



ANNUAL REPORT

BY

THE JUDGES



1989

PAPUA NEW GUINEA

ANNUAL REPORT

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1989

REPORT BY THE JUDGES TO THE HEAD OF STATE
FOR THE YEAR ENDED 31 DECEMBER 1989
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 (CH. NO. 37) SECTION 9

National Court Library



N055259

JUDGES
OF THE SUPREME COURT OF
PAPUA NEW GUINEA
AND THE NATIONAL COURT OF JUSTICE
DURING 1989

THE HONOURABLE SIR BURI WILLIAM KIDU,
Chief Justice of Papua New Guinea

THE HONOURABLE SIR MARI KAPI, C.B.E.
Deputy Chief Justice of Papua New Guinea

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

THE HONOURABLE ARNOLD KARIBONE AMET, C.B.E.

THE HONOURABLE ROBERT KYNERSLEY WOODS, C.B.E.

THE HONOURABLE KUBULAN LOS, C.B.E.,

THE HONOURABLE STANLEY GEORGE CORY (Retired May 1989)

THE HONOURABLE THOMAS EDWIN BARNETT, O.B.E.,
(Retired 18 December 1989)

THE HONOURABLE TIMOTHY ALEXANDER HINCHLIFFE

THE HONOURABLE TOMARUM KONILIO

THE HONOURABLE MAURICE JAMES SHEEHAN (Appointed May 1989)

THE HONOURABLE THEODORE MIRIUNG (Acting 1.1.89 - 31.12.89)

THE HONOURABLE BRIAN DANESBURY BRUNTON (Acting - May to 31.12.89)

THE HONOURABLE TERESA ANNE DOHERTY (Acting 12 months from November 1989)

THE HONOURABLE GIBUMA GIBBS SALIKA (Acting 6 months from December 1989)

SENIOR COURT OFFICIALS:

Registrar : Mr Lawrence Newell, I.S.O.,
LL.B., F.Inst. L. Ex.

Deputy Registrar : Ms Maria Doiwa, LL.B (Resigned)
: Mr Lohia Raka, LL.B
(Appointed November 1989)

Secretary for the National
Judicial Staff Service : Mr Colin Murray

Assistant Secretary
(Management Services) : Mrs Ila Imani

Assistant Secretary
(Secretarial & Transcription)
And Chief Secretary : Mrs Jean Linz

Chief Associate : Mr Peter Rarua

Research Officer : Mr Pius Kingal, LL.B.

Clerk of the Court : Mrs Marie Miria

Budgets Officer : Mr Humphrey John

Chief Interpreter : Mr Ivan Vagi

Chief Sheriff's
Officer : Mr Aba Bina

Chief Security
Officer : Mr Anton Ambane

Chief Driver : Mr Francis Taiabu, B.E.M.

1. INTRODUCTION

We present to Parliament our report for the year ending 31 December 1989. This year was the first time the Supreme Court and the National Court operated on a budget provided separately in an Appropriation Act for the Judiciary.

Funding for the year was adequate. (See Appendix "D" actual item by item figures).

During 1989 three (3) Justices were based in regions - Woods, J. (Mt Hagen for Western Highlands and Enga), Konilio, J. (Rabaul for East and West New Britain, New Ireland and North Solomons) and Doherty, A.J. (Lae for Morobe Province).

During 1990 two more Justices will be regionally placed - Brunton, J. at Goroka and another at Rabaul. We intend to have two judges for the Islands Region and two for the Highlands Region next year.

We consider that there must be restructuring of the whole judicial system. The Judicial and Legal Services Commission has appointed a Committee headed by Amet, J. to look into this matter. We are confident that this Committee's report will be available during 1990 for implementation in 1991/1992.

2. JUDGES

Justice Maurice Sheehan was appointed for three (3) years from May 1989.

During 1990 three citizens were appointed as Acting Judges - Justices Theodore Miriung, Brian Brunton and Gibuma Gibbs Salika and the first female Judge (Acting Justice Teresa Doherty) was appointed. Acting Justice Salika is the first Papua New Guinean Magistrate to be appointed a Judge.

Justice Thomas Edwin Barnett, O.B.E., left Papua New Guinea on 18 December 1989 to take up a post in Perth, Australia as a Member of the Australian Administrative Appeals Tribunal.

3. REGIONALISATION OF NATIONAL COURT

This process went very well during 1989. We now have Justice Robert Woods based in Mt Hagen, Justice Tomarum Konilio based in Rabaul and Acting Justice Teresa Doherty at Lae.

The Chief Justice announced in 1989 that Justice Brunton would be based in Goroka and another Judge based at Rabaul for the Islands Region early in 1990.

4. HONOURS

Justice Arnold Amet was made a Commander of the Most Excellent Order of the British Empire (C.B.E.) by Her Majesty, The Queen.

5. STATISTICS

Appendices "A" and "B" and "C" are records of matters dealt with in the Supreme Court and the National Court respectively during 1989.

6. FINANCE, STAFF, ETC.

The 1989 Appropriation, revised estimates and actual expenditure are contained in Appendix "D".

Over Expenditure: Vote 203-1-100

(a) Item 1 - The K7,885 over expenditure arose as a result of the Department of Finance and Planning's failure to provide funding for an Acting Judge and staff from 20.11.89. The funds were requested at the Third Quarter Review. (See also page 4 last para and page 5)

(b) Item 10 - No information has been provided by the Department of Finance despite several requests as to how their records show a greater expenditure than the Courts commitment records viz K69,461 as opposed to K71,217,

Under Expenditure: Vote 203-1-100

(a) Items 2 - 6 - These items cover circuit expenses, utilities, office stationary, circuit vehicle hire and interpreters fees. The difference arises from suppliers of November/December supplied services not submitting their claims before the end of the year.

(b) Item 7 - Items to be purchased with these funds could not be supplied and claims lodged before the end of the financial year.

Vote 203-1-200:

Items 1, 2, 4 & 5

The under expenditure arose from the funds not being made available until 27.10.89 which was too late in the year for the funds to be utilised.

Budgetary Procedures

In November 1989 our 1990 Budget was reduced, without proper consultation, by the Executive. It was part of an exercise in 'across the board' cuts arising out of the Bougainville problem.

The Chief Justice wrote to the Prime Minister on 14 November 1989 about these cuts and recommended budgetary procedures for the Judiciary and the Legislature. We reproduce this letter below:

"Procedures

Implied in ss 209/210 of the Constitution is a procedure which to date has not been followed through. It is this:

- Step 1 The Chief Justice presents the Court's estimates to the Prime Minister by 30th September each year; (Constitution s.209).
- Step 2 The Prime Minister acknowledges receipt of the estimates.
- Step 3 The Prime Minister informs the Chief Justice of any variation in the estimates (if any).
- Step 4 The Chief Justice presents his case to justify the estimate (if the Executive has varied them or wishes to do so).
- Step 5 If the Prime Minister and the Chief Justice cannot agree on the estimates both sets of figures are put before the Parliament by the Speaker. I assume the Finance Minister would put the Government's case and I suggest that the Minister for Justice should put the Chief Justice's case (Constitution s.210(3)).

Step 5 would mean argument not being on partisan lines and maintain the Speaker in an impartial position.

In the case of the Parliament's figures the Parliament's case would be presented by the Minister for Administrative Services or the Minister for State.

To date steps 4 and 5 have not been followed.

I learned of the cuts in my estimates via the attached letter. I consider this an insult to the Office of the Chief Justice and the Judicial Arm of Government. I am sure you were not aware of this discourtesy.

Justice

In times of economic stringency cutbacks in Government spending, such as the present, governments resort to percentage "across the board" reductions in funding which are not calibrated to allow for the special requirements of the administration of justice and features which distinguish the Judicial Arm from Executive Government. The Courts"

"cannot reduce the size of their operation in the way a government department can. I cannot say, as a result of economies, the Courts will only deal with civil cases and criminal cases will be deferred. Nor can I say to you, when you ask for a judge to preside over an inquiry "no, we haven't enough judges" which is the case at the moment.

The Head of State has approved on the advice of the NEC that the National Court have 14 judges. As Chief Justice in exercising the authority vested in me by s.169(3) of the Constitution I have deemed it necessary to have 14 judges in 1990 in order that the Court meet its constitutional obligation to dispense justice.

By denying the Court its funds the Finance Department are saying to me the equivalent of saying to you - "cut your Ministries by two". I find that totally unacceptable as I am sure you would if you were ordered to do so.

In addition, by refusing me the two judges the Court is entitled to have, the Executive is contradicting itself by saying it fully supports "law and order".

It is for the foregoing reasons that I ask that the Government reconsider my request. The Judiciary cannot be a non-political impartial body if its operations are to be subject to political expediency.

In the letter from the Department of Finance the reduction of my Estimates is quoted as K506,500. This is not correct. According to the 1990 Estimates of Revenue and Expenditure the reduction is K515,700.

The largest cut is, of course, the estimates relating to the appointment of two extra judges, their personal staff (private secretaries and associates) and associated estimates. This cut is over K280,000.

I am agreeable to cuts in other areas but I ask that about K281,200 for two extra judges and their support staff and ancillary expenses be restored to my Budget."

We consider that as the Judiciary's Appropriation Act is enacted by Parliament the Executive Government has no power to reduce that appropriation later. If it wishes to do so it must take the matter back to Parliament. This view applies to the appropriation for the Legislature also passed by Parliament i.e. that the Executive Government has no power to reduce Parliament's appropriation without an amendment to the Parliamentary Appropriation Act.

Court Vehicles

In 1989 approval was given by the Minister for Finance and Planning for the Court to have its own official vehicles rather than hiring the same from the Department of Works. However this could not be implemented as a result of cuts in our 1989 appropriation which we have already mentioned. It is our intention to implement this sometime in July 1990. The purpose of this exercise will be to reduce costs of government.

7. DEVELOPMENT OF THE UNDERLYING LAW

During 1989, there were no cases litigated in which the judges found an occasion to develop the underlying law.

We note once again that the development of the underlying law by judges under Schedule 3 of the *Constitution* was intended only as an interim measure pending an enactment of an Act of Parliament under s 20(1) of the *Constitution*. We draw the attention of the Members of the Parliament to this provision which lays the primary responsibility on the Parliament to:

- "(a) declare the underlying law of Papua New Guinea; and
- (b) provide for the development of the underlying law of Papua New Guinea."

It is now 14 years since Independence and we would urge the Parliament to consider its responsibility under s 20(1) of the *Constitution*.

8. HUMAN RIGHTS

We are concerned about allegations of human rights violations arising from the conflicts in the North Solomons Province. There have been allegations against both the militants and government forces and, as a matter of law, both sides are subject to the *Constitution* and may be dealt with, either under S.57 of the *Constitution*, or under the *Criminal Code*.

Of particular concern has been the allegations in the media, that the State has allowed its forces to indulge in arson, torture, and murder. These allegations (and at this time they are no more than that) are very serious, and should be investigated by the proper authorities.

It is unfortunate that, as at 31st December 1989, investigations and due process of law do not appear to have materialise in a single formal complaint before the National Court. This is in spite of the fact that the media has published post-mortem reports on alleged victims which appear to require, at least on their face, more formal consideration.

These apparently serious matters are now known to the public. No action appears to have been taken by the Attorney-General, or any of the Law Officers who have constitutional responsibilities to enforce the *Constitution*, uphold the Rule of Law, and protect individual citizens. The absence of any action in bringing allegations before the National Court, on the part of the Public Solicitor, is also a matter of grave concern.

Not only has the Public Solicitor refrained from commencing proceedings, but the Law Society, which has a general duty to uphold the Rule of Law, has also taken no action.

We are aware that a report on alleged human rights violations in the North Solomons prepared by an officer of the Public Solicitor's Office and a lawyer on behalf of the Law Society, was presented to the Minister for Justice.

Section 57(1) of the *Constitution* says:-

"ENFORCEMENT OF GUARANTEED RIGHTS AND FREEDOMS

- (1) A right or freedom referred to in this Division shall be protected by, and is enforceable in, the Supreme Court or the National Court or any other court prescribed for the purpose by an Act of the Parliament, either on its own initiative or on application by any person who has an interest in its protection and enforcement, or in the case of a person who is, in the opinion of the court, unable fully and freely to exercise his rights under this section by a person acting on his behalf, whether or not by his authority. (emphasis added)".

We were of the view, in 1989, that because of the intensity of feelings over the North Solomons conflict, that the integrity and impartiality of the National Court and the Supreme Court, must be of paramount consideration, and that our general disposition was not to initiate any judicial action ourselves, under S.57(1) of the *Constitution* in order that the court system could be seen to be impartial. It was decided that it was much better if complaints could be brought before the National Court by the people affected or by lawyers.

However in the absence of any complaint whatsoever by a member of the public, and in the absence of action taken by any lawyer to uphold the *Constitution* and the Rule of Law, the Judges, the National Court, and the legal system have been severely embarrassed. To some, it may have appeared that the courts have done nothing, at a time of great need. In fact this has not been the case. We have had these allegations continuously under review since they first appeared in the press in June 1989. The Chief Justice issued a statement, on behalf of the Judges, to advise the people of their rights under the *Constitution*, and of the availability of redress before the Courts.

In December 1989 we drafted a "Human Rights Complaints Form" (a copy of which appears at Appendix "E".of this Report). This form was designed to allow quick access to the National Court by those who allege that their human rights guaranteed by the *Constitution* have been violated. The form has been distributed to all Court houses, and is now available to the public.

The people should be aware that the National Court will retain its judicial posture of fairness and impartiality in all matters, including human rights matters. The National Court will vigilantly guard the *Constitution*, and the rights granted to the people by the *Constitution*.

The Judges encourage people to bring to court any complaints with respect to breaches of human rights so that the courts may deal with them.

9. WARRANTS OF ARREST

We reported in 1988 that hundreds of Arrest Warrants issued by the National Court were still outstanding. This situation did not improve during 1989.

APPENDIX "B"

NATIONAL COURT
CRIMINAL CASES TRIED DURING PERIOD
1 JANUARY TO 31 DECEMBER 1989

INDICTED	CONVICTED	ACQUITTED	NOLLE PROSEQUI	SENTENCE
<u>OFFENCES AGAINST PERSON</u>				
Wilful murder				
50	27	5	10	1 - 5 yrs 6 5 - 9 yrs 3 9 - 15 yrs 16 15 -25 yrs 2 Life 2
Murder				
89	44	16	21	1 - 5 yrs 15 5 - 9 yrs 17 9 - 16 yrs 11
Manslaughter				
59	48	3	4	1 - 2 yrs 7 2 - 4 yrs 20 4 - 6 yrs 16 6 - 8 yrs 3 Susp on GBB 3
Unlawful Wounding				
18	17	1	-	Rising of Court 4 Probation 1 GBB 4 1 - 12 mths 5 1 - 2 yrs 2
Indecent Assault				
9	6	-	2	Fine 2 GBB 1 1 - 12 mths 3 1 - 2 yrs 1

INDICTED	CONVICTED	ACQUITTED	NOLLE PROSEQUI	SENTENCE
<hr/>				
Assault Causing Greivous Bodily Harm				
22	16	2	2	GBB 6 Fine & GBB 4 1 - 12 mths 4 1 - 2 yrs 3 2 - 5 yrs 1
<hr/>				
Infanticide				
4	3	1	-	Rising of Court 2 GBB 1
<hr/>				
Concealing Birth of a Child				
2	2	-	-	Rising of Court 2
<hr/>				
<u>OFFENCES GENERALLY INJURIOUS TO PUBLIC</u>				
Dangerous Driving Causing Death				
6	2	2	2	Fine 1 1 - 4 yrs 1
<hr/>				
Rape/Attempted Rape				
151	69	31	49	Probation 4 GBB 6 1 - 2 yrs 11 3 - 4 yrs 16 4 - 5 yrs 17 5 - 8 yrs 8 8 - 10 yrs 7
<hr/>				
Unlawful Carnal Knowledge/Attempted U.C.K.				
57	45	7	4	GBB 4 Fine 1 1 - 12 mths 15 1 - 2 yrs 20 2 - 5 yrs 10 5 - 8 yrs 1
<hr/>				

INDICTED	CONVICTED	ACQUITTED	NOLLE PROSEQUI	SENTENCE
Incest				
20	12	2	5	1 - 2 yrs 3 2 - 3 yrs 6 3 - 5 yrs 3 5 - 7 yrs 1
Unnatural Offences				
5	1	1	3	1 - 12 mths 1
Abduction				
9	4	1	4	Rising of Court 2 1 - 12 mths 2
<u>OFFENCES AGAINST PROPERTY</u>				
Stealing With Violence/Attempted				
265	178	34	34	Rising of Court 1 Probation 10 GBB 8 2 - 3 yrs 70 3 - 5 yrs 73 5 - 7 yrs 20 7 - 9 yrs 2
Breaking, Entering and Stealing				
38	29	3	3	GBB 2 Probation 2 1 - 12 mths 6 1 - 3 yrs 22 3 - 5 yrs 1
Stealing				
32	28	1	2	GBB & Repay. 5 Suspended on GBB 7 Rising of Court 3 Fine 2 1 - 12 mths 2 1 - 2 yrs 6 2 - 5 yrs 2

INDICTED	CONVICTED	ACQUITTED	NOLLE PROSEQUI	SENTENCE
Arson				
13	8	-	5	Probation 2 GBB 1 1 - 2 yrs 4 2 - 5 yrs 1
False Pretence				
5	5	-	-	GBB 2 1 - 2 yrs 3
Forgery & Uttering				
34	20	-	9	Suspend on Repay 3 GBB 4 Fine 2 1 - 12 mths 3 1 - 2 yrs 6 2 - 5 yrs 4
Misappropriation				
53	28	7	12	Rising of Court 1 GBB Repay 14 Fine 3 1 - 12 mths 3 1 - 2 yrs 6 2 - 3 yrs 2 3 - 5 yrs 2
<u>OTHER OFFENCES</u>				
Conspiracy				
7	-	4	3	-
Corruption				
4	3	3	1	1 - 12 mths 2 1 - 2 yrs 1

INDICTED	CONVICTED	ACQUITTED	NOLLE PROSEQUI	SENTENCE
Unlawful Use of Motor Vehicle				
3	2	-	1	1 - 2 yrs 1 3 - 5 yrs 1
Accessory				
1	-	-	1	-
Receiving				
17	17	-	-	Rising of Court 2 1 - 12 mths 7 1 - 3 yrs 4 GBB 4
Disturbing Election				
9	-	-	9	-
Fraudulent & False Account				
3	3	-	-	Fine 1 Suspended sent. 2
Attempt to Suicide				
1	-	-	1	-
Harbouring				
3	1	-	2	Rising of Court 1
Failing to answer Ombudsman Commission Summons				
1	1	-	-	Fine 1

INDICTED	CONVICTED	ACQUITTED	NOLLE PROSEQUI	SENTENCE
Organising Quazi Military				
1	1	-	-	GBB 1
Supplying Drugs with intent to procure abortion				
1	-	-	1	-
False Representation				
1	-	1	-	-

NATIONAL COURT OF JUSTICE
CIVIL MATTERS

During the year ended 31st December 1989, the National Court business has been as follows:-

(a)	In its Appellate Jurisdiction	263
(b)	In its Probate & Administration Jurisdiction	23
(c)	Register of Overseas Judgements & Orders	2
(d)	In its Civil Jurisdiction:-	
	(1) Writ of Summons	1,469
	(2) Miscellaneous Proceedings	120
	(3) Matrimonial Causes	21
	(4) Originating Summons	242
	(5) Lawyers Admission	61
	(6) Admiralty Minute Book	1
	(7) Caveat Warrant Books	Nil
(e)	Bill of Sales -	
	(1) New Bills of Sale	7,977
	(2) Bills of Sale discharged	307
	(3) Renewal of Bills of Sale	Nil
	(4) Stock Mortgages	3
	(5) Stock Mortgages discharged	8
(f)	Writ of Execution Directed to Sheriff	300

SUPREME & NATIONAL COURTS

SHERIFFS OFFICE

ORIGINAL VOTE APPROP.	REVISED APPROP.	CFC WARRANT	TOTAL COMMIT.	TOTAL EXPEND.	UNDER EXPEND.	VARIATION OVER COMMIT.
203-1-200-1		1,930	1,930	NIL		NIL
203-1-200-2		14,870	14,870	6,212	4,472	10,397
203-1-200-3		1,250	1,250	NIL		NIL
203-1-200-4		1,000	1,000	418	157	842
203-1-200-5		6,700	6,700	3,283	128	6,571
203-1-200-6		2,500	2,500	NIL		NIL
203-1-200-7		9,700	9,700	NIL		NIL
203-1-200-10		450	450	NIL		NIL

APPENDIX "D"

SUPREME AND NATIONAL COURTS

VOTE	ORIGINAL APPROP.	REVISED APPROP.	TOTAL COMMIT.	TOTAL EXPEND.	VARIATION UNDER EXPEND.	VARIATION OVER COMMIT.
203-1-100-1	1195,500	1342,000	1351,815	1351,815		7,885
203-1-100-2	335,100	389,500	380,154	360,422	29,078	
203-1-100-3	181,000	146,900	146,898	142,931	3,969	
203-1-100-4	71,300	75,600	75,111	69,526	6,174	
203-1-100-5	100,000	383,700	380,721	360,841	22,869	
203-1-100-6	30,200	37,700	37,666	37,540	160	
203-1-100-7	273,000	298,800	298,744	293,813	4,987	
203-1-100-8	23,100	32,200	31,197	32,425		225
203-1-100-9	66,600	53,300	52,854	51,676	1,624	
203-1-100-10	72,800	70,300	69,461	71,217		917

YOUR CLAIM AND THE CONSTITUTION AND HUMAN RIGHTS

The *Constitution* guarantees human rights such as:

- the right to life
- freedom from inhuman treatment and torture (this makes unconstitutional beatings and assaults, but includes both severely physical and mental mistreatment.
- protection of the law - particularly as it applies to accused persons and persons in custody (detainees are protected under this provision)
- protection from otherwise legal acts that are harsh, oppressive, disproportionate, or not reasonably justifiable in a democratic society.
- liberty of the person and the rights of persons on arrest, rights to bail, and the right not to be detained illegally
- freedom from forced labour
- freedom from arbitrary search and entry of homes and private property (this would include customary land)
- freedom of conscience, thought and religion
- freedom of expression
- freedom of assembly and association
- freedom of employment (limited to choice of employment)
- the right to privacy
- the right to vote and stand for office
- the right to freedom of information
- the right to freedom of movement
- protection from unjust deprivation of property
- equality of all citizens irrespective of race, tribe, place of origin, political opinion, colour, creed, religion or sex

Some of these rights are quite broad, others are qualified or apply only to citizens. They are set out in detail in the *Constitution*. Copies of the *Constitution* are held in court-houses.

The National and Supreme Courts have broad powers to enforce these rights. If you think that any of your human rights have been broken, or if you think the human rights of a relative or friend, who cannot make a complaint, have been broken you can apply to the National Court to have those rights enforced.

The application may be made by filling in this form and giving it to -:

- the Clerk of Court in your town
- a Judge of the National Court on circuit
- The Registrar of the National Court Box 7018, P.O. BOROKO, NCD.

Instructions to Clerk of Court:

When this form is handed to you it should be transmitted as quickly as possible to the Registrar of the National Court. The fax number of the National Court is 257732. The address is Box 7018, P.O. BOROKO, NCD.

PAPUA NEW GUINEA
NATIONAL COURT OF JUSTICE

APPLICATION FOR ENFORCEMENT OF HUMAN RIGHTS
AND/OR FREEDOMS PURSUANT TO S.57 CONSTITUTION

Name of Applicant:

Address:

Right or Freedom to be enforced:

.....

.....

Time and Date of Breach of Right or Freedom:

Day Month Year Time

Place of Breach of Right or Freedom:

.....

Person or Authority Responsible for Breach of Right or

Freedom:

.....

Brief Description of the Breach of Right or Freedom: ...

.....

.....

.....

I hereby make application for the enforcement of my right
or freedom as guaranteed by the Constitution and seek
orders under section 58 thereof and any other orders the
Court may see fit to make.

DATED this

day of

19

.....
Name and Signature of Applicant

Printed by G. Dadi, Acting Government Printer,
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