



### *Article 13. Participation of society*

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups, outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may only be such as are provided for

## **CIVIL SOCIETY REPORT**

on the Implementation of  
Chapter II (Preventive Measures) of the

## **UNITED NATIONS CONVENTION AGAINST CORRUPTION**

## **IN PAPUA NEW GUINEA**

by Transparency International Papua New Guinea

## Context and purpose

The UN Convention against Corruption (UNCAC) was adopted in 2003 and entered into force in December 2005. It is the first global anti-corruption agreement that is legally binding on acceding states. To date, 186 states as well as the European Union have become parties to the convention, thus committing to implement a wide and detailed range of anti-corruption measures that affect their laws, institutions and practices. These measures promote the prevention, criminalisation and law enforcement of corruption and foster international cooperation, asset recovery, technical assistance and information exchange.

Concurrent with UNCAC's entry into force in 2005, a Conference of the States Parties to the Convention (CoSP) was established to review and facilitate required activities. In November 2009, the CoSP agreed on a review mechanism that was to be transparent, efficient, non-intrusive, inclusive, and impartial. It also agreed to two five-year review cycles, with the first focusing on chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation), and the second cycle focusing on chapters II (Preventive Measures) and V (Asset Recovery). The mechanism included an Implementation Review Group.

UNCAC Article 13 requires States Parties to take appropriate measures including "to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption" and to strengthen that participation by measures such as "enhancing the transparency of and promoting the contribution of the public in decision-making processes and ensuring that the public has effective access to information; [and] respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption". Further articles call on each State Party to develop anti-corruption policies that promote the participation of society (Article 5), and to enhance transparency in their public administration (Article 10); Article 63 (4) (c) requires the CoSP to agree on procedures and methods of work, including cooperation with relevant non-governmental organisations.

In accordance with Resolution 3/1 on the review mechanism and the annex on terms of reference for the mechanism, all States Parties provide information to the CoSP secretariat on their compliance with the UNCAC, based upon a "comprehensive self-assessment checklist", and participate in a review conducted by two other States Parties on their compliance with the convention. The reviewing States Parties then prepare a country review report, in close cooperation and coordination with the State Party under review, and finalise it upon agreement. The result is a full review report and an executive summary, the latter of which is required to be published. The terms of reference call for governments to conduct broad consultations with stakeholders during the preparation of the self-assessment and to facilitate engagement with stakeholders if a country visit is undertaken by the representatives of the reviewing countries.

The inclusion of civil society in the UNCAC review process is of crucial importance for accountability and transparency, as well as for the credibility and effectiveness of the review process. Thus, civil society organisations (CSOs) around the world are actively seeking to contribute to this process in different ways. This parallel report was made possible with technical and financial support from the UNCAC Coalition.

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The findings in this report are those of the authors but do not necessarily reflect the views of the UNCAC Coalition or the donors who have made this report possible.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of the 13<sup>th</sup> of April 2021.

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Transparency International Papua New Guinea (TIPNG) is a local chapter in Papua New Guinea of the global Transparency movement. Since its incorporation in 1997, TIPNG has strived to empower Papua New Guineans to take action against corruption wherever it is encountered. As the leading civil society voice on anti-corruption, we work with citizens and institutions to try to ensure that Papua New Guinea is a country where there is rule of law and principles of good governance are followed.

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## Abbreviations

AMLCTFA	Anti-Money Laundering and Counter Terrorist Financing Act
CSTB	Central Supply and Tenders Board
CSO	Civil Society Organization
EITI	Extractive Industries Transparency Initiative
FASU	Financial Analysis and Supervision Unit
FOI	Freedom of Information
GST	Goods and Services Tax
ICAC	Independent Commission Against Corruption
IPA	Investment Promotion Authority
IPPC	Integrity of Political Parties and Candidates Commission
IRC	Internal Revenue Commission
JLSC	Judicial Legal Services Commission
LLG	Local Level Governments
MP	Member of Parliament
NACPA	National Anti-Corruption Plan of Action
NACS	National Anti-Corruption Strategy
NAP	National Action Plan
NEC	National Executive Council
NFACD	National Fraud and Anti-Corruption Directorate
NPA	National Procurement Act
NPC	National Procurement Commission
OCPNG	Ombudsman Commission Papua New Guinea
OGP	Open Government Partnership
OLDRL	Organic Law on the Duties and Responsibilities of Leaders
OLICAC	Organic Law on the Independent Commission Against Corruption
OLIPPAC	Organic Law on the Integrity of Political Parties and Candidates
PFMA	Public Finances Management Act
PNG	Papua New Guinea
PNGEITI	Papua New Guinea Extractive Industries Transparency Initiative
PSC	Public Services Commission
RPNGC	Royal Papua New Guinea Constabulary
RTI	Right to Information
TIPNG	Transparency International PNG
UNCAC	United Nations Convention Against Corruption

## List of Agencies Consulted

Agency	UNCAC Articles	Response
Integrity of Political Parties and Candidates Commission	Article 7	Had a Meeting with the Registrar for Political Parties Dr Alphonse Gelu on the 24 <sup>th</sup> of February 2021.
	Article 8	Same as above.
Public Service Commission	Article 7	Had a Meeting with the Secretary to the Public Service Commission Mr Terrence Tupi on the 25 <sup>th</sup> of February 2021.
	Article 8	Same as above.
	Article 32	Same as above.
National Procurement Commission	Article 9	Had a Meeting with the Secretary to the National Procurement Commission Mr Babaga Naime on the 25 <sup>th</sup> of February 2021.
Judicial and Legal Services Commission	Article 8	No Meeting was held due to unavailability of designated point of contact.
	Article 11	Same as above.
Department of Prime Minister	Entire Report	A copy of the final draft report was sent on 12 <sup>th</sup> of May 2021 to the Department of Prime Minister to provide feedback on the report. No response was received.
United Nations Pacific Regional Anti-Corruption (UNPRAC) Project	Article 5	An email was sent to UNPRAC, a response was received on 14 <sup>th</sup> May 2021.

## 1. Introduction

Papua New Guinea signed the United Nations Convention against Corruption (UNCAC) on the 22<sup>nd</sup> of December 2004 and ratified it on the 14<sup>th</sup> of June 2007.

This report reviews PNG's implementation of selected articles of Chapter II (Preventive Measures) of the UNCAC. The report aims to provide an independent perspective on the implementation of the UNCAC from a civil society standpoint and is a contribution to the second cycle of the UNCAC Implementation Review Mechanism (IRM) launched in November of 2015.

The report is intended as a contribution to the UNCAC implementation country review process currently underway covering this chapter. PNG was selected by the UNCAC Implementation Review Group by a drawing of lots for review in the 4<sup>th</sup> year of the 2<sup>nd</sup> cycle which corresponds with the year 2019. A draft of this parallel report was provided to the government.

**Scope.** The UNCAC articles that receive particular attention in this report are those covering:

- preventive anti-corruption policies and practices (Article 5),
- preventive anti-corruption bodies (Article 6),
- public sector employment (Article 7.1),
- codes of conduct, conflict of interest and declaration of assets (Article 7, 8 and 12),
- reporting mechanisms and whistleblower protection (Article 8.4 and 13.2),
- political financing (Article 7.3),
- public procurement (Article 9.1),
- management of public finances (Article 9.2 and 9.3),
- access to information (Article 10),
- participation of society (Article 13.1),
- judiciary and prosecution services (Article 11),
- private sector transparency (Article 12.1, 12.2 (c) and (f), 12.4), and
- measures to prevent money laundering (Article 14).

**Structure.** Section II of the report is an executive summary, presenting condensed findings, conclusions, and recommendations on the review process, the availability of information, as well as on implementation and enforcement of selected UNCAC articles. Section III outlines our findings on the review process in PNG, as well as on access to information issues in more detail. Section IV reviews the implementation of the UNCAC, including key issues related to the legal framework and the enforcement system, with examples of good practices and identified deficiencies. Section V covers recent developments and Section VI elaborates on recommended priority actions.

**Methodology.** This report was prepared by Transparency International Papua New Guinea (TIPNG) with technical and financial support from the UNCAC Coalition. TIPNG made efforts to obtain information for the report from government offices and to engage in dialogue with government officials. As part of this dialogue, the report was shared with the Department of Prime Minister in its capacity as the focal point for UNCAC implementation in PNG.

The report was prepared using a questionnaire, questions from which were extracted from the UNCAC Coalition's guidance document and report template. Apart from this, desk research was conducted to obtain relevant literature, statistics, and other useful data for analysing the implementation of the UNCAC in PNG.

The questionnaire asked a set of questions about the review process and the implementation and enforcement of articles 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 to identify good practices as well as deficiencies.

The report preparation process involved several steps, starting with data collection and the preparation of questionnaires which were then sent to relevant agencies. Subsequently, staff from these agencies were interviewed and their transcribed responses together with other research findings were analysed and compiled in the final report outline provided by the UNCAC Coalition. Due to COVID-19, group interviews and workshops were not possible at the time.

TIPNG will use this final report to continue the dialogue and engagement with various stakeholders, including the government, beyond the second cycle of the country review process.



## 2. Executive Summary

The overall findings of the report indicate that Papua New Guinea (PNG) is only partially compliant with its obligations under the UNCAC. Furthermore, although laws and relevant agencies have been established to carry out these obligations, improvement is needed in areas where these laws are inadequate and where UNCAC provisions are not strictly enforced.

In reading this report, the reader should bear in mind that PNG has a mixed legal system of common law and customary law. Common law refers to the system of law that was adopted from England through Australia, whilst customary law is comprised of the indigenous values, beliefs, and traditions of PNG. The national legal system of the country is set out under Part II of the PNG National Constitution which states that the Constitution is pre-eminent in the hierarchy of laws and all other acts of the parliament are subject to it. Other laws in accordance with this hierarchy are: The Organic Laws (additional laws of constitutional stature), Acts of the Parliament, Emergency Regulations, Provincial laws, laws made under or adopted by or under this Constitution or any of those laws, including subordinate legislative enactments made under this Constitution or any of those laws and the underlying law. The Constitution gives effect to and provides the framework for which all other laws are created. The framework for an anti-corruption law is entrenched in Division VIII.3 of the PNG Constitution. The principle of separation of powers was adopted by the country and is enforced through the Constitution. The state is made up of three principal branches: the National Parliament; the National Executive and the National Judicial System.<sup>1</sup> All three branches of government are independent and therefore each must not interfere with the workings of the other. They are, however, encouraged to work together as they collectively exercise the power of the people.

Corruption, and particularly systemic grand corruption, has worsened in PNG in the decades following its political independence from the Australian colonial administration in 1975. In addressing this issue, past and present PNG governments have continued to look for avenues to address and minimize corruption. The country has accordingly enacted laws, joined international initiatives, and adopted global principles and anti-corruption commitments. The concern by local and international observers is that whilst these policies, principles, and laws exist, their enforcement is lacking. This report highlights significant deficiencies in the implementation of PNG's obligations under the UNCAC, especially with regards to gaps within existing laws that allow corruption to grow; the lack of harmony between key agencies such as the police, courts, and the government departments; political interference in the functions of these agencies which affect their ability to perform their functions efficiently and, the perennial issue of under-resourcing.

### Description of Process

The reporting process began with desktop research into existing laws and amendments, relevant official documents, company press releases, corporate and annual plans as well as news articles. Following this document review, interviews with key agencies were conducted, to identify good practices and deficiencies in the implementation of PNG's obligations under the

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<sup>1</sup> The Independent Constitution of Papua New Guinea. Section 99(1).  
[http://www.paclii.org/pg/legis/consol\\_act/cotisopng534/](http://www.paclii.org/pg/legis/consol_act/cotisopng534/).

relevant UNCAC articles. The number of interviews was impacted by the Covid-19 pandemic. Based on the review and the interviews, TIPNG officers compiled the report, which received management and Board approval. All these steps were crucial in the completion and success of this report.

### **Availability of Information**

The necessary information for this report was made available by government officials, the majority of which was obtained online. In addition, this report has been compiled based on investigated and prosecuted cases from 2012 to 2020.

Three state agencies were approached to obtain the required information for the compilation of the report. These were: The National Procurement Commission (NPC), the Public Services Commission (PSC), and the Integrity of Political Parties and Candidates Commission. TIPNG held separate interviews with each of these government agencies to discuss the role that each of them plays in the implementation of the relevant UNCAC articles.

PNG currently does not have Freedom of Information Legislation in place, hence requests for information release were not possible for this report. However, during the interviews with relevant agencies, TIPNG requested certain documents which were not available online to aid the drafting of the report. These documents were provided upon request.

### **Implementation in Law and in Practice**

**Table 1: Implementation and Enforcement Summary**

<b>UNCAC Articles</b>	<b>Status of Implementation in Law</b>	<b>Status of Implementation and Enforcement in Practice</b>
<b>Art. 5</b> – Preventive anti-corruption policies and practices	Partially Implemented	Moderate
<b>Art. 6</b> – Preventive anti-corruption body or bodies	Partially Implemented	Moderate
<b>Art. 7.1</b> – Public sector employment	Partially Implemented	Moderate
<b>Art. 7.3</b> – Political financing	Partially Implemented	Moderate
<b>Art. 7, 8 &amp; 12</b> – Codes of conduct, conflicts of interest and asset declarations	Partially Implemented	Moderate
<b>Art. 8.4 &amp; 13.2</b> – Reporting mechanism and whistleblower protection	Partially Implemented	Poor
<b>Art. 9.1</b> – Public procurement	Partially Implemented	Moderate
<b>Art. 9.2</b> – Management of public finances	Partially Implemented	Poor

<b>Art. 10 &amp; 13.1</b> – Access to information and the participation of society	Not Implemented	
<b>Art. 11</b> – Judiciary and prosecution services	Partially Implemented	Moderate
<b>Art. 12</b> – Private sector transparency	Partially Implemented	Moderate
<b>Art. 14</b> – Measures to prevent money-laundering	Partially Implemented	Moderate

Below are key findings for each UNCAC article that is subject to review in the second cycle:

#### Article 5 – Preventive Anti-Corruption Policies and Practices

PNG has established a National Anti-Corruption Strategy and from this strategy a National Anti-Corruption Plan of Action. The National Anti-Corruption Plan of Action (NACPA) is a technical working plan containing the details of a program of work aimed at implementing certain preventive measures in Papua New Guinea. This plan ultimately assists the country to achieve its goals under the National Anti-Corruption Strategy 2010-2030 (NACS), including, inter alia, the promotion and strengthening of honest leadership and strengthening transparency and the public exposure of corruption. Although established already in 2011, these strategies and plans remain minimally implemented and enforced. Furthermore, no evaluations or progress reports on the effectiveness of these preventive corruption measures have been conducted thus far.

#### Article 6 – Preventive Anti-Corruption Body or Bodies

Since the passing of the Organic Law on the Independent Commission against Corruption (OLICAC) in November 2019, the Independent Commission against Corruption (ICAC) is now established in law to carry out the investigation and prosecution of corruption-related matters. This body at present is not fully operationalized, as it has limited human and financial resources. Before its establishment, anti-corruption bodies such as the National Fraud and Anti-Corruption Directorate (NFACD) and the Ombudsman Commission PNG (OCPNG) have attempted to deal with corruption-related offences committed by the general public, while leaders have been subjected to the Leadership Code (i.e.; Members of Parliament, Judges, and Senior Non-Elected Public Officials). The NFACD is housed within the Royal Papua New Guinea Constabulary (RPNGC) as a Directorate of the Police. The NFACD has demonstrated its commitment to fighting corruption through the pursuit of arrests on high-profile individuals. However, its independence is perceived to be affected by political interference. The OCPNG ensures that information relating to investigations conducted and the processes for lodging complaints are accessible. It administers penalties upon leaders which are not perceived to be a sufficient deterrent. Both the NFACD and the OCPNG are underfunded and there is a lack of regular statistical information on the number of corruption cases that have been successfully resolved.

#### Article 7.1 – Public Sector Employment

The Department of Personnel Management (DPM) is responsible for the recruitment, appointment, and selection of the national public (civil) service. Procedures relating to the process of recruitment are contained in the law and have been further elaborated by the DPM. These procedures are available online and upon request. The DPM works together with the Public Services Commission (PSC), which was established under the Constitution to undertake the review of personnel matters, merit-based appointments, and organisational review.

As part of its mandate, the PSC has a process in place relating to the wrongful conduct of Departmental heads, questionable recruitment, corruption matters, and wrongful dismissal. An estimated 80% of complaints to the PSC are received from civil servants and are administrative in nature. It is important to note that the PSC's review process at present does not provide for whistleblower protection as complainants are required to disclose their full identity on the complaint form.

Both the Department and the Commission are underfunded; therefore, funding has to be sought from international organizations to assist the agencies to carry out their legal mandate.

#### Article 7.3 – Political Financing

PNG has the Organic Law on the Integrity of Political Parties and Candidates (OLIPPAC) 2003 in place, which was enacted for the purposes of promoting political stability and good governance. In addition to this law, the Integrity of Political Parties and Candidates Commission (IPCC) was established under the Constitution to consider applications for the registration of political parties and the control of monies allocated to candidates and political parties. While the IPCC has indicated that it is underfunded, it has nevertheless sought to ensure adherence by political parties to the OLIPPAC. Candidates in the national elections are penalized for failure to submit annual returns and political parties are de-registered for failure to comply with provisions under the OLIPPAC.

The IPCC is also seeking to ensure that areas of the OLIPPAC which are inconsistent with the Constitution are remedied through amendments. Particular amendments are being made to the disclosure of contributions and donations. Pre-existing issues, however, include the ability of State-owned enterprises to make contributions, the non-disclosure of funds raised by political parties from fundraising events and programmes, as well as the allocation of funding to political parties which is made according to the number of Members of Parliament in a party.

#### Article 7,8 and 12 – Codes of Conduct, Conflicts of Interest and Asset Declarations

The Constitution establishes the Leadership Code, which sets out the duties, responsibilities, and ethics which leaders (i.e., Members of Parliament, Provincial Administrators, Judges, and Senior Non-Elected Public Officials) are expected to follow. The Ombudsman Commission, in administering the Leadership Code, conducts investigations into breaches of the code and has as of 4<sup>th</sup> April 2018 published a total of 46 investigative reports.

Under two additional laws: The Organic Law on Duties and Responsibilities of Leaders (OLDRL) and the OLLIPAC, leaders and political parties are expected to disclose conflicts of interest as well as declarations of assets which may include copies of balance sheets and financial statements detailing assets, liabilities and sources of income. A continuing challenge for leaders and political parties in the country, however, is the exercise of restraint when power and wealth are placed in their hands.

#### Article 8.4 and 13.2 – Reporting Mechanisms and Whistleblower Protection

PNG recently enacted a Whistle Blower Act for the purposes of protecting all employees who make a protected disclosure from occupational detriment. Unfortunately, the legislation is not comprehensive enough as it does not extend beyond employer-employee relationships, nor does it allow for anonymous disclosures or mandatory whistleblower mechanisms to be in place for all organizations. Furthermore, the legislation does not establish an independent body to which disclosures can be made. Whistleblower protection in the OLICAC is considered by TIPNG to be relatively stronger than the Whistle Blower Act itself. Therefore, further amendments need to be made to the Whistle Blower Act.

#### Article 9.1 – Public Procurement

In 2019, the PNG Government enacted the National Procurement Act (NPA) 2018 which signified the reform to the management of public procurement in PNG. The NPA provided for the establishment of the National Procurement Commission (NPC), a new body that is responsible for undertaking procurement on behalf of the State and statutory bodies.

The NPC has published and made accessible procurement procedures and has established offices in various provinces of the country to allow for greater efficiency in its work. In terms of procurement, tenders are facilitated by the NPC, but there are still gaps that can be exploited by political actors. Aside from the risk of political interference, the NPC is perceived to be underfunded and understaffed. A concern is that there are not sufficient checks in place to ensure that the beneficial ownership of bidding firms is disclosed, and proactive disclosure of procurement information to the public is quite limited.

#### Article 9.2 – Management of Public Finances

The Public Finances (Management) Act (PFMA) 1995 and its subsequent amendments provides the main legal framework for the management of public finances in PNG. For this Article the three primary and pertinent agencies are the Department of Finance, the Department of Treasury, and the Auditor General's Office.

The role that each agency plays is essential to ensure transparency in the management of public funds. An assessment carried out by the Department of Finance in 2014 revealed serious concerns in the keeping of accounting books and reporting on public accounts. In general, it was found that such records were not kept in accordance with legislative standards and provisions. This, therefore, remains a significant, annually recurring challenge for the Department of Finance. National budgeting documents on the other hand are published by the

Department of Treasury and while being accessible online to the public, there is a distinct lack of civil society and citizen involvement in this process.

#### Article 10 and 13.1 – Access to Information and the Participation of Society

PNG does not have a Freedom of Information (FOI) Legislation, although the basis for such a law is provided by section 51 of the Constitution. The Government has however recognized the need for this legislation and steps are being taken to draft FOI legislation. In the absence of such a law, piecemeal measures have been adopted by the country to promote an institutional culture of transparent communication between government and civil society. PNG is now a member of both the Open Government Partnership (OGP) and the Extractive Industries Transparency Initiative (EITI). Under its governing law, the OCPNG has powers to request information from state agencies that would be in the public's interest to know, but these powers have not been systematically utilised.

#### Article 11 – Judiciary and Prosecution Services

The Constitution provides for the National Judicial System and for the establishment of a body to ensure adequate staffing of Courts. This body is the Judicial and Legal Services Commission (JLSC) which along with this function, shall conduct a continuing review of the jurisdiction, practice, and procedure of all courts, other than the Supreme Court and the National Court. Judges and magistrates of the courts are subject to codes of conduct and are like other leaders held to the highest standards of performance.

Judicial corruption is not unknown to the PNG Judiciary System, and there have been instances where judges have been referred for prosecution, but impunity has persisted due to the weak penalties in place under the respective codes of conduct. A significant challenge for the judiciary is to address existing issues such as low case disposition rates and to develop new measures to ensure that the integrity of the judiciary is preserved.

#### Article 12 – Private Sector Transparency

Article 12 requires State parties to take measures to prevent corruption that involve the private sector, enhancing auditing standards, and providing dissuasive civil, administrative, and criminal penalties for failure to comply with such measures. In PNG, the Investment Promotion Authority (IPA) is the organisation that houses PNG's Companies Office, Securities Commission, and the Intellectual Property Office.

IPA does have measures in place that relate to the implementation of Article 12 of the UNCAC. These measures include keeping a registry of all registered domestic and international companies, which is accessible to the public online in a searchable manner.

The measures that are in place include ensuring that proper financial records are kept by companies and that company audits are conducted and annual returns are submitted in a timely manner. As of the present time, there are no measures or requirements in place for beneficial ownership to be disclosed in the process of registering a company. The Papua New Guinea

Extractive Industries Transparency Initiative (PNGEITI) has identified this as a challenge for the IPA to take up.

#### Article 14 – Measures to Prevent Money-Laundering

Article 14 requires States Parties to establish a comprehensive regime for banks and non-financial institutions which provide formal and informal services for the transmission of money, for the purposes of deterring and detecting all forms of money laundering. PNG does have a legal framework for anti-money laundering, the Anti-Money Laundering and Counter-Terrorist Financing Act 2015 (AMLCTFA).

The purpose of the Act is to enable the government to detect and deter money laundering and terrorist financing. The Financial Analysis and Supervision Unit (FASU) was established under the act to, amongst other roles, carry out financial intelligence gathering and analysis concerning suspected money laundering. Upon its establishment, FASU conducted an assessment of PNG’s current systems and published findings on the existing strengths and weaknesses. In addressing weaknesses identified, FASU has formed associations with international agencies with the hope to strengthen the skills of front-line agencies in monitoring, detecting, and reporting money laundering. Limited information on the work of FASU is made available to the public.

**Table 2: Performance of selected key institutions**

<b>Name of Institution</b>	<b>Performance in relation to responsibilities covered by the report</b>	<b>Key words explaining performance</b>
PNG Ombudsman Commission	Moderate	Limited Resources and Funding Relative Independence Limited Technical skills
PNG National Fraud and Anti-Corruption Directorate	Moderate	Limited Resources and Funding Much Political Interference Limited Technical skills
Department of Personnel Management & Public Services Commission	Moderate	Limited Resources and Funding Relative Independence Limited Technical skills
Integrity of Political Parties and Candidates Commission	Moderate	Limited Resources and Funding Relative Independence with minimal to no political interference Limited Technical skills
National Procurement Commission	Moderate	Limited Resources and Funding Relative Independence Limited Technical skills
Department of Finance	Moderate	Limited Resources and Funding Heavy Political Involvement Limited Technical Skills

Judicial and Legal Services Commission	Moderate	Limited Resources and Funding Independent however some outside influence Limited Technical Skills
Investment Promotion Authority	Moderate	Limited Resources and Funding Relatively Independent Limited Technical Skills
Financial Analysis and Supervision Unit	Moderate	Limited Resources and Funding Relatively Independent Limited Technical Skills

PNG Ombudsman Commission:

The OCPNG which is mandated to administer the Leadership Code has reportedly faced budget cuts over the years and remains under-funded. With the limited resources that it has, it undertakes investigations into leaders conduct upon complaints and produces investigative reports on issues of national concern, particularly relating to corruption in the public sector. OCPNG has made its process for lodging complaints online, as well as its investigative reports available to the public. Investigative reports and commissions of inquiry conducted by OCPNG are also tabled in Parliament for further action.

Improvements are needed in updating the public regularly on the number of cases OCPNG deals with on a weekly or monthly basis, and whether the nature of the cases are corruption-related or administrative. At the time of writing, only two out of the three constitutionally required office-holders are in place, while the position of the Commissioner remains vacant.

PNG National Fraud and Anti-Corruption Directorate:

The NFACD has been serving as an anti-corruption body in the country preceding the establishment of the ICAC. The NFACD is responsible for investigating and arresting persons suspected of being involved in corrupt or fraudulent activity. This Directorate is significantly underfunded and political interference is immense. Furthermore, it does not release to the public any regular statistics on the number and nature of cases it deals with. Despite this, the NFACD has shown its commitment to the cause of reducing corruption by following through with its mandate and conducting arrests of some high-profile individuals.

Department of Personnel Management & Public Services Commission:

The DPM is responsible for the recruitment, appointment, and selection of the national civil service whilst the PSC is responsible for merit-based appointments as well as the review of personnel matters. The role that the PSC plays in the appointment of senior non-elected public officials is minimal, and a bulk of the work is done by the Department of Personnel Management in consultation with the National Executive Council (NEC) which makes the final decision. The involvement of the NEC increases the risk of political influence substantially.



Both the DPM and the PSC suffer from inadequate funding and resources. The PSC has been active in seeking funding from development partners such as the European Union, which is currently funding the development of a Case Management System (for the review of personnel matters) and providing an update of technology equipment to make the workings of the PSC more efficient.

#### Integrity of Political Parties and Candidates Commission:

The IPPCC, which is responsible for the registration of political parties and the management of political finances, is another entity that has been reportedly underfunded and resourced. Despite this, the Commission continues to conduct awareness activities for political parties and candidates on the importance of adhering to provisions under the OLIPPAC (ex: submitting annual returns) and is strict in applying penalties for non-compliance. Furthermore, the decisions made by the OLIPPAC are perceived to be independent. The IPPCC has reportedly made significant changes to the OLIPPAC which are aimed at ensuring greater transparency in the process and is awaiting the passing of the amendments in Parliament in 2021.

#### National Procurement Commission:

The NPC is mandated to carry out procurement on behalf of the State and statutory agencies. As an agency, it is underfunded and under-resourced, and it lacks the expertise and technology needed to push through its plans, for example in the area of e-procurement. The procurement process although under the purview of the NPC, has gaps that could be exploited by the corrupt, therefore affecting the independence of the Commission. In carrying out its duties, the NPC strives to provide the public with access to information on procurement procedures and tenders in a timely manner. Yet, the information available to the public is limited due to concerns of sensitive information being revealed. Amendments to its enabling legislation have been made and are expected to be passed by Parliament in 2021.

#### Department of Finance:

The Department of Finance is the mandated agency tasked with the management of public funds and should work in close collaboration with the cabinet and line agencies such as the Department of Treasury and the Office of the Auditor General. An assessment conducted on the Department found that accountability in terms of the maintenance of the integrity of accounting books and records is extremely poor. Access to information from these agencies and those with which it works closely together is limited; some documents available online are even outdated. The agency is facing the challenge to ensure that accounting records are maintained and that there is greater transparency in its work and the state's spending.

#### Judicial and Legal Services Commission:

The JLSC is responsible for the adequate staffing of the courts and ensures the maintaining of statistics relating to the exercise of the jurisdiction of all courts. As with most other government agencies, the Commission requires additional funding to carry out its duties. Decisions made by the Commission are perceived to be independent.

Information can be obtained from the Commission’s website on its workings and procedures of recruitment but is often limited. For this report, queries were made on the recruitment of judges and procedures for determining conflicts of interest, as well as the distribution of cases that were not attended to in a timely manner. JLSC was not able to respond to our queries.

#### Investment Promotion Authority:

The IPA is the independent body that houses the Companies Office in PNG. It is responsible for the registration of companies, for keeping a company registry, and for ensuring compliance with the Companies Act 1997. Over the years, it has enforced the provisions of the Company Act through the imposition of penalties such as fines and de-registration of companies upon non-compliance with provisions of the Act, despite facing budget constraints. An area that the IPA could contribute to is the creation of a national beneficial ownership registry, through the introduction of requirements in the company registration process.

#### Financial Analysis and Supervision Unit:

FASU is PNG’s Financial Intelligence Unit. FASU was established in 2016 for the purposes of carrying out financial intelligence and analysis concerning suspected money laundering and associated predicate offences. FASU is an independent body, housed within PNG’s Central Bank, the Bank of Papua New Guinea (BPNG), and carries out its function through the BPNG.

Since its establishment, FASU conducted an assessment of the country’s systems and has put in place measures that reassures better monitoring of cash flows in the country. However, adequate funding is needed for FASU to carry out its operations better. The challenge for FASU is to continue to create awareness of its functions and to build an effective national coordinating committee on anti-money laundering and counter-terrorism financing.

### **Recommendations for Priority Actions**

1. The National Anti-Corruption Strategy Taskforce (NASTF) must hold regular meetings.
2. Each state agency should develop an internal anti-corruption strategy.
3. Wide consultation is required to ensure a thorough regulatory framework for OLICAC.
4. Amendments to go beyond the traditional employer-employee relationship need to be made to the Whistleblower legislation to ensure its effectiveness.
5. Ensure that sanctions under the Leadership Code and the Organic Law on Duties and Responsibilities of Leaders are proportionate and compel reporting by public officials.
6. Amendments are required to the OLIPPAC to ensure it is constitutional and followed.
7. Creation of a legal basis for beneficial ownership data to be collected and shared.
8. Operationalisation of PNG’s e-procurement system with reference to global standards.
9. Support is required for the national chapters of EITI and OGP to achieve their broad objectives, and specifically to enact a Freedom of Information law.

For more detailed recommendations, see Chapter 6.

### 3. Assessment of Review Process for Papua New Guinea

No assessment of the Review Process was conducted, since the Department of the Prime Minister, which serves as the focal point for the second cycle review of UNCAC implementation in PNG, has not provided a response regarding the status of the review by the time this parallel report was finalised. PNG was scheduled for the 4<sup>th</sup> year of the second review cycle, corresponding with the year 2019. The reviewing countries are Burundi and Kyrgyzstan which were selected by a drawing of lots.

**Table 3: Transparency of the government and CSO Participation in the UNCAC review process**

Did the government disclose information about the country focal point?	Yes	In 2019 the focal points were: 1) Mrs. Josephine Pitmur from the Department of Justice and Attorney General 2) Mr. Jeffrey Murley from the Department of Prime Minister and National Executive Council
Was the review schedule publicly known?	Yes	The scheduled was communicated in September 2019 to members of the National Anti-Corruption Strategy Taskforce
Was civil society consulted in the preparation of the self-assessment checklist?	Yes	Transparency International Papua New Guinea was consulted and in October 2019 made a submission to the Government focal points
Was the self-assessment checklist published online or provided to civil society?	No	Once feedback was submitted, the self-assessment checklist was not published online or shared
Did the government agree to a country visit?	N/A	This is unclear (Kyrgyzstan and Burundi are the reviewing countries for the 2nd cycle review)
Was a country visit undertaken?	N/A	This is unclear
Was civil society invited to provide input to the official reviewers?	N/A	This is unclear
Was the private sector invited to provide input to the official reviewers?	N/A	This is unclear
Has the government committed to publishing the full country report?	No	

## **Access to Information**

In preparing this report, information was obtained in three ways: through desktop research (both online and offline TIPNG archival records), through interviews with agencies, and through making direct information requests with agencies. It is important to note here that desktop research constitutes the bulk of this report. Documents obtained from desktop research were mostly official government documents and legislation. Reports and assessments conducted by civil society organisations as well as media reports contributed a significant portion of data to the report. These include reports made by Transparency International PNG and news reports from the Australian Broadcasting Company, Radio New Zealand, Post Courier, The National as well as the internet-based Loop PNG.

Due to the absence of Freedom of Information legislation, it was not possible to make official requests for information, however, requests were made in writing to interview agency representatives and to obtain documents. Three key agencies were interviewed and provided data for the report: The Public Services Commission, the National Procurement Commission, and the Integrity of Political Parties and Candidates Commission. These three agencies provided valuable on record information which was used to write a report that was not only focused on existing deficiencies within the country's systems but also the successes which should be acknowledged. Upon the authors request, the Public Services Commission was able to assist by providing documentation of Codes of Conduct for public servants. In contrast, the JLSC, given the sensitivity of the questions from the report methodology, was only able to respond in person and with authorisation. This wide range of responses further underscores the necessity of Freedom of Information legislation in PNG, to ensure consistency in the obtaining of public documents.

The challenges to accessing information in the country are still prevalent. This is due to underlying issues, poor accessibility of public documents over-the-counter across all agencies; the promotion of a culture of secrecy in some government agencies, a lack of freedom to information policy and guidelines in government agencies due to the absence of legislation; and the failure of some agencies to update documents that are publicly accessible online. For example, the most recent full Auditor General's Report that is available online is from 2015.

Despite the difficulties involved in obtaining documents directly from relevant agencies, sufficient information for the production of this report was accessible online. These online documents include: budget manuals, legislation, codes of conduct, company annual reports, civil society reports, press statements, discussion papers, roadmaps, risk assessments, scoping studies, and newspaper articles.

## 4. Assessment of the Implementation of Chapter II Provisions

This chapter provides an analysis of how the UNCAC's Chapter II provisions are being implemented in Papua New Guinea through laws, regulations and practices.

### 4.1 Article 5 – Preventive Anti-Corruption Policies and Practices

The PNG government has adopted laws and policy mechanisms on anti-corruption. In terms of legislation, the government passed in 2020 the *Organic Law on the Independent Commission Against Corruption (OLICAC) 2019* to implement the 2014 amendment to the Constitution (Insertion of DIV VIII.3).

The purpose of this legislation was to establish an Independent Body responsible for conducting investigations, issuing recommendations, and prosecuting corruption-related matters. The OLICAC is supported by a number of other laws and codes of conduct: The Whistle Blower Act 2020, the Anti-Money Laundering Act 2015, the Proceeds of Crime Act 2005, the Organic Law on Integrity of Political Parties and Candidates, and the Leadership Code.

With respect to policy coordination mechanisms, the Papua New Guinea National Anti-Corruption Strategy (NACS) 2010-2030 was approved by the PNG government in 2011.<sup>2</sup> NACS sets the framework for the government and all its stakeholders to begin taking actions to combat corruption and improve good governance.<sup>3</sup>

Under the NACS there are eight key action areas (KAA's) essential to sustaining a national system of integrity:

- (1) Promote and strengthen honest leadership;
- (2) Strengthen transparency and public exposure of corruption;
- (3) Build and maintain effective people management;
- (4) Strengthen the integrity of the Public Financial Management System;
- (5) Strengthen accountability and oversight;
- (6) Strengthen compliance and enforcement;
- (7) Strengthen public awareness and education; and
- (8) Strengthen coordination and partnership.<sup>4</sup>

The PNG NACS 2010-2030 is the basis for multi-year implementation plans, such as the current National Anti-Corruption Plan of Action (NACPA), which is running from 2020-2025. NACPA is a technical working plan containing the details of the programme of work aimed at implementing certain measures for fighting corruption in PNG between the years 2020 and

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<sup>2</sup> National Anti-Corruption Strategy Technical Working Group – Public Discussion Paper on the Development of Papua New Guinea's Proposed Anti-Corruption Agency. May 2013. pp.2.  
<http://www.actnowpng.org/sites/default/files/ICAC%20public%20discussion%20paper%20May%202013.pdf>.  
(Accessed on: 12 February, 2021).

<sup>3</sup> *Ibid.*

<sup>4</sup> National Anti-Corruption Strategy 2010-2030. pp17-32.

2025.<sup>5</sup> The primary role of NACPA is to lend support to and achieve PNG's long-term anti-corruption goals contained in the PNG NACS.

It is important to note that civil society played more of a supporting role to the efforts of the government, in consultation, development, implementation, coordination, and monitoring of the NACS as well as the NACPA. In June 2020, TIPNG and other non-state actors requested to meet separately from the state agencies to formulate a monitoring and implementation strategy for the NACPA. In the past, TIPNG has participated in meetings of the NACS Taskforce, which is responsible for the coordination of state agencies in implementing the NACS and corresponding NACPA.

Progress reports on the implementation of the NACS and NACPA are not publicly available. Due to this and the lack of an operational ICAC, this report reviewed anti-corruption bodies that have been operational prior to 2020, chiefly the National Fraud and Anti-Corruption Directorate (NFACD) and the Ombudsman Commission for Papua New Guinea (OCPNG).

The NFACD, being a body that operates within the Royal Papua New Guinea Constabulary (RPNGC), is responsible for collecting, investigating, and prosecuting fraud and corruption complaints in PNG. The number of fraud and corruption cases dealt with by the NFACD over the years (apart from those reported in the media) is not publicly available, as the RPNGC neither publishes regular detailed crime statistics, nor progress reports on the enforcement of NFACD's mandate as an anti-corruption body.

The OCPNG in contrast is an independent office established under the Constitution and mandated to conduct investigations into matters of alleged corruption and misconduct in public offices. OCPNG does not provide progress reports on the implementation of anti-corruption measures, but upon conducting investigations on allegations of corruption it often publishes investigative reports which set out the finding of facts, persons implicated, as well as recommendations.

As of the 4<sup>th</sup> April 2018, the OCPNG has published a total of forty-six investigative reports. These reports have implicated high-profile businessmen and politicians. An example of such was seen in the 2018 investigative report on *the Alleged Misuse and Misapplication of the Services Improvement Program Grants by Madang, the Joint Provincial Planning & Budget Priority Committee to Purchase 19 Motor Vehicles for the 19 Local Level Government Presidents in Madang Province*<sup>6</sup>. This report implicated the Honourable Member and Governor for Madang Province, in the Momase region of PNG, Jim Kas, whose conduct in the view of the Ombudsman Commission was stated to be improper when he funded the purchase of motor vehicles for all Local-Level Government (LLG) Presidents using the Governor's Provincial Services Improvement Programs (PSIP) Grants.<sup>7</sup> This practice was deemed improper as Governors are to only spend allocated funds for the purpose for which it is intended. In this

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<sup>5</sup> Draft PNG National Anti-Corruption Plan of Action 2020-2025. pp.1.

<sup>6</sup> Ombudsman Commission Investigative Report - *The Alleged Misuse and Misapplication of the Services Improvement Program Grants by Madang the Joint Provincial Planning & Budget Priority Committee to Purchase 19 Motor Vehicles for the 19 Local Level Government Presidents in Madang Province*. [2018]. <https://drive.google.com/open?id=1eEfMDSbUZPWp4Vo17yh-uqoo2kX6n7kw>. (Accessed on: 12 February, 2021).

<sup>7</sup> *Ibid.*

case, the PSIP grants were specifically for the improvement of services in the province and not for the unnecessary purchase of vehicles for each individual LLG President. This was seen as an abuse of state funds. The Commission also found that the conduct of the acting Provincial Administrator, Bernard Lange, was wrong when he failed to perform due diligence checks on forms which enabled the processing of payments for these vehicles.<sup>8</sup>

The lack of publication of progress reports on the effectiveness of corruption measures in the country indicates that thorough evaluations on the effectiveness of preventative corruption measures have not been internally conducted by the country or an organisation within it.

This is distinct from general observations, papers, and surveys conducted by international organisations or scholars evaluating the causes of corruption in Papua New Guinea and suggesting how corruption can be prevented. An example of such was a paper written by Bui Mana in 1998 titled “*An Anti-Corruption Strategy for Provincial Government in Papua New Guinea*”<sup>9</sup>, examining the causes and characteristics of corruption at the provincial government level in Papua New Guinea, and leading to the developing of an education training approach with regards to preventing corruption.<sup>10</sup>

Nevertheless, there have been parallel efforts to systematically strengthen governance in PNG. In 2014, the PNG Government indicated an interest in the Open Government Partnership (OGP). On the 28 October 2015, PNG was officially declared as an OGP Partner Country at the OGP Global Summit in Mexico.<sup>11</sup> Under the PNG OGP, a National Action Plan (NAP)<sup>12</sup> was developed. Twelve Government Departments and ten civil society organisations (CSOs), who form PNG’s Steering Committee, initially gathered to initiate the process for the formulation of the NAP in February 2016.<sup>13</sup>

Under its first OGP NAP, PNG signed up for four commitment clusters: Public Participation, Freedom of Information, Fiscal Transparency, and Extractive Resources Transparency.<sup>14</sup> PNG is currently implementing seven commitments from their 2018-2020 national action plan. CSOs such as TIPNG currently monitor the implementation of the NAP and have been

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<sup>8</sup> Ombudsman Commission Investigative Report - *The Alleged Misuse and Misapplication of the Services Improvement Program Grants by Madang the Joint Provincial Planning & Budget Priority Committee to Purchase 19 Motor Vehicles for the 19 Local Level Government Presidents in Madang Province.* [2018]. <https://drive.google.com/open?id=1eEfMDSbUZPWp4Vo17yh-uqoo2kX6n7kw>. (Accessed on: 12 February, 2021).

<sup>9</sup> B Mana. ‘An anti-corruption strategy for provincial government in Papua New Guinea’. Asia Pacific Press – Australian National University (1998). (PDF). <https://crawford.anu.edu.au/pdf/wp99/gov99-5.pdf>. (Accessed on: 12 February, 2021).

<sup>10</sup> *Ibid.* page 3.

<sup>11</sup> Pole Kale. ‘The progress of OGP in Papua New Guinea’ (2016) Open Government Partnership. <https://www.opengovpartnership.org/stories/the-progress-of-ogp-in-papua-new-guinea/> (Accessed on: 6 January, 2021).

<sup>12</sup> Open Government Partnership National Action Plan. [https://www.opengovpartnership.org/wp-content/uploads/2018/11/Papua-New-Guinea\\_Action-Plan\\_2018-2020.pdf](https://www.opengovpartnership.org/wp-content/uploads/2018/11/Papua-New-Guinea_Action-Plan_2018-2020.pdf). (Accessed on: 6 January, 2021).

<sup>13</sup> *Ibid.*

<sup>14</sup> TIPNG Press Release: “Civil Society to work with Government for Openness” (2019). [http://www.transparencypng.org.pg/wp-content/uploads/2019/05/TIPNG\\_PR\\_070519\\_Civil\\_Society\\_To\\_Work\\_With\\_Government\\_For\\_Openness.pdf](http://www.transparencypng.org.pg/wp-content/uploads/2019/05/TIPNG_PR_070519_Civil_Society_To_Work_With_Government_For_Openness.pdf). (Accessed on: 6 January, 2021).

involved in the drafting of the second action plan towards the end of the first implementation year.<sup>15</sup>

PNG also commenced working with EITI in 2014 and after forming a tri-partite multi-stakeholder group, establishing a national secretariat, releasing annual reports, as well as an endorsed PNG EITI Policy, the country is being assessed in 2021 for member status.

PNG is also part of the Anti-Corruption and Transparency Experts' Working Group (ACTWG). The ACTWG was established for the purpose of ensuring continuity of the initiatives that have been introduced in previous years including existing APEC commitments, such as the UN Commitments Against Corruption.<sup>16</sup> In 2018, a workshop on "corruption prevention mechanisms in APEC economies" was hosted in Port Moresby, Papua New Guinea.

### Good Practices

- PNG has joined the EITI and the OGP as a step towards greater transparency in the extractive sector and recognising that governments are likely to be effective in their performance and functions when public participation and oversight is allowed.
- PNG has in place the NACS as well as the NACPA which spell out preventative corruption measures.

### Deficiencies

- The PNG NACS was completed and released in 2011, but to date, there has not been consistency in efforts to fully operationalise and implement the strategy.
- No evaluations or progress reports have been conducted in the country on the effectiveness of preventative corruption measures.
- Bodies that existed prior to the newly established anti-corruption body such as the NFACD do not provide regular and detailed statistics in relation to the volume and frequency of fraud and corruption cases that have been reported and resolved.

## **4.2 Article 6 – Preventive Anti-Corruption Body or Bodies**

Since the passing of the OLICAC Legislation in 2020, the newly established body to oversee and coordinate the implementation of anti-corruption policies is the Independent Commission Against Corruption (ICAC). At present, the ICAC is not fully operationalised as it does not have an office, nor the necessary manpower, resources, and funding to carry out its mandate.<sup>17</sup> In terms of independence, however, section 32(b) of the OLICAC gives the ICAC "the power

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<sup>15</sup> TIPNG Press Release: "Civil Society to work with Government for Openness" (2019).

[http://www.transparencypng.org.pg/wp-content/uploads/2019/05/TIPNG\\_PR\\_070519\\_Civil\\_Society\\_To\\_Work\\_With\\_Government\\_For\\_Openness.pdf](http://www.transparencypng.org.pg/wp-content/uploads/2019/05/TIPNG_PR_070519_Civil_Society_To_Work_With_Government_For_Openness.pdf) (Accessed on: 6 January, 2021).

<sup>16</sup> Anti-Corruption and Transparency Experts' Working Group Endorsed Work Plan for 2018. [http://mddb.apec.org/Documents/2018/SCE/SCE2/18\\_sce2\\_007.pdf](http://mddb.apec.org/Documents/2018/SCE/SCE2/18_sce2_007.pdf). (Accessed on: 15 February, 2021).

<sup>17</sup> Post Courier Author. 'Anti-graft commission not ready to start operations'. Post Courier. 19 February 2021 Issue. pp.1 (No link).



to do all things necessary to be done for, in connection with and reasonably incidental to the performance of its functions and exercise of its powers.”<sup>18</sup>

The ICAC has an Oversight Committee whose role is to monitor, review and report on the Commission’s functions, operations, and exercise of powers. The decisions of the ICAC regarding its priorities and whether or not to investigate or prosecute a person is thus not subject to any authority, including the oversight committee.<sup>19</sup> The ICAC, however, has multiple powers that the Prime Minister can override. As a result, in the absence of transparency, there is the risk that the Prime Minister may be able to effectively stall the ICAC indefinitely. Article 36 of the UNCAC states that Anti-Corruption Agencies must be sufficiently independent. The powers given to the Prime Minister may risk the ICAC not meeting this threshold unless clear secondary legislation, in the form of regulations, is enacted.

Furthermore, the OLICAC will require supporting regulations that would assist in precisely defining corruption and establishing standards or principles that guide and make transparent the way in which cases are selected. In 2014, the government established an interim committee for the establishment of an ICAC. The Chair of the Interim Committee (which reports to cabinet) stated that it plans to carry out and increase awareness on the ICAC by visiting government departments, non-governmental organisations, the corporate sector and the public at large.<sup>20</sup>

Prior to the establishment of ICAC, the NFACD within the RPNGC was one of the bodies responsible for dealing with and prosecuting corruption and fraud cases. In terms of budget, the NFACD is an anti-corruption body that has suffered immensely as a result of being subject to significant budget cuts by the government, thus making it very difficult to carry out its operations.<sup>21</sup> In 2019, NFACD was set to receive K640,000 (US\$ 181,495.74)<sup>22</sup>, which is slightly less than it received in 2018, and a full two-thirds lower than its 2016 allocation. Furthermore, the independence of the NFACD is often questioned, as a consequence of its establishment within a state agency – the RPNGC. There have been instances where the risk of political interference over the workings of the NFACD has been high. An example of this was seen in 2016 when it was reported that the NFACD was allegedly shut down by then Prime Minister Peter O’Neill after a warrant was issued for his arrest.<sup>23</sup> This is in contrast to when O’Neill was appointed Prime Minister in 2011 and had promised to establish a task force sweep and an Independent Commission Against Corruption.<sup>24</sup> Once established, the NFACD operated intensively in the political scene discovering O’Neill’s alleged corrupt practices in June of

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<sup>18</sup> Organic Law on the Independent Commission Against Corruption 2019.

[https://actnowpng.org/sites/default/files/NG2019\\_843\\_ICAC\\_Bill\\_OCR.pdf](https://actnowpng.org/sites/default/files/NG2019_843_ICAC_Bill_OCR.pdf).

<sup>19</sup> TIPNG booklet: 10 things you should know about ICAC. <https://www.transparencypng.org.pg/10-things-you-need-to-know-about-the-organic-law-on-the-independent-commission-against-corruption/>. (Accessed on: 6 December, 2020).

<sup>20</sup> Post Courier Author. ‘Anti-graft commission not ready to start operations’. Post Courier. 19 February 2021 Issue. pp.1 (No link).

<sup>21</sup> G. Walton, H. Hushang, ‘Anti-corruption and the 2019 PNG budget’ [2018] *DevPolicyBlog* <https://devpolicy.org/anti-corruption-and-the-2019-png-budget-20181219> (Accessed on: 6 December, 2020).

<sup>22</sup> *Ibid.*

<sup>23</sup> S. Andrews. ‘Corruption & chaos in PNG: Peter O’Neill & the Fraud Squad’ [2016] *The Diplomat* <https://thediplomat.com/2016/04/corruption-and-chaos-in-papua-new-guinea> (Accessed on: 14 December, 2020).

<sup>24</sup> *Ibid.*

2014.<sup>25</sup> NFACD then issued a warrant of arrest for the Prime Minister and directly arrested Attorney-General Ano Pala, Supreme Court Justice Bernard Sakora, and the Prime Minister's lawyer, Tiffany Twivey, for corruption, fraud, and perverting the course of justice.<sup>26</sup> O'Neill then allegedly used his power to completely shut down the agency.<sup>27</sup>

The NFACD to date continues to deal with and attend to reported cases of corruption in the country. Most recently in February 2020, the former PNG Forest Minister Douglas Tomuriesa and his wife were arrested by the NFACD for alleged money laundering and misappropriation.<sup>28</sup> Police alleged that the two colluded with the former South Fly Member of Parliament (MP) Sali Subam, district official Andrew Marubu, and others to apply to their own use, and the use of Quick Span Building Systems Ltd, a sum of K6 million (US\$ 1,702,118.40) belonging to the South Fly District.<sup>29</sup> This arrest was finally made after the NFACD had been conducting investigations on the matter since a complaint was lodged by former South Fly MP, the late Aide Ganasi and former Chief Secretary, the late Sir Manasupe Zurenuoc at the National Fraud and Anti-Corruption Directorate on July 24, 2013.<sup>30</sup>

In addition to the NFACD, the OCPNG as an office established under the Constitution is mandated and publicly known for conducting investigations into alleged matters of corruption and misconduct in public offices. This is done through the administration of the Leadership Code. The Commission has the powers to investigate a matter and once sufficient evidence is collected such that upon the first appearance a case exists, the Commission shall refer the matter to the Public Prosecutor for prosecution before a Leadership Tribunal. Information on the workings of the Commission, investigations, and the process of filing complaints are published and made accessible to the public by the Commission on its website. OCPNG is funded within PNG's national budget under the law and justice sector. Up until 2015, it was reported that the Ombudsman Commission suffered continuous cutbacks to its budgetary submissions often with frequent delays in receiving its monthly grants.<sup>31</sup> This puts a huge constraint on the Commission to effectively deliver its functions.<sup>32</sup> In 2019, however, Grant Wilson reported that the Ombudsman Commission received an additional 23 percent of funding compared to 2018.<sup>33</sup>

The Ombudsman Commission does enjoy a great deal of independence granted under the Constitution, allowing OCPNG to carry out its purpose to ensure leaders are compliant with the Leadership Code. The OCPNG as of the 9<sup>th</sup> April 2018, has referred 115 cases for

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<sup>25</sup> S. Andrews. 'Corruption & chaos in PNG: Peter O'Neill & the Fraud Squad' [2016] *The Diplomat* <https://thediplomat.com/2016/04/corruption-and-chaos-in-papua-new-guinea> (Accessed on: 14 December, 2020).

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> The National Author. 'MP, wife back in court' [2020] *The National* <https://www.thenational.com.pg/mp-wife-back-in-court> (Accessed on: 22 December, 2020).

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> Ombudsman Commission PNG Annual Report 2015. pp.8. <https://drive.google.com/file/d/1eoeJRMzLkyKwFgFrwVBvbhW9GhJM5EfM/view>. (Accessed on: 22 December, 2020).

<sup>32</sup> *Ibid.*

<sup>33</sup> G. Walton, H. Hushang, 'Anti-corruption and the 2019 PNG budget' [2018] *DevPolicyBlog* <https://devpolicy.org/anti-corruption-and-the-2019-png-budget-20181219>. (Accessed on: 22 December, 2020)

prosecution under the Leadership Code. A large number of these cases resulted in the return of guilty verdicts against leaders, however, punishments imposed were and continue to be very lenient. A significant deficiency would appear to lie in this area. The Leadership Code stipulates that the most severe penalty is the dismissal from office for three years. In addition, the Leadership Code (Alternative Penalties) Act 1976 sets alternative penalties for misconduct of office at a fine not exceeding K1000 (US\$277) or K500 (US\$138).<sup>34</sup> Other penalties under this Act include suspension, demotion, or reduction in salary. The relative meagreness of the penalties could be said to not sufficiently serve as a deterrence to corrupt conduct – this affordable cost of being caught corrupt should be urgently addressed.

### Good Practices

- The ICAC although not fully operational is currently raising public awareness on its workings and encouraging corruption witnesses to come forward.
- The NFACD has shown its dedication to fighting corruption by continuing operations and conducting arrests on high-profiled individuals.
- The Ombudsman Commission ensures information relating to investigations conducted and the process for lodging complaints are publicly accessible.

### Deficiencies

- The ICAC does not have adequate funding and resources allocated to carry out its mandate.
- There is a high risk of political interference with the workings of the NFACD. Therefore, its independence is challenged and under pressure.
- Penalties prescribed for offences under the Leadership Code administered by the Ombudsman Commission are not a sufficient deterrent.

## **4.3 Article 7.1 – Public Sector Employment**

The public service is part of the formal sector in PNG, which only provides a narrow employment base as most of the population are employed in the informal sector. The majority of public servants are teachers, comprising more than 50 percent. Others are employed in junior administrative positions, or positions such as health workers. The uniformed services, Correctional Institution Services, the PNG Defence Force, and the Royal PNG Constabulary account for approximately 10% of the total government workforce. Most recently in 2020, it was reported that 122,000 people were employed in the public workforce.<sup>35</sup> The PNG Government is therefore by far the nation's largest employer.

Over the years, public servants have faced the brunt of delayed public service processes, lack of information, delays in the payments, and underpayments of salaries, wages, and allowances. Such issues are said to have contributed to the widespread acceptance of bribes and corruption

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<sup>34</sup> Leadership Code (Alternative Penalties) Act 1976. S 2(a)-(b).  
[http://www.paclii.org/pg/legis/consol\\_act/lcpa1976339/](http://www.paclii.org/pg/legis/consol_act/lcpa1976339/) .

<sup>35</sup> M. Vari, 'Delaying Public Servants Pay Unethical, says unions', 2020, Post Courier.  
<https://postcourier.com.pg/delaying-public-servants-pay-unethical-say-unions/>. (Accessed on: 16 February, 2021).

in the public sector. In a recent study, interviews with 136 public servants across four provinces – Eastern Highlands, Milne Bay, Madang, and New Ireland revealed that public servants are often ill-informed about the laws and rules guiding their roles, and are under enormous pressure to provide unofficial favours to businesses and politicians.<sup>36</sup> Some public servants are however able to resist these pressures better than others.<sup>37</sup> Another survey found that over 80% of persons in the selected four provinces perceived corruption to be common in the public sector with 60% agreeing that it would be difficult to get things done if bribes were not paid.<sup>38</sup> The challenge for the PNG Government as an employer is to adequately and timely inform and remunerate public servants so they are not tempted to accept bribes or carry out unofficial favours.

In 1995, the first Public Service (Management) Act was passed. Over the years the Act has been amended to suit the changing circumstances of the country, with the most recent amendment made in 2014. The Act included provisions for the appointment, conditions of employment, constitution, powers, procedures, and functions of the Public Services Commission, in accordance with Sections 190 (*Establishment of the Commission*) and 191 (*Functions of the Commission*) of the *PNG Constitution*.<sup>39</sup> The body responsible for civil service as a whole is the Department of Personnel Management (DPM). Section 24 of the Public Service (Management) Act 1995 dictates that the roles of the departmental head for the DPM include: the application and interpretation of terms and conditions of employment in the National Public Service, the setting of terms and conditions of employment for the National Public Service and the retrenchment of officers from the National Public Service.<sup>40</sup> The DPM is also responsible for the regulation of training and staff development in the Public Service.

A key constitutional agency that works together with the DPM is the Public Services Commission (PSC). The PSC has three main responsibilities: The review of personnel matters (s.18 of the act), merit-based appointments, and organizational review.<sup>41</sup> It is worth noting that the overwhelming majority of the recruitment process is not done by the PSC, but rather by the Department of Personnel Management (DPM).<sup>42</sup> As a statutory body, the DPM is funded under the PNG National Budget, and as all other government bodies does not have adequate funding and resources to carry out its mandate.

The process for recruitment of departmental heads or heads of state-owned enterprises begins with the DPM who advertises the position in the National Gazette and ends with the DPM and the National Executive Council (NEC) who makes the final decision. With the recruitment of senior non-elected public officials such as Departmental heads, close attention must be paid to

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<sup>36</sup> G. Walton, *Governance and Corruption in PNG's Public Service: Insights from Four Subnational Administrations* (2019). Development Policy Centre Discussion Paper No.

81. <https://ssrn.com/abstract=3365319>. (Accessed on: 16 February, 2021).

<sup>37</sup> *Ibid.*

<sup>38</sup> G. Walton, "Understanding Governance and Corruption in PNG's Public Service", 2019, <http://devpolicy.org/2019-PNG-Update/Presentations/Parallel-4C-Understanding-and-responding-to-corruption-in-PNGs-public-service-Grant-Walton.pdf>. (Accessed on: 23 February, 2021).

<sup>39</sup> Public Services (Management) Act 2014. <http://www.dpm.gov.pg/wp-content/uploads/2019/01/Public-Service-Management-Act-2014.pdf>.

<sup>40</sup> *Ibid.* s 24(2).

<sup>41</sup> Terence Tupi – Secretary to the Public Services Commission Interview (25 February, 2021).

<sup>42</sup> *Ibid.*

minimum person competency and performance requirements as set out under Part II of the *Public Services (Management) (Employment of Departmental Heads) Regulation 2014*.<sup>43</sup> These provisions set out strict competency and performance requirements such as possession of a degree, good reputation, as well as freedom from criminal charges and investigations. The DPM has drafted general orders as part of its mandate, which highlight in detail, procedures for the recruitment and selection of civil service members. Recruitment functions are however delegated to Departmental heads and provincial administrators. General orders cannot be obtained online but can be requested over the counter either from the DPM or the PSC.

The role of the PSC is primarily to schedule and conduct interviews with the shortlisted candidates submitted to it by the DPM, further consider requirements as well as qualifications from those who are shortlisted and recommend three candidates from which the NEC then chooses an appointee.<sup>44</sup> Before the shortlisted applicants are sent to DPM, the PSC has to obtain clearance checks on the shortlisted applicants from four Departments and agencies: the Police, the Ombudsman Commission, the Department of Health, and the Public Prosecutor.<sup>45</sup> This is to ensure that the applicants are in good health and have no prior record of being prosecuted under the Leadership Code or for a criminal case in the National Court or Supreme Court. Once an appointment has been made it is published in the National Gazette and the successful applicant has an obligation under the Leadership Code to declare his or her assets.

Concerning the review of personnel matters and collection of complaints, the PSC has a process in place for the reporting of matters relating to either wrongful conduct of Departmental Heads, corruption matters, or wrongful dismissal. Generally, public servants who feel they have been wrongfully dismissed or not treated fairly in the recruitment process can make a complaint or appeal to the PSC. If the body decides against the complainant, the option for judicial review through the court system is always available. According to the PSC, not more than fifteen corruption-related complaints are received yearly out of approximately 100 complaints made against Departmental Heads. However, for civil servants who make complaints against their Departmental Heads, 80 percent of those complaints are considered valid and most are administrative in nature.<sup>46</sup> In the PSC's assessment, many of these complaints were coming from the Highland's Region of Papua New Guinea. In response to this, the PSC has taken steps to regionalise its offices. There is currently only one office in the nation's capital with an emphasis on outreach to the highland's region for ease of convenience in the filing of complaints.<sup>47</sup>

Unfortunately, the PSC does not have a mechanism in place to protect persons who make complaints against public officials, especially for corruption-related matters. It is a requirement that complainants must disclose their identity on the complaint forms to verify the authenticity of the complaint. Although there may be valid reasons for this, the protection of the person providing details of a corruption offence containing sensitive information must be protected.

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<sup>43</sup> *Public Services (Management) (Employment of Departmental Heads) Regulation 2014*.  
<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88060/100580/F1455280010/PNG88060.pdf>

<sup>44</sup> Terence Tupi Interview.

<sup>45</sup> *Public Services (Management) (Employment of Departmental Heads) Regulation 2014*, s 12.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

This is a gap in the PSC review process that needs to be addressed, in line with the new Whistleblower Act 2020.

Like DPM, the PSC also struggles with inadequate funding. In an attempt to better manage the number of cases being reported to the PSC it had requested funding from the government to establish a case management system critical to its function of reviewing personal matters. The government did not respond to the PSC's plea and hence funding was sought from the European Union for the establishment of the system and an upgrade of PSC's technology.<sup>48</sup>

### Good Practices

- The DPM has drafted general orders highlighting the process for the recruitment and selection of members of the public service. These orders are available online and upon request.

### Deficiencies

- The NEC has the last say, especially with the recruitment of senior non-elected public officials. This indicates that political influence is present. Decisions should best be left to the DPM in consultation with the PSC to ensure independence.
- The DPM and PSC are underfunded and under-resourced.
- The PSC has not incorporated whistleblower protection mechanisms in their review process of collecting and dealing with complaints.

## **4.4 Article 7.3 – Political Financing**

In PNG, the law that deals with political financing is the Organic Law on the Integrity of Political Parties and Candidates (OLIPPAC) 2003 and is accessible online. The OLIPPAC was enacted to provide for political stability and good governance as a subject matter of public interest, recognize the importance of political parties as important institutions of state, and ensure compliance with the relevant provision of the Constitution.<sup>49</sup> In 2008, the OLIPPAC was subject to judicial review where certain provisions were found to be unconstitutional. The executive of the Fly River Provincial Government filed a Special Reference under section 19 of the Constitution seeking the Supreme Court's opinion on the interpretation and application of various provisions in the Constitution.<sup>50</sup> In 2010, the Supreme Court found that sections 57, 59, 60, 61, 69, 70, 72, 73(1) (b) and 81 were unconstitutional.<sup>51</sup> More recently, amendments were proposed in 2020 and are currently awaiting tabling in Parliament. The OLIPPAC sets out provisions, for amongst others, the establishment of the Integrity of Political Parties and Candidates Commission (IPCC), funding of political parties as well as campaign and election finances.

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<sup>48</sup> Terence Tupi Interview.

<sup>49</sup> Organic Law on the Integrity of Political Parties and Candidates 2003.

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88056/100575/F2099356900/PNG88056.pdf>.

<sup>50</sup> SCR Ref No.11 of 2008; SC1057: In the matter of the Organic Law on the Integrity of Political Parties and Candidates (2008). <https://actnowpng.org/content/png-organic-law-integrity-political-parties-and-candidates-declared-unconstitutional-supreme>. (Accessed on: 25 February, 2021).

<sup>51</sup> *Ibid.*

The IPPCC is a constitutional office and therefore enjoys freedom and independence. It is granted powers under section 49 of the OLIPPAC. IPPCC is mandated and responsible for: the consideration of applications for registration of political parties; the policy concerning, and for the control and management of, the Central Fund, the administration of terms and conditions – such as salaries and allowances of the executive members of the registered political parties; and to have such other functions as are given to it by the OLIPPAC.<sup>52</sup> As the body responsible for political parties and candidates, the IPPCC must effectively enforce the provisions of the OLIPPAC. The OLIPPAC provides that political parties and candidates are funded under the government's national budget to a central fund that holds monies contributed from various sources.<sup>53</sup> Funding allocated to political parties by the national budget is done according to the number of Members of Parliament in a particular party. Section 78 (2) (a) of the OLIPPAC states that each Member of Parliament gets a total of K10,000 (US\$2,744). This means that a party with fifteen Members of Parliament receives more than a party with only five Members of Parliament.

Concerning the funding of parties and candidates, the Organic Law provides limits to amounts that may be contributed for campaign expenditures as well as a requirement that political parties are required to inform the Registrar of the amount of the contribution; the name of any non-citizen from whom a contribution was received; the date on which the contribution was made; and such other matters concerning the contribution as may be prescribed.<sup>54</sup> Failure to comply with this requirement constitutes an offence under the OLIPPAC. Furthermore, all monies received and expended by political parties and candidates must be recorded and accounted for. Section 68 of the OLIPPAC states that financial returns (containing details of contributions and expenditures) of a successful candidate should be lodged with the Registrar within three months of declaration either by the return of writs, a court, or a court of disputed returns.<sup>55</sup>

From an interview conducted with the IPPCC, it was noted that there have been many instances where successful candidates have failed to submit financial returns on time. This was seen in the 2012 national elections when 80% of Members of Parliament had not submitted annual returns but did so eventually after paying fines.<sup>56</sup>

The case of *Namah, In re [2018] PGLT 1 N7194*.<sup>57</sup> addressed this issue. In this matter, the Hon. Belden Namah, Member for Vanimo Green Open was referred to the Leadership Tribunal for several allegations, one of which included failure to lodge financial returns to the office of the IPPCC as the winning candidate for the 2012 general elections.<sup>58</sup> Mr. Namah admitted to being

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<sup>52</sup> SCR Ref No.11 of 2008; SC1057: In the matter of the Organic Law on the Integrity of Political Parties and Candidates (2008). <https://actnowpng.org/content/png-organic-law-integrity-political-parties-and-candidates-declared-unconstitutional-supreme>. (Accessed on: 25 February, 2021). s 49.

<sup>53</sup> *Ibid.* s 56(1).

<sup>54</sup> *Ibid.* s 57(5).

<sup>55</sup> *Ibid.* s68(1).

<sup>56</sup> Dr. Alphonse Gelu – Registrar of the Integrity of Political Parties and Candidates Interview (24 February, 2021).

<sup>57</sup> *Namah, In re [2018] PGLT 1; N7194* (LT) (9 April 2018). <http://www.pacii.org/pg/cases/PGLT/2018/1.html>. (Accessed on: 26 February, 2021).

<sup>58</sup> Dr Alphonse Gelu Interview.

guilty of failing to submit financial returns as required by the OLIPPAC and was therefore liable to pay a fine.

The OLIPPAC states that a successful candidate who fails to file a financial return is guilty of an offence with the penalty of a fine not exceeding K5, 000 (US\$1,387) and a default penalty of a fine not exceeding K10 (US\$2.77) for each defaulting day.<sup>59</sup> In this case however, Mr Namah was not charged any of these fines for his failure to lodge financial returns due to his admission of guilt.

According to the IPPCC, comparing 2012 national elections to 2017, the rate at which annual returns are submitted has significantly improved with only nine Members of Parliament in 2017 being late in submitting returns.<sup>60</sup> As seen by the IPPCC, this is due to the increasing awareness and implementation of penalties for late and default submission of returns.<sup>61</sup> The IPPCC in line with implementing penalties for late submissions of returns has deregistered political parties in the past for failure to comply with certain provisions of the OLIPPAC, such as failure to disclose contributions. According to the IPPCC, political parties are given ample notice of de-registration and allowed time to respond to ensure transparency in this process.<sup>62</sup>

There are a number of areas of concern identified by the IPPCC. Firstly, the current law does not cover fundraising arranged and hosted by political parties. As a result, political parties do not disclose the amounts of money raised from fundraising events including the identity of their contributors. A further issue is that of monies given by contributors being deposited into the account of the party leader, and not the political party, who then diverts the funds for personal use.<sup>63</sup> In addition to these two issues, the IPPCC is concerned with provisions in the current OLLIPPAC that do not prohibit state-owned enterprises from making contributions to a campaign or political party, thus creating a significant risk of corruption.

These three issues will be addressed by the IPPCC in the revised OLIPPAC to ensure terms such as contributions and donations are adequately defined, all contributions and donations are disclosed and used for the purposes in which they are intended, and that state-owned enterprises are prohibited from making contributions to political parties and candidates.

### Good Practices

- There has been a significant improvement in the submission of financial returns by successful candidates as compared to 2012.
- The IPPCC is tightening provisions on the definition and disclosure of contributions and donations as well as the prohibition of contributions from state-owned enterprises in the revised OLIPPAC.
- The IPPCC has continued to strictly enforce penalty provisions prescribed in the current OLIPPAC, and does so with ample notice and time given to parties.

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<sup>59</sup> Dr Alphonse Gelu Interview.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*



## Deficiencies

- The current OLIPPAC allows for state-owned enterprises to make contributions.
- Political parties host fundraisers but according to the OLIPPAC, are not required to disclose the amounts obtained from these events.
- Funds contributed for use by political parties are abused by party leaders into whose account the funds are often transferred.
- Government allocations of funding to political parties have been considered unfair by smaller parties.

### **4.5 Article 7, 8 and 12 – Codes of Conduct, Conflicts of Interest, and Asset Declarations**

In PNG, the prime legislation that establishes frameworks for codes of conduct, conflict of interest, and asset declarations is the Constitution. Concerning codes of conduct, the Constitution establishes the Leadership Code under Division III.2. The Leadership Code sets out duties, responsibilities, and ethics which leaders are expected to know and follow. Some of these responsibilities include: not allowing their public, official integrity, or their personal integrity to be called into question and never using their office for personal gain.<sup>64</sup> The Constitution then established an independent body to administer the Leadership Code (the OCPNG), which is also the body to which declarations of assets and conflicts of interest must be made by leaders.

The enabling legislation that contains provisions on conflicts of interest is the Organic Law on the Duties and Responsibilities of Leaders (OLDRL). The OLDRL implements the Leadership Code and under this Act, leaders are expected to disclose any conflict of interest before participating in any official actions or duties to the Ombudsman Commission. Section 130 of the Independent Constitution of PNG provides requirements for candidates of elected public office to demonstrate the absence of a potential conflict of interest. It requires a candidate or a former candidate who stands for election to the Parliament to disclose to the OCPNG, or some other authority prescribed by law, any assistance (financial or other) received by him in respect of his candidature, its source, and the amount or value of his electoral expenses.<sup>65</sup> This is a practice that is commendable and must continue to be strictly enforced. Furthermore, section 32 of the OLIPPAC states that an application for registration of political parties shall be accompanied by a copy of the balance sheet and financial statements detailing assets and liabilities, and sources of income.<sup>66</sup> All three pieces of legislation (Constitution, OLDRL, and OLIPPAC) are accessible by the public online on the National Parliamentary website as well as other websites, such as that of the Pacific Islands Legal Information Institute.

The Leadership Code alongside the OLDRL exists to remind leaders of the high standard of honesty and integrity required of them as individuals. Although penalties are prescribed for non-compliance, some leaders fail to uphold the integrity of their office, and corruption mainly within the public sector, but also the private sector, is rife. In 2017, TIPNG published its *Lest*

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<sup>64</sup> Independent Constitution of PNG. s 27(1).

<sup>65</sup> Independent Constitution of Papua New Guinea. S130(1)(i).

<sup>66</sup> Organic Law on the Integrity of Political Parties and Candidates. s. 32.

*We Forget* report,<sup>67</sup> which highlighted corruption in twenty issues of national concern. In almost all these cases public officials and elected office-holders were seen to have acted in a manner that calls the integrity of their office into question.

With regards to the degree of enforcement and implementation of penalties set out under respective laws, in certain instances, some leaders are allegedly suspected to be given favourable treatment as compared to ordinary citizens who commit offences. This was seen in the case of *Kondra, In re [2015] PGLT 2; N6232*.<sup>68</sup> The Hon. Boka Kondra, MP Member for North Fly Open and Member of the Western Provincial Assembly, was facing, amongst other charges, allegations of misappropriation relating to three various sums of monies (US\$23,655, US\$37,439, and US\$5,048) allegedly misapplied by the leader from the District Services Improvement Program (DSIP) and the District Support Grant funds.<sup>69</sup> He denied all allegations but a leadership tribunal found him guilty of all of them. Mr. Boka was then dismissed from office. This case can be compared to *State v Mose [2018] PGNC 317; N7388*.<sup>70</sup> In this case, the accused received K120,000 (US\$33,287) from the complainants for the sale of her land. She did not receive title to the land or the land itself, but instead it was sold to three other persons.<sup>71</sup> The complainant was never refunded the K120,000 (US\$33,287).<sup>72</sup> The court found the accused guilty of misappropriation and sentenced her to four years of intensive hard labour. It is evident that the leader in the first case was given more leeway by the leadership tribunal despite the offence being of a very serious nature, as compared to the second case dealt with by the National Court of Justice.

The Constitution and the OLDRL clearly set out the duties and responsibilities of leaders under the Leadership Code. However, these do not establish the means or measures to ensure compliance with the code. Such measures may include workshops or training for all leaders on good governance and anti-corruption practices where leaders are reminded of their duties and responsibilities and/or compulsory checks of a leader's respective office by an independent body to assess the level of compliance with the Leadership Code.

### Good Practices

- There are laws in place which establish codes of conduct for leaders and the requirements for conflicts of interest to be declared. All these laws are accessible online.
- The OCPNG publishes all investigative reports that implicate Members of Parliament. Copies of these reports are publicly available and can be obtained online or from the OCPNG office.

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<sup>67</sup> Transparency International PNG. A Review of 20 Unresolved National Issues. <http://www.transparencypng.org/pg/wp-content/uploads/2017/02/Lest-We-Forget-Final.pdf>. (Accessed on: 27 February, 2021).

<sup>68</sup> *Kondra, In re [2015] PGLT 2; N6232(LT) (27 April 2015)*. <http://www.paclii.org/pg/cases/PGLT/2015/2.html>. (Accessed on: 27 February, 2021).

<sup>69</sup> *Ibid.*

<sup>70</sup> *State v Mose [2018] PGNC 317; N7388 (24 July 2018)*. <http://www.paclii.org/pg/cases/PGNC/2018/284.html>. (Accessed on: 27 February, 2021).

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

## Deficiencies

- Some leaders are suspected to be given favourable treatment and are subject to more lenient penalties as opposed to citizens who commit crimes under the Criminal Code Act.
- Leaders are not given sufficient training to ensure they are aware of codes of conduct and their applicability.

### **4.6 Article 8.4 and 13.2 – Reporting Mechanisms and Whistleblower Protection**

PNG recently enacted the Whistle Blower Act 2020 for the purposes of protecting all employees who make a protected disclosure from occupational detriment.<sup>73</sup> In addition, Part VII of the 2019 Organic Law on the Independent Commission Against Corruption (OLICAC) sets out provisions to protect those who assist the Commission with information or act as a witness in corruption matters dealt with by the commission.

The Whistle Blower Act 2020 covers all employees both in the public and private sector, defines what disclosure is, and nominates persons as well as authorities to which disclosures can be made to. However, the Act is not comprehensive enough. There are four main concerns that arise in the content of the Act itself.

The first is that the existing legislation in its entirety neither defines the term “whistleblower” nor does it state whether or not the act itself applies to disclosures beyond the traditional employee-employer relationship. Generally, whistleblower protection should apply to everyone and should not be limited only to specific groups of persons such as employees. The term ‘disclosure’ is defined in the act as the “*disclosure of information made by an employee that may show that the employee’s employer, or another employee of the employer, has engaged in, is engaging or intends to engage in conduct that constitutes impropriety*”.<sup>74</sup> This definition refers only to employees i.e., a person who works for another person, and who receives or is entitled to receive remuneration. Secondly, the Act does not make any allowance for anonymous disclosures which is an essential element to consider, especially when persons who provide sensitive information are at risk of physical, or other forms of detriment treatment. Thirdly, the Act does not make it compulsory for all organisations to set up internal whistleblowing mechanisms. This in itself defeats the purpose of whistleblower legislation if employers are not obliged to include such mechanisms in their internal workplace policies. Finally, the Act does not establish an independent body responsible for driving the implementation and enforcement of whistleblower protection. The Act instead appoints certain persons and authorities to which disclosures can be made to and only then are they considered protected. The absence of this body, however, greatly affects the strength and effectiveness of the established whistleblower framework. The provisions of this legislation are very restrictive and therefore do not provide the wide application as they should.

Fortunately, the OLICAC provides whistleblower protection which is much stronger than the whistleblower legislation itself. Section 103 of the OLICAC provides for the protection of witnesses to make disclosures or recount sensitive information in a manner that protects them

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<sup>73</sup> Whistle Blower Act 2020. [http://www.parliament.gov.pg/uploads/acts/20\\_6A.pdf](http://www.parliament.gov.pg/uploads/acts/20_6A.pdf).

<sup>74</sup> *Ibid.* s. 2.

from intimidation or fear. Furthermore, the OLICAC provides for physical protection of persons assisting the ICAC and makes it an offence for any person to retaliate against someone making a disclosure to the ICAC.<sup>75</sup>

In addition to these two laws, anti-corruption agencies such as the NFACD and OCPNG have in place pathways that allow for the public to make reports of suspected corrupt or fraudulent activities. Reports made to these bodies and information received from complainants are usually kept confidential, so as not to jeopardise investigations. In addition, complainants who wish not to disclose their identity are allowed to remain anonymous. Data on the volume and number of cases reported to these agencies are not available online, as neither of these authorities publishes regular statistics on the amount and nature of complaints received.

### Good Practices

- The OLICAC has in place sufficient whistleblower and witness protection measures.
- Anti-corruption bodies such as the NFACD and OCPNG have in place pathways for the public to make reports on corrupt or fraudulent activities.
- Reports made to the ICAC, NFACD, and the OCPNG can be made anonymously.

### Deficiencies

- The recently enacted Whistle Blower Act is not comprehensive as it covers only employees, does not allow for anonymous disclosures, or makes it compulsory for all organisations to have whistleblower mechanisms in place. The Act does not establish an independent body to which these disclosures can be made to.
- Access to statistics and the volume of cases reported to the NFACD or the OCPNG are not regularly published for public awareness.
- Due to the premature stage of the whistleblower legislation, awareness has not been widely raised on its existence as of yet.

## **4.7 Article 9.1– Public Procurement**

In 2019, Parliament passed the National Procurement Act 2018 (NPA). The NPA abolished the Central Supply and Tenders Board (CSTB), which was the previous body responsible for the purchase and disposal of property and stores, as well as the supply of works and services, and established a new body called the National Procurement Commission. The CSTB was established under the previous Public Finances (Management) Act 1995. Over time the CSTB became inefficient and millions of public funds were lost through the department over the years through corruption.<sup>76</sup>

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<sup>75</sup> Organic law on the Independent Commission against Corruption. s. 108-109.

<sup>76</sup> Peter. Esila. 'Concerns over Corruption'. The National PNG. (2019).  
<https://www.thenational.com.pg/concerns-over-corruption/> (22 December, 2020).

In the view of several experts, the enactment of the NPA was the most significant reform to the management of public procurement in PNG in the last 20 years.<sup>77</sup> It is important to note that at the time of writing, amendments to the 2019 NPA are currently being reviewed by the government.

The National Procurement Commission (NPC) is responsible for undertaking timely, fair, competitive, transparent, non-discriminatory, and value for money procurements for and on behalf of the state, including public and statutory bodies.<sup>78</sup> It is also responsible for building procurement capacity in PNG and maintaining a register of providers of goods, works, or services.<sup>79</sup> Procurement is a large aspect of the work of the NPC as it works to implement provisions set out in the NPA. The NPC confirmed that it adopted the Good Procurement Manual<sup>80</sup> which was used by the previous authority (Central Supply and Tenders Board).<sup>81</sup>

This manual entails procurement procedures for the planning, advertisement, and receipt of tenders as well as the process for the evaluation of tenders. According to this manual, works, goods, and (non-professional) services tenders are to be evaluated using the Lowest Cost Evaluation (LCE). This is where the minimum qualifying requirements are carefully and clearly stated.<sup>82</sup> Only those tenderers who meet the requirements will be evaluated. The remainder is non-responsive tenders.<sup>83</sup> Furthermore, bidders are required to comply with the specifications wanted in the bidding documents, which outline details of the work to be done.<sup>84</sup> According to section 58 (3) of the NPA, qualifications required of a bidder are that: it has the legal capacity to enter into a contract; it must not be insolvent or its business activities suspended; must not be the subject of a legal proceeding; has fulfilled all obligations to register and pay taxes and social security obligations, and finally does not have less than three years relevant experiences prior to the application. This section, however, fails to set out appropriate checks so as to eliminate the likelihood of conflicts of interest. Such checks would include looking at beneficial owners of a bidding entity to consider their fit and proper status and in doing so identify if there any conflicts of interest.

There are adequate thresholds in place. Under the current NPA, procurements above K500,000 (US\$ 141,442) must go on public tender and ample time is given for applications as everyone is encouraged to participate.<sup>85</sup> At present local contractors can apply for procurement of up to K10 million (US\$ 2,828,854) Anything below K500,000 (US\$ 141,442) does not go on tender and rests with the discretion of the NPC Chief Executive Officer and others, in consultation with the Public Finances (Management) Act 1995.<sup>86</sup> This threshold, however, is currently being

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<sup>77</sup> Dentons PNG. 'Major Reform of PNG's public procurement laws' [2018] Dentons PNG <https://www.dentons.com/en/insights/alerts/2018/november/26/major-reform-of-pngs-public-procurement-laws> (Accessed on: 22 December, 2020).

<sup>78</sup> National Procurement Act 2018. s9(2)(a). <http://www.parliament.gov.pg/uploads/acts/18A-12.pdf>.

<sup>79</sup> *Ibid.* s 9(2)(b)-(c).

<sup>80</sup> Central Supply and Tenders Board – Good Procurement Manual Version 4.

<http://www.procurement.gov.pg/wp-content/uploads/2019/04/Good-Procurement-Manual-Version-4a-NPC.pdf> (Accessed on: 1 March, 2021).

<sup>81</sup> Mr. Babaga Naime – Secretary to the National Procurement Commission Interview (25 February, 2021).

<sup>82</sup> Good Procurement Manual. pp 68.

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> Mr. Babaga Naime Interview.

<sup>86</sup> *Ibid.*

amended to allow for local companies to apply for procurements up to K50 million (US\$ 14,144,271) at the behest of the Executive.

The NPC ensures it publicly advertises tenders in the National Gazette as well as the two daily newspapers which are circulated nationwide.<sup>87</sup> Once a bidder has been selected, the announcement is also made known to the public through publication in the National Gazette.<sup>88</sup> The NPC has a process in place for the selection of bidders to be appealed or reviewed, but such complaints are rare.<sup>89</sup> Aside from the established procedure for advertisements of tenders, there is also a process for exemption in place, however, the NPC does not make exemptions, rather this is left to the PNG government.<sup>90</sup>

When the government sees it fit to make an exemption, it seeks the NECs approval for a Certificate of Expedience. After approval, the NPC is then told to facilitate the process.<sup>91</sup> The obvious risk is that as exemptions are left to the government, there is a likelihood of the process being misused. Exemptions instead would best be left to be administered by the NPC. This also affects the independence of the NPC. An example of the misuse and abuse of the process was the PNG government's approval of K10.2 million funding to a newly-registered company Niugini BioMed Ltd who claimed to have the capacity to deliver Covid-19 medical supplies throughout PNG and find a cure for Covid-19.<sup>92</sup> Once the public found out, through a leaked document, there was widespread uproar demanding accountability over this decision. Especially since, contrary to the requirements for bidders set out in the NPA, the company was only in business for a few months when funding was approved and had no history of any projects or activities undertaken. Prime Minister James Marape defended the NEC decision to approve funding and said there was nothing "illegal or improper" about the government's engagement with Niugini BioMed, a newly-founded company that has said it was "highly confident" it had discovered a new treatment for Covid-19 after "scanning and analysing" 30,000 drugs from around the world.<sup>93</sup> A further justification the government provided for the approval of this contract was that the K10.2 million Bio Med contract was administered under the newly-enacted National Pandemic Act 2020, which precluded the applications of NPA. It is noted here that although the contract was approved for funds to be released to Niugini BioMed, no confirmation has been made as to whether or not Niugini Bio-Med has received any funds.

Concerning access to information, there is limited information made available to the public, especially in relation to details of contracts awarded to bidders. According to the NPC, this is done to protect the confidentiality of the contractual relationship and avoid the leakage of sensitive information.<sup>94</sup> However, the NPC encourages those who require the information to

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<sup>87</sup> Mr. Babaga Naime Interview.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> The National. 'Investigate Niugini BioMed Ltd' [2020] The National PNG <https://www.thenational.com.pg/investigate-niugini-biomed-ltd/> (Accessed on: 15 January, 2021).

<sup>93</sup> B. Harriman, B. Kora. 'Papua New Guinea's Prime Minister defends multi-million-dollar plans to find COVID 'cure'' [2020] ABC News <https://www.abc.net.au/news/2020-10-30/png-prime-minister-defends-million-dollar-covid19-cure-plans/12831486> (Accessed on: 15 January, 2021).

<sup>94</sup> Mr. Babaga Naime Interview.

call into the office and inquire.<sup>95</sup> NPC offices in districts and provinces are also in place for the public to obtain information. To facilitate access to information, the NPC intends to raise awareness about this issue in the provinces and districts, but this is difficult due to the lack of funding from the government (despite numerous requests) and a resulting lack of manpower.<sup>96</sup> E-procurement is also an area that the NPC is working towards, also heavily dependent on appropriate funding.

### Good Practices

- Procurement procedures are in place and accessible through a good procurement manual.
- The NPC has established offices in various provinces in the country to allow for greater efficiency in its workings.
- Tenders are publicly advertised and bidders are given ample time to apply.

### Deficiencies

- The NPC is underfunded and understaffed.
- The NPC does not have absolute independence, as there is still much political influence in the procurement process.
- There is limited access to information.
- There are no appropriate checks established under the NPA to eliminate conflicts of interest and disclose beneficial ownership.

## **4.8 Article 9.2 – Management of Public Finances**

In PNG, the law that deals with the management of public finances is the Public Finance (Management) Act 1995 (PFMA). This legislation has been amended over the years to suit the changing circumstances of the country and cure defects. The latest amendment to the PFMA was in 2018.

There are currently three agencies that are responsible for the management of public funds; the Department of Finance, the Department of Treasury, and the Auditor General's Office. The Department of Finance is responsible for providing the following: direction and support in financial policy formulation; financial systems development and maintenance; financial and accounting information processing; monitoring of financial performance against the budget and legislative compliance; and financial reporting requirements for the whole of government.<sup>97</sup> The Department of Treasury's main functions are to: undertake research and provide advice to the government on economic issues, provide advice to the government on financial issues that arise from the national budget and prepare and monitor the national budget.<sup>98</sup> The Auditor General Office of PNG has the responsibility to inspect, audit, and report at least once in every fiscal year to the Parliament on the public accounts of PNG.

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<sup>95</sup> Mr. Babaga Naime Interview.

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

<sup>98</sup> Department of Treasury PNG. 'About the Department of Treasury' [2020] Department of Treasury PNG [https://www.treasury.gov.pg/about\\_us.html](https://www.treasury.gov.pg/about_us.html) (Accessed on: 4 January, 2021).

In March 2014, the PNG Department of Finance started a review and assessment of PNG's public financial management (PFM). Officials from several departments were involved, including Finance, Treasury, Planning & Monitoring, Personnel Management, Internal Revenue Commission (IRC), Customs, and the Auditor General.<sup>99</sup> Through this assessment, strengths, and weaknesses in PNG's PFM systems were identified. Amongst other things, the assessment looked at: the credibility of the fiscal strategy and budget; comprehensiveness and transparency; asset and liability management, policy-based planning and budgeting, predictability and control in budget execution as well as accounting, recording, and reporting.<sup>100</sup> The assessment revealed that whilst the country's performance on the credibility of fiscal strategy and budget was good, accounting, recording, and reporting were relatively weak.<sup>101</sup> With respect to adequate processes being in place for the keeping of accounting books and records, no recognised accounting standards are used to prepare central government financial statements.<sup>102</sup> The financial statements are only submitted for audit 15-16 months after year-end, which lags good practice by a considerable margin.<sup>103</sup> Furthermore, many bank reconciliations are not carried out in a timely manner, and backlogs arose in the clearance of suspense accounts and advances.<sup>104</sup> These issues were highlighted by the Auditor General in the most recently available 2015 Report of the Auditor General on the Public Accounts of PNG. The Auditor General stated that public accounts were not maintained and kept in accordance with government legislation.<sup>105</sup> In addition, receipts and payments, investment of public money, and the acquisition and disposal of assets for the financial period ending 31<sup>st</sup> December had not been properly accounted for in accordance with the relevant legislation, and balances have not been able to confirm the completeness of those disclosed in the financial statements.<sup>106</sup> It is important to note that the last full audit of government accounts that is publicly available was for the year 2015. The proper maintenance of public accounts, therefore, remains not only a yearly challenge for the Department of Finance but has a serious backlog of reports for previous years.

Concerning national budgeting, the Department of Treasury has prepared a PNG Budget Manual that highlights the processes and procedures in developing and preparing the budget. According to the manual, the budget process starts in January each year, when the Treasury seeks information from agencies, including an estimate of their cash flow needs for the upcoming budget year.<sup>107</sup> In developing the national budget a ceiling must be set. When determining a budget ceiling the Treasury considers the level of funding appropriated in the previous year, subsequent NEC decisions, impacts of other processes such as an election, one-off funding in the current year, budget-funded retrenchments, and public service wage

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<sup>99</sup> PNG Public Expenditure and Financial Accountability Road Map 2015-2018. pp 1. [http://www.finance.gov.pg/wp-content/uploads/2019/02/PEFA\\_Road\\_Map\\_Assessment.pdf](http://www.finance.gov.pg/wp-content/uploads/2019/02/PEFA_Road_Map_Assessment.pdf) (Accessed on: 4 January, 2021).

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.* pp. 2.

<sup>102</sup> *Ibid.* pp.4.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> Report of the Auditor General on the Public Accounts of Papua New Guinea (Part I) [2015]. pp 18.

[http://www.ago.gov.pg/images/Part\\_1\\_Report\\_2015.pdf](http://www.ago.gov.pg/images/Part_1_Report_2015.pdf). (Accessed on: 6 June 2021).

<sup>106</sup> *Ibid.*

<sup>107</sup> Department of Treasury. PNG Budget Manual.

[http://www.treasury.gov.pg/html/national\\_budget/files/2008/budget\\_documents/Budget%20Manual.pdf](http://www.treasury.gov.pg/html/national_budget/files/2008/budget_documents/Budget%20Manual.pdf). (Accessed on: 4 January, 2021).



negotiations.<sup>108</sup> The new funding level may then be indexed to take account of cost increases, and in some cases, population increases from year to year.<sup>109</sup> Once the overall budget goes through all relevant processes, the national budget is handed down at 2 p.m. on the second Tuesday in November. From 10 a.m. on Budget Day, the Treasurer and the Minister for Planning present the budget to journalists and other interested parties in the budget ‘lock-up’. Once the lock-up commences, participants are unable to leave the premises until the budget speech in Parliament commences. It is to this extent that budget information is disclosed to the public with relevant documents. Weeks after the budget and appropriation bills have been introduced into Parliament, the opposition is given a chance to respond and a vote is taken on the budget bills.

Once monies are allocated under the national budget to various agencies, section 63 of the PFMA dictates that all departments to which have been allocated monies prepare and furnish to the finance minister “*before 30 June in each year, a performance and management report of its operations for the year ending 31 December preceding, together with financial statements to enable the Minister to present such report and statements to Parliament*”.<sup>110</sup> Before these financial statements are given to the Minister, they must first be submitted to the Auditor General for his report to be made based on these statements. Both the reports of the Department and the Auditor General are then tabled in Parliament.<sup>111</sup> The PFMA also sets forth penalties for failure to submit financial statements: withholding of half of any of the grants appropriated to that public body for the following fiscal year, or a referral of the head of that particular body to the Public Accounts Committee for failure to comply with provisions of the Act.<sup>112</sup> These actions have little deterrence. Penalties could include criminal prosecution.

Although the budgetary process is clearly set out, there are instances where Parliament is criticised for its lack of budget accountability. In 2020, during a single Parliament sitting on 17 November 2020, the government tabled and passed the K19.6 billion 2021 Budget. Despite the requirements of both the Constitution and the Government Budget Manual, which dictate that the Treasurer presents the budget and Parliament is adjourned for a week to allow the Opposition to reply, the 2021 budget was tabled and passed on the same day.<sup>113</sup> The move by the current government to pass the budget under such circumstances was brought before the Supreme Court where a five-person bench ruled that the decisions of Parliament made on 17<sup>th</sup> November 2020 were null-and-void as a consequence of an invalid and unconstitutional calling of Parliament by the Speaker.<sup>114</sup> The Speaker’s actions could be seen as denying a large number of Members their rights as MPs under s. 50 of the Constitution, to take part in the affairs of the Parliament and to exercise their functions as parliamentarians.<sup>115</sup> The national budget,

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<sup>108</sup> Department of Treasury. PNG Budget Manual.

[http://www.treasury.gov.pg/html/national\\_budget/files/2008/budget\\_documents/Budget%20Manual.pdf](http://www.treasury.gov.pg/html/national_budget/files/2008/budget_documents/Budget%20Manual.pdf). (Accessed on: 4 January, 2021).

<sup>109</sup> *Ibid.*

<sup>110</sup> Public Finance (Management Act) 1995 Section 63(2)(a).

<sup>111</sup> *Ibid.* s 63 (4)-(5).

<sup>112</sup> *Ibid.* s 63 (8).

<sup>113</sup> B. Kramer. ‘Is the 2021 Budget legal?’. 2020. PNG Attitude. <https://www.pngattitude.com/2020/11/k19-billion-question-was-the-2021-budget-legal.html>. (Accessed on: 3 March, 2021).

<sup>114</sup> One PNG Author. ‘Budget Invalid’. 2020. One PNG. <https://www.onepng.com/2020/12/2021-national-budget-purportedly-passed.html>. (Accessed on: 3 March, 2021).

<sup>115</sup> *Ibid.*

therefore, had to be passed a second time in Parliament. This issue shows a lack of accountability and disregard for constitutional processes and rights of parliamentarians not only by the Speaker of Parliament but by the government of the day. In going forward, the government must ensure that it is adequately informed of constitutional budgetary processes to avoid similar mistakes.

### Good Practices

- The Department of Finance took steps to conduct an assessment of the PFM systems in the country to identify strengths and weaknesses.
- The PFMA makes it mandatory for all government departments to submit performance reports as well as financial statements.

### Deficiencies

- The assessment conducted by the Department of Finance revealed that the accounting, maintenance, and recording of public revenue and expenditure is very poor. The integrity of account books is not preserved.
- No recognised accounting standards are used to prepare central government financial statements.
- The PNG government has in certain instances failed to uphold budget accountability.
- Penalties for non-submission or with-holding of information relating to financial statements are not deterrent in nature.
- The involvement of civil society and citizens in the budget process is minimal.
- Bank reconciliations are not carried out in a timely manner.

## **4.9 Article 10 and 13.1 – Access to Information and the Participation of Society**

PNG does not have a Freedom of Information (FOI) law, although section 51(1) of the Constitution of Papua New Guinea states that “*Every citizen has the right of reasonable access to official documents, subject only to the need for such secrecy as is reasonably justifiable in a democratic society*”. Furthermore, section 51(4) states that the provision does not authorise withholding information or limiting the availability of records to the public except in accordance with its provisions, or withholding information from the Parliament. These provisions set the groundwork for which freedom of information legislation is to be established under section 51(3). However, this has not been done by successive governments since the country’s independence in 1975. The drafting of FOI legislation is currently in progress.

In 2019, TIPNG undertook a survey and published a Right to Information report on the current state of accessing public information across selected government agencies in Papua New Guinea. The objectives of the report were to measure and assess the accessibility of public information from government agencies, the responsiveness of public agencies towards citizen requests, and the annual budget appropriations as a factor in the dissemination of public

information.<sup>116</sup> The survey revealed that accessibility of public documents over-the-counter across agencies as well as the agency response is poor.<sup>117</sup> This was seen as closely related to the lack of clear FOI policy and legal guidelines, and the current culture of secrecy of public bodies.<sup>118</sup> According to the report, there is a poor understanding of the definition of public information among the sampled agencies. TIPNG made recommendations for improvement, including the need to enact Freedom of Information Legislation which is independent from political influence; accessible, affordable, and timely; specific as it deals with sensitive public interest and includes harm tests; and applicable to state-owned entities, political parties as well as organisations receiving funding directly from the government.<sup>119</sup>

In PNG, attacks have been made on the media regarding the publishing of certain articles which highlight corrupt practices. The most high-profile case in recent times being the suspension of PNG's award-winning journalist Scott Waide, who was purportedly sidelined at the behest of the government after airing a story from a New Zealand television station.<sup>120</sup> This was done amidst anger over government spending during the Asia Pacific Economic Cooperation (APEC) conference.<sup>121</sup> In an email sent to all staff of the company to which Mr. Waide was employed, the human resource manager informed staff that the management was forced by the government to take the action of suspending Mr. Waide.<sup>122</sup> The Media Council in PNG and the Pacific Freedom Forum in separate statements described Mr. Waide's suspension as politically motivated and an attack on media freedom. Mr. Waide has since been re-instated and made a public statement that journalists "*will continue to promote critical, proactive and transparent journalism. The people's voice has to be heard and the media must remain as the conduit and platform for opinions and debate and those who cannot accept it MUST step aside and let progress happen*".<sup>123</sup> More recently, in April 2020, the PNG Police Minister called for the sacking of Loop PNG political and business editor Freddy Mou and senior PNG Post-Courier journalist Gorethy Kenneth for their reporting on the use of Covid-19 funds to hire cars and media consultants.<sup>124</sup>

In addition to the media, there have been rural communities in PNG who have suffered as a result of lack of access to information but were able to alleviate their issues with the support of civil society organizations (CSOs). A recent example of a civic-led push to access key official documents is the actions taken by local communities against the government of PNG for

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<sup>116</sup> Transparency International PNG. Our right to know their duty to tell (2019) pp. 7. <http://www.transparencypng.org.pg/wp-content/uploads/2019/09/TIPNG-RTI-Report-FINAL-1.pdf>. (Accessed on: 5 March, 2021).

<sup>117</sup> *Ibid.* pp 8.

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

<sup>120</sup> ABC News Author. 'Suspension of senior PNG journalist Scott Waide overturned after public pressure' (2018). <https://www.abc.net.au/news/2018-11-26/suspension-of-png-journalist-overturned-after-public-pressure/10556204> (Accessed on: 9 March, 2021).

<sup>121</sup> *Ibid.*

<sup>122</sup> V. Moses. 'EMTV suspends senior journalist Scott Waide over NZ Maserati news story' (2018). <https://asiapacificreport.nz/2018/11/25/emtv-suspends-senior-journalist-scott-waide-over-maserati-news-story/> (Accessed on: 9 March, 2021).

<sup>123</sup> Radio New Zealand Author. 'PNG Journalist Scott Waide Reinstated' (2018). <https://www.rnz.co.nz/international/pacific-news/376888/png-journalist-scott-waide-reinstated> (Accessed on: 9 March, 2021).

<sup>124</sup> 'Journalists Targeted in PNG Amid The Covid-19 Pandemic While Nurses Strike Over Lack Of Protection'. CIVICUS Monitor. <https://monitor.civicus.org/updates/2020/05/14/journalists-targeted-png-amid-covid-19-pandemic-while-nurses-strike-over-lack-protection> (Accessed on: 9 March, 2021).

permitting the Canadian company Nautilus Minerals Inc. to conduct exploration activities.<sup>125</sup> These exploration activities were expected to be the initial stages of a proposed deep-sea mining project led by Nautilus.<sup>126</sup> However, community groups took collective action against the state in 2017 in a bid to obtain key documents relating to the exploration permit, and the environmental and socio-economic impacts of the project.<sup>127</sup> Environmental Impact Assessments are a prerequisite to the granting of exploration and mining licences in PNG. The government in this case had ignored written requests from local community groups for the key documents. This led to the community groups, which include the Centre for Environmental Law and Community Rights as well as coastal community alliances, to seek redress through the judiciary system. The community groups have referenced s. 51 of the Constitution as the basis for their complaint against the government, citing the need to understand the risk analysis that was undertaken and how their communities would be affected by the experimental seabed mining.<sup>128</sup>

In assessing the involvement of society, the Government seems to continuously be challenged by citizens to create and maintain a safe and enabling environment for civil society. A number of CSOs operate in PNG, including groups focused on human rights and environmental causes, as well as some that provide social services. Most CSOs are small and lack resources, but as a rule, they are otherwise free of constraints on their activities. Often informal groups come together in response to resource extraction activities or development projects that affect communities.<sup>129</sup> There have been, however, instances where CSOs have been attacked as a result of the work in which they engage within communities. In October 2020, ten UN special rapporteurs highlighted 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.<sup>130</sup> It was further reported that gunshots had been fired at them by unidentified individuals.<sup>131</sup> The project involved the governments of Australia, Canada, China, and PNG.

Despite the absence of legislation, measures have been adopted by the country to promote an institutional culture of transparent communication between government and civil society. As already mentioned, PNG is committed to the OGP and the EITI. Under the OGP and in the implementation of PNG's four cluster commitments, the drafting of Freedom of Information legislation is currently being worked on. Concerning PNGEITI, a bill is being finalised to establish the PNGEITI as a Commission in the country (the EITI Establishment Act). Furthermore, according to PNGEITI's 2018 annual progress report, the year 2018 saw a significant milestone as the country commenced its first country validation since becoming a member in 2013, which is a quality assurance mechanism targeted at EITI candidate countries, such as PNG, to ensure compliance with minimum requirements of the EITI Global

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<sup>125</sup> TIPNG. *Our Right To Know Their Duty To Tell*. pp 15.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.* pp 16.

<sup>128</sup> *Ibid.*

<sup>129</sup> Civil society activists including Transparency International PNG, Interview (February, 2021).

<sup>130</sup> 'Advocacy Groups and Activists Continue Campaign Against Mining Projects in PNG Despite Threats', CIVICUS Monitor, November 2020, <https://monitor.civicus.org/updates/2020/11/23/advocacy-groups-and-activists-continue-campaign-against-mining-projects-png-despite-threats>. (Accessed on: 10 March, 2021).

<sup>131</sup> *Ibid.*

Standard.<sup>132</sup> The EITI Validation process went on from April till October 2018, with the EITI International Board awarding PNG ‘Meaningful Progress’ in fulfilling its commitments.

### Good Practices

- The country has taken active steps to facilitate citizen and government interaction through the OGP and the EITI.
- Under the PNGEITI, the country has commenced its very first validation.
- Active steps are being taken towards the drafting of the Freedom of Information Legislation.

### Deficiencies

- There is currently no Freedom of Information Legislation.
- The media and local communities have suffered tremendously due to the absence of FOI legislation.
- Accessibility of public documents over-the-counter across agencies as well as agency response is poor.
- There is a lack of a clear RTI policy and legal guidelines in public bodies.
- The current culture of secrecy of public bodies is a hindrance to access to information.

## **4.10 Article 11 – Judiciary and Prosecution Services**

In PNG, Section 99 of the Constitution establishes that there are three principal arms of the government; the Legislature, the Executive, and the Judiciary. All three arms are considered independent and kept separate from each other.<sup>133</sup> The Constitution refers to the Judiciary as the National Judicial System (NJS) comprised of: the Supreme Court of Justice and a National Court of Justice, of unlimited jurisdiction, and other courts. Within the NJS, the Supreme Court and the National Court are the superior courts of record. The Judicial and Legal Services Commission (JLSC) is the body responsible for conducting a continuing review of the jurisdiction, practice, and procedure of all courts, other than the Supreme Court and the National Court.<sup>134</sup> In addition, from time to time, it makes recommendations to the Law Reform Commission regarding legislative changes that appear necessary in relation to jurisdiction, practice, and procedure.<sup>135</sup> The JLSC must also ensure the adequate staffing of the courts and that adequate and proper statistics relating to the exercise of the jurisdiction of all courts are compiled and kept.<sup>136</sup>

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<sup>132</sup> PNGEITI Annual Progress Report 2018. pp 4. <https://eiti.org/files/documents/annual-progress-report-2018.pdf>. (Accessed on: 20 March, 2021).

<sup>133</sup> The Independent Constitution of PNG. ss 99(3).

<sup>134</sup> Department of Justice and Attorney General Author. ‘Judicial and Legal Services Commission’. [2020] Department of Justice and Attorney General. <https://www.justice.gov.pg/index.php/2015-04-26-07-01-34/judicial-and-legal-services-commission> (Accessed on: 20 March, 2021).

<sup>135</sup> *Ibid.*

<sup>136</sup> Organic Law on the Judicial and Legal Services Commission. Section 8. [http://www.paclii.org/pg/legis/consol\\_act/olotjalsc470/](http://www.paclii.org/pg/legis/consol_act/olotjalsc470/).

In terms of prosecution services, the Constitution has established under section 176 the offices of the Public Prosecutor and the Public Solicitor, both of which are appointed by the JLSC. The Public Prosecutor is responsible for controlling the exercise and performance of the prosecution function (including appeals and the refusal to initiate and the discontinuance of prosecutions) before the Supreme Court and the National Court, or other courts, and secondly, to bring, or to decline to bring proceedings under Division III.2 (leadership code) for misconduct in office.<sup>137</sup>

Judges of the National and Supreme Court are subject to the Leadership Code, and therefore must declare their assets, and additionally must not call into question their own integrity, or that of the office in which they occupy. For Magistrates, a code of conduct is established under the PNG magistrate's manual<sup>138</sup> by which they must abide. There are five main rules under this manual. A Magistrate shall: uphold the integrity and independence of the judiciary; avoid impropriety and the appearance of impropriety in all magistrate activities; perform the duties of a judicial officer impartially and diligently; conduct the magistrate extra-judicial activities as to minimize the risk of conflict with judicial obligations and refrain from inappropriate political activity.<sup>139</sup>

There have been instances where some judges have been suspected of diminishing the integrity of the judiciary by accepting bribes or not disclosing conflicts of interests, which is a necessary obligation under the Leadership Code. Evidence does not suggest that the performance of judges is regularly monitored, to leave no room for foul play. A noteworthy instance was the arrest of Supreme Court Judge Bernard Sakora for alleged Judicial Corruption in 2016. On 11 April 2016, Mr. Sakora was arrested by members of PNG's fraud and anti-corruption squad and charged with one count of judicial corruption.<sup>140</sup> Sakora's criminal charge concerned a payment that he allegedly received from persons at the centre of fraud allegations with which he was deliberating.<sup>141</sup> The case against Sakora had failed on procedural grounds, however, the Ombudsman Commission had referred him to the Public Prosecutor. In 2018 Sakora resigned from office resulting in the termination of formal investigations into allegations of misconduct against him as a judge and a leader subject to the Leadership Code.<sup>142</sup> There were no punitive repercussions. Such instances highlight the need for the JLSC to continue evaluating the performance of judges to ensure that the highest level of integrity is upheld.

Furthermore, PNG is currently introducing an Integrated Case Management System (ICMS). When this system will be fully operational it should address the many long-delayed judgments. Under the ICMS, cases will be filed electronically, which marks a significant change from the

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<sup>137</sup> The Independent Constitution of PNG. s 177.

<sup>138</sup> PNG Magistrates Manual. <http://www.paclii.org/pg/Manuals/Magistrates/Magistrates.htm>.

<sup>139</sup> *Ibid.*

<sup>140</sup> Radio New Zealand Author. 'PNG Supreme Court Judge arrested, charged with corruption' [2016] Radio New Zealand. <https://www.rnz.co.nz/international/pacific-news/301223/png-supreme-court-judge-arrested.-charged-with-corruption> (Accessed on: 20 March, 2021).

<sup>141</sup> Radio New Zealand Author. 'Controversial long-serving PNG judge resigns' [2018] Radio New Zealand. <https://www.rnz.co.nz/international/pacific-news/350293/controversial-long-serving-png-judge-resigns> (Accessed on: 20 March, 2021).

<sup>142</sup> *Ibid.*

existing manual system.<sup>143</sup> This will reduce the risk of corruption by reducing the delays that lead to the facilitation of payments for favourable and speedy rulings.

### Good Practices

- There is public access to court hearings.
- Judges and Magistrates are held accountable to codes of conduct and ethics.
- There are laws in place which establish bodies responsible for the recruitment of judicial staff.

### Deficiencies

- Judicial corruption is not an issue to which the PNG judiciary system is immune.
- The penalties in place under the Leadership Code are very lenient. There have been instances where judges under investigation have been allowed to walk free simply by resigning from office.
- The PNG Judiciary currently has a low case disposition rate, leading to a risk of corruption.

## **4.11 Article 12 – Private Sector Transparency**

The PNG economy consists of a large subsistence sector which provides a livelihood for roughly 85% of the population, a capital-intensive resources sector, and a relatively small formal sector of service and manufacturing industries.<sup>144</sup> Private sector development is at the core of PNG's future economic growth.<sup>145</sup> The Private sector largely comprises the extractive industry.

Corruption not only occurs within the public sector but also in the private sector. The challenge remains for businesses within the private sector to join forces in the fight against issues such as bribery and extortion. A key area where corruption is rife is in the forestry industry. PNG has lost over 60% of its forest cover to logging. Although indigenous communities are recognized as custodians of the forest and granted total land rights under the PNG Constitution, widespread government corruption has enabled the illegal timber trade to continue uncontrolled.<sup>146</sup> Since the 1980s, the government has long maintained lucrative relationships with logging companies that have been alleged to ignore restrictions and act with impunity while also terrorising locals, often at gunpoint, into signing over land rights in exchange for massive bribes to the government.<sup>147</sup> Illegal logging remains an issue that is yet to be properly addressed.

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<sup>143</sup> Radio New Zealand Author. 'Controversial long-serving PNG judge resigns' [2018] Radio New Zealand. <https://www.rnz.co.nz/international/pacific-news/350293/controversial-long-serving-png-judge-resigns> (Accessed on: 20 March, 2021).

<sup>144</sup> Country Partnership Strategy: Papua New Guinea 2016-2020. Private Sector Assessment Summary. <https://www.adb.org/sites/default/files/linked-documents/cps-png-2016-2020-psa.pdf>. (Accessed on: 23 March, 2021).

<sup>145</sup> *Ibid.*

<sup>146</sup> Anne Kajir. 'Uncontrolled illegal logging, Papua New Guinea'. 2020. <https://ejatlas.org/conflict/uncontrolled-illegal-logging-papua-new-guinea>. (Accessed on: 23 March, 2021).

<sup>147</sup> *Ibid.*

In PNG, the Investment Promotion Authority (IPA) is the independent body that houses the Companies Office of PNG, the Securities Commission of PNG, and the Intellectual Property Office of PNG.<sup>148</sup> The IPA is also the point of identification of markets for PNG exports and dissemination of investor-related information about PNG.<sup>149</sup> The IPA was established by the Investment Promotion Act 1992, which provides for the promotion of investment in the interests of national, social, and economic development. In addition, the Act sets out the powers and functions of the IPA. Along with the Investment Promotion Act, The Companies Act 1997 prescribes all other matters relating to amongst others: the registration of companies, company records, the appointment of directors, and the register of companies.

As the independent body which houses the Companies Office of PNG, the IPA has put measures in place that tie into the implementation of Article 12 of the UNCAC. Under section 395 of the Companies Act, the registrar of companies is to keep in the country a register of companies registered or deemed to be registered under Part II of the Companies Act and a register of overseas companies registered or deemed to be registered under Part XX of the Companies Act.<sup>150</sup> The IPA has made this company registry publicly accessible on its website in a searchable manner. This registry database provided on the IPA website allows for the public to have access to information on directors, representatives and direct owners of enterprises, company ID as well as historical data of previous owners and directors. The business name, date of registration, the type of activity conducted by the business as well as the date of commencement of operations can also be accessed on this database.

The Company Act 1997 has also set out provisions that compel registered companies to keep proper books and accounting records, including financial statements and audits of the company's transactions. Section 188 of the Company Act states that the board of a company shall cause accounting records to be kept that: correctly record and explain the transactions of the company; will at any time enable the financial position of the company to be determined with reasonable accuracy; and will enable the financial statements of the company to be readily and properly audited.<sup>151</sup> These accounting records shall be in a written form and must contain: entries of money received and spent; a record of assets and liabilities, where a company business involves dealing with goods; a record of goods bought and sold as well as stock held at the end of the financial year along with records of any stocktakings during the year.<sup>152</sup> Where a company's business involves the provision of services, accounting records must also contain a record of services provided and relevant invoices.<sup>153</sup> It is noted here that accounting records' main financial statements are to comply with a generally accepted accounting practice that complies with applicable financial reporting standards or is appropriate to the circumstances of the reporting company and have authoritative support within the accounting profession in Papua New Guinea.<sup>154</sup> In line with the keeping of accounting records, a company must at each

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<sup>148</sup> IPA Author. 'General Information' [2021] Investment Promotion Authority PNG, <https://www.ipa.gov.pg> (Accessed on: 27 December, 2020).

<sup>149</sup> *Ibid.*

<sup>150</sup> The Companies Act 1997.

<sup>151</sup> *Ibid.* s 188(1)(a)-(d).

<sup>152</sup> *Ibid.* s 188(2).

<sup>153</sup> *Ibid.*

<sup>154</sup> *Ibid.* s 172.



annual meeting, appoint an auditor to hold office from the conclusion of the meeting until the conclusion of the next annual meeting to audit the financial statements of the company.<sup>155</sup>

Following the auditing process at the end of every year, annual returns in accordance with section 215 of the Companies Act must be submitted to the Registrar for registration at least within 14 days after the annual meeting of the company and must summarize all financial statements and company records including meeting minutes, etc.<sup>156</sup> In implementing the provisions under the Company Act, the IPA has in various instances strictly enforced its powers when companies have failed to lodge annual returns. In 2019, IPA issued a notice of intention to remove 5,000 defaulting companies who had failed to submit annual returns since 2000.<sup>157</sup> The defaulting companies were given a month to comply and lodge their returns. In January 2020, the IPA then released figures showing that 4,724 companies had been de-registered. The justification for this decision was to ensure companies are compliant with all requirements under the Companies Act.<sup>158</sup> Such practices are good and serve to remind citizens, company owners, and directors of the importance of keeping a proper record of accounts and financial statements making it possible for corrupt and fraudulent activities to be detected.

In the further implementation of Article 12, the new 2020 EITI standard now includes the provision for all implementing countries to ensure that corporate entities disclose the identity of their beneficial owners for greater transparency. As a result, PNG EITI has conducted studies into beneficial ownership, which is an aspect that is currently lacking in the country. In carrying out this study, PNG EITI appointed KPMG (a leading provider of audit, tax, and advisory services) to undertake a scoping study on beneficial ownership and the development of a roadmap. This scoping study identified gaps that will affect compliance with the EITI standard requirements on beneficial ownership as well as recommendations on how to address them.<sup>159</sup> These include: the absence of a specific national priority linked to beneficial ownership; the absence of a requirement to disclose beneficial ownership information in the process of registering a company under the Company Act as well as the lack of coordination and support between key state agencies to share beneficial ownership information.<sup>160</sup> These gaps are also challenges that the PNG EITI will face in the implementation of the EITI standard and the study as a whole will be used to provide input for the development of a final roadmap for beneficial ownership disclosure in the extractive industries of PNG.<sup>161</sup> Whilst this study is being conducted for the extractive sector only, the hope is that it sets a national standard that is carried forward, tailored, and developed in other sectors of the country.

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<sup>155</sup> The Companies Act 1997. s 190(1).

<sup>156</sup> *Ibid.* s 215(1).

<sup>157</sup> C. Patjole. 'Companies deregistered'. (2020). Loop PNG. <https://www.looppng.com/business/companies-deregistered-89682> (Accessed on: 21 January, 2021).

<sup>158</sup> *Ibid.*

<sup>159</sup> PNGEITI. Report on Outcome of the Scoping Study on Beneficial Ownership. February 2017. pp. 8. [http://www.pngeiti.org.pg/wp-content/uploads/2020/12/BDO\\_PNG-EITI-BO-Report-Final-version-20-12-20.pdf](http://www.pngeiti.org.pg/wp-content/uploads/2020/12/BDO_PNG-EITI-BO-Report-Final-version-20-12-20.pdf) (Accessed on: 21 January, 2021).

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.* pp. 10.

## Good Practices

- The IPA has placed the company registry on its website enabling the general public to search businesses to determine whether or not they are validly registered.

## Deficiencies

- The information on companies provided by the IPA on the online company registry is thorough but could be expanded.
- There are currently no measures or requirements in place for beneficial ownership to be disclosed in the process of registering a company.

### **4.12 Article 14 – Measures to Prevent Money Laundering**

PNG does have a legal framework for anti-money laundering. In 2015, PNG passed the Anti-Money Laundering and Counter Terrorist Financing Act 2015 (AMLCTFA), enabling the government to detect and deter money laundering and terrorist financing. Under the AMLCTFA, section 61 provides for a Financial Intelligence Unit (FIU) referred to as the Financial Analysis and Supervision Unit (FASU). FASU is established within the Bank of Papua New Guinea and is an operationally independent unit.<sup>162</sup> In accordance with section 72 of the act, FASU is responsible for carrying out financial intelligence and analysis concerning suspected money laundering and associated predicate offences, terrorist financing and proceeds of crime.<sup>163</sup> Other roles of FASU include monitoring and enforcing compliance with the Act.

The AMLCTFA makes provisions for offences and penalties in line with money-laundering and terrorist financing under subdivision 5. Section 36 prescribes the offence of failure to comply with due diligence requirements, section 37 prescribes the offence of operating anonymous accounts and accounts in false names and section 38 prescribes the offence of establishing or continuing a business relationship involving a shell bank.<sup>164</sup> Under each of these offences, penalty fines are prescribed. In line with these offences and the monitoring of transactions, the AMLCTFA also establishes obligations to report assets of a designated person or entity, as well as threshold reporting and suspicious matter reporting obligations for financial institutions. For instance, section 39 (1) stipulates that a financial institution must report to FASU any transaction of an amount in physical currency, or in the form of a bearer negotiable instrument, equal to or greater than K20,000.00 (US\$5,665.72) that is carried out as a single transaction or two or more transactions that appear to be linked.<sup>165</sup> The same practice must also be done with international electronic fund transfers of an amount in currency equal to or greater than K20,000.00 (US\$5,665.72).<sup>166</sup> Penalties for failure to comply with reporting obligations are also prescribed.

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<sup>162</sup> Anti-Money Laundering and Counter Terrorist Financing Act 2015. s 61(1)-(2).

<https://www.bankpng.gov.pg/wp-content/uploads/2014/08/1-No-20-of-2015-Anti-Money-LaunderingCounter-Terrorist-Financing-Act-2015.pdf>.

<sup>163</sup> *Ibid.* s 72.

<sup>164</sup> *Ibid.* s 36-38.

<sup>165</sup> *Ibid.* s 39(1).

<sup>166</sup> *Ibid.* s 39(2).

It is through the implementation and execution of reporting obligations that FASU detects and monitors the movement of cash. Furthermore, FASU is now a member of the Egmont Group of Financial Intelligence Units, an international organisation that facilitates corporation and intelligence sharing between national financial intelligence units to investigate and prevent money laundering together with terrorist financing. This is a platform that is used by FASU PNG for the exchange of information with other international Financial Intelligence Units.

In 2017, FASU as the Financial Intelligence Unit published its findings from a Money Laundering and Financing of Terrorism National Risk Assessment.<sup>167</sup> The assessment was crucial in identifying, understanding and assessing the money laundering and terrorist financing risks in terms of threats and vulnerabilities faced in PNG, and was one of the first steps taken by FASU since its establishment in 2015. This assessment revealed that PNG faces a very challenging money laundering threat generated by: corruption, taxation fraud, other frauds against government and in the private sector, environmental offences, and trafficking of illicit drugs.<sup>168</sup> The assessment identified deficiencies in certain agencies such as IRC and IPA. Currently, the exchange of information between IRC, IPA, FASU and Customs is weak. In addition, the IRC relies on non-payment of fraudulent claims or the use of civil recovery processes. This does not provide a strong incentive to pay tax. FASU recommended that IRC in conjunction with RPNGC and the Office of the Public Prosecutor undertake criminal prosecutions for tax and Goods and Services Tax (GST) Fraud.<sup>169</sup> Doing this will act as a deterrent for tax fraud and encourage businesses and individuals to ensure effective tax returns.

As an attempt to address deficiencies highlighted by the assessment, FASU partnered with Interpol in 2018 to undertake a capacity training workshop in Port Moresby which aimed to improve the skills, co-operation, and exchange of information between key agencies such as the Police, Customs, Lands Department, and the Forest Authority in working together to investigate and prosecute forestry and land-use related crimes as they rapidly grow in the country.<sup>170</sup> More recently, FASU has focused on the national coordinating committee of the anti-money laundering and counter terrorism financing.

### Good Practices

- The AMLCTFA sets forth provisions for the establishment of a Financial Intelligence Unit (FASU) as an independent body.
- The AMLCFTA has prescribed offences and penalties, and has in place reporting obligations which are used as measures to monitor financial transactions in the country.
- FASU conducted an assessment which highlighted strengths and deficiencies in the country and are taking proactive steps to address deficiencies.
- FASU is a member of the Egmont Group of Financial Intelligence Units.

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<sup>167</sup> Money Laundering and Financing of Terrorism National Risk Assessment (2017).

<https://www.bankpng.gov.pg/wp-content/uploads/2019/04/Money-Laundering-and-Financing-of-Terrorism-National-Risk-Assessment-4.pdf>. (Accessed on: 25 March, 2021).

<sup>168</sup> *Ibid.* pp 17.

<sup>169</sup> *Ibid.* pp 134.

<sup>170</sup> C. Patjole. 'Forests, land crimes training'. [2018] Loop PNG. <https://www.looppng.com/business/forests-land-crimes-training-75867>. (Accessed on: 25 March, 2021).

## Deficiencies

- The assessment conducted by FASU highlighted a number of existing challenges for the country to overcome in relation to the lack of strong incentives to pay tax and a lack of co-operation between key agencies.

## 5. Recent Developments

There have been a few notable achievements to systematically address corruption in Papua New Guinea since TIPNG's last civil society report on the implementation of UNCAC in PNG in 2012.

In 2020, following decades of campaigning by CSOs, the ICAC and Whistleblower Legislations were enacted in Parliament. Moreover, the 2019 Organic Law on the Independent Commission Against Corruption saw the establishment of an independent body responsible for investigating corruption complaints in the country either in relation to public officials, or any other person or entity. With the aim to strengthen governance in PNG, ICAC will also work in cooperation with other agencies and bodies to facilitate administrative arrangements for this cooperation as well as the exchange of information and the referral of matters.

Along with the ICAC legislation, the PNG government also enacted the whistleblower legislation for the purpose of protecting all employees who make a protected disclosure from occupational detriment. The act however requires a tremendous amount of improvement to close gaps that, if left unaddressed, will allow for corruption to seep through. Improvement is needed with regards to the ambit and scope of whistleblower protection and to address the lack of an independent body to coordinate and implement whistleblower protection under the Act.

Apart from the establishment of these two landmark laws, there has also been significant reform made in relation to the management of public procurement in the country. In 2018, the government passed the National Procurement Act 2018 (NPA), to establish provisions for the management of national procurement to provincial and local level governments as required by the Organic Law on Provincial Governments and Local Level Governments. The NPA is undergoing amendment and TIPNG was invited to give feedback on proposed amendments to it. These amendments aim to strengthen transparency and restore confidence in the procurement process.

Between the years of 2014 and 2015, PNG joined the EITI and the OGP. In joining these initiatives, the government attempts to work together with both industry and civil society to ensure greater transparency and strengthen partnerships. The EITI process will deliver direction for a registry of beneficial owners. Through OGP, the government has a work plan to enact Freedom of Information legislation by 2021.

There have been government-led efforts to strengthen integrity since the last report, such as the Anti-Money Laundering and Counter-Terrorism Financing Country Risk Assessment, and the establishment of a National Coordinating Committee. A further example in the same sector would be the success of the *Phones Against Corruption* initiative within the Department of Finance. However, despite these developments, PNG still performs poorly on indicators such as the Corruption Perceptions Index, as these initiatives have yet to lead to tangible action to address impunity for grand corruption in the country.

## 6. Recommendations

There is a multitude of deficiencies in mechanisms that hinder the successful implementation of the UNCAC by PNG. In providing recommendations to address these deficiencies, this report focuses on priority actions that have been requested by civil society in PNG:

1. The National Anti-Corruption Strategy Taskforce (NASTF) must hold regular meetings to ensure the National Anti-Corruption Plan of Action (NACPA) is collectively developed and effectively implemented. The government of Papua New Guinea must ensure that there is consistent public communication on these efforts and that the NACPA has budgetary support throughout its lifespan.
2. In line with the National Anti-Corruption Strategy, each state agency should prioritise the development of internal anti-corruption strategies that will empower agencies to respond to public concerns on good governance, handle internal whistleblower complaints and liaise with the Independent Commission against Corruption (ICAC) once it is established.
3. Wide consultation, of all governmental and non-governmental stakeholders, including civil society and academia, is required to ensure a thorough regulatory framework to accompany the Organic Law on the Independent Commission Against Corruption (OLICAC). The framework should clearly set out requirements for collaboration between the ICAC and existing state agencies and clearly articulate the basis by which the Executive can use powers in OLICAC. The regulations must provide transparency on all procedures of the ICAC.
4. Amendments should be made to the whistleblower legislation to ensure it applies beyond employee-employer disclosures and makes compulsory the implementation of whistleblower mechanisms in all organisations. This legislation requires a stronger framework that shifts the burden from whistleblowers and ensures that principles of independence and confidentiality are adhered to. Secure and anonymous reporting mechanisms should be established, comprehensive protection of all whistleblowers should be ensured, and mechanisms to support whistleblowers should be introduced.
5. Senior public officials in all branches of government, as well as elected leaders, should be made subject to annual asset, income and interest declarations. These declarations should be subject of independent oversight and be made available to the public online in easily accessible formats (possibly after removing some sensitive personal information). The sanctions prescribed under the Leadership Code and the Organic Law on Duties and Responsibilities of Leaders must be reviewed to ensure they are proportionate, timely and deterrent; they should be imposed on those officials who fail to comply with the disclosure requirements or who make incomplete or false statements.
6. The integrity of political parties must be strengthened. There is a need to enact amendments to the Organic Law on the Integrity of Political Parties and Candidates (OLIPPAC) to ensure that it is constitutional and could be implemented so that civil society and the electorate at large can demand accountability through political party mechanisms. Parties

and candidates should be required to disclose in detail their finances (income, expenses, assets and debts) in a timely manner to the public, proportionate sanctions should be introduced for failures to comply with the transparency and accountability requirements. These amendments must be supported by reform to strengthen the governance and independent oversight of electoral management.

7. A legal basis should be created for the IPA to collect information on the beneficial owners of all companies and legal entities, in line with international best practice, to put in place a mechanism to ensure that this information is accurate, complete and timely, and to make this information, alongside information on companies and their direct owners, available to the public through a freely searchable and easily accessible web portal. Furthermore, the NPC should be strengthened in order to ensure that it has the resources and capacity to collect, verify and publish information on the beneficial owners of companies that are awarded public contracts.
8. The NPC should work towards introducing an e-procurement system, aiming to ensuring a fully transparent procurement system, including by publishing information and documentation on all stages of the procurement process online, in line with international best practice approaches, in particular the Open Contracting Principles and the Open Contracting data standard. As needed, the NPC should seek international support and technical assistance to advance a procurement reform.
9. Support is required for the EITI and OGP to achieve their broad objectives, but also specifically to enact a Freedom of Information law. The legislation should enable citizens to access public documents with support and oversight provided by an independent entity such as the Freedom of Information Commission. The information must be accurate, accessible and provided in a timely manner.

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## **Backpage Cover**

The **United Nations Convention against Corruption (UNCAC)** is the only legally binding international **anti-corruption** multilateral **treaty**. Negotiated by Member States of the **United Nations (UN)**, it has been adopted by the **UN General Assembly** in October 2003 and entered into force in December 2005.

In the preparation and drafting of this report, Transparency International PNG conducted desktop and manual research on the implementation of UNCAC chapters II (preventive measures) and V (asset recovery) covered in the ongoing second review cycle. Following this research, interviews were conducted with key government agencies to determine the practical implementation of UNCAC articles in the country. The structure of the report strictly followed a template provided by the UNCAC Coalition, which also provided technical and financial support for this project.

### Recommendations of Priority Actions in the report:

1. The National Anti-Corruption Strategy Taskforce (NASTF) must hold regular meetings.
2. Each state agency should develop an internal anti-corruption strategy.
3. Wide consultation is required to ensure a thorough regulatory framework for OLICAC.
4. Amendments to go beyond the traditional employer-employee relationship need to be made to the whistleblower legislation to ensure its effectiveness.
5. Ensure that sanctions under the Leadership Code and the Organic Law on Duties and Responsibilities of Leaders are proportionate and compel reporting by public officials.
6. Amendments are required to the OLIPPAC to ensure it is constitutional and followed.
7. Creation of a legal basis for beneficial ownership data to be collected and shared.
8. Operationalisation of PNG's e-procurement system with reference to global standards.
9. Support is required for the national chapters of EITI and OGP to achieve their broad objectives, and specifically to enact a Freedom of Information law.