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The Dangers of Political Party Strengthening Legislation in Solomon Islands

The Solomon Islands government is considering introducing laws aimed at strengthening political parties, at restricting MPs from switching sides and at halting excessive use of ‘no confidence’ motions. The government wants to (i) abolish the constitutional position of the ‘Leader of the Independents’², (ii) reform the process of selection of Prime Ministers and (iii) build a more coherent party system by adopting legislation similar to that experimented with in Papua New Guinea³. The aim is to increase political stability, and give Prime Ministers and Cabinets an opportunity to implement their policies without having to focus continually on sustaining fragile coalitions, or on attracting opposition members to cross the floor to strengthen governments.

Objectives of Party Integrity Legislation

Several objectives can be served by such laws, sometimes referred to as political party integrity legislation. Sometimes, the aim is parliamentary stability, sometimes nation-building, and sometimes the goal of strengthening parties is driven by the view that strong political parties are an inevitable feature of ‘proper’ democracy (although Ancient Greece, the ‘cradle of democracy’, never had political parties and nor for that matter do many local councils in the mass democracies of Western Europe or Australasia)⁴. Legislation against floor-crossing has been introduced in many parts of the Pacific, including Fiji, New Zealand and Papua New Guinea. The Samoans have legal controls on what kinds of new parties can be formed (So’o & Fraenkel 2005: 355). Even in Tahiti (French Polynesia), frustration with continual government change led Gaston Flosse to alter the electoral law in 2004 hoping to stabilise the political order (although the result was a major defeat for his party). Often, the real objective behind party integrity legislation is to strengthen *governments*, despite the public rationale being to strengthen *political parties*.

In several cases, laws against MPs crossing the floor have been introduced in the hope of consolidating one political faction, but have ended up strengthening another. That is what happened in Papua New Guinea and Fiji. In PNG, the government of Sir Mekere Morauta introduced laws binding MPs to political parties, but Sir Michael Somare won the 2002 election and his government proved the beneficiary of the new laws. The opposition in PNG stayed away from parliament during much of the second half of 2004, frustrated at their inability to challenge the Somare government. In the wake of the 2007 election, leading figures on the opposition benches – including New Ireland Governor Sir Julius Chan – have denounced the OLIPPAC legislation as promoting dictatorship⁵.

In Fiji, Sitiveni Rabuka’s government amended the constitution to prevent floor-crossing in 1997, but Mahendra Chaudhry won the 1999 election. The new law ensured that Chaudhry’s Fiji Labour Party’s 37 seats in the 71-member parliament was an unbreakable majority. The allied parties in the Labour-led People’s Coalition all split, with the rank-and-file joining opposition protests against the government. Within Labour ranks, Fijian

members like Dr Tupeni Baba and Kenneth Zinck challenged the policies being pursued by the Labour leader. But these rebels could not legally switch sides. A year later, Fiji witnessed a coup d'état.

In other cases, laws binding MPs to political parties have not worked as intended. In India, more MPs crossed the floor after 1985 legislation aimed at preventing floor-crossing than beforehand (Indian Advisory Panel on Electoral Reforms, 2001: 24-24). In New Zealand, laws against MPs switching sides simply delayed inevitable political realignments, and political opinion turned against their continued usage (Geddis 2002). Likewise in PNG, when Treasurer Bart Philemon fell out with his Prime Minister, Sir Michael Somare, the new laws prevented him from founding the inevitable new political party (the New Generation Party) until shortly before the 2007 polls. One 2003 survey of the usage of rules against party defections concluded that, leaving aside a few as yet untested exceptions, the legislation was 'problematic at best and unworkable at worst' (Miskin, 2002-3: iii).

In PNG, the rules against floor-crossing contained in the *Organic Law on the Integrity of Political Parties and Candidates* (OLIPPAC) have not yet been fully tested before the courts. Eleven members broke ranks during Somare's 2002-7 government, but none lost their seat. What will happen in PNG when a Prime Minister finds himself politically isolated and unpopular? What will happen if *only* the law prevents the fall of such a government? There are plenty of cases across the Pacific where Prime Ministers have shown themselves willing to exploit every available legal instrument to avoid the fall of their governments (consider, for example, then Solomon Islands Prime Minister Francis Billy Hilly's attempt to rescue his government in 1994, or Sogavare's efforts to stave off impending defeat in late 2007). If laws are in place that protect Prime Ministers against no confidence votes, will they be complied with when they are used in such a transparently self-serving manner? The former Chief Justice of PNG has suggested that, in such circumstances, OLIPPAC may not withstand a constitutional challenge. The courts may rule the law null and void because it restrains MPs freedom of association or conscience⁶. In Vanuatu, Serge Vohor passed laws in 2004 providing a 12-month 'grace period' during which there could not be a 'no confidence' motion, but this was ruled unconstitutional by the courts and the Vohor government was subsequently toppled⁷.

Essentials of OLIPPAC

How does OLIPPAC work in PNG? First, under OLIPPAC the party with the largest number of seats after an election gets the initial opportunity to form a government⁸. The law helped Sir Michael Somare to become Prime Minister in 2002 and again a second time after the July 2007 elections, for he was after both elections the leader of the largest party (the National Alliance). Second, there are some rather weak financial incentives to join parties (and added incentives for female candidates), and disincentives to remaining as independents, and there are rules regarding the registration of political parties. Third, and most importantly, MPs in PNG who vote for a particular Prime Minister cannot vote against that Prime Minister in any vote of confidence, budgetary vote and vote on constitutional amendments for the life of the parliament. There are loopholes. If a party decides collectively to switch sides - in accordance with its internal rules and procedures

- it can do so. For that reason, many Papua New Guinea politicians constituted themselves as one-man political parties, so as to retain their freedom to switch to and fro. Others nominally conformed with the law, if only to reduce the prospect of judicial intervention. Such responses to the OLIPPAC legislation indicate another problem with such provisions: these weaken the separation of powers, and require judges to adjudicate the internal rules of political parties⁹ or to uphold the rules of procedures of parliament. Historically, the courts have been reluctant to assume jurisdiction over the internal affairs of parliament, and have viewed the Speaker as the proper authority for the internal self-regulation of parliament¹⁰.

The other key part of PNG's government strengthening package is 'grace periods' which were introduced separately as part of the 1975 constitution, and extended in 1991. After an election, a new government has 18 months during which there cannot be a 'no confidence' motion (a provision Sir Michael Somare in 2004 unsuccessfully attempted to extend to 36 months). And if there is a 'no confidence' motion in the last 12 months of the life of PNG's five-year terms, parliament gets dissolved and there is an early election. Since MPs always want to prolong their periods in office, there never has been a successful 'no confidence' motion in the last year of a PNG parliament's term. That shows one interesting way of maintaining the safety valve of 'no confidence' motions, while ensuring that these are not used in a frivolous manner or simply to grab hold of ministerial portfolios or for 'fund-raising'¹¹. If a no confidence vote entails a general dissolution of parliament and an early election, MPs might take this option only if they are riding the crest of a wave of popular dissatisfaction with government. Under normal circumstances, as the PNG history indicates, they will not want to rock the boat if that means going back to face the electorate earlier than normal. Elections are costly affairs. Between 50 and 75 percent of members in PNG tend to lose their seats at each general election.

The consequences of laws that ensure that a no confidence vote entails a general dissolution of parliament are illustrated by the Kiribati semi-presidential system. In Kiribati, the *Beretitenti* (president) is directly elected, but he/she forms a cabinet composed of members of parliament. Parliament can remove the *Beretitenti* through a confidence vote. But if they do so at any point during the President's term of office, all members of the *Maneaba ni Maungatabu* (parliament) lose their seats. A President facing a challenge to legislation he is pressing through parliament can also stamp this as raising a question of confidence, so that if he loses the consequent vote the result is, likewise, a dissolution of parliament and a fresh general election¹². The institutional set-up contains a strong deterrent to usage of 'no confidence' motions, but this has not been altogether abolished. On three occasions, 1982, 1993 and 2003, there have been premature dissolutions of parliament, and early elections. Nevertheless, there has been considerably greater political stability in Kiribati than in neighbouring Nauru or Tuvalu, where it is possible to dislodge a government without going back to the polls. Without the dissolution provisions in the I-Kiribati Constitution, there is little doubt that the country would have witnessed far more regular changes in government.

The Impact of OLIPPAC

What has been the impact of OLIPPAC in PNG? First, the number of political parties has risen, not fallen¹³. It has followed a wave-like motion. After OLIPPAC, the number of *registered* parties rose to 43 in 2002, then fell back as a result of five amalgamations and de-registration of fourteen on-paper parties with no seats at all in 2006¹⁴, and then rose again to 34 ahead of the 2007 polls. The number of *parliamentary* parties after the 2002 elections was 22. This decreased largely due to amalgamations to around 15 in 2006, but then rose to 21 after the 2007 election (Sepoe, Gelu & May 2007). Second, no MP has as yet lost his or her seat due to this law, although there were many breaches of OLIPPAC. Cases were referred to the Ombudsman, but no action was taken¹⁵. The MPs concerned were all able to retain their seats, despite the legal position. In that respect, the law was a paper tiger. Yet if Sir Michael Somare's government had been about to fall, the pressures to enforce the law would no doubt have been much greater. Third, Somare's 2002-7 government was the first since independence to survive a full term in office. In that sense, the law brought 'stability', an achievement much cherished by PNG reformers. But although the Prime Minister did not change through 2002-7, many of the key ministers changed regularly and there were frequent associated changes at the top levels of the public sector bureaucracy. No confidence challenges were avoided during Somare's 2002-7 government not only due to the 18-month grace period and OLIPPAC, but also by suspension of parliament at critical junctures when opposition forces were mustering for a challenge, by changes of ministers and by the drawing of opposition parties into the governing coalition (Sepoe, Gelu & May 2007: 7-8).

There are always dangers associated with laws aimed at restricting 'no confidence' challenges or at binding MPs to political parties. They may stabilise popular governments, avoid frivolous 'no confidence' motions and permit parliament to concentrate on law-making, but they may also remove the ability to dislodge a corrupt administration or entrench an unpopular government. In Solomon Islands on April 18th 2006, Snyder Rini was elected Prime Minister by parliament, behind closed doors, after an intense period of wheeling and dealing between rival factions based at three Chinese-owned Honiara hotels. Consequent protests outside parliament culminated in the burning down of much of Honiara's Chinatown district and involved attacks on Regional Assistance Mission to the Solomon Islands vehicles. Eight days later, Snyder Rini resigned to head off an impending 'no confidence' vote, leading to jubilation amongst crowds in Honiara. If the Papua New Guinea grace-period legislation had been in place in Solomon Islands on April 18th, the short-lived Rini-led government would have had 18 months before it could face a 'no confidence' challenge, and OLIPPAC might have given that government a full four year term. Deprived of constitutional means of dislodging the government, social unrest might have continued to assume a violent and destructive form¹⁶. Locking in such a government would have been an unwise and dangerous policy choice.

The subsequent government, led by Manasseh Sogavare, was keen on making provision to strengthen governments, and diminish the opportunity for no-confidence votes. In the period prior to the fall of the Snyder Rini-led government, Sogavare had proved able to

manoeuvre in such a way as to become the opposition's candidate for the Prime Ministerial post (Fraenkel 2006a). In the months after he captured the top job, several frustrated leaders of the smaller parties in his Grand Coalition for Change broke away and joined the opposition¹⁷. Ironically, some, such as Bartholomew Ulufa'alu and Billy Hilly had prior to the April polls been enthusiasts for laws aimed at tying parliamentarians firmly to political parties. Had they been successful, they would have rendered illegal their own subsequent action. Under Sogavare, steps were taken to consolidate the position of cabinet. Most importantly, the number of cabinet ministers was increased from 20 to 24, close to half the 50-member parliament. Together with judicious usage of chairmanships of the state-owned corporations, such tactics were aimed at diminishing the potential for an opposition challenge. In other words, years of effort aimed at strengthening the role of parliament were potentially under threat. Instead, parliament would have reverted to being a mere talking shop or rubber-stamping device for government.

Plans for the top-down construction of a party-based system are unlikely to be successful. Parties spontaneously arise where there are cleavages in the society that generate political polarization. In the Pacific Islands, for example, the only three territories that have fairly robust political parties are all polarised around key issues that divide both the electorate and the politicians. In Fiji, the schism between the indigenous Fijian and Indian migrant-descended politicians has been the critical influence on the party divide. In New Caledonia and French Polynesia, the cleavage has been between those parties that want independence, and those that do not (or those that prefer some kind of loose autonomy from France). Elsewhere in the region, political parties tend chiefly to be loose factional alliances which assume significance only in the wake of general elections when the issue becomes who will form the government. Even in Samoa, Vanuatu, Marshall Islands and Kiribati, where political parties are sometimes thought more significant, organisations are more fluid than is commonly recognised (see Fraenkel 2006b). Samoa's dominant Human Rights Protection Party may be unique in the Pacific because it has ruled, with only one brief exception, for a quarter of a century. Yet, in the wake of elections, Samoan MPs, like those elsewhere in the region, seek to gravitate towards the government benches, and political allegiances can be fluid. Vanuatu once had a robust party system focussed on the anglophone/ francophone cleavage during the days of Walter Lini's Vanua'aku Pati and the opposition Union of Moderate parties, but after 1991 the major parties increasingly splintered and a more fractured political environment emerged (Van Trease 2005), although some micro-parties are still more organisationally robust in Vanuatu than other Melanesian countries. Where parties have arisen spontaneously because there are key issues that divide people, this no doubt adds to the coherence of parliamentary processes, but it also raises other difficulties, as the troubles of Fiji, New Caledonia and French Polynesia clearly show.

Party Strengthening Laws in Solomon Islands

In and of themselves, OLIPPAC-type policies will not promote a coherent party system in Solomon Islands. But they will strengthen the elite, and make more difficult the emergence of political newcomers, and perhaps contribute to frustrations about unaccountable leadership. The so-called political parties in Solomon Islands, at present,

are primarily vehicles for securing the top job for ambitious political big men, and their supporters. For example, straight after the 2006 polls, Chinese businessman Tommy Chan published a full page advert in the *Solomon Star* listing alleged members of the Association of Independent Members of Parliament (AIMP) in a bid to win support behind his favoured candidate, Snyder Rini¹⁸. Often the MPs listed in that advert had no idea that they were being cast as ‘members’ of AIMP, or the MP for this or that constituency was listed without the name (presumably because the writers did not know the electoral outcome in that constituency when they submitted the advert!). The example indicates something about what political parties (or, in this case, clusters of independent members) are in Solomon Islands. Similarly, former Prime Minister Bartholomew Ulufa’alu published adverts in the newspapers giving photos of the alleged candidates for his Liberal Party shortly before the 2006 polls, also hoping thereby to strengthen his claim to political leadership. In response, several candidates wrote angry letters to the newspapers denying any connections with the Liberal Party¹⁹. In their quest for the Prime Ministerial position after general elections, the big men of Solomon Islands politics seek to project an image of significant support, hoping to generate a roller-coaster or bandwagon-type effect so that others quickly jump aboard, fearing exclusion from the impending process of distribution of ministerial portfolios.

If the Solomon Islands introduces PNG-style legislation tying new members more firmly to these political big men, the result will be to make competition during the period between general elections and the prime ministerial vote even *more* intense than at present, and even more susceptible to money politics. Asian loggers and would-be casino-operators will be *more* likely to seek to influence this process. The stakes will be raised because lobbyists will know that, once the government is elected, it may be locked in for a full four year term. Competition between the camps habitually established at Honiara’s hotels will consequently be even more vigorous than usual, undermining the popular objective of seeking to avoid corruption surrounding the so-called ‘second election’. Only during this brief period will the bargaining power and opportunism of the new, first-time, MPs be greatly strengthened. Once the government is formed, the well-established politicians who get ministerial portfolios will be better able to consolidate their control over parliament. The female politicians, of whom a growing number have been contesting elections of late, will be weakened, and alternative newer groupings will find themselves at a great disadvantage as compared to the established so-called parties. Eventually, the likely result will be a major political crisis, unless wise counsel prevails amongst judges who themselves ditch the new legislation.

Other Approaches to Strengthening Governments in Solomon Islands

Reforming Westminster systems to remove the possibility of ‘no confidence’ votes is the worst possible way to reform Solomon Islands institutions or strengthen government. The primary advantage of Westminster systems is that they generate greater potential for the mid-term removal of unpopular governments than presidential systems. In the presidential systems, it is usually difficult to remove the head of state and government, unless opponents go through long and elaborate methods of impeachment. As a result, Presidential systems – as in much of Latin America – have often been said to be more prone to coups than parliamentary systems²⁰. On the other hand, the advantage of

Presidential systems is that they entail nationwide direct elections for the head of government, with the result that government has a strong and direct popular mandate. Retaining the parliamentary system - without the associated possibility of mid-term removal of governments - means adopting the weaker aspects of both systems. It misses out on the direct popular vote for the head of state, but adopts only the inflexibility of the locked-in form of government.

However, a standard Presidential system would also be a poor choice for the Solomon Islands. Presidential systems tend to be highly majoritarian; there is a single presidential position to fill, and the most populous group (if it votes for a single candidate) will usually be able to capture the presidency. Another advantage of the parliamentary system in Solomon Islands is that governments have usually had to be coalitions with representatives from across the group, balancing in particular leaders from Malaita, Guadalcanal and the Western province.

For the Solomon Islands, the better option would be to retain the Prime Ministerial system but introduce legislation that makes a successful 'no confidence' motion entail a general dissolution of parliament. Political scientists who are unfamiliar with Pacific politics may warn that this will entail too many snap elections and short-lived governments. However, another consequence of the weakness of parties in Melanesia is an extreme reluctance of politicians to consider a premature dissolution. As we saw previously, PNG has *never* had a successful 'no confidence' motion during the last 12 months of a government, when doing so would entail a parliamentary dissolution. Kiribati has had three dissolutions, but has nevertheless been far more politically stable than its closest neighbours. Making a no confidence vote entail a dissolution of parliament is a far better option than forbidding no confidence votes for certain 'grace periods' or locking MPs into backing this or that political leader.

However, neither option would, in itself, do anything to diminish political horse-trading between the general election and the Prime Ministerial election. There are four viable responses to address these issues. First, the Prime Ministerial election might be opened to public scrutiny, rather than taking place by secret ballot²¹. In 2006, election observers declined to observe the so-called 'second election' on the grounds that the constitution forbids them from doing so. Second, the period between the general election and the Prime Ministerial election could be shortened (the thirteen days separating the two in 2006 compounded difficulties, and increased the scope for corruption). Third, politicians might be subjected to more rigorous scrutiny by formalizing the anti-corruption 'pledges' signed by candidates on the 2006 campaign trail. Nomination forms signed by intending candidates before a general election might require would-be MPs to declare themselves open to greater scrutiny than ordinary citizens by a strengthened Leadership Code Commission. Ultimately, however, tackling corruption during the run-up to a Prime Ministerial election is not something that will be achieved by new legislation. Laws against corruption already exist on the statute books. Curtailing these kind of activities would be greatly assisted by only one or two high profile convictions of would-be lobbyists offering cash in the run up to a Prime Ministerial election.

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¹ The authors are grateful for the comments provided by Ron May in the development of this paper.

² 'If at anytime it appears to the Governor-General, acting in accordance with the advice of the Speaker, that the leader of an independent group, by reason of the numerical strength of that independent group or by reason of the support which he receives from the members of independent groups generally, should be appointed as Leader of the Independent Members, the Governor-General shall appoint him as such leader' [The Solomon Islands Independence Order 1978, S. 66, (2)]. To drop this provision seems sensible.

³ The Organic Law on the Integrity of Political Parties and Candidates, 2003, available, http://www.paclii.org/pg/legis/consol_act/olotioppac2003542.

⁴ For a discussion of the different meanings of the word 'integrity' used in Papua New Guinea, see Baker 2005.

⁵ 'Dump law: Chan', *The National* 15 August 2008. 'MPs' hands tied, says NRI expert' (*The National*, 30 May 2008).

⁶ Sir Arnold Amet, former Chief Justice, Papua New Guinea, personal communication, Honiara, April 2006.

⁷ See *Vohor Vs Attorney General* [2004], Civil Appeal Case 24 of 2004, 8th December 2004. see also 'Vanuatu Agrees to Constitutional reform', *Vanuatu Daily Post*, October 19, 2004; 'Court to decide legality of 12-month Grace Period', *Vanuatu Daily Post*, 5th December 2004; see also Jowitt, 2005, p462.

⁸ For details, see Gelu, 2005.

⁹ This issue arose also regarding the Fiji legislation, when the courts found it impossible to establish which of the two New Labour Unity Party MPs had 'crossed the floor' since there was no internal party resolution making clear the stance of the party (see Fraenkel, 2004, p128-9).

¹⁰ 'The whole of the law and custom of parliament has its original from this one maxim, that whatever matter arises concerning either House of Parliament, ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere' (Blackstone, 1830, p163). With written constitutions, courts are sometimes more prone to regulate parliamentary conduct, but usually only where legal jurisdiction is clearly outlined in the Constitution.

¹¹ Some critical observers of Solomon Islands politics describe the objective of (and mutual interest among parliamentarians in) no confidence challenges as being tied up with fund-raising. Both those on the government and opposition sides can benefit financially from the resulting pressures on political leaders to procure political support.

¹² 'The Maneaba ni Maungatabu [parliament] shall stand dissolved if, in respect of any matter before the Maneaba, the Beretitenti [President] notifies the Speaker that a vote on that matter raises an issue of confidence, and in a subsequent vote on the matter it is rejected by a majority of all members of the Maneaba' [Kiribati Constitution, S 78, (1), (b)].

¹³ Ben Reilly is in error where he says 'the trend is clear: the number of registered parties has fallen sharply since the OLIPPAC reforms were introduced, from 42 in 2001 to 15 in 2005' (Reilly 2006, p191). He neglects that the initial reaction was a *rise* just before the 2002 polls, and confuses the number of *registered* parties (i.e. nominal parties on the books of the Office of the Registrar of Political Parties) with the number of *parliamentary* parties (i.e. parties with seats in parliament). A significant proportion of the alleged decrease over 2002-6 was in fact merely a striking off of registered parties without a single member in parliament by the Office of the Registrar of Parties. For the number of parliamentary parties after the 2007 polls (see May, 2008, p4).

¹⁴ Paul Bengo, Registrar of Political Parties, cited in 'Strict terms set for new political parties', *The National*, 4th October 2006; see also '14 political parties removed from registry', *The National*, 25th August 2006. Although different sources cite different numbers, the wave-like trend both in registered and parliamentary parties is clear

¹⁵ In some cases, this was because internal party procedures were too vague. In other cases, it was because the party declared the issue to be a 'confidence' question, permitting a free vote.

¹⁶ In early 1977, when Julius Chan's government was in its last year in office (and therefore when there could not be a 'no confidence' vote without a dissolution of parliament), he recruited the Sandline mercenaries with the objective of violently ending the Bougainville conflict. Mass public demonstrations and a military revolt, rather than a parliamentary reaction, put an end to the policy (see Standish, 2004, p148).

¹⁷ Splitting parties in this way has been a familiar tactic in PNG, both under Bill Skate and Michael Somare: one minister in Somare's National Alliance in 2004 boasted that 'we have cut off the heads of the minor parties and will be able to gather up the bodies' (Standish, 2004, p147).

¹⁸ *Solomon Star*, 10th April 2006

¹⁹ 'Liberals Vie for 38 Seats', *Solomon Star*, 28th February, 2006; 'Former MPs Refute Liberal's Claim', *Solomon Star*, 28th February, 2006.

²⁰ See Linz & Valenzuela, 1994; but see also Shugart & Mainwaring, 1997.

²¹ This would require amendment to the 1978 Constitution, which provides that 'the election shall be by secret ballot' and that 'no person other than the Governor-General, a member, or a public officer whose assistance is enlisted under the preceding sub-paragraph shall be present at an election meeting. [Schedule 2 to the 1978 Constitution, S.5, (1), S. 6, (3)].