

Social and Spiritual Development Strand
Social Science

Unit 4: Contemporary Issues

Module 4.5 Crime, Punishment and Justice



Lecturer Support Material

Acknowledgements

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Unit outline

Unit 4 Contemporary Issues	4.1	Framework for Studying Issues (Core)
	4.2	Population Studies (Optional)
	4.3	Disaster Management (Optional)
	4.4	Women and Equity (Optional)
	4.5	Crime, Punishment and Justice (Optional)

Icons



Read or research



Write or summarise



Activity or discussion



Suggestion for lecturers

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Module 4.8: Crime, Punishment and Justice

Rationale


All citizens of all ages any society have certain social and moral roles, rights and obligations. This module – Crime, Punishment and Justice – enables students to learn about the law in general and its application in society. It provides an opportunity for students to become aware of their rights as well as their roles, obligations and responsibilities towards others and become active, responsible citizens.

Objectives

By the end of this module students will be able to:

1. Understand and value the need for laws in society
2. Know and discuss the nature and the workings of the judiciary
3. Discuss and define the different types of crimes and punishment
4. Acknowledge their constitutional right and responsibilities
5. Develop thinking skills to enable informed decisions and positive attitudes
6. Organise, process and interpret information logically and rationally
7. Recognise, appreciate and acknowledge social and technological changes that results in the development of new laws

Teaching Module 4.5

 The main emphasis in the teaching of each topic is to include a range of activities and to develop skills which will be useful for beginning teachers in their own classrooms. Activities are included in the module. Alternate activities you might like to consider are listed below.

- Library research e.g., history of the development of systems of laws
- Media studies e.g., newspaper clippings documenting recent cases involving court actions
- Debates e.g., “Should abortion be legal in Papua New Guinea?”
- Discussion and group work e.g., the problems of the Ombudsmen Commission and the Leadership Tribunal
- Analysing values
- Guest speakers e.g., magistrates, judges
- Case studies e.g., crimes and punishment in PNG and overseas
- Conflict resolution skills e.g., handling confrontations between opposing groups

How to use this module

- It is important to read through the module first, to decide what materials you will use, and what tasks and activities you will set for the students. It is also important to see how this module fits within the complete unit. Refer to the programming hints in your Unit guide for ideas on ways to include this module in the study of Unit 4.
- The material is written as a resource for the teaching of this module.
- Do not expect students to work through the total module alone. There may be too much material and they will need assistance in determining the tasks required.
- Many of the activities have a number of questions to discuss and tasks to do. They are included to provide some ideas and stimulus, not necessarily to complete every part of each activity.
- The activities provide a focus for learning, and some may be suitable for developing into assessment tasks, but the activities are not written to be used as the assessment program.
- The Lecturer Support Material is the same as the Student Support Material, with additional notes included in the text boxes.
- Materials included as an appendix are included as additional information for lecturers. These may be photocopied for students where appropriate.

Module 4.5: Content

Topic 1: Why have laws?

i It is a good idea to start this module with a discussion about the nature of laws – what they are and why they are necessary. The activity questions below are a starting point for such a discussion.
Spend a little time identifying why this topic is a contemporary issue. You may need to refer to 4.1 as revision.
A comprehensive glossary is provided at the end of the module. Refer students to the glossary when necessary to clarify meanings.
Students can be set reading for homework to enable more time for activities.

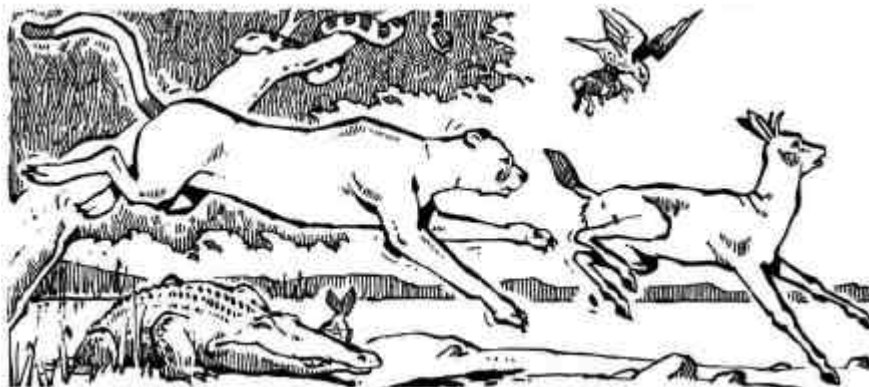
4.8 Activity 1

In groups discuss what you think would happen if there were no laws

Identify one law that you think is essential for this country

Identify one law that was important in traditional communities

Decide what laws are illustrated by the picture below



Laws are one of the most basic social institutions – and one most necessary. From the earliest days when people began to live together, it has been necessary to have laws. No society could exist if all people did just as they pleased, without regard for the rights of others. Laws were needed so that people could work smoothly together and so people could be protected from the wrong-doings of the others.

What would the society be like if there were no laws? There would be no generally accepted rules about what is right or fair. Each person would have to make up his or her mind about

what they thought was right. For instance, if two people disagreed there would no court to decide who was acting unfairly.

Without laws, it is likely that those people who were the strongest, or those who could gain the support of others, would be able to enforce their will over the weaker members of society. People would be free to steal possessions, burn down houses, even commit murder, and no one could do anything about it.

Some of the earliest recorded laws are in the Old Testament. As well as the Ten Commandments, many crimes and punishments are set out quite clearly. ‘An eye for an eye, a tooth for a tooth,’ for example, comes from the Old Testament.

The law thus establishes the rules that define a person’s rights and obligations. The law also sets penalties for people who break these rules. Because a person can be punished for disobeying the law, most people agree that laws should be ‘just’. Justice is a moral standard that applies to all human conduct. In democratic societies, the law itself provides ways to amend or abolish unjust laws.



Features of law

- The first feature of law is its ability to regulate everybody’s behaviour (*Applies to everyone*).
- A second feature of law is that it will be made by special organizations whose ability to make law will be clearly accepted and recognised by the citizens (*Is made by special authorised bodies*).
- The third feature of law is that it defines the basic structure or ‘core’ of our society (*Focuses on important values and concerns*).
- The feature of law is that it imposes a highly formalised system of enforcement and penalties (*Is enforced in special ways*).

Functions of law

- The law preserves society’s stability.
- The law promotes the orderly functioning of society, to the benefit of its citizens.
- The law helps our society to settle its disputes as peacefully as possible.

Informal laws

The first laws were all verbal laws and were kept in people’s heads because nobody could write. They were part of the customs of a people. Stories, ceremonies and punishments (including sorcery) were outward signs of the laws.

Papua New Guinea always had laws. These traditional laws were informal laws passed down from one generation to another. The laws were usually made by the old people. They decided who was to be punished and sometimes decided how much punishment should be given. Laws

told people what rights they had with other members of their society and told them what their obligations were. They were the unwritten rules which made it clear what was right and what was wrong.

There was no one set of laws for the people of Papua New Guinea. Different groups of people had different laws. These laws were not written down but they were strong and people usually obeyed them because:

- Communities were strong and kinship ties were strongly maintained
- People were frightened of being punished by sorcery and ancestor spirits
- Punishments were often very harsh, done in public which caused shame for the family.

As the customs of a society change, so do some of the laws.

Formal laws

There are a number of different systems of laws in Papua New Guinea today. These are the traditional laws, the laws of the church brought by the missionaries, and remaining laws of foreign countries which were brought by the colonial administrators.

When Papua New Guinea became an independent nation in 1975 only one set of laws was needed to unite all citizens together. Obviously, using the traditional laws of one group of people would not work. A new set of laws was needed and this new set of laws must apply to everybody no matter what one's tribal or individual position, background or social status was.

The constitution of Papua New Guinea is based mainly on the English Common Law. Because Papua New Guinea is different and some of the English laws are not suitable for PNG, a group called the Law Reform Commission advised the government about what types of laws were best for Papua New Guinea when the constitution was written.

Papua New Guinea traditional and modern laws

There are four (4) sources of law in Papua New Guinea:

- Common Law – laws made by the courts adopted mostly from England
- Equity – body of rules to mitigate (reduce) the harshness of the Common Law and grant relief to petitioners, inherited from England
- Statute Law – laws made by the parliament
- Custom – adopted suitable customs from Papua New Guinea as law. Schedule 2.1 of the PNG constitution says – *custom is adopted and shall be applied and enforced, as part of the underlying law.*

Both traditional and modern laws are used in Papua New Guinea today. Many traditional conflicts are still solved in the traditional ways, for example marriage/bride-price conflicts or compensation payments, just to mention a few. However, if traditional laws break or conflict with the modern law (constitution), the new law is powerful and it overrides or prevails over traditional law. For example, even though payback killing may be a customary obligation, there should be no payback killing for a death because that breaks the new law – the constitution.

 **4.8 Activity 2**

Try to imagine living in a society where no laws exist. Who would tend to benefit by this situation? What do you think would happen?

Do schools need rules? If they do, what rules do you think they should have, and who should make them?

Debate this proposition: "Human beings are good by nature."

What would be the problem with the law or its enforcement, in each of the following imaginary situations?

- *The judge is sentencing a person found guilty of a crime. Just before he goes to court, the judge finds out he's won Gold Lotto. Full of the milk of human kindness, he gives the lightest possible sentence of six months in prison. Next morning, His Honour, having celebrated his good fortune with something much stronger than milk, is not feeling at all well. He has to sentence another offender, of similar background to the first, for the same crime. "Five years in prison," he growls.*
 - *The minister for roads, reviewing the high road toll, proposes some drastic new laws. "We have had too many accidents," he says. "The speed limit in all areas will now be five kilometres per hour. Also, no citizen can drive further than 50 kilometres each week."*
-

Topic 2: Crime, punishment and justice

Crime

Crime is one of the world's oldest social problems. Crime can be defined as 'an *act that is prohibited by law*'. A crime is committed when a law is broken, and this can be anything from stealing money to killing another person, or a situation where some act of violence or injustice occurs. The perception of crime is affected by changes in social behaviour and attitudes. Acts which were previously considered illegal have now become legal and they include abortion, homosexual relationships between consenting adults over the age of twenty-one in private, but driving a car without wearing a seat belt is now an offence but previously it wasn't. The perception of crime is also affected by changes in technology, for example, the many computer crimes committed now.

There are immediate causes as well as deeper underlying causes of crime. Immediate causes might include thrill, boredom, jealousy, greed, frustration or anger. The deeper underlying causes of crime need to be studied. Often crime is not caused by just one factor but rather a combination of factors.

Some of those factors are:

- Circumstances – crime can be caused by the type of environment one lives in such as housing, unemployment or a deprived upbringing.
- Conflict with others – e.g. marriage problems; difficult parents; a violent family.
- Mental or emotional disturbances in the offender – such as lack of confidence; loneliness; sexual problems; psychological disorders; depression; bad experiences (eg; accidents, being beaten as a child).
- Social pressure – living in a materialistic and consumer society; keeping up with the Joneses; advertising – the creation of false ideals and impressions; mixing with potential criminals; TV images.

Types of crimes

- **Indictable offences**, eg; treasons, felonies, misdemeanours
- **Summary offences**, eg; minor offences – traffic offences, minor dishonesty
- **Crimes against people or property**, eg; unlawful killing, assault, sexual offences, arson, burglary, embezzlement, forgery, fraud, theft, vandalism
- **Crimes against public order or morality**, eg; disorderly conduct, illegal gambling, prostitution, public drunkenness, vagrancy, unlawful assembly
- **Organised crime**, eg; large scale activities by groups of gangsters or racketeers
- **White-collar crime**, eg; criminal acts committed by businesses and professional people while earning their living
- **Political crime**, eg; terrorism, assassination

Born criminals?

Are people born criminals? In the USA and many other countries, a lot of work has been done to answer this question. Human behaviour is complex and this question is very difficult to answer, however, there are two views put forward.

First, criminals may be produced by the society they live in, rather than being born that way. In every society and even in every city, you will find a place where infant mortality is three or four times higher than the rest of the city; where the death rate is twenty-five per cent higher; where life expectancy is ten years shorter; where common communicable diseases with the potential of physical and mental damage are eight to ten times more frequent; where alcoholism and drug addiction are much more common than in the rest of the city; or where health and education services are not efficiently and effectively delivered.

This view says that a high level of personal affluence (owning luxuries like cars, television, expensive houses, good job) and an abundant consumer society (displays of goods like jewellery, television sets, radios, cars) tempt the people who do not have those things to steal or commit a crime. The seventeenth-century, British thinker John Locke believed that a newly born baby was like a blank piece of paper and its character was formed by the experiences it went through.

Second, the laws of society create criminals. A crime is committed when a law is broken. This view argues that the action is only illegal when it is written into the law. Changes in the law could mean that what was previously a criminal act becomes legal, or what was a legal activity becomes a crime. This view says that laws create criminals. An action is said to be illegal only when it is legislated upon, but when there are no laws about it then that action is legal.

Punishment

Society believes it must be protected from wrongdoers so a system of punishment has developed. People have different ideas on why/how lawbreakers should be punished but here are some of them:

- Punishment as a **deterrent**. For example, ‘We’ll punish A for the harm s/he did to B, so that C and D will be frightened to do the wrong thing’. Punishing criminals will stop them as well as others from doing the same wrong thing.
- Punishment for **revenge [retribution]**. (*A should be made to suffer for the harm s/he did to B*). “You have hurt me, so you should be hurt in the same way.”
- Punishment as a **cure [rehabilitation]**. (*We’ll work with A so that s/he’ll be a better person and not break the law again*). Some attempt should be made to reform criminals so that they will see that they have done wrong and may have to live without breaking the law.
- Punishment for **restitution**. (*A should pay compensation for what s/he did to B*). Make criminals pay for the damage they have caused to their victims.
- Punishment to **protect the community [prevention]**. (*A won’t get the chance to do anything else wrong – we’ll lock her/him away*). Imprison criminals so they do not indulge in further wrongdoing (usually by removing them from society for a time, but also conceivably by some more drastic method).

Types of punishments

Fines

Fines are common for minor offences, particularly those involving traffic offences. If you are fined, the magistrate or judge gives you a reasonable time in which to pay.

Bonds

A 'bond' is a written promise. Young people and first offenders are often given a good behaviour bond for a period of time. In most cases, the offender has to agree to pay some money. If the bond is broken, the offender is tried for the original offence as well as the new one.

Community service

This can be ordered for a 16-year-old who has committed a serious offence. This person has to do unpaid work for the community for between 40 and 120 hours.

Disqualification

One can be disqualified from driving even if s/he does not hold a licence.

Probation

Instead of going to jail, the offender is placed under the control of a probation officer who may be a pastor, a welfare officer, a councillor, or a recognised and respected person in the community. The probation officer is to 'advise, befriend and assist' the offender. The offender has to follow conditions laid down by the probation officer. This includes regular meetings with the probation officer and may include visits to a pastor, a psychiatrist or a doctor. The officer may prevent the person on probation from associating with certain people.

Youth training centre

These centres attempt to help young offenders to live in society instead of going to jail. The offender must be under the age of twenty-one when convicted. The idea is to keep young offenders away from hardened criminals.

Most offences committed by young people involve the illegal use of motorcars, stealing and breaking and entry. Young offenders under the age of 16 years can be treated by the courts in a number of ways.

- The offender may be sent to a juvenile detention centre
- The offender may be put on probation or on a good behaviour bond
- Adjournment. In the Children's Court - the court may put off sentencing the juvenile for a period of up to one year. If the juvenile has not done anything wrong in that period, the case is dismissed without a penalty.

Imprisonment

Prisoners are locked up securely for a period of time. The person's freedom is taken away. The worst type of imprisonment is solitary confinement. Here, the prisoner is locked away from any human contact. This is reserved for the more difficult prisoners. For those who have been jailed for lesser offences or for those prisoners who have shown good behaviour, there are places where the security is less strict and the prisoners can work in the outdoors.

Parole

For prisoners who show good behaviour and attempt to improve their ways there is a system of early release from prison called 'parole'. Prisoners are released before their term of imprisonment is up. A person on parole has to report to a parole officer who assists the offender to make the change from prison to society.

Capital punishment

This occurs when a criminal is put to death for a crime. This can be done by hanging, the electric chair, the guillotine, a firing squad, a gas chamber or by an injection.

Other sanctions

Other penalties that may be ordered by the court include:

- Forfeiture and destruction; for example, seizure and destruction of obscene publications, drugs, firearms, gaming instruments
- Disqualification, cancellation or suspension of licences held under various Acts, for example, driving licences
- Detention of mentally ill or alcoholic and drug dependent persons in hospitals and special centres. The latter allows for specialised treatment and care which may not be as readily available in prisons.



Before commencing these activities, provide newspapers and other resources for students to utilise.

Some students may have personal experience with this issue. Remind students to respect the views of their peers during group and class discussions.

**4.8 Activity 3**

Identify how many of the punishments listed above apply in PNG.

Use newspapers to find examples of crimes committed and the punishments applied.

Does the knowledge that if you murder someone you will receive the death penalty stop would-be-murders from killing others?

Identify problems likely to be experienced in the trial of the four men charged with sorcery killings

4 charged with sorcery killings

Four Chimbu men have been charged with wilful murder as police step up efforts to clamp down on sorcery or witchcraft-related killings in the province.

"They have been charged with first degree murder. They have to prove in court that their victims were in fact sorcerers or witches ... otherwise they are staring at long prison terms," provincial police commander Superintendent Simon Kauba said from Kundiawa yesterday. Mr Kauba conceded that it would be difficult for anyone to prove allegations of sorcery in court, but he said the tough measure had to be taken to prevent the torture and killing of innocent people.

"There have been many such killings lately and we have to clamp down on it, before it gets out of control. 'We now have a situation where every death is blamed on sorcery. This is dangerous, as we have seen already in Chirnbu,'" Supt Kauba said. In the case of the four men, three were arrested and charged in relation to the torture and murder of an elderly woman in Chuave early this month. Mr Kauba had reported that the woman was attacked with axes and shot in the head with a gun ...

The National, 30 August 2001

Prisons: holiday camps or dungeons?

The most common form of punishment persons found guilty of serious crimes in our society today is imprisonment. An offender's freedom is restricted by sending him/her to jail.

However, this has not always been the case. Up until the eighteenth century the most common punishments were flogging (beating, whipping), the loss of a hand or ear, or even death. The modern prison system began to develop when the death penalty was abolished.

People have different views as to why offenders have to be sent to prison. Generally, the prison is a place to which offenders are sent to serve certain periods of time under a stern and exact discipline as a punishment and a warning to others, as well as for the protection of society.

Some of the aims of the system of prisons have been questioned because some people think that the whole concept of prisons as an effective way to deal with crime has failed. The majority of the people leaving the prisons are not so frightened by their ordeal that they stop committing more crimes.

In fact, it is highly likely that some of these people would go back into prison quite soon after their release from prison. Therefore, in recent times the emphasis has moved towards trying to reform the prison system where the prisoners would be *rehabilitated*. People who are in favour of this view say that criminals should be given the opportunity to rehabilitate themselves so that they can become law-abiding citizens after serving their sentence.

Rehabilitation

Case Study: John, aged 25

John has been in and out of prison all his adult life. Currently, he is serving four years for burglary.

"I know that what I do is wrong, but it's really difficult. I've got a wife and kids. Every time I get out I swear I'm not going to go back. I've tried to go straight, but no-one wants to employ an ex-criminal. All I know is house breaking. The bills mount up and so I end up doing another burglary. I was caught red-handed this time. Someone saw me forcing the window. The police were waiting for me when I came out. And so I'm back in here again.

The last time I was in, one of the warders persuaded me to go along to some education classes. I went along a few times, but the other prisoners and warders laughed at me, so I stopped.

I know what I did was wrong. I've got to pay the price. I don't see why I should be treated like an animal, though. I share a cell with three other blokes. We have to take it in turns to get dressed as there's no room for all of us to stand up. Some of the warders are as bad as the inmates. They taunt you and are always on the look-out for you to step slightly out of line.

I try and keep my nose clean, but it's hard. When I'm out, I shall try and go straight again, but what have I got to offer?"

Courts view alternatives

The judiciary is looking at alternatives to the prison system of rehabilitating offenders. It wants to introduce other dispute resolution programs into the court system as the alternative punitive measures. Already the judiciary has established a committee to review the National Court rules and possibly the District Courts Act to make it mandatory for the courts to refer parties to an Alternative Dispute Resolution forum if the court thinks that the dispute is suitable for ADR.

There is a PNG Commercial Dispute Centre that provides an avenue for parties to resolve their differences outside of the courts. ADR has also been introduced as a subject at the University of PNG Law School and will also be taught this year at the Legal Training Institute. Chief Justice Sir Arnold challenged the judges and the magistrates to design appropriate alternative dispute resolution programs which could be adopted into the court system.

Post-Courier, 30 April 2001

4.8 Activity 4

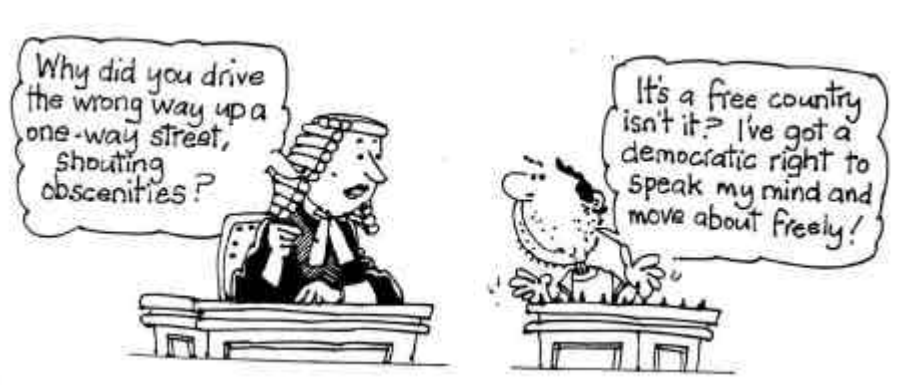
Do you think it is likely that John will offend again? Why or why not?

Find out more about Alternative Dispute Resolution. Ask your local magistrate what it means and how it will be used.

Justice

Protection versus freedom

In a democratic society, people enjoy a lot of freedom. But what does 'freedom' really mean? Does it mean you have all the rights and freedom to do whatever you like, in any way as you like?



If society gives too many rights and freedoms to people, they may misuse their freedoms and may harm themselves or other members of the society. Today, many young people consume a lot of alcohol and other dangerous drugs, such as cigarettes, marijuana, cocaine. Should the government put more controls on these drugs to protect the individual?

There are many more questions like this:

4.8 Activity 5

Divide into seven teams. Select one of the following questions and list the points for and against such a law.

- *Should the government force you to wear a seat belt when driving a car?*
- *Should you be forced to wear a helmet when riding a motorbike?*
- *Should the government stop you from doing your own electrical wiring in your house?*

- *Should the government put more controls on painkiller drugs to protect people?*
- *Should there be censorship of film, radio, television, the press, literature?*
- *Should the government erect boom-gates at borders to check vehicles eg; border of Simbu province and Western Highlands province?*
- *Should the government limit or stop people's right to work by making laws which says that you must have a certificate or a license?*

In response to the growing complexity of our twenty-first century society, the role of government has been greatly expanded to make regulations affecting many of the vital activities of our lives. The necessity for this development is widely acknowledged – our society needs laws and regulations that set standards in matters like the construction of buildings, the quantity and quality of education for our children, the amount of electricity in domestic homes, and the purity of the food we eat, to name only a few. *However, there is the danger that those laws and regulations will ultimately so control our lives that our freedoms and rights will be drastically diminished.*

What specific legal controls on such possible restrictions of freedoms exist?

Firstly- our legal system guarantees as well as protects individual's rights by implication. Take, for example, freedom of speech. What our law does is define limits beyond which we *cannot* exercise that right without incurring legal penalties. Those limits lie where others' rights or the interests of the whole society are harmed, as set out, for example, in our laws on 'defamation'. However, within those limits we are basically free – what is not declared illegal remains legal and it is our right to do it.

Secondly, in some sections of the Constitution an assortment of rights are guaranteed. For example it is illegal to pass laws restricting or favouring any religion; fair compensation must be given to people whose property is resumed; people have the right to protect their property; people have the freedom of choice of employment; and there must be freedom of business and trade between individuals or groups within Papua New Guinea or overseas. The right to vote and the right to a fair trial are also given some protection.

Thirdly - the Supreme Court can declare the action of the National government in passing certain laws to be constitutionally invalid if it is *ultra vires* – outside the scope of the power granted by the constitution.

Fourthly - Papua New Guinea has signed a number of treaties concerned with guaranteeing human rights in various areas and set up the Ombudsman Commission to investigate complaints and enforce laws forbidding discrimination based, for example, on sex or race.

Fifthly - it may be possible to apply for court review of administrative decision-making. This is normally done through a Supreme Court writ, and the remedies sought may include, for example, a declaration that an act exceeded the allowed power, an injunction forbidding

certain action to be taken, or an order that proper procedure be followed in the making of the decision, or that the complainant be allowed 'natural justice'.

The United Nations "*Universal Declaration of Human Rights*" proclaims that all peoples are born free and equal, and that they are entitled to the rights it sets out, including, for example, the 'right not to be subjected to arbitrary interference with privacy, family, home or communication'. In Papua New Guinea, the Human Rights Ordinance of 1971, section 42, subsection 1, protects and gives citizens 'the right to personal liberty'.

A government make laws on these sorts of things to 'protect' the individual. Although the individual is protected to some degree by governments from poverty, illness and danger, sometimes people need to be protected from the governments and institutions themselves. Sometimes the authorities threaten the rights of the individual. Therefore, in the United States, the constitution includes a Bill of Rights. In Papua New Guinea, the Human Rights Ordinance of 1971 which contains rights and freedoms is part of the constitution.

Victims' rights

When you look at the media, you will find a lot of reports about crime. The radio, newspapers and television are all full of crime stories. In almost all cases of reported crime, much of the publicity and coverage is about the crime itself and the offenders. There is very little reported about the victims of crime and, in fact, they are soon forgotten. Large amounts of money are spent every year on the police force that catch criminals, the courts that judge and sentence them, and the prisons that carry out the sentences.

This young person is recovering in hospital – the victim of a vicious attack. The physical wounds will heal quickly, but the victim will have to live with the mental trauma maybe for the rest of his life.



However, what happens to the victims of crime? It is argued that victims of crime are often forgotten as the authorities concentrate their time, efforts and resources (money) on catching the criminals. Without question, the victim is hurt by the crime itself and the effect can last a long time. The physical and, especially mental suffering of the victim cannot be measured.

Even though the clock cannot be turned back to wipe away the crime, the victim can be compensated. Consider the following:

- The criminal, rather than paying his/her debt to the victim, pays his/her 'debt to society' when in jail. The next suitable step must be to give the victim the right to collect from society as a whole.

- The state has failed to protect the victim, from whom it takes taxes for law enforcement and corrections. Under this version of the ‘rights’ argument’ the victim has been denied the protection due him/her and society must take the responsibility to help, restore, compensate and amend the hurt, the loss, the anger, the fear and the trauma the victim has gone through.

Because of this, it is argued that the victim of a crime has a right to compensation. Although there are compensation programmes in which the state pays, there are limitations on these benefits. Because of the limitations, the vast majority of crime victims are not covered by the programmes. For example; the victim of crime may receive no compensation for the loss of or damage to property, for injuries received as a result of violations of traffic laws, or pain and suffering. The victim deemed partly responsible for the crime receives at most a reduced compensation, and the victim injured by a close relative usually receives nothing.

4.8 Activity 6

Discuss the reasons for punishing criminals. Are all of the reasons given in this module relevant to Papua New Guinea?

Debate the topic: “Capital Punishment is good?”

Organise a visit to the local courthouse, or a local jail.

Invite a guest speaker from the local courthouse, the welfare or the corrective institution.

Do you agree that society has a responsibility to look after victims of crime? Should the police and the courts have the responsibility for letting victims of crime know what has happened to the criminals in their case? Would information like this actually help victims get over the trauma of the crime they have suffered?

Consider the following cases about “freedom of expression” and complete the exercise. Has an offence been committed in each of the following cases? If so, what defences (if any) are available to D?

- *D writes and publishes a book titled ‘One Thousand Ways of Killing Your Mother-in-Law’.*
- *D, a photographer, holds an exhibition of photographs of nude people (in rather unusual poses) titled ‘Like the Day They were Born’.*
- *D, a supporter of the Guria Rugby League Team, vents displeasure at a decision against his team by calling the referee ‘A filthy black dog’.*

Read the articles below and study the cartoon. Are there any times the law should be lenient?

White collar crims must face law

THE prospect of white collar criminals escaping the law because of lack of resources within law enforcement bodies is unacceptable. If that were to happen, the majority of the grassroots people of Papua New Guinea will completely lose confidence in the nation's legal and judicial system. It will confirm the view that there are two sets of laws operating in this country - one for the rich and powerful and the other for the poor. Everyday small people are arrested, charged, taken to court and convicted of petty crimes while the elite and those in high places who have committed far more serious crimes remain free - untouched by the law.

The situation regarding the stealing of millions of kina in contributors' funds from the National Provident Fund is a case in point. While the NPF management should be commended for instituting civil lawsuits against some of the persons responsible, criminal proceedings remain yet to be commenced. Now contributors learn through Acting Police Commissioner Joseph Kupo that lack of resources may prevent this from happening.

The government's efforts to clean up the massive corruption and misappropriation of funds in NIPF will not be complete without the prosecution of the criminals involved. Corruption will continue to grow and completely destroy this country if people in high places know that they can still get away with stealing millions of kina from organisations such as NPF because police and other law enforcement bodies do not have the resources to prosecute them.

The consequences for the country could be serious as public confidence in the legal system will be eroded and leads to a complete breakdown in law and order - presently Papua New Guinea's most serious national problem. It is for this reason that we urge the police and key government bodies to work together to ensure that white collar criminals face the full force of the law for their crimes.

Post-Courier, Editorial, 15 August 2001

Laws must apply to everyone

Reference is made to the front page article in the Post-Courier of Tuesday, August 21, regarding MPs and guns. I am bitterly angered at learning of our thoughtless politicians making laws on the floor of Parliament and then breaking the law themselves.

It appears we have two sets of laws in PNG - one for the law makers (politicians) and the other for the common ordinary people. The politicians easily get away with committing the worst of criminal offences like misappropriating and misusing tens of thousands of kina of public money. This money belongs to the common and ordinary people.

On the contrary, a young 10 year old boy who is caught for pick-pocketing gets severely punished from the policeman physically man-handling him to the extreme of imprisonment for a couple of years. What an injustice!

Law enforcers - the police force and the courts - should be fair to all citizens irrespective of one's status in the country.

David Kawagle, Ongat-Nem, Wabag, Enga

Post-Courier, 24 August 2001

Topic 3: Facing the future

Social and technological changes and the law

As our society changes, as peoples' activities change, as people form new and different attitudes, the law also needs to be changed. This is because if the law does not change, then it may become a hindrance to progress, as it may not reflect the core values of our society. Today, at a time of massive social change, the laws of society are confronted with a whole array of questions as well as problems to which there are no easy answers.

The relationship between law and social change is clearly very complex. One should recognise that the law has its limitations in its ability to actually change behaviour and attitudes. Consider the following as examples:

- Laws could not stop gambling, drinking or smoking by prohibiting them – such laws would not be accepted by a significant percentage of the population, and therefore, it would be difficult to practically enforce it
- Some problems are by their very nature not able to be resolved simply by passing laws – for example, poverty and violence
- Furthermore, laws cannot be used to make people become more loving, caring and considerate

Technological change

The extremely rapid rate of technological change raises all sorts of issues. The widespread use of computers and their vast capacity to store and process information has opened up all sorts of possibilities but at the same time created problems too.

White-collar crime, much of it undetected, is undoubtedly on the increase. Serious questions are raised for our law making and enforcing agencies. Do the vast databanks of our governmental and private bureaucracies pose a threat to the individual's right to privacy? How can we protect citizens from such threats and prevent abuse of our medical, educational, banking and taxation schemes?

In the employment sector we have seen people being replaced by computers and automated mass production systems. Will the law be called upon to help as threatened workers demand that a "right to work" be recognised?

Technology has also expanded into new fields making it inevitably necessary to have greater legal regulation. For example, in-vitro fertilisation, surrogate parenthood and genetic engineering have raised unprecedented medical, moral and legal questions which our society will have to resolve. There is the issue of euthanasia – does a doctor's duty to a patient include a right to actively terminate the patient's life and, if so, in what circumstances and with what restrictions and safeguards?

Social change

Levels of family abandonment, illegitimacy, divorce, single adult (usually female-headed) families, teenage mothers, young mothers in the labour force, school dropouts, and the

percentage of children living in households below the poverty line, all increased during the 1960's, 1970's and 1980's. Currently, in Papua New Guinea, all these indicators are rapidly on the increase. All these indicators obviously point to a decreasing quantity of "parenting", growing family discord and disruption, and decreased adult supervision of youths.

These indicators of the extent of family disorganisation are strongly related to neighbourhood levels of crime. Furthermore, national trends in violent crimes are linked to factors like the changing proportions of families with only one adult at home and the ever increasing divorce rates.

There are a lot of other problems related to rapid social change. For instance, drug and alcohol abuse is rife in our society. Some people would argue that there should be a greater role for the law here, especially in imposing tougher penalties in areas like drink-driving. Others point to the failure of traditional enforcement methods to curb illegal drug use and this people often advocate "decriminalisation" – a move away from legal answers – for the so-called victimless crimes like possessing and using of illegal drugs, illegal gambling, pornography and prostitution.

The face of our society has dramatically changed. The family, while it is still the fundamental unit of our society, now takes various forms. Will marriage disappear as an institution? What are the rights of "homosexual marriages"? Will the law give greater protection to "de facto relationships" and "homosexual marriages"?

The spread of AIDS and other sexually transmitted diseases has posed questions for the law – questions of:

- The right to compensation of those who acquired AIDS through blood transfusion
- Imposing criminal sanctions against those who wilfully or recklessly infect others
- How to balance the needs of the AIDS sufferer to live and die with freedom and dignity against the need of other members of the community to be protected against the spread of the disease

4.8 Activity 7

Is there really such a thing as 'victimless crime'? Discuss.

Collect stories/examples of as many legal issues as you can and classify them as resulting from social or technological change

What would be the reasons for Papua New Guinea in trying to legalise prostitution?



Topic 4: Detection and prevention of crime

Crime is adapting just as much as legitimate activity as the world is undergoing a technological revolution. Criminals are using modern technology to their advantage. The advent of international terrorism and drug trafficking is a development which our traditional legal systems are poorly prepared for.

Law enforcement agencies also benefit from the technological revolution. The police are already experimenting with new computer-based techniques that make the identification of criminal easier. Fingerprinting, long used for identifying criminals, has been turned from a time-consuming task into a fifteen-minute search using a computer system called AFIS (Automated Fingerprint Identification System).



Identity card



DNA code



Automated Fingerprint Identification System

Genetic fingerprint (DNA)

In 1984, Professor Alec Jeffreys discovered a way of identifying people by looking at a thing called DNA, which is stored in the body's cells. These small segments of DNA are dotted about the chromosomes in a pattern so varied that no two people's are alike. They provide a "genetic fingerprint". This technique can be used to tell whether or not a suspect is guilty. This technique allows scientists to take blood samples or other body fluids found at the crime scene, and compare the genetic fingerprint of the criminal with that of likely suspects. It was first used in Leicester Crown Court, England, in 1986 to show that a 17-year-old accused of murder was actually innocent. He was set free, and the real murder of three young girls was later trapped using the same technique.

Computerised identity cards

While new information technology may help police track down criminals, some people argue that real advances in fighting crime will only come when everyone carries a computerised identity cards. This 'smart card' has a silicon chip that can store a great deal of information. Advocates argue that ethically, no innocent person has anything to fear from this system and it will greatly increase his or her own security within the community. It is not a civil right to conceal identity, still less to impersonate someone else. On the other hand, some people are strongly opposed to the idea of being required to carry any identity card – let alone one with such detailed information on it.

Problems and solutions

One of the major social issues that is dominant in Papua New Guinea is the problem of growing lawlessness, especially in the urban areas. Traditional social order began to break down during the colonial period when the Europeans imposed their own law. By imposing their law, they undermined the traditionally accepted systems of social control, i.e. decisions made by the elders of the village. After independence, villagers moved to the urban areas in search of employment and greater access to Western goods. As there was very often no employment for them, many turned to crime.

The police force is largely unable to deal effectively with the rapidly rising crime rate. When you look at the newspapers, the television or listen to the radio you will see a lot of stories about rape, break and enter, stealing, arm-hold-ups and even murder.

There is also a serious increase in white-collar crime, with politicians openly breaking the Leadership Code, and businessmen involved in illegal business activities. This criminal activity on the part of those who are supposed to provide examples of good conduct and give leadership to society further encourages lawlessness at the lower levels of the community at large.

Papua New Guinea is currently undergoing a lot of social changes; population is increasing very rapidly; the AIDS epidemic is spreading at an alarming rate; there is a very high rate of unemployment; the value of the kina is weak; crime rates are very high; corruption in high officer is rife, to mention a few. Because of the influence of technological changes which inevitably affect the laws of the nation, Papua New Guinea must make laws that reflect the real needs of the people. These laws must protect the citizens, but at the same time preserve the rights of the people.

4.8 Activity 8

Explain what you think the following statement means: “The use of prison should be minimized to reduce isolation from society and weaken the likelihood of crime”.

“Innocent until proven guilty? Or vice versa?” Describe the relationship between the police and the general public in Papua New Guinea.

Study the following cases. In your opinion, what sort of punishment would ‘fit the crime’? Give reasons for each suggestion.

- *A youth threatens a woman with a bush knife, and then takes her bilum.*
- *Angry voters of the losing candidate set fire to the provincial offices.*
- *A drunken driver ploughs into a parked vehicle. The child inside the parked car is killed instantly.*
- *An eighteen-year-old male has a sexual relationship with a fourteen-year-old girl.*

- *A student punches a teacher in anger.*
- *A youth beats up his girlfriend. She has a broken nose, a split lip, and two black eyes.*
- *A student demonstration outside the Australian Embassy gets out of hand. Stones are thrown and windows are broken. The crowd tries to break down the gate.*
- *A girl finds her sister's purse on the table. She takes K10 and spends it at the trade store with her friends.*

Enforcing the law in Papua New Guinea

i Listed below are the institutions and organizations associated with law and its enforcement in PNG. Information on these is available from a number of sources including high school textbooks. Students should be familiar with the nature and responsibilities of each. If they are not, use the list as the basis of a research or display assignment.

Department of Justice

National Court

Specialised courts

- Children's
- Coroners
- Disputed Returns
- Wardens

National Narcotics Control Board

Law Reform Commission

Traffic Branch

Supreme Court

District Court

Village court

Law Society

Royal PNG Constabulary

Correctional Institutional Services

Parole Board

Human Rights Commission

Criminal Investigation Division (CID)

4.8 Activity 9

Read the article by Tony Sigauru (1988) and the list of media headlines for two months in 2001. What has changed? Why?

Taking a hard look at crime	Media headlines
<p>No serious commentary on matters contemporary In Papua New Guinea society can avoid the pressing and depressing issue of an increase in crime...With regular monotony the media carries stories of robbery or rapes, murder or mayhem, break-ins into homes, break-outs from jails around the country.</p> <p>More than enough studies have been done on the cause of crime and the solutions required. In 1984 we had the Clifford Report. Before that there was the Morgan Report. We have heard of the 49 steps and the Minimum Penalties Laws. We saw the appointment of the Kerepia Task Force, witnessed the Lucas Awareness Campaign and experienced a curfew in the National capital. To what purpose? We might all ask...As soon as a bit of unpleasant news confronts us, we go into what is fast-becoming our national pastime in the public arena – diving for cover and passing the buck...</p> <p>The fundamental fact is that regardless of the measures to be adopted to combat law and order problems, for there to be any realistic chance of success there must be a determination and single-mindedness on the part of political leadership hitherto unseen in Papua new Guinea.</p> <p>Tony Siaguru, Times, 20 May 1988</p>	<p>Accountability urged Arrest those corrupt leaders Armed gang terrorising villagers 600 flee after gang attack Judge concerned at rise in robberies Hagen gangs ruling byways Top law man slams police investigators Review of law must have benefits: A-G Joint effort on crime Criminals target St John service Ombudsman – no one is above the law Crime a 'big disaster' Court view alternatives Leader referred to the Public Prosecutor Child killer in for life term Hardcore criminals escape Teacher shot dead by Grade 5 student in SHP Convicted man still on payroll Jails breeding ground fro criminals says PM Not enough evidence says magistrate Crime threat to airport safety Call to stop youth crime Cop shot by gang Police guilty of loot theft Chamber's call to curb corruption Corruption growing unchecked Man jailed on assault count Shots ring out on hill Two arrested on arson Illegal visa 'bought' TI says crooks should not be let off easily Crime still main obstacle to investment Lae and order starts at home White collar crims must face law Police attacked for preventing looting Archbishop condemns killing of priest Cheats of deceased estates cornered Police need to win back public trust Police complaints unit useless Laws must apply to everyone Bring leaders to justice We want honest leaders</p>

Examine list of headlines for 2 months. Classify them by the types of crime referred to. How many examples are there of justice or punishment?

Glossary

Attorney General	Principal legal adviser to the State, responsibility for laws relating to the legal profession
Auditor-General	Officer with the responsibility of auditing the accounts of government departments and other official bodies
Chief Magistrate	
Common law	Law based on custom, precedent and court judgements – gradually changes as new judgements follow trends in community attitudes
Community policing	
Compensation	The payment of money to make amends for loss or injury sustained through a criminal act
Coroner	Court of record, open inquiry to investigate events
Crime	An act that breaks the law
Defamation	
Democracy	A government that is run by the people of a country through elected representatives
Deterrent	The idea that punishment will stop people from engaging in criminal activities.
Euthanasia	Deliberate but painless killing of a person who has an incurable disease and is in great pain (mercy killing)
Freedom	
Genetic Engineering	
Judiciary	Judges as a group in their official capacity
Justice	The quality of being morally right and fair
Juvenile	A young person age less than 17
Law	The rules by which a country or community is governed
Legal aid	Provision of legal services to people who cannot afford the full costs
Ombudsman Commission	Body responsible for investigating complaints against the government of Public Service
Public Prosecutor	Controls prosecutions and brings proceedings under the Leadership Code for misconduct in office
Public Solicitor	Provides legal advice and assistance to persons in need
Punishment	
Rehabilitate	To convert a criminal or anti-social person into a citizen ready to be allowed to play a full part in society without restriction.

Restitution	
Retribution	The payment of a crime with a punishment
Statute	A formally defined and recorded law
Statute law	Written law
Sub judice	A legal term meaning that the matter under consideration is the subject of court proceedings. Public comment on such cases is forbidden
Terrorism	The indiscriminate use of violence for political ends
Trauma	
Victim	A person who is injured and/or suffers from a criminal act

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