

Creating Parliaments to Realise the Vision: a Government Score Card

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Nine months ago, the Institute of National Affairs (INA) published a booklet, *Timelines and Deadlines*, This described steps to ensure PNG has a constitutional Parliament, which meets Government commitments in 2012.

INA was concerned that the Government was running out of time.

This report documents progress and continuing concerns.

INA believes strongly in public discussion. It has also invited Government and Opposition leaders to commence

A Test for the Present Government

The greatest test of the Government and Parliament to realize the *Vision 2050* is decisions they make about future decision-makers. Parliament must:

- decide what electorates elect Members to future Parliaments,
- make sure electorates are Constitutional; and
- ensure Members are elected by electors making free and informed choices uninfluenced by guns, bribes and corruption.

If Parliament makes the right decisions, Parliament will create accountable and representative future Parliaments whose MPs give honest, intelligent and informed national leadership. And, these Parliaments will give our people the future promised by the Vision.

If Parliament makes the wrong decisions, it could create a self-interested and self-perpetuating leadership. Or, at the best, a leadership which believes that through divine right or special wisdom and insight it should govern Papua New Guinea. This risks large scale corruption where a few citizens gain immense wealth, and the rest of the nation live in poverty and ill health as government services collapse. This risks large scale unrest and a failed State as landowners in project areas and other areas not benefitting from large scale projects protest.

Looking to the 2012 General Election

Making Parliament Constitutional

The present Parliament was elected in breach of the *Constitution* and *the Organic Law on National and Local-level Government Elections* (OLNLLGE). Breaches could lead to constitutional challenges. These could undermine people's trust in Parliament and State, and could delay and disrupt government work.

The Number of Open Electorates breaches the OLNLLGE

The OLNLLGE Section 35 requires that ‘in no case shall the number of open electorates be less than 110 or more than 120’. There are now 89 open electorates.

The Government needs to ensure that the number of open electorates is in line with the *Constitution* in the 2012 General Election. It could have summoned a Boundaries Commission to recommend on a new redistribution of open electorates. It is now too late – a Boundaries Commission could not prepare recommendations and have Parliament consider them.

Parliament therefore needs to amend the OLNLLGE before issue of writs for the next General Election. These amendments should also enable and encourage redistribution of open electorates during the 2012 Parliament to create equitable representation of our people in the Parliament to be elected in 2017.

Elections for Provincial Electorates breach the Constitution

The *Constitution* Section 126 requires provincial electorates to be defined in a manner prescribed under an Organic Law. However, Section 34 of the OLNLLGE which met this requirement was repealed before the 2007 General Election.

The Government has promised provincial electorates will remain in the 2012 General Election. Parliament will need to restore provisions for provincial electorates in the OLNLLGE.

Keeping Government Commitments to the Nation

Reserved Seats for Women in each Province

The Government has pledged support for reserved seats for women in each province. The legislation, called the *Equality and Participation Law*, is on the Notice Paper of Parliament.

The step is widely supported. It is seen as diversifying input into national debate which has been male-dominated.

Provincial Electorates for New Provinces

The Government has promised new provinces, Hela and Jiwaka, which shall be divided from the present Southern Highlands and Western Highlands Provinces.

Parliament’s creation of the new provinces by amendment of the *Organic Law on Provincial Boundaries* has been widely welcomed. It is the most significant move from colonial administrative districts, to provinces defined by PNG cultures and identity, by administrative needs and convenience.

Creation of Hela Province helps create a welcoming environment for the LNG Project – and only through the LNG Project can the *Vision 2050* become reality.

Newspaper articles everyday describe a very wide range of conflict among the hosts of the LNG Project. It has been expressed at the highest level and on the most exalted occasion.

Unfortunately, amendment of the *Organic Law on Provincial Boundaries* does not create provincial electorates. Creation of new provincial electorates requires summoning a Boundaries Commission. The Boundaries Commission must recommend jointly on provincial electorate and open electorate boundaries, and Parliament must jointly consider and accept or reject these recommendations under detailed procedures defined by the OLNLLGE.

If the Government wishes provincial electorates for Hela and Jiwaka in 2012, Parliament must amend the Constitution:

- to remove the Boundaries Commission from recommending on provincial electorates; and
- to define provincial electorates in accordance with definitions of provinces.

A Constitutional Bomb

Parliament has enacted *Constitutional Amendment No 30*. The amendment removes all provisions for provincial electorates from the *Constitution*. Its commencement would remove Provincial Electorates from elections and Provincial MPs would cease after the next General Election. It would require new legislation to provide for election of provincial governors.

Constitutional expert, Professor John Nonggorr, believes this amendment, was enacted by error. Parliament mistakenly voted by a three quarters absolute majority twice (82 MPs) to remove provincial electorates. Provincial Members voted to abolish their electorates.

Earlier this year, Parliament – again by three quarters absolute majority – amended *Constitutional Amendment No 30*. This majority – which could have repealed the legislation – removed the decision to commence the Amendment from the Governor-General to the Prime Minister.

There was almost no public discussion of why the Prime Minister needs authority to commence *Constitutional Amendment No 30* or when he will do so.

Government Progress in Redefining Electorates for the 2012 General Election

The Government reacted positively and promptly to the INA Report. NEC appointed a Legislative Working Group (LWG). The responsible Minister wrote to employers of appointees working with other agencies, seeking their release from their work contracts. New appointees were told contracts had been prepared and they were informed they would be paid when contracts were signed.

Unfortunately, the Government never funded salaries of new appointees or operational costs of the LWG. Appointees funded telephone and other costs and had pay terminated from the earlier employer without new pay for new work.

Despite these difficulties, the LWG has reported in person and through a detailed report on legislation to the NEC Planning Committee.

Draft legislation prepared by LWG, *the Equality and Participation Law*, is on the Parliamentary Notice Paper and designed to support creation of women's reserved provincial seats.

The LWG has prepared and circulated recommendations on amendments to this proposed legislation. These amendments would remove Boundaries Commissions from a role in recommending on provincial electorates and define provincial electorates in accordance with definitions of provinces and their boundaries.

The Government acted positively in other areas. These include supporting:

- National Research Institute analyses of problems in the management of elections; and
- the Electoral Commission drafting amendments of the OLNLGE to handle the problems.

A major gap is no action on the Guns Report. Control of weapons during elections through campaigning, voting and counting of votes has been a major concern. The Government should consider prioritizing Gun Control legislation, and in no way be influenced by the possibility that some Members of Parliament may be major offenders.

Preparing for the 2017 General Election

The future and not by the past must define Parliamentary open electorates.

Parliament in 2017 must have open electorates defined by present population and present identities. It must reflect changing populations – including urbanisation.

Consideration needs to be given to the number of open electorates. Population has doubled since definition of present open electorates. Census counts of urban population are not wholly reliable and definitions of town boundaries are fluid. However, urban population is likely to have quadrupled, and is growing much faster than rural populations.

Boundaries Commissions are required to be convened and report every 10 years – although they can meet earlier. A Commission must meet in the term of the next Parliament.

The Government should learn from Parliaments' rejections of all Boundaries Commission reports. Boundaries Commissions have reported relatively late in the term of Parliaments. MPs have rejected recommendations partly because redistribution of electorates threatens their political survival. However, decisions on new electorate boundaries come too late to be implemented. An additional complication is the need to redefine district boundaries and administrations with the redistribution of open electorates. Perhaps, Parliament also should have reduced authority to reject Boundaries Commission's reports.

Amendments to the OLNLGE to commence with return of writs from the next General Election would not threaten current MPs. It would also allow convening a Boundaries Commission early in the next Parliament.

In the spirit of long term thinking embodied in the *Vision 2050* and the *20-Year National Development Plan*, the Government should look ahead. It should prepare amendments to the OLNLGE to be enacted in 2011. These amendments should be a basis for the Boundaries Commission recommending open electorates for an equitably representative Parliament to be elected in 2017, and Parliament to accept these recommendations.

Deadlines leading to the General Election in 2012

Constitutional Process

The Government needs to plan its use of time and its Parliamentary schedule.

Adjournment of Parliament until November means it has only a year in which to enact the constitutional amendments to prepare for the General Election. The budget session of Parliament does not usually consider legislation unrelated to the budget. The Cabinet reshuffle means also that the Parliament Constitutional Laws and Acts Committee which must recommend on constitutional laws no longer has valid membership.

Enactment of necessary legislation at the earliest will begin in the first session of Parliament in 2011 – February or March.

Much of the constitutional legislation will require a three quarters absolute majority in Parliament. The Government needs to plan a back-up schedule of legislation which requires lower majorities – and meets core objectives. These core objectives must include legitimate open electorates, retention of provincial electorates, and creation of provincial electorates for Hela and Jiwaka.

Constitutional legislation requires:

- three successive submissions to NEC which will include approval of a policy paper, drafting instructions for legislation, and legislation for enactment;
 - during preparation of those submissions consultation with the State Solicitor for approval of drafting instructions, partnership with the Office of Legislative Counsel for drafting of legislation, and throughout consultation with stakeholders, the Constitutional Law and Reform Commission, and central government agencies;
 - inclusion of Government and Opposition MPs in discussions in order to build the necessary majorities;
 - circulation of the legislation to MPs at least 30 days before enactment;
 - election and meeting of a Parliamentary Constitutional Acts and Laws Committee in order to endorse and comment on the Bill; and
 - two opportunities for debate separated by at least 2 months.
- The sequence of possible constitutional legislation shows the context for choices:

Timelines

The Government must program to preparation and enactment of necessary legislation before the General Election in 2012 in order to create the Parliaments required to realize the Vision.

The core legislation is amendment of Section 101 of the *Constitution*. This when commenced in parallel with *Constitutional Amendment No 30* can provide for retention of provincial electorates, creation of new provincial electorates in accordance with definition of provinces, and creation of women's provincial seats. Subsidiary amendments of the *Organic Law on Provincial and Local-level*




Governments are required for clarification of the role of women MPs from the reserved seats in the Provincial Governments and Assemblies.

The creation of women’s reserved seats also requires amendment of Section 50 of the *Constitution* which deals with the right to stand for election.

Amendment of Section 50 together with amendment of Section 101 means that enactment of the *Equality and Participation Bill* requires a three quarters absolute majority. The Government cannot take for granted achievement of that majority.

Amendment of Section 101 of the *Constitution* to retain provincial electorates and to define provincial electorates according to the boundaries of provinces requires only a simple absolute majority – that is 55 votes. The sensitivity of the issue of creation of the new provincial electorates for Hela and Jiwaka. The Government will have to assess whether this simpler amendment of Section 101 of the *Constitution* should also be placed on the Parliament Notice Paper.

The sequence of possible constitutional legislation shows the context for choices:

Scenario \ Parliament Sitting	February 2011?	May 2011?	July 2011?
Amendment of the Equality and Participation Bill to provide for definition of provincial electorates in accordance with definition of provinces. Equality and Participation Bill – obtains three quarters absolute majority – 1 st reading early 2012	1 st opportunity for debate 	2 nd opportunity for debate	
Equality and Participation Bill cannot obtain prescribed majority. Definition of Provincial Electorates Bill on notice paper	1 st opportunity to debate and Definition of Provincial Electorates Bill 	2 nd opportunity to debate Definition of Provincial Electorates Bill	
Equality and Participation Bill cannot obtain prescribed majority. Definition of Provincial Electorates Bill not on notice paper	1 st opportunity to debate Equality and Participation Bill	1 st opportunity to debate Definition of Provincial Electorates Bill 	2 nd opportunity to debate Definition of Provincial Electorates Bill