Module 2.2 Government in PNG

The tree of government.

Executive branch enforces the laws carries out the plans

Legislative branch makes the laws makes the plans

Judicial branch solves conflicts punishes law breakers

The branches are supported by the Constitution.

The people are like the roots of the tree They “feed” the tree by electing leaders and paying taxes.

The citizens

Constitution

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# Unit outline

(Based on the National Curriculum Guidelines)

<table>
<thead>
<tr>
<th>Unit 2</th>
<th>2.1</th>
<th>Introducing Politics and Government (Core)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Politics and Government</td>
<td>2.2</td>
<td>Government in PNG (Core)</td>
</tr>
<tr>
<td></td>
<td>2.3</td>
<td>Leadership (Optional)</td>
</tr>
<tr>
<td></td>
<td>2.4</td>
<td>Elections, Parties and Pressure Groups (Optional)</td>
</tr>
</tbody>
</table>

## Icons

- 📖 Read or research
- ✍️ Write or summarise
- ⏩ Activity or discussion
# Table of contents

Module 2.2: Government in Papua New Guinea

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rationale</td>
<td>1</td>
</tr>
<tr>
<td>Objectives</td>
<td>1</td>
</tr>
<tr>
<td>Topic 1: Overview</td>
<td>3</td>
</tr>
<tr>
<td>History of Government in PNG</td>
<td>3</td>
</tr>
<tr>
<td>National politics</td>
<td>5</td>
</tr>
<tr>
<td>Case study in government - The Sandline Affair</td>
<td>6</td>
</tr>
<tr>
<td>Topic 2: The Constitution</td>
<td>8</td>
</tr>
<tr>
<td>Topic 3: Levels of Government</td>
<td>12</td>
</tr>
<tr>
<td>National Government</td>
<td>12</td>
</tr>
<tr>
<td>Provincial Government</td>
<td>24</td>
</tr>
<tr>
<td>Local Government</td>
<td>27</td>
</tr>
<tr>
<td>Topic 5: Provision of services</td>
<td>30</td>
</tr>
<tr>
<td>References</td>
<td>31</td>
</tr>
<tr>
<td>Additional resources</td>
<td>31</td>
</tr>
</tbody>
</table>
Module 2.2: Government in Papua New Guinea

Rationale

All citizens of all ages have certain social roles, rights and responsibilities. The unit – Politics and Government - includes the relevant knowledge, particular skills, processes and attitudes necessary for students to develop and maintain a thoughtful and practical commitment to democratic principles and values. The unit provides opportunities for students to test the relationship between democratic ideals and political realities, and to pursue issues as active citizens.

A government institutes and forms the basis of leadership and decision-making in a country. Its prime role is the day-to-day management, control, monitoring and supervision of the people and the affairs of the nation.

Objectives

Knowledge

Through the study of this module students will gain knowledge about:

- Democratic values and institutions
- Constitutional rights and responsibilities
- Government organization and structures
- The nature and workings of the judiciary
- Democratic social structures

Skills

Through the study of this module students will develop skills in:

- Identifying, gathering and evaluating information
- Organising, processing and interpreting information
- Using a range of written, oral and graphic forms to communicate information
- Analysing the impact of different perspectives on issues at local, national and global levels
- Accounting for differences within and between governments and political groups

Values/attitudes

Through the study of this module students will develop:

- Informed opinions about politics, government and decision-making
- Respect for truth, reasoning, co-operation and fairness
- Concern for the welfare, dignity and rights of all people
• A commitment to a just society
• A commitment to ethical behaviour
• Respect for different viewpoints and belief systems
**Topic 1: Overview**

Papua New Guinea is an independent parliamentary democracy, with Queen Elizabeth II as Head of State, represented in PNG by a Governor General. The Constitution sets up three arms of government. They are Parliament, the National Executive Council, and the courts. Each branch is independent of the others. Each serves as a check on the others, avoiding a concentration of powers that could lead to dictatorship.

The Prime Minister leads the Government and has both lawmaking and executive roles. After each national election, parliamentarians elect a prime minister, who in turn appoints ministers from members of his/her party and/or coalition. However, Parliament can reject his programme and/or remove him from office by a *vote of no confidence*. The courts can rule the government's actions illegal. All three arms of government are based at Waigani, NCD.

A provincial government system was introduced in 1976 when nineteen provinces and a separate national capital district were formed, each with a provincial assembly. Many of these were soon suspended for mismanagement or corruption, so, in 1995, as a result of the Constitutional Review Commission (the Micah Commission), the national parliament moved to radically modify the system. Now, provincial assemblies comprise national members from each province, including a governor.

There are also over 150 local councils.

**History of Government in PNG**

PNG is an under-developed country which has only recently become an independent nation. The first people, to inhabit the area were probably hunters and gatherers, but gradually agriculture became the main way of life. Sweet potato, yams and taro became the staple food...
crops. Contact with European civilisation occurred as early as 1576 when a Portuguese sea
captain sighted the New Guinea mainland and named it 'lilpas dos Papues', which mean 'land
of frizzy-haired people'. Later a Spanish explorer called it 'New Guinea' because he saw
they resembled people he had seen on the Guinea coast of Africa. Traditional types of
government existed for thousands of years until contact with the outside world started to
change things. The first foreigners to arrive in PNG were explorers, traders and missionaries.

As more visitors came, interest in New Guinea increased and before long the colonial powers
of Europe were looking to extend their empires into this island. Holland became interested in
the western half of New Guinea following its trade with the Dutch East Indies (now Indonesia).
Germany claimed north-eastern New Guinea in 1884 and soon after Britain claimed the
south-eastern part. When Australia became an independent nation in 1901, she assumed
responsibility for the south-eastern part and named it Papua. The European nations formed
governments in New Guinea to protect their own interests. Some interests were economic, for
example they wanted plantation crops to send home to Europe and some interests were
political, for example European nations wanted more colonies for more power and status.

For many years these powers had very little influence over the majority of people. In some
areas, the contact between the villagers and foreigners was friendly. In other areas, the contact
was very hostile. The main task of the early foreign governments was to try to keep peace
between different local groups - clans, villages, tribes - and between the villagers and the
foreigners. Both governments did this by appointing government officers to teach village
people about the new types of government in Port Moresby and Rabaul. These officers were
called kiaps in New Guinea and patrol officers in Papua. Government matters became
important whenever the kiap or resident magistrate made his visit. This might have been only
once a year. For the rest of the time, village life remained the same as it had been for hundreds
of years.

In German New Guinea (before 1914) local people were appointed in many villages as luluai,
and taltul' to act as village leaders and as representatives of the people with their colonial
German rulers. When Australia took over German New Guinea in 1914, this system was
retained. In Australian-ruled Papua a similar officer was appointed, called the village
constable. He was given a full uniform.

During World War 2, the Japanese invaded the island but their progress was halted by
Australian and American troops on the famous Kokoda Trail. After the war, the newly formed
United Nations Organisation asked that Australia continue to be responsible for the trust
territories of Papua and New Guinea. Australia greatly increased its financial aid to the country
and assisted in the preparation for 'self-government'.

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2.1 Activity 1

List the advantages and disadvantages of using nominated village
leaders to assist with local government.
With the re-establishment of Australian control in 1945 after World War 2 efforts were made to introduce local government on the British model. In the late 1940s some local councils were set up as experiments. By early 1970 the system of local council was extended to more than 80% of Papua and New Guinea. However the system is still not fully understood and accepted by the people themselves and it has no effective financial backing.

Before independence the Papua and New Guinea Act passed by the Australian Parliament in 1949 provided for:

- The PNG House of Assembly
- An Executive Council of Ministers
- An Australian Administrator

The House of Assembly (an elected parliament) was set up in Port Moresby in 1964. After self-government on 1 December 1973 there was no office of the Administrator and the leader of Parliament became the Chief Minister.

After PNG gained independence on 16 September 1975, the Chief Minister became the Prime Minister. The House of Assembly became the PNG Parliament and Australia appointed a High Commissioner to PNG. The country became known as Papua New Guinea, with the capital at Port Moresby.

2.1 Activity 2

*How important is ‘politics’ to your cultural group? How is your group ‘governed’? Divide into groups and discuss the differences.*

National politics

National politics is a world of shifting alliances. No single party has ever governed in its own right. Each successive government has been dependent on shaky, unreliable coalitions. Party discipline is also loose and party members are prone to act independently, changing allegiances overnight and voting as it suits them and, sometimes, their bank balances.

The political parties themselves are not distinguished so much by ideology as by the personality of their leaders and their regional bases. Generally, there appears to be a remarkable degree of consensus about the kind of society that should be created. All parties favour a mixed economy, with governments overseeing and, sometimes, operating alongside private enterprise; only the details and emphases differ.
Politics ‘PNG style’

PNG politics never ceases to amaze anyone who tries to understand it. Political scientists and perhaps politicians themselves who began their careers with no degree in politics have continually been asked to describe PNG politics and they have given up trying to explain ...because this country’s politics is so unstable and unpredictable. You could not find similarities in PNG politics with that of another country.

Besides its peculiar features of many parties, party hopping, half of one party in government, the other in the opposition, mockery of the electoral process (countless election petitions), the rise of politicians in the political hierarchy, is one that has always amazed me and continues to do so. And perhaps one might say that it is home-grown or as often termed "PNG Style" but it is a stark contrast to the western democracies we have tried to emulate.

Alphonse Yer, Post-Courier, 4 November 1999

2.2 Activity 3

Why do governments change between elections? Document cases where this has happened in PNG. Identify the reasons for each case.

Case study in government - The Sandline Affair

The secessionist movement on Bougainville in the late 1980s and the closure of the Panguna mine dealt a blow to the PNG government. The conflict became more and more entrenched as time went on to the point where, in late 1996, three members of the government - the then Prime Minister Sir Julius Chan, his deputy Chris Haiveta and the defence minister Mathias Iape - decided to take pre-emptive action to resolve the matter using outside military force. This became known as the Sandline Affair and was to be a crucial factor in public perception of PNG's leaders in the lead-up to the June 1997 elections, described as the most important since independence.

With US$36 million, (funded by 'budget cuts') Chan and his allies employed a well-known mercenary company, Sandline International, which was tasked to provide men and equipment via an associated company, Executive Outcomes, to help train the PNG Defence Force in anti-guerrilla tactics and to deploy them in an attack on the secessionists. It was hoped that the result would be a speedy military victory on Bougainville, the kudos from which would sweep Chan's People's Progress Party back into power at the elections.

After learning of the plans in February 1997, Australia and a number of other regional governments urged Chan to negotiate with the secessionists rather than take military action. However, the PNG leader was adamant and much of the money had already been spent on equipment and upfront payments. Mercenary troops were, at that stage, stationed at Moem
Barracks near Wewak and training was under way. The controversy became the subject of much public debate in PNG and, to complicate matters, the popular PNGDF Commander, Brigadier General Jerry Singirok, decided to do an 'about-face' and publicly condemn the government for undertaking such an affair. He was duly sacked, but the military stayed loyal, leading to rioting and looting in the streets of Port Moresby by his supporters. Widespread doubts that 'something was wrong' related to three issues: the source of the funding for the affair in this cash-strapped country, the way in which the money was spent and how the decision was made without wider consultation within parliament.

Bowing to pressure from both his parliamentary colleagues and the international community, Chan suspended the Sandline contract in March and announced a commission of enquiry into its circumstances. The mercenaries were sent home. As a result of further pressure, Chan announced, on 26 March, that he and his two associates would 'stand aside' pending the outcome of the enquiry. John Giheno was named acting prime minister in the interim.

The enquiry, conducted by Justice Warwick Andrews, cleared Chan of corruption. On hearing of this, in early June, Chan resumed his position as prime minister - until he lost his seat in the national elections two weeks later. However, the enquiry noted that it 'remains suspicious of Mr Haiveta's actions and motivations (concerning alleged insider trading associated with a trip he made to Hong Kong to meet Sandline executives), and, in parts, rejects his evidence as untruthful'.

2.2 Activity 4

What happened to key players after ‘Sandline’ eg Haiveta, Singirok, Chan?

What is your opinion of ‘rightness’ of their actions?
**Topic 2: The Constitution**

A constitution shows the way a nation is to be governed and the sort of society the nation is trying to develop. A country's constitution contains the rules that the government and the people must follow.

Just as the Student Representative Council or a club has a constitution of its own, PNG also has the Constitution of Independent State of PNG. A constitution is a set of laws which define citizenship rights, obligations, powers and limits of the government and people. The Constitution also determines the structure of the government, its court system and other bodies.

In the early 1970s people formed a House of Assembly where they helped Australia by proposing laws to fit PNG. PNG representatives were learning the process. A Constitutional Planning Committee was organised and started work on PNG's own constitution. Because PNG was to gain independence and also have its own constitution the British Parliament had to pass an act first granting independence and secondly recognising the new Constitution. The constitution was worked on and written from 1971-1975. It was adopted 16th September 1975.

At the beginning of the Constitution, PNG lawyers have written five goals and eight aims for PNG, which are based upon the traditions, culture and the needs for the future.

In the Constitution there are rules for:

- Forming the government
- The way the government should work for the people
- The Parliament
- The Speaker and members of the national parliament to carry on the business of parliament
- The public service, including the police force and the defence force
- The judicial system, including the courts, the public solicitor and the public prosecutor
- PNG citizenship
- Respecting PNG customs
- Acceptance of the sovereignty of Britain and her heirs as the constitutional head of state, represented by the governor-general

**The Constitution has some special features. These include:**

- National Goals and Directive Principles - not all countries have such a section
- Fundamental rights which are clearly stated
- Laws making it possible to form provincial governments
- Rule of law
- Equal participation in social and economic changes and development

No constitution is perfect and so changes are often desirable. Every constitution reflects the circumstances in which it was made and these circumstances may change.
Basic rights
Every person has the right to freedom based on law and has a legal right to do anything that does not injure or interfere with the rights and freedoms of others, and has a legal right to do anything that is not prohibited by law.

There are altogether seventeen Basic Rights provided by the Constitution. Three of them are called Fundamental Rights, and the other fourteen, Qualified Rights.

The three Fundamental Rights are the:
- Right to life
- Right to freedom from cruel and inhuman treatment and
- Right to protection of the Law

These Rights are for everybody, not just citizens, and they cannot be restricted or regulated. They can only be repealed by the National Parliament.

The Fourteen other Rights guaranteed by the Constitution may be qualified by law which is passed by an absolute majority of the National Parliament. Such a law must be expressed to be a law which restricts a guaranteed right or freedom and it must specify the right or freedom which it intends to restrict or modify. It must be a law that regulates or restricts the exercise of a right or freedom as long as the regulation or restriction is necessary, taking into account the National Goals and Directive Principles and the Basic Social Obligations.

Citizenship
A citizen of Papua New Guinea is one who belongs to this country and who is loyal to this country. He or she is also able to benefit from this country and has certain rights (voting, appointment to public office) and duties (upholding the laws, paying taxes).

Foreigners are those people who are citizens of another country. They can become citizens of PNG by naturalisation. A foreigner must live in PNG for eight years before he or she can apply for citizenship. Any citizen of PNG, foreign or national, can lose his or her citizenship through choice or through providing false information.

The Police Force
The Police Force is subject to the control of the National Executive Council through a Minister but the Minister has no power of command unless it is given to him/her by a Constitutional law or act. The main functions of the Force are to:
- Preserve peace and good order
- Maintain and enforce the law in an impartial and objective way

The Commissioner of Police is the person responsible for the efficient operation of the Force. Under the Constitution, there can only be one Police Force but other bodies can be set up eg Police Reserve Force and police powers can be given to persons who are not members of the Force eg village peace officers.

The Defence Force
The Defence Force is subject to the control of the national Executive Council through the Defence Minister. The Minister must have a principal military adviser and a civilian adviser to
assist. The Constitution forbids the raising of unauthorised forces but does allow the setting up
of a reserve force. The functions of the Defence Force are to:

- Defend Papua New Guinea
- Assist PNG carry out its international obligations
- Assist civilian authorities during disasters and national emergencies
- Assist in the development of civil projects

**Achieving the goals and aims of the Constitution**

We, our children and their children can achieve these goals and aims if:

- Papua New Guineans produce the primary and secondary products used by PNG in
  PNG and not import them from other countries
- Personal and property income goes to Papua New Guineans
- Wealth is distributed equally among people
- Similar services operate in different areas of PNG
- Businesses depend on the PNG style of service
- Local production makes PNG less dependent for its needs on imported goods and
  services
- Government spending is raised by taxes and exports, especially from minerals, timber
  and coffee
- Government spending is invested in agricultural development, village industry and
  internal trade
- Local government councils provide facilities in rural areas
- Women have businesses and say how they feel PNG should be organised and
  developed
- Men respect women's thoughts and opinions
- The government makes decisions which develop PNG

The closer PNG gets to achieving these goals and aims, the more developed PNG becomes
and the less foreign aid is needed.

**Changing the Constitution**

Most of the Constitution was written, debated, and approved before Independence. It went
into effect on Independence Day, 16 September 1975, but it has been changed slightly since
then.

In general, changes in the Constitution or its organic laws require the favourable vote of
two-thirds of all the members of Parliament (normally 73). The new law must state clearly that
it changes the Constitution. It must be presented to Parliament at 2 meetings separated by at
least 2 months, and it must be printed and circulated to all members of Parliament so that they
will have time to study carefully the proposed change. This process can be speeded up in
cases of emergency.
2.2 Activity 5

What constitutional changes have been made since independence?

How do Bills become laws of the country?

Identify the fourteen Qualified Rights. What do they mean for you as a citizen of PNG?

Visit a courthouse or sitting of provincial assembly. What business was conducted there during the course of your visit?

Which government organisation deals with citizenship issues? Identify some of the problems experienced by this department in recent times.

Research and discuss occasions where members of the Police Force or Defence Force have acted unconstitutionally.

Debate the following statement – “The Police Force and Defence Force should become one organisation”.
Topic 3: Levels of Government

National Government

The PNG Constitution has provided three separate branches (legislative, executive and judicial) to do the government work. This is called the 'separation of powers'. Both the national and provincial governments have these branches.

- The Legislative Branch makes the laws and the plans. This is the Parliament in national government and the Provincial Assembly in the provincial government.
- The Executive Branch decides on questions of policy and directions for PNG. In the national government, the National Executive Council (Cabinet) is made up of the Ministers assisted by the National Public Service. In the provincial government, the Executive Branch is the Provincial Executive Council assisted by the Provincial Public Service.
- The Judicial Branch is an independent body which protects the basic rights as stated in the Constitution. The Judiciary solves conflicts and punishes lawbreakers. It works through the national, supreme, district and local courts in the national government and the village courts in the provincial government. It interprets (works out) and enforces the constitutional rules and develops the body of legal rules, expanding on the PNG laws to cover any new situations.

The national government is responsible for the defence force, police, foreign trade, international affairs, national roads, education, conservation and tourism. The national government gets the money it needs from:

- Taxes, foreign aid, fees and fines charged by government departments
- Dividends earned from its investments in various developmental projects, such as mining
- Royalties on mining production

Legislative Branch - Parliament

Monarch

In PNG, Queen Elizabeth II is queen under the Constitution. She consented to be the Queen of PNG, so long as the people want her to be. The moment the people do not want her, she will cease to be their queen.

In monarchies, the monarchs get their position when their parents die. It is handed down from one family to the next. Queen Elizabeth II became queen when her father, George VI, died. Queen Elizabeth II's son, Prince Charles, will become king when she dies. Both the Queen and Prince Charles have visited PNG.

Governor-General

The Governor-General represents Queen Elizabeth II as Head of State. The person to be Governor-General is decided by Parliament after a secret vote. The Queen appoints him and he serves for six years. The Governor-General cannot make laws or decisions by himself. In PNG the Governor-General follows decisions made by the NEC (Cabinet) when he signs
official documents on behalf of the Queen; represents the Queen at official ceremonies; and checks the honours and awards nominations, which are sent to the Queen for approval.

2.2 Activity 6

*Who wrote the national anthem? Study the words of the anthem and the National pledge. What are Papua New Guineans promising to do when singing or saying these words?*

*Define the role of the Governor-General as set out in the Constitution.*

**Political parties**

Candidates with similar ideas or policies join together into political parties. Members of Parliament who do not belong to any political party are called 'Independents'. Although the party members and the independents may disagree on some matters, most support:

- Agricultural development
- The idea that every Papua New Guinean has the right to a similar lifestyle
- The idea that PNG must become self-reliant and not depend so much on foreign aid

In 1967, Michael Somare and others formed the Pangu Party. In PNG, no party has ever achieved a clear majority in Parliament, so several parties have joined together (negotiated a coalition) to form the governments since independence in 1975. Some political parties in PNG were the Pangu, People's Progress, National, People's Democratic Movement, United and Melanesian Alliance. Most parties have provincial branches that have businesses to raise money for political campaigns. Every year, the parties must file financial reports, listing what they own (their assets), their income, bank statements and details of election spending, with the Ombudsman Commission.
National Parliament

National Parliament is composed of 109 persons who have been elected from districts throughout PNG to make the nation's laws. Only Parliament can amend the Constitution. Parliament adopts the budget each year to keep government services operating. Parliament's approval is required for any treaties with other nations concerning trade, defence, or other mutual concerns. Parliament's approval is usually needed before the government can borrow large sums of money from overseas. Parliament elects the Prime Minister, who then names members of Parliament (MPs) to seats on his National Executive Council (Cabinet). MPs who would prefer another prime minister form the Opposition.

There are 109 elected members of Parliament who serve for a fixed term of five years. Each of the twenty provinces has one person to represent the province in the National Parliament. (The NCD is treated like a province.) These 20 provincial members are sometimes called regional members. Eighty-nine members each represent a smaller sub-division of the provincial areas, called the open electorate. If a member dies or leaves office for other reasons, a replacement is elected in a special by-election. There is a provision in the Constitution which allows up to three nominated members to be appointed by the Parliament. This provision has yet to be used.

A new Parliament's first actions are to elect a Speaker and then a Prime Minister. Both of them are elected by a simple majority of those voting. The Speaker is elected by secret ballot. The Prime Minister is elected by open vote so the winner and the public will know who his supporters are.

The schedule of parliamentary sittings is set by the Prime Minister. The budget for the next year is presented, and usually adopted, during the November sitting. Cabinet and parliamentary committees meet between sittings of Parliament. The committees are small groups which study in detail matters requiring action by Parliament. The most powerful committees are the Public Works Committee and the Public Accounts Committee.
Parliament must obey the laws

SECTION 124 of the Constitution is explicit in specifying the amount of time Parliament should meet. It directs Parliament to meet seven days or one week after the day fixed for the return of writs following a national general elections. Following that in one parliamentary year of 12 months, Parliament is directed to meet at least three times. During those three meetings the Parliament is directed again to meet for not less than nine weeks. It does not specify the number of days it is to meet but nine weeks times seven days gives 63 days …

Nothing can be more specific than this provision on the times that Parliament is supposed to meet. Still it took a Supreme Court reference by the Ombudsman Commission to lay down that law once and for all last year. That decision revealed that Parliament often interpreted one part of this provision and left the other out. For instance, in any one year Parliament might have sat at least three times but it did not quite sit for the full nine weeks, or that it even sat for nine weeks, but did not sit for 63 days.

Take the weekends and the rest days and any nine weeks of sitting equals only 54 days. Now, it transpires that in the past two years that the Sixth Parliament has been in office, and even following that landmark court decision, Parliament has continually been in breach of the Constitution. There is a danger it will also be in breach this parliamentary year. The parliament year of 12 months runs from July 16 to July 16.

In the first year (1997 to 1998) Parliament sat for only 40 days. In the next year it sat for a total 19 days, even though it sat four times, prompting the Ombudsman reference. From last July to now Parliament has only sat 12 days. It must yet sit for 51 further days. Parliament is due to meet on March 28. Between then and July 15, 2000, it has 110 days or 6 weeks to fulfil the Constitutional requirement. That translates to about seven weeks and two days of meeting remaining. Somehow Parliament has to meet that requirement or be in breach a third time running. Nine weeks or 63 days sounds like a lot but in a year of 365 days or 52 weeks that is only one sixth of a year.

Parliament is the legislature, the principle law making body, in Papua New Guinea. Politicians are elected to be members of that Parliament. In a land where law making as well as law breaking are frequent, the least we expect of Parliament is to set the right example by obeying the letter of the law, particularly the Constitution. The constitution is also specific on the penalties and where Parliament as a body has been unable to fulfil the legal requirements it should be made to suffer the penalties. It cannot be expected to make the laws and exclude itself from the effects of them.

At the same time those individuals and organisations charged with advising the Speaker on the calling of Parliament and the Leader of Government Business on the business of Parliament ought to be taken to task for allowing such an easy lapse to occur. Looking through the notice paper at any one sitting, there appear to be sufficient business that is delayed for many months and even years which need to be taken care of. At the same time, very important bills need careful in-committee discussions before they are passed to ensure they are without flaws. We are yet to see great debates on the floor of Parliament on major issues afflicting the country.

*The National, 16 March 2000*

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**2.2 Activity 7**

What are the constitutional requirements for Parliamentary sittings/meetings?  
Why have there been problems/conflict over the time Parliament has sat?  
How do Prime Ministers manipulate the required times?  
If you were to take advantage of the provision to appoint MP’s who would you appoint?
Find out how many MP’s come from each province.
What is the role of the Speaker? How is he/she chosen?

Because they represent the grassroots people, every MP has a right to propose laws and to take part in Parliament's debates. However, so-called member’s bills have little chance of becoming laws unless Cabinet supports them. It is illegal to prevent MPs from attending meetings of Parliament or from taking part in votes. To encourage debate, MPs have special privileges of free speech on matters being discussed by Parliament or its committees. They may not be sued for compensation if what they do or say is incorrect or causes harm to people or property. All MPs are eligible to serve as Cabinet ministers or as members of committees.

MPs may be removed from office for violation of the **Leadership Code**. They automatically cease to be members if they are convicted of a criminal offence and sentenced to prison for more than 9 months. They also cease to be members if they become citizens of another country or become mentally ill.

**The Opposition**

The members who are not part of the governing party or parties become the Opposition who can:

- Agree with the Government's plans
- Try to change them in some way
- Vote against motions and try to stop the Government's plans

The Opposition elects a Leader of the Opposition. The Opposition makes sure the Government behaves properly by calling it to account for its actions in Parliament and speaking out against anything it believes to be wrong.

**Treasury control**

The government must be watched and checked all the time by the Parliament. The government cannot collect a tax of even one toea or spend one toea without approval of the parliament (budget approval). At the end of the year all expenses by the government are audited. The Auditor-General gives his report and it goes to Parliament for debate. The Government must answer all the questions and satisfy Parliament.
Executive Branch - National Executive Council

Some of the elected members of a government become Ministers. They form the **Cabinet** (National Executive Council) which is presided over by the Prime Minister. The National Executive meets regularly at least once a month. The NEC plans everything in advance and effectively leads the Parliament. The government has one MP who is appointed as the Government "Whip" whose duty is to see that all MPs are present in the Parliament.

Each Minister controls one of the Public Service departments and is responsible to Parliament for the work of his department. The Government provides for the Public Service by:

- Building government offices
- Paying wages and salaries to the public servants
- Administering the government buildings and services, such as paying for electricity, water, vehicles, paper and workers' travel

Judicial Branch

PNG has a combination of traditional and imported court systems. The Supreme Court, the National Court, and District Courts are based on European models and have many formal rules. The local courts and village courts are more informal. People may present their own arguments at any level of the PNG court system. However, this is seldom done in the highest courts because the laws and details of legal procedures are so complicated. Lawyers normally present the arguments there. The judiciary is headed by a Chief Justice and is augmented by several judges and numerous magistrates.

The Supreme Court

The Supreme Court of Justice is the highest court of the land; having its inherent powers and enabling jurisdiction established under the Papua New Guinea Constitution. It is the ultimate and final court of appeal which hears appeals from the National Court of Justice. It is the only court that can decide cases concerning the meaning of the Constitution. At least 3 judges must hear a case brought before the Supreme Court. The Supreme Court has the original jurisdiction to interpret any part of the Constitution. The following authorities can apply to the Supreme Court to give an opinion on anything to do with a Constitutional law, including questions as to the validity of a law or proposed law the:

- Parliament
- Head of State, acting with, and in accordance with the advice of the National Executive Council
- Law Officers of Papua New Guinea
- Constitutional Review Committee
- Ombudsman Commission
- Speaker of the Parliament

The Supreme Court is an important part of the lawmaking process. Written decisions by judges of the Supreme Court and National Court give people a better understanding of the laws and how they are to be applied. The Supreme Court and the National Court have many formal rules and hold jurisdiction over both civil and criminal matters.
The National Court

The National Court of justice also has inherent powers and original jurisdiction. It hears or tries criminal cases and indictable offences. The National Court is made up of the same judges who sit on the Supreme Court. However, only one judge hears each case. The judge can hear evidence and arguments at the main courthouse in Waigani, NCD, or at other places in the country. The National Court can hear appeals against District Court rulings. It can hear any criminal and civil case. However, it usually only hears criminal cases when the District Court asks it to and deals with civil litigation cases involving K11,000 damages or compensation and above. This court of record reviews various administrative or executive decisions of government departments or statutory authorities and body. It is a Court of Appeal that hears appeals from the District Court.

The Clifford report in the mid 1980's was critical of the National court system in the first ten years since independence. Conviction rates had fallen from 80% to 50% and court delays had escalated so that the average number of days from committal to verdict was 344. Police inefficiency, poor quality of prosecution work, lack of resources, including a short supply of court reporters and interpreters hampered the course of justice.

2.2 Activity 8

What is the role of the Constitutional Review Committee? Collect and discuss cases of changes to the Constitution.

Can Parliament make tougher laws? Elaborate

Do the criticisms of the National Court system still apply today? What steps have been taken to improve the situation?

District Courts

District courts are run by magistrates who hear the less serious criminal cases. The bulk of cases are brought by the police. They make decisions or refer the case to the National Court. There are 5 grades of District Court magistrates, each with more authority. A Grade 2 magistrate can rule on civil lawsuits with claims up to K2000. A Grade 5 magistrate can act on claims of up to K10000.

Local courts have two grades of magistrates and can hear cases with claims up to K2000 and minor criminal cases. They can only hear case from the area for which the court was set up or within 33 kilometres of its boundary.

Village courts normally take care of problem in 5 or 6 nearby villages or settlements. The village magistrate is a local resident who is appointed after consultation with the people. The aim of the Village Court Act is to encourage people to settle local disputes in their own way. The village courts are not traditional Melanesian institutions but they try to take Melanesian norms, values and modes of organisation into account. In general it is felt that they have con-
tributed to the maintenance of law and order though there are criticisms such as "wantokism" by court personnel, arbitrary punishments and ignorance of proper procedure.

**Special courts**

PNG also has a number of special courts with limited powers: the Land Court hears and tries to settle land disputes; the Children's Court deals with people under age 16; the Coroner's Court investigates unexpected deaths; the Warden's Court deals with local mining disputes; and Court of Disputed Returns deals with complaints by losers in political elections. There are other courts with responsibility for determining ownership of land and for assessing the right of customary landowners to compensation.

**Laws**

Laws in PNG are made by the government or are the product of custom. They are rules which help control society. The Constitution and the Organic Laws are the supreme laws or the main laws of Papua New Guinea. Other laws include:

- Acts of Parliament
- Emergency Regulations
- Laws made under or adopted under the Constitution or any of these laws including subordinate enactments or laws under the Constitution or any of these laws
- The Underlying Laws

*The Constitution is* the most important law. Any law that is not consistent with it is not valid. The Constitution and its organic (supporting) laws define and give the details of the government system. These include the National Goals and Directive Principles; the Basic Rights and Social Obligations of individuals; citizenship; government bodies such as the National Executive Council, government departments, courts, public service, police, and the Defence Force; the Leadership Code; provincial governments and their relationship with the national government; and how the Constitution can be changed.

Organic Laws are part of the Constitution. They deal with important matters which were provided for by the Constitution but are not dealt with in detail in the Constitution. An example is the Organic Law on Provincial Government. If it had all been included in the Constitution it would have been extremely long. These rules mainly concern lawyers, as they are rather technical.

The constitution also allows for the development of under-lying laws based on PNG customary rules or laws so that a body of law based on these and adapted to the changes taking place in PNG is developed. Certain laws in force before Independence were also adopted on Independence.

**Judges and magistrates**

The politically independent Judicial and Legal Services Commission selects judges and magistrates for PNG's court system. Only experienced attorneys can be appointed as judges. Papua New Guinean judges are appointed for 10 years, expatriates for up to 3 years. Judges have special status as constitutional officers to ensure their independence. Magistrates are appointed for unlimited terms. Grade 5 magistrates must have 5 years of experience as lawyers. Lower grade magistrates are appointed and promoted on the basis of training and experience. Judges and magistrates can be removed from office if they are found to be
physically or mentally unable to perform their duties. An independent tribunal must make the findings concerning their condition. Cabinet requests a tribunal for the Chief Justice. The Judicial and Legal Services Commission requests it for other judges or magistrates.

### 2.2 Activity 9

Collect articles from the newspapers dealing with court cases or the judiciary. Identify the nature of the case and level of court involved.

Identify the Supreme Court judges. Give examples of recent cases they have been involved in or judgements they have made.

### Acts of Parliament

If a government department decides that new laws are necessary or that present laws need to be changed, it submits a proposal with its ideas to its minister. The minister presents it to the National Executive Council (Cabinet). If Cabinet approves, it sends the proposal to the Legislative Counsel. The proposal is known as a bill. The Legislative Counsel writes the idea out in correct legal language and sends it back to Cabinet for further discussion. If approved again, the idea is printed and sent to all members of Parliament, along with any information that helps explain it.

In Parliament each bill is considered three times. No debate takes place when it is introduced with a ‘first reading’. At the ‘second reading’, the minister or the member of Parliament who introduced the bill explains its purpose and how it will work. Now the bill may be debated and changed. If there is a lot of debate, the bill may be sent to a parliamentary committee for further discussion and possibly more changes. At the ‘third reading’, any changes suggested by
the committee are talked about and the members of Parliament then vote on whether to pass the bill into law or not.

When a bill is passed, it becomes an Act. When does it go into effect? Some Acts list their effective date. An act which makes only minor changes to an existing law usually goes into force when the Speaker and the Clerk of Parliament sign papers certifying that Parliament adopted it. However, major new acts go into force only after the Governor-General publishes a Notice of Commencement in the *National Gazette* setting the date. Sometimes the Governor-General, at Cabinet's request, puts only certain sections of the Act into force. Other sections may be put into force later - or never.

*Delegated legislation*: Parliament does not have time to concern itself with all the detailed rules needed to run a government body. The right to make these rules is usually passed on to the minister of the department affected. Such rules have the same force as an official Act of Parliament. They may be reviewed by Parliament or the courts to make sure they do not exceed the powers that have been delegated.

**Customary laws**

Customary laws are traditional practices of the people of various parts of PNG which are recognised by the Constitution as the proper laws for governing certain local situations and problems. They are most often applied by village courts in settling disputes. Customary law must abide by the Constitution. For example, it may be the custom of two village groups to fight, and even kill, each other. However, killing violates the Constitutional right to life and, therefore, this custom cannot be followed as law. From the first days of Independence custom was seen as an essential ingredient of nation-building. Customary law was no exception, though its integration into the legal system has been slower than was hoped.

**Government Departments and the Public Service**

The number of government departments is not fixed. Sometimes the government closes a department that is not needed or opens another one to undertake particular tasks. The Public Service is made up of all the people who work in the government. Before World War II, the Territories of Papua and New Guinea had a Public Service each. In 1949, these were joined together. From 1964 to 1 August 1973, the Public Service was looked after by the Public Service Board, which was directly responsible to the Australian Minister for External Territories in Canberra. From 1973, the Board became responsible to the PNG government.

Government departments are responsible for the following broad areas.

**Agriculture and Livestock** oversees all laws about agriculture and livestock; promotes agricultural development and the creation of jobs in the industry; gives provincial governments technical advice and services; prepares and carries out investment programmes for major commodities and livestock; researches crops and their preparation for marketing; advises the government on the plans of international bodies dealing with agriculture and livestock organisations; and publishes extension and scientific reports.

**Civil Aviation** develops air transport policy; administers laws on civil aviation; designs and maintains airports; provides civil aviation services, including Government Flying Unit aircraft; maintains and controls civil aviation navigational aids; operates the Civil Aviation Training College; runs civil and airport fire services; provides services to the Air Accidents Investigations Branch; and runs weather information services.
Corrective Institutions helps develop and then carry out policies for jails and the care and rehabilitation of prisoners; manages the jails.

Culture and Tourism administers laws on culture and tourism; makes policy proposals; encourages the promotion of writers, printers, filmmakers, poets, creative artists, and literature; co-ordinates the preservation of PNG’s culture and oversees its cultural institutions; and promotes tourism.

Defence helps develop defence policy; plans the development and use of the Defence Force; runs its investigatory, research, executive, administrative, and financial services.

Education helps develop and then carry out policies on pre-school, primary, secondary and higher education, technical education, teacher education, general education services, and internal school education; oversees the National Library Service, including libraries in the NCD and the National Archives; encourages the promotion of writers and creative artists at schools; and provides services to the National Education Board, provincial education boards, the Teaching Service Commission, and other education organisations.

Environment and Conservation helps develop and then carry out policy on environment and conservation; administers laws on environment planning and population control, conservation and the protection of plants and animals and their habitat; wildlife management, national parks, and water resources.

Finance and Planning manages the collection and spending of public monies; gives the government advice on major economic policies and the management of the public debt and foreign aid; prepares and administers annual budgets; controls government income; advises the government on long-range development strategies; provides services to co-ordinate development and improvement plans.

Fisheries and Marine Resources oversees all laws on marine resources; helps develop and carry out policies for the development of these resources; helps provincial governments with advice and technical services; prepares and carries out investment plans for major marine resources; conducts research on marine resources, fishing techniques, and marketing the catch; guides commercial production schemes.

These departments were operating in 1993

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<thead>
<tr>
<th>Department of the Prime Minister</th>
<th>Transport</th>
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<tr>
<td>Defence</td>
<td>Livestock and Agriculture</td>
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<td>Information and Communication</td>
<td>Labour and Employment</td>
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<td>Finance</td>
<td>Home Affairs and Youth</td>
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<td>Correctional Services</td>
<td>Foreign Affairs</td>
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<td>Civil Aviation</td>
<td>Mining and Petroleum</td>
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<td>Village Services and Provincial Affairs</td>
<td>Forests</td>
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<td>Culture and Tourism</td>
<td>Works</td>
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<td>Justice</td>
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<td>Land and Physical Planning</td>
<td>Health</td>
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<td>Environment and Conservation</td>
<td>Education</td>
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</tbody>
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2.2 Activity 10

Which of government departments listed above remained in place after the 1997 elections?

Which of those departments still exist in 2001? Have any new departments been established?

Survey newspapers for week and list which government departments are mentioned and why?

Statutory bodies and authorities

Statutory bodies are government agencies which have been given semi-independent status by the National Executive Council (Cabinet).

Commercial statutory bodies must:

- Be gazetted in the Government Gazette
- Pay dividends to the government, which is the only shareholder
- Pay taxes
- Pay import duty and other government charges
- Make only government-approved investments
- Make a profit
- Plan their own budgets
- Have directors appointed by Cabinet or the Minister responsible for them
- Have employees who are not part of the government's Public Service
- Have their business records checked every year by the government's Auditor-General

Other bodies, called statutory authorities, are fully funded by the government through the annual budget. They operate special services and do not make a profit. They include:

- NBC (radio)
- Universities (education)
- Agriculture Bank (a bank to help landowners)
- Ombudsman Commission (checks complaints about leaders)
2.2 Activity 11

Identify the statutory bodies which are still in operation this year.

Many of these bodies have been listed for privatisation. What does privatisation mean?

Collect examples of different opinions on privatisation. Prepare a list of the advantages and disadvantages of the process.

Select one organisation which is being privatised for a case study. In your study identify the reasons why it is being privatised, the process of privatisation and the implications for future service to the people of PNG by that body.

Provincial Government

Provincial Government and Local Level Government are dealt with under Part VI A of the Constitution, which is the first amendment to the constitution since its adoption. It was not included in the Constitution at the time of adoption because details of the law were not worked out. Soon after independence, provincial governments were set up in all provinces of PNG. Provincial governments had the power to make certain laws and decisions within their provinces. They could also make plans and set projects to help develop the province. The Local levels of government came under the control of the provincial governments.

What is Provincial Government?

It means:

- Sharing of powers and responsibilities of the National Government through the elected or chosen Provincial Government leaders at the Provincial level
- Creating a system of government at the provincial level which guarantees the people's needs or wants
- Formulating developmental policies which will enable the rural people to fulfil their needs and aspirations

The whole idea of establishing Provincial Government was to depart from the centralised system of operation at Port Moresby and set up system or structure at the Provincial level where people's needs are catered for in the province. Under the colonial administration, people said little or did not participate in making decisions to run the country. The provincial government structure allows people a greater say in their own affairs. Each of the 20 provinces, including the National Capital District, has its own constitution and flag.

Decentralisation meant certain powers or functions of a number of Departments was transferred to each of the Provincial Governments. These include departments such as:
The Provincial Assembly
The Legislative branch of provincial government is called the Provincial Assembly.

The members of the Provincial Assembly are chosen in local government elections. The Provincial Assembly is able to make some of the laws for the province and make decisions about development. A Provincial Assembly is organised like the National Parliament. The leader or Chairman of the Assembly is called the Speaker. The members of the Assembly are divided into Government and an Opposition. The leader of the Government is called the Governor. The Governor chooses the Ministers who will be responsible for different Departments.

The Executive Council
The executive branch of provincial government is called the Provincial Executive Council. Government Ministers and the Governor make up the Provincial Executive Council. The Provincial Executive Council is given advice on the running of the provincial government by a group of experts called the provincial Secretariat.

There is no judicial branch of provincial government. The Village Courts are controlled by the Village Secretariat as part of the Department of Justice of National Government.

Local government Presidents automatically become members of the provincial governments, and suitable and capable LGC presidents are appointed by the Governor as provincial ministers. All Regional Members of Parliament automatically become Provincial Governors except those who are Ministers in the national government.

Government responsibilities
Provincial Governments get a lot of their finance from the National Government to help them to do their work. They also raise funds within their provinces and encourage overseas investment for development projects. National Government members are allowed to attend Provincial Assembly Meetings in their own Province but they have no voting power. By attending meetings, they know what their provincial members want and can help them get support from the National Government.

Examples of specific responsibilities are:

- Sale of liquor licenses
- Primary and secondary education
- Libraries and museums
- Hospitals, clinics, aid-posts and sub-health centres
• Mobile trading licenses
• Building and repair of minor roads and bridges
• Garbage and sewerage disposal
• Dog licenses
• Health inspections
• Cleanliness of streets, cemeteries, community and sports grounds, public parks and gardens
• Provision of street-lights

**Daru in Chaos**

DARU in Western Province came to a standstill yesterday as disgruntled public servants and townsfolk protested over unpaid salaries. On Tuesday, shops were looted; government buildings were smashed and bystanders assaulted as public servants, who had not received their salaries for a month, went on a rampage. One person was seriously injured. Attempts to contact the Acting Provincial Administrator Wesley Malesa and provincial police commander John Anawe were unsuccessful yesterday.

It was claimed that town residents who have been carrying around bank cheques issued by the provincial administration and worth a total of K4.9 million joined the protest because they cannot cash the cheques. The PNG Banking Corporation's Daru branch is understood to be refusing to make payments to the provincial administration because of a National Court order obtained by Pioneer Health Services to freeze all accounts of the Fly River Provincial Government. Pioneer Health Services is seeking K1.3 million from the Fly River government allegedly in unpaid debts. Pioneer Health Services, which was set up with the blessing of Governor Norbert Makmop as a “flying doctor” service, has already claimed and was paid K1.5 million. The recent court order to freeze the accounts was set aside on January 17, but a “minor confusion” on the wording of the order is preventing PNGBC Daru from reopening the accounts ...

Fly River Provincial Assembly member Justin Gaewele said from Daru yesterday that the problem was aggravated by the fact that the province’s 2000 budget had not been prepared, leaving the province without a money plan. Mr Gaewele said a supply bill of K15 million was passed by the assembly last Friday and should see them through until March. He said Mr Makmop had told the assembly during the session that he was going to step down in March to allow, for investigations to be conducted into allegations of gross financial mismanagement.

*Post-Courier, 17 March 2000*

Over the years there have been problems in many provinces, particularly financial problems. The National Government has the power to suspend Provincial Governments if they are not working properly. The National Government then appoints a person to run the affairs of the province while the problem is being solved. Sometimes a new election has to be held.
2.2 Activity 12

Working in groups and using books such as Waiko, J.- 'A Short History of Papua New Guinea', Dorney, S. – Papua New Guinea' and newspaper articles, document cases of suspension of provincial governments.

What are the latest developments on provincial government reforms in Papua New Guinea?

Examine Maxton-Graham’s critique of the provincial government system. Identify his main arguments. What facts does he use to support his arguments? Collect facts to support arguments for continuing the current system?

Local Government

Local government councils were PNG’s first elected governments. The Australian colonial government started them in the 1950s to get support for development and to begin teaching people about democratic practices. Most councils covered large areas, often not connected by roads, with many different villages and tribes. By 1970, there were 165 councils, serving about 94 per cent of the population. PNG’s Constitution guarantees the existence of local governments, but it gives provinces the right to control them. All provinces except Gulf and Sandaun (West Sepik) have laws regulating local governments.

Local (community) governments (councils) are often limited to one clan, following the theory that people who have a similar background and speak the same language and have similar communication links will work together better.

Local government councils and community councils provide basic services for about three-fourths of the people in PNG. They are responsible for local roads and providing buildings for health aid posts and schools in rural areas. A few councils provide more services in urban areas under their control. Some local governments run businesses to support their activities. However, most of the councils’ money comes from grants from provincial governments or their district’s Member of Parliament. Other sources are head taxes and licenses for trade stores.

Community councils have replaced local government councils in East New Britain, Manus, Morobe, and North Solomons. They serve smaller areas, generally limited to one tribe. Manus, for example, created 14 community governments to replace its one local government council. In theory, people with one background and local communication links will work together better. However, there is duplication of jobs and a loss of central control.
Too few women in politics

The New Organic Law has made a step forward for women in politics, but we must be careful that it does not, in the long term, become a step backwards. Member for Moresby South Lady Carol Kidu said at a conference in Kavieng last week that there are simply too few women in politics. She said with the New Organic Law on Provincial and Local Level Government (LLG), we have a provision allowing for one appointed woman councillor to each council. The reason for this was to improve urban LLG by bringing in gender balance.

Lady Kidu posed the question: "The world of politics is tough and the election process toughens us up. I did not go into politics to represent women; I entered politics to represent both men and women. Does having an appointed woman to represent women mean that male councillors don't represent women?"

She said politicians need to have a working knowledge of the legislative process, of policy formulation, of prioritising, planning, budgeting and so on. "If we want our politicians to be effective, more emphasis should be given to training and capacity building at all levels of politics," she said.

Lady Kidu said she doubted that there would be a marked change in the barriers to women entering politics by 2002 because attitudes are slow to change. She said it is important that we achieve a balance between the different levels of politics if we want a sustainable future.

Dorothy Bengo, The National, 22 October 1999
2.2 Activity 13

What role does Lady Kidu have in government? What party is she associated with? Provide examples of work she has done in her electorate.

Produce a one-page profile on another woman who has been influential in government.

Interview women who are involved in local level government in your region. What are their main concerns? Interview men who are involved in local level government in your region. What are their main concerns? Discuss why the women and men might be concerned about different issues.

In pairs or small groups study the Grade 7 & 8 textbooks – Government and the People, Government in PNG and identify charts, diagrams and information which are no longer current. Design a wall chart for a classroom which presents current government structures and information.

Simulation – In a Local Government Council area which includes 10 small villages, a town market has been established which is no more than 8km from any one of the villages. All the villages have good gardens and could sell much produce at the market if they had better transportation. It has been proposed that the LGC purchase a truck which could service all the villages twice a week. The Council has enough money but some of the closest villages feel the money would be better spent to improve the primary schools or the local roads first. Simulate a council meeting to discuss the issue. Make sure you have at least five councillors and a representative from at least five of the villages. Make sure some of the councillors and village representatives are women. They do most of the carrying.
**Topic 5: Provision of services**

In Topic 4 there is a list of the broad areas of responsibility of government departments and the public service. Government departments (national and provincial) are responsible for the provision of services and facilities such as:

- Hospitals, clinics and aid posts
- Roads and transport infrastructure
- Telephone and postal services, schools and colleges
- Electricity and water supplies

Confidence in the government of PNG is very low. The economy is stagnant and if the economy is not growing then the welfare of the average Papua New Guinean gets worse because there is no money for schools, aid posts, roads etc. A major obstacle to economic development is the lack of infrastructure such as adequately maintained roads; for example, the failure of feeder roads is blamed for more than 25% of the coffee crop failing to reach markets.

Community service obligations of government enterprises have not been clearly understood or effectively delivered. Operational and financial efficiency and the delivery of services have not kept up to standard for at least a decade.

“The only way out of our wretchedness is to understand the real problems and to begin planning after we identify those problems. That can not be done by viewing the land from the air or from the air-conditioned and tinted comfort of a vehicle or from the porthole of a fancy boat.’

*(Frank S Kolma, 2001)*

### 2.2 Activity 14

*Scan the newspapers for a week for articles and letters about the provision of services. Read the articles and the statement by Mr Kolma (above). Then, in a group discussion, work out the reasons why services are poor.*

*Go on an observation field trip or talk to local people near your college. Identify the services that are lacking and/or the services people would most like developed.*

*Write a letter to the local Member of Parliament describing the main development issues in the local area. In your letter suggest ways the provision of services could be improved.*

*Develop your own GLOSSARY of terms that appear throughout this module.*
References


NDOE: *Government in Papua New Guinea*.

NDOE: *National Government*.

Post Courier – various issues.


The National – various issues.


Additional resources


NDOE: *Government and the people*.


NDOE – various primary/community school Social Science booklets.