

# The Creation of Two New Provinces in Papua New Guinea – A Story of False Starts and Near Fatal Collisions

*Sir Manasupe Zurenuoc OBE Kt made an enormous contribution to Papua New Guinea. During his career in public service he touched many lives and will be fondly remembered. Sir Manasupe was deeply committed to the establishment of the new provinces and celebrated with the people of Hela and Jiwaka when the new provinces came into effect. Just as he did, I am sure he would want you all to enjoy the high and lows and the great characters that contributed to the creation of the new provinces.*

## Introduction

The creation of two new provinces, Hela and Jiwaka, in 2012 will be remembered as a great event in the political history of Papua New Guinea. However, like all great events it had many false starts and some near fatal collisions. The period from 2010 to 2012 held exciting times for Papua New Guinea. There was an unprecedented political impasse between Sir Michael Somare and Hon Peter O'Neill, attempts were made to remove provincial electorates and Exxon Mobil was preparing to invest heavily in a gas pipeline and processing plant. This discussion paper will attempt to provide some insight into some of these events and consider why after 36 years the dreams of the Hela and Jiwaka people were finally fulfilled.

## The Start of the Hela Movement

No discussion of the Hela movement would be complete without mentioning the deep religious and spiritual mythology underpinning the Hela people. The Hela people see themselves as comprised of a number of clans living in a federation, ultimately seeking self-determination which amounts to the ability to define their civilisation through the Hela world view and philosophy (Hela Gimbu Association 2006:2). The creation of a Hela provincial government would formalise the existing Hela clans and

allow for the recognition of the Hela world view and philosophy. The Hela world view, 'revolved around the value of the ultimate common good of the collective wellbeing of this clan state' (ibid.:3).

The people of Hela have their own version of the old testament and a reverence for Dadagaliwabe who commanded his own laws and spoke to the Hela people (Hela Gimbu Association 2006:4–5).

According to Hela mythology, the light (*laitebo*) burning within the Gigira (one of the prophetic mountains in Hela) would one day light up the whole land. The Hela people believe that the Hides gas project fulfilled this prophecy, as the actual gas, and also infrastructure associated with the project, have brought development to the Hela people, lighting up the whole land. The more recent LNG project is a further affirmation of this prophecy as development continues to come to the Hela people (Hela Gimbu Association 2006:13–14).

It was not until the 1950s that the people of Hela had any significant outside influence. In the late 1960s, the Hela people formed the Hela Association (now renamed the Hela Gimbu Association) to represent the people of Hela and their own interests (Hela Gimbu Association 2006:3). The Hela Gimbu Association survives today and was a key stakeholder throughout the fight for a new Hela Province and its formation.

In 1974, Hon Andrew Wabira, member for Koroba-Kopiago, moved a motion in the old House of Assembly calling for the creation of the Hela Province. The motion was debated in 1976 but it was not until 2000 when Hon Alfred Kaibe, member for Tari-Pori, lodged a petition in parliament to create the Hela Province that new life was breathed into the fight (Hela Gimbu Association 2006:3).



In September 2002, during a visit to Tari, Prime Minister Grand Chief Sir Michael Somare promised he would investigate the *possible* establishment of a Hela Province. Soon after, cabinet directed the establishment of a parliamentary committee, in consultation with the Boundaries Commission, to report on the establishment of new provinces (Abal 2006:7).

### Work of the Parliamentary Committee

Hon Sir Peter Barter the then minister for intergovernmental relations appointed the following members to the committee:

- Hon Sam Abal MP, Chairperson
- Hon Don Polye MP, Minister for Transport and Higher Education
- Hon William Duma MP, Minister for Environment and Conservation
- Hon Moses Maladina MP, Member for Esa'ala
- Hon Byron Chan MP, Member for Namatanai.

However, the creation of new provinces would involve the redistribution of electorates and this could only be done with the cooperation of another body, the Boundaries Commission. According to the Organic Law on National and Local-level Government Elections, the Boundaries Commission is responsible for the redistribution of electorates as well as determining the number and boundaries of open electorates. The Boundaries Commission was already hard at work and had conducted their own consultation throughout the entire country. However, the focus was on open electorates rather than provincial electorates.

According to the Parliamentary Report, the relationship between the Parliamentary Committee and the Boundaries Commission was best described as poor. The Boundaries Commission decided its work was confidential and did not share any information with the Parliamentary Committee (Abal 2006:8). This was a major setback for the Parliamentary Committee.

The first report of the Boundaries Commission presented to parliament in February 2006 was promptly rejected, and again rejected a second time in April 2006. The second rejection signalled the end of the process and a failure to change any boundaries or create new electorates. The report recommended significant changes to the electoral

boundaries across the entire country, with many new electorates being created which would impact on the voting base for many incumbent and future members. With the election due in mid-2007, it was now likely that there would be no new provinces (or electorates) at the upcoming general election.

### Submissions Received by the Parliamentary Committee

The Parliamentary Committee received submissions seeking the establishment of two new provinces. Not surprisingly, a new province in Southern Highlands (Hela) and another in Western Highlands (Jiwaka). There were other proposals from East New Britain and Morobe. However, no formal proposal was lodged by East New Britain and the governor for Morobe decided not to pursue the matter (Abal 2006:2).

#### Jiwaka Submission

The people of Western Highlands divide themselves into two dominant ethnic groups, the Waghi and Melpa people. The Waghi claim to be quieter and less aggressive than the Melpa people and are often fearful of the Melpa. The Waghi are numerically less and claim to be underrepresented and neglected in the provincial government and administration (Abal 2006:22–23).

The Parliamentary Committee reported large supportive crowds in Kudjip, Banz and Nondugl in North Wahgi and Tabibuga in Jimi. They estimated a crowd of 10,000 in Banz and 3000 in Nondugl. Given the difficulties in attending such rallies, these were impressive numbers. All political representatives from Jiwaka were in favour of a new province (Abal 2006:21–22).

#### Hela Submission

The Hela people saw themselves as extending beyond the boundaries of Tari-Pori electorate, the Koroba-Kopiago electorate and Komo-Magarima electorate but to also include people living in Bosavi, and around Pimaga and Kutubu. There were even wider proposals to include those people living in Kandep and Pogera districts in Enga and in Nomad in Western Province. However, in light of the recent rejection of the report by the Boundaries Commission the committee decided

that it would assume the boundaries for the new Hela Province would be Tari-Pori, Koroba-Kopiago and Komo-Magarima (Abal 2006:11). Not to mention the practical difficulties of creating an electorate of this nature.

Unlike in Jiwaka, the Hela people carefully connected the creation of the new province to ongoing security in the region. According to the Parliamentary Report, 'It tied development of the gas pipe line to declaration of a province, and declaration of a province to continuation of peaceful development' (Abal 2006:13). The 1992 and 1997 general elections in the province were marred by violence and in 2002 the general election was declared failed. Although significant efforts had been made to restore peace and surrender guns, the committee considered the threat was real (Abal 2006:13).

The level of political support was complex. Open members from Hela supported the proposed new province. However, the then governor of Southern Highlands (Governor Yawari) was staunchly opposed. The governor had used his popularity and powerful alliances to swear in his own local level government presidents after the failed election, making the Southern Highlands Provincial Assembly a rubber stamp (Abal 2006:15). However, in an interesting turn of events, by 2009 Governor Yawari had been replaced by Hon Anderson Agiru, a proud Hela man.

Already there were sharp contrasts between the plight of the people of Hela and those from Jiwaka. The Jiwaka people appeared well organised, had popular support and were peaceful. Meanwhile, in Hela there were some strong personalities, deeply held convictions and beliefs and simmering unease.

### Final Recommendation of the Parliamentary Committee

The Parliamentary Committee recommended the creation of the two new provinces to take effect from when the writs were issued for the 2007 election, as well as proposing a number of legislative reforms which would clarify the process for creating new provinces and the role of the Boundaries Commission (Abal 2006:26–27).

### The Proposed 2007 Amendment to the Organic Law on Provincial Boundaries

It seemed as though the people of Hela and Jiwaka were going to have their wish. In early 2007, the government tabled an amendment to the Organic Law on Provincial Boundaries, which varied the boundaries for Southern Highlands Province so that Tari-Pori, Koroba-Kopiago, and Komo-Magarima districts would be located within the proposed Hela Province, and Ialibu-Pangi, Imbongu, Kagua-Erave, Mendi and Nipa Kutubu would remain in the Southern Highlands, whilst Jimi and North Waghi districts, and South Waghi would be located in the proposed Jiwaka Province.

Unfortunately, parliament ran out of time and the bill lapsed when the writs were issued for the 2007 general election. However, it is also arguable that the fate of the new provinces had already been decided when parliament rejected the report of the Boundaries Commission in 2006.

The general election occurred in mid-2007 and the demands for new provinces seemingly slipped off the political agenda. Not unlike other countries, competition among issues is fierce in Papua New Guinea. Not all issues, no matter how important, can be progressed simultaneously. Managing powerful stakeholders and landowner groups takes incredible skill and large amounts of time. The skill lies more so in containing all the possible issues and moving those forward that have reached boiling point. By August 2007, the two new provinces remained a significant issue but the danger had passed at least for now and the government was busy with other more pressing issues.

### A Final Instruction from the Grand Chief Sir Michael Somare

By April 2008, the Somare Temu government was back to work. A new secretary for the Department of Provincial and Local Government Affairs was appointed. As all new secretaries do, the secretary officially reported for duties to the secretary for the Department of Personal Management, Ms Margaret Elias. Ms Elias dispensed with formalities then moved swiftly into a meeting with the then prime minister, the Grand Chief Sir Michael Somare. The

conversation quickly turned to government priorities and it was made very clear to the new secretary for the Department of Provincial and Local Government Affairs that the new provinces of Hela and Jiwaka needed to be established during this term of parliament. As the prime minister pointed out, this talk had been going on since 1973, a total of 36 years. As a brand-new secretary, recently arrived from the provinces and keen to please, the new secretary decided that he would do everything in his power to honour this last wish of a great man.

In accordance with the then prime minister's instruction, the Department of Provincial and Local Government Affairs was desperately trying to resurrect the earlier 2007 amendment to the Organic Law on Provincial Boundaries. Fortunately, the bulk of the work had already been done. Detailed mapping coordinates had been determined and were attached as a schedule to the proposed law. The law would redraw the provincial boundaries for the Southern Highlands. The Tari-Pori, Koroba-Kopiago and Komo-Magarima districts comprised the new Hela Province and Ialibu-Pangi, Imbongu, Kagua-Erave, Mendi and Nipa Kutubu remained as the Southern Highlands. In the Western Highlands, Jimi, North Wahgi and Anglimp-South Wahgi districts comprised the new Jiwaka Province. It was not practical to revisit the proposal to extend the boundaries of Hela to include Mount Bosavi in the Nipa Kutubu electorate.

### Passage of the Amendment to the Organic Law on Provincial Boundaries

However, it was not surprising that there remained uncertainty about whether Jiwaka would be progressed simultaneously with Hela. The department had prepared multiple National Executive Council (NEC) submissions to cater for different scenarios. One scenario involved running two separate amendment bills rather than combining both Hela and Jiwaka in a single bill. It was not until the NEC made a final decision in September 2008 approving a single amendment bill that created both the Hela Province and Jiwaka Province that the position was clear. From that moment, the new Hela and Jiwaka Provinces were linked.

The Organic Law on Provincial Boundaries (Boundaries Description) (Amendment) Law 2009 passed the first vote on 11 March 2009 where 87 voted for the amendment and 1 against. The second vote was on 14 July 2009, where 83 voted for the amendment and 1 against. Hon Bart Philemon was the only voice of dissent. The law was to come into effect in accordance with a notice in the National Gazette by the Head of State, acting in accordance with advice from the minister. In order to ensure an orderly movement to the new provinces, the law was commenced immediately before the writs were issued for the 2012 general election.

### The Practical Realities of a New Province

Whilst there was much jubilation when the Organic Law amendment was passed, there was still a great deal of work to be done. Planning needed to start immediately for the practical realities of creating two new provincial administrations. Buildings and land needed to be identified for new provincial headquarters, staffing structures and budgets needed to be approved. Development indicators in the Southern Highlands and Western Highlands were already low, the people of neither province could afford any disruption to service delivery. As soon as the new governors were elected, the supporting administration needed to be ready.

Commentators had warned about the dangers of creating new provinces, arguing that infrastructure in many districts was in decline. Creating more provinces would place even more stress on this fragile system. It was said that although the creation of new provinces was a political decision for government, it should work within the current system and look at improving services before embarking on creating more provinces (Gelu 2008:56).

There was also an argument that the creation of the Hela and Jiwaka Provinces would open the floodgates. It was feared that there were many more disaffected clans and tribes unhappily existing within provinces who wanted to break away and form their own province. So far the floodgates have not opened. The Department of Provincial and Local Government Affairs has received only one request from central Sepik.

Axline and Gelu raised concerns about the lack of consideration of what it called 'good governance'. The new provinces were granted without any assessment of service delivery or impacts on the rest of the country (2008:30). This lack of rational process was of concern to the department and would be addressed later. However, the decision was ultimately political and it had already been made.

The Parliamentary Report pointed to what it called the 'extensive positive outcomes' that came with creating more provinces (Abal 2006:30). A more ethnically homogenous province would mean services are distributed more evenly. At that moment there was a tendency for politicians to favour their own tribe or ethnic group depriving other tribes of services within the province. The provincial assembly would also be able to operate in its own language with its own cultural practices. The creation of new provinces would also result in a redrawing of boundaries away from the arbitrarily imposed colonial boundaries to reflect local ethnic groupings (Abal 2006:30).

However, the report also warned of the increased costs and possible deterioration of services. There was also a danger that administrations would operate on the basis of ethnicity rather than merit and that the national government would be unable to supervise a large number of provinces (Abal 2006:30).

For better or worse, by early 2009 it was obvious that two new provinces would be created, and the tussle was on as many individuals started to vie for control.

### The Stakeholders

The Jiwaka interest groups were well organised and spoke through a single voice — the Jiwaka Separate Province Working Committee. This committee was composed of a number of senior statesmen and broadly represented the interests of the region.

However, the Hela group was less clear. Although there were clear leaders, they were not necessarily united. The Hela Gimbu Association has a long history and was keen to assume full responsibility for the transition to the new province. There were other stakeholders also looking to take more responsibility and it would take some time for a clear leader to emerge. Eventually, Hon

James Marapa, member for Tari-Pori, who had only recently been elected, was able to pull everyone together and bring some discipline to the Hela group. The political leadership was dominated by the Tari-Pori and Komo-Margarima. To bring about some balance, the chief executive officer of the Hela Transitional Authority would have to be a person from Koroba-Kopiago.

As would often be the case over the next few years, whilst there would be turmoil within one group the other would be working effectively. It was a rare moment when there were no problems within either group.

### The Transitional Authorities

Whilst there were struggles going on for leadership there was also competition for *how* the transition to the new province would occur. It was not unusual for the department to receive draft NEC submissions and even draft legislation from stakeholders that would entrench the interests of certain groups. The department received draft legislation, the Hela Provincial Government (Interim Provincial Government) Act, that would have established a Hela Interim Provincial Government complete with a governor and all the powers and functions of other provincial governments. Clearly, there were issues regarding the constitutionality of this proposed bill. Most of the sections were lifted directly from the Organic Law on Provincial Governments and Local-level Governments.

There were also some stakeholders calling for the creation of a special purpose authority. Special purpose authorities are established administratively by the Minister for Intergovernmental Relations in accordance with the Local Level Government Administration Act. They are usually used as a vehicle for landowner interests in resource projects. They also have a reputation for poor governance and had caused many headaches for the Department of Provincial and Local Government Affairs. It seemed a special purpose authority for the new provinces was the last thing the department would have wanted to create.

The Jiwaka group were also keen to assume greater powers during this interim period. It wanted to start imposing taxation immediately and also

establish some sort of executive committee which would act like a Provincial Executive Council. Both groups operated from the starting position that they themselves would determine how the transition would operate and the Department of Provincial and Local Government Affairs was there only to do as they asked.

However, the department had a much larger role to play. The Minister for Intergovernmental Relations was responsible for determining policy in relation to the transition period. Whilst he would listen carefully to the views of the groups and other stakeholders, it was he who was ultimately responsible. The department was left to carefully explain and manage the process. This occurred over countless meetings with the two groups.

After considering all views and interests, it was determined that the best way to manage the transition was to create a statutory authority for each new province: the Hela Transitional Authority and the Jiwaka Transitional Authority. A series of discussion papers were prepared to further develop and gain agreement on the policy. In October 2009, parliament passed the Hela Transitional Authority Act 2009 and the Jiwaka Transitional Authority Act 2009.

The main role of the authorities was to commence preparations for the new provincial administration. This included securing land and a building for the new provincial capital, securing assets and infrastructure necessary for the new administration and, in consultation with the secretary for the Department of Personal Management, developing a staffing structure for the new administration.

The authorities would be legal entities capable of suing and being sued, and able to hold property. They would be governed through a Board and have staff. Most importantly, the authorities would automatically cease when the new provincial governments came into effect. Like most statutory authorities, membership of the Board was highly controversial.

### Political Leadership

According to the Hela Transitional Authority Act, the members of the Board were:

- (a) the Member of the Parliament representing the following open electorate –
  - (i) Tari-Pori; and
  - (ii) Koroba-Kopiago; and
  - (iii) Komo-Magarima; and
- (b) the Provincial Governor of the Southern Highlands Province; and
- (c) the following persons appointed by the National Executive Council on the recommendation of the Minister [for Intergovernmental Relations] –
  - (i) a representative from Tari;
  - (ii) a representative of Tebi;
  - (iii) a representative of Tagali;
  - (iv) a representative of Haypuga;
  - (v) a representative of Hulia;
  - (vi) a representative of South Koroba;
  - (vii) a representative of North Koroba;
  - (viii) a representative of Komo;
  - (ix) a representative of Lake Kutubu;
  - (x) a representative of Lake Kupiago;
  - (xi) a representative of Awi Logaye;
  - (xii) a representative of Pori;
  - (xiii) a representative of upper Wage;
  - (xiv) a representative of lower Wage;
  - (xv) a representative of Mount Bosavi;
  - (xvi) a person representing religious organisations in the proposed Hela Province;
  - (xvii) a woman representing women in the proposed Hela Province; and
  - (xviii) 2 other persons who do not have any association with the proposed Hela Province.

This yielded a grand total of 23 members. There was initial concern within the Department of Provincial and Local Government Affairs that this was too large and would ultimately prove unmanageable. However, the Hela representatives were convinced that this membership would appease everyone and provide fair representation. The department decided to be guided by the stakeholders, and the stakeholders were correct as the membership proved to be stable.

The representative from Mount Bosavi was included by way of an amendment on the floor of

parliament, and the inclusion of Mount Kutubu caused unnecessary confusion later on. Mount Kutubu was not geographically located in the new province. However, some Huli-speaking tribes were located at Mount Kutubu and some Hela people considered that Mount Kutubu should be represented. It quickly became apparent there was division among the Hela as to the proper role for Mount Kutubu so, in the face of uncertainty, the NEC left the position vacant. This was later challenged in court by the President of the Special Purpose Authority for Mount Kutubu. The position remained vacant for the life of the transitional authority.

A chairperson and deputy was appointed by the NEC, on the advice of the Minister for Intergovernmental Relations, from among the members representing open electorates: the Governor Hon James Marape MP was appointed chairperson and Governor Anderson Agiru was appointed deputy. They both remained in those positions for the duration of the transition and aside from the issue with representation from Mount Kutubu, political leadership was relatively stable.

According to the Jiwaka Transitional Authority Act 2009 the members of the Board were:

- (a) the Members of Parliament representing the following open electorates –
  - (i) Jimi; and
  - (ii) North Waghi; and
  - (iii) Anglimp South Waghi; and
- (b) the following persons appointed by the National Executive Council on the recommendation of the Minister –
  - (i) a representative of North Waghi Western End;
  - (ii) a representative of North Waghi Central;
  - (iii) a representative of North Waghi Eastern End;
  - (iv) a representative of South Waghi Western End;
  - (v) a representative of South Waghi Central;
  - (vi) a representative of South Waghi Eastern End;
  - (vii) a representative of Kambia;
  - (viii) a representative of Jimi;
  - (ix) a woman representing women in the proposed Jiwaka Province;

- (x) a person representing youth in the proposed Jiwaka Province;
- (xi) a person representing religious organisations in the proposed Jiwaka Province; and
- (xii) a person representing the business community in the proposed Jiwaka Province.

Again, membership was large at 15 but less than the Hela Transitional Authority. Unlike the Hela Transitional Authority, the chairperson and deputy were appointed by the NEC, on the advice of the Minister for Intergovernmental Relations, from among the members. The chairperson and deputy did not have to be an open member or governor.

Initially, this did not cause any problems and Mr Phillip Kapal was appointed chairperson and Hon Benjamin Mul was appointed deputy. However, in June 2011 there was an amendment to the Act to make it consistent with the Hela Transitional Authority so that the chairperson and deputy would be appointed from among the open members and governor. Soon after the amendment was passed, Hon Benjamin Mul was appointed chairperson and Mr Roger Palme appointed deputy.

Another six members were also included by way of the amendment:

- two representatives of Jimi, representing each local level government
- two representatives of Anglimp South Waghi electorate
- two representatives of the agriculture sector.

There was a strong view that Jimi and Anglimp South Waghi needed better representation on the authority and the inclusion of two representatives of the agriculture sector was to rectify an obvious omission. It was a widely held view that agriculture would be the backbone of the new Jiwaka Province and their interests should have been included.

### Administration of the Authorities

Competition for who would be appointed chief executive officers of the authorities was fierce. The department was regularly receiving applications and was frequently reminding intending applicants that in accordance with the relevant legislation, the chief executive officer would be appointed by the NEC from three candidates nominated by the authority.

There was much work to be done: a chief executive officer needed to be appointed as soon as possible. Within a month of the position for chief executive officer closing, Mr William Bando was appointed as the chief executive officer for the Hela Transitional Authority. Mr Bando came from Koro-ba-Kupiago, which would strike a good balance against the Board who were predominately from Tari-Pori and Komo-Magariama.

However, the search for a chief executive officer for the Jiwaka Transitional Authority would take more time. In order to keep things moving, the department appointed a liaison officer, Mr Nick Kuman, who would be based in Jiwaka. Mr Kuman used the title of director and fulfilled duties similar to that of the chief executive officer.

However, by mid-2011 there was some unhappiness within the Jiwaka administration. The then chairperson, Mr Phillip Kapal, was attempting to remove Mr Kuman. An NEC submission for the appointment of the chief executive officer had been lodged with the NEC secretariat some time ago but was stalled. Eventually Mr Kuman stood aside and Mr Tokana Hasavi was appointed by the NEC as the chief executive officer. Coinciding with this appointment was the appointment of the new chairperson and deputy. Stability was finally installed and this team continued through until the 2012 general election.

### The Need to Change the Electoral Boundaries

Whilst steady progress was being made to prepare for the new provinces it would also be necessary to address the electoral boundaries. Commentators have noted that there is some conflict of law in relation to creating new provinces (Abal 2006:33; Gelu 2008:56). The boundaries of the new provinces have a double identity as both provincial electorates and geographical provincial boundaries. The Organic Law on Provincial Boundaries describes the geographical boundaries and is administered by the Minister for Intergovernmental Relations whilst the Boundaries Commission (an independent Constitutional Office), falling under the responsibility of the prime minister, is responsible for electoral boundaries, thereby creating a split in responsi-

bility. This proved to be fatal in 2007, when the Boundaries Commission Report failed to be passed by parliament and then shortly after the amendment to the Organic Law on Provincial Boundaries lapsed when parliament was dissolved for the 2007 general election.

As soon as parliament passed the amendment to the Organic Law on Provincial Boundaries the Department of Provincial and Local Government Affairs commenced discussions with the electoral commissioner. The electoral commissioner was the chairman of the Boundaries Commission and at that time the commission was short a few members.

According to the constitution and Organic Law on National and Local-level Government Elections the Boundaries Commission is comprised of the following members:

- the electoral commissioner who is the chairperson
- the surveyor-general
- the national statistician
- three other members appointed by the Head of State acting on advice of NEC after consultation with the Public Service Commission and any relevant parliamentary committees.

The appointment of three other members was sensitive and it would take some time before suitable candidates were identified. Once formed, the commission was still nursing its wounds from its last report and was somewhat reluctant to embark upon another nationwide consultation process. Going back to the electorate after such a short time period and having to explain why the last report failed was going to be unpleasant. Plus, the commission was already facing an expensive general election and funding was already scarce. There was no money available for more consultation.<sup>1</sup>

Fortunately, everyone could see the importance of adjusting the boundaries for the new provinces so the solution would be a limited boundary review. Instead of reviewing the entire country, only the provincial boundaries of the Southern Highlands and Western Highlands would be reviewed to take into account the new provinces. There would be no discussions about open electorates.

Successful consultation occurred in Tari and Banz. The public consultation was well attended and there was unanimous support for altering the provincial boundaries to create the new provinces. The Boundaries Commission succeeded in limiting its inquiry to only the new provinces and was not drawn into wider discussions on open electorates.

Unlike the process for rejecting a report of the Boundaries Commission, the process for approving a report is very easy. Parliament can approve the report in a single majority vote. In November 2011 parliament approved the report and the road for the new provinces was now clear. As chief secretary, I felt that I had achieved my goal.

### Other Events at the Time

#### The Future of Provincial Electorates

Simultaneous with these calls to create new provinces there was also movement afoot to abolish provincial electorates. Without provincial electorates, there would be no governor and no provincial government. Therefore, the creation of a new province would be meaningless and would not deliver the political autonomy that the people of Hela and Jiwaka were expecting.

An amendment to the Organic Law on National and Local Elections in 2002 resulted in the abolition of provincial electorates from when the writs were issued for the 2007 elections. It was arguable that this amendment to the Organic Law was unconstitutional since the constitution specifically provides for the establishment of provincial electorates. In order to remedy the defect a further amendment was made to the constitution in 2006.

An amendment to the constitution passed the second vote in 2006 removing all references to provincial electorates. This amendment would take effect when the writs were issued for the 2007 general election. However, this was a mistake. Parliament had intended to pass a bill that would have removed provincial electorates for the 2012 general election. In order to rectify this and to save provincial electorates (for the moment) the Head of State was not advised to commence the bill and it was recommitted by the Head of State on the advice of the NEC to parliament.

Parliament reconsidered the bill by way of a little known or used recommittal process provided for in the constitution. In May 2010, parliament passed the second and final vote which changed the commencement date. Instead of retrospectively removing provincial electorates when the writs were issued for the 2007 general election, the provincial electorates would be removed on the advice of the Head of State acting in accordance with the advice of the prime minister. The effect of this was that the hopes of the people of Hela and Jiwaka were kept alive, but only just.

It was not until early 2012, that parliament passed a further wave of amendment bills that effectively undid the chain of events from above and permanently saved the provincial electorates. It was necessary to amend the Organic Law on National and Local Government Elections as well as the constitution. This was no easy feat considering that amending constitutional laws requires two separate votes separated by one month and requiring large majorities, all of which needed to be completed on the eve of a general election. However, it was vital that these amendments were progressed with the amendment to the Organic Law on Provincial Boundaries providing a guarantee that provincial electorates would be saved.

#### Resource Development in the Highlands

By 2008, the PNG LNG project was taking shape. The project partners signed the joint operating agreement and in May the gas agreement was signed. Soon after, the project went into the [Front End Engineering and Design](#) phase (FEED). Exxon Mobil was prepared to invest large amounts of money to build a pipeline that would span from the highlands to the coast and cross four provinces. This was an ambitious task. Negotiating with this many diverse landowner groups had never been done before. The people of Hela saw an opportunity and were once again able to propel their issue back into the spotlight.

However, the people of Jiwaka should not be forgotten. The pipeline was not going to bring them any riches but they were watching the actions of the Hela people closely. If the Jiwaka people played their cards correctly, they may be able to capitalise

on the efforts of the Hela people and get their own province as well.

### A Changing Political Environment

The period from 2011 to the 2012 general election was also filled with unprecedented political events. In December 2010, Prime Minister Sir Michael Somare voluntarily stood aside as prime minister to allow an investigation by the Leadership Tribunal into allegations he had failed to lodge financial returns. During his absence, Hon Sam Abal became the acting prime minister. Whilst the bulk of the work on new provinces had been completed, there was still more to be done and their implementation was not guaranteed. Ongoing political commitment was still necessary.

In March 2011, the Leadership Tribunal found Hon Sir Michael guilty and recommended suspension for 14 days without pay. The suspension took effect from 14–28 April. In March, Hon Sir Michael Somare, taking advantage of his extended leave, sought medical treatment in Singapore for an existing medical condition. However, things took a turn for the worse and he found himself in intensive care on life support in the fight of his life. In June, Hon Sir Michael remained unwell in hospital in Singapore and his family announced his retirement from political life (In re Reference to Constitution s19(1) by East Sepik Provincial Executive Council [2011] PGSC 41; SC 1154 para 202–9).

With Hon Sir Michael out of the country, the coalition government was vulnerable. In August 2011, in an unexpected and skilled political move, Hon Peter O'Neill, the then Minister for Public Service, successfully gathered the necessary numbers and moved a motion on the floor of parliament to remove Hon Sir Michael Somare as prime minister and elect Hon Peter O'Neill as the new prime minister.

Shortly after this, the cabinet of the newly elected prime minister permanently appointed Sir Manasupe Zurenuoc as chief secretary. This brought to an end a period of over one year where, due to an unresolved court case, the secretary for the Department of Provincial and Local Government Affairs was serving as both secretary and also acting chief secretary. Like many lawyers, the chief secretary held some doubts about the manner in which

the prime minister had gained office. However, the court of public opinion was more persuasive. It was obvious that the new prime minister had overwhelming parliamentary and public support.

This switch from secretary of the Department of Provincial and Local Government Affairs to chief secretary was very timely for the creation of the two new provinces. The boundaries report and amendments to secure the provincial electorates were still outstanding. By now the new provinces had become a whole of government issue. Multiple government agencies were now involved and a range of ministers needed to be briefed on legislation. The Department of Provincial and Local Government Affairs remained invaluable partners. However, they needed the strength of the Office of the Chief Secretary.

In September 2011, with Hon Sir Michael Somare still absent due to ill health, the Speaker declared Hon Sir Michael Somare's seat vacant. The East Sepik Provincial Executive Council had already lodged a constitutional reference seeking an interpretation of a number of sections in the constitution that dealt with the office of the prime minister. In December 2011, the Supreme Court, after considering the application and argument, ordered that:

1. The Hon Sir Michael Somare was not lawfully removed from the office of Prime Minister on the 2 August 2011;
2. The Hon Peter O'Neill was not lawfully elected as Prime Minister on the 2 August 2011;
- ...
4. The Speaker's decision of 6th September 2011 to declare that Sir Michael Somare had lost his seat was in breach of [the] *Constitution* ...;
- ...
6. The Hon Sir Michael Somare is restored to office of Prime Minister forthwith. (In re Reference to Constitution s19(1) by East Sepik Provincial Executive Council [2011] PGSC 41; SC 1154)

These orders were re-affirmed in a later case, In re Constitution section 19(1) – Special reference by Allan Marat; In re Constitution section 19(1) and

3(a) – Special Reference by the National Parliament [2012] PGSC 20; SC 1187.

However, time marched on. The public, including the public service, had fallen behind the newly appointed chief secretary who was pursuing the priorities of the O’Neill Namah government. Papua New Guinea was only six months out from a general election and it was Christmas. Everyone wanted to get back to their villages and enjoy the Christmas spirit. It was as if there was no appetite for any more major political upheaval, at least not now. The government of O’Neill using its numerical strength held another vote and elected Hon Peter O’Neill as the prime minister.

Whilst 2011 was filled with surprising political events and deep political divisions, the new provinces enjoyed bipartisan support. No matter who was in charge, the legislative agenda was relatively the same.

### A Clear Road to the New Provinces

By April 2012, parliament had passed all the necessary amendments to retain provincial electorates and create the new provinces. MacPherson outlined in some detail the full complexities of the task at hand and warned that failure to complete these tasks would result in the possible deferral of the 2012 general election (2009:16). However, the parliament managed to successfully navigate the complicated legislative program. When the writs for the 2012 general election were issued, parliament had amended the constitution, Organic Law on Provincial and Local Government Elections, Organic Law on Provincial Boundaries and accepted the report of the Boundaries Commission.

The 2012 general election resulted in the election of Dr William Tongamp as governor for Jiwaka, a first-time member, who defeated Hon Jamie Maxton Graham who had held the seat of Anglimp South Waghi in the last parliament. Meanwhile, Hon Anderson Agiru, the governor of Southern Highlands in the last parliament, switched seats to become the inaugural governor for Hela.

### A Better Way for the Future

Creation of the new provinces was taking the department into unchartered territory. In 1977, the Organic Law on Provincial Governments had a

very specific process for granting self-government to newly formed provinces. Papua New Guinea was a new country and was to be divided into provinces with their own government. When the Organic Law was replaced in 1995 by the Organic Law on Provincial Governments and Local Level Governments there was no need to retain any equivalent provisions. Provinces already existed and would simply continue to operate under this new decentralised system of government.

It would appear that when parliament passed the Organic Law they did not foresee the creation of more provinces or consider it to be necessary to provide a legal framework. However, in 2008, the government’s intention was clear. The two provinces needed to be created and this needed to occur as soon as possible. There was no time to waste, the department could not spend the next two years developing a legal framework and then hoping it would be passed in parliament. As is often the case, necessity is the mother of invention so the department set about doing the best it could within the current legal framework. If a disgruntled person took issue, then the department would have to face them in court and hope for the best. It was a risk that would have to be taken. Fortunately, there were no legal challenges and in 2012 the new provinces came into being with much fanfare.

The Parliamentary Committee also recognised this problem and proposed a solution. The committee proposed there needed to be a flexible system that would:

- maintain and expand delivery of services;
- ensure economic use of limited government resources; and
- maintain political accountability to the people. (Abal 2006:33)

The committee recommended giving responsibility for provincial boundaries to a single agency, the Boundaries Commission. The committee recommended a very orderly rational process for considering requests for new provinces. The process would be comprised of the following steps:

- lodgment of a proposal from the initiators addressing specific political and administrative criteria and representing the outcomes from community consultation;

- there would be a preliminary assessment by the Boundaries Commission with feedback given to the initiators;
- the initiators would then finalise the proposal;
- the Boundaries Commission would assess the proposal against the specific political and administrative criteria;
- consultation with affected communities;
- referral to NEC for approval; and
- presentation to Parliament for final approval. (Abal 2006:34)

The criteria would be broken into political and administrative. The political criteria would be:

- the level of popular support for the proposal;
- whether the proposal was consistent with local ethnicity; and
- the level of political support by local leaders. (Abal 2006:35)

The administrative criteria would focus on the delivery and access to services in the new province. The services would include:

- the availability and capacity of provincial and local-level government and assembly support services;
- the availability of treasury and finance offices;
- the personnel management of staff for the new administration including appointments, salaries, discipline, in-service training and supervision;
- the capacity and current levels within the law and order sector, including police, corrective service, courts and peace and good order committees;
- the capacity within the education sector including pre-school, primary, high, secondary and vocational;
- the capacity within the health sector including hospitals, health centers and aid posts;
- the capacity of the industry and commercial support services;
- the existing transport and communication infrastructure; and
- the capacity and level of community development. (Abal 2006:35)

In 2007 given the predicament the department found itself in, it immediately started to do further work to develop the administrative process. However, as one would expect, the department saw itself as the responsible agency, not the Boundaries Commission. In 2008, it outlined the extent of the problem in a discussion paper for the 2008 Governor's Conference. This indicated the department was in the process of developing further policy on this issue. The department was proposing a four-tiered process similar to that recommended by the Parliamentary Committee. First, the initiator would bring a proposal addressing specific criteria (which would cover administrative, political and financial considerations) which would be assessed by the competent authority and then advise the NEC. Lastly, parliament would pass any necessary legislative amendments (Department of Provincial and Local Government Affairs 2008:12–13).

In September 2008, the NEC approved the administrative process and criteria for creating new provinces. However, it was too late for Hela and Jiwaka. It is still unclear whether this very orderly rational process will be used successfully or whether the creation of new provinces will once again be a very politically driven decision.

### Conclusion

The odds were against the successful creation of the two new provinces. There was high political drama when Hon Peter O'Neill was installed as prime minister in August 2011 as well as a rearguard campaign to reshape the system of decentralisation to abolish provincial electorates, which would have removed provinces, at least politically.

In order to create the new provinces, parliament had to navigate a complex legislative agenda. It needed to amend the constitution, the Organic Law on National and Local Government Elections and the Organic Law on Provincial Boundaries. It also had to pass a report from the Boundaries Commission and pass the Hela Transitional Authority Act and Jiwaka Transitional Authority Act. All needed to be done before the writs were issued for the 2012 general election.

However, in 2012 due to the unwavering commitment from many people, the new provinces

were born. There were many people, from elected members of parliament to officers in the public service and the people of Hela and Jiwaka, who each played a part. No one person was able to give rise to the new provinces; it took the collective efforts of many people over a long period of time.

### Notes on Authors

Sir Manasupe Zurenuoc is a qualified lawyer who has served in the PNG public service for over 30 years. From 2011–16 he was the Chief Secretary to Government and from 2008–12 was the Secretary for the Department of Provincial and Local Level Government Affairs. Prior to this he served in the Morobe Provincial Administration and from 1999–2007 was Provincial Administrator.

Ms Felicity Herbert has worked in Papua New Guinea for the last 12 years on various Australian funded aid projects. During this time, she supported the National Economic and Fiscal Commission, Department of Provincial and Local Government Affairs and the Department of Prime Minister and National Executive Council to improve their capacity in policy development and legal interpretation.

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### Appendix 1 — Timeline of Events

1960s	The formation of the Hela Association (to be later renamed the Hela Gimbu Association)
1974	Hon Andrew Wabiria moves a motion in parliament calling for the establishment of a separate Hela Province
1976	The Hela province motion debated in parliament
2000	Hon Alfred Kiabie lodges a petition in parliament calling for the establishment of a separate new Hela Province
2000, September	Prime Minister Sir Michael Somare visits Tari and announces an investigation into the possible establishment of a Hela province
2002	Amendments passed to the Organic Law on National and Local Government Elections to abolish provincial electorates
2006	Amendment passed to the constitution to confirm the abolishment of provincial electorates
2006, February	Parliament rejects the report of the Boundaries Commission for the first time
2006, April	Parliament rejects the report of the Boundaries Commission for the second time
2007	Amendment to the Organic Law on Provincial Boundaries listed on the parliamentary notice list
2007, August	General election — Hon Sir Michael Somare re-elected as prime minister
2008	Exxon Mobile in discussions with the national government on a proposed gas pipeline and gas development
2008, April	Instruction from Prime Minister Sir Michael Somare to the secretary of the Department of Provincial and Local Government Affairs to create two new provinces

## Appendix 1 – Timeline of Events (cont.)

2008, June	Governor's Conference where the Department of Provincial and Local Government Affairs outlines preliminary work on administrative criteria for creating new provinces
2008, September	The NEC approves legislation to amend the Organic Law on Provincial Boundaries to create two new provinces
2008, September	The NEC approves an administrative process and criteria to create new provinces
2009, March	First vote to amend the Organic Law on Provincial Boundaries to create two new provinces
2009, July	Second vote to amend the Organic Law on Provincial Boundaries to create two new provinces
2009, October	Parliament passes the Hela Transitional Authority Act 2009 and Jiwaka Transitional Authority Act 2009
2010, March	First vote of recommitted Constitutional Amendment to change the commencement of removal of provincial electorates
2010, May	Second vote of recommitted Constitutional Amendment to change the commencement of removal of provincial electorates
2010, December	Hon Sir Michael Somare stands aside as prime minister to allow an investigation by the Leadership Tribunal into an alleged failure to lodge financial reports
2011, March	Leadership Tribunal finds Hon Sir Michael Somare guilty and recommends 14 days suspension without pay
2011, March	Hon Sir Michael Somare admitted to Raffles Hospital Singapore
2011, June	Amendment to the Jiwaka Transitional Authority Act to change the eligibility for appointment of the chairperson and deputy and include more members to the Board
2011, August	Hon Sir Michael Somare is removed as prime minister and Hon Peter O'Neill elected by parliament as prime minister
2011, September	Boundaries Commission consults on the proposed boundaries for the new provinces
2011, September	First vote of the recommittal to amend the constitution to retain provincial electorates
2011, September	Speaker declares Hon Sir Michael Somare's seat in parliament vacant
2011, November	Parliament approves the report by the Boundaries Commission
2011, December	The Supreme Court orders that Hon Sir Michael Somare is restored to the office of the prime minister
2011, December	Hon Peter O'Neill maintains popular support and with the support of the bureaucracy continues as prime minister
2012, February	Second vote of the recommittal to amend the constitution to retain provincial electorates
2012, February	First vote to amend the Organic Law on National and Local Government Elections to retain provincial electorates
2012, April	Second vote to amend the Organic Law on National and Local Government Elections to retain provincial electorates
2012, April	Writs issued for the general election
2012, August	General election
2012, August	New provinces of Hela and Jiwaka commence

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