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**REALIGNING ELECTORAL INCENTIVES
Lessons for the 2012 National General Election from
Conflict Theory and Public Policy**

July 2010



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**REALIGNING ELECTORAL INCENTIVES:
Lessons for the 2012 National General Election
from Conflict Theory and Public Policy**

by
**Andrew Ladley
Ole Holtved
&
Solomon Kantha**

**NRI
The National Research Institute**

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ACRONYMS

EAC	Elections Advisory Committee
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
IFES	International Foundation for Electoral Systems
LLG	Local-level Government
NATO	North Atlantic Treaty Organisation
NGO	Non-government Organisation
NRI	National Research Institute
OECD	Organisation for Economic Cooperation and Development
OLNLLGE	Organic Law on National and Local-level Government Elections
PNGEC	Papua New Guinea Electoral Commission
PNG	Papua New Guinea
RO	Returning Officer
UNDP	United Nations Development Program

EXECUTIVE SUMMARY

Competition is at the heart of elections and strong competition can be a measure of the health of a democracy. But if the rules don't work, the 'race to win' can be a 'race to the bottom' as competitors match and try to outdo their opponents' unlawful and sometimes violent cheating. It is critical to stop the 'race to the bottom'. Indeed, it is a Constitutional requirement that elections be 'genuine' — something that is hardly possible if there is widespread cheating and violence.

In some areas of Papua New Guinea (PNG), especially the Highlands Region, it seems that the incentives for cheating outweigh the incentives for playing fair. Prosecutions for the wide range of offences are rare and few communities have the capacity to negotiate fair play, especially amongst very influential and adversarial candidates and their supporters. In a number of cases influential community members such as ward councillors, church leaders, sitting members or other 'big men' work with some of the competitors to influence enrolment, polling and counting procedures. Sometimes whole communities are caught up in the electoral contest and the disruption of elections. In many instances this is not so much a deliberate flouting of the electoral laws as a continuation of inter- and intra- community politics from a forum defined by custom, to a forum defined by the laws of a distant and poorly understood institution: the nation state of PNG.

Managers of elections in PNG have said that genuine compliance will only be successful in a context where the concepts of elections and the need for fair play are more widely understood and accepted by the people. It should be possible to create more incentives to follow the rules.

This paper takes up this challenge. It argues that the Papua New Guinea Electoral Commission (PNGEC), and other institutions (police and churches, for example), could work together with candidates, communities and voters not just to manage and administer elections, but to realign the incentives that drive behaviour during elections.

In making this suggestion this paper draws on the lessons of regulatory theory and conflict management. In essence, regulatory theory seeks to understand the drivers of behaviour and how people might respond to various 'carrots and sticks'. The key goal is to achieve higher voluntary compliance, rather than rely on coercive sanctions which are expensive and very much a last resort. The field of conflict management suggests that it should be possible to anticipate conflict and work with communities and candidates to create conditions in which competition can be managed without violence. But this requires proactive engagement — diplomacy — rather than emergency responses in the heat of the moment.

Elections take place in PNG when required by law, with the PNGEC administering the process. In the past, this has seen elections go ahead in scenarios where violence and fraud are almost certain to take place on a widespread scale. This was the case in some Highlands Region electorates in 2002, and failed elections were the result. Regarding the recent Kandep By-election, it also seems that the conditions on the ground were very volatile. Yet law and current practice encourage the PNGEC to push on in the face of danger, combined in no small measure with strong political pressure to see elections take place. Conducting elections in the expectation of widespread fraud, cheating and violence means that the PNGEC is hard-pressed to deliver genuine elections. Further, there are great costs to the state of PNG,

including loss of life in communities, an unsafe working environment for electoral officials and police, and, too often, repeats of the process following judicial decisions that require by-elections.

This report suggests that the PNGEC, with the right support, could instead play a more proactive role in negotiating a better ‘consent environment’ for elections.

In this scenario, in addition to election planning, designated officers would spend the months leading up to the election working with the candidates, local communities, churches, authorities, prospective candidates, sitting members, supporters, and any other relevant stakeholders to establish the ground rules of an election: by agreement.

Those rules could include:

- all candidates and parties signing a code of conduct (displayed widely in the electorate, used by all local groups to educate voters);
- building transparency about fair processes (for example, public readings and verification of the electoral roll at agreed places, using agreed processes);
- gaining the commitment of communities to respect the use of the electoral roll for voter identification purposes on polling day (using agreed consensus-building processes);
- gaining the support and advocacy of local authorities (churches, local-level government (LLG) representatives, village elders, civil society groups) to respect voting processes and procedures, especially one ballot per person, a secret vote, and the proper use of indelible ink (along with processes agreed in advance to assist voters who did not know how to cast their ballots); and
- ensuring candidates and communities are aware of possible consequences of inappropriate conduct, including (for example) delays to polling or changing the sites of polling stations to enable better security.

Embarking on this kind of approach to elections requires a combination of:

- knowing about incentives, rewards and sanctions (understanding, research and awareness);
- seeing them work effectively (developing a body of experience); and
- supporters believing that their candidates will be worse off, rather than better off by cheating the system.

This report recommends — to begin with — a national discussion, including consultations around the country, and especially in the Highlands Region, about whether this approach to elections might be possible in PNG.

RECOMMENDATIONS

1. Convene a national working group on the realignment of electoral incentives.

The PNGEC (or the NRI, by agreement) should convene a national discussion with key stakeholders to discuss the ‘realignment of incentives’ of elections to establish if there is sufficient consensus for the approach.

If sufficient agreement is reached, assistance and training for the PNGEC will be needed. Part of the discussion might include the possibility of engaging external support or agencies to assist the PNGEC and to operate under its authority in the implementation of the new processes.

2. Review legislation to clarify powers of the PNGEC to facilitate these realigned incentives in order to ensure genuine elections.

The electoral laws should make it clear that the PNGEC has the power to delay elections if insufficient arrangements can be made to ensure genuine elections as required by the Constitution of the Independent State of Papua New Guinea (the Constitution).

3. Consider developing and activating the Elections Advisory Committee (EAC) to serve an enhanced and transparent role in PNGEC decision-making.

This should help to affect more transparent decision making, particularly as regards assessing the situation on the ground before polling. It could also relieve the pressure that currently centres on the single decision-making figure of the Chief Electoral Commissioner.

4. Develop an elections reconciliation and cooperation strategic plan.

If sufficient preliminary agreement is reached, the PNGEC would need to develop a strategic plan for the implementation of the approach. The plan would include developing and implementing codes of conduct, coordination with voter awareness, targeting the approach in key electorates, and holding discussions with all relevant parties including highly public media and outreach campaigns.

The methodology would be to consult continually as the strategic plan evolves, consistently conveying a clear message of the goals: cooperation with candidates, political parties, and voters to achieve genuine elections.

1. Introduction

Everyone in PNG knows there are problems at election time. In some areas the issues are currently manageable; in the Highlands Region the alarm bells are ringing. The PNGEC is constantly trying to do better — but however much the administration is improved, however many police and military are brought in for security, ultimately it is people who cheat elections and cause violence and it is people who can make things work more fairly — if they so choose. This paper explains how the PNGEC might help more people make better choices about election fairness.

This discussion paper is a companion to a longer report, commissioned by the National Research Institute (NRI) on the electoral roll and voter identification issues in Papua New Guinea (Ladley *et al.* 2010). Our research for that report (and for previous studies, see also Ladley *et al.* 2004) highlighted that a key issue underpinning the administrative and technical matters relating to improving the electoral roll, was how to build more popular support in PNG for fair processes, non-violence and general ‘ownership’ of elections. Because the discussion had implications beyond the narrow focus on the electoral roll (even beyond the policy area of elections), it was decided to develop the supporting reasoning separately in this paper.

There is an obvious synergy in using a discussion about elections to illustrate a wider argument about why people might comply with laws and processes. The Constitution of PNG does not base all government on the consent of the people as rhetorical flourish. The simple statement of democracy has a deeply practical rationale, illustrated across the ages and in very diverse circumstances: people are more likely to comply with the intentions of government, pay taxes and obey laws if they feel that the system of government as a whole ‘belongs’ to them, that they have ‘chosen’ it.

This does not suggest that people only comply if their own political party or group is in power (though that is a risk). In soccer, people can love the game, play the game, and accept that their team might lose, provided the rules are fair, the referee is impartial and the game is played fairly. But if one side cheats and wins, without sanctions, then the incentive for losing sides is to do the same. A spiral into competitive cheating can result, as each tries to out-gun the other to win. There may be limits to how far cheaters might go in these sorts of spirals. But under conditions of strong competition, especially backed by tribe or religion, the ‘bottom line’, even in sport, may be ugly. In human competitive history more generally, countless examples illustrate these sorts of spirals, with occasional horrific results (North *et al.* 2009). This reasoning essentially applies in PNG elections, especially in the Highlands Region (Ketan 2003).

Calls to think and act differently came recently from Chief Electoral Commissioner Andrew Trawen (2006) and legal adviser to the PNGEC Dr. John Nonggorr (2006) in relation to how the people of PNG should ‘take ownership’ of some of the problems and solutions, and how incentives and disincentives might bring about the desired change more quickly. They also suggested that attempts to rely on the criminal law to regulate behaviour in relation to elections have largely failed. We agree and explain why. We take up the explicit challenge from Mr. Trawen and Dr. Nonggorr to look at incentives and disincentives more closely. We draw on lessons from public policy and conflict management to suggest ways of engaging the people directly to establish conditions for the genuine elections that the Constitution requires.

2 *Realigning Electoral Incentives*

Our conclusion, put simply, is that even with the best management and technology available, there is likely to be ongoing major problems with PNG elections until there is more voluntary compliance with the rules of ‘fair play’. There is no magic way by which this can be achieved. But the PNGEC can work more closely with local communities to give more incentives to ‘play by the rules’ than to cheat. That may at least stop the spiral.

2. Public Policy: How the State Seeks to Achieve its Objectives

If a government wants its citizens to act differently from how they are currently behaving — for example, ensuring citizens drive within a speed limit on the roads to reduce road deaths — it has to find some way to persuade them. How does the state get things done? The field of public policy tries to bring evidence to this question. Parsons (1996:x) summarises that public policy focuses on:

...the public and its problems... what governments do, why they do it, and what difference it makes.

He also describes policy orientation as:

... multi-method; multi-disciplinary; problem-focused; concerned to map the context of the policy process, policy options and policy outcomes; and whose goal is to integrate knowledge into an overarching discipline to analyse public choices and decision-making and thereby contribute to the democratisation of society. (xvi)

In a democracy the issues involve politics as a key ingredient: what political support can be gathered at any point for legislative or executive action? If there is political will, the state frames objectives in accordance with law and allocates resources to make things work and to check if they don’t. One mechanism of persuasion is coercion: various forms of pressure for compliance. The law sets out what has to be done in great detail and by whom; funds are allocated. Everyone is supposed to follow the system. Breach is assumed to be rare, and there are consequences at multiple levels, including administrative sanctions (officials losing jobs), electoral petitions and, sometimes, criminal prosecutions. But what if people don’t follow the rules? And what if the persuasive mechanisms don’t work? In many parts of PNG the election systems confront combinations of intense competition, violence, fraud and breaches of electoral law. Plainly, any theoretical shaping of behaviour, including the threat of punishment by the police and courts, is of marginal relevance in the intensity of ‘trying to win’.

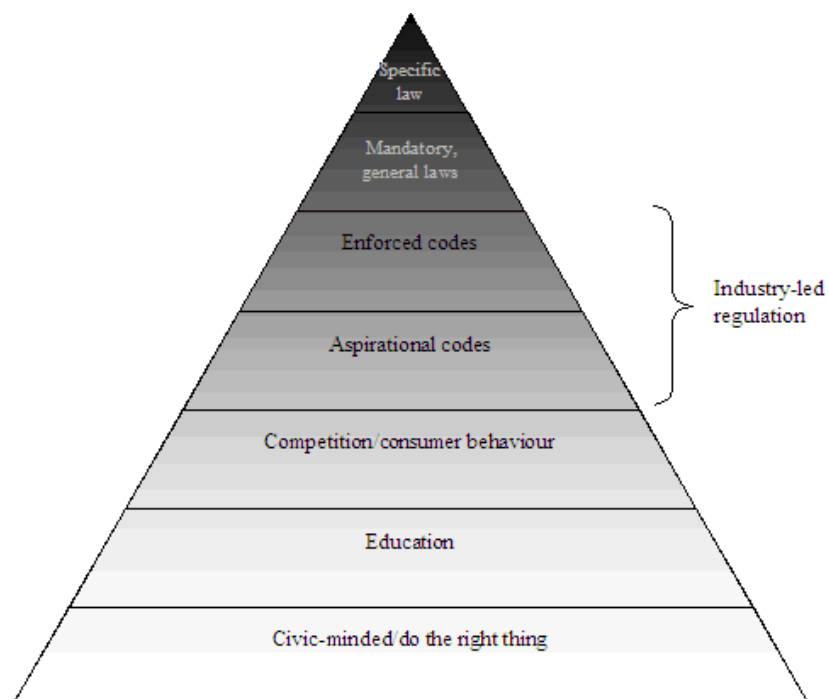
This is essentially the situation at election time in large areas of PNG, especially the Highlands Region. The issues have been well documented by election petitions and observer reports covering some decades (summarised in Ladley *et al.* 2010). If the evidence is clear, the rational analyst trying to advise government, or any branch of the public service, should not wait for another major crisis as in 2002. Cynics might suggest that only crises, often with devastating costs in human and financial terms, build the necessary political and financial support for reform. That may be so. But another option is to see if something different can be done, in advance, to avoid a crisis.

Although rationality does not always triumph in public policy (or anywhere else), we suggest that it is worth exploring options in relation to elections in PNG. In particular, we argue that it is useful to see all aspects of elections from the perspectives of identifying the problems, and looking for multiple ways in which they might be addressed.¹ One should continually question whether the combination of PNGEC and other state agencies have found the most effective ways of getting compliance — or if something new needs to be tried.

PNG is not, of course, alone. All governments find the business of changing behaviour hard. A substantial body of literature shows the complexity of achieving changes to citizens' behaviour and the even higher degree of difficulty in achieving changes to attitudes (see Sparrow 2000). Discussion about the use of law and regulation to achieve an objective often makes reference to some sort of sliding scale between education to achieve voluntary compliance, incentives to shape choices, and enforcement to punish behaviour that deviates from the objectives. In passing, we note that much PNGEC publicity material makes comparatively little reference to what might happen if the rules are not followed — a point to which we will return.

Much of the recent literature on regulatory theory adapts the *enforcement pyramid* in the work of Malcolm Sparrow (2000:40), including the example shown in Figure 1 below. His work was initially focused on methods to get greater compliance with tax regulation. But the concept has been very widely used in Australia and New Zealand at least, in discussion of regulation generally, with various adaptations of the triangle based on Ayers and Braithwaite (1992). A good general analysis of these issues can also be found in North *et al.* (2007).

Figure 1: The Regulatory Pyramid



Source: Government of New Zealand, 2005.

¹ This adapts from earlier work on voter education in PNG (see: Ladley and Williams, 2007).

In all the various adaptations of these ‘regulatory pyramids’, the base layer seeks agreement from the citizen by education, moving upwards through incentive-based systems to the top of the pyramid, where state legal compulsion against violators is required. This is a layered set of persuasiveness which moves from inviting people to comply (at the bottom), to helping them to comply, to shaping incentives, to punishing non-compliance (top). In general terms, maximum compliance comes if most people comply voluntarily, and there should be careful analysis of why people are not complying to craft an appropriate regulatory response. In a broadly compliant environment, the bulk of activity by regulators would be in the bottom half of the pyramid, making it easy for people to do what they should do: removing barriers, conveying information, educating, structuring incentives to comply (and disincentives against breach), and so on. Obviously, regulatory costs are highest at the top of the pyramid (state coercion) and lowest at the bottom. Prosecution, courts, police, and imprisonment are enormously expensive and time-consuming. It is significantly cheaper (and more effective) if it is possible to get compliance by such methods as making sure that the incentives favour compliance, using civic education, for instance.

The evidence from regulatory experience is that the top of the pyramid is generally the least effective and most expensive means of regulating behaviour. But this does not mean that the ‘top of the pyramid’ is unimportant — indeed it is critical because it must be available and used on occasions, so that all the other levels fit within a coherent compliance framework.

The writing in this field stresses the importance of ‘matching horses for courses’, in other words, of knowing the nature of the problem — the people, the culture, the existing incentives and disincentives — and being able to change methods of securing the goal depending on what works (Scott and Baehler 2010:205).

In some societies, the pyramid is quite ‘flat’, in that there is almost nothing between education and the next level, compulsion. Singapore is often cited as an example, where there are extensive education campaigns against low-level social ills (for example, chewing gum) backed by substantial fines for non-compliance, and nothing between. This appears to work in that culture with high levels of compliance and relatively few fines being levied (the same framework operates in Singapore at many levels, from politics to family obligations).

We suggest it is useful to be informed by this regulation theory, and more specifically the concept of the regulatory pyramid.

Clearly, the management of elections seeks to shape behaviour along certain lines. In considering elections it is important to know:

- What are the objectives (e.g. maximising participation, creating a fair electoral roll, reducing problems of unlawful conduct)?
- What are the range of regulatory measures being contemplated on the ‘pyramid’ (e.g. seeking voluntary cooperation,; building agreements, shaping incentives, prosecution)?
- What is the knowledge available about existing behaviour and attitudes (and local power structures, community leaders, competitive and cooperative pressures) so that the most effective means of regulating conduct towards a defined purpose might be achieved?

3. Structuring Incentives and Disincentives

The regulatory pyramid suggests that the most effective changes in conduct (in terms of expenditure) would come from structuring the incentives and disincentives ('carrots and sticks'), such that more people comply voluntarily.

Carrots are culturally shaped — what is effective in one society will not work in another. Thus, in the Highlands Region, it is often reflected that the name and the prestige of the tribe in a very competitive society is of major significance, as is the opportunity to compete in elections (Ketan 2003). Use of the pyramid should work with this knowledge. Ketan (2010) adds to this point:

The compliance system needs more than just policing and prosecution; it needs negative publicity (shaming), leadership training (getting their leaders to get it right), churches to declare that electoral fraud is sinful, etc. In this context, it would be best to use sanctions or disincentives that people understand and practice as part of their culture.

Similarly, *sticks* are not uniformly regarded as such in every context and so may not work uniformly in all scenarios, especially if the sanctions involved are seen as meaningless, ineffective, impractical and less important than other disincentives or incentives. For example, other disincentives — the possible humiliation of being beaten by a rival who cheated the system or, more simply, not having an election until reasonable arrangements are made for the fair and peaceful construction of the electoral roll, identification on polling day, and all other aspects of elections — may outweigh sanctions in terms of their influence on behaviour.

In PNG looking at elections and electoral behaviour in this way requires a combination of:

- knowing about rewards and sanctions (understanding and awareness);
- seeing them work effectively (experience); and
- believing that their candidates will be *worse off, rather than better off* by cheating the system.

According to regulatory theory, this combination outlined above would be far more likely to bring about effective conformity than any threat of the widespread deployment of coercive force by the PNGEC or police, even if this were possible.

The literature on regulation suggests that the entire electoral process should be seen as an overall attempt to regulate conduct and behaviour. This includes everything from the work of non-government organisations (NGOs) to conduct voter education and peace-building, the competitive perspectives of candidates and political parties, the PNGEC's tasks of building a reasonably accurate electoral roll and running the elections, the police's role in punishing law-breakers, and post-election judicial inquiries into the conduct of the process.

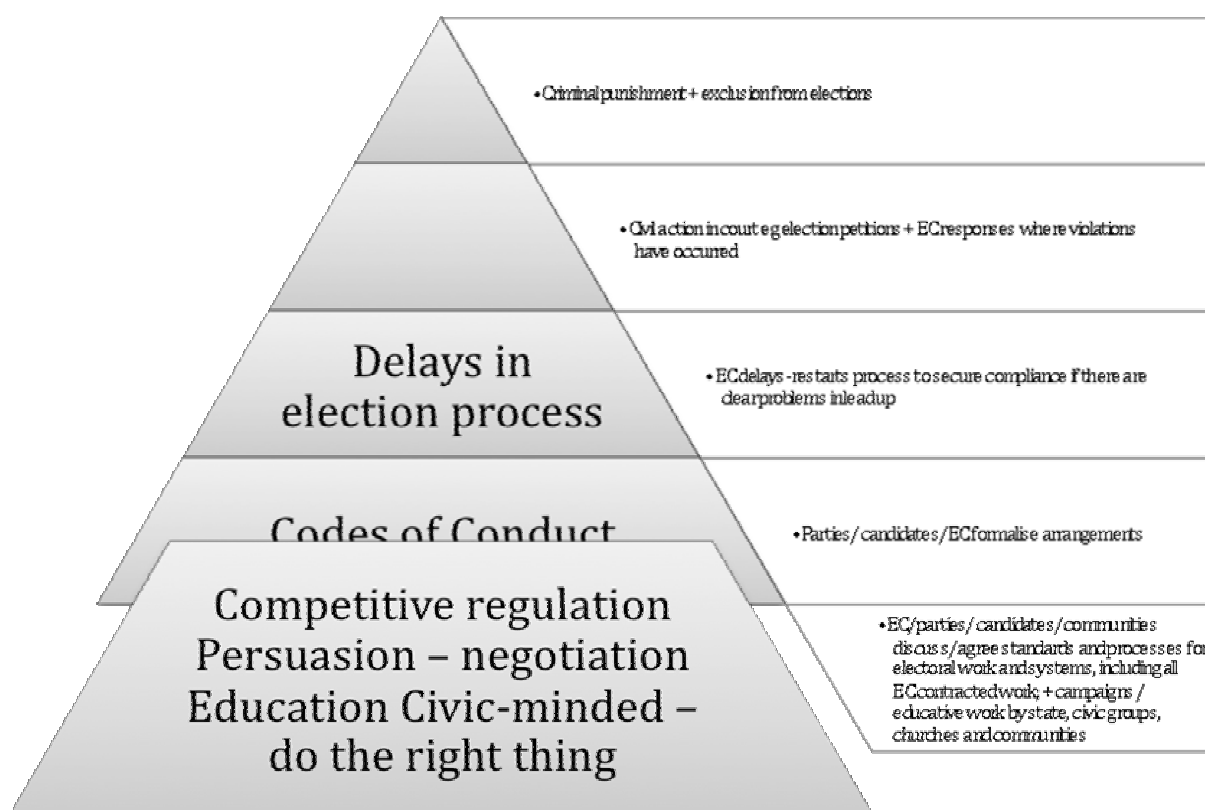
In particular, the evidence suggests that realigning the incentives should be considered in the planning and operations for elections in any area. By this, we mean that if candidates, supporters and voters can see that the incentives for compliance are more attractive than the incentives for breaching the law, then it is more likely that they will comply.

Those incentives and disincentives need to be understood and agreed to as widely as possible, and backed by consequences and processes. The consequences need not leap to the top of the pyramid in all cases of course. Indeed experience has shown that it is impossible to sanction instances of mass law breaking. Regulatory theory shows that it is expensive and less effective if undertaken without the rest of the pyramid.

Rather there should be graded responses, stressing opportunities for compliance and the interests of all parties in complying. In all variations of the regulatory pyramid, the bulk of effective activity is in the non-coercive bottom part of the triangle.

Figure 2 applies the pyramid concept to elections and is discussed further in the section on conflict management below.

Figure 2: Application of Regulatory Pyramid to Election Processes



4. Conflict Management

Lessons from the conflict-management literature can be summarised much more briefly, insofar as they link to the regulatory pyramid concepts discussed above. Even assuming that force is lawful and justified in some situations, much of this field draws on analyses of conflict to show that the use of coercive force (war, threats of war, etc.) has limited value except in the relatively rare occasions that opponents can be completely defeated by force. Even where there is overwhelming military superiority, the importance of citizen agreement (sometimes called ‘hearts and minds’) is universally acknowledged (Kilcullen 2009). Here again, the real issues do not involve cynical use of propaganda, but understanding deeply

what are the key concerns driving violence, addressing those concerns, and then establishing clear incentives and processes to press combatants towards peaceful competitiveness within some rules, rather than through warfare (Fry 2007:33).

As regards elections in PNG, violence and other unlawful activities may reflect much deeper pre-existing rivalries. The elections play these issues out in another form, compressed onto a focused stage (Ketan 2003).

Given the ongoing tribal violence in the Highlands Region and the concern about the proliferation of arms, it is of course entirely appropriate to bring conflict-management perspectives to bear on attempting to manage electoral competitiveness without widespread violence. Dinnen and Ley's (2000) work shows that relying on Western law to deal with violence in Melanesia is less likely to work than a thorough understanding of indigenous patterns.

Our discussions with key stakeholders in PNG elections, speaking specifically about the Highlands Region, illustrated the potential for negotiated processes to strike agreements about peaceful conduct, even amongst competitors.

A recent illustration where civil society organisations brokered arrangements for orderly electoral processes (not backed by 'big money') can be found in Gari (forthcoming), who observed the work of civil society organisations in Chimbu at the time of the 2007 National General Election.

An older example of structuring incentives in the context of highlands conflict that we are aware of is the stand taken by some medical facilities not to treat wounds from tribal conflict, in order to shape incentives to stop this form of fighting.

The approach we recommend is not precisely in the mould of attempts to foster peace efforts generally in the Highlands Region. Those are important and have their own logic and purposes. Rather, we suggest that the PNGEC itself, in close cooperation with civil society, should become an active player in setting clearer incentives to comply peacefully with electoral processes.

The analogy that often arose in discussions with stakeholders was that of a sporting game, which was illustrated at the beginning of this paper. Suppose local groups wished to play soccer competitively in a league, and a state sports agency was required to referee, supply the ball, mark the fields, etc. Then suppose that the competition was so highly contested that players were cheating and getting injured, and violence was erupting amongst supporters. Under these circumstances, the agency would signal that it was not able to do its job, and stop the games. It might then look for solutions. An obvious option would be to approach local groups to see what could be done to build agreement on fair procedures, non-violence and the rules of the game. The agency might point out that its referees should not have to fight their way to the field, confront teams fielding 50 players, confront the use of guns to scare off opponents, and risk being attacked by crowds of spectators.

If these discussions produced better climates for the resumption of the league, the games would begin again. But if the agency felt, in the lead up to a football match, that the evidence was that there was still no basic agreement on the rules (and it was thus likely that cheating,

and fighting would resume), the games would again be suspended for further discussions. This process would continue until sufficient agreement was reached.

We apply this analogy to all aspects of elections. Where the evidence of a sufficient threshold of major problems is strong, the PNGEC would establish supportive processes and diplomacy, working closely with and through community groups, churches, and other civil society partners to create agreements with candidates and their supporters *before* the elections, to respect peaceful and genuine processes, as well as establish contingency plans on what to do on election day if things went wrong.

This work would complement the wide range of activities emerging in community organisations, especially those involved in civic and voter education, non-violence, and HIV/AIDS education (these groups have been discussed by Haley 2008). The focus would be building public support — starting with candidates and their supporters — for reducing the instability and conflict that accompany aggressively competitive elections in many parts of PNG. If it was not possible to make appropriate advance arrangements, there would be appropriate responses. These could include delaying the elections in particular areas to allow further negotiation, or moving vulnerable polling sites into more secure areas. This formula would apply to all aspects of elections, starting with the compilation and maintenance of the electoral roll and including the use of the electoral roll on polling day.

How this might work can be illustrated by examples. Thus, the 2002 General Elections went ahead in all parts of the country at the same time because the law required it, even in the face of evidence that there was going to be mass violence in some areas. The requirement for elections to follow strict timetables, come what may, has since been changed to give flexibility for changes in emergencies e.g. s.59.6a of the Organic Law on National and Local-level Government Elections (OLNLLGE) allows an election to be stopped if no election is possible. But in conflict-management terms, it is highly risky to wait for an emergency. The flexibility should be applied well before that, to establish more reliable terms on which the elections will proceed.

Of course, contestants in PNG elections will quickly respond to the incentives created by any new rules — and not all of these responses will be cooperative. One example (based on real experience) is that rivals might create fights at their opponent's strongholds. This is risky for those involved in safety terms, but presumably worth it to disrupt the polling or get the opponent's ballots removed from the elections. All these aspects of 'gaming' the incentives would have to be worked through, each with counter-strategies, each communicated clearly to all the 'players' and their supporters.

There would obviously be a key role for police in such circumstances. In some cases, the police might lead or assist with negotiations. In others, they would provide the general security for the processes to be established. Properly done, the result could achieve dramatically improved security in polling areas *by agreement*, rather than amassing resource-intensive security to deter and (in some limited way) counteract the anticipated conflict.

As one stakeholder put it simply when these possibilities were raised:

This sort of thing can be done locally — let the people and the candidates take responsibility for the consequences, otherwise there is no limit.

We understood this to express confidence in our core argument that localised arrangements that included candidates and supporters might see them embrace the responsibilities for success and/or failure, rather than relying on outside agencies (for example, police or the PNGEC) to halt the spiral of increased cheating and violence.

Somewhat controversially, we pause briefly to consider whether negotiations with communities should include options for how various forms of ‘open voting’ might take place if that was the wish of the community. Despite the basic democratic rights and concepts (personal voting, secret ballot) being spelled out in law, Ketan (2010), amongst other commentators, notes:

There is no such thing as a secret ballot in some parts of rural PNG, where voting is largely a collective exercise. Whilst the law spells out international norms, in reality an ‘open ballot’, rather than a ‘clandestine’ secret ballot actually feels more democratic to many people, especially in the Highlands. It may not appear democratic, but it is nonetheless democracy at work.

Standish (pers. comm. 2010) observes that some polling staff support this, saying that open voting is the request of various communities. But how does one distinguish between mob rule (powerful leaders steamrolling communities to control the entire vote under the guise of ‘custom’) and genuine traditions and community wishes to vote as a group? A conflict-management perspective would address the question, working with the communities to try to make the law and its implementation fit better with community wishes, rather than lamenting the breach of the law and the impossibility of its enforcement. Ketan is particularly emphatic on involving local communities, especially churches, if they have agreed to play a neutral role (2005:25):

Making policy changes at the national level is not going to work. But working closely on an intimate basis with family units systematically through Church programs will.

We note, however, that it is not possible to generalise too far about a role for churches and the issues should be sorted out relevant to in each location. Sometimes church leaders are themselves candidates, while in some areas churches wish to stay above the political fray and so do not participate even in voter education.

There are, of course, limits to how far the PNGEC might accommodate local wishes — abandoning the secret ballot is Constitutionally impossible, quite apart from PNG’s international law obligations under the International Covenant on Civil and Political Rights (United Nations, 1966).² But if candidates and local communities were engaged closely and the reasons explained, they might support (for example) enhanced voter education and extra electoral officials to help illiterate people to cast ballots, if the alternatives included delayed elections, or moving the ballot stations further away from communities so that the risk of mob rule could be reduced. The PNGEC would have to weigh the resources required (e.g. an extra vehicle for more polling staff to some stations) against the costs of breaches of the law and possible by-elections. We also note that if the electoral rolls were accurate, or perceived to be accurate, there would be reduced incentives and opportunities for bloc voting.

² ICCPR Article 25: ‘every citizen shall have the right... to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot guaranteeing the free expression of the will of the electors’. PNG is a party to the ICCPR.

Currently, ‘ghost enrolments’ put thousands of ineligible voters onto the electoral roll, which means that sometimes thousands of extra ballot papers are distributed on polling day. For those who cheat, the goal is to create sufficient chaos in the system to ensure those ballots are cast for the right candidate, by bloc voting and by-passing the voter identification system.

5. The Kandep By-election, November 2009

An example that illustrates the potential of a conflict-management perspective can be found in the observer report of the Kandep By-election held in Enga Province from the 15–19 November 2009 (Butler and When 2009).

This by-election arose from a successful election petition from the 2007 National General Election, specifically because the court found that there had been clear breaches (including hijacking of ballots and ballot stuffing) that made the results of the counting unreliable (Papua New Guinea National Court 2009). We note that the burden of proof in election petitions significantly favours those who cheat elections in situations where the events are chaotic and witnesses produce starkly contradictory accounts.

Still, it was established at the Court of Disputed Returns that the use of the electoral rolls on polling day was especially problematic and that at particular polling stations there had been and would likely be again, bloc voting of all ballots, major risks of ballot stuffing and destruction of ballot boxes to prevent votes going to rival candidates.

As the by-election loomed in late 2009, the evidence was that actions similar to those that had resulted in the 2007 Election in Kandep Open Electorate being voided (including violence) were likely. Further, it seemed that the combination of intent by supporters of certain candidates to ‘capture’ particular polling stations and supporters of others to resist this capture meant that violence was probable. Again, this was known to the PNGEC at headquarters in Port Moresby, and on the ground by police, the Returning Officer (RO), local polling staff, observers, supporters, and candidates.

The intense rivalry and suspicion escalated to all areas of the polling process. On the day before the polls opened, the RO called a meeting with the candidates and key advisers to discuss polling procedures and to try to assuage their concerns. Issues raised included the location of the counting centre (fear of attack), alleged partisan alignment of polling staff, one day polling (intended to avoid suspicion of double-voting), and general security including the candidates’ use of armed private bodyguards (Butler and When 2009:17). On the morning of polling day, the RO (who had been brought in from outside the area to conduct the election), confronted by ongoing allegations of political bias amongst the local staff, dismissed most of the locally-hired polling staff on the spot except the Presiding Officers who were expected to conduct the polling using 5–6 police officers designated to each station instead (*Ibid.*:20). The by-election thus began in an atmosphere of threat, with a skeleton staff, and with police expected to take the place of most polling staff.

In three particularly contentious polling places the RO tried to establish polling stations as planned, so as to give the relevant communities an opportunity to vote. Several attempts were made by helicopter and other means to do this. But the roads were blockaded, helicopters faced attack on the ground and finally all such attempts were abandoned. The Chief Electoral Commissioner later advised the RO to attempt to poll in these areas, however, staff refused to go back.

Despite distinct threats in these three (and a small number of other) polling places, most of the rest of the polling was relatively peaceful, but with other significant procedural difficulties including bloc voting, problems of identifying voters from the electoral roll and changing locations of polling stations at the last minute. As the observer team noted (*Ibid.*:23):

The conduct varied widely from polling place to polling place, and even between two polling places in the same location. Voting conduct included and at times combined:

- *lain up* voting, where voters simply lined up and received ballots with no use of the roll;
- *man-meri* voting, where voters lined up according to gender, and as the roll was called the next woman or the next man in line would proceed;
- block voting, where the community would dictate the number of votes (including preferences) to go to each candidate, usually before the start of polling.

As regards the electoral roll specifically, the observers noted dryly that “the electoral roll did not figure prominently in the Kandep By-election” (*Ibid.*:24).

After the relatively peaceful but procedurally flawed polling was completed, more generalised violence erupted thereafter at Kandep Station, near the designated counting centre. It was then decided that the count should be moved to a safer place. Eventually, a result emerged with the previous winner (whose victory had been cancelled by the Court) winning conclusively on first preferences.

From a conflict-management perspective, the Kandep By-election illustrates some key lessons:

- The risks were well-known in advance, and the main ‘new’ measures taken were essentially to bring in some experienced officials from outside the district to be presiding officers and a six-fold increase in police personnel (possible only because this was a by-election).
- The attempts by the RO to discuss processes, listen to concerns and establish fair procedures were clearly done as well as could be expected on the spot. But they took place in the heat of the moment, with all the risk factors converging as polling opened. This resulted in emergency decisions including withdrawing from the riskiest polling sites, and sacking most of the polling staff on the morning of the elections. Back at PNGEC headquarters, the Chief Electoral Commissioner also had to use his discretionary powers to advise the Governor-General to extend the period for the return of the writ, due to the delays in counting.
- To the extent that polling was possible, the extra police and security ‘saved the day’, not least with the police good-naturedly and in a non-partisan manner largely conducting the polling (raising the question of whether actual training on voting should be added to their duties). Their presence probably also avoided most violence in the actual polling and there was no attempt (as in the previous election) to actually hijack and stuff ballot boxes.
- There were still many procedural flaws (especially in the requirement of each ballot being cast only by a person on the electoral roll, or a designated assistant, once). The observers noted that much of the relevant conduct was done openly and appeared to reflect the will of the majority of those present (such as the crowd allowing relatives

to cast proxy votes for people not at the polling site). Although this was not necessarily undemocratic in the broadest sense, such methods of voting were, of course, simply unlawful.

- Despite all these difficulties, a result was achieved and declared. The rival challengers indicated to observers that they were exhausted and would not seek an electoral petition or even stand again (Butler and Wheen, pers. comm. 2010).

Though the electoral roll was not audited in Kandep, it is also possible to say with some confidence that the failure of election procedures to work as required would be compounded by an inflated electoral roll (evidenced by the comparison of total voters against census data). The Kandep By-election is an example of how the electoral roll can be inflated (by various methods) to maximise ballots sent to any area, and then using various forms of voting, without regard to the electoral roll, to secure maximum votes for a candidate.

Applying regulatory theory and conflict management experience, therefore, the lesson is that whilst extra police and agility in responding to emergencies ‘got a result’ without major violence, that result cannot reliably be called ‘genuine’ as required by the Constitution. Hence, there is a reasonable argument to be made that the Kandep By-election should not have taken place under those conditions.

If the key suggestions in this section were activated, the PNGEC (and others assisting) would have absorbed the lessons of the regulatory pyramid and of conflict-management after the voided 2007 election in this constituency. In addition to election planning, designated people would have spent the months leading up to the election working with the candidates, local communities, churches, authorities, supporters, etc., to establish the ground rules — by agreement. Those rules would have included:

- all candidates and parties signing a code of conduct (displayed widely in the electorate, used by all local groups to educate voters);
- public displays and verification of the electoral roll (at agreed places, using agreed processes);
- the use of the electoral roll for voter identification (using agreed processes);
- one person, one ballot, a secret vote, and the proper use of indelible ink (along with processes agreed in advance to assist voters who did not know how to cast their ballots); and
- other details for fair updating of the electoral roll and conduct of the polling discussed below.

If no agreement was reached on all these processes in advance, or if it seemed that these arrangements would be broken, the PNGEC would have then taken advice on its options. Those options would have included postponing the entire poll for further negotiations, or altering the sites of polling stations to enable better security.

If the arrangements had been broken on polling day itself, the PNGEC would have carefully considered responses (agreed upon within the PNGEC and advertised to candidates) as emergency measures. This would include a consideration not to conduct the polling until conditions improved.

6. Application of this Approach

PNG elections are competitive. Candidates and their supporters want elections to be held to get access to office. We suggest that this ‘demand’ from candidates and their supporters, gives the PNGEC a major bargaining card in the lead up to elections as well as over the actual polling. This analysis applies to all parts of the election.

The PNGEC has already started down a track to achieve what we propose here. Within the framework of genuine elections and the relevant laws, the PNGEC has a fair measure of discretion and flexibility in how to establish the electoral rolls in any area, the use of technology, the actual timing of elections (though not for by-elections), and the location and methods of polling. The PNG also has great flexibility in responding to conditions on the ground by postponement or variation of polling schedules, in accepting or rejecting any votes or ballot boxes, in prosecution of offences, and, ultimately, in refusing to declare a result. But the evidence from 2007, confirmed most recently in the Kandep By-election, suggests that this discretion is seen as essentially for ‘reacting’ to circumstances and emergencies. Further, in the absence of very clear planning that sets out scenarios and responses, the emergency management on and around polling and counting is subject to legal delays and court action. Our core suggestion, therefore, is that the PNGEC’s discretion should be proactively used, with much more training.

The PNGEC would make it clear that unless credible arrangements are made with candidates, political parties, supporters, and local communities in electorates on the conduct of elections peacefully and according to law (starting from the foundation of the electoral roll), the PNGEC would delay compiling the electoral roll, and even holding elections *in relevant areas*, until the circumstances were appropriate. This would not delay an entire general election, disrupting the political and constitutional imperative of forming a government. But a range of strategies would become more prominent, including spacing the timetable to allow the concentration of resources in areas that were most problematic. Currently, the only ultimate option available to the PNGEC is to fail an election. We note that this was required in many areas in the 2002 National General Election, and it still proved possible to form a government without the relevant MPs.

The goal is therefore to use negotiated-arrangements to align the incentives for rule-following, rather than rule-breaking. This would work *with* rather than *against* competitiveness (including regarding bloc voting). The process would utilise the insights from conflict management and practice, not just the somewhat heroic assumptions of law. This would move the PNGEC from passively waiting for crisis to pro-active engagement with candidates and political parties, as well as with local NGOs, women’s groups, and respected authorities such as churches. In some places there may be insufficient civil society capacity. In any event the PNGEC would work primarily with candidates, placing some responsibility on them for the conduct of their supporters.

This ‘new compact’ would therefore start with political parties and candidates, probably in the form of negotiations to agree on a code of conduct that all candidates and parties would sign along with the PNGEC and other interested parties. Most rules for elections are of course set out in relevant laws. But these are ‘handed down’ from the legislature, rather than being personally-negotiated compacts as we propose. The goal of supplementary codes of conduct is to get personal and political party recognition of the problems and buy-in to the conduct required for solutions.

The phenomenon of ‘codes of conduct’ or similar arrangements tends to be found most often in peace agreements for internationalised conflicts (for example, for the relevant parties in Bosnia and Herzegovina, see NATO 1995).

Even within countries — particularly those divided by conflict — it is also common to seek agreements from candidates and parties for negotiated processes for peaceful elections. One ongoing example is in Ethiopia, where political parties have tried to negotiate common codes of conduct (Heinlein 2009).

Another example is in Kosovo, where USA Ambassador Christopher W. Dell remarked on the signing of the code of conduct that “Your signatures here today — the commitment you are giving — are an honour-bound promise to respect the fundamentals of democratic expression and participation. They signal to your party supporters and activists that their leadership will be held to account for the actions of even the most passionate supporter. Codes of conduct also provide the electorate with a commitment that parties will respect and promote the fairness of the process, and the rights of all to participate in democratic life” (Dell 2009).

Another current example of a code of conduct is from Namibia (set out in the Appendix). Further, Jamaica from 2002 onwards significantly reduced electoral conflict and improved compliance with fair campaigning, following the negotiation of a Code on Electoral Conduct between the core parties, and the establishment of a new office (the Political Ombudsman) to mediate disputes and investigate and prosecute breaches (Government of Jamaica, Office of the Prime Minister, 2009).

7. Transparent Decision-making

As we have seen, a new approach would require new capacity in the PNGEC. In particular, it would be important to practice and demonstrate the PNGEC's objective standards of decision-making.

The Constitution makes it clear that the PNG Electoral Commission as a whole is not subject to any outside direction. But there is a risk that personalising decisions in the Chief Electoral Commissioner means the finger of responsibility for every failed or fraudulent process, or indeed for every major decision (such as delaying elections, or excluding ballots) tends to get pointed at the head of the organisation, even if the many reasons for problems lie elsewhere, e.g., in unlawful conduct. In the intensity of elections, threats and other pressures against one person are realities.

To minimise criticism of unjustified delays and even litigation, transparency of decision-making would be essential. This would include setting basic standards meeting the Constitutional requirement for genuine elections, such as non-violence.

Without in any way shirking the constitutional responsibilities of decision-making, it should be possible within the PNGEC to establish a careful process for considered decisions taken with advice by the PNGEC in a corporate sense. One stakeholder suggested such an approach “would be critical” both for the integrity of the decisions and to protect the Chief Electoral Commissioner from pressures.

In this respect, the Election Advisory Committee (EAC) contemplated in sections 96A, B and C in the OLNLLGE provides a solid basis for the required process. The EAC would need to be activated so that it is engaged early in all processes, informed of all key facts, and carefully documents all reasons considered by it and the Chief Electoral Commissioner in the use of discretionary powers. The key is to establish procedural integrity and transparency, especially in building the compact and in any resulting decisions.

There is also precedent for asking one or more external international respected persons to play an advisory role, if it was widely agreed and would reinforce impartiality. Advice in any form would not of course detract from the Constitutional responsibility of the PNGEC to make decisions.

As we have noted, the legislation already authorises considerable flexibility for the PNGEC around polling time. In our view, however, it is worth making absolutely clear in the legislation that this flexibility extends to the pre-election period. This would enable the PNGEC to establish the negotiation process with all relevant actors, including candidates, political parties, communities and tribal authorities. It would set clear conditions for the conduct of enrolment, campaigning, voter identification on polling day, the conduct of the polls, counting and declaration of results.

In other words, the goal is, by careful discussion and agreement, to increase the incentives for candidates, local communities, local electoral officials, local governments and voters generally, to comply with the law or face delays (in addition to other sanctions higher up the regulatory pyramid). As regards the proper compilation and maintenance of the electoral roll, and its use on polling day, these incentives would be well-publicised in advance, by proper voter education and close engagement of candidates, parties, local authorities and other stakeholders. Obviously, voters and supporters may still break all the agreements. The goal is not perfection, but the management of risk. The strategies outlined here are all concerned with giving clearer choices, and trying to shape the incentives for better options.

8. Summary

From the perspective of how state action achieves its objectives, we argue that a major flawed assumption in PNG is that people will obey the electoral laws and the relevant criminal laws set out in the OLNLLGE — and that criminal sanctions and election petitions are sufficient to deal with any breaches of those laws.

The evidence is that there are multiple breaches of laws, and, for most practical purposes, no criminal sanctions. Indeed, the competitiveness of PNG elections is such that the overwhelming incentives for candidates and supporters are to cheat the legal processes as much as possible in the hope of winning, precisely because the advantages of office are bigger than the sanctions for cheating. Losing candidates face the financial, evidential and often exhausting human costs of an electoral petition. At different elections, more than half the declared winners regularly face such petitions, although many are abandoned for complex reasons, including cost, exhaustion and petitioners being paid to drop the claim. Even if a petition is successful, the cheating is often repeated in similar terms in the subsequent by-election.

Two bodies of literature offer useful perspectives in considering this issue and what to do about it: public policy and conflict management. Faced with regulatory problems on a large

scale, countering such problems with resort to the law alone requires the ‘coercive’ top of the regulatory pyramid to be functioning, and hence requiring brave informants and very substantial resources indeed.

In the absence of such resources (which would in any event probably fail to achieve their objectives), the three major options appear to be:

- proceeding ‘as best as possible’ by maintaining a semblance of law, but recognising that core legal requirements cannot be upheld and leaving defeated candidates to petition the National Court;
- trying to find some way to secure more voluntary compliance; and
- trying to make the systems work better through a range of management and technology options.

We suggest that it is clear that present conditions are fostering the first of these options. We favour a combination of the second and third.

In our companion report (Ladley *et al.* 2010) we make the point that a credible electoral roll is the key to the integrity of elections, and that management and technical options should be considered. However, any such options must be based upon a reasonable likelihood that the systems could operate with some integrity. In other words, considerable work should go into realigning the incentives and securing agreement, trust and compliance before the PNGEC can manage its way out of the problems, or try expensive new technologies.

By way of recent international experience we draw on a comparison between Bangladesh and Pakistan. Mehboob (2009) reports that a new voter list with photographs was compiled in Bangladesh in 2008 following the cancellation of elections because of major problems, reflecting the approach we recommend here. However, before even compiling a new electoral roll was attempted, there were substantial reforms of the Bangladesh Electoral Commission and very close dialogue between the Bangladesh Electoral Commission and all political parties to establish broad consensus about the processes and systems. The result was highly successful, with independent verification finding the 80 million strong electoral roll with digitised photo identification, to be highly credible (IFES, 2008; UNDP, 2008). Peaceful and orderly elections followed.

This is in contrast to Pakistan, where dialogue and trust between the Electoral Commission of Pakistan and political parties has until recently been virtually non-existent, and the electoral rolls are contested and inaccurate despite massive expenditure on technology and implementation by an outside contractor. It is also important to note that reasons for the problems of Pakistan's electoral roll were complex, including lack of quality control in the entry of data and failure to involve the Electoral Commission of Pakistan at all stages of the software development of the project (Tufail 2009).

But there is more to the story than just the election. Whilst the Bangladesh example supports the value of establishing trust and agreement for electoral processes, there are no ‘magic wands’ in eradicating violence — the peaceful election was not accompanied by a peaceful aftermath, with political violence erupting in the months after the election (IFES 2009).

Building on these reasons, we recommend a series of simple steps aimed at building trust and hence realigning incentives in relation to elections generally and the electoral roll in

particular in PNG. Further elaboration and analysis of each of these steps would be urgent if sufficient consensus could be secured to start the process moving.

In summary, the logic, backed by lessons from public policy and conflict management, is as follows:

- the Constitution requires genuine elections — but there are still enormous problems in particular areas, with no easy solutions in sight;
- the PNGEC has sole Constitutional authority to conduct these elections — but it does not have unlimited power or resources at its disposal and relying on coercion, security and punishment to ensure compliance simply does not work;
- in addition to the proper backing of state authorities, the PNGEC will work with all relevant actors and communities to try something new: building consent;
- this new approach will require the PNGEC to build its capacity to manage the conditions for elections proactively;
- this proactive role would essentially seek to establish a higher level of voluntary compliance with ‘fair play’ and hence improve the environment in which *genuine elections* can be conducted;
- that environment would essentially establish agreements with candidates, parties, supporters and voters on how the elections would be conducted — there would be codes of conduct and specific arrangements made in relevant areas with clear and transparent processes of decision-making;
- based on that decision-making, if the PNGEC is not satisfied (with good evidence) that there is sufficient likelihood that there will be *genuine elections* in the period leading up to the elections, including compilation of the electoral roll and proper voter identification on polling day, the PNGEC would carefully consider its options, including delays to allow negotiations to continue and proper conditions to be established;
- if there is insufficient compliance with the arrangements on polling days, again the PNGEC would consider an appropriate range of responses, including invalidation of ballot boxes, to no declaration of results (and then repeat the negotiations to try again); and
- all these processes would take place acknowledging the supervisory jurisdiction of the National Court to ensure lawful processes.

In the end, elections represent the peoples’ choices of political leadership. It is a contested game and without reasonable, widely agreed conditions of fair play, there is likely to be a spiral towards increased cheating and violence, with possibly ugly results. It should be possible to stop and then reverse this spiral. Ultimately, it will be the peoples’ choice to do so, or not. Realigning incentives may help more people to make better choices.

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APPENDIX

Political Parties Code of Conduct (Namibia 2009)

WE PLEDGE OUR COMMITMENT TO FREE AND FAIR ELECTIONS

An essential part of free and fair elections is freedom of political campaigning. Everyone has the right to express his or her political convictions and ideas, without threat or fear of intimidation. Freedom of political campaigning, however, also carries responsibilities which include the freedom of others to express their own and independent opinion.

The Namibian political parties, associations, organisations and independent candidates subscribe to the following:

- Intimidation, in any form, is impermissible.
- No weapon of any kind, including any traditional weapon, may be brought to any political rally, meeting, march or other demonstration.
- Parties shall avoid holding rallies, meetings, marches or demonstrations physically close to one another during the same time of the day.
- Parties shall refrain from utilising public address system, either fixed or mobile between 21:00 and 07:00 hours and which could constitute a public nuisance.
- Speakers at political rallies may not use language which incites violence in any form against any other person or group of persons.
- Parties will not issue pamphlets, newsletters or posters which contain materials which incite people to violence.
- Party members and supporters will not seek to obstruct other persons from attending the political rallies of other parties.
- Party members and supporters will not disfigure or destroy political or campaign materials of other parties.
- Party leaders will use their good offices to seek to ensure reasonable freedom of access by all political parties to potential voters, including those at farms and on state owned properties, outside working hours.
- Parties will establish lines of communication to one another at headquarters, regional and local levels, and will appoint liaison personnel who will be constantly on call to deal with problems that may arise.
- The Director of Elections will meet party representatives on a weekly basis to discuss all matters of concern related to the election campaign and the election itself. Emergency meetings will be convened as and when necessary.
- Designated members will attend their parties' rallies to ensure compliance with this Code.
- All allegations of intimidation and other unlawful conduct in the election campaign will be brought to the attention of the police and to the attention of Directorate of Elections at the place where they are alleged to have occurred.
- Party leaders will issue directions to their members and supporters to observe this Code of Conduct, and take all other necessary steps to ensure compliance.
- The Electoral Commission of Namibia and party leaders undertake to publicise this Code of Conduct throughout Namibia by all means at their disposal.
- Parties will in their advertising and propaganda efforts take care not to disfigure the environment

