

FOUR CUSTOMARY LAW CASES

It has long been recognized that the official legal system, imported from Australia and England, impinges on most Papua New Guineans very little. Occasionally, a Papua New Guinean may be charged with a violation of the Criminal Code or may fall behind in payments for a truck or outboard motor. But, for the most part, the lives of rural and even many urban Papua New Guineans are governed not by the rules and courts of the imposed legal system, but by the customary laws of traditional Papua New Guinean societies, applied by unofficial village and clan bodies. Most Papua New Guineans marry, divorce, inherit property, obtain rights to land and settle disputes totally within the purview of customary law and customary legal procedures.

For many years, the work of unofficial courts went almost unnoticed by the official world. While the courtrooms of the imposed legal system were airconditioned and judges sat majestically bewigged and robed, while the government allocated funds and the press reported the convictions and judgments of the official courts, unofficial village meetings went about their business of settling disputes and solving the legal problems of the mass of the people essentially unpublicized and unpaid that situation is beginning to change as Papua New Guineans recognize that they have a rich legal tradition. The *Village Courts Act* 1974 does not so much create new court as legally recognize procedures that have long existed. At the University, law students now learn not only the rules of the imposed legal system but also the principles and practices of customary law. A number of students spent the University holidays gathering data on customary law and customary dispute settlement bodies. This information will be supplied to the Law Reform Commission, so that its proposals for new legislation will mirror the values and traditions of Papua New Guinea.

The four cases presented here were gathered by law students from various parts of the country. The cases demonstrate the workings of the customary legal system and the attempts of official courts to understand and apply customary law. Village bodies decide disputes and to the felt need to maintain community harmony and solidarity. Official courts and police are caught between the rules of the imposed legal system and the often conflicting norms of customary law.

I. The Theft of a Pig

This cases, which involved the Milika and Paliga clans who live near Mount Hagen in the Western Highlands, took two

days before a solution was reached. Though only two individuals were directly concerned, their clans took part in talking out the case. The history of these two clans indicates that they were traditional enemies. However, since the pacification imposed by the laws of the official system, they have managed to live close to each other and use rivers, hunting grounds and other things together.

Wama had lost a pig, and he suspected that Waka, the defendant, had been in the area where the pig usually roamed. Searching for the lost pig, Wama noticed that Waka had been there and that Waka's movements in the bush were irregular steps. The footprints went to a fro, followed the pig's paths, and went along the creek, in order Wama said to avoid staining the bush with the pig's blood. Wama also found that wood had had been chopped, to make a spear he believed. Although Wama could find no evidence of the pig itself, the major element which supported his suspicion of Waka was Waka's previous record of being a thief. Waka had stolen a pig from Wama's clan a few years ago.

On the appointed date, the two clans gathered on the Paliga clan's singsing ground to talk out whether the defendant had stolen the pig. All the clansmen of each side sat opposite each other with the councillors and *komitis* in the centre to question Waka and Wama. The clans exchanged no words of greeting, except with some elders.

When everyone was settled, defendant's councillor stood up and gave a general speech about law and order, development and the country's political situation, with particular emphasis on the proposed date for independence and how to keep up with the changes. He also emphasised how to behave towards each other--to work and, particularly, not to fight. He gave an example of two clans near Mt. Hagen, namely the Jigas and the Yamulgas, where tribal differences forced people to create more problems since their properties have been ruined. He concluded by facing the two clans and saying, "The two clans present here are former traditional enemies. Therefore, we the young ones who knew nothing about fights should take every precaution to see that we do not create or start it again. In the present case, I would like to see Waka admit the theft quickly so that we can all go back to our work."

The councillor then asked Wama to produce his evidence, and plaintiff described the evidence he had found in the bush. He concluded, "A thief cannot be innocent when he is being suspected. The pig was born in that particular area and cannot just wonder out of the area as if it does not know the area."

The defendant produced his defence. "I went to that area searching for wood to make a spade handle. Since the day was hot, I followed the creek and came home. Here is the wood I chopped for the spade handle." The crowd murmured, because the spade-hand looked older than it should.

While the councillor took Waka aside to ask him privately if he had stolen the pig, the elders on each side made numerous speeches of the past and what would happen in the future if such threats go on. Although there were many speeches, I will quote only one: "You young men think that people in my age lived like you people do these days. You eat too much, move freely, do what you want and marry whom you love. My sons, you are very fortunate to have these privileges. In the past, no one in this valley heard my name. I kept to myself and was always on the alert for attacks. Now you are in the hands of the government and by all means keep it that way. If you don't then the government, the man for all people, will be against you and you have no where of escaping." To me it seemed that the elders were teaching their young men not hurt each other.

When Waka did not admit the theft, the whole case seemed complicated. But regardless of this, Wama's clan pressed Waka's to compensate even though he did not admit it.

By this time it was getting late in the evening so Waka's clan agreed to come with an answer in the morning after quizzing Waka privately in their men's house. If the answer were still not satisfactory, then they would go to the local court after they dispersed. Defendant's clan, the Paligas, gathered in the men's house where the elders pressed Waka to tell them if he had stolen the pig. The elders also warned the young men not to go to the area where the pig had disappeared. If they happened to go there then they must consult the elders so that if something arose, the elders could act as witness and solve the case easily.

The next day both clans gathered at the same ground and this time the Milikas looked angry. Their eyes looked fierce and their words sounded angry and their speeches were degrading defendant's clan. The Paliga elders did not want to tolerate this, but the councillors ordered them to stop.

Just before they broke up to take Waka to a Local Court, a big man in Waka's clan got up and spoke, "I thought this case would not be as difficult as it now turns out to be. We were here yesterday, sweating in this hot sun, did no work and you Milikas have made numerous speeches which I as the big man couldn't bear. However, since plaintiff still believed that his pig was stolen by one of the members of my

side, I did not speak in the first place because I would be wrong. Now it seems that we are about to go to a local court but I don't want us to. You Milikas and Paligas see that the way defendant is speaking does not seem to be innocent. And since we in our generation have stopped our tribal differences, I now hereby order two pigs from our clansmen. We do not know the real facts of this case, but for the mere reasons I've mentioned, we'll give one pig as compensation and the other for you men of both clans to have feast."

The councillors from each side took the pigs and, while holding them, made speeches about what will happen if Waka or other men steal. Plaintiff's councillor ordered Waka to stand up and shouted, "Look at these pigs. How much do you think they are worth? Now you have to work twice as hard to breed the small ones up to this size. Don't think you can gain more by stealing. Instead you'll lose more when found out, or if not then God will not give you pigs. You can never hide such thefts, because we two clans are together and we pinpoint on you who steals."

There were many things involved in this case which determined its solution. There was no conclusive evidence in the case, but both clans believed that Waka was guilty. They pressed him to admit the theft because he had a record as a thief and because the way he spoke made everyone in the traditional court know he had done it. He did not face the people, he spoke in an unusual manner and he was sweating. Both clans also knew what would have happened if the case had been taken to an official court: defendant would probably have been found innocent because no material facts could be proven. Neither clan wanted that outcome as it would have had consequences for both clans. The Paliga elders gave compensation in order to keep up their clan status and to preserve their right of demand the same thing if such offences go the other way. But the most important reason for this solution to the case was to retain friendship between the clans, and this was emphasised in all the speeches.

II. An Unfaithful Wife and her Lover

This case happened in 1968 in the village of Ralalar, which is 36 kilometres from Kokopo on East New Britain. To Midal and Ia Wurmagit had been married in the customary way for six years and had two children. Everyone believed that they were happy together. When their younger child was 14 months old, To Midal went over to New Ireland by himself for two and a half months. While he was gone, Ia Wurmagit started to have an affair with To Warpam, an unmarried man who was looking for a wife.

When To Midal returned from New Ireland, the affair continued, though he didn't know it. The lovers would meet whenever To Midal left the village. But he became suspicious. He came home one night to find his two children asleep in the alone. He went out to look for his wife. When he came back an hour later, she was home, getting ready for bed. She told him she had been talking to their next-door neighbors, but he knew she was lying because he had been there looking for her. He said nothing, but he decided to find out why his wife would lie to him.

The next day he told his wife that he was going to a village five miles away to help a friend build a house. A half mile from home, he turned back. He saw his wife leaving the house hurriedly, and he decided to follow her. She went to their vegetable garden, where she was met by To Warpam. To Midal hid himself behind some banana trees and saw To Warpam take his wife's hand and lead her towards a patch of cassava, which was growing thickly at the side of the garden. To Midal watched them undress and begin sexual intercourse. Then, he burst from cover and ran towards them. To Warpam gathered his clothes and ran away. To Midal took his wife home, where they argued fiercely. Ia Wurmagit took the two children and went to live with her parents.

To Midal went to the elders of the village and asked them to hear his case against To Warpam and Ia Wurmagit. The elders and To Midal agreed to a date for a hearing. Ia Wurmagit and To Warpam were required to attend. According to the customs of the Tolai people, adultery is a very serious offence.

On the day of the hearing, To Midal, his wife and To Warpam were present. As is customary at such gatherings, all the people of the village were present also. The people come to hear the proceedings because they want younger people to learn how cases are solved by customary law and because they believe that attendance will deter others from committing the same offence.

The committee of elders sat in the middle of the large crowd. To Midal sat with the elders, and Ia Wurmagit and To Warpam sat in front of them. One of the elders began the hearing with an announcement of what it was about and how important it is for the people not to break the customary rules. He made an example of the present case, pointing out how humiliating it was to the relatives and friends of the parties. Then, To Midal was asked to present his evidence. While he spoke, Ia Wurmagit and To Warpam sat with their heads bowed low. When he had finished, he was questioned both by the committee of elders and also by several villagers from the crowd. The elders act as judges and are in control

of the hearing, but discussion of any fact is open to the whole village because it is believed that adultery is an offence not only against the husband but against society as a whole.

Ia Wurmagit was ordered to stand up, and she was questioned by each of the five elders on the committee. She confessed that she was having an affair with To Warpiam and that she had slept with him many times when her husband was away from home. This brought a great expression of shock and feelings of discontent and humiliation from the crowd, especially from the women. They were shocked at her disloyalty to her husband. Asked whether she still cared for her husband, she said that she no longer loved him. She loved To Warpiam, she said, but she could not leave her husband because of the children.

At this point, her parents demanded to know whether To Warpiam had used love magic to attract Ia Wurmagit. She had always been an honest woman, they agreed, and would not commit adultery unless she had been forced into it by To Warpiam's sorcery. But To Warpiam denied that he had used sorcery, and his brothers supported him, saying that he had never believed in magic and therefore would not use it. Questioned on how the affair had started, To Warpiam said they had talked while her husband was in New Ireland and had agreed to have a secret love affair. Ia Wurmagit admitted this was true.

The elders then discussed the case among themselves. They decided that both To Warpiam and Ia Wurmagit were guilty and thus, as was customary, the relatives of To Midal should decide on the amount of *tambu* (shell-money) which Ia Wurmagit and To Warpiam must pay to To Midal. The relatives decided that Ia Wurmagit and To Warpiam should each pay 2,000 fathoms of *tambu*. They reported this decision to the committee of elders, whose duty it was to decide whether this was a reasonable and fair amount of compensation for the offence. The elders argued that the price was too high and suggested that compensation should be 1,000 fathoms of *tambu* from each. This compromise was accepted by both the family of To Midal and the families of the offenders. The elders then determined a date for the payment of the compensation. The payment must be made to the committee of elders, who in turn hand it over officially to the recipient.

But the hearing was not yet over. To Midal stood up again, and said that even though To Warpiam and Ia Wurmagit has promised to pay compensation to him for what they had done behind his back, he was not satisfied. His marriage had been greatly affected, and he no longer wished to remain married to Ia Wurmagit. His pride had been destroyed. The thought of what Ia Wurmagit had done would always be in his

mind. Besides, she had admitted that she no longer loved him. He asked for a divorce in the customary way.

To Midal demanded that Ia Wurmagit's parents return to him the bride price he had paid for her. The elders discussed the matter. Under custom, a husband has the right to decide whether he wants to divorce his wife has been unfaithful. However, Tolai is a matrilineal society, and the elders decided that Ia Wurmagit's children would live with their mother in her parents' house. Therefore, the elders decreed that To Midal could have his divorce, but a portion of the bride price would be given to Ia Wurmagit to use for the welfare of the children. The elders also said that To Midal had the right to see the children any time after the divorce. After all, they were his children, too. The bridal price had been 8,000 fathoms of *tambu*. Of this, 6,000 fathoms were returned to To Midal and 2,000 fathoms were retained for the children, who would be under the care of their grandparents.

Because To Midal and Ia Wurmagit had been married in the village under customary law, their divorce was also accomplished in the customary way. Had this case taken place on the Rabaul side of East New Britain, the procedures and results might have differed slightly, but compensation with *tambu* is common throughout the whole Tolai community. The amount of compensation varies considerably depending upon the nature of the offense. Two adultery cases may produce different amounts of compensation, because the cases could differ in the reasons for the adultery, the parties responsible for it, the consequences of their act, etc. In this case, the compensation payment was very high because the relatives of the injured man had been very much hurt and humiliated by the wife's unfaithfulness.

Ia Wurmagit and To Warpiam suffered greatly for their offense. Apart from the large compensation payment that had been exacted from them, they had been deeply shamed when the hearing made their adultery public. They would always be shy in the eyes of the village. This is a major reason why offenders are subjected to community punishment.

The two adulterers married one another in 1969, a year after the hearing. They might have wanted marry right away, but they had to wait until all the compensation had been paid and the bride price returned. Further, it would have been considered very shameful had they married immediately, without waiting for the feelings of the people over the incident to subside. The children stayed with Ia Wurmagit's parents, and To Midal has continued to take care of them, giving them land and buying them gifts now and then. Even though his marriage to Ia Wurmagit is over, he still loves his children.

Adultery is not taken lightly by the Tolai people. It is considered a very serious offence against society, and since 1968 there has not been another case of adultery to come before the committee of elders in Ralalar village. If a case were to come up today, it would probably be taken to the *Narkurai Nigunan* in Rabaul, where Tolais now bring serious customary matters for hearing and solution.

III. A Fight in Boroko

On 17 July 1974, in Boroko Local Court, the defendant Terry Anglo of Kabwum in the Morobe District was charged with assaulting Harold David of Bundi in the Madang District.

The witness, Harold David, told the court that, on 19 June at about 9:30 p.m., the defendant had helped a group of his *wantoks* to fight the witness and his friends. Everyone involved had been drinking in the Boroko Hotel. "The defendant was inside the hotel when we left," the witness said, "but he saw that his *wantoks* had picked a fight with us, so he ran down from behind us and hit me very hard on the back of the head. With this big blow, I fell unconscious on the ground and fell right into the drain. When they saw this, the defendant and his *wantoks* fled into their compound and hid themselves." The witness lay unconscious in the drain for about two hours. When he awoke, he struggled slowly to the police station and reported the matter. The police asked him whether he knew his assailant and where he lived, and the witness said that he did, so they told him to leave the matter until the next day. Next morning, before the defendant could go to work, the witness arrived with the police, who arrested him, charged him and took him to court. The defendant's employer put up bail for him, and the case was set down for 17 July.

After hearing the evidence and arguments from both sides, the magistrate asked the defendant whether he knew the witness. The defendant admitted that he did. "Then why did you go ahead and punch him nearly to death?" asked the magistrate. The defendant told the court that he had been obeying the customs of his people. It was their custom that a man who sees any of his *wantoks* in trouble must go to their rescue. He must fight the *wantoks'* opponents, no matter who the opponents are. The defendant knew the witness, but his priority was to help his *wantoks* fight the witness.

The defendant explained to the court some of the reasons for this custom. If he didn't help his *wantoks* to fight, they would not help him if he were in trouble, but if he did come to their defence, then they would aid him, not only in

fighting but also by giving him food and other kinds of help. Thus, he had to fight for his own safety. Moreover, he told the court, a man who does not help his *wantoks*, especially in a fight, will be called "a woman, a boneless creature and a coward." That would be a shameful thing for him, the defendant said, and his relatives and the young women would make fun of him all the time.

While the court was having a short recess, I asked the defendant whether there were any other reasons why he had taken part in a fight that did not concern him directly. "Oh, yes," he answered, "Now, when my *wantoks* or anyone ask me about my fighting experience, I'll have something to boast about."

The magistrate sentenced the defendant to a \$15 fine. After the hearing, I asked the magistrate whether he had considered defendant's customs in deciding upon this penalty. The magistrate said that he could have fined the defendant as much as \$20, but had reduced the penalty because he realized that fighting was not a crime in defendant's customary law. He could not have found the defendant innocent, however, because under the Criminal Code and the *Native Customs (Recognition) Act*, section 7, custom can be taken into account in setting a penalty but not in determining guilt or innocence.

I believe the magistrate was correct in recognizing the importance of the defendant's customary law and in lessening the penalty accordingly. Defendant's society, like many in Papua New Guinea, believes that among the functions which every member of the society should carry out is the duty to help other members whenever necessary. If a member of Kabwum society failed to fulfill these obligations, he would be considered an inferior or greedy person. Thus, the defendant was in conflict between the rules of the imposed legal system and those of his own society. He had to make a decision that might affect the whole pattern of his life. If he obeyed the imposed legal system, he would avoid a fine or goal, but he would lose the help of his *wantoks* and any chance for prestige in his society. He chose to take the side of his *wantoks* because he comes from a society where everyone depends on everyone else. Further, he knew that he would be with his *wantoks* all the time, but he would not have to live with the magistrate, the police officer or anyone else that deals with the imposed law.

The defendant believed that in fighting the witness he was doing good for his people, his society and himself. This may seem funny to those who make and introduce the received laws, but it would not seem so to most of the people of Papua New Guinea. To the people of customary societies and traditional

backgrounds, reciprocity and mutual aid are serious matters. For this reason, I would conclude that the magistrate was correct in recognizing custom and reducing the penanty.

IV. The unexplained Death of a Child

This incident occurred in late June 1974 at Kateaka village, a mile or so from Asaro, rural centre in the Eastern Highlands District. My father was the non-commissioned officer in charged of the police station there.

I was around the station that day. It was lunch hour so no policemen were about when a girl of about 12 and a boy of 14 came to the station. Both looked worried. "Did you hear a small story from Kateaka?" they asked me. I ran to fetch my father, as I sensed the situation needed immediate attention. But when he came to inquire into the matter, the fell silent. They didn't know whether they should give the full facts of the case to him, because (as we later discovered) the elders of the village had warned that the police should not be brought into the matter. The elders said they would deal with the matter in their own way. If children defy the elders, their status in society may be severely affected. In reaction to this, some children have gone so far as to commit suicide, though it is more usual to stay and endure it. My father, growing impatient, told them they mustn't feel afraid as he would do what he could to help them. After much convincing, they spoke at last.

They told my father that, at that moment, a ceremony was going on in Kateaka village which was to result in the hanging of an old woman believed to have extraordinary powers of sorcery. The other week, some village boys, of ages ranging from five to eight, developed a liking for playing around the old woman's garden. She was cross about it and told them off. That evening, one of the small boys got sick. At about 7 o'clock, it was alleged, the old woman became a *sanguma meri* and took out the boy's heart. At about 4 o'clock in the morning, the child died. According to the poeple, the old woman was the obvious cause of the child's death. I do not have any information about her past practices, but the decision of the elders to end her life implies that she had caused alot of problems in the past and that the villagers did not want to cope with her practices beyond this limit. The elders were holding a ceremony, first to have the old woman confess to the people that she had caused the child's death, and second to deal with her in the customary way -- i.e., to kill her, in this case by hanging, in order to deter other persons from practicing sorcery. People from all the villages around Kateaka were invited to the ceremony. Sugar cane was cut for them, and the ceremony was underway.

My father acted immediately, and soon the police vehicle had reached Kateaka. We left the vehicle about two hundred yards from the village, and proceeded into the village on foot. As we arrived, the sounds of excitement that we had heard died away, and shouts of abuse followed by flying missiles were centred on the children. The two policemen stood guard over the two children to prevent a physical assault on them from the frustrated crowd of approximately 500 people.

Under the shade of the tree was the suspected sorcerer, with a noose around her neck. From the loud cries of excitement we had heard as we were approaching, we had guessed that they were just about to hang her. We got there just in time. My father went straight to the old woman and took the noose from around her neck. He placed her under the custody of the policemen who were guarding the two children.

My father asked the elders to a small talk on the law involved. They obeyed him reluctantly, though all the while the crowd abused the two children and made threatening gestures. We discovered that the girl who had reported the matter was the suspected sorcerer's daughter while the boy was unknown in the village. My father ordered the policemen to drive the children and the old woman back to the police station, as it was much safer there, and to return for him later. The track from the village to the vehicle was one of sweat, heat and defence as I aided the policemen protecting the victims from flying missiles and assaults. After seeing them off, I went back to the village to learn what my father had to say to the people.

He opened his speech by saying that, as a Highlander himself, he sympathised with them, for it is the custom in many Highland areas that sorcerers be punished by death if their acts harm the society in which they are living. (Hageners don't practice sorcery, which is why my father didn't refer to his own area.) But, "he went on, "the old times of our fathers are finished, The white man is among us and has imposed his laws on us. If we don't obey these laws he will punish us. By custom, the old woman would have been hanged, but the white man doesn't want it to be this way. I mustn't let you hang her, for I will be brought to court if I do and will possibly lose my job. Once a complaint has been reported I must act upon it, for it is my job and I'm paid for it." The people murmured in approval and agreement. He went on, "Unfortunately, this case was reported to me and as a policeman I must intervene."

Later I discussed the matter with my father. He said that he believed the woman should be hanged. She was a sorcerer. Her deathlike look revealed the hidden evil in her

personality. "We have in our custody," he said, "a sorcerer who will now be dangerous to the people she has offended. We safeguard her, and when she returns to her village she knows that she has the security of the police and can carry on her condemned acts. Sorcery ought to be investigated in detail. The House of Assembly should pass a law saying that any sorcerer found practicing an evil sorcerous act must be imprisoned for life or killed."¹

This case demonstrates problems that arise throughout Papua New Guinea, wherever sorcerers practice and people believe in their power to do harm. The *Sorcery Act* 1971 should have solve some of these problems. In sections 7, 8 and 9, the Act recognizes the belief in sorcery. And section 11 provides, "No person shall do any act of forbidden sorcery or aid, abet, counsel or procure ... the doing of such an act." By virtue of section 11, the old woman would have been liable for her practices. However, the punishments provided by the Act are very light, and the sorcerer's victims may not be satisfied with less than life imprisonment or capital punishment.

The *Sorcery Act* also protects people who are provoked by the activities of a sorcerer into killing her. Section provides:

- (1) For the avoidance of doubt, it is hereby declared that an act of sorcery may amount to a wrongful act or insult within the meaning of S. 268 of the code;
- (2) It is immaterial that the act of sorcery did not occur in the presence of the person allegedly provoked, or that it was directed at some person other than the person allegedly provoked;
- (3) The likely effect of an act of sorcery replied on by virtue of this section shall be judged by reference, among other things, to the traditional beliefs of any social group of which the person provoked is a member ...

The strengths and limitations of this provision can be assessed

¹ My father distinguished between good sorcerous acts which should not be punished, and evil sorcerous acts, which should be punished. The *Sorcery Act* 1971, sec. 4, makes the same distinction.

by looking at two cases in which sorcery was an issue-- *Ferapo Meata* (decided before passage of the *Sorcery Act*)² and *Joharumba and Arira* (decided after passage of the Act).³ In *Ferapo Meata*, the accused was charged with the wilful murder of a fellow villager. Both were members of a community where the belief in the power of a sorcerer to kill by supernatural power is genuinely and widely held. The deceased was generally supposed to possess supernatural powers and to have used them in the past. In 1965, two of the accused's nephews died, and in 1966 his daughter died. There was no evidence of the cause or manner of these deaths. The accused formed the belief that deceased had killed his relatives by sorcery, and he tried to appease the deceased, who foolishly accepted \$10 from the accused in return for an undertaking not to harm any more members of family. About a week before the killing, accused's youngest daughter became ill. Accused concluded that the deceased had not kept his bargain. He became angry and killed him. At his trial, it was pleaded that accused had acted in self defense against the assaults he believed the sorcerer to be making on his family. Accused was convicted of wilful murder. The court rejected his defence, holding that it is not reasonable to believe in sorcery and that an act of sorcery cannot be an assault justifying a counter-attack upon the sorcerer.

Passage of the *Sorcery Act* altered the legal situation. In *Joharumba and Arira*, defendants were also from an area where belief in the supernatural powers of sorcerers was strong, and they had killed the deceased because they believed him to be harming themselves and their relatives through sorcery. Defendants were charged with wilful murder, but the court applied section 20 of the *Sorcery Act*, and both defendants were convicted of manslaughter only.

The decision in *Joharumba and Arira* leaves many questions unanswered. Under sections 268 and 269 of the Criminal Code, the defence of provocation can be used only if the accused acted quickly, before his passion had time to cool. Will this requirement apply in sorcery cases, or is it vitiated by section 20(2) of the *Sorcery Act*, which provides that the provocation need not occur in the presence of the accused? If the Criminal Code's requirement does apply, what will be its effect in an incident such as that described here, where the villagers waited for more than a week before trying to hang the old woman? Moreover, the hanging was part of a tra-

2 *R. v. Ferapo Meata* (1967) PNGLR 419.

3 *R. v. Joharumba and Arira* (1971) PNGLR 679.

ditional ceremony. Would this remove their actions from the safety of the provocation defense? Finally, the villagers acted in concert to hang the old woman, but they were led by their elders, and some villagers took a more active part than others. Which, if any, should a court charge?

Thus, the *Sorcery Act* is not as useful as it could be. Its penalties for sorcerers are too light, and its protections for the victims of sorcery too vague. The Act's greatest drawback, however, arises because most people, even policemen, do not know that it exists or what penalties and protections it offers. In this case, neither the old woman nor the villagers who attempted to kill her were ever brought to court. The people believed that no court would convict a person of sorcery, and the old woman had been threatened that she would be killed if she attempted to prosecute. Before the handing ceremony, the old woman had received many blows from the villagers. She was admitted to hospital, and subsequently released, but she died soon after as a result of the injuries she had received.

- William Yak
- David K.G. Tibu
- Toffamo Mionzing
- Kibikang Kara