

THE NATIONAL JUDICIAL SYSTEM

Report of the Judges



For the years 2011-2012

Report to the Head of State for the period 1st January 2011 to 31st December 2012, for presentation to the National Parliament, on the work of the National Judicial System, pursuant to the Constitution Section 187.



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1. JUDICIAL ADMINISTRATION

The Supreme Court and the National Court are separate Courts but jointly administered by the Chief Justice. The same permanent Judges sit in both Courts. Pursuant to *Constitution* Section 169(3) the Chief Justice administers the Courts in consultation with the other Judges, the Registrar who is also the Sheriff of Papua New Guinea, the Secretary for the National Judicial Staff Services (NJSS) and various Committees chaired by Judges, each of which is responsible for a different part of Court administration.

The jurisdictions of the Courts is summarized in *Appendix 1* of this report.

2. JUDGES SITTING IN THE REPORTING PERIOD

In the reporting period, with the appointment of four new judges, the Judiciary for the first time was able to reach its numerical ceiling of 24 permanent Judges under the *National Court (Number of Judges) Act*. The Judiciary was also able to recruit a further seven (7) Acting Judges, bringing the total number of Judges to 32 Judges by the end of 2012 – the highest number of Judges since Independence.

In the reporting period, the Judiciary increased its efforts to decentralize the Courts by opening up new National Court centers. By the end of 2012, there were 12 National Court centers in the provinces serviced by resident judges of which 5 centers were established in the reporting period (Kundiawa, Mendi, Alotau, Buka and Wewak). Of 32 Judges in 2012, 17 Judges were based in the provinces outside of Waigani.

A list of Judges and information on their resident locations appear in *Appendix 2*.

3. APPOINTMENT OF NEW JUDGES

Four (4) new judicial appointments were made in the reporting period. Justice Steven Kassman and Justice Jacinta Murray were appointed from the local bar whilst Justice Bernal Collier and Justice John Logan were appointed from the Federal Court of Australia.

The appointment of Justice Bernal Collier and Justice John Logan were made under a Memorandum of Understanding for Judicial Cooperation (MOU) entered into in 2009 between the Federal Court of Australia and the PNG Judiciary. Their appointments were approved by the governments of Australia and PNG through their respective Attorney Generals.

The appointments were of historical significance for the judiciaries of both countries in that it was the first time for the country for serving judges of one country were appointed to the bench of another country under a MOU.

4. SUPREME COURT

The Supreme Court continued to sit and dealt with many appeals, reviews, and constitutional references. Constitutional cases which emanated from the “*Constitutional Crisis*” that gripped the nation as a result of the “*political impasse*” that occurred in the reporting period were the most important cases decided in the reporting period.

In December 2012, the Judges promulgated the *Supreme Court Rules 2012* which consolidated all the amendments made since 1987 when the Supreme Court Rules were first made. The new rules also contain changes made to the 1987. Amongst the changes, provisions were made for commencement of a constitutional cause of action under s 18 (1) of the *Constitution*.

5. NATIONAL COURT - SPECIALIZED COURTS TO IMPROVE COURT EFFICIENCY

The National Court continued to sit in all the provinces including the National Capital District.

Between 2005 – 2010, six (6) specialized court tracks were established. In the reporting period, the work of the specialized Courts were strengthened through procedural changes and change in administrative practices in order to bring about improved court efficiency and quality decision-making.

In the reporting period, the Judiciary continued to strengthen the work of the six (6) special court tracks. In this report we present reports on the operations of each of those tracks, as follows:

Appendix 3 Commercial

Appendix 4 Human Rights

Appendix 5 Election Petitions

Appendix 6 Appeals and Judicial Review

Appendix 7 Mediations

6. DEVELOPMENT OF CASE LAW

Death penalty cases

Following the Supreme Court decision *Uma Loke & others v State* (2006) SC836 which set the sentencing guidelines for death penalty cases, the National Court continued to impose the death penalty in a number of cases. In the reporting period, 6 persons were convicted and sentenced to death for the crime of willful murder. They appealed their sentences. Their appeals are pending.

Constitutional crisis

In the reporting period, the Supreme Court, which is the final and absolute authority on what is Constitutional and what is not, was required to adjudicate on two Constitutional references both of which raised the question as to which of two (2) prime ministers and governments was the constitutional government. The Supreme Court heard and delivered judgments on each case but not without overcoming deliberate attempts by the government to interfere with and frustrate the timely conduct and conclusion of the two cases and the enforcement of the judgments, by acting against the Chief Justice and some of the other judges who heard the matters.

The first attempt was made during the time when the Supreme Court was deliberating on the first Constitutional reference which it had heard and reserved. Weeks before the judgment as delivered, the National Executive Council suspended the Chief Justice on allegations of abuse of office. The decision was stayed by the Supreme Court. The Supreme Court proceeded to deliver its decision on 2 December 2011.

The second attempt was made in March 2012. The Supreme Court was scheduled to hear the second Constitutional reference. The Chief Justice was arrested and charged over a complaint concerning the conduct of the estate of the late Justice Timothy Hinchliffe who passed away 20 March 2009. The prosecution was injuncted by the National Court. The Court completed hearing the reference and reserved its decision. The decision was delivered on 21 May 2012.

The third attempt was after the Supreme Court handed down its decision on 21 May 2012. The Court had dismissed two separate applications for recusal of the Chief Justice and Justice Nicholas Kirriwom. Judgement was delivered on 21 May 2012.

The Supreme Court's second decision was not received very well by certain politicians. The Chief Justice, Justice Nicholas Kirriwom and Justice Les Gavara-Nanu who delivered the decision were threatened and told to resign within 48 hours. That did not happen.

On the second day of the ultimatum, an attempt was made to arrest the Chief Justice. A large group of people came to the Court to seize the Chief Justice while he was presiding on a matter.

The group consisted of a large contingent of policeman, a smaller number of soldiers and politicians both elected and unelected, apparently under the direction of politicians. However the attempt to trample on the dignity of the Court did not succeed.

The Chief Justice and Justice Kirriwom were later charged and appeared in the District Court and were granted bail. The charges were not proceeded with and were subsequently withdrawn.

The Supreme Court decisions dated 12 December 2011 and 21 May 2012 are summarised in this report: see *Appendix 8*

7. LEADERSHIP TRIBUNALS

The Chief Justice appoints members of leadership tribunals in respect of many leaders. The enabling Constitutional Laws make no provision for the administration and funding of Leadership Tribunals appointed by the Chief Justice. Since Independence, Chief Justices have appointed tribunals without making provision for its administration. The Judiciary and the Magisterial Services that contributed Judges and Magistrates to constitute the tribunals shared responsibility for the administration and funding of the tribunals under ad hoc arrangements which over time proved unsatisfactory. Individual tribunals constituted by different Judges and Magistrate also produced a body of decisions which lacked consistency and coherence.

In 2010 and in the reporting period, the Judiciary, in consultation with key players in the leadership tribunal process, reviewed the administrative arrangements and made three (3) important decisions, as follows:

1. As we reported in 2010, the Judiciary promulgated procedural *Guidelines / Protocol on Appointment of Leadership Tribunals by the Chief Justice*. The Guidelines were made in consultation with the Judges and other key Stakeholders including the Public Prosecutor, Chief Ombudsman and the Chief Magistrate. The full text of the guidelines were reproduced in the 2009 – 2010 Annual Report of the Judges. The Guidelines brought clarity and transparency in the appointment process and administration of leadership tribunals appointed by the Chief Justice.
2. The Judiciary assumed full responsibility for the administration and funding (out of its recurrent appropriation) of Leadership Tribunals that were appointed by the Chief Justice. This included funding for the engagement of Magistrates appointed to the tribunal.
3. In 2011, the Chief Justice determined that a standing Leadership Tribunal comprising a senior judge and two senior magistrates be appointed to deal with all leadership referrals that came before the Chief Justice (other than referral of the Prime Minister and Constitutional Officeholders). The decision was made in consultation with the Chief Magistrate, the Public Prosecutor and the Chief Ombudsman. The purpose of the standing Tribunal was intended to achieve prompt disposition of referrals and consistency in approach and decision-making.

The Constitutional Laws make provision for serving Judges and retired Judges of PNG and the high Courts of countries with a legal system similar to that of PNG, to be appointed by the Chief Justice, to constitute Leadership Tribunal inquiring into allegations of misconduct in office made against Constitutional Office-holders and the Prime Minister.

In the reporting period, two (2) long outstanding matters were concluded and three new matters were concluded with only one matter remaining unresolved due to pending judicial review proceedings.

A full report on matters dealt with in the reporting period appears on *Appendix 9*.

We report on one particular leadership tribunal appointed in 2011 that attracted public interest.

In 2011, the Chief Justice appointed a Leadership Tribunal that was wholly constituted by retired judges from overseas, to inquire into allegations of misconduct made against Prime Minister Sir Michael Somare. The appointment was made in accordance with the procedural guidelines set out in the *Guidelines / Protocol* referred to the above.

The tribunal was constituted by retired Judges from three developed common law jurisdiction - UK (The right Hon. Sir Robin Auld), Australia (The Hon. Roger Gyles AO QC) and New Zealand (the Hon. Sir Bruce Robertson). Their appointments were made by the Chief Justice in consultation with the Chief Justices of those countries. The Commonwealth Secretariat assisted in furnishing information on the conditions of service of technical officers provided by the Commonwealth Secretariat to member countries, which were used as a guide to determine their conditions of service.

Amidst public controversy over the Chief Justice's decision to appoint overseas retired Judges, the tribunal commenced its inquiry. The inquiry was funded out of the Judiciary's own savings from the previous year. The proceedings were conducted before an independent tribunal, in an adversarial setting in which the parties were represented by lawyers. No issue was taken by the parties before the tribunal on its composition and jurisdiction. The inquiry was completed in record (short) time. The tribunal was unanimous in its decision to find the leader guilty on various counts of misconduct in office. The decision on penalty was by majority in favour of suspension and a fine. The Prime Minister publicly accepted the verdict and penalty. The matter is closed.

8. DEFENCE FORCE JUDGES

Judges serve as Defence Force Judges. Their appointments are made under *Defence Act*. They are not enlisted members of the Defence Force. They exercise jurisdiction of the National Court.

The current Defence Force Judge is the Hon Justice Panuel Mogish and his assistants are the Hon Justice Allen David and Hon Justice John Kawi. Their appointments were made in 2011. They succeeded Deputy Chief Justice Gibbs Salika, Justice Kirriwom, and Justice Sawong.

There were no cases referred to the Defence Force Judges in the reporting period.

In the reporting period, the Defence Force Judge commenced discussions with the Defence Force to promulgate a set of procedural guidelines for the conduct of proceedings under the *Defence Act*.

9. CASE MANAGEMENT

In the reporting period, the Judiciary intensified its effort to put in place a modern case management system that is comparable to those developed in other democracies. Information technology continues to play a pivotal role in managing cases effective case flow management in modern courts. The CMIT Committee chaired by Justice Nicholas Kirriwom is responsible for overseeing the development of case management and information technology in the courts. We report on some of the important projects initiated in the reporting period.

1. New judicial case management system – Case Docketing system (CDS) & Database

In December 2012 the Judiciary introduced a new computerized database system (CDS) to manage data under a new case management system whereby each case file is allocated permanently to a particular judge who is responsible for managing the case during its life. This new system allows a case file to be tracked from filing to disposition and generates reliable case flow data.

2. New database

There are two sets of database used in the Registry to capture information about the case files and the cases. The first is a Microsoft Access based database created some 15 years ago, which is associated with the existing Case Management (CMS). Due to an insufficiently rigorous process for updating this database its data became unreliable, particularly as to the number of cases completed, as the physical audit referred to in the 2008-10 Report showed. It is now being taken over by the recently introduced CDS written in a modern database language, which is gradually being developed, from a case progress tracking system to a fully featured case management system, with strict protocols for keeping data entry up to date and with the necessary staff training, both of Registry staff and others involved, including Judges Associates. Technical assistance for the development of the new database and CDS was provided by the Japanese government through its aid agency JICA.

10. COURT CASE – WORKLOAD

In our Annual Report for the period 2009 – 2010, we reported that a national inventory of the courts' workload had been completed and reported as follows:

1. that the current database operated by the Judiciary to capture case flow was largely outdated and unreliable such that it was unable to produce reliable data on judicial case flow ; hence a decision was made in 2008 to carry out a physical inventory of all case files held by the courts to establish their status.
2. the inventory when completed in 2010 revealed that 60% of the cases for each court were completed files and that 40 % of the cases in each court were pending files.
3. it was proposed that a new database would be introduced to support a new judicial case management system would render accurate case flow data and produce reliable case data and statistical information. The 40% of active files would then be posted on the new database and together with new case files, they should be managed under new case management system.

New database

In the reporting period, a new database was introduced. All pending and new cases for both Courts were posted on it. The database contained all relevant information from the point of case registration and up to disposition including data on judge assigned the case and reserved judgments.

New case management system – Case Docketing System

Also a new case management system known as the Case Docketing System (CDS) was introduced. Under this system, all cases filed in the National Court would be assigned to a Judge to manage and complete the case and account for its disposition.

Monthly Court circuit arrangements phased out

As a direct consequence of the new case management regime, the old and outdated system of assigning judges, month by month, on court circuits to different provincial or district locations or court tracks around the country practiced since Independence was replaced by CDS. Under CDS, the Judge assigned the case (s) is responsible for the conduct of the case from filing to disposition.

Special summary disposal sittings

The 40% pending cases in each Court was subjected to further scrutiny to weed out dormant or inactive files that had remained inactive for more than 2 – 3 years. Under this exercise each Judge called up cases for summary disposal. Many cases that had remained idle for many years were summarily determined in the reporting period.

Case load statistics

The reporting period marked transition from the old database and case management system to the new system. By the end of 2012, the new case management regime (CDS) was in place. As such the input of data and processing of accurate data in the reporting period is not possible.

However, we are able to provide preliminary case statistics that show the case workload for the two courts in the reporting period (see *appendix 10*). In the annual reports for 2013 and beyond, we will be able to provide more detailed and accurate case flow statistics.

11. COURT RECORDING SERVICES

The use of analogue recoding system using tape is superseded by technology and spare parts and recording tapes are becoming impossible to source. The analogue recording system used by many courts in the last 15 years including PNG is being gradually phased out. Digital recording of court proceedings using the FTR system commenced in September 2012.

12. COURT SUPPORT SERVICES

The Judiciary support services comprise four divisions (Judicial support services, Registry services, Sheriff services & Corporate management services). Total support services staff establishment catered for 856 in 2012 of which 564 positions were filled, which comprised as follows:

- Judicial support services (Judges' personal staff including Judges Associates and secretarial staff) - 58 officers
- Registry services – 332 officers
- Sheriff services – 30 officers
- Corporate management services- 144 officers

Appendices 11,12 and 13 contain a list of senior officials of the Registry Services, the Sheriff Services and the Corporate management services respectively of the four Support Services, the Sheriff of the Sheriff requires special mention.

The administrative arrangements for the office of the sheriff and the performance of its functions is due for a thorough review in order to restore its intended organizational structure and to render efficiency and effectiveness in its operations.

Of the four division, Sheriff Services requires special mention. The office of the Sheriff of Papua New Guinea is established under the *Sheriff Act (ch 55)*. The Sheriff is the chief enforcement officer for judgments and orders issued by all Courts of the National Judicial System (both lower and high Courts). The office of the Sheriff is independent. Its functions are akin to the enforcement functions of the Police Force. Provision is made in the *Sheriff Act* to appoint commissioned officers of the Police Force as Sheriff officers whose duty is to assist the Sheriff execute judgments and orders.

The *Sheriff Act* makes provision for the Sheriff and the Sheriff's Officers to be appointed by the Head of State acting on advise of the National Executive Council.

Constitution, s 209(2A)(b)(iv) brings the administration of the office of the Sheriff under the National Judiciary, in that the Judiciary's budget estimates submitted to the government by the Chief Justice includes the office of the Sheriff.

Shortly before Independence, by instrument dated 17th April 1975, T K Critchley High Commissioner, by infuse of powers conferred by s 4 of the *Sheriff Act (Amalgamated) 1973*, appointed the Registrar of the Supreme Court to be the Sheriff: see National Gazette G32 dated 1May 1975 at p 4. Also by instrument dated 17th April 1975, the High Commissioner, by virtue of powers conferred by s 5 of that Act appointed each commissioned officer of the Police Force to be an officer of the Sherriff": see National Gazette G32 dated 1May 1975 at p 4.

After Independence, the *Sheriff Act (Ch 55)* succeeded the *Sheriff Act (Amalgamated) 1973*. By further instrument, the Head of State acting on advice appointed the Registrar of the National Court and the Supreme Court as the Sheriff of Papua New Guinea. By separate instrument, commissioned officers were appointed an officer of the Sheriff: see National Gazette (? Locate copy of instrument and copy of gazette).

As a consequence, the administration of the office of the sheriff was subsumed into the registry services. Over the years many issues have surfaced over the proper and efficient administration of the office of the Sheriff. For instance the Sheriff's officers and other officers

continue to be appointed under the *National Judicial Staff Services Act* and made answerable to the Secretary of the National Judicial Staff Services (NJSS). The sheriff officers are not adequately remunerated and poorly trained and equipped to carry out their duties. As a result, court judgments are not properly enforced and many remain unenforced. A thorough review of the administration of the office of the Sheriff is due.

In 2012, the Judiciary commenced discussion with the Sheriff's offices in Queensland and New South Wales, Australia to conduct review into the operations of the office of the Sheriff and make appropriate recommendations to the Judiciary.

12. FINANCE

The Judiciary is guaranteed protection and independence in the budget process and control over its appropriation. In the reporting period, the Judiciary continued to suffer reductions in its estimates submitted by the Chief Justice to the Prime Minister. The appropriation for 2011 fell short of the Chief Justice's estimates by K21,002,354 and in 2012 the appropriation fell short of the estimates by K49,671,468. : see *Appendix 14*.

The Judges in previous Annual Reports expressed concern over the failure by successive Executive Governments and Parliament to give effect to Constitutional guarantee of finance to the Judiciary accorded by s 209 and s 210 Of the *Constitution*. The Judiciary repeats those concerns with regard to the budget allocations in the reporting period.

With limited funds, the Judiciary put in place its own consultative process to prepare realistic budget estimates for the Chief Justice to submit to the government and also to put in place stringent measures to control expenditure.

The Judges' Finance Committee chaired by Justice Sao Gabi is responsible for preparing the Judiciary annual budget estimates and overseeing expenditure.

Two major achievements were made in the reporting period, as follows:

1. **Audit Committee:** With the assistance of the PNG Australia Law and Justice Partnership (PALJP) and also with the advice and assistance from the Department of Finance, the Judiciary established an Internal Audit Committee that became fully operational in 2011. This Committee chaired by an independent member (who is nominated by the Secretary of Finance) and with representatives from Department of Finance and the Auditor-General, as well as other independent members and a National Court Judge constitutes an important element of the internal control environment within the Judiciary. The Judiciary's delegate on the Committee is Justice Ere Kariko. The work of this committee complemented the work of the Auditor General who audits the Judiciary accounts each year.
2. **Provincial Imprest accounts:** With the assistance of PALJP, the Judiciary successfully de-centralized financial management to National Courts operating in provincial locations to complement the Judiciary expansion program into provinces and districts. National Courts in twelve provinces now have local access to funds for goods and services by means of an Imprest system. This system was originally piloted in two provinces during 2011 and then rolled-out to all provinces during 2012. Approximately 40% of the Judiciary's Goods and Services Appropriation is now spent at provincial level.

Provincial expenditure is now linked to Provincial budgets and is closely monitored and reported upon with the use of robust internal control procedures. A substantial investment in training and in monitoring and evaluation has been expended to ensure the system works efficiently. The system enables National Courts in the Provinces to access goods and services locally and with the minimum of delay and thereby increases efficiency in Court operations and administration. This has improved the level of service delivery at provincial level thus improving access to justice to a larger percentage of the population.

14. AUDITED ACCOUNTS

The accounts for the reporting period were audited by the Auditor General. A summary of the audit report from the Auditor General dated 11 April 2014 appears in *Appendix 15*.

15. COURT BUILDINGS AND FACILITIES

In the reporting period, the Judiciary increased its efforts to build suitable court facilities for its own use or for joint use with the District Courts. This is against a backdrop in which court facilities particularly in the provinces did not favour the higher judiciary. Historically, at the time of Independence, it was thought that the National Court which at that time was small in terms of number of Judges, would be based in Waigani and the provinces visited on circuits. For this reason, the Court facilities built in the provinces were for the use of the Local and District Courts. The Lower Courts claimed those facilities for their exclusive use. Judges who visited those locations on circuit were lent those facilities for the duration of the circuit. The situation has remained unchanged for most provinces to this day.

In the mid 1980's, when the Judiciary began to increase the number of judges and expanded into the provinces, it was faced with the difficulty of finding its own facilities and ended up sharing facilities with the District Court, a situation that has remained to this day. The higher Judiciary has been having running battle with the District Courts for access to Court facilities in the provinces.

In the reporting period, the Judiciary in consultation with the Magisterial Services that runs the District courts, developed a National Judiciary Services Capital Works Plan 2011 – 2015. Under this plan, amongst other things, the Judiciary would undertake court facilities development in several provincial locations for its own use and in other locations, one - stop Court complexes would be built to be shared by both the lower and higher Judiciaries. In other smaller provinces, the higher judiciary would use the District Court facilities and maintain limited facilities for registry services.

Also under this plan, the main Court complex in Waigani would be expanded to accommodate the increased in number of judges based in Waigani. The new court complex will also accommodate the proposed three tier high Court structure.

Appendix 15 contains a report on the major court facilities projects undertaken by the National Judiciary in the reporting period in accordance with the capital works plan.

16. COURT PUBLICATIONS

Publication of court information and court decisions for public dissemination is an integral part of the Courts' work. Two judicial committees were responsible for the writing and publishing information concerning the Courts and court decisions. The Council of Law Reporting under the Chairmanship of Justice Les Gavara-Nanu was responsible for publishing judgments on the Papua New Guinea Law Reports. In the reporting period, the Council commenced work on preparing for publishing the Law Reports for 2006, 2007, 2008 and 2009.

Apart from the above, the Judiciary continued to publish judgments of the National Court and the Supreme Court through PNGINLAW database and PACLII website, both of which are available to the public.

The Publications Committee under the chairmanship of Justice Nicholas Kirriwom was responsible for writing and publishing several other publications in the reporting period as follows:

1. *Case Notes* for 2009 and 2010.

This book contains a summary of important cases decided in the period.

2. *Underlying Law Journal*

A periodic journal was published in 2012 for the first time on the topic of the Underlying Law. It features some papers delivered at the first underlying Law Conference at Alotau in December 2011 and other notable academic papers on the topic specific to Papua New Guinea previously published in international journals. It also contains the Rules made by the Judges for pleading in cases where the Court may be asked to develop the underlying law. Other editions are planned for the future.

3. *Consolidated National Court Rules 1987 – 2012*

A 555-page hardcover volume consolidating all of the Rules of the National Court still current and made between 1983 and 2011. This is the first volume of its type since Independence and the Committee invested considerable effort in the page headers and employment of a specialist indexer for the indexes to make sure they are user-friendly. The Court offers copies of these publications for sale to the general public through its sales agent.

4. *Judges Supreme Court Bench Book*

Also published in the period for the use of the Judges was a Supreme Court Bench Book which gathers together the decisions of the court on the various aspects of the Supreme Court Rules and some other common legal topics. A good deal of this material is available to the general public through a *Commentary to the Supreme Court Rules* published on the Paclii website.

5. *Supreme Court Rules (Consolidated) 2012*

The Judges reviewed the *Supreme Court Rules 1984* and made changes. A Book containing a consolidation of rules made to date was published.

17. JUDICIAL EDUCATION & TRAINING

Professional development of judicial officers and Court support staff through structured judicial development programs is essential to achieving judicial excellence.

In the pursuit of judicial excellence, the Judiciary has moved towards phasing out ad hoc training arrangements undertaken previously under the auspices of the Judicial Education Committee. In 2009, The Judiciary established a centre for judicial excellence that is able to deliver structured judicial development programs delivered by and for judicial officers and Court staff. The PNG Centre for Judicial Excellence (PngCJE), established in 2010 under a

Memorandum of Understanding signed between the Chief Justice, Chief Magistrate and the Secretary for Justice, is set to deliver structured programs.

The establishment of PngCJE is an important step in implementing the government's aspirations pronounced in the White Paper on Law and Justice issued in 2007. In that paper, the government called for the establishment of a judicial college to deliver structured judicial training programs for the higher and the lower judiciary. The White Paper states the following.

"The government acknowledges moves by the judiciary to take the lead in establishing a formally structured legal/ judicial training program building upon the foundation created by the current ad hoc judicial training programs undertaken by the judiciary and the Magisterial Services. Government will support the judiciary and the Magisterial Service to work with the Legal Training Institute to bring to government a proposal to establish the Judicial and Legal Training Centre. In addition it will establish a training centre in which judicial officers and court officers can have their skills and competencies upgraded. The centre will also be available for use by others in the sector that have a close engagement with the court processes. Government proposes to invite similar judicial and legal professional development institutes in Australia and New Zealand to form an association with the centre so as to encourage the exchange of instructors, course materials and experiences. The centre's resources will also be available to judges and Court staff of the other Pacific jurisdictions." (p.18)

The Judiciary considered that in the long term the Judiciary will have to institutionalize judicial education and trying by establishing for itself a permanent institution for judicial training and education under legislation. For instance, a number of States including Australia and the UK have institutionalized judicial education by legislation. The establishment of PngCJE under the MOU is the beginning of that process.

Since its inception PngCJE has delivered training programs for judicial officers from within PNG and provided assistance to small Pacific jurisdictions. Courses offered include judgment writing, Election Petitions, Mediators training and training for Court interpreters. PngCJE has developed close partnership with several international judicial education agencies and institutions to assist in running judicial education programs. Those include the Commonwealth Judicial Education Institute, Australian Judicial College and Pacific Judicial Development Program.

18. MOU WITH THE FEDERAL COURT OF AUSTRALIA

On 26 November 2009, the PNG Judiciary and the Federal Court of Australia entered into a MOU for judicial cooperation. The MOU runs for five years. The main purpose of the MOU is for judicial cooperation in enhancing and improving the conduct of commercial and civil cases. The Annexure to the MOU identifies activities conducted over a two year period. The term of the Annexure expired in 2011 and a new Annexure was signed between the two Judiciaries in Brisbane on 1 November 2012.

19. MOU WITH THE SUPREME COURT OF QUEENSLAND

On 9 August 2012, the Supreme Court of Queensland and the PNG Judiciary entered into a MOU for judicial cooperation for a term of 5 years. Its main purpose is to enhance and improve criminal justice administration in the PNG Courts through research, exchange of ideas and exchange of technical personnel and equipments.

20. CORPORATE PLANNING & IMPLEMENTATION

The Judiciary is a service institution and its programs and activities for service delivery are guided by its corporate plan. The Judiciary's first five year corporate plan was issued in 2006. The current five year plan was issued in 2011. The Planning Committee chaired by the Hon Justice Don Sawong is responsible for overseeing and reporting on its implementation.

The NJS Corporate Plan 2011-2015 launched on 30th April 2011 contains many initiatives and activities designed to improve the quality of judicial services offered to people at all levels of the community and to ensure that these services are easily accessible by the people of PNG. The Judiciary is determined to meet the community expectation by implementing the initiatives and activities that were identified during consultations so as to achieve the objectives of this Corporate Plan. The Corporate Plan is the framework on which the 2011 to 2015 budget has been and will continue to be based.

Amongst the major activities that featured in the Corporate Plan which were implemented in the reporting period include the following:

- (1) Increased the number of Judges by from 21 as at end of 2010 to 32 in 2012 (4 new permanent appointments and 7 new Acting Appointments); Continued to strengthen and improve the work of special Court tracks, especially the Election Petition National Court track and the Supreme Court Election Petition Review track by introducing changes to the rules of Court and stream lining and realigning case management practices to achieve greater efficiency in case disposition;
- (3) Opened five new provincial resident Judge centers (Kundiawa, Alotau, Mendi, Wewak and Buka). The National Government's Medium Term Development 2011-2015 states that there should be two (2) resident judges in each region by 2015. We are happy to report that we have exceeded this target. There are now seventeen (17) resident Judges in the four (4) regions excluding National Capital District.
- (4) Completed pre-tender specification work for design of new major Court Complex to replace the existing Court House at Waigani;
- (5) Conducted meaningful engagements with executive government on implementing the Judiciary's "21st Century Court Structure Reform Report 2010) under which it is proposed that the National Court and Supreme Court administration be separated and a new Court, an intermediate appellate Court known as the Court of Appeal, be introduced.
- (6) Launched transition from Analogue Court Recording System to Digital Recording System using modern FTR system;
- (7) Intensified activity on training of Court annexed Mediators to mediate 60% of civil cases filed in the National Court

In 2012, the total number of activities for the Judiciary for all divisions were 367. The Judiciary has successfully implemented 171 (46%) whilst 140 (38%) are on-going and 40 (16%) were not implemented.

21. APPENDICES

- 1 *Jurisdiction of the Courts*
- 2 *List of Judges and resident locations*
- 3 *Special Court track report – Commercial*
- 4 *Special Court track report – Human Rights*
- 5 *Special Court track report – Election Petitions*
- 6 *Special Court track report – Appeals & Judicial Review*
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*Case summary of **In re Reference to Constitution section 19(1)**
by East Sepik Provincial Executive [2011] PGSC 41; SC1154
(12 December 2011) & In re Reference by the Attorney General
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- 8 *Leadership Tribunal Case Report*
- 9 *Caseload statistics*
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Appendix 1: Jurisdictions of the Courts

Constitutional scheme for judicial administration

Section 99 (2) of the *Constitution* provides the structure of Government as consisting of three arms - the National Parliament (Legislature), the National Executive Council and the National Judicial System. Section 99 (3) states that in principle the respective powers and functions of the three arms shall be kept separate from each other, s. 99 (3). Section 157 of the *Constitution* guarantees independence of the National Judicial System.

Court Administration

The Judiciary is a service institution. Its core function is to administer justice according to law. This is achieved by Judges hearing and deciding cases in the Supreme Court and the National Court. It is vital to have an efficient administrative system to support the Judges in performing their core function.

The Supreme Court and the National Court are jointly administered by the Chief Justice. However it is a collective role involving participation of all Judges. Section 169 (3) of the *Constitution* states “(T)he Chief Justice, after consultation with the other Judges, is responsible for the organization of the affairs and the administration of the business of the Supreme Court and the National Court.”

Consultation by the Chief Justice with other Judges occurs in many ways, the main one being consultation with all Judges collectively through a series of Judges Consultation Meetings.

The Secretary of the National Judicial Staff Service is the head of the National Judicial Staff Service established under the *National Judicial Staff Service Act 1987*. The Registrar of the Supreme Court and the National Court is the head of the Registry service of both Courts. He is appointed under the *Supreme Court Act* (Ch 37) and the *National Court Act* (Ch 38). The Secretary and the Registrar are responsible to the Chief Justice for the performance of their respective administrative functions.

Ultimately, the Chief Justice is accountable to the Parliament and the people of Papua New Guinea.

Number of Judges

Section 164 of the *Constitution* provides for the number of Judges to be determined under an Act of the Parliament. Section 2 of the *National Court (Number of Judges) Act* (Chapter 404) provides for the number of Judges to be determined by the *Head of State acting with the advice of the National Executive Council* after considering a report from the Chief

Justice. The number of judges does not include the Chief Justice, Deputy Chief Justice and Acting Judges.

The current number of judges was determined by the NEC in 1999 (*decision No.35/99 in meeting No.09/99 dated 26th February 1999*), which set the number of Judges at 23.

Supreme Courts

The *Constitution*, Section 160 establishes the Supreme Court. The ***Supreme Court Act*** (Chapter 37) further provides the powers and rules of practice and procedures for the Supreme Court. It is the highest court in Papua New Guinea and its decisions are final and binding on all persons.

Jurisdiction of the Supreme Court

The jurisdiction or powers of the Supreme Court are as provided by the *Constitution*, s. 162 (2) or other statutory laws of Papua New Guinea. The main jurisdiction of the Supreme Court is to;

- Hear appeals from the decisions of the National Court;
- Review decisions of the National Court by virtue of Section 155(2) of the *Constitution*. (concerning matters of which the law does not allow for appeals to be made);
- Give an opinion or advice on whether a proposed law or a law already made by Parliament is *Constitutional*;
- Develop the Underlying Law;
- Enforce human rights as provided under the *Constitution*, and
- Decide issues referred to it by persons qualified to make a reference to the Supreme Court under the *Constitution*;

Membership of the Supreme Court

Judges (other than acting judges) of the National Court are also Judges of the Supreme Court. One, three, five or seven judges sitting together constitute a Supreme Court Bench. A single Judge may constitute a Supreme Court to hear interlocutory matter.

Supreme Court Registry

The registry function of the Supreme Court is centralized at the Waigani Court House. All registry work, including legal document processing, case-flow management, listing of matters for hearing, registering court decisions/orders are managed from Waigani.

Sittings of the Supreme Court

The principal seat of the Supreme Court is at Waigani. Until June 1994 the Supreme Court had been sitting in Waigani only, to deal with appeals. The Supreme Court now sits on a regular basis in Lae, Mt. Hagen, Kokopo, Wewak and Kimbe. It may also from time to time sit elsewhere in other Provincial centres. This depends on the volume of appeal cases generated by a particular province and there being adequate court facilities in a provincial court house to accommodate the Supreme Court.

As much as the Supreme Court would like to travel on circuit to all the Provincial centres in the country, there are logistical and practical challenges that prevent the Supreme Court from sitting in all the Provincial towns. In many provinces Court facilities were inadequate to accommodate sittings of the Supreme Court. As part of its Infrastructure development program, the Judiciary is addressing this matter to ensure the Supreme Court is more readily accessible to the people of Papua New Guinea.

National Court

The National Court of Justice is established by Section 163 of the *Constitution*. Further provisions concerning the National Court, which includes Rules of Practice and Procedures, are set out in the *National Court Act* (Chapter 38).

Membership of the National Court

Judges of the National Court are the Chief Justice, Deputy Chief Justice and other judges. Citizen Judges are appointed for a 10-year term whilst non-citizen judges are appointed for a three-year term. Acting Judges are appointed for up to a 12-month period to help ease an unexpected workload or to temporarily occupy a vacancy or fill in during the absence of a Judge. One judge constitutes a National Court Bench.

Jurisdiction of the National Court

Section 166 of *Constitution* provides the jurisdiction of the National Court. It is a court of unlimited jurisdiction. The main jurisdictional areas dealt with by the National Court are;

- Trials of indictable offences (serious crimes under the *Criminal Code*);
- Appeals from the District Court and the Commissioner of Inland Revenue;
- Enforcement of human rights under the *Constitution*;
- Development of the Underlying Law; and;
- Review of administrative decisions or actions

Civil matters handled by the National Court include;

- Claims involving any amount, however as the District Court deals with amounts below K10,000, in practice the National Court only deals with claims exceeding K10,000.00;
- Election Petitions (For National Parliament; Local Level Government Elections are dealt with by the District Court);
- Matrimonial Matters (Adoption and Custody of Children, Dissolution of Marriage, where a marriage is registered. The District Court also deals with custody and other matrimonial matters);
- Probate And Administration (To allow for distribution of a property of a person who has died where there is a will or a large sum of money involved – customary and smaller matters are dealt with administratively by other means);
- Company Matters (Winding up companies and other matters);
- Insolvency;
- Admiralty (Shipping and Cargo Claims)
- Lawyers Admission; and;
- Prerogative Orders.

Sittings of the National Court

The main National Court Registry is at Waigani Court House (Supreme Court Building). There are registries of the National Court in each Provincial centre where there is a resident Judge and an Assistant Registrar. The Registrar of the National Court oversees the Registry at Waigani with a Deputy Registrar.

It is planned that registries will be established in each centre where circuits are conducted. This will make the Courts more accessible to the people. People will be able to file their cases in their own provinces. New Registries are added each year

Appendix 2 :

LIST OF JUDGES and their RESIDENT LOCATIONS

	Name of Judge	Location
1	The Hon. Chief Justice Sir Salamo Injia Kt.	Waigani
2	The Hon. Deputy Chief Justice, Gibbs Salika, CSM, OBE	Waigani
3	The Hon. Justice Sir Bernard B. Sakora, CBE, CSM	Waigani
4	The Hon. Justice Mark Sevua, CBE (retired January 2011	Waigani
5	The Hon. Justice Nicholas Kirriwom	Wewak
6	The Hon. Justice Les Gavara-Nanu, OBE, CSM	Waigani
7	The Hon. Justice Ambeng Kandakasi	Waigani
8	The Hon. Justice Ellenas Vitata Batari, MBE	Kimbe
9	The Hon. Justice Salatiel Lenalia	Kokopo
10	The Hon. Justice Catherine Anne Davani	Waigani
11	The Hon. Justice Panuel Mogish	Waigani
12	The Hon. Justice David Lionel Cannings	Madang
13	The Hon. Justice George Manuhu	Waigani
14	The Hon. Justice Kingsley Allen David	Mt Hagen
15	The Hon. Justice Sao Gabi	Lae
16	The Hon. Justice Derek Hartshorn, ML	Waigani
17	The Hon. Justice Joseph Yagi	Goroka
18	The Hon. Justice Colin Makail	Waigani
19	The Hon. Justice Ere Kariko MBE	Waigani
20	The Hon. Justice Don Sawong MBE	Lae
21	The Hon. Justice John Kawi	Waigani
22	The Hon. Stephen James Kassman – appointed 2011	Mendi
23	The Hon. Jacinta Murray – appointed 2011	Lae
24	The Hon. Berna Joan Collier – appointed 2011	Waigani/Brisbane
25	The Hon. John Alexander Logan OA- appointed 2011	Waigani/Brisbane
26	Acting Justice Royale Thompson— appointed 2011 only	Waigani
27	The Hon. Acting Justice Mekeo Gauli -appointed 2011, reappointed 2012	Wabag
28	The Hon. Acting Justice David Maliku – Appointed 2011, reappointed 2012	Kokopo
29	The Hon. Acting Justice Martin Ipang –Appointed 2011, re-appointed 2012	Goroka
30	The Hon. Acting Justice Lawrence Kangwia – appointed 2011, reappointed 2012	Kundiawa
31	The Hon. Acting Justice Iova Geita—appointed 2012 only	Wewak
32	The Hon. Acting Justice Peter Toliken—appointed 2012 only	Alotau

Appendix 3 : SPECIAL TRACK- COMMERCIAL TRACK

The Judge Administrator of the Commercial List Court is Justice Hartshorn.

The jurisdiction of the Commercial List Court is wide. It extends to any claim for an amount greater than K 500,000 (AUD \$190,000) that arises out of a commercial transaction or in which there is an issue which has importance in trade or commerce.

Without being exhaustive, a claim that may be regarded as arising out of a commercial transaction is likely to involve the construction of a business contract or a commercial document, insurance and re-insurance, banking and financial services, securities, technology rights, intellectual property, takeovers, exporting and importing, carriage of goods, natural resources, taxation, company law, liquidations, markets, exchanges and commodities.

In 2011 and 2012 the volume and complexity of cases being heard in the Commercial List has continue to increase. The cases coming before the Court have included numerous cases relating to the LNG Project, mining, forestry, fishing, major construction disputes, shipping including the removal of wrecks, alleged breach of trademarks and importation of counterfeit cigarettes, loan recovery by banks and finance companies, liquidations and the recovery of assets, schemes of arrangement, disputes between statutory corporations and the powers of the Registrar of Companies and the Investment Promotion Authority.

The Commercial List Court has been sitting on an almost daily basis in Waigani throughout the year. The emphasis is on cases being determined expeditiously with a consistent approach being adopted with particular attention to proper timekeeping, the imposition of directions and adherence to those directions, the delivery of ex tempore decisions on motions more than 60% of the time and some of the time after substantive hearings and the insistence upon counsel precisely and briefly informing the court of the client's position.

It is anticipated that the work of the Commercial List Court will continue to increase given the increase in economic activity and the continuing growing awareness that commercial matters however complex are now able to be dealt with expeditiously.

Appendix 4 : SPECIAL TRACK - HUMAN RIGHTS

In 2010 the judges made the Human Rights Rules making it easier and simpler to commence proceedings in the courts, recognizing that human rights cases are of a special type and need to be given special priority, making it easier for judges and court officials to manage human rights matters, and improving access to justice. These rules commenced operation on the 1 July 2011 and the Chief Justice appointed Justice David Cannings to administer the list of human rights cases.

The most prolific and serious offenders against human rights, in terms of matters coming before the courts, are members of the disciplined forces, especially the Police Force.

In the reporting period, whilst the regular courts continued to deal with many human rights cases, we mention a number of such cases dealt with by the Human Rights track in which damages were awarded for breach of Human Rights.

2011 Cases

A member of the Police Force while on police duty shot a man in the leg for no good reason. The man's leg had to be amputated below the knee. Total judgment, including interest, against the State was K262,106.80: *Namba v Naru* [2011] PGNC 124; N4396 (23 September 2011).

A claim was made against the State for damages for loss of personal property, animals economic trees and food crops resulting from a police raid. Damages of K89,736 was awarded against the State: *Aine v State* [2011] PGNC 116; N389 (26 September 2011).

A squad of police officers raided a block of State land as part of a squatter eviction exercise and destroyed a house and other property owned by the plaintiff who claimed K3,347, 667 in damages. The Court awarded a total amount of K416,405.26 against the Madang Provincial Government: *Alep v Madang Provincial Government* [2011] PGNC 149; N4442 (11 November 2011)

A health worker was assaulted by a policeman in the course of his duties. The worker was punched and kicked and sustained injuries to the face and head and lower back. General damages for pain and suffering and loss of amenities were assessed at K6000: *Kito v Karl* [2011] PGNC 200; N4543 (10 February 2011).

2012 Cases

There were also a number of human rights matters which came before the court in 2012 involving the police. These were the only matters involving human rights which came before the Court in 2012.

A man was locked up by police for 7 weeks without charging him with an offence or taking him before a magistrate to apply for bail. An order was made for the immediate release of the applicant subject to conditions: *In the Matter of an Application for Enforcement of Human Rights and a Complaint of Unlawful and Unreasonable Detention by Jonathan Paru* [2012] PGNC 273; N4572 (10 February 2012).

A man claimed that he was unlawfully shot in the leg by police officers and as a result his leg was amputated. He commenced proceedings under Section 57 of the *Constitution* seeking enforcement of his human rights. The plaintiff established a cause of action for breach of human rights against the State: *Meta v Kumono* [2012] PGNC 272; N4598 (29 February 2012) Damages of K477,325.80 including interest were awarded against the State: *Meta v Independent State of Papua New Guinea* [2012] PGNC 95; N4745 (20 July 2012).

A man was shot in the leg by police for no good reason. The leg had to be amputated. Total damages were assessed against the State in the sum of K458,918.94: *Kerry v Independent State of Papua New Guinea* [2012] PGNC 65; N4658 (2 May 2012).

A man complained he was assaulted and shot in the back by police. After a trial in which the State did not call any evidence, the Plaintiff established his cause of action against the State: *Pain v State* [2012] PGNC 40; N4708 (25 June 2012).

A man alleged that he had been assaulted by police. The State called no evidence. Liability was found against the police and the State: *Kale v Ipata* [2012] PGNC 148; N4806 (24 September 2012).

Members of the Police Force, while on police duty, shot ten men in the feet and arrested three others without good reason, then detained the 13 of them for 64 days before they were released from custody during which time they were denied medical treatment. Criminal charges against them were struck out by the District Court. The total amount of damages awarded for all plaintiffs was K265,000.00 for wrongful injury or trespass to person + K352,000.00 for false imprisonment = K617,000.00. In addition, interest of K521, 241.60 is payable, making the total judgment sum K1,138,241.60.: *Songkae v Wagambie* [2012] PGNC 150; N4807 (27 September 2012).

Five plaintiffs claimed that they were for no good reason physically assaulted and beaten with batons and gun butts by members of the Police Force who raided the first plaintiff's residence and looted the trade store in which he conducted business at his residence. Judgement for liability was given against a policeman and the State for damages to be assessed: *Kaima v Poga* [2012] PGNC 116; N4813 (8 October 2012).

The plaintiffs claimed that their houses (and in the case of the second plaintiff, her store) and contents were burned and destroyed by members of the Police Force. Liability was found against a policeman and the State. Damages were assessed at K12,000.00 (first plaintiff) and K16,000.00 (second plaintiff); and interest was awarded at a rate of 8 per cent per annum from the date on which the cause of action accrued to the date of judgment, a period of 14.77 years: K14,179.20 (first plaintiff) and K18,905.60 (second plaintiff), total judgment of K61,801.: *Gawi v State* [2012] PGNC 117; N4814 (8 October 2012).

A man was arrested, detained and bashed without good reason by members of the Police Force at a police station and then charged, without a proper basis, with stealing, which resulted in him being remanded in custody for one month, three weeks before being granted bail and eventually having the criminal charge struck out by the District Court. Liability was established against the State. Damages were assessed at K5,000.00 and interest was awarded in the sum of K2,028.00, being a total judgment sum of K7,028.00: *Tindaka v Kambu* [2012] PGNC 136; N4853 (31 October 2012).

The plaintiff claimed that he was, while on remand for a criminal offence, unlawfully detained for seven days in a detention cell within a correctional institution in a confined and overcrowded space in conditions that were inhuman. He commenced proceedings under Section 57 of the *Constitution* seeking enforcement of his human rights, in particular his rights to full protection of the law under Section 37(1) of the *Constitution*, freedom from inhuman treatment under Section 36(1) of the *Constitution*, be treated with humanity and respect under Section 37(17) of the *Constitution* and personal liberty under Section 42 of the *Constitution*. He sought enforcement of his rights by way of an order for compensation against the State. Liability was established against the State. Damages were calculated at the rate of K200.00 per day of unconstitutional detention plus exemplary damages of K100.00 per day, being a total of K2,100.00 plus interest of K599.76, being a total judgment sum of K2,699.76: *Selan v Independent State of Papua New Guinea* [2012] PGNC 242; N4938 (18 December).

A woman was arrested and detained in a correctional facility for 18 days on the false accusation that she had failed to pay a debt pursuant to a District Court Order. Damages of K6, 444 was assessed, including interest: *Chauka v Biang* N4854 (31 October 2012).

A policeman led a raid with a party of other policeman on a private dwelling, without a warrant, ordered the occupants out at gunpoint, assaulted them, detained them in a police lock-up for 13 days, then let them go without charge. Damages, including interest, was assessed in the sum of K13, 845 for one plaintiff only: *Stephen Kuefa v George Sunku* N4855 (31 October 2012).

Appendix 5: SPECIAL TRACK-ELECTION PETITIONS

Introduction

In anticipation of an increase in election petitions expected after the 2012 general elections, the Judiciary conducted workshops and prepared itself to deal with petitions. The Chief Justice appointed Justice Collin Makail to administer the Petition track.

The Judiciary set itself a target to achieve prompt disposition of petition cases. It gave itself 6-12 month to complete petition trials in the National Court and a further 6- 12 months to complete petition decision reviews in the Supreme Court.

Petitions in the National Court

The year 2012 was also a significant and eventful year for the Judiciary because it was the year the country held its General Elections. Under the Organic Law on Provincial and Local-level Government Elections, section 208(e), a losing candidate may file an election petition to dispute the result of the election and it must be filed within 40 days after the declaration of the result of the election. It was anticipated by the Judiciary that there will be election petitions filed and in preparation for this, Judges held a one day Election Petition Workshop on 31st July at Crown Plaza Hotel in Port Moresby. It was chaired by the Deputy Chief Justice Gibbs Salika. Judges who presented papers on the topic were Justice Kandakasi and Justice Davani. The Workshop emphasised on timely disposition of election petitions. The goal was to complete them within one year of their filing.

The management of election petitions is governed by the National Court Election Petition Rules, 2002 (as amended). The Chief Justice, in consultation with Judges appointed Justice Colin Makail as Judge Administrator of the Election Petition Track. An Election Petition Registry support team was also established comprising of Track Officer Ms Kini Raimo, and three assistants.

Justice Makail's task was to supervise the case management of election petitions including dealing with all preliminary matters before fixing the petitions for trial. Preliminary matters include confirmation of legal representation of parties, preparation of evidence, confirmation of production of electoral records by Electoral Commission, confirmation of objections to competency of petitions and allocation of cases to trial judges. The support team was responsible for receiving and registering election petitions, court documents and advising parties of dates for preliminary hearings and trials after consultation with the Judge Administrator.

The 2012 National Elections saw a record 109 election petitions registered in the National Court. The first was registered on 26th July 2012. It was for Ambunti-Drekikir Open electorate by Tony Aimo against Hon. Ezekiel Anisi. One of three election petitions for the National Capital District Provincial Electorate was the last. It was filed by Aiwa Olmi against Hon. Powes Parkop on 17th September. The electorates in the Coastal Provinces registered the highest number of petitions with 59 and the Highlands Provinces with 46. Between 26th July and 13th December, a total of 33 petitions out of 109 were disposed of. 76 were carried over to the new-year. The 33 petitions were disposed in the following manner:

- 6 were decided following a trial. Out of this number, 4 were upheld and a by-election ordered or recount of votes ordered. 2 were dismissed.
- 5 were dismissed on competency grounds.
- 13 were withdrawn.
- 9 were dismissed for want of prosecution or non-compliance with court directions and Rules.

Petition decision reviews in the Supreme Court

In 2012, eighteen (18) decisions of the National Court were taken on review to the Supreme Court. In 8 matters, leave for review applications were either dismissed or withdrawn. In two matters, leave to apply for review were granted. Eight leave applications were pending at the close of 2012.

Appendix 6 : SPECIAL TRACK – APPEALS & JUDICIAL REVIEW

The Appeals & Judicial Review track (AJR) is the second special Court track (the first being the Election Petition track introduced in 2002) introduced in 2005. The practice and procedures governing the conduct of cases are contained in the *National Court (Appeal) Rules 2005* and Order 16 of the *National Court Rules* as amended by *Judicial Review (Amendment) Rules 2005*.

A major portion of its work is with regard to applications for judicial review of administrative action. Decisions under review include appointments made by appointing authorities in government.

Judicial review of administrative action is a fast growing area of judicial work and workload increased significantly in the reporting period.

The law is also evolving. By the end of the reporting period a large body of law to that addressed special issues on public law had been developed by the National Court. Many of those decisions were appealed giving the Supreme Court an opportunity to settle the principles and enunciate new law.

The principles that govern public and private rights in the context of a public official engaged on contract of employment is the subject of divided judicial opinion.

There had been a growing trend in the public sector, especially by the Head of government Departments to deliberately ignore or defy decisions of the Public Services Commission, after 30 days from the date of the decision pursuant to s.18 (3) (d) (ii) of the *Public Services Management Act, 1995*. When the concerned public servants take their matter to Court, the State is not able to defend the claims and ends up paying huge amount in costs. This should be a matter of serious concern for the government.

Large percentage of cases that came before the Court during the reporting period related to Land deals. Most of these cases involved illegal issuing of titles by the Office of the Registrar of Titles. Many other cases involved decisions by the Land Board which were made without hearing all the parties having interest in the land.

Many other cases involved forfeiture of leases without the lessees being given proper notices to show cause.

If the Land Board, Office of the Registrar of Titles and offices of the Department of Lands and Physical Planning dealing with land matters follow procedures set out in the Land Act, most, if not all these cases would not have ended up in court.

Appendix 7 - SPECIAL TRACK - MEDIATIONS

As reported in the last Judges Report a new building was constructed in 2010 at the entrance to the National Court to house ADR facilities and to be had ADR and Mediation Centre. Since the commencement of the mediation Centre a total of 7 training sessions have been run through the Australian Mediation Association. 147 have participated (Judges, Magistrates, NJSS staff and lawyers). 140 underwent mediate or accreditation assessment and 63 gained Australian Accreditation and also gained PNG Provisional Accreditation as mediators in PNG under our ADR Rules.

The Director for the Papua New Guinea Centre for Judicial Excellence, Regina Sagu, became the first fully accredited local mediator. There are now 11 fully accredited mediators, 10 internal and 1 external. The Deputy Chief Justice Gibbs Salika, Justice Kirriwom, senior provincial Magistrate Seri Senaka, lawyers Geoff Shepherd and Derek Wood, Secretary, NJSS Kapi Sarohafa, Assisted Secretary Anna Nenta and Kari Rea will soon be in a position to attain full accreditation. There are approximately 63 provisionally accredited mediators yet to be fully accredited.

Some of the challenges faced so far in implementing mediation have been the low number of matters ordered to mediation, the inability of parties to pay the quite high external mediator fees, mediators not making themselves available and time conflicts between parties and mediators.

There has been participation in international workshops including the Samoan Judiciary Consultation on Rules and ADR Development, consultation with the Queensland Law Society, attendance at the Asian Pacific Mediation Forum resulting in collaboration with the National Judicial Institution in Canada for an exchange between Judges on court annexed mediation practices and other forms of non-adversarial dispute resolution. Attendance at the Australian National Mediation Conference in Sydney 2012 resulting in Papua New Guinea taking a leading role on court next mediation mechanisms in the Pacific, Asia and Australia region.

In the period 2011 and 2012 a total one of 157 mediation orders were registered with the Centre. 46 mediations were successful, 27 were unsuccessful, 20 mediations did not progress because parties were unable to meet external mediator costs. 84 registered mediation cases have not progressed and remain pending. Justice Kanda-kasi has disposed of more than 200 cases in Court using skills in conducting mediation since the launch of the program.

Work still in progress at the end of 2012 included a Judges Mediation Bench Book, a Mediators Handbook, pamphlets and brochures regarding mediation, a mediation section on the NJSS web site, independent evaluation of the mediation process, review of the ADR Rules and other matters.

The work to date has identified a need for mediation venues in other locations throughout the country, including room for staff.

Appendix 8:

In re Reference to *Constitution* section 19(1) by East Sepik Provincial Executive [2011] PGSC 41; SC1154 (12 December 2011)

Injia CJ, Kirriwom J and Gavara-Nanu J (Salika DCJ and Sakora J dissenting)

s19 (3)(b) of the *Constitution* – Removal of Prime Minister – Removal of Member of Parliament - *Constitution*, s142 (2), (3), (4) (5); s103(3)(b), s104 (2) (d), s 133, s 134, s 135, s 141 (a), s 86 (4), Schedule 1.10 (3)– Organic Law on National and Local-Level Government Elections (OLNLLGE), Part XVIII, Division 2 (ss 228 – 233).

Facts

Prime Minister Sir Michael Somare was absent from the country and in Singapore from 24th March 2011 to 26th August 2011 for medical treatment. During that time there were 3 meetings of the Parliament in May, June and August. Sir Michael had leave of the Parliament to be absent from the May meeting. On 2nd August 2011, Parliament passed a motion declaring that there was a vacancy in the office of Prime Minister and immediately thereafter elected the Hon Peter O'Neill as Prime Minister. There was a further meeting of the Parliament in September and Sir Michael attended that meeting on 6th September. Subsequently on that day the Speaker declared that Sir Michael Somare had lost his seat in Parliament by virtue of having been absent from Parliament without leave for 3 consecutive sittings of the Parliament.

Held;

1. Injia CJ, Salika DCJ, Kirriwom J and Gavara- Nanu J, (Sakora J dissenting)
2. The occasions and methods for removing a Prime Minister are restricted to those specified in *Constitutional* laws;
3. Sir Michael Somare was not lawfully removed from office as Prime Minister; Injia CJ, Salika DCJ, Kirriwom J and Gavara- Nanu J, (Sakora J dissenting):
4. A Prime Minister can only be elected on a day following the day of the Speaker's advice to Parliament that there is a vacancy in the office of Prime Minister;
5. Mr Peter O'Neill was not lawfully elected as Prime Minister, the election was unconstitutional and invalid;

The National Court has exclusive jurisdiction as to whether the seat of a member has become vacant by reason of facts arising under Section 104(2)(d) of the *Constitution*;

The declaration made by the Speaker on 6th September 2011 that Sir Michael Somare had lost his seat by reason of being absent from Parliament for three consecutive meetings of Parliament pursuant to Section 104(2)(d) of the *Constitution* is unconstitutional and invalid.

The meaning of “person of unsound mind” in Section 103(3)(b) of the *Constitution* is the meaning given by Section 81 of the Public Health Act Chapter 226. In re *Constitution* Section 19(1) - Special reference by Allan Marat; In re *Constitution* Section 19(1) and 3(a) - Special reference by the National Parliament [2012] PGSC 20; SC1187 (21 May 2012).

SCR 1 of 2012 Reference by the Attorney General and Speaker of Parliament

Reference Pursuant to Constitution, Section 19 (1) Reference by DR ALLAN MARAT, MP in his capacity as the Attorney - General and Principal Legal Adviser to the National Executive Council.

*In the matter of Prime Minister and NEC Act 2002 Amendments and Reserve Powers of the Governor General.
SCR 2 of 2012*

Reference by the National Parliament pursuant to Constitution, Section 19 (1) and (3) (a).

IN THE MATTER of:

Sections 104 (2)(d); 109, 110, 115, 141 (a), 142(2) of the Constitution;

Prime Minister and National Executive Council (Amendment) Act 2011;

Prime Minister and National Executive Council (Amendment No 2) Act 2011.

Injia CJ, Kirriwom & Gavara-Nanu JJ (Salika Dep. CJ, and Sakora J not delivering written opinions)

2012: April 2, 3, 4, 5 & May 21.

CONSTITUTIONAL LAW – Constitution s. 19 (2) – Binding effect of the opinions of the Supreme Court in Supreme Court References – Doctrine of separation of powers – Constitution s. 99 (3) – Constitution the Supreme law – Constitution ss. 9; 10 and 11 – Supreme law making powers of the Parliament - Supreme Court has unlimited jurisdiction – Constitution s. 99 (2) (c) - Supreme Court has inherent power – Constitution s. 155 (2)

(b) and (4) – Constitution is Supreme over all three arms of the government – Scheme of the Constitution - Supreme Court Act (Ch No 37), ss 1 & 7

CONSTITUTIONAL LAW – Constitution s. 19 (1) and (3) - Practice and Procedure – Constitutional References – Interpretation and application of Constitutional Law – Amendments to Prime Minister and Executive Council Act 2002 – Such amendments having retrospective effect; setting limit to duration of Acting Prime Minister and setting age limit of Prime Minister at 72 – Appointment of Prime Minister – Doctrine of res judicata – Doctrine of Separation of Powers - Constitution, ss38, 50, 141, 109, 110, 141, 142; Prime Minister and National Executive Council Act 201, ss 2, 3, 4 and 6.

CONSTITUTIONAL LAW – Constitution s. 86 – Justiciability of the advice given to the Head of State – Justiciability of the decisions by the Head of State – Whether the Head of State has discretion on advice by Parliament regarding election of the Prime Minister – Constitution s. 142 (2) – Scheme of the Constitution.

CONSTITUTIONAL LAW – Validity of decision by Parliament to rescind previous grant to Member of Parliament leave of absence from sitting of Parliament - Constitution, s 50, s 104 (2)(d) & s 135; Organic Law on National and Local-Level Government Elections, s 4, 228, 229.

CONSTITUTIONAL LAW – Constitution s. 153 (4) – Validity of executive acts – Constitutional safeguard and protection over executive acts – Actions taken by Ministers not open to challenge – Constitution s. 141 - Prime Minister occupying office without legal right – De facto Prime Minister – De facto government – Meaning of a de facto government.

PARLIAMENT – Legislative arm of Government – Independent from Executive and Judicial arms - Separation of Powers - Supreme law maker – Laws passed subject to the Constitution – Supremacy of the Constitution – Constitution, ss.99(2) and (3), 100, 138 & 158

JUDGMENTS AND ORDERS – Enforcement – Compliance with – Duty of all persons to obey without fail – Neither Parliament nor elected Members of Parliament, individually and collectively, are exempted from complying with Court Orders, Judgments, Decisions, Rulings or Opinions – Parliamentary privileges - Separation of powers do not apply – Misconception – Constitution, ss.155(6), 115 and 99(3).

Facts

These special references are brought under s 19 of the *Constitution* by the Attorney-General (SC Ref No 1 of 2012) and the National Parliament (SC Ref No 2 of 2012) respectively. They seek the Supreme Court's opinion on the interpretation and application of certain provisions of the *Constitution*. The validity of decisions in question include Parliament's decision made on 9th December to rescind its earlier decision to grant leave of absence to Sir Michael Somare for the May 2011 meeting of Parliament; Parliament's decision made on 12th December to enact the Prime Minister and National Executive Council (Amendment Act) 2011 which amended the Prime Minister and National Executive Council Act 2002; Parliament's decision made on 12th December to declare a vacancy in the office of the Prime Minister; Parliament's decision made on 12th December to re-elect Peter O'Neill as Prime Minister; the actions of the Governor - General Sir Michael Ogio taken on 13th December 2011 to recognize and give effect to the Supreme Court's decision given on 12th December 2011 invalidating the appointment of Peter O'Neill as Prime Minister on 2nd August 2011 and restoring Sir Michael as Prime Minister; the Speaker of Parliament and Acting Governor - General Jeffrey Nape's actions taken on 14th December to recognize Parliament's re-election of Peter O'Neill as Prime Minister; actions of the Governor-General Sir Michael Ogio in retracting his earlier recognition of the government of Prime Minister Sir Michael Somare on 13th December 2011 and recognizing the re-appointment of Peter O'Neill; and, Parliament's decision made on 21st December to enact the Prime Minister and National Executive Council (Amendment No 2) Act 2011.

1. The Supreme Court's judgment and orders given under s 19 of the *Constitution*, on 12th December 2011, in SCR No 3 of 2011 Reference by East Sepik Provincial Executive (2011) SC1154, is confirmed; and, is binding on all persons including the parties in that reference and in these references.
2. Parliament's decision made on 9th December 2011 to rescind leave of absence granted to Sir Michael Somare for the May meeting is inconsistent with s50 of the *Constitution* and s 11, s 19, s 155 (6) and s 157 of the *Constitution*; and therefore declared unconstitutional, invalid and of no effect.
3. The Prime Minister and National Executive Council (Amendment) Act 2011 passed by the Parliament on 12 December 2011 and certified by the Speaker is inconsistent with s 38 and s 50 of the *Constitution* and declared unconstitutional, invalid and of no effect.
4. The Prime Minister and National Executive Council (Amendment No 2) Act 2011 passed by the Parliament on 21 December 2011 and certified by the Speaker is inconsistent with s 11, s 19, s 38, s 50, s 155 (6) and s 157 of the *Constitution* and therefore declared unconstitutional, invalid and of no effect.
5. The election of Peter O'Neill as Prime Minister on 12th December 2011 and his subsequent confirmation by the Speaker of Parliament the Hon Jeffrey Nape, in his capacity as Acting Governor-General, on 14th December 2011 are inconsistent with s 142 (1) and (2) of the *Constitution* as interpreted and applied in *SCR No 3 of 2011 Reference by East Sepik Provincial Executive*(2011) SC1154, and therefore, declared unconstitutional, invalid and of no effect whatsoever.
6. That Prime Minister Sir Michael Somare shall be accorded full privileges and benefits as Prime Minister and Member of Parliament for East Sepik Provincial seat, effective from 2nd August 2011.
7. Pursuant to s 153 (4) of the *Constitution*, and subject to the *Constitution* generally, the bona fide decisions and actions made and implemented by the de facto government of Peter O'Neill as Prime Minister and any of those of ministers appointed by him, between 2nd August 2011 and 20th May 2012, are not open to challenge.
8. That at all material times, Sir Michael Somare was and is the member for the East Sepik Provincial seat; and, the legitimate Prime Minister of Papua New Guinea until the writs for the 2012 National elections are returned and a new Prime Minister is elected in the first sitting of the next Parliament pursuant to s 142 of the *Constitution*.
9. Pursuant to s 11, s19 (2), and s 155 (6) of the *Constitution*, it is the duty of all persons, including the Governor General, and the Speaker of Parliament and all other members of the executive government officers, bodies and agencies, so far as is within their respective lawful powers; to give full effect to and comply with the binding opinions and orders issued in SCR No 3 of 2011 and SCR No 1 and 2 of 2012.

Appendix 9 : Leadership Tribunal Case Report

General

The Leadership Tribunal track is managed by Justice Salatiel Lenalia.

Leadership Tribunals are appointed by the Chief Justice to inquire and determine allegations of misconduct in office by a leader or a constitutional office holder. Allegations of misconduct are referred to the Public Prosecutor by the Ombudsman Commission pursuant to s27 (1) of Organic Law on Duties and Responsibilities of Leadership. The Public Prosecutor in turn refers the matter to the Chief Justice or Appointing authority for the appointment of a tribunal, to investigate whether there is any cause to remove the leader from office, based on the allegations presented.

The appointment and procedures of appointing of a Leadership Tribunal are guided by the Protocol on the Appointment of Leadership Tribunals 2010. The tribunal proceedings are guided the Organic law on Duties and Responsibilities of a Leader and the Constitution.

Leadership Tribunal cases commenced in the reporting period are summarized below.

Leadership tribunal of Grand Chief Michael Somare (LT No 1 of 2010)

The Leadership Tribunal of Grand Chief Sir Michael Somare, was appointed by Sir Salamo Injia, Chief Justice of Papua New Guinea on the 21st February 2011. The Tribunal inquired into and determine 25 allegations of misconduct in office by the Prime Minister. This tribunal was unique, as it was the first tribunal, where a Papua New Guinean Prime Minister was referred and also tribunal was wholly constituted by retired judges from overseas.

Misconduct Allegations

1. Allegations 1 to 5 of failure to provide annual statements of income & assets to the Ombudsman Commission.
2. Allegations 6 to 13 of delay in providing annual statements income & assets to the Ombudsman Commission.
3. Allegation 14 to 25 of providing incomplete annual statements income & assets to the Ombudsman Commission.

Verdict of Tribunal

The Tribunal found a guilty verdict of misconduct on allegation 7,8,9,10,15,16,17, 18,19, 20,21,23 & 24. Not guilty on allegations 2, 3 & 4 and allegations 1,5,6,13,17 & 22 were dismissed on the grounds of being unnecessary and repetitious.

Recommended Penalty

The Tribunal by majority decision recommended a penalty of 14 days suspension of office, without pay.

Leadership tribunal of Hon. Arthur Somare (LT No. 6 of 2006)

On 15th September 2006, Chief Justice Sir Mari Kapi appointed tribunal of Hon. Arthur Somare, Member for Angoram. The tribunal comprised of Los, J (Chairman), Noreen Kanasa SPM (Member) and Orim Karapo SPM (Member). The tribunal was set up to inquire into and determine 11 allegations of misconduct in office of the leader.

The tribunal began proceeding on the 15th of March 2006, but did not proceed beyond that date, as the leader had filed an application to review the tribunal proceedings, on the grounds that process to his referral by Ombudsman Commission was tainted and bias. The application was granted and the matter reviewed by the National Court. While the matter was in the National Court, the chairman of the tribunal at that time, Justice Kubulan Los retired.

On the 7th of June 2011, the Chief Justice Sir Salamo Injia reconvened the tribunal, with the same senior magistrates and a new chairman, Justice Salatiel Lenalia. Senior Magistrate Noreen Kanasa passed away during the inquiry. The tribunal was then adjourned to a date for a new appointment to be made. Senior Magistrate Rosie Johnson was appointed to the tribunal on the 23rd of January 2012 and tribunal re-commenced.

Misconduct Allegations

1. Allegations 1 to 5 of failure to provide annual statements of income & assets to the Ombudsman Commission.
2. Allegations 6 to 7 of failure to comply with directions issued by the Ombudsman Commission under Section 27(4) of the Constitution.
3. Allegation 8 to 11 of failure to carry out the obligations imposed by Section 27(1) of the Constitution. In regard to the District Support Grant" Discretionary Component for the Year 2002 (K305, 102.23).

Verdict of Tribunal

Tribunal found a guilty verdict of misconduct on allegations 2 3 & 4, which he pleaded and dismissed all other allegations

Recommended Penalty

The tribunal recommended penalties of K500 fines for each allegation.

Leadership tribunal of Hon. Fidelis Semoso (LT No. 1 of 2012)

The Leadership Tribunal of Hon. Fidelis Semoso, Regional Member for Bougainville, was appointed by the Chief Justice sir Salamo Injia on the 25th of January 2012. Tribunal comprised of Lenalia, J as chairman and Magistrates Ignatius Kurie and Nerrie Eliakim as member. The tribunal inquired into the 14 allegations of misconduct in office, presented by Public Prosecutor.

Misconduct Allegations

1. Allegations 1 to 3 of misapplication of K2.7 million from South Bougainville Feeder Road Project Funds.
2. Allegations 4 to 6 of misapplication of K1.4 million from South Bougainville Feeder Road Project Funds.
3. Allegations 7 to 9 of personally benefiting from public funds meant for South Bougainville Feeder Road Project Funds.
4. Allegation 10 of assault and torture of Ms Theresa Marrie Hani Hapoot.
5. Allegation 11 of winning contract on false pretences.
6. Allegations 12 to 14 of failure to disclose interest in family company.

Verdict of Tribunal

After 4 months of inquiring, the tribunal found that the leader was guilty of allegations presented to the tribunal and deemed that there was very serious culpability in this matter.

Tribunal found a guilty verdict of misconduct on all allegations.

Penalty

The tribunal recommended penalty of dismissal from office.

Leadership tribunal of Hon. Mark Maipakai (LT No. 2 of 2014)

The tribunal of Hon. Mark Maipakai, Member for Kikori was appointed by Chief Justice Sir Salamo Injia on 25th January 2012. The composition of the tribunal was same as the Fidelis Somoso tribunal.

The leader was referred on 16 allegations of misconduct in office by the Public Prosecutor, as follow;

Misconduct Allegations

1. Allegations 1 to 5 of failure to provide annual statements of income & assets to the Ombudsman Commission.
2. Allegation 10 to 15 of providing incomplete annual statements income & assets to the Ombudsman Commission.
3. Allegation 16 of failure to comply with his duties as a leader under the Constitution (Extra Martial Affairs)

Verdict of Tribunal

Tribunal found a guilty verdict of allegations 2,3,4,5,6,7,8, and 16.

Penalty

The tribunal recommended a penalty of a fine of K500 each on seven counts and K1000 on one court.

Leadership tribunal of Hon. Patrick Pruaitch

The Leadership Tribunal of Hon. Patrick Pruaitch was appointed on the 6th January 2010. The tribunal did not progress beyond the appointment of the tribunal members, as the leader decided to apply for leave to review his referral by the Ombudsman Commission in the National Court, by way of OS 34 of 2010. The matter was brought before Hartshorn, J who refused the leave to review.

The leader then appealed the decision and applied for a stay order in the Supreme Court pending determination of the appeal. The Supreme Court granted leave and stayed the ruling of the National Court, until the substantive appeal was to be heard.

On 31st March 2010 the Supreme Court quashed the decision of the National Court and reinstated the case to go before a different judge. The Supreme Court extended the stay order until the proceedings before the National Court were determined. On 24 October.

2012, the substantive matter was heard and reserved for decision by Justice Kassman. The decision was pending at the time of this report.

Appendix 10: CASE LOAD STATISTICS

Supreme Court - Case load Statistics

2011

		Pending Pre-2011 Cases Brought	New Cases Filed in 2011	Sub-Total	Cases Completed in 2011	Pending Cases Brought Forward to 2012
Supreme Court						
	SCA	234	128	362	7	355
	SCRA	107	63	170	1	169
	SCM	31	21	52		52
	SCRef	9	3	12	1	11
	SCOS	2	2	4		4
	SCRes			0		0
	SCApp	19	8	27	2	25
	SCRev	77	72	149	2	147
TOTAL:		479	297	776	13	763

2012

		Pending Cases Brought Forward	New Cases Filed in 2012	Sub-Total	Cases Completed in 2012	Pending Cases Brought Forward to 2013
Supreme Court						
	SCA	355	141	496	29	467
	SCRA	169	40	209	3	206
	SCM	52	17	69	5	64
	SCRef	11	6	17	4	13
	SCOS	4	8	12	2	10
	SCRes	0	1	1		1
	SCApp	25	6	31	3	28
	SCRev	147	37	184	7	177
	SCRev(EP)		18	18	8	10
TOTAL		763	274	1,037	61	976

**National Court - Case load Statistics
2011**

	Pending Pre-2011 Cases Brought Forward	New Cases Filed in 2011	Sub-Total	Cases Completed in 2011	Pending Cases Brought Forward to 2012
Equity Division - Commercial					
WS(Com)	69	75	144	12	132
OS(Com)	13	36	49	3	46
MP(Com)	4	5	9	2	7
WPA(Com)	0		0		0
Equity Division - Appeals					
CA	47	31	78		78
CIA	475	109	584	40	544
OS(App)	5		5	1	4
Equity Division - Judicial Review					
OS(Jr)	258	118	376	49	327
Equity Division - Human Rights					
WS(Hr)	6	15	21		21
OS(Hr)	2	4	6		6
HRA	38	17	55	2	53
HROI	0	1	1		1
HRC	0	3	3	1	2
Equity Division - Election Petitions					
EP	29		29		29
EP(WS)	0		0		0
EP(OS)	0		0		0
EP(MP)	0		0		0
Equity Division - Leadership Tribunals					
LT	1	1	2	1	1
Common Law Division - Civil Court					
WS	3660	1129	4789	125	4664
OS	928	403	1331	74	1257
MP	387	195	582	60	522
MC	100	19	119	9	110
WPA	77	81	158	33	125
LA	0	74	74	73	1
Criminal Division					
CR	4530	727	5257	185	5072
CR(Ap)	1	15	16	11	5
TOTAL	10,626	3,058	13,684	681	13,007

**National Court - Case load Statistics
2012**

	Pending Cases Brought Forward From 2011	New Cases Filed in 2012	Sub-Total	Cases Completed in 2012	Pending Cases Brought Forward to 2013
Equity Division - Commercial					
WS(Com)	132	66	198	20	178
OS(Com)	46	44	90	14	76
MP(Com)	7	13	20	5	15
WPA(Com)	0		0		0
Equity Division - Appeals					
CA	74	41	115	2	113
CIA	544	134	678	30	648
OS(App)	4	2	6	1	5
Equity Division - Judicial Review					
OS(Jr)	327	115	442	37	405
Equity Division - Human Rights					
WS(Hr)	24	47	71	2	69
OS(Hr)	6	4	10		10
HRA	54	101	155	5	150
HROI	1	2	3		3
HRC	2	11	13		13
Equity Division - Election Petitions					
EP	29	105	134	35	99
EP(WS)	0	1	1		1
EP(OS)	0	26	26		26
EP(MP)	0		0		0
Equity Division - Leadership Tribunals					
LT	1	2	3	3	0
Common Law Division - Civil Court					
WS	4660	1206	5866	316	5550
OS	1258	574	1832	173	1659
MP	524	228	752	110	642
MC	110	18	128	5	123
WPA	125	72	197	56	141
LA	1	67	68	62	6
Criminal Division					
CR	5073	829	5902	275	5627
CR(Ap)	5	135	140	30	110
Total	13,007	3,843	16,850	1,181	15,669

Key
National Court Abbreviations

Case type Abbreviation

Writ of Summons	WS
Writ of Summons (Commercial)	WS (Com)
Writ of Summons (Election Petition)	WS (EP)
Writ of Summons (Human Rights)	WS (Hr)
Originating Proceedings	OS
Originating Summons (Appeals)	OS (App)
Originating Summons (Commercial)	OS (Com)
Originating Summons (Human Rights)	OS (Hr)
Miscellaneous Proceedings	MP
Miscellaneous Proceedings (Commercial)	MP (Com)
Miscellaneous Proceedings (Human Rights)	MP (Hr)
Criminal Appeal	CA
Civil appeal	CIA
Wills, Probate & Administration	WPA
Wills, Probate & Administration (Commercial)	WPA (Com)
Matrimonial Cause	MC
Lawyers Admission	LA
Election Petition	EP
Human Rights Applications	HRA
Human Rights Complaints	HRC
Human Rights Own (Court's) Initiative	HROI
Leadership Tribunal	LT
Crimes	CR
Crimes Bail Applications	CR (Ap)

Supreme Court Abbreviations

Supreme Court Appeal	SCA
Supreme Court Criminal Appeal	SCRA
Supreme Court Review	SCREV
Supreme Court Election Petition Review	SCREV (EP)
Supreme Court Motion	SCM
Supreme Court Reference	SC Ref
Supreme Court Application	SCApp
Supreme Court Reservation	SC Res
Supreme Court Originating Summons	SCOS

Appendix : 11**Senior Registry Officer**

DESIGNATION	2011	2012
Registrar	Mr.Ian Augerea	Mr.Ian Augerea
Deputy Registrar (Supreme)	Mrs.Christine Daingo	Mrs. Sally Karaut
Deputy Registrar (National)	Mr. Samuel Ikiso	Mr. Samuel Ikiso
AR Supreme	Mr. Joe Posi	Mrs. Poning Makap
AR Crimes	Mrs. Imelda B. Makap	Mr. Kwara Giriwa
AR Common Law	Not created/Nil	Mr.Mathew Bae (Acting)
AR Equity	Not created/Nil	Mr. David Gonol
ADR	Ms. Kari Boga	Ms. Kari Boga

Appendix : 12**Provincial National Court Officers**

PROVINCIAL NATIONAL COURT OFFICERS		
DESIGNATION	2011	2012
Mt. Hagen National Court	Mr. Eric Kiso	Mrs. Imelda B. Makap
Wabag National Court	Mr. Peter Nend (Acting)	Mr. Peter Nend (Acting)
Lae National Court	Mr. Raphael Bongnabul (Acting)	Mr.Raphael Bongnabul (Acting)
Madang National Court	Ms. Anzack Korua	Ms. Anzack Korua
Kokopo National Court	Mrs. June Micka	Mrs. June Micka
Kimbe National Court	Mrs. Sally Karaut	Mrs. Senas Wowhiehembe (Acting)
Wewak National Court	Nil	Ms. Alison Jerewai
Kundiawa National Court	Mr. Philip Kaumba	Mr. Philip Kaumba
Mendi National Court	Mr. Vincent Bailey	Mr. Vincent Bailey
Alotau National Court	Nil	Mr. Eric Kiso
Kavieng National Court	Nil	Mr. Ben Kepas (Acting)
Buka National Court	Nil	Mr. Timothy Holi (Acting)
Tari National Court	Nil	Nil

Appendix 12– Sheriff officers

Sheriff Execution Waigani Establishment List 2011

Name	Location	Position
Ian Augerea	Waigani	Sheriff of Papua New Guinea
Vacant/Baka Bina Acting	Waigani	Chief Sheriff Process Enforcement Officer
Baka Bina	Waigani	Senior Process Enforcement Officer
Miriam Koim	Waigani	Process Enforcement Officer
Martin Ravai	Waigani	Process Enforcement Officer
Vacant	Waigani	Process Enforcement Officer

Sheriff Execution Waigani Establishment List 2012

Name	Location	Position
Kevin Kianda	Waigani	Chief Sheriff Process Enforcement Officer
Martin Ravai	Waigani	Senior Process Enforcement Officer
Miriam Koim	Waigani	Process Enforcement Officer
Vacant	Waigani	Process Enforcement Officer
Penipas Waineti	Waigani	Process Enforcement Officer

Sheriff Execution Provincial Establishment List 2011

Name	Location	Position
Vacant	Mt. Hagen National Court	Senior Process Enforcement Officer
Simon Bill	Mt. Hagen National Court	Process Enforcement Officer
Paul Gerowa	Goroka National	Process Enforcement Officer
Vacant	Wabag National	Process Enforcement Officer
Levi Kurakipa	Lae National Court	Senior Process Enforcement Officer
John Koumot	Lae National Court	Process Enforcement Officer
Vacant	Madang National Court	Process Enforcement Officer
Vacant	Kokopo National	Senior Process Enforcement Officer
Mary Vapuak	Kokopo National	Process Enforcement Officer
Horter Boskey	Kimbe National	Process Enforcement Officer

Sheriff Execution Provincial Establishment List 2012

Name	Location	Position
Tony Gants	Mt. Hagen National Court	Senior Process Enforcement Officer
Daniel Pup	Mt. Hagen National Court	Process Enforcement Officer
Paul Gerowa	Goroka National Court	Process Enforcement Officer
Chris None	Wabag National Court	Process Enforcement Officer
Levi Kurakipa	Lae National Court	Senior Process Enforcement Officer
John Koumot	Lae National Court	Process Enforcement Officer
Michael Wambun	Madang National Court	Process Enforcement Officer
Mary Vapuak	Kokopo National Court	Senior Process Enforcement Officer
Ben Gregory Burua	Kokopo National Court	Process Enforcement Officer
Godfrey Salley	Kimbe National Court	Process Enforcement Officer
Harry Kupi	Kundiawa National Court	Process Enforcement Officer



Appendix 13 : Senior corporate management services staff

Division	Designation	2011	2012
NJSS	Secretary	Kapi Sarohafa	Kapi Sarohafa
NJSS	Dep Secretary	vacant	Anna Nenta
Policy & Planning	Director	Tom Dangiaba	Tom Dangiaba
Finance	Director	Humphrey John	Humphrey John
Human Resources	Director	Anna Nenta	Thomas Takahu
Court Reporting Service	Director	Pavora Marupi	Pavora Marupi
Judicial Support Services	Director	Sam Mulina	Sam Mulina
Png Center for Judicial Excellence (PngCJE)	Acting Director	Regina Sagu	Regina Sagu
Communications & IT	Manager	Josette Karkaraya	Josette Karkaraya
Security	Chief Security Officer	Sgt Albert Alabain	Sgt Albert Alabain
Library	Librarian	Polycarp Reu	Polycarp Reu
Audits	Internal Auditor	Joana Toupu	Joana Toupu
Legal	Principal Legal Officer	Bernard Koe	Bernard Koe

Appendix 14 : Budget shortfalls

Expenditure Item	2011 K.		2012 K.	
	Estimates	Appropriation	Estimates	Appropriation
Personnel Expenditure	38,590,362		41,374,285	
Goods and Other Services	33,093,192		45,753,483	
Current Transfers	1,000,000		600,000	
Capital Formation	17,970,800		35,775,000	
Total	90,654,354	69,652,000	123,502,768	73,831,300
Shortfall		21,002,354		49,671,468

Appendix 15: Audit Statements

AUDITOR GENERAL'S OFFICE
PAPUA NEW GUINEA
 Telephone: 301 2203 Fax: 325 8295 Website: www.ago.gov.pg Email: agopng@ago.gov.pg

OFFICE OF THE AUDITOR-GENERAL

Date: 11th April, 2014

Chief Justice
 National Judiciary Staff Services
 P. O. Box 7018
BOROKO
 National Capital District


Dear Sir

SUBJECT: AUDIT UPDATE ON NATIONAL JUDICIARY STAFF SERVICES

Please find below the status of the work undertaken by the Office.

Fiscal Year	Status	Remark
2012	Management Letter issued and Responses received and incorporated into AGO Part II report-2012.	Report yet to be presented to Speaker's Office.
2011	Management letter issued, Responses received and incorporated into AGO Part II report – 2011.	Report presented to Speaker's Office dated 30 th July, 2013.

Thank you



Mamu Kolis Mitiliu
A/ Deputy Auditor General
 National Government Audit Division

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 TISA Investment Haus
 Kumul Avenue, NCD

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 WAIGANI, NCD
 Papua New Guinea
 Page 1 of 1

Appendix 16: COURT BUILDINGS & FACILITIES

Maintenance, improvements and new works are under the supervision of the Court Building and Facilities Committee. The Court Building and Facilities Committee, is chaired by Justice Gavara-Nanu. The Committee works in conjunction with the Magisterial Services and AusAid funded Law and Justice Sector Programme.

A Master Plan for a new Waigani court complex was completed in 2011. This Master Plan provides for a separate Supreme Court building a Court of Appeal building and a National Court Building anticipating the separation of the National and Supreme Courts and the creation of a Court of Appeal as recommended to the Government by the Judges. It is expected that physical work on the new court complex will commence in 2014.

Also at Waigani a number of new buildings were completed, most of a temporary nature, until permanent expansion of the Court complex is achieved. These were as follows:

1. National Judicial Staff Services administration building, a two-storey timber building to house general administration, human resources and finance divisions.
2. A central archives and store room building completed 2012.
3. Two Court Reporting Temporary Buildings to house the court reporters, while permanent accommodation is constructed as an extension of the current principal building (2011-2012).

Sub- registries to receive documents for filing and carry out other administrative tasks for the Court were constructed or upgraded in Buka (2011) , Daru (2011) Kerema (2012), Kwikila (2012).

In New Ireland Province , design of a “new one-stop court complex” to house the District Court and the National Court was completed and construction set to commence in 2013. In the meantime, a temporary facility was put in place to accommodate the National Court in a separate building.

A new “one-stop” Court Complex is nearing completion in Alotau, Milne Bay Province. Magisterial Services are the lead agency for this project. The new Court Complex will house and integrate both Magisterial Services and the National Courts under one roof. Final works are progressing on site and the complex is expected to be completed for start of the 2013 legal year. Construction of a new judge’s chambers was commenced in Goroka (2012) to enable a 2nd judge to be stationed there.

In 2012, the Southern Highlands Provincial Government completed construction of a new one-stop court complex in Mendi to accommodate both the higher and lower courts. On completion it was discovered that the building did not meet the requirements of the higher Judiciary. Upon request by the Judiciary, the new court complex was assigned to the District Court for its use and the old District Court building was given to the higher judiciary. The Provincial government also gave three new houses for the National Court staff. The National Judiciary carried out extensive renovation work and refurbishment of the courthouse

In Morobe Province the Lae court house was renovated (2012). Minor works were carried out on the judge’s chambers in Mount Hagen (2012) and hurricane damage repaired at the Kimbe Court.

Designs are currently being completed for renovation and extension works to the Dagua Road Courthouse in Wewak. The Courthouse will be extended to provide a larger National Court Registry area and Courtroom and improvements will be made to the Judge’s Chambers. A new cell block and staff facilities are proposed and work will begin soon on upgrading the fencing to this site. This is a temporary facility to accommodate a resident Judge who was appointed in 2012. The permanent Court Complex will be located at Kreer Heights. Funding has already been allocated but delays have occurred because of issues concerning the award of the construction contract.

In Simbu Province, the District Court facilities were upgraded to accommodate a new resident Judge. Simbu Province Government and the Judiciary met the cost. Also, the Judiciary was shown a new site at Mirane which could be accommodate the National Court.

The official residence for the Chief Justice, located on Davetari Drive, Toaguba Hill, was destroyed by fire in 2003. Since then the site has been lying vacant. Design documents were recently undertaken and construction has now begun on building a new residence on this prominent site in Port Moresby.

A new National Court Complex which was completed in 2009 in Tari is awaiting the appointment of a resident Judge for Hela Province in 2013 or 2014.

In East New Britain , design for a new one-stop Court Complex was prepared and submitted to CSTB in 2012. Award of contract for the design is expected to be made in 2012/2013 and construction take place in 2013-2014.



The Independent State of Papua New Guinea

The Supreme Court and National Court of Papua New



National Judiciary Services
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Papua New Guinea
