

The 31st Pacific Islands Law Officers Network Conference

Held at the Gazelle Hotel at Kokopo, East New Britain Province, Papua New Guinea

On

Monday 29th October 2012

Introduction

The Secretary for Justice and Attorney General, Dr. Lawrence Kalinoe and the PILON's organizing Committee let me first of all thank you for inviting me to speak at this very prestigious conference of our eminent law officers of our Pacific Region. Secondly let me thank you for choosing my home province as the venue for such a prestigious conference. Thank you Secretary and the PILON's Organizing Committee

Distinguished guests, ladies and gentlemen as a local man myself let me also welcome each and every one of you to my home Province, the East New Britain Province. It is my sincere hope that apart from enjoying the conference itself that you will find the volcanic environment of the towns of Kokopo where we are now which is the new headquarters of our Province , Rabaul town which was destroyed by the twin eruptions in 1994 and the surrounding villages fascinating and the people friendly and welcoming. Welcome again ladies and gentlemen ma a bona na ravien.

It is indeed a great pleasure and privilege for me to speak at this conference. I understand that the late Chronox Manek the then Chief Ombudsman of Papua New Guinea until his untimely passing on the first of this month was to have spoken in this session on the subject of Leadership and Governance in PNG but sadly this is not to be now.

As a country we mourn the passing of such a vibrant young leader who was a strong defender of the Country's Constitution and the Leadership Code in particular until his passing. Papua New Guinea has truly lost a son and another good leader who was fearless in his stand for good leadership and good

governance and it will be very difficult to replace a man of his caliber. We thank God however for his life and his many good contributions to the development of Papua New Guinea as a nation especially in the Public Solicitor's Office the Public Prosecutor's Office, the Ombudsman Commission the Law and Justice Sector and the whole legal fraternity locally and within the Pacific. May his soul rest in peace with his Maker

Leadership and Governance

In his absence let me try to address the subject of Leadership and Governance with specific references to Ethics, Integrity and the Ombudsman Commission which the late Mr. Manek would have loved to address with his usual frankness and professionalism.

From a slightly different angle I will be addressing these subjects from the perspective of an Anti Corruption Practitioner with 27 years of police service and more specifically in the Criminal Investigation Division specializing in fraud investigations prior to and after Independence and then eight years experience with the Ombudsman Commission as the head of Investigations in both classic ombudsman administrative complaint investigations as well as leadership investigations and currently with the Papua New Guinea – Australia Law & Justice Partnership as an Anti- Corruption Development Practitioner for the last four years.

Background

Thirty-seven (37) years ago on the 16th September 1975, eight hundred plus strong uniquely different cultures and traditions with what we may say their different unwritten constitutions became one Nation under one written Constitution, the Independent State of Papua New Guinea Constitution.

In preparation for our Independence in 1974 the Constitutional Planning Committee (CPC) in its final report to the then House of Assembly which was adopted by the first Parliament, set the tone for leadership and good governance for the country in the following words and I quote;

Quote from the CPC Report 1974

"The success of a nation depends ultimately on its people and its leaders.....No amount of careful planning or scientific discipline will achieve liberation and

fulfillment for the citizens of Papua New Guinea unless the leaders – those who hold official positions of power, authority or influence – have bold vision work hard and are resolutely dedicated to the service of their people.

“No one can do more to set the tune and style of the nation than the leaders. Likewise, no one can do more to lower the standard than the leaders.”

“We believe that the most important factor in determining the direction of national development is the quality of leadership. If Papua New Guinea is to have any chance of implementing its National Goals and Directive Principles, it must ensure that its leaders have a genuine commitment to these goals”

Ladies and gentlemen, I have referred to that quote to simply show you that the founding fathers of this nation in their wisdom foresaw and forewarned that the success or the failure of this nation would be dependent very much on its leadership quality and its resolute dedication to the sound governance of its National Goals and Directive Principles laid out in the preambles of the Constitution. After 37 years of independence that challenge still stands today and the current state of the nation can be fairly attributed to the kind of leadership and style of governance we have had to date.

Historical back ground

Let me state from the very beginning that the current state of the nation after 37 years of Independence leaves much to be desired in the areas of leadership and governance especially when the country has been blessed with so much natural resources yet the majority of its 7.1 million people who live in the rural areas of the country have yet to see or experience the benefits from these blessings. This is a sad state of affair and the main reason for this is because of poor and weak leadership and bad governance.

Our founding fathers, while recognizing the diverse cultural differences of eight hundred plus tribes and languages and the different degrees of government and missionary influence, they envisioned PNG could become a successful nation if it has good strong visionary leadership.

To enhance that vision or dream they unprecedentedly made the Ombudsman Commission of Papua New Guinea a creature of the Constitution – something that had not been done anywhere else in the ombudsman world, with the unique responsibility of enforcing a Leadership Code of conduct to hold leaders ,

especially elected leaders in the three levels of government namely National, Provincial and Local level Governments, accountable at the highest level possible. The whole purpose and dream of our founding fathers was to ensure that the country is effectively led and governed by its leaders so that the people's basic needs are met and their aspirations are enhanced.

Even though the idea of having a high constitutional office such as an Ombudsman Commission to hold our leaders accountable was foreign to our leaders and people and may have not been understood fully in the beginning, it was adopted without opposition and therefore came into force on Independence Day and is still in force today. In addition to this unique responsibility the Ombudsman Commission also maintains its traditional and classic responsibility of ensuring good public administration and governance in Government Agencies.

Thirty-seven (37) years have now lapsed and looking back at where we have come from and where we are now the challenges have been many and difficult but we are still standing together as one united nation with the real potential of becoming a leading prosperous nation in the Pacific. The reality however is that since independence PNG as a country has been experiencing a serious decline in providing and sustaining basic good governance to deliver basic goods and services to her 7.1 million people most of who live in the rural areas of the country.

One of the early reasons for this, I believe is the different levels of government influence and exposure in the different parts of the country prior to independence. History shows that some parts of the country have had 100 – 150 years of government and missionary influence while other parts only have had 50 to even 30 years of government influence prior to independence. Independence however meant that despite the varying degrees of government and western influence and exposure we immediately became one people, one nation and one country under one Constitution in a democratic system of government which was basically foreign to the leaders and people. That meant that both our political and bureaucratic leaders who were at the forefront of leading and governing the nation had varying degrees of exposure and understanding of the Democratic System of Government and how it functions with its different styles of leadership and expectations.

It also meant there was serious disparity in the development of infrastructures such as roads, sea and air ports, communications and accessibility to basic services such as health, schools and markets. The political independence did not mean that we suddenly had the benefits of all these things that we so often take for granted and which would have made governance and leadership somewhat easier from the start.

So for our early leaders leading a country as ours with these unique difficulties and limitations coupled with a rough and difficult terrain and topography and its diverse cultures and languages, it was uniquely challenging and very difficult from the start. Our leaders however took the challenge and for the last 37 years it has been a fast learning, adjusting and evolving experience and it was expected that we would go through so much trial and error in the areas of leadership and governance.

First General Elections

In 1977 PNG had its first General Elections proper and we witnessed our first elections related bribery cases where varieties of consumable goods such as cartons of beer and lamb flaps were freely and openly distributed by candidates to buy votes. This was done without fear or any hesitation or regard for any ethical code of behavior as traditionally this was expected of a 'big man' to do which is to distribute goods to his people. It meant that becoming a political leader was based very much on the traditional expectations and styles of leadership rather than the leadership qualities required for good leadership in a modern democratic system of government. The elections of political leaders depended very much on a leader's traditional standing in society and what one can give rather than on what leadership qualities one possesses in a modern setting.

In the subsequent eight general elections buying of votes with the supply of consumable goods, favors and or cash, although unacceptable in a Democratic System of Government became the norm rather than an exception. This was followed by the practice of political appointments of bureaucrats which were very much dependent on the 'Wantok' system which broadly means who you know and where you come from rather than on merit. This was followed by

political interference in the administration of Public Agencies and the Public Service for selfish reasons or for political expediencies.

The Public Service

Consequently the bureaucracy was soon being politicized and the recruitment and promotion of public servants was no longer strictly done according to the Public Service Management Act but was strongly influence by political affiliations 'Wantok' system, favoritism or nepotism. This led to the systemic break down of the Public Service Machinery which directly affected the delivery of basic goods and services to the people

The Administrative College or what is now known as the PNG Institute of Public Administration lost its purpose in training Public Servants in public service ethics which contributed very much to the public service losing its focus on being servants and agents of delivering much needed services to the people.

At the same time the Public Service Code of Business Ethic and Conduct was not enforced effectively resulting in the public servants doing very much what they want to do without fear of reprisals

The Public Financial Management Act and financial policies and guidelines are being generally ignored especially under heavy political or senior bureaucratic pressures. The procurement processes are either not followed or under mind so that works are given to cronies or wantok companies resulting in jobs either not completed, half done or poorly done at exorbitant cost.

The law and order situation continues to deteriorate and the streets of major towns and cities are no longer safe for people to freely move around without fearing for their lives or fear of being robbed or hijacked. The aging Police Force with four to five thousand men and women since independence is seriously undermanned and lacks the basics resources to operate effectively to meet the growing demand for law and order to be maintained at acceptable level

Over all the public service machinery continues to grow in size but is plagued with wantokism, nepotism and unprofessionalism resulting in being ineffective to deliver basic services to the people

The end result of all these and more is that the political leadership and the public service machinery appears to have lost their way in serving the people resulting in a serious break down of service delivery of basic services such as medical supply and school materials etc

Conflict of Interest

The leadership of the country and the civil service was and is still plagued by a serious and chronic disease called 'Conflict of Interest' where public officials are more interested in furthering their personal and private ambitions than serving the people they represent or are mandated to serve. Such a practice is fast becoming an accepted norm rather than an exception and clearly this has led to losing focus on the real purpose of government and the public service to deliver government services to the people.

Abuse of Power

Another major emerging problem is the abuse of position and power by leaders or public officials at all levels. The country started to witness a growing gross abuse of power by public officials in the areas of distribution of limited wealth and resources and services. This is very evident in the Decision making processes where decisions are being made for political expediencies and or personal benefits rather than for the greater good of the people and the nation as a whole. Decisions at the highest level no longer advanced or promote the implementation of the National Goals and Directive Principles envisioned by the founding fathers of the nation. They became rhetoric cliches more than anything meaningful and beneficial to the development of the country and her people.

The country also began to witness the emergence of serious abuse of public funds being used to further political advantages or personal enrichment at the expense of the majority of people who suffered silently in their rural settings.

An example of this kind of abuse came about in the early part of the history of the country with the creation of what is normally referred to as the 'Slush Funds' The 'Slush Funds' is actually the District Support Grants (DSG) which is a direct allocation of funding to the 89 Districts and as of this year 111 Districts of the country. This funding comes under the direct control of the 111 Open Members of Parliament who are chairpersons of the governing body of these

funds known as the Joint District Planning and Budget Priority Committee (JDPBPC). The District Support Grants (DSG) comprised of discretionary and non discretionary components. As chair persons of the JDPBPC the Members of Parliament would use their discretionary component pretty much anyhow they want while they would directly influence the use of non discretionary funding despite set guidelines for the use of such funds. The purpose of the DSG is to bring some of the basic services right to where the people are in the rural villages unfortunately such funding has been subject to serious and blatant abuse from the start therefore basic services to the people are never delivered and if delivered it is not what has been envisage to meet the needs of the people. Such practice still goes on today as we speak.

At the heart of the systemic break down of governance is the prevailing attitude of non compliance with ethics, rules, laws, procedures and processes at all levels of leadership enhance by the apparent lack of accountability for breaches or non compliance.

Corruption

Ladies and gentlemen, what I have briefly tried to describe here is called corruption. For the last 37 years of independence, due to weak leadership and the systemic break down of sound and effective administration, corruption has crept in and has taken root in the country. So much so that it is now a very serious threat to any meaningful development in the country

One of our former Prime Ministers, Sir Mekere Morauta in 2009 described this sad state of affair as follows and I quote. "Corruption in PNG is systematic, systemic and endemic". Please do not get me wrong. There are many good things happening in the country but what I am saying is that despite all the good things and government initiatives and development such as the giant LNG project and other good initiatives it is true to say that Corruption exists and if not addressed effectively it will undermine every good work that are being done to develop the country including our democracy and the rule of law.

The National Law & Justice Policy and Plan of Action of 2001 describes corruption as such and I quote "Corruption is the most serious threat to our internal security, political stability, national integrity and prosperity in PNG

today” That is the current state of affairs in the nation today and it is because of ineffective governance and weak leadership

The PNG Ombudsman Commission

Having described the serious governance and leadership issues in the country it begs the question what is being done about such serious growing problems and what is the new direction that the Government is taking to address the issues of leadership and governance.

The Ombudsman Commission is one of the highest Constitutional enforcement agencies charged with the duty to help shape the country’s leadership and improve the governance capabilities of Governmental Bodies. While the Ombudsman Commission is endowed with such powers to perform her constitutional functions it does not have the capacity or the resources to meaningfully handle such volume of responsibility.

At its inception in 1976 the Commission started with only three members of the Commission. After five years of operations in 1980 the Commission increased its manpower to just 29 officers to look into the increasing and over whelming leadership and governance issues a cross the whole public sector. After 37 years of independence the Commission’s strength stands at 105 with the established strength of 145 which is a short fall of forty officers. But even if it is increased the Commission would still be under strength to handle the volume of work it is required to do.

This year the number of MPs increased from 109 to 111 with the creation of two new Provinces. With the prevalence of serious leadership misconduct and the systemic break down of government structures and an increase of population to 7.1 million in the latest census the Commission is seriously undermanned and under resourced and simply cannot perform its constitutional obligations effectively.

In addition to that the other law enforcement bodies such as the Royal Papua New Guinea Constabulary (RPNGC) and the other law and Justice Agencies suffer the same fate of being under manned and under resourced.

Law and Justice Sector Agencies

Recognizing the generic endemic problem of shortage of manpower and other resources in the Government Agencies and the chronic administrative and leadership problems I tried to describe to you earlier, the Government developed a National Law and Justice Policy and Plan of Action in 2001. One of the three pillars of that policy is the Sectoral approach to address the countries leadership and governance problems.

In 2003 the Government of Australia through its International Aid Program – AusAid, partnered with the PNG Government to implement that Policy through what was known as the Law and Justice Sector Program which has evolved to the Papua New Guinea – Australia Law and Justice Partnership Program. The program is specifically aimed at addressing leadership and governance in the Law and Justice Sector which consist of the Ombudsman Commission, Department of Justice and Attorney General, the Judiciary through the National Judicial Staff Services, the Public Prosecutor’s Office, Public Solicitor’s Office, Magisterial Service the Royal Papua New Guinea Constabulary and the Correctional Service.

This Partnership Program is being coordinated by the National Coordinating Mechanism (NCM) which consists of the CEOs of the eight Law and Justice Agencies. One of the specific areas being addressed under this Partnership is corruption in the public Sector and that is being done through what is called the Fraud and Anti Corruption Activity Management Team comprising of representatives from the Law and Justice Sector Agencies to address governance, integrity and ethical issues within the Sector

In a review of the Law and Justice Sector Agencies in 2005 conducted by retired judge of the National and Supreme Courts of PNG Judge Tos Barnett, he recommended that the Ombudsman Commission be strengthened and resourced adequately to perform its constitutional duties effectively. He also recommended that Internal Integrity Reviews be conducted in each of these agencies to identify the risks areas and to take corrective measures to minimize risks levels and to put into place fraud control plans to deal with corruption and improve the overall governance of the Agencies.

The reviews were concluded in 2010 and they clearly revealed systemic break down in administrative and financial systems in the administration of these agencies. It also recommended corrective measures such as developing Fraud Control Plans, new and effective procedure and policy manuals and instilling ethic and integrity in each agency. Through the Fraud and Anti Corruption Activity Management Team this is being done and the implementation process is in progress.

National Anti Corruption Strategy

Last year PNG for the first time in its short history developed a National Anti Corruption Strategy and governance and leadership are in the eight key areas for implementation in all government agencies. Work is now underway by a Government Task Force to develop an implementation program to roll out the National Anti Corruption Strategy nationwide.

Other government initiatives such as the over arching National Plan the Vision 2050 came into force in 2009 and already Government Agencies are realigning their corporate plans with Vision 2050 which may be viewed as a furtherance of the National Goal and Directive Principles of the country and there is a sense of a new direction in the country. The National Anti Corruption Strategy is linked to Vision 2050 so that it can be incorporated into the annual and corporate Plans of Government Agencies. So despite the serious governance and leadership issues, there is a new direction being set by Government and there is hope for a better future.

With the new Government in place and its strong commitment to address corruption in a meaningful way and the strong commitment by donor countries such as Australia, New Zealand and the UN to work with the PNG Government there is a light at the end of a dark tunnel.

Conclusion

So in conclusion, ladies and gentlemen, what I have briefly presented to you is a snap shot of the problems the country is facing in the areas of leadership and governance. I have also tried to briefly show you that despite these problems the country has good initiatives in place to address these issues and as the country continues to strive to make positive progress, I believe we will make good progress in the coming years.

With the economic boom at our door steps there is real potential for that to become a reality but it must be stated again that all this will depend on the leadership of the country resolutely dedicated to making these initiatives work for PNG and her people.

Thank you ladies and gentlemen and God bless Papua New Guinea.