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TWO PAPERS ON ELECTORAL REFORM IN PAPUA NEW GUINEA

PAPER ONE

ELECTORAL REFORMS: IMPLICATIONS FOR THE 2007 NATIONAL ELECTIONS¹

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We are going into the general elections next year, and before this we expect to implement many reforms. It is our view at the Electoral Commission that we are preparing for a national election that in many aspects will be different from previous national elections.

Background

We have had six general elections since the first one was held in 1977. The last election in 2002 was described as the worst election ever held in Papua New Guinea; it saw the Electoral Commission declaring results in six electorates failed. Supplementary elections were consequently held in 2003.

Administering elections in Papua New Guinea is not an easy task. It is tedious, difficult, expensive and often risky. The history of the conduct of elections since 1977 has not been positive. One would have expected an improvement in the conduct and administration of elections but I must say we have not improved.

The quality and competency of the elections has continued to decline as the country progressed. There are many factors involved, but a major factor, I believe, is the rapid socio-economic and political development we have gone through, and the decline in the respect for government processes and authority by our people. Inadequate and late release of funds for general elections has also, in my view, contributed to this situation.

Despite all these difficulties, the Electoral Commission performed to expectation and declared results that have placed our representatives in the National Parliament.

We have learnt lessons and have attempted to rectify some of the problems we have continued to experience since 1977.

Many reviews have been done of elections in Papua New Guinea, including reviews by the National Research Institute (formerly IASER). These reviews have reached common

The contribution of AusAID to this series is acknowledged with appreciation.

conclusions that there are indeed irregularities in the electoral process in Papua New Guinea.

The most recent review, entitled *Election Lessons*, by the Institute of National Affairs in collaboration with Transparency International and the Institute of Policy Studies based at New Zealand's Victoria University, stated boldly that some of these irregularities threaten the very nature of democracy in Papua New Guinea.

The electoral roll

The most outstanding problem, repeatedly cited, is the electoral roll or common roll. It is widely known that Papua New Guinea has a hugely inflated electoral roll, and although this has sometimes been a topic for amusing stories, it is a serious matter.

In February 2006, for the first time in the history of the Electoral Commission, I revealed details of how bad our electoral roll is. A review by the Electoral Commission found that the entire roll is inflated and corrupt.

The review estimated the number of eligible voters for the 2002 elections at 2.7 million; however, the number of voters on the electoral roll was 4.9 million. This figure cannot be correct, given that our population is about 5.1 million. It indicates that about half of the names on the rolls were suspect, consequently bringing into question the legitimacy of representation in parliament.

We simply cannot allow this situation to remain unchecked. It is a major irregularity that must be fixed, as it seriously undermines the credibility of our elections, and therefore democracy at large. On this matter, I have announced that the electoral roll used in the 2002 elections will be discarded.

The 2002 roll has been updated since 1977. It simply cannot be used again. The Commission has begun the process of creating a completely new electoral roll for Papua New Guinea. It is a challenge, but we must do this to safeguard our election process.

There are numerous reasons why we have this overly inflated roll. One of these is the law itself. Various provisions of the *Organic Law on Elections* make it difficult to clean the roll by removing names – for example the names of deceased people or names that occur twice. To remove names from the roll one must formally object and there is a court process involved where people are dissatisfied. The process is thus a long and tedious one. The result is that

ghost names have remained and abuses have occurred.

The Electoral Commission has admitted that electoral rolls are defective and is doing its part to create new electoral rolls. However, at the end of the day, the people of Papua New Guinea must take ownership of the electoral roll. The people of Papua New Guinea must assist the Electoral Commission in preparing clean and accurate rolls and not take measures aimed at corrupting the rolls by coming forward with false names and seeking to influence electoral officials to include the names of non-existent persons.

The electoral roll reforms are significant, but are only one part of an overhaul of our electoral law, policy and processes.

The limited preferential voting system

Another major change in the electoral process relates to the manner in which voters will cast their votes.

General elections in Papua New Guinea are amongst the most colourful, vibrant and energized events in the lives of our people. Justifiably, it is a time for people to be excited to elect their political leaders. However, general elections, in some parts of the country, have turned into times of conflict, violence and disruption.

People vote for their representatives in parliament largely on the basis of ethnic or tribal support, while some candidates are used to split votes. Over time, more candidates have joined in the race, resulting in a reduction in the number of voters voting for the winning candidate, with the consequence that the mandate of members of parliament decreased.

The decision to move from the first-past-the-post voting system to the limited preferential voting (LPV) system is an attempt to meet these problems and also, more importantly, to ensure that the people's representatives in parliament are decided upon by majority support.

A review of results has shown that a great majority of the elected members have scored less than 20 per cent of votes since 1997 and in 2002 less than 15 per cent of votes – that is, members were not obtaining a majority vote.

This has had an impact on the provision of development and services, as members of parliament have concentrated their efforts in taking goods and services to areas where they received most votes.

The new form of LPV voting, we hope, will change the mindset of our people and of our members of parliament so that we can have a trouble-free, transparent and cooperative election.

In this new system, candidates must work together and make sure they are true representatives of the people in their respective electorates. By this, we should be able to see a gradual improvement in the provision of services, a decline in violence, and some transparency in the manner candidates go out and campaign and the way people vote.

We have used the LPV system in a number of by-elections held after 2002 and indications are that people are aware of the use of LPV. However, there is still a need for people to fully understand that they must put preferences 1, 2, 3 and not ticks or Xs, and to understand the counting system so that they can appreciate what giving preferences 1, 2 and 3 to particular candidates means.

The use of LPV in the general election of 2007 is likely to see changes to the way elections are conducted. The Electoral Commission hopes, in particular, to see the following changes:

- candidates and political parties displaying cooperative behaviour, as this is the only winning strategy;
- supporters of candidates following suit and behaving accordingly, thus reducing tension between tribal and ethnic groups, allowing elections to be conducted peacefully;
- bribery or corruption at elections reduced, as it is now not possible (as it was under first-past-the-post) for candidates to buy their way into parliament, because LPV makes it almost impossible to win by bribery alone;
- voters having a wider choice – with the three preferences more voters now have the ability to vote for a winning candidate; and
- women voters especially now have a chance to vote freely according to their own wishes as they have three preferences to give, as opposed to the single vote under first-past-the-post when most womenfolk in the country may have been required by clans, tribes and husbands to vote according to choices not made by the women themselves.

The challenges that LPV poses are real. Voting may take longer. Counting may take longer. Voters must be educated not only on

marking votes 1, 2 and 3, but must also know why they are voting 1, 2 and 3. They must have some understanding of the counting system.

The creation of a new electoral roll and the introduction of a limited preferential system are two major reforms now being undertaken, but the Electoral Commission has recommended other reforms which we believe will contribute to the better administration and conduct of elections.

The National Executive Council has approved major reforms to the *Organic Law on National and Local-level Government Elections*, which have been gazetted and should be tabled in parliament in the April 2006 session, when the first vote will be taken.

This set of reforms is the result of a review of the electoral law and the integrity of political parties and candidates legislation by the Electoral Commission assisted by the Australian Electoral Commission. It takes into account reports and recommendations of the Commonwealth Observer Mission that reviewed and reported on the 2002 general election. It also takes into account reports prepared by AusAID on the 2002 elections and observer reports by Transparency International and the Institute of National Affairs into by-elections conducted after the 2002 elections. It also incorporates reports from election managers in the provinces.

The reforms are huge – I could speak all day on individual aspects of changes we anticipate will come into effect by the 2007 elections – but I will attempt to highlight major aspects of the recommendations and their respective implications on the coming elections.

Election failures

Political and electoral history was made in the 2002 elections, when the Electoral Commission failed six elections in the Southern Highlands Province, because threats of violence and actual violence disrupted the elections.

The Electoral Commission, seeing potential problems in the future, has recommended the establishment of an Election Advisory Committee. This Committee will comprise the chief ombudsman or his nominee, and two other persons, one nominated by the board of Transparency International and one a retired judge, or lawyer qualified to be appointed a judge, nominated by the electoral commissioner in consultation with the chief ombudsman and

Transparency International. The primary role of this committee is to provide recommendations and advice to the Electoral Commission on matters concerning the law on elections and other matters relating to elections referred by the Electoral Commission.

A decision to declare an election as failed will only be made by the electoral commissioner on the recommendation of this committee. The electoral commission wants this process to be as transparent as possible so that powers to fail an election are not abused.

Prosecution – illegal practices

Experience of violence, threats and intimidation has been the norm in elections in Papua New Guinea. These illegal practices have not been spelled out clearly as electoral offences and the proposed law is to include them.

The reforms proposed give powers to the Electoral Commission to prosecute people involved in such practices such as violence intended to interfere with the conduct of elections, assault and threats to electoral officers, inciting or encouraging disturbances to interfere with elections, and similar offences.

An important aspect of this law is that persons convicted will be disqualified from voting, holding elective public office, or being employed in the public service, provincial government or local-level government.

The law is intended to restrict violence and threats of violence so that voters are allowed to exercise their democratic rights freely and without duress, and that elections are seen to be credible and trouble free.

Voter identification system

In view of the experiences of double voting and ghost names on the electoral roll, the Electoral Commission proposes a voter identification system to be used in the future. This system may use manual finger prints, computer-recorded and recognized finger or palm prints, electronic or other photographic systems, or some combination of these.

This proposal will be implemented at an appropriate time if funding and appropriate technology are available. We have begun discussions with the Birth Registry Section of the Department of Social Development on how we can work together using an integrated network.

Date of return of writ

The proposed law has given the Electoral Commission some flexibility with respect to the period within which a writ should be returned. Given past experience, when we were sometimes rushed to conduct elections because of the strict timeframe imposed by law, the new law proposes that where special circumstances exist the Commission may, by notice in the *National Gazette*, extend the period of polling, and may also fix different polling dates for different electorates.

The current law states that polling will commence on the same date for all electorates and that the writs be returnable twenty-one days after the end of polling.

Where problems prevent the Commission from conducting polling in a particular area, for example because of natural causes such as bad weather conditions, the Electoral Commission must have the flexibility to reschedule polling.

Invitation to form government

There has been considerable discussion in this area, given the sensitivity of the issue and the politics involved in the formation of government. Discussions have centred on when the formation of government should take place.

When the *Organic Law On the Integrity of Political Parties and Candidates* came into effect after the last general elections, the question came up of when was the correct time to advise the governor general to invite the winning party to form government. There was concern that while counting was ongoing in some electorates, the Electoral Commission could advise the governor general to invite the winning party to form government.

While this did not create much of a problem in the 2002 election, because the number of winning candidates clearly favoured the National Alliance party, the Commission must have in place procedures to deal with situations where the winning candidate's margin is narrow.

The recommendation is that the Electoral Commission compute the number of candidates returned for each political party forty-eight hours to midnight of the day of the fifth anniversary of the parliament. The Electoral Commission, after making sure all matters are correct, will give the name of the political party or political parties to the head of state,

who will invite it or them to form government. The Electoral Commission's advice to the head of state will be transparent.

Concluding remarks

The implications of the proposed reforms for the 2007 elections and elections thereafter are huge. The reforms we have recommended represent a wholesale change to the processes we have followed since the first post-independence elections in 1977. For the first time in the electoral history of Papua New Guinea, we at the Electoral Commission are taking a new approach to the planning and conduct of elections.

The planning is a 'whole of government' approach so that there is the necessary adequate and immediate logistic, funding and resource support to the Electoral Commission.

Past experience was based on the premise that election planning and conduct is the responsibility of the Electoral Commission. Security was for police, and the Electoral Commission dictated how the election was run.

We want to change that. The establishment of an Inter-Departmental Electoral Committee (IDEC) is crucial to proper early planning. It is the strategic link to the Electoral Support Program board, made up of the Chief Secretary's Office, IDEC, civil society, and donor agencies.

A review by the Electoral Commission found that the causes of electoral problems, apart from the violence and threats, were far greater than simply the management, resources and administration of the Electoral Commission, but extended across the administrative capabilities of the state as a whole when it came to planning for elections.

It is my firm view that the approach we are now taking will not immediately clean up and make perfect the electoral processes, but it is the beginning of what I believe will be a fair and transparent planning and conduct of elections which should have a simultaneous effect on the people, who will in turn respect the electoral processes. And as political parties become stronger, voters will begin to vote not on family and or clan lines but will put their mark according to the platforms and ideologies of a political party.

Papua New Guinea will then have a truly democratically elected government. Political stability, and eventually a stable economy,

will become the norm. This will surely have a positive effect on the lives of our people.

Finally, let me make two appeals.

First, I appeal to each and every member of parliament to pass the electoral reform legislative amendments now before parliament. The passage of this legislative package is crucial to the conduct of the general election in 2007.

Secondly, I make a special appeal to every Papua New Guinean. The Papua New Guinea Electoral Commission can do its best to conduct your elections. It is preparing itself for it. However, the real success of elections remains in your hands. The elections are yours. It is your time to have a say in how Papua New Guinea progresses. This time does not come often; it comes once every five years. Make use of this opportunity. Assist the Electoral Commission to help you in exercising your voting power to return the right person to parliament to run this country. I appeal to every Papua New Guinean not to disrupt elections in any way, either by seeking to corrupt the enrolment process or through the polling process.

Author note

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Endnotes

¹ This paper was presented to a seminar at the National Research Institute on 23 March 2006.

PAPER TWO

ELECTORAL REFORMS – IMPROVING ELECTION ADMINISTRATION AND MANAGEMENT¹

JOHN NONGGORR

This paper will briefly discuss proposed changes to the election laws to improve election administration and management in readiness for the general election in 2007.

The impetus

Why the reforms? There are two main reasons why changes are required to the laws governing elections: first, problems experienced in the general election of 2002 cannot be tackled, even with improved funding, election administration and management, without reviewing the laws governing elections; secondly, many aspects of the electoral process established by the current election laws are based on Australian practice from the 1970s. Some elements of these laws are no longer appropriate in Papua New Guinea because of the different local circumstances.

The 2002 general election experience

The general election of 2002 has been described as the worst election in Papua New Guinea's short history. Three main problems were encountered.

The first concerned the electoral roll. Many complaints were raised that the electoral roll was defective. Either eligible voters' names were left off the roll, thus preventing many citizens from exercising their constitutionally guaranteed right to vote, or what have now come to be labelled 'ghost names' got on the roll, allowing people to cheat.

There were two main reasons for the problems with the electoral roll. One was human failure: dishonesty has entered at many phases of the electoral roll updating and creating process. People deliberately make false claims for enrolment. Some enrolment officers

deliberately facilitate false claims for enrolment, including suspect names in electoral rolls. The second was that the existing law has made it difficult for suspect names on electoral rolls to be removed. The proposed reforms address this (see below).

Human failure by the many individuals involved in electoral roll updating and creation cannot be overcome simply by electoral law reform. Human behaviour, good or bad, must change through other means. Values and ethics take a long time to change, but incentives and disincentives may be used to bring about desired change more quickly. Legal measures may be employed to discourage dishonesty and fraudulent behaviour in electoral roll updating and preparation. Identifying, arresting and prosecuting those involved is the usual disincentive. However, this has not worked.

Another disincentive against dishonest behaviour designed to corrupt the electoral roll is to make the populace understand that we all suffer as a result of such actions. There is a direct cost that affects us all, on an almost daily basis. Our children feel this too. A person whose election to parliament is enabled by cheating will not represent the electorate. MPs who do not have real voters to whom they must remain accountable for their future survival as MPs, and who know that they got elected through a corrupted system, will rely on the same corrupted process to be reelected.

Accountability is the critical factor in democratic elections, and democracy in general. Individuals become MPs on the mandate of the voters. They are accountable to voters. If a MP does not remain accountable to voters, voters can withdraw the mandate in a subsequent election. Individuals elected through corrupt means, such as by getting people to corrupt electoral rolls, are unlikely to feel compelled to be accountable to voters. Moreover, those who cause others to corrupt the electoral process to get elected are intrinsically people with bad morals and ethics. Persons of such character will not have in mind the interests of voters.

We all see the poor state of basic public services in Papua New Guinea at present. The great majority of our people in rural areas throughout the width and breadth of Papua New Guinea, as well as the majority lowly-paid or unemployed dwellers in urban areas, lack the most basic services – quality education and health services. Schools are not resourced, teachers are neglected and they neglect our children. With children denied a decent education, Papua New Guinea will

not get anywhere. It will remain behind or go backwards with rapid population growth. Mothers and children are dying in their thousands every year from preventable diseases like malaria and TB.

We must elect individuals to the parliament who will manage Papua New Guinea's limited resources wisely. We must elect into parliament individuals who see the improvement in the wellbeing and progress of the mothers and children in the most remote rural areas and urban settlements not only as a benefit to the mass of people but also to the individual MPs themselves and their families, because individuals who contribute to the wealth and wellbeing of a community that they are part of contribute to the wellbeing of themselves and their families.

Electing good individuals to parliament is critical for the weak and poor in rural areas and urban settlements. An election is not a game without consequences, in which it does not matter if we allow a few to cheat and not do anything about it. Elections have real consequences for us all. Elections produce MPs. MPs go into parliament and some go into the government. Governments decide on how public money is spent, and generally decide how the country is run. The national budget now runs into billions. Who do we want to make decisions on how this money is spent?

We want individuals who are upright, honest and of the highest integrity. We do not want individuals who cheat in the electoral process to control public funds and run the affairs of the country. If individuals cheat in the electoral process to get into parliament, what assurance is there that they will not cheat when in control of public monies?

Elections determine whether we provide a good standard of education for all our children in both urban and rural areas. Elections determine whether mothers and children in rural areas get the most basic medical services. Elections determine whether we have good doctors working in hospitals and medicine to cure the diseases that are taking the lives of the weak and poor throughout Papua New Guinea.

If cheating in the election process – whether in electoral roll preparation or at other stages – is not discouraged and stopped, our people, especially the weak and poor, will continue to suffer.

Andrew Trawen, the Electoral Commissioner, has announced that past electoral rolls are being abandoned, and that new rolls will be created for electorates

throughout the country. This is a brave action, not only in admitting that existing rolls are defective, but also in undertaking a task that is not simple. The task of creating new rolls is not entirely dependent on the Electoral Commission. The Electoral Commission does not have the manpower to carry out this exercise throughout the country. With a full-time staff of fewer than sixty employees, the Electoral Commission alone cannot prepare rolls for 89 open electorates. The Commission must necessarily rely on the assistance and input of others, especially public servants in the provinces. It must rely on the services of others, outside of the public service. The risks of tampering with the electoral roll remain.

It is in this context that every Papua New Guinean must realize the cost of behaviour that is designed to corrupt the electoral process. We and our children will suffer the consequences of allowing dishonesty in the process.

The electoral commissioner is aiming to have the preliminary rolls for electorates in the highlands issued during the third quarter of 2006. Preliminary rolls for other electorates will be issued progressively as they become available. This will enable the public to have sufficient time to check the rolls and allow for final improvements to be made to the new rolls. Questions have been raised about some eligible voters not having been enrolled. There is still an opportunity to be enrolled after the preliminary rolls are issued.

In the general election of 2002, because of the late release of funding and other logistical problems, preliminary rolls were sent out late – only a matter of weeks before writs for commencement of elections were issued – and many complaints were raised because of this. Indeed, the Morauta government brought court proceedings against the Electoral Commission to delay the elections for a few weeks because the preliminary rolls were issued late. Preliminary rolls are to be released early to avoid a similar situation.

Security issues at polling and counting

In the general election of 2002, major security problems led the Electoral Commission to declare failed elections in six electorates in the Southern Highlands Province. The electorates concerned were Kagua-Erave Open, Tari Open, Komo-Magarima Open, Imbonggu Open, Koroba-Lake Kopyago Open and

Southern Highlands Provincial. In the history of elections in Papua New Guinea, this is the first time that a number of elections was failed for a common reason.

In other electorates in Southern Highlands Province and Enga Province similar disturbances were experienced in the elections, especially during polling. Some of these might be summarized to remind us that the situations were created not by the Electoral Commission and its officials but by candidates and their supporters.

- In **Imbonggu Open** electorate, 84 ballot boxes were issued for polling, with over 80,000 ballot papers. Of these, 32 ballot boxes destined for Lower Mendi LLG were returned by some candidates and their supporters with ballot papers cast. Polling for these ballot boxes was not supervised by electoral officials or police, and the ballot papers in them could not be counted because none could be verified by officials as legitimate votes.

Similarly, 22 ballot boxes and ballot papers destined for Lalibu Basin were returned by candidates and supporters without electoral officials or police involvement. They could not be counted either.

Two batches of ballot boxes, one with 16 boxes and the other with 7, were returned by electoral officials and police. These 23 ballot boxes were the only ones that could be accepted out of the 84 boxes issued. The whereabouts of the other ballot boxes was not known. Ballot boxes and ballot papers had been hijacked by candidates and their supporters on the way to polling.

Given that only 23 ballot boxes were available, the outcome in that electorate could not be decided and the Electoral Commission had no option but to fail the election.

- In **Komo-Magarima Open**, 101 ballot boxes were issued with over 90,000 ballot papers. These were airlifted to the five sub-district centres a few days before polling and dispatched from the sub-district centres to polling places. Polling did not go well in the electorate; reports indicated that there was widespread intimidation with the presence of firearms. There were even reports of ballot papers

being marked by a few individuals and put into ballot boxes. Some ballot boxes were destroyed. For example, five ballot boxes from Hulia were brought back by polling officials and left at the Tari police station. Individuals broke into the police station and removed and destroyed the ballot boxes and the ballot papers they contained.

Only nineteen policemen were assigned to the whole of Komo-Magarima electorate. They were unarmed. There was no way that nineteen unarmed policemen could cover the electorate, and candidates and their supporters were left free to hijack the election.

The Electoral Commission had little option but to fail that election: there was no point in the Commission going to look for the missing ballot boxes and counting them to determine a winning candidate.

- In **Koroba-Lake Kapiago Open** ballot boxes and ballot papers were hijacked by candidates and supporters even before they reached the polling areas. Tribesmen supporting different candidates blocked off roads into and out of many parts of the electorate. Helicopter companies refused to fly their aircraft into electorates to drop off electoral materials because they feared for the safety of their helicopters and pilots. In fact, helicopters were reportedly shot at by gunmen. Candidates and their supporters took the ballot boxes and some were polled. Reports were received that ballot boxes with cast ballot papers were available in some LLG centres but their integrity could not be accepted. It was reported that ballot papers were being sold by individuals.

Again, the Electoral Commission refused to proceed with scrutiny of votes and cancelled that election.

- Problems similar to those in Koroba-Lake Kapiago were reported in **Kagua-Erave Open**. A total of 90 ballot boxes and over 55,000 ballot papers were issued for elections in four LLG areas – Erave, Kware, Aiya and Kagua.

Some 22 ballot boxes and 13,156 ballot papers were allocated for Erave LLG. But at the Erave station, the assistant

returning officer was stabbed and all the ballot boxes and ballot papers were taken by candidates and their supporters.

A total of 32 ballot boxes was issued to Kagua LLG, of which 20 were for polling around Kagua station. Four ballot boxes were stolen, one was destroyed at the polling place, and 15 were taken by candidates and their supporters at polling locations. The remaining 12 ballot boxes were retained to be airlifted to outlying areas of Kagua LLG. On the morning of Sunday 7 July 2002, supporters of a candidate grabbed two ballot boxes, arguing that ballot boxes and ballot papers destined for their polling places had been taken by others. The supporters of another candidate came in big numbers to the Tari station and took ten ballot boxes and ballot papers. There were eight policemen at Kagua station at the time who could not do much against many tribesmen with firearms.

Some seven ballot boxes and 2,534 ballot papers were destined for Kware LLG area. A helicopter commenced airlifting these materials to polling places, but after four trips the helicopter pilot was threatened with injury to his person and the aircraft. The helicopter company refused to allow further use of its equipment.

For Aiya LLG, 29 ballot boxes had been allocated, with 18,100 ballot papers. Because of the helicopter company's refusal to allow the use of its equipment and personnel, these ballot boxes could not be taken to the polling areas. Four candidates decided to 'assist' by offering to take the materials to the polling places, as there were only two vehicles available to the electoral officials. The returning officer dispatched the materials with polling officials to go to the polling places. However, on the way, the four candidates and their supporters argued amongst themselves and fought over the ballot boxes and ballot papers, which were never seen again.

Other ballot boxes and ballot papers were unaccounted for. Again, the Electoral Commission was forced to cancel the election.

- In **Tari Open**, ballot boxes and ballot papers were properly dispatched

for polling, accompanied by polling officials. Some ballot boxes were properly returned, including nine boxes used for polling around Tari station. A number of ballot boxes and ballot papers were destroyed at polling places, however. Whilst over 40 ballot boxes with cast ballot papers were returned to Tari station, this represented something over half of the ballot boxes issued.

On 9 July 2002, all ballot boxes with cast ballot papers at the Tari station were looted and damaged by two rival candidates and their supporters. The 40-odd ballot boxes were taken away and never seen again. This was done in the presence of 15 local policemen and a mobile squad of 20 policemen. The two rival groups fought in Tari station, resulting in two deaths. The policemen could not stop the looting, destruction and killing because the rival clans were armed with high-powered firearms.

Once again, with over half of the ballot boxes and ballot papers destroyed or not located, the Electoral Commission had no option but to fail that election too.

- The election for the **Southern Highlands Provincial** electorate was cancelled because the problems in the open electorates affected the provincial electorate. Ballot papers for the provincial electorate were destroyed, damaged or did not surface for other reasons as well.

Problems were also encountered in other electorates, but were not serious enough to result in cancellation of elections.

- In the **Wapenamanda Open** electorate in Enga, two ballot boxes containing cast ballot papers were destroyed at polling places by disgruntled supporters.
- In **Kompam-Ambum Open**, seven ballot boxes waiting to be airlifted to polling areas were hijacked by candidates and their supporters at Wabag. Two ballot boxes were separately hijacked at another location, and were destroyed. They were subsequently the subject of a major court dispute.
- In **Wabag Open**, nine ballot boxes with cast ballot papers were destroyed by fire when a shipping container containing cast ballot boxes from a number of open

electorates in Enga Province was fire bombed at the Wabag police station.

- In **Laigap-Porgera Open**, two ballot boxes were destroyed by the fire at the Wabag Station whilst eight ballot boxes were hijacked.
- In **Kandep Open**, fifteen ballot boxes were destroyed by the fire at the Wabag police station, destroying over 7,000 cast votes.

The incident at the Wabag police station was one of the most serious experienced. Ballot boxes from a number of open electorates were brought into the police station with cast ballot papers. These were put into containers to be kept safe for counting. The containers were placed in front of the Wabag police station. On the night of 10 July, men armed with high-powered firearms, including a submachine gun, held up the lone policeman on night duty, shot open the locks to one of the containers and firebombed the contents, destroying 26 ballot boxes and cast ballot papers. Fortunately, the 26 ballot boxes were distributed between 3 electorates – Wabag (9), Laigap-Porgera (2), and Kandep 15 – and the remaining ballot boxes could still be counted.

Another serious incident occurred in Wabag, where an assistant returning officer's wife was shot dead in election-related violence when gunmen went to the officer's house looking for him. There were other incidents where polling officers and returning officers were kidnapped and later released. An assistant returning officer appointed to take charge of elections in Kware LLG in Kagua-Erave Open resigned his position close to the day of polling because a candidate's tribesmen threatened him and said that they would declare war on his tribe.

Counting of votes for the remaining electorates in Southern Highlands was done in Mount Hagen. Mendi was unsafe for anyone to count votes. This created major logistical problems for the Electoral Commission and police. Ballot boxes had to be brought to Mount Hagen, and polling officials from these electorates were required to travel to Mount Hagen. Some did, but many did not. Because of this, some counting rules were not followed.

Election timetable and the formation of government

On the recommendation of the Electoral Commissioner, on 4 April 2002 the head of state set the following timetable for the return of writs for the general election:

Nomination open, 11 April 2002

Commencement of polling, 15 June 2002

Last day of polling, 29 June 2002

Return of writs, 15 July 2002.

Nominations commenced as scheduled. Polling commenced in all parts of the country as scheduled except in the following electorates: Lae Open; part of Wewak Open (Wewak Urban); all electorates in NCD; and all electorates in the five highlands provinces.

Polling for the latter electorates was scheduled for one-day polling. One-day polling in these electorates proceeded as scheduled except in Southern Highlands and Enga. Polling for Enga and Southern Highlands was scheduled for 25 June, but due to bad weather conditions electoral officials and police, together with polling materials, could not be dispatched to the polling locations. At the request of polling officials and at the written request of then commissioner of police, Joseph Kupo (letter to the electoral commissioner dated 25 June 2002), polling was deferred and set to end on 10 July.

Using limited powers given to the electoral commissioner, the polling timetable was changed mid-stream by deferring the last day of polling from 29 June to 10 July. With the date set for return of writs being 15 July, this gave very little time for the Electoral Commission to count votes in Enga and Southern Highlands electorates. In fact, vote counting could not be completed within the five days available.

The Commission then turned to Section 177 of the *Organic Law on National and Local-level Government Elections*, which permitted the Commission to change the polling date. But, with respect to the date for return of writs, the original date could be changed by an extension of no more than fourteen days. On the advice of the electoral commissioner, the head of state extended the writ return date from the originally scheduled date of 15 July to 29 July. Beyond this, the Commission had no powers to extend the date.

Essentially, by law (s.105 of the constitution) the timetable for an election is set within

a period of three months before the fifth anniversary of the previous general election. This is because all MPs have a five-year term, which ends on the fifth anniversary of their becoming MPs. They become MPs on the date that their writs are returned.

The Electoral Commission has to commence and conclude a general election within the three months period. In the case of the general election of 2002, because of the problems and consequent delays, elections went outside the three-month period.

Counting of votes for the electorates in Southern Highlands Province that were not cancelled was seriously delayed because ballot boxes were flown to Mount Hagen. There were disputes over this move. Time was also taken in bringing in polling officials to participate in counting. Counting officials then demanded to be paid allowances before they would participate in counting. Some policemen did likewise. Counting was delayed considerably.

For electorates in Enga Province, counting did not start on time because rumours were being spread there that all elections would be cancelled. In addition, counting officials refused to participate pending claims for advance payment of allowances. This was a problem experienced in counting throughout the five highlands provinces.

Writs from Enga Province were eventually returned on the evening of 29 July – the last day. In fact, the Electoral Commission delayed returning writs to the head of state until 10:00pm in the evening of 29 July, to enable the last writs from Enga and Southern Highlands provinces to reach him. However, a few writs were very late and were not returned until the next day, 30 July. Complaints were made in the court of disputed returns about the late return of writs.

Writs for most electorates in the highlands were returned after the original date set for return of writs, 15 July. Because of this, the leader of the National Alliance party, Sir Michael Somare, threatened court action to prevent the writs outstanding after 15 July from being accepted.

This objection was subsequently dropped. However, the attorney-general filed an action against the Electoral Commission in the Supreme Court, and asked the Supreme Court to declare failed elections in all the Southern Highlands and Enga provinces because these elections were affected by widespread violence, intimidation, and so on, and were not proper elections. Complaint was also made in this

court action that the election timetable had not been complied with and that constitutional prescriptions were breached. This court action added to the confusion that surrounded the general election of 2002.

In this environment, the electoral commissioner was required by the *Organic Law on the Integrity of Political Parties and Candidates* to advise the head of state on which political party had returned the greatest number of candidates so that it could be invited to form government. This is an important power given to the electoral commissioner.

Between 29 July and 4 August 2002, the electoral commissioner was required to perform two important constitutional functions: first, he was to recommend to the head of state which elections in the Southern Highlands and Enga provinces should be failed; secondly, he was to recommend to the head of state which political party should be invited to form government.

Ultimately, the decisions made by the then electoral commissioner, Rueben Kaiulo, following the 2002 general election – namely, the failing of six elections in the Southern Highlands and the advice to the head of state that the National Alliance party should be invited to form government – were not seriously questioned.

The reforms

At the beginning of 2003, Andrew Trawen, the newly appointed electoral commissioner, appointed a three-man team to review the electoral laws in the light of issues raised in the general election of 2002 but also to look at other matters, including electoral roll management. This team comprised Morea Veri, deputy electoral commissioner, Soki Raga, director, Policy and Planning, and myself.

We reviewed a number of reports, including reports by the Commonwealth Observer Group on the general election of 2002, and a detailed report by AusAID. We investigated the problems faced, drawing on our own experiences. We submitted our report to Commissioner Trawen in December 2004. The report recommended review of the election laws with the aim of updating them. We recommended a timetable to be adopted for this; in essence, we suggested that the changes be enacted by December 2005, with 2006 being used to publicize the substance of the changes before commencement of the general election in 2007.

The electoral commissioner acted on the recommendations and commissioned the same team to work on the changes. These were taken, with the required approvals, to the National Executive Council. The National Executive Council approved most of the recommendations, and the first vote on the proposed changes was successfully taken in the last sitting of the National Parliament at the end of April. The second and last vote is expected in the next sitting of parliament, in June 2006.

What are the proposed changes? The changes proposed address the two areas highlighted at the beginning of this paper: one, to deal with some of the problems experienced in the general election of 2002; the other, to change certain aspects of the laws to suit Papua New Guinea's circumstances. The changes are summarized below in relation to the problems highlighted.

The electoral roll

People must take ownership of electoral rolls. Laws cannot prevent people from corrupting the electoral roll. If there is concerted action on the part of the population to corrupt a roll, there is nothing much that the Electoral Commission can do to prevent this. That is the reason why, we, the people, have to realize the consequences of our actions. Corrupting electoral processes leads to corrupt MPs, which results in poor services for us all.

Certain aspects of the election laws also prevent electoral rolls from being managed properly, especially to remove suspect names. One such aspect is the objection process. Under the law as it currently stands, a name on a roll cannot be removed unless a strict objection process is observed. If this process is not complied with, an election can be invalidated. The Electoral Commission can also be sued for damages, as has happened already.

The objection process requires that before a name that is on a roll can be removed, someone must first object to the name remaining on the roll. This is the action that begins the process. A fee of K4 must be paid for each objection. A returning officer can register such objection too. An objection made by a returning officer does not require the payment of the fee.

The next stage is for the objection to be sent in the form of a letter forwarded to the last known place of residence of the person whose name is objected to. The letter proposes that the name will be removed from the roll.

The person must then give an answer to the objection, and the returning officer must make a decision on it. If a person is dissatisfied with the decision of the returning officer, the decision can be appealed to the District Court.

These provisions are taken directly from Australian legislation. They worked well in Australia, where most people have addresses and letters to individuals can be delivered to their doorsteps through an efficient postal system. In Papua New Guinea, the large rural-based population does not have postal addresses. In urban areas, it is not possible to deliver objections to settlements. It is difficult to get a letter to an individual in a village from a provincial, district or sub-district centre let alone getting hundreds or thousands of letters to individuals whose names should be removed from electoral rolls. This has made it difficult to remove names from rolls.

The objection process is the only lawful way to remove names from rolls. If names are removed without following this procedure, this can result in elections being invalidated, as happened in the case of an election in Wabag Open in 1997. In that case, the name of the successful candidate, Takal Kapi, which was on the 1992 Wabag Open electoral roll, was removed without following the objections procedure. His name was not included in the 1997 roll. Kapi nominated to contest the election in 1997 and won, but it was later discovered that his name was not listed in the 1997 electorate roll. A petition filed against his election, based on the absence of his name from the roll, was successful; his election was voided and a by-election was ordered. Subsequent to this, Kapi sued the Electoral Commission, alleging that his name was on the 1992 electoral roll but was unlawfully removed for the 1997 roll. He argued that his name was removed without following the objections procedure, and the National Court decided in his favour.

It is proposed to change this part of the law in two respects. First, instead of sending letters to individual persons at the last known place of residence, a returning officer can send a list of names to a village elder, councillor or church elder to bring to the notice of persons concerned. Answers may then be forwarded either by the persons concerned or by the councillor or other village elder. Secondly, by gazettal notice the Electoral Commission can create new rolls with ease. In such cases, the new rolls will not relate to previous rolls but will be completely new rolls. Under the current law, this is possible only in very limited situations.

Security at polling and counting

Security issues faced in electorates in the highlands cannot be tackled by making changes to laws. Meaningful solutions can only come through behavioural change. This will take time, but the pace of change can be advanced if people are made aware early that the cost of disrupting elections affects us all on a daily basis.

If elections are disrupted and not held properly, the individuals elected will not genuinely represent the people and will not be accountable to the majority. They will not make good decisions about the use of public funds. The end result is that everyone suffers through poor educational services for our children, poor health services resulting in deaths of women and children in their thousands every year from preventable diseases, poor infrastructure, and poor management of the nation's resources. It is therefore in everyone's interest to ensure that elections are clean, so that those elected feel a real responsibility (and hence accountability) to their voters.

In the proposed reforms, some incentives and disincentives are introduced to discourage disruptive and negative behaviour in elections and encourage cooperative behaviour.

- The limited preferential voting (LPV) system introduced in 2002 will allow for cooperative behaviour between candidates and supporters, replacing the combative behaviour associated with first-past-the-post voting.
- The format and size of ballot papers will be changed, to make ballot papers simpler and smaller. This will enable smaller ballot boxes to be used for polling, allowing electoral materials before and after polling to be handled with ease, requiring less manpower and funds to fly materials to and from remote parts of the country in helicopters and airplanes.
- The Electoral Commission will be empowered to withdraw writs issued for elections in particular electorates where widespread problems are likely to arise that will make it impossible to conduct a decent election. In the general election of 2002, it was known before polling commenced that proper polling was not going to occur in some of the electorates in the Southern Highlands Province. Intelligence reports indicated that there

was a build-up of firearms in certain electorates and that there were already tensions waiting to spill over. Despite these warning signs, the Electoral Commission proceeded with elections in these electorates, spending hundreds of thousands of kina and risking the safety of electoral officials, because there was no power in the Electoral Commission to withdraw or cancel an election. The proposals now being made give authority to the Electoral Commission to withdraw a writ. However, this power is not to be used by just one person; a group of three people from outside will advise the electoral commissioner on whether or not a writ for an election should be withdrawn.

- The Electoral Commission will also be empowered to prosecute individuals for breaches of electoral laws. Persons found guilty may face various penalties including disqualification from contesting or holding elective public office.

Election timetable and the formation of government

The proposed changes impact on the election timetable and the procedures following a general election leading to formation of government. Some of these will contribute to easing tensions in elections and avoid security problems resulting in disrupted elections.

- More flexibility is given to the Electoral Commission to adjust the election timetable if problems are experienced during the election process. The Commission has flexibility to change polling schedules, polling commencement and completion dates as well as writ return dates. However, this flexibility is provided within the three-month period set by the constitution.
- In the context of flexibility on election administration timetable, the Electoral Commission is allowed the flexibility to stagger elections if this is considered necessary to deal with security-related issues. Elections may be staggered within a province or within an electorate.
- Similarly, the Electoral Commission is given flexibility to schedule national elections and local-level government (LLG) elections according to each

individual situation in each electorate. In the experience of the general election of 2002, LLG elections were conducted efficiently and combined well with national elections in some electorates. In other electorates, LLG elections created problems for national elections resulting in both elections being badly affected, notably when conflicts between candidates in LLG elections spilled over to national elections. The proposed changes leave the discretion as to when to hold national and LLG elections to the Commission, unlike the present situation where the Commission must hold both elections together. With the proposed changes, the Commission may schedule LLG elections together with national elections in electorates where this is easy to do, as this is less costly, but where LLG elections are likely to create problems for national elections, the Electoral Commission can schedule LLG elections before or after national elections.

The types of problems experienced in the general election of 2002 that related to the strict time limits placed by the organic law will not arise again if these proposed changes are enacted.

The procedures for the electoral commissioner to advise the head of state to invite a political party to form government after a general election are clarified and made transparent by the proposed changes. This is done by requiring the electoral commissioner to set out in his advice the number of political parties that contested the elections, details of candidates returned by each political party, and the number of independents elected, and then advise the head of state on the political party that has returned the largest number of candidates. This advice is to be made available to the public at the same time. At present, there is no form of advice required and advice could be given by a letter simply naming a political party without giving other details.

Other changes

There are other small but important changes included to improve general election administration and management. For example, an amendment is proposed to the provisions of the organic law to change the nomination procedure and format relating to political

party endorsements. At present, the law does not stop a candidate from nominating first and then changing his/her political party position. This created many problems for the Electoral Commission in the general election of 2002. Some candidates obtained endorsement from one political party first and nominated accordingly, only to later accept nomination from another political party. Some political parties nominated one candidate but subsequently nominated another candidate in the same electorate. Such practices created confusion for voters. In addition, the Electoral Commission could not print ballot papers without determining the status of political party endorsements for a good number of candidates. Some candidates had three separate nominations endorsed by three different political parties. One of the proposed changes says that once a candidate has been endorsed by a political party, he/she is not allowed to change the endorsement.

Concluding remarks

A number of points may be made in conclusion.

- Laws do not themselves solve problems. Laws are tools to be used by people to solve problems or influence behaviour for favoured outcomes. Therefore, the legal reforms to the electoral system proposed, and those made already (such as the LPV voting system), are instruments to be used by us, the people, to achieve our desired objectives. Laws, by themselves, do not achieve anything. People do.
- Elections are not games. Elections have real consequences on people. The outcomes of elections affect all of us in our daily lives. The people we choose in elections determine whether we have schools, resourced and staffed by good people, to give a decent education to our children. The people we choose in elections determine whether there are aid posts in rural areas, good doctors in hospitals, and medicines in hospitals and aid posts to prevent people from dying from preventable diseases. We must see the direct connection between our vote, a good electoral system, and the poor services that we continue to receive. Elections are not simply about

democracy, a concept that we do not readily grasp.

- In this context, we the people must own elections. A vote that is guaranteed by the constitution is a civil right and is valuable. But to most Papua New Guineans, the vote is not seen as valuable unless a connection is made between their vote and the services that are received (or not received). We must make that connection and continuously remind ourselves of it.

- The electoral process is the only means whereby every individual of voting age gets to have a say on how public resources are managed and how the country is run. Once every five years MPs have to account to us, the people, for what they have done with the trust bestowed on them. It is in all our best interests to own the elections and ensure that elections take place peacefully, fairly and in legitimate ways.

Author note

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Endnotes

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