



Seek Truth & Ensure Justice

**ESTABLISHMENT
OF
THE PROPERTY AND
JUDGMENT ENFORCEMENT DIVISION**

DECEMBER 2021



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TABLE OF CONTENTS

1. Title	5
2. Introduction	5
3. Roles and responsibilities undertaken by incumbent attorneys in (PJED)	6
i. Payment of timely compensation to victim(s).....	6
ii. Restitution of monies to the State.....	7
iii. Conduct of search and seizure.....	7
iv. Enabling action or inaction to cancel or renew the licences.....	7
v. Follow up to take administrative action or not to take the action.....	8
vi. Conduct of property investigation against the judgment debtor.....	8
vii. Restitution of state land from private individuals or enabling restoration of property of theft.....	8
viii. Ensuring payment of money by the State to the judgment creditor, if any.....	9
ix. Ensure and admit the defendants to rehabilitation centre.....	9
x. Destruction of properties as per decree of the court.....	10
xi. Enable proper conduct of stakeholder’s joint enforcement.....	10
xii. Conduct auctions amongst others.....	10
xiii. Timely monitoring of the diversion cases.....	11
xiv. Any other adhoc tasks.....	11
4. Establishment of PJEU (“a Unit”)	12
5. Increasing trend of enforcement across the country	15
6. Turn Around Time (TAT) in PJED	17
7. Challenges faced by the erstwhile PJEU	18
8. Judgment Enforcement Division (Hierarchy)	19
9. OAG organogram	20

1. Title

This is the Foundational Paper for the Establishment of the Property and Judgment Enforcement Division (PJED) under the Department of Justice of the Office of the Attorney General.

2. Introduction

As enshrined under Article 29 (1 to 8) of the Constitution of the Kingdom of Bhutan 2008, and the Office of the Attorney General's Act 2015 (OAG Act), the OAG carries out the responsibilities within the domain and authority of the Government and such other legal matters as and when entrusted to this office. The OAG, therefore, is the central litigation and prosecuting agency of the Government as provided under section 11, 12, and 13 of the OAG Act. Hence, this office either prosecutes or litigates the cases referred to by the government and other agencies as provided under section 16 and 24 of the OAG Act.

The history of the OAG begins when it was first established as the Office of Legal Affairs (OLA) under the recommendation of the then special task force on enhancing good governance in 1999. Ever since the appointment of the Director General of the OLA in January 2000, OLA became the legal arm of the government which was previously taken up by the Royal Civil Service Commission (RCSC) and the Law and Order Division under the Ministry of Home Affairs. Since then, the OLA has seen tremendous change in its functions and ultimately became an autonomous agency in 2008 with the appointment of the first Attorney General as the Chief Legal Officer of the government.

Currently, the OAG has two departments namely Department of Justice (DoJ) and the Department of Legal Services (DLS). The Prosecution and Litigation Division (PLD), under the DoJ, is primarily mandated to undertake prosecution and litigation on behalf of the State. Initially, the Property and Judgment Enforcement Unit (PJEU) is a mere unit under

the PLD whose primary job is to give life to the judgments rendered by the courts. It also ensures to safeguard the limited resources of the State from untoward erosion. Once the judgments are rendered by the courts through due process of law, careful considerations are required in enforcing the judgments as provided under civil and criminal procedure code of Bhutan 2001 and other relevant laws. Since the enforcement task herein ensures giving life to the decrees of the court, providing this PJED related services require due diligence through collaboration, communication and consultation.

3. Roles and responsibilities undertaken by incumbent attorneys in (PJED)

Enforcement of judgment, besides many other pivotal services provided by this office, is a daunting task principally because many decisions of the courts are unable to enforce and becomes a frustrated judgment. While the task becomes frustrated when the defendant goes at large, it also becomes frustrated when the defendant convicted for life involves payment of compensation or restitution. The enforcements work principally includes the following tasks:

i. Payment of timely compensation to victim(s)

In most criminal cases, prosecution involves civil restitution in the form of compensation to victims as provided under Penal Code of Bhutan 2004 and Civil and Criminal Procedure Code 2001. OAG as the central prosecuting agency is duty bound to ensure that the victims are compensated as adjudged. When the compensation is not met, it is imperative to conduct property investigations, and if that is not sufficient to redeem the victim, the ultimate option is to seek value-based sentencing. When the compensation is paid, issuance of receipts is a necessity as evidence for record. A greater challenges arise when defendants are stressed to make compensation payments when they have no means to pay, then, this indirectly coerces them to commit other crimes.

ii. Restitution of monies to the State

In all the corruption cases and many other penal cases (RBP), the defendants are required to enable restitution of money to the State in a stipulated frame. The decree of the court in many cases, however, remain silence and does not mention when to make payments and identify properties of the defendants to be restituted. Hence, the PJED is duty bound to give life to the judgment and ensure that the State gets the restitution amount as adjudged. The process to get restituted is similar to section 4.iii. below. The amount restituted must be accordingly deposited in the accounts maintained with the office. Great care must be taken particularly dealing with those maligned defendant or destitute ones.

iii. Conduct of search and seizure

As the enforcement service is carried out in different stages, it demands a platform wherein this office needs to ask for property search, seizure and auction orders from the Courts. Such stage is pivotal and is conducted in most of the cases particularly when the defendant refuses to pay or is unable to pay the compensation to the victim or restitution to the State. While seeking the order is straightforward, the length of workload increases when the order is granted and the attorney needs to work in close collaboration with other relevant agencies to find out whether the defendant owns any property, prepare report, and justify the need to seize the property including assessing valuation of seized properties. Accordingly, the properties are auctioned as per the auction manual.

iv. Enabling action or inaction to cancel or renew the licences

As per the judgments and court orders, this office is also duty bound to ensure that certain active actions are taken or to revoke such action that are taken earlier. For instance, this office is required to cancel a

trade license or renewal of the same belonging to a person who has been convicted for tax evasion, or conversely to ensure payment of all the entitlements to the defendant as per the service rules where a case is acquitted as per section 204 of Civil and Criminal Procedure Code of Bhutan.

v. Follow up to take administrative action or not to take the action

Wherever a civil servant or such other public official is involved in the commission of a crime or omission, or that the employee involved has been accordingly convicted, this office is duty bound to inform his/her employing agency to take appropriate administrative actions as deemed fit under their respective service rules. For instance, this office informs and ensures that appropriate administrative action is taken against a civil servant who is convicted of felony, misdemeanor, or petty misdemeanor whatsoever in accordance with the Civil Service Act of Bhutan, and Bhutan Civil Service Rules and Regulations. After receiving the action taken report from the respective agency, the case is then deemed closed provided that there remains nothing to enforce. Obtaining an action taken report is essential part of case closure.

vi. Conduct of property investigation against the judgment debtor

After obtaining a property investigation order from the Court, this office initiates property investigation against the defendant in question. In doing so, this office needs to correspond with all the relevant stakeholders, conduct field visits, meet with relevant authorities, prepare an investigation report, and finally conduct an auction as per auction manual, to dispose off the property.

vii. Restitution of state land from private individuals or enabling restoration of property of theft

This office ensures restitution of encroached government reserve forest

land from the defendants, and handing over the seized property to the victim/defendant as the case maybe. In doing so, this office needs to work in close collaboration with the National Land Commission Secretariat (NLCS) and local government functionaries, other relevant stakeholders or agency, and conduct field visits too. A handing taking must be carried out diligently.

viii. Ensuring payment of money by the State to the judgment creditor, if any

Although there is an emerging trend of winning the cases by the OAG, there are also certain cases wherein the government is at losing end particularly those contractual obligations ensuing contract terminations. In such cases, this office is duty bound to ensure judgment execution by enabling payment of the decree amount to the defendant. In such aspect, the concerned attorney needs to duly work in close collaboration with concerned agencies under Ministry of Finance. With inter-agency task force members institutionalized, close consultation must be held accordingly.

ix. Ensure and admit the defendants to rehabilitation Centre

In most of the drug cases, the defendants are either decreed liable to undergo a certain number of compulsory rehabilitation either before or after conviction. The judgment enforcement becomes difficult to enforce when the defendant(s), who are on bail, are adjudged to undergo compulsory rehabilitation before they are sent to the prison cell. For instance, Mr. A, who is on bail, has been adjudged to undergo a year of compulsory rehabilitation and then be sent to the prison cell. In such cases, the defendant goes at large, and the concerned attorney is unable to search the defendant which becomes a daunting task. The involvement of three principal stakeholders viz. RBP, Bhutan Narcotics Control Agency (BNCA) and OAG on board and search the defendant is pertinent.

x. Destruction of properties as per decree of the court

After the judgment is passed, in some cases, the court decrees properties, especially those which have been attached as evidence, to be destroyed. In executing such an order of the court, relevant stakeholders are involved which requires careful planning and involvement. For instance, controlled or prohibited drugs such as SP+ or hashish have been seized by the RBP from a defendant. After the pronouncement of the judgment, the SP+ or the hashish has been ordered to be destroyed. In order to ensure effective execution of such an order, this office spearheads in collecting the seized item from the RBP, hand over to the BNCA or such other relevant agencies to be destroyed by forming an *ad hoc* committee.

xi. Enable proper conduct of stakeholder's joint enforcement

Whenever multiple victims or stakeholders are involved for execution of a judgment, the concerned attorney needs to spearhead and enforce the judgment accordingly with heightened sensitivity. A typical scenario arises which needs multiple partners and hence coming together becomes a greater challenge principally when the defendant is due for release from the central jail or open air prison as the case may be.

xii. Conduct auctions amongst others

As mentioned above, when the court grants property search, seizure and auction order, this office is duty bound to seize the property in accordance with the Civil and Criminal Procedure Code. The seized property value called as the "reserve price" is fixed through a secret process involving the attorney concerned, the Chief Attorney of PJED, the Deputy Attorney General and the Attorney General. After doing so, the department of national properties (DNP) auctions the seized property as per property manual. However, with the SoP in the pipeline, auction is carried out by the PJED itself. The auction proceeds

are then added as part of restitution from the defendant, or paid as compensation to victims accordingly.

xiii. Timely monitoring of the diversion cases

As per Child Care and Protection Act of Bhutan 2011(CCPA), a diversion may be initiated by RBP, OAG and even the judiciary when a child in conflict with law (CICL) is involved. When diversion is initiated by OAG, the follow up and monitoring is carried out by respective protection officer or gender focal point. Such monitoring report is then submitted to PJED who carries out careful studies to ensure that the CICL strictly adheres to the terms and conditions laid down in the Diversion Agreement. The violation, if any, is being forwarded to the concerned prosecutor to initiate and pursue the prosecution.

xiv. Any other *ad hoc* tasks.

In addition to the duties mentioned above, the enforcement task comes as an *ad hoc* activity as well. It includes but not limited to

- Deportation of the foreign nationals
- Keep close collaboration with RBP/ACC/BNCA/Ministry/Dzongkhag/CSO/NGO/RAA
- For re-arresting a person

The enforcement cases includes but are not limited to referrals from Royal Bhutan Police (RBP), Anti-Corruption Commission (ACC), Civil Society Organizations (CSOs), Non-Governmental Organization (NGO), State Owned Enterprise (SOE), Districts, Ministries, autonomous agencies and other agencies.

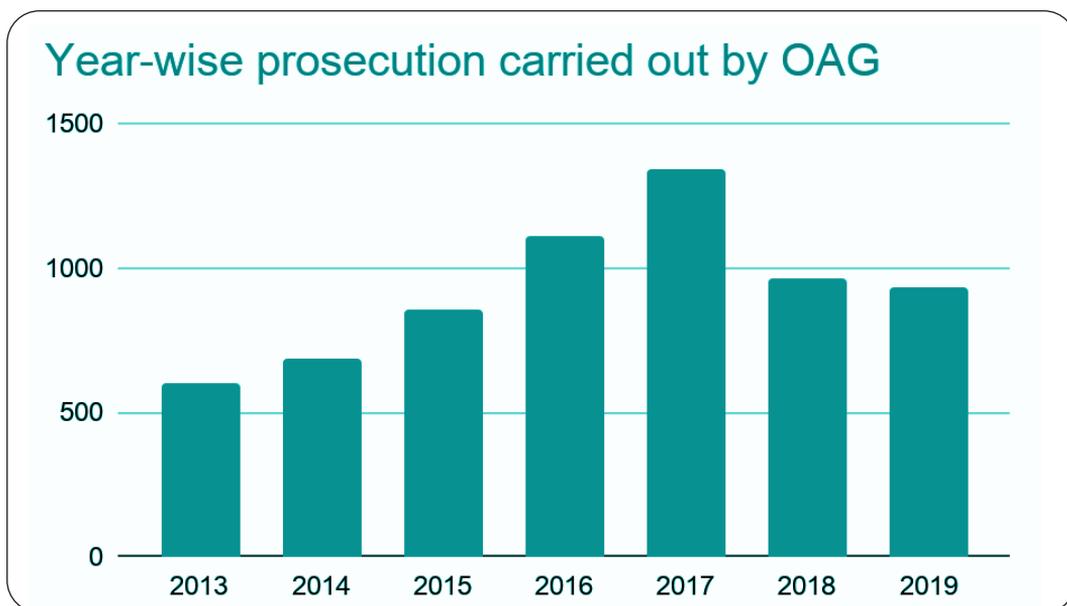
4. Establishment of PJEU (“a Unit”)

Owing to numerous challenges faced by the justice sector in general and this office in particular, this office initiated steadfast enforcement of judgment by appointing a separate focal person (an attorney) to look after enforcement of judgment in 2016. Prior to this, the concerned prosecutor themselves enforced the judgment which was very tasking. An Attorney Mr. Namgay Rinchen the first person to look after enforcement of judgments not only prosecuted numerous cases before all the courts across the country but was also looking after the multifold judgments passed by various courts across the country. Due to an absence of specialization, a separate enforcement unit was then created in the year 2017 headed by an experienced attorney. Since then, judgment enforcement services were provided with efficiency by two staff members headed by Attorney Sonam Deki Retty. However, they faced numerous challenges in executing the judgments principally owing to lack of sufficient attorneys to render the enforcement services.

Beginning 2018, and owing to the growing need of progressive growth of enforcement services, two more staff was recruited on contract basis for two years and were exclusively appointed in enforcing the judgments. Indeed, this office specifically recruited them to provide judgment enforcement services. Since then, the PJEU functioned as a full unit under the PLD, DoJ. However, retaining an experienced attorney within the PJEU has been the biggest challenge thus far mainly due to complexities involved in it. Whenever the attorney gained an experience in enforcing the judgments, they would either seek to get transferred to another division or within the same division but would never remain in the Unit. They wouldn't show greater enthusiasm and zeal to remain in the PJEU. This happened much due to ever increasing cases which would then burden the already complex and pending cases.

Now, the PJED has six staff headed by Janchu Dorji, a senior attorney who has been transferred to this office from Tsirang Dzongkhag administration on an *ad hoc* basis in November 2018. The Division was managed by two attorneys, three assistant attorneys and a legal assistant. Since then, he has been proactively involved in developing rules of procedure along with the prosecution and litigation division, standardizing the in-house enforcement procedure and developing various documents in providing efficient enforcement service. Owing to an established enforcement procedure, various ministries and agencies including the justice sector and other relevant institutions have been approaching this unit for advice.

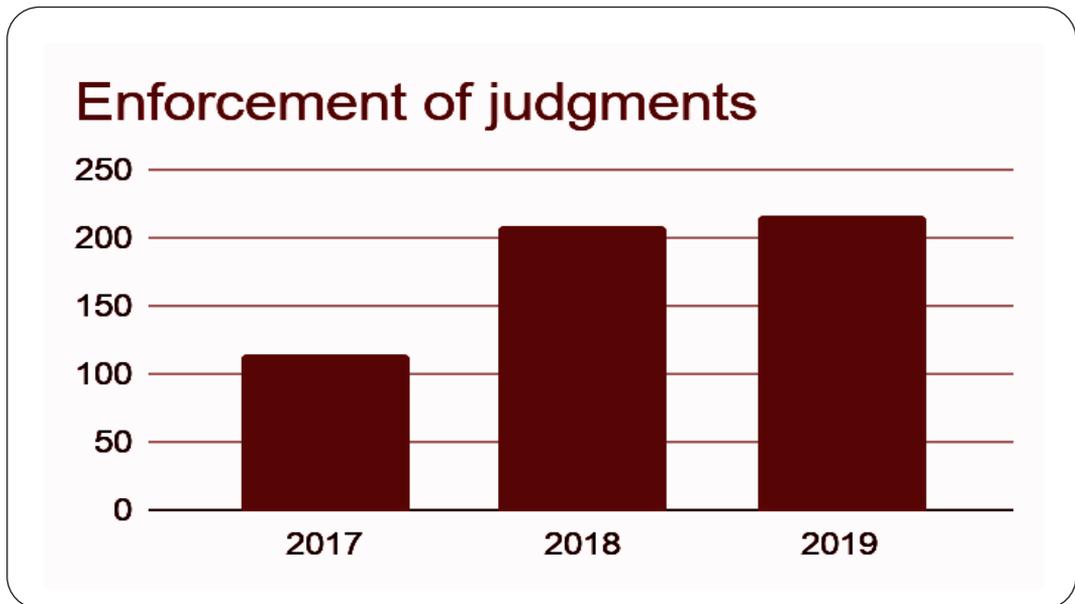
For every cases adjudged by the court, attorneys in the PJED is assigned based on jurisdiction or seriatim (in Thimphu only) to enforce the judgment. There are increasing cases, both civil and criminal, being referred for prosecution and litigation by OAG. The increasing trend of prosecution and litigation of cases is indicated below:



Graph 1: Year-wise prosecution carried out by OAG since 2017

On a deeper look, the number of defendants involved in prosecution of cases in 2018 and 2019 were alarmingly high which then heavily burdened enforcement of judgments.

The enforcement of judgments, as indicated below based on the number of case and not on number of victims/defendant involved, also saw an increasing trend as provided below:

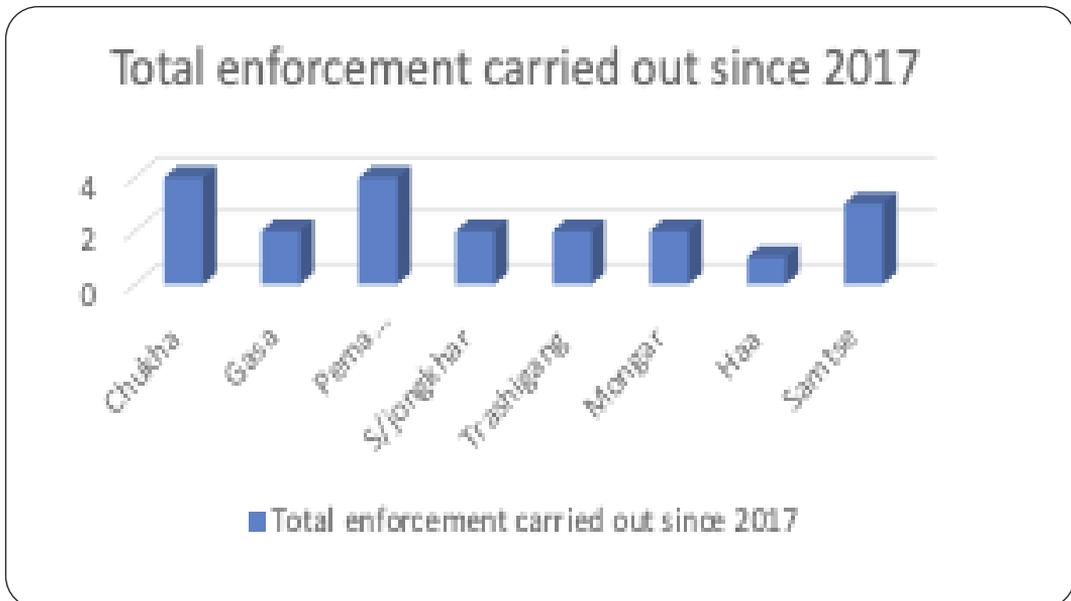


Graph 2: Year-wise enforcement carried out by PJEU since 2017

The workload of the enforcement of judgment keeps on increasing every year particularly when the previous year's judgments are either pending or becomes a frustrated judgment. This also occurs when the enforcement involves multiple victims and multiple defendants, and also due to manifold cases that a single attorney handles.

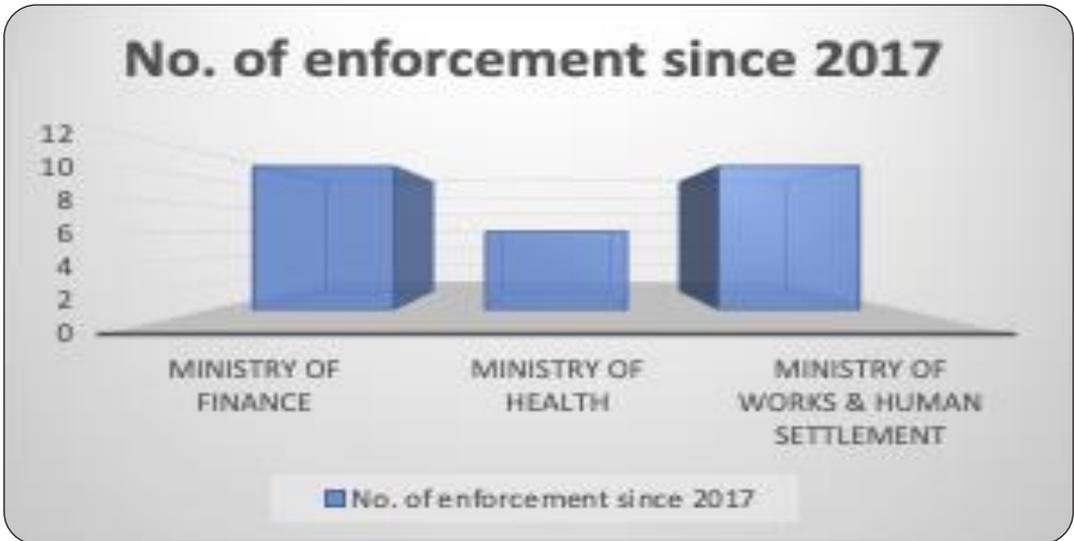
5. Increasing trend of enforcement across the country

Since OAG is mandated to carry out the prosecution and litigation services, besides such other legal matters, the growing need to enforce the judgment is increasing exponentially. Currently, the civil litigation initiated at the agency level, especially those in ministries, agencies and districts, are enforced by the agency concerned since the legal officers render enforcement services. However, this office has been receiving an increasing number of civil cases for enforcement in the past years. If this trend continues, then it would pose a greater challenge to effectively enforce the judgments.



Graph 3: Enforcement carried out in districts since 2017

The above graph No.3 is the data collected from some of the districts wherein they have enforced judgments since 2017. From 16 judgments enforced within their domain, they successfully enforced and could retribute Nu. 19.68 million from defendants.



Graph 4: Enforcement carried out in ministries since 2017

The above graph No. 4 depicts the judgment enforcement carried out in some ministries. From 28 judgments enforced since 2017, they could restitute Nu. 66.66 million from the defendants.

This office also collected judgment enforcement datas from various corporations including Dungsam Cement Corporation Limited, Kuensel Corporation Limited, Bhutan Postal Limited, Bhutan Power Corporation Limited, Natural Resources Development Corporation Limited, State Trading Corporation of Bhutan Limited, Food Corporation of Bhutan Limited and Farm Machinery Corporation Limited among others. Of 10 judgments enforced within their agency level, these corporations also have pending judgments for enforcement. A total of Nu. 27.16 million was recovered from the defendants since 2017.

Similarly, this office also collected enforcement datas from few banking institutions and established that the banking institutions are also facing numerous challenges in enforcing the judgments.

On careful analysis from the data provided above, it depicts that the enforcement of judgment is a challenge in almost all the sectors. The above graph 3 & 4 shows enforcement carried out within the

respective agency's domain and does not include the enforcement which the PJED is undertaking. The underlying fact remains, however, that these institutions do not own any established institution to undertake enforcement service. Therefore, OAG as the legal arm of the government and as the lead agency in prosecution and litigation, must strengthen enforcement service to provide capacity building to these institutions by establishing a division.

The workload of the enforcement service would drastically increase if the current Police Act also gets amended with a provision that shifts the burden of prosecuting the violation and petty misdemeanor cases to OAG. This will increase the cases to be received from RBP to double fold from the current state. Currently, the RBP conducts both investigation and prosecution of violation and petty misdemeanor cases, and they also enforce these cases as per the Police Act. However, the OAG is the central prosecution and litigation agency wherein these provisions under Police Act to carry out prosecution are highly likely to be amended in accordance with the constitutional mandates.

It is also because of the increasing trend of enforcement cases across the country which principally involves referral of cases for enforcement to this office by various government agencies in contractual matters such as contract termination settlements, arbitrations and litigations awards. Hence, the establishment of a new division for enforcement is timely and necessary.

6. Turn Around Time (TAT) in PJED

The turnaround time of every services the attorney renders defer based on the nature of the judgment under PJED. While some take as much as 40 hours, some take an hour only. The time invested per year (TIPY) adds up to 1954 hours in a year. This TIPY is based on the time that the PJED spends on misdemeanor and above cases only. Considering that the violation and petty misdemeanor cases to be prosecuted by

OAG then the TIPY would increase by minimum two-fold stand, and owing to the increasing trend of the referral for enforcement from ministries and agencies then the TIPY would further increase. Hence, PJED is in urgent need of additional staff and corresponding resources and expertise.

7. Challenges faced by the erstwhile PJEU

OAG as the central prosecution and litigation agency faces acute shortage of attorneys. In addition, retaining an experienced attorney is a bigger challenge. It is even more challenging to secure and retain attorneys in the enforcement unit owing to the complexity of roles and responsibilities that this Division undertakes. This office also faces challenges to prioritize and schedule the meeting with justice sectors and such other relevant stakeholders owing to the huge workload that the attorneys in PJED carries out. And without a person with authority in enforcement, decisions to be taken for enforcement is the greatest challenge which ultimately affects the judgment enforcement services delivery. In a nutshell, following are the challenges that PJEU faces:

- i. Inability to retain experienced attorneys.
- ii. Inadequate number of attorneys.
- iii. lack of skills owing to multifold duties.
- iv. Lack of authority without a division chief.
- v. Lack of career growth and opportunities.
- vi. Need to strengthen the systems in place.
- vii. Handling multifold cases which immensely hampers the enforcement services.

The challenges faced by PJEU, previously mentioned, is not exhaustive.

8. Judgment Enforcement Division (Hierarchy)

The hierarchy of the new division termed as “Property and Judgment Enforcement Division (PJED)” is a specialized division whose primary mandate is to enforce the judgments rendered by the court is provided below:

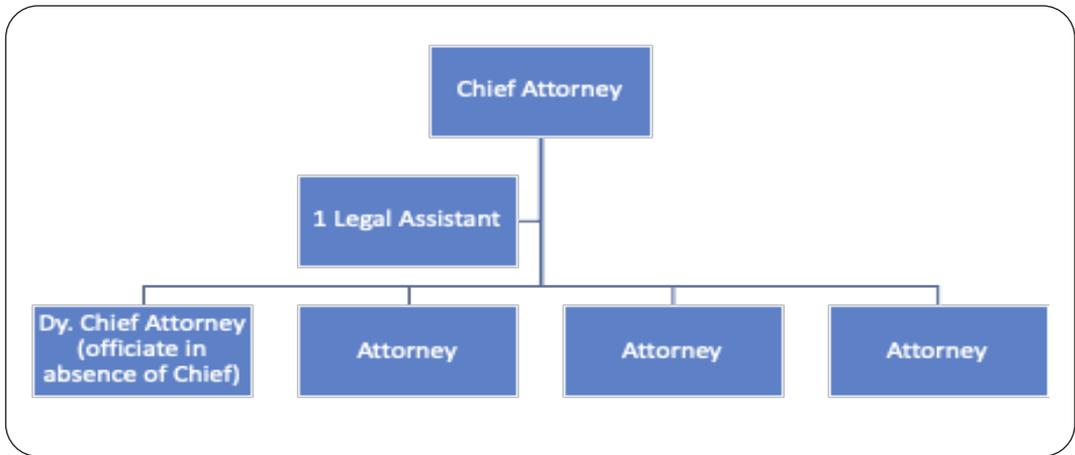
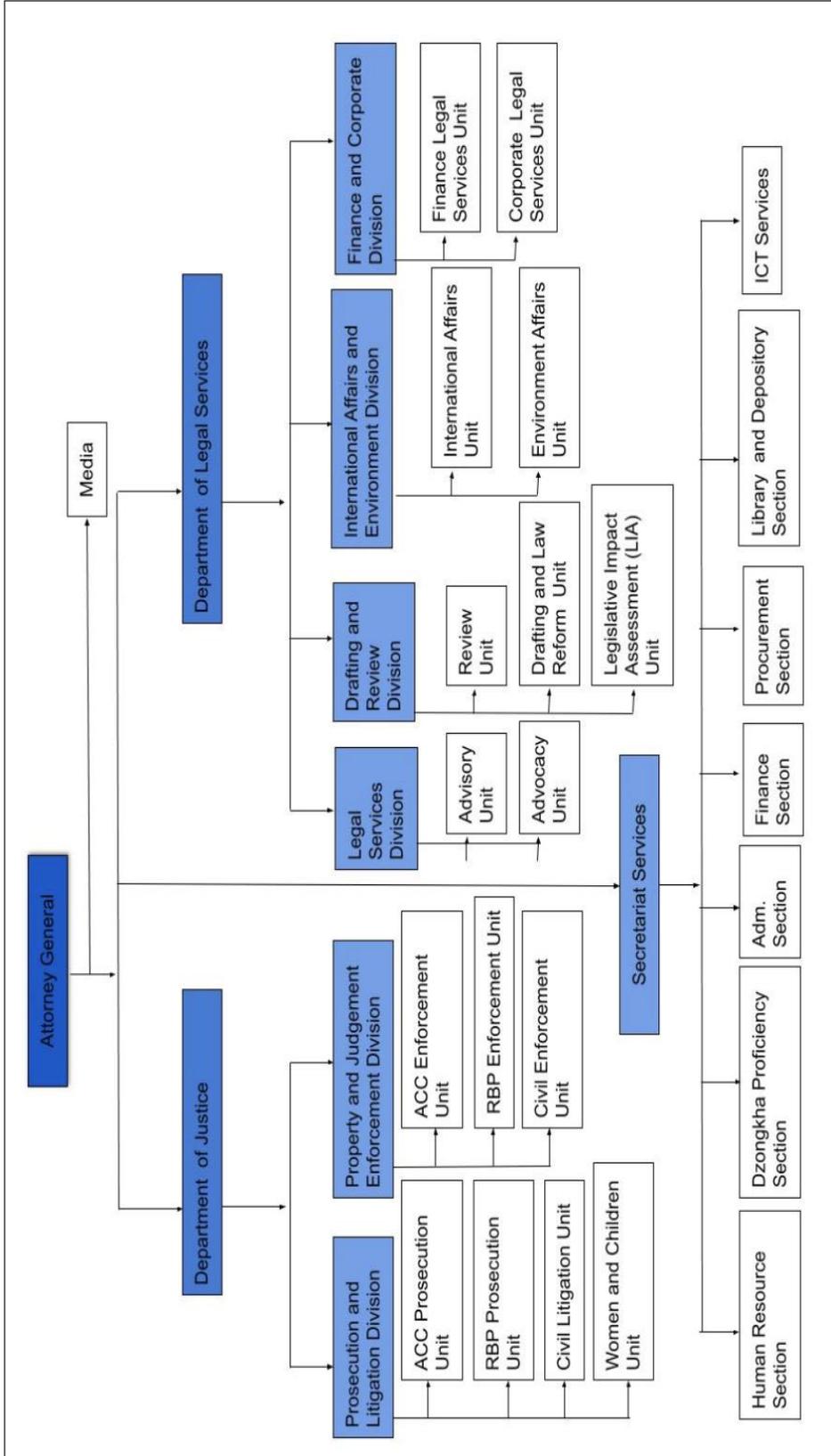


Image1: Hierarchy of Property and Judgment Enforcement Division under Department of Justice

The new division is now head by Officiating Chief Attorney, two attorneys, two assistant attorneys (on contract) and a legal assistant.

9. OAG Organogram





OFFICE OF THE ATTORNEY GENERAL
Post Box No. 1045, Thori Lam, Lower Motithang
Thimphu, Bhutan
PABX: +975-2-326889/324604/336947
Fax: +975-2-324606
Website: www.oag.gov.bt