

Equality and Participation for women; A better future for PNG

A Policy and Legislative
Options Paper
Prepared for the Technical
Working Group

In the kind of elections we run in Papua New Guinea, our peace-loving women can never fare well. They cannot because men use guns and muscles and they cannot and do not. Men carry huge amounts of money which they shamelessly dish out to all and sundry when women (minus a handful) cannot and do not. Elections have become a violent and expensive enterprise in which our women have little chance of winning.

The National, 11/3/09 Editorial, p.20

BACKGROUND NOMINATED SEATS

In 2008, the National Executive Council (NEC), exercising the power available to it within the *Constitution of the Independent state of Papua New Guinea* (the *Constitution*), approved a process to enable the appointment three of women members of Parliament¹ in an attempt to move toward equality of opportunity for all Papua New Guineans to take part in the political life of the country and improved participation and representation of women in Parliament. During 2008 and early 2009, the process identified three women as suitably qualified to be members of Parliament.

On March 10 2009, the Prime Minister; Grand Chief Sir Michael Somare, moved a motion to nominate the first of the three women to Parliament. The Government did not have the numbers to pass the motion;² so it was withdrawn before a formal vote was taken.³ To date, the motion has not been moved again although it remains on the Parliamentary Notice Paper.

RESERVE SEATS

On 30 September 2009, the NEC formally gave effect to the outcome of the Lae National Leaders Summit; including specifically directing the National Strategic Plan Task Force (NSPTF) to undertake the necessary preparatory work to enable the creation of 22 reserve seats for women in the National Parliament.⁴

POSITION OF THE OPPOSITION

The Leader of the Opposition, Sir Mekere Moruata has publicly stated that:

¹ The NEC process used the powers in sections 101 and 102 of the Constitution which enable the appointment of up to three members.

² Nomination of members of Parliament requires a two thirds absolute majority, being 73 affirmative votes.

³ See Hansard 10 March 2009

⁴ In NEC Decision No 154/2009, NEC (2) noted the outcome of the Lae National Leaders Summit; (3) took specific note of the Morobe Communique, including the Governors Resolutions; (4) endorsed the Morobe Communique and the Governors Resolutions of the National Leaders Summit 2009 and (8) (iv) approved that the NSPTF, in working closely with all relevant Government Agencies, undertake work to bring about all consequential legal adjustments, reform and amendments to existing legal and constitutional pre requisites to give effect especially to the following: the provision of 22 reserve seats for women in the National Parliament.

*the parties in Opposition stand ready to support and work with the Government to establish a process that will substantially increase the number of women, elected by the people, to Parliament.*⁵

The Opposition voted against the motion to nominate three women as members of the National Parliament using sections 101 and 102 because it did not meet the criteria and principles the Opposition considered necessary characteristics of any reform in this area. The criteria and principles are:

1. *The process must be meaningful in that it must lead to a sizeable number of women in Parliament;*
2. *The process must be prescribed by law and must not be subject to the discretion of any Prime Minister or Government; and*
3. *The process must be based on the premise that membership of the Parliament can only be won through a process of popular election – not by appointment or nomination.*⁶

The proposal for two member provincial electorates of which one seat is reserved for a female member put forward in this paper complies with the publicly stated criteria of the Opposition for such reforms.

PURPOSE OF THIS PAPER

The purpose of this paper is to put forward the policy case for legislative measures to make tangible progress toward:

- equal participation by women citizens in all political activities and specifically women's participation and representation in National Parliament
- every citizen to be able to participate, either directly or through a representative, in the consideration of any matter affecting his or her interests or the interests of his or her community;
- political and official bodies are so composed as to be broadly representative of citizens from the various areas of the country; and
- a reduction in gender discrimination in PNG.

The proposed rolling program of legislative reform put forward in this Paper is not an exhaustive list of measures which might or will be undertaken to achieve the policy objective, but rather an indicative list of priority reforms to guide planning and reform agendas in the Department of Family and Community Development (DFCD) and other

⁵ See Hansard 10 March and Sir Mekere Morauta "A political perspective on the implementation of women's seats for the 2012 elections and beyond" Paper delivered at High Level meeting on women's representation in Parliament, September 2009, Port Moresby

⁶ Hansard and Sir Mekere Morauta "A political perspective on the implementation of women's seats for the 2012 elections and beyond" Op Cit

Government Portfolios and Departments partnering the DFCD in advancing the agenda of equality and participation.

ACKNOWLEDGEMENT OF USE OF DISCUSSION PAPER DEVELOPED BY THE DEPARTMENT OF JUSTICE AND ATTORNEY GENERAL

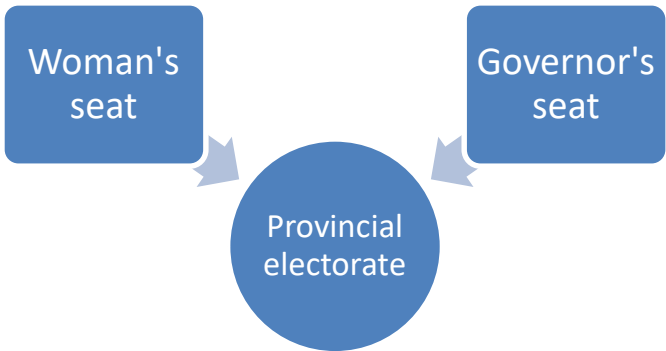
In developing this Policy Paper, the Technical Working Group has had regard to a document entitled “*Implementing CEDAW in PNG – A Discussion Paper*” written by the Department of Justice and Attorney General. The TWG has been greatly assisted by the Discussion Paper and acknowledges its influence, in particular, in developing the ideas for Phase Two.

PROPOSED ROLLING REFORM PROGRAM IN THREE PHASES

PHASE ONE – CREATION OF TWO MEMBER PROVINCIAL ELECTORATES OF WHICH ONE SEAT IS RESERVED FOR A FEMALE MEMBER

The objective of this phase is to give effect to the NEC decision⁷ to create 22 reserve seats for women in the National Parliament. There exists considerable momentum in support of this initiative. Although supporting a broader reform agenda to increase women’s equality and participation across many spheres of life in PNG, the TWG has recommended to the Government that the creation of provincial seats reserved for female members should be vigorously pursued on its own to minimize the possibility of encumbering its progress.

The proposed reform creates two member provincial electorates which will elect two members, each of whom will hold a separate seat. One seat will be reserved for the member who will be the Governor of the Province, and the other will be exclusively reserved for a female member.



⁷ NEC Decision 154/2009

Passage of the amending law will immediately create 20 additional seats in the National Parliament which are reserved for women. An additional two seats will also be created if the creation of provinces of Hela and Jiwaka is given legal effect in due course.

This reform is achieved by an amendment to the *Constitution* and consequential amendments to the *Organic Law on National and Local-level Elections* and the *Organic Law on Provincial and Local-level Governments*. It makes use of the Constitutional power⁸ to enable the making of laws for the special benefit, welfare, protection and advancement of women.

The women members are members of Parliament with duties and privileges like any other. They represent the provincial electorate, take their place in both the National Parliament and the Provincial Assembly and bring their perspective to bear on all matters under the consideration of the provincial assembly or the National Parliament.

PHASE TWO - CREATION OF A GENDER PARTICIPATION AND EQUALITY ACT

Options for inclusion in this Act include:

1. create quotas of 30% for women in governance and decision making roles in the public sector boards of PNG; and
2. work with the Village Courts Secretariat and the Department of Justice and Attorney General to entrench and strengthen a presently available mechanism for the declaration of custom by provincial and local leaders as it applies to women.

Quotas in public sector boards would be a practical and logical follow up to the introduction of reserve seats in the National Parliament. It would not be a highly expensive option and would continue to grow a cohort of women to participate in public sector decision making in PNG.

The entrenching of a legal mechanism to make a declaration of custom as it affects women recognizes the need for law reform which works with PNG forms of community organization and the Constitutional call for the emphasis on Papua New Guinean ways. Portfolio responsibility for this area rests with the Attorney General and he would need to agree to such an approach. The Village Courts Secretariat piloted the mechanism in Manus in 2009 and it has showed significant promise. The TWG will host a discussion with the Village Courts Secretariat on the progress of the pilot and opportunities to entrench the mechanism in a law to advance the equality and participation of women.

⁸ Section 55(2)

PHASE THREE - CREATION OF EQUAL OPPORTUNITY LEGISLATION

Equal opportunity legislation is an important mechanism in giving women legally entrenched specific protection against discrimination. This kind of law can serve as a powerful symbol of progress and help women advocate for their rights in many aspects of life. It is recommended as phase three because anti discrimination legislation is largely used to address workplace discrimination. Women public servants already have a range of legal protections against discrimination.⁹ These are not well observed, but they exist. Most women in PNG work in subsistence agriculture or sell produce at local markets and will not receive any benefit from such legislation. For this reason, it is not recommended as a top priority for immediate action.

⁹ See the *Public Services (Management) Act*, and General Orders on disciplinary offences and sexual harassment

INTRODUCTION

Since Independence, Papua New Guinea has made a number of domestic and international commitments to the advancement of women and the elimination of gender discrimination. Some are policy commitments and some are entrenched in domestic or international law. Despite this, progress has been painfully slow.

Full compliance with these commitments would require an ambitious program of reform across every sector and within most Government portfolios in PNG. It would necessitate a monumental program of legislative change and implementation. This paper acknowledges the need for action in an area where continued neglect robs women and girls of the opportunity to develop themselves and to participate fully in the life of their community and their country. In doing so, it also blights the future of the country which loses the richness of their contribution. The case for reform is overwhelming. This paper also acknowledges that resources are finite, implementation of reform is difficult and it is more effective to set priorities and to bring about change in a rolling program which is more politically palatable, incremental and sustainable.

This Paper recommends a rolling program of reform in three priority areas.

LEGAL AND POLICY COMMITMENTS BINDING PNG TO ADVANCE WOMEN AND ELIMINATE GENDER DISCRIMINATION

CONSTITUTION OF THE INDEPENDENT STATE OF PNG

The drafters of Papua New Guinea's Constitution tried hard to blend twentieth century thinking about human rights, and equality of opportunity and individual freedoms, with traditional Papua New Guinean ways.¹⁰ Equality of opportunity is called for in the National Goals and Directive Principles¹¹ and is also a qualified right that may be enforced in PNG courts.¹² Value is also placed on Papua New Guinean culture, and on the importance of traditional villages and communities remaining viable units of Papua New Guinean society.¹³ The Constitution places a duty on governmental bodies to apply and give effect to such principles as far as lies within their respective

¹⁰ *Constitution*, National Goals and Directive Principles; 2 Equality and Participation, and 5 Papua New Guinean Ways

¹¹ *Constitution*, National Goals and Directive Principles; 2 Equality and Participation

¹² *Constitution*, sections 55, 57 and 58

¹³ *Constitution*, National Goals and Directive Principles; 5 Papua New Guinean ways

powers,¹⁴ although the day to day application of such principles is difficult to achieve and highly unlikely to be required by public service management. Nor is its observance likely to be reviewed or monitored.

The *Constitutional Planning Committee Report* is also an important document to help interpret the meaning of the Constitution. It sets out the thinking of the planners in great detail, and provides many useful explanations of the text of the Constitution itself. It continues to be used to interpret clauses of the Constitution where the meaning is not clear.¹⁵ Together, the *Constitution* and the 1974 *Constitutional Planning Committee Report* comprise a set of documents rich in ideas. They are a crucial resource for policy and lawmaking.

Despite the clear commitment in both documents to equality of opportunity, and to the importance of efforts to reduce discrimination against the women of Papua New Guinea, their impact does not appear to have been significant. Few people seek to enforce their constitutional rights¹⁶ and many people are quite unaware that they exist. So while the *Constitution* creates the foundation of formal lawmaking in PNG, and its principles are known to politicians, lawyers and public servants, its resonance the vast majority of Papua New Guineans is not strong.

PNG PLATFORM FOR ACTION

The *PNG Platform for Action*, was developed after a PNG delegation attended the Fourth UN World Conference on Women, held in Beijing, China, in September 1995. It uses a similar format to the *Beijing Declaration and Platform for Action*¹⁷. The Beijing document was long, comprehensive and ambitious in its scope. It was adopted unanimously by 189 world governments that agreed to remove all obstacles to equality for women, and to ensure a gender perspective in all government policies and programs.¹⁸ Progress, however, has been slow.

Similarly, the *PNG Platform for Action* identifies critical areas of concern for women, with strategic objectives and recommendations for action in each critical area. It reported in its introductory remarks that:

Despite ... early initiatives, successive government policies have not been consistent enough to maintain ... momentum. This has resulted in fewer achievements for the advancement of

¹⁴ *Constitution*, section 25(2)

¹⁵ *Constitution*, section 24(3)

¹⁶ The complexities of the legal system including access and cost factors cause most people, especially women to rely heavily on legal aid or suffer discrimination without legal redress. For example, see *Re Wagi Non* [1991] PNGLR 84,N959; and *In Re Miriam Willingal* MP 289 of 1996.

¹⁷ See <http://www.un.org/womenwatch/daw/beijing/platform/> accessed 12 January 2010

¹⁸ Banulacht, *Women in Ireland in Global Solidarity* at <http://www.banulacht.ie/docs/briefing-beijingplus10.htm> accessed 5 January 2009

*women with the consequential impact of a poorer quality of life for women in Papua New Guinea.*¹⁹

It invoked the Constitution as an important source of rights for PNG women, but noted that these had not been realised in practice.

*Although the national Constitution provides for the equal rights of all citizens, women have not been able to fully understand and exercise their rights. This has been largely due to ineffective government mechanisms advocating and promoting the rights of women.*²⁰

The *PNG Platform for Action* was intended to be used to address these problems.

A 1998 World Bank Report states that the document

*was developed from extensive consultations with Government, non-government organisations and individuals, particularly women, throughout the nation. It is thus the most comprehensive identification of issues and problems facing women in PNG.*²¹

However, the report goes on to note that “This is an extensive and somewhat lengthy list and very little of it seems to have been implemented.”²² In 2010, the position does not appear to have greatly changed.

In the foreword to the *PNG Platform for Action*, the then Prime Minister, Sir Julius Chan, presented the 1995 document as “the yardstick in the coming decade.”²³ In the preamble, it stated that “The government of PNG officially recognises the needs and potential of women.” Using this document in the way suggested by Sir Julius Chan, the yardstick will show that progress has been painfully slow. The *PNG Platform for Action* has become another plan that has not been implemented.

¹⁹ Government of PNG, *Platform for Action: A Decade of Action for Women Towards National Unity and Sustainability, 1995-2005*, June 1995, (first edition) at <http://www-ilo-mirror.cornell.edu/public/english/region/asro/mdtmanila/training/unit2/pngplat.htm> accessed 6 January 2009, page 4

²⁰ *PNG Platform for Action*, Op Cit, page 4

²¹ Brouwer et al, *Gender Analysis in Papua New Guinea*, The World Bank 1998, page 36

²² Brouwer, Op Cit, page 36

²³ Government of PNG, *Platform for Action: A Decade of Action for Women Towards National Unity and Sustainability, 1995-2005*, June 1995, (first edition), at <http://www-ilo-mirror.cornell.edu/public/english/region/asro/mdtmanila/training/unit2/pngplat.htm> accessed 6 January 2009

INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS

PNG has ratified many International Labour Organization (ILO) conventions. The most relevant of these to the advancement of women and the elimination of gender discrimination are the:

- *Equal Remuneration Convention*, 1951
- *Maternity Protection Convention (Revised)*, 1952
- *Discrimination (Employment and Occupation) Convention*, 1958.

While all of these conventions were ratified by PNG in 2000, they were created much earlier in the 1950s and predate CEDAW. The subject matter of all these conventions is also covered in CEDAW, which specifically covers the right to equal remuneration,²⁴ prevention of discrimination on grounds of maternity²⁵ and the elimination of discrimination against women in employment.²⁶

MILLENNIUM DEVELOPMENT GOALS

The eight Millennium Development Goals (MDGs) – which range from halving extreme poverty to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015 – form a blueprint agreed to by all the world’s countries and all the world’s leading development institutions. They have galvanised unprecedented efforts to meet the needs of the world’s poorest. Goal three is “promote gender equality and empower women.”²⁷

*The inclusion of “gender equality and women’s empowerment” as Goal 3 in the Millennium Development Goals (MDGs) together with Goals 1,2,4,5,6 and 7 has created opportunities for increased attention to gender and development in PNG. However, the PNG MDG Report on Goal number 3, while referring to education targets for girls and boys in primary and secondary education, ignores the other gender indicators for gender equality and women’s empowerment.*²⁸

PACIFIC PLAN

Under the broader heading of good governance, goal 12.6 of the *Pacific Plan* requires States to:

²⁴ CEDAW, Article 11(d)

²⁵ CEDAW, Article 11(2)

²⁶ CEDAW, Article 11

²⁷ See <http://www.un.org/millenniumgoals/> accessed 27 March 2008

²⁸ Go PNG and UNDP, 2004. *Millennium Development Goals, Progress Report for Papua New Guinea*. Quoted in ADB Report Op Cit, page 25

Develop a strategy to support participatory democracy and consultative decision-making (including ...youth, women and disabled), and electoral process.²⁹

Work under goal 12.6 continues, with the Pacific Islands Forum Secretariat having commenced consultations with countries around the region, with the aim of enhancing women's participation in democratic and decision making processes. This work has drawn together UNIFEM, UN Development Program (UNDP) Pacific Centre, Secretariat of the Pacific Community and national women's organisations throughout the region.³⁰

There is some evidence that commitments to regional plans such as the *Pacific Plan* has some resonance within PNG. The December 2008 advertisement for expressions of interest from PNG women, for nominated seats in the National Parliament, specifically mentioned that one reason for the initiative was the 38th Pacific Island Forum Communiqué (October 2007) in which, on the issue of good governance, the Pacific Island Forum leaders agreed

to explore ways to enhance participation particularly by women, in decision making institutions, and in particular parliamentary processes.³¹

MEDIUM TERM DEVELOPMENT STRATEGY

The *Medium Term Development Strategy* (MTDS) covers the period 2005-2010. It is based firmly on the Somare Government's Program for Recovery and Development, and its three interrelated objectives of good governance; export driven economic growth and rural development; poverty reduction and empowerment through human resource development.³²

The Millennium Development Goals (MDGs) have been specifically incorporated into PNG policy making via the MTDS. The Strategy states that Papua New Guinea is committed to the MDGs, which set the objectives for global development over the period 2000 to 2015. While the timeframe covered by the MDGs is longer than the period of the MTDS, the goals and objectives are consistent.³³

The MTDS acknowledges the Constitution as the source of a national vision for PNG.³⁴

²⁹ Pacific Islands Forum Secretariat, *Pacific Plan*, at <http://www.forumsec.org.fj/pages.cfm/about-us/the-pacific-plan/> accessed 4 Feb 2009

³⁰ Pacific Islands Forum Secretariat, *Annual Report on Pacific Plan*, 2007 at http://www.dfat.gov.au/dept/annual_reports/06_07/performance/1/1.1.6.html accessed 4 Feb 2009

³¹ *The National*, PNG, 25 November 2008, page 11

³² Department of National Planning and Monitoring, *Medium Term Development Strategy 2005-2010*, page iv

³³ MTDS, Op Cit, page 17

³⁴ Government of PNG, *Medium Term Development Strategy 2005-2010*, November 2004, page iv

*Protection of the vulnerable and disadvantaged, and the promotion of gender equity, is both a moral and constitutional obligation for government. Under the Constitution, PNG's first and second National Goals and Directive Principles call for Integral Human Development and Equality and Participation.*³⁵

It also recognises that the success of the MTDS will be constrained if the issues of gender equality and the empowerment of women are not addressed.

It is undoubtedly encouraging to see a high level planning document, such as the MTDS, specifically acknowledge the importance of gender to the realisation of PNG's medium term goals.³⁶ An important further step would be specific actions that address gender issues directly. There are no such goals in the MTDS, and this has been acknowledged as a shortcoming in other reports giving consideration to gender.

The acknowledgement of gender issues in the MTDS represents progress in PNG thinking about the importance of this issue and its rightful place in planning and budgeting. This progress should be built upon when the MTDS expires in 2010.

PROGRESS

SITUATION OF WOMEN IN PNG GENERALLY

Many reports have been written on the position of women in PNG over the last twenty years. The picture painted in these reports is both consistent and bleak. Reading such reports on the economic, social, political and health status of women in PNG leads to a conclusion that the plight of women has become a blight on the economic, social and cultural prospects of this country. Violence against women and children, in particular, presents a grave risk to development.

Violence and the fear of violence severely limit women's contribution to social and economic development, thereby hindering the achievement of important national and international

³⁵ MTDS, Op Cit, page 44

³⁶ One example of such a sentiment publicly expressed in PNG: "By making a clear statement about framing supporting policies leading to gender equality (pg. vi), the resolve of the MTDS to addressing gender concerns in the country's development planning process comes through". The same paper refers to efforts by the Department of National Planning and Rural Development; in the National Population Policy 2005-2010, and to other plans made by that Department which purport to support creation of policy creating opportunities for women and girls to participate in all aspects of PNG life. No report is made on the success or otherwise of these plans in the paper. Popoitai, Y and Avei, U, in a joint paper entitled "Papua New Guinea Government's Interventions to Facilitate and Evolve Women's Empowerment", presented to the Women in Mining Conference, Madang, 19-22 June, 2005 at http://siteresources.worldbank.org/EXTOGMC/Resources/336929-1166646977904/pnginterventions_avei.pdf accessed 6 January 2009

*development goals, such as the Millennium Development Goals of eradicating extreme hunger and improving maternal and child health.*³⁷

A recent AusAID report noted that in PNG:

*Economic deprivation due to lack of land rights, patterns of out-marriage, and little independent access to cash income trap women, making them dependant on men for economic survival and reinforcing the expectations of male dominance and control founded on the still-prevalent practices of bride price and polygamy.*³⁸

The treatment of PNG's women and girls in many instances leaves them poverty stricken, powerless, uneducated and unable to nourish and educate their children. This affects all Papua New Guineans.

THE ADVANCEMENT OF WOMEN IS GOOD DEVELOPMENT

While compliance with PNG laws, policies and convention obligations in relation to the equality of women and the reduction of gender discrimination is a legitimate policy goal in itself, there is another incentive worthy of note in advancing women in PNG.

The evidence presented in a number of recent studies suggests gender equality is also desirable from an efficiency perspective. In a September 2007 World Bank Report which examined numerous studies, it was found that "Increases in opportunities for women lead to improvements in human development outcomes, poverty reduction, and – although the evidence on this last point is relatively weak – potentially accelerated rates of economic growth".³⁹

Speaking at the UN Commission on the Status of Women at a high level Roundtable on "Financing for Gender Equality and Empowerment of Women" Economist Dr Lopez-Claros noted that a number of studies have shown a close connection between national economic performance and the degree to which women are integrated into a national economy."⁴⁰ As one commentator put it;

*"Societies that discriminate on the basis of gender pay a significant price – in greater poverty, slower economic growth, weaker governance and a lower quality of life"*⁴¹.

³⁷ AusAID Office of Development Effectiveness, *Violence Against Women in Melanesia and East Timor, Building on Global and Regional Promising Approaches*, 2008 PNG Country Supplement, page 2 at http://www.ode.usaid.gov.au/publications/pdf/vaw_cs_full_report.pdf

³⁸ AusAID, OAE, *Violence Against Women in Melanesia and East Timor*, Op Cit, PNG Country Supplement, page 2

³⁹ The World Bank, *Gender Equality, Poverty and Economic Growth; Policy Research Working Paper 4349*, September 2007, page 1. See http://econ.worldbank.org/external/default/main?pagePK=64165259&piPK=64165421&theSitePK=469372&menuPK=64166093&entityID=000158349_20070911132056

⁴⁰ Bahai World News Service at <http://news.bahai.org/story/609> accessed 28 March 2007

⁴¹ Quoted in "World Bank sees economic benefit to gender equality" *Business World*, March 9 2001, accessed 28 March 2008. See

Another similar conclusion:

“the status of women in a society appears to rival economic development level for explaining how good or ill a quality of life is enjoyed by its citizens”⁴²

The development of legislation to address gender equality and reduce gender discrimination is not only a fair and just policy which constitutes compliance with both international and domestic legal and policy obligations, it is also sound policy to address poverty, human development and also, possibly, economic growth.

GENDER AND GOVERNANCE

PROGRESS IN PNG

A cursory read of recent reports on women’s participation in the political life of PNG will confirm that Constitutional goals of equality and participation in this sphere of life have yet to be met.

*The Constitution recognises women’s right to participate in all forms of nation building. However, women continue to be significantly disadvantaged in Papua New Guinea. At present, there is only one woman member of parliament, who is the current Minister for Community Development. Women have been more successful in seeking representation at local level, either through elections or by nomination. Currently, there are 12,579 women councillors both elected and appointed throughout the country. There is an urgent need for capacity building among these women councillors to enable them to be more effective in their interventions through these governance structures.*⁴³

One report suggests that women’s place in community relationships minimises their opportunities to be put forward for opportunities to obtain public office or to move toward qualification for public office. PNG’s systems of family and community relationships often exclude women from leadership and decision making roles. These community relationships often make available opportunities to seek public office and then create obligations back to influential community members when public office is achieved. Women can be excluded from privilege in being put forward and in being favoured for advancement by those already in power.

[Inweb18.worldbank.org/.../\\$FILE/World%20Bank%20sees%20economic%20benefit%20to%20gender%20equality.pdf](http://web18.worldbank.org/.../$FILE/World%20Bank%20sees%20economic%20benefit%20to%20gender%20equality.pdf)

⁴² The Status of Women and the Quality of Life in Developing Societies; Cal Clark Auburn University Janet Clark State University of West Georgia

⁴³ ADB, *Country Gender Assessment – Papua New Guinea*, May 2006, page 24

*Kinship ties in PNG determine all manner of relations between people, covering support networks, morality and land ownership. Binding obligations exist between close kinsfolk who share membership with a clan or a tribe. It is this system of obligations that often leads to nepotism and corruption in government systems. These links and associations often do result in increased opportunity for employment, contracts and nomination to lucrative company and government boards. Very often women, women's policies and machineries become the unsuspecting victims of this nepotism and corruption.*⁴⁴

Recognition has begun to grow in PNG, that action will be necessary to address the poor representation of women in the National Parliament and in provincial and local legislatures.

WOMEN IN THE NATIONAL PARLIAMENT SINCE INDEPENDENCE

In the thirty three years since PNG gained Independence, women have never held more than two seats in the 109 seat National Parliament in any one term. During that period, far fewer women than men have stood in every one of the eight elections. Over the thirty three years a total of four women have been successfully elected. In 2009 of the 109 seats in the National Parliament only one is held by a woman. Complete figures for the participation of women and men in the national electoral processes in PNG since Independence are set out in **Appendix 1**.

The maximum number of women successfully elected to Parliament in any one term since Independence has been two.⁴⁵ This comprises a maximum of 2.2% of the members over the past 33 years. Since 2002, there has been one woman Member elected to the National Parliament, comprising less than 1% of the membership. This is despite the fact that 73 women stood for election in 2002 and 107 stood in 2007.

Looking at the overall numbers of candidates who stood for election reveals similar figures. The percentage of women candidates compared with the percentage of men candidates has never been higher than 5% and has been less than 1% in five out of the eight elections.⁴⁶

These figures provide clear evidence that the current system of electing members of Parliament previously under the *Organic Law on National Elections* and now under the *Organic Law on the National and Local Government Elections* does not provide equal opportunity for women to stand for Parliament or to be successfully elected. Based on these figures, women cannot be said to be participating equally

⁴⁴ ADB, Op cit, page 24

⁴⁵ Source of figures, Department of Community Development

⁴⁶ See **Appendix One** for Table of Figures

in the activity of making laws in the National Parliament for the peace, order and good government of Papua New Guinea and the welfare of the people, as envisaged by the *Constitution*.⁴⁷

It was hoped that the introduction of the Limited Preferential Voting System introduced in 2007 might pave the way for more women members of Parliament, but the results in 2007 were disappointing with only one woman returned.

The present position, which has not improved since Independence, is that women, who make up 50% of the PNG population, cannot be sufficiently represented in the National Parliament by 1 woman or under 1% of the members in a population which is 50% women.

PNG RANKS POORLY ON MEASURES OF POLITICAL PARTICIPATION AND GENDER ADVANCEMENT

Gender inequality in PNG is widespread, and achievements to date have been poor.⁴⁸ PNG ranks 123 out of 156 countries for the Gender-related Development Index (GDI)⁴⁹ and 145 out of 177 countries for the Gender Empowerment Measure (GEM).⁵⁰ “PNG is 119 in a ranking of 121 countries for women’s political participation.”⁵¹

CONSTITUTIONAL RIGHT FOR EVERY PAPUA NEW GUINEAN TO TAKE PART IN THE CONDUCT OF PUBLIC AFFAIRS

Under the *Constitution*, every Papua New Guinean has the right, and shall be given a reasonable opportunity, to take part in the conduct of public affairs, either directly or through freely chosen representatives⁵² and to vote and to hold public office and to exercise public functions.⁵³ The Constitutional Planning Committee wanted to emphasise the need for more women to be involved in public life and so recommended a specific provision that women are entitled to hold public office and to exercise all public functions.⁵⁴ In relation to the right to stand for election to public office and to vote, the Committee specifically referred to the importance of the participation of women:

⁴⁷ *Constitution*, Section 109(1)

⁴⁸ ADB, *Report-Technical Assistance to Papua New Guinea for preparing the Gender and Population Project* at http://www.adb.org/Documents/TARs/PNG/r14_02.pdf accessed 11 Feb 2009

⁴⁹ The Human Development Index (HDI) measures average achievements in three basic areas: a) a long and healthy life (measured by life expectancy); b) knowledge (measured by adult literacy rate and combined primary, secondary and tertiary gross enrolment ratio); and c) a decent standard of living (measured by GDP per capita (purchasing power parity in USD). The Gender-related Development Index (GDI) adjusts the average achievements measured by the HDI to reflect inequalities between men and women in the same areas. See UNDP website at <http://hdrstats.undp.org/indicators/268.html> accessed 11 Feb 2009

⁵⁰ See UNDP website at <http://hdrstats.undp.org/indicators/280.html>, accessed 11 February 2009

⁵¹ AusAID, OAE, *Violence Against Women in Melanesia and East Timor*, Op Cit, PNG Country Supplement, page 2

⁵² *Constitution*, Section 50(1)(c)

⁵³ *Constitution*, Section 50(1)(e)

⁵⁴ Constitutional Planning Committee, *Constitutional Planning Committee Report*, 1974, Chapter 5, paragraph 77

*To emphasize the need for more women to be involved in public life, we have specifically provided that women are entitled to hold public office and to exercise all public functions in accordance with the law, on equal terms with men, without discrimination.*⁵⁵

In the Constitution, the right is expressed as applying to “every citizen”.⁵⁶

The figures on women’s participation in the electoral process and their lack of success in being elected to Parliament suggest that the current electoral system has not provided a “reasonable opportunity” for women to take part in the conduct of public affairs.

Constitutional amendments to create reserve seats in provincial electorates for women members of Parliament can be construed as progress toward the provision of a “reasonable opportunity” for women to take part in the conduct of public affairs in PNG and is therefore not only consistent with that right, but positively seeks to advance that right.⁵⁷

CUSTOM IN PNG

Custom in PNG has tended to entrench gender inequality and discrimination against women.^{58, 59 & 60}

An Amnesty International report pulls no punches in its discussion on the treatment of women within PNG. According to the report, women face gender-based discrimination and violence.

Traditional patriarchal customs, often distorted by changed circumstances, are invoked to justify gender discrimination and subordination. Meanwhile, the protections that at least sometimes used to accompany those customs have been eroded. The formal justice system offers the promise of equality, protection and redress but in practice is remote, inaccessible and ineffective. Women are as at risk of gender-based discrimination and violence as ever.⁶¹

⁵⁵ Constitutional Planning Committee, *Constitutional Planning Committee Report*, 1974, paragraph 77

⁵⁶ *Constitution*, Section 50

⁵⁷ *Constitution* Section 55 (2) provides for laws to be made to advance women and other less privileged groups.

⁵⁸ Korare, Dianne, “Gender and Perceptions of Political Power in Papua New Guinea”, *Development Bulletin*, No 59, 2002, pp 47-50

⁵⁹ ADB Report, Op Cit, page 6

⁶⁰ “The discrimination females experience lasts a lifetime. Historically and even today, the arrival of a baby girl is a cause for disappointment. They are often unwanted or loved less by many families in Papua New Guinea, especially fathers.” – *Gender Training Manual*, HELP Resources, at http://www.oxfam.org/en/programs/development/pacific/papua_gender_equality accessed 28 March 2008

⁶¹ Amnesty International Report, 2006

One commentator noted that, despite ratification of relevant treaties, a Constitution that enshrines human rights principles and policies that mainstream gender..., women are still not contributing equally to development in PNG.⁶²

Overwhelmingly, studies on women and girls in PNG report a position of violence and discrimination.^{63, 64 & 65} Neither custom nor law appears to provide adequate protection.

The *Pacific Plan* has also raised the issue of custom and its role in gender discrimination. It notes that “Pacific nations are being forced to examine the appropriateness of customary institutions and laws in the light of changing social conditions.”⁶⁶

IS CUSTOM THE PROBLEM?

CEDAW states that discriminatory customs must be changed.⁶⁷ Is it possible to simply change discriminatory custom? If so, how is it done? If so, is it a good idea? Documents created by UN agencies, intended as guides to the implementation requirements of transnational treaties, are usually silent on such points. The Constitution and the *Constitutional Planning Committee Report* are clear in emphasising the importance of Papua New Guinean ways, although the *Constitutional Planning Committee Report* does acknowledge some

*of our own institutions’ constraints on our vision of freedom, liberation and fulfilment. These should be left buried if they cannot be reshaped for our betterment.”*⁶⁸

Discussions of the importance of culture, or the importance of preservation of Papua New Guinean ways, a value enshrined in the Constitution, seem to uncover a tension between internationally agreed sets of values and their implementation in local situations, which were not and could not have been contemplated by transnational drafters of treaties. It should also be noted that custom can be protective of women and efforts to simply remove custom may remove important protections for women’s status and role.

⁶² Dom, Grace, “CEDAW: An Important Tool for Change”, Paper delivered at 2nd Women in Mining Conference, Madang, 19-22 June, 2005, page 2

⁶³ Amnesty International Report, 2006

⁶⁴ EC/UN Partnership on Gender Equality for Development and Peace, *Mapping Aid Effectiveness and Gender Equality in Asia Pacific – Regional Issues and Trends • Final Report* at http://www.unifem.org/attachments/products/MappingAidEffectivenessAndGenderEquality_AsiaPacific.pdf accessed 5 January 2009

⁶⁵ ADB Report, Op Cit

⁶⁶ *PNG Platform for Action*, Op Cit, page 6

⁶⁷ CEDAW, Articles 2 and 5

⁶⁸ *Constitutional Planning Committee Report*, 1974

Custom and law continue to have an awkward relationship in PNG and this paper argues that reforms which complement and work with customary approaches to community organization are likely to work best.

In the words of Sir Mekere Morauta, former Prime Minister of Papua New Guinea:

*At independence, Pacific nations adopted government systems based on the Westminster model of representative democracy. For many the model was new and unfamiliar. The transition came with little preparation, and to this day the Western-style institutions sit awkwardly alongside traditional leadership.*⁶⁹

The Western approach places great emphasis on individual rights and liberties. A framework of rights and responsibilities which focuses on individuals and their rights to make their own decisions and enjoy maximum liberty often has little resonance in a region which has a very different approach to social organization and governance. It asks what governance meant to people in the Pacific before the arrival of Europeans:

*Back in our traditional societies good governance in a village means they make sure there are gardens for everyone, they make sure that in times of hunger, taim bilong hangre, that they through long experience manage to keep some food in store and in stock for bad times. They make sure people have houses, they make sure that young people are brought up in the traditions and customs. So transferred into a modern state, good governance for us really is about that, it's about taking good care of our land, our resources and our relationships with one another and of course with people who we regard as allies, or friends in the working out of our common lives. Good governance, good administration, good management, a key to it is wisdom in our societies. You have to be wise, you have to be sensitive, you have to be cautious, careful in what you say, what you do, and most significantly in your distribution of food and pigs you must be fair to everyone.*⁷⁰

CUSTOM AND WOMEN IN VILLAGE COURTS PROJECT

This paper recommends an approach to custom in PNG which increases women's voice in Village decision making and enables reworking of custom by entrenching a mechanism which respects

⁶⁹ Sir Mekere Morauta, comment made on "Time to Talk" program on Roles and Structures of Government broadcast on Radio Australia 2008, see http://www.radioaustralia.net.au/pdf/timetotalk/timetotalk_1.pdf accessed 8 April 2009

⁷⁰ Comment made on "Time to Talk" program on Governance in the Pacific broadcast on Radio Australia 2008, see http://www.radioaustralia.net.au/pdf/timetotalk/timetotalk_1.pdf accessed 6 April 2009

existing customs and local level social organisation. It is the use of a local declaration of custom⁷¹. This has recently been the subject of a pilot in Manus Province under the Custom and Women Project run by the Village Courts Secretariat in the Department of Justice and Attorney General.

The purpose of the Custom and Women in Village Courts project is to try to reduce discrimination against women and to enhance community life in PNG. It aims to make progress toward achieving the second Constitutional Goal of “Equality and Participation” in a way that also respects and observes the fifth Goal of “Papua New Guinean ways”.

A simple process is used to enable communities to identify customs which are not working to enhance community life and to agree on some changes to those customs. Communities decide for themselves which customs will be discussed and reviewed. Any agreed changes may then be formalised in a declaration of custom enforceable in Village Courts within the LLG. Alternatively, the declaration would be enforceable in the province if a province wide declaration of custom is favored by the Governor and Ward Presidents. The process is designed to work at LLG Ward and Village level. A declaration framed using principles of custom rather than codification of custom is preferred.

The use of this process represents a tangible and sustainable move toward fulfillment of PNG’s obligations to implement CEDAW and the *Constitution*. It can largely be controlled and operated by people at LLG and village level in a tangible form of inclusive governance.

The pilot saw men and women, old and young, leaders and ordinary people gather in villages to discuss custom. Customs which affect women were discussed as were customs which were not specific to women. Women and men were able to make a range of points about food sharing, house boi decision making, birth custom, death custom and bride price in a forum which gave them all a platform to speak. The process was well received and generated much interest and gave rise to requests from most ward councilors for a visit from the team and an opportunity to make a local declaration of custom.

This Paper recommends working with the Department of Justice and Attorney General to consider the progress of the pilot Custom and Women project and consider entrenching in law the mechanism to make a declaration of custom specifically in relation to women.

⁷¹ A declaration of custom is currently possible as an administrative order recognised by the *Village Courts Act* and the *Underlying Law Act*. It may be made if the Provincial legislature passes an enabling law to allow a declaration to be made.

WOMEN ON STATUTORY BOARDS

There are many boards created by statute in PNG. These are in areas as diverse as forestry, public hospitals, fisheries management and gaming. This is undoubtedly a fertile ground for the inclusion of women in a broad range of public sector governance roles in PNG. The *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*, has as one of its objectives, the appointment of non-ex officio members of boards of regulatory statutory authorities. The appointment process, as set out in the Act, requires a list of candidates for any vacancy, to be prepared by the Minister for submission to the Public Services Commission.⁷² This section could be amended to require that the list of candidates include at least 30% women. When considering the recommendations, the National Executive Council should also have regard to the fact that women must make up 30% of members of statutory boards.

The *Education Act 1983* creates a National Education Board⁷³ and boards of management for schools. These important boards also present opportunities for the inclusion of women's voices and for the participation of women in governance in PNG.

This paper recommends a mandatory quota of 30% women on public sector boards in PNG.

ANTI-DISCRIMINATION LEGISLATION

It is beyond the scope of this paper to fully explore the options for anti-discrimination legislation. However, much interest was generated when the Department of Community Development ran a high level workshop in December 2009 to consider the development of such legislation for PNG. The interest is noted and this paper acknowledges the importance of such legislation. The Department of Community and Family Development will, in another forum, pursue a policy agenda to develop much legislation. For the purposes of this paper, the activity to date is noted and the development of such legislation included as phase three of a rolling program of reform.

ENTRENCHED INTERESTS WILL NOT WELCOME REFORMS

Reforms which alter the existing distribution of power inevitably create a "disturbance to entrenched interests".⁷⁴ In 1974, the Constitutional Planning Committee encountered opposition of this nature during its work in developing the PNG *Constitution*, which was indeed a departure from the distribution of power in existence before its passage. The Committee Members wrote of the

⁷² *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*, section 10(2), see http://www.pacii.org/pg/legis/consol_act/rsatcoa2004721/ accessed 3 Feb 2009,

⁷³ *Education Act*, sections 10,11 and 12, at http://www.pacii.org/pg/legis/consol_act/ea1983104/ accessed 3 Feb 2009

⁷⁴ Constitutional Planning Committee Report

“considerable suspicion, spite and prejudice” they encountered. The CPC Report of 1974 encountered some criticism of its proposals. This would be expected in a robust environment of consultation and reform. However, the CPC noted that some responses from bureaucrats who saw the CPC and the independent manner in which it operated as a challenge to their own power and authority. It also noted a “danger too that some of our politicians whose power is reinforced by the existing institutions will be tempted to defend their positions by adopting similar attitudes.”⁷⁵

In an initiative such as the creation of reserve seats for women and other policy reforms noted in this paper, some similar attitudes may emerge. Every effort should be made to address concern and to inform the community as to the nature of the initiatives and their undoubted legal and policy legitimacy.

CONCLUSION

The policy justification for a rolling program of reform to increase the equality and participation in the public sector of Papua New Guinea has the highest degree of validity and consistency with PNG’s existing international and domestic policy and legal obligations. It is also good development.

Radical and comprehensive reform agendas, however justified, are rarely successful and face insurmountable problems with implementation. This paper recommends a rolling program of policy and legislative reform to advance the important reform agenda at a pace which acknowledges the urgency and legitimacy of reform but marries it with a practical and sustainable approach to implementation in the unique social, political, economic and cultural environment of PNG.

⁷⁵ Constitutional Planning Committee, *Constitutional Planning Committee Report*, 1974, paragraphs 9 and 10

APPENDIX 1 – TABLE OF FIGURES OF ELECTORAL PARTICIPATION BY WOMEN AND MEN SINCE INDEPENDENCE

TABLE 1

Representation by sex in PNG, 1972 – 2002				
	Candidates		MP's	
	Women	Men	Women	Men
1972	4	604	1	108
1977	6	872	2	107
1982	10	1,114	0*	109
1987	15	1,502	0	109
1992	16	1,629	0	109
1997	50	2,322	2	107
2002	73	2,763	1	108
2007	102	2700	1	108

* One woman member was elected after the Court of Disputed Returns ordered a recount of disputed votes