# WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

Papua New Guinea

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## GENERAL OVERVIEW

1. Political System.

Section 99 of the Constitution defines the National Government as consisting of three principal branches, which are the National Parliament, the National Executive, and the National Judicial System. The National Parliament is an elective legislature with unlimited powers of law-making, subject to the Constitutional Laws. The National Judicial System consists of a Supreme Court of Justice and a National Court of Justice of unlimited jurisdiction, and other courts.

The Constitution establishes an essentially Westminster system of Government. The Queen remains the formal Head of State, with her powers exercised by a Governor General. These powers are extremely limited and can only be exercised in accordance with the advice of the National Executive Council (N.E.C.). The National Government is usually formed by a coalition of parties with a majority of members in the National Parliament. Ministers are chosen by the Prime Minister from the Parliamentary majority and sit on the National Executive Council, which is the highest policy making body in the country.

At present there are 109 members of the National Parliament. Of these, 89 members are from single member open electorates, while 20 are elected by province-wide vote. (The National Capital District is treated like a province for electoral purposes.) The Constitution states that 5 years is the normal term of the National Parliament, although an incumbent government can be removed earlier as a result of a successful vote of no confidence. Such votes, nominating an alternate Prime Minister, can be moved 18 months

after the appointment of a Prime Minister.

The Constitution establishes a unitary political system rather than a federation. A system of Provincial Governments was created shortly after Independence in 1975. There are currently nineteen Provinces in Papua New Guinea, which are Central; East New Britain; East Sepik; Eastern Highlands; Enga; Gulf; Madang; Manus; Milne Bay; Morobe; New Ireland; North Solomons; Oro; Sandaun; Simbu; Southern Highlands; West-New Britain; Western; and the Western Highlands.

Under the Organic Law on Provincial Government each Provincial Government consists of a Provincial Legislature and a Provincial Executive. The constitutional framework ensures the predominance of National over Provincial Governments. The latter have their powers delegated from the National Parliament and are subordinate to it. In addition, the main sources of provincial revenues are grants from the National Government. The National Parliament also has powers to suspend Provincial Governments where there is widespread corruption, gross mismanagement, a breakdown in administration or a deliberate and persistent failure to comply with the lawful directions of the National Government.

Under the Organic Law on Provincial Government (O.L.P.G.), Provincial Legislatures have restricted powers of law-making. They have primary power to make laws in certain areas as specified in Section 24 of the O.L.P.G. This includes some powers in respect to the establishment and administration of Village Courts. The National Parliament can only make a law in these areas if the provincial legislature has not made an exhaustive law. Provincial legislatures may also make laws in concurrent areas listed in Section 27 of the O.L.P.G., as long as they do not conflict with an Act of the National Parliament regarding a matter of national interest.

Within this overall system of government, criminal justice is highly centralized. The National Parliament remains the source of all the nation's main criminal laws. The Royal Papua New Guinea Constabulary (R.P.N.G.C.), the Corrective Institutional Services (C.I.S.) and the National Judicial System are national institutions and each have their administrative headquarters, relevant Government Departments, and Ministers located in the national capital, Port Moresby.

Policymaking and coordination is concentrated at the national level. The Department of the Attorney General provides national policy and coordination for a collection of legal and nonlegal branches of National Government: The offices of the Public Prosecutor, Public

Solicitor, Solicitor General, National Lands Commission, Lands Title Commission, Probation and Parole Service, Village Courts, Law Reform Commission, and Liquor Licensing Commission. District and Local Courts are administered by the Chief Magistrate, while the Supreme and National Courts are administered by the Chief Justice. While the Courts and other criminal justice agencies operate in all the Provinces, they ultimately remain under the control and direction of their National Government Departments.

2. Legal System.

For the majority of Papua New Guineans, most of whom continue to reside in rural villages, the legal system remains culturally, and often geographically, distant. Allegiance to the tribe, clan and sub-clan remains stronger in most cases than to the abstract notions of citizenship, state and nation. Collective responsibility remains a social fact in most communities and, in practice, some tension is generated by the principles of individualized criminal responsibility underlying the modern system. Customary laws, as adapted to the processes of modernization, continue to wield extensive influence at the village level.

During the Period of Independence, there were great expectations about the development of a legal system in which customary law would play a leading role. However, the reality is that the laws and legal institutions which were introduced continue to dominate the formal legal arena. With the notable exception of the Village Courts, first introduced in 1974, the current machinery and practice of the national legal system affords few real concessions to customary law and customary forms of dispute settlement. Many disputes continue to be settled beyond the formal legal system through informal community level mechanisms, such as village moots.

Papua New Guinea's autochthonous Constitution is the supreme law of the country, establishing the system of government and law. Section 9 of the Constitution identifies sources of law, which are the Constitution; Organic Laws; Acts of Parliament; Acts of Provincial Legislatures; Subordinate Legislation; Emergency Regulations; Laws made under or adopted by the Constitution; and the Underlying Law.

Organic Laws are special constitutional laws made by Parliamen under specialauthorization of the Constitution (Sect.12). An Organic Law must not be inconsistent with theConstitution and has the same authority as the Constitution. The provisions on Provincial Government were introduced as a result of an amendment of the Constitution. Section 187C of

the Constitution states that an Organic Law shall provide the legislative powers of Provincial Governments. Currently, the Organic Law on Provincial Government determines the legislative powers of Provincial Governments.

The Underlying Law is the unwritten law to be applied on any matter on which there is no legislation. Section 20(1) of the Constitution provides that an Act of Parliament shall declare and provide for the development of an Underlying Law. No such act has yet been passed. Section 20(2) and Schedule 2 provide the temporary rules of Underlying Law. The purpose of Schedule 2, according to Section 21, is "to assist in the development of our indigenous jurisprudence, adapted to the changing circumstances of Papua New Guinea."

Schedule 2.1 provides that "custom is adopted, and shall be applied and enforced, as part of the underlying law" except for any custom that is inconsistent with a Constitutional Law or statute or repugnant to the general principles of humanity. Under Schedule 2.2, the adopted common law and equity of England, which applied immediately before the Independence date of September 16, 1975, are also made part of the Underlying Law unless it is inconsistent with the Constitution or a statute, or inapplicable and inappropriate to the circumstances of the country from time to time, or inconsistent with custom as adopted under Schedule 2.1.

Under Schedule 2.3, where a court is dealing with a matter "where there appears to be no rule of law that is applicable or appropriate to the circumstances of the country", then the court, in particular the Supreme Court and the National Court, is under a duty to formulate an appropriate rule as part of the Underlying Law having regard to: the National Goals and Directive Principles; the Basic Rights set out in Division III.3 of the Constitution; analogies from statutes and custom; legislation and cases of countries with a similar legal system; relevant Papua New Guinean decisions; and the circumstances of the country from time to time.

This elaborate Constitutional scheme envisages a significant and growing role for customary law in the evolving post-Independence legal system. Many leaders recognized, in accordance with the nationalist sentiment evident during the immediate Independence period, the need to develop a legal system that reflected the values and expectations of Papua New Guinean communities. A Law Reform Commission was established under the Constitution "to assist in the development of an indigenous jurisprudence". In one of its early reports it made a series of detailed recommendations aimed at

enhancing the role of custom in the determination of criminal responsibility and taking greater account of customary beliefs and practices in sentencing (Law Reform Commission, 1977). However, none of its recommendations were implemented and, in practice, the Superior courts have been hesitant in their adoption of customary principles in developing the underlying law.

Judicial conservatism, in this respect, has been reinforced by the continuing failure of Parliament to enact the relevant underlying law provisions or to thoroughly review the colonial legislation adopted at Independence. Customary perceptions continue to be taken into account by the courts in the mitigation of sentences, a practice established during the colonial period.

The adversarial system of criminal procedure, which was retained after Independence, stands in contrast to traditional processes of dispute resolution which emphasize mediation, compromise and compensation. In practice, the most significant institutional concession to customary beliefs and practices in the post-Independence period has been the establishment of Village Courts. While there have been many problems in the operation of these courts, they process the greatest number of disputes and articulate the social organization and values of village life.

3. History of the Criminal Justice System.

Papua New Guinea comprises the eastern half of the world's second largest island, New Guinea, and a number of islands to the east, including New Britain, New Ireland and Bougainville. Prior to colonial intrusion in the late nineteenth century, the indigenous inhabitants led a subsistence lifestyle using rudimentary agricultural techniques. The largest permanent political units typically comprised 200-300 persons living together in one or more villages or scattered in hamlets and homesteads. The existence today of almost 800 distinct languages bears testimony to the remarkable degree of social and cultural diversity evident amongst the population. Traditional societies were organized on principles of kinship, marriage and descent. These principles continue to play a central role in contemporary social relations. Although almost 100 years of colonial rule generated extensive change, the cultural traditions of Melanesian societies have proved remarkably resilient and continue to exert a major influence in the daily lives of most Papua New Guineans.

The northern and southern halves of modern Papua New Guinea were initially colonized separately. In the north, the Territory of New Guinea was annexed by the imperial German

government in 1884 and remained under German control until 1914. Between 1914 and 1921, the Territory was occupied by an Australian naval and military expeditionary force. German law was applied during the period of German rule and remained part of the official legal regime during the military occupation. In 1921, the Territory became a mandated Territory administered by Australia on behalf of the League of Nations. To the south, British New Guinea had been declared a protectorate by the British government in 1884 and was subsequently transferred to Australian rule, and renamed Papua, in 1906. The two Territories were administered separately until the establishment of a permanent joint administration in 1949. Independence was attained in 1975. Papua New Guinea is a member of the Commonwealth of Nations.

Throughout most of the Australian administration period, all inhabitants of Papua and New Guinea were subject to the common law and equity of England and the various statutes and regulations then in force in Queensland. From the Queensland statutes, the Territories received the Criminal Code of Queensland which had been enacted in 1899. The Code, which was in force in Queensland on July 1, 1903, was adopted in Papua (formerly British New Guinea) by the Criminal Code Ordinance 1902. It was later adopted in New Guinea, as in force in Queensland on 9 May 1921, by the Laws Repeal and Adopting Ordinance of 1921, as amended in 1924.

In addition to laws introduced from Australia and England, colonial authorities in Papua and New Guinea enacted a comprehensive body of restrictive Native Regulations that applied only to the indigenous population. Whereas the Criminal Code was administered in the formal Supreme and District Courts, the Regulations were enforced in Courts of Native Matters and Courts of Native Affairs in Papua and New Guinea respectively. These Courts were usually presided over by administrative officers following an inquisitorial procedure. After World War II, the Regulations were gradually reduced. Most of the remaining Regulations were repealed in 1975 by the first post-Independence Government.

For most of the colonial period, there was no discrete or formal criminal justice system. Rather, policing, judicial and penal functions constituted part of a largely undifferentiated system of native administration. The key official actor was the patrol officer, or kiap, who was responsible for maintaining order at the district and sub-district level. The patrol officer investigated crime, apprehended suspects, heard cases as a magistrate in the Court of Native

Affairs or Native Matters, and often acted as jailer for minor offenses. This system of administrative justice was gradually dismantled and replaced with a centralized criminal justice system in the Anglo-Australian tradition in the two decades preceding Independence.

In preparation for Independence, the enactments adopting the Queensland Criminal Code, together with all subsequent amendments, were repealed and replaced by the Criminal Code Act of 1974 which established the Criminal Code of Papua New Guinea (Schedule 1). In practice, the new Code differed little from its predecessors. The 1974 Code was retained after Independence in 1975 by virtue of Schedule 2.6(2) of the Constitution of Papua New Guinea, which adopted all pre-Independence laws as Acts of Parliament. Since the 1975 Independence, the Criminal Code has been subject to numerous, but relatively minor, amendments.

While the Criminal Code continues to provide the main source of indictable offenses, many summary offenses are provided for in the Summary Offenses Act. Other sources of criminal law include: the Inter-Group Fighting Act; the Peace and Good Order Act; the Internal Security Act; the Motor Traffic Act; the Explosives Act; the Dangerous Drugs Act; and the Customs Act.

## CRIME

### 1. Classification of Crime.

*Legal classification. Crimes are classified as summary and indictable offenses. Summary offenses are less serious than indictable offenses. The distinction between the two types of offenses also relates to the different procedures involved in their prosecution and punishment. For summary offense cases, criminal proceedings are initiated by a summons and the trial is conducted before a magistrate. Indictable offenses are usually tried before a judge of the National Court and are preceded by a committal hearing before a magistrate. A large number of indictable offenses can, however, now be tried before a Grade V magistrate rather than a National Court judge.

Section 3 of the Criminal Code Act further distinguishes crimes into misdemeanors and simple offenses. Crimes and misdemeanors are indictable offenses or indictable offenses that are triable summarily. All other offenses, those which can only be tried summarily, are simple offenses. The District Court Act defines a simple offense as one that is punishable on summary conviction before a court by fine, imprisonment or otherwise.

While many different Acts list offenses that

are punishable on summary conviction, the principal source is the Summary Offenses Act. Examples of summary offenses, under the Summary Offenses Act, include dangerous and negligent driving, drunkenness in a public place, minor assaults to the person, possession of offensive weapons, carrying stolen goods, passing valueless checks; willful damage to property and public buildings, and obstructing a police officer.

The Criminal Code lists most indictable offenses, such as willful murder; murder; manslaughter; causing grievous bodily harm; rape; robbery; breaking and entering; stealing; and unlawful assembly.

*Age of criminal responsibility. Section 30 of the Criminal Code provides for the age of criminal responsibility in Papua New Guinea. A child under seven years of age cannot be held criminally liable. There is a presumption that a child between 7 and 14 years is not capable of committing an offense unless it can be proved that the child knew he or she was doing wrong.

*Drug offenses. Drug abuse and drug trafficking are growing problems of comparatively recent origin in Papua New Guinea. Marijuana is the most common type of illegal drug and is widely cultivated and consumed, and exported overseas. The current law on illegal substances is scattered among various statutes, mainly the Dangerous Drugs Act, the Poisons and Dangerous Substances Act, the Drugs Act, the Customs Act, the Summary Offenses Act, and the Criminal Code.

The Dangerous Drugs Act lists a range of substances in its definition of dangerous drugs, including cannabis, cannabis resin and extracts and tinctures of cannabis. Section 3 makes it an offense to cultivate, make, export or be in possession of a dangerous drug. The prescribed penalty is imprisonment for a term of not less than 3 months and not exceeding 2 years. Importation of a dangerous drug is also an offense.

The Poisons and Dangerous Substances Act and the Drugs Act are primarily concerned with the preparation and distribution of chemically constituted drugs. Both Acts are administered by the Health Department. The Customs Act, administered by the Bureau of Customs, provides for the prevention and detection of smuggled goods, including narcotics, entering or leaving the country.

The Summary Offenses Act creates a number of offenses relating to drunkenness, which includes intoxication induced by drugs. The use of illegal drugs may also be relevant in relation to a number

of other offenses and defenses available under the Criminal Code Act.

2. Crime Statistics.

The quality of official justice statistics in Papua New Guinea is extremely poor and should be interpreted with caution. The data is often produced on an irregular basis. The most recently published crime figures are found in the Annual Police Report for 1990 which contains national crime statistics for the years 1986 to 1990. Prior to the 1990 Report there had been no official statistics published since 1985. (R.P.N.G.C., 1990).

The following statistics are derived from national police statistics for the period January 1, 1993 to December 31, 1993 and are published in the 1993 Annual Police Report. he statistics do not distinguish between different areas, but rather represent the entire country. Further, the figures represent crimes reported to the police and therefore, do not include unreported crime, which has been estimated to be as high as 80% in Papua New Guinea. (Offenses et al, 1984:15). Legal definitions are used for offenses against persons and property. Administrative definitions are used for drug arrests. All figures include attempts.

*Murder. In 1993, there were 585 cases of murder reported to the police.

*Rape. In 1993, there were 3,079 counts of rape reported to the police, of which there were 1,357 known victims.

*Robbery. In 1993, there were 2,149 cases of robbery reported to the police.

*Serious drug offense. During 1993, 16 arrests were made for offenses considered serious, all involving marijuana. They included possession of multi-kilo quantities, cultivation on a large scale and conspiracy to export. No offenses involving psychotropic substances or manufactured dangerous drugs were recorded during the year.

*Crime regions. Crime in Papua New Guinea varies a great deal according to region. The unpublished 1993 figures, quoted above, do not provide any regional breakdown. The published figures for 1990, however, do indicate some of these variations. For example, in 1990, 46% of all reported murders occurred in the Highlands Provinces, with 17.3% occurring in the Enga Province alone. These figures are explained by the increasing amount of tribal conflicts in parts

of the Highlands that resort to modern firearms.

The same report states that 42.4% of all reported armed robberies in 1990 occurred in the National Capital District, that is, the area centered around Port Moresby. This situation is said to be due to the emergence of well-armed and organized criminal gangs who target the cash payrolls, business premises, banks, and cash in transit that are concentrated in the capital.

Likewise, 27% of all reported breaking and entering and stealing offenses in 1990 occurred in the National Capital District. Thus, to a large extent, these statistics reflect the presence of regional variations in criminal opportunities.

## VICTIMS

### 1. Groups Most Victimized by Crime.

In the absence of reliable criminal justice data, it is not possible to provide any exhaustive account of victimization patterns in Papua New Guinea. The complex cultural and geographic configuration of the country suggests that there are likely to be significant variations between and within Provinces, as well as between rural and urban areas.

Indirect evidence suggests that crimes against women and, in particular, crimes of violence, constitute a significant part of the overall crime situation. In a series of surveys conducted in the 1980's, the Papua New Guinean Law Reform Committee documented the extent of domestic violence committed against women in different parts of the country. Their research established that 67% of rural women, 56.1% of low income urban women and 62.2% of elite urban women had been physically assaulted by their male partners. Violence against women outside the domestic context is also believed to be widespread and increasing. (Law Reform Committee, 1985a, 1985b, 1986a, 1986b, 1992).

Particular concerns have been expressed at the prevalence and apparent rise over recent years in sexual assaults against women, notably rape. Bearing in mind the problems associated with police statistics, national figures of reported rapes and attempted rapes over the years 1990-1992 indicate a dramatic rise from 1990 to 1993: 1,177 in 1990, 1,626 in 1991, 2,668 in 1992 to 3,079 in 1993 (R.P.N.- G.C., 1990, 1991, 1992 and 1993).

A Victim Survey was conducted in Papua New Guinea in 1992 as part of the second International Crime (Victim) Survey sponsored by the United Nations Interregional Crime and Justice Research Institute (U.N.I.C.R.I.). The survey was conducted in Port Moresby, Lae and Goroka which were, at the time, the three largest towns in the country. An

overview of the preliminary aggregate data shows that on average, Papua New Guinea citizens are exposed to high victimization risks and share similar experiences with citizens across the world, in particular, with urban areas in developing countries. Burglary is the most frequent form of victimization, followed by personal theft and consumer fraud. About 10% of the total sample were victims of robbery, assault/threat and corruption. The number of vehicle thefts was also particularly high. (U.N.I.C.R.I., 1993).

2. Victims' Assistance Agencies.

Organized support services for victims of crime are extremely limited. A recent Report on Employment Strategy and Human Resource Development in Papua New Guinea concluded that "(t)he funding of services for the identification and support of victims, and associated policy, is totally inadequate." (U.N.D.P./I.L.O., 1993:266).

Victims services that do exist are primarily aimed at women and are provided by non-government organizations. Forms of assistance include the provision of short-term accommodation by Lifeline and the Salvation Army in some urban centers. The main source of support for crime victims remains their kin group and communities.

3. Role of Victim in Prosecution and Sentencing.

Victims of crime have no official role in the prosecution and sentencing of offenders in the Western-style courts but play a significant role in the more informal proceedings of the Village Courts.

4. Victims' Rights Legislation.

The only Act that specifically addresses victims' rights is the Criminal Law (Compensation) Act of 1991. This Act allows the National Court, which hears indictable offenses, and the District Court, which hears summary offenses and indictable offenses triable summarily, to make compensation orders in criminal cases. The compensation can be in cash, goods, services, or any other kind or method that the judge considers appropriate.

POLICE

1. Administration.

The Police Force is established under Section 188 of the Constitution. The functions of the force, as defined in the Constitution, are: (a) to preserve peace and good order in the country; and (b) to maintain and, as necessary, enforce the law in an impartial and objective manner (Constitution, Sect.197).

Control of the force is vested in the National Executive Council through a Minister of Police (Constitution, Sect.196). The Minister has no power of command within the force except to the extent provided for by a Constitutional Law or Act of Parliament with respect to the laying, prosecution and withdrawal of criminal charges, the police are not subject to direction or control by any person outside the force. The Commissioner of Police is responsible for "the superintendence, efficient organization and control of the Force in accordance with an Act of Parliament." (Constitution, Sect.198). In practice, the Minister formulates broad policy, while senior Police management, under the Commissioner, exercise considerable autonomy over operational matters.

The Police are a national force with their administrative headquarters located in Port Moresby. For operational purposes, the country is divided up into five Divisional Commands, each with a Divisional Commander. In addition, each Province has its own Provincial Police Commander and Provincial Police Headquarters.

The force is organized hierarchically with the Police Commissioner and his senior management team at the apex. Section 199 of the Constitution states that there shall only be one Police Force in Papua New Guinea although special statutory provisions can be made for the creation of reserve or special forces and the conferring of police powers on persons who are not members of the police force. In practice, the police have been regularly supplemented by members of the Defence Force, particularly in the course of special policing operations, national disasters, general elections, and during states of emergency.

The legal authority for deploying the Defence Force in a civil capacity is found in Section 202 of the Constitution. This provision enables the Defence Force to provide assistance to civilian authorities in a civil disaster, in the restoration of public order and security on being called out in accordance with Section 204 (call-out in aid to the civil power), or in accordance with an Act of Parliament during a period of declared national emergency under Part X (emergency powers).

In addition, certain specialized enforcement powers are vested in the Bureau of Customs, the Taxation Office and the Migration Division. The Bureau of Customs and Taxation Office are divisions of the Internal Revenue Commission and have national responsibilities for enforcing customs and taxation policies, respectively. While the principal powers to raise taxes reside at national level, some limited powers exist at

provincial level, such as the sales tax. These powers may be enforced by provincial authorities. The Migration Division of the Department of Foreign Affairs is responsible for ensuring compliance with migration laws and regulations throughout the country.

2. Resources.

*Expenditures. The actual figure spent on policing under the budgetary allocation for 1992 was K70,344,580 (Approximately, K1=US$1). (Public Accounts 1992). While the final actual figure for 1993 has not been publicly released, the preliminary final figure is K75,597,716.

These figures cover the entire cost of national policing funded from the annual budgetary appropriation. In addition to the annual budgetary appropriation, there is the figure for ex-budgetary technical assistance. This consists principally of aid from the Australian International Development Assistance Bureau (A.I.D.A.B.). In 1993, the A.I.D.A.B. spent K10.7 million on technical assistance to the police and C.I.S., with the bulk of this sum being spent on the police.

*Number of police. As of March 31, 1994, there were 4,956 police personnel, of which 4,797 were male and 159 were female. All of the female police personnel were Papua New Guinean. Of the male police personnel, 4,781 were Papua New Guinean, 12 were European, 3 were Asian, and 1 was West African.

3. Technology.

*Availability of police automobiles. A total of 734 vehicles are currently operated by the 4,956 police officers throughout the nation. The most common vehicles are four wheel drive types. There are also sedans and motor cycles. The ratio of police officers to vehicles is 6.75:1.

*Electronic equipment. There is no computer-aided dispatch. Computer equipment is available at 20 major centers within the nation to record and retrieve Offense Report Information, Information for Charge Sheets etc. Administrative Support Systems are also available.

High Frequency radio communication is available at major centers for long-distance transmission throughout the country. UHF and VHF are available for local mobile communication. Hand-held radios are also available to assist foot patrols.

*Weapons. The availability of firearms to police is generally controlled and issued on a needs basis. Most C.I.D. (criminal investigation) personnel are armed with a handgun at all times because of the nature of their duties.

The following weapons are available for general distribution and use when warranted: .39 Smith and Wesson and Colt revolvers, Baikal single shot shotguns, Mossberg pump action shotguns, Federal gas guns, Gas grenades, Gas rounds, Rubber bullets, and C.S. Gas Spray Aerosols.

The following equipment is available for use only by specially trained mobile units: AR 15 Semi Automatic Rifles, Bullet Proof Vests, Shields, and Ballistic Helmets.

4. Training and Qualifications.

Initial recruit training consists of a 6-month training program at the Bomana Police College. The program has theoretical and practical components with physical education, firearms training and drill. Training for both the recruits and officer cadets is conducted by police and civilian lecturers employed by the police.

After completing 3 years service, before confirmation, probationers are required to complete 36 educational units. Appointment as a new recruit requires at least a Grade 10 standard of education and the meeting of appropriate medical and character standards.

5. Discretion.

*Use of force. If a police officer or other person is under imminent threat of death or grievous bodily harm, deadly force may be used if no other options are available.

*Stop/apprehend a suspect. Provisions of the Constitution and Arrest Act make it clear that police cannot detain an arrested person without granting bail or taking the person before a court. However, very few suspects in Papua New Guinea are aware of their rights or how to enforce them. In addition, it should be noted that the recently enacted Internal Security Act (1993) provides authorities with wide powers to examine, search, arrest and detain persons who have been in, are in, or are about to visit officially designated prohibited or restricted areas.

*Decision to arrest. The police may arrest a suspect with or without a warrant. Most police arrests occur without a warrant. Section 3 of the Arrest Act gives police considerable discretion to arrest. Under this section, no warrant is required where a police officer believes on reasonable grounds

that a person is about to commit, is committing or has committed, an offense. Alternatively, a magistrate may issue a warrant to the police for a suspect's arrest if there is any likelihood that the suspect will not obey a summons to attend court.

When a police officer makes an arrest, with or without a warrant, and the person does not resist the arrest, the officer is required to inform the person that he or she is under arrest, relate the reason for the arrest, and ask the person to go the police station. However, under Section 14 of the Arrest Act, the police may use all reasonable means to make the arrest when the person is resisting.(Arrest Act, Sect.14).

After the arrest, with or without warrant, the police officer must take the arrested person without delay to the police station. (Arrest Act, Sect.17).

*Search and seizure. The police have no general power to enter premises to search for people or property. This is recognized by the Constitution in the right to privacy (Sect.49) and the right to freedom from arbitrary search and entry (Sect.44). The Search Act allows a police officer to search a person where there are reasonable grounds for believing the person is in possession of goods that have been stolen or otherwise unlawfully obtained, or intended for the commission of an indictable offense. (Search Act, Sect.3(1)).

The police may also search persons, and any property under their immediate control, when they are arrested or in lawful custody. The search must be conducted with decency and reasonable force. The determination of what constitutes reasonable grounds, decency, and reasonable force in such cases is a matter for the court to decide and is only determined in the event of a subsequent legal challenge. (Search Act, Sect.3(2)(3)(4)).

Generally, all searches must be conducted with a warrant issued by a court, other than the Local Court. The court must be satisfied that there are reasonable grounds for believing that any building, craft, vehicle or place is involved in an offense that is committed or is about to be committed. If anything is found pursuant to the search warrant and is seized by the police, a record must be kept. A breach of search procedures under the Act may lead to a compensation action under Sections 57 and 58 of the Constitution, or a civil action under Section 17 of the Search Act. (Constitution, Sect.44 (a)(i)(ii); Search Act, Sect.6, 12)

*Confessions. At the police station, the police may question an arrested person. The police may

also question a suspect who has willingly agreed to accompany an officer to the police station. Such an interview will be recorded in notes. A suspect or arrested person has no obligation to answer police questions. Before questioning commences, the police interviewer should caution the suspect. In practice, police rely heavily on the confessional evidence contained in the record of interview.

Statements or confessions are required to be voluntary. Police must not use improper methods of force, threats or inducements to extract statements or confessions. A confession is inadmissible as evidence if induced by a threat or promise by a person in authority. (Evidence Act, Sect.28).

6. Accountability.

Complaints against the police are handled by the police themselves. This involves the Public Complaints Section of the Internal Affairs Division of the force. The primary role of this Section is to receive, register and investigate all public complaints against the police and determine the appropriate action to be taken.

An officer found guilty of a disciplinary offense may be subject to a penalty ranging from a caution, fine, demotion in rank, to dismissal from the force. In addition, the officer may be subject to criminal proceedings. Such proceedings are covered by the normal principles of natural justice and may be subsequently reviewed in a court of law.

Criticism has been made about the existing complaints system in a number of recent reports. A recurring concern is the extremely slow pace of the complaints process. In 1990, the police force's own figures indicate that only 13% of the total complaints made were resolved. (U.N.D.P./I.L.O., 1993; R.P.N.G.C., 1990: 41).

In addition, police behavior might be investigated by the Ombudsman Commission. Section 219 of the Constitution and the Organic Law on the Ombudsman empower the Commission to investigate, on its own initiative or on complaint by a person affected, any conduct on the part of any state service or member of such service. The Commission has the power to require documentation and require members of the police to answer questions. Disclosure of serious wrongdoing might lead to subsequent criminal proceedings.

PROSECUTORIAL AND JUDICIAL PROCESS

1. Rights of the Accused.

*Rights of the accused. There is no provision for

trial by jury. All criminal trials take place before a judge or magistrate sitting alone. The Constitution (Sect.37(4) provides a number of rights to accused persons. For instance, a person charged with an offense shall be presumed innocent until proved guilty according to law. However, a law may place upon a person charged with an offense, the burden of proving particular facts. (Amended by Constitutional Amendment, Protection of Law, Law 1987). The accused is to be informed promptly in a language which he or she understands, and in detail, of the nature of the offense with which he or she is charged and is to be given adequate time and facilities for the preparation of his or her defense. The accused is also permitted to have the free assistance of an interpreter if he or she cannot understand or speak the language used at the trial.

Under the Constitution, accused persons are permitted to defend themselves before the court in person or with a legal representative of their own choice at their own expense. If they are entitled to legal aid, they can defend themselves by using the Public Solicitor or another legal representative assigned to them in accordance with the law. They are also to be provided facilities to examine in person or by legal representative, the witnesses called before the court by the prosecution, to obtain the attendance and carry out the examination of witnesses, and to testify before the court on their own behalf under the same conditions as those applying to witnesses called by the prosecution.

*Assistance to the accused. The Public Solicitor's Office exists to provide legal aid and assistance. Priority is given to acting as defense counsel in indictable trials before the National Court. The legal aid offered in other cases takes the form of advice on legal problems and representation in court if necessary. If the person has no funds, the assistance is given free. Otherwise, the accused may be asked to pay some costs.

In practice, lack of resources remains a major constraint on the workings of the Public Solicitor's Office. The Papua New Guinea Law Society has recently launched a nationwide legal aid scheme which will operate in collaboration with the Public Solicitor's Office.

2. Procedures.

*Preparatory procedures for bringing a suspect to trial. The police are responsible for prosecutions in the Local and District Courts and have discretion over whether to prosecute. In addition, where a suspect is believed to have

committed a number of offenses, the police have the discretion to decide which offenses to charge.

Criminal proceedings against an accused (the defendant in summary offenses) are initiated by means of either a summons or an arrest. A summons is employed for summary offenses before the Local or District Courts. The informant goes before a magistrate and informs him/her that an offense has taken place by drawing up an information, which is a short statement of the nature of the offense. The magistrate then issues a summons ordering the defendant to appear before the court on a particular day. In addition to the police, any private citizen may lay an information and commence a prosecution in the lower courts.

The police are responsible for investigating the alleged offense and compiling the evidence that makes up the court file. In summary cases, an accused will not normally be represented by a lawyer and the prosecutor will be a police officer. In a trial before the National Court for an indictable offense, the accused will normally be represented by a lawyer from the Public Solicitor's Office. The prosecution in such cases will be conducted by the Public Prosecutor's Office. Prosecutors have an obligation not to bring cases to the Court when there is little or no evidence to support the charge being laid.

After a person has been summoned or arrested s/he will be brought before the court to have the matter tried. In the case of a summary trial, the magistrate may proceed to hear the charge(s), enter a decision in the case and impose punishment if the charges are proved.

In the case of indictable offenses that are not triable summarily, the person charged must first appear before a District Court magistrate for committal proceedings. To save the time of the National Court, the District Court first examines the evidence. If the evidence consists of written statements deemed to be sufficient, the District Court may commit the accused for trial. This "hand-up brief" cannot occur in cases where the defendant is not legally represented or where the sufficiency of the evidence is challenged by the lawyer. In such cases, the accused may be asked whether s/he wants to give evidence. The magistrate will then decide whether there is sufficient evidence to commit the person for trial or, if insufficient, to discharge the accused. Committal proceedings are not a trial but a review of the evidence before a subsequent trial in the National Court.

*Official who conducts prosecution. In summary cases, the police conduct the prosecution. Indictable offenses are prosecuted by the Public

Prosecutor's Office.

*Alternatives to trial. Plea-bargaining is a regular informal practice in Papua New Guinea involving the negotiation between defense and prosecution lawyers. Plea-bargaining occurs primarily for administrative reasons. In the case of indictable offenses, a recently initiated pre-trial hearing allows each party to preview the trial evidence before a judge. It is usually after this stage that a "plea-bargain" will be struck. Matters which may be the subject of such bargaining include the sum of money in misappropriation cases, the nature of the charge, and the number of charges or counts.

*Proportion of prosecuted cases going to trial. Lack of data for the inferior courts (District and Local courts) makes it impossible to state with any accuracy how the majority of criminal cases are resolved.

*Pre-trial incarceration conditions. Information not available

*Bail Procedure. The Constitution provides a right to bail: A person arrested or detained for an offense other than treason or willful murder as defined by an Act of the Parliament is entitled to bail at all times from arrest or detention to acquittal or conviction unless the interests of justice otherwise require (Sect.42(6)).

Where bail is granted, persons are released from custody by the court provided they agree to attend court for their case on a particular day and provided they agree to the conditions. For serious offenses, a condition of bail may be that accused persons or other persons pay the court a monetary sum as a guarantee of their attendance. If they do not attend court as required, then the court keeps the money. Bail is usually granted automatically for summary offenses. (Bail Act, Sect.19).

Since 1993, only the National or Supreme Court can grant bail for serious offenses such as willful murder, murder or an offense punishable by death, rape, abduction, piracy, burglary, stealing with violence or robbery, kidnapping, assault with intent to steal, breaking and entering a building or dwelling-house, including that involving a firearm but irrespective of whether the firearm was actually used in the commission of the alleged offense. (Bail (Amendment) Act, Sect.1).

In all other cases, any court may grant bail. Subject to the restrictions noted above, the police can grant bail when it is not practicable to take the person before a court within a

reasonable time. (Bail Act, Sect.5). Bail applications can be made at any time after arrest and at any stage in the proceedings (Sect.6).

The grounds for refusing bail are set out in Section 9 of the Bail Act as follows: (a) the person in custody is unlikely to appear at his trial; (b) the offense was committed while the person was on bail; (c) the offense in respect of which the person is in custody consists of a serious assault; a threat of violence to another person; or possessing a firearm, imitation firearm, other offensive weapon or explosive; (d) the person is likely to commit an indictable offense; (e) it is necessary for the person's own protection for him to be in custody; (f) the person is likely to interfere with witnesses or the person who started the proceedings;(g) the alleged offense involves property of substantial value which has not been recovered and the person if released would make efforts to conceal or otherwise deal with the property; (h) the alleged offense is one of breach of parole (Amended by Bail (Consequential Amendment) Act 1991). (i) there are, in process or pending, extradition proceedings against the person in custody; and (j) the alleged offense involves the possession, importation or exportation of a narcotic drug other than for the personal, medical use, under prescription only, of the person in custody.

*Proportion of pre-trial offenders incarcerated. See below under admissions.

JUDICIAL SYSTEM

1. Administration.
Supreme Court. The Supreme Court is at the top of the court hierarchy, and has original jurisdiction in constitutional matters and appellate jurisdiction, hearing appeals brought from the National Court.

National Court. The National Court has original unlimited jurisdiction in civil cases and indictable offenses. It also has appellate jurisdiction over appeals brought from District and Local Courts.

District Courts. District Courts have jurisdiction in civil cases involving up to K10,000, depending on the grade of the magistrate. It also has jurisdiction in criminal cases over summary offenses, committal proceedings, and certain indictable offenses before a grade V magistrate.

Local Courts. Local courts have jurisdiction in civil cases up to K1000 and in criminal cases over

summary offenses.

Village Courts. Village Courts have the jurisdiction to award K1000 compensation (except in cases of bride-price or death), a fine up to K200, or a work order for a maximum of 6 months. These courts have no power to imprison except by a Local Magistrate's approval. They are subject to supervision by the District Supervising Magistrate or appeal or review by a Local or District Court Magistrate.

The current powers of the Village Courts are provided by the Village Courts Act of 1989. They are presided over by Village Court Magistrates who are villagers appointed after consultation with the people. A Village Court area may consist of between 2,500 to 10,000 people and might cover 5 or 6 villages. In addition to Village Court Magistrates, the Village Courts Act provides for the appointment of Peace Officers (Sect.26) and Village Court Clerks (Sect.22). Village Courts are supervised by the District Supervising Magistrate, who is a District Court Magistrate.

Village Courts can hear almost any civil case. However, they can only make temporary orders about land rights, since this is typically a matter for the Land Courts. They can only hear criminal offenses which are listed in the Village Courts Regulations (Sect.41). Such offenses include: injury to person, damage to property, stealing, disturbance of the peace, slander and bad language, breaking of a customary rule, hygiene and cleanliness, sorcery, carrying of an offensive weapon, and breaking of a council rule.

A Village Court can give civil compensation up to K1000 (s.45) or a work order to be carried out for the victim for up to twelve weeks (Sect.44). In cases involving bride-price or compensation for death, the court has no limits on the amount of compensation it may order (Sect.46). In criminal cases the court can fine a person up to K200 (Sect.42(1)) or order him/her to do community work for up to six months (Sect.42(2)).

Village courts also have limited powers of imprisonment (Sect.61, 62, 73, 74). A person who fails to appear before a court may be imprisoned for up to six months. A person who fails to pay a fine or perform community work may be imprisoned for one week for every K10 of unpaid fine or for every one week's unperformed work. Such imprisonment is only valid if approved by a Local Court Magistrate. The Court may also issue a Preventative Order requiring that persons not aggravate an existing order.

Mediation, compromise and compensation are emphasized. There is no procedural distinction made between criminal and civil matters. A single

magistrate may settle disputes if both parties agree. If a dispute is not settled, the case goes before a full court, consisting of at least three magistrates. This court can resolve the dispute even if the parties do not agree. It can also impose criminal penalties.

A District Supervising Magistrate and his or her deputy are supposed to make regular supervisory visits to Village Courts and offer advice. In practice, supervision has been extremely irregular in some areas. Sections 86 and 87 of the Village Court Act allow for the possibility of review and appeal. For instance, a Local or District Court magistrate may review or hear appeals from Village Courts.

2. Special Courts.

Land Courts. Land Courts were established under the Land Disputes Settlement Act. This Act sought to combine elements of customary and Western settlement procedures. The first step in a land dispute is mediation involving community participation and compromise. Land mediators are usually appointed from Village Court Magistrates or other village leaders (Sect.11) and try to bring the parties to a settlement.

If mediation is unsuccessful, then the case can go before a Local Land Court for arbitration (Sect.27). This court consists of a Local Land Magistrate, who is normally a Local Court Magistrate, and two or more land mediators or other persons from the area (Sect.23). While the emphasis is on mediation and compromise, if none is reached, the court can force a solution. If arbitration fails, the case may be brought to a District Land Magistrate, who is usually a senior District Magistrate for the area. Appeals are allowed in limited circumstances (Sect.58).

Juvenile Courts. The Juvenile Courts were established under the Juvenile Courts Act of 1991 and replaced the previous system of Children's Courts. These are courts of summary jurisdiction, with the power to hear all offenses committed by children under the age of 18 which would otherwise be triable before a District or Local Court. In addition, the Juvenile Court can hear and determine summarily all indictable offenses committed by juveniles other than homicide, rape or any other offense punishable by death or life imprisonment. (Juvenile Courts Act, s.15).

Juvenile Courts are presided over by magistrates specially appointed to these courts. Publication of a court's proceedings is prohibited unless the court expressly authorizes publication and the proceedings are conducted in camera. Juvenile Courts are not bound by strict rules of

evidence (Sect.25). Throughout the proceedings the interests of the juvenile shall be the paramount consideration (Sect.4).

Where it has been established that an offense has occurred, the court has a range of options. The court can order the discharge of the juvenile without conviction, enter a conviction but impose no further order, fine the juvenile up to K200, order the juvenile to pay damages up to K200, place the juvenile on probation, order that the juvenile be made a ward of the Director of Child Welfare, order that the juvenile be made a ward and committed to the care of the Director, with a directive that the ward be committed to custody in a juvenile institution, or sentence the juvenile to a term of imprisonment in the juvenile section of a corrective institution (Sect.30).

Coroner's Court. Coroners are appointed under the Coroners Act and are required to carry out judicial investigations in cases of unexplained deaths on behalf of the State. They also conduct official inquiries into the cause of fires which result in property damage, as well as inquiries into the whereabouts of missing persons. Official inquiries are called inquests. Coroners are usually District Court magistrates.

A coroner is given all the powers of a District Court applicable to committal hearings of indictable offenses. If necessary, a coroner can commit a person for trial in the National Court for homicide or arson, depending on the circumstances. The procedure followed at inquests is largely the same procedure as the District Court.

Warden's Courts. These courts are designed to deal with disputes and other matters which arise in connection with mining operations. Wardens are appointed under the Mining Acts and carry out both administrative and judicial duties. Warden's Courts can hear and decide all disputes and cases which arise in relation to mining on any land which is subject to a mining lease. They can also hear cases involving offenses against the Mining Acts.

3. Judges.

*Number of judges. There are currently 16 judges of the Supreme and National Courts, including 2 Acting Judges. Of these, 10 are Papua New Guinean citizens and 6 are non-citizens (mainly Australians). Only 1 of the 16 judges is a woman, as well as a non-citizen.

*Appointment and qualifications. When appointed,

a judge serves on both the National and the Supreme Court, usually spending the first three weeks of each month sitting as a trial judge in the National Court and the last week sitting as an appellate judge in the Supreme Court. Until the late 1980's all National Court judges were based in the capital, Port Moresby. From there they travelled on circuit during the first three weeks of each month. A decentralization program has led the relocation of some judges to provincial centers. Two judges have been placed in both Rabaul and Lae. One judge has been placed in the centers of Madang, Goroka and Mount Hagen.

The Chief Justice is appointed by the National Executive Council (N.E.C.). All other judicial appointments are made by the Judicial and Legal Services Commission (J.L.S.C.), a five member body comprised of the Chief Justice, Deputy Chief Justice, Chief Magistrate, Minister for Justice or Attorney-General and a Member of Parliament. Section 168 of the Constitution provides that the qualifications for judges, including the Chief Justice and Deputy Chief Justice, are to be determined by an Act of Parliament. The National Court Act lists the legal qualifications and is supplemented by the Organic Law on the Terms and Conditions of Employment of Judges.

Section 2 of the National Court Act states that to be appointed a judge, a person must be a Papua New Guinean citizen, hold a law degree for 6 years, and have practiced as a lawyer for a minimum of 4 years. If the person holds a law degree and has practiced as a magistrate of a District Court, then the minimum time of practicing as a lawyer is 5 years.

A non-citizen lawyer can be appointed as a judge under Sect.3 of the National Court Act if he or she has practiced as a lawyer for a minimum of 5 years in Papua New Guinea or in a country whose legal system is similar to that of Papua New Guinea.

PENALTIES AND SENTENCING

1. Sentencing Process.

*Who determines the sentence? The sentence is determined by the relevant court. Most offenses have a maximum penalty attached by which the court is guided. The court is also assisted by other statutory provisions detailing the range of penalties and combinations possible. In addition, the judges have formulated their own sentencing guidelines in the case of the most serious indictable offenses.

*Is there a special sentencing hearing?

Information not available.

*Which persons have input into the sentencing process? Psychiatric expertise might be consulted in any case where the state of mind of the offender was in question. Evidence that the offender had already provided customary compensation to the victim could be taken into account as a mitigating factor. The views of the victim would be addressed in the case of a Village Court hearing. Pre-sentencing reports from Juvenile Court Officers in the case of the Juvenile Court, and Probation Officers in other cases, might be sought and taken into consideration by a court in sentence determination.

2. Types of Penalties.

*Range of penalties. The range of penalties available to the courts are: (a) Death, (b) Imprisonment (with or without hard labor), (c) Detention in a Juvenile Institution, (d) Suspended sentences, (e) Fines, (f) Probation, (g) Community work orders, (h) Good Behavior Bonds, and (i) Compensation orders.

Serious property offenses and offenses against the person are almost invariably punished with imprisonment, while suspended sentences, probation and fines are used for less serious offenses. Under the Probation Act, a court can impose particular conditions upon probationers. Some judges have used this to pass sentences of "home imprisonment" upon offenders. (State v. Justin Vincent Nyama, 1988).

*Death penalty. The death penalty has been available for many years for the offenses of treason, piracy with violence and attempted piracy with personal violence. It has, however, never been imposed for any of these offenses. A recent amendment to the Criminal Code introduces the death penalty for a person convicted of wilful murder. This provision has not yet been used. (Criminal Code, Sect.37,81,82; Criminal Code (Amendment) Act, 1991, Sect. 299).

Section 614 of the Criminal Code provides that the death penalty "shall be carried out by hanging the offender by his neck until he is dead".

PRISON

1. Description.

*Number of prisons and type. There are currently 18 jails in operation in Papua New Guinea. Of these, 4 are metropolitan jails (Bomana, Buimo,

Kerevat and Baisu), 12 are provincial jails, and 2 are district jails. The Bomana metropolitan jail, outside Port Moresby, comprises two separate institutions. One is the major Central Correctional Institution and the other is the Maximum Security Institution. The latter is the only institution of its kind in the country.

The Constitution provides that all persons deprived of their liberty "shall be treated with humanity and with respect for the inherent dignity of the human person". It further states that convicted detainees should be segregated from remand detainees and that juveniles be separated from adults. In practice, most jails have separate compounds for juvenile and female prisoners. Generally speaking, however, no separate facilities exist for remand prisoners. (Constitution, Sect.37 (9)(17)(18).

Existing jails are designed essentially as prison compounds, enclosed by fences. Escapes are relatively frequent.

*Number of prison beds. As of August 4, 1994, there were a total of 3,790 prison beds. (C.I.S.Records, Week ending August 4, 1994).

*Number of annual admissions. In 1993, there were a total of 15,639 admissions to prison, of which 7,020 were convicted offenders and 8,169 (55%) were on remand. Remand prisoners have comprised more than 50% of the total annual admissions. (C.I.S. unpublished statistics).

*Average daily population/number of prisoners. As of August 4, 1994, there were 4,222 inmates, of which 4,029 were male and 193 female. (C.I.S. Records, Week ending August 4, 1994)

*Actual or estimated proportions of inmates incarcerated. There are no up-to-date figures available on the proportion of inmates incarcerated for particular offenses. The most recent published figures are from 1988, which indicate the proportion of annual admissions of convicted detainees by offense.

| | |
|---|---|
| Drug Crimes (included possession of drugs, such as marijuana). | 1% |
| Violent Crimes (includes murder, attempted murder, manslaughter, grievous bodily harm, unlawful wounding, rape, attempted rape, unlawful carnal knowledge, and common assault). | 20% |

Property Crimes 43%
(includes breaking and entering, stealing, unlawfully using a motor vehicle, unlawfully in a dwelling house, malicious damage, and unspecified 'others').

Other Crimes 36%
(C.I.S., Prison Statistics of Papua New Guinea 1983-1988).

2. Administration.

*Administration. Similar to other criminal justice agencies, the Corrective Institutions Service is a national institution, with its headquarters in Port Moresby. The Commissioner, Deputy Commissioners and Assistant Commissioners constitute the senior executive management of the service responsible for operations. They also advise the Minister for Correctional Services on administrative matters.

In addition to the C.I.S., some churches and N.G.O.'s play a minor role in the provision of penal services. This includes Boystown in Wewak, run by the Catholic church, and several juvenile hostels provided by the Salvation Army.

*Number of prison guards. There are currently 1,650 officials, including uniformed and civilian staff, employed by the C.I.S. Of these, 221 work at the Headquarters or are involved in staff training. The remaining 1,429 employees are dispersed among the various C.I.S. institutions around the country.

*Training and qualifications. Applicants for employment with the C.I.S. are expected to attend a selection interview, fulfill certain medical requirements and successfully complete a pre-entry test which has a fixed pass mark for different grades of school levels. Trainee wardens normally undergo six months of training at the C.I.S. Training College at Bomana, outside Port Moresby. Trainees are taught courses in institutional procedures, C.I.S. law, penology, supervision, self-defence and physical education, practical training, foot and arms drills, and riot drills.

*Expenditure on prison system. The actual figure spent on the C.I.S. under the budgetary allocation for 1992 was K22,401,954. Whilst the final actual figure for 1993 has not been released, the preliminary final figure is K24,236,959. In addition, a small portion of the K10.7 million spent on technical assistance to the police and C.I.S. in 1993 went to the C.I.S. (Public Accounts

1992, Financial Year Ended 31st December 1992).

3. Prison Conditions.

*Remissions. Under the Corrective Institutions (Remission of Sentences)(Amendment) Regulation 1985, prisoners are allowed a remission of one-third of their sentence. Escapees and those who have been found guilty of a serious breach of Prison Regulations by a Visiting Justice will lose their remission. (Regulation of 1985, Remission of Sentences, Amendment).

The 1991 Parole Act allows for the conditional release of prisoners on parole at the discretion of a Parole Board. Under the Act, a prisoner is eligible for consideration for parole where he or she: (a) is sentenced to prison for not less than 3 years and has served not less than 12 months; or (b) is sentenced to prison for 3 years or more and has served not less than one-third of his sentence; or (c) is sentenced to life imprisonment or detention and has served not less than 10 years in prison.

*Work/education. Section 43 of the Constitution further provides that no person shall be required to perform forced labor. "Forced labor" does not, however, include labor that is part of a rehabilitation program.

In theory, prisoners are allocated to work parties and may be engaged in carpentry, mechanical work, poultry farming, or other activities, as part of their rehabilitation program. In practice, such activities will depend on the availability of funding and other resources. Some prisoners are also involved in extension studies.

*Amenities/privileges. All prisons have medical orderlies and aid posts and there is provision for visits from a visiting medical officer from the nearest government hospital. In addition, prisoners may be taken to such a hospital for treatment. Section 37(20) of the Constitution recognizes the general right of prisoners to serve their sentences in an institution in the area closest to where their relatives live. Weekly visits from relatives and friends are normally allowed. Weekend leave is not permitted but a prisoner may be allowed to attend the funeral of a relative where the service is conducted within reasonable travelling distance from the institution.

EXTRADITION AND TREATIES

*Extradition. The Extradition Act, and

regulations made under it, provides the relevant law for the extradition of criminals and suspects from Papua New Guinea to other countries and vice-versa. The following countries are listed as 'Treaty States' under Schedule 2 of the Act: Austria; Belgium; Chile; Czechoslovakia; Ecuador; Greece; Guatamala; Hungary; Iceland; Iraq; Luxembourg; Monaco; Nicaragua; Paraguay; Poland; Portugal; Switzerland; United States of America; Uruguay; Yugoslavia. The treaties are bilateral.

The Extradition (Commonwealth Countries) (Amendment) Regulation, 1984, lists the following countries as 'Designated Commonwealth Countries': Australia; Bahamas; Bangladesh; Barbados; Belize; Botswana; Canada; Cyprus; Dominica; Fiji; Gambia; Ghana; Guyana; India; Jamaica; Kenya; Kiribati; Lesotho; Malawi; Malaysia; Malta; Mauritius; Nauru; New Zealand; Nigeria; Seychelles; Sierra Leone; Singapore; Solomon Islands; Sri Lanka; Swaziland; Tanzania; Tonga; Trinidad and Tobago; Tuvalu; Uganda; United Kingdom; Western Samoa; Zambia; and Zimbabwe.

*Exchange and transfer of prisoners.

No provision exists for exchanging or transferring prisoners to other countries.

*Specified conditions. Section 6 of the Extradition Act authorizes the extradition of any person found in Papua New Guinea who: (a) is accused or convicted of an extradition offense in any treaty state or designated Commonwealth country; or (b) is alleged to be unlawfully at large after conviction of such an offense in any such state or country. An extradition offense is: (a) in the case of an offense against the law of a treaty state, any offense designated as such in the extradition treaty, or (b) in the case of an offense against the law of a designated Commonwealth country, an offense listed in the Schedule to the Act which is punishable with at least 12 months imprisonment. (Extradition Act, Sect.6).

Schedule 1 of Section 6 lists extradition and extraditable offenses. These are serious offenses against property and persons and include offenses involving dangerous drugs and narcotics. Under Section 8, extradition is not permitted in the case of political offenses or where the request for extradition appears to be motivated by the relevant person's race, religion, nationality or political opinions. Likewise, extradition will not be permitted where the person concerned might be subject to prejudice at his/her trial or punished, detained or restricted by reason of race, religion, nationality or political opinion. (Extradition Act, Sect.6,8).

Where a person accused or convicted of an extraditable offense is, or is suspected of being, in a treaty state or designated Commonwealth country, a request may be made to that state or country to surrender the person (Extradition Act, s.19). An extraditable offense is an offense (wherever committed) against the law of Papua New Guinea that is described in the Schedule to the Act (Sect. 18). Whether a designated Commonwealth country consents to an extradition request will depend on their own extradition provisions and, specifically, whether they have classified Papua New Guinea as a designated Commonwealth country.

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