



CONSTITUTIONAL AND LAW REFORM COMMISSION

Presentation by Dr. Eric Kwa, PhD, Secretary
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Good morning ladies and gentlemen, students and colleagues. It gives me great pleasure to address you this morning at this very important forum. However, before I share with you my thoughts about the post 2017 National Elections period, I want to acknowledge the Acting Vice Chancellor of the University of Papua New Guinea, Professor Vincent Malaibe, the senior Management of the UPNG, Her Excellency, Catherine Ebert-Gray, the US Ambassador to PNG, Professor Lekshmi Pillai, the Executive Dean of the School of Business and Public Policy of UPNG, Professor Stephen Howes, Director, Development Policy Centre, ANU, our senior bureaucrats, politicians and members of the community for participating in this very crucial forum.

Ladies and gentlemen, as I look at the list of presenters and the issues that will be covered by our speakers, I must congratulate the organisers of this conference - the School of Business and Public Policy of UPNG and the Development Policy Centre, Crawford School of Public Policy of ANU - for selecting pertinent topics and bringing together a body of excellent speakers.

I want to thank the organisers for inviting me to give you the keynote address.

At this forum, I would like to share with you my thoughts about some of the important actions that the new government of Prime Minister Hon. Peter O'Neill must now take with the conclusion of the 2017 National Elections. The topic for our conference is: PNG After the Elections! I can assure you that we have a lot to discuss about the future of our beloved country after the 2017 elections. As I survey the list of topics to be covered during these two days conference, I am confident that our esteemed speakers will highlight the challenges we face as a nation and offer some solutions that our new Government needs to take to avert potential economic disaster and social upheavals. I do hope that our leaders who are here and those who will read and see on TV the issues that are being discussed and the proposals presented here will take heed of this advice from our experts and technocrats.

Ladies and gentlemen, I am sure, you are all aware of the Number 1 issue that confronts us immediately - the damning financial position of the country! The Department of Treasury has just recently released its report on the country's 2017 Mid-Year Economic and Fiscal Outlook which paints a grim picture for PNG. I am not an expert in this field so will not debate the matter here, except to state that the new Deputy Prime Minister and Treasurer, Hon. Charles Abel has accepted this fact and is working with the relevant agencies and officials to arrest this problem.

What I would like to share with you this morning is about the governance systems that we need to put in place or improve to restore confidence in the government and its systems and processes. The last five years has been a successful period for the O'Neill/Dion Government in the area of political stability and infrastructure development. The O'Neill/Dion Government also attempted to introduce a number of

interventions to improve governance. These efforts have either not been fully implemented or remain incomplete. The Constitutional and Law Reform Commission has been a party to many of these initiatives and it is in this context that I would like to share with you these proposals.

If PNG is to improve governance and encourage investment in the private sector and improve its bureaucracy, the new Government must act on these outstanding initiatives because they originate from Alotau Accord I and the proponents of these programs are now in the current Government.

It is encouraging to note that some of these Alotau Accord I initiatives are also carried over into the Alotau Accord II manifesto. I will address them under seven (7) main headings: Governance Structure; Leadership; Wealth Creation and Distribution; Service Delivery; Corruption; and Human Rights.

1. Governance Structures

Papua New Guinea has been described as a weak state because of its frail government structures. The primary target of criticisms has been the bludgeoning public service. It has been argued that the governance structures have been weakened to the point where they are not able to push back the tide of corruption and abuse in the government system. The last Government attempted to tackle this problem by first of all down-sizing and disbanding several government agencies and institutions such as the merging of National Cultural Commission and National Museum and Art Gallery and the demise of the Office of Tourism, Arts and Culture.

Second when the O'Neill/Dion Government took office, it introduced the 'Performance Based Contracts' for Departmental Heads and CEOs. The performance of these top bureaucrats will now be judged by set criteria. For the first time since Independence, Departmental Heads and CEOs can now be terminated for non-performance.

In my view, the issue is not about the structures, but more on the political and outside influence on these structures and those who manage them. In my six years as the Chief Executive Officer of CLRC, we have worked with and continue to work with about 30 different Government Departments and agencies to reform their legislation to improve governance. As we have progressed with these reforms, its becoming clearer that the system and processes of government that we adopted at Independence in 1975 are compatible and can work effectively if public servants are allowed to perform their duties without fear of being penalized or removed from their positions.

The bureaucratic leaders and their subordinates need protection so they can perform effectively. In this context, the Government needs to protect senior civil servants and those in the public sector through: (1) strengthening contracts of employment; and (2) enactment of a Whistleblower legislation. This legislation will protect public servants who can confidently expose corruption and abuse in government.

At this juncture, I would like to talk about the proposals to create an Appeals Court that is designed to promote and strengthen access to justice by the citizens. In 2016, the judiciary proposed the creation of an Appeals Court that would hear all appeals from the National Court while the Supreme Court would be the final court of appeal but mostly dealing with constitutional cases. The proposed Constitutional Amendment was gazetted and the first debate and reading was done in early 2016.

However, because of the issues of votes of no-confidence and the student unrest, the Bill failed to go for the second and final reading.

It is incumbent on the new Government under Prime Minister Peter O'Neill to reactivate the process and get this Bill through Parliament this year or early next year. This proposed law will improve governance in the judiciary and strengthen the Government's efforts in improving access to justice by its people.

2. Leadership

Papua New Guinea has a strong Leadership Code (*Organic Law on the Duties and Responsibilities of Leadership*) that exhorts our leaders to maintain a high standard of leadership. In the last couple of years, we have witnessed the erosion of this standard through legislative tampering and new types of behaviours not covered by the Code.

To address this problem, the Ombudsman Commission, together with CLRC and other stakeholders are developing a number of proposals to strengthen the work of the Commission and protect our leaders. The reforms relate to the *Organic Law on the Ombudsman Commission* and the *Organic Law on the Duties and Responsibilities of Leadership*. This work is nearing completion and hopefully will be presented to the new Government for approval and enactment by Parliament.

Another proposal that was initiated by the O'Neill/Dion Government to promote quality leadership was the review of the Organic Law on the Integrity of Political Parties and Candidates (OLIPPC). The review was conducted between 2012-2013 by the Registry of Political Parties and Candidates and the CLRC and other stakeholders.

The aims of the review were: (1) improve OLIPPC in response to the Supreme Court decision in 2010 nullifying provisions of OLIPPC; (2) strengthen and improve the governance of political parties; (3) strengthen provisions relating to the conduct of candidates and elected leaders.

A draft constitutional amendment was presented to the Government in 2013 which was accepted with several alterations. The draft constitutional amendment was gazetted in 2015 but to date no action was taken to enact the draft Amendment Bill to OLIPPC).

Hopefully, the current Government will revisit the proposals on OLIPPC and encourage the Parliament to enact the amendments into law.

3. Wealth Creation and Distribution

There is a general consensus that the wealth of our nation is being mismanaged and our people have missed out on the benefits of the development of their natural resources. In the months leading to the 2012 National Elections, the Government agreed to support the establishment of the Sovereign Wealth Fund which would act as the custodian of funds generated from the utilization of our natural resources and through several mechanisms, these funds would be accessed for developing the country.

When the O'Neill/Dion Government was about to proceed with the implementation of SWF, another proposal was put before the Government called the 'Kumul Consolidated Agenda' (KCA). The KCA was basically to consolidate and strengthen

the state owned enterprises in the minerals and LNG sector. The Government proceeded to implement the KCA while leaving the SWF on the sidelines.

The *Constitution* has been amended to cater for the Sovereign Wealth Fund around 2011. An Organic Law on the Sovereign Wealth Fund was enacted in 2012 to enable the implementation of the SWF. However, it was discovered that the Organic Law on the Sovereign Wealth Fund was defective. This 2012 Organic Law was therefore repealed and replaced in 2014.

On the eve of the 2017 National Elections, the Department of Treasury announced that it was finally going to establish the SWF. It is imperative that the Government fully implement the SWF.

The work of the CLRC and DPLGA in the review of the decentralization system also covered the issue of natural resources ownership and benefit sharing. Our proposal is to return ownership of minerals to the landowners, while the Government manages the exploitation and the distribution of benefit derived from the production of the natural resources. This is a major paradigm shift and will require further analysis and agreement on the implementation process.

4. Service Delivery

In 2013, the O'Neill/Dion Government commissioned a review of the decentralisation system of government under the Organic Law on Provincial Governments and Local-level Governments 1995. The CLRC and the Department of Provincial and Local Government Affairs (DPLGA) undertook the review and submitted their Final Report to the Government in April 2015 after 12 months of nationwide and public consultations. This report was presented to Parliament in June of the same year.

The report by the CLRC and DPLGA contain a number of proposals to improve service delivery to the people of PNG. These proposals include:

- Having one level of subnational government – provincial governments only (third level to be established under autonomy)
- Criteria for obtaining autonomy
- Strengthening District Development Authorities (DDAs) and ensuring transparency and accountability
- Streamlining District Support Improvement Program and Provincial Support Improvement Program into the national and provincial budgetary processes
- Strengthening audit at the subnational level
- Clarifying the roles of municipal authorities, DDAs and provincial governments
- Improving planning and implementation of national, provincial and district development plans
- Clarifying ownership of natural resources and promoting equitable benefit sharing

These proposals were accepted by the Government in 2015 and implementation is currently being managed by the Central Agencies Coordinating Committee (CACC) through an ad hoc basis. At the eve of the 2017 National Elections, the Prime Minister, Hon. Peter O'Neill promised to push for the implementation of the proposals contained in the CLRC/DPLGA Final Report if re-elected. It is encouraging to observe that one of the key goals of Alotau Accord II is the granting of autonomy to provinces.

It is our firm view that when the findings of the CLRC/DPLGA are implemented, we will see improvements in the delivery of basic services to our people.

5. Corruption

Corruption is a major problem for PNG. In 2016, it ranked 136 on the Transparency International's Corruption Perception Index, sitting on the same spot with Guatemala, Kyrgyzstan, Lebanon, Myanmar and Nigeria. As one of the most corrupt countries in the world, PNG has a huge task ahead to improve this image. PNG signed onto the United Nations Convention Against Corruption on 22 December 2004 and ratified it on 16 July 2007.

In 2011, the Government launched the National Anti Corruption Strategy to fight corruption. After the 2102 National Elections, the O'Neill/Dion Government supported the establishment of an inter-government anti-corruption unit called 'Task Force Sweep' to investigate and prosecute crimes of corruption. This team was disbanded about two years later when the Prime Minister was implicated in a corruption scandal.

The Government however proceeded to request the Parliament in 2014 to approve the establishment of the Independent Commission Against Corruption (ICAC) by amending the *Constitution*. A new Division VIII.3 was inserted into the *Constitution* through *Constitutional Amendment No. 40* enabling the establishment of ICAC.

This constitutional amendment paved the way for the enactment of an Organic Law on the Independent Commission Against Corruption and its full establishment.

The new Government has agreed through Alotau Accord II that the passage of the Organic Law on ICAC will be one of their main priorities. The Prime Minister, Hon. Peter O'Neill has recently called on the Opposition to support the Government in enacting the legislation. It would be very good for the country if the Organic Law on ICAC is enacted quickly so the ICAC can be established soon to deal with the disease that is eating away at the resources of this country.

6. Human Rights

Papua New Guinea has been advocating for the establishment of a Human Rights Commission (HRC) since the 1990s. A number of attempts were made by successive governments to amend the *Constitution* and establish the HRC with a draft Organic Law on the Human Rights Commission being completed around 2010. To date, this initiative has not been implemented.

There is now an urgent call by the international community and the civil society for the Government to establish the HRC because of the spiraling effects of human rights abuses in the country.

It is imperative that the new Government takes a more proactive role in establishing the HRC.

7. 2017 National Elections

The Electoral Commission has finally delivered the 2017 National Elections apart from the seat of Kundiawa-Gembog in Simbu Province. A lot has been said about the

management of the 2017 National Elections. I have also personally commented on the issue of the date for the return of writs. However, whatever our views, there is general consensus on two points: (1) a review on the conduct of the 2017 National Elections; and (2) a review of the *Organic Law on National and Local-level Government Elections*.

The preliminary comments I want to offer here are:

- The duration of the polling period should be shortened
- The nomination fees should be increased
- The counting period and process must be properly regulated
- Electoral Commission must be given the powers to prosecute offences under the Organic Law without waiting for the approval of the Public Prosecutor
- Introduce Temporary Special Measures for the election of women into Parliament. The Constitution already provides for 22 Women Electorates. What is needed is an amendment to the election law to stipulate the manner of election of these 22 women leaders.

The new Government has agreed that one of its first tasks is to review the *Organic Law on the National and Local-level Government Elections*. The CLRC and other partners are ready to assist the Electoral Commission undertake this review. A formal National Executive Council decision on this matter soon would be encouraging.

Ladies and gentlemen, the new Government should accept these legislative reform proposals and enact the following laws to strengthen our government:

- Whistleblower Bill
- Amendments to the Organic Law on the Ombudsman Commission
- Amendments to the Organic Law on the Duties and Responsibilities of Leadership
- Amendments to the Organic Law on the Integrity of Political Parties and Candidates
- Repeal and replacement of the Organic Law on Provincial Governments and Local-level Governments
- Amendments to the Organic Law on the National and Local-level Government Elections
- Draft Organic Law on the Independent Commission on Against Corruption
- Proposed Constitutional Amendment to create the Appeals Court
- Draft Organic Law on the Human Rights Commission
- Review and amend the Organic Law on the National and Local-level Government Elections

In my professional opinion, if these 10 and other related legislative reforms are progressed in the next 100 days of the current Government or even under this present Government in the coming months, we can transform the governance structures and provide a strong and stable government for our country.

The reform of these laws and the enactment of the proposed laws will lay the foundation for strengthening the government in pursuing its Vision 2050 goals and the possible attainment of the country's aspirations contained in the National Responsible Sustainable Development Policy. The combined effect of this and other legislative reforms in the next couple of years will also enable the Government and PNG to achieve the Sustainable Development Goals.