

Crises compounded: Papua New Guinea politics in November 2011

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On Thursday 10 November 2011 the new Papua New Guinea government headed by Peter O'Neill celebrated its first 100 days in office. But three days later Papua New Guinea is facing not one but three constitutional crises, a mere nine days before the Parliament convenes to consider the national budget for 2012 and vote on major constitutional legislation which will determine the size and shape of the next Parliament. The term 'crisis' derives from the Greek word for a turning point, and all these issues will have a significant effect on the country's governance, and hence its development, for years to come. Some professionals in Port Moresby have been sufficiently alarmed to leave town. This report sketches the current legal issues embroiling Port Moresby, before summarising the major constitutional matters which must be dealt with before the House adjourns in April 2012 for the June-July election.

Crisis #1

On 2 August 2011, after four months of unresolved political tension in the National Alliance-led Somare government, the first constitutional crisis emerged when the Speaker Jeffrey Nape agreed with the then Opposition Leader Belden Namah that the office of Prime Minister was vacant. This arose from the prolonged absence of Grand Chief Sir Michael Somare while in hospital in Singapore, and the Speaker permitted a parliamentary vote for a new PM. This did not follow the constitutional provisions for removing the chief executive, based either on a medical assessment of the PM's health or capacity or a vote of no confidence — which could have been possible in the following week. Thus on 2 August the former Works, Transport and Civil Aviation Minister Peter O'Neill was endorsed by 70 votes to 24. Mr Namah became Deputy PM in Mr O'Neill's government. Most of the government crossed the floor on 2 August, and the dominant party in the former government has since lost and or/expelled over 20 MPs. About half the new ministers had held portfolios in the Somare cabinet. The rump of the former government, now the Opposition, has boycotted parliamentary sittings since 2 August.

On 6 September, Sir Michael Somare returned to the House, only to be told by Speaker Nape that he was disqualified because he had missed three sittings without prior permission from the house, when in fact on 17 May the House had excused his absence and he had only missed two sittings. After two attempts by members of the former government to block these moves in the National Court, the government of Somare's East Sepik Province has brought a reference to the Supreme Court seeking a ruling on the constitutionality of the new government, and Sir Michael's continuing membership of Parliament. Eight other parties have joined the case. Prominent constitutional lawyers have argued that the Speaker's actions were unconstitutional. If the court so rules, the O'Neill government will lack constitutional legitimacy, despite its apparently strong political support in the Parliament and the wider community. The bench is headed by Chief Justice Sir Salamo Injia, and having heard all submissions has said it will deliver its decision on 9 December.

Once before, in 1993, former PM Paias Wingti resigned in order to gain a renewed mandate. The Supreme Court in 1994 ruled that his 1993 re-election had been unconstitutional. They ordered a new election by the parliament the following week, and that all government decisions in the interim be deemed constitutional. Given the current political log-jam, such a ruling might be possible on 9 December. The Speaker would be embarrassed and the O'Neill government, which by then should have passed its election year budget, would almost certainly win a renewed vote for PM. It might be thought that the simplest response would be to have an immediate national election, but the Electoral Commission (PNGEC) has yet to finalise the voter electoral rolls, and several constitutional bills have to be passed to determine the number of Members in the next Parliament. These processes could take five months, as I discuss below.

Crisis #2

Hints of the second constitutional crisis emerged in early November when the former Attorney-General, Sir Arnold Amet, himself a former Chief Justice, said the new government was intending to remove the current Chief Justice in order to pressure the court over the East Sepik constitutional reference. That suggestion offended PM O'Neill, who demanded an apology. Then on Thursday 10 November, following a National Executive Council (NEC or cabinet) meeting chaired by Deputy PM Belden Namah, Governor-General Sir Michael Ogio signed an order suspending the Chief Justice and appointing a tribunal to investigate the matters. The former judge appointed in the order had refused that role, saying he had not been consulted. Mr Namah, previously a forestry minister, businessman and soldier, had joined the then Opposition in July 2010 and in fiery speeches led the attack on the former Somare government. He told the press on Thursday that police were investigating allegations that the Chief Justice had been involved in double-dipping some of his entitlements, had mismanaged the judiciary's finances and was in contempt of the court.

Predictably, Sir Michael Somare and Sir Arnold Amet expressed outrage, and the President of the Law Society (and Sir Michael's lawyer) Kerenga Kua said the action could only be deduced to be 'a way to sabotage, disrupt and derail the delivery of the final judgement of the full bench' scheduled for delivery on 9 December 'and to rule by default into the next election' (*The National*, 11 December 2011). Social media bloggers and the great bulk of talkback radio callers on Friday also linked this issue to the East Sepik reference. Mr O'Neill, away at an APEC meeting in Hawai'i, pointed out on Friday night 11 November that under S 182(3) of the Constitution the Chief Justice can continue any cases already under way, and announce the decisions, and Mr Namah echoed this in a statement on Saturday evening after a further NEC meeting endorsed the order against Injia CJ.

Crisis # 3

The third constitutional case emerged quickly on Friday morning 11 November, when Mr Justice Bernard Sakora, a member of the bench on the East Sepik reference, issued a Bench Warrant ordering that the Deputy PM Namah and the Attorney-General Dr Allan Marat be arrested and detained by police on charges of contempt of court and produced to the Supreme Court on 12 December, and that the NEC and its servants be restrained from implementing the decisions in the Governor-General's order.

Clearly the matter had now become a major confrontation between the executive and the judiciary, and a challenge to the separation of powers. The courts have always defended their role and the constitution in PNG, and in two headline cases in the mid 1990s under Sir Arnold the Supreme Court over-rode the executive on the *Internal Security Act* and the Wingti case referred to above. The ruling last year in the referral on the *Organic Law on the Integrity of Political Parties and Candidates* made it easier for MPs to change their party membership and cross the floor, and ultimately challenge the Somare government.

On Friday night (Nov 11), Mr O'Neill's statement called for calm and impartiality, but in it he clearly supported the NEC's actions under Mr Namah. He said that under him the country would not be reduced to a nation under constitutional crisis.

"What the nation has been watching and experiencing since August 2 is a healthy democratic display of the legislature, the executive and the judiciary proactively exercising their respective constitutional and

independent roles as the three arms of government.

“That being so, the gravest development we must all expose, oppose and depose is the intrusion by all three arms of government into the affairs of each other.

“One arm of government must not unilaterally usurp the powers and authority of the other and vice versa.

“The executive government’s collective right to make national interest decisions – including decisions relating to members of the judiciary collectively or individually in the interest of transparency and good governance - through the National Executive Council should not be usurped by the threat of warrants of arrest for members of the NEC.” (Susuve Laumaea ‘O’Neill appeals for calm’ *The National*, <http://malumnalu.blogspot.com> 12 November 2011).

Political consequences

Events in PNG politics are often unexpected, but a number of consequences can be predicted. The first is that members of the current Opposition will be less likely to provide bipartisan support for essential legislative changes that are required in the next six months. As pledged, they may sustain their boycott of Parliament until the Court’s decision on 9 December, even though that would render themselves impotent until then. Parliamentary scrutiny of the budget in PNG is usually confined to a few hours debate, but it may be even less this year. The budget is bound to be passed, but the government is not likely to be very generous towards Opposition members in funding for their districts in an election year, especially while trying to pay for its own very popular promises of ‘free education’ (school fees paid to Year 10). The new government has made many promises of works and other projects, but it does not have enough time or (perhaps) cash to deliver them. It is likely to continue with its pursuit of corruption allegations against certain members of the previous Somare-led government, so relations will remain tense.

There are however more far-reaching consequences of the current tensions which will impact on next year’s general elections. The issues which I list here result from the failure of successive governments to eliminate legislative problems created over the last 10 years. At its most basic, it is not clear at this stage how many electorates there will be. At present there are 89 open seats, one for each administrative district, but the *Organic Law on National and Local-level Elections* specifies they shall number between 110 and 120.

This government and the previous one are committed to ensuring the continuation beyond 2012 of the provincial MPs, who under the *Organic Law on Provincial and Local-level Government* usually become the Governors who head provincial governments. These are often called ‘regional or ‘governors’ seats. The Electoral Boundaries Commission will soon recommend the creation of two more seats for the new provinces, Hela and Jiwaka, taking the total to 22 provincial seats, and keeping the open number at 89 as at present, by recommending the law be amended. Failure to create the long-promised Hela governor and provincial government could well cause havoc in the heartland of PNG’s Liquefied Natural Gas project, the country’s main hope for future prosperity. Another set of 22 provincial seats is also promised by both sides of the House, namely the seats reserved for contest between women candidates only, which would be voted for by both men and women, making a total of 44 provincial seats. The Constitutional amendment for that has been passed on its first vote, by 20 votes to 3, but a second vote over 55 is required to entrench it in the constitution. Along with 89 open seats, that would give a Parliament of 133 MPs, which the chamber can just accommodate, even though the MPs offices may be crowded.

The constitutional complexity is that ensuring these changes (open seats limited to 89, continuing the provincial seats and instigating the reserved seats for women) all require a second set of amendments to the electoral law, which — being an Organic Law — has constitutional status. Three separate amendments are required, and they each must be passed by absolute majorities of three quarters of the 109 member House, which is 82 votes. Obtaining that very high majority usually requires strongly bipartisan support, and is often lubricated by the issuing of funds to MPs for their electorates, so such changes are often passed at a budget

sitting. Given the intensity of current hostilities in the Parliament, and the uncertain outcome of the reference on the Somare government and Sir Michael's status, it may not be possible to progress these amendments before Christmas.

Once the current constitutional stalemate over the O'Neill government is resolved, as it must be, the question remains as to whether the Parliament can meet twice two months apart to determine the number of electorates in the 2012 election. The writs must be issued on April 27 and nominations closed on May 4, and at that date the electoral rolls will also be finalised. The timelines are very tight; there is no slack, nor time for delays.

Some of PNG's more cynical politicians and observers have argued that the current government will try to defer the next election. Note, however, that was attempted in 2002 and was firmly rejected by the Supreme Court. Such a move would be seen as a breach of trust and would damage the morale of the public service and security forces. Most likely, it would lead to uproar across the country, infuriating thousands of intending candidates and their supporters, who will have spent most of their campaign funds and but would see government candidates continuing to spend freely. Just a week ago, PNG saw how quickly riots erupted among disaffected groups in the city of Lae, and many people in Port Moresby are distrustful of politicians and are just as volatile. If such a delay were to be attempted by the O'Neill government — which has started on a wave of popularity by attacking corruption and promising necessary reforms — it would destroy much of its political capital. All of which would destabilise development programs and disturb nervous foreign investors. As Mr O'Neill himself suggests, the country needs calm.

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