

FEDERAL COURT OF AUSTRALIA

**“Law and Justice in Papua New Guinea”**

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**The Honourable Justice Logan RFD**

**A Judge of the Federal Court of Australia [[1]](#footnote-1)**

# Introduction

I have deliberately chosen “Law and Justice” as my topic, rather than “Law and Order”. The latter subject is one better addressed by a police officer rather than a judge. Instead, the focus of this paper is on the evolution of the legal system and judicial power in what is now the Independent State of Papua New Guinea from colonial times until the present. I also outline Law and Justice Sector assistance which is being provided to Papua New Guinea.

Necessarily, the perspective I offer in this paper is personal. Under our constitutional arrangements, as with those which prevail in Papua New Guinea, the day to day business of government, which includes the formulation and conduct of national foreign policy, is in the hands of the Executive, not the Judiciary. Further, I am a resident of Australia, not Papua New Guinea. I visit Papua New Guinea periodically to undertake judicial duty there. All of this means that there are very particular limitations on my perspective and that there are very particular proprieties which I must observe.

# The Historical Position

To understand how Papua New Guinea’s law and justice system came to assume its present form, it is necessary to go back in time and to appreciate 19th century colonial imperatives in the South Pacific.

Australia and even more particularly Queensland have long and deep ties to what has been, since 16 September 1975, the Independent State of Papua New Guinea.

In the modern era, those ties are to be found in Australia’s administration, from early last century, in succession to the United Kingdom, of Papua, once known as British New Guinea, the south-eastern portion of the island of New Guinea. On and from the First World War, Australia also came to administer the remainder of the eastern half of that island and outlying islands, which together comprised the former German trading concession and then colony of New Guinea. In that administration lies a shared heritage of the English common law and the Westminster system of government with its underlying principles of an independent judiciary and an executive represented in and responsible to Parliament.

Much more distantly in time, the ties were beyond the colonial. The present island of New Guinea and the Australian continent were once one, joined by a vast tract of land running over what is now the Torres Strait and into what is the Gulf of Carpentaria, then an inland lake.[[2]](#footnote-2) Genetically, Australian Aboriginals are more closely related to the Highlanders of Papua New Guinea than to any other people.[[3]](#footnote-3) An understanding of geography and anthropology remains relevant in relation to law and justice in Papua New Guinea.

I begin with an account of how the United Kingdom and later Australia came to transplant our system of justice in Papua New Guinea. It should not be assumed that, before this transplantation, there was then no indigenous system of justice. At village and clan level, there were very definite codes of behaviour. Features of that indigenous justice system remain in Papua New Guinea to this day. ***Papua – a British Protectorate***

In March 1874, the Australian colonial born but by then British resident barrister, author and Fellow of the Royal Colonial Institute, Francis Labilliere[[4]](#footnote-4) put the following in a letter to the then Secretary of State for the Colonies, the Earl of Carnarvon:

*To leave the Papuans independent would be their certain destruction. Fiji is a warning against that. Gold and other rich productions of New Guinea are beginning to draw white men there. In a very few years they will swarm in the Island, extending, unless controlled by a regular government, over a vastly greater area, all the evils they have occasioned in Fiji.[[5]](#footnote-5)*

The following month, the Colonial Secretary referred this letter to the then Governor of New South Wales, Sir Hercules Robinson,[[6]](#footnote-6) seeking from him “any observations which the information at your disposal, and your knowledge of the opinions entertained on this subject in the Colony under your Government, may enable you to offer”.[[7]](#footnote-7)

Robinson cannot have been ignorant of the argument being made byLabilliere for, later in 1874, it was he who negotiated the cession of the Fiji Islands from King Thakombau to the United Kingdom. Even so, there was no move that decade by the British to annex any part of New Guinea.

Later in the 1870’s, a limited form of authority in relation to “some islands and places in the Western Pacific Ocean and not being within the jurisdiction of any civilised Power” had been asserted by the United Kingdom by an Order in Council of 15 August 1877, known as the Western Pacific Order in Council, made under the *Foreign Jurisdiction Acts 1843 to 1875* (UK) (6&7 Vict. cap 94; 28&29 Vict. 116; 29&30 Vict cap. 87; and 38&39 Vict. Cap 85) and the *Pacific Islanders Protection Acts 1872* (UK) (35&36 Vict. Cap 19).[[8]](#footnote-8) The area which came to be known as Papua was regarded as one such place.[[9]](#footnote-9) A particular impetus for this action arose from what came to be called “blackbirding”, the trafficking in islanders to work on Queensland’s cane fields, nominally as labourers but more accurately as slaves in all but name.[[10]](#footnote-10)

The Western Pacific Order in Council made provision for an office known as the High Commissioner in, over and for the Western Pacific Islands, styled Her Britannic Majesty’s High Commissionerfor the Western Pacific Islands. It also established a court known as “Her Britannic Majesty’s High Commissioner’s Court for the Western Pacific Islands”, the members of which were the High Commissioner and the Judicial Commissioner and Deputy Judicial Commissioners. Under the terms of the Western Pacific Order in Council, the Chief Justice of Fiji and every other judge of the Supreme Court of Fiji were, *ex officio*, Judicial Commissioners.[[11]](#footnote-11) On 27 September 1877, the Governor of Fiji, Sir Arthur Gordon was appointed as the first such High Commissioner.[[12]](#footnote-12)

The High Commissioner’s Court for the Western Pacific Islands had jurisdiction over British subjects, resident within the area specified in the Order in Council within the area or not, in respect of acts in that area and to all British vessels in that area.[[13]](#footnote-13) The Order in Council made the criminal and civil law of England applicable to this class.

Appeals lay to the Supreme Court of Fiji and thence to the Judicial Committee of the Privy Council.[[14]](#footnote-14) A weakness with the court was the breadth of the area over which even this limited jurisdiction was asserted and the related lack of executive authority and presence to enforce the asserted jurisdiction.[[15]](#footnote-15)

The concerns voiced by Labilliere did not diminish. The Colony of Queensland, in particular, became increasingly concerned about activities in and about south-eastern New Guinea and adjacent waters such as gold mining, pearl diving and bêche-de-mer fishing engaged in by its colonists but over which and whom it had very little control.16 Another concern was that the Torres Strait, one of the colonies means of communication with Europe might come under the control of a foreign power occupying this area. [[16]](#footnote-16)

The following decade, on 4 April 1883, Queensland, on the initiative of the then Premier, Sir Thomas McIlwraith, purported to annex for the United Kingdom the area of land which later became known as Papua. The rationale for this was fear that a foreign power would otherwise undertake this step, as was explained in the Administrator’s Opening Speech to the next session of the Queensland Legislative Assembly:

*For some time past the imminent danger of annexation by a Foreign Power of the adjacent island of New Guinea has caused my Government much concern and uneasiness. Ultimately it was determined by a formal act of annexation to establish permanently British claims to the possession of that country. Accordingly that portion of New Guinea east of the one hundred and forty-first meridian and the adjoining islands up to the one hundred and fifty-fifth meridian were annexed on the fourth of April last. This action has not yet received the sanction of Her Majesty; but there can be no question that, however distasteful to some of our countrymen at home further extensions of territory may be, New Guinea and the adjacent groups of Pacific Islands must form part of the future Australian Nation.[[17]](#footnote-17)*

The British government disavowed the annexation. McIlwraith was strongly rebuked.[[18]](#footnote-18) Even so, agitation on the part of the eastern seaboard Australian colonies for an assertion of some form of British control over the same area which Queensland had purported to annex continued.[[19]](#footnote-19)

Continued representations from the Australian colonies occasioned a change of sentiment in London.[[20]](#footnote-20) These representations were supplemented by a related intercolonial conference held in Sydney in November 1883 and a later colonial conference held in London in April and May 1887.[[21]](#footnote-21) Germany’s annexure, in 1884, of the northeastern portion of New Guinea(named Kaiser Wilhelmsland by it) and the Bismarck Archipelago (New Britain and New Ireland)[[22]](#footnote-22) and colonial concerns regarding the intentions of both Germany and France in the South Pacific were particular catalysts.[[23]](#footnote-23) With the Australasian colonies promising financial support, the United

Kingdom initially responded by declaring the south-eastern portion of New Guinea a Protectorate in November 1884.25

A recently retired British general officer with extensive experience in the planning of colonial defensive works in Australia, Sir Peter Scratchley, was appointed on 22 November 1884 as the first special commissioner for this Protectorate.26 Scratchley had an enlightened view of what a British Protectorate entailed. According to his biographer, he was “convinced that ‘New Guinea must be governed for the natives and by the natives’ and planned to appoint chiefs representing British authority and tried to protect native land rights”.27 Unfortunately, his tenure of office was destined to be short-lived. He arrived in Port Moresby on 28 August 1885 but, later that year, contracted malaria on an official visit to a jungle camp, dying on board ship on route from Cooktown to Townsville on 2 December 1885.28

Enlightened though his views were, Scratchley lacked the means to carry them into effect, his short term of office being marked by fruitless requests for regular financial contributions from the Australasian colonies. Further, the very status of the area as a Protectorate, rather than a colony, made the nature and extent of the special commissioner’s powers moot. McIlwraith’s successor as Queensland Premier, Sir Samuel Griffith, went so far as to opine that Scratchley had “no legal jurisdiction and authority of any kind”.29

At least in a formal sense, it became possible to address this deficiency in authority following the enactment of the *British Settlements Act 1887* (UK), s 2 of which

under the pretence of legitimate trade and intercourse, might endanger liberties, and possess themselves of the lands of such native inhabitants, that a British Protectorate should be established over a certain portion of such country and the islands adjacent thereto :

It is necessary to state “purportedly” in relation to this gazettal because comparison of the proclamation as gazetted by Queensland with that read out by Commodore Erskine at Port Moresby discloses that Queensland has “surreptitiously” added the D’Entrecasteaux Group into the area of the Protectorate specified in the Schedule to the Proclamation: P van der Veur, *documents and correspondence on New Guinea Boundaries,* ANU Press, 1966,*..* 9-10 and fn 1, p 10.

1. Ibid.
2. R. B. Joyce, ‘Scratchley, Sir Peter Henry (1835–1885)’, *Australian Dictionary of Biography, National Centre of*

*Biography*, Australian National University, http://adb.anu.edu.au/biography/scratchley-sir-peter-henry4552/text7463, published first in hardcopy 1976 (Accessed 10 June 2015).

1. Ibid.
2. Ibid. 29 Ibid.

enabled The Queen in Council “to establish all such laws and institutions, and constitute such courts and officers, and make such provisions and regulations for the proceedings in the said courts and for the administration of justice, as may appear to Her Majesty in Council to be necessary for the peace, order, and good government of Her Majesty’s subjects and others within any British settlement”. On 17 May 1888, by an Order in Council made under that Act, the British government provided that any appeal from a court established in the then Protectorate might be brought to the Supreme Court of Queensland at Brisbane.30

# Papua – a British colony

On 4 September 1888, the British Government went further with the Proclamation in Port Moresby of Letters Patent dated 8 June 1888 declaring the south-eastern portion of New Guinea to be a colony by the name of British New Guinea.31 It is this same portion which was later termed Papua. The Letters Patent notified that “William Macgregor, Esq., M.D., C.M.G” (later the Rt Hon Sir William Macgregor, GCMG, Governor of Queensland and first chancellor of the University of Queensland),32 as

1. As recited in the Preamble in the *Papua Act 1905* (Cth); Act No 9 of 1905.
2. Notification of the issuing of the Letters Patent was made in the London Gazette, 30 October 1888, p 5888. A copy of the Letters Patent of 8 June 1888 constituting the new colony and appointing McGregor as first Administrator, together with his dispatch notifying the making of the Proclamation on 4 September 1888 and related correspondence is to be found in an Appendix to the Journals of the New Zealand House of Representatives, 1889 Session I, A-04: http://atojs.natlib.govt.nz/cgi-bin/atojs?a=d&d=AJHR1889-I.2.1.2.5&e=------10--1------2%22Papers+relating+to+the+introduction+of+salmon+ova%22-- (Accessed, 14 June 2015). This reflects the then interest, shared with the Australian colonies, which New Zealand then had in the establishment of the Protectorate and in its conversion into a separate British colony.

See also the Preamble in the *Papua Act 1905* (Cth); Act No 9 of 2015 in which the definition of the boundaries of the colony as specified in the Letters Patent are recited as follows:

“[The] southern and south-eastern shores of New Guinea from the one hundred and forty-first meridian of east longitude eastward as far as East Cape, and thence north-westward as far as the eighth parallel of south latitude in the neighbourhood of Mitre Rock, together with the territory lying south of a line from Mitre Rock, proceeding along the said eighth parallel to the one hundred and forty-seventh degree of east longitude, then in a straight line in a north-westerly direction to the point of intersection of the sixth parallel of south latitude and of the one hundred and forty-fourth degree of east longitude, and continuing in a west-north-westerly direction to the point of intersection of the fifth parallel of south latitude and of the one hundred and forty-first degree of east longitude, together with the Trobriand, Woodlark, D'Entrecasteaux, and Louisiade Groups of Islands and all other Islands lying between the eighth and the twelfth parallels of south latitude and between the one hundred and forty first and the one hundred and fifty-fifth degrees of east longitude and not forming part of the Colony of Queensland, and furthermore in eluding all Islands and Reefs lying in the Gulf of Papua to the northward of the eighth parallel of south latitude.”

It will be noted that, on this occasion, the D'Entrecasteaux Group has been expressly included in the description.

1. R. B. Joyce, ‘MacGregor, Sir William (1846–1919)’, *Australian Dictionary of Biography, National Centre of Biography*, Australian National University, http://adb.anu.edu.au/biography/macgregor-sir-william4097/text6343, published first in hardcopy 1974 (Accessed 9 June 2015).

Administrator of the colony. The view of the British government was that this new colony was a territory acquired by settlement, not conquest.[[24]](#footnote-24)

Shortly after the establishment of the colony of British New Guinea, its Legislative Council established a court of record known as the Central Court constituted by the Chief Magistrate for the colony.[[25]](#footnote-25) The Central Court was given like civil jurisdiction to that exercisable by the Supreme Court of Queensland.[[26]](#footnote-26) The court’s criminal jurisdiction was declared to be “of and over all crimes and offences against the law”.[[27]](#footnote-27) In keeping with the view that the colony had been acquired by settlement, this meant that the criminal law of England was applicable.[[28]](#footnote-28) The following year, another local ordinance adopted for the colony the “principles and rules of common law and equity that for the time being shall be in force and prevail in England”, as well as a large number of Queensland and United Kingdom statutes then in force in Queensland.[[29]](#footnote-29)

Three themes are evident in the representations and deliberations that culminated in the establishment of the colony of British New Guinea – concern for the lives and property of the indigenous population, regulation of economic development, particularly the exploitation of natural resources and strategic interests both arising from the geographic proximity of the island of New Guinea, particularly its southeastern portion, to continental Australia and from the activities of foreign powers in the South Pacific. These themes were to continue to have enduring relevance in the governance of what is now the Independent State of Papua New Guinea and in

Australia’s relationship with it.

Macgregor was a protégé of Sir Arthur Gordon and had served in the colonial administration in Fiji, including as Acting Governor of that colony. He had also represented Fiji at the Federal Council in Tasmania where he began a lifelong friendship with Sir Samuel Griffith. Macgregor would continue as Administrator and then Lieutenant Governor (reporting to the Queensland Governor) of British New Guinea until 1898. His administration of the colony was notable for his resisting attempts, even those supported by Australian colonies, to exploit Papuan land or labour. This benign policy caused him to clash with Sir Thomas McIlwraith. The origins of the Royal Papua New Guinea Police Force may be traced to Macgregor’s administration. He appointed Papuan village constables, and recruited Papuans into the armed constabulary in order to support the authority of the Executive. [[30]](#footnote-30)

The Queensland Supreme Court’s appellate jurisdiction in respect of matters arising in British New Guinea was extended on 24 November 1891 by a further Order in Council, also made under the provisions of the British Settlements Act 1887. This provided that in all Admiralty matters “an appeal should lie from the Colonial Court of Admiralty of the Possession of British New Guinea to the Supreme Court of Queensland at Brisbane”.[[31]](#footnote-31)

At least in hindsight and probably also in prospect, the combination ofBritish New Guinea’s formal status as a British colony separate from but immediately proximate to the Australian colonies, particularly Queensland, and the responsibility of the Australian colonies for financial contributions for the administration of the new colony, led to blurred reporting lines for the local administration. These were not lessened by the federation of the Australian colonies on 1 January 1901 so as to form the new body politic known as the Commonwealth of Australia, of which British New Guinea was not a part.[[32]](#footnote-32)

# Papua – an Australian Territory

Following resolutions passed by the House of Representatives and the Senate in 1901 attesting to a willingness to accept authority, the British Government issued Letters Patent on 18 March 1902 placing British New Guinea under the authority of the Commonwealth of Australia.[[33]](#footnote-33) Pending the enactment by the Commonwealth Parliament of an Act in respect of the government of that territory, the 1902 Letters Patent modified the 1888 Order in Council so as to substitute the Australian Governor-General for the Governor of Queensland as the supreme law-making authority for that territory. Earlier that same month, by an Order in Council made under the British Settlements Act 1887, the British Government made provision for the cessation of appeals from British New Guinea to the Supreme Court of Queensland upon the enactment and proclamation of an Act by the Commonwealth Parliament making provision for appeals.[[34]](#footnote-34)

Notwithstanding that it had been the then Australian colonies which had pressed the British government to take control of the south-eastern portion of New Guinea, the Parliament of the newly federated Commonwealth proved to be tardy in making laws for its government. Those responsible for the framing of the Constitution of the Commonwealth of Australia and the British Parliament in enacting it as the schedule to the *Commonwealth of Australia Constitution Act 1900* (UK) had, by the inclusion of the “Territories power”, s 122 of *The Constitution*,[[35]](#footnote-35)[[36]](#footnote-36) anticipated that this power would be availed of so that, among other things, the newly federated Australia would take over British New Guinea from the United Kingdom and make laws for its government.[[37]](#footnote-37) Australian tardiness in so doing was the subject of pointed reminder by Colonial Secretary Joseph Chamberlain to the first Prime Minister, Sir Edmund Barton.[[38]](#footnote-38)[[39]](#footnote-39)

In the interval between the handing over of the colony to Australian administration and the enactment by the Commonwealth parliament of legislation for its government, British New Guinea’s Legislative Council made provision by an ordinance for the Queensland *Criminal Code 1899* to apply in the colony as its criminal law.[[40]](#footnote-40)

Formal Australian statutory provision for the governance of this new external territory of the Commonwealth was not made by the Parliament until 1905 with the passage of the *Papua Act 1905* (Cth) (Papua Act 1905). Full responsibility for the governance under that Act of the Territory of Papua, as British New Guinea became known, was assumed by the Australian Government upon the proclamation of the Papua Act 1905 on 1 September the following year.[[41]](#footnote-41)

The Papua Act 1905 provided that, subject to its particular provision in respect of certain matters, the laws in force in British New Guinea at the commencement of that Act were to continue in force in the Territory until other provision was made.[[42]](#footnote-42) Thus, the Queensland Criminal Code continued to apply in the territory. The Act also continued in existence, as courts of the new territory, the Central Court and other courts of the former colony. It likewise continued in existence the appointments of the judicial officers constituting those courts.[[43]](#footnote-43) The right of appeal to the Supreme Court of Queensland from the Central Court ceased, replaced by a right of appeal to the High Court of Australia.[[44]](#footnote-44)

A detailed history of the formal arrangements for the administration of justice in British New Guinea and then Papua between its annexation by the United Kingdom and the assumption of military administration of the territory during the Second World War is set out in a footnote to the *Central Court Ordinance* 1925 (Papua) made pursuant to the Papua Act 1905.52

A noteworthy holder of judicial office in Papua both before and after the Second World War was Mr Justice Ralph Gore. Gore had hitherto been Crown Law Officer for the Territory. He was appointed as a judge of the Central Court of Papua on 1 April 192853 and would eventually retire from office as a judge of a successor court, the Supreme Court of Papua and New Guinea, in 1962.54

One of the cases dealt with by Gore J when constituting the Central Court of Papua was a claim by an Acting Resident Magistrate contesting his summary dismissal from office by the Lieutenant Governor. His Honour dismissed the claim and the subsequent appeal to the High Court was dismissed.55

1. Note 4 to the Central Court Ordinance recites:

Pursuant to Clause XIX of Letters Patent dated 8.6.1888, and published in British N.G. Govt. Ga-z. of

4.9.1888, the Administrator appointed an Acting Chief Judicial Officer as from 7.9.1888 (notified in British

N.G. Govt. Gaz. of 22.9.1888).

By notice dated 25.10.1888 and published in British N.G. Govt. Gaz. of 27.10.1888 the Administrator notified the termination of the appointment of the Acting Chief Judicial Officer and the appointment of a Judicial Officer as from 25.10.1888. The Administrator, l>y notice dated 6.11.1889 and published in British N.G. Govt. Gaz. of 23.11.1889 notified the appointment of the Judicial Officer as Chief Magistrate for the Possession from 8.1.1889. The Chief Magistrate for the Possession retired on 3.1.1903. By notice dated 11.5.1903 and published in British -N.G. Govt. Gaz. of 23.5.1903, the appointment of a' Chief Judicial Officer and Chief Magistrate of the Possession was notified to date from 11. 5.1903. By notice dated 16.9.1904 and published in British N.G. Govt. Gaz. of 1.10.1904 the appointment of a Chief Judicial Officer and Chief Magistrate for the Possession was notified, vice the former Chief Judicial Officer and Chief Magistrate of the Possession, then deceased. By Commission dated 30.11.1908 and published in Papua Govt. Gaz. of 18.1.1909, the Governor-General of the Commonwealth of Australia appointed the Chief Judicial Officer to hold the office of Lieutenant-Governor of the Territory in addition to the office of Chief Judicial Officer. By Commission (notified in Papua Govt. Gaz. of 4.5.1910) the Lieutenant-Governor appointed a Deputy Chief Judicial Officer for the Territory as from 1.4.1910. Accordingly, as at 31.8'.1925 (the' date of the commencement of the Central Court Ordinance, 1925) there were the Chief Judicial Officer (who was also Lieutenant-Governor) and the Deputy Chief Judicial Officer for the Territory, who became Judges of the Central Court by virtue of Section 5 of the Central Court Ordinance, 1925. On 31.3.1928 a Judge of the

Central Court retired and by notice dated 22.3.1928 and published in Papua Govt. Gaz. of 4.4.1928, the appointment of a Judge of the Central Court was notified. On 27.2.1940 the Lieutenant-Governor died, and, accordingly, there was one .Judge of the Supreme Court of the Territory at the date of cessation of civil administration

1. Papua Government Gazette, 4 April 1928; see also R T Gore, *Justice versus Sorcery* (Jacaranda Press, 1965) pp 76-77.
2. Retirement noted 3 FLR iii.
3. *Faithorn v Territory of Papua* (1938) 60 CLR 772.

Throughout the period of Australia’s administration of Papua and later also of New Guinea, judicial officers in those places were not regarded either by the Commonwealth or local Executive Governments or legislatures as judges appointed under Chapter III of The Australian Constitution. Thus, they were not regarded as enjoying the security of tenure for which s 72 thereof provides (during this period, for life, during good behaviour). That s 122 of The Constitution permitted the making of laws providing for lesser forms of tenure was upheld by the High Court.[[45]](#footnote-45)

# German New Guinea becomes the Australian Territory of New Guinea

Shortly after the outbreak of the First World War, the German colony of New Guinea was captured by the Australian Naval Military and Expeditionary Force (ANMEF). The colony was surrendered by its Acting Governor, Herr E. Haber to the commander of the ANMEF, Colonel Homes at Herbertshohe, New Britain on 17 September 1914. Clause 9 of the Terms of Capitulation provided:

*During the said military occupation the local laws and customs will remain in force so far as is consistent with the military situation.[[46]](#footnote-46)*

The colony then came under British military administration (staffed by Australians). Within the military administration, Lt Col Seaforth Mackenzie, hitherto a Legal Officer in the Commonwealth Attorney-General’s Department, was responsible for law and justice.[[47]](#footnote-47) Mackenzie would later become the Principal Registrar of the High Court of Australia. He gained notoriety in that office for forging and uttering the seal of the court, for which he was in 1936 convicted and gaoled for four and a half years.[[48]](#footnote-48)

The German colony remained under military administration until 1921 when, following Germany’s renunciation of her rights in respect of the colony by the Treaty of Versailles, Australia was granted a Mandate over the area by the League of Nations.[[49]](#footnote-49) Provision was made for the civil government of what was termed the Territory of New Guinea as an external territory of Australia by the *New Guinea Act 1920* (Cth), the operation of which was proclaimed on 9 May 1921.[[50]](#footnote-50) By the *Judiciary Ordinance 1921* (NG) made under that Act, a court of record, initially known as the Central Court and, later, as the Supreme Court of New Guinea and District Courts were established. The principal seat of the Supreme Court was at Rabaul.[[51]](#footnote-51) Judges of the Supreme Court came to be appointed until age 65 and were removable by the Governor-General for misbehaviour.[[52]](#footnote-52)

Also proclaimed on 9 May 1921 and made under the authority of the New Guinea Act was the *Laws Repeal and Adopting Ordinance* *1921* (NG), which terminated, save in respect of accrued rights, German law and adopted specified Queensland statutes and “those portions of the Acts, Statutes and laws of England that are in force in the State of Queensland …so far as the same are applicable to the circumstances of the Territory.” Amongst the Queensland statutes adopted was the Queensland Criminal Code.[[53]](#footnote-53) Interestingly but in keeping with the status of the territory as a mandated territory, s 10 of this ordinance provided for a limited preservation of customary law:

*10. The tribal institutions, customs and usages of the aboriginal natives of the Territory shall not be affected by this Ordinance and shall, subject to the provisions of the Ordinances of the Territory from time to time in force, be permitted to continue in existence in so far as the same are not repugnant to the general principles of humanity.*

# The Second World War

As a result of the outbreak of hostilities with Japan and its invasion of New Guinea and then Papua, Australian civil administration in both territories came to an end in a practical sense early in 1942. In law, the agencies of civil government in these territories were suspended on 27 April 1942 by the *National Security (Officers of External Territories) Regulations 1942* (Cth),[[54]](#footnote-54) made pursuant to the *National Security Act 1939* (Cth). The judges of each of the territories were suspended from office by these regulations. Those parts of the territories which remained under or returned to Australian control were then subject to military administration pursuant to these regulations and the *National Security (Emergency Control) Regulations* (Cth).[[55]](#footnote-55)

Civil government came gradually to be restored to the territories of Papua and New Guinea pursuant to the *Papua-New Guinea Provisional Administration Act 1945* (Cth), which was enacted shortly prior to the final defeat of Japan. It provided, for the first time, for the administration of the two territories as one territory known as the Territory of Papua-New Guinea. An Administrator appointed under that Act was charged with the administration of this territory on behalf of the Commonwealth of Australia. The Act also provided for the establishment of a new Supreme Court for the Territory, known as the Supreme Court of Papua-New Guinea.[[56]](#footnote-56) Judges appointed to this court were to hold office during the pleasure of the Governor-General.[[57]](#footnote-57) Subject to any amendment made under the Act, the pre-existing laws of the two territories were continued in force.[[58]](#footnote-58)

# The Australian Territory of Papua and New Guinea

These provisional arrangements ceased with the commencement of the *Papua and New Guinea Act 1949* (Cth), which commenced on 1 July 1949.[[59]](#footnote-59) This Act recognised the ceasing to exist of the League of Nations, the existence of the United Nations and Australia’s assumption responsibilities in respect of Papua under Chapter XI of the United Nations Charter and the provision pursuant to Chapter XII of that Charter for an Australian trusteeship in respect of New Guinea. It provided for an administrative union of the two territories as the Territory of Papua and New Guinea but to the end that, “the Territory of Papua and the Territory of New Guinea shall continue to be Territories under the authority of the Commonwealth and the identity and status of the Territory of Papua as a Possession of the New of the Crown and the identity and status of the Territory of New Guinea as a Trust Territory shall continue to be maintained”.[[60]](#footnote-60)

The Papua and New Guinea Act made provision for the continuance of laws in force in the former territories of Papua and New Guinea and for their subsequent amendment.[[61]](#footnote-61) It further provided for a superior court of record for the new Territory, to be known as the “Supreme Court of the Territory of Papua and New Guinea”.[[62]](#footnote-62) Subject to a transitional provision in respect of judges who had hitherto held office under the repealed Papua-New Guinea Provisional Administration Act, judges of this new court were to hold office until age 65 and were removable by the GovernorGeneral only on the ground of proved misbehaviour or incapacity.[[63]](#footnote-63) The transitional provision allowed that a former judge “may continue in office during the pleasure of the Governor-General after he has attained the age of sixty-five years”.[[64]](#footnote-64) An appeal from the Supreme Court of the Territory of Papua and New Guinea lay to the High Court of Australia.[[65]](#footnote-65) The Papua and New Guinea Act further provided for the establishment, by or under an Ordinance, of “Courts and tribunals, including native village courts and other tribunals in which natives may sit as adjudicating officers or assessors”.[[66]](#footnote-66)

In 1953, doubts emerged as to the provision that former judges appointed to the new court held office during the pleasure of the Governor-General and a special Act was passed removing the limitation in their commissions “to have, hold, exercise and enjoy the said office during the pleasure of the Governor-General”.[[67]](#footnote-67) Mr Justice Gore was one of the judges affected by the passage of this Act.

Comprehensive internal self-government in preparation for the granting of independence came to the Territory of Papua and New Guinea via amendments made to the Papua and New Guinea Act by the *Papua New Guinea Act (No. 2) 1973* (Cth). So far as the Judiciary was concerned, a feature of this Amendment Act was its provision for a judge to be appointed to the Supreme Court, “during a period specified by the Governor-General” but not so as to extend before age 65.[[68]](#footnote-68) The rationale for this was specified in the following way by the then Minister for External Territories in his Second Reading Speech in this way:

*Clause 26 provides for judges to be appointed on contract for a fixed term. Such provisions will allow Papua New Guinea to call on overseas expertise for as long as it takes its own legal profession to provide a sufficient number of judges.[[69]](#footnote-69)*

This then was the position in relation to the Judiciary in Papua-New Guinea at the time of the granting of independence. During the time when the areas which came to comprise the Independent State of Papua-New Guinea had been under British or Australian administration, superior court judges in the protectorate, colony or, as the case may be, territory had never enjoyed the security of tenure which comes with appointment either for life or until a particular age, combined with an inability to be removed before then except by a resolution of Parliament on the basis of proved misbehaviour or incapacity That type of security of tenure had come to be the norm in each of these countries. Such tenure bulwarks judicial independence.

This diminished security of tenure was not inconsistent with general British colonial practice concerning the Judiciary in other than settled, self-governing colonies with a locally elected legislature. In respect of these other colonies, “the British government’s position was clear, that judges appointed to the colonies would hew to the Baconian model. The position manifested itself in the retention of the prerogative as the instrument for selecting candidates and appointing them, and in large part for their firing, the continuation of appointments at pleasure, and a dogged refusal to countenance the extension of the Act of Settlement or anything like it to the empire.”[[70]](#footnote-70) Article III, s 7 of the *Act of Settlement 1701* (Eng) had provided that judges’ commissions be made “*quamdiu se bene gesserint* [during good behaviour] ... but upon address of both Houses of Parliament it may be lawful to remove them”. In the British Empire in the post-Act of Settlement period, the differing practice in respect of colonial judges may be traced to s 2 of the *Colonial Leave of Absence Act 1782* (UK) ((22 Geo. 3, c. 75.)[[71]](#footnote-71)[[72]](#footnote-72)

# Planning for Independence

It is evident from the Report of the Constitutional Planning Committee 1974 (the Committee), which informed the drafting of Papua New Guinea’s post-independence Constitution, that the Committee regarded the independence of the Judiciary as a “cardinal principle” which needed to be firmly established” in that Constitution.83 The Committee commented:

*In Papua New Guinea there have always been traditional peaceful means of resolving disputes and doing what is right in conflict situations, according to traditional notions of justice. With the establishment of modern institutions in our country, the courts of justice, as developed elsewhere, are gradually becoming generally acceptable institutions in our society. The advent of the Constitution and Independence provides the opportunity for these courts, appropriately modified to suit our needs, to become a vital part of the foundations on which our people seek freedom, fulfilment and total development, both personal and national.84*

The Committee recommended “cutting the legal ties between our judicial system and that of Australia”.85 To this end, it recommended that a new Supreme Court be established as the country’s final court of appeal.86 This new Supreme Court was to be constituted rotationally from the judges of a new superior court of record of general jurisdiction to be known as the National Court.87 These two new courts would replace the then existing Supreme Court of the Territory of Papua and New Guinea, which, constituted by a single judge, exercised original jurisdiction and, constituted by three judges, sat as a Full Court exercising an intermediate appellate jurisdiction.

in other cases of appeal from such colony or plantation, whereon such a motion shall be finally judged of and determined by his Majesty in council.

1. Constitutional Planning Committee Report 1974, Chapter 8, para. 4:

http://www.paclii.org/pg/CPCReport/Cap8.htm (Accessed 15 June 2015).

1. Ibid, para. 8.
2. Ibid, para. 12. 86 Ibid.

87 Ibid, para. 27.

The Committee envisaged a continuance of English common law but saw in the creation of a local final court of appeal the opportunity for the development in the future of a local common law, influenced by an understanding of the cultures and customs of the people of Papua New Guinea.[[73]](#footnote-73) To this end, the Committee recorded its belief that:

*The system of village courts which the House of Assembly has approved should provide a suitable means of developing our traditional judicial institutions and of significantly influencing the evolution of the imposed court system and the common law which it applies.[[74]](#footnote-74)*

It also saw a role for “Assistant Judges”, who need only be of three year’s standing and who, “should be seen partly as trainee judges under their more experienced foreign brother judges, but more significantly, these appointments should represent a deliberate policy to have our own people control the courts of our country soon after Independence”.90 The Committee envisaged that, Papua New Guinea would, “continue to rely on foreign judges for some years to come” but that, “Whilst this situation might be acceptable in a pre-independence period, it will obviously not be consistent with the principle of our national sovereignty after Independence.”[[75]](#footnote-75) It was the Committee’s hope that, via the influence of village courts and these Assistant Judges, Papua New Guinea’s common law would evolve so as to incorporate local values.

The Committee envisaged that the Chief Justice of Papua New Guinea would be formally appointed by the National Executive Council. Prior to that formal appointment, the Committee recommended that, “the Prime Minister should initially consult the Minister responsible for justice on a proposed appointment of a Chief Justice. The Prime Minister should then consult the National Executive Council and the Permanent Parliamentary Committee responsible for justice, jointly”.[[76]](#footnote-76) The Committee saw it as of “great importance” that a prospective appointee for the office of Chief Justice be seen by all political groups as “clearly impartial”. Even so, the Committee also saw it as necessary that the Chief Justice be, “responsive to the circumstances of Papua New Guinean society”.[[77]](#footnote-77) It saw this recommendation as a way of achieving these goals.

The Committee recommended that all other judicial appointments, be they the Deputy Chief Justice, other judges or magistrates be made by a Judicial and Legal Services Commission (JLSC), rather than the Government of the day.[[78]](#footnote-78) It observed:

*Particularly in a developing country such as Papua New Guinea,* ***judges should normally be not unsympathetic to the executive and legislative branches of government,*** *and as we have indicated above, always have a real appreciation of the circumstances of the country in which they work, if their judgements are to be just.95*

*[emphasis added]*

By “not unsympathetic” the Committee cannot be taken to have meant subservient, for this would have been completely inconsistent with the great importance it attached to judicial independence. Instead, the Committee must have had in mind that the Judiciary would bring to bear an understanding of the difficulties which the other branches of government faced in the developing phase of a newly independent country.

In order to achieve this, the Committee recommended that the membership of the JLSC comprise:

* the Minister responsible for Justice, who would be Chairman;
* the Chief Justice;
* a lawyer of the National Court, nominated by the Minister responsible for

justice;

* the Chief Ombudsman (who would be the head of the Ombudsman Commission which the Committee separately proposed should be established); and
* a lawyer nominated by the Permanent Parliamentary Committee responsible for

justice.[[79]](#footnote-79)

The Committee deliberately chose not to recommend the exclusion of political representation (in the form of the Minister as Chairman and via the presence of a nominee of the Permanent Parliamentary Committee responsible for justice) for this reason:

*A further serious disadvantage of excluding politicians from the process of appointing judges is that it is likely to increase the danger (which is almost always present in emerging states), of a serious break-down in communication between the judiciary and the other arms of government. Such a situation might result in the very independence of the judges, which the people very much want to see established, being threatened.[[80]](#footnote-80)*

As to tenure, the Committee recognised that security of tenure was important for judicial independence but, at the same time, believed that, “judges should not be insulated from the society in which they work”.[[81]](#footnote-81) What they sought to achieve was tenure sufficient “to provide individual judges with the personal security to be truly independent of both the government and other powerful groups that might seek to influence their judgements” while, at the same time, “their position would periodically be reviewed by a body sensitive to public and professional opinion”.[[82]](#footnote-82)

To achieve these ends, the Committee recommended term appointments, rather than appointments for life or until a given age. As a general proposition, it recommended that citizen judges ought to be appointed for ten years[[83]](#footnote-83) and then to be eligible for reappointment until reaching age 55 (subject to a discretion on the part of an appointing authority to extend their appointment for up to five years).[[84]](#footnote-84) As for non-citizen judges and in keeping with their view in respect of constitutional offices generally, the Committee considered that they should not be appointed for a period granted than three years.[[85]](#footnote-85)

The Committee also recognised that, upon Independence, there would probably be relatively few citizens qualified to be judges. It considered that, in the first ten years following Independence, even citizen judges ought initially to be appointed only for a three year period, so as to allow the JLSC the, “opportunity to review the professional competence and general suitability of its first nominees fairly soon after they are appointed”.[[86]](#footnote-86)

The reason why the Committee opted for retirement at age 55 years for judges was in keeping with its views as to a retirement age for constitutional office holders and also public servants. These views were formed not just by an appreciation of the then lower life expectancy of Papua New Guineans in comparison with other countries but also because, “[O]ur leaders must be responsive to the society in which they live, and sensitive to changing circumstances. Our country cannot afford a tired leadership or one committed to outmoded ideas, particularly not in offices subject to no outside direction or control”.[[87]](#footnote-87)

The same year as the Committee reported, Her Majesty Queen Elizabeth II opened the then new Law Courts at Waigani in Port Moresby. In so doing, she made the following observation in relation to Papua New Guinea’s forthcoming Independence:

*The people of Papua New Guinea are about to set out on the great adventure of Independence; and if they are to be successful in it, it is essential that the rule of law should grow and flourish. Experience shows that it is hard to establish, and that great vigilance is needed to maintain it.[[88]](#footnote-88)*

The events of the four decades which have passed since then have, for Papua New Guinea, demonstrated the wisdom of Her Majesty’s observation and the prescience of the Committee’s apprehension in relation to the post-Independence era, of “the danger (which is almost always present in emerging states), of a serious break-down in communication between the judiciary and the other arms of government”.

# Independence

Under the terms of the *Papua New Guinea Independence* *Act 1975* (Cth),[[89]](#footnote-89) Australia relinquished any claim to sovereignty in respect of Papua New Guinea as from midnight on 15 September 1975. When the Australian flag was, in recognition of this, lowered at a ceremony at Port Moresby at sunset that day, Sir John Guise, who would take office as Papua New Guinea’s first Governor-General the following day, graciously and memorably observed, “We are lowering this flag, not tearing it down”.[[90]](#footnote-90) There was then and, in my experience, there remains to this day much mutual goodwill between Papua New Guinea and Australia.

On 16 September 1975, a new nation, the Independent State of Papua New Guinea, governed under a constitution adopted for its people by the pre-Independence House of Assembly, came into being.

# Judicial Power under the PNG Constitution

As does Australia’s Constitution, the PNG Constitution provides for a Westminster system of responsible government with a Ministry represented in and responsible to Parliament and an independent Judiciary. The Parliament is unicameral. The Sovereign for the time being of the United Kingdom is Papua New Guinea’s Head of State, locally represented by a Governor-General, appointed by the Sovereign after selection in accordance with a manner set out in the PNG Constitution. It is a feature of the PNG Constitution that it prescribes many matters in relation to Vice Regal and Parliamentary practice that, in other countries, are left to convention. Unlike Australia’s Constitution, the PNG Constitution also specifies and, subject to that Constitution, guarantees many individual rights and freedoms.

In relation to the Judiciary, the Committee’s recommendations were largely adopted by the House of Assembly. Thus, the PNG Constitution provides for the judicial power of the people of Papua New Guinea to be vested in a National Judicial System which comprises:

1. the Supreme Court; and
2. the National Court; and
3. such other courts as are established under Section 172 (establishment of other courts).[[91]](#footnote-91)

Provision in the PNG Constitution for judicial independence is made by s 157, which states:

 *157. INDEPENDENCE OF THE NATIONAL JUDICIAL SYSTEM.*

*Except to the extent that this Constitution specifically provides otherwise, neither the Minister responsible for the National Justice Administration nor any other person or authority (other than the Parliament through legislation) outside the National Judicial System has any power to give directions to any court, or to a member of any court, within that System in respect of the exercise of judicial powers or functions.[[92]](#footnote-92)*

The Supreme Court, as constituted *ad hoc* by the judges of the National Court, is made the final court of appeal[[93]](#footnote-93) with the National Court a superior court of record of general jurisdiction.[[94]](#footnote-94)

A feature of the Supreme Court is its jurisdiction to “give its opinion on any question relating to the interpretation or application of any provision of a Constitutional Law”.[[95]](#footnote-95) This jurisdiction may be invoked by a number of Executive and Legislative Branch office holders and institutions at National and Provincial or Local Government level.[[96]](#footnote-96) This feature distinguishes the Supreme Court from the High Court of Australia, which cannot furnish advisory opinions.[[97]](#footnote-97)

The Supreme Court also has a jurisdiction to adjudicate, on a reference from other courts and tribunals, a question concerning the interpretation or application of a constitutional law.[[98]](#footnote-98) Though in Australia the process is initiated by the Commonwealth, a State or Territory or a party, this jurisdiction is not dissimilar in its operation to the ability for questions arising under the Australian Constitution or involving its interpretation to be removed from other courts into the High Court of Australia.[[99]](#footnote-99)

The PNG Constitution provides that the Chief Justice “shall be appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after consultation with the Minister responsible for the National Justice Administration”.[[100]](#footnote-100) The appointment process for all other judges and magistrates follows that envisaged by the Committee, i.e. appointment via the JLSC established under the PNG Constitution.[[101]](#footnote-101)

The PNG Constitution does not make any express provision in respect of the length of a judge’s term of office. Instead, by s 223(1) it reserves this as a subject upon which provision is to be made by an “Organic Law”. An “Organic Law” is a special class of statute which is:

1. for or in the respect of a matter provision for which by way of an Organic Law is authorized by this Constitution; and
2. not inconsistent with this Constitution; and
3. expressed to be an Organic Law.[[102]](#footnote-102)

The PNG Constitution provides for a special procedure to be followed in relation to any proposed alternation to an Organic Law.[[103]](#footnote-103)

Unlike in Australia,[[104]](#footnote-104) there is not a blanket prohibition against the reduction of a judge’s remuneration while in office. Instead, the PNG Constitution provides that the remuneration shall not be reduced except, “as part of a general reduction applicable equally or proportionately to all constitutional office-holders”.[[105]](#footnote-105)

An Organic Law has been enacted in respect of the term of office and other conditions of judges - *Organic Law on the Terms and Conditions of Employment of Judges* (PNG). This Organic Law adopts the limited tenure envisaged by the Committee. Thus, citizen judges are appointed for a term of ten years and non-citizen judges for a term not exceeding three years.[[106]](#footnote-106)

An age limit also applies to judges under this Organic Law. By an amendment which commenced on 27 September 2012,[[107]](#footnote-107) the age limit for retirement was extended from its previous 60 years of age to 72 years of age, subject to a discretion on the part of the appointing authority to extend the retirement age to 75 years of age (previously, it had been 65 years of age).

During a judge’s term of office, a judge does enjoy a degree of security of tenure in that a judge may only be removed:

1. for inability (whether arising from physical or mental infirmity or otherwise) to perform the functions and duties of his office; or
2. for misbehaviour; or
3. in accordance with Division III.2 (leadership code), for misconduct in office.[[108]](#footnote-108)

The PNG Constitution also provides for removal processes. These differ as between the Chief Justice and other judges.

In the case of the Chief Justice, the initiating of the removal process is via the National Executive Council with the removing authority being the Head of State (The Queen of Papua New Guinea, as locally represented by the Governor-General) on the advice of the National Executive Council.[[109]](#footnote-109) In the case of other judges, the removal process must be initiated by the JLSC and that body is also the removing authority.[[110]](#footnote-110)

In either case, the question of whether there exist grounds for removal must be referred to a specially constituted tribunal for investigation and report with removal possible only if that tribunal reports that there are good grounds for removing the Chief Justice or, as the case may be, other judge.

The tribunal must consist of a chairman and two other members, each of whom must be:

1. a Judge or former Judge of the Supreme Court or of the National Court; or
2. a former Judge or acting Judge of the pre-Independence Supreme Court; or
3. a Judge or former Judge of a court of unlimited jurisdiction of a country with a legal system similar to that of Papua New Guinea, or of a court to which an appeal from such a court lies.[[111]](#footnote-111)

For a country which, at Independence, did not have a long history of parliamentary government by Papua New Guineans and which since then has shown marked volatility in the turnover of members of Parliament at elections, this removal system offers, in my view, better security of tenure, *during a judge’s term of office*, than would the more traditional “Act of Settlement” process whereby the removal of a judge may occur by an address of Parliament to the Head of State on the basis of proved misbehaviour or incapacity.[[112]](#footnote-112) It is necessary to emphasise “during a judge’s term of office”.

In modern times, even in jurisdictions which do not, as does New South Wales, have a standing judicial commission, the practice, before a parliament considers whether to pass an Address seeking removal is to constitute a commission of inquiry to investigate and report upon the question of whether a judge ought to be removed from office.[[113]](#footnote-113) In this sense, the entrenchment of such an inquiry and report process in the PNG Constitution was innovative and progressive.

As is the case with the Queensland Supreme Court and for like reasons arising from Papua New Guinea’s decentralisation and the desirability of local access to justice, judges of the National Court sit not only in Waigani in the National Capital District but are also out-posted to and resident in major provincial centres. If the volume of local appellate and other business requires, the Supreme Court also sits in major provincial centres.

As envisaged by the Committee and authorised by the PNG Constitution, Papua New Guinea has, lower in its court hierarchy, a network of District Courts (constituted by Magistrates) and Village Courts throughout the country.

The Village Courts are constituted by a layman of standing in a local community. They “deal with matters primarily by reference to custom or in accordance with customary procedures”.[[114]](#footnote-114) Such matters are civil and criminal disputes, minor in character but frequently locally and personally important.

Disputes in relation to interests in customary land are dealt with in Local and Provincial Land Courts.[[115]](#footnote-115) In these courts, there is, where possible and practical, particular emphasis on mediation and traditional dispute settlement processes.

# Underlying Law and Pre-Independence Statute Law

The PNG Constitution effected a deliberate severance with the Australian common law, previously applicable in the former Territory of Papua and New Guinea and a selective readoption of hitherto applicable statute law. It provides[[116]](#footnote-116) for Papua New Guinea to have an “Underlying Law”, which is an admixture of:

*the principles and rules that formed, immediately before Independence Day, the principles and rules of common law and equity in England are adopted, and shall be applied and enforced, as part of the underlying law, except if, and to the extent that–*

1. *they are inconsistent with a Constitutional Law or a statute; or*
2. *they are inapplicable or inappropriate to the circumstances of the country from time to time; or*
3. *in their application to any particular matter they are inconsistent with custom[[117]](#footnote-117) … .*

In relation to previous statute law, the position is as explained by Miles J in *Milan Capek v The Yacht “Freja” (No 2)*:

*… the effect of the Laws Repeal Act 1975, the Papua New Guinea Independence Act 1975 (Aust.) and the Constitution is to notionally repeal all laws of Papua New Guinea as at the moment of Independence and to adopt, at that same moment, all pre-existing laws except those Acts, Australian or Imperial, which had extended to Papua New Guinea not through adoption, application or continuation, but of their own force.[[118]](#footnote-118)*

# The Rooney Affair

The first “serious break-down in communication” between the Judiciary and the “other arms of government” was not long in coming after Independence. The precipitating incident and its sequel have come to be known as “the Rooney Affair”. The Rooney Affair has had an enduring impact on post-Independence relations between the Judiciary and the other arms of government, on how the PNG Constitution has worked in practice with respect to those relations and on the development of the local legal profession.

On 31 May, 1979, the Minister for Foreign Affairs and Trade revoked the entry permit of a Dr Ralph Premdas, a non-national, who was a lecturer at the University of Papua New Guinea.[[119]](#footnote-119) Dr Ralph Premdas was entitled under his entry permit to remain in Papua New Guinea while employed at the University. He remained so employed at all material times.

At the invitation of a Minister, Dr Premdas had been providing, earlier that year, informal advice on a subject within that Minister’s portfolio responsibility. That role had occasioned quite some dissatisfaction within the Minister’s Department. Further, the then Prime Minister (Sir Michael Somare) was not in favour of Dr Premdas having any advisory role except “on an ‘out-of-office’ hours, friendly basis”. He informed the Minister accordingly. Matters deteriorated further with the upshot being the revocation of the entry permit.

Under the prevailing migration law, the Minister’s decision was able to be reviewed on the merits by a Committee of Review comprised of three Ministers. This committee read the material, but did not permit Dr Premdas to appear before them. On 28 June the committee informed Dr Premdas that he was to leave Papua New Guinea by no later than 4 July 1979. On 3 July 1979, Dr Premdas instituted proceedings in the National Court in which he alleged that particular infringements had occurred in relation to the decision as confirmed by the committee to revoke his entry permit. That same day, the National Court granted an interlocutory injunction restraining the deportation of Dr Premdas, pending the hearing and determination of his court challenge. There was nothing unusual or unorthodox about the making of an order preserving the status quo, pending a final determination of the merits of a claim.

On 11 July 1979, the then Minister for Justice, the Honourable Nahau Rooney, wrote a letter concerning the case to the then Chief Justice of Papua New Guinea, the Honourable Sir William Prentice. The full text of that letter is set out in a footnote below.137 Suffice it to say, Mrs Rooney remonstrated with the Chief Justice about the

137 The full text of the letter was as follows:

“In writing this letter, I acknowledge section 157 of the constitution which refers to the Independence of the National Judicial system.

However I am writing in my capacity as an elected member, a leader of this country and the Minister responsible for National Justice Administration I see it absolutely necessary to bring to your attention the feelings of the Nation. I now refer to the recent case the State v. Dr. R. Premdas.

The recent decision by the National Court to suspend the deportation order for Dr. Premdas can be clearly seen as a case where a narrow and literal interpretation of the written law was used.

interlocutory injunction, asserted that it was up to the Government to decide which non-citizens were welcome and that “the court has jeopardized its independence and neutrality by intervening in a matter which is obviously the sole prerogative of the Government” and exhorted “the Judiciary to make a greater effort to use their discretion effectively to develop the National legal system in the context of a proud and growing National consciousness” [sic]. Mrs Rooney also chose to circulate this letter “very, very widely”.

On behalf of the Judiciary, the Chief Justice replied to Mrs Rooney by a letter of 13 July 1979 in a measured but pointed way on the subject of judicial independence in the course of which he stated that, “I can assure you my dear Minister that judges of the National and Supreme Court will not accept directions from or pressure by the Minister for Justice or anyone else.” He begged the Minister that she “withdraw your

In saying this I believe the court had a responsibility to take into account the reasons that Papua New Guinea or any other country makes provision for deportation in the Migration Act.

The decision to deport Dr. Premdas was made by the Minister for Foreign Relations and Trade and later endorsed by a properly constituted committee of review of three senior Ministers of the Government.

The Ministers made their decision in the belief that the actions of Dr. Premdas may have been detrimental to the sovereignty of the Nation.

It is obvious that no one has deprived Dr. Premdas of his basic human rights or freedom.

The important principle at stake is not simply whether Dr. Premdas has done any wrong to warrant deportation nor whether the procedures employed are correct but whether the Government of Papua New Guinea has the right and power to decide which non-citizens are welcome here and which non-citizens are not welcome.

It is up to the Elected Government and no one else to decide what criteria are used to deport Foreigners.

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 preceeding. What we do understand is the concept of a Papua New Guinea identity and we believe that it is our right and prerogative to decide which foreigners we want in our country.

The matter of deportation is not a matter of Justice or Injustice because the deportee is not being penalized by imprisonment or being fined in any way. He is merely being told to return to his home country and that he is no longer a welcome visitor to our country.

I believe the principle of being a Papua New Guinean is basic and transcends any semantic or legalistic argument.

In failing to recognize this principle the court has jeopardized its independence and neutrality by intervening in a matter which is obviously the sole prerogative of the Government.

However I ask all members of the Judiciary to make a greater effort to use their discretion effectively to develop the National legal system in the context of a proud and growing National conciousness.” (sic)

letter, and apologise immediately and fully to National and Supreme Courts — with a distribution identical to that your letter has been given”.

The Minister replied on 17 July 1979, expressing contrition but also stating:

*My chief concern is that the integrity of the Government and the citizen’s trust in their elected Government should always be maintained. There should never be any doubt that the Government has the power and authority to act immediately and decisively against any foreigner who may threathen the security or be seen to undermine the sovereignity of the Nation. [sic]*

She further stated that while it was, “regretable that I referred to a specific matter currently before the Court … I still stand by the principle that I have re-iterated above.” [sic]

It is not necessary to relate the further dealings which occurred in July and in August 1979 as between the Minister and the Chief Justice and in the media. Suffice it to say, Mrs Rooney’s position essentially remained the same as set out in her letter of 17 July 1979. She came to be charged with a number of counts of contempt.

In the meantime, Dr Premdas’ case had been transferred to the Supreme Court. On 4 September 1979 the Supreme Court held that his deportation did not infringe the PNG Constitution.

On 11 September 1979, the Supreme Court found Mrs Rooney guilty of contempt and ordered that she be imprisoned with light labour for eight months.

The sequel to the Supreme Court’s order was recalled in 2012 by that longstanding observer and reporter of events in Papua New Guinea, the ABC journalist, Mr Sean Dorney:

*Somare … made himself acting justice minister and set Ms Rooney free after just one day pending an appeal to the non-judicial Mercy Committee.*

*Five judges including the chief justice and the deputy chief justice resigned. More than one thousand prisoners then broke out of jail from prisons all around PNG arguing that if it was good enough for the justice minister to go free it was good enough for them.[[120]](#footnote-120)*

The judicial resignations were a direct result of the foregoing events. It is these which have passed into history as “the Rooney Affair”. The resignations followed in close succession in late 1979 and early 1980. Those who resigned included the Chief Justice and the Deputy Chief Justice and constituted a majority of the membership of the Supreme and National Courts at the time when Mrs Rooney had been found guilty of contempt.

Those who resigned had held judicial commissions pre-Independence. It would not be until 2011 that the holders of Australian superior court judicial commissions would again serve as members of Papua New Guinea’s Judiciary.

With these resignations, a very great deal of judicial experience indeed was lost to Papua New Guinea and lost at a time when the country’s system of government under the PNG Constitution was in its early, formative stage. Pre-Independence, the Committee had envisaged that, during this formative stage, it would be particularly desirable for those Papua New Guineans who would gradually come to hold judicial office to have the benefit of joining a court initially populated by expatriates with superior court judicial experience.

It is not for me to gainsay the judicial resignations. What I do know, both from my time at the Bar and since appointment to the Bench in Australia, is that good, experienced, senior judicial role models are important, both for newly appointed judges and for the development of the legal profession from which the next generation of judges will be drawn. It would be idle to suggest that this loss did not have detrimental effects for Bench and Bar in Papua New Guinea.

On the positive side, the resignations were an emphatic reminder to the other arms of government about the constitutionally appointed role of the Judiciary. They enhanced within the political class and the public generally the judicial arm’s pre-Independence repute of independence. Later appointees to the Supreme and National Courts have benefited from this reminder and sought not to diminish that repute.

Another sequel to the Rooney Affair was that the government of Prime Minister Somare was defeated on a no confidence motion in Parliament in March 1980. The elections which followed saw the first Ministry led by Sir Julius Chan take office. ***A Papua New Guinean Judiciary Emerges***

The resignations precipitated the appointment of the first Papua New Guinean, the Honourable Mari Kapi,[[121]](#footnote-121) to the Supreme and National Courts on 1 December 1979. It would not be until August 1980 that a replacement Chief Justice, the Honourable Buri Kidu[[122]](#footnote-122) was appointed. Other judicial vacancies were filled by members of the local profession agreeing to assume judicial office or by former members of the Judiciary agreeing to serve as acting judges for short periods.

Sir Buri Kidu, as his Honour became, proved to be a worthy custodian of the ethos of judicial independence. In his own words, “I take pride in the fact that our judiciary’s probably one of the most independent in the world.”[[123]](#footnote-123) He secured budgetary appropriation for the National Judicial Staff Services (under the umbrella of which court staff serve), separate from the Ministry of Justice. Sir Buri served from 1980 until 1993. His term as Chief Justice did not end because he reached the statutory retiring age. It expired and he was not re-appointed. This occurred at a time when he was about 2 years short of eligibility for the judicial pension.

Sir Buri died of a massive heart attack less than six months later. In the opinion of a former Acting Prime Minister of Papua New Guinea, Sir Moi Avei and also Sir Buri’s widow, Carol, Lady Kidu, later Dame Carol Kidu, DBE, he was not reappointed was because he was perceived by the then government as too independent. If so, it exposed a weakness with which the PNG Constitution was then and remains pregnant: lack of long term, secure tenure for the Judiciary.

Her husband’s death inspired Dame Carol to take up a political career in Papua New Guinea in the course of which she rendered great service to her adopted country.[[124]](#footnote-124)

Sir Buri Kidu was succeeded as Chief Justice by Sir Arnold Amet. In 1995, when Chief Justice and referring to the constitutional reference and interpretation jurisdiction possessed by the Supreme Court, Sir Arnold observed:

*The challenge that this presents to the Supreme Court lies in the fact that many of the issues are arising for the first time in the political and socioeconomic development of the whole nation. The issues that have arisen and have come before the Supreme Court in recent years have been very political in nature and the rulings of the Court in the interpretation and application of provisions of the Constitution have lead [sic] to decisions of Parliament being rendered unconstitutional in some instances and laws being struck down. In August 1994, the Court declared the re-election of the Prime Minister unconstitutional – leading to a change of Government and Prime Minister on the floor of Parliament.*

*In my opinion, this challenge will continue well into the 21st century, quite simply because the whole process of constitutionalism and the rule of law is so very recent. Many of the provisions of new laws and the Constitution are still being worked out. Conflicts and challenges will become more and more frequent in relation to different provisions until fundamental principles have been established by rulings of the courts. Some of the principal decisions that have been made and are presently before the Supreme Court are fundamental to the establishment of constitutionalism and the rule of law.[[125]](#footnote-125)*

Later events have underscored the accuracy of Sir Arnold’s prediction. The case to which he referred, which led to a change of Government and Prime Minister, was *Haiveta, Leader of the Opposition v Wingti, Prime Minister; and Attorney-General; and National Parliament*.[[126]](#footnote-126) His Honour presided. The case is an emphatic demonstration of the continuance of the ethos of judicial independence during his Honour’s term as Chief Justice. Sir Arnold chose at the end of his term in 2003 to leave judicial office and to enter politics himself. Rather in the manner of the Rt Hon H V Evatt in Australia, Sir Arnold later became Attorney-General and Minister for Justice.

Sir Arnold was succeeded in office as Chief Justice by Sir Mari Kapi, who had by then become Deputy Chief Justice. Sadly, ill health forced Sir Mari to resign from judicial office in 2008. He died only a few months later in Singapore where he had been receiving medical treatment. At a ceremonial sitting of the National Court in November 2008 to farewell him, he was variously described as a “top national jurist” and a “perfect role model” in the legal fraternity and the judiciary for upholding the rule of law.[[127]](#footnote-127)

Sir Mari’s successor as Chief Justice was Sir Salamo Injia, who remains in office.

# Australian judges become Papua New Guinea judges

In late 2011, following a request by the Government of Papua New Guinea and with the consent of the Australian Government, my Federal Court colleague, Justice Berna Collier and I were commissioned as judges of the Supreme and National Courts of Papua New Guinea. These commissions are additional commissions in the sense that our primary commissions remain as judges of the Federal Court of Australia.

While these appointments owed much to the initiative of Sir Salamo Injia, they also reflected recognition by the Government of Papua New Guinea of the desirability of augmenting local judicial resources with additional judges with experience in commercial cases at superior court level. In turn, the initiative is directly related to Papua New Guinea’s continuing economic development and, with that development, a greater need for capacity in the Judiciary and the local legal profession to deal with commercial matters.

Neither of us is a resident judge. The understanding reached between the Chief Justice of Papua New Guinea and the Chief Justice of the Federal Court of Australia at the time of our appointment was that we would visit Papua New Guinea periodically and rotationally to sit on the civil side in Supreme Court appeals, such that one or the other of us would be present at each of the usual six annual appeal sitting periods. Last year, we were each appointed for a further three year term.

Justice Collier and I, along with newly appointed resident judges, were welcomed to the court at a ceremonial sitting in December 2011. At that sitting, I stated, in Tok Pisin and then in English:

*Wataim stap Papuaniugini mi bilong Papuaniugini.*

*Lo bilong yu stap lo bilong mi.*

*I begin in Tok Pisin, in Melanesian Pidgin, to emphasise this:*

*When in PNG I belong to PNG.*

*Your law is my law.*

When one recalls the Committee Report concerning the PNG Constitution and the provision in that Constitution for Underlying Law, that is a necessary philosophy to bring to bear when serving in Papua New Guinea.

# Tensions

The year that followed our appointments, 2012, proved to be a year to remember. As between us, Collier J and I agreed that I would undertake the first rotation. Thus, in February 2012, I became the first serving Australian superior court judge since Independence also to exercise judicial power in Papua New Guinea. I cannot emphasise how much of a privilege that is. There were though times during that year when I wondered whether the Rooney Affair would repeat itself.

I described events of 2012 in Papua New Guinea, particularly as they affected the Judiciary, in a paper presented at the Commonwealth Law Conference in Cape Town in 2013,[[128]](#footnote-128) a revised and updated version of which was published last year in the New South Wales Judicial Commission’s journal, “Judicial Review”. To repeat what is there stated would only add unnecessary length to an already lengthy paper.

Suffice it to say, the period leading up to the 2012 elections in Papua New Guinea was a period of marked tension in that country. There was a controversy as to whether Sir Michael Somare or Mr Peter O’Neill was the lawful Prime Minister of the country. It was just the kind of controversy forecast by Sir Arnold Amet in his 1995 conference paper.

The controversy came before the Supreme Court in a series of cases in late 2011 and the first half of 2012. In one of these, decided on 12 December 2011, the Supreme Court determined, by a bare (3-2) majority), that Sir Michael Somare had not lawfully been removed from office as Prime Minister.[[129]](#footnote-129) Sir Salamo Injia formed one member of the majority, Justice Nicholas Kirriwom another.

Over this period, sustained pressure being brought to bear on the Judiciary by elements then within the other branches of government. Initially, Sir Salamo Injia was purportedly suspended from office, a decision later rescinded by the National Executive Council. Later, he was twice arrested, once after armed, rogue elements of the Royal Papua New Guinea Constabulary and PNG Defence Force, led by the then Deputy Prime Minister (the Honourable Belden Namah MP), burst into the courtroom at Waigani where the Chief Justice was sitting. Justice Kirriwom and the Court’s dedicated Registrar, Mr Ian Augerea, were also arrested. All of the charges concerned were wholly misconceived and proceedings in respect of them have now long been stayed or dismissed.

In March 2012, the then Parliament also enacted legislation, retrospective to 1 November, 2011, which purported to grant to the Parliament an ability to refer a judge the Head of State in given circumstances with the effect that the judge “shall not hear or continue to hear legal proceedings or exercise his powers as a Judge”, pending the provision of the report from a nominated Tribunal to Parliament. The Act also purported to have the effect that “any Order or Judgment in that proceeding made by that Judge shall be stayed pending the provision of the report from the Tribunal to Parliament”.[[130]](#footnote-130) A target of that provision was the order made concerning the unlawful removal of Sir Michael Somare. The following month, amendments of this Act were mooted which might have seen those judges who sat with a judge regarded as disqualified commit a criminal offence and lose pension entitlements**.**

It is necessary to use the qualification, “purported” in relation to this legislation because it was of problematic constitutional validity. In the result, the proposed amendment was never enacted and the legislation itself was repealed in 2013.[[131]](#footnote-131)

To sit, as I did on two occasions, in Papua New Guinea while the Judiciary was subject to this pressure was, for an Australian judge, a surreal but at the same time uplifting experience. The type of pressure to which the Judiciary and Sir Salamo Injia in particular was subjected might have broken lesser men and women. The collective reaction of Papua New Guinea’s Judiciary was, to the best of their ability, to continue to dispense justice according to law. I continue to admire the manner in which the Papua New Guinea’s Judiciary discharged their duty during this difficult period.

History records that, with the assistance of friends such as Australia and New Zealand, Papua New Guinea conducted full and free elections in 2012. This was no mean feat for a country with electors dispersed not just in major urban centres but also in remote, difficult to access villages and over many islands.

Dramatic though some pre-election events were, an informed perspective of them was offered by Dame Carol Kidu on 15 May 2012 in her last speech in Parliament. During her last term, she had served for a time as Leader of the Opposition. Dame Carol stated:

*The political impasse of the past nine months has been a trying time for all, but we must thank the people of Papua New Guinea for their peaceful patience with their leaders.*

*After much public anxiety and international scrutiny ... I think we can tell the world very proudly that we are a young, volatile, democratic nation.[[132]](#footnote-132)*

By happy coincidence, I was sitting in Papua New Guinea in February 2014 when, at a ceremonial sitting to welcome new members of the Judiciary, the Honourable Keranga Kua MP, the then Attorney-General and Minister for Justice, tendered, with great sincerity, a formal apology to the Court for the various actions of the Executive with respect to the Judiciary in the period prior to the 2012 elections. This apology was formally accepted by Injia CJ on behalf of the Judiciary.

# Present and Future Challenges

Papua New Guinea’s present population is approximately 7.3 million people.[[133]](#footnote-133) In my experience, this is not widely understood in Australia, even though Papua New Guinea is our nearest neighbour. Though English, Tok Pisin (Pidgin), and Hiri Motu (the lingua franca of the Papuan region) are the official languages, Papua New Guinea has over 800 known languages.[[134]](#footnote-134) The challenge of identifying custom which is nationally pervasive so as to adapt English common law as envisaged for the Underlying Law is considerable. What is genuine custom to one language group in one remote village may be unknown to a different language group on a different island.

About 15 per cent of the population live in urban areas such as the capital, Port Moresby and the major provincial cities of Lae, Madang, Wewak, Goroka, Mt Hagen, and Rabaul. The remainder live in traditional village-based life, dependent on subsistence and small cash-crop agriculture.153

The capital, Port Moresby, is not linked by road to Papua New Guinea’s other major urban centres. Air and sea transport offer the only direct links. Internet access can be problematic in Port Moresby, not to say expensive, even more so in provincial centres.

Such difficulties in physical and electronic communications complicate the administration of justice. Ever increasingly in Australia, the internet is used by both the judicial and practising branches of the legal profession for communications electronic databases are used for filing of documents and for legal research. In Papua New Guinea, even when internet access is available, commercially published legal research databases may be prohibitively expensive. To some extent, this is addressed by publicly available databases such as the Pacific Legal Information Institute (PACLII) database and its equivalents elsewhere but these do not contain the full range of law reports, statutes and texts. Hard copy law libraries which many firms in Australia have come to regard as obsolescent in the electronic age still have a useful role to play in Papua New Guinea. Yet the cost of maintaining these is also expensive, especially with exchange rate fluctuations.

There has long been a need for expansion of the court house facilities in Waigani and upgrading of provincial court houses and judge’s residences in provincial centres. Even in developed countries, governments often give such expenditures a lower priority than other needs such as health or transport or public utility infrastructure. In Papua New Guinea, the opportunity cost of such facilities is much more magnified. Even so, Papua New Guinea’s Parliament has recently allocated funds which will allow for large scale upgrading works to commence at Waigani and in the provinces. Australian aid funds have also been directed to the upgrading or expansion of the provincial court house and related criminal justice system infrastructure.

Advances in technology, related lowering of costs and budget allocation has also made it possible for Papua New Guinea to embark upon electronic court reporting and court record keeping. These are tremendous advances over a system which, of necessity, hitherto had Dickensian features.

With economic development and an expanding population has also come a need for a greater number of judges. Further, amendments have been proposed to the PNG Constitution which will see the establishment of an intermediate appellate court, freeing the Supreme Court of much routine appellate work and allowing it better to focus on its charter of developing Papua New Guinea’s Underlying Law and the disposition, as a final appellate court, of cases of true national importance.

With this expansion comes an increased need for suitably qualified and experienced personnel both in judicial appointments and in the National Judicial Staff Service. Recruitment for its expanded judiciary and the National Judicial Staff Service will present Papua New Guinea with fresh challenges, as will the replacement on retirement of existing senior judges and registry staff. The challenges are even more magnified if one takes into account the magistracy. All of this highlights the importance of continuing professional development within Papua New Guinea’s legal profession and the engendering and fostering within the senior ranks of that profession of the ethos of public duty associated with the acceptance of judicial office.

# Australian and other International Assistance

Australia is working in close co-operation with Papua New Guinea to address these needs via programs such as:

* the PNG–Australia Law and Justice Partnership and its associated Transition Program (currently in transition, with a new program due to start in January 2016)
* the PNG–Australia Policing Partnership (delivered by the Australian Federal Police)
* the Strongim Gavman Program (under which experienced specialist Australian legal advisers are embedded in PNG government law offices to enhance and develop local capacity), and
* the Combating Corruption Project.[[135]](#footnote-135)

Australian aid also funds the travel and accommodation costs of the deployment at the Legal Training Institute (Papua New Guinea’s post-graduate/preadmission practical legal training centre) of volunteer training teams drawn from the Victorian Bar and the Queensland Bar and respective judiciaries to augment instructors from the local profession. From these deployments have sprung specialist workshops in criminal law and practice for members of the PNG Public Prosecutor’s and Public Solicitor’s Offices. These, in turn, dovetail with exchange placements of Australian lawyers in these offices and the PNG Solicitor General’s chambers and with visits to Australia for training and experience by Papua New Guinea lawyers from these offices and chambers. There is great scope for the further expansion of such programs by the private profession in Australia and by Australian firms which have offices in Papua New Guinea.

The deployment of Collier J and me to sit in the Supreme Court of Papua New Guinea complements and facilitates the better targeting of these programs. There is a world of difference between presenting at a judges’ conference and the formal and informal interchange and understanding that ever increasingly comes from regularly sitting in another country with judicial colleagues.

Activities under memoranda of understanding that exist between the Supreme and National Courts of Papua New Guinea and the Federal Court of Australia and the Supreme Court of Queensland respectively also complement these programs. Both geography and history make the latter a useful adjunct to that with the Federal Court, given that Sir Samuel Griffith’s Criminal Code continues to be the foundation of the criminal law of Papua New Guinea and Queensland.

 Papua New Guinea’s judiciary, along with other South Pacific judiciaries, has also benefited from the New Zealand aid funded and Federal Court of Australia managed Pacific Judicial Development Programme.[[136]](#footnote-136) The British government has also provided funding for specialist education programs, tailored to the separate needs of the Judiciary and the public service, in relation to law and practice under Papua New Guinea’s recently enacted proceeds of crime and anti-money laundering legislation.

For Papua New Guinea to gain maximum benefit from these programs, long term commitments are necessary. Further, measuring outcomes is difficult, especially in the short term. For example, an understanding of judicial independence, the rule of law and the mutual respect which ought to attend relations between the arms of government may not manifest itself for decades when a graduate of the Legal Training Institute, who has later chosen to embark on a political career and become Attorney-General, recalls lessons learned there and at continuing professional development activities and by interchange with embedded Australian advisers and does not repeat the behaviour of Mrs Rooney.

The Commonwealth of Nations has also been active in the South Pacific, for example, by partnering with the PNG Centre for Judicial Excellence to deliver a workshop on Judicial Independence and in funding judicial officer positions and training in micro-nations. With our well-developed networks in Australia for judicial and legal professional education it is all too easy here to diminish the singular importance of the Commonwealth of Nations in bringing together, via such activities and the work of the Commonwealth Judicial Education Institute, the Commonwealth Magistrates and Judges Association and the Commonwealth Lawyers Association, judicial officers and lawyers from the many nations of the Commonwealth. These organisations do much good with relatively little funding but a global network of public spirited volunteers. They provide opportunities for collegiate learning, exchanges of ideas about law and practice and support, all under the umbrella of a common heritage and understanding of the importance of the rule of law. As I have witnessed now on a number of occasions at such Commonwealth conferences and workshops, it is very difficult to dismiss as neo-colonialist presentations on the subject of the rule of law, judicial independence and aspects of law and practice when the presenter is a judge or lawyer from a developing Commonwealth country. Further, the exchange of ideas between judges and lawyers from developed and developing countries promotes greater mutual understanding and professional development.

Sometimes I hear concerns voiced by Australian judicial colleagues about separation of powers issues – “judges do not conduct foreign policy”. We don’t. That is for the Minister for Foreign Affairs and Trade and, locally in Papua New Guinea, so far as Australia is concerned, for the High Commissioner and her staff. What we do, in conjunction with resident judicial colleagues and the practising profession, is to give substance in practice to the rule of law and to assist in professional development. An Attorney-General, as First Law Officer, also has responsibilities in these same areas. There must always be necessary interchange between the Judiciary and an Attorney in the delivery of justice according to law. When in a foreign land, our own Administrative Arrangements and diplomatic protocol demand that, where that interchange involves Australia, the Department of Foreign Affairs and Trade also be involved. As in Australia, there are some features of the interchange which must be informed by the separation of powers. My experience is that these are well understood and respected by our Department of Foreign Affairs and Trade.

# A helpful glue

I have been both impressed and humbled by how well my Papua New Guinea judicial colleagues deal with so many cases with limited resources and by their standards of scholarship and integrity. There are moves afoot to increase judicial numbers so as better to address the demands that come with economic development but there are so many competing priorities for public funds. Further and, in any event, to increase judicial numbers without commensurate increases in the numbers and skills of support staff and the local legal profession would not adequately address those demands.

Given the historic large turnover in the political class in Papua New Guinea, the Judiciary could aptly be described as the glue which helps to hold the country together. Affording the Judiciary greater security of tenure than do the present constitutional and Organic Law arrangements would, as a matter of personal opinion, buttress their ethos of judicial independence and facilitate recruitment. It would strength the glue. As will be apparent from the survey of the pre-Independence period, the arrangements which presently exist are more in keeping with colonial practice rather than the good governance of a sovereign nation.

Many stories which emanate from Papua New Guinea highlight particular acts of violence. It would be idle to suggest that law and order in Papua New Guinea does not present many challenges. So, too, is that the case with law and justice. But there is a great disposition abroad in Papua New Guinea to address these challenges.

There are some countervailing things to remember. Shocking though the pre-election events in relation to the Judiciary were, they were perpetrated by rogue, not mainstream elements of the police and Defence Force. These rogue elements aside, the PNG Defence Force obeyed its officers and remained in barracks. It did not, as in Fiji, stage a military coup. Instead, under the direction of a civilian government, it provided, in conjunction with the Royal Papua New Guinea Police Force, aid to the civil power by assisting Papua New Guinea’s Electoral Commissioner to address the considerable logistic challenges presented by that election. Such challenges as occurred to results in particular electorates were settled not by violence but by the bringing of electoral dispute cases before the National Court for determination according to law.

Even apart from the pre-Independence service of Australian judges in Papua New Guinea, there is a long history of members of the Australian judiciary serving, usually at appellate level, in various South Pacific countries. The deployment in which I participate is but another chapter in this. Helping to write that chapter has proved to be a highlight of my judicial life.

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1. Also a judge of the Supreme and National Courts of Papua New Guinea. The views expressed in this paper are personal, not those of either of those Australian or Papua New Guinea courts or the respective national governments. [↑](#footnote-ref-1)
2. G Blainey, *The Story of Australia’s People: The Rise and Fall of Ancient Australia* (Penguin Random House Australia, 2015) (Blainey), pp 77-87. [↑](#footnote-ref-2)
3. Blainey, p 77. [↑](#footnote-ref-3)
4. B. R. Penny, ‘Labilliere, Francis Peter (1840–1895)’, *Australian Dictionary of Biography, National Centre of Biography*, Australian National University, http://adb.anu.edu.au/biography/labilliere-francis-peter3976/text6279, published first in hardcopy 1974 (Accessed 5 June 2015). [↑](#footnote-ref-4)
5. Queensland State Archives, –‘Annexing a foreign nation’, http://www.archives.qld.gov.au/Researchers/Exhibitions/QldFirsts/01-25/Pages/17.aspx (accessed, 5 June 2015) (Qld Archives 1883 Annexation). [↑](#footnote-ref-5)
6. B Nairn, ‘Robinson, Sir Hercules George (1824–1897)’, *Australian Dictionary of Biography, National Centre of*

*Biography*, Australian National University, http://adb.anu.edu.au/biography/robinson-sir-hercules-george4493/text7343, published first in hardcopy 1976 (Accessed 5 June 2015). [↑](#footnote-ref-6)
7. Qld Archives 1883 Annexation. [↑](#footnote-ref-7)
8. A F Madden, *Select Documents on the Constitutional History of the British Empire* (Greenwood Press, 1991) (Madden), p 17. [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. B H McPherson, *Supreme Court of Queensland*, (Butterworths, 1989) pp 90-91. [↑](#footnote-ref-10)
11. Madden, p 18. [↑](#footnote-ref-11)
12. London Gazette, Issue: 24508, p 5455, 2 October 1877, available at http://www.thegazette.co.uk/London/issue/24508/page/5455/data/pdfm. [↑](#footnote-ref-12)
13. Madden, p 18. [↑](#footnote-ref-13)
14. Ibid. [↑](#footnote-ref-14)
15. A Todd, *Parliamentary Government in the British Colonies* (Longmans, Green and Co, 1894) (Todd), p 249. 16 Todd, p 249. [↑](#footnote-ref-15)
16. Ibid. [↑](#footnote-ref-16)
17. Queensland Parliamentary Debates, Legislative Assembly, 26 June 1883, p 2: http://www.parliament.

qld.gov.au/work-of-assembly/sitting-dates/dates/1883/1883-06-26 (Accessed 5 June 2015). [↑](#footnote-ref-17)
18. As related in Qld Archives 1883 Annexation. A full account of the purported annexation and subsequent disavowal is to be found in Todd, pp 249-251. [↑](#footnote-ref-18)
19. See the collection of material concerning the New Guinea Protectorate printed by the government of the Colony of Victoria in 1884: www.parliament.vic.gov.au/papers/govpub/VPARL1884No60.pdf (Accessed 9 June 2015). [↑](#footnote-ref-19)
20. In 1886, Samuel Griffith circulated a memorandum to the other Australian colonies calling for action in relation to New Guinea in light of Germany’s initiatives: The Argus (Melbourne, Vic. : 1848 - 1957), Friday 2 April 1886, page 6, NLA Trove database: http://trove.nla.gov.au/ndp/del/article/6090346 (Accessed 9 June 2015); see also Colonial secretary’s dispatch concerning the New Guinea Protectorate to Mr John Douglas, Special Commissioner of New Guinea, as reprinted in the South Australian Register (Adelaide, SA : 1839 - 1900), Thursday 8 April 1886, page 6, NLA Trove database: http://trove.nla.gov.au/ndp/del/article/44567157 (Accessed, 9 June 2015). See also the collection of material concerning the New Guinea Protectorate printed by the government of the Colony of Victoria: www.parliament.vic.gov.au/papers/govpub/VPARL1884No60.pdf (Accessed 9 June 2015). [↑](#footnote-ref-20)
21. Todd, pp 252-253. [↑](#footnote-ref-21)
22. The area was initially administered as a Protectorate and trading concession by Neuguinea Kompagnie and, on and from 1899, directly by the German government via a Governor based initially at Herbertshöhe (Kokopo) in New Britain and, from 1910, at Rabaul: National Library of Australia, ‘German Colonies in the Pacific’, https://www.nla.gov.au/selected-library-collections/german-colonies-in-the-pacific (Accessed 12 June 2015). [↑](#footnote-ref-22)
23. J Mayo, ‘From Protectorate to Possession: British New Guinea 1884–88’ (1975) 21 *Australian Journal of Politics & History* 54–69. See also C Lyne, *An Account of the Establishment of the British Protectorate Over the Southern Shores of New Guinea* (Sampson Low, Marston, Searle & Rivington, 1885); now a Project Gutenberg of Australia eBook: http://gutenberg.net.au/ebooks14/1400631h.html (Accessed 10 June 2015) (Lyne). The text of the Proclamation of the Protectorate was purportedly reproduced in the Queensland Government Gazette, volume XXXV, No 113, p 232, 23 December 1884. The Preamble to that Proclamation recites the professed reasons of the British Government for the declaration of the Protectorate:

WHEREAS it has become essential for the protection of the lives and properties of the native inhabitants of New Guinea, and for the purpose of preventing the occupation of portions of that country by persons whose proceedings, unsanctioned by any lawful authority, might tend to injustice, strife, and blood-shed, and who, [↑](#footnote-ref-23)
24. Baron Henry de Worms, Under Secretary of State for the Colonies, reply in the House of Commons to question by Sir George Campbell: HC Deb 12 November 1888 vol 330 c889: http://hansard.millbanksystems.com/ commons/1888/nov/12/british-new-guinea#S3V0330P0\_18881112\_HOC\_28 (Accessed 13 June 2015). [↑](#footnote-ref-24)
25. The Courts and Laws Adopting Ordinance of 1888 (BNG), assented to 17 September, 1888. [↑](#footnote-ref-25)
26. s 10, The Courts and Laws Adopting Ordinance of 1888 (BNG). [↑](#footnote-ref-26)
27. s 8, The Courts and Laws Adopting Ordinance of 1888 (BNG). [↑](#footnote-ref-27)
28. Anonymous Case (1722) 2 P Wms 75 (Privy Council). [↑](#footnote-ref-28)
29. The Courts and Laws Adopting Ordinance (Amended) of 1889 (BNG). [↑](#footnote-ref-29)
30. Ibid. [↑](#footnote-ref-30)
31. As recited in the Preamble in the *Papua Act* 1905 (Cth); Act No 9 of 1905. [↑](#footnote-ref-31)
32. National Archives of Australia, British New Guinea Records, 1884–1906, Descriptive Summary: http://guides.naa.gov.au/papua-new-guinea/chapter2/index.aspx (Accessed, 13 June 2015). See also, reply in the House of Commons by the Secretary of State for the Colonies, Rt Hon J. Chamberlain to question from Mr Hogan MP detailing interim funding arrangements, pending resolution of questions relating to their Federation: HC Deb 07 March 1899 vol 68 c21: http://hansard.millbanksystems.com/commons/1899/mar/07/british-new- guinea#S4V0068P0\_18990307\_HOC\_72 and further such question and answer:

http://hansard.millbanksystems.com/commons/1899/oct/24/british-newguinea#S4V0077P0\_18991024\_HOC\_41 (Accessed 13 June 2015). [↑](#footnote-ref-32)
33. Letters Patent of 18 March 1902, Vol III, Commonwealth Statutory Rules 1901-1914, pp 1898-1899. [↑](#footnote-ref-33)
34. As recited in the Preamble in the *Papua Act 1905* (Cth); Act No 9 of 1905. The Order in Council of 6 March 1902 was published in the London Gazette on 7 March 1902, Issue: 27414, pages: 1626-1627. [↑](#footnote-ref-34)
35. Section 122 provides: [↑](#footnote-ref-35)
36. **Government of territories**

The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit. [↑](#footnote-ref-36)
37. J Quick and R Garran, *The Annotated Constitution of the Commonwealth of Australia* (Legal Books, 1976) Reprint of original 1901 edition, p. 972. [↑](#footnote-ref-37)
38. For a detailed account of the transition from British Protectorate and Colony to Australian external territory, see Hans-Jürgen Ohff, Empires of enterprise: German and English commercial interests in East New Guinea 1884 to [↑](#footnote-ref-38)
39. , Chapter 5: University of Adelaide Ph D Thesis: https://digital.library.adelaide.edu.au/ dspace/handle/2440/48479 (Accessed 13 June 2015). [↑](#footnote-ref-39)
40. Criminal Code Ordinance 1902. [↑](#footnote-ref-40)
41. The Governor-General’s Proclamation is reproduced in Vol III*, Commonwealth Statutory Rules* *1901-1914*, pp 1900-1901. [↑](#footnote-ref-41)
42. s 6, Papua Act 1905. [↑](#footnote-ref-42)
43. ss 8 & 9, Papua Act 1905. [↑](#footnote-ref-43)
44. s 43, Papua Act 1905. [↑](#footnote-ref-44)
45. *Spratt v Hermes* (1965) 114 CLR 226; and see, earlier, *Edie Creek Proprietary Limited v. Symes* (1929) 43 CLR 53. [↑](#footnote-ref-45)
46. SS Mackenzie, *Official History of Australia in the War of 1914–1918 , Volume X – The Australians at Rabaul: The Capture and Administration of the German Possessions in the Southern Pacific* (Halstead Press Pty Limited, 10th ed, 1941), pp 81-85: https://www.awm.gov.au/histories/first\_world\_war/AWMOHWW1/AIF/Vol10/ (Accessed 14 June 2015). [↑](#footnote-ref-46)
47. NAA: B2455, MACKENZIE S S, Service File, pp 5-6: http://recordsearch.naa.gov.au/SearchNRetrieve

/Interface/ViewImage.aspx?B=1963265 (Accessed 14 June 2015). See also, R McNicoll, ‘MacKenzie, Seaforth Simpson (1883–1955)’, *Australian Dictionary of Biography, National Centre of Biography*, Australian National University, http://adb.anu.edu.au/biography/mackenzie-seaforth-simpson-7390/text12849, published first in hardcopy 1986 (Aaccessed 14 June 2015). [↑](#footnote-ref-47)
48. ‘Critical comment by Judge’, *The Age*, 1 October 1936, https://news.google.com/newspapers?nid=1300&dat

=19361001&id=uetjAAAAIBAJ&sjid=YJUDAAAAIBAJ&pg=6976,3617387&hl=en; ‘Mckenzie’s appeal disallowed’, *The Age,* 6 November 1936,

https://news.google.com/newspapers?nid=1300&dat=19361106&id=v\_RjAAAAIBAJ&sjid=OpcDAAAAIBA J&pg=3653,547911&hl=en (Each accessed 14 June 2015). [↑](#footnote-ref-48)
49. See the recitals to the *New Guinea Act 1920* (Cth). [↑](#footnote-ref-49)
50. For a detailed survey of the law applicable in the Territory of New Guinea, see H T Gibbs (later Gibbs CJ of the High Court of Australia), *The Laws of the Territory of New Guinea,* University of Queensland, thesis for the award of the LLM degree, unpublished, copy held in Queensland Supreme Court Library. [↑](#footnote-ref-50)
51. s 9, Judiciary Ordinance 1921 (NG). [↑](#footnote-ref-51)
52. s 8B, Judiciary Ordinance 1921 (NG). [↑](#footnote-ref-52)
53. s 13 and Sch 2, Laws Repeal and Adopting Ordinance 1921 (NG). [↑](#footnote-ref-53)
54. SR 200 of 1942: http://www.comlaw.gov.au/Details/C1942L00200 (Accessed 14 June 2015). Repealed wef 1 January 1950 by the *Defence (Transitional Provisions) Act 1949* (Cth). [↑](#footnote-ref-54)
55. SR 64 of 1942, as amended. [↑](#footnote-ref-55)
56. s 16, Papua-New Guinea Provisional Administration Act 1945. [↑](#footnote-ref-56)
57. Ibid. [↑](#footnote-ref-57)
58. ss 5 & 6, *Papua-New Guinea Provisional Administration Act* 1945. [↑](#footnote-ref-58)
59. Proclamation, Commonwealth of Australia Gazette, 1949, p 1897. [↑](#footnote-ref-59)
60. s 8, Papua and New Guinea Act 1949. [↑](#footnote-ref-60)
61. Ibid, s 32. [↑](#footnote-ref-61)
62. Ibid, s 58. [↑](#footnote-ref-62)
63. Ibid, s 59. [↑](#footnote-ref-63)
64. Ibid. [↑](#footnote-ref-64)
65. s 64, Papua and New Guinea Act 1949. [↑](#footnote-ref-65)
66. Ibid, s 63. [↑](#footnote-ref-66)
67. *Papua and New Guinea (Validation of Appointments) Act 1953* (Cth). [↑](#footnote-ref-67)
68. New s 59(1A), Papua and New Guinea Act 1949, inserted by s 26 of the *Papua New Guinea Act (No. 2)* *1973* (Cth). [↑](#footnote-ref-68)
69. Commonwealth Parliamentary Debates, House of Representatives, 23 August 1973, p 343. [↑](#footnote-ref-69)
70. J McLaren, *Dewigged, Bothered and Bewildered, British Colonial Judges on Trial, 1800-1900* (University of Toronto Press, 2011) pp 275-276. [↑](#footnote-ref-70)
71. Section 2 provided: [↑](#footnote-ref-71)
72. . Governor and council of colony may amove officers for absence or neglect of duty.-If any person or persons holding such office shall be wilfully absent from the colony or plantation wherein the same is OF ought to be exercised, without a reasonable cause to be allowed by the governor and council for the time being of such colony or plantation, or shall neglect the duty of such office, or otherwise misbehave therein, it shall and may be lawful to and for such governor and council to amove such person or persons from every or any such office; and in case any person or persons so amoved shall think himself aggrieved thereby, it shall and may be lawful to and for the person or persons so aggrieved to appeal therefrom, as [↑](#footnote-ref-72)
73. Ibid, para. 38. [↑](#footnote-ref-73)
74. Ibid, para. 21. 90 Ibid, para. 36. [↑](#footnote-ref-74)
75. Ibid, para. 34. [↑](#footnote-ref-75)
76. Ibid, para. 40. [↑](#footnote-ref-76)
77. Ibid. [↑](#footnote-ref-77)
78. Ibid. 95 Ibid. [↑](#footnote-ref-78)
79. Ibid, 44. [↑](#footnote-ref-79)
80. Ibid, para. 50. [↑](#footnote-ref-80)
81. Ibid, Chapter 8, para. 65. [↑](#footnote-ref-81)
82. Ibid, Chapter 8, para. 67. [↑](#footnote-ref-82)
83. Ibid, para. 66. [↑](#footnote-ref-83)
84. Ibid, para. 70. [↑](#footnote-ref-84)
85. Ibid, para. 10 [↑](#footnote-ref-85)
86. Ibid, para. 68. [↑](#footnote-ref-86)
87. Ibid, paras. 18-19. [↑](#footnote-ref-87)
88. ‘The Opening of the Supreme Court Building by Her Majesty, Queen Elizabeth II’ 1974 PNGLR. [↑](#footnote-ref-88)
89. s 4. [↑](#footnote-ref-89)
90. Papua New Guinea Association of Australia, PNG 30th Anniversary of Independence Luncheon messages:

http://www.pngaa.net/Independence\_Anniversary/independence\_anniversary.htm (Accessed 16 June 2015). [↑](#footnote-ref-90)
91. ss 155 and 158, PNG Constitution. [↑](#footnote-ref-91)
92. s 154 of the PNG Constitution provides:

The National Justice Administration consists of– (a) the National Judicial System; and

(b) the Minister responsible for the National Justice Administration; and (c) the Law Officers of Papua New Guinea. [↑](#footnote-ref-92)
93. Ibid, s 155(2)(a). [↑](#footnote-ref-93)
94. Ibid, s 155(3), 163 and 166(1). [↑](#footnote-ref-94)
95. Ibid, s 19. [↑](#footnote-ref-95)
96. Ibid. [↑](#footnote-ref-96)
97. *Re Judiciary & Navigation Acts* (1921) 29 CLR 257. [↑](#footnote-ref-97)
98. s 18, PNG Constitution. [↑](#footnote-ref-98)
99. Part VII, *Judiciary Act 1903* (Cth). [↑](#footnote-ref-99)
100. s 169(2), PNG Constitution. [↑](#footnote-ref-100)
101. Ibid, ss 170(2) and 173. [↑](#footnote-ref-101)
102. Ibid, s 12. [↑](#footnote-ref-102)
103. Ibid, s 15. [↑](#footnote-ref-103)
104. s 72(iii), Australian Constitution. [↑](#footnote-ref-104)
105. s 223(4), PNG Constitution. [↑](#footnote-ref-105)
106. s 2, Organic Law on the Terms and Conditions of Employment of Judges (PNG). [↑](#footnote-ref-106)
107. Organic Law on the Terms and Conditions of Employment of Judges (Amendment) Law 2010 (PNG), certified on 12 December 2011, commencement date of 27 September 2012 notified by later National Gazette notice. The amendment amended the provision for retirement ages specified in s 7 of the Organic Law on the Terms and Conditions of Employment of Judges (PNG). [↑](#footnote-ref-107)
108. s 178, PNG Constitution. [↑](#footnote-ref-108)
109. Ibid, s 179. [↑](#footnote-ref-109)
110. Ibid, s 180. [↑](#footnote-ref-110)
111. Ibid, s 181. [↑](#footnote-ref-111)
112. As, for example, found in s 72(ii), Australian Constitution. [↑](#footnote-ref-112)
113. E Campbell, ‘Judicial Review of Proceedings for Removal of Judges from Office’ *University of New South Wales Law Journal* (1999) 22(2) 325, available at http://www.austlii.edu.au/au/journals/UNSWLJ/1999/1.html(Accessed 16 June 2015) (Campbell). [↑](#footnote-ref-113)
114. s 172(2), PNG Constitution. [↑](#footnote-ref-114)
115. *Land Disputes Settlement Act 1975* (PNG). [↑](#footnote-ref-115)
116. s 18 and Part 1, Sch. 2.2.2., PNG Constitution; Campbell (Accessed 16 June 2015). [↑](#footnote-ref-116)
117. “Custom” is only adopted to the extent that it is not inconsistent with a Constitutional Law or a statute, or repugnant to the general principles of humanity: s 18 and Part 1, Sch. 2.1.1., PNG Constitution. [↑](#footnote-ref-117)
118. [1980] PNGLR 161 at 164. [↑](#footnote-ref-118)
119. The recitation of facts is based on the report of the contempt proceedings in the Supreme Court: *Public Prosecutor v Rooney (No 2)* [1979] PNGLR 448: http://www.paclii.org/cgi-bin/sinodisp/pg/cases/ PNGLR/1979/448.html?stem=&synonyms=&query=nahau%20rooney (Accessed, 16 June 2015). [↑](#footnote-ref-119)
120. PNG - Sean Dorney reflects on the land of the unexpected, Radio Australia, 6 February 2012:

http://www.radioaustralia.net.au/international/2012-02-01/png-sean-dorney-reflects-on-the-land-of-theunexpected/282610 (Accessed 16 June 2015). Mr Dorney has the distinction of being honoured by both Australia (AM) and PNG (MBE) for services to journalism and the further experience of not only being honoured by PNG but also deported from it. [↑](#footnote-ref-120)
121. Later, Sir Mari Kapi. [↑](#footnote-ref-121)
122. Later, Sir Bari Kidu. [↑](#footnote-ref-122)
123. Archival footage, as shown in the ABC Australian Story Program, “Oh Carol”, Monday, 13 September 2004, Program Transcript: http://www.abc.net.au/austory/content/2004/s1198695.htm (Accessed, 17 June 2015) (Oh Carol). [↑](#footnote-ref-123)
124. All further content concerning Sir Buri and Dame Carol Kidu in this paragraph drawn from, “Oh Carol”. [↑](#footnote-ref-124)
125. Sir Arnold Amet, *Issues and Challenges Facing the Supreme Court of Papua New Guinea*, Paper delivered at a conference, “The Mason Court and Beyond”, Melbourne, 8-10 September 1995, published in C Saunders (ed), *Courts of Final Jurisdiction: The Mason Court in Australia* (Federation Press, 1996) at p 254. [↑](#footnote-ref-125)
126. [1994] PNGLR 197. [↑](#footnote-ref-126)
127. Former Chief Justice Sir Mari Kapi Dies: sourced from “The National” newspaper:

http://www.pina.com.fj/?p=pacnews&m=read&o=58670308649caf6a6ed83e2d7892c5 (Accessed, 17 June 2015). [↑](#footnote-ref-127)
128. http://www.fedcourt.gov.au/publications/judges-speeches/justice-logan/logan-j-20130415 (Accessed 21 June 2015). [↑](#footnote-ref-128)
129. *In re Reference to Constitution section 19(1) by East Sepik Provincial Executive* [2011] PGSC 41; SC1154 (12 December 2011). [↑](#footnote-ref-129)
130. *Judicial Conduct Act 2012* (PNG). [↑](#footnote-ref-130)
131. *Judicial Conduct (Repeal) Act 2013* (PNG). [↑](#footnote-ref-131)
132. As reported in the Sydney Morning Herald, 20 May 2012: http://www.smh.com.au/federal-politics/politicalnews/png-farewells-a-great-dame-20120516-1yqii.html (Accessed 20 June 2015). [↑](#footnote-ref-132)
133. Australian Department of Foreign Affairs and Trade Papua New Guinea country brief: http://dfat.gov.au/geo/papua-new-guinea/Pages/papua-new-guinea-country-brief.aspx (Accessed 20 June 2015). [↑](#footnote-ref-133)
134. Ibid. 153 Ibid. [↑](#footnote-ref-134)
135. Australian Department of Foreign Affairs and Trade, ‘Law and Justice assistance in Papua New Guinea Overview’, http://dfat.gov.au/geo/papua-new-guinea/development-assistance/Pages/law-justice-png.aspx (Accessed 20 June 2015). [↑](#footnote-ref-135)
136. New Zealand Ministry of Foreign Affairs and Trade: https://www.aid.govt.nz/media-andpublications/development-stories/october-2013/strengthening-justice-across-pacific# (Accessed 20 June 2015). [↑](#footnote-ref-136)