



TRANSPARENCY INTERNATIONAL PNG INC.
A National Chapter of Transparency International,
and a member of the Coalition Against Corruption
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27th April 2010

Public Seminar hosted by the National Research Institute

Topic: Amendments to the Constitution and the Leadership Code: Are they necessary or dangerous for PNG Leadership?

Acknowledgements: Sir Mekere Morauta, Member for Moresby North West, Chief Ombudsman Mr Chronex Manek and his fellow Commissioners, NRI Director Dr. Thomas Webster, Head of the NRI Political & Legal Studies Division Dr. Ray Anere and distinguished guests.

Introduction

I speak today on behalf of the organisations represented through the Community Coalition Against Corruption – the CCAC. The CCAC is a group of individuals and organisations who come together out of concern for the governance of PNG and the levels of corruption in this country. Transparency International along with the Media Council of Papua New Guinea currently serve as joint chairs of the CCAC.

The Chief Ombudsman in his presentation has provided the legislative background related to the proposed amendments, and spoken from the OC's position on how these amendments will impact on the ability of the OC to undertake its work.

Given the limitation on time my presentation will focus on the grounds for objection that we, the CCAC have called the Maladina Amendments.

In our campaign we have tried to make available background information on the proposed amendments, including the supporting submissions by the OC and the Parliamentary submission prepared by Mr. Maladina. Our aim was to ensure our communities were fully informed in order for them to voice their position.

As we met with community groups the overwhelming response from them was an expression of great concern, which in most cases escalated to a deep anger. The people we spoke to were sick and tired of countless empty promises by the Government. They equated the lack of services directly to corruption, and thus wonder why this Government and the members of Parliament were hell bent on weakening the powers of the OC in the face of growing misuse and theft of public monies.

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Most stated that the OC was their last hope. They have lost confidence and faith in the Police and the Public Accounts Committee was seen as a toothless tiger. Their lack of faith is justified given the many recommendations and referrals from the various commissions of inquiry that remain unresolved.

Community Context

Rightly or wrongly the People hold very dearly to our Constitution; the “Mama Lo”.

They believe that our Constitution is the representation and the embodiment of the shared values that we as a society has agreed to abide by and be protected under.

With that understanding the Constitution should form the basis for the laws that we enact and these laws in turn should govern the way we as a nation co-exist and behave. Our Constitution can be read and understood by its literal meaning, taking in to account all the legal jargon. However more important in my view is the “intent” captured within the document by the Constitutional Planning Committee as presented in 1974.

It is my view; if we are to build a truly united PNG we must first subject ourselves to our Constitution and be willing to abide, uphold and enforce the laws emanating from the Constitution without fear or favor. If we fail to do so, we face the real threat of descending further into regionalized groups serving our narrow economic and ethnic self interests. Worse yet, PNG could fragment into regional groupings captured by megalomaniacs who dispense “goods and favors” selectively to maintain their power base.

We have objected to these amendments fundamentally because of a lack of meaningful and genuine consultation. This less than transparent process in the drafting and tabling of the amendments has created doubt among members of the public about the process undertaken and raises questions on the motivation. Mr. Maladina in my view has disrespected the process undertaken by the Constitutional Planning Committee of 1974, and has been contemptuous of the important role accorded to the OC by the CPC.

“The “Ombudsman Commission” is one of the new institutions which our People, in their submissions to us, have clearly decided is necessary to meet their changing needs as Papua New Guinea moves to independence. We fully support their views, and have accordingly recommended the establishment of this important body, which we describe below. In our traditional societies, there were many customs and beliefs which imposed restrictions on land use, human relations and on personal obligations. These traditional controls are no longer adequate to cope with the increasingly interdependent nature of our societies and widespread activities of government.”

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“In recommending the establishment of the Ombudsman Commission we have given consideration to the kinds of argument which were raised some years ago, when the possibility of introducing the institution of the ombudsman was first raised in Papua New Guinea. The view that an ombudsman would reduce the scope of members of parliament to serve the interest of their constituents by obtaining redress for their complaints, has been rejected in many countries since then, and we, too, find it unconvincing”.

These are quotes from the Constitutional Planning Report of 1974 made 36 years ago. I think you will agree they remain still very relevant today.

Specific Areas of Objection

New Amendments	Grounds for objection	Implication of amendment	Comment
Section 27 (3) (c) of the Constitution, and sections 16A & 16B of the Leadership Code	Duplication of responsibilities	The intent is to place the responsibility of disciplining public servants who do not comply with Govt Policy back to the OC	<ol style="list-style-type: none"> 1. The OC already has the power to take action against senior public office holders for misconduct and breaches of the leadership code 2. The disciplining of public servants is the administrative task of Government through the Public Finances Management Act, Employment Contracts etc
Section 27 (5) of the Constitution	Removes the power of the OC to issue directions to prevent	<ol style="list-style-type: none"> 1. The proposed change is vague and open, could be used to 	In the life of the OC this power has only been used 40 times and 26 of those have been issued directly to prevent the misuse of

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	breaches of the leadership code or to protect public assets	<p>suppress the power of the OC under the guise of implementing Govt Policy</p> <p>2. Once again the amendment is not required as similar protection is provided in Div 2, Sect 219 sub section 3 guide the OC in reference to Govt Policy</p>	public monies
Section 28 (5) of the Constitution, & sections 30, 30 (6) & 30 (7) of the Leadership Code	Action initiated by the OC under the Leadership Code will bar any further proceedings under another law and vice-versa	The leadership Code polices the moral and ethical conduct of leaders. Its intention is to ensure the conduct of our leaders is above reproach and uphold the highest levels of integrity.	As an example when an employee of a private company is breaks the rules of his employment he is disciplined, if the grounds are criminal in nature he is also liable to be referred to police for prosecution. Why two standards?

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Grounds for the Public's Objection to the Maladina Amendments:

- The amendments will weaken the powers of the Ombudsman Commission
- Lack of meaningful and genuine consultation
- Apparent lack of proper briefing and debate within Parliament
- Process of consultation was made not available for public scrutiny and no opportunity was offered for further comment from key stakeholders
- The review committee was made up of parliamentary members which may raise questions on the impartiality of the process
- Lack of information available to the public and members of parliament

Conclusion

We the organizations represented through the Community Coalition Against Corruption stand together to vehemently oppose these Maladina Amendments. We call on the thinking members of parliament to vote no to any further erosion of the powers of the ombudsman, we call on our members to hear the voice of your communities.

These amendments must go back to the drawing board and this time there must be meaningful consultation sought from the wider community and the Members of Parliament. The Ombudsman Commission is only one part of our nation's integrity and governance system. If we are really serious about addressing the issues then any review must look at the overall machinery, including the public prosecutor, police, judiciary, tribunals and not simply be a "band aid" solution proposed by some "bush mechanic consultants".

The system of government is crumbling around us:

- Prisoners are walking out of jails whenever they want.
- Police run around as glorified security to the highest bidder
- Public office holders are no longer servants but are now masters, holding ordinary citizens to ransom for access to what should be public services and resources
- The continuous eroding of government processes and procedures; by establishing systems outside of existing accountability mechanisms; trust accounts, the discretionary funds etc
- The government through its gluttonous ministries and statutory entities continues to waste desperately needed public funds that would be better spent delivering real services to communities, who rightfully now wonder: "why do we have a government?"

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We understand the frustrations faced by our MP's in dealing with the ineffectiveness of the public service delivery mechanisms. Their frustration is borne by our communities who suffer as a consequence of this breakdown of government systems. But it serves no ones purpose to further weaken an already weakened system. Now more then ever our nation needs our thinking members of parliament to take real and affirmative action to start to re-building our institutions of state. Therefore we, your community, ask you to say no to these Maladina Amendments.

In closing I remind us of the intent of the Constitutional Planning Committee backing 1974 in establishing our Leadership Code:

“The success of a nation, we believe, depends ultimately on its people and their leaders. No amount of careful planning in governmental institutions or scientific disciplines will achieve liberation and fulfillment of citizens of our country unless the leaders – those who hold official positions of power, authority or influence – have bold vision, work hard and are resolutely dedicated to services of their people” CPC 1974.

Thank you.

Peter John Aitsi
Chairman
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