

Policy Proposals for Open and Accountable Government
Fifteen steps to improve governance and public oversight

A CONSULTATION DOCUMENT

May 2018

Introduction

This Consultation Document has been developed to contribute to the national debate on improving governance and service delivery.

The proposals that are set out are designed to promote openness and transparency, improve integrity and accountability, empower citizens, and harness new technologies to make government more effective and accountable and ensure the aspiration of our National Goals.

The proposals, if adopted, will support and enable greater civic participation in government decision making, increase the available information about government activities, and promote the highest standards of professional integrity.

These are all necessary prerequisites if we are to achieve the goals of improving the quality and delivery of government services, ensure greater equality, create safer communities and improve the prosperity, well-being and human dignity of all Papua New Guinea's citizens and promote these values in our interconnection with the global community.

The proposals promote the mission and strategies of the multilateral Open Government Partnership which Papua New Guinea joined in 2015.

Comments and feedback

This is a consultation document and all comments and feedback are welcome.

By mail: ACT NOW!
P.O. Box 5218
Boroko, 111
National Capital District

By email: info@actnowpng.org

From the comments and feedback received ACT NOW! will develop a further discussion document.

Contents

1. Civic participation

- A. Devolution of powers to the Provinces
- B. Publication of Service Improvement Program acquittals
- C. Public registers on land use decision making

2. Access to information

- A. Freedom of Information law
- B. Company registry search function
- C. Online access to governance reports
- D. Online access to the National Gazette
- E. Public register of government procurement

3. Government integrity

- A. Independent Commission Against Corruption
- B. Permanent appointments to senior public service posts
- C. Public register of Members interests
- D. Criminal liability for unlawful alienation of customary land
- E. Public register of beneficial interests

4. Constitutional authority

- A. Whistleblower Protection law
- B. Justiciable National Goals and Development Principles

1. CIVIC PARTICIPATION

1A. Devolution of powers to the Provinces

What: Devolution of centralised powers from Port Moresby to the Provinces so there is greater autonomy and more localised decision making together with an enforceable revenue sharing arrangement based on population numbers.

Who: Constitutional and Law Reform Commission / Department of Justice and the Attorney General

Why: Port Moresby is physically remote from most centres of population and the majority of people have no access to decision makers or public records. Decentralising powers and decision making to the Provinces, together with other policy proposals, will allow much greater public participation and scrutiny. Also geographical and cultural variations throughout the country mean 'one-size-fits-all' centralised decision making is often inefficient.

1B. Publication of Service Improvement Program acquittals

What: Online publication of all District and Provincial Service Improvement Program grant acquittals presented to the Department of Finance by District and Provincial administrators.

Who: Department of Finance / Department of Implementation and Rural Development

Why: D/PSIP grants are a mechanism designed to improve the provision of services at the Provincial and District levels. The sizeable grants, over K1 billion in total was allocated in 2016, have attracted much controversy and have often been the subject of complaint and allegations of corruption. There is a very poor level of acquittal for the funds by the various development authorities. Publishing the acquittals will allow better citizen oversight, more 'social auditing' by the intended recipients of the services and increase transparency and accountability.

1C. Public registers on land use decision making

What: Government Departments publish online, and make freely available, all key documents relating to land use decision making, including:

- [1] all applications for changes to land use, including but not limited to resource extraction and harvesting projects, and including all supporting documentation;
- [2] maps showing clearly the proposed boundaries, the communities impacted and key geographical features;
- [3] all documents related to identification of affected communities/clans/landowners, the information given to them on expected impacts and benefits, details of the consultation process and how consent was reached;
- [4] all the documents submitted or produced during of the decision making process, including but not limited to social and environmental impact studies, feasibility studies, proposed contracts etc;
- [5] all decisions made relating to changes in land use, including but not limited to any leases / licences / permits / authorities or other legal instruments;
- [6] all relevant commercial contracts, including lists of affected communities/ clans/ landowners and their consent given, and final maps of the project boundaries.

Who: Department of Lands and Physical Planning / Mineral Resource Authority / Department of

Agriculture / PNG Forest Authority.

Why: Land is a key asset in Papua New Guinea. It is the centre of life for rural communities and for many people living in or around urban centres. Customary landholders and anyone occupying land, whether informally or not, is legally entitled to be involved at every stage of the decision making process in relation to changes to land use and any large-scale activities. For customary landowners, free, prior and informed consent depends on complete transparency in planning and decision-making processes and the interaction of three key rights - the right to access information, the right to participate in decision-making, and the right to challenge such decisions. Disclosure of contracts is in line with Papua New Guinea's commitments to the Extractive Industry Transparency Initiative and has been adopted in, for example, the Democratic Republic of Congo.

2. ACCESS TO INFORMATION

2A. Freedom of Information law

What: A law that allows public access to data held by the national and provincial governments and which gives statutory effect to the right to freedom of information contained in Section 51 of the Constitution. Establishes a "right-to-know" legal process by which requests may be made for government-held information, to be received freely or at minimal cost, barring standard exceptions (national security, personal privacy, trade secrets, privileged communications, fair trial, endanger life), and within a period not exceeding 3 weeks after the submission of the request.

Who: Constitutional and Law Reform Commission / Department of Justice and the Attorney General

Why: The Constitution [Section 51(3)] requires for a law that establishes procedures by which citizens may obtain ready access to official information, but such a law to give effect to the right to freedom of information has never been enacted. A freedom of information law will help lift the veil of secrecy behind which corruption thrives and allow greater public engagement in decision-making processes and governance oversight.

2B. Company registry search function

What: The Investment Promotion Authority online company and business name database to be searchable by director and shareholder / owner name.

Who: Investment Promotion Authority.

Why: A lot of corruption in PNG is hidden behind a veil of corporate secrecy. The Investment Promotion Authority has taken a commendable and important step in making information about individual companies freely accessible online. But while its register of business names can be searched by individual name, its register of companies cannot, meaning companies cannot be identified through shareholder or director names. Making the register searchable by director or shareholder name would provide much greater transparency.

2C. Online access to governance reports

What: Governance institutions make copies of all their annual and investigation reports, including all past reports, freely available online so they can be publicly accessed.

Who: Auditor General / Department of the Prime Minister / Ombudsman Commission / Public Accounts Committee / Department of Justice and the Attorney General

Why: The investigations and reports of governance institutions provide an important record of past abuses, the actors involved, the schemes they have been involved in and their culpability. Unfortunately, many of the reports are not available to the public, either in libraries or online. Publishing the reports online will increase accountability and transparency, inform policy development, lead to better decision making and assist other measures to tackle corruption.

2D. Online access to the National Gazette

What: The National Gazette is published online at the same time physical copies are printed so it is publicly accessible and information in the public domain is up-to-date. The online platform should

include a search function allowing the user to search the gazettes using any keywords.

Who: Government Printer

Why: The National Gazette is the official medium by which decisions of the Government are announced. These include public service appointments, issuing of land leases, decisions relating to boards and commissions, and calls for tenders and awarding of contracts by the Government. Currently the Gazette is only available by collection from the office of the Government Printer in Port Moresby which means most people have no access to the important information it contains.

2E. Public register of public procurement

What: A public sector procurement website that provides details of all government contracts awarded with a value over K20,000, including tender documents, tender report including name of bidders, the terms and date of contract signature and the name of the successful bidder. Data should be searchable by procurer or bidder name and search results should be filterable by province / type of work and year. Short-term implementation could focus on critical government departments like Works and Health as pilot projects.

Who: Department of Works / National Department of Health.

Why: Government procurement is a major area for corruption. Greater transparency will assist detection and prevention, including through 'social auditing' and provide an effective deterrent.

3. GOVERNMENT INTEGRITY

3A. Independent Commission Against Corruption

What: A fully funded and autonomous Independent Commission Against Corruption to investigate complaints of corruption, prosecute offenders and initiate and support education and awareness programmes aimed at prevention.

Who: Department of Justice and the Attorney General

Why: Current institutions have proven to be ineffective in tackling endemic corruption and are susceptible to political interference. The Ombudsman Commission has a mandate that is too limited and easily circumvented. An ICAC type body has proven to be effective in other jurisdictions. The power to prosecute offenders is included in the ICAC powers to address the historical experience with other governance oversight bodies where investigations and recommendations for prosecution have often not been actioned. The Constitutional amendment allowing for an ICAC has already been passed by Parliament.

Next step: DJAC to engage in an open and transparent round of public and expert consultation on the text of the draft Bill.

3B. Permanent appointments to senior public service posts

What: All senior public servants should be employed on fixed term permanent contracts with no short-term contracts or repeated 'acting' appointments. All appointments should be made following proper transparent processes and all decisions should be published in the National Gazette

Who: Department of Personnel Management / National Executive Council.

Why: Short term or 'acting' appointments can create an unhealthy dependency and unwillingness to report or act on allegations of corruption or to stand up to political interference. By creating transparency through publishing appointments, the risk of nepotism and cronyism can be reduced.

3C. Public register of Members of Parliament's interests.

What: An online registry of the share ownerships and directorships declared to the Ombudsman Commission by those subject to the Organic Law on the Duties and Responsibilities of Leadership as part of their Section 4 annual returns. These declarations to include immediate family members [spouses and children].

Who: Ombudsman Commission.

Why: There is a lot of evidence of Members of Parliament and public servants benefiting, directly or indirectly, from contracts given to their own companies or companies owned by family members, and causing a conflict of interest with their decision making roles. A lot of this abuse goes undetected because either leader's interests are not declared or not acted on as there is no public disclosure. A public register will allow wider scrutiny, reduce the opportunities for abuses and increase pressure to enforce applicable laws. Such public registers exist in many other countries including United Kingdom, New Zealand and Australia and provide transparency and strengthen public trust and confidence in parliamentary processes and decision-making.

3D. Criminal liability for unlawful alienation of customary land

What: An amendment to the criminal code that makes it a criminal offence to aid or assist in the alienation or occupation of land or interference with user rights without following the full process as laid out in law and without ensuring the free, prior and informed consent of all customary or other landowners.

Who: Constitutional and Law Reform Commission / Department of Justice and the Attorney General

Why: Land is a key asset in Papua New Guinea. It is the centre of life for rural communities and for many people living in or around urban centres. Unfortunately, there are many examples of public servants and politicians being involved in the unlawful alienation of land sometimes on a grand-scale. An amendment to the criminal code would have a deterrent effect and allow assist in ensuring those culpable face justice.

3E. Public register of beneficial ownership

What: Amendments to the Companies Act to place a duty on companies to investigate and declare any beneficial ownership or control of their company as part of their annual reporting obligations. The declarations would be published by the IPA on their website.

Who: Department of Justice and the Attorney General / Investment Promotion Authority

Why: The use of proxy directors and other individuals or companies as shareholders, particularly when based overseas and in tax-havens, can be used to hide real (beneficial) ownership and corrupt transactions including tax-avoidance, reduction or evasion and other unlawful behaviour. A public register was introduced in the UK in 2016 to assist financial institutions and other businesses with due diligence exercises and to support law enforcement agencies. A public register would also be congruent with PNG's EITI beneficial ownership obligations.

4. CONSTITUTIONAL AUTHORITY

4A. Whistleblower Protection law

What: A law that protects all employees in both the public and private sectors from any civil or criminal action, including disciplinary proceedings, for disclosing in good faith information about dishonest or illegal activities. Should apply to any person, whether or not subject to a confidentiality provision or duty of confidentiality or any other prohibit or restriction on disclosure. Prohibits any person or agency from taking action, or threatening to take action, against an employee or applicant for disclosing information about dishonest or illegal activities.

Who: Constitutional and Law Reform Commission / Department of Justice and the Attorney General

Why: There are many loyal and hard working public and private sector workers who see abuses occurring but are afraid to speak out because of the fear or losing their job or being demoted. A whistleblower protection law will help increase the amount of reporting and decrease the impunity for wrongdoers.

4B. Justiciable National Goals and Directive Principles

What: Constitutional amendment to make the National Goals and Directive Principles justiciable.

Who: Constitutional and Law Reform Commission / Department of Justice and the Attorney General

Why: The lack of enforceability of social and economic rights as enshrined in the Constitution means the vision of the National Goals has been lost and replaced by the demons the Constitutional Planning Committee warned against. The non-justiciability is structural to the over-centralism of the current system. In 1985, the General Constitution Review, required after a decade of Independence, recommended that the National Goals and Directive Principles be made justiciable. The recommendation has not yet been implemented.