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THE PUNISHMENT FOR WILFUL MURDER:

A STUDY BY THE LAW REFORM COMMISSION

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The Law Reform Commission of Papua New Guinea was established by the Law Reform Commission Act 1975 and began functioning in May 1975.

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PREFACE

The Law Reform Commission is responsible for proposing changes to our legal system so that it will better suit the needs and conditions of the country. In order to carry out this responsibility, we have frequently found it necessary to enquire into current practices and procedures in law. We feel that people in government and the law, and many members of the public, would find the results of our studies useful and interesting. We have therefore decided to publish some of them as occasional papers. This study into penalties for wilful murder is the first of these occasional papers. We welcome comments on it.

B.M. Narokobi
Chairman of the Law Reform Commission

THE PUNISHMENT FOR WILFUL MURDER:
A STUDY BY THE LAW REFORM COMMISSION

There have always been arguments about the kind and amount of punishment that people who commit wilful murder should receive, but these arguments came to a head in Papua New Guinea's House of Assembly in March 1974, when some members suggested that all wilful murderers should be condemned to death. The motion was defeated after a long debate, and the House passed Mr Tei Abal's compromise suggestion that all wilful murderers be sentenced to life imprisonment.[1]

The debate was re-opened later in the year, when the House was considering the new Criminal Code. Once again, some members argued that every wilful murderer should die, and once again they were defeated by a compromise proposal - put forward this time by Mr Stephen Tago - which would sentence every wilful murderer to imprisonment for life.[2] The compromise was adopted, and became section 309 of the new Criminal Code which came into force in January 1976.

Many parliamentarians were dissatisfied with the provision for mandatory life sentences, however. It had been passed as a compromise between those who wanted the harshest penalty, death, and those who believed wilful murderers should be sentenced to a number of years in prison. A mandatory life sentence was not first choice of most of the members of Parliament. So the Law Reform Commission was asked to do a thorough study of wilful murder in Papua New Guinea and to recommend an appropriate punishment for wilful murderers based on its findings.

The major focus of the Commission's study consisted of a detailed analysis of all the people charged with wilful murder in the Supreme Court in the years 1964 and 1974. Court, police and prosecution records were examined to determine what kinds of people commit wilful murder, what kinds of people tend to be the victims of wilful murder, what the reasons for wilful murder usually are, where most murders are committed, and the average length of sentence. The years 1964 and 1974 were chosen because they were far enough apart to show whether there have been changes in the characteristics of murder or the kinds of punishment over time, yet close enough to the present to give an accurate picture of wilful murder and the official reactions to it in Papua New Guinea today. [3]

As a result of its investigations, the Commission recommended to Parliament that wilful murderers be sentenced to prison, and that the judge imposing the sentence be permitted to determine in each case, whether the term be life or a lesser period. Parliament accepted the Commission's proposal, and it is now section 309(1) of the Criminal Code.

I. MURDER RATES

In the years 1964 and 1974, a total of 224 people stood trial for wilful murder - 83 in 1964 and 141 in 1974. Of these, 37 were found guilty of wilful murder in 1964 and 60 were found guilty of wilful murder in 1974. The rest were either acquitted or found guilty of lesser crimes:

Table One

Dispositions in 1964
(53 cases: 83 defendants)

Found guilty of wilful murder	37	
Found guilty of murder [4]	5	)
Found guilty of manslaughter	10	)
Found guilty of infanticide	3	) 46
Found not guilty by reason of insanity	1	)
Found not guilty	1	)
Nolle prosequi [5]	26	)
Total	83	

Dispositions in 1974
(76 cases: 141 defendants)

Found guilty of wilful murder	60	
Found guilty of murder	7	)
Found guilty of manslaughter	25	)
Found guilty of doing grievous bodily harm	1	)
Found guilty of unlawful wounding	1	) 81
Found guilty of assault	4	)
Found not guilty by reason of insanity	3	)
Found not guilty	31	)
Total	141	

Although the number of murders in Papua New Guinea went up between 1964 and 1974, the population increased also, so that the actual murder rate did not rise significantly. The population of Papua New Guinea in 1964 was approximately 1,900,000. By 1974, the population has reached about 2,622,000. Thus, the murder rate in Papua New Guinea in 1964 was 2.73 murders for every 100,000 people in the country. In 1974, the Papua New Guinea murder rate was 2.90 murders for every 100,000 people. There was, then, only a six percent rise in the murder rate over ten years.

A rise this small might be completely accounted for by improved police procedures. Ten years ago, many parts of the country were without permanent patrol posts, and police entered these areas to arrest murderers only when chance brought the murder to their attention. Many murders went unreported that would be brought to the notice of the authorities today, so the rise in murder rates may not reflect an increase in crimes at all, but merely an increase in official awareness of crimes.

Papua New Guinea's murder rates suggest that murder is not as big a problem in this country as the newspapers would have us believe. At least, it is no bigger a problem here than it is in many other countries. In the United States, for example, 4.8 out of every 100,000 people were murdered in 1964.[6] In Australia, the murder rate was 2.47 out of every 100,000 in 1964 and 3.78 out of every 100,000 in 1973.[7] The figures are even higher for many developing countries: Nicaragua had a rate in 1965 of 29.3, Columbia in 1967 of 21.5, Angola in 1968 of 6.0, Boliva in 1966 of 11.2.[8] Thus, even if we assume that many murders in Papua New Guinea go unreported, the murder rate here would not be as high as in other developing countries.

In both 1964 and 1974, most people convicted of wilful murder came from the Highlands. In 1964, 26 of the people convicted of wilful murder came from the Highlands (including 9 from the Southern Highlands), 10 came from the New Guinea coast and Sepik areas, one from the New Guinea islands and none from the Papuan Coast. In 1974, there were 36 people in the Highlands convicted of wilful murder (including five from the Southern Highlands), 18 people on the Papuan coast, five in the New Guinea islands, and one from the New Guinea coast or Sepik. Of the 18 defendants who committed wilful murder in Papua, seven were from the Goilala area and two were migrants from the Highlands, and of the five people who committed murder in the New Guinea islands, four were originally from Chuave.

II MURDERERS AND THEIR VICTIMS

In the developed nations of the west, most murders are committed in big cities. Murder in these countries is frequently the work of habitual criminals, and many murders occur during the commission of other crimes - when, for example, bank robbers kill a bank customer or guard.[9] Occasionally, too, murder is done for money, and the murderer plans his crime for weeks or months ahead. In the United States and Western Europe, harsh penalties - ranging from death to life imprisonment to prison sentences of twenty to thirty years - are exacted when these people are convicted, on the grounds that they are criminals who will murder again if set free, that their reasons for committing murder are especially odious, and that a harsh punishment for them might deter others from committing similar murders.

In Papua New Guinea, however, murderers are not habitual criminals who live in town and kill for monetary gain or as part of other criminal activities. Of the 37 people convicted of wilful murder in 1964, 36 were subsistence gardeners, living in or near the village of their birth, and one was a mission school teacher who had retired to his home village. Even in 1974, when many more people had gotten jobs in the cash economy, of the 60 people convicted of wilful murder, 50 were subsistence gardeners, living in the village of their birth. Of the other ten, three were labourers, one worked for a small mine run by his father-in-law, one was a Lae council driver, four (the Chuave men living in Kimbe) had no occupation listed on their records, and one (a Goilala man living in Morata) was listed as unemployed. Of all those convicted of wilful murder, only seven had ever committed another crime before their arrest for murder, and none of those released from jail after serving a sentence for murder has ever been arrested again.

Of the 37 people convicted in 1964, 35 killed people they lived with or knew well. And of the 60 convicted in 1974, 42 killed people they lived with or knew well:

Table Two

Relationship of Victim to Murderer in 1964		
Wives of murderer	11)	
Other relatives	3)	35
People from same or adjoining village	21)	
Expatriates	0	
Other or unknown	2	
Total	37	

Relationship of Victim to Murderer in 1974		
Wives of murderer	3)	
Other relatives	7)	42
People from same or adjoining village	32)	
Expatriates	5	
Other or unknown	13	
Total	60	

In 1964, every murder was committed in or near the village of the murderer. By 1974, Papua New Guinea had greatly changed. There were many more Papua New Guineans who had moved away from their home villages to find schooling or work in towns or on plantations than there had been ten years earlier. And yet, even in 1974, only twelve defendants committed murder outside their home villages.

III. WHY PEOPLE MURDER

The typical murderer in Papua New Guinea kills in a moment of blind and passionate rage. A wife taunts her husband with talks of her activities with other men and slighting references to his own lack of sexual ability, and he swings at her with his axe. Two men fight drunkenly in a tavern, and the loser waits outside in the darkness, nursing both his grievances and a large stick. A child dies, horribly mutilated with knife wounds, and his grief-crazed uncle races into the bush to murder the man who did it. Twelve angry villagers trap a sorcerer in his house and beat him to death.

Of the murders that occurred in 1964 and 1974, we found none committed in connection with criminal activities or for gain. We found none committed after weeks or even days of calm and cold-blooded forethought. We found most committed under the sway of a violent emotion, such as anger, the desire for revenge, or fear of a sorcerer:

Table Three

Reasons for murder in 1964	
Payback	7 (19 percent)
Murder of sorcerer	8 (22 percent)
Sex	3 (8 percent)
Quarrel or fight[10]	11 (30 percent)
Other or unknown	8 (22 percent)
Reasons for murder in 1974	
Payback	24 (40 percent)
Murder of sorcerer	3 (5 percent)
Sex	7 (12 percent)
Quarrel or fight[11]	17 (28 percent)
Other or unknown	9 (15 percent)

As Table Three shows, the political and economic changes that swept Papua New Guinea in the ten years from 1964 to 1974 have not significantly altered the patterns of life - and death - in the villages. In general, villagers in 1974 were driven to anger and murder by much the same things that caused them to grab an axe or a spear in 1964. The rate of quarrels or fights ending in murder has remained almost constant. Murders of sorcerers have declined somewhat, which may be attributable to increasing knowledge about the medical causes of death.

The most startling change is the rise in reported payback murders. In our survey, we did not include in the category of payback murder either deaths during tribal wars or murders provoked by insults. The payback murder category was limited to those circumstances where an individual or small group kill in retaliation for an earlier murder. Examples of this category include two brothers who murdered the man they believed to have killed their sister. After a road accident in which a Southern Highlander was killed and the Papuan driver ran away, four Southern Highlanders murdered a Papuan passenger. When a man in their clan had died of illness, two men assumed another clan responsible for his death and killed a member of the other clan.

One might expect murders of this sort to decrease under the impact of Australian courts and justice, but our survey indicates that, proportionally, payback murders, unlike other kinds of murder, have increased. It is possible that people feel unable to get sufficient justice from the Australian courts. The increased ill-feeling and feuding that culminate in murder and revenge might also be caused by the tensions and uncertainty that have accompanied the development process. Development in Papua New Guinea has called traditional values and social systems into question, but - at least in the villages - it has not provided new values or new jobs to take the place of what has been lost. As a result, village people have grown insecure, tense and confused, an emotional situation likely to vent itself in spontaneous and violent reprisals against real or imagined enemies.

IV. MURDER AND PUNISHMENT

Criminal penalties are supposed to serve four purposes. They are supposed to punish the defendant for the wrong he has done; they are supposed to give the state an opportunity to rehabilitate him; if he is dangerous to others in the community, they are supposed to keep him locked away where he cannot hurt anyone; and the threat of criminal penalties is supposed to deter the offender from committing his crime again and others in the country from doing it at all.

The length of each offender's prison sentence depends upon the amount of time needed to accomplish these purposes. If the defendant has done a serious wrong, his sentence will be longer than if his offence was minor. If he is a hardened criminal who will need many years of treatment before being rehabilitated, his sentence should be longer than if he is a first offender. The more likely he is to be a danger to others by committing his crime again, the longer his sentence will be. Finally, the court will assess the length of sentence needed to deter him and other from committing similar crimes.

Using these criteria, a habitual criminal who killed a bank customer in the course of an armed robbery would receive a very long sentence. He has committed a murder of the most callous and cold-blooded sort. He is unlikely to respond quickly to attempts to make an honest man of him. Given his record of repeated crimes, he is likely if set free to rob and kill again. Only a long prison sentence will convince him and others in the community that crime does not pay.

On the other hand, a usually law-abiding person who kills a friend or family member in a moment of rage or uncontrollable anger is likely to receive a relatively short sentence. Although murder is a serious wrong, he did not do it in cold blood or for gain. He probably regretted his action soon after he did it, and will need little more rehabilitation. Numerous studies have shown that people who murder in these situations seldom commit murder or any other crime again.[12] Giving him a long prison sentence will not necessarily stop others from committing the same kind of murder, as people who murder in anger do not stop to consider the legal consequences before they strike out at their victims.

Sentences for wilful murder in Papua New Guinea tend to be relatively short - the average sentence for 1964 and 1974 combined was seven years - and it is easy to see why. Papua New Guinean murderers are not criminals who murder for gain. They tend to be otherwise honest villagers who commit murder in a burst of emotion and who never have and never will commit another crime.

Because most of the defendants were not dangerous criminals who would cause further harm to the community if released from prison, no defendant was imprisoned for life in 1964, and only five defendants received life sentences in 1974. The longest sentences handed down in 1964 were for ten years. In 1974, besides the five life sentences, one defendant was sentenced to a 15-year prison term, three to 12-year terms, and two to 11 years in prison.

In 1964, every murder was committed in the murderer's home village, against a victim he knew well or was related to, in a situation involving anger or revenge. In 1974, only seven murders, involving 12 defendants, did not follow this pattern. All seven crimes occurred outside the murderer's home village. The victim of one was an expatriate girl who was murdered at the Papitalai Mission Station on Manus. Another expatriate girl was killed on a road near Kerema. A little girl was murdered near Lae after her killer had tried unsuccessfully to rape her. Three of the murders involved pay-back: in Morata a Goilala man whose brother had allegedly been killed by Chimbus murdered an eight-year-old Chimbu boy, in Kimbe four Chuave men collaborated to murder a Tolai, and three men were convicted for the murder of two expatriates whose car had run over a woman on the Brown River Road. On a Cape Rodney plantation, a labourer from Woitape killed a fellow worker.

The court recognised that these murders were not the sort usually encountered in Papua New Guinea, and most of the defendants received harsher sentences than were handed down in other cases. In 1974, the average sentence for wilful murder was 8.3 years. Of these twelve defendants, however, five (including four who had killed expatriates) were sentenced to life imprisonment, one was sentenced to 11 years in prison, four to nine years and nine months, one to eight years and one to seven years, making an average sentence for these murders of 11.7 years, or three years longer than the 1974 average.[13]

V. SENTENCES FOR WILFUL MURDER

In 1964, the Criminal Code required the Supreme Court to sentence everyone convicted of wilful murder to death, and then to recommend mercy to the Administrator's Executive Council, which would set a prison term for the offender based on the Court's recommendation. In 1974, the Code required the Supreme Court to sentence everyone convicted of wilful murder to death, unless the judge could find "extenuating circumstances" which would allow him to sentence the offender to a terms of years in prison.

In practice, the different procedures produced essentially similar results. In 1964, the judges always recommended mercy and the Administrator's Executive Council always accepted the recommendation, so every wilful murderer actually served a term of years in prison. And, in 1974, the judges always found "extenuating circumstances" to avoid the death penalty, so every murderer then, too, was sentenced to prison.

There was, however, a significant difference between the average length of sentences handed down in 1964 and those of 1974. The judges gave much longer sentences in 1974 than were the rule 10 years earlier. In 1964, the average prison sentence for wilful murder was 4.9 years; by 1974, it had almost doubled to 8.3 years.

Table Four[14]

Average sentences in 1964

In the Highlands	5.6 years (8.4 years)
On the Papuan Coast	No convictions
New Guinea Coast & Sepik	3.1 years (4.6 years)[15]
New Guinea islands	6.7 years (10 years)
Overall (1964)	4.9 years (7.4 years)

Average sentences in 1974[16]

In the Highlands	7.4 years
On the Papuan Coast	9.4 years
New Guinea Coast & Sepik	11 years 17
New Guinea islands	11 years
Overall (1974)	8.3 years

Average for 1964 and 1974 combined: 7.0 years

Even if the twelve sentences for non-village murderers were taken out of the 1974 figures, the average for that year would still be 7.5 years, or 2.6 years longer than the average for 1964. So, while the murder rate rose by only 6 percent, the average sentence rose by 53 percent, even when atypical murderers are excluded.

As we noted earlier, most wilful murders are committed in the Highlands or by Highlanders. Yet Highlanders do not receive the longest prison sentences. In 1974, in fact, Highlanders received on the average the shortest sentences.

The length of sentences vary considerably depending upon the circumstances that led the murderer to commit the crime:

Table Five

Sentences and Circumstances in 1964

Average sentence for payback murder	6.2 years (9.4 years)
Average sentence for murdering sorcerer	2.5 years (3.8 years)
Average sentence for sex-related murder	6.1 years (9.1 years)
Average sentence for murder arising out of quarrel or fight	5.6 years (8.4 years)
Average sentence for other or unknown	4.8 years (7.2 years)

Sentences and Circumstances in 1974

Average sentence for payback murder	9.6 years
Average sentence for murdering sorcerer	6.2 years
Average sentence for sex-related murder	7.6 years
Average sentence for murder arising out of quarrel or fight	7.3 years
Average sentence for other or unknown	8.3 years

Although sentences for murdering sorcerers doubled in length between 1964 and 1974, they were in each year shorter than the sentences for other kinds of murder. This leniency demonstrates the Court's awareness that people who murder sorcerers do so out of fear for themselves or their family or out of a sense of responsibility to the village, and not from evil motives.

In both 1964 and 1974, the harshest penalties were handed down for payback murders. Although the harshness may be merited, it has had no deterrent effect on payback murderers. The numbers of payback murders rose more considerably than murders done for other reasons, despite the relatively long sentences.

VI. THE COURT'S SENTENCING POLICY

Between 1964 and 1974, the murder rate in Papua New Guinea did not rise appreciably, but judges tended to impose much longer prison sentences for wilful murder in 1974 than they had in 1964. If the murder rate was not increasing, why did judges feel called upon to levy harsher penalties? The court has answered this question itself, in the judgements that it writes to explain the decision and sentence in each case. We analysed the judges' writings in the early 1960's and 1970's, and found three major reasons given for the change in sentencing policy.

One reason for the changes in sentencing between 1964 and 1974 lies in a change over that time in the judges' opinion of Papua New Guineans and in the standards of behaviour that judges expected of Papua New Guineans. In the early 1960's, judges felt themselves to be members of a civilised minority attempting to bring law and justice to a land of savages. "We are", as one judge put it, "dealing with a society primitive in all respects".[18] The epithets "primitive" and "savage" were used frequently and interchangeably in judicial writings of that period.

The judges were torn between conflicting aims. On the one hand, they knew it their task to apply the Criminal Code, and in particular to sentence to death or prison anyone found guilty of wilful murder. Moreover, they believed it proper to do this. They believed that their law was civilised and just, that good people ought to obey it, and that Papua New Guineans would rise from savagery only insofar as they learned to obey the criminal law and to refrain from murder.

But, on the other hand, they also knew that they were dealing with people unlike themselves, people who might never have heard of their Criminal Code and whose customs often approved of the very killings that the Code called murder. They felt it unfair to impose the standards of the Code too strictly on these people.

The judges of the early 1960's tried to effect a compromise between their duty to apply the law and their belief that Papua New Guineans were unable to understand its purposes. Often, the judges compromised simply by giving short sentences. Sometimes, they did it by making new interpretations of the law, so that it would better suit the conditions of Papua New Guinea. In Regina v. Awabe, for example, the defendant, a Highland's villager, had killed a village woman because she had insulted him. The charge of wilful murder can be reduced to manslaughter and the sentence consequently lessened, if the defendant proves to the court that he was provoked into killing by the actions of the victim. To succeed with the defence of provocation, the defendant must convince the court that the victim's act was so terrible that it would provoke any ordinary man to kill.

In Regina v. Awabe, then, the court had to decide whether the woman's insulting words would have provoked any ordinary man to kill her. The judge decided that the ordinary Highlander rather than the ordinary Englishman or Australian must be the standard for the ordinary man in this case, and that Highlanders are much more easily provoked than are Englishmen: "The Highland Native appears to be very susceptible to insult and prone to respond to it promptly and violently."[19] In effect, the court had decided that Papua New Guineans were on a lower standard than were Europeans. Ordinary Papua New Guineans were more savage, more excitable, "more easily deprived of self-control than an ordinary European".[20]

By the 1970's, the writings of judges had changed. They no longer were likely to describe Papua New Guineans as violent savages, "a Native Community where sophistication does not approach to that of, say, seventeenth century England..."[21] The judges now expected Papua New Guineans to be as capable as Australians of understanding the law, of following the dictates of reason and of controlling themselves. In Regina v. Galamu Obu, for example, the defendant found his little nephew horribly murdered, and ran through the

bush to kill the man who had done it. We have no doubt that, ten years before, a judge would have had little trouble deciding that the defendant had been provoked into killing his nephew's assailant, and this defendant's lawyer did argue that his client had been provoked into murder. The judge however, refused to find that in these circumstances an ordinary Papua New Guinean would be provoked to kill.

> ...the proper test of a reasonable person, or an ordinary person, which seems a more appropriate term, is the test of the native villager in the environment in question. It is accepted by both Crown and defence that the ordinary Goilala villager is volatile and mercurial, but it is not common ground that he is a savage.[22]

Papuan New Guinean murderers get longer prison sentences today than they did 10 years ago because the judges of today hold Papua New Guineans to a higher standard of behaviour. Many Papua New Guineans now are educated and sophisticated townspeople, but even when the murderer is an uneducated villager, the courts today assume that he has a reasonable regard for human life and the ability to stop himself from committing murder.

Judges today treat Papua New Guineans with greater respect than they did ten years ago. And a result of the increased respect is more convictions for wilful murder and longer prison sentences. But we must ask why judges now hold Papua New Guineans to a higher standard of behaviour.

One reason lies in Papua New Guinea's emergence as a nation. In 1964, the judges viewed the Colony and Territory as a collection of separate tribes. They assumed that the trial and prison sentence of a murderer in one part of Papua New Guinea would have little if any impact on people in other parts of the country. By the early 1970's, however, Papua New Guinea had become a unified society in many ways. Radio brought the news of a murder trial in Kerema or Mendi or Rabaul to people everywhere in Papua New Guinea. The judges began to see their prison sentences as having deterrent effects not only on a murderer's clansmen but on people throughout Papua New Guinea.

In Regina v. Tsauname Kilape and Abiya Palina, the defendants had committed a payback killing on a man thought to have murdered their sister. The defendants came from a remote region, hardly touched by the outside world and the changes that had swept the rest of the country in recent years. "They are primitive men", the judge said, "each defendant has lived in a remote and primitive subsistence area with little or no contact with the culture and standards of behaviour of civilised society."[20] They had killed because the traditional law of their clan ruled it right to kill in these circumstances, and the judge doubted that a prison sentence would deter either the defendants or their fellow clansmen from killing again when a similar situation occurred.

However, the judge noted, radio and newspapers will make their prison sentence known to people from every area of the country, and a substantial sentence in this case may deter men not just of their village but throughout Papua New Guinea from taking the law into their own hands:

> The law must be seen to be tough in its attitude to unlawful killing. The law after all proscribes it, even though native custom in some circumstances sanctions it. If the Court is seen to be too soft, then the general populace of Papua New Guinea may exert pressure upon their politicians to legislate for harsher penalties and even for the mandatory death penalty. My duty requires me not to be more lenient than I have been in dealing with these defendants.[23]

In that statement from Kilape's case can also be found the other important reason for longer prison sentences. Judges are no more immune than other politicans and government servants to the pressures of public opinion. By the early 1970's, talk of the need for harsher penalties was widely current. Papua New Guineans, once thought by judges to be so savage that they would commit murder at the slightest provocation, were themselves sufficiently horrified by murder to be agitating for stiffer sentences for murderers. The longer prison sentences demonstate that judges were responding to the expressed wishes of the more vocal citizens of Papua New Guinea.

FOOTNOTES

The data was collected by John Yamboli, a law student at the University of Papua New Guinea. He was assisted by Joe Maingu, the Law Reform Commission's Administrative Officer. The data was analysed by Stephen A. Zorn, Assistant Director of the Office of Minerals and Energy. Jean Zorn, Principal Project Officer of the Law Reform Commission conceived & supervised this research and wrote this paper.

1. House of Assembly Debates, Vol. III. No 26, pp 3319-34; Vol III No 27, pp 3557-59.

2. House of Assembly Debates, Vol. III No. 37, pp 4814-17.

3. This research was undertaken with limited resources. It is essentially a detailed comparison of the wilful murder cases dealt with by the pre-Independence Supreme Court of Papua New Guinea in the years 1964 and 1974 and all comments and speculations offered in this paper must be read in that light.

   The two years 1964 and 1974 were chosen,not only because they are decade apart, but because they occured in two different eras of Papua New Guinea's development. In 1964 the first House of Assembly had just started, political development was very slow and all 3 arms of government, legislative, executive were controlled by Australians. By 1974 Papua New Guinea was self-governing. Papua New Guineans, under the Somare Government, had taken control of the legislative arm of government and localization in the executive arm was advancing rapidly. Papua New Guineans were much more politically active and not only were their views widely published, but also were taken into account to varying extents by 3 arms of government.

4. According to the Criminal Code, a person commits wilful murder if he kills another "intending to cause his death or that some other person" (s.304). He is guilty of the lesser crime of murder if he kills someone whom he had intended only to injure (s.305). Murder & wilful murder now have the same maximum penalty, imprsonment with hard labour for life. However those convicted of murder usually get a lesser sentence than those convicted of wilful murder.

5. The prosecution withdrew the case and did not proceed with the trial against the defendants.

6. Federal Bureau of Investigation, Crime in the United States, Uniform Crime Reports (1964) unpaged.

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7. Commonwealth Bureau of Census and Statistics, Official Yearbook of the Commonwealth of Australia, Vols. 51 (1965) and 60 (1974) Government Printer, Canberra.

8. These and others are reported in M. Clinard and D. Abbot, Crime in Developing Countries, John Wiley & Sons; New York, 1973, p.58.

9. In the United States for example, fifteen percent of all murders occur in the course of committing other crimes. President's Commission on Law Enforcement, The Challenge of Crime in a Free Society. United States Government Printing Office, Washington, 1967, p.19.

10. In 1964, this category included arguments among relatives and fights during parties. It did not include murders that occured during tribal wars.

11. In 1974, there were two murders that occured during tribal fighting included in this category. The rest were family arguments or personal fights and quarrels.

12. For a summary of these studies, see President's Commission on Law Enforcement, The Challenge of Crime in a Free Society (1967) 38-48.

13. These murders were committed without apparent reason in circumstances there was little in the way of extenuation to be taken into account.

14. In 1964, it was the practice for all sentences to be remitted so that defendants served only two-thirds of the sentence recorded against them. The courts and Administrator's Executive Council knew this, and set sentences accordingly. In Table Four and Table Five, the figure in brackets represents the sentence recorded and the other figure represents the sentence actually served.

15. There was only one wilful murder conviction in the New Guinea islands in 1964.

16. Offenders serving life sentences have their first chance to be paroled after 15 years, so that figure was used in computing average sentences.

17. There was only one wilful murder conviction in the New Guinea coast and Sepik regions in 1974.

18. Smithers J. in Regina v. Rumints Gorok [1963] P & N.G.L.R. 81 at 84.

19. Regina v. Awabe, unreported judgment No. 170 (18-7-1960, Brenan A.T.)

20. Regina v. Moses Robert, [1965-66] P & N.G.L.R. 180 at 186 quoting Chibeka v. Regina, (1959) Rhodesia and Nyasaland Reports 476 at 483.

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21. Regina v. Awabe, supra.

22. Regina v. Galamu Obu, unreported judgment No. 786; (6-5-1974, Denton A.J.) p.9.

23. Regina v. Tsauname Kilape and Abiya Palina, unreported judgment, No. 763,(18-9-1973, Wilson A.J.) p 3.

24. Ibid. p 5.