Overview of the law and justice sector in PNG:

The Law and Justice Sector comprises of the formal principal Law and Justice agencies including those informal or civil organization groups who are committed to assisting the formal agencies to address the law and order issues. The formal sector agencies include:

- Department of Justice and Attorney General,
- The National Judicial Staff Services,
- The Ombudsman Commission,
- The Royal Papua New Guinea Constabulary,
- Correctional Services, Magisterial Services,
- Office of the Public Prosecutor and Public Solicitor and
- The Department of National Planning and Rural Development (plays a major role in this coordinating process)

Sector Agencies working to curb corruption in PNG (please click on hypelinks):

- Police - enforces the Law
- Courts - The Chief Justice and The Chief Magistrate - administers and interprets the laws
- Attorney General - provides legal services The Attorney General
- Correctional Services - custody and rehabilitation of convicted offenders The Commissioner
- Ombudsman Commission - protects the fundamental rights and freedoms of the people and ensures the quality of leadership The Ombudsman

Other working Groups:

- Justice Advisory Group
- The Working Group
- IMMETWG
A Detailed Look at the Ombudsman Commission


FUNCTIONS OF THE OMBUDSMAN COMMISSION

The Ombudsman Commission is one of the most complex institutions established by the Constitution. It is conventional to regard it as having just two functions.

- Performing the role of a "traditional" ombudsman (under its general "complaints" jurisdiction; and
- administering the Leadership Code (the specific "leadership" jurisdictions).

To put the Commission in its proper constitutional context, the Commission has three primary functions and, in addition, a number of complementary functions.

<table>
<thead>
<tr>
<th>Function</th>
<th>Source of Power</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Investigation of alleged wrong conduct and defective administration by governmental bodies.</td>
<td>Constitution, Sections 219(1)(a) &amp; (b); Organic Law on the Ombudsman Commission.</td>
</tr>
<tr>
<td>2. Investigation of alleged discriminatory practices, by any person or body.</td>
<td>Constitution, Section 219(1)(c); Organic Law on the Ombudsman Commission.</td>
</tr>
</tbody>
</table>
Traditional Functions

The first function allows the Commission to perform the role of a "traditional" ombudsman by investigating, either on complaint or its own initiative, administrative practices and decisions of governmental bodies which may be unreasonable, unjust, oppressive etc.

Discriminatory Practices

Under the second function, the Commission performs the role of what in other jurisdictions are called anti-discrimination or equal-opportunity commissions.

In this context, its jurisdiction is not restricted to the investigation of governmental bodies. Section 219(1)(c) speaks simply of investigation of discriminatory practices "within the meaning of a law prohibiting such practices".

There is only one relevant law in this area: the Discriminatory Practices Act (Chapter No 269), which applies to all bodies and persons.

Though the Commission was established primarily as a means of imposing accountability and control on the public sector, this peculiar area of jurisdiction gives it an extra dimension in terms of its relationship with the private sector.

Leadership Code

Under its Leadership Code jurisdiction, the Commission performs the role of conflicts-of-interests commissions in other countries. But even that does not give a full picture of its responsibilities.

In the absence of an independent, adequately resourced anti-corruption body, it has also become a de facto anti-corruption agency. It has been able to combine its extensive powers under the Leadership Code, together with the exercise of powers as a traditional ombudsman institution, in the overall fight against corruption in PNG.

In addition to its primary functions, the Commission has a number of complementary functions.

<table>
<thead>
<tr>
<th>Complementary functions of the Ombudsman Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Function</td>
</tr>
<tr>
<td>----------</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>1. Power to make special references to the Supreme Court on questions of constitutional interpretation.</th>
<th>Constitution, Section 19.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. (Implied) power to enforce the Basic Rights.</td>
<td>Constitution, Section 57.</td>
</tr>
<tr>
<td>3. Power to advise (jointly with the NEC) the Queen and Head of State, to consent to the Governor-General holding another office or position or engaging in another calling.</td>
<td>Constitution, Sections 87(3) &amp; (4).</td>
</tr>
<tr>
<td>4. Power to administer the <em>Organic Law on the Integrity of Political Parties and Candidates</em> regulating political parties, political donations and the protection of elections from outside or hidden influences.</td>
<td>Constitution, Sections 129 &amp; 130; <em>Organic Law on the Integrity of Political Parties and Candidates</em>.</td>
</tr>
<tr>
<td>5. Power given to Chief Ombudsman to participate in judicial appointments etc, by virtue of his membership of the Judicial and Legal Services Commission.</td>
<td>Constitution, Section 183; <em>Organic Law on the Judicial and Legal Services Commission</em>.</td>
</tr>
</tbody>
</table>

- **Special Court References**

The Commission is one of a limited range of public bodies authorised by the Constitution to make special references to the Supreme Court to seek the Court's binding opinion on questions relating to the interpretation or application of the Constitutional Laws.

In this respect, the Ombudsman Commission has been authorised to maintain a watching brief over the nation's constitutional development. By dint of this "hotline" to the Supreme Court, the Commission has become, to some extent, a guardian of the Constitution. Since Independence, it has been a fairly regular referrer of constitutional questions to the Supreme Court.
Basic Rights

Under Section 57 of the Constitution, the Commission appears to have been given the power to enforce the Basic Rights. Section 57(2) suggests that any persons "with an interest ... in the maintenance of the principles commonly known as the Rule of Law" ought to be given standing to make applications on behalf of others in the Supreme Court or the National Court for enforcement of the Basic Rights. The Ombudsman Commission would appear to fall squarely within this category of persons.

However, the Commission has never exercised this power. When it has investigated alleged abuses of the Basic Rights, it has confined its role to preparing reports and recommendations. It has never actively pursued the results of its investigations through the courts.

The rationale for this approach lies in the Commission's perception of its role when it undertakes a human rights investigation. It performs the role of an independent investigator. Although it acts on a complaint, it is not acting for the complainant. The complainant is not its client. The Commission therefore has no paramount duty to the complainant. It would be inconsistent with the Commission's impartiality, for it to assume the adversarial role required of it, if such matters were pursued through the courts.

Jurisdiction over the Governor-General

The Commission has an important role to play concerning the office of Governor-General, the only senior office established by the Constitution not subject to the Leadership Code.

The Governor-General is prohibited by Section 87 of the Constitution from holding any other office or position or engaging in any other calling, except with the consent of the Queen and Head of State, acting with and in accordance with the joint advice of the National Executive Council and the Ombudsman Commission. In this way, the Commission is included in the system of checks and balances which regulates the official conduct of the Governor-General.

Integrity of Political Parties and Candidates

The Ombudsman Commission has the power to regulate political donations and ensure that elections are protected from outside or hidden influences. The Organic Law on the Integrity of Political Parties and Candidates envisaged by the Constitution was enacted in
2001 was replaced 2003. The Commission has the power to enforce certain provisions of this Organic Law if breaches of those provisions occur.

**Judicial and Legal Services Commission**

The Chief Ombudsman's membership of the JLSC gives him (and the Commission) an influential role in the appointment process for all the Judges of the National and Supreme Courts, members of the Magisterial Service and key constitutional office-holders such as the Public Prosecutor and the Public Solicitor.

- **Anti-Corruption Prevention / Sector Policy and Plans**


The Policy adopts the concept of 'restorative justice' to reshape the law and justice sector. It entails a shift towards a justice system that is more community-orientated and problem solving in approach, one wherein the interests of victims are employed to reintegrate offenders within their communities. Such developments rely on improving and reorientating the conventional formal justice system to enhance open and accountable core capacities and increase engagement with the community.

A difficulty with realising the policy's full potential is the lack of information about, and experiential understandings of customary/community-based justice resolutions as they are widely practised throughout PNG. This framework recognises the need for extensive community consultation around restorative and customary justice resolution practices, as well as the need for research to document and evaluate community justice processes, to complement the planning and development of the National policy.

**Three Pillars**

The Policy is organised around three pillars as follows:

**(a) Improving the Efficiency of the Deterrence System**

Strengthening the formal law and justice agencies to meet constitutional and statutory obligations, especially to deter crime and maintain the rule of law; while at the same time building engagement between the formal and informal stakeholders in the sector.
(b) Sector-wide Coordination

Building a sectoral approach to law and justice recognises the high level of interdependence between agencies comprising the sector. There is a need for consistency in implementation of the Policy and the sector approach will enhance this. Coordination needs to occur between agencies, between different levels of government, and across different kinds of stakeholders, particularly between those in government and civil society.

The sector approach, as reflected in the Sector Strategic Framework, is community-led and government sponsored, while being inclusive of other particular stakeholders. It aims to move beyond the weakness of past approaches involving uncoordinated programs of individual government agencies and other stakeholders within the sector, and isolated and fragmented development projects that lack sufficient community ownership and participation.

In particular the recognition of community-based resolution processes as central deliverers of justice, and comparable foci for sector planning and investment means a repositioning of previous approaches to sectoral integration.

A key aspect of this repositioning entails the deliberate nurturing of partnerships between the law and justice agencies and community, civil society and private sector stakeholders.

(c) Crime Prevention and Restorative Justice

Promoting crime prevention and restorative justice interventions throughout the formal and informal components of the sector. The policy acknowledges the significant role that communities throughout PNG play in the prevention and resolution of local level disputes. Recognising and developing informal law and justice initiatives is an essential and core part of PNG's law and justice policy. It involves building community capacity in order to provide a more holistic, integrated and sustainable approach to prevention and management of crime and conflict.

Sector Strategic Framework

The Law and Justice Sector Strategic Framework identifies a vision, and set of goals, strategies and priorities to guide and integrate efforts to develop a more just, safe and secure society in Papua New Guinea.

The Sector Strategic Framework represents a focal point for planning within the sector, supporting the National Law and Justice Sector Policy and Plan of Action (2000) (the
Policy). The Policy emphasizes that addressing Papua New Guinea's significant law and justice issues requires:

- A shift towards a 'restorative' approach to justice;
- Empowerment of the community to participate in solving law and justice issues, and in the delivery of sustainable solutions;
- Better performance from the formal agencies; and
- An integrated, sector based approach.

Together with the National Law and Justice Sector Policy and Plan of Action, this Sector Strategic Framework guides a reform program for law and justice. It not only reinforces a new vision of justice, but represents one of the cornerstones of an improved process of planning (the Sector Approach).

The sector approach coordinates the involvement of multiple stakeholders in law and justice within an overarching planning framework. Key stakeholders include national, provincial and local governments, communities, families and civil society in PNG, the private sector and donors.

Another dimension of positive change reflected in the Sector Strategic Framework is support for the government's public sector reform agenda that aims to improve the quality of governance both within and across different arms of government in order to improve services and reduce costs. This recognises the necessity for good governance and stable and inclusive state service delivery as a precondition for secure and engaged communities.

The preparation of the Sector Strategic Framework occurred after extensive assessment and planning with individual government agencies, and after widespread consultation with the peoples of PNG and the private sector about future directions, and the process and management of change.