

Creation of New Electorates

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Introduction

The membership of the National Parliament in Papua New Guinea (PNG) is provided for under Section 101 of the *Constitution*. This provision provides for the membership to the National Parliament. According to this provision, there are four categories of persons who can be elected to Parliament. These are:

- (1) Members representing Open Electorates;
- (2) Members representing Provincial Electorates;
- (3) Three Nominated Persons; and
- (4) Members representing Women.

Since Independence in 1975, only two of these categories of electorates have been represented in Parliament: (1) Open Electorates and (2) Provincial Electorates. From 1977 to 2011, the Parliament had comprised 89 Open Electorate Members of Parliament (MP) and 20 Provincial Electorate MP, a total of 109 MP.

No Nominated MP has ever been selected or elected to join Parliament.¹ The quest for women representation in Parliament was achieved in 2011 when Section 101(1) of the *Constitution* was amended to insert paragraph (d).² However, this provision has not yet been implemented because the enabling legislation, the *Organic Law on National and Local-level Government Elections* (OLNLLGE) has never been amended to implement Section 101(1)(d) of the *Constitution*.

This paper explores the creation of new electorates with the adoption and approval of the 2021 Electoral Boundaries Commission Report on electoral boundaries³ in April 2022.

Electorates

Pre-Independence Electorates

An examination of the history of electorates begins with the report of the Distribution Committee of 1967.⁴ This Committee was established under the *Electoral Ordinance* 1963-71. The Committee identified and clearly defined the boundaries of the electorates for the 1968 national elections, which can be lumped under the current regional groupings as shown in Table 1 below.

Table 1. 1967 Electorates

Region	Electorates	Total
Southern	North Fly, South Fly, Kerema, Kikori, Moresby, Rigo-Abau, Goilala, Hiri, Kula, Alotau, Esa'ala, Ijivitari, Sohe.	13
	Kainantu, Henganofi, Goroka, Daulo, Okapa, Lufa, Chimbu, Chuave, Gumine, Sinasina, Kerowagi, Hagen, Waghi, Jimi, Mul-	

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¹ This provision is expanded in Section 102 of the *Constitution*.

² *Constitutional (Amendment No.32) (Equality and Participation) Law* 2011.

³ Electoral Boundaries Commission., *2021 Reports & Recommendations of Electoral Boundaries Commission to National Parliament* (Port Moresby: Electoral Boundaries Commission, 2021). Download at <https://www.tallyroom.com.au> (accessed 14/10/22).

⁴ See generally *Distribution Committees; 1967 Description of Electoral Boundaries Part IV* (Port Moresby: Territory of Papua and New Guinea, 1967). This is the only source document that I was able to find. There might be other source documents.

Highlands	Dei, Mendi, Ialibu, Koroba, Kagua, Nipa, Tari, Kandep-Tambul, Kompam-Baiyer, Lagaip, Wabag, Wapenamanda.	25
Momase	West Sepik Coastal, Wapei-Nuku, Upper Sepik, Wewak, Angoram, Ambunti-Yangoru, Dreikike, Maprik, Bogia, Sumkar, Rai Coast, Mabuso, Middle Ramu, Finschhafen, Huon Gulf, Markham, Kabwum, Kaindi, Munya, Nawae.	20
New Guinea Islands	Talasea, Kandrian-Pomio, Kokopo, Gazelle, Rabaul, Kavieng, Namatanai, Manus, North Bougainville, South Bougainville	10

For the 1968 National Elections, there were 68 electorates for the House of Assembly.

In preparation for the 1972 National Elections, the Electoral Boundaries Distribution Committee established under the *Electoral Ordinance* 1963-71, was again tasked by the Administrator, Mr. Leslie Wilson Johnson, to review the electoral boundaries and propose the distribution of electorates.⁵ The Committee recommended:

- 82 Open Electorates; and
- 18 Regional Electorates.

The Committee toured most parts of the country, except Manus, New Ireland and Western Districts. It noted that the population at that time was estimated at 2,441,708 people. The Committee therefore recommended that Open Electorates must have a population of 30,000.⁶ In the Highlands the Committee was “told not to set any target dates for home-rule or self-government.”⁷

The Committee had difficulty ascertaining the total population of the country so it took into account other factors such as:

- Community or diversity of interest;
- Existing Local Government Council boundaries in accordance with the expressed wishes of the people concerned;
- Present and future movement of people into other electorates;
- Existing Electoral Boundaries;
- Existing administrative District boundaries;
- Geographic features;
- Communications; and
- Census divisions.

PNG gained Independence on 16th September 1975. It’s first election after Independence was slotted for 1977, two years after independence. A new Boundaries Commission established under the *Organic Law on National Elections* was tasked by Parliament to review the electoral boundaries and recommend any new distributions. The Electoral Boundaries Commission (EBC) conducted its inquiries and submitted its first report to Prime Minister, Michael Somare on 7th December 1976.

Prime Minister Somare presented the EBC Report to Parliament on the same day. After a lengthy debate in Parliament, the EBC Report was rejected by the members of Parliament on 8th December 1976. The EBC then reviewed its report and presented a revised package which was approved by the Parliament in February 1977. Thus, the number of Open Electorates were

⁵ Electoral Boundaries Distribution Committee; *1971 Electoral Boundaries* (Port Moresby: Territory of Papua and New Guinea, 1971) 1.

⁶ Id, p2.

⁷ Id, p3.

increased to 89 and Provincial Electorates to 20.⁸ These 109 electorates remained in place until 2011.

Post-Independence Electorates

The creation of Open and Provincial Electorates are provided for under Section 125 of the *Constitution*. These electorates are to be created on the recommendations of the EBC. Since Independence, members of Parliament (Members for Open Electorates and Members for Provincial Electorates) have been elected into Parliament according to Section 126 of the *Constitution*.⁹

Provincial Electorates referred to in Section 101(1)(b) of the *Constitution* were reaffirmed in Section 34 of the OLNLLGE.¹⁰ Provincial Electorates follow the boundaries of the provinces established under the *Organic Law on Provincial Boundaries*. With the creation of two new provinces in 2011 – Hela and Jiwaka, the number of Provincial Electorates increased to 22, bringing the number of seats in Parliament to 111. Table 2 shows the distribution of Provincial Electorates in the four regions of the country. The table shows that the Highlands Region has the greatest number of Provincial Electorates (7). In second place is the Southern Region with six.

Table 2. *Provincial Seats by Region*

Region	No of Provincial Seats
Southern (Western, Gulf, Central, NCD, Milne Bay, and Northern)	6
Highlands (Eastern Highlands, Simbu, Jiwaka, Western Highlands, Enga, Southern Highlands, and Hela)	7
Momase (Sandaun, East Sepik, Madang, and Morobe)	4
New Guinea Islands (Manus, New Ireland, Autonomous Region of Bougainville, East New Britain, and West New Britain)	5

Open Electorates provided for by Section 101(1)(b) of the *Constitution* are reaffirmed by Section 35 of the OLNLLGE.¹¹ Prior to April 2022, there were 89 Open Electorates. Section 25 of the OLNLLGE provides that to represent these 89 electorates in the Parliament, a person must be voted by the electors in the electorates. Table 3 shows the distribution of Open Electorates according to the four regions of the country. Again, the data shows that the highest number of Open Electorates is from the Highlands Region (34). In second place is the Momase Region with 25.

Table 3. *Allocation of Open Electorates by Region*

Region	Open Seats
Southern	18
Highlands	34

⁸ Government of Papua New Guinea; *1977 Electoral Boundaries Commission Report* (Port Moresby: Government Printer, 1977).

⁹ For those who are interested in reading about elections in PNG see Kwa, E, Gelu, A and Golman. W (ed), *Judicial Scrutiny of the Electoral Process in a Developing Democratic State* (New Delhi: UBSPD, 2022); Wood, T, “Papua New Guinea Election Results: Trends and Patterns 1972-2012” (Discussion Paper 55) (Canberra: Development Policy Center, ANU, 2017) (see https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2926707) and Baker, K, “Women’s Representation and Electoral System Reform in Papua New Guinea: The Limitations of Limited Preferential Voting” (Canberra: Asia and the Pacific Policy Studies, ANU, 2018) (see https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3188468).

¹⁰ It is important to note that Section 34 of the OLNLLGE was repealed in 2002 by Constitutional Amendment No. 28 of 2002. There are therefore no Provincial Electorates under the OLNLLGE.

¹¹ This Organic Law replaced the *Organic Law on National Elections* in 1997.

Momase	25
New Guinea Islands	12

Creation of Open Electorates

The Criteria for Creating Open Electorates

Open Electorates are created under the OLNLGE. The EBC which is created under Section 26 of the OLNLGE is the body responsible for proposing Open Electorates. The EBC is headed by the Electoral Commissioner and five other members.¹² The members of the EBC hold office for six years. As an independent body, the EBC is free from any direction or control. Its primary function is to conduct a review and submit its report with its recommendations to Parliament. It is the Parliament who, if it accepts the report, creates new electorates.

Since 1997, the lower and upper limits of Open Electorates were set by Section 35 of the OLNLGE. It stipulates that there shall be no less than 89 and not more than 120 Open Electorates. This provision also empowers the EBC to name or rename an Open Electorate.

The formula or criteria for determining an Open Electorate is provided by Section 36 of the OLNLGE. It provides that:

36. SIZE OF OPEN ELECTORATES.
- (1) For the purposes of a proposed redistribution of the country into open electorates, the Boundaries Commission shall determine a population quota by the following formula: –
- $$Q = P/N$$
- where–
- “Q” is the population quota for the electorate; and
- “P” is the total population of the country; and
- “N” is the provisional number of open electorates as determined by the Boundaries Commission within the limits specified in Section 35.
- (2) Subject to Subsection (3), in drawing the boundaries of open electorates, the Boundaries Commission shall not draw them in such a way that–
- (a) the population of any electorate is more than 20 per centum more than or less than 20 per centum less than the population quota prescribed by Subsection (1) except in circumstances which in the opinion of the Boundaries Commission would otherwise lead to an unreasonable result; or
- (b) the boundaries of an open electorate cut across the boundary of a province.
- (3) Where the Boundaries Commission has–
- (a) at a meeting determined the provisional number of electorates and proceeded to determine the population quota calculated for that number of electorates in accordance with Subsection (1); and
- (b) a later meeting determines that there be more or less electorates than the provisional number determined at the earlier meeting,
- the Boundaries Commission shall not redetermine the population quota.
- (4) In determining the degree of variation of size between electorates (within the 20 per centum plus or minus allowable) the Boundaries Commission shall give due consideration to–
- (a) density of population; and
- (b) physical features and communications; and
- (c) existing electoral boundaries; and
- (d) Local-level Government and provincial and other administrative areas; and
- (e) the community and diversity of interest, where it considers it relevant to do so.

The first attempt by the EBC to increase the number of electorates after Independence was made in 1977, using the above criteria. As mentioned above, the EBC proposals were approved by Parliament in February 1977. At the 1977 National Elections, the number of Open Electorates increased to 89 and Provincial Electorates to 20,

¹² The other members of the Commission are: (1) Surveyor-General, National Statistician and three other persons appointed by the Head of State on the advice of the National Executive Council.

making the chamber a 109 seat Parliament. This number remained unchanged until 2011 when two provincial electorates (Jiwaka and Hela) were added to the list of electorates to bring the total to 111.

The EBC of 2021

Since 1977, no new Open Electorates were added to the Parliament. Although the EBC did submit its report in 1981, 1985/86, 1991, 2005/2006, to increase the number of Open Electorates, these reports were all rejected by the Parliament. It was only in April 2022 that the 2021 EBC Report with its recommendations (to create an additional 13 Open Electorates) was finally accepted by Parliament.

The membership of the EBC was reconstituted in 2021. The Marape Government tasked the EBC to consult the people and recommend the redistribution of electoral boundaries in readiness for the 2022 General Elections.

After conducting its review, the EBC in accordance with Section 37 of the OLNLGE, published a notice in the National Gazette and the daily newspapers, inviting the public to comment on its proposals for the creation of additional electorates. The EBC also toured the four regions of the country and discussed the proposals with the people.¹³

After the public consultations, the EBC submitted its final report and recommendations to the Minister as specified under Section 39 of the OLNLGE. This report was accompanied by a map signed by members of the EBC.¹⁴ When the Minister, who in this case was the Prime Minister, Hon. James Marape, MP, received the EBC's report at the end of March 2022, he presented the report to the National Executive Council (NEC) for endorsement and presentation to Parliament as prescribed under Section 40.¹⁵

When the report of the EBC was presented to NEC for endorsement, the Cabinet fully supported the Report. The EBC had recommended 13 new electorates, of which seven would become operational in the 2022 National Elections and the other six to be implemented in the 2027 National Elections. The new Open Electorates for 2022 are as shown in Table 4 below.

Table 4. *Allocation of New Open Electorates*

Province	Recommended Open Electorates	Existing Open Electorates	2011 Population	Projected Population 2021
Western	Delta Fly	Middle Fly	50,859	67,000
Central	Hiri Koiari	Kairuku-Hiri	63,016	87,000
Northern	Popondetta	Ijivitari	72,001	74,000
West New Britain	Nakanai	Talasea	122,418	165,000
Morobe	Wau-Waria	Bulolo	44,142	55,000
Hela	Magarima	Komo Magarima	35,604	61,000
Enga	Porgera Pailea	Lagaip Porgera	84,242	126,000

The other six new electorates for 2027 are:

¹³ Section 38 of the OLNLGE requires the Commission to conduct a public inquiry about its proposals. This was done by the Commission from July to September 2021. See Electoral Boundaries Commission, n3, supra, at p.7.

¹⁴ When the Commission submitted its report, we realized that the map was signed only by the Electoral Commissioner. We advised the Commissioners to sign the map to comply with Section 39.

¹⁵ As the Attorney General of Papua New Guinea, at that time, I was requested by the Government to assist the Commission to ensure that all legal requirements were complied with for the Government and Parliament to properly receive and debate the report and recommendations of the Commission.

1. Baniara Open Electorate (Milne Bay)
2. Motu Koitabu Open Electorate (NCD)
3. Baining Open Electorate (East New Britain)
4. Middle Sepik Open Electorate (East Sepik)
5. Mendi Central Open Electorate (Southern Highlands)
6. Anglimp Open Electorate (Jiwaka)

The approval by Parliament of the 2021 EBC Report meant that in the 2022 National Elections, there was a total of 96 Open Electorates and 22 Provincial Electorates. It is also important to note that come 2027, there will be an additional six Open Electorates, bringing the total number of Open Electorates to 102. This figure is within the upper threshold of 120 as provided for under Section 35 of the OLNLGE.

Table 5. *Allocation of Open Electorates by Region*

Region	Open Seats	New Seats	Total
Southern	18	5	23
Highlands	34	4	38
Momase	25	2	27
New Guinea Islands	12	2	14

When we review the figures in Table 5, it is obvious that the Southern and Highlands regions have gained more Open Electorates than the other two regions. In terms of the total number of seats in Parliament, which region has the most seats? Table 6 shows the number of Parliamentary seats by region. Looking at this table, it is clear that the Highlands Region has gained more Provincial and Open Electorates.

Table 6. *Allocation of Parliamentary Seats by Region*

Region	Open Seats	Provincial Seats	New Seats	Total
Southern	18	6	5	29
Highlands	34	7	4	45
Momase	25	4	2	31
New Guinea Islands	12	5	2	19

The EBC highlighted the following reasons for justifying its proposals for the increase in the number of Open Electorates:

- Criteria Q=P/N
The Commission argued that when it applied the Population Quota against the total Population and the Number of electorates, there was a glaring need for the creation of more Open Electorates. The Commission pointed out that since 1977, there has been no additional Open Electorates, even though the population of the country had increased exponentially.
- Population of an Open Electorate is 20% more than or 20% less than the population quota. The Commission argued that according to its calculations, the majority of the Open Electorates in all the regions did not meet the criteria of 20% threshold based on the 89 Open Electorates.
- The boundary of an Open Electorate cut across the boundary of a province
The Commission argued that the 13 proposed Open Electorates did not cut across the boundary of a province
- Density of the population
- Physical features and communication
- Existing electoral boundaries
- Local-level Government and provincial and other administrative areas
- The community and diversity of interest
In terms of the last five conditions, the Commission argued that generally the proposed 13 Open Electorates did meet these requirements.¹⁶

¹⁶ Electoral Boundaries Commission, n3, supra, pp12-18.

Some of the reasons above resonate with the findings of the Distribution Committee of 1967. Apparently, the criteria have not changed much since 1967.

The approval of new Open Electorates by Parliament is clearly spelt out in Section 41 of the OLNLGE. The key features of this provision are:

- The Parliament must consider the report within two months after its presentation to Parliament.
- The Parliament must either:
 - (a) accept the report by a simple majority vote, or
 - (b) reject the report by a two thirds absolute majority vote, or
 - (c) reject the report and refer it back to the Electoral Boundaries Commission.
- The Parliament may even refer the report to the relevant Parliamentary Committee to consider and report back to Parliament.
- After Parliamentary approval, the Minister is required to gazette the new Open Electorates.

Where the Parliament accepts the recommendations of the EBC, the recommendations come into effect immediately. If the Parliament rejects the report of the EBC, that is the end of the matter. However, if the Parliament refers the report to the relevant Parliamentary Committee, the Committee must report back to Parliament within four months on its recommendations. In the event that the Parliament refers the report back to the EBC, it has 40 days to reconsider its report and resubmit a new report to Parliament for consideration.

Parliamentary approval of the 2021 Report of the EBC

Parliament approval

When the Commission submitted its report to the Prime Minister in March 2022, the Prime Minister, as the Minister responsible, was careful to ensure that the report was progressed properly through the Cabinet to Parliament. Also because of the sensitivity of the report, it was resolved by all relevant parties that the report was not leaked to the public.

The Prime Minister presented the report of the EBC to the NEC in April 2022. At the meeting the Prime Minister instructed members of Cabinet to return the report to the NEC Secretariat after the meeting. Immediately after the Cabinet meeting all the copies of the report were collected by the Secretariat.

As per the requirements of the OLNLGE, seven days after the receipt of the Commission's report, the Prime Minister tabled the report in Parliament also in April 2022. After the presentation by the Prime Minister, the Government used its numerical strength to approve the report in full on the same day. This was only the second time in the history of the country since 1975 that the number of Open Electorates were increased by Parliament.

Gazettal

The Parliamentary approval of the EBC's report brought great joy to the Government and the people of PNG. With this decision of Parliament, the government proceeded to prepare the gazettal notice of the new Open Electorates by the Prime Minister. This gazettal notice came out on 7th April 2022. Soon after the gazettal notice, we had to liaise with the Department of Provincial and Local Government Affairs to gazette the Wards and Local-level Governments in the seven new electorates. This notice also came out in the same month (April).

Writs for the Seven Open Electorates

The Writs for the 2022 National Elections were initially set for 20th April 2022. However, with the death of the Deputy Prime Minister, late Hon. Sam Basil, MP for Bulolo, the date for the issues of Writs was deferred by almost a month. Although the deferral was to honour the late Deputy Prime Minister, it also gave the government ample time to ensure that the Electoral Commissioner was able to prepare the Writs for the additional seven Open Electorates. Thus,

when the Writs for the National Elections were issued on 15 of May 2022, the Governor General also signed off on the seven new Open Electorates.

Supreme Court Challenge

There was great joy and excitement when the Parliament approved the additional 13 Open Electorates for the country. The Commission had masterfully and with the full support of the Government, under the leadership of the Prime Minister, Hon. James Marape, MP, created 13 new Open Electorates that appealed to the Members of Parliament. The MPs acknowledged that their regions and provinces were fairly represented in the redistribution of the electorates. This was one of the primary reasons, the Parliament voted overwhelmingly for the Commission's report.

The Opposition, under the leadership of Hon. Belden Namah, MP, took issue with the Commission's report and lodged an application in the Supreme Court challenging the constitutionality of the decision of Parliament. Mr. Namah filed the application in early April 2022 and attempted to obtain an interim injunction to stop the issue of Writs for the seven new Open Electorates.

When the State was served with the copies of the Supreme Court application, our legal team quickly met and developed a strategy to oppose the application by Namah. On the first hearing of the matter in April 2022, the State through the Office of the Solicitor General, successfully sought an adjournment to mid April 2022.

When the case was listed and heard on 21 April 2022, the government's legal team advised the Supreme Court that the Writs for the seven Open Electorates had been issued on 20th April, 2022, so there was no utility in the proceedings. Mr. Namah agreed with the government lawyers' submissions and withdrew the matter.¹⁷ The cessation of the case meant that the 13 new Open Electorates were safe.

Conclusion

The successful presentation and approval of the 2021 Report of the EBC, was an excellent learning experience for all those who were involved in the process. Those in the public service and Parliament who were involved in the 1976 EBC report were not available to provide guidance to the new crop of Papua New Guineans who took carriage of the process.

It was imperative that those of us who were involved in the process worked collaboratively to ensure that we could develop and maintain the institutional memory to support the work of future Electoral Boundaries Commissions. This paper, is my small contribution to that end.

¹⁷ We are unable to provide the case file number because the matter was dealt with at the interlocutory stage so the case is unpublished.