



**Papua New Guinea**

**1986—ANNUAL REPORT  
BY THE JUDGES**

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PAPUA NEW GUINEA

**ANNUAL REPORT**  
**BY**  
**THE JUDGES**

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REPORT BY THE JUDGES TO THE HEAD OF STATE  
FOR THE 17 MONTHS ENDED 31 DECEMBER 1986  
FOR PRESENTATION TO THE NATIONAL PARLIAMENT  
ON THE WORK OF THE SUPREME COURT AND THE NATIONAL COURT,  
PURSUANT TO THE CONSTITUTION, SECTION 187 AND  
THE *NATIONAL COURT ACT* 1975, SECTION 9

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

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

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

THE HONOURABLE NORRIS HARRY PRATT, C.B.E. (RETIRED 25.07.86)

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

THE HONOURABLE ARNOLD KARIBONE AMET

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

THE HONOURABLE KUBULAN LOS

THE HONOURABLE STANLEY GEORGE CORY

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

THE HONOURABLE KIM ANTHONY WILSON

## 1. INTRODUCTION

- 1.1 This Report covers the 17 month period from 1st August 1985 to 31st December 1986.
- 1.2 Previous reports have been in respect of periods from 1st August in one year to 31st July of the following year. We have decided to alter this to cover the 12 month period from 1st January to 31st December each year.

## 2. JUDGES

- 2.1 During the period covered by this Report the following changes occurred in the composition of the Bench:
- (a) The Honourable Arnold Karibone Amet was re-appointed a Judge for 10 years commencing 23 June 1986.
  - (b) The Honourable Thomas Edwin Barnett, O.B.E., was appointed a Judge for a term of three years commencing 1st January, 1986.
  - (c) The Honourable Kim Anthony Wilson was appointed a Judge for three years commencing 24 March 1986.
  - (d) The Honourable Norris Harry Pratt, C.B.E., ceased to be a Judge on 25 July 1986 and returned to Australia after serving as a Judge for 6½ years.
  - (e) The Honourable Dermid Joseph McDermott was appointed an Acting Judge (30 December 1985 to 31 December 1986).

### 2.2 Honours and Awards

- 2.2(1) The honour of Companion of the Most Excellent Order of the British Empire (CBE) was bestowed upon the Honourable Robert K. Woods for Services to the Law and the Community.
- 2.2(2) All Judges serving at the 10th Anniversary of Independence were awarded 10th Anniversary Medals which were presented to them by the Rt. Hon. Michael T. Somare, CH., MP after he opened the Second Papua New Guinea Judicial Conference in September 1985.

## 3. ADMINISTRATION OF CRIMINAL JUSTICE

- 3.1 In September 1984 the Clifford Report said:

“The ability of the National Court to process cases has declined to an unacceptable level, with long delays, a poor conviction rate and a large proportion of cases being struck out.”

There has been no change in this state of affairs. Specifically, we indicate;

- (1) Serious shortcomings in police evidence tendered in a ‘Hand up Brief’ committal;
- (2) Insufficient use being made of Grade 5 Magistrates in Criminal Cases;
- (3) Inability to bring cases on for hearing before the National Court; and
- (4) An unacceptably high level of Nolle Prosequi’s presented.

The result of inefficiency in the Police, Prosecutions and Court Administration means that it is the exception rather than the rule that any accused person is ever brought to trial within 4 months — the opposite of the high hopes contained in **Constitution S.37(14)**.

#### 4. PRISON SECURITY

- 4.1 We are concerned with the escalation of crimes involving violence — particularly of all types of robbery. In many instances these crimes are committed by hardened criminals while escapees. This highlights the shortcoming in goal security to hold such persons when sentenced. Overcrowding in some goals has overtaxed C.I.S. facilities and escalated this problem.

#### 5. STATISTICS

- 5.1 Appendices “A” and “B” contain the details of judicial business transacted by the Supreme Court and the National Court respectively.

#### 6. ADMINISTRATIVE AND FINANCE

- 6.1 The Clifford Report recommended as follows:

“The Resources necessary to operate efficiently must be provided for the courts to keep pace with burgeoning court lists. The costly investment in law and order suffers from the inability of the courts to process cases effectively.”

- 6.2 Whilst we recognise the need for financial restraint at this time of economic uncertainty, we must have funds sufficient enough to enable us to carry out our constitutional functions, duties and obligations.

The Constitution (S.225) directs and obliges all governmental bodies (National or Provincial) “to ensure, as far as is within their respective legal powers, that all arrangements are made, staff and facilities provided and steps taken to enable and facilitate, as far as may reasonably be, the proper and convenient performance of the functions of all constitutional institutions and of the offices of all constitutional office-holders.”

All Courts are constitutional institutions and all Judges are constitutional office-holders. Unfortunately, in respect of the Courts and the Judges, public servants in the financial and staffing areas frequently ignore Section 225.

- 6.3 **Budget**

Since Independence, particularly in the last 5 years, the Judiciary has experienced budgetary problems. And in the last two years Budget cuts have been applied to the Judiciary by the Executive without consideration of effects on the functions of the Judiciary.

- 6.4 We appreciate that it is the responsibility of the National Executive Council (N.E.C.) to prepare the Annual Budget for approval by Parliament and that public servants are obliged to help the N.E.C. in this process. However, we stress that it is important for the N.E.C. and public servants to bear in mind that it is their constitutional duty to ensure that the Judiciary has adequate funds, manpower and facilities in order for it to effectively exercise the Judicial power of the people delegated to them under Section 158 (1) of the Constitution.

- 6.5 National Court circuits to Provinces are being reduced gradually as a result of financial constraints. The 1987 Budget has cut the Court’s circuit allocation by K109 000. This means that in 1987 if there is no extra funds provided by the Department of Finance, Court circuits to Provinces will be ceased by the end of June.

One of the most important adverse consequences of this will be that those in custody waiting for trial in the National Court will have their waiting periods extended by six months or more thereby breaching the provisions of Section 37(14) of the Constitution.

6.6 In 1983 Parliament was assured by the then Minister for Justice that the Government was looking into the matter of the Courts' financial independence. As a result of this assurance the Court was given separate funding from the Justice Department as from 1 January 1984. But the problem now is the adequacy of funding for the Courts.

6.7 We consider that in the interest of an Independent Judiciary and in the interest of those who come before the Court and who expect to have their problems dealt with as quickly as possible that the Court be guaranteed funding for the whole year each year.

6.8 We recommend that the Courts' budget for one year should not be less than the budget for the previous year.

6.9 The volume of the Courts' work does not depend on the number of judges. It depends on the volume of criminal activity and people's wish to use the Court to solve their problems. And it is our experience that both the criminal and civil work of the Court are on the increase. If the funds of the Courts are reduced and court circuits thereby reduced this country will experience problems of a long back-log of cases and problems of law and order this creates.

6.10 We recommend that a constitutional amendment along the following lines be instituted:

“The Judicial System shall enjoy fiscal autonomy. Appropriations for the Judicial System may not be reduced by the legislature below the amount appropriated for the previous year adjusted fully for inflation and, after approval, shall be automatically and regularly released.”

Members of Parliament must be mindful of the possibility of the Independence of the Judiciary being impaired by means of budgetary manipulations which breach Section 225 of the Constitution.

## 7. REVENUE RAISING

In 1986 Finance Department required the Courts to estimate revenue to be raised by way of fines and court fees. We wish to emphasise that it is not a function of the Judiciary to raise revenue for the State. The fact that fines are imposed and fees are charged by the Courts is incidental to the judicial function.

## 8. EXPENDITURE

The figures shown below are for the financial year 1986.

Vote	Item	Description	1986 K'000	1985 K'000
203	1	Personal Emoluments	798 394	748 302 (1)
	2	Travel and Subsistence	223 517	172 630 (2)
	3	Utilities	112 110	91 278 (3)
	4	Materials and Supplies	47 959	53 660 (4)
	5	Plant and Transport	140 212	136 099 (5)
	6	Special Services	21 151	30 055 (6)
	7	Purchase of Capital Assets	9 354	8 461 (7)

8	Grants and Subsidies	25 645	6 981 (8)
9	Other	23 894	17 312 (9)
10	Emoluments	68 030	62 685 (10)

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1 466

1 323

### 8.1 **Pelair Inquiry Costs:**

For the first nine months of the year the Court bore telex, telephone and photocopying costs of the Pelair Commission of Enquiry. The length of the Commission's enquiries necessitated the appointment of an acting Judge to take over the circuit duties of the judge chairing the enquiry. The overall cost to the court for the enquiry was nearly K50 000.

### 8.2 **Item 1 — Personal Emoluments**

The court functioned for the year with ten judges, one more than in 1985. The extra judge also meant extra judges' staff all of which is reflected in the increases in Item 1 expenditure.

### 8.3 **Item 2 — Travel and Subsistence**

The costs of circuits to provinces continued to rise in 1986 with increases in airfares and hotel accommodation. Permanent housing for judges in centres where regularly monthly sittings of the National Court are held will reduce costs. It is planned to seek such accommodation for two centres in 1987.

### 8.4 **Item 3 — Utilities and Printing**

- (1) To reduce the waste of energy resources, the court asked the Department of Works to carry out a survey of existing facilities and make recommendations as to what changes should be made.
- (2) The Department of Works reported on its investigations in November 1986. In its report it recommended a two-phase approach costing in total K90 000 which would lead to a reduction in electricity consumption of approximately 40%. As funds for capital works are scarce it will probably take several years before the recommendations of the report can be put into operation.
- (3) Telephones for the new building extension were provided by rationalisation of existing phone numbers and extensions.

### 8.5 **Item 4 — Materials and Supplies.**

#### **LIBRARY**

The rising costs of goods and services will be felt by the Supreme Court Library. It is essential that the Library be maintained for the benefit of the Judiciary and the legal profession both in Port Moresby and provincial centres. It is only fair that the legal profession, in future, contribute towards the cost of books.

### 8.6 **TRANSPORT**

- (1) The only vehicles allocated to the Court are ten judges' official cars. Transport for administration purposes is provided by these cars on a rostered basis and

by paying mileage allowance to court officers to recompense them for the use of their private vehicles.

- (2) Transport in provinces is becoming a problem. The court would often prefer to use smaller sedans available from private hire car companies instead of large 4-wheel drive vehicles frequently offered by provincial transport authorities at high hire costs.

#### 8.7 **Item 7 — Capital Purchases**

- (1) In December 1986 after more than three years of efforts before Executive Government committees the Court purchased 9 IBM PC Compatible Computers, 8 XT's and 1 AT for development of a data entry system for the Registry. Development work is being carried out by Mr Nobuaki Masui who has come to us as a Volunteer under the Japanese Overseas Co-operation Volunteer (JOCV) Scheme administered by the Japanese International Co-operation Agency (JICA). Mr Masui who formerly worked for the Japanese Computer Giant FUJITSU joined our staff in August 1986 for a two-year period.
- (2) The new extension of three judges chambers and the Chief Justice's Conference Room were all furnished from existing budgetted funds and all furniture was of local manufacture.

#### 8.8 **Item 9 — Overseas Travel**

The only overseas travel undertaken was a visit by the Chief Justice to Australia to interview lawyers who had expressed interests in a judicial appointment and Mr Justice R.K. Woods' attendance at the Lawasia Conference in India during his vacation.

#### 8.9 **Item 10 — Misuse of Labourers**

The court continues to be forced to rely on seven people, (who are well qualified) paid as labourers, to perform important clerical functions which attract a higher level of remuneration in the Public Service. That this situation has continued for a number of years without resolution by the bureaucracy of the Public Service is bordering on the outrageous.

#### 8.10 **SUPREME COURT HOUSE**

The work of looking after the Court House grounds and gardens has been given to a youth group who have now carried out the work successfully for over a year.

#### 8.11 **COURT HOUSES:**

At present responsibility for the provision and maintenance of the court houses, with the exception of the Supreme Court House Waigani, rests with the Magisterial Service. Over the last 5 years there has been an ad hoc committee responsible to the Judicial and Legal Services Commission in existence to advise on this function. However, the administrative responsibility remains with the Magisterial Service. It is now obvious that the administrative facilities of the service are quite unequal to the task of implementing any plan.

With a few exceptions, provincial court houses are in a deplorable condition without proper security, office space or courtrooms. In a word most provincial



court houses require complete redevelopment and in many cases relocation. This is a major task. From the information available to us, the cost of providing a provincial court complex is in the region of K400 000.

We recommend that consideration be given to the implementation of a nation-wide court rebuilding programme funded as a tied aid project.

In view of the successful implementation of our own building project at Waigani, we are prepared to make available the services of one of the Court's senior officers in planning and co-ordinating such a project.

## 8.12 TRANSCRIPTION OF COURT PROCEEDINGS

The efficient transcribing of court proceedings has until now been largely ignored. With the increasing workload in both civil and criminal matters coming before the Courts, it is essential that a transcribing system is introduced in the immediate future commencing with the Supreme Court. The introduction of computerisation into the Court House make it opportune to provide a system compatible with this in order to provide transcripts of proceedings without delays.

## 9. 1986 COMPUTER PURCHASE

Nine Work stations and Eleven Printers. The particulars are as follows:

- (a) Two Cordata Laser Printers;
- (b) Nine Super 5 EP-1000 Dot matrix Printers;
- (c) Seven Song Turbo PC/XT system with same specification as above, but including a Colour (EGA) Monitor instead of the Monochrome Monitor.

One Song MB-1 AT compatible system with similar specifications to the above, but also including an EGA Monitor and also one 1.2 Mbyte Disk Drive in addition to the 360 Kbyte Drive, and 1 Megabyte of RAM.

Together with original copies (one only) of the following software:

- MSDOS operation system;
- Microsoft WORD word processor;
- Dbase III + Database Development System;
- Fastback — the system to back up the fixed disk.

Also included are Eleven Power Surge Processors, and maintenance for the whole of 1987.

## 10. COMPUTER PLANS 1988 ONWARDS

The plan envisaged in the Report by Peter Harris is that we buy a Honeywell Mini-computer in 1987, and that with additional equipment in 1988, we buy a share in the National Computer Centre (or Air Niugini) Mainframes in 1989.

### 1988:

- 6 additional microcomputers similar to the Song PC/XT in standard configuration (i.e. with monochrome Monitor).
- 1 Tape backup system for backing up hard disks.
- Modems and Local Area Network equipment to link all Microcomputers together, and also to allow access by Computers outside of Court building.

- 1 Microcomputer (using 386 chip) to act as a file server, with a 150-200 Mbyte Fixed (hard) drive, to be used as part of LAN.
- Split type Air-conditioning Unit for use with room in which file server is located.
- Uninterruptable Power supply equipment to allow Computers to run when ELCOM power is interrupted in any way.

A third alternative is possible of some other Mini computer system if Japanese Aid is available, however there is little Japanese Equipment sold in Papua New Guinea at present, and so such alternative will have to await some real indications of Japanese Aid being available. If this alternative were available an NEC or Fujitsu Mini Computer might be useful, however the smallest suitable Fujitsu Mini Computer costs some K250 000, and would require the employment of one or more fully trained professional computer personnel. Daltron who sell NEC equipment have not as yet started to market the NEC Astra Mini-Computers (which Peter Harris considered was too small for our needs).

## APPENDIX “A”

### SUPREME COURT

(a)	Appeals from National Court	—	92
(b)	Reference to Supreme Court under Section 41 of the Constitution.	—	—
(c)	Reference to Supreme Court under Section 18 of the Constitution.	—	—
(d)	Reference to Supreme Court under Section 19 of the Constitution.	—	6
(e)	Reference to Supreme Court under Section 21 of the <i>Supreme Court Act</i> .	—	—
(f)	Reference to Supreme Court under Section 15 of the <i>Supreme Court Act</i> .	—	—
(g)	Principal Legal Adviser’s Reference to Supreme Court under Section 41 of <i>Supreme Court Act</i> .	—	—
(h)	Supreme Court Review	—	1

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APPENDIX "B"

CASES TRIED DURING THE PERIOD 1ST AUGUST 1985 TO 31ST DECEMBER 1986

OFFENCE TYPE	OFFENCE AGAINST PERSON											AGAINST PROPERTY						OFFENCES AGAINST CURRENCY			OTHER
	Wilful Murder	Murder	Unlawful Killing or Attempted	Unlawfully Wounding	Grievous Bodily Harm	Rape or Attempt	Offences against Female	Incest	Infanticide	Unlawful & Indecent Offences	Dangerous Driving Causing Death	Other Offences against the Person	Stealing with Violence	Breaking, Entering & Stealing	Stealing	Receiving	Arson	Wilful Damage to Property	False Pretence	Forgery & Uttering	

INDICTED	118	85	101	36	62	250	27	34	8	9	35	11	160	157	62	11	25	37	18	39	77	32
CONVICTED	51	45	79	35	45	123	22	29	5	4	26	5	81	105	49	8	16	32	10	34	59	17
LESSER CHARGE	10	13	—	—	—	4	—	—	—	—	—	—	3	1	—	—	—	—	—	—	1	—
ACQUITTED	37	14	12	1	6	60	2	—	—	—	1	1	26	14	4	1	1	3	1	—	8	1
N.P.	20	9	7	—	10	50	3	5	3	5	8	3	49	25	7	2	8	2	7	5	17	11
DISCHARGED S.52(4) CRIMINAL CODE	—	4	1	—	—	11	—	—	—	—	—	1	1	1	—	—	—	—	—	—	1	1
DECLARATION NO TO CHARGE	—	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—	—	—	—	—	—	2
DISCHARGED S.37(a) CONSTITUTION	—	—	2	—	1	2	—	—	—	—	—	—	—	11	2	—	—	1	—	—	—	—

GOOD BEHAVIOUR BOND	2	11	12	6	12	—	1	1	—	2	2	—	1	20	9	2	3	3	—	2	4	4
RIISING OF THE COURT	—	—	6	2	5	2	2	—	2	—	1	2	—	8	5	2	—	1	1	3	—	3
FINE	—	—	2	5	4	1	1	—	—	—	8	—	—	—	5	—	—	17	2	9	10	—
IMPRISONMENT — 1 — 12 Months	2	7	11	8	10	15	9	2	—	1	10	—	2	24	19	3	6	5	5	13	16	6
1 — 2 Years	2	8	18	6	8	14	9	18	1	—	4	2	10	20	7	—	6	6	2	5	9	3
3 — 5 Years	14	24	26	2	12	29	1	8	1	1	1	—	27	29	4	1	1	—	—	—	—	1
5 — 10 Years	13	13	5	—	44	—	—	—	—	—	—	—	44	5	—	—	—	—	—	—	2	8
10 — 15 Years	16	3	—	—	—	10	—	—	—	—	—	—	1	—	—	—	—	—	—	—	3	—
15 — 20 Years	14	3	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
LIFE	2	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

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