

# JUDICIARY UNDER ATTACK BY THE O'NEILL NAMAH GOVERNMENT

The O'Neill Namah government has done the unthinkable – it has directly interfered in the judiciary in the most flagrant manner possible – it has suspended PNG's Chief Justice for political reasons. The O'Neill Namah government has blatantly broken one of the most basic principles of constitutional democracy – the separation of powers between the legislature, the executive and the judiciary. This is serious for Papua New Guinea's young democracy.

The O'Neill Namah government is a dangerous regime in terms of governance, abuse of power and a direct attack on the Constitution. Papua New Guineans must wake up and recognise this. If the National Executive Council (NEC) is used by individuals, who are hungry for power, for short term gain to destroy the last remaining arm of government – the judiciary – that has kept the confidence of the average citizen in government institutions, what hope is there for PNG to continue as a democracy?

## Suspension of the Chief Justice

It is not a simple and light matter to suspend a Chief Justice of any country that claims to be governed under the rule of law. The Chief Justice is the head of the judiciary. An attack on the Chief Justice is an attack on the judicial arm of government – as it is an attack on all judges as well as the magistracy and the legal profession.

The casual and vindictive manner in which the O'Neill Namah government has suspended Sir Salamo Injia breaching many of the basic principles of fairness and constitutional laws shows that this government has no understanding and appreciation of the importance of respecting the rule of law and maintaining and nurturing PNG's young democracy.

## Reasons used to suspend Sir Salamo Injia

The reason why Sir Salamo has been suspended is clear to the average citizen – the O'Neill Namah government is interfering in the Supreme Court deliberating on the Reference filed by the East Sepik Provincial Executive (ESP) against the overthrow of the Somare led government and the removal of Sir Michael Somare as the MP for East Sepik. However many number of excuses the O'Neill Namah government comes up with, the average citizen is not convinced. The timing of the suspension of Sir Salamo and the recent attempts by the O'Neill Namah government to frustrate the hearing of the Reference leaves no other conclusion to be drawn.

- First, the O'Neill Namah government tried to withdraw the financial powers of the ESP to stop the Reference proceeding. They abandoned that move because they did not follow legal procedures.
- Second, the O'Neill Namah government tried to suspend the ESP provincial government. In the face of possible contempt, this was reversed a few days later.

Both these instances showed that they were desperate but they had no understanding of the law. It is a bad indictment on a government to admit that they did not understand the law by reversing decisions within days. What kinds of people are running government in PNG?

The government used every procedural step in Court to frustrate and delay the ESP Reference so that the O'Neill Namah government can hold onto power.

- The government (through their lawyers) insisted that the Court documents should be served personally on individual public office holders connected to the Reference knowing that it would take time to find some of these individuals – a delay tactic.
- The government (through their lawyers) applied to have Sir Salamo Injia disqualified from presiding in the Supreme Court Reference matter simply because Sir Salamo's son swore an affidavit of service (a routine and clerical task) connected to the Reference. They were unsuccessful.
- The government (through their lawyers) applied to the Court enquiring into the facts to have the Reference adjourned (a delay tactic) so that Sir Michael Somare's medical records could be produced. The Court refused this saying that medical reports produced were sufficient.
- The government (through their lawyers) applied to the Court to have the Reference struck out because the medical records were not produced. The Court (by majority of 3 to 2) refused this.
- The government (through their lawyers) applied to get the Reference struck out on the grounds that the ESP provincial executive did not have the quorum to approve the filing of the Reference. The Court rejected this by unanimous decision. (As a delay tactic, this was argued separately from the challenge on production of medical records. Normally alternative challenges can be made at the same time).

## The timing of the suspension

The timing of Sir Salamo's suspension removes any doubt left in the minds of citizens that the suspension was done to interfere in the Supreme Court's deliberations in the ESP Reference.

The Supreme Court set 9 December as the date for it to hand down a decision on the Reference. The O'Neill Namah government got into government (its legitimacy is in question) on 2 August. The O'Neill Namah government has been able to come up with grounds to suspend Sir Salamo within a period of 3 months as if there are no other pressing national issues to address! How convenient that it found maladministration offenses so quickly?

The question must be asked – if the reasons it used to suspend Sir Salamo are genuine, why couldn't the O'Neill Namah government wait until after 9 December to suspend Sir Salamo? Why couldn't this wait for another 3 weeks? Why was the rush?

By suspending Sir Salamo in the timing and manner used, the O'Neill Namah government can legitimately be accused of intimidating all the judges on the Supreme Court bench deliberating on the ESP Reference – to make them feel insecure as to their future. This is dangerous. It is a blatant attack on the independence of judges and the judiciary on a case under deliberation.

## Targeting the Chief Justice

The question must be asked – why is the O'Neill Namah government picking on and targeting the Chief Justice at a time when the Supreme Court is considering the ESP Reference? On television, Deputy Prime Minister Belden Namah claimed that the actions against the Chief Justice are part of his government's campaign against corruption. Is he suggesting that the government has taken action against all public figures who are corrupt and it is urgent that the Chief Justice be targeted at this time – that the action cannot wait until after 9 December?

No, the O'Neill Namah government is being vindictive. The O'Neill Namah government is targeting the Chief Justice to intimidate the Supreme Court in deliberating on the ESP Reference. The O'Neill Namah government failed in its attempt to frustrate and delay the hearing of the Reference, both through its actions outside the Court (threats to withdraw powers and/or suspend the ESP government) and inside the Court.

## Other unlawful/unconstitutional actions

The suspension of Sir Salamo is unlawful and unconstitutional for other reasons. This shows desperation.

First, it is reported that Sir Salamo was not given any warning before the suspension. This is grossly unfair. A suspension is a disciplinary action. At the least, a person (let alone the Chief Justice) must be given an opportunity to respond or see the allegations made against him before-hand. To treat a Chief Justice in such manner is outrageous.

Second, it is doubtful if the NEC has the power to suspend the Chief Justice. Section 28 of the Organic Law on Duties and Responsibilities of Leadership provides for suspension, and this provision has been discussed by the courts in recent cases and the position is still unclear. This is the first time a Chief Justice has been suspended.

Third, it is reported that the O'Neill Namah government has appointed Justice Bernard Sakora as the Acting Deputy Chief Justice. The NEC does not have the power to make such an appointment. That power of appointment is with the Judicial and Legal Services Commission. Section 170(2) of the Constitution (that applies to judges acting in positions as well) makes this clear – "The Deputy Chief Justice and the other Judges of the National Court (other than the Chief Justice) and acting Judges shall be appointed by the Judicial and Legal Services Commission".

## The role of the Attorney-General

It is most disappointing that Dr Allan Marat, a highly qualified scholar and very experienced lawyer, was involved in a decision to suspend the Chief Justice in these circumstances. The NEC has on it very senior lawyers turned MPs – William Duma, Moses Maladina and Ano Pala included. How could they miss the basic legal problems?

## Sir Salamo's wrong doing

Sir Salamo Injia set a strict time frame for the ESP Reference to be prepared and heard by a strong Court because of the importance of the issues raised. Sir Salamo did the correct and right thing. It is obvious to any reasonable person that the O'Neill Namah government is now attacking the reputation of Sir Salamo because of this and, in the course of it, is attacking the judiciary – the third arm of government. This is callous, vindictive and dangerous.

However vindictive the O'Neill Namah government wants to be, Sir Salamo is a respected judge, respected by all lawyers (except those who may have provided advice to the O'Neill Namah government for his suspension). And, Sir Salamo is a decent person. Apart from attacking the judicial arm of government, in the manner and the apparent real reasons, for political reasons the O'Neill Namah government is attacking the integrity and standing of a decent and senior professional Papua New Guinean. This is unacceptable.

## Questions on the campaign to fight corruption

Corruption in PNG is a big problem for the country. It is thriving as is general mismanagement of finances. The country needs to fight corruption and general mismanagement. The O'Neill Namah government was being praised for its resolve to fight corruption.

With the type of vindictiveness shown against Sir Salamo for political reasons, citizens must now wonder if some of the arrests and other actions taken by authorities recently in the name of fighting corruption are plain vindictiveness – if the exercise is a con for political reasons.

This is dangerous – ordinary citizens now do not know who is the real criminal and who is not when good people are being targeted for political reasons through the misuse of power and public institutions such as the office of Attorney General, the NEC and the police. With such confusion, the bad can easily pretend to be good and the good being persecuted as scapegoats.

## Not a kitchen cabinet!

The MPs who were in the Opposition used to call the executive government of the Somare National Alliance led government a "kitchen cabinet". The main actors in the O'Neill Namah government were part of the old Somare National Alliance led government – Prime Minister O'Neill and Deputy Prime Minister Namah included. I was no fan of the Somare National Alliance government – it conspired with Speaker Jeffrey Nape to break many Parliamentary procedures and acted unconstitutionally as well in many instances (and they got a taste of the same medicine when Nape later switched sides). If the then Opposition led by Sir Mekere Morauta, Bart Philemon, Sam Basil and the likes (who now just hug Nape as the king-maker favouring them) called the Somare government the "kitchen cabinet", what should their present cabinet be called? No wonder we are a laughing stock!

## The rule of law & the welfare of the people

The rule of law and the difficulties faced by Papua New Guineans – especially the suffering faced by young people around the country – have a direct link to the failure by political and other leaders to abide by the law.

The rule of law must be respected and upheld not only for democracy but to ensure that there is fairness amongst all citizens regardless of place of origin, whether a person is educated, rich and is powerful or not. The rule of law also exists to ensure that the country's resources, especially public funds, are properly managed and distributed fairly.

If the Constitution, the most important law of the country, is continuously broken by the government of the day – as the O'Neill Namah government has done and so did the Somare National Alliance government before it – what chance is there that they and others below them and in the system are abiding by other laws like the Public Finances Management Act?

The Public Finances Management Act exists to protect public funds. It has been evident that public funds have been mismanaged, misused and corruptly appropriated in breach of this Act for many years now. Corruption has thrived because of this. The result is that PNGans – especially young people – have no opportunity and no hope and are turning to drugs and crime – they are suffering.

All MPs, whether on the government or opposition sides, are guilty – they are directly responsible for the suffering faced by Papua New Guineans. They were put in Parliament to take care of these people – what have they been doing? None of them can escape blame.

## Responsibility of the legal profession

The legal profession must stand up in defence of the judiciary. The judiciary cannot take this up itself outside of the court room. In some instances, contempt, etc., are insufficient remedy. This is one issue that must be taken up outside of the court room. We have allowed these types of behaviour by so-called MPs to go on for far too long. Illegitimate political actions such as this have in other democracies seen the legal profession up in arms. For example, similar action by the government against the Chief Justice in Pakistan a few years back saw lawyers taking to the streets in defence of the judiciary. Where is the PNG legal profession?

## Arrest for contempt of the Supreme Court

It is reported that the Supreme Court has, through Justice Sakora, issued orders for the arrest of the Deputy Prime Minister and the Attorney-General. The police need to execute this Order without delay – the longer the police delay executing the Order the greater is the perception that the police are compromised or failing to act out of fear or favour. Unless set aside, the Order of the Supreme Court must be complied with promptly as contempt is a serious offense. Any member of the police force who has a copy of the Order in any part of the country where the contemners are, and not necessarily by senior police personnel, can effect an arrest. No further instruction from anyone is required – it is an Order of the Supreme Court. If not done, a real crisis situation will result. It is the duty of the police to obey an Order of the highest court as is required by the Constitution.

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