



Papua New Guinea

**1985 — ANNUAL REPORT
BY THE JUDGES**

National Court Library



N055273

**ANNUAL REPORT FOR THE YEAR ENDING 31 JULY 1985
 BY THE JUDGES TO THE HEAD OF STATE
 FOR PRESENTATION TO THE NATIONAL PARLIAMENT
 ON THE WORK OF THE SUPREME COURT AND THE NATIONAL COURT,
 PURSUANT TO THE CONSTITUTION, SECTION 187, AND
 THE NATIONAL COURT ACT 1975, SECTION 9**

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

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

**THE HONOURABLE MARI KAPI, C.B.E.,
 DEPUTY CHIEF JUSTICE OF PAPUA NEW GUINEA**

THE HONOURABLE NORRIS HARRY PRATT, C.B.E.

THE HONOURABLE THEODORE REGINALD BREDMEYER, C.B.E.

THE HONOURABLE DERMID JOSEPH McDERMOTT (RETIRED APRIL 1985)

THE HONOURABLE WILLIAM KAPUTIN (RETIRED MARCH 1985)

THE HONOURABLE ARNOLD KARIBONE AMET

THE HONOURABLE ROBERT KYNNERSLEY WOODS

THE HONOURABLE KUBULAN LOS

THE HONOURABLE STANLEY GEORGE CORY

THE HONOURABLE THOMAS EDWIN BARNETT, O.B.E.

THE HONOURABLE WARWICK JOHN ANDREW C.B.E. (JUNE—JULY 1985).

1. INTRODUCTION

This is the 10th Annual Report by the Judges of the Supreme Court and the National Court since Papua New Guinea became an independent sovereign nation on 16th September, 1975.

2. JUDGES

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

- (a) The Honourable Thomas Edwin Barnett, O.B.E., was appointed an Acting Judge for a period of 12 months from 3 October 1984.
- (b) The Honourable Kubulan Los was appointed a Judge for three years (3) in December 1984.
- (c) The Honourable Stanley George Cory was appointed a Judge for three years (3) on 6th March 1985
- (d) The Honourable William Kaputin left the Bench in March 1985 after serving as an Acting Judge and a Judge for almost 4 years. He is now Chairman of the Law Reform Commission, the office he held before he was appointed a Judge on 18 June 1981.
- (e) The Honourable Dermid Joseph McDermott completed a three-year term as a Judge left on 13th April 1985.
- (f) The Honourable Warwick John Andrew, C.B.E., returned as an Acting Judge for 2 months (June — August 1985).

2.2 Honours and Awards

A C.B.E. was conferred upon Mr Justice Bredmeyer in the Queen's 1985 New Year Honours List.

2.3 Study Leave

Mr Justice Kapi left Papua New Guinea in September 1984 with his family to do a 12-month LL.M. degree course in the United Kingdom. During his absence, Mr Justice Pratt was appointed by the Judicial and Legal Services Commission as Acting Deputy Chief Justice.

2.4 Number of Judges

In 1984 Parliament enacted the **National Court (Number of Judges) Act 1984** (No. 8 of 1984). The minimum number of Judges was fixed at 10 (not including the Chief Justice and the Deputy Chief Justice or acting Judges). The Act allows the Governor-General on advice of the National Executive Council to increase this number and this has been done. Now the Judiciary is allowed to have 14 Judges (including the Chief Justice and the Deputy Chief Justice).

In the last five years we have operated on the basis of ten Judges and we consider that at the present time not more than ten Judges are required to cope with the matters that come before the National Court. We point out however that whenever the number goes below 10, as in cases where Judges are asked to head Leadership Tribunals or Commissions of Inquiry, the Judiciary then experiences difficulties in servicing all the circuits outside the National Capital.

3. JUDICIAL INDEPENDENCE

Ten years after independence we report that judicial independence has been maintained. But we must emphasise once more that judicial independence does not mean Judges making judicial decisions without interference or influence from outside the Judiciary. Judicial independence includes independence from the Executive arm of the Government in regard to funds, personnel and facilities.

It is no point talking about judicial independence when Judges do not have adequate funds to travel to hear cases in places outside Port Moresby; judicial independence is greatly affected when Judges have no proper facilities to record evidence and judgements except by writing laboriously in longhand; proper staffing and interpretation services are essential for the efficient performance of judicial functions by the Judges.

We once again request the Parliament, and the National Executive, to ensure that the Judiciary is properly funded and staffed so that it can perform the task it has been allocated by the **Constitution** of exercising the judicial power of the people without interference and without fear or favour.

We have been encouraged by the Prime Minister's assurances that Papua New Guinea must have an independent Judiciary. We know that the former Prime Minister has the same view. But this must be supported by the treatment of the Judiciary as independent from other arms of Government in matters of finance, administration and facilities.

4. STAFF, FINANCE AND FACILITIES

4.1 Staff Establishment

The control of the establishment of the staff of the Supreme and National Courts rests with the Public Services Commission. The Commission, in November 1984, approved the first public service establishment for the Courts since Independence.

The Public Service positions approved were:—

TOTAL NUMBER OF POSITIONS		80
LESS POSITIONS NOT FUNDED	<u>26</u>	54
LESS JUDGES PERSONAL STAFF	<u>31</u>	23

These positions are in the following divisions:—

- REGISTRY
- SHERIFF/ADMIRALTY MARSHALL
- MANAGEMENT SERVICES
- SUPREME COURT LIBRARY
- PROVINCIAL INTERPRETERS/LIBRARIANS (PROVIDED FOR 2 PROVINCES ONLY)

Of the 23 positions funded, only 5 are currently held substantively.

4.2 Recruitment

Public Service recruitment procedures have seriously handicapped the Court's independence in being manager of its own affairs. Since Independence there has been virtually no substantive appointments of Permanent National Officers.

4.3 Manpower and PTB Ceilings

We also note that the Judges, their personal staff and the Judges' official vehicles have been included in the Public Service Manpower and PTB Unit Ceilings. That this has happened is a serious failure to understand the position of the Judiciary set out in the National Constitution and the Organic Law on the Terms and Conditions of Employment of Judges under which Judge's staff, vehicles and other entitlements are authorised. A submission to correct this error has been made to the Budget Priorities Committee. We trust that this error will not be perpetuated in the 1986 Budget.

4.4 BUDGET

Expenditure

Set out in Appendix "A" is the 1984 Budget Allocation and Expenditure.

4.5 Representation has been made to the Executive Arm of the Government to have overseas travel funds for 1986 for Judges excluded from the Public Service allocation and given to the Court under its own vote (Division 203). Authority for Judge's overseas travel rests with the Judicial and Legal Services Commission in relation to the Chief Justice and with the Chief Justice in respect of all other Judges. **The Terms and Conditions of Employment of National Judges** in respect of overseas travel provides as follows:

Judges "Attendance at Conventions shall be at the discretion of the Chief Justice of Papua New Guinea. The Judge's wife may accompany the Judge to a Convention once a year."

Chief Justice "Attendance at Convention shall be at the discretion of the Judicial and Legal Services Commission. The Chief Justice's wife may accompany the Chief Justice to conventions once a year."

To date the funds for travel have been controlled by public servants who have no authority over Judges.

4.6 Internal Travel

The Court is examining ways in which to reduce costs in this area. One possible solution is to have circuit houses for Judges in centres where there are regular monthly or bi-monthly circuits. A NPEP pilot project is being investigated for possible future funding.

4.7 Buildings

The Court wishes to control and manage the property it uses. This is necessary if the Court is to be seen to be independent in view of the present unsatisfactory arrangements.

Under these, the Court has virtually no control over the maintenance and replacement of its buildings. The Supreme Court building has had little maintenance carried out to its fabric since it was built. It is in urgent need of exterior cleaning, the wooden fenestration requests preservation and the airconditioning system, without which the courtrooms are unusable (there being no windows), is only partially effective. Some areas of the building have never been finished nor have the surrounding roads been sealed.

The Waigani Court House extension comes shortly. Funding for 1985 was provided in the year's Budget allocation.

4.8 Judge's Housing

Housing continues to be a major problem. We have experienced great difficulty securing houses of appropriate standard. Housing supplied to Judge's falls short of the standard laid down in Judges' terms and conditions. The majority of the houses are old, patched up and will require replacement in the next decade. As most houses are in prime real estate areas redevelopment of the existing allotments should be explored with a view to replacing these houses without resort to public monies.

4.9 National Public Expenditure Plan Submissions

The following are all the NPEP projects we have submitted:

- (1) Improvement of Chief Justice's official residence;
- (2) National Court Building Extensions;
- (3) Staff Restructure — Stage II;
- (4) Computerisation — Stage II;
- (5) National Court District Registries Services;
- (6) Creation of Sheriff's Officers to relieve Police of role of Service and Execution of Process.

5. INFANTS SETTLEMENTS

A difference of opinion has developed as to whether 21 or 18 should be the appropriate age for the monies held by the Court on behalf of infants. This difference will ultimately have to be decided by the Supreme Court or the Parliament.

The National Court each year sends a large amount of money to the Department of Finance for investment on behalf of infants. However despite the large amounts which may amount to between K4 million and K10 million at any one time, these funds are invested in IBD's and Savings Accounts. The Department of Finance should each year invest a proportion of this money in specially arranged IBDs.

The current Savings Accounts rate is approximately 6%.

IBDs	6.5 — 8.5%
Specially arranged IBDs	9.5 — 10.5%

The time has now come for this old arrangement to be reviewed. There are two possibilities — to have the money paid to and invested by the Public Curator as trustee or have the money invested directly by the registrar, such investments to be in approved accounts.

6. COLLECTION OF PUBLIC MONIES BY THE COURT/TRUST ACCOUNTS

We are hoping in 1986 to have two staff who will take charge on a full time basis of collection of Public Monies and running our three Trust Accounts. These Trust Accounts are:

Registrar's Trust Account — Infant Settlement monies are held here prior to their being sent to the Department of Finance. Deposits of monies paid into Court, money ordered to be repaid to others, etc. are held in this account — the account is really like holding account for money to be paid in and paid out, rather than the money held for any length of time — we do not get interest.

Sheriff's Trust Account — This money is mainly money deposited on account of Sheriff's fees and money collected by Sheriff's Officers (Police Officers), and paid after deduction of poundage and deduction of fees to the Lawyers and for the Judgement Creditors — No Interest.

National Court Library Account — This account only came into existence at the end of the Annual Report period and has approximately K30 000 in it — the account does not draw interest. This money comes from money paid by lawyers on admission, which is used for buying books for the National Court Libraries.

7. NATIONAL COURT ACT

A new National Court Act to set up a National Court Service of similar status to the Parliamentary Service is being proposed and it is hoped that the proposed legislation will be tabled before the next Annual Report is due.

8. SUPREME COURT RULES

The new Supreme Court Rules came into force during the period of this Report. They were tabled in Parliament.

9. CRIMINAL PROCEDURES RULES

These are being drafted to replace Rules that were repealed at Independence.

10. ADMIRALTY LEGISLATION

We express concern that in the country with perhaps more than 50 per cent of its area consisting of sea, we still do not have legislation relating to admiralty matters. In our last Report we mentioned that a Bill was being prepared and we understand that nothing has happened. We refer Members to our last Report.

11. INTERPRETATION

We now have a Chief Interpreter and permanent reasonably well paid staff at Waigani. We hope that in the next few years we will be given sufficient funds to allow us to recruit staff in Provinces on a permanent basis for this purpose.

12. COMPUTERISATION

We thank ESCAP and UNDP for making Mr Ohashi available as consultant. The basic recommendation of the report made by him is that the Court has need for Computers in the areas of:

- (a) Court Registration (including Bills of Sale registration);
- (b) Judgement Database;
- (c) Improved Court Statistics;
- (d) Library Cataloguing

Computerisation will not lead to a reduction in staff, but will mean that the Court records will be more accurate and that it will be easier to extract information from the Registers, and from Judgements, which will lead to more efficiency.

We hope to recruit two volunteers (most probably in Japan) as Computer Professionals for the Courts. Part of their responsibility will be to train citizens.

13. DEBT COLLECTION

There are numerous Government Departments and Agencies, as well as private lawyers in need of an independent body to serve summonses and notices efficiently. Courts in other countries have specialist Court managed bodies to serve and execute court process. We should have Sheriff's officers in all provinces to serve summonses and execute judgements, and these officers can, depending on workload, also carry out (on a semi-contractual basis) the role of service of Government summonses and notices such as land rent demands.

14. LIBRARY

As we have been unable to recruit a law librarian, we are hoping to obtain the services of a retired law librarian from U.K. as a short-term volunteer to assist our present librarian to run the library efficiently.

We do not have the staff and facilities to keep our four (4) Regional Libraries up to a suitable standard. For many years to come citizen private lawyers in Papua New Guinea whether in the National Capital or in the Provinces will not be able to acquire their own reference libraries and the Court Libraries will have to serve the Legal Profession as well as the Courts. Over the next year we wish to upgrade the quality of these libraries. We will have to use most if not all funds in the National Court Library Account and seek additional funds to effect this upgrade.

STATISTICS

Appendices B & C to this Report contain the details of Judicial business transacted by both the Supreme Court and the National Court during the period covered by this Report.

APPENDIX 'A'

ITEM	DESCRIPTION	1985 APPROPRIATION (KINA)	1984 APPROPRIATION (KINA)	1984 ESTIMATED EXPENDITURE (KINA)
SUMMARY OF EXPENSES				
ITEMS				
01	Personal Emoluments	550 600	529 100	529 100
02	Travel & Subsistence	239 000	183 300	203 300
03	Utilities	115 200	117 200	117 200
04	Materials & Supplies	44 200	33 700	39 200
05	Plant & Transport Hire	130 900	123 400	123 400
06	Special Services	51 800	22 500	24 500
07	Purchase of Capital Assets	9 300		7 300
08	Grants & Subsidies	10 000		
09	Other	15 800	14 600	15 900
10	Emoluments (Overtime, Wages Others)	84 400	81 300	81 300
	TOTAL	1 251 200	1 105 100	1 141 200

APPENDIX 'B'

NATIONAL COURT OF JUSTICE

During the year ended 31st July, 1985 the National Court business has been as follows:

(a)	In its Appellate Jurisdiction — Filed and Heard	188
(b)	In its Probate and Administration Jurisdiction — Filed and Dealt with	10
(c)	Register of Overseas Judgement and Custody Orders	Nil
(d)	In its Civil Jurisdiction:—	
(1)	a. Writ of Summons Issued	715
	b. Orders Made	213
(2)	Miscellaneous Proceedings — Filed	57
(3)	Originating Summons	101
(e)	In its Matrimonial Jurisdiction — Filed and Heard	28
(f)	(1) Bill of Sales	4 237
	(2) Discharge Bill of Sale	303
	(3) Renewal Bill of Sale	7
	(4) Stock Mortgages	31
	(5) Discharge Stock Mortgages	50
	(6) Renewal Stock Mortgages	Nil
(f)	Lawyers Act — Admissions	65

SUPREME COURT

(g)	(1) Appeals from National Court	55
	(2) Reference to Supreme Court under Section 41 of the Constitution	Nil
	(3) Reference to Supreme Court under Section 18 of the Constitution	1
	(4) Reference to Supreme Court under Section 19 of the Constitution	3
	(5) Reference to Supreme Court under Section 21 of the Constitution	Nil
	(6) Reference to Supreme Court under Section 15 of the Constitution	1
	(7) Reference to Supreme Court under Section 210 of the Constitution	1
	(8) Supreme Court Review	Nil
	(9) Supreme Court Application	1
	(10) Supreme Court Reservation	1
	(11) Principal Legal Adviser Reference to Supreme Court under Section 41 of Supreme Court Act 1975	Nil

It should be noted that these figures are not in all respects correct, and are the best that can be produced with present facilities.

APPENDIX 'C'

CASES TRIED DURING THE PERIOD 1ST AUGUST 1984 TO 31ST JULY 1985

OFFENCES	CHARGES	CONVICTED	DISCHARGED	N. P.	SENTENCE
1. OFFENCES AGAINST PERSON					
WILLFUL MURDER	31	22	7	2	Rising of the Court to life I.H.L.
MURDER	48	38	6	4	2 years to 8 years I.H.L.
UNLAWFUL KILLING OR ATTEMPT	16	12	2	2	Rising of the Court to 7 years I.H.L.
UNLAWFUL WOUNDING	35	18	11	6	2 months to 3 years I.H.L.
GRUEVOUS BODILY HARM	18	12	2	4	Rising of the Court to 4 years I.H.L.
RAPE OR ATTEMPT	73	35	30	8	6 months to 10 years I.H.L.
UNLAWFUL ASSAULT	15	10	4	1	Rising of the Court to 3 years I.H.L.
OTHER OFFENCES AGAINST FEMALE	29	21	2	6	4 months to 5 years I.H.L.
INCEST	13	7	2	4	8 months to 2 years 8 month I.H.L.
UNLAWFUL & INDECENT OFFENCES	21	18	2	1	3 months to 2 years 7 months I.H.L.
DANGEROUS DRIVING CAUSING DEATH	11	6	3	2	5 months to 2 years I.H.L.
OTHER OFFENCES AGAINST THE PERSON	23	13	4	6	Rising of the Court to 2 years I.H.L.
S U B T O T A L	333	212	75	46	
2. OFFENCES AGAINST PROPERTY					
ROBBERY	51	37	7	7	6 months to 10 years I.H.L.
BREAKING AND ENTERING	58	35	8	15	Rising of the Court to 8 years I.H.L.
HOUSE BREAKING	4	3	1	-	1 year to 5 years I.H.L.
STEALING	69	53	6	10	Rising of the Court to 10 years I.H.L.
RECEIVING	5	5	-	-	G.B.B. to 3 months I.H.L.
OTHER OFFENCES AGAINST PROPERTY	9	5	2	2	Rising of the Court to 5 years I.H.L.
ARSON	14	6	3	5	G.B.B. to 18 months I.H.L.
DAMAGING PROPERTY	6	4	2	-	
S U B T O T A L	216	148	29	39	

CASES TRIED DURING THE PERIOD 1ST AUGUST 1984 TO 31ST JULY 1985

OFFENCES	CHARGES	CONVICTED	DISCHARGED	N.P.	SENTENCE
<u>3. OFFENCES AGAINST CURRENCY</u>					
FALSE PRETENCES	22	15	3	4	
FORGERY & UTTERING	22	16	3	3	
FORGERY	27	22	2	3	Rising of the Court to 3 years & 6 months I.H.L.
UTTERING	9	7	-	2	Rising of the Court to 3 years & 6 months I.H.L.
MISAPPROPRIATION	28	17	7	4	
SUB TOTAL	108	77	15	16	
<u>4. OFFENCES NOT INCLUDED IN THE PRECEDING CLASSES</u>					
RELATING TO ESCAPES	5	4	-	1	Fine (K200) I/D 6 months I.H.L. to 6 months I.H.L.
RELATING TO POST AND TELEGRAPH CONSPIRACY	-	-	-	-	15 months I.H.L.
UNLAWFUL ASSEMBLIES	1	-	-	1	Fine (K1,100.00) to 12 months I.H.L.
SUB TOTAL	7	4	-	3	
TOTAL	664	441	119	104	

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ADDENDUM TO APPENDIX 'B'

PARAGRAPH (g)(5) should read:

Reference to Supreme Court under Section 23 of the Constitution.

PARAGRAPH (g)(6) should read:

Reference to Supreme Court under Section 15 of the Supreme Court Act.

PARAGRAPH (g)(7) should read:

Reference to Supreme Court under Section 21 of the Supreme Court Act.

PARAGRAPH (g)(11) should read:

Principal Legal Adviser Reference to Supreme Court under Section 26 of the Supreme Court Act 1975.

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Port Moresby.—130/250 Books.—2.86

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