

Chapter 2

The Legal Framework

Basic Structure

The Independent State of Papua New Guinea is a unitary state. The Constitution provides for the establishment of a National Capital District which is the seat of government, and authorises the establishment of other Provinces under an Organic Law made by Parliament. Currently the country consists of 20 Provinces. The Head of State, Her Majesty Queen Elizabeth II, is the constitutional monarch, represented by a Governor-General. The Governor-General is a citizen appointed by the Queen on the advice of the National Executive Council, given in accordance with a decision made by simple majority of a secret ballot of Parliament.

The Legislature consists of a single chamber vested with the 'legislative power of the people'. It consists of 89 representatives elected by single-member Open electorates and 20 elected by the single-member Provincial electorates. Representation in the Parliament is on the basis of the first-past-the-post (majoritarian) system.

The Judiciary consists of the Supreme Court, the National Courts and the Inferior Courts. The Supreme Court is the court of final appeal. The courts play a significant role in the electoral process, as the final arbiter – as the Court of Disputed Returns – of disputed results. We learned that in 1992 some 61 petitions were filed, of which three were to an extent successful.

The Executive governs as long as it enjoys the support of the majority of Parliament (subject to the modifications, noted below, of the use of the vote of no confidence).

While the Constitution establishes a clear separation of powers between the legislative, executive and judicial branches of government at the centre, it is noted that as a result of the amendments to the Constitution and the new Organic Law on Provincial and Local Level Governments, the distinction is not respected in that sphere. The Provincial MP, a legislator in the Parliament, becomes the governor and chief executive of the province. The elected member for each Open electorate is given a significant administrative role in local-level government. For example, he bears the main responsibility for deciding upon and executing important development projects funded by the Electoral Development Fund. We believe that the neutrality and independence of the civil service should be strengthened.

In the universal suffrage elections conducted before independence in 1975, the voting was on the basis of an optional limited transferable vote. The debate over the suitability of the present system in a society so diverse as this has been continuous since then among both academics and active politicians.

We heard considerable support for a return to such a system, based on the premise that it would encourage a more national and issue based form of politics. The combination of a first-past-the-post system and the split voting resulting from multiple candidacy, has in the past enabled one candidate, relying on a solid core of clan voters, to be elected with a simple majority which represented as little as six per cent of the votes cast. It was also argued that this encouraged a multitude of nominations by independents who saw the possibility of victory on a very narrow and sectional platform based on nothing more than family loyalty. We were also told that the transferable vote, even in an optional and limited form, where the voter would be able to vote for perhaps three candidates in order of preference rather than only one, would be more complicated for many than the relatively simple system now used.

We are of the view that, given the numbers of candidates contesting elections in Papua New Guinea, serious consideration should be given to alternative systems of voting.

Provincial Government

In this context we noted the considerable interest in, and concern with, the issue of Provincial Government and its relationship to the Central Government. This is another aspect of the diverse nature of the country. The impact of this, and the inevitable competition for national

resources, on the electoral situation was noticeable in a country which is seeking to find a balance between diversity and unity, central authority and local autonomy. A variety of views was heard by us as to the merits and demerits of various combinations of ideas for the promotion of effective government, stability and democracy in the country. These views ranged from federal solutions, through shades of devolution to local autonomy within a unitary state.

Recent constitutional amendments and the law on provincial and local level governments have resulted in a changed relationship between the centre and the provinces. As already noted, these have produced a situation where the same elected representatives in Parliament have the power to exercise legislative, fiscal and administrative authority in the provinces.

Electoral Boundaries and Representation

The Legislature consists of 89 single-member Open Electorates and 20 Provincial Electorates, including the National Capital District. The Constitution provides that the number of Open and Provincial Electorates and their boundaries shall be determined by Parliament in accordance with recommendations of a Boundaries Commission (chaired by the Electoral Commissioner) to be made at least every ten years. The present Organic Law on National Elections sets a minimum of 81 and a maximum of 91 Open Electorates, while each Province constitutes one electorate. The legal criteria laid down for boundary changes are standard considerations of population density, geography and communications as well as existing electoral and administrative boundaries, and are set out in the electoral law. In fact Parliament has not accepted any of the Commission's recommendations to date and the present electorate boundaries are based on census figures from the 1970s. The fact that the largest electorate has 84,578 registered voters and the smallest only 21,175 provides clear evidence of the distortions this has caused.

The constitutional provision which allows for the nomination of three members of Parliament has never been implemented, though this has been discussed. There was general support for the view that this provision could be usefully employed to nominate women MPs.

The Census

In 1995, the Parliament enacted a law requiring that a census be held prior to each five-yearly general election. After advice from the National Statistical Office this was amended so as to exempt the 1997 general election from this law. The last national census was conducted in 1990. It is notable that the current estimated population is 4.3 million and the number of voters registered for the 1997 elections was 3.41 million, suggesting a distortion in one figure or the other.

It was noted that although the census, which is the responsibility of the National Statistical Office, is an entirely separate activity from voter registration, the statistical base which it provides can considerably facilitate the planning and conduct of voter registration. We would emphasise the importance of holding regular periodic censuses.

The Franchise

Universal, adult, citizen suffrage is granted under the Constitution, the qualifying age being 18 years. The vote is optional, unlike registration which is mandatory.

The Electoral Commission

The Electoral Commission is established under the Constitution (Section 126), which states that it is not subject to the direction or control of any person or authority. The Commission, in terms of the electoral law, consists of the Electoral Commissioner who is a constitutional office-holder. He is appointed by the Head of State on the advice of the Electoral Appointments Commission. A recent amendment has brought the Leader of the Opposition into this process together with the Prime Minister and the Appointments Commission.

The Constitution stipulates that the Organic Law shall provide for the independence of the

Commission. It is to be solely responsible for the electoral system, the integrity of the elections and dealing with petitions and appeals to the courts in electoral matters. Under the Organic Law the prime function of the Commission is to organise and conduct all elections for Parliament and the legislative arms of the local-level government.

The Electoral Staff and Powers of the Commission

The Law imposes an obligation on the government department responsible for personnel matters to make available to the Electoral Commissioner and to Returning Officers, such staff as is necessary for the discharge of their statutory functions. The Observer Group was informed by the Commissioner that the effective power of appointment, discipline and control of Returning Officers and polling staff does not in practice rest solely in his hands. This is a result of the fact that District Officers are *ex officio* Returning Officers, and their appointment, under the new Provincial Government law, involves the sitting MPs. Thus, while the Law (Section 18) gives the Commissioner the authority to revoke any power delegated by him, it does not give him effective power to discipline staff made available to the Commission. It was suggested to us that his choice is reduced to dismissal and the loss of staff who cannot be replaced, or his enforced tolerance of performance which he knows is inadequate.

In our view a truly independent Electoral Commission should have a real choice in the appointment of the staff made available to it and full control over all staff engaged in election work.

Polling Places

The electoral law authorises the Commission to appoint and abolish polling places by notice in the *National Gazette*. No polling place shall be abolished after the issue of the election writ and before its return.

The Common Roll

Each electorate must be provided with a copy of its Common Roll. The law requires all persons to register. The Commissioner has the power to direct, by a notice in the *Gazette*, that a new Common Roll must be prepared and that persons not on the new Roll must submit a claim for enrolment. Section 46(4) of the Law makes it clear that any elector enrolled for an address for which he is entitled to be enrolled shall not be required to make a further claim. Section 47 provides that the new Roll shall be sent to Returning Officers who must then make additions or corrections to it in accordance with information received by them. The Law (Section 48 and Part VII) provides that objections can be lodged, in writing, with the Returning Officer to the Roll on the payment of a K4 (four kina) fee. No case was brought to our attention where these provisions or mechanisms had been used. It appeared that they are largely unknown to voters.

Supplementary rolls with the recent additions to the Roll may be printed immediately after the election writ is issued or at other times. Copies of the Roll and supplementary prints are required to be open for inspection during office hours at the office of the Returning Officer or elsewhere, and to be obtainable for a fee from her/his office. Section 51 imposes an obligation on all persons apparently entitled to enrolment and on all occupants of habitations, to give any information required by the Commission or by a Returning Officer in connection with the preparation or revision of the Roll.

The basic qualifications for enrolment are age, citizenship and six months' residence at the place where enrolment is claimed. Provisions include the right of appeal to the District Courts when applicants' claims or objections have been rejected by the Returning Officer (Part IX of the Law).

Nominations

Candidates must be 25 years of age or over and must have been born in the electorate contested or resided there for two years continuously or five years at any time. We learned that there

is no requirement for the candidate to produce a list of supporters, though we heard no complaints on this point. Candidates can stand in only one electorate. The nomination fee was increased ten-fold in 1991 to K1,000 – a figure which some regard as too small and others feel is too large. For the 1997 elections it had been made non-refundable. Nominations closed on 17 April 1997.

Comment

The electoral law of Papua New Guinea is fair and comprehensive.