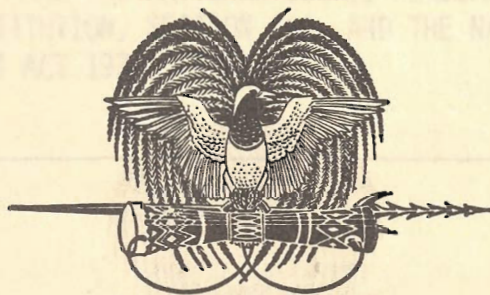


Papua New Guinea

**1977 — ANNUAL REPORT
BY THE JUDGES**

ANNUAL REPORT FOR THE YEAR 1987 BY THE JUDGES
TO THE DEPUTY CHIEF FOR PRESENTATION TO THE
NATIONAL PARLIAMENT IN THE HOUSE OF THE SUPREME
COURT AND THE NATIONAL COUNCIL, PURSUANT TO THE
CONSTITUTION AND THE NATIONAL
COURT ACT 1975



Papua New Guinea

OF THE SUPREME COURT OF JUSTICE
AND THE COURT OF JUSTICE

ANNUAL REPORT

BY

THE JUDGES

THE HONOURABLE SIR SYDNEY WILSON, Chief Justice of Papua New Guinea

THE HONOURABLE SIR WILLIAM PRENTICE, K.C., M.D.S.,
Deputy Chief Justice of Papua New Guinea

THE HONOURABLE EDMUND PETER TOM WAINÉ, E.L.D.

THE HONOURABLE JAMES ROYD KEITH WILLIAMS

THE HONOURABLE LOYOLA PASCAL SALDANHA

THE HONOURABLE WILLIAM JOHN FRANCIS KENNEY, C.B.E.

THE HONOURABLE JOHN ADRIAN DONALD MITCHELL

National Court Library



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ANNUAL REPORT FOR THE YEAR 1977 BY THE JUDGES
TO THE HEAD OF STATE FOR PRESENTATION TO THE
NATIONAL PARLIAMENT ON THE WORK OF THE SUPREME
COURT AND THE NATIONAL COURT, PURSUANT TO THE
CONSTITUTION, SECTION 187, AND THE NATIONAL
COURT ACT 1975, SECTION 10.

JUDGES

OF THE SUPREME COURT OF JUSTICE
AND THE NATIONAL COURT OF JUSTICE

THE HONOURABLE SIR SYDNEY FROST, Kt., Chief Justice of Papua
New Guinea.

THE HONOURABLE SIR WILLIAM PRENTICE, Kt., M.B.E.,
Deputy Chief Justice of Papua New Guinea.

THE HONOURABLE EDMUND PETER TOM RAINE, E.D.

THE HONOURABLE JAMES BOYD KEITH WILLIAMS.

THE HONOURABLE LOYOLA PASCAL SALDANHA.

THE HONOURABLE WILLIAM JOHN FRANCIS KEARNEY, C.B.E.

THE HONOURABLE JOHN ADRIAN MCNAIR PRITCHARD.

ANNUAL REPORT FOR THE YEAR 1977 BY THE JUDGES
TO THE HEAD OF STATE FOR PRESENTATION TO THE
NATIONAL PARLIAMENT ON THE WORK OF THE SUPREME
COURT AND THE NATIONAL COURT AND THE NATIONAL
CONSTITUTION SECTION 187 AND THE NATIONAL

SUPREME COURT OF JUSTICE

1. During the year ended 31st July 1977 the Supreme Court business has been as follows:-

Appeals from National Court - filed	18
References to Supreme Court under Section 18 of the Constitution	2
References to Supreme Court under Section 19 of the Constitution	1
References to Supreme Court under Sch.2.3 of the Constitution	1

NATIONAL COURT OF JUSTICE

2. TRIAL WITH THE AID OF ASSESSORS. In our previous report reference was made to the conduct of trials with the aid of assessors at Lae and provincial centres in the New Guinea Islands. This mode of trial was suspended in operation following a reference being made to the Supreme Court as to its Constitutional validity. The matter has only recently been resolved by the withdrawal of the reference. The procedure thus remains available to a Judge in those provincial centres where lists of assessors have been prepared, viz. Lae, Rabaul, Kieta and Kavieng. However, there has been no great support on the part of the legal profession for this procedure. In those trials in which assessors have been used, the initiative has usually been left to the Judge to institute the procedure of his own motion. Unless there emerges some real interest or demand on the part either of the profession or the public for it, the eventual extension of the assessor system to the whole of Papua New Guinea seems doubtful. We do not at this stage make any such recommendation.
3. THE PROPOSALS TO LESSEN THE WORK OF THE NATIONAL COURT BY INCREASING THE CRIMINAL JURISDICTION OF THE DISTRICT COURT, AND FOR REFORM OF COMMITTAL PROCEEDINGS. Both these reforms were referred to in our first Report. However, the proposals were not sufficiently developed to enable the legislation to be prepared for the consideration of the First Parliament. The Judges would support suitable proposals for reform under both heads.
4. THE DEVELOPMENT OF THE UNDERLYING LAW. Under the Constitution Sch.2.5 provision is made for the Judges to comment on the state, suitability and development of the underlying law, with any recommendations as to improvement as are thought proper. Until the Parliament provides otherwise the underlying law is as prescribed in Sch.2.2, Constitution s.20(2).

The effect of these provisions is that the prime source of the underlying law is custom, but otherwise the underlying law to be applied consists of the principles and rules of the common law of England and equity except to the extent that it is contrary to the written law or inapplicable to the circumstances of the country.

The development of an indigenous jurisprudence thus depends on the law being moulded to incorporate custom, and the common law and equity being adapted to the changing circumstances of Papua New Guinea. As the Constitution itself provides, certain special responsibilities are thus imposed on the National Judicial System in the development of an indigenous jurisprudence for Papua New Guinea.

But it must be kept in mind that the extent to which custom may be taken into account by the Courts is limited by the provisions of Sch.2.1 of the Constitution. Whilst custom is adopted and is to be applied as part of the underlying law it can be applied only to the extent that it is not inconsistent with a Constitutional Law or a statute or is not repugnant to the general principles of humanity. In other words, custom cannot be applied in circumstances where it is inconsistent with the provisions of an Act made by the Parliament of Papua New Guinea. For example, the question as to what conduct attracts criminal liability is to be determined by reference to the Criminal Code. Consequently custom can be taken into account to a limited extent only on certain questions of guilt or innocence where doing so does not abrogate or detract from the Code. But custom is regularly taken into account on sentence in deciding community attitudes and the degree of moral culpability.

Since Independence it is difficult to recall any type of case in the National Court, other than criminal cases and civil disputes concerning the custody of children, in which there has been an attempt to adduce evidence of custom by either party. If a party does not desire to rely on custom, it is not for the Judge, of his own motion, to make such a case. This follows from the adversary system of justice in which it is left to each party to conduct his own case. Further, few cases have been heard in which submissions have been made that the appropriate common law or equitable rule was inapplicable or inappropriate to the circumstances of Papua New Guinea. When the applicability of the common law has been questioned, the point has usually been raised by the judge.

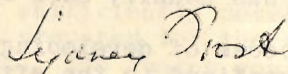
If the process of developing an indigenous jurisprudence is to be confined to the efforts of the judiciary, that development must be necessarily slow. This is due to the comparatively small volume of civil work in the National Court and Supreme Court.

Papua New Guinea is not the only country which has adopted the common law only to find that, because of the limited range of civil litigation, it is only in the distant future that a complete statement of indigenous jurisprudence can be achieved by means of decided cases. This is to some extent still the position in each of the Australian States, a century and more after the establishment of the legal system. In this respect Parliament has entrusted the major work of development of the law to the Law Reform Commission. See Law Reform Commission Act 1975, Section 9. We would thus emphasize that the development of an indigenous jurisprudence requires, as a basic matter, that the Law Reform Commission, in accordance with appropriate references, should undertake its functions in relation to traditional or customary laws as contemplated under that Act.

However, this can be said - that the broad and liberal principles of statutory interpretation provided for in the Constitution have already facilitated in the National Court judicial solutions suited to the circumstances of Papua New Guinea.

5. It gives the Judges great satisfaction to report that an increasing number of National counsel now appear in the National Court and the Supreme Court. Indeed it is not unusual for a criminal case to be conducted entirely by National counsel.
6. COURT BUILDINGS. We repeat the recommendation in our first Report that a new Court House be constructed for the National Court at Mount Hagen. A new Court is also required at Kimbe.
7. STATISTICS OF THE NUMBER OF CASES HEARD. Statistics of the number and nature of appeals, civil cases, and criminal trials as prepared by the Registrar are annexed to this report. Also included are particulars of the range of sentences in criminal trials.

We should draw attention to the practice of the Court to take into account on sentence the period an offender might have spent in custody prior to trial. Thus the effective sentence may be somewhat longer than the statistics indicate, but usually of the order of about 3 or 4 months.



(Sydney Frost)

31st August, 1977.

Chief Justice of Papua New Guinea.

APPENDIX TO JUDGES' ANNUAL REPORT - AUGUST 1977.

PAPUA NEW GUINEA

NATIONAL COURT OF JUSTICE

CASES TRIED DURING THE PERIOD 1ST AUGUST 1976 TO 31st JULY, 1977.

OFFENCE	CHARGES	CONVICTED	DISCHARGED	N.P.	SENTENCE
1. OFFENCES AGAINST THE PERSON					
Wilful Murder	102	92	3	7	K100 recognizance to 12 years' IHL.
Murder	33	29	2	2	K100 recognizance to 7 years' IHL.
Unlawful Killing or Attempt	65	40	10	15	Rising of the Court to 12 years' IHL.
Unlawful Wounding	27	19	1	7	K50 recognizance to 1 year 2 months' IHL.
Grievous Bodily Harm	46	36	6	4	K50 recognizance to 4½ years' IHL.
Rape or Attempt	52	42	9	1	K50 recognizance to 4 years' IHL.
Unlawful Assault	20	18	-	2	Rising of the Court to 12 months' IHL.

OFFENCE	CHARGES	CONVICTED	DISCHARGED	N.P.	SENTENCE
Other Offences against females	50	30	15	5	K100 recognizance to 3 years' 10 months'
Incest	16	14	1	1	5 months' IHL to 5 years' IHL.
Unnatural and indecent offences	9	7	-	2	6 months' IHL to 2 years' IHL.
Other offences against the person	68	44	13	11	K50 recognizance to 3 years' IHL.

TOTAL : 488 371 60 57

2. OFFENCES AGAINST PROPERTY

Breaking and entering	90	85	3	2	Fined K25.00 to 4 years' IHL.
Housebreaking	62	60	1	1	Rising of the Court to 2 years 3 months' IHL.
Stealing	271	243	17	11	Rising of the Court to 4 years' IHL.
Receiving	22	19	3	3	K50 recognizance to 1½ years' IHL.

OFFENCE	CHARGES	CONVICTED	DISCHARGED	N.P.	SENTENCE
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Other offences against property	11	9	-	2	4 months' IHL to 7 months' IHL.
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TOTAL :	456	416	21	19	
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3. OFFENCES AGAINST CURRENCY

Forgery	22	20	1	1	K100 recognizance to 1 year IHL.
Uttering	42	31	1	10	K100 recognizance to 2 years' IHL.

TOTAL :	64	51	2	11	
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4. OFFENCES NOT INCLUDED IN PRECEDING CLASSES

Relating to escapes	4	4	-	-	Rising of the Court to 2 months' IHL.
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Relating to Post & Telegraphs	1	1	-	-	10 months' IHL.
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Arson	8	8	-	-	K20 recognizance to 1 year 8 months' IHL.
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OFFENCE	CHARGES	CONVICTED	DISCHARGED	N.P.	SENTENCE
Conspiracy	4	3	-	1	2 months' IHL to 3 years' IHL.
Unlawful assemblies	-	-	-	-	-
TOTAL::	17	16	-	1	
GRAND TOTAL :	1025	854	83	88	
Comprising:					
Europeans	6	4	-	2	
Asians	-	-	-	-	
Other non-Nationals	1	-	-	1	
Nationals	1018	850	83	85	
GRAND TOTAL :	1025	854	83	88	

NOTES : IHL - Imprisonment with hard labour.
N.P. - Nolle Prosequi.

APPENDIX TO JUDGES' ANNUAL REPORT - AUGUST 1977.

Papua New Guinea - Period 1st August, 1976 to 31st July, 1977.

NATIONAL COURT OF JUSTICE

A.	In its Appellate jurisdiction - filed	262
B.	In its Probate jurisdiction - filed and dealt with	
	Probate and Letters of Administration	21
	Reseal	4
	Order to Administer	4
	Order to Administer with the Will Annexed	Nil
C.	In its Civil jurisdiction -	
	Writ of Summons issued	821
	Motions and Petitions heard	222
D.	Bills of Sale	858

NATIONAL COURT OF JUSTICE

OPRACK	CHARGES	CRIMINAL	MISCELLANEOUS
262			A. In the Appellate Jurisdiction - filed
21			B. In the Probate Jurisdiction - filed and dealt with
4			Probate and Letters of Administration
4			Reseal
4			Order to Administrator
4			Order to Administrator with the Will Annexed
231			C. In the Civil Jurisdiction -
232			Writ of Habeas Corpus
233			Motions and Petitions heard
258			D. Bills of Sale