

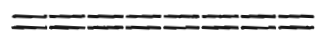


# 1997 Annual Report



*by*  
*The Judges*

**ANNUAL  
REPORT  
BY  
THE JUDGES**



**1997**



# PAPUA NEW GUINEA

## ANNUAL REPORT

BY

THE JUDGES

1997

UC

---

REPORT BY THE JUDGES TO THE HEAD OF STATE FOR THE YEAR ENDED 31 DECEMBER 1997 FOR PRESENTATION TO THE NATIONAL PARLIAMENT ON THE WORK OF THE NATIONAL JUDICIAL SYSTEM, PURSUANT TO *CONSTITUTION*, SECTION 187 AND THE *NATIONAL COURT Act* (CHAPTER 38) SECTION 6.

---

**JUDGES OF THE SUPREME COURT OF PAPUA NEW GUINEA AND  
THE NATIONAL COURT OF JUSTICE DURING 1997**

THE HONOURABLE SIR ARNOLD KARIBONE AMET, C.B.E., LL D.  
*Chief Justice of Papua New Guinea*

THE HONOURABLE SIR MARI KAPI, C.B.E., C.S.I., LL M.  
*Deputy Chief Justice of Papua New Guinea*

THE HONOURABLE JUSTICE ROBERT KYNERSLEY WOOD, C.B.E.

THE HONOURABLE SIR KUBULAN LOS, C.B.E., M.C.J.

THE HONOURABLE JUSTICE TIMOTHY ALEXANDER HINCHLIFFE, C.B.E.

THE HONOURABLE JUSTICE MAURICE JAMES SHEEHAN, P.M.

THE HONOURABLE JUSTICE GIBUMA GIBBS SALIKA

THE HONOURABLE JUSTICE MOSES JEFFREY JALINA

THE HONOURABLE JUSTICE TERESA ANNE DOHERTY

THE HONOURABLE JUSTICE WARWICK JOHN ANDREW, C.B.E

THE HONOURABLE JUSTICE BERNARD BEREKIA SAKORA, LL M.

THE HONOURABLE JUSTICE MARK SEVUA

THE HONOURABLE JUSTICE SALAMO INJIA, LL M.

THE HONOURABLE JUSTICE DON SAWONG, M.B.E.

THE HONOURABLE JUSTICE PAUL AKURAM

THE HONOURABLE JUSTICE MICAH PITPIT (ACTING)

THE HONOURABLE JUSTICE SALATIEL LENALIA (ACTING)

THE HONOURABLE JUSTICE COSMAS BIDAR (ACTING)

THE HONOURABLE JUSTICE SITION PASSINGAN (ACTING)

THE HONOURABLE JUSTICE ELENAS BATARI (ACTING)

THE HONOURABLE JUSTICE KARO VAGI (ACTING)

## SENIOR COURT OFFICIALS

### Registry

Registrar - Supreme and National Courts	Mr Laurence Michael Newell ISO, LL B., F. Inst. L. Ex. AIMM
Sheriff - Supreme, National and District Courts	Mr Laurence Michael Newell ISO, LL B., F. Inst. L. Ex, AIMM
Admiralty Marshall	Mr Laurence Michael Newell ISO, LL B., F. Inst. L. Ex, AIMM
Deputy Registrar - Supreme Court	Mr Alois Kintau, LL B. Ms Christine Daingo, LL B.
Deputy Registrar - National Court	Ms Freda Talao, LL B.
Deputy Registrar - Lower Court	Mr Ian Augerea, LL B.
Assistant Registrar - Supreme Court	Ms Christine Daingo, LL B. Mr Pius Tapil, LL B.
Assistant Registrar - National Court	Mrs Marie Miria
Assistant Registrar - Lower Court	Ms Aimo Opiang, LL B.
Assistant Registrar - Rabaul	Ms June Micka, LL B.
Assistant Registrar - Mount Hagen	Ms Imelda Buru, LL B.
Assistant Registrar - Goroka	Mr Philip Kaumba, LL B.
Assistant Registrar - Lae	Mr Samuel Ikiso, LL B.
Assistant Registrar - Madang	Mrs Margaret Lingas

### Administration

Secretary - National Judicial Staff Services	Mr Laurence Michael Newell, ISO, LL B., F. Inst. L. Ex, AIMM.
Deputy Secretary - Finance and Administration	Mr Robin Guria
Assistant Secretary - Finance	Mr Humphrey John
Assistant Secretary - Personnel	Mr John Aiga
Assistant Secretary - Information Technology	Ms Konio Vai, DCCC
Principal Legal Officer	Mr Pius Kingal, LL B. Mr William Hagahuno, LL B. Mr Peter Yasbi, LL B.
Research Officer to Chief Justice	Mr Clivson Philip, LL B.
Legal Officer	Mr William Hagahuno, LL B.
Building Manager	Mr Vagi Tashmaha Isaiah, B Arch.
Librarian	Mr Tom Dangiaba, B LIS.

---

## INTRODUCTION

We present to Parliament our joint report for the year ending 31 December 1997 on the work of the National Judicial System with recommendations as to such improvement as we think proper, pursuant to the *Constitution* Section 187 and the *National Court Act* (Chapter 38), Section 6.

In the early part of 1997 a dispute arose between certain elements of the Defence Force and the Government over the use of Sandline International Incorporation Limited.

For a number of days the work of the Judiciary was hampered, and a number of court sitting days were lost due to this dispute. It also led to Judges and Magistrates being appointed to two separate Commissions of Inquiry, which again hampered the Judiciary from getting on with its primary tasks of dealing with Criminal and Civil Trials and hearing Appeals.

In addition to the Sandline Incident, Judicial time was also spent on Commissions of Inquiry and Military Courts, which arose mainly from that incident, Eighty-eight (88) Election Petitions and Five (5) Leadership Tribunals, whilst the Supreme and National Courts also had to deal with day-to-day civil hearings and criminal trials.

## **JUDICIAL ADMINISTRATION**

The Administration of the Supreme and the National Courts is vested by the *Constitution* in the Chief Justice. To assist the Chief Justice in the administration of the Supreme Court and the National Courts, the Judicial Administration Council was established.

The Council's function was to provide a venue at and through which legal and judicial issues relating to the work of all Courts within the National Judicial System may be raised and discussed with a view to improve the work of the courts.

The council has 13 members consisting of the Chief Justice as Chairman, the Deputy Chief Justice, four senior judges, Chief Magistrate, Deputy Chief Magistrate, four senior magistrates and the Secretary/Registrar.

The council has no legislative basis or powers and functions at present. It is an administrative arrangement whereby it acts as an advisory body to the Chief Justice and Chief Magistrate.

## **JUDICIAL AND LEGAL SERVICES COMMISSION**

Section 183 of the *Constitution* gives the authority to the Judicial and Legal Services Commission (JLSC) to appoint judges of the National Court of Justice and the Supreme Court of Justice. During the currency of this report, the following appointments and re-appointments were made.

### **Appointment of Judges**

- ❖ **Justice Los** was re-appointed on 15<sup>th</sup> August, 1997 for a further 10 years.

- ❖ **Justice Sheehan** was re-appointed a Judge for 12 months on 1<sup>st</sup> January, 1997.
- ❖ **Justice Andrew** was re-appointed as a Judge for 12 months on 6<sup>th</sup> May, 1997.
- ❖ **Justice Kirriwom** was appointed a Judge of the National and the Supreme Court for 10 years on 6<sup>th</sup> May, 1997.

### **Appointment of Acting Judges**

- ❖ **Justice Batari** was re-appointed as an Acting Judge for 12 months from 3<sup>rd</sup> March, 1997.
- ❖ **Justice Bidar** was re-appointed as an Acting Judge for 12 months from 3<sup>rd</sup> March, 1997.
- ❖ **Justice Lenalia** was re-appointed as an Acting Judge for 12 months from 3<sup>rd</sup> March, 1997.
- ❖ **Justice Passingan** was re-appointed as an Acting Judge for 12 months from 3<sup>rd</sup> March, 1997.
- ❖ **Justice Doherty** was re-appointed as an Acting Judge for 12 months from 11<sup>th</sup> August, 1997.
- ❖ **Justice Vagi** was appointed an Acting Judge for 12 months from 24<sup>th</sup> April, 1997

### **Honours and Awards**

The Honourable Justice Teresa Doherty in the Queen's Birthday Honours list for 1997 was awarded the Commander of the British Empire (CBE).

### **Retirement of a Judge**

The Honourable Justice Teresa Doherty, CBE was farewelled as a judge of the National and Supreme Court on 24<sup>th</sup> October, 1997. Her Honour departs our Courts and the country after 21 years of outstanding and distinguished public services to the legal profession, the provincial government system, the magisterial service, the judiciary and the community.

### **SUPREME COURT**

The *Constitution*, Section 155 establishes the Supreme Court of Papua New Guinea. The *Supreme Court Act* (Chapter 37) further provides for the Supreme Court powers and rules of practice and procedures. The Supreme Court is the highest court in Papua New Guinea and its decision is final. It is a court of record, meaning that it must keep a record of the proceedings done before it and give a written decision on these proceedings.

### **Membership**

Full time Judges of the National Court are also Judges of the Supreme Court. This includes the Chief Justice and the Deputy Chief Justice. Three, five or seven judges sitting together constitute a Supreme Court Bench. In appropriate circumstances a single judge may constitute a Supreme Court.

### **Jurisdiction**

The jurisdiction or powers of the Supreme Court are as given by the *Constitution* or another statutory law of Papua New Guinea. The main jurisdiction of the Supreme Court is to:

- ❖ Hear appeals from decisions made by the National Court;
- ❖ Review decisions made by the National Court (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 (that is, complies with the Constitution);
- ❖ Develop rules of the underlying law; and,
- ❖ Enforce human rights as provided under the Constitution.
- ❖ Review its own decision in appropriate case.

### **Sittings**

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 cases coming to the Supreme Court from all places where the National Court sat in Papua New Guinea. In June, 1994 for the first time, the Supreme Court sat outside of the National Capital District. Sitting outside of Waigani continued in 1997. The Supreme Court sitting in the regional centres is the result of the Chief Justice's intention to bring the formal courts closer to the ordinary people of this country.

### **Registry**

The registry of the Supreme Court is at the Waigani Court House (Supreme Court Building). That is the place where cases for the Supreme Court are registered, dates for hearing are given and any other matters concerning the Supreme Court are handled.

### **Management of Case Work Load**

Progress has been made into this area of measuring the workload of the Courts, particularly the appeal workload of the Supreme Court. Commencing in 1998 a Supreme Court database will be developed to provide for consistent and reliable reports. The aim of this project is to track the number of days it takes from the date of filing to a decision to be delivered, the average number of days between the hearing date and the delivery of decision and the time taken to prepare the transcript of proceedings.

*For a Summary of cases dealt with in the Supreme Court in 1997 see Appendix "A".*



## NATIONAL COURT

The National Court of Justice is established by Section 155 of the *Constitution*. Further provisions concerning the National Court, which includes rules of practice and procedures are provided for by or under the *National Court Act* (Chapter 38).

### Membership

Judges of the National Court are the Chief Justice, Deputy Chief Justice and full time as well as acting judges of the National Court. Full time citizen judges are appointed for a 10-year period whilst full time non-citizen judges are appointed for a three-year term for which appointment may be renewed or extended. 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.

### Jurisdiction

The *Constitution* states that the National Court is a court of unlimited jurisdiction, meaning that the National Court has the power to hear any case unless the Constitution gives the power to hear a particular case to another court. The main jurisdictional areas dealt with by the National Court are:

- ❖ Tries indictable offences (serious offences under the Criminal Code);
- ❖ Tries major civil matters;
- ❖ Hears appeals from Local Court, District Court and the Commissioner of Inland Revenue;
- ❖ Enforces human rights under the Constitution;
- ❖ Interprets the Constitution and Organic Laws;
- ❖ Develops rules of the underlying law; and,
- ❖ Reviews administrative decisions or actions.

The major civil matters handled by the National Court include:

- ❖ Claims involving any amount however, as the District Court deals with amounts below K10,000.00, in practice the National Court only deals with claims exceeding K10,000.00 unless legislation otherwise specifies that a matter cannot be dealt with by another court;
- ❖ Election Petitions (for National Parliament);
- ❖ Matrimonial matters (Adoption and Custody of children, Dissolution of marriage);
- ❖ Probate and Administration (Certificate to allow for distribution of a dead person's property);
- ❖ Company matters (winding up companies and other matters);
- ❖ Insolvency;
- ❖ Admiralty (Shipping and Cargo Claims);
- ❖ Lawyers Admission; and,
- ❖ Prerogative or other orders.

### Registry

The main National Court Registry is at Waigani Court House (Supreme Court Building). There are sub-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 and Assistant Registrars overseeing the sub-registries.

### **Management of Case Work Load**

The workload since 1995 has increased in the Civil Jurisdiction from 2,455 to 2,602 Registrations in 1997 (includes Writ of Summons, Originating Summons, Miscellaneous Proceedings and Matrimonial Proceedings but not including other categories).

In the Appeals Jurisdiction, the total number dropped from 425 in 1995 to 349 in 1996 and then increased to 433 in 1997.

*For Matters before the National Court in 1997 see Appendix "B".*

### **Sittings of the National Court**

The National Court sits in all provincial centres and other major district centres. Where a judge is resident, the National Court is based there too.. Where there is no resident judge, the National Court sits there when it makes its circuit to that area from Waigani or some other centres. Judges are resident in the National Capital District, Lae, Mount Hagen, Goroka, Kavieng and Kimbe.

It is the intention of the Judiciary to put in place a resident judge in all provincial centres, this exercise is continuing.

*See Appendix "C" for listing of Judges by Provinces in 1997.*

### **Bench Warrants**

Bench Warrants are normally around 1,000 and are issued where a person has escaped custody or not answered bail. Many of these bench warrants go back 10 to 20 years. In each year there are not more than 10 or 20 new persons for whom bench warrants are issued. However many bench warrants which are sent to the Police for the arrest of those named, they are never dealt with. It should be noted that in the Lower Courts each year hundreds of bench warrants are issued, in addition to those issued by the National and Supreme Courts. At any time, there are thousands of Local and District Court bench warrants that are outstanding. The principal reason for this is that Papua New Guinea has no effective Police Information System (PIS) in use as at the date of this report.

In Developed Countries, the use of an Automated Fingerprint Identification System (AFIS) which uses a mathematical algorithm to allow for computers in Police Stations to identify suspects against the fingerprint records contained in a database are in use. However, these may be too costly for Papua New Guinea, which has over 100 Police Stations nationwide. A manual system matching fingerprints to descriptions and photos of persons may be more cost effective. However, what is clear is that we are

still in need of a PIS that allows for more effective identification of those against whom bench warrants are issued.

### **Criminal Statistics**

In 1993 the *United Nations Regional Crime and Justice Research Institute* based in Rome conducted a review of Criminal Justice Statistics in Papua New Guinea. The researchers were Ugljesa Zvekic (from the Institute in Rome) and Donald James Weatherburn a leading Criminologist and Statistician from New South Wales, Australia. In October, 1993 they produced a Report entitled *Strategy and Mechanisms for Development and Co-ordination of Crime and Criminal Justice Statistics*. This report remains to be implemented.

Amongst the recommendations was the establishment of a *National Bureau of Crime and Justice Statistics* to integrate data from the Police Force, Correctional Service, Probation Service (Department of Justice) and the Supreme, National, District and Local Courts (National Judicial System).

### **Criminal Justice Data**

The Judiciary is hampered by not having accurate data, and with the compiling of the Information Technology Strategic Plan, which was designed with the assistance of Auscript in 1997 to cover 1998 to 2002 and the proposed introduction of a modified version of the South Australian Judicial Information System, it is hoped that within a short time more accurate Criminal Justice statistics will be able to be produced for the Judiciary.

However, the need for integration of statistics through a National Bureau of Crime and Justice Statistics is still required, as this will ensure that accurate rather than as is at present, largely inaccurate National Criminal Justice Statistics are produced.

### **Tribunals, Commissions and Other Court Proceedings**

In 1997 six (6) Acting Judges were appointed to the National Court to enable the experienced Supreme and National Court Judges to deal with Election Petitions, Leadership Tribunals, Commissions of Inquiry and Military Courts.

**Election Petitions** – In 1997 a number of Senior Judges were involved in Election Petition Hearings.

**Leadership Tribunals** – In 1997 a few months were spent on hearings and drafting recommendations for Leadership Tribunals.

**Commissions of Inquiry** – In 1997 it took 4 months in which Commissions of Inquiry sat, heard and compiled Reports.

**Military Courts** – There were a number of Judges of the National Court dealing with Appeals and Inquiries arising under the Defence Act and Code of Military Discipline in 1997.

### **Election Petitions**

In 1996 and 1997 the *Organic Law on Provincial Governments and Local-level Governments* was approved by Parliament and amended a number of times. In April, 1997 the Organic Law on National and Local-level Government Elections was brought into operation.

In preparation for the changes to the procedures and an anticipated volume of Election Petition cases to be lodged with the National Court after the 1997 National Elections, following on from the re-enactment of the Organic Law on National and Local Level Elections a Judicial Committee headed by The Honourable Justice Sheehan looked into Election Petition Practice and Procedures.

In May, 1997 a Workshop on National and Local-level Government Elections was held at the Islander Hotel in Port Moresby to introduce the revised Election Petition Practice and Procedures. The workshop was attended by Judges of the National and Supreme Court, members of the Electoral Commission, the Legal Profession, the Police and other interested parties to discuss and put in place the revised Election Petition Practice and Procedures.

The total number of Election Petitions filed in the National Court after the 1997 National Elections was eighty-eight (88). Out of these, 19 Petitions were dealt with and 4 were withdrawn between August and December 1997. It is expected that the balance of the petitions will be dealt with in 1998.

To assist in the tracking of Election Petitions a database was developed with the assistance of Henderson Management Services of Australia.

### **Leadership Tribunals**

Leadership Tribunals take up a considerable amount of time for Judges and Magistrates. In 1997 over 4 months was devoted in total to Leadership Tribunals. This includes sitting time and the time required to produce the decisions of the Tribunals. The following were the Judges and Magistrates that were involved in Leadership Tribunals in 1997:

<b>Tribunal Members</b>	<b>Leader</b>	<b>Decision recommended</b>	<b>Other Outcome</b>	<b>Dates of Hearing</b>
Justice Sakora, Magistrates Karapo and Manahu	Paul Pora MP	Fine of K8,000.00		1996: February: 15 & 19 March: 11 April: 15, 18, 19, 24, 29 May: 2, 3, 7, 9, 10, 14, 16, 21, 22, 27 to 31 November: 25 to 29 December: 9 & 10 1997: January: 20 February: 19, 24 & 25
Justice Sheehan,	Joseph Onguglo	-	The	1997: April & May

Magistrates Pupaka and Numapo	MP			Member resigned from Office 19 May, 1997	
Justice Andrew, Magistrates Vagi and Sagu	Yaip Avini, MP	-		See below	1997: Appointed 18 March 1997 - the Tribunal never sat
Justice Salika, Magistrates Pupaka and Sagu	Ted Diro MP	-		Tribunal concluded it had no jurisdiction to hear the matter	1997: August: 20 and September: 2
Justice Doherty, Magistrates Oli & Numapo	Gabriel Dusava MP	Dismissal from Office	-		1997: September & October

**Note:** The National Court sentenced Mr. Yaip Avini, MP to Eight (8) years imprisonment in November 1996. On 15<sup>th</sup> March, 1997 the Supreme Court dismissed Mr. Avini's appeal against conviction. Because the Supreme Court upheld the Criminal Conviction of Mr. Avini he was disqualified from holding office as a Member of Parliament under Section 103(3)(c) of the *Constitution*. Accordingly the Leadership Tribunal lost its jurisdiction to hear the alleged Leadership matter.

### Commissions of Inquiry

*The Commission of Inquiry into the Engagement of Sandline International* was appointed by the Prime Minister (Hon. Sir Julius Chan, MP) on 21<sup>st</sup> March, 1997. The Commissioner appointed to Report on the matter was Justice Warwick Andrew, who reported back to the Acting Prime Minister (Hon. John Giheno, CMG, MP) on 29<sup>th</sup> May, 1997. The inquiry sat from 25<sup>th</sup> March to 30<sup>th</sup> May, 1997.

*The Commission of Inquiry into Transparency of Government Dealings and Accountability of Public Office Holders* was appointed by the Prime Minister (Honourable William Jack Skate, CMG, MP) on the 10 August, 1997. Justice Los, Magistrates Apa and Gauli were the Commissioners. The Commissioners spent a couple of months dealing with the matter in 1997 and expects to finalise its inquiries and report in 1998.

### Military Court

Section 172 of the *Constitution* establishes Other Courts within the National Judicial System Framework. One of which is the Court constituted by a judge of the National Court or a magistrate grade 4 of the District Court that can hear charges of offences or appeals under *Defence Act* and the *Code of Military Conduct* under the *Defence Act*.

The powers and responsibilities of the Judges and Magistrates are as provided for under the *Defence Act* (Chapter 74) and the Code of Military Discipline in the Schedule to the *Defence Act*. Only members of the Defence Force and such members of Overseas Forces and others as are brought under the *Defence Act* and are not exempted are subject to the *Code of Military Discipline*.

Much of the work of the Judges and Magistrates in 1997 was taken up with matters arising from the Sandline Incident.

### **Appointment of Defence Judges**

- ❖ **Justice Sevua** was appointed Defence Force Judge on 13<sup>th</sup> May, 1997
- ❖ **Justice Hinchliffe** was appointed Deputy Defence Force Judge on 13<sup>th</sup> May, 1997.
- ❖ **Justice Sawong** was appointed Deputy Defence Force Judge on 13<sup>th</sup> May, 1997

### **JUDICIAL COMMITTEES**

Judges are also members of a number of Committees. The following are some of the committees on which Judges sit.

#### **Court Restructure Committee**

A Court Restructure Committee under the Chairmanship of The Honourable Justice Timothy Hinchliffe is currently looking at the restructure of the Courts. This committee will report to the Judicial Administration Council with its findings and recommendations.

#### **Continuing Judicial Education Committee**

The Continuing Judicial Education Committee (CJEC) headed by The Honourable Justice Sir Kubalan Los, deals with an essential part of the lives of the judicial officers, continuing discussion and updating of the skills of Judges and Magistrates. The CJEC has organised workshops for judges and magistrates as part of an on-going transfer of skills between judges and magistrates in Papua New Guinea and overseas. As part of its programme, judges and magistrates have attended conferences overseas.

Judges and Magistrates attended the following workshops and conferences as part of its CJEC program.

- May, 1997 – Workshop on National and Local Level Government Election Petitions held at Islander Travelodge – see details above under Election Petitions.
- 4<sup>th</sup> June, 1997 – Judges in-house Continual Judicial Education on Criminal Procedure.
- 22<sup>nd</sup> to 24<sup>th</sup> August, 1997 – Justice Los and a number of Magistrates attended the AIJA Asia Pacific Courts Conference in Sydney, Australia.

#### **National Legal Convention**

In 1997 Justice Sir Kubalan Los in his capacity as Chairman of the Continuing Judicial Education committee chaired the National Legal Convention organising Committee. It is intended that the inaugural Convention will be held in 1998.

### **Council of Law Reporting**

The Honourable Deputy Chief Justice Sir Mari Kapi is the Chairman of the Council of Law Reporting. The Council of Law Reporting supervises the production of the Papua New Guinea Law Reports (PNGLR).

The 1963 edition of the PNGLR was printed and published for the Council of Law Reporting of the Territory of Papua and New Guinea by the Government Printing Office in Port Moresby. The 1964 edition of the PNGLR was printed and published for the Council of Law Reporting of the Territory of Papua and New Guinea by the Government Printing Office in Sydney, New South Wales.

From 1965 until 1991 all editions of the PNGLR were published by the Law Book Company in Australia

From the 1992 edition of the PNGLR the Faculty of Law at the University of Papua New Guinea (UPNG) produced them.

In 1997 the Faculty of Law at the UPNG published the 1995 PNGLR for the Council of Law Reporting for Papua New Guinea.

### **FINANCE AND ADMINISTRATION**

The funds of the Courts are given by separate appropriation of Parliament and are managed by the National Judicial Staff Services (NJSS) under the control of the Chief Justice. The NJSS looks after the court buildings and institutional houses of the judiciary. Services such as provision of secretarial and clerical staff, library, research, legal, security, office vehicle and equipment are the responsibility of the NJSS.

The Salaries and Remuneration Commission determines the Judges' terms and conditions of employment.

#### **Finance**

The Chief Justice presents the Judiciary's Budget Estimates to the Prime Minister. Its estimate for 1997 was K33, 803, 000 but the Judiciary was appropriated K20, 950, 000 . Although this appropriation was less than what we had estimated, the judiciary continued to function until the end of the 1997 financial year but at the expense of some plans and projects not being implemented to accommodate the shortfalls.

The monthly releases by the Department of Finance were on many occasions not made within reasonable time. At times, we were given our monthly allocation well into the month, sometimes as late as one week before the month was up. Because of the lateness in the allocation of funds by the Finance Department, we at times had difficulty in meeting our commitments or even worse still, circuits were cancelled or

delayed causing inconvenience to the public thereby denying them justice within reasonable time.

We have written to the Finance Department on a number of occasions, requesting the release of our funds on a quarterly basis rather than the current monthly releases so that we can effectively plan and carry out our constitutional duties and functions without having to face the problem of funds not coming on time. To date Finance Department has not responded to our requests or even acknowledged our letters. We would like the Finance Department to release our funds on a quarterly basis on the first working day of each quarter.

### **Court Staff**

The National Judicial Staff Services (NJSS) employs the staff of the Courts at Waigani and throughout all the court houses in the country. Personnel matters of judges and magistrates are handled in accordance with instructions from the Chief Justice and Chief Magistrate by the NJSS. The Secretary of the NJSS is responsible for the employment and control of all staff of the Courts except Judges' personnel staff.

## **COURT BUILDING AND MAINTENANCE**

Set out below is a Summary of the work in this area.

### **General Matters**

Building and maintenance of court houses throughout the country is a major task, which has been an on-going concern. Most of the court buildings are old and run down. In 1996, Officers of NJSS started work with the assistance of Frameworks Architects Propriety Limited of Goroka on a NJSS National Building Repair and Maintenance Survey. In 1996 most courts were surveyed (except in Southern Highlands Province and a couple of southern region locations) and in 1997 the Islands Region survey was completed.

In 1997 we were committed to carry out the construction and maintenance of the court buildings nation-wide. This will continue into the years to come. In 1997 our current Maintenance Bill was over K4 Million.

Neither in 1996 nor 1997 were we able to even clear a tenth of this work. If maintenance is not carried out, the buildings further deteriorate. With the result that maintenance work to be done at the end of 1997 costed much the same as what was waiting to be done at the beginning of 1996. Unless a major funding increase is given we can expect that the Maintenance Bill for work still to be done in 5 years time – 2002 will be in the region of K6 Million to K10 Million.

In Popondetta the renovation of a house to be occupied by a Judge was completed in 1997 and work to upgrade and extend the existing court house in Popondetta started in 1997. When this work is completed it is expected that there will be additional Courtrooms, Chambers for Judges, Magistrates and their support staff, as well as a



new Registry, a small Library for use by the Judge and Magistrates and other improvements. At present there is only one courtroom in Popondetta and therefore when a Judge sits in Popondetta the Magistrates cannot sit. The existing court room structure is of the 'A' frame type, which is also in use in Kavieng, Minj and Wewak.

We have written to the Governors of each province indicating to them what our plans are for the province with the hope that if they have any plans to assist, then we can work in partnership with them. We will also be writing to major developers in the provinces who are willing to assist us in building court houses.

### **Gazelle Restoration**

Following the eruptions of Tarvurur and Vulcan a plan for the Kokopo Commercial Business Centre and Ralum Civic Centre was put together for the Gazelle Restoration Authority (GRA) in 1996.

The Ralum Civic Centre design included a new Court House for Kokopo to replace the temporary buildings erected within the Kokopo Commercial Business Centre. Following on from the Report, a letter was sent to the GRA in 1996 requesting the inclusion of the construction of the new court house in Kokopo, the relocation of the temporary buildings at Kokopo to Rabaul, Palmalmal and Kerevat, and the construction of residences for Judges, Magistrates and Senior court staff in Kokopo in the World Bank funded Project.

In 1997 despite numerous letters and visits to the GRA offices and the National Planning Office no response was forthcoming to these requests. The Judiciary is concerned that despite putting in place a temporary court house very soon after the eruption of Tarvurur and Vulcan, the GRA has not responded to requests for moving the existing temporary court house to the Ralum site or with the construction of a new court house on that site.

### **Bougainville Restoration**

In 1997 the only court house used in Bougainville was the Buka Court House. There was no indication of funding from Development sources for upgrading of Buka court house or restoration of other Court services elsewhere in Bougainville.

### **Waigani Court Complex**

In the Judges Annual Report for 1994 it was reported that a tender for Architectural Design for a new Waigani Court Complex was called. In 1995 the design consultancy was awarded as a joint project between Frameworks Architects Propriety Limited of Goroka and Cox Richardson of Australia.

Work on Stages I, II and III of the Design of the complex was completed by 1997. In 1998 the final (IV<sup>th</sup>) stage of the design consultancy in which detailed drawings will be drawn, will need to be funded.

A sum of K2, 250, 000 (at the Kina value in 1997) is required to complete stage IV of the design.

The projection for the number of Courtrooms required in the National Capital in 2002 is 30 courtrooms, in 2010 this is projected to be 40 court rooms. At present in the National Capital some Magistrates hear cases in their offices, as there are insufficient courtrooms. In Waigani due to shortage of office space, some courtrooms are occupied by court staff. The NJSS rents a warehouse at Gordons for office and storage space.

The proposal for a suitable large building to centralise all Court hearings in the National Capital District (NCD) in one location and provide a suitable location for the Headquarters of the National Judicial System needs to have the design completed in 1998 and construction commence in 1999.

It is expected that further buildings will be required to be built or rented in the 1998 to 2002 period in the NCD for use as courtrooms and office space for staff because of this failure to provide stage IV design funds in the 1998 Judiciary Budget. It is hoped that the funds will be provided in 1999 under the PIP submission lodged by the Judiciary in 1997, if so building might be able to commence by the year 2000.

The estimated cost of the building in 1997 was K100 Million (including the cost of the fitout of the building). It is proposed that the present Waigani court building be used jointly by the Legal Training Institute and also provide facilities for Judicial Education for both Judges and Magistrates.

Temporary buildings in Waigani will be relocated to upgrade court facilities at locations in Papua New Guinea where they can be easily delivered by sea or land.

### **Court Reporting**

The Court Reporting Project begun in 1995 for the recording of trials in the courts and transcribing of these recordings. This project progressed well into 1997. In 1996 courtrooms 4, 5, 6 and 7 in Waigani were installed fully with the recording system. It also extended into 1997 to fully equip courtrooms in Mount Hagen with the recording system, two courtrooms in Lae, one courtroom in Goroka and one courtroom in Madang. Court reporting officers were employed in all of these centres. The extension of court reporting services will continue into all the provincial centres as part of its program from 1998 and beyond.

To provide members of the National Parliament with a better understanding of the role of the Court Reporting Service, transcripts are normally produced after an appeal is lodged against a National Court decision. In 1997 not all National Court sittings (except in Waigani and during the course of 1997 in Goroka, Lae, Madang and Mount Hagen) in other places in Papua New Guinea were recorded, and a number of transcripts were still produced using Judges' Notebooks. In addition some Supreme Court hearings were also recorded but these were rarely needed to be transcribed.

However, in addition to providing transcripts one or two months after a hearing (for Appeals from the National Court) daily (or next day) transcripts were provided for all the Leadership Tribunals and for the two (2) Commissions of Inquiry. Additional to

this, the court reporting service produced transcripts for a number of Conferences and Workshops in 1997.

To provide some information on numbers of transcript pages that were produced on a daily basis:

- For the Commission of Inquiry into the Engagement of Sandline International (the Inquiry chaired by Justice Andrew) – 2,163 transcript pages at 31 copies a day were produced on a daily basis;
- For the Commission of Inquiry into the Engagement of Sandline International (the Inquiry chaired by Justice Los) which sat in 1997 and 1998, 5,580 transcript pages at 31 copies a day were produced on a daily basis.

It is not possible to produce daily transcripts and also keep up to date with transcripts where Appeals are lodged with the Supreme Court against the National Court due to a shortage of space, the number of staff and a range of related issues.

There is no pool of trained transcript typists in Papua New Guinea who have experience in producing the highly complex transcripts required for court proceedings. To cover basic experience either as a Monitor (recording in court) or as a transcript Typist, a minimum of six (6) months is needed to get up to a reasonable speed. However, for five (5) or more years after that transcript Typists and Monitors will still be upgrading their skill levels.

Each courtroom has a different acoustic situation, this means that volumes for individual microphones are different in each courtroom. In addition Lawyers or Witnesses may have different voice levels which again means a constant attention to the volume. The Monitor is also noting the time each person starts and stops talking and the tape counter number.

The transcripts do not necessarily contain correct English – they contain the actual words said by the Judges, Lawyers and Witnesses whether grammatically correct or incorrect. In addition if a Latin or legal French phrase is used, a medical or other scientific term is used, then this must be transcribed exactly. Therefore transcript Typists need many years experience before they can be able to produce accurate transcripts.

### **The use of Information Technology in the Courts**

An Information Technology Strategic Plan (ITSP) was designed with the assistance of the Australian Government company, Auscript in 1997 to cover 1998 to 2002.

The ITSP provides the National Judicial System with a coherent and effective framework for the planning and implementation of the Information Technology systems and applications required for the National Judicial System. In both 1996 and 1997 we were considering whether we should purchase the South Australian Judicial Information System.

While the priority is developing a Court Registry Systems, other systems for the other divisions will be developed as we progress.

In preparation for the Local Area Network (LAN), the wiring of the cables commenced in 1996 and it is expected to be completed in 1998.

A Computer-training Officer was recruited in 1997 and a Systems Administrator will be recruited in 1998.

## CONCLUSION

As mentioned in this Report the work of the Supreme and National Courts in dealing with the trial of Criminal matters and hearing of Appeals and Civil matters has been hampered by a number of factors.

These included the incident in the earlier part of the year arising apparently from the employment of Sandline International. This led to two Commissions of Inquiry being appointed:

- *The Commission of Inquiry into the Engagement of Sandline International;* and,
- *The Commission of Inquiry into the Transparency of Government Dealings and Accountability of Public Office Holders.*

In addition to this, Three (3) Judges were appointed to head Military Courts to deal with matters largely arising from the same incident.

Another factor that affected the work of the Judiciary in 1997 was the 88 Election Petitions that arose from disputes arising from the 1997 National Parliament Elections. It is to be hoped that the National Parliament will review the conduct of the 1997 National Elections and consider ways in which the Electoral system can be reviewed to reduce what appears to be an excessive number of petitions.

A number of Acting Judges were appointed in 1996 and re-appointed in 1997 to allow the experienced Judges to sit on the Leadership Tribunals, Military Courts, Commissions of Inquiry and Election Petitions in 1997. In addition one other Acting Judge was appointed in 1997.

This is our report for the work of the Supreme and National Courts in 1996 and 1997. We have done our best to administer justice efficiently within our limits. We are continuously trying to improve on the manner and extent to which we perform our constitutional duties to the people of Papua New Guinea. We will continue to try to improve in 1998 and beyond.

---

## APPENDICES

---

APPENDIX "A" *Summary of Matters before the Supreme Court dealt with in 1997.*

APPENDIX "B" *Summary of Matters before the National Court dealt with in 1997.*

APPENDIX "C" *Listing of Judges' locations by Provinces.*

## APPENDIX "A" - Summary of Matters before the Supreme Court dealt with in 1997.

## Supreme Court Civil Appeals Statistics

Year	Total Appeals Registered	Dealt with matters 1997	Total Dealt with	Total Pending
1996	87	05	84	03
<b>Total</b>	<b>87</b>	<b>05</b>	<b>84</b>	<b>03</b>

## Supreme Court Civil Reviews Statistics

Year	Total appeals Registered	Dealt with matters 1997	Total Dealt with	Total Pending
1997	09	02	08	01
<b>Total</b>	<b>09</b>	<b>02</b>	<b>08</b>	<b>01</b>

## Supreme Court Motions Statistics

Year	Total Appeals Registered	Dealt with matters 1997	Total Dealt with	Total Pending
1997	04	01	03	01
<b>Total</b>	<b>04</b>	<b>01</b>	<b>03</b>	<b>01</b>

## Supreme Court Applications Statistics

Year	Total Appeals Registered	Dealt with matters 1997	Total dealt with	Total Pending
1997	06	02	04	02
<b>Total</b>	<b>06</b>	<b>02</b>	<b>04</b>	<b>02</b>

## Supreme Court Criminal Appeal Statistics

Year	Registered	Dealt with	Discontinued/Withdrawn	Pending
1997	107	97	005	005
<b>Total</b>	<b>107</b>	<b>97</b>	<b>005</b>	<b>005</b>

## Supreme Court Break-up of Pending Criminal Appeals Statistics

No.	Categories	1997	Total
1.	Awaiting 'CR' file & Certified Transcript		
2.	Awaiting 'CR' file only		
3.	Awaiting Certified Transcript only		
4.	A/Books being complied		
5.	Awaiting Direction Hearing	03	03
6.	A/Books awaiting certification		
7.	A/Books to be filed by private lawyers		
8.	Ready for listening		
9.	Stood Over to next SC sittings	01	01
10.	Reserved for Decision/ Judgement	01	01
	<b>Total Pending</b>	<b>05</b>	<b>05</b>

## Supreme Court Criminal Review Statistics

Year	Registered	Dealt-with	Cancelled/Withdrawn	Pending
1997	66	52	12	03
<b>Total</b>	<b>66</b>	<b>52</b>	<b>12</b>	<b>03</b>

## Break-up of Pending Supreme Court Criminal Reviews

No.	Categories	1997	Total
1.	Awaiting CR file & Certified Transcript		
2.	Awaiting CR file only		
3.	Awaiting Certified Transcript only		
4.	Appeal books under compilation		
5.	Awaiting Directions Hearing	01	01
6.	Appeal Books awaiting Certification		

7.	Appeal Books to be filed by Private Lawyers		
8.	Ready for listing/hearing	02	02
9.	Adjourned/Stood over to next Supreme Court sitting		
10.	Reserved for Decision/Judgement.		
	<b>Total Pending</b>	<b>03</b>	<b>03</b>

#### APPENDIX "B" - Summary of Matters before the National Court dealt with in 1997.

##### National Court Criminal Statistics 1997

Total Pending start of 1997	Total cases registered in 1997	BW	Bail	Remand	Death with	Total pending at the end of 1997
2421	1470	1455	407	313	974	2902

##### National Court Civil Statistics 1997

Item	Pending in 1996	Total Registered in 1997	Total Registered Matters Total dealt with	1997 Registered Matters Total pending	Other years dealt with in 1997	All matters Pending in 1997
Civil Appeal	1106	293	12	281	22	1375
Criminal Appeal	104	156	42	114	1	217
Wills & Probate		11				
Writ of Summons	3693	1300	423	877	641	3919
Originating Summons	1355	596	199	397	263	1689
Miscellaneous	2119	681	203	478	223	2374
Matrimonial Causes	171	33	9	24	5	190
Lawyers Admissions	Nil	47	47	Nil	Nil	Nil

Instruments	Bills of Sale	Stock Mortgage
Registered	10240	1
Discharged	68	Nil
Renewal	Nil	Nil
Total	10308	1

#### APPENDIX "C" - Listing of Judges' locations by Provinces.

During 1997 the National Court Judges based in the regions or provinces were as follows:

Location	Judge(s)	Responsible for
Waigani	(as available)	Central, Milne Bay, Northern Provinces & National Capital District

	Justice Lenalia.	
Goroka	Justice Sawong	Eastern Highlands
Lae	Justices Hinchliffe and Sakora.	Manus and Morobe Provinces
Madang	Justice Andrew and Acting Justice Bidar.	East Sepik, Madang and West Sepik Provinces
Kavieng	Justice Jalina.	Bougainville, Manus, East New Britain and New Ireland Provinces
Kimbe	Justice Woods.	West New Britain Province (and assisting elsewhere as required)

