PEACE Foundation Melanesia

COMMUNITY JUSTICE

- People Skills
- Win Win Mediation
- Restorative Justice

PEOPLE AND COMMUNITY EMPOWERMENT
PEACE FOUNDATION MELANESIA

1

PAPUA NEW GUINEA

- Population 6 million
- About the same size as new Zealand
- 800 languages
- Largest population is found in the highlands

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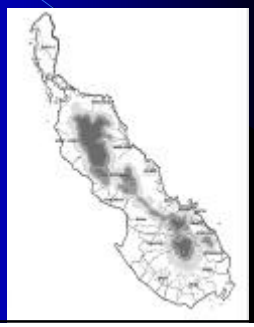
BOUGAINVILLE

- Population about 164,000
- Largest population in the south.
- Mountain regions are very cold.



MT. BALBI

4

UNITS OF GOVERNMENT IN BOUGAINVILLE

The Hamlet -- the basic unit of government.

Roughly eight to ten families.

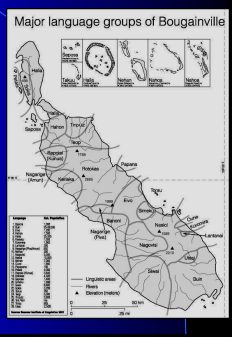
5 to 20 hamlets made up a village.

Toitoi Hamlet Siwai

5

BEFORE COLONIAL OCCUPATION

- Clans were units of government within the language groups.
- There was little sense of unity even within the language groups.
- No sense of national unity.



THE BOUGAINVILLE CRISIS

Civil War

7

THE CIVIL WAR IN BOUGAINVILLE

1. **The BRA were a mixed group of irregulars who opposed the mine by force.**

2. **They were joined by some dedicated civilians and hard core criminals.**

3. **The two groups drove out the army and police and then……**

4. **The raskol element turned on the civilian population because they had guns and power.**

8

BRA COMMANDER

- **The BRA obtained guns by taking them from the army and making deals with friends in their resistance.**

9

THE CIVIL WAR IN BOUGAINVILLE

5. **The resistance grew up out of the friends and relatives of the people killed by the BRA.**

6. **The resistance called back the PNGDF and fought alongside them to protect the population against criminal BRA.**

7. **The resistance were armed by the PNGDF and did most of the fighting.**

10

THE CIVIL WAR IN BOUGAINVILLE

8. **Care centres were set up to separate BRA from civilians. A failed policy.**

9 **Home guard were set up by many chiefs to protect their villages.**

10 **In the fighting all four groups PNGDF, BRA resistance and home guard committed many atrocities against civilians and their "enemies."**

11

CIVIL WAR IN BOUGAINVILLE

- Civil war continued from 1990 to 2000
- Estimated 15,000 people died.
- All public buildings in Arawa trashed
- Capital moved to Buka

12

THE WESTERN CONCEPT OF JUSTICE

13

WESTERN CONCEPT OF JUSTICE

1. Court is an adversarial process.
2. Both victim and offender are represented by lawyers.
3. The priority is finding innocence and guilt.

14

WESTERN JUSTICE

The western law concentrates on:

- Going into the past to find guilt or innocence.
- Punishing the guilty with fines and/or jail sentences. (With a hope that this will produce reform).

15

WESTERN CONCEPT OF JUSTICE

- The duty of the lawyer is to win the case for his client.
- Victim and offender have only a passive part in the process.
- The court works on the letter of the law – not on moral behaviour.

16

Melanesian Model Of Crime And Justice

17

THE MELANESIAN WAY

Based on Community Relationships .

- Justice is mending a broken or damaged relationship in a way that satisfies the survival needs of the community.
- Talk the matter through for weeks if necessary
- The survival and good and community comes first.

18

THE MELANESIAN WAY

- Melanesians developed a form of justice based on a ritual shaming and punishment of the offender.
- Restitution to the victim.
- Restoration of the victim and offender to the community.

19

INFLUENCES ON CUSTOM LAW

Survival was the bottom line governing all decisions in a village community in a hostile environment.

1. The ones who contributed most for survival received favoured treatment.
2. Those who contributed less received less and
3. Those who threatened survival could be executed

20

WESTERN LAW UNSUITABLE TO MELANESIAN CUSTOM

- No apology.
- No reconciliation.
- Offender not returned to the community.
- Justice was based on the law not on moral behaviour

21

THE CIVIL WAR IN BOUGAINVILLE

A study in Peace making Reconciliation and treatment of crime.

22

SURRENDER OF GUNS

23

RECONCILIATION OF WARRING GROUPS IN BOUGAINVILLE

A return to the past process

24

THREE TRADITIONAL PROCESSES FOR DEALING WITH CRISIS RELATED CRIME

1. Reconciliation between groups of fighters and the community.
1. Custom Law (Restorative justice) for dealing with individuals who have committed a crime within the community.
2. Official execution for unrepentant re-offenders.

25

TRADITIONAL PROCESS FOR RECONCILIATION IN MELANESIA

1 Reconciliation uses a win-win mediation process.

2 In the first step there is no attempt to identify the offenders.

3 Mediator shuttles back and forth to obtain agreement that both sides want to end fighting. (Months).

26

TRADITIONAL PROCESS FOR RECONCILIATION IN MELANESIA

4 Mediator shuttles back and forth to decide on the details of the reconciliation package –place, gifts, speakers, who carries out the ceremony, gain a balance of all arrangements (more months).

5 Gathering of gifts and all stake holders from all over PNG to give credibility to the ceremony.

27

TRADITIONAL PROCESS FOR RECONCILIATION IN MELANESIA

6 The two groups meet for the ceremony which is conducted by the chiefs. It is essential that all parties give due respect and are satisfied with the process and their part in the ceremony.

7 Speeches, exchange of gifts, shaking of hands outpouring of grief and relief by all present.

28

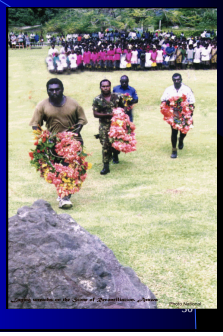
TRADITIONAL PROCESS FOR RECONCILIATION IN MELANESIA

- This is just the first step. The step which declares a cease fire - no more fighting.
- Further ceremonies continue for years to cement the first agreement.
- At some such ceremony the offenders will confess their killing to the families of the victims.
- The reconciliation ceremonies may continue for many years.

29

RECONCILIATION CEREMONY

- Reconciliation requires a public ceremony.
- Complete involvement by by both sides
- Genuine commitment



RECONCILIATION AT KUNUA

Note
- The offenders
- The victims
- The coffin
- The pig
- The food
- The witnesses
- The chiefs

31

CUSTOM LAW

A return to the past process

32

CRIME BEFORE COLONIAL TIMES

What to do with a murderer?

1. Ignore the crime – damaged relations and payback on the part of the victim.
2. Kill him- may lead to feud and payback.
3. Exile him - he may join up with an enemy state.
3. Beat him – There is public shame which may lead to bad relations within the hamlet or village.

33

CUSTOM LAW AND RESTORATIVE JUSTICE

- In the past custom law was a form of restorative justice.
- Custom law in Melanesia aimed at mending the damaged relationships
- Punishment was also used in most places

34

RETURN TO CUSTOM LAW IN BOUGAINVILLE

- During the crisis the village courts disappeared. (some magistrates were shot)
- Local mediators came to the fore to deal with conflicts

35

RETURN TO CUSTOM LAW IN BOUGAINVILLE

- PEACE Foundation worked with local mediators to formalize the win-win mediation and restorative justice processes.
- Mediators used these processes for every kind of conflict

36

COMMUNITY JUSTICE

- Community Justice (not custom law) to refer to
- Win win mediation.
- Restorative Justice
- Custom law

37

CUSTOM LAW

- Custom law (restorative justice) is best when it is kept in the hands of the community who treat it as their own affair.

38

THE IDEALIZED MELANESIAN PROCESS OF JUSTICE

1. Shaming and ritual punishment of the offender (the victim, family and community all speak about what has been done and its effect on them.)
2. Apology by offender.
3. Restitution to the victim by the offender.
4. Forgiveness by victim.

39

THE IDEALIZED MELANESIAN PROCESS OF JUSTICE

5. Reconciliation between victim, offender and the community.
6. Restoration of the offender to the life of the community.
7. Forgiveness ceremony. For serious matters there is usually a public meal and a shake hands ceremony.

40

THE IDEALIZED MELANESIAN PROCESS OF JUSTICE

- The extended family must take responsibility for the offender.
- Restitution
- Future good behaviour
- Supervision if he is subject to trauma

41

COMPENSATION

- Restitution is paying back an equivalent to the damage done.
- There is no real reconciliation without restitution.
- Restitution in kind is a traditional form of settlement --goods (pigs, shell money, food etc).

42

COMPENSATION

- Compensation has grown up in the highlands where power brokers use it to gain status. It is now a way of getting money. It is not a traditional process.
- With compensation there is no reconciliation and hence no restorative justice.

43