manual.

- Competent instructors - trained and monitored by professional educators.

Following from these basic principles governing training there are a number of specific recommendations for training:

- New Recruits. The importance of basic training cannot be exaggerated. Efficiency in the fundamental skills of police work lays the foundation for competence in all aspects of policing. The old style of basic training, lots of it, a mix of field work and class room training and a painstaking grounding in fundamental skills must once again characterise the training of all recruits. Recruit training through class room and field work should take at least two years. The recruit's probationary period should end after three years with exams, field assessments and the recruit's own assessment of whether a career in the police force offers anything to him to inspire the personal sacrifices the profession demands. Recruits should not be taken into the force until at least 19 years of age due to the maturity demanded by the training. By recruiting older candidates the drop out rate will be reduced Perhaps a special cadet corps could be established for a two year service by

persons interested in police work but too young for recruit training. The cadet corps could be used for traffic control, community projects and work in various capacities as assistants to command and headquarters positions.

A basic training programme common to both officers and men fosters a closer working relationship between all ranks in the force.

- Management exchange programmes. Senior police officers at management levels should be seconded to work in other management roles. A two year experience in the National Planning Office, Finance or other areas involving personnel management or public relations, would greatly assist the officer in developing management skills. Equally important, the officer will learn how other key departments operate. Similarly, senior managers especially from the National Planning Office, Finance or the Public Service Commission could benefit the police and their department by a two year stint working in the police force in a relevant management capacity.

- Foreign in-service training. In specialised areas of police work, officers and men should be posted to work in the police forces of Australia, New Zealand, England and Canada. The cost of such postings in terms of housing, living expenses and travel may be funded by international or Commonwealth agencies and in some cases may be carried as part of a foreign aid package from the host country. In selected areas of police work such as forensic investigation, specialised fraud or other forms of criminal investigation, periods of secondment to foreign police forces would provide an incomparable training experience.

- Advanced training. To attract and retain excellent people, a police career must involve variety, challenge and the opportunity to develop expertise. For selected officers, opportunities for university training, courses in management, computers, or other specialised skills must be encouraged. Contracts could be structured in such a way that bright, young officers do not divert such opportunities to their own career development rather than to the benefit of the force. Without such opportunities for higher training, the bright policeman will inevitably be attracted to other fields and ambitious candidates will not be attracted into the force.

  Over a range of police functions expertise produced by higher learning is in great demand to contend with contemporary and future law and order problems.

- Community skills. The police objective of building a community-based force will not miraculously evolve from foot patrols, small suburban police stations, socialising in villages, and from an aggressive public relations office. Making the fundamental shift from a para-military to a community-based force will require extensive training. The present training and working experience of police does not properly prepare

them for the challenge of working closely with communities. The difficulties facing the police force have been succinctly stated by several policemen. For example one said -

"Don't know how to treat people as human beings." and another observed:

"We are policeman that's all..... we don't know the first thing about relating to people in any other way than as a policeman."

A third complained:

"I am told how to arrest ... how to use force. .. how to be firm ... and to enforce the law...These things didn't prepare me for being a part of the community."

Living and working in close contact with the community as a policeman requires special skills. It is not enough to move policemen out of patrol cars, barracks and compounds and expect harmonious community relations to flower. Past police training has emphasised the interventionist role of arrest and prosecution. Police are trained to exercise legal powers not to rely on informal means of resolving conflict. How to be a "peace maker" without being heavy handed requires an ability to listen, persuade, mediate and to exercise discretion fairly.

Not that skills necessary to work closely with the communities are difficult to develop, many will naturally adapt themselves to the task, it is primarily that training must be directed to mesh the role of police as a law enforcer with the role of "peace-maker". The former requires the traditional skills of policing, the latter requires much greater discretion in the skills of a facilitator, animator, and trusted resource for community initiatives and personal problems. Some policemen, because of prior training or disposition, will never master the skills needed for working closely with communities. There are lots of other police jobs for them!

A new set of guidelines for exercising discretion, for guiding the policeman to know how far he can become immersed in the community and community activities, must be developed and taught. There are many appropriate techniques to facilitate positive community relations, to maintain established relations, and to avoid misleading the public by raising unrealistic expectations about police/community relationships and cooperative undertakings.

It is an important and for some police, a bold new step from their years of experience as a para-military, essentially aloof force, to a force aspiring to develop a close working partnership with the community in resolving the problems of law and order. The step must not be taken blindly. Training must be immediately instituted and guidelines must be carefully developed to ensure the step is not withdrawn upon encountering a number of disasters that could easily have been avoided by proper training and guidelines. There will be problems - but not more than a properly trained police can easily handle. Training for community skills cannot be treated as a frill - it is as vital to successful policing in the future as any other skill.

- Discretion. To facilitate their role as a community based police force and to unclog the justice system, the police must be taught how to exercise proper discretion in dealing with trivial cases that should never be processed through the courts. Police have not been taught the flexibility necessary to deal with matters that may or may not constitute an offence, but require the "peace maker" influence of the police. Presently if it is an offence, no matter how trivial, a charge is laid. Similarly if it isn't an offence, no matter how urgently the services of the police may be required, often nothing is done. One magistrate asked:

  > "What has happened to the old-time cop who would take both parties to a petty dispute and sit down with them ...mediate a settlement.... Why hassle people at the drop of a hat.... There are many minor offences which should have been handled by the police giving a serious warning to the offender and sending him on his way."

  Consumate skill, used within clear guidelines and developed through proper training are essential for discretion to be exercised in an equitable manner. A significant part of police training, especially recruit training, must be directed to developing the skills required to exercise discretion while dispensing justice.

- Specialised training. Two desperately urgent training priorities must be immediately addressed: criminal investigations and management skills (three if prosecutions is to remain with the police). In these areas the police force cannot wait for the S.A.T. training programmes to provide training. The need is now. The capacity for S.A.T. to provide training in these areas is two if not more years away. Without disturbing the timetable for S.A.T. the best interim resources must be marshalled to provide basic training in management and criminal investigations. The rest of the justice system cannot wait for S.A.T.; management skills are desperately needed in the field to upgrade the standard of police activities, to upgrade administration and to enable the force to implement its objectives. Without immediate improvements in basic management skills, low police morale may undo reforms to improve the police force.

The deficiencies in police investigations are capable of single-handedly undermining the ability of the entire justice system to contain crime. With mandatory minimum sentences, fewer confessions and more not guilty pleas, the deficiencies in police investigations will increasingly enable hardened criminals to operate above the law, for corruption to spread, become entrenched, and for public confidence in justice to be irreparably damaged as the public watches the system fumble with serious crime while coping effectively and harshly with traffic violators, minor and youthful offenders.

- Intensive training courses. It may be cheaper and more effective to take training to the field than to bring policemen into training at Bomana. Wherever possible training packages should be taken to field stations to provide intensive three to four day training sessions. The distractions for students and the disruption of line responsibilities are much less when training is provided at field units. Due to the savings in costs, more people can be reached by a travelling course than by bringing policemen into Bomana.

- Correspondence courses. Some subjects can be covered by correspondence courses. Correspondence courses can prepare students for courses to be taken in the future at Bomana and provide follow up instructions for courses already completed at Bomana.

- Priority of training. The closure of the Police Training Institute at Bomana for six months in 1981 as an austerity measure sadly reflects past failures to appreciate the pressing priority of training. Although recently much effort has been invested in developing the S.A.T. system, there is reason to doubt that the priority now commanded by training will continue to beat back competition from other crisis management concerns regularly harrassing senior managers for their attention. It must. The primary purpose of reducing the police force is to free up funds to make the police force better at delivering essential services. The concept is that one properly trained policeman can do the work of several incompetent police, or at least not create the additional problems commonly accorded to incompetent police work. Training is a primary means of producing competent policemen. If any other matter takes precedence over training the justice system may be grievously delayed in developing a capacity to contain crime. If the improvements are delayed for too long, the cost of containing crime may become prohibitive and crime, especially corruption, may become too entrenched to be affected by normal law and order resources.

To date the Public Services Commission in failing to appreciate the urgent need to recruit key people to implement the S.A.T. programme have caused a two year delay. These and other delaying factors must be promptly eradicated. Whatever it takes to implement competent training programmes must be done. The cost in doing so, will be recouped several times over through noticeable improvements in the efficiency of the justice system.

> The emphasis on training must not be read to imply that the Royal Papua New Guinea Constabulary must reach in all aspects of policing, the standards of other jurisdictions. In some areas of police operations, a higher level of expertise is unavoidably required. However, in most activities, commonsense, a desire to work with and help people, and an ability to make decisions under pressure, constitute the primary skills most police activities in Papua New Guinea demand. One of the many advantages of a community based police force is its ability to rely on the more basic skills of policing. The less the public cooperates, the higher the demand for sophisticated techniques of investigation to ferret out the proof necessary to arrest and convict.

The use of expatriates

Newly recruited or short term expatriates should not be employed in line positions. All positions of command should remain with nationals or long term regular expatriate officers. Short term contract expatriates should be used as advisors, consultants, or in a training capacity. No-one on a short term contract can adequately comprehend the dynamics of the Papua New Guinea police force or of Papua New Guinea to operate effectively in a line position. The invaluable contribution of short term expatriates flows from their specialised expertise. Their time should be expended in sharing this expertise through teaching, advising and consulting, and not wasted through unavoidable and time consuming administration endemic to line positions.

Before expatriates are employed in the field as advisors, consultants or trainers, a two to three weeks orientation course should be provided to acquaint them with the practices and policies of the force. Once the expatriate has some appreciation of the working environment his contribution will be significantly more relevant.

As an interim measure only, until training can upgrade the investigative skills of policemen, expatriates on short contracts will be needed to assist with investigations of serious crimes and in specialised areas such as forensic services, criminal intelligence, planning and public relations.

Promotions and transfers

On the job training provided by contract expatriate specialists primarily relates to the position held by the national at the time. Before the skills acquired through this training can be applied by that national officer or passed on to others working in the same field, promotions or transfers moves the national officer to one or two levels above the position that the job training was designed to serve. Promotion often takes the officer to a higher position where new and unrelated skills are required. By keeping policemen in positions for at least three years the investment return from on the job training will be considerably enhanced.

Whenever possible promotions or transfers should not move officers from work unrelated to the training received, otherwise much of the investment in employing expatriate officers to provide on the job training is lost by rapid promotions or transfers.

Pay

The sacrifices any professional makes to keep his knowledge and skills current and constantly upgraded are usually rewarded by increases in responsibility and pay as well as in the personal satisfaction of being a competent professional. Pay and promotion in the police force should be significantly related to the successful completion of training courses.

Police manual

A police manual can be found on the Christmas wish list of every policeman. A comprehensive manual readily accessible to all police and regularly updated to keep abreast of policy, legal and procedural changes, reinforces the investment of time and money in training.

Public perceptions and the police

Interviews with village people, merchants, community leaders, civil servants, judges, lawyers and other justice officials reveal an astonishingly widespread and unfavourable impression of the police. Some recognise the difficult task facing the police and accordingly tempered their criticism. The exceptional positive comment about the police focused on the work of particular policemen or a particular police activity and was qualified by knowing how abysmally the rest of the police force performed. While few police forces anywhere enjoy a favourable public image, the unfavourable public image of the police in Papua New Guinea is unique in its universality and its extreme intensify. This harsh public condemnation engenders police frustration and indifference. Frustration may be manifested by abuse or violence against the public. Indifference is manifested by ineptitude, apathy and grossly deficient responses to public requests for police services. These responses intensify negative public perceptions.

Good men are reluctant to be associated with an agency roundly condemned by the community. Many good men leave the force or bide their time until retirement with little enthusiasm for their work. Good recruit prospects, soured by the community's perception of the police, turn to other careers.

An integral part of improving the performance of the police necessitates changing public attitudes. To do so the police must not only improve efficiency and professionalism of their work but equally must change their approach to all

sectors of the community. Public, whether victim or offender, whether persons of insignificant or significant stature, must be respected and treated courteously. The awesome powers accorded by the state to police must be exercised with consumate sensitivity to the rights of all citizens. An abuse of the rights of any one citizen breeds disrespect specifically for the police and generally for the law. As the most prominent representatives of the justice system, the police bear the awesome responsibility of nurturing public respect for the justice system. They can only do so by professional regard for their responsibilities and for the powers they exercise.

In quite a different manner the police attitude to the public must change. Police must learn to share their powers with the community and especially with community leaders and community based institutions. Only through a meaningful partnership with the community will the police be either appreciated or effective.

Techniques for improving police/community relations

Good relationships between the public and police principally explain the high proficiency of Japanese police. Foot patrols, community based small police stations, community visitation schemes, providing helpful advice to different sectors of the community, the minimal use of force in carrying out police duties and an active public relations programme all contribute to maintaining a positive community link between police and the community. The "kobans" or local police boxes are often singled out as a central contributing factor to positive good community relations. Police operating out of "kobans" appear to be responsible for two-thirds of all arrests in Japan. Not only can the police divide the neighbourhood into small networks more easily handled, but the local people deepen their understanding of the police and the activities of the police.

In Japan the police box is responsible for a single community or a small part of the community. Each police box operates 24 hours a day providing a wide spectrum of police services. An urban police box has at least three officers while residential/rural police boxes are usually served by a single officer. In the case of a residential police box, the policeman and his family live in a house connected to the police box. In cities and at major police stations officers are required to live close to their place of duty. The facilities of a police box are sparse, containing the bare essentials of an office, a toilet and a communications system between the "koban", officers on patrol and police headquarters.

Accommodating police in the community

Police barracks and police compounds are remnants of a bygone era when police were trained to function as a para-military force. Current police policies espouse the importance of forging meaningful relationships with the community and of eradicating the practice and reputation of a para-military force. Moving police out of barracks and compounds and dispersing them to live in the community is an integral part of realising these objectives.

The communities visited enthusiastically welcomed the prospect of police living in the community; senior police planners, and other government departments support the concept. With few exceptions, the police are equally eager to be housed in communities. Of the policemen interviewed who live in communities, they all appear to be much happier and much more assimilated into the social and cultural life of the community. They actively participate in community activities. Their circle of friends was not dominated by other policemen. Many having earned both the trust and acceptance of the community, moved freely and easily through the community. They believed they and their families were much happier once integrated into community life, and especially if allowed to stay long enough to develop good friends and settle their families into community schools and in the community social and recreational activities.

Many policemen are still sequestered in compounds and barracks. Their social life revolves around the police force. Their connections with the community are tenuous, superficial and more concerned with domestic commercial needs than with social and recreation needs. They know less about the community, and believe they are not liked, but tolerated. Strangers to their own communities, many of them believe posting to another community rather than living in the community will resolve their dissatisfaction with their present life style.

No one disputes that changing both the image and practice of a para-military police force requires eliminating police barracks and compounds that have characterised, promoted, and maintained the para-military image of the police. Yet compounds and barracks persist.

Some police fear living in the community will render them vulnerable to pay-back and other forms of violence. They prefer the safety of numbers afforded by barracks and compounds. If the pay-back vengeance is sought against police, it is less likely to be deterred if the police are without friends or contacts within the community. The alienation fostered by segregated living creates an environment much more conducive to creating situations giving rise to pay-backs and much less capable of diffusing pay-back pledges. The recent killing of a young constable on a highlands highway bridge dramatically illustrates the illusion of the safety offered by segregated residences.

More obvious, less tolerable reasons for the persistent anomaly of barracks and compounds stems from a lack of funds. The money saved in not building, renting, buying or subsidising accommodation in the community for all but the most junior policemen is spent several times over in coping with the problems created or exacerbated by policemen not being in communities.

The most pressing and consistent explanation for low police morale and high dropout rates in the police force arise from the poor to abysmal accommodation provided by police barracks and compounds. An unhappy employee, whether a policemen or in any other line of work, produces less and what is produced markedly slips in quality. This can and must be equated to police costs in manpower loses and inefficiency.

Police living in the community are better positioned to prevent and resolve crime. Their presence encourages law-abiding behaviour, but more importantly, encourages people in conflict to seek help from policemen. The policeman's skill in community and personal relations can settle many conflicts that might over time escalate to crime. A policemen with an understanding of the community can resolve many offences informally. Apologies, compensation, mediated reconciliations and any other creatively designed solution to fit the circumstances can be employed by police to maintain harmony in the community and avoid the necessity of resorting to, expensive, formal, slow and often unsatisfactory solutions of the justice system. The "peace maker" role of the policemen most effectively carried out by policemen living in and known by the community, saves the justice system untold expenses in preventing crime and in processing crime informally. The flooding of district and village courts with trivial if not vexatious prosecutions may in part be attributed to the few police "peace makers" successfully operating in Papua New Guinea.

The culmination of all these costs, impossible to accurately measure, but no less real, in the course of a few years exceed the cost of moving policemen out of compounds and barracks and into the communities. The apparent savings in forestalling expenditures on integrating police into the community mark another sad example of false economy in the allocation of funds for law and order.

Police and community relations

On several occasions in recent years, the police have sought greater powers. However, the experience in other countries has demonstrated that expanding police powers isolates the police from the very community they are designed to serve. There is every reason to believe that arming the police with greater powers would have this same effect in Papua New Guinea.

Papua New Guinea has already accumulated a wealth of experience in the past few years to illustrate that militaristic police policies alienate communities. The "mekim save" policies of previous decades may have had their place, but are presently dubiously appropriate responses to tribal fighting.

The more repressive, the more severe, and the more far-reaching police powers become, the more communities become isolated from police. Armed with greater powers, the police rely less on community cooperation and more on their repressive powers. In doing so they become isolated from communities, and lose vital community sources of information and assistance necessary for prevention, detection and the prosecution of crime. Lacking community assistance police become progressively less capable of carrying out their reponsibilities despite additional police powers. Police, cut off from the community become increasingly frustrated and begin to turn to violence, hostility and arrogance.

The community equally frustrated by the inability of the police to protect property and maintain law and order resent and disrespect police for their incompetence and for their arrogant, heavy-handed tactics. As police abilities to effectively deal with crime deteriorate, the police demand more and more police powers. The more power police acquire and use, the deeper the rift grows between police and the community. As the battle lines intensify between police and the community, crime flourishes.

To break the vicious circle caused by increasing police powers, the police and the communities must appreciate they cannot achieve their respective aims without supporting each other. Without respecting, understanding and working with the community the police cannot function effectively in a democratic society. Similarly the community cannot enjoy the stability of a law abiding environment unless they assume a major part of the responsibility for preventing and prosecuting crime. Communities often expect the police to do more than the police could or should do. Realistic appreciations of what a police force can do will prompt communities to accept more responsibility.

The police cannot fix crime in the same fashion a mechanic can be called upon to fix a broken vehicle. Crime evolves out of the community and is an unavoidable consequence of society that cannot be swept away or even contained by hiring professional crime "fixers". The present roles of police and communities must be substantially reversed. The community must take the primary responsibility for resolving crime, looking to the police and the formal justice system for assistance. The police must recognise they can't function without community cooperation and to achieve the level of cooperation necessary, the police must never engage either directly or indirectly in struggles to exert supremacy over law abiding community authorities. Consequently police must bow to parents, village elders, village court magistrates, peace officers, local councillors or to any person recognised within the community, as an authority figure, as long as such persons in resolving community problems are not acting in a manner that constitutes a substantial miscarriage of justice. By supporting indigenous systems of control, the police will have less to do, and what they have to do will be much more easily accomplished.

For the police to understand the value as well as the process of community controls, they must move into communities wherever they can, and spend a lot more time within the communities. A blue uniform and statutory powers do not automatically secure trust or understanding at the community level. By spending more time in the community the police will come to know the people and to become known by the people.

Only if the police and community know and trust each other can the foundation be established to achieve their mutual goals: law and order. Developing close ties between the community and the police, and engaging the community as a front line of defence against crime, takes more time, perhaps more skills, but ultimately is less costly to democratic principles, to democratic institutions and poses much less of a burden on public funds.

There is a place in every justice system for punishment, even severe punishment, and in some instances, police must respond aggressively. However, to maintain law and order in a democratic society and arguably in any society the justice system cannot principally rely on such measures. If it does, the justice system will create more problems than it solves. Future generations will inherit the disasters spawned by a repressive justice system.

APPENDIX A. 4

These detailed recommendations concerning the village courts are based on a study by one of the team members with previous experience in researching village society in Papua New Guinea. The suggestions were discussed with various participants in the law and order process, including village court officials, and complement the earlier recommendations regarding the national and district courts.

Appendix A.4

RECOMMENDATIONS ON VILLAGE COURTS

The importance of village courts

Village courts play a vital part in our recommended approach to the maintenance of order in Papua New Guinea. Our approach is focused on community involvement, and village courts are run by lay officials within communities and responsive to community needs and opinions. Their role is not so much to bridge the gap between the traditional and the modern, although they can help in this regard, but to bridge the gap between the government and the common man. They place responsibility more firmly in his hands while giving him access, when needed, to resources outside his community.

Papua New Guinea is fortunate in having so many viable communities within which courts can operate, traditions on which they can in part be built and public demand for such institutions. 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. In its village courts Papua New Guinea has such a system within reach if not within its grasp.

We see village courts not simply as building on existing community sentiment and structure but as contributing to the development of these elements where they are weak, for instance in inter-clan or inter-village relations, or hardly existent, as in mixed urban suburbs. In doing this they contribute more than their immediate activities to community development. We see a pressing need for village courts in the towns of Papua New Guinea, preferably in association with the reestablishment of some form of local government (presently under consideration, for example, by the National Capital District Interim Commission). We also see a need in the highlands provinces for the further development of the Joint Sitting provisions of the national Village Courts Act so that communities and individuals can take responsibility for law and order beyond the boundaries of their own village court. In these ways we feel village courts can contribute not only to law and order but to community and national development.

Lastly, village courts are the best mechanism available to government to strengthen and support the most fundamental element in the overall system of order in this country: the informal structures of the community (see chapter 14). By their nature these 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. It should be clear from our presentation in chapters 11 and 14 that village courts are linked most closely to these informal institutions and that other elements of the formal justice system are best linked to the community through village courts rather than by inadequate and inept direct contact.

A broad strategy

Many people, as we do, would like to see village courts strengthened and extended. We think it is important to phase improvements in village courts in a logical way and, if you like, to make haste slowly so that the final product is of a high quality. The elements in our recommendations are.

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

We suggest that these be phased as follows:

Phase 1	Strengthening existing programmes, and urban village courts programme
Phase 2	Extension to full coverage in rural areas
Phase 3	Changes in jurisdiction and function.

We are not in a position to say how long each phase might take, but we imagine Phase 3 would probably not be reached within ten years.

We order proposals in this way because we feet each phase is a pre-condition for the next, except in the case of the urban programme which is an urgent necessity not to be delayed. We would not like to see extension in rural areas beyond the present NPEP provision (57 courts in four years), before major steps have been taken to strengthen the performance of existing institutions. When major rural extension took place in Phase 2 a better quality service would be being offered than is presently the case. The urban and rural extension programmes to 100 per cent coverage are essential before some of the changes we propose in jurisdiction and function can be implemented.

We must make one point clear to national and provincial policy-makers: improving and extending village courts will cost money. While other elements in the formal justice system may already have the resources needed to function properly (with the modifications we propose), village courts have only recently been established and are not as yet even quantitatively fully developed. There is no way they can be extended or improved without more funds than they have at present. In April 1982, Village Court Secretariat staff estimated the costs of complete coverage for village courts as an additional K835,000 per annum once they were all established. With recent increases in allowances for officials and our recommendation for an increased number of inspectors, the annual cost of our proposal might be more in the order of K850-900,000.

A commitment in principle to funding extension was implicit in parliament's decision to adopt the Village Courts Act in the first place. However, more than good intentions will be needed to pay and supervise 35 per cent more court officials than we have today. Further we do not think provincial or national governments have thought out the minimum levels of support needed to have these courts function adequately. For instance, as argued in chapter 11, the national government has not allocated enough resources to training and inspection, and some provincial governments who want village courts will not provide housing or other support to secretariat staff. While extension and improvement of village courts will cost money, it will also bring community-wide benefits and reduce pressure on resources in the police and higher courts. It is, in our view, the best possible way to spend money on law and order anywhere in Papua New Guinea

Strengthening existing programmes

The aim of this set of recommendations is to improve the quality of service provided by village courts. The recommendations respond first to present inadequacies and difficulties in village courts, and second to our suggested longterm goals for government inputs in the area of law and order. We suggest

1. Improved training programmes for provincial village court officials (PVCQs), village court inspectors VCIs and village court officials.

   The Village Court Secretariat should provide PVCQs and VCIs with annual in-service programmes and new staff with a formal induction course. Court officials should continue with the standard induction programme for new courts or newly elected magistrates, but should be given an annual in-service course as well. At present this is only offered in certain provinces and new training materials are not available. Consideration should be given to a mandatory induction period of observation only for new magistrates where a training course is not immediately available. For instance, a new magistrate might be required to attend ten court sessions before he can take part in decision-making.

Training programmes should continue to emphasise the importance of mediation, although not necessarily by village court magistrates. Emphasis should be placed on the value of non-formal institutions and how they complement village courts. With respect to sentencing practices, alternatives to jail should be discussed and recommended, especially for young or first offenders.

On-the-job training for PVCOs and VCIs is most important. While VCIs can learn from well-trained PVCOs, we recommend that national secretariat training staff spend one week per year with each PVCO going over his management and other procedures and offering advice and assistance. The Village Courts Secretariat may need more training positions, although no decision should be taken until existing positions have been filled satisfactorily. There is, however, a definite need for the annual production of materials for the in-service programmes for village court officials. These would ease the burden on and improve the quality of the training given by PVCOs and VCIs.

We should note that the team was not unanimous on the role of VCIs in the supervision, and inspection of village courts. One member felt strongly that these functions properly belonged to full-time magistrates accredited to local and district courts, and that VCI salary money would be better spent on appointing more magistrates with special responsibility for village court supervision. This arrangement was thought likely to improve the quality of supervision, better integrate village and higher courts, and increase the status of village courts. Other team members accepted the view that, although such a link with magisterial services is desirable in theory, in practice magistrates were unlikely to devote sufficient time to the supervision of village courts. They would prefer local and district court duties and regard village court supervision as less rewarding. There is also currently a shortage of district and local court magistrates and no opportunity to appoint additional ones.

2. Improved inspection and supervision of village courts

This will be assisted by training programmes for PVCOs and VCIs but also requires additional manpower and support from provincial governments. As we suggested in chapter 11 there is an immediate need for 12 more inspectors, and a continuing pro rata increase associated with the extension programme. The NPEP programme (225-2-600/84) should be expanded to include four inspectors located where most appropriate, and all future extension budgets should include funds for VCI positions as well as for establishment costs and allowances for officials. Provincial governments need to recognise the value of inspection and supervision as well and provide, as they have done in Enga, housing and transport for VCIs in the districts.

3. Review of proposed administrative arrangements on decentralisation

We recommend review of the Department of Justice's suggestion that provincial governments locate village courts with provincial services/local government. The most important working and legal relationship village courts have is with the magistrates of the local and district courts. Cooperation between these two organiations is vital for the well-being of both. Anything which apparently or actually divides the two is not a wise development. We would prefer that provincial governments recognise this special relationship perhaps by creating a division or sub-division of justice within their departmental structure. Provinces should consider in what ways they can advance and improve the relationship with the district and local court magistrates in the province.

4. Improving relations with police

Everybody, including village courts and police, is agreed that there is room for more cooperation between the two agencies. However, arrangements so far have been almost entirely informal and, at the best, subject to ups and downs. We do not support the present proposal 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 will have this effect because it would place village peace officers outside the control of village courts and make them responsible primarily to the police rather than the community.

We suggest instead that the police develop their approach to community involvement through the medium of the village courts as a total institution. Instead of aiming at reaching the grass roots on their own with their limited manpower, they should plan their approach indirectly through village court officials, themselves all resident members of the community. If the police were to accept this approach, and its long-term success depends on the continued extension of court coverage, then we recommend the police set up a Village Courts Liaison Programme. This might consist of policy development staff at the national level, national and provincial liaison plans, full-time provincial village courts liaison officers (senior officers with good access to the Provincial Police Commander), and an officer with village court liaison as a specified duty in every police post in the country. In appointing liaison officers, the aim would be to provide a single point of contact for village court officials and staff, someone officials can ask for help and PVCOs and VCIs can discuss problems with.

The appointment of officers with special responsibility in the area of village courts should not be seen as diminishing the responsibility of every policeman in the country to respond to the policy directive we have proposed to the National Executive Council. Working with and through village courts will be such a change of approach, that all personnel will require special training courses and on-the-job programmes.

5. Size of courts and number of officials

Village Courts Secretariat staff should assist PVCOs to plan the size of courts and numbers of officials to avoid, where possible, too many small courts or, where small courts are necessary, to ensure they have a smaller-than-average team of officials. This type of planning might be assisted by a standard population-to-official ratio for the purposes of national government funding. Hence, instead of the current maximum of two peace officers per court, the mechanism would be so many people per official. This would result, probably, in a reduction of officials funded by the national government in some provinces. We would not recommend that any formula developed be applied court by court. Rather it should be the basis for the determination of funds transferred under Vote Item 1-5-6 to the provinces. We would also recommend the formula be applied to the total number of officials rather than by type of official. Nothing here denies the right of provincial governments to increase the number of officials beyond the level funded by the national government. However, provincial governments too should benefit from better planning in this area

6. Legal provision for another level of village court to handle tribal fighting problems

We have been impressed by the development in Enga Province of the district-level village courts described in chapter 11, with a mandate to concern themselves only with tribal fighting or the threat of tribal fighting. At the moment these courts in Enga are not operating under any Act. There are three possible approaches to enabling such courts to operate legally. Either Section 14 of the proposed new national Village Courts Act could be amended so that a Joint Sitting is defined to include or include exclusively magistrates from village court jurisdictions other than those of the disputing parties, or provinces could consider passing their own legislation under Section 27 (r) of the Organic Law on Provincial Government setting up courts of a village court type but not operating at all under the national act. It has been suggested that a third alternative would be to provide for district-level courts in a Provincial Village Courts Act. However, we doubt this is possible since the Joint Sitting provision in the national Act, being in Part III Jurisdiction (a national function under Section 39(2) of the Organic Law), overrides provincial legislation on this point. We recommend provisions under Section 14 of the national Act.

Our aim would be to enable provinces which needed this type of court to develop them. We do not, however, think the need exists in most coastal and islands provinces, where we understand magistrates from two courts are able to handle disputes effectively, if only rarely, between individuals from separate jurisdictions. More frequently individuals submit to the jurisdiction of one court even when they come from different ones. It would not be desirable to develop another and costly level of courts where they were not needed or seen to be needed. The Department of Justice should only encourage them as a response to tribal fighting or, possibly, in urban areas.

7. Review provisions of national Act on compensation for damage to property

There is clearly considerable dissatisfaction with the K300 limit on compensation. The Department of Justice has already proposed in its drafting instructions for the Village Courts Bill to raise the limit to K500. However, we recommend that this limit be raised considerably under certain circumstances, for example for damage to vehicles, buildings or machinery. This would assist village courts handling damage as a result of tribal fighting.

A special programme for urban village courts

While we recommend leaving a faster expansion of rural courts to Phase 2, we see an urgent need for extension of the coverage of village courts in urban areas. The urgency arises from public dissatisfaction with the level of order in towns, and the need to make a start if there is to be a long-term emphasis on village courts in town. We believe that the fundamental approach to community involvement in the maintenance of order should be the same in urban and rural areas. 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 at present weak. We do not believe there should be one justice system for rural and a different system for urban residents.

However, in towns there are fewer existing informal community institutions to build on than in rural areas. As a result government inputs will need to be relatively greater at least in the initial stages to achieve the same results. In addition a more sophisticated population will require right from the start a very precise knowledge of and performance under the Act to satisfy the general public. The problems of apprehending offenders and getting people to court hearings are greater in towns and the need for liaison with police greater. Experience in the National Capital District shows there is a greater need for inspections, there are problems in attracting high quality officials when they are usually drawn from the ranks of the unemployed and there are many complaints about the level of allowance.

We therefore propose a special package for the establishment and improvement of urban village courts, without indicating what the financial responsibilities should be. We suggest the following guidelines for the programme -

1. Establishment of village courts in urban areas other than Port Moresby, and increased coverage in Port Moresby

It may be a good idea to start with the more straightforward areas traditional villages and migrant settlements, approximately 36 per cent of the urban population (which numbered 393,131 in 1980). We recommend that census unit boundaries be used at all times, since maps and population figures are available, although several census units may be combined in one court. In progressing to census units of mixed ethnic composition, we recommend beginning with smaller courts (and fewer officials) while anticipating amalgamation at a later date. In Port Moresby courts at Evedaha, Saraga, Kaugere, Badili and Morata already cover substantially mixed populations. We recommend that non-citizens may be required to take part in proceedings before village courts, but be debarred from holding office.

2. Inspection provisions

Inspection provisions would need to be substantial for urban areas and staff should be clearly allocated to that task. We suggest a ratio of one inspector to eight courts, exactly double the rural ratio proposed above. In addition transport would need to be made available, and both for transport and conditions of service consideration should be given for the need for out-of-hours work. VCIs would, of course, be responsible to the PVCO. In a town as large as Lee there may be a need for an additional senior VCI position to coordinate urban courts under the direction of the PVCO.

3. Allowances for urban officials

We feel that while allowances are not wages their value to the recipient could be evaluated on the same basis as wages. Thus at present, given the costs of urban living, the urban court official receives substantially lower monetary rewards than his rural counterpart. We suggest that the national government recognises differences in the value of money between urban and rural areas and between different types of town, in the same proportions as are evident in the minimum wages established legally from time to time. For example, the ratio of the urban minimum wage to the rural minimum wage is currently 2.68:1, suggesting a considerable upward adjustment of urban court officials' allowances might be in order. We do not support indexation as such for allowances since they are not wages or regarded as the main source of subsistence for recipients.

4. Facilitating the appointment of employed officials

It is necessary to facilitate the appointment of people with full-time jobs as court officials to give variety to the educational and other background of urban courts. Section 93 of the Public Service Act (Chapter 67 of the revised laws) permits national public servants to take ten days special leave with pay in any twelve months as members of local government councils, local government authorities or as officers or registered industrial organisations. It appears that this provision has already been used in one or two cases for village court officials. However, the Department of Justice should ensure that village court duties are specifically covered by the new Act and negotiate to see if there is a possibility of a larger number of days per annum. Existing arrangements should be publicised at the time of appointment of village court magistrates. In addition private sector organisations, the Chambers of Commerce and the Institute of National Affairs, should be approached to see if the larger employers among their members could release private sector employees for court service in the same way as the public sector.

5. Liaison with police

We would expect a general policy on liaison to apply in towns as well (see above). However the interdependence of village courts and police may be more marked in towns, suggesting the need for a stronger programme. Full-time liaison officers may be needed in suburban as well as central police stations, and liaison staff, PVCOs and VCIs may need to meet on a regular basis.

Extension to full coverage in rural areas

Present policies of extension could be rapidly increased in scope when it was felt existing systems and courts were satisfactorily working. We would, however, make two specific recommendations.

1. Full provision for inspection and supervision should be included in extension plans, with costs divided as usual between different authorities. No inspectors or inspectors without training, housing or transport will jeopardise the success of new courts.

2. Planning for social infrastructure in large-scale development projects should include plans for village courts. Agreement should be reached on this as on other social infrastructure costs between governments and developer. This would apply both to rural resettlement schemes and new project-based townships. Village courts in these situations can help establish community feeling and responsibility and develop self-reliance in law and order from the start. We deplore the present policy which provides for police but no village courts in such projects.

Changes in jurisdiction and function

In the long term we propose 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 noncitizen, must go first to a village court. While local and district courts can continue to enjoy concurrent jurisdiction over matters within the competence of village courts, under our proposal in Phase 3, these higher courts could only hear village court matters when the village court waives jurisdiction, or when the matter is inextricably bound up with other matters before the higher court. For matters within the jurisdiction of the village court, the convenience or preference of the parties involved should not justify taking the matter to the local or district court.

The aim of this proposal is to place a large number of minor offences and disputes within the community sphere of influence, 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. Other elements of the formal justice system need to be able to focus more on serious offences or improve their effectiveness in relation to those offences. Village courts cannot be optional or they will become poor men's courts. Everyone must use them, and the more litigious, sophisticated or wealthy be prevented from using higher courts at their own convenience. This change in role will strengthen village courts vis-a-vis the rest of the court system.

To give an example of how the sphere of original jurisdiction might be defined, we suggest the following:

- all civil matters up to K300
- all council regulatory offences, and
- all minor offences where the maximum fine is K100 and the maximum jail sentence is 30 days.

In addition we recommend that in Phase 3 the national Act be amended to strengthen the requirement for mediation prior to a formal court hearing. Following our discussion in chapters 11 and 14 we feel that the Act should recognise that mediation can take place before any mediator acceptable to both parties, not just village court officials. Further, formal court hearings should ensure in every case that mediation has been attempted and record the name or names of the mediator(s) before whom the attempt was unsuccessful. Existing provisions for recording mediation agreements mediated by court officials should continue.

Finally, as national coverage is achieved (although the Department of Justice may wish to consider an earlier introduction), we recommend development of user fees in village courts. There are four arguments for user fees: first to raise revenue to cover or partially cover costs; second to move courts into line with the broad principle of user pays in government services; third to deter frivolous use of village courts; and fourth to encourage settlement by pre-court mediation.

The existing model provincial village courts act includes a mention of court fees. Possibly this scheme could be encouraged and further defined by an enabling amendment to the national Act, permitting but not requiring court fees and setting a maximum fee of, say, K2.00. The national Act should also permit the waiving by a village court of any or all of the fee in particular circumstances. The fee could be charged initially as a deposit to a plaintiff and then restored to him and charged to the defendant if the court decides in his favour. If he loses the case his deposit may be forfeit, although the court should make a decision on the deposit (costs) in each case. The present brief phrase in the model provincial act does not appear to us to spell out these arrangements and safeguards in sufficient detail, thus permitting the possibility of abuses.

APPENDIX A.5

These detailed recommendations for using the Office of the Ombudsman to combat corruption are included in case it is decided to follow that course of action.

Appendix A.5

CORRUPTION
RECOMMENDED ACTION TO REDUCE CORRUPTION

Harsh penalties for those found guilty of the worst forms of corruption will be necessary to satisfy the public that something is being done even if it does not deter others or rehabilitate the offender. It is justified as a measure of public condemnation. However, the more effective way to reduce corruption is to reduce the materialism and selfishness which are its lifeblood - and in the case of a country like Papua New Guinea to use the wantok system and the clan loyalties to suppress rather than encourage corruption. This is a tall order but Papua New Guinea has no option if it wishes to remain a democracy, to avoid revolution and to arrest the demoralisation of the country which is already under way.

First there has to be charismatic leadership. Weak government, colourless leaders and cabinets afraid to take unpopular decisions have always promoted rather than prevented corruption. The prime minister has to be the national symbol of integrity and his ministers, worthy representatives. No one should be allowed to continue in high office who cannot measure up to such standards. This is not idealism: it is the only formula the world has ever had for the control of corruption. The cabinet has to be living proof to people everywhere that they are not being ripped off, that their taxes are not being squandered and that those who direct others dedicate themselves. Let this image decline, let this corporate model become tarnished and national momentum is lost. But national momentum is the only way to get people thinking of the country rather than themselves i.e. the only way to offset the pressure to think only of family and clan. When people can no longer trust their leaders - they begin to trust themselves and the opportunities as well as the incentives for corruption multiply.

Secondly, accountability has to become a dogma of government - not just financial accountability, though this is central to prevent corruption - but accountability to a superior for the exact performance of the tasks assigned. This we believe to be so important that, as a principle, it should take precedence over development, decentralisation, the redistribution of wealth and even localisation. We say that it should take precedence because none of these others are going to be possible - or their benefits enjoyable without strict accountability. This means hard choices to get the right personnel in supervisor positions and it may mean financial rewards for continuing to perform satisfactorily rather than promotion or transfer to obtain salary increments. But the nettle has to be grasped - not only to prevent corruption but to provide viable government. Middle management has to be efficient and effective and accountability firmly installed Without this, talk of dealing with corruption is mere rhetoric.

Thirdly, there must be machinery for the definitive investigation and prosecution of corruption. This means -

Proper laws

An omnibus statute on corruption should consolidate all existing criminal offences with the new offences required to thoroughly deal with corruption in both private and public sectors.

To embrace all persons who are directly or indirectly involved in corruption, farreaching definitions of aiding and abetting corruption, conspiracies to corrupt, and attempts to corrupt, must be included The scope of activities defined as corruption should be as broadly based as the definition of corruption and "gratification" in the Prevention of Corruption Act of Singapore (see chapter 4, volume 1).

Gratification means

(a) "Money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable;

(b) Any office, employment or contract;

(c) Any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part;

(d) Any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or panel nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and

(e) Any offer, undertaking or promise of any gratification within the meaning of the preceding paragraphs (a), (b), (c) and (d)."

The evidentiary statutory presumptions and the powers of investigation and arrest contained in the Singapore Prevention of Corruption Act should all be incorporated in Papua New Guinean legislation (note especially Singapore Prevention of Corruption Act Sections 8, 9, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 33, 34, and 35). Some amendments of these Sections will be required for adaptation to Papua New Guinean institutions and Constitution.

Investigative agencies must be able to make application to national court judges or to grade 5 magistrates for wire taps, search warrants, and access to state and private sector financial records. These powers should only be granted by the court on the basis of sworn affidavits from investigating officers setting out the grounds for reasonable belief that corruption has taken place. If the judge is satisfied reasonable grounds do exist, the application may be granted subject to (a) time limitations, (b) conditions respecting extent and use of powers granted, (c) required reports to the judge on all evidence collected, and (d) subject to the power of the judge to order the return or destruction of evidence not relevant to the investigation.

The investigator may request the application be heard in camera, and that all information remain confidential. If the request for an in camera proceeding is granted, the application, the evidence supporting the application, and the evidence collected may be kept secret until the accused is committed for trial, or until such time prior to committal the judge deems it necessary to release the evidence in the best interests of justice. Similarly applications can be made to the judge to ensure that the identity of persons providing information about corruption are protected.

To provide these powers some constitutional amendments imposing restrictions on individual rights will be necessary. In a free and democratic society encroachment on the rights of individuals may be demonstrably justified to protect the public interest and the overall well-being of the society. When the social order is threatened, exceptional procedures are justified, but such procedures must be expressly limited to address only the purpose warranting the exception. They must be carefully monitored to ensure all excesses are harshly punished. The courts must have the power to award costs or any other remedy they deem appropriate against the state or anyone else who misuses or abuses these powers.

Penalties for corruption must vary with the reprehensible quality of the circumstances, but the penalties should be relatively harsher than the penalties for theft or fraud.

Courts must be empowered to confiscate all assets traced to corrupt activities. Similarly the courts must be able to levy restitution orders against the assets of any offenders for funds acquired by corruption or for the losses imposed on others arising from corrupt practices, or for the costs of investigating and prosecuting the offence.

No-one should elude criminal prosecution for corruption by resigning from office. Any breach of a statute which also constitutes an offence must be prosecuted and punished irrespective of the non-criminal sanctions imposed by the statutes.

The prohibitions on the business activities of senior public servants and politicians must be more realistic. Too many of the present restrictions are unreasonably oppressive and can be significantly relaxed without giving rise to any worrisome conflicts of interest.

Supervision of powers

The formidable powers necessary to be effective against corruption must be placed in the hands of skilled professionals unencumbered by institutional politics, but monitored by constitutionally independent and impartial office holders. The court through its power has the means to deal with abuses or misuse of these powers.

The administration of anti-corruption laws requires a distinct agency if the experience of Hong Kong, Singapore and several other neighbouring countries be taken into account. One way is to use the Papua New Guinea Ombudsman Commission which has already shown itself to be interested in this subject. If the Ombudsman is to be given this function, his role as an ombudsman will change - but that is a decision for the government. The alternative is to provide in the prime minister's office an anti-corruption commission with special powers. Given the situation in Papua New Guinea we believe that the Ombudsman Commission can do this work impartially and with integrity.

Daily guidance over the administration of the special powers to deal with corruption can be provided by the Ombudsman Commission - though it will need a special unit.

Public confidence in the impartiality of the investigative and prosecutorial functions of the Commission must be achieved by establishing the constitutional independence of the Ombudsman. To establish the necessary independence of the commission the following steps should be taken -

(a) All commissioners should be appointed for nine years upon good behaviour.

(b) Appointment should be made by the National Executive Council on the recommendation of the judicial appointments committee.

(c) The cabinet should have the power to suspend or revoke appointments upon the recommendation of the judicial appointments committee if a judicial hearing has found evidence of misconduct and recommended dismissal.

(d) Commissioners should be paid at the same rate as the Chief Justice of the National Court and entitled to a pension at the end of one term.

(e) Financial, administrative and personnel matters relating to the Commission must be controlled by the Chief Ombudsman.

(f) The annual budget of the Commission should be based on the recommendation of an advisory panel charged with the responsibility of assessing the Commission's needs and making recommendations to parliament. The panel should consist of one member appointed by the government, and one member appointed by the Commission. The third member and chairman of the panel to be selected by the two appointees. if agreement cannot be reached by the panel on the third member, then the third member should be the Chief Justice of the National Court or a person appointed by him.

By statute or convention, parliament should appropriate without question a budget equal to the previous year's budget plus an inflation factor. Any deduction from this base line budget should require an absolute two-thirds majority of parliament. Any additional amount recommended by the panel should be subject to a non-partisan vote by parliament.

Subject to the expenditure and accounting regulations of government, control of allocated budgetary amounts should rest entirely with the Commission.

(g) Within staff allotments and subject to the public service conditions of employment, the Ombudsman should have control over all staff including the hiring, firing and promotion of such staff.

These procedures remove any fear of covert or overt political interference with the activities of the Commission. To balance this freedom of operation accorded to the Commission the following checks guard against the misuse of Commission powers:

- parliament's control over finances;

- power of judicial council to investigate and prosecute Commission staff for wrong doing;

- ability of cabinet to appoint and to revoke appointment upon recommendation of appointment committee;

- regulations governing expenditures and civil servants;

- court's ability to monitor use of powers;

- court's power to grant remedial relief for misuse or abuse of powers.

Realignment of work load

Presently the work load of the Ombudsman Commission far outstrips their present finances and resources. Minor complaints should be processed in a much more expeditious fashion. A tougher screening system is necessary to encourage all complainants to resort to the Commission as a last resort. The Commission should handle only complaints that no other agency can, or that no other agency has satisfactorily handled. While "no problem is too small" the Ombudsman cannot divert its major energies into an infinite variety of inconsequential problems thereby becoming unable to properly cope with major corruption investigations.

Manpower

Lawyers, accountants and persons experienced in financial, corporate and banking matters must be part of the investigative and prosecutorial team in the Commission. In some areas of expertise it may be necessary to use expatriates who can provide professional skills without the conflicts arising from "wantok" relationships, or from future career ambitions in the country. If expatriates are employed their contract terms should be for at least five years to provide the continuity of experience to undertake major corruption investigations and prosecutions. The scalpel used to remove the cancer of corruption must be razor sharp, and wielded without the hesitation of present or future political advantage. The costs of highly professional investigative and prosecutorial team will be recovered many times over if corruption is contained

Both the police and Public Prosecutor's Office may become involved in a supportive role, but neither can nor should be expected to carry out the major fight against corruption. Both the police fraud squad and the Public Prosecutor's Office are over-burdened with existing work loads, and are not suitably free from other constraints to invest the single minded concentration that corruption investigation and prosecutions require. Both these agencies are too vulnerable to political influence or to the public perception of political influence. The awesome powers required to tackle corruption must be handled by a body regarded by all as above compromise or influence.

Combining professional investigators and prosecutors under the auspices of the Ombudsman is crucial to achieving any measure of general deterrence against corruption. Without these resources and the legal powers to use them, the Ombudsman Commission will be ineffectual and increasingly frustrated Rhetoric doesn't deter corruption, prosecutions do.

In a business and government environment kept honest by a proficient anticorruption squad, honest politicians and businessmen will not be disadvantaged by their honesty. Reputable businesses will be attracted to invest, and dishonest businesses will be deterred. Professionally proficient enforcement agencies targeted on corruption provide the most effective deterrent by raising the expectation within the community that corrupt practices will be detected and prosecuted Without a pervasive perception that corruption will be prosecuted, many will be tempted by the stories of others who have made significant gains without consequences and by the rapid accumulation of wealth and power that corruption can quickly accomplish.

Improving supervisory agencies

Related institutions such as the Auditor-General's Office and the Parliamentary Accounts Committee must be given the staff and resources to ensure their supervisory role is comprehensively carried out. Any evidence of wrong doing should be immediately pursued by the Commission if it involves corruption, or by the police if other crimes are involved

Remuneration of senior civil servants

Senior public servants and politicians must be properly compensated to minimise any pressure to turn to corruption. Politicians must be given adequate pension funds. The frills of office such as fancy cars, fancy homes and unlimited entertainment allowances conducive to a life-style beyond the means of most politicians must be replaced by long term benefits and higher annual remunerations.

Preliminary measures

Distinctions between legal, sharp, indiscreet, shady, dishonest and corrupt business dealings have become blurred by a tangle of laws governing the business community, and especially by the laws governing the involvement of public servants and politicians in business. As a consequence many do not honestly know where on the spectrum their past business practices fall. Some may have honestly not appreciated the illegality of their business interests. To avoid the prosecution of honest but uninformed people and to ring in a new regime of powers available to the Ombudsman two preliminary steps should be taken.

First, a proper public education programme explaining the laws in a simple and comprehensive manner must be undertaken. Prohibitive conduct must be carefully explained through pamphlets, lectures and discussion sessions. Penalties and procedures for corruption must be carefully explained As more emphasis must be given to corruption in provincial governments, the education programme must be carried to all provinces. Seminars should be given in each province to alert all public servants and politicians to the rules of acceptable behaviour and the consequences of illegal conduct. These seminars should be repeated every year.

Second, these new powers and resources must not be used to prosecute any corruption that took place prior to a specified date. Consequently the energies of the Ombudsman Commission should be focused on corruption arising after a specified date.

Finally, in addition to the law against gifts being offered which is already recommended by the Ombudsman there should be greater efforts made to discourage present giving throughout the service. One member of the team with experience in Cyprus - a traditional present giving country - had considerable success in preventing undue influence and corruption in the handling of public funds by having the following notice printed in all appropriate languages and posted in every office -

> WARNING
>
> Kindly note that to avoid any misunderstanding in the relations of this office with the public it has been decided that any evidence of a gift being given or received
>
> 1. Between Inferiors and Superiors
>
> 2. Between officers and members of the public Will be regarded as sufficient evidence for dismissal from public service.

Of course there needed to be one or two dismissals to indicate that this was more than a pious hope of improvement: but within twelve months all such attempts at subornation by present giving disappeared and the public rating of the department rose tremendously. In five years of handling large amounts of public money - frequently in cash - there was no single incident of corruption. It was a direct interference with tradition which was greatly appreciated by people who had suffered from such a tradition in the past.

It may be observed that the foregoing proposals incorporate the experience of Hong Kong and Singapore Commissions to deal with corruption. They also incorporate the wisdom of Wang Ah Shih (A.D. 1021-1086) a Chinese reformer who was impressed with the recurrence of two important sources of corruption "bad laws and bad men". Wang Ah Shih believed one could not rely on the law to control officials when the latter are not the right men for the job. Good men, proper laws and adequate resources are required to deal with corruption.

APPENDIX A.6

This appendix is a short statement which focuses on the confusion caused in law and order matters as a result of the Papua New Guinea custom of frequent personal name changes and poor record keeping. It canvasses practise in other countries but reaches ho firm conclusion as to the desirability of identification procedures for this country.

Appendix A.6

A SYSTEM OF PERSONAL IDENTIFICATION

One of the most hotly debated proposals for improving the efficiency of government records, enhancing accountability within the government system and helping the police to keep track of offenders is the introduction of a personal identification system. As it is now, people change their names with confusing regularity, pay rolls are not easy to check and with births, marriages and deaths not always held in written records it is extremely difficult to follow age groups through changes in the population. The age of criminal liability, the differences between adults and juveniles as well as eligibility for driving licences and a host of other routine activities are sometimes impossible to determine. Even the criminal records of the police, though ultimately accurate via fingerprints are difficult to maintain with several names of different spellings for the same individual. There are cases of public servants under one name serving prison sentences under another having secured sick leave or vacation leave from their jobs for the period of their incarceration. Where the offender has not been arrested in the act of committing a crime or has not been fingerprinted there may be doubt that. the court is dealing with the right person.

Logic demands a system of identification. Those who deplore this as unconstitutional or inconsistent with human rights - or who fear that it might be used to restrict freedom of movement appear to overlook the comprehensive systems of registration in the Scandinavian countries - countries which can hardly be accused of being insensitive to human rights. Japan records not only each person but each change of residence. Denmark even records all medical histories with the personal identification files. Citizens of the United States have a social security number and the United Kingdom, Canada, Australia and New Zealand have systematic registrations of births, marriages and deaths. The commitment of most of these countries to the ideals of democracy would appear to obviate any attempt to cast them as police states or to suggest that Papua New Guinea was being unnecessarily oppressive if it decided to adopt a registration system. Indeed in an informal way Papua New Guinea already has in the rural areas an extremely effective method of checking individuals. Villagers are never in doubt about each others families and their rights to local land A town dweller - an ex-rascal - explained how he could go back to his grandfather in a remote rural district and have pointed out to him the piece of land that belonged to him. He was known in that area even though he had not lived there since birth. The older kiaps used to keep a rough head count and knew when individuals were moving. The head tax system frequently operated as a kind of registration. We do not believe that there is anything either untraditional or unduly regressive therefore about the police - or some other government authorities - operating a personal registration system and it would simplify immensely the work of the police, the courts and the prisons. It would also be a contribution to the accountability recommended elsewhere.

We have just one reservation. It might be too costly. To maintain such a system, follow-up inquiries, trace and replace lost cards, deal with attempts to circumvent the system or falsify records, presupposes an efficient organisation, well-maintained and strictly run. We have not found very many such systems in Papua New Guinea so far - and we have deplored the lack of middle management and accountability. To have an inefficient personal record system would be worse than having none at all. It would compound confusion. We believe therefore that the government should look into the costs involved in developing a well organised, efficient system of personal registration to be run by persons who are thoroughly reliable. Then it should ask itself whether these costs outweigh the possible benefits. If not, then we would recommend beginning now with a proper system of personal identification. It will be necessary anyway if customary land rights are ever to be registered. It may be possible to begin with a kind of work permit without which one cannot be employed - and then to proceed slowly in the direction of comprehensive coverage. But nothing will work if this confusion of identities is allowed to develop unchecked

APPENDIX A.7

After listing the problems faced by the present study with respect to data sources and paucity of previous research, the appendix goes on to suggest a future agenda for record keeping and research.

Appendix A. 7

RESEARCH AND INFORMATION FOR POLICY MAKING

We have tried, in the time at our disposal, to survey a range of subjects any one of which would justify a year or more's work by a team of specialist researchers. We have probed as far as the data would take us; and, by a series of interviews and inquiries, we have sometimes reached beyond the strictly available material to make what we have considered to be reasonable assessments for the benefit of those with policy decisions to make. None of this is an adequate substitute for scientific studies of the areas we have covered inadequately - or for the systematic collection and analysis of routine data on which policy making for law and order should be based. There is obviously scope for "pure" and "applied" research in this field in Papua New Guinea and we would hope that anything we have been able to do might have the benefit of stimulating others with more time and opportunity to go further. There are two main aspects to this.

Within the departments

There are collections of data which should be routine and which will become easier to process regularly as the use of computers becomes more widely established. We have demonstrated the need for the police and corrections to collect and check the information they need on their own regular activities for the purpose of policy making. The defects have been shown. If there is to be an informed approach to the amount of crime reflected by police action, court hearings and incarceration, an in-built system has to be developed The policy and research department of the police might be used for spot checking, and training police supervisors on what is required regularly. A single person with a research assistant could do wonders for the Corrective Institutions Services. The courts could depend on their registrars with periodic "soundings" by researchers to provide direction.

We would urge those responsible for such work to provide reports which might be published occasionally on the reliability of their own methods of correcting data and on the measures taken to improve these. Merely for the outside world to know what the problems of data collection are -and how they are being tackled - would help enormously. It would also promote a momentum for accurate reporting within the services. Actually, paper work is the bane of any conscientious police or correctional officer so that attention must be given to simplicity. It is better to have less information that is however reliable than to have complicated forms to fill in which are eventually completed casually, carelessly and with a feeling of intense frustration. Where a system might prove onerous to individual officers it

might be better for the research department to make their own sample surveys, with their own personnel sitting in the police stations or prisons and compiling the information required. As a minimum the following is needed -

1. Number of crimes reported to the police - types, amounts involved, number of persons involved.

2. Number of these accepted by the police as "true crimes".

3. Number of arrests, prosecutions and convictions showing in so far as possible -

   - The differences between the number of cases and the number of persons.

   - The levels of gravity of the offence as measured by the statutory penalty provided, the amount stolen or destroyed and the aggravating features: e.g. A rape aggravated by sadism, a robbery with what arms?, an assault, domestic or by a stranger unprovoked Here a code might be developed for a limited number of common crimes.

   - The number of charges and those later dropped

   - The number of cases discontinued by nolle prosequi.

   - The penalties awarded by the court. (Where such detail is difficult to collect as a routine it could be monitored by sampling in different provinces at the same time.)

4. Number of cases and persons dealt with by the courts at different jurisdictional levels.

5. Number of persons received by the Corrective Institutions Service for safe custody.

   - number convicted - for what offences and for what periods

   - number on remand

   - number of remands later convicted

6. Daily average prison population.

7. A prison census to be carried out on a given day each year. (Could be coordinated with Australian National Prison Census on 30 June each year).

8. Number of cases dealt with by Public Prosecutor and Public Defender showing -

   - original charge
   - amended charge
   - pleas
   - courts involved
   - disposal
   - appeals
   - outcome of appeals

9. Periodic (every five years?) victimisation surveys which can be carried out in connection with the local or national censuses. These should be the responsibility of those already responsible for broader statistical and demographic work - with expert advice from the specialist services. But, by now, there is detailed information on victimisation surveys done in the United States, the United Kingdom and Australia - and it should not be difficult to adapt these models to the simpler needs of Papua New Guinea.

Within the private sector

There would seem to be value in repeating periodically the survey of companies which is an appendix to this study. There is great interest in business circles in the cost factor and, though we appreciate the questionnaire may need refinement (with the consequent loss of some comparability) we think that, gradually, accounts will be kept in the private sector to monitor the information on losses and costs which we tried to obtain. Maybe the I.N.A. could do this.

General

The above would provide the routine information which any country should have to keep its citizens informed of the working of its criminal justice system. But, as we have tried to indicate, crime is a broader political, economic and social phenomenon. It is therefore important to trace and interpret its genesis, its

impact and its transformations over time. It is important to know what crime really means to the people. How it is conceived in rural as well as urban areas. What is regarded as being purely for individual action and what requires community action. What can they tolerate, what do they accept as inevitable, what do they regard as only technically criminal? Some work has been done on perception of the offences listed in the criminal code and this could be greatly extended but it is important for policy by the government for researchers to trace the seriousness of crime to different sections of this country of diverse populations. Amongst other things this will guide the authorities in the areas that need (and those that do not need) official action.

Anthropologists have looked for social controls - some of which might be designated "customary law" and some of which are more subtle and even less formal than that: but crime as such - as a disturbance within a community, as a function of - or instigator - of change in indigenous societies has not been adequately researched in Papua New Guinea. It is hoped that this area will receive more attention from both anthropologists and sociologists in the future. Psychologically there would appear to be scope not only for the attitudinal studies already mentioned but for work amongst the police, amongst prisoners and their families. The conflict/consensus approach to deviation will attract sociologists for some time to come but Papua New Guinea offers opportunities for such research to be done in greater detail than is usual and in relation to particular communities - urban and rural.

It is to be hoped that economists too will find inquiries into the crime situation in Papua New Guinea to be rewarding. It is absorbing resources but also generating employment. To reiterate what has already been said elsewhere crime will be a constant companion of development (or the lack of it). Consequently it offers challenges for those economists who are prepared to look at their own subject from a different point of view.

The changes wrought in this society by the demographic changes, the improved health and education, at the end of which processes, the towns are flooded with aimless, rootless, unemployed - increasing numbers of whom will be attracted to or forced into illegal behaviour needs serious attention from a variety of disciplines. The government might consider this for a team study by their own departmental experts and some recognised academics. It will be important for such a study however that there be flexibility. It will be dangerous to have this Papua New Guinea problem which admittedly is not unique - but which has special characteristics of its own - forced onto the Procrustean beds of the established approaches in both disciplinary methodology and professional ideology. These have shown their limitations in so many other parts of the world that for Papua New Guinea to be different there will need to be scope for ingenuity in approach.

The Institute of Applied Social and Economic Research has helped enormously with this study and, we believe, is equipped for further studies in the area of criminology. Australia has shown the value of an Institute of Criminology to bring together the resources of a federal country for a more profound understanding of

the crime problem - and for improving the quality of the crime control services. Papua New Guinea however is beset with a wide variety of such urgent research needs in all kinds of subjects and therefore a too highly specialised institution may not suit immediate requirements. For the time being a criminological unit within IASER would probably meet the purpose. However, it is suggested that this should seek to be a unit not only for academics but for judges, police and correctional personnel to learn from and contribute too. Such a combined operation would give the academic researchers the entree they need to the routine crime control services to collect data: it would stimulate a research orientation within police, courts and prisons.

Of course we are aware that all good reports end by calling for more studies of the areas they have only been able to touch upon. Every research project throws up the need for more research. Without going so far - and in trying to provide a blueprint for action - we would be less than competent in our own fields if we did not recognise the shortcomings of what we have done. Undoubtedly another report, equally long, could now be written taking to pieces some of the methods and conclusions we have used and reached (In fact we could do this ourselves if we had enough time!). We think however that we have done all we could, given the restraints of time and resources under which we had to work. Now we would like to see some of the data gaps filled and kept up to date so that anyone following our lead will be more precise, more informative about the size and extent of what he is dealing with and less obliged to deduce and extrapolate. This means developing some of the research and data collection machineries dealt with here.

APPENDIX B.1

This short appendix sets out the initial terms of reference of the study and the research team's comments on them.

Appendix B. 1

TERMS OF REFERENCE

Since there were three persons engaged for the study who had not met each other before, the broad outlines of the study had to be settled by correspondence. It was therefore necessary to make provision for the precise dimensions to be settled finally only when the I.N.A. and IASER could meet the researchers and of course when they could meet each other. Prior to this, in order to obtain approval for funding and the participation of the government, the following draft terms of reference were prepared

1. Nature of Study

Investigation of and analysis of the current and potential state of social disturbance, both civil and criminal in Papua New Guinea; compare and contrast urban and rural based disorders; comment upon the effectiveness of government regulatory policies; community attitudes to lawlessness; analysis of effect upon economic performance and discuss implications for future economic development; and formulation of feasible proposals for improvements in the field of law and order, including any implications for Government expenditure allocation and priorities - (if any) - temporary or permanent.

2. Elements of Study

Part I: The extent of the problem

(a) Statistical analysis of trends in activities of a law and order nature including discussion on these trends, separately for urban and rural situations.

(b) Describe the physical infrastructure related to law and order including size of the police force, courts, correctional institutions, and provision of other public services.

(c) Describe the legal/judicial system together with proposed amendments.

(d) Survey and discussion of a broad cross-section of opinions relating to law and order.

(e) Relation of these matters to experiences and systems existing in other countries.

Part II: Economic aspects

(a) Investigation and analysis of the economic effects of the present law and order situation in Papua New Guinea, separately for urban and rural situations.

(b) Measurement of the costs incurred by the public sector in providing for law and order prevention, detection, correction and related services. Measure similar costs to the private sector and for individuals.

(c) Measurement of the economic losses incurred in the public sector, private sector and by individuals through civil and criminal infringements of a law and order nature.

(d) Derive conclusions as to the compounded economic consequences for Papua New Guinea in terms of foregone production as a result, direct or indirect, of the law and order situation.

(e) Discuss the implications for future economic activity and investment in Papua New Guinea.

(f) Within the overall development framework and having regard for the alternative means of financing development in its diverse facets comment upon the place of the law and order systems in government expenditures.

Part III: Administrative aspects

(a) Analyse the resolution of offences and discuss the efficiency of the different agencies involved.

(b) Investigate existing organisations and institutions such as the police and the judicial system and assess their ability to respond to existing circumstances in terms of resources and trained manpower.

(c) Identify and discuss the problems faced by the different institutions with a view to determining solutions.

(d) Investigate and discuss the community's level of access to services and the response by the responsible institutions to complaints concerning law and order.

(e) Formulate recommendations which would assist in overcoming problem areas identified

Part IV Social setting

(a) The national context: analyse the nature of the social sanctions and structures available to the state for the imposition of law and order and the consequences of the use of such sanctions.

(b) The local context: (i) examine community forms of control and the potential of such forms for expansion and encouragement; (ii) examine the feasibility or otherwise of a uniform nationwide policy of social sanctions, if in the opinion of the consultants such a course of action is considered of low potential, what variations in the forms of social sanctions (e.g. between urban and rural, or one region and another) would be desirable.

(c) Examine and make recommendations concerning ways of integrating social sanctions available to the state with those available in small scale communities.

(d) Examine the dependence between the system of law and order and the education and health systems and the implications for relative expenditures.

Part V: Conclusions and recommendations

(a) Draw together the conclusions to be derived from the above analysis in a coherent whole.

(b) Give opinions and formulate appropriate prescriptions for adoption by government to mitigate the problems identified.

3. Comments of coordinator

The coordinator in correspondence made it very clear however that in the time allowed some of the requirements were much too ambitious e.g.:

Part I (a) "Statistical analysis of trends ..... etc." Here there could have been quite sophisticated work on published figures and in-depth studies of particular communities - and in order to determine trends, a twenty or thirty year spread might have been necessary. Apart from the dearth of data the time involved for a serious analysis of this kind would have exceeded that available to the team. We could only agree to do whatever was possible within the constraints of the time and data available. We hope others will take up where we have been obliged to leave off.

Part II (a) Investigation and analysis of the economic effects of the present law and order situation". Again, to trace the ramifications of crime and its control through all sectors of the economy and to relate this to changes over time was asking for complicated, modern, computer aided research of an order never substantially attempted before. Without a back-up of mathematicians and computer specialists supplied with all the data necessary and all the equipment required, it could not be done. We had to scale this down to the limits of time, equipment and data available. Once again we would invite more generously endowed teams to follow us up.

(b) "Measurement of costs....." Again a highly sophisticated and controversial process which would take several years to even approach satisfactorily. It is however an area of research that needs continuous attention in any country.

Part IV (a) and (b)

These again implied the writing of a book if all the facets were to be examined and assessed separately and in detail. Once more the team could only draw on the limited expertise and data which were available to it.

APPENDIX B.2

This appendix was written by the team member who did the chapter on economic aspects and costs. To keep the argument more direct in that chapter it was decided that this background material should become an appendix.

Appendix B.2

SOME ECONOMIC CONSIDERATIONS UNDERLYING
PART II, CHAPTER 3

One of the main objectives of this study was to measure the economic consequences for the country of the prevailing law and order situation. Businessmen who comprise the membership of the Institute of National Affairs had the idea that it ought to be possible to trace the economic consequences for the country of the progressive deterioration in security. The cost to them in terms of safeguards for their homes and for the homes of their staff was traceable enough - painfully traceable: it ought to be possible to show the losses to the government, the wastage on inefficient "crime control" services and the effects on development of more and more people either leaving the country because of its law and order problems or refusing to accept appointments here for the same reason.

In trying to respond to this expectation the team had to move warily. The costs of crime have been studied in many countries but usually inconclusively. The "costs of crime" is still an inexact science: and the tendency is to concentrate on only one side of the ledger - on the costs but not the benefits. That is all right when only the situation of the victim is being considered If he has any doubtful benefits from having to reorder his life they will be long term and not easy when calculated to relate to his victimisation. Once a total economy is the area for study however the costs to some can be positive benefits to others. To illegally drive out or dispossess the customary holders of fragmented land can mean the opportunity for large scale farming which in the long run benefits millions. This was the English experience in the 16th century. Crime injures or impoverishes its victims at times but it provides employment for the judiciary, the police and the correctional staff. They spend their wages to the advantage of retailers, airlines, vehicle importers and many other businesses. These in turn make profits on which they pay taxes - so that the costs of crime might in the long run be recovered by an astute government. For instance a study of crime costs in New South Wales found that the courts made in fines and fees enough to cover their annual cost. A loss caused by stealing may be covered by insurance or on-costed in higher prices to the ordinary customer. This can have peculiar consequences. A breaking and entering with property stolen of less than K500 (probably the largest number of offences provide the offender with more than this) could lead to an insurance claim. Enough of those claims and the insurance company will demand the employment of more police or the installation of security bars, alarms, etc. - or the employment of watchmen. One or all of these will exceed the cost (for the taxpayer - or for the householder's employer) of the original loss: but they will also generate employment.

The costs of crime in Papua New Guinea

The ripple effects of a single criminal event stretch into hundreds of sub-sections and touch the crevices and interstices of the economy with effects which eventually defy any identifiable link with the original crime. A crime is committed, the victim is disabled and can no longer either produce or earn. If he has some rare expertise the loss to his firm is considerable and will include the costs of training a replacement if riot indeed partially retooling the plant to operate without the need for that expertise. The costs of medical and psychological treatment for the disabled person himself will be a burden on the state or charity. There may be population effects if he is young and can no longer reproduce because of physical or mental inadequacies. If he dies several years after the event his death cannot be brought home to the original offender. During the period when no earnings are available his family will become a burden on the state, on their relatives or on charity. If it is relatives or neighbours this might affect the capacity to save which in turn might be reflected in less investment or expenditure. The education of the children may be interrupted or curtailed with consequences into the next generation. At best the country may be deprived of a genius or of important trade or professional accomplishments. At worse the deprived children may become deviant and delinquent without a father's guidance and the familiar cycle of expenditure for others will be repeated All this concerns the victim: but the offender, by being imprisoned, will require taxpayers to contribute: and his loss of earning power makes his family dependent with consequences similar to those for the victim. There are economic spin-offs for the police who might get promotion because of the arrest or who have to hire a lawyer to help with the prosecution. The lawyers income is affected: if there are also lawyers for the defence there is another cost. The amount of time absorbed by this case in the courts, the manpower devoted to it by judges, lawyers, court officials, witnesses and police officers all represent costs which have to be met by someone - usually the taxpayer.

Now, on a pure cost-benefit basis we could readjust attitudes to the property offender. If the offender is not violent and is generally satisfied with small takings he might if he is clever commit 100 offences a year (two a week). Assuming that it is always a stealing of property worth K500 then he is taking K50,000 a year. To devote expensive manhours to his capture, prosecution, trial and imprisonment might cost at least that amount. So that, ignoring the individual sufferers and thinking only economically it might be cheaper for the taxpayer to leave him at large. Of course once personal attacks are included and people become terrified by the insecurity the extra spent to put the person out of circulation does not matter. Purely economic factors are then subordinated to human concern - but here we are concentrating on economics. It has been pointed out by several observers that in terms of death by murder, manslaughter or in terms of personal injury the carnage on the roads exceed by far the consequences of crime. Purely economically again the phenomenon of crime is less costly and logically the police should be diverted to the roads, to vehicle inspection, speed traps, etc. The reason they aren't is that far more than economic factors are involved

Still following this theme, the habit which we have of referring to losses by crime should not cloud the fact that economically a theft is a transfer. What is stolen does not usually disappear and it is not usually destroyed: it is sold or spent or used by the culprit as it would have been used by the owner. Now there are situations in which this alternative use can be better for the economy than the original use. The classic example is stealing from a miser who has been sitting on his money and not using it in an economically beneficial way. The thief will spend the money - and it will circulate to the benefit of those producing the goods he buys or those who supply them with raw materials. Along the way there will also be a little for the government in direct or indirect taxation. However, the miser case need not be invoked. Poor people stealing from the rich are likely to transfer the expenditure from luxury imported goods to locally produced necessities with corresponding benefits for the total economy including more employment.

Again each item included on the crime balance sheet has a double meaning or is inter-related with other debit and credit items. The variables are rarely ever independent of each other. Whilst most of the private sector is howling about insecurity some parts of it are benefitting - security firms, producers or importers of alarms, wire mesh, lock, iron bars. When the police or prisons are better equipped there are significant contracts for the supply of vehicles, uniforms, housing, handcuffs, fingerprint pads, stationery, etc. The flow-through to private industry of the government allocations is enormous. There are both costs and benefits therefore in the private sector. The cost of a policeman is well known - or is not difficult to calculate but, as already shown, his value in promoting the flow of cases which produce the fines which offset the cost of the courts is significant. It costs much to feed, house and guard a prisoner but he is sometimes a free labourer - a cook, gardener, farm labourer. Usually the income from prison industry is counted but the savings in wages not shown. Using the police to serve warrants may benefit creditors in debt cases. And in the courts the economic equation is balanced by justice. Costs are sometimes deliberately incurred to ensure justice by not proceeding too quickly. Representation slows the process but may guarantee a better airing of both points of view. Tribal fighting is debilitating to the economy but the use of the helicopter and the police mobile unit may in the long run be far more detrimental economically. Once again the purely economic arguments are not the only ones but from all the foregoing it will be seen that the cost-benefit approach if strictly pursued would dramatically change the way the community handles crime. Actually there is no need to fear that a purely economic structure for the determination of crime prevention policy will be adopted because planners and economists generally have been slow to appreciate the economic significant of crime. We turn to this in general terms now before dealing with the Papua New Guinea situation in particular.

The economic significance of crime - a general perspective

The economics of crime can be approached on various levels - from the relatively simple cost-benefit analysis of the professional crook calculating the risks of a future burglary, to the profound nationwide effects on the quality of life of whole populations occasioned by massive, illegal dimensions of national resources.

The legality and illegality of both individual and social behaviour, the rewards and sanctions provided to induce legality, as well as the efficiency of the criminal justice system as a whole, are all distinct economic phenomena - even though they have not always been taken into account. It is only just being appreciated how much they affect individual choice and national policy-making.

The developed as well as the developing countries have had their economic wellbeing promoted or retarded by the activities of those who defy, suborn or circumvent the law in recorded or unrecorded ways - who succeed in amassing wealth for investment - or who provoke the creation of huge crime control bureaucracies to contain their criminal activities. Criminals therefore deplete or divert resources, and their activities escape or distort the usual economic indicators. They falsify or slant these indicators and can therefore interfere drastically with the implementation of some of the most carefully prepared plans for economic and social development.

In Papua New Guinea where the indicators are frequently based on disputable data anyway (cf. population, migration, unemployment, consumer price index and national income distribution), the economic ramifications of crime are as meaningful as they are difficult to trace. The destruction or redistribution of resources by crime may have profound social and economic consequences well before they can be reflected even indirectly by any of the indicators. More seriously, the extent of unrecorded crime and its effects on labour, incomes, revenues, investments and rates of exchange may render the estimated dimensions of both the crime problem and the economic trends either false or misleading. In trying to trace this process in Papua New Guinea it has been possible to demonstrate only by example and extrapolation. The full costs are more than economic anyway, having to be measured in terms of lives lost, families broken up, children neglected in ways that the next generation will pay for. They are political in that the struggle for power has sometimes been won in other countries by the successful criminals being able to finance their candidates and extend their patronage. The costs are also attitudinal, in that the benefits publicly observed to be flowing to the wily and least scrupulous undermine the hard work and honesty of so many others. Economically, in Papua New Guinea with audits not carried out, or far behind, with records conspicuous by their absence and with accountability so little valued, the ramified depredations of crime are incalculable.

Crime-cost and benefits

In economics, scarce resources have to be allocated between alternative uses. In crime or crime prevention the same principles apply. The professional criminal seeks to minimise costs and maximise profits. The law seeks to increase his costs and reduce his profits. Only the unimaginative economist pretends that law abiding or law breaking behaviour is easily reducible to such unmitigated rationalism. Crimes of passion or violence, revenge killings, middle class shoplifting, drug abuse, vandalism and gang activities as well as the global extension of white collar and organised crime (tied as much to power as to profit)

are all committed for motives which are only occasionally analysed in advance in terms of costs and benefits. It is convenient, however, and a necessary corrective to many looser analyses of crime, to remember that it does have a distinct economic dimension - for both the law breakers and for those who try to catch and punish them. There are obviously some offences frequently committed which are not vigorously investigated or prosecuted simply because it would not be worth it. There are others so heinous that they justify quite enormous and disproportionate investments in man-hours and technical resources - even when these are not cost effective. In between, the question of how much for what result, exercises the criminals and their controllers as it would exercise any businessman. Such cost and benefit calculations have revolutionised the approach to street crimes, to the allocations of police manpower, to the levels of jurisdiction of lower courts, the move into computers and the decriminalisation of some offences.

Market and centrally planned economies

In economics, the allocation of resources will usually be decided by either governments or by market forces. Scarce resources are by definition valuable: and there is the well-known competition for their control - a competition, however, which might well exceed the bounds of law and, indeed, has often done so in the course of development. Competition is supported or condemned for its encouragement of initiative or its favouring of the few astute and powerful to the detriment of many others. But when competitors use illegal methods, when they arrange for competitors to be intimidated or physically attacked, when they steal industrial secrets or tap telephones for information they are straying from competition to crime. That is to say, the economic game, in a market economy might not always be decided according to the rules laid down by the authorities. The usual interpretation of this refers to imperfections in, the free market to monopolistic practices or rigidities introduced by interest groups. But this does not exhaust the ingenuity applied to circumventions of the law for economic advantage. It has not been usual to include the forms of underground criminal conduct backed by sophisticated business methods or by blatant coercion. Yet these have been significant economically in so many areas of national life. Striking and strike breaking have not always allowed themselves to be constrained by law. They determined the distribution of gains and losses in the development of so many democracies. They were critical to economic development in the United States at one stage and the legal attitude to picketing is an issue in the United Kingdom as this is written. Industrial or private interests are frequently placed higher than conformity with the law. Capital gains as a shelter from income tax are always controversial. Ports and docks have frequently had to come to terms with routine stealing - almost regarded as a privilege. And the maintenance of even respectable and essential business has been sometimes dependent on various gradations of tolerated or blatant corruption with "entertainment", "presents", "foreign travel" or "scholarships" inflating costs - and with contracts, licences, subsidies, exemptions or quotas augmenting the benefits. Where organised crime gets into legitimate business but uses its illegal assets to finance the undercutting of its legitimate competitors - or (and this has happened) arranges for their intimidation or disappearance, a new dimension has been added to the whole idea of competition - by crime.

Even if the government becomes extremely socialist and decides to expropriate all scarce resources, experience shows that there is still no guarantee that these will always be allocated in accordance with the law - that the undeserving might not benefit - or that the control of these resources will not be abused The socialist countries have their share of black markets, corruption, the misuse of public funds and the trafficking in official influence. Man has demonstrated his capacity to tarnish the best of societies, democratic or dictatorial.

Patterns of distribution in any economy affect the direction of future investment, determine the forms of demand and its elasticity and help to determine the marginal utility of future effort. So, criminal behaviour which can influence the patterns of distribution (detrimentally or beneficially from an economic point of view) is obviously economically significant. Corruption if it is widely known can sap the national will to work (Myrdal 1974 : 117): but it has also been suggested that it might help a country to develop. The "informal economy" can be extralegal to a considerable extent (Conroy 1982), and tax evasion, pilfering and smuggling, not to mention various forms of white collar and corporate crime serve to widen the range. Even if such lawlessness does not become the norm it adds a cost to the law-abiding. If it does become the norm then it will doubtless determine economics - extorting its own benefits by law and imposing its costs as legal obligations.

The right to life and the ownership of property are economic benefits; but providing for their protection is a cost. The way in which these costs and benefits are distributed will affect the capacity of some to influence the market more than others and will therefore have economic consequences. It is the ones who cannot afford high security fences and guards who are the most vulnerable. Their rights are less protected. The rich an afford better health care and legal as well as medical protection. The poor are more exposed So equal and inalienable rights are unequally enjoyed, even where governments are doing their best.

Contrary to much popular belief - not only amongst the educated lay people but also in business and economic circles - not all these inter-acting decisions about investment, the way in which the tax burden will fall or the patterns of distribution in a country are the preserve of powerful governmental planning or financial control bodies - or of the confidence or lack of it in the markets. They are sometimes decisions made - or at least influenced by - illegal operators able to cut corners for a quick profit or they are manipulations by more blatantly criminal organisations. These, internationally, have immense funds and are able to operate through respectable finance houses to bring great pressure to bear on the markets, to effect exchange rates of commodity prices to corner supplies to distort the import/export figures by wholesale smuggling, to buy influence on all kinds of boards and councils, to steal information, or as a last resort, to destroy the opposition. It is dangerous to dismiss them as unspeakable criminals and to under-estimate their economic clout. Those still in doubt should look at the extent of the global drug trade, the arms dealings and, lately, the organisations for the illegal disposal of nuclear waste. These are enormously powerful interests having substantial influence on international and national events - and though Papua New Guinea does not have to face such problems now it should not expect to be insulated for long. Its present law and order problems are generated

internally: but they arise to some extent from external pressures on the economy. When internationally organised crime gets into this picture the problems will become more serious. That is why action now is worth ten times the same action later when its effectiveness cannot be guaranteed

It would appear that money markets in Papua New Guinea are not greatly influenced by illegal operators. There are funds flowing out of the country but generally within the limits prescribed by the government. There are corrupt profits being made but not yet of a dimension to distort appreciably the money economy. Significantly this money economy is small since 85 per cent of the people have subsistence production on which to depend - or cash crops to augment incomes. Equally significant for this argument on economics and crime however is the fact that, underlying much of the tribal fighting in the highlands is a redistribution of economic advantage, an extension of patronage and, of course, the concentration of wantok favours made possible by political freedom. The economics affect crime just as the widespread destruction which follows on tribal fighting is an economic cost - to someone.

There is a sense in which the science of economics is legally neutral. Whether in profit or planning, what is legal is not always beneficial; and the most gainful may be the least lawful. Moral or legal constraints might even be regarded economically therefore as being constraints on the innovation, entrepreneurship risk-taking and ingenuity required to stimulate an economy[1]. Economics assumes certain conditions however and one of these is usually economic behaviour within the law. It has indeed traced the economic effects of ill-considered laws which introduce controls which cannot be enforced and encourage black markets: but generally it has kept out of the illegal domain and has only recently begun to take notice of the consequence of the "underground" economy. It would be unfair therefore to portray economics as being legally or morally indifferent - even if it has paid little attention to crime so far. Obviously, without moral or legal constraints, the doctrine that "might is right" leads eventually to suppression and in the long run to a loss of efficiency. Economics anyway has never been indifferent to the loss of life or injury and has recently been paying much more attention to the possible conflict between private gain and social costs. There is no economic benefit for private gain obtained by selling product which damage the health (and therefore the productive capacity) of consumers[2]. When human resources are depreciated this is an economic reality - and crime uncontrolled, places this price in man-hours at a premium that no economist can ignore - even though he may not yet be able to measure it accurately.

Again, as shown, there maybe a loss of productive capacity when crime is rife due to people being forced to work for what they see as benefits for the undeserving; there may be an undermining of the will to produce, because the fruits of hard

1. Cf. G. K. Chesterton who once said that the epitome of the risk-taking courage and the capacity to be ingenious which capitalism needed was the pickpocket: and that the communist answer to the pickpocket was to sew up all the pockets.

2. At least there is no benefit to the country: but for short term private gains deleterious products have sometimes been marketed - even though their affects on health were understood cf. thalidomide.

labour are being expropriated by the unscrupulous, the corrupt or the strong. It is unwise to under-estimate the importance of the public confidence, security and assurance of a reasonable return on which all economies ultimately depend. This foundation can be shaken by crime apparently out of control. Confidence in a just redistribution is essential to an economy - whether in reality such confidence is really justified. With the law and order breakdown and the concern with corruption so widespread in Papua New Guinea there are economic consequences that affect national accounting.

Economists have usually thought of law and order as a kind of basic platform on which the economic structure could be built. Profits legitimately made could be kept or invested for more profits. Wages were guaranteed and minima determined, contracts were safeguarded against fraud, property could be enjoyed providing it was not used to pollute the air that others breathed, the water they drank or the amenities which were so much a part of the quality of life for all. Law provided the ring within which the economic competition could flourish to the ultimate benefit of all.

But the analogy misleads. Law and order is much more than a platform or a ring for economic activity. It is not so distinct from the economy or so easily recognised. It is, for example, more than a regulation of market forces or the patterns of distribution. It operates to determine decisions on the viability of investment. It is indeed a condition of development - hampering or promoting growth, occasionally punishing and inhibiting the one who cuts corners and gets his wealth illegally but more often being unable to control the illegally wily and thereby unwittingly placing a heavy halter of legitimacy around those who are obliged to follow the rules. Because it is not terribly good at regulating economic activity, the law itself is sometimes overwhelmed by the political influence of the economically powerful and has often, in the past served vested interests. Because crime is as much an economic as it is an illegal phenomenon it combines with the measures for its control to determine the size of the ring or platform - and as this grows it correspondingly inhibits the scope for economic initiative, ingenuity and tolerable competition. Moreover the time lag has immense relevance for this symbiotic relationship between economics and crime. Crime extracts the short term benefits which mangle any long term expectations. Development planners therefore would be well advised to look under their feet for the drain off of resources. Those able to benefit in the short term may have no interest in the long term consequences. Their own interest supercedes the interests of those who might follow. We acknowledge the danger of this in protecting the environment but it is unusual to examine the criminogenics of new investment, extended banking systems, inequities of taxation schemes, the uneven distribution of benefits between the present builders of an infra-structure and the future generations, the dangers of companies coming into existence for the benefits but taking refuge in bankruptcy when the costs begin to tell. Nor should it be forgotten that when large amounts of government money go to defence or the police this has a distorting effect on national income figures making it difficult for planners to draw the correct inferences from the skewed indicators. Whenever public funds

go out by tender and sub-contract, the opportunities for crime and corruption are vastly increased[1]. So crime and its prevention not merely affects development but, by changing the meaning of the data on which planners depend, they make planning more difficult.

Criminogenic consequences of investment in other sectors

The true extent of the criminal intervention will only be known when it is too late: but wherever there are huge profits to be made, the temptation to cut legal corners becomes irresistible. Even housing, education and health policies will have significance for crime and for law and order - just as these will in turn affect housing, education and health. Inspiring and hopeful plans for developing countries in the 1960's and 1970's concentrated on industry, agriculture, health, education and infrastructure. The populations soared as death rates declined, schools were unable to cope but even where they could the end product was a deeply disillusioned unemployed population destined to waste the life of one or two generations in urban idleness. Not surprisingly, in the late 1960s and 1970s these politically volatile young people supported changes of government to change the ground rules. It rarely solved the problem except for the favoured few but it provided something to do until the next revolution or coup. It is important therefore to realise that quite unrelated investments in other sectors can have consequences for the development of crime and disorder.

The present scattering of residential premises not only in Port Moresby but in other capital cities designed for the 21st century have served to incapacitate people in the present generation by making it impossible for them to operate without being mobile. So often the planning has effectively separated "haves" and "have nots": this has made residential areas less frequently populated and correspondingly more vulnerable to being broken into. Police supervision too is rendered easier or more problematic by housing policies - particularly if one is interested in controlling unauthorised residents: but this was presumably not a factor which gave pause to the town planners who had apparently not heard of the notion of "defensible space".

Education obviously has an enormous effect on behaviour and can serve to generate as well as to prevent crime. This deserves a section to itself but it is necessary to note here the effect of irrelevant education on employment - or unemployment, the corrosive influence of unreal expectations often aroused by education for its own sake and, of course, the accelerated flow from agricultural areas to the towns where people concentrate in less controlled or disciplined groups. How can the criminal statistician ignore the effect of a falling infant mortality rate on the increase of population - at the younger ends where crime is concentrated As the total numbers in the 15-25 age group increase so will crime

1. In the U.S. bid-rigging on construction sites began to be investigated in 1979 and has grown to become the largest single investigation in the history of the U.S. Justice Department. It has produced 262 cases against 256 corporations - and 137 jail sentences.

proportionately increase (all other things being equal) because this is the age group of the criminal population in any country. This does not mean the advocation of a higher mortality rate as a crime preventative - it only alerts us to a relationship which should never be ignored in planning - but which has, in fact, very frequently been ignored.

Socially, crime corrodes the quality of life for all but the uncaught offender. Offences are more easily perpetuated against those weakest or most immediately available in a community. This generally means the poorest who have little to lose, who are not insured and who have little protection. Crime creates the insecurity which ultimately disrupts working habits, denies public amenities to the taxpayers who have subscribed for them and destroys confidence, not only in the system but in each other. Crime contributes to inflation by raising prices - whether these be additional taxation for crime control or higher prices due to on-costing to cover theft and security charges. Crime destroys families either by personal attacks on members or breaking up the families of those who go to prison. In many ways crime is a symptom of the social divisiveness which can no longer control it. Most personal offences are committed in the family or they occur with relatives or people known. When these are induced by drink there is a threat of immense proportions to which the members of the family will adjust by defensive tactics which again have economic significance. Women in agriculture for example may hesitate to grow more if they fear that surplus profit will be used by their husbands for drink.

APPENDIX B.3

Appendix B. 3

ONE HUNDRED AND TEN COMPANIES
(THE PRIVATE SECTOR QUESTIONNAIRE

Introduction

Reproduced at the end of this appendix is a questionnaire which was distributed through the Institute of National Affairs and the Papua New Guinea Chambers of Commerce and Industry to businesses and professional agencies throughout Papua New Guinea. Of the 600 or so distributed, one hundred and ten completed forms were received. About 25 of these were individual branch (or divisional) replies sent to the head offices of a large and diversified trading company and to the headquarters of two banks: but the rest were from separate and distinct firms. All reflected geographical differences in the types of concern for the several forms of crime. There was a convergence of opinions on the reasons for and the solutions to the law and order problem in Papua New Guinea. Some replies were angry and frustrated, even vengeful. Others were cynical and resigned: but many were thoughtful and demonstrated a desire to be not only critical but constructive.

Though obviously a larger sample would have been desirable, the one hundred and ten submissions covered a cross-section of the private sector in Papua New Guinea. The large trading companies and the banks were represented, as already shown. Two of the largest mining concerns, two of the oil giants and the largest banks contributed as did the major plantations, construction companies, haulage firms, estate agents and insurance companies. There were large and very small enterprises wanting to have a share in this latest attempt to assess the crime problem. And some who could not provide the information sought by the questionnaire asked to 'be interviewed on the subject of law and order because they felt strongly about it. Whatever the figures showed, the general concern about crime in the country was evident, not only in the desire to cooperate but in the enthusiasm shown when lunches and public meetings were held to explain the study and seek information. Even when the more simplistic solutions being proposed had to be revealed as inadequate or not likely to work any better than in other countries where they had been tried, the mood was one of interest and inquiry rather than opinionated and belligerent. The private sector was imbued with the notion that "something must be done" and there was a readiness to admit that some of the drastic measures proposed were probably based on frustration and lack of precise information.

The Questionnaire

The Questionnaire used was in four parts.

Part I dealt with "Losses Incurred" and sought estimates in terms of kina for the losses suffered due to the theft of stock, equipment, and vehicles as well as losses due to damage inflicted on business or domestic premises, on vehicles or cash crops. The years from 1980 to 1983 were listed separately with an obvious hope that changes in the extent of this victimisation could be shown. Medical and associated expenses were asked to be shown separately. Companies were also asked to assess the cost for themselves of the absences of employees from regular work as a consequence of victimisation. Finally the break-downs in production occasioned by law and order problems were asked for - again the years 1980-1983 being listed separately.

In this way it was hoped to get some idea of the direct costs to individual firms in terms of property stolen or destroyed, work interrupted or medical expenses incurred - and the direction in which these costs had been going over the past four years.

Part 2 sought information on the costs over the four years of providing physical protection and insurance against crime. This was divided into the costs of having watchmen directly employed for the business or residential premises of employees or hired from security firms - and the expenses of providing fences, security bars, locks, etc. Here the costs being traced were not those inflicted by offenders but incurred as a result of having to provide for protection against the costs which might be incurred Question Two in this Part asked for a description of the prevention measures and Question Three tried to get at the insurance costs - increases in premiums, new cover necessitated as offset by what had been received in claims.

Part 3 was a kind of catch-all for items or areas of cost not covered by Parts 1 and 2. Question 1 asked for a break-down in the cost of man-hours lost as a result of having to deal with law and order problems, attending courts, meetings, etc. and this was divided into the time lost by line workers - and by management. Question 2 asked for an estimate of non-recoverable costs due to uninsurable risks, tribal fighting, land-ownership disputes or any other related issues. Finally, Question 4 tried to deal with a problem constantly on the lips of expatriates complaining about the law and order problem - the cost of recruiting staff and replacing those who leave because of the law and order problems in the country. This was divided into nationals and non-nationals and again the years 1980-1983 were listed for separate treatment.

Part 4 was deliberately general inviting comments on the major reason for the law and order situation, the likelihood of an increase or decrease in the extent to which costs might be offset: and it provided an opportunity to draw attention to local circumstances or peculiarities not otherwise covered by the questionnaire. This of course was where the thoughtfulness and the fulmination occurred in the replies received.

It was known from the outset that questions arranged in this way would not be easily answered or indeed appropriate to the conditions obtaining in all firms. The range of interests in the private sector are so varied that attempts to generalise are always unduly superficial or perhaps predicated on questionable assumptions. It is a difficulty that economists constantly experience when they attempt to calculate the investments or returns from the private as opposed to the public sector: and these persist, even when industrial and agricultural interests are separately considered. There are always differences between a plantation and a small market gardener, between a huge mining company and a small prospector, between a single bus owner and the one running a fleet. Sometimes these differences in size reflect vulnerability to victimisation by criminals and they certainly indicate differences in the capacity to sustain losses over a period of time. The same proportionate loss could cripple one company or be absorbed (or on-costed) by another. The loss of a staff member could be a nuisance or a disaster depending on the specificity of expertise required or the amount already invested in training. A small trading store is differently related to the law and order problem in Papua New Guinea than say the large oil companies: and an importer of specialist articles for sale may be more profoundly affected by wharf thefts than a large importer of food for retail.

The private sector is much more varied however than implied by dimensions of scale. A private legal firm may be helping clients to recover costs incurred in a crime, counting its own losses from its premises being broken and entered whilst at the same time representing in court offenders who have broken and entered shops and stores nearby. It has benefits as well as costs from crime. An accountant in private practice could be helping a large firm to complete our questionnaire (and being paid for it) whilst his own office was being wrecked by vandals on a pay night. Or he might be implicated himself in tax deals which are questionable if not outright illegal as he demands police action for the stealing of his motor vehicle. To be more facetious (though not less realistic) the stealing of the car, its recovery and the prosecution and incarceration of the offender might, in total, cost society less than the diversion of funds from the exchequer which the accountant was engineering. If the first stopped the second it could be an overall benefit. The more obvious and well used example is the brewery losing millions, due to the breaking and entering of its premises which indirectly subscribes to the depredations of criminals around the country - since so much crime and violence is alcohol related. Then of course the private sector would include private security companies which directly profit from the insecurity. Their losses would have to be offset against their gains. Also it should never be overlooked that when gains to security companies rise their costs increase due to the greater competitiveness from all kinds of genuine or doubtful companies

entering the market. To stay ahead the security firms with a reputation have to improve quality without pricing themselves out of the market. The questionnaire, in seeking to get at the possibility of on-costing, was attempting to trace the ways in which the impact of crime could be shifted to customers or consumers.

With such ramifications and with such a diversity of perspective throughout the private sector it was inevitable that some firms would have found the questionnaire too difficult. That so many did try to cooperate is a credit to their objectivity and self-questioning. The shortcomings must be ascribed to the relatively underdeveloped nature of this kind of research not only in Papua New Guinea but anywhere in the world at this time. With all its defects, this may represent the first attempt made anywhere to survey the crime costs for the private sector.

Still dealing with limitations however it has to be acknowledged that, unfortunately, the questions asked probably had a range of meanings and connotations for those trying to answer them. Short of a group of interviewers (trained to standardise the replies) being available to administer the questions and record the answers - and short of providing a detailed manual of guidance to standardise the answers, the risk of getting replies which implied different things just had to be taken. The purist will therefore be justified in discounting the value of the exercise altogether: and even the pragmatist will raise some very difficult methodological questions. These were not overlooked: but time and geography permitted no compromise. It was either this imperfect attempt or perhaps nothing at all. A similar response has to be made to the skilled market research specialists who might criticise the openness or ambiguity of some of the questions. Given time, they could have been refocused with expert advice.

Maybe, from this first very unsophisticated attempt to get at the facts, more refined questionnaires (or better funded interviewers) with more detailed instructions on their completion will gradually emerge. As the president of the I.N.A. remarked at one meeting it might have been better for there to have been interviews so that everyone could have understood what was behind each question and uniformity could have been achieved That would have meant either quadrupling the time being taken on the study - with perhaps significant changes in the law and order situation whilst it was going on - or else an array of specially trained interviewers operating all over the country which would have inflated the cost.* It is such considerations which explain, even if they do not justify, the defects now likely to emerge from the results of this first ever, but admittedly inadequate, attempt to obtain some idea of the costs of crime to the private sector in Papua New Guinea.

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* Editor's comment: The research team worked alone with no help from research assistants, data collectors and the like in processing the results of the survey. The forms themselves were mailed to respondents with the assistance of the PNG Chambers of Commerce & Industry.

Part 1

The companies had many problems with this - most of which had been foreseen by the drafter but which were difficult to avoid or accommodate without a much more extensive study in both time and manpower. Some organisations were not able to go back to 1980 for comparative information and some of those that could, could not afford the time for the search and analysis which would be required. One or two enterprises had been registered after 1980, so earlier data for them did not exist.

It cannot be guaranteed that, as requested, the insurance coverage for thefts was always discounted. Again this was too difficult and much depended upon who was given the task of completing the questionnaire. Round figures obviously raised suspicions that the guesswork had been just too casual but there were other returns which were meticulous. Under theft of vehicle, for example, one form showed just an amount of K100 with the explanation "insurance excess". The larger firms were able to be most precise, the smaller ones giving detail in words where they were not sure. Road hauliers for instance showed that losses were of goods in transit - some of which might have been reflected in the returns of firms that had to suffer the full loss or had to claim on insurance. The reality that some companies may have gained from the losses of others can never be excluded in trying to interpret figures of this kind. For instance a legal firm may benefit from the losses incurred by a victim firm if it is hired for the defence - or prosecution. Investigations elsewhere show that some firms have bought copper or petrol or paint and building materials cheaply without enquiring too closely into their source. One firm's loss was another's gain. Such benefits would offset costs: but this is a refinement which must await a later and more methodologically strict enquiry.

The answers to assessments of losses due to stock thefts or other thefts were straight forward - where of course such information was either available or sufficiently well known for calculated estimates. There would appear to be some ambiguity in taking the estimates of vehicle theft at their face value - for, as shown, there was obvious uncertainty about showing the value of the vehicle as a loss or discounting the insurance received.

There was probably some overlap in the answering of Question 1 (iv) dealing with property damage. It was not difficult to deal with the overlap however at the compiling stage of the study. Some respondants for instance put the total loss due to damage under "Property Damage" and then proceeded to break down this total into its constituent parts of damage to business premises, domestic premises, vehicles and cash crops. This difficulty had been created in the word processing of the questionnaire, a separate place having been provided by dotted lines as if a separate answer was required. However, when the figures did diverge for the total damage in the constituent sections and this more general category of "property damage" it was usually very clear that the extra category was being used to account for damage not covered by the other lines provided. Damage to equipment for example had no place to be recorded and it would have been stretching the category a bit to include it under "business premises". So miscellaneous (but extra) damage was put in the general section.

Allowing for all such problems due to the hasty way in which the questionnaire had had to be compiled and distributed - and the fact that in the many firms and organisations processed different levels of personnel were entrusted with the task of interpreting and answering it - a fair degree of responsibility appears to have been exercised in estimating damage. It will be seen that there are no wild amounts and the general extent of the damage recorded is conservative and restrained when of course it would have been easy (and tempting) to exaggerate for effect.

The figure for cash crops is rather meaningless since it was provided by only one plantation and others, unable to estimate, simply wrote in "substantial". It can be reliably stated from general knowledge, however, that much more damage than this is being inflicted on cash crops. In the tribal fighting areas alone, it is not only the small private owners of gardens that have trees cut and coffee, tea, or cocoa, etc. destroyed, it is also some of the companies with property in close proximity.

Table B. 3.1

Questionnaire Part 1, Question 1
Estimation of actual losses incurred (without insurance reimbursement)

	1980	1981	1982	1983
		Kina		
1. Theft of Stock	581,164	2,054,095	2,392,455	3,086,858
2. Other thefts (tools etc)	83,810	122,470	123,670	145,992
3. Theft of vehicles	79,546	109,059	159,547	122,660
4. Property damage	22,150	31,265	58,500	55,250
a) business premises	50,130	75,230	118,199	124,300
b) domestic premises	31,750	66,795	142,730	139,717
c) vehicles	47,600	71,480	89,088	118,015
d) cash crops	48,000	45,400	45,400	45,400
	944,150	2,575,794	3,129,589	3,838,192

Note: As already mentioned many firms did not have comparative data for 1980 so that it would be wrong to imagine, for instance that stock thefts had risen by over 500 per cent between 1980 and 1983. There was a rise and the best estimate of the cost is doubtless the figure for 1983. On the other hand vehicles are registered and insured so that records are usually available and the effective doubling of these costs between 1980 and 1982 is accurate - as is the decline in costs between 1982 and 1983. In property damage it looks as if 1980 was either very low or the records are not available: but the rise between 1981 and 1983 of nearly a million kina could be reconciled with experienced

Question 2 was not answered by many of the respondents due to the fact that their personnel affairs were dealt with by head office - at a distance or due to the fact that the help given for medical assistance for an employee or his family could have been ad hoc and therefore largely unrecorded. It is significant that Table B. 3. 2 shows rather more information available for 1980 and that the "associated expenses" actually fell over the four year period.

What can explain the increases in the employees' medical expenses and the costs of their dependents? The question sought the medical expenses incurred as a direct result of a law and order situation. This could have been treatment for an injury inflicted on an employee at home or at work when the premises were attacked. It could include the shock and subsequent illness of employees victimised - or of course it could include the loss to the company of an employee getting hurt whilst he himself was operating with a gang of rascals or otherwise engaged in criminal activities. Equally acceptable under this heading, would be hospital treatment required by an employee after a drunken brawl or costs incurred when a female employee had been violently assaulted by her husband and could not come to work without medical attention. However, some respondees included under "associated expenses", the air fares they had had to find because relatives or family had been killed or injured in tribal fighting. It will be seen that the greatest amount of expenditure is incurred by having to pay for the employee himself - or herself. Very little appears to be spent on dependants.

Table B. 3. 2

Questionnaire Part 1, Question 2
Estimation of the cost of any medical expenses and associated expenses incurred as a direct result of a law and order situation.

Type of expenses	1980	1981	1982	1983
		Kina		
Employee medical expenses	22,300	24,040	32,265	30,690
Dependant medical expenses	900	1,050	1,350	3,070
Associated expenses (travel costs, compensation etc.)	9,970	4,550	12,560	9050

Note: An interesting feature of this table and of the returns received is that compensation payments if they occur at all are not apparently very large. Since a sum of K50,000 is being demanded for the death of a single person in a traffic accident in Mt. Hagen as this is written it (-an only be concluded that compensation does not usually constitute a large law and order related cost for the private sector. Some of it is of course covered by third party insurance: but this is increasingly being regarded locally as a "first" payment only - not precluding traditional compensation claims.

THEFT

FIGURE 1(a)

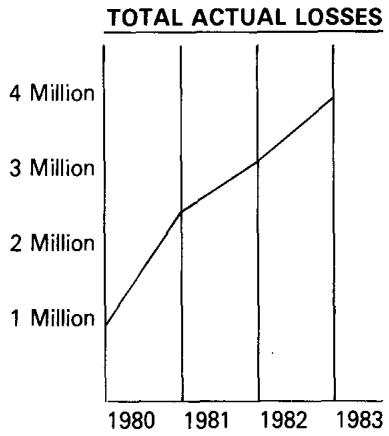


FIGURE 1(b)

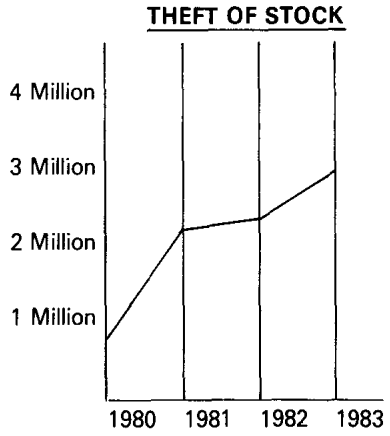


FIGURE 1(c)

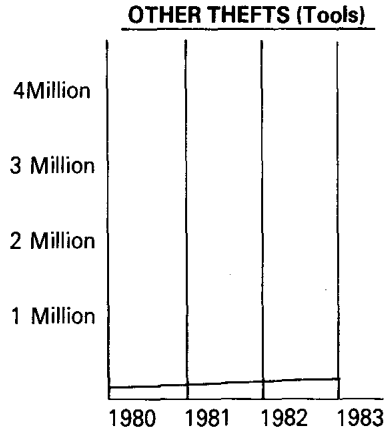


FIGURE 1(d)

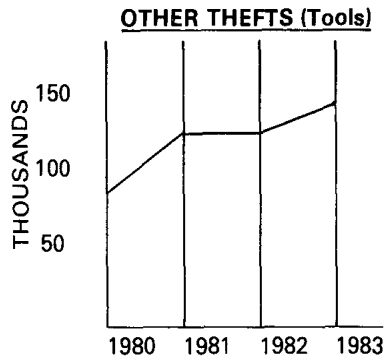
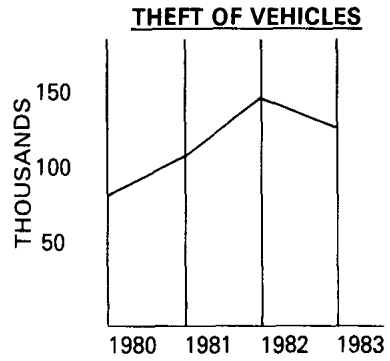


FIGURE 1(e)



Once again attention is drawn to the fact that 1981-83 is probably showing a more reliable pattern than the rise from 1980. It should also be observed that the dimensions are not the same for all graphs. The (a) - (c) graphs are in millions of kina whereas the (d) and (e) graphs are dealing with nothing over K170,000.

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FIGURE B. 3. 1

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figure b. 3. 2

DAMAGE

FIGURE 2(a)

PROPERTY DAMAGE

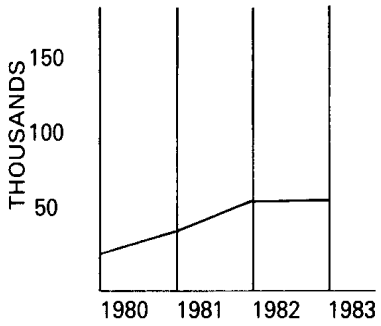


FIGURE 2(b)

BUSINESS PREMISES

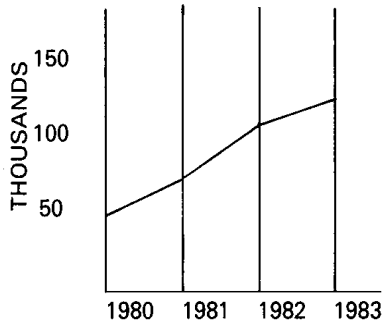


FIGURE 2(c)

DOMESTIC PREMISES

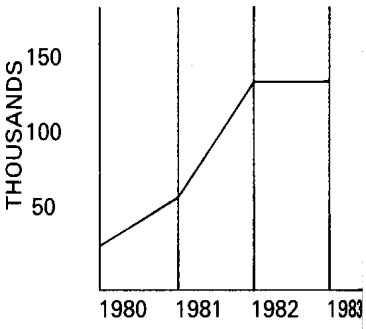


FIGURE 2(d)

VEHILES

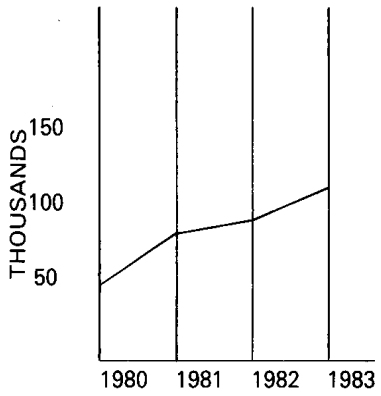


FIGURE 2(e)

CASH CROPS

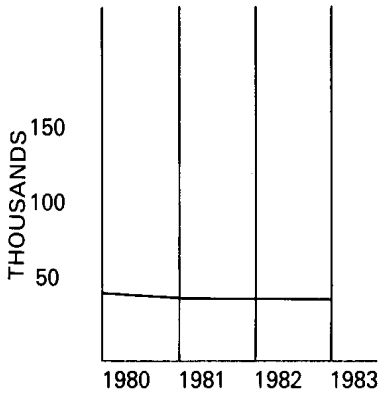
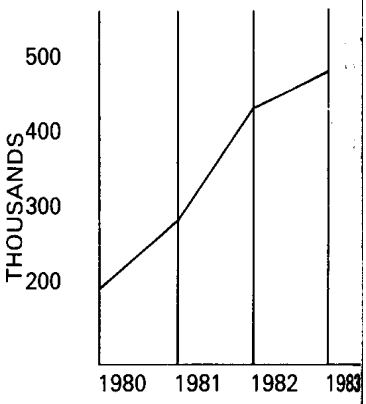


FIGURE 2(f)

TOTAL DAMAGE



Even allowing for poor records the rise in the total bill for damage shown in (f) above is striking. It does not mean more incidents of crime - more robberies or breakings but it probably indicates a shift to the more valuable equipment. Figure (e) is useless because it does not reflect what is officially known about damage to cash crops. This was only one return and it would seem atypical. Though, as Figure (e) showed the loss due to vehicle theft actually fell in the last year, the damage to the vehicles could have been rising steadily as shown in (d). Also the prevalence of breaking and entering is shown by the way domestic premises are suffering more than even business premises.

Rather more significant are the absences from work which could be attributed to law and order problems. This was Question 3 of Part 1 and the results are provided by Table B. 3. 3. It will be seen that there were large rises in the past two years. Absenteeism is not unusual in Papua New Guinea of course where village occasions, a death or a special celebration will lead to workers taking time off to be in attendance. Papua New Guinea is still in the stage at which such obligations or opportunities mean much more to the individuals concerned than a formal job. However, the respondents were asked to count only such absences as were directly related to a law and order situation. This obviously included absences to return to a rural area where tribal fighting might be in progress, absence to attend a funeral occasioned by a person being killed in a criminal attack, time off for attendance at court to give evidence as a witness or as a victim, the time away from work required to attend the police station and give statements, the time required to attend village courts for minor offences. And included in this question was a division to show whether the time off for la\v and order problems arose directly out of the company link or arose independently. Most respondents gave kina estimates but some gave or added man-hours, man-days or just the number of days. In these cases the time was calculated at the minimum wage rate and rounded off to the nearest day. Obviously the costs involved were probably much higher than such minimum levels: but it indicates that the losses through absence were under calculated rather than over calculated.

Table B. 3. 3

Questionnaire Part l, Question 3
Estimation of the cost of employee absences
from work attributable to law and order

Absences from work	1980	1981	1982	1983
		Kina		
Associated with the company	15,295[a]	15,725[c]	42,813[e]	77,680[g]
Unrelated to the Company, e.g. Private situations/ assisting relatives	4,695[b]	6,900[d]	28,310[f]	54,545[h]
Totals	19,990	22,625	71,123	132,225

Notes:
a Incl. 150 man hours - converted to kina at minimum wage rates
b Incl. 5 man days - converted to kina at minimum wage rates
c Incl. 150 man hours - converted to kina at minimum wage rates
d Incl. 30 man days - converted to kina at minimum wage rates
e Incl. 800 man days and 200 man hours converted as above
f Incl. 500 man days converted as above
g Incl. 4,006 man days and 200 man hours converted as above
h Incl. 2,525 man days converted as above.

Finally In Part 1 the attempt was made in Question 4 to get at the often claimed direct losses in production because of the law and order situation, the interruptions to factory work or the loss in replanting cash crops. We sought some idea of the trading opportunities which had had to be foregone because of the preoccupation with law and order and the consequent shrinkage in the size of the market (if any and if calculable). Then we asked for an estimate of the expansion to the work which had deliberately been deferred due to the insecurity and finally some idea of the new investments which had been contemplated but which had been put aside because of the uncertainties created by law and order problems.

Needless to say this was highly speculative - and we knew it. The reasons for not expanding, deferring investments or concentrating on a smaller market are usually more complicated than being a simple function of insecurity. A businessman will balance a number of factors for and against and though law and order may be significant, even predominant, it is unlikely to be the sole consideration.

Again, it was not easy to frame questions which would not beg the answers or perhaps offer only a small segment of the businessman's perspectives and policy making procedures. So again, limited by time and resources the plunge had to be made in full realisation of its "fishing" characteristics.

Given this kind of probing but open question however there was a golden opportunity for the private sector to inflate the losses in a way which could alarm governments even though it was speculative. It is gratifying to the study and a credit to the respondents that they did not do this. Much more responsibility was shown and if figures were too uncertain they were not given. The results are provided by Table S. 3. 4.

Table B. 3. 4

Questionnaire Part 1, Question 4
Estimate of the cost of production losses experienced
as a direct result of law and order problems

Losses	1980	1981	1982	1983
			Kina	
a) Production lost - factory throughput - cash crop replanting	12,220	12,220	24,000	375,00
b) Market size reduction Trading opportunities Foregone	6,500	28,000	85,000	795,000
c) Expansion deferred	125,000	125,000	202,000	2,366,000
d) New investments foregone	100,000	100,000	170,000	780,000
Total	243,700	265,200	481,000	4,316,000

Notes: These are presented for what they are worth. It will be seen that they are uneven because not all respondents attempted them. They are significantly cummulative however, with the major decisions against expansion and the larger losses occurring in the year 1983. No doubt as a result of what had gone before. One firm did not give figures but observed that whereas, due to law and order problems they had lost 20 per cent of total production in 1980 it had risen to 50 per cent of total production in 1983.

Part 2

Having sought to trace losses in Part 1, Part 2 was designed to get an idea of the amounts being spent by the private sector on its security and preventative measures. Table B. 3. 5 deals with the first question in this Part which asked for the persons actually employed - or the kinds of security hired and the amounts being spent on fencing, locks, security bars, etc. for both the business premises and the residences: for in Papua New Guinea, employers are required to house employees - and by extension they often feel an obligation to ensure reasonable security. This is particularly true if an employee has been recruited from abroad, bringing his family. Occasionally, these days, the employee moving to Papua New Guinea will require assurances of his family being securely housed This is why, with particular reference to security locks, alarms, fencing, etc. the amount that firms spent on domestic premises exceeded what was spent on business premises. One plantation whose costs for watchmen had risen from K67,000 in 1980 to K94,000 in 1983 made no distinction between its business and domestic security. Another similar type of business whose watchman costs had gone from K26,000 in 1982 to K30,000 in 1983 also combined the security operation. Incidentally neither of these were included in Table B. 3. 5 because of the difficulty of dividing the amounts involved but another K124,000 can be added to the K2,608,591 shown in the bottom right hand corner of Table B. 3. 5. It is possible that only direct and easily identifiable costs were included so that the amounts given are slightly lower than actual costs. Only two respondents showed that they were including the cost of dogs (about K1000 for both firms) but there may be a number of firms which are maintaining dogs - perhaps for companionship, but not without some thought being given to their usefulness for security. Not all mentioned lights or the electricity charges connected with lights. None mentioned intercom or any particular extension in the employee's eligibility for a telephone installation but of course all of these were countable and could well have been overlooked.

There were some oddities in the amounts which make up Table B. 3. 5 and which would merit further study. For example, 1981 seems to have been a peak year for security expenditure; business premises increased expenditure on watchmen an incredible thirteenfold, although it was dropped back by nearly 53 per cent the following year - and, in 1983 it was only 27 per cent of what it had been two years before - and only three and a half times the 1980 figure. So why did 1981 cause such an enormous increase in watchman expenditure?

Superficially a good reason might seem to be provided by the following passage taken from the Police Annual Report for 1980 which however became available only a year or two later.

> "Violent crime which had become evident in 1979 was attacked with vigour..... the break and enter rate in the National Capital dropped from a high of 15 per night to an average of 1.2 offences per night".

It has to be remembered however that such rates are computed by the police themselves from the numbers reported and these are variable according to who is doing the recording - as is shown elsewhere in this report. It should also be appreciated that many of these offences are not reported to the police or do not get counted as reported. Fifteen breakings per night in Port Moresby may seem an alarming increase if Mackellar had not already shown that four years earlier - in April 1975 there were two nights of that month with 14 breakings and one with 19! (Mackellar 1977). Moreover, even if the rate had been temporarily reduced to 1.2 offences per night, the Police Report for the year 1982 which has become available only as this is being written records 1815 breakings in the National Capital that year. This takes the rate back to 5 offences per night. But Mackellar from his magisterial and other experience concluded that there were at least the same number of breakings (if not more) which were not reported to the police - so this would get back to 10 offences per night.

A rise in breaking and enterings - or a change in their quality of violence would explain part of the extra security expenditure - but it would not give a satisfactory reason for a rise of such a magnitude. In fact, in 1981 the employment of watchmen for domestic premises fell to 34 per cent of what it had been in 1980 - and there was a fall in the cost of watchmen services hired from security firms for private premises. Yet, as indicated, the breaking and entering figures seem to have been rising from the 1.2 per night to 5 and perhaps 10 or more between 1980 and 1.982. Of course it is important to bear in mind that these figures are aggregates and their distribution could have been uneven. A sudden increase by a large mining company or a spurt of new building could account for much of it.

There was one plantation for example which recorded a rise in the number of watchmen that it directly employed from just six in 1980 to no less than seventy in 1983! In fact it increased the number of watchmen from six to twenty-two in the period 1980-1981.

Certainly according to Table B. 3. 5 the year for fencing and security equipment generally was 1982. There was an increase of nearly 30 per cent in the purchase and installation of this kind of hardware for business premises between 1980 and 1981 (but the increase was only 9 per cent for domestic premises). However, between 1981 and 1982 the equipment for business premises, expressed as a cost, more than doubled - as did the expenditure on domestic premises. The contracting security firms seem to have done very well between 1982 and 1983 - the investment on both business and private premises being very substantially increased. In this year the cost of contracted watchmen for private premises more than doubled. Even so it may be that there are areas not covered by the figures provided here. Going through the returns it was noticeable that the amounts being spent by some firms, flying in the wages by helicopter to avoid the hijacking of cars carrying money, was not mentioned. This happens to amount to K90,000 per year for one firm. The special measures being taken by haulage firms to modify trucks to make them more difficult to climb into or to station workers along the roads to guard trucks which have broken down, might not have been included because there was no place on the form for them.

It is difficult to adduce figures which can demonstrate the weight of this security burden on the private sector in Papua New Guinea. Firms in other countries have security costs: but assuming that our 110 companies are about 15 per cent of the sector then it is possible that just the amount spent on fencing and locks and alarms for business and private firms in 1983 (K571,380) could be about K3.5 million for the whole sector. In 1980 private capital expenditure in Papua New Guinea was running at K204.7 (World Bank 1981 : 65) - so with an acknowledgment that this is a rough approximation capital investment in security is probably running at 2 per cent of the total. For, in addition to the figures available here one needs to allow for the built in security in staff housing or the high rents for properly secured premises. And this is capital investment to which must be added recurrent expenditure and the watchmen. What is also important to note in Table B. 3. 5 is that the capital investment is not decreasing - as one might well expect it to do once a house or office has been made secure. Either due to rapid depreciation or heightened fear of attack, the investment in this item increases - sometimes very sharply. Some firms, large enough to do so, have embarked on their own housing schemes - in high rise buildup or compounds easier to secure than the hitherto more common one storey bungalows of light construction.

The second question in Part 2 was difficult to answer and had been included only because some firms not yet greatly affected by security expenditure might be planning major investments for the future whilst other firms already investing a great deal in security might have had plans for rationalising or redistributing the burden.

The question asked in an open ended way

> "Give a brief description of measures taken or planned to be taken with estimated costs of the latter".

Most respondents realised that they had already covered the first part of this question in the answers they had given to the foregoing questions. Many had not thereby given the figures but explained what they had been for. In answer to the first part of question 2 therefore, many simply wrote "see above".

The general response to the second part of the question i.e. future intentions and probable costs was extremely interesting as a reflection on the attitudes towards law and order within the private sector - and to the sense of despair at any prospect of stimulating official and effective action. Self-help was the keyword everywhere - with the cost to be passed on wherever possible. No respondent looked forward to any reduction in the cost of security in the future and more than 85 per cent were preparing to increase the investments in protective security in the future. Just a few felt that they had already done everything possible - and some did not tackle this question at all. Most expected to pay more - some much more and a few of the larger firms with building programmes under way or new houses being erected were planning security features ab initio - adding this to the construction costs. The majority envisaged increments on their expenditure year by year.

Table B. 3. 5

Questionnaire Part 2, Question 1
Expenditure incurred in providing security measures

Form of security	1980	1981	1982	1983
(a) Watchmen				
(i) directly employed				
for business premises	266,340	3,413,701	1,801,970	927,154
for domestic premises	174,402	60,813	284,795	347,614
(ii) Contracted with security firm				
for business premises	171,286	361,360	495,235	625,547
for domestic premises	49,500	46,750	64,220	136,896
(b) Fencing, Security Bars locks etc.				
for business premises	75,800	104,180	225,595	269,145
for domestic premises	92,773	101,790	211,555	302,235
Totals	830,101	4,088,594	3,083,370	2,608,591

One firm was planning to spend K100,000 on personal mobile radio communicators: another had new premises under construction for which they planned to spend an additional K25,000 to have security features installed. A plantation had budgeted for another K20,000 next year. One firm had already decided to proceed with the fencing of the entire plantation at a cost of K70,000; but more were planning small increments e.g. two full time watchmen at a cost of K4,000; security fences for coffee and cocoa fermentaries at a cost of K5000; night patrols and extra security mesh K12,000; additional security screens and locks K2,113.50 (he'd obviously got an estimate!); fencing all residences K9,000. And so the list continued with amounts ranging (apart from those given above) from a low of K1,000 to a high of K15,000. One had in mind roller shutter blinds; another "hostile dogs"; a third was looking at closed circuit television; a fourth had a cost involved in security training courses for staff and the issue of appropriate instructions and literature. There were those who sought the external monitoring of alarm systems and others who wanted security cameras. The cutting of the long grass around the houses was a security cost to be envisaged as a regular item in future; but only one firm looked forward to increasing rewards payable to those giving information leading to arrests and conviction.

As mentioned everyone seemed to be looking forward to more, not less expenditure on security as time went on. As one person put it succinctly -

> "More criminal activity - more staff";

> and another said his future plans consisted of "keeping his fingers crossed";

> a third announced rather ambiguously that "Factory offices are alarmed".

Then there were the cases of businessmen near to despair. One advised that due to breaking and entering, the firm had had to give up its regular premises to move to a safer but most inconvenient site and they lost business because no-one could find them and they had all kinds of travel and communication problems. There were missed opportunities and it was observed that the usual travellers for overseas suppliers do not like to visit Papua New Guinea any longer. Supplies are delayed or just do not come. This respondent said that, in the move, he had also had to forego the services of a permanent security guard. He has virtually been driven out by the attacks on his premises and he warned -

> "The next time will be the last"

Similar sentiments were expressed even more strongly by a businessman broken into many times. He wrote that a future plan was to try a 3mm steel plate to protect the shop which was already equipped with a welded 8mm and 10mm mesh. However, he added -

> "My medium range plan is to get myself, my national wife and our children out to a civilised country. With a total of eight attempts on the home, three cases of smashed cars and ten breakings at the shop WE WANT OUT!"

Part 2, Question 3 looked at the costs of insurance. Respondents were asked for increases in premiums related to law and order, the extent of any new cover they had taken out and the amounts received for claims. The returns were not very clear and some did not complete this part of the form at all. It was difficult for the larger foreign banks for instance that might have comprehensive insurance as part of full cover provided by headquarters negotiations with insurance companies in other countries. Something similar was happening with the large trading companies. Much depended on whether losses could be on-costed If losses could be passed on to the consumer, the need for excessive insurance might be obviated. There was anyway a link between the insurance costs and the cover since insurance companies in Papua New Guinea are now refusing to cover premises which cannot show that proper precautions have been taken.

The information was not conclusive or complete therefore but from what was received it seemed to show that the respondents paid K23,000 in increased premiums in 1980, K29,230 in 1981, K51,007 in 1982 and K94,587 in 1983. Beyond remarking that it would be expected that insurance premiums would rise something like this in a period of insecurity it is not possible to go further. Full information on the extent of insurance, the percentage increases in premiums and changes in the amount of cover purchased would be necessary to provide anything meaningful. This could of course be the subject of a later study.

The amount of coverage taken out by those who responded was not very great - K500 in 1980, K1600 in 1981, K2150 in 1982 and only K8050 in 1983. If these figures can be believed there was no great rush in this period of insecurity for extra insurance. On the other hand the insurance companies had paid out amounts which look substantial - though they cannot be judged without full knowledge of the total insurance held and the extent of the losses these amounts were supposed to cover - or at least to respond to in a substantial way. The claims received by those who responded to the questionnaire totalled as follows -

1980	K48,500
1981	K79,530
1982	K143,805
1983	K181,837

As shown these amounts signify little without further data.

Part 3

Part 3 of the questionnaire dealing with "other costs" tried to get at time lost - the cost to the firm of having personnel off work because of being victimised, making statements to the police, attending court, replacing property stolen and so on. Then an attempt was made to get at the amounts that could not be recovered from insurance companies or on-costed: and the last question in this part tried to get at the effects on recruitment and replacement of staff lost as a result of law and order problems. It was known in advance that some of these were imponderables. For instance, as this is written a teacher at technical college responsible for a course in refrigerator engineering and maintenance is leaving because of being attacked twice in his own home and having suffered head injuries trying to defend his family. His course has had to be cancelled with future ramifications not only for refrigerator sales and maintenance but also for firms that may have to recruit from abroad rather than locally for this kind of work. Such costs will be passed on to customers: but in such a competitive field some firms may be unable to compete.

The answers to the three questions in this part of the questionnaire were unsatisfactory partly because of the way the questions were phrased and partly because different levels of private sector personnel were charged with their compilation. Sometimes respondents did not indicate whether they were working in kina or in the numbers of man hours. And it was clear that the interpretation of the questions varied according to the size of the operation and the particular responsibilities of the person answering the questionnaire. If it was his own business, he tried to be precise and to explain what was on his mind. If he was an employee somewhere down the line who had been given the chore of providing the answers, he did so by assigning numbers with little explanation of the way he had obtained them.

It may be more convenient to begin at the end - with the third part of question 3, dealing with the replacement of employees who had left. This final question was whether such problems were thought likely to arise in the future in respect of nationals and non-nationals. The answers were as follows -

Staff	Yes	No
Nationals	22	63
Non-Nationals	50	34

One firm employing nine expatriates reported that four had already expressed an intention of not renewing their contracts.

Obviously the non-nationals were expected to be the most likely to be affected since their supply is elastic. They are more likely to head away from danger in Papua New Guinea than are the local people who have their families here and who might not find it easy to leave the country without special skills. Yet it will be evident that nationals were expected to be substantially affected and there was perhaps a third of the respondents who had in mind non-nationals who were not expected to be driven away by insecurity.

The middle portion of question 3 simply asked how many cases of replacement difficulty had been experienced. Whilst the expatriate replacement was uppermost in people's minds the replies showed that the number of cases of replacement difficulties with nationals increased sharply in 1982 and then seemed to fall back to normal. Thus the number of cases of this nature experienced was shown as -

	Number of cases by year			
Staff	1980	1981	1982	1983
Nationals	2	226	397	231
Non-nationals	14	9	36	41

The fall to 9 cases of difficulty with expatriate replacement in 1981 was atypical. Otherwise the numbers were showing consistency in growth.

For completeness here it should be observed that one return showed a figure of 4200 for nationals in 1981 and there were two other figures for nationals in 1983 of 5000 and 1100. Since it was obvious that even very large employers would not find it easy to come up with numbers for replacement it seemed likely that a kina figure for the cases was being provided These replies were therefore disregarded

The figures in kina were provided consistently however for those who had left as a result of law and order problems and had had to be replaced Occasionally here a low figure like a 5 or 3 was submitted which (since the form was not one of those calculating by thousands) could only mean numbers of staff and not the estimated kina cost of the replacement as a result of law and order. What was surprising here was not the rising cost of replacing the non-nationals (a fall of about 7 per cent in this cost between 1982 and 1983) but the annual increment in the cost of replacing nationals as a result of law and order. Why this should be is sufficiently interesting to justify further study. Of course one reason might be the loss of labour on some larger plantations due to tribal fighting - facing the management with a high replacement burden. It is worth observing in passing that these results appear consistent with the replies obtained by Michael Trebilcock when he surveyed the private sector in 1982 and asked about "General Economic Restraints. Only about 12.4 per cent of those answering him mentioned "Difficulty in obtaining expatriate manpower" but 21 per cent mentioned "difficulty in obtaining skilled local manpower" (Trebilcock 1983 : 72).

This question 3 (i) asked for an estimate of the costs incurred in relation to the replacement of employees who have left employment as a direct result of the law and order problems. The replies were -

	Costs of replacement Kina			
Staff Leaving	1980	1981	1982	1983
Nationals	17,680	13,000	33,650	51,150
Non-National	71,500	65,300	201,400	167,610

Again it must be stressed that the weight falls unevenly depending upon the type of business and the kind of expertise required. One return could not provide an adequate estimate but pointed out that production had fallen and efficiency been reduced with consequent effects on projects because they had simply not been able to replace the man who had gone. He had been virtually irreplaceable because in addition to expertise and technical skills he had had years of experience of working in Papua New Guinea. Another firm providing a return pointed out that it could be doubled or trebled by a single incident causing alarm and driving more of their specialists away. There would seem to be no doubt that a person whose house has been broken into More than once is worried for his family - or for his own freedom to live as he wishes (if he is alone) and he looks for more comfortable employment. If he has young children - especially girls - he will not stay. An employee will be driven away more quickly by direct personal attack on himself or his family. He does not feel that he has the same demand on the government for his family's protection in Papua New Guinea as he does on his government at home. His action will be in direct proportion to his assessment of risk. There is a point at which a calculated risk for a little extra money is just not worth it. In this way, by an odd twist, it could be the breakers and enterers in Papua New Guinea - or the "rascals" - that really hold the key to future growth and development....

Moving now to the first question asked in Part 3, the aim was to establish the burden on the private sector as a result of the man hours lost in dealing with law and order problems - attending courts, giving statements, going to hospital, time off through injury in drunken brawls, etc.

Respondents were asked to make a distinction between the cost of man-hours lost by line workers and by management.

Complications of interpretation arose because some of the returns simply showed the number of roan-hours: others had converted these to kina. It was easy to add the kina amounts: but for the man-hours at diverse rates of pay it was necessary to calculate a national rate of remuneration. For the purposes of the conversion it

was necessary to suppose that a reasonable level for line workers hours would be the minimum wage rate and a reasonable level for management would be a multiplication by four . These were deliberately calculated at levels well below what was imagined to be the usual average so as to avoid any charge of inflating the figures.

The results are provided by Table B. 3. 6 a striking feature of which is the rising trend for the time, taken up by both line workers and management with law and order problems. Inflation obviously had some effect on the costs, but the doubling of the expense for companies of losing the time of line workers between 1980 and 1983 must mean more involvement in the law and order problems. It will be seen that the cost of management time practically quadrupled and there can be few firms in which productivity kept pace with this. There is nothing in the returns which throws light on the fall in management costs between 1981 and 1982 or on the near 250 per cent rise in management costs between 1982 and 1983.

Table B. 3. 6

Questionnaire Part 3, Question 1
Kina costs of man hours lost as a result of dealing with law and order

Type of staff absent or released	Costs in kina 1980	1981	1982	1983
Line worker	37,870	44,243	57,520	71,332
Management	67,360	111,192	109,228	265,964
Totals	105,230	155,435	166,748	337,296

Note: Assuming that our sample represents about one-sixth of the private sector the total cost to the sector of people being off work as a consequence of law and order problems in 1983 would be 2.08 million kina.

Finally Table B. 3. 7 rounds up some rough figures for other costs that probably could not have been avoided or foreseen but which are still ascribable to law and order. We listed here the risks which were uninsurable anyway (e.g. a worker killed or injured defending his property - or even involved himself with a rascal gang and killed or injured whilst committing crime; compensation payments over and beyond the insured amount which a company must pay to placate local groups, losses due to crime flowing from negligence caused by drunkenness), losses to property flowing from tribal fighting - or a loss of customers unwilling to risk passing through a tribal fighting area - or territory occupied by an enemy. Unexpected losses flowing from violent confrontation over land rights, etc.

Some companies found it impossible to split up their costs in this way. One simply wrote "K50,000 a year for all" and another "K50,000 loss of production 19801983". A third said that these losses were "30 per cent" and another [11]60 per cent". Unfortunately they did not specify the percentage of what. All these were omitted from Table B. 3. 7 which provides the information which was received.

Once again the rise of costs through the years is remarkable: and even when the exceptionally large figures for tribal fighting and land ownership disputes (to which attention is drawn in the notes at the foot of Table B. 3. 7 are omitted it is only the figure of tribal fighting which drops in 1983. Again it is clear that a 28 fold increase in four years reflects a lot more than inflation and even if the two exceptional amounts already mentioned are deducted from the total it is apparent that inflation alone does not explain a five fold increase.

Table B. 3. 7

Questionnaire Part 3, Question 2
Cost of non-recoverables

Type of non-recoverable	Cost			
	1980	1981	1982	1983
Uninsurable risks	14,667	13,367	20,900	23,900
Tribal fighting	1,500	1,000	2,500	710,800
Land-owner disputes	25,100	180,100	26,100	302,600
Other	114	20,100	42,600	123,710
Totals	41,381	214,567	92,100	1,161,010

Note: The high figure for tribal fighting in 1983 was due to one plantation having K710,000 damage which was not recoverable. And the high figure for land-owner disputes in 1983 included a cost of K250,000 which had to be paid by a timber company for customary land it was using.

With figures so doubtful it may be unwarrantable to just add them together to get a cost. As already warned the costs and benefits are unevenly distributed between the firms and they are hardly ever independent variables. However, having gone to the trouble of collecting these items Table B. 3. 8 gives a total for the 110 companies surveyed.

Table B. 3. 8

Amalgamation of total costs 1980 - 1983

Table totals	1980	1981	1982	1983
B.3.1	944,150	2,575,794	3,129,589	3,838,192
B.3.2	9,970	4,550	12,560	9,050
B.3.3	19,990	22,625	71,123	132,225
B.3.4	243,700	265,200	481,000	4,316,000
B.3.5	830,101	4,088,594	3,083,370	2,608,591
B.3.6	105,230	155,435	166,748	337,296
B.3.7	41,381	214,567	92,100	1,161,010
Staff replacement costs	89,180	78,300	235,050	238,760
Totals	2,283,702	7,405,065	7,271,540	12,641,124

It will be seen that some costs are omitted from Table B. 3. 8. Part 2, Question 3 for example on insurance seemed so uncertain in meaning and content that it was not in the same class as the other figures in Table B. 3. 8. What is striking about Table B. 3. 8 is the apparent sixfold rise in the expenses of these 110 companies for law and order between 1980 and 1983. Even if the records for 1980 were not fully available the 74 per cent increase in the costs between 1982 and 1983 is equally significant. Then, if it can be assumed that these 110 companies are a fair reflection of 15 per cent of the total private sector in Papua New Guinea then the burden for law and order in 1983 was of the order of K76 million - or more than the total national allocation for the police and justice (including corrections). Even before the 74 per cent rise between 1982 and 1983 the private sector law and order burden had been around K45 million.

It would appear to be a not unreasonable conclusion then that the private sector has been putting its money where its mouth is. If it has been loud in its demands for something to be done about law and order, it has shown by the shape of its costs why the problem is of such concern. It is draining resources - and the private sector knows it. Nor should it ever be forgotten that a survey of this kind never gets to the real costs of crime - the tragedy, the human misery, the losses suffered not only by the victims but by the offenders and their families. Lost or wasted lives no less than the morale effect can never be calculated

A final point needs to be made: when such large amounts are invested on private security the crime problem is not solved but shifted It means that the poorer sections of the community unable to invest such large amounts in security become more exposed Already a number of urban victimisation surveys carried out by the National Statistical Office have found that theft from the homes of nationals is at least as great as that from non-nationals. But whereas nearly 60 per cent of nonnationals report their losses to the police only 26 per cent of the local people do so.

Part 4

Perceptions of the problem

All except two respondents believed that there was indeed a problem: the vast majority regarded it as being serious. However, a bank return from Alotau in the Milne Bay Province described it as "virtually crime free" and the people of Madang were said to be "loving and content", there being no large community there of the "more aggressive" highlanders!

The two respondents that had substantial doubts about there being a problem of law and order were referring to its dimension and to its conceptualisation rather than denying its existence altogether. One thought that crime was certainly not as serious as was usually supposed and perhaps not nearly as serious a problem in Papua New Guinea as in a lot of other countries - developed and developing. The other dissenter was far more specific: having stated that it was no problem as compared to Western countries, this writer proffered the following interpretation of events -

- Stealing and robbery are associated with capitalist policies creating "haves" and "have-nots".

- Rape is associated with a disparity in the female/male ratio in a given situation.

- Defalcation is committed by "white collar" workers who should not have been entrusted with responsibility without the proper management controls.

- Tribal warfare flowed from customary obligations and the lack of education in legal methods of problem solving plus a lack of confidence in legal methods where these were known about.

Crime is therefore a function of social conditions and it follows from the conditions of Papua New Guinea. Given these it is to be expected

Abstracting these markedly exceptional replies, the preponderance of those answering, firmly believed that Papua New Guinea had a major law and order problem; and some thought it was serious or grave. One sought to anticipate the argument that it might not be large, as compared with other third world countries, by asserting that, even if these had higher crime rates, this should not be used to justify the situation in Papua New Guinea where as the writer pointed out -

- there is no food shortage
- the climate is good
- health is relatively good.

However, this was partly answered by another respondent who observed that "prosperity encourages stealing. Higher prices for crops are always accompanied by an increase in theft". Another submission reversed this asserting that "low commodity" prices (e.g. coffee, cocoa) cause some minor law and order problems. Of course all of these are probably reconcilable views when the specific offences and the particular situations that they have in mind are distinguished: but it is worth reminding ourselves in passing that affluent countries are generally more crime ridden than poor countries.

What are the reasons for the problem?

More than 82 per cent of those who replied gave unemployment as the main reason for the law and order problem. Generally this meant unemployment in the towns or the centres of population but one referred to unemployment on an estate and to the unemployed there being linked with outside gangs for the purpose of crime. And another mentioned resettlement from remote areas to the recession-affected rural estates as a factor in crime.

If unemployment be combined with urban drift then this would account for nearly 100 per cent of all the major reasons provided by the answers to the questionaire. On the reasons for unemployment and the urban drift however the opinions were diverse.

- About ten per cent blamed the education system without specifying too much or too little education. Throughout the returns, however, when education is mentioned it is generally as a complaint that there is too little rather than too much. There is an awareness of the large number not in schools and of the increasing crowds of young unemployed in the towns or in the money sector that are not sufficiently educated for the types of

jobs available. Five per cent were definite that there was not enough vocational training but others referred to the insufficiency of education generally; and one, with an eye to the future, said that the level of education was inadequate to fit the people for "the technological society that is evolving". Only one said that the forms of education being given were "irrelevant to rural needs". And only one wanted more education to gradually eliminate things like wantok, payback and the demands for compensation. Whilst one deplored the lowering of educational standards generally another two saw education as increasing expectations unrealistically. This was the nearest that anyone got to the possibility that education might be training people out of the available agricultural roles.

Just three of those who replied drew attention to the inadequacy of rural development as a reason for the urban drift and unemployment.

The other reasons for unemployment and the urban drift were less easily classified. Three thought that the economy was responsible for there not being enough jobs but did not say how. One other believed however that there had been a failure to attract overseas investment because of the high internal costs of production. There was a complaint that there was not enough available productive land close to the cities, that government had encouraged squatters; and there was an isolated reference to the recession as a factor in unemployment which came, however, with a rider to the effect that even so Papua New Guinea had suffered from recession less than most other less developed countries. There were, however, several references to the freedom of movement in Papua New Guinea society being a cause of the concentration of unemployment - and this comes up again when we deal with the remedies proposed. One thought that the flow into towns and consequent unemployment was a function of the decline in tribal or customary constraints, whilst two other respondents considered that the squatter settlements themselves encouraged the flow of labour beyond local absorption levels.

Turning from unemployment now to the other main reasons advanced for the crime problem nearly all the respondents concentrated on the police. In fact the failure of the police combined with unemployment and urban drift would account for all except a few very exceptional returns. Practically everyone who filled in the questionnaire had well in mind a picture of overcrowded settlements, aimless unemployed youths and an incompetent police force as an interlocking, selfreinforcing combination which explained Papua New Guinea's law and order problem.

Twenty five per cent of those who blamed the police ineffectiveness did not specify; but most of the others did in no uncertain terms: and in order of frequency the following occurred -

• Inept, indifferent ineffective police who do not take action	13
• Insufficient manpower	12
• Lack of expertise required for the job	12
• Poor management, supervision and leadership	7
• Inadequate training	6
• Have lost respect of community	6
• Ineffective because of wantok system	6
• Underequipped	2
• Lack of community contact	2

The other reasons for the police failure to cope with the problem were too scattered to make a pattern but they are worth listing.

- Police not residing in the community
- Lack of senior N.C.O.'s
- Insufficient powers
- Localisation has caused breakdown
- Low morale
- Difficult for police to man outlet/inlet areas (sea or air)
- Fear of payback if they take action
- Lack of mobility
- Attitude of nationals to the police
- Traditional for Papua New Guineans to fight only in large numbers - so 4 police will not face 5 or more law breakers
- Frightened to prosecute
- Poor standard of prosecutions
- Cannot attract good quality recruits - not a prestige position
- Handicapped by delays in the legal system.

Allied with the concern about the effectiveness of the police was a belief that penalties should be tougher. Courts did not seem to be backing up the police or understanding their difficulties with prosecution. About twenty five per cent of all replies blamed the courts for being weak, not severe enough, not tough enough and not providing sufficient deterrents. In particular, the penalties for breaking and entering were thought to be inadequate. It should be remembered that these opinions were collected after the introduction of minimum penalties for offences (i.e. after 14th July 1983]

Next, the people replying to the questionnaire vented their spleen on the government. Indeed many of the foregoing reasons for the law and order problem were linked with a belief that, ultimately, government policies were to blame. This was diversely expressed but there was an underlying unity.

Government was -

- weak,
- apathetic (esp. to parliamentarians who break the law)
- lacking in direction and definition
- lacking initiative to tackle the main problem which was "idle hands"
- blind
- inadequate or incompetent
- entertaining the wrong priorities therefore responsible for
    - poor educational facilities
    - poor health facilities
    - poorly equipped police
    - not doing enough for rural industries
    - not making the penalties fit the crime
    - ineffective because of decentralisation, provincial government, over administration and politicisation.

In addition the government was blamed for not having introduced compulsory military or civil service for the young unemployed And one submission said that some of the politicians have been inclined to laugh-off the law and order problem - and indeed to encourage it on the Robin Hood principle of what came from the rich was going to the poor. Another blamed the lack of discipline throughout the public service and the lack of respect within the public service.

Finally, having covered the main responsibilities which were placed on unemployment, urban drift, the police and the government, we can consider a miscellany of reasons that were given for the law and order problem in Papua New Guinea. Some already counted above were put forward in combinations like -

- "government inadequacy and incompetence
- poorly led, ill trained and inadequate police
- third world economy", or
- "encouragement of squatters, rascal gangs and a police force scared to react effectively".

About ten per cent of the respondents drew attention to the deep rooted instinct for revenge or payback as a reason for crime. This made people afraid of retaliation and frightened of protecting their property. Rascal gangs were frequently cited as a cause of the problem but most people went beyond that and looked for the deeper influences or for the factors producing the gangs. One talked about the poor leadership in villages and settlements where: the people know about the crimes and where they know who the criminals are - but they do nothing. The "lack of respect for law and order" was a good umbrella explanation and there were others like "drink, gambling and the proliferation of wantoks" or "loss of respect for authority", "disinterest of individuals" and "abuse of alcohol".

Some were rather more specific like:.

- acute shortage of housing
- dislike of expatriate contract workers
- continued dependence on short-term expatriates who are unable and unwilling to get fully involved
- non-nationals' treatment of nationals far too patronising - leading to the generation of a desire to get even
- disaffection over non-payment of compensation
- attitude of offenders - do not regard their actions as crime
- lack of any criminal stigma
- lack of community discipline
- clan jealousies
- greed
- reduced authority of village elders
- disintegration of values and morals (many)
- lack of parental control (many)
- attitude of villagers and public towards crime - which does not assist police
- wantok situation or tribal situation.

Others sought to be more penetrating, e.g.

> The Melanesian "sharing" attitude in conflict with the free enterprise attitude of modern development. This causes trouble.

> Erosion of traditional values: but (it was added) it should be remembered that traditional values were anarchistic anyway. However, this had not affected expatriates then as much as it does today.

> Basic change in the structure of society with village people coming to the towns where they find it hard - and they are easily led. At the same time they become increasingly aware of the true structure of society with the expatriates on top.

> Traditional tribal hostility - easily develops into disputes over land ownership and sometimes to war.

Linking the well supported and the minority opinions was a lively awareness - which came through more clearly in some papers than in others - that <u>disparities</u> were a root cause of trouble. It was not so much the levels of living as the juxtaposition of rich and poor, haves and have-nots. Nor did this always mean that in reality there were necessarily great gaps for some nationals have become wealthy and many expatriates dependent on salaries do not have the land rights possessed by many nationals who can rely on the social security of their families

or clans. The disparity is conspicuous in the differences of life style, the dress, the diet, the use of vehicles, the size of houses. The extremes are visible on the streets. People in cars, well dressed and with money to spend in the shops alongside bare footed urchins barely clad and without a busfare. There will always be a fringe of people incited by such aggravating differences to help themselves whenever possible - or maybe to give vent to feelings of grievance even when they do not get much out of it. A uniformly rich society or a uniformly poor society will not escape crime altogether but it can usually be tolerated Now, put them cheek by jowl and the crime is infected with resentment so that bigger trouble brews. Some respondents understood this very well: others felt more aggrieved that they should be victimised. As one person put it -

> "How can a person who has had his house cleaned out three times in three months concentrate on his work".

The remedies for the problem

Question 2 of Part 4 asked whether the person answering the questionnaire believed that the present law and order problems would increase or decrease. There was absolute unanimity about an increase being in store for the reasons already advanced for the problem. No-one could see these issues being tackled promptly and therefore an increase was uniformly expected

As for remedies, ideas for which were sought by Question 4, these came in clusters - more work, more education, improved policing, heavier penalties and more positive government.

Unemployment and urban drift

Since unemployment and the urban drift were the most frequently cited causes, solutions were proposed to deal with the high concentrations of unemployment in the towns. More education and more relevant education were the favourite approaches though more jobs and the formation of a compulsory national youth service had wide support. Those who favoured more education were of course thinking in terms of qualifying people for employment available. A few wanted free compulsory education, others mentioned the need for more adult and community education but several drew attention to the need to up-grade and improve the standards of education which were held to have been slipping for a number of years. Most of those favouring more relevant education specified more vocational training. These calls for more, better or more relevant education assumed of course that the jobs were going to be available eventually. Other respondents were not so sure and wanted -

- Government promotion of labour-intensive industry
- Incentives for foreign investment to create more jobs
- More rural employment to keep people from coming to towns
- Relocation of the unemployed back to their villages
- A compulsory form of national service of two or three years for all school leavers

- One respondent stressed that this should be civil not military and that the carrot for all those to become involved should be a guarantee of a job or land to cultivate at the completion of service.

- Another specified that a national youth service should facilitate the mobilisation of youth for community help projects, road construction, water storage, drainage and sewage works, forestry and crop training, accountancy, etc. There was a proposal that an Israeli kibbutz model could be used.

About 25 per cent of the answers involved legal measures to bring the situation under control. One wanted constitutional reform so that the movement of people across the country could be restricted when necessary. Another wanted all squatter settlements in the towns to be controlled or else removed altogether. There was the suggestion of a tax to be levied on all town dwellers who supported the unemployed and another that air fares should be made more expensive to discourage movement. The example was given that the air fare from Mt. Hagen to Port Moresby should be double the fare from Port Moresby to Mt. Hagen.

Law enforcement

Under this heading came calls for the government to recognise the seriousness of the law and order problem and to make a commitment to its solution. There was a general feeling that better law and order legislation was needed and a conviction that laws were just not being enforced. One returned form had the suggestion that there should be public campaigns to improve attitudes to increase social responsibility: and another thought that it would be more appropriate for the courts to work on Melanesian rather than European principles. There was a paper with a blunt recommendation in just three words -

"authoritative government required"

Of course, overwhelmingly, the demand was for tougher penalties for those convicted of offences. Two, perhaps facetiously, called for the chopping off of the hands of those who had been found guilty and had been considered a threat to the community. One of these two extremists added "There is little shoplifting where the hands are chopped". But generally it appeared to be believed that more severe penalties would be a marked deterrent. Only one voice was raised in a kind of question, remarking that -

> "The recently increased fines/punishments for break and enter offenders appear to have had little effect".

The police naturally attracted the greatest attention as an instrument for dealing with crime. Since, in giving the reasons for the law and order problem, those cooperating in the survey had stigmatised the police and criticised them as ineffective, badly led and lacking in motivation, it was to be expected that suggested remedies for the situation would mean recommendations for correcting these defects in the police structure and the quality of police operations. One of the forms returned had a sweeping demand for a 400 per cent improvement in police working and living conditions. It believed that the business community should help the government achieve this. Other forms just wanted more funds for the police without going into detail about how they should be used A couple qualified the recommendation for extra funds - one suggesting that it should be accompanied with more judicial support for what the police were trying to do. The other wanted the extra funds to be applied to ensure inter alia a European commander in each town. Several who did not mention extra funds implied they were necessary by calling for more expatriates for the senior positions in the constabulary. The vast majority of the returns demanded more police and better police administration, management and training - though these requirements were expressed in a variety of ways.

The other suggestions are perhaps best presented as follows -

- Police should be more visible to give a greater sense of security
- Police need someone at the top who commands respect
- Police should raid settlements (several wanted this)
- Police should have more foot patrols (many thought this necessary)
- There should be suburban police stations
- The police need better public relations
- Police should be delocalised in operational areas. (This means less nationals in key positions and is the same as the call for more expatriates).
- Police should be tougher
- Police need to be fully trained, motivated and encouraged
- Relocate police to break-up wantoks.

One area of police work that attracted special interest was prosecutions. There were several calls for this to be improved, that police prosecutors should be better trained. One submission argued that prosecutions should not be done by the police at all but by civilians who should have discretion not to prosecute.

An isolated return recommended that the police give more attention to the investigation of white collar crime.

Still under the general heading of "Law Enforcement" came a variety of recommendations for dealing with criminals and making better provision for convictions. These can be listed as follows -

- Convicted offenders should be rusticated (i.e. sent back to their villages)
- There should be better security in prisons
- "Rascals" should be "criminals" and not treated like naughty boys
- First time offenders in petty cases should be made to work 20 hours a week with city councils or interim commissions
- Criminals should be put to work in villages under the direction of village councils
- The names of criminals and their villages should be published
- Crime should be made shameful
- Village elders should be used more
- The stocks should be brought in

The last five are interesting as seeking to use shame as a means of improving future behaviour.

General

Not easily classifiable were a wide range of observations extending from remarks about the economy to ensuring a free press. Some of these have emerged already as reasons for the problem or as approaches to the solution of unemployment. For instance the suggested increase in the number of expatriates in key positions in the police was complemented by the observation, in one return, that -

> "An increase in the number of expatriates in the private sector may well increase the number of jobs available to nationals because of better productivity and overall economy".

Similarly, in a return from a missionary enterprise, the value of an example being given by expatriates was stressed.

> "Our expatriate staff are church workers. Their life-style is observably simple (i.e. older cars, fewer parties) and there is no alcohol in any residence. Therefore there are less attempted break-ins"

And the references to "pay-back" in the section on reasons are echoed here by one respondent writing that there is a need to "neutralise the fear of payback".

The solutions to unemployment occur again in this general area with such recommendations as -

- Develop the rural sector in a "massive" way to create employment and stop the drift
- Establish agricultural schemes in uninhabited areas
- Economy must improve.

The suggestion above that the police should be paying more attention to "white collar" crime gets one kind of precision in this general section when one respondent demands that the authorities must "bring politicians to justice".

However, there are a number of comments which are not easy to lump with any others and yet, though they represent the view of only one person sending back the completed questionnaire are worthy of quite serious attention. For example -

- Papua New Guinea like other developing countries has a law and order problem: and only time and positive government will decrease it.

- Provincial governments must be made totally responsible for law and order in their provinces - and must be answerable.

- There is a need for community pride. Village elders should be encouraged to prosecute criminals.

- Non-nationals feel that the situation is beyond them and so either become stoically resigned or get out at a convenient moment. A lot of non-nationals seem to have lost all enthusiasm for the country and its interests.

- There is a need for good sports and recreational facilities.

This leaves us with just three very specific recommendations worthy of attention. One calls for better street lighting and thereby complements a great number of the other suggestions for improvement. So too does a submission that it is necessary to improve the speed of repair and installation of telephones as a means of preventing crime or getting help quickly. And then there is the assertion already mentioned that the country needs a free press if it is to prevent crime.

Reasons and remedies - an analysis

Apart from being an opportunity to blow off steam - or perhaps a necessary sounding, in depth, of the flow of opinions on law and order through the private sector in Papua New Guinea, what value if any, can be attached to this collection of views and comments provided by business people on the reasons as they see it for crime and the remedies they consider to be necessary to deal with it?

It should first be noted that the 86 returns are almost exclusively the opinions of expatriates. There were a few nationals answering and they stand out in such complaints as -

> "Non-nationals treatment of nationals.....", or

> "Village people coming to the towns...become increasingly aware of the true structure of society with the expatriates on top."

But apart from these the rest are expatriate opinions: and it is to be expected therefore that there should be occasional emotional outbursts, a general addiction to severer penalties, a criticism of localisation, thought to be too rapid, an impatience with the ineptitude of the police and above all frustration at the seeming complacency of the government and the politicians who appear to thrive or get their perquisites of office whether they take their duties seriously or not. It must be remembered that these answers to the questionnaire were received not merely from businessmen but from businessmen who were victims.

Moreover, they were not merely victims once or just occasionally. Some were frequently or even regularly victims in their businesses or at home. So that the majority were worried not simply about a social problem but about their families' personal security. They were particularly concerned at the evidence accumulating that more personal attacks were adulterating and aggravating what had been regarded generally as a problem of property crime - house-breaking and stealing.

This targeting of victims has to be taken into account in interpreting the opinions that were expressed. For, although the law and order problem has much wider dimensions and obvious ramifications which are not expatriate, it can hardly be denied that the expatriate minority has been the objective for most of the offenders. The expatriates have been the most conspicuous "haves" and therefore they have been the ones most frequently victimised by the criminals. Of course, nationals suffer too and, relatively speaking they may suffer far more than the expatriates; but they are not so far away from their extended families who might be brought in for protection; and, apart from a few with flamboyant life-styles, they are not nearly as conspicuous or provocative for the would-be offender. Not surprisingly then, the expatriate group feels singled out for exploitation and

attack; it feels vulnerable and "put-upon". Many of these expatriates, even those coming from more thickly populated crime-ridden cities, have never been as close to crime as they are now - and the experience of having one's privacy invaded is disturbing even when one can afford the loss. Again, the guarding of privacy is more individualistically Western and more meaningful to expatriates than to Papua New Guineans. Moreover, these expatriate victims do not feel they have deserved it. There may be a few racially chauvinistic individuals but the vast majority would not be in Papua New Guinea if they were racists. They are usually well aware of the condemnations of neo-colonialism and of the radical opinions that they are here to make money out of the local people : but, in general, they feel neither guilty nor insensitive to the plight of the "have-nots" in the towns and rural areas. Those who did come to make money feel that they are giving a fair return for what they get and they believe that they are generating employment for nationals and complying with the requirements to localise and pay wages at levels determined by law. Those who came as specialists or experts with the government or the private sector feel justified to be filling positions for which local people are only just becoming available. They believe that they deserve what extra they may be receiving because of the higher levels of services they are rendering, their additional expenses back home and the comforts they are foregoing by living outside their own countries with fewer health, educational or cultural facilities. Sometimes, air fares alone for the occasions when they have to make visits or deal with family emergencies in their own countries represent an additional burden. Even so, the majority of the professional or specialist expatriates have no objections to properly qualified nationals receiving the same salaries as themselves and many have helped to train their replacements. Finally, both these groups of expatriates - the entrepreneurs and the specialists - are conscious of the fact that, with such a small money economy, they are the main taxpayers. They feel justified therefore in expecting that their personal security should be a charge on the government - not an additional burden on themselves and their businesses. After all they pay for so many of the government services; and it seems to add insult to injury that they should be prime targets for both the criminals and the tax-collectors yet still have all the worry of how to protect themselves and their families. The feeling of having to live and work in a state of constant apprehension of being slugged by the government or the "rascals" seriously detracts from the quality of life for expatriates in Papua New Guinea; and it saps both initiative and the sense of commitment. It changes their life-styles. They go out less, become more defensive and withdraw into barricaded homes when it is as necessary as it is natural for them to mix. It is in such a context that some of the extreme comments that have been recorded have to be read.

Yet, leaving out some of these crystallised expressions of frustration and pent-up aggression it is very clear that, amongst the expatriates who make up the private sector, there is an awareness that the crime problem is more than just a problem of more effective law enforcement. There is a lively appreciation of its deeper economic and social roots and it will be seen that some of the observations are perspicacious. For instance, whether one agrees that stealing and robbery are functions of capitalist policies or that rape is a result of the male/female ratio in the population, these are interesting attempts to look beyond the law enforcement dimension of crime. Much the same could be said about the preoccupation with affluence and poverty and, in particular, about the understanding expressed of the corrosive consequences of blatant disparity. These are the "haves" recognising the an inbuilt responsibility and appreciating the enormous pressures on the "have-nots".

It is, of course impossible for anyone in the towns of Papua New Guinea not to draw the apparently logical connection between poverty and crime. People are likely to steal when they are in need; and laws become progressively less constraining as those needs increase and intensify. So that poverty and crime, unemployment and crime and the concentration of these in squatter settlements is a theme which runs through practically all of the returns received in the course of the survey. Everywhere in the world slums and crime have been connected so why not here. Confirmation seems to be abundantly available - provided by the common knowledge that, when caught, the "rascals" are living in the settlements, are usually unemployed and are generally without alternative means of earning a living.

The conclusions therefore that poverty, unemployment and crime (especially property crime) are connected is drawn as readily in Papua New Guinea as in so many other countries of the world. There is a provable connection in individual cases of course, and the references to "idle hands" or the need for sports and recreation show that this need to provide for youth is well appreciated However, the assumption behind it is much less substantiated by experience i.e. the assumption that crime will decrease as incomes rise and living conditions improve. Some of the steepest rises in crime in the West occurred in periods of full-employment whilst conversely the depression periods are not usually correlated with the highest figures for crime. The poorest countries are generally the least troubled with crime. the richest are the most plagued with both violent and sophisticated crime. It is interesting that one respondent had noted that more money did not mean less crime. It is evident nearly everywhere that those who have want more.

Therefore the poverty/unemployment/urban drift connection with crime is rather more subtle than was evidently appreciated by the businessmen's returns. There were a few more thoughtful comments but generally there was no awareness that most of the poor, unemployed migrants are not committing crimes. If they were then by definition - and on the figures alone - the crime rate would be so overwhelming that normal life would cease. Victims would be forced out because they would be unable to protect themselves against the hordes, and the police would be more powerless than they are now. It is because the majority of the poor, the unemployed and the squatters are law-abiding that any semblance of normal life is possible.

Similarly, it is evident that the economy is not producing enough jobs and the victims call for more effective government to attract investment, to find labour intensive enterprises or to provide for a youth service to put the unemployed to work. It is interesting that in no return was there a mention of the 85 per cent of the population which is supported by agriculture - largely subsistence agriculture. Again, though the problems can be centralised in migration and unemployment, the real danger to Papua New Guinea is that the subsistence sector should be adversely affected by climatic changes. If this should happen then there would be no stopping the flow into towns. Even the recommendations for investment in the rural areas to create jobs are supposing a shift to cashcropping and less dependence on subsistence. but again this could increase the

rural vulnerability to world price fluctuations and lead to a denuding of the rural areas if the income from cash crops suddenly fell. Once again subsistence living is a safeguard not to be despised. The stabilising effect of this on the majority of the "have-nots" was a factor which attracted no comment in the returns - even in those returns which related crime to the economic structure.

The submissions received show that the push/pull factors in migration are very well understood and education is obviously central in uprooting the young from traditional ways of living. The disproportionate economic returns to education - especially to higher education in the past quarter of a century have convinced older people - and their children - that upward social mobility is tied to education, that education is the touchstone to untold riches - as of course it has been already for some. Yet in the returns there is a clear ambivalence towards education and its role in unemployment. There is a dithering between demands for more education or less, for more of the same types of education or for fundamental changes in the types of education.

Finally, in the social and economic reasons advanced there was an awareness that changes were taking place in the standards by which people lived. The references to values to the lack of a stigma, to the decline in parental or elder authority and to the importance of an example being given by the politicians, all show an understanding that behaviour is more regulated by social expectations than by law. However, like people in changing societies everywhere, the expatriates were better at perceiving the breakdown than at providing remedies. Widespread publicity campaigns are no substitute for home or peer guidance and these, in Papua New Guinea, as in most other countries, are declining. There was no suggestion that nationalism might provide a viable substitute if vigorously prosecuted. The Israeli kibbutzim model was mentioned for a youth service but the Israeli propagation of a national consciousness to offset the deleterious consequences of the ethnic melting process was not advanced.

So much was written on the police that only a few comments are possible. First, the police themselves have recognised and confirmed most of the short-comings and have sought the means to deal with them. They believe, as do so many of the questionnaire respondents that it is a question of resources. However, there is again an assumption that police prevent crime when indeed it is becoming increasingly obvious across the world that, even the best police forces, are unable to provide the residential protection that people want. That is why the private security industry is booming - not only in Papua New Guinea. It is communities that prevent and control crime. Yet the questionnaire answers bring in the communities only in terms of police/ community relations.

Apart from the references to values, the real strength of community pressure, even apart from the police liaison, would appear to be only dimly appreciated The existence of effective informal controls or the understanding that crime could only persist because it was community tolerated are not usually explicitly mentioned. They emerge of course in the frustration that so many feel that parents and leaders are not discipling the young - or that crime carries no stigma.

Turning now to remedies it will be clear that a discussion of most of these would involve excursions into the economic and social issues more fully explored elsewhere in this report. The recommended improvements in the police and the labour-generating potential of the economy have already been reviewed above. It may be useful to exclude some of the less realistic suggestions however. If the chopping of hands was not facetious then the author should be referred to Section 36 (i) of the Constitution of the Independent State of Papua New Guinea which states -

> "No persons shall be submitted to torture (whether physical or mental) or to treatment or punishment that is cruel or otherwise inhuman or is inconsistent with respect for the inherent dignity of the human person."

The underlined words would also appear to rule out the use of stocks or public shaming.

Some respondents aware of the constitutional safeguards have called for revisions - especially of Section 52 (i) providing that no person shall be deprived of the right to move freely throughout the country, to reside in any part of the country, etc. The desire to uproot town settlements and to send these people back to rural areas not only ignores this constitutional safeguard but gives less than sufficient attention to the experience gained elsewhere of such resettlement provisions failing. More than that it does not allow for the increasing number of unemployed young people who were born in town - nor for the problems involved in trying to apply such sweeping legislation fairly. Usually the worst and wiliest elements escape the net whilst the ones thrust back to rural areas where they no longer belong, are the ones likely to be least harmful in the towns. As already shown, the majority of the poor, unemployed squatters are law abiding. Having said this it should be added that there may be constitutional toleration of the rustication of persistent offenders - though how they can be kept in rural areas is another question. Similarly the suggestions for convicted offenders to do community work would seem to be reconcilable with the constitutional safeguards.

The observation that provincial governments must be made "totally responsible for law and order" is pertinent in view of the kiap/police divisions of the past and the move towards the centralisation of all police functions at a time when provincial government is being fostered. However, once again, there are constitutional implications because the police commissioner is given independence in operations.

In conclusion, whatever the refinements suggested in this analysis the private sector awareness that remedial action needs to be concentrated on the unemployment and on the police is certainly not mistaken. It is the form and implementation of these approaches which requires more attention than the respondents were able to give within the confines of a questionnaire.

CONFIDENTIAL - FOR I.N.A. RESEARCH PURPOSES ONLY

LAW AND ORDER IN PAPUA NEW GUINEA

PRIVATE SECTOR QUESTIONNAIRE

The questions contained in this survey are designed to provide a base for measuring the effect upon individual companies of the existing law and order situation. By extension this will then enable an estimate of the effect upon the Papua New Guinean economy to be calculated. Details are requested on a company basis rather than on differences which may be experienced by the same company in its different locations in Papua New Guinea. Such information is, however, extremely important and a question has been included asking for experiences in separate locations to be identified. Where you believe that the differences are of particular note it would be useful to complete a separate questionnaire for each centre and it is asked that you contact me regarding this.

I will be pleased to discuss any aspect of this survey or the research in general with you.

IMPORTANT: Your assistance in this exercise is most important and it is requested that this questionnaire be returned no later than 16th December 1983

C. I. Mackay
Deputy Director

COMPANY INFORMATION

NAME:.....ADDRESS:.....
CONTACT:.....PHONE:.....
LOCATION (MAIN)..... (Head Office/Factory, Plantation, etc.)
(OTHER)..... (Factory, Sales Office, Other)

PART 1 : LOSSES INCURRED:

QUESTION 1.

Please estimate in kina terms actual losses incurred as a result of the following activities for the years indicated: (do not deduct insurance reimbursements).

		1980	1981	1982	1983
i)	Theft of Stock	.....	.....	.....	.....
ii)	Other thefts (tools, etc.)	.....	.....	.....	.....
ii)	Theft of vehicles	.....	.....	.....	.....
v)	Property damage:	.....	.....	.....	.....
	a) business premises	.....	.....	.....	.....
	b) domestic premises	.....	.....	.....	.....
	c) vehicles	.....	.....	.....	.....
	d) cash crops	.....	.....	.....	.....

QUESTION 2:

Please estimate the cost of any medical expenses and associated expenses incurred as a direct result of a law and order situation for:

		1980	1981	1982	1983
a)	employee medical expenses	.....	.....	.....	.....
b)	dependant medical expenses	.....	.....	.....	.....
c)	associated expenses (travel costs, compensation, etc.)	.....	.....	.....	.....

QUESTION 3:

Please estimate the cost of employee absences from work attributable to law and order.

		1980	1981	1982	1983
a)	associated with the company	.....	.....	.....	.....
b)	unrelated to the company e.g. private situations/assisting relatives.	.....	.....	.....	.....

QUESTION 4:

Please estimate the cost of production losses experienced as a direct result of law and order problems:

		1980	1981	1982	1983
a)	production lost	.....	.....	.....	.....
	- factory throughput	.....	.....	.....	.....
	- cash crop replantings	.....	.....	.....	.....
b)	market size reduction/trading opportunities foregone	.....	.....	.....	.....
c)	expansion deferred	.....	.....	.....	.....
d)	new investments foregone	.....	.....	.....	.....

PART 2

COSTS OF PROVIDING PROTECTION AND INSURANCE:

QUESTION 1:

Please detail expenditure incurred in providing security measures as follows:

		1980	1981	1982	1983
a)	Watchmen				
	i) Directly employed	.....	.....	.....	.....
	- for business premises	.....	.....	.....	.....
	- for domestic premises	.....	.....	.....	.....
	ii) Contracted with security firm				
	- for business premises	.....	.....	.....	.....
	- for domestic premises	.....	.....	.....	.....
b)	Fencing, security bars, locks, etc.				
	- business premises	.....	.....	.....	.....
	- domestic premises	.....	.....	.....	.....

QUESTION 2:

Please give a brief description of measures taken or planned to be taken with estimated costs for the latter.

QUESTION 3:

Please provide details of insurance costs incurred in:

		1980	1981	1982	1983
a)	increases in premiums related to law and order	.....	.....	.....	.....
b)	new covers taken out	.....	.....	.....	.....
c)	amounts received for claims	.....	.....	.....	.....

PART 3: OTHER COSTS:

QUESTION 1:

Please estimate the cost of man hours lost as a result of dealing with law and order problems and attending courts, meetings etc.

		1980	1981	1982	1983
a)	Line workers time	.....	.....	.....	.....
b)	Management time	.....	.....	.....	.....

QUESTION 2:

Please estimate the cost of non-recoverables due to losses in:

		1980	1981	1982	1983
a)	uninsurable risks	.....	.....	.....	.....
b)	tribal fighting	.....	.....	.....	.....
c)	land owner disputes	.....	.....	.....	.....
d)	other	.....	.....	.....	.....

QUESTION 3:

i) Please estimate costs incurred in relation to the replacement of employees who have left employment as a direct result of the law and order problems:

		1980	1981	1982	1983
a)	nationals	.....	.....	.....	.....
b)	non-nationals	.....	.....	.....	.....

ii) How many cases of this nature have you experienced for

		1980	1981	1982	1983
a)	nationals	.....	.....	.....	.....
b)	non-nationals	.....	.....	.....	.....

iii) Do you anticipate recruitment problems for this reason.

	Yes	No
a) nationals		
b) non-nationals		

PART 4: GENERAL:

QUESTION 1:

What, in your opinion, is/are the major reason(s) for the level of law and order problems being experienced. (e.g. government, police, unemployment, education, the economy).

QUESTION 2:

Do you believe that present problems will increase or decrease in intensity. What are your reasons?

QUESTION 3:

Do you have any particular circumstances in your area which you feel contribute to or protect you against law and order problems? Please explain.

QUESTION 4:

To what extent (= by what percentage) have you been able to offset the costs to your business (shown in Question 1) by on-costing i.e. raising prices. Is it easy to continue this?

QUESTION 4:

Do you have any other comments regarding law and order in Papua New Guinea (e.g. Is there really a problem? What solutions do you see working?, etc.)

APPENDIX B.4

This appendix contains a discussion of people's perceptions of those involved in criminal activity and the use of the term "rascal" to describe them and ends with a general profile of Papua New Guinea criminals.

Appendix B.2

THE RASCALS OF PAPUA NEW GUINEA

Many people interviewed or surveyed in the course of this study were intrigued, disgusted, indignant or perhaps just mildly amused by the fact that the young offenders and the gangs (especially the town gangs) which commit quite serious crimes, which blatantly disturb the populace, go out of their way to generate fear and insecurity and which give so much cause for public concern, are nevertheless still euphemistically known as "rascals". Wayward, misbehaved aggravating young people may properly deserve to be called "rascals": but these violent street marauders who rob, rape and forcibly invade residences are common or even dangerous criminals and they do not deserve to be dignified by the term "rascal". For the word "rascal" is frequently an indulgent or bantering substitute for a wrong doer and it chides rather than condemns.

Actually, the "rascals" themselves rather like the word; and they do not regard it as euphemistic. Nor need it be; for the Oxford and several other famous dictionaries give the meaning of rascal as -

> "one belonging to the rabble or common herd; a man of low birth or station", or it can mean
>
> "A low, mean, unprincipled or dishonest fellow".

That would seem to get a little lower than "common criminal". It comes from the old French "rascaille" which in modern French is "racaille" meaning "rabble, riffraff, rubbish, trash" and it can be traced to Spanish and Portuguese words meaning "scab". That term would seem to be scathing enough.

The fact is, that most gangs, wherever they develop in a large society, need an identity, a collective description by which they can be known and respected (or feared). They take a perverse, sometimes fiendish delight in sporting a name which shocks or disturbs their elders. If those to be most victimised and disturbed are privileged foreigners, so much the better. The satisfaction of belonging to something challenging the status quo is increased.

Sometimes they adopt a title which deliberately adulates that which the society at large most detests. Nazi labels and swastikas have been favoured by gangs across the Western world since the Second World War. Castro, Mao and the Viet Cong inspired titles for gangs which used them to show their disdain for the values their own countries were trying to uphold. Now a variety of terrorist names are

popular. For a gang, the name is more than a title - it is a bond. Like the distinguishing war paint and the blood-curdling cries of tribal warriors the name unites them, excites them, gives them courage: it demoralises their enemies, enhancing their own sense of power. The name gives a feeling of belonging to something outside of the regular society with alternate standards of worth and status and with different channels for advancement and recognition. Under the aegis of a striking, defiant group name the members proclaim their importance, express their frustration and behave anti-socially just to revel in the way that people have to begin noticing their existence.

This is a venerable tradition which is not so new even in Papua New Guinea. Clan names, identifying tattoos and distinctive feathers in headdresses were adopted thousands of years ago by groups in this country concerned with their own survival and gaining the respect of neighbouring groups. Like the modern gangs they were often establishing a role - forcing others to acknowledge them. Some of the alliances of modern urban gangs against other groups are similar to the shifting alliances typical of rural life in earlier times in Papua New Guinea.

Sometimes the gangs themselves invent or adopt the names. So the ancient Greek gangs used to call themselves "Triballoi", "Autolecythoi" or "Ithypalloi" (Pearson 1983 : 222). In the 17th century the streets of London were being terrorised by the"Bravadoes" the "Dead Boys", the "Roaring Boys" the "Tuquoques", the "Nickers" and the "Scowrers". In the 19th century Birmingham was said to have its "Peaky Blinders" or its "Sloggers" and other groups prominent around the United Kingdom at the time were the "High Rip" gang the "Grey Mare Boys" the "Tiger Bay" gang and the "Scuttlers" (op.cit._:_188). During the 1950s the U.S.A. had the leather jacketed motor cycle gangs with names like "Hells Angels" and "Satan's Choice" and these were copied around the world as they were immortalised on film. In a curious sartorial aberration the "zoot suits" identified a class not particularly renowned for courage or law abiding behaviour: they were the anti-heroes of an age which followed the adulation of war-time bravery. An historical flashback was provided by the "Teddy Boys" all trying to become convincingly Edwardian. Then the "Mods and Rockers"; the "Spivs" and "Hippies" the more gentle "Flower People" and the more militant "Weathermen" and finally the "Skinheads" and the "Punks". Jamaica had its "Rudeboys" and Australia its "Bikies".

Sometimes however the names are conferred on the groups by an offended or exasperated citizenry and then proudly flaunted by the gangs themselves. "Riffraff", "Hooligans", "Larrikins", "Hoodlums", "Ruffians", are all virulent denouncements of this type-epithets which later come to be worn like badges by the denounced youth. "Street urchins" or "Street Arabs", "Corner Boys" and "Layabouts" had more general application and less appeal to the gangs but there was something positive and a little fearful about being a "Hooligan" or "Larrikin" - both Irish names for troublesome urban tribes. Curiously enough the Russians adopted the word "Hooligan" for their own young deviants at least a generation before the 1917 Revolution and it has survived into the classless society. They used to be regarded as a capitalist hangover into socialism but they have outlived all such political classifications. The Japanese call violent groups "Boryokuzoku", the "zoku" standing for a clan or tribe.

It may be objected that, in this account of labelling, we have strayed from the really criminal designation -that some of these names refer to mere unconventionality, boisterous, growing-up experience of young people who are not committed to crime; "Hippies" and "Flower People" may be permissive but they are peaceful; "Weathermen" and "Skinheads" have political overtones. That is true: there is always an overlap in deviance and some groups are more positively criminal than others: but it is equally true of the "rascals" in Papua New Guinea. One high school boy explained that in his school it was really "something" to be classed as a "rascal", so that many from quite well-to-do homes deliberately affected the frayed shirt sleeves and shorts, the bare feet and dilapidated appearance which identified them as sympathetic to if not actually belonging to the notorious rascals. Six or seven in each class of such upper middle class, educated boys would identify in this way and may well have been prepared to run risks with the law. It is common knowledge that some of the established gangs of rascals in the urban settlements are active, respected and successful participants in the National Youth Movement, conducting a variety of self-help projects which have the backing of the community. And it is evident at election time that these groups are by no means unaware of their political potential. They can be seen enthusiastically crowding some of the candidates' vehicles. The borderlines between criminality and protest, adventure and viciousness, get blurred And, of course with a global media there is now a widened imitative effect which leads youth groups across the world to ape each other. An international pop culture and drug culture has institutionalised some forms of deviance which may be far from the usual connotation of criminal but which rejoice in those illegalities which demonstrate a contempt of older social values. In some ways Papua New Guinea has been insulated by distance and its own diversity from the worst criminal or socially disruptive effects of such world-wide movements. But its exponents of criminal or social deviance have intensified the local campaign to achieve a satisfying, menacing and profitable image with the means at their disposal.

In Papua New Guinea then the word "rascal" is given to and enjoyed by a continuum of youthful non-conformists. At one extreme may be found the better educated students who are posturing against their elders and protesting by their appearance and behaviour against the comfort and complacency of those who seem insensitive to the gross disparities in Papua New Guinean society. At the other extreme are the hardened and professional criminals who usually lead these groups and who do not hesitate to use weapons and violence. Many of them have such long police records that, even if they tried to settle to some regular, non-criminal activity, they could now hardly avoid harassment by the police investigating on-going crimes. Whether guilty or not they would be held and questioned with obvious consequences for their jobs. In between the respectable and the reprobate are the restless and bored, the aimless and unconnected. A gang leader in prison referred to these younger ones as the "moral support".

It has to be appreciated that it is not easy for an unemployed young person hanging around markets and stores to avoid for long the rascal gangs, the members of which abound. His friends will be implicated; he may have to take sides in a given incident - or his support will be elicited. Soon he will be subsumed by the excitement of group activity, the feeling of belonging and the meaning imparted to an otherwise rather empty existence. Even so, the extent to which there will be an indulgence in real crime will vary. The rascal gangs, most of which are

unashamedly criminal, have large numbers of "hangers-on", young people who are with them but not criminally of them. The transition to real crime is a slower process - often accelerated by a police arrest, conviction and imprisonment. Once that barrier has been crossed, the differences between those who are and those who are not criminal begin to disappear. To the unsophisticated youth who has been mixed in prison with hundreds of offenders, not all criminals are bad: and many of them inspire his respect. Respectability (for him) has become distinctly relative. In a report on urban youth in 1981 it was said that urban youth gangs in Papua New Guinea had a culture all their own - not traditional, not western but with elements of each: this needs further study.

In 1975 an article on the gangs in Port Moresby was published by a former gang member, now a senior public servant (Polo 1975). Another psychological study of juveniles in trouble with the law showed that most of their fathers were in regular employment. Without initiation or a smooth transition to work or further education there is evidence from settlement studies and the attempt by the 1980 Census to define unemployment, that there is a distinction between the 15-19 year olds and those over 20. Unemployment figures decline in the older groups as community pressures are applied and more young people settle down.

If the rascals are to lose their wide appeal for the young or to decline in significance as delinquency recruiting cadres, the annual increment in thousands of school leavers for whom society has neither role nor patience, will have to be reduced. However, though this is an urgent need in its own right, it should be remembered that full youth employment does not itself guarantee an elimination of either gangs or crime: they both also thrive on affluence. Meanwhile there are ways in which surplus energies can be redirected and the National Youth Movement especially as applied by the Eastern Highlands Provincial Rehabilitation Committee demonstrates one way of doing this. It should be remembered that the West Indian steel bands which have achieved world wide fame and evolved a distinct musical style were originally aimless delinquent groups playing around garages and oil drums. Louie Armstrong learnt his trumpet playing in a school for young delinquents and in Papua New Guinea many people in established and respectable jobs - including some of the most effective night watchmen or the proudest peace officers serving the village courts - have already served terms of imprisonment as "rascals".

The rascals cannot be outcasts in a society so demonstratively young and so generally unemployed. Though they constitute a minority of the total young and unemployed (most of whom are remarkably law abiding) they represent a majority of their age group. Their criminality apart, they are a troublesome segment of youthful society so extensive and growing so rapidly, that society will have to come to terms with it. Or else, as has happened elsewhere, it will shape society to its needs.

As shown, the labelling of troublesome teenagers, many of them blatantly delinquent will continue: it is a generational phenomenon so that two hundred years from now Papua New Guinea will still have its notoriously identifiable fringe groups revelling in their power to generate concern and enjoying the discomforted

populace. They will undoubtedly then be as powerless and as relatively disadvantaged economically as their counterparts today. And, unless there are drastic changes in the structure of urban life in the next two centuries then an increasing, perhaps an overwhelming number of rebellious and disenchanted middle class or highly educated youths will also be attracted by the public defiance and the challenging alternative life-styles that these deviant fringe groups exemplify.

After all, the problem demanding such urgent attention now has been growing and indeed clamouring for attention for several decades. There is very little about the situation in the mid-1980s which was not fully documented and submitted for official action in the mid-1970s. And the gangs came into prominence long before this. Though Port Moresby had virtually full employment from 1945 to 1960 this has to be interpreted in terms of contract labour and a tight control of urban residence. Yet in 1966 only 250 men were described by the census as unemployed. Others did not admit it for fear of being regarded as vagrants and being sent out of the city (Gram 1976 : 123). Then in 1968 the number of persons unemployed in the city was estimated at 2000 and steadily growing (Daw and Doko 1968). Even though the strict meaning of "unemployment" needs to be qualified to apply to a situation in which so many not actively working could (at that time) return to subsistence living in the rural areas, the writing was already on the wall. Not only were more coming to town in search of work but more "educated" young people were no longer satisfied with what the rural areas had to offer. Also there were many more children born and surviving in town. It was a tidal wave of young, partly educated, urbanised unemployed, produced by reduced infant mortality rates and improved schooling similar to patterns already observed in many African, Asian and Latin American countries. The educational reasons for this are discussed elsewhere in this report. And always (and nearly everywhere) the economies had failed to keep pace with youthful expectations. In Papua New Guinea, as elsewhere, the formation of gangs of different degrees of formality to channel youthful energies and satisfy the needs for diversion and excitement was inevitable.

According to an Inspector J. Banono, President of the Police Association, there were fifty gangs in Port Moresby by 1971 - sporting such names as Ghosts, Rockers, Joe's Mob and the Black Horse Gang: and alarm about their activities was growing (Post Courier 26 July 1971). By 1972 it was being alleged that some juvenile crime was being organised by adults (Parry 1972).

One of the present study group writing on crime in Port Moresby for the government in 1975 observed:-

> "No one seems to know exactly how many gangs there are in Port Moresby, but if there are from 40 to 70 as is thought, and if some of these are over 500 strong then there is a serious situation when they become deviant subcultures working against the larger society and rejecting its rules and standards. But it would be a mistake to treat these gangs as if they were only an abnormal outgrowth of settlement life: the converse would appear to be true. It seems clear that these

> gangs are functional in the sociological sense. They developed in response to a social need and they thrive because they continue to fill that need. There is reason to suppose that unemployed, aimless, frustrated and bored young people unable and perhaps unwilling to find work, slowly drew together for mutual protection - probably against critics at home, older people who despise their idleness or other working youths who had no time for those less fortunate than themselves. Formed into powerful groups the unfortunate could compensate for their powerlessness and sense of failure. In a strong mutually protective group, they were able to stand against others, to make others respect their troublemaking capacity and to present a bold front to an alien world: this was a way to obtain a form of status and dignity.
>
> "Of course, such groups with nothing to do were naturally prone to obtain funds in the easiest ways, to adopt short cuts to the satisfaction of their wants and eventually to organise for illegal adventures. Gradually they made a business of breaking and entering, engaging thereby in a kind of guerilla warfare with the police. These gangs are reminiscent of the "mods and rockers", the "bikies" and many other hooligan type groups which developed soon after the Second World War in Europe, Australia and America and which have continued to plague the law abiding under different guises through the years. The Port Moresby gangs have a good deal less addiction to violence but they break and enter in ways which openly challenge the police. The names they adopt are indicative of their style and they dress in a non-conformist manner or adopt gang marks of rank and status. The Amigos, the Rascals, the Devils, the Taxis, the Laddies and the Ladies (a girls' outfit) all belong to different settlements. They protect their own territories against trespass by other gangs but do not usually commit offences in their own settlements. Nor are all these offenders under-privileged. One gang is reputed to be led by a university student with high school students as members. It is obvious that these groups will tend to grow, get bolder and more powerful. It may be only a matter of time before they begin to obtain arms to defend their territories with bullets, engage in armed robberies and be prepared to kill policemen getting in the way." (Clifford 1976 : 165-67)

That was almost ten years ago: but there is little to change. Hindsight has confirmed what was then only expected. It is these developments that have to be noted. Since 1975 the term "rascal" once confined to one gang has become a generic term for all. The violence has become more marked with armed attacks and robberies increasing and rapes becoming more numerous. Pistols have begun to appear. There are 12,000 guns registered and an estimated 10,000 unaccounted for. In the life history of one offender included in this report there is evidence that gangs might sometimes acquire firearms from the victims they successfully attack. More and more householders fearful for their families are obtaining firearms legally or illegally and the police have no easy task controlling the flow. With a remarkable similarity to some of the tribal fighting - where numbers always count - sorties in strength by large numbers of rascals have been increasing. And it is said that the police do not relish such confrontations unless they have even larger numbers.

What is equally striking is that despite these forewarnings and these reports and well documented accounts of the shape of things to come there has been a lack of official response. The counter measures have not been much in evidence. The government has not done much to stop the problem growing. In fact as government has been withdrawn from the grass roots and corruption has set in, the hope of doing anything effective has been extinguished Nor have the police become anymore efficient. Suburban policing is still a pious hope in most places so that criminal intelligence is not as plentiful as it should be: relationships with peace officers are still poor: detailed studies of these gangs have been few: welfare has decreased: and only the interest shown by the National Youth Movement has been constructive. Even there supervision has been lacking and only the Eastern Highlands Provincial Rehabilitation Committee offer evidence of sustained achievements in the redirection of burgeoning gang activity.

As underlined elsewhere in this report the economic, social and political conditions during the last decade have been deteriorating in such a way as to strengthen and intensify the functionalism of these urban gangs. They are more dangerous now because they have been deplored but ignored.

What can be done?

It would be a denial of history and a neglect of recent experience in so many countries to imagine now that the gangs in Papua New Guinea can be stamped out by shipping their members back to the rural areas. Too many of them were born in town or have never known rural life. The wiliest and most dangerous would have no difficulty escaping the round up - or they would soon find their way back to the life they know. The country is too mobile for people to stay long where they don't want to be. It would be an even more cavalier disregard of the evidence available elsewhere, to believe that all such gangs can be crushed or brought to official heel by the rigid enforcement of strict law by painful corporal punishment or by long prison sentences. These expedients have all been tried and found wanting. The Constitution with its concern for human dignity would preclude anyway most of the simplified Draconian penalties that are frequently recommended in exasperation. But even if these were to be authorised, the effects would be a displacement of the problem and a later revival[1]. The trouble will continue as long as society provides all the conditions necessary for its instigation and nourishment.

People say "conscript them all into a national youth service, discipline them and use them to develop the country at low cost". Apart from the enormous expense of this kind of programme, the army of specialists that would be needed to man it

1. Cf. The Police Annual Report for 1980 described the Prime Minister agreeing with the Commissioner of Police to react vigorously. The effects were temporary.

would not be easy to recruit; and supervision would have to be particularly creative and intense to avoid some of the debilitating morale problems in the disciplined forces of Papua New Guinea which are outlined elsewhere in this report. Moreover it would only buy time for the economy to expand because the troublesome young people could not be kept mobilised indefinitely and when they came out, still at a loose end, they would pose an even greater threat to stability and security than they do now. Such simplified solutions ignore the fact that some of the worst gang crime - and the most vicious types of gang warfare - in the United States flourished at a time when young people were being selectively drafted for the armed forces. Hooligans still trouble Russia despite nation-wide conscription; and "Teddy Boys" and "Mods and Rockers" were at their height when national service was general. Indeed national service in the United Kingdom was sometimes actually blamed for the youth problems because it disrupted the smooth transition from education to work. National youth services have had a chequered history in Africa - sometimes being used for political ends: but in the countries that have had recourse to such measures to relieve unemployment there have been no dramatic reductions in crime rates. Hitler whose success with youth is frequently quoted, needed military service and war to fulfill youthful expectations. Without these he would have been saddled within a few short years with large numbers of trained, inspired but very frustrated young people. His days as the leader would have been numbered.

Therefore, the arguments for a national youth service have to be considered on its merits - on its value for young people who need direction and purpose, quite apart from its value in reducing crime. It has never been shown that it does reduce crime. Though it is true that crime rates fell at home (in Australia and the United Kingdom) during the periods of the First and Second World Wars it was never clear how far the problem had been displaced into the military services themselves. Their need for police and detention centres certainly increased - though of course much aggression that might have been connected with crime could, during a war, be acted out against an enemy. Furthermore the societies at home were transformed by the war effort - reducing the scope and incentives for deviations. No one was idle - everyone had a place. Certainly the falling crime rates were no direct function of the call-up.

Reflections along similar lines might raise doubts as to whether the much to be desired period of full employment by a vast extension of the money economy would really eradicate the deviancy of youth which is associated with the rascals. These youth groups causing trouble in so many other countries were often at their most destructive and intrusive during periods of affluence. The fact that they had too much money was frequently advanced as a factor contributing to the delinquency. Thus Fyvel (1963) thought that violent delinquency in the late 1950s and early 1960s in the United Kingdom was due to

> "a new economic revolution which has put spending money on a scale not known before into the pockets of working class boys and girls." (Fyvel 1963 : 147)

And throughout the 1960s and early 1970s there were references to the irresponsibilities of youth produced by the cushioning effects of a welfare state. In fact, on the available statistical evidence the lower rates of crime appear to be correlated with periods of depression and unemployment. So it would be naive for Papua New Guinea to believe that its law and order problems will evaporate in the heat of an expanding economy. It may have less crime simply because it is less developed.

So, like the youth movement, the solution to the unemployment problem has to be pursued in its own right as something which should be done regardless of its immediate effect on law and order which may be contrary to that expected Aimless, frustrated, disillusioned young people need a place in society: but material improvements alone may not solve their fundamental role problems.

Obviously, the provision of employment and of opportunities for all is a necessity for the development of youth - quite apart from its crime prevention significance. With unemployment amongst the 15 to 19 year olds running at 40 per cent or more, with the oft-quoted doomsday warning of the National Manpower Survey (August 1981) that the active labour force will increase in the 1980s by 40,000 a year - for whom there will be only 4,000 jobs per year and with the estimate of 700,000 urban unemployed young people by 1990, the writing is on the wall. The numbers alone will bring more crime - and worse. So one does not need the spur of crime to urge action on a much more serious social dislocation. This is explored elsewhere in this report as an economic issue. Here it is sufficient to observe that however necessary and valuable a full employment policy for young people may be it is less certain that such a development will radically transform the youthful protest or change the desire that young people have to be noticed. It is these that give the "rascal" image its appeal and it will be an appeal still available to those who feel unappreciated. For, whatever measures are taken in Papua New Guinea - even a huge transfer of government resources to youth projects - would still leave fairly large numbers of young people unprovided for: and from these would come the rascals of the future. So it is more than an unemployment problem.

Having now reviewed some of the broader recommendations there are a number of practical measures that can be taken:-

1. One very obvious and urgent need is for Papua New Guinea to cease, forthwith, creating the worst kind of rascals or hardened criminals by sending young people to prison. This is not a "bleeding heart" plea, or a sentimental concern with soft treatment. It is a recommendation born of experience in the way society has created its own problems by a relative indifference to child care. It is an appeal to stop the rot. If the sterner penalties are to work later, they must not be used indiscriminately in the beginning. Society does not want young people to be hardened very early to take anything society can give. The use of imprisonment for young people for minor offences is inhuman. But experience shows that it is also self

defeating. No one under 16 should be sent where they can mix with the most deviant and depraved, where they can be used and abused by the older gang leaders and criminals; and eventually become worse so as to graduate from prison to the most prestigious and successful school for professional and violent offenders.

Courts should be deprived immediately of the power to imprison any young person under 16 for any offence unless he has proved so uncontrollable that no other institution for juveniles can handle him. No court should be able to imprison a person under 16 for the non-payment of a fine, for contempt of court or for non-compliance with a court order. These measures do no good to either the young offender or society - and they do a great deal of harm. This implies of course a range of expedients to be made available to the courts to deal with juveniles. Properly conceived and supervised these could be a good deal less expensive than the present forms of incarceration in prisons for which the transport costs alone must be high.

2. A second and related need is to involve local communities in the governing of their own affairs - even rascal affairs. The police should be included in these discussions with preventative measures being considered in relation to individuals as well as groups. These young people are sheltered and their activities condoned by wantoks who will feel differently and be less complacent if their household comes under more general scrutiny and their own status seems likely to be affected by the misconduct of youths for whom they are responsible.

3. To back up community action the national youth movement should support communities in the provision of sports fields, vocational training, language training and self-improvement generally. It is not generally appreciated how little is available in or near the settlements and housing areas to occupy young people not at school.

4. There is a need for a better understanding of the differences already documented by one of us of the life-styles of young people between 15 and 19 and young people above this age. It is a difference confirmed by the experience of people long residing in the settlements and it is again reflected in the measures of unemployment, formal and informal used in the 1980 Census. Again this affects the kind of community pressure for conformity which is exercised on young people of different ages.

5. There are evident differences between the young people constituting rascal groups in the larger towns and those nearer to rural alternatives. Sometimes there is a large annual turnover in the personnel of the urban youth groups near to villages. This needs to be better understood if helpful measures are to work. Here the experience gained by the Eastern Highlands Provincial Rehabilitation Committee needs to be generalised This Committee has demonstrated how much can be done with little.

6. The private sector has already done a great deal for sport and culture in Papua New Guinea. Its expertise and resources should now be mobilised to provide limited schemes for informal youth groups. The bridging of the gap between offenders and the usual victims will itself be useful: but also there may be ways in which lawful enterprise can be encouraged - which in itself would help to identify and make more conspicuous those recalcitrant offenders who still preferred crime.

7. Attention needs to be paid to the effect on rascal groups of minimum wage rates and the regulations designed to discourage informal trading. Enterprise and initiative has been crushed by unimaginative forms of protection for the established businesses which in the long run may be paying more in security and protection charges or the enterprising move from the regulated trading to the unregulated stealing.

The suggestion here then is that Papua New Guinea should be more cautious and sophisticated about its approach to its rascal problem - that it should avoid the short sharp shocks, the "short back and sides" and drill approach to a problem which is far more complex - that it should discriminate in its policies so as to avoid lumping all young people together as if they were all uniform in mind and heart. The suggestion is that before investing wildly and hopefully in short term solutions Papua New Guinea should learn from experience elsewhere and win over its youth instead of conscripting.

APPENDIX B.5

This appendix features a group of detailed profiles on Papua New Guinea offenders, based on a team member's investigations within the jails of Papua New Guinea.

Appendix B. 5

THE PAPUA NEW GUINEA OFFENDERS
(Selected Criminal Profiles)

Introduction

The offenders of Papua New Guinea - as of any other country are a varied group of:

- Hardened criminals who find satisfaction in their crimes and who have no wish to change;
- Professional criminals who calculate the costs and benefits of their illegal activities as carefully as any economist;
- The vengeful killers who obeyed an instinct of wild revenge which is a form of justice forbidden by law;
- Those who killed once in a temper and will probably never do it again;
- Corrupt politicians and businessmen - and the fraudulent officials who were tempted and went too far;
- The highly intelligent psychopathic/sociopathic offenders unable to feel for others. These are the cold hearted who are very likely to do it again - whether it is murder, robbery, rape or simple larceny;
- Some very ordinary young people who offended to escape boredom and give more meaning to life. These are young people protesting against and seeking attention from a society which seems to reject them and deny them a role;
- The backward or mentally and emotionally disturbed individuals who have acted out their problems in socially unacceptable ways.

This list is by no means exhaustive. There are some who are just unfortunate and a few who may have been wrongly convicted. There are evil men and women too, whom everyone knows about but who defy classification.

Since this report had to be concerned not only with the law and order situation but with those who committed offences - usually more than once - it was decided to collect a few life histories. Since occasional offenders are likely to be representative of the population as a whole the accounts which follow are of those who are unlikely to be representative of the population as a whole - the ones who are generally known as "recidivists". They have been to prison several times and some of them for long periods.

Those selected here cannot be claimed to be representative even of the group of persistent offenders, because the selection of cases was not random but on the basis of them being familiar admissions to prison. Moreover, to get a more precise representation, a larger number of interviews would have been necessary - a number larger than the time allowed for the study would permit.

The value of this small collection of case studies is that it demonstrates a typical flow of young people into lives of crime. The troubled domestic background, the frustration of leaving school and feeling excluded, the notable absence of opportunities for regular work or meaningful activities, the satisfaction of gang membership or group leadership, the feeling of power and the gratification of recognition, the disinterest in the plight of victims who were better off than they were, the excitement of being different and engaging in the running fights with the police. The maintenance of status in the prisons by dominating other prisoners - all of this will be evident. Amongst the small number of females there is the evidence of unbridled jealousy, a need for care and a questionable use of imprisonment in some cases.

It should be remembered however that those described here are outnumbered thousands to one by those who, submitted to the same pressures and frustrations, did not succumb in this way. There are much larger numbers of young Papua New Guineans who were drop outs or out-casts from the school system, who were untrained and unappreciated but who found ways of living without so conspicuously preying on others. That does not mean that these thousands of others never committed an offence or took advantage of others. It means only that they did not adopt this kind of activity as a way of life. It should be noted that in all the cases that follow the names have been changed to avoid identification.

1. Karo

Karo is of mixed race. He was born in Rabaul in 1957. His father was a plantation manager of mixed German and Kavieng descent, his mother of mixed Chinese and Kavieng descent.

There were four children of this marriage - two girls and two boys. The first and last children were girls and Karo is the youngest of the two boys. In other words, he was the third child born to his parents.

He was only nine when, in 1966 the marriage broke up. His mother left his father and brought all four children to live with her mother in Boroko, Port Moresby. Then the following year (1967) the children's mother was married again, this time to a Chinese of mixed blood like herself - and, by this second husband, she had one more child. Subsequently this new family of man, wife and one child moved to Australia where Karo believes that the husband is operating a small business. He has had little or no contact with them however because even whilst they were still in Port Moresby - in 1972 - he ran away from home. He was then 15 and he felt that his mother and stepfather were treating him badly. He left them to go to Hohola another suburb of Port Moresby where he was accommodated by friends but had to fend largely for himself. This means that he drifted into crime between 15 and 16 years of age, having completed primary and two further years of secondary education.

Before the mother and stepfather left for Australia, they appear to have sought to educate their children even though as a family they were moving around the town quite a lot. The stepfather was employed by shop owners - mainly Chinese - to take care of the businesses during the temporary absences of the owners. This meant that they had to move around to live where the shops were located

All the children went first to Coronation School where Karo completed 2 years of primary education before transferring to Bavoroko Primary School to do the next 2 years. He finally achieved Standard 6 at St. Theresa's School in Badili. Then from 1970 to 1972 he attended Moresby High School where he completed Form 2 before he suddenly abandoned his family for his friends in Hohola.

He looked around for work in Port Moresby but did not find any. With no work or income and with his friends' families keeping him he felt that he had to find ways of getting money to repay his benefactors. They were not asking for a contribution but he felt bound to repay in small ways. He quickly learned to live on his wits - to use the time on his hands to turn a dishonest kina. He cannot remember now the smaller acts of theft that he committed - the taking from shops, the pickpocketing or the snatching when the opportunity offered: but he does recall that in collusion with friends he would get into a particular workshop to steal copper. One of his friends had a "wantok" working at the place and he would tell them how and when they could get the copper. Having stolen it they would sell it very easily to a firm which was run by an expatriate. No questions were asked.

Karo appears to have had no contact with any of his family during this time. It was not long after, that his mother and her husband went to Australia. His eldest sister married, had one child and divorced, then married again and she too is now living with her husband in Australia having left the child by the first marriage in Papua New Guinea attending high school. Karo's older brother reached Form 4 of secondary school. He too has left for Australia. His youngest sister married a Chinese merchant in Kavieng, New Ireland and she has one child. There is little contact however and Karo last saw his sister in 1974.

To return to 1972, Karo says that he went with 5 or 6 other youths to break into a house in Hohola which they had been watching over a very long period They knew that there was "good stuff" there for the effort of taking it. At the same time Karo was trading in stolen property and picking up whatever he could. He stole purses and cars and, more generally, indulged his flair for leadership by developing a gang. He even acted as a moderator sometimes, helping to reconcile the interests of hostile groups in the settlements of Port Moresby.

Karo appears to have had a fair run of successful and lucrative crime without being caught. It was not until the New Year of 1973 that he was arrested for the first time. They were breaking into the Taurama Self Service store. In fact they had finished the job and were leaving in a stolen car when the police arrived and chased their car. They were getting away but suddenly ran headlong into a roadblock which had been erected by young New Year revellers outside Hanuabada. The police took them and the stolen property. Karo says that the police beat him and he confessed but he probably did not need to do so with the evidence so strong. He was given a sentence of 2 months in the Boys Town run by the Salvation Army at Sogeri. He quickly escaped from there and came back to Port Moresby but he was caught again for breaking and entering and also charged with stealing. This time the court gave him 2 weeks hard labour for escaping and a months hard labour for breaking and entering - the sentences to run concurrently. To serve this sentence he was sent to Wewak Boys Town. However, he was returned to the Sogeri Salvation Army establishment to await the air ticket. When this had not come over one month later he escaped again. Again he was recaptured and brought back before the court. But this time the court decided he had had enough and released him - cancelling the Boys Town Order.

So now Karo was back with his old friends - and his gang in the Port Moresby settlements. For, by this time his connections had spread beyond Hohola - and now of course he had all the new friends he had made whilst he was in the Boys Homes, to join him. He says that at this time there were actually two leaders of the gang of which he was one. He explains that they divided the gang into groups for different activities. Some were sent out for car stealing, some for breaking and entering and others for shoplifting: but they were able to join these groups when a car had been stolen and they could go out in force to attack the more difficult jobs - or to concentrate on selected premises.

Karo himself did not take part in all of these enterprises and sorties - but he took the proceeds. He was entitled to take the whole lot if he felt like it: but he only did this very occasionally with some of the gang members whom he did not particularly like. Usually he was content to take about 10 per cent because, after all, he felt that he had to be considerate of his colleagues. Asked what would happen if a member did not hand over the proceeds, he said that they would be beaten.

Thus the proceeds of these more or less organised criminal activities came into the settlements. The money of course he used to keep himself and to buy beer or clothing for himself and his friends. The other articles stolen he disposed of in a

variety of ways. Some he would sell - sometimes for very low prices but often he used them to make presents to those who had helped him with food and who had generally supported his gang activities. He was, by this time, quite well known in the settlements but particularly in Hohola where his operations were largely concentrated. Within a few weeks of being released by the court he was back on a charge of illegally using a motor vehicle and given 6 weeks hard labour. Of course this was only one episode in the continuous run of offences, the stealing of the motor vehicle being a prelude to the breaking and entering. The car was always needed for the get-away. It was the Boroko Court which dealt with this offence in October 1973. In December he was again charged with illegally using a motor vehicle and driving without a licence at excessive speed. This earned him 4 months hard labour with fines of K60 and another 3 months.

In 1974 he had, with others, broken and entered the Waigani Supermarket. A few days later he was arrested by the police whilst waiting at a bus stop. Again he claims that he got a beating from the police. He pleaded guilty and got his first long prison sentence of 2 years. It was further ordered that on completion of the 2 year prison sentence he should be sent back to Rabaul. He was sent to serve this 2 year sentence at Bomana prison outside Port Moresby.

Two or 3 months later he escaped from a work party but his freedom was short lived. He was recaptured and given an additional 3 month sentence. Three months later he again escaped, was recaptured and given yet another 3 months. This time however he was moved to the maximum security section of the prison. He completed the sentence without further escapes.

Actually Karo's account of the charges and sentences are slightly at variance with the police record but as the differences were not substantial it seemed best for his own recollection of events to be recorded here. This was how he saw it.

Released in August 1976, Karo was, in accordance with the court order, sent to Rabaul. Here he returned to his routine way of life and broke and entered again. He was caught and sentenced to one year and six months imprisonment. This he was serving in Rabaul but after he had escaped 2 or 3 times and had been given extra sentences for breaking and entering or being found unlawfully on premises during the time he was at large, he was transferred to Bomana Prison, Port Moresby where, although he was not put in maximum security, he did not escape again.

Released in February 1979 Kara went back to Hohola where he lived this time with an "uncle" of mixed blood who had known his father. The old gang of which he had been joint leader had been called "The Ladies" or "Laddies" but this was a corruption of "The Leaders" (pronounced "Leders"). This name had been acquired because in the early days (besides the copper mentioned above) they had become well known for stealing and selling lead. It had three girl members. As Karo was

released this old gang had split up - so he formed a new one - the "Mafia". It seems however that this "uncle" tried to get him into something more worthwhile. He kept Karo for about 15 months and got him a job with a steel company. Having kept this job without incident for the 15 months Karo was arrested for uttering a forged cheque. A friend of his, presumably a member of his gang brought him three cheques, asking his help to fill them in and cash them. The cheques were part of the proceeds of a break and enter. Karo filled them in for K400, K500 and K887. He actually cashed the first two but they were waiting for him when he came with the third. So again he went to prison - this time for one year and eight months. He appears to have served this sentence without incident at Bomana and was released. Curiously enough this particular offence did not appear on his criminal record. He may have used a different name.

Not long after he was released - in January 1982 - Karo was arrested again - this time on suspicion that he had taken part in a 1980 breaking and entering. He protested his innocence and was acquitted - but he spent 7 months in custody before being found not guilty. He had tried to get his old job back at the steel company but the firm had been sold to a Philippino and Karo's services were no longer required. Still depending on his "uncle" he had made his way by stealing.

In 1983 Karo was arrested for a robbery but again was acquitted. Later he was arrested again for a robbery and this time found guilty (though he is still protesting innocence). He was given 2 years and 7 months and he is still serving this sentence. Asked what he will do when released again Karo said he was anxious to settle down. He has a customary wife who has moved from her family to live with his "uncle" and he believes he can reform. He would like to use his driving ability and the welding and bricklaying he has learned in prison. To get a new start he would like to go to the Ok Tedi area. However, Karo has a well established criminal record and his fingerprints are on file. He can expect therefore that when an offence which looks to have his "trademark" is investigated by the police he will certainly be questioned.

2. Joe

Joe is a Chimbu who does not know how old he is. He is an only child and his parents live in Boroko. His father is a local council worker. Back in Chimbu, Joe says that his "brothers" are looking after the family gardens.

He first went to school in Chimbu at the community school where he reached Standard 3. He then came with his parents to Port Moresby. If it can be assumed that he was 7 years of age when he started community school then he was about 10 years of age when they moved to Port Moresby. That was in 1972. Very soon he was associating with a well-known Boroko youth gang.

Joe ran away from his parents in Boroko in 1976 (when he was 14?) and went to friends' houses at "Four Mile". He soon joined with others who were stealing and breaking and entering. However, a year before he ran away from his parents he had been charged with the stealing of a bicycle and placed on 2 months "probation". He had to report to the police every Friday in Hohola. Now at Four Mile he became the leader of a separate gang which took his name. He has committed far more offences than he has ever been charged with and his gang has grown over the years. Apart from Four Mile the gang has groups of members in Morata (small) in Koki, Boroko and Gordon. They are divided into specialist groups - some for car stealing and others for breaking and entering - but they combine for some offences.

Joe was sent to the Boys Town, run by the Catholics, for a period of 9 months in 1976. He had been breaking and entering at Six Mile and had been caught inside a house.

He was soon back at his usual profession and he must have been receiving a good income, for in 1977 he could afford the air fare to take himself back to Chimbu to see his "brothers". He stayed there several months, his activities merely being changed by the environment. There he stole chickens or other things which were available. He was not caught.

Back in Port Moresby in 1978 he was arrested for breaking and entering New Guinea Carpenters. He got 2 months which was spent at the Sogeri Salvation Army Boys' Town. A year later (1979) he was traced by his fingerprints and charged with breaking and entering Steamships, the premises of two dentists and other premises in Boroko. He was not convicted

In 1979 Joe was caught again on fingerprints and arraigned on no less than 17 charges which included breaking into the Steamships Supermarket. This time he got a 6 months sentence and a 4 year bond. Released in 1981 he lived in Boroko till December 1982 when again he was arrested and put before the court on 2 counts of breaking and entering. This time he was given a sentence of one year and eleven months. It seems that the National Court made this 2 years and 5 months.

Joe was an organiser of a recent group escape from Bomana. Seven of the prisoners got away at a time when there had been a celebration and there were few warders on duty.

He is now due out at the end of 1984 and makes no secret of his intention of returning to run his gang. It is a very strong and well organised gang - even in the prison where he has considerable status and influence.

3. Mutti

Mutti was born in Port Moresby at Three Mile but he does not know how old he is. His father and mother were from Gulf Province but his father is now dead. His parents had 9 children and he was the fourth. There were 4 girls and 5 boys.

The first born was a girl who is now married with 5 children of her own. The second child was a boy who is also married with 2 children. The third child was a boy who is married but with no children.

Mutti was the fourth child. He married in 1974 and has 2 boys, one of which is at school.

The fifth child was a girl who is now married with 3 children of her own. The sixth child was a girl who is also married with one child. The seventh was a boy - not yet married. The eighth was a girl - not yet married And the ninth child was a boy who is now 12 years of age.

Mutti attended the Kila Kila Primary School attaining a Standard 6 education. He left in 1969/70. Assuming that he was 13 or 14 when he left, he is now 27 or 28 years of age. On leaving school he was quickly drawn into gang activities but it was 3 or 4 years before he was caught. His involvement in gangs is demonstrated however by the fact that his first charge was for the willful damage - i.e. stoning cars at night at Kila Kila in the course of a gang fight. He was arrested when the police threw tear gas at the fighting gangsters. For this he got 2 months in prison. This does not show on his criminal record which indicates only one court appearance - in 1980 - when he was charged with escaping lawful custody, robbery and stealing.

Mutti has his own gang now and he has been its leader both in and out of prison for some years. It specialises not merely in breaking and entering but in direct violence and using chains and knives (but not guns he says). They attack both expatriates and nationals concentrating mainly on the shopping areas. Soon after he was married - in 1975 - he was arrested for breaking and entering and was given one year six months imprisonment which he served in Bomana Prison, Port Moresby. He was released in 1977. He then had about 3 years of criminal activity without being caught: but in 1980 he was chased by the police after robbing a PMV bus and this brought him back to Bomana for 6 months. Two weeks after admission he escaped but was quickly picked up and sent back to prison with an additional 2 months to serve. He escaped again 3 months later, was re-arrested and given an additional 6 months. Finally he was released in May 1981.

This time one of his friends who was working at a departmental store introduced him to the management and he was appointed to the security staff. The extent to which he might have been mixing his security work with crime is not known but he says that he never stole from, or broke into the store where he was employed - nor did he organise anyone else to do so. However, in 1983 he was arrested on

suspicion of robbery. He pleaded not guilty and he has now been on remand 7 months awaiting trial. His mother has hired a private lawyer to defend him. In prison he continues to govern his gang's activities both inside the institution and outside in the town.

4. Stephen

Stephen's mother died when he was 7 years of age. His father who came from Pari village and works in Port Moresby, married again when his wife died and he had 4 children by the second wife. He then divorced this second wife and remarried He is at present living with his third wife in Hanuabada.

Stephen has two brothers - i.e. of the same mother - his father's first wife. One is in prison with him and the other lives in the village in Pari. Stephen did the first three grades of primary school at Pari and went on to Standard 6 at the Hagera Primary School. He left school in 1974 and began looking for work but could not find any. In Hanuabada he had been more or less "adopted' by a family whose name he now bears. He appears to have little to do with his father who now has another family. Stephen attended various community centres to occupy his time and took vocational classes but he did not find them satisfying. He drifted, looking for something to do.

In 1976 Stephen left home and went by PMV bus to Tuberseria in the Rigo sub-province where he stayed for 6 months with friends doing nothing he says but fishing and "things he wanted to do". He returned to the adoptive family in Port Moresby and immediately got mixed up with the gang of which Joe is the leader. There was a break-in of the San Miguel Brewery and others were arrested who probably said he was with them. He was therefore picked up by the police as a suspect: but he said he did not do it. The court believed him and he was acquitted. He is now still on remand for an offence of robbery in Hanuabada which occurred only about 100 yards from where he was living. The people were drunk and there was a pistol which one of the boys gave him. He has pleaded not guilty and is on remand. He has spent 7 months awaiting trial.

5. Kavagl

Kavagl is a huge, muscular man of tremendous strength and he has learned to use this to dominate others. Born in Kominga village near Mendi in the Southern Highlands he is not sure of the date but his age is estimated at 22. Both parents are now dead and he feels that there is no one to look after him so he should look after himself even if this means getting what he needs by attacking others.

Kavagl's parents had 5 children, 3 girls and 2 boys. The eldest child was a girl who is now married with 5 children. The second child was also a girl and she is now married with 4 children. The third in the family was a boy who, according to Kavagl, has been married to 7 different wives (consecutively) and has many children. Kavagl was the fourth child and one girl followed who is also married.

Kavagl himself has been married and divorced He went to the school in the village and completed Standard 6 after which he returned to his home for one or 2 years. He had already determined that no one would help him and he would take what he wanted so that even in this early period he was in league with other boys in the village stealing from the trade stores. He was not caught.

After these 2 years at the village he went with another youth to Rabaul where they joined a gang which he referred to as "SS 55:Satan Strike" and Kavagl became the leader. They seem to have behaved with little restraint, Kavagl saying that they would go out to get money or kill. Having got money from the householders whose homes they penetrated with their knives and other weapons they would tie them up with ropes and leave them. If those people had no cash they would try to force them to write a cheque - and perhaps stay with them until they got the money. The gang had committed 30 or 40 of these offences before they were caught by the police. They lived in empty houses but did not want for anything - they always had enough money or knew how to get it.

He was first arrested at Kieta for breaking and entering but was acquitted. His next arrest was at Kimbe in West New Britain when he was imprisoned for 8 years for stealing a mail bag which contained K14,000 from the airport office. He said that the police got him only because he attracted notice by spending the money too conspicuously. His next conviction was at Rabaul for breaking and entering which earned him one year and six months.

He was released in August 1981 and went back to his home village for only a few weeks. Then in Mendi, still in August of that year, he went with 2 or 3 of his gang to the house of a Steamships employee carrying a knife. He got K5000 from them and then tied them with a rope and put them in the back room. He found a pistol and a gun in the house and took them for his own use. After this he returned to his village area for 2 weeks but. the police broke in very early in the morning whilst he was sleeping with one of his girlfriends. He believes that the police information about him came from some of his wantoks who were jealous because he had not given them any money. Charged with this offence he engaged a lawyer who got him off. He paid the lawyer K700 and the pistol. Soon afterwards he showed his disdain for the police by breaking and entering the police canteen and stealing K80 and "forty or fifty" cartons of beer. He next went to Steamships in Mendi during the night and stole food, K400 from the till and a quantity of electronic equipment.

He is currently serving an 8 year sentence reduced to 6 for entering a dwelling house in Mendi at 7.00 p.m., (he said this is a good time to get people to open the door) and robbing the occupants - an expatriate, his wife and a small child. He went to the front door with three of the gang and knocked. When they asked who it was he said that it was "their wantoks" (this is not clear: but he may have discovered from someone who had worked in the house what to say to get the door opened). As soon as it was unlocked and beginning to open he charged inside and grabbed the woman threatening to kill her if he did not get all the money he wanted. He said she was crying and saying that she had just had a baby. Also he said the husband was crying in the other room. The husband gave him K50 from his wallet but they said it was not enough and they wanted a cheque. He wrote a cheque for K900. Then the husband was tied up and put in the bathroom and Kavagl ordered the woman to make coffee for him. She did this and gave him something to eat. He then slept with her till 9.00 a.m. when he went to the bank and cashed the cheque. He claims he did not let his other men touch her because she had just had a baby. He says that he too did not rape her.

He was not arrested for this offence but for another - and his implication in this came to light. This time he did not get a lawyer but he was represented by the public solicitor who had an original 8 year sentence reduced to 6.

Kavagl has no experience of work and it is difficult to see how he would adjust to another life style having been attracted by the large sums of money he has been able to steal or extort - and the long periods of profitable offending between his convictions. However, he has a head for business and with some of his money he has brought shares.

6. Baundo

Baundo is a cheerful character who looks back over his career with regret but not without amusement. Though he achieved no more than Standard 5 he has been doing what he can in the difficult conditions of the Baisu Prison at Mt. Hagen to improve his English. He appears to have a good grasp of the language already and when complimented on the fact that he spoke good English, he replied "not really".

This cheerfulness belies the fact that he is currently serving a sentence of 7 years imprisonment for attempted murder. When police, acting on information from villagers, came to his village to arrest the gang, the gang resisted with knives and axes and 2 policemen were injured He was said to have stabbed a policeman. Though he was only the deputy leader of the gang, Baundo says that he assumed full responsibility for the offence. Six gang members were arrested but he said he was to blame and asked for the other 5 to be released.

Born in Hagen, the son of a councillor, his father is still a prominent politician. However, he does not know his date of birth but thinks he may be 25 or a bit older. He was the fourth of 6 children. The first born was a boy who is now married with 2 sons. The second was also a boy who is married and has 2 children. The third child was again male and he has married but has no offspring yet. Baundo came next and has never married but the fifth child - the one and only girl in the family is already married with 2 daughters of her own. The last child was once more a boy who is now working in Port Moresby.

Baundo attended primary school in Mt. Hagen where he went up to Standard 5 and left at what he thinks was the age of 13. He ran away from school and spending his time with other boys around his home he soon began stealing - small things at first. He was spending days in Hagen and frequenting markets and public places where there were ample opportunities to steal.

He believes that he began breaking and entering when he was about 14. It began when he was at his village and saw a boy riding a bicycle. It was something that he really wanted to have so he broke into the house and stole it: but in the village everyone knew who had done it and he was soundly beaten.

Most of the time he spent with other boys around the town of Hagen and they became very skilful at stealing from stores. Some would distract the storekeeper whilst the others were stealing. He was usually the one that did the stealing - food, clothing, shoes and other articles whilst others attracted the attention elsewhere - and he was never caught. He became too ambitious however and was eventually discovered walking out of a shop wearing a coat he had taken from the rack. Even then he was almost away when spotted and he tried to brave it out by feigning innocence and pretending that it was his own coat. They did not believe him and he was taken before the Children's Court and fined K15. He was then about 15 years of age. He did not pay the fine and ran off to his village where he stayed for about 2 months.

Then he returned to Hagen and this time began to pick pockets. He had seen a film in which a negro and two white men escaped from prison and the negro kept them by picking pockets. The techniques for hustling people and using the left hand to cover the movements of the right were quickly absorbed by Baundo who put them into practice in Hagen and was delighted to find how effective they were. He followed one person clutching a bag which had a strap over the shoulder and was held pinioned under the left arm pressing the bag tightly to the body. After studying the situation for a long time he slipped into the supermarket and bought a razor. He then got close enough to the person to slit the back of the bag with a razor and gently pulled out the notes. He got K500. And he was never caught once for pickpocketing.

His interest was next attracted to cars but he could not drive and knew nothing about them mechanically - so he set out to learn. He bought beer for drivers learning a little about driving from each one until finally they let him try and he practised. He still did not know how to get into a locked car but he stole some that were unlocked and got his real driving practice by steering them around before he abandoned them. Finally he watched what happened when people had locked their keys in the car and little by little he learned how to open them. This took too long for his purposes however and he usually stole his cars by breaking the small window to get in. Watching drivers in trouble had also taught him to connect the two wires necessary for ignition.

Baundo did quite well stealing cars and combining this with his other thieving until 1978 when he was caught trying to steal a car. He got in the car all right but the owner, a Philippino, had removed the rotor arm so that it would not start. He was very surprised that his learned tricks did not work and he was intrigued to find out why. He was still trying to make it start when the police asked him if the car was his. He said yes and tried to brazen it out but they arrested him and he got ten months. He was serving his sentence when he was transferred to the prison in Madang. He does not know exactly when this was but he remembers that it was at the time of the Rooney affair - so (he thinks) it was probably 1979.

On release he immediately returned to stealing cars but this time he was quickly arrested again and fined K200 or 6 months imprisonment. His family paid the fine and he went back home for about a month. This was now 1980. With a classmate from his school and other boys they now formed another gang. The classmate was the leader and Baundo his deputy. He was, he said, the "planner" of the outfit, organising the breakings. They concentrated on offices and became quite knowledgable about the layout of offices - where the petty cash was likely to be, where the most valuable items that could be carried - like calculators - were to be found. It was people in the village who gave them away - perhaps out of jealousy. It was when the police came that the fight started which occasioned the offence for which Baundo is in prison. Baundo is an intelligent and therefore an adaptable person as this record shows. He is very conscious of having let his family down and says wistfully that "they have given me up". Given the right openings it is possible that this man could be rehabilitated.

The Women

Female offenders are in a different category to most of the male recidivists already described. They are in prison for shorter periods usually and they are usually sent there for sudden outbursts of violence - usually domestic or for minor assaults connected with prostitution or disputes whilst they are under the influence of drink. There are some in the prisons for stealing and a considerable number for whom, in other countries solutions would have been found. In Papua New Guinea as elsewhere the number of female offenders is much smaller than

the male. It would appear to be common in Papua New Guinea for a man to remarry when his wife goes to prison. Usually when she comes out she does not go back to him. Of course if the man does not remarry and the woman does not return to him then after a few months he can demand the return of the bride price.

1. Koita

Koita has been in and out of prison for minor offences since she was 15 or 16. She is now 22. The prison staff thinks that she may have a mental disability. She is currently in Baisu Prison, Mt. Hagen for one month for obstructing the police. Her account of the affair suggests that it could be that the policeman's conduct was questionable. She explains that she was going to the cinema which is near the police station when a man followed her and eventually began to pull her arms. She resisted and he hit her - and arrested her - he was a policeman. It is not clear whether there had been any previous contact between the two but she denies it.

Koita was born at Kiak in Chimbu, the second of a family of 10 children. The first born, a boy who is now 25 described by Koita as "running loose in Hagen". None of her younger sisters are married - two of them are twins, 5 years of age. Koita ran away from home because she said she had nothing to do and she came to her cousin's house in Mt. Hagen. One of her previous offences was that she stole this cousin's dress and gave it away!

All the evidence points to this girl being more in need of care and attention than imprisonment.

2. Maraga

Maraga is a woman who is described as 23 years of age but looks to be about 35. She is serving a sentence of 12 months imprisonment for fighting in front of the Minj Courthouse. She was fighting her second husband's second wife. Two years previously she had been released after serving a sentence of 7 years imprisonment for murdering the second wife of her first husband. They had been living in the same house and her husband took a pig belonging to Maraga and gave it to the second wife. A dispute arose and Maraga killed her.

Maraga was born in Kontampi a village near to Minj in the Western Highlands. She is the third of a family of 4 - all girls except the youngest. All are married and the second has 5 children of her own. Maraga had no children and her husband, a driver, married a second time when she was imprisoned She too married a second time when she was released from prison 2 years ago but, as shown, the original problem of "another woman" recurred.

3. Valo

This girl of 23 comes from an area of the Highlands where there is still tribal fighting and she giggles when asked if she has become involved. It seems to be a bit of excitment for her. In town she likes discos. She is married but left her husband a long time ago. She also had a child but it died . She now lives with her sister. It appears that a fight broke out between her sister and the sister's husband's first wife. Her sister was arrested and Valo took food to her sister in the cell at the police station. However, she gave some of the food to another detainee and was imprisoned for breaking the regulations. Without more information about previous convictions it is difficult to understand the use of imprisonment here. Valo is the youngest of a family of 10, eight boys and two girls.

4. Mirisa

Mirisa was born in Banz in the Wahgi Valley of the Western Highlands, 19 years ago. Her father was a full time member of a church and he married twice - being presented with 3 children by the first wife and 7 by the second wife. Mirisa is the first born child of the second marriage. Two younger girls were twins and she has a brother at an important high school.

Mirisa is in trouble for stealing but she does not admit it. She was given 5 months imprisonment, after being recognised in the street by a woman who accused her of the theft. This was about a year after she had left her family (now in Rabaul) to come and live with her father's brother in Hagen.

She has not lost touch with the family. Her uncle has been to visit her twice and she is hoping to ask her parents to take her back to Rabaul where she has a boyfriend.

APPENDIX B.6

This is a short study of two former criminals.

Appendix B.6

PROFILES OF PREVIOUS GANG MEMBERS NOW SETTLED

Simon

Simon is nearly 30, tall and heavily bearded He knows that he was born in 1955 to a man who had a job with a company and whose wife presented him with 9 children. The family is from Iokea in the Gulf Province and Simon still has an entitlement to land there. A few years ago he went to his village and although he has lived nearly all his life in Port Moresby his grandfather took him out to the countryside and showed him the land that was his -how to identify the boundary by trees or natural features. He was told that anytime he could go back there, build his house on the land and cultivate it for his family.

Simon was the first born and the second child died The third child was a girl who is now married with 3 children of her own. Simon who is not married said that in Port Moresby a man needs a job to get married The next child was a boy who is unemployed - and frequently depressed. Then came another boy who now has a job and is married followed by a girl who is married but has no children yet. The last 3 children were boys and the youngest of these was given for adoption to a childless couple in the village. This man had wanted Simon's father to give him one of the older boys but Simon's father had refused. However when the man knew that Simon's mother was pregnant again he once more asked to be allowed to adopt. Simon's father came to an agreement with him that if the next child was a girl there would be no adoption but if it was yet another boy then he would give it for adoption. It was a boy so that immediately it was born it was passed over to the childless couple and is now being brought up by these people in the village.

Simon reached Standard 3 at school but had never had a job until 1974. He said that they always wanted someone with more schooling. Instead he quickly got mixed up with the gangs and became a leader. He has been to prison several times. At the age of 16 he was jailed for 2 weeks for picking pockets and was caught again stealing within a short time of being released and given 2 months imprisonment. He has also been jailed for 6 months for gangfighting but he was never caught breaking and entering although he committed such offences for years and got a lot of money. He says that the largest amount he ever got in one job was K17,000 when they broke into the Post Office. Asked about relations with the settlement communities he said these were generally good and they would share their spoils but every now and again someone would inform on them. If they found out who it was they would get a skinful of beer and then (having sent word to the man and his family that they were coming so that they could evacuate the house) they would destroy or demolish it. Sometimes the person would refuse to leave his house in which case they would beat him up before demolishing the house.

In 1974 he was affected by a missionary for the United Church who persuaded him to come to a service. He was eventually "reached" by realising that people were doing nothing for God who had given his only Son to redeem them. Gradually he got more into the church life and was persuaded to be baptised i.e. to repent the past and forget about it. Asked how he kept himself after the change over, Simon said that some of those most attached to him in the gang followed him and he was able to form a group. From their ill-gotten gains they each contributed K50 and with this little amount began fundraising for a youth group. From this kind of youth work he gradually became a co-ordinator of the Government's youth programme. Asked about improving his educational levels Simon appeared to have no interest. He is very conscious that to do this he would have to learn with younger people. He now has a role and status flowing from his link with the Government and is satisfied.

Joseph

Joseph is just 21 having been born in Port Moresby in 1963 to a family from the Gulf Province (Ihu, sub-province). His father was a government servant. The family had 9 children - Joseph being the fourth. The first born child was a girl who died, the second was a boy who is now married with 5 children. Another boy preceded Joseph and this one is married with 3 children. Joseph is not married After him came twin boys and then a girl and none of these are yet married. The last 2 children were girls - one died and the other is still at home.

Joseph completed his Standard 6 at Pari Community School in 1972. The following year he entered the Yarowari Provincial High School where he got as far as Form 2 or Grade 8 before being expelled with some of his friends for breaking into the school canteen. He then began to drift and quickly joined the gangs. He had already moved to Hohola when he was 15. He first joined the Amigos which later became the Laddies and then this was disbanded and they deliberately reformed as a gang calling itself the Mafia. It was possible to crosscheck this story by getting the names of leaders whom I had met elsewhere (some in prison). He was first imprisoned for 2 months when he was 16 - for gang activity in the market place and serious damage to property. Thereafter he was in prison 6 or 7 times. He once got 6 months for a gang rape when they had dragged a girl out of a theatre and raped her.

He has also been in prison for breaking and entering and for robbery. However, in 1975 he was contacted by the United Church and he had a change of heart, confessing his sins with true repentance. He now runs the permanent Youth Fellowship for the Church and works for the youth movement. He believes that he underwent a physical and mental conversion.

APPENDIX B.7

This appendix looks at the role which voluntary agencies can play in the "non state" oriented law and order strategy recommended in Volume 1.

Appendix B. 7

THE ROLE OF VOLUNTARY AGENCIES

The role of government and the concern of the private sector reviewed here, are to some extent combined when individuals and families from both unite in the voluntary bodies for the organisation of social activities aimed at inducing behaviour of community value. Missionaries were sometimes the first - or amongst the first - to penetrate Papua New Guinea, not only in the 19th century but in the highlands before the Second World War and in the re-organisations which have occurred since the 1950's. They pioneered and developed education at all levels and have engaged in agriculture, commerce, and industry as well as in the development of the media in Papua New Guinea. The colonial period saw the introduction to Papua New Guinea of most of the international voluntary bodies - scouts, guides, the Red Cross and, of course, the church related organisations. Indeed, to some of these voluntary bodies must go the credit for grooming many of the Papua New Guineans, who have led the nation since in politics, in the public service and in business. They have been prominent in the women's movement and in the improvement of social services.

As law and order has deteriorated, particularly since the end of prohibition in the early 1960s, these organisations concerned with human fulfilment and the promotion of moral standards have worked strenuously to develop the restraints on individuals and families which were so obviously declining in some of the traditional social institutions in towns. The venerable antagonism of some of the churches to the customs irreconcilable with their own doctrines has usually been adjusted to cooperation for better standards of public and private behaviour. Women particularly have used these organisations to help their families. Overwhelmed by the enormous numbers of role less unemployed young people in the towns they have laboured to provide compensating leisure interests; and they have been prominent in the National Youth Movement which supports youth groups at village and suburban levels and links them into national development activities of extension service agencies. For all these reasons the voluntary agencies need special consideration when broad changes in national attitudes and behaviour are sought. They are not secondary channels of action, there only to supplement government policies and programmes. They have a distinct and complementary role of their own.

The bulk of this report is concerned with the kind of formal and informal action which might induce greater security but it would be a mistake to undervalue the tremendous potential of the voluntary organisations for the kind of personal dedication and disinterested social service which can make external controls unnecessary and provide the country with security from within. The nationwide mobilisation of Catholic groups for the visit of the Pope reflected the enormous and very genuine interest and support for the church in Papua New Guinea. The Seventh Day Adventists have recently opened a university. Missionaries are living and working at grass roots levels - personally integrated with societies remote

from provincial and local government agencies. Their congregations are united and devout. They can and do mobilise for action. With state aid the women's movement has been fostered and there are organisations for the help of prisoners, especially juvenile offenders. The Salvation Army and Catholic organisations run institutions for juvenile offenders. The power is there, the dedication tried and proven, the public appeal unmistakable; and the prospects for development are enormous.

There are, however, some complications inherent in the voluntary bodies movement in Papua New Guinea which need to be faced squarely if the best is to be obtained from their partnership with official and private sector bodes in securing a change in the law and order situation.

First, it is not enough to rely on the conviction that goodwill in the voluntary bodies assures either efficiency or cheapness. Even "self-help" has been abused by people able to manipulate local situations. Such concepts are very Western. The great "voluntary body for social change" movement originated in 19th century Western philanthropy when taxation did not cream off inordinate earnings and when a church-developed social conscience led to deep concern with the large scale misery and deprivation at the lower end of the social scale produced by the Industrial Revolution. There were many persons - especially women and wealthy people who had retired - who were free and rich enough to give full time to voluntary bodies. Gradually both the money and time dwindled. Taxation whittled away unearned income and those working had little free time. In the countries where it began, the movement has largely worked itself out so that the best ensconced organisation often depends now on government subventions to provide full time secretarial and field services. There are, of course, huge charitable trusts but even these have developed their own permanent, paid, administrations and these funds' exemption from tax makes it possible to regard them as being, in effect, para-statal organisations. They do work the government wants or at least will not prevent and can raise funds which will not be taxed. People will not usually be taxed on their contributions so that this exemption amounts to a generous government subsidy.

This change in the working realities of the voluntary bodes - church and other - has been transmitted to Papua New Guinea. Here, of course, it has never been easy to get the volunteers for any length of time because with the wantoks so powerfully established and both able and obliged to look after their own, the need for a wider altruism was imbibed from the doctrines imported rather than being a part of local custom. The highly individualised Western person may have a feeling of unlimited concern for his fellow men but he is rarely in a position to genuinely share his substance. The customary-oriented Papua New Guinean on the other hand has obligations which are less wide but more exacting. They extend to the family or clan only - but they are virtually unlimited. Everything must be shared. Nor was government money as readily available in Papua New Guinea as abroad. In fact, some voluntary bodies depended very largely on funds coming from overseas. Nevertheless, the provincial governments of Papua New Guinea

provide subventions for churches and voluntary organisations. Projects are funded by a variety of government organisations anxious to develop self-help. Difficulties develop as it becomes obvious that the voluntary bodies lack time and resources. Yet, given these, they tend to do what a government official would have done anyway.

Second, the rationale of funding voluntary bodies to do what otherwise the government would have to do for itself is that they can offer more value for money. They can find the volunteers to work for nothing if the equipment is bought or their expenses met. This is true if the cost of administration of the distribution of funds does not become excessive - if local full-time organisers do not make local volunteers jealous of their paid positions - and of course if the projects are supervised and successful. The rivalries between the several voluntary organisations - church and lay - must also be taken into account. In the struggle for influence and tradition not all is sweet charity. The complementary government-voluntary body role can be diluted in the scramble for funds.

Third, when youthful misbehaviour is considered, the voluntary bodies in Papua New Guinea are subject to the handicaps which beset their parent bodies abroad. First, the wilder groups are not usually the ones who are attracted Second, to be effective at changing youthful conduct these organisations have to penetrate peer groups. The older influences via the family may still constrain especially in the rural areas where wantok authority can be strengthened: but essentially the peer group - not here - but across the world - determines the critical lawless or law abiding action and is generally resistant to formally organised groups whether voluntary or governmental. The Eastern Highlands Provincial Rehabilitation Committee and some of the individual work by youth coordinators of the National Youth Movement have demonstrated that it is possible not only to influence peer groups but to mobilise them for specific tasks. Some rascals are working for the youth movements full time or part-time. Even so, looking at the problem of youth misbehaviour as a whole, this local success can only be regarded as peripheral. Sometimes it is achieved by neutrality towards criminal activities: that is the crime is thought to be a job for the police, not the concern of the youth worker who has to maintain contact and inspire confidence at all costs. Maybe, but it is a delicate role to maintain and sometimes too much of such permissiveness can emasculate leadership. So there are dilemmas and difficulties. However the Youth Movement and the Eastern Highlands Probation and Community Development Scheme so far as they go are promising and deserve to be extended After all no one seems to have a better idea for the unemployed.

It is not easy to see even a greatly augmented mobilisation of voluntary bodies in Papua New Guinea having any real impact on the mass of unemployed youth however and probably, by definition, those most in need of the voluntary bodies will be the ones to avoid them. Aggressive street corner social work by the voluntary (and official) youth leaders might rope in a few but, on the whole, this wholly commendable work with so much individual effort does not solve the problem of the aggregate. The mass of unemployed young people from whom many of the criminals are recruited will continue. Indeed there are instances of delinquents participating in self-help schemes during the day and breaking and entering at night.

Fourth, there is a tremendous possibility for the voluntary bodies to influence home life and the quality of child care but the communal values already enshrined in the obligations which relatives have to each other need to be considered first. Western-type courses designed for a self-reliant nuclear family may be socially destructive when they are most hygenic. How far to go - how to harness change with tradition is a huge subject underlying the activities of voluntary groups.

Fifth, the influence of voluntary groups on drinking habits could be critically important. Some encourage prohibition, others moderation. All are perturbed by the effect of drinking on home life, tribal fighting and public order. But what have the effects been on drinking habits? There must be thousands of individual stories: but records of careful follow-ups of community changes have not usually been available. Yet we know from settlement studies that some households spend hardly anything on liquor whilst others spend a lot. It would be interesting to know what has happened.

We believe that the potential is there for all voluntary bodies to have a great impact; but more needs to be known about -

1. How the voluntary bodies influence behaviour

   - when they fail and why
   - when they succeed and why.

Success here needs to have a time frame and case histories need to be followed up.

2. How better forms of training can be given to volunteers willing to take the responsibilities. What can they be taught to do which will have the best results.

3. How greater cooperation on a national basis can be achieved

We think that "more of the same" voluntary work, as in the criminal justice system, will not get very far. We hesitate therefore to endorse the Morgan recommendations in this respect. They imply that the need is more for quantity (greater government support: channel funds through voluntary bodies to get more value for money) than quality. Maybe as a committee of officials the Morgan Committee felt hesitant about getting into questions of quality. We have no such hesitation though we recognise that we are raising subtle and profound issues which have rarely been researched Some organisations are actually working better here than they do abroad. Others are community groups only sketchily fitting their imported titles. Through it all a process of transformation is unfolding with effects different from (perhaps better than) those intended. The trouble is that the process is little understood. Self-criticism is needed,

scrutinised and the criteria for success carefully reviewed. This work could be initiated by the university among social workers and by the Office of Youth, Women and Religion. Too much has been taken for granted. Western models have been imported without sufficient regard for custom - and the results have not been sufficiently checked by follow-up. There should be built-in evaluations. Not just to check on the organisations but to dispel some old myths about how these things work - and to refine the approaches for the benefit of all.

It could be that the government subsidies are not enough to help voluntary bodes cope with a youth unemployment problem growing every year (by about 36,000 in urban areas): but the past correlation between rising crime and rising government support for voluntary organisations is a bit like the rise in police expenditure and the rise in crime. It can surely provide no basis for complacency. We have not had the time to go into this matter as much as we would have liked but we believe that much of what is now being done needs research and evaluation. Papua New Guinea already has the resources for this. They merely need to be applied to refine and make more effective the voluntary work already under way.

APPENDIX B.8

This study by one of the team analyses village based disputes, looking both at the nature of the issues and the characteristics of the disputants, and discusses the disposition of them by village courts.

Appendix B.8

LAW REFORM COMMISSION VILLAGE DISPUTE DATA

Background

The data described here were collected in 1979-81 as part of the Customary Law Development Project of the Law Reform Commission (LRC) of Papua New Guinea. This project "was designed to provide the basis for developing a Papua New Guinea legal system based on Papua New Guinea values, customs, beliefs, perceptions and institutions" (all quotations in this section from Scaglion 1983). The project consisted of work on a bibliography and collection of new data on "customary legal systems". The data collection was undertaken by students of the University of Papua New Guinea under the direction of Dr. Richard Scaglion of the LRC. The first publication on the new data collected is the LRC's Monograph 2 (Scaglion 1983) which contains qualitative accounts by the students of their fieldwork.

The field research also produced information on a large number of separate cases. The LRC intended to do a computer analysis of these in order to provide a quantitative summary of findings and to set up a data retrieval system which would allow users "to scan the types of cases they are interested in and receive a printout of summary information about the cases together with case numbers of individual cases". Dr. Scaglion was unable to complete this stage of the project during his time with the LRC. However, he has prepared a number of cases for computer analysis although not so far as I know for case retrieval.

Punch cards for these cases and an initial system file description were held by the LRC in Port Moresby in early 1984. This material was of interest to the IASER/I.N.A. Law and Order study because it covered different parts of the country and dealt with the full range of mechanisms available to rural communities to handle disputes and offences. The LRC kindly agreed to make the material available for a summary quantitative analysis by myself. I would like to thank Josepha Kanawi, Susan Toft and Richard Scaglion for their assistance and cooperation in this task. Ian Armstrong of the National Computer Centre arranged the computer processing of the material.

The presentation in this appendix is designed first, to draw out of the material conclusions relevant to the argument in Chapter 14 of this report and second, to inform potential users of the existence of the resource which they might be interested in using further themselves. The secretary of the LRC retains control of and should be approached for access to the data. A printout of the data itself, frequencies and 60 cross tabulations is available (with index) at the LRC, Waigani.

Characteristics of the data

The cases in the computer file number 481 or 89 per cent of those recorded as being collected in Monograph 2. The cases were collected, as already indicated, by 30 university students, who worked for course credit in their home areas in either the 1979-80 or the 1980-81 long vacation. Standard schedules were used for the recording of each case. The majority (59 per cent) were recorded from accounts given by informants of past events, 27 per cent of cases were observed, 8 per cent were current but not observed and 5 per cent were collected from written records. There was a tendency for a higher proportion of village court cases to be observed first hand and for fewer local court cases to be observed.

The 481 cases are presented in terms of the 36 variables shown in Table B. 8. 1. I list them here at length so that the reader gains an impression of the full range of the material.

Table B. 8. 1

Variables available for each case in
LRC village dispute data

Purpose[a]	Variable name in analysis[b]	Full description[s]
Identification	NUMBER	Case number
Background	PROVINCE	Province where recorded
Type of case	TAXONOMY	Type of case intended to represent indigenous perceptions of conflict management
	VCTYPE	Type of case according to village court officials' handbook
	CHARGE2	A major secondary charge in case (VCTYPE categories)
Methods of handling case	VCOURT	Was village court used as a remedy agent?
	LCOURT	Was local court used as a remedy agent?
	LANDMED	Was a land mediator used as a remedy agent?
	WELFARE	Was the welfare office used as a remedy agent?
	REMEDY1	First major remedy agent used
	REMEDY2	Second remedy agent used
	REME DY3	Third remedy agent used
	WHERESET	Remedy agent settling case

/continued

Table B. 8. 1 continued

Techniques of settlement	SETTECH	Main technique for settlement of the case
	RITUAL	Was some type of ritualized settlement used?
	RITTYPE	Which was the main ritual settlement mechanism used?
	RITTYPE2	Secondary ritualization mechanism
	PUNTY	Main type of punishment or negative sanction (if one party "at fault")
	PUNTY2	Secondary punishment given
	AMTPUN	Amount of fine, compensation or balance of exchange levied on "guilty" party
	TIMELAB	Time spent in public labour
	TIMEJAIL	Jail term given
	GUILT	If one party was thought to be "at fault", what was the guilt type? (collective or individual)
	COUNTCLM	Type of counterclaim, if any
	PUNID	Identification of who punishment as levied against
		Method of collection
Method of Collection	TYPECASE	Type of case (how collected)
Other characteristics of case	PHYSVIOL	Did the conflict involve physical violence?
	CONFHIST	What was the conflict history of these particular principals?
Characteristics of parties involved	SEXPLTF1	Sex of main plaintiff, whether not case brought by that person
	SEXPLTF2	Sex of person bringing the case (if not the plaintiff)
	SEXDEFT	Sex of main defendant
	AGEPLTF	Age of the main plaintiff
	AGEDEFT	Age of main defendant
	SMVILL	Were principals from the same village?
	SMCLAN	Were principals from the same clan or similar relevant social group?
	SMFAM	Were principals recognised as being related (according to kinship of that group)?

Notes:
a. My categories.
b. As on computer file.
c. As in Scaglion's codebook plus extra details in his letter to LRC dated 10 May 1984.

There is no sense in which these cases were ever intended to be a representative or random sample of all village disputes. However, there was an aim to spread the researchers well around the country. In the event and due largely to the availability of students and their different abilities, the geographical spread is rather uneven and in some parts very thin. Table B. 8. 2 shows that 50 or more cases are only available from Enga, Gulf and Morobe provinces, while some provinces are not represented or represented by less than 10 cases. This geographical distribution of the 481 cases imposes considerable limitations on their use. The province variable is almost unusable in all but three cases. It would be unwise to consider the data as fairly representing rural Papua New Guinea. Rather they may, where distributions are very different from what might be expected on a random hypothesis, suggest trends in a very mixed group of rural communities and hypotheses for further investigation.

A second problem of interpretation is that for the communities studied we do not know what is the relationship of the cases available to the whole set of offences and disputes in the community in a given period Students were instructed to record all cases occurring during their research, but there must have been certain kinds of selectivity in recording the 64 per cent of non-current disputes. We do not know how the students chose the ones they did, or whether there was a tendency to favour particular types of cases or cases handled by particular means.

Table B. 8. 2

Province where village dispute occurred

Province	Number of cases	Province	Number of cases
Chimbu	17	Morobe	82
Eastern Highlands	29	New Ireland	6
East New Britain	10	Northern	44
East Sepik	29	North Solomons	11
Enga	73	Southern Highlands	39
Gulf	91	Western	5
Madang	18	West New Britain	20
Manus	7		
Total			481

Third, we need to be cautious about the quality of the information collected, as in all research projects. In this case 30 different researchers worked in different parts of the country. They were trained and supervisors visited most but not all of them in the field. But there are a few points where the case details appear unlikely or inconsistent.

A fourth concern is the data processing itself. Dr. Scaglion was not able to run a full edit on the data at the LRC (personal communication). It looks as if the coding (or possibly the collection) of some variables was handled differently by different people, causing some inconsistencies e.g. on the settlement techniques variable. We found 50 (0.3 per cent of) computer entries out of range and 361 (2 per cent of) entries where the use of 000 and 999 was not clear to us. Further entry errors were apparent in cross tabulations. These data/coding/punching errors are not large enough, however, to obscure main trends in the data.

A fifth problem is that the person presenting the results is not the person designing and conducting the field research. We will not have done justice to the variables since we have not grasped all the possibilities of each. In addition there are things we do not know about the processing which will have made our analysis clumsy or inappropriate.

The nature of village disputes

The cases covered by the project are what Scaglion calls "conflict case studies", situations of dispute. The material does not attempt to distinguish situations of dispute from situations of offence or civil from criminal law matters. In fact Scaglion concludes from the qualitative analysis (1983 : vii) that there is "no general distinction between civil and criminal law", most disputes being treated as civil matters would be handled in a Western system.

In Table B. 8. 3 the incidence of different types of disputes is shown, with the categories ranked in order of frequency. Sexual and marital relations, "sexual jealousies" plus "petty domestic", account for about one third of all cases. What are criminal offences in the national law of Papua New Guinea play a minor role. There are no marked differences in the types of disputes between Gulf, Enga and Morobe provinces.

Of all the disputes recorded 28 per cent involved physical violence. The proportion of disputes that involved violence was higher than average in the twelve liquor-related cases and, of course, in the injury disputes. The proportion was also somewhat higher than average in disputes over sexual jealousies and petty domestic matters. There were no apparent differences between provinces in the incidence of violence.

Table B. 8 3

Types of disputes in village data

Type[a] of dispute	Number of cases	Per cent of cases
Sexual jealousies	105	22
Land and water rights	57	12
Theft	49	10
Petty domestic	41	9
Domestic animals	28	6
Injury	27	6
Traditional obligations	19	4
Sorcery	15	3
Defamation	14	3
Incest	14	3
Liquor related	12	2
Accidental damage	10	2
Rape	4	1
Other	71	15
Not known	15	3
Total	481	100

Note: a. Scaglion notes (Letter of 10 May 1984 to Law Reform Commission) that the categories of this variable (Taxonomy) "are meant to represent indigenous perceptions of conflict management rather than western legal categories."

In the majority of cases, 63 per cent, the data show there had been no previous history of conflict between the parties. In 16 per cent of cases there had been previous but unrelated problems (the phrase used in the codebook) and in 19 per cent a "related problem". We find this a rather difficult result to interpret since in small communities there are many occasions for conflict between members. In general these findings go against the common assumption that behind every village dispute lies the whole relationship between the parties over the past ten years. It may be that the figures mean nothing because researchers made superficial assessments of the background of each case. On the other hand it may mean that informants were themselves willing to dissociate present events from past relationships or, unlikely, that villagers were now falling out for the first time in large numbers with people with whom they had previously lived in complete amity. The cross tabulation by type of case suggests the variable is responsive in a logical way to other factors, indicating it may well be a valuable variable. For instance in land disputes, 42 per cent of cases were recorded as being ones where parties had previously had a related problem.

The study provides useful background on the parties to village disputes. While nearly all the people involved were adult, the findings on the sex of plaintiffs and defendants are of some interest. In 39 per cent of cases women were the main plaintiffs, but they were only defendants in 16 per cent of cases. Thus while the majority of disputes involved men as the major parties, the cases involving women were more likely to involve a woman as plaintiff and a man as defendant than vice versa. Table B. B. 4 shows the differences in the sex of the parties by the type of case. While the number of cases is rather small in each category in the lower half of the table, the differences in the main categories suggest that women are particularly likely to be plaintiffs and men defendants in cases of sexual jealousy, theft and injury.. There were somewhat more cases against women in the East Sepik and Southern Highlands than in the other provinces where the number of cases is reasonably large.

Information is also available on the social relationship between the disputing parties. In 22 per cent of cases they were close consanguines, in 20 per cent close affines (presumably including spouses), in 13 per cent they were distantly related and in 35 per cent not related at all. (In 9 per cent of cases there was no information on this variable.) Although apparent differences between provinces were negligible, there were large differences according to the type of case. Close consanguines were more likely to be involved in cases about traditional obligations (42 per cent) and domestic animals (36 per cent); and unrelated persons in sorcery (73 per cent) and sexual jealousy (49 per cent) cases.

Table B. B. 5 shows the relationship between the social groups to which the disputing parties belonged The largest number of disputes occurred within the most immediate social group, "same village, same clan", but there were substantial numbers involving people of different clans in the same village and different villages. Petty domestic disputes and cases over domestic animals were more likely to occur within the same clan in the same village. Land disputes were, however, proportionately distributed between the three main alternatives. Enga Province had a slightly higher proportion of cases involving different clans in different villages (34 per cent) while Gulf Province had fewer (11 per cent) than average. These differences are likely to reflect the different type of social structure in these two provinces.

In sum these data suggest that a fair number of disputes in villages involve problems in relationships between closely related people or people belonging to the same small group. Many of these problems are not regarded as particularly serious in the written law of this country. It remains to be seen in the next section how seriously they are taken by the parties concerned

Table B. 8. 4

Sex of plaintiffs[a] and defendants by type of case

Type of case	Per cent of plaintiffs who were male[b]	Per cent of defendants who were male[b]
Sexual jealousies	52	77
Land and water rights	96	96
Theft	73	94
Petty domestic	71	61
Domestic animals	86	89
Injury	74	88
Traditional obligations	65	88
Sorcery	100	93
Defamation	55	62
Incest	38	100
Liquor-related	50	100
Accidental damage	100	89
Rape	0	100
Other	69	78
Not known	43	100
Total	70	84
Total cases	417	424

Note: a. Plaintiff being defined as the main plaintiff whether or not the case was brought by that person.

b. Excluding cases where multiple information was not available or where multiple plaintiffs (or defendants) were both male and female.

Table B. 8. 5
Group relationship between principals in village disputes

Groups involved	Number of Cases	Per cent of cases
Same village, same clan	161	34
Same village, different clan	120	25
Different village, same clan[a]	11	2
Different village, different clan	104	22
Terms not applicable or complete data not available	85	18
Total	481	101

Note: a. Not a particularly likely combination. Entries here may either be in error, describe the kind of situation found in the Elema cultural group in the Gulf Province where named totemic patrilineal clans stretch half way across the province but have no corporate functions or record statements assuming married women are members of their natal clans.

Handling village disputes

One of the most interesting aspects of this material is the detail it provides on the processes of handling village disputes. The records indicate that in almost half the cases parties sought a second remedy after an initial attempt at resolution and in 11 per cent they sought a third "remedy agent". Table B. 8. 6 shows the number of times different remedy agents were used We have combined the figures to produce a "total use score" in the fourth column. There was a general tendency to begin with self-help and less formal remedy agents and then to move towards more formal methods. It was more common to look for a second remedy agent when the first used was police (12 per cent moved on to a second remedy), mediation (62 per cent) and moots (57 per cent). The use of agents does of course reflect their availability. In the Gulf Province communities there were no village courts, while these were available in the other major provinces of the study. Welfare services were mainly used in the East Sepik and moots (perhaps for reasons of culture or research bias) in Morobe.

Table B. 8. 6 also shows which agent "finally settled the case" and indicates the importance of self-help and mediation by local government and village court officials. In terms of a success rate for each remedy agent, the highest scores are from formal courts, with mediation by local government and village court officials being somewhat more effective than self-help, other mediation and moots. We would not expect the police to be an agent of resolution in many cases, and indeed they were not.

What comes out most clearly from these figures is the importance of informal mechanisms in processing and resolving village disputes. If we include mediation by local government officials, informal mechanisms were used in more than half of the total number of instances of use (749) and were responsible for resolving 55 per cent of disputes. If we include mediation by village court magistrates, the proportion of cases handled and resolved by informal mechanisms rises further.

Different remedy agents were favoured or more successful in different types of dispute. Self-help tended to be used more often than average in cases over theft and domestic animals. Injury cases were more often than normal taken first to a local government or village court magistrate for mediation. In some cases, then, people felt their chances of coping without the intervention of a third party were better than in others.

Table B. 8. 7 describes the extent of reference to the formal justice system (including mediation by village court magistrates) according to the type of case. A rather constant proportion of all cases went as far as the village court, but there is marked variation in the proportion of cases going to the local court. While other mechanisms totally screen the local court from petty domestic disputes, one quarter of all injury cases and a good number (16 and 14 per cent respectively) of disputes arising from sexual jealousy and traditional obligations went to the local court. Thus these matters, regarded as less serious by written law than rape, theft and injury, were pursued by villagers to courts outside their community. There were few cases taken before land mediators and to welfare services, probably because few were available or near at hand.

A variable called "settlement technique" indicates that 58 per cent of all disputes were settled by mediation and only 16 per cent by adjudication. However, the codes appear to have been applied inconsistently by remedy agent, so it is probably better to use the information in Table B. 8. 6. In all 45 per cent of cases were resolved by the intervention of private or official mediators. However, it is not necessary the case that the parties involved perceived the technique as mediation. Officials and villagers alike often see officials as having more powers than they have. In any event it is clear that technically speaking adjudication and arbitration played only a small part in the settlement of the cases recorded in this project.

Table B. 8. 6

Use of remedy agents in village disputes

Remedy agent	first remedy	Used as second remedy	third remedy	Total use score[c]	Agent finally settling case	Success rate in settlement[d]
Self-help	137	11	2	150	84	56
Mediation by Informal mediator[a]	55	40	4	99	51	52
Moot	53	22	5	80	45	56
Local government Council official[b]	84	37	6	127	85	67
Mediation by village court magistrate	85	30	4	119	82	69
Formal village court	26	19	9	54	42	78
Police	22	8	1	31	6	19
Other courts	4	34	16	54	39	72
Other	11	16	6	33	18	55
Not Known	2	0	0	2	23	n.a
Missing data or not applicable	2	263	428	n.a.	6	n.a
Total	481	481	481	749	481	64

Notes:
a. Relative, Big Man or chief.
b. Councillor or komiti.
c. Sum of first three columns
d. Number of cases where agent settled case over number of cases in which agent used at all (either as first, second or third remedy).

Table B. 8. 7

Use of formal justice system in village disputes

Type of dispute	Total Number of cases	Per cent of cases going to village court	local court	land mediator	welfare services
Sexual jealousies	105	39	14	0	5
Land & water rights	57	30	7	11	0
Theft	49	33	6	0	0
Petty domestic	41	32	0	0	0
Domestic animals	28	43	7	0	0
Injury	27	41	26	0	0
Traditional obligations	19	26	16	0	16
Sorcery	15	20	13	0	0
Defamation	14	43	0	0	0
Incest	14	36	7	0	7
Liquor-related	12	58	17	0	0
Accidental damage	10	10	0	0	0
Rape	4	25	0	0	0
Other	71	35	4	0	0
Not known	15	27	7	0	7
Percent of all Cases	100	35	9	1	2
Number of cases	481	167	43	6	10

In the majority of cases there appears to have been a ritual element in the settlement arrangements. Table B. 8. 8 shows the types of ritual used, the largest number of cases being the payment of compensation in the eyes of the court. This procedure was more common in Enga, while a ritual meal shared by the parties to a dispute was more popular in Morobe Province.

Table B. 8. 8

Main ritual settlement mechanisms used in village disputes

Type of Ritual	Number of Cases	Per cent of cases
Exchange of goods	34	7
Exchange money (and goods)	18	4
Ritual meal	53	11
Group acceptance[a]	63	13
Speeches	9	2
Shaking hands	19	4
Symbolic planting[b]	5	1
Pay compensation before court	102	21
Non data or no ritual	178	37
Total	481	100

Notes: a. By applause, display of acceptance etc.
b. Of trees, shrubs, etc.

The operation of village courts

Table B. 8. 6 shows that the main contribution of village courts in the cases covered by the study was through the mediation of village court magistrates rather than through formal hearings. Mediation was used twice as often as formal hearings, and was the agent settling cases in almost twice as many instances as formal hearings. This finding is contrary to the common view that village courts tend towards formality rather than informality. There% could be a real difference between the trend in these data and other studies or it could be that the method used in this study, emphasizing all remedy agents and referral between them, brings into the open a trend more widely occurring.

The data on punishments imposed are not specific about which remedy agent was responsible for the imposition. It is not possible, therefore to look specifically at punishments imposed by formal hearings of village courts. Table B. 8. 9 shows over all cases ever referred to village courts (either fur mediation or adjudication) the pattern of punishments or orders against defendants or other guilty parties. We notice here the dominance of compensation. It was used in 74 per cent of cases.

The date on punishments imposed are not specific about which remedy agent was responsible for the imposition. It is not possible, therefore, to look specifically at punishments imposed by formal hearings of village courts. Table B. 8.9 shows over all cases ever referred to village courts (either for mediation or adjudications the pattern of punishments or orders against defendants or other guilty parties. We notice here the dominance of compensation it was used in 74 per cent of cases.

Table B. 8. 9

Types of punishment imposed in 140[a] cases ever referred to village courts[b]

Type of Punishment	Main punishment	Secondary punishment	Total use	Per cent of 140 cases
Compensation (money)	60	4	64	46
Compensation (goods)	28	11	39	28
Fine (money)	12	18	30	21
Avoidance	4	7	11	8
Jail	7	2	9	6
Return goods	1	5	6	4
Other[c]	16	8	20	14
Not known	12	8	20	14
Total	140	63	203	145

Notes:
a. In 27 cases no punishment resulted from case.
b. Punishments likely to have been imposed by village court in most but not all cases.
c. Where frequency less than 6.

However, this figure will reflect the importance of mediated settlements in these cases as much as the importance of compensation in formal court decisions. However, the table does suggest the importance of compensation in village dispute settlement as a whole and the minor contribution made by jail terms and fines.

Table B. 8. 10 shows the amounts of fines or compensation apparently arising from village court cases (either by mediation or adjudication). In just over half the cases the amounts were under K50 while in a few they rose above K200. The data do not indicate in the way they are presented here which amounts were for compensation. In addition K50 is a much easier sum to accumulate in some parts of the country than in others.

In other respects the trends in cases referred to village courts are similar to trends in the 481 cases as a whole. Interestingly village court remedies are sought by women as well as men, women being plaintiffs in 32 per cent of cases where the plaintiff was either male or female. As in the whole set of cases, women were less frequently defendants than they were plaintiffs (22 to 32 per cent of cases) when they used village courts. These figures do not then bear out the charge that is sometimes made against village courts that they favour men at the expense of women.

Table B. 8. 10

Amount of fines or compensation or combination apparently[a] payable from village court cases

Amount in kina	Number of cases	Per cent of all cases where fine or compensation paid
Up to 10.00	13	16
10.01 to 20.00	16	20
20.01 to 50.00	18	22
50.01 to 100.00	10	12
101.00 to 200.00	11	14
Over 200.00	6	7
Not known	7	9
All relevant cases	81	100

Note: a. Deducting cases also heard in local court. Some punishments may have been imposed by higher courts other than local courts.

The operation of local courts and welfare services

Only 43 of the 481 cases ever went before local courts, mostly (as Table B. 8. 6 shows) as a second or third remedy sought. Local courts were relatively successful in finally settling cases. They leant more towards jail than the village courts, imposing jail terms in 30 per cent but compensation in only 28 per cent of cases.

Women used local courts as much as they did other remedies being plaintiffs in 28 per cent of cases. However, cases against women rarely went to local courts. A woman was the defendant in only one of the 43 cases. This must be linked to the tendency for women to be defendants in the type of cases not usually taken to local courts (see Table B. 8. 4 above). There were still a large number of cases taken to the local courts which involved people living very close to one another, more than half of the 43 cases being between parties from the same village. Close consanguines were still involved, although there were cases against non-kin as well (21 out of 43). It would not then be true to say that local courts were used mainly to bridge gaps in traditional remedy agents, since they were used so much for disputes within traditional groups and networks.

Only 10 of the 481 cases were ever referred to the government's welfare services, six of these being in the East Sepik Province. In five of these cases women were plaintiffs and in four of them they were defendants, suggesting women and women's concerns are more suited to welfare services than other remedy agents. However, we assume the use of welfare services was mostly limited by access and availability and the small number of cases can tell us little about their role in the country as a whole.

Main conclusions

The particular interest of these data lies in their approach to the issues of dispute settlement in communities in Papua New Guinea. This study looked at the widest possible range of disputes and considered all available mechanisms for their resolution. It enables us to see the contribution of government-sponsored agents to the overall process of dispute settlement. The main limitation of the data is that, while covering many provinces, they are by virtue of the method of selection and size of sample, only indicative of trends in a small number of rural areas.

A number of substantive trends appear in the data which I summarise here:

1. Informal mechanisms are more important than formal and government-sponsored mechanisms in the resolution of village disputes.

2. Some types of dispute not regarded seriously in the written laws of Papua New Guinea are very frequent in rural communities and take up much of the use time of remedy agents e.g. "sexual jealousy" and "petty domestic" categories.

3. Village courts are more frequently used for informal mediation than formal hearings.

4. Village courts and local courts are most frequently used after other remedies have been tried and failed.

5. Government-sponsored courts are used not just in disputes with parties outside traditional groups and networks but in disputes within such groups and networks which cannot be resolved by other mechanisms.

6. While disputes and their settlement are mainly the preserve of men, women where they are involved, are more often asserting their rights against men they claim to have injured them than vice versa.

Policy implications

These findings, in so far as they are taken as indicative of broad trends, do not contribute so much to the development of substantive laws for a Papua New Guinea legal system as they provide information about processes and practices. In so doing they in part fulfil the aims of the project.

The main findings are humbling as well as instructive for the legal or other policy-maker.

First, law and order in the communities studied was largely maintained by informal and non-government mechanisms. The conclusion should be that government policy must do all it can to support and not undermine these mechanisms.

Second, government mechanisms are used as back-up for informal agents. The conclusion might be that government services in this field should be developed to strengthen this back-up function rather than to create a competitive set of mechanisms for dispute settlement.

APPENDIX B.9

This account of a village court in his own area was written by Senior Inspector Joseph Kupo who was seconded by the police to work with Judge Barry Stuart. It is included here because it exemplifies some of the points discussed in Chapter 11 of this report and reflects the understanding of a police officer of the work of village courts.

Appendix B.9

THE BANDI VILLAGE COURT

by
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1. The original concept of the village court system as perceived by the government was to allow people to solve their community problems in their own ways at their own level. This step was taken in recognition of the importance and the values of traditional forms of justice which existed in Papua New Guinea before the colonial intrusion. The ways and means of solving problems in traditional forms are often talked about and spoken of today as "The Melanesian Way" where decisions are reached by agreement, compromise or compensation. They were mainly based on commonly known customary rules and procedures and the decisions are usually understood and accepted by the parties concerned and the community in general.

2. Village courts in Papua New Guinea were established under the Village Court Act 1973 and are considered to be the most important method of bringing customary ways into the national legal system. These courts are in principle the people's courts and the officials must be selected from the village by the people themselves. The officials would then hear cases according to customary rules or law and procedures.

3. Different village courts throughout the country will have different ways of dealing with cases according to their respective customs and rules. I intend to focus this report on the Bandi Village Court which is situated some sixty kilometres south-west of Kundiawa in the Simbu Province. I did not consult the written records of this Court, so the information contained here is from my practical experience and observation.

4. The Bandi Village Court covers a total population of 2,347 and is very remote from the nearest administrative centre. There is very little visiting from year to year by the national law agencies such as the Police and Justice. Nevertheless, this village court is functioning well with a total of six magistrates, three peace officers and one village court clerk. The village court magistrates are selected on the merits of their political, social and economic status in the tribe. They are the old traditional and well-respected members of the community and they have very strong influence over their people. Peace officers are generally young agressive men who are considered as having the ability and the necessary force to apprehend people and take them before the court. Depending on their performance, they can be considered for future magistrate selections.

The third person on the scene is the court clerk. He is selected on the merits of his educational qualifications. He is considered by the village court as an important person in that he does all the paper work and becomes an advisor to the magistrates on the interpretation of the Village Court Act.

5. There are two village court houses which are located in the centre of the tribe to enable people to have easy access to them. The layout of the courtroom is not such as to give a clear impression to the people of the purpose for which such courts were established If the village court was to operate according to the traditional form of problem-solving, there would be no need for a bench for the magistrates, and no separate boxes for the witnesses and the accused such as one finds in the national courts. On the other hand, if the same layout as in the national courts were used, it would not give the impression that the people were being tried by their own court according to their own customs and rules. The procedure used by the Bandi Village Court is that a platform is built in the court house where all the magistrates sit and the village court clerk sits at the end with a little table. The court clerk in a chronological order reads the nature of the complaint and the names of the complainant and the accused. Peace officers who usually stand at the door of the court house as court orderlies bring in the parties concerned and stand them before the magistrates. At this point freedom of movement is totally restricted The complainant and the accused are told to stand to attention, hands down and tell the court about their grievances. The peace officers with their batons stand right behind the two parties to ensure that there is no problem.

6. The village court chairman gives an opening brief of the case as he perceives it and requests the complainant to tell the court the full extent and circumstances of the case in the presence of the accused When the complainant is finished, he is examined, cross-examined and re-examined. After the examinations, the accused is required to give his account of the case and rebut the evidence given by the complainant and his witnesses. After the accused is finished, he is also examined to ascertain his evidence. One case can take up to an hour or more depending on the nature of the offence. During all this lengthy period, the parties are standing to attention and occasionally the court has found itself having people fainting. The court officials seem to take certain pride in this because they regard it as a form of punishment; but it does not do any good to the innocent complainant. The practice adopted here would suggest that the right of freedom of movement is taken away as soon as the parties step into the court house. After the parties present their case they are then ordered to go outside whilst the magistrates decide on the penalties. Here the magistrates have an open discussion on the case and each magistrate gives his own opinion to justify his view why certain punishment must be given. The chairman usually takes a leading role in the discussion and very often influences other magistrates to accept his decision. There is no secret way of having individual magistrates pass their sentences. Therefore the most talkative magistrate takes advantage of the open discussion whilst the other magistrates either contribute to the decision with or without proper consideration. After a consensus decision is reached, the two parties are called in and the chairman announces the decision of the court and imposes the penalty on the accused. The other magistrates also give their own explanations as to why they reached their final decision.

7. Penalties. The court has jurisdiction to award civil compensation up to K100.00 or alternatively order the accused to do work for the complainant. In cases of brideprice and death, the court has unlimited jurisdiction to award compensation. In most criminal cases, the court can fine a person a maximum of K50.00 or order the accused to do community work for up to four weeks. A person who disobeys a summons to appear can be imprisoned for up to one month. A person who fails to pay a fine or do community work can be imprisoned for one week for every unpaid K10.00 fine or for one week of unperformed work. All the above penalties are governed in the Village Court Act and are followed. The actual penalties are not as severe but the procedure adopted in hearing the cases as mentioned earlier is totally out of keeping with the original concept when the courts were introduced Maltreatment of offenders by peace officers and magistrates generally could not be accepted from the point of view of Western justice. However, ironically, the general community accepts this treatment as appropriate. This would imply that the people regard the actions of the court as a deterrent for potential offenders. They are more interested in peace and good order and would prefer religious and economic ventures rather than living in fear of rascalism and tribal fights. They have seen the effects of tribal fighting and are totally against it.

8. The Bandi Village Court is regarded as being powerful and very effective. The court officials have the means of executing the penalties. The people in the area cannot escape because they have their permanent houses and gardens there and they have lived there for almost all their lives. In a tribal fighting area, no one is expected to run away from his own clansman and therefore cannot escape court penalties. Sometimes when an accused is hard to find, the next of kin is rounded up and taken before the court and this forces the accused himself to turn up. If the accused has no next of kin, personal belongings are taken possession of, until the accused turns up. Again this course of action can be disputed from the Western point of view, but traditionally, this is regarded as justified as a means of forcing the accused to come before the court. The system is effective and the community accept it as part of proper justice.

9. Problems. The executive government of the day must constantly bear in mind that these village court officials are themselves members of the particular community. They are very much obliged to follow the traditions and customs of the people in order to survive politically, socially and economically. They cannot be expected, therefore, to totally divorce themselves from the community. Therefore there are situations which the village court is not able or prepared to handle, particularly major cases which involve the whole tribe. Court officials feel that they have an obligation to safeguard their men from any arbitrary action from outside. A classic example of this was on 13 December 1980 when a man from another tribe was murdered in cold blood by the Bandi Tribe. The body was buried in an old graveyard in the night. The Bandi Village Court knew about the killing and who the killers were but were not prepared to take the right course of justice. Later tribal fighting escalated and many tribesmen were wounded or killed. This instance is an example of a situation in which each village court official feels that if he reported the matter, his political, social and economic survival would be at stake. There was no way the national authorities could find out because the area is very remote from the nearest administrative centre and hardly any visits are made by police or magistrates. This is an area where the

national authorities need to step in by making regular visits to keep themselves informed of developments in the area. There is a potential danger in that the officials will fall back to their clansmen and disrupt peace and good order in the community. Very often court officials complain that they are forgotten by government. They do not have any official transport and communication facilities to carry out their duties effectively. They have the capacity to control law and order in the community but their effort is discouraged by the national government in not providing the essential services. The wages of the village court officials are also relatively small. As a result of the low pay, the Bandi Village Court introduced a system where the peace officer is to be paid K2.00 by the complainant to go and apprehend the accused. This system is accepted by the people because they are well aware that peace officers do more work and get less pay. It is unreasonable to create an organisation such as the village court and not supply the essential needs of these courts. If the government of the day considers the courts as playing an important role in maintaining law and order in the country due consideration must be given to their needs.

10. Observations. The ultimate aim of the village court is to maintain peace and good order in the community. The system that is adopted, whether based on traditional custom or imported western custom, must be accepted in the community. It is important to note what the community perceives and not only what the government perceives in determining what is just and what is not. In other words the people's perception of justice in their community must not be challenged as unjust by the authorities. Here one is confronted with a conflict of views on the question of justice. People throughout the country are complaining that our national legal system is too democratic or too lenient and as a result, more crimes are committed Punishment from national courts does not deter crime. Recently minimum penalties were introduced to impose severe punishment. This course of action is a clear indication of the perception of the people of this country and is accepted by the particular village court mentioned above. People generally believe that harsher penalties are the only way of deterring potential offenders. This view may not be accepted by the Western system of justice but again the Western system of justice took thousands of years to develop from a primitive background. The refined Western justice system which took years to develop cannot be automatically absorbed into Papua New Guinea traditional society. Attempts to impose it on the traditional community will do nothing except create conflicts between the two systems. These indications are showing up when everyone says our national justice system is too democratic.

11. The learned lawyers in the Public Solicitor's Office have said "However, of the cases that are referred here, almost all invariably disclose some form of injustice having being done to the persons concerned... The common injustice disclosed is that, for minor village infringements which may only attract a severe reprimand, a caution, a small fine or work order, quite disproportionately long terms of imprisonment are imposed" (Public Solicitor 1983 : 5). This view comes from people who are moulded or indoctrinated in the Western system of justice. However, the above view has been challenged: "the principles of criminal responsibility, substantive offences, and rules of procedure and evidence embodied in the criminal code are drawn from the common experience of Western industrial nations in particular England - and Australia - and bear little relationship to

traditional Melanesian concepts of criminal justice, which emphasise group responsibility, group sanction and compensation" (Warwick et al. 1979 : 7). Professor Maeve O'Collins has said, "Melanesians themselves must continue the process in which they are already engaged of debate and discussion as to how best to develop a system of justice reflecting the nature and particular needs of their own societies" (O'Collins 1980). The main concern here is that if the government is interested in promoting economic investment in this country, it has to devise a system of criminal justice which can be accepted and fully implemented by the people. If it is the majority view of the people that the Melanesian system of justice be encouraged, the government has a duty to accept it. Village courts throughout the country were considered to be the basis for developing the underlying law of this country but the range is not clearly identified The judges already have problems in developing the underlying law which is based on customs, because there is no one common custom in this country. They are looking at over six hundred different diversified customs and the job is almost impossible. It would be desirable to give wider jurisdiction to the village courts and consider developing a Village Court Criminal Code which would be based on customs. Particular attention should be given to the highlands region where tribal fighting is frequent. Village courts in those areas must be given wider powers to prevent tribal fights which tend to hamper economic development.

12. The effectiveness of the village court will depend mainly on the interest shown by the executive government in providing transport, communication, office equipment and facilities and regular visits by the police and justice officials. The strength and the high morale of the village court officials is gradually deteriorating due to non-availability of the above facilities.

APPENDIX B.10

This appendix discusses the general question of designing systems – both formal and informal - which improve prospects for accountability. It largely focuses on the need for better record keeping.

Appendix B.10

ACCOUNTABILITY

We realise only too well that in raising the banner of accountability in Papua New Guinea it might never be seen in the forest of identical banners that have been paraded before the cabinet since independence. We need no reminding that we are repeating what an army of consultants and technical advisers have been advising for years. And we are painfully aware that the Public Services Commission, permanent heads of departments and provincial secretaries have been clamouring incessantly for better middle management. However, the very fact that now in connection with law and order we find it necessary to highlight, stress and underscore once again the need for accountability proves in itself that even in the higher reaches of the administration accountability is lacking. Here is policy advice probably accepted by the Government time and time again - yet nothing seems to happen. Why? Probably because no one is held clearly and inescapably responsible for making it happen.

It would be nice to believe that in a law and order study we need not concern ourselves with the problem of accountability in the government system generally at national and provincial levels. Unfortunately this is not true - especially as we have the responsibility for tracing the economic and social consequences of the law and order problem. For the criminal justice system is the tank into which drain all the consequences of the lack of accountability - both the lack of financial and the lack of programme accountability. The trouble is that the tank can neither hold nor process what it is receiving because it is riddled with the holes of its own failure to be accountable.

There is a problem of law and order very largely because nothing works as it should. This means that the government is not getting what it is paying for. It passes laws that are not enforced, votes funds that are neither controlled nor audited and occupies buildings which are disintegrating for lack of maintenance. At the level where government meets the people its officials are rarely seen, its policies are never explained and its resources are squandered so ostentatiously that the public feels cheated when it does not get a share of the spoils. In rural areas the break-down is more noticeable because for most people at any distance from a provincial centre they never see a government servant and are left to either solve their own problems in their own way or to take it to a politician. If this gap between the government and the people is filled with lawlessness and corruption, with tribal fighting and political manipulation it is because the people feel abandoned and obliged to fend for themselves. There are few if any community links with the police so that there is no flow of criminal intelligence. The police don't know and find it impossible to discover the real culprits. Without the refinement of precise knowledge the police have to use blunt instruments like the raid or the inconvenience of an arrest. Too often they take the wrong persons and

build up a resentment which reinforces further the opposition to the police and confers on the rascal gangs the enhanced status of urban guerillas justifiably challenging the police. All this because the regular government services and the contact with the people have been allowed to wither for lack of supervision of routine work.

Suppose, however, that the police effect an arrest. There is no guarantee that the charge will be properly framed or the evidence gathered to substantiate the charge. There are no checks of accountability to keep the ordinary constable on his toes. Prosecutions fail because they are not properly prepared and witnesses gathered No one is checking (who has the competence to check?). The courts have to discontinue proceedings in a frightening 60 per cent of serious cases because the supporting documents are not prepared, the witnesses are not available or because the accused himself cannot be found. Fingerprint equipment is not maintained This ink is not washed off and renewed so that prints forwarded to police records are often blurs with no identifying characteristics. The great complaint of police everywhere in the country is that they do not have vehicles: but it is practically impossible to keep up with the rate of repair and replacement required. Again there is insufficient accountability. The judges do not find the interpreters they need: guard dogs die for lack of feeding: prisoners escape from both police and prison custody because routine checks are neglected Prisoners are even kept beyond their release dates because the registers are not scrutinised.

Criminals exploit the slackness, of course. They change their names, impersonate other inmates, escape almost at will. They learn to use lawyers, to challenge the evidence, to mislead the courts.

So the first question - just how much crime Papua New Guinea has got - cannot be answered because records are not reliable - because there is inadequate accountability. To get any idea of how much corruption there may be is a wild fancy because records are not kept, accounts are not audited and tracing transactions to find out whether they were kept or not becomes quite impossible.

The second and third questions - what direction to take now - and how to make the systems work are also tied up with accountability. The informal approach - the non-government option - depends upon proper help with records and routine supervision of the village courts. Then the formal back-up services cannot foster the informal approach if they are incapable of keeping their own house in order. So there has to be accountability throughout the law and order services. It would be totally unrealistic however to expect accountability to be maintained in the law and order services if it was being ignored around them. Efficiency in the police, courts and prisons can be maintained for some time as a conspicuous exception to the standards in other government services - but not for long. It is for that reason that accountability throughout the government and throughout its informal and formal links with the people is of direct importance to the maintenance of law and order. Law and order cannot be handled in isolation.

APPENDIX B.11

Appendix B.11

RACIALISM

We are very hesitant to write a note on this very delicate issue but we believe that those who instigated this study should be aware of some rather sinister elements to Papua New Guinea's law and order problem. They aggravate the problem but they are also instigated by the problem. Actually we found a minimum of racial feelings in the country; and the divisions between people from the different parts of the country were as profound as those between nationals and expatriates. The extent of inter-marriage had kept racially chauvinistic feelings to a minimum. However, it would be myopic not to observe that affluence and poverty are defined generally along racial lines here as in a number of developing countries where higher salaries have to be paid to attract expertise from abroad. No matter how economically justifiable such disparities may be, they are still disparities and they introduce divisions. Not infrequently the crimes committed are racially motived simply by being the crimes of the have-nots committed against the haves. These are no longer colonial days when a hierarchy of peoples with contrasting living standards was accepted as the natural state of things. In a few criminal cases the small amount actually taken and the concomitant vandalism reflects an underlying resentment which can be as racially as it can be economically interpreted. More portentous for the government however is the fact that these racial divisions can be - and maybe have been - exacerbated by expatriates who are themselves racially divided. Jealousies and vested interests in the available jobs have sometimes meant expatriates dividing on racial grounds - supposedly identifying or not identifying with the local people in Papua New Guinea. Examples could be given but the situation is well known and we would prefer not to do more than invite the government's attention to an aspect of its law and order problem which will need careful watching. Law and order problems are bad enough, when they crystallise along racial lines they will become a lot worse. When this happens the implementation of an effective crime control programme could easily be misrepresented in "have" and "have-not" terms - and more perniciously in terms of expatriates versus locals. A tougher stance by the authorities then could be mischievously misconstrued as an example of the government being in the service of the "haves" and insensitive to the "have-nots". Needless to say such a situation is politically exploitable. Still worse it could be used by the unscrupulous to obtain personal advantage by construing normal competition in racial terms. To say anything more on this matter would be not only beyond our terms of reference but beyond our competence. However, law and order problems can easily be used to divide. They will be resolved only by a united approach.

For these reasons anything that can be done to reduce the barriers must be attempted. We have suggested private sector involvement with the village courts and the prisons. There is already a good deal of interaction in the voluntary bodies. All this must continue.... and more.

APPENDIX B.12

Tables prepared by Klaus de Alburquerque
These tables give details of the court delays referred to in Chapter 11 and Appendix A. 1

Table B.12. 1

Mean days for cases[a] processed through the criminal justice system
Southern Coastal Region, 1977 -1978

Offence category[b]	No. Of cases	Mean number of days from Commission to committal	Committal to judgement	Commission to judgement
Offences against the person	72	98	84	182
Homicide & attempted homicide	22	102	103	205
Assault (occasioning bodily harm)	5	52	149	201
Unlawful (simple) assault	3	104	90	194
Rape & attempted rape	11	62	71	133
Other sex offences	18	106	62	168
Dangerous driving causing death	10	157	80	237
Robbery	2	54	40	94
Other offences[c]	1	234	119	353
Offences against property	99	126	77	203
Breaking & entering[d]	28	72	72	144
Stealing	54	134	63	197
Possession/receiving stolen property	1	46	44	90
Forgery, uttering & fraud	16	182	130	312
Conspiracy	-	-	-	-
Wilful damage to property	-	-	-	-
Arson	-	-	-	-
Other offences	-	-	-	-
Total offences (cases)	171	114	80	194

Notes:
a Refers only to cases heard by the National Court. Cases for which there were no commission, committal or judgement dates recorded, were omitted
b Offences were reclassified into broader categories
c Escaping custody
d Includes house breaking.

Source: Records of the National Court, Waigani.

Table B. 12. 2

Mean days for cases[a] processed through the criminal justice system
Highlands Region, 1977 - 1978

Offence category[b]	No. of cases	Mean number of days from Commission to committal	Committal to judgement	Commission to judgement
Offences against the person	167	65	99	164
Homicide & attempted homicide	57	57	88	145
Assault (occasioning bodily harm)	15	77	108	185
Unlawful (simple) assault	4	250	108	358
Rape & attempted rape	18	63	161	224
Other sex offences	13	76	69	145
Dangerous driving causing death[c]	57	53	93	146
Robbery	1	77	102	179
Other offences[d]	2	90	116	206
Offences against property	132	129	78	207
Breaking & entering[e]	37	114	65	179
Stealing	79	150	78	228
Possession/receiving stolen property	3	117	76	193
Forgery, uttering & fraud	10	55	24	179
Conspiracy	-	-	-	-
Wilful damage to property	-	-	-	-
Arson	3	29	112	141
Other offences	-	-	-	-
Total offences (cases)	299	93	90	183

Notes:
a Refers only to cases heard by the National Court. Cases for which there were no commission, committal or judgement dates recorded, were omitted
b Offences were reclassified into broader categories
c Includes 8 cases of dangerous driving causing grievous bodily harm
d Includes one case of dangerous driving and one case of unlawfully detaining a person
e Includes house breaking

Source: Records of the National Court, Waigani.

Table B. 12. 3

Mean days for cases[a] processed through the criminal justice system
Islands Region, 1977 - 1978

Offence category[b]	No. of cases	Mean number of days from Commission to committal	Committal to judgement	Commission to judgement
Offences against the person	67	69	94	163
Homicide & attempted homicide	17	69	90	159
Assault (occasioning bodily harm)	6	39	154	193
Unlawful (simple) assault	1	40	147	187
Rape & attempted rape	13	28	79	107
Other sex offences	15	82	67	149
Dangerous driving causing death[c]	11	119	121	240
Robbery	-	-	-	-
Other offences[c]	4	68	91	159
Offences against property	58	164	105	269
Breaking & entering[d]	11	93	92	185
Stealing	40	191	112	303
Possession/receiving stolen property	-	-	-	-
Forgery, uttering & fraud	4	139	67	206
Conspiracy	-	-	-	-
Wilful damage to property	-	-	-	-
Arson	-	-	-	-
Other offences	3	103	109	212
Total offences (cases)	125	113	99	212

Notes:
a Refers only to cases heard by the National Court. Cases for which there were no commission, committal or judgement dates recorded, were omitted
b Offences were reclassified into broader categories
c Includes two cases of concealment of birth of a child/secret disposition of dead child, one case of escaping custody, and one case of an unlawfully attempted abortion
d Includes house breaking
e Includes one case each of attempted bribery, attempted extortion and posing as a police officer.

Source: Records of the National Court, Waigani.

Table B. 12. 4

Mean days for cases[a] processed through the criminal justice system
New Guinea Coast Region, 1977 -1978

Offence category[b]	No. of cases	Mean number of days from Commission to committal	Committal to judgement	Commission to judgement
Offences against the person	104	96	77	173
Homicide & attempted homicide	35	76	91	167
Assault (occasioning bodily harm)	6	76	82	158
Unlawful (simple) assault	2	76	20	96
Rape & attempted rape	19	49	83	132
Other sex offences	28	165	65	230
Dangerous driving causing death	10	59	53	112
Robbery	-	-	-	-
Other offences[c]	4	137	97	234
Offences against property	100	116	92	208
Breaking & entering[d]	36	88	107	195
Stealing	49	100	91	191
Possession/receiving stolen property	-	-	-	-
Forgery, uttering & fraud	8	248	78	326
Conspiracy	1	99	47	146
Wilful damage to property	1	154	75	229
Arson	2	124	24	148
Other offences[e]	3	361	49	410
Total offences (cases)	204	106	85	191

Notes:
a Refers only to cases heard by the National Court. Cases for which there were no commission, committal or judgement dates recorded, were omitted
b Offences were reclassified into broader categories
c Includes three cases of concealment of birth and one case of escaping custody
d Includes house breaking
e Includes two cases of tampering with the mail and one case of attempted bribery.

Source: Records of the National Court, Waigani.

Table B. 12. 5

Mean days for cases[a] processed through the criminal justice system
Southern Coastal Region, 1982 -1983

Offence category[b]	No. of cases	Mean number of days from Commission to committal	Committal to judgement	Commission to judgement
Offences against the person	84	137	240	377
Homicide & attempted homicide	25	95	16	311
Assault (occasioning bodily harm)	12	119	285	404
Unlawful (simple) assault	4	103	114	217
Rape & attempted rape	10	157	240	397
Other sex offences	17	125	248	373
Dangerous driving causing death[c]	7	319	376	695
Robbery	4	109	125	234
Other offences[d]	5	192	221	413
Offences against property	103	230	187	417
Breaking & entering[e]	21	210	169	379
Stealing	38	259	214	473
Possession/receiving stolen property	2	155	353	508
Forgery, uttering & fraud	35	234	153	387
Arson	5	67	118	185
Other offences[f]	2	302	442	744
Total offences (cases)	187	188	210	398

Notes:
a Refers only to cases heard by the National Court. Cases for which there were no commission, committal or judgement dates recorded, were omitted
b Offences were reclassified into broader categories
c Includes one case of dangerous driving causing grievous bodily harm
d Includes child stealing, attempted suicide, concealment of birth, etc.
e Includes house breaking
f Diverting electricity illegally

Source: Records of the National Court, Waigani.

Table B. 12. 6

Mean days for cases[a] processed through the criminal justice system
Highlands Region, 1982 - 1983

Offence category[b]	No. of cases	Mean number of days from Commission to committal	Committal to judgement	Commission to judgement
Offences against the person	138	106	321	427
Homicide & attempted homicide	43	70	149	219
Assault (occasioning bodily harm)	16	49	544	593
Unlawful (simple) assault	5	78	430	508
Rape & attempted rape	35	130	367	497
Other sex offences	11	79	385	464
Dangerous driving causing death	13	206	350	556
Robbery	13	126	395	521
Other offences[c]	2	368	115	483
Offences against property	75	259	605	864
Breaking & entering[d]	15	157	972	1129
Stealing	30	299	751	1050
Possession/receiving stolen property	2	98	325	423
Forgery, uttering & fraud	14	328	383	711
Arson	10	196	143	339
Other offences	4	336	207	543
Total offences (cases)	213	160	421	581

Notes:
a Refers only to cases heard by the National Court. Cases for which there were no commission, committal or judgement dates recorded, were omitted
b Offences were reclassified into broader categories
c Includes one case of attempted suicide and one case of child stealing
d Includes house breaking.

Source: Records of the National Court, Waigani.

Table B. 12. 7

Mean days for cases[a] processed through the criminal justice system
Islands Region, 1982 -1983

Offence category[b]	No. of cases	Mean number of days from Commission to committal	Committal to judgement	Commission to judgement
Offences against the person	106	110	171	281
Homicide & attempted homicide	20	107	123	230
Assault (occasioning bodily harm)	4	53	248	301
Unlawful (simple) assault	1	102	163	265
Rape & attempted rape	18	63	203	266
Other sex offences	40	107	151	258
Dangerous driving causing death[c]	19	189	224	413
Robbery	1	43	120	163
Other offences[d]	3	69	133	202
Offences against property	106	224	289	514
Breaking & entering[e]	30	164	301	465
Stealing	56	229	272	501
Possession/receiving stolen property	2	552	144	696
Forgery, uttering & fraud	15	317	385	702
Conspiracy	-	-	-	-
Wilful damage to property	-	-	-	-
Arson	2	78	78	156
Other offences[f]	1	66	115	181
Total offences (cases)	212	167	230	397

Notes:
a Refers only to cases heard by the National Court. Cases for which there were no commission, committal or judgement dates recorded, were omitted
b Offences were reclassified into broader categories
c Includes 3 cases of dangerous driving causing grievous bodily harm
d Includes 2 cases of harbouring escapees and one case of escaping custody
e Includes house breaking
f Includes one case of failure to report a crime.

Source: Records of the National Court, Waigani.

Table B. 12. 8

Mean days for cases[a] processed through the criminal justice system
New Guinea Coast Region, 1982 -1983

Offence category[b]	No. of cases	Mean number of days from Commission to committal	Committal to judgement	Commission to judgement
Offences against the person	69	76	181	257
Homicide & attempted homicide	37	67	155	222
Assault (occasioning bodily harm)	6	117	180	297
Unlawful (simple) assault	-	-	-	-
Rape & attempted rape	10	64	274	338
Other sex offences	6	104	208	312
Dangerous driving causing death	4	88	218	306
Robbery	3	113	125	238
Other offences[c]	3	37	141	178
Offences against property	75	243	157	400
Breaking & entering[d]	17	229	169	398
Stealing	34	261	164	425
Possession/receiving stolen property	1	33	153	186
Forgery, uttering & fraud	14	327	148	475
Conspiracy	2	137	110	247
Wilful damage to property	-	-	-	-
Arson	3	57	102	159
Other offences[e]	4	99	155	254
Total offences (cases)	144	163	169	332

Notes:
a Refers only to cases heard by the National Court. Cases for which there were no commission, committal or judgement dates recorded, were omitted
b Offences were reclassified into broader categories
c Includes two cases of harboring escapees and one of dangerous driving
d Includes house breaking
e Includes one case each of lying under oath, elopement, and disturbing elections.

Source: Records of the National Court, Waigani

APPENDIX 8.13

This appendix was prepared by a member of the team with experience in the legal problems of ethnic minorities.

Appendix B.13

COMMUNITY-BASED SYSTEMS OF DISPUTE RESOLUTION

The realisation that the formal justice system cannot adequately cope with crime, has increasingly fostered the development of community-based systems of dispute resolution. Mediation, diversion, "peacemaker" courts, justice councils and numerous other techniques of involving local community people in dispute resolution systems are being implemented or extended throughout the world. In many respects these attempts to involve the community reflect a return to traditional forms of settling disputes that pre-dated contemporary formal justice systems. In countries such as Papua New Guinea where the skills and acceptance of traditional dispute settling procedures still exist, the possibility of establishing viable community-based systems to resolve conflict has a much greater prospect of success than in countries that have for centuries been essentially reliant upon professionals and highly formalised systems to resolve conflict.

In most jurisdictions, the monopoly of professional police, lawyers, judges, correctional officials, social workers, and other professionals over the delivery of legal services has not stemmed the tide of rising crime rates and rising justice budgets. Recent attempts throughout the world to re-engage the community in the delivery of legal services through community-based adjudicative systems are demonstrating the best means of being more effective against crime at less cost.

Greenland

The demise of traditional community responses to disruptive behaviour is perhaps most graphically and most recently manifested in Greenland. The traditional customary system codified in the Greenland Criminal Code of 1954 focused on rehabilitation. Sanctions were determined by total evaluation of the offender, his family, social background and social function. The principle objectives of any sanction were not to prevent crime by others or to punish the offender, but rather to prevent recurrence of the undesirable behaviour and re-establish harmony in the community. The offender's continued harmonious existence in his community was directly affected by his adherence to the sanctions imposed by his peers.

The success of this system depended upon the ability of the community to dictate collectively modes of acceptable behaviour. Although this system of social control survived "the Danish civilizing influences" and still persists today the most successful environment for this "peacemaker system" was based on traditional patterns of community life where sharing and cooperation made each individual indispensable to the existence of the community. Under such circumstances, incarceration was impractical, and contrary to the collective interests of the community.

The imposed Danish system of sanctions employed punishment as a repressive means of social control to force conformity to society's norms. The severity of the offence measured the punishment required. In contrast to the indigenous system of social control where neither justice nor punishment of the individual offender interfered with the desire of the community to restore harmony, the Danish legal system embodied in the Greenland Criminal Code focussed on principles of legal justice and institutionalised sanctions.

In the "peacemaker" model of social control, incarceration is limited to overnight confinement to enable offenders to spend daytime hours at regular jobs or to attend school. Youthful offenders may be placed with skilled members of the community to learn essential skills or they may be required to assist in vital community activities. Accordingly the purpose of the sanction was to not to isolate the offender but rather to reinforce his integration into the community.

Within the Greenland Criminal Code, judges have a broad discretion to impose whatever sanction suits the offender's personal background, whatever is necessary both to realise community harmony and to rehabilitate the offender. In this system judges are neither lawyers nor foreigners. The judges are local people who rely upon their intimate knowledge of the offender's family situation to prescribe an individual programme of correction.

To monitor and supervise the effectiveness of the initial corrective measures, judges are empowered to review again and again the offender's case to redesign the sentences imposed, to ensure the offenders ultimate rehabilitation. Thus the offender is regarded as a patient requiring individual treatment to cure anti-social behaviour. Treatment is adjusted to match any progress made towards rehabilitation. This fine tuning offers an incentive to the offender to shorten his sentence, and to demonstrate in a positive fashion his remorse and desire to regain acceptance and respect within the community.

Except for a limited version of this treatment approach made possible through the use of probation, reliance upon a "one-shot" sentencing system characterises most modern criminal justice systems. This one-shot sentence approach is neither monitored nor altered by the judge and reflects a focus on the offence as opposed to the offender. Judges within the system have little or no knowledge of the reasons for the success or failure of the sentence imposed on any individual offender. Reliance on a seemingly clairvoyant ability to choose an appropriate sentence upon the first and only assessment of the offender, and reliance upon punishing the crime as a primary means of realising rehabilitation largely explains the high rate of recidivism in modern criminal justice systems.

Peacemaker systems rely upon the community to locate resources to provide private homes, private probation officers, community work or counselling for offenders. This system persisted until the late 1960s when the informal community based sentencing alternatives were principally replaced by professional and institutional responses. The advent of professionals, institutional responses and the resultant centralised focus of imported Danish bureaucratic controls over the criminal justice system to a large degree subverted the local autonomy and removed the flexibility, imaginative and pragmatic approach of peacemaker models of social control. Professional and institutional responses shifted the focus from the offender to the crime and gave precedence to legal justice and punishment over community harmony. Consequently both youth and adult incarceration rates doubled Equally astonishing the number of offenders removed from Greenland and institutionalised in a Danish psychiatric prison has almost tripled in six years. Greenland, increasingly locked into institutional responses, must now cope with the staggering cost of increasingly expensive jails and professionals. Very recently, to stem the tide of rising justice costs, initiatives have been taken to re-establish community based sentencing alternatives based on the traditional peacemaker model of conflict resolution.

Yukon Justice Council of Elders

Native elders, selected by their community, formed a justice council to hear cases diverted from the courts, to make recommendations for sentencing cases before the courts, to supervise community work orders issued by the court and to discuss general problems of law and order in the community. The Council re-established local methods of community control and re-asserted the influence of elders. In this manner the Council developed a greater measure of self reliance within the community. The Council, in carrying out its responsibilities, introduced principles of customary law and relied extensively on its familiarity with local conditions and the family backgrounds of the persons appearing before them.

Generally, when faced with a choice, accused persons choose the Council over the courts. Accused persons appearing before the Council avoid a criminal record and receive a much greater measure of individual attention.

The Councils ensure much more immediate attention to local problems, and add an invaluable supplement to the formal justice agencies.

Navajo - North America

In April 1982, chiefly through the auspices of judges working in the formal justice system a new type of court system blending traditional native methods of mediating disputes with formal court structures was established for the Navajo people. This court, known as the Navajo Peacemaker Court, was adopted to soften the impact of the alien Western justice system and to provide flexibility for mediation and the arbitration of local problems by community leaders.

Peacemaker courts employed various strategies of mediation. A peacemaker or mediator is only authorised to encourage disputants to work together to resolve all their differences. By assisting each disputant to understand the other's position and concern, the mediator steers the discussion towards recognising common ground and common interests. In the end if either disputant rejects the process or the result he can turn to the formal courts for adjudication. However, once a result has the agreement of both parties, and has been reduced to writing, the agreement becomes binding upon both parties. The enforcement remedies of the formal justice system are available to enforce any agreed settlement. - This procedure provides an easily accessible, private, formal and inexpensive means of resolving conflict.

Mediation employs compensation, reconciliation and pragmatic compromises to foster peace between the parties. Peacemaker courts avoid the syndrome of winners and losers and thereby reduces the polarising and visceral nature of formal court processes. Peacemaker courts are not bound by the legality of procedures or results. They are bound only by the parties' accord of what is fair. These courts enjoy extensive flexibility to search for solutions with imagination, creativity and resourceful pragmatism. In the end, the parties discover a compromise perceived to be fair and tolerable. In resolving the dispute largely through their own efforts, with the mediator as a relatively passive facilitator, the parties may enhance their relationship through the process of resolving a specific dispute.

Peacemaker courts have the time, flexibility and procedures to unearth the underlying conflict which often lies hidden under the articulated dispute. Assault under closer scrutiny may not be the eruption of an uncontrolled temper but may have evolved from a long history of differences between the parties. An assault may be traced through mediation discussions to an ancient controversy between the parties over hunting rights. To resolve the assault, the festering hunting dispute must be exposed and resolved

Peacemakers are chosen on the basis of their reputation for honesty, integrity, humanity and their ability to resolve local problems (Navajo Peacemaker Court Manual, Rule 2.1). They are chosen by the local community and local judges. The disputants can also select their own peacemaker.

As peacemakers have no coercive powers they must earn the respect of the parties and have the skill to mediate, persuade and facilitate the disputants' discovery of a reasonable and fair resolution. The process of mediation may take any form suitable to the dispute or disputants. Each peacemaker evolves his particular style and mediation skills. Strategies for mediation may range from lectures on traditional values, on the importance of harmonious relationships in the community, to simply seeking methods of fostering a purposeful discussion between the parties.

Both the formal and peacemaker courts benefit from the linkages between them. The courts provide clerical and recordkeeping assistance, and enforce the decisions of peacemakers. The courts can refer cases to the peacemaker courts at the outset of litigation or at any time during the course of the case when the judge deems it appropriate and both parties consent. Family disputes involving personal matters are commonly referred by judges to peacemakers. Victims and offenders in minor criminal cases are often better served by the mediation process of peacemaker courts.

As an alternative to the formal, adversarial, and rule-bound procedures and the formal public hearings of established courts, peacemaker courts add an invaluable addition to the community capacity to resolve conflict peaceably.

Peacemaker courts adopt the best features from the formal justice system and from traditional systems. In doing so the peacemaker courts reinforce community harmony and supplement the ability of formal courts to process disputes.

Summary

In all community-based "peacemaker" models of conflict resolution, any grave injustices from the perspective of formal criminal justice systems are minimised by restricting the jurisdiction of peacemaker courts to minor offences and restricting sentencing powers to short periods of incarceration and reasonable fines. Peacemaker courts rely primarily on remedies designed to promote rehabilitation, reconciliation of the offender and victim, and the positive integration of offenders into the community.

Many of the disputes tackled by peacemaker courts if not resolved may escalate to cause very disruptive behaviour within the community. In many respects, peacemaker courts can credibly be viewed as a vital crime prevention strategy. A dispute between two neighbours may create difficult relations for all members of both families and may spill over into community activities disrupting local political, sporting or cultural events. In a small northern Canadian community a dispute between two local businessmen over a relatively insignificant matter caused both to abandon their involvement in the running of a local community recreation centre. Without their involvement, the centre closed its doors for three months before their contributions could be replaced The entire community suffered, lines were harshly drawn in the community disrupting local council and other local activities. Similar problems beset many communities around the world. The cause of a dispute and its consequences may take different forms, but its disruptive effect on the community will be similar irrespective of the cultural or political setting of the community.

In all cases where both parties to a dispute must continue to live or work in close proximity, they and their community are best served by a solution that achieves a mutually acceptable compromise. A legally correct solution pronounced by the courts may perpetuate discord by creating a winner and a loser.

The further development of village courts would directly benefit communities, the formal justice system and indirectly benefit the overall governing process in Papua New Guinea. The system in this country is already one of the most advanced and best developed community-based court systems in the world.

Few community courts, such as the "peacemaker" courts of Greenland and the United States, or the Justice Elders Council of the Yukon are as firmly entrenched or as developed as the village courts of Papua New Guinea already are. Community-based courts provide the following advantages -

- a crucial connection between the formal justice system and the community;
- alternatives to the complex, slow, expensive, and adversarial processes of the formal justice system;
- reduces the workload of formal justice agencies;
- avoids cumbersome procedures imposed by formal procedures in realising and maintaining harmony within the community;
- allows community customs and values to be directly incorporated into dispute resolution procedures;
- most importantly - ensures that the community assumes significant responsibility for its own problems - thereby building up a sense of community and developing participatory skills for all aspects of the governing process affecting community life.

All aspects of the justice system in Papua New Guinea would benefit from well run village courts. Their continued development not only would improve the functioning of the entire justice system, but may be an essential ingredient in any attempt to solve the country's current law and order problems.

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