

Letting the Raven Fly: The failure to convict leaders charged with corruption offences.

Abstract

Corruption in Papua New Guinea (PNG) is both 'systemic and systematic' and is undermining both economic growth and the delivery of basic government services, especially to the rural majority.

If PNG is to achieve its national development goals then effective measures to prevent corruption are essential. Such measures must include the investigation, prosecution and conviction of those engaged in corruption at all levels.

ACT NOW has conducted a desktop research exercise to investigate how effective the criminal justice system is in dealing with corruption offences.

The study found that despite the high reported prevalence of corruption, only a very small number of officials are being charged with corruption related offences and, over the past two years, of twenty-eight people charged none have been convicted or imprisoned.

Introduction

Transparency international's Corruption Perception Index ranked PNG in 142nd place out of 180 countries in 2020, making PNG the worst rated country in the Asia Pacific region. With a perception score of 27, PNG ranks in the bottom 20% of countries worldwide while PNG's Melanesian neighbours, the Solomon Islands with a score of 42 and Vanuatu 43, are in the top 50% of countries.

It has been estimated that as much as half the annual government budget ends up being stolen and the economic costs of corruption have been calculated to amount to billions of Kina every year.

In 2011, The Economist warned, "PNG's governments are notorious for corruption, and ever run the risk of turning the state into a fully-fledged kleptocracy". Ten years later, PNG shows little sign of overcoming this unenviable reputation. As Miriam Mathew, writing in the Policy Development Blog, has stated the high levels of corruption PNG and its Melanesian neighbours, has been largely stagnant over the past decade and allegations of corruption involving political leaders and the powerful remain rife.

The newly legislated Independent Commission Against Corruption (ICAC), has the potential to change the narrative in PNG, but the Commission has yet to be established. Once it is set up it will be essential that it is able to not only investigate cases of corruption but also hold the officials involved to account.

To assess how corruptions cases are currently faring in the legal system, ACT NOW conducted a desktop study. The study aimed to identify all the media coverage of court cases involving corruption charges reported in 2019 and 2020 and track their progress.

The study looked at both criminal charges laid by the police and leadership offences identified by the Ombudsman Commission.

Methodology

Media reporting of legal cases involving Papua New Guinean politicians and bureaucrats was tracked on a daily basis for two years, 2019 and 2020. Hard copies of the daily and weekly newspapers were physically scanned for reports on legal cases and the online news content of radio and television broadcasters was reviewed each week. Popular social media, particularly Facebook and Twitter, was also tracked for relevant news links and popular PNG websites were monitored.

Where legal cases were identified, the details and relevant media links were recorded in a spreadsheet. At the end of each year, the information in the spreadsheet was verified and updated using the Google internet search engine to search for any additional media reporting using the names of the individuals charged.

The information in the spreadsheet was then used to compile three tables of results which are shown below.

Results

In total the study identified thirty criminal cases involving twenty-eight politicians and public servants who were charged with offences involving the misuse of their office for financial gain during 2019 and 2020.

There were a further fifteen politicians and public servants referred to the public prosecutor by the Ombudsman Commission for misconduct in office.

The thirty criminal cases identified in the study are shown in Tables 1 and 2 below.

The thirty criminal cases mostly involve charges of fraud or misappropriation, and the total sums involved amount to almost K200 million (equivalent to A\$80 million).

Those charged with criminal offences include seven current or former national MPs, two of whom are current government Ministers, and one a former Prime Minister, one Bougainville government Minister and eleven current or former Departmental Secretaries or CEOs.

Of the thirty recorded cases from 2019 and 2020, as of November 2021, only three case have gone to trial and in each case the accused was acquitted.

None of the thirty criminal cases identified in the study has yet resulted in a known conviction or imprisonment.

Five of the cases did not make it past the committal stage, the charges being thrown out for lack of evidence, for lack of police action or, in one case, the incorrect wording of the charges.

Table 1:. Corruption charges laid in 2019.

Name	Position	Allegation	Charged	Committal	Outcome
Labi Amaiu	Former MP	Fraud and misappropriation of 300 land titles	22-Jun-18	Jan-19	Not known
Unnamed	Former Defence Force officer	Misappropriation of K1.2 million	25-Jan-19		Not known
Sir Tipo Vuatha	Former Secretary to the Governor General	Misappropriation of K200,000	14-Feb-19	Not known	Acquitted, lack of evidence
Douglas Tomuriesa	MP and former Minister for Forests	Misappropriation of K2.2 million	12-Jul-19	Nov-19	Charges thrown out at committal
Imelda Agon	Former Gaming Board CEO	Official corruption and perjury	16-Jul-19		Not known
Steven Gibson	Former Secretary for Finance	K60 million fraud	Unknown		Not known
Sali Subam	Former MP and Minister	Misappropriation of K6 million	05-Aug-19	Nov-21	Not known
Richard Yopo	National Airports Corporation MD	Perverting the course of justice	14-Aug-19	Feb-20	Charges dismissed on technicality
Wemin Boi	Former legal officer and acting MD NHC	Conspiracy to defraud and misappropriation	27-Aug-19		Not known
Andrew Marubu	Former Secretary to the Minister for Sports	Misappropriation of K6 million	28-Aug-19	Sep-19	Charges struck out July 2021
Robin Wison	ABG Finance Minister	Corruption and misappropriation of K150,000	11-Sep-19	Aug-20	Not known
Kevin Guba	Rural Links Ltd MD	Misappropriation of K1.6m in District funds	01-Oct-19		Not known
Patliias Gamato	Electoral Commissioner	Official corruption, conspiracy and money laundering	18-Oct-19	Oct-20	Acquitted in Nov 2021
Uke Kombra	Secretary for Education	Abuse of office and misappropriation of K4.4m	20-Nov-19		Not known
Robert Kennedy	Acting Chief Migration Officer	Official corruption	20-Dec-19		Not known

This means that in total, just eight of the cases out of thirty, have reached a known conclusion and twenty-two cases are still waiting to be heard or their conclusion has not been reported. This is despite some of the charges dating back more than two-years.

In addition to the thirty criminal cases involving corruption, the study also identified fifteen people referred by the Ombudsman Commission to the Public Prosecutor under the Leadership Code in 2019 and 2020. These cases are shown in Table 3.

The leaders referred by the Ombudsman Commission include three current national government Ministers, two other current national MPs, six Bougainville government MPs and one Minister, two Departmental heads and one Provincial Administrator.

Of the fifteen cases referred by the Ombudsman Commission, only two have reached a final determination. In both cases the charges were dismissed for a lack of evidence.

There are two other Leadership Tribunals that have been appointed but in the other eleven cases the leaders referred to the Public Prosecutor are still awaiting a decision on whether their cases will proceed.

Table 2: Corruption charges laid in 2020.

Name	Position	Allegation	Charged	Committal	Outcome
Douglas Tomuriesa	Former Forest Minister	K6 million misappropriation	05-Mar-20	Nov-21	Not known
Alois Kingsley	Former Culture Minister	Forgery and stealing	27-Feb-20		Not known
Peter Yama	Madang Governor	Bribery and corruption	05-Mar-20	Sep-20	Dismissed for lack of evidence
Reuben Aila	Fomer NAC Chairman	Conspiracy to defraud	06-Mar-20		Not known
Francis Tanga	Former Lands Board Chairman	Abuse of power and fraud	10-Mar-20	Apr-21	Dismissed for lack of evidence
Sylvester Kalaut	Assistant Commissioner of Police	Conspiracy to defraud	17-May-20		Not known
Bob Kerry	Police Director Human Resources	Conspiracy to defraud	16-May-20		Not known
Peter O'Neill	Former Prime Minister	Misappropriation and Corruption	23-May-20	Nov-20	Acquitted Oct 2021
Bire Kimisopa	Former MP	Fraud and corruption	27-Jun-20		Not known
Dickson Kiragi	Former Registrar General	Fraud	07-Jul-20		Not known
Sama Arua	Former Deputy Registrar General	Fraud	07-Jul-20		Not known
Richard Yopo	Former NAC Managing Director	Misappropriation and Stealing	13-Oct-20		Not known
Ditha Nayabbunung	Former MD NHC	Fraud and misappropriation	23-Nov-20	Nov-21	Not known
Fr Jan Czuba	Secretary for Education	Corruption and abuse of office	09-Dec-20		Not known
Luke Ipani	LLG Deputy President	Misappropriation	15-Dec-20		Not known

Overall, the study identified thirty criminal cases and fifteen leadership cases being dealt with through the court system in 2019 and 2020. Of the total of forty-five cases, not one is yet known to have resulted in a conviction and penalty.

Only ten of the forty-five cases have reached a conclusion, and in each of those cases the charges were either dismissed for a lack of evidence, lack of police action or other error, or the accused was found not guilty.

Table 3: Ombudsman Commission referrals 2019 and 2020.

Name	Position	Allegation	Referred	Tribunal	Outcome
John Simon	Minister for Agriculture	Misappropriation of K1.6 million	09-Jul-19	Feb-20	Insufficient evidence
Simon Pentanu	ABG Speaker	Misconduct in Office	17-Jun-20		Outstanding
Robin Wilson	ABG Minister	Misconduct in Office	17-Jun-20	Aug-20	Outstanding
Simon Dasiona	ABG MP	Misconduct in Office	17-Jun-20		Outstanding
Thomas Keriri	ABG MP	Misconduct in Office	17-Jun-20		Outstanding
Philip Kuhena	ABG MP	Misconduct in Office	17-Jun-20		Outstanding
Steven Suaku	ABG MP	Misconduct in Office	17-Jun-20		Outstanding
John Vianney Kepas	ABG MP	Misconduct in Office	13-Aug-20		Outstanding
Puka Temu	Minister for Health	Misconduct in Office	07-Oct-20		Outstanding
Marc Avai	Gulf Provincial Administrator	Misconduct in Office	07-Oct-20		Outstanding
Anna Bais (nee Solomon)	Secretary Department of Community Affairs	Misconduct in Office	06-Nov-20		Outstanding
Mehrre Minne Kipefa	MP	Misappropriation	13-Nov-20		Outstanding
Solan Mirisim	Minister for Defence	Official corruption	13-Nov-20	Jun-21	Insufficient evidence
Sam Basil	MP and former Deputy Prime Minister	Misconduct in Office	03-Dec-20	Jun-21	Outstanding
Paul Marcus Unas	MD National Maritime Safety Authority	Misconduct in Office	08-Dec-20		Outstanding

Discussion

The study conducted by ACT NOW may not be comprehensive or complete. It is based on a desktop review of media reporting and not police or court records. Not all the legal cases involving corruption or leadership offences may have been captured and some cases may have been resolved without being reported in the media. Some media reports may have been missed or may be inaccurate.

The study does though give some notable insights into the working of the justice system in PNG and how it is managing cases involving corruption by politicians and public servants. It also raises some important questions.

In a country with over 60,000 public servants and rampant corruption, 30 people charged with criminal offences involving corruption over a 24 month period seems a very low number.

The failure to charge more people could reflect a whole series of factors. Is there a low referral rate of cases to the police, do police have the capacity and resources to investigate corruption cases, is there a reluctance to investigate 'white-collar' crime, and do those who come under investigation have the power and resources to avoid scrutiny?

The Police Minister has recently offered [some insights](#). The Minister has revealed there were 651 cases referred to the Fraud and Anticorruption Directorate in 2020 and to August 2021. Of these cases, 522 were investigated. Sixteen cases have been referred for prosecution and a decision in a further 17 is still pending.

Sixteen prosecutions over 20 months from 651 cases referred equates to about 2.5%. Is this further evidence that PNG's law enforcement agencies are woefully under-funded and poorly resourced?

The head of the police Fraud and Anti-corruption Division, Inspector Mathew Damaru, certainly thinks so. Speaking in May he highlighted the lack of resourcing for fraud investigations and how, he says, his division is being starved of funding.

This could be having a direct impact on the number of investigations and the number of people of charged, but it only partly explains the failure to ensure criminal prosecutions result in convictions and imprisonment.

The current study shows that of forty-five legal cases that were initiated in 2019 and 2020, only nine have been concluded and in none of those nine cases was a conviction secured.

These statistics could reflect a lack of funding, staffing and other resourcing for the prosecution process and the court system in general. It could indicate those who are charged are able to influence or block the court process, either through legal challenges or in some other ways.

The study certainly points to a general failure to charge, prosecute and convict those who are involved in corruption and stealing from the public purse. The reasons for this failure are likely to be multi-faceted but are certainly deserving of further and much more intensive study because if we do not know and properly understand the causes we are unlikely to find effective solutions.

Conclusion

The failure to hold accountable those involved in corruption allows them to defy the rule of law and undermines public trust. It also erodes the effectiveness of government departments and service delivery. It can also encourages others to follow the same path.

If the law and its institutions cannot be relied on to protect against corruption and deliver justice then ultimately it is our democracy that will be destroyed and civil unrest will become inevitable.

The clear fact is that despite numerous expensive publicly financed inquiries and investigations into major scandals, corruption is still flourishing. One reason for this is because nobody is ever held accountable.

PNG's continued stagnation at the bottom of the annual corruption perception ranking echoes the fact that while the government talks up its corruption fight, we have yet to see any results in terms of corrupt deals reversed or successful prosecutions.

This is despite the efforts of some international organisations to improve institutional performance and their investment in projects like the National Anti-Corruption Strategy and Open Government Partnership.

Meanwhile, the government points to the passage of the ICAC legislation as an important step forward in the fight against corruption, but it is clear there can be no single silver bullet that will cure all our ills and, of course, the Commission has yet to be properly set up and funded.

Recommendation

ACT NOW has previously published a full set of Policy Proposals for Open and Accountable Government that includes a recommendation to reboot the whole national integrity system.

This should include increased resourcing, independence and capacity building for all existing anti-corruption and governance oversight institutions, including the Ombudsman Commission, Auditor General's Office, Public Accounts Committee, the Fraud and Anti-Fraud and Corruption Directorate, the Public Prosecutors Office and the Financial Analysis and Supervision Unit in the Bank of PNG.

In the meantime there is an urgent need for greater transparency and accountability including greater understanding and more effective oversight over what is happening inside the criminal justice system and how its performance can be improved.

Until such steps are taken, PNG will not see corruption brought under control, the quality of basic government services will not get better and ordinary citizens will not see their livelihoods and well-being improve.

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