



Spotlight with NRI

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THIS PARLIAMENT — AND THE NEXT?

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Crisis

Political climate change can create a political cyclone. Controversies over parliament's election of the Governor-General, votes of no-confidence, environmental legislation, integrity of political parties, and infrequent meetings of parliament are political climate changes. Parliament risks unconstitutionality and irrelevance. This could be the cyclone.

Opportunity

Parliament has been adjourned to 10 May 2011 so that maintenance work can be done. This long period could be used by leaders to debate steps for defining electorates that will create a constitutional, representative, and effective parliament after the 2012 National General Elections. However, will they?

Storm Clouds

Unconstitutional Elections for Provincial Electorates

A stable government requires a parliament that is defined by its *Constitution*. However, provincial Members of Parliament (MPs) throughout the country are currently holding office in breach of the *Constitution*. Section 126 requires electoral procedures to be defined by an Organic Law. Provisions in the *Organic Law on National and Local-level Government Elections*

were repealed before the 2007 National General Elections. The re-election of provincial MPs could, therefore, be challenged in court in 2012.

A Legislative Working Group (NEC Decisions 91/2010 and 182/2010) drafted legislation on electoral procedures for the re-election of provincial MPs. However, its enactment has been delayed because leaders are avoiding parliamentary meetings. Will Parliament amend the *Organic Law on National and Local-level Government Elections* to provide for the election of provincial MPs, and if so, when?

Unconstitutional Number of Open Electorates

The number of open electorates breaches the *Constitution*. The *Organic Law on National and Local-level Government Elections* requires between 110 and 120 open electorates. Currently, there are only 89 open electorates. The Boundaries Commission is too late to recommend new electorates for Parliament's approval for the 2012 National General Elections. To prevent a constitutional crisis, the Organic Law should be amended to provide for a new range of open electorates.

The Legislative Working Group has prepared amendments. However, legislation has been

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delayed by a higher government priority resulting in MPs avoiding parliamentary meetings. Will parliament amend the *Organic Law on National and Local-level Government Elections* to make constitutional, the number of open MPs, and if so, when?

New Open Electorates

Open electorates represent history, not voters. Population changes mean that some electorates represent far more people than others. The Government knows the parliamentary dynamic, which has led to a rejection of 35 years of recommendations to redistribute open electorates.

Failure by the present parliament to facilitate the redistribution of open electorates will fossilise the next parliament. This will mean the retention of electorates embedded in the 1965 era, if new legislation is not passed. Megacities which are core to the *National Strategic Development Plan* will be irrelevant to the definition of open electorates. Tari may become a megacity represented only by the Tari-Pori Electorate.

The present parliament should consider processes for the redistribution of open electorates. To leave decisions to the next parliament means risking the political futures of MPs. The compelling issue is, 'Will parliament amend the *Organic Law on National and Local-level Government Elections* to facilitate the redistribution of open electorates, and if so, when?'

New Provincial Electorates

The *Organic Law on Provincial Boundaries (Amendment)* 2010 potentially creates Hela and Jiwaka Provinces, and new Southern Highlands and Western Highlands boundaries. Hela and Jiwaka want to elect Provincial MPs, just like other provinces.

Electorates for new provinces in 2012 will require either:

- calling upon a Boundaries Commission – which must also recommend new open electorates. It is too late, in this case; or
- an amendment to s.125 of the *Constitution* – which requires a three-quarters majority vote for it to be passed in parliament; or
- commencement of *Constitutional Amendment* No. 30, combined with an amendment of constitutional provisions on provincial electorates. This would require provincial electorates and their boundaries to be the same as those of provinces. Parliament enacted *Constitutional Amendment* No. 30 to remove provisions for provincial electorates, and for the Boundaries Commission to recommend on provincial electorates by twice voting by a three-quarters majority. MPs, including provincial MPs who voted to remove their electorates, thought that

they were voting on a different legislation. Amazing!

The Legislative Working Group has prepared draft legislation covering various alternatives. However, parliament has not considered this legislation. Parliament should also consider consequences for the LNG Project on which the Government has based the nation's future. Which national leader will tell the Huli why Hela will not have a provincial governor? The compelling issue is, 'Will Parliament amend the *Constitution* to establish electorates for Hela and Jiwaka Provinces, and new boundaries for the Southern Highlands and Western Highlands electorates, and also, when?'

Women's Electorates

The *Constitutional Amendment (Equality and Participation) Bill* 2010, if enacted, will enable women to be elected to reserved seats in electorates in 2012. The Government stated that these amendments would be considered in 2010. However, they were not, as parliament did not make a decision. The Government and the Speaker did not allow parliament to enact or even debate proposed constitutional amendments which would have reserved seats in electorates for women. How democratic is the Government, if parliament is not allowed to make a core decision on its future membership?

Will parliament debate the implementation of gender equality and empowerment of women as embodied in Goal 3 of the *Millennium Development Goals*? Or will the Government stall the participation of women, and inclusive democracy in the country? Provisions for women's seats in electorates, and retention and definition of provincial electorates according to provinces and their boundaries could require three different amendments to the same section of the *Constitution*.

The Legislative Working Group has prepared amendments to this Bill to integrate provisions for women's reserved seats in electorates, new provincial electorates, and retention of provincial electorates. Amendments reduce the parliamentary majorities required from a three-quarters absolute majority to a simple absolute majority. Will parliament amend the *Constitution* to provide seats in provincial electorates for women, and if so, when?

Erosion of Parliament

The erosion of parliament is subtle. Under the *Organic Law on Provincial Governments and Local-level Governments*, MPs are planners and funders at the district level. Benefits exist, as national legislators are handling local needs. However, funding can depend on conformity to the National Government and can undercut the roles of national MPs. Open MPs see their political future as

being identified with access to district funding.

The Auditor-General and the National Economic and Fiscal Commission question whether district funding optimises the use of these funds. MPs perceive district funding as being difficult. They lack experience in district planning and lack qualified district administrators. They are torn between responding to supporters and developing their electorates. They acknowledge that there are tensions between the need for visible and immediate projects and programs that will bring sustainable services to their people.

MPs also acknowledge the pressures that district funding brings. Constituents haunt them in their electorates, in parliament, and at home, for funding assistance for coffin boxes, school fees, new roads, bride price, plane tickets, tribal fights, and much more. MPs believe that the use of electorate funds determines their prospects for re-election. However, MPs are not re-elected because of perceived failure to manage funds or direct them equitably.

The identification of open electorates with district funding makes the redistribution of open electorates difficult. The redistribution of open electorates requires reshaping district administrations. Reshaping district administrations means new administrative boundaries, new administrative centres, and new staffing. It will be challenging, within the term of a parliament, for a Boundaries Commission to report, and for parliament to consider these reports, and reshape district administrations.

The National Research Institute analyses the management of each election. New research and analysis might include:

- analysis of elections in terms of use of electorate funding;
- MPs' perceptions of their roles in parliament; and
- conditions under which electorate funding is available.

The results of the research might move open MPs to reduce their district role. This would ease the redistribution of open electorates. It would enable them to focus on their national role — creating new legislation and keeping government accountable. Will parliament review the roles of MPs in district funding and its impact on their national roles in Parliament, and if so, when?

Sitting Days of Parliament

Section 124 of the *Constitution* requires parliament 'in principle', to meet in each period of twelve months, 'for not less than nine weeks'. The current parliament, which was elected in 2007, met far less than nine weeks in each twelve months (see Table 1). Does this parliament lack 'principle'?

The Government and Acting Speaker have deferred any meeting of Parliament until May 2011. Table 1 shows the lack of people's control over

decision makers through elected representatives. The number of sitting days suggests that the Government and parliament are driven by the government's political survival interests rather than by people's public interests. The number of sitting days measures the weakness of parliament and of democracy.

Table 1: Parliament's Meeting Days, 2007-2011

Year	Sitting Days
2007	35 (7 weeks)
2008	40 (less than 8 weeks)
2009	31 (6 weeks)
2010	30 days (4 weeks)
2011	What will the Government and parliament choose?

Source: Hansard

The Supreme Court ruled that the flexible use of the term 'in principle' was unconstitutional. The Government and Speaker ignored this ruling. Is the Speaker the *Speaker of Parliament* or the *Speaker of Government*? Key legislation is delayed – or never enacted. Votes of no-confidence are blocked. Grievance debates, discussion of matters of public importance, and questions without notice to make the government accountable are impossible to present.

This year, the parliament has held one short meeting in compliance with a decision by the Supreme Court. This meeting was not permitted to consider matters other than the nomination for the position of a Governor-General. Political inequality between the Government and parliament makes public decision making less effective and inclusive, and driven by political rather than by people's interest. Will parliament amend the *Constitution* to make indisputable the minimum number of weeks that parliament must meet in each twelve months? When? How many weeks will parliament meet in 2011, and when?

Timelines and the Future Parliament

Parliament meets in May, which is less than a year before the issue of writs for the next National General Elections. Constitutional amendments for open and provincial electorates should be completed before November 2011. Indeed, a representative of the PNG Electoral Commission has stated that any decision later than August 2011 will make it difficult for the Electoral Commission to prepare for the elections. Constitutional laws require a month's notice and two months opportunity for debate. Parliament's *Constitutional Laws and Acts*

Committee will need to recommend on legislation before the first opportunity for debate. Currently, there is no Chairperson for the *Constitutional Laws and Acts Committee*.

Table 2: 2011 Timeframe for the Legislative Program

February and March	<ul style="list-style-type: none"> • Policy statements, drafting instructions, and legislation prepared and submitted to, and through, the State Solicitor, Legislative Council, Constitution and Law Reform Commission, National Planning Committee, and National Executive Council. • Public awareness. • Consultations with Government and Opposition leaders.
10 April	<ul style="list-style-type: none"> • Final date for placing on the Notice Paper. • Briefings for <i>Parliamentary Constitutional Acts and Laws Committee</i>. • Other briefings and consultations as required – affected Ministers, affected provinces.
10 May and following	<ul style="list-style-type: none"> • First reading and first opportunity for debate. • Briefings of Leader of Government Business, and Government and Opposition caucus. • Briefing of <i>Parliamentary Constitutional Acts and Laws Committee</i>.
June	<ul style="list-style-type: none"> • <i>Parliamentary Constitutional Acts and Laws Committee</i> considers draft legislation and proposed amendments to legislation on the Notice Paper.
July	<ul style="list-style-type: none"> • Parliament's second opportunity for debate and approval. The Governor-General approves. • Electoral Commission can start work on electoral rolls, and advisories.

The legislative program for creating a constitutional parliament, which includes new electorates, is very tight. Without conforming to that timeframe, parliament will be unconstitutional and lack provincial electorates for Hela and

Jiwaka Provinces. This will create more general problems for parliament and the development of the LNG project. Parliament will also lack reserved seats in electorates for women, and will have lost the opportunity to create a wider voice and perspective in decision making.

Some amendments require a three-quarters absolute majority vote. These include amendments to the *Organic Law on National and Local-level Government Elections* to make constitutional the elections to provincial electorates, the number of open electorates, and meeting days of Parliament.

Constitutional amendments to establish Jiwaka and Hela provincial electorates and to retain provincial electorates need to be integrated with proposals to establish women's reserved seats in electorates, which is already on parliament's Notice Paper.

If these amendments are not enacted, parliament will have unconstitutional membership, and electorates will be imprisoned by the past. The legislative program to create a constitutional and effective parliament, which represents the present population and new provinces, needs to start now.

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