



**PAPUA NEW GUINEA
COUNTRY REPORT**

2009

**PACIFIC ISLANDS LAW OFFICERS'
NETWORK (PILON)**

PREPARED BY THE DEPARTMENT OF JUSTICE & ATTORNEY GENERAL

PRELIMINARY 4

OVERVIEW 4

LAW OFFICES 7

PUBLIC SOLICITOR..... 7

Criminal Law Division..... 7

Juvenile Justice, Magistrates Courts and Grade 5 Matters 8

Civil Law Division.....10

Legal Aid Desks and Public Awareness Section.....11

Human Rights Section.....11

STATE LEGAL SERVICES12

STATE SOLICITOR’S OFFICE 12

LEGAL POLICY & GOVERNANCE BRANCH 13

POLICY PLANNING & MONITORING BRANCH 14

CONSTITUTIONAL LAW REFORM COMMISSION..... 17

Legislative Review.....17

Major Policy and Legislative Reform.....19

JUSTICE ADMINISTRATION.....20

COMMUNITY BASED CORRECTIONS 20

THE PUBLIC TRUSTEE OF PAPUA NEW GUINEA..... 23

VILLAGE COURTS..... 26

MAJOR LEGISLATIVE DEVELOPMENTS29

PNG’S NATIONAL ANTI-CORRUPTION ALLIANCE..... 29

Rationale30

Test Case - Southern Highlands Province32

Summary.....33

MEMBERSHIP OF THE ASIA PACIFIC GROUP ON MONEY LAUNDERING. 34

UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC) 35

Anti-corruption authority.....36

Whistleblower legislation.....37

Analysis of UNCAC.....38

Dissemination of information on UNCAC.....39

EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY..... 40

HIV & AIDS POLICY 41

ADDENDUM.....43

OFFICE OF THE PUBLIC PROSECUTOR 43

Administrative Autonomy43

Family and Sexual Violence.....43

People Smuggling and Trafficking.....45

Sorcery.....45

Identification Evidence.....46

Leadership Code.....46

Death Penalty.....47

Proceeds of Crime and International Crime Cooperation Unit.....47

VILLAGE COURT SECRETARIAT 49

Introduction.....49
Overview.....50
Land Mediation System.....50
Village Courts and Land Mediation Secretariat51
Other functions to be retained by the National Government are:.....51
Major Issues and Future Directions.....52
Summary of Village Courts per province and number of Village Court Officials per Village Courts in a Province with access ratio population per Court53
Summary of Permanent Land Mediators and Ad-Hoc Mediators in Divisions and Areas.....54
Women, children and young people’s access to community justice – Village Courts56
Success of Village Courts.....56
Conclusion.....57

PRELIMINARY

OVERVIEW

Since Papua New Guinea's last Country Report in 2005, the most significant activity impacting on the Law and Justice Sector was the launch in 2007 of a White Paper on Law and Justice in Papua New Guinea.

That publication identifies a vision and sets goals, strategies and priorities to guide and integrate the development of a more just, safe and secure society in Papua New Guinea. The White Paper sets the road map for the effective delivery of law and justice services in the country and is the focal point of government policy for the law and justice sector.

The White Paper is designed to bring consistency and coherence to the implementation of public policy expectations, beyond the life of any particular Parliament or minister or government. It is intended to stabilize policy and provide a clear sense of direction and unity for the public service.

There is now widespread recognition that poor access to justice, inadequate coordination across the law and justice sector, violence, corruption, lack of security, lack of working legal systems, poor administration of justice and other related sector issues have a direct impact on development. Good governance, law and order and an enabling environment for inclusive and equitable growth contribute to the reduction of poverty and increasing economic and social development. Implementation of the White Paper will be a key step in achieving this goal.

Law and justice is one of the governments seven development priorities aimed collectively at giving strong attention to growth. The key elements of the Government's law and justice reform agenda put forward in the White Paper

support the Government's central framework for development; the Medium Term Development Strategy 2005-2010.

The review and reform of the Law and Justice Sector is also guided by the recently launched PNG Vision 2050. The Vision was launched by the Prime Minister, the Rt. Hon. Grand Chief Sir Michael T Somare GCL GCMG CH CF KSt.J who said that the Vision is the most significant instrument since the adoption of our Constitution and the Eight-Point Plan in 1975, towards the improvement of our performance as a nation.

Central to the reform of the law and justice sector is enhancing the role of the Department of Justice and Attorney General. That Department and its offices (which include the Public Solicitor and the Office of the Public Prosecutor) will be strengthened to drive the law and justice policy agenda for the sector. Previously the absence of a clear vision and sense of direction has contributed to an unstable policy direction. The Department will seek to build its capacity to carry out its core tasks. The White Paper also supports the creation of a Government Law Office which would include the State Solicitor and Solicitor General.

Unfortunately, the Department continues to face major constraints that impact on its ability to deliver.

Another significant issue for the law and justice sector has been the replacement of the PNG-Australia Enhanced Cooperation Program with the Strongim Gavman Program. This followed an independent joint review of the ECP which was completed in March 2008. The review recommended a number of changes to the ECP including a change in the name of the program.

In April 2008, Australian and PNG Ministers met in PNG for the 18th Papua New Guinea-Australia Ministerial Forum and agreed to rename the program: the Strongim Gavman Program. The objective of the Strongim Gavman Program is

for PNG and Australia to work together to strengthen PNG's financial and economic management, public sector reform, governance including a broad anti-corruption focus, law and justice and border security.

The Program is currently providing assistance to the PNG Government in these areas through the placement of Australians in in-line and advisory roles within PNG Government agencies and departments.

In the law and justice sector Australian officials are working to build the capacity of PNG in areas of legal policy, prosecutions, litigation and corrections.

In addition, the previously labelled Law and Justice Sector Program has been re-titled and the Papua New Guinea Australia Law and Justice Partnership. The Partnership builds on the previous success of the Law and Justice Sector Program and strives to increase ownership of sector reform by key agencies. Approximately 60 advisers provide long term capacity building support for law and justice agencies in a range of corporate functions, including: corporate planning and organizational development; finance and budgets; information technology and information management; financial audits; human resources and, performance monitoring.

The PALJP approach is grounded in the principles of integration and alignment with PNG's law and justice sector policy framework, systems and processes. Papua New Guinean ownership and leadership of the reform agenda is essential to success. The focus is on integration through sectoral mechanisms and Government of Papua New Guinean systems.

Finally, at the 18th Papua New Guinea–Australia Ministerial Forum Papua New Guinea (PNG) and Australia also endorsed a renewed policing partnership between the Royal Papua New Guinea Constabulary (RPNGC) and the Australian Federal Police (AFP) and the.

The PNG–Australia Policing Partnership (PNG–APP) involves, in the first instance, the deployment of a small team of advisers to operate in key areas selected by the RPNGC Commissioner of Police. At the request of the PNG Government the Australian Federal Police International Deployment Group returned to PNG in September 2008 to work with the RPNGC to build the foundations needed for long-term safety and security in that country. A Memorandum of Understanding provides the framework for a police-to-police development program in two stages. Stage I consists of extensive scoping, which will provide the information needed to design the wide-ranging program of assistance that will be implemented in Stage II.

LAW OFFICES

PUBLIC SOLICITOR

Criminal Law Division

The Constitution guarantees that any person charged with a serious criminal offence has the right to legal representation. In circumstances where a person cannot afford a private lawyer, or prefers to use the expertise of the office, then the Office of the Public Solicitor provides such representation.

Over the years, an increase in the number of cases and the number of crimes circuits, combined with a shortage of lawyers within the office, has meant that attending in criminal cases has been the major focus of the office.

There has been a significant increase in the number of private legal firms undertaking criminal work. This has resulted in a decrease in some areas in the demand for lawyers to be conducting exclusively criminal law work and will ensure that greater activity can be maintained in other areas of legal assistance.

Including lawyers who are also responsible for Appeals, Juvenile Justice and Magistrate Courts, there are now ten lawyers in the Criminal Law Division of the Office in Port Moresby alone. These lawyers attend to the Waigani and regional circuits and assist in branch circuits when required. In the branch offices the number of criminal lawyers varies according to the size of the office.

The low number of criminal appeals conducted by the offices continues to be a matter of concern. A reluctance on the part of young lawyers, due to the fact that many of the new lawyers recruited in 2008 and some about the time of this report are young in experience to question senior judges, and the slowness of lodging circuit reports, are contributing factors. Often recommendations for appeal are not received or applications considered until well after the time for lodging such appeals has expired. It is hoped that with the exposure in training through CLE and supervision, this will improve in the not too distant future.

Juvenile Justice, Magistrates Courts and Grade 5 Matters

In particular the Public Solicitor has identified the areas of Juvenile Justice, Magistrates Courts and Grade 5 matters as requiring special attention and has established a dedicated section within the Criminal Law Division for this purpose.

The need to try to keep young people out of the adopted criminal justice system, and in particular the penal system, is well recognized. Alternatives to imprisonment for young offenders are explored through the use of restorative justice practices.

It is likely that legislative amendment will mean that a larger number of criminal matters will be able to be heard in the Magistrate Grade 5 Courts. In recent years the office has been unable to attend to these courts, because of a lack of manpower and funding for court circuits.

Furthermore, the creation of this unit will enable the office to more readily attend to the needs of women, particularly in areas of domestic violence, as lawyers will be regularly attending at the Magistrates Courts.

The early intervention by offices lawyers in criminal cases will also lead to an early identification of pleas of guilty and a reduction in the delays taken to bring matters to trial.

In 2008, four pilot regions were identified: Port Moresby, Lae, Madang, and Goroka. Staffs have been recruited and a number of planning sessions have taken place with the Chief Magistrate, Community Based Correction Officers, senior Court Registry Officers, UNICEF and other stakeholders.

Funding was obtained from the Law and Justice Sector Program to enable what was to be a 2009 activity to commence in 2008.

Two significant meetings, combining training and planning, took place with lawyers and other interested groups in Lae and Madang. These were attended by magistrates, lawyers, NGOs, CBC, Correctional Service, Police, Public Prosecutors and Church Groups. A thorough understanding of the role of the section was obtained.

Although not due to officially commence operation until 2009, the section lawyers and officers in the pilot centres are already attending at police cells and juvenile centres on a regular basis. Representation in Juvenile Courts has commenced. It is too early in the operation of this initiative to have meaningful statistical data available, although this is now being collected.

The development of this section is likely to be on eof the most significant steps in the office's endeavours to increase accessibility to legal services to the people of

PNG and to reduce the delay in bringing about fair and just resolution to criminal matters.

Civil Law Division

The increase focus on the Civil Law Division is one of the most profound changes that occurred in the office in 2008, following the 2007 restructure.

Over recent times, civil lawyers have frequently been called upon to undertake criminal circuits, owing to a lack of manpower in that division. That led to a lack of continuity and shortage of resources to properly pursue civil claims.

The recruitment of new lawyers to the division has meant that five additional lawyers (4 females) are now at the head office.

Additional lawyers have also been added to a number of branch offices. In the past, all civil law matters were being dealt with by lawyers in the head office. The additional lawyers in Madang, Lae, Kokopo, and Goroka have meant that an increasing number of civil claims can be dealt with at branch level. This of course increases the client's access to information and facilitates an efficient disposition of cases. Certainly, the division has experienced an uplift in morale with the enthusiasm shown by newly recruited lawyers.

In addition, the Public Solicitor has set aside funds for specific civil circuits to enable lawyers from head office to attend upon clients in the branches in order to obtain instructions and bring them up to date on the progress of their matters.

Attempts have been made to improve efficiency in the office putting lawyers on roster to attend at directions hearings and opening dialogue with Registrars of Courts and other agencies, including the Motor Vehicle Insurance Limited (MVIL). These attempts have met with mixed responses.

Legal Aid Desks and Public Awareness Section

The establishment of Legal Aid Desks will bring to people in district and rural areas the opportunity to seek advice and redress. For many years, people in provinces where the Public Solicitor had no full time presence were able to be represented in criminal cases, but civil assistance was most irregular. Experience is already showing that where Legal Aid Desks are established.

Human Rights Section

The Public Solicitor has long been of the view that many, if not most, of the cases dealt with in the Office involve Human Rights, e.g. criminal cases invariably concern the liberty of the subject.

The Office has made a commitment to expanding its Human Rights services by allocating a team of three lawyers to this section.

To date, many of the claims that might be regarded by some as being Human Rights cases have been described otherwise. For example, a police shooting may be described as a tort, while on the other hand, a medical negligence claim against a public hospital may be described as a claim against the State.

Accordingly, and without proper definition, it is difficult to extract data which indicates the number of Human Rights cases currently being conducted within the Office.

In 2008, the officer-in-charge of the Human Rights Section was actively involved in travelling to a number of centres as part of a scoping exercise to determine the development of a Human Rights Charter. Lawyers have also taken part in a UNHRC training workshop for lawyers.

The Public Solicitor intends to establish a section to deal with persons living with HIV AIDS by 2009-2010. The Office currently has one major test case of the HIV AIDS Management and Prevention Act (HAMP Act) pending, and anecdotally it seems that a number of other matters have been dealt with by lawyers throughout the country.

STATE LEGAL SERVICES

STATE SOLICITOR'S OFFICE

The Office of the State Solicitor is basically the Government of Papua New Guinea's legal office. It assists the State to implement decisions of the National Executive Council regarding resource projects, infrastructure projects, matters of commercial undertakings. It also provides legal advice on constitutional and other legal implications on administrative and executive actions of the State.

The Office of the State Solicitor is divided into three divisions: Commercial, International Law and General Advising.

The Commercial Law Division provides legal assistance in relation to commercial issues impacting on Government in five main areas: mining and petroleum; infrastructure projects; non-mining investment projects; loans; grant/aid finance assistance and general commercial advice.

The General Advising Division is tasked with providing advices and opinions on a wide range of matters including administrative law, employment issues, and land matters.

The main functions of the International Law Division are to ensure that the international obligations of the State are complied with. In doing so, the Division

is required to provide specialist advice on international law issues as regards: law of the sea; maritime and fisheries; fisheries prosecutions; diplomatic and consular matters; citizenship and immigration issues; trade; civil aviation; intellectual property environment issues and human rights.

The Division works closely with its client Departments to provide legal advice on the international issues. For example, in relation to international instruments, The Division assists client Departments by providing advice on the legal obligations created by those instruments to facilitate domestic implementation. Key areas in recent times include human rights, including the development of a Human Rights Commission, Counter-terrorism and Transnational Organised Crime.

Another key area is the delineation of PNG's maritime boundaries in accordance with the acceptable standards as outlined in the United Nations Law of the Sea Convention.

LEGAL POLICY & GOVERNANCE BRANCH

In 2009, the Executive Services Branch in the Department of Justice and Attorney General was renamed the Legal Policy and Governance Branch in recognition of its new role in building a legal policy capability for the Department. While the Branch continues performing executive functions, including being the Central Authority for Overseas Child Maintenance, Extradition and Mutual Assistance in Criminal Matters, it will now have a broader role in developing policies to implement Government initiatives.

Work to date includes developing policies in relation to the implementation of the United Nations Convention Against Corruption, the United Nations Convention Against Transnational Organized Crime and the Terrorism International Instruments.

New issues to be considered include the implementation of legislation to facilitate the operation of the Hague Conventions on Private International Law.

The Branch is also responsible for administering, on behalf of the Minister for Justice, a number of important pieces of legislation including the Criminal Code Act 1974, the Proceeds of Crime Act 2005, the Mutual Assistance in Criminal Matters Act 2005 and the Extradition Act 2005. This function includes developing proposals for amendments to ensure that the legislation is compliant with international standards.

The Branch works closely with other areas of the Department to assist with the development of policy proposals and legislative amendments. This includes work with the Village Courts Secretariat, Community Based Corrections and the Office of the State Solicitor (in relation to the domestic implementation of international instruments that deal with subjects within the portfolio responsibility of the Minister for Justice).

POLICY PLANNING & MONITORING BRANCH

The Policy, Planning and Monitoring Branch co-ordinates, monitors and reviews the strategic planning processes of the Department and aligns these with the budget processes to produce the Corporate and Annual Plans.

Since 2006 the scope of work of the Branch has actually been expanded as a result of the amount of responsibilities placed upon by the Law and Justice Sector Program and other tasks directed to the Branch from time to time. Review of the Branch is currently being done to strengthen its capacity and to realign its staff to effectively and efficiently deliver its functions.

The current activities being implemented are outlined in the Department's Annual Plan 2007, which are consistent with the Department's Corporate Plan 2006-2009. Hence the following;

1. Manage and co-ordinate the development and review of the DJAG Annual Plan. In 2005 the Department's Corporate Plan was reviewed with the Corporate Plan 2006-2009 which took into account the Law and Justice Sector Strategic Framework goals and priorities. As such the Corporate Plan is translated into the Annual Plan which is reviewed every year. The Annual Plan activities are implemented towards achieving those outputs. The 2007 Annual Plan has been reviewed early in the year to ensure that it is realistic, measurable and achievable. The Annual Plan forms the basis for identifying impact activities for the 2008 Development and Recurrent budgets.
2. Monitoring the implementation of the Annual Plan in ensuring the expected outputs are achieved. Monitoring of the implementation of the plan is an ongoing process within the Department. Monitoring, reporting and evaluation elements of the planning process are currently being strengthened with technical assistance from the Law and Justice Sector Program. In 2007 and 2008 the Department introduced a Flash Report in which Branches reported on their outputs with graphs and statistics/data justifications for budget expenditure etc. This also contributes to the evaluation of the sector as a whole.
3. Coordination of the Community Justice Centre (CJC) Pilot Project which is implemented in Wau/Bulolo, Morobe Province and Kainantu, Eastern Highlands Province. The other major achievements in 2008 was the initial process of the CJC in Lumi West Sepik Province which will be launched this year 2009 and the Lihir CJC which we are seeking financial assistance to pilot. There are lot more interest being shown from other

provinces. This is enunciated from the Law and Justice Policy and Plan of Action, which embrace Restorative Justice. An evaluation report has been compiled on the experiences and lessons learned of the two pilot centres and submitted to the Law and Justice Working Group. The report highlights a number of issues experienced during the pilot phase of the two centres, and also provides a way forward with recommendations and a plan into addressing those issues. The Law and Justice Sector considers CJC to align with its Provincial Engagement Framework to channel the delivery of services at the Provincial, District, Local Level Government and Community levels.

4. The Branch also coordinates all Annual Plan Program Activities under AUSAID funded Law and Justice Program as well as other donor funded projects sponsored by other donors such as UNICEF, UNFPA and UNDP.
5. In collaboration with other Law and Justice Agencies co-ordinate the activities consistent with the Law and Justice Policy. The implementation of this Policy has brought all the Law and Justice Agencies together through the AUSAID funded Law and Justice Sector Program, in which the National Coordination Mechanism becomes the authority within the sector. The Branch represents the department in the Law and Justice Working Group, which advises and recommends to the National Coordination Mechanism on strategic policy issues. As a result of this approach the Sector Strategic Framework was developed in which the sector goals and priorities have been identified, and translated into agencies Corporate and Annual Plans and implemented.
6. The Branch also represents the department in a number of important committees such as the Safer Port Moresby, CIMC (Law and Order Committee & Family and Sexual Violence), Electoral Committee etc.

From time to time as directed by the Secretary and Attorney General the Branch represents the department in a number of important inter-departmental committees and Workshops such as the United Nation Country Strategy for PNG, AID effectiveness in PNG with International Development partners etc.

CONSTITUTIONAL LAW REFORM COMMISSION

The Constitutional and Law Reform Commission was fully constituted in 2006 and started working on legislative reform programs in 2007.

Legislative Review

Since its establishment in 2005, the Constitutional and Law Reform Commission has been given the following References by the former Minister for Justice, Hon. Bire Kimisopa MP:

- CLRC Reference No. 1 – Review of the Committal Proceedings on 29th November, 2006;
- CLRC Reference No. 2 – Review of the Indictable Offences Triable Summarily on 29th November, 2006;
- CLRC Reference No. 3 – Review of Ex-parte Proceedings on 29th November, 2006;
- CLRC Reference No. 4 – Proof of Business and Electronic Records on 29th November, 2006;
- CLRC Reference No. 5 – Review of the Incorporated Land Groups and Design of a System of Voluntary Land Registration on 4th July, 2007;
- CLRC Reference No. 6 – Review of Environmental and Mining Laws Relating to Management and Disposal of Tailings on 4th July, 2007.

References 1, 2 and 5 have been completed and the final reports have been published and released with appropriate recommendations for legislative reform:

- CLRC Reference No. 1 – Review of Committal Proceedings – the final report was published in August 2007 which reviewed the law and process and generally recommended to retain the current system if committal proceedings but to bring in procedural changes to expedite the proceedings of committals;
- CLRC Reference No. 2 – Review of Indictable Offences Triable Summarily – the final report was published in August, 2007 which generally recommended for the current Schedule 2 Offences also known as Indictable Offences Triable Summarily to be removed from their current accommodation under the Criminal Code Act Chapter 262 and to house them under a separate legislation with summary jurisdiction conferred on Principal Magistrates to handle these offences but the Public Prosecutor still retaining the overall prosecutorial supervision of these class of offences; and
- CLRC Reference No. 5 – Review of Incorporated Land Groups and Designed of a System of Voluntary Customary Land Registration – the final report was published in May 2008 which proposes major amendments to the Land Groups Incorporation Act to inject integrity into the process of incorporation of ILGs and management and other amendments to the Land Registration Act to introduce a new part to the Act which will allow for the voluntary registration of customary land through the ILG as a corporate vehicle for customary land registration by customary land owners of those portions of customary land which they wish to put to economic production.

Work on CLRC References 3, 4 and 6 is still continuing. In the period of this report, the CLRC also published its Annual Reports for 2005, 2006 and 2007. A website for the CLRC was also created and Issues Papers and Draft Reports for the completed references have been placed on this website: www.clrc.gov.pg

Major Policy and Legislative Reform

Apart from working on the above stated references, the CLRC has also undertaken the following other activities in policy and legislative reform:

- Seminars in collaboration with the Papua New Guinea Law Society in June 2007 to discuss the two draft reports on Review of Committal Proceedings and Review of Indictable Offences Triable Summarily;
- Seminar organized in collaboration with the PNG Law Society and the National Research Institute to discuss the draft report on Review of Incorporated Land Groups and Design of a System of Voluntary Customary Land Registration on 30th November, 2007;
- Collaboration with the Intellectual Property Organization (WIPO) and organized a WIPO National Workshop on Copyright and Related Rights and Collective Management of Rights from 1st to 2nd May, 2008 which essentially discussed draft Collective Management Organization (CMO) regulations for Papua New Guinea;
- Actively participated in the various publications of the AusAID Pacific Land Program and also participated in the Pacific Land Conference from 12th to 13th June, 2008, Port Vila, Vanuatu; and
- Attended and participated at the Australasian Law Reform Agencies Conference in September 2008, Port Vila, Vanuatu.

Apart from the above, the CLRC has also participated in the debate on the review of the provincial and local-level government systems under the current Organic Law on Provincial and Local-level Governments by participating in various forums in this period under review.

JUSTICE ADMINISTRATION

COMMUNITY BASED CORRECTIONS

The office of Community Based Correction (CBC) is responsible for administering non custodial options in the following programs, namely, probation, parole, juvenile justice, criminal compensation and community work order. These programs at least provide an opportunity to adult and juvenile offenders to serve their term or remainder of their sentence in the community offenders under the supervision of probation, parole or juvenile court officers and volunteers.

Since, PNG has ratified the United Nations Conventions on the Rights of the Children (CRC) in 1993. Having made that commitment, PNG is bound by the terms of the Convention, that is, to implement the requirements and directions spelt out in the articles of the Convention.

Article 40 of the CRC refers to the “Administration of Juvenile Justice” that states that ‘a child in conflict with the law has the right to treatment which promotes the child’s sense of dignity and worth, takes the child’s age into account and aims at his or her reintegration into society. This child is entitled to basic guarantees as well as legal or other assistance for his or her defense. Judicial proceedings and institutional placement shall be avoided whenever possible’.

On or about 2000, the National Executive Council approved the National Law & Justice Policy which signalled the government’s commitment to carry out a comprehensive reform of the Juvenile Justice system in the country. The policy embraces restorative justice as the foundation and identified juvenile justice as the priority for the reform process to begin with.

In that regard, the Department of Justice has given priority consideration to the implementation of the administration of juvenile justice since the responsibility falls within the Department for that matter.

The Department continues to coordinate the implementation of juvenile justice reform programs throughout the country with the cooperation and participation of the National, Provincial and District Authorities including Churches and Civil Societies.

Over the past 3 years, further key achievements were progressed as part of the ongoing implementation of Juvenile Justice Reform program in PNG. They include the following:

- The National Juvenile Justice Policy (NJJP) was launched on the 20th November, 2007;
- The review of the Juvenile Court Act 1991 was considered necessary in order to embed what is being stated in the CRC and NJJP into domestic legislation. The review of the JCA 1991 is in its eight (8th) draft and under progress;
- An additional six (6) Juvenile Courts have been launched in the provinces, namely, Goroka, Vanimo, Kimbe, Alotau, Buka in the Autonomous Region of Bougainville and Manus. A total altogether of eleven (11) Juvenile Courts launched in the country so far;
- Thirteen (13) Provincial Juvenile Justice Working Group (PJJWG) established including 1 District JJWG, bringing a total number of 14 JJWG formed. This working groups assist to implement and coordinate juvenile justice reform, issues and activities at the provincial level;

- Launching of the Lae Police Juvenile Reception Centre in August, 2006;
- Twenty two (22) Visiting Justice (VJ) Inspections conducted for juvenile detention facilities in the following locations; Southern Region (Bomana CS & Boroko cells), Highlands region (Bihute CS & Baisu), NGI region (Kerevat CS, Kokopo cells, Buka Police cell), Momase region (Vanimo CS, Vanimo cell, Buimo CS, Erap Boystown, Beon CS and Wewak). The VJ inspections agencies concerned in line with JCA 1991, NJJP and the Minimum Standard Guidelines;
- In 2008, the Public Solicitor's Office or the Public Defender's Office for both adult and juvenile offenders establishes a Juvenile Justice desk within its office which meant that juveniles appearing before the court of law would be provided legal representation by the office;
- Juvenile Justice workshops have been conducted b Public Solicitor's office to sensitize lawyers on juvenile justice and consider providing priority legal representation to juveniles;
- Mediation and Juvenile Justice diversion trainings conducted to assist juveniles and victims alike in National Capital District (NCD) and Buka;
- Juvenile Justice segment is communicated to the Police intake (recruits) at Port Moresby Bomana College under the subject 'Human Rights'.

On the front of adult offenders and prisoners, a total number of about eighty-six (86) offenders and prisoners placed under community based supervision orders referred to attend skills training programs coordinated by Ginigoada Foundation Inc (GFI) in National Capital District.

In 2008, a total of 23 prisoners have secured employment with business houses in NCD. The overall number may be viewed as small however it is views on the part of CBC as a success story. This initiative would not have come about without the political will and vision of the current Minister for Community Development and Member for Moresby South electorate, Dame Carol Kidu who initiated the foundation that is working well in partnership with the Port Moresby Chamber of Commerce and the Yumi Lukautim Mosbi project.

The Department of Justice and the National Juvenile Justice Committee wish to acknowledge the generous funding and technical support provided by UNICEF and AUSAID through the Law and Justice Sector Program to Community Based Correction and Juvenile Justice in PNG.

THE PUBLIC TRUSTEE OF PAPUA NEW GUINEA

The State of Papua New Guinea like all emerging third world countries faces challenges in many areas of its development as a young developing nation. A lot of these areas require proper policy frameworks upon which to develop legal frameworks so that the demands of the people's cultural and social practices are harmonized and given coherence in practical and relevant laws.

Deceased Estates Administration and Trusteeship is an area of Law relatively still new to the people of Papua New Guinea. Whilst the country is already well assisted by the adoption of English Common Law in the area of Wills, Probate and Administration, practical application of the ECL is in some ways irrelevant to the country's cultural and societal norms; however, it does provide a wide parameter within which an administrator can exercise administrative flexibility in the administration and distribution of intestate deceased estates.

Intestacy Administration of deceased estates will perhaps continue to be the norm in Papua New Guinea for a long time to come. This mode of administration is appropriate for Papua New Guinea for many good reasons.

Firstly, the social climate is not appropriate and conducive for the propagation and promotion of probate administration of deceased estates. Given the country's strong cultural history of polygamy, this practice has badly infected the marital attitude of the men folk. The behavior of many if not most men folk in respecting marital vows directly determines how their estate will be distributed in the event of their deaths. Children can be vulnerable to unfair distribution if they are not identified and reported as issues of the deceased person. Children are innocent victims of such decisions of men folk having affairs outside of their marriages. In the current climate of intestacy administration, there is flexibility to deal with such situation within the parameters of the current intestacy laws.

Secondly, the cultural climate is not appropriate and conducive for the propagation and promotion of probate administration of deceased estates. Most Papua New Guineans are not comfortable to make Wills as they do not feel culturally inclined to do such a thing. It is viewed as a self imposed curse or a pre-emption of ones premature demise. Until making of Wills is viewed culturally as an acceptable responsibility, no one will make wills. Even the educated elite of the country refuse to make Wills because they have already acquired a culturally instilled sense of hesitation toward making Wills.

Thirdly, women and children are culturally accepted by the men folk of the country as part of their wealth or asset for themselves as well as their clan, family and tribe. This fact stands out dominantly in most intestate administration. Illegitimate children of deceased men normally stand a chance in benefiting in estate distributions without much contention or opposition because normally the first wives and their children accept it as a fact of cultural obligation created by their husbands and fathers. Given this prevailing cultural norm, making of wills

would create a cut and dry situation for an executor or executrix in a culture where collectivism and communism is heavily influential in the sharing of deceased wealth.

Fourthly, the choices of most men folk in having extra-marital relations give rise to a climate where making of wills would be a very hard choice for them. Unless men folk are serious about having one family and raising a strong family, the making of wills would be impractical and irrelevant. Even if they left a will, the appointed executor/trix would have a nightmare in executing the will given that the rule of law will be despised by disputing parties and order may not prevail throughout the probate administration period. The executor/trix must have strong police protection to strictly execute the will in such a society as PNG. Probate administration is clearly implied by the testator or testatrix in his/her will, thus any executor or executrix will have no flexibility to accommodate unforeseen circumstances and dispute arising during the period of administration of a probate estate. This makes probate administration of estates in PNG an unwelcome prospect; nevertheless, it is the ideal goal to work toward achieving in the long term.

The prevailing norm of deceased estate administration in Papua New Guinea thus far is intestacy administration. Most law firms and law practitioners in Papua New Guinea are aware of this situation and almost 99% of deaths are intestate. Section 44 of the WPA Act automatically vests all intestacy deaths in the Public Curator/Trustee of PNG to be divested to other interested and provisions of law does allow for the initial vesting rights of the Public Curator of PNG to be vested to other interested administrators, provided, such interested parties comply with section 9 (2) of the Public Curator Act.

It is assumed that other sister nations of the Pacific would be faced with a similar cultural climate as PNG and perhaps their deceased estate administration experiences can be shared through the network of lawyers working together.

VILLAGE COURTS

What is the Village Courts system in PNG

There are currently 1,400 Village Courts in PNG with approximately 14,000 officials operating in remote areas with very limited resources and poor access to transport.

The PNG White Paper on Law and Justice previously referred to, identifies Village Courts as one of the high priorities for improved support. Village Courts are an important part of the restorative justice pillar of the PNG Government law and justice policy and the Sector Strategic Framework (SSF). They are the most accessible form of justice for the people of Papua New Guinea and aim to maintain and restore where necessary peace and harmony for people in their local communities.

Village Courts emphasise the use of mediation and peaceful settlement of disputes and minor offences in all Village Court proceedings. If mediation fails then a matter goes to a Full Court hearing which involves at least 3 Magistrates. Village Courts draw heavily on customs which have served them well for many generations. At the same time they must be able to incorporate new beliefs, values and practices which respect all adults and children, reject the use of violence and discrimination, and encourage communities and individuals to resolve issues between them respectfully and constructively.

The Village Courts & Land Mediation Secretariat recognizes the barriers and discrimination faced by women, children and men, encourage all men and women to care for and protect children, and support men and women to find non-violent ways of resolving differences. Our data base shows that women represent around 43% of complainants to Village Courts across a wide range of disputes and offences. Marriage problems, assault (striking a person), family

conflict, insulting or threatening words, debt and property damage are the most common complaints made by women.

Over the past 5 years significant improvements for women have been achieved in the Village Courts system with the support of Development Budget funding. This has included:

- The appointment of over 300 women as magistrates, up from around 10 in 2004, and every province is currently reviewing their officials to ensure they are properly appointed and that there is at least one woman magistrate in every court. By the end of 2010 we hope that we will have over 600 women magistrates. We will keep up this recruitment effort every year. Most provinces are supporting this effort although some are slower than others to take on the challenge.
- We have trained over 5,000 officials in 17 provinces – for the past 2 years we have been training them about women’s and children’s rights, family violence and HIV and AIDS. – we use real case studies from Village Courts to help officials understand their responsibilities to protect people from violence and discrimination and how to hear cases involving women.
- In 2008 we held the first week long, national forum on cross cutting issues and Village Courts in Kavieng. We trained over 80 people including all 20 Provincial Village Courts Officers, in issues impacting on women and children and people living with HIV and AIDS and on how to deal with family violence. We are continuing this training effort to address problems for women in Village Courts through a concerted training effort to help Village Courts understand what they can and cannot do around family violence.
- We work with UNICEF on a human rights project, managed in the Secretariat, to address family violence against women and children, to

increase the involvement of women as community leaders, and encourage them to nominate as Village Court officials. This project involves 6 women being located in 6 Districts and working closely with the community and village court officials to improve their services to women and children.

- We are reviewing the Village Courts legislation to make sure that it is modernised and helps to address some of the ongoing issues about women. We will be proposing amendments to ensure that there is at least one woman in every village court. We will include principles and objectives which highlight that Village Courts must protect and promote human rights for all and the rights of women and children.
- This year we have piloted a project in Manus to engage communities in a project to examine how customs need to be or could be changed to protect women and to promote their role as leaders in communities. The Manus Provincial Government and LLG Presidents have strongly supported this project which will lead to Provincial Declaration of Custom aimed at promoting the protection of women and the promotion of rights. This project has been very well received by communities and we hope we will be able to roll this out to other provinces.
- A national data base has been established for officials' listings and court operations and over 450 court clerks trained in providing operations data – this is providing important data on the operations of village courts.
- Over 800 Quarterly Data returns have been provided since mid 2008 and for the first time we have some reliable data on village courts' operations. We are just beginning to analyse this data but can see some gender patterns emerging. For example more women than men complain to Village Courts for marriage problems and assault matters. Men are more likely to be defendants in matters involving assault, using threatening

words or weapons, and drunkenness. Women are more often defendants for spreading false rumors.

MAJOR LEGISLATIVE DEVELOPMENTS

PNG'S NATIONAL ANTI-CORRUPTION ALLIANCE

In 2004, a number of PNG departments of government, agencies and constitutional offices made a pledge to work together to address the problem of corruption in the public sector. This culminated in the signing of a Memorandum of Agreement (MoA) in April 2004 cementing the desire for collective approach to combat fraud and corruption within government. This MoA established the National Anticorruption Alliance (NACA) which has been operational since 2005.

The MoA sets out the operational principles and the arrangement for cooperation between and among state agencies and constitutional offices. The MoA was necessary because of the legal and constitutional demarcation relating to functions and responsibilities of the respective state organizations. NACA has operated for the past four years and has proven to be a useful arrangement, especially that it brought together expertise and resources to combat fraud and corruption in the country.

Government departments, constitutional offices and state agencies that signed the Memorandum of Agreement are as follows:

- Treasury and Finance,
- Personnel Management,
- Provincial & LLG Affairs,
- Police,
- Office of the Auditor General,

- Office of Solicitor General,
- Internal Revenue Commission; and
- Ombudsman Commission of Papua New Guinea

The Office of the Public Prosecutor has been included in NACA in 2006 and has been an active member of NACA since its inclusion.

Under the NACA arrangement, the Head of the participating agencies form the NACA Board. Below the Board is the Technical Working Group (TWG) which is the operational unit of NACA. NACA also has a Secretariat which is headed by the Director. The Secretariat exists to facilitate the operation of NACA, especially investigations. NACA is housed under Fraud and Anti-Corruption Directorate of the Royal Papua New Guinea Constabulary.

Rationale

PNG recognised that there are a number of reasons for institutional cooperation in the form of an alliance such as NACA, which should be encouraged and supported.

- Firstly, the increasing level of corruption within public sector calls for specific attention from government instrumentalities, especially the law enforcement agencies. The public perception is that corruption in government is rampant to the extent that it is systemic and endemic. A combine effort is not only required but necessary because corruption is at all levels of government.
- Secondly, experiences over the years demonstrated that individual agencies had difficulty addressing the problem of corruption because of the complexity of the issue. This situation allowed perpetrators of corruption to continue their illegal activities, penetrating and undermining the system of control and rule of law in the country. Perpetrators of corruption are criminals who know the

weaknesses of the government system and manipulate it for their own benefits.

- Thirdly, there is the need for greater coordination and cooperation between agencies in the fight against abuses and maladministration within government. This is consistent with the sector approach to policy planning and program implementation now been cultivated in Papua New Guinea.
- The fourth reason is the need to share resources and expertise in the area of investigation and prosecution.
- The fifth reason is that there is an ever ready government investigation mechanism that can be deployed as and when the need arises.

NACA is concern primarily with white collar crimes within government organizations. It will also serve as a stepping stone for public sector agencies to check on each other's mandate. For far too long this has sadly been the opposite where agencies operated in isolation from each other, thereby not been able to understand the difficulties and constraints that are faced by each of these agencies.

The most notable constraints have been funding and manpower shortage. Hence investigations have been prolonged or delayed or in some instances, cases have been thrown out by the courts on technical grounds. NACA attempts to improve on this area and see successful prosecution of as many cases as possibly can so that this becomes a deterrence, hence dissuade would be corrupters from engaging in corrupt activities.

Test Case - Southern Highlands Province

The NACA concept was put to test in Southern Highlands Province in 2006. This followed widespread complaints about misuse of public funds by government employees. In most of these cases, persons within the provincial administration systematically squandered public funds. In majority of the cases there were collusion between public servants and politicians resulting in inflated amounts on claims for payments including over calculation on salary and wages, allowances and other public service entitlements.

NACA investigation has resulted in the arrest of thirty (30) people who are now waiting their cases. The updates on the cases as at 12 September 2007 is that, 28 cases have been dealt with by the Mendi District Court. Only two are outstanding pending court deliberation. The status of the 28 cases are as follows:

➤	Committed to stand trial	-15
➤	Struck-out of Court	- 06
➤	Dismissed	- 03
➤	Withdrawn	- 01
➤	Adjourn Sine-die	- 03

The Report compiled by the NACA Investigation Team revealed massive overpayments, diversion of funds and illegal appointments to positions of persons within the provincial administration. This report was tabled at a NACA Board meeting, which endorsed its recommendation for criminal prosecution of persons identified in the report.

Lessons learned

The Southern Highlands experience speaks well for NACA, especially the level of cooperation between agencies concern. It was the first time for government departments to work alongside each other. For example, the collaboration by officers from the Departments of Personnel Management, Treasury, Provincial Affairs and Auditor Generals Office enabled NACA to carry out payroll audit which uncovered ghost names and overpayments of salaries, allowances and public service entitlements. Also the combined team carried out inspections on expenditure of public funds appropriated under the national budget. This action stopped wastage of thousands of Kina of public money.

One of the advantages is that NACA Investigation Team can be easily assembled and deployed to investigate provincial government administration if there are allegations of misuse and maladministration. Similarly other government departments can be investigated for the same reasons. A permanent mechanism is now in place to carry out investigations on maladministration.

Summary

NACA is a PNG initiative aimed at bringing together resources and expertise in a combined effort to investigate and prosecute major corruption allegations. If properly organized in terms of structure and supported with sufficient resources, it could be effective in achieving its objective.

PNG would be interested in discussing the practicalities of NACA with other interested jurisdictions.

MEMBERSHIP OF THE ASIA PACIFIC GROUP ON MONEY LAUNDERING

On 18 December 2008, Papua New Guinea achieved full membership of the Asia Pacific Group on Money Laundering. This will enable PNG to have access to the full range of technical assistance offered by the organisation.

The Asia Pacific Group on Money Laundering (APG) is an international organisation established in 1997 to help combat money laundering and financial crime in the Asia/Pacific region. It has a membership of 39 countries, who meet twice annually to discuss APG business and the implementation of anti-money laundering and counter-financing of terrorism systems (AML/CFT). It also conducts Typologies Workshop to discuss current methods and trends of money laundering and terrorist financing. Nearly all Pacific Island Countries are members of APG, including Solomon Islands, Vanuatu and Fiji. The APG also runs a program of mutual evaluation of member countries' AML/CFT arrangements as compared with the international standards including the 40+9 Recommendations set by the Financial Action Task Force (FATF).

In 2006, PNG was granted 'Priority Observer' status. This status is granted to countries for up to two years, during which time countries are encouraged to apply for full membership with the assistance of a sponsoring APG-member jurisdiction. In February 2007, the APG formally invited PNG to apply to become a member.

At the July 2008 APG annual meeting in Bali, PNG's two year Priority Observer status was due to expire. However, APG members agreed to extend this status for six months, that is, until 8 January 2009. The extension was granted on the basis that PNG would apply for full membership within that 6 month time frame.

Over the past twelve months, PNG has made significant progress in implementing AML/CFT arrangements, including the establishment of a financial

intelligence unit within the RPNGC, and the introduction of requirements for banks to report suspicious financial transactions. This is in addition to significant legislative progress as evidenced by the *Proceeds of Crime Act 2005*, *Extradition Act 2005* and *Mutual Assistance in Criminal Matters Act 2005*.

As a part of the formalities for membership, PNG emphasized its commitment to:

- (a) adopting the international standards contained in the FATF's 40 recommendations designed to combat money-laundering;
- (b) adopting FATF's nine (9) special recommendations on terrorist financing;
- (c) implementing relevant United Nations Conventions and Resolutions; and
- (d) accepting the procedures for the evaluation of the effectiveness of anti-money laundering systems, which reflect international practice.

In July 2009, PNG attended its first APG Annual Meetings as a full member and PNG was also represented at the Typologies Workshop held in Cambodia in October 2009. It is hoped that technical assistance measures will strengthen PNG's fight against money laundering.

UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

Papua New Guinea signed UNCAC on 22 December 2004 and proceeded to implement into domestic legislation a number of its international obligations before formal ratification on 16 July 2007.

UNCAC has four main pillars: prevention, criminalization, international cooperation and asset recovery. PNG has undertaken considerable amount of work in recent years in relation to each pillar and has worked with other countries in the region to share experience and expertise. For example, in March 2009, Port Moresby was home to a Sub-regional Melanesian Workshop hosted by UNDP and the Pacific Island Forum Secretariat looking at the implementation

issues. Each participating Country left that workshop with a plan of action for the development of a National Anti-Corruption Strategy. PNG was also represented at the cross-regional workshop on UNCAC held recently in Toronto, Canada. The workshop, which was sponsored by UNODC and the International Crime Centre for Law Reform, brought together representatives from the Caribbean Island Countries and the Pacific Island Countries to share common experiences and best practice models, particularly in relation to asset recovery.

Of particular significance to the obligations that relate to international cooperation, in 2005 PNG enacted both the *Mutual Assistance in Criminal Matters Act 2005* and the *Extradition Act 2005*. Both Acts have ramifications beyond corruption and will enable PNG to play an active role in combating transnational organized crime. Furthermore, the *Proceeds of Crime Act 2005*, also implemented obligations contained in UNCAC – those relating to asset recovery.

Additional work is now being taken in four areas:

- consideration of an independent anti-corruption authority for PNG,
- consideration of whistleblower legislation,
- development of a national anti-corruption strategy, and
- a gap analysis of the remainder of the Convention, particularly the bribery offences, to identify where additional work is needed.

Anti-corruption authority

In the late 1990s, consideration was given to establishing an independent commission to deal with corruption in PNG. This led to the drafting and introduction into Parliament of an ICAC Bill, but debate did not ensue. Since that time, the need for such a body has been the source of much public debate and recently that debate has gathered momentum. The signing and ratification of

UNCAC can be seen as one of the catalysts in this regard in that Article 6 of UNCAC states that:

“Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.”

PNG has re-commenced work in relation to the development of a comprehensive legal policy position relating to an anti-corruption authority.

Whistleblower legislation

The possibility of PNG enacting legislation to protect whistleblowers has arisen in a number of international and domestic forums. For example, Article 33 of UNCAC states that:

“Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to competent authorities any facts concerning offences established in accordance with [UNCAC].”

In addition, the Commonwealth Secretariat has drafted model legislation to assist Commonwealth countries prepare domestic whistleblower legislation. That draft was endorsed at the meeting of Commonwealth Law Ministers and Senior Officials in Scotland 7-10 July 2008. On a domestic level, the Barnett Report *Fighting Corruption and Promoting Integrity in Public Life in Papua New Guinea*

recommended that the Government of PNG provide legal protection for whistleblowers, who bring to light corrupt practices by leaders, Ministers and public officials.

To implement UNCAC Article 33, PNG needs to *consider* enacting whistleblower protection. PNG has commenced this work, but, as with the enactment of anti-corruption authority legislation, the work cannot be done in isolation.

Analysis of UNCAC

While PNG has implemented many of the obligations imposed by UNCAC, there is a requirement to undertake a gap analysis to identify where action is still required. PNG has commenced this task, though it will take some time to complete. One of the objectives will be to identify the relevant agency within Government that should have the lead responsibility for implementation of specific Articles, particular in the area of preventative measures.

Recent work has identified gaps in the PNG Criminal Code, for example in relation to the width of the definition of public official in relation to bribery offences. It is hoped that work will commence on closing those gaps in the near future.

Development of a National Anti-Corruption Authority

In May 2006, the National Executive Council (NEC) directed the Department of Prime Minister and NEC to coordinate the development of a Strategy on Combating Corruption and Improving Good Governance. Unfortunately, limited resources meant that little work was undertaken in relation to the project. However, following the UNDP and PIFs sponsored workshop on UNCAC held in Port Moresby in March 2009, work has recommenced on the development of a National Anti-Corruption Strategy.

There is an Inter-Governmental Committee overseeing the development of the Strategy. Work to date has included a whole-of government workshop at which, with the assistance of UNDP, UNCAC was explained. This was followed by participants identifying key action areas for where work is needed to combat corruption in PNG and which will be set out the Strategy. The Strategy will then identify issues that need to be improved in order to give effect to addressing corruption in those key action areas.

PNG recognises that both identifying the key action areas and the issues that need to be improved or strengthened requires input from all sectors of the community. PNG also recognises that the implementation of the Strategy and the plan of action for that implementation is also something that needs to involve the whole community. It is anticipated that the Strategy will be launched in the near future.

Dissemination of information on UNCAC

One important initiative that PNG has recently embarked upon is the need to make all elements of society, including members of the public sector, the private sector and civil society, aware of the existence of UNCAC and its international obligations. To this end, PNG has commenced giving presentations that provide an overview of UNCAC and its four main pillars.

However, while PNG is compliant, in theory, with many of the obligations imposed by UNCAC, it is clear that the actual implementation of those obligations, in practice, is not 100% effective. There is still a long way to go to ensure that the measures that have been put in place to implement UNCAC are actually put in place *in practice* to combat corruption. The plan of action to implement the national anti-corruption strategy will be a significant tool in this regard.

PNG would welcome the opportunity to discuss ratification and implementation issues with other members of PILON with a view to providing any assistance that is required.

Equal Employment Opportunity (EEO) Policy

The Department plays a significant role in ensuring that the goals and principles of the National Constitution are upheld by all state entities and through the conduct of the business of Government and by Public Servants in Papua New Guinea.

The adoption of the Equal Employment Opportunity (EEO) policy signifies the agency's commitment and beginning of a new era for agency reform in the operations and transformation of a desirable work place culture for the Department. The EEO Policy consolidates on existing policy directives by the Law and Justice Sector to create fair, productive and healthy work environments for its workforce. The policy also serves as a tool for enhancing the sectors strategy to promote good governance and to improve the quality and effective delivery of legal and just services to the people of Papua New Guinea.

It is hope that the EEO policy will further strengthen and motivate the development of human rights based responses and offer a new language that will raise the standards of work practices in the Department. The EEO policy aims at creating a work environment that is free from discrimination and harassment and, where all workers are dignified and valued equally on the basis of individual merits. The policy adds value to the workforce by recognizing the range of professional expertise, diversity of knowledge, skills base and experiences of the employees. It also complements the Department's goal for greater transparency and accountability in its decision making and the manner in which the

Department manages and empowers its workforce for the achievement of its corporate goals.

This policy reinforces the Public Services general Orders, the Goals of the Constitution and upholds the rights of workers by guaranteeing all workers decent working conditions and fair environment.

HIV & AIDS Policy

We have heard and learnt so much about HIV and AIDS; we have witnessed people dying of AIDS related illnesses, and we have heard testimonies of people living with HIV. This demonstrates the seriousness and reality of HIV/AIDS epidemic in Papua New Guinea. The epidemic is not only a health issue but is a socio- economic and political issue. It is threatening the very fabric of our society where our traditional norms and values are slowly being eroded. Parents are dying leaving children orphans and vulnerable to abuse, neglect, stigma and discrimination. People are stigmatized and discriminated against not because of their HIV status but due to misconception and fear of HIV and AIDS. Those who are infected are being neglected to be taken care of by the community service organizations. It is eating into families' livelihood; with all savings spend on medications leaving nothing for the children. The nation is losing skilled workforce and professional people to AIDS and will not long affect the development of the nation.

Experiences from regions of the world devastated by HIV and AIDS shows that organizational ability to effectively and efficiently achieve development goals are at risk. Activities are left undone due to illness and funerals, key officers are taking sick leave to seek medical treatment or to care for their loved ones, and household composition changes – with children and the elderly assuming greater responsibility to fend for themselves and their families. Organizations are finding

it difficult to replace skilled people to fill position left vacant by the deceased officers with level of production of their organization dropping dramatically.

The Department is no exception. Experiences with HIV and AIDS within the workplace may be minimal but the risk of exposure to HIV is very much obvious. Officers are fairly mobile and tend to be away from family and generally have access to money and alcohol and all these can set the scene for risky sexual behaviours and practices. What can the Department of Justice & Attorney General, as a responsible organization do to minimize the risk of exposure and manage HIV/AIDS related issues within workplace with specific regard to officers who may be infected or affected by HIV and AIDS.

The Department of Justice & Attorney General as a responsible organization must take steps to adapt its core business to respond to emerging changes brought about by HIV and AIDS. Workplace policy would help protect its employees and their families from HIV transmission, minimize the impact of the infection on those who may be infected or affected by HIV and AIDS, and create a healthy working environment for all. The Department therefore developed the HIV & AIDS policy and management procedures as a mechanism to effectively coordinate mainstreaming programs within core business of “delivering excellent legal and justice services to the State and the people of Papua New Guinea.”

Under the policy, the Department will also deal humanly and appropriately with employees who are or may be infected or affected by HIV and AIDS by fostering an environment of solidarity and hope for people living with HIV and AIDS in its workplace in accordance with the HIV/AIDS Management and Prevention (HAMP) ACT 2003, other relevant PNG legislations and the management procedures set in the HIV & AIDS policy.

ADDENDUM

OFFICE OF THE PUBLIC PROSECUTOR

Administrative Autonomy

The Office of the Public Prosecutor is established under Section 176 of the Constitution of Papua New Guinea and pursuant to S 177 is responsible for the control and exercise of the prosecution function of the State.

In addition to its head office in Port Moresby the Office operates 7 regional offices in Lae, Goroka, Madang, Mt Hagen, Wabag, Kokopo and Kimbe and employs 32 lawyers, including 4 deployed under the Australia and Papua New Guinea Strongim Gavman Program, and 19 staff.

Whilst independence in the control and exercise of the prosecution function of the State is guaranteed under the Constitution, the Office of the Public Prosecutor is currently financially administered by the Department of Justice and Attorney General. With the support of the Department, the Office will begin the process of becoming financially autonomous in 2010. Critically this will see the Office treble in size to over 150 lawyers.

Such expansion will be necessary to meet the ever increasing number and location of National Court circuits held in the provinces across the country, and to meet the Office's additional responsibilities in the implementation of the Proceeds of Crime, Mutual Assistance and Extradition Acts.

Family and Sexual Violence

The fight against family and sexual violence continues to be a priority for the Law and Justice Sector in Papua New Guinea and in 2002 key amendments were

made to the Criminal Code by the Criminal Code (Sexual Offences and Crimes Against Children) Act, 2002. The purpose of the amendments is to strengthen the prohibition against sexual violence against women and children and to improve the opportunity of victims to participate in the sentencing process through the use of victim impact statements.

Since 2005 the Office has been at the forefront of the implementation of the amendments, training its lawyers and developing guidelines to be applied by prosecutors in the conduct of such matters. In addition the Office has provided education and training for police and civil society across Papua New Guinea. In 2008 the Office held its first Public Information Day at which it launched its Going to Court Book. The purpose of the book is to assist victims and witnesses understand the criminal process and to date over 6000 copies have been distributed across the country, together with information brochures for victims of sexual violence.

Since the amendments the courts have made it clear that sexual penetration of children will be severely punished and sentences imposed usually range between 15 and 20 plus years.

A new Division, 2A, was also inserted into the Criminal Code to protect children from commercial sexual exploitation through pornography or prostitution. The legislation makes it clear that children involved in these activities are not to be prosecuted. Only a few such cases have been referred to our Office to date, perhaps due to the fact that those with direct knowledge of such activities are often those who use or benefit from them.

Amendments were also made to the Evidence Act in 2002 to enable special measures to be used when evidence is given by a witnesses who is under the age of 18 or a complainant in a proceeding relating to sexual or violent crime, and where the court is of the view that the quality of the witness' evidence is

likely to be diminished by reason of fear or distress. Measures in the form of screens, support persons and proceedings held in camera are now used by the National Court across Papua New Guinea as appropriate.

In recognition of the need to better support victims of crime, the Office is in the process of establishing a Victims of Crime Unit in its Head Office. This unit will provide support and assistance to victims of crime, witnesses and their families. It will guide them through the criminal process and refer them to relevant social services.

People Smuggling and Trafficking

People smuggling and trafficking is an issue which has in the last 12 months received a lot of attention. The nature and extent of these activities in Papua New Guinea is yet to be properly understood. Specific legislation will be needed to properly combat what is perceived by many within the country to be a growing problem, particularly as the flow of people into the country is expected to increase with the LNG Project.

Sorcery

The prevalence of sorcery related killings has been identified by the Government as a priority issue for the country and in response to this the Office held conferences in Goroka, Madang and Port Moresby this year to hear from doctors, churches, civil society, police and lawyers. The complexity of this issue is reflected by the different experiences and views shared at each of the conferences. Information gathered and resolutions made at the conferences will be used by the Office in its work with the Constitutional Law Reform Commission which has embarked upon a review of the law of sorcery.

Identification Evidence

The issue of identification is fundamental to every criminal case. Until recently the principle means of proving identity was through the use of identification parades. Unfortunately for many reasons it is often not practicable for such parades to be conducted by police, particularly in the regional areas of Papua New Guinea. As a result many cases fail due to the inability of the State to prove the involvement of the accused.

However, a witness may also be able to identify a suspect by pointing him out from a number of photographs on a photo board of different but similar looking people. In addition to assisting the State prove its case, the use of photo boards can assist in the early elimination of suspects, a matter which is obviously important to both police and suspects alike.

In 2009 the Office introduced the use of photo boards to police in several provinces in Papua New Guinea. The approach has been positively received and the Royal Papua New Guinea Constabulary will consider its inclusion in formal police training in the near future. My Office is also keen to ultimately see this method of identification recognised in the Evidence Act.

Leadership Code

Pursuant to s 176 of the Constitution the Office is also responsible for the prosecution of matters under the Leadership Code. The purpose of the Code is to protect the people of Papua New Guinea from misconduct by its leaders. Misconduct is not necessarily criminal and in prescribing certain conduct the Code recognises that leaders are to be held to a higher standard. In the event of misconduct leaders face removal from office or a fine of up to K1000. Proceedings under the Leadership Code are no bar to criminal proceedings and vice versa.

Since 2005 20 leaders have been referred to the Office, of which:

- 4 were found guilty
- 1 was criminally dealt with and convicted and sentenced
- 1 was acquitted
- 2 are pending judicial review of their referral to the Office
- 9 no longer hold leadership positions (proceedings can only be conducted against those currently holding leadership positions)
- 3 are being considered by my Office.

Death Penalty

As reported in past years, whilst a number of individuals have been sentenced to death under the Criminal Code, no one has yet been executed. In 2005 it was reported that 3 appeals had been lodged against the death penalty:

- Arua Maraga Hariki, SCRA 12 of 2003: appeal against conviction successful and re-trial ordered
- Kepak Langa, SCRA 80 of 2003: pending
- Ben Simakot Simbua SCRA: pending
- Steven Loke Ume & Ors, SCRA 10 of 1997: SC 836, 19 May 2006, appeal successful, sentence reduced to life imprisonment

Proceeds of Crime and International Crime Cooperation Unit

The Mutual Assistance in Criminal Matters Act 2005, the Extradition Act 2005 and the Proceeds of Crime Act 2005 were passed by Parliament on 20 July 2005 and came into force on 1 March 2006. The Public Prosecutor has responsibility for various functions under these Acts. In particular, it is the Public Prosecutor's role to conduct proceedings under the Proceeds of Crime Act and to represent

foreign countries in Extradition proceedings in PNG Courts. The Office of the Public Prosecutor plays a significant awareness, training and advisory role with police and other agencies and stakeholders involved or with an interest in the implementation of this legislation and which the office is dependant upon to refer suitable cases. The office also liaises with and provides advice to the DJAG in respect of matters such as necessary amendments to the legislation and commentary on related PNG legislation and international obligations. There have been other significant developments in this work over the last 12 months:

Firstly, the office has been working to overcome staffing difficulties which have hindered the establishment of a dedicated Proceeds of Crime and International Crime Cooperation unit as a reality. Through the 2010 development budget, 2 new lawyers will be recruited in early 2010 for this purpose. It is proposed that the unit manager and at least 2 PNG lawyers will be undertaking POC and ICC work at all times. A paralegal has already been recruited and is providing paralegal (legal searches, court filing etc) and administrative support for the unit.

Secondly, the office has stepped up its stakeholder engagement, among other activities, attending at the police National Fraud and Anti-Corruption Directorate (NFACD) and FIU premises 2 or 3 times per week to discuss investigations and steps required from POCA action (these departments investigate the most serious financial crime in PNG). As a result, many cases have been identified with potential for POCA investigation and action.

Most importantly, a piece of PNG legal history was made recently when the first restraining order was obtained under the Proceeds of Crime Act by one of our Senior State Prosecutors in the National Court. The case is but the beginning of a new phase in the implementation of the POCA with the office and police counterparts in the police now encouraged that many more such actions (and some much significant) will be able to be undertaken from 2010 onwards.

Through attending an ICC workshop (AMLAT) and the Asia Pacific Group on Money Laundering (APG) AGM and technical workshop as well as an APG Money laundering Typologies meeting designated POCICC unit lawyers have also increased their awareness of proceeds of crime, money laundering and international crime cooperation issues and established connections with overseas counterparts.

Although a number of possible incoming and outgoing extradition requests were notified to the office as possible this year, none have eventuated as requests. PNG is likely to make at least one extradition request to Australia sometime in the new year in respect of a matter that has recently received some press.

VILLAGE COURT SECRETARIAT

Introduction

This information is from the Village Courts and Land Mediation Secretariat a branch within the Department of Justice & Attorney General. The Village Courts and Land Mediation systems are two institutions that are governed by their own respective legislations, the Village Courts Act 1989, Section 52 and Land Disputes Settlement Act (Chapter No. 45) Section 17.

These two institutions are social control institutions which attempt to integrate customary law into introduces law in Papua New Guinea. Village Courts is an important part of the restorative justice pillar of the Papua New Guinea law and justice policy which plays a vital role as the most accessible and aim to maintain and restore where necessary peace and harmony for people in their local communities. Village Courts draw heavily on customs which have served them well for many generations and at the same time incorporate new beliefs and practices.

Overview

Village Courts like other Law and Justice Sector agencies in the community is concerned with the promotion of peace, harmony and good order in the community. The Village Courts system today delivers a system of law and justice that is truly Papua New Guinean ways, as stated in its Policy of 2001. It is local level judicial system presided over by men and women of status with the community and settles disputes by applying customary law and is spread throughout Papua New Guinea. It has 1,420 established Village Courts dealing with over 600,000 cases/disputes annually.

The Village Courts Act was proclaimed in 1973 and commenced operation in 1975, as authorized by Section 172 of the National Constitution to provide for a system of Village Courts, Peace Officers, their jurisdiction, powers, duties, practices and procedures and for other purposes.

Land Mediation System

The Land Mediation system is a system provided for under the Land Disputes Settlement Act (Chapter NO. 45) Section is another institution that deals with resolving land disputes through mediation over customary land rights, ownerships and usage. This institution is staffed by ad-hoc and permanent land mediators and magistrates of Magisterial Services (District Court) who sits in the Local Land Court and District Land Court.

There are 677 permanent land mediators who are appointed by the Provincial Land Disputes Committee and over 2,100 and ad-hoc mediators who are appointed by the Local Land Court Magistrates.

The permanent land mediators receive an allowance of K125.00 per quarter while the ad-hoc mediators receive an allowance of K10.00 per mediation whether successful or unsuccessful.

The Village Courts and Land Mediation systems are two institutions that are more accessible to the majority of Papua New Guineans in resolving their disputes. These institutions are located in rural villages and settlements unlike the other part of our court system, located in cities, towns and district headquarters.

Village Courts and Land Mediation Secretariat

The Secretariat is a branch in the Department of Justice and Attorney General and is responsible for the implementation of the Village Courts Act, 1989 and some parts of the Land Disputes Settlement Act, (Chapter No. 45).

The Secretariat is headed by the Executive Director who is assisted by a Deputy Director and three (3) Managers with twenty-two support staff based in Waigani. Under the present Organic Law on Provincial Governments and Local-Level Governments arrangements, some functions have been transferred and these are:

- (a) processing and payment of monthly allowances for Village Court Officials and land mediators.
- (b) establishment and administration of Village Courts.
- (c) inspection and supervision of Village Courts.
- (d) provision of order books, forms and stationeries.

Other functions to be retained by the National Government are:

- (a) jurisdiction.
- (b) proclamation of Village Courts.

- (c) appointment and revocation of Village Magistrates and Peace Officers & Clerks.
- (d) Policy formulation and maintaining standards.

The Minister for Justice & Attorney General appoints and revoke Village Magistrates after receiving recommendations from the Senior Provincial Magistrate and the Executive Director of the Village Courts and Land Mediation Secretariat

Major Issues and Future Directions

The effect of reform has affected the ability of Village Courts and Land Mediation nationwide. The inadequate or no funding at all for Village Courts and Land Mediation, lack of capacity and expertise in the province and district is not assisting the system when the functions of Village Courts were transferred in 1996.

The Village Courts functions were transferred to Provinces without funding, and as a result nearly all Provincial Governments and Local Level Governments were reluctant to take over and fund the Village Courts and Land Mediation system. Even though, the functions have been transferred and the level of funding and assistance provided by Provincial Governments are low and inadequate:

- Village Court Officials are not performing because they have not been paid their allowances in time.
- Inspection and supervision are not attended too, due to lack of funding and uncertainty of officers on their positions.
- Training are not conducted due to inadequate funding and officers uncertainty of their positions and their future with the Public Service.
- Political interference in officials appointment and the positions of Village Courts Inspector. Provincial Administration preferred to have their own

man rather than the Village Court officer, who have worked its way through.

- The Village Court Officials are paid by the National Government and receive an allowance on monthly basis for a day work each week. This excludes mediation done each night or during weekends.

The officials receive:

Chairman	-	K32.70 per month
Deputy Chairman	-	K29.06 per month
Village Magistrate	-	K26.64 per month
Peace Officer	-	K24.22 per month
Clerks	-	K24.22 per month

Summary of Village Courts per province and number of Village Court Officials per Village Courts in a Province with access ratio population per Court.

The estimates of average case load per court are per month and patterns of action taken for each of the 1,419 Village Courts in Papua New Guinea (excluding cases of informal problem solving and counseling):

	PER COURT		ALL COURTS
	Per Month	Per Year	Per Year
Complaints lodged:	40 – 50	480	681, 120
Cases before Full Court	20 – 25	240	340, 560
Adjourned or dismissed:	10 – 12	120	170, 280
Compensation Order:	7 – 8	84	119, 196
Fines:	2 – 3	24	34, 056
Community Work:	1	12	17, 028
Preventive Order:			

Imprisonment Order:	less than 1	6	8, 514
	less than 1	6	8, 514

Summary of Permanent Land Mediators and Ad-Hoc Mediators in Divisions and Areas.

LAND MEDIATORS				
PROVINCE	AREA	DIVISIONS	NO. OF LAND	MEDIATORS
1. NCD	5	11		15
2. CENTRAL	7	14		28
3. MILNE BAY	6	12		25
4. ORO	6	7		22
5. GULF	7	7		20
6. WESTERN	6	10		30
7. EHP	9	12		40
8. SHP	14	15		42
9. SIMBU	6	18		40
10. WHP	16	16		45
11. ENGA	6	7		20
12. MOROBE	16	17		48
13. MADANG	7	7		18
14. ESP	5	15		35
15. SANDAUN	11	11		35
16. ENBP	19	19		56
17. WNBP	7	12		44
18. NIP	5	12		30
19. ARB	7	15		40
20. MANUS	4	12		24

	169	256	677
--	------------	------------	------------

The community level court system employs traditional methods of conflict resolution underpinned by concepts of restorative justice. The majority of minor civil disputes and summary offences in Papua New Guinea are dealt with through the Village Courts and Land Mediation system. The Village Courts system has received significant financial support from the Australian Government through its donor agencies, the Law and Justice Sector Secretariat.

The Australian Aid funding assistance enables the Village Courts and Land Mediation Secretariat to undertake a rollout program over five-year period to revitalize the administration and operations of village based judicial system in the country. The trust of this program is aimed at addressing the following priorities identified in the National Village Courts Policy 2001:-

- Standardized national training program for Village Courts Officers, Village Court Officials and Land Mediators.
- Strengthen the operating systems across the country, both at national, provincial as well as Local Level Governments.
- Enhance the capacities of respective Provincial Administrations and Districts Administrations to adequately effectively support the Village Courts and Land Mediation operations across the country.
- Expansion of the Village Courts system of about 14 percent to the remaining parts of the country.
- Promote the rights of women and children and the role of women in the Village Courts system.

One of the significant shifts in the history of the Village Courts is in the training program in human rights, particularly promoting the rights of women and children and awareness on persons living with HIV/AIDS and of course to ensure increased representation of women in Village Courts. So far, more than 420

women are serving the system as Village Court Magistrates. The Secretariat anticipates that by 2012 there will be 1,420 Women as Village Court Magistrates in the 1,420 established Village Courts throughout Papua New Guinea.

Women, children and young people's access to community justice – Village Courts.

This program is a new program support by UNICEF and is designed to prevent and respond to child abuse and family violence at a village level, by engaging the Village Courts system as a key partner in promoting and enforcing a new social value that says that this type of violence is no longer acceptable. It will involve the Village Courts actively pursuing these matters through their justice system and referring more serious cases to the District Courts for prosecution.

Without over 1,420 Village Courts 15,609 Village Court Officials and coverage of over 90% of villages across the country, the Village Courts system has the potential to become a strong advocate for the Convention on the Rights of the Child (CRC and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Success of Village Courts.

The establishment of Village Courts in Papua New Guinea in 1975 has been a success in that if (the system) has greatly eased the amount of work load on the District Courts especially on trivial, petty or minor offences is overwhelm.

The expansion and general acceptance of Village Courts by the people is an indicating that Village Courts existence will be administered for along time to come. There is multitude of requests for new Village Courts establishment in rural and urban areas by Local Level Governments, Provincial Governments, Church Organisation and Projects Development areas are an indication of its

successes. All minor disputes and complaints that were previously dealt with by District Courts are now being dealt and heard at the Village Courts level, except for serious and major cases which are brought to the Police and Higher Courts.

The degree of success of a Village Court can only be measured with performances of each court area, attendance, the distance and their accessibility to other law agencies such as Police, District Courts, District Administrations, Provincial Administration, Missions, Kiaps, etc. The Village Courts system can only succeed if there is readily available assistance and advice from these bodies and the governments. The operations of Village Courts should not be implied as failures when there is no good backup and support given. All it needs a revamp of the system to get it back to where it began.

Conclusion.

The Village Courts being on informal system can support and back up the formal system in maintaining law and order problem currently experience throughout the nation. New types of crime are now being committed.

In Papua New Guinea or Melanesian societies, it is the community that regulates and controls human behaviour or action.