FRIDAY 20TH NOVEMBER 2009

The Deputy Speaker, Hon. Kengava took the Chair at 11.31 am.

Prayers.

ATTENDANCE

At prayers, all were present with the exception of the Deputy Prime Minister and Minister for Rural Development & Indigenous Affairs and the Ministers for Justice & Legal Affairs; Communications & Civil Aviation; Agriculture & Livestock Development; Provincial Government & Institutional Strengthening; Forestry; Police, National Security & Correctional Services and the Members for Mbaegu/Asifola, Temotu Pele, Temotu Nende, East Makira, East Choiseul and North Guadalcanal.

SPEAKER'S ANNOUNCEMENT

Mr Speaker: Hon. Members, you would have noticed on Order Paper that the chairman of the Constitutional Review Committee was to table this report this morning. This will now take place on Monday due to the Committee's decision. Thank you.

PRESENTATION OF PAPERS AND OF REPORTS

- Essential Services Act, Cap 12, Essential Services Regulations 2009.

STATEMENT OF GOVERNMENT BUSINESS

Bills - Second Reading

The Constitutional (Political Parties Amendment) Bill 2009

Hon SIKUA: Mr. Speaker, I am most honored to be given this opportunity to move before this House of Honourable and Distinguished Members of Parliament a motion that the Constitution (Political Parties Amendment) Bill 2009 (No. 24 of 2009) be now read the Second time. This opportunity would not have come true had it not been for the exhausting effort, support and

cooperation rendered by many people, whom I will specifically acknowledge towards the end of my speech. At this juncture, however, may I thank you, Mr. Speaker, for accepting and endorsing this very significant Bill.

In moving this motion, this Parliament is being asked to consider, at this second reading stage, the principles of the Bill by way of a debate. To lay the basis for a sound debate, I am duty bound to state the policy reasons and justifications for presenting the Bill to this Honourable House. May I, therefore, beg the patience of this Honourable House to bear with me whilst I provide the policy reasons and justifications.

I present this Bill to this House in the name and for the sake of the people of this nation; those who have gone, those now living and those to come after we have all gone. Our people, whom we represent, will listen to hear you call the name of their representatives assembled here, one by one, to cast their respective votes on this Bill.

Firstly, on the support of this Bill, our people have spoken. This Bill before you is the testimony of the people of this nation calling for a sound political system that provides for more stable political climate in this nation. The people of this nation have spoken in the form of this Bill and so have specifically asked their respective representatives assembled here to approve and pass this Bill, and of course the accompanying Bill, namely the Political Parties (Registration and Administration) Bill 2009. They have spoken in support of the CNURA Government policy on political reforms.

This 8th Parliament will be remembered for listening to the call of its people for a more transparent and stable political climate; and so I urge all honourable colleagues to debate responsibly and constructively in support of this Bill, and of course to vote in support of the Bill.

The people have been consulted and spoken at public forums, meetings organized and convened by the Working Committee. The public meetings were held in Honiara, Tulagi, Buala, Taro, Gizo, Kirakira and Auki. The members of the Renbel executive were consulted whilst they were in Honiara. For those who were unable to attend the public meetings held at the provincial towns mentioned, there were live talk-back shows carried on air by SIBC and on a FM station.

There were two workshops held in Honiara in 2008, and two study visits were made to Port Moresby during which members of the Working Committee and two members of the Opposition studied the PNG OLIPPAC law. Let me make it clear from the outset, that our two Bills are specially designed to meet our own circumstances, and are not mere copies of the PNG OLLIPAC law. Although some concepts are similar, the provisions in the two Bills are not same

or similar. May you, therefore, not make any misleading assumptions that our Bills are same as the PNG law.

The people's representatives assembled here were also consulted on two occasions. Firstly, when the White Paper was presented and debated by this House in 2008. Secondly, when a technical workshop conducted by Professor Don Patterson of the USP law School was conducted within the chamber of this Honourable House this year. In all consultations, the overwhelming public call was for this Bill to be presented to this Parliament, and be debated and passed at this meeting.

Sir, the various consultations were quite useful because the Working Committee gathered from those consultations very constructive proposals for improvement of the Bill. The Bill has incorporated a number of submissions and constructive proposals from members of public and eminent nationals after thorough and careful consideration by the Working Committee, the Caucus and the Cabinet. The Bill presented to this House is a balanced Bill which does not tilt heavily to any one side, but rather takes the middle ground to ensure a good balance approach in achieving a more stable political system.

As we all know, after endorsing the White paper in March 2009, we could not table this Bill in the July and September sitting of Parliament, as originally envisaged, because of the need for further consultations. My Government in the meantime has had to bring in a constitutional expert to carry out further consultations with the public, including two days seminar organised for Members of Parliament. At the conclusion of all those consultations, the Cabinet felt that all possible technical issues had been exhausted with the Constitutional expert. We were also confident that there was genuine popular support from the general public, not only in Honiara, but throughout the Provinces for these political reforms.

Sir, I have heard the call of a few critics to delay the Bill or to alter certain parts of this Bill, including those from the legal fraternity. This Bill cannot be delayed any further, the people have spoken, and so I must listen to the voice of the majority, and not a few critics, who have taken the luxury to wait all these time until the 11th hour before springing up with their views, as if they were waiting to ambush the Bill on its way to passage.

We have come a long way since early 2008, when I made public my Government's intention to bring about political stability through legislative reform. This task has been challenging both in managing the technicalities and the politics of it. That, said, however, I will still respond to those few critics in the course of this speech.

On CNURA policy, you would recall, Mr Speaker, in my major policy address delivered on the occasion of the launch of the CNURA Statement of Policy on 18th January 2008, I said that political stability was (and is) essential to stable society building. On that occasion, I assured the nation that the CNURA Government would enact a legislation aimed at introducing political stability measures. This Bill and the accompanying Bill, i.e the *Political Parties (Registration and Administration) Bill 2009* are the very legislations I promised the people of this nation. In the White Paper, I prefaced that if the CNURA Government was to leave a legacy for this nation's political history, it was political reform for political stability that I desired.

My Government endorsed the tabling of this *Constitution (Political Parties Amendment) Bill 2009*, to address factors which my Government and the people see as causing political instability, and to create an enabling environment for the enactment of the *Political Parties (Administration and Registration) Bill 2009*, aimed at strengthening political parties in SI.

This Bill and the *Political Parties (Administration and Registration) Bill 2009* have been discussed and filtered at length over many days and nights in Cabinet and Caucus. We noted and acknowledged some individual preferences but it is the common good and interests that must prevail. It is significant for you to note now that the two driving considerations under the CNURA political reform package are: *to achieve political stability and to reduce political corruption*.

We recognise that one way of achieving political stability is by strengthening the party system as the basis for political governance in our country. The party system works well with West Minister system of government that we inherited, because on the floor of parliament, it is collective position that is needed to make laws and formulate policies.

To achieve collective position and coherence in political governance, we need to work from a strong basis, at the party level rather than spending valuable time chasing individual MPS to secure collective positions. To this end this Bill forms the basis for strengthening party politics by facilitating the enactment of the law that aims to strengthen party system in SI, i.e *the Political Parties (registration And Administration) Bill*.

The ordinary people are urging us to stop grass-hopper politics by outlawing grass-hopping, and concentrate on delivery of goods and services. We must agree to that for we, ourselves, have witnessed that grass hopping is a factor that infests instability. Instability undermines effective governments and proper planning for building a stable nation. Without stability we cannot have proper planning and good policies. Without proper planning and good policies we cannot have long term national development plans. As a result we will have

no campus with which to steer the direction for long term economic prosperity of this nation.

The political reforms introduced by CNURA, by way this Bill and the *Political Parties (Registration and Administration) Bill 2009*, are indeed political engineering for purposes of achieving political stability and reduced political corruption. I do note that a few critics appear not to favour political engineering but rather prefer to wait and observe how politics and parties evolve in Solomon Islands.

Our people cannot continue to suffer whilst political party evolves over the next century. This country has been producing crafty politicians with difficult behaviours which, if not forced to change by legislative measures, will become too complex to deal with in future. Hence, political engineering must occur in our country. It is better that political evolution occurs within a legislative framework than to evolve within unbounded political sphere.

Sir, it is significant for you to note that in other commonwealth countries, their systems for formation of Government is very much entrenched in their traditions or conventions, and they need not codify those in law because they know very well how to conduct themselves even without written laws. As an example, in Australia, the name of Prime Minister does not appear in their Constitution, yet they have a Prime Minister. In contrast, corruption thrives easily and fast in our country where there is no written law. Thus, natural political party evolution is not suitable for us.

I wish now to delve into and enlighten you on the policy reasons underlying the provisions of the Bill. I will leave specific textual examination of the clauses until we come to the Committee of the Whole House.

The fundamental underlying objective of this whole political reform exercise, and hence the Bills, is to achieve political stability and to reduce political corruption. These could also be found in the Objects and Reasons of this Constitutional Amendment Bill.

An important feature of the Bill is that it ensures that the reforms as depicted in the Political Parties (Registration and Administration) Bill 2009, does not breach our National Constitution. To that extent Clauses 2, 3, 4 and 5 of this constitutional amendment bill provide exceptions to the fundamental human rights provisions enshrined in our Constitution. This is to ensure that we do not violate the relevant fundamental human rights and freedoms of individuals under the Constitution.

Clause 2 amends section 11 of the Constitution which deals with freedom of conscience. Clause 3 amends section 12 of the Constitution which deals with freedom of expression. Clause 4 amends section 13 of the Constitution which

deals with freedom of assembly and association. Clause 5 amends section 15 of the Constitution which deals with protection against discrimination.

The exceptions provided by way of these proposed amendments are to provide for the following circumstances:

(i) formation of political parties;
(ii) operation of political parties;
(iii) conduct of members of political parties in relation to elections;
(iv) conduct of members of political parties in relation to parliamentary proceedings;
(v) conduct of persons in relation to elections;
(vi) conduct of persons in relation to parliamentary proceedings.

When this Bill has been passed, the Parliament can then make laws which can affect the fundamental rights and freedoms of MPs or individuals to the extent permitted by the constitution amendment.

Let it be known that the Constitution sets the standard principles and rules only. The Constitution does not set out in detail the specific schemes that are best left for detail enactment by an Act of Parliament. In this Bill, CNURA is proposing that the fundamental rights and freedoms be relaxed so that Parliament can make laws which may have the potential of affecting a person's right to form a party, right of independent MPs, right of non-citizens, etc. If there is a mismatch between this constitution amendment Bill and the P*olitical Parties (Registration and Administration) Bill*, it is the latter that must be made to meet the standard principles and rules set out in the Constitution. We will know this and ask this kind of question when we come to the Political Party Bill.

Another important feature of this Bill is that it proposes a new and improved process for the election or appointment of Prime Minister and formation of governments after general elections. This replaces or improves on the current system of election of a Prime Minister through secret ballot. Clause 6 of the Bill amends Section 33 of our Constitution to achieve this.

Allow me to describe the proposed system for appointment and election of Prime Minister and formation of a government as prescribed in the Bill. We are all aware, that our nation has experienced a lot of horse trading, intense political lobbying, hotel camp movements and the intrusion of external powerful forces into the process of election of the Prime Minister and formation of governments. Our experience has shown that this process is susceptible to political corruption.

In 2006, we witnessed serious rioting in Honiara after two weeks of political wrangling. In the April 2006 Riot Enquiry Report, the people of this country called on their political leaders to make the necessary political reform to improve on the accountability and transparency of the process for election of the Prime Minister and strengthen political stability through necessary political reforms.

Consequently four methods have been proposed for the election or appointment of the Prime Minister under the new process for election or appointment of Prime Minister in Schedule 2 of this Bill. Common to all four methods is the emphasis that in forming government, greater recognition and responsibility is given to parties rather individual Members of Parliament.

The Method 1 in Schedule 2 of the Bill allows the political party with absolute majority after an election to form government. The provision recognises that a party with absolute majority has a clear mandate from the people, and therefore, that clear mandate must not be interfered with by another process of election on the floor of parliament.

The Method 2 in Schedule 2 gives the party with the highest number of seats, but has no absolute majority, in parliament to form coalition with other parties and if such coalition can reach the required absolute majority to rule, then a government can be formed there and then. This method recognises that although the party with the highest number does not have absolute majority, it nonetheless has a sizeable mandate from the people. Such a party with the highest number should, therefore, be given the privilege to form a coalition government, if and when there is no government with absolute majority.

This provision is significant also for development of big political parties, and to avoid a group of independent members from taking advantage of the situation to form a coalition government with small parties. In designing this method 2, it was realised that parties with lesser number of members may group together and form alliance with independent members to sabotage the opportunity given to the party with highest number by playing a **"waiting game"**. To counter such possible moves, the method 2 is designed to give this opportunity of forming government to party with the highest number only, and not a coalition or a party with the next highest number.

Also to counter such "waiting game", the party with the highest number is allowed to invite independent MPs if and when smaller parties decline or refuse to form a coalition with the party that has the highest number. However, this privilege is given to the independent members as a last resort only in circumstances when and if smaller parties do not wish to form coalition with the party who has the highest number.

Let me repeat to make it clear to all that the right to nominate a prime minister or to form government, under method 2, belongs to the party with the highest number of seats only; hence parties with lesser seats or a group of independents cannot consolidate to form a government under this method 2. This is an improvement from the current practice where independent members can sell themselves to different groups for the highest price. That will now be reduced because the party to form government will be clearly known, and so independent MPs will not go out in the dawn or dusk hunting for parties to make a competitive bid. The *Political Party (Registration and Administration) Bill* has the necessary process for determining party with the highest numbers. These are:

(a) The requirement for parties to lodge with the Integrity Commission and the Electoral Commission the parties' list of candidates and consent forms prior to a general election.

(b) The requirement for the Integrity Commission, on the advice of the Electoral Commission, to inform the Speaker of the names of the parties that return candidates at that general election.

This is how far the law can go. If independents are willing to accept bribe and corrupt means to secure leadership in government, then that really goes to individual integrity of persons wanting to lead our country. Furthermore if indeed independents engage in corrupt means then other corruption reforms by the CNURA government or existing laws will deal with that. For instance section 94 of the Constitution will be violated and the Leadership Code Commission will deal with independent members engaging in such demeaning activities such as bribery. Under this Bill the spirit promoted is for elected leaders to behave with integrity. And if leaders are bent on selling themselves as assumed by some people, then they need to think again, because the law will catch up on them under the various corruption reforms undertaken by CNURA government or exiting laws. They need to realize that the people of this nation are tired of corruption. The new generation will not tolerate it and the fight against corruption will be everybody's business.

Method 3 in Schedule 2 recognizes that if there is no party with absolute majority, and failing a party with highest number, a formidable and genuine coalesced party must be encouraged to form the government. After all, on many occasions, executive governments in this country are coalition governments.

This nation has witnessed very fragile and fluid coalitions of parties and individuals. To counter such fragility and fluidity, the Bill requires that a coalition must be a coalition of parties (not individuals) formed *"under a coalition agreement made before the general election"*. The Bill also requires that the coalition must be formed under any law regulating political parties. This, thus, brings in the application of the provisions of the *Political Parties (Registration and Administration) Bill 2009*.

By requiring that coalitions must be formed before the election, we will be avoiding the practice of signing MOUs in hotels which were often violated just a few hours after signing. Further, a coalition formed under an agreement before election gives the voters fair opportunity of also deciding upon a coalition of parties. The current system deprives the voters of deciding upon the policies and suitability of a coalition government. Thus, this method ensures that people can participate directly in the formation of a coalition government before the elections.

The final method, Method 4 in Schedule 2 is that failing methods 1, 2 and 3, which I have just gone through, we need a fall back mechanism to use until such time when methods 1, 2 and 3 will become known and familiar to the voters and politicians. Method 4, the fallback mechanism is the current system and is the final resort. This is where coalition of parties after election can come into play as well as independents. But again this is a final resort. We hope in the long term that a government should be formed under Methods 1 to 3 that I have just described that when parties are strong and smart to form governments under Methods 1 to 3 above.

Having looked at the four (4) methods of forming a government, let me dispel an argument that a prime minister must be elected on the floor of Parliament. Not all countries who adopt the Westminster system, and have representative governments, elect their prime ministers on the floor of Parliament. I can give you a lot of examples on this. The first example I want to give you is Australia where the Prime Minister is appointed by the GG, and the second example is that of New Zealand where the Prime Minister is also appointed by the Governor General.

Another new invention featured in this Bill is the provision in Clause 8 which allows for replacement of a Prime Minister without changing the ruling government. The Clause 8 introduces the new section 34A into our Constitution. The current constitutional provision on vote of no confidence still remains, but as you are all aware, the office of all ministers becomes vacant if a resolution of no confidence in the Prime Minister is passed. This is the constitutional law at moment.

The new provision in the Bill recognises that sometimes it may warrant removal of the Prime Minister only and that, for the sake of stability purposes and for continuity of government programs, the whole government should not be disturbed. The clear case in point is the situation which the GCCG found itself, which eventually led to its fragmentation and collapse.

For those apprehensive about the PNG OLLIPAC law, let it be made clear to you that our invented section 34A will make us different from PNG because in our proposal a Prime Minister can be replaced by the reigning government. There are, however, certain control mechanisms put in place to ensure that this newly invented section 34A is not abused. There is, therefore, a good balance.

In clause 10 of the Bill is a new provision for the appointment of Parliamentary Secretaries. I note that during the technical workshop conducted by Prof. Don Patterson, the Leader of Opposition did express that this is a provision they supported.

The notion of parliamentary secretaries is not new in commonwealth countries. The CNURA Government adopts this notion and incorporates it into our constitution because of the obvious need for greater engagement and utilisation of MPs in parliamentary duties. In other jurisdictions, junior MPs are groomed to become Ministers through the process of parliamentary secretaries. The provision can also be utilised to appoint MPs as assistants to Ministers in large Ministries. The allowable number of parliamentary secretaries will be prescribed and their functions will be as set out in the appointment instrument.

Clause 11 of the Bill amends Section 50 of our Constitution. There are two provisions invented for discouraging individual MPs from causing rupture in a party, the executive government or opposition which could result in the collapse of an executive government or the opposition group.

(a) Firstly, section 50 will now have an additional ground for an MP to vacate his/her seat if he/she resigns from his/her political party;

(b) Secondly, section 50 will now have a provision for dealing with an MP who is removed by his/her party. A member removed by his/her party will be deemed to be an independent member, but shall not be given any assignment or responsibility in Government.

It is to be noted however that a political party can act collectively to cross the floor after exhausting negotiation, dialogue and consultation mechanism laid down in the Political Party (Registration and Administration) Act.

Clause 12 of the Bill deletes section 66 of the Constitution, and re-enacts a new section 66. In the process of doing so, the provision which recognises the Independent Group and allows for appointment of a Leader of the Independent Members will now be abolished.

There is a common consensus throughout that Independent Members have been easy targets for certain political-financial investors, whose interests are nothing more than their own business interests. The public is very suspicious, and there is some truth in some of those suspicions, that political grass hoping is facilitated by political corruption as politicians are bought with money to jump from camp to camp.

This group is seen as holding the balance of power dictating the removal of governments. There is, therefore, a common consensus that one of the factors of political instability is the Independent group in parliament, hence, the justification for its abolition.

The Bill, however, does not prohibit independent members standing as an individuals. This preservation is, however, made with some control or proscriptive measures which will act as disincentives to independent members. As an example of such disincentives, you will note that in the new Schedule 2 of the Constitution, the methods 1 and 3 prohibit outright independent MPs from being counted in determining absolute majority of a single party or that of a coalition. In method 2, the party with the highest number will seek out independent members only as a last resort in circumstance where smaller parties are not willing to form coalition with the party with the highest number.

The *Political Parties (Registration and Administration) Bill 2009* will show other disincentives as well. This accompanying Bill, however, has a provision which allows for independent members to join political parties. It is significant for us to appreciate that under the political party Bill, an independent member can join a party only once, not twice or thrice. These are stability measures, and not contradictions as a few critics seem to argue.

Clause 12 of the Bill also provides measures proposed for the strengthening of the Opposition Group in Parliament. These measures are:

(a) The creation of the office of Deputy Leader of Opposition.
(b) A clear process for appointment and removal of a Leader and Deputy Leader of Opposition;
(c) The granting of constitutional power and authority to the Leader to assign responsibilities to MPs in the Opposition.

These measures recognize that the Opposition Group is a vital organ in Parliamentary democracy, and so must be strengthened so that it can be effective in its duty in checking on the functioning of the executive government; and also so that it can be ready at all times to offer an alternative government in the eventually of a sudden change of government.

The provision which allows for the Leader of Opposition to assign responsibilities corresponding to any government portfolios to members of the opposition effectively means that the Parliamentary Entitlements Commission will now be able to determine remuneration package for MPs performing assigned responsibilities in the Opposition. This measure will also serve to achieve stability because one of the reasons for MPS to cross the floor from the Opposition side is less incentives to remain on the Opposition side of the house.

Clause 14 of the Bill establishes the Political Parties Integrity Commission as the power house for the registration and administration of political parties. The Commission will then have powers and functions to facilitate the registration and administration of political parties under the *Political Parties (Registration and Administration) Bill 2009*.

Before I conclude my speech, may I point out in summary that it is incorrect and misleading that the Bills will entrench an unpopular government, and in this case the case of PNG has been used as an example. May I repeat that our laws are not "copy and paste" of the PNG OLLIPAC law. In this regard, I am obliged to briefly point out that an unpopular government can be ousted in our laws by using the following legislative provisions:

(i) The Motion of No Confidence (MNC) provision under Section 34 of our Constitution is not affected by this Bill.

(ii) The Motion for Replacement Prime Minister under section 34A is available for removal of PM without changing Govt.

(iii) Section 38 (3)(a) of the Political Parties (Registration and Administration) Bill allows a party to move, as collective group, to the opposition and remove a government through the MNC provision under Section 34 referred above.

(iv) There is no restriction on MNC such as grace periods that we see in countries like Papua New Guinea.

May I now thank all those who have worked tirelessly and taken time to contribute to the making of this Bill and Political Parties (Registration and Administration) Bill. In particular, I am thinking of our good people throughout the country and overseas, Premiers and Provincial Governments, senior citizens

and statesmen and women, professionals, Professor Don Patterson, Professor Benjamin Reilly, members of the Working Committee, members of the Caucus, members of the Cabinet, colleague MPs in the Opposition and Independent Group, Constitution Review Committee and the staff of this Parliament, public officers and the staff of the Attorney General's Chambers for all the good work and support they have rendered throughout.

Mr. Speaker, with these remarks, I move that the Constitution (Political Parties Amendment) Bill 2009 (No. 24 of 2009) be now read the Second time. With these remarks, I beg to move and I now resume my seat.

Mr **Speaker:** Honorable Members, I have been advised that the Honorable Prime Minister wishes to allow more time for Members to read their upcoming constitutional review committee's report on the Constitution Political Parties Amendment Bill 2009 in order to prepare for the second reading debate. As such, I now call on the Hon. Prime Minister to take the necessary step.

Hon. Sikua: Mr. Speaker, I move that the debate on the Constitution Political Parties (Amendment) Bill 2009 be now adjourns until the next sitting day.

Debate on the Bill adjourned until the next sitting day

Hon Sikua: I beg to move that the House do now adjourn.

The House adjourned at 12.39 pm