

# Election Lessons

The Election Audit Report  
prepared for the  
PNG Electoral Commission  
on 3 by-elections held in  
Papua New Guinea in mid 2004

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November 2004



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# Executive Summary

## General Considerations

Even within the limited scope of this audit, some basic impressions struck us deeply. There is an apparent engagement with the electoral process at every level of this complex society. We had no sense that elections are today ‘foreign’ concepts in PNG. Rather, they have clearly been absorbed into an adapting social and political order – democracy with a multiplicity of PNG accents, is ‘the new tradition’. If true, this is important. In our view, PNG presents not as a state struggling to adjust “tradition” to “alien concepts”, but as a developing country adapting to its own governance, by its people, for its people. The issues are no longer (if ever they were) about whether ‘Westminster democracy’ was an appropriate import, but about how Papua New Guineans are building their own relationships between each other, and especially between citizen and authority. Whilst each place, province, electorate has its own pace in that process, the stories follow the same themes. Elections, in other words, are now part of the culture in PNG.

Elections play a central part in the legitimisation of public power. Under the framework of the Constitution, the people choose representatives who, through Parliament, can form both Government and Legislature. In those institutions, the representatives authorise the raising of taxes and the allocation of public funds. This might be termed: the “legitimacy cycle”. If elections go wrong, the integrity of the entire process is at risk. Instead of good elections feeding good governance, and vice-versa, the danger is that the entire cycle might become corrupted. LPV alone cannot change this cycle, though it might indeed be one part of a complex array of solutions. And no amount of security, as Chimbu shows, can secure the integrity of an election against widespread determination to cheat the rules.

Put simply, we suggest that policy must work *with* the competitiveness in PNG, but seek to reframe the basic incentives at every part of the cycle with encouragement and effective penalties. Ambiguities (such as election bribery) must be clarified – and we suggest a combination of strategies to establish more widely accepted rules for citizen and candidate.

## 1 Objectives of this Audit

This project had the objective of offering an independent post-event view of:

- *the conduct of the 3 by-elections in terms of their general planning, integrity, costs, security and processes;*
- *the impact of changing from First Past the Post (FPP) to the Limited Preferential Vote (LPV) under which each voter has 3 votes to rank candidates in order of preference, and*
- *any lessons relevant to the 2007 General Election in a manner which was relevant to the context of PNG.*

A summary of views on these matters follows, along with recommendations and priorities.

## 2 Planning

Accepting the limitations, the audit was impressed with the quality of planning and coordination in all three by-elections. But we note that the capacity of the Electoral Commission is extremely stretched, especially conducting apparently endless by-elections, such as these, as well as the projected Bougainville elections in 2005. The lack of capacity is significantly magnified by the run-down of the state in the Provinces generally, measured in terms of deterioration of roads and services and the general ‘reach’ of the state. A critical aspect of planning is the solid and predictable availability of funding. That predictability is not available to the Commission. This makes appropriate preparation extremely difficult.

### 3 Integrity

We note and support the generally positive independent reports from people who were on the ground during the elections. However, with 2 out of these 3 by-elections still subject to Election Petitions, it is hard to be certain about the integrity of the processes in Yangoru-Saussia and Anglimp-South Wahgi. In relation to Chimbu, our investigation confirmed what the observers reported: the by-election had serious irregularities, particularly in multiple voting and the counting. Quite simply, these won the election. But a dominant impression gained from this Audit in terms of the integrity of the electoral process, relates to the opportunity for fraud that comes from a bad Voters' Roll. Instead of a key tool to *reduce* election fraud, the Roll has become the *means*.

### 4 Costs

Adjusting for topography and so on, the costs in Yangoru-Saussia were roughly a third of the costs of running the Highlands elections, with the key difference being police costs and having to process approximately three times the votes that would be necessary if there were a fair process. In relation to Chimbu, at least, it seems odd to fund an extremely expensive but *irregular* election. Projecting into 2007, it will take not only a minimum of K100 million, but a "staggered" process to enable security to be deployed sequentially and the resources of the Electoral Commission to match the scale of the tasks. In addition to defending a host of 2002 Election Petitions, and probably two out of three of any by-elections before then, the Electoral Commission can anticipate three substantial advance costs from 2004-7:

- a well-run LPV awareness campaign,
- a well-run campaign seeking public and candidate support for 'fair play',
- sequentially building a new Roll in electorates.

If cost-escalation is true for the public sector, we have also highlighted that elections have enormous and escalating costs for candidates and for communities.

### 5 Security

Conducting these by-elections reasonably peacefully was a major success, although the Highlands operation involved nearly half the country's police force. Whilst welcome and necessary, this is surely only a short-term solution. There are dangers in building an electoral process around a substantial police deployment, particularly in pulling the police into the process as *actors*, not as guardians. The remoteness of many areas means that police are simply unable to arrest people, and indeed it would be foolish in many cases to try. A police presence is thus an essential part of giving confidence to an electoral process, as it was in all of these three by-elections. But there has to be a better way.

### 6 The Limited Preferential Vote (LPV)

Our short conclusion from these three by-elections is that LPV shows solid signs of working well in terms of:

- making candidates and supporters far less publicly antagonistic to one another,
- reasonably-conducted counts (given the potential complexities, and noting the attempts/possible successes at fraud),
- being reasonably understood by voters.

However, there are costs of LPV, principally in extra and complex counting. And the entire system is extremely dependent on good voter and candidate understanding, so there is a great deal of work to be done in this regard across the country. Chimbu at least also makes it clear that irregularities will not cease under LPV – in campaigning, voting and counting.

*In our view, however, the introduction of LPV, with a country-wide education campaign and associated changes as recommended here, offers Papua New Guinea the best opportunity in a*

*generation to change candidates' and voters' views on the "win at all costs" mentality and to rebuild the values of "fair play".*

If this opportunity is taken, it could significantly reduce the escalating financial costs of elections. But the process has to be inter-connected with wider goals of rebuilding respect for "fair play" in all parts of the "legitimacy cycle" – i.e. anti-corruption, stability of government, building appropriate and transparent relationships between MPs and constituents, etc.

## **7 Looking to 2007**

In our view, these by-elections show that without change and prompt action, the prospects for an affordable, peaceful and fair election in 2007 are bleak. That said, plans are in train, discussions on legislative change and capacity-building are in progress. The Electoral Commission needs support to make them work. The historical record shows that many in PNG knew the dangers when they embarked upon the 2002 elections without adequate preparation and well aware that uncontrollable forces could be unleashed. Those memories are still very fresh in the minds of those we interviewed, and as the Election Petitions from the 2002 Elections show.

## **SUMMARY OF RECOMMENDATIONS**

### **1 Leadership**

The Commission may wish to invite the Government to establish a high-level '2007 Election Committee' including members of the Prime Minister's Department, to work with the Electoral Commission to determine priorities and coordinate implementation, including through the House. This is not the same as a 'coordination committee' of people actually concerned with running elections – it is a 'change committee' to decide upon and fund implementation of critical necessities, starting in 2005, without which the 2007 General Elections will be in trouble.

### **2 Prioritisation**

The most important things should be sequenced into manageable priorities – thus, reforming the Roll is critical as set out below, but it need not be done all over the country and in the same way by 2007: one could start with the areas that are the subject of most abuse (i.e. the Highlands); the same point applies to conducting the elections in problem areas in that they should be sequenced; and the same for reforming Electoral Boundaries.

### **3 Building the notion that fairness entitles reciprocal obligations**

At every level, the attempt should be to re-build the notion that the *Electoral Commission enables and assists the people's choice – but there are reciprocal obligations on the people to make this a fair process.*

### **4 The Roll**

The Roll must progressively be rebuilt, starting with the most problematic areas. There is no simple formula here. It will need adjusting for the complexity of PNG societies. There is very wide discretion given in the law to the Commission on how it might build the roll. The message is: *unless we rebuild the Roll fairly, your community will not be able to vote; we need to do this together.*

### **5 Technology and the Roll**

Reasonably low-cost technology can compile (in the field) a digital Voters' Roll that includes both photograph and fingerprints. Consideration should be given to requesting a business case for this technology, and to trialling it as Rolls are rebuilt in priority areas. This technology might have multiple uses (eg by police), which would make a better business case.

## **6 Flexibility**

Subject to the over-riding imperative of providing as free and fair an election as circumstances allow, the Electoral Commission needs to use its existing flexibility in its processes, including in elections themselves but also in the preparation, such as the Rolls. A further example is in the choice of polling places. In our view, this should mean not only *access* for the public, but access for a “fair vote”.

## **7 The Electoral Commission’s capacity to exclude irregular ballots**

At present, the balance of the law is towards *allowing* suspect material into the count, and then leaving it to candidates to challenge via an Election Petition. This provides a very significant incentive on candidates and supporters to cheat, as it is a lengthy and expensive process afterwards to challenge the result once it is entered. In our view, this balance is worth reconsidering explicitly, including with clear legislative authority and Electoral Commission guidelines and training, so that the incentives are the other way round. The critical point is that the deterrent to cheating must be effective.

## **8 Speedy and effective decisions and dispute resolution**

The goal should be to get Candidates, especially, to sign up to the rules of “fair play”, and to provide speedy and effective processes for dealing with breaches of electoral laws. Accepting the need for independent scrutiny by the Courts, the Electoral Commission should be able to act as Plaintiff, not just as Defendant, in proactively enforcing electoral law. Consideration should be given to establishing a special “Election Tribunal” with election and legal expertise to consider breaches of the electoral laws during elections.

## **9 Establishing clearer rules for candidates on bribery/undue influence and ‘tradition’**

To establish ‘fair play’ the candidates must know the limits, with far less ambiguity. In relation to the problem of “bribery v custom”, there appear to be three options:

- a) accept the current situation with its ambiguities, and do nothing;
- b) formulate a clearer description (using customary knowledge and processes) of what is acceptable as ‘customary’ and what is not at election time, and better define such in the law; and
- c) if it is simply not feasible to distinguish between bribery and custom at election time, and the view is that the expense has become prohibitive for all concerned, specifically legislate to provide that ALL gifts, donations, payments, *including at any customary or traditional ceremony*, would be prohibited after, say, the issuing of the writs (the opening of the Nomination period), until after the return of the writs.

## **10 Candidate ‘Code of Conduct’**

Setting out all the (existing as well as re-formed) rights and obligations of candidates in a Code of Conduct, and getting them to sign such as part of the nomination process, would provide a mechanism of education and possible enforcement of fair play.

## **11 Limits on campaign expenditure**

To prevent domination by only the wealthiest in elections, many countries have reasonably effective limits to campaign expenditure. Without clear rules spelling out acceptable expenditure and banning “traditional gifts” as noted above, such limits would be completely unviable in PNG. We accept, however, that enforcement here is a major problem. But legislation might empower the Commission to establish such limits by Regulation, when it deems that reasonable enforcement possibilities

exist. The integrity laws allow unlimited expenditure and huge donations by individuals and (foreign and local) companies to both parties and individual candidates.<sup>1</sup>

### **12 Requiring candidates to declare assets**

The same incentives should apply to Candidates as to MPs. It makes little sense to clean up *elections* without linkage to corresponding sanctions in public office to stop the cycle of corruption. Consideration should be given to requiring *all Candidates* (not just elected MPs) to submit declarations of assets to the Ombudsman as part of the nomination process, and to provisions which would mean that any false declaration rendered the person ineligible to stand for a defined period.<sup>2</sup>

### **13 Neutrality and its breach**

Fair process should apply also to all officials involved in elections, or with them in a neutral capacity (such as police). Existing provisions requiring Electoral staff to make declarations to serve without bias, and there are criminal offences for breaches of such. But they are not enforced and punished. Polling and Counting staff are subject to bribery offers that outweigh any realistic chance of being caught and subject to noticeable penalties - for example if people who also hold other public office (eg in the Provincial Administration) were realistically subject to dismissal.

### **14 Prohibiting candidates or MPs who have breached core obligations of fairness from standing again for defined periods**

Being able to remove a Candidate during the election, or an MP afterwards, for major breaches of electoral rules in an effective and timely manner is a key part of changing the incentives. But an additional factor is necessary – that process should mean that a Candidate cannot stand for public office again at the next opportunity. Initially, the ban should be for, say 5 years. But a second breach might be more substantial, say 10 years.

### **15 Shared planning and clear roles**

Establishing joint provincial planning and operational committees is already taking place and makes solid sense. But at the same time consideration might be given by the police and Electoral Commissioners, to drafting a short Memorandum of Understanding to establish clear boundaries for their roles, and clear terms on which police might move from ‘protection’ to ‘assistance’ (if ever).

### **16 Voter and citizenship – and electoral staff /officials – education and training**

We echo the 2003 Report of the AusAID Review Team which recognized the importance of increased citizenship education, which would include voters’ rights and responsibilities, as well as the need for specific community awareness programs on the LPV. It is also critical to effectively train electoral staff (and other officials) in the count in order to avoid lengthy delays and problems in 2007.

### **17 Abolishing by-elections**

Consideration should be given to abolishing by-elections under certain conditions. Under First Past the Post (FPP), “winning” candidates routinely received less than 10% of the overall vote. With three votes under LPV, there is solid evidence that a far wider democratic mandate would have been won by even losing candidates than was often secured under FPP. It would, in our view, be

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<sup>1</sup> Louise Baker *Political Integrity in Papua New Guinea and The Search for Stability: A report on the implications of the Organic Law on Integrity of Political Parties and Candidates (OLIPPAC) for political stability in PNG.* AusAID, Canberra February 2004.

<sup>2</sup> We accept that the Ombudsman Commission will not have the resources to check individually several thousand forms submitted at a General Election. But this should not stop the filing of such forms so that they are available in appropriate cases as a base line.

perfectly legitimate to consider requiring the Electoral Commission to complete the count in a manner that would allow the reallocation of votes in the event that a person lost his or her seat. Careful attention to detail would be necessary here, including possibly requiring a by-election in the event of the death of an MP (to exclude any incentive for murder). This alone, would save millions of Kina and allow the Electoral Commission to concentrate on the Roll between elections.

#### **18 Ballot design and layout**

We note the recent proposal from the Law Review Committee to abolish the single ballot paper and replace it with a single ballot form (presumably printed in a unique way each time, and for each electorate, to prevent fraud) with the usual sequential serial number. This ballot would have only 3 boxes for First, Second and Third Preferences, and voters would merely write the number of each candidate from a list giving the order of draw, on display at the polling centre and cardboard voting screen. It is too close to the next general election to contemplate even a trial. But the idea is worth thinking about when there is more time.

#### **19 Providing for elections to be held on different days for the General Election**

It will be necessary to amend section 81 of the Organic Law on National and Local Level Elections to allow for “staggered” elections should this be necessary. It will not always be necessary, but there should be the option, especially under current conditions.

#### **20 Political instability in Parliament and Cabinet**

The difficulty of maintaining stable government under current conditions has been the subject of a great deal of thought in PNG. We have noted that this instability is inter-connected with the electoral process, evidenced not least in these by-elections. It might be possible to discuss further re-framing the laws and conventions around confidence and supply.

#### **21 The relationship between MPs and their constituents**

There has already been much talk about District Support Grants and the “slush funds” and we are aware that some reforms have been made and others are still under consideration. One key aspect of Parliamentary democracy is to enable a “representative” to work in the House on behalf of his or her constituents and PNG is no different from many other democracies in this. The key is the means by which this is done. There may be scope, for example, in the possibilities of allowing more Private Members Bills including expenditures to certain limits, so that Members can find transparent mechanisms to promote development in their electorates.

#### **22 Provincial Governors**

We are aware that discussions on this are continuing. We simply note that there are good grounds in election practicality and costs, in addition to constitutional principle, for the nature of this particular representation to be reconsidered.

#### **23 Increasing Nomination Fees for candidates**

In our view, there are very good grounds for increasing the Nomination Fee to at least K10,000 as a reasonable limitation under PNG’s democracy. This will raise funds as well as ensure that candidates have to seek wider support before standing.

#### **24 Gender**

In these three by-elections, as indeed the Parliament as a whole, whilst women apparently participate actively at all levels of the campaign and voting, we note the very low representation in parliament. This is a deeply cultural matter. But we note that in the adaptation and adjustment of its



democracy, PNG's leadership may wish to consider reforms to improve the representation of women in Parliament. In turn, this might have a significant impact on the electoral system.

## **25 Matters particularly concerning the Police**

- a) There should be better clarity in the roles of officials participating in the electoral processes:
  - i. A Memorandum of Understanding between the Police Commissioner and the Electoral Commission be developed that clearly defined the roles of police and Commission staff in discharging their duties at by and general elections,
  - ii. Election documentation (such as handbooks and guidelines) currently in circulation be updated to reflect these roles and duties,
  - iii. The prescribed roles and duties are reinforced as part of ongoing training and education of police and electoral staff.
- b) The opportunity for officials involved in the electoral process to unfairly or unlawfully influence the outcome should be reduced if:
  - i. All affected staff are required to declare any actual or potential conflict of interest,
  - ii. Comprehensive vetting arrangements are put in place to assess all relevant officials and ad hoc employees,
  - iii. The rotation of senior staff takes place as a matter of course,
  - iv. Officials are, as far as practically possible, deployed to areas other than those they are directly responsible for.
- c) Consideration be given to strengthening the governance arrangements for all aspects of the election processes including:
  - i. The creation of a single multi agency steering group that would oversee and could guide the collective governance effort, and
  - ii. The development of common election budget bidding/allocation arrangements for the police and Electoral Commission, and
  - iii. Mandating local structures including Steering Committees, and
  - iv. Creating multi-disciplinary awareness teams to promote the new LPV electoral system.

## **PRIORITISATION**

1 Having considered this Report, the Electoral Commission may wish to invite the responsible Minister (the Prime Minister) to establish a senior committee of officials to progress the urgent preparatory matters necessary for 2007, and to build support from within the legislature and executive for progressive and effective action.

2 Planning towards 2007 should be integrated with the previous and existing reports, particularly the AusAID Phase II electoral support project.

3 Starting on re-building the Roll in key areas is the major priority. That takes only budgetary support, rather than legislative change (there are a number of methods by which this might be done as part of a comprehensive package – see the Summary Action Points from the PNG Ad-Hoc Committee's response to the Commonwealth Expert Group's suggestions in Appendix C).<sup>3</sup>

<sup>3</sup> The Commonwealth Expert Group's suggestions may be found at:  
[http://www.thecommonwealth.org/shared\\_asp\\_files/uploadedfiles/{02776B7C-C858-4B17-B36B-25FCA5813A8B}\\_PNGElectoralrpt.pdf](http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/{02776B7C-C858-4B17-B36B-25FCA5813A8B}_PNGElectoralrpt.pdf).

4 In the legislative package, the key is to increase flexibility and effectiveness, and change the incentives on candidates and supporters to 'win at any cost':

- more flexibility to the Commission eg to conduct a General Election on a 'staggered' basis, within and between provinces, and separating Local Level Government ward elections on a rotating basis during the 5 year cycle;
- establishing an effective "Election Tribunal";
- clarifying the boundaries between 'custom' and 'election law';
- increasing the Nomination Fee;
- provision for abolishing by-elections under certain circumstances;
- banning candidates who breach key rules from standing for defined periods.

## 1. Purpose and Scope of this Audit

Considerable policy, academic, domestic and international attention has been paid to the electoral system and wider governance in PNG since the dramatic problems of the 2002 General Elections. Those problems, especially the violence and chaos which resulted in failure to complete the election in numerous electorates, were concentrated in the Highlands region. Most of the rest of PNG was relatively peaceful and orderly. The PNG Government and Parliament has for some years been responding to the issues with policy and administrative changes – arguably too slowly. The main statutory reforms relate to the method of voting (2002) and the attempt to bring stability and integrity into party-politics and leadership in Parliament and governance (2001). More broadly in the public sector, an evident mood in this respect has been one of reflection, evaluation and determination that the experience of the 2002 General Elections will not be repeated in 2007. That mood has, it seems, been matched by a widespread expectation from the business sector, and from private citizens, that well-planned action is imperative. .

Since 2002, several by-elections have given early opportunities to assess the impact of policy and administrative changes as planning builds for 2007. In particular, three by-elections<sup>4</sup> were clustered in mid-2004 in the electorates of *Yangoru-Saussia*, *Anglimp-South Wahgi*, and the provincial seat of *Chimbu*. The first is in the hills just inland from the coast on East Sepik province. Anglimp-South Wahgi is a Western Highlands electorate around the town of Minj. And Chimbu is a central Highlands province comprising six Open electorates, with this by-election returning a person who is at once both the Provincial Governor and national MP for the Provincial Electorate of Chimbu (often called the Regional seat).

Reflecting discussions that had been held on the possibility of an electoral audit after the 2002 elections, the PNG Electoral Commission in July 2004 welcomed the suggestion from Transparency International (PNG) that an election audit of these 3 by-elections should be conducted as part of the planning for the 2007 General Elections. The Institute of Policy Studies at Victoria University of Wellington agreed to work with the Institute of National Affairs and Transparency International (TI) in PNG, to conduct the audit and report to the Electoral Commission. AusAID provided funding in support of the Electoral Commission and TI. In alphabetical order, the team members were:

Dr Ray Anere (Consultant, former Senior Lecturer, UPNG)  
Ms Chloe Davenport (Solicitor, Institute of Policy Studies)  
Mr Solomon Kantha (Tutor, UPNG)  
Ms Patricia Kassman (Transparency International, PNG)  
Dr Andrew Ladley (Director, Institute of Policy Studies)  
Mr Gavin McFadyen (Consultant, former Assistant Commissioner NZ Police)  
Mr Dan Williams (former Senior Partner, Deloitte, Wellington).

Election audits can fulfil many tasks, depending on their timing and purpose. This project had the objective of offering an independent post-event view of:

- *the conduct of the by-elections in terms of their general planning, integrity, costs, security and processes;*
- *the impact of changing from First Past the Post (FPP) to the Limited Preferential Vote (LPV) under which each voter has 3 votes to rank candidates in order of preference, and*
- *any lessons relevant to the 2007 General Election.*

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<sup>4</sup> The reason for the by-elections included the deaths of two incumbents and an Election Petition overturning the 2002 General Elections results (in Yangoru-Saussia).

As part of the research, the team had access to the considerable volume of published and unpublished material that has been produced on elections in PNG since independence in 1975, and particularly the UPNG and ANU research done over the last year or so.<sup>5</sup> This material was supplemented by detailed discussions in the Electoral Commission and free access to its records and personnel, by frank discussions with key staff in the Royal PNG Constabulary, by visits to each of the 3 electorates and by a wide range of other interviews (including with candidates, Members of Parliament and former MPs) in PNG in October 2004. Of the 3 electorates, only the seat of Chimbu was not at the time of field research subject to an election petition, and it was thus only possible to inspect the actual used ballots in the seat of Chimbu in their place of storage, accompanied by an official from the Electoral Commission.

In the end, a great deal of material was collected. In addition, it quickly became plain that for the report to have any possibility of adding workable value to PNG's planning, it must locate the elections in a wider cycle of governance in PNG. The reason was simple: effective change will require the widespread support of MPs and the voting public.

The vast amount of material, together with the wide scope of the audit, could sustain books and theses. Instead, we have opted for a report setting out and justifying our key findings and recommendations with further detail in the Appendices and with cross-referencing to earlier reports.

## 2. Reports on PNG elections to date

There is an impressive literature on PNG elections, including notably the UPNG series dating back to the 1964 General Election, a recent example being the volume edited by Ron May and Ray Anere on the 1997 elections.<sup>6</sup> But there have also been valuable reports, including the 1997 Report of the Commonwealth Observer Group; the 1997 Report by the then Electoral Commissioner (Reuben Kaiulo); the Constitutional Development Commission (CDC) Final Report of 2001; material from UPNG Election 2002 Workshop of October, media reports and government papers on election and electoral reform issues; the November 2002 report by the Commonwealth Expert Group; the January 2003 Report of the AusAID Review Team; and reports of the ANU, UPNG and Australian Electoral Commission observers, and PNG Electoral Commission staff, on the by-elections in Abau, Yangoru-Saussia, Chimbu and Anglimp-South Wahgi.

We see this Audit as joining this substantial body of evidence, and note that many of the issues canvassed here have been very well documented both in these elections and in many before them. We also note that the Government in power in 2002 shortly before the General Elections sought to suspend the elections because the Voters' Roll was in such bad shape and as the violence escalated leading up to the elections. Indeed, Papua New Guineans told us that everyone at street level knows the problems extremely well and repeating them was not of particular value unless accompanied by effective solutions.

A list of the major recommendations in the recent reports is an impressive agenda for improvement and reform (many aspects of which are already under way):

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<sup>5</sup> We note the authoritative body of work of Dr Bill Standish from ANU and his collaboration with University of Papua New Guinea colleagues including Dr Joseph Ketan, Dr Henry Okole, Dr Orovu Sepoe, Alphonse Gelu, Dorke de Gedare and Lawrence Sause. Joe Ketan's most recent work is a penetrating examination of the issues: *The Name Must Not Go Down: Political Competition and State-Society Relations in Mount Hagen, Papua New Guinea*. Institute of Pacific Studies, University of the South Pacific, 2004.

<sup>6</sup> RJ May and R Anere (eds) *Maintaining Democracy: the 1997 Elections in Papua New Guinea*. UPNG and ANU, Canberra, 2002.

- Cleansing and updating the common roll, including decentralizing these processes to provincial administrations;
- Conducting continuous LPV awareness planning, coordination and training at all levels;
- Ensuring appropriate transport, accommodation, logistics and security arrangements;
- Ensuring adequate funding and allowances for police and polling officials;
- Improving voting and counting procedures;
- Coordinating between the Electoral Commission, relevant national government agencies, provincial administrations, NGOs and civil society organizations;
- 
- Reviewing provisions in electoral law pertaining to voting and counting;
- Ensuring better compliance with strict election rules;
- Defining clear roles for police personnel, returning, assistant returning, and presiding officers;
- Using voter ID cards and photographs;
- Securing political will through ministerial involvement;
- Establishing a high-powered committee for 2007 elections;
- Staggering elections (so that all national and local government elections do not need to be held at one time) ; and,
- Considering doing away with the common roll in the Highlands electorates and issuing ballot papers in accordance with the census roll for the province/electorate concerned (given the major problem of the inflation of the roll, especially in the Highlands provinces).

Given the valuable reporting on the actual conduct of these by-elections, and the above list of recommendations, this report focuses on what value we could add. We therefore concentrate particularly in identifying whether the processes intended to guarantee integrity in the system appeared sufficiently robust to correct problems. We also focus on costs and security – the two appendices to this paper. The result confirms many of the well-known problems in the electoral area and indeed the progress being made. Still, we have attempted to prioritise recommendations.

### 3. Concerns in each by-election

#### Yangoru-Saussia

We have had access to the relevant planning and other records setting up all these by elections. In addition, the actual conduct of the elections by the Electoral Commission (including campaigning, polling and counting) was closely observed by an independent team of researchers from UPNG.<sup>7</sup> Their reports noted some problems and the appropriate adjustment by the Electoral Commission to cope with these (eg. the discovery in the midst of voting that the supposedly updated Roll had excluded substantial numbers of voters, and hence the decision to revert to the 2002 Roll). Overall, their observations were essentially that:

- the voting process was free and fair,
- the LPV system apparently worked well in producing less tensions between rival candidates (and their supporters),
- there were remarkably few “informal” (i.e. ballots with wrong marking such that they cannot be counted as valid votes) ballots, suggesting that most people understood reasonably

<sup>7</sup> Henry Okole, Lawrence Sause, Alphonse Gelu

*The Yangoru-Saussia by-election under the Limited Preferential Voting System, May-June 2004* FINAL REPORT TO THE PNG ELECTORAL COMMISSION, October 2004.

well that they had 3 votes (or, at least, they had reasonably informed ‘assistance’ with their voting);

- not many people, including notably some of the leading candidates, fully understood the impact of the second and third preferences until the actual count was under way; and
- the entire process, including the count, was conducted in a secure and peaceful environment.

Further, it was clear that the 2002 problems arising from not making timely payment to election workers for their services had been learned and all this went well, in that all payments were made on time, hence preventing “slowdown” or even “strike” by election workers. It must be noted, however, that there are still several million Kina worth of outstanding claims for unpaid work by election official from the 2002 General Election from many electorates. A key reason why these three by-elections went well is that the Commission was allocated funds specifically to settle the relevant claims in these electorates, *before* any serious work could be done locally. This has important implications for other by-elections and for the 2007 elections.

The positive comments suggest solid progress. Still, an Election Petition was filed by the runner-up candidate, basically alleging unfair/inaccurate counting processes and unlawful electioneering by the winning candidate (bribery).

Ordinarily in an audit, we would have examined the ballot papers to conduct our own spot checks on the counting. But the fact of a “live” court process meant this was not possible. Nor were we able to pursue in detail other issues that emerged from our own research. For example, we were told how a number of candidates had financed their campaigns, the sources of the funds, and how the funds had been spent contrary to electoral (and possibly other) law.<sup>8</sup> We were briefed on the politics surrounding this by-election, and on the apparently high stakes involved for the balance of power in government. We do not here endorse what are obviously at this stage unproven allegations. The key point is that even this apparently well-conducted election is subject to an Election Petition alleging irregularities in the process and unlawful electioneering (especially bribery) by the winning candidate – and it will take considerable time and expense to test the validity of these allegations.

This is reflected in a great deal of the research on elections in PNG: the stakes are high, all candidates have very strong incentives to “win at all costs”, it is hard to adequately police the electoral rules on campaigning, and in the event of dispute, it takes months, sometimes years, to determine judicially the allegations after an event. All this puts candidates, including the elected MPs, into a state of continuous battle for survival. This risks destabilising Parliament and Government. And it is very expensive for candidates, the Electoral Commission and the whole machinery of justice.

The point is that even in an area where the voting apparently went peacefully and well, where an early trial of LPV shows that it delivered a positive message and “worked” with no major problems, the Yangoru-Saussia by-election suggests that established behaviour in PNG elections has not radically been altered by the policy changes.

Furthermore, the by-election gave further evidence that the Rolls are in very bad shape, effectively excluding many voters on the one hand, and including many “ghost” and invented names on the other, and hence potentially allowing ‘multiple voting’.<sup>9</sup>

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<sup>8</sup> Most of the electoral offences are also in the PNG Criminal Code and as such can be prosecuted at any time, although we understand that important point is not mentioned by PNGEC in its publicity material as much as it might be.

<sup>9</sup> We use the term ‘multiple voting’ to include the many ways in which more votes might be cast than if eligible voters cast only one vote, for example: individuals voting themselves more than once by queuing up in the line and voting

Winning elections is, in the end, a simple exercise: maximising one's own votes, minimising the votes of opponents. The question is the means and lawfulness of how candidates go about that exercise. The rules count if they work.

This by-election thus also invited deeper consideration of the costs to each candidate: how funds are raised and spent. It places squarely on the table the issue of the boundary between "customary celebration/gift-giving" and the prohibition against seeking to "bribe" voters by linking requests for votes with gifts, funds (including public funds), hospitality, etc. Such issues are of course relevant in all these by-elections, and indeed, to elections generally in PNG (and in much of the Pacific).

### **Chimbu**

Again, this by-election was closely monitored at the time by other independent observers. It was reported that despite the Electoral Commission's determination to deal with previous grievances from election workers, there were still unpaid claims for services (dating from 2002, and even earlier) in Chimbu and this led to a day's strike by Assistant Returning Officers in this by-election.

In relation to LPV, the comments are similar to Yangoru-Saussia: the new system shows positive signs of working as expected to reduce conflict between candidates. Related both to LPV and to the security presence, reports indicated that the by-elections in Chimbu were largely peaceful. This, it must be said, was a very significant achievement, given the background of 2002 where there was considerable intimidation of people before and during polling and many deaths in clan warfare after the voting.

However, in other respects, the reports noted eyewitness evidence of unlawful campaigning, multiple voting, intimidation and attempts at cheating the actual count.

Again, however, this result was the subject of an Election Petition. Fortunately for the purposes of the Audit, this petition was withdrawn just before we arrived, enabling us to examine the ballots in some detail. The containers stand in the yard of the police station in Kundiawa. The Police officer in charge confirmed that there had been no access other than by us. There is only one set of keys, held by the Electoral Commission. We were accompanied by the same electoral official who had secured and stored the ballot boxes, and who therefore knew where each "stack" of boxes and ballots was stored in the containers. He had not even been in the province since the ballots were secured after the count.

We note in passing some preliminary points raised in Chimbu that relate to the discretion of the Electoral Commission to deal with fraud or other irregularities on the spot. We were advised by people who were present at the Chimbu count, that one ballot box had arrived and been presented for counting, but from quarters where no-one present could guarantee that it had been in the custody of the Electoral Commission. We are advised that the same thing happened in Anglimp-South Wahgi. Such conduct reflects a previous pattern in Highlands elections of capturing (and stuffing) boxes, which were then duly counted by electoral staff.

*Because of its significance to later recommendations on changing the incentives on elections, we note that counting and including such ballots where there is strong evidence of ballot box fraud sends the signal to voters and candidates to do this – and to keep doing it.*

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again using different names, and one person casting tens, sometimes thousands, of votes by filling in multiple forms on the spot. See the section on Chimbu, below.

But, in the 2004 by-election in Chimbu, that particular ballot box was not counted. After much heated discussion challenging the integrity of this box, all the Candidates present agreed that the contents of the box should be removed and promptly burned on the spot. This was duly done, reflecting a common practice in previous elections where unused ballots were publicly burned to prevent any further inappropriate ‘stuffing’.

We also note that in another Highlands province in the 2002 Highlands elections, enormous pressure had been put on the Returning Officer, including threats to his life, to declare results in areas where there had been massive violence and electoral fraud. The Returning Officer refused, but had to flee to avoid being killed. In the same province the wife of a Returning Officer was shot and killed. These incidents illustrate a point to which we return in the final section.

A final preliminary point is that we noted observer comments that some senior local staff in the Chimbu by-election were on occasions at loggerheads with police and the Port Moresby-based Electoral Commission staff. This was particularly in relation to the count. Along with the evidence presented below that at least some of the irregularities were actually carried out by Polling Officers, this highlights the pressures for ‘co-option’ of local staff by candidates. The Electoral Commission has largely to rely on local staff (often from the Provincial Administration) to conduct the balloting and counting. This makes ensuring integrity doubly difficult. Unless addressed, the co-option risks will be exacerbated in the General Election, when it is impossible to deploy so many Electoral Commission staff from headquarters to act as checks.

In the audit in October of 2004, we could not of course conduct a complete recount of the Chimbu stored ballots, nor scrutinise every single ballot. Our goal was to examine the ballots of the winning candidate and runner-up. Initially, this was a random check, simply to determine if there was any evidence of a problem, and hence to form a view on whether the electoral systems could adequately find and correct irregularities.

The results of that scrutiny must be stated simply: there is evidence in the ballots themselves, of two very significant irregularities in the Chimbu by-election that together won the election: ‘multiple voting’ and cheating the count.

#### **‘Multiple voting’**

In using the term ‘multiple voting’ we need to make some distinctions, as the term can cover conduct that is lawful or unlawful, and conduct which might be (in the eyes of local people, at least) legitimate, or illegitimate. Because of the interplay between ‘custom’ and ‘law’, these are not always seen the same way by observers and by those who do it.

The simplest form of multiple voting might better be termed: ‘repeat voting’ i.e. where a person votes, and then joins the back of the queue and tries to vote again – often several times, and at different polling booths, cleaning off the finger dye where this had been used to identify those who had voted. There were reports of this in both Anglimp-South Wahgi and Chimbu. But it is hard to measure the scale of such voting from a review of the ballots, and one relies on observations made at the time.

Different from ‘repeat voting’ is the situation where one person, often the Presiding Officer, fills out many ballots – often thousands in a massive block vote. The phenomenon is so common, that it is useful briefly to inquire into its apparent ‘customary basis’.



Many previous reports indicated that there are various forms of ‘assisted voting’ in many PNG elections. It is *lawful* for a Presiding Officer to permit a person nominated by the voter to assist that voter if she or he cannot cast a vote personally (illiteracy, or being disabled, for example). It is *unlawful* for a person to cast votes on behalf of others if there is no such disability, irrespective whether there is consent.<sup>10</sup>

These provisions, and indeed the entire electoral law, envisages an individual voter freely making personal, individual choices. But there is a common practice in PNG elections of various forms of communal decision-making which then translates across into voting behaviour.

For example:

- a whole village might agree to vote for a particular candidate, and then adopt a range of methods to put this into place (such as asking a candidate, candidate’s son, other chosen person, or even the presiding officer, to fill in all (or most of) the ballots;<sup>11</sup>
- a person might claim the right to vote on behalf of his eligible voting family, or sub-group etc, and be allocated parcels of votes of ballot papers to vote on their behalf.

But assuming it is possible genuinely to get such ‘customary consent’ and hence that there is some legitimacy because the ‘multiple voting’ is consensual, *all* such practices are still *unlawful*.

And further, there is abundant evidence that such customary ‘consent’ can easily mask intimidation, (at gunpoint or with severe threats of violence if there is any attempt to prevent the practice) and/or bribery to officials to allow or conduct the activity. Hence, one or more people might cast all ballots for them in open view or hidden inside a house. Or several people might cluster round a voting area watching, or helping, candidates to vote for the ‘chosen’ person. There have been many reports (some captured on video) of candidates and their supporters taking over thousands of ballots and simply casting them as they will, with no suggestion of any regard for the wishes of voters.<sup>12</sup>

This raises another category of common practice, whereby the vote at a polling station is “forced” or “controlled” by means of a candidate’s key organisers (sometimes known as “henchmen” or “supporters”) taking over the polling and casting the ballots. Sometimes this is done with the collusion of polling staff, either under threat or bribery.

In all these examples, one needs also to distinguish between conduct that purportedly assists *actual* voters, and the practice of simply filling out *all the ballots* that were sent to that polling station.

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<sup>10</sup> Section 52(2) of the Organic Law on National and Local Government Elections states explicitly that no person is entitled to vote more than once at any election; sections 128(4) prohibits party scrutineers from assisting voters to vote in any way; section 129 prohibits candidates from playing any part in the polling; sections 140-3 authorise a Presiding Officer at a polling station, to permit persons nominated by voters unable to vote themselves, to assist that person to vote.

<sup>11</sup> Such practices have been observed in many parts of PNG, and are not confined to the Highlands. One needs also to distinguish the common practice where a Presiding Officer simply calls out names off the roll, and voters then come forward to vote. Done properly, where for example all those in the village are known to the Presiding Officer, this could be perfectly legitimate. But it has often translated, observers indicate, into using the Roll to call out the next name and anyone, male or female, then votes that name’s vote, irrespective of who, actually, was being called. Often there is no pretence at using names on the roll, merely marking off every name as voting in the order as printed. Often, too, the finger nail ‘indelible’ dye is not applied to show who has voted.

<sup>12</sup> This was filmed in Enga in the 2002 General Election in the film *Tanim*, cited above, and ABC TV *Foreign Correspondent*, 30 July 2002..

Not far from the point where a person assists voters who are illiterate, etc, and the mass capture of votes by candidates or supporters, the line is crossed between any suggestion 'customary assisted voting' (which would still be illegal but at least have some notion of consent from the voters) and mass fraud.<sup>13</sup> These issues nicely raise key questions, relevant to the whole of PNG: even assuming there was a customary consent base to such voting at some point in history, at what level is "custom" itself corrupted in the election business? Many comments were made to us that claims to "custom" have become the mask and the means for something that is neither customary, nor lawful, and that many people complain about it.

Put together with the evidence of eyewitnesses, we believe the ballots themselves show that line was crossed in the Chimbu by-election. The problems were concentrated in the electorate of Chuave, one of the 6 Open electorates making up the Provincial seat.

We note observer reports that for reasons that are not explained, the ballots went out early to many Chuave polling stations, and that such police as were deployed mostly only arrived much later in the morning – and that by then, most of the ballots had been 'cast'.<sup>14</sup>

Because the ballots are numbered, they can be re-arranged sequentially for examination. This reveals, for example, the same handwriting, dimples in the ballots where the previous sheet has been marked whilst still in stapled lots of 100 papers, before being issued to the voter, and this previous mark has pressed through onto the next ballot behind it, and so on. This pattern was evident in thousands and thousands of ballots, and in Chimbu in May 2002 it took place to an extent which was at least three times the number of eligible voters that should have been able to vote.<sup>15</sup>

So, the ballots confirm what eyewitnesses (including independent observers, police, one presiding officer and voters) stated. In some actual cases in this by-election the person issuing the ballot paper (usually the Presiding Officer) had pre-marked the ballot paper with a first preference, leaving the voter to fill in other choices. In others, the papers were marked en masse by other persons. But simple arithmetic tells the same story from another angle. The winning candidate's victory was built on his massive "first preference" result from the Open electorate, of Chuave, his home district. Relatively speaking, he gained a far smaller proportion of his overall eventual winning total from 2<sup>nd</sup> and 3<sup>rd</sup> preferences than the runner up (who won a comparatively low % of first preferences from his 'home' district, but who then got substantial support across the province from other candidates' second and third preferences. It must be remembered that the electoral roll in Chuave, as in much of the Highlands, is some three times larger than the ENTIRE estimated voting population. Ballots are issued according to the Roll, not the actual number of people who live there. At many polling stations in Chuave, ALL ballots were cast (and in some other areas). Statistically, this means that tens of thousands of ballots were cast unlawfully by multiple voting (see also Appendix A, Table 2). And that is what the ballots themselves confirm.<sup>16</sup>

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<sup>13</sup> An interesting question, from a policy point of view, is whether the legislature might seek to provide some method of "customary voting" so as to provide a legitimate means for what appears to be common practice? Of course, any such attempt would have to distinguish between "genuine" and "coerced" custom.

<sup>14</sup> We were unable to verify what are effectively allegations of some police collusion in this activity, but we were also advised that a key police officer deployed to the by-election was the brother of a candidate.

<sup>15</sup> The candidate got 44,828 'first preference votes', the bulk from the Chuave electorate where the 'multiple voting' can be shown to have taken place. His closest rival got 27,754 'first preference votes', spread across the province. Once second and third preferences were added, the final winning tally was 72,478 votes, as against 72,004 for the runner up.

<sup>16</sup> We note that a similar audit of every single candidate's votes might show a similar pattern in their voting. However, the records show that the vast bulk of Polling Station with 100% turnouts (i.e. every ballot sent was cast), was in Chuave, which is why we concentrated on inspecting ballots from that district, particularly.

We should not end this section on the multiple voting in Chimbu, without linking the discussion to violence and intimidation. The practice has grown of attempting to get “guarantees” on how whole areas will vote, and on the eruption of violence by “payback” should those votes not in fact be delivered. Often this happens well into the counts, when it becomes clear that a particular ballot box did not “deliver” as demanded (or contracted). The local people are thus hostage. In Chimbu, the day the last external police pulled out, violence of this nature started in the Kundiawa town markets.

### **Cheating the count**

All that multiple voting was still not enough to secure victory. We found concrete evidence that the actual count was apparently cheated. To illustrate, we need first to describe the scene. Ballots are counted into bundles, typically 20 per bundle, each bound with rubber bands. These bundles are themselves often bunched into 100s and the overall group for that particular count placed in a large heavy duty clear plastic bag with the total on the outside. For example, the reallocation of second and third preferences from an eliminated candidate for each candidate still in the count, will be placed in one large plastic bag – which is then sealed with the number on the outside (for example, “2<sup>nd</sup>/3<sup>rd</sup> preference votes for Candidate B, from elimination of candidate K, Total: 120 votes”).

There are many ways to cheat a count that might be picked up on audit (recall the cheater’s goal: “maximise yours, minimise others”). So, votes for candidate X might be misallocated to candidate Y, so as to weaken X and boost Y; numbers in actual bundles might be over- or under-totalled. Or the totals themselves might actually be mis-stated. For the cheater seeking efficiency, this last is preferable. One needs a lot of luck to get away with mis-allocating actual votes, and even then, it can probably only be done in small numbers to avoid attracting attention.<sup>17</sup> But if one could successfully cheat a total, a significant difference can be made in one hit.

We were initially checking randomly for all of these, but in particular to see if the numbers in bundles of 20 showed any under or over counting, or misallocation. We found no significant discrepancy of this nature, in all our inspections.

But, recounting the actual ballots in their marked bags across all 28 counts showed one (and only one) discrepancy between the ballots in a bag and the number entered both on the outside of that bag and into the record for a particular candidate for that actual count. In that case, the number of ballots actually in the bag was 350, and the number entered on the outside (and into the count record) was 1850.<sup>18</sup> This difference was the nicely round figure of 1500 votes. That candidate won by just over 400 votes.

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<sup>17</sup> Observers present at Chimbu reported to us that there were at least two *miscounts* from early rounds when candidates were eliminated. The offenders were removed. After that, there was a check count of all papers before their preferences were allocated, which should have picked up further attempts at such cheating. Ordinarily, the votes were checked after sorting to ensure they no longer carried live preferences and that they really were exhausted and so should be removed from the count. The observers noted that there were two teams working on successive eliminations. In the team of the south side of the shelter all the double-checking of eliminated papers was done by senior and experienced Electoral Commission staff from headquarters. Early on this process picked up about a 10 per cent error rate, which led to much greater care and fewer mis-sorted exhausted papers subsequently.

<sup>18</sup> All the ‘first preference votes’ from each eliminated candidate that were reallocated to one of the remaining candidates had been placed in separate bags for each candidate to whom they were being allocated. Every other such bag containing re-allocated votes from each preference tallied exactly in terms of numbers on the outside of the bag and ballots in each bag. We found some errors in terms of whether a particular ballot should actually have been in that bag (i.e. the vote was for someone else), but these were small in number. The important point is that the numbers written on the *outside* of the bag and the actual ballots *inside* tallied in every case except one.

It is always theoretically possible that there is another explanation for this discrepancy between total and ballot numbers. For example, 1500 ballots might have been removed prior to our arrival, or placed in another bag by mistake on the actual count. But we could find no sign of the 1500 ballots in any other bag – and besides, *all* the other numbers stacked up. If there was simple mislabelling, it should have been obvious because the totals for the elimination would not reconcile. As for any outside interference, we were advised that the ballots were as they had been left and stored after the count and there was no access to them prior to our arrival.

What this suggests, then, is that a single false entry of the round figure of 1500 votes at a late stage in the elimination process changed the result. There would appear to be *prima facie* evidence to justify a recount of the votes, whether or not this requires an order from the National Court to do so.

Any cheating of the count in this way would of course be a criminal act - and the police may wish to take this further. How could it have been done? Who would be the main suspects? Why was it not picked up? It is not possible here to answer such questions definitively. The point is that out of all the eliminations that add to the totals of the winning candidate, the ballots in *ONLY ONE* bag differed from the recorded totals (and the corresponding number entered into the record). We found no explanation. On its face, this suggests that someone cheated the count.

We are reinforced in that deduction by eye-witness evidence that twice (and the second one may have been after this apparent incident) in the Chimbu count, counters had called out a false total (once, of exactly 1500 votes, the coincidence suggesting this kind of fraud was pre-planned). But on those occasions Electoral Commission staff noticed, told the police and the people held responsible were roughly removed from the count process by police (in one instance, the person was beaten up, reportedly having his jaw broken; see also Appendix B: para 2.5).

If such attempts were discovered on those occasions, how could someone have gotten away with falsely adding 1500 votes to a candidate? The answer is not clear. But in simple terms, it would have required a number of things to happen, principally without a cross-check of the numbers of the eliminated ballots which would have revealed the discrepancy.

The fact that at least two attempts were made (and one possibly succeeded), illustrates the vulnerability of the lengthy counts that will become standard under LPV. There are many opportunities and the most “cheatable value” may well come late into the count, when people have relaxed and are tired, when it is hard to re-count thousands of discarded exhausted ballots, and if there is little cross-checking. It is also the case that an accurate count of first preferences is crucial. If these are not cross-checked and verified, it becomes logistically impossible to re-trace any errors once the various ballots get reallocated in the elimination process.

As the next sections make clearer, the Chimbu by-election was the subject of probably the largest mainland police security operation in PNG history. Between one third and half the country’s entire police force was deployed into the area. Helicopters ferried police, ballots and electoral officials to remote villages. The resulting process was indeed relatively peaceful. But it was still apparently fraudulent.<sup>19</sup>

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<sup>19</sup> We are of course aware that fraud, especially in Highland elections, is not new - the question is what to do about them. For a detailed account of electoral fraud in the 1997 elections, see: Rebecca Robinson “Koroba-Lake Kopiago Open: ‘The Final Election’ ...” in RJ May and R Anere (eds) *Maintaining Democracy: the 1997 Elections in Papua New Guinea*. UPNG and ANU, Canberra 2002, pp141-148.

From a policy point of view, this raises the important question of why PNG taxpayers should spend very significant sums enabling and protecting irregular processes.

It also makes the point that the counts are likely to be extremely time consuming. In Chimbu, it took over a week to compile the count of First Preferences, and 12 days to do the eliminations and allocate Second and Third Preferences. And all of those processes were backed by the technical and managerial expertise of the Electoral Commission, even though most of the actual electoral work was conducted by locally-hired polling and counting staff, as is usual. The time needed for the LPV count raises enormous implications for electoral administration, especially in a General Election.

Finally here, the Chimbu by-election highlights the Regional MP/Provincial Governor position. Six ordinary electorates make up this single Parliamentary/Governor seat, and it is thus necessary to poll an entire province. We are aware that debate around this position and structure is in progress and that it is complicated, that there are historical reasons for the provincial seat (including representation of the Provinces in the House). While there is provision in the 2002 amendments to the electoral law to abolish this category of MPs by 2007, the discussion as regards amending the Constitution is still under way. As consideration is given to that process, we offer 3 observations:

- the Regional MP/Provincial Governor position tests the constitutional principle of the separation of powers between legislator and executive (having a parliament-mandated cabinet is the subject of core conventions to manage that ambiguity, but adding the provincial Governorship to a national MP's role is constitutionally complex);
- in the context of highly-charged political competition at Central Government, giving an MP access to the funds of an entire Province may not be the best incentive for appropriate separation of the two roles; and
- conducting elections for this category of MPs effectively requires that the Electoral Commission conduct TWO general elections (since the 20 Governors are elected by the entire country) with all the logistical difficulties and expense (including to candidates). At present, the law specifies that in the same general period a third set of elections, those for local-level governments, must also be conducted. In 2002 all three were combined on the one day in each council ward, which was a major factor in the overload of the entire system of electoral management.

### **Anglimp-South Wahgi**

Again, there is very good reporting from actual observers present at the vote and count. The pattern is basically the same as Chimbu. There was massive security (see Appendix B). The process went extremely well, from a security point of view, and LPV appeared to have contributed to the mostly peaceful process by reducing aggressive inter-candidate (and supporter) behaviour. However there were several instances of violence when people were attacked by community members because of the way they had voted. This also indicates, of course, that – as in Chimbu – the vote was not secret. Again, there were numerous reports of irregularities, including, especially, unlawful and multiple voting (see also the comparisons of votes cast, set out in Appendix A, Table 2). An attempt to cheat the count by putting extinguished votes in a selected candidates tray was discovered *by chance* after a change of shifts (see Appendix B, para 2.4). Again, an Election Petition has been filed. That Petition meant that we did not inspect the stored ballots. But we note that one of the key allegations in the Petition is of counting irregularity.<sup>20</sup>

<sup>20</sup> Election Petition No 02 of 2004 *In the Matter of the Organic Law on National and Local Level Government Elections and in the Matter of the Anglimp South Wahgi Open Electorate and in the Matter of a Dispute of the Returns for the Anglimp South Wahgi Open By Election between Pawa Wai (Petitioner) and Jamie Maxtone Graham (first respondent)*

## 4. The costs

### 4.1 The need to estimate the numbers of voters to allocate costs

*Appendix A* is a full financial report. It outlines the arguments and calculations we have made regarding the costs of the electoral process, based on the best evidence we can find for the 2002 General Election, the three 2004 by-elections, and projecting into the 2007 General Elections. As we worked through the figures, it quickly became clear that in order to estimate costs properly, especially as we project into the future, we needed to understand the effects of the over-stated voters roll, and the relative costs of the different electorates in PNG.

At the end of *Appendix A*, Table 1 sets out the best estimates of population in any province (i.e. the census estimates), compared with the Roll in that area. Further, it estimates the relative numbers of people in relation to other figures, such as voters per polling station. To grasp the effects of these numbers, consider Chimbu. The Voters Roll of 451,775 is nearly double the estimated entire population (258,776, based on the 2000 Census). Estimating the actual eligible Voting Population (by using census estimates of the proportion of the overall population under 18), produces, in Column 3, an estimate of 145,340, or about 1/3 of the number of those currently on the Roll. Put differently, there were 300,000 ballot papers printed unnecessarily in Chimbu for the by-election.

The effects of getting a “clean roll” also become apparent as one goes across the table. Instead of a notional 1058 voters per polling station in Chimbu, a clean roll would only have 340 voters per polling station. Working with accurate figures would massively reduce voting time, counting, and all associated costs.

**Table 2** in *Appendix A* sets out the costs for the 3 by-elections that were the subject of this Audit.

Anglimp-South Wahgi	K 2,911,000
Chimbu	K10,186,000
Yangoru-Saussia	K 863,000

Those costs include helicopters for the actual conduct of the elections, and the substantial security costs. Again, it is necessary to find sensible measures on how to compare the costs, even accepting that terrain and security make some elections more expensive than others. A significant point is the relative expense of the Highlands elections. For example, the approximate *cost per polling station* of these by-elections was:

Chimbu and A-SW	K23,000
Yangoru-Saussia	K 9,000

### 4.2 Analysing the costs of these by-elections

The key points highlighted here from the full report in *Appendix A* are:

1. security (police) costs are more than half the costs of each by-election (60% in Chimbu; 59% in Anglimp-South Wahgi; 56% in Yangoru Saussia);

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and *The Electoral Commission of Papua New Guinea (Second Respondent)*. The allegation is that after the last elimination the total number of ballot papers allowed as valid and disallowed as exhausted did not add up to 105,948 being the number of valid ballot papers allowed after counting of the first preferences. Therefore 10,612 valid ballot papers were not included in the counting and further, no explanation was given for this. Scrutineers were refused permission to inspect the exhausted ballot papers.

2. cost controlling is problematic in elections generally, and in these by-elections in particular (see Appendix A: para 5.5 which notes some examples);
3. the LPV system has added a noticeable cost component to the conduct of elections, mainly in the allowances paid for what is often a protracted counting process;
4. AusAID contributed some K4 million to the costs of these by-elections (entirely devoted to air support and radio communications);
5. the Electoral Commission operates with uncertain funding and budgeting, meaning that it is difficult to plan and operate effectively.

#### 4.3 Projecting into 2007

Based on the available evidence from 2002 and the calculations from the current by-elections, we have tried to take realistic account of the various factors relevant to the costs of conducting the General Election in 2007. Thus, we have produced a table to take account of terrain (road access), security and difficulty of conducting the polling. On this basis, each province was allocated a grade relevant to costs. This gives a working basis to project actual costs, and supports the intuitive view that the Highland areas will be most expensive, some coastal areas much cheaper, and there will be some in between.

From whatever way the estimates are examined, the cost in 2007 looks to be more than K100 million, and it is relatively easy to see how it could be significantly higher than that.

This suggests two simple options, which are of course complementary: *raise funds, cut costs*. As regards both, whilst it seems unlikely that the international community will turn its back on PNG, we believe it is simply unrealistic to budget for the substantial donor support that assisted with these by-elections (approximately 40% of the overall costs, but committed to air support to enable secure transport of boxes, ballot papers and officers).

#### Raising funds

Assuming that the currently severe constraints on the national budget continue, a key suggestion in this report is that consideration should be given to requiring a substantially increased Nomination Fee to be paid by candidates (K10,000). Even if this reduces the number of candidates by 20%, some K28 million would be raised to support the holding of the election. To those who will inevitably say that a fee of K10,000 will put standing as a candidate out of reach of the “ordinary person”, especially women, and hence raise constitutional and gender as well as political problems of access, there are two counter-considerations. First, the historical origin of Candidate Deposits was exactly this two-fold consideration of deterring frivolous candidates and sharing the costs. Thus, part of the obligations of citizenship includes paying a greater share of the complex process that the state organises to enable their candidacy to be tested. Few constitutional rights are unqualified by reasonable considerations of shared citizenship.<sup>21</sup> Secondly, it seems clear that the current costs of campaigning are well over K50,000 for almost all candidates, and we were given figures of up to K400,000 (and K2million being spent by one in 2002). In the face of such expenses, and given the major financial problems of government generally, a substantially increased deposit appears justifiable and reasonable.

<sup>21</sup> Section 50 of the Constitution specifies that an individual ‘... has the right, and shall be given a *reasonable* opportunity (a) to take part in the conduct of public affairs, either directly or through freely chosen representation; and (b) to vote for, and be elected to, elective public office at genuine, periodic, free elections; and (c) to hold public office and to exercise public functions’. But section 50(c) states that, ‘the exercise of those rights may be regulated by a law that is *reasonably justifiable* for the purpose of a democratic society that has a proper regard for the rights and dignity of mankind’. (Emphasis added)

### **Cutting costs**

The key to making elections sustainable (financially, politically and socially), is clearly to make them “owned” by candidates and citizens, in that the enormous costs of security are brought down because people accept that there should be fair rules for all. Not a great deal can be done in the short term about the costs of mountainous topography or bad roads and bridges.<sup>22</sup>

So cutting costs comes down to accepting a certain measure of logistical difficulty and expense, rebuilding the Roll to make it realistic, establishing efficiencies and cost controls in operational activity, and trying to build a climate in which citizens take more responsibility for a fair electoral process without the necessity for the substantial deployment of police. Not only will this slow the escalation of costs, it should produce a fairer election.

### **4.4 Costs to Candidates**

Elections are big business in PNG, and this was certainly clear in these by-elections. We were given estimates of expenditure by candidates that surprised even seasoned observers of PNG elections, ranging from expenditures of K40,000 to K200,000, although some have suggested figures several times higher than even the higher of those two. There is a vast list of campaign activity and expenditure that no-one would consider problematic under PNG electoral rules. But the real issue is simply stated: candidates report that it has become necessary to pay very substantial sums of money to potential supporters, to make expensive donations of pigs, luxury food and drink, and to make promises of a great deal more. These are not promises of policy outcomes, but of personal riches. We were advised that very substantial debts are incurred by candidates. And we were given examples of what constituted the “return”, both for those who failed in their electoral bids, and for those who succeeded. Put simply, this process constitutes a major threat to the integrity of PNG’s governance. The analogy given us, was of a gambler who borrows (and sometime steals), money to keep gambling – and who keeps gambling in the hope of a “big win” which might pay back the loans. The stakes are high.

As part of a developing democracy working through the relationships between candidates, MPs and citizens, such issues are not surprising, nor are they limited to PNG. The questions put to us (and to virtually every Court of Disputed Returns in the Election Petitions) concerned whether public policy could stop a “race to the bottom” by better establishing and enforcing limits on candidate fund raising and expenditure.

We were advised that there was a fairly common view amongst candidates that a state of exhaustion was approaching – with an increasing risk that violence and/or fraud is cheaper than bribery, so long as there are no effective rules on campaigning.

We were also advised that “cost” and ‘benefits’ should be measured not only in financial terms, but in lost or gained “prestige” (particularly in some tribal areas) and in political risk. Both are well-documented in PNG. In particular, we were invited to consider the risk to political stability that is engendered by having certain MPs being so determined (required) to “reciprocate” the costs of their campaigning, requiring huge funds, so that their votes in the House are effectively for sale to the highest bidder. None of this is new to Papua New Guineans. In offering proposals, we accept the

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<sup>22</sup> Still, it is worth emphasising that the road system appears not in good shape. Even in Yangoru Saussia, our visit to well-connected areas (on the map) encountered a barely traversable ‘main road’ that promised dramatically worse ahead without maintenance. The apparent deterioration of provincial roads across the country means that logistical difficulties will become greater each year, certainly for the 2007 General Elections. It is surely not a tenable proposition to Papua New Guineans that they cannot have a viable democracy without helicopters.



complexity of the issues and particularly do not want to imply that the issues relate to all MPs or to Parliament as a whole.

#### 4.5 Costs to Communities

In some respects, communities benefit from election activities of course. In these three by-elections (and in all PNG elections), there were abundant reports of feasts, donations of food and money, and so on. There is a real “election economy” effect in local areas. Hotel owners and shop-keepers in Wewak, for example, reported very considerable rises in occupancy and sales. And local people commonly joke that they eat well at the expense of apparently endless numbers of hopeful candidates seeking their favour. So it is tempting to suggest that as these “mini-booms” add value to some local people they are tolerable, whatever the electoral rules. But we suggest that the costs to the communities need to be weighed against such benefits.

Here, we note two aspects of the costs, already alluded to above. First, there is the contribution/extraction of funds and resources from local communities to support their candidates. The support extends across the board, from funds, to feasts, to compensation arrangements necessary to settle post-election grievances where there has been violence, etc. A lot of general evidence<sup>23</sup> is available on this, and bringing such together in one paper would be valuable in itself. But for the purposes of this Report, it is trite that elections can cost communities a great deal to support a candidate. Given that 79 candidates contested these three by-elections, and only 3 people were declared elected, it is hard to see the benefits outweighing the costs overall.

This leads to the second point: the costs of exclusion for the losing communities. There is a “gambling mentality” here, where candidates and communities “risk all” in the hope of getting access to power which will then enable a significant “return” in the flow of state largess back to them and their communities. But for the losers, there will be nothing. This feeds deep resentment, anger, violence – and determination to “win at all costs” next time. Robinson’s concluding comments might have applied to the losers in any of these 3 by-elections:

The reasons behind the cheating and the violence... cannot simply be put down to glib statements such as ‘that’s the way things are done in Papua New Guinea’. (In this electorate)... violence did not beget violence. People had reached a threshold of frustration. They have been, and continue to be, neglected by the national government. They can see that there are places in PNG where people appear to have a greater political voice... it was fear for the future, fear of future neglect, and utter frustration at their lack of voice in any national political forum that begat the election-related violence...

Massive policing can of course reduce the scale of the violence that frustration and competitiveness begets, and it is important that sustainable security remains in place as part of the process of rebuilding broader support from candidates and the public for a fairer process.

## 5. Policing and Security

Commentary on security is woven through all this Report. Appendix B contains more detail on policing in these by-elections, and the costs are also set out in Appendix A. The main points to note here are: The police learned much from the 2002 problems and this is reflected in these by-elections

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<sup>23</sup> The evidence is graphically set out in virtually every report on Highlands elections (see chapters by Sinclair Dinnen and Bill Standish in Yaw Saffu ed *The 1992 Papua New Guinea Elections: Change and Continuity on Electoral Politics*, Canberra, ANU, 1996), and indeed in every Election Petition, but cf also Joe Ketan note 1 above, p327ff, and Rebecca Robinson, note 3 above, p145.

in terms of planning, coordination with the Electoral Commission and local government, effective deployment – and forward planning for 2007;

- The by-elections were substantially peaceful and this is regarded as a major success – but at the same time, police reports add detail to the body of evidence that there were significant irregularities, especially in the Highlands – in other words, the police were ‘securing’ an electoral process that still had significant irregularities (eg Appendix B: paras 2.4; 5.4);
- The commitment of nearly half the country’s police force to secure the two Highlands by-elections shows that unless there are very major improvements in the security environment (unlikely in the short term), it is almost certain that there will have to be “staggered” elections in provinces of major risk, to enable progressive deployment (“leapfrogging”);
- Air support (entirely funded by AusAID) and communications (the temporary construction of radio-repeater stations) were absolutely essential to the operational success; whilst temporary arrangements are clearly necessary a more sustainable approach through a capital development strategy would ensure optimum investment in the Police;
- Moving so many police out of their bases creates risks that law and order will suffer in other areas. The issue is known and there are anecdotal reports of increases in crime - in Port Moresby, for example - over the by-elections, but there is not yet sufficient evidence to measure that risk;
- Payment of allowances constitutes over 60% of the overall police costs in these by-elections, and the daily allowances are in the order of a 5-10 fold increase in the fortnightly salary of the majority of staff; whilst no issue is taken with such in this report, the facts are important to know as considerations of sustainability are weighed;
- Whilst police ensured close protection of the ballots for these elections, there is evidence that some local police had conflicts of interest in the elections (in the Highlands) and that such matters had the potential to affect overall security as well as the integrity of the entire process;
- In some areas, police “substantially assisted” in the actual conduct of the elections, claiming that polling staff simply were unable to conduct the polls appropriately; on the other hand, there were reports by voters (and observers) that the police had in some areas significantly exceeded their authority. Having seen or heard about the pre-election operation, many older voters and women reportedly felt intimidated and in some areas few were seen voting.<sup>24</sup>
- With police teams at remote polling stations often having poor communications and being significantly outnumbered (and sometimes in previous election, outgunned), it is extremely difficult to see how police can effectively intervene when voting irregularities take place in front of them – indeed, in many instances it would be foolish to try as their own safety would be very much at risk.

Recommendations based on these observations are set out in the final section. What is clear, however, is that police can provide an important measure of security, but that will take planning and very significant resources. Ultimately, however, any community has to take substantial responsibility for its own security and it is to these matters that we now turn.

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<sup>24</sup> We note the report by Bill Standish et al “Limited Preferential voting: Fourth Interim Report on the Chimbu and Anglimp South Waghi Elections, March-June 2004, p3: “some police overstepped their security role by counting papers, or made announcements during counting which is the job of election officials.” The report stated that police concerned told scrutineers to leave the counting room after their candidate was eliminated, which is contrary to law and transparency.

## 6. Disputing Elections

Electoral transparency extends to include a prompt and effective complaints system dealing with everything from the denial of voter registration to violent voter suppression.<sup>25</sup> Legislation on election petitions has barely changed since 1975. It is argued that the original intent of the Organic Law on National and Local Level Government Elections (OLNLLGE) was to remove lawyers from the election review process.<sup>26</sup>

A common theme across the disputes process is candidates accusing each other of bribery, treating, intimidation and other forms of electoral fraud. In 1997, 89 petitions were filed and 25 applications for judicial review went before the Supreme Court regarding those petitions.<sup>27</sup> After the 2002 General Election, 85 disputes were filed in the courts and eight are still pending. Eight petitions were filed after the 2003 Southern Highlands supplementary elections which was, like the 2002 elections, conducted under First Past the Post.<sup>28</sup> Three of these are still to be dealt with.

A petitioner must file a petition to the Registry of the National Court at Port Moresby or at the court house in any Provincial Headquarters within 40 days from the announcement of the result with a security deposit of K2,500.<sup>29</sup> Based on interviews in the field, we are told that petitioners would spend a further K60,000 - 80,000 on the petition process, a significant amount after huge campaign costs.

The Electoral Commission has to date been a respondent in each petition lodged. We are advised that the Commission's cost of defending each case is at least K40,000. As many petitions are filed in provincial courts, this cost can increase significantly covering legal fees, accommodation and transport for officials, witnesses and their lawyers. Where a petition is successful the court may award costs against the Electoral Commission meaning they then may have to pay the petitioners K2500 filing fee plus any costs they have incurred in bringing their petition (potentially much more than K40,000).

A successful petition caused the Abau Open 2002 election to be declared null and void and led to the first by-election held under the new LPV system in late 2003.<sup>30</sup> Three petitions were filed after

<sup>25</sup> A Kaplan, *A Guide to Transparency in Election Administration*. Association of Central and Eastern European Election Officials, International Foundation for Election Systems, Central Election Commission of the Russian Federation, [www.aceproject.org/main/samples/vr/vrx\\_o005.pdf](http://www.aceproject.org/main/samples/vr/vrx_o005.pdf), p3.

<sup>26</sup> E.L Kwa, A Gelu, and W Golman, *Judicial Scrutiny of the Electoral Process in a Developing Democratic State*. UBS Publishers' Distributors Pvt. Ltd, UPNG, Papua New Guinea, 2003, p28.

<sup>27</sup> MJ Sheehan, "Judicial Responsibility in Securing a Fair and Just Election Result" in E.L Kwa, A Gelu, and W Golman, *Judicial Scrutiny of the Electoral Process in a Developing Democratic State*. UBS Publishers' Distributors Pvt. Ltd, UPNG, Papua New Guinea, 2003, p85

<sup>28</sup> An example of this is EP 76 of 2003 where the Court dismissed the petition as it was not satisfied that the alleged illegal practices could be proved (impersonation, underage voters, double voting, intimidation). The Court dismissed the allegations that during the counting of the ballot papers, the RO erroneously overrode the decision of the Provincial Elections Manager in allowing the two disputed ballot boxes (0801, 0802) to be counted. The alleged illegalities occurred at the Katiloma Polling Booth.

<sup>29</sup> Section 208(e) of the OLNLLGE Requisites of Petition, section 209 Deposit as security of costs. The 1997 review of the OLNLLGE decreased the number of days for filing a petition from 122 to 40. This change was aimed at limiting the propensity of losing candidates using the 4 months to cause unnecessary delays - Kwa, E.L., Gelu, A. and Golman, W. *Judicial Scrutiny of the Electoral Process in a Developing Democratic State*, UBS Publishers' Distributors Pvt. Ltd, UPNG, Papua New Guinea, 2003, 26.

<sup>30</sup> In that petition, allegations of bribery succeeded, but somewhat ironically, the actual allegations were the candidate's comment on opening a publicly-funded health facility, that voters should 'remember me'. The point is mentioned because on a scale of bribery, it was always arguable that achieving public gains for an electorate in such hopes is exactly what democracy intends. It shows that there is a real need to give more precise advice to candidates on what

the 2004 by-elections for the open seats in Yangoru-Saussia and Anglimp-South Wahgi, and one for the Chimbu Provincial seat (later withdrawn).

The petitioner in Yangoru-Saussia disputes the result of on the grounds of bribery, attempted bribery, undue influence, personation, double voting, unlawful taking and interfering with the ballot boxes, treating, illegal practices and irregularities on the part of the first and second respondents and or their officers and agents.<sup>31</sup>

The Anglimp-South Wahgi petition was filed by Mr Pawa Wai on 15<sup>th</sup> June 2004. Mr Wai alleged that agents of the winning candidate committed illegalities and malpractices during the counting process and that the second respondent (the PNGEC) failed to ensure a fair election count.

The Chimbu petition was filed on the 4<sup>th</sup> August 2004 by runner up, Father John Garia, alleging that ballot papers for the Chauve District had their first preferences pre-marked in favour of Peter Launa, the winning candidate. When the petitioner's scrutineers objected to the counting of some ballot boxes, their objections were overruled. However, Father Garia's petition was later withdrawn.

In passing, we note that a petitioner is precluded from complaining about registration on the common roll as the Courts have no jurisdiction to enquire into the correctness of the common roll, the presumption is that it is correct.<sup>32</sup> That said, the Courts have wide powers on Election Petitions to take such action that it thinks is 'just and sufficient', including: upholding the result; ordering a re-count of ballots; removing a candidate from the seat; or (where the election was held void) ordering a new election.<sup>33</sup> Where a court voids an election for illegal practices, the person in question is not immune from criminal prosecution for the electoral offence.<sup>34</sup>

The caseload, plus the enormous expense and time delay involved with the current disputes process, suggest that change is needed. The PNGEC's 2004 Election Law Review Committee made a number of insightful recommendations for an improved petitions process. This also has broader implications for the electoral system as a whole. The following practical possibilities are noted:

- The Electoral Commission should not participate in defending a petition where the allegations relate to bribery or undue influence. This means that by-elections will be held only where the allegations made and proven in court relate to errors or omissions made by electoral officers. Further an election is voided on these grounds only if it is proven that the error or omission would affect the result.
- The Review proposed that by-elections should not be held where there is a vacancy created when (a) an MP resigns his seat; (b) an MP is dismissed by a Leadership Tribunal; (c) an MP is no longer qualified to be an MP as defined under the constitutional laws (he/ she) is imprisoned for more than 9 months, is convicted of an indictable offence or is adjudged solvent; or (d) an MP dies. Again the vacating MP's votes must be redistributed to produce a new MP. Section 106 of the Constitution (by-elections) will need to be amended consistent with this<sup>35</sup> as will Part XVIII of the OLNLLGE.

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conduct is acceptable, and what is not. The excluded candidate fought the by-election, and won back his seat with an increased majority

<sup>31</sup> E.P NO. 01 of 2004.

<sup>32</sup> Section 214 OLNLLGE

<sup>33</sup> Section 212 OLNLLGE Powers of the Court

<sup>34</sup> Section 215(2) OLNLLGE

<sup>35</sup> Review of Election Laws Workshop- Thursday 26<sup>th</sup> August 2004 with Andrew Trawen, John Nonggor, Morea Veri, and Boki Raga, p35. Section 106 PNG Constitution- By- Elections: If the office of an elected member of the Parliament becomes vacant otherwise than by virtue of Section 104(2)(b) (normal term of office), an election shall be

- Section 209 of the OLNLLGE must be amended to increase the petition filing fee from K2,500 to K5,000.
- It is proposed that in addition to the existing provisions of section 210 (no proceedings unless requisites complied with) the following amendments: (a) the National Court must inquire into the competency of a petition first before trial of a petition; (b) a decision of the National Court can be reviewed by the Supreme Court only on the ground that the judge was influenced by bias.

Because of its significance to the entire conduct of elections, as well as liabilities, we note in passing on this subject that the Electoral Commission needs effective safeguards in place to avoid liability such as that arising under the Kapi case.<sup>36</sup> This particular incident stresses the importance of cleansing the common roll and having mechanisms to enable public inspection and frequent alteration of the roll. The substantial claim for damages from being wrongfully denied the opportunity to be a Member of Parliament, also shows how “valuable” elected office is – which links to the commentary on “winning at all costs”, below.

## 7. The legitimacy cycle

Elections play a central part in the legitimization of public power. Under the framework of the Constitution, the people choose representatives who, through Parliament, can form both Government and Legislature. In those institutions, the representatives authorise the raising of taxes and the allocation of public funds. This might be termed: the “legitimacy cycle”. If elections go wrong, the integrity of the entire process is at risk. Instead of good elections feeding good governance, and vice-versa, the danger is that the entire cycle might become corrupted. Many Papua New Guineans, including academics and Members of Parliament, have commented on this. LPV alone cannot change this cycle, though it might indeed be one part of a complex array of solutions. And no amount of security, as Chimbu so nicely shows, can secure the integrity of an election against widespread determination to cheat the rules. One has also to look at other aspects of the legitimacy cycle, including:

- the role of the MP in relation to constituents or broad interests (eg tribes, workers, business);
- the “slush funds” of MPs;
- the role of the MP as maker/breaker of Governments in terms of Votes of Confidence;
- problems of party, parliamentary and governmental stability;
- the incentives/disincentives on MPs to seek and take money both for personal gain, and to pay back the promises and costs of election;
- the pressures which outside influences, including money, can bring to bear on MPs;

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held to fill the vacancy unless the vacancy occurs- (a) Within the period of 6 months before the 5<sup>th</sup> anniversary of the date fixed for the return of the writs for the previous general election; (b) After the writ has been issued for an election under Section 105(1) (general elections) and before the day fixed for the return of that writ, writs for a general election are issued, the first- mentioned writ shall be deemed to have been revoked.

<sup>36</sup> Takai Kapi case involved a candidate suing the EC after being removed from Parliament as it was discovered his name had been removed off the common roll. It is alleged that this occurred when the EC was cleansing the roll and Mr Kapi’s name was not transferred over from the 1997 roll to the 2002 roll. He is now seeking relief for the following: his legal costs;

1. his election costs for the 1997 election as well as the 1999 by- election;
2. his loss of Parliamentary privileges, that is, between 1997 and 2002;
3. his loss of full pension entitlements if he had served out the five years term between 1997 and 2002;
4. general damages for suffering

The EC initially offered a pre- hearing settlement of K1 million however later withdrew the offer and are now proceeding to appeal to the Supreme Court in hope that the whole proceedings will be dismissed. Letter to The Acting Electoral Commissioner 6<sup>th</sup> January 2004 from EC lawyers Nonggorr and Associates per Andrew Kongri.

- the difficulties of getting re-elected, which thus occupy vast amounts of elected Member's time.

Analysts, and even some candidates, convey that the rewards of office drive the desperate competition in a “win at any cost” environment. The promise is of access to power, patronage, and vast wealth. In some respects, PNG is no different from many democracies in this regard, and perhaps this is simply part of the ‘adjusting-building’ part of its democratic story. But if we are correctly advised that there is indeed a desire for “faster adjustment” at all levels in PNG, then it is necessary not only to make the electoral process fairer, but to address the incentives as they relate to elections at all parts of the “legitimacy cycle”.

This is not to suggest that patterns can simply be changed overnight. As each of these by-elections shows in their own way (particularly Chimbu), patterns are remarkably durable. Nor should there be any suggestion that PNG's democracy is unable to adjust. The Integrity Law seeking better party and leadership integrity shows a robust parliament, looking for solutions.

In governance terms, this produces an agenda much larger than the electoral process, but arguably a report seeking to go to the heart of electoral issues that avoids consideration of the electoral system's inter-relationships with the “legitimacy cycle” would miss the point.

## 8. Working with, and adjusting, the cycle

The diversity of PNG is well known, as is the complexity of building and governing the relatively new idea of ‘the constitutional state’ within its multiplicity of customs and traditions. In some respects, the deeper our examination of the issues, the harder they appeared. We offer no romanticised quick fix, nor do we seek to add fuel to the “Fire! Fire!” view that PNG is in insoluble crisis. That said, it is perfectly obvious that some areas – the Highlands, particularly, but not exclusively - present tough challenges. And we do reflect a widely expressed view that without the sorts of changes we recommend here (many of which are on the agenda anyway), PNG may be in for a very difficult period ahead. We have accepted that the challenge for this report is to be realistic, both in assessing the problems and suggesting solutions.

Even within the limited scope of this audit, some basic impressions struck us deeply. First, there is an apparent engagement with the electoral process at every level of this complex society. We had no sense that elections are today ‘foreign’ concepts in PNG. Rather, they have clearly been absorbed into an adapting social and political order – democracy with a multiplicity of PNG accents, is ‘the new tradition’. If true, this is important. In our view, PNG presents not as a state struggling to adjust “tradition” to “alien concepts”, but as a developing country adapting to its own governance, by its people, for its people. The issues are no longer (if ever they were) about whether ‘Westminster democracy’ was an appropriate import, but about how Papua New Guineans are building their own relationships between each other, and especially between citizen and authority. Whilst each place, province, electorate has its own pace in that process, the stories follow the same themes. Elections, in other words, are now part of the culture in PNG.

In the adjusting-building process, it is perfectly obvious that there will be some ambiguities in rule systems, or even contradictions<sup>37</sup> (eg. “bribery” in the electoral system, “gift-giving” in custom) and that political actors might exploit such ambiguities to their maximum advantage.

<sup>37</sup> Dr Ketan speaks of “competing” systems of legitimacy, with state rules and clan obligations in conflict: *The Name Must Not Go Down*, note 2, above.

But if enthusiastic participation is evident at all levels, it is less clear that the fundamental importance of ‘fairness’ in voting and governance is widely accepted by leading actors, or indeed by supporters. Indeed, the common view put to us is that “win at all costs” is the dominant mentality in many provinces and towns, rather than “playing by the rules”. This has profound implications. An electoral process ultimately belongs to the whole society, not just to the players. If “all gloves are off”, then there are few limits to the violence or the financial and other costs. Such a downward spiral, a “race to the bottom”, will of course steadily destroy a society. Bit by bit, the social order will be captured - first by little warlords whose gangs dominate corners, neighbourhoods and the hours of darkness, and then by more powerful and armed conglomerates that will emerge in daylight. It is not a pretty vision. But nor is it just bad dreaming. Many Papua New Guineans are nervous about a downward spiral should nothing be done. In the 2002 elections, they saw the potential<sup>38</sup> – some may have even seen the movie.<sup>39</sup>

The essential recommendations of this report reflect a more optimistic view, namely that there is a widely shared demand for ‘fairness’ in the electoral cycle, and indeed in all of governance. Whilst we have not done detailed research into customary traditions for this audit, we are advised that basic notions of ‘fairness’ are to be found in virtually every custom and tradition in PNG, though they need voice. If those voices are articulated by communities in their own words, rules of fair electoral play stand a better chance of become effective.

Put simply, we suggest that policy must work *with* the competitiveness in PNG, but seek to reframe the basic incentives at every part of the cycle with encouragement and effective penalties. Ambiguities (such as election bribery) must be clarified – and we suggest a combination of strategies to establish more widely accepted rules for citizen and candidate.

We believe that everyone in PNG understands the metaphor that unless (say) rugby league is played according to a well-refereed set of rules, ‘the game’ will quickly become unplayable and probably violent. So with the electoral system - the rules must be known and supported. Officials, candidates, parties and public must be able to know what is a forward pass and a dangerous tackle, and the difference between supporting one’s team and throwing stones at the opponents. In elections, competition cannot (and should not) of course be stopped – but it might be better channelled so it does not become violent conflict. If violence, multiple voting, bribery, and other forms of cheating, are not effectively penalised, there is a real risk that the entire ‘game’ will become unplayable. It will also become too expensive for the players, the communities, and for the state. In the election process, as in any ‘game’, there must therefore be clear warnings, whistles, penalties, “Yellow Cards”, and, where necessary, the “Red Card” to exclude them from the game – in other words, candidates and MPs who have breached electoral rules in key respects, should not be able to contest again for defined periods (eg, 5 and 10 years).

## 9. Conclusions

The objectives of this audit were to offer an independent view of:

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<sup>38</sup> We note the editorial in one of the two main English language newspapers in PNG, *The National* on May 21, 2002: “It is ridiculous to pretend that people who are involved in hostage-taking, the widespread use of illegal weapons, and the slaughter of rivals at every available opportunity can put these activities on hold and cast a mature vote in a vital national election”.

<sup>39</sup> We pay tribute to the New Zealand filmmaker, James Frankham, for his remarkable personal documentary on the Enga Highland elections in 2002, titled *“Tanim – a tribal struggle for power”* (2002).

- the conduct of the by-elections in terms of their general planning, integrity, costs, security and processes;
- the impact of changing from First Past the Post (FPP) to the Limited Preferential Vote (LPV) by which each voter has 3 votes to rank candidates in order of preference, and
- any lessons relevant to the 2007 General Election in a manner which was relevant to the context of PNG.

The following summarises our views around these objectives.

### 9.1 Planning

Accepting the limitations, the audit was impressed with the quality of planning and coordination in all three by-elections. But we note that the capacity of the Electoral Commission is extremely stretched, especially in preparing for the General Election in 2007, whilst at the same time completely absorbed by conducting apparently endless by-elections, such as these, as well as the projected Bougainville elections in 2005. Outside of Port Moresby Headquarters, the PNGEC's capacity is very thin indeed, with effectively only one Election Manager per province. That person is required to organise all election activity, including rebuilding the Rolls, conducting Voter Education programmes, and play a major role conducting by-elections in their own province and by-elections elsewhere. The lack of capacity is significantly magnified by the run-down of the state in the Provinces generally, measured in terms of deterioration of roads and services and the general 'reach' of the state. It also seems clear that the politicisation of the provincial administrations via the Provincial Governor/Member of National Parliament dualism (where many employees now owe their positions to patronage, rather than selection on merit) has significantly reduced the capacity of provincial administrations. Put simply, outside the major areas, the PNG central state authority is 'retreating' and this makes it extremely hard for the Election Commission to mobilise local capacity for election activity. The issues are compounded by the budgetary problems which have prevented the Electoral Commission from settling all valid claims for payments from local staff from their work in 2002, and even before, and the poorly documented nature of many such claims.

It was clear to us that the Electoral Commission understands full well the need for voter awareness of the new LPV system. Education materials and processes were planned well, even though they were only delivered "just in time" for these three by-elections. A key lesson is that a coordinated planning team is necessary at all levels – in the capital, and in each province and electorate – and that this process must include civil society if it is to be effective. A critical aspect of planning is the solid and predictable availability of funding. That predictability is not available to the Commission, even for these by-elections. This makes appropriate preparation extremely difficult. It is hard to take on suitable staff, for example, or let contracts for voter education, or re-building the Voters Roll. And before any real activity can take place in the provinces, it is always necessary first to pay the outstanding claims from previous elections.

### 9.2 Integrity

We note and support the generally positive independent reports from people who were on the ground during the elections. However, with 2 out of these 3 by-elections still subject to Election Petitions, it is hard to be certain about the integrity of the processes in Yangoru-Saussia and Anglimp-South Wahgi. In relation to Chimbu, our investigation confirmed what the observers reported: the by-election had serious irregularities, particularly in multiple voting and the counting. Quite simply, these won the election. In relation to the campaigns in all three by-elections, there were also serious questions about bribery. But a dominant impression gained from this Audit in terms of the integrity of the electoral process, relates to the opportunity for fraud that comes from a bad Voters' Roll. Instead of a key tool to *reduce* election fraud, the Roll has become the *means*. The



only limit to voting in many polling stations in the Highlands, was running out of ballot papers – hence the 100% returns from many Polling Stations (and 102% in some, i.e. including the extras sent in case of spoiled ballots). Consideration might be given to the suggestions from some commentators that the Roll should be abandoned in the Highlands in favour of only sending the number of ballots for the voting population as estimated by the Census. Noting that even the 2002 Census is regarded as unreliable for much of the region, our view is that abandoning the Roll should not be done lightly, and further, it is entrenched in the organic law on elections. Indeed, re-building a clean Roll offers the opportunity of also re-building the notion of fair play, as illustrated below.

### 9.3 Costs

Adjusting for topography and so on, the costs in Yangoru-Saussia were roughly a third of the costs of running the Highlands elections, with the key difference being Police costs and having to process approximately three times the votes that would be necessary if there were a fair process. In relation to Chimbu, at least, it seems odd to fund an extremely expensive but irregular election. Projecting into 2007, it will take not only a minimum of K100 million, but a “staggered” process to enable security to be deployed sequentially and the resources of the Electoral Commission to match the scale of the tasks. In addition to defending a host of 2002 Election Petitions, and holding essential further by-elections before 2006, the Electoral Commission can anticipate three substantial advance costs from 2004-7:

- a well-run LPV awareness campaign,
- a well-run campaign seeking public and candidate support for ‘fair play’,
- sequentially building a new Roll in electorates.

If cost-escalation is true for the public sector, we have also highlighted that elections have enormous and escalating costs for candidates and for communities. And it is clear that whilst some businesses benefit in the short term from the “election economy”, there are probably far greater costs to business and the whole economy from other aspects of a threatened “cycle of legitimacy” that is part of elections, principally in corruption and practices which fall under the general heading of “wantokism” (favouring one’s kin or language group).

### 9.4 Security

Conducting these by-elections peacefully was a major success, although the Highlands operation involved nearly half the country’s police force. Whilst welcome and necessary, this is surely only a short-term solution. There are dangers in building an electoral process around a substantial police deployment, particularly in pulling the police into the process as *actors*, not as guardians. The remoteness of many areas means that police are simply unable to arrest people, and indeed it would be foolish in many cases to try. A police presence is thus an essential part of giving confidence to an electoral process, as it was in all of these three by-elections. But there has to be a better way. Getting there is not a simple process.

### 9.5 The Limited Preferential Vote (LPV)

Our short conclusion from these three by-elections is that LPV shows solid signs of working well in terms of:

- motivating candidates and supporters to be far less publicly antagonistic to one another,
- reasonably-conducted counts (given the potential complexities, and noting the attempts at fraud),
- being reasonably understood by voters.

However, there are costs of LPV, principally in extra and complex counting. And the entire system is extremely dependent on good voter and candidate understanding, so there is a great deal of work to be done in this regard across the country.

The informal vote in Chimbu was 0.4%, Anglimp-South Wahgi 1.1% and Yangoru-Saussia 1.1%. One reason why there were so few “informal votes”, is surely that so many voters in the Highlands, at least, were “assisted”. Further, it is already clear that candidates, and voters, will quickly respond to the new electoral system by working with its incentives, just as soon as those are better understood. The by-elections offer ideal training grounds for candidates, parties and strategists (and the Electoral Commission), heading for 2007. The messages will spread to other electorates.

There is some evidence in the ballots of the winning candidate in Chimbu, for example, that stronger candidates, asked their voters (and those filling in ballots for them) to allocate second and third preferences to the *weakest* candidates in the race, so as not to risk any possible advantage to their main opponents. And one should not be surprised at “deals”, as candidates “trade” signals to their supporters on which other candidates should be given second and third preferences. So long as this process takes place peacefully and within the electoral law, all this is healthy and in accordance with the objective of ensuring more broad-based support for any candidate. That said, one should not be naïve. Chimbu at least also makes it clear that irregularities will not cease under LPV – in campaigning, voting and counting.

*In our view, however, the introduction of LPV, with a country-wide education campaign and associated changes as recommended here, offers Papua New Guinea the best opportunity in a generation to change candidates’ and voters’ views on the “win at all costs” mentality and to rebuild the values of “fair play”.*

If this opportunity is taken, it could significantly reduce the escalating financial costs of elections. But the process has to be inter-connected with wider goals of rebuilding respect for “fair play” in all parts of the “legitimacy cycle” – i.e. anti-corruption, stability of government, building appropriate and transparent relationships between MPs and constituents, etc.

But we must end with a stark warning: the time and administrative, computer, etc costs to count in an entire General Election, will be enormous.

#### **9.6 Looking to 2007**

In our view, these by-elections show that without change and prompt action, the prospects for an affordable, peaceful and fair election in 2007 are bleak.

That said, plans are in train, discussions on legislative change and capacity-building are in progress. The Electoral Commission needs support to make them work. The historical record shows that many in PNG knew the dangers when they embarked upon the 2002 elections without adequate preparation and well aware that uncontrollable forces could be unleashed. Those memories are still very fresh in the minds of those we interviewed and are echoed in the election petitions..

With these summary points in mind, we turn finally to offer recommendations.

## **10. Recommendations**

These are set out as recommendations to the Electoral Commission, but they have, of course, direct relevance for Government and for all Members of Parliament (and aspiring candidates), other parts of the public sector – and for the people, whose votes underpin the entire process.

### 10.1 Leadership

The Commission may wish to invite the Government to establish a high-level '2007 Election Committee' including members of the Prime Minister's Department, to work with the Electoral Commission to determine priorities and coordinate implementation, including through the House. An ideal outcome in the House, would be if a non-partisan Select Committee could focus on and progress necessary legislation. The process needs leadership, from Ministers down – it particularly needs a well-connected 'champion' able to connect the independent Electoral Commission with effective executive and legislative decision-making. This is not the same as a 'coordination committee' of people actually concerned with running elections – it is a 'change committee' to decide upon and implement critical necessities, without which the 2007 General Elections will be in trouble.

### 10.2 Prioritisation

The most important things should be sequenced into manageable priorities – thus, reforming the Roll is critical as set out below, but it need not be done all over the country and in the same way by 2007: one could start with the areas that are the subject of most abuse (i.e. the Highlands); the same point applies to conducting the elections in problem areas in that they should be sequenced; and the same for reforming Electoral Boundaries. If the priorities are examined, matched against capacity and funding, it might be that seeking to change Boundaries before 2007 is less important than other matters.

### 10.3 Building the notion that fairness entitles reciprocal obligations

At every level, the attempt should be to re-build the notion that the *Electoral Commission enables and assists the people's choice – but there are reciprocal obligations on the people to make this a fair process.*

### 10.4 The Roll

The Roll must progressively be rebuilt, starting with the most problematic areas. There is no simple formula here. It will need adjusting for the complexity of PNG societies. There is very wide discretion given in the law to the Commission on how it might build the roll. For example, the Roll in the Highlands might be rebuilt around each polling station. This would require sending a team, possibly accompanied by Church leaders, or other respected persons, to that station and working with the communities concerned to reach clear understandings that from now on *only* eligible voters enrolled at that station would be entitled to vote.<sup>40</sup> Further, this would require their understanding and agreement of *one person one ballot* (albeit with 3 votes!). This process is not simple, but it is essential. Reciprocity is the key. The message is: *unless we rebuild the Roll fairly, your community will not be able to vote; we need to do this together.* This process would tend to support the 2004 Law Review Committee recommendation for voting only to be allowed at places where the voter is registered. We also note that the Roll issue is reflected in numerous previous reports,<sup>41</sup> and that for various reasons work on rectifying the roll has now been delayed for two years.

<sup>40</sup> We were reliably informed of a current practice (this one, relating to the Southern Highlands) of candidates getting election officials to add new names to the Roll in preparation for the 2007 elections, specifically to add to the potential to boost votes by "100% returns" (i.e. the multiple voting seen in Chuave) in future.

<sup>41</sup> See: Kerry Heisne and Alistair Legge, 1998. *Report on the Operational Effectiveness of The Papua New Guinea Electoral Commission and the Capabilities of the Commission's Core Staff, Business Systems and Processes*. This acknowledges that an accurate roll is the basis upon which fair and democratic elections are built and that the PNG common roll was defective in a number of ways including: missing data; ghost names; missing enrolment forms; no cross checking with census data to verify levels of enrolment; no voter identification by Returning Officers (in regards to list of voters being submitted); and no local knowledge in provincial electoral offices to ensure that electors are placed in the correct local government or open electorate boundaries (p 25). See also, Commonwealth Expert Group, 2002. Report of The Commonwealth Expert Group on Papua New Guinea's Electoral Arrangements,

### 10.5 Technology and the Roll

Reasonably low-cost technology can compile (in the field) a digital Voters' Roll that includes both photograph and fingerprints. Consideration should be given to requesting a business case for this technology, and to trialling it as Rolls are rebuilt in priority areas. Again, the key is to tackle priorities, not the whole country. This technology might have multiple uses (eg by Police), which would make a better business case. But obviously there would be protocols preventing inappropriate use of information between agencies. Having a secure Voters' Roll will not of itself stop 'multiple voting', but it will be part of the incentives.

### 10.6 Flexibility

Subject to the over-riding imperative of providing as free and fair an election as circumstances allow, the Electoral Commission needs to use its existing flexibility in its processes, including in elections themselves but also in the preparation, such as the Rolls. A further example is in the choice of polling places. The legislative requirement is for the placing of sites where there is "reasonable and sufficient opportunity to vote" (s13). In our view, this should mean not only *access* for the public, but access for a "fair vote". In other words, if communities persist in violence or massive fraud at elections at particular sites that are insecure as a result, the Electoral Commission should change those sites, even if it means that voters will have to walk greater distances to vote in future. Again, the objective is to change the incentives, such that local communities and candidates benefit more from fair process than from fraud or intimidation.

### 10.7 The Electoral Commission's capacity to exclude irregular ballots

Consideration should be given to the question of what discretion a Returning Officer should have to exclude from the count, boxes where ballots which appear to have been improperly cast. At present, the balance of the law is towards *allowing* suspect material into the count, and then leaving it to candidates to challenge via an Election Petition. This provides a very significant incentive on candidates and supporters to cheat, as it will be a lengthy and expensive process afterwards to challenge the result once it is entered. In our view, this balance is worth reconsidering explicitly, including with clear legislative authority and Electoral Commission guidelines and training, so that the incentives are the other way round. If Returning Officers (possibly with the consent of the Chief Electoral Commissioner) believed that there was good evidence for excluding ballots, they could be counted, recorded, noted as "disputed" (if the decision was), but then excluded from the final count. The burden would then be on the person alleging that there was no irregularity, to prove that the decision of the Returning Officer was not appropriate. This would significantly reduce the incentives on candidates and supporters to take over ballot processes from the Electoral Commission, or to bribe Presiding Officers to do the work for them.

### 10.8 Speedy and effective decisions and dispute resolution

The goal should be to get Candidates, especially, to sign up to the rules of "fair play", and to provide speedy and effective processes for dealing with breaches of electoral laws. Accepting the need for independent scrutiny by the Courts, the Electoral Commission should be able to act as Plaintiff, not just as Defendant, in enforcing electoral law. Consideration should be given to establishing a special "Election Tribunal" with election and legal expertise to consider

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[http://www.thecommonwealth.org/shared\\_asp\\_files/uploadedfiles/{02776B7C-C858-4B17-B36B-25FCA5813A8B}\\_PNGElectoralrpt.pdf](http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/{02776B7C-C858-4B17-B36B-25FCA5813A8B}_PNGElectoralrpt.pdf) accessed 30 November 2004. The 2000 Report on electoral reform by the Constitutional Development Commission expressed the urgent need for improvement in the compilation of the common roll to ensure that every citizen who is of voting age is on the roll while those who ineligible are not included (p 2).

breaches of the electoral laws during elections.<sup>42</sup> If the Electoral Commission had reliable evidence of a person breaching the campaign laws (for example, bribery) it would apply to remove the Candidate from that election. If the vote had already taken place, the first preference would be removed just as if that candidate had been eliminated, and other preferences re-allocated. The new message needs to be: *breaching electoral rules is not to your advantage*. The old message effectively was: *anything* that improved the chances of winning was acceptable.

#### **10.9 Establishing clearer rules for candidates on bribery/undue influence and ‘tradition’**

To establish ‘fair play’ the candidates must know the limits, with far less ambiguity. This could be done, for example, by formulating the limits more precisely in legislation, summarised on the forms candidates submit to Returning Officers, and signed by candidates as part of the process. In relation to the problem of “bribery v custom”, there appear to be three options:

- d) accept the current situation with its ambiguities, and do nothing;
- e) formulate a clearer description (using customary knowledge and processes) of what is acceptable as ‘customary’ and what is not at election time, and better define such in the law; and
- f) if it is simply not feasible to distinguish between bribery and custom at election time, and the view is that the expense has become prohibitive for all concerned, specifically legislate to provide that ALL gifts, donations, payments, *including at any customary or traditional ceremony*, would be prohibited after, say, the start of the Nomination Period (issue of writs), until after the return of the writs.

Whichever of the latter two is chosen, breach would render the candidate liable to being removed from the election, promptly under the speedier Election Tribunal process above. The point would not be lost on candidates or supporters: giving gifts or money risks, rather than benefits, the entire candidacy.

#### **10.10 Candidate ‘Code of Conduct’**

Setting out all the (existing as well as re-formed) rights and obligations of candidates in a Code of Conduct, and getting them to sign such a part of the nomination process, would provide a mechanism of education and possible enforcement of fair play.

#### **10.11 Limits on campaign expenditure**

To prevent domination by only the wealthiest in elections, many countries have reasonably effective limits to campaign expenditure. Without clear rules spelling out acceptable expenditure and banning “traditional gifts” as noted above, such limits would be completely unviable in PNG. All politicians and indeed their communities should share an interest in setting effective limits on campaign expenditure. We accept, however, that enforcement here is a major problem. But legislation might empower the Commission to establish such limits by Regulation, when it deems that reasonable enforcement possibilities exist.

#### **10.12 Requiring candidates to declare assets**

The same incentives should apply to Candidates as to MPs. It makes little sense to clean up *elections* without linkage to corresponding sanctions in public office to stop the cycle of corruption. Obviously there are existing processes in place in this regard, but consideration could be given to requiring *all Candidates* (not just elected MPs) to submit declarations of assets to the Ombudsman as part of the nomination process, and to provisions which would mean that any false declaration rendered the person ineligible to stand for a defined period. We accept that the Ombudsman

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<sup>42</sup> Within the Commonwealth, the closest approximation to this process is in Jamaica.

Commission does not have sufficient resources to verify the details of all candidates. The purpose of the recommendation is firstly educative (in reminding candidates that they embark on a process where their overall integrity is on the line) and secondly to lay the basis for possible later investigation if relevant. Playing by the rules should not be just one option in a game of winning at all costs – it should be a condition for being a candidate *or* holder of public office.

#### **10.13 Neutrality and its breach**

Fair process should apply also to all officials involved in elections, or working with them in a neutral capacity (such as Police). Existing provisions requiring Electoral staff to make declarations of fair dealing, and there are criminal offences for breaches of such. But they are not enforced and punished. Polling and Counting staff are subject to bribery offers that outweigh any realistic chance of being caught and subject to noticeable penalties - for example if people who also hold other public office (eg in the Provincial Administration) were realistically subject to dismissal.

#### **10.14 Prohibiting candidates or MPs who have breached core obligations of fairness from standing again for defined periods**

Being able to remove a Candidate during the election, or an MP afterwards, for major breaches of electoral rules in an effective and timely manner is a key part of changing the incentives. But an additional factor is necessary – that process should mean that a Candidate cannot stand for public office again at the next opportunity. Initially, the ban should be for, say 5 years. But a second breach might be more substantial, say 10 years.

#### **10.15 Shared planning and clear roles**

Establishing joint planning and operational committees is already taking place and makes solid sense. But at the same time consideration might be given by the Police and Electoral Commissioners, to drafting a short Memorandum of Understanding to establish clear boundaries for their roles, and clear terms on which Police might move from ‘protection’ to ‘assistance’ (if ever).

#### **10.16 Voter and citizenship – and electoral staff /officials – education and training**

We echo the 2003 Report of the AusAID Review Team which recognized the importance of increased citizenship education, which would include voters’ rights and responsibilities, as well as the need for specific community awareness programs on the LPV. It is also critical that there be proper training of electoral staff, especially on the count, if an administrative crisis is to be avoided in 2007. Further, the report stated that the problems of electoral governance are far greater than simply the management, resources and operations of the Electoral Commission. Rather the problems extend across the administrative capabilities of the PNG state as a whole. In other words, for the Electoral Commission to carry out effective LPV awareness activities, it must secure the support and participation of other relevant stakeholders such police, NGOs and civil society organizations. This is necessary to ensure peaceful and democratic elections, as well as governance.

#### **10.17 Abolishing by-elections**

Consideration should be given to abolishing by-elections under certain conditions. Under First Past the Post (FPP), “winning” candidates routinely received less than 10% of the overall vote. With three votes under LPV, there is solid evidence that a far wider democratic mandate would have been won by even losing candidates than was often secured under FPP. It would, in our view, be perfectly legitimate to consider requiring the Electoral Commission to complete the count in a manner that would allow the reallocation of votes in the event that a person lost his or her seat. Careful attention to detail would be necessary here, including possibly requiring a by-election in the event of the death of an MP (to exclude any incentive for murder). Other factors would include situations where a person was removed because of, say, mass multiple voting that threatened the

integrity of the ballot, that person's *entire* vote would be excluded, including all three preferences (because of the fraud). But in principle, it should be possible to allow the reallocation of votes of a person who lost her or his seat, to establish a successor with the next highest mandate. This alone, would save millions of Kina and allow the Electoral Commission to concentrate on the Roll between elections (for the purposes of comparison, we note that approximately 1/3 of overall the budget for the New Zealand electoral process is spent simply on maintaining the Roll each year).

#### **10.18 Ballot design and layout**

We note the recent proposal from the Law Review Committee to abolish the single ballot paper and replace it with a single ballot form (presumably printed in a unique way each time, and for each electorate, to prevent fraud) with the usual sequential serial number. This ballot would have only 3 boxes for First, Second and Third Preferences which would be filled in with the candidates' number in the order of the draw. The Electoral Commission would undertake to distribute widely, including in each Ballot Station, detailed posters of the candidates with photographs and identifying numbers for each candidate. For example, each voter would then be given a ballot, and in the box for each Preference, write the candidate number from the list in front of her or him. With growing numbers of candidates standing for each election, the suggestion has the advantage of potentially saving significant amounts of taxpayer funds. Its disadvantage, obviously, is that choice would be significantly more complex for the voter – and for the counting. On the principle that elections should stick to basics until there is popular support for a change, it is too close to the next general election to contemplate even a trial. But the idea is worth thinking about for trial when there is more time.

#### **10.19 Providing for Elections to be held on different days for the General Election**

It will be necessary to amend section 81 of the Organic Law on National and Local Level Elections to allow for "staggered" elections should this be necessary. It will not always be necessary, but there should be the option, especially under current conditions.

#### **10.20 Political instability in Parliament and Cabinet**

The difficulty of maintaining stable government under current conditions has been the subject of a great deal of thought in PNG. We have noted that this instability is inter-connected with the electoral process, evidenced not least in these by-elections (and especially in Yangoru-Saussia, with its history of petitions and by-elections). Discussing this in detail is beyond the scope of this Report, but we note that as part of the ongoing adjustment of PNG's governance and democracy, it might be possible to discuss further re-framing the laws and conventions around confidence and supply in a manner that would allow back-bench MPs to propose development expenditures and programmes up to defined amounts for approval by the House as a whole. But that is a significant proposal for future consideration.

#### **10.21 The relationship between MPs and their constituents**

There has already been much talk about the District Support Grants and "MP's slush funds" and we are aware that some reforms have been made and others are still under consideration. One key aspect of Parliamentary democracy is to enable a "representative" to work in the House on behalf of his or her constituents and PNG is no different from many other democracies in this. We accept that in every society, matters have to relate to the underlying cultures in some meaningful manner. The key is the means by which this is done. In our view, the current process gives too many incentives for corruption because of the difficulties of ensuring open accountability for the funds. But the attempt to enable some legitimate means of building valid relationships between MPs and constituents must continue. There may be scope, in this regard, in the possibilities of allowing more Private Members Bills, including for expenditures of up to certain limits, so that Members can find

transparent mechanisms for development in their electorates. Again, we are aware that this has important ramifications. But this should not preclude careful consideration of the possibilities.

#### 10.22 Provincial Governors

We are aware that discussions on this are continuing. We simply note that there are good grounds in election practicality and costs, in addition to constitutional principle, for the nature of this particular representation to be reconsidered.

#### 10.23 Increasing Nomination Fees for candidates

In our view, there are very good grounds for increasing the Nomination Fee to at least K10,000 as a reasonable limitation under PNG's democracy. This will raise funds as well as ensure that candidates have to seek wider support before standing. There might be limited discretion to reduce the fee in some narrowly-defined cases where there are important policy reasons to encourage candidates, such as women.

#### 10.24 Gender

In these three by-elections, as indeed the Parliament as a whole, whilst women apparently participate actively at all levels of the campaign and voting, we note the very low representation in parliament. This despite the fact that women constitute nearly half of the general population, as well the voters. This is a deeply cultural matter, obviously for PNG to decide. But we note that in the adaptation and adjustment of its democracy, PNG's leadership may wish to consider reforms to improve the representation of women in Parliament. In turn, this might have a significant impact on the electoral system.

#### 10.25 Matters particularly concerning the Police

To improve a number of Policing and Security aspects to General Election and By-election processes in Papua New Guinea it is recommended that:

- a) To ensure greater role clarity between officials participating in the electoral processes:
  - i\_- A Memorandum of Understanding between the Police Commissioner and the Electoral Commissioner be developed that clearly defined the roles of Police and Commission staff in discharging their duties at by and general elections,
  - The prescribed roles and duties are reinforced as part of ongoing training and education of police and electoral staff.
- e)b) To reduce the opportunity for officials involved in the electoral process to unfairly or unlawfully influence the outcome,
  - i\_- All affected staff are required to declare any actual or potential conflict of interest,
  - Comprehensive vetting arrangements are put in place to assess all relevant officials and ad hoc employees,
  - The rotation of senior staff takes place as a matter of course,
  - Officials are, as far as practically possible, deployed to areas other than those they are directly responsible for.
- f)c) Consideration be given to strengthening the governance arrangements for all aspects of the election processes including,
  - i\_- The creation of a single multi agency steering group that would oversee and could guide the collective governance effort, and

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iii- The development of common election budget bidding/allocation arrangements for the Police and Electoral Commission, and  
iii- Mandating local structures including Steering Committees, and  
- Creating multi-disciplinary awareness teams to promote the new LPV electoral system.

- d) The Electoral Commission consider developing a business case for building a fresh common roll including the option of utilising the proven identification technology of fingerprinting and/or personal photographs.

## PRIORITISATION

**1** Having considered this Report, the Electoral Commission may wish to invite the responsible Minister (the Prime Minister) to establish a senior committee of officials to progress the urgent matters necessary for 2007, and to build support from within the legislature and executive for progressive and effective action. One person in the Electoral Commission might be specifically tasked with coordinating discussions on security legislative and budgetary support for 2007. The key objective is to enable a parallel planning, legislative and action process to take place whilst the Electoral Commission is so busy with by-elections and with Bougainville.

**2** Planning towards 2007 should be integrated with the previous and existing reports, particularly the AusAID Phase II electoral support project.

**3** Starting on re-building the Roll in key areas is the major priority. That takes only budgetary support, rather than legislative change (there are a number of methods by which this might be done as part of a comprehensive package – see the suggestions in Appendix C).

**4** In the legislative package, the key is to increase flexibility and effectiveness, and change the incentives on candidates and supporters to ‘win at any cost’:

- more flexibility to the Commission eg to conduct a General Election on a ‘staggered’ basis;
- establishing an effective “Election Tribunal”;
- clarifying the boundaries between ‘custom’ and ‘election law’;
- increasing the Nomination Fee;
- provision for abolishing by-elections under certain circumstances;
- banning candidates who breach key rules from standing for defined periods.

## Appendix A: The Cost of Elections and By-Elections

### 1. Introduction

Section 15 of the Organic Law on National and Local Level Government Elections provides that - “it is the prime function of the Electoral Commission to organise and conduct all elections for the Parliament and legislative arms of Local Level Government”.

Section 225 of the Constitution requires Government to ensure as far as is within their legal powers: “That all arrangements are made, staff and facilities provided and steps taken to enable and facilitate, as far as may reasonably be, the proper and convenient performance of the functions of all constitutional institutions and other offices of all constitutional office holders”.

In short the Government are required to adequately resource the Electoral Commission – a point strongly emphasised in each years Electoral Commission’s Budget Estimates.

### 2. Process

#### 2.1 Funding Requests

Funding requests are prepared by the Electoral Commission (EC) and submitted annually to the Treasury for approval.

In the case of Elections and By-Elections the requests for funding follows broadly the following pattern:

1. EC requests Returning Officers and Election Managers to provide detailed costing of expenditures at the local level.
2. These are sent to the EC for review, variations and reporting back to the field offices.
3. EC consolidate the electorate costs and add their own expenditures (e.g. printing ballot papers) and submit the full Budget Estimate to Treasury.
4. Treasury review and hold Budget meetings with EC to discuss the estimates.
5. Following approval, funds are appropriated by the Department of Finance based on the timing indicated by Statements of Cash Flow prepared by the EC. Understandably the bulk of the funding needs to be paid over before and during the election period.

#### Reporting

The Electoral Commission reports to the Department of Finance monthly. If supplementary funding is required then application is made at that time.

### 3. Annual Budget Estimates

- 3.1 The annual budget estimates submitted to Treasury include, inter alia, the following Planned Activities and Targets.

	2003	2004	2005
Dispose of 2002 election petitions	✓	✓ (Remaining)	✓ (Remaining)
Revision of electoral rolls	✓	✓	✓ Massive Cleansing
Limited Preferential Voting ("LPV") awareness programme	✓	✓ (Massive)	✓ Massive
Review electoral boundaries	✓	✓	✓ Full Review
Prepare for By-Elections		✓	✓
Awareness workshop and training of officials		✓	

A summary of Budget Estimates is set out below. These are for amounts included in Item Code 135, - Other Operational Expenses. Other Operational Expenses is the item code covering all elections, By-elections, and all future references are only to expenditures under item Code 135.

3.2 The following can be noted:

In respect of the 2003 Budget estimates of K30,300,000 only K4,654,000 was originally approved, although a further K8,219,000 was appropriated by way of supplementary approvals during the year. In 2004 only K15,000,000 was approved of an estimate/ request of K40,703,000. However K5,000,000 was subsequently withdrawn and transferred to Police.

3.3 It could be reasonably concluded:

That the EC performance is effected by the lack of certainty of funding and as a consequence will only incur costs as is necessary e.g. deferral of the LPV System Awareness and non payment of outstanding debts in respect of the 2002 election.

#### 4. The 2002 Elections

4.1 Little evidence or record is available to establish accurately the cost of running the 2002 General elections.

The EC have made available to us a report prepared by Deloitte which was commissioned to report on and audit the election costs. In the event Deloitte were unable to reach any conclusions, primarily from there being a lack of adequate records.

In summary the report's conclusion can be summarised as follows.

Funds were provided from the following sources:

	K,000's
Consolidated Revenue	41,000
Nomination Fees	4,000
Consolidated Revenue to Provincial Treasurer	6,000
Consolidated Revenue to Provincial Police	4,000
	<u>57,000</u>

Given that opening and closing bank balances were similar, then this indicates expenditure of the above amount. Only half of this expenditure was accounted for from limited records. Thirteen provinces did not provide (or could not provide) any records at all. However it is important to note that after the election there were still outstanding claims for election costs of between K13,500,000 and K14,000,000, indicating a total cost of approx K70,000,000.

This does not allow for any additional Police expenditure over and above the K4,000,000 allocated. Although there is no firm evidence, it has been indicated Police may well have incurred costs of more than K10,000,000. Furthermore no account has been taken of any funds which may have been provided by AusAid. In all likelihood the total election cost was in excess of K76,000,000.

- 4.2 This appears to be a very expensive election with little apparent control over expenditure or any accountability. If, as appears likely, the election cost was in excess of K 76,000,000, then based on this cost this equates to:
- K697,000 per Member of Parliament
  - K8128 per polling station
  - K14.29 per elector on roll
  - K23.29 per vote cast
  - K26.07 per estimated eligible voter

By way of a benchmark the cost of a New Zealand General election is approx K22.50 per eligible voter. This may not seem much less than the PNG equivalent of K26.07 but it should be borne in mind New Zealand costs (employees) are at a considerably higher level.

A further point of interest is that the New Zealand Electoral Commission spends the equivalent of K85 million over the three year election cycle (K28.3 million per annum) on maintaining the electoral roll.

There is a further category of cost directly relating to the elections which is not included in the above figures. These are the legal costs incurred post election by the EC in dealing with Candidate disputes (numbering 89) filed after the election. The exact cost to date is not yet available to us, but we are advised that it is in excess of K5million, with a further eight disputes still to be settled (and note there is a budget estimate in 2005 for K4.5 million for legal disputes, and another K1million for the resolution of the remaining 2002 Petitions).

- 4.3 There are weaknesses in this analysis in that the overstated roll and multiple voting would indicate the only useful measures of cost are those of:
- Cost per polling station
  - Cost per estimated eligible voter

From the 2002 election report by Province (including the Southern Highlands Supplementary election) the following was noted:

2000 Census	5,130,365
2002 Roll	5,319,095
Votes Cast	3,275,926

Eligible voters are based on the census in 2000 adjusted for a growth rate of 2.7%pa. This census found that 53.25% of the population were aged 18 years plus and thus eligible to vote. (Source PNG 2000 Census, Community Profile System). This translates into eligible voter population in 2002 of approx 2,915,000. Only in New Ireland Province did the roll equate to the estimated eligible voter numbers. Interestingly in 38 electorates the roll exceeds the total population.

- 4.4 In Appendix II we provide statistical details of Eligible voters per Polling Station, compared

with Enrolled voters, by Province; and Eligible voters per Constituent Member of Parliament and Eligible voters per Provincial Governor.

## **5. The 2004 By-Elections**

5.1 Because the By-elections were organised / controlled by the EC senior staff, a significantly improved recording of costs was maintained. The Budget Estimates prepared by the EC included a first assessment of costs – refer Appendix I, 2004 Budget Estimate. Thereafter the EC prepared detailed budgeted costings for each of the three By-elections – refer Table 2.

5.2 Actual expenditures are arrived at from Commitment Control Ledger reports prepared by the EC accountant. These reports were reviewed by the Audit team and where appropriate some checking was carried out against the primary documentation – namely: approved Finance Forms, copy of the signed cheque paying the account, requisitions/ requests from Returning Officers, quotes and any other relevant information.

5.3 In addition to District and Electorate expenditure, the EC Headquarters incurred costs on, amongst others:

- Preparing for the By-elections
- Printing Ballot papers
- Purchasing Indelible Ink, Seals, Padlocks, Ballot boxes etc
- Freighting / distributing material to electorates.

For the purpose of the by-election audit these costs have been apportioned on the basis of Ballot papers lodged.

### **5.4 Police Costs**

The salary costs are actual for the number of staff based on time deployed at each location. In the case of Chimbu and Anglimp, some EC staff were interchanged between the two regions so for the purposes of analysis the salary costs have been apportioned on the basis of the number of polling stations. The majority of the Operational costs are allowances (K3,400,000) so the Operational Costs have been apportioned on the basis of the salary apportionment. Air transport was provided by Police but paid for by a grant from AusAID. The Yangoru-Saussia cost is an actual cost whereas the Anglimp / Chimbu cost has been apportioned on the basis of the number of polling stations.

### **5.5 Cost controls**

In reviewing the Commitment Control ledger reports further confirmation of expenditure is needed in many cases by way of goods received notes/ packing slips or confirmation of services having been received. By way of example:

1. In Chimbu three payments totalling K114,216 were made for the provision of lunches for counting staff.
  - a) A deposit of K2,800 was paid with the first invoice as a deposit for the Elimination round of counting. This was not deducted from the later invoices.
  - b) The initial invoice was for K7 per lunch box per day.
  - c) The final invoice was for a further claim for K4 per lunch per day to take it to the original quote but also included a charge for lunches for Police personnel. Did not the allowances paid to the police include an amount to cover lunch?

- d) Attendees at the count have cast doubt as to whether the appropriate number and quality of lunches were actually provided.
- 2. A payment of K74,520 was paid in May 2004 for Diesel for the Chimbu By-election. This included K17,820 being deposits for empty drums. There was no evidence of any recovery of this deposit by way of return of empty drums.

## 6. The 2007 General Elections

- 6.1 A number of factors will have a significant effect on the cost of the next general election.
- LPV System – more counting
  - Multiple voting – i.e. reduction in cost from fewer ballots, less counting etc.
  - Security needs.

- 6.2 Previous analysis of the 2002 General election and the 2004 By-elections lead one to the conclusion estimates of cost based on numbers of polling stations and/ or eligible voters are the most appropriate basis for endeavouring to estimate future election costs.

Dealing firstly with eligible votes and the Electoral roll and using the assumptions in Para 4.3.

If the electoral roll is not cleansed then there would potentially be 5,920,000 voters on the roll by the next election (well more than the national population). However if using the same assumptions to calculate estimated eligible voters then the potential electoral roll for 2007 would be approx 3,250,000 voters.

An assessment of polling station costs has necessitated a very subjective judgement. Three key factors impact on the cost of elections:

1. Terrain – Highland terrain, boats, poor roads etc. This is unlikely to change in the medium term
2. Security. This is a significant cost – refer Appendix III. This cost can be reduced substantially with a better understanding of the political process, introduction of LPV and an awareness campaign, and with cultural change and the voters taking ownership of the process.
3. Roll and Voting irregularities. With LPV and in many instances multiply voting costs increase – more ballots, more counters and time required etc.

Assessments are as follows

<i>Terrain</i>	1 easy access (e.g. NCD) to 5 difficult (e.g. Highlands, use of helicopters)
<i>Security</i>	1 low risk (e.g. New Ireland, Manus) to 5 high risk (e.g. Highlands)
<i>Voting</i>	1 low risk; (votes cast less than 80% of estimated eligible voters) 2 medium risk; (votes cast between 80% and 100% of estimated eligible voters) 3 high risk; (votes cast greater than 100% of estimate eligible voters)

- 6.3 Table 3 provides rating details by Province and have been assessed with the assistance of the EC Operations office. Table 4 is the assessment of the likely cost on a per polling station basis.

Those with 13 points are the most expensive provinces in carrying out an election. These have been assessed at K22,000 per polling station. Refer Table 2 which confirms that the two Highlands By-elections cost K23,288 and K23,855 per polling station. Yangoru-Saussia rated 9 is very much the average. Interestingly the average cost per polling station in the 2002 election was K8,128 (ref Para 4.2) and the cost of the Yangoru-Saussia By-Election was K8,806 per polling station (refer Table 2).

**6.4 Estimated Costs per eligible votes**

The average cost of the 2002 election per estimated eligible voter was K26.07 (refer para 4.2). The cost per estimated eligible voter in the 2004 Yangoru-Saussia (an average electoral) 2004 By-election was K32.35. Given the additional counting time under L.P.V it is reasonable to assume the average for the 2007 election would be say K32.

**6.5 Cost of 2007 Election**

Estimate eligible votes

3,250,000 votes (para 6.2) at K32 = K104 million

Per Polling Station

Aggregate cost – per Appendix IV – K114 million

Inflating 2002 Election Costs

Inflation measured by the Consumer Price Index was 14.7% in 2003, 3.4% forecast for 2004, 7.0% Estimate for 2005, 8.5% Estimate for 2006. Whilst there is no certainty the CPI would apply to election costs but interestingly if one assumed an overall 6% inflation rate then on this basis the 2007 election would cost K102 million.

In the absence of significant changes, in all probability the 2007 election will cost in excess of K100 million.

**6.6 2007 Election Funding**

In 2002 nomination fees of K1000 per candidate raised K4 million indicating there were approx 36 candidates per parliamentary seat. Enquires by the Audit team indicate most candidates spent tens of thousands of Kina, if not hundreds of thousands, in the hope of being elected. On this basis a significant increase in the nomination fee to say K10,000 for 2007 would have the following benefits, assuming there would be a drop in nominations by say 20% to 28 per seat:

- The EC would received K28 million towards running the election.
- Treasury contribution would remain the same or reduce.
- Fewer candidates results in savings in counting / eliminations

**6.7 Savings**

It is difficult to provide accurate financial estimates of potential savings. The above estimates are predicated on the status quo continuing. However there are two potential areas to save cost.

**Counting**

Cost overruns in the By-elections arose because of the extra time it took to count/ eliminate votes under LPV. This was not helped by substantial multiple voting. Considerable savings would result from a reduction in multiple voting.

### Security

This is a major cost (especially in the Highlands), with a major component the helicopters. If threats, bribery and general voting bad habits could be reduced, considerable savings would result. Referring to Table 3 if the five worst Provinces took measures to produce safer voting and cleaner rolls to the extent they were rated as 11 then the savings from these provinces alone would amount to K20 million.

## Budget Estimates 2003, 2004, 2005

### (1) 2003 Budget Estimates

<b>K 000's</b>			
<b>Original</b>	<b>Budget Request</b>	<b>Budget Approvals</b>	
2002 Election Petitions	2,300	1,300	sup
LPV System	600		
Govt Printing	500		
Private Printing	500		
Common Roll Update	519		
Other Minor items	81		
	<u>4,500</u>	4,654	Org
<b>Supplementary</b>			
Outstanding Accs 2002 Election	13,000	478 2,900	Sup Sup (Printing)
National Boundaries Commission	1,500		
By-elections	7,000	692	Sup
Supplementary Elections SHP	4,200	4,806	Sup
Supplementary Elections ORO (LLG)	82		
	<u>25,782</u>		
<b>Variations during year</b>			
Funds Withdrawn		(2,162)	Sup
Vehicle Allowances		48	Sup
Transferred to various other codes		(25)	Sup
Allowances		44	Sup
Unknown		138	Sup
	<b>30,282</b>	<b>12,873</b>	

Org = Original Treasury Approval  
Sup = Supplementary approvals during year



## (2) 2004 Budget Estimates

K'000's		Budget Request	Approval	Spent
<b>2002 Election Petitions</b>		4,500	1,000	
<b>Boundaries Commission</b>		2,200	-	
<b>By-elections</b>				
Central – Abau	147			
Chimbu	4,771			
East Sepik	250			
Enga-Wabag	812			
Morsba	367			
Anglimp-SW	813			
Southern Highlands	838			
National Capital District	242			
HQ Costs	514	8,754	8,000	
<b>LPV System Awareness &amp; Training</b>				
Chimbu	571	)		589
East Sepik	625	)	1,000	176
Anglimp – SW	645	)		165
Other Provinces	8,716	)		
		10,557		
Common Roll Update		360	-	
<b>Election Debts</b>				
Unpaid Bills from 2002 Elections		12,500	5,000	
Included in Chimbu By-election Budget		1,760	-	
Other Minor Items		72	-	
		40,703	15,000	
<b>Variations during year</b>				
Withdrawn for police			(5,000)	
Transfer Allowances ex account 111			30	
Utility Bills paid by HQ			(120)	
Wabag By-Election (Additional)			1,100	
Wabag 2002 outstanding account			100	
		<b>40,703</b>	<b>11,110</b>	

## (3) 2005 Budget Estimates

K000's

	Budget Request
2002 Election Petitions	993
Boundaries Commission	2,200
By-election	8,779
Logistics	1,315
LPV Awareness	12,354
Common Roll Cleansing	19,400
2002 Election Debts Unpaid	9,000
Legal and Court fees (estimated)	4,507
Sundry	273
<b>Total</b>	<b>K58,821</b>

## Table 1: Voters per Polling Station and Electorate

Province	2000 Census Total Population	2002 Voters on Roll	2002 Estimated Eligible Voters	No of Polling Stations	Enrolled Voters per polling Station	Estimated Eligible Voters per Polling Station	Estimated Eligible Voters per Electorate	Estimated Eligible Voters per Governor
Central	183,153	191,496	102,867	494	388	208	25,717	102,867
Chimbu	258,776	451,775	145,340	427	1,058	340	24,223	145,340
East New Britain	220,035	172,481	123,581	342	504	361	30,895	123,581
East Sepik	341,583	286,716	191,848	719	399	266	31,915	191,848
Eastern Highlands	429,480	602,228	241,214	659	914	366	30,152	241,214
Enga	289,299	411,201	162,483	392	1,049	414	32,497	162,483
Gulf	105,050	105,912	59,001	270	392	218	29,500	59,001
Madang	362,805	345,476	203,770	654	528	312	33,962	203,770
Manus	43,589	30,701	24,481	128	239	191	24,481	24,481
Milne Bay	209,054	187,149	117,414	484	387	243	29,354	117,414
Morobe	536,917	462,341	301,556	942	491	320	33,506	301,556
NCD	252,469	233,763	141,797	197	1,187	720	47,266	141,797
New Ireland	118,148	64,568	66,357	312	207	213	33,179	66,357
North Solomons	141,161	129,299	79,282	325	398	244	26,427	79,282
Northern	132,714	112,502	74,538	263	427	283	37,269	74,538
Southern Highlands	544,352	598,811	305,732	815	735	375	38,216	305,732
West New Britain	184,838	148,181	103,813	272	545	382	51,906	103,813
West Sepik	185,790	145,838	104,348	457	319	228	26,087	104,348
Western	152,067	141,467	85,407	412	343	207	28,469	85,407
Western Highlands	439,085	497,190	246,609	627	793	393	35,230	246,609

## Table 2: By-Election Costs

K 000's

	Anglimp-South Wahgi	Chimbu	Yangoru- Saussia
Electoral Commission Budget	810	4,659	302
Less Helicopter/ Fixed Wing Aircraft (Provided by Police)	183	866	46
	<u>627</u>	<u>3,793</u>	<u>256</u>
Actual EC expenditure – Paid	730	2,928	303
-	96	186	29
Outstanding			
Head Quarters Costs (Share of- refer Para 5.3)	169	539	38
Police Costs – refer Para 5.4			
Salaries	221	753	44
Operational	1,191	4,060	237
Air Transport	504	1,720	212
	<u>2,911</u>	<u>10,186</u>	<u>863</u>
Analysis			
No of Polling Stations	125	427	98
No of Candidates	30	31	18
Total Ballots cast	107,141	342,462	24,062
No of enrolled voters	129,003	451,775	46,743
Estimated No of eligible voters	63,962	172,846	26,675
Cost per:			
Polling Station	23,288	23,855	8,806
Per Ballot Cast	27.17	29.74	35.86
Enrolled voters	22.57	22.53	18.46
Estimated eligible voters	45.51	58.93	32.35

Table 3: Polling Station Assessment and Cost

Province	Terrain	Security	Voting	Total	No of Polling Stations	Estimated Cost per Polling station	Total K000's
Central	2	2	2	6	494	6,500	3,211
Chimbu	5	5	3	13	427	22,000	9,394
East New Britain	2	2	1	5	342	6,000	2,052
East Sepik	4	3	2	9	719	9,500	6,830
Eastern Highlands	5	5	3	13	659	22,000	14,492
Enga	5	5	3	13	392	22,000	8,624
Gulf	3	3	2	8	270	8,000	2,160
Madang	4	3	2	9	654	9,500	6,213
Manus	1	1	1	3	128	5,000	640
Milne Bay	3	2	1	6	484	6,500	3,146
Morobe	4	4	1	9	942	9,500	8,949
NCD	1	2	1	4	197	5,500	1,083
New Ireland	2	1	1	4	312	5,500	1,716
North Solomons	3	4	1	8	325	8,000	2,600
Northern	3	3	2	8	263	8,000	2,104
Southern Highlands	5	5	3	13	815	22,000	17,930
West New Britain	3	2	1	6	272	6,500	1,768
West Sepik	4	3	2	9	457	9,500	4,342
Western	3	3	2	8	412	8,000	3,296
Western Highlands	5	5	3	13	627	22,000	13,794
							<u>114,344</u>

Table 4: Cost Per Polling Station by Rating

Rating	Cost Per Polling Station	
13	22,000	Chimbu Anglimp-S/W
12	19,000	
11	15,000	
10	12,000	
9	9,500	Yangoru-Saussia
8	8,000	
7	7,000	
6	6,500	
5	6,000	
4	5,500	
3	5,000	

## Appendix B: Policing and Security Arrangements

### 1. Background

The Royal Papua New Guinea Constabulary (RPNGC) is a national organisation and the pre-eminent peacekeeping and law enforcement agency in Papua New Guinea. It is expected therefore that the Constabulary would play a prominent role in any election process especially given the history of elections in Papua New Guinea. The RPNGC learned much from the experience of the 2002 general election exercise. Strategic assessments identified areas of risk and operational imperatives to mitigate these. However insufficient cognisance of these was taken, with the result that a number of shortcomings in the areas of leadership, planning, coordination, cooperation, execution and review became evident. Whilst those issues were not confined to the Police, marked improvements have ensued, with the strengthening of police leadership, particularly the appointment of a new Commissioner and Deputy Commissioner: Operations.

These improvements materialised in the planning and execution of policing and security arrangements for the 2003 Supplementary Elections, conducted in the Southern Highland province. The key strategy of rolling sequential operations termed “leapfrogging” was adopted that enabled a more effective use of resources deployed on the ground. Improved use of command structures, air support and communications greatly advanced the capability of the Police to deal with issues as they arose and to prevent large-scale problems occurring. Despite these efforts incidents of violence (including murder) and election based offending were reported and investigated

Towards the end of 2003 a by-election was held in the Abau electorate. This was the first electorate to use the new limited preferential voting system (LPV) and was regarded as very successful both in terms of the system and security. It should be noted that the police strategic assessment was low risk driving appropriate planning and low-key deployment arrangements. The three by-elections immediately following Abau in utilising the LPV voting system were Yangoru-Saussia, Anglimp-South Wahgi and Chimbu Provincial, the latter two being the first to be held under this system in the Highlands.

Transparency International and the Electoral Commission (EC) contracted a small New Zealand based team with expertise from Papua New Guinea Nationals to conduct an audit of these by-elections. The field work was completed in October 2004. The team specifically looked at the electoral system and processes, policy and legal issues, cost and benefits, and policing and security arrangements. The work culminates in a report discussing these areas and identifying options for improvements leading towards the 2007 General Elections.

This appendix focuses on policing and security aspects of the three by-elections.

### 2. Yangoru-Saussia (East Sepik), Anglimp-South Wahgi (Western Highlands) and Chimbu Province

#### 2.1 Introduction

Preparation for these by-elections was very much seen as a dress rehearsal for the future policing of a general election. This approach pervaded the entire operation culminating in a comprehensive multi-agency debrief held in Lae conducted under the theme “Preparing for 2007.”<sup>43</sup>

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<sup>43</sup> By-Election De-Brief Minutes 12-15 July 2004

Full security preparations commenced in January 2004 with planning built around the strategy of sequenced phases of polling arrangements in the Highlands Provinces. The decisions taken around timings were very much a joint effort between the Police and the Electoral Commission.

Strategic assessments concluded that the Highlands Provinces (Chimbu and Western Highlands - Anglimp) were high risk and the East Sepik Province (Yangoru-Saussia) was a low risk.

Issues identified in the assessments served to initiate joint initial work between the Police, the Electoral Commission and other Government agencies as well as relevant NGOs. Some collective planning and coordination arrangements between agencies did take place. This is evidenced in the setting up of new structures, some common briefing arrangements and EC support to Government for additional Police funding. A national LPV advisory committee, including a police representative and civil society members, oversaw education and awareness delivery. Steering Committees were set up in each of the three provinces. These committees consisted of local representatives of agencies and organisations who oversaw and steered each by-election process.

Further, a key initiative developed in the supplementary elections operation was extended and strengthened. A dedicated team from the Special Services Division of the RPNGC were exclusively tasked with securing the voting papers from printing (Port Moresby) to delivery in the electorates. This team was also responsible for movement of the ballot boxes, security in the counting areas and ultimate storage of the ballot boxes in secure containers.

The three by-elections processes commenced with the issue of writs on 25<sup>th</sup> March 2004 and concluded with return of the final writ on 25 June.

## **2.2 Yangoru-Saussia Electorate (East Sepik)<sup>44</sup>**

A variety of initiatives were introduced with the aim of ensuring a successful by-election. The approaches were taken against a backdrop of the electorate locally regarded as the “by-election electorate.” This label was applied due to the constant requirement for a stream of by-elections driven by members not going full term, petitions lodged and deaths of sitting members. There was an air of both inevitability and exasperation amongst officials at the effort required to support a constant stream of election processes.

Senior staff from a number of organisations had a well developed sense of what was required to plan, organise and execute a by-election, perhaps a feature of the practice, with much experience driving a keen sense of purpose.

It must be said that there is also a belief that the local people of Yangoru-Saussia were well educated and likely to adapt easily to the new LPV system once provided with the requisite knowledge and awareness.

The Police assessment of low risk was based upon historical as well as current information. Key amongst these was the surrender to the police of a local offender (and some of his followers) complete with automatic firearm shortly before polling began. Police regard the population as generally supportive and law abiding.

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<sup>44</sup> Initial information obtained from reports of Electoral Commission, East Sepik Provincial Administration and the RPNGC. Supported by field interviews with police and electoral staff.

A Yangoru-Saussia by-election steering committee was formed to oversee the process and guide progress. The committee included the Provincial Administrator (East Sepik) as chair, Provincial Electoral Officer, Provincial Police Commander (PPC), Provincial Works/Plant Manager, and the District Administrator for Yangoru Soussia.

The committee saw their role as a joint partnership that drove through key elements of awareness/education, getting in front of security and law and order problems and facilitating the electoral processes.

Pre-polling efforts principally concentrated upon training and awareness of staff and the general population. Much attention was placed upon exercises conducted with candidates and scrutineers including mock counting that it is believed had the effect of eliminating much mistrust. Ultimately scrutiny of ballots is reported to have gone well.

Both the EC and Police conducted separate campaigns as well as joint arrangements. The police see their role as community-type policing and their work prior to the by-election as an extension of long standing initiatives. Work with media, church groups, women's groups and others all contributed to the awareness effort. This included visiting schools, villages, and markets some weeks before the election with written material complementing personal delivery.

Police deployed around 110 staff in a policing and security role pre-polling, during polling and the counting processes. The only outside staff utilised were deployed from Madang, some 15 in total. Command and control was situated at police Headquarters in Wewak with forward units pivoting on strategically located vehicles fitted with radios. Staff with polling teams did not have immediate communications.

Access remains problematic as the term 'roads' barely fit the description. A helicopter was used to get to three villages including a village that had mistaken the location for voting. That decision taken to airlift the reserve team in would not be taken again as it could be seen as providing support not available to all voters.

Electoral, Provincial and police staff have common views of the benefits of coordination and cooperation in conducting by-elections. The joint experience has led them to believe that this should be broadened to include other areas including (obviously) national elections, census work and emergency management.

They will need to do this as indications are that a national election process would not see additional resources being allocated to the area. In all probability police staff may be seconded to other areas assuming the intelligence assessments deem them a higher priority. However there may be other electorates within the police boundaries that would attract a higher risk assessment. In the event no offences were reported to the police or arrests made relating to the by-election.

General views of LPV reflected that people felt it was a fairer system would attract less corrupt activities and the key to success is the effort put in to awareness.

### **2.3 The Western Highlands and Chimbu Province Operation**

A combined and coordinated effort between police, Electoral Commission and Provincial staff served to consolidate what was a significant planning, preparation, and deployment exercise for the

Highland's operation. In the main this proved successful although some areas could be improved upon in future operations.<sup>45</sup>

The policing and security effort in the highlands provinces was conducted as a single operation in order to maximise deployment and logistics opportunities. A focused planning and execution effort was required to identify, brief, deploy and extract some additional 1500 police staff in the Chimbu/Anglimp-South Wahgi phases.

Drawing from previous experience of the Supplementary Elections, police delivered a number of preparatory initiatives some weeks before polling. These included specific reconnaissance activities, the installation of a temporary mobile radio network, and the deployment of staff for awareness training/education of the new LPV system, individual rights and voting rights.

An additional strategy was to demonstrate the police strength in the province/electorates. Activities included conducting roadblocks and raids with the result that a number of illegal firearms and other items were secured or confiscated.

The polling security operation commenced with a parade of police staff at the Kimininga barracks addressed by the Deputy Commissioner Operations. The Deputy Commissioner then led a full operational briefing at the Mount Hagen police station.

The police command centre was established at Kundiawa and was attended by Electoral Commission staff. A total of around 2000 police personnel took part, including locally based staff. This included additional police staff (568) deployed prior to polling and those (975) deployed into the field to discharge polling security duties.

Polling began on 22 May at both Anglimp-South Wahgi (Western Highlands) and Karimui Nomane (Chimbu) electorates. Polling teams were then extracted and placed in their next operational areas ready for polling in that electorate. Polling took place at Gumine on 25 May, Chuave 26 May, Sinasina Yonggamugle 27 May, Kundiawa Gembogile 29 May and concluded with Kerowagi on 31 May.

A schedule of polling agreed to by the EC saw a "leap frogging" strategy put in place that enabled staff to rotate to their polling stations. Polling contingents were extracted from their Area of Operations the day after polling concluded from Mount Hagen on 1 June. The gradual withdrawal of other seconded staff was finalised on 17 June.

Although a normal component of any police operation, the challenges logistics posed by this particular exercise are worthy of special attention. Given the nature of the terrain, weather (rain affected access roads), infrastructure (not all venues are well serviced by adequate roading) and level of personnel deployment the police effort was commendable. Vehicles needed to be transported into the areas of operation. Ten were shipped from Port Moresby to Lae and then driven to Mt Hagen. Eleven vehicles were returned the same way (including a purchase). Seven other vehicles were hired from private providers and schools for use in the Areas of Operations.

The cost of hiring and maintaining vehicles is relatively high. A key cost driver is the need to source hires from the private sector. Prices are high and doubtless there is an element of capture due to the overt demand from government agencies and lack of genuine competition. In addition

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<sup>45</sup> Electoral Commission staff did not attend the police orders group nor did senior police attend the EC's main briefing.



many of the vehicles do not come in good condition requiring new maintenance while the nature of the terrain ensures a constant maintenance effort.

Planned use of aircraft was confirmed with letters of commitment prior to the event to ensure availability for the operation. Aircraft transported personnel, electoral officials, ballot papers/boxes, election equipment and other materials, police equipment and dangerous goods. All air operations support was led by the Police Director of Air Operations. A total of six helicopters (including the police unit) and five fixed wing aircraft were used.

Communications were a vital element of the overall operational success. The by-election budget provided funding for the purchase and supply of land mobile radio equipment including three repeaters and additional handheld radios as well as other network components. The repeaters were installed strategically to provide coverage solely for this operation.

#### **2.4 Anglimp-South Wahgi Electorate (Western Highlands)**

This part of the operation was based at Minj. Around 500 police staff participated in support of the one day of polling on 22 May. Although reported as going well, the operation had its problems.

A mixture of election related offending occurred including the robbery of nine security staff. They were robbed at gunpoint at the Wurup polling station. Almost K6,000 in cash as well as other items were stolen. Five suspects were apprehended soon after the offences took place. In addition the Minj High School Administration block was burned to the ground but it is not yet clear if there was any relation to the election. No suspects had been apprehended at the time of writing.

Overall there were nine reported offences including double voting and destruction of ballot boxes with 14 arrests. After the count, frustration was reportedly widespread when people realised they had not used the LPV system to their best advantage. Tension levels were high for two weeks after the end of counting, with the clan groups of all candidates on the alert for 'payback' attacks over votes and preferences expected but not delivered, but fortunately no fighting erupted, despite real tensions.

Interviews with a number of police personnel and electoral staff once again pointed to the by-election as being successful. This rationale appeared to be principally based on the spectacular reduction in violent offending when compared with what was expected.

This was the first time that counting for the electorate was actually held in the electorate itself (Minj). Previously counting was held in Mount Hagen. Police led the debate on venue citing the need for confidence in security arrangements. It is reported that local people were entirely supportive of this decision and ultimate execution of the counting arrangements.

Although criminal offending was kept to a relatively acceptable level, electoral process integrity was a different issue. Police staff spoke of observing double counting and other illegitimate vote casting (such as people who were too young to vote). In discussing the police role it became apparent that in practical terms, intervention by police would be unlikely.

Police accompanying polling staff usually numbered four or five, were unarmed and without radio communications. Their tasks ranged from providing pre-polling advice (they often arrived before polling staff), peace-keeping through visibility, securing the ballot boxes once voting had concluded, and passing them to the special security team for extraction. Staff travelled to and from

the polling places by vehicle (on occasion by helicopter) were dropped off, and then uplifted later in the day at a pre-determined time.

These arrangements made dealing with offenders difficult. First should the police be outnumbered and/or out gunned then intervention would be foolhardy at best. An incident of this nature was reported where unarmed police were overwhelmed at a polling area.

Secondly even when there was opportunity to apprehend double voters and other offenders, no processing support was in place. The point of apprehension in these matters is to ensure the integrity of the process by removing transgressors and deterring others. Given the nature of the terrain, lack of prisoner processing, absence of communications for backup/extraction support, arrest at polling areas would have been virtually impossible.

It is accepted that in some cases arrests were made and action taken. This occurred in areas where police were in strength, were armed and had the transport and other facilities available for use.

Commentary around the counting arrangements was mixed. On the positive side the venue was well set up in the District Headquarters property with a clear perimeter, prominent displays of progress results and computer support. In the police view, a strong and disciplined police presence deterred potential violence (but we were advised that some commentators and Chimbu people viewed the deployment as overly heavy-handed).

Other issues arose such as counting staff being allied to candidates attempting to defeat the process by putting extinguished votes in a selected candidate's tray thus inflating the count. The scheduling of rotating counting shifts discovered the problem. The suspects were stood down and the practice stopped.

A further set of issues evolved around timings. Various accounts point to delays created by police (determining the venue for counting) and electoral staff (failing to commence work on time and late for transport connections). These highlight natural tensions between police and civilian imperatives and can be resolved with closer planning and decision-making arrangements as well as determining roles more definitively.

## **2.5 Chimbu Provincial By-election**

An ad hoc ten person provincial steering committee was formed to oversee the running of the by-election. Key roles were described as advising the Returning Officer and his election teams, ensuring resources were provided/available, identifying problem areas to get in front of potential issues as well as to provide background information on electoral staff especially Returning Officer and Assistant Returning Officers before approving the schedule of officers for gazetting by the Electoral Commission.

Committee members were selected on the basis of the contribution they could make. They included; the Provincial Administrator (Chair), the PPC, the Police Station Commander, the Manager Dept of Works, Kundiawa, the Manager NBC, the Principal Advisers of Health, Education, Human Resources and Provincial Affairs and the Provincial Returning officer.

The policing operation was reported as very successful in achieving the objective of preventing and/or dealing with criminal activity. A total of 16 offences were reported including just six election-based activities (double voting and disturbing elections). Others included arson and firearms offences. Thirty arrests were made.

The provincial administration confirmed that both the police operation and their co-operation with stakeholders were excellent. The airlifting of ballot papers and ballot boxes was also considered to be particularly beneficial to the exercise.

Similar issues to the Anglimp-South Wahgi electorate were evident in the Chimbu province. Whilst the near absence of violence was considered a major breakthrough, the integrity of the electoral process suffered. Key weaknesses, reported by observers, were confirmed by police and electoral staff.

Polling itself was marred by numerous instances of people multiple voting and voting by otherwise ineligible people (under age). In addition examples of irregularities in the counting area were reported through discussions with officials. In two instances counting was halted when an inflated total number of votes for a candidate were called out. When challenged, the individual concerned left the counting area.<sup>46</sup>

There were also tensions between local people and the special police SSD security team at the Kundiawa counting area. This team had express orders and accountability for the security of ballot papers, ballot boxes and their movement. In the counting area they were the principal security capability.

A mobile police team attempted to enter the counting area disputing the Special Services Division (SSD) team authority. The SSD team held firm refusing, successfully, the mobile police entry to the counting area. Locals also attempted to discredit the leader of the SSD team citing his Sepik origins and possible affiliations to the Alliance party. This challenge foundered when once again the counting was halted and the bona fides of the security team accepted.

The police view is that some appointed returning officers and polling officials were aligned with candidates and did not discharge their duties honestly or with commitment. Similar counts were made about some police personnel. In one case a senior police officer was stood down from command prior to the by-election taking place.

Given a number of issues raised about the conduct of some personnel the vetting, appointment and deployment strategies need closer examination.

### **3. Police Budgeting and Expenditure <sup>47</sup>**

Overall budgeting arrangements for elections/by-elections differ between agencies. The Electoral Commission includes provision for conducting by-elections within the annual planning/budgeting cycle. The police deliver an ad hoc bid for funding during the year driven by planning for an individual by-election or group of by-elections depending upon timings. A more coordinated approach would be required for resourcing a general election.

Police prepared a special budget bid of K6.8 million for the conducting of these three by-elections due to the concurrent nature of their timings. The Government agreed to K5 million and ultimately K5.5 million was expended. In addition AusAID allocated K4.3 million to be expended exclusively on air support. A total of K2.4 million was consumed with the surplus being allocated to the

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<sup>46</sup> Note the discussion on this on p 20, above, where independent observers reported that this happened twice.

<sup>47</sup> The costing assessment and audit for the by-elections is the subject of Appendix A.

operation supporting the next two by-elections. This expenditure is in addition to other policing costs driven by wages and operating expenses not picked up by the special funding arrangements.

The key cost drivers for police are the payment of allowances for personnel deployed in the operation/s, vehicle hire/maintenance, communications, and integrated command and co-ordinating arrangements.

It is worth noting two issues that arise from these principal cost drivers. First the lack of relativity between salary and allowances could create an environment that drives a culture of creating opportunities for payment of allowances. The daily allowance can be in the order of a 5-10 fold increase in a fortnightly salary for the majority of staff.

Secondly the infrastructure and capability requirements of the RPNGC appear to be funded principally through these ad hoc bids as they are not provided for in the usual budget cycle. While the current arrangements are necessary to ensure staff/public safety as well as facilitating these operations, a more sustainable approach developed through a capital development strategy would ensure optimum investment in the police.

#### **4. Opportunity Cost**

Much has been said about offending rates rising as a result of the heavy police deployment into the electorates. Whilst there may appear to be a natural assumption that offending rates would rise in areas where large numbers of police are removed (in some cases for a number of weeks), recorded statistics do not bear this out<sup>48</sup>.

A rise in robberies in the NCD in April 2004 (the month covering the by-elections) from 80/100 to 138 per month is the only data set that may be so interpreted. The 47% increase is obviously very significant, but it is hard to be sure of the exact cause on only one occasion.

Of greater interest is the distraction of police from what might be regarded as more value-adding work. The fact that “clean” elections form a key part of true democracies and therefore providing a legitimate policing role to ensure security is not in dispute.

However the sheer scale of the police effort gives rise for concern. It could be said that Papua New Guinea would gain much from a reduction in the policing and security requirements at elections and by-elections.

In addition to enabling a clear focus on community policing, order maintenance and law enforcement, the RPNGC could enhance capability and capacity in dealing with organised crime, potential terror threats and other (often associated ) criminal activity in the areas of drugs, arms and people trafficking.

#### **5. Conclusions**

##### **5.1 Resourcing v. results**

The audit team has been able to carefully assess policing/security planning, operations, deployment and logistics reports and debriefs. Field interviews with members of the police, electoral staff and members of the public have added to a comprehensive picture of the by-elections reviewed.

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<sup>48</sup> RPNGC national crime summary January to July 2004

Two enduring themes were consistently to the fore. First is that the new LPV system itself contributed greatly to the stability of the exercise. Secondly the police operation ensured that the types of violent (and other) offending previously experienced did not occur.

Much commentary around these by-elections focuses primarily on success being measured in terms of the near absence of violence. Less official attention is paid to the integrity of the system itself. A number of strategies/tactics have been introduced to enable successful elections although closer examination confirms that opportunities to unlawfully influence the results are present and frequently taken.

Given the considerable investment of public monies made in conducting elections, the Government would doubtless require positive results. A change in the investment mix could see a greater weighting to ensuring the integrity of the system to enable the twin goals of both legitimate and peaceful elections to be attained.

## **5.2 The LPV system**

The new LPV system was widely reported as contributing greatly to the success of the elections. The key element was the reduced tensions emanating from the opportunity for allocating three votes. Field interviews with a number of people confirmed that voters were able to discharge 'duty' as well as their personal preferences this time. Whilst it is difficult to assess accurately the contribution to reduced violence, it could reasonably be assumed as significant.

## **5.3 Preventing and/or dealing with criminal activity**

Clearly the police effort was extensive and expensive as it was successful. The RPNGC contributed a significant effort in terms of planning, resourcing and deployment. The entire operation consumed the combined resources of over 2100 staff, six helicopters, five fixed wing aircraft, dozens of vehicles, additional communications infrastructure, more than K9 millions, all mobile squads and a number of Special Services Division personnel.

The perennial issues of terrain and resource requirements for vehicles, equipment and telecommunications ensured that an effort on this scale was only achievable with substantial additional investment in the police.

The lack of serious offending will now form a yardstick against which to measure future operations of this nature. It remains to be seen whether this is a realistic expectation in the absence of basic reforms to the electoral system.

In the event changes in behaviour in these by-elections should drive a measured and focused intelligence gathering and assessment that leading to a changed mix of risk profiles for provinces (and electorates within these) prior to the General Elections. Combined with the strengthening of strategies and approaches ensuring the integrity of the system a more modest application of police resources should result.

## **5.4 Security and integrity of the electoral system**

Commentary, reports and field interviews all tend to identify two areas of weakness in the electoral processes carried out in these by-elections. Polling itself constitutes the first with obvious issues concerning the common roll (far more than the eligible voting population), and to do with voting (ineligible voters and multiple voting). It is difficult to see a punitive solution to these issues.

Police are unable to deal with and remove offenders numbering in the scores if not hundreds. Appropriate processing arrangements are not a realistic option due to cost and the added logistical difficulties. An option of reporting the offender/s and dealing with them at a later time would be self-defeating. This approach effectively leaves them in the polling area with the opportunity to engage in further offending and/or influencing voters thereby defeating the purpose of the exercise.

Consideration could be given to introducing different incentives, for example ruling out ballots from polling areas where irregularities are observed. This approach would require observers together with one or two police officers allocated to most polling areas with a mandated role of formally reporting irregularities. Should the police or other officials be so mandated then issues of their own safety and integrity would doubtless be the subject of specific operational focus

The second key fail point is the counting process. Incidence of irregularities were observed, reported and, in some cases, dealt with in all three counting areas. These irregularities are designed to inflate supporting candidates' counts and/or deflating competitors' counts. This situation created tension between some police and electoral officials. Interviews with staff on the ground reflected a frustration that for all the security effort applied by the special police unit, they were in effect protecting an electoral system with evident and often substantial irregularities.

## **6. Towards 2007**

Clearly gains have been made in terms of risk assessment, planning, execution and operating arrangements between agencies. Given what is known about the need to change and modify behaviours and take account of these in future elections a number of suggestions are canvassed in this paper.

### **6.1 Ensuring clarity of the roles of officials**

Reports, debriefs and interviews with a number of people working in the by-elections revealed conflicting concepts of agency/individual roles. Although this is particular issue during polling, role conflict at counting was also evident.

These issues range from reported cases of police controlling polling stations and preventing some genuine voters from voting<sup>49</sup> to police reported as doing most of the work where polling officials were ineffective.<sup>50</sup> A tighter set of agreed arrangements relating to responsibilities and accountabilities could alleviate these issues

### **6.2 Security of the electoral process**

A number of strategies have been introduced in an effort to ensure the integrity of the election processes. For example, a special police team is now routinely tasked with physical security of the ballot papers from printing, distribution, counting and ultimate storage. Police are deployed with the polling teams to provide a secure environment within which voters can vote at the polling areas. However a number of activities combine to defeat these strategies. These include,

- Printing and distributing excessive ballot papers
- "Insiders" can manipulate the counting and/or data entry systems to either inflate or deflate counts depending upon their allegiances

<sup>49</sup> The 2004 by-election Simbu Provincial "Our perspective" report to election debrief Lae 12-15 July, Joe Kunda Naur, Acting Provincial Administrator, Simbu Province. This commentary is reinforced by Senior Inspector DW Tende, Station Commander Kundiawa in his report (to the Administrator, Simbu) of 8 July 2004

<sup>50</sup> By-election debrief Lae 12-15 July, Superintendent N Kambo, PPC Chimbu

- Multiple voting and voting by otherwise ineligible voters

We know that police staff at polling area will not often prevent the latter offences as they are either unable to deal with violent groups who outnumber them and/or cannot deal with large numbers of offenders at the time.

This approach would need to be combined with the appointment and deployment of trained, dedicated and scrupulous staff throughout the electoral process.

### **6.3 Enhanced governance arrangements**

The Electoral Commission, police and other key agencies have clearly developed closer planning and operating arrangements to managing election processes. Preparation for the 2007 general election has already begun. Initial thinking about what needs to be achieved is occupying the minds of senior people from the relevant organisations.

The police have created a dedicated planning team who will lead and execute policing and security arrangements for all by-elections leading up to the general election. The Electoral Commission has requested this audit of these three by-elections to enable a clear focus on what needs to be done leading up to the 2007 elections.

However opportunities exist to further strengthen overall governance arrangements to ensure clear and decisive leadership, transparency and accountability in delivering credible, reliable and trouble-free elections. A more integrated, joined-up government agency approach could be introduced from executive level all the way through to operations on the ground.

### **6.4 Technology**

The state of the common roles undermines all efforts to enable a clean election process. There is current, proven technology that could provide a technological basis for creating a clean roll and ensuring legitimate voter behaviour on polling day.

This would involve the fingerprinting and/or photographing eligible voters in order to facilitate the building of a clean roll. The technology has the capability of completing these processes “in the field” as well as central locations integrated in a storage facility at a central and secure location.

The application is capable of identification matching. Although this technology has been developed for other identification and matching purposes, application to the electoral system would require only a portion of the process to be utilised.

## **7. Recommendations**

Four recommendations are set out under heading 10 above, to improve a number of Policing and Security aspects to General Election and By-election processes in Papua New Guinea.

## Appendix C: Officials Ad-Hoc Group Summary Action List on Election Changes Post 2002<sup>51</sup>

1. Present situation:
  - + Census K57m/10 year intervals
  - + Common roll K23m/5year intervals
  - + General elections K43m; plus police and Defence Force costs
2. As much as possible reduce need for huge one-off payments and instead have appropriate constant annual allocations
3. Savings & sustainable operations
4. LLG 3 year Term
5. Abandon present common roll and start again
6. 5873 village recorders (training and allowances) 5873 + V.Bs (Printing and distribution cost)
7. Annual D.A Patrols and inspections of V.Bs
8. Pilot in Morobe, Milne Bay, Manus, EHP, the extraction of common roll info from VBs.
9. Process for 2007 & more for 2012
10. Fixed Polling Places per community and part of roll
11. Amend secrecy provisions re census
12. Pilot tie-in of civil registration at (8) this is medium term aim (2012)
13. Amend OL to provide for Electoral Commission of 3
14. Formalise whole-of-Gov't approach and coordination committee
15. Command centre in every province
16. Police PTB provide vehicles
17. Vote education
18. Nomination to be 2 weeks and shorten campaigning or impose cooling-off period and allow longer polling
19. Code of conduct for candidates and enforcement
20. 2 year lead-in for returning officer (7)
21. more women polling officials
22. review electoral forms
23. domestic observer group
24. best-practice support from Commonwealth Secretariat.

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<sup>51</sup> This list was developed within the PNG Public Service by and Ad-Hoc Committee, following the Report of the Commonwealth Experts Group in 2002. It has no official status and the group was disbanded as there was insufficient support for action. It was supplied by a former member of the official's group and is included here simply as a reference point for future action. The Commonwealth Experts Group's suggestions may be found at:  
[http://www.thecommonwealth.org/shared\\_asp\\_files/uploadedfiles/{02776B7C-C858-4B17-B36B-25FCA5813A8B}\\_PNGElectoralrpt.pdf](http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/{02776B7C-C858-4B17-B36B-25FCA5813A8B}_PNGElectoralrpt.pdf)