



PAPUA NEW GUINEA

Introduction

Papua New Guinea (PNG) adopted the Westminster system of parliamentary democracy from Great Britain when it gained independence from Australia in 1975. PNG is a constitutional monarchy with the Queen as the Head of State and the Governor General as her representative. There are three branches of government: Executive, Legislature and Judiciary. The Constitution guarantees the separation of powers between the three branches.¹ The Executive forms part of the Legislature and in PNG the Executive is powerful and strong.

PNG has a unicameral Parliament made up of 89 open electorates and 20 provincial electorates. Parliament elects the Prime Minister from among the elected members of Parliament, which occurs 21 days after the return of writs of a general election, and is the first item of business of the first sitting of the Parliament.

National Parliamentary elections are held every five years, and the number of candidates per electorate currently averages around 26. Under the *Organic Law on the Integrity of Political Parties and Candidates 2003* (OLIPPAC), the Governor General must invite the party with the highest number of endorsed candidates declared elected to form government on the advice of the Electoral Commissioner. Since no single party has ever won a simple majority of 55 seats, the government has always been made up of a coalition of smaller political parties.

PNG has a multiparty system. There have been as many as forty-three political parties, however in the most recent general election in 2007, the number dropped to thirty-four. The freedom of association expressed in the Constitution and the advantages of political parties in election campaign and in forming government through a coalition of political parties has fostered a political environment for a large number of political parties to exist. Large numbers of individual candidates also compete for political office. In 2007, over 1,200 candidates contested the elections. Voter participation rate was estimated at 75 per cent.

The people of PNG, through periodic elections, provide the mandate and legitimacy for the elected leaders, i.e., Members of Parliament (MPs) to legislate on their behalf. The country has an estimated population of 6 million people, of which about 85 per cent live in rural areas. Migration into urban areas is increasing due mainly to lack of basic services in the rural areas. Although half the population is women, very few women hold elective office. The Constitution has a provision that allows for three nominated seats in Parliament and that provision is currently being explored with the aim of having three nominated women in parliament before the next general election in 2012.

¹ Constitution of the Independent State of Papua New Guinea



PNG is a unitary state with three tiers of Government – the national, provincial and local levels. The sub-national Governments are recognised under legislation called the *Organic Law on Provincial and Local-Level Governments (OLPLLG)*. The OLPLLG spells out the relations between the tiers of Government, and the powers, functions, and responsibilities of the provincial and local Governments, including the sources of their funding. Due to the nature of unitary decentralisation, the provincial and local Governments depend on the national Government for much of their recurrent and development expenditure. They are, however, expected to generate their own revenue through appropriate taxation powers.

Leaders are formally bound by the Constitution, the *Organic Law on the Duties and Responsibilities of Leadership* or commonly referred to as the *Leadership Code (LC)*, the *Organic Law on Certain Constitutional Office-holders*, the OLIPPAC and relevant Acts of Parliament. Section 26 of the Constitution lists the people affected or covered by the LC. These include constitutional office holders who are either elected or appointed and senior Government officials in the public sector, including the diplomatic service. Section 221 of the Constitution defines ‘constitutional institution’ as ‘...any office or institution established or provided for by this Constitution, other than an Office of Head of State or of a Minister, or the National Executive Council.’ It further states that ‘constitutional office-holder’ means a Judge, the Public Prosecutor, the Public Solicitor, Chief Magistrate, a member of the Ombudsman Commission, a member of the Electoral Commission, the Clerk of Parliament, a member of the Public Service Commission, the Auditor General, or the holder of any office declared by an Organic Law or an Act of Parliament to be a constitutional office (s 221, pt 93)

Other leaders specified in Division 2, Section 26 of the Constitution comprise of the following people:

- the Prime Minister and the Deputy Prime Minister, other Ministers;
- Leader and Deputy Leader of the Opposition;
- All other MPs;
- Members of Provincial Assemblies and Local-level Governments;
- All heads of Department of the National Public Service;
- All heads of or members of the boards or other controlling bodies of statutory authorities;
- The Commissioner of Police;
- The Commander of the Defence Force;
- All ambassadors and other senior diplomats and consular officials;
- The public trustee;
- The personal staff of the Governor General, the Minister and the Leader and Deputy Leader of the Opposition
- Executive officers of registered political parties.

There are several categories of leaders within the context of the LC and the Constitution:

- Elected leaders at national, provincial and local levels;
- Constitutional office holders; and,
- National level distinguished persons (judges, departmental heads and heads of public sector agencies and institutions).





Beyond the LC and the Constitution, there are business and civil society leaders who make substantial contributions to policy, the economy and service delivery. There are also traditional leaders, such as chiefs, where chiefly systems exist in certain communities, including Bougainville, the Trobriand Islands, and the Mekeo society (in the Central province). The types of leadership that are actively practiced in PNG are political, constitutional-office, public sector, business and civil society. Leadership for this Report covers political, constitutional-office, public sector and civil society leadership.

Section 1:

Principle 1 – Respect for the Law and the System of Government

Parliamentary democracy is active and vibrant in PNG; however sometimes respect for the intent and spirit of the law can be difficult to assert, as political expediency can often dominate decision-making.

- i) Upholding democratic processes and institutions, the rule of law and the independence of the judiciary and the legislature:
 - a) Allow for peaceful transfer of power;

The Constitution allows for the peaceful transfer of power, primarily through its provisions for elections every five years (s.105). The details are set out in the *Organic Law on National and Local-level Government Election 1997*, as amended 2006, which governs the processes for the conduct of election from the issue of writs to the return of writs. In 2000, OLIPPAC formalised the process for the registration of candidate's party affiliations and imposed a number of rules on the behaviour of candidates and political parties. Most recently, the general elections of August 2007 resulted in a peaceful change of government.

Since gaining independence in 1975, there have been a number of changes in governing coalitions and government leadership in Parliament during the five-year intervals between national elections. There has also been inter-tribal violence during past elections. In an attempt to provide more stability to the system and to reduce violence around elections, the Limited Preferential Voting (LPV) system, a modified version of the Alternative Vote, was introduced in the 2007 national elections.

While the LPV system seems to have resulted in less electoral violence compared to the previous national election, there are still significant concerns about the validity of the election results. The Electoral Commission's list of nearly 4 million registered voters in a population of 6 million persons is incredible, particularly in light of the fact that 1.4 million names were purged from the previous registry.²

In 2007, several candidates who won provincial electorates had their results challenged in court. In Western Highlands, the former Governor Pias Wingti challenged the election of Tom Olga over allegations of corrupt and improper practices.³ Some of Wingti's supporters even damaged roads by digging up large sections of the road in protest over the result.⁴ The Governor of Madang, Sir Arnold Amet's election was annulled by the National Court in 2008, based on evidence that his political party and the Prime Minister called the other candidate a 'thief'

²Ray Anere and Katherine Wheen, *Priorities for a Free and Fair Election* Discussion Paper No. 107., National Research Institute, Port Moresby (2009) <http://www.nri.org.pg/pages/new_at_NRI_files/PFFFE%20DP%20No.%20107.pdf> at 1 July 2009.

³David Muris, 'Wingti unseated', *Post-Courier* (Port Moresby), 10 August 2007, 12.

⁴Nikints Tiptip, 'Road services cut', *Post-Courier* (Port Moresby), 10 August 2007.



and unduly influenced voters against him.⁵ In other instances, incumbents continued to hold onto office against the rulings of the Court in annulling the results of the election. The transfer of power following the 2007 national elections was relatively peaceful.

b) Respect and promote the separation of powers by ensuring the financial autonomy of the judiciary and Parliament and ensure that the judiciary and Parliament are free from unlawful interference by the executive:

Section 99(3) of the Constitution states, ‘...in principles, the respective powers and functions of the three arms (Parliament, Executive and Judiciary) shall be kept separate from each other.’ The powers, functions and authority of the Judiciary, including the Public Prosecutor and the Public Solicitor are set out under several subdivisions in the Constitution from s.154-184. The Constitution also provides for the independence of the National Judicial System (s.157). It states that neither the Minister responsible for the National Justice Administration, nor any other person or authority outside the National Judicial System, other than Parliament through legislation, has any power to give direction to any court or to a member of any court within the system in respect of the exercise of Judicial powers or functions.

With expenditure support for the judiciary’s operations, s.209(2) of the Constitution states that for each fiscal year, the national budget shall comprise of three key components. One of these components specifies separate appropriation for the services of the Judiciary, Parliament and general public services. For the Judiciary, s.209(2A)(b)(i)-(iv) and s.209(2B)(3) define the services for which budget appropriations must be set aside. Annual budget appropriations must cater for the salaries and allowances of the Supreme and National Court, the maintenance of the Supreme and National Court, the National Judicial Staff Service, and the salaries and allowances of all persons appointed under the *Supreme Court Act 1975*, the *National Court Act 1975* and the *Sheriff Act 1973*. The Chief Justice must submit the estimates of the services of the Judiciary by 30 September to the Prime Minister. Further, according to s.210(3), where expenditure of the services for the Judiciary, in the opinion of Parliament, is insufficient, Parliament may increase the expenditure to an amount not exceeding the original estimates submitted by the Chief Justice. However, Parliament (in s.210(4)) may reallocate, or reduce and reallocate the amount of expenditure for any purpose. The Constitution (s.225) also directs and obliges all governmental bodies, ‘...to ensure, as far as is within their respective legal powers, that all arrangements are made, staff and facilities provided and steps taken to enable and facilitate, as far as may reasonably be expected, the proper and convenient performance of the functions of all constitutional institutions and of the offices of all constitutional office-holders.’

The Executive branch of the Government appoints the members of the bench with the Prime Minister as chair (s.168-70). Full time PNG citizen judges are appointed for a 10-year period and this appointment may be renewed or extended. Full time non-citizen judges are appointed for three-year terms, which may also be renewed or extended. Acting judges are appointed for up to 12 months. Judges are removable from office if there is a serious breach or conviction of a violation of the



⁵Peter Korugl, ‘PM Attacked Yama, Court Told’, *Post-Courier*, 17 March 2008, 5.





Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust (s.178-80).

The terms and conditions of employment of Supreme and National Court judges are determined by the Salaries and Remuneration Commission (s.21A of the Constitution). This body also determines the salary and other terms and conditions of Members of Parliament, Constitutional Office-holders, Heads of Departments and Ministers of State.

The Parliament is financially autonomous. It has its own separate appropriation each financial year, and it is not dependent on the Executive for day-to-day operations, with its functions governed by the *Parliamentary Services Act 1997*. It also has an independent and professional parliamentary service. Parliamentary staff do not fall under the ambit of the Public Service, and are therefore not subject to being transferred, as most public servants are.

A recent example of political interference with the Parliament's operations is the case of the Parliamentary Public Accounts Committee (PAC). Despite having its funds cut off and other attempts to undermine its work, the PAC stands out for having tenaciously investigated 95 government agencies and departments in 2007. The PAC concluded that not one agency or department had complied with the *Public Financial Management Act 1995* over the PAC's 5-year term. However, in 2008, nothing has come of the PAC report and its recommendations have not been followed up.

ii) Upholding a just, fair and honest government through:

a) Respect for and enforcement of the decisions of courts and independent tribunals;

In order for court decisions to be respected and enforced, the Judiciary must have the legal authority to exercise its power. This is explicitly expressed in the Constitution under Part 5 on judicial precedent. All decisions of law made by the Supreme Court are binding on all other courts, but on itself (Part 5, sch.2.5.9(1)), and so on with the National Court (Part 5, sch.2.5.9(2)) and lower courts, except village courts.

The Constitution in s.159 provides for the establishment of tribunals outside of the National Judicial System. These cover investigating the removal of the Chief Justice and other judges (s.178), the Public Prosecutor, Public Solicitor and Chief Magistrate (s.180(1)), constitutional office-holders (s.223(2)(a)) and suspension of the Prime Minister for misconduct (s.142(6)(a)). Section 28(1)(g) provides for the establishment of a tribunal through an Organic Law to investigate cases of alleged or suspected misconduct in office. Section 28(1A) provides for an independent tribunal to recommend to the appropriate authority the penalty to be imposed or refer the matter to the Public Prosecutor for prosecution (s.29(1)). Tribunals undertake inquiries without regard to legal formalities or rules of evidence and shall inform itself in such a manner as it thinks proper, subject to compliance with natural justice (s.181(2)). For example, the *Commission of Inquiry Act* sanctions the establishment of a Commission of Inquiry to investigate various matters in government operations. However, there is no mechanism or law to compel the enforcement of their recommendations. In 2008, a former Ombudsman noted that



while some 30 inquiries have been commissioned since 1996, their outcomes have raised questions about their effectiveness.⁶

At the community level, there are also Village Courts with Magistrates and Peace Officers who are appointed by the Government, and whilst are not part of the national court system, come under the Department of Justice and Attorney General. The parties involved are not legally bound by agreements, however Peace Officers facilitate enforcement by reminding parties of their commitment, undertakings and promises, and that they will lose status if they do not keep their word.

In general, it is not uncommon for leaders to contest the decisions of courts and independent tribunals. Examples include the multitude of court injunctions that have been taken out by leaders. Another example is in 2008, when the Prime Minister directed the Minister for National Planning and Rural Development to investigate the payment of K53 million for violating a court order and a government directive. This case lent support to allegations on the existence of a group of officials in the departments of National Planning and Finance involved in siphoning-off of public funds.

Another example in 2008 was the Commission of Inquiry into the Department of Finance that was carried out to examine if the Department made fraudulent payments between 2000 and 2006. During that time, the Department allegedly paid out more than US\$1.3 billion for 2,677 individual claims.⁷ In April 2008, the Prime Minister terminated the Inquiry, whose history had become something of a political circus with its on-again, off-again life-span; questionable appointments, sackings and new appointments of staff assisting the Commission and the funding costs which escalated from PGK5 million (US\$1.8 million) to PGK7 million [US\$2.6 million], of which PGK2 million was outstanding⁸. The Inquiry was established to investigate the disappearance of more than PGK270 million [US\$101 million] in public funds from the Department between January 2000 and July 2006. In the same month, and amidst severe criticisms from the Opposition and Transparency International (PNG), the Prime Minister overturned his decision, re-scoped the Commission and broadened the parameters of the inquiry, claiming the specified time period of the inquiry had lapsed. The Commission was given nine months to complete its inquiry and to furnish a report⁹.

Headed by Justice Maurice Sheehan, the inquiry was reconstituted to:

- Investigate the handling of public money in excess of PGK300,000 [US\$121,000] by the Department of Finance between January 1, 2002 and July 1, 2006;
- Look into the systems that protect public monies from illegal claims and identify core failures that have exposed the state to improper liability. It will also investigate how public monies have been allowed to be applied to payment of illegal, false or improper judgments and out-of-court settlements. The inquiry will then make recommendations to secure or further protect public monies from such misuse;

⁶*Post-Courier* (Port Moresby), 7 January 2008, 2.

⁷Radio New Zealand, 'PNG Finance Dept Inquiry Needs Timeframe, says TI', 24 June 2009 <<http://www.rnz.com/pages/news.php?op=read&id=47340>> 25 June 2009.

⁸'PNG Prime Minister end Inquiry into missing funds', *Post-Courier*, 22 April 2008.

⁹'Somare backpedals, restarts PNG Finance Inquiry', *Post-Courier*, 24 April 2008.





- Look into the role of the Finance Department in screening all claims for payment by the state and detecting and rejecting illegal, false and improper claims;
- Identify the source of monies used to pay all identified illegal, false and improper claims; and
- Look into and conclude the involvement of legal firms in the making and paying of false and improper claims etc¹⁰.

In October 2008, three former senior officers – the former Solicitor-General, the former Chief Secretary to Government and a former provincial administrator, through the National and Supreme Courts challenged the validity of the inquiry.¹¹ They successfully sought and had the Courts to declare the inquiry unconstitutional, invalid and of no effect for breaching the Constitution, as well as lacking jurisdiction to inquire into their matters, and being not lawfully appointed under the *Commission of Inquiry Act*.¹² Its report, numbering 800 pages, was presented to the Prime Minister in November 2009, who promised to table it in Parliament in November 2009. The report established that more than US\$1.3 billion was paid out in fraudulent claims over the period between January 2000 and July 2006.

b) Enforcement of lawful instructions and lawfully created policies;

The national Government has various organs that enforce its instructions and policies, for example, the Supreme Court protects and enforces people's constitutionally guaranteed rights. Its authority to enforce these rights is laid out in the Constitution and other Acts of Parliament. Part 3 of the Constitution covers basic rights, and the Supreme and National Courts' power to secure these rights. As per the Constitution (s.57), enforcement authority is not limited to the Supreme and National Courts and the Law Officers of PNG; it may include others. The main agency responsible for law enforcement is the Royal Papua New Guinea Constabulary, as set forth in the *Police Act 1998*. Its oversight rests with the Minister for Police and the operations are handled by the Commissioner of Police.

In 2008, the Ombudsman Commission continued to investigate the transportation of Julian Moti in a covert operation conducted by elements of the PNG Defence Force in collaboration with government officers, to use a CASA aircraft to aid the escape of Julian Moti from Jackson International Airport in Port Moresby to Munda in the Solomon Islands on 10 October 2006. Julian Moti, an Australian citizen, was appointed Attorney-General of the Solomon Islands. He was travelling from India through Singapore via Port Moresby where he was arrested by PNG police. The Prime Minister was alleged to have issued the directive to remove the then soon-to-be appointed Solomon Islands Attorney General. Moti was wanted in Australia for sex crimes he had allegedly committed in Vanuatu and was to be extradited from PNG to Australia when he fled to the Solomon Islands. In response, the Australian government banned the Prime Minister and the Minister of Defence from travelling to Australia. The Minister for Defence established a Defence Force Board of Inquiry following the rejection by the Government of two investigative reports. One was an internal inquiry ordered by the Commander of the PNG Defence Force and the second undertaken at the direction of the Prime Minister. The Defence

¹⁰"New inquiry hopes to crack PNG malfeasance," *Post-Courier*, 16 September 2008.

¹¹"PNG Court asked to dismiss Finance Department probe." *Post-Courier*, 23 October 2008.

¹²"PNG Court orders pause of finance probe." *Post-Courier*, 28 October 2008.



Force Board of Inquiry conducted inquiries from December 2006 to March 2007. Its terms of reference were to investigate if the National Executive Council and the National Security Council approved Moti's evacuation and who authorised it. The Prime Minister then dismissed the Minister for Defence and took over as acting Minister for Defence, whereupon receiving the Inquiry's report, embargoed its release to the public. Nonetheless, the report was leaked to the press. On the allegations surrounding the Prime Minister, the inquiry found that in undertaking the orders from the Government official, the military officers had failed to verify the verbal directive of the Prime Minister before performing the covert operation. The inquiry also found that the Defence Council and the Commander of the PNG Defence Force were unaware of the operation planned by its operations branch in breach of its standard operating procedures and the Constitution (s.203, 204 and 205) on call-out of the army, that the then-Chief Secretary was aware of the directive and did consult with the officer tasked to handle the matter, intruded on Solomon Islands territorial integrity, the *Civil Aviation Act* and Civil Aviation rules, the *Organic Law on the Duties and Responsibilities of the Leadership* and the *Criminal Code*.¹³ The Inquiry recommended that the Prime Minister and senior officials including the Chief Secretary and the Chief of Staff to the Prime Minister, who are leaders under s.26 and 27 of the Constitution be charged under the Leadership Code.

- c) **Compliance with the letter and spirit of the laws, which are made for the benefit of the public;**

Refer to instances reported in section b) above.

- d) **Disclosure of fraud, corruption and mal-administration, of which the leader has become aware;**


Corruption, fraud and maladministration, including the penalties, are set out and defined in the *Criminal Code Act 1974*. Part III of the Criminal Code, under 'offences of law and justice and against public authority', covers public servants, constitutional office-holders, people employed by constitutional institutions, the Head of State, Ministers, MPs and employees in the national and provincial legislatures, and employees of corporations established by the state. A strong knowledge and awareness of these offences should guide leaders and enforcement agencies on disclosing such practices. Disclosure process for this is not articulated, except for the requirement to report the matter to a commissioned police officer. According to the *Public Service Management Act's* Oath of Loyalty and Service to the State and the Executive Government, a public servant swears not to inform lawful authorities of wrongdoing by others of which he or she may know. He also swears not associate with or deal with any person who intends to corruptly undermine the integrity of the Public Service, the Executive Government or the State and report such persons to the Ombudsman Commission.

Beyond this, the Magistrates' Code of Conduct states that, 'a Magistrate sometimes becomes aware of improper conduct on the part of another Magistrate or on the part of a lawyer appearing before the Magistrate. Where the conduct is repeated or serious, it is improper for a Magistrate to ignore such conduct. Depending on the seriousness of the conduct, appropriate responses range from a conversation with



¹³Quoted in, Oseah Philemon, 'Plenty talk, little action: Sir Mekere', *Islands Business*, May 2008 <http://www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=18074/overrideSkinName=issueArticle-full.tpl> at 15 July 2008.





the Magistrate in question, pointing out the inappropriateness of the conduct, to immediately reporting the conduct in writing to the Chief Magistrate.’

The *Criminal Code Act 1974* (s.87) defines ‘official corruption’ as

(1) A person who— (a) being— (i) employed in the Public Service, or the holder of any public office; and (ii) charged with the performance of any duty by virtue of that employment or office, (not being a duty touching the administration of justice), corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit for himself or any other person on account of any thing done or omitted to be done, or to be done or omitted to be done by him in the discharge of the duties of his office; or (b) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, on or for any person, any property or benefit on account of any such act or omission on the part of a person in the Public Service or holding a public office, is guilty of a crime. The penalty is imprisonment for a term not exceeding seven years, and a fine at the discretion of the court

The Criminal Code also covers bribery of and by MPs and public officials, abuse of office, extortion, false claims, receiving of gifts, secret gifts and commissions, falsification and misleading accounts, and false claims, amongst others. Section 97O of the *Criminal Code Act* clearly challenges the claims of custom, in that custom does not amount to a defence in the receiving, soliciting, giving or offering of a valuable consideration.

A thorough search of criminal cases would be required to indicate precisely the extent of the situation in PNG. Disclosure of fraud, corruption and maladministration are exposed in different ways. In 2008, evidence for the Parliamentary Public Accounts Committee hearing into the misuse, mismanagement and theft of public funds was revealed by the report of the Auditor-General and officials called before it. The subsequent establishment of the Commission of Inquiry into the Department of Finance and the inquiry into the covert transportation of Julian Moti to the Solomon Islands are official inquiries that reveal significant problems on maladministration, fraud and corruption.

e) Refraining from exertion of pressure, and abuse of persons carrying out their lawful duties;

Pressure and abuse of persons undertaking their lawful duties can be exercised in many different ways, such as through bribery, undue influence and gifting. The *Criminal Code Act 1974* (s.92(1)-(2)) identifies exertion of pressure as an abuse of office. The Act states that, ‘A person employed in the Public Service who, in abuse of the authority of his office does, or directs to be done, any arbitrary act prejudicial to the rights of another is guilty of a misdemeanour.’ The penalty is imprisonment for a period of not more than two years and where it was done for personal gain, the offender is liable to imprisonment up to three years.

An area of growing concern is the increasing level of pressure, including threats electoral officials face in ensuring the conduct of free and fair elections. The *Criminal Code Act 1974* covers offences on elections such as treating (s.101), undue

influence (s.102), bribery (s.103), illegal practices such as defamation of candidates (s.105) and interference with elections (s.108). In 2008, the court in a case of disputed returns, ruled that the East Sepik Governor and MP had bribed a voter with K50 to vote for him in the 2007 national election. His election was declared null and void. In 2008, there was also a case in which the deputy governor and another senior officer of the New Ireland provincial government were arrested for allegedly defaming a senior District Court magistrate.¹⁴

f) Refraining from using any legal immunity or privilege as a cloak or shield for behaviour of a lower ethical standard than that reasonably expected of the leader by citizens;

Section 115 of the Constitution provides the powers, privileges and immunities of the Parliament and its members and committees. MPs are not subject to court jurisdiction in respect to the exercise of their powers or performance as legislators, but this ‘does not affect the operation of Division III.2 (Leadership Code).’ As a result, MPs are not immune from investigation under the Leadership Code. Further details are found in the *Parliamentary Powers and Privileges Act 1964*.

In May 2008, the Prime Minister was alleged to be associated with the disappearance of US\$31 million of assistance from Taiwan. The Prime Minister attempted to avoid being investigated by citing executive privilege. However, the National Court in June 2008 ruled that the Ombudsman’s Commission could continue its investigation into the matter. In May 2008, the revelation of the PGK82.6 million [US\$31 million] diplomatic scandal involving two middlemen of Chinese origin and two Papua New Guineans in 2006 surfaced to embarrass the Government.¹⁵ The US\$31 million in question was reportedly entrusted to the middlemen as a tool to persuade PNG to switch its allegiance from the People’s Republic of China to Taiwan. One MP, who is also current Chairman of the Public Accounts Committee and a private lawyer were alleged to have asked for PGK55 million [US\$21 million] before any bilateral relationship could be established, but denied the claims. Only the Minister for National Planning admitted to meeting with one of the middlemen involved in the scandal. The case led to the Taiwanese Foreign Affairs Minister, who met the Prime Minister in Singapore, returning from a UN meeting to step-down from office in disgrace.¹⁶ The Prime Minister clarified in Parliament that the meeting explored possible areas of co-operation to further strengthen the trade and economic relations between Papua New Guinea and Taiwan under the APEC umbrella.¹⁷ The money allegedly disappeared. One of the two men went missing and the second was barred from leaving Taiwan while prosecutors investigated the matter.

Three months later, the Vice Premier of China (Taiwan) Chiou I-jen, following investigation for corruption in connection with the diplomatic scandal, resigned from the ruling party in shame.¹⁸ The case came to light in April 2008, when Taiwan applied to Singapore’s High Court to retrieve the US\$29.8 million in a bank in Singapore. It had been set aside in September 2006 for the middlemen to help Taiwan forge diplomatic relations with Papua New Guinea, after the two were enlisted for the job by Chiou I-jen. It was alleged that \$US20 million was given to six Papua New Guineans.¹⁹



¹⁴*The National*, 25-27 January 2008, 1.

¹⁵‘PNG Minister implicated in Taiwan funding scandal.’ *Post-Courier*, 12 May 2008.

¹⁶‘Somare met with disgraced Taiwan Minister in 2007.’ *Post-Courier*, 13 May 2008.

¹⁷‘Somare: ‘I will not sell my country.’’ *Post-Courier*, 16 May 2008.

¹⁸‘Top Taiwan official implicated In PNG Scandal.’ *Post-Courier*, 25 August 2008.

¹⁹‘Prominent PNG suspects took Taiwan bribe.’ *Post-Courier*, 15 October 2008.



g) Establishing and empowering bodies, such as an Ombudsman Commission, to independently investigate public complaints against government actions;

The Ombudsman Commission (OC) is a constitutional office established in 1975 (s.217). The Ombudsman Commission consists of two Ombudsmen and the Chief Ombudsman. Each operates his or her own investigations independently, and no Ombudsman has the power to oversee operations of another's investigations. Appointed by a bi-partisan Committee, each incumbent serves a term of six years for citizens and 3-years for non-citizens.

The functions of the Ombudsman Commission as specified under the *Organic Law on the Ombudsman Commission*, 'are to investigate, on its own initiative or on complaint by a person affected, any conduct on the part of any State Service or a member of any State Service or any governmental body, or an officer or employee of a government body, or any service or body referred to' it. The results, suggestions and recommendations of its investigations are copied to the Prime Minister, the Minister responsible for the National Public Service, the Chairmen of any parliamentary committee, the Speaker of Parliament, the Minister responsible for National Legal Administration, the Chief Justice, the Chief Magistrate, the Chairman of the Public Service Commission, the head of any provincial government and persons holding an official position as the Commission considers appropriate. The Ombudsman Commission also administers the Leadership Code. Where there is *prima facie* evidence, the leader is referred to the Public Prosecutor for possible prosecution, or it is referred directly to the Leadership Tribunal. The OC tables its annual reports to Parliament.

Enabling legislations include the *Organic Law on the Ombudsman Commission* (OLOC), which addresses the traditional ombudsman function, and the *Organic Law on the Duties and Responsibilities of Leaders* (OLDRL), or the Leadership Code. Under both laws, the OC can initiate investigations, as well as respond to public complaints. Heads of Government Bodies are informed when investigations are conducted under the OLOC, whereas investigations under OLDRL are private, meaning that a leader under investigation is notified when he or she is given a right to be heard.

In 2008, the outgoing Chief Ombudsman, Ila Geno referred the Prime Minister for alleged failure to submit annual statement of income for the years 1992 to 2005, failure to submit annual statements on time, and submission of incomplete annual statements. These statements are required by the Leadership Code. The Prime Minister sought a court injunction to halt the investigation and used Parliamentary Privilege to attack the integrity and impartiality of the Chief Ombudsman in Parliament, including raising matters that referred him to the Public Prosecutor and which were before the Courts, that he instituted and which are not allowed on the floor of Parliament. The Chief Ombudsman was also referred to the Parliamentary Privileges Committee²⁰.

h) Ensuring that the Auditor General reports directly and in a timely manner to Parliament/Congress;

²⁰The National, 7 July 2008

A key integrity and anti-corruption institution is the Office of the Auditor-General,



which is a permanent constitutional authority that inspects, audits, and reports on the 'control of and transactions with or concerning the public monies of PNG' (as set forth in s.213 and s.214 of the Constitution). Section 213(3) states that, 'In the performance of his functions ... the Auditor-General is not subject to the control or direction of any person or authority.' The primary functions of the Auditor-General in s.214(1) of the Constitution are, 'to inspect and audit, and to report at least once in every fiscal year (as provided by an Act of the Parliament) to the Parliament on the public accounts of Papua New Guinea, and on the control of and on transactions with or concerning the public moneys and property of Papua New Guinea, and such other functions as are prescribed by or under a Constitutional Law".

The Auditor-General is appointed by the Head of State, in accordance with the advice of the National Executive Council, on receipt of advice from the Public Service Commission and the Public Accounts Committee. The Prime Minister chairs a Parliamentary Auditor-General Committee, which appoints the Auditor-General (s.213(2) of the Constitution). Section 20 of the *Audit Act of 1989* strengthens the constitutional provisions by giving the Office of the Auditor-General powers to appoint its officers and to set its own terms and conditions of employment within the finances provided to it, as stipulated under s.21 of the same Act.

In 2008, the Auditor-General reported directly to Parliament and in a timely manner, including reporting to the Parliamentary Public Accounts Committee. However, the ability of the Auditor-General's office to carry out audits, as was revealed to the Public Accounts Committee, is limited by resource constraints and the failure of most Government departments to comply with the law in keeping records of public monies.

In a Parliamentary Public Accounts Committee hearing in 2008, the Auditor-General's report found that some PGK850 million (US\$318.5 million) in development funds had been stolen over a period of three years by government officials inside national and provincial administrations, before it reached the targeted population and projects. It is alleged that to date, none of these officials have been prosecuted, although some 60 public office holders, allegedly involved in stealing public funds, were referred to the office of the Attorney General and the Ombudsman Commission. According to s.5 of the *Audit Act 1989*, the office of the Auditor-General is vested with the power to prosecute any person that commits an offence of misappropriation of public monies. In reply to why this provision of the Act was not enforced, the Auditor-General informed the PAC that his office was advised by the office of the Secretary of the Department of Justice and Attorney General that this Section is invalid and is of no effect. This effectively renders the Auditor-General ineffective.²¹

Two examples can be cited in support of the Auditor-General's report. In August 2008, a former Governor was arrested and charged for allegedly misappropriating project grants totalling more than PGK2.2 million [US\$873,605]. His arrest arose from the internal audit investigations conducted into the provincial and local-level government by the National Anti-Corruption Alliance.²² In January 2008, a senior manager and a number of staff of the National AIDS Council Secretariat were



²¹ "PNG Auditor: \$318 million stolen yearly," *Post-Courier*, 14 April 2008.

²² "Former PNG governor arrested for theft," *Post-Courier*, 25 August 2008.





suspended and an investigation was ordered into allegations of serious financial and administrative malpractices, which included more than PGK1 million [US\$370,000] spent on ghost stationery purchases.²³

The PAC was also informed that some PGK1 billion [US\$ 379.5 million] of public money has been misused from the Department of Finance over a period of seven years, a figure likely to inflate as the PAC examines records for the last 10 to 15 years. The Auditor-General's report also stated that some K750 million passed through one trust account in five years and was misappropriated without a trace.²⁴ A Commission of Inquiry was later instituted to investigate this matter. In February 2008, a senior Department of Finance officer was arrested and charged with fraud over allegations of receiving a fee of PGK122,000 [US\$45,000] for using his position and connection in the Department to have the landowners' claim processed for the use of their water resources to supply the city with water and electricity.²⁵ This case also supports the allegations of a seasoned business executive being aware of the existence of 'a 30 percent syndicate of bureaucrats and politicians begging businesses for money before work can be done'.²⁶

The Auditor-General's report to the Public Accounts Committee on the PNG National Forestry Authority reported that some PGK100 million [US\$41 million] in public funds allocated to the National Forest Authority from 1999 to 2005 had disappeared. There were no records kept of PGK100 million for that period despite warnings by the Auditor-General.²⁷ According to the Minister for Forestry, foreign logging firms continued to breach all logging agreements in PNG with some estimates at 70 percent of logging being undertaken illegally.²⁸ Some aspects of this are supported by a report prepared by the Australian Criminology Institute which also alleged vested interests of politicians, even in the highest office.²⁹

The PAC also directed the Auditor-General to audit the National Housing Corporation (NHC) as the authority had become insolvent, but was still able to receive budget support as it was a Government entity. NHC had reportedly incurred a net loss of PGK4.024 million [US\$1.6 million] during 2000 and as of then its total liability exceeded its assets by PGK22.75 million [US\$9 million]. According to the Auditor-General, the NHC did not comply with the requirements of the *Public Finances (Management) Act* as it did not submit financial statements on a timely basis to his office for audit purposes. The Auditor-General was only able to undertake audits as far as 2003. Lack of funding prevented it from completing audits up to 2008.³⁰ Early in March 2008, the Managing Director was charged with misappropriating PGK50,000 [US\$18,599] belonging to the Housing Authority.³¹

The Auditor-General's report of the Autonomous Bougainville Government for the years 2005 and 2006 found discrepancies, irregularities and lack of compliance to the *Public Finance (Management) Act* amounting to abuse of millions of kina.³²

iii) Protection of fundamental human rights:

Basic rights are defined in Division 3 of the Constitution. Subdivision A, in particular, s.32 and s.33 define right to freedom as consisting of '...the least amount of restriction on the activities of individuals that is consistent with the maintenance and development of Papua New Guinea and of society in accordance with this Constitution and, in particular, with the National Goals and Directive Principles and the Basic Social Obligations.' This is further grouped and articulated

²³"PNG Aids Council manager probed over funds." *Post-Courier*, 31 January 2008.

²⁴"\$380 million unaccounted for In PNG Ministry." *Post-Courier*, 2 May 2008.

²⁵"Top PNG finance official charged with fraud." *Post-Courier*, 12 February 2008.

²⁶"PNG shakedown: officials want 30 percent kickback." *Post-Courier*, 12 March 2008.

²⁷"\$41 million missing at PNG Forest Authority." *Post-Courier*, 24 September 2008.

²⁸"PNG minister out to clean up forest industry." *Post-Courier*, 10 April 2008.

²⁹"Report documents illegal logging in PNG." *Post-Courier*, 24 April 2008.

³⁰"PNG Housing Corporation target of probe." *Post-Courier*, 25 September 2008.

³¹"PNG Housing official arrested for theft of funds." *Post-Courier*, 27 March 2008.

³²"Bougainville audit shows \$9.6 million missing." *Post-Courier*, 9 May 2008.



in the Preamble to the Constitution which states that, ‘all persons in our country are entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever their race, tribe, places of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the legitimate public interest, to each of the following:

- life, liberty, security of the person and the protection of the law;
- the right to take part in political activities;
- freedom from inhuman treatment and forced labour;
- freedom of conscience, of expression, of information and of assembly and association;
- freedom of employment and freedom of movement; and,
- protection for the privacy of their homes and other property and from unjust deprivation of property.’

These are further articulated in the Constitution referenced below. Fundamental rights are set out in subdivision B of the Constitution and these include the right to life (s.35), freedom from inhuman treatment (s.36) and protection of the law (s.37). The Constitution, in s.38, also provides for qualified rights that regulate or restrict the exercise of a right or freedom to the extent that the regulation or restriction is necessary to the public interest in terms of defence, public safety, order, welfare, health and protection of marginalised groups.

The Constitution also provides for courts to have regard for the Universal Declaration of Human Rights and any other declaration, recommendation or decision of the General Assembly of the United Nations concerning human rights and fundamental freedoms, European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols, and any other international conventions, agreements or declarations concerning human rights and fundamental freedoms, judgements, reports and opinions of the International Court of Justice, the European Commission of Human Rights, the European Court of Human Rights and other international courts and tribunals dealing with human rights and fundamental freedoms.

The Constitution guarantees the liberty of persons (s.42), freedom from forced labour (s.43), from arbitrary search and entry (s.44), of conscience, thought and religion (s.45), of expression (s.46), of assembly and association (s.47), of employment (s.48) and of privacy (s.49). Every citizen who is of full capacity and has reached voting age has the right to vote and stand for public office (s.50), the right to freedom of information (s.51), right to freedom of movement (s.52), and protection from unjust deprivation of property (s.53), with special provisions related to certain lands (s.54) and equality of citizens (s.55) and natural justice (s.59). The courts, in particular the Supreme Court, and the police are the primary institutions charged with enforcing these protections. In 2008, PNG acceded to the International Covenant on Civil and Political Rights (ICCPR),³³ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁴

Respect for fundamental human rights is an ongoing challenge for PNG. In 2008, a journalist received death threats and had to leave the country after he wrote articles for the *Post-Courier* newspaper about the Taiwan diplomacy scandal. The Prime Minister, upset with the media linking him to this scandal, referred the *Post-Courier* to the Parliamentary Privileges Committee.³⁵



³³International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

³⁴International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

³⁵Australia Network, ‘PNG Journalist Receives Threats Over Taiwan Reports’, 20 May 2008 <http://australianetwork.com/news/stories_to/2250687.htm> at 15 August 2008.





In 2008, human rights abuses included arbitrary or unlawful killings by police and police abuse of detainees. The protection of fundamental human rights sometimes conflicts with traditional practices. For example, compensation is a common method of settling problems, even though studies indicate that women do not feel that this approach resolves their issues.³⁶

According to Human Rights Watch,³⁷ in two highlands provinces, police commanders stated, ‘there were more than 50 sorcery-related killings in their provinces in 2008, but the perpetrators of such killings are rarely brought to justice.’ One example was when, in front of a police station, a mob stripped a woman naked, beat and poked her with hot iron rods, and set on her on fire. The accusation was that she was possessed by spirits, which she had used to chop off a man’s tongue. Later, the true story emerged that the man went to her house, tried to rape her, and in the struggle she bit off part of his tongue. The next day he accused her of witchcraft.³⁸

Gender participation and representation in Parliament and in senior management levels in the public sector is low. PNG signed the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 1995 and the Beijing Platform for Action which prescribes 30% participation of women in parliament but there is only one female Member of Parliament. So far, PNG’s international obligations on women’s participation have not been realised.

Section 2:

Principle 2 – Respect for Cultural Values, Customs and Traditions

i) Respect for cultural values, customs, traditions and indigenous rights and observation of traditional protocols in the exercise of power:

The Preamble on the adoption of the Constitution opens with, “We, the people of Papua New Guinea: united in one nation; pay homage to the memory of our ancestors—the source of our strength and origin of our combined heritage; acknowledge the worthy customs and traditional wisdoms of our people—which have come down to us from generation to generation; pledge ourselves to guard and pass on to those who come after us our noble traditions and the Christian principles that are ours now.” Section 5(4) of the Preamble of the PNG Constitution expresses the desire for ‘traditional villages and communities to remain as viable units of Papua New Guinean society,’ and for them to be preserved. This has been carried out through institutions such as the National Cultural Commission, the Creative Arts Centre of the University of Papua New Guinea, and the National Museum and Art Gallery. The *National Cultural Commission Act 1994* was established to preserve, protect, develop and promote the traditional cultures of indigenous peoples of PNG. This followed the *National Cultural Property (Preservation) Act of 1965* and the *National Cultural Property (Preservation) Regulations 1965*.

The Constitution (s.2.1) states that custom is adopted and shall be applied and enforced, as part of the underlying law, to the extent that it is consistent with a Constitutional Law or statute and not repugnant to the principles of humanity. Furthermore, ‘an Act of Parliament may provide for the proof and pleading of

³⁶AusAID, ‘Violence Against Women in Melanesia and East Timor’ <<http://www.ode.usaid.gov.au/news/news08.html>> at 15 February 2009.

³⁷Coursen-Neff, Zama, *Where Violence Against Women is Rampant*, (2009) Human Right Watch <<http://www.hrw.org/en/news/2009/01/27/where-violence-against-women-rampant>> At 2 February 2009.

³⁸Ibid.



custom for any purpose' and 'regulate the manner in which, or the purposes for which, custom may be recognised, applied or enforced, and provide for the resolution of conflicts of custom.' In an attempt to integrate aspects of custom into the criminal justice system, the *Criminal Law (Compensation) Act* was enacted in 1991.

The *Village Courts Act 1989* provides that village courts should 'ensure peace and harmony' (s.52) in their areas, apply 'relevant custom' (s.57), in accordance with 'substantial justice' (s.58), and follow principles of 'natural justice' (s.59(2)). The primary role of Village Courts is to resolve disputes through mediation by applying customary laws and practices. Chiefs or Elders are appointed as Village Court Magistrates and as Peace Officers by the Government.

Parliament has enacted laws in which a type of tenure called 'customary land title' is recognised, meaning that the traditional lands of indigenous peoples have some legal basis to inalienable tenure. Customary lands underpin customs, traditions and indigenous rights. They constitute 97% of lands in PNG, and are held and controlled communally by a tribe or clan.

The *Land Disputes Settlement Act* came into operation and Provincial Land Courts and Local Land Courts were established in 1975. The *Land Disputes Settlement Act* sets out three stages for the attempted settlement of disputes over customary land: first, mediation by a land mediator, an appointed local person; second, arbitration at a Local Land Court; and third, there is a limited right of appeal to the Provincial Land Court. The *Land Act of 1996* also covers the use and protection of customary land.

In practice, traditional land tenure is often recognised when settling land disputes, or when entering into land negotiations with land and resource owners for development purposes. In 2008, several court cases were filed involving alleged misuse of the traditional lands of indigenous people. Village courts often use traditional land tenure rather than Western law to settle traditional land disputes. In general, these courts adjudicate and rule on matters relating to cultural values, customs and traditions.

Provincial governments and local communities protect, preserve and promote their respective cultures, customs and traditions. For example, the Trobriand Islands in Milne Bay province practice the annual yam festival called the Mila Mala festival. In chieftainship societies, such as the Trobriand Islands and the Mekeo society, the authority of chiefs is widely recognised and may override the authority of ward councillors or village-based peace officers.

Section 3:

Principle 3 – Respect for Freedom of Religion

i) Respect for religious belief and practice:

The Constitution provides for the freedom of religion. The predominance of Christianity is recognised in the preamble of the Constitution, which refers to, 'our noble traditions and the Christian principles that are ours'; however, there is no state religion. The Constitution states that, 'every person has the right to freedom



of conscience, thought and religion, and the practice of his religion and beliefs, including freedom to manifest and propagate his religion and beliefs' (s.45). No one shall be compelled to receive religious instruction or to take part in a religious ceremony or observance, and no one may force a religion onto another person. Reference is also made to traditional religious beliefs and customs.

The practice of religion is generally free. The Constitution's provisions for freedom of conscience, thought, and religion mean that, in practice, any religion may be practiced or propagated as long as it does not interfere with the freedom of others.

Section 4:

Principle 4 – Respect for People on whose behalf Leaders Exercise Power

i) Proper use of official powers:

Official powers of leaders are set out in the Constitution, the Organic Laws and Acts of Parliament, emergency regulations and provincial laws. Section 99(2)(a) of the Constitution gives the National Parliament unlimited powers of law-making. Section 109(1) states that, "the Parliament may make laws, having effect within and outside the country, for the peace, order and good government of Papua New Guinea and the welfare of the People". The Constitution, in Part VIA, provides for provincial and local-level government system. Section 187C(5) aside from other powers, states that "An Organic Law shall make provision for the devolution and delegation to each Provincial Government and Local-level Government of substantial powers of decision-making and substantial administrative powers in respect of matters of direct concern to the province and to the local-level government area." Official powers may be used to influence administrators to get employment for family members or *wantoks*. In 2008, the National Anti-Corruption Alliance, an intergovernmental agency coordinating mechanism set up to investigate major cases of corruption, uncovered over 200 ghost workers on the payroll of the Southern Highlands Provincial Administration. Over 60 arrests were made; among them two leaders. Prior to the 2007 election, the Governor for Southern Highlands had considerable control over the public servants in the province, including to the extent of the province literally operating outside of the framework of the *Organic Law on Provincial and Local-Level Government*.

ii) Honesty in dealing with the people and Parliament, with any misleading information corrected at the earliest practical opportunity:

It is difficult to assess the extent to which leaders are being honest with the people and seek to correct misleading information of their own volition, or intentionally misleading them and correcting information only when an untruth becomes public. In January 2008, the Acting Prime Minister gave a press conference to unequivocally state that the Government would not deport West Papuan refugees. This is an example of the Government correcting misleading information. Another example is the case regarding the Prime Minister's shareholding in the Pacific Register of Ships Ltd (PRS), which was brought to attention in 2008, and which appeared to be a conflict of interest. When asked in Parliament to disclose his shareholding in PRS, the Prime Minister denied owning any shares and had



nothing to declare to the Ombudsman Commission regarding a breach of the Leadership Code.³⁹ Company registration details from the Investment Promotion Authority (IPA) proved otherwise. The Prime Minister subsequently retracted his comments to say he had no personal shares, but does hold shares in trust on behalf of the Government and people of PNG.⁴⁰ According to the IPA document, PRS was registered and incorporated on 22 November 2004 and is not a government-owned company. The Opposition severely criticised the Prime Minister, accusing him of lying about the matter, and putting himself in a position of conflict of interest in issuing directions to the National Maritime and Safety Authority (NMSA) over the functions of PRS.⁴¹ The ownership of PRS came under Parliamentary scrutiny in 2007, when the Opposition Leader alleged that one of its shareholders, an employee of the NMSA board, also owned a national shipping company - Bismark Maritime Ltd. The Opposition Leader was concerned the company was not only insolvent, but it did not meet the criteria of the International Maritime Organisation (IMO), and could be caught in a conflict of interest situation.⁴² It was also alleged that this employee purportedly on behalf of the NMSA board, signed an agreement with PRS in May 2007, to enable the company to carry out safety surveys and issue safety certificates for vessels below 500 gross tones, contrary to the authority of the NMSA.

A third example of a leader seeking to set the record straight is the case of the Governor of Oro Province, who called for an investigation into funds designated as District Support Grants, that ended up in his personal bank account.⁴³

iii) Publicising information on legal wrongdoing, ethical lapses and false or misleading statements:

The media is a well-utilised arena. Both the Opposition Leader and the Prime Minister used the media to make accusations of legal wrongdoing, ethical lapses and false or misleading statements throughout 2008. Other MPs used the media to give information on wrongdoing, for example, the Bulolo MP reported that Bulolo health centre's ambulance had been used as a 'mobile pub' over the holidays.⁴⁴

However, agencies such as the courts, the Ombudsman Commission, the Police, the National Anti-Corruption Alliance, the Public Prosecutor, Treasury, and National Planning did not publicise or make documents and reports readily available to the general public in this area in 2008.

iv) Giving priority to official duties over private interests:

In a public address at a conference on governance in 2008, the Opposition Leader stated that 'corruption and patronage have become firmly entrenched and institutionalised. Bribery, kickbacks, conflicts of interest, vote-buying, and rewards for personal loyalty have become the norm in many public institutions. Senior civil service, military and police positions have become available for purchase. It's a system in which the 'crooked' float to the top and the 'clean' find themselves weighted down at the bottom'.⁴⁵ Refer to several examples discussed in the appropriate sections relating to private interests, such as the allegation against the Prime Minister having shares in Pacific Register of Shipping Ltd held in trust for the State.



³⁹Alex Rheeeney, 'Somare sails in deep water', *Post-Courier* (Port Moresby), 15 February 2008, 1.

⁴⁰'PNG Opposition: Somare lied, broke leadership code.' *Post-Courier*, 19 February 2008.

⁴¹'Somare accused of lying to PNG Parliament.' *Post-Courier*, 17 April 2008.

⁴²'Somare caught in PNG shipping conflict of interest.' *Post-Courier*, 18 February 2008.

⁴³Radio New Zealand International, 'Oro Governor Defends PNG Funds Transfers Into His Account', 18 January 2008 <<http://www.rnzi.com/pages/news.php?op=read&id=37529>> at 15 February 2008.

⁴⁴*Post-Courier* (Port Moresby), 4 February 2008.

⁴⁵Quoted in Oseah Philemon, above n 9.



v) **Performance of public duties uninfluenced by fear of personal cost or any hope of personal benefit:**

The *Organic Law on the Duties and Responsibilities of Leadership* (or ‘Leadership Code’) prohibits leaders from using their office for personal benefit. A leader who directly or indirectly asks for or accepts, on behalf of him/herself or an associate, ‘any benefit in relation to any action (past, present or future) in the course of his [or her] duties, or in the course of his [or her] official position is guilty of misconduct in office’ (s.5.1).

In 2008, the Minister for National Planning and Monitoring reported that there was a so-called “Ten Percent Syndicate” at headquarters of the Departments of Finance, Treasury and National Planning. In announcing the replacement of the Secretary for Planning, the Minister also mentioned the existence of a syndicate in the department, which he alleged had been receiving ten per cent from every cheque that was approved and processed⁴⁶.

Also in 2008, the media reported allegations of misappropriation of funds at the National AIDS Council Secretariat by senior officials, including a K1 million (approximately US\$361,000) stationery purchase that never arrived, mismanagement of finances, failure to provide expenditure reports, and hiring people without following the proper recruiting process.⁴⁷ Officials also allegedly used work computers to view pornography and misused money on overseas travel.⁴⁸ The Acting Director was subsequently dismissed, along with other top officials, and an investigation was launched but not concluded.

vi) **Public and private conduct that does not lead to a conflict of interest, or in which the fair and impartial exercise of duties might be compromised:**

It was reported by the Australian Institute of Criminology in 2008, that PNG is one of the leading exporters of illegal timber, and that ‘many politicians and high-level office holders in PNG have considerable personal interests in timber companies, including the Prime Minister, who, in June 2007, admitted to having financial ties with the logging industry’. (Schloenhardt, 2008)

vii) **Ensuring that public facilities are used only for public purposes and not for personal purposes unless authorised by legislation or by a public decision of Cabinet:**

There were no documented cases of leaders being found using public facilities for personal purposes in 2008. This could be due to the difficulty in policing and enforcing such practices, as well as distinguishing between public and personal purposes. Many leaders and public employees attend to personal business in their offices or during work hours, and use public vehicles for personal purposes without being held responsible for such abuses, however trivial this might be.

Section 5:

Principle 5 – Respect for Members of the Public

i) **Treatment of members of the public honestly and fairly with proper regard for their rights and obligations:**

Human rights reports about police violence do raise issues about regard for rights.

⁴⁶ *Post-Courier*, 20 February 2008

⁴⁷ *Post-Courier*, 30 January 2008, p. 3

⁴⁸ *Ibid.*



Under PNG's *Arrest Act 1977*, police may use all 'reasonable means' to make an arrest when a person resists, but not to exert greater force than is necessary. Several cases of brutality (physical, verbal and sexual abuse) against children who were detained by police were documented in 2008. At the same time, Human Rights Watch has observed some progress in the area of juvenile justice since 2005.

Section 6:

Principle 6 – Economy and Efficiency

i) Ensuring that public resources are not wasted, abused, or used improperly or extravagantly:

Due to the severe shortcomings in the funding of Provincial Governments under the 1995 *Organic Law on Provincial Government and Local-Level Government*, the National Economic and Fiscal Commission was charged in 2002 with overhauling existing arrangements and creating a new system of funding. A comprehensive Review of Intergovernmental Financing Arrangements (RIGFA) resulted in legislation being passed by Parliament in 2008. Its formula provides for more rational and equitable distribution of resources based on the actual cost of service delivery in each location. It also addresses the need to increase the resources required to deliver services to the people, as well as the need to allocate additional resources to the expansion of activities at the provincial and local levels.

The *Fiscal Responsibility Act 2006* promotes economic and financial transparency and accountability in the interests of a stable macroeconomic environment. Its purpose is to provide guiding principles for the conduct of fiscal policy for the Government of PNG, and to provide a framework for fiscal management based on principles of sound fiscal management, and for transparent reporting of the national fiscal position against this framework.

Also important in ensuring the economic and efficient use of resources, the *Public Finance (Management) Act 1995* (amended on 1 January 2006) provides for the management of public finances, including those relating to Provincial Governments and Local-level Governments as required by the *Organic Law on Provincial Governments and Local-level Governments*.

There is evidence that at least some leaders are not financially transparent in their use of public resources. For example, the mishandling and misuse of public funds under the Restoration of Educational Services Initiative (RESI) strongly suggests that certain leaders are not transparent. The Commission of Inquiry on Finance's preliminary findings of 2008 also support this.

Although the Public Accounts Committee did not table any report to Parliament in 2008, it was conducting investigations into the Government Trust Accounts, the Office of the Attorney-General, and two investigations into the use of public accounts by the Finance Department. In 2007, the PAC chairman stated that 'not one department or arm of government had complied with the *Public Finance (Management) Act 1995* over the Public Account Committee's 5-year term.'⁴⁹

The Auditor-General reported in April 2008 that each year K850 million [US\$318 million] in development funds are being stolen, and that 'more than sixty



⁴⁹Todayia Kelola, 'Government Arms Not Complying With Act', *Post-Courier*, 18 April 2007, 5.





public office holders, allegedly involved in stealing public funds, were referred to the office of the Attorney General and the Ombudsman Commission but nothing had happened'.⁵⁰ Also in April 2008, the Secretary of the Department of Finance resigned when it was revealed that US\$70 million was missing from the Department's accounts. In May 2008, the former treasurer for Southern Highlands province was arrested and charged with misappropriating US\$95,000.

Principle 7 – Diligence

i) Exercise of proper diligence, care, and attention.

Effective monitoring and oversight mechanisms are essential to ensure proper diligence, care and attention. Enforcement and compliance are essential. A problematic area where such a monitoring and oversight mechanisms are needed is the implementation of the District Support Improvement Program administered by the Office of Rural Development, but accessed and controlled by MPs. Under this program, each district in PNG was granted K10 million for 'impact' project in 2008.⁵¹ Many MPs have abused and misused this program, including misappropriating and corruptly applying the funds. In 2008, a former governor of the Southern Highlands was arrested by the Fraud Squad and charged with five counts of allegedly misappropriating project grants over K2 million and one count of conspiracy to defraud the State.⁵²

ii) Always seeking to achieve high standards of public administration:

It has become a practice for the Parliament to fail to sit for the required minimum number of days per legislative year. This is attributed to insufficient number of MPs turning up to constitute the required quorum for Parliament, extended adjournments of Parliament, in some cases to avoid the threat of a vote of no confidence or to avoid debating a sensitive and controversial matter involving the Government.

Section 8:

Principle 8 – National Peace and Security

i) Promotion of peace, security and harmony:

Leaders face serious challenges in promoting peace, security and harmony in such a culturally, linguistically and geographically diverse country. In the Highlands provinces in particular, ethnic clashes were frequent, sometimes brutal and violent in 2008. Migration of diverse groups from rural areas to provincial towns and capitals has impacted on the ability of Government to provide basic services. According to the Minister for Internal Security, law and order is the issue that needs to be addressed.⁵³ Apart from the recent upsurge of violence in the Southern Highlands and the Bougainville conflict, ethnic conflicts have not presented a threat to national government and the most consequential impacts of ethnic conflict in Papua New Guinea are at the local level.⁵⁴

⁵⁰Pacnews, 'K850m Misuse Shock', April 11, 2008 <http://www.accessmylibrary.com/coms2/summary_0286-34584328_ITM> at 25 April 2008

⁵¹Simon Eroro, 'K10 Million for Impact Projects', *Post-Courier* (Port Moresby), 7 March 2008, 22.

⁵²Police to Prepare for Yawari Case', *Post-Courier* (Port Moresby), 20 August 2008 <<http://www.postcourier.com.pg/20080825/newso7.htm>> at 25 August 2008.

⁵³David Muri 'Wingti unseated', *Post-Courier* (Port Moresby), 10 August 2007, 12.

⁵⁴Benjamin Reilly, 'Ethnic Conflict in Papua New Guinea' (2008) 49(1) *Asia Pacific Viewpoint* 12-22.



Part 10 of the Constitution lays out the emergency powers, which may be invoked in the interest of national security. The Constitution also has a provision for the Police Force to ‘assist in the fulfilment by PNG of its international obligations by taking part in an international peace-keeping or relief operation’ (s.197). The Constitution also states that the role of the Defence Force includes providing such assistance, as well as assistance in the restoration of public order and security (s.202).

Money laundering and financing of terrorism present threats to domestic security. To this end, PNG introduced anti-money laundering legislation: the *Proceeds of Crime Act 2005*, the *Mutual Assistance in Criminal Matters Act 2005* and the *Extradition Act 2005*. The *Proceeds of Crime Act* establishes an anti-money laundering system and enables the restraint, seizure and forfeiture of tainted property. It also provides for a regime of financial transactions reporting by cash dealers to a Financial Intelligence Unit, which has yet to be fully staffed and operationalised. In July 2007, PNG ratified the *United Nations Convention against Corruption*, which contains a number of provisions relating to anti-money laundering measures.⁵⁵ Furthermore, PNG’s *Internal Security Act 1993* aims to maintain the nation’s internal security by providing measures to combat terrorism and terrorist activities.

In 2008, the PNG police established a Financial Intelligence Unit. It also began joint border patrols with the Australian police, to attempt to reduce guns used for drug trade and other transnational crimes taking place on the border. The operation also targeted the movement of illegal immigrants to and from the country.⁵⁶

ii) **Refusal to give or obey an illegal order to use force against another citizen:**

There were no reported cases in 2008.

Section 9:

Principle 9 – Respect for Office

i) **Exercise authority and interact with people in a manner that is open, transparent, accountable, participatory and decisive but fair and equitable:**

The Speaker of Parliament has occasionally frustrated the Opposition by preventing it from debating or asking questions on matters of public importance. It is common knowledge amongst the politically aware public that the Speaker is not non-partisan, and is viewed to promote and protect the agenda of a particular political party, the largest in the governing coalition, on the floor of Parliament. In 2008, the Shadow Mining Minister and Imbonggu MP complained to the Governor-General that attempts in Parliament to debate the state mining company Petromin’s purchase of Tolukuma mine were being blocked by the majority, and that the public’s attempts to participate in discussion on this issue were blocked by police.

ii) **Seek to strengthen the integrity of a leader’s Office and its effectiveness:**

There are numerous examples of leaders’ actions that diminish the integrity of their office and its effectiveness. In 2008, the Speaker of Parliament was alleged to have misused parliamentary funds set aside to upgrade Parliament House over the

⁵⁵ *United Nations Convention Against Corruption*, open for signature 9 December 2003, A/RES/58/4 (entered into force 14 December 2005).

⁵⁶ *Post-Courier* (Port Moresby), 20 February 2008, 5.





previous three years.⁵⁷ In reacting to this allegation, the Clerk of Parliament was sacked over allegations of similar misuse.⁵⁸ MPs have reportedly complained of ‘old and broken furniture, faulty air-conditioning, rotting floors, smelly carpets, and leaking toilets’.⁵⁹

Another example of a lack of respect for office is a reported ‘scuffle’ outside Parliament between two MPs from West Sepik Province that almost ended in a physical fistfight. The source of confrontation between the Treasurer and the Minister of Forest were the news articles in the media on some US\$40 million from a logging scam deposited in a MP’s bank account in Singapore.⁶⁰

In 2006, the Governor of Madang Province and MP for Rai Coast Open electorate was convicted of rape and imprisoned. Despite a constitutional amendment that disallows anyone convicted of an indictable offence from running for office, in 2007, the Electoral Commission accepted his candidacy on the basis that his legal appeal was still underway. In the 2007 general election, he was voted back. Shortly thereafter, the Supreme Court quashed his appeal, nullifying his election, and a by-election was held. The Court was widely criticised for not having made its decision before the election.⁶¹

⁵⁷*Islands Business*, ‘Double Celebration for Somare: But Test of Leadership Still Lingers’ (2008) <www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace%3DMiddleMiddle/focusModuleID%3D17892/overrideSkinName%3DissueArticle-full.tpl+PNG+double+Islands+business+nape&cd=1&hl=en&ct=clnk> at 15 August 2008.

⁵⁸*Post-Courier* (Port Moresby), 24 January 2008, 3.

⁵⁹Tangata Vainerere, ‘Inquiry into PNG Parliamentary Funds’, *Pacnews*, 20 March 2009 <http://www.spc.int/fpocc/index.php?option=com_content&task=view&id=352&Itemid=1> at 25 March 2009.

⁶⁰*Post-Courier* (Port Moresby), 14 July 2008, 1.

⁶¹Nicholas, Isaac, ‘Amet Slams Judges’, *The National*, 17 August 2007, 1.



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