HUMAN RIGHTS IN PAPUA NEW GUINEA AND THE PROSPECTS FOR INTERNATIONAL SUPERVISION*

By Brian Brunton**

I. *Introduction.*

The thesis of this paper is that the rule of law and the idea of Constitutional Government is well understood in Papua New Guinea, but that the country's underdevelopment and lack of resources hinders effective administration of dispute avoidance and settlement, according to law.

Underdevelopment in certain rural regions of Papua New Guinea nurtures a major threat to the rule of law and constitutional government. This threat is from the endemic large scale tribal fighting that has until recently been going on in the Highland Region.[1]

Underdevelopment in rural areas motivates urban drift with the familiar corollary of urban crime. Lack of funds, but perhaps more importantly lack or shortage of adequately trained and skilled manpower, frustrates the implementation of government policy, not only in the areas of economic development, but in the administration of justice. It is the frustration of not being able to see the fruits of policy implementation, and of the administration of justice according to the rule of law, that has led, in recent times, to a questioning of the whole concept of Constitutional Government and the rule of law, as it is understood by lawyers. There is a tendency to look favourably upon the political resolution of conflict, rather than the judicial resolution of conflict. Judicial resolution is considered by some to be technical, obscure, and esoteric. In a recent clash between the then Minister for Justice, Nahau Rooney, and the Chief Justice, Sir William Prentice, over an injunction granted to restrain temporarily the deportation of a foreigner, Dr. Ralph Premdas, pending a full hearing, the Minister wrote:

> Neither I nor my Ministerial colleagues understand the meaning of 'injunction', 'prerogative writ', 'unconstitutionality of the decision of the review committee' or any of the other legalistic arguments that are now proceeding. What we do understand is the concept of a Papua New Guinean identity and we believe that it is our right and prerogative to

---

* Paper presented at the Lawasia Conference, Sri Lanka, 1979.

** Lecturer in Law and Dean, U.P.N.G.

1. The background to tribal fighting is described by M.L. Mackellar, 'The Enga Syndrome' (1975) 3 *Melanesian Law Journal* 213, and W. Standish, 'Warfare, Leadership and Law in the Highlands' in J. Zorn and P. Bayne (ed.) *Lo Bilong ol Manmeri* (U.P.N.G., 1975)

decide which foreigners we want in our country.[2]

There are no lawyers in the present government. There is only one lawyer in Parliament and he is a member of the opposition. This does not mean that the concept of the rule of law is rejected. There is a clear government commitment to the present *Constitution* and to the concept of the separation of powers. The problem lies in a lack of understanding and familiarity amongst the political leadership of the basic concept of government within a constitutional framework.

Papua New Guinean leaders are still learning to live with and govern under the rule of law.

Within this context the implementation and maintenance of Human Rights gives rise to special problems that not only affect domestic considerations, but will influence Papua New Guinea's likely response to international supervision, or pressure to conform to international standards, in Human Rights matters.

In order to develop the ideas outlined above I will consider the Human Rights issues that are raised by three current socio-political phenomena. They are: (a) tribal fighting, (b) urban crime, and (c) refugees and aliens. But before I continue with this examination I wish to comment briefly on the structure of government in Papua New Guinea.

The system of government in Papua New Guinea is formally based on a *Constitution* and the concept of the rule of law. At the date of Independence[3] the *Constitution* of Papua New Guinea contained 153 pages including 275 sections and five Schedules. Since that time it has been added to by amendment. Within the technical meaning of the term 'Constitutional Law'[4] has to be included 19 further statutes, known as 'Organic Laws'[5], which are an adjunct to the basic constitutional document. In terms of statute law and without any consideration of judge-made law, the constitutional laws of Papua New Guinea may be described as 'formidable'.

The *Constitution* has a detailed Bill of Rights,[6] and effective machinery for the enforcement of these rights.[7] The Supreme Court and the National Court have not been reticent to defend rights and to inter-

---

2. Letter from Minister for Justice, Nahau Rooney, to the Chief Justice, Sir William Prentice. P.N.G. *Post-Courier*, 23 July 1979, p.6.

3. 16 September, 1975.

4. *P.N.G. Constitution* Sch. 1.2(1).

5. *P.N.G. Constitution* s.12.

6. *P.N.G. Constitution* Part III Division 3 and 4.

7. *P.N.G. Constitution* s.57.

post themselves between the individual and the State,[8] although judicial interpretation and application has tended to proceed in a conservative manner.[9] The Courts do react when there are clear cases of human rights violations, however such cases are seldom 'clear',[10] which with the current conservatism of the courts makes them difficult to prosecute. Apart from the complexity of the litigation process once the victim is in court, the victim must first find an impartial forum of necessary competency to determine the matter.[11] These forums are limited to the superior courts of record in Papua New Guinea. There, the victim will need a lawyer, and unfortunately there are not enough advocates available at the present time in Papua New Guinea.[12] All this presupposes that the victim is aware of the human rights guarantee in the *Constitution*, and of the right to seek redress.

II. *Tribal Fighting.*

Tribal fighting in the Highlands of Papua New Guinea has been

---

8. The matter of the *Premdas Case* is an example. The National Court granted a temporary injunction against the State, staying the deportation of a foreigner. This provoked an executive reaction, see footnote 2, and the citing of the Minister for Justice by the Leader of the Opposition for criminal contempt of court and breach of constitutional duty under s.23 of the *Constitution*. The proceedings against the Minister for Justice are continuing. The contempt proceedings have now been formally taken over by the Public Prosecutor.

9. *Constitutional Reference No. 1 of 1977 under Section 19 of the Constitution* (S.C. 122, 26 October 1977). The Court was asked 'Does failure to comply with all or any of the provisions of Section 42(2) of the *Constitution* for that reason alone render subsequent admissions by an accused person inadmissible as evidence on his trial?' Section 42(2) deals with an accused's rights to be informed of the charge against him, his right to a lawyer, and his right to adequate time to prepare a defence. The Court answered the question: 'No'. The decision is now used by the lower courts as authority to ignore Section 42(2) completely.

10. *The State v. Avia Aihi* (First Interlocutory Judgment N187A, 14 February 1979). Female suspect questioned for eight hours, by male interrogators; she urinated and defecated in her clothing, and she alleged threats. Confession held to be voluntary; no unfairness or impropriety or oppression to warrant the exercise of the discretion to reject the subsequent record of interview.

11. P.N.G. *Constitution* s.57. Rights and freedoms under the *Constitution* are enforceable in the Supreme Court and the National Court.

12. Papua New Guinea has a population of about 3.25 million people. In 1977 there were 93 lawyers employed by the Public Service, of whom 34 were nationals. In private practice there were 34 lawyers, including 7 nationals. The ratio of practicing lawyers to the population was 1:25,590; in terms of the availability of national lawyers it was 1:79,268. See S.D. Ross, 'The Legal Profession in Papua New Guinea' (1977) 5 *Melanesian Law Journal* 226.

attracting unwelcome press coverage internationally since 1972,[13] but the tradition of group fighting in these areas goes back to pre-colonial times.[14]

Fighting is based on quarrels between relatively small political or linguistic groups. In some cases 'the clan' is the group involved but in others fights occur between units that may be larger or smaller.

Fighting is conducted in a traditional pattern. Traditional weapons, bows, arrows, or spears are used. Steel axes have replaced stone axes, and there have been some reports of steel spear tips and arrow heads, but there is no real evidence of a general technological escalation of weapons.

Battle tactics used by the warriors are adapted to the limitations of the weapons, and while considerable stealth and guile goes into raiding and ambushing the enemy, formal battles appear to be set pieces arranged on ground cleared for that purpose.

Large groups of people are involved in fighting. In 1972 Standish reported fights involving 6,000 persons.[15] Fights amongst 1,000 and 2,000 people have been reported this year. Fights involving many hundreds of people have been almost a weekly occurrence in 1979.

The death toll from tribal fighting, in relation to the large numbers of people involved, has in the past been surprisingly small. In the past there were reports of one or two people being killed per fight, but recently the death-toll appears to have risen. Radio reports talk now of eight or ten people being killed in a fight,[16] Fighting appears to have increased in intensity.

The number of persons wounded is known to be much larger. Many wounded refuse medical treatment at hospitals for fear of prosecution, and these seek help from traditional village doctors. Fighting is an excuse for general lawlessness. Women are raped. Damage to property is wide spread. Looting of businesses occurs. Houses are burnt, subsistence gardens destroyed, cash crops uprooted, pigs and cattle are wantonly slaughtered. The traditional economy is thrown into disarray, and very great hardship is endured by the innocent victims of all warfare - the women and children.

The modern economy has also been threatened. Fighting has spilled over into towns, and roads have been blocked by armed warriors

---

13. Standish, *op. cit.*, 104.

14. Mackellar, *op. cit.*, 218.

15. Standish, *op. cit.*, 104, citing P.N.G. *Post-Courier* 13 September 1972.

16. In his speech to Parliament on the introduction of the Emergency Legislation on 6 August 1979 the Acting Prime Minister Hon. E. Olewale M.P. stated that police recorded 44 people definitely killed in tribal disturbances during the period 1 January to 31 July 1979. Police estimated that other people had been killed in fighting, and their deaths concealed.

on their way to battle. In at least one province, government has completely broken down outside the administrative centre, and the Queens Writ does not run unless it is accompanied by a mobile squad of police. The coffee industry, a major export crop to the nation, has been affected by the destruction of small-holder gardens, and by the decline in the quality of the beans bought from small holders.

Tribal fighting has produced a state of near insurrection that no responsible government could tolerate. It has violated the Human Rights guaranteed by the *Constitution* of thousands of people. It has placed the rule of law in jeopardy, and it has disrupted the economy.

The causes of tribal fighting lie in land shortage, the special significance of land to Melanesians, over-population, and the inability of the people to develop an alternative model of dispute settlement. It is known that intermittent fighting took place before the advent of colonial administration. During the colonial period there was a decline in the visibility of fighting, but as independence drew nearer the people sensed that the political status quo was about to change, and that there would be a decline in the effectiveness of government protection. Since 1972 tribal fighting has gradually increased.[17]

There have been various attempts by the Government to identify and deal with what were thought to be the root causes of tribal fighting. Two Commissions of Inquiry were formed, one to look into land matters,[18] and one to look at the fighting itself.[19] Village Courts were established to enable local participation in the adjudication process.[20]

Procedures and institutions for settling land disputes were implemented. Special legislation was passed to deal with the fighting itself.[21] More police, organised into special mobile squads were located in fighting areas. Why then, has the fighting continued?

---

17. Standish, *op. cit;* Mackellar, *op. cit.*

18. P.N.G. Government. 'Commission of Inquiry into Land Matters', *Report,* 1973.

19. P.N.G. House of Assembly 'Tribal Fighting in the Highlands' *White Paper,* November - December 1974. This white paper was based on the report of an inquiry conducted in 1973 known as *The Paney Report.*

20. P.N.G. Government 'Inquiry into the Need for Village Courts' Desailly and Iramu, *Report,* 1972.

21. *Inter-group Fighting Act 1977* (No. 43 of 1977). Section 11 of this Act, which created an offence of 'taking part in an inter-group fight', attempted to cast the persuasive burden of proof onto an accused. In *Reference SCR 3 of 1978* (SC 139, 8 November, 1978) the whole of the provision was held to be invalid in that it was unconstitutional under s.37(4) of the *Constitution.*

I suggest the reasons are:

(a) The people are bound into a traditional political economy which limits their choice of response in group disputes, and precipitates fights.

(b) The scale of fighting is so large, and the terrain in which it takes place so mountainous, difficult, and at times inaccessible, as to hinder policing.

(c) The lack of effective policing means that the coercive power of the law is not available in these areas. People know their lawlessness will go unsanctioned. They also know that their enemy's lawlessness will be unsanctioned - thus peace, and a feeling of personal security cannot be guaranteed.

(d) Therefore the people turn to self-help when threatened, or have no fear in pursuing illegal methods to attain what they want - such as a land claim, or compensation for a death.

In 1979 the Government was pressured politically to act against tribal fighting.[22] Advice in the past had tended to advocate the speeding up of the dispute settlement processes.[23] There was little thought of interfering specifically in the traditional economy in order to assist the people to break out of the web of circumstance in which they were held.[24] Similarly there appeared to be a reluctance to transfer resources to the police, in order to give them the ability to interfere effectively with the actual fighting.

A Committee of Ministers is now examining the long term development problems associated with fighting. The short term problem of stopping the fighting has been dealt with by declaring a State of Emergency in the Highlands.[25]

---

22. This pressure was applied by the Opposition in Parliament, in early 1979, and by various Highlands Provincial Governments, and politicians.

23. Standish, *op. cit.*, 125, speaks of 'more official backing for the authority of local leaders as mediators to defuse local tensions' as a short term policy. His 'long term recommendations involve a re-orientation of educational and development goals'. He also called for greater resources for the police, and increased police efficiency.

24. Mackellar, *op. cit.*, 253-257, advocates specific proposals to improve Enga agricultural practices, and land use. He also indicates several amendments to summary court procedures that could have increased the effectiveness of the lower courts.

25. Declared 23 July 1979 under Part X of the *Constitution*. The Emergency is confined to the Highlands Provinces. Effectively the fighting has stopped. There has been only one report of a fight since the declaration. This involved a group of people in a remote area of the Eastern Highlands Province who had not heard about the Emergency.

The State of Emergency was declared only with reluctance by the Government. Under the *Constitution* there were restraints upon the police, particularly with regard to their powers of search and the entry upon private property. There were also recognised limitations to police efficiency, and the police ability to cope with extra power. This gave rise to a reticence to entrust the police with greater responsibility.

The police in Papua New Guinea are associated with violence.[26] Their task in the early days of colonial administration was 'pacification'. Nelson writes of police behaviour in the Northern District at the turn of century, a time and place when white miners and officials were fiercely resisted by the local tribes:

> By 1906 forty-four of the fifty-three constables and six of the nine non-commissioned officers came from the Northern and North-Eastern Divisions. Their knowledge of the languages spoken by villagers and of local alliances and enmities gave them opportunities to manipulate government power to the advantage of particular groups. On the Mambare the men who joined the police were personally engaged in clan fighting before and after the arrival of the foreigners; in the area from Buna to Yodda most of the police were less immediately involved in local conflicts. But they alone knew the clans, alliances and boundaries; they alone could talk with fight leaders; and they told the government officers what they wanted them to know about the fighting in an area and the tracks patrols should use. Acting as forward scouts they could determine peace or war without the knowledge of the government officer. John Waiko has pointed out that in the clan histories which he collected wars are remembered as being decided by negotiating and fighting between clans and the police; white officers are rarely mentioned.[27]

Nelson indicates that in those early days policemen were involved in theft, murder, rape and intimidation, in the course of their duties.[28] While the modern Police Force avoids involvement in local politics by the careful selecting and posting of members to locations

---

26. P.N.G. *Post-Courier*, 26 July 1979, p.1, reports that the Police Commissioner Mr. Bouraga addressed a police parade in Arawa using the following words: 'There is far too much bashing of suspects by police. It is causing a lot of trouble and giving us a bad name.' The *Post-Courier* reported that 'Mr. Bouraga said he thought the police force was sick and "we don't appear to have self-control, discipline, or morale".'

27. H. Nelson, *Black White & Gold*, (1976), 155.

28. *Ibid*, 153-4.

away from their homes, the allegations of torture,[29] manslaughter,[30] rape,[31] use of excessive force[32] are still current in 1979. It is the fear of the propensity for police brutality in Papua New Guinea, that makes the current declaration of an emergency a crucial Human Rights issue. In short, the police cannot be trusted to act in a humane manner while on field operations.

The manner of the declaration of the State of Emergency, and its justification, are a compromise between the necessity to stop tribal fighting, and the reluctance to allow the police unbridled power. An examination of the Emergency Powers and the Human Rights provisions of

---

29. In the P.N.G. *Post Courier*, 13 March 1979, p.3. it was reported that 'a man told the Commission of Inquiry into alleged Menyamya incidents yesterday he suffered considerable pain when a policeman tortured him with pins...'. These allegations were struck out by the Commission owing to interpretation difficulties. But see *R v. Obis Nipi and Kevin Wapang* (unreported decision of the Supreme Court, June 1972) where policemen were convicted of manslaughter and assault occasioning bodily harm on suspects. The trial judge described the accused's behaviour as 'callous, inhuman, horrifying, and cruel.' See M.F. Adams, 'Law versus Order' in Zorn and Bayne (ed.), *op. cit.*, 100.

30. According to the P.N.G. *Post-Courier*, 12 March 1979, article entitled 'Police Caning Kills Baby', 'the policeman used canes to hit my wife, daughter and father in law' a witness said. 'He told the Commission a blow aimed for his wife had missed and hit his daughter across the stomach.' 'My baby was beginning to crawl on her stomach when she died' he said.

31. The P.N.G. *Post-Courier*, 16 March 1979, p.3, article entitled 'Raped by PC, says woman!' states that 'the woman, Ponigiyipo of Wiwaye Village, Menyamya, said the policeman had escorted her to the women's prison kitchen and raped her!' Serious allegations of police looting and rape were made in the press in June and July 1979 over police operations in the Gumine area. Arising from the State of Emergency, allegations of police looting at Kami have been made by the Eastern Highlands Premier. Police described the complaints as 'malicious and unfounded' (see P.N.G. *Post-Courier*, 7 August 1979). In Parliament during questions arising from the Emergency, the Member for Liaigam alleged looting, and the rape of three women, by police.

32. Papua New Guinea Government 'Commission of Inquiry into unrest at the University of Papua New Guinea in April and May 1978 and into other related matters', *Report* (Port Moresby, January 1979), 34, states: 'If the actions of students on Wednesday night could properly be described as a student riot then it is only fair to describe the actions of the police on the University campus on the Thursday morning as a police riot...the policemen concerned were primarily motivated by their desire for revenge.' Police action in relation to an incident at Hanuabada Village, Port Moresby, on 25 December 1978 is currently the subject of a Commission of Inquiry.

the *Constitution* indicates that only limited powers have been granted to the police. The nature of the Emergency is a police operation, as distinct from a military operation. However, the powers granted involve a suspension of basic rights guaranteed by the *Constitution*, and this in itself has frightening implications if past experience of police behaviour can be any guide at all.

III. *Urban Crime.*

It has been pointed out that the problem of crime in the urban areas of Papua New Guinea is not the same as encountered elsewhere in the world.[33] Towns like Port Moresby have become unsecure after dark. Street offences, bashings, damage to property, and drunkeness occur.[34] There is perceived to be a high incidence of burglary.[35] But on the other hand, as Mackellar has put it:

> There are drugs in Port Moresby but no drug problem. There is gambling and prostitution, but no gambling and prostitution rackets. Port Moresby has no Vice Kings and no underworld, and although mailbags containing money have sometimes been stolen, Port Moresby has never experienced a bank robbery or a payroll robbery.[36]

The statistical evidence relating to the incidence of urban crime is confusing.[37] Certainly the popular perception is that there is 'too much crime', 'too many burglaries' and that the steets are insecure at night. Such beliefs merely reflect social concern over the incidence of lawlessness. They do not assist in quantifying the problem, and putting it into perspective.

Statistical confusion over the incidence of crime relates to the lack of systematic methods for recording data on the incidence and treatment of crime.[38] But the problem is further compounded by Papua New Guineans' expectations over living standards and social conditions. The colonial experience in Papua New Guinea has led to a demand for standards in all aspects of life that equate with those in developed

---

33. M.L. Mackellar, 'Crime in Port Moresby', (University of Papua New Guinea, Dept. of Anthropology and Sociology, 1977. Unpublished M.A. Thesis), 15-16.

34. William Clifford, 'Urban Crime in Papua New Guinea', in David Biles (ed.) *Crime in Papua New Guinea*, (1976), 6-8.

35. Incidence of burglary for the months 1st March to 30th June in Port Moresby: 1977 - 678, 1978 - 505, 1979 - 543. Port Moresby is a city of about 100,000 people. See statement by the Acting Prime Minister, P.N.G. *Post-Courier*, 7 August 1979.

36. Mackellar, 'Crime in Port Moresby' *op. cit.*, 19.

37. Clifford, *op. cit.*, 9.

38. *Ibid.*

countries rather than developing nations. Therefore, while statistically the incidence of burglary and street offences in Port Moresby may not appear to be disproportionate in the context of a developing country,[39] the people's expectations equate more with expectations to be found in developed countries. Perhaps this goes some way to explain the public reaction against the incidence of burglary, for Mackellar has commented that in Port Moresby in 1975 offences of burglary occurred at twice the rate they had occurred in cities of a comparable size in the United States of America.[40]

Expatriates have appeared to be, until recently, the major victims of burgulary and auto theft. They are richer than nationals own more attractive consumer goods, and drive proportionally more cars. They are also accustomed to using the news media and their elected representatives to secure the redress of grievances.

It is the nationals living in urban areas who have suffered most from street offences. They are generally the victims of bashing, drunken assaults, and harassment.

The indigenous inhabitants of Port Moresby can look back on an era, before recent migrations, when their town was a safe place to live in. They resent the intrusion of urban migrants from other areas of the country, and in particular they resent migrants from the Highlands.[41]

Whether or not it is supported by the facts, there is in the urban areas of Papua New Guinea a developing political consensus amongst the land owners and local elite: (a) that there is too much crime in the towns; (b) it is caused by migrants; (c) the migrants should be sent back to where they came from; (d) the police and the courts should 'get tough' with crime.

In Rabaul and Kieta there have been moves to encourage unemployed migrants to return to their provinces. As yet there has been no attempt to repatriate migrants coercively. The *Constitution* guarantees the freedom of movement of all citizens within the country.[42] However, I have been unable to find sympathy for the retention of this right in future, and I would predict that it will be qualified during the current Constitutional Review.

Special police operations are mounted periodically in response to public indignation over the incidence of urban crime. The effect of these operations has in the past been transient. The Police Force does not have the resources to execute a sustained effort.[43] It lacks the

---

39. *Ibid*, 10.

40. Mackellar, 'Crime in Port Moresby', *op. cit.*, 15-16.

41. See P.N.G. *Post-Courier*, 7 August 1979, p.4, Letters to the Editor: 'Most of Moresby's rascals are Papuan drifters' by 'Full Blooded New Guinean Girl' and the reply on 15 August 1979 p.23 'New Guinean girl, listen!' by 'Wild Horse, Hanuabada!'

42. P.N.G. *Constitution*, s.52.

43. Clifford, *op. cit.*, 17-23.

necessary manpower both in terms of ordinary constables, and in terms of officers with appropriate management skills to implement a long term programme. The Police Force receives little support from the urban public. Because there is no formal community organisation at street level, there is no opportunity for police to build effective community links, even supposing they were so motivated.[44] Police are openly resented in the urban villages where they have unfortunately been accused of using excessive force.[45] On the streets there is a feeling that police utility is marginal. This climate has generated a conservative reaction to the liberalism of the *Constitution*. Crime is blamed on human rights. It is sometimes said that the police cannot do their job because the legal system hinders their efficiency.[46] Consequently, calls have been made for a curfew in the towns, the declaration of an Emergency in urban areas, and the re-introduction of capital punishment.

Crime control in towns is poorly administered. There is a lack of community commitment to crime control, which is regarded as strictly a police function. The police simply do not have the resources to cope with the problem on their own, but this is not recognised. The popular view is to call for increased penalties, control on movement, and less emphasis on due process of law. The end is not hard to imagine.

IV. *Refugees*.

Papua New Guinea shares a border with the Indonesian province of Irian Jaya. For about ten years some of the Melanesian inhabitants in Irian Jaya have waged a guerilla war against Indonesian authority.[47] In 1978 this war boiled over and there were incidents along the border with Papua New Guinea.

Papua New Guineans are sympathetic towards the Irianese cause, and there is a substantial population of Irianese exiles in Papua New Guinea. This sympathy, the presence of the exiles, and a continuous flow of refugees into Papua New Guinea caused the government embarrassment. Papua New Guinea is frightened of Indonesian military power, and wishes to maintain cordial relations with that country. Australia, too, wishes to maintain good relations with Indonesia. Australia has for sometime been attempting to settle a seabed boundary in the potentially oil rich Timor Sea between Australia and Indonesia. Papua New

---

44. *Ibid*, 25.

45. See footnote 32. But contrast with the facts in *Giago Kakore v. Sing* (FC 78 26 June 1975) where police trying to affect an arrest at Tatana Village, were attacked and badly stoned.

46. The incident at Hanuabada 25 December 1978 was cited by the Acting Prime Minister in his speech on the Emergency in Parliament 6 August 1979, as an example of how police efficiency was hindered by the liberalism of the *Constitution*. Police who had chased a youth into the village were confronted by village leaders and Village Court officials; tear gas was fired. A Commission of Inquiry into this incident is continuing.

47. See N. Sharp, *The Rule of the Sword* (1978).

Guinea is dependant upon Australia for an annual grant in aid, to balance the Papua New Guinea budget. The region contains sufficient self-interest for retaining Indonesian sovereignty of Irian Jaya.

Papua New Guinea actively discourages Irianese refugees from entering its territory. In 1978 four prominent Irianese leaders crossed into Papua New Guinea. All were imprisoned after trial for illegal entry; they subsequently went into exile in Sweden. This action was deliberately carried out as a warning of what would happen to other refugees who entered Papua New Guinea. In April 1979 a party of refugees was allegedly bashed up by officials on a beach near Vanimo.

The treatment of border crossers raises a number of Human Rights issues.

There was a readiness to use the threat of deportation back to Indonesia of anyone who is not considered a 'genuine refugee'. Actual deportation of a refugee could violate the international law on the subject contained in the various Treaties and Conventions on refugees. However, Papua New Guinea has not signed these documents.

Immigration matters arising on the border occur in areas where there are no lawyers. They are handled secretly, and immigrants are not informed of their rights to legal assistance when they are brought before the courts.

Both in Australia and in Papua New Guinea immigration matters were considered part of the executive function.[48] While Australia has amended its legislation to include a review of administrative decisions by an impartial tribunal,[49] Papua New Guinea does not permit any independent review.[50] Consequently, litigants who wish to impeach orders made under immigration statutes have to use the Human Rights provisions of the *Constitution* in order to obtain judicial review.[51] This has recently brought the judiciary and the Executive into conflict, and precipitated the Minister of Justice being cited for contempt of court and breach of Constitutional duty.

The crossing by Jacob Prai and Otto Ondawame into Papua New Guinea in 1978, and the subsequent furore, drew attention to the prominence of the security intelligence bureaucracy as a decision-making organ in the country, The bureaucracy was for a while forced into the public domain and its links with counterparts in Australia and Indonesia became apparent. While any nation must possess an intelligence

---

48. *Robtelmes v. Brenan* (1906) 4 C.L.R.

49. Australian *Administrative Appeals Tribunal Act* 1975 (Cwlth).

50. The *Migration Act* 1963 and its proposed replacement not yet in force the *Migration Act* 1978, both allow a review of certain matters by a Committee of three cabinet ministers. The Committee is not an impartial body.

51. *In the matter of Section 42(5) of the Constitution, and of a complaint thereunder by Jacob Hendrich Prai and Otto Ondawame.* N 184 2 March, 1979.

gathering capability, 'secret police' pose a potential threat to individual liberty. Paid informers,[52] and manufactured evidence,[53] the hallmarks of such organisations, make it difficult for an individual to defend himself. Similarly it is difficult to prevent telephone tapping and tampering with private mail.

A further aspect of this case is the attitude of judicial diffidence towards the few rights possessed by Prai and Ondawame. They were arrested in a dawn raid, taken before a Magistrate, and summarily sentenced to imprisonment for illegal entry into the country. They were not advised of their Constitutional right to a lawyer nor were they given any chance to prepare their case. On appeal to the National and Supreme Courts the appeals were delayed and pushed down the lists. Such an attitude by the judiciary does not auger well for refugees in future.

Papua New Guinea during 1979 has shown concern over the possibility that Vietnamese refugees may arrive in the country. The position taken by the Government is that it will not accept Vietnamese as permanent residents, as it does not wish to import 'ethnic problems'. Papua New Guineans are aware of the situation in Fiji, where an Indian majority lives side by side with an indigenous Melanesian minority. There is a recognition that Papua New Guinea, like Australia, has uninhabited areas, and that it could absorb refugees. There is also a limited recognition that Vietnamese refugees could bring agricultural and other skills that are needed in Papua New Guinea.

V. *International Supervision of Human Rights.*

Papua New Guinea is unlikely to accede to proposals that Human Rights issues arising within its territory should be reviewed by any international agency. The *Constitution* vests final power of judicial review within Papua New Guinea in the Supreme Court.[54] In pre-independence times an appeal lay from the courts in Papua New Guinea to the High Court of Australia, but this right was abolished at Independence. The current political climate towards economic nationalism and international ecumenism is in my view only likely to be successful if the leadership can identify tangible benefits to the nation.

I do not think that proposals to establish international Commissions or Courts to supervise human rights would be seen in terms of 'tangible benefits' to Papua New Guinea. They would more likely be interpreted as unwarranted interference in Papua New Guinea's internal affairs. Such proposals would be met by indicating that the Human Rights bill in the *Constitution* contains more than adequate protection for the individual. That these provisions are drafted upon the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights,

---

52. See 'Commission of Inquiry into unrest at the University of Papua New Guinea', *op. cit.*, 36-37.

53. Allegations made by Prai and Ondawame on affidavit were that they were lured across the border.

54. *P.N.G. Constitution* s.155(2).

and the Fourth Protocol to the European Convention on Human Rights is apparent on careful analysis. It would also be pointed out that the courts of record in Papua New Guinea are staffed by experienced and independent judges who have adequate powers to supervise the *Constitution*. Further, there is likely to be resentment in Papua New Guinea to external supervision by countries with Human Rights records inferior to that of Papua New Guinea.

The Government of Papua New Guinea is unlikely to be moved by suggestions to establish international supervision of Human Rights. However this should not preclude attempts to have the matter discussed in principle. The events of the world around us clearly demonstrate that the concept of international review is sound. The European experience shows, with qualifications, that a Human Rights Commission and Court can function in an international community.

It is tempting to immediately ask the question 'could similar institutions exist in this region?' I think that there are sufficient differences between Europe and the Asia Pacific Region to make the timing of that question inappropriate. It is in my view more pertinent to enquire into the degree of acceptance in the Asia Pacific Region of the standards laid down in the international treaties and conventions on Human Rights and Refugees. Whereas European nations may ratify these treaties and then ignore defacto their provisions, many countries in our Region tend not to have even taken this first step. They refuse to acknowledge publicly that there are international standards according to which the world will judge their acts.

The Region has always had Human Rights problem in terms of violations of the right to life, the freedom from inhuman treatment, torture, and imprisonment without due process of law.

Now we have the exodus of Vietnamese and Cambodian refugees. The countries directly involved are concerned with the immediate task of feeding, housing, and finding a permanent home for these people. But in my view such pressing necessities do not detract from a nation's responsibility to acquiesce and acknowledge basic responsibilities at international law. This applies *a fortiori* to countries not directly involved in the current refugee crisis.

Many of the Asian Pacific nations, including Papua New Guinea, are not parties to all the International Treaties and Conventions on Human Rights.[55] This matter is basic. Nations must acknowledge publicly that they are bound by the rule of law in these matters. There is no room for equivocation.

At the start of this paper I said that Human Rights in Papua New Guinea are affected by resource problems. In particular I indicated the existence of poor management skills at all levels within law enforcement institutions. The strengthening of these institutions will produce tangible benefits to ordinary Papua New Guineans in terms of their ability to avail themselves of the rights guaranteed in the

---

55. See *Human Rights International Signatures, Ratifications, Accessions, etc. 1 January 1979*, United Nations ST/HR/REV 1.

Constitution. This may appear to be a paradox, but on reflection I do not think it is so. For example, police brutality during an investigation is generally a matter of poor police discipline, lack of supervision by competent officers, an alternative to competant forensic investigation, and lack of confidence in the adjudication process. It is at this level of the problem of police violence, that we must strike, in order to produce lasting benefit.

To be specific Papua New Guinea needs assistance in training police investigators, and forensic personnel. The training of police prosecutors, and the up-grading of existing skills is needed. Within the legal profession programmes need to be developed to up-grade both the defence and prosecuting skills of advocates. The judges in Papua New Guinea are all expatriates, and the political climate is such that this situation is likely to change soon. But Papua New Guinea is a Common Law country, and the development of judges is dependant upon long periods of practical experience as an advocate at the bar of the court. The appointment of national judges cannot afford to wait, but the traditional Common Law has little experience in the conscious process of 'training judges', although colleges do exist for this purpose in India and the United States. Assistance is needed with this problem.

The strengthening of existing institutions which affect the administration of, and the access to, values contained in international Human Rights Legislation, is more appropriate in terms of timing, political acceptability and local needs. In comparison, the external supervision of Human Rights, is a long term goal. There are more immediate objectives that can be attained and produce the sort of tangible benefit, likely to attract governments, to which I have previously referred.