



Zapping the Yo-Yo Man: OLIPPAC and the Consolidation of Executive Power in Papua New Guinea¹

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Introduction

In the early years of the new millennium, the Papua New Guinea (PNG) government introduced major reforms intended to promote greater parliamentary stability. The Organic Law on the Integrity of Political Parties and Candidates (OLIPPAC) sought to regulate the post-general election process of selecting prime ministers, increase women's representation and establish or reinforce the 'integrity' of the political order, both in a structural engineering and a moral sense. Most controversially, it aimed to regulate member of parliament (MP) votes on the floor of parliament so as to discourage defections on issues of confidence and to tie pro-government MPs to prime ministers. This was an exceptionally ambitious and unusual set of institutional reforms, designed to nurture the emergence of a robust political party system in a context of fluid parliamentary loyalties, numerous independent MPs and regular changes of government.

In its aftermath, a prime minister was able to survive a full term in office for the first time since independence (Somare, from 2002–7), an achievement regularly attributed to the OLIPPAC's stabilisation provisions. Some therefore concluded that 'the OLIPPAC reforms have played a positive role in promoting the consolidation of the PNG party system' (Reilly 2006:191). Yet factors other than the OLIPPAC may have been responsible for the strengthening of the position of prime ministers in modern PNG, including control over parliamentary sittings through the office of the speaker and a mineral resources boom that funded sizable payments to pro-government MPs. The law's most influential provision in this respect turned out to be granting the largest party the first opportunity to form a new government after each general election rather than the OLIPPAC's party-hopping rules or the parliamentary voting regulations. Core parts of the OLIPPAC were ruled unconstitutional in 2010, but this did not stop Somare's successor, Peter O'Neill, from also serving a full term in office (2007–12). There is little evidence that political parties *sui generis* have been 'consolidated' by the OLIPPAC and that law's provisions aimed at encouraging the representation of women proved largely tokenistic (see endnote 3).

This paper argues that the impact of PNG's OLIPPAC reforms needs to be assessed in the context of a

broader package of initiatives aimed at strengthening incumbent prime ministers. In practice, the OLIPPAC was just one of several measures used to weaken the opposition parties, including lengthy 'grace periods' following the election of a prime minister during which a no confidence vote is unlawful, and partisan efforts by the speaker to limit the exercise of the powers of the legislature by reducing sitting days through lengthy adjournments, controlling the order of parliamentary business and identifying which MPs are formally recognised as party leaders.

The OLIPPAC may have had the effect of reducing the number of independent MPs, but it also created incentives to increase the number of political parties, much to the consternation of its architects. Giving the largest party the first opportunity to form a government after each general election has accentuated a previously observable bandwagon characteristic of PNG prime ministerial elections, whereby independents and small parties flock behind a front-runner candidate, temporarily leaving only a small number of MPs on the opposition benches. In tandem with the grace period law, this has encouraged MPs to view prime ministerial elections as one-shot contests, followed by a relatively short, manageable and potentially further compressible window when governments are vulnerable to no-confidence challenges. The irony is that democratic reformers, although hoping to assist the consolidation of PNG's political parties, have unwittingly lent their support to measures that further enhance executive dominance in the PNG legislature. Fortunately, they have not been entirely successful.

PNG's experience with the OLIPPAC has prompted a variety of conflicting assessments. When the law was first introduced, Benjamin Reilly thought it 'likely to provide a strong and immediate stimulus towards the formation of a more encompassing and structured party system at the parliamentary level' (Reilly 2002:710). By 2006, Reilly, then serving as director of The Australian National University's Centre for Democratic Institutions, concluded that the reforms 'have in fact already had a discernible positive impact upon political outcomes', mainly because Somare was close to surviving a full parliamentary term and, Reilly mistakenly claimed, the number of political parties had 'fallen sharply' (Reilly 2006:187).² Others were less optimistic and, after some

years of the law's operation, less convinced. Louise Baker concluded that 'the OLIPPAC in its first years of operation has not been able to stabilise PNG politics because the very purpose of the integrity law has been twisted and manipulated' (Baker 2005:115). Alphonse Gelu, who later assumed the post of PNG Registrar of Political Parties and Candidates, found that the 'OLIPPAC's promise to strengthen the party system has not been realised. In fact, the opposite has occurred' (Gelu 2005:92). In an article titled 'The Failure of the Organic Law', he rejected the claim that the OLIPPAC was responsible for Somare's survival over the 2002–7 parliamentary term, pointing rather to the influence of 'long adjournments of parliament, lack of enforcement of the OLIPPAC by the registrar and the government and the speaker's unilateral interpretations of the OLIPPAC' (Gelu 2005:95). His view was that part of the problem lay in ineffective legal provisions, including the 'continued recognition of independent MPs' (ibid.). Besides Reilly, most scholars have concluded that OLIPPAC failed, even before the Supreme Court's 2010 judgment. Economists Satish Chand and Roderick Duncan, for example, explain the OLIPPAC's failure as due to the weakness of its incentive structure. Referring to the practice of PNG governments disbursing District and Provincial Services Improvement Program (DSIP and PSIP) allocations or 'slush funds' to individual MPs, they rather strangely 'advocate that the slush-fund money be paid to political parties rather than to individual members of parliament' and recommend a reform to 'double their size' in order to incentivise MPs to vote for the proposed change (Chand and Duncan 2010).

Although most assessments of the OLIPPAC have been negative, some have identified its problems as poor legal drafting and weak enforcement, while others have queried its basic intent, both on the generic grounds that institutional engineering alone cannot manufacture a party system and owing to a more country-specific scepticism about whether PNG's 'entrenched political culture of localised and personalised electioneering and fluid party allegiances can be changed from above — in effect, by constitutional fiat' (Standish 2001:295). In 2003, Ron May warned of the 'tendency in Papua New Guinea to place too much faith in changes to institutions when the real problems are behavioural' (May 2003:9). In 2012, Henry Okole concluded that the 'OLIPPAC has progressively facilitated the dominance of the executive arm of government by one political party' (Okole 2012:11). As Ted Wolfers pointed out:

entrenching governments or ministers too strongly in law by making them hard to remove might not provide stability, but rather close off options for more or less peaceful and orderly change, and in doing so, leave no alternative to systemic instability. (Wolfers 2011:48)

The architects and implementers of the OLIPPAC, including lawyer John Nonggorr and Alphonse Gelu, were not oblivious to that risk (Nonggorr 25/7/2001), but there has been a predictable temptation to seek the support of sitting prime ministers by promising that

various amendments to the OLIPPAC would consolidate their hold on high office. Unsurprisingly then, the most vocal critics of the OLIPPAC have been from the opposition benches. In the wake of the 2007 election, New Ireland Governor Sir Julius Chan denounced the OLIPPAC for promoting dictatorship (Chan 15/8/2008).

It is not possible to reach a comprehensive judgement about the success or failure of the OLIPPAC, since that would first require identification of a singular objective. The OLIPPAC was an aggregated package of laws covering five main areas that need to be considered separately:

1. new constitutional offices: the Office of the Registrar of Political Parties and Candidates and the Integrity of Political Parties and Candidates Commission (IPPCC)
2. rules for the funding of political parties, their registration, their required office holders and foreign financing of parties. Funds were not granted to independent MPs
3. rules regulating the voting behaviour of MPs on the floor of the House and their resignation or expulsion from parties
4. a financial incentive aimed at encouraging parties to nominate female candidates for election
5. a rule that gives the largest party following a general election the first opportunity to form a government.

Most debate has centred on the third set of provisions, but these are now defunct owing to the 2010 Supreme Court judgment (discussed later). The gender provision has attracted little scrutiny, largely because it has had predictably negligible influence.³ Oddly, there has been no careful study of the impact of 20 years of party financing on political party organisational structures, though Ted Wolfers warned of the likely 'growth of a political class — political professionals who live off, not for, politics' (Wolfers 2011:49). Nor has there been much critical scrutiny of the largest-party provision, plausibly because so far, no alternative opposition coalition of smaller parties has emerged as a potential majority government after elections in 2002, 2007, 2012, 2017 or 2022 that might have left the 'largest party' in opposition.

Morauta and the problem of party discipline

The OLIPPAC was introduced by the 1999–2002 government of Sir Mekere Morauta, which had assumed office in the wake of a particularly turbulent period in PNG's political history. Under Morauta's predecessor, Bill Skate, PNG experienced a severe economic crisis, an unstable parliament and a weak executive. The 1997 elections, held under a first-past-the-post system, were marred by violence and inflation of the number of registered voters. Seventy-three per cent of those standing, and 33 per cent of those who secured seats in the 109-member parliament, had contested as independent candidates (May 2004:3). Despite his People's National Congress (PNC) obtaining only five MPs after the 1997 election, Skate was able to become prime minister, helping explain why reformists

were attracted to the largest-party provision. Political parties had weakened since independence, often owing to side-switching on the floor of parliament by so-called 'yo-yo' politicians seeking to acquire ministerial portfolios or other rewards (Okole 2005). As former permanent secretary for foreign affairs Anthony Siagaru wrote of the reforms under consideration in 1999, 'the general idea seems to be to zap this basic yo-yo instinct of our MPs simply by passing a law forbidding it' (Siagaru 1999:24).

At independence, PNG did put in place several deterrents to no-confidence challenges. First, the 1975 constitution provided for a six-month post-election grace period during which a prime minister could not legally be removed from office. This was extended to 18 months in 1991. Second, PNG has a German-style 'constructive' no-confidence vote provision, which requires the opposition to nominate an alternative prime minister before any confidence vote (PNG 1975:S. 145). Third, PNG's constitution provides for a parliamentary dissolution in the event of a successful no-confidence vote in the 12 months prior to a general election.⁴ MPs are highly averse to early dissolutions, not least because 50 per cent or more of them lose their seats each election.

Despite those disincentives, until 2002–7 no post-independence government had survived a full term in office since independence in 1975. All five of the initial post-independence parliamentary terms saw mid-term changes in prime minister, though on one occasion this arose due to intervention by the courts (Paias Wingti in 1994)⁵ and on another this was due to a resignation to avoid an impending no-confidence defeat (Bill Skate in 1999). Focusing solely on successful no-confidence votes downplays the centrality of opposition challenges during parliamentary sittings. As a National Executive Council policy submission stated in March 2000:

[T]here is a need to address the serious problems facing PNG stemming from the weak party system, leading to constant changes of governments and constant threats to any government ... *The time and energy we as political leaders spend on it are incalculable.* The consequences for the country as a whole: in the economy, social disorder and other negative consequences that follow from instability affect the well being of our people. (NEC Policy Submission, March 2000, cited in Sepoe 2004; emphasis added)

One reason for the frequency of no-confidence votes in PNG is great uncertainty about their likely outcomes. Prime ministers cannot always be confident of victory, even if the opposition at first seems miniscule. If a change of government looks possible, a supermajority in parliament can evaporate overnight. Conversely, even a damaged prime minister with the numbers seemingly stacked against him (there has yet to be a female prime minister) has often been able to rebuild a majority. The outcome may be unclear even at the point when a seven-day notice of such a vote is lodged. The opposition has therefore commonly engaged in games of brinkmanship, hoping to thereby lure one or

two prominent ministers across the floor so that the tide can be seen as turning. Since there are no profound ideological cleavages differentiating government and opposition, reconfiguring a coalition government usually presents few difficulties. Most long-serving MPs will have been in government with most other such MPs at some point. Ministerial loyalty plays second fiddle to the desire not to be left out of government, and early defection has the potential to capture powerful portfolios in any prospective new government. Government backbenchers are easier to seduce to cross the floor, since they have less to lose.

In his acceptance speech upon becoming prime minister in 1999, Sir Mekere Morauta described his government's 'first objective' as being to 'restore integrity to our great institutions of state' (Morauta 1999). He established a Constitutional Development Commission to devise institutional reforms aimed at rectifying perceived weaknesses in PNG's electoral and party systems. Those who proposed the OLIPPAC argued that the industrialised mass democracies had hundreds of years to develop robust party systems, but PNG did not have that luxury. What emerged spontaneously in Europe, North America and Australia/New Zealand had to be legislated into existence in Melanesia (Bengo 2007; Nonggorr cited in Gelu 2005:88). Other countries have experience with laws governing party registration, restrictions on ethnic parties, provisions for party block voting and rules on party financing and membership (Janda 2009; Karvonen 2007; Fraenkel 2012).⁶ None, as far as this author is aware, has trialled a framework of party laws that is quite as far-reaching in intent as that in PNG.

In December 2000, PNG's parliament passed the OLIPPAC. It was an 'organic law' in the sense of being authorised by the 1975 constitution and only capable of alteration by constitutional amendment or by another organic law (PNG Government 1975:S. 12). That constitution foresaw a law to 'to restrict a member of the Parliament in certain circumstances from resigning or withdrawing from or failing to support a political party of which he is a member' and 'to restrict in certain circumstances the voting rights of a member of the Parliament' (ibid.:S. 127).

The OLIPPAC, which was certified on 22 February 2001, established an office of the registrar of political parties and candidates with powers to maintain a register of political parties, deregister non-complying parties, disburse funding to party office holders and monitor financial returns required by parties (OLIPPAC 2001:16 [1]). The law prohibited secessionist parties, double endorsements and parties with names including the word 'independent' (OLIPPAC 2001:S. 7, 2003:S. 28). The registrar was to be appointed for 'a term of six years' and was eligible for reappointment, so that post-holders appointed in one five-year parliamentary term would continue into the next (OLIPPAC 2001:S. 8. [3a], 2003:S. 16 [3a]). The law provided that an MP who resigned from a political party could potentially forfeit their seat, but with the matter first referred by the speaker to the registrar, then by the registrar to

the Ombudsman Commission, which was tasked with handling offences under the Organic Law on the Duties and Responsibilities of Leadership (OLIPPAC 2001:S. 72, S. 35 [1], [4], 2003:S. 59, S. 48 [1], [4]). MPs expelled from political parties had greater freedoms (generating some peculiar incentives). Most controversially, party-affiliated MPs were constrained to vote in accordance with party resolutions in the election of the prime minister, in any no-confidence motions brought against a sitting prime minister and on the budget and constitutional amendments, but they could abstain in such votes (OLIPPAC 2001:S. 77, 2003:S. 65). Votes contrary to that rule were not to be counted, and offenders were 'deemed to have resigned', but with the matter again referred by the speaker to the registrar and then to the ombudsman (OLIPPAC 2001:S.79, 2003:S. 67).

The OLIPPAC's rules for independent MPs were slightly different. An unaffiliated MP who backed a prime minister elected after a general election was forbidden from voting in support of a no-confidence vote against that same prime minister and was required to support that prime minister in any vote on the national budget or a constitutional amendment, with no right of abstention (OLIPPAC 2001:S. 82, S. 84, 2003:S. 72 [1], [b], S. 73 [1], [b]). For party-affiliated MPs, some end of parliamentary term reconfiguration was permitted. The OLIPPAC allowed a window for MPs to resign from political parties ahead of general elections (OLIPPAC 2001:S. 70, 2003:S. 57). Most importantly, the law required the head of state to invite the registered party that had 'endorsed the greatest number of candidates declared elected' to form a government, though subject to an investiture vote in parliament (OLIPPAC 2001:S. 76, 2003:S. 63 [1]).

In 2003, parliament repealed the OLIPPAC 2001 and enacted a new version. The OLIPPAC 2001 made no mention of the opposition, but the OLIPPAC 2003 recognised the leader of the opposition and made a provision for funding an opposition office (OLIPPAC 2003:S. 64). In the OLIPPAC 2001, independent MPs could only join parliamentary parties after the post-election vote for the prime minister, but the OLIPPAC 2003 allowed them to join such parties beforehand (OLIPPAC 2001:S. 81, 2003:S. 69 [2]). The OLIPPAC 2003 also added a requirement to the rules for party registration of 500 financial members (OLIPPAC 2003:S. 28 [h], S. 54). While the OLIPPAC 2001 briefly acknowledged its own restrictions on constitutional rights and freedoms 'for the purposes of giving effect to the public interest in public order and public welfare', the OLIPPAC 2003 featured a much longer and more detailed section on 'Compliance with Constitutional Provisions', explaining this to be necessary 'for the avoidance of doubt' (OLIPPAC 2001:S. 1, 2003:S. 1). Thus, the likely tension in the OLIPPAC as a constitutional law was recognised by its drafters. As Siagaru presciently warned, 'it might be prudent for the prime minister from the very beginning to ensure that the judiciary arm is fully involved in sorting out the best way to put a stop to the yo-yo man' (Siagaru 1999:25).

In the next section, I review the extent to which the

OLIPPAC influenced executive formation and duration as well as the composition of legislature during the four subsequent parliamentary terms.

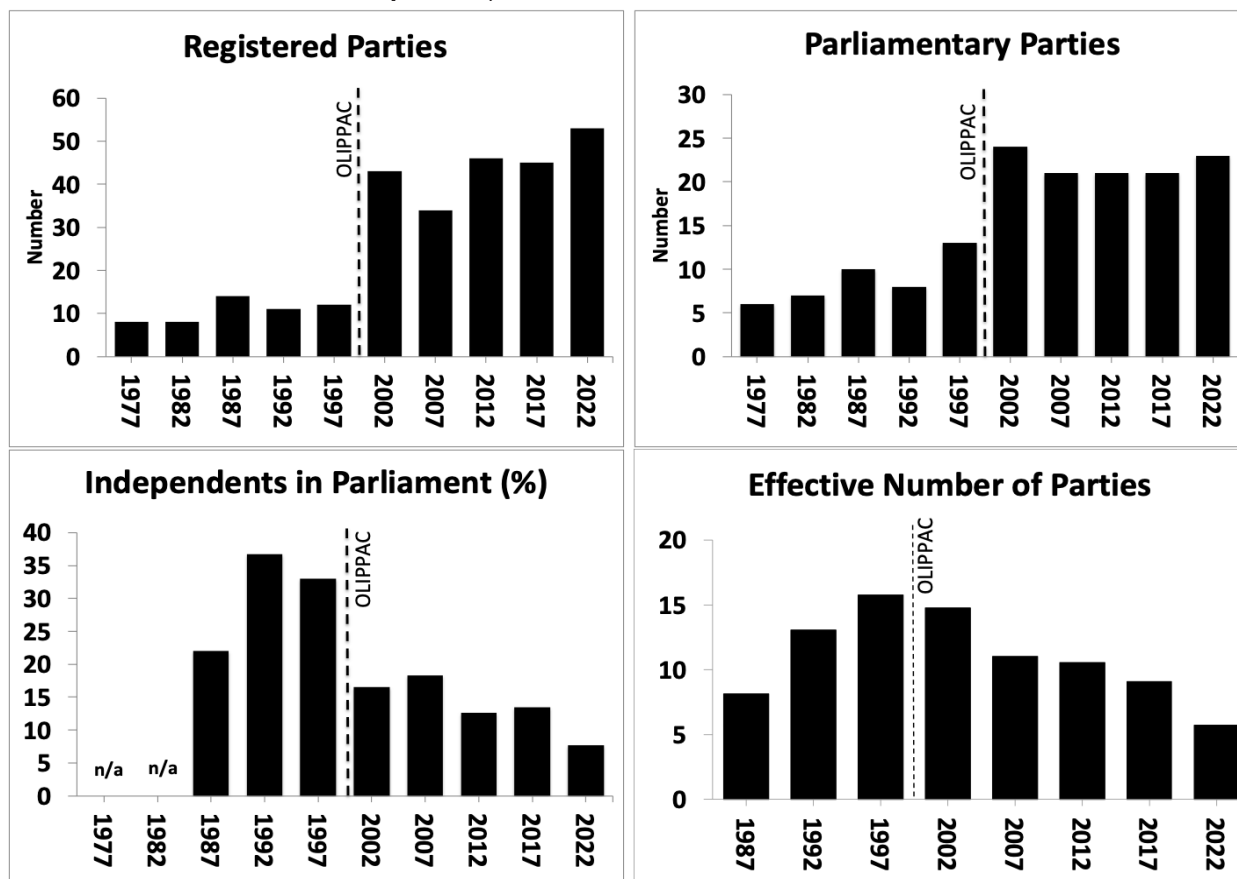
The Somare governments

The government that introduced the OLIPPAC 2001 failed to secure re-election in the 2002 elections. Instead, Sir Michael Somare formed an enduring administration. His National Alliance Party emerged from the 2002 polls with only 19 of the 109 seats, but that still made it the largest party and thus gave it the first opportunity to form a government. This triggered the familiar bandwagon effect, with smaller parties and independents rallying behind the frontrunner to give Somare victory by 88 votes to zero. Outgoing prime minister Morauta's People's Democratic Movement managed only 14 seats. The number of registered parties had jumped from 12 in 1997 to 43 in 2002 (see Figure 1), though only 24 of the latter secured seats in parliament. By June 2004, the number of parliamentary parties had fallen to 15 due to amalgamations and associated liquidations. Seventy per cent of those elected in 2002 were first-time MPs, an all-time high for PNG. The share of independent MPs fell from 33 per cent in 1997 to 16.5 per cent in 2002, clearly signalling the effectiveness of the new provisions incentivising party membership, though as was typically the case before the OLIPPAC as well, most of these independents aligned with one of the major parties ahead of the prime ministerial election. The new rules encouraged many who would have contested as independents to adopt a party moniker, but most of these were tiny 'mosquito' parties with only one or two members. Forming one-man (or -woman)⁷ parties offered MPs the advantage of the OLIPPAC funds while also allowing them to retain the flexibility characteristic of independents on the floor of parliament.

As is usual in PNG, the 2002–7 government saw repeated shifts in the composition of the governing coalition. Many MPs switched sides during those years, thus potentially becoming vulnerable to legal action. Although the OLIPPAC was regularly invoked as limiting the opposition's ability to rally support behind a no-confidence challenge, none of these MPs lost their seats due to that law during the 2002–7 term, or indeed at any point thereafter. Ironically, the speaker himself soon crossed the floor. After the 2002 election, the former prime minister Bill Skate was selected to preside over parliament. His PNC had been temporarily in coalition with Somare's National Alliance Party, but the PNC was sacked from cabinet in May 2004 and joined the opposition. Skate was subsequently ousted from the speaker's post and replaced by Jeffery Nape, an MP from the prime minister's own party (O'Callaghan 31/5/2004; *Sydney Morning Herald* 11/7/2003).

More important than the OLIPPAC in keeping the Somare government afloat between 2002 and 2007 were the 18-month grace period, long suspensions of parliament and parliamentary Private Business Committee controls over the legislative agenda. The prime minister also sought additional protections,

Figure 1. Number of Papua New Guinea political parties registered or contesting elections, number of parliamentary parties, the share of independents winning seats in the legislature and the effective number of parties, 1977–2022



Sources: Parliamentary parties and independents (%) calculated from the PNG Elections Database (Development Policy Centre n.d.). Registered parties from Fraenkel 2004. Author's additions for 2007, 2012 and 2017.

Notes: Data report affiliations at general elections, not subsequent changes in the run up to the parliamentary vote for prime minister. Data from 2002 include the subsequent byelections for the six failed Southern Highlands elections. Effective number of parties calculated using seat shares.

which were initially intended to be included as part of the OLIPPAC 2003 (Office of the Prime Minister of Papua New Guinea 2003). Before his grace period expired in February 2004, Somare moved to extend it from 18 to 36 months by constitutional amendment (requiring a two-thirds majority), a manoeuvre that itself generated splits within those parties in government and associated uncertainties about which factions were following the legally required party resolutions. In November 2003, the deputy speaker ruled 11 votes on the proposed amendment invalid on the grounds that these MPs' parties had submitted more than one party resolution. At least five of these MPs were referred to the Ombudsman Commission on misconduct charges, but the latter dismissed the charges (Baker 2005:113–14; May and Anere 2011:14).⁸ On a further reading in December 2003, the amendment bill again failed to achieve a two-thirds majority, largely due to abstentions. With that route to 'stability' at least temporarily closed, and opposition MPs camped out in Port Moresby's hotels, the speaker adjourned parliament from January to June 2004. The ombudsman condemned this adjournment as 'dangerous' and challenged it in court on the

grounds of a failure to comply with the constitutional requirement of at least 63 sitting days per annum (Radio New Zealand International 21/7/2004; May and Anere 2011:14).

In late May 2004, Somare's government was reconfigured. After opposition leader Sir Mekere Morauta took his PNG Party across the floor to join the cabinet, the deputy prime minister Moses Maladina and some of his fellow PNC MPs were dumped from government (Gelu 2005:91). This is a classic tactic of PNG politics, but one deeply corrosive of party discipline: the leader is ditched, but that party's members are retained in cabinet, precipitating an inevitable schism (Okole, cited in Standish 2007:147). In late July, Somare's rivals again hovered in hope of regime change, but their notice of a no-confidence motion was rejected by the parliamentary Private Business Committee and parliament was again suspended (Radio New Zealand 8/7/2004; Chin 2005:192). The opposition boycotted parliament during much of the second half of 2004, frustrated at their inability to dislodge the Somare government but also bedevilled by acrimonious splits. The IPPCC's Orovu Sepoe wrote at that time of 'chaos inside parliament

regarding the sitting arrangements of government and opposition MPs' (Sepoe 2005:5). The political turmoil quietened over 2005 and early 2006 as the mineral resource boom accelerated and fuelled hitherto unprecedented funds disbursed to MPs for discretionary spending. The K10,000 per annum awarded to party-affiliated MPs through the OLIPPAC amounted to less than 0.2 per cent of the K5.3 million handed out to each parliamentarian in 2007 (Fraenkel 2011).

The 2002–7 parliamentary term may have brought greater stability in the sense of continuous tenure by a single prime minister, but movement between government and opposition, schisms within parties and shifts in the holders of cabinet portfolios were no less frequent than they had been prior to the passage of the OLIPPAC. As Somare juggled with his coalition partners, five different deputy prime ministers were appointed over the 2002–7 parliamentary term.⁹

The 2007 election again saw a proliferation of newly registered political parties. Of the 34 recognised, 21 obtained seats in parliament (10 of which had only one or two seats). As in 2002, the share of successful independents (18.3 per cent) was lower than it had been in the 1990s, but the OLIPPAC did little to influence the factional horse-trading ahead of the prime ministerial election. Incumbent prime minister Somare's now-strengthened National Alliance Party obtained 27 of the 109 seats, easily ahead of Morauta's PNG Party with eight seats. As usual, most fence-sitting independents rallied behind the prime minister's party before the first sitting (Standish 2/8/2010; May 2008:4). On 13 August, Somare obtained a supermajority, with 86 votes to 21 against. What Paul Riker once described as 'minimum winning coalitions', those only just sufficient to secure a parliamentary majority, are rarely characteristic of the political scene straight after general elections in PNG, but they do typically arise towards the mid-term (Riker 1962).

After the expiry of his statutory grace period in February 2009, Somare faced the familiar threat of an opposition no-confidence challenge. In July, however, the speaker backed a motion by the leader of government business and minister for national planning Paul Tientsen to adjourn parliament until November (Kantha 2010:448). As with the 2002–7 government, the administration in office after the 2007 elections resorted to familiar devices from the pre-OLIPPAC era rather than rely on the anti-party switching rules to prevent efforts to dislodge the government (Tomscoll 2009:2). Money politics ruled the roost, with the Somare government paying out K2 million to each of its MPs in August 2009 (Standish 2/8/2010). Hanging over the operation of the OLIPPAC were doubts about whether the law was consistent with the PNG constitution.

The 2010 Supreme Court judgment

In mid-July 2010, the Supreme Court found core aspects of the OLIPPAC to be unconstitutional. The judges displayed considerable sympathy for the

objectives of the OLIPPAC, but also an awareness of the controversies surrounding the Somare government's efforts to sustain itself in power (Supreme Court of PNG 2010:S. 185). They recognised the 'potential risk of politicisation of the court in deciding politically charged cases' but echoed the pre-independence Constitutional Planning Committee's advice that PNG's judges needed to be 'politically conscious' and 'take full account of the society in which they live' (Supreme Court of PNG 2010: S. 107). The OLIPPAC's provisions governing resignation from political parties and rules controlling the votes of both party-affiliated and unaffiliated MPs in prime ministerial elections, no-confidence ballots, constitutional amendments and on the budget were struck down. These were construed to restrict MPs from performing their constitutional duties and to violate the 'freedom of speech, debate and proceedings' provisions of the 1975 constitution (Supreme Court of PNG 2010:Para. 270 [1], Para. 276 [2]; PNG Government 1975:S. 50 [2]). The OLIPPAC's rules on defection and its constraints on parliamentary votes were described by the Supreme Court as 'draconian' (Supreme Court of PNG 2010:Para. 188).

Importantly, PNG's Supreme Court has powers of constitutional review. The judges did not halt at simply invalidating the OLIPPAC's controls on voting and defection. They also found it necessary to revisit certain aspects of the 1975 constitution itself. The constitution's provisions for laws restricting voting rights or defection were clarified as constrained by the requirement that these be laws 'reasonably justifiable for the purpose in a democratic society that has a proper regard for the rights and dignity of mankind' (Supreme Court of PNG 2010:S. 277; PNG Government 1975:S. 114, S. 50). Both by precedent and by explication of the 1975 constitution, the 2010 Supreme Court ruling thereby shut down the possibility of parliament subsequently amending the OLIPPAC to resurrect those controls over parliamentarians' freedom to either switch party allegiance or vote according to conscience.

Nevertheless, the court did not invalidate all of the OLIPPAC's rules. It concluded that 'the operation of the bulk of the OLIPPAC provisions were not affected by this decision and remained in force' (Supreme Court of PNG 2010:S. 279). Predictions that the 2010 Supreme Court ruling would open the floodgates of parliamentary rebellion proved false (*Pacific Islands Report* 21/7/2010; *Post-Courier* 19/7/2010). Deputy prime minister Sir Puka Temu crossed the floor to lead a challenge as alternate prime minister, but the speaker adjourned parliament until the November budget session (Standish 2/8/2010). When parliament sat in November, a confidence vote was avoided by the release of K112 million 'to honour certain government commitments' (Okole 2012:11).

The major crisis that ensued during the 2007–12 parliamentary term arose in 2011–12 but had nothing to do with the OLIPPAC. It nonetheless once again greatly involved the courts in the country's

political deliberations. With Somare absent from PNG receiving heart surgery in Singapore, the post of prime minister was declared vacant and a vote allowed for his replacement, precipitating Peter O'Neill's accession to the position. The result was PNG's biggest constitutional crisis since independence. The Supreme Court intervened twice to pronounce the new government unlawful and was twice defied.¹⁰ Those events were, however, influenced by the executive formation rules: specifically, the law that requires a parliamentary dissolution if a no-confidence vote takes place in the 12 months prior to a general election. Given the perennial strong reluctance of MPs to support early elections, that rule effectively removed the possibility of O'Neill instead lawfully replacing Somare after July 2011 via the route of a no-confidence vote. The events of 2011–12 also indicated just how reliant PNG prime ministers had become on control of the legislature through the office of the speaker. It was the holder of that office, Jeffery Nape, until then a firm Somare loyalist, who precipitated the crucial parliamentary vote by declaring the prime ministerial post vacant in August 2011. Those events encouraged rules concerning the election and the powers of the speaker to be described as the 'fatal flaw' in the PNG constitution (Stewart 5/10/2012).

The O'Neill governments

The general elections of June–July 2012 echoed the pattern of 2007 in the sense that the outgoing prime minister's party was again able to re-emerge as the largest. O'Neill's PNC secured 27 seats in the now 111-member parliament, with the second-largest party obtaining 12 seats and 19 other parties receiving at least a single seat. Placed in pole position by the OLIPPAC's largest-party rule, O'Neill won the prime ministerial election by 94 votes to 12. At the first sitting of the new parliament, O'Neill immediately declared an intention to revisit the grace period issue and amend the OLIPPAC to address the perceived gaps left by the Supreme Court's 2010 ruling. In February 2013, the 18-month grace period was extended to 30 months (PNG Government 2013). To gain additional protections, O'Neill secured passage of further constitutional amendments to raise the number of signatures required for a motion of no confidence from one-tenth to one-fifth of all MPs, increase the necessary notice for a motion of no confidence from one week to one month (PNG Government 2014a) and reduce the minimum number of parliamentary sitting days from 63 to 40 per annum (PNG Government 2014b). Assisted by a 2013 merger with Enga Governor Peter Ipitas' People's Party, O'Neill's PNC had 40 MPs, and the ruling coalition could boast the support of three-quarters of MPs, buttressed by lavish allocations of constituency funds to MPs (Elapa 13/1/2013; Standish 18/1/2016). Having insulated himself from an opposition challenge via the more direct route of outlawing no-confidence votes for the first half of his parliamentary term, O'Neill had little need for the complexities of —

or potential legal challenges to — a proposed OLIPPAC amendment law. Despite having been agreed by the National Executive Council, this proposed amendment law languished off the statute books through the latter part of 2012–17 parliamentary term (May 2017:15–16).

That route of avoiding once again falling foul of the judiciary proved to no avail. The leader of the opposition, Belden Namah, together with the chief ombudsman, Ila Geno, petitioned the Supreme Court to adjudicate on the constitutional amendments of 2013–14, including a challenge to the 1991 extension of the grace period from six to 18 months. The Supreme Court handed down its verdict on 4 September 2015. The five-judge bench described it as 'unfortunate' that the 1991 law change had not been contested at the time, since its purpose was clearly 'the entrenchment of the government in power' (Supreme Court of PNG 2015:S. 72; S. 83). However, it found the challenge 'far too belated' and dismissed it. The Supreme Court described the more recent constitutional amendments reducing required sitting days, changing rules for no-confidence votes and extending the grace period from 18 to 30 months as 'in essence no different to the Constitutional amendments struck down in the OLIPAC case':

These three amendments were rushed through in Parliament by the executive government, buoyed by its success after the 2012 General Elections that saw an unprecedented number of MPs supporting the government; in the name of political stability, with the aim of entrenching power in the government at the expense of the Parliament, the MPs and Parliamentary democracy. (Supreme Court of PNG 2015:S. 100)

All three constitutional amendments were declared unlawful. The judges pointed out that the requirement of a month's notice would effectively rule out no-confidence votes, since parliament habitually sits for shorter periods. In fact, parliament's average sitting days have been well below the constitutionally required minimum in every year since 2012 (see Table 1).

Table 1. Papua New Guinea parliamentary sitting days, 2012–22

2012	16
2013	49
2014	32
2015	28
2016	37
2017	27
2018	49
2019	41
2020	34
2021	29
2022	28
Average	33.6

Source: National Parliament of Papua New Guinea, Hansard and sitting dates.

By the time of that judgment's release, O'Neill's 30-month grace period had expired (in February 2015). When parliament sat again, the government preferred the well-trodden route of using the parliamentary Private Business Committee to reject a proposed opposition no-confidence motion as 'parochial' and 'defective' in October 2015, reject another in November and, after a five-month adjournment, yet another in March 2016 (May 2017:20; Supreme Court of PNG 2016:S. 35). In October, with the opposition mostly absent, the O'Neill government swiftly lodged a no-confidence motion against itself, moved by the leader of government business James Marape, which it won with 78 votes to two (PNG Parliament 2015; Hayward-Jones 31/10/2015). By this time, the O'Neill government's initial honeymoon was over, as public disquiet grew over a US\$1.2 billion loan from the UBS Bank to buy shares in Oil Search, a scandal over the payment of US\$24 million to Paraka lawyers and the government's repeated efforts to avoid a legitimate no-confidence vote (Standish 18/1/2016). In June 2016, police opened fire on students travelling to protest outside parliament in support of yet another planned no-confidence motion. The O'Neill government responded by adjourning parliament until August 2016, intending to thereby reach the point, 12 months before an election, when MPs become reluctant to back a censure motion. The opposition denounced the move as unlawful and took the matter to the Supreme Court, which condemned the government's manoeuvres as 'an affront to the rule of law and a real threat to parliamentary democracy' and ordered parliament to sit to hear the motion (Supreme Court of PNG 2016:S. 47). Although the numbers at first looked inauspicious, O'Neill proved able to rebuild his majority and defeated the court-enforced no-confidence motion 85 votes to 21.

The June–July 2017 election was plagued by more irregularities, violence and fraud than its two predecessors, and yet again repeated the pattern of a prime minister able to wield the resources of state to ensure the ruling party re-emerges as the largest. O'Neill's PNC obtained the most seats, 29 of the 111 total. There were 20 other parties with elected MPs and 15 independents in the legislature. The opposition was considerably strengthened compared with 2007 and 2012. Great uncertainty about the eventual outcome of the prime ministerial election fuelled a period of severe instability as politicians divided into rival camps at Kokopo on the island of New Britain and Alotau at the eastern tip of the mainland. O'Neill won the August prime ministerial vote with 60 votes to 46, a narrower margin than usual. Yet his broader popularity was waning. When his grace period expired in February 2019, O'Neill suspended parliament for three months. By April, the opposition was camped out at the Laguna Hotel in Port Moresby and a stream of ministerial defections followed, including most prominently finance minister James Marape, the attorney-general and justice minister Davis Stephen, health minister Sir Puka Temu and arch wheeler-dealer William Duma and his United Resources Party (Stiefvater 2020).

Parliament sat again in May, when O'Neill obtained another three-week suspension, but this time he could not reconstruct his majority. Bowing out before the inevitable, he resigned on 29 May 2019, with Marape elected as his replacement with 101 votes to 8.

The pattern of Supreme Court resistance to attempted executive evasion of no-confidence challenges witnessed under the Somare and O'Neill governments has continued under Marape. He too faced an opposition challenge towards the end of his grace period on 28 November 2020. Two weeks beforehand, the opposition MPs had the numbers to force an adjournment until 1 December, the point when they would be legally allowed to displace the prime minister. They promptly flew off to Vanimo in West Sepik in the hope of thereby maintaining solidarity ahead of the anticipated no-confidence vote. Instead, in a counter-manoeuve, parliament was reconvened in their absence. The opposition-forced adjournment was set aside, and Marape's supporters proceeded to pass the 2021 budget before suspending parliament until April 2022.

Consistent with its earlier rulings when governments sought to avoid confidence votes in the legislature, the Supreme Court ruled that budget unconstitutional and ordered parliament to sit again on 14 December (Supreme Court of PNG 2020). With the axe poised to fall, Marape condemned his predecessor Peter O'Neill as the conspirator-in-chief and lamented that 'this fight is nothing but about controlling resources' (Marape 16/12/2020). Yet a path unexpectedly opened to restore his majority. The opposition split over the choice of alternate prime minister. The disappointed Sam Basil — a notorious yo-yo politician who had earlier deserted Marape in the hope of realising his own ambitions — led 18 allies back across the floor to the government benches (McLoud and Pryke 16/12/2020). Marape was able to survive to reach the 12-month hiatus before the 2022 general elections. At those elections, Marape repeated the Somare/O'Neill trick of going to the polls as a powerful incumbent and re-emerging at the head of the largest party. His Pangu Party obtained 39 seats, well ahead of O'Neill's PNC with 16, and Marape was re-elected prime minister. The prime minister's party has been able to re-emerge as the largest party after the general elections of 2007, 2012, 2017 and 2022 because so many prominent MPs have pinned their political fortunes to attempts to re-elect the incumbent government.

The number of parties

While the number of parliamentary parties has risen compared to the pre-OLIPPAC elections, and the share of independent MPs has fallen, the 'effective number' of parties has declined since the first post-OLIPPAC election of 2002 (see Figure 1, panel 4). The Laakso-Taagepera index measuring the effective number of parties weights parties by their relative size and is particularly useful for comparing party configurations across countries. It is equivalent to one divided by the summed squares of each party's vote or seat shares,

where i represents the proportion of each party in the total votes or seats:

$$1 / \sum_{i=1}^N i^2$$

As Laakso and Taagepera acknowledged, the index is highly sensitive to the method used to handle small parties and independents. In some estimates, these are grouped together in an 'other' classification, 'leading to an underestimate of fragmentation' (Laakso and Taagepera 1979:13). In other calculations, they are treated as separate units, which Laakso and Taagepera construe to risk an 'overestimate of fragmentation' (ibid.). That is particularly relevant for PNG, given the country's proliferation of small parties and historically high number of independents. Also troublesome is the inability to derive an effective-number measure using vote shares due to missing data.

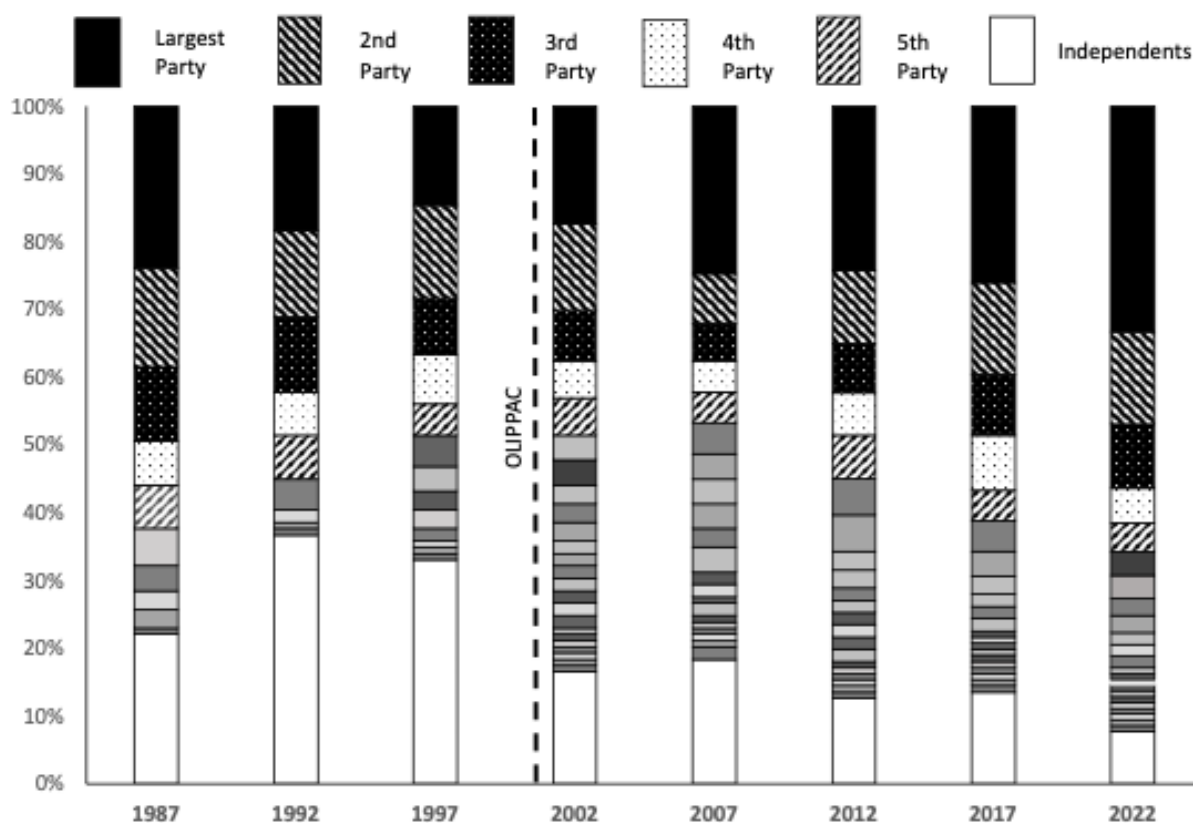
Figure 2 shows instead the raw number of PNG parliamentary parties by relative size, with independents shown in white at the base of each column and the largest five parties coded at the top. Three trends can be identified since the introduction of the OLIPPAC. First, there was a reduced share of independent MPs. Second, there was a proliferation of micro-parties. Third, the share of the top three parties diminished up to 1997, then steadied between

2002 and 2007, then grew between 2012 and 2017, which helps explain the effective number decline. The incentive to emerge as the largest party and thereby have the first chance to form a government as well as the vast amount of money disbursed by incumbent governments were the most likely causes of the third trend. Figure 2 gives only a snapshot for each election date. Between elections, shifts also occurred in the number of both registered and parliamentary parties. A double wave-like pattern has arisen with regard to both (a) expansion in the number of registered parties in the run up to a general election, many of which subsequently fade away or get deregistered, especially if they acquire no seats, and (b) highly fragmented immediate post-election parliaments followed by a within-term period of amalgamation and liquidation of parliamentary parties, before the proliferation cycle commences afresh ahead of the next election.

Conclusion

Did the difficulties implementing OLIPPAC between 2002 and 2010 arise because the law was 'twisted and manipulated' (Baker 2005:115), because it was not fully implemented or because it was inherently flawed or utopian in its objectives? In 2011, the key architect of the OLIPPAC 2001, John Nonggorr, described Jeffery Nape as PNG's 'most destructive speaker', owing to

Figure 2: Share of parliamentary parties and independents in the Papua New Guinea legislature, 1987–2022



Source: As for Figure 1.

Note: Top five parties and independents coded and labelled. Other parties coded with various shading to distinguish them, but not labelled.

the way he (and Sir Michael Somare) operated and implemented the OLIPPAC (Nonggorr 2011). However, it was always likely that the OLIPPAC would be 'twisted and manipulated' under the prevailing arrangements. The speaker is a political appointee: an MP initially selected at the first meeting of parliament after a general election. Speakers are therefore usually prime ministerial allies, making it probable the law would be used to punish defections from government but not to strengthen the opposition parties. Where there is a subsequent falling out, a government can easily use its majority to oust the speaker, as occurred with Bill Skate in 2004. It was no accident that Somare replaced Skate with a loyal MP from his own National Alliance Party. Likewise, the first person appointed registrar of political parties and candidates was Paul Bengo, Somare's former principal private secretary.¹²

Could a strengthened office of the registrar with greater independence have regulated political parties (and independents) in a non-partisan manner and thereby facilitated the transformation of PNG's fluid parliamentary factions into stronger political parties? This would have required an extraordinary micromanagement of internal party affairs by that office. It would have necessitated monitoring not just of party affiliations but also consistency with the initial prime ministerial vote and determining what precisely constituted a party resolution and who exactly each party's legitimate office holders were.¹³

In practice, the office of the registrar found it extremely difficult even to deregister parties that existed only on paper.¹⁴ Regarding parties with parliamentary representation, the office of the registrar was, and remains, largely confined to monitoring movements that it does not either control or influence. Amalgamations and liquidations of parties are important aspects of shifting mid-term loyalties in PNG parliaments, as they were before the OLIPPAC, but these do not occur at the behest of the registrar or the IPPCC. Rules regarding financial disclosures were never fully implemented. Parliament's Standing Orders were not amended to align with the OLIPPAC. The greater constraints placed on independent MPs, who were denied the right to abstain in votes of no confidence on the budget or constitutional amendments, could easily be evaded by such MPs simply absenting themselves on a certain parliamentary sitting day. Efforts to discipline MPs for voting against party resolutions were applied in a highly partisan fashion, leading to the 2003–4 quarrels between the offices of the registrar and the ombudsman (which in January 2004 accused the registrar of failing to fulfil his statutory duty to refer five cabinet ministers to the ombudsman for violation of the integrity law) (Radio New Zealand International 28/1/2004). The difficulties encountered in implementing the OLIPPAC did not arise because of circumstances that are unique to PNG. Many countries have fluid party systems that are not straightforwardly amenable to administrative control. Tight government authority over internal

party democracy is occasionally found in the industrialised mass party democracies. It is rarely found in the so-called global south, except in some authoritarian regimes.

The OLIPPAC was an ambitious attempt to simultaneously achieve several desired objectives: greater stability in government; fewer no-confidence challenges against sitting prime ministers; a lessening of corruption, particularly during prime minister elections and no-confidence votes; and a stronger party system, as well as increased women's representation in parliament. The reform has often been credited with securing greater longevity in the tenure of prime ministers, but other factors strengthened the position of heads of government in the new millennium. In particular, a mineral resources boom buoyed government coffers and conferred unprecedented advantages on incumbent governments. It enabled sitting prime ministers to oil the wheels of parliamentary business through large payouts of discretionary funds to MPs in the form of DSIP and PSIP allocations. On balance, the perennial procedural manoeuvres designed to offset the threat of parliamentary rebellion were less significant in sustaining prime ministers in office than the resources boom. Somare's position became much more secure as that boom accelerated over 2005–6, and O'Neill's position deteriorated as the funds dried up in 2018–19. To have handed those funds over to parties rather than MPs would have conferred still greater advantages on sitting prime ministers at the helm of the largest party. It also would have reinforced the tendency towards independents masquerading as mosquito parties in order to secure advantages of flexibility and finance.

The OLIPPAC may have strengthened the largest party, but with the ruling party obtaining only around a quarter of parliamentary seats in 2007, 2012 and 2017, PNG falls far short of a dominant party system.¹⁵ The threat of opposition rebellion still serves as a strong counterweight to the ability of incumbents to squash dissent via parliamentary manoeuvring. Yet it has been the courts that have acted as the critical counterbalance to PNG's authoritarian drift. The model of a prime minister riding into elections, with the resources of state and connections with private resource-extractive companies at their disposal so as to command the largest party was pioneered by Somare in 2007 and repeated by O'Neill in 2012 and 2017 and again by Marape in 2022. At the end of each grace period, those governments used all means at their disposal to avoid the threat of ouster, including long suspensions and control over the order of parliamentary business. PNG's reforms have done little to stop post-election horse-trading. If anything, they have made this more intense since the immunity period locks in a government for the first year and a half. The institutional set-up also makes likely a concerted opposition bid to dislodge that government once the immunity period expires.

The many proposed no-confidence motions that were tabled or merely proposed between 2002 and 2007 and 2007 and 2010 were not defeated because of the application of the OLIPPAC, even if some MPs may have felt deterred from formally switching party affiliations due to that law. No MP lost their seat over this period due to the application of the OLIPPAC. The law was a toothless tiger even before the Supreme Court ruled its core provisions unconstitutional, largely because the key enforcement agency, the Ombudsman Commission, anticipated that court decision. While it was theoretically in full operation, the OLIPPAC did not generate either stability in cabinet or steadiness regarding which MPs were in government on the so-called middle benches or in opposition. Nor did a more robust party system emerge as a result of the law. That is not to argue that the OLIPPAC was without effects. The share of independents elected fell, and the number of party-affiliated MPs rose. With the office of the registrar and the IPPCC in place, many PNG politicians calculated that they could maximise their own flexibility by forming mosquito parties. Many yo-yo MPs have come and gone, as also occurred before the OLIPPAC, but the yo-yo phenomenon itself has not been zapped.

Author notes

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Endnotes

1. An earlier version of this paper was presented at the Learning about Papua New Guinea and How it Works conference at The Australian National University, 16–17 September 2021. I am indebted to Ron May, Henry Okole, Bill Standish, Edward Wolfers, Alphonse Gelu, Hank Nelson, Anthony Regan and Joe Ketan for discussions about the impact of the OLIPPAC down the years, and to Orovu Sepoe and Paul Bengo for providing a range of materials relating to the implementation of that law. None are responsible for the verdict reached here.
2. Reilly drew his party data from the IPPCC's Orovu Sepoe, who reported that the number of parties had fallen from 42 in 2001 to 15 in June 2004 (Sepoe 2004:3). But as Henry Okole rightly pointed out, this confused the number of registered parties and the number of parliamentary parties (Okole 2012:6).
3. The OLIPPAC's provisions encouraging parties to field female candidates were linked to the wider introduction of state financing of political parties. Payment of K10,000 (around AU\$4600) per annum was provided for all party-affiliated MPs, whether male or female. Seventy-five per cent of that K10,000 was to be granted to party-affiliated female candidates who obtained at least 10 per cent of the vote. To work effectively, this would imply that parties field candidates in order to get a partial refund of campaign expenses, which is nonsense. Insofar as parties 'field candidates' at all in PNG, rather than vice versa (i.e. candidates selecting preferred parties), they endorse those likely to win seats, not those who — despite being unable to secure election — might potentially return some cash to party coffers. As Orovu Sepoe reported in 2011, 'the IPPCC board has not received any claims for reimbursement from political parties for their female candidates who obtained 10 per cent or more votes from their constituency' (Sepoe 2011:3).
4. Some believe that the constitution prohibits a vote of no confidence in the last 12 months of a parliamentary term, partly because of its somewhat convoluted phrasing on this point. The relevant provision states that '[a] motion of no confidence in the Prime Minister or the Ministry — (a) moved during the first four years of the life of Parliament shall not be allowed unless it nominates the next Prime Minister; and (b) moved within 12 months before the fifth anniversary of the date fixed for the return of the writs at the previous general election shall not be allowed if it nominates the next Prime Minister' (PNG Government 1975: S. 145). The reason for this strange formulation, i.e. the requirement that a motion in a fifth year *not* nominate an alternative prime minister, needs to be read in conjunction with section 105, which states that '[a] general election to the Parliament shall be held — ... (b) if, during the last 12 months before the fifth anniversary of the day fixed for the return of the writs for the previous general election — (i) a vote of no confidence in the Prime Minister or the Ministry is passed in accordance with Section 145 (motions of no confidence)' (PNG Government 1975: S. 105). In other words, a motion in the last 12 months entails an immediate dissolution, not the substitution of an alternative prime minister.
5. Wingti secretly resigned in September 1993 at the end of his grace period and then got himself re-elected, hoping thereby to secure an additional 18-month grace period, but this was struck down by the Supreme Court (Supreme Court of PNG 1994).
6. New Zealand has rules for party block voting, but members can dissent from party alignment either by requesting that the whip allows a split party vote or withdrawing the whip's authority and casting their votes separately (David Wilson 27/9/2021. Clerk of the New Zealand parliament, personal communication).
7. Only one woman was elected to the 2002–7 parliament: Dame Carol Kidu.
8. As Chief Ombudsman Chronox Manek explained in 2011, in this case, there were two conflicting People's Progress Party (PPP) resolutions, one dated 11 November (resolving to vote against the amendment) and another dated 26 November (resolving to vote in favour of the amendment). The ombudsman found that the five PPP members who

- voted in favour of the amendment had done so in accordance with the 26 November resolution and therefore not acted contrary to law (Manek 2011).
9. Allan Marat, Andrew Baing, Moses Maladina, Sir Moi Avei and Don Polye.
 10. On PNG's 2011–12 constitutional crisis, see May 2017 and Fraenkel 21/12/2011; *The Economist* 6/8/2011; *The Economist* 4/2/2012.
 11. In the PNG Elections Database, there are 32 missing constituency results for the 2007 election, four for the 2012 election and one each for the 1987 and 1992 elections, and party affiliations of candidates are unavailable for earlier elections (Development Policy Centre n.d.). In addition, there were six failed elections in 2002. Since the party affiliations of victors at each election are available, this dilemma does not affect the data in Figure 1 or Figure 2, but it does prevent calculation of the effective number of parties based on vote shares.
 12. On the close relations between the two, see Paul Bengo's tribute to Somare, 'The Man I Knew as Michael Tom: A Tribute to Grand Chief Sir Michael Somare 1936–2021' in 11/3/2021 *The National*.
 13. An issue I warned about in 2004 drawing on the Fiji experience (Fraenkel 2004).
 14. Fourteen parties were deregistered in 2006, but none of these had secured seats in parliament at the 2002 elections (Orovu Sepoe 24/11/2011, personal communication).
 15. The concept of a dominant party system has been extensively discussed in the African context, but that entails the largest party having at a minimum 45 per cent of seats (see Bogaards 2004; Giliomee 1998).
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