OMBUDSMAN COMMISSION
OF
PAPUA NEW GUINEA

ANNUAL REPORT 2000

FOR THE PERIOD

1 JANUARY 2000

TO

31 DECEMBER 2000
His Excellency, the Governor-General  
Sir Silas Atopare, GCMG, KSt.J  
Government House  
KONEDOBU

Your Excellency

We have the honour of submitting to you the Ombudsman Commission’s Annual Report covering the period from 1 January 2000 to 31 December 2000.

May we request that your Excellency have it presented to the National Parliament in compliance with Section 220 of the Constitution.

Yours sincerely

[Signatures]

ILA GENO OBE QPM  
CHIEF OMBUDSMAN

RAHO HITOLO  
OMBUDSMAN

PETER MASI  
OMBUDSMAN
# LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>AusAid</td>
<td>Australian Agency for International Development</td>
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<td>CIS</td>
<td>Correctional Institutions Service</td>
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<td>FIO</td>
<td>Freedom of information</td>
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<td>ICFRAF</td>
<td>Individual and Community Rights Advocacy Forum</td>
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<td>ISP</td>
<td>Institutional strengthening project</td>
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<td>IT</td>
<td>Information Technology</td>
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<td>JLSC</td>
<td>Judicial and Legal Services Commission</td>
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<td>MP</td>
<td>Member of Parliament</td>
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<td>NACA</td>
<td>National Anti-Corruption Agency</td>
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<td>NBC</td>
<td>National Broadcasting Corporation</td>
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<td>NEC</td>
<td>National Executive Council</td>
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<td>OC</td>
<td>Ombudsman Commission</td>
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<tr>
<td>PAYE</td>
<td>Pay As You Earn</td>
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<tr>
<td>PGAS</td>
<td>Papua New Guinea Accounting System</td>
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<tr>
<td>PNG</td>
<td>Papua New Guinea</td>
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<tr>
<td>PNGDF</td>
<td>Papua New Guinea Defence Force</td>
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<tr>
<td>POSF</td>
<td>Public Officers Superannuation Fund</td>
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<tr>
<td>POSFB</td>
<td>Public Officers Superannuation Fund Board</td>
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<tr>
<td>PSC</td>
<td>Public Services Commission</td>
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<td>RPNGC</td>
<td>Royal Papua New Guinea Constabulary</td>
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<td>TI</td>
<td>Transparency International</td>
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<td>UN</td>
<td>United Nations</td>
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<td>VAT</td>
<td>Value Added Tax</td>
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The National Flag is a symbol of independence. The Constitutional Planning Committee recommended in its Final Report that "the Ombudsman Commission's independence should be deeply embodied in a sense of fairness and determination to do what is just in a given situation. "The Ombudsman should travel regularly to various parts of the country, make investigations into complaints made to them, and carry out investigations on their own initiative if they have a reasonable belief that a wrong may have been done to an individual or group, or that a law is being applied unfairly."

National Goals and Directive Principles

In exercising its powers and duties, the Ombudsman Commission will take fully into account Papua New Guinea's National Goals and Directive Principles, as it is required to do by the Constitution:

- Freedom of the individual from domination and oppression.
- Equality of opportunity and participation in the benefits of development.
- Political and economic independence for the country.
- Conservation of our natural resources and environment.
- Use of Papua New Guinean forms of social, political and economic organisation.
1. YEAR IN REVIEW

This report covers the work of the Commission for the period 1 January 2000 to 31 December 2000.

Ombudsman Commission Silver Jubilee

The Ombudsman Commission commenced operations on 8 December 1975. Just as PNG commemorated its twenty-fifth birthday in September 2000, so too did the Ombudsman Commission. On Friday 8 September – a week before the nation stopped to celebrate its first quarter of a century – the Ombudsman Commission threw open its doors to the media and a large contingent of invited guests for a day of reflection, assessment and celebration at the Commission’s headquarters at Garden City, Boroko.

Guests were taken on a walk through the Ombudsman Commission offices and were introduced to staff before the day’s official program began. The first panel discussion featured PNG’s first prime minister Sir Michael Somare, the country’s longest-serving MP, Sir Pita Lus, and one of the architects of the Constitution, Mr John Momis – all still active members of Parliament.

The panel discussed the events and atmosphere surrounding the framing of the Constitution and considered the question of how effective it has been in meeting the needs and aspirations of the People since Independence. It was a rare opportunity to gain an insight into the thinking, the hard work and the solicitude behind the preparation of PNG’s very original, homegrown Constitution.

As well as being a chance to learn about our history, for the Ombudsman Commission it was a way to acknowledge these – and through them other – elders of the nation, away from the hullabaloo of daily politics.

The second discussion panel turned the spotlight on the Ombudsman Commission itself, examining the successes and failings of its first 25 years. The panellists were former Ombudsmen Jean Kekedo and Frank Hedges, current Ombudsman Raho Hitolo, Counsel to the Commission David Cannings and Public Prosecutor Panuel Mogish. Former Chief Ombudsman Sir Charles Maino chaired the discussion.

Former Ombudsman Frank Hedges is the only surviving “Pioneer Ombudsman”. It was a great privilege for the Commission (and staff) that former Ombudsman Hedges could visit us and participate in our Jubilee gathering.

Late in the afternoon the audience was entertained by two teams of law students from the University of Papua New Guinea debating the topic “That the Constitution is supreme, not Parliament”. Adjudicator of the debate was First Legislative Counsel James Fraser.
In the evening the focus switched to the Port Moresby Tennis Club in Boroko, where Ombudsman Commission staff and families enjoyed theatre and dance presentations, a fine mumu and a keynote address from Fred Albietz, the Queensland Ombudsman, a long-time friend of the Ombudsman Commission of PNG.

Long service awards were presented to staff members who had served under all three Chief Ombudsmen – Sir Ignatius Kilage, Sir Charles Maino and serving Chief Ombudsman Simon Pentanu. The long service staff awards were presented to: Mary Tuavot, Mary Walaun, Margaret Kila, Benny Onglo and Peter Kape.

The day was an appropriate time at which to examine where we’ve come from, where we’ve been and where those of us who find ourselves at the Ombudsman Commission at the beginning of the twenty-first century should take this vital constitutional institution.

**Opening of New Guinea Islands regional office in Kokopo**

The Ombudsman Commission once again has a permanent presence in East New Britain, with the relocation from Kavieng and opening of the office in Kokopo on Friday 25 August 2000.

As a result of the volcanic eruptions in 1994, the Ombudsman Commission was forced to move its New Guinea Islands regional office from Rabaul to Kavieng, from where it operated from April 1996 to August 2000.

In a speech at the opening ceremony Chief Ombudsman Simon Pentanu said the Commission was pleased to be returning to the main population centre of the New Guinea Islands. He said that in Kokopo the Commission was centrally located and well placed to serve the other provinces in the region. The Ombudsman Commission is determined to make itself as accessible as possible to the majority of Papua New Guineans, recognising that most of PNG’s people live in rural and remote parts of the country.

The member for Kokopo and former prime minister Sir Rabbie Namaliu, officially opened the new office at Kinabot which overlooks Kokopo town and the still-smoking volcano, Tavurvur.

**External relations**

Through the Commission’s external relations plan Ombudsman Commission officers reached more people in 2000 than ever before with public awareness campaigns. These programs were not restricted to the national capital, but took place in major centres all over the country. A summary of the Commission’s external relations activities appears in Chapter 8 of this report.

The emphasis of the external relations plan was on increasing understanding of the Ombudsman Commission’s role among leaders, public office-holders, the general public and young people – the leaders, public office-holders and public of tomorrow. Presentations about the Ombudsman Commission were delivered at 20 schools in seven different provinces.
The Commission knows it must be creative, progressive and open-minded in its approach to enforcing the Leadership Code. We are attempting to bring some sense of relationship into our dealings with leaders. We cannot just wait for them to make a mistake and then think we're doing a good job when we let everybody know about it. Our external relations work is based on the understanding that 'prevention is better than prosecution'.

Referrals to the Public Prosecutor

Of course, sometimes it becomes necessary for the Commission to refer leaders to the Public Prosecutor for the attention of a leadership tribunal. When an investigation has been conducted, a leader has been granted the 'right to be heard' and the Commission determines that there is a prima facie case of misconduct in office, the Commission must take the necessary steps towards referral for prosecution under the Leadership Code.

In 2000 the Commission referred five leaders to the Public Prosecutor – the second most referrals in a single year since the Commission was established in 1975. Further information about these cases can be found in Chapter 6.

Increased number of complaints received

The period under review also saw an increase in the number of complaints lodged with the Ombudsman Commission. In 2000 the Commission received 2,953 complaints, 876 more than in 1999.

The number of complaints closed also increased, from 2,067 in 1999 to 2,694 in 2000. This shows an increased commitment by Commission staff. In 2000, the number of 'case files pending' at the end of the year hit a new low with only 93 cases needing to be brought forward to 2001. Details of the Commission’s work of receiving and dealing with complaints can be found in Chapters 3 and 4 of this report.

Supreme Court Reference N° 3 of 2000

The Ombudsman Commission continues to take seriously its role as a ‘watchdog of the Constitution’. Section 19 of the Constitution authorises the Commission to make special references to the Supreme Court on questions relating to the interpretation or application of the Constitutional Laws.

In Supreme Court Reference N° 3 of 1999 the Ombudsman Commission challenged the Parliament’s decision to adjourn for more than seven months. In that case the Supreme Court decided by a 6:1 majority that the Parliament had breached the Constitution when it adjourned for 222 days, from December 1998 to July 1999. The decision stated that the Parliament had a duty to meet, in principle, for 63 days in each parliamentary year.

In June 2000 the Parliament filed an application to have that decision set aside, relying on the so-called "slip rule". The application was heard in November 2000 by a six-member Supreme Court bench. The Ombudsman Commission was a party to these proceedings, vigorously defending the decision in Supreme Court Reference N°
3 of 1999, affirming the principle that no person, authority or institution – including the Parliament – is above the Constitution.

Institutional strengthening and looking ahead

Much of the hard work put into the Commission’s institutional strengthening project in 1998 and 1999 started to come to fruition in 2000. Some of the fruits include a practical work plan (the annual Ombudsplan) to guide the Commission throughout the year; higher quality investigations and reports; better training for staff; improved terms and conditions; and a higher profile within PNG and internationally. Details of these achievements are scattered throughout this report.

But the most noteworthy result of the institutional strengthening project is clearly the increased commitment to the tasks at hand displayed by the officers of the Commission.

It is the commitment of men and women involved in a task that has the potential to really change Papua New Guinea for the better that is driving the Ombudsman Commission at the start of this new century.

Finances

The Commission’s 2000 Budget allocation approved by Parliament was K5.5 million, and represents in nominal terms, the same amount as appropriated in each of the previous two years. In its Budget submission for the year 2000, the Commission had sought funding of K7.3 million.

Approximately 20% of the Commission’s Budget is returned to Treasury through PAYE Personal Income Tax deductions and VAT payments.

Employer contributions for officers’ POSF accounts totalled a shade over K250,000 for 2000 and this aggregate sum was remitted in fortnightly instalments direct to Treasury and Finance Department as currently required. The employees’ own contributions, which are deducted from salary, were remitted each fortnight direct to the POSF.

In addition to its necessary operating expenses, the Commission is also required to fund from its own Budget, the “Annual Pensions” to former Chief Ombudsmen and Ombudsmen. In a full year this currently costs the Commission almost K260,000. These payments, which are non-discretionary for the Commission, are provided under the Constitutional Office-Holders Retirement Benefits Act 1986, at prescribed rates, and typically can continue for up to 10 years after the Constitutional Office-holder leaves the Commission.

The Commission operates the PGAS Accounting System for its financial management and is subject to financial audit by the Auditor-General’s Office.

The Commission’s audited accounts for 2000 are included as Chapter 11.
The Finance Unit is part of Corporate Services, which also includes units dealing with Human Resources, Information Technology and Security, Transport and Property. Together these four units provide the essential infrastructure to enable the Commission to undertake its core business activities during the year.

*Ombudsman Commission staff of the recently opened New Guinea Islands Regional Office in Kokopo, East New Britain Province.*
Keep Papua New Guinea for our children
Introducing the Ombudsman Commission

Chapter 2

Simon Pentamu and Ila Geno at the handover-takeover ceremony in December 2000.

"We have given careful consideration to the question of whether a single person or a number of people should hold this office. We believe, as do our people, that because of the diverse nature of our society and the collective way in which it is our custom to settle disputes, three persons should be members of what we call the Ombudsman Commission. One of these should be the Chairman. He is the Chief Ombudsman."

National Goals and Directive Principles

In exercising its powers and duties, the Ombudsman Commission will take fully into account Papua New Guinea’s National Goals and Directive Principles, as it is required to do by the Constitution:

1. Integral human development

We declare our first goal to be for every person to be dynamically involved in the process of freeing himself or herself from every form of domination or oppression so that each man or woman will have the opportunity to develop as a whole person in relationship with others.

WE ACCORDINGLY CALL FOR-

(1) everyone to be involved in our endeavours to achieve integral human development of the whole person for every person and to seek fulfilment through his or her contribution to the common good; and

(2) education to be based on mutual respect and dialogue, and to promote awareness of our human potential and motivation to achieve our National Goals through self-reliant effort; and

(3) all forms of beneficial creativity, including sciences and cultures, to be actively encouraged; and

(4) improvement in the level of nutrition and the standard of public health to enable our people to attain self fulfilment; and

(5) the family unit to be recognized as the fundamental basis of our society, and for every step to be taken to promote the moral, cultural, economic and social standing of the Melanesian family; and

(6) development to take place primarily through the use of Papua New Guinean forms of social and political organization.
2. INTRODUCING THE OMBUDSMAN COMMISSION

The Ombudsman Commission is an independent institution established by the Constitution. It forms an integral part of the system of checks and balances that have been put in place by the Constitution to oversee the governance of Papua New Guinea.

The Commission consists of a Chief Ombudsman and two Ombudsmen.

MEMBERS OF THE OMBUDSMAN COMMISSION

The members of the Commission for this reporting period were Chief Ombudsman Simon Pentanu, Ombudsman Ila Geno and Ombudsman Raho Hitolo.

Simon Pentanu is from Pok Pok Island near Kieta, Bougainville Island.

He completed his primary and secondary education in the New Guinea Islands.

He joined the pre-Independence House of Assembly as a trainee interpreter/translator in 1969, thus beginning a career in the Parliamentary Service which was to span more than 24 years.

In 1971 he completed a Public Service Certificate at the Administrative College of Papua New Guinea. The following year he commenced studies at the University of Papua New Guinea, graduating in 1976 with a Bachelor of Arts in political science and administrative studies. After completing his university studies Mr Pentanu rejoined the Parliamentary Service. This was the time the post-Independence Parliament was in its infancy; a time of great change, excitement, vibrancy and challenge.

Mr Pentanu held a number of different positions in the Parliamentary Service. He became Deputy Clerk in 1978 and in 1984 he was appointed Clerk of the Parliament, thereby becoming the head of the Parliamentary Service and a constitutional office-holder. Mr Pentanu held the office of Clerk of Parliament for nine years, during which time the Parliament had five different Speakers and four different Prime Ministers.

In 1994 he was appointed a member of the Public Services Commission – also a constitutional office. He was appointed Chief Ombudsman in January 1995. In July 1999 he was elected to the Board of Directors of the International Ombudsman Institute, representing the Australasian and Pacific Region.

Mr Pentanu’s six-year term as Chief Ombudsman concluded on 31 December 2000.
Ha Geno is from Karawa village, Hood Lagoon, Rigo, in Central Province. His primary education was at the London Missionary Society School in Karawa and Hood Lagoon Primary School at Keapara. He completed his secondary education at Sogeri Secondary School in 1967.

Mr Geno joined the Royal Papua New Guinea Constabulary in 1968 as a direct entry cadet officer upon leaving school. This was the beginning of a long and distinguished career with the Police Force, spanning 24 years.

In 1974/75 Mr Geno matriculated and completed a Diploma in Police Science at the University of Papua New Guinea. He held many different positions within the RPNGC, including Chief Superintendent, Director of the Criminal Investigation Division and Deputy Commissioner before being appointed Commissioner of Police in 1990.

In December 1992 he was appointed as Commissioner and Chairman of the Public Services Commission, becoming a constitutional office-holder for the first time. He was to hold the position for six years.

In December 1998, the Governor-General, acting on the advice of the Ombudsman Appointments Committee, appointed Mr Geno as an Ombudsman. In December 2000 Prime Minister Sir Mekere Morauta announced Mr Geno’s appointment as Chief Ombudsman from 1 January 2001.

Raho Hitolo is from Elevala village, Hanuabada, in the National Capital District.

He completed his primary and secondary education at Hagara and Badihagwa schools respectively.

In 1971 he was sponsored by the Development Bank to study at the University of Technology in Lae, from where he graduated in 1974 with a Bachelor of Technology in Accountancy.

After graduating, Mr Hitolo joined his sponsor as a loans officer in 1975. He became a senior manager in the Development Bank head office and went on to become Port Moresby Branch Manager in 1980.

In 1984 he was appointed Regional Manager for the Mamose region and was posted to Lae for four years. In his 13 years with the Development Bank (which changed its name to the Agriculture Bank during this time), Mr Hitolo travelled extensively throughout the mainland coastal regions of PNG.

In 1990 Mr Hitolo joined the Ombudsman Commission as Deputy Director Leadership and was later appointed Director Leadership. He was acting Secretary to the Commission in 1997 and 1998. Mr Hitolo was appointed as an Ombudsman in January 1999 by the Governor-General, acting on the advice of the Ombudsman Appointments Committee.
WHY WAS THE OMBUDSMAN COMMISSION ESTABLISHED?

In general terms, the Commission has been established to:

- guard against the abuse of power by those in the public sector;
- assist those exercising public power to do their jobs efficiently and fairly; and
- impose accountability on those who are exercising public power.

Section 218 of the Constitution lists the purposes for which the Ombudsman Commission was established:

(a) to ensure that all governmental bodies are responsive to the needs and aspirations of the People;
(b) to help in the improvement of the work of governmental bodies and the elimination of unfairness and discrimination by them;
(c) to help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies; and
(d) to supervise the enforcement of Division III.2 (leadership code).

THE CONSTITUTION AND THE TWO ORGANIC LAWS

In its hierarchy of written laws, Papua New Guinea has a number of Organic Laws. These are special statutes that have been enacted to elaborate on the key principles of law laid down in the Constitution.

The investigative powers of the Ombudsman Commission are exercised under the Constitution and under two Organic Laws:

- the Organic Law on the Ombudsman Commission; and
- the Organic Law on the Duties and Responsibilities of Leadership.

Section 11 of the Constitution states that the Constitution and the Organic Laws are the Supreme Laws of Papua New Guinea. Organic Laws therefore have a higher status than Acts of Parliament. If there is any inconsistency between the provisions of an Act and those of an Organic Law, the latter will prevail. If there is some inconsistency between the Constitution and an Organic Law, the Constitution will always prevail.

The fact that two Organic Laws have been specifically enacted to provide for Ombudsman Commission investigations reflects the very high status of such investigations. It also has significant practical consequences. If compliance with a direction issued by the Commission under one of its Organic Laws would involve the breach of an Act of Parliament, the Commission’s direction will have precedence. For example, if the Commission issues a summons for the Internal Revenue Commission to produce certain documents, the secrecy provisions of the Income Tax Act and the Customs Act have to “give way” to the summons.

Chapter 2
Introducing the Ombudsman Commission
The Organic Laws put the Commission in a strong position if it faces any resistance during the course of an investigation.

THE APPOINTMENT OF OMBUDSMEN

The appointing authority for members of the Ombudsman Commission is the Governor-General, acting on the advice of the Ombudsman Appointments Committee (Constitution, Section 217(2)). This Committee is made up of:

- the Prime Minister as Chairman;
- the Chief Justice;
- the Leader of the Opposition;
- the Chairman of the Permanent Parliamentary Committee on Appointments; and
- the Chairman of the Public Services Commission.

ACCOUNTABILITY

The Constitution and the Organic Law on the Guarantee of the Rights and Independence of Constitutional Office-holders provide for the Ombudsman Appointments Committee to act as an instrument of accountability for members of the Ombudsman Commission.

The Organic Law on the Guarantee of the Rights and Independence of Constitutional Office-holders gives the Ombudsman Appointments Committee the authority to monitor the conduct of the members of the Commission and, if necessary, to appoint a Constitutional Office-holders Rights Tribunal to inquire into a matter and recommend removal from office. Section 5(1) of that Organic Law states:

If the appointing authority is satisfied that the question of removal from office of a constitutional office-holder should be investigated, it shall, by notice in writing to the Chief Justice, request that he appoint three Judges to be the Chairman and members of the tribunal to hear and determine the matter.
ORGANISATIONAL STRUCTURE

Section 25 of the Organic Law on the Ombudsman Commission provides for the Commission to appoint a Counsel and a Secretary. Section 25(1)(b) states that the Ombudsman Commission, within the limit of funds lawfully available to it, may appoint other officers that are necessary for the efficient performance of the functions of the Commission.

These offices constitute the Service of the Commission.
CHANGING OF THE GUARD

On 23 December 2000 the Ombudsman Commission marked the end of one era and the beginning of another with a dinner at the Islander Travelodge Ballroom to farewell outgoing Chief Ombudsman Simon Pentanu and welcome the new Chief, Ila Geno.

Speeches were made by staff representative Andrew Ikufu, Counsel to the Commission David Cannings, Ombudsman Raho Hitolo and the two Chiefs, Pentanu and Geno.

Outgoing Chief Ombudsman Pentanu commented on what he sees as some of the strengths of the institution:

In succeeding me Ila becomes the fourth Chief Ombudsman in the country after the late Sir Ignatius Kilage who was our pioneer and Sir Charles Maino whom I succeeded in 1995. This is a very admirable record of stability and continuity when one considers that in Departments and other public bodies as well as in politics, very senior bureaucrats and Ministers go by the wayside like tenpins week in and week out.

Without making a song and dance about it, it is heartening to know that the Commission has been building upon a good tradition from the past. I have inherited from my two predecessors and their colleagues an institution that is stable, that has clout and leverage and is staffed by people with pride and bold determination in what they do as officers of the Commission.

Incoming Chief Ombudsman Geno described Mr Pentanu as a visionary who had significantly regenerated the Ombudsman Commission. He vowed to carry on the work the outgoing Chief had begun. "I want to assure Simon Pentanu – and everyone here – that the good work that has been started through the institutional strengthening project will continue while I am Chief Ombudsman," Mr Geno said.

Mr Geno stressed the importance of a Chief Ombudsman leading by example:

Among the duties and responsibilities of this high office, as outlined by the Constitution and the Organic Laws, I am very conscious that perhaps the single most important duty is to set and maintain a high standard in terms of my own personal conduct.

I regard this as a 24-hour-a-day commitment for the duration of my term as Chief Ombudsman. The whole of my conduct must be clearly seen as exemplary and beyond reproach, both to my colleagues and staff of the Commission, as well as to the world at large.

This commitment comes from my heart because I believe that the best and most effective way of leading other people is to lead by example.
One of the primary functions of the Ombudsman Commission is to investigate alleged wrong conduct and defective administration by governmental bodies. Officers are required to go out and collect complaints as seen in the picture.
National Goals and Directive Principles

In exercising its powers and duties, the Ombudsman Commission will take fully into account Papua New Guinea's National Goals and Directive Principles, as it is required to do by the Constitution:

2. Equality and participation

*We declare our second goal to be for all citizens to have an equal opportunity to participate in, and benefit from, the development of our country.*

WE ACCORDINGLY CALL FOR-

(1) an equal opportunity for every citizen to take part in the political, economic, social, religious and cultural life of the country; and

(2) the creation of political structures that will enable effective, meaningful participation by our people in that life, and in view of the rich cultural and ethnic diversity of our people for those structures to provide for substantial decentralization of all forms of government activity; and

(3) every effort to be made to achieve an equitable distribution of incomes and other benefits of development among individuals and throughout the various parts of the country; and

(4) equalization of services in all parts of the country, and for every citizen to have equal access to legal processes and all services, governmental and otherwise, that are required for the fulfilment of his or her real needs and aspirations; and

(5) equal participation by women citizens in all political, economic, social and religious activities; and

(6) the maximization of the number of citizens participating in every aspect of development; and

(7) active steps to be taken to facilitate the organization and legal recognition of all groups engaging in development activities; and

(8) means to be provided to ensure that any citizen can exercise his personal creativity and enterprise in pursuit of fulfilment that is consistent with the common good, and for no citizen to be deprived of this opportunity because of the predominant position of another; and

(9) every citizen to be able to participate, either directly or through a representative, in the consideration of any matter affecting his interests or the interests of his community; and

(10) all persons and governmental bodies of Papua New Guinea to ensure that, as far as possible, political and official bodies are so composed as to be broadly representative of citizens from the various areas of the country; and

(11) all persons and governmental bodies to endeavour to achieve universal literacy in Pisin, Hiri Motu or English, and in "tok ples" or "ita eda tano gado"; and

(12) recognition of the principles that a complete relationship in marriage rests on equality of rights and duties of the partners, and that responsible parenthood is based on that equality.
3. RECEIVING AND HANDLING COMPLAINTS

Any person can make a complaint to the Ombudsman Commission about any matter. The Commission is obliged to consider every complaint it receives. But the Organic Laws give it the discretion to choose whether or not to investigate and whether or not to continue an investigation.

The Commission can also initiate its own investigations. Not all ombudsmen have this power. In some countries, the ombudsman is an officer of the parliament and only has the power to investigate when a complaint is referred through a member of parliament.

Every year the Ombudsman Commission receives thousands of complaints from people all over the country. These are received at the main office in Port Moresby and at the Momase, Highlands and New Guinea Islands Regional Offices. Graph 3.1 (below) shows total numbers of complaints received for each year since 1990.

GRAPH 3.1: Total complaints received 1990 -2000

![Graph showing total complaints received from 1990 to 2000](chart.png)
STATISTICAL ANALYSIS OF COMPLAINTS

In 2000 the Ombudsman Commission received 2,953 complaints, 877 more than in 1999. The number of complaints closed also increased, from 2,067 in 1999 to 2,694 in 2000. Graph 3.2 shows the breakdown of complaints received during the year. The number of case files pending hit a new low with only 93 cases needing to be brought forward to 2001.

Graph 3.2

Comparison of "Complaints Received"

Year | 1999 | 2000
--- | --- | ---
Port Moresby | 902 | 1502
Mt Hagen | 449 | 466
Lae | 609 | 681
N.G.I | 125 | 304
Total | 2076 | 2953

The Complaints and Administrative Investigations Division’s statistics for workload output are very encouraging, especially from the Input and Screening Unit. The numbers of complaints received has been steadily increasing since 1998. Public awareness visits to provinces not directly serviced by an Ombudsman Commission office - part of the Commission’s external relations plan (see Chapter 8) - have resulted in a discernible increase in the number of complaints received during 2000. Further gains seem likely with continuation of the program in 2001.
<table>
<thead>
<tr>
<th>Classification number</th>
<th>Description of classification</th>
<th>Section of OLOC</th>
<th>Case files closed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Resolved during the investigation</td>
<td></td>
<td>13</td>
</tr>
<tr>
<td>2</td>
<td>Complaint sustained</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>3</td>
<td>Complaint not sustained</td>
<td></td>
<td>24</td>
</tr>
<tr>
<td>4a</td>
<td>Discontinued – further inquiries not warranted</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>4b</td>
<td>Discontinued – complaint withdrawn or not pursued</td>
<td></td>
<td>0</td>
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<td>5a</td>
<td>Declined – complaint outside jurisdiction – explanation given to complainant</td>
<td>16(3)(b)</td>
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<tr>
<td>5b</td>
<td>Declined – adequate remedy available – explanation given to complainant</td>
<td>16(3)(c)</td>
<td>30</td>
</tr>
<tr>
<td>5c</td>
<td>Declined – right of appeal available – explanation given to complainant</td>
<td>16(3)(c)</td>
<td>0</td>
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<tr>
<td>5d</td>
<td>Declined – too long delayed – explanation given to complainant</td>
<td>16(3)(e)</td>
<td>33</td>
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<tr>
<td>5e</td>
<td>Declined – insufficient interest from complainant to proceed</td>
<td>16(3)(d)</td>
<td>30</td>
</tr>
<tr>
<td>5f</td>
<td>Declined – frivolous and vexatious – explanation given to complainant</td>
<td>16(3)(a)</td>
<td>0</td>
</tr>
<tr>
<td>5g</td>
<td>Declined – minor matter or insufficient resources for adequate investigation – explanation given</td>
<td>16(3)(f),(g)</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total case files closed for 2000</strong></td>
<td></td>
<td></td>
<td><strong>135</strong></td>
</tr>
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</table>
TABLE 3.2: Complaints received, case files pending 1997 – 2000

<table>
<thead>
<tr>
<th>Office</th>
<th>Year</th>
<th>Total complaints received</th>
<th>Total complaints closed</th>
<th>Total case files closed</th>
<th>Investigation case files pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>Port Moresby</td>
<td>1997</td>
<td>1237</td>
<td>1205</td>
<td>78</td>
<td>361</td>
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<tr>
<td></td>
<td>1998</td>
<td>600</td>
<td>591</td>
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<td>342</td>
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<tr>
<td></td>
<td>1999</td>
<td>631</td>
<td>626</td>
<td>158</td>
<td>220</td>
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<tr>
<td></td>
<td>2000</td>
<td>1502</td>
<td>1459</td>
<td>135</td>
<td>49</td>
</tr>
<tr>
<td>Southern (POM)</td>
<td>1997</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td></td>
<td>1998</td>
<td>167</td>
<td>167</td>
<td>27</td>
<td>33</td>
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<tr>
<td></td>
<td>1999</td>
<td>267</td>
<td>266</td>
<td>7</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td>2000*</td>
<td>N/A*</td>
<td>N/A*</td>
<td>N/A*</td>
<td>N/A*</td>
</tr>
<tr>
<td>Mt Hagen</td>
<td>1997</td>
<td>694</td>
<td>691</td>
<td>11</td>
<td>46</td>
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<td>2000</td>
<td>466</td>
<td>253</td>
<td>20</td>
<td>22</td>
</tr>
<tr>
<td>Lae</td>
<td>1997</td>
<td>723</td>
<td>721</td>
<td>5</td>
<td>37</td>
</tr>
<tr>
<td></td>
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<td>27</td>
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<tr>
<td></td>
<td>2000</td>
<td>681</td>
<td>681</td>
<td>0</td>
<td>18</td>
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<tr>
<td>Kavieng (January to August)</td>
<td>1997</td>
<td>270</td>
<td>267</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Kokopo (August to December)</td>
<td>1998</td>
<td>212</td>
<td>212</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>1999</td>
<td>125</td>
<td>124</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>2000</td>
<td>304</td>
<td>301</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Totals</td>
<td>1997</td>
<td>2924</td>
<td>2884</td>
<td>94</td>
<td>At 1/1/98 - 512</td>
</tr>
<tr>
<td></td>
<td>1998</td>
<td>1931</td>
<td>1920</td>
<td>75</td>
<td>At 1/1/99 - 448</td>
</tr>
<tr>
<td></td>
<td>1999</td>
<td>2073</td>
<td>2067</td>
<td>168</td>
<td>At 1/1/00 - 290</td>
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<tr>
<td></td>
<td>2000</td>
<td>2953</td>
<td>2694</td>
<td>156</td>
<td>At 1/1/01 - 93</td>
</tr>
</tbody>
</table>

DISCIPLINED FORCES UNIT

The Commission’s Disciplined Forces Unit was established in 1999 to deal exclusively with complaints relating to the disciplined forces – the Royal Papua New Guinea Constabulary (Police), the Papua New Guinea Defence Force and the Correctional Institutions Service (CIS).

The main link between the Ombudsman Commission and the department or disciplined force is through a liaison officer. The liaison officer is a senior staff member of the department with sufficient authority to be able to take specific actions within the department and to provide advice to the Departmental head. This officer ensures set guidelines regarding Ombudsman Commission matters are followed within the department.

A closer relationship will be possible with Police and CIS once departmental liaison officers are appointed and training on the practice guidelines begins in 2001. The introduction of liaison officers will dovetail with AusAID programs already operating in the Police and CIS. Separately, the Commission hopes to establish links with the Department of Education; another source of many of the complaints lodged with the Commission.

Chapter 3
Complaints
Ombudsman Commission staff on an external relations trip to the provinces.
Chapter 3
Complaints
Our ancestors have used all modes of transport either to trade or for important gatherings such as conflict-solving. In the same way we at the Ombudsman Commission try to reach out to as many communities as possible. We use all modes of transport either to collect complaints or to tell people how the Commission can help them and how they in turn can help the Commission.

“We are convinced that the careful balancing of the rights of the individual against the rights of the society at large must be maintained if the rewards of our development are to be enjoyed by all our people. The Ombudsman Commission should make a major contribution to maintaining this balance. The uneducated and politically weak who tend to lose out in the complicated government system of today should see the Commission as their helper. Those in government and in other official or leadership positions should see it as a body which fulfils an important role of promoting efficiency and integrity in public life.”

National Goals and Directive Principles

In exercising its powers and duties, the Ombudsman Commission will take fully into account Papua New Guinea’s National Goals and Directive Principles, as it is required to do by the Constitution:

3. Political and economic independence for the country

*We declare our third goal to be for Papua New Guinea to be politically and economically independent, and our economy basically self-reliant.*

**WE ACCORDINGLY CALL FOR-**

1. our leaders to be committed to these National Goals and Directive Principles, to ensure that their freedom to make decisions is not restricted by obligations to or relationship with others, and to make all of their decisions in the national interest; and

2. all governmental bodies to base their planning for political, economic and social development on these Goals and Principles; and

3. internal interdependence and solidarity among citizens, and between provinces, to be actively promoted; and

4. citizens and governmental bodies to have control of the bulk of economic enterprise and production; and

5. strict control of foreign investment capital and wise assessment of foreign ideas and values so that these will be subordinate to the goal of national sovereignty and self-reliance, and *in particular* for the entry of foreign capital to be geared to internal social and economic policies and to the integrity of the Nation and the People; and

6. the State to take effective measures to control and actively participate in the national economy, and *in particular* to control major enterprises engaged in the exploitation of natural resources; and

7. economic development to take place primarily by the use of skills and resources available in the country either from citizens or the State and not in dependence on imported skills and resources; and

8. the constant recognition of our sovereignty, which must not be undermined by dependence on foreign assistance of any sort, and *in particular* for no investment, military or foreign-aid agreement or understanding to be entered into that imperils our self-reliance and self-respect, or our commitment to these National Goals and Directive Principles, or that may lead to substantial dependence upon or influence by any country, investor, lender or donor.
4. COMPLAINTS CASE SUMMARIES

This chapter is a compilation of short summaries of some of the cases the Ombudsman Commission closed during 2000 under its Organic Law on the Ombudsman Commission jurisdiction.

MADANG NEPOTISM CLAIM

A senior officer with the Madang provincial administration submitted a petition from the Madang branch of the Public Employees Association to the Minister for Public Service seeking the revocation of the appointment of the Madang Provincial Administrator.

The petition claimed the Administrator abused his powers and breached recruitment and selection rules in employing two very close members of his family. The petitioners claimed this caused much frustration amongst members of the staff.

The petition was forwarded to the Secretary of the Department of Personnel Management for investigation. Subsequently the Ombudsman Commission received a copy of the Department's investigation report, which showed that all personnel matters had been dealt with and appropriate recommendations made to the Administrator for implementation.

The complainant advised the Commission that the Administrator had been given a copy of the report. Two weeks later the Commission was further advised by the Department of Personnel Management that all financial mismanagement complaints had been referred to the Auditor-General for investigation.

The Ombudsman Commission set out to determine whether any conduct under investigation was wrong and to determine whether there were any defects in any of the applicable laws or administration practice.

The Ombudsman Commission's investigation uncovered several anomalies and irregularities relating to selection, displacement and discipline of staff.

In its report on the case the Ombudsman Commission reminded the Administrator to put the Department of Personnel Management's recommendations into effect. The Commission was satisfied that the examination of the allegations of financial mismanagement were being carried out by the Office of the Auditor-General.

This case was closed on 8 December 2000.
“UNFAIR” APPOINTMENT AT UNIVERSITY

An employee of the University of Papua New Guinea complained that he had been unfairly overlooked for a position at the University in favour of a less-qualified candidate.

The complainant had previously held the position on a nine-year contract and applied for a renewal of the contract. The University chose instead to appoint him to a one-year contract position. The complainant said he was given a verbal assurance in November that his contract would be extended to July. However, in April the position was advertised. He reapplied but did not receive a response to his application.

The complainant asked the Ombudsman Commission to inquire into the matter to ascertain whether the selection was done in a transparent manner and in accordance with procedures. He claimed his successor was not adequately qualified for the position.

The Ombudsman Commission wrote to the University seeking explanations on a number of matters. The Registrar advised the Commission that the advertised position had attracted a number of applicants, including the complainant, but the University Appointments Committee decided to appoint someone else.

After considering documents relating to the selection process, the Ombudsman Commission formed the opinion that an appropriate appointment committee had appointed a candidate to the job, at their discretion. Whether or not they based their decision on the candidate’s qualification (or lack of it) was the prerogative of the committee.

The complainant was advised of the Commission’s decision but, still dissatisfied, he insisted he talk with the Director of Complaints and Administrative Investigations who informed him that the matter would not be pursued further. It was again pointed out to him that an appropriate appointment committee had made the decision to appoint someone else and also that the Ombudsman Commission has the prerogative to discontinue an investigation, under Section 16(3) of the Organic Law on the Ombudsman Commission, if it determines the complaint to be not justified.

JOB TERMINATION EXPLANATION REQUIRED

A complaint was received by the Commission in which the complainant claimed that he was improperly terminated from his position at the National Narcotics Bureau and proper termination procedures had not been followed.

The Commission requested an explanation for the termination. The employer’s response detailed the Bureau’s reasons for the termination. However, attempts to get in touch with the complainant to verify the employer’s reasons were unsuccessful. The file was kept open for several months, but further attempts to contact the complainant were similarly fruitless.

Occasionally the Ombudsman Commission has no option but to close cases, such as this one, due to insufficient interest from the complainant.

The case was closed in late October 2000.
WIDOW AND FAMILY EVICTED

The widow of a deceased Army Major complained that the PNG Defence Force was harsh in trying to remove her from institutional housing. She was also unhappy that entitlements owed to her and her family were slow in coming.

She alleged that two months after the death of her husband in mid-1998 the institutional house they had been living in burnt down along with all their possessions. The fire was believed to have been the result of an electrical fault.

The PNGDF provided the family with a tent as temporary accommodation. She said this had an adverse mental effect on the family, especially coming as it did just after the loss of their husband and father. The complainant said her daughter could not continue school because of the difficulties associated with living and studying in a tent.

In February 1999 they were relocated to another house but in April were issued an "eviction notice" on the basis that the house was needed to accommodate serving members of the force. She obtained a court injunction to prevent the Defence Force removing her from the house.

Given this situation the Commission recommended the complainant and her family remain in the house pending the standing court order. The Commission maintained another eviction notice would be in breach of this.

As well, Ombudsman Commission believes that the Department of Defence should have a clear and consistent policy on entitlements. This case and others suggest there is no such policy or that if one exists it is not adhered to. The Ombudsman Commission receives many complaints from ex-servicemen, or their families, still awaiting entitlement payments, final payouts or ex gratia payments. Some of these have been due for many years.

The case was closed on 21 September 2000.

CLAIM FOR INJURY PAYMENT

The Ombudsman Commission received a complaint against the Police force. A man claimed that his wife had sustained an injury to her right thigh after police allegedly fired shots while pursuing criminals.

The Commissioner of Police advised the Commission that the matter was before the Deputy Commissioner of Police (Operations), to look into and deal with.

Nevertheless, given the seriousness of the claim, the Ombudsman Commission referred the case to the Public Solicitor, requesting that the complainant be represented in court if he chose to pursue a compensation claim against the State and Police.
With the matter referred to the Public Solicitor the file was closed on 14 August 2000, in accordance with Section 16(3)(c) of the Organic Law on the Ombudsman Commission.

POSF PAYS INTEREST TO PUBLIC SERVANT

A former Health Department employee complained that he was underpaid his Public Officers Superannuation Fund (POSF) payout for 20 years of contributions.

The Ombudsman Commission referred the matter to the Board of the POSF for consideration and suggested they revisit the complainant’s payout and address the substance of his complaint.

The Board of the POSF replied that the complainant had been paid his correct benefits and there was no case for them to answer. However, the complainant maintained that interest owed to him had not been included in the final payout.

The Commission again contacted the Board of the POSF, making reference to documents substantiating the complainant’s claim. Following this further contact, the superannuation fund conceded the mistake and agreed to pay the amount owed.

PROMOTION ISSUE AT CORRECTIONAL INSTITUTION

A prison warder complained that he was not given a promotion to Sergeant Major rank despite being officially notified by the PNG Correctional Service that he was to be promoted.

The Ombudsman Commission wrote to the Correctional Service seeking more information on the matter.

The Commission did not receive a reply from the Correctional Service, but three months later the complainant wrote back to the Ombudsman Commission to say he had been promoted and his salary had been adjusted accordingly.

TEACHER PAID SALARIES OWING AFTER LONG DELAY

A teacher had been in the “teacher’s pool” without work or pay for six years when the Milne Bay Provincial Education Board offered her a teaching post at a school in the province.

Upon resumption of duties she completed the necessary re-admission forms and submitted them to the Teaching Services Commission and the Education Department for processing and approval. There was a prolonged delay, during which time she was not paid. After several approaches to the Department she wrote to the Ombudsman Commission seeking assistance.

The Commission took up the matter with the Education Department and was advised that the teacher’s application for re-admission had been recently been approved – midway through the school year.

She was paid her salaries, backdated to her commencement date.
ALLEGED UNLAWFUL TERMINATION OF CONTRACT

A former senior officer with a State-run rubber development project complained to the Ombudsman Commission that he was improperly dismissed from his employment by the Secretary of the Department of Agriculture and Livestock.

The Commission investigated the matter and formed the opinion that the complainant was unfairly dismissed.

After receiving the Ombudsman Commission's report and recommendations the Department suggested that he apply for a position they were advertising in the newspapers at the time. The complainant chose not to do this, as he had found employment elsewhere.

The case was closed on 30 June 2000.

Any person can make a complaint to the Ombudsman Commission. The Commission is obliged to consider every complaint it receives.
PENSION PAID TO WRONG PERSON

A Central Province woman who was regularly paid a POSF pension either directly into her bank account or by cheque complained that someone else was collecting the cheques. The pension was not going to her bank account either.

The Commission’s inquiry into the matter revealed that the pension cheque had been collected and banked by the wrong person.

A new cheque was issued, covering the amount stolen. Police later apprehended the person who had fraudulently collected the cheque.

PRIVATE COMPANY PAYS WAGES OWING

A man came to see the Ombudsman Commission to complain about his boss owing him several fortights’ pay.

The Commission discovered that the man was employed by a private company. He was advised that the Ombudsman Commission does not have jurisdiction over complaints against private companies.

However, an investigating officer called the company anyway to inquire into the reason for the delay and was assured by the manager that the man would be paid that same day.

Upon receiving the money the grateful complainant returned to the Commission to say thank you.

PLANTATION LABOURERS SEEK ASSISTANCE

A group of 137 plantation labourers in the Morobe Province sought assistance from the Ombudsman Commission alleging they did not receive final entitlements when they were laid off 16 years earlier.

After some correspondence between the Commission and the State-owned plantation, the office of the Managing Director wrote to say they would honour the payments. This included recreational and furlough entitlements.

A final payout of more than K27,000 was paid to them.

DEPARTMENT FINALLY REIMBURSES GULF HEALTH WORKER

The Ombudsman Commission was asked by a health worker in the Gulf Province to assist him after he had trouble getting the Division of Health in Kerema to reimburse him for a plane ticket.

He had been a patient at the Port Moresby General Hospital and had to purchase a ticket to return to his place of work in the province. The Division was responsible for providing him with a ticket.
The Ombudsman Commission wrote to the Kerema Division of Health for further information on the matter but did not get a response. However the Commission’s letter appears to have had an impact. The complainant visited the Ombudsman Commission’s Port Moresby office two months later to say he had been paid the money.

MAN SEeks PROMISED CONTRIBUTION TO YOUTH CARNIVAL

A man from the Central Province came to see the Ombudsman Commission after the Department of Provincial and Local-level Government Affairs failed to pay money allegedly owing to him.

The man said he had been promised a K500 contribution from the Department towards food and accommodation costs for a provincial youth carnival held at Kwikila station. However, the payment was never made.

When contacted by the Ombudsman Commission the Department asked that the complainant go in to see them the following day.

The complainant visited the Department the next day as requested and was advised that due to a shortfall in National Government funding for that year, he would be paid the following year.

In March 2000 he received his payment.

In a growing number of instances, a letter or a phone call from the Ombudsman Commission can prompt governmental bodies and organisations to leap into action and take remedial measures. One of the Ombudsman Commission’s aims is to help ordinary citizens break through the “brick walls” often associated with government bureaucracy.
Chapter 4
Complaints Case Summaries
The Ombudsman Commission is given the power by the Constitution to investigate alleged wrong conduct and defective administration by governmental bodies and alleged discriminatory practices. The purchase of The Conservatory in Cairns, Australia was the subject of a major investigation and report.
National Goals and Directive Principles

In exercising its powers and duties, the Ombudsman Commission will take fully into account Papua New Guinea's National Goals and Directive Principles, as it is required to do by the Constitution:

4. Natural resources and environment

We declare our fourth goal to be for Papua New Guinea's natural resources and environment to be conserved and used for the collective benefit of us all, and be replenished for the benefit of future generations.

WE ACCORDINGLY CALL FOR-

(1) wise use to be made of our natural resources and the environment in and on the land or seabed, in the sea, under the land, and in the air, in the interests of our development and in trust for future generations; and

(2) the conservation and replenishment, for the benefit of ourselves and posterity; of the environment and its sacred, scenic, and historical qualities; and

(3) all necessary steps to be taken to give adequate protection to our valued birds, animals, fish, insects, plants and trees.
5. MAJOR INVESTIGATIONS AND REPORTS

CAIRNS CONSERVATORY STATUS REPORT

On 1 December 1999 the Ombudsman Commission’s final report of its investigation into the purchase of The Conservatory building in Cairns, Australia, by the Public Officers Superannuation Fund Board (POSFB) was tabled in Parliament. That report was the result of a four-year investigation into the purchase and associated transactions and arrangements.

Twelve months on the Ombudsman Commission finalised a status report on the implementation of the twenty recommendations contained in the 1999 report.

PNG’s governmental bodies do not generally have a good track record in implementing recommendations arising from Ombudsman Commission investigations. Too often in the past the Commission’s recommendations have simply been ignored. This has resulted in many of the same sorts of mistakes being made again and again.

The purpose of the status report was to assess how the recipients of the recommendations in the 1999 report have performed. Who has done the right thing and taken the recommendations seriously? Who has put words into action? Who has ignored the recommendations?

Recommendations from the Cairns Conservatory report

Chapter 14 of the 1999 report made thirty findings of wrong conduct by people involved in the transactions. Chapter 15 of the report then made twenty recommendations based on those findings. The recommendations are intended to ensure that the errors and bad practices, which resulted in the poor investment decision to purchase The Conservatory, do not recur. The recommendations are targeted at the statutory office-holders and members of Parliament who have responsibility for relevant areas of government.

In the week following the finalisation of the report, the Ombudsman Commission wrote to the recipients of the recommendations. We asked all the recipients to give close consideration to the recommendations directed at them. We also requested each recipient to notify the Ombudsman Commission by 31 January 2000 of the steps they proposed to take to give effect to the recommendations. On 3 August 2000 we wrote again to the recipients, reminding them of their obligations. Where we had not received enough information from the recipients we also requested further details on how our recommendations were being implemented.

The Ombudsman Commission also placed public notices in The National and Post-Courier newspapers over several days in early August 2000. These notices listed our...
recommendations and the recipients of those recommendations. The notices advised that we would be preparing a status report.

**Observations on the responses**

The Commission received a variety of responses from the recipients of the recommendations.

The Ombudsman Commission was heartened by the first steps taken in several areas. In particular, the corporate governance review of the POSFB, the introduction of investment guidelines and the Investment Committee and the general commitment to reform of the POSFB was encouraging. However, these reforms are only as effective as the level of compliance with them.

The management of The Conservatory building also appears to have improved. Although occupancy of the building is only around 35%, the agreement with management group Raine and Horne is a step in the right direction.

We were also encouraged by the initial actions of the Attorney-General and the POSFB in commencing court proceedings to attempt to recover some of the money lost in The Conservatory purchase.

But overall, the implementation of recommendations relating to specific public officials has been poor. The Commission recommended that employers review the ongoing employment of these individuals on the basis of the facts given in the 1999 report. The Commission wanted the employers to look at the report, ask the official for an explanation, think about what the official had done and what they could offer in the future, and make a decision.

With one or two exceptions, recipients of the recommendations have not followed these simple steps through to their conclusion. The Commission considers this shows a general unwillingness to make people accountable for their actions. It is important for all people who are paid from the public purse to realise that they are accountable to the public.

The level of implementation, as opposed to agreement, has also been poor. Some recipients of recommendations gave in-principle agreement and made very positive projections of future changes. However the actual implementation of these changes has either not happened or been long delayed.

Of very serious concern are the numerous recipients who did not respond at all to the report and several follow up letters. These recipients have failed to fulfil their obligation under Section 22(3) of the *Organic law on the Ombudsman Commission* and put themselves in the position of having court proceedings brought against them by the Ombudsman Commission under Section 23 of the *Constitution*.

Perhaps the most common and disappointing misconception encountered as a result of The Cairns Conservatory Report was the request from individuals (and supporters) to “clear” their names of “allegations”. It is important to appreciate that when the Ombudsman Commission compiles a final report of an investigation, it is reporting its final opinion on whether the investigation has disclosed any instances of wrong
conduct, defective laws or defective or discriminatory administrative practices. In the 1999 report these opinions were recorded as findings of wrong conduct. They are not “allegations” that can later be “cleared”.

Every single person who was adversely commented on in the 1999 report was given at least one chance to state his or her case. That is a person’s opportunity to clear their name. The Ombudsman Commission is obliged to set out a person’s defence in a report. That was done in the report on The Conservatory through extensive quotes and summaries. The final report is the Commission’s final findings on an issue.

Next steps

In the past the Ombudsman Commission has had difficulty in getting its recommendations implemented. There have been very detailed recommendations in comprehensive reports, such as the Report on the Upgrading of the Port Moresby Water Supply in 1996 and the Poreporena Freeway in 1992.

Many public officials seem to have the view that as they are only recommendations they are free to ignore them.

In order to overcome this misconception the Commission decided to produce a formal statement in the form of a status report. It is a report on how the Ombudsman Commission’s recommendations are implemented at this time. It is not intended to be a once and for all summary of what action was taken as a result of The Conservatory report.

The Ombudsman Commission will continue to keep a close eye on the implementation of recommendations made in its reports. These recommendations were made to prevent the mistakes and incompetence that surround The Conservatory purchase from happening again. Implementing these recommendations is one way to make sure that the lessons of The Conservatory have been thoroughly learnt.

MALAGAN HOUSE STATUS REPORT

One week after the Cairns Conservatory report was tabled in Parliament a related report by the Ombudsman Commission was also released. This was the final report of the investigation into the lease and proposed purchase by the National Government of a building in Brisbane, Australia, called Malagan House. The building is at 99 Creek Street in the city’s central business district.

The Ombudsman Commission conducted this investigation at the same time it investigated the purchase of The Conservatory, Cairns, by the Public Officers Superannuation Fund Board. There were a number of similarities:

- both projects were an attempt to implement the government’s “one-stop-shop” policy, under which government offices in overseas cities were to be located under one roof.
- some public officials were involved in both matters.
• the Conservatory was purchased at a price two and a half times its market value. Attempts were made to sell Malagan House to the government at a similar exorbitant mark-up.

• both projects involved irregular financial arrangements, rent paid for large amounts of unused space, political interference in administrative functions, and administrative incompetence. As a result, an environment was created where corruption could easily occur.

Twelve months on from the tabling of the original report, the Ombudsman Commission finalised a status report on the implementation of the three recommendations contained in the 1999 report.

Recommendations from the Malagan House report

Chapter 14 of the 1999 report made twelve findings of wrong conduct by people involved in the transactions. Chapter 15 of the report then made three recommendations based on those findings. The recommendations are targeted at the statutory office holders and members of Parliament who have responsibility for the relevant areas of government.

In the week following the finalisation of the report the Ombudsman Commission wrote to the recipients of the recommendations. The Commission asked all the recipients to give close consideration to the recommendations directed at them. They were also asked to notify the Ombudsman Commission by 31 January 2000 of the steps they proposed to take to give effect to the recommendations. On 3 August 2000 the Commission wrote again to the recipients, reminding them of their obligations.

Observations on the responses

The Commission received a variety of responses from the recipients of the recommendations.

The main aim of the recommendations was to stop the lease of Malagan House continuing to be a drain on the resources of the Consulate-General, the Department of Foreign Affairs and the State as a whole. The Consulate-General was paying above-market rentals for far more space than it needed and was also subsidising the space occupied by Air Niugini.

The Commission is generally pleased with the steps taken to stop this waste of money. The then Acting Minister for Foreign Affairs, Moi Avei, announced in Parliament on 21 September 2000 that the Consulate-General had moved from Malagan House. This has been confirmed by Consul-General Henry Koaia. Although we understand that the Consulate-General is now operating from temporary accommodation, the Ombudsman Commission is pleased that tangible moves are being made to secure suitable and appropriate long-term office space in Brisbane.

The implementation of the recommendation relating to the three specific public officials has been less successful. The Commission recommended that employers view the ongoing or future employment of these individuals on the basis of the facts given in our report. The Commission wanted the employers to look at our report, ask the officer for
an explanation, think about what the employee had done and what they could offer in the future, and make a decision. The Prime Minister did so when appointing Sir Frederick Reiher to his personal staff. However the further proposal to appoint Sir Frederick to the National Fisheries Authority did not follow this process.

Of very serious concern are the numerous recipients who did not respond at all to the report and several follow up letters. These recipients have failed to fulfil their obligation under Section 22(3) of the Organic Law on the Ombudsman Commission. The Commission is seriously considering commencing court proceedings under Section 23 of the Constitution.

Next steps

This status report is only a report on how our recommendations are being implemented at this time. It is not intended to be a once and for all summary of what action was taken as a result of the Malagan House report.

Malagan House, 99 Creek Street, Brisbane.
Remember, for a few Kina you could sign away national integrity.
"The members of the National Parliament are the elected representatives of all people of Papua New Guinea. They have been given high position to represent the interests of their people, and not for their own special interests. What applies to the ordinary member of parliament is even more applicable to those who hold ministerial office in the nation state. The Ministers of the nation hold high office and wide powers so that they may be better equipped to serve the people of their nation."

National Goals and Directive Principles

In exercising its powers and duties, the Ombudsman Commission will take fully into account Papua New Guinea’s National Goals and Directive Principles, as it is required to do by the Constitution:

5. Papua New Guinean ways

We declare our fifth goal to be to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organization.

WE ACCORDINGLY CALL FOR-

(1) a fundamental re-orientation of our attitudes and the institutions of government, commerce, education and religion towards Papua New Guinean forms of participation, consultation, and consensus, and a continuous renewal of the responsiveness of these institutions to the needs and attitudes of the People; and

(2) particular emphasis in our economic development to be placed on small-scale artisan, service and business activity; and

(3) recognition that the cultural, commercial and ethnic diversity of our people is a positive strength, and for the fostering of a respect for, and appreciation of, traditional ways of life and culture, including language, in all their richness and variety, as well as for a willingness to apply these ways dynamically and creatively for the tasks of development; and

(4) traditional villages and communities to remain as viable units of Papua New Guinean society, and for active steps to be taken to improve their cultural, social, economic and ethical quality.
6. ENFORCING THE LEADERSHIP CODE

The Leadership Code (Division III.2 of the Constitution) is a code of conduct that PNG's leaders are expected to know and follow. The Ombudsman Commission has been given the authority by the Constitution and the Organic Law on the Duties and Responsibilities of Leadership to supervise and enforce the Leadership Code.

LEADERSHIP DIVISION OPERATIONAL MATTERS

Wide-ranging changes to the structure and operations of the Leadership Division took effect in early 2000. The Leadership Division is headed by a Director, Mr John ToGuata, and is made up of an Annual Statements Assessment Unit and three investigation teams.

PROCESSING LEADERS’ ANNUAL STATEMENTS

The Commission’s proposal to reduce the number of leaders required to submit annual statements from 921 to about 330 is yet to be implemented. In the meantime, the Leadership Division continues to use around 15% of the resources available to it in making sure leaders comply with the requirements of the leadership code in regard to leaders’ annual statements. The remaining 85% of resources are allocated to leadership investigations.

Table 6.1 gives a general picture of the work of the Leadership Division by looking at numbers of incoming and outgoing documents over the last four years. Since 1997 there has been a significant decline in the number of annual statements lodged by leaders and an increase in the number of reports on leadership cases submitted to the Ombudsman Commission from the Leadership Division. The planned introduction of a computerised returns system for annual statements is expected to make the process of lodging annual statements simpler for leaders. This should result in an increase in the number of annual statements received.

Table 6.1: Leadership Division work - comparative data 1997-2000

<table>
<thead>
<tr>
<th>Complaints received from:</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members of Parliament</td>
<td>21</td>
<td>18</td>
<td>36</td>
<td>57</td>
</tr>
<tr>
<td>Provincial Government members</td>
<td>26</td>
<td>6</td>
<td>22</td>
<td>21</td>
</tr>
<tr>
<td>Others</td>
<td>6</td>
<td>6</td>
<td>14</td>
<td>20</td>
</tr>
<tr>
<td>Appointments letter issued</td>
<td>198</td>
<td>502</td>
<td>195</td>
<td>197</td>
</tr>
<tr>
<td>Vacating leadership positions (Section 35)</td>
<td>54</td>
<td>212</td>
<td>34</td>
<td>51</td>
</tr>
<tr>
<td>Annual statements received</td>
<td>480</td>
<td>557</td>
<td>357</td>
<td>308</td>
</tr>
<tr>
<td>Reminder letters for annual statements sent</td>
<td>571</td>
<td>465</td>
<td>302</td>
<td>347</td>
</tr>
<tr>
<td>Requesting further information (Section 21)</td>
<td>113</td>
<td>254</td>
<td>162</td>
<td>608</td>
</tr>
<tr>
<td>Submissions, reports and minutes</td>
<td>42</td>
<td>149</td>
<td>47</td>
<td>400</td>
</tr>
<tr>
<td>Rights to be heard</td>
<td>225</td>
<td>236</td>
<td>196</td>
<td>96</td>
</tr>
<tr>
<td>Letters about gifts and overseas travel</td>
<td>4</td>
<td>9</td>
<td>26</td>
<td>55</td>
</tr>
<tr>
<td>Reports to the Ombudsman Commission</td>
<td>18</td>
<td>30</td>
<td>27</td>
<td>44</td>
</tr>
</tbody>
</table>

Chapter 6
Leadership
TABLE 6.2: Outgoing correspondence relating to the processing of leaders’ annual statements 2000

<table>
<thead>
<tr>
<th>Category</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
<th>11</th>
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<tr>
<td>Ministerial staff</td>
<td>57</td>
<td>103</td>
<td>19</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>28</td>
<td>125</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Statutory authority members</td>
<td>3</td>
<td>59</td>
<td>19</td>
<td>5</td>
<td>30</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>49</td>
<td>7</td>
<td>14</td>
</tr>
<tr>
<td>Provincial govt members</td>
<td>86</td>
<td>86</td>
<td>17</td>
<td>21</td>
<td>54</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>11</td>
<td>10</td>
</tr>
<tr>
<td>Overseas missions</td>
<td>9</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Departmental heads</td>
<td>14</td>
<td>18</td>
<td>4</td>
<td>5</td>
<td>40</td>
<td>1</td>
<td>1</td>
<td>7</td>
<td>16</td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td>Constitutional office-holders</td>
<td>26</td>
<td>8</td>
<td>0</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>7</td>
<td>2</td>
<td>0</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>MPs</td>
<td>84</td>
<td>69</td>
<td>37</td>
<td>57</td>
<td>421</td>
<td>12</td>
<td>14</td>
<td>3</td>
<td>3</td>
<td>54</td>
<td>113</td>
</tr>
<tr>
<td>Others</td>
<td>0</td>
<td>0</td>
<td>6</td>
<td>3</td>
<td>55</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>0</td>
<td>37</td>
<td>129</td>
</tr>
<tr>
<td>Totals</td>
<td>308</td>
<td>347</td>
<td>96</td>
<td>98</td>
<td>608</td>
<td>26</td>
<td>29</td>
<td>51</td>
<td>197</td>
<td>121</td>
<td>279</td>
</tr>
</tbody>
</table>

LEADERSHIP DIVISION – TARGETS AND PERFORMANCE INDICATORS

The Ombudsman Commission continues to monitor the Division’s performance closely during the year so that accurate and realistic performance indicators can be established.

On the basis of the Leadership Division’s output in 1999, a number of performance indicators were set as targets for the Division to work towards in 2000. These performance indicators are set below in italics; the targets achieved are listed underneath each one in standard type.

330 leaders’ files to be managed in relation to submission of annual statements, responses to letters seeking advice, clearances and exemptions.

By year’s end 308 annual statements had been received from leaders.

Around 100 leaders expected to require one or more reminder notices.

347 reminder notices had to be issued and 608 letters requesting further information.

25 “right to be heard” notices expected to be issued in relation to annual statements (for a leader not to submit an annual statement is a violation of the Leadership Code).

96 “right to be heard” notices were sent out in relation to annual statements and investigations.

Reports on 10 leaders expected to be prepared and forwarded to the Office of Counsel with a view to having them issued with rights to be heard and, if necessary, referred to the Public Prosecutor for the attention of a leadership tribunal.
51 leadership investigations were completed to the stage that the Commission's Office of Counsel had been asked to provide advice and/or prepare appropriate referral documents. Five of these were referred to the Public Prosecutor in 2000. Details of these five referrals follow in the next section.

24 leadership files to be prioritised for investigation by the three investigations units.

The three investigations units put together a total of 28 new cases in 2000, in addition to 12 cases that were carried over from 1999.

30 leaders' files to be assessed for potential issues.

The Assessment Unit reached this target by the middle of the year. By the end of 2000 they had assessed 66 cases.

A further 20 leadership investigations were in progress at the end of the year.

LEADERSHIP PROSECUTIONS AND REFERRALS IN 2000

During 2000 a leadership tribunal dealt with one matter outstanding at the end of 1999:

• Brigadier-General Jerry Singirok MBE.

In addition, five fresh cases were referred by the Ombudsman Commission to the Public Prosecutor for prosecution before a leadership tribunal. This is the second-highest number of leaders referred in a single year. The highest is six, in 1992.

The leaders referred in 2000, in order of date of referral, were:

• Michael Gene.
• Jim Kas MP.
• Peter Peipul OBE MP.
• Anderson Agiru MP.
• John Wakon QPM.

Of those five, one (Kas) was referred by the Public Prosecutor to a leadership tribunal and the case resolved. For various reasons explained below, the remaining four were not resolved during 2000.

An overview and details of each of the six cases follow.
JERRY SINGIROK

Overview

<table>
<thead>
<tr>
<th>Office</th>
<th>Commander of the Defence Force (an office subject to the Leadership Code by virtue of Section 26(1)(i) of the Constitution).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of referral to Public Prosecutor</td>
<td>6 August 1999.</td>
</tr>
<tr>
<td>Date of request for appointment of tribunal</td>
<td>1 November 1999.</td>
</tr>
<tr>
<td>Date of appointment of tribunal</td>
<td>12 November 1999.</td>
</tr>
<tr>
<td>Composition of tribunal</td>
<td>Mr Justice Moses Jalina (Chairman) and Senior Magistrates Mr Cosmas Bidar and Ms Regina Sagu.</td>
</tr>
<tr>
<td>Date of referral to tribunal</td>
<td>15 December 1999.</td>
</tr>
<tr>
<td>Legal representation</td>
<td>Mr Francis Kuvi and Mr Kathwa Umpake for the Public Prosecutor; Mr Moses Murray and Mr Colin Mikail, of Murrays Lawyers, for the leader.</td>
</tr>
<tr>
<td>Hearing dates</td>
<td>15 December 1999, 2, 3, 28 February and 1, 2, 3, 6, 7, 8, 13, 17, 20 and 21 March 2000.</td>
</tr>
<tr>
<td>Decision and recommendation</td>
<td>Guilty of 3 allegations; not guilty of 2 allegations – tribunal recommended dismissal from office.</td>
</tr>
<tr>
<td>Date recommendation given</td>
<td>22 March 2000.</td>
</tr>
<tr>
<td>Judicial review</td>
<td>On 24 March 2000 the leader applied for judicial review of the tribunal’s decision and recommendation. Leave was granted by the National Court (Sheehan J) on 30 August 2000. The application for judicial review was heard by the National Court (Sheehan J) on 13 December 2000. As at 31 December 2000, judgment was reserved.</td>
</tr>
<tr>
<td>End result</td>
<td>Subject to the outcome of the judicial review, the leader is dismissed and disqualified from holding public office under Section 31 of the Constitution until 23 March 2003.</td>
</tr>
</tbody>
</table>

Details

Mr Singirok was appointed Commander of the Defence Force on 15 November 1995. His appointment was revoked on 17 March 1997 at the height of the Sandline crisis. On 14 October 1998, he was reappointed as Commander.

During 1997 and 1998 two separate Commissions of Inquiry were established to inquire into the engagement, in early 1997, of Sandline International by the National Government in connection with the Bougainville crisis, and related matters. The second Commission of Inquiry, headed by Justice Sir Kubulan Los, reported adversely on the conduct of Mr Singirok during his first term of appointment as Commander. It concluded that he had received illicit payments from a foreign military goods supplier, J & S Franklin Ltd.

In October 1998 soon after Mr Singirok’s reappointment as Commander, the Ombudsman Commission commenced its own independent investigation into the matters uncovered by the Los Inquiry.

On 18 May 1999 Mr Singirok was served with a right to be heard notice. He responded in writing at the end of June 1999. The Commission deliberated on the matter and concluded there was a prima facie case he had been guilty of misconduct in office. Accordingly, the Commission was obliged by Section 29(1) of the Constitution.
The day prior to his referral to the Public Prosecutor Mr Singirok was suspended as Commander by the Governor-General, acting in accordance with the advice of the National Executive Council, under Section 193(3) of the Constitution. An Acting Commander was appointed. However, this did not affect the jurisdiction of the Ombudsman Commission as Mr Singirok continued to hold the office of Commander.

On 1 November 1999 the Public Prosecutor, Mr Panuel Mogish, exercised his discretion under Section 177 of the Constitution to bring proceedings against Mr Singirok for misconduct in office. He did so by requesting the Chief Justice to appoint an independent tribunal to investigate, inquire into and determine the alleged misconduct. On 12 November 1999, Chief Justice Sir Arnold Amet appointed the tribunal.

On 15 December 1999 the matter was formally referred to the tribunal. The tribunal ran from 2 February to 13 March 2000. On 17 March 2000 it announced its decision in public.

Mr Singirok was found guilty of three allegations of misconduct in office. These were:

- **Allegation No 1** – secretly receiving a series of payments totalling K68,000.00 from a foreign military supplier (J & S Franklin Ltd) at the time he was Commander of the PNGDF, through a Visa Card account at Lloyds Bank London, thereby putting himself in a conflict of interests, demeaning his office, allowing his integrity to be called into question etc., contrary to Section 27 of the Constitution. The tribunal highlighted the fact that having received the money, Mr Singirok told no-one about it. To worsen the situation, he used the money for personal and private purposes:

  **Chapter 6 Leadership**

  *Failure to obtain an exemption is not the same as receiving a benefit of favour or right to disclose such benefits. There is clearly no evidence that he obtained an exemption from the Ombudsman Commission. He has also not given any explanation for his failure to report that he was under so much pressure to bring a military solution to Bougainville that he could not attend to it.*

- **Allegation No 2** – accepting the above money without exemption from liability by the Ombudsman Commission, contrary to Section 12(1) of the Organic Law on the Duties and Responsibilities of Leadership. The tribunal noted that though this allegation relied on the same facts as the first one, the nature of the allegation was different:

  **Chapter 6 Leadership**

  *On the evidence available we cannot reach any other conclusion than that reached by the Ombudsman Commission.*
• Allegation No 4 – giving a false financial statement to the Ombudsman Commission by failing to declare the Lloyds Bank account and the gifts he had received from Franklins, contrary to Section 4(6) of the Organic Law.

Mr Singirok was found not guilty of two allegations. These were:

• Allegation No 3 – overruling defence procurement procedures by entering into arrangements with another supplier of military goods, Unicorn International Pte Ltd.

• Allegation No 5 – failing to publicly apologise for his conduct at the Andrew Commission of Inquiry at which he gave oral testimony regarding gifts and benefits from Franklins which amounted to lying under oath.

On 20 March 2000 the tribunal heard submissions on penalty and on 21 March 2000 announced in public its decision.

As to Allegation No 1 the tribunal concluded there was serious culpability on the part of the leader and that public policy and the public good demanded that he be dismissed. The tribunal highlighted a passage from the leadership tribunal case concerning Mr Ted Dito (1991): “... the conduct of leaders is subject to additional obligations and additional statutory provisions have been enacted to enforce those obligations”. The fact Mr Singirok did not put his hand in the “public till” was irrelevant:

The Commander of the armed forces is someone who is very special to the people of his country. He is special because he is at the pinnacle of those who have been entrusted by the people to defend the sovereignty of their nation. ... In making our decision [on penalty] we did consider his unblemished record but it has little significance in view of the seriousness of his conduct bearing in mind the position he occupied at the time.

Allegation Nos. 2 and 4 were considered together. Both Mr Singirok’s failure to seek an exemption from the Ombudsman Commission regarding the payments he had received through his Visa Card account at Lloyds Bank, London, and his failure to disclose the existence of that account in his annual statement, were found to have a common element: an intention to conceal the gifts he had received from Franklins. This also amounted to serious culpability warranting dismissal from office.

On 22 March 2000 the tribunal recommended to the Governor-General that Mr Singirok be dismissed from office. On the same day the Governor-General acting in accordance with the tribunal’s recommendation dismissed Mr Singirok from office as Commander of the Papua New Guinea Defence Force.

MICHAEL GENE

Overview

<table>
<thead>
<tr>
<th>Offices</th>
<th>Secretary, Department of Attorney-General (an office subject to the Leadership Code by virtue of Section 26(1)(f) of the Constitution); Attorney-General.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of referral to Public Prosecutor</td>
<td>3 March 2000.</td>
</tr>
<tr>
<td>Date of request for appointment of tribunal</td>
<td>17 April 2000.</td>
</tr>
<tr>
<td>Date of appointment of tribunal</td>
<td>Tribunal not appointed.</td>
</tr>
</tbody>
</table>

Chapter 6
Leadership
On 27 July 2000 the leader’s appointment as Secretary (and Attorney-General) was revoked by the Governor-General acting on the advice of the National Executive Council. As at 31 December 2000, Mr Gene had not held any other offices subject to the Leadership Code, so no further action could be taken by the Public Prosecutor. If he becomes a leader again the matter may be reactivated.

Details

On 30 January 1998 Mr Gene was appointed Secretary of the Department of Attorney-General. He also became the Attorney-General of Papua New Guinea by virtue of Section 5 of the Attorney-General Act.

The allegation at the centre of this referral was that the leader swore an inappropriate affidavit for use in a private legal action brought by a friend and colleague in a foreign court, which contained statements highly prejudicial to the legal system of Papua New Guinea.

It was alleged that by swearing the affidavit Mr Gene placed himself in a position where he had a conflict of interests; demeaned his office of Attorney-General; allowed his official and personal integrity to be called into question; and endangered respect for and confidence in the integrity of government in Papua New Guinea, contrary to Section 27 of the Constitution. It was also alleged he allowed his official position to be used for the benefit of another person, contrary to Section 5(2) of the Organic Law on the Duties and Responsibilities of Leadership.

The affidavit was sworn by Mr Gene on 28 April 1998. It was filed in the Supreme Court of Victoria in the case Gregory Toop v Mobil Oil New Guinea and Others. Mr Toop was seeking to recover damages in a civil action against Mobil arising from an armed robbery at the Mobil service station, Five Mile, Port Moresby, in December 1995. Mr Toop was a customer at the service station and suffered serious injuries during the course of the robbery.

Mobil argued that the case should not be heard in Victoria. It should be heard in Papua New Guinea. Mr Gene’s affidavit was filed for the purpose of defending an application by Mobil to have the case permanently stayed on the ground that Victoria was an inappropriate forum in which to institute the proceedings.

In his affidavit Mr Gene stated amongst other things that there existed serious problems in the courts in PNG “... which would place Mr Toop at a distinct juridical disadvantage if he were to proceed with his action in Papua New Guinea”. Mr Gene stated:

The problems facing Papua New Guinea’s judicial system and courts are well known both within the judiciary, the government, the Department of Justice, the Legal Profession and by members of the public. These problems which have been caused by a chronic shortage of funds and suitably qualified judges have been resulted in delayed judgments, a backlog of undecided cases particularly in the civil jurisdiction, delayed trials, cumbersome and outdated case management practices and procedures, and on occasions poor quality judgments.
On 9 December 1998 Mr Justice Beach of the Supreme Court of Victoria handed down a judgment rejecting Mobil’s application and finding in favor of Mr Toop. This judgment quoted several paragraphs of Mr Gene’s affidavit. The Ombudsman Commission alleged that the actual effect of Mr Gene’s statements contained in the affidavit was to lessen the confidence of a judge of a foreign jurisdiction in the Papua New Guinea justice system.

Although lodged in a private case the affidavit was a public document and it transpired that the contents of it became the subject of media coverage in PNG, eg the front page of the Post-Courier on 19 March 1999. It was alleged that the circumstances in which Mr Gene made his sworn statements suggested that he was prepared to use his position as Attorney-General to advance the interests of a personal friend in a private legal action commenced in a foreign jurisdiction.

On 9 August 1999 Mr Gene was served with a right to be heard notice. He was given until 30 August 1999 to respond. He sought and was granted two extensions of time, to 30 September 1999 then to 16 November 1999. He failed to exercise his right to be heard. On 3 January 2000 he requested further time but the request was declined.

The Ombudsman Commission then deliberated on the matter. It concluded there was a prima facie case he had been guilty of misconduct in office. Accordingly, it was obliged by Section 27(1) of the Constitution to refer the matter to the Public Prosecutor, which it did on 3 March 2000. The Public Prosecutor then considered the matter. On 17 April 2000 he exercised his discretion to bring proceedings by requesting Chief Justice Sir Arnold Amet to appoint a leadership tribunal.

On 25 April 2000 the Chief Ombudsman wrote to the Chief Justice pointing out that he may not be the appropriate appointing authority for the tribunal. Section 27(7)(b) of the Organic Law on the Duties and Responsibilities of Leadership provides that in the case of alleged misconduct in office by a “Law Officer” the tribunal shall consist of three Judges (rather than one Judge and two senior magistrates as is normally the case) appointed by the Judicial and Legal Services Commission, not by the Chief Justice. Mr Gene in his capacity as Attorney-General and principal legal adviser to the National Executive was one of the country’s three Law Officers; the others being the Public Prosecutor and the Public Solicitor. The Chief Ombudsman added however that the matter was not free of doubt because of the wording of Section 180 of the Constitution. Section 180 tends to suggest that only the Public Prosecutor and the Public Solicitor are caught by Section 27(7)(b) of the Organic Law.

The Chief Justice considered the matter in light of the Chief Ombudsman’s letter. On 22 June 1999 he advised the Public Prosecutor that he would in fact proceed to appoint a tribunal as requested. However no appointment was made before 27 July 2000 when Mr Gene’s appointment as Secretary of the Department of the Attorney-General (and hence Attorney-General) was revoked. Mr Gene on that date ceased to be subject to the Leadership Code. No further proceedings could take place. The matter is now on hold. It can be reactivated if and when Mr Gene occupies another office subject to the Leadership Code.

Chapter 6
Leadership
JIM KAS

Overview

<table>
<thead>
<tr>
<th>Offices</th>
<th>Member for Madang Provincial; Governor, Madang Province; Member, Madang Provincial Assembly (offices subject to the Leadership Code by virtue of Sections 26(1)(c) and 26(1)(d) of the Constitution).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of referral to Public Prosecutor</td>
<td>12 April 2000.</td>
</tr>
<tr>
<td>Date of request for appointment of tribunal</td>
<td>28 July 2000.</td>
</tr>
<tr>
<td>Date of appointment of tribunal</td>
<td>7 August 2000.</td>
</tr>
<tr>
<td>Composition of tribunal</td>
<td>Mr Justice Mark Sevua (Chairman) and Senior Magistrates Mr Sition Passingan and Mr Mark Pupaka.</td>
</tr>
<tr>
<td>Date of referral to tribunal</td>
<td>17 August 2000.</td>
</tr>
<tr>
<td>Legal representation</td>
<td>Mr Panuel Mogish, in person, for the Public Prosecutor; Mr Gregory Sheppard, of Maladinas Lawyers, for the leader.</td>
</tr>
<tr>
<td>Hearing dates</td>
<td>17 August, 6, 14, 20, 21, 27 September 2000.</td>
</tr>
<tr>
<td>Decision and recommendation</td>
<td>Guilty of the single allegation inquired into by the tribunal - tribunal recommended dismissal from office.</td>
</tr>
<tr>
<td>Date recommendation given</td>
<td>4 October 2000.</td>
</tr>
<tr>
<td>Judicial review</td>
<td>The leader applied for leave to seek judicial review of: the tribunal's decision to accept the leader's guilty plea; its decision on penalty; and its recommendation the leader be dismissed. On 24 October 2000 the National Court (Sakora J) refused leave. The leader then appealed to the Supreme Court. As at 31 December 2000 the appeal had not been heard.</td>
</tr>
<tr>
<td>Result</td>
<td>Subject to the outcome of the appeal against refusal to grant leave for judicial review, the leader is dismissed and disqualified from holding public office under Section 31 of the Constitution until 6 October 2003.</td>
</tr>
</tbody>
</table>

Details

On 16 July 1997 Mr Kas took office as the member for Madang Provincial in the National Parliament. He thus became the Provincial Governor and a member of the Provincial Assembly.

On 21 February 1998 he was involved in an incident at Madang Airport. He was running late for a flight he had booked to travel to Mt Hagen. He was drunk in a vehicle (his own) and was driven to the airport by a drunken policeman. There were two other drunken policemen in the vehicle. In an attempt to board the plane which had taxied to the end of the runway and had its engines running preparing to take off, he ordered his vehicle to be driven through a locked gate and across the aerodrome next to the plane. He was waved away by the pilot. Mr Kas then returned to the airport terminal and abused airline staff and airport officials. The incident was widely reported in the media. On EMTV news the following evening an interview conducted the day of the incident was telecast. In the interview he appeared drunk.

He later faced criminal proceedings over the incident. He was charged, together with the three police officers, with an offence under Section 442(1)(a) of the Criminal Code: dealing with an aircraft so as to endanger its free and safe use. He was found guilty (together with the three police officers) by the National Court (Sawong J) in November 1998 and sentenced to four years imprisonment.

Chapter 6
Leadership
While the criminal proceedings were continuing, the Ombudsman Commission undertook its own investigation of Mr Kas’s conduct. On 4 January 1999, he was served with notice of his right to be heard. By that time he was an inmate of the Beon Corrective Institution.

On 30 April 1999 the Supreme Court (Amet CJ, Kapi DCJ, Woods J, Los J and Sakora J) upheld an appeal against the conviction of Mr Kas and the three police officers. They were all released from prison.

The Ombudsman Commission considered that Mr Kas’s acquittal had no effect on the allegations of misconduct in office. The Leadership Code and the Criminal Code are two separate codes of conduct leaders must adhere to. Acquittal or conviction under one has no necessary flow-on effect on the initiation or result of proceedings under the other.

Mr Kas did not exercise his right to be heard and on 12 April 2000 he was referred to the Public Prosecutor.

On 17 August 2000 the Public Prosecutor referred the matter to the tribunal. Originally, the Public Prosecutor’s reference consisted of four allegations arising from the Madang airport incident. On 7 September 2000, however, the Public Prosecutor withdrew his original reference and substituted it with a reference containing only one allegation. The tribunal asked Mr Kas how he wished to respond. He replied that he was wrong and guilty. This was the first time a leader had pleaded guilty to misconduct in office in a leadership tribunal.

On 14 September 2000 the tribunal resumed and announced its decision. It noted that Mr Kas’s guilty plea was unequivocal. A number of aspects of his conduct were highlighted. He had been drunk. He acted without lawful authority or excuse. He clearly violated the Civil Aviation Regulation and committed a criminal offence. He unlawfully directed the police officers to commit a criminal offence. He impeded the pilot of an aircraft in the performance of his duties. He acted in an abusive manner towards airline staff. His conduct was unbecoming of a leader, improper, unfitting and disgraceful.

The tribunal concluded that Mr Kas had demeaned his office; allowed his public integrity and official integrity to be called into question; endangered respect for and confidence in the integrity of government; and engaged in an activity that might be expected to give rise to doubt in the public mind as to whether he was carrying out his duties as a leader. He was found guilty of misconduct in office under Sections 27(1)(a), (b), (c) and (d) and 27(2) of the Constitution.

The tribunal adjourned to 20 September to hear submissions on penalty. On the afternoon of 19 September 2000 however, the leader’s lawyer delivered a letter to the tribunal indicating that an application would be made for the tribunal to disqualify itself. On 20 September the tribunal heard the application. The grounds were that in making its decision that the leader was guilty the tribunal had departed from the statement of facts he had pleaded guilty to; had made findings of disgraceful and improper conduct he had not been charged with; purported to find the leader guilty of criminal offences; had failed to consider the transcript of the criminal trial in the National Court; and had found the leader guilty of a breach of Section 27(2) of the Constitution when he had not been charged with misconduct under that provision.

Chapter 6
Leadership
Accordingly it was argued the tribunal had acted in excess of its jurisdiction and
denied the leader natural justice in that its decision gave rise to a reasonable
apprehension of bias.

The next day, 21 September 2000, the tribunal handed down its ruling on the
application. It dismissed the application. The tribunal also refused a request for a further
adjournment. It then heard submissions on penalty and adjourned to consider its final
decision.

On 27 September 2000 the tribunal resumed. Prior to handing down its decision the
leader’s lawyer submitted that the tribunal should halt its proceedings on the ground
that the previous day the leader had commenced proceedings in the National Court
seeking an order of prohibition against the tribunal. The tribunal considered the
application. It ruled that in the absence of a Court order it would not stay its
proceedings. It proceeded to announce its decision.

The tribunal accepted that Mr Kas was sincere in accepting responsibility over his
foolish actions. But his successful appeal to the Supreme Court and his discharge
from prison were related to a matter under the Criminal Code. He was incarcerated for
6 months but that did not relate to a Leadership Code offence.

The tribunal concluded that Mr Kas’s conduct amounted to “serious culpability”. As
to “public policy and the public good” the leader breached the standard of conduct
expected not only by the people of Madang but the people of Papua New Guinea. The
incident was in a public place, witnessed by the public and then played out in the
media resulting in the public perception of the leader’s conduct as a public disgrace.
He deserved the maximum penalty.

Though there was no allegation of corruption, to recommend any other penalty would
downdplay the seriousness and enormity of the incident. The Leadership Code is there
to protect people not only from corrupt but also improper conduct. There were a lot of
aggravating factors: driving a vehicle at high speed across the tarmac; stopping close
to an aircraft preparing for takeoff; abusing airline staff; and being drunk throughout
the incident. These deserved special condemnation.

Reference was made to the leadership tribunal’s decision in Ted Diro’s case (1991)
that commented on the quality of leadership PNG should have. The tribunal stated:

Members of the National Parliament not only represent their electorate; they represent their
country in that foreigners observe their conduct and thereby form a view of the country. A
Member of Parliament who engages in sub-standard conduct gives this country a sub-standard
reputation.

The purpose of the Leadership Code is to protect and preserve the People of Papua
New Guinea from leaders whose conduct has been weighed in the balance and found
wanting. As the tribunal found serious culpability, it was bound to recommend
dismissal. On 4 October 2000 the tribunal conveyed its recommendation to the
Governor-General. The next day Mr Kas was dismissed from office.
PETER PEIPUL

Overview

<table>
<thead>
<tr>
<th>Offices</th>
<th>Deputy Leader of the Opposition; Member for Imbonggu Open; Member, Southern Highlands Provincial Assembly (offices subject to the Leadership Code by virtue of Sections 26(1)(b), 26(1)(c) and 26(1)(d) of the Constitution).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of referral to Public Prosecutor</td>
<td>7 August 2000.</td>
</tr>
<tr>
<td>Date of request for appointment of tribunal</td>
<td>8 December 2000.</td>
</tr>
<tr>
<td>Date of appointment of tribunal</td>
<td>21 December 2000.</td>
</tr>
<tr>
<td>Composition of tribunal</td>
<td>Mr Justice Maurice Sheehan (Chairman) and Senior Magistrates Mr Orim Karapo and Mr Iova Geita.</td>
</tr>
<tr>
<td>Status at end of 2000</td>
<td>As at 31 December 2000 the matter had not been referred to the tribunal.</td>
</tr>
</tbody>
</table>

Details

On 16 July 1997 Mr Peipul took office as the member for Imbonggu Open in the National Parliament and became a member of the Southern Highlands Provincial Assembly. He had previously held a number of other leadership positions over a period of fourteen years. He had been a member of the Public Services Commission (PSC), an ambassador and head of two government departments. From July 1997 he was a member of the Opposition when Mr Bernard Narokobi was the Leader of the Opposition. In November 1998 he moved to the Government. On 3 December 1998 he was appointed Minister for Public Service by the Prime Minister Mr Bill Skate.

Mr Peipul had statutory and political responsibility for the PSC and the Department of Personnel Management. At the time of his appointment there was a vacancy in one of the three offices of member of the PSC. These are constitutional office-holder positions.

Six days after he was appointed Minister Mr Peipul instructed the Secretary for Personnel Management, Mr Bill Kua, to prepare a National Executive Council (NEC) submission for his signature, recommending that Moses Ipu Tawa be appointed to the vacant PSC position. Mr Tawa is Mr Peipul’s brother. Mr Peipul did not tell Mr Kua that Mr Tawa was his brother. He proceeded to present a submission to the NEC recommending his brother’s appointment. There was no mention in the submission that Mr Tawa was his brother. The Governor-General, acting on the advice of the NEC, made the appointment in late December 1998.

On 29 December 1998 Mr Peipul wrote to the Ombudsman Commission stating that the new member of the PSC was his “blood brother”. On 30 December 1998 the Chief Ombudsman replied, seeking further information from Mr Peipul as well as drawing his attention to various relevant laws. Mr Peipul was asked to respond by 5 January 1999 but failed to do so. Follow-up letters were sent. Mr Peipul was asked to contact the Chief Ombudsman by telephone, but never did. Mr Peipul eventually responded on 8 February 1999, but his response was incomplete. In view of his failure to fully co-operate and the seriousness of the suggestion he had engineered a constitutional appointment for his brother within a matter of days after being appointed as the Minister the Ombudsman Commission decided on its own initiative to conduct an investigation into suspected misconduct in office.
The Commission discovered that after Mr Peipul received the Chief Ombudsman’s letter of 30 December 1998 he arranged the revocation of Mr Tawa’s appointment and Mr Tawa’s immediate reappointment. But the Commission was still concerned that Mr Peipul had not complied with the Leadership Code. Section 6 of the Organic Law on the Duties and Responsibilities of Leadership imposes strict procedures in cases where leaders deal with matters in which their associates have an interest. These procedures had again, evidently, been by-passed.

In July 1999 the Government changed and Mr Peipul ceased to be a Minister. He then became Deputy Leader of the Opposition. On 31 August 1999 a right to be heard notice was served on him. On 2 September 1999 he responded in writing. He maintained his brother was the best-qualified person for the job and all requirements of the Leadership Code had been satisfied.

The Ombudsman Commission deliberated on Mr Peipul’s response and concluded there was a prima facie case he had been guilty of misconduct in office. On 7 August 2000 the matter was referred to the Public Prosecutor. In the statement of reasons presented to the Public Prosecutor the Ombudsman Commission stated that Mr Peipul:

- Directed his Departmental Head, Mr Kua, to prepare a submission recommending his brother for appointment to a constitutional office and did not advise him or anyone else that it was his brother he was recommending.
- Did not meaningfully consider any person other than his brother for appointment and put a misleading submission to the NEC.
- Flouted the requirements of the Constitution concerning consultation with the Permanent Parliamentary Committee on Appointments and manipulated the appointment procedures prescribed by the Constitution.
- Falsely stated to the National Executive Council on two occasions that consultation with the Permanent Parliamentary Committee on Appointments had occurred.
- Engaged in a duplicitous course of conduct motivated by the desire to get his brother appointed to a senior public office.
- Compromised the position of the Chairman of the Permanent Parliamentary Committee on Appointments by presenting him with a prepared letter and asking him to sign it.
- Knowingly placed his Excellency the Governor-General in a position where he executed an instrument that contained a false statement.
- Arranged the revocation of the appointment of a constitutional office-holder and his immediate reappointment, without regard to the constitutional implications of his actions.
In the statement of reasons the Ombudsman Commission noted widespread concerns in PNG about nepotism. The word "nepotism" is defined by the New Oxford dictionary (1998 edition, Oxford University Press) in the following terms:

The practice among those with power or influence of favouring relatives or friends, especially by giving them jobs.

There was a prima facie case that Mr Peipul had engaged in nepotism in that he:

- Placed himself in a position where he had a conflict of interests, contrary to Section 27(1)(a) of the Constitution.
- Demeaned the office of Minister for Public Service, contrary to Section 27(1)(b) of the Constitution.
- Allowed his official and personal integrity to be called into question, contrary to Section 27(1)(c) of the Constitution.
- Endangered respect for and confidence in the integrity of government in Papua New Guinea, contrary to Section 27(1)(d) of the Constitution.
- Failed to reveal to the Ombudsman Commission, the Parliament and the National Executive Council the nature and extent of his associate's interest in a matter with which he had to deal in an official capacity, contrary to Section 6(1) of the Organic Law on the Duties and Responsibilities of Leadership.
- Took part in the deliberations and decisions to appoint his brother as a member of the PSC without the express approval (by resolution) of the NEC contrary to Section 15(3) of the Organic Law on the Duties and Responsibilities of Leadership.

The Public Prosecutor deliberated on the matter and on 8 December 2000 exercised his discretion to bring proceedings by requesting the Chief Justice to appoint a leadership tribunal. The tribunal was appointed on 21 December 2000 and was expected to commence its hearings early in 2001.

**ANDERSON AGIRU**

**Overview**

<table>
<thead>
<tr>
<th>Offices</th>
<th>Member for Southern Highlands Provincial; Governor, Southern Highlands Province; Member, Southern Highlands Provincial Assembly (offices subject to the Leadership Code by virtue of Sections 26(1)(b), 26(1)(c) and 26(1)(d) of the Constitution).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of referral to Public Prosecutor</td>
<td>9 November 2000.</td>
</tr>
<tr>
<td>Status at end of 2000</td>
<td>As at 31 December 2000, the Public Prosecutor had not made a decision whether to bring proceedings. So no request had been made for appointment of a tribunal.</td>
</tr>
</tbody>
</table>
Details

On 16 July 1997 Mr Agiru took office as the member for Southern Highlands Provincial. He thus became the Provincial Governor and a member of the Provincial Assembly. He had previously held leadership positions as a member of the official personal staff of a number of different Ministers over a period of nine years.

Various allegations of misconduct in office had been put to Mr Agiru in four separate right to be heard notices given to him in the period from December 1997 to September 2000.

In December 1997 Mr Agiru was given notice of his right to be heard on his alleged failure to give annual statements to the Ombudsman Commission for the years 1993/94; 1994/95 and 1995/96.

In January 1998 Mr Agiru was given a right to be heard on his alleged failure to give an annual statement to the Ombudsman Commission for the year 1996/97.

In August 2000 Mr Agiru was given a right to be heard on his alleged unlawful possession of a high-powered firearm. This matter came to light when an article headed “Only God will remove us ...” was published on page 3 of the 31 July 2000 edition of the Post-Courier newspaper. A photograph showing Mr Agiru at Mendi airport shaking hands with the Minister for Provincial and Local-level Government Affairs, Mr Iairo Lasaro, accompanied it. In his left hand Mr Agiru was carrying what appeared to be an AR-15 semi-automatic high-powered firearm. Three other members of the Parliament also appeared in the photograph.

In September 2000 Mr Agiru was given notice of his right to be heard on his alleged failure to give annual statements to the Ombudsman Commission for the years 1997/98 and 1998/99.

Mr Agiru did not respond to any of the above right to be heard notices.

The Ombudsman Commission deliberated on these matters and concluded there was a prima facie case that Mr Agiru was guilty of misconduct in office. Accordingly, the Commission was obliged by Section 29(1) of the Constitution and Sections 17(d), 20(4) and 27(1) of the Organic Law on the Duties and Responsibilities of Leadership to refer the matter to the Public Prosecutor, which it did on 9 November 2000.

The Ombudsman Commission’s statement of reasons puts the allegations of misconduct in office into two categories.

First, the six annual statements that Mr Agiru has allegedly failed to submit to the Ombudsman Commission. It is alleged that as a consequence he has committed misconduct under Section 4(6)(a) of the Organic Law on the Duties and Responsibilities of Leadership.

Secondly, the Mendi airport incident. It is alleged that Mr Agiru did not have a firearm licence; illegally carried the firearm in a helicopter; illegally carried the firearm in a public place; allowed himself to be photographed carrying the firearm; and misled the media and the public by stating he had a licence for a high-powered firearm when in fact he was unlicensed.
Consequently there is a prima facie case that Mr Agiru:

- Demeaned the leadership offices he holds, contrary to Section 26(1)(b) of the *Constitution*.
- Allowed his official and personal integrity to be called into question, contrary to Section 26(1)(c) of the *Constitution*.
- Endangered and diminished respect for and confidence in the integrity of government, contrary to Section 26(1)(d) of the *Constitution*.
- Engaged in activities that might be expected to give rise to doubt in the public mind as to whether he was carrying out his duties as a leader, contrary to Section 27(2) of the *Constitution*.

The matter remains in the hands of the Public Prosecutor.

**JOHN WAKON**

**Overview**

<table>
<thead>
<tr>
<th>Offices</th>
<th>Commissioner of Police; Departmental Head, Department of Police (offices subject to the Leadership Code by virtue of Sections 26(1)(b) and 26(1)(f) of the <em>Constitution</em>).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of referral to Public Prosecutor</td>
<td>20 December 2000.</td>
</tr>
<tr>
<td>Status at end of 2000</td>
<td>As at 31 December 2000, the Public Prosecutor had not made a decision whether to bring proceedings. So no request had been made for appointment of a tribunal.</td>
</tr>
</tbody>
</table>

**Details**

On 20 July 1999 Mr Wakon was appointed to the office of Commissioner of Police. He was also appointed Departmental Head of the Department of Police under Section 27 of the *Public Services (Management) Act*.

The allegation at the centre of this referral is that the leader received motor vehicle allowances to which he was not entitled and that he obtained the allowances under a false pretence. It is alleged that he represented that he had purchased a motor vehicle from his executive officer when no such transaction took place.

Under a contract of employment between the leader and the State, the leader was entitled to:

(a) a vehicle allowance paid fortnightly at a rate of K31,800.00 per annum; or

(b) a fully serviced and maintained vehicle provided to him and paid for by the State on a 24 hour unrestricted use basis.

The Ombudsman Commission alleges that he has since September 1999, been receiving the benefit of both (a) and (b).

On 30 May 2000 Mr Wakon was served with a right to be heard notice. He replied promptly in writing.
The Ombudsman Commission then deliberated on the matter. Out of fairness to the leader it took into account a number of matters that might be regarded as extenuating circumstances. In particular it considered whether Mr Wakon's conduct might be regarded as an "administrative indiscretion" rather than misconduct in office.

However, the Ombudsman Commission considered that the Commissioner of Police has a heightened duty, compared to other leaders, to abide by the law. He is the head of a disciplined force, a conspicuous leader who must be beyond reproach. To be seen to receive allowances to which he is not entitled can have a serious adverse effect on the morale of the force and the effectiveness of the command and control structure.

The Ombudsman Commission concluded that there was a prima facie case Mr Wakon had been guilty of misconduct in office. Accordingly it was obliged by Section 27(1) of the Constitution to refer the matter to the Public Prosecutor, which it did on 20 December 2000.

The matter remains in the hands of the Public Prosecutor.

Leaders must never place themselves in a position where they could have a conflict of interests, or where they could be compromised in any way.
### Table 6.3: Leaders Referred for Prosecution by the Ombudsman Commission under the Leadership Code as at 31 December 2000

<table>
<thead>
<tr>
<th>No</th>
<th>LEADER</th>
<th>OFFICE</th>
<th>YEAR</th>
<th>RESULT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MOSES SASAKILA</td>
<td>MP; Minister for Culture</td>
<td>1976</td>
<td>Guilty – dismissed – later set aside by Supreme Court</td>
</tr>
<tr>
<td>2</td>
<td>BRIAN GREY</td>
<td>General Manager, National Airline Commission</td>
<td>1978</td>
<td>Guilty – reprimanded</td>
</tr>
<tr>
<td>3</td>
<td>AKO-TOUA</td>
<td>Commissioner, Electricity Commission</td>
<td>1978</td>
<td>Guilty – suspended</td>
</tr>
<tr>
<td>4</td>
<td>LEO MORGAN</td>
<td>A/Secretary, Department of Works and Supply</td>
<td>1978</td>
<td>Guilty – dismissed</td>
</tr>
<tr>
<td>5</td>
<td>JAMES MOPIO</td>
<td>MP</td>
<td>1981</td>
<td>Guilty – dismissed</td>
</tr>
<tr>
<td>6</td>
<td>OPAI KUNANGEL</td>
<td>MP; Minister for Commerce</td>
<td>1982</td>
<td>Resigned after appointment of tribunal</td>
</tr>
<tr>
<td>7</td>
<td>MICHAEL PONDROS</td>
<td>MP</td>
<td>1983</td>
<td>Guilty – dismissed</td>
</tr>
<tr>
<td>8</td>
<td>LENNIE APARIMA</td>
<td>MP</td>
<td>1985</td>
<td>Not guilty</td>
</tr>
<tr>
<td>9</td>
<td>EZEKIEL BROWN</td>
<td>Managing Director, National Provident Fund</td>
<td>1985</td>
<td>Guilty – fined</td>
</tr>
<tr>
<td>10</td>
<td>JULIUS CHAN</td>
<td>MP; Deputy Prime Minister; Minister for Finance</td>
<td>1988</td>
<td>Not guilty</td>
</tr>
<tr>
<td>11</td>
<td>JOHN KAPUTIN</td>
<td>MP</td>
<td>1988</td>
<td>Guilty – fined</td>
</tr>
<tr>
<td>12</td>
<td>OBUM MAKARAI</td>
<td>Chairman, Papua New Guinea Banking Corporation</td>
<td>1988</td>
<td>Guilty – fined</td>
</tr>
<tr>
<td>13</td>
<td>KEDEA URU</td>
<td>Chairman, National Broadcasting Commission</td>
<td>1988</td>
<td>Not guilty</td>
</tr>
<tr>
<td>14</td>
<td>GERALD SIGULOGO</td>
<td>MP</td>
<td>1989</td>
<td>Guilty – dismissed – (judicial review by leader unsuccessful)</td>
</tr>
<tr>
<td>15</td>
<td>SUSUVE LAUMAEA</td>
<td>Chief of Staff, Office of Prime Minister</td>
<td>1990</td>
<td>Public Prosecutor failed to refer matter to tribunal – no further action</td>
</tr>
<tr>
<td>16</td>
<td>GABRIEL RAMOI</td>
<td>MP</td>
<td>1990</td>
<td>Resigned after appointment of tribunal</td>
</tr>
<tr>
<td>17</td>
<td>ESEROM BUREGE</td>
<td>MP</td>
<td>1990</td>
<td>Resigned after tribunal commenced hearing</td>
</tr>
<tr>
<td>18</td>
<td>TED DIRO</td>
<td>MP; Deputy Prime Minister; Minister for Forests</td>
<td>1991</td>
<td>Guilty – recommended for dismissal – but resigned before dismissal effected</td>
</tr>
<tr>
<td>19</td>
<td>TOM AMAIU</td>
<td>MP</td>
<td>1992</td>
<td>Resigned after appointment of tribunal</td>
</tr>
<tr>
<td>20</td>
<td>TONY ILA</td>
<td>MP</td>
<td>1992</td>
<td>Guilty – but resigned before decision on penalty</td>
</tr>
<tr>
<td>21</td>
<td>PETER GARONG</td>
<td>MP</td>
<td>1992</td>
<td>Resigned – later guilty – dismissed</td>
</tr>
<tr>
<td>22</td>
<td>GALEN LANG</td>
<td>MP</td>
<td>1992</td>
<td>Resigned – later died in office</td>
</tr>
<tr>
<td>23</td>
<td>MELCHIOR PEP</td>
<td>MP</td>
<td>1992</td>
<td>Resigned – later guilty – dismissed</td>
</tr>
<tr>
<td>24</td>
<td>PHILIP LAKI</td>
<td>MP</td>
<td>1993</td>
<td>Recommended for dismissal – but resigned before dismissal effected</td>
</tr>
</tbody>
</table>

Chapter 6
Leadership
<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Position</th>
<th>Year</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>ANDREW POSAI</td>
<td>MP; Minister for Forests</td>
<td>1995</td>
<td>Guilty – dismissed (judicial review by leader unsuccessful)</td>
</tr>
<tr>
<td>26</td>
<td>JOHN NILKARE</td>
<td>MP; Minister for Village Services and Provincial Affairs</td>
<td>1995</td>
<td>Guilty – dismissed – later reviewed by Supreme Court – penalty altered to fine</td>
</tr>
<tr>
<td>27</td>
<td>PAUL PORA</td>
<td>MP; Minister for Civil Aviation</td>
<td>1995</td>
<td>Guilty – fined – (judicial review by Public Prosecutor unsuccessful)</td>
</tr>
<tr>
<td>28</td>
<td>JEFFREY BALAKAU</td>
<td>MP; Governor, Enga Province</td>
<td>1996</td>
<td>Guilty – dismissed (judicial review by leader unsuccessful)</td>
</tr>
<tr>
<td>29</td>
<td>GABRIEL DUSAVA</td>
<td>Secretary, Department of Foreign Affairs</td>
<td>1996</td>
<td>Guilty – dismissed (judicial review by leader unsuccessful)</td>
</tr>
<tr>
<td>30</td>
<td>YAIP AVINI</td>
<td>MP</td>
<td>1996</td>
<td>Lost office through criminal conviction</td>
</tr>
<tr>
<td>31</td>
<td>JOSEPH ONGUGLO</td>
<td>MP; Minister for Education</td>
<td>1996</td>
<td>Resigned after tribunal commenced hearing</td>
</tr>
<tr>
<td>32</td>
<td>ALBERT KARO</td>
<td>MP</td>
<td>1997</td>
<td>Lost office in election</td>
</tr>
<tr>
<td>33</td>
<td>PETER YAMA</td>
<td>MP; Minister for Transport &amp; Works</td>
<td>1997</td>
<td>Lost office in election</td>
</tr>
<tr>
<td>34</td>
<td>AMOS YAMANDI</td>
<td>MP</td>
<td>1997</td>
<td>Lost office in election</td>
</tr>
<tr>
<td>35</td>
<td>JERRY SINGIROK</td>
<td>Commander of Defence Force</td>
<td>1999</td>
<td>Guilty – dismissed (judicial review by leader unsuccessful)</td>
</tr>
<tr>
<td>36</td>
<td>MICHAEL GENE</td>
<td>Secretary, Department of Attorney-General; Attorney General</td>
<td>2000</td>
<td>Appointment revoked</td>
</tr>
<tr>
<td>37</td>
<td>JIM KAS</td>
<td>MP; Governor, Madang Province</td>
<td>2000</td>
<td>Guilty – dismissed (judicial review pending)</td>
</tr>
<tr>
<td>38</td>
<td>PETER PEIPUL</td>
<td>MP; Deputy Leader of the Opposition</td>
<td>2000</td>
<td>Guilty – dismissed (judicial review pending)</td>
</tr>
<tr>
<td>39</td>
<td>ANDERSON AGIRU</td>
<td>MP; Governor, Southern Highlands Province</td>
<td>2000</td>
<td>Pending</td>
</tr>
<tr>
<td>40</td>
<td>JOHN WAKON</td>
<td>Commissioner of Police</td>
<td>2000</td>
<td>Pending</td>
</tr>
</tbody>
</table>
Ombudsman Commission in Court

Chapter 7
Purposes of the Ombudsman Commission

Section 218 of the Constitution states:

The purposes of the establishment of the Ombudsman Commission are -

(a) to ensure that all governmental bodies are responsive to the needs and aspirations of the People; and

(b) to help in the improvement of the work of governmental bodies and the elimination of unfairness and discrimination by them; and

(c) to help in the elimination of unfair and otherwise defective legislation and practices affecting or administered by governmental bodies; and

(d) to supervise enforcement of Division III.2 (leadership code).
7. OMBUDSMAN COMMISSION IN COURT

OVERVIEW

The Ombudsman Commission continued to be involved in a wide range of court proceedings in 2000. For the first time the Commission was subject to defamation proceedings. This occurred in January after the Commission issued a press release about an investigation being conducted under the Leadership Code.

In what has become a familiar pattern the two leadership tribunal decisions in 2000 (Singirok and Kas, reported in Chapter 6) were subject to judicial review. There is no right of appeal against the decision of a tribunal. But those aggrieved can and almost invariably do apply for leave to seek judicial review.

Litigation surrounding the Commission's 1999 report into the purchase of The Conservatory building in Cairns by the Public Officers Superannuation Fund Board continued in 2000. Alfred Manase, trading as Pato Lawyers, commenced proceedings aimed at nullifying a recommendation that that law firm be banned from acting for the State for five years due to its role in the purchase.

The duty of the National Parliament to sit regularly – an issue apparently resolved in a Special Reference by the Ombudsman Commission under Section 19 of the Constitution in 1999 – was revisited in two separate proceedings in 2000. In June the Parliament applied to the Court under the so-called “slip rule” to have the Court’s decision in SCR No 3 of 1999 (see the 1999 annual report) set aside. In October the Governor-General, acting on the advice of the National Executive Council, brought a new reference that raises many of the same issues covered by the 1999 case.

Consistent with the classification of Court proceedings introduced in the 1999 annual report, cases in this chapter are dealt with as follows:

- cases resolved during the year;
- cases pending – those unresolved at the end of the year.

The two cases classed as resolved are Singirok v Leadership Tribunal and the State and Kas v Leadership Tribunal and the State. Each was an application for leave to seek judicial review of the decision of a tribunal recommending dismissal from office. Both cases, however, led to subsequent proceedings which were unresolved at the end of the year. In Singirok the application for leave was granted in August and a substantive judicial review was heard in December, with judgment reserved. In Kas the application was refused in October and this led to an appeal to the Supreme Court that had not been heard at the end of 2000.
### TABLE 7.1: Court cases 2000

<table>
<thead>
<tr>
<th>Name</th>
<th>Court</th>
<th>Dates</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CASES RESOLVED</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Singirok v Leadership Tribunal and the State (No 1)</td>
<td>National Court OS 141</td>
<td>March 2000 – August 2000</td>
<td>Application for leave to seek judicial review of leadership tribunal granted</td>
</tr>
<tr>
<td>Kas v Leadership Tribunal and the State (No 1)</td>
<td>National Court OS 570 of 2000 N 2010</td>
<td>October 2000</td>
<td>Application for leave to seek judicial review of leadership tribunal decision refused – appeal filed</td>
</tr>
</tbody>
</table>

| **CASES PENDING** | | | |
| National Provident Fund Board of Trustees v Ombudsman Commission | National Court OS 177 of 1991 | October 1991 – December 2000 | Judgment reserved |
| Kumbakor v Hitolo, Geno and Pentanu | National Court WS 40 of 2000 | January 2000 – December 2000 | Trial date to be set |
| Supreme Court Reference No 3 of 1999 – Special Reference by the Ombudsman Commission | Supreme Court SCR 3 of 1999 | June 2000 – December 2000 | Judgment reserved |
| Supreme Court Reference No 3 of 2000 – Special Reference by the Governor-General | Supreme Court SCR 3 of 2000 | September 2000 – December 2000 | Set down for hearing in early 2001 |
| Singirok v Leadership Tribunal and the State (No 2) | National Court OS 141 | August 2000 – December 2000 | Judgment reserved |
| Alfred Manase trading as Pato Lawyers v Ombudsman Commission, the Attorney-General and the State | National Court OC 582 of 2000 | September 2000 – December 2000 | Trial date to be set |
| Kas v Leadership Tribunal and the State (No 2) | Supreme Court SCM 11 of 2000 | November 2000 – December 2000 | Hearing date to be set |
CASES RESOLVED

SINGIROK v LEADERSHIP TRIBUNAL AND THE STATE (No 1)
National Court
Sheehan J
24, 31 August 2000

On 22 March 2000 the Governor-General Sir Silas Atopare dismissed Mr Jerry Singirok as Commander of the Defence Force in accordance with the recommendation of a leadership tribunal. The tribunal case is reported in Chapter 6. Two days after his dismissal Mr Singirok filed an application for leave to seek judicial review of the tribunal’s recommendation.

The application for leave was argued before Sheehan J on 24 August 2000. Messrs Moses Murray and Colin Mikail of Murray and Associates represented Mr Singirok. The Acting Solicitor-General, Mrs Hitelai Polume-Kiele, represented the tribunal and the State.

Mr Murray did not raise any challenge to the tribunal’s decision that the leader was guilty of misconduct in office. The challenge was confined to the penalty. It was argued that no reasonable tribunal could have recommended dismissal given the circumstances of the case; that the tribunal had not taken into account the good things Mr Singirok had done for the nation; that the tribunal had failed to consider Mr Singirok's honesty during 1997 in returning US$450,000.00 seized from Sandline personnel and which he had been keeping in his house for some months; and that the tribunal had in effect found Mr Singirok guilty of accepting a bribe from the Franklins company when he had not been charged with bribery.

The Acting Solicitor-General argued that the tribunal applied the relevant provisions of the Constitution and the Organic Law on the Duties and Responsibilities of Leadership when it addressed the question of penalty; that the tribunal had a strictly confined discretion; that it had exercised that discretion carefully and taken into account all relevant considerations; and that accordingly an arguable case had not been established.

On 31 August 2000 Sheehan J handed down an oral decision. His Honour said he was satisfied that Mr Singirok had the necessary standing to bring the application. He was also satisfied he had raised an arguable case and was therefore entitled to have his case heard in a substantive hearing. His Honour added that he did not intend to make any further comment on the merits of the application for leave to seek judicial review.

The case was put in the callover list to obtain a date for judicial review. The substantive hearing was held on 13 December 2000, also before Sheehan J, and is reported below as a case pending.
This was an application for leave to seek judicial review of various decisions of and surrounding a leadership tribunal that recommended the Governor of Madang Province, Mr Jim Kas, be dismissed from office. The Governor-General dismissed him on 5 October 2000. The tribunal case is reported in Chapter 6.

Mr Kas sought leave to review the following decisions:

- The tribunal’s decision of 14 September 2000, after accepting his guilty plea, in which it gave detailed reasons for its conclusion that he was guilty of misconduct in office.
- The ruling of 21 September rejecting an application that the tribunal should disqualify itself on the grounds of bias.
- A subsequent ruling of 21 September rejecting an application for a one-week adjournment.
- The decision on penalty of 27 September recommending that Mr Kas be dismissed.
- The formal recommendation to the Governor-General of 27 September.
- The dismissal of Mr Kas by the Governor-General of 5 October.

Mr Kas’s lawyer, Mr Greg Sheppard of Maladinas Lawyers, argued that the tribunal exceeded its jurisdiction. At the start of the case the leader, the Public Prosecutor and the tribunal agreed, and it had been determined by the tribunal, that its proceedings would be akin to criminal proceedings. When the leader pleaded guilty he was only accepting what was within the four corners of the single “charge” preferred against him and the statement of facts summarised in the Ombudsman Commission’s statement of reasons – nothing more. On 14 September the tribunal went beyond those four corners. It made findings of fact and law that had not been put to the leader. It therefore breached the rules of natural justice. Furthermore, the tribunal’s various statements condemnatory of the leader gave rise to a reasonable apprehension of bias.

Mr Sheppard argued that the tribunal should have conducted its proceedings in so far as dealing with the guilty plea was concerned as if it were a criminal court. It should have just announced that it accepted the guilty plea and found Mr Kas guilty of misconduct in office; and then invited submissions on penalty.

In the National Court Sakora J delivered a 27-page judgment, refusing leave. His Honour emphasised the fundamental principle that in considering leave for judicial review the court is not concerned with the merits of the decision but “the decision-making process itself”. He spelt out the purpose of the requirement to seek leave: to detect unmeritorious challenges “before they clog up the system”. He explained the four factors that the National Court must consider: sufficient interest; an arguable case;
exhaustion of other remedies; and whether there has been delay in making the application for leave. His Honour said there were no problems with three of the four prerequisites: Mr Kas had a sufficient interest, he had exhausted other remedies and there was no delay.

He then came to the crux of the case – whether there was an arguable case. Sakora J stated:

"I am of the firm view that the plaintiff has not discharged his onus to my satisfaction. He has, in my view, demonstrated to my satisfaction that there is an arguable case in respect of each of the decisions of the Leadership Tribunal that would warrant this court granting the leave sought to have substantive judicial review of those decisions."

His Honour noted that there were various “unfortunate and premature” remarks in the tribunal’s decision of 14 September. Nevertheless the tribunal’s decision was based on factual circumstances properly before it. The tribunal was quite justified in referring to these in its remarks.

As to the tribunal’s decision not to disqualify itself Sakora J stated:

"That decision necessarily follows from the comments. It is possible to say that the Tribunal may have been defensive, over-sensitive, questioning the bona fides of the plaintiff and his lawyer in the application to disqualify. The application itself is a normal procedure and, thus, was not wrong. The only proviso, in my view, would be that there was bona fides in the application which necessarily had to demonstrate proper legitimate grounds, and did not venture into personal attacks. Such an application is part of the legal process and procedure, useful in appropriate cases. Whilst the Tribunal may have appeared to be dealing with the plaintiff and his lawyer with "its back to the wall" defensively, it cannot properly be said that this attitude was or is demonstrative of bias or giving rise to reasonable apprehension of bias on the part of the Tribunal."

Sakora J seemed to be indicating that though criticism might be made of the tribunal for the manner in which it conducted itself that did not necessarily mean it was biased or that a reasonable apprehension of bias had arisen or it had committed a jurisdictional error.

His Honour considered the recommendation of 27 September 2000 and the actual dismissal from office effected on 5 October 2000 and found no arguable case of error of law. The application for leave was therefore refused.

On 16 November 2000 Mr Kas appealed to the Supreme Court against Sakora J’s judgment. At the end of 2000 a hearing date had not been set.
CASES PENDING

NATIONAL PROVIDENT FUND BOARD OF TRUSTEES v OMBUDSMAN COMMISSION
National Court
Sheehan J
8 October 1991

This case arose when the Ombudsman Commission launched a major investigation under the Organic Law on the Ombudsman Commission into the decision of the National Provident Fund Board to award a substantial contract for management of its superannuation fund to an overseas company.

The Board argued that it was not within the jurisdiction of the Ombudsman Commission. On the other hand, the Commission argued that the Board was a "governmental body" and therefore its conduct could be investigated.

At the end of 2000 judgment was still reserved.

TONY CHAN AND GOLDEN BOWL PTY LTD v OMBUDSMAN COMMISSION
National Court
Hinchliffe J
21 October 1997

Mr Chan and Golden Bowl Pty Ltd applied for judicial review of the Ombudsman Commission's preliminary report of the investigation into the awarding of contracts for the Port Moresby water supply project. The contracts for this project, worth in excess of K1 billion, were awarded in 1995. A report of the Commission's investigation was presented to the Parliament in October 1996. Both Mr Chan and his company were mentioned in the report.

The plaintiffs argued that the Commission did not have the power to report on private individuals and companies and had not given them an adequate opportunity to state their case and was biased.

SIR HUGO BERGHUSER v OMBUDSMAN COMMISSION
National Court
Hinchliffe J
21 October 1997

Sir Hugo Berghuser was also mentioned in the Water Report. He applied for judicial review and his case was argued, together with Mr Chan's case, before Hinchliffe J in October 1997.

At the end of 2000 judgment was still reserved.
KUMBAKOR v HITOLO, GENO AND PENTANU
National Court

This is a defamation action commenced by the member for Nuku Open, Mr Andrew Kumbakor.

On 11 January 2000 the Commission issued a press release on a leadership investigation concerning Mr Kumbakor. He was at the time the Minister for Rural Development.

The following week Mr Kumbakor filed a defamation writ in the National Court against the three members of the Commission. The writ sought an injunction restraining further publication of the statements in the press release and damages.

It was claimed the press release contained unfounded imputations and defamatory innuendoes. Further, Sections 17 and 20 of the Organic Law on the Ombudsman Commission prohibited the publication of such statements. Section 17 states the Commission must conduct every investigation in private. Section 20 of the Organic Law on the Ombudsman Commission obliges all members and officers of the Ombudsman Commission to maintain secrecy in relation to the affairs of the Commission. It was claimed that by breaching these obligations the defendants "injured the good name and standing of the plaintiff and induced others to shun, avoid or despise him as the Member for Nuku and a Minister of the Government".

Pato Lawyers, acting for Mr Kumbakor, filed a number of affidavits from people in Mr Kumbakor's electorate deposing that they previously respected him but after the press release they despised, shunned, avoided or gossiped about him.

On 12 May 2000 the Ombudsman Commission filed its defence. This explained why the press release was issued. The person who made the complaint about the conduct of the leader planned to issue a press release stating that the investigation of his complaint had been delayed by "bribery and corruption" in the Ombudsman Commission and the Police Fraud Squad. It was therefore decided that the most appropriate thing to do was to respond to the allegations made by the complainant immediately.

The Commission asserted that the press release was not defamatory. But if it was there were defences available under the Defamation Act that made the publication lawful. These were: the issuing of the press release was published in the course of an official inquiry under the Organic Law on the Duties and Responsibilities of Leadership; the press release amounted to fair comment respecting the conduct of a public officer in the discharge of his public functions; all the statements were true and it was for the public benefit that the press release be issued; and the press release was published in good faith for the public good. The Commission denied breaching Sections 17 or 20 of the Organic Law on the Ombudsman Commission.

At the end of 2000 a date for the trial had not been set.
SUPREME COURT REFERENCE No 3 OF 1999

Supreme Court
Amet CJ, Kapi DCJ, Los J, Sheehan J, Sakora J, Sevua J
28, 30 November 2000

This was a special reference to the Supreme Court under Section 19 of the Constitution by the Ombudsman Commission. Section 19 allows a limited number of authorities including the Ombudsman Commission to seek from the Supreme Court a binding opinion on any question relating to the interpretation or application of any provision of a Constitutional Law. In 1999, the Ombudsman Commission sought the Court's binding opinion on the application of Section 124(1) of the Constitution and a number of other provisions dealing with meetings of the Parliament.

Section 124(1) states:

The Parliament shall be called to meet not more than seven days after the day fixed for the return of the writs for a general election, and shall meet not less frequently than three times in each period of 12 months, and, in principle, for not less than nine weeks in each such period.

The reference was brought amid growing public concern about prolonged adjournments of the Parliament. In the parliamentary year that commenced on 16 July 1998 the Parliament had met for only 17 days when on 2 December 1998 it decided to adjourn until 13 July 1999, a period of more than seven months. If the Parliament were to meet on each of 13, 14 and 15 July 1999, the most it could sit was 20 days. This seemed substantially less than "nine weeks". The Ombudsman Commission was concerned that Parliament was not fulfilling its constitutional obligations and decided to refer the question to the Supreme Court.

There were two main issues in Supreme Court Reference No 3 of 1999:

1. Was Section 124(1) of the Constitution breached by reason of the adjournment of Parliament from 2 December 1998 to 13 July 1999?

2. If the Constitution was breached, can any action be taken to remedy that breach?

The Supreme Court's original decision was handed down in June 1999 and is reported in detail in the Ombudsman Commission's 1999 annual report. It was decided by a 6:1 majority that the Parliament breached Section 124(1). The following principles emerged:

- The Parliament has a duty to sit, in principle, for 63 days each parliamentary year.

- During 1998-1999 the Parliament was in clear breach of the Constitution.

- If the Parliament fails to comply with that duty proceedings may be commenced in the National Court by a person or authority (e.g. the Ombudsman Commission) to enforce the duty.

- The National Court can, in an appropriate case, issue orders requiring the Parliament to sit the necessary number of days.

Chapter 7
Ombudsman Commission in Court
In June 2000 the Parliament filed an application to have that decision set aside relying on the so-called “slip rule”.

The application was heard in November 2000 by a six-member Supreme Court bench. This comprised six of the seven Judges who dealt with the case in 1999. The only omission was Sir Robert Woods who had resigned in the interim.

Mr Camillus Narokobi of Narokobi Lawyers represented the National Parliament. He asserted that the majority of the Supreme Court made mistakes or “slips” in their June 1999 judgements. In particular, they overlooked the constitutional separation of powers between the legislature (the Parliament) and the judiciary (the Courts). This led to an injustice to the Parliament and to individual members of the Parliament. The Court should set aside the 1999 decision and allow reargument of the issues.

The National Executive Council was granted leave to be a party to the proceedings and was represented by Dr John Nonggor of Nonggor and Associates. Dr Nonggor supported Mr Narokobi’s submissions. The Court had misinterpreted Section 124(1) of the Constitution. The Parliament’s duty was only to meet for nine weeks “in principle”. The Constitution was just telling the Parliament what it should aim to do. If it didn’t meet the aim that was a matter for the Parliament. It did not follow that the Constitution was breached.

The Ombudsman Commission was represented by Counsel David Cannings and Senior Legal Officer Tabitha Suwae. The Commission argued that Supreme Court Reference No 3 of 1999 was a momentous constitutional decision carefully and correctly made and the application to set it aside puts in issue the principle of certainty in the law. There were no material mistakes made in the 1999 decision. The Parliament had had ample opportunity to make submissions on all aspects of the case. Fresh argument should not be permitted. Most of the arguments now being propounded were a rehash of arguments rejected previously. There was a handful of new arguments but they should not be permitted to be raised now, more than 12 months after the Court had given its decision. The jurisdiction to reopen a decision could only be exercised in rare and exceptional circumstances which did not exist here.

The Supreme Court finished hearing the slip rule application on 30 November 2000 and reserved its judgment.

SUPREME COURT REFERENCE No 3 OF 2000

Supreme Court

This is another Supreme Court reference filed under Section 19 of the Constitution. It also raises questions as to Parliament’s duty to meet regularly. It was filed in October 2000 in the name of Governor-General, Sir Silas Atopare, acting on the advice of the National Executive Council.

The questions raised are:
Question 1
What do the following words and expressions in Section 124(1) of the Constitution mean:-
(a) “meet”?
(b) “in principle”?
(c) “nine weeks”?

Question 2
If the words “nine weeks” in Section 124(1) refer to a defined number of days, what constitutes a day?

Question 3
If the Parliament is adjourned for lack of quorum on a “day” scheduled for it to “meet” within the meaning of those words as interpreted in answer to questions 1 and 2, is such adjourned day included in the number of days the Parliament is required to meet?

Question 4
Is it mandatory for the Parliament to “meet” for “nine weeks” within the meaning of these expressions as interpreted in answer to question 1?

Question 5
If the answer to question 4 is yes – is the Parliament in breach of Section 124(1) of the Constitution if it does not meet for the required period?

Question 6
If the answer to question 5 is yes, and if, within a period of 12 months of a Parliament year, the Parliament completes its business in less than “nine weeks” within the meaning of that expression as interpreted in answer to question 1, is it still in breach of Section 124(1) of the Constitution?

Question 7
If the answer to question 5 or 6 is yes – in either case, who is to be held responsible for the breach?

Question 8
Having regard to the answer to question 7, what sanctions are to be imposed on those held responsible for a proven breach?

Question 9
Having regard to Sections 99, 100 and 115 of the Constitution, do the Courts have jurisdiction to impose sanctions on those determined as being responsible in the answer to question 7?

Question 10
Having regard to Sections 99 and 115 of the Constitution, is the question as to the number of days and weeks Parliament meets in each 12 months a matter of Parliament procedure and is a legislative function and therefore not subject to judicial supervision?

Question 11
Having regard to Sections 99 and 115 of the Constitution, do the National and Supreme Courts have the constitutional authority to:-
(a) decide that the Parliament is in breach of Section 124(1) of the Constitution; and
(b) impose sanctions on Parliament or members of Parliament?

Many of the issues raised by this reference overlap those dealt with in Supreme Court Reference No 3 of 1999. Towards the end of 2000 the Chief Justice Sir Arnold Amet indicated in directions hearings that the Court would not hear the reference filed in October 2000 until after the Court handed down its decision on the “slip rule” application by the Parliament to have the 1999 decision set aside.
Mr Jerry Singirok's judicial review application was heard in the National Court on 13 December 2000 before Mr Justice Maurice Sheehan.

Mr Singirok was challenging the leadership tribunal decision of March 2000 that found him guilty of misconduct in office and resulted in his dismissal from office as Commander of the Defence Force. In August 2000 he was granted leave to bring the judicial review. (The tribunal’s decision is reported in detail in Chapter 6. The granting of leave for judicial review is reported earlier in this chapter.)

Mr Moses Murray and Mr Colin Makail of Murray and Associates argued Mr Singirok's case. Mr John Kumura of the Office of Solicitor-General appeared for the tribunal. The Ombudsman Commission’s Counsel, David Cannings, argued the case for the State on instructions from the Public Prosecutor.

At the start of the hearing Mr Murray objected to Mr Cannings’ appearance. He argued that the matter was no longer within the ambit of the Ombudsman Commission. Sheehan J stated however that he saw no reason why Mr Cannings should not be allowed to argue the case and ruled accordingly.

Mr Murray then made another preliminary application. He sought leave of the Court to allow Mr Singirok to give evidence in the witness box about the circumstances in which he had handed in US$450,000.00 cash he had obtained from Mr Tim Spicer during the height of the Sandline crisis. Mr Cannings objected on the ground of relevance. The objection was upheld. Sheehan J ruled that the subject matter of the case was the tribunal’s decision and its reasoning and whether the tribunal had made any error of law.

The main arguments put on Mr Singirok’s behalf were:

- The tribunal’s mind was “clouded” by its assessment that the money he received from a United Kingdom military goods supplier, Franklins, was a bribe.

- There was a breach of natural justice because Mr Singirok had not been charged with receiving bribes, but the tribunal found him guilty of this.

- The tribunal failed to take account of mitigating factors.

- The tribunal’s decision to recommend dismissal from office was so unreasonable no tribunal could have recommended dismissal.

The State’s arguments were:

- The tribunal was entitled to draw the inference that the leader had received bribes.
It could not possibly be said that the tribunal had made an “outrageous”
decision. Nor could it be said that the decision defied logic.

Most of the so-called mitigating factors were mere assertions that were not
proven in evidence.

The tribunal properly applied the penalty regime. It properly found there was
serious culpability.

The hearing lasted one day at the end of which Sheehan J reserved his decision.
Judgment was still reserved at the end of 2000.

ALFRED MANASE TRADING, AS PATO LAWYERS v OMBUDSMAN
COMMISSION AND THE ATTORNEY-GENERAL AND THE STATE
National Court

Pato Lawyers is suing the Ombudsman Commission and the Attorney-General over
the recommendations concerning it in the Cairns Conservatory Report. That report
was tabled in Parliament on 1 December 1999. Recommendation No16 was:

On 28 September 2000 Alfred Manase trading as Pato Lawyers filed an originating
summons in the National Court asserting amongst other things that Recommendation
No16:

• is unconstitutional; and

• was made in breach of the rules of natural justice; and

• is harsh or oppressive.

He is seeking declarations to the above effect and also damages.

At the end of 2000 the case had not been set down for trial.

KAS v LEADERSHIP TRIBUNAL AND THE STATE (No 2)
Supreme Court

This is an appeal against the refusal of leave by the National Court for judicial review
of the proceedings of a leadership tribunal. The refusal to grant leave is dealt with
earlier in this chapter under Cases Resolved. The sole ground of the appeal is that
Sakora J erred in fact and law in finding that Mr Kas had not established an arguable
case. It is contended on Mr Kas’s behalf “the evidence clearly demonstrated that there
was such an arguable case ripe for substantive hearing”.

At the end of 2000 a hearing date for the appeal had not been set.
Misappropriation of public funds is misconduct in office under the Leadership Code and a criminal offence under the Criminal Code.
Ombudsman Commission staff at the National Court Waigani

Chapter 7
Ombudsman Commission in Court
Villagers at Kerema Gulf Province listen to an Ombudsman Commission officer as he talks about the role and functions of the Commission. Field visits are part of the Ombudsman Commission external relations plan to define and improve the Commission's relationship with complainants, governmental bodies, public servants, Parliament, other constitutional institutions, the media and the People of Papua New Guinea.
Primary functions of the Ombudsman Commission

1. Investigation of alleged wrong conduct and defective administration by governmental bodies - Constitution, Sections 219(1)(a) & (b); Organic Law on the Ombudsman Commission.

2. Investigation of alleged discriminatory practices, by any person or body - Constitution, Section 219(1)(c); Organic Law on the Ombudsman Commission.

3. Investigation of alleged misconduct in office under the Leadership Code - Constitution, Section 219(1)(d); Organic Law on the Duties and Responsibilities of Leadership.
8. EXTERNAL RELATIONS

EXTERNAL RELATIONS PLAN

The Ombudsman Commission’s external relations plan aims to define and improve the Commission’s relationships – with complainants, governmental bodies, public servants, Parliament, other constitutional offices, the media and the People of Papua New Guinea. The plan began in 1999, but 2000 was the first full year of its implementation. The Commission set a number of targets for the external relations plan to achieve during the year.

TARGETS AND PERFORMANCE INDICATORS

Leaders to have a clear understanding of and support for the purposes and functions of the Commission.

Information seminars were conducted with Local-level Government members at the following centres:

1. Alotau, Milne Bay (April)
2. Kerema, Gulf (June)
3. Malalaua, Gulf (June)
4. Lae City Chambers, Morobe (July)
5. Wabag, Enga (August)
6. Wapenamanda, Enga (August)
7. Vunadidir, East New Britain (August)
8. Popondetta, Oro (October)

12 newsletters to be issued in 2000 as a communication medium to inform the Commission staff and external recipients about the Commission and what it does.

Twelve editions of the Newsletter were issued during the year including a bumper edition in December to commemorate the change of Chief Ombudsman from Simon Pentanu to Ila Geno.

12 schools to be visited as part of the Commission’s public awareness program.

Presentations (with overhead projector where electricity was available) were made at the following 20 schools:

1. Gollanai Top Up School, Milne Bay (April)
2. Alotau Primary School, Milne Bay (April)
3. Hagita High School, Milne Bay (April)
4. Cameron Secondary High School, Milne Bay (April)
5. Rabe Top Up School, Milne Bay (April)
6. Kerema High School, Gulf (June)
7. Ila Karacta Primary School, Gulf (June)
8. Malalaua High School, Gulf (June)
9. Karea Primary/Malalaua Vocational Schools, Gulf (June)
10. Wabag High School, Enga (August)
11. Kopen Secondary School, Enga (August)
12. Kokopo High School, East New Britain (August)
13. George Brown High School, East New Britain (August)
14. Kerevat National High School, East New Britain (August)
15. Malabunga Secondary High School, East New Britain (August)
16. Popondetta High School, Oro (October)
17. Martyr’s Memorial High School, Oro (October)
18. St Mary’s Primary School, East Sepik (October)
20. Vanimo High School, Sandaun (October)

Regular media releases.

28 media releases and editions of the Commission’s *Legal News* were issued by the Ombudsman Commission to the PNG media and selected Australian media outlets during the year. This compares with 22 media releases in 1999, nine in 1998 and four in 1997 (see graph below).

GRAPH 8.1: Keeping the people informed – media releases 2000

![Graph showing media releases from 1997 to 2000]

Issue of a Media Guide to assist journalists in their reporting of issues relating to the Ombudsman Commission.

A 26-page Media Guide was released in September. The purpose of the guide is to provide a concise and handy reference for all media outlets on the role of the Ombudsman Commission. During the month of September, education sessions were held with journalists in Port Moresby and Lae and with journalism students at UPNG. Copies of the Media Guide were distributed to all who attended and delivered to others who were unable to attend.

Issue of pamphlets, booklets and brochures about the role and functions of the Ombudsman Commission.

In addition to the Media Guide, a new pamphlet, *Making a Complaint*, was issued in March and more than 2500 copies of the pamphlet were distributed in the course of the Commission’s public awareness work.

The 1999 Annual Report was tabled in the Parliament on 30 November 2000.

Regular visits to provinces to receive new complaints, conduct investigations and undertake awareness activities.

Table 8.1 shows the various public awareness activities undertaken by the Ombudsman Commission as part of the external relations plan in 2000.

<table>
<thead>
<tr>
<th>Date</th>
<th>Place</th>
<th>Purpose</th>
<th>OC members/officers</th>
</tr>
</thead>
<tbody>
<tr>
<td>6-10 March</td>
<td>Namatanai and Konos, NIP</td>
<td>Following up on existing complaints, collecting new complaints, public awareness</td>
<td>Victor Milli, Bitura Mova</td>
</tr>
<tr>
<td>10-14 April</td>
<td>Alotau, MBP</td>
<td>Public awareness, complaints gathering, school visits</td>
<td>Raho Hitolo, Patrick Niebo, Thomas Kairi, Mavara Sere, Josh Meadows</td>
</tr>
<tr>
<td>19-23 June</td>
<td>Kerema and Malalaua, Gulf Province</td>
<td>Public awareness, complaints gathering, school visits</td>
<td>Patrick Niebo, Roslyn Pochelep, Royanna Minapi, Josh Meadows, Mavara Sere, Walis Imbal</td>
</tr>
<tr>
<td>23 June</td>
<td>Bomana CIS</td>
<td>CIS Commanders training course</td>
<td>Peter Kape, Dennis Siro, John Hevie, Laniert ToKiala</td>
</tr>
<tr>
<td>20 July</td>
<td>Lae City Chambers</td>
<td>Awareness seminar</td>
<td>John Nero, Richard Pagen, Oala Moi, Augustine Gaurim</td>
</tr>
<tr>
<td>31 July - 4 August</td>
<td>Wabag and Wapenamanda, Enga Province</td>
<td>Public awareness, complaints gathering, school visits</td>
<td>John Nero, Josh Meadows, Petrus Tiki, Thomas Waima</td>
</tr>
<tr>
<td>10 August</td>
<td>Police College, Bomana</td>
<td>Customs officers training course</td>
<td>Patrick Niebo, Conrad Turalir</td>
</tr>
<tr>
<td>22-25 August</td>
<td>Rabaul and Kokopo, ENBP</td>
<td>Public awareness, complaints gathering, school visits</td>
<td>Conrad Turalir, Josh Meadows</td>
</tr>
<tr>
<td>19 September</td>
<td>OC head office, Port Moresby</td>
<td>Media Guide training session with Port Moresby based journalists</td>
<td>Simon Pentanu, Ila Geno, David Cannings</td>
</tr>
<tr>
<td>25 September</td>
<td>UPNG Waigani campus</td>
<td>Media Guide training session with UPNG journalism students</td>
<td>Josh Meadows, John Nero</td>
</tr>
<tr>
<td>27 September</td>
<td>OC Momase regional office, Lae</td>
<td>Media Guide training session with Lae based journalists</td>
<td>Oala Moi, Augustine Gaurim, Esther Gaegaming, Josh Meadows</td>
</tr>
<tr>
<td>3-7 October</td>
<td>Popondetta, Oro Province</td>
<td>Public awareness, complaints gathering, school visits</td>
<td>Patrick Niebo, Royanna Minapi, Mavara Sere, Ivan Afo</td>
</tr>
<tr>
<td>6 October</td>
<td>OC head office, Port Moresby</td>
<td>Information session with UPNG law students</td>
<td>Ila Geno, David Cannings</td>
</tr>
<tr>
<td>9-20 October</td>
<td>Wewak and Vanimo, East and West Sepik Provinces</td>
<td>Public awareness, complaints gathering, school visits</td>
<td>Esther Gaegaming, Augustine Gaurim</td>
</tr>
<tr>
<td>14 October</td>
<td>Port Moresby</td>
<td>Media Guide training session with PNG FM news staff</td>
<td>John ToGuata, David Cannings, Josh Meadows</td>
</tr>
<tr>
<td>8 December</td>
<td>Police College, Bomana</td>
<td>Police internal investigators training</td>
<td>John Hevie, Andrew Ikufu</td>
</tr>
<tr>
<td>15 December</td>
<td>Bomana Police Training College</td>
<td>Police internal investigators training</td>
<td>Andrew Ikufu, Peter Peraki</td>
</tr>
</tbody>
</table>

Chapter 8
External Relations
SEMINARS, WORKSHOPS AND CONFERENCES, ETC

Speeches by members and officers of the Ombudsman Commission continued to be an important external relations tool for the Commission in 2000. Table 8.2 shows some of the public speeches given by the Commission during the year. Many of these talks were well covered in the media, effectively reaching many more people than just the original audience. A selection of speeches is included in the appendix.

### TABLE 8.2: Speeches by the Ombudsman Commission 2000

<table>
<thead>
<tr>
<th>Date</th>
<th>Speaker</th>
<th>Organisation</th>
<th>Topic</th>
<th>Venue</th>
<th>Audience</th>
</tr>
</thead>
<tbody>
<tr>
<td>22 March</td>
<td>Simon Pentanu</td>
<td>Transparency International</td>
<td>&quot;Practical steps the OC is taking in the fight against corruption&quot;</td>
<td>Islander Travelodge</td>
<td>TI members and supporters</td>
</tr>
<tr>
<td>15-26 May</td>
<td>Ila Geno</td>
<td>Centre for Democratic Institutions, Australian National University</td>
<td>&quot;Dealing with corruption in PNG&quot;</td>
<td>Workshops in Sydney and Canberra</td>
<td>Representatives of Asia-Pacific law enforcement agencies</td>
</tr>
<tr>
<td>7 June</td>
<td>Ila Geno</td>
<td>Rotary Club of Port Moresby</td>
<td>&quot;Corruption – its impact on society&quot;</td>
<td>Port Moresby Bankers College</td>
<td>30 young people, identified by their employers as potential future leaders</td>
</tr>
<tr>
<td>13 June</td>
<td>Raho Hitolo</td>
<td>Australian Institute of Administrative Law</td>
<td>&quot;The OC of PNG – Key features and current issues and trends&quot;</td>
<td>Australian Institute of Administrative Law forum, Adelaide</td>
<td>Other ombudsmen, the legal fraternity</td>
</tr>
<tr>
<td>11 July</td>
<td>Ila Geno</td>
<td>UN Population Fund</td>
<td>&quot;Masculinity and its impact on violence and conflict in PNG&quot;</td>
<td>Islander Travelodge</td>
<td>Panel discussion broadcast nationally on NBC Radio</td>
</tr>
<tr>
<td>22 September</td>
<td>Simon Pentanu</td>
<td>British High Commissioner</td>
<td>&quot;The role of the OC and challenges in the future&quot;</td>
<td>Residence of British High Commissioner</td>
<td>Heads of international missions in Port Moresby</td>
</tr>
<tr>
<td>30 October</td>
<td>Simon Pentanu</td>
<td>Durban, South Africa</td>
<td>&quot;Balancing the exercise of governmental power and its accountability – The role of the Ombudsman&quot;</td>
<td>International Ombudsman Institute</td>
<td>Other ombudsmen, representatives from the United Nations and the National Human Rights Institutions</td>
</tr>
</tbody>
</table>
INTERNATIONAL PARTICIPATION

In June Chief Ombudsman Simon Pentanu spent three weeks in Africa as a member of the Commonwealth Observer Group for the parliamentary elections in Zimbabwe.

Commonwealth Secretary-General Don McKinnon invited Mr Pentanu to join the Observer Group, which was constituted under the Millbrook Commonwealth Action Program adopted by the Commonwealth Heads of Government at their meeting in New Zealand in 1995. This program allows for the observation of elections by an Observer Group as a means of supporting democratic processes and institutions in Commonwealth countries.

The group included parliamentarians, ombudsmen and other eminent citizens from a variety of Commonwealth nations. Chief Ombudsman Pentanu was the only representative of Papua New Guinea in the group. The parliamentary elections in Zimbabwe were considered a crucial test for democracy in the southern African nation, which was the scene of much unrest in 2000.

In its editorial on Monday 12 June 2000 The National described Mr Pentanu’s involvement as “an excellent opportunity for one of our most senior and respected public figures to be exposed to another nation’s political and administrative problems and solutions – and all part of the process of enrichment of public life and experience which is so vital for PNG’s future”.

Upon his return to PNG the Chief Ombudsman gave a briefing on the trip to the media and representatives of international missions based in Port Moresby.

The costs of the trip were covered by the Commonwealth Secretariat.
Chief Ombudsman Pentanu briefs representatives of diplomatic missions in Port Moresby along with Ombudsman Commission members and staff upon his return from Zimbabwe.

LINKAGES WITH INTERNATIONAL AGENCIES

On 28 November 2000 the Ombudsman Commission approved a policy paper entitled *A strategy paper to develop linkages with external agencies to facilitate investigations 2001-2003*.

The aim of the strategy is to guide and assist the Commission in improving current linkages and creating new linkages with anti-corruption and other similar bodies. Effective linkages will bring benefits to the Commission and the other organisations involved.

Through this policy paper the Commission is seeking to enhance its own expertise and performance in conducting investigations.
The Committee is well aware that for it to fully perform its roles as mandated by the Constitution and for it to become a high-performing organisation, it requires a thorough revitalisation of its capacity through ongoing staff training and development.
Complementary functions of the Ombudsman Commission

1  Power to make special references to the Supreme Court on questions of constitutional interpretation - Constitution, Section 19.

2  (Implied) power to enforce the Basic Rights - Constitution, Section 57.

3  Power to advise (jointly with the National Executive Council) the Queen and Head of State, to consent to the Governor-General holding another office or position or engaging in another calling - Constitution, Sections 87(3) and (4).

4  Power to help administer the Organic Law regulating political parties, political donations and the protection of elections from outside or hidden influences - Constitution, Sections 129 and 130.

5  Power given to Chief Ombudsman to participate in judicial appointments etc, by virtue of his membership of the Judicial and Legal Services Commission - Constitution, Section 183; Organic Law on the Judicial and Legal Services Commission.
9. HUMAN RESOURCES DEVELOPMENT

During 2000 the Ombudsman Commission's Human Resources Development Unit undertook a number of activities in order to achieve the overall goals of the Commission's annual workplan, 'Ombudsplan 2000'. The Human Resources Development Unit had the full quota of staff in 2000, consistent with the Commission's overall structure.

TRAINING AND DEVELOPMENT ACTIVITIES

In January the Ombudsman Commission approved the Training and Development policy submission. Many of the Commission's staff development and training activities during the year derived from the policy. A five-year staff development plan is part of the policy document.

In consultation with the institutional strengthening project team's human resources adviser, the Commission's 2001 staff training and development needs were identified through workshops with directors and team leaders.

The training program has four levels of priority:

Level 1     Training that forms part of the institutional strengthening project in the areas of IT training, investigation skills and report writing.

Level 2     Other project related training activities.

Level 3     Non-project related training and development activities, funded by the Commission.

Level 4     Training that is not included in the 2001 program, but will be considered on an ad hoc basis as needs arise.

Staff development programs have tried to address the skill gaps and specific requirements of each officer. Special consideration has been given to maximising use of the Commission's resources, taking measures to ensure training and development is cost effective.

Table 9.1 shows the number of different training courses and programs undertaken by officers of the Commission in 2000. Officers are categorised by job group or position.
TABLE 9.1: Number of training programs undertaken in 2000, by position

<table>
<thead>
<tr>
<th>Position</th>
<th>Within PNG</th>
<th>Overseas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Managers (Salary Band 4)</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Team Leaders (Band 3)</td>
<td>39</td>
<td>4</td>
</tr>
<tr>
<td>Senior Investigators (Band 3)</td>
<td>42</td>
<td>0</td>
</tr>
<tr>
<td>Senior Administrative Officers (Band 2)</td>
<td>29</td>
<td>0</td>
</tr>
<tr>
<td>Investigators (Band 2)</td>
<td>16</td>
<td>0</td>
</tr>
<tr>
<td>Assessors (Band 2)</td>
<td>19</td>
<td>0</td>
</tr>
<tr>
<td>Legal Officer (Band 2)</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Assistant Investigators (Band 1)</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Clerical positions (Band 1)</td>
<td>9</td>
<td>0</td>
</tr>
<tr>
<td>Secretarial positions (Band 1)</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>Drivers/Security Officers (Band 1)</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>177</td>
<td>6</td>
</tr>
</tbody>
</table>

From that total of 183 training programs, 146 were undertaken by male officers, 37 by female officers.

The vast majority of training has been delivered in-country and in-house. Graph 9.1 shows the percentage breakdown of training programs attended within PNG for the various levels of officers. Positions are grouped into the four salary “bands” used by the Commission.

GRAPH 9.1: Training within PNG 2000

During the year, two senior managers and four team leaders attended training courses abroad. Overseas training was kept to a minimum in order to reduce the costs of airline tickets, accommodation and other related travel expenses. Five of the six overseas training courses were funded by the donor countries. The Commission is grateful for the sponsorship assistance received from AusAID, the British High Commission, the Commonwealth Secretariat and the Australian National University’s Centre for Democratic Institutions.
PERFORMANCE APPRAISALS

The Ombudsman Commission now has an improved performance appraisal system in place. The system has been developed as an institutional strengthening project activity. It is intended to improve the overall work performance of every staff member in the Commission through regular appraisal of the officer's performance, encouragement and disciplining, where necessary. Comprehensive sessions have been conducted with all officers, at Port Moresby and in the regional offices, on the objectives of the appraisal system.

The performance appraisal system aims to:

• encourage effective and efficient work performance in officers to enable them to achieve their respective divisional goals;
• identify performance gaps and close these gaps by training, counselling and other development activities; and
• provide a means to reward hard-working officers through annual salary increases.

RECRUITMENT

Office of Counsel

Under the organisational structure there were three senior legal officer positions and two legal officer positions which remained vacant for much of the year. The positions were advertised in May 2000. By the end of the year, two appointments had been made – one senior legal officer and one legal officer. It is anticipated the other positions will be filled early in 2001.

Vacancies

At the end of the year, a number of other positions were vacant or being filled by officers in an acting capacity. These were:

• Manager Corporate Services
• IT Manager
• IT Hardware Officer
• Investigator (Lae)
• Driver (Kokopo)

CONTRACT OFFICERS

There are 38 citizen officers on contracts within the Commission (thirty-five male and three female). Table 9.2 shows numbers of citizen contract officers at each pay point. These officers all have three-year employment contracts with the Commission.
A total of 34 officers received gratuity payments in 2000. The others will receive gratuity payments in 2001.

The Commission employed seven non-citizen contract officers in 2000. Table 9.3 shows the numbers of non-citizen contract officers at each pay point.

<table>
<thead>
<tr>
<th>Pay point (band)</th>
<th>N° of non-citizen contract officers</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.5</td>
<td>1</td>
</tr>
<tr>
<td>3.6</td>
<td>2</td>
</tr>
<tr>
<td>3.4</td>
<td>3</td>
</tr>
<tr>
<td>3.2</td>
<td>1</td>
</tr>
</tbody>
</table>

One officer has a three-year contract. The other six have 18-month contracts. Gratuity is paid at the expiry of the contract for those on 18-month contracts and annually for the officer on the three-year contract.

**SUCCESSION PLANNING**

In line with the training and development policy the Commission will embark on a succession-planning program in 2001. It is considered important to establish career path planning for staff. The Commission should be able to identify a pool of skilled and competent officers to select from to fill senior positions, should they become vacant. The first step of this program will be to identify officers considered to have the potential to go on to more senior positions within the Ombudsman Commission.
The Ombudsman Commissions institutional strengthening project is one of a wider series of projects aimed at strengthening justice institutions in PNG. They were developed following a feasibility study conducted in 1996. Early in 1997, AusAID called for capability statements from organisations interested in providing consultancy services for the design and implementation of a project to be known as the Papua New Guinea Ombudsman Commission institutional strengthening project.

After consulting the Ombudsman Commission, the project was awarded to a Canberra-based company, Educo Pty Ltd. The project commenced in November 1997 and is due to be completed in July 2002.
“The holders of responsible positions, the leaders, because of the positions they hold are very often in the public eye. How they conduct themselves is observed by many. For their part the people naturally expect great things of their leaders, who can set the tone for the whole nation and make a positive contribution to the national morale. For without being able to formalise their sentiments the citizens like to see embodied in their leaders all that is best in the nation; and they like to have leaders worthy of identifying themselves with. To this deep and traditional feeling, the leaders of the country must respond positively and truly. By doing so they will build up the confidence of the people, and give the nation additional solidarity, so that the citizens, inspired by the high standards set by their elected representative and officials, can feel one with their leaders in contributing to and consolidating the national ethos.”

In November 1997 the Ombudsman Commission embarked on an institutional strengthening project funded by the Australian Government (through AusAID) and the Government of Papua New Guinea.

The project is assisting the Commission to increase and strengthen its capacity to carry out exercises such as organisational structuring, recruiting, introducing new and improved work processes, planning and review of performance targets and regular monitoring and reporting of productivity. The expansion and upgrading of the Commission’s information technology network and a robust external relations program are prominent resultant features of the institutional strengthening project.

The project, sponsored by AusAID, is a cooperative venture owned by the Commission and assisted by professional services provided by Educo Pty Ltd. The project was extended in September 2000 until 31 July 2002 to enable completion of continued activities designed to strengthen the Commission. While the installation of the new IT network was to be delayed throughout 2000, pending the relocation of the commission to Deloitte Tower, agreement was reached towards the end of the year to install the network at Garden City. Further, the operations of Regional Offices were reviewed by the Project Team Leader and the Director (Complaints and Administrative Investigations Division). A new Internal Communications Policy was introduced, reflecting a desire by Commission staff for improved communications.

The Commission prepared Ombudsplan 2001 which formed the basis of the budget submission that year. The Commission was widely praised for its comprehensive plan, especially for the content which spelt out the Commission contribution to improved governance. Such was the impact, the Commission was allocated a substantial increase to its annual budget allocation.

The Commission also completed its annual reports for the period 1994-98 and for 1999 with all reports submitted to Parliament.

The project in consultation with the Commission prepared a Staff Development Plan for 2001-2002. That gave priority to project related training but contained – in response to staff needs – a range of Commission-sponsored training.

Throughout the year work processes introduced in previous years under the project have been incorporated in the Commission’s daily operations. Notably, the Commission’s external relations program gained momentum, exposing to the broader population, including in the provinces, much of the Commission’s work in an endeavour to educate people throughout Papua New Guinea on its role under the Constitution. The above achievements in 2000 positioned the Ombudsman Commission well for the implementation of key project activities such as the Information Technology (IT) installation and associated user training, scheduled for 2001.
Chapter 10
Institutional Strengthening Project
The kina shell is believed to be made from the pearl shell. The kina shell has played a prominent role in the highlands region as a form of currency when it was introduced to the area during the many trade networks that existed in the past between the lowlands and the highlands people. They were used in almost all forms of payments such as bride-price, compensation and for goods and services.

The toea shell is believed to be made from the trocus shell. The toea is normally worn as an arm band around the arms.

Both items were very valuable and were the replica of the morden currency of PNG. Therefore it was only appropriate to adopt their name for the present national currency as ‘kina and toea’ (K1=100toea).

Caption is provide by John Dop, the Principal Curator, Anthropology Department, Science and Research Division Papua New Guinea National Museum and Art Gallery;
PO Box 5860, Soroko 111
National Capital District, Papua New Guinea,
Phone (675) 325 5364
Fax (675) 325 1779
Email: pngmuseum@global.net.pg
Sections 213 and 214 of the Constitution provide for the establishment of the office of Auditor-General and the functions of that office.

Subdivision B—The Auditor-General.

213. Establishment of the office of Auditor-General.

(1) An office of Auditor-General is hereby established.

(2) The Auditor-General shall be appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving reports from the Public Services Commission and the Public Accounts Committee.

(3) In the performance of his functions under this Constitution, the Auditor-General is not subject to the control or direction of any person or authority.

214. Functions of the Auditor-General.

(1) The primary functions of the Auditor-General 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.

(2) Unless other provision is made by law in respect of the inspection and audit of them, Subsection (1) extends to the accounts, finances and property of—

(a) all arms, departments, agencies and instrumentalities of the National Government; and

(b) all bodies set up by an Act of the Parliament, or by executive or administrative act of the National Executive, for governmental or official purposes.

(3) Notwithstanding that other provision for inspection or audit is made as provided for by Subsection (2), the Auditor-General may, if he thinks it proper to do so, inspect and audit, and report to the Parliament on, any accounts, finances or property of an institution referred to in that subsection, insofar as they relate to, or consist of or are derived from, public moneys or property of Papua New Guinea.
Dear Sir,

SUBJECT: 2000 - AUDIT REPORT


I would like to extend my appreciation to your staff for the co-operation and assistance rendered during the course of the audit.

Yours faithfully,

GEORGE W. SULLIMANN
a/First Assistant Auditor-General
(Statutory Bodies & Special Audits)

For: Auditor-General
Dear Sir,

OMBUDSMAN COMMISSION -
AUDIT FOR THE YEAR ENDED 31 DECEMBER, 2000

In accordance with Section 8(4) of the Audit Act, 1989 (as amended), I have audited the accompanying receipts and payments of the Ombudsman Commission for the year ended 31 December, 2000 as set out on pages 1 to 4, submitted by the Commission under Section 63(4) of the Public Finances (Management) Act, 1995. The members of the Commission are responsible for the preparation and presentation of the receipts and payments and the information contained therein. I have conducted an independent audit of these receipts and payments in order to express an opinion on them.

My audit was conducted in accordance with generally accepted auditing practice to provide reasonable assurance as to whether the receipts and payments are free of material misstatement. My audit procedures included examination, on a test basis, of evidence supporting the amounts disclosed in the receipts and payments. These procedures have been undertaken to form an opinion as to whether, the receipts and payments are presented fairly and in accordance with generally accepted accounting practice and statutory requirements so as to present a view which is consistent with my understanding of the Commission's financial position.

The audit opinion expressed in this report has been formed on the above basis.
AUDIT OPINION

I now report that in my opinion:

(a) the financial statements are based on proper accounts and records; and

(b) the financial statements are in agreement with those accounts and records, and show fairly the state of affairs of the Ombudsman Commission as at 31 December, 2000.

Yours faithfully,

MARK M. WANI, MBE
Auditor-General
<table>
<thead>
<tr>
<th>1989 (Kina)</th>
<th>2000 (Kina)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,392,275 OPENING CASH BALANCE AT 1.1.2000</td>
<td>1,284,108</td>
</tr>
<tr>
<td><strong>ADD RECEIPTS:</strong></td>
<td></td>
</tr>
<tr>
<td>5,500,000 RECURRENT BUDGETARY GRANT ALLOCATION</td>
<td>5,579,000</td>
</tr>
<tr>
<td>100,000 ISP COUNTERPART GRANT FROM PNG GOVT</td>
<td>223,000</td>
</tr>
<tr>
<td>52,063 OTHER RECEIPTS</td>
<td>246,446</td>
</tr>
<tr>
<td>480 CHEQUES WRITTEN BACK</td>
<td>3,465</td>
</tr>
<tr>
<td><strong>7,044,818</strong></td>
<td><strong>8,051,901</strong></td>
</tr>
<tr>
<td><strong>LESS PAYMENTS:</strong></td>
<td></td>
</tr>
<tr>
<td>2,840,793 SALARIES AND ALLOWANCES</td>
<td>3,302,346</td>
</tr>
<tr>
<td>104,752 WAGES</td>
<td>155,994</td>
</tr>
<tr>
<td>77,422 LEAVE FARES</td>
<td>98,080</td>
</tr>
<tr>
<td>0 EDUCATION BENEFITS</td>
<td>7,500</td>
</tr>
<tr>
<td>298,475 TRAVEL AND SUBSISTENCE</td>
<td>327,446</td>
</tr>
<tr>
<td>120,629 UTILITIES</td>
<td>219,908</td>
</tr>
<tr>
<td>137,238 OFFICE MATERIALS &amp; SUPPLIES</td>
<td>116,654</td>
</tr>
<tr>
<td>13,303 OPERATIONAL MATERIALS AND SUPPLIES</td>
<td>21,726</td>
</tr>
<tr>
<td>52,316 TRANSPORT AND FUEL</td>
<td>74,635</td>
</tr>
<tr>
<td>0 ADMINISTRATIVE CONSULTATIVE FEES</td>
<td>97,394</td>
</tr>
<tr>
<td>239,254 RENTAL OF PROPERTY</td>
<td>361,621</td>
</tr>
<tr>
<td>43,250 ROUTINE MAINTENANCE</td>
<td>54,770</td>
</tr>
<tr>
<td>226,387 OTHER OPERATIONAL EXPENSES</td>
<td>297,840</td>
</tr>
<tr>
<td>42,232 EDUCATION AND TRAINING</td>
<td>33,231</td>
</tr>
<tr>
<td>941,396 GRATUITIES</td>
<td>469,586</td>
</tr>
<tr>
<td>8,314 SUBSCRIPTION FEES</td>
<td>11,101</td>
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<tr>
<td>122,078 OFFICE FURNITURE AND EQUIPMENT</td>
<td>94,741</td>
</tr>
<tr>
<td>51,540 PURCHASE OF MOTOR VEHICLES</td>
<td>0</td>
</tr>
<tr>
<td>193,369 REDUNDANCY EXPENSES</td>
<td>50,089</td>
</tr>
<tr>
<td>146,222 DECEMBER 1998 TAX PAYMENT</td>
<td>0</td>
</tr>
<tr>
<td>97,692 AusAID INSTITUTIONAL STRENGTHENING PROJECT</td>
<td>93,604</td>
</tr>
<tr>
<td><strong>5,760,712</strong></td>
<td><strong>5,897,987</strong></td>
</tr>
</tbody>
</table>

**1,284,108 CLOSING CASH BALANCE AT 31.12.2000.**

**CASH BALANCE IS REPRESENTED BY:**

| 3,213 COUNTER-PART FUNDING ACCOUNT (ANZ BANK) | 132,809 |
| 194,474 OPERATING ACCOUNT (BSP BANK) | (197,756) |
| 36,419 BUS. MANAGEMENT ACCOUNT (BSP BANK) | 154,663 |
| 1,050,000 FIXED TERM DEPOSITS (BSP BANK) | 1,338,504 |

**1,284,108**

[Signatures and dates]
OMBUDSMAN COMMISSION OF PAPUA-NEW GUINEA
NOTES TO AND FORMING PART OF THE ACCOUNTS FOR

STATEMENT OF RECEIPTS AND PAYMENTS

Statement of Receipts and Payments is prepared on a cash basis, which means that receipts excludes
sales and payments excludes expenditure incurred but in respect of which payment had not been
made at the balance date.

B. CONCILIATION OF FIXED ASSETS OF THE COMMISSION (KINA)

<table>
<thead>
<tr>
<th></th>
<th>Balances at 1 January 2000</th>
<th>Additions at cost during the year</th>
<th>Disposals during the year</th>
<th>Balances at 31 December 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor Vehicles</td>
<td>334,370</td>
<td>0</td>
<td>0</td>
<td>334,370</td>
</tr>
<tr>
<td>Office Furniture</td>
<td>1,106,239</td>
<td>113,952</td>
<td>0</td>
<td>1,219,851</td>
</tr>
<tr>
<td>Fittings and Office</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Machinery</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>1,440,663</td>
<td>113,952</td>
<td>0</td>
<td>1,554,255</td>
</tr>
</tbody>
</table>

3. Additions at Cost during the Year

(a) The purchase of Office Furniture, Fittings and Office Equipment during the year amounted to K113, 952 of which
K113, 951 has been expended out of the ISP Counterpart Fund for ISP related purposes.

(b) For Motor Vehicles, there were no purchases during the year, and thus the closing balance remains unchanged at
K334,370.

2. Disposals during the year

There were no disposals of Office Furniture and Equipment, or of Motor Vehicles, recorded during the year.

NOTE 3.

BANK ACCOUNTS.

Bank of South Pacific Limited.

The Ombudsman Commission has continued to maintain its three (3) existing accounts with BSP; the
"Operating Account" for day to day purposes; the "Business Management Account" for cash management
purposes and the fixed "Term Deposits" for investment of funds to meet Deloitte Tower Office partitioning and
furniture expenses.

For the Operating Account, the closing Cash Book balance is showing an over-drawn balance, whereas the
actual bank account balance was K54,216.08 Cr with K251,971.94 being aggregate balance of unpresented
cheques.

On the Fixed Term Deposit, the net Capital investment amount, including principal and interest amounts to
K1,938,504 in total, which includes the additional capital investment during the year of K100,966.
NOTE 5.
REDUNDANCY EXPENSES
Claims made by and paid to Officers in 2000, who were made redundant by the Ombudsman Commission.

NOTE 6
OMBUDSMAN COMMISSION OF PAPUA NEW GUINEA - RECEIPTS SCHEDULE FOR

<table>
<thead>
<tr>
<th>Date</th>
<th>Description of Funds Received (Kina)</th>
<th>Recurrent Budget Allocation</th>
<th>ISP Counterpart Funds</th>
<th>Interest &amp; Sundry Receipts</th>
<th>Total Funds Received</th>
</tr>
</thead>
<tbody>
<tr>
<td>13/1/00</td>
<td>January Budget Allocation (Part)</td>
<td>290,000</td>
<td></td>
<td></td>
<td>290,000</td>
</tr>
<tr>
<td>19/1/00</td>
<td>Interest on Business Management Account</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27/1/00</td>
<td>January Budget Allocation</td>
<td>183,300</td>
<td>12,288</td>
<td>183,300</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Remaining Portion)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8/2/00</td>
<td>February Budget Allocation</td>
<td>411,300</td>
<td></td>
<td></td>
<td>411,300</td>
</tr>
<tr>
<td>10/3/00</td>
<td>March Budget Allocation (Part)</td>
<td>274,100</td>
<td></td>
<td></td>
<td>274,100</td>
</tr>
<tr>
<td>23/3/00</td>
<td>March Budget Allocation</td>
<td>118,600</td>
<td></td>
<td></td>
<td>118,600</td>
</tr>
<tr>
<td></td>
<td>(Remaining Portion)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7/4/00</td>
<td>April Budget Allocation</td>
<td>422,500</td>
<td>23,000</td>
<td>422,500</td>
<td></td>
</tr>
<tr>
<td>14/4/00</td>
<td>ISP Counterpart Funds (Part)</td>
<td>75,000</td>
<td></td>
<td></td>
<td>75,000</td>
</tr>
<tr>
<td>19/4/00</td>
<td>Interest on Business Management Account</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25/4/00</td>
<td>ISP Counterpart Funds (Part)</td>
<td>75,000</td>
<td>794</td>
<td></td>
<td>75,794</td>
</tr>
<tr>
<td>3/5/00</td>
<td>May Budget Allocation</td>
<td>427,800</td>
<td></td>
<td></td>
<td>427,800</td>
</tr>
<tr>
<td>1/6/00</td>
<td>June Budget Allocation</td>
<td>433,900</td>
<td>427,880</td>
<td></td>
<td>861,780</td>
</tr>
<tr>
<td>7/7/00</td>
<td>July Budget Allocation</td>
<td>441,100</td>
<td></td>
<td></td>
<td>441,100</td>
</tr>
<tr>
<td>19/7/00</td>
<td>Interest on Business Management Account</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4/8/00</td>
<td>August Budget Allocation</td>
<td>449,900</td>
<td>3,417</td>
<td></td>
<td>453,317</td>
</tr>
<tr>
<td>7/9/00</td>
<td>September Budget Allocation</td>
<td>461,200</td>
<td></td>
<td></td>
<td>461,200</td>
</tr>
<tr>
<td>6/10/00</td>
<td>October Budget Allocation</td>
<td>461,200</td>
<td></td>
<td></td>
<td>461,200</td>
</tr>
<tr>
<td>19/10/00</td>
<td>Interest on Business Management Account</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27/10/00</td>
<td>ISP Counterpart Funds (Remaining Portion)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10/11/00</td>
<td>November Budget Allocation</td>
<td>461,200</td>
<td>125,000</td>
<td></td>
<td>586,200</td>
</tr>
<tr>
<td>8/12/00</td>
<td>December Budget Allocation</td>
<td>744,900</td>
<td></td>
<td></td>
<td>744,900</td>
</tr>
<tr>
<td>29/12/00</td>
<td>Aggregate interest income on FTDs ***</td>
<td></td>
<td></td>
<td></td>
<td>222,499</td>
</tr>
<tr>
<td>29/12/00</td>
<td>Sundry Receipts and Acquitals</td>
<td>4,481</td>
<td></td>
<td></td>
<td>4,481</td>
</tr>
<tr>
<td>29/12/00</td>
<td>Cheques Written Back</td>
<td>3,455</td>
<td></td>
<td></td>
<td>3,455</td>
</tr>
</tbody>
</table>

**TOTAL** 5,579,000 223,000 249,901 6,059,901

*** During the year FTD's were rolled-over and reinvested at maturity with interest income capitalised.

End of Notes to and forming part of the Accounts for the year ended 31st December 2000
Appendices

The Ombudsman Commission tries to reach out to people of all walks of life, making them aware of their rights and obligations and how the Ombudsman Commission can help them make an effective contribution to the country.
“The success of a nation, we believe, depends ultimately on its people and their leaders. No amount of careful planning in governmental institutions or scientific disciplines will achieve liberation and fulfilment of the citizens of our country unless the leaders - those who hold official positions of power, authority or influence - have bold vision, work hard and are resolutely dedicated to the service of their people.”

As the nation and people celebrate 25 years of existence as an independent sovereign state, so does the Ombudsman Commission. It is institutions like the Parliament, the Judiciary and the Ombudsman Commission that give the country its democratic heart and promote the core values that are found and enjoyed in a democracy.

Nowhere are these inspirational features more overtly espoused than in our Constitution.

Being a “home grown” document, our Constitution has a weight, texture and a good flavour and character about it. Although not enough of our leaders keep a copy with them, it makes a pleasant and reassuring presence in the hand.

The Constitution is a document that talks without speaking. It is a living document that expresses the human values and the spirituality of a people who came of age, in the modern political sense, on 16 September 1975. That is why the Ombudsman Commission will never tire of defending and upholding the authority of the Constitution when it has to.

The Ombudsman Commission was built into the Constitution to be an independent institution that would be a vital cog in the system of checks and balances put in place to regulate the governance of Papua New Guinea.

The Commission is a unique institution. Twenty-five years on it is still doing pioneering work in world terms – in developing the Leadership Code and being a “watchdog” of not only leaders, but the whole working of the Constitution.

The Constitution gives the Commission a variety of very clear responsibilities. But the one that has, naturally, aroused the most interest, attention and controversy over the years is the task of enforcing PNG’s unique Leadership Code.
This task has seen the Commission undertake numerous investigations and has resulted in a total of 38 leaders being referred to the Public Prosecutor since Independence. Most of them were dismissed from office, fined, warned or reprimanded after being found guilty by leadership tribunals. Others resigned before the tribunal could reach a verdict, thereby escaping punishment as leaders under the Leadership Code.

But despite the many referrals and court actions, the fact remains that the Ombudsman Commission is not an adversarial body. The Commission is not an anti-corruption agency like those in other countries. It is not a body that conducts criminal investigations. Administering the Leadership Code is very different from enforcing a criminal code.

That is why the Commission has been keen to promote an approach that is more elaborate than combative, trying to get the message across that it exists to assist, advise and, wherever possible, guide our country’s leaders.

Over the years many leaders have been apprehensive about coming into contact with the Commission.

I recall how the process of serving Right To Be Heard notices used to be quite a cat-and-mouse game. Some leaders went to great lengths to avoid the Commission’s officers. Thankfully those days are gone and contact between the Ombudsman Commission and leaders is more dignified these days.

Certainly, there have been some trying times for the Ombudsman Commission since Independence. But the occasions are too few to recall when it has been found wanting.

After 25 years in the hurly-burly of public life in PNG, the Commission has managed to retain its independence, exactly as the constitutional planners intended. This is a very significant achievement and something all Papua New Guineans can be proud of.

The Commission is often said to be too slow, and it has been accused of being cumbersome and inefficient. But it is fiercely and proudly independent. It has never allowed any government to dictate its agenda and, thankfully, successive governments have respected its independence. When leaders have challenged its procedures in court, the Commission has always vigorously defended the constitutionality and fairness of its decisions.

One of the areas that has been a continual concern to the Commission and has been the focus of much disdain from the wider community and international financial institutions, has been the blatant, unabated and obtrusive misapplication of MPs’ discretionary funds over the years.

By and large, rural areas have very little to show, in terms of physical and material evidence, for the many millions of kina that have been disbursed or gobbled up by leaders given a virtual free license to shuffle this money with both hands.

It has raised the fundamental question of whether our political leaders really understand what their role is. Three observations can be made.
First, the way that the dreaded “shush funds” have been used and monitored is an example of our Parliamentarians not properly comprehending their role as policy makers and legislators. Many have shown they want to control every aspect of governance, trying to be legislators, implementers, administrators and, it seems at times, even project managers.

In the case of Governors – and the country has 20 of them to consider – their role of being simultaneously national parliamentarian and provincial governor has created too many handsomely remunerated vagabonds.

Secondly, it is a sad indictment on the leadership of our country that we have stumbled and begun to lose our way forward after such a good start, both politically and economically, in the first dozen or so years after Independence.

A disproportionate amount of Parliament’s time and attention is devoted to parochial, mostly self-serving political issues, rather than to debating matters of importance to the nation.

Meetings, sittings and sessions – until the watershed decision of the Supreme Court in *Supreme Court Reference No. 3 of 1999* – were less frequent with each new Parliament, resulting in the art of parliamentary debate losing its quality and clout. This is tantamount to an abuse of process as it deprives the good parliamentarians from being seen, heard and noticed, as they should be.

It is even more serious and disconcerting when a Parliament adjourns for half of the year. It is an abrogation of responsibilities on the part of the Executive, which determines the business of Parliament, and on the part of the Speaker, who is bestowed with a duty of trust by his position as Chairman presiding over the People’s house.

The third point follows on directly from this. It is the question of the role of Parliament vis-à-vis the Executive. Increasingly, the constitutional and conventional role of Parliament has been contemptuously reduced to one of rubberstamping Executive decisions.

This often begs the question of the legitimacy and relevance of Parliament. We are at a juncture at which the Speaker must do more than just rule on nonsensical points of order. He must wave the Parliament mace and rally parliamentarians to protect the Parliament’s role and position from being usurped by the Executive.

Observing from the outside these days, it appears that we have more politicians than parliamentarians in Parliament today. To me, a politician is someone who spends more time talking than thinking. Someone to whom everything suddenly becomes a priority before the elections.

A parliamentarian is a member of that dying species who is genuinely concerned with defending the core values of our democracy: constitutional authority, the rule of law, the separation of powers, regard for human rights and dignity, tolerance, freedom of expression and all the other values and principles that can be found in the Constitution.
All leaders should remember that in the fullness of time we will not be judged by our popularity, our academic qualifications or even our character. But by our record of achievement. By the positive changes we have managed to bring to society.

Life, after all, is an endlessly creative experience which we ourselves shape by the decisions we make. Twenty-five years into Papua New Guinea’s nationhood, many of us as leaders should be prepared to serve, rather than be served all the time.

We are very fortunate that the Ombudsman Commission already exists in our Constitution and our country. If we did not have such an institution and then discovered the need for one, I doubt whether it would be possible to create one now. In this regard the Commission is like a good insurance policy. It has proved to be an institution for all seasons.

The Ombudsman Commission is one of the best and most durable gifts our farsighted pre-Independence leaders gave the nation in September 1975. Some of these leaders, such as Sir Michael Somare, Sir John Momis, Sir John Kaputin and Sir Pita Lus, are still serving in Parliament today. And it is perhaps fitting that a man who assisted the constitutional planners in another capacity, Mr Bernard Narokobi, is now Speaker of the Parliament, 25 years later.

On a personal note, I must pay tribute to those who served in the Commission before me and set the Ombudsman Commission ship off on an even keel. In particular my two predecessors, Sir Ignatius Kilage and Sir Charles Maino.

Despite the stormy weather we have encountered along the way, both the Ombudsman Commission and Papua New Guinea as a nation have much to be grateful for and proud of.
CORRUPTION – ITS IMPACT ON SOCIETY

BY

OMBUDSMAN ILA GENO

ROTARY YOUTH LEADERSHIP AWARD COURSE
PORT MORESBY

7 JUNE 2000

I appreciate the opportunity to speak to a group of motivated and intelligent young people, such as yourselves, on this important question of what impact corruption has on our society.

Let me start with a story from my own childhood. When I was a young boy, growing up in Rigo, I used to enjoy collecting coconuts from the trees around where we lived – trees planted by my father and grandfather. My father, always a strong Christian man, was very strict about us not taking coconuts from other people’s trees.

Even when we were collecting brown coconuts from off the ground, we were prohibited from collecting coconuts that were lying on our family’s land if they had fallen from other people’s trees. He told me to throw them back onto our neighbour’s side.

My father’s words emphasised the importance of land in Papua New Guinea, but also the importance of boundaries and respecting them.

Corruption begins to creep into society when people in positions of power choose to ignore or bend or overstep the boundaries that are set out for them.

Personally, I have never had difficulty accepting the boundaries I have been given to work within. We pick up many of our principles and approaches to life from our parents, so perhaps my father’s words about collecting coconuts have had an impact on me as I have gone on in life. After finishing school I joined the Police College and I can honestly say I had no problems in complying with the discipline and rules of the police system.

I’m sure that you would all be familiar with boundaries in your own lives. You would have encountered school rules, road rules, deadlines for essays and projects at University, as well as work schedules, timetables and employment contracts.

I believe that the ability to understand rules and boundaries is an essential quality of leadership.

When people violate rules and break the boundaries they are supposed to be working within, they start operating outside the rule of law. This is the beginning of corruption. When leaders start to behave in this way, it does not take long before others start to follow their example. The impact on society as a whole is profound.
THE OMBUDSMAN COMMISSION’S PLACE IN OUR SOCIETY

In Papua New Guinea, we have a diverse and multi-ethnic society. We are well-known for having over 800 languages and probably as many separate and distinct cultures. Some PNG cultures are based on a patrilineal system of inheritance; others are clearly matrilineal. We have a complex, ancient and rich heritage.

But as a nation, we are still relatively young. It was only 25 years ago that this diversity of cultures was brought together to form a single nation, with one key document – the Constitution of the Independent State of Papua New Guinea – being the unifying force. In many respects the Constitution forms the foundation for the modern culture of Papua New Guinea.

The Ombudsman Commission is an independent institution established directly by the Constitution. It is an integral part of the system of checks and balances that have been put in place by the Constitution to regulate the governance of Papua New Guinea. The Commission consists of a Chief Ombudsman and two Ombudsmen.

At present the Chief Ombudsman is Mr Simon Pentanu (from Bougainville) and the two Ombudsmen are Mr Raho Hitolo (from Hanuabada) and myself.

In general terms, the Commission has been established to:

- Guard against the abuse of power by those in the public sector;
- Assist those exercising public power to do their jobs efficiently and fairly; and
- Impose accountability on the country’s leaders by enforcing the Leadership Code.

In its hierarchy of written laws, Papua New Guinea has a number of Organic Laws. These are special statutes that have been enacted to elaborate on the key principles of law laid down in the Constitution. Organic Laws have a higher status than Acts of Parliament. If there is any inconsistency between the provisions of an Act and those of an Organic Law, the latter will prevail. If there is some inconsistency between the Constitution and an Organic Law, the Constitution will always prevail.

The investigative powers of the Ombudsman Commission are exercised under the Constitution and under two Organic Laws:

- The Organic Law on the Ombudsman Commission; and
- The Organic Law on the Duties and Responsibilities of Leadership.

RURAL DEVELOPMENT FUNDS

Another Organic Law that has had a big impact on the work of the Ombudsman Commission is the Organic Law on Provincial Governments & Local-Level Governments, introduced in 1995. Provisions in this Organic Law allow Parliamentarians to have direct involvement in the administration of the budget funds earmarked for rural development. These discretionary funds make up about K143 million of the national Budget every year.
They have gone under a variety of different names (Electoral Development Funds, Rural Action Program etc), but have become widely known as MPs' "slush funds".

They have been notoriously misused and have been the source of many allegations of corruption that the Ombudsman Commission has had to investigate.

This money is meant to be used for creating rural infrastructure that will benefit all people in rural areas — things like roads, bridges, water supply systems, remote stations and clinics. Many of you would have experienced first-hand the terrible condition of many important roads in the Central Province, leading to and from Port Moresby.

There are rules and procedures set down for the distribution of these funds, but they have proved inadequate.

Instead of being spent on essential infrastructure for the service of the electorate, often the discretionary funds have been used to buy vehicles and boats or to help set up small businesses or even to pay for funerals and school fees. Although some of these might seem worthy things to spend money on, they are not what the rural development funds are intended for.

Also, there is plenty of room for corruption to creep in when cars and banana boats are bought for community groups with this money. Instead of benefiting the whole community, they can end up being used by just a small number of people — often supporters or wantoks of the politician who supplied them!

The Westminster system of parliamentary democracy that PNG inherited from Britain (via Australia) requires a strict separation of powers between the legislature, the bureaucracy and the judiciary. Doesn't the involvement of MPs in the administration of these funds blur the lines separating the role of the legislature and the role of the bureaucracy? Who should be administering the policies of government — politicians or bureaucrats?

Under provisions of this Organic Law, politicians are the chairpersons of the Provincial Planning & Budget Priority Committee for their electorate. In short, MPs have a big say in how and where these rural development funds are spent in their electorate. This arrangement places MPs in a clear conflict of interests and, in my view, there is a strong argument to say it is un-constitutional.

Time and time again we have seen MPs directing these discretionary funds towards the areas within their electorate where they want to increase their percentage of the vote at the next election. The disbursement of the money often seems motivated not so much by the needs of the people as by the desire of the MP for re-election.

Our first-past-the-post voting system is partly to blame. In the last election many electorates had ten, fifteen or more candidates. The result of this was that many successful candidates won well below 50% of the vote. Some MPs were elected to Parliament with the support of only seven percent of the eligible voters in their electorate!
When these same Parliamentarians have such wide-ranging discretionary powers to use the Rural Development funds, it is inevitable that some of this money ends up being used for "vote buying" instead of for its intended purpose.

I believe the provisions of the Organic Law, that allow so much political influence in the disbursement of these funds, have created an environment in PNG in which a corrupt culture can grow. This is obviously a major concern to the Ombudsman Commission.

The administration of the discretionary funds has failed mainly due to excessive political interference in the process.

Some politicians argue in defence of the slush funds that public servants are slack and incompetent and not capable of delivering the goods and services to the people. Thus the politicians argue they must have direct involvement in administering the public funds – to make sure they get to the people.

I believe politicians would do far better by taking remedial action to fix the problems that exist within the public service, than to overstep the boundaries by managing the disbursement of the funds themselves. There are legitimate ways politicians can deal with a real or perceived slackness within the bureaucracy. They can re-structure, re-organise and re-train public servants and ensure good corporate management measures are in place. This would be the responsible way to deal with the problem.

‘LEADERSHIP THROUGH ACCOUNTABILITY’ PROJECT

You may wonder what the Ombudsman Commission is doing about the apparent lack of accountability in the system for disbursing discretionary funds?

When the Prime Minister, Sir Mekere Morauta, handed down his first budget in December 1999, he expressed his dislike of the slush funds, saying he wished they had never been introduced. But when questioned on whether he would get rid of them in the budget, he admitted that to do so would be "political suicide".

Prompted by the Prime Minister’s comments (and by years of investigating leaders who have misused the funds), the Ombudsman Commission launched a new project later that month, aimed at improving the accountability of the schemes.

We wrote to each member of Parliament to canvass their views and obtain their input to a discussion paper and set of draft guidelines for the use of Parliamentarians’ discretionary funds.

In the letters we asked Parliamentarians to identify two aspects of the present discretionary funds system they believe are desirable, as well as two or more areas where the system could be improved.

Having received a reasonable response, the next step is to prepare a discussion paper which will be the focus of a public forum with Parliamentarians and officials who administer the funds to discuss the proposed guidelines and surrounding issues.
These discussions and consultations may be used to help the Ombudsman Commission promulgate a fresh set of guidelines on the use of discretionary funds. These could be issued to all members of Parliament to ensure they use the funds for their correct purpose – for developing infrastructure in the electorates that is for the benefit of the people and the whole society.

The guidelines could be issued under Section 27(4) of the Constitution. Non-compliance would leave MPs open to investigation by the Ombudsman Commission and liable to be referred to the Public Prosecutor for prosecution through the leadership tribunal process.

This is one of the steps the Ombudsman Commission is taking to improve PNG’s country leadership and country management and to lessen the potential for corruption.

COOPERATION BETWEEN ANTI-CORRUPTION AGENCIES

Another step relates to the moves towards better co-operation between law enforcement agencies. For years, there has been virtually no formal communication between PNG’s various law enforcers and anti-corruption agencies. This has actually worked to the advantage of those who attempt to defraud public money and escape detection.

The proposed establishment last year of NACA – the National Anti-Corruption Agencies – is a big step forward for a well-coordinated fight against corruption in PNG.

NACA will involve the Ombudsman Commission, the Police Fraud Squad, the Auditor-General, the Department of the Attorney-General, the Public Prosecutor, the Department of Finance’s Inspection Branch and the Department of Provincial & Local Level Government Affairs.

Representatives of these groups are currently having regular meetings, and there is now a new spirit of cooperation and a desire to work together to root out corruption from PNG society.

I believe that through good communication and a coordinated approach, the NACA alliance will make significant steps towards achieving this goal.

CONCLUSION

There is no doubt that we live in a land that is rich in many ways – natural resources, human resources and a strong cultural heritage. But we look around and we see so many Papua New Guineans living in poverty and not receiving the goods and services they should be getting.

This is the impact of corruption on our society. And this is the challenge that faces the Ombudsman Commission and all of us who want to see good country leadership and good country management in PNG.
THE OMBUDSMAN COMMISSION
OF PAPUA NEW GUINEA

KEY FEATURES AND CURRENT ISSUES AND TRENDS

BY

OMBUDSMAN
RAHO HITOLO

AUSTRALIAN INSTITUTE OF ADMINISTRATIVE LAW FORUM

ADELAIDE

13 JUNE 2000

FEATURES OF THE OMBUDSMAN COMMISSION OF PNG

The Ombudsman Commission is an independent institution established directly by the Constitution of the Independent State of Papua New Guinea. It forms an integral part of the system of checks and balances that have been put in place by the Constitution to regulate the governance of Papua New Guinea. The Commission consists of a Chief Ombudsman and two Ombudsmen.

There are two special features of the Ombudsman Commission that set it apart from equivalent institutions in other countries:

1 Diversity of functions

The Ombudsman Commission performs a range of different functions, which in other countries are dealt with by different institutions. We have no industry-based ombudsmen or provincial ombudsmen in PNG. The Ombudsman Commission has very broad powers and a very broad jurisdiction.

2 Constitutional independence

The Commission’s independence is guaranteed by the Constitution, in a number of different ways. In many other countries, ombudsman institutions do not have this special status.

In general terms, the Commission has been established to:

• Guard against the abuse of power by those in the public sector;

• Assist those exercising public power to do their jobs efficiently and fairly; and

• Impose accountability on the country’s leaders.

These roughly translate to three major functions:
1 Traditional Ombudsman role

The first function allows the Commission to perform the role of a "traditional" ombudsman by investigating, either on complaint or its own initiative, administrative practices and decisions of governmental bodies which may be unreasonable, unjust, oppressive etc.

2 Discriminatory Practices

Under the second function, the Commission performs the role of what in other jurisdictions are often called anti-discrimination or equal-opportunity commissions. In this context, its jurisdiction is not restricted to the investigation of governmental bodies. Though the Commission was established primarily as a means of imposing accountability and control on the public sector, this peculiar area of jurisdiction gives it an extra dimension in terms of its relationship with the private sector.

3 Leadership Code

Under its Leadership Code jurisdiction, the Commission performs the role of conflicts-of-interests commissions in other countries. But even that does not give a full picture of its responsibilities. In the absence of an independent, adequately resourced anti-corruption body, it has also become a de facto anti-corruption agency. It has been able to combine its extensive powers under the Leadership Code, together with the exercise of powers as a traditional ombudsman institution, in the overall fight against corruption in PNG.

LEGAL FRAMEWORK

In its hierarchy of written laws, Papua New Guinea has a number of Organic Laws – special statutes that have been enacted to elaborate on the key principles of law laid down in the Constitution. Organic Laws have a higher status than Acts of Parliament. If there is any inconsistency between the provisions of an Act and those of an Organic Law, the latter will prevail. If there is some inconsistency between the Constitution and an Organic Law, the Constitution will always prevail.

The investigative powers of the Ombudsman Commission are exercised under the Constitution and under two Organic Laws:

- The Organic Law on the Ombudsman Commission; and
- The Organic Law on the Duties and Responsibilities of Leadership.

The fact that two Organic Laws have been specifically enacted to provide for Ombudsman Commission investigations reflects the very high status of such investigations. It also has significant practical consequences. If compliance with a direction issued by the Commission under one of its Organic Laws would involve the breach of an Act of Parliament, the Commission’s direction will have precedence.

The Organic Laws put the Commission in quite a strong position if it faces any resistance during the course of an investigation.
Any person can make a complaint about any matter within the jurisdiction of the Commission. The Commission is obliged to consider every complaint it receives. But the Organic Laws give it the discretion to choose whether or not to investigate and whether or not to continue an investigation.

The Commission is also entitled to investigate matters on its own initiative. Not all ombudsmen have this power.

CURRENT ISSUES AND TRENDS

Switching of Ministers and Departmental Heads

The Ombudsman Commission has faced some difficulties in its communication with government departments in recent years because of the never-ending “revolving door” problem at the top of many departments and statutory bodies.

Since the election of Bill Skate’s Government in 1997, the problem has been particularly pronounced. It was hoped that things would stabilise on this front when the Morauta Government came to power in July 1999, but the signs are not promising – there have been five or six Cabinet reshuffles since Sir Mekere became Prime Minister less than a year ago.

The Ombudsman Commission is at its most effective in resolving complaints when the lines of communication with departments are open and there is a good working relationship in place. This is extremely hard to establish when Ministers and Departmental Secretaries keep changing.

Institutional Strengthening Project

In November 1997, the Ombudsman Commission embarked on a three-year institutional strengthening project with Australian Government funding through AusAID. The project’s various activities are now into the implementation stage. It has been decided to extend the project by one year and it is now expected to finish at the end of 2001.

The project is helping in many areas, such as:

- Improved organisational structure;
- New, more efficient work processes;
- Human resources development to guide recruitment, training and terms and conditions of staff;
- Improved planning and reporting cycles;
- Revised approaches to the use of information technology;
- An ambitious and wide-ranging external relations plan; and
- Production of core documents such as an induction handbook and a manual of professional doctrine.

An important aspect of the Commission’s Institutional Strengthening Project is to do with external relations. This includes working on developing closer relationships with
senior decision-makers in the various departments and bodies that come under the Ombudsman Commission’s jurisdiction.

Parliament’s long adjournment and the Supreme Court reference

One of the major constitutional issues the Ombudsman Commission has had to deal with in recent years is the trend for the Parliament to take long, extended breaks. This inevitably has the effect of putting more pressure on the Ombudsman Commission, as the Parliament is unable to perform its role as an instrument of accountability. At these times it is not able to provide an adequate check against the “excesses” of the executive.

It often seems that these extended breaks are taken, and are carefully timed, so as to allow the Prime Minister of the day to avoid a motion of no confidence. One example of this was in December 1998, when the Parliament decided to adjourn for seven months.

The Ombudsman Commission believed that this adjournment was unconstitutional, (the Constitution states that the Parliament must sit for a total of “nine weeks” a year.) We took the matter to the Supreme Court and a seven-member bench of the Supreme Court agreed, six-to-one, with the Ombudsman Commission that nine weeks equals 63 days that Parliament must sit in a year and that the long adjournment was, therefore, unconstitutional.

The decision upset many MPs and has sparked a debate on whether or Parliament is “supreme” over the Constitution.

The Speaker of Parliament has recently suggested that Parliament may take the matter back to the Supreme Court in an effort to have the decision overturned.

Discretionary funds project

In PNG, Parliamentarians have direct involvement in the administration of certain funds which are earmarked for rural development. These discretionary funds make up about K143 million of the national Budget every year. They have gone under a variety of different names (Electoral Development Funds, Rural Action Program etc), but have become widely known as MPs’ “slush funds”. They have been notoriously misused.

Provisions of the Organic Law on Provincial & Local-Level Governments, each MP chairs the committee that decides how the money will be allocated within their electorate. This allows politicians to have a great deal of input into how and where these rural development funds are spent in their electorate. This arrangement is obviously open to abuse and conflicts of interests and arguably contradicts the principle of the “separation of powers”. Invariably, some of these funds, meant for building rural infrastructure, end up being used to shore up support for re-election, instead of for their intended purpose.

For years the Ombudsman Commission has had to mop up the mess that has resulted from the apparent lack of accountability in the system for disbursing discretionary

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funds. Many of our investigations have been sparked by allegations of leaders misusing these funds.

In an attempt to tackle the problem at the “front end”, the Ombudsman Commission has launched a new project, called “Parliamentarians’ Discretionary Funds — Leadership Through Accountability”, which hopes to improve the system of accountability for rural development funds.

This is a process of consultation and discussion with Parliamentarians and officials who administer the funds. We hope that the end result might be a new set of robust guidelines for use of discretionary funds.
FREEDOM OF INFORMATION
IN PAPUA NEW GUINEA

HOW THE OMBUDSMAN COMMISSION
MIGHT FIT INTO THE PICTURE

BY

DAVID CANNINGS
COUNSEL TO THE OMBUDSMAN COMMISSION

FREEDOM OF INFORMATION WORKSHOP

PORT MORESBY

1 NOVEMBER 2000

ISSUES TO BE ADDRESSED

The Parliament has a duty under Section 51 of the Constitution to enact laws to enable ready access to official information. When the time comes for that duty to be discharged, one of the most important issues to address is:

What external review procedures should be in place?

When a person makes an FOI request and is denied a document, then goes through an internal review process and is still aggrieved – who do they turn to? Who conducts the external review? The National Court? An administrative tribunal? A special body such as an information commission? Should it be the Ombudsman Commission?

And that leads on to the next question:

What about the information that the Ombudsman Commission has in its possession?

Can the Ombudsman Commission be made the target of an FOI request? Or should it enjoy a special immunity?

CHOICE OF AN EXTERNAL REVIEW BODY

The options seem to be:

> The National Court – this would be cumbersome and unworkable. Time is of the essence in dealing with FOI requests. The Court would be unable to deliver on that score. In fact, the Court already has the power under Section 57 of the Constitution to enforce the right to freedom of information in proceedings commenced by “any
person who has an interest in its protection and enforcement”. The power has very rarely been used.

➤ **An administrative tribunal** – though it has been talked about loosely for many years, PNG does not have a general-jurisdiction administrative appeals tribunal and none is on the immediate horizon. Even if one were to emerge it is doubtful that it could cope with the quick, rapid-fire, informal disposal of disputes that any good FOI law should aspire to.

➤ **An information commission** – although sounding good, this idea suffers from being an extra bureaucracy, with – at least in the early years – an unpredictable workload.

➤ **The human rights commission** – a nice idea that has withered on the vine. No one should hold their breath waiting for its revival.

➤ **The Consumer Affairs Council** – this is only listed as an option as it has been floated as a possibility. The Council is ill-equipped legislatively and administratively to deal with FOI matters. It would be wholly inappropriate to clothe it with FOI functions.

➤ **The Ombudsman Commission** – presents itself as the natural choice. It is already established and entrenched as a constitutional institution. It is the most powerful oversight agency in the country. It deals with governmental bodies all the time. It has the “T” factors working in its favour.

### The "T" factors.

Good ombudsmanship entails bringing together a number of critical ingredients:

- **Independence** - this is given by the *Constitution*. But it still has to be protected at all costs.

- **Impartiality** - in large part this depends on an ombudsman’s reputation. It has to be earned rather than received. The institution must be able to enter a dispute or conflict-driven environment and be regarded automatically as impartial. This is sometimes a difficult balancing act to perform for the Ombudsman Commission as it invariably works in a politically charged environment by virtue of its Leadership Code jurisdiction.

- **Integrity** – this depends largely on the individual qualities of the ombudsmen.

- **Initiative, imagination, intelligence** - these qualities run together. A good ombudsman must be able to come up with creative solutions to disputes; to seize the initiative at the right moment; and to marshal intelligent arguments that will carry the day and move disputing parties to acceptable and realistic outcomes.

- **Idealism** - there must be some ideals driving an ombudsman – values worth striving for. In PNG these are provided by the *Constitution*, especially the National Goals and Directive Principles.

- **Influence** - once the above factors are working together, the populace will have confidence in the ombudsman. The ombudsman will command respect. And with that comes influence. The ombudsman can be a steadying, sage force in the community.

[From D Cannings, *The Ombudsman Commission as a Forum for Alternative Dispute Resolution*, paper presented at the National Legal Convention, Port Moresby, July 1999]
But some other things to consider:

Is the Commission efficient enough? Perhaps it is too slow. But isn't everybody? There are ways around this, such as imposing statutory time limits throughout the decision-making process. (Perhaps this needs to be considered for other parts of the Ombudsman Commission's jurisdiction, e.g. time limits imposed on the resolution of complaints; time limits on leadership investigations. Maybe the Courts need time limits imposed for the handing down of judgments – both oral and written.)

Does it have too much to do already? Consider its already heavy workload.

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<th>PRIMARY FUNCTIONS OF THE OMBUDSMAN COMMISSION</th>
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<td><strong>FUNCTION</strong></td>
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<tr>
<td>Investigation of complaints</td>
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<td>for the enforcement of laws</td>
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<td>and other matters</td>
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In addition to its primary functions, the Commission has a number of complementary functions.

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<th>COMPLEMENTARY FUNCTIONS OF THE OMBUDSMAN COMMISSION</th>
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<td><strong>FUNCTION</strong></td>
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<td>Inspection of executive decisions</td>
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The enormous range of responsibilities and breadth of jurisdiction that is conferred on the Ombudsman Commission by the Constitution means that it is called upon, under the one roof, to perform functions which in other countries are usually dealt with by a multitude of different authorities. The Ombudsman Commission of PNG is not just an ombudsman institution. It is also:

- a human rights commission;
- an anti-discrimination commission;
- an anti-corruption commission;
- a conflicts of interests commission;
- a law reform commission; and
- a watchdog of the Constitution.

Will a “determinative” role as an external review body be inconsistent with the traditional Ombudsman function of investigating, forming opinions and making recommendations? Not really. The Commission already has some determinative functions under its Leadership Code jurisdiction. And even under its traditional complaint resolution jurisdiction, it does not make “mere” recommendations. There are duties imposed on the recipients of its recommendations.

What does the overseas experience tell us? Both New Zealand and Queensland have the external review function successfully carried out by their ombudsmen. The Ombudsman Commission has a very good working relationship with both of those institutions and is well placed to tap into the store of existing expertise.

Can it do the job with its existing resources? Clearly, no. Is special funding required? Most assuredly, yes. And that is the bottom line. The Ombudsman Commission is ideally placed to do the job. But a proper appropriation from the Parliament is essential.
INFORMATION HELD BY THE OMBUDSMAN COMMISSION: SHOULD IT BE ACCESSIBLE UNDER A FREEDOM OF INFORMATION LAW?

Yes and no, depending on the type of information that is sought. The documents that the Commission has in its possession can be put into (at least) four categories:

Administrative information and in particular “financial documents”

This category of information relates to documents such as the appropriation and expenditure of the Ombudsman Commission; salaries and allowances of members of the Commission and staff; numbers of complaints received and resolved; various policies and determinations of the Commission for officers in the Service of the Commission; etc. This information should be easily accessible.

The “annual statement” declarations of leaders

Presently, details disclosed in the annual statements lodged with the Ombudsman Commission by leaders are confidential. To facilitate transparency and accountability among our leaders, this information should be accessible. PNG in some ways led the way in the mid-seventies with compulsory disclosure of leaders’ financial affairs. But it has now lagged behind. In many countries, members of parliament are required to make declarations of their assets and liabilities in a public register.

The Final Report of the Constitutional Planning Committee remarked that unless leaders declare their assets, liabilities and business activities, the Ombudsman Commission will not know whether they are living up to what is expected of them. The same sentiment applies with the general public.

Documents obtained in the course of investigations

Special care needs to be exercised here. The Commission often has a paramount duty to preserve the confidentiality of the sources of its information. There is also the duty of secrecy under Section 20 of the Organic Law on the Ombudsman Commission that needs to be considered. In order to protect a witness or a “whistle-blower”, the Commission cannot reveal the name of a witness.

There is a risk that an investigation may be derailed by the forced and premature disclosure of documents. This applies particularly with leadership investigations. Each investigation has to be considered on its merits. Some are entirely open – where the leader is notified what the Commission is investigating. Others are more sensitive: cases where the Commission carefully builds up a case and pieces together evidence without the knowledge of others.
Documents that should be on the public record

For example, where a Member of Parliament has acquitted his or her allocation and disbursement of discretionary funds to the Ombudsman Commission. If the MP’s constituents would like to have access to this information, this should be readily accessible.

CONCLUSION

The Ombudsman Commission presents itself as the natural choice for an external review body. In fact, it already has that function – so why give it to somebody else? However if an FOI law is introduced it needs the money to do the job properly.

The Commission has been shrouded in too much secrecy since its establishment and can afford to have some of its information assets made accessible. But documents obtained for the purposes of investigations need to be put into a special category.
REMARKS BY
SIMON PENTANU
OUTGOING CHIEF OMBUDSMAN

OMBUDSMAN COMMISSION FAREWELL/WELCOME DINNER

ISLANDER TRAVELLODGE

PORT MORESBY

21 DECEMBER 2000

Let me begin my few simple remarks that I wish to make by thanking all of you who have accepted the invitation to join our PNG Ombudsman Commission family for this occasion. That family consists of the members of the Commission as well as the staff of the Commission. In this respect it is very much a family affair.

This evening we are joined by a circle of friends that includes the Chief Justice, the Deputy Chief Justice and several of their brother Judges, members of the diplomatic corps, His Grace Archbishop Brian Barnes, the Chief Secretary, the Attorney-General, the Clerk of Parliament, the Chairman of Transparency International’s PNG chapter, other distinguished guests and friends and acquaintances from the private sector.

The occasion this evening is to farewell the outgoing Chief Ombudsman and welcome the new Chief Ombudsman. As the one that is outgoing may I express my sincere gratitude to my two colleagues, Ombudsman Ila Geno and Ombudsman Raho Hitolo and the team of staff that are responsible for arranging this function.

Having heard the remarks by the two officers who spoke earlier, I believe the team chose its speakers well. I listened very carefully from start to finish to what officers Andrew Ikufu and David Cannings have said. I did not hear anything untoward, malicious or defamatory or any unfounded allegations against me that might have caused me to lodge a serious complaint to the Commission as I leave office!

I am a great believer in not dwelling on or getting stuck in the past unless what has happened in the past is helpful, relevant or might make a difference in the present and, maybe, in the future.

In this context what is important is not so much the farewell of Simon Pentanu as the outgoing Chief Ombudsman but rather, the enthronement of my successor, Ila Geno as the new Chief Ombudsman.

In this and in any transition it is important that the baton change is smooth. A smooth and orderly change at the top is important for the integrity of the institution as well as for the morale of the staff. We are all too aware this hasn’t always been the case in the Commission. As recently as two years ago when my two colleagues were appointed,
court action was mounted immediately by the Public Employees Association, challenging their appointments for all kinds of very absurd reasons. The challenge was never going to succeed and never did succeed because it was simply a case of sour grapes on the part of certain individuals in the Commission at the time who should have known better.

Ombudsman Geno will begin his appointment as Chief Ombudsman in the New Year. Ila has been a good Ombudsman and I know the Commission has benefited and will continue to benefit from the values and experience he has gained in his previous positions as Chairman of the Public Services Commission and, before that, as Commissioner of Police. And he has already served two good years as an Ombudsman.

But the demands, responsibilities and sensitivities of being an ombudsman take on a slightly new meaning when you become a Chief Ombudsman. While the position is there to be had, it is the person that brings the tone, as well as character and style, to the job. We should be acutely aware that in prominent positions we will not be judged by our popularity, our academic qualification or even our experience and character. Rather, we are judged by our record of achievements and the positive changes we bring to an organisation or to the society we live in.

In succeeding me Ila becomes the fourth Chief Ombudsman in the country after the late Sir Ignatius Kilage who was our pioneer and Sir Charles Maino whom I succeeded in 1995. This is a very admirable record of stability and continuity when one considers that in Departments and other public bodies as well as in politics, very senior bureaucrats and Ministers go by the wayside like tenpins, week in and week out.

Without making a song and dance about it, it is heartening to know that the Commission has been building upon a good tradition from the past. I have inherited from my two predecessors and their colleagues an institution that is stable, that has clout and leverage and is staffed by people with pride and bold determination in what they do as officers of the Commission.

When I actually commenced my appointment as Chief Ombudsman some six years ago - on Friday 13 January 1995 to be exact - I understood well enough that I was succeeding a man of formidable character and clout and with a solid repertoire of legal ammunition to boot. That man was Sir Charles.

Sir Charles had no advice to impart on his departure and I did not expect him to give me any advice. I actually preferred it and liked it that way.

Likewise, I have no advice to offer my successor and friend Ila, except to state the obvious to him: that the world is a stage and life is a constant challenge. He can make it a daring adventure or nothing at all. In this regard I know that Ila appreciates that as Chief Ombudsman there is a continual need to maintain focus and vision.

I know Ila well enough to know that he is honest, sincere, dedicated and disciplined in his approach to life and he is a nice, likeable human being. It is heartening to know that he is a serving Ombudsman who will continue as Chief Ombudsman.
Well, looking back now and putting aside the niggling, irritating and annoying bits, I can say that I’ve had a ball! I have really enjoyed the work and enjoyed my time as Chief Ombudsman. This has been possible in the last two years because of having good people around me and the family atmosphere we have been building through teamwork in the Commission.

I have developed honest, fulfilling and professional relationships with Ilia and Rabo and many members of staff, especially senior staff that members of the Commission come into contact with regularly.

I cannot speak of achievements in my time as Chief Ombudsman without acknowledging the contribution, cooperation and dedication of everyone in the Commission from the tea-boys and drivers up to the Managers, Directors and lawyers. I feel very satisfied, fortunate and gratified to have witnessed the conversion of many Doubting Thomases amongst the staff who have taken to changes in work practices, new work systems and processes. I have witnessed the opening up of many hearts and minds to embrace new ideas – even if these ideas may have seemed far out and outrageous at times.

I can quite honestly say I have felt an abiding sense of satisfaction working with the current Ombudsmen in the last two years. I quickly began to realise that together, slowly but surely, we have been turning the Ombudsman Commission into one heck of a place to work in – a place that I always envisaged when I started, as a meeting point or confluence of the throbbing hearts and the fleeting minds. It has become a place where we have gradually come to discard the bad habits of the past and, in doing so, have developed a fortitude to step out and up to another level.

The Chief Ombudsman is a member of the Judicial and Legal Services Commission (JLSC). In my time I have regarded it as an honour and have found it challenging to serve alongside other members who comprise the JLSC. They include the Chief Justice, the Deputy Chief Justice, the Chief Magistrate and the Minister for Justice, who is Chairman.

I believe it has been worthwhile making other JLSC members sit up and listen, particularly the judicial members, on such matters as the absurdity of continuing with acting appointment of judges when clearly they were not improving or adding value to the bench, but getting in the way of seniority of serving senior judges.

After much debate I can also express some satisfaction in seeing the JLSC finally promulgate a policy manual for the appointment of judges. The manual is already in use and its criteria and the guidelines have been used in making two recent judicial appointments.

I have been quite forthright in expressing views on many matters in the JLSC to ensure that the laws, rules and proper practices are adhered to in such matters as judicial appointments, concerns of the magistracy and dealing with matters of discipline.

The Judiciary is not immune from criticism itself. I believe that when criticisms and comments are raised publicly about its leadership and administration, these should be matters of concern for the JLSC. This is the view I have taken on many occasions in

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raising what may have seemed, at times, rather difficult and sensitive issues to deal with.

I hope that Ila will continue to play a role in the JLSC in speaking up, initiating matters and continuing to participate as Chief Ombudsman on an equal footing with the Chief Justice, the Deputy Chief Justice, the Chief Magistrate and the Minister for Justice.

This is not really an occasion for me to enumerate or speak of achievements during my time and term in the Commission. That has been done earlier already. However I wish to just mention three areas about which I feel over the moon (like the cow in the nursery rhyme).

The first is increased funding. I have always been confident and convinced that if the Commission put all its proverbial cards on the Finance table the necessary funds would come flowing in. I have spared little imagination in ensuring that the Commission is given what it deserves. The Commission today is on a better footing financially than it has ever been. The staff are enjoying better terms and conditions. I hope that this support from the Parliament, the Executive and the Central Agencies Coordinating Committee will continue after I leave.

We have already heard about the institutional strengthening project. I believe credit has already been given where it is due. If the full story was told about the stresses and strains I had to endure to convince my colleagues that we needed an ISP it would be like a story of a coup d'etat being planned in earnest by an ambitious stranger. What matters now is that good and progressive minds prevailed and the Commission continues to become better, stronger and more efficient as a result.

Thirdly, we cannot begin to talk about the work, including many of our successes in the Commission, without mentioning the media. I have always been an avowed supporter of the freedom of the press. I regard the media in this country as protectors of a sacred truth. That sacred truth is to tell it, write about it, broadcast it and telecast it as it is. Not as some people would like it. I have enjoyed, benefited and learned a lot from my contacts with the media and from many of the individual personalities that I have come to know over the years. For the Commission it has been a symbiotic relationship. I believe we have been well served in the publicity stakes, and here I include criticisms and critiques that we have learnt to take on the chin rather well.

As I leave, I do so feeling enriched by the experiences I have had and the challenges I have faced in the Commission and all that it stands for. If I arrived in the Commission slightly bewildered by what lay ahead when I took office six years ago, I know I am leaving strengthened by the numerous experiences that have called on me to exercise boldness, courage, independence of mind and sensitivity as Chief Ombudsman.

I thank my wife and family for standing by – or rather, putting up with – me for the last six years of early starts, late finishes and many prolonged absences from home.

I thank my two colleagues and all the staff for the privilege and opportunity of sharing with you the life experiences, strategies, sensitivities and emotions that have shaped my own life.

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I believe that deep down in our souls we all have a special gift. If we dig and search deep within us I believe we can make a difference in the world around us. I know you can do this through the work you will continue to do at the Commission.

I have already congratulated Ila on his appointment but let me congratulate him again. I wish him well and I know his wife and children will be by his side to give him support and encouragement.

To all the staff, let me say that the future belongs to the optimists and the brave. You came into the Commission to contribute something personal that money can’t buy: that is your honesty, loyalty, sincerity, pride and commitment to Good.

I know you will support the new Chief Ombudsman. I know you will also challenge him like you have challenged me. And I know you will do this knowing as I do, that the Ombudsman Commission is more important than any of us individuals who come to serve here only for a time and then have to move on.
Pamphlets
Duties and responsibilities of leadership
Making a complaint

Handbooks
Organic law on the Duties and Responsibilities of Leadership
Organic law on the Ombudsman Commission
Relevant laws
Leadership Manual
Media Guide

Newsletter

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Appendices