

Chapter 3

The Electoral Framework and Election Administration

International and regional commitments, and national legal framework

Papua New Guinea has signed or agreed to several regional and international instruments relating to human rights and the conduct of elections. These include:

- Affirmation of Commonwealth Values and Principles (2009)
- Biketawa Declaration of the Pacific Islands Forum (2000)
- Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- International Covenant on Civil and Political Rights (1966)
- Universal Declaration of Human Rights (1948)

The key national laws providing the legal and regulatory framework for the conduct of the elections are:

- Constitution of Papua New Guinea 1975 (as amended)
- Organic Law on National and Local-level Government Elections 1999 (OLE, as amended)
- Organic Law on the Integrity of Political Parties and Candidates 2003 (OLIPPAC, as amended)
- Electoral Law (National Elections) Regulations
- Integrity of Political Parties and Candidates Regulations

The Constitution of Papua New Guinea guarantees a range of fundamental rights and freedoms relevant to democratic processes, including freedom of expression, assembly, association and movement; the right to vote and stand for election; and equality of rights, privileges, obligations and duties for all citizens irrespective of race, tribe, place of origin, political opinion, colour, creed, religion or sex.

The electoral system

Papua New Guinea's unicameral National Parliament is chosen in national elections held every five years. Eighty-nine members are elected from single-member Open electorates (constituencies) across the country. In addition, each province elects one Regional member, who takes the title of Provincial Governor as well as a seat in the national parliament. The 2012 elections saw the size of parliament increase from 109 to 111 seats, with the creation of two new provinces in 2011 (Hela and Jiwaka), taking the total to twenty-two.

The law provides that the electoral boundaries shall be determined by parliament in accordance with recommendations from an independent Boundaries Commission, which

must be convened to review the boundaries at least once every ten years. The Boundaries Commission must determine the boundaries on the basis of ensuring each electorate contains an equal population, allowing a 20 per cent plus or minus variation to take into account such factors as traditional and local government boundaries. Parliament may accept or reject, but not amend, the Commission's recommendations.

There have been several Boundaries Commission reviews since independence, but parliament has rejected the recommendations of every review since 1977. The next is scheduled to take place in 2013.

The Limited Preferential Vote (LPV) system, which replaced first-past-the-post voting at the 2007 election, was again used in 2012. Under this system, voters mark three preferences on the ballot, regardless of the number of candidates. Voters identify the name and 'candidate number' of their preferred candidates on a photographic poster provided in the voting compartment, and write three names and/or numbers in preference order on the ballot paper. To win, a candidate must secure an absolute majority (50%+1) of the valid votes cast in their electorate: if no candidate receives an absolute majority of the first preference votes, the lowest-scoring candidates are progressively eliminated and their next preferences distributed, until such time as one remaining candidate receives the absolute majority.

Voting takes place over a two-week period in Papua New Guinea, on a rolling schedule, in order to provide for adequate presence of security and electoral personnel in each place, as well as catering for the difficulties of access to parts of the country. In each Highlands province and in urban centres, voting was scheduled for a single day within the two-week period. In other rural electorates, mobile polling teams moved from village to village over a schedule spanning several days. For the 2012 election there were approximately 9800 polling stations used, staffed by 4700 polling teams.

The electoral roll for each electorate is divided into 'wards', and voters are to vote only within their own ward. In the 2012 election, in the National Capital District, the rolls were further divided into alphabetical sub-groups within a ward, with individual polling stations each dealing only with voters whose names fell within one such sub-group within that Ward.

The electoral timetable for 2012 was as follows:

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| Issue of Writs | Friday 18 May |
| Close of Nominations | Thursday 24 May |
| Voting | Saturday 23 June to Friday 6 July |
| Return of writs | on or before Friday 27 July |

The Papua New Guinea Electoral Commission

Under the OLE, management of the election is vested in the Papua New Guinea Electoral Commission (PNGEC), which consists of an Electoral Commissioner appointed by the Head of State on the advice of an Appointments Committee comprising the Prime Minister, Leader of the Opposition, Chair of the Parliamentary Committee dealing with electoral oversight, and

Chair of the Public Services Commission.

Electoral Commissioner Andrew Trawen has been in the position since January 2004. During the 2011–12 political crisis, his impartiality was challenged by some parties, and in March 2012 Prime Minister O'Neill questioned the legality of his re-appointment in 2010, because he had passed the public service retirement age of 55. However the government later stated that no move would be made to remove the Commissioner prior to the election.

The Commissioner heads the office of the PNGEC, which has 94 permanent staff. A number of additional staff were recruited or seconded to the PNGEC to play various roles during the election period. The PNGEC was also supported by 22 international advisers appointed under the Australian-funded Electoral Support Program. Polling and counting officials engaged at the provincial and district level for the elections lifted the total number of election personnel to around 30,000.

The OLE was amended in 2007 to establish an Election Advisory Committee comprising the Chief Ombudsman, a representative of Transparency International PNG, and an independent legal expert. The Committee is to provide recommendations and advice to the Electoral Commission on any election-related matters referred to it. The Group was advised that the Committee is convened by the Commissioner at his discretion, and has not met to date.

An Inter-Departmental Elections Committee (IDEC), chaired by the Secretary to Government, was also in place to coordinate election arrangements between the PNGEC and other relevant government agencies including the police and military. The IDEC for the 2012 elections included representatives from each of PNG's four regions.

Administration of the elections is largely decentralised. Provincial Election Managers (EM) are responsible in large part for organising and managing the elections in their respective provinces. They are expected to work in consultation with a Provincial Election Steering Committee, chaired by the Provincial Administrator. One of the 22 EM was a woman. One innovation in 2012 was the appointment of Assistant Election Managers (AEM) for the election period. These were generally young public servants, many of them women, with the aim of providing exposure and experience to a greater number of officials in the tasks of election management for the future.

The appointment of Returning Officers (RO) for each open electorate, and subordinate staff (Assistant ROs, Presiding Officers, and polling and counting staff) is undertaken at the provincial level. We were advised that most of the RO were drawn from provincial administration staff, and that the names of the RO and ARO are gazetted for public transparency.

The PNGEC advised the Group that it had only received PGK180 million of the PGK240 million² budgeted for the election. This meant that some cuts had to be made, including a reduction in funding to provincial Election Managers, and non-use of the electronic count verification system which had been trialled in by-elections in 2010 and 2011. The PNGEC

² The Papua New Guinea Kina (PGK) is equivalent to approximately £0.33, or AUD/USD 0.50.

also advised that most of the funds had been disbursed very late, creating difficulties for election preparations.

In addition to the Electoral Commission, Papua New Guinea has an Integrity of Political Parties and Candidates Commission (IPPC), an independent statutory body established under the OLIPPAC. The IPPC registers and regulates political parties under the terms of OLIPPAC. The PNGEC remains responsible for candidates' nomination for, and participation in, elections, in accordance with the OLE.

Voter eligibility and voter registration

The Constitution states that to be eligible as a voter one must be a citizen of Papua New Guinea and at least 18 years of age. It is compulsory under law to enrol, but not compulsory to vote.

Following significant problems with the integrity of the electoral roll in PNG's 2002 elections, particularly acknowledgement that it was inflated with a large number of deceased, duplicate and false names, a complete re-registration of voters was undertaken prior to the 2007 elections. The 2007 roll contained 3.9 million names, 1.4 million less than the 2002 roll. This was a significant improvement, but widespread discrepancies in the roll were nevertheless reported by election observers in 2007.

Prior to the 2012 election, an exercise was undertaken to update the 2007 roll. This process nominally began in early 2011, but was suspended in July 2011 to avoid confusion with the national census survey, which was occurring concurrently (having been delayed from 2010), and the August deadline for completion of the preliminary roll was extended to 31 October 2011. In the event, almost all provinces failed to meet that deadline and the roll update continued into early 2012. Between March and May 2012 the PNGEC, with donor support, mobilised extra computers and staff working 24 hours a day to finalise the rolls, but the rush to meet the constitutional deadline for elections meant that the display of preliminary rolls at district level and consequent verification and objection processes in several provinces were either reduced in time, or did not occur at all.

The final electoral roll issued for the 2012 election contained 4,776,096 names. The Electoral Commissioner expressed concern to the Group that this number appeared to be inflated, given the country's population of just over 7 million, the high youth demographic, and the increase of 800,000 names since 2007.

The electoral roll lists the voter's name, election identification number, gender, occupation, and date of birth. It does not include a photograph or any other biometric information. Voters are not issued any voter identification card or other document. On election day they establish their identity by stating their name, and if necessary, date/year of birth.

One innovation introduced for the 2012 election was a change in the organisation of the electoral roll in the seven Highlands provinces and Manus province. These provinces were issued a 'family roll' in which voters were grouped by family and clan association, rather

than listed in alphabetical order of surname. It was hoped that the family roll would provide a more accurate picture of the residents of a community, one that better reflected the way community members identified themselves, and in so doing would help voters and officials to use the roll more effectively, and also help prevent false enrolment and personation.

Candidate eligibility and nomination

The Constitution provides that election to parliament is open to all Papua New Guinean citizens of at least 25 years of age. A prospective candidate must be nominated by a person to whom the candidate is personally known, and must pay a non-refundable deposit of PGK1,000.

Following the close of nominations on 24 May 2012, 3428 candidates were validly nominated – the largest number in Papua New Guinea’s history. This meant an average of over 30 candidates per seat, with individual seats ranging from eight candidates (Ialibu-Pangia Open) to 73 (Chimbu Regional).

Only 1250 of the 3428 candidates represented political parties, with 2185 standing as independents.

Only 135 of the candidates were women, representing 3.9 per cent. While the real number of female candidates increased, the proportion was comparable to 2007 when 101 out of 2,759, or 3.7 per cent, of candidates were women. Efforts were undertaken in the lead-up to the election by various stakeholders, including PNG’s Office for the Development of Women and the United Nations Development Programme, to increase women’s chances of being nominated and campaigning for election, including training programmes for women candidates.

Election offences and election petitions

The OLE identifies a comprehensive series of illegal practices and election offences. These include treating, bribery, and undue influence; false enrolment and personation; misleading or interfering with voters including through false campaign advertising; interfering with and destroying election materials. Each offence is punishable by a range of fines and/or prison sentences, which are prescribed in the law.

The Constitution provides that the National Court is to resolve election disputes. The OLE further clarifies that it is the sole body empowered to do so, and that its decisions in that regard shall be final.

Key issues

Election boundaries and equal suffrage

Equal suffrage, often expressed as ‘one voter–one vote–one value’ is a fundamental principle of democratic elections. Although this principle is well enshrined in PNG’s electoral law and

process, the non-implementation of any boundaries review since 1977, despite massive population growth and movement, meant that by 2012 electorate sizes were well out of proportion, giving citizens in some electorates far greater voting power than others. The number of enrolled voters in each Open electorate varied from 22,403 (Rabaul Open) to 122,202 (Lagaip-Porgera Open). There were some large discrepancies within provinces too: for example Enga Province was home to Lagaip-Porgera with over 122,000 voters, while Enga's other four open electorates had less than 60,000 voters each; and of West New Britain's two electorates, Talasea Open (101,755) had more than twice as many enrolled voters as Kandrian-Gloucester (45,131).

Equal suffrage is a fundamental principle of democratic elections, and the significant discrepancies between the present Open electorates did not provide equal suffrage to the voters of PNG. The Group recognises that some allowances need to be made for traditional boundaries and communities of interest, and the laws governing the Boundaries Commission provide for this. The Group therefore urges parliament to undertake a serious debate on the next review of the Boundaries Commission, due in 2013, with due consideration of the importance of redressing the present inequalities.

Voter registration and the electoral roll

The failure of the electoral roll to facilitate voting for a large number of citizens was a major concern in the 2012 election. The Group observed problems with the electoral roll in all the provinces visited. The proportion varied, but a worrisome number of voters were turned away in all locations. In some polling stations, lack of confidence in the roll was so great that it was abandoned altogether.

It seemed likely that this situation arose at least in part due to missing, misplaced or mistyped data entries which occurred in the rush to complete the roll update at the national level in the weeks leading up to the election. Such problems would have been exacerbated by the time factor preventing return of the preliminary rolls for checking in several provinces. Beyond human error, however, candidates and community leaders in some places expressed concerns to the Group that names may have been deliberately added to or omitted from the roll, by compromised officials at various levels, in order to benefit certain candidates. The Electoral Commissioner himself publicly noted the possibility of attempts to sabotage the roll by some candidates or their supporters.

Other factors were also cited by the PNGEC and others as contributing to the inability to locate many voters on the roll during polling. Almost all polling stations only had a very limited section of the roll for reference, which meant that voters may have been turned away when in fact they were enrolled in a different ward, but had no practical way of determining that on election day. The use of multiple names by many Papua New Guineans was also observed to make the process of checking names on the roll lengthy and unreliable. Moreover, confusion between the 2011 census and the voter registration exercise was cited in some areas as potentially leading voters to mistakenly believe they had registered to vote after filling in the census. The census and electoral roll processes were not

linked (although electoral officials in one province told Commonwealth observers that they had decided locally to use the census data to complete the roll update).

The many cases of voters being turned away occurred despite acknowledgement that at almost 4.8 million names, the roll appeared to be inflated.

It is extremely difficult to assess accurately the extent of disenfranchisement caused by the roll problems, and we heard some difference of opinion on this, but Commonwealth observers personally saw enough voters being turned away to assess this as a serious concern. While there may have been various causes of this problem, the resulting impact made clear that the integrity of the roll, and the ability of voters to easily and reliably use the roll to exercise their franchise, remained significant problems which must be addressed in Papua New Guinea.

Problems with the roll were repeatedly cited by Commonwealth observers and other commentators following previous elections, and recommendations made for strengthening voter registration and the roll. The Group emphasises that urgent action is needed without further delay on this issue. We urge the new government and parliament, in cooperation with the PNGEC, to move ahead immediately following the 2012 election to agree upon, fund, and implement measures to strengthen the registration process and roll procedures, well in time for the 2017 election.

The Group believes that such measures should not just include further updating and correction, but the implementation of a strengthened system for voter identification and checking to ensure maximum integrity in the roll. This should include the introduction of a voter identification card and/or biometric system for more reliable verification of voters' identity and the accuracy of the roll. Some steps have been taken in the past toward implementing such measures – most recently, in early 2012 the National Executive Committee (Cabinet) approved the adoption of a biometric registration system, but the PNGEC advised that neither the decision nor the funding to implement it were provided in time for the 2012 election.

It is also extremely important that legal provisions and timelines are more carefully adhered to in regard to the collection of data for the roll, and the display and inspection of the preliminary roll in local areas, prior to the election.

Beyond the roll itself, the Group also urges the re-examination of procedures for distribution and use of the roll during the polling, so that voters are not turned away due to the inability to access accurate information. Measures in this regard might include availability of the full electorate roll in all polling stations in the electorate for cross-checking and/or display at strategic locations within the electorate, or a provincial or national 'hotline' for officials or voters to refer to on election day in order to verify their enrolment information.

The Group recognises that Papua New Guinea is a challenging environment for the implementation of such systems, and appropriate measures will have to take into account

limitations on logistics and services in remote areas. However, we believe that reform and improvement is possible – and essential. There are many models and much knowledge and support available from other Commonwealth countries that could assist PNG in this task.

Election administration

Administration of elections is an enormous task in Papua New Guinea. The staff of the PNGEC, both in Port Moresby and around the country, worked hard in very challenging circumstances. Nevertheless, the Group observed that there was an unfortunate level of disorganisation and inconsistency in aspects of election management.

This was particularly notable in the significant delays which plagued the commencement of voting and counting in every location, varying from a few hours to a few days, and ultimately led to an extension of the polling schedule in seven provinces, by up to eleven days. These delays were of concern for their potential to confuse and disenfranchise voters, as well as the cost and security implications of further extending an already lengthy election period.

The delays occurred in certain places due to weather conditions, but in many cases were caused by late distribution of polling materials and deployment of personnel, tardy payment of allowances to officials and security forces, and failures in logistics planning. The Group sometimes detected a lack of urgency to ensure that the polling schedule was met.

The Group also observed inconsistencies in both the procedures and the quality of election management at the provincial and district level. There appeared to be wide variations in the timeliness and effectiveness of training provided to Presiding Officers and other election officials, and their accountability for performance. Often, officials at various levels were making their own decisions to vary electoral arrangements and practices from the lawful and published procedures. In some cases, this extended to polling officials playing inappropriate and unlawful roles such as filling in ballots on behalf of voters in public, or assisting all voters regardless of request.

In a few provinces training had been provided in advance of the election, and officials understood their roles well. In others, training was still taking place on the eve of polling (such as in Enga Province), and some staff (including in National Capital District) even told observers they had not been trained at all. While cascading 'train the trainer' arrangements may be essential in the circumstances of PNG, it is vital that training be supported, monitored and audited to ensure that all election officials are fully aware of their roles and able to perform them correctly.

Part of the election management approach is the devolution of the administration in large part to the provincial level through Election Managers and their offices. This seems a logical and even necessary approach. At the same time, the Group observed that the quality of election management varied between provinces and even between districts, and delay and disorganisation plagued many locations. In addition, constraints on the resources of Election Managers and some problematic bureaucratic procedures (such as the requirement that all

payments of allowances for election officials be authorised by the Commissioner himself from Port Moresby), rendered the task of administration at the provincial level more difficult and less efficient.

Allegations were raised with the Group in certain locations about partiality and even corruption on the part of locally-appointed polling staff. In at least two electorates, candidates threatened to boycott the election due to the perceived bias of Returning Officers and polling staff. Observers saw other cases of individual polling and counting staff being removed when identified as candidate supporters. It is crucial that measures are in place to ensure the impartiality and professionalism of every election official at every level, and clear processes to fairly investigate and respond to concerns or complaints in that regard. The Group welcomed attempts made in some areas to arrange for polling stations to be staffed by polling teams drawn from outside localities, in order to ensure voter confidence in their impartiality.

These are complex challenges, but the Group believes that further attention must be given to improving the effectiveness, professionalism and accountability of the electoral administration, including a consistent and timely training programme for electoral officials at all levels, to minimise problems in future elections.

Women's participation and representation

The current system does not adequately fulfil women's right to equality in the political sphere. While the Constitution guarantees equal rights for women and there are no legal barriers to women standing for election, in practice women experience severe discrimination, which largely excludes any opportunity for meaningful exercise of political rights on a basis of equality with men.

In particular, social and cultural norms of leadership in PNG continue to be male dominated at all levels. The 'big man' culture, by which certain male figures are seen as the centre of power and influence for a community or tribe, extends into national politics. As such, women are not viewed as prospective political leaders, regardless of their merit, and they are culturally dissuaded from participating in politics.

Moreover, women continue to experience discrimination in virtually all other spheres of life, which in turn negatively impacts on their ability to exercise their political rights. This includes discrimination in education, health care, economic life, family life, access to finance (including campaign finance) and access to justice. Another major issue is widespread violence against women.

Since independence in 1975 only four women have held seats in PNG's parliament. The 2007–2012 parliament included only one woman out of 109 members. The minimum global benchmark for gender equality in national politics is that women should hold 30 per cent of parliamentary seats.

Under international human rights law, including treaties to which PNG is party, the

Government has a legal obligation not only to ensure there are no legal barriers to women's political participation, but also to take positive legislative and other measures to eliminate discrimination against women in practice. This includes measures to level the political playing field so that women can fully exercise their rights to participate in public life on a basis of equality with men.

To this effect, at the initiative of the sole female member of the previous parliament, Dame Carol Kidu, efforts were made for several years to create reserved seats for women in Parliament.

A Bill was put before parliament in 2011 to amend the Constitution to expressly permit laws specifically designed for the advancement of women. The Equality and Participation Bill was passed by Parliament in November 2011 stating that there shall be special seats for women as defined by an Organic Law. A simple majority of 55 votes was required.

An enabling Organic Law was then presented to create 22 women's seats in Parliament, one for each province, by providing that the boundaries for the women's seats would be the existing boundaries for the Regional electorates. These seats would only be open to female candidates but would be voted on by both women and men. The Organic Law (33b) required a two thirds majority, or 73 votes, to pass. On its second reading in February 2012, at a session of Parliament at which 80 members were present, 21 walked out of the chamber leaving only 59 present for the vote. One member voted against the Bill and 58 voted in favour, far short of the required 73 votes. Although it was stated as a priority government policy, a 'conscience' vote was allowed and the result reflected the predominant feeling of the male-dominated parliament.

However, the Organic Law could be re-activated and, if successfully passed, provide one way for women to better access their democratic right to participate in political life in time for the 2017 elections, or earlier through a by-election.

Recommendations

- The parliament of Papua New Guinea should give due respect to the principle of equal suffrage in considering the recommendations of the next Boundaries Commission review, which should proceed as scheduled in 2013 with all necessary support for its work.
- Action should be taken by the new government and the PNGEC as an urgent priority, immediately following the conclusion of the 2012 elections, to review and strengthen the voter registration system and the management of the electoral roll for future elections. This should include the incorporation of an appropriate form of voter identification into the enrolment process and the roll, and better measures for collection, checking and verification of enrolment details before and during polling.
- A review should be conducted of the support and reform needed to strengthen the effectiveness of election management by the PNG Electoral Commission, including

through possible restructuring, and refining the arrangements for decentralisation.

- The Electoral Commissioner should make use of the Elections Advisory Committee established under the law to advise and assist him on election-related matters, including by convening regular meetings of the Committee.
- The PNGEC should ensure that adequate and timely training of election officials is undertaken, preferably no later than two weeks before polling commences.
- Efforts should be accelerated with urgency to establish a legal framework and other measures, compliant with CEDAW and international good practice, to ensure greater gender balance in Parliament in time for the 2017 elections.
- The new government should continue and expand dedicated programmes to train and support female candidates, and allocate clear and adequate budgetary resources to educate voters throughout the country and throughout the 2012–2017 election interval on the equal rights of women and men to participate in public life, and the benefits to society as a whole from gender balance in leadership and decision making.