



THE AUSTRALIAN NATIONAL UNIVERSITY

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The Australian National University

# *State Society* *and* Governance *in* Melanesia

PUBLIC POLICY IN PAPUA NEW GUINEA — DISCUSSION PAPER SERIES

2006 Number 2

## TWO PAPERS ON THE PROPOSED DECENTRALISATION IN PAPUA NEW GUINEA

### PAPER ONE

#### THE PROPOSAL TO ESTABLISH DISTRICT AUTHORITIES IN THE PROVINCES OF PAPUA NEW GUINEA<sup>1</sup>

PETER O'NEILL

The subject of this paper is the District Authorities Act I have initiated, and parliament has enacted, to pave the way for the establishment of district authorities in the existing 89 open electorates throughout the nation. (The act is reproduced below.) This subject is very relevant to ongoing discussions and reviews of the public sector reform agenda.

We live in a global village where technological changes, and overhauls of management and delivery systems occur daily — if not hourly.

Papua New Guinea at present does not have the institutional or human resource capacity to compete on par with developed or wealthier nations, regionally or globally. We can, however, aspire to some degree of efficiency

and best practice management as experienced in developed and other developing economies of the world.

We can begin the process of attaining high levels of efficiency in government and public sector management, human resource use, and delivery of goods and services within a deliberately structured approach — even if only in a small way. We have to start somewhere. That is why I initiated the bill for an act of parliament to establish district authorities in the provinces.

The *District Authorities Act* provides for the creation of a dynamic district administration structure within which local-level governments can participate in development, policy-making and wealth sharing. It is a structure that is intended to effectively interface national development goals and objectives with those of the districts.

I see the eventual establishment of district authorities as an elevation of local-level governments' capacities to articulate and construct sustainable development initiatives for their respective districts or local-level government areas.

It envisages greater participation and a feeling of ownership of development policies and initiatives by district and local-level government decision makers.

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

It provides the means for active and direct participation of people in the process of effective and efficient government, providing opportunities for the people, institutions and interest groups who are at present excluded from the decision-making process or have been marginalized in the development process.

I believe it is time for Papua New Guineans, especially the leaders of this nation, to become seriously focused on issues that impact on the nation's gainful development, political stability, and capacity to deliver social and economic services to the population at large.

Papua New Guinea has undergone numerous changes, public sector and market reforms, right-sizing, down-sizing, structural adjustments and institutional capacity-building programs over the last thirty years. But we are still in the trial and error mode. We are still conducting reforms; we have not hit the right chord yet.

All of these exercises have been carried out in the interests of cost efficiency, equitable distribution of national wealth and development opportunities, maximized social and economic benefits to the people, efficient delivery of goods and services, poverty alleviation, and the creation of a foreign-investor-friendly reputation, amongst other things.

I recently had the privilege of being given a comprehensive briefing by the National Economic and Fiscal Commission on the research analysis that organization has undertaken, on a province-by-province basis, of the distribution of public wealth, availability of road transport infrastructure, frequency of airline flights, availability of services such as electricity supply and banking facilities, and other indicators. The disparities in affluence, basic life-support services, and essential infrastructure between provinces are criminal.

It is all too easy to say that we live in an imperfect country, governed by imperfect governments since independence, and forever struggling to make ends meet under ever-changing economic, political and social conditions. If there are imperfections – and we can all point to numerous examples – then we must address them and create uniquely Papua New Guinean systems and structures to meet our nation's and our people's development needs. Those who are privileged to occupy political, public service, academic, or civic leadership positions cannot sit back and say that all is economically, socially and politically well in our nation.

Our multi-tiered system of delivery of public services and national development programs is

not responsive to our people's or our nation's development needs and aspirations. Services, development, and gainful wealth-generating opportunities have to be made more accessible to every man, woman and child of this country. Over 80 per cent of the national population are rural dwellers. The majority of Papua New Guineans live a subsistence existence in villages and hamlets within defined district and local-level council boundaries. They are not residents of urban centres.

Government services, development, life-improvement and wealth-generation opportunities through improved and affordable compulsory education, health services and other social and economic services, must therefore be brought to the people. However, efforts to do this run into a lack of administrative capacity and structures to manage government funds and use resources effectively for development projects, public investment programs, and the provision of essential social services to our people. We need an appropriate administrative infrastructure to stop the rot.

My response has been to initiate the act of parliament to establish district authorities in the provinces. The objective of the act is to establish Authorities to implement the principal administrative functions of the *Organic Law on Provincial Governments and Local-level Governments* as specified under the *Local-level Governments Administration Act, 1997*.

District authorities, when they are established, should be seen as vehicles, or enabling administrative structures, to ensure the wise use of public funds for social and economic development projects that will maximize the living standards of the people within defined district boundaries or open electorates.

It is envisaged that the administrative structure that comes with the establishment of district authorities in each open electorate will remove cumbersome provincial bureaucratic red-tape, political preferences and biases, and other systemic flaws that have made it impossible to attain efficient delivery of basic life support and development services.

The initiative to establish district authorities within the framework of the present system of provincial governments and local-level governments is intended to improve the delivery of goods and services, good governance, and accountable and transparent distribution of public wealth, and bring development opportunities and public investment programs directly to the people.

The underlying intentions of establishing District Authorities are to ensure that:

- government funding and development resources will reach and directly benefit populations residing within a defined district boundary;
- elected leaders of the people, including council presidents, the MPs in respective open electorates or districts, and representatives each of churches, women and chambers of commerce, together with the district administrator and district treasurer as *ex officio* members, will participate in determining priorities for the allocation of development funding, and overseeing management control and the distribution of resources so as to accelerate improvement of the standards of living of the people;
- an objective and result-driven administrative structure is developed for effective, equitable and efficient delivery of public services, government resources and development projects to populations living within the district or open electorate;
- district and local-level government decision makers, the local MP, and other stakeholders and development partners get the opportunity to directly participate in making policies and decisions that determine the development agenda of their district and LLG area.

The move towards setting up district treasuries compliments the district authorities concept, as it provides the vital financial services linkage.

The district authorities will be supported by structural units, similar to the joint district planning and budget priorities committees chaired by the open MPs, which will meet twice in each three calendar months.

## Author note

The Honourable Peter O'Neill, MP is the member for Ialibu-Pangia Open and leader of the opposition in the National Parliament of Papua New Guinea.

## Endnotes

- <sup>1</sup> This paper was presented to a seminar at the National Research Institute on 6 April 2006.





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INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

## **ALTERATION TO THE ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS**

THE Honourable Member for Ialibu Pangia, Peter O'Neill, proposes to alter the *Organic Law on Provincial Governments and Local-Level Governments*, and pursuant the Section 12(2) (Making of alterations to the Constitution and Organic Laws) of the Constitution, I, Jeffery Nape, Speaker of the National Parliament, hereby publish the proposed law:-

Draft of: 20/01/06

INDEPENDENT STATE OF PAPUA NEW GUINEA

## **PROPOSED LAW TO ALTER THE ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS**

The Organic Law on Provincial Governments and Local-Level Governments (Amendment No. ) Law

### **ARRANGEMENT OF CLAUSES**

1. Provincial Government and Provincial Legislature (Amendment of Section 10).
2. The Deputy Provincial Governor (Amendment of Section 18).
3. Provincial and Local-level Administrative System (Amendment of Section 72).
4. Functions of the Provincial and District Administrator (Amendment of Section 74).

Draft of: 20/01/06

INDEPENDENT STATE OF PAPUA NEW GUINEA

## **ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS (AMENDMENT LAW No. ) LAW**

being

A law to alter the *Organic Law on Provincial Governments and Local-Level Governments* and for related purposes, MADE by the National Parliament

**Proposed Law on the Provincial Governments and Local-Level Governments (Amendment Law No. ) Law:- *continued*****1. PROVINCIAL GOVERNMENT AND PROVINCIAL LEGISLATURE (AMENDMENT OF SECTION 10).**

Section 10 of the Organic Law is amended in Subsection 3 by repealing Paragraphs (b) and (c).

**2. THE DEPUTY PROVINCIAL GOVERNOR (AMENDMENT OF SECTION 18).**

Section 18 of the Organic Law is amended:-

(a) in Subsection (2) by repealing “Section 10(3)(b) and (c) and replacing them with the following:-

“Section 10(3)(a)”; and

(b) by repealing Subsections (3) and (4) and replacing them with the following:-

“(3) If the Deputy Provincial Governor:-

(a) is dismissed from the office in accordance with Section 20; or

(b) is appointed:-

(i) a Minister or a Vice-minister in the National Government; or

(ii) the Speaker or Deputy-Speaker of the Parliament; or

(iii) the Leader or Deputy Leader of the Opposition in the Parliament; or

(iv) the Chairman of the Permanent Parliamentary Public Works Committee; or

(v) the Chairman of the Permanent Parliamentary Public Accounts Committee; or

(vi) to an office which has powers and privileges equivalent to a those of a Minister; or

"(c) resigns his office by written notice to the Minister responsible for the provisional government and local-level government matters; or, and

"(d) is, in the opinion of two medical practitioners appointed for the purpose by the National Authority responsible for the registration or licensing of medical practitioners, unfit, by reasons of physical or mental incapacity, to carry out the duties of his office; or

"(e) is otherwise disqualified by law or ceases to be a member of the Provincial Assembly or of the National Parliament,

he shall be deemed to have vacated the office of the Deputy Provincial Governor.

"(4) If the Deputy Provincial Governor vacates his office in accordance with Subsection (3), the Provincial Assembly shall elect the Deputy Provincial Governor in accordance with Subsection (2).

"(5) Where the Deputy Provincial Governor vacates his office in accordance with Subsection (3)(a), (b), (c) or (d), he shall continue to hold office as a member of the Assembly, and is eligible to be re-elected as the Deputy Provincial Governor”.

**3. PROVINCIAL AND LOCAL-LEVEL ADMINISTRATIVE SYSTEM (AMENDMENT OF SECTION 72).**

Section 72 of the Organic Law is amended in Subsection (2)(a) by adding the following new subparagraph:-

"(iv) District Authorities; and”.

**4. FUNCTIONS OF THE PROVINCIAL AND DISTRICT ADMINISTRATOR (AMENDMENT OF SECTION 74)**

Section 74 of the Organic Law is amended in Subsection (3) as follows:-

(a) By deleting the termination mark (full stop) in Paragraph (b) and adding the following:-

“;and;; and

(b) By inserting the following new paragraph:-

"(c) “policy direction, functions and directions as from time to time issued by the Authority or as directed to him by the Authority.”.

INDEPENDENT STATE OF PAPUA NEW GUINEA

A BILL

for

AN ACT

entitled

*District Authority Act 2005*

**ARRANGEMENT OF CLAUSES**

**PART I. –PRELIMINARY**

1. Compliance with Constitutional Requirements.
2. Purpose and Object of the Act and Authorities.
3. Application.
4. Interpretation.

**PART II. –DISTRICT AUTHORITY**

*Division 1. –Establishment of Authorities*

5. Establishment, etc. of the Authority.
6. Functions of an Authority.
7. Powers on an Authority.
8. Head Office.

*Division 2. –Composition of the Authorities*

9. Composition on the Authority.
10. Filling of vacancies.
11. Chairman of the Authority.
12. Deputy Chairman.

**DISTRICT AUTHORITY**

13. Leave of Absence.
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16. Vacancy not to affect powers and functions.
17. Meeting of an Authority
18. Disclosure of interest.
19. Committees of an Authority.
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21. Delegation.
22. Secretariat and support staff.
23. General Obligations.
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28. Suspension.
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31. Agency functions.
32. Protection from personal liability.
33. Confidentiality.
34. Regulations.

Draft of 07/12/05

## INDEPENDENT STATE OF PAPUA NEW GUINEA

A BILL

for

AN ACT

*District Authorities Act 2005*

being

An Act to establish District Authorities for Districts and to define their powers and functions, and for related purposes, MADE by the National Parliament to come into operation in accordance with a notice published in the *National Gazette* by the Head of State, acting on the advice of the Minister.

## PART I. –PRELIMINARY

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS**

- (1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subsection III.3.C (qualified rights) of the Constitution, namely:-
  - (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the Constitution; and
  - (b) the right to privacy conferred by Section 49 of the Constitution,is a law that is made for the purpose of giving effect the public interest in public welfare.
- (2) For the purposes of Section 41 of the *Organic Law on Provincial Government*, it is hereby declared that this law relates to a matter of national interest.

**2. PURPOSE AND OBJECT OF THE ACT AND AUTHORITIES**

The objects and the purposes of the Act and the Authorities are to implement the principal administrative functions as specified under Section 45 (Principle administrative functions of the Local-level Governments) of the Organic Law on the Provincial Governments and Local-level Governments of the Organic Law on the Provincial Governments and Local-level Governments to achieve the following:-

- (a) to bring governments funding and resources directly to the people within the Districts;
- (b) to enable elected leaders of the people, to determine priorities for allocation of funding and to oversee management control and distribution of resources so as to accelerate improvement of the standards to living of the people;
- (c) to ensure that resources are equitably distributed in the Districts;
- (d) to encourage co-operation among both the government and the non-governmental agencies or persons engaging in development activities in the Districts.

**3. APPLICATION**

- (1) Subject to the Organic Law, this Act applies to all Districts.
- (2) Notwithstanding any other laws, all laws, acts, matters or things that are inconsistent with provisions of this Act are, to the extent of inconsistency, invalid and effective and the provisions of this Act shall prevail.

**District Authority: -continued****4. INTERPRETATION**

In this Act, unless the contrary intention appears:-

“Authority” means a District Authority established under Section 5 of this Act;

“District” in relations to an Authority, means the area of Local-level Governments in and for which the Authority is established;

“Member” means the Member of the National Parliament representing the electorate in the province which the Authority is established;

“Organic law” means the Organic Law on the Provincial Governments and Local-level Governments;

“this Act” includes the Regulation.

**PART II. -DISTRICT AUTHORITIES***Division 1 –Establishment of Authorities***5. ESTABLISHMENT, ETC., OF THE AUTHORITY**

(1) A District Authority for each District in hereby established.

(2) The Authority:-

- (a) is a body corporate with perpetual succession; and
- (b) shall have a common seal; and
- (c) may acquire, hold and dispose of property; and
- (d) may sue and be sued in its corporate name.

(3) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume that it was duly affixed.

**6. FUNCTIONS OF AN AUTHORITY**

Subject to this Act and the Organic Law, the functions of an Authority are:

- (a) To assist in the proper and efficient administration and management of the District; and
- (b) to assist in the proper and efficient administration of all government services including health, education, law and order, infrastructure maintenance and extension services; and
- (c) in consultation with the District Services of the Provincial and Local-level Government Administrative Services to formulate policies in relation to the powers of the Local-level Governments under Section 44 of the Organic Law; and
- (d) in consultation with the District Administrator, to assist the Joint District Planning and Budget Priorities Committee to perform its functions under Section 33A of the Organic Law; and
- (e) make provisions for appointment of personnel to provide support services for Local-level Governments.

**7. POWERS ON AN AUTHORITY**

(1) Subject to this Act, an Authority has power to do all things necessary or convenient to be done for or in connexion with the achievements of its objects and the performance of its functions, and in principle achieving or promoting any of the subject matters specified in Section 44 (*Law Making powers on the Local-level Governments*) of the Organic Law.

(2) Without limiting the generality of Subsection (1), the power of an Authority under that subsection includes power to:-

- (a) take such action as it deems necessary or desirable for the maintenance of public assets for the benefit of the people of the District; and
- (b) carry out any such works for the benefit of the people in the District; and
- (c) provide or co-operate with any department of the national government and a provincial government or other body in providing any public or social service to the people in the District; and
- (d) subject to this Act and Organic Law, do all such things as seem to it necessary or desirable for performing its powers and functions under this Act.

**District Authority: -continued****8 HEAD OFFICE**

An Authority shall have an office which, for the purposes of this Act and the Authority shall be referred to as the 'Authority Office' and:-

- (a) in which all the records and documents of the Authority shall be kept; and
- (b) to which all correspondence shall be addressed; and
- (c) subject to any direction of the Authority, in which all the meetings of the Authority shall be held.

*Division 2 –Membership of Authorities***9 COMPOSITION OF THE AUTHORITY**

(1) Subject to the Organic Law, the members of the Authority shall consist of:-

- (a) the Member of Parliament representing the open electorate, *ex officio*; and
- (b) the Presidents of the Rural Local-level Governments, *ex officio*; and
- (c) the District Administrator, *ex officio*; and
- (d) the District Treasurer, *ex officio*; and
- (e) one person representing the Churches nominated by the Council of Churches in PNG; and
- (f) one person representing the PNG National Council of Women, nominated by the Council; and
- (g) one person representing the Papua New Guinea Chamber of Commerce nominated by that Chamber

(2) The members of the Authority referred to in Subsection (1)(e), (f) and (g):-

- (a) shall be appointed in accordance with the *Regulatory Statutory Authorities Act 2004*; and
- (b) shall be appointed for a term not exceeding three years; and
- (c) shall hold office on such terms and conditions as are determined under the *Boards (Fees and Allowances) Act (Chapter 299)*; and
- (d) are eligible for re-appointment; and
- (e) shall be ordinary resident in the District.

**10 FILLING OF VACANCIES**

Where there is a vacancy in the membership of the Authority (other than a vacancy in the offices referred to in Section 9(1)(a), (b), (c) and (d)):-

- (a) an appointment to fill the vacancy shall, subject the Paragraphs (b) and (c) of this section, be made as soon as practicable and in any case not later than three months after the date on which the vacancy occurs; and
- (b) the appointment shall be made in accordance with Section 9 and the person so appointed shall hold office, subject to the Act, for the balance of his predecessor's term of office; and
- (c) where the vacancy occurs within three months before the expiration of the term of office the vacancy shall remain unfilled for the remainder of the term.

**11 CHAIRMAN OF THE AUTHORITY**

- (1) There shall be a Chairman of an Authority.
- (2) The Member of the National Parliament representing the open electorate shall be the Chairman of the Authority.

**12 DEPUTY CHAIRMAN**

- (1) The members of the Authority shall elect one of the members referred to in Section 9(b) to be the Deputy Chairman of the Authority.
- (2) Subject to this Act, except by express authority in writing by the Chairman, the Deputy Chairman may act as Chairman only in the absence of the Chairman or if the Chairman is unable to perform the duties of his office.

**District Authority: -continued****13 LEAVE OF ABSENCE**

The Authority may grant leave of absence to a member of the Authority on such terms and conditions as the Minister determines.

**14 RESIGNATION**

A member of an Authority may resign his office by written notice to the Authority.

**15 VACATION OF OFFICE**

(1) A vacancy occurs when a member, other than the members specified under Section 9(1)(a), (b), (c) and (d) of the Authority:-

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office under Section 14; or
- (c) is without valid reason absent from three consecutive meetings of the Authority; or
- (d) fails to comply with lawful directions of the Authority given under this Act; or
- (e) becomes bankrupt, or applies to take the benefit of any law for relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of remuneration for their benefit; or,
- (f) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer and as a result is sentenced to imprisonment,

the Minister shall terminate his appointment.

(2) The Minister may at any time by written notice advise a member, other than the members specified under Section 9(1)(a), (b), (c) and (d), that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(3) Within 14 days of the receipt of a notice under Subsection (2), the member may reply in writing to the Minister who shall consider the reply, and, where appropriate, terminate the appointment.

(4) Where the member referred to in Subsection (2) does not reply in accordance with Subsection (3), his appointment is terminated.

**16 VACANCY NOT TO AFFECT POWERS AND FUNCTIONS**

The exercise of a power or the performance of a function of an Authority is not invalidated by reason only of a vacancy in the membership in the Authority.

**17 MEETINGS OF AN AUTHORITY**

(1) An Authority shall meet at such times and places as the Chairman determines, or, in his absence the Deputy Chairman determines, but shall:-

- (a) meet at least twice in each period of 3 calendar months; and
- (b) not meet at the same time as the meetings of the National Parliament, the Provincial Assembly or a Local-level Government

(2) Notwithstanding that the time and place have been determined under Subsection (1), a meeting of the Authority shall be called:-

- (a) By the Chairman or in the absence of the Chairman by the Deputy Chairman acting in his place, or
- (b) By the members of the Authority, being a number not less than three, in writing, so request.

(3) Notice of a meeting shall be given personally or by post, by the Chairman or, at his direction, the Executive Officer to each member at least seven days before the meeting is to be held.

(4) Where a direction or request is received for a meeting under Subsection (2), the Chairman or the Deputy Chairman acting in his place shall call the meeting within 14 days of the receipt of the direction or request.

(5) At a meeting of the Authority:-

- (a) three members, of whom the Chairman or the Deputy Chairman is one, are a quorum; and
- (b) all matters before the meeting shall be determined in accordance with a majority of the votes; and
- (c) the Chairman has a deliberative and, in the event of an equality of votes, a casting vote.

(6) Subject to this Act, the Authority may otherwise determine its own procedures.

**District Authority: -continued****18 DISCLOSURE OF INTERESTS**

- (1) A member who has a direct interest in a matter being considered or about to be considered by an Authority shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of the interest at a meeting of the Authority.
- (2) A disclosure under Subsection (1) shall be recorded in the minutes of the meeting of the Authority and, unless the Authority determines otherwise, the member shall not:-
  - (a) be present during an deliberation of the Authority with respect the that matter; or
  - (b) take part in any decision of the Authority with respect to that matter.

**19 COMMITTEES OF AN AUTHORITY**

- (1) An Authority may, from time to time, establish Committees of the Authority, to advise the Authority on such matter as the Authority considers necessary.
- (2) In establishing a Committee under Subsection (1), the Authority may:-
  - (a) appoint such persons, including members, as it considers necessary; and
  - (b) specify the functions, powers and procedures of the Committee.

**20 REPORTS**

- (1) An Authority shall furnish the Minister responsible for Local-level Governments a report on the progress and performance of the Authority in relation to its functions before 31 March each year and the Minister shall table such report at the first sitting of the National Parliament each year.
- (2) The Authority shall also furnish to the Ministers such other reports as the Minister may require at such intervals as the Minister may determine.

**21 DELEGATION**

An Authority may delegate, by instrument under its seal, to any person or body of its powers and functions under than Act (except this power of delegation).

*Division 3. –Secretariat, etc.*

**22 SECRETARIAT AND SUPPORT STAFF**

- (1) The District Administrator shall:-
  - (a) be the Executive Officer of an Authority; and
  - (b) ensure adequate services and support staff is accorded to the Authority
- (2) A person, required under Subsection (1)(b) to provide the services of the Authority, who is an officer of the National Public Services:-
  - (a) shall be deemed to have been seconded to the support staff of the Authority; and
  - (b) shall, during his period of deemed secondment, be paid his salary and other entitlements as an officer or employee of the State, by the government department or governmental body which, immediately prior to the offer's deemed secondment, the offer was employed with.
- (3) The service on the support staff of the Authority of an officer shall be counted as services in the National Public Services for the purposes of determining his rights(if any) in respect of:-
  - (a) leave of absence on the grounds of illness; and
  - (b) furlough or pay in lieu of furlough (including pay to dependants on the death of the officer).

**23 GENERAL OBLIGATIONS**

All government departments, public authorities, bodies, instrumentalities of the State, and their officers and employees are required to cooperate and assist an Authority in carrying out its functions under this Act.

**24 FAILURE TO CO-OPERATE WITH THE AUTHORITY TO AMOUNT TO MISCONDUCT**

- (1) Where a public authority referred to in Section 23 fails to co-operate or assist an Authority in the performance by the Authority of its functions under this Act:-
  - (a) in the case of a public authority other than a Department – the person having deemed to have failed to co-operate is considered to have been guilty of misconduct or misbehaviour and is liable to be dismissed or removed from office; and

**District Authority: -continued**

- (b) in the case of a Department – the Department Head and every officer concerned is guilty of negligence in the discharge of his duties,

under the *Public Services (Management) Act 1986* or any other appropriate law.

- (2) For the purposes of Subsection (1), a government department, a public authority or public body or a person employed by a government department, public authority or public body fails to co-operate with an Authority if it or he fails, within a reasonable time:-

- (a) to comply with a notice issued by the Authority; or  
 (b) to comply with a direction by the Authority; or  
 (c) to answer correspondence from the Authority; or  
 (d) otherwise, to assist the Authority in the performance of its functions to the extent that such assistance is within the functions and powers of the public authority or person.

**PART III. -FINANCE****25 SOURCES OF FINANCE**

- (1) The sources of finance for an Authority shall include:-

- (a) grants and aids from the National Government, the Provincial Governments and the Local-level Governments within the District; and  
 (b) contributions or donations from private persons and bodies; and  
 (c) fees for work carried out by the Authority on a contractual or agency basis for a governments or a private person or body.

**26 APPLICATION OF PUBLIC FINANCES (MANAGEMENT) ACT 1986**

Part VIII of the *Public Finances (Management) Act 1986* applies to and in relation to an Authority.

**27 APPLICATION OF THE AUDIT ACT 1989**

The accounts of an Authority shall be audited in accordance with Part III of the *Audit Act 1989*.

**PART IV. -SUSPENSION****28 SUSPENSION**

- (1) Where in the opinion of the Minister:-

- (a) the business of the Authority is:-  
 (i) being negligently, improperly, inefficiently, fraudulently or badly conducted; or  
 (ii) being so conducted in a manner that is not in the best interest or welfare of the District or of people in the District; or  
 (b) An Authority is not properly carrying out it's duties imposed under this Act or any other law,  
 the Minister may, by written notice addressed to the Chairman of the Authority, suspend the Authority, subject the Subsection (2), for a period of two months within which an investigation shall instituted and completed an remedial action taken to correct the cause of the suspension.

- (2) Unless a suspension under Subsection (1) is previously confirmed, varied or revoked by the Minister, it lapses at the end of one month.

**29 EFFECT OF SUSPENSION**

The suspension of an Authority under Section 28 does not affect:-

- (a) any right, privilege, obligation or liability, acquired, accrued or incurred by the Authority, or  
 (b) any investigation, legal proceeding or remedy in respect of a suspended power or function; or  
 (c) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability,  
 and any such right, privilege, obligation or liability may, subject to this Act, be carried on or enforced as if the suspension had not taken place.

**District Authority: -continued****30 APPOINTMENT OF MANAGER**

- (1) Where an Authority is suspended under Section 28, the Minister shall appoint a person to be the Manager for the Authority.
- (2) Subject to any direction of the Minister, a Manager;-
  - (a) Has and may exercise on behalf of the Authority, such of the suspended powers and functions of the Authority as are specified by the Minister in the instrument; and,
  - (b) Has such other powers, functions, duties and responsibilities as are prescribed
- (3) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of appointment of the Manager are as determined by the Minister.

**PART V. –MISCELLANEOUS****31 AGENCY FUNCTIONS**

An Authority may perform duties or responsibilities on behalf of the National Government, Provincial Government, Local-level Government, or any other public body or instrumentality, as an agent or instrumentality of the National Government, Provincial Government, Local-level Government, the public body or instrumentality, as the case may be, and on such terms and conditions as are agreed upon.

**32 PROTECTION FROM PERSONAL LIABILITY**

The Chairman, Deputy Chairman or a member of the Authority, is not personally liable for any act or default of himself or the Authority or for the purposes of this Act

**33 CONFIDENTIALITY**

- (1) The Authority shall take all reasonable steps to protect from unauthorized use or disclosure, information given to it in confidence in connection with the performance of its functions or the exercise of its powers under this Act
- (2) For the purposes of Subsection (1), the disclosure of information as required and permitted by any law of court of competent jurisdiction shall be considered authorized use and disclosure of the information.
- (3) For the purposes of Subsection (1), the disclosure of information by a person for the purposes of performing that person's functions as:-
  - (c) person providing secretarial services to the Authority; or
  - (d) member of the support staff of the Authority; or
  - (e) member of the Authorityshall be considered authorized use disclosure of the information

**34 REGULATIONS**

The Head of State may, acting on advice, make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be made or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## PAPER TWO

### IMPROVED DECENTRALIZATION: THE WORK OF THE PUBLIC SECTOR REFORM ADVISORY GROUP<sup>1</sup>

**GRAHAM TUCK**

The Public Sector Reform Advisory Group (PSRAG) was established with twelve appointed members by the previous prime minister, Sir Mekere Morauta, to give independent advice on any public sector reform matter that it thinks proper. The present prime minister has seen fit to have PSRAG continue with this work.

PSRAG's first report, issued in October 2002, contained twelve priority initiatives, most of which were generally well received. However, one of those initiatives, number 9, was ignored. Initiative 9 was for direct funding to local-level governments (LLGs) in line with the intent of the *Organic Law on Provincial Governments and Local-level Governments* (OLPGLLG), and for a review of the Department of Provincial and Local Government Affairs (DPLGA) to identify its responsibilities and resource requirements to fulfill those responsibilities. The main aim was strengthening the operations of DPLGA in relation to LLGs.

The lack of action on initiative 9 has spurred PSRAG to take a broader view of difficulties concerning decentralization, resulting in its second report, titled *Improved Decentralisation*. My comments are based on this second report, and generally restricted to the contents of chapters 1 and 2, although some leeway is allowed for drifting into brief references to recommendations in other chapters and related matters. Sir Barry Holloway is deputy chair of the PSRAG, and in that capacity will discuss in future National Research Institute (NRI) seminars some other aspects of the report, including proposed reforms to the provincial government and local-level government system and strengthening of communities.

NRI printed 100 copies of the PSRAG's draft report, and these have been distributed as part of PSRAG's consultation process. This is a draft version only, and PSRAG has agreed that five of the 29 recommendations be amended to reflect latest ideas, and parts of text also

need revision. Irrespective of those changes, it is surprising how little substantial criticism has surfaced during the four months since its distribution, concerning the overall thrust of the report or its details.

Chapter 1, 'Principles and introductory outline of the report', commences by citing initiative 9 in the first report, then deals with the need for reform and related matters, and describes six principles identified by PSRAG for testing decentralization issues. For convenience, the various headings are retained.

### Earlier recommendations

The national government adopted the first report of the PSRAG, which was issued in October 2002. Action has been taken on most recommendations, but not Priority Initiative number 9:

Restoring Capacity to Governments by:

- giving priority to the direct funding of Local-level Governments in accordance with the intent and spirit of the Organic Law on Provincial Governments and Local-level Governments (OLPGLLG); and
- enabling the Public Sector Reform Management Unit (PSRMU) to conduct an immediate review of the Department of Provincial and Local Government Affairs (DPLGA) with regard to budgeting, and staff capacity for proactive service operations through Local-level Governments, to become effective next year.

The PSRAG based this recommendation on:

- support for direct assistance by the national government to LLGs, as provided for by the OLPGLLG;
- support for the OLPGLLG, without major legislative amendments; and
- central agencies realigning activities to achieve these objectives.

This soft approach to kick-start community development did not eventuate. Lack of action has left LLGs largely irrelevant.

### Pressures for reform

Since then, awareness of a need to improve the system of decentralization has grown. Responsible leaders agree that the present three-level

legislative system is expensive and inefficient. It does not satisfy the basic requirements of most citizens, and has not produced enhanced economic development. It has contributed to the nation's declining human development.

The prime minister summarized the national perception at the National Development Forum in 2004, at which he stated that:

- a review of decentralisation is overdue;
- the present system stifles community initiative and empowerment;
- the national government must support communities to become its partners;
- Papua New Guinea must avoid an economy of 'haves' and 'have nots';
- budget strategies should inject cash into communities to stimulate self-reliance and productivity;
- a more appropriate model of decentralisation is required to achieve social harmony, better living standards, and greater wealth; and
- to attain these objectives, Papua New Guinea must incorporate the Fifth National Goal and Directive Principle, which is 'to achieve development primarily through the use of Papua New Guinean forms of social, political, and economic organisations'.

## Government structures

The prime minister's comments were founded on the concern that government structures are too complex. Papua New Guinea now has three levels of government:

- a parliament comprising representatives of 20 provincial electorates and 89 open electorates;
- 18 provincial governments, plus the National Capital District Commission, mostly comprising *ex-officio* members; and
- some 299 local-level governments in 18 provinces, plus the Motu Koitabu Council and three urban local-level governments in the National Capital District (NCD).

The nation has three-levels of administration:

- national departments and agencies, some with direct responsibilities at the provincial level;
- 18 provincial administrations, and the NCD administration; and

- 83 district administrations under the 18 provincial administrations.

In addition, there is:

- the Autonomous Bougainville Government and its LLGs, under its own constitution; and
- the Bougainville Provincial Administration and its district administrations, under special arrangements.

## Recent actions by the national government

The national government has:

- instructed a review of the OLPGLLG; and
- funded the review by the National Economic and Fiscal Commission (NEFC) of intergovernmental finance, which has required:
  - ❖ identifying current actual functions of each level of government;
  - ❖ determining the cost of delivering services in each district and province; and
  - ❖ quantifying internal revenue generated at the provincial level.

The Commission's reviews are intimately connected to the operations and finances of provincial governments and LLGs. The implementation of recommendations requires amendment to the OLPGLLG.

The Medium Term Development Strategy embodies the Overarching Development Strategy 2005-2010 defined as:

export-driven economic growth, rural development, and poverty reduction, including through good governance and the promotion of agriculture, forestry, and fisheries and tourism, on an ecologically sustainable basis. The strategy will be realised by empowering Papua New Guineans, especially those in rural areas, to mobilise their own resources for higher living standards.

The key to this strategy is empowering people to mobilise their own resources as a catalyst to development.

## Six principles concerning decentralization

In light of these considerations, the PSRAG identified six principles to test decentralization issues. The six principles are:

- the Fifth National Goal;
- national government support;
- maintaining integrity of office;
- holding one office at a time;
- eliminating inefficiencies; and
- change only when justified.

### The Fifth National Goal

Decentralization matters should generally conform with, and certainly not derogate from, the Fifth National Goal of the *Constitution of the Independent State of Papua New Guinea*.

The Fifth National Goal states:

#### PAPUA NEW GUINEAN WAYS

We declare our fifth goal to be to achieve development primarily through the use of Papua New Guinean forms of social, political, and economic organisation.

#### WE ACCORDINGLY CALL FOR:

- (1) a fundamental reorientation of our attitudes and the institutions of government, commerce, education, and religion towards Papua New Guinean forms of participation, consultation, and consensus, and a continuous renewal of the responsiveness of these institutions to the needs and attitudes of the people; and
- (2) particular emphasis in our economic development to be placed on small-scale artisan service, and business activity; and
- (3) recognition that the cultural, commercial, and ethnic diversity of our people is a positive strength, and for the fostering of a respect for, and appreciation of, traditional ways of life and culture, including languages, in all their richness and variety, as well as for a willingness to apply these ways dynamically and creatively for the tasks of development; and
- (4) traditional villages and communities to remain as viable units of Papua New Guinean society, and for active steps to be taken to improve their cultural, social, economic, and ethical quality.

This goal is pertinent to decentralization, because any decentralization that deviates from direct interaction with most people is not appropriate.

The Fifth National Goal is not resistant to change. All societies change. Development by use of Papua New Guinean forms of social, political, and economic organization means integration of development by the people and for the people, as close to their terms and interests as possible.

The Constitution at s.25 [‘Implementation of the National Goals and Directive Principles’] states:

- (2) .... it is the duty of all governmental bodies to apply and give effect to them (National Goals and Directive Principles) as far as it lies within their respective powers.
- (3) Where any law, or any power conferred by any law (whether the power be of a legislative, judicial, executive, administrative, or other kind), can reasonably be understood, applied, exercised, or enforced, without failing to give effect to the intention of the Parliament or to this Constitution, in such a way as to give effect to the National Goals and Directive Principles, or at least not to derogate them, it is to be understood, applied, or exercised, and shall be enforced, in that way.

### National government support

Decentralization must be structured so that assistance, advice, and resources from the national government go direct to the level of government which interacts with communities. Papua New Guinea is a unitary state. More provincial autonomy is not automatically more progressive decentralization.

The Parliamentary Bi-Partisan Select Committee on Provincial Government had a clear view of this, as well as the consequent need of direct national government support for that level of government where participation by citizens is best achieved. Instead of recommending the abandonment of national responsibilities to lower levels of government, the Committee recommended a unified national public service to serve and monitor provincial governments and local-level governments, while grants and other resources from the national government, plus devolved taxing powers, form the basis for sub-national revenues.

The Committee saw the need for increased national assistance for LLGs. It proposed:

a Commission for Urban and Rural Councils. The Commission shall comprise key advisers in law, finances and budgets, economics, engineering, and so on. The Commission shall also manage, supervise, control, provide training, and supply, all auxiliary public service for all councils throughout the country. Under this Commission, Village Services shall be construed as the most important unit, playing the crucial role in the provision of capacity, training, monitoring, and implementation of policies. Key areas of the Village Service Program shall include council staff, peace officers, village court magistrates and clerks, land mediators, village census recorders, and extension officers in various resource sectors vital to village progress.

Little of this proposal translated into the OLPGLLG. The few provisions are not used.

The PSRAG takes up elements of this proposal by the Committee, including establishment of a commission for local government as now stated in Recommendation 27.

#### **Maintaining integrity of office**

Integrity of office must remain under national control. Effective decentralization does not devolve more responsibilities than can be handled at any level. Papua New Guinea is best served by retaining national control of offices that require great integrity. For this reason, offices in the judicial system, police, Ombudsman Commission, Office of the Auditor-General, and so on, must be under direct national control.

The corollary is that the greater the devolution of an office to lower control, the more parochial pressures may corrupt the integrity of that office. For example, a provincial judicial system can be compromised by local pressure when it has no extra-provincial authority to support, monitor, guide, or control its activities.

All occupants of political office (and others) answer to the Leadership Code concerning integrity of office. Similarly, holders of all other public offices must ultimately answer to the national government for their performance.

#### **Holding one office at a time**

The Constitution provides at s.254(b) that in principle 'no person shall hold more than one public office at the same time except where one

such office is so much associated with, or related to, another, or where the holding of one such office is so relevant to the holding of another, as to make it desirable that the offices be held jointly'.

Administrative offices appear to comply with this, but the legislation now provides for a complexity of interrelated political offices that dissipates focus of office holders and may possibly offend against the intention of s.254(b). This is examined under the heading 'Complexities of Offices' and leads to Recommendation 1 concerning a complete break between membership of lower level government and that of parliament.

The implementation of Recommendation 1 will fulfill the requirement of the principle that one office should be held at a time that PSRAG considers fundamental to effective decentralization.

#### **Eliminating inefficiencies**

Where possible, changes should reduce inefficiencies and barriers.

#### **Change only when justified**

Change should only be made when substantial benefits accrue. Substantial changes in the past were ill conceived, and few benefits resulted. There has been a trend not to sustain and fine-tune reasonably successful models, but to abandon them for untried models.

Chapter 2 is titled 'Learning from the Past'. It examines decentralization from 1949 to the present, and indicates matters that appear to be successful and not successful that are taken up in subsequent chapters and lead to formation of some of the report's 29 recommendations. For convenience, headings are again retained.

#### **Introduction to chapter 2**

National development and poverty alleviation depend on improved sub-national service delivery. Achieving this objective requires overcoming economic and social disparities between regions and urban and rural areas, and reforming the fiscal, political, and administrative framework in which sub-national governments operate.

Papua New Guinea's history of decentralization reveals that, when properly supported, local governments met many needs, but they were replaced. By contrast, the two versions of decentralization since 1975 which focused on provincial governments, have achieved little of value. Neither system of provincial government has interacted meaningfully with most people,

and neither system has generated substantial improvements to services. Both systems were associated with declining social indicators. The review suggests that more emphasis needs to be placed on local government.

## Decentralization, 1949-1976

Local government:

- introduced democratic elections to most Papua New Guineans;
- promoted a structured system of planning and budgeting, and
- promoted community self-help through a head tax and community work.

During its greatest success, from 1965 to 1975, local government required direct advice, management assistance, and financial aid from the administration. A range of generally tied grants and subsidies was available to local governments. The most significant was the Rural Development Program. This funding was tied to:

- approved projects selected by councils, based on perceived community needs, and
- local initiatives to collect and allocate local resources to each project.

This was a time of innovation in community empowerment, as seen in Kainantu Council's scheme to establish *eria komuniti* as a form of ward committee, with the power to raise money for projects, by public subscription, receive money from the council, and operate bank accounts (*Local Government Act 1963* [ss.39-55]). This innovation was lost under the subsequent provincial government system.

## Decentralization, 1976-1995

Before 1975, administration and government comprised two levels — the House of Assembly and national administration, and local government councils and the administrations they employed. The *Organic Law on Provincial Government*, which came into effect in 1976, introduced a three-level system of government — the national government, provincial governments, and local governments. Provincial governments were given authority over local governments.

With no direct national government support, most local governments became ineffective. Provincial governments assumed the more interesting and lucrative local government responsibilities, and absorbed the grants and subsidies. Few benefits trickled down from

provincial headquarters to districts and villages.

By the late 1980s, services were deteriorating and the provincial system was failing most people. This resulted in the establishment of the Parliamentary Bi-Partisan Select Committee on Provincial Government. The Committee toured the nation and recommended improvements to the system of provincial governments. Many recommendations proposed ways to reinvigorate councils and community governments, and included direct national government intervention.

Between 1993 and 1995, another intervention illustrated the national government's capacity for making significant changes at community level. Regardless of provincial government control of local government matters, the national government directly intervened in local government and community matters. The Village Services Scheme (VSS) was initially stated as having at least K50 per head available for local government and community reinvigoration. A national budget allocation of some K35 million saw a dramatic expansion of the VSS in 1994. Village court officials and land mediators received a top-up allowance, village recorders and *tokples* teachers were recruited, trained, and equipped, and councils and community governments were provided with direct grants for administration. These moves sparked immediate interest within communities and reactivated councils and community governments.

However, the introduction and operation of the OLPGLLG in mid 1995 saw these 1993-1995 developments overtaken by new policies. In mid 1995, statements were made that the OLPGLLG continued the VSS. However, although the OLPGLLG [s.93(1)(b)] refers to local-level government and village services grants, most initiatives of the VSS were abandoned.

## Decentralisation, 1995 to the present

The OLPGLLG, which applied to 18 provinces from mid 1995, and to Bougainville from 1999, purported to encapsulate recommendations of the Parliamentary Bi-Partisan Select Committee on Provincial Government. The Preamble to the OLPGLLG states that the system of provincial governments and LLGs is established for purposes of:

- (i) maintaining our identity as a sovereign united nation; and
- (ii) promoting equal opportunity and popular participation in government, at all levels; and

- (iii) providing especially the basic human needs for water, health, education, transportation, communication, accommodation, and social order, through economic self-reliance; and
- (iv) promoting responsible citizenship, through self-management, control, and accountability for one's actions.

These objectives are in accord with the Fifth National Goal.

The OLPGLLG contains conflicting provisions. It:

- (a) espouses 'responsible citizenship through self-management, control, and accountability for one's actions', but generally does not provide for this to be achieved;
- (b) provides for direct grants formulated on a base amount of K20 per head, despite the national government's inability, or reluctance, to pay the guaranteed amounts;
- (c) provides for the Salaries and Remuneration Commission to determine councillors' allowances, but does not clarify the funding source for these entitlements;
- (d) fails to provide for the scope of internal revenue, earlier established by the *Local Government Act 1963*; and
- (e) reduces the autonomy of LLGs (and provincial governments) by eliminating their right to employ staff according to their needs, or to operate and maintain their own accounts.

Key features of the reform are the relocation of LLGs under national government control, and the national government's direct allocation of grants to LLGs.

## Complexity of offices

The move has been to more complex systems, which are less able to operate effectively. The multiple political offices that are linked to those who hold the substantive offices of ward councillor or seats in parliament representing provincial electorates or open electorates, illustrate this.

Under the *Local-level Governments Administration Act 1997*, a ward councillor is:

- automatically chairperson of the ward development committee [s.27(a)];
- eligible for appointment to committees of the LLG [s.25(1)(b)];

- eligible for appointment as deputy head of the LLG [s.13(2)]; and
- eligible for election as head of the LLG [s.12(1)(b)].

Under the OLPGLLG, if the ward councillor is elected as head of the LLG, he or she is, in turn:

- automatically a member of the JDPBPC [s.33A(2)(c)];
- automatically a member of the provincial assembly [ss.10(3)(b), 10(3)(c)];
- eligible for appointment as deputy provincial governor [s.18(2)];
- automatically a member of the provincial executive council, if appointed deputy governor [s.23(2)(a)];
- eligible for appointment as chairperson of a permanent committee of provincial executive council, which, in turn means membership of the provincial executive council [s.23(2)(b)];
- eligible for appointment to committees of the provincial assembly [s.16A(2)]; and
- eligible for appointment as chairperson of the JPPBPC, if a member of the provincial executive council [s.25(2)(a)].

Under the OLPGLLG, a member of parliament (MP), who represents a provincial electorate is:

- automatically a member of every JDPBPC in the province [s.33A(2)(b)];
- automatically provincial governor [s.17(2)];
- automatically chairperson of the provincial executive council [s.23(3)]; and
- eligible for appointment to permanent parliamentary committees and sessional and select committees (see Constitution ss.118(4), 121, 123), and to be chairperson or deputy chairperson of such committees (see Constitution s.119(2)).

Under the OLPGLLG, each MP representing an open electorate is:

- automatically chairperson of the JDPBPC [s.33A(2)(a)];
- automatically a member of the provincial assembly [s.10(3)(a)];
- automatically a member of the JPPBPC [s.25(2)(b)];

- eligible for appointment as chairperson of a committee of the provincial executive council, which, in turn, means automatic membership of the provincial executive council [s.23(2)(b)];
- eligible for appointment to committees of the provincial assembly [s.16A(2)];
- eligible for appointment as a minister of the government (see Constitution s.141(a)), which, in turn, means membership of the National Executive Council (see Constitution s.149(2));
- eligible for appointment to permanent parliamentary committees and sessional and select committees (see Constitution ss.118(4), 121, 123), and to be chairperson of such committees (see Constitution s.119(2)); and
- eligible to hold another office, such as speaker, deputy speaker, or prime minister (see Constitution ss.107(2), 141(a)).

Since 1997, there has been one legitimate and several purported elections of heads of LLGs to the office of provincial governor, which make further crossovers. These examples illustrate complexities that detract from governance. For governance to improve, a shift to simplicity is required.

## Complexity of legislation

The move from one-level to two-level and three-level legislation has increased the complexity beyond the general capacity of governments at any level. This has been exacerbated by the redistribution of legislative functions with the coming into effect of the OLPGLLG, which has rendered almost all previous lower-level government legislation invalid.

Legislation in multi-level governments becomes more problematic as:

- legislation has to be fitted into the framework of the legislation of the national and sometimes provincial governments;
- there is decreasing, and usually almost no access to law libraries and statutory draftsmen at local and usually provincial levels; and
- national agencies with limited resources tend to focus on national responsibilities rather than enabling local template

legislation to effect or facilitate provincial or legislation.

The results are seen very clearly in developments since the OLPGLLG came into effect. Some of the key pieces of supporting national legislation that are required by the OLPGLLG have not been enacted, and a number of important acts have been in place for decades but not amended to achieve compliance with the reform requirements of the OLPGLLG. Provincial governments and LLGs are partly crippled because most of the national acts that are required to enable them to raise their own revenue have either not been updated or not been enacted during the last ten years.

## Division of functions between levels of government

The effective operation of the three levels of government requires a clear statement of the functional responsibilities between each of those levels. This clear statement of functions needs to be accompanied by awareness at each level of the functional responsibilities, and a commitment and capacity to undertake these functions.

As responsibilities for a sector, such as education, health, infrastructure, law and justice, primary industries extension, and so on, fragment, so does the capacity to coordinate, ensure, and deliver services.

Review of each sector shows that, in significant areas, the division of functions within each sector has led to a progressive decline in the delivery of services to the districts. This decline has become more rapid following the coming into effect of the OLPGLLG.

## Balance of functions and finances between levels of government

The effectiveness of each level of government in a multi-level system depends on the appropriate distribution of functions, and of access to revenue for each level of government and administration. The access to revenue may be either by external revenue; that is, grants from one level of government to another, or by internal revenue; that is, the legal and administrative capacity of each level of government to generate revenue.

This appropriate distribution becomes all the more difficult with the increase in levels of government. The overall review of finance

is the responsibility of the NEFC. Preliminary findings show that capacity and willingness of the national government to either transfer funds to match functions or to empower the lower levels of government to generate internal revenue to match functions has declined. This decline has become increasingly evident with the introduction of the OLPGLLG in 1995.

## Complexity of administration

Analysis of the different levels of administration shows a declining ability to deliver services and provide and maintain infrastructure associated with complexity of the division of labour between different levels of administration. These are manifest at the district level with a lack of career paths, lack of training, absence of effective supervision and discipline, and inadequate equipment and facilities.

## Other concerns

Other provisions of the OLPGLLG cause problems. Provincial governments, as established by the OLPGLLG, are not popularly elected. They are, by and large, removed from promoting equal opportunity or popular participation in government, providing basic human needs through economic self-reliance, or promoting responsible citizenship through self-management, control, and accountability for one's actions. Most provincial governments are as far from direct interaction with people, as is Waigani.

Empowering people is not effective at the provincial level. Popular opinion from the late 1980s revealed dissatisfaction with ineffective provincial governments. This led to their replacement by the present version, but current criticisms indicate disconnection between provincial governments, service delivery, and empowerment of the people.

However, too much emphasis may be placed on criticism of individual provincial governments, when system failures at national, provincial, and local levels, in both political and administrative arenas, are at the heart of our difficulties.

Discontinuity between the objectives of the OLPGLLG and the systems of government which it establishes, is a major flaw. The failure of provincial governments to implement empowerment may be inevitable, given the lack of direct connection to most people. Their place one step down from the national government and one step up from local government, insulates them from the people.

## Summary

From these shifting policies, four related matters become apparent.

- Changes have substantial impact, but often little benefit.
- Concurrent with the devolution of responsibilities to the several successive versions of provincial government and local government, the national government has largely divested itself of the ability to deal with responsibilities at provincial and local levels.
- The nation has lost almost thirty years of opportunities. Experimentation and failures may be expected, when refining systems. However, to ignore the possibility of refining systems, and instead repeatedly adopt major changes and end up with no level of government that is competent to deal with the needs of most citizens, is a long-term failure.
- The trend has been from simple to complex models, each further removed from the capacity of the nation and needs of most citizens.

The combined effect of the 29 recommendations in this report is to present a paradigm shift in how decentralization is viewed. Instead of attempting to refine systems of government and responsibilities within a three-level system in which national standards and basic social indicators are largely left to the whim or capacity of provincial governments and LLGs, this report cuts to the heart of the matter.

Papua New Guinea is a small developing nation that requires much simpler and more appropriate systems that more readily allow all citizens and community groups to participate in their own betterment through direct national government intervention. Thirty years of increasingly complex decentralization that has generally abandoned the interests of the majority of people, has proven to be a wasteful detour of little benefit to the nation.

Various earlier reports have clearly stated the need for empowering people to participate in their own betterment. For example, the report of the Parliamentary Bi-Partisan Select Committee on Provincial Government was strongly focused on national government action to reinvigorate communities and local government. However, policies to do this became subservient to accommodating provincial government,

as reflected in the OLPGLLG. Instead of entrenching more effective decentralization, the solid concepts offered by the committee became dissipated in an attempt to further refine the complex system based on the earlier *Organic Law on Provincial Government*.

Now, the PSRAG's recommendations build on those solid concepts. Instead of attempting to accommodate the present government framework, the PSRAG recommends the removal of all identified impediments.

The results may come as a shock to some leaders. However, the recommendations pass the litmus test of the six stated principles, and perhaps more importantly, meet the approval of the overwhelming majority of the many citizens and community groups consulted. Further refinement may be possible. After all, no system of government – national or local – is beyond improvement. Systems of administration can also be refined, but the basic structures must be appropriate and strong.

Also, the PSRAG has not considered the perplexing matter of most appropriate form of representation at a level higher than communities and wards. That is, representational government that crosses ethnic and community lines. Apart from recommending the abolition of provincial electorates and an increased number of seats in parliament for representatives of open electorates and women, the PSRAG leaves the parliament and local government as is.

The matter of representation may later be considered, as a refinement of the improved system of decentralization now recommended.

The PSRAG proposes 29 recommendations. These are developed and described in chapters 3 to 11 which will be dealt with in later seminars.

However, by way of a conclusion, recommendations derived from matters referred to in chapters 1 and 2 are now cited. These may be referred to again in later seminars, and should, of course, be studied in light of the combined effect of the 'Improved Decentralisation' report and all 29 recommendations.

1. The Constitution be amended at s.254(b) so that no person representing any sub-national government can also be a member of parliament.
2. Provincial electorates and provincial seats in parliament be removed and the number of seats available for members representing open electorates be increased.
7. There be two levels of legislative government — the parliament and local government — and the provisions for provincial assemblies, be repealed.

8. The distribution of functions between the national government, provincial operations, and local governments be legislated by acts of parliament that provide for delegations to provinces according to circumstances and capacity, and not by an organic law.

12. Wards continue to be formed in sizes that are convenient for the people, in light of their affiliations and traditional communities. Where convenient, and where the number of wards is not excessive, current local-level governments be encouraged to merge into larger (i.e. district-wide) local-level governments.

17. Local-level governments may continue to collect head tax as a revenue source, and ward development committees and community groups be empowered by national legislation to collect project tax as seed money for community development projects.

18. The national government to make direct grants to local-level governments, and be set at an appropriate rate to meet their responsibilities.

19. Local-level governments to operate their own accounts, while provincial and district treasuries take on support and supervisory roles.

27. Supervision and support for local-level governments, including employment arrangements, be consolidated under a commission headed by a commissioner for local government.

28. A functional and expenditure review be carried out within and beyond the Department of Provincial and Local Government Affairs, to identify resources required for implementation of responsibilities, including the operation of the National Monitoring Authority and its provincial inspectorates, and provincial and district administrations.

## Author note

Graham Tuck is a member of the Public Sector Reform Advisory Group.

## Endnotes

- <sup>1</sup> This paper was presented to a seminar at the National Research Institute on 6 April 2006.

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The State, Society and Governance in Melanesia Project comprises four Fellows (Dr Sinclair Dinnen, Dr Nicole Haley, Dr Abby McLeod, Mr Anthony Regan), a Convenor (Mr David Hegarty) and an Executive Officer (Ms Sue Rider).

The National Research Institute is headed by Dr Thomas Webster. The National Research Institute, as the leading research authority in Papua New Guinea and the Pacific Islands Region, contributes to development through the generation of appropriate research information for debate and discussion. The NRI supplies this information to support informed decision making by the Government, the private sector, civic society and ordinary people about cultural, economic, educational, environmental, political and social concerns.



*State Society  
and Governance  
in Melanesia*



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