

Papua New Guinea under the O'Neill Government: Has There Been a Shift in Political Style?¹



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In 2011–12 Papua New Guinea suffered its most serious constitutional crisis since independence, when the incumbent prime minister, Grand Chief Sir Michael Somare, was effectively removed from office in a 'political coup' by members of parliament whose actions were subsequently ruled unconstitutional by the Supreme Court. The political impasse of this period, in which two people laid claim to the office of prime minister, was finally resolved in mid-2012 following a scheduled national election. But it is arguable that the damage done in 2011 to the institutions of Papua New Guinea's democratic system was not entirely undone in 2012 and that political developments since 2012 give some cause for concern. This paper briefly recounts the events of 2011–12 and looks at political developments under the O'Neill government which came to power following the 2012 election.

Background: The 'Impasse' of 2011–12²

In August 2011 the incumbent prime minister, Sir Michael Somare, was on extended parliamentary leave in Singapore, where he was recovering from heart surgery, when the National Parliament convened, accepted a resolution that through Somare's absence the prime ministership had become vacant, and proceeded to elect a new prime minister, Peter O'Neill. Key players in this political coup, apart from O'Neill, were Belden Namah, the leader of the opposition who became deputy prime minister under O'Neill, and the speaker of parliament, Jeffrey Nape, who had previously managed parliamentary proceedings to stave off opposition to the Somare government. Both O'Neill and Namah had previously served in the Somare government. The election of O'Neill, by a majority of 70 votes to 24, saw a split in the governing coalition and a split within Somare's National Alliance party; former deputy prime minister under Somare, Don

Polye, was amongst those who joined the O'Neill camp. The move against Somare, however, violated the country's constitutional provisions and parliamentary procedures, and Somare's supporters were quick to lodge a legal challenge with the Supreme Court. The O'Neill–Namah coalition sought to thwart their action — *inter alia* by (unsuccessfully) moving to withdraw the financial powers of the East Sepik Provincial Government, which had initiated the challenge; by attempting to remove the chief justice of the Supreme Court, Sir Salamo Injia, charging him with maladministration of court funds (Injia responded by having Namah — acting prime minister at the time — and the attorney general, Allan Marat, charged with contempt of court); and having parliament rescind the leave granted earlier to Somare and legislate to retrospectively set a maximum age of eligibility to run for office at 70, thus depriving Somare not only of the office of prime minister but of his status as the MP for the East Sepik Provincial seat.

In December 2011 the Supreme Court handed down its decision, ruling that Somare was still the legitimate prime minister. The decision was initially accepted by the governor general, Sir Michael Ogio, but ignored by O'Neill, who appointed Nape as acting governor general until Ogio changed his position in favour of O'Neill. Thus began what is now referred to as the period of the 'impasse', during which Papua New Guinea had two claimants to the office of prime minister, each with his own cabinet, and for a while two police commissioners, and briefly two governors general. Somare appealed to the commander of the Papua New Guinea Defence Force (PNGDF) — a fellow Sepik appointed by Somare — to assist enforce the Supreme Court decision, but the commander wisely declined to intervene in what he saw as a civil dispute.



Meanwhile, although there were many who condemned the actions of O'Neill, Namah and Nape, there was very little civil unrest. There seems to have been widespread popular support for, or at least acceptance of, a change of government and by late 2011 the public service and the Royal Papua New Guinea Constabulary had fallen into line behind O'Neill. In January 2012 Somare attended a meeting of the parliament but was told to leave and threatened with arrest, after which he and most of his supporters boycotted the parliament.

Unable to achieve redress through parliament, the courts, or popular support, in January 2012 Somare, acting as prime minister, appointed a new commander of the PNGDF, Colonel Yaura Sasa, and Sasa and a group of about 30 soldiers briefly took control of the two main barracks in Port Moresby, placing the existing commander under house arrest and calling for the reinstatement of Somare as prime minister in accordance with the Supreme Court's ruling. But before the day ended the 'takeover' had collapsed and Sasa was charged with inciting mutiny. The following month, O'Neill's chief of staff, Ben Micah, announced that the government was monitoring the internet and that people spreading 'malicious and misleading information ... subversive to the overall security of the nation' — in other words people criticising the tactics used by the O'Neill–Namah coalition — would be 'dealt with'; 'The military, police and the National Intelligence Organisation and other pro-government civilian networks are monitoring all attempts to destabilise the government's firm control of the country', he said. O'Neill denied that such monitoring was going on and no action appears to have been taken against internet critics, but Micah's statement received widespread publicity and condemnation (see *National* 27/2/2012; malumnalu.blogspot.com/2012/07/3/).

In April 2012 a further ruling by the Supreme Court upheld its earlier decision and voided legislation passed since August 2011 by the parliament under O'Neill. O'Neill and Namah again rejected the court's ruling and continued their vendetta against the chief justice. Parliament passed a controversial Judicial Conduct Act designed to assert the legislature's dominance over the judiciary and,

shortly after, Namah (a former PNGDF officer who was gaoled for his part in the Sandline affair of 1997) led a group of police and soldiers into the Supreme Court building to arrest Injia and one of his fellow judges, Nicholas Kirriwom, on charges of sedition — an act which drew widespread popular condemnation. At the time, Injia was reported as saying, 'This country is being run by men who are happy to use force rather than the rule of law' (*Australian* 23/5/2012).

The main hope for a resolution of the impasse lay in the forthcoming national election, scheduled for June 2012. But in the early months of 2012 Namah began calling for the postponement of the election, and in April parliament voted accordingly (even though it lacked the constitutional authority to make such a decision). O'Neill initially backed Namah on this (at the same time, ironically, accusing Injia and his judicial colleagues of attempting to disrupt the forthcoming election). However, the electoral commissioner stood firm (encouraged by continuing technical and logistic support from Australia) and with most of the country already in electoral mode the election went ahead. Sir Michael Somare decided to stand again for the East Sepik seat he had held since 1968, vowing that if he were re-elected, 'some of these guys will go to jail' (*Fiji Times Online* 30/6/2102).

Papua New Guinea's eighth national election was held in June 2012. O'Neill was among a small number of candidates who were returned on first preference votes in Papua New Guinea's limited preferential voting system; Somare and Namah both emerged as winners in more tightly contested elections; Nape lost his seat. When parliament met in August O'Neill, as leader of the party with the largest number of elected MPs, was invited to form a government, as laid down by the Organic Law on the Integrity of Political Parties and Candidates, and was duly elected prime minister by 94 votes to 12 (with 5 seats still to be decided), heading a coalition of more than a dozen parties. Before the election, O'Neill and Namah had reportedly signed an agreement pledging mutual support during and after the election, but the two had a falling out during the election campaign and Namah emerged as

leader of the small parliamentary opposition. Further reflecting the unpredictability of Papua New Guinea politics, Somare joined the O'Neill government. At the time, a newspaper editorial commented: 'With 94 MPs out of the 111 MPs, the O'Neill–Dion Government can do virtually anything on the floor of Parliament' (*Post-Courier* 23/8/2012).

At the opening of parliament in August, Injia presided over proceedings as chief justice and there was reconciliation and handshakes all round — except between O'Neill and Namah. Namah apologised to Injia, Somare and others for his role in the events set in train in August 2011 but blamed O'Neill (*National* 24/10/2012). The charges against Injia and Kirriwom were dropped; charges against the officer appointed by Somare as his police commissioner were also set aside, and in February the offending legislation — the Judicial Conduct Act 2012, Supreme Court (Amendment) Act 2012, amendments to the Parliamentary Powers and Privileges Act 1964, and amendments to the Prime Minister and National Executive Council Act 2002 — was repealed (*Post-Courier* 7/2/2013).

Reflecting on the events of 2011–12 at the time, I raised the question:

Have democratic norms been fully restored in PNG? Or will the events of 2011 and 2012 come to be seen as marking the rise of a new type of politics in which the legislature, the judiciary, and ultimately the rule of law itself become hostages to whoever has a majority in Parliament? (May 2013:170)

With the O'Neill government approaching the end of its parliamentary term, I return to this question.³ In the following section I focus on three political issues, selected in part because they have dominated much of the political activity of the period but also because they provide an insight into how politics has been played in the 'post-impasse' era. These are described in some detail, because only by examining the detail can one see how governments actually govern and avoid the bland comments about 'good governance' (and non-good governance) which characterise much of the writing on politics in developing countries.⁴

The O'Neill Government 2012–17

'Parakagate' and Its Ongoing Fallout

Papua New Guinea has become an increasingly litigious society. Amongst the effects of this have been increased costs to the government of maintaining the judicial system, a huge demand for compensation payments by the state, and a substantial outsourcing by the state of legal services to private legal firms.⁵ In the process, a number of lawyers have become very wealthy. Papua New Guinea's largest legal firm, Paul Paraka Lawyers, has grown from a small business in Madang in the 1990s to a large nationwide operation with 22 branches and a staff of around 1000 in 2014.

Around 2002, allegations that private legal firms, particularly Paraka Lawyers, had been issuing claims on, and receiving payments from, the state for services never provided led to growing concerns about corrupt transactions between lawyers and state agencies. As allegations mounted, the Somare government, in 2006, set up a Commission of Inquiry into the Department of Finance, to investigate improper claims approved for payment by the Department of Finance and involvement by the Office of the Attorney General, the Solicitor General and the Registry of the National Court. Additionally, after commissioning a departmental inquiry into the briefing-out of cases by the Attorney General's Office, the then Minister for Justice in 2006 terminated the retainer contract with Paraka Lawyers. After several unsuccessful attempts to block the commission of inquiry (between August 2006 and September 2008 the commission was suspended and re-established five times), the commission presented its 812-page report to the prime minister in October 2009.⁶ The report documented massive corruption, involving the fraudulent payment of an estimated K780 million between 2000 and 2006, and recommended 57 people for investigation and possible prosecution by the public prosecutor. Prominent amongst those named — who included the Finance Department secretary and his predecessor, the Justice Department secretary, a former chief secretary, a former attorney general and a former solicitor general — was Paul Paraka. Paraka promptly took out an injunction to prevent

publication of the report, which was not lifted until November 2013.

Following the termination of its contract with the government, Paraka Lawyers took court action claiming K6 million for outstanding payments for the period 2001–6. The National Court awarded the claim but in 2007 the Supreme Court put a stay on its order. The Supreme Court ultimately quashed the National Court decision in July 2014.

On taking office in 2011, O'Neill promised to act against corruption, and to this end established an anti-corruption taskforce, known as Investigative Task-Force Sweep. The taskforce was headed by Sam Koim, a lawyer from the Solicitor General's Office, and staffed by members of the police National Fraud and Anti-corruption Directorate (NFACD, commonly known as the Fraud Squad). An early target of the taskforce was Paul Paraka.

After the 2012 national election, from which O'Neill emerged as prime minister and Namah as leader of the opposition, O'Neill directed Taskforce Sweep to investigate the allegations of fraudulent payments of legal fees and court orders by the Department of Finance revealed by the Commission of Inquiry's report,⁷ and Namah took up the case against Paraka, claiming in May 2013 that, despite the earlier proceedings against him, between February 2012 and May 2013 Paraka had received from the Department of Finance, through a network of related companies, a series of payments, totalling K71.8 million.⁸ Namah submitted to parliament a list of questions without notice on the subject; he was initially prevented by the speaker from raising them but on revised legal advice the questions were allowed, and, once reported, provoked massive public outrage.⁹ In August 2013 Paraka and representatives from several other law firms under investigation by Taskforce Sweep appeared before Deputy Chief Justice Gibbs Salika seeking, unsuccessfully, to have set aside search warrants issued earlier by Salika, and in October Paraka Lawyers sought, again unsuccessfully (and failing in an appeal to the Supreme Court), to have the National Court terminate investigations into the firm by Taskforce Sweep. Later that month Paraka was arrested, along with two other lawyers. He faced 18 charges of conspiracy to defraud, stealing

by false pretence, money laundering and misappropriation, relating to payment by the Finance Department of K28.7 million. Paraka, while protesting his innocence and saying that his arrest was politically motivated, claimed that Taskforce Sweep was operating unconstitutionally and sought restraining orders over his arrest warrant, which were refused by the National Court and on appeal to the Supreme Court. Prime Minister O'Neill, who in May had directed that the government should act swiftly against fraudulent payment for legal fees and out-of-court settlements, said his government would not stand in the way of Taskforce Sweep (Callick 25/10/2013).

In late October 2013 the Paraka prosecution took a new twist, when Namah lodged a complaint with Police Commissioner Tomai Kulunga, alleging official corruption and conspiracy to defraud the state on the part of Prime Minister O'Neill. The accusation was based on a letter, dated 24 January 2012 and purportedly signed by O'Neill, authorising the payment of K71.8 million to Paraka Lawyers. O'Neill denied sending the letter, suggesting that his signature had been forged. Kulunga noted Namah's complaint but noted also that investigations into payments to Paraka were 'at an advanced stage' with Taskforce Sweep and that another investigation would be counterproductive; moreover, since O'Neill was currently acting minister for police,¹⁰ 'it is in the best interest of all parties that the matter is handled by the Task Force Sweep to avoid any suggestion of bias' (transcript from Radio New Zealand (NZ) 5/11/2013). O'Neill was requested to attend a meeting with the Taskforce to answer questions about the letter, but refused.

Correspondence between Finance Minister James Marape and Finance Secretary Steven Gibson and between Treasurer Polye and Treasury Secretary Simon Tosali had also been cited in Namah's complaint. Marape and Polye were called in for questioning and agreed to attend (*Post-Courier* 17/1/2014). Marape had filed for the court to declare that Paraka's claims were legitimate and that there was therefore no criminality, and sought a stay on that basis (see statement by Koim reported in *Post-Courier* 18/6/2014 and comments

on 'O.S. No. 115 of 2014: Marape and O'Neill v. Paraka'¹¹ in Peramo 26/4/2015). Gibson was subsequently charged with nine counts of misappropriation, official corruption and conspiracy, but not the politicians who had authorised it.

With Prime Minister O'Neill rejecting calls to come in for questioning (and apparently Marape and Polye not appearing), Taskforce Sweep obtained warrants for the arrest of the three. The following days and weeks saw an outburst of political activity which recalled the politics of the 2011–12 'impasse'. Marape decried the 'abuse of court and police protocols' (a charge denied by the magistrate involved) and suggested that the warrants had been issued on the insistence of a policeman with links to the opposition leader. O'Neill's lawyers obtained a stay order and the prime minister announced that a taskforce would be set up to investigate collaboration between Namah and 'some "rogue" policemen' to obtain the warrants, which he claimed had been issued outside of the normal lawful processes; he also said (without apparent embarrassment) that he had formally requested police to investigate Namah over the arrest of the chief justice in May 2012 (*Post-Courier* 8/1/2014). The same day, the Waigani District Court issued an injunction against the warrants, which were subsequently set aside as 'defective', in being based on a law which had been repealed. Meanwhile, four police officers involved in the operation were suspended and there were reports that two police mobile squads had been deployed from the highlands to Port Moresby, presumably to deal with any popular protest. It was also alleged that three senior NBC journalists had been sidelined after running 'biased' stories (*Post-Courier* 1/11/2013). Given the history of their collaboration in 2011–12, however, there was perhaps some irony in O'Neill's charge that Namah was 'conspiring to overthrow ... a legitimate government' (*Post-Courier* and *National* 8/1/2014).

The following week Koim announced that the taskforce had 'insufficient evidence at this time to pursue a case against Prime Minister O'Neill', though 'investigations are still continuing'. Namah, obviously upset by this statement, lashed out at the taskforce, describing it as 'an illegal and unconstitutional setup which is not even serving its intended

purpose' (*National* 16/1/2014), and accused Kulunga (who had been appointed police commissioner by O'Neill during the 'impasse' in 2011) of colluding with O'Neill to pervert the course of justice, and of initiating an illegal search of his (Namah's) phone records. Namah also sought, through court action and by direct demands to Kulunga (threatening to have him arrested), to have the four policemen reinstated. Kulunga responded by ordering the arrest of Namah, but when police arrived at Namah's residence they were met by a collection of private security guards, policemen, PNGDF personnel and civil society members — many of whom had responded to calls through social networking — and went away empty handed. Namah's lawyers, meanwhile, obtained an interim injunction from the National Court to stay the arrest order. Over the next few days, tensions eased as the various parties agreed to wait until their proceedings returned to the courts in February. (See AAP 18/1/2014; *Post-Courier* and *National* 20/1/2014, 21/1/2014.) In May Namah dropped his challenge to the suspension of the four policemen involved in the investigation of the payments to Paraka, but otherwise there was little change in the situation for several months.

For some time, despite occasional official denials, there have been factional divisions within the Royal Papua New Guinea Constabulary (RPNGC). During 2013–14 one of these divisions was between members of the National Fraud and Anti-corruption Directorate (NFACD) associated with Taskforce Sweep, and the senior hierarchy of the RPNGC. But there was friction also at the most senior levels. In 2009 Assistant Police Commissioner Geoffrey Vaki had been suspended (over an incident in which his female companion had been pushed from a moving vehicle which Vaki was driving). Vaki had sought a judicial review and in 2012 the National Court ordered that he be reinstated. Kulunga initially failed to reinstate Vaki and then, under pressure, reinstated him but simultaneously told him that his contract had expired. Vaki filed a legal challenge and in June 2014 Kulunga was charged with contempt of court over his actions and sentenced to seven months gaol, but freed on bail pending an appeal. (The same month he was knighted in the Queen's Birthday honours list.)¹²

In June 2014 what was now being popularly referred to as 'Parakagate' moved into a new phase. Claiming it had new evidence, Taskforce Sweep revived its appeal for O'Neill to come in for questioning and informed the police commissioner accordingly. The principal new evidence was a report from Australian-based Forensic Document Services Pty Ltd which had analysed the letter containing what O'Neill had dismissed as a forged signature and had expressed the opinion that the signature was O'Neill's. The taskforce had also found a letter dated 15 May 2013 from O'Neill to Marape which referred to the 24 January 2012 letter whose existence O'Neill had denied, and an interview with Polye had lent further credibility to the case against the prime minister.¹³ On the basis of this, Police Commissioner Kulunga requested O'Neill to attend a police interview and when the prime minister failed to do so, on 16 June he was served with an arrest warrant, signed by Chief Magistrate Nerrie Eliakim, by Assistant Commissioner (Crimes) Thomas Eluh and two of his officers.

Over the next few days O'Neill responded forcefully: on 16 June his lawyers sought to stop the interrogation and obtained a stay of arrest; Kulunga took leave and on 17 June was retired, being replaced by Vaki as acting commissioner;¹⁴ the same day, Deputy Police Commissioner (Operations) Simon Kauba (who was said to have been Kulunga's preferred successor) called on the prime minister to come in for an interview and on 18 June was sacked for 'disobeying instructions' (from Vaki) and replaced by Assistant Commissioner Jim Andrews;¹⁵ also on 18 June the police lawyer, Superintendent Nicholas Mirivi, who had been representing the RPNGC in proceedings up to this point and opposed O'Neill's stay order, was replaced by a private law firm, Paul Mawa Lawyers, who were instructed to accept O'Neill's lawyers' request for a stay of the arrest warrant;¹⁶ and the prime minister, claiming that the taskforce's actions were 'a politically motivated stunt' and that the police, courts and government departments had been 'politically compromised', announced that Taskforce Sweep was disbanded and Koim stood down, and that the government would set up a commission of inquiry into the corruption charges,

to be headed by Australian retired judge Warwick Andrew.¹⁷ It was also announced that an Interim Office for Anti-Corruption would be created, under another Australian retired judge, Graham Ellis, to replace Taskforce Sweep pending the establishment of a long-foreshadowed Independent Commission Against Corruption (ICAC). At the same time, on 17 June the Minister for Justice and Attorney General, Kerenga Kua,¹⁸ was decommissioned (after a separate dispute with O'Neill — see below) and replaced by Ano Pala, who had defected from the National Alliance to support O'Neill in August 2011 and served as foreign minister under O'Neill in 2011–12. Vaki, Pala and Mawa were generally seen as appointees sympathetic to O'Neill. Another casualty in late June was acting solicitor general Jubilee Tindiwi, who was replaced by her deputy, according to rumour (denied by Pala) because she refused to support O'Neill's lawyers' application to set aside the arrest warrant against O'Neill (*Post-Courier* 1/7/2014). At the time, O'Neill was reported as saying, 'We will continue to terminate everybody who is going to undermine the work of the Government' (*National* 19/6/2014).¹⁹

The appointment of Vaki as commissioner, in particular, caused some resentment within the RPNGC, and when Vaki instructed his newly appointed police lawyer, Mawa, to consent to the demands of O'Neill's lawyers for a stay of the arrest warrant, police from the NFACD moved to arrest the acting commissioner for trying to pervert the course of justice; they also sought to question Attorney General Pala. On 21 June Assistant Commissioner Eluh issued a statement outlining police concerns, describing Papua New Guinea's criminal justice system as 'hanging in the balance', and again calling on the prime minister to come in for questioning. In a later comment on social media he suggested that Vaki 'is now being seen as a puppet conveniently appointed to prevent Prime Minister O'Neill from submitting himself to the rule of law'. Eluh was promptly suspended for insubordination, a move which he described as 'contemptuous and a blatant breach of the police/court process'.²⁰ The assistant police commissioners from the Momase, Highlands and New Guinea Islands regions flew to Port Moresby to support Kauba and their

junior colleagues in the NFACD but in the event respected the court's stay order and appealed to the prime minister to voluntarily present himself to the investigating police. The Ombudsman Commission, issuing a statement expressing concern at the recent turn of events, intervened to prevent the suspension of the head of the NFACD, Chief Superintendent Mathew Damaru, and his deputy, Chief Inspector Timothy Gitua (*Post-Courier* 27/6/2014); their suspension appeared to be in breach of a court order directing Vaki not to interfere with the police investigation (*Post-Courier* 19/6/2014; *National* 19/6/2014, 20/6/2014; *Radio NZ* 18/6/2014). Vaki and his recently-promoted acting deputy commissioner Jim Andrews, however, continued to deny that there were divisions within the RPNGC and insisted that the Constabulary was 'carrying out its functions as normal' (*National* 20/6/2014; *Radio NZ* 20/6/2014). Shortly after, the Police Association warned that 'it may be forced to use its industrial muscle' if politicians continued to politicise the Constabulary (*Post-Courier* 8/7/2014). A meeting between the two factions contesting pursuit of the arrest warrant against O'Neill, proposed by acting metropolitan police commander Perou N'Dranou, was dismissed by Andrews as 'totally unnecessary' (*National* 28/7/2014, 29/7/2014; *Radio NZ* 29/7/2014). Meanwhile, the new commander of the Papua New Guinea Defence Force (appointed by O'Neill in January 2014 and, like O'Neill, a southern Highlander from Ialibu-Pangia) ordered his troops to stay out of the political battle or face dismissal.

When court action resumed on 25 June, Mawa had been replaced by private law firm Sam Bonner Lawyers,²¹ who sought a permanent stay of the arrest warrants (*National* 30/6/2014).²² The National Court refused the application, but did not rule on whether the warrant should be enforced or withdrawn, leaving that decision to Vaki (*Post-Courier* 1/7/2014; *National* 2/7/2014). In a 16-page judgement, Justice Kariko also said that 'there was no evidence that the current criminal investigations ... were the work of "rogue policemen". Or that the investigations are politically motivated as described by the prime minister' (as reported in *National* 2/7/2014). Vaki was reported to have 'assigned the case for further analysis and assessment' to the man

who had replaced Eluh, Chief Superintendent Donald Yomasombi (*Post-Courier* 2/7/2014). O'Neill initially said he would appeal to the Supreme Court, but withdrew all court proceedings, saying he would respect the commissioner of police to do his job (*National* 2/7/2014, 3/7/2014; *Radio NZ* 2/7/2014). The court also foreshadowed that 'there may also be contempt charges raised from the sacking of senior police officers and possibly the disbanding of Taskforce Sweep' (Australian Network News 25/6/2014).

In early July, Chief Justice Injia rejected Vaki's lawyers' submission that the case against the police commissioner be dismissed, ruling that Vaki had a case to answer in relation to the charges that he prevented or frustrated the execution of the warrant for the arrest of O'Neill. A further attempt by Fraud Squad officers to arrest Vaki was thwarted by officers loyal to Vaki (*Post-Courier* 2/7/2014, 3/7/2014, 14/7/2014, 17/7/2014; *National* 3/7/2014). After several further moves by Vaki's lawyers to delay a decision, the Supreme Court in October ruled that the police commissioner did not have the power to direct his officers not to execute the arrest warrant, clearing the way for the charges against Vaki and O'Neill to proceed. Contempt proceedings (over Vaki's failure to execute the warrant for the arrest of O'Neill) and charges of perverting the course of justice (filed by Damaru and Gitua over Vaki's replacing of the police lawyer after the National Court had ordered that the *status quo* remain) returned to the court in March 2015, but were again adjourned.²³ Finally, in June 2015 Vaki was convicted and sentenced to three years gaol with hard labour. (He appealed and was granted bail, but in October 2015 was arrested after failing to attend a court hearing. See *Post-Courier* 21/10/2015.)

Shortly before the court's decision was handed down, however, Vaki was sacked — following public outcry over the government's failure to act on the fatal shooting by police of two men in Hanuabada village in Port Moresby — ostensibly, in the words of the police minister, 'to restore public confidence and discipline in the police force' (*Radio NZ* 8/5/2015). Vaki was replaced by the director of National Intelligence and former police commissioner, Gari Baki, who had himself been sacked by

Prime Minister Somare in 2012 for ‘mismanaging the police force and allowing a breakdown of law and order’ (see Radio Australia report 15/2/2012).

Also in July 2014, the Waigani District Court authorised an arrest warrant against Justice Minister and Attorney General Ano Pala for conspiring to pervert the course of justice in relation to the arrest warrants against the prime minister and Finance Minister Marape. Pala’s application to have the question referred to the Supreme Court was refused (*Post-Courier* 18/5/2014), and the Supreme Court issued a summons calling on Pala to explain a media statement he had made ‘which purportedly legitimized’ the payments to Paraka and ‘bordered on contempt of court’; Pala subsequently retracted the statement (*Post-Courier* 9/7/2014, 10/7/2014, 14/7/2014; PNGBlogs 8/7/2014). An arrest warrant was subsequently issued but Pala successfully applied for a judicial review of the Supreme Court’s decision and police were constrained from executing the warrant pending the outcome of the review.

The same month, Paraka was arrested on another 32 corruption-related charges but was freed without bail by magistrate Pinson Pindipia. Pindipia, who in May had granted Paraka a generous court adjournment to prepare his defence, was detained by the Fraud Squad and charged with perverting the course of justice (PNGExposed Blog 30/7/2014; PNGBlogs 2/9/2014). He was subsequently suspended but in February 2017, with two witnesses unwilling to give evidence, the state withdrew the charges and the case was dismissed (*National* 8/2/2017).

Fraud Squad police also arrested lawyer Sam Bonner, on several charges including conspiracy to defraud, over Bonner’s involvement as a conduit for state monies paid to Paraka Lawyers (*National* 19/8/2014).

While these events were unfolding through the courts, Papua New Guinea’s burgeoning civil society was expressing its views through Facebook, Twitter and various Blog sites which also provided information (and sometimes misinformation) about what was happening in the courts. Most of this was strongly negative towards O’Neill — particularly after the sacking of Kua and disbanding of Taskforce Sweep — and there were frequent calls

for him to resign or at least stand aside while the courts deliberated.²⁴ On 24 June a planned protest march, initially approved by acting Metropolitan Police Commander N’Dranou, then banned by Vaki (who said ‘The circumstances do not warrant the demonstration’) but held in defiance of his ban, drew a peaceful crowd of over a thousand who gave a petition to the police minister (who attended the rally), calling for the resignation of O’Neill and the reinstatement of Koim, Kua, Kauba and Eluh. Another planned protest march in November was banned by acting Deputy Commissioner Andrews (*National* 18/11/2014). Among those who joined in calls for O’Neill to step down were Kua, Somare, Polye (who in March 2014 had fallen out with O’Neill — see below) and, of course, Namah (Loop PNG 21/6/2014; *Post-Courier* 23/6/2014; *National* 23/6/2014). Namah warned that Papua New Guinea was on the path to tyranny and dictatorship (*Post-Courier* 24/6/2014; PacNews 18/6/2014), but by June 2014 Namah had become a less dominant player in the Parakagate saga, and in December he was replaced as opposition leader by Polye. As against this, in July people of the Southern Highlands and Hela provinces threatened to shut down oil and gas projects in their provinces if O’Neill were forced to resign (*Post-Courier* 4/7/2014).

The disbanding of Taskforce Sweep, and standing down of Sam Koim, in June 2014 was probably the most significant of the numerous actions taken by O’Neill, Vaki and the National Executive Council (NEC) to deal with the allegation against the prime minister. It had been set up by O’Neill in August 2011 — early in the period of the ‘impasse’ — but was continued after the 2012 election and was generally well regarded, despite O’Neill’s later claim that it had become ‘heavily compromised and politicised’ (*National* 19/6/2014). There was particular concern at the suggestion by O’Neill that the administrative part of the taskforce would go to the proposed ICAC, and that all files currently under investigation would go to police (presumably, police other than those working with the taskforce); investigating officers feared that files might disappear and subsequently filed an application in the National Court seeking to restrain Vaki from obtaining files relating to the Paraka case (*National* 7/7/2014). Towards

the end of June, it was reported that the government intended to ask Vaki to investigate Koim's association with deputy opposition leader Sam Basil, suggesting Koim had been 'politically compromised' by talking to Basil (ABC News 25/6/2014). Koim, meanwhile, vowed to continue his investigations, making a brief visit to Australia in June to talk about what was happening in Papua New Guinea and seek support (see *Post-Courier* 26/6/2014). In early July the National Court granted leave for a judicial review of the NEC decisions to disband the taskforce and create an Interim Office for Anti-Corruption, and issued an interim stay order against the NEC decision; it also issued interim orders preventing the state from suspending Koim (*National* 9/7/2014, 11/7/2014, 16/7/2014). In late July the court extended the stay indefinitely, stopping the NEC decision to disband Taskforce Sweep.

This did not, however, end the issue: notwithstanding the court's ruling, in what one commentator described as 'an act of total bastardry and an affront to the court' (Keith Jackson & Friends: PNG Attitude 10/9/2014), Koim was taken off the government payroll and funds allocated for the taskforce in the national budget were not released.²⁵ Contempt proceedings were consequently initiated against the acting Finance secretary, Justice secretary and Commissioner Vaki (*Post-Courier* 11/12/2014). At the end of 2016, the taskforce had been operating without funding for over two years; most of the taskforce personnel had returned to other divisions of the RPNGC, and Koim had been working without salary. By this time, the taskforce had initiated 93 criminal cases and secured 12 convictions, including those of three prominent MPs convicted on misappropriation charges,²⁶ and 28 public officials had been suspended or dismissed from office. It had also identified over K240 million in unpaid taxes and proceeds from crime, of which K25 million had already been recovered. In addition, around 300 cases, including more than a dozen cases against MPs, and involving an estimated K3.5 billion, were pending or stalled by judicial review proceedings and at risk if the taskforce closed.²⁷

In the meantime, continuing tensions within the RPNGC were again demonstrated in October 2014 when, in Vaki's absence, NFACD officers,

apparently authorised by the acting Commissioner Awan Sete, arrested several Special Services Division officers, and officers from that division retaliated by turning up at the NFACD's office where they shot out the tyres of parked vehicles, arrested NFACD officers ('on unknown charges') and allegedly shot at and assaulted a NFACD officer (*Post-Courier* 23/10/2014, 28/10/2014; *Islands Business* 11/2014). The growing frustration within the RPNGC was reflected in a February 2015 statement by the general secretary of the Police Association, who called for a complete change in the top police hierarchy (*Post-Courier* 4/2/2015; also see an earlier report in *Post-Courier* 8/7/2014).

Against the background of escalating tensions within the RPNGC, Baki took up the position of commissioner in May 2015. One of his first actions was to order an inquiry, headed by Assistant Commissioner David Manning, into the NFACD. In July Assistant Commissioner Eluh was again suspended, after refusing a posting as divisional commander in the Islands Region. In August Damaru and Gitua brought contempt charges against Baki for alleged interference in an arrest warrant against Treasury Secretary Dairi Vele on charges of corruption.²⁸ In response, Baki issued an arrest warrant against them. Two Australian-based lawyers, Greg Egan and Terence Lambert, hired to defend the NFACD officers were initially refused entry to Papua New Guinea, but the ban was overturned and in October the National Court granted a stay of the arrest warrant against Damaru and Gitua, and the police commissioner was restrained from further investigation of them and their lawyers. In September it was announced that both Eluh and Gitua had been sacked for disciplinary reasons — Eluh for insubordination and Gitua over an incident in 2014 at a nightclub which involved the use of firearms (see Radio NZ 30/9/2015). In October perjury charges were brought against Damaru, Gitua and their lawyer, McRonald Nale, over their contempt action against Baki (ABC News 2/10/2016). Damaru was subsequently arrested by officers of the Special Police Investigation Division (*Post-Courier* 12/10/2015, 13/10/2015).

The same month, after several court actions, the Supreme Court dismissed an application by Pala

for the stay of the arrest warrant against him relating to the allegation that, as attorney general, he had conspired with O'Neill and Marape to pervert the course of justice in the Paraka case, and Pala turned himself in to NFACD officers. In July 2016 the Supreme Court finally handed down its ruling: it found that the warrant issued by the Committal Court in June 2014 was defective and therefore null and void, and the following month the charges were dropped (Radio NZ 28/8/2016).

Meanwhile, further attempts were made to suspend Chief Magistrate Eliakim (who had issued the warrants against O'Neill and Marape in June 2014). In September 2015 Chief Secretary Sir Manasupe Zurenuoc (reportedly acting on orders from O'Neill) directed Pala, as chair of the Judicial and Legal Services Commission, to investigate charges of 'official misconduct and administrative incompetence' against Eliakim, after the district court refused an application to arrest Damaru, Gitua and Nale. Zurenuoc denied that the action against Eliakim had anything to do with 'events that are currently before the courts' (*Post-Courier* 8/10/2015; see also PNGBlogs 10/2015).

The legal wrangling continued on into 2016, with Damaru and Gitua involved in lawsuits concerning O'Neill, Marape, Pala, Baki and Vele. In February O'Neill obtained a temporary stay of proceedings over the validity of the arrest warrant against him, in order to allow him to challenge the joining of Damaru and Gitua as parties to the proceedings, granted by a National Court decision in December (*Post-Courier* 19/11/2015, 24/2/2016; *National* 8/12/2015). In early April the Supreme Court lifted stay orders preventing NFACD officers from investigating O'Neill and Marape (though the separate interim injunction, questioning the validity of the arrest warrant, was still before the court thus preventing police from arresting the prime minister). An appeal by Marape was subsequently dismissed and an application from the prime minister to revisit the decision was rejected (*National* 29/2/2016, 5/5/2016; *Post-Courier* 6/4/2016, 8/4/2016, 6/5/2016). Damaru and Gitua had again been prevented from using private lawyers²⁹ but nevertheless had won their case. Encouraged by this, in the days after the April ruling NFACD

officers questioned Pala over his role in preventing the arrest of the prime minister and then arrested him and took him in for questioning over alleged misuse of district support grants for his electorate (see *National* 12/4/2016, 13/4/2016, 15/4/2016). They also arrested Supreme Court Judge Sir Bernard Sakora, alleging judicial corruption (a charge later dismissed on procedural grounds),³⁰ and O'Neill's lawyer, Tiffany Twivey, charging her with perverting the course of justice in intervening in the judicial proceedings against Finance Secretary Vele (*National* 14/4/2016).³¹

Prime Minister O'Neill accused the NFACD of 'a vigilante style of police operation' (ABC News 16/4/2016) and an angry Baki promptly suspended Damaru and Gitua and several officers allegedly involved in 'unsanctioned' fraud investigations in Chimbu and Eastern Highlands provinces, claiming that officers had 'received large cash payments to carry out investigations'. The NFACD was 'stood down', but the commissioner described his actions as 'purely administrative' and 'not directly related to the recent spate of high-profile arrests' (ABC News 17/4/2016; Radio NZ 17/4/2016). Baki's actions drew an expression of concern from Transparency International PNG, and a comment from lawyer Greg Egan that the arrest of Damaru and investigations into Gitua looked like attempts to stop contempt charges against Baki. Former chief justice and attorney general, Sir Arnold Amet said, 'This Commissioner has been appointed by this prime minister and they are trying to corrupt the process' (Radio NZ 18/4/2016). However, a National Court order stayed the suspensions and restrained Baki from interfering in the NFACD's investigations (ABC News 18/4/2016; *National* and *Post-Courier* 18/4/2016, 19/4/2016, 6/5/2016). The following day, police from the Special Services Division loyal to the commissioner closed down the NFACD offices, changing locks and blocking the entrance with a troop carrier thus denying the NFACD officers access, and confiscating vehicles and weapons. Baki claimed that the closure of the NFACD 'had nothing to do with the cases against O'Neill, Sakora and Pala' but related to issues of 'discipline, command and control' (ABC News 18/4/2016), and with the backing of the police minister he again

foreshadowed an inquiry into the activities of the NFACD. Damaru's lawyers promptly filed contempt proceedings against Baki (*National* 4/5/2016; *Post-Courier* 5/5/2016). Former police minister Biri Kimisopa described Baki's actions as 'an unprecedented threat' to the independence of the RPNGC and 'part of a troubling trend of obstructing investigations into high-profile fraud' (*National* 4/5/2016; *Radio NZ* 3/5/2016) and the Ombudsman Commission urged leaders facing criminal charges to step down (*Radio NZ* 9/5/2016). The National Court, noting that closure of the NFACD offices prevented pursuit of several court cases, requested Baki to reopen the NFACD and threatened to recall him and issue an order if he did not do so (*National* 4/5/2016). The office was reopened in early May. Shortly after this Baki proposed that a committee, comprising himself as police commissioner and three deputy commissioners, should vet all high-profile cases before the NFACD made arrests (*National* 10/5/2016). The following month Damaru was arrested and charged with abuse of office and deprivation of liberty over the arrest of Sakora (*ABC News* 17/6/2016; *Post-Courier* 17/6/2016).

In August Damaru said that the operations of the NFACD had 'reached a breaking point': lacking support from the police prosecutor, the public prosecutor and the attorney general, cases were being struck out or dismissed, mostly on technical grounds (*Post-Courier* 12/8/2016). Amongst other things, the ongoing legal saga in the aftermath of Parakagate illustrates the problems in administering justice that can arise when the attorney general and the police commissioner themselves become the subjects of police investigations.

The judicial decision of February 2016 denying Damaru and Gitua private legal representation was the first of several decisions in 2016 which went against those pursuing the anti-corruption cases.³² The charges of perversion of the course of justice against Attorney General Pala having been dropped in July, in November the charges of misappropriation against him were dismissed by District Court magistrate John Kaumi on the grounds that the documentary evidence did not support the charges (*Loop PNG* 15/11/2016). The following month, the Supreme Court handed down its

long-awaited decision on the disbanding of Taskforce Sweep: it ruled that the court did not have the authority to intervene in a policy decision of the NEC, and lifted the stay order imposed by the National Court in 2014. At the same time, it was announced that Taskforce Sweep would be replaced by an Interim Office for Anti-Corruption headed by former judge Graham Ellis (*ABC News* 5/12/2016; *National* 5/12/2016). Koim appealed the decision and Chief Justice Injia granted an interim stay, saying that the security of the investigative files compiled by Taskforce Sweep should be maintained pending final determination of the appeal (*Post-Courier* 16/2/2016); at the time of writing (March 2017) the matter was still before the courts. However, the court also stayed a motion of contempt filed by O'Neill's lawyers against Koim for breaching court orders by taking out a paid newspaper advertisement setting out his position (see *National* 8/11/2016), and Koim's lawyers countered by applying to the National Court to dismiss the charge as an abuse of process.

The UBS Loan Issue

Oil Search Limited is a Port Moresby-based oil and gas exploration and development company which has been in Papua New Guinea since 1929. The Papua New Guinea government is a shareholder in Oil Search through Kumul Consolidated Holdings (formerly the Independent Public Business Corporation).³³ In 2008, Oil Search became a participant (with an initial equity of 29 per cent) in the PNG Liquid Natural Gas (LNG) Project operated by ExxonMobil PNG Ltd, which has been predicted to more than double Papua New Guinea's GDP and triple its export earnings. The Papua New Guinea government, through Kumul Petroleum of PNG Ltd (formerly National Petroleum Company of PNG), is also a participant (with an initial equity of 16.8 per cent and a further 2.8 per cent held by the government-owned Mineral Resources Development Company (MRDC) on behalf of landowners).

To fund the government's participation in the initial A\$19 billion phase of the LNG project, in 2009 the then minister for public enterprise, Arthur Somare, negotiated an arrangement through which it raised A\$1.681 billion from the Abu Dhabi-based

sovereign wealth fund, International Petroleum Investment Company (IPIC), through the issuance of a five-year exchangeable bond backed by its shareholding in Oil Search. At the end of the five years, the government anticipated a buy-back of the shares. The transaction was criticised at the time, notably by former prime minister Sir Mekere Morauta, as a risky venture, and in March 2014 the government was unable to renegotiate the buy-back from IPIC, which retained the shares. Instead, the government negotiated the purchase of 149.4 million shares in Oil Search, at a cost of US\$1.1 billion (around K3.7 billion), to acquire a stake (of 10 per cent) in a second prospective LNG project, based on gas fields held by Canadian-based InterOil, in which Oil Search had acquired a 22.8 per cent stake (see *Post-Courier* 21/2/2014, 28/2/2014, 17/3/2014; *National* 27/3/2014, 31/3/2014; *Weekend Australian* 1–2/3/2014, 8–9/3/2014).

In March 2014 it was revealed that Prime Minister O'Neill had directed the Treasury to borrow the US\$1.1 billion through UBS, a Swiss-based global financial services company, but had apparently ignored the state solicitor's advice that, under section 209(1) of the constitution, such a borrowing required parliamentary approval (*National* 14/3/2014). The decision on the UBS borrowing (a two-year loan backed by the state's Oil Search shares) appears to have been made collectively by O'Neill, Finance Minister Marape and the then Minister for Public Enterprise and State Investment Ben Micah.³⁴ Treasurer (and THE Party³⁵ leader) Polye had not been involved in the decision and subsequently refused to sign the loan agreement; he was sacked from cabinet, accused of 'causing instability in the government'. O'Neill himself briefly took over the Finance portfolio, signing off on the loan. Initially Polye accepted his sacking and said he would maintain the coalition government's solidarity, but in April he initiated court proceedings seeking to block the UBS loan and be reinstated as treasurer. In September O'Neill informed the THE Party that it was no longer a member of the coalition; the party split, with three THE Party members who were ministers in the government resigning from the party rather than lose their portfolios (*National* 22/5/2014).

Meanwhile, with the parliamentary opposition and civil society groups coming out against the borrowing³⁶ and growing calls for O'Neill's resignation, in March 2014 the Ombudsman Commission gave notice of its intention to investigate whether the prime minister had 'followed all the correct legal procedures' and directed the government 'to stop all further transactions on the loan arrangements' pending the investigation; it warned that failure to comply with its direction would constitute misconduct in office and be liable to prosecution before a leadership tribunal. The commission sought advice from Attorney General Kerenga Kua. The transaction, however, had been completed. O'Neill said he welcomed the ombudsman's review, but he nevertheless filed an application to dismiss the legal challenge; Justice Salika ruled that O'Neill's application was an abuse of process.³⁷ Former counsel to the Ombudsman Commission, Nema Yalo, accused O'Neill of usurping the powers of parliament, saying:

The bulldozing of this massive and unprecedented loan transaction is a clear example of the dictatorial nature of the current regime ... the current executive government's dominance of Parliament has compromised the independence of the house as it is unable to provide the necessary checks and balances on key legislation and large financial transactions (*National* 27/3/2014).

Reportedly, the director of the National Research Institute (NRI) was threatened with disciplinary action after economists from the NRI criticised the government's decision in a public discussion of the UBS loan, and the executive director of the private sector Institute of National Affairs, a British citizen, was threatened with deportation after suggesting in June 2014 that the rule of law was at risk (see *Post-Courier* 2/5/2014; *Radio Australia* 24/6/2014; also see Yala et al. 21/3/2014 and Barker 2014).

The ombudsman's direction to stop the loan transaction raised the possibility that the government could default on the loan and have to forfeit its shareholding; however, the government was granted a stay to allow it to service the loan pending judicial review. O'Neill told the ombudsman

(Rigo Lua) ‘not to impede the work of the executive government’ (Press Release from Prime Minister’s Office 1/6/2014; *National* 2/6/2014, 12/6/2014).

The Ombudsman Commission’s investigation subsequently found that the UBS loan was illegal and that there was a prima facie case of misconduct against the prime minister for approving it without observing proper procedures. In August it was reported that the Ombudsman Commission had referred O’Neill to the public prosecutor for misconduct in office under the Leadership Code, on the grounds that he had not followed proper processes in raising the UBS loan, had inappropriately sacked the treasurer, and had misleadingly claimed, on national television, that he had consulted with the Bank of Papua New Guinea prior to signing the loan. O’Neill strongly criticised the Ombudsman Commission’s statement, somewhat ironically complaining that it had ‘gone around’ the judicial review process initiated by Polye and should have followed proper procedure by tabling its report in parliament (*Post-Courier* 13/8/2014, 14/8/2014; *National* 13/8/2014, 14/8/2014).

The Ombudsman Commission’s intervention in the UBS affair exacerbated longstanding tensions between the prime minister and the commission, and the chief ombudsman expressed fears that the commission was ‘under threat’ and that its functions might be taken over by other institutions, such as the proposed ICAC (*Post-Courier* 11/6/2014).³⁸ In July, O’Neill announced the appointment of a new acting ombudsman commissioner, Howard Maliso; the appointment was subsequently challenged by the Ombudsman Commission, on the grounds that the proper appointments procedures had not been followed and that Maliso did not meet the criteria for appointment;³⁹ it was suggested by some that Maliso’s appointment was partisan (see *Post-Courier* 17/7/2014, 21/7/2014; PNGBlogs 11/8/2014). Lua’s term as chief ombudsman came to an end in May 2015 when he reached the age limit of 55; an acting chief ombudsman was appointed from among the members of the commission but the position was not filled until March 2017 (*Post-Courier* 14/5/2015; *Loop PNG* 4/8/2016, 27/2/2017; *PNG Today* 21/4/2017).

Facing the prospect of coming before a leadership tribunal, O’Neill publicly welcomed the opportunity to ‘clear his name’, but in fact his lawyers again worked to block the judicial process, seeking a restraining order to prevent the Ombudsman Commission from investigating O’Neill’s part in the loan raising. Two months after the Ombudsman Commission’s referral to Public Prosecutor Ponds Kaluwin, Kaluwin issued a public statement to the effect that he was seeking further evidence from the commission before deciding whether to refer the matter to a leadership tribunal, and that he would drop the two charges relating to the sacking of Polye and the statement on television (see *National* 13/10/2014). O’Neill’s lawyers seized on this, arguing that the public prosecutor had exceeded his constitutional powers, and on appeal to the National Court were granted an interim injunction in January 2015, which stalled the process pending a Supreme Court reference on a number of constitutional issues.⁴⁰ O’Neill also challenged the jurisdiction of the ombudsman, arguing that the commission lacked the power to investigate and distribute a report which contained comments seen to be adverse to and derogatory of him.⁴¹ Meanwhile, Polye called on the prime minister to step aside, but O’Neill rejected the call (*Post-Courier* 17/11/2014).

While these manoeuvres were taking place, Sir Michael Somare issued a statement in which he referred to his own acceptance, in 2010, of referral to a leadership tribunal (for failing to submit annual returns required under the Leadership Code), said he did not believe that due process was followed in relation to the UBS loan, and announced that he was shifting from the government to the parliamentary crossbenches (*Post-Courier* 28/11/2014).⁴² Shortly before this, Somare’s lawyers filed an action against O’Neill and the state seeking damages of K205 million over Somare’s unlawful removal as prime minister in August 2011.⁴³

In October 2015, following a critical analysis of the UBS loan by Australian journalist John Garnaut, former prime ministers Somare and Morauta called for investigation into ‘possible corrupt activities’ in relation to the UBS borrowings. (See *Canberra Times* 6/8/2015; *Australian Financial Review* 10–11/10/2015; *Sydney Morning Herald* 12/10/2015;

and later statements by Sir Mekere Morauta on 19 July 2016, available on [Papua New Guinea Observer](#).)

In May 2016, however, the Supreme Court dismissed Polye's challenge to the UBS borrowing, ruling that the government had acted within the law and that it was not a constitutional issue, and in September the Supreme Court ruled that the Ombudsman Commission's directive to the public prosecutor was inadequate and that the public prosecutor was not entitled to request additional information, and consequently quashed O'Neill's referral by the public prosecutor to the leadership tribunal (*Post-Courier* 5/9/2016).

Amendments to the Constitution and OLIPPAC

The Papua New Guinea constitution makes provision for the removal of a prime minister through a parliamentary vote of no confidence, and lays down the procedures for such a vote (s.145). But it also provides 'grace periods' during which a prime minister is safeguarded from votes of no confidence: originally, a prime minister could not be subjected to a no-confidence vote during the first 12 months after being elected, and if there were a successful vote against the prime minister in the last 12 months of parliament, the parliament was to be dissolved and a new election held (which, given the high turnover of MPs in Papua New Guinea elections, was a strong disincentive to votes of no confidence in the last months of the parliamentary term). From 1977 votes of no confidence became common and no government survived a full five-year parliamentary term until 2002–7, following the passage of the Organic Law on the Integrity of Political Parties and Candidates (OLIPPAC) which discouraged MPs from switching party allegiance and parties from switching coalition membership. In 1991, the grace period following an election was extended to 18 months. Eleven years later the Somare government attempted to extend the period further to 36 months but a number of MPs opposed the change and crossed the floor (in defiance of the OLIPPAC) to vote against the amendment; Somare subsequently dropped the proposal.

At the opening of the ninth parliament in August 2012, the O'Neill government gave notice that it would undertake a major legislative reform program,

including a review of the provisions of the constitution 'relating to the election of the Prime Minister, the term of Parliament and so on', and of the OLIPPAC to make it 'more effective and relevant to our needs today' (*Post-Courier* 22/8/2012, 3/9/2012).

In November 2012 a bill was introduced to extend the initial grace period from 18 to 30 months. In introducing it the prime minister said, 'The bill is for stability and continuity in governance.'⁴⁴ The bill passed the first reading stage in November, with opposition MPs' support; opposition leader Namah was reported as saying, 'If there is a need we can change it to five years' (*National* 28/11/2012). But there were critics of the proposed amendment, notably Transparency International PNG (see Radio NZ transcript 29/11/2012). On its second reading, in February 2013, the bill was passed (by 90 votes to 14) with virtually no debate; only one MP (former attorney general Allan Marat) spoke, and he opposed the extension. Recently demoted cabinet minister Francis Potape complained that the speaker had gagged debate and rushed the amendment through. O'Neill defended the speaker, saying there was 'no need for speeches as it was obvious to everyone that the country needed stability' (*Post-Courier* 6/2/2013). Between November 2012 and February 2013, Namah had changed his position and opposed the bill, saying 'Papua New Guinea is fast becoming a banana republic' (AAP 24/1/2013). Having lost the vote, he said he would seek a Supreme Court interpretation to prevent the extension.

Eight months later it was reported that the government intended to introduce further legislation, to make votes of no confidence 'more transparent' and to 'clarify' the required number of parliamentary sitting days (s.124). The former was to be achieved by changing the period of required notice for a motion of no confidence from one week to three months (subsequently reduced to one month), increasing the number of signatures required for an intended motion from one-tenth of MPs to one-third (subsequently reduced to one-fifth), and requiring that notice of a motion of no confidence be fully published in a national newspaper (Radio NZ 17/6/2013; *National* 18/7/2013). Section 124 was to be amended by replacing the

requirement generally taken to mean that parliament meet for at least 63 days in a year by a provision requiring that it meet for not less than 40 days in a year.⁴⁵ Both measures were seen as making motions of no confidence more difficult.

The opposition said it would vigorously challenge this move by the government and would seek a Supreme Court preventive order against parliament debating and voting on the proposed amendments; it would also seek to have the Ombudsman Commission as an intervener (*Post-Courier* 4/7/2013, 8/7/2013). Two prominent constitutional lawyers spoke out against the proposed amendments: Moses Murray (leader of the People's Freedom Party) referred to them as 'a recipe for a total dictatorship style of government', adding, 'The constitution must remain supreme and not the parliament' (*Post-Courier* 9/7/2013), and John Nonggorr (lawyer, academic and legal adviser to the Electoral Commission) opposed the changes, reminding voters, 'These are the same characters who ignored the Constitution, destroyed the integrity of the judiciary, the police and other public institutions when they got rid of Somare in the last Parliament' (*Post-Courier* 11/7/2013). Former National Court judge Nemo Yalo described the additional amendments as 'draconian' and said they 'institutionalize dictatorial government', and former attorney general (and lawyer) Allan Marat said the amendments would not promote stability and transparency and would only weaken the power of the National Parliament (*Post-Courier* 9/7/2013). Defending the proposed amendments, the prime minister insisted, 'a government voted in after a general election must be allowed to enjoy the mandate of the people' (*National* 18/7/2013). The bill was passed by parliament in September 2013. The following month, Namah challenged the amendments and sought a Supreme Court ruling, and cited the speaker and attorney general as parties to the proceeding (*National* 14/10/2013, 24/10/2013).

The same month, former chief ombudsman Ila Geno and opposition MP Tobias Kulang (founders of the PNG Constitutional Democratic Party) challenged the extension of the grace period from 18 to 30 months, describing the amendment as 'a shield that protects a corrupt or weak dictatorial government ... from being held accountable

by Parliament' (*Post-Courier* 24/10/2013). In July 2014 it was reported that the combined applications by Namah and Geno would be considered by the Supreme Court and in September 2015 the court ruled in favour of the challengers (*National* 7/9/2015; *Post-Courier* 18/9/2015). In delivering the court's judgement Chief Justice Injia said that the changes 'were rushed through Parliament by the executive 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' (Namah v O'Neill [2015] PGSC 77; SCA No. 165 of 2013 & SCA No. 177 of 2013 (4 September 2015), p.34. Also see Radio NZ 7/9/2015).

Another proposal, to amend section 145(3) of the constitution, was floated in June 2014. The proposed amendment provided that if a prime minister were voted out in a vote of no confidence an alternative prime minister should be nominated by the party invited to form government at the last election (on past experience that would mean a nominee from the prime minister's own party). This proposal came from the registrar of political parties, Alphonse Gelu, but was critically reported, under a headline 'O'Neill-ocracy', as coming from the prime minister. It was rightly seen as making it more difficult to achieve a change of government, and defended as promoting stability in government. The measure was opposed by deputy opposition leader Sam Basil (see *Post-Courier* 5/6/2014) and also by the attorney general and distinguished lawyer Kerenga Kua, who was quoted in a *Post-Courier* editorial (24/6/2014) as saying that the proposed bill would lead to the demise of the opposition and was in breach of Westminster convention (also see *Post-Courier* 18/6/2014). As noted above, Kua was dropped from cabinet as a result of his opposition to the proposed amendment. Caught up in the midst of the 'Parakagate' controversy at the time, O'Neill announced that he would defer debate of the proposed section 145(3) amendment and, once passed, the new provision would not be implemented until after the 2017 election (*Post-Courier* 24/6/2014).

The revised OLIPPAC was approved by the National Executive Committee in May 2015 but when the parliament rose before the election of 2017 legislation had still not been introduced to

parliament, and the registrar of political parties expressed disappointment and concern that ‘a very important piece of legislation has been put on hold’ (*National* 8/4/2015. Also see *PNG Today* 2/6/2016, and report on *Pacific Beat*, ABC News 16/3/2017). The registrar’s comments have been supported by former chief ombudsman Ila Geno (*Post-Courier* 29/11/2016).

The Student Protests of 2016 and the Vote of No Confidence

By late 2105, with Paraka still out on bail, the arrest warrant against O’Neill still outstanding, the seemingly endless court cases emanating from ‘Parakagate’ still ongoing, public frustration was growing. In October a protest rally in Port Moresby was broken up by police and several protesters were injured in the confrontation (*Post-Courier* and *National* 27/10/2015). In March 2016 former prime minister Sir Mekere Morauta warned that there had been ‘a number of dangerous attacks on the integrity and independence of national institutions ... [which] constituted a very serious threat to the rule of law, to Parliamentary democracy and to human rights These attacks have been coupled with constant challenges to legitimate court decisions and rulings ... often on frivolous grounds’ (reported in *Post-Courier* 31/3/2016).

Stimulated by a robust social media, in late April students at the University of Papua New Guinea (UPNG) began calling for O’Neill to step down while the charges against him were investigated, and boycotted classes. A five-page petition was drafted to this effect; it accused the prime minister of compromising the dignity and integrity of the office, specifically by

1. ‘Obtaining the K3 Billion UBS Loan without due process according to the law;
2. Collusion with Paul Paraka (trading as Paul Paraka Lawyers);
3. The K144 Million LR Group Generation [sic] deal;⁴⁶
4. The unfair and inequitable distribution of [District Services Improvement Program] funds;
5. Politicization of independent institutions and their bureaucratic machinery; and

6. Misuse of legislative and executive prerogative’

and called on him to step down within 48 hours.⁴⁷

The boycott movement quickly spread to the country’s other three state universities: the University of Technology (UniTech) in Lae, the University of Goroka (UoG) in the Eastern Highlands, and the University of Natural Resources and the Environment (UNRE) in Vudal, East New Britain. Attempts to get students to return to classes were unsuccessful. A planned protest march in Port Moresby was called off when police refused permission for the march and threatened to intervene if it went ahead. (An earlier request from civil society groups, coinciding with the reconvening of parliament in March 2016, had also been turned down on the orders of Police Commissioner Baki. See *Post-Courier* 22/3/2016.) The president of the PNG Trade Unions Congress, who supported the students, criticised the heavy-handed tactics of government and warned that such action ‘could only fuel confrontation’ (*National* 9/5/2016).

Prime Minister O’Neill declined an invitation to UPNG to receive the students’ petition but on 17 May the National Capital District MP and governor, and UPNG graduate, Powes Parkop, accompanied by two other MPs and police, received the petition on O’Neill’s behalf at a peaceful forum attended by about 5000 students and private citizens (*Post-Courier* 20/5/2016). O’Neill acknowledged the petition in conciliatory terms, commending the students ‘who have expressed their right to free speech in a responsible manner’, while noting, ‘Considering that several of [the matters raised in the petition] are before the courts, comment must be carefully considered so as not to undermine court proceedings’ (*Post-Courier* and *National* 20/5/2016). The following week, in a 10-page letter addressed to the presidents of the Student Representative Councils (SRCs) of UPNG and UniTech, the prime minister responded in detail to the concerns expressed in the petition, but he made it clear that he had no intention of stepping down (O’Neill’s letter is reproduced at [Asia Pacific Report](#); see also *Post-Courier* 24/5/2016, 25/5/2016, 26/5/2016). Predictably, the students were not satisfied with the prime minister’s response and threatened further

action, including ‘awareness’ campaigns to be conducted by students around the country, and petitions to all MPs.

Meanwhile, the UPNG senate had invited police onto the UPNG campus (ostensibly to prevent intimidation of students opposed to the boycott and to protect property), and it was decided to suspend the semester indefinitely and withdraw student services; students were given 48 hours to vacate the campus, but obtained a stay from the National Court. A court order initiated by UPNG also restrained SRC members from boycotting classes and conducting activities ‘which are contrary to their enrolment as students’ (*National* 9/6/2016).

A ‘National Disobedience Day’ was called for 19 May, by a Coalition of Civil Society Groups representing workers in the health, energy, aviation, maritime and justice sectors (*Post-Courier* 19/5/2016). Recently appointed Chief Secretary Isaac Lupari⁴⁸ claimed that, ‘the agitators behind proposed protest are not students, but have much more sinister purposes’ and convened a meeting of the National Security Advisory Council (*National* 18/5/2016). The secretary of the Department of Personnel Management warned that any public servant taking part in the protest would be disciplined and police said that they would arrest people ‘involved in illegal gatherings and marches’ (*ibid.*). The *Post-Courier* (19/5/2016) reported that ‘An air of uncertainty [had] descended on the national capital’, with some businesses and schools closing for the day, but apart from some stop-work activity and the looting of an Asian shop in the suburb of Gerehu, the day passed quietly.

With parliament reconvening in June, and the parliamentary opposition intent on reviving the no-confidence motion it had been attempting to move since October 2015 (see below), students planned a rally outside the parliament in support of the motion (*Radio NZ* 31/5/2016). On 8 June 2016 the motion was to be put to the parliament and UPNG students (having earlier been again refused permission by police to stage a protest march) were about to board buses which had been organised to take them to the National Parliament building. Police Special Services Division personnel, however, prevented students from boarding the buses and when the students

decided to walk to the Parliament, police blocked their path and attempted to arrest the SRC president. A scuffle ensued and the police responded with tear gas and fired on the students. Initial reports to the parliament that four students had been killed proved to be untrue, but several were admitted to the Emergency Department of the Port Moresby General Hospital, where police reportedly fired tear gas into the Emergency Department entrance. Police also chased students across the university campus, punching and kicking them.

As news of the shooting spread, in Papua New Guinea and internationally, there were appeals for calm and for respect for peaceful assembly from various sources including the UN Secretary General, Amnesty International, Transparency International, Human Rights Watch and the Papua New Guinea Catholic Bishops Conference. Former chief justice and attorney general Sir Arnold Amet said that police were denying people their constitutional rights by preventing peaceful protests and urged students to initiate a judicial human rights inquiry (*ABC News* 15/6/2016). In Australia, Foreign Minister Julie Bishop called on ‘all sides to respect the peaceful and lawful right to protest’ (*AAP* 8/6/2016) and students and trade unionists picketed the Papua New Guinea consulate in Sydney. Within Papua New Guinea, there were reports of some rioting and looting in Lae and Mount Hagen as well as in Port Moresby, and the ombudsman promised an inquiry (*National* 9/6/2016; *Post-Courier* 9/6/2016, 10/6/2016). Prime Minister O’Neill admitted that the incident ‘could have been handled better’ (*Post-Courier* 10/6/2016) but his reaction was to blame ‘a small group of students’ and to propose an inquiry ‘to determine the underlying reasons for continued student unrest promoted by individuals outside the student body [and] to uncover the source of external funding that has underwritten student protest in recent weeks’ (*Post-Courier* 9/6/2016). And Baki announced that the police had commenced their own investigation — not into the shooting but ‘into the affairs of the SRC president and members’ (*Post-Courier* 10/6/2016; also see Standish 11/6/2016).

In the chaos created by the police shooting on 8 June, parliament had adjourned before the no

confidence motion had been tabled. The adjournment was to 2 August, by which time parliament would have been into its last 12 months before a scheduled election and a successful vote of no confidence would result in the dissolution of the house. Opposition leader Polye initiated a legal challenge to the adjournment and the Supreme Court ruled that the house be recalled and accept and debate the no confidence motion; further it said 'The Supreme Court believes it should consider civil and criminal sanctions on those found to be responsible for the breach of constitutional duty under Section 23 of the Constitution' (quoted in *National* 13/7/2016). Amid reports that the government would use its emergency powers to maintain law and order (ABC News 12/7/2016), the parliament subsequently met as ordered, on 15 July, and a week later, after a brief debate, voted on the motion (in which Polye was named as alternative prime minister). Although some MPs crossed the floor to join the opposition, the motion was defeated by 85 votes to 21.

Among those MPs who crossed the floor were Petroleum and Energy Minister Ben Micah and his People's Progress Party (PPP) members, who cited dissatisfaction with the prime minister's handling of the student protests. O'Neill supporters were quick to accuse Micah of being behind the student protests (Radio NZ 17/7/2016).

Following the dramatic events of 8 June, the student boycott at the four state universities was maintained, but with some students and parents wanting classes to resume, there were also growing tensions, which sometimes followed regional/ethnic lines. In the volatile Enga Province, where a request by UniTech students to conduct 'awareness' had been turned down by the provincial police commander, vehicles and buildings were damaged and people were injured; police accused students of 'leading a rampage through Wabag town' but witnesses reported that the public had turned on police when they ordered a peaceful crowd to disperse (*Post-Courier* 27/5/2016, 30/5/2016, 31/5/2016).

In mid-June classrooms at UPNG were opened, but generally empty; it was claimed that students wanting to resume their studies were being intimidated (*Post-Courier* 15/6/2016, 6/7/2016). At UniTech the vice-chancellor urged students to

return, amid reports of 'tribal' clashes on campus (*Post-Courier* 14/6/2016, 15/6/2016). Fighting broke out at UoG, with local people joining in to support students from the Eastern Highlands; around 50 people were injured, classes were suspended and students evacuated to their home provinces (*Post-Courier* 14/6/2016, 15/6/2016, 17/6/2016). On 22 June it was reported that classes at UPNG and UniTech had resumed (*National* 22/6/2016), but the following day students and UniForce security personnel at UPNG clashed and UniForce property and a valuable book collection were destroyed by fire. Subsequently 350 police were deployed to UPNG (*Post-Courier* 30/6/2016). About the same time, buildings were set alight and a student was killed in fighting between rival ethnic groups at UniTech and students left the campus. Students from Solomon Islands and Vanuatu at both universities were repatriated by their governments. Curfews were imposed at the two universities, following a recommendation of the National Security Advisory Council, which also recommended the possible declaration of a state of emergency and call-out of the Papua New Guinea Defence Force (*Post-Courier* 28/6/2016, 30/6/2016).

By early September, however, classes were being conducted at all four universities, though UniTech suspended the SRC for 2016 and required students re-enrolling to undertake not to 'engage in activities beyond their studies' and UPNG refused to re-enrol student leaders associated with the SRC's boycott movement — a move unlikely to promote reconciliation. (The students mounted a legal challenge to the UPNG administration's action and obtained a stay order but in late September the university was still refusing to enrol SRC members. Radio NZ 28/9/2016.)

Beyond the universities, there were renewed calls in July for a general 'withdrawal of services' in support of calls for O'Neill to step down, and stop-work actions, notably in the aviation and health sectors, which led to the controversial sacking of eight AirNiugini pilots (see *National* 21/9/2016; Radio NZ 22/9/2016).⁴⁹ Former prime ministers Somare, Morauta, Chan and Wingti joined those calling on O'Neill to step down, and Morauta released a 'Statement of Reasons Why Prime Minister O'Neill Must Resign' (Morauta 19/7/2016).

At the end of 2016, political tensions appeared to have eased and with its ninth national election scheduled for June–July 2017 the country was beginning to drift into election mode. But the allegations against Prime Minister O’Neill had not been resolved, the RPNGC was still deeply divided, and there remained a good deal of political angst, with continuing calls for O’Neill to step down.

Politics since 2011: A Change in the Nature of Political Contestation?

When Namah and O’Neill, with the collaboration of Nape, staged their political coup against Somare in 2011, they claimed legitimacy on the basis of the parliamentary majority they had achieved (notwithstanding the fact that the majority vote by which they attained control of the parliament was twice deemed unconstitutional). With this majority, which split the governing National Alliance–led coalition, the O’Neill–Namah de facto government secured popular support and eventually the compliance of the bureaucracy; it ignored the rulings of the Supreme Court, and passed retrospective legislation to stave off opposition; and it used its executive authority to harass those (like the chief justice) who still opposed them. Having gone ahead with the 2012 national election, and having won power by legal means, the O’Neill government (with Namah in opposition) appeared to have had a change of heart, or at least a change of strategy, when O’Neill and Somare were reconciled and the offensive legislation of 2011–12 was repealed. But looking at the processes of governance in Papua New Guinea since August 2012, it is arguable that new patterns of political contestation have emerged — or perhaps recently established patterns have been magnified — under the O’Neill government.

Despite the actions which O’Neill and Namah took between August 2011 and June 2012, once elected as prime minister in 2012 O’Neill repeatedly voiced his respect for the rule of law: ‘I am firm in my resolve to restore and instil confidence in the rule of law and operation of our constitutional democracy’, he said (*National* 19/9/2012); ‘We have the highest degree of respect in [sic] our judicial system’ (PACNEWS 18/6/2014). Yet, having been praised for his resolve to tackle official

corruption, notably through the creation of Taskforce Sweep, when questions of possible corruption were raised against him in the ‘Parakagate’ affair, O’Neill refused to attend a police interview and proceeded to remove the police commissioner and deputy commissioner, investigators of the police National Fraud and Anti-Corruption Directorate, the attorney general, the solicitor general, the head of Taskforce Sweep and even the taskforce itself, and the RPNGC’s lawyer was replaced by the new police commissioner with a private lawyer who was directed to support the plea of O’Neill’s lawyers to withdraw the warrant of arrest against O’Neill. And when the courts ruled against the National Executive Council’s decision to close down Taskforce Sweep and to remove Sam Koim from the government payroll, the government cut off its funding, placing in jeopardy a large number of anti-corruption cases. In September 2014 O’Neill reportedly told a gathering in Mount Hagen that no one could overthrow his leadership or change the government in parliament, because ‘it would be difficult’ (*National* 5/9/2014). At the end of 2016, lawyers acting for O’Neill and Marape had managed, through a series of legal manoeuvres continuing for more than two and a half years, to put off a resolution of the charges against them. The person first chosen by O’Neill to replace the offending police commissioner was gone, but had been replaced by another commissioner whose actions were supportive of O’Neill. The person chosen to replace the offending attorney general remained, having survived charges of contempt and misappropriation. And the courts eventually upheld O’Neill’s disbanding of Taskforce Sweep.⁵⁰ Meanwhile Paul Paraka not only walks free, but in February 2016 submitted bills amounting to over K24 million for allegedly outstanding payments from the state and in July 2016 launched a new political party, the Grassroots United Front Party, and announced his intention of contesting the 2017 national election (PNGexposed Blog 23/2/2016, 22/7/2016).

The decision to go ahead with the UBS loan without the necessary referral to parliament may have been an (inexcusable) oversight rather than an attempt to bypass the legislature (with a dominant majority in government there was little doubt that

parliament would have authorised the loan), but when confronted with allegations that he had acted illegally and with significant opposition to the loan, O'Neill's response was to plough ahead and use threats in an attempt to silence his critics, including the Ombudsman Commission. In this case, O'Neill survived the legal challenge, but questions about the wisdom of the borrowing remain.

In the case of the amendments to the constitution and the OLIPPAC, O'Neill clearly had strong support from his colleagues in the coalition and from some in the opposition, as well as the qualified support of the registrar of political parties, but the amendments to the constitution, which had the effect of making a vote of no confidence against the prime minister more difficult, have been overruled by the Supreme Court and when the National Parliament rose in March 2017 the revised OLIPPAC had not been tabled in parliament.

O'Neill has been able to behave as he has largely because, with a large governing coalition, there has been no effective parliamentary opposition. When he was elected prime minister in August 2012 he received 94 votes from the 106 seats that had been declared, but the opposition was further marginalised as more minor parties and independents flocked to the People's National Congress-led coalition. In August 2014 the registrar of political parties could only identify definitely two opposition MPs (Namah and Marat) in the 111-member parliament (*Post-Courier* 18/8/2014),⁵¹ and in early 2015 it was rumoured that even Namah might join the government (*Post-Courier* 9/2/2015, 10/2/2015). In 2016 Micah and the PPP crossed to the opposition, and the split in the THE Party increased the opposition slightly, with a few more MPs, including Somare, on the crossbenches, but it remained small. As the *Post-Courier* commented in August 2012 (quoted above), with such a majority the government 'can do virtually anything' on the floor of parliament.

In February 2015 the (then) 30-month grace period came to an end, opening the window on the 18-month period in the 60-month parliamentary term during which a vote of no confidence might be moved. Following some speculation, promoted by Polye (see *National* 13/2/2015), a motion was submitted in October but was rejected by

the Permanent Parliamentary Committee on Private Business (PPCPB) as 'defective' (see *National* 30/10/2015); instead, the house passed a vote of confidence in O'Neill by 78 votes to 2. An amended motion was submitted in November but was again rejected by the PPCPB which (as reported in *National* 13/11/2015) resolved 'that the motion was not in the best interests of the nation at this particular point in time and was therefore parochial in nature'; parliament was then adjourned for over five months. Former attorney general Allan Marat described the rejection as unconstitutional and a breach of standing orders (*National* 30/10/2015).

A new, amended, motion was submitted when the house met again in March 2016 but it too was rejected, prompting Polye to mount a legal challenge against the PPCPB (*Post-Courier* 31/3/2016, 1/4/2016) and Kerenga Kua to resign from the National Alliance (which as a member of the governing coalition had accepted the PPCPB's rejection). In July 2016, after parliament had adjourned without debating a vote of no confidence motion the previous month, the Supreme Court handed down a 21-page judgement. It ruled that the four moves to thwart a vote of no confidence 'are unprecedented and pose a real threat to parliamentary democracy'; further, it said, 'The Supreme Court believes it should consider civil and criminal sanctions on those found to be responsible for the breach of constitutional duty under Section 23 of the Constitution' (quoted in *National* 13/7/2016; also see ABC News 12/7/2016). As noted above, parliament was ordered to reconvene and debate the motion, and O'Neill won by a substantial margin — but not before an apparent attempt by Speaker Theodore Zurenuoc to again overrule the motion, a tactic which he abandoned when former attorney general Kua suggested this would attract a charge of contempt of court (see Radio NZ 18/7/2016).

O'Neill has rationalised his parliamentary majority into a political philosophy. On several occasions he has announced the view that in Papua New Guinea's democracy the legislature is supreme: shortly after his election in 2012 he defended his actions in August 2011 at the Australian National Press Club in Canberra by saying, 'Parliament is the supreme authority in Papua

New Guinea' (*National* 10/12/2012); in July 2013 he accused critics of the proposed constitutional amendments of attempting 'to undermine the supreme authority of this Parliament' (*Daily Hansard* 17/7/2013:19); and in June 2014, when the Ombudsman attempted to stop interest payments on the UBS loan, O'Neill was reported as saying, 'I'm sure that the Commission realizes that the task of running the country lies with the executive government ... I do not think it is wise for anyone to think that they might have a right, or mandate, to stop the government from doing its work' (Press Release from Prime Minister's Office 1/6/2014; *National* 2/6/2014). 'Mandate' is a word O'Neill uses frequently, as in June 2014: 'I am not going to resign ... I was mandated by the people to be the head of this government' (adding, outrageously, 'National Alliance was given the same mandate and ruled for 10 years and *nobody questioned that mandate*') (*National* 23/6/2014; *Post-Courier* 24/6/2014 (italics added); also see *National* 1/4/2016, 24/5/2016).

To be fair to O'Neill, the exploitation of a large parliamentary majority, and a compliant speaker, is not new to Papua New Guinea politics: the Somare government of 2002–7 became the first to survive a full five-year term of office, but, as I have argued elsewhere, this was perhaps due less to the provisions (invalidated in 2010) of the OLIPPAC⁵² which prevented MPs from switching allegiance and crossing the floor than it was to the government's management of parliamentary procedures and use of adjournments of parliament.⁵³ But — apart from the questions which 'supremacy of parliament' raises in relation to the 'rule of law' — without an effective opposition, parliament can become, in effect, a rubber stamp for the executive (as it was accused of being from 2002 to 2011 under Somare). Recent years have arguably seen a marked decline in the duration⁵⁴ and quality of parliamentary debate and the ascendance of 'executive government'.

Paradoxically, in the absence of effective political opposition to the government in the 'supreme' legislature, political contestation and the pursuit of accountability have shifted in new directions: for one, opposition, from within parliament and outside, has turned to the courts (and the Ombudsman Commission) to challenge decisions of government;

for another, there has been a burgeoning of political critique through the social media. It might be argued that neither is a satisfactory alternative to robust parliamentary debate.

Pursuit of opposition and accountability through the courts is a poor alternative on several grounds. First, courts of their nature are primarily concerned with issues of law rather than with policy content. In a case such as Parakagate the courts have had a critical role to play in upholding the law, but in relation to votes of no confidence, for example, their role is limited — though, as illustrated by the Supreme Court's intervention in July 2016 to enforce a vote on a motion of no confidence, the courts have sometimes been able to play an 'activist' role. Even where their role is clear and important, however, legal decisions can be delayed for long periods by appeals, adjournments, delays in scheduling court proceedings, and challenges on technical grounds — as the Parakagate saga testifies. Further, to the extent that political contestation shifts from the parliament to the courts, the possible unintended effect is that the judicial system may become, or be seen to be, politicised, or as in 2011–12 that it is ignored, and therefore undermined. To date the judicial system has stood up fairly well, but it appears to be under increasing pressure.⁵⁵ Following the Supreme Court's ruling on the vote of no confidence in July 2016, the speaker of the National Parliament, Theodore Zurenuoc, said, 'The Supreme Court has taken over the powers of the clerk of the parliament' (*National* 18/7/2016) and there were some (including O'Neill and Marape) who argued that the court's intervention violated the separation of powers between the legislature and the judiciary. The speaker has since filed for a Supreme Court reference on the separation of powers (*Post-Courier* 30/8/2016).⁵⁶ Apart from the dubious logic of this argument, the same considerations regarding the separation of powers between the legislature and the executive do not seem to have concerned those who have embraced the dominance of the executive over the legislature.

Papua New Guinea has always had a robust print media, with strong 'letters to the editor' sections, and has now developed what former Papua New Guinea journalist Rowan Callick has

described as ‘a rampantly critical social media’ (12–13/4/2014).⁵⁷ Social networking has, overall, played a useful role in promoting awareness of political issues and providing a voice for opposition, but, to quote from a recent editorial in *The National* newspaper (27/3/2015), ‘recent developments have given rise to criticisms against the abuse of social media in spreading defamatory information, lies and half-truths’; and the postings by bloggers are not always supportive of democracy — for example, there have been calls for the PNGDF to ‘do something’ about ‘the rampant corruption by the O’Neill government’ (see PNGBlogs 13/3/2015). This has, on a number of occasions, led to calls for restrictions on the social media (notably, as cited above in 2012, but also see comments by MP Sasindran Muthuvel reported in *National* 15/11/2013, and see Callick 12–13/4/2014). *The National’s* editorial endorsed proposals by the National Information and Communication Technology Authority for cybercrime legislation to establish ‘proper mechanisms’ to prevent abuse of social media. Proposed measures included a requirement that bloggers use their real names. Frequently, bloggers in Papua New Guinea do use their real names, but in doing so they expose themselves to the possibility of ‘payback’. In November 2014 prominent blogger Bryan Kramer was arrested on charges of conspiring to kill, following allegations by Madang MP and Minister for Petroleum and Energy Nixon Duban (against whom Kramer had stood in the 2012 election and subsequently lodged an appeal); the arrest of Kramer followed comments on his website relating to Parakagate, and appears to have been a case of politically motivated harassment (see PNGBlogs 20/11/2014).⁵⁸

In April 2016 the NEC endorsed a Cybercrime Policy (*National* 1/4/2016). Following the unrest and criticism of the government in July, Minister for Communication and Information Technology, James Miringtoro stated, ‘Civil legal action must be taken against online news services who publish false and misleading information’; Miringtoro specifically mentioned EMTV (Papua New Guinea’s national television channel), the Australian Broadcasting Corporation, and Loop PNG (OnePNG 2/8/2016; *Post-Courier* 3/8/2016). Shortly after this, parliament passed a Cybercrime Code Act. While

presented primarily as a measure to counter terrorism, the legislation has been widely seen as giving the government a means of acting against its online critics. Such concerns were not allayed when, at an APEC meeting in Peru in 2016, attended by Facebook founder Mark Zuckerberg, Prime Minister O’Neill said that Facebook had become a tool of disruption in some societies and that online platforms had a duty of care to protect communities from the harm inflicted by lies and malicious slander, and in December 2016 the National Information and Communications Technology Authority, citing ‘numerous complaints ... regarding articles and statements appearing on blogs’, announced penalties of up to K25,000 or 25 years gaol for ‘abuse [of ICT services], particularly on social media platforms’ (*Post-Courier* 23/12/2016).

If neither the courts nor social media (nor, it might be said, proposed changes to the OLIPPAC) offer an effective counter to executive dominance, are there other alternatives? None seems obvious.

Papua New Guineans take pleasure in referring to their country as ‘the Land of the Unexpected’, and political forecasting is certainly more difficult than in most other countries. In the past, Papua New Guinea has shown remarkable resilience in recovering from what seemed at the time to be political crises. Nevertheless, there do seem to be grounds for concern at some of the tendencies evident in Papua New Guinea politics in the period from 2011 to 2016, which need to be watched if Papua New Guinea is to maintain its standing as a democratic country.⁵⁹

Author Notes

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Endnotes

- 1 I am grateful to Anthony Regan and Bill Standish for their comments on an earlier draft of this paper, though they do not necessarily endorse my judgements. I am also indebted to Peter Elder for his continuing assistance in accessing Papua New Guinea press reports.
- 2 This section draws on more detailed accounts in May (2011, 2013).

- 3 This is an updated version of an unpublished paper first drafted in late 2014.
- 4 In a paper entitled 'Governance Is Political in Papua New Guinea' Bill Standish (2013) has addressed some of the broader issues in relation to Papua New Guinea.
- 5 According to a *Post-Courier* (28/5/2014) report, the state owed K600 million in unpaid judgement debts, interest and legal costs and was facing 10,878 active claims against the state. In September 2015 Police Commission Baki said that the state was liable for K106 million in legal costs from cases filed by the public against the police (National 1/10/2015).
- 6 *The Commission of Inquiry Generally into the Department of Finance, Final Report*.
- 7 In October 2014 Taskforce Sweep released its report (a summary of findings, conclusions and recommendations of which was published as a paid advertisement in national newspapers and as an attachment to Devpolicy Blog 17/12/2014).
- 8 Namah's statement is reproduced at pngexposed.wordpress.com (22/5/2013). According to PNGBlogs (18/6/2014), Namah and Basil, before the 2012 election, had challenged an alleged payment of around K30 million to Paraka Lawyers, but were shouted down in parliament and received no media attention.
- 9 A copy of 'Questions without notice regarding fraudulent payments of K71.8 million to Paul Paraka Lawyers by the Department of Finance', dated 17 May 2013 and authorised by Namah, was subsequently released from Namah's office.
- 10 Police Minister Nixon Duban had stood down pending the outcome of charges relating to his 2012 election campaign and to an alleged assault.
- 11 *Marape v Paraka* [2014] PGNC 118; N5740 (1 July 2014).
- 12 In December 2016 Kulunga lost his appeal and was taken into custody, but subsequently filed an application to make another ('slip rule') appeal (*Post-Courier* 22/2/2017).
- 13 Koim's letter to Kulunga is published in *Post-Courier* (19/6/2014:4). Also see ABC News 23/6/2014, 10/7/2014; PNGLoop 21/6/2014; and *Post-Courier* 10/7/2014.
- 14 In announcing Vaki's appointment, O'Neill argued in his favour that because Vaki had been away from the police force for five years due to a pending court case he 'had not been involved in any of the current political developments' (National 18/6/2014).
- 15 Kauba appealed; an application by the state and the National Executive Council to dismiss the appeal was refused by the National Court, and when the case eventually went to court, in October–November 2015, Kauba's dismissal was quashed — but since his appointment was due to expire in February 2016 he was not reinstated (National 16/11/2015).
- 16 Initially this caused some confusion in court, when both Mirivi and Mawa turned up and the presiding judge was asked to choose which would represent the police. The appointment of Mawa appears to have breached a '*status quo*' ruling by the court in January.
- 17 Proposals for a commission of inquiry received little support, former National Court judge Nemo Yalo describing the decision as 'ridiculous and ludicrous' and pointing to the unhappy history of the Commission of Inquiry into the Finance Department. Attorney General Kerenga Kua and former director of public prosecutions Kevin Egan urged Andrew not to accept the invitation to chair of the commission, which they described as a 'poisoned chalice' (*Post-Courier* 27/6/2014). Nevertheless, the commission began its inquiries in August and handed its report to the prime minister in December 2014. The *Report on the Commission of Inquiry into Processes and Procedures Used to Brief Out Matters to Law Firms, and Processes and Procedures for Paying Public Monies to Law Firms* dealt with the general issues and did not look at the politics associated with the Paraka case.
- 18 Kua, a widely respected lawyer turned politician, had earlier represented Somare in a Leadership Tribunal.
- 19 See *Age* 16/6/2014; *Australian* 16/6/2014; *Post-Courier* 16/6/2014, 17/6/2014, 18/6/2014, 2/7/2014; Radio NZ 17/6/2014, 20/6/2014; *National* 18/6/2014, 19/6/2014.
- 20 'Media Statement by Royal PNG Constabulary on current events, Saturday, June 21, 2014'. Also see posting on The Masalai Blog 22/6/2014; PNGBlogs 4/7/2014; Radio Australia transcript 23/6/2014; *Post-Courier* 7/7/2014.
- 21 Bonner had previously acted in the reinstatement of Vaki and in the prosecution of Kulunga, and continued to act for clients facing charges by the NFACD, despite being himself charged in August 2014 (see below).
- 22 The lawyer initially asked to prepare the brief for Bonner (Laken Lepatu Aigilo) objected to the instructions coming from Vagi, saying, 'it defeats all the purposes and intends [sic] of the Police Force's case against the State or PM O'Neill ... I am confused as to whether we are acting for the Prime Minister Peter O'Neill or the Police Force'. He withdrew his services and was sacked. See PNGBlogs (26/6/2014).

- 23 See *Post-Courier* 8/7/2014, 16/7/2014, 17/7/2014, 21/7/2014, 19/8/2014, 3/10/2014, 13/11/2014; *National* 18/7/2014, 21/7/2014, 28/7/2014; Radio NZ 16/7/2014; PNGBlogs 9/10/2014, 23/10/2014. Also see Kama 4/7/2014, 7/11/2014.
- 24 See, for example, PNGBlogs 18/6/2014; PNGLoop 21/6/2014; and see Radio Australia 20/6/2014.
- 25 In the three years from 2011 to 2013 the taskforce was allocated a total of K15.5 million; in 2014 and 2015 its budget allocations were K7.0 million and K5.0 million respectively, but the funds were never released.
- 26 Former planning minister Paul Tiensten was sentenced to nine years gaol; former petroleum and energy minister Francis Potape was sentenced to two and a half years but released on bail pending a retrial, and Gulf Province Governor Havila Kavou was sentenced to 18 months. In a statement reported in PNGBlogs (12/11/2014) Koim said that 15 MPs were being investigated.
- 27 Data taken from a report, authorised by Sam Koim and released on 13 November 2015, and an IPS (Inter Press Service) report ('Tackling Corruption at Its Root in PNG', 24/2/2015) based on an interview with Koim.
- 28 On instructions from the O'Neill government, in 2013 Vele had approved payment of K50 million as part payment for two diesel generators to an Israeli company, the LR Group, with which O'Neill was said to have links through his associate and adviser Jacob Weiss. Namah, opposition leader at the time, had raised this issue in parliament and filed a complaint in April 2014 (see Radio NZ 30/4/2014; *National* 9/5/2014; LR Group's 'advertorial' in *Post-Courier* 15/5/2014, PNGBlog 30/6/2014, 27/9/2014; PNG Pulse 8/1/2015; ABC News 27/7/2015; PNGLoop 28/7/2015; *Post-Courier* 11/3/2016). In July 2015, Vele was granted a stay. In January 2016 Vele's deputy, Aloysius Hamou, was also arrested over his role in the purchase of the generators but the case was later dismissed for lack of evidence (*National* 21/7/2016; PNGBlogs 29/1/2016, 5/2/2016; *Post-Courier* 1/2/2016). (O'Neill was also said to be under investigation over this transaction.)
- 29 In February 2016 the Supreme Court restrained Damaru and Gitua from engaging private lawyers (overruling an earlier court decision), on the grounds that 'brief-outs' by state officers to private lawyers should come from the police commissioner and have approval of the attorney general. But since Pala was a subject of legal proceedings in which Damaru and Gitua were involved, Pala delegated the matter to Justice Secretary Laurence Kalinoe. Kalinoe endorsed the court's ruling and suggested that the two officers be represented by the public solicitor — which was clearly not an attractive option for the officers (see *National* 25/2/2015; *Post-Courier* 15/3/2016).
- 30 It was alleged that in 2009 Sakora had accepted K100,000 from PKP Nominees Ltd, a company linked to Paraka, and it was suggested that this payment was made to secure favourable court judgements (in 2010 Sakora had upheld an application for a permanent stay on the publication of the report of the inquiry into the Finance Department, and in February 2016 he had granted a temporary stay order in relation to the questioning of the validity of the 2014 arrest warrant, preventing the arrest of O'Neill. Sakora claimed that the K100,000 payment was from the sale of a vehicle, and his lawyer described the charge as 'malicious'. However, it was alleged that Sakora had not declared the transaction when sitting on subsequent cases involving Paraka. The Supreme Court subsequently dismissed the case against Sakora as improper and illegal on the grounds that a charge of judicial corruption required a direction from the public prosecutor (*Post-Courier* 12/4/2016, 5/5/2016; see also *Post-Courier* and *National* 8/6/2016).
- 31 It was alleged that Twivey, who was representing Vele, substituted the name of Commissioner Baki for that of Gitua on court documents, without the knowledge or authority of Gitua or the court. In April 2017 a committal court found sufficient evidence to warrant a trial (*National* 4/4/2017). In June 2017 the Office of the Public Prosecutor filed an application to discontinue the prosecution against Twivey and Deputy Chief Justice Salika said she was free to go.
- 32 For comments by a Papua New Guinean lawyer on the 'judicial setbacks' of 2016 see Kama (14/12/2016).
- 33 In 2002, the state-owned Orogen Minerals Ltd merged with Oil Search, and Orogen's capital value of around A\$600 million translated to a 14.6 per cent shareholding in Oil Search.
- 34 See transcript of a Forum held at the University of Papua New Guinea on 28 March 2014, by Vincent Moses, on [Keith Jackson & Friends: PNG Attitude](#) (2/4/2014). This quotes Ben Micah as saying, '*Mi papa blong UBS loan. Ino Peter O'Neill, ino James Marape, ino Don Polye*. I was the Minister tasked to raise money to buy back OSL shares from IPIC'.
- 35 Triumph Heritage Empowerment Party.
- 36 See 'Response from Papua New Guinea Deputy Opposition Leader Samuel H. Basil to the Full Page Advertisement on the Oil Search Share Purchase, 24 March 2014' posted on PNGBlogs.

- 37 See *National* 25/3/2014, 8/4/2014; PNGBlogs 24/3/2014; *Post-Courier* 25/3/2014, 26/3/2014, 31/3/2014, 7/5/2014, 9/5/2014; Radio NZ 8/4/2014; Reuters 24/3/2014.
- 38 According to sources in Port Moresby, at a government caucus meeting in early 2015 a MP proposed a private member's bill to abolish the Ombudsman Commission.
- 39 There are three ombudsman commissioners, two of whom must be lawyers and the third an accountant; Maliso, a lawyer, was appointed to fill the vacancy created by the departure of an accountant.
- 40 Papua New Guinean blogger Bryan Kramer had anticipated such an outcome, and questioned why the public prosecutor had acted 'outside normal practice and procedure'. (On this, also see Peramo 26/4/2015.) Opposition leader Polye called on Kaluwin to step down. See PNGBlogs (12/1/2015).
- 41 In March 2017 the Supreme Court ruled that the ombudsman was not obliged to inform the prime minister of its intention to investigate his conduct and could publish the results of its investigation (*Post-Courier* 31/3/2017. Also see PNGLoop 17/2/2017).
- 42 Somare's statement ('Why I Moved to the Middle Bench') is reproduced in PNGBlogs (28/11/2014).
- 43 In August 2015 Somare was paid just over K2 million in an out-of-court part settlement of his claims. The following month he lodged a complaint with the Ombudsman Commission, naming the prime minister, governor general, cabinet ministers and other MPs, and senior public servants who had failed to comply with the Supreme Court's orders in 2011 and 2012.
- 44 Prime Minister's Office Media Unit, 'Statement on Extension of Grace Period to 30 Months', 1/11/2012.
- 45 Section 124 actually says parliament shall meet 'not less than three times in each period of twelve months, and, in principle, for not less than nine weeks in each such period' (9x7=63), and in 1999 and again in 2000 the Supreme Court ruled that parliament must meet for 63 days. But in supporting the amendment senior government minister Sir Puka Temu argued that since parliament only sits for four days a week, the constitutional requirement was in fact only 36 days. In commending the bill to parliament in July 2013 O'Neill argued that the amendments 'will stop the prolonged adjournment of the Parliament merely for political convenience and survival' (*Daily Hansard* 17/7/2013:24, 21). It is not clear how a shortening of the required number of parliamentary sitting days (or even, on Temu's calculations, increasing the number from 36 to 40) would achieve this.
- 46 See footnote 25. In his detailed response to the students' petition O'Neill said the amount involved was K94 million.
- 47 University of Papua New Guinea Student Representative Council, *Petition to The Right Honourable Peter O'Neill, Member for Ialibu-Pangia, in Your Capacity as The Prime Minister of the Independent State of Papua New Guinea*, 5/5/2016.
- 48 Lupari was amongst those mentioned in the report of the inquiry into the Finance Department as 'unjustly enriching himself'.
- 49 The pilots were subsequently allowed to return to work pending a National Court review. *National* 10/10/2016.
- 50 For a comment on this and other recent judicial decisions which have gone against those pursuing anti-corruption cases see Kama (14/12/2016).
- 51 Sam Basil was elected as a Papua New Guinea Party (PNGP) candidate in 2012 and served as deputy opposition leader under Namah (and later under Polye), but in August 2014 he resigned from the PNGP and became parliamentary leader of Pangu Pati — and for a while its only MP. He remained deputy opposition leader, but at the time the registrar was not certain of Pangu's allegiance.
- 52 For details, see Okole (2012).
- 53 May (2013:166). Also see Nonggorr (2012) and Stewart (5/10/2012).
- 54 In 2008/9 (a parliamentary year runs for 12 months from the date on which parliament first convenes, usually early August) parliament sat for 33 days; in 2009/10 it sat for 35 days; in 2012/13 49 days; in 2013/14 (the last year for which figures are available) 37 days.
- 55 In a paper entitled 'The Untouchables Polluting Our Justice System' (PNGBlogs 26/4/2015) a pseudonymous 'Kelly Peramo' (formerly with the court registry) discusses a number of court cases which he/she considers to have given rise for concern (see Peramo 26/4/2015).
- 56 Also see *Post-Courier* (25/7/2016), quoting Morobe Governor Kelly Naru, and *Post-Courier* (13/9/2016), reporting comments by Prime Minister O'Neill at a Pacific Judicial Conference in Port Moresby, and *National* editorial (22/6/2016).
- 57 See Rooney 31/7/2012.
- 58 In June 2015 the charges against Kramer were dismissed, for lack of evidence, by the Waigani Committal Court; in welcoming the decision Kramer said, 'innocent people let the court process

confirm their innocence, while those who are guilty tend to avoid and frustrate it' ([EMTV Online News 6/4/2017](#)). He promptly announced he would lay criminal charges against those behind his arrest.

59 On Freedom House ratings, from 1999 to 2003 Papua New Guinea was given a Freedom Rating of 'free, 2.5' (civil liberties 3, political rights 2 [1=best; 7=worst]); between 2004 and 2008 its rating slipped to 'partly free, 3.0' (3,3), as a result of 'growing corruption and violent crime', and from 2009 to 2013 it slipped further to 'partly free, 3.5' (3,4) on account of 'the government's failure to address increasingly widespread instances of corruption and official abuse of power'; in 2014 it recovered to 3.0 (3,3) 'due to efforts ... to address widespread official abuse and corruption', but in 2015 went back to 3.5 (3,4) due to Prime Minister Peter O'Neill's increasingly authoritarian leadership style', and remained on that level in 2016.

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