

**LEADERSHIP CODE OF PAPUA NEW GUINEA AND OMBUDSMAN
COMMISSION'S ROLE IN ENFORCEMENT TO MINIMISE CORRUPT
PRACTICES AND ENSURE ACCOUNTABILITY BY LEADERS IN PNG**

PAPER BY

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ABSTRACT OF PAPER

Papua New Guinea (PNG) is an Independent State situated to the North of Australia and East of Indonesia. It has entrenched in its National Constitution, a Leadership Code to regulate the conduct of persons holding public office (referred to as Leaders) to minimize their involvement in corrupt practices and make them accountable. The National Constitution of Papua New Guinea, also established the Ombudsman Commission comprising of 3 members. Besides performing the traditional role of an Ombudsman to investigate citizens complaints about wrong conduct and defective administration by Government Agencies (ie oversight function over Government Administration), the Ombudsman Commission has a unique role to enforce the Leadership Code in PNG (ie oversight function over Leaders or persons holding public office).

The Paper looks at the underlying reasoning for a Leadership Code ; what is contained in the Leadership Code of Papua New Guinea; who is subject to the Leadership Code and how corrupt practices are minimized and Leaders or persons holding public office, in PNG are made accountable under the Leadership Code. The Paper also looks at the establishment of the Ombudsman Commission and its role with implementing / enforcing the Leadership Code (ie oversight function over Leaders) and the impact.

Questions or issues arising from this Paper or presentation on the Leadership Code are;

- (1) The use of Codes of Conduct as a tool or strategy to minimise corrupt practices and ensure accountability by persons holding public office including Politicians and Heads of Public Sector Agencies ; and
- (2) The role of an Ombudsman in enforcement of such Codes of Conduct to minimise corrupt practices and to ensure accountability by such public office holders.

INTRODUCTION

Distinguished Guests, Participants, Ladies and Gentlemen, I want to thank the Organisers of this World Conference for the opportunity to present a Paper on behalf of the Ombudsman Commission of Papua New Guinea. Papua New Guinea is an Independent State situated to the North of Australia and East of Indonesia with a population of 7 million and over 700 languages spoken in our country. Until September 16th 1975 (when it gained Independence), it was the Australian Territory of Papua and the UN Trust Territory of New Guinea (JGolding, 1978, pg 5).

I am one of three (3) members that make up the Ombudsman Commission of Papua New Guinea and I have the pleasure in presenting to you this Paper on the Leadership Code of Papua New Guinea - a Code of Conduct for Leaders in Papua New Guinea (PNG) to regulate their conduct and minimise corrupt practices and ensure accountability among our Leaders and the Ombudsman Commission's role with implementing / enforcing the Leadership Code and its impact.

OMBUDSMAN COMMISSION OF PAPUA NEW GUINEA

The Ombudsman Commission of Papua New Guinea (OCPNG) is an independent institution established under Section 217 of the National Constitution of the Independent State of Papua New Guinea (ie the National Constitution of PNG). The Ombudsman Commission comprises of the Chief Ombudsman and 2 Ombudsman and the 3 members are appointed for a 6 year term by the Governor General on the advice of an independent Committee comprising of the Prime Minister, Leader of the Opposition, Chief Justice of PNG, Chairman of the Public Services Commission and Chairman of Parliamentary Committee on Appointments. In the performance of its functions, the OCPNG is not subject to direction and control by any person. Besides performing the traditional role of an Ombudsman to investigate citizens complaint about wrong conduct and defective administration by Government Bodies and thereby hold such bodies accountable for their actions and decisions they make which affects or aggrieves a citizen, OCPNG is also vested with the function to enforce the Leadership Code of PNG which is entrenched in the National Constitution of PNG.

WHY HAVE A LEADERSHIP CODE (REASONING)

Prior to Papua New Guinea (PNG) gaining Independence on 16th September 1975, there were rumours of foreign interests offering money and other benefits to PNG Politicians and senior public officials. There was also much discussion of problems caused by corruption of public officials in both developing and developed countries (eg USA,) (JGolding, 1978, pg 189). The framers of our National Constitution (Constitutional Planning Committee (CPC) also noted at that time that number of new Commonwealth Countries had taken firm action to address corruption in public offices (eg in 1973 Jamaica had passed a new law concerning Members of Parliament, Tanzania introduced a leadership code in 1967 and Zambia had adopted similar Code) (Final Report of CPC,1974, Part 1 Chapter 3, para 27-29, pg 3/4). Various measures were put in place leading up to PNG gaining Independence to regulate conduct of certain leaders (eg the Parliamentary Integrity Ordinance, and the proposed –but not officially released –Ministerial Code of Conduct. However the framers of our Constitution (CPC) felt that the provisions should be extended to cover other

categories of leaders not just National Politicians to ensure integrity in whole of public office as available evidence both within country and abroad at that time indicated that senior government officials, members of provincial governments and other categories of officials proposed to be covered by the Leadership Code, were just as much exposed to temptations of corruption as the National Politicians. (Final Report of CPC, 1974, Chapter 3, para 17, pg 3/2-3/3).

In creating the Leadership Code, the framers of our National Constitution (CPC) foresaw that corruption in the public sector would be one of the greatest dangers to the new Nation in terms of the implementation / achievement of the National Goals & Directive Principles which had been set / mapped out for our Nation to achieve. The CPC recognised the *importance of ensuring quality of leadership in PNG* to ensure the achievement of the National Goals and Directive Principles. It stated;

“The success of a nation, we believe depends ultimately on its people and their leaders. No amount of careful planning in governmental institutions or scientific disciplines will achieve liberations and fulfilment of the citizens of our country 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 (Final Report of CPC 1974, Part 1, Chapter 3, para 1).

In his public office, a leader’s first responsibility is to the people he (or she) represents or on whose behalf he is working. This responsibility must override self interest. A Leader’s first loyalty must be to his office, not to himself. Such priority of loyalties might in fact mean some personal loss of opportunity or benefit, but this personal and official responsibility of a leader is assumed when he takes office and it continues throughout his entire tenure of office. (Final Report of CPC, Chapter 3, para 4)

A leader’s loyalty to his office must spring from his genuine concern for his country. It is always expected of a patriot that he will put his country’s interests before his own. In the event of any conflict of interests, the interests of the people he serves must prevail over his own personal interest. The higher the office held in the State, the more serious the office-holder’s responsibility. The greater the power, the greater the obligations of the person holding the powerful position. The power he holds is not meant to be for his own honour and fame; much less is it for his own material aggrandizement. The power he holds is for the betterment of the citizens of Papua New Guinea” (Final Report of CPC, Chapter 3, para 5).

The framers of our National Constitution (CPC) emphasised the need for leadership that had a genuine commitment to implement the National Goals and Directive Principles for the betterment of our people. A leadership that is dedicated to the service of their people and made the people their 1st priority and not for their own self interest and material enrichment. Leadership that will not compromise long term interests of our people for short term advantages to themselves.

The CPC considered it necessary to take positive steps to ensure leaders do not use their positions in ways that threatened the achievements of the National Goals and Directive Principles as stated in the National Constitution of PNG. Hence after wide consultation with the people of PNG, it was concluded that clear rules strictly enforced was required

to regulate the conduct of leaders (or persons holding senior public offices) so that they don't fall to corrupt practices and ensure the integrity of leaders at all levels. Hence the enactment of the Leadership Code.

It is amongst CPC's most fundamental recommendations which is entrenched in the National Constitution of PNG (Division III.2) and the Organic Law on Duties & Responsibilities of Leadership (OLDRL) and not just in any ordinary Act of Parliament which can be easily amended. The CPC regarded the Leadership Code as pivotal to whole notion of quality leadership and representative democracy;

“We believe most strongly, that the effectiveness of many of our proposals depends heavily on the acceptance of the Leadership Code which we propose. The Code is among our most fundamental recommendations and as such it should be entrenched in the Constitution (Final Report of CPC, Chapter 3, para 3.36)

PNG is perhaps one of very few countries that have a constitutionally entrenched and enforceable Code of Conduct for their leaders.

WHAT IS THE LEADERSHIP CODE

The Leadership Code is a Code of Conduct for Leaders or persons holding public offices which is legally binding on such Leaders and which they are expected to know and comply with. It is a quasi-administrative or disciplinary procedure and provisions of the Leadership Code imposes stringent requirements upon those who seek to hold public office (JGolding, 1978, pg194 & 201). The Ombudsman Commission of PNG (OCPNG) is given the mandate under the National Constitution of PNG to implement and enforce the Leadership Code. The Leadership Code comprises provisions of the National Constitution of PNG (ie Division III.2 - Sections 26-31) and the Organic Law on the Duties and Responsibilities of Leadership (OLDRL). It requires a high standard of personal conduct and integrity of leaders. The Leadership Code also applies to their spouses and children under voting age (18yrs).

The National Constitution of PNG (Section 26) specifies persons who occupy various senior public offices who are subject to the Leadership Code. They include;

- Members of Parliament (including Prime Minister & his Ministers)
- Members of Provincial Assemblies and Local Level Governments
- All Constitutional Office Holders (ie offices created under the National Constitution eg Judges, Public Prosecutor; Public Solicitor; Chief Magistrate; Clerk of Parliament; Ombudsman; Electoral Commissioner; etc)
- Heads of Government Departments of Public Service
- Heads of Statutory Authorities and other Government Bodies and Agencies
- Provincial Administrators
- Commissioner of Police
- Commander of Defence Force
- PNG's High Commissioners & Ambassadors
- Public Curator
- Ministerial Staff and staff of Leader & Deputy Leader of Opposition
- Governor General's Staff

- Executives of Registered Political Parties; and
- Autonomous Bougainville Government Members of House of Representatives

The National Constitution of PNG (Section 26 (4)) also gives the mandate to Ombudsman Commission to determine in the event of doubt as to whether a person is subject to the Leadership Code and its decision is final.

HOW ARE CORRUPT PRACTICES MINIMISED AND LEADERS MADE ACCOUNTABLE UNDER LEADERSHIP CODE

Persons occupying public office who come under the Leadership Code (ie Leaders) are expected to conduct themselves in a certain way in their public and private life. Various leadership duties and responsibilities are imposed on them by the Leadership Code to minimise corrupt practices by leaders and make leaders accountable. The Leadership Code imposes requirements to disclose ones income and assets and restricts or prohibits certain activities by leaders. The Leadership Code basically outlines what Leaders can do or cannot do and what the consequences are if they fail to do so, (ie it amounts to “*misconduct in office*”) and they can be investigated by Ombudsman Commission and referred to the Public Prosecutor to be prosecuted before the Leadership Tribunal.

There are various duties and responsibilities imposed by the Leadership Code for persons holding specified public office or leadership positions to follow or comply with to minimise their involvement in corrupt practices and make leaders accountable. These duties and responsibilities can be summarized as follows;

1. *General Duties* –under Section 27 of National Constitution of PNG; and
2. *Specific Duties* – under Organic Law on Duties and Responsibilities of Leadership (OLDRL).

I. General Duties and Responsibilities of Leaders (National Constitution, Section 27)

Section 27 of National Constitution of PNG, is a general provision containing general duties and responsibilities imposed on persons holding public office (referred to as Leaders) to conduct themselves properly to protect their personal integrity and the integrity of the Government in PNG. These general duties are:

- (1) Leaders must not place themselves in a position where they could have a conflict of interest or where they might be compromised when discharging their official duties.
- (2) Leaders must not demean their office or position.
- (3) Leaders must not allow their integrity to be called into question.
- (4) The integrity of Government of Papua New Guinea must be preserved at all times. No act of a Leader should endanger or diminish respect for and confidence in the integrity of government.
- (5) Leaders must not use their office for personal gain. They must not enter into transaction or activity that might cause the public to doubt that they are carrying out their duties as a leader.

- (6) Leader must ensure as far as is within his lawful power that their spouses, children and associates do not conduct themselves in a way that might raise doubt in the public mind as to his complying with his duties referred to above, and if necessary to publicly disassociate himself from any such activity of his spouse, children and associates.

II. Specific Duties and Responsibilities of Leaders –Organic Law on Duties and Responsibilities of Leadership (OLDRL)

The Organic Law on Duties and Responsibilities of Leadership (OLDRL) spells out the specific duties and responsibilities required of persons holding public office (or Leaders) to minimise corrupt practices and ensure accountability by them. These are;

1. Lodgement of Annual Statements (Section 4 of OLDRL)

Leaders are required to submit their Annual Statements every after 12 months to the Ombudsman Commission where they declare their state of affairs in the 12 months in terms of their personal particulars, spouse(s), children, income, assets, liabilities, bank accounts, business connections and positions, business transactions and gifts. The Leader's 1st Annual Statement covers the 12 month period prior to the date of his appointment to the public office. This ensures we have some base-line information on the Leader's state of affairs prior to occupying public office. Non-declaration /Non- Submission constitutes *misconduct in Office*.

2. Use of Office for Personal Benefit (Section 5 of OLDRL)

A Leader must not directly or indirectly ask for or accept, on behalf of himself or an associate, any benefit in relation to any action (past, present or future) in the course of his duties or by reason of his official position. Failure to comply constitutes *misconduct in Office*.

3. Disclosure of Personal Interest (Section 6 of OLDRL)

A Leader must disclose or report to the Ombudsman Commission and the appropriate authority, the nature and extent of his interest or the interest of an associate, in the matter with which he has to deal with in his official capacity. Failure to comply constitutes *misconduct in Office*.

4. Company Directorships (Section 7 of OLDRL)

This applies to Government Ministers only. A Minister, his spouse or children under voting age must not hold directorship in any company or foreign enterprise. To do so will constitute *misconduct in office*. (There are exceptions made and these are where the Minister holds directorship as nominee of State of PNG or the company is one in which citizens of PNG have effective control etc where approval has been obtained from Ombudsman Commission). A Minister who fails to give priority to official business over personal business is guilty of *misconduct in Office*.

5. Shareholdings (Section 8 of OLDRL)

A Leader must not hold shares or any other investments in a company if this could put him/her in a conflict of interest situation. A Leader cannot hold any shares or invest in any foreign enterprise without the prior written approval from the Ombudsman Commission to do so.

6. Engagement in Other Paid Employment (Section 9 of OLDRL)

A Leader must not remain in, or engage in other jobs or work that pays a wage or salary other than his official employment, without obtaining the written approval of the Ombudsman Commission. Failure to comply constitutes *misconduct in Office*.

7. Interest in Government Contracts (Section 10 of OLDRL)

A Leader who, or whose spouse or child under voting age, or whose company; seeks, accepts or holds any beneficial interest in any contract of PNG is guilty of *misconduct in Office*. The above will not apply to the leader who has obtained the approval of the Ombudsman Commission.

8. Acceptance of Bribes (Section 11 of OLDRL)

A Leader or any of his associates, must not corruptly ask for, receive or obtain, or agree or attempt to receive, or obtain any property, benefit, or favour of any kind for himself or any other person in consideration for his actions as a public official being influenced in any manner. Failure to comply constitutes *misconduct in Office*.

9. Acceptance of Loans (Section 12 of OLDRL)

A Leader who accepts any loan, or holds any franchise, or accepts any gifts or other benefit or advantage, from a person or a foreign enterprise, is guilty of *misconduct in Office*. The above will not apply to a normal bank loan, a loan from a Savings & Loan Society or a hire-purchase agreement obtained or entered into on the same or similar terms & conditions applicable to other borrowers or hirers.

10. Misappropriation of Public Funds (Section 13 of OLDRL)

A Leader must not misuse/misappropriate public funds or agree to misuse/misappropriate public funds in any manner. Misuse means, applying funds in the manner not intended for. Failure to comply constitutes *misconduct in office*.

11. Personal Advantage of Official Information (Section 14 of OLDRL)

Leaders must not divulge official or confidential information for their own benefit and for the benefits of their associates. (spouses, friends and relatives). This does not apply to information which has been officially released by a leader or body having the power to release it for public information. Failure to comply constitutes *misconduct in office*.

12. Disclosure of Interest Before Debate or Voting (Section 15 of OLDRL)

A member of a legislative or executive body who proposes to speak or vote on any matter before the body or a committee of the body who has a direct or indirect beneficial interest in a matter, shall first disclose to the body or the committee the nature of his interest in the matter. After disclosure - the member shall not take part in any deliberation or decision of the body – unless the body otherwise resolves. Failure to make disclosure, - constitutes *misconduct in office*

13. Agents (Section 16 of OLDRL)

Section 16 states that if an act that if it was done by a Leader would constitute, or form misconduct in office, and such act is done by his spouse, relative or associates, the Leader must dissociate himself from those actions of his spouse etc. Failure to do so constitutes *misconduct in office*.

The above are various duties and responsibilities imposed by the Leadership Code on persons occupying public offices which come under the Leadership Code, to minimise their involvement in corrupt practices and make them accountable.

OMBUDSMAN COMMISSION’S POWERS IN RELATION TO ENFORCEMENT OF THE LEADERSHIP CODE

Besides imposing stringent requirements for disclosure of income and assets and prohibiting or restricting certain activities by Leaders or persons subject to the Leadership Code, the Leadership Code also provides a procedure for Ombudsman Commission to investigate breaches of the Leadership Code (ie allegations of misconduct in office) and if prima facie evidence exists, to refer the Leader to the Public Prosecutor for prosecution before a Leadership Tribunal. The Ombudsman Commission has wide investigation powers.

Investigations are confidential and can be done on complaint or on own initiative (own motion). The Ombudsman Commission can decline to investigate for reasons specified under the Organic Law (OLDRL) eg complaint is trivial, complaint too long delayed; matter is outside jurisdiction of Commission etc). The Commission has powers to examine Annual Statements lodged by leaders; can issue summons to persons to provide information that is relevant to its investigations; has powers under the National Constitution of PNG (Section 27 (4)) to issue directions to leaders either generally or in a particular case, to ensure compliance with the Leadership Code. Failure to comply with such directions constitutes *misconduct in office*.

The Ombudsman Commission has issued directions during National Parliamentary Election time in 2002, 2007 and in the recent June 2012 National Parliamentary Election to protect the integrity of Members of Parliament from breaching the Leadership Code through engaging in the misuse of public funds and to also protect public funds from being misused by Members of Parliament. Through the exercise of this powers, the Commission has saved millions of public funds from being misapplied or misused by Members of Parliament during the National Election period. The Ombudsman Commission can also appoint a Constitutional Office Holder to carry out investigations on its behalf and such person has all the powers of the Commission to carry out such investigations.

The Ombudsman Commission is also vested with powers to declare in relation to a person, persons or class of persons to whom the Leadership Code applies, the interests, benefits or property that such person (s) or class of persons is prohibited from seeking, obtaining or holding and in the event such persons obtains or accepts or holds such prohibited interests, benefit or property he / she is guilty of misconduct in office unless prior written approval of the Commission has been obtained (Section 24 & 25 OLDRL). The Ombudsman Commission also has powers to order forfeiture of such prohibited interest rather than refer the leader who has obtained such prohibited interest to the Public Prosecutor for prosecution before the Tribunal (Section 26 OLDRL)

There are *various offences* created under the Organic Law (OLDRL) and can be prosecuted in the National Court (eg failure to attend and produce documents on summons; giving false information; refusing to give evidence; failure to co-operate with the Commission; contempt of the Commission etc.).

Leaders who cease to hold public office are not entirely free from the requirements of the Leadership Code. They are still required within 3 years of ceasing to hold public office, to seek approval from the Ombudsman Commission if they want to hold a directorship or consultancy with a foreign enterprise and there's a penalty of a fine or imprisonment for 12 months for non-compliance (Section 35 OLDRL). This is to avoid the possibility of persons who previously held public offices being appointed as directors / consultants as reward for past favours done whilst in such office or to avoid the possibility of such persons assisting the company concerned quite considerably through their contacts with senior public/ civil servants and possibly with Government Ministers hence the 3 year ban. (Final Report of CPC, Chapter 3, para 82, page 3/10)

REFERRALS BY THE OMBUDSMAN COMMISSION TO PUBLIC PROSECUTOR FOR PROSECUTION BEFORE A LEADERSHIP TRIBUNAL

The Leadership Code provides a procedure for the Ombudsman Commission to investigate breaches of the Leadership Code and if prima-facie evidence exists that a person holding public office that's subject to the Leadership Code (a Leader) is guilty of misconduct in office, the Commission is required to refer the Leader to the Public Prosecutor to be prosecuted before the Leadership Tribunal. Before being referred to the Public Prosecutor, the leader is given a right to be heard before he or she is referred. The Public Prosecutor is an independent office that makes his independent assessment of the case before he decides to prosecute the leader before a Leadership Tribunal.

Where a matter has been referred by the Public Prosecutor to the Leadership Tribunal, the person alleged to have committed misconduct in office, is suspended from duty (Section 28 of OLDRL).

Result of any proceedings in respect of a charge of misconduct in office under the Leadership Code, is not a bar to proceedings in respect of the same act under any other law and vice versa (Section 30 of OLDRL).

There have been instances where Leaders have resigned from public office after their referral by Public Prosecutor to the Leadership Tribunal to avoid prosecution by the Public Prosecutor however they can still face Criminal Court proceedings if their actions / conduct

breaches other laws of the country as required by Section 30 of OLDRL. In addition to that, the Leadership Code investigations do not have time limits so if a Leader resigns from public office then the investigation file is shelved until he / she is appointed to another public office which comes under the Leadership Code when the file is re-opened and pending matters can be pursued by the Ombudsman Commission.

The Penalties that the Leadership Tribunal can impose on a Leader found guilty of misconduct in office are;

- (a) dismissal from office or position; or
- (b) payment of a fine not exceeding K1,000-00 (Kina); or
- (c) to enter into his own recognizance in an amount not exceeding K500-00; or
- (d) be suspended, without pay from office or position for period not exceeding 3 months; or
- (e) be reprimanded; or
- (f) reduce his / her salary; or
- (g) if his or her conditions of employment allow for demotion – he be demoted (Section 27 (5) of OLDRL and Leadership Code (Alternative Penalties) Act.

Since 1976 (when the 1st leader was prosecuted for breach of the Leadership Code) to 31 August 2012 a total of 98 leaders (which included a former Prime Minister) have been referred to the Public Prosecutor for prosecution before a Leadership Tribunal. The highest number of referrals was in 2001, 2002 and 2006 with a total of 10 leaders referred at any one time. The success rate of prosecution in terms of getting a conviction has been good (about 95% success rate, the other 5% being those who were found not guilty or resigned from public office or whose terms in office expired or who failed to get re-elected to Parliament, after their referrals to the Public Prosecutor. Leaders have resorted to Judicial Review proceedings in Court arising from Ombudsman Commission's referrals to Public Prosecutor, or Leadership Tribunal's Decisions.

PUBLIC AND LEADERSHIP AWARENESS PROGRAMS BY OMBUDSMAN COMMISSION – A PROACTIVE APPROACH

As we have noted, the Leadership Code imposes stringent requirements on persons who want to hold public office and in the course of our work the Commission has found that many of our Leaders do not fully understand the requirements of the Leadership Code and have found themselves in trouble with the law because of breaches of the Leadership Code requirements.

The Ombudsman Commission has taken a proactive approach in recent years to assist and educate our Leaders (or those holding public offices or positions subject to the Leadership Code) on the requirements of the Leadership Code and the consequences of not complying with the Leadership Code so that they are better informed of the requirements of the Leadership Code and will ensure their conduct is consistent with or in compliance with the Leadership Code requirements.

Ombudsman Commission has participated in Induction Programs organised by Clerk of Parliament for new Members of Parliament after each National Parliamentary Elections where the Commission gives a briefing to the Members of Parliament on the requirements of the Leadership Code. The most recent Induction Program was held in August 2012 after the recent 2012 National Parliamentary Elections.

Leadership Training Workshops are also conducted for Local Level Government Councillors (ie the 3rd tier of Government in PNG) throughout the year in various parts of the Country where Members of the Local Level Governments are informed of the Leadership Code requirements. A one (1) day Leadership Seminar /workshop was held in late 2011 for Heads of Government Departments and CEOs of Government Agencies and the Ombudsman Commission intends to make this an Annual event.

The Ombudsman Commission also conducted a Nation-wide Good Leadership Election Awareness Program in June 2012 (prior to the 2012 National Parliamentary Elections) to inform and educate our people (including students in educational institutions) on good leadership values/ qualities captured by the Leadership Code, to assist them in making wise choices on who to vote for to represent them in Parliament. About 60% of Members in the last term of Parliament, lost their seats in the June 2012 Elections and we believe our awareness drive made an impact on our people and their choice of leaders to represent them in the current term of Parliament.

The Ombudsman Commission also has Public Education Program where awareness programs are conducted in various parts of the Country (including Schools, Universities, Colleges and other Educational Institutions) throughout the year to inform people on the work of the Commission including Leadership Code requirements. Through these awareness programs, people (including Students in Educational Institutions) are made aware of the requirements of the Leadership Code and can hold their local Members of Parliament and other Leaders accountable for their actions / decisions. They can also assist the Ombudsman Commission to enforce the Leadership Code by bringing complaints and providing information to the Ombudsman Commission. Students in Educational Institutions are made aware of these requirements because they are the future Leaders of PNG and the Ombudsman Commission believes they should be informed of these matters so that they become better leaders in the future when its their turn to hold public offices. The Commission is currently engaged in discussions with the Department of Education to look at how such information can be included in the Education Curriculum for Schools in Papua New Guinea.

IMPACT OF LEADERSHIP CODE ON LEADERS AND PARLIAMENT'S ATTEMPT TO AMEND THE CODE

We have found the Leadership Code to be an effective tool / strategy that has assisted to minimise corrupt practices and ensure accountability among our Leaders (or persons holding public offices or positions) in Papua New Guinea. Certain activities restricted or prohibited among persons holding public offices (or leaders) could become an everyday thing or everyday occurrence if not for the Leadership Code and an Ombudsman Commission to keep Leaders in check by enforcing the Code. Leaders who want to engage in those restricted or prohibited activities know they will face the full force of the law (ie face prosecution and imposition of penalty under the Leadership Code).

The Ombudsman Commission's use of its powers to issue "Directions" under the National Constitution of PNG has protected the integrity of Leaders by ensuring they do not breach the Leadership Code and has also saved millions of pubic funds which would have been misappropriated had it not been for the Commission's Directions.

In recent years we have seen an increase of leaders contacting the Ombudsman Commission to seek advice on matters related to compliance with the Leadership Code. This is an indication of their desire to want to do the right thing and ensure compliance on their part with the Leadership Code requirements and the Commission encourages such practice among the Leaders in Papua New Guinea – for them to see the Ombudsman Commission as a “friend” there to help if they have problems or issues with compliance with the Leadership Code and not as an “enemy” who is out to get them all the time.

Through the Ombudsman Commission’s public awareness programs, more people are made aware of the Leadership Code requirements and can keep check of their leaders and hold their leaders accountable for their actions. They can also assist the Ombudsman Commission to enforce the Leadership Code in terms of bringing complaints and providing information. The public (people) have become the “*eyes and ears*” of the Ombudsman Commission and they help to bring complaints and provide information to the Commission. The average number of leadership cases received per month is 16 cases whilst the average number of cases received per year for the last 4 years, is 131 cases per year. This is an increase. There are 4 main categories of leadership complaints – (1) abuse of power; (2) misappropriation of funds; (3) mismanagement; and (4) moral complaints. The people of Papua New Guinea look to the Ombudsman Commission as an anti-corruption agency which must deal with leaders (or persons holding public offices) and corrupt practices by them hence the need to make our services easily accessible to our people to enable them to bring their complaints and also enable proper / effective supervision of the Leadership Code by the Ombudsman Commission.

Leadership Code requirements are there to help our Leaders or persons holding public office to protect their integrity and the integrity of the public office they hold and to also ensure people of Papua New Guinea have good quality leaders who don’t involve or engage in corrupt activities which will divert their focus and attention from what they have been put in that public office to do which is to deliver services to the people and ensure the attainment of the National Goals and Directive Principles of our country as enshrined in the National Constitution of PNG for the betterment of our people.

However Leaders in PNG have found the Leadership Code too stringent and an added responsibility for them to comply with and many see the Ombudsman Commission as someone who is out to get them or catch them all the time rather than to help them become better leaders. Hence attempts have been made by Members of Parliament in recent times to change provisions of the Leadership Code and amend the powers of the Ombudsman Commission to make it less stringent on leaders.

The most recent attempts were in 2006 and 2009. Prior to 2006, the proceedings of the Leadership Tribunal were not subject to strict rules of evidence (except principles of natural justice). In 2006, amendments were pushed through by Parliament to amend Section 27(4) (Tribunals) of the Organic Law (OLDRL) to make Leadership Tribunal proceedings subject to strict rules of evidence similar to a Court process. This is contrary to the original intentions of the framers of the National Constitution to treat breaches of the Leadership Code as disciplinary offences rather than criminal offences (though some breaches would also constitute criminal offences and should be dealt with as such) and for Leadership Tribunal proceedings to be administrative / disciplinary procedure (Final Report of CPC, 1974, Chapter 3, para 94, page 3/12).

In 2009, amendments were proposed to both the National Constitution provisions and the Organic Law on Duties and Responsibilities of Leadership (OLDRL) under the pretext of making the Ombudsman Commission's function in relation to enforcement more effective which was not the case on closer examination of the proposed amendments. In Commission's view the proposed amendments would make its job in terms of enforcement of the Leadership Code harder or more difficult to achieve. However these amendments were stalled due to public out-cry (ie public petitions). The Ombudsman Commission found out in May 2012 on the eve of our recent 2012 National Parliamentary Elections that the amendments to the National Constitution had been passed by Parliament and gazetted as law in the Governments Gazette by the then Speaker of Parliament. The Ombudsman Commission has filed proceedings in the highest Court of the land –the Supreme Court (ie through a Supreme Court Reference) for the Supreme Court to give its opinion on the constitutionality of these amendments. This case is pending before the Supreme Court.

CONCLUSION

The rationale for having a Leadership Code as noted by the framers of the National Constitution of PNG, is to have quality leadership in PNG who are dedicated to the service of the people of PNG and will ensure the attainment of the National Goals and Directive Principles of our country as enshrined in the National Constitution of PNG for the betterment of the people of PNG rather than their self interest and material enrichments.

The Leadership Code is law and can be enforced by the Ombudsman Commission. Leaders or persons holding public office who are subject to the Leadership Code can be prosecuted for misconduct in office if they breach the Leadership Code. There are stringent requirements imposed by the Leadership Code on persons who want to hold public offices or persons holding specified public offices. No-one is forced to become a leader or to occupy public office but once a person gets appointed to occupy public office which comes under the Leadership Code, he/ she automatically comes under the Leadership Code and the scrutiny of the Ombudsman Commission and is required to comply with the requirements of the Leadership Code.

We have found the Leadership Code to be an effective tool / strategy that has assisted to minimise the involvement of leaders in corrupt practices and ensure accountability among our Leaders (or persons holding public offices or positions subject to the Leadership Code). Through the Ombudsman Commission's public awareness programs, people are made aware of the Leadership Code requirements and can hold their leaders accountable for their actions and can assist the Ombudsman Commission to enforce the Leadership Code in terms of bringing complaints and providing information. Awareness programs are also conducted among our Leaders to educate them on the requirements of the Leadership Code to help them to become better leaders in public offices.

We've had the Leadership Code since PNG's political Independence in 1975. Changes are occurring in terms of leadership and their conduct of business (official & private) which is taking them overseas, across jurisdictions giving rise to other issues which may require changes to the Leadership Code to keep up with changing times. One of the priorities of the current O'Neill / Dion Government is to review the roles and responsibilities of the Ombudsman Commission with a view to determining its core roles so that it can be better resourced.

As a Country, we are in-debted to the fore-sight of the founding fathers of our Nation to have an enforceable Leadership Code entrenched in the National Constitution of PNG at the time our Nation gained it's political Independence for it would have been difficult to establish one now.

The question many of us ask ourselves today in PNG is – what would it be like now if there was no Leadership Code and an Ombudsman Commission to enforce it.

With those few remarks, I want to once again thank the organisers of this Conference for the opportunity to share our experience with the enforcement of the Leadership Code in Papua New Guinea to minimise corrupt practices within Government and among persons holding public offices and ensure accountability by our Leaders (including Politicians and Heads of Government Agencies).

Reference List:

- (1) John Golding (1978), The Constitution of Papua New Guinea, Law Book Company, Sydney, NSW
- (2) Constitution of The Independent State of Papua New Guinea, Edited by First Legislative Counsel, July 2002,
- (3) Final Report of The Constitutional Planning Committee, 1974, Part 1, Papua New Guinea

Abbreviations

CPC – Constitutional Planning Committee
PNG - Independent State of Papua New Guinea
OCPNG – Ombudsman Commission of Papua New Guinea
OLDRL – Organic Law on Duties and Responsibilities of Leadership