

Chapter 2

Political Background

Early and colonial history

Melanesian people are believed to have inhabited the main island of Papua New Guinea from as early as 3000 BC, living in discrete groups isolated by dense forest. Spanish and Portuguese sailors sighted the land in the early 16th century. There was some limited exploration in the 19th century, and a few settlements made. In 1884, Germany annexed the northern parts and Britain proclaimed a protectorate over the southern parts, which were formally annexed by Britain in 1888 and became British New Guinea.

In 1906, Australia took over British New Guinea, renamed a year earlier as the Territory of Papua. The Australian army occupied German New Guinea in the First World War and in 1920 Australia received from the League of Nations a mandate for the government of New Guinea, as it was then called.

In 1942 the Japanese army occupied parts of New Guinea and Papua; the Australian military administered the rest. Papua New Guinea played a significant role in World War Two history, as a frontline of allied defence against Japan's push southward. Following the war, under the Papua and New Guinea Act of 1949, the two parts were united as the Territory of Papua and New Guinea and put under United Nations International Trusteeship, administered by Australia.

A transition to limited self-government followed through the 1960s, with the establishment of a House of Assembly comprising a mix of appointed and elected members. By the time self-government was granted at the end of 1973, the House had 100 elected, three appointed and four official members, and was led by Michael Somare as Chief Minister of a coalition government.

Post-independence politics

In September 1975 Papua New Guinea proceeded to full independence, becoming a sovereign constitutional monarchy with Queen Elizabeth II as Head of State, represented by a Papua New Guinean Governor-General, Sir John Guise. Michael Somare, appointed Prime Minister at independence, was returned at the 1977 elections, but a parliamentary defeat in 1980 led to his replacement by Sir Julius Chan, leader of the People's Progress Party, until 1982 when parliament re-elected Somare. The 1987 elections brought in another coalition government, headed by Pias Wingti. Sir Rabbie Namaliu became Prime Minister in June 1988, after Wingti lost a vote of no-confidence in the House. Pias Wingti was returned at the elections of 1992.

The law was amended in 1992 to extend the mandatory period between no-confidence motions to 18 months, in an attempt to increase political stability. Sir Julius Chan again became Prime Minister in 1994, following a leadership challenge and Supreme Court ruling. Chan was forced to resign in March 1997 as a result of a political and military crisis arising from the Bougainville conflict.¹ Cabinet appointed a caretaker government headed by the Minister for Mining and Petroleum, John Giheno.

In elections held in June 1997, 16 ministers (including Chan) lost their seats and Bill Skate, the governor of Port Moresby, was elected Prime Minister by parliament, after a month of negotiations, at the head of a four-party coalition. Beset by corruption scandals and an acute financial crisis, by mid-1999 Skate lost the support of the majority in parliament. He resigned as Prime Minister in July, and Sir Mekere Morauta emerged as his successor.

The general election that commenced in mid-June 2002 was chaotic and violent, with the loss of at least 25 lives, and had to be extended for four weeks beyond the scheduled two-week voting period. Six Southern Highlands constituencies could not be declared because of sabotage and destruction of ballot boxes. Sir Michael Somare's National Alliance Party (NA) won 19 of the declared seats, formed a multiparty coalition commanding a parliamentary majority, and Somare once again became Prime Minister.

In 2003, a new Organic Law on the Integrity of Political Parties and Candidates (OLIPPAC) was enacted. The law aimed to strengthen the regulation of political parties and enhance political stability, and included restrictions on switching allegiances by parties, providing that Members of Parliament would forfeit their seats if they switched parties following an election, or failed to vote with their party on constitutional amendments, budget bills, or motions of no-confidence.

With the OLIPPAC in place, the 2002 Somare government became the first to serve a full five-year term in office. Following the parliamentary elections held in June/July 2007, in which NA won 27 seats, Somare secured the agreement of a further 59 members to join his coalition, and in mid-August was duly re-elected as Prime Minister by parliament.

In July 2010, PNG's Supreme Court ruled that the 'party-hopping' and voting restrictions in the OLIPPAC were unconstitutional and therefore null and void. This led to the return of a more fluid political environment.

The 2011–12 political crisis

In the months leading up to the 2012 elections, Papua New Guinea's national parliament

¹ The conflict between 1989 and 1997 in Papua New Guinea's Bougainville province was one of the most serious and damaging in the modern history of the Pacific Islands region. Under the Bougainville Peace Agreement signed between the Government of Papua New Guinea and representatives of warring Bougainvillean groups in August 2001, Bougainville received special autonomous status under its own Constitution (enacted in 2004), with a gradual draw-down of substantial powers from the PNG Government, and the promise of a referendum on independence to be held between 2015 and 2020.

and other institutions were beset by a series of events which rendered the political and legal environment for the elections an extremely complex one.

In December 2010, shortly after reshuffling his cabinet, Prime Minister Somare faced a Leadership Tribunal for breaching financial reporting obligations imposed on Members of Parliament under the OLIPPAC. While serving a two-week suspension from office imposed by the Tribunal in April 2011, Somare departed to Singapore for medical treatment, for what emerged as a serious heart condition. His absence extended into months.

On 20 August 2011, amid increasing speculation that Somare would never be able to resume office, parliament voted to declare his seat, and therefore the office of Prime Minister, vacant. Parliament then elected the leader of the People's National Congress (PNC) party, and Minister for Transport and Works, Peter O'Neill, as Prime Minister, with support from many government as well as opposition members.

Parliament's actions were immediately challenged in the Supreme Court, and the court action was joined by Somare following his remarkable recovery and return to Papua New Guinea in September 2011. On 12 December the Court ruled that parliament's replacement of the Prime Minister was unconstitutional, and that Somare therefore remained the lawful Prime Minister.

In response, parliament passed a law which sought to retrospectively legitimise the installation of O'Neill, and to prevent Somare resuming the Prime Ministership, by applying an age limit of 72 years on the office. The O'Neill government also made two attempts to suspend the Chief Justice of the Supreme Court, Sir Salamo Injia, and a subsequent attempt to arrest him, citing alleged misconduct unrelated to the political case. The Supreme Court rejected all of these and issued orders restraining any action against the Chief Justice.

On 26 January 2012, a small group of military officers briefly took up arms against the O'Neill-appointed Commander of the PNG Defence Force, claiming the authority of Somare as the lawful Prime Minister. The situation was defused by police and military loyal to O'Neill.

On 21 March parliament passed the Judicial Conduct Act, vesting (retrospective) power in the legislature to institute a procedure which could lead to the dismissal of a judge. Critics within PNG and internationally expressed concern that the Act created the potential for parliamentary interference in the judiciary, and that it was unconstitutional. On 4 April, Chief Justice Injia and Supreme Court Justice Kirriwom rejected an application by the O'Neill government to recuse themselves from the ongoing case on the legality of the government, in response to claims of bias. Following this decision, parliament invoked the Act to refer the two judges to the Governor-General for alleged misconduct.

On 5 April 2012, parliament voted to delay the national elections (constitutionally required by mid-year) by six months, citing concerns about the readiness of the Electoral Commission. Constitutional experts advised that parliament had no power to do so, and that only the Governor-General could delay the elections, on advice from the Electoral

Commissioner, but the Speaker of Parliament maintained that the doctrine of parliamentary supremacy enabled the legislature to make the decision.

On 7 April, Prime Minister O'Neill addressed the nation, saying that 'parliament may have been advised wrongly' to defer the elections, and that if the Electoral Commissioner advised Cabinet that he was ready to proceed, the polls would go ahead on schedule. The Prime Minister defended the Judicial Conduct Act, saying it was consistent with the Constitution and the separation of powers, by curbing an overreaching judiciary which he said had intruded on the powers of the parliament and executive.

On 10 April thousands of demonstrators staged protests in Port Moresby and Lae against the proposed election delay and the Judicial Conduct Act. Prime Minister O'Neill addressed the main rally in Port Moresby and announced that, following the Electoral Commissioner's brief to Cabinet the previous day, the polling would go ahead as scheduled. On the Commissioner's advice, a three-week delay would occur in the issue of writs to allow the rolls to be adequately finalised, with the campaign period shortened accordingly.

On 11 April, in a reference against the constitutionality of the Judicial Conduct Act, the Supreme Court found that there was a prima facie appearance of unconstitutionality and illegality in the Act and issued a stay on its enforcement, including the actions to suspend Justices Injia and Kirriwom, pending final outcome of the case.

The Speaker of Parliament refused to entertain the Prime Minister's request that parliament reverse its decision to delay the elections. Nevertheless on 18 May, on the advice of the Electoral Commissioner and in accordance with the announced (revised) timetable, the Governor-General dissolved parliament and issued the writs for national elections.

On 21 May a 3–2 majority judgment of the PNG Supreme Court confirmed its decision of December 2011 that the appointment of Peter O'Neill as Prime Minister was unconstitutional, and ordered that Sir Michael Somare be reinstated to the office. The two dissenting judges refused to deliver their judgements and stated their opinion that the majority should not have done so, citing ethical concerns over the allegations of bias against Chief Justice Injia and Justice Kirriwom.

The following day Sir Michael Somare sought an audience with the Governor-General to be sworn in, but was turned away from Government House by police. The Governor-General's office subsequently stated that the G-G, having issued the writs for elections, would 'not sign anything' until after a new government was elected.

On 24 May, (O'Neill's) Deputy Prime Minister Belden Namah entered the Supreme Court with police and soldiers, seeking to arrest the Chief Justice. Following a stand-off in the court for some hours, the Chief Justice and Justice Kirriwom were arrested and charged with sedition.

The O'Neill government reconvened parliament on 25 May (after two attempts which failed due to lack of quorum, and an ultimately unsuccessful blockade of parliament by police loyal

to Somare, in an attempt to prevent the third). Parliament passed a motion purporting to nullify the Supreme Court's ruling of 21 May, and also moved to establish a State of Emergency in two provinces (Hela and Southern Highlands) and the National Capital District, stating that this was necessary to ensure law and order in the lead-up to the elections.

The Governor-General's office subsequently stated that the G-G had signed no instrument lawfully reconvening parliament following its dissolution on 18 May, and moreover, that he would not sign instruments establishing the State of Emergency. The Governor-General subsequently left the country, and in accordance with constitutional provisions, the Speaker of Parliament became Acting G-G while the Deputy Speaker would act in the Speaker's role.

Under these arrangements, parliament was convened again on 29 May, in the absence of both prime ministerial claimants. The Acting Speaker ruled that the Supreme Court's decision of 21 May was valid and therefore Sir Michael Somare was the legitimate Prime Minister. Having done so, he immediately declared Sir Michael's seat in parliament, and the office of prime minister, vacant, on the basis that Sir Michael had contravened standing orders by missing three consecutive sittings of parliament during 2012. The Acting Speaker directed parliament to convene and elect a new prime minister the following day. It did so, electing Peter O'Neill by a vote of 56–0. Sir Michael Somare was not present. Mr O'Neill and his cabinet were sworn in later that day by the Acting Governor-General.

As the election began, therefore, Mr O'Neill remained in effective control of the caretaker government, while Sir Michael Somare and his supporters remained adamant that Sir Michael was the legitimate (caretaker) Prime Minister. The hope was widely expressed that the political and legal morass could be resolved through a successful election with a clear and accepted result.

Papua New Guinea and the Commonwealth

Papua New Guinea has been a member of the Commonwealth since its independence in 1975. The country's Foreign Minister served on the Commonwealth Ministerial Action Group (CMAG) for two terms from 2005–09. PNG's Electoral Commissioner has participated in the Commonwealth Electoral Network, and was a member of the Commonwealth Observer Group to Nigeria's 2011 elections. Papua New Guinea will host the next Commonwealth Youth Ministers' Meeting, scheduled to be held in Port Moresby in April 2013.

The Commonwealth Secretariat is presently providing technical assistance to PNG in a range of areas including human rights training, mining sector reform, maritime boundaries and ocean governance, debt management, trade, and tourism.

The Secretariat has also been working to support and strengthen Papua New Guinea's judiciary since 2010. Most recently, it convened a seminar in February 2012, in conjunction with Papua New Guinea's judiciary and the Commonwealth Magistrates' and Judges' Association, on the independence of the judiciary and judicial code of conduct. In response to the legal and political crisis of 2011–12, the Secretariat offered further assistance to PNG

to strengthen the rule of law and help rebuild an effective relationship between the three branches of government, which may be taken up following the election.