

ARTICLES

The State Policy on Leadership in Papua New Guinea

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Introduction

Papua New Guinea (PNG) gained Independence on 16 September 1975. By global standards, it was a young nation when it gained Independence.¹ As an emerging State, it needed guidelines to help it to achieve a certain level of change that would bring happiness and prosperity to the people of PNG. These guidelines find their form in the National Goals and Directive Principles (NGDP). The NGDP are located in the Preamble of the *Constitution*. The success of PNG depends primarily on the kind of leadership that adheres to the values and principles enshrined in the NGDP and the *Constitution*.

The NGDP are also referred to as national goals that the people of PNG must aspire to achieve as an independent country. In their totality, they are the State Policy of PNG.² The State Policy covers various aspects of the PNG State and its operations. This paper looks at the NGDP and attempts to identify the extent to which they can assist in addressing leadership issues in PNG. As the country heads into the General Elections in 2022, the social media has been ablaze with the issue of leadership. There seems to be no let-up in criticisms of past and current leaders by aspiring politicians and dissatisfied political opponents of those in power and Government. The key thread that runs through all these leadership debates is “**corruption**”. Everyone on the anti- corruption bandwagon seems to firmly hold the view that they have some kind of magic bullet to defeat this evil called corruption.³

In this paper, I offer some advice on fixing our leadership deficiencies from the constitutional perspective. I do not intend to get into the myriad debates on corruption and leadership. In my view, Papua New Guineans can still make our country a better place to be, if we only redirect and refocus our attention to the *Constitution* and find the wisdom of our founding fathers and mothers who dreamt of a prosperous and successful country called ‘Papua New Guinea’. The answers to our localized leadership debacle are found within our constitutional framework, if only we look closer.

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¹ PNG emerged as an independent State at a time when many former colonies of the Western powers in Africa, Asia and the Pacific had or were rejecting colonialism and embracing independence.

² Ghai, Y., Law, *Politics and Government in the Pacific Island States* (Suva: Institute of Pacific Studies, University of the South Pacific, 1988) 49.

³ See the discussion on this topic in PNG in Ayius A., and May, R., *Corruption in Papua New Guinea: Towards an Understanding of the Issue (Special Publication No.47)* (Port Moresby: National Research Institute, 2007).

Leadership matters!

Leadership is a complex issue and as a topic, has attracted much attention by various sectors of the community. However, a commentator said "[L]eadership appears to be a rather sophisticated concept".⁴ Leadership can be defined in various ways and take various forms. Bernard Narokobi, one of the leading thinkers of PNG, puts it this way, "[I]n any situation, whether at school, in college or university, or in a village, different situations provide backdrop for leaders to emerge."⁵ Whatever the definition (and in whatever situation), it is generally agreed that leadership entails power.⁶ Power has two essential elements. These are motive and resources.⁷ According to Burns, the two are interrelated. As such, if motive is lacking, resources diminish. Conversely, if there are no resources, motive lies idle. This power is exercised through, what Tichy and Bennis describe as "judgement". They argue that 'judgement' is "the essence of effective leadership." This means that "making judgement calls is the essential job of a leader."⁸

What then are the qualities of leadership? There are various commentaries on the subject. For the present purpose, four different commentaries on leadership qualities are presented with the aim of identifying the common qualities of leadership.

Cronin lists seven qualities which are attributes of leadership. These are: (1) knowledge; (2) sense of priority (Vision, ability to infuse important, transcending value into an enterprise); (3) integrity (character, intellectual honesty); (4) compassion; (5) create and resolve conflict; (6) creativity and entrepreneurship; and (7) knowledge of oneself.⁹ Narokobi, on the other hand, lists 15 leadership qualities, which he argues, are essential for the modern leaders of PNG.¹⁰ These qualities are:

- Faultlessness,
- Sobriety,
- Self-control,
- Wisdom, prudence, discretion,
- Orderliness,
- Hospitality,
- Teaching,
- Integrity,
- Stepping aside,
- Delegating responsibilities,
- Having one spouse,
- Family management,
- Not loving money, and
- Maturity in the faith

⁴ Stogdill, R., *Handbook on Leadership: A Survey of Theory and Research* (London: The Free Press, 1974) 7.

⁵ Narokobi, B., *Leadership in Papua New Guinea* (Madang: DWU Press, 2005) 13.

⁶ Burns, J. M., *Leadership* (New York: Harper & Row Publishers, 1978) 9 and Etzioni, A., *The Spirit of Community: The Reinvention of the American Society* (New York: Simon & Schuster, 1993) 18.

⁷ Id, p9.

⁸ Tichy, M. N. and Bennis, G. W., *Judgement: How Winning Leaders Make Great Calls* (New York: Penguin Books, 2007) 1.

⁹ Cronin, T., "The Qualities of an Effective Leadership" (at cram.com, accessed 10/2/22). Also see Cronin, T., and Genovese, A. M., *Leadership Matters: Unleashing the Power of Paradox* (Boulder: Paradigm Publishers, 2012).

¹⁰ Narokobi, n5, *supra*, at pp19-31.

In my own Kowai culture, as in other cultures in PNG¹¹, leadership qualities also include: (1) generosity; (2) humility; (3) peace loving; (4) strength; (5) and wisdom.¹² We may also include Christian qualities of leadership given that 96% of Papua New Guineans subscribe to the Christian faith. More importantly, in 2021, the Government embarked on an agenda to declare PNG “a Christian Country” by directing the Constitutional and Law Reform Commission (CLRC) to consult the people and gauge their views on this agenda. The Final Report of the CLRC shows that the majority of Papua New Guineans supported the Government’s proposal to declare PNG a Christian Country.¹³ If PNG is declared a Christian Country, then what does the Bible say about leadership qualities. For the purposes of this paper, seven Christian qualities of leadership are presented. These qualities with their biblical references are:

1. Compassion (Mark 8: 1-3);
2. Gentle (Luke 18: 15-17);
3. Authority/power (Mark 4: 35-5: 1-43);
4. Firm/strong (Luke 19: 45-48);
5. Respectful (Luke 2: 51; Matt 22: 21);
6. Humility (Luke 19: 1-10 (5-7)); and
7. Love (John 17).

When these four different views on leadership qualities are compared, seven qualities stand out, with one identified by Narokobi and the other by Cronin. This is shown in the table below.

Table 1. The Key Qualities of Leadership¹⁴

	Narokobi	Bible (Christian)	Cronin	Kowai	Common
1	Integrity	Respectful	Integrity		Integrity
2	Wisdom (Orderliness (<i>wise</i>))	Gentle	Create and resolve conflict (<i>wisdom</i>) (Creativity and entrepreneurship (<i>orderliness/wise</i>))	Wisdom	Wisdom
3	Sobriety (<i>discipline</i>) (Self-control (<i>discipline</i>), Faultlessness (<i>discipline</i>))	Firm/strong	Knowledge of oneself (<i>self-control/discipline</i>)	Strength (<i>power/authority</i>)	Self-control/ Discipline
4	Hospitality				

¹¹ Weiner, A., *The Trobrianders of Papua New Guinea* (New York: Harcourt Brace Jovanovich College Publishers, 1987) and Arabagali, D., *Datagaliwabe Was Working in the Huli* (Port Moresby: Treid Pacific (PNG) Ltd, 1999).

¹² Kwa, E., Aikung, F., Samuel, P., Kwa, V. and Aikung, E., *Kowai Wisdom: The Wisdom of the Kowai People of Siassi Island, Morobe Province, Papua New Guinea* (Port Moresby: 110 Ltd, 2021) 62. The paramount leader of the Kowai people is called “Baimbuk”. I am proud to be the current Baimbuk of my people since 2006.

¹³ Constitutional and Law Reform Commission., *Constitutional Directive No.4: Declaring Papua New Guinea a Christian Country: Final Report* (Port Moresby: Constitutional and Law Reform Commission, 2021).

¹⁴ When I reviewed the qualities identified by Narokobi, the Bible, Cronin and the Kowais, I was able to establish nine leadership qualities which are shown in Table 1, above.

	(<i>generous/compassion</i>) (Not loving money (<i>compassion</i>))	Compassion	Compassion (<i>love</i>)	Peaceful (<i>gentle</i>)	Compassion
5	Teaching (<i>humility</i>) (Stepping aside (<i>humility</i>))	Humble		Humble	Humble
6	Delegating responsibility (<i>knowledge</i>)	Authority or Power (<i>knowledge</i>)	Knowledge		Knowledge
7	Having one spouse (<i>love</i>) (Family management (<i>love</i>))	Love		Generous (<i>love</i>)	Generous/Love
8	Maturity in faith			Maturity	
9			Sense of priority (<i>vision</i>)	Vision	

When comparing the list of leadership qualities identified by Narokobi (14); the Bible (7); Cronin (7); and the Kowai (5), four leadership qualities are identified by the Kowais, Narokobi, Cronin and the Bible. The fifth quality (humility) is identified only by Narokobi, the Bible and the Kowais. The sixth quality (knowledge) is identified only by Narokobi, the Bible and Cronin. The final two qualities are identified by Narokobi only (faith) and Cronin only (vision).

What do these leadership qualities mean? Let us consider each of these qualities briefly.

1. Integrity

According to the Oxford English Dictionary, integrity is “the quality of being honest and having strong moral principles”. In other words, a leader must be of high standing and a morally upright person.

2. Wisdom

The term according to the Oxford English Dictionary entails the quality of “having experience, knowledge and good judgement”. In simple terms, a leader must be wise in his or her decision making because of his or her knowledge and experience in life.

3. Discipline

According to Narokobi, this quality involves self-control. Controlling one’s own behaviour is based on rules and practices. A leader must restrain his or her actions within the boundaries of the law or code of conduct.¹⁵

4. Compassion

This quality involves having concern for others who are at a disadvantaged position. A leader must have sympathy for the suffering of others.

5. Humility

The Pidgin description of this term has more meaning than the English definition. In Pidgin, humility is “*daun pasin*”, meaning “always regarding oneself lower than the others.” A leader must always consider himself or herself lower than the people.

¹⁵ See the attributes of this quality in Julius Chan., *Playing the Game: Life and Politics in Papua New Guinea* (Brisbane: University of Queensland, 2016) 106.

6. Knowledge

This quality is about the acquisition of information and ideas through education or experience. A leader must have the ability to learn and acquire information to guide his or her decisions and behaviour.

7. Love

This quality involves a strong and deep feeling for others. A leader must be deeply affectionate for his or her people and others.

8. Faith in God

In the context of PNG, a leader must be God fearing. According to Narokobi, a leader must be mature in the faith because he or she is accountable to God who judges his or her actions. By fearing God, a leader is restraint from doing evil (corrupt) deeds. The fact that a leader who does evil (which is an abomination to God), will spend eternity in hell, which should deter him or her from engaging in corrupt practices.

9. Visionary

This quality involves the ability to scan the future and devise or adopt plans to achieve the desired outcomes in the future.

To be successful in life, a group, an organisation, or a country, a leader must possess these qualities. Leadership having these qualities promote progress, improvement, utilizing opportunities, and success.

Leadership and the CPC

The issue of leadership was a thorny issue in the years preceding independence. PNG gained independence at a time when many countries in the Asia, Africa and Pacific regions were starting to come to terms with their new-found roles as independent States in the global community. Some of these new States were experiencing serious political and social crises as their leaders begun to wield power and access wealth which were not available to them during the colonial era. The Constitutional Planning Committee (CPC)¹⁶ was aware of the problems of corruption, bribery, misappropriation of funds and abuse of power generally that existed both in the third world and the developed countries.¹⁷ On corruption, it noted that:

Corruption in public life is, of course, a world-wide problem which has reached very serious proportions in a substantial number of countries – developing and industrialized alike.¹⁸

The prevalence of these problems in many countries had a lot of impact on the people of PNG. The CPC's concern was expressed in its Final Report. The CPC identified the sources of the problems of corruption, bribery and the other evils of society as ***weak and poor leadership***. The importance of this issue is reflected by its position in its Final Report. The

¹⁶ The CPC was established by the House of Assembly in 1972 to carry out this task. The CPC was tasked with the responsibility of formulating a constitution for an independent Papua New Guinea. The CPC took 18 months to complete its task. It presented its final report in 1974. See Kwa, E. L., *Constitutional Law of Papua New Guinea* (Sydney: Law Book Co, 2001) and Kwa, E. L. and Wolfers, E., *The Constitution of Papua New Guinea* (Port Moresby: 110 Ltd, 2021) xv.

¹⁷ See Rynkiewicz, M. A., "Big-Man Politics: Strong Leadership in a Weak State" in Rynkiewicz, M. A. and Seib, AR (eds), *Politics in Papua New Guinea: Continuities, Changes and Challenges* (Point No.24) (Goroka: The Melanesian Institute, 2000) 17.

¹⁸ Constitutional Planning Committee., *Final Report of the Constitutional Planning Committee 1974: Part 1* (Port Moresby: Government Printer, 1974) 3/3.

whole of Chapter 2 of the Final Report is dedicated to the issue of leadership. According to the CPC:

The success of a nation, we believe, depends ultimately on its people and leaders. No amount of careful planning in governmental institutions or scientific disciplines will achieve liberation 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.¹⁹

To the CPC, the prosperity and success of the country depended very much on the leaders and the people themselves. The view taken by the CPC is quite profound as it pushed the issue of leadership back to the people of PNG. The issue of leadership was therefore a subject to be addressed collectively by these two groups – the people and the leaders themselves.

The CPC envisioned that the successful development of the country was to be based on the collaborative efforts of the people and their leaders. As the saying goes “the leader is the mirror of the voters or constituency”. To assist these two groups in this relationship, the CPC provided the NGDP. The NGDP were to act as a guide to the people and their leaders in promoting quality leadership which would consequently lead to the successful development of Papua New Guinea.

The National Goals and Directive Principles

The NGDP are not unique only to PNG. Other countries such as India, Sri Lanka, Nigeria and Uganda have also set out in their constitution similar goals and directive principles.²⁰ In formulating the NGDP, the CPC expanded upon the Eight Point Plan which was adopted by the House of Assembly in 1973.²¹ The Eight Point Plan served as the fundamental guideline for the development of PNG. The CPC said:

There are several basic principles which lie behind these aims. These have been summed up in the ideas of Equality, Self-Reliance and Rural Development. In evolving the National Goals and Directive Principles of Policy which we propose should be incorporated in the Constitution, we have taken full account of the Eight Aims. The Goals and Directive Principles we recommend are broader and more comprehensive than the Aims in that they provide for the full development of our people, whereas the Aims emphasize the economic aspects of our society.²²

The NGDP are therefore, a cleverly woven development policy reflecting the aims and aspirations of the people and leaders of PNG.²³ There are five National Goals. In numerical order, they are:

1. Integral Human Development – Liberation and Fulfilment

¹⁹ Id, p3/1.

²⁰ *Constitution of the Republic of India*, Part IV, “Directive Principles of State Policy”, *Constitution of the Republic of Nigeria*, Chapter 11, “Fundamental Objectives and Directive Principles of State Policy”, *Constitution of the Islamic Republic of Pakistan*, Chapter 2, “Principles of Policy” and the *Constitution of the Republic of Uganda*, Chapter 3, “National Objectives and Directive Principles of State policy”.

²¹ See the discussion of the implementation of the Eight Aims by Utula Samana, “The Eight Aims, Development and Decentralisation: The Morobe Experience” in King, P., Lee, W. and Warakai, V., *Papua New Guinea’s Eight Point Plan and National Goals after a Decade: From Rhetoric to Reality (Papers from the Fifteenth Waigani Seminar)* (Port Moresby, University of Papua New Guinea Press, 1985) pp.209-222.

²² CPC, n18, at p2/2.

²³ For a detailed historical background of the NGDP, see Narokobi, B., *Life and Leadership in Melanesia* (Suva: Institute of Pacific Studies, USP and UPNG, 1983) 94.

All activities of the state should be directed towards the personal liberation and fulfilment of every citizen, so that each man and woman will have the opportunity of improving himself or herself as a whole person and achieving integral human development.

2. *Equality and Participation*

All citizens should have an equal opportunity to participate in, and benefit from, the development of our country.

3. *National Sovereignty and Self-Reliance*

Papua New Guinea should be politically and economically independent and its economy should be basically self-reliant.

4. *Natural Resources and the Environment*

The natural resources and the environment of Papua New Guinea should be conserved and used for the collective benefit of the people: and should be replenished for future generations.

5. *Papua New Guinean Ways*

Development should take place primarily through the use of Papua New Guinean forms of social, political and economic organization.

These five Goals and their respective directive principles act as the signposts for the evolution of PNG as a nation State.²⁴ The NGDP "set the agenda for all aspects of government in Papua New Guinea, and represent a clear break with the colonial past."²⁵ They seek control over foreign investment, and the protection of the environment and the Papua New Guinean way of life."²⁶ The NGDP are aimed at promoting "national identity, integrity and self-respect."²⁷ Generally, it is agreed that the NGDP are to be the "guiding lamp" for the working of the government and its instrumentalities.²⁸

The National Goals and Directive Principles and Leadership

The operation of the NGDP affects every citizen in PNG. As a Papua New Guinean, every citizen must aim to be fully developed as an individual; actively participate in all activities of government; aspire to become self-reliant in the political, social and economic arenas; wisely use and manage the natural resources and the environment and promote, and encourage the Papua New Guinean ways of making decisions and implementing those decisions. By pursuing these aims through participation in relevant State structures, the citizen is actively participating in the development of the country. If this is the setting of the NGDP, how then does the issue of leadership come into the picture? The NGDP do impact on the issue of leadership in many ways. When we unpack each of the NGDP, the following attributes or principles of leadership can be identified.

Goal 1 implores a leader to be a fully developed person. The leader must be physically, emotionally and spiritually developed to contribute to the common good. The leader must be a person of integrity and humility.

²⁴ For a detailed discussion on the NGDP, see Kari, S. S., *Decolonization and the Birth of Papua New Guinea's Constitution 1959-1975 with Five National Goals and Directive Principles* (Goroka: NGDP Consultancy and Publishing Services, 2009).

²⁵ See Wolfers, P. E., *Race Relations and Colonial Rule in Papua New Guinea* (Port Moresby: UPNG Press & Bookshop, 1975).

²⁶ Brunton, B., *Constitutionality and Resource Development in Papua New Guinea* (Discussion Paper #77) (Port Moresby: National Research Institute, 1994) 3.

²⁷ *The State v. NTN Pty Ltd* [1992] PNGLR 1 at 17.

²⁸ Weisbrot, D., Paliwala, A. and Sawyer A., (ed), *Law and Social Change in Papua New Guinea* (Sydney: Butterworths, 1982) 7.

Goal 2 talks about the equality and participation of every Papua New Guinean in all aspect of development of the country. The leader must be compassionate and knowledgeable, and be cognizant and promote the equal participation of the citizens in the national affairs of the country.

Goal 3 encourages Papua New Guineans to be self-reliant by being free from all forms of influence and control by others. When a leader is free from all forms of influence and control, particularly from foreigners and even ‘wantoks’ and relatives, he will focus on delivering goods and services, fairly to the people. This goal requires a leader to be self-disciplined and strong.

Goal 4 requires leaders to exercise wisdom in the management and utilization of their natural resources. This goal requires the leaders of the country, at whatever the level, to ensure that the natural resources and the environment are used wisely for the benefit of the present and future generations.

Goal 5 declares that leaders must be knowledgeable and visionary to be able to promote and encourage the development of PNG primarily through Papua New Guinean ways.

An analysis of the NGDP reveals that they contain the nine attributes of leadership as identified above. This is clearly shown by Table 2 below.

Table 2: Leadership Qualities and NGDP

Leadership Qualities	National Goals and Directive Principles
1. Integrity	Goal 1, 2, 3, 4 & 5
2. Wisdom	Goal 1, 2, 3, 4 & 5
3. Discipline	Goal 1, 2, 3, 4 & 5
4. Compassion	Goal 1, 2, 4
5. Humility	Goal 1, 2, 3 & 4
6. Knowledge	Goal 1, 2, 3, 4 & 5
7. Love	Goal 1, 2, 3
8. Faith in God	Goal 1, 2, 4
9. Visionary	Goal 1, 2, 3, 4 & 5

Looking at Table 2, it becomes crystal clear that the NGDP do promote and encourage quality leadership which can steer PNG to prosperity and success. The NGDP encourage every Papua New Guinean to strive to become quality leaders. A citizen denied access to State institutions, services, or facilities which promote these leadership qualities, becomes disoriented, incapacitated either physically or mentally, experiences inequality, and is left behind in the process of development. The end result is that the citizen lacks any meaningful and active participation in the development of the country.

Groups of people, whether they be a race, nation, religion, tribe, local-level government, district or province, within the country, must not be denied access to any government institution or facilities which encourages and enhances their capabilities to actively and meaningfully participate in the development of the country. Any group of people that lack the government facilities that provide goods and services for their development, become powerless, frustrated and express their dissatisfaction through violent means. These outward expressions of dissatisfaction reflect the absence of quality leadership in the group.

Leadership Standards

In its effort to protect the leadership of the young nation, the CPC provided the Leadership Code (*Organic Law on the Duties and Responsibilities of Leadership*) under Section 27 of the *Constitution* to guide the leaders. The Leadership Code applies to all officials who hold leadership roles in the public service as defined under Section 26 of the *Constitution*. So, what is the purpose of the Leadership Code? The Supreme Court answered this question in *SCR No 2 of 1992; Re The Leadership Code*²⁹, where it said, “we accept the referrer’s submission that the entire thrust and the primary purpose of the Code is to preserve the people of Papua New Guinea from misconduct by its leaders”. The Supreme Court added that:

We accept also that, more specifically, the purpose of the Code is to ensure as far as possible that the leaders specified in *Constitution* s26 do not offend in the various ways prescribed by the provisions of *Constitution* s27, and that these provisions are geared towards advancing the purpose of protecting the people from the improper and corrupt conduct of their leaders and to ensure, as far as possible, that such breaches are not committed in the first place.

The framers of the *Constitution* envisioned that the Leadership Code would assist leaders avoid unacceptable or improper behavior. They therefore set a *very high standard of leadership* for the public service. So, what is that high standard of leadership? The high standard of leadership, it is suggested, consists of the nine qualities that have been identified above.

Leaders, including public service leaders, living and promoting the nine qualities of leadership, would prevent *weak and poor leadership* (identified by the CPC) from corrupting and destroying the prospects of the country becoming a strong and wealthy nation. The pre-independence leaders of PNG were concerned about the potential for abuse of the public offices by future leaders of the country by suggesting that those who breached the Leadership Code should be immediately dismissed from office.³⁰ They also suggested that the leaders who become Members of Parliament must meet the high standards stipulated by Section 103 of the *Constitution*.³¹

The framers of the *Constitution* were also aware that without an enforcement institution, the Leadership Code would be toothless in ensuring that the country was protected from corrupt leaders. They therefore recommended the creation of the Ombudsman Commission which is

²⁹ [1992] PNGLR 336. See also *Special Reference by the Attorney General pursuant to Constitution, Section 19* (2016) SC1534.

³⁰ See *SCR No 1 of 1978; Re Tribunal established under the Organic Law on the Duties and Responsibilities of Leadership S27 and Leo Robert Morgan* [1978] PNGLR 460; *In the matter of Gerard Sigulogo* [1988-89] 384; *Application by John Mua Nilkare, Review Pursuant to S155(4) of the Constitution* [1998] PNGLR 472; *Peipul v The Leadership Tribunal* (2002) SC706; *Gore v Lua* (2015) N5981.

³¹ See *Yali v Yama* (2018) N7145; *Tabar v Wong* (2018) N7121 and *Anisi v Aimo* (2013) SC1237.

established under Section 217-219 of the *Constitution* and empowered it to enforce the Leadership Code.³²

Since the inception of the Ombudsman Commission in 1975, it has been able to prosecute 96 national leaders. The first leader to be prosecuted after independence was Moses Sasakila, for corruption, in 1976.³³ The number of prosecutions and referrals after *Sasakila* are highlighted in Table 3 below (as presented by the Ombudsman Commission).³⁴

Table 3: Leaders Referred to Leadership Tribunal by Ombudsman Commission since 1975

1975-1985

No.	Name	Organisation	Matter
1.	Moses Sasakila	Minister for Culture	Set aside after being guilty and dismissed
2.	Brian Grey	General Manager - NAC	Guilty – Reprimanded
3.	Ako Toua	Electricity Commission Commissioner	Guilty – Suspended
4.	Leo Morgan	Acting Secretary - Department of Works and Supply	Guilty-Suspended
5.	James Mopio	Kairuku Hiri MP	Guilty – Dismissed
6.	Opai Kunangal	Minister for Commerce	Resigned after appointment of tribunal
7.	Pius Kerepia	Secretary - Department of Works & Supply	Guilty
8.	Iiinome Tarua	PNG High Commissioner to London	Guilty
9.	Michael Pondros	Minister for Public Utilities	Guilty – Dismissed
10.	Lennie Aparima	Minister for Public Service	Not Guilty
11.	Ezekiel Brown	Managing Director - National Provident Fund	Guilty – Fined

1986-1995

No.	Name	Organisation	Matter
12.	Julius Chan	Deputy PM & Finance Minister	Not Guilty
13.	John Kaputin	Member of Parliament	Guilty – Fined
14.	Obum Makarai	Chairman - PNG Banking Corporation	Guilty – Fined
15.	Kedea Uru	Chairman - National Broadcasting Corporation	Not Guilty
16.	Gerald Sigulogo	MP	Guilty – Dismissed
17.	Susuve Laumea	Chief of staff at Office of Prime Minister	Public Prosecutor failed to refer matter to tribunal – no further action taken
18.	Gabriel Ramoi	Member of Parliament	Resigned after appointment of tribunal
19.	Eserom Burege	Member of Parliament	Resigned after appointment of tribunal
20.	Ted Diro	Deputy Prime Minister & Forest Minister	Guilty – Resigned before dismissal effected
21.	Tom Amaiu	Member of Parliament	Resigned after appointment of tribunal
22.	Tony Ila	Member of Parliament	Guilty – Resigned before decision on penalty

³² See *Organic Law on the Ombudsman Commission*.

³³ *Independent Leadership Tribunal; Ex Parte Sasakila, The State v [1976] PNGLR 491*.

³⁴ *Post Courier*, Thursday 21st October 2021.

23.	Timothy Bonga	Member of Parliament	Resigned – Later Guilty – Dismissed
24.	Peter Garong	Member of Parliament	Resigned – Later Guilty- Dismissed
25.	Galeng Leng	Member of Parliament	Resigned – Later died in office
26.	Melchior Pep	Member of Parliament	Resigned – Later Guilty – Dismissed
27.	Phillip Laki	Member of Parliament	Guilty – Recommended for Dismissal – Resigned before dismissal effected
28.	Andrew Posai	Forest Minister	Guilty – Dismissed
29.	John Nilkare	Provincial Affairs Minister	Guilty – Dismissed – Fined
30.	Paul Pora	Civil Aviation Minister	Guilty – Fined.

1996-2005

No.	Name	Organisation	Matter
31.	Jeffery Balakau	Governor for Enga	Guilty – Dismissed.
32.	Gabriel Dusava	Secretary - Dept of Foreign Affairs	Guilty – Dismissed.
33.	Yaip Avini	Minister for Health	Lost office through criminal conviction.
34.	Joseph Onguglo	Minister for Education	Resigned after tribunal commence hearing.
35.	Albert Karo	Member of Parliament	Lost office through election.
36.	Peter Yama	Minister for Works & Transport	Lost office through election- Later Guilty – Dismissed and Fined, later reinstated as Usino Bundi MP – appeal by Public Prosecutor still pending.
37.	Amos Yamandi	Member of Parliament	Lost office in election.
38.	Jerry Singirok	PNGDF Commander	Guilty – Dismissed.
39.	Michael Gene	Secretary for Department of Justice & AG	Appointment revoked prior to appointment of tribunal.
40.	Jim Kas	Governor for Madang	Guilty – Dismissed.
41.	Peter Peipul	Deputy Leader of the Opposition	Guilty – Dismissed – Fined.
42.	Anderson Agiru	Governor for Southern Highlands	Guilty – Dismissed.
43.	John Wakon	Commissioner for Police	Appointment Revoked.
44.	Kuk Kuli	Member of Parliament	Resigned after appointment of tribunal.
45.	Benard Molok	Member of Parliament	Resigned after appointment of tribunal.
46.	Jacob Wama	Member of Parliament	Resigned after appointment of tribunal.
47.	John Kamb	Minister for Communications	Not Guilty.
48.	Bevan Tambi	Member of Parliament	Resigned after appointment of tribunal.
49.	Peti Lafanama	Governor for Eastern Highlands	Guilty – Dismissed – Fined.
50.	Peter Waieng	Member of Parliament	Resigned after appointment of tribunal.
51.	Anderson Agiru	Governor for Southern Highlands	Guilty – Dismissed.
52.	Vincent Auali	Minister for Corporatisation & Privatisation.	Resigned after appointment of tribunal.
53.	Peter Arul	MP	Resigned after appointment of tribunal.
54.	Bernard Hagoria	Member of Parliament	Guilty – Dismissed.
55.	Mao Zeming	Member of Parliament	Guilty – Dismissed.
56.	Iairo Lasaro	Member of Parliament	Lost office in election.
57.	Yauwe Riyong	Member of Parliament	Lost office in election.

58.	John Tekwie	Member of Parliament	Lost office in election.
59.	Thomas Pelika	Member of Parliament	Lost office in election.
60.	Andrew Kumbakor	Minister for Finance	Not Guilty.
61.	Michael Nali	Member of Parliament	Guilty – Fined
62.	Alfred Daniel	Electoral Commissioner	Appointment expired after tribunal.
63.	Ces Iewago	Managing Director - Public Superannuation Funds	Appointment revoked prior to tribunal.
64.	Michael Nali	Member of Parliament	Guilty – Dismissed, review upheld and redirected to hearing.
65.	Daniel Kakaraya	Managing Director - Mineral Resource	Matter referred to JLSC – Not subject to leadership Code.
66.	Mark Wani	Auditor General	Guilty – Dismissed – Judicial review successful.
67.	Raho Hitolo	Ombudsman	Tribunal disbanded due to lack of jurisdiction.
68.	Mark Sevua	National & Supreme Court Judge	Matter referred to JLSC – Not reappointed – Now deceased.
69.	Peter Ipatas	Governor of Enga	Guilty of 16 of 23 allegations- Fined K1000. For each allegation.
70.	Gallus Yumbui	Member of Parliament	Guilty of four out of six – Dismissed.
71.	Charlie Benjamin	Member of Parliament	Guilty of 19 allegations – recommended for dismissal.
72.	Gabriel Kapris	Minister for Works	Guilty of two allegations – Fined.
73.	Ano Pala Iso	Clerk of Parliament	Assumed Rigo MP in 2007 (Pending Public Prosecutors Decision).
74.	Puka Temu	Minister for Lands	Guilty of four counts – Fined.
75.	James Yali	Governor of Madang	(Disqualified)
76.	Andrew Baing	Deputy Leader of the Opposition	Deputy Opposition Leader (Guilty of three allegations)

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No.	Name	Organisation	Matter
77.	John Simon	Member of Parliament	Suspended with pay, and later cleared in February, 2020
77.	Philip Nagua	PNG Auditor General	Pending, currently not subject to leadership code
78.	Bernard Sakora	Judge of the National & Supreme Court	Matter referred to JLSC, resigned after appointment of tribunal
79.	Trevor Meauri	Acting Secretary - Department of Defence	Pending, currently not subject to leadership code
80	Simon Pentanu	Speaker - Bougainville House of Representative	Pending
81	Simon Dasiona	Member of Parliament - ABG South North Nasioi	Pending
82	Thomas Keriri	Minister for Finance & Treasury – ABG	Pending
83	Steven Suako	Member of Parliament - ABG	Pending
84	Philip Kuhena	Member of Parliament - ABG	Pending
85	Robin Wilson	Minister for Finance & Treasury -ABG	Pending
86	John Kepas	Member of Parliament -	Pending

		ABG	
87	Marc Avai	Administrator - Gulf Provincial	Pending
88	Sir Puka Temu	Minister for Bougainville Affairs	Completed. Not guilty.
89	Peter O'Neill	Member of Parliament	Pending
90	Anna Bais	Secretary - Department of Community Development	Pending
91	Mehrra Kipefa	Member of Parliament	Pending
92	Paul Unas	CEO and Managing Director of NMSA	Pending
93	Solan Mirisim	Minister for Forestry	Completed. Found guilty on one count and fined.
94	Sam Basil	Deputy Prime Minister	Completed. Not guilty.
95	Patrick Pruaitch	Member of Parliament	Completed. Not guilty.
96	Belden Namah	Member of Parliament	Completed. Not guilty.

In the first 10 years of independence, only 11 leaders were referred to the Leadership Tribunal by the Ombudsman Commission. In the second decade, 19 leaders were referred by the Ombudsman Commission to the Leadership Tribunal. In the third decade, 46 leaders were referred by the Ombudsman Commission. From 2016 to 2021, a total of 21 leaders were referred by the Ombudsman Commission. The trend is quite glaring – as the country has developed or progressed in age, more and more of our leaders have either been found to be guilty of leadership failures or accused of leadership abuses. This partly explains why there is widespread discontent about leadership at all levels throughout the country.

What we hardly hear or read about is the crisis of leadership among citizens themselves. It is suggested that poor administrative and political leadership is a mirror of the quality of leadership individual citizens possess. If the public possess poor leadership qualities, then those who govern them will also reflect the same characteristics because they have been appointed (chosen in many cases) to those positions by the people who lack the qualities to make a good judgment.

In response to the rapid increase in corruption and misconduct by the public service leaders, the Parliament amended the *Constitution* in 2014 to establish the Independent Commission Against Corruption (ICAC). The amendment to Section 220A to 220H of the *Constitution* creating ICAC, was meant to be supplemented by an Organic Law on ICAC.³⁵ The ICAC's primary role is to fight against corruption both in the public and private sectors, although the major focus of the institution is on public servants.

After five years, the Parliament finally enacted the *Organic Law on the Independent Commission Against Corruption* (OLICAC) in November 2020.³⁶ The passage of the OLICAC now paves the way for the establishment of ICAC. It is envisioned that when the ICAC is fully operational, it will assist the Ombudsman Commission to effectively fight corruption in the country.

The increase in the number of prosecutions and referrals of public service leaders by the Ombudsman Commission and the recent establishment of the ICAC clearly suggest that many of our leaders lack many of the nine leadership qualities of a good leader. The rampant

³⁵ *Constitutional (Amendment No. 40) (Independent Commission Against Corruption) Law 2014.*

³⁶ See, Hon. Davis Steven, "Parliamentary Speech on the Organic Law on the Independent Commission Against Corruption," (2020) 2(1) *Attorney General's Law Journal* 61.

law and order problems, the high incidences of violence and death, and corruption at all levels of society, is a clear testimony of this fact. Papua New Guineans are crying out for quality leaders because they see all around them misery and pain. This attitude is misconceived because quality leadership starts with the citizen himself or herself. As educationists proudly declare "education starts at home not at school". The same is true for leadership. Leadership qualities are ingrained in individual homes, villages, schools and towns. These qualities are then exposed on a larger and wider scale at the local, provincial and national levels where power and authority are exercised more openly and readily.

It is suggested that most of the impediments to attaining quality leadership are caused by those who wield power and authority. The majority of the people lack adequate health, education and other social facilities and are denied access to the government and its instrumentalities, because their leaders have been denied the necessary resources to assist them. Applying the power test by Burns, it is apparent that the PNG leadership lacks motivation and therefore, is not able to adequately manage and apply the resources to enhance the livelihood of the grassroots people.

The reality of the situation is that power is being abused by those who have been entrusted with the responsibility of exercising them for the common good. Past and present leadership of the country have lost the CPC visions and have gone astray. Generally, the country's leadership has become greedy and selfish and unashamedly use State institutions openly to satisfy their greed through *corrupt* activities. It is no wonder the call is growing stronger for leadership of integrity.

Conclusion

The CPC, in its wisdom, intricately weaved the NGDP so that they address almost all the issues relating to Leadership, the State and its instrumentalities, and its people. The CPC was aware of the problems of leadership that arose at that time and those which would arise in the future. It therefore enshrined the nine qualities of good and honest leadership in the *Constitution*. To counter the problem of *weak and poor leadership*, the framers of the *Constitution* proposed that the people who will lead this country must possess the following leadership qualities to be strong and diligent in their roles and duties in the service to the country and its people:

1. Integrity,
2. Wise,
3. Self-Disciplined,
4. Compassionate,
5. Humble,
6. Knowledgeable,
7. Loving,
8. Faith in God, and
9. Visionary.

These qualities must be pursued by individuals and groups of people alike. Every citizen has a responsibility of attaining these qualities of leadership. Old and young people alike must strive towards these qualities of leadership. In the process, the citizens become active partners with the State and its institutions in the development of the country.

The leadership in PNG is in a crisis because both the leaders and the people have not adhered to the proverbs the CPC enshrined in the *Constitution*. There is obviously a need for renewal and reorientation of our views about leadership in PNG. If the people want to change their leadership, they too must be prepared to change. For PNG and its people to experience a fundamental change that will lead to success and prosperity, they must refocus on the State Policy on Leadership and meaningfully aim to implement the values inherent in them.

The CPC was mindful of the difficulty of implementing the NGDP:

We are well aware that it is one thing to establish inspiring goals for the nation, and sound principles to guide the government and our people in seeking to achieve these goals, yet quite another for effective steps to be taken which are directed towards achieving these goals (CPC 1974: 2/15).

However, the CPC was confident that this State Policy was achievable. The CPC envisioned that PNG could succeed in attaining these Goals through a:

Fundamental re-orientation of our attitudes and the institutions of government, commerce, education and religion towards Papua New Guinea forms of participation, consultation, and consensus, and a continuous renewal of the responsiveness of these institutions to the needs and attitudes of the People.³⁷

The CPC therefore, recommended that:

To the extent that this is practicable, we have tried, in our recommendations, to facilitate the implementation of the Directive Principles in this Chapter, which, in turn, are aimed at promoting the achievement of the National Goals. Thus, our recommendation that all activities of the State and its institutions should be based on the Directive Principles and directed towards achieving the National Goals is designed to help to reorient the thinking and attitudes of everyone who is a member of an elected body or who works in a government department or authority, and to redirect the policies of those bodies towards the goal (ibid).

If PNG is to succeed as a country, the people and their leaders need to heed the wisdom of the CPC. Papua New Guineans have gone astray of the State Policy on Leadership. The *Constitution* calls for a collaborative effort by all governmental bodies and the people in implementing the State Policy on Leadership embedded in the NGDP.

The leadership issue is every citizen's business. There is no time to point fingers at each other. The wisdom of our founding fathers and mothers is that every Papua New Guinean must actively participate in making bold decisions which are visionary and which will produce results for the common good. Partnership through leadership builds society. Divisions based on individualism tears apart society. The country has seen the rampant rise of "self" which is manifested in greed and selfishness or corruption. The time for change is now, not tomorrow. Papua New Guineans have to re-examine themselves with a view to changing their attitudes and views of this country to ensure everyone makes Papua New Guinea the best place on planet earth.

³⁷ Weisbrot, n28, p27.

Methamphetamine a dangerous drug under the *Dangerous Drugs Act*

Nichodemus Mosoro*

Introduction

In 2021, the Royal Papua New Guinea Constabulary (police) investigated and prosecuted for the first time a methamphetamine case in Papua New Guinea (PNG) which was styled, *State v Jamie David Pang* (DC:NO:1846-1847/2021) (*Pang case*).¹ This was a reflection of exceptional police work, but it was not without its challenges.² The main challenges were the existence of appropriate offences to which charges could be laid, and the required advocacy skills to navigate a complex legal issue.

Being uncertain as to the charges, the National Narcotics Bureau (Bureau) was requested under the *National Narcotics Control Board Act* 1992 to provide advice. The Bureau acted independently and offered advice to police on the applicable offence provisions provided under the *Dangerous Drug Act* 1952.³

In the *Pang case*, the preliminary issue was whether methamphetamine was listed as a dangerous drug under the *Dangerous Drug Act*. This gave an opportunity to the District Court to contribute jurisprudence on matters involving a pre-independence legislation adopted under the *Constitution*. It was also a case that tested the District Court's jurisdiction, judicial temperament and capability. It also pointed significantly to the limited capacity of the police to assist the court on pertinent constitutional and legislative issues. The need for police to upskill their research and advocacy skills was evident, as well as for lawyers to supervise or assist the District Court.

This paper is a reflection on the District Courts judgement in the *Pang case*, particularly in relation to how the Magistrate could have been better assisted. As will be discussed, relevant discourse on applicable laws and the legislative process were not taken into account resulting in a virtual misapprehension of the law.

* Mr. Nichodemus Mosoro was the Acting Director-General of the National Narcotics Bureau from 2018 to 2022. The discussions in this article are from actual criminal investigations to which the National Narcotics Bureau provided assistance to the Police. The extracts from those investigations and legal advices have been reproduced in this article with the permission of relevant authorities.

¹ Zarriga, M. (21 November 2021). Hotel-turned drug lab. *The National*. Retrieved from <https://www.thenational.com.pg/hotel-turned-drug-lab/>. See also EMTV. (17 November 2021). *Pang Detained* [Video file]. Retrieved from <https://emtv.com.pg/pang-detained/> , See also ABC News. (24 November 2021). *Australian Jamie Pang caught up in drug bust, after alleged meth lab, illegal firearms discovered in his hotel* [Video file]. Retrieved from <https://www.google.com/amp/s/amp.abc.net.au/article/100643446>

² According to report however, methamphetamine had been discovered in the possession of individuals before the K90m drug bust in POM, 12 October 2021, *Post Courier*. Retrieved from <https://postcourier.com.pg/k90m-drug-bust-in-pom>.

³ Chapter 228 of the Revised Laws of Papua New Guinea.

Methamphetamine Offences

On 16th November 2021, a search of the Sanctuary Hotel in Port Moresby, National Capital District, by police with a search warrant discovered a clandestine laboratory allegedly used for the manufacture of methamphetamine.⁴ In conducting the search, high powered firearms and ammunition were seized as well as equipment resembling a make shift laboratory. The production of methamphetamine was plausible when a white powder-like substance was obtained. There was also heavy presence of hazardous chemicals.⁵

The basic precursors used in the manufacture of methamphetamine are ephedrine, pseudoephedrine and 1-phenyl-2-propane (P-2-P).⁶ These are found in decongestions such as cough syrups while the latter is used legitimately in the manufacture of medical amphetamines. These plus other chemicals such as hydrochloric acid, anhydrous ammonia, phenylpropanolamine, red phosphorus, iodine and hypo phosphorous acid are used interchangeably to make methamphetamines in various quantities and quality.⁷ Some of those chemicals were located in the room by which the clandestine laboratory was discovered. These chemicals can be readily accessed in pharmacies, hardware or industrial outlets, and some would require a license or prescription whilst others easily purchased off the shelves or illegally sourced.

Standard police forensic analysis would later reveal that the white powder like substance was methamphetamine. According to the United Nations Office on Drugs and Crime (UNODC), methamphetamine is described as ‘part of the group of drugs called amphetamine-type stimulants (ATS). It is a synthetic drug that is usually manufactured in illegal laboratories. Methamphetamine comes as a powder, tablet or as crystals that look like shards of glass. It can be swallowed, sniffed or snorted, smoked or injected’.⁸ It is a highly addictive stimulant that poses serious health risks to the person consuming it,⁹ and has been reported to fuel anti-social behavior and perpetuate organized crime.¹⁰

The manufacture of methamphetamine would require independent verification that the equipment seized were in fact used for the alleged chemical process. The court would be interested in whether there were traces of methamphetamine on the equipment, finger prints, and presence of precursor chemicals.

⁴ Zarriga, M., n1 supra.

⁵ Yamasombi, D., personal communication, 17 November, 2021.

⁶ International Narcotics Control Board (2019). *Precursors and chemicals frequently used in the illicit manufacture of narcotic drugs and psychotropic substances*. Retrieved from https://www.incb.org/documents/Publications/AnnualReports/AR2019/Precursors_Report/English_ebook_PRE2019.pdf

⁷ United Nations International Narcotics Control Board. (2017). *Extent of licit trade in precursors and the latest trends in precursor trafficking*. Retrieved from https://www.incb.org/documents/PRECURSORS/TECHNICAL_REPORTS/2017/Report_breakdown/English/7a_Extent_of_licit_trade_in_precursors_2017.pdf and United Nations Office On Drugs & Crime. (2014). *Precursor Trends And Manufacturing Methods*. Retrieved from https://www.unodc.org/documents/southeastasiaandpacific/2014/05/gsda/clean/2014_Global_Synthetic_Drugs_Assessment_CH9.pdf

⁸ United Nations Office On Drugs And Crime (2022). *Methamphetamine*. Retrieved from <https://www.unodc.org/drugs/en/get-the-facts/methamphetamine.html>

⁹ American Addiction Centre. (2022). *Meth Relapse*. Retrieved from <https://drugabuse.com/drugs/methamphetamine/relapse/>

¹⁰ Sousa-Santos, J. “Drug trafficking in the Pacific Islands: The impact of transnational crime.” (2022). *Lowy Institute Analysis*, 5-11.

The accused, Mr. Jamie David Pang was then arrested for possessing the marketable quantity of methamphetamine in his room at the Sanctuary Hotel. After arresting Mr. Pang, police referred to the *Dangerous Drugs Act*, but had difficulty framing the charges. This was because the offence provisions in relation to possession and manufacturing of a dangerous drug applied only to dangerous drugs that were prescribed in that Act. There had to be a list that prescribed the type of dangerous drugs, and it should include methamphetamine if the charges were to be substantiated.

Under Section 1(a) of the *Dangerous Drugs Act*, “dangerous drugs” means a substance specified in the Schedule. The offences include making or possessing a ‘dangerous drug’ and is provided under Section 3(1) of that Act. It states:

A person who-

- (a) cultivates a plant from which a dangerous drug can be made; or
 - (b) **makes** (emphasis added) a dangerous drug; or
 - (c) exports a dangerous drug; or
 - (d) is in **possession** (emphasis added) of or conveys a dangerous drug or a plant or part of a plant from which a dangerous drug can be made,
- is guilty of an offence unless he is authorized to do so by or under some other Act.

Penalty: Imprisonment of a term of not less than three months and exceeding two years.

Mr. Pang’s lawyer after reading a copy of the *Dangerous Drugs Act* from the Pacific Islands Legal Information Institute or *PacLII*, realized that methamphetamine was not listed as a dangerous drug. He then brought this to the attention of the police and stated that his client could not be charged under Section 3 of the Act. Counsel also indicated to make a no case submission if the matter proceeded.

The Bureau when consulted, advised the police that legislation accessed from *PacLII* must be confirmed with official copies of the legislation. From experience, a number of legislation accessed on *PacLII* were not updated. This has been the observation from the bench as well.¹¹ Even so, the *PacLII* website has a disclaimer stating that legislation accessed on the website must be verified with official copies from the country concerned. In PNG, official copies of legislation and other legal materials are maintained by the Department of Justice & Attorney-General (DJAG) Library, the First Legislative Counsel and the National Court Library.

In conducting further research, at the Bureau confirmed that the version of the Act on *PacLII* did not have methamphetamine listed in the Schedule. However, when consulting the official copy of the Act at the DJAG Library, the Bureau discovered a subsidiary legislation to the *Dangerous Drugs Act* which listed methamphetamine. This subsidiary legislation came into force under a Gazettal Notice issued from the pre-independence legislation – *Dangerous Drugs Act*. Armed with this information, the Bureau, in a letter dated 30th November 2021, provided preliminary advice to the police to charge Mr. Pang given that ‘methamphetamine’ was listed in the subsidiary legislation.¹²

¹¹ As a practicable illustration of *PacLII*’s operability and reliability, see the observations by Justice Cannings in the case of *Gawi v Public Service Commission* (2014) N5473 where his honor who could not be assisted by counsel, could not find a copy of the *Public Service General Orders* on *PacLII* and opted to access the Department of Personnel Management’s website, which had an official copy. Also note that *PacLII* has a disclaimer notice on the accuracy of the legislation and other legal materials provided.

¹² The relevant law offices that were requested to confirm the advice supplied by the Bureau were the Public Prosecutor, State Solicitor and the First Legislative Counsel. The position of the Bureau was later

The Bureau had the necessary standing to provide such advice under Section 13(1)(c) of the *National Narcotics Control Board Act* and other enabling provisions to government agencies and other organisations that required advice from it. Generally, these provisions authorize the Bureau to maintain records of precursor chemicals or dangerous drugs for policy, law reform, education and awareness purposes as well as the United Nations Convention on Narcotic Drugs 1961 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988. This advice may be shared with other government agencies including law enforcement agencies upon request. This is a function also performed by the Pharmacy Board (established under the *Medicines and Cosmetics Act* 1999), in relation to United Nations International Narcotics Control Board reporting requirements.

An analysis of Pre-Independence Legislation and Methamphetamine

The Bureau's preliminary research revealed that "methamphetamine" was declared as a 'dangerous drug' by the *Papua New Guinea Gazette No.4* dated 20th January 1972 under the *Dangerous Drugs Ordinance* 1952-68. The Bureau took the view that according to Schedule 2.6 of the *Constitution*, the *Dangerous Drugs Ordinance* was also 'adopted' in 1975 as an Act of the Parliament of PNG. The Bureau's position was based on the fact that Schedule 2.6(1)(d) defines 'pre-independence laws' to include "subordinate legislative enactments under any such laws that were in force in the country immediately before the repeal, or immediately before Independence Day, as the case may be." Also pursuant to Schedule 2.6(2), the *Dangerous Drugs Ordinance* as a 'pre-independence law' was adopted as an Act of Parliament "immediately after Independence Day". As a matter of due process, this means that the gazettal notice of the declaration which included 'methamphetamine' continued to be in force in PNG from Independence Day under the *Dangerous Drugs Act*.

Moreover, the *Constitution* intended to preserve the application of pre-independence legislation by making necessary adjustments to suit the PNG context. Schedule 2.7(1) of the *Constitution* provides that "a law adopted by Schedule 2.6 (adoption of pre-independence laws) takes effect subject to such changes as to names, titles, offices, persons and institutions, and to such other formal and non-substantive changes, as are necessary to adapt it to the circumstances of the country and the Constitutional Laws." This was to effectively facilitate the transition of pre-independence laws into the PNG legal system immediately on Independence Day. There were no material adjustments to the *Dangerous Drugs Ordinance* since its adoption as the *Dangerous Drugs Act*.

The Bureau also referred the police to relevant provisions of the *Interpretation Act* that reinforced its view that the use of 'adopted subordinate enactments' which also included 'subsidiary legislation' was valid. These provisions include:

1. The *Dangerous Drugs Ordinance 1952-1968* could be cited in formal correspondences as 'adopted' legislation. This would not derogate in any way the substantive nature of Section 61 and Section 93B & C of the *Interpretation Act*.
2. It was important to also note that Section 2 of the *Interpretation Act* applied to adopted laws.

confirmed by the Attorney-General, the Public Prosecutor and the State Solicitor. This advice was also shared with the PNG Customs Service who were also pursuing a charge against Mr. Pang under the *Customs Act*.

3. The definitions of “adopted Act”, “adopted law”, “adopted subordinate enactment”, and “pre-independence law” were defined by the *Interpretation Act*.
4. Section 1 of the *Interpretation Act* defines “subordinate enactment” as an “instrument (whether of a legislative nature or not) made under an Act”. The subsidiary legislation falls within the meaning of ‘subordinate enactment’ or ‘subordinate legislation’.
5. Section 4(e)(iii) of the *Interpretation Act*, provides that the issue of a “Government Gazette or a Gazette of any date”...being a date not earlier than 1 July 1971 and later than 15th September 1975, shall be read as a reference to an issue of the Papua New Guinea Government Gazette of that date. This provisions clearly captures the pre-independence Gazette which was the subject of the police charge on methamphetamine.
6. Section 79 of the *Interpretation Act* states that ‘the act or thing to be done is deemed to be made under the instrument itself’. This provision clearly protects the declaration made in the Gazettal Notice in 1972.
7. Section 89(2) and in particular Section 89(4) of the *Interpretation Act* provide that any discrepancy between an instrument and a gazette itself shall not invalidate ‘the act, matter or thing’ being done in reliance of the gazettal.¹³

The Bureau’s support provided helpful insight into the legislative process concerning the pre-independence legislation, but in hindsight, it was limited if the court asked for further clarification from the police on how the pre-independence legislation came to be part of PNG’s legal system. So, despite the existence of the pre-independence legislation and gazettal notice explicitly making reference to methamphetamine, and the law being valid under the *Constitution*, there had to be further information of evidentiary value. There was therefore an obvious disconnection in the narrative.

The Bureau then turned to the State Solicitor for further legal analysis of the legislative process. The legal advice was unfortunately received after the conclusion of the *Pang case*. An abstract of that legal advice dated 01st April 2022 is set out below:

- a. Definition of dangerous drugs under the *Dangerous Drugs Ordinance* (“Ordinance”) passed by the pre-independence Administration in 1952 states that for a substance to be a dangerous drug:
 - (i) it must be listed in Schedule 1; or
 - (ii) it must be declared under s. 2 of the Act and published in the National Gazette;
- b. Schedule 1 of the Act did not contain Methamphetamine, so in 1972 there was a declaration made pursuant to s. 2 of the *Ordinance* and it was published in the National Gazette No.4 dated 20th January 1972. In this declaration, methamphetamine was listed. Hence, for purposes of the *Ordinance* it was a dangerous drug;
- c. The *Ordinance* was repealed by s.3 of the *Laws Repeal Act 1975* and subsequently brought back into operation by Schedule 2.6 of the *Constitution* as *Dangerous Drugs Act* Ch.288;
- d. The vacuum left by the repealed Acts was immediately filled by Sch.2.6 of the *Constitution*. By operation of subsection (2) of Schedule 2.6, all pre-Independence laws including subordinate legislative enactments are, by virtue of that section, adopted as Acts of the Parliament and apply to the extent to which they applied immediately or purported to apply before Independence Day. The Schedule itself sets out the definition of the term pre-

¹³ As an observation, the *Interpretation Act* is a useful piece of legislation when it comes to interpreting legislation, or when there is uncertainty arising from amendments or repeal of legislation amidst pending court proceedings.

- Independence laws namely, ‘a law that was repealed by the *Laws Repeal Act 1975* made by the pre-Independence House of Assembly of Papua New Guinea’; and
- e. This means that the *Dangerous Drugs Act* Ch.228 and its list of dangerous substances under Schedule 1 or under the declaration, continued to apply as subordinate legislative enactment under the *Dangerous Drugs Act* to the extent to which they applied immediately before Independence Day.
 5.[M]ethamphetamine is listed in the declaration made pursuant to s.5 of the Ordinance. This provision was adopted in s.2 of the *Dangerous Drugs Act* Ch.228. Hence, by operation of Schedule 2.6(2) of the *Constitution*, the Act and its subordinate legislative enactments remain effective.”

This legal advice made it much clearer, and could have served the foundation for a stronger argument by police had it been a part of the submissions at the District Court.¹⁴

Private Members Bill to amend the Dangerous Drugs Act

In an effort to address the offences and especially the penalties in relation to dangerous drugs, a Private Member’s Bill was introduced in Parliament in September 2021. That Bill resulted in a repeal of Section 3 of the *Dangerous Drugs Act* and increased the penalty from two years to 40 years imprisonment. At the outset, that demonstrated political will and the concern in addressing the rise in hard drugs being manufactured or coming into PNG.¹⁵ However, as to the operability of this legislation, it would need to be tested by criminal practitioners who might have a concern regarding the policy rationale for the offences as well as its compatibility with sentencing guidelines (i.e., a penalty must be proportionate to the offence being committed).

The problem with the penalty from the amendment is that it does not give any room for the court to decide on varying quantities of type of drugs, toxicity, cultivation, manufacturing or possession. This would mean that a person who is found guilty of cultivating three plants of marijuana or in possession of 2 grams of cocaine is liable to pay K1 million or be imprisoned for 40 years, similar to a person found guilty with significantly larger quantities. The sentencing guidelines adopted by PNG’s criminal justice system would not be able to gel well with these legislative provisions. The constitutionality of the said provision can be tested against Section 11(2) of the *Criminal Code* and Section 37(7) of the *Constitution*. This can be the subject of further debate later.

The Private Member’s Bill was developed without any legal policy process or consultations with relevant stakeholders, therefore, the effect on ongoing investigations and criminal prosecutions was not taken into account. This created much apprehension by the police on whether the accused could still be charged under Section 3 of the Act.

¹⁴ After the judgment in the Pang case was handed down and in preparation for a potential review, the Bureau formally instructed the State Solicitor for independent advice. The said advice was provided without the District Court judgment, and therefore added objectivity to the subsequent debate. As mentioned above, the State Solicitor’s advice was that the subsidiary legislation was valid.

¹⁵ In 2020, PNG experienced the biggest drug bust. K160 million worth of cocaine was seized at Papa Lea Lea. The Bureau was responsible for providing legal and strategic advice to police and stakeholders on evidentiary gathering especially under a mutual assistance request to Australia with the assistance of the Legal Policy & Governance Branch of the DJAG. See Zarriga, M. (August 2020). “Drug bust”. *The National*. Retrieved from <https://www.thenational.com.pg/drug-bust/>

In terms of using the provisions of the *Dangerous Drugs Act* that have been repealed, Section 67 of the *Interpretation Act* applies. This provision states that criminal or civil matters on foot will not be affected by the amendments or repeal of such provisions and can continue. Section 65 of the *Interpretation Act* also preserves the application of the existing provisions of the *Dangerous Drugs Act* pending the bringing into operation of the new law.

The Bureau advised the police that under Section 67 of the *Interpretation Act*, the charges had been laid prior to the repeal and therefore could be sustained. This was adequately supported by Sections 63(1)(b), (c), (d) and (e) of the *Interpretation Act* with respect to “Effect of repeal” which states:

- (1) The repeal of a provision does not-
 - (a) ...
 - (b) affect the previous operation of the repealed provision, or anything duly done or suffered under the repealed provision; or
 - (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the repealed provision; or
 - (d) affect any penalty, forfeiture, or punishment incurred in respect of an offence committed against the repealed provision; or
 - (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty forfeiture or punishment, and any such investigation, legal proceeding, or remedy may be instituted, continued or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repeal had not been made.

A case on point is *State v Jerry Kiwai* (2014) N5640. In that case, the court held that Section 63 of the *Interpretation Act* means that ongoing criminal proceedings initiated under a repealed offence provision can continue unaffected, provided that the offence was committed when the provision concerned was still in force. The court observed that:

In my view, therefore, the charges on indictment against the accused under the repealed provision is valid in that the provisions of section 169 of the Act, under which the accused stands charged, is saved pursuant to sections 63(1)(b), (c), (d) and (e) and 67 of the *Interpretation Act*. I will now proceed with the judgment on verdict.¹⁶

The Bureau also referred the police to Section 37(7) of the *Constitution*, as the underlying constitutional provision in such matters. This constitutional provision, usually pleaded by the defense, stipulates that:

No person shall be convicted of an offence on account of any act that did not, at the time when it took place, constitute an offence, and no penalty shall be imposed for an offence that is more severe in degree or description than the maximum penalty that might have been imposed for the offence at the time when it was committed.

This means that a person should be charged only for an act or omission if the subject of the charge is an offence under law. In the *Pang case*, Section 37(7) of the *Constitution* was complied with in that Section 3 of the *Dangerous Drug Act* was still in force. Another legislative provision relevant to the case was Section 11 of the *Criminal Code* which states that:

- (1) A person cannot be punished for doing or omitting to do an act unless—

¹⁶ Also note the case of *State v Kutetoa* (2005) N2814 and the case of *State v Kape Sulu* (2003) N2456. There are a number of useful principles stated by the court in relation to the application of those provisions mentioned.

- (a) the act or omission constituted an offence under the law in force when it occurred;
and
 - (b) doing or omitting to do the act under the same circumstances would constitute an offence under the law in force at the time when he is charged with the offence.
- (2) If the law in force when the act or omission occurred differs from that in force at the time of the conviction, the offender cannot be punished to any greater extent than was authorised by the former law, or to any greater extent than is authorised by the latter law.

Based on the existing legal framework, the accused was arrested on the 16th November 2021 and charged for possessing a certain quantity of methamphetamine. At the material time, the possession of methamphetamine, was an offence under Section 3(1)(d) of the *Dangerous Drugs Act*. The repeal of Section 3 of the *Dangerous Drugs Act* which came into effect on 13th January 2022 did not affect the status of the offence and charge.

At the time of his arrest, Mr. Pang was found in possession of materials that are used to manufacture methamphetamine. Based on circumstantial evidence, the manufacture of the said drug did occur on or before the 16th November 2021. Mr. Pang was therefore liable to be charged under Section 3(1)(b) of the *Dangerous Drugs Act* for manufacturing methamphetamine. The accused was consequently charged on the 07th December 2021 for the production and possession of methamphetamine. This was clearly before the 13th of January 2022, the date by which the repeal came into force.

On the same occasion, the NEC also approved the *Controlled Substance Bill 2021* to be tabled in Parliament. The *Controlled Substance Bill* also had a provision to repeal Section 3 of the *Dangerous Drugs Act*. The *Controlled Substance Act* was also passed unanimously by Parliament in December 2021.

The Judgment in State v Jamie David Pang

It should be noted that in the *Pang case*, a number of relevant information and documents were not tendered by the police as evidence, or through their submissions especially in relation to the application of the pre-independence law. These included: (1) the official copy of the *Dangerous Drugs Act* bearing the subsidiary legislation and the gazettal notice; (2) the legislative process in adopting pre-independence laws, or any applicable cases (that may include in affidavits from those responsible for the legislative process); (3) the legal advice from the State Solicitor which pointed out the application of the *Laws Repeal Act 1975* (which was obtained post-judgement); and (4) the Bureau's legal advice on the *Interpretation Act*.

The Magistrate in the *Pang case* had the benefit of knowing that there existed a subordinate legislation which mentioned methamphetamine. A judicial officer having gone through legal training and in that position could have been able to deduce that the matter is of significance to the legal system and warrants deliberate judgement. However, a differing view was immediately held. The ruling was that the subsidiary legislation that contained a list of drugs which included methamphetamine was invalid. His Worship could not appreciate how the subsidiary legislation came to apply under the *Dangerous Drug Act*. The concern was that there was no 'head of power' or enabling provision expressly provided in the *Dangerous Drugs Act* to make or support the existence of the subsidiary legislation. The required assistance in terms of explaining the gazettal notices or providing evidence of the legislative process was not provided.

His Worship also ruled that even the Deputy Administrator responsible for making the declarations in the said gazettal did not have the authority to make those declarations in the first place, as Section 5 of the *Dangerous Drugs Ordinance* expressly stated that any declaration was to be made by the Administrator. There was a case being referred to by his Worship regarding a contract of employment namely *Wilson Thompson v National Capital District Commission* (2004) N2686. In that case, his Honor Justice Kandakasi (as he then was) ruled the contract of employment to be invalid given that the individuals who executed it did not have the authority to do so. Whilst that point is clear, the issue here is whether the Deputy Administrator had the authority to make those declarations in the first place. Apparently, the Magistrate's consideration was only limited to what the law had expressly stated without regard to any further information that could have supported the Deputy Administrator's exercise of that power. This may have required evidence of a provision that delegated such a role or an instrument of delegation. This was not in evidence. This point of law was material to the substantive proceedings, and provided an opportunity for further deliberation.

A key evidentiary document that would have had a persuasive value was the official copy of the PNG legislation. This included a compilation of the legislation's historical developments from original enactment, gazettal, repeal or amendments. This compilation could be as thick as a text book.¹⁷ According to the DJAG's Chief Librarian, such documents are bound up nicely in a thick green cover which can be easily removed to include further documents, insert amendments or repeal to the legislation by pasting or crossing out provisions or wordings with immediate references.

The official legislation was borrowed from the DJAG Law Library and given to the police with verbal advice as to how to present it to the Magistrate. Official copies of other legislation from the same period with their historical information as compiled were also provided to the police so as to demonstrate to the court the consistency and professionalism involved in maintaining official copies of PNG's legislation. Unfortunately, according to the Magistrate, this did not happen. He said:

I must first establish and acquaint myself the process involved on the transitional period from post-independence to pre-independence with laws on the face of, what is before the court, considering the fact that both parties did not guide me properly on this.

His Worship further observed that:

[i]n the absence of any gazettal notice or ministerial approval or certification to enact as subsidiary legislation, it creates doubts in the minds of the court. It was for this reason; the prosecution was asked to produce the books that she got the extracts from and to deliberate further on it, but advised court that, the books are too old and heavy to carry them.

In hindsight, case law in relation to similar circumstances, involving the application of Schedule 2.6 of the *Constitution*, the *Interpretation Act* and the *Laws Repeal Act 1975* could have helped. A case that could have potentially been referred to was *Capek v The Yacht 'Freja'* [1980] PNGLR 161. In this case, the court held that the *Colonial Courts of Admiralty Act 1980* applied to PNG immediately before Independence under 'adoption, application and continuation' under the 'combined effect' of the *Laws Repeal Act 1975*, the *Papua New Guinea Independence Act 1975* and the *Constitution*, Schedule 2.6(2).

¹⁷ Mr Raphael Luman from the Office of Public Prosecutor, personal communication (25 November, 2021).

A case that also affirmed the State Solicitor's advice (which did not refer to any case law) was *SCR No 1 of 1976 (P); Peter v South Pacific Brewery Ltd* [1976] PNGLR 537. This was an application by the District Court under Section 18 of the *Constitution* regarding the validity of Section 131 of the *District Courts Act* 1963. The issue was whether Section 131 was unconstitutional and therefore invalid to the extent that it allowed the District Court to proceed *ex-parte* to hear and determine the case in the absence of the defendant. The Supreme Court was asked to clarify whether Section 131 undermined Section 37(5) of the *Constitution* which provides for the *ex-parte* jurisdiction to hear all other summary offences. The other consequential issue that was brought up was the validity of the *District Courts Act* 1963 as a 'pre-independence legislation'. In relation to the issue in the *Pang case*, the court said:

it is important to note the legal arrangements which were made to ensure that all laws in the country must stem from its autochthonous or homegrown *Constitution*. (*Constitution*, s. 24, Report of the Constitutional Planning Committee, Chapter 15, par.14). The first step was the enactment by the pre-Independence House of Assembly of the *Laws Repeal Act* 1975 which came into operation immediately prior to the expiry of Independence Day, 15th September, 1975. The purpose of that Act, which was achieved by one simple section and without reference to particular enactments, was the repeal in bulk, as it were, of all the legislation and subordinate legislation of Papua New Guinea, and any other country applying to Papua New Guinea immediately before the commencement of the Act. It was then by force of s.20(3) and Sch.2.6 of the *Constitution*, which came into effect on 16th September, 1975, that all pre-independence laws, which means for the purposes of this case all laws repealed by the *Laws Repeal Act* 1975, were adopted as Acts of the Parliament, and were brought into application to the extent to which they applied immediately before Independence Day. Just as the repeal was of the legislation in its entirety, so also was the adoption of that legislation under the *Constitution* and, of course, the *District Courts Act* was included in that adoption. Further, as the provision contained in Sch.2.6 is expressly made subject to any Constitutional law, it is clear that the adopted laws are subject to the same constitutional limitations as an Act of Parliament, and in particular, for the purposes of this case, ss 10 and 11. Section 11 provides that the *Constitution* and the Organic Laws are the Supreme Law of Papua New Guinea and, subject to s.10 all Acts (whether legislative, executive or judicial) that are inconsistent with them are, to the extent of the inconsistency, invalid and ineffective.¹⁸

In upholding the validity of the *District Court Act* 1963, the court held that:

Immediately prior to 16th September, 1975 the *District Courts Act* 1963 (as amended) was in operation as a pre-independence Law. Section 3 of the *Laws Repeal Act* 1975 of the House of Assembly, repealed this law as at 15th September, 1975. It was adopted as an Act of the National Parliament as from 16th September, 1975 by Sch.2.6 (2) of the *Constitution*.¹⁹

An important constitutional provision which should have guided the District Court is section 24 of the *Constitution*. The Supreme Court stated that Section 24 of the *Constitution*, should always guide judicial officers in statutory interpretation and when establishing the legal basis for legislation. This was not considered in the *Pang case*. The existing guidance under the *Constitution* if referred to would have prompted the use of extraneous materials such as official records of debates and of votes and proceedings (including those from the pre-independence House of Assembly), documents, and papers or Hansards.

¹⁸ The case can be accessed at <http://www.paclii.org/pg/cases/PGSC/1976/28.html>.

¹⁹ *Ibid*.

Instructions to Review the Pang Case

When the Bureau was informed that the District Court had dismissed the case against Mr. Pang, it approached the Office of the Public Prosecutor to seek advice on the options available to the State. The Public Prosecutor's Office advised that it could not institute an *ex-officio indictment* given that the matter in question was not a result of a committal proceeding, but was within the jurisdiction of the District Court.²⁰ However, it was uncertain as to whether the District Court had exclusive jurisdiction, or that such a matter can be appealed by the State as would persons who have been convicted and sentenced. Therefore, it was considered most appropriate to seek the assistance of the Supreme Court. The Bureau therefore advised the Attorney-General to instruct the Solicitor-General under the *Attorney-General Act* to refer the matter to the Supreme Court for determination.

The Attorney General was advised through the Solicitor-General to consider the following courses of action:

1. Make an application under Section 19 of the *Constitution* for a Supreme Court Reference to determine the validity of the *Dangerous Drugs Act*, in particular the subordinate legislation.
2. Make an application to the Supreme Court pursuant to Section 26 of the *Supreme Court Act* for an opinion on the point of law in question. Expressly this provision is in relation to indictable offences, however, substantively it may be available for all criminal offences that require clarification.
3. Under Section 28 of the *Supreme Court Act*, the Attorney General could seek orders from the Supreme Court to order a new trial. This provision expressly allows for an appeal against conviction. However, can this apply to an appeal against dismissal on a point of law? Research on applicable case law will assist as well as practice directions by the Supreme Court. The case of *Oscar Tugein v Michael Gotaha* [1984] PNGLR 137 provides some main grounds for a retrial:
 - a) the public interest in bringing justice to those guilty of serious crimes and ensuring that they do not escape because of technical blunders by the trial judge in the conduct of the trial;
 - b) the expense and inconvenience to witnesses who would be involved in a new trial when weighed against the strength of the evidence;
 - c) the seriousness and prevalence of the particular offence;
 - d) the consideration that the criminal trial is an ordeal which the defendant ought not to be condemned to go through for a second time through no fault of his own unless the interest of justice require that he should do so;
 - e) the length of time elapsing between the offence and the new trial if ordered; and
 - f) the strength and availability of the evidence.²¹

The challenge in utilising these grounds as referred to in the *Oscar Tugen case* is that there is express reference to the National Court or trial Judge, and not the District Court. Also importantly, are such grounds applicable to District Court matters either indictable offences triable summarily or criminal matters within the District Court's jurisdiction? The Supreme Court could assist if it has jurisdiction in such matters. The Supreme Court could also issue

²⁰ Luman R., personal communication (26 January, 2022).

²¹ These were discussed by Mamu in Mamu, B.L. *Supreme Court (PNG) Practice & Procedure* (Port Moresby: Kairos Press, 2016)

directions under Section 185 of the *Supreme Court Act* with respect to practice or procedure where it is lacking with respect to a matter.

Another option would have been to seek a judicial review of the court's decision and have the decision quashed and reverted to the District Court for a rehearing. The Supreme Court could also be asked to clarify the following issues:

1. Is the subsidiary legislation valid?
2. What is "subsidiary legislation" compared to the definition of "subordinate enactments etc...? What is the process of making subsidiary legislation?
3. Did the Deputy Administrator have authority to make any declaration of dangerous drugs under the *Dangerous Drugs Ordinance 1952-1968*?
4. Whether a decision of the District Court in such matters can be appealed? If so, where should the matter be appealed at? The National Court, Supreme Court or the District Court comprising of different senior Magistrates?
5. Whether such District Court decisions can be reviewed pursuant to judicial review?
6. Can such matters at the District Court be stayed pending the interpretative jurisdiction of the National or Supreme Court on points of law?
7. The evidence has not been determined yet, so is the matter res-judicata? Should the police discard the evidence? In the *Pang case*, the merits of the matter were not determined. In that the matter did not proceed to trial but was dismissed by the Magistrate who took issue with the existence of the subsidiary legislation to the *Dangerous Drugs Act*.
8. What would become of all or any decision made under the subsidiary legislation in question since its inception if the subsidiary legislation is declared as invalid. As an example, the Pharmacy Board also has the responsibility to regulate the importation of narcotics and psychotropic substances used for therapeutic purposes and provide quarterly reports to the International Narcotics Control Board (INCB). In 2015, minimum requirements for a drug import certificate for Narcotic and Psychotropic Substances was issued by the National Department of Health pursuant to Section 5(2)(b) of the *Dangerous Drug Act*. By virtue of the District Court ruling, what would be the impact to these requirements and any decisions that were made?²²

Conclusion

According to legal opinion, the subordinate legislation under the *Dangerous Drugs Act* which lists methamphetamine as a dangerous drug is valid. However, the District Court in the *Pang case* did not take judicial notice of the subordinate legislation as submitted by the police prosecution and thus ruled that it was invalid *ab initio*. Technically, this means that the *Dangerous Drugs Act* and the subordinate legislation is ineffective and must not be used.

Given that the District Court ruled that the Deputy Administrator under the colonial administration did not have authority in the first place, the effect would be that the subordinate legislation containing the list of dangerous drugs never existed. This will have repercussions on other authorities that have jurisdiction under the subordinate legislation and

²² The *National Medicines Policy 2014* also has a chapter that calls for the regulation of narcotic drugs and psychotropic substances which is based on the *Dangerous Drugs Act*.

their functions concerning those various chemicals or compounds listed. These include the health sector, agriculture, food or scientific industry. The subordinate legislation falls within the portfolio responsibility of the Minister for Health. It is therefore only a matter of time when the authority of those stakeholders will be questioned. The *Peter v South Pacific Brewery Ltd* case refers to the need for judicial officers to exercise ‘judicial ingenuity’ in the dispensation of justice and not to be ‘narrowly legalistic’ which can compromise the ‘spirit of the letter of the law’.²³

This is a matter worth pursuing in the Supreme Court to develop the country’s jurisprudence in legislation in particular dangerous drugs. It will give clarity to the court’s jurisdiction in such matters, restate the legislative process when pre-independence legislation is involved and give guidance to law enforcement in such matters in the future.

Finally, there are important lessons from the District Court case that actors in the criminal justice system must take note.²⁴ They must adopt appropriate interventions to address the notable capacity gaps both from an individual, systemic and policy perspective to maintain the integrity of the justice system. In that manner, other stakeholders can be assisted meaningfully in making a lasting difference in the country’s efforts against illegal drugs.

²³ Supra, n17.

²⁴ The likely legal implications associated with the preliminary issue required personnel with the skills and veracity to pay attention to details. It is not insurmountable, and only takes the persistent application of sound advocacy skills and the prerequisite judicial temperament. The kind of attitude required from judicial officers in these constitutional matters is the ability to ask the right questions and seek the fullest extent of available evidentiary support to clear any doubt and dispense justice. As an observation, the type of legal issue raised could potentially be for the higher judiciary.