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## PANGTEL CEO referred to Public Prosecutor

The Ombudsman Commission on 5 September 2006 referred Mr Charles Punaha, Chief Executive Officer of the Papua New Guinea Radio Communications and Telecommunications Technical Authority (PANGTEL) to the Public Prosecutor for alleged misconduct in office.

The Ombudsman Commission conducted investigations into alleged misconduct in office by Mr Punaha arising from the leader's failure to submit four annual statements to the Ombudsman Commission when they fell due as required by law. The annual statements relate to the following reporting periods;

- 29 April 2001 to 28 April 2002;
- 29 April 2002 to 28 April 2003;
- 29 April 2003 to 28 April 2004; and
- 29 April 2004 to 28 April 2005

The Commission gave Mr Punaha an opportunity to be heard on all the allegations of misconduct in office against him. Mr Punaha responded to all the allegations in writing.

The Commission has duly considered the allegations against him and his written response to the allegations. It deliberated and formed the opinion that there was a prima facie case that Mr Punaha was guilty of misconduct in office in relation to the allegations referred to above.

Mr Punaha was served a notice pursuant to Section 20(2) of the *Organic Law on the Duties and Responsibilities of Leadership* of the Commission's intentions to refer the matter to the Public Prosecutor for his independent deliberations under section 177(1) (b) of the *Constitution*, and if he so decides, prosecute the matter before an independent tribunal established under Section 28(1)(g) of the *Constitution* and Section 27

(7) of the *Organic Law*.

The allegations are centred on alleged breaches of Section 27 of the *Constitution* and Sections 4 and 23 of the *Organic Law*.

The *Organic Law* states that a person who is subject to the leadership code commits misconduct in office if he fails to cooperate to the best of his ability with the Ombudsman Commission, Section 23.

The Commission is satisfied that there is a prima facie case that Mr Punaha is guilty of breaching Section 27 of the *Constitution* and Sections 4 and 23 of the *Organic Law*.

The Public Prosecutor has the discretion to bring or decline to bring proceedings under the Leadership Code for alleged misconduct in office in accordance with Section 177(1)(b) of the *Constitution*.

## OC receives Human Rights report



Chief Ombudsman Ila Geno (3rd from right) making a point at a meeting between the OC officers and a team from the Amnesty International. Seated from l-r are Sophie Peer Australia's representative, Dr Puma Sen, team leader, Asia Pacific Regional Programme, a/Team leader for OC's Anti Discrimination and Human Rights Unit (ADHRU), Patrick Niebo, Theresa MacCarthy, Amnesty International Lawyer based in London, Senior Assessor Selwyn Alua and Deputy Director for Complaints and Administrative Investigations Branch Joseph Molita.

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## OC receives Amnesty Report

By Jack Sion

Amnesty International, the global body that watches crime against humanity has highlighted law and order problems, violation by police and violence against women as problems that the PNG government needs to address.

A team from the Amnesty International headed by Dr Puma Sen, the Director of the Asia-Pacific Regional programme presented a copy of the report titled "The State of the World's Human Rights for 2005" to the Chief Ombudsman Ila Geno this month.

On the issue of violence by the Police Force, the report stated that they continued to use excessive force when making arrests and were engaged in torture including rape.

The report showed that domestic violence and rape are widespread with counselling services generally non-existent.

The widespread violence exacerbated women's vulnerability to HIV/AIDS.

The report also features the global campaign on violence against women and children.

The Anti-Discrimination and Human Rights Unit (ADHRU) of the PNG Ombudsman Commission will look into the details of the report.

The Amnesty International team was in the country to showcase the report and to gauge the views of the public on human rights issues, study complaint handling processes that are in place and look into advocacy and campaign work carried out in PNG.

## OC teams on GBLP visits

The Oro Provincial Government is plagued with surmountable issues surrounding its administration.

These were some of the findings of a Commission visit to the province recently under its Government Bodies Liaison Program (GBLP) headed by Ombudsman Peter Masi.

Local level Government Presidents expressed the same sentiments especially on the lack of funds for projects in the rural areas.

A women's representative in the provincial assembly said the women's office had not received any funds.

The Commission has appointed representatives from various National Government and Provincial Departments as liai-

son officers to look into complaints raised by officers within the departments and other matters that require the attention of the Ombudsman Commission.

In early September another GBLP team from the Commission, travelled to Wewak to carry out awareness on the roles and duties of the Ombudsman Commission.

Whilst there, the team conducted four workshops and addressed over 100 public servants who attended the various presentations.

The Ombudsman team discussed administration and leadership matters that affect the East Sepik Province.

See picture spread on p4-5



An Eye within

## Loloata Twinning review meeting

It is pleasing to note that the PNG Defence force and the Correctional Service are equally concerned about the issue of handling and resolving complaints.

The Commission invited the PNG Defence Force, the Correctional Services and the Royal Papua New Guinea Constabulary to a review meeting.

The meeting was held at the Loloata Island Resort, in Port Moresby and was attended by senior officers in the Ombudsman Commission, Commander of the PNG Defence Force, Commodore Peter Ilau and Commissioner for Correctional Services Richard Sikani, AusAID representative, Joanne Choe and Dr Stephen Ranck of the Commonwealth Ombudsman of Australia.

Chief Ombudsman Ila Geno said the Commission was willing to discuss with the disciplinary forces matters concerning their training and complaints handling without encroaching on their administrative functions.

The review was an opportune time for the

Commission to generate interest from the discipline forces, forging partnerships in staff training, complaints handling processes and looking into and addressing human right issues.



(Front row l-r) AusAID representative, Joanne Choe, Dr Stephen Ranck of the Commonwealth Ombudsman, Australia, CS Commissioner Richard Sikani, Chief Ombudsman Ila Geno, PNG Defence Force Commander, Commodore Peter Ilau, Ombudsman John Nero and senior officers of the OC and members of the Defence Force pose for this photo

## OC keen on linking up with disciplined forces

By Jack Sion

The Ombudsman Commission intends to establish permanent working relationship with the three disciplined forces, Police, Defence and Correctional Service to look at ways of resolving complaints against members of the forces and their hierarchy.

The first step to achieving that goal was established through a meeting held between the Chief Ombudsman Ila Geno, his Colleague Ombudsman John Nero with the Commander of the Papua New Guinea Defence Force, Commodore Peter Ilau and the Commissioner for Correctional Services, Richard Sikani.

Also in attendance was the AusAID representative, Joanne Choe and Dr Stephen Ranck of the Commonwealth Ombudsman, Canberra, Australia.

Currently the Ombudsman

Commission has a Twinning Arrangement with the Commonwealth Ombudsman that allows officers from both organizations to attend work and training exchange programmes.

The OC PNG feels that a similar program should be established with other law enforcing agencies that deal with complaints handling, carrying out investigations and addressing human rights issues.

The Ombudsman Commission is of the view that the entire public service should work with the Commission to handle complaints and carry out investigations. By training overseas or through other avenues, officers can obtain new skills.

Chief Ombudsman Ila Geno made this remark whilst referring to the Twinning Arrangement that already exists and is currently being reviewed by officers of the OCPNG and the Commonwealth Ombudsman of



Chief Ombudsman Ila Geno chats with Commissioner for Correctional Services, Richard Sikani (centre) and the Commander of PNGDF, Commodore Peter Ilau.

Australia.

The Commission intends to establish a working partnership with the disciplined forces because of the number of complaints made against the organizations by their officers and from the public.

Commodore Ilau said the initiatives were encouraging and could be pursued

through the Defence bilateral programme with Australia. One suggestion he mooted was to appoint a military Ombudsman that will work within the military as an independent person.

The CS Commissioner Mr Richard Sikani agreed that a similar arrangement could be looked at for the Correctional Institutions.

## Forgoing ethics a wrong move for leader, says Ombudsman

Forgoing ethics is not a wise move for a leader if the people he or she represents are to benefit from quality leadership, effective governance, harmonious society and a prosperous nation.

This was the main message from Ombudsman Peter Masi in a paper he presented in Port Vila, Vanuatu on 23 August 2006.

Mr Masi was a guest speaker on the occasion of the Savenaca Siwatibau Memorial Lecture Series.

He was invited by Transparency International Vanuatu as a continuation of the South Pacific Islands Speaking Tour Services funded by Transparency International and New Zealand aid.

“Forgoing ethics and expecting the people to accept and enjoy a leadership is really capitalizing upon the

silent and good nature of the Melaneans to keep quiet over the personal conduct of leaders.

“What makes a leader to continue to go down the same road of misconduct—even with both eyes open? It has to be driven by an uncontrolled compulsion to do it because he or she has forgone the accepted ethical conduct,” he said.

Mr Masi in his paper also touched on the issue of selling of mandates.

He said the selling of mandates was when leaders intentionally made decisions that did not benefit the other party that he or she agreed to work for.

When a public official’s decision has been influenced by a private interest or an external pressure, he or she is selling a piece of the public mandate.

Mr Masi said the sacredness and the value of public mandates are now worthless in many government offices.

He said it was the responsibility of a government to explain their policies and decisions and for the media, churches and non government organizations like Transparency International to facilitate interactions between the public and the government.

Mr Masi challenged the ombudsman institutions and partners who are agencies of government to be the voice of public conscience to the government at all times.

“The voice of public conscience is to ensure that the actions of government/agents of government are lawful, fair, transparent, accountable, and that those decisions should enhance social and economic progress,” he said.



# Ombudsman Masi's Vanuatu Visit



Ombudsman Peter Masi (4th from right) poses with IT students from the University of South Pacific. The office maintains the USP website where OC PNG has a page.



Posing with TI Vanuatu President Ms Blandine (2nd from left) and her staff.



Ombudsman Masi (right) and Tony from TI Vanuatu (far left) pose with Ombudsman Peter Taurakoto (2nd from left) and his staff of the Vanuatu Ombudsman in Port Vila.



A picture with the Prime Minister of Vanuatu, Mr Ham Lini.(left).



Posing with Vanuatu Ombudsman officers at the Santos Provincial Office. TI Vanuatu guide Tony Tarivonde (2nd from left) took Ombudsman Masi around.

## LAE ERP



Ombudsman Masi and TI International Chairman Mike Manning (left) listening to audience during a TI PNG sponsored awareness program in Lae.



Ombudsman Masi has a friendly chat with the SRC President of the University of Technology Nathan Pingu and Vice President Esther Pora during an awareness visit there.

# GBLP trips to Popondetta and Wewak



Ombudsman Masi (in front) poses with the OC team and Kokoda hospital workers.



GBLP with Police of Wewak, East Sepik Province.



Posing with landowners at the Kokoda District Hospital.



Ombudsman Masi seated with the Senior Magistrate, Magistrates and staff in Popondetta, Oro Province.



a/ Team Leader of OC's ADHRU, Patrick Niebo (far left), Ombudsman Peter Masi (2nd from left, back row) pose with members of the Human Rights Technical Working Committee in Alotau.

The group met to finalise a draft NEC submission through Community Development Minister Lady Carol Kidu for the establishment of a Human Rights Commission in PNG.

## Complaints and Administrative Investigations Branch Summary of closed files

The following table shows a summary of minor complaints cases that the Complaints and Administrative Investigations Branch investigated and successfully resolved. Major investigation cases are not for public consumption and therefore are not publicized.

No.	Case No.	Case Name	Nature of Complaint	OC Findings	Implementation of recommendations
1	LA12086	TAMANA vs DLPP	ALLEGED UNFAIR DELAY IN ISSUING ILG CERTIFICATE	It was found that the Registrar of Titles unfairly delayed the issuing of ILG certificate to Mr Tamana & others despite the completion of the necessary documentations and payment of required fee for incorporating of a land group.	The Registrar of Titles formalized and issued in January 2006 a ILG Certificate to Mr Tamana and others. Mr Tamana confirmed the receipt of the certificate.
2	M1685	AWALA vs CS	ALLEGED IMPROPER ACTION TO DETAIN A PRISONER BY GILIGILI JAIL	Mr Tomo Awala was improperly detained in Giligili Jail as he had fully served his four year parole sentence while in jail awaiting his release on parole.	The matter was brought to the attention of a National Court Judge on circuit who issued a Notice of Discharge and the complainant was released and sent home by CS on 22 May 2006. Matter was then closed.
3	LA13354	MANGO vs DLPP	ALLEGED UNREASONABLE ACTION BY DLPP TO ISSUE AN ILG APPLICATION FORM	It was found that the action of the Customary Lands Officer not to provide to Mr Reuben Mango a ILG Application Form was unreasonable.	Mr Mango was given a ILG Application Form by the Customary Lands Officer in Lae in June 2006.
4	LA13347	DICK vs CS	ALLEGED UNREASONABLE ACTIONS OF DEPT. OF CORRECTIONAL SERVICES TO PAY OUTSTANDING MAINTENANCE CLAIMS	It was found that the action of the Salaries and Administration Sections were unreasonable which led to the outstanding maintenance claims.	The CS then adjusted and paid Ms Dick her outstanding maintenance claims in June 2006. Ms Dick confirmed the receipt of her maintenance claims through her bank account.
5	M19053	KASENG vs POLICE	ALLEGED IMPROPER CONDUCT BY PPC-ESP	It was found that the conduct of the PPC was improper and against the Police Act and Code of Ethics.	The PPC was charged, fined and demoted from higher rank to lower rank in June 2006.

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No.	Case No.	Case Name	Nature of Complaint	OC Findings	Implementation of recommendations
6	M156686	BURE vs CPA	ALLEGED IMPROPER ACTION BY CPA TO PAY OUT OUTSTANDING SALARIES	It was found that the Central Provincial Administration improperly delayed Mr Biro Bure's outstanding salaries for the period 1999 to 2003. CPA was advised to calculate and pay Mr Bure.	CPA then calculated and paid a total amount of K17,321.04 to Mr Bure on 29 June 2006.
7	M19421	KUNAI vs CS	ALLEGED IMPROPER ACTION BY CS	Mrs Kunai was sentenced to jail and her four year old child was left with distant relatives which she was not keen. A good mediation with the distance relative resulted in the custody of the child to her brother Robin Kunai on 9 August 2006	The complaint was a human rights matter which was mediated and solved satisfactorily.
8	M19323	BAMETE with DFAI	ALLEGED IMPROPER ACTION TO REFUSE GRANTING OF PASSPORT	Ms Sarah Bamete was refused to be granted a PNG passport to travel to and from Australia while working with Airlines PNG as she was mixed parentage. However, Child Clinic Records and Birth Certificates showed that she was born in Port Moresby General Hospital and lived and worked in PNG since then.	The matter was brought to the attention of the Director of Immigrations and a passport was issued to Ms Bamete which was confirmed on 10 July 2006.
9	M16285	YAWARI, MP vs DPM	ALLEGED MALPRACTICE IN PAYMENT OF SHP SALARIES BY DPM	The Auditor General's Office advised that it was conducting audit inspections into the Southern Highlands Provincial Gov't. and administration whilst the National Anti-Corruption Agency (NACA) was currently undertaking an investigation into the alleged malpractice.	Matter was dealt by the appropriate government bodies to inquire and deal with the allegations raised.
10	M17265	WONG vs DLPP	ALLEGED UNFAIR ACTION TO DELAY THE ISSUANCE OF RENEWED LEASE TITLE TO SECTION 05 LOT 14, LAE	It was found that the DLPP unfairly delayed the formalization of the renewed title as all procedural requirements were adhered to by Mr Robert Wong. Upon DLPP's advice, Mr Wong then completed and made necessary payments to formalize the granting of the lease title.	The DLPP then on 24 August 2006 granted to Robert Wong the renewed 99 year lease title for the property in Lae.
11	H13329	BOMAI vs POSF	ALLEGED IMPROPER ACTION BY POSF TO UPDATE THE CONTRIBUTOR'S BALANCE	It was found that Mrs Caroline Bomai a teacher in a remote school in Gumine District in Chimbu Province could not have access to POSF Contributors Statement despite many attempts as POSF failed to update the member's balance to date.	POSF on 31 August 2006 updated and advised Mrs Bomai that her Contributor's Statement was in order. This was confirmed with a copy of her Statement from POSF.



## LEGAL BRIEF

### Special reference on the *Forestry Amendment Act*

The Supreme Court on 14 September issued directions in relation to a Special Reference filed by the Ombudsman Commission challenging the constitutionality of the *Forestry (Amendment) Act 2005*.

Counsel to the Commission, Nemo Yalo appeared before the Chief Justice Sir Mari Kapi for directions.

When queried by the Chief Justice on the nature of the Reference, Mr Yalo advised the Special Reference was brought under Section 19 of the *Constitution* challenging the Constitutionality of the Parliament's amendments to the Forestry Act 1991.

The Chief Justice issued directions that the following parties shall appear before the Supreme Court on 21 September 2006;

- The Attorney General
- The National Parliament
- The Speaker of Parliament
- The Minister for Forests
- The Leader of the Opposition; and
- The PNG Forest Board

Following widespread public concerns relating to the proposed amendments to the Forestry Act 1991 (the principal Act), the Commission, on its own initiative conducted inquiries into the issue.

In the course of its inquiries the Commission had consultative meetings with the National Forest Service, National Forest Board, the Minister for Forests, Eco-Forestry Forum and individuals on the issues arising out of the proposed amendments and the merit of the Issues.

In a letter written to the Prime Minister Sir Michael Somare and the Minister for Forests, Patrick Pruaitch in July 2005, the Commission raised its concerns and advised that the bill be withdrawn and reconsidered.

The Commission stated that unless the bill was reconsidered and corrected, a court challenge would ensue.

On 3 November 2005 the Ombudsman Commission filed a Special reference under section 19 of the Constitution. The Commission posed a number of important questions for the opinion of the Supreme Court.

The filing of the Special Reference demonstrated that the Commission maintained its initial position on the issue;

- that the Forestry (Amendment) Act 2005 contained provisions that were unconstitutional, operating in effect to deprive landowners constitutional right to have a say and participate in development and management of their forest resources. The Commission thought the repeal of the entire Section 59 of the principal act breached the *Constitution*.
- The repealed section 59 of the principal Act allowed for consultation with forest owners in relation to the allocation of a timber permit for a particular project. The repeal of the entire section now deprives the forest resource owners of their inherent right to have a say as to the allocation of the timber permits.
- Furthermore the Commission disagreed with the counter-argument that the landowner's rights to be consulted on the grant of timber permits is preserved by section 57(3) of the amendment Act which stipulates that the board is to consult the Provincial and Local-level governments for the area covered by the Forest Management Agreement (FMA) and their members of parliament and the electorate in which the project will be developed.

The Commission believed that the process under section 57 is totally distinct to the process which was provided for in the repealed section 59 and both are equally important. Consultation with and participation of resource owners at the different stages is necessary and to do away with one is to deny them the right to be consulted on two very important issues.

This raises serious issues relating to Basic Rights, in particular Special Rights to Citizens, guaranteed by the *Constitution*.

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