



**Papua New Guinea**

**1982 — ANNUAL REPORT  
BY THE JUDGES**

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**ANNUAL REPORT FOR THE YEAR 1982 BY THE JUDGES TO THE HEAD OF THE STATE FOR PRESENTATION TO THE NATIONAL PARLIAMENT ON THE WORK OF THE SUPREME COURT AND THE NATIONAL COURT, PURSUANT TO THE CONSTITUTION, SECTION 187, AND THE *NATIONAL COURT ACT* 1975, SECTION 9.**

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**JUDGES**  
**OF THE SUPREME COURT OF JUSTICE**  
**AND THE NATIONAL COURT OF JUSTICE**

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**THE HONOURABLE SIR BURI WILLIAM KIDU, Kt.,**  
CHIEF JUSTICE OF PAPUA NEW GUINEA

**THE HONOURABLE MARI KAPI,** DEPUTY CHIEF JUSTICE  
OF PAPUA NEW GUINEA

**THE HONOURABLE WARWICK JOHN ANDREW**

**THE HONOURABLE NORRIS HARRY PRATT**

**THE HONOURABLE THEODORE REGINALD BREDMEYER**

**THE HONOURABLE WILLIAM KAPUTIN**

**THE HONOURABLE DERMID JOSEPH McDERMOTT**

**THE HONOURABLE JERZY JACOB GAJEWICZ**

**THE HONOURABLE RICHARD KENNERSLY WOODS**

## 1. INTRODUCTION

The Judges are required to make a report every year on the work of the National Judicial System pursuant to the provision of Section 187 of the Constitution and Section 9 of the *National Court Act* (Ch. No. 38).

This is our report for the period from 1st August 1981 to 31st July 1982.

## 2. JUDGES

During the period covered by this Report the following changes occurred in the composition of the Judiciary:

- (a) The Honourable William John Francis Kearney, C.B.E., the Deputy Chief Justice, retired on the 13th April, 1982. His Honour was appointed Federal Aboriginal Land Commissioner and a Judge of the Supreme Court of the Northern Territory.
- (b) The Honourable John Greville Smith, C.B.E., retired on 6th April, 1982. He returned to the Federal Attorney-General's Department, Canberra.
- (c) The Honourable Jeffrey Miles resigned. His Honour was appointed a Judge of the Supreme Court of New South Wales.
- (d) The Honourable Paul Joseph Quinlivan left the Bench. His 12 months' appointment expired early in January.

We express our thanks to these Judges for their valuable contribution to the work of the Judiciary.

- (e) The Honourable Jerzy Jacob Gajewicz and the Honourable Dermid Joseph McDermott were appointed for 3 years from April 1982.
- (f) The Honourable Robert Kennersley Woods was appointed an Acting Judge for 12 months from March 1982.

## 3. ATTENDANCE FOR TRIAL OF PERSONS CHARGED WITH CRIMES

### 3.1. *Escapes — Whilst awaiting trial*

In our Reports for 1979, 1980 and 1981 we expressed our concern about the many people escaping from custody whilst awaiting trial. In the period covered by this Report there has been very little improvement in this situation despite the fact that many of those persons charged with the responsibility of looking after those persons awaiting trial have done a good job in the circumstances in which they find themselves.

We repeat what we said in our 1981 Report:

“We are aware that there are difficulties in recapturing escaped detainees and persons who have escaped while awaiting their trial. However in the interests of orderly administration of justice and respect for the law, we ask law enforcement officers to make greater efforts to recapture all those who have escaped from custody. Consideration might be given to greater public involvement in locating escapees, by use of the media, and a system of rewards for information.”

Bench Warrants have been issued for most of these – Some have been arrested and dealt with by the Courts.

### 3.2. **BAIL**

In Our 1981 Report we reported on the fact that the Government intended to introduce Legislation to make breach of bail conditions an offence. This has now been done. However, with respect to the other recommendation in that Report that “Consideration might be given to amend Section 9 of the Act so as to include some other factors to be weighed up by authorities when considering whether bail should be granted”, we would again propose that the matter be considered.

## 4. **STAFF, FINANCE AND THE INDEPENDENCE OF THE NATIONAL JUDICIAL SYSTEM**

### 4.1. **Introduction**

Section 99 of the Constitution provides that the National Government consists of three principal arms:

- (a) The National Parliament;
- (b) The National Executive;
- (c) The National Judicial System.

This section of the Constitution goes on to provide that “In principle, the respective powers and functions of the three arms shall be kept separate from each other.”

This principle is not being followed. The National Judicial System relies on the Public Services Commission for all its staff, except Associates to Judges who are appointed by the Minister for Justice on the recommendations of the Judges. All other staff, the Registrar, the Registry staff and the few Interpreters we have, are employed by the National Public Service which is part of the Executive arm of the Government.

Likewise all financial control is with the Department of Justice, so that the Judges have no control over the money that is spent for them to run the National Judicial System.

We would propose that the National Judicial System be given control of its own funds and that these be appropriated by Parliament each year much in the way that the Ombudsman Commission and the National Parliament is funded and given some independence from the Executive arm of the Government.

We set out below some of the problems that our lack of control of staff and funding has created for us.

#### 4.2. *Interpreters*

In every Report that the Judges have made to the National Parliament since the introduction of Provincial Government we have pointed out that despite the fact that to be a good interpreter requires skill and could be said to be an art, the standard of interpretation in the Courts is very low. There are of course exceptions to this, and we would like to record our appreciation to the excellent work done by all Interpreters, many of whom are called on to interpret for limited periods of time whenever the judges are in a particular Provincial Centre on Circuit.

This situation has arisen because firstly we only have interpreters attached to the National Judicial System on full time basis, and have to rely on Provincial Staff who have a wide range of other responsibilities and so cannot be expected to develop the skills necessary to become a top class interpreter, and secondly on the fact that whereas Interpreters employed by the National Parliament (who also have the role of translating speeches and transcribing transcripts) are employed at three levels – Clerk Class 5, Clerk Class 7 and Clerk Class 9, the highest at which Interpreters are employed by the National Court is only at Clerk Class 4 level.

It is obvious from this disparity in salaries, and the fact that sometimes a Judge can have three or four different interpreters in a week whilst on circuit in the Province, that unless an Interpreter is very good and very dedicated then justice cannot always be said to be done, *and though we hope there is nobody at present serving a sentence of imprisonment because interpretation of his reply to a question was wrong*, we would earnestly request that consideration be given to raising the level of Interpreters to a range similar to that for person working in similar positions in the National Parliament.

Also we would request that there be created new Interpreter positions so that in 1983 we have three Interpreters based at Waigani and three Interpreters based at Provincial Centres, and that by 1985 there be at least one Interpreter employed by the National Judicial System in each province, with three in Waigani.

Interpreters employed at a Provincial Level could be given two roles. Firstly, to provide interpretation facilities for the National Court whilst on Circuit in that province, and secondly when not required in that role, to provide **interpretation** services to the District Courts, particularly Grade 5 Magistrates.

#### 4.3. *Secretarial and Stenographic Staff for Judges*

The problem highlighted in our 1981 Report, that we needed more stenographers, has now been resolved and we would like to express our thanks to the Justice Department and the Public Services Commission for their assistance in this regard. We would hope this would not occur again, however we believe that until such time as all staff are attached to the National Judicial System, rather than as at present to the Public Service, we could possibly find at some distant time in the future a similar problem.

#### 4.4. *The Registry and other Staff needs*

The Registrar of the Supreme Court is a Clerk Class 11 position. We believe this level should be raised to ensure that we can retain good staff in this position. There is a position of Deputy Registrar which is at Clerk Class 8-9 level and we believe this should be raised to Clerk Class 11 (equivalent to Principal Legal Officer in the Department of Justice), because until such time as this occurs it is unlikely that we will be able to fill this position. Finally we believe that all other positions should be raised in levels so that those employed in the Registry can make it a career. The highest level at present being Clerk Class 5, we believe this should be raised to Clerk Class 9.

Departmental Heads in the National Public Service get Executive Officers of equivalent to Clerk Class 10. Ministers of the State have personal staff of very high level. Our situation is deplorable whilst the position of Associate to the Chief Justice is only Clerk Class 6 all the other Associates are only classified as Clerk Class 5. At present many of the matters that would be carried out by an Executive Officer to the Court are being done by the Chief Justice and the Judges themselves. Requests made in 1981 for staff funding and level increases have not been answered yet, and we would ask that the decision of the Public Services Commission in answer to our request be dealt with in 1983.

#### 4.5. *Stores and Supplies*

To record the evidence given to a Court, a Judge has to write this down in longhand, with the result that the speed which a case can proceed is dependent upon the speed at which the Judge can write down the details of the evidence given in Court. The effect of this is that cases before the Court are long and costly.

We would ask that we be given one more recording system in the Supreme Court building at Waigani to add to the existing recording system, which will relieve the Judges of the need to write down evidence in longhand, and we would like the provision of some form of portable system to be used by Judges when they go on circuit to be available at each Provincial Centre they normally visit. Judges will still have to take notes in case there is a breakdown in the recording apparatus, and to assist them in understanding the nature of the evidence given to them. However the provision of such recording facilities would assist them to reduce the length of trials and actions before them.

We would ask that another recording system be installed at the Supreme Court at Waigani in 1983, with such systems being installed gradually in each Provincial Centre over the period 1984 to 1986.

#### 4.6. **Finance**

The actual expenditure figures for the 1982 Fiscal Year are not yet available. We only report that our appropriation for 1982 was K832,300.

#### 4.7. **Pension Scheme — National Judicial System**

In 1979 the National Parliament approved the Parliamentary Members Retirement Benefits Act to give Members of the Parliament a pension scheme. The Judges of the National Court have no such scheme for themselves, as in 1979 the *Judge's Pension Act* (Ch. No. 39) which applied to expatriate Judges only was repealed. We would ask that such an Act be redrafted along similar lines to the Judge's Pension Act to Provide for Pensions for National Judges and that this be introduced into National Parliament in 1983.

#### 5. **ANNUAL REPORT — January-December**

We believe our Annual Report should follow the budgetary year rather than the August 1st to July 31st in the following year.

#### 6. **STATISTICS**

We attach as Appendices A and B to this Report the details of business transacted by both the Supreme Court and the National Court in the Period between 1st August 1981 and 31st July 1982 (the period covered by this Report).

#### 7. **SUPREME COURT OF JUSTICE**

In this part of the report we wish to bring to the attention of those reading this Report, and in particular the Members of the National Parliament, what we consider are some of the more important decisions made by the Supreme Court in the period covered. We list below a complete list of the decisions.

SC205 — Acting Public Prosecutor v. Clement Maki and Tom Kasen

SC206 — Lawrence Allen Sausau v. The Police Commissioner and The State

SC207 — In the Matter of the *Adoption of Children Act* 1968. And — In the Matter of an Appeal against an Order of the National Court made in respect of a male child P and K and K and — Director of Child Welfare

SC208 — The Acting Public Prosecutor AND Andrew Amona Yongga

SC209 — Gabriel Laku v. The State

- SC210 — Public Prosecutor v. Thomas Vola
- SC211 — In the matter of a Tribunal under Section 27 (7) and In the Matter of James Eki Mopio M.P.
- SC212 — Karo Gamoga v. The State
- SC213 — Magi Barton v. The State
- SC214 — Acting Public Prosecutor v. John Airi
- SC215 — The Sheriff of P.N.G. ex parte Port Moresby City Council Prosecutor
- SC216 — Paulus Pawa v. The State
- SC217 — In the matter of a Special Reference under Section 19 of the Constitution
- SC218 — Avia Aihi v. The State
- SC219 — Placer Holdings Pty. Ltd v. The State of Papua New Guinea
- SC220 — In the matter of a petition by the Right Honourable Michael Thomas Somare, C.H., M.P. under Section 18 (1) of the Constitution
- SC221 — Avia Aihi v. The State (No. 3)
- SC222 — In the matter of Organic law on *National Elections (Amendment) Act* 1981
- SC223 — In the matter of Sections 37 (4) and 37 (5) of the Constitution AND – In the matter of validity of section 19 AB (2) (e) (iii) of the *Motor Traffic Act* 1950, s.138A(1)(b) of the *District Courts Act* 1963, and s. 38A(1)(c) of the *Local Courts Act* 1963. And In the Matter of a Special Reference under Section 19 of the Constitution by the Public Solicitor
- SC224 — In the Matter of a Reference under s.18(2) Constitution And In the Matter of Section 19(1) of the Criminal Code
- SC225 — In the matter of a Board of Inquiry appointed under the provisions of Section 82 (2) of the *Public Services (Interim Arrangements) Act* 1973 and In the Matter of certain alleged disciplinary offences in office Mr. Philip Bouraga
- SC226 — In the matter of the Organic Law on *National Elections (Amendment) Act* 1981 – And In the matter of a Special Reference by the Ombudsman Commission under s.19 of the Constitution
- SC227 — Imiyo Wamela v. The State



SC228 — James Neap v. The Independent State of Papua New Guinea

SC229 — Public Prosecutor v. Nitak Mangilonde Taganis

SC230 — The Public Prosecutor v. Kwalimu Goina, John Vele and Norman Leva.

Subject to financial constraints and funding being provided for reprints of these decisions we would hope to be able to supply members of National Parliament copies of all or any of our decisions both in the Supreme Court and National Courts, on request.

At present copies are supplied to Magistrates, Government Lawyers, and Constitutional Office Holders who require a knowledge of Supreme and National Court Judgements as part of their day to day work. In addition members of the public and private lawyers are supplied copies of judgements at the cost of K5 per judgement (Supreme Court) or K4 per judgement (National Court).

## 8. LEGAL AID

The Public Solicitor in his Annual Report of 1980/81, page 6 said:

“A good deal of claims are against companies and organisations represented by private solicitors. These too prove to be the slowest and most difficult to settle. I am also of the strong view that the private legal profession in this country, towards legal aid for the vast majority of national people.

This Office continues to experience instances where it has had to provide legal representation to persons because further legal representation by private solicitors are withdrawn because the persons had exhausted their means. The Principal reason being that the fees being charged by private solicitors are grossly excessive and beyond the means of most nationals who would otherwise not be entitled to legal aid from this Office. The Private profession has made no genuine effort to contribute towards legal aid in this country.

I am of the view that consideration should be given to enacting legislation to oblige private firms of solicitors to contribute towards legal aid in an appropriate manner.”

From discussions with a number of private lawyers we have worked out a way over this problem which would allow private lawyers to take some of the legal aid work around without having to expect private lawyers to fund legal aid out of their own profits, because as well as being lawyers they are running businesses and should not be forced by the State to fund a legal aid function which the Constitution says is the responsibility of the State.

We propose that a Legal Aid Trust Fund be established to be administered by lawyers and judges which would derive its funds from the interest on private lawyers' trust accounts (that is the monies kept on trust by lawyers for their clients) and perhaps an annual grant by the Government. In each year so much of the interest would be appropriated by some form of levy, and this would then be used for the provision of legal aid for both criminal and civil cases, so as to take off some of the burden that the Public Solicitor has on his shoulders. The payment of fees for legal aid would be regulated by the Legal Aid Trust, which would have the responsibility of ensuring that all lawyers in private practice shared the responsibility of giving legal assistance at the fees prescribed by the Trust.

## **9 INCREASED JURISDICTION OF THE DISTRICT COURT**

We note that during the period of this Report Grade 5 Magistrates have been given increased jurisdiction, but it is too early to indicate with what result. However from the little we have seen so far it would appear that it is necessary that there be more such Magistrates, as they are not making any real dent into the excessive work load of the judges.

It is also apparent that as well as giving increased jurisdiction to Grade 5 Magistrates in the District Court it is also necessary for there to be increases in the numbers of Prosecutors and also of lawyers available to defend persons charged in the District Court. Part of the solution can be found in our suggestion in paragraph 8 above that there be a Legal Aid Scheme established.

## **10 PROSECUTION PROBLEMS**

It is apparent that there are shortages in the number of skilled prosecutors (with the result that on many occasions persons who may be guilty get off because of this lack of skill in some of our prosecutors). We hasten to say that we are satisfied that junior prosecutors are doing their best in most instances, but until such time as there are more experienced prosecutors who are better paid it will not be possible to overcome this problem.

At present the judges get over these problems in many instances by assisting prosecutors, however we should not have to do this. We would support the Public Prosecutor and the Public Solicitor in their calls for their own control of funding, and the increase of funding for their offices so as to enable them to attract and retain good prosecutors and officers beyond the training period. The Legal Training Institute does have separate funding.

## **11. STANDARD IN THE COURT**

We have noted that the standard of advocacy in our Courts is not increasing and in many instances lawyers are now more poorly prepared than they ought to be.

## 12. HIGHLANDS FIGHTING

It is recommended that it be made an offence to carry weapons in a public place except for singsings or other cultural activities and celebrations only. We believe more police is not the answer. But it is the duty of field officers in Provincial Governments and police to get into fight prone areas before they happen.

## 13. POLICE PROSECUTIONS

We have found that (for instances in rape cases) it is mostly the C.I.D. Constables who investigate major crimes rather than Senior C.I.D. officers, as most of them seem to spend all their time sitting in their offices. We believe that much of the cause of the police lack of success in prosecutions is attributed to the inaction of these senior C.I.D. officers.

## 14. CONCLUSION

We wish to emphasise our concern that the National Judicial System is treated not as an autonomous arm of the National Government as it is supposed to be, but as an integral part of the National Executive through financial and staff control by the Public Service. We believe as we said earlier in this Report that the National Judicial System should be in the same position financially as the National Parliament, with a National Judicial Service (similar to the Parliamentary Service) under which our staff are controlled, and that we must have the same financial independence that the National Parliament enjoys.

Likewise we should be given the necessary facilities as it is provided for by Section 225 of the Constitution to do our work properly; this includes the provision of Interpreters (paid at a proper rate), and funds to enable us to fulfill our Constitutional duties, responsibilities and obligations correctly.

APPENDIX A

PAPUA NEW GUINEA  
NATIONAL COURT OF JUSTICE

CASES TRIED DURING THE PERIOD 1ST AUGUST, 1981 TO 31ST JULY, 1982

OFFENCE	CHARGES	CONVICTED	DISCHARGED	N.P.	SENTENCE
<b>1. <u>Offence Against the Person</u></b>					
Wilful Murder	90	62	18	10	2½ months IHL to 2 months IHL
Murder	39	29	6	4	To 3 months IHL to 4 months IHL
Unlawful Killing or Attempt	83	71	8	4	To 5 months IHL to 7 months IHL
Unlawful Wounding	26	20	6	—	To 8 months IHL to 9 months IHL
Grievous Bodily Harm	40	33	2	5	To 1 year IHL to 2 years 6 months IHL
Rape or Attempt	87	71	9	7	To 4 years 8 months IHL to 5 years IHL
Unlawful Assault	22	18	2	2	To 8 years IHL to 2 years IHL Rising of the Court
Other Offences Against Females	37	23	9	3	To 8 years IHL Recognizance to 12 years IHL
Incest	28	25	—	3	To 15 years IHL to life imprisonment IHL
Unlawful and Indecent Offences	14	11	2	1	
Dangerous Driving Causing Death	96	62	16	18	
Other Offences Against the Person	47	36	9	2	
<b>TOTAL</b>	<b>609</b>	<b>463</b>	<b>87</b>	<b>59</b>	
<b>2. <u>Offences Against Property</u></b>					
Breaking and Entering	161	138	13	10	3 months IHL to 4 months IHL
House Breaking	261	238	12	11	To 5 months IHL to 7 months IHL
Stealing	446	399	28	19	To 8 months IHL to 10 months IHL
Receiving	29	26	—	3	To 1 year IHL to 3 years IHL
Other Offences Against Property	13	10	—	3	To Rising of the Court to 5 years IHL K300 Recognizance to 3 years IHL
<b>TOTAL</b>	<b>910</b>	<b>811</b>	<b>53</b>	<b>46</b>	

Cont'd.

OFFENCE	CHARGES	CONVICTED	DISCHARGED	N.P.	SENTENCE
<b>3. <u>Offences Against Currency</u></b>					
Forgery	48	41	6	1	3 months IHL to 10 months IHL
Uttering	37	34	3	—	To 1 year IHL to 3 years IHL
<b>TOTAL</b>	<b>85</b>	<b>75</b>	<b>9</b>	<b>1</b>	
<b>4. <u>Offences not included in Preceding Classes</u></b>					
Relating to Escapes	6	3	2	1	3 months IHL to 6 months IHL
Relating to Post & Telegraphs	17	15	2	—	To 8 months IHL to 9 months IHL
Arson	9	9	—	—	To 2 years IHL to 3 years IHL
Conspiracy	4	3	—	1	To 5 years IHL
Unlawful Assemblies	—	—	—	—	
<b>TOTAL</b>	<b>36</b>	<b>30</b>	<b>4</b>	<b>2</b>	
<b>GRAND TOTAL</b>	<b>1640</b>	<b>1379</b>	<b>153</b>	<b>108</b>	
<b><u>Comprising</u></b>					
Europeans	7	4	2	1	
Asians—Philippines	2	2	—	—	
Other Non-Nationals	—	—	—	—	
Nationals	1631	1373	151	107	
<b>GRAND TOTAL</b>	<b>1640</b>	<b>1379</b>	<b>153</b>	<b>108</b>	

NOTES: I.H.L. — Imprisonment with Hard Labour  
N.P. — Nolle Prosequi

(HUBERT A. AOAE),  
A/Registrar.

## APPENDIX B

### NATIONAL COURT OF JUSTICE

During the year ended 30th July 1982 the National Court business has been as follows:

(a) In its Appellate jurisdiction — Filed & Heard	624
(b) In its Probate jurisdiction — Filed & Dealt with:	
(1) Probate & Letters of Administration	7
(2) Reseal	7
(3) Order to Administer	3
(4) Order to Administer (with the will annexed)	nil
(5) Letters of Administration	2
(c) In its Civil jurisdiction:	
(1) Writ of Summons Issued	1,196
(2) Motion & Petitions — Filed & Heard	297
(d) Bill of Sale	1,949

### SUPREME COURT

(a) Appeals from National Court	55
(b) Reference to Supreme Court under Section 41 of the Constitution	nil
(c) Reference to Supreme Court under Section 18 of the Constitution	5
(d) Reference to Supreme Court under Section 19 of the Constitution	1

LEGISLATIVE COUNCIL OF PAPUA NEW GUINEA

During the year 1967, the following bills were introduced:

- (a) In its original form...
- (b) In its amended form...
- (c) Proposed & referred to the Committee...
- (d) Referred...
- (e) Order in Council...
- (f) Order in Council...
- (g) Order in Council...
- (h) Order in Council...
- (i) Order in Council...
- (j) Order in Council...
- (k) Order in Council...
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- (p) Order in Council...
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- (r) Order in Council...
- (s) Order in Council...
- (t) Order in Council...
- (u) Order in Council...
- (v) Order in Council...
- (w) Order in Council...
- (x) Order in Council...
- (y) Order in Council...
- (z) Order in Council...

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LEGISLATIVE COUNCIL

- (a) Bills introduced...
- (b) Bills introduced...
- (c) Bills introduced...
- (d) Bills introduced...