



## PILON COUNTRY REPORT 2017

### Papua New Guinea

#### **1. Major law and justice sector achievements**

##### *Implementation of Anti-Money Laundering and Counter-Terrorist Financing Laws*

- i. Implementation of PNG's suite of Laws on Anti-Money Laundering and Counter Terrorist Financing (AML/CTF) is ongoing and has been progressing effectively particularly in terms of, the development of implementation materials such as posters, banners, Standard Operating Procedures (SOP's), Guidance Notes, Compliance Rules etc. The financial industry sector and other relevant sectors are aligning their processes and procedures with the AML/CTF laws which complement the implementation materials that have been and continue to be developed to give effective implementation to the laws.

- ii. *Family Protection Regulation 2017*

The Family Protection Regulation, a subordinate instrument of the Family Protection Act was endorsed this year and is currently in force. Practice Directions on the Family Protection Act was developed and ready for use by District Court Magistrates throughout the country. Two regional trainings were conducted for District Court and Village Court Magistrates on the Family Protection Act and its enabling regulation. Implementation is well underway with financial support from the Australian Government through JSS4D.

##### *Counter-Trafficking in Persons*

- iii. In Counter- Trafficking in Persons (C-TIP), the National Action Plan (C-TIP NAP) and the Standard Operating Procures (SOPs) for the Identification, Referral and Prosecution of Human Trafficking Cases is being implemented in 9/22 provinces of the country. Capacity building trainings conducted by the Department of Justice & Attorney General, International Organisation for Migration and the Family & Sexual Violence Action Committee. The target agencies were government departments, law enforcement agencies and Non-Government agencies involved in the protection of victims. The European Union provided funding for the 15 trainings which took place in 6 target provinces which are; Milne Bay, West Sepik, West New Britain, Eastern Highlands, Madang and Morobe, in addition to the previous provinces of Autonomous Region of

Bougainville, Western Province and National Capital District. A total of 1500 people in the respective provinces have been provided with basic training on PNG's Trafficking in Persons and People Smuggling provisions in the Criminal Code, Victim Identification, Case Referral and Victim Assistance. Apart from the Provincial Trainings, a C-TIP Technical Expert facilitated by the ACP-EU Migration Action is providing investigation Training and Training of Trainers (TOT) for Police and other Government Law Enforcement Agencies.

- iv. The Trainings and awareness resulted in an increase in reported case in the Stop Human Trafficking Hotline. Another significant factor is the committal of two (2) precedent TIP cases to the National Court. One case which has been committed to the National Court in Morobe Province and is on trial and involved the forced and organised marriage of a minor to a foreign. The other significant case, concerning the forced prostitution and sexual exploitation of 9 females in the Chimbu Province has also been committed to the National Court and will be on trial by early 2018.

#### *Standard State Legal Rates & Reduced State Liabilities*

- v. The Office of the Solicitor General (OSG) has put in place standard State legal rates applicable to all law firms engaged by the State to act for and on behalf of the State in legal brief outs. This was endorsed by National Executive Council just before elections and was widely published in the media. Previously, in the absence of the State rates, firms and other organisations would charge excessive fees for legal services rendered to the State. The standard State legal rates are a mechanism through which thorough vetting is conducted to ensure that the legal bill charged by private law firms and other organisations to the State is consistent with the State legal rates.
- vi. The OSG re-structured its office to ensure that the rates were effectively implemented. This resulted in the decrease of state liabilities. For the 3<sup>rd</sup> quarter alone there were:
  - 9 dismissal proceedings in favour of the State;
  - 8 dismissal of 8 appeals in favour of the State; and
  - 78 summary determinations in favour of the State

These proceedings by the OSG saved the State K42 million.

- vii. Officers from the OSG, Office of the Public Prosecutor and the Office of the State Solicitor (OSS), assisted in providing legal advice/guidance during the PNG National Elections this year. In previous years private legal officers would be engaged to provide these services. The expenditure for engaging private lawyers to assist in the national elections would cost the state at least K19 million. In the 2017 elections the cost for engaging state lawyers was K1.4 million saving the State K17.6 million.

- viii. The National Court and Supreme Court have increased their court circuits and expansion to provinces where there were no judges before. More resident judges have been appointed to take up post in these areas. The Chief justice also announced this year that the judiciary will increase its number of judges to 100 to serve more communities. This initiative coincides with the Government's priority to shift resources and services directly to districts and less concentrated in the capital. This move has seen a shift from town focused to district focused and allowed for other law offices to also expand where judges take up residency.
- ix. Work is well underway to restructure the court system to allow for an appellate court.

#### *2017 National Election*

- x. Most agencies in the Law and Justice Sector were involved in the 2017 national elections which saw no women representative voted into Parliament. The Ministry of Justice has a new Minister in Hon. Davis Steven, LLB, MP and a new Police Minister in Hon. Jelta Wong. There is an Alotau Accord II (Policy Framework for 2018 – 2022) which highlights anti-corruption as one of the priorities of the new Government as well as updating all old laws. Both tasks has been given to the Department of Justice & Attorney General and the Constitutional and Law Reform Commission.

### **Significant court decisions**

#### **State v. Wartoto case – Court Decision**

- i. In February 2016, Mr Wartoto, a prominent Papua New Guinean businessman, was indicted on two counts of misappropriation of a total amount of K7, 989,892.00 belonging to the State. The funds were paid to his company to carry out rehabilitation works to a high school in East New Britain province in 2009. The funds were paid into the company account and subsequently used for purposes largely unrelated to rehabilitation work at the school. The criminal trial was conducted over two weeks. On 29 March 2017, Mr Wartoto was found guilty and convicted on the first count of misappropriation (K6, 445,262.69) and found not guilty of the second count of misappropriation (K1, 198,483.80).
- ii. On 23 June 2017, Mr Wartoto was sentenced to 10 years in hard labour, 5 years of which were to be suspended on the condition that Mr Wartoto repay an amount of K3, 915, 047.08 within 4 months from the date of the sentencing order and that he be placed on good behaviour bond for three years.
- iii. On 5 May 2017, Mr Wartoto via his lawyers, lodged a Notice of Appeal against both his conviction and sentence and relied on numerous grounds. A date has not yet been set for hearing the appeal.

## 2. Significant legal reform

### ***Lawyers Act (Fit and Proper Process)***

- i. The Fit and Proper process under the Lawyers Act was reviewed with significant amendments proposed to be made to the said process. The proposed amendments are to strengthen the process particularly where loopholes were identified during the development of the gap analysis on the process. The proposed amendments are to ensure that only men and women of high calibre are admitted to practice as lawyers in order that the values and principles of the legal profession are maintained. Simultaneously, the Act is also reviewed in its entirety to update provisions to meet the current changing circumstances.

### ***Independent Commission Against Corruption (ICAC) Bill review***

- ii. The passage of the ICAC Bill in Parliament was delayed due to the vetting process it had to undergo by the relevant key agencies and parliamentary committees. The draft ICAC Bill has completed the vetting process by the parliamentary committees and recommendations have been made to expedite the passage process of the ICAC Bill into Parliament to ensure that it becomes law. The passage of the Bill will meet the PNG government's commitment under the National Anti-Corruption Plan of Action 2012 - 2015 in the establishment of the Independent Commission Against Corruption.

## 3. PILON strategic priorities

### **(a) Cybercrime**

- i. Cyber Security Breach Simulations were conducted by the PNG ICT Regulator, National Information and Communication Technology Authority (NITCA). In December 2016 the *Cybercrime Act 2016* came into operation. Cyber Incident Simulations were conducted to get PNG accustomed to the idea of common cyber-attacks. PNG is currently developing an Incident Response Plan and a National Cyber-Security Strategy to complement the existing Cybercrime Policy and further assist with the implementation of the *Cybercrime Act 2016*.

### **(b) Environmental Crime and Corruption**

- ii. The Public Prosecutor is responsible for the prosecution of all criminal offences including money laundering offences prescribed under the *Criminal Code Act* Chapter 262. The Public Prosecutor is also responsible for conducting asset confiscation litigation under the *Proceeds of Crime Act 2005*. Therefore, generally, any offence committed that is an "indictable offence" and/or a "serious offence" as defined under these laws can be prosecuted and or litigated on by the Public Prosecutor.

- iii. Currently, there is no case dealt with by the Office of the Public Prosecutor (OPP) on this particular crime type. However, it is anticipated that as the level of awareness on these crime types and the relevant laws within sector agencies increases, OPP will begin to see more cases of this nature being referred for prosecution or asset confiscation.

**(c) Sexual and Gender-Based Violence**

- iv. Significant efforts done in this space this year, with the hosting of first ever men forum which attracted a large number of males both in leadership roles as well as general male population. The 1-Tok Kaunselin helpim Lain hotline has seen staggering statistics each year of people seeking assistance over the phone with a reported statistics of 7000 callers each year since it was launched in 2015. The awareness on the hotline for trafficking in persons victims has seen increased callers who not only report matters relating to human trafficking but often matters of sexual and gender based violence which are often referred to the 1-tok counselling hotline for assistance.

**4. Significant issues affecting the law and justice sector, and options to address these issues**

- v. Whilst many of the law and the justice sector agencies execute their roles and responsibility in terms of effectively addressing the issues that affect PNG, the challenge that the sector is confronted with is ineffective coordination between key stakeholders in a given issue. The absence of or limited technical expertise may also be a contributing factor to addressing significant issues within the sector and the country as a whole. However, agencies have taken a proactive approach and identified options in which to address this challenge. One such option includes the drafting and signing of domestic Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU). This option further encompasses the drafting and signing of MOA's, MOU's and Terms of Reference (TOR) on an international level for purposes of engaging technical expertise.
- vi. In addition to the agreements, agencies are also becoming proactive in initiating one on one meeting with individual agencies as opposed to broader inter-agency meetings as a means to appreciate the roles and responsibilities they play individually in addressing the issue and identify the challenges they face when it comes to co-ordination with other agencies to addressing the issue. The overall objective is basically to achieve a holistic approach within the law and justice sector to addressing issues affecting PNG.
- vii. Budget constraints have been the major factor this year to non implementation of key initiatives, however, the new Government has encouraged agencies in the sector to share resources.

**5. Significant initiatives/projects involving the member country and its law and justice sector**

- i. PNG has held various workshops and trainings throughout the year for various law and justice projects. These workshops/trainings were held for the following projects:
- 1) Foundational Legislative Drafting Course held in Canberra in March.
  - 2) Sorcery Related violence
  - 3) Anti-Money Laundering and Counter-Terrorist Financing/ Proceeds of Crime
  - 4) Mutual Legal Assistance
  - 5) Trafficking in Persons
  - 6) International Humanitarian Law
  - 7) Family Protection training for District Court Magistrates
  - 8) Health and Prosecution Training for health professionals and prosecutors
  - 9) Juvenile Justice Trainings
  - 10) Forestry Crimes

These workshops and trainings involved representatives from the different agencies within the law and justice sector. The workshops and trainings highlighted the significance of these issues in PNG and the roles that each law and justice sector agency had to play in addressing the issues. Furthermore, the obligations of the relevant agencies were highlighted in terms of the international requirements accorded to PNG as a whole in addressing the issues. E.g. International obligations relating to Human Trafficking and Anti-Money Laundering and Counter - terrorist financing.

PNG will host the Australasian Law Reform Agencies Conference in 2018. CLRC is coordinating this major event. It has developed a strategic plan as a guide towards preparatory work. There is an internal committee putting together ideas, but other relevant stakeholders will be invited to form the national organising committee. This is a huge event and we look forward to it in 2018.

PNG will also host the International Conference on the Rule of Law in 2018. The Judiciary is coordinating the event with the assistance of the Constitutional and Law Reform Commission, University of Papua New Guinea through the Law School and Department of Justice & Attorney General.

PNG will also host APEC 2018, with the first Transport Ministers meeting held in October 2017. Offices with the Department of Justice & Attorney General have been trained for the event and some have been seconded to the APEC Secretariat to assist in preparing for the event. The

Department of Justice & Attorney General will chair 2 anti-corruption technical workshop on whistle blower and.

## **6. Technical legal assistance**

- i. PNG has received law and justice training and technical assistance in some of its priority areas including trafficking in persons, anti-money laundering and counter-terrorist financing, international humanitarian law, Illegal Unreported, Unregulated fishing (IUU), sorcery related violence etc. We still have other priority areas that require technical assistance needs. These areas include implementation of the Family Protection regulations to curb domestic violence.
- ii. Training priorities also include increasing the capability of police officers in understanding the issue of proceeds of crime in terms of its elements and their duties in identifying the activity, investigations and referral for prosecution.
- iii. Training of police officers in the area of proceeds of crime further broadens their capabilities and knowledge base in linking inter-related activities such as environmental crime and corruption. Another significant area of training priority would be addressing the issue of cybercrime which is a conduit through which proceeds of crime and terrorist financing activities are conducted but more so catching offenders who challenge the existing paradigms of policing and crime through this area.
- iv. In C-TIP, PNG received technical assistance from the ACP-EU Migration Action, through a Technical Expert that has identified Training needs in Law Enforcement and Regulatory Agencies and is conducting C-TIP Investigation Training with Police Officers, Labour Officers, Forestry Officers, Migration Officers, Customs Officers, Juvenile Justice officers, and Village Court Magistrates.
- v. Officers from the OPP have attended trainings in the area of money laundering, terrorist financing, proceeds of crime, and forestry related crimes. These trainings were hosted and conducted by the Financial, Analysis and Supervision Unit (FASU) and Australian Money Laundering Assistance Team (AMLAT) from the Attorney-General's Department, Australia (AGD) and INTERPOL respectively.
- vi. PNG will be the host country for the Asia Pacific Economic Cooperation (APEC) meetings in 2018. In preparation for this event, officers from the Office of the State Solicitor have been participating in APEC trainings and other technical assistance has been provided by other countries in the various aspects of hosting APEC. The technical assistance provided by the various donor organisations and PNG's counterparts to ensure that the officers are well equipped with the necessary tools to effectively host APEC.

## **7. Contact information for key law and justice agencies**

[Including but not limited to: Ministry of Justice, Crown Law Office, Courts, Law Reform Commission, People's Lawyer, Office of Parliamentary Counsel, etc.]

Agency	Key responsibilities	Contact person and position	Phone number and email
Department of Justice & Attorney-General	To provide a just safe and secure society for all	Dr. Lawrence Kalinoe, Secretary	(+675) 301 2972 Fax: 325 3661
Office of the Public Prosecutor	To deliver timely, independent, fair, efficient and effective prosecution and related services to the people of Papua New Guinea.	Mr. Pondros Kaluwin, Public Prosecutor	(+675) 325 0366 / 301 2699 / 325 0241
Office of the Public Solicitor		Mr. Jim Tamate, Public Solicitor	
Royal Papua New Guinea Constabulary		Mr. Gari Baki, Police Commissioner	
Constitutional Law Reform Commission		Dr. Eric Kwa. Secretary	Telephone: (675) 325 2862 Fax: (675) 3253375 Email: <a href="mailto:erickwa@gmail.com">erickwa@gmail.com</a>