



# WASDOK

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OMBUDSMAN COMMISSION

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## Trial awareness exercise attracts show goers

By Jack Sion

The Ombudsman Commission's trial External Relations Program (ERP) at the 2<sup>nd</sup> Anglimp South Waghi Agriculture and Cultural festival from the 24 -25 November 2006 was a success.

For the first time, the Commission took part in a festival by having a stall to disseminate information about the Commission. This was a departure from the normal ERP activities where visits are conducted to selected locations.

The Commission's participation at the show came about through a letter of invitation from the Member for Anglimp South Waghi, Hon. Jamie Maxtone-Graham.

The Commission accepted the invitation as an opportunity to conduct its awareness exercise.

The OC stall attracted more than 700 show goers for the two days.

The people who were mainly from the remote villages of the district who have no knowledge or limited knowledge of the organisation learnt all that they could about the roles and functions of the Commission.

During the two days officers from Port Moresby and Mt Hagen explained to the public the work of the Commission and



Visitors to the OC stall at the Anglimp South Waghi Agricultural and Cultural festival show off brochures that they received from the OC officers.

gave away 900 brochures explaining the complaints and leadership functions, the Governmental Bodies Liaison Program, and the Anti-Discrimination Human Rights brochures and OC flyers.

Other ERP activities included a meeting between Ombudsman Peter Masi and 23 Village Court officials and Lands officials who were aggrieved by bad admini-

stration.

Ombudsman Masi informed them to organise themselves and prepare their cases before presentation to the Mt Hagen office.

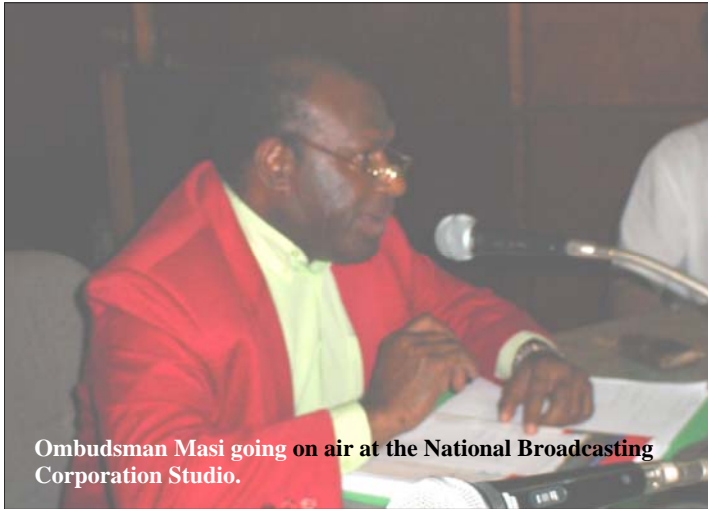
Mr Masi was invited to give the closing remarks at the end of the show on 25 November 2006 and spoke briefly on the role that the Commission plays in upholding the *Constitution*.

He also joined the official party in inspecting the different stalls.

An estimated 2000 people attended the show.

In so far as the Commission's participation is concerned, targeting shows and festivals is an opportune time to create awareness on its functions and responsibilities to the public.

## Good leadership is crucial



As the 2007 national election draw near, organizations campaigning for a better 2007 elections have urged the public to elect good leaders who are concerned about the country and its citizens' well-being.

These organisations include the Ombudsman Commission, the Electoral Commission and Transparency International.

The group went on talkback radio this month at the National Broadcasting Corporation to inform the public to elect committed leaders who stand for good governance and good leadership.

Ombudsman Peter Masi who was a panelist said the country could not afford to be dragged back by leaders who did not possess the qualities of leadership and who did not have the slightest idea in good governance.

He said voters should not support leaders in return for favours such as money, school fees and funeral expenses.

## Investigation Symposium

Ombudsman John Nero and Senior Legal Officer Howard Maliso attended the 6th Investigation symposium in Sydney, Australia from 2-3 November 2006 .

New South Wales Ombudsman Mr Bruce Barbour gave the welcome address.

Hon Terence Cole QC from the Royal Commissions and Commissions of Inquiry made the keynote speech on investigative aspects while Mrs Guy Dehn from UK Public Concerns spoke on the whistle blower's protection.

Ombudsman John Nero told the participants about the challenges and successes of investigating political leaders in PNG. His paper captured the attention of the audience who appreciated the integrity and the high ideals held by the Ombudsman Commission which is vested with wide powers.

Mr Nero and Mr Maliso answered questions throughout the symposium following Ombudsman Nero's presentation.

## Trial awareness program is worth looking into



An Eye within

The Commission's awareness program known as the External Relations Program took a new twist when a trial ERP visit was conducted at the 2<sup>nd</sup> Anglimp South Waghi Agriculture and Cultural Festival this month.

Traditionally the Commission's visits are carried out in provinces, and are organized to target schools, universities, public servants, Members of Parliament, Provincial Administrators, Local Level Government Presidents and Ward Councilors.

For the first time the Commission had a stall at the show ground giving out information to show goers about the roles and functions of the Commission.

The ERP exercise was a success going by the number of brochures that were distributed and the overwhelming response from the show goers who were eager to get first hand information.

As this was a trial ERP, other factors need to be considered should the Commission wish to go ahead with this particular type of ERP.

Shows held in a town or city setting often attract drunkards and unruly crowd so the safety of officers is paramount.

Further, one has to be mindful of supporters of leaders who have been referred by the OC to the Public Prosecutor over misconduct charges who may decide to harm officers in retribution.

## Commissioners for Oaths

Minister for Justice, Hon Bire Kimisopa MP, on 25 September 2006 approved the applications for Mr Mavara Sere, Secretary, Mr Joseph Molita, Deputy Director CAIB, Mr Allan Barilae, Regional Manager Highlands and Ms Roslyn Pochelep, Team Leader Intake & Screening Unit and appointed them as Commissioners for Oaths pursuant to Section 12 of the Oaths Affirmations and Statutory Declarations Act Chapter 317.

Their appointments are for six years and were gazette in the National Gazette No. G 195 dated 12 October 2006 (page 15).

As Commissioners for Oaths, the officers now have the power to administer any oath or affirmation in relation to the taking of affidavits, administering of oaths and affirmations, the witnessing of documents and any other similar functions.

A person ceases to be a Commissioner for Oath if he dies; or becomes permanently incapable of performing the duties as Commissioner for Oaths or is convicted of an offence punishable under the law by a term of imprisonment or by death and as a result of the conviction is sentenced to imprisonment or death.

A person also ceases to be a Commissioner for Oaths if he ceases to hold the title or the position as the Minister specifies in the instrument of appointment. In the case of Mr Sere, as Sec-



**Team Leader ISU, Roslyn Pochelep uses her Commissioner for Oaths stamp for the first time to stamp papers belonging to Media Officer Jack Sion.**

retary to the Commission, Mr Molita as Deputy Director, Mr Barilae as Regional Manager and Ms Pochelep as Team Leader.

Commissioner for Oaths is a special project of Office of Counsel which commenced in 2004.

Of the 18 applications that were given out to Senior Officers, only four complied with the instructions which saw them being appointed as such in 2006.

The Commission also issued the four officers CFO stamps.

Apart from these four officers, all Commission lawyers are Commissioners for Oaths upon registering with the PNG Law Society.

For queries and information on this subject, contact Tabitha Suwae of Office of Counsel on telephone 308 2637.

### Email Etiquette

The use of the email system has modernized the work culture of the Ombudsman Commission and ensures that there is constant dialogue between officers. Here are some rules to observe when sending emails.

- Avoid sarcasm and anger

- Do not say any thing on e-mail you do not want the whole world to know
- Never type using ALL CAPITAL LETTERS
- There is no need to copy your Boss every time
- Be professional, an e-mail account is not a licence to abuse or insult people
- Be respectful
- Always put something descriptive in the subject line
- Keep paragraphs and messages short
- Briefly describe who you are if the recipient does not already

know you

- Include your signature at the bottom of all e-mail messages
- Your signature should include your name, address and phone number
- Check your e-mail regularly



### Anglimp South Waghi ERP picture spread



Media Officer Jack Sion counting the brochures in preparation to give out to show goers.



Senior Investigator (Mt Hagen) Steven Haibaku gets a helping hand from wife Christine in putting up posters.



Ombudsman Masi (left) speaks to a complainant who visited the stall to lodge his complaint.



Ombudsman Masi gives the closing remarks to end the show on Saturday 25 Nov 2006.



The OC stall were given a full dose of traditional music from these elderly musicians who were in the stall next door.



Steven Haibaku promotes the work of the Commission to interested show goers.

# The Human Rights Working group

**By Patrick Niebo  
a/Team Leader Anti Discrimination  
and Human Rights Unit**

The Human Rights Working Group known as "Technical Working Committee" (TWC) comprises of representatives from the Department of Community Development, Department of Justice and Attorney-General, Department of Foreign Affairs and Trade, Department of Prime Minister and National Executive Council, University of Papua New Guinea, UNHCR, UNDP and the Ombudsman Commission.

This committee was formed in December 2005 after a Human Rights workshop meeting in Port Moresby.

The committee's objective is to establish a Human Rights Commission in PNG that will provide protection for individuals and groups from being abused and exploited of their human rights and to promote human rights in the country.

When the proposed set of PNGHRC was first mooted, a Needs Assessment

Mission was commissioned by the UN Center for Human Rights in Geneva.

The assessment concluded that there was a need for the setup of a national institution for Human Rights in PNG.

From the National Executive Council decision NO.2/197 the Department of Justice and Attorney-General (DJAG) was mandated as the lead agency to provide the legal framework for the proposed establishment of the Papua New Guinea Human Rights Commission (PNGHRC).

Five meetings were held in 2006 to look at Optional papers and Parish Principle of Human Rights on the proposed setup of PNGHRC.

The OC position at the time was that an independent constitutional institution for human rights was absolutely necessary.

A separate institution dedicated to focus on the promotion and protection of Human Rights in PNG.

The OC PNG supported the proposed

establishment of the PNGHRC and gave financial and manpower resources towards the setup of the PNGHRC.

When the National Executive Council made its decision in 1997, DJAG made little progress to come up with a legal frame of setting up the PNGHRC and this was stalled for unknown reasons.

The Department of Community Development with support from Minister Dame Carol Kidu initiated the move to push for the immediate set up of the PNGHRC.

The department deals with people and therefore wants to see that this institution is set up quickly to address rights of the citizens of this country and to promote and protect the peoples' rights.

This department is taking the lead role without funding from the government. They continue to seek help from participating departments and organizations like the Ombudsman Commission and others.

## National Court refuses Governor's Leave Application

The National Court (Deputy Chief Justice Sir Salamo Injia) on Friday 10 November 2006 refused Hon Hami Yawari's Application for Leave to seek judicial review of the Ombudsman Commission's decision to refer him to the Public Prosecutor for alleged misconduct in office.

Mr Yawari's application was dismissed on the grounds that he had not fully exhausted all other available avenues before coming to the court.

The Court ruled that the applicant had ample opportunity to object to the Ombudsman Commission's referral by raising the matter with the Public Prosecutor or had that failed he could raise the issue at the

tribunal that may be appointed to further investigate the allegations against him.

The Ombudsman Commission referred Mr Yawari to the Public Prosecutor on 29 June 2006.

On 28 June 2006 Mr Yawari filed his originating documents seeking leave. The leader sought ten (10) declaratory orders from the Court.

The thrust of the application was to ask the National Court to issue declaratory orders that the Ombudsman Commission be permanently enjoined or permanently refrained from conducting any investigation against the leader in rela-

tion to the receipt and use of equity funds entitled to him and other landowners from Kutubu Oil and Gas Projects. Furthermore, the leader sought declaratory orders that the Ombudsman Commission lacks jurisdiction to investigate the leader for alleged misconduct in relation to those funds.

The Ombudsman Commission investigated Mr Yawari for alleged misconduct in office in relation to five categories of allegations. They are:

- 1 Misappropriation of public funds in the form of Special Support Grants (SSG funds) belonging to Kutubu Local-level Government Special Purposes

Authority (KLLGSPA); and

- 2 Applying to his personal use substantial proceeds of the public funds in the form of SSG funds paid out of KLLGSPA account to Foe Association Incorporated; and
- 3 Failure to disclose other sources of income and his various personal bank accounts to the Ombudsman Commission; and
- 4 Failure to settle liabilities as and when they were due and failure to disclose the same to the Ombudsman Commission.

**NEMO YALO  
COUNSEL TO THE  
COMMISSION**



## LEGAL BRIEF

### Tribunal finds member for Maprik guilty of misconduct

The Leadership Tribunal appointed to inquire into allegations of misconduct in office by Gabriel Kapris, Member for Maprik Open and member of East Sepik Provincial Assembly found the leader guilty of misconduct in office. The Tribunal comprises of Justice Sir Kubulan Los as Chairman and Senior Magistrates Kanasi and Karapo.

The leadership tribunal commenced proceedings on 17 October 2006.

On 24 June 2005 the Ombudsman Commission referred Hon Gabriel Kapris to the Public Prosecutor for alleged misconduct in office.

The allegations related to:

- 1 failure to consult the National Forest Board regarding the appointment of Mr David Nelson as the Managing Director of the National Forest Service contrary to Section 34(1) of the Forestry Act and thereby breaching the requirements of Section 255 of the *Constitution* regarding consultation; and
- 2 lied in his advice to the Governor-General wherein he stated that he had consulted the National Forest Board to appoint Mr David Nelson as the Managing Director of the National Forest Service when in fact he knew that he had not done so; and
- 3 misled or lied to the Ombudsman Commission by telling the Commission that his advice to the

Governor-General to appoint Mr Nelson as the Managing Director of the National Forest Service was based on a Court order, when he knew that there was no court order requiring him to give such advice.

The allegations are centred on the breaches of Section 255 of the *Constitution* and Section 34(1)(a) of the *Forestry Act* 1991.

Section 255 of the *Constitution* states that "where a law provides for consultation between persons or bodies, or persons and bodies, the consultation must be meaningful and allow for a genuine interchange and consideration of views."

Section 34(1)(a) of the *Forestry Act* establishes the office of the Managing Director and further provides that he or she shall be appointed by notice in the National Gazette by the Head of State, acting on the advice of the Minister after consultation with the Board.

There appears to have been no meaningful consultation between Mr Kapris as the Minister responsible and the Board prior to Mr Kapris advising the Head of State to appoint Mr Nelson as the Managing Director of the National Forest Service.

During the tribunal's inquiries Counsel to the Commission Mr Nemo Yalo gave evidence that there was no evidence before the Ombudsman Commission to demonstrate that Mr Kapris had consulted the National Forest

Board as is the mandatory requirement of Section 34 of the *Forestry Act*.

Mr Yalo further gave evidence that Mr Kapris lied to the Ombudsman Commission on 7 August 2002 when Mr Kapris informed the Commission during an interview that he had advised the Head of State to effect the appointment of David Nelson following a National Court Order. The Court Order was issued on the 8 August 2002, a day after Mr Kapris misled the Ombudsman Commission.

In his defence Mr Kapris gave evidence that he did not consult the Board since his predecessor, Mr Ogio, had already consulted the Board in other previous appointments made by Mr Ogio.

Other witnesses were called to assist the leadership tribunal.

On 30 October 2006 the Tribunal heard submissions on guilt from both parties.

On 7 November 2006 the Tribunal handed down its decision and found Hon Gabriel Kapris MP, guilty of misconduct in office.

The parties were directed to make submissions on the appropriate penalty on Thursday 9 October 2006.

**NEMO YALO  
COUNSEL TO THE COMMISSION**

### Officers get ready to attend Forensic Accounting Training

Senior Investigator Malcolm Kulu and Internal Auditor Gabe Hekoi will be attending a training course on Forensic Accounting in Auckland, New Zealand from 4 to 15 December 2006.

The two officers are qualified accountants and together have over 25 years of experience in both the

private and public sectors.

Forensic Accounting is a specialist field in Accounting and the Ombudsman Commission is pleased that the New Zealand High Commission has accepted to sponsor the training of these officers.

As crime and corruption become sophisticated, the

Commission sees the need to train its officers in forensic accounting to enable them to investigate fraudulent and corrupt activities in relation to public assets and funds.

The training will equip the officers in carrying out investigations and related accounts work.

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## Parliament passes amendments to the Organic Law

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The *Constitution* incorporates the Rules of Natural Justice as part of the underlying law.

### 59. Principles of Natural Justice

(1) Subject to this *Constitution* the principles of natural justice are rules of the underlying law known by that name developed for control of judicial and administrative proceedings.

(2) The minimum requirement of natural justice is the duty to act fairly and, in principle to be seen to act fairly.

As the *Constitution* says the **minimum** requirement of natural justice is to act fairly. The main components of the Rules are procedural fairness and the right to be heard before an adverse decision is made and a decision maker should not be biased in his or her decisions.

The constitutional statement that acting fairly is a **minimum** requirement is taken further in Section 27(4) of the OLDRL which states that the Leadership Tribunal shall not insist on legal formalities or proof by rules of evidence in carrying out its duty to inquire and inform itself on the matter on hand. It should exclude nothing because of formalities or rules and particularly, ignorance of them might prevent a just result.

The Rules of Evidence and the formalities of the Rules of Courts are capable of preventing a court from assessing evidence that might affect the outcome of a trial. A Court does not decide what evidence is to be put before it. The Court decides "fact" (for the parties) from the admitted evidence that the parties choose to place before it and nothing else. That can have serious consequences for plaintiff or defendant, prosecutor or accused.

The rules of Natural Justice are inclusive. The original Section 27(4) said do not exclude opinion, hearsay or evidence that may be offered on social or political circumstances surrounding or justifying disputed actions. The *Constitution* directs Leadership Tribunals to hear everything.

The rules of Evidence by contrast are exclusionary. Hear only that which can be shown to be admissible and relevant to the issue or to prove the charge shall be admissible.

**The amendment now puts the Organic Law into conflict with the *Constitution***

An Organic Law can only do what the *Constitution* says it can do. The amendment is in direct opposition to Section 28 (5) of the *Constitution* which says:

### Division 2.-Leadership Code.

#### 28. Further provisions.

- (1) For the purposes of this Division, an Organic Law-
- (a) may give to the Ombudsman Commission or some other authority any powers that are necessary or convenient for attaining the objects of this Division and of the Organic Law; and
- (g) shall establish independent tribunals that-
- (i) shall investigate and determine any cases of alleged or suspected misconduct in office referred to them in accordance with the Organic Law; and
- (5) Proceedings under Subsection (1)(g) are not judicial proceedings but are subject to the principles of natural justice, --

The *Constitution* authorizes an Organic Law that establishes an investigative tribunal that acts under the principles of natural justice. The amendment substitutes those principles and is in direct conflict with the constitutional direction as to how the authorized tribunal shall conduct itself.

Rules of Evidence are for **judicial proceedings**, or for "legal proceedings" which the Evidence Act defines as "- any civil, criminal or mixed proceedings and an enquiry in which evidence is or may be given before a court."

The *Evidence Act* (s. 1) defines "court" as including, a court, judge, magistrate or arbitrator, and a person acting judicially.

A Leadership Tribunal is an investigatory tribunal tasked to make due enquiry into matters before but it is certainly not a Court. As the *Constitution* says at Section 28(5) the Leadership Tribunal "proceedings --are not judicial proceedings but are subject to the principles of natural justice, --"

There is also further conflict in that the *Constitution* provides an investigatory role for the Leadership Tribunal. Making the tribunals subject to the rules of evidence would preclude that role as they would prevent the Tribunals making its own enquiry and calling for evidence. The carriage of Tribunal proceedings would then be lead by and depend on the Public Prosecutor.

## Officers ready to attend Forensic Training

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It will enhance their ability to provide in-depth analysis of suspected fraudulent activities.

Discussions on the training with the Serious Fraud Office of New Zealand were initiated by Ombudsman John Nero during his visits there.

Mr Nero says the implementation of the Proceeds of Crime Act relies very much on appropriate expertise in forensic accounting which is a highly specialised area.



Mr Kulu (l) and Mr Hekoi (r)

## Parliament passes amendments to the Organic Law

The National Parliament in the November 2006 session amended Section 27(4) of the *Organic Law on the Duties and Responsibilities of Leadership* (OLDRL) enabling the Leadership Tribunals to work within the legal formalities of the *Evidence Act* when it comes to determining allegations of misconduct in office by leaders.

The Organic Law as now amended provides that the proceedings of Leadership Tribunals be conducted under Court rules of evidence rather than the principles of natural justice that the *Constitution* prescribes.

The amendment enacted on 8 November was effected through a 73-5 vote.

Prior to the amendment,

Section 27(4) of the OLDRL read:

**"The tribunal shall make due inquiry into the matter referred to it, without regard to legal formalities or the rules of evidence, and may inform itself in such manner as it thinks proper, subject to compliance with the principles of natural justice".**

The Organic Law as amended now reads:

**"The Tribunal shall make due inquiry into the matter referred to it within the legal formalities and in strict compliance with the rules of evidence and the provisions of the Evidence Act (Ch. 48)".**

The amendment now passed will likely cause the

Leadership Tribunal to take on the roles of a criminal court, rather than the independent investigatory tribunal the *Constitution* describes. It will likely demand that the Prosecution carry the onus of proof and a greater number of challenges to the form of the charges and to the admissibility of evidence. It will also take more time, with points taken on appeal during Tribunal proceedings.

### What does Rules of Evidence mean?

The Rules of Evidence are the rules and procedures established by Courts and statute for Courts to ensure that trials focus only on the charges or issues in dispute, and that only strictly relevant evidence is put before a Court.

Evidence that do not comply with such rules such as hearsay and opinion is excluded. They also provide the standards and methods of proof. The *Evidence Act* focuses on rules for production of specific types of evidence, such as official documents, previous convictions etc.

### What does Natural Justice mean?

Natural Justice is the sum of all those rules internationally recognized that ensure the entitlements of any person charged under law to be given a fair hearing and dealt with justly.

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## Officers learn to use upgraded CHRIS system



The Commission recently purchased an upgrade of its Complete Human Resources Information System (CHRIS5).

In November a representative from the manufacturers FRONTIER Pty Ltd of Brisbane visited the Commission and conducted a two-day course to familiarize Key-Users with the new system—CHRIS21.

The photo on the left shows FRONTIER Consultant Saran Balasubramanian with IT Manager Alexia Luke, PayMaster Geita Doura, Judy Samasi and Lydia Mulina from the HR Unit.

CHRIS21 is used extensively in PNG by many large companies and statutory corporations.

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