



INA Focus – by Paul Barker, Executive Director, Institute of National Affairs

Healing Parliament

At the start of 2011 Papua New Guinea is going through a period of unprecedented economic and social change. It is a time of opportunity, but also one of risk. In recent years PNG has enjoyed high levels of economic growth, owing largely to outside factors, notably high commodity prices, but also local factors, including investment in telecommunications with its opening up to competition. Much of the population, however, has missed out on the opportunities provided from a growing economy, with poor access to markets, public goods and services, but sky-rocketing costs. Many State institutions have performed poorly or even disintegrated from poor management, inadequate funding, corruption and lack of oversight. Such services are critical to broad-based economic and social opportunities, including for businesses to operate away from main centres and for households to access markets, schools and local health facilities.

An effective State depends upon an executive government (at National and local level), a legislature (or Parliament) which approves laws and oversees the operations of the executive, independent Courts, which apply the laws approved by the Parliament freely and fairly, along with a free press and informed public. In recent years there has been great public concern, and amongst Parliamentarians, that Parliament's role has been sidelined, being used merely as a rubber stamp, without playing the active and critical role of closely scrutinising proposed legislation or overseeing the performance of government and its many institutions.

At the start of 2011 there is a crisis of confidence in many State institutions and many top posts are vacant from hasty or apparently botched appointment processes. Efforts by the Acting Prime Minister, Hon Sam Abal, to ensure that the 2011 Budget is applied in a timely manner should be commended, so that the first months are not wasted by bureaucratic preoccupation, or indifference to the public, for whom services are critical. It is also time for the credibility and standing of Parliament to be restored promptly and resume its leading role in overseeing the nation's development on behalf of the public which it represents.

In this analysis Dr James MacPherson examines the crisis facing Parliament and suggest a strategy for restoring its effective functioning immediately: -

During the present Parliament, the Office of Speaker has been associated with controversy, and litigation. Its decisions have embarrassed Parliament, Government, respected citizens and the Queen. The most recent is the Supreme Court judgment declaring unconstitutional election of the Governor-General.

The Speaker is key to Parliamentary democracy. The Speaker:

- Chairs meetings of Parliament;
- Keeps order within Parliament;

- Oversees election of the Governor-General;
- Oversees election of the Prime Minister and votes of no confidence which may remove the Prime Minister from office; and
- Interprets Standing Orders.

Amendments of Parliament’s Standing Orders could enable Members to decide on valid issues in application of Standing Orders. These amendments could also enable Members to replace a Speaker who breaches Standing Orders.

Crisis is opportunity. Parliament can decide now whether – or not - to become an effective and independent legislature.

Legitimacy of the State

Samuel Abal, when acting Prime Minister, has spoken of the need to protect the ‘sanctity of Parliament’. Supreme Court rulings that decisions of Parliament are unconstitutional show mismanagement of Parliament weakens that sanctity.

The Speaker should operate within the framework of the *Constitution*, Organic Laws, and Standing Orders. The Supreme Court stated that purported election of a Governor-General by Parliament last July breached requirements that the Speaker:

- under the *Constitution* when acting Governor-General cannot preside over a meeting of Parliament or undertake other duties and functions of the Speaker; and
- any acting Speaker must correctly interpret and observe legislation, such as the *Organic Law on the Nomination of the Governor-General*, which defines required procedures.

More generally, there are queries whether the Speaker correctly interprets Standing Orders. An example is the Speaker’s alleged misuse of ‘of national interest’ to mean ‘in the national interest’ as he assessed it to justify refusal to allow a vote of no confidence in the Prime Minister to be considered by Parliament.

These concerns weaken more than the sanctity of Parliament. They undercut respect for the office of Governor-General, the highest representative of the State. Questions on conduct of Parliament and legitimacy of the State are Page 1 headlines of newspapers, and lead in radio and television news. Letters to newspapers and conversations in villages and street indicate mistrust among citizens – from grassroots to professionals, from youth to elders.

Enabling Parliament to terminate the Speaker

Parliamentary Standing Orders do not provide for Members to terminate appointment of the Speaker. Other national leaders including the Governor-General, Prime Minister and Chief Justice can be terminated from Office following prescribed procedures.

The *Constitution* Section 107(3) provides that the Speaker holds office, and his office become vacant, in accordance with Constitutional Laws and Standing Orders of Parliament.

However, neither Standing Orders nor Constitutional Laws now provide for Parliament to terminate the appointment of a Speaker.

Parliamentary leaders on both sides of the House could join to restore the sanctity of Parliament by amending Standing Orders to provide for termination of appointment of the Speaker and election of a new Speaker during the term of a Parliament.

Time Line

The Speaker is crucial to amendment of Standing Orders. The Speaker can block changes to Standing Orders which weaken his authority or enable Parliament to terminate him from Office. Amendments should be completed while the Deputy Speaker remains Acting Speaker. The Speaker cannot resume his office as Speaker until a new Governor-General is appointed. Standing Orders should be amended before appointment of a new Governor-General.

Under the *Organic Law on the Nomination of the Governor-General*, the (acting) Speaker fixes a date not less than 10 sitting days after convening Parliament for a ballot to nominate a new Governor-General. The next meeting of Parliament occurs on January 11th 2011. The ballot must occur before January 21st 2011.

The future Governor-General will take up office after:

- National Executive Council advises the Queen (as Head of State) of the decision of Parliament;
- The Queen appoints the Governor-General; and
- The Governor-General makes the Declaration of Office before Parliament.

The diagram below assumes an 8-week process, but the process might be shorter.

TIMELINE FOR ENABLING PARLIAMENT TO TERMINATE APPOINTMENT OF A SPEAKER

	January	February	March
Appointment of Governor-General	Parliament Nominates National Executive Council advises Head of State Queen appoints Governor-General Governor-General takes oaths before Chief Justice and Parliament		
Deputy Speaker acts as Speaker	Deputy Speaker remains acting Speaker until Governor-General takes oath		
Amendment of Standing Orders	Draft Standing Orders prepared Parliament approves.		

Parliament can use this time to prepare and approve amendments to Standing Orders to strengthen accountability of the Speaker to Parliament and restore credibility to Parliament.

(A Discussion Brief by Dr James MacPherson on this theme, published by the INA, is being released on 12th January 2011, launched at 11 AM in the INA Conference Room, 2nd Flor, IPA Haus, Konedobu)