

Table 1: Comparison between the PNG Ombudsman Commission and the Independent commission against corruption.

PNG Ombudsman Commission	Independent Commission Against Corruption (ICAC)
<ol style="list-style-type: none"> 1. Investigate alleged wrong conduct and defective administration by governmental bodies.⁷ 2. Investigate alleged discrimination practices, by any person or body. 3. Investigation of alleged misconduct in office under the Leadership Code <p>Does not have the power of prosecution against alleged wrongdoers.</p>	<p>ICAC has wider powers of law enforcement (investigative and prosecution), preventative powers and education and awareness responsibility.</p> <p>These 3 functions compliment each other.</p> <p>ICAC powers are much more wider and reaches beyond constitutional office holders to those not covered by the Leadership Code.</p>

2012 The Government of Peter O’Neil took office on the promise to combat corruption “at all levels” of the system, through the establishment of an ICAC.

2013 - National Anti-Corruption Plan of Action (2012-2015). This was the Plan of Action to implement Anti-Corruption Strategy. Part of the strategy was a commitment to revisit 2011 ICAC legislation.

2014 - Constitutional Amendment (No. 40) (Independent Commission Against Corruption) Law 2014.

The Government established a National Anti-Corruption Strategy Taskforce to gather the views of the PNG public through consultation Forums across PNG. It received written submissions on the draft law aimed at finalizing the legislation to create the ICAC. The first step was to pass a Constitutional Amendment. This has happened.

At the time of compiling this discussion paper, the Organic Law on ICAC had not been enacted.

⁷ Functions of the Ombudsman Commission, <http://www.lawandjustice.gov.pg/www/html/116-role-of-the-agency.asp>



The 2010 Finance Commission of Inquiry found that K780 million was stolen. No one has since been prosecuted and the money is yet to be recovered.

Independent Commission Against Corruption (ICAC)

Conclusion

Former Prime Minister of PNG, Sir Mekere Morauta has been quoted as describing Corruption in PNG, to be "systemic and systematic".

Corruption is SYSTEMIC, because it is not only prevalent in all sectors of society but that its impact also is far reaching!

Corruption is also SYSTEMATIC because corrupt activities often involves collaborative efforts of individuals, from elected officials, beauracrats, public servants, business associates, and even family members of these individuals.

This is the reason why there is a need for a fully-funded, independant institution such as an ICAC, with wide powers that can investigate and prosecute corrupt individuals.

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CORRUPTION is simply putting into action a dishonest desire to gain material wealth, other favours, fame or power. It is also an abuse of a position of trust in order to gain an undue advantage.

CORUPTION is a mechanism of unrestrained capitalism through which a few people are enriched while weakening the social fabric of society, the economy and the State.

What is an ICAC?

An Independent Commission Against Corruption (ICAC) is one kind of anti-corruption agency.

Hong Kong is referred to as the birthplace of ICAC. The Hong Kong ICAC was formed in February 1974 when Hong Kong was under British rule and experiencing rapid changes. Massive growth in population and the fast expansion of the manufacturing industry accelerated the pace of social and economic development. The aim of establishing the ICAC was to clean up endemic corruption in many departments of the Hong Kong Government through law enforcement, prevention and community education.

Since then Commissions like this have been established in the Australian State of New South Wales and Fiji. ICACs in these countries have proven to fight corruption through effective law enforcement, prevention and education. An ICAC functions as an independent organ of the public service.

What does an ICAC do?

All ICACs have 3 main functions: *Prosecution, Prevention and Education*. Its typical roles are:

1. Receive, screen and investigate complaints of alleged corrupt conduct and prosecute those involved; and
2. Facilitate corruption-prevention in government departments by examining practise and procedures and recommending changes to reduce the likelihood of corruption; and
3. Conduct community awareness to educate the public on the impacts of corruption with the aim of enlisting public support in combating corruption.

What is an Ombudsman?

Ombudsman is Swedish for “grievance person” when loosely translated or “Defender of Citizens”, as it is more formally known. The world’s very first Ombudsman was born when King Charles XII of Sweden established the institution of the King’s Highest Ombudsman in 1713. This institution later became an institution of Parliament,

and the new Swedish Constitution of 1809 established an office called “Justitieombudsmannen” or Parliamentary Ombudsman, which is still effective 200 years on. This office is responsible for looking after citizen’s interests in their dealings with government. The first three countries to appoint an Ombudsman were Sweden, Finland and Denmark.

The methods of enforcement include bringing pressure to bear on the responsible authority, publicizing a refusal to rectify justice or a defective administrative practice, bringing the matter to the attention of the legislature and instigating a criminal prosecution or disciplinary action¹

The Ombudsman Commission

Papua New Guinea (PNG) adopted the Ombudsman concept at Independence, in 1975. In PNG the Ombudsman Commission (OC) is an independent institution established under Section 217 of the Constitution.

The OC is a 3-member body headed by a Chief Ombudsman and two (2) Ombudsmen appointed by the Governor General, acting on the advice of the Ombudsman Appointments Committee.²

1 Fighting Corruption as a Public Sector Ombudsman in PNG, By Ombudsman Peter Masi

2 Constitution, Section 217 (2)

The Commission’s vision is to promote good leadership and good governance³. Its constitutional mandate⁴ is to:

1. Ensure that all governmental bodies are responsive to the needs and aspirations of the People; and
2. Help in the improvement of the work of governmental bodies and the elimination of unfairness and discrimination by them; and
3. Help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies; and
4. Supervise the enforcement of the Leadership Code.

What does an Ombudsman do?

Ombudsmen safeguard the interest of citizens by ensuring administration according to law, discovering instances of maladministration of public officials, and eliminating defects in administration.

In PNG, the Ombudsman Commission performs a range of different functions, which in other countries are dealt with by different institutions. The Commission’s independence is guaranteed by the Constitution. The Commission has three (3) primary functions, which are:

3 The Ombudsman Commission of Papua New Guinea, Annual Report 2002

4 The Ombudsman Commission of Papua New Guinea, Annual Report 2002

1. Investigation of alleged wrong conduct and maladministration by government bodies. The Commission performs the role of a “traditional” Ombudsman by investigating either on complaint or its own initiation; administrative practices and decisions of governmental bodies which may be unreasonable, unjust, oppressive etc.⁵
2. Investigation of alleged discrimination practices, by any person or body. Under this function the Commission performs the role of what in other jurisdictions are called equal opportunity commissions and the relevant law in this area is the Discriminatory Practices Act.
3. Investigation of alleged misconduct in office under the Leadership Code (Section 219 (1) (d) of the Constitution).

In the absence of an independent anti-corruption body, the Ombudsman Commission has become a *de facto* anti-corruption agency. It has had to try to combine its powers under the Leadership Code, together with the exercise of powers as a traditional Ombudsman institution, in the overall fight against corruption in PNG.⁶

5 Functions of the Ombudsman Commission, <http://www.lawandjustice.gov.pg/www/html/116-role-of-the-agency.asp>

6 ibid

How is an ICAC different from an Ombudsman Commission?

In recent times, public concerns in PNG, have been that there is no need for an ICAC because an Ombudsman Commission already exists, which can simply be given additional powers and resources to perform the role of an anti-corruption agency. This argument has its advantage and disadvantages. To differentiate between these institutions, it is important to understand their historical roles as well as the roles prescribed by law.

The PNG Ombudsman Commission is different from an ICAC by virtue of its functions. Although in PNG, an ICAC is yet to be established by legislation, the historical role of an ICAC defines its functions. (Refer to **Table 1** overleaf to see a comparison between the PNG OC and ICAC.)

History of ICAC in Papua New Guinea

1997 - The first ICAC Bill was drafted after nation-wide consultations but was shelved due to lack of political will.

2010/11 - PNG National Anti-Corruption Strategy (2010-2050)

2011 - New ICAC Bill drafted but not tabled in Parliament due to political impasse.