



**NATIONAL INTEGRITY  
SYSTEM ASSESSMENT**  
PAPUA NEW GUINEA **2021**

Author:

Transparency International Papua New Guinea works to empower people to act against corruption. We envision being Papua New Guinea's leading, reputable, well-established organisation that works with like-minded individuals and organisations to combat corruption.

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# Acronyms

<b>AGO</b>	Auditor General's Office
<b>CACC</b>	Central Agencies Coordination Committee
<b>CSO</b>	Civil Society Organisation
<b>CSTB</b>	Central Supply and Tenders Board
<b>DJAG</b>	Department of Justice and Attorney General
<b>EITI</b>	Extractive Industry Transparency Initiative
<b>EMB</b>	Electoral Management Body
<b>FOI</b>	Freedom of Information
<b>ICAC</b>	Independent Commission Against Corruption
<b>IPPC</b>	Integrity of Political Parties and Candidates Commission
<b>NACPA</b>	National Anti-Corruption Plan of Action
<b>NACS</b>	National Anti-Corruption Strategy 2010-2030
<b>NACSTF</b>	National Anti-Corruption Strategic Task Force
<b>NBC</b>	National Broadcasting Corporation
<b>NEC</b>	National Executive Council
<b>NFACD</b>	National Fraud and Anti-Corruption Directorate
<b>NGO</b>	Non-Government Organisation
<b>NIS</b>	National Integrity System
<b>NISA</b>	National Integrity Systems Assessment
<b>OCPNG</b>	Ombudsman Commission of Papua New Guinea
<b>OGP</b>	Open Government Partnership
<b>OLICAC</b>	Organic Law on the Independent Commission Against Corruption
<b>OLIPPAC</b>	Organic Law on the Integrity of Political Parties and Candidates
<b>OLNLGE</b>	Organic Law on National and Local Level Government Elections
<b>PFMA</b>	Public Finances (Management) Act 1995 (as subsequently amended)
<b>PNGEC</b>	Papua New Guinea Electoral Commission
<b>PNGEITI</b>	Papua New Guinea Extractive Industry initiative
<b>RPNGC</b>	Royal Papua New Guinea Constabulary
<b>TIPNG</b>	Transparency International Papua New Guinea Inc.
<b>UNCAC</b>	United Nations Convention Against Corruption

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1. National Parliament
2. Constitutional and Law Reform Commission
3. Office of Legislative Council
4. Department of Justice and Attorney General
5. Department of Prime Minister and National Executive Council
6. National Judicial Staff Services
7. Office of Public Prosecutor
8. Department of Provincial and Local Level Government Affairs
9. Department of Finance
10. Royal Papua New Guinea Constabulary
11. PNG Customs Service
12. PNG Immigration and Citizenship Authority
13. PNG Electoral Commission
14. Auditor General's Office
15. National Economic and Fiscal Commission
16. National Fraud and Anti-Corruption Directorate
17. Interim ICAC Office
18. Financial Analysis and Supervision Unit
19. Integrity of Political Parties and Candidates Commission
20. Wantok Niuspepa
21. Catholic Bishops Conference of Papua New Guinea and Solomon Islands
22. Centre for Environmental Law and Community Rights
23. Advancing PNG Women Leaders Network
24. Centre for International Private Enterprise
25. Certified Practising Accountants PNG
26. PNG Investment Promotion Authority
27. PNG Asia Pacific Economic Cooperation Secretariat
28. Business Council of PNG

The National Integrity Systems Assessment (NISA) Report for Papua New Guinea aims to assess the level of national integrity in the country as well as capture areas within key government agencies that require improvement. This report was written in consultation with key partners and anti-corruption experts.

TIPNG expresses its gratitude to Dr Sarah Dix, for invaluable assistance to TIPNG in the drafting and production of the report. We also acknowledge the individual and collective support of the NISA Technical Advisory Group.

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# Foreword



On behalf of the Board and Management of Transparency International PNG (TIPNG), I am pleased to present this report that evaluates our national integrity and makes recommendations based on that analysis. At the outset I must thank and acknowledge the support of the European Union to TIPNG which has enabled us to produce and launch the publication.

TIPNG's National Integrity System Assessment (NISA) 2021, is an upgrade of the last assessment in 2003, now almost 2 decades ago. In that time TIPNG as an organisation has grown, but our mission to empower people in PNG to take action against corruption has not changed. This NISA 2021 is to be launched at the inaugural National Integrity Summit to be held in Port Moresby at APEC House on the 13th and 14th of May 2021, a landmark event for our national chapter of Transparency international.

Any significant and sustainable effort to combat the corruption that is deeply rooted in our integrity system can only be achieved if we work together. This Report and the Summit will act as a point of convergence for all concerned national integrity institutions. And to raise our collective awareness of the challenges ahead of us and to engage in conversations which help us identify the most successful solutions, as well as how they may be replicated across our different agencies.

As you read this NISA 2021 Report, you will notice the marked integrity gap between the best aspirations of our institutions as captured in their respective laws, and the actuality of implementing their mandates. It is in that gap that good people must act decisively to halt the further widening of the chasm between legislation and practice.

The NISA is an important tool, not only as a means of monitoring the health of our integrity system, but also as a means of identifying key areas which need improvement. This is a fundamental step towards developing realistic and practicable integrity system and solutions to address these weaknesses.

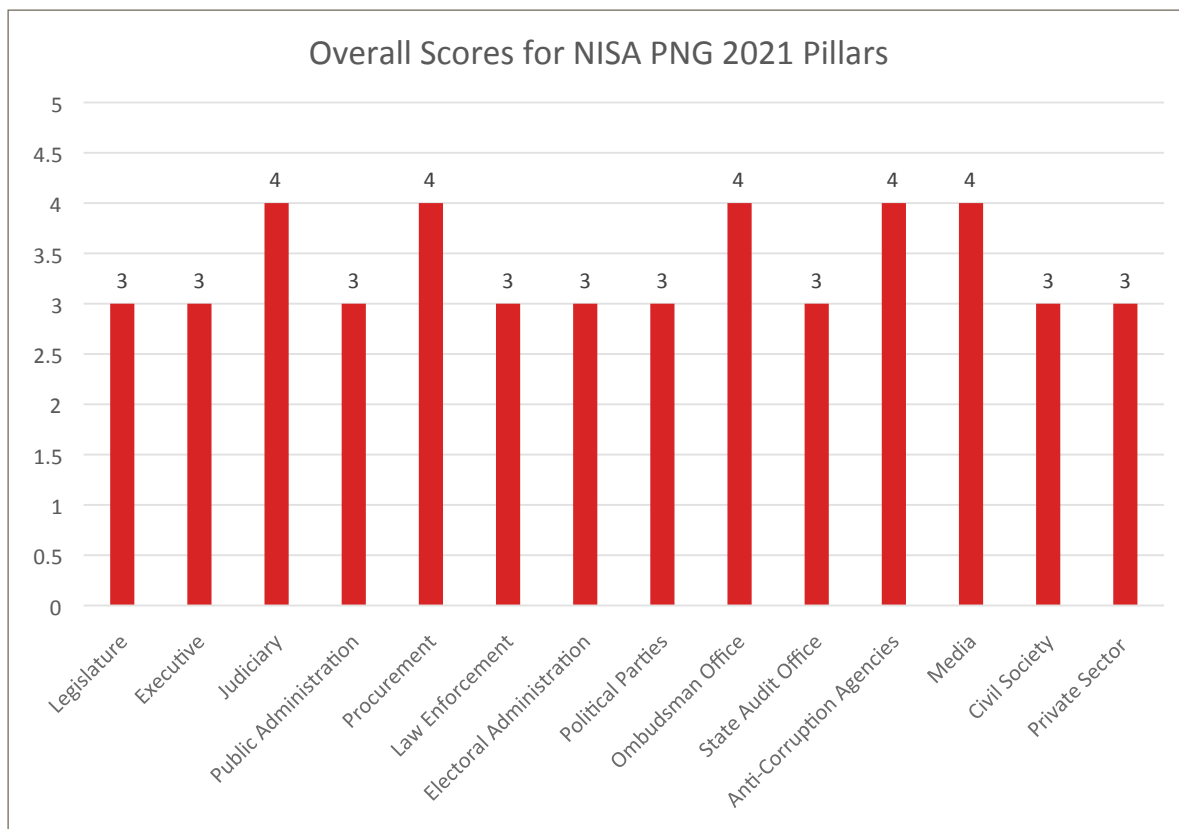
Thank you for joining TIPNG on this journey as #TogetherWeRiseAboveCorruption.

**Peter Aitsi, MBE**

Board Chair - Transparency International Papua New Guinea

# Executive Summary

The National Integrity System (NIS) approach considers that preventing corruption and promoting good governance in a country requires the effective operation of all key institutions. According to this assessment, only 5 of Papua New Guinea’s 14 NIS institutions have a relatively high Overall Score although it is concerning that they still fall short of having both an adequate legal framework and adequate actions in practice: the Judiciary, Procurement, Anti-Corruption Agencies, Ombudsman Office and the Media. These pillars tend to score relatively better than others because of supportive legislative frameworks but like all 14 pillars, there are troubling weaknesses in their implementation. This result points to a number of challenges that require action for preventing corruption and for strengthening democracy in general.



Graph 1: Overall Scores for NISA PNG 2021 Pillars

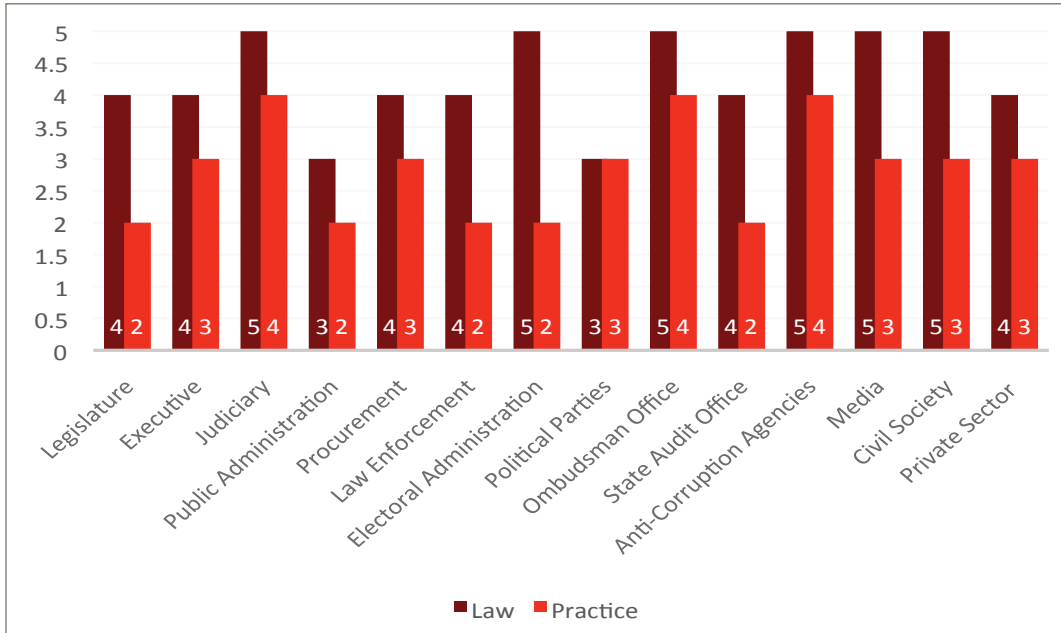
A lack of transparency, political party weakness, and lack of effective accountability mechanisms, have alarmingly enabled the Executive in successive governments to progressively encroach on the legislature and the public administration. The reasons for this are more political than due to inadequate laws, although access to information legislation is notably missing, as is a fully functional Organic Law on the Integrity of Political Parties and Candidates. This state of affairs is also related to the quality of leadership, which voters choose at the ballot box.

## Law and practice

The Overall Scores of the institutions reflect the results of the analysis of both the practice of these institutions and of the legal framework governing their operation. If we look at the results of the



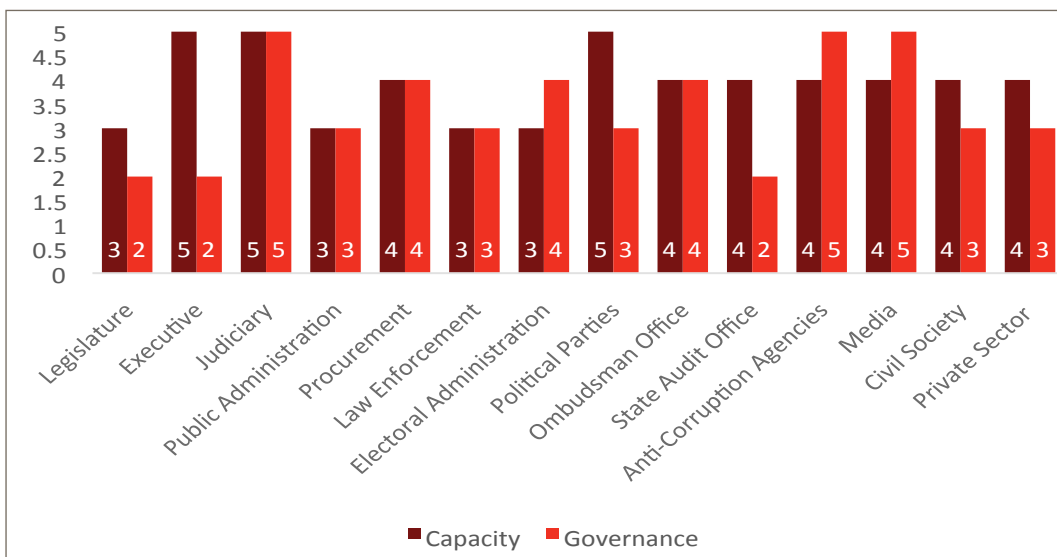
assessment of the practice and the law separately, we will see that, in the overwhelming majority of the institutions, the score for practice is significantly lower than the average score for law, which indicates that the actual effectiveness of the institutions is lower than their total scores may suggest.



Graph 2: Comparison NISA Pillars Law and Practice Scores

## What you see is not what you get

Look at each pillar’s supporting legislative framework we find that overall, it is stronger than its implementation. In other words “What you see is not what you get.” Looking at the breakdown of the components of what is visible, the Judiciary has both fairly high capacity in terms of resourcing as well as adequate basic governance rules, as the figure below shows. In most areas there are at least basic frameworks in place, but all of the pillars fall short on implementation.



Graph 3: 2021 Capacity and Governance Scores for NISA Pillars

## NIS Institutions: main trends

The level of the Parliament's independence in legislative matters is severely weakened in practice and parliamentary oversight of the Executive branch is minimal except in Votes of No-Confidence. The Parliament is falling short of its Constitutional role, in the areas of accountability, transparency and integrity. Members of Parliament have failed to fill their role as legislators who must act in the public interest, consult constituents and reflect their views and needs in the law, and serve as a check on the excesses of the Executive. This results in laws that cater to certain interests and are not always beneficial to the public, and the Executive essentially monopolising Parliament. The legal framework governing the Parliament's activities is considered sound but the legislature does not utilise its legal powers effectively enough.

The Executive branch is overstepping its role by progressively disregarding and undermining of democratic norms of Parliamentary procedure. This state of affairs is made possible by weakened and sometimes complicit oversight institutions and lack of citizens' oversight at the ballot box. The legal framework contains important provisions designed to ensure high standards of integrity in the cabinet so as to limit corruption in the government, but these provisions are often not enforced in practice. To the extent that possible cases of corruption in the government are investigated, they are either to placate public outrage or keep political rivals in check through integrity provisions. The government does not engage in sufficient efforts to establish an independent civil service and to establish a culture of integrity in public administration.

The Judiciary demonstrates integrity in practice, although there are some vulnerabilities due to administrative bottlenecks at the subnational level. The accountability of judges for possible violations of the law, including possible cases of corruption, is not ensured. Rulings passed by judges are well reasoned in the higher courts, but quality tends to deteriorate further down the court hierarchy. External actors including the Executive wield little influence over national court decisions. The annual budget is adequately appropriated by Parliament. Some important decisions regarding the Judiciary, including judicial appointments, are made through the Judicial Legal Services Commission process.

The legal framework governing the Public Administration's activities contains important provisions designed to ensure its independence, transparency, accountability and integrity. However, the public administration is not independent in practice due to undue political influence over its activities, while the level of transparency is uneven across the public administration. The enforcement of the legislative provisions designed to prevent corruption in the public administration is weak.

Despite positive reforms, significant corruption risks persist in the Public Procurement system. The situation has only marginally improved and is at risk of reverting due to political pressure. The process of public procurement and information surrounding it is still guarded and key procurement policy documents have not been developed. Staff from the Central Supply and Tenders Board (CSTB) have been retained and procurement powers have been devolved to sub-national entities with no discernible improvement on e-procurement. The new legislation contains requirements around transparency and integrity. However, significant governance issues, for instance on beneficial ownership of bidding entities has not seen substantive change. In short there does not seem to be structural reform even though there has been legislative reform. Of concern, there is pressure to increase the threshold for local content with no evidence-based justification.

The Law Enforcement Agencies do not receive adequate funding or effectively deal with petty corruption in communities and organisations. They do not effectively respond to cases of corruption that involve high-ranking officials and other influential individuals. This is due to internal operational constraints, and external pressures by those implicates. The degree of accountability for law enforcement agencies actions are severely limited and the transparency of their activities has been a consistent concern of civil society

and the public at large. While public information may be purposefully obscured for short term gain (e.g., avoiding public criticism) this eventually leads to a lack of public trust. This was exemplified in a recent case of moral panic over organ harvesting in Port Moresby where public statements by the Police were distrusted by citizens who thought they were compromised.

The Electoral Administration has worsened since the last assessment in terms of organising elections with significant shortcomings in terms of application of rules, management of human resources, and the conduct of ballot counting and declaration of seats. The worsening state of electoral processes raises questions regarding the very democratic underpinnings of Papua New Guinea. These poor governance conditions are further exacerbated by the COVID-19 pandemic which could jeopardise the conduct of the 2022 National and 2023 Local Level Government (LLG) elections, respectively.

The establishment and registration of Political Parties is provided for by legislation. However, the unconstitutionality of key provisions in the Organic Law on Political Parties and Candidates (OLIPPAC) reduces the accountability of political parties in the law. The financing of political parties is not transparent in practice, and the ruling party's accountability is not ensured. Violations of financing rules are an annual issue (peaking in election years). Internal democratic governance procedures of the parties are weak and so is their link with the broader public they seek to represent.

The Ombudsman Office, the Ombudsman Commission, was established directly by the Constitution as an independent institution that plays an oversight role and ensures compliance in government processes and procedures. It is well-resourced and its services are free, which facilitates public access. It is active in the anti-corruption field although it is not clear that its recommendations are successfully implemented or that its investigations lead to prosecution.

The State Audit Office, the Auditor General's Office works to review the spending of public funds. However, is it not sufficiently transparent or active and public agencies frequently fail to implement the Office's recommendations. Also, its monitoring of political party finance is ineffective.

The primary Anti-Corruption Agency is the newly created Independent Commission Against Corruption (ICAC). It was passed into law in 2020 and is in the process of operationalisation. The ICAC is the latest, and to date most substantive, action by the Government of Papua New Guinea to address corruption. That said, there have historically been other agencies and initiatives with an anti-corruption mandate. The Ombudsman Office and law enforcement agencies are assessed under their own pillars.

The Media is supported by a favourable legislative environment for its establishment and operation. However, the independence of the media has been challenged by the Government and commercial interests, which undermines the media's primary role of providing citizens with relevant information about important political processes. Investigative journalism is weak overall. There has been an increase in the use of social media, both generally and as a news platform, since the entry of new internet service providers in PNG. The major news outlets all have a social media presence.

The legal framework enables the establishing of Civil Society organisations and further supports their independent operations. There are a large number of civil society organisations (CSO) both within the nation's capital and in provinces around the country. Most CSO lack sustainable organisational structures and therefore lack internal resources, with the majority relying on government financing, donations or foreign aid. The country's leading CSOs work actively to hold the government accountable and promote policy reforms. The government has a mechanism through the Consultative Implementation and Monitoring Council to seek and obtain CSO views, and while the government will acknowledge these views, they rarely fund or implement recommendations. In seeking to hold the government accountable, civil society is weakened by the lack of Right to Information laws.

For the Private Sector, the law requires individuals and companies wanting to conduct business in PNG to register with the Investment Promotion Authority (IPA). Once registered, they enjoy a relatively open environment to operate. However, in some cases, the authorities have exerted politically motivated pressure on business. Transparency of beneficial ownership of companies is not ensured. The involvement of business in anti-corruption policy is limited however there is a readiness to engage via the Business Council of PNG and more recently a greater interest and commitment is being signalled by the PNG Chamber of Commerce..

## Current challenges and essential reforms

The lack of transparency and accountability among political institutions and leaders are the primary challenge of PNG's NIS. This is due in large part to state-society relations being weak and the government not depending on citizens in a meaningful way. Related to this, Parliament is relatively weak in relation to the Executive and the Constitutional separation of powers is not respected. The efforts to strengthen PNG's National Integrity System must, therefore, focus in the coming years on bridging the gap between strong legislation and weak implementation by engaging citizens in governance. This will create favourable conditions for greater transparency and accountability of the system's main institutions and their effective operation.

The report's final chapter reviews the relative strengths and weaknesses of each pillar according to the NISA PNG 2021 and contains specific recommendations for each institution.

The following highlights the key reforms that TIPNG considers must be implemented in the lead up to and beyond the 2022 National Election, as a priority to strengthen the country's national integrity system and democratic governance:

1. **Open Up Parliament!** Broadcast full Parliament session, Demand MP Constituent Meetings, Release Annual Report on Parliament Performance, and restore OLIPPAC.
2. **Make every vote count!** Prioritise the National Census, register every eligible voter, and implement the electoral laws, to ensure integrity within the electoral process.
3. **Let the People Know!** Protect our media, empower our citizens and welcome informed investment by delivering an effective way for us all to access public information
4. **Start ICAC Strong!** Recruit competent staff, use the NACTF to coordinate anti-corruption partnerships, and protect the integrity of our new anti-corruption agency
5. **Bridge the Integrity Gap!** Develop and Recognise integrity initiatives in agencies, enable citizens to hold public servants accountable, align Police Conduct with integrity provisions in Police Act and support multi-stakeholder forums

# Introduction: About NIS Assessment

The National Integrity System (NIS) assessment offers an evaluation of the main institutions of governance responsible for enhancing integrity and preventing corruption in a country.

A well-functioning NIS safeguards against corruption and contributes to the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. Corruption undermines good governance, the rule of law and fundamental human rights. This can be prevented if NIS institutions are, on the one hand, based on sound laws and have appropriate regulations, and on the other hand, these are respected and implemented in practice. This not only prevents corruption, it contributes to good governance, the rule of law and the protection of fundamental human rights. Strengthening the NIS promotes better governance across society and contributes to a more just society overall.

The purpose of conducting the assessment in PNG is to understand the state of governance in the country today and to contextualise the performance of different sectors with regards to their abilities to support just and democratic rule. Not only does this study highlight specific areas in which reform is needed, it also provides a starting point for further evidence-based research and advocacy. The assessment may also be used as a benchmark to measure progress over time, and to compare performance across institutional pillars of integrity.

The NISA Papua New Guinea 2021 report addresses 14 Integrity Pillars:

1. Legislature
2. Executive
3. Judiciary
4. Public Administration
5. Procurement
6. Law Enforcement
7. Electoral Administration
8. Political Parties
9. Ombudsman Office
10. State Audit Office
11. Anti-Corruption Agencies
12. Media
13. Civil Society
14. Private Sector

Each of these 14 pillars is assessed along three dimensions that are essential to its ability to prevent corruption: First, its overall capacity in terms of resources and legal status, which underlies any effective institutional performance. Second, its internal governance regulations and practices, focusing on whether the institution is transparent, accountable and acts with integrity, all crucial elements to preventing the institution from engaging in corruption. Third, the extent to which the institution fulfils its assigned role in the anti-corruption system, such as providing effective oversight of the government (for the legislature) or prosecuting corruption cases (for the law enforcement agencies). Together, these three dimensions cover the institution's ability to act (capacity), its internal performance (governance) and its external performance (role) on the task of fighting corruption.

Each dimension is measured by a common set of indicators. The assessment examines both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting discrepancies between the formal provisions and reality on the ground. To take contextual factors into account, the evaluation is informed by an analysis of the overall political, social, economic, and cultural conditions in which these governance institutions operate.

Dimension	Indicators (law, practice)
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role within governance system	Between one and three indicators specific to each institution

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather, it seeks breadth, covering all relevant pillars across a wide number of indicators to gain a view of the overall system. The assessment also looks at the interactions between institutions to understand why some are more robust than others and how they influence each other. The NIS presupposes that weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars also helps to prioritise areas for reform.

## Methodology

The NIS assessment is a qualitative research tool based on a combination of desk research and in-depth interviews. A final process of external validation and engagement with key stakeholders ensures that the findings are as relevant and accurate as possible before the assessment is published.

The assessment is guided by a set of “indicator score sheets” developed by the Transparency International global Secretariat during the changes introduced to the NIS methodology in 2008. The sheets consist of a “scoring question” for each indicator, supported by further guiding questions and scoring guidelines. For example:

<b>Sample indicator score sheet: Judiciary, capacity, resources (practice)</b>	
Scoring question	To what extent does the Judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?
Guiding question	the budget of the Judiciary sufficient for it to perform its duties? How is the Judiciary's budget apportioned? Who apportions it? Is the Judiciary apportioned a minimum percentage of the general budget? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practising lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge's knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest?
Minimum score (1)	The existing financial, human and infrastructural resources of the judiciary are minimal and insufficient to effectively carry out its duties.
Mid-point score (3)	The judiciary has resources to carry out its basic duties.
Maximum score (5)	The judiciary has an adequate resource base to effectively carry out all of its duties.

The guiding questions for each indicator were developed by examining international best practices, existing assessment tools for the respective pillar as well as using TI's own experience, and by seeking input from international experts on the respective institution.

To answer the guiding questions, the assessment relied on three main sources of information: national legislation, secondary reports and research, and interviews with key experts. Secondary sources included trusted reports by national civil society organisations and authoritative international organisations.

According to the TI methodology, in three pillars, the legal basis for resources is not assessed because it is not expected that there would be specific provisions beyond the annual National Budget process.

## The scoring system

The NIS is a qualitative assessment, and scores are assigned to achieve a macro perspective, promote a view of the interactions across institutions and help highlight key weaknesses and strengths of the integrity system. The scores are a way to give a snapshot of all 14 pillars to promote reflection on the system as a whole, rather than focusing only on its individual parts. The scores are assigned on a 5-point scale as follows: 1 (minimal and insufficient), 2 (somewhat insufficient), 3 (basic), 4 (somewhat adequate), 5 (adequate). The scores are not suitable for cross-country rankings or other quantitative comparisons due to differences in data sources applying the NIS methodology and the absence of an international review board tasked to ensure comparability of scores.

## Background and history of the NIS approach

The concept of a “National Integrity System” originated within the TI movement in the 1990s as TI’s primary conceptual tool of how corruption could be best fought, and, ultimately, prevented. The focus on “integrity” signified the positive message that corruption can indeed be defeated if integrity reigns in all relevant aspects of public life. It made its first public appearance in the 1997 TI Sourcebook, which sought to draw together those actors and institutions which are crucial in fighting corruption, in a common analytical framework, called the “National Integrity System”. The Sourcebook suggested the use of ‘National Integrity Workshops’ to put this framework into practice.

In the early 2000s, TI developed a basic research methodology to study the main characteristics of actual National Integrity Systems in countries around the world. In 2008, TI engaged in a major overhaul of the research methodology, adding two crucial elements – the scoring system as well as consultative elements. The latter consists of an advisory group and the National Integrity Workshop, which had been part of the original approach.

The NIS approach is an integral component of TI’s overall portfolio of research tools which measure corruption and assess anti-corruption efforts. By offering an in-depth country-driven diagnosis of the main governance institutions, the NIS’ main aim is to provide a solid evidence-base for country-level advocacy actions on improving the anti-corruption mechanisms and their performance. It is complemented by other TI tools, which are geared more towards raising public awareness of corruption and its consequences through global rankings (e.g., Corruption Perception Index, Bribe Payers Index) or through reporting the views and experiences of the public (e.g., Global Corruption Barometer). In addition, the NIS approach fills an important gap in the larger field of international governance assessments, which are dominated by cross-country rankings and ratings (e.g., Global Integrity Index, Bertelsmann Transformation Index), donor-driven assessments (which are rarely made public) and country-specific case studies, by offering an in-depth yet systematic assessment of the anti-corruption system which is based on a highly consultative multi-stakeholder approach. This combination of being driven by an independent local civil society organisation, involving consultations with all relevant stakeholders in-country, and being integrated into a global project architecture (which ensures effective technical assistance and quality control) makes the NIS approach unique.

TIPNG published a previous NIS Assessment in 2003.<sup>1</sup>



# Country Profile: Foundations of the National Integrity System

## Political-Institutional Foundations

Score: 3

*To what extent are the political institutions in the country supportive of an effective national integrity system?*

According to the Constitution, PNG is a state based on the rule of law whose citizens have the right to vote, establish political parties, and stand for public office. They also have many civil and political rights including the right to freedom, the right to life, freedom from inhuman treatment, freedom of conscience, thought and religion, and freedom of expression. In practice, however, problems in terms of the operation of political institutions are a significant obstacle to the establishment of an effective national integrity system in PNG.

According to Freedom House, in 2020 PNG scored 62/100 for global freedom, which covers freedom assessed with political rights and civil liberties.<sup>2</sup> Transparency International's 2020 Corruption Perceptions Index (CPI) also highlights PNG scored 27 out of 100, with a ranking of 142 out of 180 countries assessed.<sup>3</sup>

The elections held in PNG in recent years have not been free, and there have been significant challenges in terms of violence, threats and intimidation, and vote buying as well as problems with secret voting.<sup>4</sup> Political parties with more members of Parliament have enjoyed major advantages in terms of campaign funding.<sup>5</sup> Moreover, there have been problems with voter registration, women's voting, and villages voting in blocks. In general, there is a lack of using the vote to hold politicians to account or to expect more than short term, personal gain.

## Socio-Political Foundations

Score: 3

*To what extent are the relationships among social groups and between social groups and the political system in the country supportive to an effective national integrity system?*

Papua New Guinea faces significant challenges in terms of the representation of the citizens' interests, women's political representation, and integration of tribal and clan perspectives.

The link between the political parties and society is weak. Political parties are not well developed with clearly distinguished platforms. Party membership is not common among citizens; parties are characterised by a hierarchical structure where the party leader possesses total power. The leaders' ambitions are to become a 'Memba' to gain wealth and opportunity for oneself and then the immediate family and possibly the clan or tribe. Most policies are formed to gain support for one's tenure if one is a Memba or for one's candidacy if a first timer.

According to experts interviewed by TIPNG, public trust in government is based on tribal allegiances and the cascade of direct benefits and opportunities. One study suggests that public trust in certain political parties in PNG has depended on factors such as the management of the country during its term of Parliament.<sup>6</sup> In the 2012 national election, Sir Michael Somare's National Alliance party lost more than three-quarters of their seats as voters became distrustful of the party.<sup>7</sup> In 2017, O'Neill's People's National Congress (PNC) party faced similar challenges, losing almost half of its MPs while some of its serving MPs ran as independent candidates or even refused to state on their campaign posters that they were endorsed by the PNC.<sup>8</sup>

The strongest part of civil society consists of national level non-governmental organisations (NGOs) which monitor the government's activities. Among them, TIPNG is particularly active and has been recognised as effective in its role, however there is a lack of critical mass of capable national NGOs that serve as watchdogs in different areas. Recent years have seen the emergence of NGOs aimed at youth and community development. Many NGOs fail to grow or maintain their activities and funding remains a challenge. Loss of funds through malfeasance behaviour can be a problem for them as well as faith-based organizations. The culture of volunteerism is weak, although multiple NGOs engage volunteers.

Women are extremely underrepresented in the political system. For example, there are currently no female Parliamentarians, and since independence only seven women have been elected to Parliament. There has never been a female Prime Minister. In the past year, seven Supreme Court judges were women. Women are represented in the political system only to the extent that traditional society affords women to be leaders, which it generally does not, although there are matriarchal societies in PNG. The Constitution does not include "gender" or "sex" as a prohibited ground of discrimination. Discrimination based on sexual orientation and gender identity is a problem.

## Socio-Economic Foundations

Score: 3

*To what extent is the socio-economic situation of the country supportive of an effective national integrity system?*

PNG faces significant problems in terms of economic development, poverty, unemployment, and inequality. According to the World Bank, PNG is among the lower-middle income countries.<sup>9</sup> PNG's GDP has grown by an average of 5.9%<sup>10</sup> annually and was USD\$2829.17 per capita in 2019.<sup>11</sup> PNG's score of 0.555 in the 2020 Human Development Index report placed the country very close to the low development category.<sup>12</sup> The score rises to 0.725 when adjusted for inequality. PNG's Gini coefficient was last measured as 41.9% in 2009.<sup>13</sup>

According to 2019 data, 56.6% of the population lives below the absolute poverty line.<sup>14</sup> The official unemployment figure was 46.0% in 2019. The poverty and employment figures vary significantly between regions. Poverty is especially widespread in rural areas, which has a negative impact on inclusiveness and social mobility. Although 85% of the workforce is employed in agriculture, the sector only accounts for 22% of the gross domestic output.<sup>15</sup> Mining and natural resources account for 43% of the country's GDP.<sup>16</sup>

## Socio-Cultural Foundations

Score: 3

*To what extent are the prevailing ethics, norms and values in society supportive to an effective national integrity system?*

Although some values and norms such as helping wantoks may encourage corruption, TIPNG surveys of citizens' understanding of corruption show that many Papua New Guineans view corruption and fraud negatively, especially if it does not benefit them or their wantok.<sup>17</sup> At the same time, the majority said they think that doing something "for the right reasons" makes it alright. Most respondents agreed that an act is still corrupt even if "everybody does it". Many thought that if something is legal, it is not corruption.

According to a 2018 survey of 136 public servants across four provinces in PNG, while 70% reported that their wantoks had asked for favours relating to their work, fewer than 30% of the public servants surveyed believed that it is acceptable for them to use their office to benefit their wantoks.<sup>18</sup> Overall, the survey data suggests that there is support among citizens and public servants for public sector integrity.

## Corruption Profile

Corruption is systemic and widespread at all levels of society in PNG today. On the 2020 Corruption Perceptions Index, PNG scored 27 on a scale of 0 (highly corrupt) to 100 (very clean). In the previous four years, PNG's score was 28-29 points, up from 25 points between 2015 and 2012 - the year when the index was first compiled based on the current methodology. Through TIPNG's Anti-Corruption HelpDesk, corruption by the Public Administration sector is the top sector for which complaints are received. This is also the most commonly reported type of corruption in the media, solicitation for payments, fraud, embezzlement and theft of public items. Public attitudes to such activities are at least in opposition, with social media littered with a myriad of complaints. But there is a quiet undercurrent that also sees this as the normal way of accessing public services.

In addition to petty bribery and opportunistic types of corruption, a TIPNG study found a number of prominent cases of risky state investments, state sanctioned land grabs, state abuse of assets and funds, and many instances of the public administration or leaders violating the rule of law and not being held to account.<sup>19</sup>

For example, successive PNG governments have in the last decade invested public funding in ventures that lacked clear guidelines on their ownership, had no guarantees of returns on investment, lack critical financial information and did not promote public engagement. Ultimately the lack of transparency and accountability in State-funded business ventures has often led to the premature closure of the projects and the loss of millions of Kina in public funds.

The Somare and the O'Neill governments during their tenures formulated controversial policies that created land leases that impinged on the rights of traditional landowners and legitimised land grabbing. This is problematic because lives of Papua New Guineans residing in rural communities revolve around land. It provides their daily sustenance, gives them their identities and guarantees the future of their children. Constitutionally-granted land rights of the Indigenous population are a critical feature of the law. Public confidence in the ability of government ministers and civil servants to protect State assets and financial resources and to use them for their intended purposes is at an all-time low. Institutions charged with oversight of State assets and financial resources are overwhelmed by the increasing number of cases that they have to deal with on an annual basis, their tasks further challenged by the lack of capacity and resources.

Many cases of corruption examined by TIPNG show a blatant disregard for the rule of law. A commission of inquiry chaired by three competent judges recommended the immediate prosecution of 35 people; an international fugitive was on the run from Indonesian authorities over his illegal receipt of AUD\$57 million; and police officers fired automatic weapons at harmless protesting members of the public and University of Papua New Guinea (UPNG) students.<sup>20</sup> Their ability to escape prosecution defies the odds and points to the impact that political patronage continues to have on democracy and the rule of law in PNG.

## Anti-Corruption Efforts

Papua New Guinea's National Constitution at the time of independence from Australia in 1975, had provisions for a Leadership Code and established the Office of the Ombudsman Commission. Historically, these have been the primary focus of national anti-corruption efforts. It should also be noted that PNG's Criminal Code has penalties for bribery, fraud and other offences related to corruption.

In 2007 PNG was the first country in the Pacific to ratify the United Nations Convention Against Corruption (UNCAC).<sup>21</sup> Following this, a National Anti-Corruption Strategy (NACS) for 2010-2030 was developed and launched in 2012, with its oversight co-chaired by the Department of Prime Minister & National Executive Council (PMNEC) and the Department of Justice and Attorney General (DJAG). NACS set out the following strategic priorities:<sup>22</sup>

- Strengthen and promote honest leadership
- Strengthen transparency and public exposure of corruption
- Strengthen accountability and oversight
- Strengthen compliance and enforcement
- Strengthen the Integrity of the public finance management system
- Strengthen and promote education and awareness
- Strengthen coordination and partnership
- Strengthen and maintain effective people management.

The National Anti-Corruption Strategic Task Force (NACSTF) was established by a decision of the National Executive Council (NEC) and comprises state agencies and non-state agencies within the NACS.<sup>23</sup> The NACSTF oversees the implementation of multi-year plans of action to meet NACS objectives. The NACSTF is responsible for Country Reports on UNCAC implementation in PNG and the last periodic review was conducted in 2012.

Along with the representatives of the state institutions identified by the law, civil society and private sector representatives are also involved in the NACSTF, however, meetings have been increasingly infrequent since one of the outcomes of the NACS, the establishment of Investigation Taskforce Sweep ("Taskforce Sweep") to investigate cases of corruption, was stymied in a public confrontation with the then Executive.<sup>24</sup> The NACS provides the policy framework for an ICAC, which was established by the ICAC law passed in November 2020.<sup>25</sup> Previously, when the Taskforce Sweep was disbanded, the NEC established the interim committee to be "responsible for the establishment of the ICAC".<sup>26</sup> The Interim ICAC which is an office of the NEC is not the independent constitutional office of the ICAC. However, in 2017, the NEC amended its 2014 Decision and tasked the Interim ICAC to investigate specific allegations of corruption. The Interim ICAC has also chaired meetings of the NACSTF.

The main tasks of the new ICAC will include determining the general policy for combating corruption, preparing PNG's NACS and NACPA, updating these documents regularly, and monitoring their implementation.

With technical assistance from the United Nations Development Program (UNDP), the Government reviewed the NACPA in 2018 in preparation for the development of the next NACPA (which is the current Plan of Action). In the review attended by members of the NACSTF, there were concerns on coordination and capacity, both compounded by the perceived lack of political will. These sentiments were echoed in 2020 when there was another meeting convened by the NACSTF co-chairs to workshop the current NACPA.

The National Anti-Corruption Plan of Action (2020-2025) was endorsed by NEC.<sup>27</sup> It follows NACS' strategic priorities, with corresponding activities and objectives. For each activity, the Action Plan identifies a fulfilment indicator, the agency responsible for implementation, a partner agency, implementation time frame, budget, and funding source. Implementing bodies however rarely prepare and publish regular monitoring and evaluation reports on the Action Plan's implementation.

According to recent developments, the national anti-corruption action plan is being slowly implemented with the passing of the ICAC and whistleblower legislation. However, during the development of the plan, the government did not commission studies to establish a baseline to measure progress, so it is difficult to assess. Furthermore, some indicators only focus on the implementation of activities, rather than their impact on the level of corruption.

Other government anti-corruption efforts include the following initiatives:

- Department of Finance Phones Against Corruption
- Anti-Money Laundering and Counter-Terrorism Financing (AML CTF) Coordinating Body
- Internal Revenue Commission (IRC) Anti-Corruption Hotline and Zero Tolerance Policy
- Lands Department Complaints Desk and online form
- Asia-Pacific Economic Cooperation (APEC) 2018 Commitments
- State Enterprises Holding Company, Kumul Consolidated Holdings Whistleblowing Policy
- PNG Extractive Industries Transparency Initiative (PNGEITI)
- PNG Open Government Partnership (OGP)
- Public Expenditure and Financial Accountability (PEFA)

## Pillar 1: Legislature

The Parliament is the supreme representative body of the country and one of the key actors of the anti-corruption system. The Constitution and other laws provide the Parliament with strong guarantees of independence from interference or overreach by the other arms of Government. However, there are informal external influences on the Parliament in practice, which undermines the legislature's independence and its ability to oversee the activities of the Executive branch.

The Parliament mostly operates in a transparent manner in that its proceedings are published in Hansard reports which are on the National Parliament website and library. However, its ability to meet its mandate to enable Papua New Guineans to democratically self-govern has deteriorated over time. In addition to the Parliament, there are legislative bodies and processes, e.g., consultation and drafting, that have also been undermined. For example, the quality of the whistleblower protection law is poor.

Parliament Overall Score: 2			
Dimension	Indicator	Law	Practice
Capacity: 3	Resources	5	4
	Independence	5	2
Governance: 2	Transparency	3	2
	Accountability	3	1
	Integrity	4	2
Role: 3	Executive oversight	2	
	Legal reform	3	
Law and Practice Overall Scores		4	2

Table 1: Legislature Scores

## Structure and Organisation

The Parliament of PNG exercises the legislative power, sets the direction of national policies and controls the government's activities, as called for by the Constitution.<sup>28</sup> The Parliament is a single chamber legislature (law-making body) consisting of 89 Members elected from Open electorates and 22 Governors elected from single-member Provincial electorates: the 20 provinces, the autonomous province of Bougainville, and the National Capital District. The total 111 Members are directly voted into office by citizens over 18 years of age through a Limited Preferential Voting System which was first used nationally in the 2007 election and was followed by a surge in payments to voters by candidates who sell their places not only to themselves but between each other.

The Governor-General invites the party or coalition with the most seats in Parliament to form a government and its leader becomes the Prime Minister, who appoints a cabinet from among the Members of Parliament (MPs).<sup>29</sup> In practice, no party has won a majority in Parliament, so coalitions have been formed through negotiation between parties. Each provincial member serves as governor of their province unless they take up a ministerial position, in which case an open member of the province becomes governor. The governor position may also extend to a LLG president where no MP is available.

## Resources (Law)

Score: 5

*To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructural resources to effectively carry out its duties?*

Financial resources are adequately provided for in the sense that under section 209 of the Constitution the Parliament has its own budget that is separate from the national appropriations budget. Section 209(2)(b) stipulates that separate appropriations for the service of a year in respect of; the services of the Parliament, general public services; and the services of the Judiciary. This basically means that monies allocated to the Parliament each year is guaranteed. From the funds budgeted to Parliament in an appropriation bill, the budget is allocated to 3 main areas; Personnel Emoluments, Goods and Services and Capital Investment.<sup>30</sup> This separate budget protects Parliament's ability to provide support to both the Opposition and the Government parliamentarians.

Human resources for Divisions and Parliamentary Staff Services are adequately captured in the annual Parliamentary budget. According to a representative from the Parliamentary Service, the Parliament Staff Services is a national service and is separate from the Public Service as they are catered for under the Constitution and the Parliamentary Service Act 1997. What this basically means is the appropriation bill which provides for money allocated to the Parliament includes funds budgeted for Parliament staff services separating them from what would be allocated to the public services. The Constitution under section 209 describes how money is allocated to the Parliament each year and ensures money is always set aside for it.

MPs get allowances for transport and other costs. In an interview with TIPNG, a representative from the Parliamentary Service mentioned that there is no internal allowances committee and all allowances for the MPs are contained in Salaries and Remuneration Commission Determinations which are made public. MPs are entitled to a number of sitting allowances as well as a constituency development fund of K10m<sup>31</sup> allocated by the Department of Finance and controlled by the Department of Treasury.

Overall, in comparison with other integrity institutions, the legislature is adequately funded and resourced.

## Resources (Practice)

Score: 4

*To what extent does the legislature have adequate resources to carry out its duties in practice?*

The Parliament has its own budget, administrative personnel and rent-free property so are better off than most other agencies. Parliamentary staff are able to provide regular (turn-around time of a month) records of Parliament Proceedings. TIPNG through its 2013 Open Parliament Project assisted with the creation of a Parliament website<sup>32</sup> which is regularly updated with information such as sitting dates, recently passed legislation, biographical information on MPs and composition of Parliamentary Committees.

According to an interview with senior parliamentary staff, due to lack of human resources, there is often a long delay on reviewing and editing legislation before it is tabled in Parliament and also after it has been enacted, and prior to the certification by the Speaker. For example, legislation that may refer to maps and Geographical Information System (GIS) data that requires cartographical skills. Parliament only has a limited number of cartographers and legal officers to ensure legislation is correct before and after enactment.

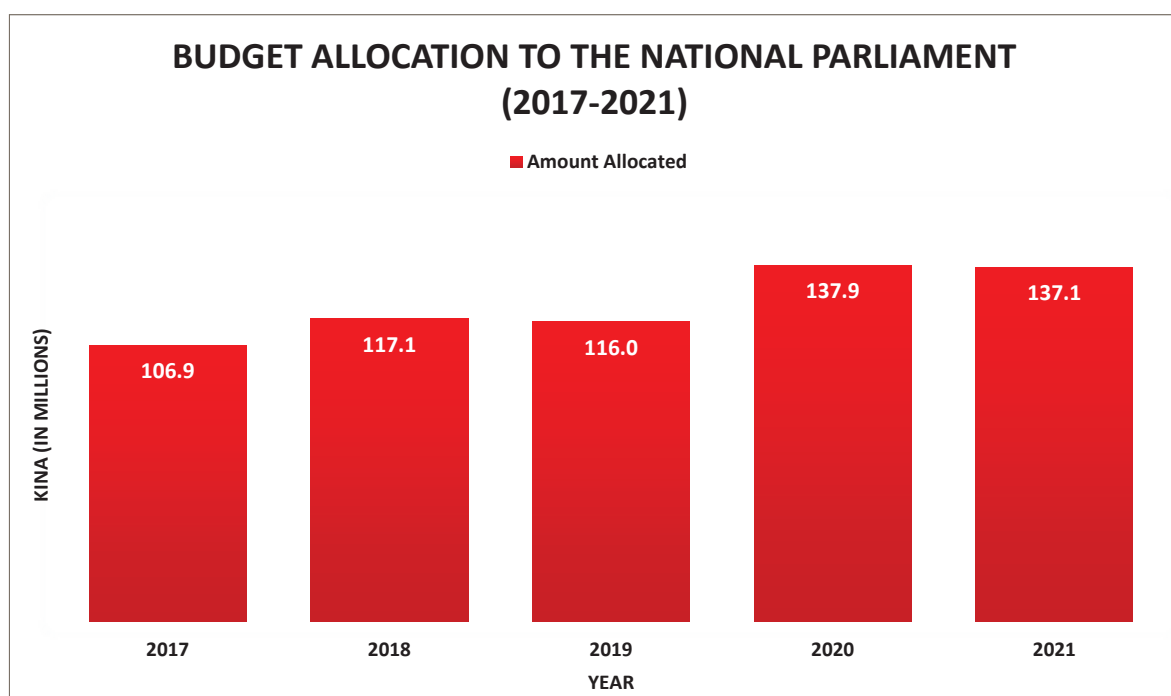
There is a lack of resourcing for Parliamentary Committees, with limited financing or administrative support for committees to assist with either investigations, public enquiries, reports or legislative deliberation.<sup>33</sup>



For instance there is a dearth of Private Members Bills as the committee rarely convenes and often is only perceived as the Vote-Of- No-Confidence Committee.<sup>34</sup> As such, the main stage for the ‘deliberation’ on bills (to the extent that deliberation takes place, as it is not uncommon for Parliamentary standing orders to be suspended, and for a bill to go through all three readings in a matter of minutes) is the floor of Parliament and not Parliamentary committees. On several occasions the National Budget has been introduced and passed on the same day.

There are additional agencies mandated to assist with the legislative process, e.g. with consultation and drafting, and are allocated funds through the national budget, however the primary entity within this pillar would be the National Parliament. The National Parliament financial resourcing in the last 5 years has been usually between K100m and K140m.

As shown in the figure below, funds allocated to the National Parliament between 2017-2021 shows a consistent allocation of funds through the National Parliament Appropriation Bills.



Graph 4: Budget Allocation to the National Parliament (2017-2021)

## Independence (Law)

Score: 5

*To what extent is the legislature independent and free from subordination to external actors by law?*

According to the Constitution, the PNG legislature is fully independent and free from subordination to external actors. This is the case even with regard to independence from the mechanisms of political parties, as decided by the Supreme Court.<sup>35</sup> Parliamentary privilege enables MPs to conduct their parliamentary work without being subject to external control, as detailed under Section 3 of the Parliamentary Powers and Privileges Act, 1964. Parliamentary proceedings are protected by absolute privilege, which means they cannot be questioned in a court of law. Anything said in Parliament cannot be subject to an action for defamation. This applies to MPs as well as committees.

The Constitution under section 99 specifically sets out that the three arms of government (Judiciary, Legislature and Executive) have separate powers and each branch should not interfere with the functions of the others. The powers and functions of National Parliament are set out in the Constitution as well as the Parliamentary Powers and Privileges Act 1996, the Parliamentary Service Act, the Parliamentary Committees Act 1994 and the Organic Law on National and Local-Level-Elections

Through the judicial review process, decisions of the Parliament can be challenged in the Supreme Court and may be overturned if they are determined to be unconstitutional or illegal. As a result, the Judiciary ultimately decides challenges in court over the decisions of the Parliament. Additionally, the Executive has the power to veto laws passed by Parliament, as a part of the system of balance of power. Further, the government of Bougainville is consulted over national legislation affecting the region.

## Independence (Practice)

Score: 2

*To what extent is the legislature free from subordination to external actors in practice?*

There is a pattern of overreach by the Executive on the deliberative functions of the Legislature. The government uses its numeric superiority to appoint the Speaker (who is often perceived to be on side),<sup>36</sup> appoints pro-government Parliamentary committees and stifles Parliamentary deliberation by suspending Parliamentary standing orders (in most Commonwealth jurisdictions, this is an extreme measure but in PNG it is used in almost every sitting of Parliament).

The core function of the legislature is to legislate, but even this function has been centralised within the Executive. The process for legislative review, consultation, and amendments should be functions of Parliament but in practice it is largely done by the Executive through ministries and state agencies. The process has become so fragmented that individuals with vested interests can push through a legislative agenda outside of Parliament and through the Executive for personal gain. A further concern is that the Executive does not feel the need to consult on legislation that weakens governance, e.g., proposed amendments to the National Procurement Act 2018 to increase from K30m to K50m the threshold where tenders should be reserved for 50% nationally owned companies; this instruction came from the Prime Minister's own agenda and neither Parliament nor the National Procurement Commission have established an objective basis for the increase.<sup>37</sup>

Perhaps the most egregious recent instance of subordination is the National Pandemic Act 2020. Under the Constitution, the Declaration of a National Emergency lies with the National Parliament and it cannot be more than two months, as Parliament has to reconvene months to review reports (including audited reports) before extending the declared emergency.<sup>38</sup> These accountability mechanisms vested with Parliament were transferred to the Executive under the National Pandemic Act with the Office of the Emergency Controller (appointed by the Government) having the power to declare an emergency for an indefinite period with no to minimal Parliamentary oversight. TIPNG raised concerns about this.<sup>39</sup>

The role of consultants who have usurped the function of the state legislative drafters is another pressing area of concern. In an interview with TIPNG, a drafter gave the following example:

Actually, I was the one who drafted that law. So the consultant was sitting right here. And he told me, he said that was around nine o'clock in the morning <redacted>. He said NEC meeting is at 10 o'clock. Parliament is 2pm. So you have to, I'll wait for you, you just, he said I already did everything for you. You just format it and put it in the, in the format that you use. And then I bring it up to NEC at 10 o'clock. And from there they will deliberate on it. They'll approve it. Then we'll run with it to the Parliament. So even

state solicitors, they have to check whether the law is good or anything that is contrary to the Constitution or overstepping other laws. They have to be given time too to check, but all of us who are in the legislative process, we didn't give...we weren't given that time because they bulldozed it. And they knew that we would ask them questions and they end up the consultant from, from... he is from Germany, he's a German man. And I think Australian citizen, and he was a consultant with <redacted> and he said oh, I just talked with <redacted>, and <redacted> said, it's okay. We just had a meeting and you can go, we can go ahead to pass it this afternoon. So that's what happened. So we ended up with that law and I told him this, this doesn't look right...

Through the judicial review process, the Judiciary can direct the activities of parliament. The Judiciary has on occasions checked the Parliament's actions through court orders. The power of judicial review is not unwelcomed by MPs who in 2020 went to the courts to interpret Parliamentary standing orders<sup>40</sup> which are wholly an instrument of the legislature; the Supreme Court had demurred in an earlier similar case on judicial review of standing orders.<sup>41</sup>

## Transparency (Law)

Score: 3

*To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?*

According to the Parliament's standing orders, all proceedings of the Parliament are recorded by the Clerk, and these records constitute the Minutes of Proceedings of the Parliament, which are reviewed and approved by the Speaker and made public in the Hansard reports with no particular time frame specified. There are no legal requirements for prompt publication of Hansard are required. Legislation or revised standing orders are required so that the Hansard could be published in a draft format, rather than waiting for confirmation from Parliamentarians.

Parliament also has a long-standing Broadcasting of Parliamentary Proceedings Committee which is required to convene and approve sessions of Parliament to be broadcast on radio and television.<sup>42</sup> The full sitting of Parliament should be broadcast, not just the Period of Questions Without Notice. The pertinent laws and regulations need to be updated to include broadcast on the internet.

## Transparency (Practice)

Score: 2

*To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?*

Parliament has a Hansard division which puts out minutes of Parliament's deliberations on their website.<sup>43</sup> The website was a result of TIPNG's Open Parliament Project. This Project included an annual performance report (produced only from 2013-2015) and a free SMS service which people in PNG could text either the name of their MP or their electorate to receive their MPs contact details, and whether they had acquitted their last district support grant.

While there were some strides in the 9th Parliament, there has not been much progress on accessing parliamentary information e.g. the Parliamentary Performance reports have ceased. The updating of the website is slow and inconsistent; after the 2017 election it took some time to update with the new Parliament information. The Hansard services are slow and it takes time to upload certified acts of Parliament (which are in formats that are not text scannable).

The agenda for Parliamentary sessions, for example the Parliament Notice paper, are often available on the morning of the Parliament session, however this is not consistent. The reports tabled in Parliament are not archived and available. Parliamentary committee meetings, if they are convened, are not transcribed. The televised sessions of Parliament are only allowed for the Questions Without Notice, but not the proceedings where the Parliament legislates - this is unnecessary gatekeeping of Parliamentary information. Journalists that have been classified as anti-government have been reportedly turned away from Parliament by government officers.<sup>44</sup>

There are public galleries in Parliament and a section for media personnel, which are physical affordances for transparency's sake.

## Accountability (Law)

Score: 3

*To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?*

Comprehensive and clear provisions for Parliament to account for its actions are lacking. There are accountability provisions for MPs (and senior Parliamentary staff) to report their income to the Ombudsman Commission and to acquit funds that were given to their District.<sup>45</sup> Parliament is accountable to the Judiciary through the process of judicial review. MPs are ultimately accountable to the electorate, with constitutional requirements for an election at a regular interval.

## Accountability (Practice)

Score: 1

*To what extent do the legislature and its members report on and answer for their actions in practice?*

There is a Parliamentary Privileges Committee which enquires into and reports on complaints of breach of privilege referred to it by the Speaker or by the Parliament.<sup>46</sup> This committee is often perceived to be politically motivated.<sup>47</sup> There is rarely any accountability for MPs on what is said or committed to on the floor of Parliament, as mechanisms such as a strong Parliamentary system, antagonistic media or even an effective election are not in place. Parliamentary staff who jeopardise the integrity of the legislature<sup>48</sup> are rarely punished.<sup>49</sup>

There are multiple levels of accountability for the legislature. The main means of accountability is to their constituents, through National and Provincial elections. The secondary means of accountability is through constituency meetings, where MPs are supposed to seek their electorate's views on legislation before consideration. This can include the circulation of white papers once it has been tabled in Parliament. MPs should also be accountable to their political parties during Parliament and lastly, they may need to be accountable to other arms of government in passing sound and constitutional legislation.

Legislators in PNG have failed to be accountable across all these areas, there is a fundamental disconnect between elected representatives and the people that have elected them to legislate. Even in elections there has been significant turnover of the legislative body.

## Integrity (Law)

Score: 4

*To what extent are there mechanisms in place to ensure the integrity of members of the legislature?*

There are no tests of integrity to stand to be a member of Parliament. The only criteria in the Organic Law on National and Local Government Elections (OLNLGE) is S.85 (b) where the candidate must set out the qualifications by virtue of which he or she is qualified for nomination.<sup>50</sup> The Organic Law on the Integrity of Political Parties and Candidates Commission (OLIPPAC) has provisions for political party integrity.<sup>51</sup> There is a Leadership Code that is overseen by the Ombudsman Commission.<sup>52</sup> The OLIPPAC is in effect except for those parts which the Supreme Court decided were unconstitutional.

## Integrity (Practice)

Score: 1

*To what extent is the integrity of legislators ensured in practice?*

The leadership code is perceived by experts interviewed by TIPNG to be rarely enforced by the Ombudsman Commission, and there are no requirements for public disclosures to ensure integrity, e.g., a public register of interests, or a public calendar of meetings held in the Parliamentary office. There have been myriad allegations of Members of Parliament self-enriching from the public purse<sup>53</sup> with no concern for the integrity of the office - impunity for the corrupt<sup>54</sup> is prevalent in the legislature.

Members of Parliament submit annual declarations to the Ombudsman Commission, and they acquit funds to the Integrity of Political Parties and Candidates Commission (IPPC).<sup>55</sup> After the last election all but nine MPs acquitted their funds within the allocated time, and these were completed after an extension and individual follow ups.

The Organic Law on the Integrity of Political Parties and Candidates is not in effect due to a Supreme Court ruling, and as such, MPs do not have any obligation to keep their campaign promises or party positions. The disregard for integrity is particularly rife during Votes of No Confidence.

## Role: Executive Oversight (Law and Practice)

Score:2

*To what extent does the legislature provide effective oversight of the Executive?*

The law provides the Parliament with tools for exercising oversight of the Executive branch. Parliamentary Committees are one of the main instruments of Parliamentary oversight. Committees can investigate matters by requesting for witnesses to present. Committees can then table reports. However, Parliamentary oversight is often ineffective in practice, primarily due to the Parliament's insufficient independence from the Executive.

The Prime Minister has an obligation to present at least once a year an oral report to the Parliament, along with the written one. Political debates are held at the end of the discussion of the report. The practice of interpellation does not occur in the Parliament. A vote of no confidence in the government can be initiated by not less than 10% of the total number of MPs, this is at least 12 members seeing as there are 111 seats in Parliament.<sup>56</sup>

In practice, there is little Parliamentary oversight of the Executive beyond a few questions to capture the news cycle during the sessions of Parliament that are broadcast. The Executive has immense influence over the functions and outcomes of the Parliament. All secondary legislation such as regulations created by the National Executive Council are supposed to be tabled in Parliament for scrutiny as per the Parliamentary standing orders but this is not done.

## **Role: Legal Reforms (Law and Practice)**

Score: 3

*To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?*

The political cycles result in waxing and waning support towards preventing corruption and strengthening the integrity, transparency, and accountability of the governance system. All new governments speak the language of anti-corruption as it is a populist concern, however this rarely extends for the full Parliament length of five years. Once a government is entrenched, anti-corruption becomes a rallying point for the Opposition, until there is a transition and the cycle repeats.

At the time of writing, there is no clear funding protection for anti-corruption agency budgets and often there is a large variance between budget and actual spending.<sup>57</sup> There does not appear to be any budgetary incentive for anti-corruption efforts, but then again, the Parliament doesn't really debate the National Budget. Often legal reforms are personality driven and are done early in the first year or two of an Administration.

## Pillar 2: Executive

PNG's Executive branch is led by the Prime Minister who is head of government.<sup>58</sup> As an independent Commonwealth realm, the monarch is ceremonial head of state. A governor general is nominated by the PNG Parliament to serve as the royal representative and acts on the advice of the prime minister and the cabinet.<sup>59</sup>

The Executive branch has enough resources for the effective performance of its role. The legislative framework contains sufficient provisions concerning the government's transparency and accountability. However, these provisions are applied inconsistently in practice and there are significant problems in terms of the government's independence and the integrity of its members. In recent years, the government has lacked the political will to initiate certain anti-corruption policies or activities, at present the push for change comes from external actors other than the government. Furthermore, the government lacks the political will to mobilise stakeholders in terms of reaching out to members of civil society and the private sector to seek their views on changes that are being pushed for and envisioned.<sup>60</sup>

Executive Branch Overall Score: 3			
Dimension	Indicator	Law	Practice
Capacity: 5	Resources	5	5
	Independence	5	5
Governance: 2	Transparency	1	2
	Accountability	5	2
	Integrity	3	2
Role: 3	Public sector management	3	
	Legal system	3	
Law and practice overall scores		4	3

Table 2: Executive Scores

## Structure and Organisation

The structure and powers of the Executive branch in PNG are defined by the Constitution and the Prime Minister and National Executive Council (PMNEC) Act 2002. Currently, the government consists of the prime minister and 32 ministers.<sup>61</sup> After Parliamentary elections, the Governor General invites a candidate for the post of prime minister presented by a party or a coalition that won the elections to form Government; after that, the prime ministerial candidate selects candidates for ministers' posts while the Parliament votes to approve the government composition and its programme.

## Resources (Law)

Score: 5

*To what extent does the legal framework provide for adequate resources for the Executive to effectively carry out its duties?*

The Executive is funded like other agencies through the appropriations bill tabled in the November session of Parliament. The Department of Prime Minister & NEC has central coordinating functions and is funded in line with its annual plans. For independence, each of the components of the Executive may have their own budget lines separate from the Department's budget.

## Resources (Practice)

Score: 5

*To what extent does the Executive have adequate resources to effectively carry out its duties?*

The Executive has different components ranging from the Department of Prime Minister & NEC (with its Divisions) to smaller offices like the APEC Secretariat and Commissions of Inquiry Office. The Department is well funded and has its own office space, some of the smaller agencies housed within the department may not have enough to carry out their functions, e.g., Office of the Legislative Council. The interviewee from Human Resources (HR) we met said they are the central agency so they are often well resourced. They are often the focal point for activities that require coordination of agencies e.g., Bougainville Peace Agreement, United Nations Convention Against Corruption (UNCAC) and APEC. The Executive due to its central coordinating functions would appear to be adequately resourced in Practice. However, in conversation with officers from the Department, there are still vacancies in the human resources structure that have not been filled; this may also be intentional as a form of ensuring control of information and access amongst rank and file officers.

There are legislative functions within the Executive that appear to be under resourced, e.g. the Office of the Legislative Counsel (OFLC) which works with the Central Agencies Coordinating Committee (CACC) to ensure drafting instructions from cabinet ministers are translated into drafting instructions and Bills for tabling in Parliament. The officers from the OFLC indicated that they are under resourced in terms of staffing, this has led to a proliferation of State Agencies engaging consultants to perform the functions of the OFLC (and sister agencies like the Constitutional and Law Reform Commission) to expedite the process of legislative drafting before it is even presented to the OFLC.

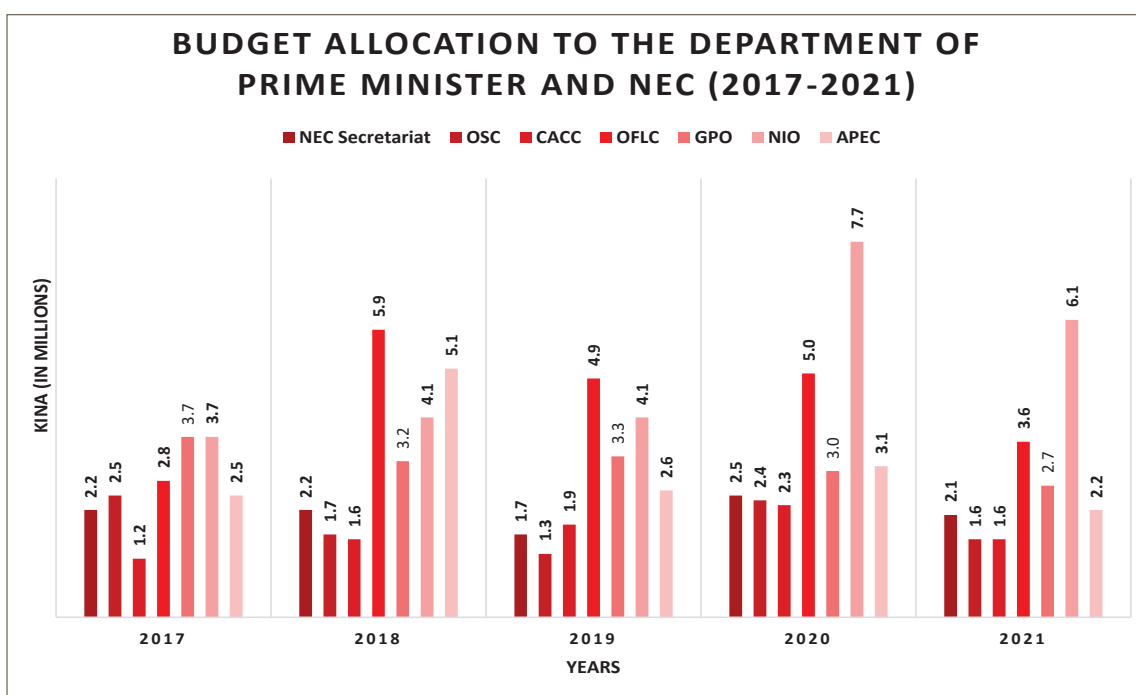
This was the case for instance with the Pandemic Act 2020 recently, which is constitutionally unsound, but perhaps most notably with the Public Money Management Regularisation (PMMR) Act 2017 which was ruled unconstitutional<sup>62</sup>- but was politically useful for the Government for budgetary purposes. The OFLC in the National Integrity Systems Assessment (NISA) interview indicated that they knew the PMMR (and indeed the Pandemic Act) were unconstitutional, but that both Acts were done by consultants engaged by agencies (Department of health and Department of Treasury respectively) and then railroaded through cabinet with OFLC effectively forced to review and authorise.

The under-resourcing is also an issue for the Office of Commissions of Inquiry (COI), which at the behest of the Executive can commence public investigations. Politically sensitive issues that come before the COI Office are often underfunded.<sup>63</sup> On the other side, politically sensitive issues that are well funded like the APEC 2018 Series of Meetings<sup>64</sup> often have a lack of resourcing for accountability.<sup>65</sup>

Under what is called the Department of the Prime Minister and the National Executive Council there exist multiple divisions which carry out the different functions of the department as a whole. According to the Department's website there are eight Executive offices: NEC Secretariat, Office of Security Coordination and Assessment (OSC), CACC, Office of Legislative Council (OLC), Government Printing Office (GPO), National Intelligence Office (NIO), APEC Secretariat and COI. Each of these offices are allocated funding from the National Budget every year. Funding for these offices between the years 2017-2021 have remained consistent however they are still greatly underfunded and under-resourced.

While the Executive is well resourced, its resources could be better distributed across its components. The figure below depicts funding allocated to its offices between the years 2017 and 2020 (and 2021 estimates).





Graph 5: Budget Allocation to the Executive (2017-2021)

## Independence (Law)

Score: 5

*To what extent is the Executive independent by law?*

The Executive, as in the Department, is Independent in law as it has its own legislation for the Department, as well as distinct legislation for the Cabinet and the smaller authorities it coordinates.<sup>66</sup> There were recently amendments in 2020 to the structure of the Department as the Chief Secretary was deemed too powerful by the Prime Minister.<sup>67</sup>

## Independence (Practice)

Score: 5

*To what extent is the Executive independent in practice?*

The Executive is appointed from the Parliament after an election (or a vote of no confidence). The Prime Minister has the prerogative to appoint cabinet members and issue ministerial portfolios.<sup>68</sup> So the threats to Independence would come from the electoral, parliamentary and administrative processes. In 2011 there were issues when Peter O'Neill became prime minister as Sir Michael Somare was hospitalised in Singapore, which led to a duplication of Prime Ministers,<sup>69</sup> cabinets, governor generals and military commanders. From the point of view of the Prime Minister, the main points of challenge to the independence of the Executive are:

The Judiciary, through court cases and judicial challenges such as the one recently with the appointment of the Police Commissioner,<sup>70</sup> where candidates that were not selected for the office challenged the Executive appointment process. The Executive was quick to reassert its authority by seeking to change regulations that it had been ruled to violate.<sup>71</sup> The Executive also exerts influence on the judicial appointments

process.<sup>72</sup> The legislature, specifically through the office of the Speaker. The Executive safeguards itself by ensuring the Speaker is politically either on side/neutral<sup>73</sup> or allegedly through political favours.<sup>74</sup> This is doubly important as in the absence of the Governor General, the Speaker of Parliament is the acting governor general, as per the Constitution. Aside from the political component of the legislature, the Executive has been alleged to exert influence over the administration of the legislature,<sup>75</sup> by making strategic appointments.<sup>76</sup>

The Governor General has a significant constitutional power that can be used to interfere with the Executive. This 'risk' is controlled by having a purely political appointment from the floor of Parliament. PNG has not had a constitutional crisis (like Australia)<sup>77</sup> where the Executive and the head of state disagree.

Ombudsman Commission, through its mandate and the Judiciary can oppose the decisions of the Executive,<sup>78</sup> on issues of the Leadership Code or the Constitution. This applies for other statutory bodies, e.g., the Police.<sup>79</sup>

The Public Service Commission is a peculiar example wherein a statutory body won a court case that re-asserted its primacy over the Executive,<sup>80</sup> in regards to screening applications for constitutional offices. The Military has historically been an issue,<sup>81</sup> but has been less of an issue in recent years due to underfunding and HR issues.<sup>82</sup>

The Executive has engaged with these various checks on its powers primarily through appointments and funding through the National Budget.

## Transparency (Law)

Score: 1

*To what extent are there regulations in place to ensure transparency in relevant activities of the Executive?*

There are no direct transparency regulations on the Executive and it is the least transparent of the three arms of government (the Judiciary has rulings and the Parliament has Hansard transcripts which are made public). There are provisions in the Constitution (section 258) that secondary legislation, e.g., regulations supporting an Act, that are created in Cabinet need to be tabled in Parliament for consideration.

PNG does not have a Freedom of Information (FOI) Law.<sup>83</sup> The Constitution which has right to information in Section 51, (1)(b) specifically exempts "records of meetings and decisions of the National Executive Council and of such Executive bodies and elected governmental authorities as are prescribed by Organic Law or Act of the Parliament."<sup>84</sup> However, Executive offices communicate with other government agencies through circulars, and often NEC Decisions are attached.

## Transparency (Practice)

Score: 2

*To what extent is there transparency in relevant activities of the Executive in practice?*

There is no proactive disclosure of information from the Executive. While they have the technical capabilities to disclose information on the website<sup>85</sup> this is not done and there is no public archive of NEC Decisions even though they impact citizens greatly. Each arm of the Executive has its own approach to information dissemination, and they are not coordinated, e.g., the Commissions of Inquiry office had its own webpage that is not maintained, and some inquiries even have their own URL.<sup>86</sup> There is a culture of secrecy that permeates PNG public institutions, including within the Department of Prime Minister.

This lack of transparency has been worsened recently with enacted amendments to the Department of Prime Minister Bill that limit public access to NEC Decisions only to those who are directly impacted by the cabinet Decision. In an interview, representatives from the Department indicated:

Yes and now that the latest amendments that were done to the PMNEC makes it even difficult now to circulate. Before we email them but now you cannot do that. They put a provision that only those who are listed will receive that but I guess it can be challenged. You can still make a request. But the request is subject to their discretion. I guess if we have a Civil Society or someone who can challenge the constitutionality of it because we have the freedom of information, then the Court will have to decide whether it's subject to the Courts.

However, despite there being no transparency requirements in law, the Executive does communicate to the public through press statements, press conferences, social media posts and publication of reports and other information.

## Accountability (Law)

Score: 5

*To what extent are there provisions in place to ensure that members of the Executive have to report and be answerable for their actions?*

There are requirements in law, e.g., the constitutional requirement for secondary legislation, for members of the Executive to report and answer questions. Specific requirements on declarations of emergency that also have to go to the legislature for review every two months. The leadership code applies to the Executive and its officers that meet the requirements under the code.<sup>87</sup> The Executive is accountable to the Judiciary and mandated agencies with which it has to comply (e.g., the Auditor General's Office).

In some instances, the Executive is bound by bilateral and multilateral agreements which it entered on behalf of the state that it has to periodically report on. This may also be true for commercial contractual engagements.

## Accountability (Practice)

Score: 2

*To what extent is there effective oversight of Executive activities in practice?*

There is widespread impunity in PNG and the Executive perpetuates and benefits from this in many instances. For example, the annual Audit Reports are not publicly available until they have been tabled in Parliament by the Executive; the last full audited report was in 2015.<sup>88</sup> The Executive even uses oversight to escape oversight, such as ignoring a full report by the Ombudsman Commission<sup>89</sup> on the Union Bank of Switzerland scandal and doing a duplicate commission of inquiry, which civil society organisations like TIPNG opposed.<sup>90</sup>

## Integrity (Law)

Score: 5

*To what extent are there mechanisms in place to ensure the integrity of members of the Executive?*

It is unclear if the Executive applies the requirements that are given by the leadership code, such as disclosure of interest, and in its conduct at cabinet meetings, but it is on the books, and Section 27 of leadership code requires high standards of integrity.<sup>91</sup>

## Integrity (Practice)

Score: 1

*To what extent is the integrity of members of the Executive ensured in practice?*

There have been multiple allegations of Ministers pushing for questionable NEC decisions, over<sup>92</sup> and over again.<sup>93</sup> There are only a select few members of cabinet, that have been an MP for multiple terms of Parliament, and do not have any allegations against their conduct in office. The Executive in recent history has not penalised<sup>94</sup> any Ministers for bringing their office into disrepute.<sup>95</sup>

## Role: Public Sector Management (Law and Practice)

Score: 3

*To what extent is the Executive committed to and engaged in developing a well-governed public sector?*

The government through the National Executive Council has signed onto international commitments for public sector governance reform like the Open Government Partnership (OGP) and the Extractive Industries Transparency Initiative (EITI). However, since 2019, the pace for implementation has stagnated considerably. Beyond the whistleblower and ICAC legislation, there has not been high level political support of governance reform in the public sector.

## Role: Legal System (Law and Practice)

Score: 3

*To what extent does the Executive prioritise public accountability and the fight against corruption as a concern in the country?*

The Department of Prime Minister is responsible for the implementation of UNCAC in PNG through the NACS and the National Anti-Corruption Strategy Task Force (NACSTF) which it co-chairs with the Department of Justice. There have been inconsistent meetings of the NACSTF only when required as part of a wider process, e.g. when development partners request for plans on anti-corruption.<sup>96</sup> This may change under the current National Anti-Corruption Plan of Action (NACPA) 2020-2025.

## Pillar 3: Judiciary

The Judiciary is a well-established pillar of the national integrity system and is responsible for interpreting and applying existing laws to the cases that come before it. The legal framework governing the Judiciary's operations contains proper provisions to ensure its independence, transparency and integrity. These goals have been generally achieved in practice, although the Judiciary is not immune to the pressures of the centralised powers of the Executive, and its erosive effects.

Judiciary Overall Score: 4			
Dimension	Indicator	Law	Practice
Capacity: 5	Resources	4	4
	Independence	5	5
Governance: 5	Transparency	5	4
	Accountability	5	5
	Integrity	5	4
Role: 5	Executive oversight	5	
Law and practice overall scores		5	4

Table 3: Judiciary Scores

### Structure and Organisation

The national judicial system of PNG is established under section 155 of the Constitution. The national judicial system consists of the Supreme Court, and national court and inferior courts. The Supreme Court of PNG is the highest court in the country and is both the final court of appeal and the constitutional court.<sup>97</sup> It has the power to review all judicial acts and has the original jurisdiction over the interpretation of constitutional provisions.

The National Court is the second superior court in the country and has original jurisdiction in the most serious civil and criminal cases. It deals with matters on monetary amounts of above K10,000. It also has the power to enforce the Constitution. Appeals from the district court are heard by the National Court and appeals from the National Court are heard by the Supreme Court.

The District Court is the first court under the inferior courts. It has territorial jurisdictions, limited only to the district it is in. The District Court has the power to try summary offenses and some indictable offenses. In an indictable offense, the District Court only does committal proceedings, and if there is enough evidence, the case is referred to the National Court.

The lower courts also include village courts which are magistrates' courts dealing with certain customary matters. Furthermore, there are special courts that handle family law, customary land disputes and civil cases relating to the mining sector. In addition, there are juvenile courts, military courts, taxation courts, land courts, traffic courts, committal courts and grade five courts.

## Resources (Law)

Score: 4

*To what extent are there laws seeking to ensure appropriate tenure policies, salaries and working conditions of the Judiciary?*

Under the Organic Law on the Terms and Conditions of Employment of Judges 1998 section 2 states that a Judge of the National Court shall be appointed for 10-year renewable terms if they are citizens. Non-citizen judges are initially appointed for 3-year renewable terms and they can serve until age 70.<sup>98</sup> The Chief Justice is appointed by the NEC and the Judges are appointed by the JLSC.<sup>99</sup> Lifetime appointments to the Supreme Court are presently lacking in legislation.

## Resources (Practice)

Score: 4

*To what extent does the Judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?*

Under the Constitution, the Judiciary has a separate appropriations bill that secures its budget. In recent years the Judiciary appears to have adequate resourcing for instance, a new building has been constructed in Waigani to provide better court reporting services and a new building has also been constructed to accommodate the Corporate Services Division of the Judiciary, saving large outlays for rent. The PNG-Australia Law and Justice Partnership has provided funding for this infrastructure.<sup>100</sup>

The PNG Judiciary has also been sufficiently resourced to the point where it can play a regional role<sup>101</sup> and explore digital technologies.<sup>102</sup>

In terms of funding allocated to the Judiciary under the national budget, budget papers between the years 2017-2021 show that the Judiciary is normally allocated totals between the amounts of K157m - K270m. These amounts show that the Judiciary is given a great deal of attention by the government in terms of providing sufficient funding.

Although there are 43 judges on the Supreme Court (including three seats that have only recently become vacant), there have been proposals to increase this number to 80 to have an adequate number of judges to handle the caseload. At the village court level, according to a TIPNG interview with a public official, there are 18,400 village court magistrates and more than 2,600 land mediators.

However, in the court system overall, there are still complaints<sup>103</sup> about the backlog of cases awaiting trial and sentencing. These backlogs and bottlenecks have led to issues of bribery<sup>104</sup> given the long delays to access justice particularly in the lower courts. This was further supported by remarks from the Chief Justice in a public dialogue, where he ascribed it to a need for a better case management system. TIPNG has received complaints through the Anti-Corruption Help Desk in this regard.<sup>105</sup>

## Independence (Law)

Score: 5

*To what extent is the Judiciary independent by law?*

The Judiciary is independent by law. The Chief Justice of the Supreme Court is appointed by the governor general upon advice of the National Executive Council after consultation with the National Justice Administration minister.<sup>106</sup> The deputy chief justice and other justices are appointed by the Judicial and Legal Services Commission (JLSC), a 5-member body that includes the Supreme Court chief and deputy chief justices, the chief ombudsman, and a member of the National Parliament.<sup>107</sup>

The JLSC is also responsible for the disciplining of the Judiciary. As Constitutional office holders, judges are subject to the leadership code as well as the code of conduct for magistrates in the magistrates manual which can be obtained online.<sup>108</sup>

## Independence (Practice)

Score: 5

*To what extent does the Judiciary operate without interference from the government or other actors?*

The courts are able to make rulings that are disadvantageous to the Government.<sup>109</sup> This is notable because there is a dearth of opposition to the Government in PNG. Public perception considers that the Parliament is ineffective,<sup>110</sup> the Police are subdued,<sup>111</sup> the Ombudsman Commission is lacking in the mandate to prosecute,<sup>112</sup> prosecutors are sloppy,<sup>113</sup> the Auditor General is tardy with reports, media outlets are not antagonistic and the churches are compliant. There is a perception that the Courts are the only ones who call it, as they see it.

In 2012 through the Judiciary Conduct Bill,<sup>114</sup> the Government sought to interfere with the constitutional independence of the Judiciary. TIPNG and members<sup>115</sup> of the Community Coalition against Corruption (CCAC) opposed this Bill.<sup>116</sup> The Bill was enacted as a law in 2012.<sup>117</sup> The Government also passed the Supreme Court Amendment Bill 2012<sup>118</sup> to further control the Judiciary.<sup>119</sup>

## Transparency (Law)

Score: 5

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Judiciary?*

The Supreme Court and National Court are courts of record and must therefore keep a record of the proceedings done before them and give a written decision on every proceeding. The Court Reporting Service was established in 1995 under the National Court Rules. The Court maintains its own Court Reporting Service and the recording of Court sessions commenced in 1995 using the Analog system and in 2012 was replaced with a Digital system. The Court Reporting Service is mandated to provide an objective, verbatim transcript of proceedings.

## Transparency (Practice)

Score: 4

*To what extent does the public have access to judicial information and activities in practice?*

In terms of access to information, for the three arms of government, the Judiciary is slightly ahead of Parliament; both of which are far beyond the Executive. Information on cases, decisions and supporting legal information are available online and in court libraries.

There are publicly available case listings for each court<sup>120</sup> on the Judiciary website. There are also publicly available case rulings on the Pacific Islands Legal Information Institute (PacLII) Website<sup>121</sup> for the Supreme Court from 1930 up to 2021 and the National Court up to 2018.

Hard copies of court decisions are available in the court libraries, in Port Moresby and in library branches. All the Branch Libraries have a basic collection of primary Papua New Guinean legal information as well as other titles. Registered members of the Library can use these libraries. Materials can only be used in the library but cannot be loaned out.

The following resources are available in all the branch library collections: Papua New Guinea Law Reports (last report 1998); National and Supreme Court Judgments; Revised Laws of Papua New Guinea; Annual Acts of Parliament; Papua New Guinea legal textbooks; Access to Laws CD, which can also be accessed via PacLII; and legal textbooks arranged by Moy's Classification.

The National Court Registry provides and facilitates interpreting services to all National and Supreme Court Sittings throughout Papua New Guinea, without cost. The court registrar and assistant registrars also provide information to individuals who have questions or seek information about the courts and the judicial process.

## Accountability (Law)

Score: 5

*To what extent are there provisions in place to ensure that the Judiciary has to report and be answerable for its actions?*

Both individual judges and the Judiciary as a branch of the state are subject to forms of accountability which are compatible with their individual and institutional independence. Under section 187 of the Constitution Judges shall, at least once in each period of 12 months (August every year) give to the Head of State, for presentation to the Parliament, a report on the work of the National Judicial System, with such recommendations as to improvement as they think proper.<sup>122</sup> This report is classified under the National Court Act 1975 as an Annual Report.<sup>123</sup>

A system of appeals also is in place to provide accountability of judicial decisions. The Supreme Court is both the Constitutional Court and the final court of appeal; its decisions cannot be appealed; however, its judgements are made public and are open to public scrutiny. The Supreme Court hears appeals on National Court decisions. The National Court has appellate jurisdiction on decisions of magistrates courts (District Courts) which have been appealed against.

## Accountability ( Practice)

Score: 5

*To what extent do members of the Judiciary have to report and be answerable for their actions in practice?*

The Judiciary reports information about court process, delays, workloads, training, appeals, complaints, lack of integrity and misconduct and equality issues to Parliament. There are several instances where senior members of the Judiciary have displayed concerning behaviour,<sup>124</sup> or outright impunity.<sup>125</sup> These scandals die down quickly and are not pursued by the media.

Members of the Judiciary practice internal accountability to more senior judges or courts by way of the system of appeals against judicial decisions, and through procedures for dealing with complaints about the conduct of judges.

There has been academic discourse and examination on the establishment when necessary of leadership tribunals into the Judiciary by the Public Prosecutor.<sup>126</sup>

## Integrity (Law)

Score: 5

*To what extent are there mechanisms in place to ensure the integrity of members of the Judiciary?*



Under the Magistrates Manual there is a Code of Conduct for Magistrates with five key rules:<sup>127</sup>

Rule 1: A Magistrate shall uphold the integrity and independence of the Judiciary.

Rule 2: A Magistrate shall avoid impropriety and the appearance of impropriety in all the Magistrates activities.

Rule 3: A Magistrate shall perform the duties of a judicial officer impartially and diligently.

Rule 4: A Magistrate shall so conduct the Magistrates extra-judicial activities as to minimise the risk of conflict with judicial obligations.

Rule 5: A Magistrate or judicial candidate shall refrain from inappropriate political activity.

For Judges of the National Court, the Organic Law on the Terms and Conditions of employment of judges under section 4 sets out qualifications for judges. A person is not qualified to be a judge if they are amongst others a member of the Parliament, a member of a Provincial Government, a member of a Local Level Government or Local Level Government Special Purposes Authority, an office-holder in a registered political party or an undischarged bankrupt or insolvent.<sup>128</sup> Section 5 further sets out conditions of employment in that judges of the national court must not actively engage in politics, engage either directly or indirectly in the management or control of a corporation or other body of persons carrying on business for profit or acquire by way of gift or otherwise in addition to his terms and conditions of employment.<sup>129</sup>

With regards to lawyers, the Legal Training Institute offers a one-year program after law school. The PNG Law Society is the legally mandated body to issue lawyers practising certificates. The Lawyers Act<sup>130</sup> provides for committees to screen applications to practise and also committees to review conduct of lawyers and disbar them in case of misconduct.

## Integrity (Practice)

Score: 4

*To what extent is the integrity of members of the Judiciary ensured in practice?*

Although the Judiciary has a reputation for integrity in its decision-making process, there are instances where integrity of the Judiciary is questioned. Currently the Judiciary has a low case disposition rate, with judgements taking an unreasonably long time. In 2018 the average waiting time for a criminal case to be disposed of in the national court was 18-24 months. Chief Justice Salamo Injia attributed this to the number of judges available.<sup>131</sup> Regardless of the reason, the very slow rate of case disposition increases the risk of foul play and the bribery of judges to hand down a decision more quickly.

A high-level instance of such was the case where Justice Bernard Sakora was arrested in 2016 for judicial corruption and brought to court, however the case was dismissed on procedural grounds. The Ombudsman Commission then referred Sakora to the Public Prosecutor for prosecution under the Leadership Code however he decided to resign as a judge, terminating all investigations pursued against him under the leadership code.<sup>132</sup> If this perceived impunity has occurred at the highest level, then one can surmise its wider prevalence in Papua New Guinea.

## Role: Executive Oversight (Law and Practice)

Score: 5

*To what extent does the Judiciary provide effective oversight of the Executive?*

To a great extent as the Judiciary can decide if legislation and actions by the Executive are constitutional. There is definitely a procedural link between the Chief Justice and the Executive in terms of appointments, but then again, the term of a Chief Justice is 10 years, i.e. at least two electoral cycles.

## Pillar 4: Public Administration

The legal framework governing the public administration's activities contains provisions that aim to ensure its independence, transparency, accountability and integrity. However, the public administration is not independent in practice due to undue political influence on its activities, especially related to the recruitment of human resources. The enforcement of the legislative provisions designed to prevent corruption in the public administration is weak.

Public Administration Overall score: 3			
Dimension	Indicator	Law	Practice
Capacity: 3	Resources	N/A	3
	Independence	3	3
Governance: 3	Transparency	2	2
	Accountability	3	2
	Integrity	5	2
Role: 2	Public education	2	
	Cooperate with public institutions, CSOs and private agencies in preventing/ addressing corruption	2	
Law and practice overall scores		3	2

Table 4: Public Administration Scores

### Structure and Organisation

The public service is comprised of over 100 departments, authorities, commissions and entities, including national departments, and provincial and district administrations. With over 100,000 employees, it is PNG's largest public employer. The service includes administrative personnel and frontline staff such as teachers, who make up half the workforce. The Department of Personnel Management (DPM) is charged with leading and supporting reform efforts "in terms of enhancing the performance of PNG public servants and the right sizing or streamlining of agencies so as to improve service delivery to the provinces and districts in meeting Medium Term Development Plan priorities."<sup>133</sup>

### Resources (Practice)

Score: 3

*To what extent does the public sector have adequate resources to effectively carry out its duties*

The public administration has insufficient and inadequate resources for the effective delivery of public services. The amount of funding allocated to the public administration appears to be insufficient for the provision of proper working conditions. They do not have the necessary materials and equipment to do their jobs. That said, there is also inefficiency within the sector, from wastage and degradation of processes that were intended to ensure long term planning, e.g., budgeting and auditing.

PNG's public administration offers inadequate salaries however civil service jobs are generally attractive for citizens because they are plentiful and barriers to entry are low if they have tertiary education. Public servants often are not paid adequately or on time, let alone given proper contracts or associated entitlements. This creates an environment for petty corruption, such as facilitation payments or other bribes.

In terms of funding allocated to this pillar, there are a number of government departments which fall within public administration that are funded by the country's national budget. Examples of departments that operate within this pillar are the department of personnel management, the department of provincial and local level government affairs, the department of finance and the public service commission. These government departments are collectively underfunded. Departments generally find that they are not given enough resources to finance their day-to-day operations and therefore cannot effectively carry out their mandate.

The Department of Finance for instance is a crucial department responsible for the management of public monies and yet it is under-resourced. In this department there is therefore a need for resources to be adequate in order to keep proper track of accounting books and transactions. This can also be done by investing in technological upgrades and systems to better ensure the effectiveness and efficiency of its role. To date however the keeping of accounts is very poor, a predominant reason being the lack of funding and resources available for system upgrades. The National Budget for the years 2017-2021 shows that the amounts of money allocated to the department of finance has decreased significantly.<sup>134</sup> In 2017 the Department was allocated a total of K576.4m which decreased over the years to K119.2m in 2021.<sup>135</sup>

## Independence (Law)

Score: 3

*To what extent is the independence of the public sector safeguarded by law?*

PNG's civil service law contains important provisions designed to safeguard the independence of public administration but could do more to protect civil servants from undue political interference in their activities. The law states that impartiality and political neutrality are fundamental principles of civil service and there are provisions that are designed to ensure the independence of civil servants. The law's requirement that civil service vacancies be filled through competition (with limited exceptions) is designed to prevent undue political interference in the appointments process.

## Independence (Practice)

Score: 3

*To what extent are public servants free from external interference in their activities?*

Public servants are not sufficiently protected from external pressure and undue interference in their activities. In practice, however, senior management positions are often divvied up as political favours and the recruitment process has been abused. This came to the fore with the creation of a ministerial appointments committee that took away powers from the Public Service Commission, a constitutionally mandated office meant to conduct recruitment for high offices. In 2020 the public service commission was able to win a supreme court challenge against the Executive and restore its mandate.<sup>136</sup>

There is further evidence that the government does not sufficiently protect and respect the independence and autonomy of the public service. For example, in 2020 it was reported that the government sought to add to the amendments on the National Procurement Act an additional amendment for the procurement threshold to be increased to allow for national companies to be awarded contracts of a value up to K50 million, the threshold at present is K10 million.<sup>137</sup> There were no real justifications given by the government explaining why this amendment be made seeing as though there are currently no proper procurement mechanisms in place especially for beneficial ownership. The government claims this is to allow more opportunities for local contractors however what can be seen from this is that the government is attempting to interfere with the provisions already put in place from consultation with public bodies to pursue their own agenda. It is important to note here that such a large increase without proper justification creates gaps for corruption to seep through.

To some extent the integrity of a public agency depends on the leadership within the agency. If the Agency Head is technocratic with strong existing systems, updated guidelines and a codified management structure there is less perceived political influence. The financial sector, e.g. superannuation funds, the internal revenue commission, the bank of PNG, tend to be insulated from day to day political interference of staff. Other direct service agencies, e.g. health, policing, public works, and state-owned entities are much more prone to daily interference by staff by political actors. Lastly, for statutory bodies the level of daily interference depends on the leadership (how compromised) and the mandate (how impactful on politics).

## Transparency (Law)

Score: 2

*To what extent are there provisions in place to ensure transparency in financial, human resources and information management of the public service?*

PNG's Constitution provides for citizens' access to information about the public sector, but lacks an enforcement mechanism to deal with possible violations of the constitutional right.

Public officials are subject to financial disclosure laws as stated in the leadership code of conduct. They are required by the Ombudsman Commission to file annual asset declarations within three months of taking office, and annually thereafter. These declarations must include their assets, liabilities, third-party sources of gifts, and all beneficial interests in companies, including shares, directorships, and business transactions. Asset declarations are not available to the public. The declarations are reviewed by the Ombudsman Commission which has the power to penalise either non-compliance or false declarations. Sanctions for noncompliance range from fines to imprisonment.

The rules for the management of public information are set out in legislation which means that dissemination of information is non-standardised, piecemeal, biased and promotes clientelism. There are a set of civil service rules called the General Orders which apply to the conduct of public servants - they might have provisions on transparency, or conversely (and perhaps more applicably) the sharing of confidential information. PNG does not have a State Secrets Act or standardised document classification system.

General Order Number 15 speaks to Discipline and Non-contract, including confidentiality. It is a disciplinary offence (and sometimes a criminal offence also) for an officer to divulge confidential information to the public and to public or private institutions and organisations. An officer shall further not divulge confidential information to the news media unless he/she has received the written permission of his/her Departmental Head. Likewise, a Departmental Head shall not divulge confidential information unless he/she receives the written permission of the Minister to whom he/she is responsible.

Confidential matters are set out under these General Orders as including:

- Matters relating to the national security, defence or international relations of PNG;
- Records of meetings and decisions of the National Executive Council or Provincial Executive Council where applicable;
- Trade secrets and privileged or confidential commercial and finance information;
- Parliamentary papers protected by Parliamentary privilege;
- Reports marked as confidential and reports, official registers and memoranda by Government authorities prior to completion of a matter;
- Papers relating to the investigation and prosecution of criminal activities;
- Papers relating to matters of personal privacy;
- Papers relating to the regulation or supervision of financial institutions;
- Geological or geophysical information and data concerning ore bodies and wells.

For the purposes of transparency, the General Orders clearly set out the procedures that must be followed when recruiting persons to a non-elected public office for instance heads of departments and departmental secretaries. The process begins with the position being advertised, followed by the receipt and acknowledgement of applications. A selection committee then goes through the applications and determines a shortlist, shortlisted applicants are notified and interviews scheduled. Once interviews are held the selection committee ranks the shortlisted applicants in order of preference and prepares a final report which must fully indicate why the applicants were ranked in that manner. The committee then makes a decision and the successful application is notified, as illustrated below.

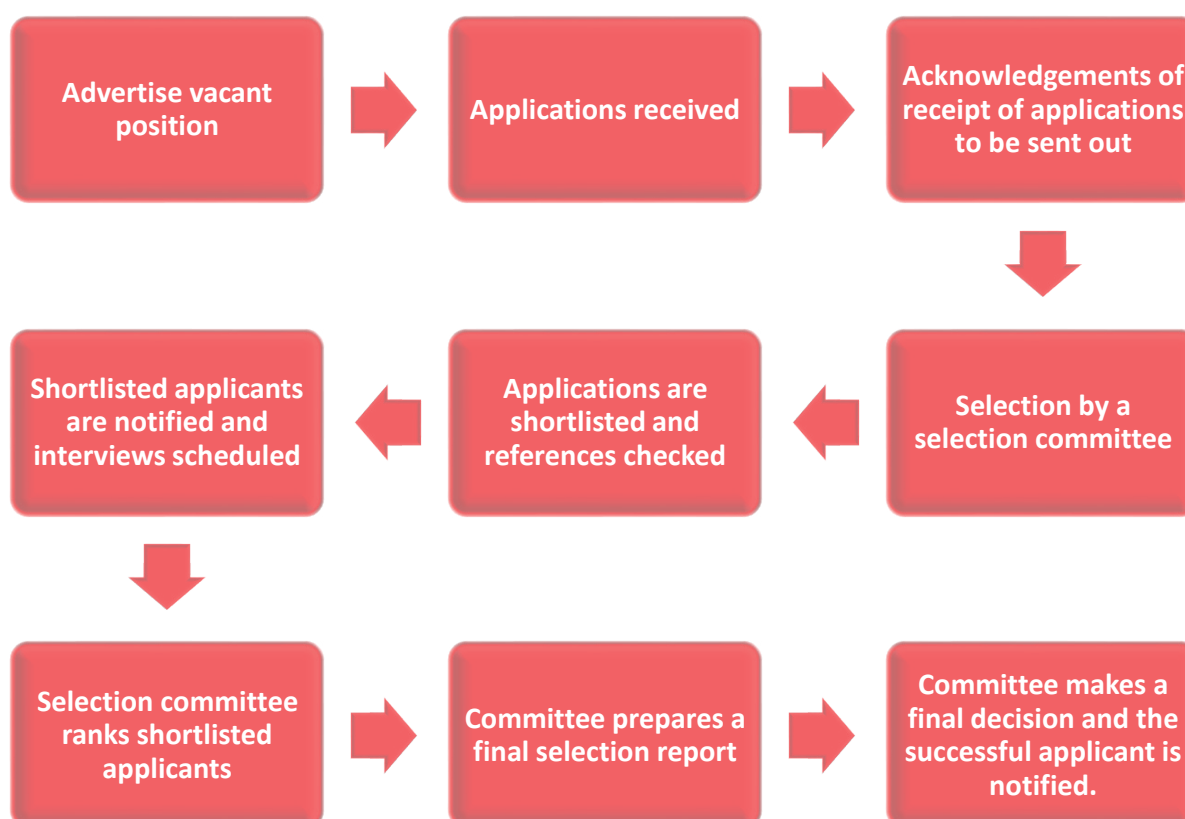


Chart 1: Recruitment process for a Non-elected Public Official

## Transparency (Practice)

Score: 2

*To what extent are the provisions on transparency in financial, human resources and information management in the public sector effectively implemented?*

PNG's public sector agencies provide requested information in most cases and asset disclosure takes place in practice too. However, the regulations on proactive publication of information are unevenly enforced across the public sector. There is no effective enforcement of access to information regulations and no sanctions are applied for the failure to comply with the law.

There is a culture of secrecy that has developed in the absence of clear legislation. This has led to a deference towards senior management at the expense of public disclosure. Prior to Independence, the Australian colonial administration had a Department of Information and Extension Services (DIES), which communicated public information to the nascent nation, however, there has been no substantial progress since then.

There are some agencies that collect and disseminate accurate information regularly and in an accessible manner e.g., through annual performance reports, however there is no standardisation across agencies. Furthermore, the provision of information is often part of a personal agenda of reform by the head of agency and not systematic in a national sense.

## Accountability (Law)

Score: 3

*To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?*

PNG law establishes a basic framework for the accountability of public sector employees. The Auditor General's Office (AGO) has the authority to audit public agencies. The Department of Finance has commenced a program that seeks to establish provincial and agency-level internal audit units. Citizens can file complaints against public bodies over their decisions and actions. Whistleblowers can report wrongdoings in a limited sense through internal channels and civil servants can be charged for crimes related to public office.

However, the whistleblower legislation that was enacted in 2020 is wholly inadequate. It is only six pages long and places the burden on whistleblowers with no protection of identity and the ultimate arbiter being the head of the agency. There is no private sector protection and the public sector provisions only allow public servants to blow the whistle on only their own agency.

All public institutions are accountable to the Parliament. The Parliament and its Committees have the right to request reports and testimonies from public servants, usually through the Parliamentary Public Accounts Committee.

## Accountability (Practice)

Score: 2

*To what extent do public sector employees have to report and be answerable for their actions in practice?*

The law enforcement agencies, the Judiciary and audit agency are less than effective in ensuring the public sector's accountability. Public sector employees are rarely held accountable in practice. This is due to the cronyism that exists within the Papua New Guinean public service. As such, grand corruption is rarely prosecuted as there are networks of protection for criminal conduct in public office. This is further compounded by lack of robust prosecution and an inefficient judicial process. The public servants that do

face repercussions are either lower down the rank or the issue is raised in the public eye and a scapegoat is required. The networks involved in public sector corruption are never held accountable.

There is a perceived sliding scale of justice. The more well connected a senior public servant is, the less likely they are to face serious repercussions i.e., termination/imprisonment for their crimes. This in turn incentivises clientelism, i.e., the more one 'helps' more powerful people, the more likely they are to keep one safe from investigations into accountability.

This is coupled by the fact that there are no clear procedures for when allegations into the conduct of office holders require investigation. The public in general (including members of the media) do not know the steps that need to be taken once there are allegations of impropriety. Whenever there are public inquiries into wrongdoing, the person implicated rarely vacates office in order to be investigated and cleared (or charged as the case may be).

On the other end of the scale, lower-level public officials are often made to be scapegoats by higher level officers. The lower-level public officials are often also swiftly dealt with in the courts for white collar crime, accompanied by reports in the media, if it is a particularly scandalous story.

There is a lot of uncertainty as to the protection afforded to internal auditors from both political influence and threats/intimidation.

## Integrity (Law)

Score: 5

*To what extent are there provisions in place to ensure the integrity of public sector employees?*

PNG has multiple legal provisions on the integrity of public sector employees. These are set out in the Leadership Code (Section 26 of the Constitution) for senior officials and General Orders for all public servants. Public servants have a code of conduct but it is little used or referenced.

Public servants are required to perform their duties in an impartial manner and must not misuse official funds or property or use official authority for personal purposes. Civil servants are not allowed to undertake other paid work or engage in business. Bribery of a public official is a criminal offence under the criminal code.<sup>138</sup>

Under the General Orders 20, Officers of the Public Service, shall not, other than with the permission of the Secretary, Department of Personnel Management, (however, this permission may be withdrawn at any time):

- (a) accept and or continue to hold an office in or under a Government of another country or in or under any public or municipal corporation;
- (b) accept or continue to hold or discharge the duties or, be employed, in a paid office in connection with any banking, insurance, agricultural, mining, mercantile or other commercial business, whether carried out by a corporation, a firm or an individual;
- (c) engage in or undertake any such business as principal or as agent;
- (d) engage and or continue in a private practice of any profession, occupation or trade;
- (e) enter into any employment, whether remunerative or not, with any person, company or firm who or which is so engaged; or
- (f) accept or engage in any remunerative employment other than in connection with the duties of his office or offices in the Public Service.

## Integrity (Practice)

Score: 2

*To what extent is the integrity of public servants ensured in practice?*

There are significant problems in terms of the application of integrity rules in practice. To begin, there is an issue with falsification of documents (particularly school certificates) to get a job within the public service. In 2018, 32 elementary teachers from Hela and Southern Highlands lost their jobs after investigations found they had allegedly used fake certificates to get the job.<sup>139</sup> The teachers were using fake grade 10 and 12 certificates to be in the Teaching Service Commission (TSC) payroll.

Furthermore, solicitation of facilitation payments by public servants is prevalent across the public sector. TIPNG in 2015 produced a report examining the prevalence of corruption in PNG and found that high numbers of respondents had to pay a public servant for a service the citizen was entitled to for free. e.g. health, education, policing.

It is a multi-factor problem on the lower end of the public service that increases the risk/likelihood of corruption. Often public servants are not paid for extended periods of time (particularly those in education and health in remote areas). Teachers fortnightly pay is sometimes delayed for months.<sup>140</sup> In urban areas, public servants' income cannot sustain a family. A National Research Institute (NRI) study indicated that over the years the supply of housing in Port Moresby has not been able to meet demand which has led to housing shortages, and house rentals and sale prices beyond the reach of many residents. Furthermore, there is a large informal housing sector in Port Moresby and the cost of building a house is high due to the high cost of building materials, land and labour.<sup>141</sup>

Another factor is that the hierarchy appears to often tolerate allegations of corrupt acts amongst those in its circle. An example of this was seen when the Prime Minister addressed allegations against the PNG Electoral Commissioner who was charged with corruption in 2019. Despite a hearing being set and formal charges being made, the Prime Minister made public statements that the Commissioner was not removed from his position rather suspended.<sup>142</sup>

When investigations are conducted, they are prone to influence internally by senior management and also externally by political actors. An example of this was seen in 2016 when anti-corruption Police had issued a warrant to question the former Prime Minister Peter O'Neill over the payments in 2014, however O'Neill won a court stay on any arrest. Three judges following this from PNG's Supreme Court dismissed court orders halting other aspects of the investigation.<sup>143</sup> In other cases, justice is slow, often a disciplinary matter can be dragged out over years. Delayed Court judgements continue to remain an issue for the Judiciary.<sup>144</sup>



## **Role: Public Education (Practice)**

Score: 2

*To what extent does the public sector inform and educate the public on its role in fighting corruption?*

The public sector informs and communicates to the general public on corruption and anti-corruption measures. PNG's NACS prioritises education and public awareness raising on corruption, through information campaigns and communication.

However, public sector education awareness is often driven by individual reformers and not structurally supported e.g. there are no incentives in the budget for agencies that address corruption internally or within the country at the national level through the course of their operations.

Often the public education is not practical, independently sourced or sustained beyond one budget cycle. That is for the initiatives that are effective, there are also many initiatives which are just cash grabs using the cover of good governance.

## **Role: Cooperate with Public Agencies, CSOs and the Private Sector in Preventing/Addressing Corruption (Practice)**

Score: 2

*To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?*

While the public sector consults with Civil Society Organisations (CSOs) on anti-corruption measures through several channels, the anti-corruption work with the private sector is very fragmented, Departments choose their own priority partners for implementation of activities.

It is difficult to generalise across the entire public sector in terms of engagement with non-state actors on anti-corruption activities, others are not keen on engaging due to a perception of blowback from the politicians.

## Pillar 5: Procurement

Despite reforms, significant corruption risks continue in the public procurement system. While the 2003 NISA was bleak on procurement in PNG by the Central Supply and Tenders Board (CSTB), the situation has only marginally improved and is at risk of reverting due to political pressure. The process of public procurement and information surrounding it is still guarded.<sup>145</sup> Key procurement policy documents have not been developed, with the CSTB's Good Procurement Manual still being used.<sup>146</sup> The NPC declined to participate in the NISA, so scoring was based on expert interviews and desk research.

Since its establishment, there has been concern that the NPC may in most instances, be continuing the issues that existed within the CSTB. Staff from the CSTB have been retained and procurement powers have been devolved to sub-national entities with no discernible improvement on e-procurement. In the legislation, the intent to improve is demonstrated with requirements around transparency and integrity. However, significant governance issues, for instance on beneficial ownership of bidding entities has not seen substantive change. In short there does not seem to be structural reform even though there has been legislative reform. This has been highlighted recently with notable cabinet-endorsed procurement of K10.2m for COVID-19 research from a new entity with no demonstrated capacity.<sup>147</sup> More concerning is the pressure to increase the threshold for local content with no evidence-based justification.<sup>148</sup>

Procurement Overall Score: 4			
Dimension	Indicator	Law	Practice
Capacity: 4	Resources	5	4
	Independence	4	2
Governance: 4	Transparency	4	3
	Accountability	4	3
	Integrity	5	3
Role: 4	Reduce corruption risks to safeguard integrity of public procurement	4	
Law and practice overall scores		4	3

Table 5: Procurement Scores

### Structure and Organisation

Public procurement is governed by the National Procurement Act 2018 (Gazetted and commenced on the 1 April 2019) and the Public Finances (Management) Act 1995 (PFMA) as amended in 2018 (Gazetted and commenced on the 1 March 2019).<sup>149</sup> The National Procurement Act establishes the National Procurement Commission and the Board of the National Procurement Commission. The Commission is a Statutory Body. The PFMA establishes an Authority to Pre-Commit Committee (APC Committee).<sup>150</sup> The committee is not an independent body but a committee formed by the Heads of Departments of Finance, Treasury (Chair) and National Planning and Monitoring. The Secretariat of the APC Committee is established within the Department of Finance.

Prior to 2019, the PFMA was the overarching legislation for Procurement, overseen by the Department of Finance (DoF), and administered by the CSTB. Over the years, the CSTB encountered issues on transparency, tenders for public works, construction for infrastructure and issuing contracts to politically affiliated entities. The CSTB was decentralised, with Provincial Supply and Tenders Board (PSTB) down to districts which had their own tenders process. Other statutory authorities had their own procurement processes. The CSTB system was difficult to oversee and open to abuse.

The Public Expenditure and Financial Accounting (PEFA) review in 2010 provided a roadmap for reform in Public Finance Management, public procurement being a focal area. The DoF began the process of integrating financial management and centralising procurement. In 2019 with minimal consultation by the DoF, the new National Procurement Act was enacted, following which a National Procurement Commission was established and operationalised. A key difference between the NPC and the CSTB is the centralisation of procurement, and the transition to a digitally integrated financial management system.

## Resources (Law)

Score: 5

*To what extent does the public procurement system have an adequate legislative framework to effectively carry out its duties*

The National Procurement Act 2018 (NPA) is adequate particularly in comparison to the previous regime of the CSTB under the PFMA. The NPA specifies powers, processes, and penalties relating to the function of the National Procurement Commission (NPC). The NPA provides a clear governance structure for the NPC and seeks to provide it Independence from the Executive.

Being abolished in 2018, National Budget papers for 2017-2021 show monies allocated in 2017 and 2018 to the CSTB then in 2019-2021 the NPC as the succeeding body.

## Resources (Practice)

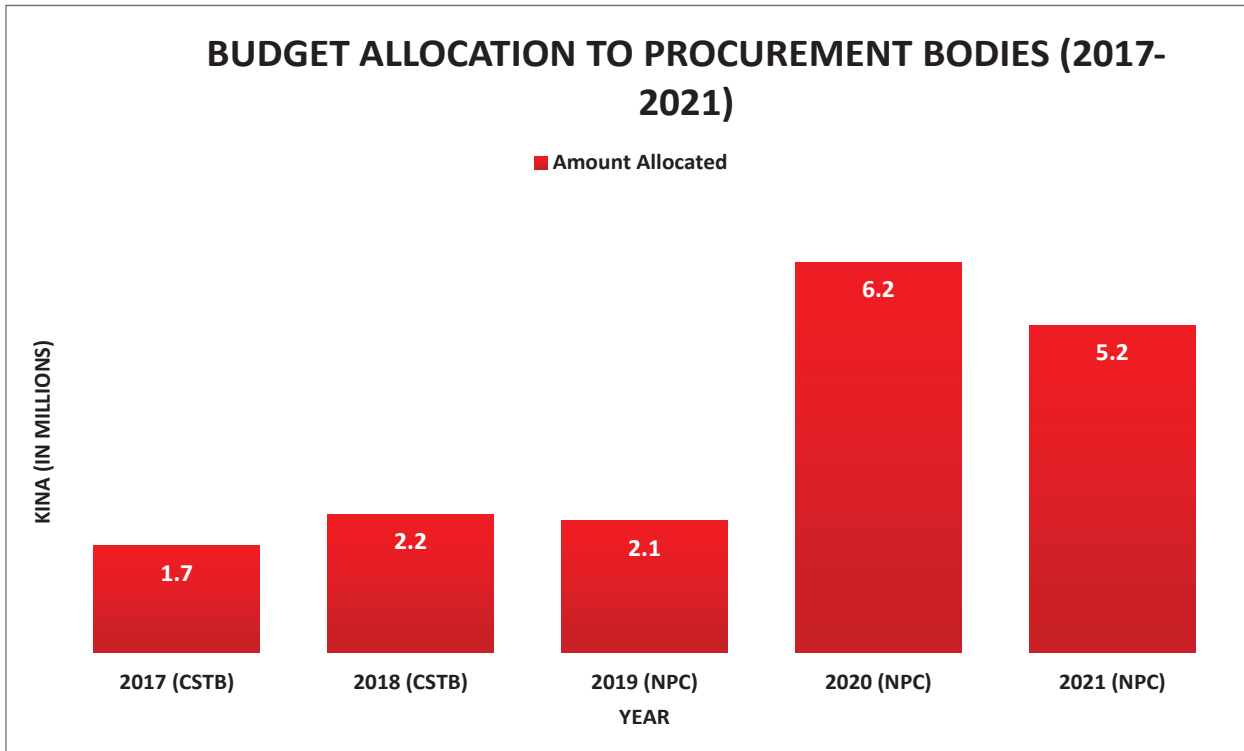
Score: 4

*To what extent does the public procurement system have adequate resources to effectively carry out its duties*

The NPC retained staff from the CSTB<sup>151</sup> so it has human resources, and also has its own office space in Port Moresby. As a relatively new agency, that was championed by the former Finance Minister, now<sup>152</sup> current Prime Minister,<sup>153</sup> they are relatively well funded. However, there is a clear lack of Information Communication Technology (ICT) infrastructure and services, meaning that it is not able to fulfil its ambition of full e-procurement.<sup>154</sup> The human element still remains, and that element as well as the institution is still susceptible to corruption.<sup>155</sup> This lack of ICT infrastructure also impedes digitisation of sub-national and agency level procurement, i.e. leaving it open to abuse.

As it is a state institution the procurement body must be allocated funding under the national budget. When still in existence the government provided yearly amounts to the PFMA for the purpose of financing its yearly expenses. Once the CSTB was abolished procurement funding from the government was allocated to the new body (NPC). PNG budget papers within the years 2017-2021 show an increase in the amounts given to procurement bodies. The amount originally given to the CSTB in 2017-2018 has increased gradually over the years (2019-2021) for the NPC. The NPC is still however significantly underfunded, like the department

of finance it needs resources and technologies in order to set up an e-procurement system for the purpose of making their function more effective and efficient. The figure below shows amounts allocated to the former CSTB now NPC between the years 2017-2020. Amounts shown for the years 2017-2019 are actual amounts whilst those for 2020-2021 are estimated amounts.



Graph 6: Budget Allocation to Procurement Bodies (2017-2021)

### Independence (Law)

Score: 4

*To what extent is the independence of public procurement safeguarded by law?*

The NPC is a statutory body established to undertake procurement; it is not independent of the wider state apparatus. Its governance is overseen by a Board of 7 with 3 from state agencies (Department of Finance, Department of Works and the State Solicitor’s Office) and an ‘Independent person’<sup>156</sup> appointed by cabinet (on the recommendation of the Department of Finance) as the Chairman of the Board.

The Chairman has ‘no role, powers or functions in the day to day operations of the Commission’<sup>157</sup> and is joined on the Board by three different people nominated by organisations specified by the Finance Minister as per the National Procurement Act 2018.<sup>158</sup> representing the interests of engineers, business or accounts and civil society respectively.

### Independence (Practice)

Score: 2

*To what extent are procurement bodies free from external interference in their activities?*

The process of procurement is the lifeblood for politicians in Papua New Guinea on two fronts; it enables them to deliver services to their communities, and also could be abused for self-enrichment. Both these avenues are necessary for re-election and the retention of power. It is not surprising that the majority of grand corruption cases in Papua New Guinea are through public procurement. This is due to the immense political pressures to award contracts for goods and services in a way that is beneficial to political interests. An example of this is the push by the Prime Minister,<sup>159</sup> to increase the thresholds for contracts that require national content from K10m to K50m on the eve of the 2022 National Elections. The Department of Finance and the National Procurement Commission in their consultation,<sup>160</sup> documents have provided no objective basis to increase the threshold beyond the request by the Prime Minister.

The legislated inclusion of Civil Society representation on the NPC Board has enabled civic participation, however it is unclear the extent of this participation.

## Transparency (Law)

Score: 4

*To what extent are there provisions in place to ensure transparency in procurement in the public service?*

The National Procurement Act 2018 is unusual in statutory bodies as it has specific Transparency clauses legislated in Sections 9(2)(h), 38(b), 40, and 42(1). There are other specific instances where Transparency is referenced in Sections 36(5), 51, and 68.

However, this expectation for Transparency is then limited by Section 42(2) which prioritises confidentiality.

## Transparency (Practice)

Score: 3

*To what extent are the provisions on procurement in the public sector effectively implemented?*

The public procurement process is generally not proactively transparent. Two instances highlight the lack of Transparency one year preceding the enactment of the National Procurement and one year after its enactment.

The first involves a Director of the TIPNG Board, Brian Alois,<sup>161</sup> who is a public servant and was the Momase Regional Manager for the Department of Works. In 2018 Mr. Alois gave a public presentation at a forum where his Department's Secretary and Minister (who are still in office, and their department is one of the agencies with an ex officio role on the NPC Board) were also in attendance. In the presentation he used publicly available information to demonstrate the increased cost of road procurement in the country over a number of years, which was not based on any corresponding increase in the cost of raw materials, labour or technique. He was subsequently suspended,<sup>162</sup> on spurious disciplinary grounds<sup>163</sup> relating to releasing 'false information' which were later overturned and he was reinstated after much public outcry.<sup>164</sup> This incident serves to demonstrate how disclosure of procurement information, that politicians consider sensitive, is not tolerated.

The more recent instance of politically sensitive procurement information being released to public outcry involved K10.2 million that was awarded in a leaked cabinet decision,<sup>165</sup> to a recently created local company led by University of Papua New Guinea (UPNG) chemistry lecturers to develop a COVID-19 vaccine. This was all the more concerning as it came months after TIPNG and others called on the government to ensure COVID-19 procurement information,<sup>166</sup> was available on the NPC website.<sup>167</sup> Subsequently the government backtracked,<sup>168</sup> and said no funds were allocated for the vaccine and it was just an agreement in principle.

This is to demonstrate that the current Prime Minister is very much aware of the structural issues in the NPC as he engineered the entity while finance minister. The former Prime Minister, who also had numerous,<sup>169</sup> procurement<sup>170</sup> issues,<sup>171</sup> was also a former finance minister.<sup>172</sup>

## Accountability (Law)

Score: 4

*To what extent are there provisions in place to ensure that procurement bodies have to report and be answerable for their actions?*

Section 36 of the NPA requires procurement records to be kept for 7 years and that they shall be open for inspection by the Commission and procurement committees. The PFMA applies to the National Procurement Commission, this requires the production of annual reports to be tabled in Parliament.

## Accountability (Practice)

Score: 3

To what extent do procurement bodies have to report and be answerable for their actions in practice?

There is a lack of awareness of the procurement processes in the public, and even less understanding of the role and functions of the NPC which has only been in operation since 2019. This is not to say that the public is not aggrieved by the impact of corruption on procurement. It just means that blame for poor outcomes from procurement is often placed on members of Parliament (or the municipal authority in the case of the National Capital District).

It is concerning that there is a lack of proactive disclosure of procurement information, i.e. it is specified in legislation that it has to be requested. Of particular interest is ensuring that there is a public registry of beneficial ownership for bidding entities to ensure that political figures are not enriching themselves from the public purse. Furthermore, the recent push to amend the NPA after only a year in operation shows that political forces are not concerned about being held accountable for abuses of the procurement processes.

## Integrity (Law)

Score: 5

*To what extent are there provisions in place to ensure the integrity of public procurement?*

The NPA has provision for Declaration of Interests by the Board in Section 16,<sup>173</sup> Promotion of Ethics as a core principle in 38(f),<sup>174</sup> and a Code of Ethics in Section 44.<sup>175</sup> The Leadership Code applies to the Board and the Chief Executive Officer (CEO) of the Commission.

## Integrity (Practice)

Score: 3

*To what extent is the integrity of public procurement ensured in practice?*

Apparently a draft code of ethics has been produced. There are not any clear steps that have been taken to ensure integrity, such as deliberate steps to rotate officers of the NPC around different sections.

## Role: Reduce Corruption Risks by Safeguarding Integrity in Public Procurement (Law and Practice)

Score: 4

*To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?*

PNG has a mainly paper-based that has been ineffective as a system of public procurement, there has been a move to digitise the process, but progress has been minimal. The volume of non-competitive procurement has decreased in recent years. The government is known for awarding questionable contracts without following procurement processes, reducing the level of competition. A dispute mechanism is said to exist for the adjudication of procurement-related disputes the dispute mechanism provided by section 75 of the National Procurement Act 2018. It stipulates that a person who is aggrieved by a decision of the Board or a public or statutory body in respect of a procurement may make a complaint to the APC Committee.<sup>176</sup> The APC may upon receiving the complaint, suspend the procurement proceedings of the Commission or a public or statutory body; and make a decision in writing, within 15 working days, indicating the corrective measures to be taken, if any, with reasons for the decision and submit a copy of the decision to the person making the complaint.<sup>177</sup> It is however unclear how frequently this is used successfully. Conflict of interest rules are not comprehensive and appear not to be regularly enforced. Companies and individuals convicted for corruption are not blacklisted from participating in procurement, even though there appears to be a non-public register.

PNG's legal framework for public procurement is still relatively new and untested but it notably contains a number of detailed provisions designed to reduce the risk of corruption. The rules for state procurement are set out in the National Procurement Act 2018.

Procurement is handled by the National Procurement Commission, which is accountable to the Department of Finance.

## Pillar 6: Law Enforcement

Law enforcement agencies in PNG do not receive adequate funding or effectively deal with petty corruption in communities and organisations. They do not effectively respond to cases of corruption that involve high-ranking officials and other influential individuals. This is due to internal operational constraints, and external pressures by those implicated. The degree of accountability for law enforcement agencies actions are severely limited and the transparency of their activities has been a consistent concern of civil society and the public at large. While public information may be purposefully obscured for short term gain (e.g. avoiding public criticism) this eventually leads to a lack of public trust. This was exemplified in a recent case of moral panic over organ harvesting in Port Moresby where public statements by the Police were distrusted by citizens who thought they were compromised.<sup>178</sup>

Law Enforcement Agencies Overall Score: 3			
Dimension	Indicator	Law	Practice
Capacity: 3	Resources	N/A	2
	Independence	4	2
Governance: 3	Transparency	3	2
	Accountability	5	2
	Integrity	5	2
Role: 2	Corruption prosecution	2	
Law and practice overall scores		6	2

Table 6: Law Enforcement Scores

### Structure and Organisation

The Royal Papua New Guinea Constabulary is PNG's main law enforcement agency. The Office of the Public Prosecutor is also responsible for law enforcement. The main legal provisions regulating the operation of these agencies are included in the Constitution, the Police Act, the Criminal Code and the Public Prosecutor's Act.

### Resources (Practice)

Score: 2

*To what extent do law enforcement agencies have adequate financial and human resources and infrastructure to operate effectively in practice?*

The funding allocated to the law enforcement agencies from the state budget has remained the same with slight variation in recent years. According to the budget for 2017-2021, the funding of the Office of the Public Prosecutor ranges between K8.5m in 2017 and K14.8m in 2021, while the agency has 152 employees.<sup>179</sup> The funding of the Royal Papua New Guinea Constabulary (RPNGC) amounts to K338.4m in 2021 and the agency in 2013 had a force of 5,387<sup>180</sup> sworn officers.

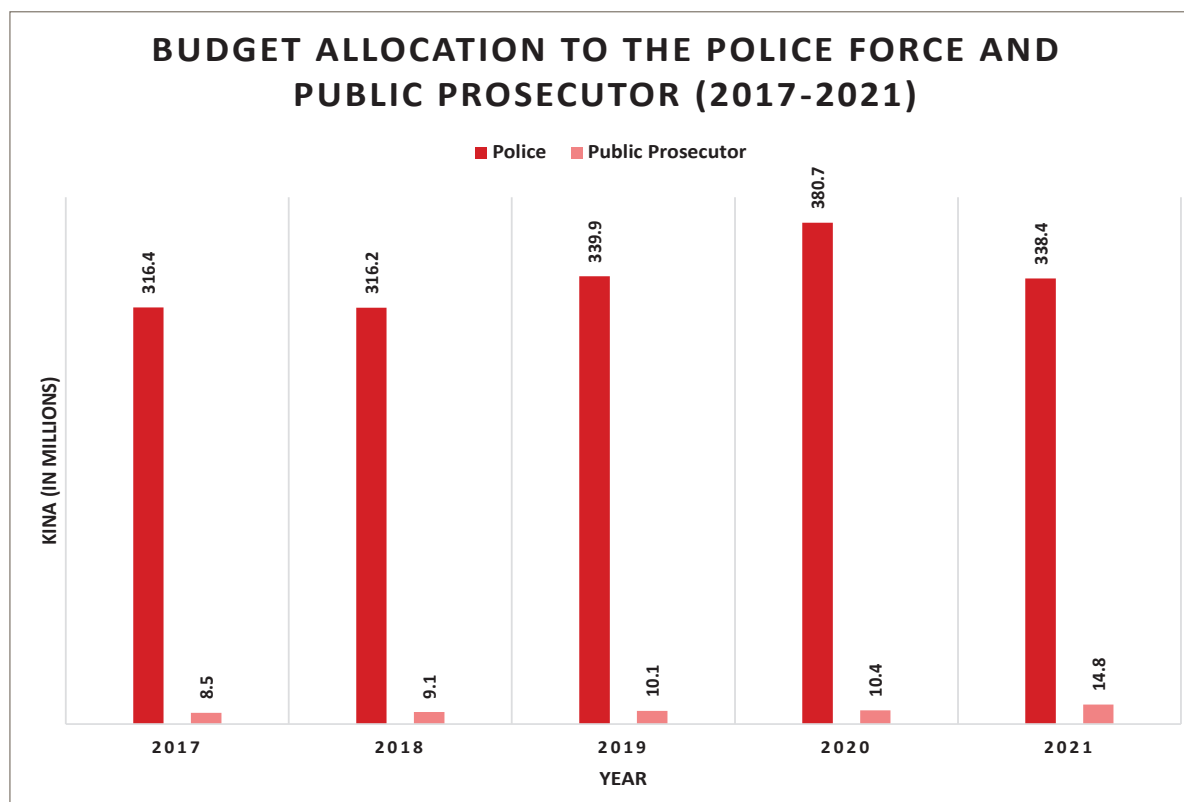
The Police are said to be underfunded due to the low ratio of personnel to citizens. It is difficult to enforce laws as the Police are stretched thinly and this often results in impunity even for the most heinous of crimes. It is not just the personnel but also the equipment, facilities and training required. This under-resourcing particularly impacts high-pressure situations that require law enforcement, e.g. corruption, internal affairs, illicit trade, transnational crime and electoral crimes.



Law enforcement agencies are perceived to be underfunded due to the lack of manpower (across both Police and public prosecutors) and facilities and assets (particularly amongst the Police). The public prosecutor is not able to attract and retain the calibre of legal professionals required and there are numerous reports of the Police (even in Port Moresby) not having enough funds to even fuel their vehicles to enforce laws. There is a drain of talent from the Police to private security firms (one of the largest employers in the country) which creates a vicious cycle of reduced public law enforcement necessitating more privatised security.

For the Police, allocated amounts range from K316m to K381m between the years 2017-2021. This funding covers the day-to-day expenses of the Police force as well as the salaries of police officers. According to the 2017-2021 budgets the Public Prosecutor's office is equally underfunded and understaffed. The Public Prosecutor's Office does not have an operational website.

The figure below indicates the amounts allocated to the Police and the Public Prosecutors office within the years 2017-2021. As is seen, the Police force is given more funds as compared to the public prosecutor. Figures for 2017-2019 are what was actually allocated whilst those for 2020-2021 are estimates.



Graph 7: Budget Allocation to Procurement Bodies (2017-2021)

## Independence (Law)

Score: 4

*To what extent are law enforcement agencies independent by law?*

The legal framework contains sufficient provisions designed to ensure the independence of the law enforcement agencies. However, there are gaps that create opportunities for undue external influence over these institutions.

The Constitution establishes the Police and the Office of the Public Prosecutor. They each have respective acts that protect and maintain their constitutional independence.

The Police Act 1998 establishes the criteria for recruitment and the guiding principles of the work of the RPNGC. One of the main guiding principles of the recruitment for law enforcement is non-discrimination. The Police Act 1998 regulates the minimum required age, criteria, and procedure for the appointment as the Commissioner of Police. There is presently a matter before the Supreme Court on the requirements of the head of the Police. The Government has maintained that the Police Commissioner is also the Secretary of the Department of Police. However, there is a requirement that all Department Secretaries must possess a tertiary qualification in the corresponding section in the Police Act.

The current procedure for the appointment does not ensure the agency's institutional independence in a situation where the Prime Minister, the Government, and the parliamentary majority represent the same political force. The appointment procedure does not allow participation of other political groups except for the parliamentary majority.

For the Commissioner of Police, the requirements are often tailored for within the force, for example, it requires experience as an assistant commissioner. The recruitment process of screening candidates is done by the Public Service Commission (which is somewhat independent), the shortlist of three is presented to cabinet and the Executive appoints.

The Police Act states that police officers are not to display partisan interests,<sup>181</sup> work as civil servants and cannot be remunerated outside of the Force without consent of the Commissioner.<sup>182</sup> Interference with a police officer's work is prohibited and police officers can apply to courts to seek protection of their interests. The law also lists legitimate grounds for the dismissal of police officers.

The Public Prosecutor's Office is led by the Public Prosecutor and has extensive powers. For example, they can prosecute leaders when cases are referred to them by the Ombudsman Commission. Under the Proceeds of Crime Act they also have wide ranging powers to enforce the laws.<sup>183</sup> The Constitution establishes this office and it has guiding legislation.<sup>184</sup>

The independence of the activities of the Prosecutor's Office is legally protected. It is the prerogative of the office to pursue a criminal matter and they have independence in operations. For example, the Constitution only allows for external direction to be from the Head of State on the advice of the Executive, with a requirement for the direction to be tabled in Parliament. An employee of the Prosecutor's Office is independent in their official activities, and may not be dismissed except as determined by law.

## Independence (Practice)

Score: 2

*To what extent are law enforcement agencies independent in practice?*

Political pressure, resource constraints and ineffective governance structures within the law enforcement agencies has negatively affected their independence in practice.

There is operational independence amongst both the Police and the office of the public prosecutor. However, there is certainly a deference to the Executive, the higher one goes up the hierarchy, e.g., Police Commissioners,<sup>185</sup> over the last decade have often just been acting in the position and not been substantively appointed, this can be seen to interfere with the decisions by senior management. At sub-national levels, the Independence of the Police is impacted by inadequate resourcing and weaker oversight by the Police Headquarters. This often results in close affiliation by members of the Police with either the local political structures or the commercial interests (usually in the extractive sector).

The Public Prosecutor has absolute discretion on whether to prosecute, and cannot be directed except by the Executive through the Legislature, and by the Judiciary through court orders. There are guiding policies that formulate how cases should be considered.

The independence of the Police force has been impacted by political pressure. An example of this was seen in the case where the operations National Fraud and Anti-Corruption Directorate (NFACD) within the force, were allegedly shut down by the former Prime Minister Peter O’Neill. In this instance, the NFACD was said to have uncovered information about corrupt activity that the prime minister was involved in and had issued a warrant for his arrest. In response to this the activities of the NFACD were stopped by the Prime Minister.<sup>186</sup>

## Transparency (Law)

Score: 3

*To what extent are there provisions in place to ensure that the public can access the relevant information on the activities of law enforcement agencies?*

The Constitution gives grounds for exemption to Right to Information and under Section 51 (f) & (g) criminal investigation is a ground to be exempt.<sup>187</sup>

The obligation to release the types of information extends to the law enforcement agencies, with the procedures and time frames provided for by the same law and decree.

The Police Act 1998 has communication of information from the Police force without consent as a disciplinary offence.<sup>188</sup> Further to this, there are provisions to Secrecy of Records in the force. Those within the Police force that are subject to the Leadership Code have to submit annual asset disclosures to the Ombudsman Commission, which are treated as confidential. Administratively, there is no FOI regime in PNG so law enforcement agencies only are required to comply with the PFMA which requires annual reports to be produced and tabled in Parliament.

## Transparency (Practice)

Score: 2

*To what extent is there transparency in the activities and decision-making of law enforcement agencies in practice?*

The public information section of the website for the police force is basic and has not been updated since 2017. The Office of the Public Prosecutor does not have a website.

There is virtually no transparency from any of the law enforcement agencies in terms of:

- number of complaints/investigations/prosecutions
- types of complaints/investigations/prosecutions
- frequency of complaints
- trends and targets

There is some transparency through media reports and public press statements. However, these are inconsistent - there are no regular monthly or quarterly updates on crime statistics or press conferences between the Police and the media. The other law enforcement agencies are equally lax on the provision of timely and,<sup>189</sup> accurate information to the public.

## Accountability (Law)

Score: 5

*To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?*

The legal framework contains important provisions to ensure the accountability of law enforcement agencies, although there are deficiencies in terms of proactive disclosure of information. There is an Internal Affairs Directorate (IAD) in the Police that is established and handles investigations into police officers wrongful conduct. There is also an Internal Investigations Unit (IIU) in the Police and it is unclear how they work in relation to the aforementioned IAD. The IIU is responsible for conducting internal investigations on the affairs of the Police, it looks at encouraging police officers to maintain a high level of discipline and promote good policing habits. The role of the IAD is similar to the IIU being responsible for investigating allegations against Police misconduct in the force.<sup>190</sup>

Another important instrument for investigating the crimes committed by law enforcement officers is the Ombudsman Commission and there is a Police Oversight Program (POP)<sup>191</sup> for coordination of efforts.

## Accountability (Practice)

Score: 2

*To what extent do law enforcement agencies have to report and be answerable for their actions in practice?*

In practice, the accountability of law enforcement agencies is not adequately ensured. There has not been an effective response to cases where police officers have allegedly committed crimes while on duty and off duty.

The law enforcement agencies have not submitted annual activity reports to the Parliament. In addition, there are no reports available on the Police website (which has limited capabilities).

There are no reliable statistics on crimes nationally and this has led to widespread distrust<sup>192</sup> in the statistics released by the Police.

There are several notable issues in the Police force regarding accountability:

- There are widespread reports of Police brutality in all aspects of law enforcement (investigations, arrests, charging and detention). The violence ranges from assault,<sup>193</sup> sexual abuse,<sup>94</sup> torture,<sup>195</sup> property damage,<sup>196</sup> theft,<sup>97</sup> all the way to extrajudicial killings.<sup>198</sup>
- Very little follow through on investigations,<sup>199</sup> of Police Personnel abusing their powers.
- The public do not understand how to lodge complaints with the internal affairs directorate.
- There is intimidation by the Police of anyone that reports issues, e.g. arbitrary detention.
- There is often no way to identify Police Officers e.g. numbers on their uniforms.
- Often the only way the public finds out about these instances of brutality is either when a community protests,<sup>200</sup> or if there is video footage,<sup>201</sup> that goes viral.
- Police hierarchy just condemns but takes no further action or provides regular updates on investigation.
- There is a culture of brutality that starts early even in the training colleges.<sup>202</sup>
- Petty corruption<sup>203</sup> is rampant because the risk of reporting, i.e. endangering one's personal safety, is too high.

## Integrity (Law)

Score: 5

*To what extent is the integrity of law enforcement agencies ensured by law?*

The Police Act 1998 has an extensive list of disciplinary offences, many of which penalise activities or behaviours that damages the integrity of the Police. These offences range from abuse of office for personal benefit, to solicitation of gifts, to use of unnecessary force and sexual harassment.

There is a Police Code of Ethics and the Ombudsman Commission also has the authority under its legislation to investigate wrongdoing by all levels of the Police. The relevant Acts for the Office of the Public Prosecutor are silent on measures to ensure integrity.

## Integrity (Practice)

Score: 2

*To what extent is the integrity of members of law enforcement agencies ensured in practice?*

The law enforcement agencies are taking some measures to ensure integrity in practice. The website of the Police for instance has a complaints form but it is unclear if it is functional, and statistics of disciplinary penalties are not displayed.

According to a survey report by TIPNG in a 2013 survey, a significant portion (66%) of the respondents surveyed believed that the Police were ineffective in fighting corruption.<sup>204</sup> In 2020 the then Police Minister stated to the media that Papua New Guinea's Police force is the most corrupt public agency in the country, engaged in drug-smuggling, gun-running, and land theft, and beset by "a rampant culture of Police ill-discipline and brutality".<sup>205</sup>

TIPNG has conducted situational ethics trainings with police personnel several times since 2017, at the request of the Australian Federal Police (AFP). At these trainings it is clear that police officers are not sufficiently aware of issues of conflicts of interest, procedural integrity, duty of care, human rights or basic customer service (in their role as public servants). It is unclear if the source of this lack of awareness is a capacity or legal issue.

One of the tools that has been used in pilot projects with village court magistrates, that TIPNG has proposed to the Police, is to have service charters at police stations. These charters would clearly state the service expectations for the public who go to the Police seeking assistance. This suggested intervention was based on the high number of Corruption complaints that TIPNG receives in regard to the Police.

## Role: Corruption Prosecution (Law and Practice)

Score: 2

*To what extent do law enforcement agencies detect and investigate corruption cases in the country?*

The mechanisms to report corruption exist, such as through the NFACD. However often the matter only proceeds if there is significant public interest, or other (often political) interest that is generated to pursue the matter. Of the issues for instance that TIPNG has issued press statements, they often do not proceed beyond the investigation stage, and if they go beyond that they often die a silent death once reports are tabled in Parliament. There is rarely any subsequent prosecution even when there are such blatant instances of abuse of public office for personal gain. TIPNG found only one instance in the last 20 years of a serving politician (a cabinet minister no less) convicted of corruption and sentenced to serve time. The Public Prosecutor often lays the blame at the Police for not conducting investigations by the book and ensuring proper documentation is maintained.

PNG's law enforcement agencies are legislatively and practically limited in their ability to detect, investigate and prosecute corruption matters. Legislatively they were mandated by the Constitution to have distinct ambits that make it difficult to compel one or more agencies to proceed with high level (and lower level) corruption matters.<sup>206</sup> Practically this impacts their handling of alleged cases of high-level corruption leading to ineffective anti-corruption efforts (if any).

According to the Criminal Code, official corruption includes a person who—

(a) being—

- (i) employed in the Public Service, or the holder of any public office; and
- (ii) charged with the performance of any duty by virtue of that employment or office, (not being a duty touching the administration of justice), corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit for [her/]himself or any other person on account of anything done or omitted to be done, or to be done or omitted to be done by [her/]him in the discharge of the duties of [her/]his office; or

(b) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, on or for any person, any property or benefit on account of any such act or omission on the part of a person in the Public Service or holding a public office.

The law enforcement agencies have adequate powers to investigate various types of crimes, including alleged cases of corruption. To do so, the law enforcement agencies take operative and investigative measures and conduct investigative actions such as search and seizure of evidence, the requesting of information, secret monitoring and recording of telephone communications, secret audio and video recording.

Investigative actions that restrict private property rights, ownership, or the right to privacy are carried out based on court warrants, although, in the event of urgent necessity, they can be conducted without a court warrant, in which case their legality is to be assessed ex post facto. Moreover, in order to ensure seizure of property, a court can, based on the prosecution's motion, freeze the assets of a defendant, a person who bears material responsibility for his/her actions, or a person with ties to him/her.

At the same time, based on the prosecution's motion, a defendant can be removed from office (if there are grounds to assume that his/her remaining in the office could obstruct the investigation, prevent compensation for the damage resulting from the crime, or continue criminal activities) prosecutor can ask a court to remand a defendant in custody, while law enforcement officers may detain a suspect without a judge's warrant.

The Public Prosecutor's Office does not have a website with information or statistics on prosecutions. There have however been instances where police officers were the subject of investigation for negligence in their line of duty. For instance in 2004, a matter was brought before the national court whereby police were attempting to apprehend a suspect and fired shots to disperse the crowd shooting a 16 year old innocent by-stander.<sup>207</sup> police officers in this matter were held to have fired shots in a public place in a dangerous and unnecessary way committing the tort of negligence. The State is liable for the tortious actions or omissions of the police officers. Other cases (criminal in nature) such as assaults by police officers have also been prosecuted and dealt with by courts. In a 2019 case police officers were accused of unlawfully assaulting a victim without any lawful excuse or jurisdiction.<sup>208</sup> The court found them guilty and the state liable.

Despite this, a number of high-profile instances of the failure to investigate, arrest, charge and prosecute those alleged to have engaged in corruption indicates that the constitutional silos have been taken advantage of for the purposes of perpetuating impunity by those in power. This systemic failure was the impetus for advocates such as TIPNG to call for the establishment of an ICAC as early as 1996.

The inability to effectively pursue alleged cases of high-level corruption could be ascribed to the following factors:

- legislated territorialism, agencies jealously guard their mandate in the face of mounting cases of serious corruption. This was an area of action identified in the NACS and was the rationale behind the establishment of Taskforce Sweep to break down operational barriers.
- Clientelism, as the Executive has substantial influence over the appointment of key office holders across law-enforcement agencies. While this may not be explicitly corrupt there is an implicit tendency for office holders (particularly amongst the Police) to protect the incumbent Prime Minister from investigation. This also applies to the rank and file officers.
- Each police officer is a constitutional office holder and can arrest anyone they suspect to have committed a crime, however the hierarchy in the Police have sought to curtail this by enforcing a two-tier system between high-profile and non-high-profile cases through a 'vetting process'.<sup>209</sup>
- Scarcity of resources, officer holders are also Administrators and in the face of limited resources, have to defer to the Executive in order to receive adequate funding for personnel and programs. Cooperation will lead to limited resources as costs can be shared.
- Lack of coordination, the NACS has not been implemented through the National Anti-Corruption Plans of Action and there have not been regular meetings of the NACSTF convened by the co-chairs (the Department of Prime Minister and DJAG). Furthermore, respective law enforcement agencies have not been reporting on their progress on implementing their progress.
- Lack of incentives, there is no rewards structure to incentivise best practice (or even expected practice). There is no national budgetary incentive for anti-corruption e.g., tracking how much has been recovered from proceeds of crime. There are no awards for other means or public recognition of exemplary law-enforcement conduct.

## Pillar 7: Electoral Administration

The electoral administration has worsened since the last assessment in terms of organising elections with significant shortcomings in terms of application of rules, human resources, and the return of seats. The worsening state of electoral processes raises questions regarding the very democratic underpinnings of Papua New Guinea. These poor governance conditions are further exacerbated by the COVID-19 pandemic which could jeopardise the conduct of the 2022 National and 2023 Local Level Government elections respectively.

Electoral Administration Overall Score: 3			
Dimension	Indicator	Law	Practice
Capacity: 3	Resources	N/A	2
	Independence	5	1
Governance: 4	Transparency	5	4
	Accountability	5	2
	Integrity	4	1
Role: 2	Election Administration	2	
Law and practice overall scores		5	4

Table 7: Electoral Administration Scores

### Structure and Organisation

PNG's electoral administration is constituted by the Papua New Guinea Electoral Commission (PNGEC), which is mandated by the Constitution and the Organic Law on National and Local-Level Government Elections 1997 to prepare for, conduct and safeguard national, local-level government and other electoral events.<sup>210</sup> The administration is responsible for administering and overseeing the electoral process, including the registration of voters and political candidates, the campaign, the vote, vote count and tabulation of election results. The PNGEC consists of one electoral commissioner who is appointed by the governor-general, two deputy commissioners and six branch directors among approximately 114 full-time staff in the national and 22 provincial offices.<sup>211</sup>

### Resources (Practice)

Score: 3

*To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?*

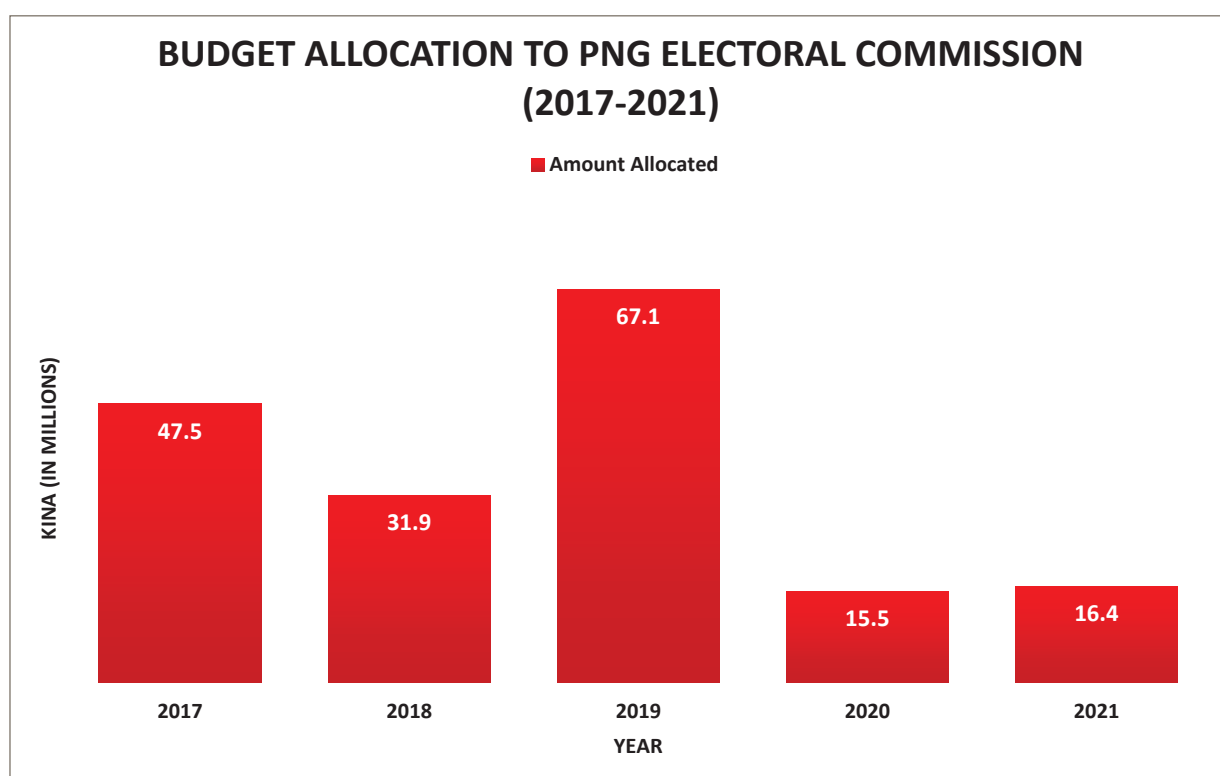
PNG's electoral administrator considers that it receives insufficient funding, even though PNG's elections are amongst the highest costing elections (per capita) globally.<sup>212</sup> The EMB has made minimal to no efforts to improve the qualifications of its members and employees over the last five years since the 2017 National Elections. None of the substantive issues identified by external observers (and interested parties such as the MPs, parties and security personnel) have been rectified and no plans have been implemented due to the wholesale deterioration of electoral standards in the country.



Resourcing was provided to review the Electoral processes in 2018 after the 2017 National Election. The review was focused on ten areas selected by the Executive without through consultation. The areas were somewhat related to electoral management, e.g., electronic voter identification, but several involved the field of candidates, e.g., nomination fees, reserved seats and eligibility criteria. None of the reforms were focussed on the issues that led to allegations of gross electoral misconduct going unpunished.

PNG's electoral management body has received unstable and inadequate funding in recent years however this has been made worse by the lack of any direction for meaningful reform (or electoral planning) within the EMB. The number of employees has stagnated and the senior management team,<sup>213</sup> is under increasing scrutiny in relation to governance issues.<sup>214</sup>

According to the National Budget for the years 2017-2021 the PNGEC is significantly underfunded as allocated amounts continue to drop every year; this makes it very difficult for the electoral commission to carry out its mandate especially with the upcoming elections. Amounts allocated within these years range between K16m and K68m. The figure below indicates the amounts budgeted and allocated to the Electoral Commission. Allocations and projected allocations for the years 2017-2021 indicate a significant reduction in funding to the electoral commission with the highest amount being in 2019. Actual amounts are those for the years 2017-2019 and estimated amounts are for the years 2020-2021.



Graph 8: Budget Allocation to the PNG Electoral Commission (2017-2021)

## Independence (Law)

Score: 5

To what extent is the electoral management body independent by law?

PNG's legal framework provides safeguards against undue influence over the electoral administration. The Constitution and the electoral law contain a number of important provisions that reinforce the independence of electoral administration. The Constitution provides that the Electoral Commission is not subject to direction or control by any person or authority. The Organic Law on National and Local-Level Government Elections and the Electoral Law (National Elections) Regulation safeguard the commission and the commissioner's independence, on almost all electoral management provisions, however there is no specific provision in the law regarding allocation of resources so the Commission is not financially independent.

The commissioner is appointed by the Head of State, with the advice of an Electoral Commission Appointments Committee consisting of the Prime Minister or a Minister appointed by him/her, who is the Chair; the Leader of the Opposition or in his/her absence the Deputy Leader of the Opposition; the Chair of the appropriate Permanent Parliamentary Committee; and the Chair of the Public Services Commission. The electoral commissioner and senior management are subject to the Leadership Code.

## Independence (Practice)

Score: 1

*To what extent does the electoral management body function independently in practice?*

The electoral administration's record on independence is weak and is at the lowest it has been for some time now. The current electoral commissioner was appointed in a questionable manner,<sup>215</sup> one year before the election, and he essentially told candidates that he would not apply the election rules.<sup>216</sup> The most concerning aspect of the election was the declaration of a Government,<sup>217</sup> before all writs were returned.<sup>218</sup> In the 2017 election TIPNG was able to nominate one member of a three-person Electoral Advisory Committee (as per the Organic Law) to independently advise the electoral commissioner and whether an election in the electorate should be failed. The entire committee resigned on the first electorate being returned,<sup>219</sup> as there was insufficient information to determine whether the eligible voting population had exceeded the actual projected figure.

## Transparency (Law)

Score: 5

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Electoral Management Body?*

The legal framework contains comprehensive provisions on the transparency of electoral administration for instance the Electoral Law requires the display of electoral rolls for verification and Observers, Scrutineers and Members of the Media are permitted to enter polling stations on election day.

Observation of the electoral process is open to observers and scrutineers upon registration with the EMB. Observers are authorised to monitor electoral processes, voter registration, as well as the polling process and vote count and declaration. Besides observers, there is also the practice of having scrutineers for each candidate. Key decisions by the PNG Electoral Commission, e.g. setting of polling dates, polling locations, appointment of returning officers and assistants, and appointment of EAC, are legally required to be publicly gazetted.

## Transparency (Practice)

Score: 4

*To what extent are reports and decisions of the electoral management body made public in practice?*

The electoral administration generally operates in a transparent manner, e.g. in the last National Election the Electoral Commissioner gave daily press briefings during the polling period. However, in the instances where there is transparency, there is also a corresponding lack of accountability e.g. while their information on the electoral roll available on a website (now down), there was no mechanism to report errors such as either duplicates or missing names. During the elections, there was no official mechanism to collect and respond to public complaints about electoral issues.

The electoral administration's work has mostly been assessed relatively positively with regard to the openness of commission meetings and the transparency of candidate registration, adjudication of complaints, voting, vote count and tabulation. Gazette notices while in some instances have been delayed, have eventually been published.

At the same time, observers have highlighted some cases where transparency did not lead to accountability. For instance, the Electoral Commission put the electoral roll online but did not create the functionality to flag duplicates or errors, and during polling had a media hub but no means for citizens to call and either receive polling information or report electoral issues. Furthermore, the 2017 Election Report by the PNG Electoral Commission still has not been discussed by the legislature.

## Accountability (Law)

Score: 5

*To what extent are there provisions in place to ensure that the electoral administration has to report and be answerable for its actions?*

The legal framework to ensure the electoral management body's accountability is through the tabling of reports in Parliament. The National Executive Council and the AGO are able to review the reports before tabling in Parliament. Election related complaints can be filed with the Court of Disputed Returns.

## Accountability (Practice)

Score: 2

*To what extent does the EMB have to report and be answerable for its actions in practice?*

The legal provisions on electoral complaints are outdated, not comprehensive and lacking in deterrence. The electoral administration's accountability is limited, officers are not investigated or reprimanded. A senior officer that was implicated in electoral fraud in 2017 after being caught by the Police transporting large amounts of hard cash around the city was able to continue with the Commission.<sup>220</sup>

The court of disputed returns, when it doesn't fail complaints on technicalities, is a long drawn out process that can take many years - disadvantaging the electorate as it perpetuates instability within the governance structure.

## Integrity (Law)

Score: 4

*To what extent are there mechanisms in place to ensure the integrity of the electoral management body?*

There is a strong but outdated legal framework in place for ensuring the integrity of the electoral management body staff, e.g. monetary penalties are not sufficiently. It is unclear if there is a code of ethics for staff, but there is a code of ethics for candidates.

## Integrity (Practice)

Score: 1

*To what extent is the integrity of the electoral management body ensured in practice?*

There is at present immense impunity in the PNGEC, officers that were implicated in electoral issues from the 2017 elections,<sup>221</sup> have continued,<sup>222</sup> on to manage other elections.<sup>23</sup> It is not just the PNGEC from the Commissioner down to rank and file officers, but also candidates standing for elections,<sup>224</sup> despite earlier unresolved electoral issues.<sup>225</sup>

There have been no measures taken to improve the integrity of electoral officers or to reduce the risk of corruption since the last election, i.e. conducting a review of the 2017 Election Report. It appears that similar issues will arise and this time to be wholly unchecked as there is no consistent leadership within the EMB.

## Role: Election Administration (Law and Practice)

Score: 2

*Does the election administration system effectively oversee and administer free and fair elections and ensure the integrity of the electoral process?*

The electoral administration system has deteriorated to the point of being ineffective. TIPNG has conducted elections observation since 2007 and the trend is that elections have reached a nadir with 2017 as its “report makes it clear that the 2017 elections were flawed to an unforgivable extent. We as a nation have allowed far too many of our people to be robbed of a basic right: the right to influence the result of an election.”<sup>226</sup> The EMB has delayed Local Level Government elections<sup>227</sup> at the behest of the Government in 2019,<sup>228</sup> this was challenged by TIPNG,<sup>229</sup> and taken by the Ombudsman to the Supreme Court.<sup>230</sup>

The Government recognised this deterioration of the electoral processes and in 2017, independently of the EMB, commissioned a report (by the Constitutional and Law Reform Commission) into 10 areas for review.<sup>231</sup> This report was finalised and presented to the Prime Minister in 2020,<sup>232</sup> to date it still has not been tabled in Parliament and therefore is not available to the public.

## Pillar 8: Political Parties

The PNG Constitution enshrines freedom of association and the legislation provides for the establishment and registration of political parties. However, the unconstitutionality of key provisions in OLIPPAC reduces the accountability of political parties in the law. The financing of political parties is not transparent in practice, and the ruling party's accountability is not ensured. Violations of financing rules are an annual issue (peaking in election years). Internal democratic governance procedures of the parties are weak and so is their link with the broader public they seek to represent.

Political Parties Overall Score: 3			
Dimension	Indicator	Law	Practice
Capacity: 5	Resources	5	5
	Independence	5	4
Governance: 3	Transparency	4	3
	Accountability	2	2
	Integrity	3	2
Role: 3	Interest aggregation and representation	3	
	Anti-corruption commitment	2	
Law and practice overall scores		3	3

Table 8: Political Parties Scores

### Structure and Organisation

PNG is a multi-party democracy which often features coalition governments. The Integrity of Political Parties and Candidates Commission (IPPC) houses the registry of political parties and is governed by the Board. There are 46 political parties on the IPPCC website, and among those, 25 parties voted have Parliamentary members.<sup>233</sup>

### Resources (Law)

Score: 5

*To what extent does the legal framework provide a conducive environment for the formation and operations of political parties?*

The OLIPPAC has Qualification for Registration provisions that have minimal constraints to the formation and operation of political parties. Under the Constitution all citizens are given rights to freedom of association and the right to stand for public office. The only practical requirement that impedes persons from forming political parties is the registration fee for registering a party although a registration fee may be justified to limit the amount of political parties being created seeing as though there are so many, a majority of which do not engage in or initiate any sort of development activities for the country, the Constitution guarantees the right to stand for public office.

The registration of a political party however is straightforward and this process is set out clearly under Section 21 of the OLIPPAC. Presently political parties are all associations under the Associations Act, a Party must be an association first before becoming registered as an official political party. The registration process begins with an application made to the registry, which is advertised in the National Gazette for

the purposes of transparency and to give ample time for persons to object to the formation of a political party. Applications are then referred to a board which considers the applications and decides whether or not registration should be granted. The board takes into consideration any objections made when the application is advertised. When a decision is made the applicant as well as persons who objected to the application for registration are notified.

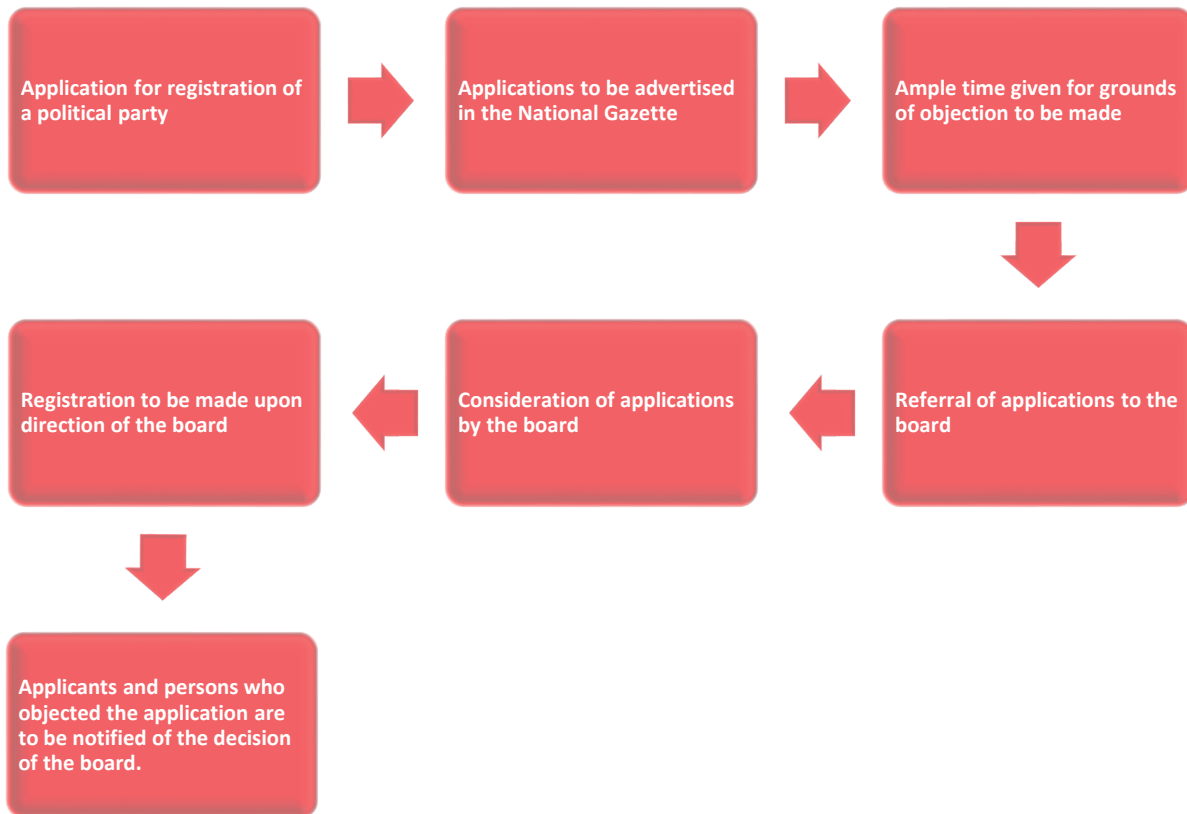


Chart 2: Process for the Registration of a Political Party

## Resources (Practice)

Score: 5

*To what extent do the financial resources available to political parties allow for effective political competition?*

The cost of establishing and maintaining a political party, do not appear to limit the proliferation of political parties. There is a risk that political parties could be funded through illicit financial flows through the extractive sector.

There is a Central Fund for IPPCC, that is administered and paid to the Executives of Parties based on the number of MPs in Parliament.<sup>234</sup> It is a state mechanism for funding parties. It is important to note that since the number of MPs in Parliament determine the amount given to each political party, some political parties are more adequately funded than others therefore some are more competitive than others. The issue of ineffective political competition does not come from the funding mechanism as much as the deterioration of the political party system in PNG and the lack of public awareness on the role of political parties in democracy.

The government however allocates funding to the IPPCC as it is a state institution. The IPPCC is significantly underfunded, with annual budgets barely able to adequately cover yearly expenses and salaries. Between the years of 2017-2021 the funding allocated to the IPPCC ranges from K6m to K7.8m.

## Independence (Law)

Score: 5

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?*

According to the law on political parties there is a limit on how much a single individual can contribute but monitoring payments is difficult. There is no publicly available registry of party donors, this information would empower civil society to monitor party funding by donors is not used to interfere in the activities of parties.

The law on political parties contains provisions to ensure foreign nationals cannot contribute to political parties.

## Independence (Practice)

Score: 4

*To what extent are political parties free from unwarranted external interference in their activities in practice?*

There have been no cases of the government dissolving, abolishing or banning political parties, although the OLIPPAC does have provisions that bar any party from calling for the dissolution of Papua New Guinea from being registered. This is potentially an issue for political parties in Bougainville that may advocate for cession, or other regional parties that may want greater autonomy, such as Papua Besena. There has also been an outlier case, where an opposition political party had to change its name as the law said no two parties could have too similar names.<sup>35</sup>

Among the instances of pressure put on political parties in recent years, of special note is the Supreme Court Ruling of 2010 which held that provisions within the OLIPPAC were unconstitutional<sup>236</sup> as they limited the freedom of conscience of MPs to freely associate.

During the national elections, there was voting for parties and candidates sought endorsements, however public understanding of political parties as mechanisms to ensure accountability in Parliament is still lacking despite outreach efforts by the IPPCC.<sup>237</sup>

There have been cases of violence during elections, against political parties and their supporters, which is a form of external interference.

## Transparency (Law)

Score: 3

*To what extent are there regulations in place that require parties to make their financial information publicly available?*

The current legislation requires that political parties declare their income. The OLIPPAC stipulates the mechanisms of monitoring and ensuring the transparency of political party financial returns and individual candidate financial returns to the IPPCC. These include details on contributions received, self-contributions, party contributions, fundraising ventures and contributions in kind. However, there is no provision for proactive disclosure of this information to the public.

## Transparency (Practice)

Score: 3

*To what extent do political parties make their financial information publicly available?*

The financial information of political parties is not publicly available. This lack of public information contributes to the risk of donations that will impact the independence of parties.

There is no publicly available registry of party donors, and making this information available would empower civil society to monitor party funding by donors and ensure that it is not used to interfere in the activities of parties.

In terms of the transparency of election campaigns, there have been increasing concerns on how parties use social media to discredit opponents.

## Accountability (Law)

Score: 2

*To what extent are there provisions governing financial oversight of political parties?*

The law establishes substantial instruments for exercising financial oversight of political parties although the relevant provisions contain multiple shortcomings. In effect, the pillar is hamstrung following the Supreme Court's 2010 ruling that sections of the OLIPPAC are unconstitutional. The party mechanisms to ensure their candidates/parliamentarians are accountable to the Party are substantially weakened as the OLIPPAC itself is compromised.

## Accountability (Practice)

Score: 2

*To what extent is there effective financial oversight of political parties in practice?*

Despite the existence of mechanisms at the level of the law, accountability of political parties is not properly ensured in practice. Political parties submit financial reports annually to the IPPCC; however, compliance is inadequate. The financial oversight practice is problematic regarding the submission of financial declarations by political parties. For example, the Registrar of political parties has had to withhold payments to party Executives for a number of years due to lack of acquittals. The reports are not made public, so it is impossible for the public to verify the accuracy of the returns.

## Integrity (Law)

Score: 3

*To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?*

At the level of the law, there are no provisions containing principles of democratic governance of political parties. This area is governed by internal regulations of political parties, which are basic and found in the party's constitutions. The law states that all political parties must be Associations, and there are minimal requirements for Integrity amongst associations.



## Integrity (Practice)

Score: 2

*To what extent is there effective internal democratic governance of political parties in practice?*

The internal mechanisms of democratic governance in PNG's leading political parties are extremely weak. Party constitutions are basic and parties do not disseminate detailed internal regulations. Some parties post minutes of council meetings on the website of Associations Registry. Party caucus rarely have conventions or large meetings, there is political capture of the party,<sup>238</sup> by the Parliamentary wing as they have influence and control over funds. This exemplified by the horse-trading of MPs,<sup>239</sup> during Votes of No Confidence.

## Role: Interest Aggregation and Representation (Practice)

Score: 3

*To what extent do political parties aggregate and represent relevant social interests in the political sphere?*

Political parties at present do not effectively represent social interests. Political parties and the larger Westminster System were inherited from the Australian colonial administration. There is little in terms of identity politics in PNG, with kinship and locality being the primary organising principles.<sup>240</sup> While power networks do follow structures of capital, religion or education, overwhelmingly the polity is structured around kinship or proxies for the same such as locality. In urban settings, policies are often populist and unsubstantiated.

Education on parties coupled with a strengthened (through amendments) OLIPPAC is required.

## Role: Anti-Corruption Commitment (Practice)

Score: 2

*To what extent do political parties give due attention to public accountability and the fight against corruption?*

In recent years, political parties appear to only champion anti-corruption when in Opposition. During the national elections parties will campaign on anti-corruption platforms but there has been no follow through. Political parties are a mechanism for accountability in Parliament, and if properly functional would counterbalance the apathy that the electorate has for political opportunists that renege on commitments once elected.

The fundamental problem is that candidates do not need parties to be elected, and once elected parties are effectively politically non-existent, aside from being a way to pay underlings from the public purse under the guise of being employed as Party executives.

## Pillar 9: Ombudsman Office

The PNG Ombudsman Commission was established directly by the Constitution as an independent institution that plays an oversight role and ensures compliance in government processes and procedures. It is well-resourced and its services are free, which facilitates public access. It is active in the anti-corruption field although it is not clear that its recommendations are successfully implemented or that their investigations lead to prosecution.

Ombudsman Office Overall Score: 4			
Dimension	Indicator	Law	Practice
Capacity: 4	Resources	5	4
	Independence	5	4
Governance: 4	Transparency	5	4
	Accountability	5	3
	Integrity	5	4
Role: 4	Role (Law and practice)	4	
Law and practice overall scores		5	4

Table 9: Ombudsman Office Scores

### Structure and Organisation

In PNG, the ombudsman office consists of the Ombudsman Commission of PNG (OCPNG). The Commission was established to guard against the abuse of power by those in the public sector; assist those exercising public power to do their jobs efficiently and fairly and impose accountability on those who are exercising public power. The Ombudsman Commission performs a range of different functions to ensure that all governmental bodies are responsive to the needs and aspirations of the People, assisting in the improvement of the work of governmental bodies and the elimination of unfairness and discrimination by them, and eliminating unfair or otherwise defective legislation and supervising the enforcement of the leadership code.<sup>241</sup>

A Commission, rather than a single officeholder, exercises the constitutional powers. The OCPNG consists of a Chief Ombudsman and two ombudsmen known as the 'Members of the commission'.<sup>242</sup> OCPNG further has an establishment of 146 comprising 119 positions in the head office and 27 positions in the regional offices.<sup>243</sup> The administration and operational structure of OCPNG is comprised of the Office of Secretary and Office of Counsel.<sup>244</sup> In addition, there are five divisions: Executive Services, Support Services, Leadership, Complaints and Administrative Investigations, and Regions and External Relations.<sup>245</sup> The Commission has a staff of nearly 100 officers.<sup>246</sup>

### Resources (Law)

Score: 5

*To what extent does the Ombudsman Office have an adequate legislative framework to effectively carry out its duties?*

The Constitution and the Organic Law on the Ombudsman Commission set out the Commission's mandate. Powers are given to the ombudsman commission under the Constitution to investigate persons holding public office or a public office, defects in law, or conduct that is wrong, unjust or oppressive.<sup>247</sup> OCPNG

however cannot in accordance with the Constitution inquire into the exercise of a rule-making power by a local government body.<sup>248</sup> Provisions set out under both laws are sufficient for OCPNG to carry out its mandate.

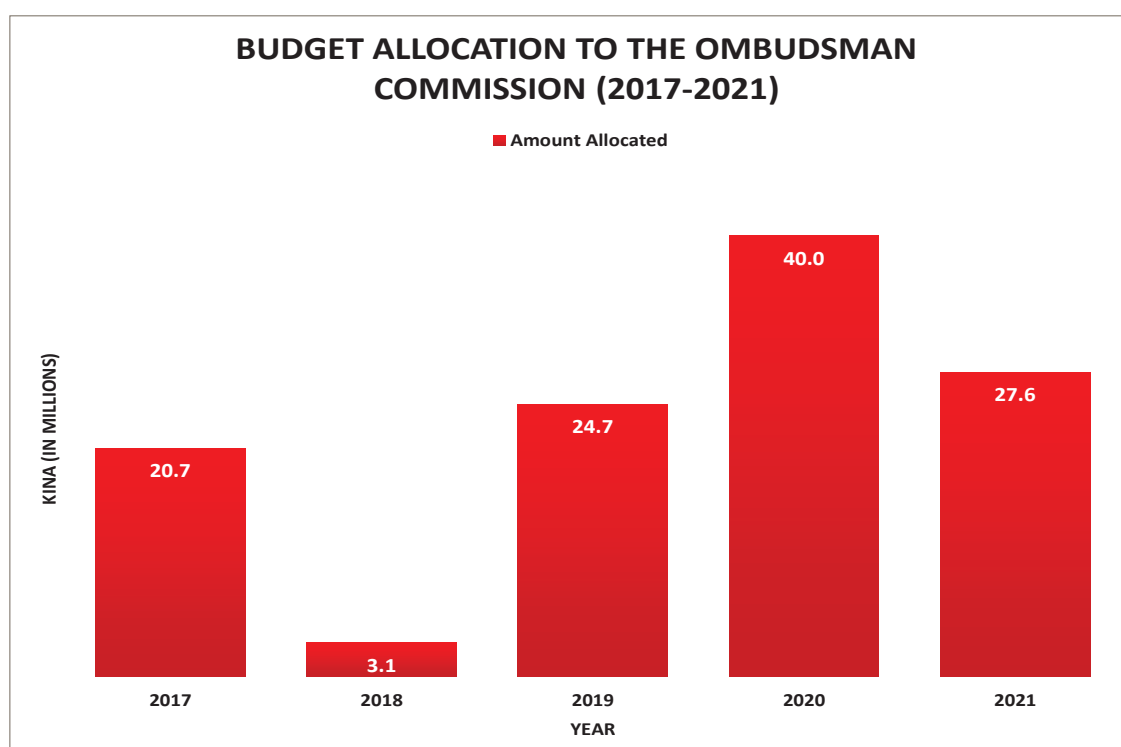
## Resources (Practice)

Score: 4

*To what extent does the Ombudsman Office have adequate resources to effectively carry out its duties?*

The Ombudsman Commission like all other public bodies is funded by the government of PNG. It has been argued over the years that the ombudsman commission does not have adequate resources (mainly in terms of funding) to fulfil its mandate. PNG budget documents from 2017-2021 show that the amount of funding given to OCPNG is significantly inconsistent. OCPNG was given K20.7m in 2017 to finance its operations, this amount significantly dropped in 2018 when it was allocated K3.1m. This amount increased again between 2019-2021.<sup>249</sup> In its 2015 annual report, OCPNG stated that it remains hopeful that the Government will appreciate its role of promoting good governance and quality leadership in PNG and ensure that it is sufficiently and equitably resourced in the years ahead.<sup>250</sup>

The figure below indicates the amounts allocated to the Ombudsman Commission from the National Budget in the period 2017-2021. Amounts allocated from 2017-2019 are actual amounts whilst those for 2020-2021 are estimated amounts.



Graph 9: Budget Allocation to the Ombudsman Commission (2017-2021)

## Independence (Law)

Score: 5

*To what extent is the independence of Ombudsman Office safeguarded by law?*

The Commission's independence is guaranteed by the Constitution, in a number of different ways. The Constitution clearly states that in the performance of its functions under Section 219 the OCPNG is

not subject to direction or control by any person or authority.<sup>251</sup> Furthermore, the proceedings of the Commission are not subject to review in any way, except by the supreme Court or the National Court on the ground that it has exceeded its jurisdiction.<sup>252</sup>

Being a Constitutional body, the Commission must be completely independent from the point of appointments of members right down to investigations conducted and reports produced.

## Independence (Practice)

Score: 5

*To what extent is the Ombudsman Office free from external interference in their activities?*

The activities and conduct of the OCPNG as established by the Constitution are relatively independent. The commission however as part of its mandate must conduct investigations, investigations are made difficult to conduct if there is inadequate funding given to OCPNG. It is through the avenue of funding and resources that external parties (such as the government) can interfere with the investigations of the commission.

Even though this independence is specified by the Constitution, the Constitution goes further to provide for an Ombudsman appointments committee comprising of; the Prime Minister, who shall be Chairman, the Chief Justice, the Leader of the Opposition, the Chairman of the appropriate Permanent Parliamentary Committee and the Chairman of the Public Services Commission.<sup>253</sup> The Prime Minister and other persons with political ties such as the leader of opposition in such an instance have a great degree of influence over who is appointed to important positions of the commission such as the chief ombudsman. In order to ensure complete independence of the body, appointments should then be done by impartial persons and not those with political ties.

Once the OCPNG conducts an investigation, it provides a report outlining the findings of the report. The commission has previously in its 2014 Annual report called on the Parliament to act promptly on recommendations contained in Investigative reports that the Commission submits for tabling on the floor of Parliament to address issues of national interest.<sup>254</sup> In recent times the government has continued to ignore the recommendations of the commission and the commission too has because of such failed to back its own reports.

An example was seen with the report produced by the Ombudsman Commission on the UBS loan which was sufficient, conclusive and implicated a number of high-level politicians including the present Prime Minister, when he was Finance Minister. The government in this instance interfered with the activities of the commission by failing to act on its recommendations in the report and instead launched a separate commission of inquiry into the matter.<sup>255</sup> Because of this move by the government, citizens not quite aware of the commission's mandate were made to believe that the report by the ombudsman commission was insufficient hence questioning its ability to adequately report on its investigations.

## Transparency (Law)

Score: 5

*To what extent are there provisions in place to ensure transparency of the Ombudsman Office?*

The organic law further sets out clearly the procedures of the commission from meetings to collecting complaints, conducting investigations, holding proceedings, collecting evidence as well as procedures after an investigation. (Sections 14, 16, 17 and 22) This is to ensure that the public is aware of the fixed procedures of the commission and can hold them accountable should these procedures not be followed. Further to this, OCPNG is to provide reports on investigations conducted containing conclusions,

recommendations and suggestions in accordance with section 23 of the Organic Law on the Ombudsman Commission to certain persons.<sup>256</sup> These include, for example, the Prime Minister, the Minister responsible for national public service, and others.

## Transparency (Practice)

Score: 4

*To what extent are these provisions effectively implemented?*

The OCPNG remains consistent with ensuring the public is aware of the procedures involved in making a complaint by publishing such information on its website and outlining the different levels a complaint goes through.

With respect to investigative reports produced by the commission, it has been consistent with publishing these reports and tabling them in Parliament. The most recent report produced by the OCPNG was in December of 2018 on the alleged improper borrowing of AUD\$1.259 billion loan from the Union Bank of Switzerland.<sup>257</sup> Since the last report no other reports have been produced in 2019 and 2020, people are left to think whether or not the OCPNG has in fact been conducting investigations during these years seeing that corruption especially in the public sector has worsened and if so, where is the evidence of such if no reports are provided?

## Accountability (Law)

Score: 5

*To what extent are there provisions in place to ensure that the Ombudsman Office has to report and be answerable for their actions?*

In terms of accountability, the OCPNG is required under the Constitution at least once in each period of 12 months to give to the Head of State, for presentation to the Parliament, a report on its functions and workings, with such recommendations as to improvement as the Commission thinks proper.<sup>258</sup>

PFMA procedures also apply to the commission in terms of the provision of financial statements to the minister for finance.<sup>259</sup> Provisions applicable under the PFMA include submitting to the finance minister before 30 June in each year, a performance and management report of its operations for the previous year ending 31 December, together with financial statements to enable the presentation of such reports and statements to Parliament.

## Accountability (Practice)

Score: 3

*To what extent does the Ombudsman Office have to report and be answerable for their actions in practice?*

In terms of the production and publication of annual reports, to date the latest report as published by the ombudsman commission on its website is that for the year 2015. It is unclear whether later reports were put together, published and tabled in Parliament as they are not available online.

## Integrity (Law)

Score: 5

*To what extent are there provisions in place to ensure the integrity of the Ombudsman Office?*

In terms of integrity, the organic law on the ombudsman commission is clear on the qualifications of a member of the ombudsman commission (Chief ombudsman and ombudsman) such that they must be a person of integrity, independence of mind, resolution and high standing in the community.<sup>260</sup> Further disqualifications are that a member must not be amongst others a member of a provincial government, a member of a local level government, an officer of a registered political party, insolvent, or of unsound mind.<sup>261</sup> These qualifications ensure that the integrity of the office is maintained.

To further maintain the integrity of the commission, the organic law sets out the conditions of employment for members of the commission.<sup>262</sup> Such conditions include that a member of the commission must not actively engage in politics or engage either directly or indirectly in the management or control of a corporation or other body of persons carrying on business for profit. Exceptions may be made on leave granted by the Head of State, or because of illness, absent her/himself from duty for more than 14 consecutive days or more than 28 days in any period of 12 months. A member must also not acquire by way of gift, use or hold in any other manner any interest in, any property of Papua New Guinea, or solicit, accept or receive any other benefit in addition to his or her terms and conditions of employment.

## Integrity (Practice)

Score: 4

*To what extent is the integrity the Ombudsman Office ensured in practice?*

The integrity of OCPNG has recently been under question, in practice. It was reported in early 2021 that police detectives from the National Capital District Metropolitan Fraud Squad had served at the Ombudsman Commission a search warrant to “retrieve, seize and confiscate” all documents relating to the Manumanu Land Deal. Ombudsman Commission staff including the Chief Ombudsman were then allegedly cited for perverting the course of justice and taken to the Police station.<sup>263</sup>

The same Chief Ombudsman, when deputy ombudsman commissioner, was also assaulted by police officers in 2019 and held at a police station without a formal charge being made.<sup>264</sup> It is difficult for the integrity of OCPNG to be maintained if its leadership is being approached by the Police in such a manner.

## Role (Law and Practice)

Score: 4

The OCPNG is mandated by law ultimately to protect the integrity of the public office by ensuring that leaders are compliant with their code of conduct. Apart from this role OCPNG also plays an important role in drawing attention to laws that threaten the democracy and rights of the people.

In carrying out its mandate the OCPNG has continued to over the years refer high-profiled politicians to the public prosecutor if being of the opinion that a case against them exists. In December of 2020 the Commission referred Bulolo MP Sam Basil to the Public Prosecutor for alleged misconduct in office, on a complaint lodged in 2016. According to Chief Ombudsman Richard Pagen, an investigation was carried out following the complaint and Basil was given an opportunity to respond to the allegations, Basil requested for and was granted time to respond but after 51 days, he still had not done so. The OCPNG therefore decided that there was a prima facie case that Basil had been guilty of misconduct in office.<sup>265</sup>

In the implementation of its mandate the commission is encouraged to continue to remain impartial and to consistently support and stand by its work, create awareness and regularly update the public on its workings for the purpose of ensuring public trust.

## Pillar 10: State Audit Office

The State Audit Office (SAO) works to review the spending of public funds. However, is it not sufficiently transparent or active and public agencies frequently fail to implement its recommendations. Also, the SAO's monitoring of political party finance is ineffective, especially during electoral campaigns.

State Audit Office Overall Score: 3			
Dimension	Indicator	Law	Practice
Capacity: 4	Resources	4	
	Independence	5	3
Governance: 4	Transparency	5	3
	Accountability	5	3
	Integrity	4	3
Role: 2	Effective financial audits		2
	Detecting and sanctioning misbehaviour		2
	Improving financial management		1
Law and practice overall scores		4	2

Table 10: State Audit Office Scores

### Structure and organisation

To promote effective public management and accountability, the Supreme Audit function is carried out in Papua New Guinea by the AGO, which oversees how budgetary funds and other public resources are used. It is also authorised to inspect the activities of other public bodies tasked with financial and administrative control and to present proposals for improving tax legislation to the Parliament.

The Supreme Audit institution is an independent body. It is accountable to the Parliament and, at the same time, it also ensures the control of public funds by the Parliament. The Supreme Audit Office is managed by the Auditor General who is appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving reports from the Public Services Commission and the Public Accounts Committee.<sup>266</sup>

### Resources (Law and Practice)

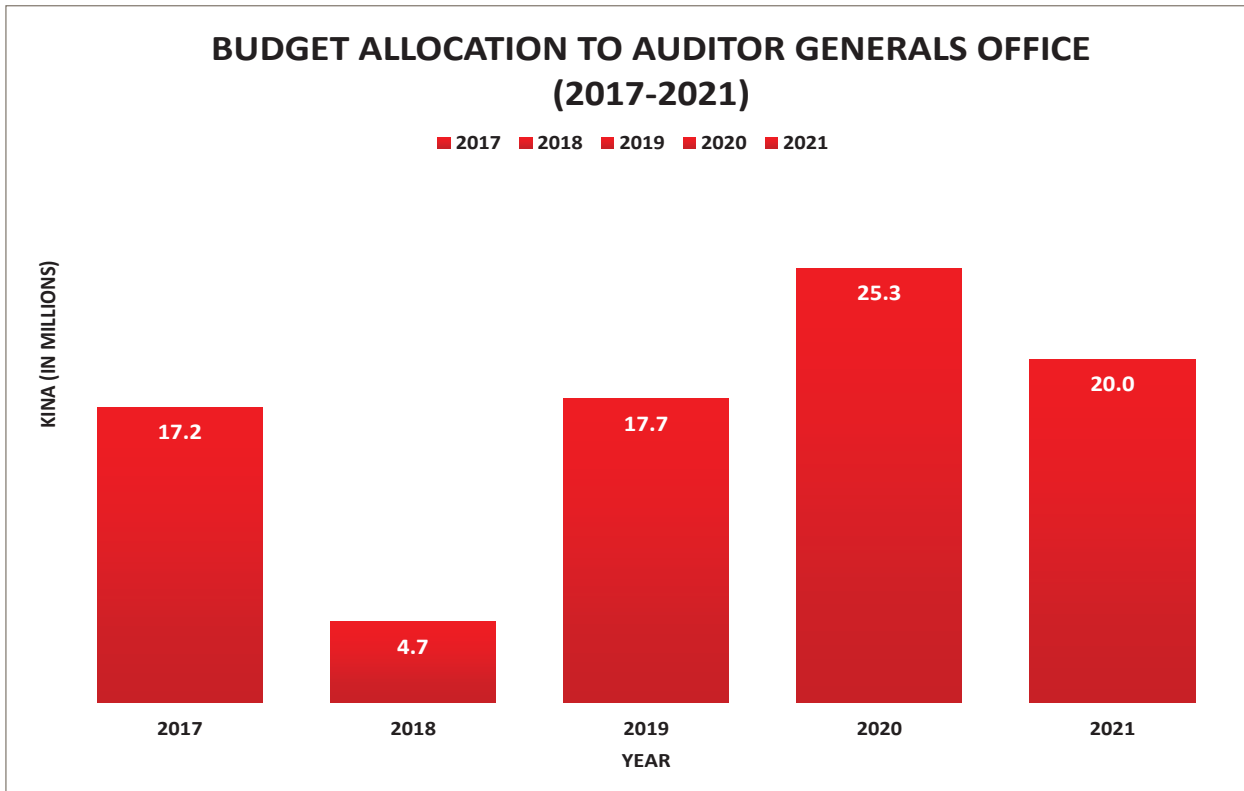
Score: 4

*To what extent does the supreme audit institution have adequate resources to achieve its goals in practice?*

The AGO is somewhat equipped with the necessary resources for accomplishing its goals. The agency's budget has been consistent in recent years. The primary capacity-related difficulty of the AGO is its human resources, for instance in an interview, the office of the AGO indicated that "Previously he had our office in 19 provinces; each province had a representative of our office in there. But then the funding for AGO has been started to reduce, we simply closed our provincial offices, and only had our office in the four regions".

According to the AGO's 2018 Annual Report, the biggest challenge faced is resource constraints. The AGO is inadequately resourced with funding and human power to deliver its audit services and produce audit reports that are current and relevant. Furthermore, it has a manpower gap between the Graduates/Auditor-1 level and the Director of Audits resulting in more man-days spent on an audit.<sup>267</sup>

The 2017-2021 national budgets show that the amount allocated to the AGO fluctuates each year but has stabilised recently. In 2017 the AGO was given K17.2m but in 2018 this amount dropped significantly to K4.7m. The highest allocated to the AGO in this five-year period was in 2019 when it was given K25.3m.<sup>268</sup> The figure below indicates the amounts allocated from the national budget to the AGO from 2017-2021. Amounts allocated from 2017-2019 are actual whilst those for 2020-2021 are estimated amounts.



Graph 10: Budget Allocation to the Auditor General’s Office (2017 – 2021)

In determining the National Budget, section 23 of PFMA states that in compiling the budget the finance minister must give to Departmental Heads and public office-holders responsible for activities involving the collection and expenditure of public moneys directions as to the form and content of estimates prepared for the purpose of compiling the national budget. The national budget is compiled based on estimates provided by government agencies. It is not uncommon for agencies to be given less or more than what has been estimated and submitted to the minister for finance.

The Auditor General submits to the Parliament the proposed budget for the coming year. In turn, the Parliament, after it has approved the proposed draft, submits it to the Government of PNG. The budgeting procedure is determined by the Parliament’s Rules of Procedure. According to the 2018 Annual Report of the AGO, the auditor general reported that despite his budget submission, the National Parliament appropriated a significantly less amount to the AGO in the budget process, this was inadequate to fund the departments operational requirements considering the increase in audit portfolios. As a result, the conduct of audits was mainly restricted to government entities and agencies based in the National Capital whilst the audits in other provinces could not be carried out because of the limited financial resources.<sup>269</sup>

The Public Services Management Act provides human resource considerations for the AGO staff. Due to budget cuts it is almost impossible for the staff of the AGO to receive specialised training in areas of their work. However, in the AGO’s corporate plan (2017-2021) the Auditor General had stated that with its budget limitations it would look at developing, strengthening and improving its Human Resource Management



processes including appropriate inductions and internal and external training, and participating in staff exchanges where available.<sup>270</sup>

A core function of the AGO is to monitor the financial activities of political parties like all other state institutions. As mentioned earlier budget restraints have contributed to the AGO's inability to carry out a lot of its functions, especially in provinces.

## Independence (Law)

Score: 5

*To what extent is there formal operational independence of the supreme audit institution?*

The AGO is an independent body under the Constitution of PNG. The Constitution stipulates that in the performance of his or her functions under this Constitution, the Auditor General is not subject to the control or direction of any person or authority. According to the Constitution, the Audit Act 1989 and the PFMA the AGO is independent in its finances, functioning and organisational affairs.

The primary functions of the Auditor General are to inspect and audit, and to report at least once in every fiscal year (as provided by an Act of the Parliament) to the Parliament on the public accounts of Papua New Guinea, and on the control of and on transactions with or concerning the public moneys and property of Papua New Guinea, and such other functions as are prescribed by or under a Constitutional law.<sup>271</sup> Although political pressure should not be exerted on the functions of the AGO, the AGO through its mandate must work together with other government bodies (who work closely with the government, such as the Department of Finance and Treasury) in order to make its work more efficient, and this increases the risk of political interference. One of the main ways the AGO is affected by political decisions is through the allocation of the national budget.

It is unclear whether the Auditor General is exempt from criminal charges however as a constitutional office holder, he or she is subject to the leadership code and must conduct himself in a manner that does not call into question the integrity of their office. In the event that the Auditor General is found to have breached this code of conduct he or she can be punished under the leadership code and is therefore subject to penalties set out under the leadership code.

It is unclear how the Auditor General is removed from office, as the Constitution only provides for the manner in which he or she is appointed. It could well be that the Head of State acting on the advice of the NEC may remove and replace the Auditor General.

## Independence (Practice)

Score: 3

*To what extent is the supreme audit institution free from external interference in the performance of its work in practice?*

Although the law provides strong safeguards for AGO's independence, these are not always realised in practice. There have been many public reports concerning external interference in the work of the AGO, most notably the absence of publicly accessible annual audit reports, as they have not been tabled in Parliament. The Parliamentary Public Accounts Committee is supposed to use these reports as the basis for any enquiries. There have also been missing reports of large expenditure e.g., the hosting of the 2018 APEC Leaders' Summit in Port Moresby.

There is the ever-present risk of government interference with the work of the Auditor General through the budgetary processes, this affects the ability of the office to carry out its duties in a manner that covers the entire country and not just a targeted area. It was reported in 2019 that the AGO is underfunded to

the point where it cannot fulfil its mandate. In total the Provincial Government Audit Division of the AGO is supposed to be responsible for auditing 947 government institutions located outside Port Moresby. No such Provincial Audit Service exists though, due to funding constraints.<sup>272</sup> It is not only in the Provinces that the AGO has been unable to conduct its audits. The National Government Audit Division of the AGO is responsible for auditing 63 government departments and treasury offices yet, only 23 are currently the subject of audit checks by the AGO.<sup>273</sup> The Office of the Governor General, for example, has not been audited since 2015.

## Transparency (Law)

Score: 5

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the supreme audit institution?*

National legislation has provisions to ensure the transparency of the work of the AGO however there are some ambiguities about the agency's specific responsibilities.

According to the Audit Act 1989, the AGO is required to submit its audit reports to the Minister to table in Parliament. The law does not establish the rules for proactive disclosure of public information and the rules for requesting public information but rather establishes secrecy requirements. According to the Constitution the Auditor General is the designated person responsible and required to publish its audit reports. Under the Audit Act 1989, Section 3(4) sets out the details of what the auditor general is expected to inspect and audit in terms of accounts either directly or indirectly. These details include the collection, receipt, expenditure or issue of public monies or the receipt, custody, disposal, issue or use of stores or other property of the State.

In terms of the type of information required to be published by the AGO, the Constitution states that apart from reporting on the audit of the public accounts, this may extend to the accounts, finances and property of all arms, departments, agencies and instrumentalities of the National Government; and all bodies set up by an Act of the Parliament, or by executive or administrative act of the National Executive, for governmental or official purposes.<sup>274</sup> The Auditor General is further obliged under section 7 of the Audit Act 1989 to report to the Minister any irregularities revealed by any inspection or audit that, in the opinion of the Auditor General, are of sufficient importance to justify.<sup>275</sup> The AGO has not assigned staff members responsible for public disclosure and responding to FOI requests.

## Transparency (Practice)

Score: 3

*To what extent is there transparency in the activities and decisions of the supreme audit institution in practice?*

The AGO is somewhat transparent in practice as it publishes its corporate strategy, annual work plans on its website which allows the public to view the activities the agency has planned for the coming year. The AGO does post on its website its annual reports submitted to the Parliament, which provide a summary of the agency's main activities, however these reports require parliamentary endorsement before they can be released. Nevertheless, there are concerns from observers, that the AGO's audit reports are littered with examples of all types of fraud. What is seen as concerning is the lack of proper record keeping by state agencies. The AGO says its audits are constrained by the lack of records kept by government organisations and the lack of proper financial management systems.<sup>276</sup>

The AGO is required to produce annual reports and full audited reports. To date on the AGO website the most recent annual report that was tabled in Parliament was for the year 2018, there are no existing reports after 2018, one then questions whether reports were in fact tabled for the years following 2018. More to this point, as per the AGO's website the most recent full audited report on the country's public accounts available is for the year. Annual audited reports for the following years (2016, 2017, 2018) are only provided in parts.

The AGO publishes updates about its work on its website, mentioned above. The website provides access to other audits by the AGO, such as performance audits and special reviews and investigations. These reports are presented to the Parliament as appropriate. Information is structured by the types of audits conducted.

The AGO website while live and stable has outdated information, there are no regular updates on the website being made on the office's workings and the scope of the website itself is limited to the offices mandate, about the Auditor General, publications (not recent), career opportunities, contact information and news (the most recent news was published in 2015). There is therefore not much public access to and update on the performance and work of the AGO since 2015 (news) and 2018 (annual report).

The AGO does not publish statistics on the violations and sanctions resulting from the financial monitoring of political parties. The AGO only has its 2018 Annual Report available online and does not publish data on its revenues and spending or quarterly information on how it fulfils the obligations foreseen by the budget.

## Accountability (Law)

Score: 5

*To what extent are there provisions in place to ensure that the supreme audit institution has to report and be answerable for its actions?*

The AGO is accountable to the Parliament and is required to report annually on its activities. The Auditor General is authorised and on occasion requested to attend the Parliament's plenary sessions, committee hearings, parliamentary faction hearings and/or the investigative or other temporary commission hearings. Under the Audit Act 1989 the AGO is required to before 30 June in each year, prepare and furnish to the Head of State a report of its operations for the year ending 31 December preceding, together with the financial statements in respect of that year, for presentation to the National Parliament. <sup>277</sup> This report is presented by the head of state to Parliament.

Following international standards and practice, under section 28 of the Audit Act 1989 the Head of State, acting on the advice of the Auditor General, shall appoint a person who is a Registered Public Accountant under the Accountants Act 1996 to audit the accounts and records of the Office of the Auditor General.

## Accountability (Practice)

Score: 3

*To what extent does the supreme audit institution have to report and be answerable for its actions in practice?*

In practice the AGO is not as accountable for its activities as it should be. The agency is inconsistent in following its accountability requirements towards the Parliament. It is unclear when the last full external audit of the AGO was conducted. There is a lack of proper regard for providing information to the public and information contained in its annual reports/corporate plans is very general and limited.

There has been an instance where the Auditor General was charged with fraud in 2018. Radio New Zealand reported that Papua New Guinea's Auditor General had been arrested and charged with fraud, Philip Nauga was charged with abuse of office, conspiracy to defraud and misappropriating over USD\$76,900.<sup>278</sup> The director of PNG's fraud office Detective Chief Superintendent Matthew Damaru told the Post Courier the charges stem from allegations Mr. Nauga did not follow proper procedures in awarding two audit contracts, worth tens of thousands of dollars, to a law firm which never carried out the audits.

Recent annual reports of the AGO have not been made available as well as full audited reports since the year 2015. The AGO website is outdated and audited reports are no longer substantive as the AGO considers that this is a result of inadequate funding from the national government.

The AGO has published its 2017-2021 corporate plan which is only 7 pages long and although containing strategies, goals, key priorities and objectives it is not sufficiently comprehensive for a 5-year period.

## Integrity (Law)

Score: 4

*To what extent are there mechanisms in place to ensure the integrity of the supreme audit institution?*

There are weakened mechanisms to ensure integrity of the AGO. The only real mechanism in place to ensure the integrity of the Auditor General especially is the Leadership Code which sets out its obligations and roles as a leader and a constitutional office holder.

The Auditor General in certain instances has been criminally charged for allegations of fraud. It is unclear if there is a separate code of conduct for the staff of the AGO, however there is the business code of ethics for civil servants which in this instance would apply to the staff of the AGO as they are civil servants.

Under section 28 of the Audit Act 1989, the person appointed as the auditor for the AGO, in conducting an audit of and preparing a report on the accounts and records of the Auditor General must have the same powers, and be subject to the same requirements as the Auditor General when auditing and reporting on the accounts and records of a public body.<sup>279</sup>

## Integrity (Practice)

Score: 3

*To what extent is the integrity of the supreme audit institution ensured in practice?*

The AGO, as far as it is publicly known, does not perform its work with the expected integrity. There have been publicly known cases suggesting a lack of integrity among the AGO staff in recent years. The AGO has not really made an attempt to ensure that the public is assured that it is doing its job and well. This is seen in the lack of reports available and information given to the public. There have not been any reported cases of lack of integrity by AGO staff however in the previous case the Auditor General in 2018 was seen to lack a lot of integrity when he was charged with fraud. Public Trust in the integrity and accountability of the AGO since the arrest of the Auditor General is lacking.

## Role: Effective Financial Audits (Law and Practice)

Score: 2

*To what extent does the audit institution provide effective audits of public expenditure?*

One of AGO's core tasks is to ensure that public funds are managed effectively. To do this, the AGO monitors public expenditures through three main types of audits: assurance audits, compliance audits, and performance audits. It also carries out special project audits.

The AGO occasionally conducts financial audits of public agencies and prepares findings on their compliance with the law. A financial audit entails tasks such as inspecting accounts, financial records and statements of a public agency; examining whether the audited agency has been complying with legally prescribed rules and financial systems; and investigating its internal controls and the internal audit function. The AGO is required to conduct annual financial audits of public agencies and prepare findings on their compliance with the law. The last full audited report available to date is for the year 2015, very concerning. This suggests either that the AGO is conducting full audits but not covering much ground or that the audits are not being done at all. If these audits have not been done where then is the money allocated by the government going?

The AGO has audited only ministries and agencies under their responsibility. These reports are available to the public on the AGO website by year.

#### STATUS OF AUDITS AS AT 30 JUNE 2020 (END OF 2019/2020 CYCLE)<sup>280</sup>

Year	Audits Completed	Audits Substantially Completed	Audits in Progress	Audits to Commence Shortly	Financial Statements not submitted	Total 2019/2020	Total 2018/2019
2019	3	1	32	9	78	123	-
2018	31	11	27	6	42	117	123
2017	22	13	17	6	25	83	119
2016	14	8	8	5	13	48	81
2015	5	6	5	4	8	28	55
2014	5	4	1	2	6	18	33
2013	1	1	1	2	5	10	14
2012	0	3	0	2	2	7	8
2011	0	1	0	2	0	3	2
2010	0	1	0	1	0	2	2
<b>Total</b>	<b>81</b>	<b>49</b>	<b>91</b>	<b>39</b>	<b>179</b>	<b>439</b>	<b>437</b>

Table 11: State Audits as at 30th June 2020

In the year 2018 the AGO had reported that it did not get to do a full audit as it should, of government institutions in the provinces as well as in the nation's capital. This left 947 government institutions located outside Port Moresby and 43 others unaudited.<sup>281</sup>

## Role: Detecting and Sanctioning Misbehaviour (Law and Practice)

Score: 2

*Does the supreme audit institution detect and investigate misbehaviour of public officeholders?*

The AGO detects misbehaviour and violations using standard audit practices and tools. At the same time, the AGO does not utilise the full extent of the measures provided by the law, particularly on enforcement and compliance with submissions.

The AGO does have the authority to impose sanctions. The AGO is given prosecution powers under the Audit Act. Section 5 of the act states that where the Auditor General is satisfied that a person, to whom the provisions relating to audit apply, is guilty of misappropriation, misuse or fraud of public money, stores or property he or she shall refer the matter, together with a statement of the reasons for being so satisfied, to the Public Prosecutor.<sup>282</sup> Where a matter has been referred to the Public Prosecutor and the Public Prosecutor has failed to proceed with the matter after 60 days, the Auditor General may prosecute the person who in his or her opinion is guilty of misappropriation of public monies.<sup>283</sup>

The AGO is responsible for the monitoring of financial activities of all public bodies who deal with public money. In this capacity the Auditor General is given very wide powers to do all matters and things necessary for the due exercise and performance of the powers, functions and duties conferred or imposed on him.<sup>284</sup> S/he has the powers to receive, have in his or her custody, dispose, issue or use of stores and other property of the State as well as cause searches to be made in, and copies or extracts to be taken from, any document, register or record in any Department, Organisation or Agency for which he or she is the auditor.<sup>285</sup>

The Auditor General has full and free access to, or to search accounts and records of government bodies dealing with public money. The Audit act establishes offences for authorities who fail to give access to or do not comply with the AGO's directions. Section 29(1) of the Audit Act states that a person who hinders or obstructs the Auditor General, or a person authorised by the Auditor General, in the exercise and performance of his or her powers, functions and duties is guilty of an offence. The Penalty is in the case of an offence by a natural person, a fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years; in the case of a person other than a natural person, a fine not exceeding K20,000.00.<sup>286</sup>

The Auditor General's reports are published on its website.<sup>287</sup> The information shared however shows that sanctions are rarely made. The Auditor General will comment on the inability of staff in government bodies to keep proper records of accounts however it does not specify whether or not punitive measures have been taken as it seems that almost all government departments do not keep proper records of their accounts.

## **Role: Improving Financial Management (Law and Practice)**

Score: 1

*To what extent is the supreme state institution effective in improving the financial management of government?*

Contributing to the improvement of financial management is one of AGO's objectives. There are legislative guarantees to ensure this and to some extent, the AGO fulfils this role in practice. The AGO should contribute to the improvement of financial management by holding certain government bodies accountable for not keeping proper records of their transactions. Because this is one of the roles of the AGO, the law adequately provides for full powers (including prosecuting powers) to ensure this and requirements for the AGO to provide reports so that the public and the government can see how public monies are being spent and whether or not they are being spent wisely for the purpose in which they are intended. If the AGO provides timely reports and fully utilises its prosecution powers it can contribute significantly to the improvement of financial management. As it stands, the AGO does not fulfil its role in practice.

In addition to identifying an audited entity's violations and flaws, the AGO is authorised to provide recommendations. The audit report and recommendations are presented to the agency or its supervisory body to which the agency is accountable.

Recommendations may concern issues such as Inability of government department staff to keep proper records of account, weak financial management systems, inadequate resources and funding, unmotivated staff, no monthly reconciliations.

The agency is not required to notify the AGO on the measures undertaken in response to the recommendations.

In practice the auditor general's recommendations are not often taken up, year in and out the same issues remain with government departments continuously failing to keep a proper record of accounts. The 2018 Annual Report available does not say much about agencies taking up recommendations however it did highlight that the AGO We have also improved its approach in providing simple, clear and relevant audit recommendations.

## Pillar 11: Anti-Corruption Agencies

Papua New Guinea's newly created Independent Commission Against Corruption (ICAC) was passed into law in 2020 and is in the process of operationalisation. The ICAC is the latest, and to date most substantive, action by the Government of PNG to address corruption. That said, there have historically been other agencies and initiatives that have an anti-corruption mandate. There are also the Ombudsman Commission and law enforcement agencies that have an anti-corruption mandate that are assessed under their own pillars in this report. The table below scores the current legislation and for practice, it assesses the current ICAC as well as Taskforce Sweep in the period since the last NIS report in 2003.

Anti-Corruption Agencies Overall Score: 4			
Dimension	Indicator	Law	Practice
Capacity: 4	Resources	5	4
	Independence	5	4
Governance: 5	Transparency	5	4
	Accountability	5	5
	Integrity	5	5
Role: 3	Prevention of corruption	3	
	Education / Awareness	5	
	Enforcement / Investigation	4	
Law and practice overall scores		5	4

Table 12: Anti-Corruption Agencies Scores

### Structure and organisation

The Constitution was amended in 2014 to enable the enactment of an Organic Law on the ICAC, eventually in 2020. The ICAC<sup>288</sup> as enacted is composed of a commissioner and deputy commissioners, appointed by a committee to investigate, arrest and prosecute cases of corruption with another committee to provide oversight. The ICAC will also collaborate with agencies, the public and others to implement and achieve the NACPA.

There are several agencies listed in the NACPA that contribute to the fight against corruption, such as the Department of Treasury and the Department of Education. Prior to the ICAC there was a Public Sector Anti-Corruption Committee, established in 2000 by Government and spearheaded by the following key State agencies: Ombudsman Commission, Police, General Auditors, Public Prosecutors, Departments of Attorney General, Personnel Management, Provincial Affairs, Finance and Treasury Departments.<sup>289</sup> The Committee was responsible for establishing a National Anti-Corruption Agency, a precursor to ICAC and signed a "Statement of Alliance on Fighting Corruption". Following this there was also the establishment of Investigation Task Force Sweep in 2011.<sup>290</sup> Taskforce Sweep was disbanded in 2016 following a government decision and a court battle.<sup>91</sup>

### Resources (Law)

Score: 5

*To what extent does the legal framework provide sufficient resources for the anti-corruption agency/agencies to effectively prevent and address corruption?*



The legislation does not have special provisions for resourcing, however, the ICAC will still be funded through the national budget. The legislation adequately provides for ICAC administration recruitment, notably of the heads of the Commission. Further regulation will provide for Administration of the entity and HR structure.

## Resources (Practice)

Score: 4

*To what extent do the human and financial resources available to the anti-corruption agency or agencies allow for effectively prevent and address corruption?*

The ICAC has not been operationalised, at the time of writing, nevertheless it has been funded in the current 2021 National Budget. The 2021 budget estimated a total of K4 million to go towards the establishment of the ICAC in 2021. The treasurer confirmed this in December 2020 when concerns were raised on whether or not any funding was allocated to the ICAC. Ling Stucky said that funding has in fact been allocated to set up the ICAC, a total of K4 million.<sup>292</sup>

Moreover, funding is not the only resource; recruitment of personnel and establishing guidelines is essential, and these have not been not carried out, in practice.

## Independence (Law)

Score: 5

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of anti-corruption agencies?*

According to the law, the independence of the ICAC is adequate. As a constitutional body it will be able to make administrative decisions, e.g., to prosecute a corruption matter, based on the regulations that are enacted by the cabinet. The appointments process is somewhat independent, as the Prime Minister is one of the 5-member appointments committee. The ICAC is also unusual as it creates an oversight body to monitor the ICAC and produce reports. Lastly, the Prime Minister has the power to stop some of the ICAC's work on matters of National Interest.

## Independence (Practice)

Score: 4

*To what extent are anti-corruption agencies free from unwarranted external interference in their activities in practice?*

While the ICAC is not yet in operation, there have been indications that the Executive will seek to use the body to investigate matters that align with its own interests. After the disbanding of Taskforce Sweep and prior to the enactment of ICAC, cabinet in an NEC Decision established the Interim ICAC, to primarily help with the establishment of the ICAC. In 2018 the former Government repurposed the Interim<sup>293</sup> ICAC<sup>294</sup> (which members of the public thought was the ICAC) to selectively investigate politically advantageous allegations. A similar approach was taken by the current government which has eluded the Interim ICAC, and the actual ICAC, in public statements on corruption issues.<sup>295</sup> This muddying of the waters, provides an indication of the Executive's intent to direct the work of anti-corruption agencies.

As an independent body the ICAC cannot be directed by any other body to conduct investigations. The ICAC can only initiate investigations in accordance with a complaint made or by its own initiative. The figure below shows how the ICAC receives and deals with complaints. When a complaint is made, it is assessed and then the ICAC can either chose to investigate it, refer it to another body, or decide not to pursue it. During an investigation the ICAC has the powers to hold hearings to obtain evidence and hear statements. Once sufficient evidence is compiled and the Commission is satisfied that a case exists it can proceed to prosecuting the matter by commencing legal proceedings.

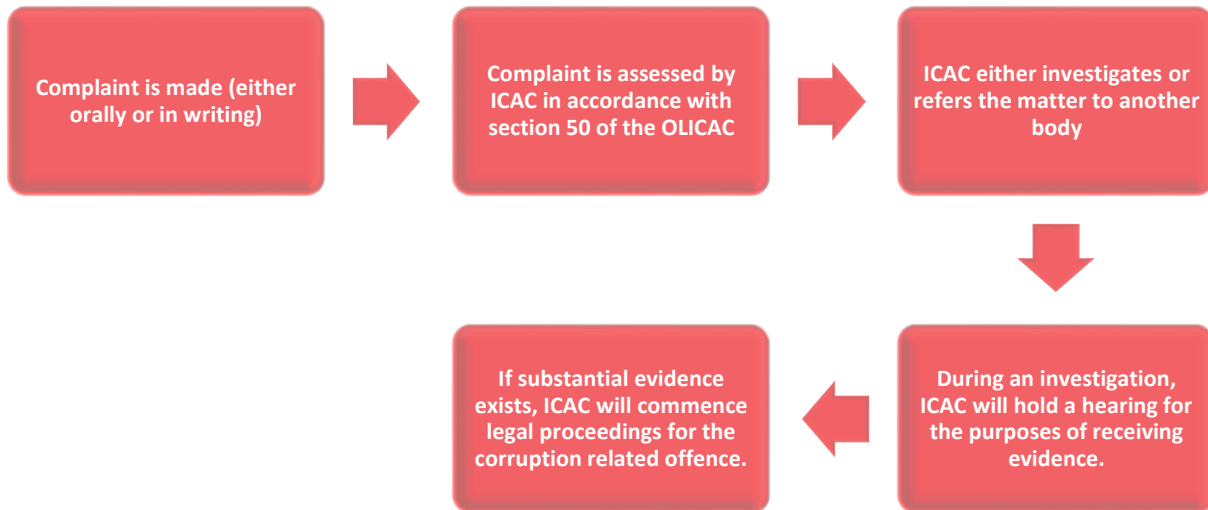


Chart 3: ICAC Process of Receiving and Dealing with Complaints

Score: 5

To what extent are there regulations in place that anti-corruption agencies to make their financial information, policies and decisions publicly available?

The current legislation creates an oversight committee that reviews the work of the ICAC. It is unclear whether the oversight committee,<sup>296</sup> will compel the ICAC to make their internal procedural information publicly available - this is a new model for a commission to have a separate oversight committee within the same law.

The PFMA stipulates the mechanisms of monitoring and ensuring the transparency of the ICAC, through Parliamentary reports.

### Transparency (Practice)

Score: 4

To what extent do anti-corruption agencies make their financial information, policies and decisions publicly available?

As of May 2021, the ICAC has not yet been established so it is unclear to what extent their procedural information will be publicly available. Existing agencies with anti-corruption mandates are often secretive and not reliable in terms of the cases they pursue; therefore, it would be a welcome development if the ICAC makes its financial information, policies and decisions publicly available in accordance with good

international practices. Thus far, operational information on the ICAC, e.g. the budget in 2021, is available and civil society is co-opted on the National Anti-Corruption Strategy Taskforce, which monitors ICAC operationalisation. However, there are no regular and clear public updates on the progress of the ICAC.

## Accountability (Law)

Score: 5

*To what extent are there provisions governing financial and other oversight of anti-corruption agencies?*

The ICAC will have to table annual reports in Parliament under the PFMA. There is also an internal Oversight Committee in the ICAC law. The Organic Law provisions notably includes an oversight body which ensures further accountability. The Oversight Committee will also have to submit annual reports within three months of receiving the ICAC's annual report. The courts also have oversight role on interpreting and ruling on the Organic Law on ICAC.

## Accountability (Practice)

Score: 5

*To what extent is there effective oversight of anti-corruption agencies in practice?*

The ICAC will have to submit financial reports to Parliament. After tabling, reports are to be published and the public is to be able to check the accuracy of these reports. The ICAC regulations and operationalisation are also currently undergoing consultation to ensure they are sufficient and that there is harmony with existing constitutional bodies. Prior anti-corruption agencies had similar approaches to consultation and coordination.

## Integrity (Law)

Score: 5

*To what extent are there organisational regulations regarding the internal democratic governance of the anti-corruption agencies?*

Prior to the ICAC, there were only working groups and task forces, bound to the terms of reference from either the Executive or agreed to by the constituents of the taskforce. The current ICAC law indicates integrity as the first qualification of appointment for Commissioner and Deputy Commissioners. This same expectation is maintained for the appointment of Members of the Oversight Committee.

## Integrity (Practice)

Score: 5

*To what extent is there effective internal democratic governance of anti-corruption agencies in practice?*

Prior to the ICAC governance of agencies was focused on coordination, so the key consideration was the integrity of those involved in cooperation and sharing of information. The National Anti-Corruption Strategy Taskforce was tested when the ICAC Bill was being drafted, i.e. whether it would have full powers. The ICAC Bill that was tabled and enacted had the powers of investigation, arrest and prosecution intact.

## Role: Prevention (Practice)

Score: 3

*To what extent do anti-corruption bodies effectively carry out its anti-corruption prevention function?*

This ICAC is still not functional, with certification of the Act and the development of key operational regulations now overdue given that 2021 budget allocation has been secured. The Government must prioritise the operationalisation of an effective ICAC that will lead and collaborate on anti-corruption prevention. While prior anti-corruption arrangements may not have been successful in prosecuting high-profile cases, their relative lack of success, are not to discredit the zeal of the effort.

## Role: Anti-Corruption Education (Practice)

Score: 5

*To what extent do anti-corruption bodies effectively carry out education and communications initiatives?*

Anti-Corruption education is captured within the NACS and the Organic Law on ICAC speaks to education (and working with educational institutions) as part of the ICAC mandate. There has been national government support for the development of a national Civic Education Curriculum.<sup>297</sup>

## Role: Enforcement / Investigation (Practice)

Score: 4

*To what extent do anti-corruption bodies effectively support and coordinate investigation or law enforcement?*

The ICAC legislation provides for investigation and arrest, with clear requirements for consultation with respective constitutional offices, e.g., the office of the Public Prosecutor. However, the regulatory framework is still to be developed and endorsed. This was budgeted to occur in 2021, it is overdue.

The ICAC will chair the NACSTF, which includes all agencies in the NACS. Besides legislated and regulated collaboration, the ICAC will have the Taskforce as a means of coordination.

## Pillar 12: Media

PNG legislation creates a favourable environment for the establishment and operation of media organisations. However, the independence of the media has been challenged by the Government and commercial interests which undermines the media's primary role of providing citizens with relevant information about important political processes. Investigative journalism is weak overall. There has been an increase in the use of social media,<sup>298</sup> both generally and as a news platform, since the entry of new Internet Service Providers in PNG. The major news outlets all have a social media presence.

Media Overall Score: 4			
Dimension	Indicator	Law	Practice
Capacity: 4	Resources	5	5
	Independence	5	3
Governance: 5	Transparency	5	3
	Accountability	5	5
	Integrity	5	3
Role: 3	Investigate and expose cases of corruption	2	
	Inform public on corruption and its impact	3	
	Inform public on governance issues	5	
Law and practice overall scores		5	3

Table 13: Media Scores

### Structure and Organisation

Radio is the primary source of information in PNG, followed by social media, print media and television. The most popular Radio stations include PNG FM group, FM 100 and the National Broadcasting Corporation. Other radio stations include Christian and Provincial Stations. There are three major local TV Networks, EMTV and National Broadcasting Corporation (NBC) which are state-owned and TVWan which is owned by Digicel, a private Telco. Minor TV stations include ClickTV and provincial stations. There are two main daily print newspapers, one owned by News Corp and the other by a Malaysian logging company. There is also a weekend paper and a Tok Pisin newspaper which have limited circulation.

The dominant social media platform is Facebook with all the aforementioned media outlets having pages on the platform. The messaging application WhatsApp is also a prominent means of individuals sharing news articles across personal social networks. Wider access to Facebook has also increased low-cost non-mainstream news pages run by individuals, who in some instances are politically linked and financed.

### Resources (Law)

Score: 5

*To what extent does the legal framework provide an environment conducive to a diverse independent media?*

The Constitution enshrines freedom of Expression in Section 46. A media law does not exist, the more appropriate law that would also cover media would be the FOI legislation which unfortunately does not exist. The Cybercrime law limits the freedom of social media news reporting.

## Resources (Practice)

Score: 5

*To what extent is there a diverse independent media providing a variety of perspectives?*

PNG's media market is small and the amount of available resources is limited because owning media is not a profitable business, it is a small market with large operational costs. Individuals usually operate media entities in order to promote their own business or political interests. At the same time, there are media entities established by religious interest groups and sub-national groups.

The National Budget for the years 2017-2021 indicates funding being allocated to NBC. The amounts given have increased greatly over the years. In 2017 NBC was given a total of K18.9m, this dropped significantly by K10m in 2018 but following this funding has increased both in 2019-2021 with an amount of K39.5m being allocated in 2020 and K36.2m in 2021.

The government owns two TV stations, national and provincial radio stations and an Internet Service Provider. Some of these media outlets operate on a commercial basis (e.g. EMTV) and others receive guaranteed funding from the state budget (e.g. NBC). These television stations also have websites and social media platforms where it streams live sessions.

Each of the media outlets has a social media page on Facebook to further share their stories, as well as websites that sell online advert space. The mobile phone network Digicel PNG has a fully digital news outlet, PNG Loop, that is solely accessible through its website and social media pages.

In this vein, Facebook has lowered the cost of website development for news outlets, and as such there has been a corresponding increase in informal (i.e. non-mainstream) news content pages. These pages can range in intent and content from, digital magazines, digital newspapers, personal blogs by employed journalists, citizen journalism, politically motivated news content, and malicious and defamatory news content.

Political spending on either direct (e.g. Facebook advertising) or indirect (fake accounts) advertising and communication has also increased markedly since the last assessment. There are also newsgroups on WhatsApp that blur the line between news content and propaganda, for want of a better phrase, fake news.

Papua New Guinea has a relatively pluralistic media profile, both in traditional and social media. As in most relatively free countries, social media has more diverse views but less quality control. The government has used this lack of quality control to threaten to censure platforms,<sup>299</sup> that report on corruption or other unwanted stories, as they are deemed unsubstantiated.

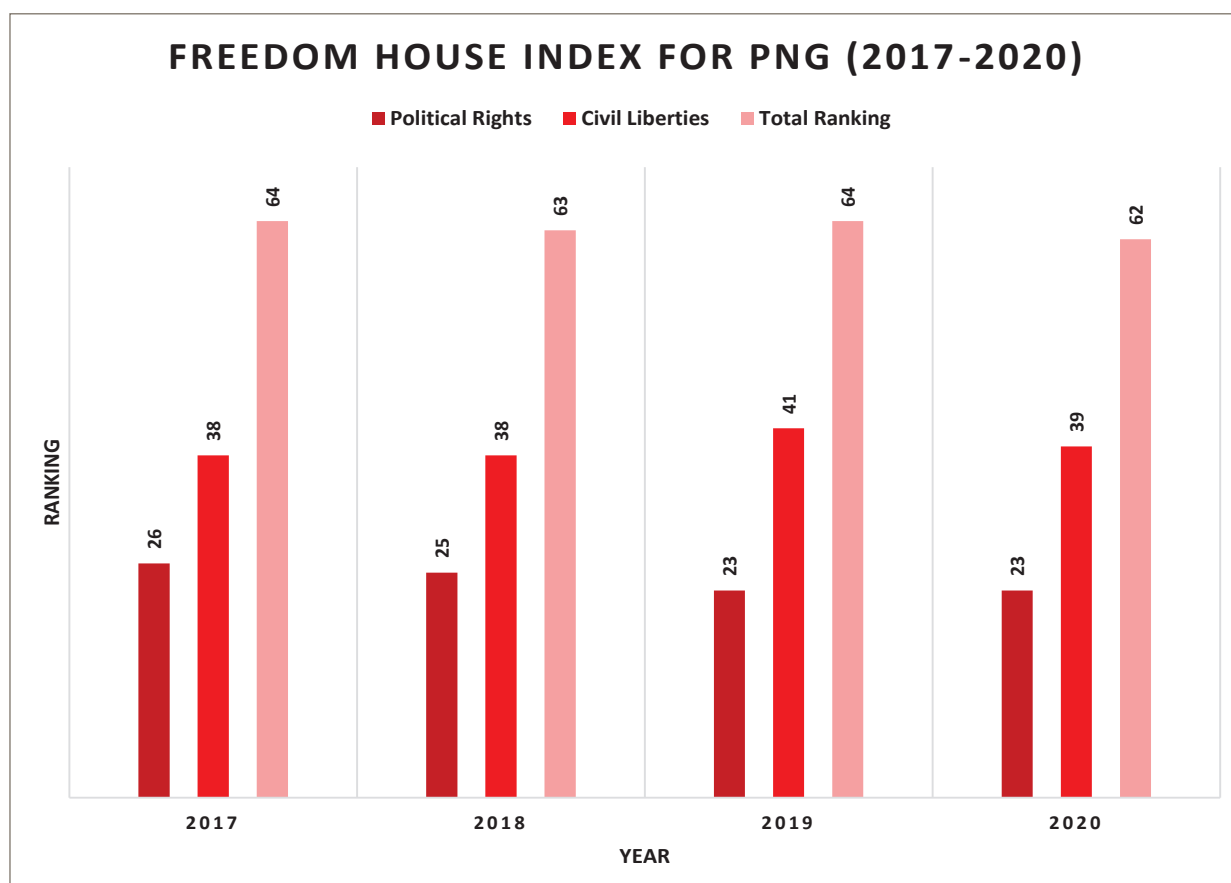
## Independence (Law)

Score: 5

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?*

Overall PNG has strong legislation in terms of the freedom of the media. The legislative framework contains multiple provisions designed to prevent undue interference in the activities of the media. The freedom of expression is only protected by the Constitution. The Constitution also protects editorial independence and ensures access to public information.

Freedom House provides useful information on how free the country is in terms of information sharing taking into account the media. Data compiled by Freedom House ranks both political and civil freedom according to annual studies. The Freedom House Index for the years 2017-2020 shows PNG rankings in political rights and civil liberties freedom have remained fairly consistent with a slight decrease last year.



Graph 11: Freedom House Index Rankings for PNG (2017-2020)

## Independence (Practice)

Score: 3

*To what extent is the media free from unwarranted external interference in its work in practice?*

The independence of the media is relatively free as compared,<sup>300</sup> to other countries; there are no journalist killings and the government doesn't arrest or detain reporters for their journalism.

That said, there have been instances of violence,<sup>301</sup> by politicians against journalists. More often political pressure is indirect, e.g. suspension of journalists,<sup>302</sup> in state -owned media for political reporting, disparaging,<sup>303</sup> and boycotting,<sup>304</sup> of outlets, and barring (in some instances physically)<sup>305</sup> from media briefings.<sup>306</sup>

The other way journalistic independence is impinged is through commercial pressures,<sup>307</sup> either from the state or the private sector (notably the extractive sector, with positive pieces after all-expense paid trips) seeking to ensure positive coverage of advantageous stories (or bury disadvantageous stories, invariably about corruption).

These two forces, coupled with poor remuneration and options for career progress lead to a dearth of public interest investigative journalism in Papua New Guinea.

To the extent that Social Media, and citizen journalism, can be considered part of the media landscape in PNG, they have been adversely affected by proposals by the government to limit access to digital civic,<sup>308</sup> spaces. Furthermore, Papua New Guinea has enacted a Cybercrime Act that limits freedom of expression,<sup>309</sup> and could be used to silence,<sup>310</sup> online reporting and commentary.

## Transparency (Law)

Score: 5

*To what extent are there provisions to ensure transparency in the activities of the media?*

PNG legislation provides for measures to ensure transparency of companies through the Companies Act, which covers private media entities. This is discussed in this report detail under the Private Sector pillar, below.

## Transparency (Practice)

Score: 3

*To what extent is there transparency in the media in practice?*

Transparency of the media is partially ensured in practice. There is limited information about the owners of media outlets publicly, accessible through the Investment Promotion Authority online portal. It is possible to obtain information about some of the broadcasters' and newspapers' revenues through the portal. At the same time, ensuring the transparency of advertising remains a challenge and there are online news agencies which do not disclose the information about their owners, revenues and financing or goals. This is part of the broader issues around the lack of a beneficial ownership transparency in Papua New Guinea.

The ownership structure of media outlets rarely elicits public discourse, outside of the concerns on Rimbunan Hijau<sup>311</sup> using a newspaper to release propaganda on (and cover up) forestry issues. There is, however, widespread and vocal distrust on the efficacy of the media to conduct public interest journalism and to hold the powerful accountable.

## Accountability (Law)

Score: 5

*To what extent are there legal provisions to ensure that media outlets are answerable for their activities?*

Multiple legislative provisions establish mechanisms for the commercial media's accountability, but there are no similar legislative provisions regulating new media and state broadcasters. Defamation provisions exist in law under the Defamation Act 1962.

## Accountability (Practice)

Score: 5

*To what extent can media outlets be held accountable in practice?*

Each media outlet has its own internal complaints mechanism and particularly in newspapers, there are apologies/retractions that are often published. However, these retractions are invariably due to a Minister taking issue with the reporting or indeed adverts,<sup>312</sup> which seems to indicate self-censorship.



There are also libel laws in Papua New Guinea, they rarely seemed to have been used but more recently provisions within the Cybercrime Law have resulted in defamation cases being pursued by citizens,<sup>313</sup> and law enforcement.<sup>314</sup>

Overall, there has not been public/political uproar about the media ‘abusing’ its freedom, so there have not been calls for accountability (as is the case in other jurisdictions). However, this could be seen as an indicator that the media is rarely antagonistic in PNG.

## Integrity Mechanisms (Law)

Score: 5

*To what extent are there provisions in place to ensure the integrity of media employees?*

PNG’s legislation partially ensures the integrity of the media. There is also a code of ethics<sup>315</sup> developed by the PNG Media Council in 2017.

## Integrity Mechanisms (Practice)

Score: 3

*To what extent is the integrity of media employees ensured in practice?*

Applying the principles of integrity in the daily lives of journalists remains a challenge. This was seen during recent electoral campaigns. There are frequent cases of deferential reporting to the benefit of the incumbent government.

The absence of a FOI legislation means that there are no objective sources of information and that journalists are more dependent on their primary source (who is often the implicated party) for information. Journalists have to prioritise access to sources over the short term, which leads to compromised stories. This is compounded by a pretence of maintaining journalistic neutrality, e.g. political corruption stories are structured around the rebuttal as opposed to the allegations, which disadvantages public interest journalism.

Senior political journalists often come under fire on social media for being compromised in their reporting. Often social media uproar on articles will lead to a retraction or further stories clarifying earlier reporting by the outlet.

## Investigate and expose cases of corruption (Practice)

Score: 2

*To what extent is the media active and successful in investigating and exposing cases of corruption?*

Exposing and investigating cases of corruption has been one of the main areas of investigative journalism in recent years. However, overall, the media has been neither active nor successful in investigative journalism, for a number of reasons.

The first is that print and broadcast media in Papua New Guinea does not have the capacity to pursue investigative lines of inquiry, the news cycle is reactive and rarely lasts beyond a week - it is easy for those implicated to bury a story. Often live (in the sense that they implicate current office holders) stories of political corruption are broken in Australia,<sup>316</sup> and then reported in Papua New Guinea,<sup>317</sup> with deference to the accused.

In addition to this, there is a lack of legal expertise in the newsrooms which again leads to deference to official responses. There is no legal analysis or explanation of issues as journalists are not trained and inexperienced.

The second major impediment is that there is a lack of editorial or commercial inclination to risk confrontation with the government. Journalists are not supported by the management to pursue a line of inquiry if there is no official statement to respond to - they cannot create storylines, they can only report. There is infrequent analysis on issues of governance, but often it is academic in nature and not speculative. Newspapers rarely run long campaigns for policy reforms when it comes to corruption, in contrast to other societal issues such as Gender Based Violence.

Lastly, there is no FOI legal framework to enable journalists to request information as a primary source. News outlets can only report from leaked documents,<sup>318</sup> there is no other way to obtain independent information on corruption. Further to this, most agencies do not have internal anti-corruption strategies, which means there is no way for journalists to engage with agencies when public figures are accused of corruption.

## Inform public on corruption and its impact (practice)

Score: 3

*To what extent is the media active and successful in informing the public on corruption and its impact on the country?*

The media is active in forming the public on corruption and its impact on the country. There are articles consistently about corruption and individuals that are alleged to have engaged in corruption. However, it is unclear if the media have been 'successful' in informing the public. The reporting is superficial and rarely outlines pathways to resolution. The media doesn't equip citizens with knowledge to demand accountability, it merely generates frustration and apathy.

The media creates outrage, not change. At a commemoration of the World Press Freedom Day in 2021, the President of the PNG Media Council highlighted this by saying:

*"During this time of gross misinformation on what our country should be and should not be doing, there is a large portion of people to rely on in the media to make informed decisions. We as journalists and the media fraternal should have an opinion as to what standards we wish to see in society, what standards we wish to hold up against our current leadership and our future leadership."<sup>319</sup>*

## Inform public on governance issues (practice)

Score: 4

*To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?*

The media is allowed access to Parliament and to broadcast live Parliament sessions. However, there is not a culture of regular public press conferences by the government. As a result, the media are unaccustomed to asking questions in group settings - they often seek exclusives through one-on-one interviews, which creates a clientelist relationship with journalists.

The media are not seen as an educational resource, as often they are limited in their understanding and the depth of their reporting. Citizens do not consume the news to be educated, only to be informed. Analysis by media outlets requires experienced journalists with clout, and there is a dearth of such journalists as they leave the sector for better paying jobs in the private sector (or with the Executive) as press officers. The Australian government has a Media Development Initiative that has sought to bring capacity to this style of journalism through press clubs<sup>320</sup> but the results have been middling.

## Pillar 13: Civil Society

PNG has a large number of Civil Society Organisations (CSOs) primarily in the environmental sector but also including faith-based organisations, women's groups, youth groups, cultural associations, professional associations, academic associations and a diverse range of community groups. Many national-level CSOs operate both within the nation's capital and in provinces around the country. Most CSOs lack sustainable organisational structures and therefore lack internal resources, with the majority relying on government financing or foreign aid. The country's leading CSOs work actively to hold the government accountable and promote policy reforms. The government has a mechanism through the Consultative Implementation and Monitoring Council to seek and obtain CSO views, and while the government will acknowledge these views, they rarely fund or implement recommendations. Civil society is weakened by the lack of Right to Information laws in seeking to hold the government accountable.

Civil Society Overall Score: 3			
Dimension	Indicator	Law	Practice
Capacity: 4	Resources	5	4
	Independence	5	4
Governance: 3	Transparency	5	3
	Accountability	N/A	3
	Integrity	3	
Role: 3	Hold government accountable	4	
	Policy reform	3	
Law and practice overall scores		5	3

Table 14: Civil Society Scores

### Structure and Organisation

There are over 70 non-profit, non-governmental organisations that are formally registered in PNG.<sup>321</sup> CSOs are categorised by law as non-commercial legal entities. Registration is managed by the Investment Promotion Authority. The largest and most active organisations are based in Port Moresby, with 37 in provinces.<sup>322</sup>

### Resources (Law)

Score: 5

*To what extent does the legal framework provide a conducive environment for civil society?*

The legal framework is generally favourable for the establishment and operation of CSOs. Section 47 of the Constitution states that every person has the right peacefully to assemble and associate and to form or belong to, or not to belong to, political parties, industrial organisations or other associations, except to the extent that the exercise of that right is regulated or restricted by a law. The Constitution also guarantees further rights of freedom of expression and FOI. These rights enable citizens to form CSOs, voice their opinions, engage and advocacy and criticize the government.

The Associations Incorporation Act 1966 regulates the formation of CSOs in PNG.<sup>323</sup> A CSO can become an incorporated association if it fulfils certain criteria, such as promoting an objective that is “useful to the community” and being not for profit.<sup>324</sup> The Registrar of Companies, under the Investment Promotion Authority, is responsible for registering incorporated associations. Organisations must go through steps in order to register, such as holding a meeting, preparing a notice for the registrar, lodging and submitting the notice, and then lodging an application with accompanying documentation.<sup>325</sup>

Some CSOs benefit from some tax exemptions such as charities however most CSOs are taxed like other businesses and revenue and expenditure. Tax deductions are not possible for business/individual donors however CSOs are eligible for refunds.

## Resources (Practice)

Score: 4

*To what extent do CSOs have adequate financial and human resources to function and operate effectively?*

Most of PNG’s CSOs do face difficulties acquiring or seeking finances and access to resources...local sources of funding are limited which is why most CSOs obtain funding from international or foreign donors. Businesses and government in general depending on the type of work of a CSO are reluctant at times to provide resource or funding support.

Most CSOs are small and lack resources, but they are otherwise free of serious constraints on their activities.<sup>326</sup> Informal groups such as community, women’s and religious groups are also allowed to operate.<sup>327</sup>

## Independence (Law)

Score: 5

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?*

The legal framework that regulates the activities of CSOs generally provides an adequate level of protection against unwarranted intervention. Because CSOs are companies as well the assumption is that they too are regulated by the provisions of the Associations Act. The Associations Act defines an association.

Citizens are free to form and join groups promoting good governance and anti-corruption, there are not really any severe restrictions on the work of CSOs however CSOs must generally be cautious about information they put out and circulate, they must verify sources and ensure information put out is accurate especially when criticising the government or individuals in order to avoid a lawsuit.

State control of CSO operations is limited to their slight involvement in the activities of a CSO (if there is any) and the use of the threat of legal proceedings in the event they believe CSOs have published information that is untrue or defamatory.

## Independence (Practice)

Score: 4

*To what extent can civil society exist and function without undue external interference?*

PNG's CSOs generally operate without undue external interference, although there have been isolated instances where CSO personnel faced external interference. In 2020 United Nations special rapporteurs reported that civil society personnel and Human Rights Defenders who raised concerns about a gold, copper and silver mine project on the remote Frieda River in the country's north, faced death threats and intimidation. The project involved the governments of Australia, Canada, China and PNG.<sup>328</sup>

Freedom in the World is an annual global report on political rights and civil liberties, composed of numerical ratings and descriptive texts for each country and a select group of territories. In scoring countries in terms of civil liberties, Freedom House creates questionnaires with a set number of questions for Freedom of Expression and Belief, Associational and Organisational Rights, Rule of Law, and Personal Autonomy and Individual Rights. In 2020 there were 3 questions asked for each country under associational and organisational rights; Is there freedom of assembly? Is there freedom for nongovernmental organisations, particularly those that are engaged in human rights– and governance-related work? and Is there freedom for trade unions and similar professional or labour organisations? Each of these questions was scored out of 4. A score of 1 meant very weak and a score of 4 meaning very strong. In 2020, PNG scored for the 3 mentioned questions; 3,4,3 respectively.<sup>329</sup>

## Transparency (Practice)

Score: 3

*To what extent is there transparency in CSOs?*

Transparency is in place to some extent across PNG's civil society.

The degree of transparency in PNG CSOs varies across the country. There are some CSOs which are more forthcoming with providing information on the organisation online including updated annual reports and financial statements and there are others that are not.

Access to resources (i.e.; technology) and manpower may also be a result of a CSOs inability to publish regular updates such as newsletters and reports. This is particularly common for CSOs in the provinces. CSOs such as the Centre for Environmental Law and Community Rights (CELCOR) update their website regularly with recent annual reports in compliance with the Companies Act provisions.

## Accountability (Practice)

Score: 3

*To what extent are CSOs answerable to their constituencies?*

Accountability mechanisms are weak in many of PNG's CSOs.

There are many membership-based CSOs some of which lack well-defined constituencies.

Many organisations have active boards that participate in their activities. In most organisations that have boards as a formal requirement. CSOs rely heavily on the involvement of the board, where the board of a CSO is not actively participating in its activities it shows in the manner day-to-day operations are carried out

While some organisations have financial management systems and control procedures in place, many CSOs lack such resources and cannot afford to conduct annual audits without donor support.

## Integrity (Law and Practice)

Score: 3

*To what extent are there mechanisms in place to ensure the integrity of CSOs? To what extent is the integrity of CSOs ensured in practice?*

There is no sector-wide CSO code of conduct however, CSOs that are chapters or branches of a larger body have their own codes, policies and procedures and are formally committed to ensuring the integrity of their operations. The public perception of CSOs is generally positive and surveys suggest that faith-based groups in particular are trusted.

## Role: Hold Government Accountable (Practice)

Score: 4

*To what extent is civil society active and successful in holding government accountable for its actions?*

Several CSOs work actively to hold the government accountable in PNG, although there are instances where activities are affected due to inadequate funding. PNG has become a member of the Open Government Partnership Initiative which aims at creating an avenue for the government and civil society to work together for greater openness and transparency. The OGP has been in operation for some time however there needs to be greater collaboration in order to achieve the commitments under the OGP. CSO need to work more closely together through established initiatives as such to put more pressure on the government to be accountable. (mechanisms are in place but collaboration is weak)

According to Freedom House country reports between years 2018-2020, the scores for the 3 questions asked under Associational and Organisational Rights for PNG remain slightly unchanged. For 2018 the scores were 3,3,3 respectively and for 2019-2021 the scores changed slightly to 3,4,3 respectively.

In recent years CSOs were able to operate with sufficient freedom. According to Freedom house country reports freedom of Assembly and freedom for NGOs engaged in Human Rights/Governance work remains a challenge for CSOs in PNG. Inadequate funding, resources and community/ private business support is also another major challenge.

CSOs have contributed to transparency of the electoral process through observation. CSOs like TIPNG have contributed to the transparency of the electoral process through observation. TIPNG has conducted observations over both national elections including the Bougainville referendum that occurred in 2019. The reports published by TIPNG<sup>330</sup> reveal the level of transparency in the electoral process, identifies whether or not there was double counting, intimidation, bribes etc and makes recommendations on how the electoral process can be improved. Despite these reports being published no moves have been made by the government to better the electoral process.

## Role: Policy Reform (Practice)

Score: 3

*To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?*

CSOs work actively to advance anti-corruption reforms but the authorities have not been sufficiently responsive to their recommendations. It is seen that whilst CSOs have done their part to advance anti-corruption reforms the government is unresponsive to their recommendations.

A few CSOs focus on anti-corruption policy issues. TIPNG has produced reports and recommendations on the need to have in place policies such as the FOI Legislation and Forest Governance integrity. In TIPNG's report "Our duty to know, their duty to tell" 2 main recommendations were made, the first one was for the government to immediately develop a whole-of-government Right To Information Policy that had 6 key characteristics and the second one was for the government to enact an FOI legislation that is independent from political influence, accessible, affordable and timely, specialised as it deals with sensitive public interest and harm tests, and applicable to state-owned entities, political parties and organisations receiving funding directly from the government.<sup>331</sup>

CSOs have monitored the PNG Government's compliance with its anti-corruption commitments under UNCAC. CSOs have also assessed and made recommendations on the drafting and the implementation of PNG's NACS as well as Anti-Corruption laws such as the ICAC and the FOI law.

TIPNG has produced one report on the implementation of UNCAC in PNG in 2011.<sup>332</sup> The second report for 2020 is currently being produced. In these reports, TIPNG has made recommendations on how government and government agencies can better their legal frameworks and internal procedures to fulfil the country's obligations under the UNCAC. It is unclear whether or not the government has put together a country report on the implementation of UNCAC for the year 2020. In the 2011 report it was recommended that the government Implement the NACS and the OLICAC as well as the whistleblower legislation and the FOI Legislation, all of which are key in addressing corruption in the country. Since this report the government has enacted the OLICAC and the whistleblower legislation.

In a press statement on the establishment of the ICAC, TIPNG said that PNG had actually taken a number of steps to address the issue of corruption in the country such as signing on to global anti-corruption initiatives (United Nations Commission Against Corruption and Extractive Industries Transparency Initiative), as well as the development of the NACS 2010-2030. However, having an independent anti-corruption enforcement agency like the ICAC is not only essential to boosting the effectiveness of the NACS, but would also allow for the most effective implementation of the National Budget, by preventing wastage through corrupt activities.<sup>333</sup>

The effectiveness of CSO involvement in anti-corruption policy reform is challenged by the government's willingness to take up its recommendations.

## Pillar 14 Private Sector

The law does make business registration procedures simple and meaningfully contributes to a favourable environment for businesses to operate. The Companies Act 1997 sets out the registration procedure for businesses under Division 2 (Method of Incorporation). However, PNG still ranks poorly on global indexes that evaluate the ease of doing business. Transparency of beneficial ownership of companies is not legally required and whistleblower protection is not provided. The involvement of business in anti-corruption policy is weak. There are few links between business and civil society which make implementation of joint initiatives (including anti-corruption initiatives) difficult.

The Companies Act 1997 sets out the registration procedure for businesses under Division 2 (Method of Incorporation). The procedure set out under the act is clear and through other accompanying laws like the Investment Promotion (IP) Act 1992 and the Independent Consumer Competition Commission (ICCC) Act 2002 a favourable environment is provided for businesses where competition is encouraged and consumer rights are ensured.

With respect to transparency of beneficial ownership of companies, to date the legal framework in place for businesses and government procurement does not require disclosure of beneficial ownership. TIPNG continues to push for beneficial ownership provisions to be included in the IP Act/Companies Act as well as procurement legislation. This however is something that the PNG Extractive Industries Transparency Initiative (PNGEITI) multi-stakeholder group is working on to include in the EITI country report for the extractive industry in PNG.

Since the establishment of the Whistleblower Act 2020 businesses shall now have in place whistleblower mechanisms however the act needs much improvement. The involvement of businesses in anti-corruption policy is weak, however in recent times there has been a rekindling of interest to engage via the Business Council of PNG and the PNG Chamber of Commerce. In the past there have been very few links between business and civil society, which make the implementation of joint initiatives (including anti-corruption) initiatives challenging.

Private Sector Overall Score: 3			
Dimension	Indicator	Law	Practice
<b>Capacity: 4</b>	Resources	5	3
	Independence	5	3
<b>Governance: 3</b>	Transparency	3	4
	Accountability	5	3
	Integrity	4	2
<b>Role: 2</b>	Anti-corruption policy engagement	2	
	Support for/engagement with civil society	3	
<b>Law and practice overall scores</b>		4	3

Table 15: Private Sector Scores



## Structure and Organisation

PNG's economy is dominated by two broad sectors: the agricultural, forestry, and fishing sector that engages most of PNG's labour force (the majority informally), and the minerals and energy extraction sector that accounts for the majority of export earnings and GDP. PNG's GDP is 22% derived from agriculture, 43% from industry and 35% from services.<sup>335</sup>

The Constitution provides guarantees and calls for economic development to take place primarily by the use of skills and resources available in the country either from citizens or the State and not dependent on imported skills and resources.<sup>336</sup> Business activities in PNG are regulated by three main laws. The Companies Act 1997, The Investment Promotion Act 1992 and the Independent Consumer and Competition Commission Act 2002. Businesses in PNG generally have a high tax burden, as of 2009, tax rates on company income for resident companies is 30% whilst non-resident companies stand at 48%.<sup>337</sup>

## Resources (Law)

Score: 5

*To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?*

PNG's current legal framework offers a basic enabling environment, as demonstrated by its score of 59.8 out of 100, on the World Bank's Doing Business Index.<sup>338</sup> Most recent data, from 2019, shows it is possible to register a company in 41 days, with a minimum financial requirement.<sup>339</sup>

Property rights are protected by the Trade Marks Act 1978, Copyright and Neighbouring Rights Act (2000) and the Patents and Industrial Design Act (2000). All three acts specify that properties such as trademarks, books, publications, and designs must be protected. The Investment Promotion Authority through the Intellectual Property Office of Papua New Guinea ensures that the investor or creator of intellectual property is protected from unscrupulous exploitation, including the interest of Papua New Guinea and its citizens.<sup>340</sup>

Special economic zones are designed to offer attractive investment opportunities for international businesses to help the country move beyond reliance on the extractive industries and help grow small-to-medium business.<sup>341</sup> In 2019 Parliament passed the Special Economic Zone Authority Act which provides a new policy and regulatory framework for the setup and operation of special economic zones. In early 2020, Prime Minister James Marape said a 10-year tax holiday would be available for investments of USD\$20 million or more.<sup>342</sup> The Ihu SEZ located in the Gulf Province in close proximity to the Papua LNG (liquified natural gas) corridor looks set to be one of the first projects to benefit. SEZs are also planned for West Sepik, Maun Island, Madang, Bougainville, Lae and Paga Hill in Port Moresby.

Another recent change that is worth mentioning is that Papua New Guinea strengthened access to credit by adopting a new law on secured transactions that implemented a functional secured transactions system and established a centralised, notice-based collateral registry. The new law broadens the scope of assets that can be used as collateral and allows out-of-court enforcement of collateral.<sup>343</sup>

## Resources (Practice)

Score: 3

*To what extent are individual businesses able in practice to form and operate effectively?*

Securing capital is a major challenge to Small and Medium Enterprises (SME) in PNG. The mechanisms in place by law for the registration of businesses, administrative procedures of certain

authorities and protection of intellectual property are implemented in practice to form businesses. However, a number of areas which would require continued improvement. An example of such is the lengthy process and the unnecessary delays involved in registering a business. Long queues and long processes create an unfavourable business environment. With the protection of intellectual property, counterfeit is an issue that continues to worsen in PNG, this also creates an unfavourable environment for businesses. The Trade Marks Act 1978 provides the opportunity for business owners to initiate court proceedings against another who uses an identical or deceptively similar trademark.<sup>344</sup>

The Trade Marks Act 1978 unfortunately does not provide the means for aggrieved parties to seek redress on foreign manufacturers given that most counterfeit products are manufactured overseas. An example of such was seen in the National Court case of British American Tobacco (PNG) Ltd v TST 4 Mile Ltd [2013] PGNC 67; N5252 (2 May 2013).<sup>345</sup> In this case BAT sought injunctive and declaratory relief against TST for counterfeit cigarettes that were found in a container imported by TST from China. The court in this case held that BAT did not prove that the container was in the possession of TST and that they knowingly imported the counterfeit cigarettes and the matter was dismissed. BAT was therefore left with no means to seek redress for infringement of their trademark as it was manufactured by a foreign company and the law did not provide the means for legal action to be taken against foreign manufacturers. The fact that action cannot be easily taken by a PNG trade-mark owner against foreign makers of counterfeit (as it is not accounted for under the law) creates an unfavourable environment for PNG businesses.

Implementation of antitrust regulations by the Independent Consumer and Competition Commission has been proactive and transparent, e.g. issuing media statements and inviting public feedback.<sup>346</sup> However there is still a concern that monopolistic and duopolistic behaviour exists and is impacting the business environment in PNG, e.g. it is alleged there is a high degree of market concentration with anti-competitive implications within stevedore fees<sup>347</sup>, a critical point in supply chains as much of market access in Papua New Guinea is through ports.

The procedures of business registration are effectively implemented in practice. The legal requirements for the liquidation of companies is provided under Part XVIII of the Companies Act 1997.

## Independence (Law)

Score: 5

*To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?*

Economic freedom is recognised by the Constitution. The preamble calls for an equal opportunity for every citizen (especially women) to take part in the economic life of the country and for economic development to take place primarily by the use of skills and resources available in the country either from citizens or the State and not in dependence on imported skills and resources.

PNG legislation provides some but not all of the safeguards against unwarranted interference in activities of private businesses. For instance, the laws relating to companies do not provide restrictions on matters such as grants, cash advances or loans provided to enterprises with liquidity problems by government or the acquisition of shares by Government or the equity of enterprises that require re-capitalisation and other forms of support.<sup>348</sup>

## Independence (Practice)

Score: 3

*To what extent is the business sector free from unwarranted external interference in its work in practice?*

Business is mostly free from interference in practice, however There have been instances of unwarranted interference in business activities in recent years.

The most high-profile recent case was the government purchase of shares at the expense of the country's economic freedom was the UBS loan acquisition for the purpose of purchasing shares in Oil Search, a joint venture partner in PNG's biggest resources development, the USD\$19 billion PNG LNG project. The government had in turn lost hundreds of millions of dollars and sold its 10 per cent stake in Oil Search, closing a complicated and costly loan worth AUD\$1.2 billion.<sup>349</sup>

In practice, COVID-19 Regulations are also a notable concern for businesses as it appears that the economic stimulus package by the Government is either not forthcoming or very selective in how it assists companies.<sup>350</sup>

## Transparency (Law)

Score: 3

*To what extent are there provisions to ensure transparency in the activities of the business sector?*

The legislation does contain some provisions to ensure transparency in the activities of the private sector. For instance, section 118 of the Companies Act 1997, directors of companies are required to disclose their interest where they are interested in a transaction or proposed transaction with the company.<sup>351</sup> Section 209 of the Companies Act also further places an obligation on the board of every company to within five months after each balance date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date. The law however is lacking provisions on the access to beneficial ownership of companies.

According to the Companies Act, some information related to enterprise registration is available and all interested persons can obtain it from the public registry whose area of competence covers enterprise registration.

The law also regulates transparency of information about enterprises, the law talks about the disclosure of information. Section 123(1) of the Companies Act 1997 states that a director or employee of a company who has information in his capacity being information that would not otherwise be available to him, shall not disclose that information to any person, or make use of or act on the information, except; for the purposes of the company, as required by law; or in complying with Section 118 (disclosure of interest).

The Anti Money Laundering and Counter Terrorism Financing Act 2015 has the goal to prevent legalisation of illicit income and creates an obligation for the financial institutions as well as relevant enterprises to monitor suspicious deals and to record the information about them.

Commercial banks are obligated by law to have an independent auditor conduct annual audits and prepare annual financial reports in line with established and known accounting standards. The annual audit and financial reports must be presented to the Central Bank and be published.

Under the Banks and Financial Institutions Act 2000, Schedule 4.1 states that not later than six months after the end of its financial year, every Authorised Institution must submit to the Central Bank its audited financial statements together with such other information as may be prescribed by this Act or requested by the Central Bank from time to time.<sup>352</sup>

The Companies Act 1997 has provisions for companies listed on the stock exchange. Section 68 states that a company shall have only one share register, the share register of a company whose shares are subject to a listing agreement with a stock exchange may, if expressly permitted by its constitution, be divided into two or more registers kept in different places.

A gap in the law is that laws currently do not contain provisions on requirements to disclose beneficial ownership.

## Transparency (Practice)

Score: 3

*To what extent is there transparency in the business sector in practice?*

In practice, the business sector is partially transparent.

In accordance with The Companies Act 1997, the Investment Promotion Authority has a database accessible online which contains general information about all registered enterprises. This includes information about the founders, shareholders and management. This public database however does not allow access to any other information about the company in terms of the board or shareholders or secretaries however only specifies the name of the business and the date of incorporation as well as the type of business it conducts. As required by the law, companies do submit their financial activity reports to the Investment Promotion Authority. The reports of some companies contain information about key financial indicators, corporate responsibility and external audit. This obligation is mainly fulfilled by large companies and other smaller companies.

Information about offshore companies operating in PNG is difficult to obtain. The companies registered offshore do not publicise their charters, exact information about their owners' identities, contractual provisions or other details in the public registries of the countries in which they operate. As a result, the public has a limited possibility to check whose interests are backing a specific big business operating in the country. This increases the risks of corrupt deals and potential cases of conflict of interest.

## Accountability (Law)

Score: 5

*To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?*

The Companies Act 1997 is the legislation that provides the laws for the oversight of business in PNG. Under this Act, all businesses shall, but are not obliged to have in place a company constitution. Under section 28 of the Companies Act a company has a constitution, and the company, the board, each director, and each shareholder of the company have the rights, powers, duties, and obligations that are set out under the act except to the extent that it is modified or removed by the constitution. The company constitution is important because it is the ultimate policy by which the company is governed aside from the Act itself. According to the Companies Act, the business and affairs of a company shall be managed by, or under the direction or supervision of, the board of the company (Section 108). Furthermore, companies are obliged to produce annual reports to be submitted to shareholders (Section 209-210). With respect to accounting, all businesses are required to keep proper records of accounts to ensure that financial statements of the company are ready to be properly audited (Section 188).

The Companies Act further provides for annual meetings to be held, the procedures for board meetings, the appointment of an auditor as well as the requirement for a company to undergo an audit every year as well as the need to submit annual returns to the registrar of companies.

Generally, the percentage each partner/owner of the business receives from the income of the business is dependent on the type of business and the agreement between parties. According to the Companies Act shareholders do not have a say in the workings of the company however they do have voting powers granted under the companies act which can only be exercised at a meeting of shareholders. (Section 86) Shareholders generally have powers to adopt a constitution or, if it has one, alter or revoke the company's constitution, approve a change in the company's name, approve a major transaction, approve an amalgamation of the company under Section 234 and put the company into liquidation. These powers however can only be exercised by special resolution. The Chairperson of a meeting of shareholders of a company can allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management of the company. (Section 90)

The Banks and Financial Institutions Act (2000), administered by the Bank of Papua New Guinea as the Central Bank, makes provision for the licensing and regulation of banks and licensed financial institutions.

## Accountability ( Practice)

Score: 3

*To what extent is there effective corporate governance in companies in practice?*

Company constitutions are documents that are not readily available to the public but the extent that effective corporate governance in companies is practiced can be assessed from whether a company is compliant with its obligations and duties as set out under the Companies Act 1997. For instance, section 25 of the Companies Act 1997 stipulates that the board of a company shall ensure that there is submitted to the Registrar for registration at least once in each calendar year within 14 days after the annual meeting of the company. In the lead up to 2020 the Investment Promotion Authority had issued a number of reminders for companies to submit their outstanding annual return. In 2020 over 4000 companies in PNG were deregistered for their failure to lodge annual returns since the year 2000.<sup>353</sup> This action by the company authority showed the absence of companies' regard for compliance with corporate governance requirements.

There are a number of bodies that aim to keep businesses in the private sector in check. For instance, the Internal Revenue Commission ensures that business taxes must be paid, the Investment Promotion Authority ensures that annual returns are lodged and the Independent Consumer Competition Commission ensures that goods and services provided by businesses are safe and consumer friendly. All these three bodies and their functions when put together ensure the integrity of business.

There is a wide variation in practice depending on the sector, company and whether it is national or multinational. Companies that are based in jurisdictions with foreign anti-bribery and anti-corruption requirements have an additional reason to be compliant. However, in assessing the totality of companies in PNG, it would appear that effective corporate governance is the exception not the norm.<sup>354</sup>

## Integrity (Law)

Score: 4

*To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?*

There are mechanisms in the legislation to ensure the integrity of the business sector representatives. Bribery in the private sector (both giving and accepting bribes) is a punishable offence according to the Criminal Code under section 103, with up to 1-year imprisonment. The Criminal Code also establishes penalties for falsification of company books; criminal responsibility of directors. The sanctions that can be imposed on legal entities include enterprise liquidation, license termination, a fine and confiscation of assets.

The law contains several norms which establish general rules of integrity for company heads, usually for board of directors. For example, a director of the board is under the duty to disclose conflicts of interest to maintain the integrity of company decisions. Furthermore Company directors do not have the right to use for personal gain the information they obtained through their post except under section 123(3) of the Companies Act where a director of a company may disclose, make use of, or act on the information where; particulars of the disclosure, use, or the act in question are entered in the interests register and, the director is first authorised to do so by the board and, the disclosure, use, or act in question will not, or will not be likely to, prejudice the company.

A general code of ethics does not exist for all companies. General rules of integrity for the heads of organisations such as a CEO may be included in their contract or as set out under a company's own code of ethics or constitution.

## Integrity (Practice)

Score: 2

*To what extent is the integrity of those working in the business sector ensured in practice?*

The integrity of those working in the private sector is to some degree ensured in practice. However, companies from the PNG private sector who have more than 250 employees and whose missions include responsible business and endorsement of anti-corruption activities have not signed the UN Global Compact.<sup>355</sup> Further, in the Doing Business 2020 report, PNG ranked 120 among 190 economies in terms of ease of doing business, which suggests that there are challenges that could encourage businesses to engage in corrupt practices.<sup>356</sup>

The law does not prohibit persons indicted for corruption and fraud from participating in public procurement. There have been instances where persons with questionable characters were awarded state contracts. An example of such was seen with the case of Djoko Tjandra. Djoko Tjandra an Indonesian fugitive had fled Indonesia to Papua New Guinea where he was granted refugee and citizenship, there was a public uproar when despite Tandra's status as an Indonesian fugitive and allegations of corruption levelled against him, he and the O'Neill Government signed an agreement to repair and refurbish the State-owned Central Government Building in a K145 million deal.<sup>357</sup>

Business integrity in Papua New Guinea needs to be addressed on a multi-sectoral basis. Civil Society reports on comprised integrity of companies operating in PNG range from sexual exploitation<sup>358</sup>, to human trafficking<sup>359</sup> and the perennial issue environmental damage.<sup>360</sup>

Professional bodies should be supported to instil integrity and discipline infractions of members of professional associations. These bodies include the PNG Law Society, the Certified Practising Accountants PNG, the Institute of Engineers of PNG, and the PNG Institute of Architects.

## Anti-Corruption Policy Engagement (Law and Practice)

Score: 2

*To what extent is the business sector active in engaging the domestic government on anti-corruption?*

The business sector is passive in engaging with the government on anti-corruption policy, although the NACS identifies the private sector as a key action area.<sup>361</sup> There is minimal cooperation between the state and the business sector in the area of managing anti-corruption policy. Business and state actors are known for meeting to discuss and share their views on how best to contribute to the fight against corruption in the country but this does not often result in actions to combat corruption.

To mark the International Anti-Corruption Day on December 9, 2018, government departments, private sector, the media, Non-Government Organisations (NGOs) and development partners gathered to share initiatives in addressing corruption in the country.<sup>362</sup> The purpose of the partnership dialogue was to strengthen the stakeholders working on anti-corruption and align their activities, to encourage citizens and organisations to identify and report individuals seen to practice abuse of trust for individual benefits.<sup>363</sup>

The Department of Prime Minister and NEC has taken certain steps to promote business integrity. Private sector representatives participated in meetings and consultations organised by the Prime Minister's Office at the beginning of every year in what is called the Prime Ministers Back to Business Breakfast. The Back to Business Breakfast with the Prime Minister is an essential event hosted by the Business Council of PNG where influential sectors in Papua New Guinea, the public and private, can meet, and share what must be done to achieve positive growth.<sup>364</sup>

## Support for/Engagement with Civil Society (Law and Practice)

Score: 3

*To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?*

While there is considerable Private Sector support for broader service delivery, primarily through Trusts and Foundations, the support that PNG's private sector offers to the civil society in terms of combating corruption is weak.

There are few examples of businesses helping the civic sector in this area. For instance, every year since 2011, TIPNG hosts the Sir Anthony Siaguru Walk Against Corruption (SASWAC) this event has proven to bring together over the years thousands of individuals, corporate businesses, families and communities to show their support in ending corruption in the country. TIPNG receives overwhelming support from private businesses who register teams, donate funds and resources to see through the success of the event.

However, while there is often support from peak private sector bodies, such as Chambers of Commerce, there is still no tangible domestic private sector engagement on combatting corruption with civil society in PNG.

Foreign governments and development agencies are the main sources of funding for PNG civil society. Philanthropy and corporate responsibility are weak in PNG.

# Conclusions and Recommendations

The NIS approach considers that preventing corruption and promoting good governance in a country requires effective operation of all key institutions. It is therefore important to assess the state of its integrity institutions, while also identifying the problems in each institution and how they affect the system as a whole.

According to the assessment results, only five of the 14 NIS institutions have a close to an adequate score: the Judiciary, Procurement, Anti-Corruption Agencies, Ombudsman Office and the Media. These pillars tend to score relatively better than others because of supportive legislative frameworks but like all 14 pillars, there are troubling weaknesses in their implementation. This result points to a number of challenges that require action for preventing corruption and for strengthening democracy in general.

The findings of this report indicate that the lack of transparency and accountability among political institutions and leaders are the primary challenge of PNG's NIS. This is due in large part to state-society relations being weak and the government not depending on citizens in a meaningful way. Related to this, Parliament is relatively weak in relation to the Executive and the Constitutional separation of powers is not respected. The efforts to strengthen PNG's National Integrity System must, therefore, focus in the coming years on bridging the gap between strong legislation and weak implementation by engaging citizens in governance. This will create favourable conditions for greater transparency and accountability of the system's main institutions and their effective operation.

The following highlights the key reforms that TIPNG considers must be implemented in the lead up to and beyond the 2022 National Election, as a priority to strengthen the country's national integrity system and democratic governance:

1. Open Up Parliament! Broadcast full Parliament session, Demand MP Constituent Meetings, Release Annual Report on Parliament Performance, and restore OLIPPAC.
2. Make every vote count! Prioritise the National Census, register every eligible voter, and implement the electoral laws, to ensure integrity within the electoral process.
3. Let the People Know! Protect our media, empower our citizens and welcome informed investment by delivering an effective way for us all to access public information
4. Start ICAC Strong! Recruit competent staff, use the NACTF to coordinate anti-corruption partnerships, and protect the integrity of our new anti-corruption agency
5. Bridge the Integrity Gap! Develop and Recognise integrity initiatives in agencies, enable citizens to hold public servants accountable, align Police Conduct with integrity provisions in Police Act and support multi-stakeholder forums

Recommendations by NISA Pillars for priority actions are presented below:



Table 16: Table of Recommendations

Pillar	NISA Strengths	NISA Weaknesses	Recommendations for Integrity Gap
1. Legislature	<ul style="list-style-type: none"> <li>Resources (Law)</li> <li>Independence (Law)</li> </ul>	<ul style="list-style-type: none"> <li>Accountability (Practice)</li> </ul>	<ul style="list-style-type: none"> <li>MP's must consult, constituents &amp; others regularly, through committees</li> <li>Full session of Parliament should be broadcast</li> <li>Reintroduce annual Parliament Performance Reports</li> </ul>
2. Executive	<ul style="list-style-type: none"> <li>Resources (Law)</li> <li>Resources (Practice)</li> <li>Independence (Law)</li> <li>Independence (Practice)</li> <li>Accountability (Law)</li> </ul>	<ul style="list-style-type: none"> <li>Transparency (Law)</li> <li>Transparency (Practice)</li> <li>Accountability (Practice)</li> <li>Integrity (Practice)</li> </ul>	<ul style="list-style-type: none"> <li>Executive should have regular monthly press conferences</li> <li>NEC Decisions should be publicly accessible after a time like Legislature and Judiciary</li> <li>Resource agencies like OLC and COI</li> </ul>
3. Judiciary	<ul style="list-style-type: none"> <li>Independence</li> <li>Accountability</li> <li>Executive Oversight</li> </ul>	<ul style="list-style-type: none"> <li>Resources</li> </ul>	<ul style="list-style-type: none"> <li>Must look at mechanisms to improve the case disposition rate.</li> </ul>
4. Public Administration	<ul style="list-style-type: none"> <li>Integrity (Law)</li> </ul>	<ul style="list-style-type: none"> <li>Transparency</li> <li>Accountability (Practice)</li> <li>Integrity (Practice)</li> <li>Public Education</li> <li>Cooperation</li> </ul>	<ul style="list-style-type: none"> <li>Develop and implement Internal Anti-Corruption strategies that reinforce existing laws</li> <li>Incentivise integrity through budget process</li> <li>Recognise and share best practice</li> </ul>
5. Procurement	<ul style="list-style-type: none"> <li>Resources (Law)</li> <li>Integrity (Law)</li> </ul>	<ul style="list-style-type: none"> <li>Independence (Practice)</li> </ul>	<ul style="list-style-type: none"> <li>Implement Beneficial Ownership registry and blacklisting must be proactively disclosed.</li> <li>Board must protect NPC from political interference by applying laws.</li> <li>Annual Performance Reports must be completed and published</li> </ul>
6. Law Enforcement	<ul style="list-style-type: none"> <li>Accountability (Law)</li> <li>Integrity (Law)</li> </ul>	<ul style="list-style-type: none"> <li>Resources (Practice)</li> <li>Independence (Practice)</li> <li>Transparency (Practice)</li> <li>Accountability (Practice)</li> <li>Integrity (Practice)</li> <li>Corruption prosecution</li> </ul>	<ul style="list-style-type: none"> <li>Restructure of police must focus on ensuring integrity laws are applied, across rank and file</li> <li>Citizens must be supported to increase public accountability</li> <li>Corruption prosecution needs to be incentivised and prioritised</li> </ul>

7. Electoral Administration	<ul style="list-style-type: none"> <li>• Independence (Law)</li> <li>• Transparency (Law)</li> <li>• Accountability (Law)</li> </ul>	<ul style="list-style-type: none"> <li>• Independence (Law)</li> <li>• Integrity (Law)</li> </ul>	<ul style="list-style-type: none"> <li>• Enforce penalties for misconduct</li> <li>• Hire and train new personnel</li> <li>• Conduct 2021 census and update electoral boundaries</li> <li>• Register and empower voters through 2022 elections and beyond</li> <li>• Reforms should be evidence-based and not political</li> </ul>
8. Political Parties	<ul style="list-style-type: none"> <li>• Resources</li> <li>• Independence (Law)</li> </ul>	<ul style="list-style-type: none"> <li>• Accountability</li> <li>• Integrity (Practice)</li> <li>• Anti-Corruption commitment</li> </ul>	<ul style="list-style-type: none"> <li>• Parties must be empowered to demand accountability from MP's</li> <li>• Citizens should be empowered to vote for parties that have a strong governance system and are committed to anti-corruption</li> </ul>
9. Ombudsman Office	<ul style="list-style-type: none"> <li>• Capacity (Law)</li> <li>• Governance (Law)</li> </ul>	<ul style="list-style-type: none"> <li>• Accountability (Practice)</li> </ul>	<ul style="list-style-type: none"> <li>• The Ombudsman Commission should maintain and release regular case statistics to the public</li> <li>• Penalties for Integrity violations need to be significantly increased to deter</li> <li>• Consider amending laws to disclose annual submissions by leaders</li> </ul>
10. State Audit Office	<ul style="list-style-type: none"> <li>• Independence (Law)</li> <li>• Transparency (Law)</li> <li>• Accountability (Law)</li> </ul>	<ul style="list-style-type: none"> <li>• Improving Financial Management</li> <li>• Effective financial Audits</li> <li>• Detecting and sanctioning misbehaviour</li> </ul>	<ul style="list-style-type: none"> <li>• The AGO needs to enforce laws on non-compliant state bodies</li> <li>• Statistics must be released on how many agencies are referred to prosecution for non-compliance</li> <li>• Recruit and train new officers</li> <li>• AGO should implement policy to receive whistleblower information</li> </ul>
11. Anti-Corruption Agencies	<ul style="list-style-type: none"> <li>• Capacity (Law)</li> <li>• Governance (Law)</li> </ul>	<ul style="list-style-type: none"> <li>• Prevention of corruption</li> </ul>	<ul style="list-style-type: none"> <li>• ICAC regulations must encourage partnership and collaboration</li> <li>• ICAC must be operationalised in 2021</li> <li>• The NACPA should be published</li> <li>• The NACSTF needs regular meetings</li> </ul>
12. Media	<ul style="list-style-type: none"> <li>• Capacity (Law)</li> <li>• Governance (Law)</li> </ul>	Investigate and expose cases of corruption	<ul style="list-style-type: none"> <li>• Media Council PNG should have a funded Secretariat to protect media</li> <li>• Journalists need access to impartial legal advice when reporting on cases of Corruption.</li> <li>• PNG needs to implement an effective Freedom of Information framework</li> </ul>

13. Civil Society	<ul style="list-style-type: none"> <li>• Capacity (Law)</li> <li>• Transparency (Law)</li> </ul>	<p>Transparency (Practice)</p> <ul style="list-style-type: none"> <li>• Accountability (Practice)</li> </ul>	<ul style="list-style-type: none"> <li>• Civic rights should be protected by state bodies such as the Ombudsman Commission and Legal Offices</li> <li>• For sustainability, CSO need to be transparent and accountable with internal governance structures</li> <li>• The Government must support the development of OGP National Action Plan 2021-2023</li> <li>• The PNGEITI process needs to be supported, particularly on beneficial ownership reforms</li> </ul>
14. Private Sector	<ul style="list-style-type: none"> <li>• Capacity (Law)</li> <li>• Accountability (Law)</li> </ul>	<ul style="list-style-type: none"> <li>• Integrity (Practice)</li> <li>• Anti-Corruption policy engagement</li> </ul>	<ul style="list-style-type: none"> <li>• Private Sector needs integrity training that aligns and reinforces NACS</li> <li>• There must be increased recognition of good corporate governance</li> <li>• More fair regulations for a more fair business environment</li> </ul>

# Notes

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**Transparency International  
Papua New Guinea Inc.**

Section 34, Lot 31, Lokua Avenue, Boroko

Phone: +675 3237317/4917

[info@transparencypng.org.pg](mailto:info@transparencypng.org.pg)

[Facebook.com/transparencyinternalpng](https://www.facebook.com/transparencyinternalpng)

[Twitter.com/TI\\_PNG](https://twitter.com/TI_PNG)

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