ANNUAL REPORT

BY

THE JUDGES

1987

PAPUA NEW GUINEA

ANNUAL REPORT

BY
THE JUDGES

1987

REPORT BY THE JUDGES TO THE HEAD OF STATE
FOR THE YEAR ENDED 31 DECEMBER 1987
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 (CH. NO. 37) SECTION 9

JUDGES
OF THE SUPREME COURT OF PAPUA NEW GUINEA AND THE NATIONAL COURT OF JUSTICE DURING 1987

THE HONOURABLE SIR BURI WILLIAM KIDU,
Chief Justice of Papua New Guinea

THE HONOURABLE MARI KAPI, C.B.E.
Deputy Chief Justice of Papua New Guinea

THE HONOURABLE THEODORE REGINALD BREDMEYER, C.B.E.,

THE HONOURABLE ARNOLD KARIBONE AMET, C.B.E.

THE HONOURABLE ROBERT KYNNERSLEY WOODS, C.B.E.

THE HONOURABLE KUBULAN LOS, C.B.E.,

THE HONOURABLE THOMAS EDWIN BARNETT, O.B.E.,

THE HONOURABLE KIM ANTHONY WILSON (Resigned March, 1987)

THE HONOURABLE TIMOTHY ALEXANDER HINCHLIFFE

THE HONOURABLE LARRY KING (Acting - 6 Months from August 1987).

SENIOR COURT OFFICIALS:

Registrar	:	Mr Lawrence Newell, I.S.O. LL.B F.Inst. L. Ex
Deputy Registrar	:	Ms Maria Doiwa, LL.B
Secretary for the Judicial Staff Service	:	Mr. Lawrence Newell I.S.O. LL.B F.Inst. L.Ex
Assistant Secretary (Management Services)	:	Mr Colin Murray
Clerk of the Court	:	Ms Marie Miria
Budgets Officer	:	Mrs Ila Imani
Chief Interpreter	:	Mr Ivan Vagi
Chief Sheriff's Officer	:	Mr Aba Bina
Chief Security Officer	:	Mr Anton Ambane
Chief Associate	:	Mr Daniel Mark, LL.B
Research Officer	:	Mr Nicholas Mirou, LL.B
Chief Secretary to the Judges	:	Ms Philomena Parau
Chief Driver	:	Mr Tobias Serika

1. INTRODUCTION:

This report is in respect of the period 1 January 1987 to 31 December 1987.

For the first time since Independence we include, as part of our Annual Report, a resume of what the Supreme Court and the National Court have done by way of the development of the underlying law. See Appendix "C".

2. JUDGES:

2.1 In the period covered by this report the following occurred:

(a) Mr Justice Bredmeyer, was re-appointed for a period of three years.

(b) Mr Justice Woods, was reappointed for another term of three years.

(c) Mr T A Hinchliffe was appointed a judge for a term of three years commencing 11 January 1987.

(d) Mr Justice Wilson, appointed a judge for three years commencing 20 March 1986,tendered his resignation effective March 1987.

(e) Mr L King was appointed an acting judge for six months commencing 25 August 1987.

2.2 HONOURS & AWARDS:

A Commander of the British Empire was conferred on Mr Justice Amet.

2.3 LOCALISATION:

(a) Of the ten judges of both the Supreme Court and the National Court in 1987 only four were citizens - the Chief Justice, the Deputy Chief Justice, Justices Amet and Mr. Justice Los.

(b) Efforts by the Judicial and Legal Services Commission to advance localisation were unsuccessful. Citizen lawyers considered suitable for appointment as judges were reluctant or not willing to accept appointment for various reasons the most obvious of which was the inadequacy of remuneration and other terms of employment being offered.

(c) We must point out to Parliament that it is not every lawyer who aspires to be a judge. Some of the best citizen lawyers we have are in private practice and these lawyers are not going to accept judicial office unless employment conditions (particularly remuneration) are improved. Until there is improvement in remuneration only those committed to P.N.G. will accept judicial appointment.

2.4 NUMBER OF JUDGES:

There are supposed to be 14 judges.

But so far financial constraints have resulted in the appointment of only 10 judges for any particular year.

We want Parliament to be aware of the fact that a country with over 3,000,000 people cannot hope to maintain satisfactorily the high standard of judicial performance necessary to do proper justice with only 10 judges.

Goal 2(4) says as follows:

> "We accordingly call for -
>
> (4) equalization of services in all parts of the country, and for every citizen to have equal access to legal processes and all services, governmental and otherwise, that are required for the fulfilment of his or her real needs and aspirations,..."

This goal cannot be achieved when there are only 10 judges for the whole country.

2.5 REGIONAL JUDGES:

We propose to place judges in regional towns - one each in Mount Hagen, Lae, Rabaul and either Madang or Wewak.

This policy cannot be implemented unless adequate housing and court facilities are available. We propose to place the first judge in Rabaul. The court facilities are adequate there and we plan to upgrade the existing house.

Our efforts to obtain houses in Lae and Mt. Hagen have been unsuccessful and this is mainly as a result of the present policy of selling Government houses to individuals.

The best way to achieve our aim is to build houses in these centres. We are looking into this at the moment. The Ministry of Housing supports us in this endeavour.

2.6 JUDGES PENSIONS:

During the year the National judges became eligible for pensions with the enactment of the **Constitutional Office-Holders Retirement Benefits Act** 1986 certified on 3 February 1987. We are grateful to be included in this pension scheme nevertheless we note some anomalies and problems with it. Firstly, a judge who prior to his appointment to the bench was a public servant contributing to the Public Officers Superannuation Fund or the Retirement Benefit Fund is not eligible for the more generous pension scheme for constitutional office-holders. We believe all judges, whether they came from the public service or the private profession, should be eligible for the same pension.

Secondly, under the new Act, the judges pension depends on length of service but there are anomalies here. For example, a judge who serves a six-and-a-half year term becomes entitled to a pension for a period of 10 years. On the other hand, a judge who serves say 13 years becomes entitled to the same annual pension for a period of 12 years. We think that unfair. The latter judge serves twice as long to get a pension for 1.2 times as long. We believe the pension given should be related pro-rata to the length of service.

In the third place, the pension scheme is a disincentive to the recruitment of young Nationals to the bench. If a man aged 43, for example, got appointed to the bench for a seven-year term he would become eligible for a pension for life on attaining the age of 50 years. Contrast this with a man appointed to the bench at the age of 35 years. He, too, becomes eligible for a pension on reaching 50 years and not before. He thus gets the same pension as the other man but only after 15 years service. Thus 43 years is the ideal age to be appointed to the bench, to get the full pension after the minimum term of service. A number of good lawyers in private practice, whom might be thought suitable for appointment to the National Court, are aged in their mid-30s. Under this pension scheme they may not be interested in an appointment until they reach 43 years. We have not yet been able to recruit a National judge from the private profession. We favour a modification of the pension scheme which will encourage judges to serve 10 or 15 years rather than 6 or 7 years before retirement.

3.1 STATISTICS:

Appendix "A" and "B" relate to judicial matters dealt with by the Supreme Court and the National Court during 1987.

3.2 APPEALS BY THE PUBLIC PROSECUTOR

Under the Supreme Court Act the Public Prosecutor is entitled to appeal against a low sentence and the Supreme Court may increase that sentence. One appeal in this category was lodged by the Public Prosecutor in 1987 but not heard. Indeed no appeals in this category were heard in 1987 or, for that matter, in 1986. We would urge the Public Prosecutor to lodge and argue appeals against sentence in appropriate cases.

4. FINANCE AND ADMINISTRATION:

4.1 A substantive degree of full independence was achieved in 1987 with the National Judicial Staff Act which the Minister for Justice brought into operation in April. This provides the judges with a support service similar to the National Parliamentary Service. It is anticipated that Regulations will be sent to Cabinet for consideration early in 1988. The Court will then for the first time since Independence be able to restructure its staffing and management to meet the needs of the judges for an efficient and adequately staffed support service.

4.2 BUDGET:

The futility of imposing an arbitrarily determined cash ceiling was demonstrated by the need of the court to ask an extra K100,000 by mid year to enable it to carry out its constitution obligations by way of provincial circuits. The need for extra funds was communicated to the Department of Finance when the 1987 budget estimates were submitted in .....1986. The submission was rejected.

.3 EXPENDITURE

tem	Description	Original Appropriation	Revised Appropriation	Expenditure
1	Personal Emoluments	949,200	921,200	924,999
2	Subsistance Travel	120,700	220,700	194,834
3	Public Utilities	123,400	128,600	123,995
4	Materials and Supply	42,600	47,800	46,123
5	Plant and Transport	145,700	148,400	139,052
6	Special Services	28,000	29,900	29,308
7	Capital Assets	3,700	3,700	3,700
8	School Subsidies	22,100	17,900	17,130
9	Economic Rent Overseas Travel	29,600	30,200	30,132
10	Labourers Wages & Leave Fares	68,000	70,000	65,512
		1,533,000	1,618,400	1,574,591

4.4 OVER/UNDER EXPENDITURE:

On Item I there was overexpenditure of K3,799, despite the fact that we had informed the Department of Finance that we required an extra K6000 for leave pays of lump sum recreational leave beginning in December and extending into January 1988. Under-expenditure arose from claims committed in December not being paid until 1988, with the exception of Item 10 where leave fares budgeted for one family for December were not utilised.

4.5 COURT HOUSES:

The deteriorating condition of most court houses in the Provinces continues to be a matter of concern particularly as a substantial amount of maintenance funds were withdrawn without prior consultation with the Judicial and Legal Services Commission. The Supreme Court House at Waigani still suffers from leaking roofs, a decreasingly inefficient air-conditioning system and an obsolete telephone system now years overdue for replacement.

4.6 FISCAL AUTONOMY:

After discussions with Mr. Speaker (Hon. Dennis Young, CMG., M.P.,) there is every indication that in 1988 Constitutional changes will be made to ensure proper funding for both the Judiciary and the National Parliament. We urge Members to support these changes in the interest of the independence of the Judiciary and the National Parliament.

5. DEVELOPMENT OF THE UNDERLYING LAW:

We include in this report a resume of the decisions of the Supreme Court and the National Court with respect to the development of an underlying law for Papua New Guinea (See Appendix "C").

SUMMARY OF INDICTABLE OFFENCES TRIED BY THE NATIONAL COURT

YEAR	CONVICTIONS	ACQUITTALS	NOLLE PROSEQUIS
1976	737	140	30
1977	854	83	88
1978	817	76	107
1979	1040	136	88
1980	1152	160	91
1981	910	200	93
1982	1379	153	108
1983	624	266	255
1984	810	242	359
1985	441	119	104
1986	876	193	256
1987	623	119	166

APPENDIX A

NATIONAL COURT OF JUSTICE

During the year ended 31 December, 1987 the National Court business has been as follows:

(a)	In its Appellate Jurisdiction	-	Filed	265
(b)	In its Wills & Probate Jurisdiction	-	Filed	
	(1) Wills, Probate and Administration-			21
(c)	Australian Register of Judgements	-		Nil
(d)	In its Civil Jurisdiction:-			
	(1) Writ of Summons	-		949
	(2) Miscellaneous Proceedings	-		162
	(3) Matrimonial Causes	-		41
	(4) Originating Summons	-		188
	(5) Lawyers Act	-		62
	(6) Admiralty Minute Book	-		1
	(7) Caveat Warrant Book	-		2
(e)	Bill of Sales	-		8199
	(1) Discharge Bill of Sale	-		221
	(2) Renewal Bill of Sale	-		1
	(3) Stock Mortgages	-		32
	(4) Discharge stock Mortgages	-		18
(f)	Writ of Execution Directed to Sheriff	-		10

SUPREME COURT

APPEALS - REFERENCES AND REVIEWS

(A)	Appeals from National Court	-	62
(B)	Reference to Supreme Court under Section 15, 18, 19 and 21	-	5
(C)	Principal Legal Adviser Reference to Supreme Court under Section 41 of Supreme Court Act 1975	-	Nil
(D)	Supreme Court Review	-	7

APPENDIX B

CASES TRIED DURING THE PERIOD 1ST JANUARY 1987 - 31ST DECEMBER 1987

	OFFENCE	INDICTED	CONVICTED	ACQUITTED	NOLLE PROSEQUI	SENTENCE RANGE
1.	OFFENCE AGAINST PERSONS					
	Wilful Murder	69	39	14	16	5-10 yrs (6) 10-15 yrs (21) 15+ yrs (11) 1 child convicted and sentenced to the care of Director of Child Welfare
	Murder	62	40	6	16	2-5 yrs (6) 5-10 yrs (22) 10-15 yrs (8) 15 yrs (3) Life (1) Rape/Murder of 9 yr old girl)
	Manslaughter	68	57	5	6	1-12 mths (2) 1-2 yrs (4) 2-5 yrs (47) 5-10 yrs (4)
	Unlawful wounding Attempted Murder	30	25	3	2	g.b.b. (1) Fine (1) 1-12 mths (10) 1-2 yrs (6) 2-5 yrs (6) 5-10 yrs (1)

CASES TRIED DURING THE PERIOD 1ST JANUARY 1987 - 31ST DECEMBER 1987

OFFENCE	INDICTED	CONVICTED	ACQUITTED	NOLLE PROSEQUI	SENTENCE RANGE
Grevious Bodily Harm/Assault	35	28	5	2	G.B.B. (3) Sentenced to the raising of the Court (1) Fine (3) 1-12 mths (6) 1-2 yrs (5) 2-5 yrs (9) 5-10 yrs (1)
Infanticide	6	4	-	2	G.B.B. (2) 1-12 mths (1) 1-2 yrs (1)
Dangerous Driving Causing Death	14	6	3	5	Fine (3) 1-12 mths (2) 1-2 yrs (1)
Rape or Attempted Rape	131	78	28	25	1-12 mths (1) 1-2 yrs (2) 2-5 yrs (30) 5-10 yrs (36) 10-15 yrs (9)

APPENDIX B

CASES TRIED DURING THE PERIOD 1ST JANUARY 1987 - 31ST DECEMBER 1987

	OFFENCE	INDICTED	CONVICTED	ACQUITTED	NOLLE PROSEQUI	SENTENCE RANGE
	Offences Against Females/Indecent Treatment	14	13	1	-	G.B.B. (2) 1-12 mths (8) 1-2 yrs (3)
2.	OFFENCES GENERALLY INJURIOUS TO PUBLIC					
	Unlawful Carnal Knowledge	31	25	3	3	G.B.B. (1) Fine (2) 1-12 mths (7) 1-2 yrs (13) 2-5 yrs (2)
	Incest	12	11	-	1	1-12 mths (1) 1-2 yrs (5) 2-5 yrs (5)
	Unnatural and Indecent offences	11	9	-	2	G.B.B. (1) 1-12 mths (4) 1-3 yrs (3) 6 yrs (1) (Victim 1 yr old girl):

APPENDIX B

CASES TRIED DURING THE PERIOD 1ST JANUARY 1987 - 31ST DECEMBER 1987

	OFFENCE	INDICTED	CONVICTED	ACQUITTED	NOLLE PROSEQUI	SENTENCE RANGE
3.	OFFENCE AGAINST PROPERTY					
	Robbery	175	109	30	36	G.B.B. (3) Fine (1) 1-12 mths (2) 1-2 yrs (10) 2-5 yrs (75) 5-10 yrs (17) 1 Child committed to the care of the Director of Boys Town
	Breaking and Entering	44	37	-	7	Sentenced to the Rising of The Court (3) Fine (3) 1-12 mths (12) 1-2 yrs (15) 20-5 yrs (4)
	Stealing	52	35	5	12	G.B.B. (6) Sentenced to the Rising of the Court (3) Fine (3) 1-12 mths (14) 1-2 yrs (5) 2-5 yrs (4)
	Receiving	6	6	-	-	G.B.B. (1) Fine (2) 1-12 mths (3)

APPENDIX B

CASES TRIED DURING THE PERIOD 1ST JANUARY 1987 - 31ST DECEMBER 1987

OFFENCE	INDICTED	CONVICTED	ACQUITTED	NOLLE PROSEQUI	SENTENCE RANGE
Arson	19	14	1	4	G.B.B. (2) Fine (1) 1-12 mths (5) 1-2 yrs (6)
False Pretence	12	9	2	1	Fine (1) 1-12 mths (5) 1-2 yrs (3)
Forgery & Uttering	29	25	-	4	G.B.B. (1) Fine (6) 1-12 mths (8) 1-2 yrs (6) 2-5 yrs (4)
Misappropriation	53	38	8	7	Fine (5) 1-12 mths (9) 1-2 yrs (15) 5 yrs + (9)

In all these offences relating to Currency, the accused was given reduction in sentence if he repaid a certain sum of the total amount.

4. OTHER OFFENCES NOT SPECIFICALLY LISTED	35	15	5	15	Sentenced to the Rising of the Court (2) Fine (2) 1-12 mths (6) 1-5 yrs (5)
	908	623	119	166	

Appendix 'C'

The Judiciary and the Development of the Underlying Law.

The underlying law for Papua New Guinea is defined in a detailed way in Schedule 2 of the **Constitution** and in the provisions of the **Customs Recognition Act** Ch. 19. Parliament has power under s. 20 of the **Constitution** to change that underlying law but since Independence has made no attempt to do so. The underlying law is the non-statutory law and its two sources are custom and the principles and rules of the common law of England as at Independence. Of these two sources custom is the prime one. It applies under Sch. 2.1 unless it is repugnant to the principles of humanity and its more detailed application in civil and criminal cases is governed by the Customs Recognition Act. The secondary source is common law and equity which applies provided it is not inconsistent with custom and is not inapplicable or inappropriate to the circumstances of the country.

By Sch. 2.5 of the **Constitution** the judges are invited to comment on the state of the underlying law and we are doing that for the first time in this report. In about the first eight years of Independence the judges were regularly criticised as having done little to develop custom and the common law in Papua New Guinea (see for example, B. Sakora, "Judicial Law-Making under the Papua New Guinea Constitution", in P. Sack (ed), **Pacific Constitutions** (1982), and essays by J. Gawi and O. Jessup in DeVere (and others) eds, Essays on the Constitution of Papua New Guinea (1985). However according to Professor D. Roebuck in his essay "Custom, Common Law and Constructive Judicial Lawmaking" (published in deVere (and others) op. cit,. 127-145)

since about March 1983, all this has changed. The criticism of the courts and the pessimism of their earlier record, is now unjustified.

Development of Customary law

Professor Roebuck cites four 1983 criminal cases in which custom was taken into account and two civil cases. An example of the former was Paul Pokolou (unpublished judgment N404) where on a theft charge the accused ran a defence that he had been pardoned by custom. The Chief Justice rejected that defence but accepted evidence of the customary pardon to reduce the punishment and gave the accused a good behaviour bond instead of a gaol term. Professor Roebuck praised two civil judgments. He especially praised Kapi D.C.J. in **Re James Allan Sanga (deceased)** 1983 P.N.G.L.R. 142 where he said that custom develops from time to time and can develop to govern the distribution on death of such modern property as shares in a company. He also discussed the judgment of Bredmeyer J. in **Aundak Kupil -v- The State** 1983 P.N.G.L.R. 350 where the large common law damages payable to a road accident victim who had been made a paraplegic were reduced by the customary compensation paid of money, cassowaries and pigs. The judgment was said to display "extraordinary evidence of judicial inventiveness."

The development of customary law has continued since 1983 especially in the area of criminal law. In **Public Prosecutor -v- Apava Keru** 1985 P.N.G.L.R. 78 the Supreme Court held that the custom of a payback killing on an innocent victim is a custom "contrary to the principles of humanity" under Sch. 2.1 of the **Constitution** and hence does not lead to a reduction in sentence. By "innocent victim" is meant a person who had no involvement in the first killing but who is killed in retribution

because he belongs to the clan or family of the killers. The Supreme Court in that case also rejected the long-held colonial notion that "primitiveness" was a ground for reducing a sentence. The court, chaired by the Chief Justice, at pp. 81-82 said:

> **"The old view was that a person's sophistication was judged by whether he went to school, whether he left his village to take outside employment, the economic development in his area and the distance from a "civilising" influence such as a town or mission; and the more primitive a person was the less punishment he should receive. The rationale for this view was twofold: the more primitive man had a less developed sense of right and wrong and less control over his passions such as anger, fear, revenge and shame; and/or did not know that there was a Government in Papua New Guinea available to redress his grievances. We think the first reason plainly wrong. The unsophisticated man may be just as fine a man in the moral or spiritual sense as the sophisticated man. The uneducated man living in a village and wearing traditional dress may have just as developed (or as poor) a moral sense as the educated man living in a town. All men have consciences which tell them right and wrong. All men succeed at times, and fail at other times, in obeying their consciences and controlling their passions. We consider that the second reason is still valid. If an offender comes from such a remote area that he does not know that there is a Government with a police force and courts to redress his wrong, so that he is forced to resort to self-help actions, then we would reduce the sentence for that reason. But there must be very few people indeed living in Papua New Guinea who fall into this category. Certainly these two respondents living in the Goilala area of the Central Province do not fall into this category. We would allow them no reduction of sentence for lack of sophistication."**

In Public Prosecutor -v- Sidney and Billy Kerua 1985 P.N.G.L.R. 85 the Supreme Court in a unanimous decision chaired by the Chief Justice rejected a Western Highlands custom of mutilating an adulteress as contrary to the principles of humanity and hence did not justify a reduction of sentence in a case where the husband and his brother murdered the adulteress wife.

In **The State -v- Luke Aidou** 1985 P.N.G.L.R. 292 Barnett A.J. was trying a case of incest which is defined in the **Criminal Code,** among other ways, as sexual intercourse with a sister. The defence raised was that the girl was only a half sister. The judge accepted evidence of custom in the Siassi area, from which the paties came, that sexual intercourse with a half-sister is abhorrent, and interpreted sister in the Code to include "half sister" and convicted the offender.

Custom is regularly and repeatedly taken into account in criminal cases. Custom is taken into account less frequently in civil cases. Most Papua New Guineans allow custom to regulate their affairs in matters relating to the family, succession to property on death, and land ownership. A few family law matters get to the National Court by way of appeal from the Local or District Courts, or by direct application under the **Infants Act** Ch. 278. They mostly concern the custody of children but there custom has been ousted by statute. Thus, whilst by the custom of a certain people the custody of a child should be awarded to a father who has paid bride price, the Infants Act provides that a father and mother are jointly entitled to the custody of a child, and that the court may award custody having regard to the welfare of the infant, the conduct of the parents, and the wishes of the parents. Of these three factors the Supreme Court has held that the welfare of the infant is the paramount consideration (**Bean -v- Bean** (1980) P.N.G.L.R. 307). The Customs Recognition Act has a similar provision. Custom may be taken into account in a custody case arising out of a customary marriage (s. 5(f)) but not if the recognition of that custom would not be in the best interests of the child s. 3(1)(b).

A few cases come to the National Court on appeal concerning appeals against maintenance orders made under the **Deserted Wives and Childrens Act** Ch. 277.

Questions arise in those cases: Are the parties married by custom?, or, Are the parties divorced by custom? As an example, Barnett A.J. considered both questions in 1986 in Igua Nou -v- Karoho Vagi (Unpublished judgment N533). Because the man got the woman pregnant and she gave birth to his child, full customary engagement practices were not followed, but there was a token exchange and a ceremony of sorts in the presence of relatives of both sides. No bride price was paid but the evidence was that the people of Pari village accepted the relationship as a marriage. The parties then lived in the man's father's house. Seven months later the man left her, married a Filipino woman under the Marriage Act, and was later convicted of bigamy. The customary wife got a maintenance order against him. He appealed to the National Court on the basis that he was divorced from her by custom. The evidence was that the marriage had broken down, and that when she removed her belongings from his house that was an accepted sign of breakdown. The judge found that the marriage had been dissolved by custom and hence he quashed the maintenance order in favour of the woman.

Disputes over customary succession and land seldom get to the National and Supreme Courts. Disputes in these matters are settled in the village by using traditional settlement means or in the lower courts. Although there is an appeal from the Local and District Courts to the National Court, the property in dispute in a succession case seldom justifies an appeal to the National Court, and no appeal lies from a Local or District Land Court, to the National Court. The most common kinds of civil case to come before the National Court are claims for personal injuries arising out of a motor vehicle accident, contract cases, or challenges to the actions of the government. The motor vehicle accidents cases are decided on the common law of tort and damages. The contract cases are decided on the common law of contract: What were the terms of the agreement?, and, if they failed to consider a vital term, what

would be a reasonable term to imply?. Cases involving a challenge to government action usually turn on questions of statutory interpretation and natural justice. Custom rarely arises in these disputes. We believe that this is the same in the African countries which have a similar system of dual laws, customary law and received English common law. Customary law is more developed in the African jurisdictions than in Papua New Guinea in the sense that there are more text books on it and more cases tried by the higher courts. The lesson to be learnt from those countries is that people will continue to sue for common law damages when injured in motor vehicle accidents, will be content to have their contractual disputes decided according to the common law, and will continue to challenge government actions under administrative law which is part of the common law, but as they get wealthier, or if legal aid is widened, they will gradually choose to litigate their property and succession disputes in the National Court and then the court will have greater opportunities to apply and develop the customary law.

The development of the common law

Professor Roebuck in the article quoted also praised the judges for their efforts to adapt the English common law to the circumstances of Papua New Guinea. He pointed out that the task is a difficult one as so few cases are litigated in Papua New Guinea, roughly 150 cases reported a year compared to well over 1000 a year in England. Yet he discovered a trend in 1983, a new willingness of judges to take opportunities - manufacturing them even - to develop Papua New Guinea's law in the way they think it should go.

Professor Roebuck referred to three 1983 cases as examples of this trend. In **Rainbow Holdings Pty Ltd -v- Central Province Forest Industries Pty Ltd** 1983 P.N.G.L.R. 34 the Supreme Court enforced a contract for the purchase of logs, even though there had been non-compliance with the Forestry Regulations, on public policy grounds - to ensure that the customary owners were paid their royalty. Professor Roebuck praised Kapi, DCJ for his willingness in **Lucien Vevehupa -v- MVI (PNG) Trust** 1983 P.N.G.L.R. 343 to follow post-Independence trends in the English common law and grant a judgment in a foreign currency. Since then a number of judgments have been given in foreign currencies, one example being **Caswell -v- National Parks Board** (unpublished judgment No. 584), a 1987 judgment of Hinchliffe J. Lastly the Professor praised several features of the judgment of Bredmeyer, J in **Aundak Kupil -v- The State** 1983 P.N.G.L.R. 350 and described the award of periodic payments instead of a lump sum for future medical expenses and loss of income as possibly the "greatest example of judicial creativity in the history of Papua New Guinea's modern legal system."

Professor Roebuck concluded that this wholesale and robust approach should he hailed as a clear sign of a new maturity in the National and Supreme Courts, which have thrown off the attitudes of former times which led them to behave like lower courts, restricting their judgments to the facts and taking their principles ready-made from overseas. We believe that this trend has continued. In **Pinzger -v- Bougainville Copper Ltd** 1985 P.N.G.L.R. 160 the Supreme Court considered the question of inflation on damages. The court was there concerned with the interest rate to be used when capitalizing a weekly sum of damages payable over a specified period. The Supreme Court chose to reduce the "discount rate", as it is called, from 5% to 3% to allow for inflation and it did so

after examining the position in England and Australia and after detailed thought and discussion as to the circumstances of Papua New Guinea.

In **Rohrlach -v- Lutheran Church Property Trust** 1985 P.N.G.L.R. 185 Barnett A.J. held that the age of majority appropriate to the circumstances of Papua New Guinea is 18 years and not 21, a change which has been made in other countries only by statute. The decision concerned an expatriate infant but the reasoning applied to Nationals as well and has been widely followed. In 1986, in a long and complicated judgment **The "Federal Huron" -v- Ok Tedi Ltd** 1986 P.N.G.L.R. 5, the Supreme Court found that there was no admiralty law applying to the Papuan part of the country. The court applied Sch. 2.3 and 2.4 of the **Constitution** and formulated an admiralty jurisdiction for Papua. The decision is a landmark in the application of those parts of the Constitution because in many, or most, other countries such a momentous step as to create jurisdiction could only be achieved by statute. The judgment has been published in Lloyds Law Reports of London which enjoys a world-wide circulation.

Two further cases decided in 1987 are remarkable for their extension of the common law in the field of administrative law. They are **Benson Gegeyo and Others -v- Minister for Lands** (unpublished judgment N635) and **Application of National Capital District Interim Commission** (unpublished judgment N636). In the former case the Minister for Lands revoked the appointment of four members to the Land Board who served there in an honorary capacity. Although Amet J. said the Minister had by statute an unfettered power to revoke their appointments, by common law he could only do so for good cause, and after having given prior notice to the members and having given them an opportunity to be heard. In the second case the Minister for Lands had revoked a recreational reserve at Ela Beach and another on Touaguba Hill both in Port Moresby. No prior notice was given to the trustee of the reserves nor reasons given

for the revocation. Amet J. held that, although the Minister had an unfettered statutory power to revoke the reserves, he could only do so for reasons which were in the public interest, and after having given prior notice to the trustee and having given it an opportunity to be heard. As the Minister had failed to give any reasons and had failed to give any notice of his proposed revocation to the Trustees, the revocations were declared invalid.

We propose to comment on the court's development of the underlying law in each future report.