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**National Integrity Systems**

**TI Country Study Report**

**Papua New Guinea 2003**

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# **National Integrity Systems**

## **TI Country Study Report**

### **Papua New Guinea 2003**

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## ***Abbreviations***

CAA	Civil Aviation Authority
CDC	Constitutional Development Commission
CSDRMS	Commonwealth Debt Recording and Management System
DPM	Department of Personal Management
FMC	Fletcher Morobe Construction
FMIP	Financial Management Improvement Program
GoPNG	Government of Papua New Guinea
ICAC	Independent Commission Against Corruption
KK	Kinhil Kramer
LAFIS	Ledger Accounting and Financial Management System
NA	National Alliance Party
NBC	National Broadcasting Commission
NCD	National Capital District
NEC	National Executive Council
NPO	National Planning Office
OLIPPAC	Organic Law on Integrity of Political Parties and Candidates
OLPLG	Organic Law on Provincial and Local Governments
PAC	Public Accounts Committee
PCI	Pacific Consultants International
PDM	Peoples Democratic Movement Party
PGAS	Provincial Government Accounting System
PNC	People's National Congress Party
PNGEC	Papua New Guinea Electoral Commission
PNGOC	Ombudsman Commission of Papua New Guinea
POSF	Public Officers Superannuation Fund
PSM	Public Service Management Act
SPFMT	Support for provincial Government Management Training
TI	Transparency International
UNDP	United Nations Development Program

## Papua New Guinea

### *Executive Summary*

Perhaps as suggested by a "bill board" at a busy inter-section in a Port Moresby Street, corruption is killing Papua New Guinea (PNG). Indeed corruption in many different forms has saturated many aspects of the public and private sectors of its society. Corruption is endemic and it happens at all levels of government and public sector organizations. There is also evidence of corruption in the private sector, although at less alarming rates.

The performance of various components of the NIS in PNG has produced a mixed bag of results. Except for the judiciary, the media, the PNG Ombudsman Commission and civil society, most government institutions are perhaps tolerant and passive towards corruption.

The code of conduct for all elected parliamentarians including the appointed ministers is determined by the Organic Law on Duties and Responsibilities of Leadership (OLDRL)<sup>1</sup>, which is enforced by the Ombudsman Commission. This code specifies that within three months of assuming office the elected leader has to submit to the Ombudsman Commission information pertaining to his or her incomes, assets, business connections, liabilities, etc. These submissions are made annually.

This law also applies to executives and members of constitutional offices, heads of central and provincial government departments, the heads and board members of statutory organizations, ambassadors, the commanders of disciplinary forces and other senior executives.

It is observed that there are adequate anti-corruption laws available in Papua New Guinea (Sections 87,88, 92 and 97 of the Criminal Code refer to fraud, undue influence, tendering and bribery.). The weakness is, however, in the effective implementation and policing of these laws. A related weakness is that organizations entrusted to fight corruption such as the Ombudsman Commission have not been given enough 'teeth' to deter corrupt practices.

Interesting and welcome developments in recent years have been the establishment of Transparency International PNG and the increased campaign against corruption by the Media Council. It is observed that through efforts of such bodies the public is now becoming keener to become involved in the fight against corruption. Non-government organizations, including the churches, are now openly talking against corruption. There is now a push for parliament to pass a law to establish the Independent Commission Against Corruption. With the combined efforts of government organizations such as the Ombudsman Commission, the Courts, the Police, the Media Council, and Transparency International PNG and other Non Government Organisations, much can be achieved in terms of reducing corruption.

A national anticorruption agency as suggested under the ICAC is also much needed, although there must be clear demarcation of powers and responsibilities between such an agency and the existing agencies. The establishment of a NACA (National Anti-Corruption Agency or Alliance) would require political will and sustained societal support to make it effective.

### **Summary of Priorities and Recommendations**

There are still many things that need to be done to reduce corruption in Papua New Guinea. A number of priority areas need to be attended to immediately to improve the fight against corruption:

First pressure from a wider community must be put on members of parliament to pass the bill for the establishment of the Independent Commission Against Corruption. The media could play a bigger role in educating the voters to put pressure on their members to vote in favour of this Commission.



Secondly, laws relating to increasing the powers of the Ombudsman Commission should be reviewed. This should be done with the view to giving more 'teeth' to the Commission.

Thirdly, the interest and enthusiasm of the general public in the fight against corruption need to be strengthened and maintained. This can be done through media campaigns, the involvement of NGOs in awareness campaigns, and discussions and consultations with various sections of society. The media campaign should be further complemented by ensuring that those found guilty of corruption are prosecuted.

## **Country Overview**

PNG comprises half of New Guinea and a range of islands, one of which has sought to break away from the country (especially Bougainville Island which has stronger ties to its neighbouring Solomons Islands and whose copper mine accounted for some 40% of the country's export revenues before its closure in 1989). PNG has been independent since 1975; it is part of the Commonwealth. It has a Governor General acting as the representative of the constitutional Head of State (the British monarch) but executive power lies with the Prime Minister and the National Executive Council (the government). The Council is formally appointed by the Governor General on the recommendation of the Prime Minister (while it is the Council which recommends the Governor General); the Prime Minister is appointed by the Governor General on the basis of the majority support in the National Parliament. This latter institution is unicameral with 109 members, of which some 20% are elected from provincial electorates. There are 20 provinces. There are some 6 main parties (and 16 minor ones) but the biggest political grouping elected to the Parliament were the independents who subsequently joined other political parties so there are only 2 left in the 2002 Parliament. The coalition government makes for a fragile tenure (with governments dismissed in 1999 and previous years in the face of votes of no confidence and allegations of misuse of office).

PNG is a country with great potential from its natural endowments of minerals and petroleum, large tracts of unoccupied fertile land, large forestry and fishery resources and tourism potential. It has enjoyed unprecedented wealth from minerals and petroleum over the 1990s but has been unable to convert this into real development and giving it some of the worst human development indicators in the Pacific.

Corruption in PNG cannot be discussed in isolation from development and politics. Explanations deduced from leaders dismissed as a result of misconduct and misuse of public funds alleged that their actions resulted from attempts to address, if not fast track, wealth-generating development activities in their electorates. This further enlightens the fact of widening disparities in development between ethnic groups, and between different geographical areas.

The background to corruption in PNG is similar to other small island states. Comparisons reiterate issues and themes that connote corruption with underdevelopment and poor governance. Development policy objectives to generate wealth through developing natural resources coupled with communal ownership, amidst diverse ethnic groups, and acute incapacity of the government, provide a susceptible nursery to germinate corruption.

The question that is immediate here is that of how and why corruption is peculiar in PNG. In the political arena, cases of corruption portray reasons pertaining to a political leader's desire to bring about immediate and visible development to his or her electorate, and especially those immediate to the leader. This justification also highlights a possible nexus between Melanesian communalism, personal greed and development. However these links could be rebutted, especially when traditional leaders were transparent in the distribution of wealth, a trait that is concealed in the dealings of today's politicians.

Related to this would be the misconception of politics as a means to personal wealth. This perception has historical validity. Absence of a strong indigenous capital base during colonialism would have fuelled the business aspirations of politicians. A browse through the political chronicles of PNG reveals an interesting trend. Politicians begin their political careers as ordinary persons, or civil servants, and graduate as business entrepreneurs after their discontinuation from office.

In fact, most medium scale business activities in PNG are owned or partly owned by politicians and ex-politicians. The emergence of politicians-turned-businessmen or vice versa after 1975, and the difficulties in separating business from politics, had sent out false signals to aspirants to political office. Contesting elections today has become a god-sent opportunity to wealth accumulation. Cases of diverting public monies into personal accounts or into those of the politician's business associates, as cited in this report, allude to this assertion.

The absence of a developed indigenous capital base has provided a vacuum in PNG's economy, which in turn has impaired the government's bargaining position against the multinational companies (MNC). The national government in PNG, by default, has become the business entrepreneur to partner MNCs in major development. And it is the dilemma of wearing 'two hats' that has compromised the government's neutrality. Its participation as guarantor and as joint-venture partner has also facilitated avenues for corruption by exposing civil servants and politicians to be vulnerable to bribes and commissions from foreign companies.

It is also an alternative to the market as a producer and distributor of goods and services. Hence businesses are conducted with government resources and through government institutions guided by political prices more than market prices. Corporate clients of business houses are public officials and organizations. The little that is left of the market is secured through political affiliations and networks. These factors are susceptible to corruption and further make it difficult for business entrepreneurs pursuing political careers to separate politics from their business interests.

Finally there is the issue of political exploitation of natural resources and 'generous' levels of aid in terms of "windfall' incomes (economic rents) that have led to waste and corruption. Rent-seeking has subsidised the rise of a small political elite and overblown central government at the expense of investment in infrastructure and diversification of the economy" (Windybank and Manning, 2003: p2). The political arena, as will be noted below, becomes a goal for inside economic gain rather than for the promotion of the public interest.

Attempts to take government away from the business through privatisation, liberalization and deregulation have been dragging, and at times have been derailed, with mass demonstrations that ride on the emotions of public ownership of the state owned business (SOE) entities. The fears of job losses and the likelihood of the economy being denationalised were reflective in the government's prolonged delays in implementing privatisation. Even now, attempts have been immersed in Commissions of Inquiry revealing allegations of defaults in the bidding process. The delays in selling SOEs reveal their unprofitable nature and perhaps the undeveloped indigenous capital base. The focus has then shifted across to superannuation funds as the alternate capital base. However these too are now inundated with allegations of corruption. Commissions of Inquiry reveal investment decisions that were submerged with tendering flaws and political pricing. Political influence in appointments of board members and influencing of the procurement process were also rampant in the superannuation funds, as revealed in the 2001 Inquiry into the National Provident Fund.

Unlike Fiji, which is more of a homogeneous society through its chieftain system, PNG is made up of many nation-states that are diverse in culture and language. Except for certain parts of Milne Bay and New Ireland provinces, the traditional political systems have little impact on PNGs political configurations. However it is the abuse of the traditional system that matters in relation to corruption.

Traditional leaders have earned and legitimised their mandate through ownership and distribution of wealth with transparency ('for many Melanesian traditional societies, a credible leader is often defined by the volume of wealth in his disposal and power that he is able to wield' (Kavanamur and Okole, 2001: 6)). They spoke for and on behalf of their clans, such that land and its resources had been a communal asset. Modern political leaders of PNG today do not ask for their voters' consensus nor give an account to their voters when distributing electoral development funds. They divert funds to family businesses that are registered under a clan name and symbol.

Political power may be equally shared in Papua New Guinea, but it is the high turnover rate at the national parliament that has a lot of implications for corruption. Almost 80% of elected leaders fail to remain in power for more than a term in parliament. Such uncertainty exerts pressures on the parliamentarians to maximise all available opportunities to establish themselves by using public office and resources to remain in power through vote buying and building their power base.

Diverting public funds outside of the scope of appropriations onto politically expedient projects or buying of capital goods like banana boats and land cruisers that rapidly depreciate become the norm of first-time (and perhaps last-time) politicians. Others invest public funds into trust accounts and corporative ventures under the name-tag of the constituencies. Of course these are often conduits for wealth accumulation by individual MPs.

Upon attaining independence in 1975, PNG adopted the Westminster system of government with a national parliament whose members are elected for a five-year term through a secret ballot by the voters in the 109 constituencies throughout the country. It has a three-tier political system comprising of the national government, 20 provincial governments and about 267 local and municipal governments. Governors who are elected as provincial members to the national parliament head the provincial governments.

The Organic Law on Provincial and Local Level Government (OLPLLG) defines that the provincial member assumes the office of a governor of the province. However the government of the day may appoint other elected members of constituencies within the province, should the provincial member be appointed as a minister in the National Executive Council (NEC). Apart from the governor, provincial government comprises the presidents of the all local governments in the province and other nominated members, and all the members of the national parliament from the province. The third tier of government is local level government, which is made up of elected ward councillors.

The national parliament is a single house assembly, from which the National Executive Council (NEC) is chosen. The NEC is headed by a Prime Minister who comes from a political party that commands majority of parliamentarians on the floor of the parliament. So far in PNG's political history there has been no single party that comprises the executive or dominates the parliament. On average the government is been made up of five coalition parties plus assorted independent members. The current Somare-Marat government, for instance, is a coalition government that is made up of six political parties, together with a handful of independent members (though all the independents have subsequently joined parties). The national parliament is also empowered to appoint a women's representative outside the ballot box. However this power has rarely been used. Unlike Tonga and Fiji, the configuration in PNG's political system has no formal ties with the traditional political system. The parliament in PNG is not subject to any traditional political institutions or practices.

Except for matters related to Foreign Affairs and Defence, the administration of the country is divided between some twenty-five national departments some of whose functions and responsibilities are decentralized to the provincial departments. These responsibilities are then delegated to a number of districts and sub-districts. The districts comprise of Local-Level Governments (LLGs) which are political units made up of elected councillors each representing a ward, which are in turn made up of several villages and hamlets.

## **Corruption Profile**

### **Causes of Corruption**

Corruption is found in underdeveloped, developing and developed economies but in varying degrees. On the same tone, rich leaders and underpaid government workers alike abuse their authority to make and access wealth. This suggests that poverty cannot be the only cause of corruption, neither is there a single cause of corruption. In PNG there are several factors that have connotations as causes of corruption. These are: culture, failure of government institutions to use the controls available, inadequacy and incapacity of the institutions, demands of supporters, introduction of large scale logging, circumvention of government regulations like work permits, visas, and reserved activities.

### **Culture**

Sharing and caring is synonymous with leadership in Melanesian culture. Amongst traditional leaders, mobilization and distribution of wealth is an essential component of their responsibilities. It further enhances their status within the tribe. However upon being elected, leaders and appointed officials fail to draw differences between traditional culture and the rules and regulations governing public office and public resources.

It is common to hear voters selecting a particular candidate on the basis of his or her attributes of sharing and caring. This in turn compels elected leaders to return favours to their voters through goods and services. Observations on voters' and candidates' behaviour during the 1987 and 1992 elections alluded to such reciprocal relationships between voters and candidates based on leadership traits of sharing and caring<sup>2</sup>. (Oliver, 1989; Saffu, 1996) The same reasons were later observed in the 2002 national elections, and especially in electorates that had the traditional chieftain system.

The traditional culture of PNG does not sanction corruption but it is its compulsion and its incompatibility with the bureaucratic and democratic norms and its abuse that denotes corruption. Skewing and manipulating proper tendering procedures to award contracts to family companies, or facilitating appointments with disregard to merit, carry implications of contrariety in the communal culture that exists within the PNG society. Payani's diagnosis of the composition of a country's public sector, for instance, alluded to a domination of one ethnic or provincial group depending on the provincial origin of an executive or the human resource personnel within the organization. (Payani, 2000)

His diagnosis was based on examples drawn from the PNG Electricity Commission and PostPNG, which at the time of his studies were largely dominated by employees from the East New Britain province. Interestingly, PostPNG witnessed phenomenal employment of the workforce from one province at its central headquarters by 1998. Even the security guards guarding the premises had affiliation with the CEO of the company and his political party. The Chief Executive Officer (CEO) of the company was also an unsuccessful candidate who contested the Enga regional seat in the 1997 national elections.

These trends are of course debatable especially when compared with cases where leaders have diverted funds outside of procedures and laws to fund their own self-interest. The majority of the referrals of leaders by the PNGOC for prosecution is due to misuse and abuse of procedures in applying public funds. For instance, between 1995 and 1998 there were twelve leaders referred by the commission for prosecution. Nine of these leaders had charges related to misappropriation of Electoral Development Funds and other public infrastructure development funds. Their transgression included diverting funds into their private accounts or funding political expediency projects outside the scope of the prescribed appropriations. (Ombudsman Commission of PNG, 2000:67-88) These cases are cited in Table 2, Annex 1.

But this individualistic behaviour has a nexus to culture when considered in the context that almost all leaders conduct their campaigns and earn their votes through strong ethnic and genealogical ties than the primacy of policies as it would be in developed democracies. Hence the abuse of culture arises when the conduct of their actions becomes ostentatious

with the use of communal name tags, or communal trusts, which in reality act as conduits to personal wealth.

Culture in PNG is one factor that can give an explanation to the causes of corruption. While it can be argued that there are certain attributes of the culture which seem to be more compatible with corruption, this does not mean that PNG has a corrupt culture. In many parts of the country, sharing and caring is synonymous with a clan leader or an elder of a family. Amongst traditional leaders, mobilization and distribution of wealth is an essential component of their responsibilities. Such activity further enhances their status in the clan or the tribe.

Such leadership traits are said to continue amongst elected leaders and appointed officials who facilitate their cultural responsibilities and their social obligations through their access to public resources. It is common to hear voters selecting a particular candidate on the basis of his or her attributes of sharing and caring. This in turn compels elected leaders to return favours to their voters through goods and services. For instance, observations on voters' behaviour in Madang Open during the 1997 and 2002 elections showed that people voted for candidates on the basis of their leadership traits of sharing and caring.

During the same observation, candidates stated that it was part of their culture to distribute resources to their tribal groups<sup>3</sup>. (Oliver, 1989, Saffu, 1996) These actions, they claimed, boost the social status of the leaders in society. They argued that as leaders they are expected to provide for their people, which they consider as normal. However the problem arises when favours and social obligations conflict with rules and procedures underlying bureaucracy and democracy.

## Party Politics

In party politics corruption has been evident in maintaining the shifting political alliances; the 1999 World bank report noted that, despite the rhetoric of reform, knowledge of the misuse of discretionary powers was 'often used to engineer political alliances rather than to reduce such behaviour and build credibility' (World Bank, 1999: 105). Further, there are instances where leaders negotiated with foreign business entrepreneurs to gain financial support for their respective parties to fund their election campaigns. This transaction is corrupted when funds become personal rather than party donations. But much more alarming in this regard is when party donations are tied in with business concessions and favours pending a successful election. A first case of this kind was documented in 1991 involving the Deputy Prime Minister, who was also the national Minister for Forestry, and a Malaysian Timber Company.

The Barnett Inquiry revealed that there was a fraudulent deal in the award of log harvesting rights to a Malaysian company. The business transaction was between a local landowner company, in which the minister had substantial interest, and the foreign company, which gave financial donations to the minister's Peoples Action Party to fund its 1987 national election campaign. In return, concessional log harvesting and exporting permits were granted to a Malaysian company.

Political nepotism is another factor that facilitates corruption. Appointment of party men to senior positions within the bureaucracy or to head government institutions is a common trend in PNG's politics: "nepotism is entrenched at the high levels. The arbitrary appointment of clan members or political cronies to public office, regardless of merit, has politicised and destabilised the bureaucracy and state-owned enterprises, most of which are running at a huge loss" (Windybank and Manning, 2003: 4)

Changes amongst heads of government departments has become almost the norm in PNG. Retrenched public officers, ex-heads of departments with terminated contracts, and unsuccessful party-sponsored candidates comprise a bandwagon of party-loyalists who are then given jobs in return for their loyalty and support. The appointments of the acting administrator of the Southern Highlands Province in 2001, and the Chairman of Constitutional Review Commission (CRC) and later to the Privatisation Commission are only some examples of appointees with political connotations<sup>4</sup>.

The former was an unsuccessful PDM-sponsored candidate for the Southern Highlands provincial seat, while the chairman of CRC was a PPP strong man, who also lost his seat in the 1997 national elections. This may be a common trend elsewhere, but the aftermath of this kind of appointment does little to conceal either corruption or its traits in PNG.

Apart from compromising and disregarding procedures and merit, such appointments were made to fast track the implementation of political objectives. The appointment of the CRC chairman followed by the Privatisation Commission appointment put into motion major policy changes on privatisation that were initiated by the PDM-PPP led coalition amidst strong opposition from the unions.

The controversy between 2001 and 2002 regarding appointments of a CEO to the National Capital District (NCD) portray a good example of party politics and corruption in PNG. The tussle between the appointees of the Peoples' Democratic Movement (PDM) and the People's National Congress (PNC) would go down on record as controversial appointments. The highlight of this saga was that these changes were confirmed and revoked within a week with little regard to appointment procedures, let alone the manner in which hand-over and take-over changes were made.

In fact, the changes were almost like a movie scene with appointees entering and exiting the city hall, each with their deputies and a band of supporters. The later awarding of a contract to expand the city's road system to a Global Construction company (GC) immediately after the appointment of the PDM-sponsored CEO, Mr. Kipit, raised several implications, including that of manipulation of the tendering procedures. GC had experience only in the Southern Highlands province and had little exposure to civil engineering in urban cities like Port Moresby. There were also established companies like Curtin Brothers and Barclay Brothers, who had wealth of experience of civil engineering in PNG, but were overlooked for the construction job in the city. GC is also a company rumoured to have substantial share ownership among some members of the ruling PDM party.

The project was disrupted in October of 2002. Interestingly this disruption coincided with PDM's defeat in the 2002 national election. Dogged with controversies, including expansion of the project outside its original scope, the project came to a halt due to non-payment by the city authority. Interestingly there was no immediate commitment from the Somare led government by the end of 2002 to complete the project. At the time of this report, there are major scars on the city's main trunk routes depicting this discontinuation, and the city's CEO post had been advertised after a change in the governing board of NCD. However, the NCD saga may have not ended here with the recent vote of no confidence in the chairman<sup>5</sup>.

Such cases reflect to the extent in which the political world has penetrated the administrative world. As the World Bank noted: 'Papua New Guinea's system provides for a clear separation of the roles of the legislature and civil service, with the legislature predominantly responsible for oversight and policy and the civil service for administration. These roles have become blurred, however, with ministers directly influencing administrative decisions, policy implementation, resource allocations, and staff appointments. The independence of the public service has all but vanished. Despite contractual arrangements, over the past two years the previous government replaced most agency heads. Thus it is no surprise that Parliament's oversight function has evaporated as politicians focus on direct intervention in the administration'. (World Bank, 1999: 229)

In early 2003 the country passed an organic Law which guarantees due process in the appointment of Departmental heads and which effectively removed the power of politicians to make their own appointments. The power was returned to the Public Services Commission and procedures for appointment and dismissal clearly spelt out.

## **Private Investors and Corruption**

The private sector is also equally responsible for corruption in PNG. The forestry sector in PNG records evidence of anomalies and bribery in the signing of contractual agreements

between resource owners and resource developers. The Baret Inquiry records controversial deals between Asian timber companies and elected leaders, with promises to financially support political parties during elections in return for permits to harvest timber. In other instances the tribal and clan leaders of landowner companies are funded to go on sight-seeing trips to Cairns or Singapore as appreciation in return for agreements to harvest logs. The Inquiry also highlights instances where government officials and the resource harvesters have blatantly abused procedures in harvesting and exporting of logs.

## Levels of Corruption

Corruption in PNG happens at all levels of government and private organizations, although at a less alarming rate amongst private organizations.

Common amongst Ministers and Heads of Departments and Statutory bodies is the abuse and exploitation of contractual benefits and authority: the 1999 World Bank report had noted that 'the institutionalisation of numerous discretionary powers to officials and ministers has produced an ad hoc approach to applying policies and regulations and increased the scope for corruption'. (World Bank, 1999: 105) This includes executives:

- Using their position and powers to appoint friends and cronies to the bureaucracy. And, furthermore, using their positions of authority to award themselves benefits in excess of their entitlements;
- Contracting government businesses to themselves or to front companies and partners; and
- Gaining additional assets (houses and vehicles) through contractual provisions. This practice is facilitated in the first instance when heads of government organizations are allowed to dictate their own contracts<sup>6</sup>. (Tsiamalili, 2000b)

The former Secretary for Foreign Affairs and former member for Yangoru/ Sausia in 1997 was dismissed from holding public office after being found guilty under the Leadership Code. He was charged on seventeen counts relating to improperly requesting and obtaining payments of his housing allowances that exceeded his proper entitlement while acting as the Secretary of the Foreign Affairs Department. These counts included diverting and irregularly obtaining monies from the department in the form of salary advances to fund private contractors to maintain his private home. Additionally, monies from different votes within the department were improperly obtained to fund a holiday trip in Australia. (Papua New Guinea National Court, 1997).

The Sandline saga stands out as another example of disregard of proper tendering process that transpired at the level of the executive government and amongst the heads of important government bureaucracies. It was alleged by the former commander of PNG Defence Force that a total of K166 million would have been spent on acquiring the military hardware to be used in Bougainville operations that were either obsolete or not in high demand. These arsenals were acquired at cheap prices but later sold to the PNG government at an exorbitant price. Most alarming was that the negotiations were conducted between the government and Sandline (outside the public procurement process). Even the government's chief legal adviser's opinion was not sought.

The Sandline case in 1997 involved the Government hiring a group of mercenaries named London-based Sandline International, but part of a firm called Executive Outcomes, to try and bring the civil war on Bougainville to an end after 8 years of fighting. A blockade on the island caused thousands of civilian deaths, the closure of schools and all government services. The Defence Force Commander rebelled, captured the Sandline troops and sent them packing. There was rioting in the streets for a short while and then the Defence Force accompanied by thousands of civilians blockaded Parliament until they terminated Sandline's contract.

As a result the Government was defeated at the upcoming election, the Commander was dismissed but was not court martialled because of the widespread public support for his actions. He was later discredited for receiving a large gift from a military equipment supplier. The military hardware destined for the project was diverted to Tindal Airforce



Base in Australia where it was left to rust away until it was disposed of in the last few years. Sandline forced the Government to pay the remainder of their contract by taking a lien on moneys owing to it from the European Union.

Further down the hierarchy of the public bureaucracy, the supervisors and their subordinates employ 'carrot and stick' culture when attending to their clients. Some of the common trends of such irregular practices include:

- Providers of public service hinting their willingness to be bribed, either an invitation for lunch or "six-packs"<sup>7</sup> and "bus fares" in return to speed up inquiries and service delivery processes;
- Law enforcement officers extorting money for themselves by threatening to impose fines (eg. abuse of on-spot fines by police traffic officers and anti-litter officers);
- Officials using their position and networks to seek employment for relatives and friends. Positions and networks are also used to cater for other requests for friends and networks. Education officers sniffing out schools for admission spaces, or arranging moves of children to areas favoured by parents, children repeating grade six in different schools to matriculate into high schools);
- Service providers giving priority to *wantoks* (the informal reciprocal relations between friends and kin groups) and family members where there is high demand for services instead of following queues and merit; and
- Service providers using state assets, vehicles and communication networks to pursue their or their affiliates' business interests. In PNG, it is not uncommon to sight a 'Z' plated government owned vehicle dropping off and picking up vendors with their cooler boxes and marketing tables at strategic locations.

Elected leaders at almost all levels of government are also directly and indirectly involved in almost similar corrupt activities, but in varying degrees. At national government level the following would be some of the most common activities pertaining to corruption. Political appointments whereby cronies, a party man, family members and relatives are appointed to public offices, either as chief executives or as junior officers. For example, it was observed in Enga Province at one time that almost all public officials, even as low as drivers and the janitor man were related to the political leader (provincial governor) on the basis of their tribal affiliation<sup>8</sup>. On the same note, a former deputy leader of the opposition was dismissed from office as a result of not declaring his interest in the cabinet when his brother was appointed into the PSC. It was alleged that he facilitated the appointment during his time as the minister responsible for the DPM. More recently the appointment of four top civil servants lacked transparency despite public assurances by the new government to follow merit and due processes in appointments. These 'back door' appointments were made without any advertisements, nor were there any consultations with appropriate bodies like the PSC.

## Costs of Corruption

There are several categories under which the cost of corruption is discussed. The economic cost of corruption stands out as the number one category. In general, the economic cost of corruption is associated with the decline in growth as a result of bad investments. Firstly, public funds (including foreign aid), which elected leaders access, are committed to capital spending on the premise that this would foster growth. Major categories of public funds in this regard include the Rural Transport Development Fund, Minor Transport Program funds, and Transport Sectoral Funds. These are in addition to the National Development Fund and the Electoral Development Funds.

Under the guise of bringing development, elected leaders commit much of these funds to the building (and maintenance) of roads and bridges, rural health centres and schools. The realities of the deteriorating state of infrastructure, some of it virtually non-existent, together with the isolation of the majority living in rural areas, justify these commitments. However much of these investments are misused and diverted to private accounts or to

fund bogus companies and projects. The actual misuse and abuse of these funds are the cardinal sins underlying the number of referrals of elected leaders for prosecution by the OC (PNG) for breaching leadership code (see Table 2, Annex 1).

Jeffery Balakau, while governor of Enga province in 1991, misappropriated K150,000.00 by depositing the money into the private cheque account of a close associate. This was then drawn out in untraceable cash. The issue of growth is further complicated by the fact that capital spending is redirected towards funding politically expedient projects. Mr. John Nilkare, while being the elected member for Gumine and the Minister for Village Services and Provincial Affairs in 1992, for instance, was charged with diverting K20, 000.00 under the Minor Transport Program to build roads under his sponsorship. He was also charged with using most of K250, 000.00 under the Rural Transport Program, which was intended to build four roads, to purchase plant and equipment.

Similarly Mr Andrew Posai, who was the Minister for Forests in 1992, altered the scope of the K40, 000 that was allocated to purchase a workboat for his electorate by purchasing 11 dinghies and outboard motors, which he gave to selected individuals in his electorate. He was also charged with applying and allocating substantial amounts of public money to a company of which he was the chairman.

Concentration of public funds on capital projects diverted many resources away from other needy areas. Education Reform since 1988 increased ribbon-cutting ceremonies marking the opening of new classrooms by elected leaders who had actually sponsored the projects. But nothing is mentioned about the lack of maintenance of existing but deteriorating classrooms, let alone the need for maintenance of new classrooms during their lifespan. Electoral Development Funds are used to purchase new Toyota Land Cruisers for local level governments, and ambulances for rural health centres. Bearing slogans stating that the vehicles had been donated by 'so and so' honourable members, they are then driven on roads that carry the scars of torrential rains and lack of maintenance. These roads can be disrupted by rivers without bridges or connected with bridges that are scavenged by villagers who have dismantled and removed parts of the bridges to show their frustration at the lack of development. New rural health centres are built amidst acute shortages of community health workers and drugs. Lack of maintenance has become synonymous with capital projects in PNG and there is no guarantee that these new projects will be maintained. Against such a background there is less opportunity for capital spending to increase growth.

These features were also evident in The Cairns Conservatory Building Deal in 1994 when the Public Officers' Superannuation Fund (POSF) purchased a building in Cairns for a price that was two and a half times more than the market value. This building was also purchased outside the proper tendering process without any feasibility studies with significant political interference (see Box 1). The building was supposed to house all PNG government offices in northern Australia. Cairns Conservatory was an office building that was sold within the same group of people for \$A3m, \$6m and \$9m. (approximate figures) within a 12 month period, it was then sold to the Public Officers' Superannuation fund for \$A18 million. The government guaranteed the full rental of the building which remained half empty for five years. The POSF ensured that the government of PNG lease the property over ten years at a market rent of A\$900 per square meter. The government also met the operating cost of the building. (Kavanamur & Okole, 2001; Ombudsman Commission, 1999 & 2000).

### Box 1: Politics and the Cairns Conservatory Building

The key people identified by the investigations included the Prime Minister at that time and his deputy, the Secretary for Foreign Affairs and Trade, POSF's managing director, the deputy controller of foreign exchange with the Central Bank of PNG, and business associates. It was apparent that correct procedures were circumvented to get the building purchased. Under intense pressure from the vendor, a special POSF board meeting was convened primarily to approve the deal. And to maneuver around the K1 million limit on off-shore investments stipulated in the *POSF Act*, the managing director had to request a waiver from the PM who was coincidentally the acting Minister for Finance and Planning in the absence of the incumbent who was overseas.

The building was intended to house all PNG government offices in the northern part of Australia. However, the state was inadvertently led by POSF and business cronies to take out a very costly ten-year head-lease over the entire property comprising 3,018 square meters. This included a commencement base rental of \$A980 per square meter so that POSF would not bear the vacancy risk. Before purchasing the property, POSF ensured that the government met several important conditions (Auditor General of PNG, 1998):

- the state must take out a head-lease over the entire property;
- the term of the head-lease would extend for ten years with the option to renew;
- the state must pay the market rent of A\$900 per square meter, the state must bear responsibility of all of the operating costs; and
- the rent must be annually adjusted in accordance with movements in the Consumer Price Index (CPI) or the rental market whichever is higher.

The Auditor General found that a discernible connection between politicians, public servants, and business associates existed. The then Managing Director of the POSF, Mr. Ereman Ragi, testified before the Ombudsman Commission that political pressure was applied from the top'. (Kavanamur and Okole, 2001: 16)

It was later valued as part of the Commission of enquiry at around \$8m. The Commission established gross incompetence and alleged fraud which was not proven. A civil case was prepared and the state spent around \$1m in its preparation to the stage that summons were to be served. The Attorney General failed to serve the warrants and no action has ever been taken against the culprits. At the end, the cost of this bad investment decision was subsidised by contributors to the fund. The deal diverted monies that may have been used to finance productive spending elsewhere. In the final count, the returns are minimal or nil. Here the spiralling costs of corruption matter most as they beef-up the total financial cost and drain the public purse.

On the other hand, frequent changes in heads of department to reward political loyalty has imposed a lot of constraints on the public purse. Not only have the terminated contracts needed to be honoured to avoid legal consequences<sup>9</sup>, but payments have to be made to additional assistants (such as chauffeurs, executive officers, bodyguards or even janitors). Otherwise the costs of extra personnel are accrued by the respective organization. By then these personnel may have formalized their employment status and made their way into the public bureaucracy. The existence of ghost names revealed by the Minister for Public Service towards the end of 2002 was only the 'tip of an iceberg' regarding extra personnel. The unanswered question remains as to how they got onto the government's payroll.

On the political front, legitimacy and the integrity of elected leaders are disparaged to an extent that civil society has little or no faith in the government. Plans announced in former Prime Minister Morauta's maiden speech to restore national institutions and eliminate the abuse of 'seed money'<sup>10</sup> never got off the ground. Instead, the opposite occurred which resulted in widespread disenchantment of society. Allegations of appointments of cronies and the selling of the PNG Banking Corporation at a deflated price were held against the Morauta government. Even the violent deaths of three students of the University of PNG were misinterpreted as silencing the voice of the society. The political cost was, of course, the very poor performance of the PDM Party in the 2002 elections in which 80 sitting members lost their seats. In the final analysis there is lack of political stability and continuity of political executives.

Public perception against the Morauta government's disrespect for merit and procedures led to the election of the Somare-Marat government in 2002. But there are already indications of the appointment of top civil servants outside due process and merit, despite announcements that all appointments were to be made on merit. The Independent Public Business Corporation Act was the first to be changed by the new government, allowing the Board to be re-constituted and removing its powers to appoint, at arms length and according to specified procedures, Boards of state owned enterprises (SOEs).

By November of 2002 there were four appointments of departmental heads that were made in isolation from the PSC, fast tracked through the DPM. At the same time, six of the top civil servants in the central bureaucracy were from the Prime Minister's province. This attracted reactions from the public accusing the government of being inundated by 'Sepik Tsunami' or Sepik Mafia<sup>11</sup>. Political consequences could include possible split within the ruling party and between the coalition partners, a characteristic that has become a trait in PNG's parliamentary democracy.

In summary, it can be deduced from these cases that the cost of corruption falls on the taxpayers, the business houses and ordinary Papua New Guineans. Public funds spent on politically expedient projects or diverted into private accounts only increase the poverty gap amongst Papua New Guineans.

## **The Impact of Change on Corruption**

Democratisation, decentralisation and good governance have been some of the changes in PNG that have had considerable impact on levels of corruption. Democratisation has led to the opening of the state. Over the past decade, the level of societal participation, especially of interest groups, has increased considerably. Apart from mobilizing their members and increasingly articulating their interests within society, these interest groups have joined forces, as in the Community Coalition Against Corruption (CCAC) and the Consultative Implementation and Monitoring Committee (CIMC), to influence the decision making process of the government.

The PNG chapter of Greenpeace, for instance, has been very active in exposing sinuous deals between foreign log harvesters, government and landowners. It has mobilised successive landowners by articulating information on unfair disparities in log pricing and environmental degradation, even to the extent of influencing the government's policies on forest development.

A most recent example of the impact of change can be deduced from the Inquiry initiated by the Morauta government in 2001 into the National Provident Fund (NPF). This inquiry revealed serious allegations of abuse of management and investment of funds contributed by private sector employees in PNG. The report and the press carried allegations of how politicians, managers of NPF and other prominent leaders plundered the fund through poor investment deals. The NPF Tower project, in particular, was plagued with fraudulent deals in tendering and construction of the tower. But it is the aftermath of the report that shows the impact of change, especially the mounting pressure by contributors through the CCAC to have those implicated tried.

The Somare government in October of 2002, through the floor of parliament, publicly referred all those who were implicated, including members and leaders of its coalition partners, to the respective authorities to be further investigated. This act in itself was

nonexistent in past parliamentary sittings. It is also a testimony to the increasing impact of democratisation.

Others, like the Landowners (resource owners), trade unions and non-government organizations like Melanesian Solidarity have even gone to the extent of forming political parties with the intention to participate in the decision making process. Increased participation has opened up the state machinery and has improved its transparency and accountability.

It has allowed for more consultation, and the government has gone to the extent of inviting representatives from stakeholder groups onto the boards of state institutions. The attributes of good governance, in particular, are antidotes to, or are at least minimizing, corruption. The participation of societal groups in the forestry sector and, lately, the TI sponsored mobilization and awareness campaign for legislating for merit in public sector appointments, are examples of the impact of change on corruption.

The recent decentralization reform has further allowed for transparency in the decision-making process and the distribution of scarce resources to be determined at the community level. This reform has its legal framework defined in the Organic Law on Provincial and Local Level Governments (OLPLLG) that was passed and initiated in 1995. This law in essence reduced the decision-making powers of provincial governments by placing more emphasis on local level governments.

One of the most significant features of the 1995 OLPLLG is its emphasis on planning and budgeting. It is now law that projects requiring public funding have to be part and parcel of a district development plan which, in turn, must be consistent with the provincial and national development plan. The district plan is reflective of development needs identified and approved by the Joint District Budget Planning and Priorities Committee (JDBPPC) comprising of elected local government councillors from a district.

In so doing, the OLPLLG has minimised the opportunities for national politicians to divert public investment funds into their personal accounts<sup>12</sup>. It has minimised unplanned spending and the diversion of public funds towards politically expedient projects. It has reinstated transparency and accountability in the use of public funds. Despite the drawbacks resulting from acute bureaucratic incapacity, the workings of JDBPPC is restoring the importance of procedures and processes by ensuring that distributions of resources are done in the light of a district plan. The reform had also enhanced the establishment of provincial audit service and the provincial and local level service monitoring authority, whose function also involves ensuring that appointments to offices in a provincial and local government are based on merit.

On the other hand, democratisation has allowed for increasing pressures to be applied on the ailing state machinery. This change in many ways opened avenues for increasing demands from society on the state machinery. While this would be legitimate, the acute incapacity of the state to respond to these demands facilitates opportunities for officials and recipients alike to disregard procedures, rules and regulations.

## ***The National Integrity System***

### **Executive**

Like most political systems the Executive holds effective political power in PNG. It has access to the bureaucracy and dictates the allocation of funds and resources. It has the opportunity to practice corruption.

There are a maximum of 29 ministers allowable under the Constitution and they are appointed from members of Parliament. Most governments have appointed the full complement of Ministers since independence. 42 political parties contested the last election (2002) but many of these have since amalgamated with larger parties: 24 parties won seats. There are 22 National Government Departments, 14 non-commercial statutory authorities and 9 commercial state owned enterprises.

The Executive in PNG is in many ways distanced from the public. Although there are constitutional provisions protecting the civil rights of the people, suing the government or its agents is an expensive exercise, as it requires a considerable amount of legal fees. Citizens are also ignorant about their rights, and the avenues to sue the government should these rights be contravened.

The code of conduct for all elected parliamentarians including the appointed ministers is defined in the Organic Law on Duties and Responsibilities of Leadership (OLDRL), commonly referred to as the Leadership Code, which is enforced by the PNG Ombudsman Commission (PNGOC). The details of the OLDRL are discussed in the later part of this report under the section on PNGOC. But in general this code defines monitoring and disclosures of assets by the leaders, their conduct and the rules and registries concerning gifts and hospitality. It sets out the responsibilities and obligations of leaders in the PNG body politic and other public posts. Amongst other things it compels leaders to make an annual return to the Ombudsman Commission setting out a statement of wealth and sources of income.

In addition to the leadership code, there are other Acts of Parliament, especially the Public Finance Management Act (PFMA), which was first passed in 1986 and later repealed in 1995, and the Public Service Management Act (PSMA). These laws act as administrative checks and balances, under which ministers perform their tasks.

The performance of the Executive in PNG has produced a mix bag of results in this regard. Examples and trends are compelling enough to argue that leadership and political will is very difficult amongst the political executive. Frequent votes of no confidence, splits in political parties resulting in the emergence of new parties struggling to establish their identities, and party disloyalties are strong testimonies of an Executive lacking in leadership.

On the other hand, political will is lacking when we find incoherent policies that are lacking in continuity. Apart from policies on provincial government and public sector reforms where executives have scored a mark, other policies have legitimised and nursed misuse of resources and positions.

The recent success in passing the Free Education Policy by the Morauta led PDM government in 1998 had a lot of political connotations<sup>13</sup>. It had in many ways paved the way for the executive to abuse public funds under the guise of building classrooms and teachers' houses. Hence it may have been a display of political will from the executive's perspective, but with a different motive. And most important of these has been their inability to pass anti-corruption related measures. Several cases can be cited here. Firstly, there have been numerous unsuccessful attempts raised on the floor of parliament to abolish the electoral development funds due to gross abuse.

In 1987 the Prime Minister made known his intention to abolish the 'slush fund', the National Development Fund (NDF)<sup>14</sup>. His justification was that the members of parliament were behaving irresponsibly and becoming dependent on the fund. However, Wingti was outvoted, especially by his cabinet, although his intentions received support from civil

society at large. In addition, there were moves to have the national parliament pass a law to establish the Independent Commission Against Corruption in 1998<sup>15</sup>.

This proposal was tabled in parliament but lacked Executive support and that of the legislature at large for it to be passed. The forestry saga also registers as another testimony of the Executive lacking political will. The recommendations of the Barnett Inquiries and the need to encourage sustainable development in the sector were all noble concerns that were widely endorsed and agreed even amongst the parliamentarians, yet these were not implemented by the government.

## Legislature

The legislature in PNG has not been very effective in performing its accountability function since independence. Marred by a volatile political party system, the legislature has been subjugated by the Executive and the conditions of its coalition alliances. Lack of party loyalty and party stability resulted in frequent votes of no confidence and the formation of smaller parties on the floor of parliament. This has tarnished the legislature's ability to act as a watchdog against corruption. Worse, "democratic elections have become the primary means of accessing state finances; almost 3,000 candidates competed for 109 seats in the 2002 elections". (Windybank and Manning, 2003: 6)

This environment has condoned 'vote buying', and frequent changes in ministries: "many (MPs) run as independents and join political parties during post-election 'horse trading' sessions, producing unstable coalitions held together more by patronage ...than by party loyalty based on common policies or ideas". (Windybank and Manning, 2003: 60 Allegations of the government diverting funds from projects to suborn members of the legislature into voting for politically expedient bills, or to support the executive to hold onto power, imply that parliament legitimately condones the abuse of public funds. Parliament has now become an avenue for the transaction of favours and support between the legislature and the executive. In the end, public programmes and public funds have been handicapped as a result of the legislature's self centred desire for favours.

A notable feature in the legislature's relationship to corruption can be further assessed in the use (or abuse) of the Electoral Development Fund (EDF), commonly referred to as the slush fund. The EDF has been gradually increased over the years from quite a small fund for MPs to K1.5m per member in 2001. It was initially entirely a discretionary fund theoretically using the government tender procedures for minor works and projects in their constituencies. It was roundly abused and the Ombudsman has prosecuted a number of members over misuse. Funds were allocated through the budget to each MP for his electorate. The fund has since been brought under tighter control. K1 m. is still allocated to each electorate but only released to larger projects that have been through a District Planning and Budget Priorities Committee and are then tendered through the government tender system. K250, 000 is allocated for smaller projects but still has to be agreed by the DPBPC and K250, 000 is still discretionary.

The existence of this fund is very controversial as it is directly implicated in facilitating corruption. More than 90 percent of elected members that were dismissed under the leadership tribunal between 1976 and 2000 were found guilty on charges related to misuse of their EDF (see Annex 1, Tables 1 and 2). Either this is in terms of breach of procedures, spending outside the scope of allocations or even diverting funds into their private accounts and companies for which they hold shares. These funds were also being used by the Executive to buy members of the legislature by the simple expedient of withholding them from members of the opposition.

This was evident during the last parliament sitting in 1998 when several members of the opposition raised questions as to when they were to receive their electoral development funds. Some even threatened to seek legal opinion on the government's delays in paying their EDF. Apparently, at that time the PDM led a coalition comprising almost 80 percent of members of the parliament, which is a common feature of parliamentary democracy in PNG. Consequently, EDF funds and other resources were diverted to honour political agreements and maintain political stability between political parties.

The Auditor-General is responsible for auditing, but MPs have failed to report to Provincial Treasuries on how the money has been spent and the AG says he doesn't have the money to carry out specific audits of each MP's projects.

Despite this gloomy picture, a certain development within the legislature is worth noting. The recent enactment of the Organic Law on the Integrity of Political Parties and Candidates (OLIPPAC) can be seen as a positive development towards addressing the fluid and unstable party system. The details of this law are discussed in the preceding paragraphs of this report. This impact of this law is yet to be felt, but if implemented it would remedy 'favours' and 'vote buying' which have become the symptoms of corruption within PNG's parliamentary democracy. Secondly, the rejuvenation by the Somare-Marat government of the Parliamentary Public Accounts Committee (PPAC), which has been dormant for many years, is also a positive sign of the legislature's response to corruption.

The PPAC has begun a lengthy series of enquiries into financial activities of public bodies and departments. This is the supreme financial watchdog and combined with an effective staff and Auditor-General it is the strongest deterrent to corruption in PNG. In 2001 several provincial governments and statutory bodies were summoned to appear before the PPAC due to anomalies in their transactions of public monies. Lacking over the past two decades, this action and its reinforcement after the 2002 elections again reinstated audit and accountability in the use of public monies.

## **Electoral Commission**

The responsibility to conduct national and local government elections rests with the Papua New Guinea Electoral Commission. (PNGEC) Being a constitutional office, it is guaranteed an autonomous status. The Head of PNGEC is referred to as the Electoral Commissioner and is appointed by the Governor General on the advice of the Electoral Commission Appointment Committee headed by the Prime Minister as chairman<sup>16</sup>. Although the constitution guarantees the independence of the electoral commissioner, the irregularities and unusual happenings during the 2002 national elections raise doubts about this independence.

Incomplete common rolls with ghost names and missing names<sup>17</sup>, declaration of certain seats ahead of others, and other defects in logistical support during the polling period has attracted a lot of finger pointing to the partiality and efficiency of the electoral commissioner. These deficiencies were reiterated in studies carried out by representatives from the Commonwealth Secretariat and the Australian government into the credibility of the 2002 elections. (AusAID has given "\$6.5 million to the PNG Electoral Commission for 'capacity building' and improving the quality of the electoral roll, yet blatant vote-rigging, intimidation and electoral violence ensued..." (Windybank and Manning, 2003: 9)). A thorough audit of the election process has not been implemented despite assurances by the past and present Prime Ministers, and mounting pressures from community groups like Transparency International (PNG), the Community Coalition Against Corruption (CCAC) and the PNG Media Council.

## **Political Parties**

Political parties in PNG rarely maximise their purpose and functions as expected in any democratic systems of government. They are seen only as election tools that emerge in great numbers prior to national elections but reduce significantly in quantity after elections. There are no distinctive ideological differences between the parties. In fact, almost all parties have the same policies and manifestos, which are distinguished by the wording and their place in the priorities of each political party.

Slightly distinctive are the regional identities of parties. Lacking in resource capacity, together with coalition conventions and conveniences, most parties concentrate efforts to endorse candidates within the scope of their regions. Rarely would they endorse candidates in all of the 109 electorates. In 2002 there were 43 political parties that endorsed candidates to contest the national elections. There are currently 23 parties in Parliament. Several smaller parties (1-2 members) have applied to amalgamate with larger parties, but this has not yet been approved by the Registrar of Political Parties. Less than



20% of these parties commandeered the numbers to form the government, resulting in a coalition government that comprises several one-man political parties.

Until recently, there has been no specific law on funding of political parties. By 1998 the Constitutional Development Commission (CDC) was given the responsibility of formulating an organic law on the integrity of political parties and candidates by the Governor General. On February 22, 2001 the Speaker of Parliament certified the legal document to become OLIPPAC. Within its fundamental intention to promote 'party stability', Part V of OLIPPAC outlines the arrangements on funding of political parties in PNG. The law firstly defines the establishment of the Central Fund Board of Management comprising the Clerk of Parliament, The Electoral Commissioner, the Registrar, the Chairman of national Fiscal Commission, a representative of National Council of Women, and a representative of National Council of Churches.

The law provides for registered political parties to be funded by the government through the national budget each year and contributions by citizens, non-citizens and international organizations. All funds are to be channelled through the Central Fund Board of Management. The board is further empowered under the OLIPPAC to regulate, control and manage the fund. This means that it has powers to regulate monies from internal and external sources, and invest the funds in bonds and securities to achieve its purposes. The source of funding is divided under the separate categories of contributors. In this regard, OLIPPAC mentions that:

- international organizations are not to contribute directly to a registered political party but through the Fund, and
- citizens and non-citizens can also contribute amounts of monies that shall not exceed K500,000. This is to be paid into the fund and not directly to a member of parliament nor a political party.

The monies from the Fund are to be distributed to registered political parties using the formula that each party is to receive K10,000 per elected member who is a member of the political party. And the amount payable can be increased depending on national economic factors and availability of monies in the Fund. Another important aspect of this Fund is the 75% reimbursement for registered parties that endorsed a female candidate who mastered at least 10% of the votes cast in the electorate during the election.

Although there is little mention about how political parties are to spend their monies, the OLIPPAC is specific about the financial returns by both the registered political parties and candidates. It states that these returns be submitted to the Fund within three months after the return of writs following a general election. Interestingly, these returns cover all the contributions, receipts and income of political parties, and details of expenditure which the party has incurred. These are to be further furnished with names and addresses of the contributors, the source and the nature of income, and the dates upon which the transaction occurred. These returns are then submitted to the Registrar of Political Parties who is appointed by the Board.

## **Supreme Audit Institution**

There are two important audit institutions in PNG that fall under this category of NIS. These are the Auditor General (AG) and the Public Accounts Committee (PAC). The PAC is a parliamentary committee comprising elected members of the national parliament. This implies that their life span and the membership depend on the life span of a national parliament; hence they are not as permanent as the AG.

Section 216 of the constitution and Section 86 of the Public Finance Management Act 1986 set out the functions of the PAC. Its primary function is to examine and report to parliament on the public accounts of PNG and on the control of and on transactions with or concerning public monies and property of PNG. Functionally, the PAC acts and deliberates on matters recommended by the AG and especially on accounts that were defective by discrepancies and anomalies. In its deliberation the committee can subpoena witnesses and take evidence under oath.

On the other hand, the AG is a constitutional body whose function is empowered by Section 214 of the Constitution and Section 113 of the Organic Law on Provincial Government and Local Level Governments (OLPGLLG). Its primary function is to inspect, audit and report on the Public Accounts of Papua New Guinea and on the control of and on transactions with or concerning public monies and property of PNG.

This implies that the AG is empowered to audit the books of all government agencies that deal with public monies. These audits are carried out annually, which then culminate into reports that are submitted to parliament and especially to the PAC. The annual reports can also be debated by the legislature and accessed by the public. However, these functions have been restricted by lack of capacity and resources which have also prevented the annual report from being up-dated. On average, an annual report by the AG is delayed by a year, often determined by availability of resources. At the time of this report, the AG had only published the 1998 report with the 1999, 2000 and 2001 reports being in press. On the same note, the chairman of the PAC reported on several occasions between August and November of 2002 that many government agencies had not been audited for several years and it lacked the funds to carry out its functions (the 1999 World Bank report noted not only that by 1997 46% of audited bodies had not submitted financial statements and only some 20% of the audits were actually complete, but that one government solution proposed in the 1999 budget was to cut the budget to the AG and to outsource part of the audit function (a proposal that the government failed to discuss with the AG in advance).

Having its origin defined under the national constitution, the office of the Auditor General is an autonomous body and is accountable to the national parliament. A parliamentary Auditor General Committee, headed by the Prime Minister as the chair, appoints the Auditor General. Despite this independence the office is financially dependent on the national government. This means that its operations and personnel are supported through the annual budget.

## Judiciary

Section 99(2) of the Constitution of PNG spells out a structure of government consisting of three arms: Parliament, Executive and Judicial System. The Constitution also allocates to each of these arms specific functions: law-making, executive government of PNG, exercise of judicial authority respectively. The Constitution goes on to uphold the principle "the three arms shall be kept separate from each other" which is a common feature of a liberal-democratic system of government.

### The Judicial System: Courts and Judges

In PNG, the judicial system consists of the Supreme Court, the National Court, the Magistrates' Courts and other courts (such as the Village Courts). There are two features of the PNG judicial system that should be noted: hierarchy and jurisdiction. The different courts form a hierarchy; each level is subordinate to the one above it so that the latter can overturn the decision of the former, until the final court (Supreme Court) is reached. The Governor General upon the advice of the NEC appoints the Chief Justice. All other judges and magistrates are appointed by the Judicial and Legal Services Commission. This Commission consists of the Minister of Justice (Chairman), the Chief Justice, the Deputy Chief Justice, the Chief Ombudsman, and an MP nominated by Parliament.

Matters relating to the interpretation of the Constitution and whether any other law or act is consistent with it are the constitutional responsibility of the Supreme Court. This implies that the judiciary and especially the national and the Supreme Court can review the powers of the executive. This power enables the courts to declare the actions of the executive illegal and the laws enacted by Parliament as invalid should they contradict the constitution. When the National Court declared that the suspension of the Western Highlands Provincial Government in mid 1987 was illegal, it was both restraining the actions of the NEC and giving a finer interpretation to the OLPLLG. To the extent that it was refining the wording of the OLPLLG, it could be said that it was an instance of rule-making.

The overall performance of the judiciary against corruption is notably impressive. They have adjudicated cases by law with little regard to circumstances, culture, and political affiliation. Examples of the impartiality of the courts are very obvious as shown in the jailing of officers and soldiers involved in carrying out Operation Rausim Kwik

This is also witnessed in their deliberations on leaders tried under the leadership and criminal code. Between 1976 and 2000, forty (40) appointed and elected leaders, regardless of their seniority, were found guilty and dismissed from their posts by the court. The only reservations on their impartiality lie with the law officers that prosecute leaders. Poor salaries and living conditions of state lawyers can be tempting and susceptible to bribery. Nevertheless the integrity of the judicial bench has been intact since independence.

There has been a tendency for the Court system to make increasing awards to plaintiffs for what appear to be relatively minor grievances. This act can be interpreted as a cause of corruption. It becomes attractive for potential suppliers of goods and services to be appointed under contracts that stipulate large payments for variations of contract and often allow for payments to be made regardless of whether a satisfactory service has been received or not. However this is being addressed with the undertakings of the recent government to revise some laws and procedures that would discourage such practice.

## **Civil Service**

There are no specific laws on corruption covering the entire civil service except the Leadership Code and other criminal laws. However there are laws on governing the management of public funds and appointments criteria. These are the Public Finance Management Act, The Public Service Management Act and the Auditor-General Act. However the implementation and impact of these acts have been impeded by incapacity and blatantly abused by public officers. These impediments led to Prime Minister Sir Michael Somare's outburst of criticism that it is the civil service that is responsible for corruption and not the elected leaders. His criticisms may not be easily brushed aside, especially with the recent revelations on rampant misappropriation of public monies through fraudulent deals within the civil service.

The citing of the provincial treasurer in Western Province, diverting around K30,000 of the provincial treasures to fund his personal interest and the fraudulent activities amongst senior public servants of the national Finance department warrants some justification to the Prime Ministers' outburst.

Within the hierarchies of the civil service there are checks and balances existing, however these have withered away as a result of lack of policing or frequent and widespread ignorance of these processes. The only time these processes are utilised are when policy decisions result in a major financial loss and when there are severe political consequences of a decision. Misappropriation in the country's provincial government system requires a special mention in this regard.

A survey on suspension of provincial governments highlighted that much of the financial errors came about as a result of 'procedural errors' that had accumulated over time. These included miscalculation, poor judgement and incorrect following of procedures. Sause (1992), in his analysis on accountability in provincial governments established that almost all suspensions of provincial governments were due to oversights and misunderstanding of provisions in the Public Finance Act.

Against such findings, we can raise the question of what happened to the application of the checks and balances system? It is not an issue of whether or not there are checks and balances systems in place, notes a former secretary for Department of Finance. But the inability of supervisors and divisional heads to be stringent in policing these laws and responsibilities is a concern. It seems as though tribal affiliations and associated obligations, patron-client relationships within and between government organizations and with outside entities, have withered and belittled the checks and balances within the civil service.

Since 1986 and after the passing of Public Service Management Act (PSM), the civil service became more open to political interference. This law facilitated the establishment of the Department of Personnel Management (DPM). Both developments relinquished the powers and functions of the Public Service Commission (PSC). The PSC is a constitutional body that was responsible for personnel matters within the public bureaucracy, such as appointments, promotions, transfers, termination and reviewing the organisation of state services.

The PSC comprised four commissioners who were appointed through the NEC. The Commission acted by itself and by representation on interdepartmental committees to approve matters of recruitment, selection, organizational changes, job classifications etc. It also carried out its mandate aggressively, in ensuring that recruitment standards and guidelines were properly adhered to. It also ensured that there was no political interference and nepotism in public service employment, including corruption. (Ballard, 1981:77). The constitution guaranteed a wide range of powers and the independence of the Commission. However it also led to unnecessary delays and the removal of decision-making powers from departments and persons who were more familiar with the issues concerned.

This then led to the establishment of the DPM which is also directly answerable to the NEC. With the backing of the PSM Act, the Secretary of the DPM can delegate to respective heads of departments, the day to day personnel decisions relating to appointments, promotions, discipline, and approval of allowances and other entitlements. Moreover the introduction of the 1986 Act has also led to separation of powers whereby the NEC<sup>18</sup> is now responsible for determining personnel policies including the appointment of departmental heads and heads of statutory bodies. (Tsiamalili, 2002a).

It is under this reform that the civil service has become more open to nepotism and political appointment and has been excessively abused almost to the extent that there is no longer appointment by merit. The high turnover in departmental heads, especially during the change of political regimes is the testimony to this. Further down the hierarchy, recruitment and/or career development rules are guided by nepotism and the 'whom you know principle'. A survey conducted by students reading for the paper on Comparative Public Sector Management with the Public policy and Management program of the University of PNG showed that almost seventy to seventy five percent of its 2000 and 2001 graduates' entrance into the public service was made easier by ethnical alliances or other networks. (Ugaia and Kaukia, 2002: 7). Indeed, it is suggested that "10%-15% of the estimated 75,000 public employees are 'ghosts' – employees who are dead, who move from department to department collecting multiple paychecks, or who enter the public service under a number of different names". (Windybank and Manning, 2003: 5)

It has become almost a norm to see 'heads rolling' whenever there is change in the election of political executives. It is now common practice to change secretaries of individual departments in accordance with their respective minister's political alliances or tribal affiliation. But a more alarming trend is the spiral effect of such changes whereby not only the bureaucratic executives change, but even their deputies change. In fact, a senior officer in the DPM acknowledged that the trickle down effect of changes go as far as appointments and promotions of third level executives. The recent efforts of the Public Sector Management and Reform Unit (PSMRU) to introduce a bill to restore merit based appointments is a long overdue development. This bill has gone past its second reading in November 2002 and will soon become a law unless the Somare government takes an about-turn from its promise to weed out corruption and restore meritocracy in public service.

The difficulties in PNG's civil service are further hampered by the inability of each department and statutory body to be more open, efficient and user friendly to the public. There is very little publicity activity or effort to increase the understanding level of the public about procedures within the bureaucracy. The civil service is almost a closed system that falls short in articulating to clients its products and the processes through which it delivers. As a result its clients, the public, resort to short cut measures by jumping procedures and bending rules to access the services, while those who are ignorant about the processes are further isolated and marginalized. On the other hand, others who are

frustrated by the lack of accessibility and information resort to demonstration and destruction of public property to gain attention.

Procedures, in particular about accessing government services like loans, are not user friendly. Firstly, they are printed in English with little or no attempt made to interpret to other languages like *pidgin* or *motu* to enable better understanding of the decisions. Secondly, the decisions and instructions are often too lengthy and technical in their presentation. This is further complicated by a lack of time and interest taken by officials to explain decisions. The common trend in the public's accessibility to administrative decisions is either by inquiry after citing the decisions in the local papers or through relatives working in the civil service.

Even the feedback mechanism is non-existent in the civil service. There are no apparent complaint sections within the departments, and even if there are sections of this kind, they are invisible to the public. Either out of ignorance or lack of faith in the civil service, the public does not pursue their dissatisfaction with government decisions and services through the respective departments. Those that are able to raise complaints go to the ombudsman commission or seek legal assistance, if they feel that they have been victimised by the government decisions.

## Police and Prosecutors

The National Executive Council appoints the police commissioner in PNG. This implies that he or she is a political appointee. The independence of the police commissioner was first tested in the famous Bouraga versus Dutton Affair in 1981. Philip Bouraga was then the head of the police and had refused to give certain information to the then Police Minister, Warren Dutton, resulting in an unsuccessful sanctioning order by the minister. The Supreme Court ruled that the minister had no power to sack or discipline the commissioner, who was a constitutional office holder.

Although this was a case of one person wearing two hats, it paved way for the opening up of the force to political appointments. Between 1997 and 2002 the police commissioner's post exchanged between five persons. Four of these commissioners were from within the constabulary, while one was a former officer turned private lawyer who was practising law before being appointed. The frequency of these changes brings into question the independence of the police force.

More specific was the case of Commissioner John Wakon. Prior to his appointment as the commissioner in July 1999, he was investigating allegations of corruption amongst certain elected leaders. By then he was the metropolitan police commander in Port Moresby. These investigations were widely published in Port Moresby and commanded public support. However they were never completed after he was appointed as the commissioner and later suspended.

All appointments of police commissioners are drawn from senior officers within the police force, especially at the rank of deputy commissioners. This implies that the appointees are career police officers. However this does not stop the NEC from recruiting outside the force, as in Peter Aigilo, who left the constabulary at the rank of superintendent to practice law before being recalled as a commissioner. Even Phillip Bouraga, one of the early commissioners, was a civil servant from outside the disciplinary forces.

The overall performance of the police force against corruption is to a large extent watered down by lack of capacity, political influence, and regionalism. Leaders make threats against officers investigating fraudulent activities, although this is not often reported. At the same time lack of capacity impedes the work of police towards investigating corruption. This is further enhanced by regionalism.

The lack of will to arrest the military personnel involved in the Sandline Crisis and the so called 'Melanesian' peace ceremony between politicians and members of the disciplinary forces after the crisis in many ways neutralised the rule of law. In so doing it forced the police investigations to be swept under the carpet. In other instances, gifts and favours, are offered to the police to diffuse investigations. Cases of lack of evidence and out of court settlements can also imply corruption in the police force.

Prosecution stands out to be one of the major concerns of both police and public prosecutors. In fact it is not unusual for the courts to throw out corruption related cases. While the statistics of successful and unsuccessful prosecution cases were not available during the compilation of this report, interviews with officers in the public prosecutor's office revealed the following as some of the common reasons amounting to lost cases:

- That there was inadequate evidence due to failures by police and prosecutors to gather hard evidence.
- There was no-show of police prosecutors on numerous court occasions, which resulted in continuous adjournment and subsequently no case.
- Conflict of interest and allegations of bribery, which resulted in omissions of important evidence. These include missing files, missing relevant information and transfer of prosecutors.

## Public Procurement

The public procurement process is the avenue whereby public and private sectors conduct their transactions. It refers to how and from whom the government purchases its goods. Essential attributes of this process include ensuring that it is fair and efficient to both the purchaser and the supplier. In this context it is argued that public procurement should be economical, fair and impartial, transparent, efficient, and accountable. In sum, the process begins with government bidding for supply of goods or contracts to implement specific projects. Upon receiving interest from potential suppliers, the government then selects the most economical and efficient suppliers or contractor.

In PNG this process is selective and can be administered by different government organizations depending on the size and the scope of projects. The Public Finances (Management) Act 1995 (Consolidated to No 57 of 2000) lays down the procedures for the establishment of Supply and Tenders Boards, and the execution of contracts (Part VII). Section 39 of this Act specifies that any number of Supply and Tenders Boards may be established by the Minister for Finance as deemed necessary by the Departmental Head of the Department responsible for financial management.

Such Boards are necessary to control and regulate:

- the purchase and disposal of property and stores, and
- the supply of works and services.

A notice in the National Gazette establishing a Supply and Tenders Board necessarily specifies:

- the limits of authority and jurisdiction of the Board,
- the policy to be applied by the Board, and
- the criteria for the evaluation of tenders to be employed by the Board.

The Act also allows the Minister much leeway in making rules that may not be consistent with the PFM Act. Specifically, this relates to:

- the procedures of meetings of Boards including fixing of quorum,
- the manner of inviting of tenders publicly,
- the method of dealing with tenders, and
- the criteria to be applied in the evaluation of tenders, and
- the appointment by the Boards of advisers in technical matters.

The Minister may also issue directions to Boards giving preference to national tenders and local manufacturers.

The Act also empowers the Minister to appoint Board members by notice in the National Gazette. He or she may also appoint an officer to be the alternate of a Board member. The

Minister may also remove a member or alternate and appoint another person in his/her place.

Major projects related to infrastructure development are administered through the Works Supply and Tenders Board (WSTB). This board is suppose to be an autonomous body, but is administered by senior members of the public service and especially the Department of Works and Supply (DWS). Major infrastructure developments undertaken by the government are advertised with the endorsement of WSTB to potential developers and contractors. The WSTB then selects the most economical bidder. Other government departments have their respective tenders board comprising of senior executives of the organization.

The public procurement processes in PNG have been inundated with excessive abuse. Either it is conducted at a local level between department and indigenous businessmen, or between the departments and multinational corporations. Evidence of misuse of the procedures and the whole ethics of transactions is alarming. The flaws in the procurement process first begin with interference of the number of pre-qualified bidders, where firms can pay off officials to restrict the list of potential bidders. This is often followed with paying for information and restructuring bidding specifications to favour a bidder. Towards the end of the process the contractor, who would have been the initial corruptor, will provide the service or sell the goods but at an inflated cost<sup>19</sup>.

Two case studies highlight the anomalies in this regard. Firstly the redevelopment of Port Moresby's Jackson's Airport first announced in 1993. This project was administered through the Office of Civil Aviation Authority (CAA) at the cost of a US\$57 million concessional loan from a Japanese foreign aid program. The business transaction transpired between the main organizations. These were: two government agencies, CAA and National Planning Office (NPO), and two private organizations - the independent evaluators Pacific Consultants International (PCI) and Kinhil Kramer (KK) - and the contractor, Fletcher Morobe Construction (FMC).

A Ministerial Report to the National Executive Council in 1995 suggested that the tendering process, which led to the awarding of contract to FMC, was tampered with and lacked transparency. The report cited irregularities like CAA extending the deadline for tenders of only two companies of which one was the final contractor. It was further alleged in the report that the ranking of potential tenderers by the evaluators was ignored and that certain individuals in CAA tampered with the Japanese Aid donor's tendering procedure after the selection of the contractor (FMC) and during the negotiation period.

The Jacksons Airport case 'demonstrates a certain degree of maneuverings that take place in a typical PNG tendering process. A sequence of steps is taken. After a tender is advertised, an elimination process starts by at least an extension of the tenderer deadlines so as to impose additional transaction cost on tenderers. Companies who cannot meet the added cost fall on the wayside. As the tenderer list shortens, the stringent requirements of the tendering process are thrown into disrepute. For one thing, the importance of the technical score - a certification criteria - becomes insignificant because those who would have ranked as less qualified tenderers under normal circumstances now "qualify" under inert and improper competition. Certain individuals now approach the remaining tenderers from the tender's side with prospective deals, which ideally may be "negotiated" to benefit everyone. In this process bribery, extortion, and even collusion by both sides take place for agreed cuts. The damage is further widened when, assuming that a tenderer capitulates to the offer, the content of the required *Contract Negotiation Report* merely rubber-stamps the hidden agreement, which, sometimes goes without the knowledge of the national government'. (Kavanamur and Okole 2001: 15)

Similar traits were also evident in the K18.72 million purchase of the Cairns Conservative Building (CCB) by the POSFB in November 1994, the construction of Port Moresby's K65 million Poreporena Freeway (PMPF) and Port Moresby's K1.8 billion Water Supply Project (ERWSP) in 1994 (in relation to the freeway, the project never came before the Works Supply and Tenders Board, an indispensable precondition for projects of this size while in relation to the water supply project the report compiled by the PNGOC revealed political involvement, absence of appropriate tender procedures and lack of a contract

specification). Outstanding in the CCB deal was the exorbitant price paid for the building resulting from manipulation and withholding of information from the purchaser by the vendor about real value of the building. In addition to this, the POSFB and the Fund's CEO failed to adhere to the requirements of PFM Act and PSM Act when deliberating on the purchase of CCB. (Ombudsman Commission, 1999).

In sum, the purchase of CCB violated almost all the criteria of public procurement. On the same note, the contracting of PMPF and ERWSP were deluged with anomalies that were more than simple oversights. Manipulating the deadlines for expressions of interest to build the projects, bypassing the WSTB, interference by responsible ministers and even selecting bidders that lacked the relevant experience were cited in these projects. Both the purchasers and the suppliers in the project engineered these actions. Interestingly, there were no sanctions made against those responsible for circumventing and manipulating the process.

Depending on the size of a project, public procurement procedures include advertisements in papers inviting bidding for tenders. Interested companies are then required to collect the necessary forms and lodge in their applications. However, some public agencies advertise through their internal newsletters. The procurement decisions are not always made public. In fact, most public organizations have established networks of contractors and suppliers who access information and documents through their tribal affiliates working within the organizations. Unlike the judicial system, there are no appeal avenues for reviewing procurement decisions. Moreover, public procurement officers are more open to bribery and their assets, incomes and lifestyles are not monitored.

## Ombudsman

PNG's Ombudsman Commission comprises of both the office of the ombudsman and the office administering the Leadership Code and making the leadership code enforceable. The legal basis of the commission is provided for in Sections 218-220 of the Constitution and the Organic Law on Ombudsman Commission. These sections state that:

- The commission is an independent entity, but funded by the national budget.
- Its functions are to investigate conduct relating to administration, which may be 'wrong', and enforce leadership code (section 219).
- The commission may not inquire into 'justifiability' of NEC or ministerial policy (219 (3)) or court decisions (219 (5)).
- Its enforcement is limited to publicity, reports and recommendations, except for leadership code (219 (6)).
- It is required to prepare and submit its annual reports to parliament (220).

When dealing with maladministration, PNG's Ombudsman Commission (PNGOC) is empowered to:

- investigate a wide range of official bodies
- initiate investigations, as well as respond to complaints or referrals.
- question decisions, as well as the process of decision-making
- consider defects in law.

In essence the PNGOC is empowered by the constitution to expose government actions and those of public officials that are detrimental to the public and its trust. These imply that it has a wider scope of responsibilities that extend between and beyond specific laws and administrative practices. (Kavanamur and Okole, 2001). The commission is made up of three members who are appointed by the Ombudsman Appointment Committee made up of the Prime Minister as the Chairman, the leader of Opposition, The Chief Justice and the Chairman of Public Service Commission, and the Chairman of the Appropriate Permanent Parliamentary Committee.



The PNGOC has been very vocal against corruption despite the acute incapacity and lack of resources that impeded its efficiency. The investigation and referral of leaders for prosecution itself is a testimony to its stance against corruption. Over the past two years the commission has further stretched its muscle in preventing leaders under its investigation from taking overseas trips.

These actions even included preventing a delegation from the Morobe provincial government from travelling to Indonesia in early 2002. Apparently this trip was funded externally and not by the provincial government. By the same note, the commission successfully sought court orders after the last parliamentary sitting in 2001 to prevent members accessing and using the Electoral Development Fund. This in itself was a bold move that prevented national MPs from using the remainder of their funds towards a vote buying exercise. However, these moves are undermined by the fact that the commission can not easily prosecute leaders without the public prosecutor's approval.

The Ombudsman Commission received a budget of K8 million for the years of 2001 and 2002, and this was increased to K8.9 million for 2003. Staffing levels for the Commission are not readily available from the annual reports. Nevertheless the general reason for the slowness of Ombudsman Commission to react to complaints is a lack of resources (it received 10,886 complaints of varying nature between 1995 and 1998).

To further complicate matters, the Commission cannot use evidence used by the police to prosecute leaders. In the light of these constraints, the PNGOC is like a dog without teeth to bite. And as such, leaders can easily escape unless tried through the state prosecutor and the leadership tribunal. On this basis the commission's efforts against corruption are watered down.

Furthermore, the recent calls by members of parliament to bring the PNGOC before parliament suggest several points. First and foremost it implied that the commission's efforts have been taking their toll on elected leaders, hence there is an impact on corruption. Secondly, it also raises the question of whether the Commission is becoming too powerful and is impeding the responsibilities of the legislature

## Leadership Code

The definition of a leader covers ministers, members of national and provincial legislatures, members of local level governments, constitutional office holders, heads of national and provincial departments, heads and board members of SOEs, ambassadors, commanders of disciplinary forces, and defined executives. There are about 600 plus leaders and list of offices to which the code applies. Drawing from Section 26 of the PNG Constitution and the OLDRL, the code sets out the 'responsibilities of office'. It specifies that a leader must not place himself in a 'conflict of interest'. The examples of "conflict of interest" as cited by Constitutional Planning Committee are when the Leader's, or his family's, firm has a business contract with the government or when MPs have shares in a foreign firm that PNG is renegotiating with. In summary, the code and the OLDRL specify that leaders are obliged to disclose their assets and incomes, prohibit certain activities to be engaged in by leaders, and empower the PNGOC to investigate and make referrals to the Public Prosecutor of alleged breaches of the code by leaders. It also requires leaders to provide annual reports of their interests and to place their private business interests under trust arrangements whilst they hold leadership positions.

The OLDRL define that a leader must not:

- Demean the office he or she is occupying,
- Allow his integrity to be called in question,
- Diminish respect for government (27(1)(b)) Spouse (husband/wife), children and others 'for whom he is responsible' also covered (27(3)(b)).

On gifts and hospitality, the code prohibits ministers, their wives and children from attempting to and asking for franchises and gifts, and other benefits and advantages associated with gifts and benefits. The Ombudsman Commission is empowered to investigate or summon ministers and leaders to appear before the commission. In essence

the declarations are registries of interests and assets to and by the commission. In the event that there is substantial evidence against the minister, he or she is referred to the public prosecutor who, in turn, informs the Chief Justice to appoint a Leadership Tribunal

On disclosures the OLDRL specifically provides that:

- Leaders must disclose income, assets and business connexions within 3 months of election or appointment, and then every 12 months. He or she must also disclose his or her interests in any official business transactions and appointments.
- Ministers in particular and their spouses and children may not be directors of companies or any 'foreign enterprise'. But, with permission of the ombudsman, they may be directors of family companies, and business or land groups.

The disclosure is made to only to the PNGOC for the purpose of enforcing the code. The public only accesses the disclosures when a leader is in breach of the code and when it is used as evidence in a leadership tribunal's deliberation and in court proceedings. The public can also access the annual reports by the Commission to parliament but which only summarises information about leaders that have defaulted against the code.

Should there be an allegation of misconduct by a leader under any of these provisions of the code, then the Ombudsman Commission upon investigating would refer the leader to the Public Prosecutor. The prosecutor, in turn, uses his or her discretion under Section 177 of the constitution to bring proceedings against a leader by requesting the Chief Justice to appoint an independent Leadership Tribunal comprising of judges and senior magistrates to investigate, inquire into and determine the alleged misconduct. The tribunal may have looser rules of conduct than the courts, and appearing before a tribunal does not stop the leader from being heard in court. The tribunal acts in many ways as a 'disciplinary' body. It is empowered to sanction the leader should he or she be found guilty under the code. On the other hand, and if the Public Prosecutor does not act, the ombudsman can also prosecute the leaders.

A breach of these provisions can result in a lesser penalty than dismissal (penalties include reprimand, dismissal, suspension from office, fine, and imprisonment). Between 1975 and 1997<sup>20</sup>, there were thirty-five politicians and public officials that were hauled before the leadership tribunals. Twenty-one of these leaders were found guilty. Out of this twenty-one, thirteen were dismissed from their office while eight were fined. These figures are reflected in Tables 1 and 2, Annex 1. The effectiveness of the code is to a large extent determined by the capacity of the enforcing organization (the PNGOC), the vigilance of the public and the ability for compliance on the part of the leaders themselves. This means that the Commission would only blow its whistle in the event that a leader fails to make annual returns or disclosures.

In most instances the Commission acts upon receiving formal reports from the public about irregularities in the conduct of a leader. These reports can come in the form of complaints lodged with the Commission. On the other hand the Commission is empowered to conduct its own investigations despite its incapacity to fully investigate corrupt leaders.

A leader found guilty is dismissed from his or her office and is not eligible to be re-elected or appointed to public office within three years. The main weakness that the OC faces is that on many occasions leaders avoid prosecution and dismissal by immediately resigning before and after the commencement of the tribunal. However this does not stop the Ombudsman Commission from reopening the case should the leader resume office after serving his or her terms out of office. The effectiveness of the code as a deterrent mechanism against corruption is debateable. The leaders can escape penalties on technical grounds. Like in any other court system, allegations are contestable, and a leader is not guilty until proven by the tribunal. Furthermore, the sanctions amount to only dismissal from public office with little or no effort to compel guilty leaders towards recouping the misused funds or recompensing for damage caused.

It is very unlikely for disgraced ministers to be re-elected although the current Health Minister (Melchior Pep) in the Somare-Marat government, and Mr. Ted Diro returned to parliament after serving their terms under the leadership code. Both Mr. Melchior Pep and

Mr. Diro were found guilty under the leadership code and dismissed in 1992 and 1991 respectively. Mr. Diro was re-elected to the national parliament in 1997 while Mr. Pep was voted back into the national parliament in 2002.

Unfortunately, the leadership code of only goes as far as recommending dismissals for leaders. It does little to pursue the allegations outside its establishment. The dismissed leader can apply for leave to seek a judicial review of the tribunal's recommendations. The Minister for Village Services and Provincial Affairs, for instance, successfully applied for judicial review resulting in the Court reversing the tribunal's decision for dismissal to a mere K7,000.00 fine.

Those found guilty and dismissed from holding public office are open to further charges by the police under any criminal code, but using a different and new set of evidence that was not used in the tribunal. The options arising at the end of a leadership tribunal can water down the effectiveness of the leadership code.

## **Investigative/Watchdog Agencies**

In May 1998, submissions from TI (PNG) and other watchdog or related agencies were made to the Parliamentary Select Committee to establish the Independent Commission Against Corruption (ICAC). However, to this date, these submissions have not passed their first reading in the parliament. The primary mandate of this Commission was to deal with criminally corrupt practices of leaders. It would complement the police to enforce criminal laws which leaders currently evade because of the lack of dedicated resources and the increasing sophistication of the criminals' corruption, a factor that is outside the jurisdictions of leadership code and the PNGOC. As noted in the preceding paragraph, the PNGOC and the leadership tribunal can only dismiss a leader regardless of the criminal nature of the charge.

Should an ICAC become functional, it will be a fully-fledged anti-corruption body that can investigate and prosecute leaders for criminal misappropriation both internally and externally. This would relieve the PNGOC to effectively perform its supervisory and other 'non criminal' functions. Corruption in PNG has intensified in number, volume and scope. Hence a proposal of this kind would relieve the PNGOC and the police who have for years lacked capacity to address this problem.

To this date the PNGOC is performing the investigative function by default. The intention is to have an ICAC as autonomous constitutional body like PNGOC and the Auditor General. But its establishment can also duplicate the functions and responsibilities of existing institutions. Most likely it can be sabotaged by the government of the day to safeguard its practices by manipulating the appointment of the commissioners of ICAC and controlling the budgetary allocations to the commission.

## **Media**

'The PNG media, daily, carry stories of alleged corruption in government or court reports of the convictions of those who have been found out. The constant exposure of corruption is a tribute to the country's vigorously forthright media....' These remarks by Sean Dorney summarise the role of media in relation to corruption in Papua New Guinea. (Dorney, 2000)

Papua New Guinea has a free and vibrant media, although there have been two unsuccessful attempts made by the national government to introduce legislation to limit media freedom. In fact it is further acknowledged that the PNG media has been growing since independence to be more robust and freer from government control. This view was further echoed by one of the country's most recognised journalists, Frank Kolma, to the effect that the media in PNG was only restricted by cultural sensitivity, its youth and its perceived wider responsibilities to the nation. (Kolma,1996:57)

The freedom enjoyed by media here is guaranteed under Section 46 of the National Constitution. Framed in the light of the 1948 Universal Declaration of Human Rights, this section specifically mentions freedom of expression, which is further enjoined by freedom of press and mass communication. Also out of section 46 are other Acts of Parliament

about information and communication<sup>21</sup>. Except for the Censorship Board Act, which is aimed to curb the dissemination of pornographic information by the media, all of these laws govern the establishment of media entities.

Against this context, the media in PNG are not regulated and any person can start a company that is aimed at the dissemination of information. The only obstruction lies with the normal bureaucratic delays in getting registered, which is no different from any ordinary business establishment. This implies that there is no specific media regulating entity, although this idea was mooted in 1996 under the banner of an Information and Communications Authority. However this authority did not transpire as a result of firm opposition from the media and society at large. (Millet, 1996)

There are six (6) major media organisations operating in PNG. Two of these, which are fully PNG owned, include the National Broadcasting Commission (NBC) with its subsidiary, the Kalang FM station, and the Word Publishing Company. While NBC is owned by the national government, the Word Publishing Company is owned by the mainline church denominations in PNG. The foreign owned media organisations include: the two daily newspaper companies, the Post Courier and The National, the commercial FM radio stations and the only television company, EMTV. The newspaper companies are respectively owned by Rupert Murdoch and Rimbunan Hijau, the Malaysian Timber Company. On the other hand the FM stations are owned by Fiji's FM 96, while Channel Nine of Australia owns EMTV.

The media in PNG is very vocal against corruption. In fact, most of the public know about corruption and the practices thereof through the media. Even the government owned NBC does not deviate in reporting on corruption either through its normal news bulletins or occasional talkback shows. The latter has been very much instrumental in facilitating the public's perceptions on corruption or issues pertaining to corruption, including criticisms of government policies. Despite these efforts, journalists and media organizations are not immune to defamation threats and other abuses. Journalists investigating and reporting corruption were threatened, verbally assaulted and even sued for defamation. At one stage towards the end of 2001, a former MP and Chairman of the state's privatisation commission threatened the Post Courier newspaper with a libel suit for allegedly misreporting on the former MP's bankruptcy.

## Civil Society

Civil society in PNG is very much passive towards corruption. The establishment of the TI chapter in PNG and the formation of Community Coalition Against Corruption (CCAC) are beginning to have some bearing on society's response towards corruption, although it would be too early at this stage ascertain the degree of its impact. However this can only be confined to Port Moresby to a larger extent, while there is a lesser degree of involvement by society at the outer centres of PNG. Attempts to maximise societal support can also be seen in the formation of the Consultative Implementation and Monitoring Council (CIMC). This council is a consultative committee that was established by the NEC after the National Economic Summit in 1998. It is chaired by the Minister for Planning & Implementation and is comprised of heads of government departments, and representatives from the business and the non-government sector. CIMC's primary goal is to ensure that recommendations made by the community are implemented through dialogue and on-going consultation between the government, the private sector and the community.

To further enhance the participation of civil society, the Organic Law on Provincial and Local Governments (OLPLG) specifies that there must be representatives of women, youth, churches, and employers' and employees' organizations appointed to the provincial and local government legislatures. This provision, in many ways, mandates the public's accessibility to government information and documents. Through such provisions society makes submissions to the legislature to make laws and relevant policies. It also allows for the monitoring of the government's performance in the delivery of services.

Ethical issues are also addressed in PNG's school system. At tertiary level, and especially at the University of Papua New Guinea, first year students are required to read for Civic

and Ethics as a compulsory paper. There are also other papers that teach ethics and corruption as a subject or a topic. At primary school level, puritan and other noble values are taught under the curriculum of religious instruction. In high schools and secondary colleges, integrity and corruption issues are highlighted in courses on guidance and counselling. The school system is also open to visits by institutions engaged in anticorruption activities.

In general terms civil society is a force against corruption in PNG. They can be relied upon to support anti-corruption statements and often initiate them. The forestry industry is one where corruption has been rampant and there has arisen a number of NGOs that have formed a loose coalition through the *Eco-Forestry Forum* which carries on a campaign against corruption and exploitation in the industry.

The PNG's chapter of Transparency International (TI-PNG) is one of those NGOs that is committed "to curb corruption by mobilizing a global coalition to promote and strengthen international and national integrity systems" (Transparency International 1997). It was launched in Port Moresby on January 24, 1997 under the leadership of former parliamentarian, Sir Anthony Siaguru.

The impact of TI in PNG is better summarised by Kavanamur and Okole (2001:13) who asserted that "TI-PNG accorded great weight and international exposure to the depth of corruption in Papua New Guinea. For a country that had increasingly been under the glare of the foreign media for politically-driven issues ranging from criminal activities to national security policy blunders, it might have been comforting to law-abiders that an anti-corruption group of this reputation could possibly be the voice in the wilderness to try and stifle political leaderships that had gone hay-wire."

Although it is still too early to evaluate its impact on corruption, TI PNG had definitely roused and mobilised the society to speak out against government decisions and policies. Although it lacks power to prosecute corrupt leaders, it has within short time established and developed networks and capabilities to investigate, educate and raise awareness against corruption. (Ibid). This included organizing public seminars against corruption and even initiating anti-corruption laws, which did not get passed as a bill at the first reading in the national parliament.

## Regional and Local Government

Until 1995, PNG had a three-tier system of government with provincial government, local government and the national government. A significant amount of power was removed from the provincial governments and given to the local governments thereby further decentralising decision making powers.. Moreover it has placed significant functions of service delivery to the districts levels. In doing so it has made allowed for people, through their councillors, to participate in decision making. By bringing the government more closer to the people, it was intended to increase accountability and transparency. Due to lack of financial and manpower resources this has happened more slowly than originally intended.

Provincial leaders are elected and appointed . The political head of a province is a member of the national parliament. By law he or she is the regional member of the province who is elected by all voters in the province into the national parliament. He or she is then mandated as a governor of the province. In the event that the regional member is given a ministry, then another open member from the province is appointed by the legislature to be the governor. Provincial administrators, on the other hand, are appointees of the NEC. Heads of local governments are also elected by all eligible voters of the local areas, while voters within their respective ward elect councillors.

Overall this arrangement means that members of parliament 'essentially control all planning and budgeting at the provincial and district levels. Furthermore. To the extent that a joint district planning and budget priorities committee is responsible for local government planning and budgets, members of parliament control local planning and budgeting as well'. (World Bank, 1999: p221) On the other the multiplicity of roles may mean that such committees are not established because of their absences and those of the provincial governors.

There are two legal mechanisms that make reference to corruption in provincial and local governments in PNG. These are the Organic Law on Provincial and Local Government, and the Organic Law on the Duties and Responsibilities of Leaders, or the Leadership Code. The Code covers the elected leaders and the heads of provincial administration. As such they are required to declare their business interest and affiliations, and their assets, annually. They are also required to conduct themselves, both in public and private life, and in their associations with other persons, in a manner that does not demean and compromise the office, which the leaders occupy. These include ensuring that they do not put themselves in a position where there is conflict of interest when discharging their public responsibilities, nor where their actions could demean the integrity of the government.

On the other hand, all other officials down the hierarchy of the provincial administration are to a larger extent guided by the Public Finance Management Act, 1985 and the Public Service Management Act, 1986. These are further substantiated with other Acts, and especially the Audit Act 1989, which inspects and audits their financial actions and the jurisdictions thereof. Under Section 113 of the new Organic Law on Provincial and Local Governments, the Auditor General is required to establish a Provincial Audit Service and a provincial auditor whose responsibilities are to maintain an effective and efficient audit service. The provincial governments as government entities are subject to the Ombudsman Commission, should there be violation of the Leadership Code. They are also subject to the Auditor General, meaning that their financial transactions and other related activities are open to annual inspection by the Auditor.

There are no legal restrictions preventing the public or the press from accessing meetings of city and town councils, although circumstances can impose restrictions. Each provincial government has a public chamber in which the public can observe provincial meetings. Further down at the local level, there are local government chambers which provide the avenue for public observation. Other municipal authorities have newsletters and use radios to broadcast their activities. The National Capital District Commission, in particular, used thirty minutes of television time to inform the public about its activities. These laws have not been effective in deterring provincial governments from corruption. Several provincial governments were suspended between 1975 and 1995 as a result of offending against the Leadership code and Public Finance Management Act.

Overall, the centralisation resulting from the roles of members of parliament and the absence of a separately elected provincial government (provincial governments are made up of presidents of LLG and MPs who are all elected but not directly to the PG) diminishes local political accountability (even if it reduces levels and costs of additional political and administrative levels). 'In the absence of political accountability, national departments must spend inordinate amounts to monitor subnational governments', on the other hand, 'few resources are available to monitor officials and investigate malfeasance. With little or no political accountability and insufficient capacity for monitoring at the national level, subnational officials answer to almost no one. Many local governments have asked the Department of Provincial and Local Government to investigate officials, but the requests have been denied for lack of funds. Further, the auditor-general is overextended and underfunded – and as a result, few audits have taken place. Problems with the misuse or mismanagement of funds are directly related to this unhealthy combination of inadequate political accountability at the subnational level and insufficient monitoring capacity at the national level'. (World Bank, 1999: 223)

## ***Anti-corruption Activities***

### **Government Anti-corruption Reforms**

Since the inception of Ombudsman Commission and the leadership code, the government has fallen short in giving more teeth to the established procedures. It lacked the will power to reform and increase the capacities of existing mechanisms despite evidence for the need to enhance these mechanisms. However this does not thwart the increasing pressure from society and international aid donors that is applied on the government to address corruption. Amidst this pressure several developments had been made. Firstly there has been a vigorous effort by the current ombudsman commissioner and the commission itself to enforce the leadership code. In fact it was noted by the commission that the period between 1992 and 2002 had witnessed many referrals of leaders to the leadership tribunal. This was in response to increasing corruption activities and most importantly increasing participation by society to address corruption. This can be drawn from Tables 1 and 2, Annex 1. The second development highlights efforts by the government to develop and legislate anti-corruption laws, like the proposed ICAC.

### **Donor Anti-Corruption Initiatives**

Donor agencies are concerned about the level of corruption in the various levels of society, and especially public agencies involved in service delivery. This concern is manifested in a number of initiatives Donor agencies have undertaken in recent years to minimize the misuse of Donor aid to Papua New Guinea. An illustration commonly reported in the media was the shift in untied to tied aid on projects. What underpinned this shift in aid policy were attempts to encouraged 'good governance'.

Over the past decade, Donor agencies – there is a functioning Consultative Group led by the World Bank - have supported the Government of PNG (GoPNG) in developing its public financial management systems through matching funding. A phased investment began in 1986 with the commitment of UNDP country program resources to the UN-executed project PNG/86/001 - Financial Management Development Project. In 1998, the project scope was expanded with matching funding from UNDP and additional funding from the Government of Australia.

Over this period a number of other financial management system initiatives were undertaken by the Government and supported through counterpart funding by Donor agencies. Some of these initiatives are:

- Department of works automation project to cater for special accounting and project management needs;
- The Commonwealth Secretariat Debt Recording and Management System (CS-DRMS) was established in the Loans and Revenue Division to assist with budgeting public debt servicing requirements and monitoring the sovereign debt portfolio;
- The Treasury-level general ledger application was replaced with a package known as the Ledger Accounting and Financial Information System (LAFIS);
- A planning and Budgeting System (PBS) was introduced to replace the budget development tools running under the previous Treasury General Ledger system;
- The major Donor Agencies have continued to support the initiatives taken by the Government to strengthen the philosophy of 'good governance' through support of the Financial Management Systems of Government programs. The Australian Aid program, Asia Development Bank, and the United Nations have continued to be key partners in this exercise. The Donor partners have, since 1988, been involved in the Provincial Government Accounting System (PGAS) through GoPNG "Financial Management Improvement Program (FMIP)". The FMIP is an initiative of Government in response to identified financial problems at National and sub-national levels of Government.

The current 'Support for Provincial Financial Management Training' ("SPFMT") is a program developed to strengthened FMIP. This project focuses on:

- Providing assistance to the short term and immediate needs of provincial treasurers in their role of providing support to Local level Governments (LLG);
- Providing support to the AusAID PFMTTP (another sub-component of the FMIP) in evaluation and monitoring of the impact and effectiveness of training programs delivered under the PFMTTP project;
- Providing assistance to PFMTTP in the conduct of provincial diagnostic; and
- Enhancing the integration of financial management training with training in planning and the budgeting process.

What this project specifically entails are:

- Formulating and enacting a new Public Finances (Management) Act;
- Drafting a Financial Management Manual;
- Improving provincial financial management systems;
- Computerizing accounts; and
- Decentralizing personnel management.

The attempts by the Donor agencies to strengthen the financial management systems appear to be bearing some results, especially in the areas of effective reporting systems, communications systems and the training of human resource capacity in-country and abroad to manage the Financial Management systems established.

### **World Bank**

The World Bank has provided a US\$ 8.3 million loan allocation, and a US 0.2 million grant allocation under an institutional development fund facility. Part of this allocation was aimed at strengthening the Department of Personal Management (DPM) in its personnel management and payroll systems, and building departmental and provincial capacity to perform training functions thus strengthening the four regional training centres and DPM's capacity to implement the National Training Policy. Another component is assistance to the Papua New Guinea Institute of Public Administration (PNGIPA) with infrastructure, equipment, curriculum development and fellowships to civil servants on financial management training.

In fact, in 2002 the World Bank released \$35million as part of its Governance Adjustment Loan. This includes "improvements to governance, through fiscal transparency and accountability, and steps to combat corruption including through institutional strengthening of oversight agencies...". We need some information on what this means in practice.

### **Asian Development Bank**

This organization is involved in strengthening the government's FMIP and Information Technology (IT) Strategic Plan with grant of US\$20m. This involved a number of sub-projects, viz a diagnostic study and support to the development of a strategic plan for FMIP, a systems reform project involving budgeting, accounting, IT systems and networks and associated training, an accounting professional development program, and a skills training program.

### **Government of Australia**

The Government of Australia through its AusAID program is involved in a US\$ 11.3 million technical assistance program and parallel financing to the Department of Finance in expenditure control and a long-term strategic program of financial improvement. In 1999, AusAID proposed a 'Provincial Financial Management Training Program (PFMTTP) of technical assistance to the Department of Treasury and Planning (DTP) to improve capacity of DTP and the LLG personnel to plan and operate their financial management systems.



The Donor agencies are effectively involved in preventing the practice of corruption (although there must be a question over “how effective Australian aid can be when the rule of law has broken down, infrastructure is dilapidated, government agencies are paralysed, the economy has stagnated, and the social fabric has frayed” (Windybank and Manning. 2003: 12)). Their input is not direct, but through collaborative effort with GoPNG in strengthening government agencies in service delivery. In this regard, the key Donor agencies have assisted the government in strengthening its Financial Management Systems for public funds.

## ***Discussion of Key Issues***

### **General**

The discussions on corruption in PNG in this report reaffirm the complex and interlocked relationship between the pillars of NIS and many different factors and sectors within the economy. This report discusses these relationships within the parameters of three major categories. The premises underlying this format is that corruption is perceived in and conceived during interactions between the different levels of government, society and the private sector. These entities are really the stakeholders in any analysis of corruption in PNG.

### **The NIS**

The performance of the NIS in PNG has produced mixed results. This implies that the nation's integrity is imperfect. Most of its components are severely lacking in essential factors. Firstly, public awareness is dissipated by high levels of illiteracy, ethnic-based parochialism, and lack of a strong puritan attitude and will. These traits in turn are reflective of wide disparities in development between regions, culture and ethnicity. Government policies and decisions, for instance, lose their meaning and objective as they move away from the centre.

The engagement of Sandline International by the government to quell an ethnic uprising on Bougainville island and the subsequent opposition and call for resignation of the prime minister by the Defence Force drummed up a lot of reaction from the public. But the reaction was based on misinformation and lacked rationality. The majority of the masses that were mobilised in Port Moresby came out of shantytown and settlements, which had their own dissatisfactions against the government.

This was mirrored by the rowdy and violent demonstration that was smeared with destruction and looting of properties. Pamphlets carrying anti IMF and World Bank sentiments, and misinformation on land mobilization were somehow tied in with the Sandline issue. (Melanesian Solidarity, 1996) Clearly the public did not understand and deduce the truth about the issue prior to the demonstration. The public may have been misled, especially after the revelation by the Commission of Inquiry into the Sandline Affair in 1997 that the commander of the PNGDF had illicitly received payments totalling K68,000 from a foreign military supplier and had bypassed defence procurement procedures in arranging for the supply of military goods. (PNGOC, 2000:49) This implies that the tensions and demonstrations may have been a smokescreen to conceal the illicit payments.

Amongst the NIS pillars, the judiciary stands out in being ruthless against corruption. It has interpreted laws against corruption without fear or favour, and with disregard to the political or economic costs of its decisions. Frequent admission by political leaders to uphold a court's decisions is a testimony of its independence. On the other hand the scorecard of the legislature and the executive show lack of political will in legislating against corruption. Their inability to reform the EDF and the delays in getting anti-corruption initiatives put forward by various stakeholders in society throw doubt on their commitment against corruption. On the other hand the Prime Minister has referred those implicated in the NPF saga to the PNGOC and the Police for prosecution. These actions, together with mounting pressures from civil society through PNGTI and CCAC, have put pressure on the government to effect anti-corruption measures.

Civil service integrity as a merit based neutral entity that functions within the parameters of rules and procedures has been seriously undermined by increasing revelations of fraudulent activities towards the end of 2002 and in January of 2003. Cases of officials in the Department of Finance and Treasury collaborating with officials in the Judiciary to counterfeit court orders to solicit funds from the state do little to uphold the fight against corruption. (The National 26<sup>th</sup> January 2002).

On the same note, there were allegations that a portion of land was improperly allocated to a church group in Port Moresby. This allegation suggested that the secretary of Treasury used his position to bypass procedures in allocating lands. (Ibid). These may be only allegations, however they predict and highlight existing and emerging trends of behaviour amongst service deliverers. This has also shifted more attention to the civil service as the breeding ground for corruption.

Such exposures of corruption can be attributed to the free and vibrant media in PNG. In fact it is the print media in PNG that initiates reactions and responses against corruption from other stakeholders in the society. This is despite a lack in investigative reporting that is yet to become a feature of the media. Complementing the media is civil society. Emerging trends imply the need for civil society to be more articulate and vigorous in taking up the fight against corruption. This should in no way detract from the coalitions that have already been formed by organizations of civil society. Entities such as CIMC and CCAC require support from society at large. Currently, they are only Port Moresby based organizations in membership and identity.

## **Priorities and Recommendations**

What needs to be done about corruption in Papua New Guinea must be deduced by understanding the complexities underlying the phenomenon. This automatically reinforces the need for an integrative approach. Corruption in PNG is more of an attitude and behavioural issue. Reckless attitudes towards laws, especially the Public Finances (Management) Act, and the principles of prudent public administration underlying it are major traits underlying cases pertaining to corruption.

These are further followed by flagrant disregard of the legal tendering processes and the methods of calling and evaluating proposals for multimillion kina projects funded by the state. More alarming is that these practices have descended to the lowest level of the civil service, to an extent that it has become the norm to give incentives for a service. Moreover, PNG's situation is compounded by the fact that corruption has accumulated over time. This implies the need to revisit the basic and the simplest means and methods that must first prevent corruption from further expanding. This must then be followed by curative means. The priorities and recommendations suggested here are based on these premises.

## **Administrative Reform**

The recent move to have the parliament pass a bill restoring appointments by merit is a significant development in administrative reform. This would imply the restoration of the PSC under the old PSM Act. Engineered by the PSRMU of the Prime Minister's department and overwhelmingly supported by TI and CACC, this piece of legislation would eradicate political nepotism by ensuring that public service appointments are advertised and done on merit. However, the hurdle at this stage for the bill is parliament's endorsement.

Such merit-based processes in civil service recruitment have to first begin with the process of appointing the head of a department. As recommended by Kavanamur and Okole (2001), the PSC should be empowered to play a major role in deciding on the appointment of heads of department. This might require reviewing the Public Service Management Act with the intention to restore appointment powers and decisions to the PSC. This might also reinforce and police performance evaluation, promotions and terminations, factors that are currently being worked at through public sector reform. These exercises must be further complemented with establishing reasonable salary levels and reinforcing proper checks and balances in the public sector.

Administrators and decision-makers alike must be articulate on the principles of prudent public administration underlying the Public Finances (Management) Act. They must also be proficient in the expectations of the following documents and the expectations thereof. These are: Public Finances (Management) Act, Public Works Committee Act, Loans (Overseas Borrowings) Act, Public Services (Management) Act, Organic Law on the Duties and Responsibilities of Leadership, Leadership Code, and the Public Service General Orders. (Kavanamur and Okole, 2001). This process can further be enhanced to minimize

corruption should the DPM, the PSC and the PNGOC be capacitated to induct public officials in these Acts.

## Procurements

Transparency and accountability seem to be the major concerns in this regard. Consistent with the recent efforts of the Public Accounts Committee, it is recommended that there is a need to review and audit the government procurement procedures. This might require a societal representative to be appointed to the Central Tenders Board. Similar appointees can be recommended for other levels of tendering. It is further suggested that there be inclusion of an Integrity Pact in all-bidding documents. Those involved in the transaction must be compelled to sign and honour a "No Bribery Pledge".

Regarding the investment environment, some of the often-repeated impediments to economic growth and development are the long delays in securing land, high wages, small and fragmented domestic market, shortage of skilled manpower, cumbersome administrative regulations, and lawlessness in society. It is of little wonder that secret payments and close alignment with people in government are viable options for those wanting to venture into business activities.

A survey by Kavanamur and others (1997) on the manufacturing and construction sectors' attitudes towards current partial investment liberalization and price decontrol in PNG revealed that discriminatory policies such as "selective tendering" and "special favours" only benefit those big and powerful companies directly linked to politicians and bureaucrats, or those large and significant enough to be recognized as such by the government.

To protect the state from interest groups, such as big and powerful businesses, and to reduce the temptation of corruption by bureaucrats, politicians and private citizens, a number of measures have to be given saliency and the case studies revealed certain areas that require attention. First, public tendering through the Works Supply and Tenders Board, as required by the Public Finances (Management) Act, must be enforced by the state without fear or favour.

The power to waive such lawful procedural requirements must be exercised strictly with restraint and should only be applied to genuine cases as specified by law. This has often been abused by successive NECs. According to the Ombudsman Commission, there is nothing in the Constitution of PNG or an Act of Parliament, which stipulates that the NEC has the power to waive tender procedures (PNGOC 1992:413-414).

The Works Supply and Tenders Board should be established as an independent statutory body, with its members having security of tenure for a fixed term of three years on a full-time basis. There is no rationale behind such a board if its members are constantly under pressure to make decisions in favour of the government of the day. Such boards are supposed to render objective assessments of competing bids for government contracts. The Works Supply and Tenders Board is too important to be left to part-time members of the public service who already have other onerous responsibilities to perform.

The powers of a Minister to appoint or terminate Board members as (s)he sees fit should be checked against possible abuse and collusion by those with vested sectional interests. The Minister's powers may be deemed excessive and not in the best interest of continuity.

## Anti-Corruption Agencies

There is an immediate need to review and amend the leadership code, with special emphasis on eliminating the provisions for leaders to resign from office when referred to the tribunal. The length of time before entering leadership roles should further be extended to five years. The jurisdiction of the leadership code be expanded to investigate and refer leaders for prosecution after their resignation to avoid tribunals.

Where the tribunal has established that the leader has squandered state resources for personal gain, the leader should be forced by law to repay amount equivalent to that misused. Furthermore, it is suggested here that there be extra effort by the government to

pass the ICAC bill. Otherwise there should be efforts to establish an equivalent anticorruption bureau to relieve the PNGOC to concentrate on policing the leadership code.

Other agencies like the police fraud squad need to be backed with capacity and resources. Most importantly, officers engaged in investigating fraudulent activities of a leader must first be remunerated to be devoid of bribery. Their activities should be transparent and be monitored through affiliations and sharing of information with other anti-corruption agencies, especially the societal based agencies.

There has been an on-going effort to create an agency within government to focus attention of existing agencies on corruption, known as the National Anti Corruption Agency (recently changed to Alliance) and bringing together other bodies from within and without the traditional law enforcement machinery to collaborate on specific cases or areas. Consisting of the police, attorney general, auditor general, public service inspectorate, finance inspectors, and provincial affairs inspectors, NACA is a loose alliance that comes together for a specific enquiry especially in a province. It means that all relevant agencies act together and move together so that they do not have to keep referring back to each other in the course of their investigations which often take weeks. It also means that all relevant knowledge is assembled in one place and a much more thorough investigation can be carried out. This is currently being formalised within the government through the CIMC Law and Order Sectoral Committee. It recently brought Finance and Public Service Inspectors together with the Police, Auditor-General, Prosecutors etc to investigate people from one province and resulted in the conviction of most of them including the Governor.

### **Civil Society**

The need for more interaction between civil society and the state is essential in this war against corruption. This is further justified by their ability and impartiality in whistle blowing activities. What is now required is to increase the engagement of civil society in governance. In the light of this we put forward the following suggestions:

- At the political level, it is recommended that civil society be engaged to screen candidates contesting elections. This would be the first stop to eliminate people with dubious backgrounds from entering parliament.
- Secondly, it is recommended that there should be provisions for civil society to be engaged in the procurement process. Their engagement should also be extended to the recruitment of senior executives of government departments.
- Thirdly, it is recommended that CIMC and related agencies be integrated into evaluating the implementation activities of the government. This implies that they be engaged to assess and report on how government implements its development policies. Their recommendations should be considered by government as societal feedback, and towards improving its policy process.

## Annex 1 - Tables

**Table 1 List of Leaders that had gone before the Leadership Tribunal**

Year	Leaders (Elected MPs & Appointed Officials)	Summary of Offence Committed	Results
1976	Moses Sasakila (Minister for Culture)	Misappropriated EDF and other public funds. Allegations included: conflict of interest, failure to acquit funds, failure to adhere to procedures, spending funds outside its scope of appropriation	Guilty and dismissed
1978	Brian Grey (GM National Airline Commission)	Details not available	Guilty and reprimanded
1978	Ako Toua (Commissioner – PNG Electricity Commission)	Details not available	Guilty and suspended
1981	Leo Morgan (A/Secretary – Dept of Works and Supply)	Details not available	Guilty and dismissed
1982	Opai Kunagel (Minister for Commerce)	Misappropriated EDF and other public funds. Allegations included: conflict of interest, failure to acquit funds, failure to adhere to procedures, spending funds outside its scope of appropriation	Resigned after appointment of Tribunal
1983	Michael Pondros (MP)	Misappropriated EDF and other public funds. Allegations included: conflict of interest, failure to acquit funds, failure to adhere to procedures, spending funds outside its scope of appropriation	Guilty and dismissed
1985	Lennie Aparima (MP)	Misappropriated EDF and other public funds. Allegations included: conflict of interest, failure to acquit funds, failure to adhere to procedures, spending funds outside its scope of appropriation	Not guilty
1985	Ezekiel Brown (CEO – National Provident Fund)	Details not available	Guilty and fined
1988	Julius Chan (D/ Prime Minister & Minister for Finance)	Details not available	Not guilty
1988	John Kaputin (MP)	Details not available	Not guilty
1988	Obum Makarai (Chairman PNG Banking Corporation)	Details not available	Guilty and dismissed
1988	Kedea Uru (Chairman – Nat Broadcasting Comm)	Details not available	Guilty and dismissed
1989	Gerald Sigulogo (MP)	Misappropriated EDF and other public funds. Allegations included: conflict of interest, failure to acquit funds, failure to adhere to procedures, spending funds outside its scope of appropriation	Guilty and dismissed
1990	Susuve Lamaea (Chief of Staff – Office of the PM)		

Year	Leaders (Elected MPs & Appointed Officials)	Summary of Offence Committed	Results
1990	Gabriel Ramoi (MP)	Misappropriated EDF and other public funds. Allegations included: conflict of interest, failure to acquit funds, failure to adhere to procedures, spending funds outside its scope of appropriation	Resigned after appointment of Tribunal
1991	Esorom Burege (MP)	Misconduct in office which included conflict of interest, misuse of EDF and other public monies, failure to adhere to procedures and failure to acquit funds.	Resigned after Tribunal commenced hearing
1991	Ted Diro (MP Deputy Prime Minister)	Guilty of 81 allegations of misconduct in office. Offences included: Conflict of interest, accepting benefits & gifts from foreign companies	Guilty but resigned before dismissal
1992	Tom Amaiu (MP)	Misappropriated EDF and other public funds. Allegations included: conflict of interest, failure to acquit funds, failure to adhere to procedures, spending funds outside its scope of appropriation	Resigned after appointment of Tribunal
1992	Tony Ila (MP)	Misappropriated EDF and other public funds. Allegations included: conflict of interest, failure to acquit funds, failure to adhere to procedures, spending funds outside its scope of appropriation	Guilty but resigned before dismissal
1992	Timothy Bonga (MP)	16 allegations of misconduct in office. These included: blackmailing the government of the day, failure to disclose annual returns as required under the code, failure to lodge tax returns, and failure to acquit school fee subsidy cheques.	Resigned before dismissal
1992	Peter Garong (MP)	Misappropriated EDF and other public funds. Allegations included: conflict of interest, failure to acquit funds, failure to adhere to procedures, spending funds outside its scope of appropriation	Guilty and dismissed
1992	Galeng Lang (MP)	Misappropriated EDF and other public funds. Allegations included: conflict of interest, failure to acquit funds, failure to adhere to procedures, spending funds outside its scope of appropriation	Resigned but died in the office.
1992	Melchior Pep (MP)	Misappropriated EDF and other public funds. Allegations included: conflict of interest, failure to acquit funds, failure to adhere to procedures, spending funds outside its scope of appropriation	Guilty and dismissed
1993	Philip Laki (MP)	Misappropriated EDF and other public funds. Allegations included: conflict of interest, failure to acquit funds, failure to adhere to procedures, spending funds outside its scope of appropriation	Resigned before dismissal
1995	Andrew Posai (MP & Minister for Forest)	30 allegations of misconduct. These included: allocating public monies outside of the scope of appropriation, deposited public monies into his private account, conflict of interest, not providing annual statements to the PNGOC,	Guilty and dismissed

Year	Leaders (Elected MPs & Appointed Officials)	Summary of Offence Committed	Results
1995	John Nilkare (MP & Minister for Provincial Affairs)	31 allegations of misconduct. These included: allocating K20,000 without following proper procedures, did not acquit these monies, diverted K250,000 to fund projects outside of the scope of appropriation, placing funds from Rural Agriculture Development into his personal account, Accepting benefits from a foreign company	Guilty and dismissed
1995	Paul Pora (MP & Minister for Civil Aviation)	31 allegations of misconduct which included: attempting to obtain a commission for himself and his associates for a US\$800 million of offshore loans for PNG government, issuing of blanket gambling licence to a company which he had an interest in, obtaining and defaulting bank loans as Minister for Finance, failure to provide annual statements, and distributing public monies to his associates	Guilty and fined
1996	Jeffery Balakau	15 allegations of misconduct which included: misappropriation of K150,000 to projects sponsored by him, diverting of these monies into his private account, misuse of EDF funds in 1990, 1991 & 1992 as payments to bogus, unregistered and non-existent groups	Guilty and dismissed
1996		17 allegations of misconduct which included: advances of allowances which contravened the PFM Act, diverting public funds outside of its appropriation and obtaining reimbursement, falsely obtaining and diverting an advance to repay his housing loan	Guilty and dismissed
1996	Yaip Avini (MP)	Misuse of EDF and RTIMPF for his own benefit, having large number of unsettled debts, failure to acquit public monies	Lost office through criminal conviction
1996	Joseph Onguglo (MP & Minister for Education)	26 allegations of misconduct which included: improper application of 1994 and 1995 EDF, improper application of Independence Day Celebration Funds, Unsettled debts, accepting benefits and improper application of departmental funds for accommodation and personal expenses, conflict of interest, failure to lodge completed annual returns	Resigned after tribunal commenced hearing
1997	Albert Karo (MP)	Allegations of misconduct which included: improper application of EDF, MTPF and NDF; conflict of interest, and failure to acquit public funds	Lost office in election
1997	Peter Yama (MP & Minister for Transport and Works)	Allegations of misconduct which included: improper application and failure to acquit EDF and other public funds, conflict of interest, using his position to obtain private bank loan and attempting to purchase 2 ships from the government below market price.	Lost office in election



Year	Leaders (Elected MPs & Appointed Officials)	Summary of Offence Committed	Results
1997	Amos Yamandi (MP)	Allegations of misconduct which included: diverting and paying public funds to companies which he had interest in, improper awarding of contracts and not following procedures, failure to acquit for funds, misapplying EDF	Lost office in election

**Source:** Ombudsman Commission of Papua New Guinea. 2000. Report to the Parliament. Pp90-92.

**Table 2 Leadership Referrals and Prosecutions for Misuse of Public Funds (1995–1998)**

Categories of Allegations	Number of Leaders Charged
Allocation of funds to private accounts	Posai, Nilkare, Balakau, Yama (4)
Allocation of funds to unidentifiable, unregistered and non-existent groups	Balakau, Nilkare (2)
Allocation of funds without proper procedures	Posai, Nilkare, Balakau, Dusava, Pora, Onguglo, Karo, Avini, Yamandi (9)
Allocation of funds to companies which the elected leader had undisclosed interest	Posai, Balakau, Onguglo, Yama, Yamandi, Avini, Karo (7)
Allocation of funds which were not acquitted	Posai, Balakau, Yama, Yamandi, Onguglo, Karo, Avini (7)

**Source:** Ombudsman Commission of Papua New Guinea. 2000. Report to the Parliament.

## ***Endnotes***



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## ***Legislation***

Auditor-General Act

Censorship Board Act Audit Act 1989

Criminal Code

Independent Public Business Corporation Act

Leadership Code

National Broadcasting Commission (NBC) Act

News Papers and Printers Act

Organic Law on Ombudsman Commission

Organic Law on Provincial Governments and Local Governments

Organic Law on the Duties and Responsibilities of the Leadership

Organic Law on the Integrity of Political Parties and Candidates

Post & Telecommunication Act

Public Finance Management Act, 1986 (repealed in 1995)

Public Finances (Management) Act 1995 (Consolidated to No 57 of 2000)

Public Service Management Act

Radio Communications Act

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<sup>1</sup> The OLDRL sets out the responsibilities and obligations of leaders in the PNG body politic and other public posts. Amongst other things it compels leaders to make an annual return to the Ombudsman Commission setting out a statement of wealth and sources of income. An Organic law is one which sits immediately under the Constitution and requires variously an absolute majority of Parliament or a two thirds majority of all members of the Parliament to be changed or adopted.

<sup>2</sup> This behaviour is documented in the 1987 and 1992 election studies that were conducted by the Department of Political Science of the University of Papua New Guinea.

<sup>3</sup> 'Jobs for the boys' is fast becoming a norm in PNG's bureaucracy, even to the extent that elites within party supporters of the current NA-led coalition government petitioned the PM with a list of names bracketed against respective departments. For example, TI-PNG spoke out in support of rescinding of the appointment of Gabriel Dusava, who had been chosen to be the managing director of the Investment Promotion Authority (IPA). Dusava was a freshman MP for Yangoru-Saussia (East Sepik) after the 1997 national elections. Soon after entering Parliament, he was dismissed for breaching the Leadership Code in his previous office as the Secretary of the Foreign Affairs Department.

<sup>4</sup> 'Jobs for the boys' is fast becoming a norm in PNG's bureaucracy, even to the extent that elites within party supporters of the current NA-led coalition government petitioned the PM with a list of names bracketed against respective departments. For example, TI-PNG spoke out in support of rescinding of the appointment of Gabriel Dusava, who had been chosen to be the managing director of the Investment Promotion Authority (IPA). Dusava was a freshman MP for Yangoru-Saussia (East Sepik) after the 1997 national elections. Soon after entering Parliament, he was dismissed for breaching the Leadership Code in his previous office as the Secretary of the Foreign Affairs Department.

<sup>5</sup> The instability in NCD did not stop after the defeat of the PDM led government. The Somare led government stripped Mr. Kipit of his powers by appointing a board that was headed by Mr. Jack Pidik who has a political affiliation with the prime minister's NA and PPP led coalition. In February of 2003, Mr. Pidik was stripped of his financial powers through a coup, which was allegedly engineered by the speaker of the national parliament and the regional member for the NCD.

<sup>6</sup> This view was considered as very unusual by the Secretary of the Department of Personnel Management. He further admitted that the provision was too liberal and provided avenues for abuse.

<sup>7</sup> "Six-Packs" connotes an afternoon social drink party that is synonymous with PNG's communal culture of sharing betel nuts and fellowship.

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<sup>8</sup> An observation by a political science graduate of the University of PNG on difficulties in being employed by the provincial government of his province.

<sup>9</sup> These contracts typically specified that the incumbent be paid the full amount of salary and entitlements for the whole year of the unexpired portion of the contract, which could be for several years and be worth thousands of kina.

<sup>10</sup> 'Seed-money' was an analogy used in a maiden speech by the former PM, Sir Morauta, to connote the inability of previous governments to prudently and effectively manage public funds. He himself fell short of this principle.

<sup>11</sup> The Prime Minister comes from the East Sepik Province and the reference was made to the number of new appointments that were made to people from East Sepik.

<sup>12</sup> The OLPLG specifically provides for and defines JDBPPC that regulates or at least attempts to tie down EDF Funds. Prior to this national MPs were free to allocate these funds which amounted to K1.5 million at their own whim.

<sup>13</sup> The Free Education Policy has been discontinued by the present government.

<sup>14</sup> EDF has been known by a number of names since independence and has been a method of providing direct funding to members of parliament, ostensibly to allow them to provide benefits such as roads and bridges, aid posts and schools. It has also been known as the slush fund because members have tended to allocate the funds to themselves or their relatives and friends rather than to their electorates. Hence the number of prosecutions for mis-use and the strong pressure to get rid of the funds from the community.

<sup>15</sup> The recent call by CCAC for audit of the NAS Fund should also be extended to investigate allegations of executives embezzling funds to stay in power or to fast track political expediencies.

<sup>16</sup> The Governor-General as Head of State appoints the Electoral Commissioner on the advice of the Electoral Commission Appointments Committee, which is made up of: The Prime Minister, or a Minister nominated by him, who shall be Chairman, The Leader of the Opposition or his Deputy, The Chairman of a related Permanent Parliamentary Committee, and the Chairman of the Public Services Commission.

<sup>17</sup> More than double the number of people of voting age voted in the Highlands during the 2002 elections. In the Western Highlands Regional Seat, the voting population exceeded the number of eligible and registered voters.

<sup>18</sup> On occasion these powers are delegated to an individual minister or the Prime Minister. The details of this process can be seen in Kavanamur and Okole's paper on 'Corruption' as indicated in the reference.

<sup>19</sup> The details of this process can be seen in Kavanamur and Okole's paper on 'Corruption' as indicated in the reference.

<sup>20</sup> The latest date for which published reports are available

<sup>21</sup> These Acts of Parliament include the News Papers and Printers Act, the National Broadcasting Commission (NBC) Act, the Post & Telecommunication Act, the Radio Communications Act and the Censorship Board Act.

# **National Integrity Systems**

## **TI Questionnaire**

### **Papua New Guinea 2003**

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## Papua New Guinea

### The National Integrity System Indicators

#### *Questionnaire*

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#### **Executive**

Can citizens sue Government for infringement of their civil rights?

##### **Formal or Legal Position**

There are existing laws in the constitution under civil liberties that allow for citizens to sue the government or its agents.

##### **What Actually Happens**

Suing the government or its agents can be a very expensive undertaking. The majority of citizens cannot afford the high legal fees and so they do not exercise their rights. Those who could afford the legal fees have successfully taken the government and its agents to court. A good percentage of the citizens, however, are ignorant of their rights to sue the government.

**Are there procedures for the monitoring of assets, including disclosure provision, for Cabinet and other Government Ministers?**

##### **Formal or Legal Position**

Yes, under the OLDRL.

##### **What Actually Happens**

They are required by the OLLDRL to make annual returns on their assets and business interests to the Ombudsman Commission.

**Are there procedures for monitoring of assets, including disclosure provisions, for high level officials?**

##### **Formal or Legal Position**

Yes. Under the OLDRL.

##### **What Actually Happens**

The responsibility for monitoring the assets of high level officials is left with the officials themselves. They are expected to make annual returns on their assets and business interests to the Ombudsman Commission. 308 annual statements were received in 2000 which was down from the high of 557 in 1998 and implies that not all leaders are providing the required returns. The OC reported that 15%<sup>5</sup> of its annual resources in 2000 were devoted to making sure that leaders comply with the provisions of the leadership code as it applies to statements.

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**Are there any differences in procedures and disclosure provisions between elected ministers, appointed ministers and high level officials?**

**Formal or Legal Position**

No. all are covered by OLDRL (sect. 6 & 10), there are no appointed ministers.

**What Actually Happens**

All are required to provide an annual return to the Ombudsman Commission.

**Are there conflict of interest rules for ministers?**

**Formal or Legal Position**

Yes, OLDRL especially section 6, 10 & 15.

**What Actually Happens**

Ministers are required to declare all their interests to the PNGOC and any respective committee prior to voting or decision making should there be conflicting interest. However it is very difficult to administer this provision if a minister fails to disclose a gift and the onus is left on individual ministers.

**Are there conflict of interest rules for high level officials?**

**Formal or Legal Position**

Yes – Sect. 6 & 10 of OLDRL.

**What Actually Happens**

Difficult to be policed and the onus is left to the officials to declare.

**Are there rules and registers concerning gifts and hospitality for Ministers?**

**Formal or Legal Position**

OLDRL especially Sections 11 & 12.

**What Actually Happens**

Very difficult to police this provision. May be misunderstood as gifts can be accepted as culture in PNG.

**Are there rules and registers concerning gifts and hospitality for high level officials?**

**Formal or Legal Position**

Yes, Sect. 11 & 12 of OLDRL

**What Actually Happens**

But the onus lies with the high level officials to comply with the rules to declare these gifts. Also these rules clash with the culture.

**If so, are these registers kept up to date? By whom?**

**Formal or Legal Position**

Not often & by PNGOC

**What Actually Happens**

Comes into effect when leaders declare their interest.

**Have they legal powers to enforce disclosure?**

**Formal or Legal Position**

Yes, under sect. 4, 15, 17 of OLDRL.

**What Actually Happens**

- Officials can avoid disclosure on technical grounds.
- PNGOC lacks the capacity & resources to verify, especially the details of disclosure.

**Have they staff to investigate allegations?**

**Formal or Legal Position**

Yes, PNGOC has staff in three (3) regional centers and in POM.

**What Actually Happens**

PNGOC has too much on its plate and lacks capacity to investigate all allegations.

**What powers of sanction are in place against parliamentarians?**

**Formal or Legal Position**

The OLDRL does not specify the sanction except to rule as misconduct of office.

**What Actually Happens**

Guilty leaders face up to 3 years dismissal from their office.

**Have they ever been invoked?**

**Formal or Legal Position**

Yes

**What Actually Happens**

But there have been appeals against tribunal decisions resulting in reduced penalties.

**What powers of sanction are in place against ministers who are also parliamentarians?**

**Formal or Legal Position**

Face Leadership Tribunal

**What Actually Happens**

Loss of office and they are ineligible to hold any public office for three years along with lesser sanctions such as fines.

**Have they ever been invoked?**

**Formal or Legal Position**

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Yes (See Report, Annex 1, Tables 1 and 2)

**What Actually Happens**

Leaders appeal and have reduced penalties. In a very few instances they have been able to win appeals against their penalties, in the majority the decisions of the tribunals have been upheld.

**What powers of sanction are in place against ministers who are not parliamentarians?**

**Formal or Legal Position**

N/A

**What Actually Happens**

N/A

**Have they ever been invoked?**

**Formal or Legal Position**

Yes.

**What Actually Happens**

Leaders avoid dismissal by resigning prior to facing the tribunal.

**Are there restrictions on post ministerial office employments?**

**Formal or Legal Position**

No.

**What Actually Happens**

Leaders are not restricted from working elsewhere. Ex-ministers often gain employment with the government either as ministerial advisors or other political appointments.

**Are members of the executive obliged by law to give reasons for their decisions?**

**Formal or Legal Position**

No and generally they do not. The decisions of the national Executive Council were supposed to be secret. In practice this was not always so.

**What Actually Happens**

Decisions were quite often leaked along with submissions setting out the reasons for the decision. Ministers often made questionable decisions which were never explained unless a public enquiry was instituted e.g. the purchase/lease of aircraft that would not "cost the state a toea" or purchases of military hardware and other decisions involving large capital expenditures.

**Do Ministers or equivalent high level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?**

**Formal or Legal Position**

No, the requirement in procurement procedures implies a board decision.

**What Actually Happens**

Of course the ministers can use special provision and 'discretionary power' to revoke a committee decision or award contracts and licences.

**Are there administrative checks and balances on decisions of individuals of the executive?**

**Formal or Legal Position**

Yes, Acts like Public Finance Management Act & Public Service Management Act.

**What Actually Happens**

An executive member can avoid the checks & balances by replacing the officer responsible with his own men. Otherwise, officials waiver the checks – balances in fear of being reprimanded.

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**Legislature**

**Is the legislature required to approve the budget?**

**Formal or Legal Position**

Yes.

**What Actually Happens**

Executives use numerical strength to get the budget approved.

**Are there significant categories of public expenditure that do not require legislative approval? (which departments does this involve, what is their expenditure and what percent does this represent of the government's annual expenditure?)**

**Formal or Legal Position**

Yes, 'off budget' agencies like statutory/commercial entities owned or partially owned by the government.

**What Actually Happens**

However the performance of SOEs amidst political interference had been very poor. Consequently they have been making a loss. The government is then approached to bail out the entities/or support the entities.

**Are there conflict of interests rules for parliamentarians?**

**Formal or Legal Position**

Yes, the OLDRL (Sect. 6, 10 & 15).

**What Actually Happens**

Parliamentarians usually wait until reminded by the PNGOC to declare interests.

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**Are there rules and register concerning gifts and hospitality?**

**Formal or Legal Position**

Yes, OLDRL (Sect. 11 & 12).

**What Actually Happens**

PNGOC lacks capacity to implement these rules.

**If so, are these registers kept up to date? By whom? Have they legal powers to enforce disclosure?**

**Formal or Legal Position**

Updated by PNGOC. Enforced under Sect. 4, 17 & 15 of OLDRL.

**What Actually Happens**

Registries are updated annually and upon declarations by members. Where there is no declaration, then there is no record nor update.

**Have they staff to investigate allegations?**

**Formal or Legal Position**

Yes: in PNGOC.

**What Actually Happens**

But they lack resources, capacity and political will. Often the investigations are aborted or delayed.

**What powers of sanction are in place against parliamentarians?**

**Formal or Legal Position**

Same as those for ministers and high level officials – they can be dismissed from office or liable to lesser sanctions such as fines if proven guilty by a leadership tribunal.

**What Actually Happens**

Members escape sanctions by resigning before facing a leadership tribunal. Otherwise they escape penalties on technical grounds.

**Have they ever been invoked?**

**Formal or Legal Position**

Yes

**What Actually Happens**

Several elected Members of Parliament were referred to the Leadership Tribunal and suspended.

**Are there restrictions on post legislature employment?**

**Formal or Legal Position**

No, (unless dismissed by a Leadership Tribunal).

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**What Actually Happens**

Ex MPS join the parliamentary staff as consultants, or use political connections to be appointed as chairman and members of various government boards.

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**Electoral Commission**

Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan)?

**Formal or Legal Position**

Yes, as a constitutional body.

**What Actually Happens**

The experiences of 2002 & 1997 elections (esp. anomalies and abuse in voting, the poor logistic support on election violence, etc...) have brought into question the impartiality of the Commission.

Who appoints the Head of the Commission?

**Formal or Legal Position**

Electoral Commissioner appointed by a Committee comprising of the PM, Leader of Opposition, Chairman of Related Permanent Parliamentary Committee, and the Chairman of PSC.

**What Actually Happens**

Committee makes the recommendation to the Governor General who makes the appointment..

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**Political Parties**

Are there rules on political party funding?

**Formal or Legal Position**

Yes, Part IV, V & VI of the OLIPPAC.

**What Actually Happens**

Recently passed and yet to be fully implemented.

Are substantial donations and their sources made public?

**Formal or Legal Position**

No.

**What Actually Happens**

The OLIPPAC only defines for the sources of funds to be lodged to the Registrar of Political Parties who has been appointed to control the Integrity of Political Parties legislation, compile



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a register of parties, members, donations etc and determine whether parties are in compliance with the Act.

**Are there rules on political party expenditures?**

**Formal or Legal Position**

Yes. Part VI (Sect. 67) of the OLIPPAC.

**What Actually Happens**

However, the law does not regulate on what and where to spend, except to demand political parties to specify details of all their expenditure.

**Are political party accounts published?**

**Formal or Legal Position**

No.

**What Actually Happens**

No law to enforce party accounts to be published.

**Are accounts checked by an independent institution, are they published and are they submitted to parliament?**

**Formal or Legal Position**

No.

**What Actually Happens**

Political Parties had been operating on an ad-hoc basis. The well established parties prior to the OLIPPAC had no assets or shared assets with companies owned by party leaders.

**Does that institution start investigations on its own initiative?**

**Formal or Legal Position**

No.

**What Actually Happens**

Cannot tell since the OLIPPAC is yet to be implemented.

**Who appoints the Head of the institution?**

**Formal or Legal Position**

Sect. 40-42 of OLIPPAC refers to the FBM to be headed by a Chairman to be elected from within the board.

**What Actually Happens**

Recently implemented and therefore we are yet to see any trends. However it is most likely for the Head to be under immense limelight especially in the light of the distribution of resources to political parties.

## **Supreme Audit Institution**

**Is the national auditor general independent? i.e. Is the appointment of the general auditor required to be based on professional criteria/merit?**

### **Formal or Legal Position**

Yes. It is a constitutional office therefore it is independent. Appointment at this stage based on merit.

### **What Actually Happens**

At this stage the Auditor General has been very much a stable appointee from within the organization. But the appointment process has never been tested. The recent revival of PAC might cause politicians to revisit the appointment procedures.

**Is the appointee protected from removal without relevant justification?**

### **Formal or Legal Position**

Yes. As a constitutional office holder, he/she can be removed if there is a breach of the leadership code.

### **What Actually Happens**

But the appointment process has never been tested. The recent revival of PAC might cause politicians to revisit the appointment procedures

**Are all public expenditures audited annually?**

### **Formal or Legal Position**

Yes, by law.

### **What Actually Happens**

Practically and due to incapacity the auditing process exceeds a financial year.

**Is reporting up to date?**

### **Formal or Legal Position**

No.

### **What Actually Happens**

Lack of resources prevents updating.

**Are reports submitted to a Public Accounts Committee and/or debated by the legislature?**

### **Formal or Legal Position**

Yes. Section 214 of the Constitution.

### **What Actually Happens**

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The Somare-Marat government has revived the PAC which had been allowed to become moribund. There has been vigorous reporting in the press of its findings and some speculation that it has been underfunded. However the chairman has assured the author that that is not the case. The current PAC has not been in existence for 12 months and therefore not obliged to report to the Parliament. References of irregularities have been made to the police and the OC.

**Are all public expenditures declared in the official budgets?**

**Formal or Legal Position**

No.

**What Actually Happens**

Off budget organizations and SOEs function outside of the budget. Even the existence of EDF enables MPs to spend public monies outside the official budget.

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## **Judiciary**

**Have the courts the jurisdiction to review the actions of the executive (i.e. Presidency, the Prime Minister's and their officials)?**

**Formal or Legal Position**

Yes, 'allowed under the doctrine of separation of powers'.

**What Actually Happens**

Courts can review executive decisions if the executive had erred by violating the constitution and other Acts of Parliament.

**Are judges/investigative magistrates independent? i.e. Are appointments required to be based on merit? Are the appointees protected from removal without relevant justification?**

**Formal or Legal Position**

Functionally independent but their appointments may be questionable.

Covered by the OLDRL therefore they can be dismissed, but only if they are guilty.

**What Actually Happens**

PNG's judiciary has been considered to be very independent, although the appointment of the current Chief Justice at one stage raised eyebrows especially when he was much younger than the incumbent Deputy Chief Justice. There is no hard evidence that the judiciary has been in any way compromised.

**Are recruitment and career development based on merit?**

**Formal or Legal Position**

Yes.

**What Actually Happens**

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However regional sentiments tend to be an 'invisible' criteria used in recruitment and promotions of judges.

**Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?**

**Formal or Legal Position**

Yes.

**What Actually Happens**

See Report, Annex 1, Tables 1 & 2 on leaders dismissed (and also please see note above about appeals).

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**Civil Service**

**Are there laws establishing criminal and administrative sanctions for bribery?**

**Formal or Legal Position**

No. No specific laws against bribery except for OLDRL which is applicable to senior officials only.

**What Actually Happens**

Sanctions against bribery are addressed only where there are fraudulent charges which are reported and investigated.

**Are there rules requiring political independence of the civil service?**

**Formal or Legal Position**

Yes – The Public Service Management Act which is enforced by the Public Services Commission and the Department of Personnel Management. The Government recently passed three complementary bills on 13 March 2003 which guarantees the independent appointment and dismissal of Departmental heads.

**What Actually Happens**

The recent establishment of the Public Service Management Act has opened the bureaucracy to political nepotism.

**Are recruitment/career development rules based on merit?**

**Formal or Legal Position**

Yes. Usually captured in Staff Development Plans

**What Actually Happens**

But these have been severely violated and made redundant by tribal/ethnic affiliations.

**Are there specific rules to prevent nepotism? (note: rules discriminating positively in favour of marginalized or minority groups are not included in this description).**

**Formal or Legal Position**

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No.

**What Actually Happens**

The ethnic and regional divisions have allowed for discrimination using provisional groups/regional groups as a category.

**Are there rules (including registries) concerning acceptance of gifts and hospitality? By whom?**

**Formal or Legal Position**

No.

**What Actually Happens**

Only for the high level bureaucracy and law enforcing agencies. There are no specific rules concerning gifts and hospitality for those below the Secretary (Head of Department) level. However, there are conventions and policy directives, especially with the police force, on ethics in the bureaucracy. However, these are not effectively policed.

**Have they legal powers to enforce disclosure?**

**Formal or Legal Position**

No. Except under criminal laws should the officer be required to.

**What Actually Happens**

N/A

**If so, are these registers kept up to date? By whom? Have they staff to investigate allegations?**

**Formal or Legal Position**

No.

**What Actually Happens**

N/A

**Are there restrictions on post public service employment?**

**Formal or Legal Position**

Yes, especially if you've been retrenched you have to wait for no less than three years before you are redeployed into the Public Service.

**What Actually Happens**

But incapacity problems and nepotism have been seen to facilitate the re-employment of ex public servants. Public servants (retrenched/retired) can seek employment in the private sector.

**Are procedures and criteria for administrative decisions published (e.g. for granting permits, licenses, bank loans, building plots, tax assessment, etc?)**

**Formal or Legal Position**

Not often.

**What Actually Happens**

Throughout the bureaucracy, too many acting appointments and lack of resources prevent information about such decisions being accessible to the public.

**Are there complaint mechanisms for public servants and whistleblower protection measures?**

**Formal or Legal Position**

Yes. Through their union (PEA) and appeal and complaint units within the civil service. Whistleblower legislation has been prepared and is before the Parliament. THE PNGOC Accepts complaints from the public but this is much lower profile than its leadership responsibilities.

**What Actually Happens**

But no protection for whistle blowers yet.

Civil servants are either ignorant or security conscious, therefore do not complain and raise alarms against corrupt dealings.

**Are there means of complaints by members of the public?**

**Formal or Legal Position**

Not often.

**What Actually Happens**

They are either ignorant or there are no avenues put forward by the civil service as feedback options to gauge public views.

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**Police and Prosecutors**

**Is the commissioner of police independent? i.e. are appointments required to be based on merit?**

**Formal or Legal Position**

Yes by law but there is an independence question in the appointment – NEC appointment.

**What Actually Happens**

Appointment is usually from Assistant Commissioners from within the force. But this does stop the NEC from appointing an outsider.

**Is the appointee protected from removal without relevant justification?**

**Formal or Legal Position**

No – subject to NEC.

**What Actually Happens**

Between 1997-2002 there were five changes made to the top post. This was reflective of changes in the Government.

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**Are public prosecutors independent?**

**Formal or Legal Position**

Yes.

**What Actually Happens**

Delays, no shows and missing files suggest that they may be partial/open to other's influence.

**Are there special units for investigating and prosecuting corruption crimes?**

**Formal or Legal Position**

Yes – Police Fraud Squad.

**What Actually Happens**

Despite resource constraints and incapacity the fraud squad can prosecute & jail MPs/Leaders. Some MPs have been successfully prosecuted and imprisoned such as Mr Esoram Buregi who was imprisoned for embezzlement.

**Is there an independent mechanism to handle complaints of corruption against the police?**

**Formal or Legal Position**

Not a specific body except PNGOC and private Law Firms

**What Actually Happens**

Citizens usually seek assistance from private law firms (which are very expensive) and PNGOC to complain against police.

**Does civil society have a role in such a mechanism?**

**Formal or Legal Position**

Yes.

**What Actually Happens**

Bodies like TI (PNG), the CCAC and civil society are continually receiving complaints about police corruption, these are passed on to the police complaints section.

**In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?**

**Formal or Legal Position**

Yes

**What Actually Happens**

Instances of officers being jailed and dismissed from the force due to corrupt practices. Complaints are investigated by the Internal Investigation Unit which received 562 complaints in 2000 which resulted in 224 suspensions, 126 dismissals and a 21 court convictions, there were a number of lesser punishments. There is no breakdown of reasons for complaints by cause so it is not possible to tell how many were for corruption.

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**Are there any cases of corruption within the prosecuting agencies?**

**Formal or Legal Position**

Not heard of at this stage.

**What Actually Happens**

But frequent cases of missing files, inadequate evidence amongst prosecutors raises reservations in this regard.

**Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery?**

**Formal or Legal Position**

Criminal Law.

**What Actually Happens**

The PNGOC & the OLDRL do not allow police to use the same evidence used in a leadership tribunal to deal with leaders.

**Is the law applied?**

**Formal or Legal Position**

Yes

**Is private-to-private corruption punishable by law?**

**Formal or Legal Position**

No – unless it is a fraud case or has developed into a criminal case.

**What Actually Happens**

Or unless it leads to breach of a criminal code.

**Is the law applied?**

**Formal or Legal Position**

There are provisions for prosecution under the criminal code.

**What Actually Happens**

Seldom because of resource constraints in the fraud squad. The fraud squad has recently been given a grant from the Australian government to expand its operations and purchase equipment.

**How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?**

**Formal or Legal Position**

Statistics not available.

**What Actually Happens**



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Nevertheless a considerable number of prosecutions have been successful although those with resources hired established lawyers to bail them out on technical grounds

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## **Public Procurement**

**Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?**

### **Formal or Legal Position**

Yes – when tenders are called for in the papers.

### **What Actually Happens**

However this is undermined by factors such as nepotism, inside information & networks.

**Are the rules laid down in documents publicly accessible?**

### **Formal or Legal Position**

Not often unless advertised.

### **What Actually Happens**

Major government projects and especially those funded with aid money have some requirements published in local papers when bidding.

**Are there strict formal requirements that limit the extent of sole sourcing?**

### **Formal or Legal Position**

Yes. There are regulations governing all levels of procurement small purchases can be made without going to tender but with more than one quote and the requirements get tougher as the size of the contract increases. There is a widely used mechanism called a Certificate of Inexpediency which allows tender procedures to be by-passed.

**Are all major public procurements widely advertised to the private sector?**

### **Formal or Legal Position**

No.

### **What Actually Happens**

There are cases of selective bidding or organizations confining tenders to local companies.

**Are procurement decisions made public?**

### **Formal or Legal Position**

No.

**Is there a procedure to request review of procurement decisions?**

### **Formal or Legal Position**

No.

**What Actually Happens**

Yet to cite a case on this.

**Can an unfavorable decision be reviewed in a court of law?**

**Formal or Legal Position**

Yes, if there is evidence of breach of existing Law

**What Actually Happens**

Often this is the prerogative of the organization calling for tenders. And it is difficult to question criteria used by the organization.

**Are there provisions for blacklisting of companies proved to have bribed in a procurement process?**

**Formal or Legal Position**

No

**What Actually Happens**

The onus is on the government, but there is no specific provision to blacklist such companies. It would also be difficult given that companies can change names.

**Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?**

**Formal or Legal Position**

No standard law, but there are practices or attempts made for transparency in the procedures towards awarding contracts.

**Are assets, incomes and life styles of public procurement officers monitored?**

**Formal or Legal Position**

No.

**What Actually Happens**

There are no means to monitor them.

**Ombudsman**

**Is there an ombudsman or its equivalent (i.e. an independent body to which citizens can make complaints about mal-administration)?**

**Formal or Legal Position**

Yes – PNGOC.

**Is the ombudsman independent? i.e. Are appointments required to be based on merit? Is the appointee protected from removal without relevant justification?**

**Formal or Legal Position**

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Yes – Appointed by the respective NEC committee. An the appointee cannot be easily removed unless in breach of the Leadership code until his/her term expires (5 year term).

**What Actually Happens**

Recently, the Ombudsman Commissioner has been very vocal and active against corruption. He has trodden on the toes of several prominent politicians and may be replaced. The Ombudsman Commission has a central and four regional offices. Despite the high profile of the leadership cases the majority of referrals are for minor transgressions affecting ordinary citizens. There were 290 files under investigation by regional offices at the end of 1999 and 2953 complaints were received in 2000.

**Has an ombudsman been removed without relevant justification in the last five years?**

**Formal or Legal Position**

No.

**Can petitioners complain anonymously if they fear possible reprisals?**

**Formal or Legal Position**

Yes.

**What Actually Happens**

Investigators allow for anonymous complainers but this anonymity might inhibit effective investigation.

**Are reports of the ombudsman published?**

**Formal or Legal Position**

Yes. Both reports on Specific Inquiries and Annual Reports, which are also presented to parliament.

**What Actually Happens**

Lack of resources and capacity has forced annual reports to be late by at least 3 years. But annual reports and Inquiries are open for public consumption. The latest report publicly available is for 1999.

**Does the government act on the ombudsman's recommendations?**

**Formal or Legal Position**

Not often.

**What Actually Happens**

It only acts on portions of reports when they become issues converted into bills or raised during question time in parliament.

## **Investigative/Watchdog Agencies**

**Are there special investigative or watchdog agencies?**

### **Formal or Legal Position**

No. No government established Agency except for PNGOC. Although ICAC Bill is yet to be passed by the parliament. The government is in the process of creating the National Anti Corruption Alliance within the public service which will bring all agencies who have a role in investigating financial mismanagement together for specific investigations.

### **What Actually Happens**

A public institution like the ICAC is yet to be established.

But there are autonomous/industry based forums/agencies, like PNG Media Council, TI and others who often 'blow whistles' more than actually conduct investigations.

**What are their main responsibilities: Investigation; Prevention; Education and Awareness, Prosecution.**

### **Formal or Legal Position**

ICAC would be investigating corruption.

### **What Actually Happens**

Reservations on an ICAC include duplication of PNGOC and lack of resources and capacity to sustain it and to make it effective.

**Are they independent? i.e. Are appointments required to be based on merit? Are appointments generally based on merit?**

### **Formal or Legal Position**

ICAC – Not defined at this stage

### **What Actually Happens**

Should ICAC come into operation and given the immensity of corruption, there could be possibilities for manipulating the appointment process.

**Are the appointees protected from removal without relevant justification?**

### **Formal or Legal Position**

ICAC – Not defined at this stage

**Are their reports published (other than when criminal charges are pending)?**

### **Formal or Legal Position**

ICAC – Yes, they will be made public.

### **What Actually Happens**

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Yet to be seen (ICAC).

**Do they report publicly to the legislature on the general scope of their work?**

**Formal or Legal Position**

ICAC – Yes, this is the intention.

**What Actually Happens**

They will be required to act as a constitutional body or by an Act of Parliament requirement.

**Can people complain to the agency without fear of recrimination?**

**Formal or Legal Position**

ICAC – Yet to be implemented.

**What Actually Happens**

ICAC – Yet to be implemented.

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## **Media**

**Is there a law guaranteeing freedom of speech and of the press?**

**Formal or Legal Position**

Yes, Section 46 of the Constitution.

**What Actually Happens**

But this section is more definite on civil liberty (freedom of speech) and not specific on free press.

**Is there censorship of the media?**

**Formal or Legal Position**

No. But attempts were made in 1996 to have the media made more accountable.

**What Actually Happens**

There have been proposals by the government to control the press and these went as far as a public workshop to discuss a media tribunal in 1988. However, this drew a very strong reaction from society and especially the press. The bill was never passed by parliament.

**Is there a spread of media ownership?**

**Formal or Legal Position**

From the size of the market there is considerable diversity consisting of EMTV – Channel 9 (Australia) . Post Courier R. Murdoch (Aust), National – Rimbunan Hijau (Malaysia) Independent – Churches, NBC – govt. NAU FM – Yumi FM, PNG and others.

**What Actually Happens**

The economics of the media sector are unprofitable. The market is too small to support more media outlets.

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**Does any publicly-owned media regularly cover the views of government critics?**

**Formal or Legal Position**

Yes, National Broadcasting Commission, the government owned station is supposed to provide independent news and current affairs programmes.

**What Actually Happens**

It has been limited by lack of funds and many of its regional stations are off the air. Its ability to provide current affairs programmes has also been severely limited.

**Have journalists investigating cases of corruption been physically harmed in the last five years?**

**Formal or Legal Position**

Yes, but verbally assaulted.

**Does the media carry articles on corruption?**

**Formal or Legal Position**

Yes – a lot, but only those that surface and are brought to the attention of the media.

**What Actually Happens**

The media only publish what they have heard. They lack the initiative to conduct investigations and publish their findings.

**Do media licensing authorities use transparent, independent and competitive criteria and procedures?**

**Formal or Legal Position**

N/A – Media not regulated here. Anybody can start a media company, under other business related regulations.

**Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?**

**Formal or Legal Position**

Yes – media can be sued for defamation.

**What Actually happens**

There is a great deal of bluster and leaders threaten legal action but this very seldom eventuates unless there is a genuine grievance.

**Civil Society**

**Does the public have access to information and documents from public authorities?**

**Formal or Legal Position**

Not formally. Freedom of Information legislation also before the Parliament and the current PM has made a commitment to having it passed. SOEs are obliged to report to the Parliament

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annually but many are years behind and there are no statutory requirements regarding physical performance.

### **What Actually Happens**

The public's accessibility is limited often due to their ignorance, or lack of interest. Information is also accessed through annual reports, but this has become meaningless because reports are so far behind due to failure of the Parliament to police the Acts and also the fact that the Auditor-General is also far behind in reporting on financial performance. The revival of the PAC has put pressure on SOEs to get their reporting up to date.

### **Do the public authorities generally co-operate with civil society groups?**

#### **Formal or Legal Position**

Yes. But co-operation only comes about when the government wishes to legitimize its actions. Otherwise public authorities have been distanced from the society.

#### **What Actually Happens**

It hasn't been until the last 10-15 years that public authorities started to listen to civil society groups.

The level of cooperation varies between different types of groups and the government eg: the government is more willing to listen to and co-operate with the Chamber of Commerce, rather than student groups or NGOs. The evolution of TI and the CCAC have meant that there has been varying degrees of cooperation and disclosure. Often information is made available in a non-attributable basis.

### **Are there citizen's groups or business groups campaigning against corruption?**

#### **Formal or Legal Position**

Yes.

#### **What Actually Happens**

Yes. Especially the TI chapter here and other NGOs in particular. Eg: Caritas.

### **Are there citizen's group monitoring the government's performance in areas of service delivery, etc?**

#### **Formal or Legal Position**

Yes. But not as a single voice until the recent establishment of CIMC.

#### **What Actually Happens**

Yes, and vocally. The presence of a free press helps this considerably..

### **Do citizen's groups regularly make submissions to the legislature on proposed legislation?**

#### **Formal or Legal Position**

No. Unless the representatives of the groups are appointed by the legislature or invited to make submissions.

#### **What Actually Happens**

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Citizens groups in PNG are passive until their interest is threatened by the government or other groups and circumstances. And their passivity and reactions often result in irrational and 'knee-jerk' policies. Government rarely consults the private sector or civil society regarding proposed changes to legislation or regulations. The CIMC has been set up to improve dialogue between all sectors of society and government does use this to air proposed legislative changes.

**Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?**

**Formal or Legal Position**

Yes, but in a casual manner.

**What Actually Happens**

TI (PNG) in conjunction with the Education Department and other educators has developed a training course for teachers that introduces ethical and moral issues into the education system at a very basic level. This is taught at teachers training institutions around the country.

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## **Regional and Local Government**

**Are there, at regional and local level, rules and disclosure provisions similar to those operating at national level on nepotism, conflict of interest, gifts and hospitality, and post public office employment?**

**Formal or Legal Position**

Yes all of heads of Provincial Depts and their deputies come under the leadership code.

**What Actually Happens**

All elected leaders of local governments are required to declare their interests. This is yet to be tested due to less perks and privileges and accessibility to resources at provincial and local level.

**What public offices at regional and local level are appointed by the national government?**

**Formal or Legal Position**

Heads of Provincial Departments/Provincial Administration but individual MPs can influence the appointment of District Managers in respective constituencies.

**What Actually Happens**

Provincial administrators are also replaced on the basis of their party loyalties and the influence of Provincial Governors.

**Is there a legal requirement that meetings of city/town councils be open to the press and public?**

**Formal or Legal Position**

No but press can cover upon invitation by the councils.



**What Actually Happens**

City/town council news is disseminated to the press by councils, and not by the press or public's own initiative.

**Are there clear criteria restricting the circumstances in that city/town council can exclude the press and public?**

**Formal or Legal Position**

No. The Press and public can access information on any subject depending on the availability of information and accessibility of information.

**What Actually Happens**

City/town councils at this moment are insignificant in resource development or resource distribution. Consequently they do not attract much attention from the press nor the public.

**Do national agencies with a remit to deal with corruption (anti-corruption agencies, ombudsmen, supreme audit institutions, and so on) work at regional or local levels and are there specific agencies with regional and local responsibilities?**

**Formal or Legal Position**

Yes, eg. Auditor General is by law required to inspect the books of all government organizations. And the Ombudsman Commission has regional offices.

**What Actually Happens**

There are regional branches of AG and PNGOC but they lack capacity and resources to police the code and implement the transfer functions. They also wait for the public to raise complaints before investigating.

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## **Progress with Government Strategy**

**Has the government announced an anti-corruption strategy and a timetable for implementation?**

**Formal or Legal Position**

Yes, the Prime Minister has committed his government to passing the ICAC Bill. There is no broader strategy despite the fact that politicians everywhere state their commitment to "transparency and accountability".

**What Actually Happens**

The ICAC bill is before parliament and is yet to be passed.

**How much of the strategy has been implemented?**

**What Actually Happens**

None.

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**Is the strategy at national level or regional/local level?**

**What Actually Happens**

N/A

**Is the government meeting its own timetable?**

**Formal or Legal Position**

N/A.

**What Actually Happens**

N/A

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## **Donor Anti-Corruption Initiatives**

**Which bilateral and multilateral donor agencies are based in the country?**

UN, AusAid ADB & WB

**What types of anti-corruption initiatives have they supported?**

All agencies have procurement and appointment procedures that should be followed. World bank and ADB are specifically targetting corruption in a number of ways e.g improving public administration and public finance management, but none of these reach the level of the common man.

But they support initiatives through the concept of good governance and some specific programmes aimed at improvement in this area.

**Are there any examples of donors cooperating or coordinating their programs?**

Yes. Under a program they would support different phases of a project.

Donors normally would have their own project focus. However and under the banner of good governance they would jointly sponsor different phases of a program.

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## **Future Research and Donor Support**

**Can key areas or issues be identified in terms of corrupt activity that the research for the report has demonstrated as requiring immediate attention, and which are they?**

Yes.

- The tendering process under public procurement.
- The 'carrot & stick' culture amongst service deliverers.
- The arrogance by leaders to rort procedures for their own benefit.
- The lapse in merit-based appointments.
- The lack in policing of existing laws funding of institutions dealing with corruption.
- The passive attitude of society towards corruption.

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**Is there a particular aspect of corrupt activity either particular to the country concerned, or significant in terms of effect or impact, that would require more in-depth research?**

Yes.

Process:

- Nepotism and disregard for merit in appointment of leaders.
- Lack of transparency in public procurement.
- Lack of adherence to the rules and regulations underlying organizations and activities.

**Is there a particular approach or initiative to combating corruption that may be considered for further research or study as an example of best practice?**

Yes.

Most viable initiatives that would likely to have effect (arranged in priority) are:

- Facilitating more involvement of society. And especially how societal participation in governance should increase and be sustained through the CIMC and successful introduction and implementation of whistleblowers legislation.
- Finding effective means to firstly eradicate corrupt attitudes amongst lower level officials and secondly to reshape attitudes and behaviour of the service deliverers.

**Can key areas or issues relating to possible anti-corruption initiatives be identified as requiring donor support.**

- Most importantly aid donors need to be specific in addressing corruption. They should insert clauses in their aid that state the aid would be suspended should corruption be detected.
- They should also devise a pledge that would be signed by both parties to uphold anticorruption behaviour.
- Introduction of an Integrity Pledge for all major contracts issued in PNG.

**Can key areas or issues relating to anti-corruption initiatives be identified in terms of forming the basis for potential donor prioritization, sequencing, cooperation and coordination?**

In addition to gender and good governance which are used as preconditions to aid, donors should add:

- Transparency,
- Community projects,
- Societal involvement,
- Adherence to accountability and ethics within the Public Sector , and
- Ethics within investors as additional conditions.