

**Joint Review  
of  
Bougainville's Autonomy Arrangements  
by  
Government of Papua New Guinea  
and the  
Autonomous Government of Bougainville**

**Joint Report by both governments to the  
Bougainville House of Representatives and the  
National Parliament of Papua New Guinea pursuant  
to the *National Constitution* Section 337(1)(a)**

**26 October 2013**

Endorsed by Joint Supervisory Body on 18 October 2013 at Kokopo,  
East New Britain Province and the Referendum Committee 26 October  
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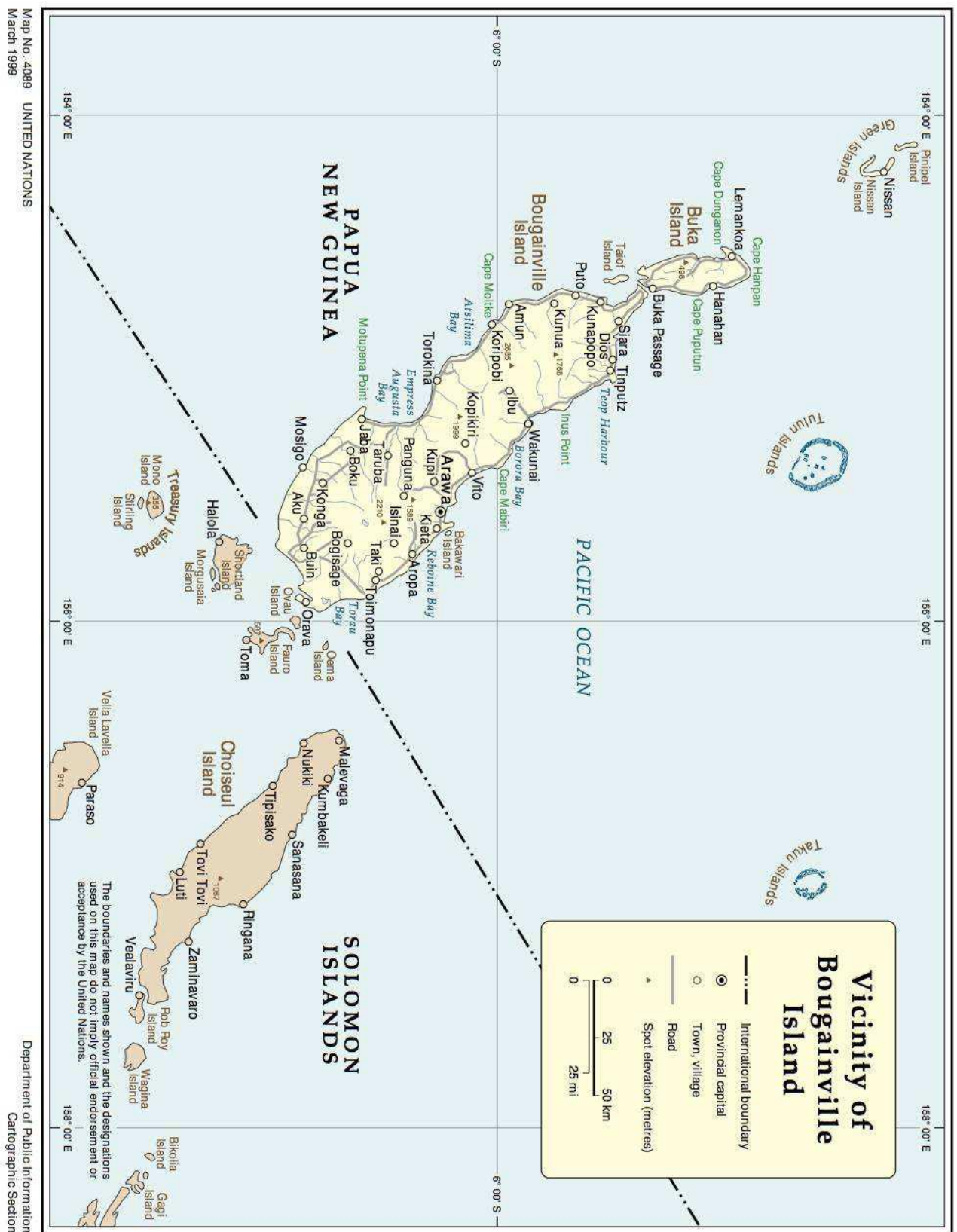
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## Acronyms

ABG	Autonomous Bougainville Government
ARB	Autonomous Region of Bougainville
BCL	Bougainville Copper Limited
BEC	Bougainville Executive Council
Bougainville	Autonomous Region of Bougainville
Bougainville Constitution	Constitution of the Autonomous Region of Bougainville 2004. Certified on: 21/12/2004. (An Act of the Parliament of the Independent State of Papua New Guinea.)
Company Tax	Tax on the profits of companies whose principal place of business or where the main business activity is in Bougainville. (Company tax is a PNG national tax which continues to apply in Bougainville)
GST	Goods and Services Tax (a PNG national tax which continues to apply in Bougainville – it was previously known as the VAT or Value Added Tax)
Independent Experts	The individuals appointed to conduct the separate expert reviews of specific subject matter under Section 337(2) of the Papua New Guinea Constitution
IRC	Papua New Guinea Internal Revenue Commission
KRA	Key Result Area
MoU	Memorandum of Understanding
National Government	Government of the Independent State of Papua New Guinea
NCOPA	National Coordinating Office for Bougainville Affairs
<i>Organic Law</i>	<i>Organic Law on Peace -Building in Bougainville-Autonomous Bougainville Government and Bougainville Referendum 2002</i>
<i>Papua New Guinea Constitution</i>	<i>Constitution of the Independent State of Papua New Guinea</i>
<i>Peace Agreement</i>	<i>Bougainville Peace Agreement</i> signed at Arawa on 30 August 2001 and published in National Gazette No. G.146 of 16 November 2001
PGAS	Provincial Government Accounting System
PNG	Independent State of Papua New Guinea
Region	Autonomous Region of Bougainville
RPNGC	Royal Papua New Guinea Constabulary
SML	Special Mining Lease





## Foreword

This is a joint review by both governments of Bougainville's autonomy arrangements as required under the constitutional laws. The review was due in 2010. It was not initiated until 2013.

This report, the Review, is the joint report of both governments. It is informed by six separate reports prepared by independent experts appointed by both governments. Their reports are contained in a supplementary volume. The views expressed in those reports are the views and opinions of those experts and they do not necessarily represent the views of either or both governments.

Both governments have decided to be forward looking and practical in accepting this joint report. Establishing Bougainville's autonomy is a new journey for all parties to the *Bougainville Peace Agreement*. It was to be expected that there would be blockages, stumbles and some disagreements. Nonetheless, considerable progress has been made since the signing of the *Peace Agreement*.

The Review sets us on a joint path to remedy some of the major weaknesses while at the same time preparing for the Referendum which is due in the period May 2015 to May 2020.

The Review contains Joint Resolutions – actions by both governments at the JSB held at Kokopo on 18 October 2013 and refined at the Referendum Committee 26 October 2013. The governments will agree an implementation plan against which we will monitor progress and report to the JSB, and the respective parliaments.

The Review contains a significant level of background material. The Review will be read by people who may not have access to essential information about Bougainville. We hope that this information will contribute to greater understanding of the broader context for the Joint Resolutions.

As required by the constitutional laws the Review will be tabled in both parliaments through the National Executive Council and the Bougainville Executive Council respectively.

Chief Secretary  
Sir Manasupe Z. Zurenouc Kt., OBE

Acting Chief Administrator  
Chris Siriosi

## Joint Resolutions

### JOINT REVIEW OF BOUGAINVILLE'S AUTONOMY ARRANGEMENTS BY THE GOVERNMENT OF PAPUA NEW GUINEA AND THE AUTONOMOUS GOVERNMENT OF BOUGAINVILLE

#### AS ENDORSED BY THE REFERENDUM COMMITTEE OF THE JOINT SUPERVISORY BODY

AT KOKOPO, ENB, SATURDAY 26 OCTOBER 2013

After reviewing the Draft Joint Review of Bougainville's Autonomy Arrangements, and as authorised by the JSB on Friday 18 October 2013 at Kokopo, East New Britain, the Referendum Committee endorsed the *following* Joint Resolutions and instructed officials from both governments to prepare an Implementation Matrix for consideration and approval.

The Referendum Committee directed that these Joint Resolution be referred immediately to the respective Cabinets for endorsement and tabling in the respective Parliaments with the Joint Review and the Reports of the Independent experts as provided under Section 337 of the *Papua New Guinea Constitution*.

#### ***Planning for 2015 Autonomy Review***

- 1.1 Joint planning for the next review of the autonomy arrangements will commence in late 2014 with the review to be conducted in the first quarter of 2015.

#### ***Review of Bougainville Constitution***

- 2.1 The *Bougainville Constitution* will be reviewed by the ABG in 2014.
- 2.2 The recommendations from the constitutional review will be made available to the independent experts who conduct the analysis that contributes to the 2015 joint review by the National Government and ABG of Bougainville's autonomy arrangements.

#### ***Greater awareness of Bougainville's vision and autonomy***

- 3.1 The ABG needs to articulate in a brief accessible document the kind of society Bougainville desires to be in the long term (not just political independence) and formulate a long term higher level strategic vision and plan for realizing the espoused vision based around the aspirations of the *Bougainville Peace Agreement* and the people. All other planning and service delivery functions should take their cues and direction from the strategic vision.
- 3.2 The Bougainville Awareness Framework will be the basis for a comprehensive (region-wide, multimedia and direct face-to-face dialogue) awareness campaign be undertaken to inform the people and leaders of the strategic vision, the meaning of autonomy, how it is being implemented and its benefits, and the context and process for the impending referendum.
- 3.3 The ABG will take responsibility, with the National Government, for initiating a regular series of briefings with local and key national political and public service leaders to seek to significantly increase their awareness and understanding of Bougainville's vision and entitlements.

### ***Draw down of functions and powers to be consolidated***

- 4.1 The governments will:
- a. jointly review the current Framework for the Draw Down of Functions and Powers;
  - b. jointly take stock of and review the progress of the draw-down of functions and powers by all sectors operating in Bougainville. In 2014 the focus will be on completing and consolidating the transfer of the functions listed in Table 2 of the Joint Review;
  - c. provide guidance to ensure that all future requests for the draw down of powers and functions, commencing with environment and health, comply with Sections 3 and 4 of the *Organic Law* and where applicable Section 43 of the *Bougainville Constitution*.
- 4.2 The drawdown of powers and functions process will be coordinated by the Chief Secretary and Chief Administrator respectively to expedite the evolutionary and smooth drawdown of functions and powers through the preparation of legislation for consideration by the Bougainville House of Representatives.
- 4.3 Greater attention will be given to calculating, negotiating and agreeing the on-going funding arrangements for each function and power to be drawn down by the ABG according to the provisions of the *Organic Law*.
- 4.4 The governments will work together to seek additional expert resources (including from development partners) to strengthen the ABG to manage the orderly draw down of powers and functions, and their subsequent implementation, particularly to contribute to analysis and policy development in legal, staffing, planning, financial and organisational aspects.

### ***Social and Economic Development***

- 5.1 Law and order – that priority be given to strengthening law and order (weapons, police and community justice) and resolving key existing conflicts that continue to hinder return to normalcy, peace and development in parts of Bougainville (e.g. Konnou and Siuwai crises).
- 5.2 Economy – a broad based and integrated economic strategy be designed and implemented that would include:
- a. high impact projects, down-stream processing of coca and copra and small to medium enterprises; and
  - b. Support be extended to strengthening economic institutions for growth of private enterprise. A specific initiative in exploration of impact projects needs to be investigated with a view to creating much needed employment.
- 5.3 Infrastructure investments be coordinated through the Joint Project Management Unit such that all of the Region is connected via transportation and communications links in the shortest possible time.
- 5.4 Education and Health –ABG continue to expand the delivery of education and health services, especially to inland areas of North, Central and South Bougainville and at the same time orientate education and health service delivery to be in line with the strategic visioning above. Specific attention will be given to:
- a. Lost generation – that Education Division (in collaboration with relevant divisions such as Community Development, Veterans Affairs, development partners and NGOs) design and implement a specific education program targeting the lost generation.

- b. Certification and Accreditation of artisans – that ABG through a relevant division, design and implement a Trade Testing, Certification and Accreditation program for skilled village artisans in anticipation for the vocational employment when mining and other economic opportunities commence.
  - c. Opportunities for the provision of vocational and technical education must be explored as a matter of urgency with reforms to entry requirements into vocational and technical schools to be started.
- 5.5 Strategy for Less Developed Areas – all three regions in Bougainville have pockets of isolated communities facing severe under-development. Examples include Visai in the Buin district, Rataiku in Siuwai district; Marau in Bana; Torokina; Kunua; Rotokas; and West Coast of Buka. The ABG will formulate a strategy for progressively linking and opening up these areas to social and economic development.
- 5.6 The governments will contribute to the immediate expansion of the reach of radio throughout the Region by ensuring current projects are implemented expeditiously.

### **Grants**

- 4.5 The governments agree to discuss and negotiate a solution to the payment of outstanding Restoration and Development Grant calculated according to law and to ensure that it is then properly calculated, appropriated and paid annually to the ABG in a timely manner.
- 4.6 The ABG will prepare detailed budget submissions for each new function and power delegated or transferred to the ABG detailing staffing and goods and services budgetary requirements for the first and subsequent three years of implementation in Bougainville of that function or power. These submissions will be endorsed by the BEC, and where required by the Bougainville Constitution, the House of Representatives.

### **Audit Functions in Bougainville**

- 7.1 The ABG will establish an internal audit function within the Administration before 1 January 2015 to be funded under the Recurrent Grant arrangements.
- 7.2 The PNG Auditor General will establish an office in Buka before 31 March 2014 with ABG assistance for housing and office space.

### **ABG Budget**

- 8.1 The ABG will, with National Government assistance, seek to develop and implement a four-year rolling program budget for development and recurrent expenditure with the intention of giving greater certainty to the planning, budgeting and financing of all government plans and service delivery activities. This will be closely linked to the estimates prepared under Joint Resolution 4.3 (Budgets for powers and functions to be drawn down.)
- 8.2 The ABG will seek to capture in PGAS greater detail on the geographical spend for all development activities.
- 8.3 The ABG will seek partner support to undertake detailed annual expenditure analysis to contribute to the development of future budgets and assist in the prioritisation of expenditure for service delivery and enhancing autonomy.
- 8.4 The ABG will work with all development partners to seek to have their contributions recorded in the ABG annual budget.

### **Medium term economic and fiscal analysis**

- 9.1 The ABG will commission expert assistance to undertake economic and financial analysis on the cost of various options to implement the BEC's vision for Bougainville taking into account various development scenarios over the next five to ten years.

### **Financial Reporting and Capacity Improvements**

- 10.1 The ABG will significantly improve the level of reporting on financial matters and projects to the BEC, individual ministers, the Bougainville House of Representatives, the National Government, development partners and the community.
- 10.2 The ABG will develop and then implement a comprehensive capacity development strategy to build the competencies and capabilities of the new ABG Finance and Treasury Department from January 2014.

### **Taxation**

- 11.1 The ABG will host a Taxation and Revenue Summit in early 2014 to educate the political leadership and the public service of both governments about the tax and revenue arrangements and issues available to Bougainville under the existing *Organic Law*. Its objective will be (a) to achieve a consensus on a broad strategy, and priorities, to secure improved efficiency and effectiveness in administering the taxation and other revenue entitlements and (b) to contribute to future revenue policy development being properly informed particularly when it seeks to improve the ABG's ability to achieve the fiscal objectives of the *Peace Agreement*.
- 11.2 Based upon the outcome of the Revenue Summit ABG will review its Office of the Chief Bougainville Collector of Taxes to assess future staffing and capacity needs.
- 11.3 The ABG will activate arrangements to establish the audit function provided in the *Organic Law* to monitor the collection of revenues by the IRC.
- 11.4 The IRC will be provided with additional resources in Port Moresby, the regional office and in Buka to undertake its role including an increased awareness program across the region.

### **Public Administration**

- 12.1 An immediate joint review be carried out on NCOBA to determine its continued relevance and its future roles and responsibilities. The ABG and the National Government should give serious consideration setting up the ABG to manage coordination with the National Government on its own with current NCOBA resources shared between an ABG representative office and the ministry.
- 12.2 The ABG with the assistance of the National Government will take immediate steps to put in place a weapons disposal plan and set a concrete time to implement weapons disposal prior to 2015. It then should move quickly to implement this plan.
- 12.3 The ABG take immediate steps to put in place a peace and reconciliation plan and that this plan be immediately implemented before 2015.
- 12.4 The new structure and operations of the Bougainville Public Service will strengthen and enhance reporting and accountability arrangements including enhancing the roles of ministers and the BEC in setting policy and monitoring the performance of the Administration.
- 12.5 The ABG will develop and implement a capacity building programme, based around the *White Paper on Councils of Elders* to resuscitate the capacity of Councils of Elders and Village

Assemblies to ensure that they are operational and remain sustainable as the second tier of government in Bougainville.

### **Good governance**

- 13.1 The governments note the expert's view that when all the reports are read together and a number of indicators are looked at it is doubtful if it could be said that the ABG was achieving the required standard of good governance in public administration as at mid-2013.
- 13.2 The governments agree that for future joint reviews greater clarity is needed on the set of indicators (having reference to the constitutional definition) against which good governance is to be assessed taking into account the available sources of quality data.
- 13.3 In early 2014, with Department of Provincial and Local Government Affairs' assistance, the ABG will complete a joint organisational assessment using an agreed set of Key Result Areas and indicators based upon the Provincial Performance Improvement Initiative, to be repeated in early 2015 to feed into the 2015 joint review of the autonomy arrangements. ABG and Department of Provincial and Local Government Affairs will seek to involve a representative from East New Britain Province (and/or Milne Bay Province) in the assessments given those provinces' above average performance in service delivery.
- 13.4 The ABG will complete its 2014-2016 Corporate Plan by 31 March 2014.

### **Capacity Development**

- 14.1 The governments agree that they will apply significant resources, with the support of development partners, to implement the BEC approved *Capacity Development Strategy for the Autonomous Bougainville Government* (November 2012).

### **House of Representatives and Principal Legal Officer**

- 15.1 The governments will engage, when appropriate, in collaborative efforts to consider the issues of construction of a permanent Parliament building for the House. [This is dependent upon the ABG and its people determining the location of the seat of government.]
- 15.2 The ABG will undertake a review to assess the required level of resources for the House for the next five years, including recruitment of its necessary administrative support staff, build office capacity and fund resources necessary.
- 15.3 The ABG will expand programs for induction (after 2015 elections) and ongoing training of Members of the House of Representatives so they understand their roles and the parliamentary procedures and processes. [This should be alongside the AusAID funded mentoring of the House by the NSW Parliament.]
- 15.4 The ABG will immediately recruit the Bougainville Principal Legal Officer, the principal adviser to the BEC, through an open and transparent process and support the office with lawyers, support staff and resources.

### **Law and Justice**

- 16.1 Recognising that improving law and order is the people's highest priority, the governments agree that there is a need to develop and implement, as soon as possible, a clear implementation plan for the transfer of police and correction services functions and powers to the ABG based upon the specific constitutional provisions.

- 16.2 As part of and under the recently launched police modernisation program, GoPNG will give special attention to infrastructure capacity development, funding of resources and police manpower in Bougainville to bring police service to at least pre-crisis level.
- 16.3 The Police Service, Correctional Service, the Courts and the other law and justice constitutional offices are an integral part of law enforcement, maintaining peace and order and for public security. Both governments will give attention to building the capacity of all aspects of the law and justice system in order to prepare the ABG to be able to enact its own laws to transfer of related powers and functions when appropriate and affordable.
- 16.4 Given the importance of establishing and maintaining law and order in Bougainville both governments will support the police and correctional services special working groups to analyse and develop appropriate short and medium term funding proposals for the police and correctional services in Bougainville based upon an optimal configuration of staff and facilities.

### **Mining**

- 17.1 The governments will review the 15-step strategy and seek to implement it in full consultation with each other.
- 17.2 The governments will as a matter of urgency meet in the Joint Consultative Coordinating Committee on Panguna Negotiations and agree the budget and potential sources of support for a comprehensive program of consultation, analysis and information-sharing so that the ABG, the landowners and the National Government are fully prepared to advocate and negotiate among each other and with BCL the new terms and conditions for mining and exploration leases associated with Panguna Mine.
- 17.3 Both governments will continue to support building staff capacity of the ABG Mining Department and other departments in order for them to be fully prepared to administer, implement and monitor mining (including issuing, managing and monitoring of mining tenements) and other legislation associated with the possible re-opening Panguna Mine, other mining operations (if any).
- 17.4 The ABG will continue to consult the National Government through the Department of Mining Policy and the Mineral Resources Authority on the ABG's proposed transitional law in accordance with the Alotau Agreement, prior to the House enacting the law. The ABG to continue wider consultation of all stakeholders in the ARB in formulating its mining legislation and the Panguna negotiations.

### **The Referendum**

- 18.1 The governments will meet quarterly in the Referendum Committee, and then at the Joint Supervisory Board, to monitor and discuss the preparations for the Referendum.
- 18.2 The governments agree that the Referendum will be conducted by an independent agency established for that purpose under Section 58 of the *Organic Law on Peace -Building in Bougainville-Autonomous Bougainville Government and Bougainville Referendum 2002*.
- 18.3 The governments agree that by 31 March 2014 the work plan for establishing the arrangements to conduct the Referendum will be completed including specifics on the roles, responsibilities and resources needed for:
  - a. the administrative arrangements including establishing the independent agency to conduct a free and fair Referendum in Bougainville;

- b. engaging with international partners to obtain support for the independent agency and the conduct of the Referendum;
- c. seeking secure sources of funding for the agency to conduct a free and fair Referendum;
- d. maintaining and supporting regular fora for officials (Referendum Committee) and political leaders;
- e. establishing a Bipartisan Parliamentary Committee of the National Parliament on Bougainville Affairs and a similar committee of the Bougainville House of Representatives so as to provide oversight, direction and monitoring of progress towards the Referendum;
- f. establishing a process of consultation with Bougainvilleans, and others, determine the link or links a person has to have to Bougainville, including those of non-residents, to vote in the Referendum [See *Peace Agreement* Article 315 and *Organic Law Section 55*];
- g. reviewing the legal and administrative *Rules for the Conduct of the Referendum* as contained in the First Schedule to the *Organic Law* taking into account issues and experiences arising from two Bougainville elections and any other relevant matter.
- h. establishing a process of consultation with Bougainvilleans and others, to seek agreement on the options to be voted on in the Referendum, including independence [PNG Constitution Section 338];
- i. developing and implementing a generalised awareness campaign within Bougainville on the process and arrangements for Referendum. [Awareness on the Referendum itself will be conducted impartially by the independent agency established to conduct the Referendum.]; and
- j. complying with the *Bougainville Constitution's* general and specific provisions for consultation within the Region including with traditional leaders and others.

### ***Feedback to the People***

- 19.1 The government will support the independent experts to meet with the people of Bougainville through a series of public consultations to close the consultation loop through feedback and deliver the Joint Review to the communities. These sessions will include representatives of both governments.



# 1. Purpose of the Review & Methodology

*This section provides the constitutional background and organisational arrangements behind this Joint Review.*

## 1.1 The Constitutional Requirements

- 1.1.1 The *Bougainville Peace Agreement* (Part 15, Regular Reviews of Autonomy Arrangements, and Paragraphs 298 to 308)<sup>1</sup> (*Peace Agreement*) provides for a five-yearly autonomy review mechanism leading to the Referendum date setting. This is entrenched in Section 337 of the *Papua New Guinea Constitution*<sup>2</sup> (emphasis added):

337. REVIEWS.

(1) *The National Government and Bougainville Government –*

- (a) *shall meet as close as is practicable to the fifth anniversary of the establishment of the Bougainville Government and every five years thereafter, jointly to review the autonomy arrangements; and*
- (b) *may agree to additional reviews of the autonomy arrangements at any time; and*
- (c) *shall present a report of each review under Paragraph (a) or (b) to the National Parliament and to the Bougainville Legislature.*

(2) *A review under Subsection (1) of the autonomy arrangements shall follow and consider separate reviews by independent experts of particular aspects, including –*

- (a) *the financial arrangements – grants, taxes and progress towards fiscal self-reliance; and*
- (b) *the Bougainville Government Services and other aspects of public sector administration in Bougainville – including size, efficiency, effectiveness, and related matters; and*
- (c) *technical and legal aspects, including issues arising from judicial interpretation, and the distribution of powers and functions; and*
- (d) *such other areas as the Bougainville Government and the National Government may agree.*

(3) *The terms of reference for a review shall specify that, unless otherwise agreed, they are intended to improve, clarify and strengthen the autonomy arrangements consistently with the objectives and principles in the Agreement.*

(4) *The National Government and the Bougainville Government may, by agreement, defer the specialist reviews or incorporate the issues with which they deal in the general view.*

(5) *The reports of the specialist reviews will include drafts or drafting instructions for any legislative amendments they recommend.*

(6) *In the event that either the National Parliament or the Bougainville Legislature passes any amendments proposed under Subsection (5) according to its own constitutional procedures and the other does not, the Bougainville Government on behalf of the Bougainville Legislature and the National Government on behalf of the National Parliament, shall follow the dispute resolution procedure up to the level of mediation or arbitration.*

(7) *Any point of law arising from the application of Subsection (6) shall be referred to the Supreme Court.*

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<sup>1</sup> The full text of the *Bougainville Peace Agreement* can be accessed at

[http://www.usip.org/sites/default/files/file/resources/collections/peace\\_agreements/bougain\\_20010830.pdf](http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/bougain_20010830.pdf)

<sup>2</sup> The full texts of the *Papua New Guinea Constitution* and the *Organic Law* can be found at [www.paclii.org](http://www.paclii.org) in the PNG section and [www.bougainvillebulletin.com](http://www.bougainvillebulletin.com).

- (8) *A Mediator or Arbitrator may not give directions to the National Parliament or the Bougainville Legislature but may order the National Government and the Bougainville Government to present a report in the National Parliament and the Bougainville Legislature recording the views of both Governments and containing their own recommendations on differences between them.*
- (9) *In addition to the reviews under Subsection (1), the National Government and the Bougainville Government shall hold annual, wide-ranging consultations on the general operation of the autonomy arrangements.*
- (10) *Unless the National Government and the Bougainville Government agree to some other method, the consultation under Subsection (9) shall be held through the Joint Supervisory Body.*

1.1.2 This first joint review (the Joint Review) should have been held in 2010 as stipulated in Section 337(1)(a) of the *Papua New Guinea Constitution*. The governments agree that an important opportunity was missed. The next joint review is due to be held in 2015 as required by law.

1.1.3 The key points about this joint review:

- a. This joint review is a comprehensive look at the autonomy arrangements including the constitutional aspects. It is not confined to 'technical' and 'operational' elements. It is intended to contribute to making autonomy work as envisaged under the *Bougainville Peace Agreement*.
- b. This is a joint review by both governments. It is not the independent experts' summary report.
- c. However the review draws on separate specialist reviews. There are three specified topics for the review by independent experts:
  - Financial arrangements – which is further strengthened by Section 40(2) of the *Organic Law – Autonomous Bougainville Government and Bougainville Referendum* (the *Organic Law*) which directs that 'revenue-sharing' shall be considered during the review; similarly section 49(4) to review National Government representation on how the Restoration and Development Grant is spent;
  - Bougainville Government Services and other aspects of public sector administration (the Bougainville Government Services are the public service, the police and the correctional service);
  - Technical and legal aspects; and
  - Other topics as added by both governments. For this review the two governments have added social and economic aspects.

1.1.4 Subsection (3) of Section 337 of the *Papua New Guinea Constitution* makes it very clear that the purpose of this joint review is to contribute to **improving, clarifying and strengthening the autonomy arrangements consistently with the objectives and principles in the Agreement**.

1.1.5 The Autonomy Review is linked explicitly to the Referendum on the future political status of Bougainville through the ratification mechanism of Paragraph 312 of the *Bougainville Peace Agreement* and Section 338 of the *Papua New Guinea Constitution*. The critical element is that the Referendum can only be held if the conditions in Sub-paragraph 312(b) have been considered by both governments. These are "weapons disposal" and "good governance". Paragraph 313 provides a definition of the "good governance" condition. These provisions are entrenched in Section 338 of the *Papua New Guinea Constitution*:

**338. REFERENDUM TO BE HELD.**

- (1) *Subject to this section, a Referendum on the future political status of Bougainville shall be held in accordance with this Division.*
- (2) *Subject to Subsection (7), the Referendum shall be held on a date agreed after consultation by the Bougainville Government with the National Government, which date shall be not earlier than 10 years and, notwithstanding any other provision, not more than 15 years after the election of the first Bougainville Government.*
- (3) *The date referred to in Subsection (2) shall be determined after considering whether*
  - (a) **weapons have been disposed** *of in accordance with the Agreement; and*
  - (b) *in accordance with Subsection (4), it has been determined that the Bougainville Government has been and is being conducted accordance with internationally accepted standards of good governance.*
- (4) *The question whether the Bougainville Government has been and is being conducted in accordance with internationally accepted standards of good governance shall be determined in accordance with the review and the dispute resolution procedure.*
- (5) *For the purposes of Subsection (4), the internationally accepted standards of good governance, as they are applicable and implemented in the circumstances of Bougainville and Papua New Guinea as a whole, include democracy, the opportunity for participation by Bougainvilleans, transparency, accountability, and respect for human rights and the rule of law, including this Constitution.*
- (6) *The National Government and the Bougainville Government shall co-operate in ensuring progress towards achieving and maintaining the standards referred to in Subsection (5).*
- (7) *The Referendum shall not be held where the Bougainville Government decides, in accordance with the Bougainville Constitution, after consultation with the National Government, that the Referendum shall not be held.*

1.1.6 Sub-section (4) refers to the question being whether the Bougainville Government has been and is being conducted to the required standard. This involves two assessments: past and current. The expert reports that contributed to this review were completed as at 31 July 2013. Subsequent events may have altered various situations.

1.1.7 The heavy onus on both governments comes out of the last clause of Section 338 (4) which states that the determination of whether the 'good governance' condition has been achieved "shall" be "determined in accordance with the review (i.e. the joint review), and the dispute resolution procedure."

1.1.8 The independent experts had no previously agreed indicators or parameters for assessing 'good governance' available to them other than the broad guidance of Section 338(5). Many international indicators are irrelevant. Some PNG indicators are useful. Given that the Referendum five-year window opens in 2015, and that the second review is due in 2015, both governments note that the independent experts have recommended that the governments agree on a limited set of some benchmarks, with recommendations for major areas for improvement, rather than undertake a detailed review of past actions and inaction other than when necessary for the narrative.

## **JOINT RESOLUTION #1**

- 1.1 **THAT planning for the next review of the autonomy arrangements will commence in late 2014 with the review to be conducted in the first quarter of 2015.**

## 1.2 The Independent Experts and the Consultations

1.2.1 The team, appointed by both governments, consisted of:

- Dr Naihuwo Ahai (Team Leader), social development, researcher and conflict management expert, and contributor to the Social and Economic Expert Report with Professor Satish Chand, economist and researcher;
- Dr Nemo Yalo, lawyer and constitutional expert, author of the Constitutional and Legal Review;
- Dr Lawrence Sause, academic and public sector expert with Mr John Mooney, governance and development expert, authors of the Public Sector Report; and
- Mr Danny Aloï, academic and public finance expert and Mr Mark Smith, revenue and taxation expert, authors of the reports on grants and taxation.

1.2.2 The independent team of experts was mobilized jointly by the National Government and the Autonomous Bougainville Government (ABG) to *“improve, clarify and strengthen the autonomy arrangements consistent with the objectives and principles of the Bougainville Peace Agreement.”*

1.2.3 The key features of the methodology used by the experts in collecting and synthesising data included document research, consultations with national level agencies, consultations with ABG Heads of Divisions, consultations with ABG political leaders and focus group discussions throughout the districts of Bougainville.

**Table 1: Independent experts program**

Date	Target stakeholder	Process
9 <sup>th</sup> March	GoPNG, ABG and the Public	Launch of Review in Buka
10 <sup>th</sup> – 15 <sup>th</sup> March	Literature Research	Independent research Buka and POM
18 <sup>th</sup> – 30 <sup>th</sup> March	Consultations with national level agencies	Individual meetings with agencies by consultants
3 <sup>rd</sup> - 20 <sup>th</sup> April	Consultations with ABG political leaders and senior administrators; CSOs and private sector	Group consultations, individual consultations and plenary discussions
3 <sup>rd</sup> - 20 <sup>th</sup> April	Field visitations throughout the three regions	Focus group discussions in all South, Central, North and Buka island districts and some COEs, except some West Coast
13 <sup>th</sup> – 19 <sup>th</sup> May	Mop up AROB visit to stakeholders	West Coast Buka, Torokina, Manetai
June-July	Expert Team	Team meetings Data analysis and report writing Expert reports completed
Aug/Sept	GoPNG & ABG	Draft Joint Report prepared

- 1.2.4 All together about 1500 people across all levels of Bougainville society and in Port Moresby provided views through meetings, focus group discussions and written submissions. Annex B lists the places visited by the independent experts.
- 1.2.5 The Review report is presented in two parts. This first volume provides the joint review as agreed to by the two governments. The separate reports of the individual experts are in a second volume.
- 1.2.6 The experts noted that a number of key constraints were encountered which affected to some degree the speedy conduct of the review and its depth:
- The failure to complete the review when due in 2010 has deprived both governments of the opportunity to create a measureable baseline.
  - There was no prior agreement by the two governments on appropriate measures or indicators of good governance.
  - There are significant problems with the availability and accuracy of data, especially from within the ABG.
- 1.2.7 The Review analysis was completed as at 1 August 2013. Events and conditions may have changed since then. The most significant event was the decision taken in early August 2013 by the ABG Bougainville Executive Council to replace the Chief Administrator with an acting appointment pending a new recruitment.

## 2. Review of the *Bougainville Constitution*

*This section discusses an important step that was omitted from the review process.*

- 2.1 Section 220 of the *Bougainville Constitution* provides that that the constitution should be reviewed immediately prior to reviews such as this joint review. A review did not take place which is a breach of the constitutional laws.

*220. REVIEW OF THIS CONSTITUTION, ETC.*

- (1) There shall be a review of the provisions and working of this Constitution immediately preceding a review held under Section 337(1)(a) (reviews) of the Papua New Guinea Constitution; and at such other times as the House of Representatives may direct.*
- (2) A review of the provisions and working of this Constitution may make recommendations as to amendment of this Constitution or of Bougainville laws or of administrative practices.*

- 2.2 The *Bougainville Constitution* Commission's reasoning for recommending this review of the constitution, before the preparation of this joint review, is as important today as when it was originally written:

***“Review of the Bougainville Constitution***

*For any constitution to stand the test of time there needs to be a capacity to bring about sensible change. Whilst the BCC is proposing a careful consultative mechanism for change -- including very high voting requirements -- we also recognise that society grows and involves an effective constitution must also grow and evolve.*

*This will not happen automatically. It requires a sensible mechanism to be in place. Section 337 of the Papua New Guinea Constitution provides for a review on a 5 yearly basis of the autonomy arrangements. A natural result of that may well be a need to amend the Bougainville Constitution.*

*In considering these matters the BCC proposes that there should be a review of the Bougainville Constitution prior to the review of autonomy arrangements under section 337 of the Papua New Guinea Constitution. The advantage of reviewing the Bougainville Constitution first will be that it should help to illuminate matters that may need to be dealt with in the wider review process in relation to the autonomy arrangements more generally. Clause 218 (now Section 220) provides for that review of the Bougainville Constitution to make recommendations for amendment proposed by it. It also provides for a Bougainville law to be passed to set out the manner in which such a review shall take place. Of course if the review recommends change to the Constitution that change can only take place in accordance with the amendment procedures under clause 217 of the draft Constitution.*

*The Panel may wish to consider recommending that the above review be commissioned forthwith and prior to the Autonomy Review Report being presented to both governments.”*

- 2.3 Both governments are agreed that a review of the *Bougainville Constitution* should be conducted in 2014. The report of the constitutional review will be available to the independent experts who contribute to the 2015 joint review of the autonomy arrangements.

### **JOINT RESOLUTION #2:**

- 2.1 The *Bougainville Constitution* will be reviewed by the ABG in 2014.**
- 2.2 The recommendations from the constitutional review will be made available to the independent experts who conduct the analysis that contributes to the 2015 joint review by the National Government and the ABG of Bougainville's autonomy arrangements.**

### 3. Bougainville in Brief

*This section provides a brief contextual background of Bougainville today.*

#### 3.1 Population

- 3.1.1 The population of Bougainville according to the Census of 2011 was 263,216. The population in 1988 when the conflict commenced was estimated at 176,000 implying an annual growth rate of the population of 2 percent.
- 3.1.2 Bougainville has a large young population. Half of the population of urban Bougainville is less than 20 years of age. A large young population implies that the momentum for growth will remain for the foreseeable future and so will the demand for basic services and for jobs.

#### 3.2 Constitutional Foundations

- 3.2.1 The foundation and strategy documents for the ABG include:
- *Bougainville Peace Agreement (Peace Agreement)* (30 August 2001).
  - *Organic Law on Peace Building in Bougainville –Autonomous Government and Bougainville Referendum (the Organic Law).*(March 2002)
  - *Report of the Bougainville Constitutional Commission.*(2005)
  - *Constitution of the Independent State of Papua New Guinea (the Papua New Guinea Constitution) Part XIV – Bougainville Government and Bougainville Referendum.*(the Papua New Guinea Constitution).
  - *Constitution of the Autonomous Region of Bougainville (the Bougainville Constitution).* (2005).
  - The 50+ laws of the ABG passed by the House of Representatives since 2006.
  - The laws of Papua New Guinea to the extent that they apply in the Region including the transfers and delegations of functions and powers under those laws.
  - *Four Pillars of Development: Bougainville Development Priorities*
  - The policies of the ABG endorsed by the House of Representatives and/or the Bougainville Executive Council (BEC).
  - The Annual Budget of the ABG incorporating the Recurrent and Development Budgets.
  - The ABG's *Corporate Plan* (to be completed by early 2014).
  - The *Bougainville Capacity Development Strategy* endorsed by the BEC in November 2012.
  - The policies and service delivery plans of the individual sectors of the ABG.
- 3.2.2 The *Bougainville Peace Agreement* has three main pillars – a deferred referendum (“the Bougainville Referendum”) on the future political status of Bougainville (including an independence option); a special high level of autonomy for Bougainville and a demilitarisation of Bougainville through withdrawal of PNG security forces; and an agreed weapons disposal plan. Under the *Papua New Guinea Constitution* the people of Bougainville are entitled to decide on future government arrangements for Bougainville including independence, subject to the

consent of Papua New Guinea parliament, in a referendum which will be held in the five-year window from 2015 to 2020.

- 3.2.3 In 2006 the ABG requested from the National Government the transfer of 34 powers and functions. As at 31 July 2013 the current status of these arrangements is illustrated in **Table 2**:

**Table 2: Status of transfer of powers**

No:	Proposed legislation	Current status
1	<b>Bougainville Public Service</b>	<ul style="list-style-type: none"> <li>BEC has approved drafting instructions.</li> <li>Second draft to be reviewed by Joint TWG week 10 November</li> <li>Legislation in House early December 2013</li> </ul>
2	<b>Bougainville Public Finance</b>	<ul style="list-style-type: none"> <li>Drafting instructions available week 14 October.</li> <li>Bill based on Sir James Frazer's 2005 draft and PNG PFM Act.</li> <li>Most of the issues had been addressed by the JTWG with DOF.</li> <li>Legislation in House early December 2013</li> </ul>
3.	<b>Bougainville Mining (Transitional Arrangement) Bill</b>	<ul style="list-style-type: none"> <li>2<sup>nd</sup> Draft complete and approved by BEC. ABG engaged in consultations with MRA and Dept of Mining Policy</li> <li>To be introduced into Special House sitting in early November 2013.</li> <li>Widespread public consultation to follow in its final stage, and BEC is happy with the current draft. [Funding needed for consultations].</li> </ul>
4	<b>Bougainville Marine Resource Authority</b>	<ul style="list-style-type: none"> <li>BEC Policy paper and drafting instruction to be prepared.</li> <li>Draft law prepared by former adviser will be reviewed.</li> </ul>
5	<b>Bougainville Environment Bureau</b>	<ul style="list-style-type: none"> <li>Policy paper approved by BEC.</li> <li>Notice of intention under section 290 has been given to the National Government.</li> <li>Preparation of Drafting Instructions is underway.</li> </ul>
6	<b>Education</b>	<ul style="list-style-type: none"> <li>BEC has approved the Bill. In House October Special sitting</li> </ul>
7	<b>Inward Investment</b>	<ul style="list-style-type: none"> <li>BEC has approved the Bill. In House October Special sitting</li> </ul>
8	<b>Health</b>	<ul style="list-style-type: none"> <li>Initial discussions held with NDOH and progress towards MoU.</li> <li>Next step Policy submissions to BEC</li> </ul>
9	<b>Commodities</b>	<ul style="list-style-type: none"> <li>Policy paper to be prepared for BEC for Commodities Board</li> </ul>
10	<b>Works</b>	<ul style="list-style-type: none"> <li>Agreed work plan being implemented including transfer of staff, budget and assets with target date 2015 but could be earlier</li> <li>Policy paper to be prepared for Infrastructure Services Bill</li> </ul>
11	<b>Police</b>	<ul style="list-style-type: none"> <li>2003 delegation operational; 2012 revised draft is to be finalised and signed</li> <li>Policy paper to BEC in 2014</li> </ul>
12	<b>Community Development</b>	<ul style="list-style-type: none"> <li>Memorandum of Understanding signed on 23 October 2013</li> </ul>
13	<b>Bougainville Time Zone</b>	<ul style="list-style-type: none"> <li>BEC has approved. Drafting instructions is needed to start working on it.</li> </ul>
14	<b>COE Validation for Tsitalato, Halia, Tonsu &amp; Tsitalato</b>	<ul style="list-style-type: none"> <li>Recently approved by BEC. Work is currently underway and should be ready for the special October session of the House...</li> </ul>
15	<b>Mining Safety</b>	<ul style="list-style-type: none"> <li>Working Committee is working in developing the drafting instructions for the Bill</li> </ul>



No:	Proposed legislation	Current status
16	<b><i>Bougainville Women's Federation</i></b>	<ul style="list-style-type: none"> <li>• <i>Hasn't gone to BEC yet, but members of the Federation are consulting with us for this Bill. Drafting is progressing.</i></li> <li>• <i>Immediate need to resolve the legal issue with the PNG Nat Council of Women</i></li> </ul>
17	<b><i>Flags, Emblems etc</i></b>	<ul style="list-style-type: none"> <li>• <i>Policy paper to be prepared</i></li> </ul>
18	<b><i>Customary Land</i></b>	<ul style="list-style-type: none"> <li>• <i>Policy paper to be prepared</i></li> </ul>
19	<b><i>Alienated Land</i></b>	<ul style="list-style-type: none"> <li>• <i>Policy paper to be prepared</i></li> </ul>

Source: ABG Brief: updated as at 26 October 2013

### 3.3 Government

3.3.1 The Constitution of Bougainville specifies that the Autonomous Bougainville Government shall consist of three branches:

- Executive - the Bougainville Executive Council (BEC) led by a President.
- Legislative - the Bougainville House of Representatives (39 elected members and 2 ex officio members).
- Judicial - the Bougainville Courts including a Supreme Court and High Court.

3.3.2 Elections for the first Autonomous Government of Bougainville were held in May and June 2005 for the two levels of government in Bougainville: the House of Representatives and the 13 Councils of Elders (COE- equivalent to the Local Level Governments in PNG) which are responsible for District Administration.

3.3.3 The House of Representatives is made up of 39 members:

- The President is elected by all voters in Bougainville;
- 33 members represent single member constituencies;
- Three women's representatives elected by voters in each of the three regions; and
- Three former combatants elected by voters in each of the three regions. (These positions continue only until the Referendum.)

3.3.4 The Speaker of the House is not a member of the House and is appointed by a vote of the House.

3.3.5 The Bougainville Executive Council has 14 members:

- The President;
- The Vice-President who is appointed by the President from a different region to the President;
- Six members based upon a prescribed formula to ensure geographic representation;
- A woman member of the House; and
- Five members appointed by the President.

- 3.3.5 Bougainville also elects four members to the National Parliament representing the northern, central and southern regions ('districts' in PNG language) and a regional member, sometimes inaccurately called 'the governor'.

### 3.4 Regions and Districts

- 3.4.1 The region consists of 9,300 sq. kms approximately with Buka, Arawa and Buin the main centres.

**Table 3: Regions and districts of Bougainville**

Region	Regional HQ	District/ CoE Name
<a href="#">North Bougainville Region</a>	<a href="#">Buka</a>	<a href="#">Atolls District</a>
		<a href="#">Buka District</a>
		<a href="#">Kunua District</a>
		<a href="#">Nissan District</a>
		<a href="#">Selau Suir District</a>
		<a href="#">Tinputz District</a>
<a href="#">Central Bougainville Region</a>	<a href="#">Arawa-Kieta</a>	<a href="#">Kieta District</a>
		Panguna District
		<a href="#">Wakunai District</a>
<a href="#">South Bougainville Region</a>	<a href="#">Buin</a>	<a href="#">Bana District</a>
		<a href="#">Buin District</a>
		<a href="#">Siwai District</a>
		<a href="#">Torokina District</a>

### 3.5 The Public Service

- 3.5.1 The majority of officers in the public service are members of the National Public Service. The *Bougainville Constitution* authorises the establishment of a separate Bougainville Public Service which is planned for January 2014. On 30 July 2012 the Secretary for the Department of Personnel Management signed a delegation of almost all his powers and functions to the Chief Administrator of the ABG. This effectively delegated all national public services functions and powers to the Bougainville administration.
- 3.5.2 The current administrative structure was approved in 2006 with the following key elements:
- 833 established positions (including 335 health worker positions)
  - 563 filled positions and 271 vacant positions
  - 113 unattached officers - 96 have agreed for retrenchment and retirement and 17 to be redeployed
  - the staff age profile ranges from 19 years to 71 years of age. It is of concern that 54 percent of staff are over the age of 50 years. Only 19 percent are under 40 years of age.
  - Total budget for public servants (excluding police and teachers) is K22 million which adequately covers current occupied positions, 17 new health positions, all costs associated with transformation to ABG Public Service, plus about 80% of the vacant positions. Serious

questions must be asked about the ABG's capacity to advertise and fill these positions based upon its recent track record.

- 3.5.3 Significant progress has been made with assistance from the Department of Personnel Management, and consultants, on establishing the Bougainville Public Service from 1 January 2013:
- Upgrade from National Public Service grades to 16 *Bougainville Public Service* grades complete.
  - Establishment Comparison Tables for upgraded structure and transformation have been completed and signed off by Acting Chief Administrator and Secretary DPM.
  - K5.5m for autonomy implementation in critical functions has been requested for 181 new positions in Law and Justice, Commerce, Primary Industry, Technical Services, Community Development and Local Level Government and Peace and Reconciliation.
  - Concept payroll package procured; data-cleansing for One Person, One Position, and One Pay to be done.
  - New ABG public service structure will be designed in 2014 following extensive consultation. BEC seeking greater devolution of public servants into the districts to support service delivery.
- 3.5.4 The Chief Administrator, currently appointed by the ABG, is EL4 grade in the National Public Service and the two Deputy Chief Administrators are at Grade 20. The divisional chief executive officers are at Grades 15 and 16. This unbalanced very flat structure was created by the then Chief Administrator in 2005. It will be replaced by a home-grown structure developed within Bougainville once the new public service is established. The BEC is determined to have a structure focussed on providing services at the village level with public servants close by.
- 3.5.4 The structure of the public service is out-of-date and does not reflect the strategic needs of the ABG. It is also not the public service envisaged by the *Peace Agreement*. There are major deficiencies: the organisational arrangement of functions does not match the needs and priorities of the ABG; staff numbers are not right in some divisions and locations, with health in particular needing a major review; position remuneration grades need revision; while the personnel emolument arrangements are inadequate in key areas. The current structure has a very compacted set of salary grades at the senior levels, and in technical positions and does not reflect position responsibilities or workloads. Low salary level for key positions has inhibited recruitment. Historically the officers of the National Public Service in Bougainville have been on the lowest 'provincial' pay grades. This is currently being addressed with the preparations for the new Bougainville Public Service. More details are contained in Chapter 8.
- 3.5.4 The ABG finances are covered in Chapters 6 and 7 below.

## 4. Autonomy

*This section discusses autonomy in the Bougainville context. The lack of understanding in Papua New Guinea and Bougainville of the autonomy arrangements is the single largest issue facing PNG and Bougainville today. This deficit goes to the heart of many current misunderstandings, tensions, unfulfilled expectations and potential conflict on many levels. This weakness starts with political and administration leaders in Papua New Guinea and in Bougainville and extends down to the people of Bougainville. It is pervasive at all levels.*

*Practical and legal aspects of the actual draw down of powers and functions since 2005 are discussed in Chapter 9. For convenience all Joint Resolutions are at the end of this chapter.*

### 4.1 Bougainville's Autonomy

- 4.1.1 An autonomy arrangement for Bougainville is one of the three pillars of the BPA. The grant of autonomy and the agreement to a deferred referendum (the second pillar) were critical to reaching consensus when the *Peace Agreement* was being negotiated. This section thus explains the historical origins of autonomy for Bougainville and its implications for the proposed referendum.
- 4.1.2 The autonomous government arrangement in Bougainville is unique to Bougainville having arisen out of the historical; political and the ten-year long Bougainville conflict.<sup>3</sup>
- 4.1.3 Bougainville's desire for political independence dates back to the early 1960s. This is underpinned by a sense of distinct Bougainville identity, a belief in basic grievances and a widespread belief in a right to self-determination. These feelings eventually led to the establishment of the North Solomon Provincial Government as a means of addressing demands for greater political power. The replication of provincial system of government across PNG however watered down that unique political status of Bougainville.
- 4.1.4 Environmental and cultural concerns, dissatisfaction over distribution of land owner benefits and poor management of these issues resulted in the escalation of militant activities against the Panguna mine leading to the closure of the mine, imposition of an economic embargo and the eventual declaration of independence by Bougainville.
- 4.1.5 The social and economic impact of the ten-year economic embargo resulted in severe disruption of internal trade and diminished access to basic services. Political divisions created through the conflict were bridged via a gradual re-establishment of PNG Government authority in Bougainville through a long protracted negotiation process (from 1990- 2001) between Bougainville and PNG. The governments of Australia and New Zealand together with the United Nations helped mediate negotiations between the parties in conflict.
- 4.1.6 In August 2001, the *Peace Agreement* was signed between the Government of Papua New Guinea and the Bougainville leaders. Its key intentions were to end the conflict, address root causes of the conflict and lay the foundations for Bougainville to run its own affairs.

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<sup>3</sup> A recent condensed history of Bougainville's governance history, the complex interplay with Papua New Guinea's various provincial systems of government, the contributing causes to the crisis and the negotiation of the current asymmetric autonomy arrangements can be found in Regan A., *Autonomy and conflict resolution in Bougainville, Papua New Guinea* an essay in Gai Y., (ed) *Practising Self- Government: A Comparative Study of Autonomous Regions*, Cambridge University Press, August 2013.

- 4.1.7 Adding to the complexity of addressing Bougainville's needs are new sources of tension:
- a. Widespread human rights abuses committed by all sides leaving many people with deep grievances and concerns about their future security;
  - b. Deep divisions among Bougainvilleans and Bougainville and Papua New Guinea;
  - c. Divided opinions on the desired future political status of Bougainville;
  - d. The lack of understanding and appreciation of the crisis and the *Peace Agreement* by many stakeholders;
  - e. The unique needs of Bougainville (compared to the rest of PNG) are not well understood including:
    - Deeply traumatised people;
    - Loss and/or deterioration of services and weak capacity for administration;
    - A significant illiterate youth population with little experience of life under a normal non-violent society;
    - The effects of the destruction of the economic base; and
    - The lack of basic infrastructure.
- 4.1.8 The oversight of the *Peace Agreement* and the progress made in implementing the three pillars (Autonomy, Referendum, and Weapons Disposal) is exercised jointly by both governments through the Joint Supervisory Board (JSB). This joint review is sponsored by the JSB for both parliaments through the Referendum Committee.
- 4.1.9 An aspiring State (i.e. sovereign), according to international law as enshrined under the *Montevideo Convention* of 1933, must satisfy the following four criteria: "(i) possess a permanent population; (ii) occupy a clearly defined territory; (iii) operate an effective government over the extent of its territory; and, (iv) display capacity to engage in international relations-including the ability to fulfil international treaty obligations" (Grant, 1998; page 414)<sup>4</sup>.
- 4.1.10 The ABG satisfies the criteria of population and territoriality but lacks government effectiveness, at this stage based upon the advice of the independent experts.
- 4.1.11 The independent experts report that people in focus group discussions held throughout Bougainville raised the demands for self-determination. The demands for self-determination were seen as being synonymous to those for secession from PNG and thus the rights to full sovereignty. And the support of the international community and the UN were sought to realize the above.
- 4.1.12 The right to self-determination as reflected in the United Nations Charter embodies the right and obligation to: "*develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace*" (Article 1, Paragraph 2, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter1.shtml>). Furthermore, the principles of equality

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4 Grant, Thomas D. "Defining statehood: The Montevideo Convention and its discontents." Colum. J. Transnational Law. 37 (1998): 403-457, and notes that the definition of a State has been "fluid and controversial" (page 457)..

of all sovereign members (Article 2, Paragraph 1) and the principle of non-interference in domestic affairs where "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations" (Article 2, Paragraph 1) limits the obligations of the international community to support the transition to independence within a member state.

## 4.2 Understanding Autonomy

4.2.1 The meaning of autonomy, its implications and the desired benefits for both Bougainville and Papua New Guinea are not well understood. More importantly, there is little genuine understanding or acceptance as to what autonomy is. Nor is there an explicit vision of what it should bring to Bougainville. Both governments recognise that for this to be the state of play 12 years after the signing of the *Peace Agreement*, and eight years after the establishment of the ABG, is both disappointing and highly risky to sensible decision-making about the future of Bougainville and its relationship with Papua New Guinea. Both governments have contributed to this undesirable situation.

4.2.2 A July 2002 report<sup>5</sup> clearly set out the differing views that needed to be addressed:

*There is a divergence of views within the Bougainville community about what autonomy can bring, and the priorities for an autonomous Bougainville. However, there is a widespread sense that autonomy will deliver benefits – and quite quickly – and in this respect expectations have been raised.*

*At the village/community level, our limited discussion point to a focus on improved service delivery at the grass roots level;*

*At the same time, people at the village level 'want to be left alone to get on with their lives';*

*Among the political leaders, all endorse the importance of service delivery at the village level, but some place greater emphasis on acquiring and building the institutions of the autonomous jurisdiction. This means building all the institutions and offices provided for [in the Constitution]. . .*

4.2.3 For many in the community they measured autonomy in terms of the actual transfer of day-to-day business and assets associated with the National Government. They asked "if Bougainville is autonomous why do we still have 'national roads', the Royal Papua New Guinea Constabulary, the hospital run by national Department of Health etc.?"

4.2.4 The *Morris Report* made these three observations which were also heard by the independent experts 11 years later almost word for word:

"

- *There are clear signs of growing impatience on the ground with progress towards autonomy;*
- *The lack of progress and frustration is directed at the National Government.*
- *The need for extensive consultation is emphasised by some key groups – the need to "consult the people where they are."*

4.2.4 The one major difference is that from the consultations it is clear that the people are united in blaming the ABG, with others, for a lack of progress.

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<sup>5</sup> Morris, Alan et al, *Bougainville Public Sector Study*, July 2002, Port Moresby

4.2.5 The *Morris Report* also synthesised four points from a then recent draft paper<sup>6</sup> from Dr Anthony Regan which the independent experts agree has relevance today:

“

- *The expectations of Bougainvilleans of the autonomy arrangements are very high. The resolution of a bitter conflict and the belief that autonomy means something close to independence, means a belief that Bougainvilleans will have the ability to change society for the better.*
- *There is room for considerable uncertainty about the extent of the implementation of the autonomy arrangements that will occur. The relevant provisions of the Peace Agreement and the constitutional laws do not provide for an automatic achievement of a goal of high autonomy. Rather, they provide for a process of developing and moving towards that autonomy goal over a number of years. The speed of the progress will depend on many factors, including the financial resources and administrative capacity available in Bougainville. Both can be expected to be in short supply in the early years of the operation of the of autonomy arrangements, just when pressures and expectations can be at the highest.*
- *The ability of the autonomous Bougainville government to respond to the unfolding dynamics of post-conflict Bougainville may be limited, in which case the expectations of ordinary Bougainvilleans concerning the likely impact of the political settlement may not be met. If that does prove to be the case, there could be considerable dangers for both the Autonomous Bougainville Government and the National Government.*
- *An understanding of the possible interaction between the autonomy and referendum aspects of the settlement should put pressure on the National Government to ensure that the autonomy arrangements are seen by most Bougainvilleans as a success, thereby encouraging support for the continued integration of Bougainville into Papua New Guinea when the referendum is held. It is not yet clear that the issue has yet been widely understood in Port Moresby.”*

4.2.6 This analysis was largely confirmed during the independent experts' consultations in Bougainville with the people across all districts. The ABG has failed to present a united vision of what autonomy is and how it benefits the people of Bougainville. The divergence of views between the grassroots, the people, and the Administration and the political leadership is serious.

4.2.7 Prior to the recently formed government of the Hon. Peter O'Neill, the National Government has in the last eight years not demonstrated a coordinated approach to understanding its critical role in making autonomy work. In fact it can be argued that after Bougainville became autonomous in 2005 the PNG government establishment, with some notable exceptions, seemed to ignore Bougainville, disengaged and forgot about the legal and constitutional duties the National Government had to support the implementation of the *Peace Agreement* and the restoration of Bougainville. This was not deliberate in the view of the independent experts.

4.2.8 A significant contributing factor to this state of affairs is the massive changes in the leadership of the National Government at the political and administrative level in the last 15 years. There are very few current National Government leaders (politicians or public servants) who have had a direct or indirect working relationship with Bougainville pre-Crisis, during the Crisis or during the negotiation of the *Peace Agreement* and the enactment of the subsequent constitutional laws. The reality is that there are at the most probably less than ten senior national politicians and bureaucrats who appreciate the special autonomy arrangements for Bougainville and even then there is little understanding of the specifics. By way of contrast, Bougainville is led by people who had active roles in all these events. Almost all know the aspirations underpinning the *Peace Agreement* but as with National leaders there is not a widespread in-depth of

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<sup>6</sup> Regan, Anthony J, *The Bougainville Political Settlement and the Prospects for Sustainable Peace* Pacific Economic Bulletin, vol. 17, no. 1, pp. 114-12

knowledge in Bougainville on the technical aspects of the constitutional laws particularly around the process for the draw-down of powers and the financing of the ABG. It is appreciated by both governments, that for the Bougainville side, the *Peace Agreement* is very much front and centre in their aspirations for Bougainville. There is a serious gap on both sides on the practicalities of process and the legal obligations in implementing the agreement. We agree that this is contributing to both governments 'talking passed' each other on critical matters in recent years.

- 4.2.9** This joint review has decided that greater effort needs to be made to brief ministers and senior officials of both governments on the specifics of the *Peace Agreement* and the constitutional laws in the areas of critical weakness as identified by the independent experts. Rather than large set piece forums this should be done in smaller meetings between respective ministers and officials.

### **4.3 The People and Leader's Views**

- 4.3.1** The independent experts reported to both governments that they heard a consistent view from the people of Bougainville about autonomy and weak service delivery. The following is a sample of representative direct quotes which were heard frequently in one form or another. This is not intended to be a scientific result: its sole purpose is to show the breadth of the frustrations:

- *Autonomy has done nothing for us, we have seen no progress.*
- *We were better off under the North Solomon's Provincial Government pre-Crisis.* [Note: This was a commonly expressed benchmark for measuring the success of autonomy for older rural people.]
- *We know there is plenty of money but we do not see it at the local level. We depend on the National members.*
- *It is not to our expectations; services not reaching people and do not know why; something is wrong*
- *Infrastructure; bridges and roads; ABG budget too small and too many projects and tries to do everything at the same time; many incomplete projects.*
- *Why do we still have national roads that are not maintained by the ABG?*
- *If Bougainville is not ready, National Gov't will not deliver on referendum.*
- *Service delivery not happening; failed structure of the ABG (designed by the National Government); we should design our own based on clan lineage, chieftain system of governance etc...*
- *Autonomous arrangement, we have ownership (want that); get the basics right in terms of service reaching the people;*
- *Questioning the qualification of elected leaders; that the ABG has lost focus and do not know what to do;*
- *That ABG can perform but transfer of powers is inadequate;*
- *Lack of administrative and financial support from PNG National Government stopping autonomy working*
- *Outstanding peace claims is hindering the peace process; peace packages not included in the BPA*
- *Nothing constructive has come out of the BPA by way of changing lives. It was embraced initially but now people are forgetting it because of a lack of capacity in implementing the BPA. The BPA is not reaching the people. It is not inclusive in terms of economic participation by all concerned stakeholders*
- *Demand an Awareness Strategy on BPA*
- *ABG and the National Government must coordinate on an awareness strategy as time's catching up*
- *There is a lack of understanding of the autonomy; there is a lack of connectivity with the communities by the Administration.*
- *The autonomous government is not changing lives.*
- *Back then when Kabui introduced autonomy, it was applauded but now people are realising that autonomy is not delivering services.*



- *Service under Provincial Government was better, not under ABG. There is a lack of infrastructure for economic development and participation without sustainable economic growth.*
- *Most grants for admin purposes only, not service delivery.*
- *No development grants to COE's.*
- *2005 – present: No change in funding so no service rendered.*
- *Proposed that monies should be given direct to COE's rather than going through the ABG and further.*
- *There is little or no feedback and no awareness in communities.*
- *Many a times, requests go up but are changed and no feedback is received; measured in budget appropriation.*
- *Allege corruption by ABG.*

#### 4.3.2 Understandably, the perspective from the leaders was different with much greater emphasis on capacity and process:

- *Problems with delivery of services; public service not established; remnants of the old public service; boat breakdown; trying to fix; same time expected to deliver; and continue to load cargo;*
- *Attitude problem; no common vision in rebuilding as captured in the BPA;*
- *Lack of capacity for internal revenue raising through tax; less than 6 million; business houses demanding administration to get organised; they are not paying taxes; tok ABG get organised pastem;*
- *Lack of awareness, Radio Bougainville underfunded; still under PNG Government; not reaching the majority of people;*
- *Powers earmarked in the BPA belong to us; drawdown is a mere process; we must just go ahead and legislate because National Government too slow; eg. own public service;*
- *National Government has final veto; mipla holim gun as a pawn; good governance, fiscal management way to go; reflection of level of understanding (holim gun) because of a lack of awareness, people are not informed, are not participating in decision making; are not involved, must be encouraged in taking ownership. There is a general feeling for cessation;*
- *National members spoon feeding; creating dependability; national government not listening; NCOBA is not playing its role; NCOBA doesn't know us; failed*
- *National Government should help us get administration up and running, then we can deliver;*
- *Political and Administrator no coordination, no interconnectivity, no working relationship;*
- *Drawdown but adapt, for compatibility with situation on the ground*
- *Best incentive, get us involved in the process, when I'm marginalised me cross; so are the people they want participation;*
- *'It is a process and the people must be informed'; BPA negotiation: timeframe is too short, white man ol strong;*
- *Want ABG to control the public service; most occupying the positions now have no experience;*
- *Lack of capacity on the ground; inherited functions from the old Provincial Government; the ABG is not ready from the increased roles and responsibilities of new power transfers;*
- *There is an over protective nature of National Government stopping swiftly and coherently transfer powers; NCOBA is not performing its responsibilities; is not facilitating;*
- *Need to streamline and relook procedures with administration arrangements with direct ABG control;*
- *Donor and development partners are doing what the National Government is supposed to be doing in terms of service delivery;*
- *ABG has capacity issues. There is a lack of expertise and knowhow and there is nothing happening in terms of building capacity and therefore no service delivery.*

- *There is a poor public service that is not delivering; the public service on Bougainville is incompetent. The Public Service is limited in scope and understanding including the geography;*
- *A public service that is not doing enough; there is a lack of discipline and high level of incompetency etc... get employed by virtue of being Bougainvillean;*
- *Where do we go from here given the constraints?*
- *Public service not sensitised what autonomy is and the role and responsibilities of the Public service that comes with it;*
- *No scoping; no capacity in terms of workforce; there is no technical expertise available; lack of infrastructure and internal revenue raising capability; Internal Revenue is only 1.5%– 2% capacity that raises around 8 – 10 million;*
- *Budgets are received late; there is no implementation time; In 2012 appropriation was received in October. 2013 programs are in fact implementing 2012 programs;*
- *Pace of capacity building is too slow with time becoming too short;*
- *The public service is not prepared for the outcome of the referendum and the ABG does not know where to go, has no idea how to govern;*
- *Are we in control of Bougainville? Is the ABG in control in policing for example?*

4.3.3 While there are many themes arising out of these direct remarks five or six main ones emerge:

- a. The people do not know what is happening. Both governments have been implementing projects and services are being restored. However the impact is not recognised or being attributed to autonomy;
- b. The public service is seen widely as deficient with a serious lack of capacity;
- c. Services are not meeting the needs of the people;
- d. The National Government is widely blamed for not funding Bougainville's restoration;
- e. Corruption and a lack of transparency over projects is a serious and emerging issue; and
- f. The people feel that they are not involved in decision-making, nor are they consulted.<sup>7</sup>

### **JOINT RESOLUTION #3:**

- 3.1 The ABG needs to articulate in a brief accessible document the kind of society Bougainville desires to be in the long term (not just political independence) and formulate a long term higher level strategic vision and plan for realizing the espoused vision based around the aspirations of the *Bougainville Peace Agreement* and the people. All other planning and service delivery functions should take their cues and direction from the strategic vision.**
- 3.2 The Bougainville Awareness Framework will be the basis for a comprehensive (region-wide, multimedia and direct face-to-face dialogue) awareness campaign be undertaken to inform the people and leaders of the strategic vision, the meaning of autonomy, how it is being implemented and its benefits, and the context and process for the impending referendum.**
- 3.3 The ABG will take responsibility, with the National Government, for initiating a regular series of briefings with local and key national political and public service**

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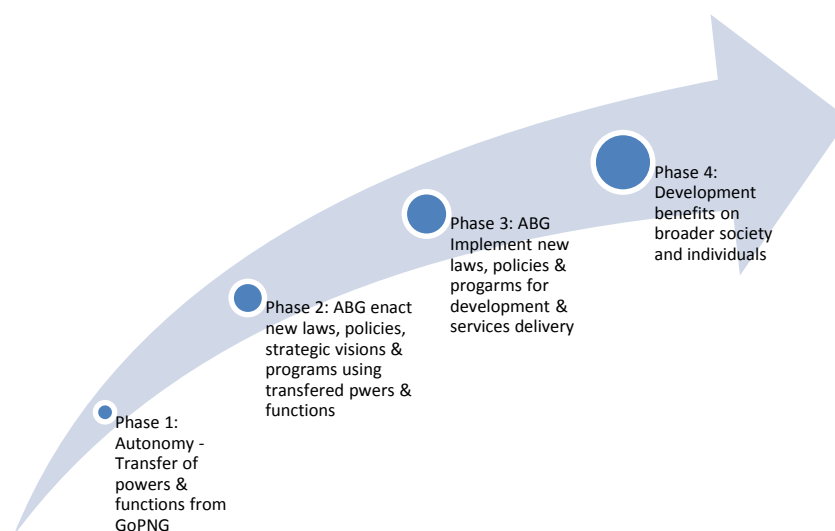
<sup>7</sup> Many attending the consultations were members of village assemblies and councils of elders.

**leaders to seek to significantly increase their awareness and understanding of Bougainville's vision and entitlements.**

#### **4.4 Linkages between autonomy and development**

- 4.4.1 The link between economic revival and development is easy to comprehend. The link between autonomy and development is a lot more complicated. The impact of autonomy and development may be through the economy and that directly through delivery of services by the ABG to the people. Furthermore, it takes time for increased inputs to translate into better services and higher income for the people. The assessments on the effectiveness of autonomy, therefore, may be premature.
- 4.4.2 The impact of autonomy and development on Bougainville society as a whole and on the lives of individuals is a complicated relationship which occurs over time as indicated below:

**Figure 1: Flow Diagram: From Autonomy to Development**



Note problems in Phases 2 to 4. Phase 2 – assumes capacity to enact appropriate laws; Phase 3 assumes implementation capacity and resources; Phase 4 assumes productivity of inputs and absence of 'leakage' plus sufficient time for inputs to translate into developmental outcomes.

- 4.4.3 ABG is still in Phases 1 and 2 with most powers and functions not yet formally transferred and also yet to be translated into appropriate laws, policies and development strategies. It is therefore too early to assess the impact of autonomy on development as phases 2, 3 and 4 are works-in-progress. It is apparent that not much thought is being given to Phase 3 particularly how and who will do the implementation given the serious skills shortages in Bougainville. Failure to deliver services has the potential to contribute to deteriorating social order.

## 4.5 Categories of Functions and Powers Available to the ABG<sup>8</sup>

**4.5.1** *This review will be accessed by many with little understanding of the constitutional arrangements. Hence, as a starting point, it is important to explain the full extent of the functions and powers available to the ABG. This section covers the law in some detail as these provisions are often misunderstood. They also illustrate the extensive nature of autonomy in Bougainville. The ABG has more powers and functions available to it than is usually realized. In summary, there are three main categories of functions and powers. They are:*

- a. Functions and powers 'inherited' by the ABG from the Interim Bougainville Provincial Government at the time the ABG was established.
- b. The functions and powers available to the ABG under section 290(2) of the *Papua New Guinea Constitution*;
- c. The additional functions and powers available to the ABG under other provisions of the *Papua New Guinea Constitutional* laws, there being five separate sub-categories of these (as discussed below).

**4.5.2** Each category requires some elaboration and discussion. Of particular importance here is the fact that in relation to the functions and powers under paragraph (a) above (those 'inherited' by the ABG) and most of those under paragraph (c) (the five additional sub-categories), there appears to be no need to follow the transfer process under sections 295-297 of the *Papua New Guinea Constitution*. This is discussed in some detail below.

### **Powers of the Interim Bougainville Provincial Government 'inherited' by the ABG**

**4.5.3** The ABG has the same functions and powers that were vested in the Interim Bougainville Provincial Government (Interim Bougainville Provincial Government) in June 2005, immediately before the ABG was established. For the most part they are the functions and powers that are exercised now by the main divisions of the Bougainville Administration. They involve such broad areas of responsibility for service delivery as health, education, agriculture and other aspects of primary industry, information, local-level government administration, community development, liquor licensing, and so on.

**4.5.4** These include all the functions and powers that had been transferred to, and remained vested in, provincial governments throughout PNG since the provincial government system was established under the *Organic Law on Provincial and Local Level Governments* (the *OLPGLLG*) was adopted by the PNG Parliament in 1977. For two main reasons, the ABG 'inherited' more powers than were vested in other provincial governments elsewhere in PNG:

- a. In 2005 the Interim Bougainville Provincial Government was still an 'interim Provincial Government' under the *OLPGLLG*. As a result, some laws of Bougainville's previous provincial governments (the North Solomons Provincial Government and the Bougainville Transitional Government) had continued to operate, even though the operation of the *OLPGLLG* had resulted in repeal of such laws in other provinces. A key example is the current Bougainville law on local level government, the *Council of Elders Act 1996*, a law passed by the BTG. It operates because it continued to apply during the period the Interim Bougainville Provincial Government existed, even though local government laws in other

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<sup>8</sup> This section is based extensively upon legal advice given to the BEC over the last five years.

provinces had ceased to operate from 1997, when interim Provincial Governments were replaced by the 'permanent' provincial governments established after elections of local government councils were held at the end of 1997. Because the *Council of Elders Act* continued to operate until the end of the Interim Bougainville Provincial Government's term, that law continued as an ABG law. As a result, even though 'local-level government' is one of the functions and powers listed under section 290(2) of the *Papua New Guinea Constitution*, there has been no need for transfer of local level-government to Bougainville, as it was one of the functions and powers 'inherited' by the ABG from the Interim Bougainville Provincial Government.

- b. In late 2003, some additional powers over Police in Bougainville were delegated to the Assistant Commissioner of Police in charge of RPNGC in Bougainville.
- 4.5.5 There is a high degree of 'overlap' between the functions and powers 'inherited' from the Interim Bougainville Provincial Government, and the functions and powers available to the ABG as listed in section 290(2) of the *Papua New Guinea Constitution*. In particular, subject areas where the ABG has 'inherited' functions and powers from the Interim Bougainville Provincial Government are included in section 290(2). In addition to 'local-level government', they include: 'agriculture', 'communications and information services within Bougainville', 'community development', 'education', 'health', and 'liquor'. The main difference between the situation when the Interim Bougainville Provincial Government existed and the position with the ABG is that:
- a. the Interim Bougainville Provincial Government had control of only some of the aspects of those functions and powers listed in section 290(2), and that was as a result of the transfers of functions and powers to provincial governments in the 1970s and 1980s; and
  - b. for the ABG, every aspect of each subject listed under section 290(2) is 'available' for transfer.
- 4.5.6 To put it another way, if the ABG wants to take over more aspects of any function or power listed in section 290(2) than it inherited from the Interim Bougainville Provincial Government, it should be just a matter of seeking transfer of those additional aspects.
- 4.5.7 This has already occurred, with some of the MOUs signed in the last three to four years for the transfer of additional functions and powers that are closely related to the existing functions and powers of divisions of the Bougainville Administration. That is a sensible strategy, particularly to the extent that it takes account of the existing levels of resources and capacity in the relevant parts of the Bougainville Administration.

#### **Functions/Powers Available to the ABG Under the List in Section 290(2)**

- 4.5.8 Section 290 contains the long list of functions and powers made available to the ABG. The list includes most of the main functions that modern governments typically carry out. In many cases there is overlap between functions and powers inherited by the ABG from the Interim Bougainville Provincial Government, and those listed in section 290(2).
- 4.5.9 In general, the method of transfer to the ABG for these functions and powers is the method spelt out in sections 295 and 297 of the *Papua New Guinea Constitution*, sections 3 to 6 of the *Organic Law* and section 43 of the *Bougainville Constitution*. Aspects of that method of transfer are discussed below in Chapter 9.
- 4.5.10 For some of the more complex and wide-reaching functions and powers listed in section 290(2), the need to develop capacity and resources to ensure their effective exercise has been the

main practical obstacle to early transfer. That was certainly the experience in relation to transfer of mining, oil and gas functions and powers.

4.5.11 Lack of capacity and resources may also be a serious practical obstacle in relation to such complex and wide-ranging functions and powers as:

- agriculture;
- building regulation;
- children;
- corporation law;
- education;
- energy;
- environment;
- family law;
- fire service;
- fisheries;
- forestry and agro-forestry;
- harbors and marine;
- health;
- housing;
- information technology;
- insurance;
- intellectual property;
- labour and employment;
- land, sea and air transport;
- land and natural resources;
- manufacturing;
- physical planning;
- professions;
- science and technology;
- trade commerce and industry;
- water and sewerage;
- water resources.

4.5.12 On the other hand, while capacity and resources might still be issues with less complex and wide-reaching functions and powers, they might not be nearly as important. Examples of such functions and powers might include:

- arts;
- cemeteries;
- censorship;
- churches and religion;
- civil registration;
- culture;
- gambling, lotteries and games of chance;
- heritage;
- home affairs, including youth and social welfare;
- language
- livestock;
- parks and reserves;

- public works;
- sports and recreations;
- tourism;
- waste management;
- wild life preservation;
- wills and succession.

#### **Five Additional Sub-Categories of Functions and Powers Available to the ABG**

4.5.13 It is sometimes assumed that the only NEW functions and powers available to be transferred to the ABG are the ones listed in section 290(2). In fact, the ABG also has available to it many other functions and powers. These are ones where the authorizing provisions are contained in other sections of the *Papua New Guinea Constitution* and in the *Organic Law* – that is, in sections other than section 290(2).

4.5.14 These functions and powers can be divided into five distinct sub-categories.:

#### **Functions and Powers Related to Establishing ABG Institutions:**

4.5.15 One sub-category involves institutions of government that the ABG has power to establish including:

- Bougainville courts and tribunals;
- government services for the ABG, including:
  - a Bougainville public service;
  - a Bougainville police service;
  - a Bougainville correctional service;
  - a Bougainville teaching service; and
  - other Bougainville Government services as required by the ABG;
- a Bougainville ombudsman, and provision for a Leadership Code for Bougainville;
- other *Bougainville Constitutional* office holders, including:
- a Bougainville Electoral Commission;
- a Bougainville auditor-general;
- a Bougainville public prosecutor;
- a Bougainville public solicitor;
- a Bougainville clerk of parliament,
- a Bougainville salaries and remuneration commission;
- a Bougainville body to coordinate restoration and development in Bougainville.

4.5.16 The power to establish these institutions is quite broad, and must necessarily include power to provide for the roles, functions and powers of those institutions (though always subject to any restrictions in the relevant empowering provisions in the *Papua New Guinea Constitution*).

- 4.5.17 An often overlooked legal requirement is to comply with section 43 of the *Bougainville Constitution*. It requires under subsection (3) that where the BEC proposes to establish a new institution<sup>9</sup> that when the proposal comes before the House that it shall be accompanied by a statement of the estimated needs, costs, capacity and other resource requirements as specified in Subsection (1)(i) to (q) of Section 43. This section is a companion to Sections 3 and 4 of the *Organic Law*. It is intended to give practical effect to the implementation plan by encouraging the House of Representatives to provide oversight on the ABG's financial and human resource competencies and capacity to undertake the functions.

#### **Functions and Powers Related to ABG Financial Management:**

- 4.5.17 A second sub-category involves a number of financial management functions and powers for the ABG. These include:
- powers to raise both foreign and domestic loans;
  - powers to approve budgets
  - powers to approve expenditure
  - powers to maintain transparent accounts
  - authority to provide for audit of its finances, in addition to those by the PNG Auditor-General;
  - power to establish an ABG Public Accounts Committee.

#### **Powers and Functions Related to ABG Taxation:**

- 4.5.18 A third sub-category involves ABG power to impose taxes, which includes all the categories of taxation referred to in section 44, and extends to power to impose the taxes, set rates, and to establish its own system of taxation administration.

#### **ABG Powers on Criminal law, and Human Rights:**

- 4.5.19 A fourth sub-category involves the ABG's powers to make laws in relation to criminal law, and human rights.
- 4.5.20 In relation to criminal law, the ABG can:
- Adopt the PNG *Criminal Code* as ABG law, and then make modifications to it (subject to restrictions stated in section 291 of the *Papua New Guinea Constitution*);
  - Amend PNG laws on summary offences;
  - Create criminal offences and set penalties for offences in the exercise of its general law-making powers;
  - Make other criminal laws (i.e. not laws equivalent to the *Criminal Code*).
- 4.5.21 In relation to human rights, the ABG has two main sets of powers it can:
- Pass laws that regulate or restrict rights or freedoms otherwise guaranteed by the *Papua New Guinea Constitution*;

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<sup>9</sup> Section 43(1)(f)



- Make provision, in the *Bougainville Constitution*, guaranteeing rights and freedoms in addition to those provided for in the *Papua New Guinea Constitution*.

**ABG roles re Functions and Powers Mainly Vested in National Government:**

- 4.5.22 The fifth sub-category involves a few other functions and powers available to the ABG subject to limits specified in the *Papua New Guinea Constitution*. In particular, these involve two main further sub-categories.
- 4.5.23 The first, and most extensive, further sub-category involves mainly subjects that section 289 of the *Papua New Guinea Constitution* otherwise reserves to the National Government. However, in relation to some of those subjects, there is provision either in section 289, or in the *Peace Agreement*, for the ABG to exercise limited powers, or to have particular functions or powers delegated to it. (The *Peace Agreement* is relevant because section 289(1) states that the functions and powers listed in section 289(2) are the functions and powers of the National Government 'subject to' anything stated elsewhere in either the *Papua New Guinea Constitution* or the *Bougainville Peace Agreement*.)
- 4.5.24 The main functions and powers reserved to or made available to the ABG in relation to the list of National Government functions and powers in section 289(2) include:
- In relation to section 289(2)(d) (**'defence'**), the powers contained in paragraphs 60 to 68 of the *Peace Agreement*, which include roles in consultation and decision-making about future PNGDF activities in Bougainville;
  - In relation to section 289(2)(e) (**'foreign relations (including foreign aid)'**), the powers contained in paragraphs 69 to 79 of the *Peace Agreement*, which include roles in relation to negotiation of some PNG treaties and border arrangements, and power of the ABG to 'seek and obtain foreign aid', as specified in section 327 of the *Papua New Guinea Constitution*;
  - In relation to section 289(2)(m) (**'migration in and out of the country'**), the powers contained in paragraphs 80-83 of the *Peace Agreement*, which include roles in recommending names for inclusion on or removal from the PNG Visa Warning List, and making recommendations on applications made to PNG for work permits and employment visas in relation to Bougainville;
  - In relation to section 289(2)(f) (**'highly migratory and straddling fish stocks'**), the powers contained in paragraphs 85 to 88 of the *Peace Agreement*, which include participating in PNG delegations negotiating fishing licences in Extended Economic Zone and continental shelf territory associated with Bougainville and rights to decide on an agreed quota of domestic fishing licences granted by PNG;
  - In relation to section 289(2)(a) (**'central banking'**), the powers contained in paragraphs 89 to 91 of the *Peace Agreement*, which include a right to establish a commercial bank in Bougainville, and to assume agreed central bank functions after the ABG has reached fiscal self-reliance;
  - In relation to section 289(2)(h) (**'international civil aviation'**), 289(2)(i) (**'international shipping'**), and 289(2)(o) (**'posts'**), the powers contained in paragraph 92 of the *Peace Agreement*, which extend to a right for the ABG to have aspects of those matters delegated to it;
  - In relation to section 289(2)(p) (**'telecommunications'**), the powers contained in paragraphs 93 to 100 of the *Peace Agreement*, which include power for the ABG to provide telecommunication services itself or through a 3<sup>rd</sup> party carrier, and to refer to the JSB

proposals either for changes to existing law, or for the ABG to assume more powers in relation to telecommunications.

- 4.5.25 The second further sub-category involves two subjects that might have been expected to be included exclusively in section 290(2) but where the National Government insisted on keeping a degree of control, namely:
- Firearms control (sections 289(4) and 290(4) and (5)); and
  - Foreign investment (sections 289(5) and 290(6)).
- 4.5.26 It is important to highlight the different methods for transfer of these additional sub-categories of functions and powers because in most cases they are completely different to the method of transfer specified for the powers listed in section 290(2) (i.e. the method spelt out in sections 295-7 of the *Papua New Guinea Constitution* and sections 3-6 of the *Organic Law on Peace-building*).
- 4.5.27 The discussion in Chapter 9, and its Joint Resolution, address specific recommendations to improve compliance with the constitutional arrangements on the draw down of functions and powers.

#### **JOINT RESOLUTION #4:**

##### **4.1 The governments will:**

- a. jointly review the current Framework for the Draw Down of Functions and Powers;
- b. jointly take stock of and review the progress of the draw-down of functions and powers by all sectors operating in Bougainville. In 2014 the focus will be on completing and consolidating the transfer of the functions listed in Table 2 of the Joint Review;
- c. provide guidance to ensure that all future requests for the draw down of powers and functions, commencing with environment and health, comply with Sections 3 and 4 of the *Organic Law* and where applicable Section 43 of the *Bougainville Constitution*.

4.2 The drawdown of powers and functions process will be coordinated by the Chief Secretary and Chief Administrator respectively to expedite the evolutionary and smooth drawdown of functions and powers through the preparation of legislation for consideration by the Bougainville House of Representatives.

4.3 Greater attention will be given to calculating, negotiating and agreeing the on-going funding arrangements for each function and power to be drawn down by the ABG according to the provisions of the *Organic Law*.

4.4 The governments will work together to seek additional expert resources (including from development partners) to strengthen the ABG to manage the orderly draw down of powers and functions, and their subsequent implementation, particularly to contribute to analysis and policy development in legal, staffing, planning, financial and organisational aspects.

## 5. Social and Economic

*This section reviews the social and economic sector and examines the impact of autonomy arrangements on Bougainville on the assumption that any impact of policy, administrative and resource inputs of ABG would be felt in the social and economic sectors. The independent expert's technical paper examines problems relating to the state of the local economy including the state of private sector development and potential areas for growth in the resource sector, human resource growth, and impact on social development including health and education indicators, crime and related matters.*

### 5.1 Local Economy

- 5.1.1. Powers and functions over the economic sector are dispersed across a number of divisions (Commerce, Mining, Agriculture, Fisheries, and Forestry) and there is no evidence of an integrated cohesive strategy across all these sectors. Uncoordinated and *ad hoc* draw-down of powers and functions is slowing and hampering service delivery.
- 5.1.2. Land is pivotal for any economic development in any nation. The bulk of arable land is under customary ownership and is not easily accessible to non-customary entrepreneurs for development purposes. The ABG Division of Lands is not yet in a position to develop policies and regulations that will harness customary land and state land in urban centres for economic development as it (ABG Lands Division) is still negotiating the draw-down of powers and functions. It is hoped that the situation will improve with the passage of the local *Lands and Physically Planning Act* in June of this year.
- 5.1.3. Ninety percent of citizens depend on agriculture for livelihood and yet it has received minimal attention from ABG on the whole. The Division of Agriculture has fewer powers and functions under ABG than it had under the North Solomons Provincial Government.
- 5.1.4. There is a clear absence of an agricultural development plan and the lack of growth of agricultural output. Cocoa production has fallen due to pest infestation (i.e. cocoa pod borer) and low prices of both cocoa and copra are hampering growth of exports.
- 5.1.5. The Region has a small economy dependent on cocoa and copra production though estimating the value of goods and services produced within the Autonomous Region of Bougainville is not possible given the paucity of data.
- 5.1.6. The natural resources sector (agriculture, fisheries, forestry) remains largely undeveloped as increasing focus is exerted on the reopening of the Panguna mine. Level of alluvial gold production is estimated at K9m a year and is untaxed. The large plantation sector remains in a dilapidated state.
- 5.1.7. There is a lack of access to markets for remote rural areas in all districts. Road and maritime services and access to infrastructure need to be prioritised.
- 5.1.8. The economy of Bougainville is small. It thus has the potential to gain much from being deeply integrated with the much larger economy of PNG.
- 5.1.9. Small internal revenue of K8-9m (estimates vary) from Goods and Services Tax (GST) results in the ABG being heavily dependent on national government grants (of K78.4m in 2012; K87m in 2013) and development partners (K80 approximately in 2013). There is considerable potential to significantly increase internal revenue from share of national GST and internal Bougainville sales taxes. But this requires enforcement of existing established taxes together

with a total review of Bougainville's financing arrangements. This is discussed in depth in Chapter 7.

- 5.1.10. The presence of the private sector is small and concentrated on cocoa/copra marketing, trade stores, kai bars, guest houses and operation of PMVs. Law and order problems, poor access to credit, and poor infrastructure remain major constraints to growth of the private sector and the economy.
- 5.1.11. There has been a strong focus on maintaining infrastructure in Buka and North Bougainville while comparatively less gets spent in Central and South Bougainville despite the potential of greater economic returns from the latter two regions.
- 5.1.12. There are potential areas for growth especially based on already existing crops. Cocoa, despite the impact of pests such as the cocoa pod borer, and copra provide incomes to the bulk of the population. Low prices for these products are a problem, thus downstream processing has the potential to add value locally and in the process generate income and employment. The incomplete copra mill in Arawa, as an example, could be brought into production and thus provide market for local copra producers. A highly targeted tourism industry (such as WWII sites in Buin and Torokina, unique marine, terrestrial and geological eco-tourism sites) also has enormous potential. Growth of boutique tourism requires improved transportation and accommodation infrastructure. Large undeveloped land in South Bougainville and deep sea Tonolei harbour also offer further potential for growth of agricultural output. Finally, the possible reopening of the Panguna mine offers huge potential for integrating local agriculture and support industries into mining development. Each of the above-mentioned requires advanced and detailed planning.
- 5.1.13. There are niche areas that could be developed. Construction of the 24 kilometre Wakunai – Togarau road by PNG Sustainable Development Program for the Togarau Hydro-power offers strong potential for high value mid-altitude vegetables (brassicas) farming such as potato, broccoli, cauliflower, carrots etc for urban markets in the New Guinea islands.
- 5.1.14. A large youth population (lost generation) is untapped with limited social and economic opportunities and increasingly engaged in home brew production and marijuana cultivation. If their labour and entrepreneurship was harnessed, they are a potential source of economic growth.
- 5.1.15. Overall, it is difficult to argue that autonomy has contributed to economic development of Bougainvilleans as the majority of the population continues to live cashless subsistence livelihoods. The economy has not reached its pre-crisis levels.

## **5.2 Impact of economic development under autonomy on social development**

- 5.2.1 There is an absence of a vision for the type of Bougainville society people should be encouraged to aspire to. This absence is impeding strategic planning and thus is inadvertently entrenching the pre-crisis "status quo".
- 5.2.2 Failure to develop and consistently adhere to aspirations stated in the *Bougainville Constitution* and the *Peace Agreement* in the delivery of services is inhibiting social development and unification.
- 5.2.3 The strong focus on mining and the absence of an integrated and broad based (diversified) economic development strategy poses risks for Bougainville.
- 5.2.4 The lack of reliable data across all social and economic sectors poses problems in analysing quality of service delivery and its collective impact on social development. However, on the

whole it is safe to conclude that autonomy arrangements have had limited social impact on the lives of citizens. The main reasons for reaching this conclusion are (i) that service delivery has not yet reached pre-crisis levels, (ii) many social and economic divisions have poor levels of capacity (human resources and funding), and (iii) in effect most ABG divisions are still in the process of drawing down powers and are not yet in a position to make appropriate laws and policies that would impact on the lives of citizens in ways that would be different under normal provincial government arrangements.

- 5.2.5 The aspirations of the people of Bougainville on levels of access to basic services are reflected in the *Bougainville Peace Agreement* and the *Bougainville Constitution*. There is a mismatch between the perceptions of universal access to education and healthcare in the ABG Head Office and the reality of poor access on the ground.
- 5.2.6 There exists a gulf between the aspirations of the people of the Autonomous Region of Bougainville and the reality on the ground in terms of social and economic development. This gulf is larger in remote areas and within the atolls.
- 5.2.7 A large proportion of children of school age are not attending school. This is due to a combination of a lack of places, the high cost of education, and the lack of employment opportunities which is a major disincentive for schooling.
- 5.2.8 Access to information throughout the Region is very poor. Radio reaches less than 20 percent of the total population with Radio Bougainville's HF service out of action. The two daily newspapers deliver approximately 1,500 newspapers on average daily with research showing a readership of four people per copy in Buka and up to 10 people per copy in rural areas. Mobile telephone coverage is larger but this is available to those with the means to buy handsets and pay for the service.
- 5.2.9 The potential for improved service delivery and increased income for the people of Bougainville is enormous. Realising this potential in the main requires improved law and order, improved planning of public investments, better transportation and communications infrastructure, and clear policies for investment.
- 5.2.10 The poor access to basic services observed in the Region is far from unique to the Region but prevalent in the many provinces of Papua New Guinea. Unique to the Region, however, is a past of a violent and protracted conflict, the continuing social and psychological after-effects of the conflict, and the remnants of the many militant factions from the conflict. Furthermore, there remain 'No-Go' zones around the Panguna mine which was the birthplace of the conflict.

### **5.3 State of Health Services**

- 5.3.1 Access to health care is less than universal and particularly poor in remote and rural parts of the AROB.
- 5.3.2 Perceptions on the quality of health service delivery at the administrative level differ from experiences at the community level. Access to primary health care is less than universal across the three districts. Restoration of health infrastructure has not yet reached pre-crisis days as evidenced by such incomplete facilities such as the Moratona Hospital.
- 5.3.3 Bougainville's comparative standing across provinces has declined from 6<sup>th</sup> during pre-crisis era to 15<sup>th</sup> out of 19 provinces plus the NCD according to national assessments.
- 5.3.4 On the administrative front, there is good capture of data of cases recorded at the various health facilities but the data does not capture cases in the villages.

- 5.3.5 Some good quality health services are being provided through Doctors Without Borders in Buin and at the hospital in Buka.
- 5.3.6 Various studies and a review of the ABG budgets demonstrate that there is a serious planning and coordination problem in the health sector with new investment in buildings, the replacement of buildings and the location of staff in the rural health service often mismatched. National members, local Members of the House and others are building structures without linkages to the recurrent budget and staffing. Empty unused facilities are common. The Recurrent Budget funding for rural health services has declined seriously. **Table 3** shows the community health staff levels and recurrent budget funding for the last decade:

**Table 3: Health recurrent Budget and staffing 2006-2014 (K 000s)**

Health	2006	2007	2008	2009	2010	2011	2012	2013	2014
	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Budget	Ceiling
Recurrent Grant - Administration	614	670	308	400	401	473	412	366	366
Recurrent Grant - Buka Hospital	79	200	200	200	232	0	0		
ABG Internal - Aid Post Maintenance	132								
ABG Internal - Medical supplies	279	0		0	0	0	15		
Total	1104	870	508	600	633	473	427	366	366
Health workers (non hospital) actual (positions 335)								219	

Source: PGAS Data and ABG HR records

- 5.3.7 While services have been restored it is too early to assess the impact (if any) of autonomy on health service delivery. However, what is evident, as with education services, is that the ABG's goods and services budget is under severe pressure to fund new functions at the cost of the health and education divisions' recurrent budget.

## 5.4 State of education

- 5.4.1 ABG Education Division has made considerable progress in its draw-down of both the National Dept of Education and Teaching Service Commission powers and functions in addition to those powers and functions already delegated under the provincial government framework. A draft Bougainville Education Bill is almost ready for the House of Representatives.
- 5.4.2 The number of teachers in Bougainville is shown in **Table 4**:

**Table 4: Teachers and Education Sector staff in Bougainville (2005 – 2013)**

	2005	2006	2007	2008	2009	2010	2011	2012	2013
HQ Staff	19	20	20	30	30	30	30	30	30
District staff	15	19	19	34	34	34	34	34	34
Secondary Teachers	85	90	90	95	95	95	100	100	100
TVET Teachers	90	90	90	65	65	65	116	116	116
Primary Teachers	1450	1460	1480	1490	1516	1526	1530	1556	1566
Elementary teachers	960	970	980	990	1100	1115	1125	1145	1195
Total	2619	2669	2679	2704	2840	2875	2935	2981	3041

Source: CEO Education, ABG

- 5.4.3 The Recurrent Budget to Education for 2013 is 54 percent of the peak of 2009 while the total funding to Education of K3.9 million of 2013 is just 45 percent of the corresponding value of

K8.66 million in 2007. **Table 5** shows the trend. This is disturbing given the large youth population and the equally large 'lost generation'.

**Table 5: Recurrent Budget for Education 2006 – 2013 (K 000s)**

Education	2006	2007	2008	2009	2010	2011	2012	2013	2014
(excludes transfers to FODE etc)	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Budget	Ceiling
Recurrent Grant - Administration	442	558	472	724	819	743	579	390	390
ABG Internal - School Materials		308	186						
Total	442	866	658	724	819	743	579	390	390

Source: PGAS data

- 5.4.3 Access to basic education is well below the universal basic education aspirations enunciated in the *Bougainville Constitution*. The ABG Division of Education claims to be achieving universal primary education although several studies indicate up to 35% of school age children not going to school.
- 5.4.4 High school education has increased with the opening of new schools in Bana, Koromira, Tinputz and Buka while Vocational and Technical education requires considerable support to meet latent demand.
- 5.4.5 The "lost generation" continues to be identified by a number of studies as deserving of special attention but to date it continues to be in a "too hard basket". Together with increased technical vocational training literacy must be accorded a higher priority if people are to be able to participate in the economy.
- 5.4.6 Most functions prior to the recent education transfer of powers and functions are similar to those provided under normal provincial government arrangements. It is too early to assess any impact of the transfer of education powers and functions. A new *Bougainville Education Bill* is due to be passed and come into force in 2014.

## 5.5 Crime situation (Law and Order)

- 5.5.1 Law and Order continues to be a major constraint to development and services delivery. Several focus group discussions revealed problems with marijuana cultivation and consumption, homebrew production and consumption, and teenage pregnancies. The diminishing influence of chiefs and traditional elders was also raised in these discussions.
- 5.5.2 Level of private sector participation in the economy is reflective of the prevailing law and order situation – Buka has strong diversified vibrant commercial activities (bank, agricultural commodities, merchandise, supermarkets, guest houses, private medical practice & pharmacies etc) followed by Arawa while Buin lags behind with only basic trade stores as the main commercial activities.
- 5.5.3 During the field trip, the Bana killings (guns were not used but were carried by aggressors) on allegations of sorcery and the Arawa fatal shooting of an unruly youth highlight the precarious law and order situation in Bougainville. Both incidents involved the presence or use of guns. There is regular movement of guns through the borders and into other parts of PNG, an issue highlighted by the recent UNDP report.
- 5.5.4 Weapons (guns) continue to be a major impediment to freedom of speech, freedom of movement, exercise of human rights, exercise of democratic principles and to expansion of economic activities. The continued presence of guns in the community will undermine a 'free and fair' referendum.

- 5.5.5 Opinions are divided on weapons containment with Chiefs, women, church leaders and the silent majority supporting containment while ex-combatants want to keep guns.
- 5.5.6 Weapons (guns) are being held for three specific reasons: (i) economic reasons (prices range from K16,000 – K20,000); (ii) security reasons because of unresolved issues; and, (iii) political reasons. On the last, it was revealed at several focus group discussions that the weapons must be held should there be the need to fight the 'final war of independence' – meaning that the PNG parliament vetoes the results of the Referendum and).
- 5.5.7 There is a very strong sentiment that the possession of guns is not a problem but man is the problem, therefore there is a need to address the human being first so that he can voluntarily hand over the gun. As one villager questioned:

*Is it the gun that fires the man or is it the man that fires the gun?*

*Source: Villager in Southern Bougainville Community Meeting April 2013*

- 5.5.8 There was a uniform desire across Bougainville to have the underlying reasons for people holding onto guns addressed as part of a peace and reconciliation process to achieve weapons disposal as agreed to under the BPA. Many in the community demanded that weapons disposal be overseen by a neutral international body.
- 5.5.9 Several conflict areas still exist (i.e. Konnou in Buin, Siuwai Crisis between Siuwai and Panguna; U Vistract; Ieta village vs. Tinputz; Torokina WWI weapons dump; missing persons) that have very high potential of destabilising the prevailing peace in Bougainville. Both governments note that each one needs a plan and to be systematically addressed through peace building efforts similar to the Panguna Peace Building Strategy.
- 5.5.10 Gender related family violence is a daily occurrence and needs attention from the ABG across many sectors.
- 5.5.11 The ABG said that in Buin and Buka home brew abuse was brought under control in December 2012 through joint operation by the ex-combatants and the Bougainville police. Some of those arrested reported incidents of human rights violations and use of physical harm (such as stabbing, cutting of ears and calf muscles) of those apprehended. This raises serious questions about the role of the State and the use of non-state resources in functions that are primarily those of the state.
- 5.5.12 Unruly and aggressive behaviour (values & attitudes) of post crisis children (do not listen to parents and become angry when parents try to discipline them) is of concern to the wider community.
- 5.5.13 The current size and geographical spread of the Police Service is inadequate to maintain law and order. Some instances such as the Bana killings where Police were unarmed and were outnumbered by thugs point to the fact that the law & order situation in the South is far from being under control.
- 5.5.14 The legitimacy of the State in upholding law and order and the due processes of the legal system are undermined by reported indiscipline of the police, their use of ex-combatants for apprehending alleged criminals, and the punishments dished out to those apprehended. Clearly the Bougainville Police Force does not have a monopoly on the use of coercive force.
- 5.5.15 The ABG needs to progress as a matter of some urgency its concept of policing in Bougainville under the *Bougainville Constitution* and the *Peace Agreement*. This needs strong local



leadership, increased resources, regular training and more importantly, the distribution of the regular police across Bougainville to support the available 400 Community Auxiliary Police.

## **5.6 Human Resources Development**

- 5.6.1 ABG is currently implementing a Capacity Development Strategy (with the assistance of development partners and DPM) that is aimed at strengthening the personnel administration, creating an expanded and capable Bougainville Public Service; and achieving Human Resources Development for ARB as a whole. Its three main elements include: (a) the expansion of a Bougainville Public Service; (b) competency training for public servants; and, (c) an aggressive scholarship program for Bougainville grade 12 graduates followed by a cadetship scheme in the ABG. The above will remedy the noticeable gap that exists between skills/knowledge of current positions and incumbents and the lack of capacity.
- 5.6.2 The lack of employment opportunities in Bougainville was stated as a major disincentive for schooling. The ABG can help this through the public service where an aging workforce will need to be replaced.

### **JOINT RESOLUTION #5:**

- 5.1 **Law and order – that priority be given to strengthening law and order (weapons, police and community justice) and resolving key existing conflicts that continue to hinder return to normalcy, peace and development in parts of Bougainville (e.g. Konnou and Siuwai crises).**
- 5.2 **Economy – a broad based and integrated economic strategy be designed and implemented that would include:**
- a. **high impact projects, down-stream processing of coca and copra and small to medium enterprises; and**
  - b. **Support be extended to strengthening economic institutions for growth of private enterprise. A specific initiative in exploration of impact projects needs to be investigated with a view to creating much needed employment.**
- 5.3 **Infrastructure investments be coordinated through the Joint Project Management Unit such that all of the Region is connected via transportation and communications links in the shortest possible time.**
- 5.4 **Education and Health –ABG continue to expand the delivery of education and health services, especially to inland areas of North, Central and South Bougainville and at the same time orientate education and health service delivery to be in line with the strategic visioning above. Specific attention will be given to:**
- a. **Lost generation – that Education Division (in collaboration with relevant divisions such as Community Development, Veterans Affairs, development partners and NGOs) design and implement a specific education program targeting the lost generation.**
  - b. **Certification and Accreditation of artisans – that ABG through a relevant division, design and implement a Trade Testing, Certification and Accreditation program for skilled village artisans in anticipation for the vocational employment when mining and other economic opportunities recommence.**

- c. Opportunities for the provision of vocational and technical education must be explored as a matter of urgency with reforms to entry requirements into vocational and technical schools to be started.**
- 5.5 Strategy for Less developed areas – all three regions have pockets of isolated communities facing severe under-development. Examples include Visai in the Buin district, Rataiku in Siuwai district; Marau in Bana; Torokina; Kunua; Rotokas; and West Coast of Buka. It is recommended that ABG formulate a strategy for progressively linking and opening up these areas to social and economic development.**
- 5.6 The governments will contribute to the immediate expansion of the reach of radio throughout the Region by ensuring current projects are implemented expeditiously.**

## 6. Grants and Revenue

*This section is an assessment of financing of the ABG through grants and internal revenues. It starts with an explanation of the revenue and funding arrangements under the law. It then describes the actual funding provided to the ABG in recent years. The taxation arrangements are dealt with in Chapter 7, below.*

### 6.1 The Organic Law and Grants

6.1.1 The Organic Law specifies the grants that Bougainville is entitled to receive from the national government. The amount of each grant may vary in accordance with the law and formulae agreed between the governments. These are:

- recurrent unconditional grants; and
- a police conditional grant;
- a correctional services conditional grant;
- restoration and development grants;
- conditional grants for specific purposes; and
- an establishment grant.

#### Recurrent Unconditional Grant

6.1.2 The Recurrent Unconditional Grant is to meet the costs of functions:

- for which the Bougainville Government is responsible; and
- for which it will become responsible during the year in which the grant is made.

6.1.3 Both grants are to be based on the cost of the functions and are to be adjusted annually in the same manner as grants to the provinces.<sup>10</sup> The wording of Section 48 of the Organic Law is precise:

*(2) The amount of grant payable under Subsection (1) in each fiscal year shall be –  
(a) adjusted annually in the same manner as annual grants for a Provincial Government activity under the Organic Law on Provincial Governments and Local-level Governments;*

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<sup>10</sup> Provinces are now funded under reforms introduced in 2007. Provinces receive their operational funding based on need, i.e. available revenues less estimated costs = fiscal gap. The national government tops up each province's fiscal gap depending on the size of the pool. The pool of funds available to meet that need is a fixed percentage of government's revenues. This means the government is never (in theory) in a position where it is unable to meet its statutory transfer obligations to provinces. If national revenue goes up, the pool goes up, if national revenue goes down, the pool goes down. So provinces benefit or lose in the same way the country does. The reforms also introduced the Function Grants that targeted recurrent funding at the essential services such as health, education, transport and law and justice. The review experts were not able to ascertain whether this method was applied to the ABG recurrent grant or whether the National Government was applying the pre RIGFA methodology currently. There seems to be a case for the ABG to argue that the changes of 2007 should have been passed on to the ABG especially the Functional Grants with adjustments. The PNG National Statistics Office records that the CPI has increased by 44 percent in the years 2008 to 2012. The ABG Recurrent Grant for goods and services has increased by only 18.4 percent and salaries by 55 percent in the period. [Chapter 6.3.5]

- 6.1.4 The grant is to be paid in such a way that it can be effectively and efficiently used and applied for the purposes for which it was provided in the year for which it was provided.
- 6.1.5 The governments note the recommendation of the independent experts that more work is needed in preparing budget submissions under the second element of the criteria, i.e. the funding of functions and powers that are drawn down. When functions are transferred the ABG is entitled to seek to increases in the Recurrent Unconditional Grant to undertake those functions. The *Organic Law* provisions are complicated with some functions to be funded as a right (e.g. those where the services is established on Bougainville) and negotiations required on cost sharing in other circumstances. In brief the law provides:
- a. The Recurrent Grant must include as a minimum the amount the National Government has been spending in Bougainville on each new function and power before the transfer to the ABG;
  - b. For functions carried out in Port Moresby or elsewhere, where the service is present in Bougainville, the National Government and ABG are to negotiate joint funding arrangements, e.g. head office functions such as standards setting, monitoring etc; and
  - c. Similarly, where the function or organisation does not have representation in Bougainville, both governments are to negotiate the cost-sharing arrangements, e.g. an inwards investment regulatory regime.
- 6.1.6 The Bougainville Government has full control over the use of the Recurrent Unconditional Grant. However, it must consult with the National Government if it proposes to allocate funds in a way which would affect the employment of public servants or the payment of future commitments. The *Organic Law* also requires the ABG to consult on the funding of future maintenance and operational costs of projects.

### **Development Grants**

- 6.1.7 The National Government is required to make an annual restoration and development grant that is no less than the 2001 Public Investment Programme appropriations for Bougainville (K10.1 million.). The grant is to be adjusted upwards pro rata in accordance with the National Public Investment Programme averaged over a rolling five year period. This escalation provision was ignored until mid-2012. The ABG has presented the National Government with calculations demonstrating that the grant should be K66 million in 2013 according to the *Organic Law* formulae and not the K15 million appropriated. The arrears are calculated at K188 million up to and including 2013 less any payments recent tis year...
- 6.1.8 The National Government and the Bougainville Government were to agree to the establishment by the Bougainville Government of a mechanism, including both National Government and Bougainville Government representation, which shall be controlled by the Bougainville Government or by an authority of the Bougainville Government, to coordinate the restoration and development programme in Bougainville. It now seems to be accepted that this is the ABG's Project Management Unit with the National Government yet to appoint representatives.
- 6.1.9 The National Government may make conditional grants, for specific purposes that are:
- proposed by the National Government after consultation with the Bougainville Government and implemented after consultation and agreement between the Governments; or
  - provided for in the *Peace Agreement*.

- 6.1.10 The National Government fund of five-years of funding at K100 million per annum under the High Impact Project arrangement starting in 2012 is a conditional grant under the first element of Section 50. The grant was re-appropriated by the ABG in its 2012 Budget. It was not received until later 2012 with most of it carried over into 2013.<sup>11</sup>

### **Policing**

- 6.1.11 The funding arrangements for policing and the provision of correctional services are specific. Given their importance it is worthwhile to describe them.
- 6.1.12 The *Organic Law* provides that the National Government shall provide to the Bougainville Government:
- (a) a guaranteed annual conditional grant for the specific purpose of meeting the recurrent costs of policing by the Bougainville Police in Bougainville; and
  - (b) guaranteed conditional grants for the purpose of –
    - (i) restoring civilian peacetime policing in Bougainville in accordance with the Agreement; and
    - (ii) providing for further development of policing in Bougainville.
- 6.1.12 The guaranteed annual conditional grant shall be:
- (a) of a minimum amount sufficient to support levels of police activities in Bougainville at the date of coming into operation of this *Organic Law*; and
  - (b) shall be adjusted annually on the same basis as the adjustment of the recurrent unconditional grant under Section 48.

This grant is included in the calculation of the unconditional grants for the purpose of determining progress toward fiscal self –reliance.

- 6.1.13 The costs of policing in Bougainville after the establishment of the Bougainville Police under the *Bougainville Constitution* (other than the costs met by the grants described above) that are in excess of the costs of providing the same level of policing in Bougainville by the PNG Police Force will be equitably shared between the National Government and the Bougainville Government.

### **Correctional Services**

- 6.1.14 When the *Organic Law* was passed in 2002 the Correctional Service had a limited presence of four officers. The funding arrangements for CS are slightly different to those for the police.
- 6.1.15 The recurrent costs of the Bougainville Correctional Service, when it is established, shall be met out of the Recurrent Unconditional Grant made by the National Government to the Bougainville Government under Section 48. This is a significant difference to the policing situation where the recurrent costs of the police are paid for by the National Government under a separate conditional grant. It is not at all clear that the National Government is required to make a contribution to those costs.

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<sup>11</sup> In 2013 the ABG Budget has carried over funds from previous years. Care is needed when reviewing ABG Budgets as carry overs are in effect re-appropriated as internal revenue leading to double counting. The independent experts do not think that they should be formally re-appropriated although the matter should be reviewed to establish an appropriate policy.

- 6.1.16 The guaranteed conditional grants for the purpose of the Correctional Service are for :
- a. restoring civilian peacetime civil authority in Bougainville with a view to reaching normal levels of correctional services elsewhere in Papua New Guinea; and
  - b. providing for restoration and development of correctional services in Bougainville.
- 6.1.17 The wording of Section 32 of the *Organic Law* with the objective of reaching normal levels of correctional services and providing for restoration indicates that, unlike the wording of the police funding provisions, that the National Government is responsible for the full-cost of establishing the Correctional Service in Bougainville as an equivalent to PNG. These grants are to be taken into account in the calculation of the amount of the recurrent unconditional grant for the purposes of assessing fiscal self-reliance.
- 6.1.18 The costs of establishing and maintaining correctional institutions and services consequent on the establishment of the Bougainville Correctional Service under the *Bougainville Constitution* (other than the costs referred to above) that are in excess of the costs of providing the same level of correctional institutions and services under the National Correctional Service will be equitably shared between the National Government and the Bougainville Government.

## **JOINT RESOLUTION #6**

- 6.1 The governments agree to discuss and negotiate a solution to the payment of outstanding Restoration and Development Grant calculated according to law and to ensure that it is then properly calculated, appropriated and paid annually to the ABG in a timely manner.**
- 6.2 The ABG will prepare detailed budget submissions for each new function and power detailing staff and goods and services budgetary requirements for the first and subsequent four years of implementation in Bougainville of that function or power. These submissions will be endorsed by the BEC, and where required by the *Bougainville Constitution*, the House of Representatives.**

## **Audit**

- 6.1.19 If the Auditor General finds systematic and widespread abuse (or misuse) of funding provided to the Bougainville Government by way of recurrent unconditional grants or conditional grants the *Organic Law* provides the procedure for the matters to be investigated.
- 6.1.20 The ABG does not have an internal audit function. The ABG is assisting the Auditor General to establish an office in Bougainville by providing two houses funded by AusAID and NZAID.

## **JOINT RESOLUTION #7**

- 7.1 The ABG will establish an internal audit function within the Administration before 1 January 2015 to be funded under the Recurrent Grant arrangements.**
- 7.2 The PNG Auditor General will establish an office in Buka before 31 March 2014 with ABG assistance for housing and office space.**

## **6.2 Taxation**

- 6.2.1 The *Organic Laws* provisions for taxation are described at the beginning of Chapter 7 and are not repeated here.

## 6.3 Revenue Overview

6.3.1 Between 2006 and 2013 around 20 to 30 percent of total grant monies appropriated under ABG budget would have come out of the restoration and development grants. These grants are significant for the purpose of this review as they are locked into development projects and therefore easily measurable should one wish to assess the effectiveness of grants. Like in the financial arrangements of all other sub-national government, grants had been a dominant revenue source of all sub national governments budgets in PNG including Bougainville under the provincial government system and the now autonomous arrangement. Since 2002 more than 80 percent of ABG's budget constituted grants coming in from the National Government implying that it is heavily dependent on National Government grants. **Table 6** below shows the grant composition and the revenue budgets of ABG between 2006 and 2013:

**Table 6: Revenue Estimates from the ABG Budget (2005 – 2013) (K millions)**

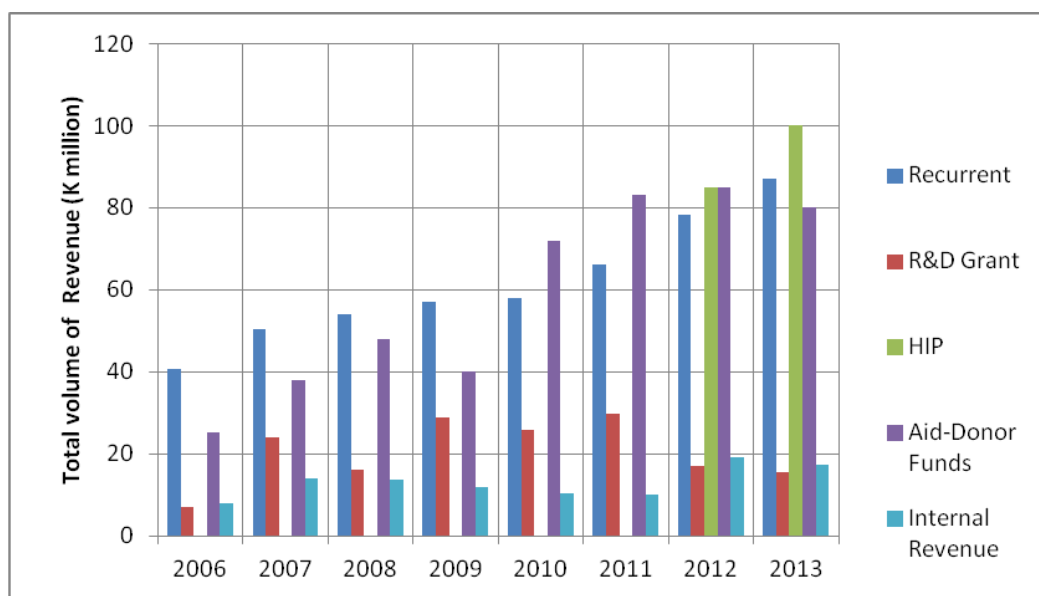
MAJOR ITEMS	2006	2007	2008	2009	2010	2011	2012	2013	TOTAL
<b>1. Total Recurrent Grant</b>	40.8	50.5	54	57	58	66.2	78.4	87	<b>491.9</b>
<b>2 Rest &amp; Dev Grants</b>									
i. PIP	5	23	15	15	0	15	15	15	<b>103</b>
ii. District Support Grants	2	1	1	1					<b>5</b>
iii. PDIP				1	0	1			<b>2</b>
iv. Other					2	4	1		<b>7</b>
<b>District Services Improvement</b>				12			1	0.5	<b>13.5</b>
<b>Infrastructure</b>		10.0			18	6			<b>24</b>
<b>Agriculture &amp; Renewable</b>					5.7	3.7			<b>9.4</b>
<b>3. HIP- Conditional grant</b>							85	100	<b>185</b>
<b>Total for all Grants</b>	<b>47.8</b>	<b>74.5</b>	<b>70</b>	<b>86</b>	<b>83.7</b>	<b>95.9</b>	<b>180.4</b>	<b>202.5</b>	<b>840.8</b>
<b>4. Donor Funding</b>	25.3	38	48	40	72	83	85	80	<b>471.30</b>
<b>5. Estimated Internal Revenue</b>	7.8	14	13.6	12	10.5	10	19.3	17.2	<b>248.90</b>
<b>Grand TOTAL</b>	<b>80.9</b>	<b>126.5</b>	<b>131.6</b>	<b>138</b>	<b>166.2</b>	<b>188.9</b>	<b>284.7</b>	<b>299.7</b>	<b>1561</b>

Source: PGAS / TMSR / Donors

### Notes:

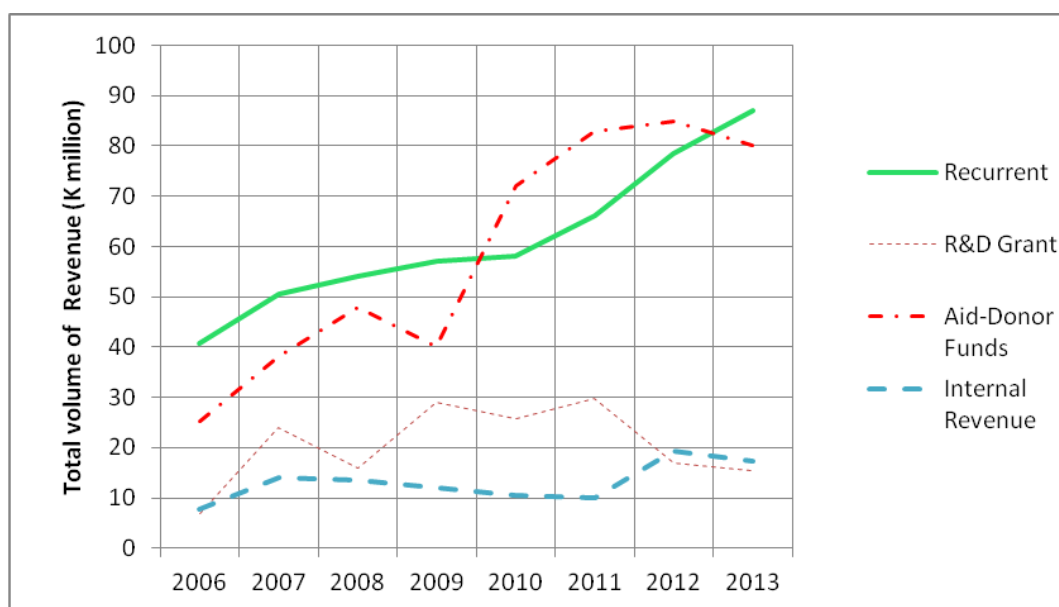
- Figures validated against approved ABG Budget of 2005 – 201.
- R&D Grants also include additional figures that were made available through National Government's Supplementary Budgets.
- R&D Grants also include additional grants that were distributed under different sectors and names.
- Estimated Internal Revenue figures are not steady. The Actual revenue can be half of the estimated figures.
- Internal Revenue figures do not match the ABG budget as funds reappropriated from earlier years have been excluded to avoid double counting.
- Most donor funding is not in the ABG budget – these figures include estimates based on figures from AusAID and NZAID sector programs.
- Does not include the National Government's District Services Improvement Program or the recent PSIP and LLGSIP.

**Figure 2: Grants and donor assistance 2006 and 2013 (Kina millions)**



Source: PGAS / TMSR / Donors

**Figure 3: Grants and donor assistance 2006 and 2013 (Kina millions)**



Source: PGAS / TMSR / ABG Budget / Donors

6.3.2 **Table 6** and **Figures 2** and **3** above only present the picture of estimated total volume of monies budgeted by the ABG annually, except for donor funds which are based on estimates of actual spending. However some important points:

- Internal revenue budgeted is weak and has hardly moved in ten years. Actual collections are often significantly less than budgeted.
- The development partner contribution is significant with most of the AusAID and NZAID contribution not visible on the ABG budget. In the period 2009 to 2011 the Japanese bridges program made a significant contribution. Since that project ended AusAID's contribution accounts for most of the current donor funding with contributions from NZAID and UNDP.



- 6.3.3 Another interesting analysis is the split between employee costs and goods and services shown in **Tables 7** and **8** in total and as a percentage of the Recurrent Grant.

**Table 7: Total Budget Staff and Goods and Services 2008 – 2012 (K millions)**

	2008	2009	2010	2011	2012
Staffing – admin, police, health	36.213	37.657	38.017.0	44.656	56.145
Goods and Services	18.073	19.384.0	19.965.5	21.563	22.251
<b>Total Annual Recurrent</b>	<b>54.286</b>	<b>57.041</b>	<b>57.982.5</b>	<b>66.219</b>	<b>78.396</b>

Source: PGAS / ABG budget

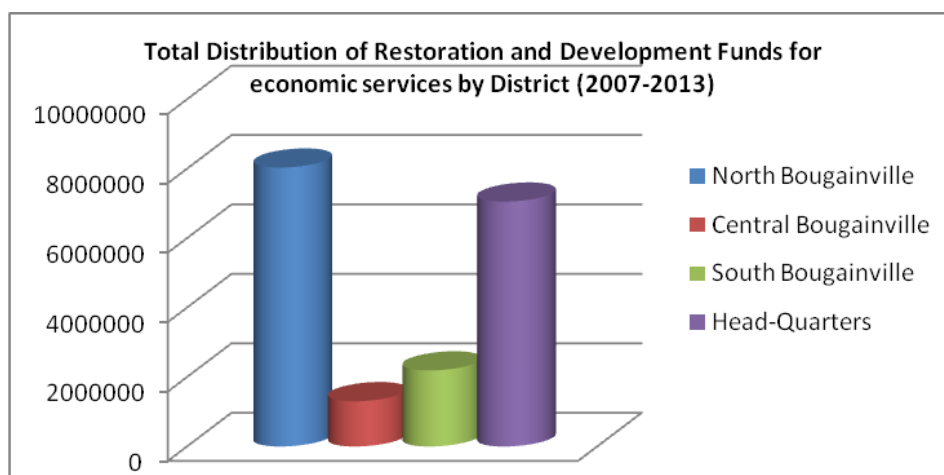
**Table 8: Percentage Budget Staff v. Goods and Services 2008 -2012**

	2008	2009	2010	2011	2012
<b>Staffing (sub total)</b>	66.71	66.02	65.57	67.44	71.62
<b>Goods and Services (subtotal)</b>	33.29	33.98	34.43	32.56	28.38
<b>Total Annual Recurrent</b>	<b>100</b>	<b>100</b>	<b>100.0</b>	<b>100</b>	<b>100</b>

Source: PGAS / ABG budget

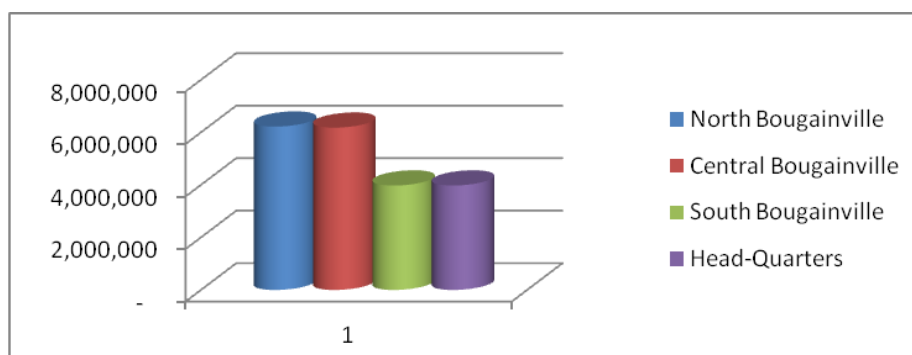
- 6.3.4 In the five years under review staff costs have increased 55 percent while goods and services budgets have increased only 22 percent.
- 6.3.5 Currently there is no analysis of the ABG budget, its trends and possible future consequences. For example there has been a significant increase in the costs to sustain the House of Representatives and ministries. A recent Salaries and Remuneration Commission Determination on the remuneration of leaders adopted by the House in April 2013 increased these costs by over K1 million per annum. This is funded by the ABG from internal revenues although since 2011 the Recurrent Grant has contributed to these costs. One consequence of this, and the failure to collect and increase internal revenue has been the serious reduction in the recurrent budget support for service delivery. The education and health figures are shown at paragraphs 5.3.6 and 5.4.3 respectively. They are half of the 2009 actual expenditure at a time when investment in new infrastructure in these sectors is increasing. To recurrent budget financing is not sustainable.
- 6.3.6 Spending cross various sectors is illustrated below. In all the tables that follow the Head Quarters Expenditure will be in one of the regions in most cases. However, if a project is implemented by Technical Services Division the PGAS accounting system does NOT identify that region.

**Figure 4: Distribution of Development Expenditure by Region (2008 – 2012): Economic Services**

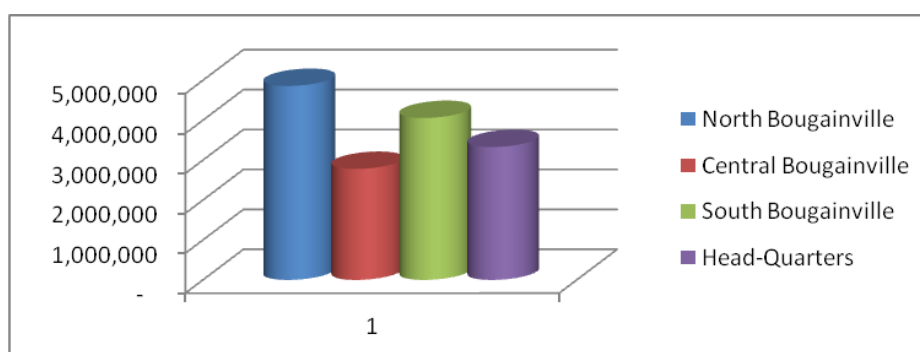


Source: PGAS / TMSR

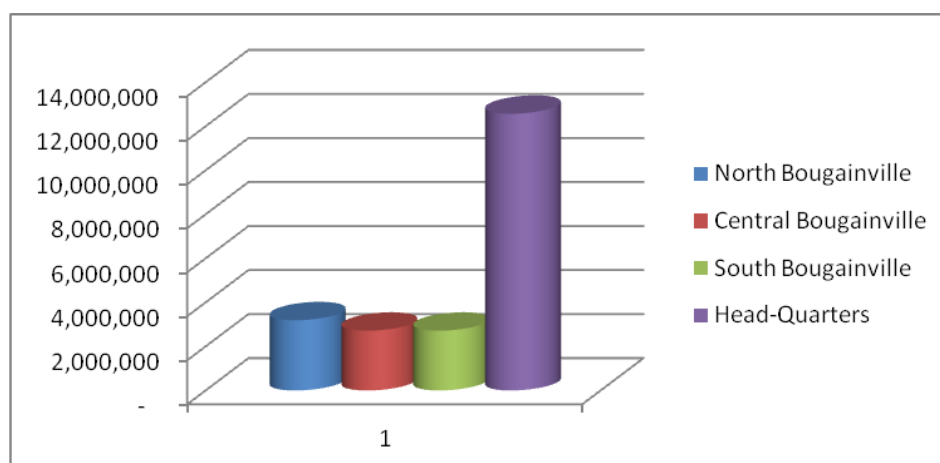
**Figure 5: Distribution of Development Expenditure by Region (2008 – 2012): Education**



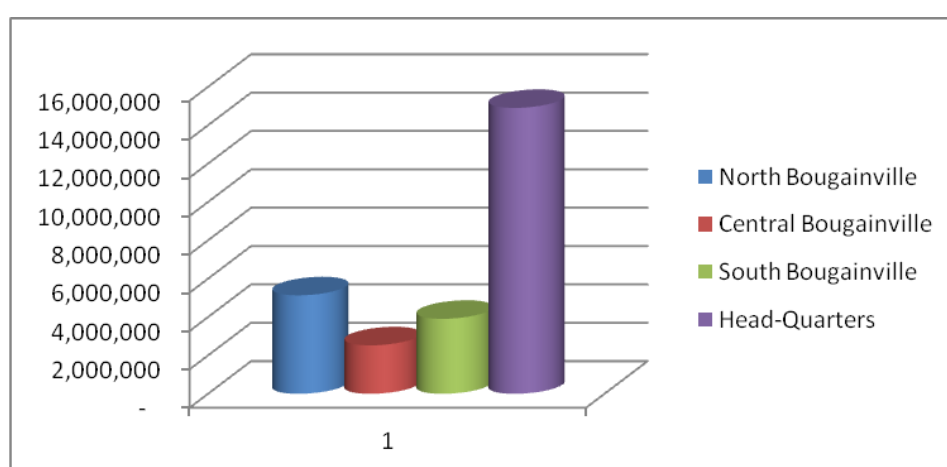
**Figure 6: Distribution of Development Expenditure by Region: Health**



**Figure 7: Distribution of Development Expenditure by Region 2008-2013. Infrastructure**



**Figure 8: Distribution of Development Expenditure by Region 2008-2013. Governance and Administration**



## 6.4 Development partner assistance

- 6.4.1 Although the ABG budget process and the budget document does not capture the details of this resource envelop, donor assistance to ABG is strategically important for several reasons. Firstly, donor assistance to Bougainville had been an alternate to Restoration and Development Grants, particularly when the RDP was not paid. Secondly, donor partner funding, particularly the Governance and Implementation Fund (AusAID and NZAID) was the only real source of discretionary funding in the absence of the RDG.
- 6.4.2 **Table 6** and **Figure 3** highlight in a broader sense the trend and growth the total volume of aid donor funds over the eight years since 2005 in comparison to other resource envelops. It is interesting to note that the total aid money to support development activities in Bougainville between 2006 and 2011 (K471 million) is over 60 percent more than the total RDG and HIP funding that ABG has received from the National Government (K288 million).
- 6.4.3 Partner assistance is hard to track as most is off budget. The ABG Budget included the Government of Japan's Bridges Project (about K80 million) and in some years part of the AusAID-NZAID Governance and Incentive Fund, and New Zealand's support to the Community Auxilliary Police together with a few other minor contributions.

- 6.4.4 Australia is the major development partner with the 2011 assistance valued at K50 million and in 2013 support is valued at K68 million (across education, health, civil society, law and justice, road maintenance, governance and autonomy including adviser and volunteer costs).
- 6.4.5 The budget does not included NZAID's contributions to the GIF, Healthy Communities Project and VSA assistance (about 20 volunteers). Similarly the UNDP contribution is missing from the budget.

## JOINT RESOLUTION #8

- 8.1 The ABG will, with National Government assistance, seek to develop and implement a four-year rolling program budget for development and recurrent expenditure with the intention of giving greater certainty to the planning, budgeting and financing of government activities. This will be closely linked to the estimates prepared under Joint Resolution 4.3 (Budgets for powers and functions to be drawn down.)**
- 8.2 The ABG will seek to capture in PGAS greater detail on the geographical spend for all development activities.**
- 8.3 The ABG will seek partner support to undertake detailed annual expenditure analysis to contribute to the development of future budgets and assist in the prioritisation of expenditure for service delivery and enhancing autonomy.**
- 8.4 The ABG will work with all development partners to seek to have their contributions captured in the ABG annual budget.**

## 6.5 Progress towards Fiscal Self-Reliance

- 6.5.1 The data in the **Table 9** below shows that Bougainville has made little progress toward achieving fiscal self-reliance. Bougainville is not achieving fiscal self-reliance because its economy is too small to generate the tax revenues needed to finance itself.
- 6.5.2 Fiscal self-reliance is a measure of whether Bougainville's economy generates enough tax revenue from company and business taxes and from GST and customs duties to finance its annual recurrent operating expenses on a sustainable basis. The technical calculation of fiscal self-reliance is explained in Section 7.2.3 below.
- 6.5.3 As can be seen from the last row of **Table 9**, Bougainville is a long way short of achieving fiscal self-reliance as currently defined. For example, in 2012 the National Government provided K78.4 million in funding for recurrent expenses. The company taxes and other revenues counted under the current fiscal self-reliance definition amounted to K3 million. The deficit or gap in revenues for achieving fiscal self-reliance was therefore K75.4 million, or equal to 25 times the value of internally generated revenues as of 2012. The small scale of Bougainville's economy is a fundamental impediment to achieving fiscal self-reliance.

**Table 9: Fiscal Self-reliance calculation (2008 – 2012) K 000s**

National Government Annual Recurrent Grants to Bougainville	2008	2009	2010	2011	2012
<b>Staffing (source: PGAS)(A)</b>					
Staffing	9,808.4	6,975.6	6,386.9	10,686.9	17488.2
Staffing Wages	0	3,400.0	4,300.0		
Teachers Services Commission	25,331.0	26,153.9	26,144.7	32,664.0	37351.6
Public Servants Leave Fares	238.2	245.2	252.6	272.8	272.8

<b>National Government Annual Recurrent Grants to Bougainville</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Teachers Leave fares	835.6	882.5	932.8	1,032.6	1032.6
SUBTOTAL (A)	36,213.2	37,657.2	38,017.0	44,656.3	56,145.2
<b>Goods and Services (source: PGAS)(B)</b>					
Recurrent - G/Services	15,602.8	16,789.7	17,293.4	18,676.9	19148.1
Police Goods & Services	2,219.7	2,344.3	2,414.6	2,607.8	2803.4
Nat. Functions. & Powers	250.0	250.0	257.5	278.0	299.0
SUBTOTAL (B)	18,072.5	19,384.0	19,965.5	21,562.7	22,250.5
<b>TOTAL ANNUAL NATIONAL GOVT RECURRENT FUNDS TO BOUGAINVILLE (A+B)</b>	<b>54,285.7</b>	<b>57,041.0</b>	<b>57,982.5</b>	<b>66,219.0</b>	<b>78,395.7</b>
<b>LESS: TOTAL BOUGAINVILLE CONTRIBUTION TO FISCAL SELF-RELIANCE (COMPANY TAX + CUSTOMS DUTIES + 70% OF GST)</b>	<b>2,800</b>	<b>2,600</b>	<b>2,800</b>	<b>4,400</b>	<b>3,000</b>
<b>FISCAL SELF-RELIANCE DEFICIT</b>	<b>51,485.7</b>	<b>54,441.0</b>	<b>55,182.5</b>	<b>61,819.0</b>	<b>75,395.7</b>

- 6.5.4 There are some other inherent practical difficulties with the fiscal self-reliance concept as a measure of Bougainville's ability to finance itself including the following:
- The legal provisions in the *Organic Law* that deal with the fiscal self-reliance arrangements are complex and confusing.
  - Little or no Bougainville company tax is currently collectable from large PNG companies doing business in Bougainville – most, if not all of them, appear to be based primarily outside Bougainville. This means that although these companies pay company tax to the National Government on the profits from their Bougainville operations, none of that company tax is counted towards Bougainville's fiscal self-reliance.
  - There is no requirement for a company doing business in Bougainville to establish its principal place of business in Bougainville itself. This means that company tax liability derived from Bougainville operations does not count toward fiscal self-reliance. This could mean, for example, that if a PNG company was established to operate a mine (or some other large business in Bougainville), its company taxes would not be counted under the current legal definition of fiscal self-reliance;
  - The IRC has demonstrated very limited capacity to identify or monitor company tax collections from any companies that may operate primarily in Bougainville or any that may do so in the future; and
  - Customs duties and GST collected in Bougainville are too small to make a significant contribution to fiscal self-reliance.

6.5.5 Chapter 7 and the independent expert's report on the taxation arrangements contain more detailed analysis of the implications of the fiscal self-reliance issues.

## 6.6 PNG Government Assistance and Services Not on ABG Budget

6.6.1 Fiscal self-reliance as a concept is extremely misleading as it only concerns the Recurrent Budget for functions actually transferred to the ABG. The Recurrent Budget Grant will increase through two means which means the bar for fiscal self-reliance also increases. Firstly, annual inflation and cost rises in salaries drives the grant up, and secondly as the ABG draws down

powers and the National Government functions are transferred the grant is increased. The National Government is required by law to fund ABG for many of the new costs. In some cases cost-sharing arrangements have to be negotiated.

6.6.2 The range of functions is vast as illustrated in Chapter 4. However a quick list of functions that the National Government provides illustrates the size of this issue:

- a. Hospital services, currently paid for by Dept of Health;
- b. Church Health and Education services currently funded by National Government grant to the churches' secretariats
- c. National Judicial Service – currently a single judge is almost full time in BGVL
- d. Magisterial Services – currently two magistrates
- e. Ombudsman
- f. Public Prosecutor
- g. Public Solicitor
- h. Correctional Service – no costs to BGVL
- i. Operating costs of all statutory authorities which ABG wishes to establish including Maritime Resources Authority, Forest Authority and Commodities Boards

6.6.3 A funding issue that seems to be overlooked by both governments is the cost of head office and backroom functions. It is relatively easy to calculate the costs of front line staff and the recurrent costs of an office in Buka if the National Government agency has one. What is not so easy is the calculation of:

- a. The costs for the provision of services in Bougainville when a National Agency does not have an officer there; and
- b. The cost of head office functions such as standards, planning, HR support, audit etc.

6.6.4 It is reasonable to assume that irrespective of who funds them the cost of establishing and maintaining a full set of will be hundreds of millions of kina i.e. much more than the current National Government unconditional Recurrent Budget Grant of K89 million. Also, the ABG will have to make a contribution to these services from its own resources as the National Government is not required to meet all costs under the cost-sharing arrangements. Both governments note the independent experts' concern that some public discussions imply that achieving fiscal self-reliance will somehow support an independent Bougainville government. This is not necessarily correct.

6.6.5 There is a need for an informed debate and policy development of Bougainville's financial future based upon more detailed financial and economic analysis. Nobody in Bougainville actually knows how much a fully autonomous government, let alone an independent one, would cost. The shape of the government and administration Bougainville desires has never been completely mapped out. The planning for the reopening of the Panguna Mine will need to include a realistic assessment of the sharing of benefits between the customary landowners, the ABG and the company. The question is "what is the ABG's likely share and what contribution will that make to either an autonomous government arrangement within Papua New Guinea or an independent government.?"

## **Joint Resolution 9**

**9.1 The ABG will commission expert assistance to undertake economic and financial analysis on the cost of various options to implement the BEC vision for Bougainville taking into account various development scenarios over five to ten years.**

### **6.7 Have the disbursements of grants been consistent?**

- 6.7.1 Disbursement of the mandatory grants by National Government to ABG as determined by law since ABG's establishment has not been consistent in terms of meeting the legal obligations, especially in terms of timeliness and in the case of the RDG the calculation of the amount. This is a mandatory grant and by law the National Government had paid these grants to the North Solomon provincial government prior to and during the crisis and after the establishment of ABG in 2005 mainly for the salaries of teachers and other public servants employed by these sub-national governments. Since 2006 these grants have steadily increased from K40.8 million to almost K87 million in 2013. The increase has primarily been in salary costs which are not controlled by the ABG. The staffing structure has remained the same.
- 6.7.2 An almost similar trend appears on the volume of disbursement of development grants, although inconsistent in the timing of payments.
- 6.7.3 The question of whether this volume of grants made its way to the ABG coffer in a timely manner and which of these development grants were absorbed by ABG is a contentious issue. Treasury generated expenditure reports tell a different but a common story about transactions of development budget between national and sub national government in PNG. The figures appear on these reports at the time of issuing of Certificate for Cash (CFC) and are different to reports generated at ABG level on when these funds were received. This difference suggests that the volume of development grants accessed and spent by ABG is less than the volume appropriated in the national budget. For instance between 2007 and 2009, not all development grants year marked for ABG were spent. The same applies for 2012 and 2013 when the RDG and HIP grants were received late in 2012. As permitted by Finance Instructions the unexpended grants were rolled over into 2013.
- 6.7.4 In summary, the indications are that not all grant monies as appropriated by the national government had been accessible by the ABG administration. The TMSR report card shows that there has been a difference of K37.3 million between 2007 and 2011 that had not been spent by the ABG administration.

### **6.8 Effective Use of Grants by ABG and National Government**

- 6.8.1 While the records confirm that grants had been appropriated, the next question that demands an explanation is if these grants been put to effective use by the ABG and National governments. The independent expert notes that such a question would attract a mixed response. The report provides explanations from two angles that are interconnected. First is to determine if there was a plan, a strategic plan in particular, that had a specific set of objectives capturing the intentions of autonomy against which these grants were spent. The second angle in determining the effective use of these grants would be an assessment on the actual use and non-usage of grants towards achieving these objectives. ABG budget and implementation of the budget over the past eight years between 2005 and 2012 becomes the point of inquiry. The budget acts as centre point where the grants are pooled and equitably redistributed. In summary both the National Government and ABG (like other sub national governments) do not

score well on both fronts. Why has this happened? Explanations in the following paragraphs provide some response to this question:

- a. The *Peace Agreement* did well in ushering in autonomy and its intention with the creation of the ABG and the designing of the *Bougainville Constitution*. The *Peace Agreement* was then complemented by a *Strategic Action Plan 2006-2010*. However that plan has lapsed. The Medium Term Development Plan has never been finalised or endorsed. In any event the draft is long and complicated.
- b. The *Capacity Development Strategy 2012*, endorsed by the BEC, contains an extensive analysis of the effects of a lack of plans and the high degree of disconnect between project financing, the plans that exist, the aspirations of leaders and the various sources of funding.
- c. The standard of plans for individual projects varies greatly. Many major projects seem to have little or no documentation according to the reports of the independent experts.
- d. Monitoring of projects and their implementation is weak, although improving. Quarterly reports are being prepared following site visits, although some major expenditures seem to escape scrutiny.
- e. The absence of any agreed plans leads the experts to conclude that projects seemed to lack strategic prioritisation. ABG's budget activities are not sensitized to autonomy and its expectations. Instead these activities are ordinary day to day activities that all sub national governments would implement under service delivery.
- f. The Administration has a serious lack of people to manage the financial system and to implement projects. Inevitably this leads to delays in project implementation. One consequence is pressure and interference by political leaders in spending decisions and implementation. Senior officers have been under pressure to create an enabling environment for ministers and members to receive funding directly for them to implement projects at the local level.

## **6.9 ABG Finance and Treasury capacity**

6.9.1 The ABG's financial capacity has been extremely low and in the circumstances what they have achieved, with support for the locally based Department of Finance Provincial Treasurer, is more than adequate. However it has been a struggle to perform to a high level.

6.9.2 There are a number of significant initiatives to happen in the next 12 months:

- a. From 1 January 2014 the ABG will operate under its own public finance law. This is being prepared with assistance from Department of Finance based on the PNG law with improvements. The law will cover all public bodies operating in Bougainville established by the ABG. Implementation will be assisted by the National Government. ABG and National Department of Finance staffing will be combined into a single entity. The finance system will still be based on the PGAS system in the interim. PGAS will be upgraded in 2013 as part of a national project.
- b. A new Finance Manual will be prepared with updated Finance Instructions.
- c. Special Finance Instructions will be prepared for the High Impact Project grants and the Service Improvement Program grants from the National Government.



- 6.9.3 As in other parts of the Administration there are serious capacity issues. These are described in the ABG's Capacity Development Strategy<sup>12</sup> with recommended approaches to increase capacity. The major issues that need to be addressed quickly are:
- a. implementing an annual budget cycle that links policy, plans and budgets;
  - b. urgently increase that standard of project documentation so as to strengthen the linkage of funds to approved plans and ensure funds are being applied correctly and value for money;
  - c. increasing the volume, relevance and accuracy of recording to all stakeholders;
  - d. introducing weekly cash flow forecasting;
  - e. addressing allegations of corruption made against staff in the division;
  - f. providing staff with safe and secure accommodation to do their job; and
  - e. training the staff to do their jobs.

### **Joint Resoltuion #10**

- 10.1 The ABG will significantly improve the level of reporting on financial matters and projects to the BEC, indivicual ministers, the Bougainville House of Representatives, the National Government, development partners and the community.**
- 10.2 The ABG will develop and then implement a comprehensive capacity development strategy to build the competencies and capabilities of the new ABG Finance and Treasury Department from January 2014..**

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<sup>12</sup> See Chapter 8.3

## 7. Taxation

*This section describes the taxation arrangements under the Peace Agreement, the taxation powers available to each, the concept of fiscal self-reliance and the weaknesses in the National Government's support of these arrangements.*

### 7.1 Legal and policy basis of taxation in Bougainville

- 7.1.1 The basis of Bougainville's tax policy is the *Peace Agreement* and the laws which implement it including the two constitutions and the *Organic Law*. The *Peace Agreement* reflects the reality that in 2001 Bougainville lacked the administrative capacity to impose or collect its major sources of tax revenue – the personal income tax and GST. That remains the case in 2013 at the time this document was prepared. These taxes continue to be imposed under Papua New Guinea legislation with the PNG Internal Revenue Commission (IRC) responsible for their collection. The revenue raised is shared with the ABG under statutory formulae contained in the *Organic Law* and in the Constitutions of Papua New Guinea and Bougainville. The commencement date of the revenue sharing formula was June 2005.
- 7.1.2 There are numerous taxation provisions in the laws which implement *Peace Agreement*. Close examination of the provisions reveals a number of apparent inconsistencies and parts of the law lack precision and detail. For example, the law provides that Bougainville will have the power to impose its own personal income tax when it achieves 'restoration', that is, a state of peace and development equal to that of Papua New Guinea. It is arguable that Bougainville has already achieved 'restoration'. However, the law contains no formal process for the assessment or declaration of 'restoration'.
- 7.1.3 The imprecision and lack of detail in Bougainville's tax laws reflects the enormity and complexity of the peace negotiation process and its implementation through the Constitutions of Papua New Guinea and Bougainville. It was not possible to cover every aspect of the taxation arrangements. Nor was it possible to predict how practical those arrangements would prove to be.
- 7.1.4 The main provisions concerning taxation are:
- *Peace Agreement* – Chapter 9, Financial Arrangements, Sections 134 to 148;
  - *Papua New Guinea Constitution* – Part XIV, Division 5, Fiscal Arrangements, Sections 324 and 325
  - *Organic Law* - Part 3, Division 1, Fiscal Arrangements, Sections 38 to 46
  - *Bougainville Constitution* – Section 154

### 7.2 Quick summary

- 7.2.1 Bougainville's taxation arrangements can be confusing. So to help understand this discussion the simplified version is that today:
- a. The National Government is entitled to receive:

- 100 per cent of company tax<sup>13</sup> collected from Bougainville companies;
  - 100 per cent of customs duties collected in Bougainville; and
  - 70 per cent of GST collected in Bougainville
- b. The ABG is entitled to receive from the IRC and/or the National Government:
- 100 per cent of personal income tax withheld from people employed in Bougainville;
  - 100 per cent of other taxes e.g. stamp duty; and
  - 30 per cent of GST.
- c. The ABG is entitled to set and collect internal revenues including sales taxes, license fees, registration fees and developed property taxes, not all of which are currently in place.
- 7.2.2 "Fiscal self-reliance" is the term used in the constitutional documents. It is often misunderstood and misused technically. It has led to confusion about Bougainville's revenue and about its autonomy and independence options. For example, there is a common mistaken belief that Bougainville must achieve 'fiscal self-reliance' to proceed to referendum on autonomy. This is not correct. There is no such requirement. Fiscal self-reliance is no more than an approximation of Bougainville's ability to finance itself. We consider that there are serious weaknesses with the current concept of fiscal self-reliance and question its relevance for the future of Bougainville.
- 7.2.3 Under the current statutory definition, Bougainville is fiscally self-reliant when:
- a. company tax; plus
  - b. customs duty collections from Bougainville; plus 70% of GST derived from Bougainville;  
**equals;**
  - c. the National Government's annual recurrent grant, including the police grant and the corrections grant, to Bougainville and can be maintained on a sustainable basis.
- 7.2.4 In 2012 National Government unconditional grants for Bougainville totalled K78 million. Under the above formula:
- a. Company tax collected was zero; plus
  - b. Customs duty collect was zero;
  - c. Plus 70 percent of GST was K3 million<sup>14</sup>.
- The shortfall below the fiscal self-reliance threshold was therefore **K75 million**. See **Table 9** above for the calculation.
- 7.2.5 This Review is concerned that under the current conceptual basis of fiscal self-reliance, as embodied in the Constitutional and *Organic Law*, Bougainville could only achieve the objective by collecting large amounts of company tax. In the absence of other large scale economic

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<sup>13</sup> Under the law, "company tax" means tax on the profits of companies whose principal place of business or whose main business activity is in Bougainville.

<sup>14</sup> The total GST paid to the ABG seems extraordinarily low as it implies that the gross GST tax base in Bougainville is around K30 million. As in the rest of PNG taxpayers are required to separately note GST paid and collected for transaction in Bougainville. An audit of the top ten goods and services areas or businesses needs to be carried out, as provided in the Organic Law, to verify this amount.

developments in Bougainville, the only plausible source of such revenue would be the Panguna copper mine. But the collection of any such tax could be delayed for many years and would depend on the long term profitability of the mine. Further, even if the mine generated significant revenues, the current statutory definition of Bougainville company tax is such that the eventual tax liability may accrue in a jurisdiction outside of Bougainville.

7.2.6 The recurrent grants in 2013 are expected to have reached approximately K80 million. Even if the Panguna Mine, or another large venture, was to open in five to seven years how long would it take for the business to be profitable, let alone be in a position to pay the same amount in company tax? More than ten years is a more believable scenario. The rapid growth of recurrent grant funding from K20 million in 2002 to approximately K80 million in 2013 and further large increases by 2020 mean that the fiscal self-reliance threshold has become an unrealistic objective. The more relevant question which this Review raises is does fiscal self-reliance have any relevance today? Perhaps the question should be "what is the reasonable cost to operate government in Bougainville to service the people"? That discussion needs to take into account all other sources of current funding of services in Bougainville including:

- Conditional grants such as the High Impact Projects conditional grant at K100 million per annum;
- The Reconstruction and Development Grant currently at K15 million per annum which should be more like K80 per annum according to the indexation formulae in the *Organic Law*;
- The K80 million of development partner assistance; and
- The direct service delivery funding by the National Government of other functions and services including:
  - The hospitals funded through the National Department of Health at K6 million pa;
  - Church health and school services funded by national grants to their umbrella organisations;
  - The recurrent budget costs of national functions not yet transferred to the ABG including Correctional Services, Fisheries etc.

7.2.7 Our point in drawing attention to this is that 'fiscal self-reliance' is often spoken of as if it means enough funding for an independent Bougainville government to operate. This is seriously misleading. As currently structured an independent Bougainville may need in excess of K300 million to operate at the equivalent level as today.

7.2.8 After achieving Fiscal Self Reliance the ABG is entitled under the *Organic Law* to receive;

- a share of company tax collected from Bougainville companies;
- a share of customs duties collected in Bougainville; and
- 70 per cent of GST on Bougainville transactions
- 100 per cent of personal income tax withheld from people employed in Bougainville; and
- 100 per cent of other taxes e.g. stamp duty.

7.2.7 The National Government will continue to impose and collect personal income tax until "restoration". Restoration is defined as *'the time when Bougainville has returned to a standard of*

*peace and development approximating to that of the rest of Papua New Guinea.*"<sup>15</sup> After restoration the ABG is able to assume the functions and powers to impose, set the rates of, and collect personal income tax. The interesting question, aside from if Bougainville has the capacity to carry out this function, is "has 'restoration' been reached?" If Bougainville assumes this function it can adjust the rates of tax but by no more than five points different to PNG.

### **7.3 The taxation arrangements**

7.3.1 The taxation arrangements of the Organic Law give Bougainville the statutory power to assume increasing control over its finances, in particular, its share of the national tax revenue derived from Bougainville and certain limited powers to impose, collect and otherwise administer it. The arrangements deal specifically with the following matters:

- a. Papua New Guinea's obligations to collect national government taxes in Bougainville through the IRC.
- b. Bougainville's powers to impose its own internal taxes such as sales taxes, license fees, registration fees and developed property taxes.
- c. Sharing of the national government tax revenue collected in Bougainville between Bougainville and Papua New Guinea.
- d. Bougainville's powers to take over the imposition and collection of personal income tax and to act as the national government's agent for the collection and administration of other taxes (including company tax) and to vary the rates at which certain national government taxes are paid in Bougainville
- e. Bougainville's power to establish its own tax administration agency.
- f. Special powers of Bougainville to audit the National Government's collection of Bougainville taxes.
- g. The National Government's obligation to establish and maintain fiscal self-reliance trust account

7.3.2 The *Organic Law* provides that the National Government will continue to impose and collect personal income tax in accordance with the provisions below until such time as restoration is achieved.

7.3.3 The *Organic Law* provides that the IRC will initially collect all taxes for the Autonomous Bougainville Government but the Autonomous Bougainville Government will have the power to establish its own tax office to collect Bougainville taxes as well as, by agreement, company tax, goods and services tax, and customs duties. Section 45 of the *Organic Law* states that:

- (1) *The Internal Revenue Commission shall, for and on behalf of the Bougainville Government, collect all taxes of the Bougainville Government under Section 44(a) until such time as the Bougainville Government has established a Bougainville tax office.*
- (2) *On and after the establishment of a Bougainville tax office, the Bougainville tax office may collect –*
  - (a) *all or any taxes under the Bougainville Government's tax administration under Section 44; and*
  - (b) *by agreement with the Internal Revenue Commission, for and on behalf of the Internal Revenue Commission, company tax, value added tax and customs duties.*

7.2.4 Section 41 of the *Organic Law* provides that the Autonomous Bougainville Government will have power to set rates or establish its own tax regime for all other existing National

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<sup>15</sup> Section 41(1)

Government taxes (e.g. export tax, excise) and all taxes that have been available to provincial governments under the National Constitution.

- 7.2.5 Section 44 of the *Organic Law* enables Bougainville to administer all of the taxes that would it would have been able to collect internally when it was the North Solomons Province of Papua New Guinea. These include liquor and gambling licensing, developed property taxes, motor vehicle registration, road user taxes and taxes like the former provincial sales taxes.
- 7.2.6 The primary tax revenue sharing provisions of the *Organic Law* are:
- a. Revenue from personal income tax collected from Bougainville will be paid directly to a trust account for the autonomous Bougainville Government and distributed to the autonomous Bougainville Government on its request to be used to support development in Bougainville.
  - b. Revenue from company tax will be retained by the National Government until Bougainville achieves fiscal self-reliance. Upon achieving fiscal self-reliance Bougainville will be entitled to negotiate a share of the company tax collection.
  - c. Revenues from all other existing National Government taxes (including 30 per cent of Value Added Tax) collected in Bougainville will be paid direct to the Autonomous Bougainville Government.
- 7.2.7 The laws which implement the finance provisions of the *Peace Agreement* make an important distinction between personal income tax and company tax. The *Organic Law* requires Papua New Guinea to return 100% of the personal income tax collected in Bougainville to the Autonomous Bougainville Government. Until fiscal self-reliance Papua New Guinea retains all of the company income tax collected in Bougainville. When fiscal self-reliance is achieved, the *Peace Agreement* and the law provide that the Autonomous Bougainville Government and the National Government can agree on a way of sharing the revenue from company income tax, customs duties and GST which exceed the National Government's recurrent grant to Bougainville.
- 7.2.8 The IRC advised the Review Panel that since the commencement of the Bougainville taxation arrangements (in 2005), 163 companies have registered with it. The IRC believes that many of these are inactive, that is, not currently trading. About 50 have had transactions with the IRC such as payment of salary and wage tax. The IRC has not yet reported any company tax that has actually been paid by Bougainville based companies.
- 7.2.9 Until fiscal self-reliance, the only significance of company tax for Bougainville is that it is used in the formula to measure fiscal self-reliance. Bougainville will not be able to negotiate a share of the company income tax until it achieves fiscal self-reliance. Until fiscal self-reliance personal income tax remains a much more direct financial benefit to Bougainville than company tax. The ABG has full control over the way it chooses to spend the personal income tax remitted to it by the National Government. Any company tax collected in Bougainville goes into Papua New Guinea's consolidated revenue and is, under the current revenue sharing agreement, beyond the control of the ABG. It should be noted that, as explained elsewhere in this document, the current definition of 'company tax' in the *Organic Law* means that there is unlikely to be any significant company tax collection in Bougainville. This has two quite significant outcomes:
- *No fiscal self-reliance* - it is impossible for Bougainville to achieve fiscal self-reliance without significant challenges in redesigning the tax system.
  - *No share of company tax* - Bougainville cannot share any of the company tax revenue because no company tax revenue will be collected in Bougainville unless companies

choose to establish a principal place of business or main business activity in Bougainville or Bougainville passes a law deeming business that operate in Bougainville to be in business there under its own companies taxation regime..

## 7.3 Findings

### **Fiscal self-reliance currently unworkable**

- 7.3.1 Bougainville would need to have generated company tax, customs duties and GST collections totalling 78 million kina to achieve fiscal self-reliance in 2012. The amount the IRC collected was 4.3 million kina<sup>16</sup>. Only 3 million of this sum actually contributes to fiscal self-reliance under the current statutory definition of fiscal self-reliance. There was thus a deficit of 75 million between the revenue collected and the amount needed to achieve fiscal self-reliance. As explained in greater detail below, Bougainville's economy remains a long way from achieving fiscal self-reliance.
- 7.3.2 We note that in addition to the simple deficiency in revenue generation, there is a fundamental weakness in the current concept of 'fiscal self-reliance' as currently defined in the *Organic Law*. There is no possibility of Bougainville achieving fiscal self-reliance because, under the current statutory definition, fiscal self-reliance could only be achieved through company tax collection in Bougainville. There is almost no company tax now collectable in Bougainville and a risk of very little collectable in the future. We note that many major Papua New Guinea companies operate in Bougainville and that a significant portion of their profits and their company tax liabilities could be attributed to Bougainville – but these amounts do not fit within the current definition of company tax attributable to Bougainville.
- 7.3.3 Fiscal self-reliance is the point at which Bougainville can sustainably generate sufficient company tax and other major tax revenues to approximate the financial benefits it receives through annual grants from Papua New Guinea. Fundamental changes are needed to the concept of fiscal self-reliance as a measure of Bougainville's contribution to Papua New Guinea's revenue base and as a measure of Bougainville's ability to finance itself sustainably.
- 7.3.4 There is also a need for a significant improvement in the IRC's capacity to identify Bougainville companies and the taxes they pay (or fail to pay). There is limited capacity within the IRC at present. It may be possible to build the required capacity. But there is no current evidence of that ability. Costly and ongoing external expertise is likely to be needed to enable the IRC to achieve this. It may be more appropriate to redefine fiscal self-reliance and for the National Economic and Fiscal Commission to be given the resources to undertake the task of measuring it.

### **Underpayment, late payment and non-payment to Bougainville of personal income tax and other tax revenue by the National Government.**

- 7.3.5 The National Government has not paid significant amounts of tax revenue that the ABG is entitled to receive. The Chief Bougainville Collector of Taxes estimates the total amount

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<sup>16</sup> Since the tax arrangements commenced in 2005 there has been no identifiable collection of company tax or customs duty contributing to fiscal self-reliance. There appear to be a small number of companies operating principally in Bougainville but there is no evidence that the IRC is able to identify the company tax payment from those companies. The IRC finds it difficult to identify company tax amounts attributable to them. Further, their contributions would be insignificant relative to the size of the annual national government recurrent grant. The amount of 4.3 million kina is GST. But only 70% of the GST collection is counted in the fiscal self-reliance calculation formula set out in the *Organic Law*.

outstanding is between K3 million and K5 million. These underpayments are due to accounting errors. The underpayments are contrary to the National Government's obligations under the *Organic Law*. The IRC is actively working on improvements to ensure that outstanding amounts are validated and paid. However, we note that at the time of submitting this report the amounts remain unpaid.

### **Income tax withholding tax on the cocoa industry?**

- 7.3.6 The IRC is currently not collecting any income tax from Bougainville's cocoa growers unless they file a return. There is an option for the Papua New Guinea Government to enforce the 10 percent withholding tax provided for in the law on cash crops purchases at wholesale. The three or four buyers of Bougainville's cocoa could do this ensuring the collection of income tax which the IRC is currently unable to collect. This is not difficult to do – it does not require a large increase in the IRC's administrative capacity - and would assure a significant and sustainable improvement to Bougainville's budget. This would, in turn, reduce Bougainville's need for financial assistance from the National Government. The proposal therefore has the potential for significant and enduring financial benefits for Bougainville.
- 7.3.7 However, there are significant policy and social reasons why imposing this tax may not be either good policy or socially fair. The experts note that the cocoa industry in Bougainville (and throughout Papua New Guinea) currently faces severe difficulties with cocoa pod borer, lack of capital investment and diminished profitability for growers due to the increase in the value of the Papua New Guinea kina against the US dollar. In 2013 it is expected that Bougainville cocoa production will fall by 50 per cent<sup>17</sup>. It is recommended that any proposal to collect a withholding income tax includes rigorous analysis of the socio-economic impact on Bougainville's 23,000 cocoa growers and their dependants.

### **Transfer of income tax power to Bougainville unrealistic**

- 7.3.8 The review Panel's view is that Bougainville should be cautious about exercising its power to take over the imposition and collection of its personal income tax or any other taxation. The ABG is struggling to collect the current internal revenues due to it with major retailers refusing to pay the sales tax on beer and cigarettes imposed by a law validly enacted by Bougainville's Parliament. The cost of establishing and maintaining the bureaucracy needed to collect new taxes will be greater than the amount of personal income tax collected.
- 7.3.9 The Bougainville Parliament has enacted a law for the general administration of taxation in Bougainville. At the time of preparing this review, the Bougainville Tax Office has a staff of three individuals and is led by the Chief Bougainville Collector of Taxes. The Bougainville Tax Office's capacity to administer taxation is limited to internal Bougainville taxes such as the sales tax imposed on local sales of beer and cigarettes. It will not be possible to plan the capacity development of Bougainville's tax administration until Bougainville's political future is resolved. If the referendum results in independence, there will need to be a complete reconsideration of Bougainville's taxation needs. If Bougainville decides to remain connected to Papua New Guinea, the nature of its taxation administration will depend upon the financial arrangements it develops with Papua New Guinea.
- 7.3.10 For the immediate future the Review Panel believes that IRC and the Bougainville Tax Office should be colocated in Buka to improve coordination and collections. The IRC has indicated that it is willing to progress this if accommodation can be made available.

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<sup>17</sup> Advice from the Papua New Guinea Cocoa Board in March 2013.



- 7.3.11 There is a high risk of economic disruption for both Bougainville and Papua New Guinea arising from the complex legislative amendments needed to separate Bougainville's personal income tax from Papua New Guinea.

#### **Economic risk of tax rate variations**

- 7.3.12 It was suggested to the Review Panel that Bougainville could compete with Papua New Guinea for foreign investment by decreasing its tax rates below those imposed by Papua New Guinea. A variation of up to five percent is permitted under the *Organic Law*. Bougainville should be cautious about exercising its power to vary personal income taxes or company taxes below Papua New Guinea rates. Such variations could seriously damage the tax revenue base of Papua New Guinea by encouraging tax avoidance by companies and other businesses wishing to avoid Papua New Guinea taxes through 'profit shifting' arrangements. If Bougainville varies its rates above those in Papua New Guinea it risks the loss of investment to Papua New Guinea or other countries with lower tax rates. Unstable tax rates would reduce the confidence of foreign companies considering large investments in either Bougainville or Papua New Guinea.

#### **Lack of accountability by National Government in respect of audit of the IRC's records of tax revenue liable to be collected and paid to the ABG**

- 7.3.13 The ABG is entitled under the *Organic Law* to audit the National Government's collection of taxation revenue in Bougainville. Papua New Guinea holds a complementary audit power. This was intended to ensure that Bougainville had a way of ensuring that it received its revenue entitlements as provided by the laws which implement the *Peace Agreement*.
- 7.3.14 It has not been possible to carry out an audit of the IRC's accounts of taxes collected in Bougainville. The ABG lacks the capacity to conduct such an audit. The tax expert believes that the IRC would have considerable difficulty extracting the necessary records and otherwise facilitating such an audit unless it receives additional administrative resources to ensure a regular program of access and audit. A significant impediment to this process is the existence of 'secrecy' provisions which prohibit the disclosure of taxpayer information by IRC officials. It is proposed that consideration be given to amend the Papua New Guinea taxation laws to require IRC officials to disclose Bougainville tax information to the Chief Bougainville Collector of Taxes and to his subordinate officials.

### **7.4 IRC support for Bougainville**

- 7.4.1 The IRC has demonstrated good intentions to Bougainville but its own significant capacity weaknesses mean that Papua New Guinea is failing to meet its legal obligations to Bougainville. The IRC has not been provided with the additional capacity needed to fulfil the National Government's taxation obligations to Bougainville under the *Peace Agreement* and under the *Organic Law*. It is unreasonable to expect significant improvement without an increase in the resources available to the IRC to ensure collection of outstanding tax, carry out well targeted enforcement and meet other obligations.
- 7.4.2 The National Government needs to provide additional capacity to the IRC in the form of senior staff resources dedicated to ensuring Bougainville's special arrangements are properly implemented. There needs to be a high and rigorous degree of accountability to the ABG including changes to the law to require an independent annual audit of performance and reporting to the ABG Finance Minister. If the necessary human resources cannot be found in Papua New Guinea it may be necessary to source them from outside.

- 7.4.3 We note that the IRC has clearly and consistently demonstrated its willingness to assist Bougainville to the extent that its limited resources permit including the following:
- Collaboration with the Bougainville Tax Office and establishment of an IRC provincial office in Buka;
  - Conduct of 'public awareness' campaigns in Bougainville to assist the people of Bougainville with taxation information;
  - Offers of assistance to train Bougainville revenue officials;
  - Identification of outstanding tax debts of some Bougainville taxpayers;
  - The IRC Commissioner of Taxation has established a forum for regular meetings with the Chief Bougainville Collector of Taxes and has personally intervened to try to resolve outstanding problems; and
  - The IRC was the first National Government agency to enter into a Memorandum of Understanding with the ABG (in 2010). The MoU has important symbolic value and provides for mutual co-operation on taxation matters.
- 7.4.4 The IRC has continued to exercise sensitivity and care in all of its dealings with Bougainville. But it lacks the operational resources to deliver the tangible outcomes required under the *Organic Law*. Concerns about law and order and safety of IRC officials continue to be a significant limitation on the IRC's ability to enforce the collection of taxes in Bougainville.

#### **JOINT RESOLUTION #11**

- 11.1 **The ABG will host a Taxation and Revenue Summit in early 2014 to educate the political leadership and the public service of both governments about the tax and revenue arrangements and issues available to Bougainville under the existing Organic Law. Its objective will be (a) to achieve a consensus on a broad strategy, and priorities, to secure improved efficiency and effectiveness in administering the taxation and other revenue entitlements and (b) to contribute to future revenue policy development being properly informed particularly when it seeks to improve the ABG's ability to achieve the fiscal objectives of the Peace Agreement.**
- 11.2 **Based upon the outcome of the Revenue Summit ABG will review its Office of the Chief Bougainville Collector of Taxes to assess future staffing and capacity needs.**
- 11.3 **The ABG will activate arrangements to establish the audit function provided in the Organic Law to monitor the collection of revenues by the IRC.**
- 11.4 **The IRC will be provided with additional resources in Port Moresby, the regional office and in Buka to undertake its role including an increased awareness program across the region.**

## **8. Public Administration**

### **8.1 Overview**

- 8.1.1 Bougainville acquired full autonomy status with the formal inception of the ABG in 2005 following the signing of the BPA in March 2000 and the certification and adoption of the *Bougainville Constitution* in 2004. The acquisition of full autonomy status and the creation of the ABG are significant undertakings in themselves not only for PNG but more so for the people of Bougainville. They express the intention of Bougainvilleans to govern their own affairs through a democratically elected government and for the region to receive the highest form of autonomy largely free from centralised (Waigani) controls and distinct from the decentralised system of provincial governments in PNG.
- 8.1.2 The implementation of the autonomy arrangement in the ARB has been a process that required guidance and better management and implementation at the political and administrative levels to ensure that it is properly done. Like any process, it had its own challenges and difficulties. These difficulties have become evident in the Review Team's consultation with the ABG and the People of Bougainville during the review exercise.
- 8.1.3 While there have been gains in some areas, overall progress has been slower than expected. In some areas, for example the establishment of the audit and accountability institutions and key areas of the government service such as the autonomous police service and the CIS, progress has stalled.
- 8.1.4 With hindsight progress could have been much faster if there was:
- A clear understanding by Bougainville leaders on what they really wanted from autonomy with prioritising to ensure their achievement,
  - Strong and decisive leadership by the ABG leaders to take collective ownership of the autonomy agenda and advance it through the centre of government by way of a whole of government approach,
  - Ample preparatory arrangements by the ABG and its institutions,
  - A strong and effective Bougainville Public Service to provide support to the ABG and progress the autonomy implementation, and
  - A high-level of coordination and cooperation by both governments to implement the autonomy provisions.

### **8.2 Overall Progress of Implementation of Autonomy**

- 8.2.1 Implementation of the autonomy arrangements should have started in 2005. For the government services especially and governance arrangements, focused attention and real work appeared to have begun in 2012. Procrastination and indecision has led to close to eight and half years of lost opportunity.
- 8.2.2 While there has been some progress made on the governance and administrative aspects, progress overall has been much slower than expected. This process could have been fast-tracked if better preparation had been done on the autonomy journey earlier or when the process began in 2005.
- 8.2.3 Political decisiveness at the highest level within the House and BEC is required to progress the implementation of autonomy on the ground. Bougainville leaders have a sense of what

autonomy is, and indeed some have very strong views on autonomy. But we are not sure whether, collectively, there is a common purpose and vision of autonomy shared by all.

- 8.2.4 We find that there is no real robust and cohesive push both in the House and the BEC to drive the autonomy agenda, and that the resolution of Bougainville leaders to do this is fragmented. There is therefore an urgent need for political leadership both in the House and the BEC to drive the implementation of the autonomy arrangements led by the Office of the President.
- 8.2.5 A clear strategy on autonomy putting in place the strategies, timeline and key milestones to be achieved in key areas of governance and government services could have aided the progression towards autonomy from the start. There was none from the start and the ABG still lacked one when this review was carried out.
- 8.2.6 Coordination between the national government and the ABG has been weak and often times lacking. A close and deeper cooperation by the ABG and the National Government (through NCOBA) could have greatly assisted in expediting the process.
- 8.2.7 The coordination mechanism through NCOBA is dysfunctional on the most part and NCOBA's performance has been severely weakened. It is therefore very doubtful whether NCOBA can provide the kind of support that the national government needs to assist the ABG to progress the implementation of the autonomy on the ground

#### *General Observations on the Executive*

- 8.2.8 Current ABG governance and administrative structures while operating face significant challenges that continue to weakening their operations. These need to be address in order for the ARB to move forward and is better prepared for the autonomy referendum
- 8.2.9 The present structure and operational arrangements of the Bougainville Public Service is unsuited to really lend effective support to the ABG institutions, the work of ministers and the BEC.
- 8.2.10 The establishment of key ABG institutions as required by the *Bougainville Constitution* is partially complete with the establishment of the House and the BEC. The autonomous system of courts for Bougainville and the establishment of key audit and accountability institutions, such as the Bougainville Ombudsman and the Auditor General are yet to be established.
- 8.2.11 There is evidence of the House operating independently as a parliament under in own standing orders but significant weaknesses still exist within its operations. The drafting and adoption of legislation are uncoordinated resulting in lost opportunity and priority legislations on autonomy not being adopted. There is no in-house capacity for the drafting and provision of advice on bills and papers resulting in the overall loss of capacity both in terms of the House's ability to maintain legislative governance and make quality legislation. And, the House oversight and scrutiny functions over the executive government and the public service is weakened due to poor reporting and accountability mechanisms within parliament and the weakened state of the House committee system.
- 8.2.12 The BEC, though operating, also faces key challenges. It does not act cohesively on matters of policy, and decisive leadership from the Office of President to control and drive the autonomy agenda needs to be stepped up. There are signs that ministers are trying their best, but ministers' efforts are largely fragmented and often do not represent the collective will of cabinet, if there is any.
- 8.2.13 The "Bougainville Public Service" is largely a creature of Waigani and is still operating as part of the national public service instead of being a public service for the ARB. Its reporting and

accountability arrangements are poorly aligned to ABG, ministers, and the BEC. The Bougainville Public Service is, instead, more attuned to Waigani.

- 8.2.14 The control of the public service machinery by the BEC is weak. There is a strong view from ministers that the public service largely remains aloof to the government determinations of policy and that the lack of effective implementation of policy is a result of this situation.
- 8.2.15 Problems of weak control of the public service by the executive is compounded by the confusing and dual accountability relationship CEO's have with ministers and the Chief Administrator and the present legislative arrangement of the law which largely shields public servants from being held to account and sanctioned for their actions by ministers and the BEC.
- 8.2.16 Given the particular situation of Bougainville a strong Chief Administrator capable of providing strategic and operational leadership and to provide strong support to ministers and the BEC is required. There are strong sentiments from the President and the members of the BEC and the House that the present Chief Administrator is lacking in these areas, and the present direction of the public service is largely the result of his leadership.
- 8.2.17 Current efforts in implementing autonomy, especially those regarding Bougainville Government Services and on the broader governance aspects are highly fragmented and not coordinated. Strategic leadership for greater coordination and coherence from the Chief Administrator and CEOs are lacking and there is no "whole of government" and no "whole of public service" approach in this.
- 8.2.18 In connection to the above, the draw-downs of powers have been highly fragmented with each department (division doing its own thing), resulting in lopsided and uneven progress.
- 8.2.19 The operations of the three-tier system of government in Bougainville consisting of the ABG, the Council of Elders and the Village Assemblies are fraught with structural and operational difficulties that, save for the ABG House and BEC, the two lower tiers of government are hardly operating and a good number of them are not functioning altogether.
- 8.2.20 There is a serious disconnect between the ABG and the two lower tiers of government, with the ABG paying little attention to their well-being. There is an urgent need to build the capacity of these lower-tiers of government.
- 8.2.21 Given the present situation, the opportunity for meaningful democratic participation in community local governance, decision-making and a range of self-help community schemes has been limited.

#### **JOINT RESOLUTION #12<sup>18</sup>**

- 12.1 An immediate joint review be carried out on NCOBA to determine its continued relevance and its future roles and responsibilities. The ABG and the National Government should give serious consideration setting up the ABG to manage coordination with the National Government on its own with current NCOBA resources shared between an ABG representative office and the ministry.**
- 12.2 The ABG with the assistance of the national government take immediate steps to put in place a weapons disposal plan and set a concrete time to implement**

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<sup>18</sup> The Joint Resolution on awareness arising out of the discussion in this Chapter is now incorporated in Joint Resolution 3 above.

weapons disposal prior to 2015. It then should move quickly to implement this plan.

- 12.3 The ABG take immediate steps to put in place a peace and reconciliation plan and that this plan be immediately implemented before 2015.
- 12.4 The new structure and operations of the Bougainville Public Service will strengthen and enhance reporting and accountability arrangements including enhancing the roles of ministers and the BEC in setting policy and monitoring the performance of the Administration.
- 12.5 The ABG will develop and implement a capacity building programme, based around the White Paper on Councils of Elders to resuscitate the capacity of Councils of Elders and Village Assemblies to ensure that they are operational and remain sustainable as the second tier of government in Bougainville.

### 8.3 How is good governance to be measured?

8.3.1 This part of the Joint Review is primarily concerned with governance and public administration. However, the constitutional requirement is somewhat broader. Therefore, based upon the experts' reports, the Review considers four different points of view:

- Section 338(5) of the Constitution indicators;
- UNDP View
- An ABG view;
- International indices; and
- The Provincial Performance Improvement Initiatives Key Result Areas.

8.3.2 Both governments' acknowledge the recommendation from the independent experts that for the next review the terms of reference should be much clearer about the good governance criteria that the experts are required to report against. The terms of reference and the scope of the independent expert reports should be prepared against a selection of indicators from all of these sources.

#### *Section 338(5) considerations*

#### **8.3.3 Section 338(5) includes a set of indicators of good governance which are representative of indicators regularly seen in international literature and assessments. It which reads:**

*"For the purposes of Subsection (4), the internationally accepted standards of good governance, as they are applicable and implemented in the circumstances of Bougainville and Papua New Guinea as a whole, include democracy, the opportunity for participation by Bougainvilleans, transparency, accountability, and respect for human rights and the rule of law, including this Constitution."*

8.3.4 The list in subsection (5) is not exhaustive. It is only one set of indicators and some aspects of it extend beyond the responsibility of the ABG alone, e.g. the rule of law and respect for human rights which closely involve the National Government. None of these indicators were explicitly referenced in the Terms of Reference of the independent experts. However from their reports and consultations the following observations can be made.

### **Democracy**

8.3.5 Bougainville has a vibrant and working system of elected government at the upper level. The various reports by the independent experts note that:

- Two free and fair elections have been held;
- The House and the BEC meet regularly;
- The House sessions are rebroadcast in full by New Dawn Radio;
- Parliamentary papers are available in limited numbers during the session from the Clerk;
- The connections to the Councils of Elders and Village Assemblies are tenuous and not working well.

8.3.6 However, there are improvements that could be made:

- Members of the House need more training and research support.
- Greater local awareness is needed of the matters before the House and the BEC.
- The committees of the House need more resources to carry out their work in each of the sectors that they are responsible for.
- ABG laws should be available on a website.
- All papers tabled in the House should be on an ABG website.
- Some members of the House need to spend more time in their constituencies and to engage more with their local constituents and the Councils of Elders.

### ***Opportunities for Participation by Bougainvilleans***

8.3.7 The Constitution has heavy obligations for leaders to consult and engage with chiefs and communities that do not seem to be supported. The regional consultations on the Panguna Mine are an example of good practice. It is acknowledged that ABG's limited financial resources make extensive consultation impossible. However it seems that there is

- No effective engagement with civil society primarily because civil society is not well organised.
- Very poor linkages between Members of the House of Representatives and their communities particularly with the Councils of Elders.
- Limited flows of information to the people.

### ***Transparency and accountability***

8.3.8 The lack of transparency and accountability is serious. There is:

- Limited performance reporting by Administration to BEC and the House.
- Lack of reporting to the House by Ministers primarily due to no reports from Administration.
- Serious concerns in the community about fraud and corruption.
- Contract details are not published. Contracts are not performed and payments are made in suspicious circumstances.
- The lack of a formal opposition in the House reduces accountability of the Executive.
- Parliamentary Accounts Committee reviews audit reports but has no resources to undertake investigations and Administration has been unresponsive to implementing recommendations.

- 1500 newspapers a day reach Bougainville with a population of 250,000. Radio Bougainville High Frequency service is not working. Radio New Dawn FM service has limited coverage. FM100 rebroadcasts PNG service. Accordingly there are few reliable media outlets to convey information to the people. ABG is investigating establishing a locally printed broadsheet newspaper of 5,000 copies to be published monthly with government news.

### ***Human rights and the rule of law***

8.3.9 Community consultations revealed deep dissatisfaction with the police and their performance:

- Abuses of youths and others by police and ex combatants during holiday periods, including inflicting injury by cutting tendons was widely reported.
- Overcrowding of police lockups, particularly in Buka is a serious abuse of human rights.
- Deteriorating law and order situation with guns freely available in communities and people being threatened. The rising tide of deep-seated resentment towards Asian traders and business cannot be ignored

8.3.10 The village court, the District Court and National Court are functioning well in Bougainville with cases being heard throughout the region. [Urgent support is needed to ensure that the National Court judge is a permanent resident of Bougainville.]

8.3.11 The Ombudsman Commission is working in Bougainville as is the Public Solicitor. The ABG is assisting the Auditor General to establish a two-person office.

### ***UNDP Perspective***

8.3.12 The UNDP has set out five basic principles that can also be used to make an assessment.

<b>Box A1: Five Principles of Good Governance</b>	
<b>The Five Good Governance Principles</b>	<b>The UNDP Principles and related UNDP text on which they are based</b>
<b>1. Legitimacy and Voice</b>	<b>Participation</b> – all men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their intention. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively. <b>Consensus orientation</b> – good governance mediates differing interests to reach a broad consensus on what is in the best interest of the group and, where possible, on policies and procedures.
<b>2. Direction</b>	<b>Strategic vision</b> – leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded.
<b>3. Performance</b>	<b>Responsiveness</b> – institutions and processes try to serve all stakeholders. <b>Effectiveness and efficiency</b> – processes and institutions produce results that meet needs while making the best use of resources.
<b>4. Accountability</b>	<b>Accountability</b> – decision-makers in government, the private sector and civil society organizations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organizations and whether the decision is internal or external. <b>Transparency</b> – transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.



Box A1: Five Principles of Good Governance	
The Five Good Governance Principles	The UNDP Principles and related UNDP text on which they are based
5. Fairness	<p><b>Equity</b> – all men and women have opportunities to improve or maintain their well-being.</p> <p><b>Rule of Law</b> – legal frameworks should be fair and enforced impartially, particularly the laws on human rights.</p>

Source: John Graham, Bruce Amos, and Tim Plumptre 2003. *Principles of Good Governance in the 21<sup>st</sup> Century*, Policy Brief No. 15, Institute on Governance, Ottawa, Canada (available online: [http://www.growourregion.ca/images/file/governance/policybrief15\\_0.pdf](http://www.growourregion.ca/images/file/governance/policybrief15_0.pdf)), p3.

8.3.13 Elsewhere in this Review recommendations are made about:

- a. The importance of the ABG developing and distributing a strategic vision for Bougainville;
- b. The ABG being more responsive to the community.

### **Good governance – an ABG view**

8.3.6 The Review notes that the independent experts have included this explanation of good governance in their report:<sup>19</sup>

*“One of the other prerequisites for setting the actual date of the referendum apart from weapons disposal is “good governance”. Clause 313(a) of the BPA reflects the agreement reached regarding the benchmarks to be applied in determining good governance. This clause is given legal effect by section 334(3)(b), (4), (5) and (6) of the National Constitution. In particular, Section 334(5) of the National Constitution establishes that the benchmarks to be applied in making a determination with respect to this issue, revolve around internationally accepted standards of good governance, as they are applicable and implemented in the circumstances of Bougainville and Papua New Guinea as a whole. These benchmarks will include democracy, transparency, the opportunity for participation by Bougainvilleans, accountability, and respect for human rights and the rule of law, including the National Constitution itself.*

*Generally, good governance is an ideal which is difficult to achieve in its totality. Very few countries in the world have achieved ideal good governance in its entirety. Certainly in the case of Bougainville and Papua New Guinea as a whole, the process to achieving good governance in the way reflected in the BPA and given legal effect by the National Constitution will be long and protracted. It is relevant to point out though that, for the purposes of undertaking this determination, it will be necessary to apply good governance issues or benchmarks, “as they are applicable and implemented in the circumstances of Bougainville and Papua New Guinea as a whole”, the minimum standard required by the National Constitution.*

*This is a reasonably fair basis for carrying out a determination on good governance in Bougainville, because, the ABG’s basic starting point for building and strengthening autonomy is the pre-existing provincial government arrangements for finances, staffing and powers and functions, which apply right throughout the country. Although, in so many ways, the autonomy of the (Bougainville Interim Provincial Government (BIPG) was far higher than most other provincial governments throughout the country in the period just before the ABG was established, as it retained control of local level government functions and powers, the financial and personnel arrangements did not necessarily reflect these increased responsibilities of the provincial government when it existed.*

*Because of the limited financial resources available to the ABG and the limited capacity in the administrative arm it inherited from the provincial government era, it is inevitable that it will take time to develop the full range of ABG institutions required to enable it to attain the capacity required by it to discharge its functions and responsibilities as an autonomous Government for people living within Bougainville. The people of Bougainville understood these limitations very clearly and decided to adopt an evolutionary approach to establishing such institutions of the ABG. These aspirations are reflected by Sections 153(1) and 208 of the Bougainville Constitution.*

*In the meantime, most National Government institutions do not have existing staff living and working in Bougainville, performing their roles and responsibilities in the period, (the transitional period), when power and*

<sup>19</sup> Siriosi, C., Private Note on the Referendum and its organisation, Buka 2010

*control over such institutions remain vested with the National Government. This severely inhibits the range of services available within Bougainville and quite obviously does have a negative impact on good governance in Bougainville. Currently the ABG is made up of just the basic institutions of the legislature (Bougainville House of Representatives), the executive and an administrative arm. The details for the much wider range of institutions intended to be established gradually by the ABG as “circumstances and resources change”, are provided for under the Bougainville Constitution.*

*Nevertheless, it's fair to say that since the ABG was established on 15<sup>th</sup> of June 2005, it has achieved a number of imperative milestones including: the implementation of the financial arrangements for autonomy; the development of agreed arrangements for transfer of competencies from the national Government to the ABG; passing of various mechanical legislations to enable the ABG to operate within the limit of law, continues to make significant progress in establishing and sustaining the rule of law throughout AROB by making law and justice services accessible in most administrative centres. Much more has been achieved to date and any determination on the issue of good governance will enumerate for the benefit of the National Government and the ABG many of these achievements, besides, pointing out any “underperformance and who is responsible for an such underperformance”.*

- 8.3.14 The experts generally concur that the ABG has made significant progress since June 2005. However, as noted below and elsewhere, many of the basics and foundations of good government and sound administration are weak or missing.

### ***International indicators***

- 8.3.15 There are dozens of indicators provided by various international and regional bodies including:

- UNDP's *Human Development Index*
- Freedom House's *Freedom in the World*
- Transparency International's *Corruption Perception Index*
- World Bank's *Governance Matters Series*
- Pacific Institute of Advanced Studies in Development and Governance *Good Governance Indicators*.

- 8.3.8 The Review Team did not intend to use them for this review for several reasons:

- Many of the indicators are inappropriate to Bougainville now;
- Little data is available for an assessment under these indices;
- The independent experts did not have the resources to undertake the research to collect the data; and
- The ABG does not have responsibility for many of the areas of assessment.

### ***Department of Provincial and Local Government Affairs Provincial Performance Improvement Initiative Model Key Result Areas***

- 8.3.16 This report takes as its starting point for a practical approach to assessing good governance in the area of public administration the work of the PNG Provincial Performance Improvement Program (PPIL) managed by Department of Provincial and Local Government Affairs with AusAID's assistance in all provinces of PNG. PPIL has been engaged with PNG provinces for over seven years in assessing their performance against a set of local standards. PPIL is managed by Department of Provincial and Local Government Affairs and works with the provinces through the corporate plan, or rather key elements of the GoPNG's traditional corporate plan modality, as an assessment, diagnostic and performance management tool. The methodology is simple and easily understood. It is not perfect and can be criticised for its lack of

sophistication and being based around traditional 1980s corporate planning thinking. However, it is effective for assessing the state of the basic tools of a working bureaucracy.

8.3.17 PPII's objective is improved service delivery by provincial, district and local administrations through more efficient and effective public administration. The basic assumption of PPII is that a province's Provincial Management Team and District Management Teams cannot deliver their development plans and services for the people effectively if their respective corporate management, systems and processes are weak, and if their relations with key stakeholders are tenuous as is often the case. Thus, the initial focus of PPII in a partner-province is to help strengthen management and administration in six areas<sup>20</sup>:

- Provincial and District Management Team Work: The Provincial Administrator, deputies, District Administrators, Divisional Heads, Advisers and Treasury Officers need to work together
- Management team relations with Stakeholders: The management teams at various levels need to work effectively with key stakeholders such as Elected Leaders, National Agencies, Civil Society and the Private Sector. The support of these stakeholders is critical to improved service delivery.
- Performance Management: Efficient performance planning, monitoring and reporting by management teams is essential to good performance and accountability
- Managing the Budget and Financial Systems with the Province: Effective links between budget and plans, integrated budget management, taking account of all source of funds
- Managing Human Resources – the public service at the provincial and district levels: Effective personnel structure and HR systems from recruitment, induction, training, performance management and staff appraisal, and
- Managing the Assets of the Province – equipment, vehicle, infrastructure, including buildings, etc. Having in place inventory control, acquisition and disposal systems, maintenance program, etc

8.3.18 These six areas are the basis for six Key Result Areas (KRAs) which are a distinct feature in all corporate plans as a first step towards addressing corporate management issues. Two additional KRAs are assessed: cross-cutting issues and organisational culture.

8.3.19 Against this backdrop Department of Provincial and Local Government Affairs has worked with provinces in PNG helping them to address the systemic and functional issues which are deemed to be the critical constraints to services at the district and local level government levels. These systemic and functional issues have been identified as – integrated planning and budgeting, expenditure and financial management, HR management and asset management.

8.3.20 The expert's report on Public Administration and Governance contains a modified version of the set of Key Result Areas appropriate to Bougainville's Administration including an assessment of the ABG's position under each KRA. Because it is a set of tested indicators developed in PNG that have been applied now for eight years, the Review Team believes that they contribute to meeting the requirements of the *Papua New Guinea Constitution's* good governance assessment

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<sup>20</sup> "Guide to Services and Performance Requirements under the Provincial Performance Improvement Initiative (PPII)", Department of Provincial and Local Level Government Affairs (Department of Provincial and Local Government Affairs), 2007

- 8.3.21 The story told by the indicators, as assessed by the panel, is not a good one. The ABG is below satisfactory in almost every sub-part of each KRA. The assessment has been verified through many conversations in Buka. It was not formally completed with the ABG and the assessment is that of the experts alone. While some within the ABG may disagree with the individual scores, the point is that the ABG is poorly performing on most basic indicators as used within PNG. It is well behind the five or six better performing provinces.
- 8.3.22 The ABG has many deficiencies across all the core governance areas of sound public administration as is shown by the indicators in Annex A to the experts report. The major problem is simply that many of the basics of good public administration are not in place. In many cases the staff lack the individual competencies to implement the government's systems and process. In other cases there are no effective sanctions for non-compliance. A summary of the weaknesses include:
- ABG does not have a current corporate plan and no development plans at the Region level or the 13 districts.
  - There are a few meetings of senior management and very little recording of those meetings or follow-up of decisions made.
  - Poor relations exist between the Administration, ministers and the BEC generally due to lack of engagement and leadership by the Chief Administrator. [As at 31 July 2013.]
  - The ABG does not have an agreed vision that can be communicated to staff around which a culture can be developed. Strategy cannot be implemented in the absence of a clearly espoused vision and culture.
  - Communication between all levels of the ABG, and within divisions, is poor in terms of conveying policy, explaining decisions and seeking information.
  - There is poor compliance across the public service with good practice and procedure, whether it is in reporting of financial matters, enforcing HR discipline, reporting to the BEC and House etc.
  - ABG does not have a performance culture or system for effective reporting at any level other than on-demand, usually in an emergency.
  - There is very weak alignment between BEC policy objectives for service delivery and budgets.
  - Despite the constitutional requirements there is limited significant consultation with the people and communities and then only single topic specific, e.g. mining discussions with Panguna people and in the regions.
  - While financial control is adequate and basic PFM requirements are being met, reporting on projects and achievements is weak, although improving with some inspections of HIP, RDG and other projects. However, it is not universal and some larger expenditures have no scrutiny at all.
  - The 2006 organisational structure and positions are out-of-date and need replacing urgently. This is being addressed with the creation of the Bougainville Public Service.
  - No significant staff training has been undertaken since the ABG was created in 2005.
  - Asset maintenance is weak with not enough resources applied to maintenance with a high demand for new investment given the immediate needs.

- Overall awareness of the ABG, autonomy and the government's program is very poor across the whole of Bougainville. This extends to the Administration.
- It is very hard to find evidence of the consideration and inclusion of the Constitution's Objectives and General Directive Principles in the work of the ABG. There is no training in the ABG on these very specific parts of the Constitution which address Bougainville's aspirations and way of working.
- Team work is spoken of but not really supported. ABG Administration is very hierarchical with a lot of talking down and at people and little internal communication and listening which are at the core of team work.
- HIV/AIDS and Gender equality plans are not in place within the Administration.

#### **8.4 Overall assessment of good governance in public administration**

- 8.4.1 Both governments note the expert's view, when all the reports are read together, that it is doubtful if it could be said that Bougainville was achieving the required standard of good governance as at mid-2013. This is for a number of reasons:
- a. Where criteria are available, such as with the PPII KRAs, the assessment shows weak capacity and poor compliance with recognised good practice, even in the Papua New Guinea context. The ABG is significantly below some of the better performing PNG provinces in terms of public administration.
  - b. There are serious capacity issues in the competencies of individuals and the capability of various parts of the administration of government to do their respective tasks; and
  - c. In other broader areas there is simply a lack of data which makes it impossible to make a valid assessment.

#### **JOINT RESOLUTION #13**

- 13.1 The governments note the expert's view that when all the reports are read together and a number of indicators are looked at it is doubtful if it could be said that Bougainville was achieving the required standard of good governance in public administration and other areas as at mid-2013.**
- 13.2 The governments agree that for future joint reviews greater clarity is needed on the set of indicators (having reference to the constitutional definition) against which good governance is to be assessed taking into account the available sources of quality data.**
- 13.3 In early 2014, with Department of Provincial and Local Government Affairs' assistance, the ABG shall complete a joint organisational assessment using an agreed set of Key Result Areas and indicators based upon the Provincial Performance Improvement Initiative, to be repeated in early 2015 to feed into the 2015 joint review of the autonomy arrangements. ABG and Department of Provincial and Local Government Affairs will seek to involve a representative from East New Britain Province (and/or Milne Bay Province) in the assessments given those provinces' above average performance in service delivery.**

## 13.4 The ABG will complete its 2014-2016 Corporate Plan by 31 March 2014.

### 8.4 Capacity Development<sup>21</sup>

- 8.4.1 The major weakness in Bougainville today is its inability to work together to do things, to implement policies in a consistent manner, and to demonstrate to the people that government is indeed working. In 2012 the ABG, with outside assistance prepared *A Capacity Development Strategy for the Autonomous Regions of Bougainville: Government must Work, and be seen to be Working* (the CD Strategy). This joint review adopts as its recommended capacity strategy development approach that BEC approved document.
- 8.4.2 The purpose of the CD Strategy was to provide a ‘road map’ of **what** the ABG needs to do and **how** it needs to act to manage the process of change leading to improved service delivery and performance by the ABG as a government. It needs to release the capacity that it has within government seeking to build and enhance individual capabilities and organisational capabilities where needed.
- 8.4.3 The cross-government strategies are about behaviour and the processes of government. These approaches need to be appreciated and understood by all those working with, and within the ABG. The strategies cover:

**“Strategy 1: Strengthen the functioning of the elected government and parliament (political government)**

- 1.1 We must take Ownership and Leadership seriously, and Lead.
- 1.2 Working Institutions of Government.

**Strategy 2: Establish a performing and accountable bureaucracy (administrative government)**

*These are the core elements of an effective and efficient public service.*

- 2.1 Strategic management and coordination
- 2.2 Priority Policies and Laws
- 2.3 Enhanced Public Financial Management
- 2.4 Human Resources Management and Development
- 2.5 Prioritised and Affordable Plans & Budgets
- 2.6 Delivery of Services to the People
- 2.7 Performance Measurement & Accountability
- 2.8 Effective Communications and Communications Systems.”

- 8.4.4 Each Strategy analysis the needs, what needs to be done and how it can be implemented.
- 8.4.5 The CD Strategy then lists six thematic priorities for the ABG. These are not intended to be exclusive or comprehensive. However, for now they should be the ABG’s priorities through to 2016. The six are grouped under Strategy 3:

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<sup>21</sup> This Section is adopted from the *A Capacity Development Strategy for the Autonomous Regions of Bougainville: Government must Work, and be seen to be Working* (November 2012 as endorsed by the BEC.)

**“Strategy 3: Fast-track key enablers for better ABG performance**

*These are some of the key enablers which need to be achieved if the ABG is to function as an autonomous government. There are many more but these are the priorities.*

3.1 *Financing government and Economic Development.*

3.2 *Weapons Disposal*

3.3 *The New Generation*

3.4 *Coordinated Mining Policy Development and Panguna Negotiations*

3.5 *The Bougainville Police Service - supported by other L&J services*

3.6 *Coordinated partner (National Government and Donors) engagement”*

8.4.6 The CD Strategy is very prescriptive. That was the intention. It is what is needed. The CD Strategy has a time frame of four to five years, shorter than the five to ten years originally envisioned. This is the reality of the constraints and weaknesses that need to be addressed.

8.4.7 When preparing the CD Strategy the team identified four *headlines* to address poor behaviours by the ABG and all its partners that were contributing to weakening the ABG and its ability to manage and control Bougainville’s development. The slogans are in essence a reminder to all parties of how they should behave in contributing to Bougainville’s development:

8.4.8

***“IF WE DO NOT KNOW WHERE WE ARE GOING THE PLACE  
WE END UP MAY BE VERY BAD!”***

This is common sense. Bougainville needs to prioritise its efforts. There is an extensive and complex agenda of work building a government under autonomy and achieving the goals of autonomy. The ABG is spread thin in many areas. With its limited human and financial resources it needs need to be clear about what the priorities are.

8.4.9

***“THERE IS NO ROAD MY FRIENDS: WE MAKE THE ROAD AS  
WE WALK.”***

There is no template or model for autonomy available to Bougainville. While there are examples of autonomous government from around the world this is an exploratory journey and not one in which the ABG can simply copy other practice. It must learn from its own history. It must learn from successes and mistakes. It must take advice. However, the journey needs to be completed in a considered manner lead by Bougainvilleans. More often than not it needs to walk rather than to run. Bougainville must lead in the design and building of the road. To continue the metaphor Bougainville must control the speed of construction. At various times it will need help on this journey. This will involve explaining the aspirations for autonomy. Sometimes this will be making available funding, or the supply of services and goods, or hands-on physical assistance building the road. At other times it will be encouragement, dialogue, facilitation, mentoring, coaching, and capacity development from partners that helps to build an effective government.

8.4.10

***“THE LONGEST WAY AROUND IS THE SHORTEST WAY HOME.”***

Efforts to short circuit good process have resulted in frustration, disappointment and limited progress. The independent experts believe that the current slow progress in the draw down of functions and powers can be attributed to attempts Bougainville needs to spend more time within the Administration, with the BEC, with the communities and chiefs, and, with partners mapping out the pathways and building the proper foundations for the road to development. All

tasks need to be broken down into small, properly sequenced steps. Much more work is needed on agreeing how change will happen. Everyone needs to be clear as to who has to contribute; what they need to do; who is responsible for bringing the individual bits and pieces together; where are the resources coming from and when; and who is accountable for results- or lack of them?

8.4.11

***“PLEASE USE OUR FRONT DOOR.....AND PLEASE TAKE A SEAT  
IN THE LIVING ROOM AND WAIT TO BE INVITED TO ENTER THE  
KITCHEN”***

Bougainville must lead its development. Public, private, church, government, development and civil society partners must respect that. Bougainville's leaders must ensure that work is politically directed at the policy level and implemented through the Administration and its leadership. Many people come to Bougainville. Some avoid engaging with the government and/or the administration. Bougainville is a small place with limited resources and many needs. It is also very easy for well-intentioned visitors and guests, and those not so well intentioned, to disturb the social and cultural environment. Dealing directly with lower levels of government or communities, without proper coordination, directly contributes to weakening government, particularly in a nascent governmental and administrative environment where proper administrative and procedural guidelines are yet to be developed. Administration and political leaders lose the ability to contribute the ABG's policies, enforce our priorities, and to influence development. We hope to put an end to what is bad practice.

- 8.4.12 A key aspect of this approach is to seek greater coordination and harmonisation of activities and initiatives through the Administration, subject to political policy guidance. All partners and prospective partners should adopt a policy to 'do no harm' in their activities in Bougainville. All engagement should start through the President and the Office of the Chief Administrator.

## **JOINT RESOLUTION #14**

- 14.1 The Governments agree that they will apply significant resources, with the support of development partners, to implement the BEC approved *Capacity Development Strategy for the Autonomous Bougainville Government* (November 2012).**



## 9. Legal and Constitutional

*This sector report is based upon the analysis, findings and recommendations of the independent expert's review of legal and constitutional matters specifically as required by the Terms of Reference:*

- *Legal/Legislative Capacity*
- *Law and Justice – Command and control structure of Police Service and Correction Service; and*
- *Mining Powers.*

*The independent expert also addressed two matters of apparent non-compliance with the constitutional laws. The first of these is dealt with in Chapter 2 above (failure to review the Bougainville Constitution) while the second, failure to comply with the law on the process for the transfer of functions and powers is addressed immediately below.*

### 9.1 Non-compliance with constitutional requirements relating to transfer of powers and functions.

- 9.1.1 Sections 295 – 297 of the *Organic Law* succinctly guide both the *National Government* and the ABG as to how they should approach the request for and the transfer of powers and functions based upon the *Peace Agreement*.
- 9.1.2 Section 295 of the *Papua New Guinea Constitution* expresses in plain language steps the ABG shall take when it wishes to request a power or function available to it (under Section 290, *Papua New Guinea Constitution*) to be transferred to it. The process is mandatory. Section 296 states that the national laws in respect of the powers and functions available to the ABG (under Section 290) shall continue to apply until the ABG enacts its own laws to replace the national laws. Section 297 is an enabling provision empowering the *Organic Law* (enacted for the purpose) to further provide details enabling the transfer of powers and functions available to the ABG.
- 9.1.3 Section 3 of the *Organic Law* provides for a joint co-ordinated approach and lists matters that shall be taken into account in order to ensure preparation and transfer of powers and functions. The matters that shall be taken into account for transfer of powers and functions include criteria, indicators and targets of capacity and resources available to or required by the Bougainville Government.

#### 3. AGREED PLANS FOR IMPLEMENTATION OF TRANSFER.

- (1) *The National Government and the Bougainville Government shall jointly prepare agreed plans for co – operating in implementing the transfer of functions and powers for which the Bougainville Government shall become responsible.*
- (2) *The agreed plans referred to in Subsection (1) –*
- (a) shall include criteria, indicators and targets of capacity and resources available to or required by the Bougainville Government that should be taken into account in making proper preparations for the transfer of particular functions and powers; and*
  - (b) in relation to transfer of police and other agreed functions and powers, may provide for a gradual transfer . .*

- 9.1.4 Section 4 of the *Organic Law* states that in the event the lack of capacity or resources prevent the transfer of power or function to the ABG and such circumstances prevent effective exercise of the power or function by the ABG, the National Government and the ABG shall consult with a view to prepare an agreed plan for overcoming the difficulties. Where both parties fail to agree on the plan to overcome the difficulty and the power or function cannot be transferred or the transfer is delayed the parties may resort to dispute resolution process prescribed under the Constitution and the *Organic Law*.
- 9.1.5 Section 43 of the *Bougainville Constitution* lists matters that the ABG shall consider prior to initiating a request for transfer of power or function from the National Government. In some specific cases such as establishing a government service or a new institution the BEC is required to supply the House of Representatives with a cost benefit analysis and statement of capacity.
- 9.1.6 A clear feature of the *Bougainville Constitutional Commission's Report*<sup>22</sup> was that functions should be established in Bougainville gradually when capacity was available and resources had been agreed and provided. These constitutional processes were designed to achieve this.
- 9.1.7 The view of the independent experts is that the transfer of functions and powers has not followed the proper legal process. Initially the ABG requested mining, oil and gas powers and functions. On 9 June 2006 the ABG requested that 34 heads of powers be transferred from the National Government to the ABG. On 16 November 2006 the National Government agreed. The transfer of mining, oil and gas powers and functions became a priority. By March 2008 both governments had agreed to sign a Memorandum of Understanding setting out 15-steps for the transfer. During this time the constitutional processes were not followed in strict time sequence although the end result was a joint plan, supported by the World Bank, to establish the Department on Mining in the ABG.
- 9.1.8 Both governments then adopted an amended process based upon the mining process for the transfer of subsequent powers and functions to the ABG. Primarily this involved the governments agreeing to a memorandum of understanding (MoU) that set out the process for the draw down of functions and powers in each area. As at 1 August 2013 there are 13 MoU across various sectors. The independent review team is of the view that this was an unfortunate development for the following reasons:
- a. Bougainville is entitled to a high level of autonomy based upon a transfer of powers not a devolution or delegation of powers. The MoU process, when supported by delegations, has been used to circumvent the constitutional processes (which required effort and resources to comply with) and has given Bougainville only half the cake so to speak. The MoU process does not fully meet the obligations of Section 3 of the *Organic Law*, particularly subsection 2. For seven years any substantive functions carried out in Bougainville in key service delivery or administrative areas have been done so on the basis of pre-ABG powers and/or delegations from the National Government. The House, when passing lands and planning laws in late 2012, completed the first 'transfer' of a major function outside of the legislative and executive arms of government.
  - b. If the constitutional processes had been followed, and powers drawn down in a logical order as the interim government agreed in June 2004,<sup>23</sup> then it may have been possible to

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<sup>22</sup> 3<sup>rd</sup> Draft, June 2005

<sup>23</sup> Provincial Executive Council Policy Paper 40/2004

establish a standard transfer process which could have evolved and been replicated in subsequent years.

- c. Having such a process would have engaged National Government Central Agencies in developing Bougainville's autonomy and the constitutional arrangements would have been familiar as working arrangements to all sides. Instead, MoUs were developed on a bilateral basis between ABG divisions of their 'mother' National Government agency. This internalised the process and contributed to a disengagement at the higher government to government level in the view of the independent experts.

9.1.9 The executive arm of ABG on the one hand wanted expeditious transfer of powers and functions. It complained that the current process of drawing down powers and functions was "too cumbersome and thus encouraged procrastinating", so the MoU was used as a circuit breaker. On the other hand it expressed grave concern that its public service machinery is inefficient, lacks capacity and the resources necessary to get on its feet and deliver the basic government services to the people. It likened the current draw down of powers and functions to ABG public service as "loading more heavy cargo on a mechanically faulty and potentially sinkable ship". Complying with Section 3 would have meant that both governments would have been forced to attend to making the ship reasonably seaworthy as well as mapping out the proposed course prior to loading the first cargo and setting off to reach the destination charted by the *Peace Agreement* and the relevant laws.

9.1.10 In 2004 the then Interim Provincial Executive Council endorsed Policy Submission 40/2004 that supported Section 3 of the *Organic Law* by approving criteria to be included in the required implementation plans. Both governments agree that these criteria are still relevant and they are replicated in this Autonomy Review for consideration as the drawdown of functions gathers pace. They should be addressed in every Policy Submission to the BEC to effect a transfer:

- a. Does the function involve a subject matter related to a key issue for Bougainville?
- b. Will drawing down the function help deal with the issue?
- c. Will drawing down the function generate more revenue for Bougainville (both in terms of government taxation and household income generation)?
- d. Is it possible to calculate the costs (both recurrent and capital) associated with drawing down the function?
- e. Is it likely that the costs are affordable, and do not involve an unfunded component, and are the costs so high that drawing down the function is not realistic?
- f. Financial projections indicate that the Autonomous Government will have very limited funds. Considering limited funds, is it likely that Bougainville will be able to meet its share of the costs for the function?
- g. Is it critical that the function is transferred now or more appropriate at a later date when the Autonomous Government is better established?
- h. Does the public service have the capacity and resources to administer the function?
- i. Is there community support for drawing down the function?

9.1.11 The paper recommended at 2004 Provincial Executive Council chaired by then Governor Momis agreed that the initial priorities for draw down were internal revenue, the public service functions, lands, foreign investment, mining/oil/gas, foreign aid, public holidays and village courts. This process should be restored.

## JOINT RESOLUTION

The Joint Resolutions for this Chapter are incorporated in Joint Resolution 4

### 9.2 Capacity of House of Representatives (House)

- 9.2.1 The House of Representatives is a member of the Commonwealth Parliamentary Association. It is independent of the National Parliament. The House is an inclusive legislature in that its membership comprises representatives of different factions in the ARB. Since 2005 the House has enacted over 50 pieces of legislation. It is for the executive to administer and implement them. The current ABG annual allocation to House is K5 million. According to the Speaker and the Clerk, this amount is insufficient.
- 9.2.2 Both the Speaker and the Clerk observed that the public service is not responsive to the executive and the legislature.
- 9.2.3 Section 282 of the *Papua New Guinea Constitution*, states that the *Bougainville Constitution* shall provide for, among other things, “that the Bougainville Government shall include an accountable executive body...”, (Subsection (1)). Subsection (2) says that the “structures and procedures of the Bougainville Government shall meet internationally accepted standards of good governance, as they are applicable and implemented in the circumstance of Bougainville and Papua New Guinea as a whole, including” among other things, “... accountability...”. The independent review team noted:
- a. there is no formal Opposition in the House. This raises questions as to how the House can hold the executive accountable. This vacuum could allow the executive to dominate the House;
  - b. there are various parliamentary committees but given their lack of resources there is no comfort that the executive arm of the government will be effectively kept in check;
  - c. there are very few annual performance reports presented by ministers to the House;
  - d. it does not have a building of its own and office space is inadequate;
  - e. research and other support to members is lacking
  - f. the budget funding seems to be inadequate, although it must be noted that the cost of the whole parliamentary services is increasing with members and minister’s salaries increasing in line with national adjustments.

### 9.3 Legal Capacity – Office of the Principal Legal Officer

- 9.3.1 Section 113 of the *Bougainville Constitution* provides for the appointment of a Principal Legal Officer for the Bougainville Executive Council (BEC). In 2009 the House enacted the *Office of the Principal Legal Officer Act 2009*. There is no evidence to date that the Principal Legal Officer has been appointed. There has been at least two advertising rounds but no appointment has resulted. Initially this was due to the low grade attached to the position. It is now rated as EL4 within the National Public Service. It will attract candidates at this grade.
- 9.3.2 The officer should be the principal legal adviser to the ABG executive arm. Until the capacity of the ABG administration is fully developed the Principal Legal Officer should be available on a daily basis to the BEC and the public service generally and advise on matters relating generally to the application and or the implementation of Part XVI of the *Papua New Guinea Constitution*, the implementation and the workings of the *Bougainville Constitution*, the implementation of the

terms and principles of the BPA, the process and progress of the autonomy, issues relating to Referendum, etc. The ABG should recruit a Principal Legal Officer as a matter of priority.

#### **JOINT RESOLUTION #15:**

- 15.1 The governments will engage, when appropriate, in collaborative efforts to consider the issues of construction of a permanent Parliament building for the House. [This is dependent upon the ABG and its people determining the location of the seat of government.]**
- 15.2 The ABG will undertake a review to assess the required level of resources for the House for the next five years, including recruitment of its necessary administrative support staff, build office capacity and fund resources necessary.**
- 15.3 The ABG will expand programs for induction (after 2015 elections) and ongoing training of Members of the House of Representatives so they understand their roles and the parliamentary procedures and processes. [This should be alongside the AusAID funded mentoring of the House by the NSW Parliament.]**
- 15.4 The ABG will immediately recruit the Bougainville Principal Legal Officer, the principal adviser to the BEC, through an open and transparent process and support the office with lawyers, support staff and resources.**

#### **15.5 Policing and Correctional Services in Bougainville**

- 9.4.1 The terms of reference for the independent expert in this area asked for a review and provision of an independent interpretation of the command and control structure of the Bougainville Police and Bougainville Correction Service in relation to the Police Act and the Correction Service Act. This Section 9.4 is a summary of that advice. Joint Resolution #@ records that both governments are agreed that (a) improving law and order supported by respected and capable police services and correctional services is a priority in Bougainville, and (b) the transfer of police functions and powers so as to establish the Bougainville Police Service is a priority, and (c) that establishing a fully functioning prison in Bougainville, with appropriate rural lockups, is important, and (d) the advice contained in the expert's report will be studied further.
- 9.4.2 In particular the reviewer noted:
  - a. Under Section 196 of the *Papua New Guinea Constitution* the Police Force is subject to the control of the National Executive Council through the Minister responsible for Police. No similar provision exists for Commissioner for Correction Service.
  - b. The sections of the *Papua New Guinea Constitution* relating to Bougainville Police Service and the Bougainville Correction Service are largely enabling provisions which stipulate that the *Bougainville Constitution* and the *Organic Law* shall make provisions for Bougainville laws relating to the police and correction services, their powers and functions and structures, training and terms and conditions of the members of the services.
  - c. The police and correction service powers and functions are not specifically allocated to any government under both Sections 289 and 290. The National Government is responsible in relation to Bougainville for the operation of the functions and powers of a Constitutional office or State Service to the extent necessary where an equivalent Bougainville Government Service has not been established or is not fully operational or as otherwise provided for or required under the Constitution or the BPA. Police and Correction services

therefore remain GoPNG powers and functions although these services are currently physically present in the ARB.

- d. Whilst the police and correction service powers are made available to the ABG, the ABG may exercise those powers and functions when they have been transferred by GoPNG. For the moment the police service and the correction service remain the powers and functions respectively of GoPNG.
- e. Part 2 of the *Organic Law* provides for transfer of powers and functions generally. We have discussed Sections 3 and 4 of the *Organic Law* earlier in this report. Section 8 of the *Organic Law* states:

*“8. BASIS OF IMPLEMENTATION.*

*The arrangements under Part XIV (Peace –Building in Bougainville –Autonomous Government and Bougainville Referendum) of the Constitution and this Organic Law for the Public Service, Police and Correctional Service in Bougainville will each be planned on a comprehensive and integrated basis, while implementation may be gradual.[Emphasis added]*

- f. Note Section 8 reiterating Section 3 of the *Organic Law* about a planned gradual transfer to the ABG of powers and functions in respect of the police and correction services.
- g. Section 11 of the *Organic Law* states that the “National Public Service, the Police Force established by Section 188(1)(b) of the Constitution, the National Correctional Service and the National Judicial System shall remain as national organizations, which recruit throughout Papua New Guinea”. Section 12 of the *Organic Law* says that both the ABG and GoPNG shall agree to arrangements to facilitate transfers, secondments and exchanges of personnel and provide training and personnel development programmes and regular consultations among senior officials in respect of the transfers, secondment, training etc.

9.4.4 The reviewer’s report contains a detailed analysis of the institutional and operational arrangements for the Bougainville Police Service. In particular:

- a. Section 20 of the *Organic Law* provides that the Bougainville Police and the Royal Papua New Guinea Constabulary (RPNGC) shall agree to arrangements for maintaining and enforcing the national laws.
- b. Section 21 of the *Organic Law* says that the RPNGC shall continue to operate in Bougainville subject to conditions specified in the *Organic Law*. At Subsection (2) it states that both the ABG and its police force and GoPNG and the RPNGC “shall develop agreed co-operative arrangements to facilitate the exercise of the functions referred to in Subsection (1)”...
- c. When the ABG establishes its own police service both the Bougainville Police and the RPNGC shall co-operate in matters relating to mutual assistance and law enforcement etc., Section 22 *Organic Law*.
- d. The *Organic Law* (Section 23) provides for funding by GoPNG to the ABG by way of guaranteed annual conditional grant for Bougainville Police recurrent expenditure, guaranteed conditional grants for the purpose of restoring civilian peacetime policing in Bougainville in accordance with the BPA and for providing for further development of policing in Bougainville. The *Organic Law* further provides for GoPNG to continue to jointly

fund with the ABG the costs of policing over and above the guaranteed annual conditional grants, Section 23(3).

- e. So far as the draw-down of police powers and functions is concerned Section 24 states that

*“Until such time as the Bougainville Government establishes the Bougainville Police under the Bougainville Constitution, the National Government shall facilitate progress towards greater autonomy in the policing arrangements in Bougainville through delegations by the Commissioner of Police of administrative and operational powers and functions to the Provincial Police Commander in Bougainville. These arrangements shall be implemented on receipt of a request from the Bougainville Interim Provincial Government or the Bougainville Government”.*

- f. It is intended that when the ABG establishes its own Police Service its members shall initially consist of the members of the RPNGC on a basis to be agreed between the ABG and the GoPNG, Section 25 *Organic Law*.
- g. Section 29 of the *Organic Law* says that the national “Police Act 1998 shall continue to apply in Bougainville, subject to necessary modifications”, until relevant ABG legislation applies, and thereafter to the extent necessary to provide for the presence in Bougainville in accordance with the BPA of members of the RPNGC.

9.4.5 There are similar provisions for the Bougainville Correctional Service.

9.4.6 Transfer of functions and powers. The ABG has not requested the transfer of police and correctional services functions and powers. The Assistant Commissioner Police Bougainville is operating under the usual delegations from the Commissioner with additional powers as contained in a 2003 delegation specific to Bougainville.

9.4.7 The ABG will only have control over the Bougainville Police Services under its own laws (see Section 148 *Bougainville Constitution*). Bougainville Police shall have jurisdiction only in the Region and shall exercise functions enumerated under the *Papua New Guinea Constitution*, the BPA and Bougainville laws. For the purposes of Section 138(3) of the *Bougainville Constitution* no separate Bougainville police service has been established at this point. Other than the enabling provisions of the *Bougainville Constitution*, to date, no Bougainville law relating to the establishment of and the provision of powers, functions and duties of the police service has been enacted. The police currently serving on the ARB are performing their duties and functions and exercising their powers under the *Papua New Guinea Constitution* and the Police Act. This means that any references to the ‘Bougainville Police Service’ and the references to the ‘functions of the Bougainville Police Service’ in the *Bougainville Constitution* do not apply to the police currently serving on Bougainville. For the avoidance of doubt the police currently serving on Bougainville are members of the RPNGC.

9.4.8 As part of the recently launched police modernization program, resourcing and building capacity on Bougainville will be a priority. Currently there is capacity plan to intake 5 officers each at a time because of housing problem in Buka. Currently there are 150 regular police in Bougainville, largely concentrated in the urban area, to serve a population of about 250,000. There are 430 Community Auxiliary Police. Building the capacity of these officers has been assisted for almost a decade by NZ Police and NZAID. This means that the Region is under-policed. Recruiting and training of police officers is a matter of priority as part of the capacity building exercise. The police officers have to be trained or re-trained in traffic, prosecution, criminal investigations, etc. There is no qualified instructor on Bougainville for training purposes. The Police Commissioner wants a planned gradual transfer of powers having addressed resources and capacity issues.

- 9.4.9 The police stations that existed pre-crisis were all burnt to ashes during the crisis. Rebuilding infrastructure such as police stations and officers' houses are a priority prior to ABG requesting transfer of police powers and functions. At the moment the RPNGC has developed strategic plans and costing to rebuild and develop the infrastructure capacity in the ARB but that is subject to funding by GoPNG and ABG. The police hierarchy's current focus is on building the infrastructure for police stations and resourcing them to bring the police service to pre-crisis level. The RPNGC requires up to K47 million to rebuild and bring capacity to pre-crisis structure. This can be done gradually in four phases with application of K10 million in each phase. The review team was informed that the proposed development plan has been presented to GoPNG.
- 9.4.10 Policing needs money from both governments for the purposes of rebuilding and resourcing. Separate budget should be allocated for infrastructure. The RPNGC recurrent budget should not be seen as adequate allocation for rebuilding purposes. At the present ABG allocates K2.4 million to police in Bougainville for recurrent operational budget purpose, from National Government funds, but not for rebuilding infrastructure. AusAID has assisted police extensively in the last decade with advisory support and infrastructure.
- 9.4.11 The Assistant Commissioner Police on Bougainville is answerable to the ABG Minister for Police whilst his colleagues of the same rank throughout PNG are answerable to the Deputy Commissioners and the Commissioner. The Assistance Commissioner Bougainville is not responsible to ABG Police Minister because there is no legal basis for it. The ABG has no police force of its own. The Assistance Commission and police service in Bougainville are answerable to the Commissioner through an established command and control structure.
- 9.4.12 The *Bougainville Constitution* provisions (Sections 151 and 152) providing for the Bougainville Correction Service are simply enabling provisions. These provisions, like those relating to the police service, simply enable Bougainville law to provide for the primary functions of the Bougainville Correctional Service, the structures and organization of the Bougainville Correctional Service, the terms and conditions of service, training and personnel development, and such other matters relating to the service as are necessary, as are consistent with the national Correction Service and the establishment of the office of the head of Bougainville Correction Service, etc.
- 9.4.13 There are currently 43 correction service officers serving in Bougainville.
- 9.4.14 In relation to transfer of powers Commanders of jails are delegated limited financial powers and functions relating to the operation of the jails. The ABG does not offer financial assistance to the Correction Service in Bougainville. No operation powers have been delegated to the correction service in Bougainville. The review team notes that it was informed that the development of prison facilities is the responsibility of the ABG and development partners. This is not correct. Both governments' obligations are clear from the *Organic Law* in relation to funding the Correction Service. There are four rural jail facilities in Bougainville, namely, Nissan, Buka, Buin and Torokina. The temporary facility in Buka is holding 90 prisoners. High risk prisoners are held in Buka Police cells whilst others are sent to Kerevat in East New Britain Province. Limited rehabilitation programs are conducted for the prisoners.
- 9.4.15 Both governments agree with the independent expert that significantly more needs to be done by both governments on policing and the correctional service in Bougainville. Both services need adequate funding, resources and capacity building in order to get to the stage where the ABG can enact its own relevant legislation to enable transfer of powers and functions to both the Bougainville Police Service and Bougainville Correction Service. There is no adequate



permanent prison facility in Bougainville. It is of grave concern that high risk prisoners are held in the Buka Police cells which are often overcrowded for long periods. Police cells are meant to hold suspects and accused persons for a short period, not persons serving sentences.

- 9.4.16 Both the GoPNG and the ABG must be mindful of Section 37(18) of the *Papua New Guinea Constitution* which states: “Accused persons shall be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons”. Section 38(19) of the Constitution states: “Persons under voting age who are in custody in connection with an offence or alleged offence shall be separated from other persons in custody and be accorded treatment appropriate to their age”. Prisoners, accused and suspects cannot be held in police cells contrary to the dictates of the Constitution. They must be kept separately. There is apparent continuous breach of Section 38(18) and (19) of the Constitution in Buka. Both the police and the correction service cannot be blamed for this. They are simply operating under a difficult circumstance. The National Court does have own motion powers to inquire into and where it sees fit issue orders to prevent such continuing breach. Any such order that directs the release of these persons is not beneficial to the society at large and it will reflect poorly on both governments.
- 9.4.17 It serves no purpose to develop the police service and correction service in isolation from other integral security and law and justice sectors. The review team suggests both the ABG and GoPNG prioritise their efforts in developing and establishing the Bougainville courts. Law and order improvements are at the top of the people’s list for improved service delivery

#### **JOINT RESOLUTION #16:**

- 16.1 Recognising that improving law and order is the people’s highest priority, the governments agree that there is a need to develop and implement, as soon as possible, a clear implementation plan for the transfer of police and correction services functions and powers to the ABG based upon the specific constitutional provisions.**
- 16.2 As part of and under the recently launched police modernisation program, GoPNG will give special attention to infrastructure capacity development, funding of resources and police manpower in Bougainville to bring police service to at least pre-crisis level.**
- 16.3 The Police Service, Correctional Service, the Courts and the other law and justice constitutional offices are an integral part of law enforcement, maintaining peace and order and for public security. Both governments will give attention to building the capacity of all aspects of the law and justice system in order to prepare the ABG to be able to enact its own laws to transfer of related powers and functions when appropriate and affordable.**
- 16.4 Given the importance of establishing and maintaining law and order in Bougainville both governments will support the police and correctional services special working groups to analyse and develop appropriate short and medium term funding proposals for the police and correctional services in Bougainville based upon an optimal configuration of staff and facilities..<sup>24</sup>**

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<sup>24</sup> See Joint Resolution @@ above

## 9.5 Mining

- 9.5.1 The independent expert reviewed two aspects. The first related to establishing the current state of the transfer of mining powers and functions from the *National Government* to the ABG. The second relates to determining the legal implications relating to both governments for re-opening the Panguna Mine.

### *Mining Powers*

- 9.5.2 Mining powers and functions are available to the ABG under Section 290(2)(zm) of the *Papua New Guinea Constitution*. The provision empowers the ABG to develop the infrastructure relative to and necessary to implement the powers and functions granted under Section 290.
- 9.5.3 On 6 November 2006 the ABG requested the GoPNG to transfer to it mining, oil and gas powers and functions. No necessary resources and administrative capacity and strategy and or plans were put in place by the ABG to request the transfer, assume and implement or exercise the mining powers and functions. The request for transfer of mining powers was made without adhering to the mandatory requirements of Section 3 of the *Organic Law*. Both governments developed a 15-step strategic framework in 2008 to develop the ABG mining division's capacity and resources and gradually draw down the mining powers and functions. This 15-step strategic plan was approved by the JSB. To implement the 15-step plan of action both governments signed an MoU which paves the way for a gradual draw down of the mining powers and functions from the *National Government*. The first three steps relating to capacity building are progressing.
- 9.5.4 The first step of the 15-step plan of action states that in the absence of ABG's own mining policy and legislation both governments agreed that the national laws and policy relating to mining will continue to apply until the ABG has in place its own policy and legislation. An understanding has been reached between both governments that the ABG be allowed to develop its policy and legislation.
- 9.5.5 Part of the action plan required the building of capacity and resourcing of the Bougainville mining department. According to the Bougainville mining department a full department of mining has been in place since 2012. Currently the mining department has the head of the division, the registrar of mining, heads of policy, human resources, corporate services and other key staff. However it says it needs to recruit more staff to bring its human resources to full capacity.
- 9.5.6 The Bougainville mining department informed the review team that the previous ABG wanted transfer of mining powers and functions first before any other function based on a new mining policy. However the current ABG's approach is to enact legislation first and thereby draw down powers. It will then formulate the relevant mining policies. The logic of this particular approach aside, the review team observed that the ABG developed draft mining legislation dated 1 March 2013. A revised draft dated 1 July has been produced which accommodates some stakeholder views and interest, in particular mineral resource landowner interests. This is being circulated for comments. The team is advised that there is yet a third draft soon to come. So as at the date of drafting this report the Bougainville mining transitional legislation is very much a work in progress. It is a good governance practice for the ABG to conduct a broader consultative process to develop the legislation. In addition, it is a good democratic and parliamentary practice for the House to ensure a much broader and comprehensive consultation process prior to finally enacting the legislation. These are, for the purpose of fixing a date for the conduct of referendum, important steps that bear on the question of whether the ABG "has been and is conducting in accordance with internationally accepted standards of good governance" (see Section 338(3)(b) *Papua New Guinea Constitution*).

9.5.7 The review team was informed that relevant resource landowners have organised themselves into groups and have formally registered their associations. The BEC has approved these associations. Currently there are 9 landowner associations and of those 8 are registered and one is yet to be registered. The umbrella association of the 9 associations is called the Panguna Mine Affected Landowner Association in respect of mining and mining legislation and other related issues. The ABG is currently drawing up plans for consultations with these associations. In addition, in further preparations for re-opening the Panguna Mine there is ongoing dialogue and negotiations among the relevant stakeholders. Unless mutual dialogue and negotiations fail, re-opening the Panguna Mine should present little challenges.

9.5.8 The key elements of the 15-steps are briefly set out as follows:

- a. The ABG has requested transfer of mining, oil and gas powers and functions. However in the interim the national laws on mining, oil and gas shall continue to apply until the powers and functions are transferred under this 15-steps approach and the related MoU. It has been agreed that GoPNG shall not exercise mining powers and functions unless requested by the ABG to do so, refer to MoU.
- b. GoPNG shall delegate the first priority functions such as grant of mineral exploration licenses. National laws shall continue to apply pending the ABG developing its capacity to administer the mining powers and functions and mining policy. Moratorium on mining will need to be lifted fully or in part if the ABG is ready to exercise mining powers to grant exploration license.
- c. Review of BCA and issues concerning BCL's licenses (with a view to resolve any issues in preparation for the re-opening of Panguna Mine.)
- d. ABG begins to develop proposals for policies and laws on mining, oil and gas. This will be done concurrently with implementation of other steps until the ABG is ready to enact its own laws envisaged under step 9.
- e. GoPNG shall delegate second priority powers and functions relating to management etc. of alluvial mining to the ABG.
- f. GoPNG shall delegate third priority powers and functions relating to approval of mining tenements (to permit mining projects) to the ABG.
- g. GoPNG shall delegate to the ABG any other powers and functions under relevant laws relating to environment, land, etc. as they relate mining tenements.
- h. GoPNG shall delegate fourth priority powers and functions under the Mining Act relating to monitoring of compliance of conditions of grants by project developers.
- i. ABG begins to develop its own policies and pass its own mining laws. A footnote under this step states that "From this point mining and related functions and powers gradually begin to be exercised under ABG laws and national laws cease to apply to Bougainville".
- j. GoPNG shall delegate to ABG any powers and functions under the related laws relevant to exercise of powers and functions relating to monitoring of compliance of conditions of grants by project developers, e.g. *Mining Safety Act*

9.5.9 The following summary points should be noted about the second draft bill with further effects explained in the expert's detailed report:

- a. The objectives of the draft Bougainville Mining (Transitional Arrangements) Bill is for ABG to regulate mining activities (i.e. exploration and mining) and by doing so minimise mining

activity related conflicts; to provide a transitional mining legislation pending a substantive ABG legislation; and to enable transfer of GoPNG powers and functions relating to mining from to the ABG

- b. all minerals existing on, in or below the surface of land in the ARB cease to be the property of the State of Papua New Guinea (section 9). All minerals existing on, in or below the surface of land in the ARB are the property of the owners of customary land.
- c. Those tenements granted, renewed or continued under the *Mining Act 1992* or any other relevant national law in respect of land in the ARB and in force immediately prior to the coming into effect of the Bougainville law continue to be valid and effective as if done under the Bougainville law subject to the same terms and conditions, mortgages, encumbrances or agreements, fees, rents and royalties etc. to which it was subject immediately prior to the commencement of the Bougainville law unless they are inconsistent with the Bougainville law.
- d. In addition, unless the tenements have ceased under law, they remain in force for the unexpired period for which they were granted, renewed or continued in existence under the *Mining Act 1992*. Any application for a tenement made (other than alluvial mining lease) under the *Mining Act 1992* in respect of land situated in the ARB is pending at the time of commencement of the Bougainville law such application is valid and in effect as if it were made under the Bougainville law and shall be determined accordingly. The same applies to application for alluvial mining lease.

- 9.5.10 It is of concern that the experts report noted that the national Mining Department and the Mineral Resources Authority informed the review team that they were not consulted and did not have any input in the drafting of the Bougainville Mining (Transitional Arrangements) Bill. They expressed concern that the proposed law may be not in accordance with the 15-step approach and the MoU. Both the Department of Mining and the Mineral Resources Authority are currently reviewing the bill to understand the legal implications vis-à-vis the national mining laws once the bill is enacted as law by the House. In the meantime the ABG has a second draft of mining legislation. The Mineral Resources Authority advised that it had not been consulted and therefore it had not made any input in the second draft of legislation.
- 9.5.11 The review team noted that to date no mining power and function has been delegated or transferred to the ABG since the request for transfer was made by the ABG in November 2006. The ABG appears to be frustrated and impatient for what it views as a procrastinated draw down of mining powers and functions whilst in the meantime there are allegedly alluvial mining activities conducted in the ARB by customary landowners and foreigners<sup>25</sup> brought in by landowners and the ABG has no regulatory control over them. There are positive developments on the ground so far as it concerns efforts to explore options of reopening the Panguna Mine and the related peace-building efforts in the mine-affected area gaining momentum. It is apparent that the draft bill requires more comprehensive consultations with the relevant stakeholders prior to it being finalised and tabled in the Bougainville House.
- 9.5.12 The transitional bill once passed into law has substantive legal implications. For instance, GoPNG currently owns all minerals existing on, in or below the surface of any land in Papua New Guinea, including any minerals contained in any water lying on any land in Papua New Guinea. However at the date of coming into operation of the Bougainville law it will no longer

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<sup>25</sup> Bougainville will need to continue to work with the PNG immigration authorities to ensure that visitor to Bougainville have the appropriate visa to their business or employment status.

have ownership, control and interest over minerals in the ARB. These are obviously sensitive matters and care will be needed to ensure that the relevant provisions of PNG law are met. Ownership of all minerals in the ARB shall be vested in the customary landowners. The bill replaces GoPNG with the ABG in respect of all mining exploration and development licenses, leases, tenements and moratoriums issued by GoPNG under the national laws which are in force at the time of coming into operation of the Bougainville law. For example as at the date of coming into operation of the Bougainville mining law the Bougainville Copper Agreement executed between GoPNG and BCL, the special mining lease and any exploration license issued to BCL by GoPNG are valid and in effect as if they were issued by the ABG.

#### *Legal aspects of reopening the Panguna Mine*

- 9.6 The following is a brief background to Panguna Mine. Historically mining agreements in pre-independence Papua New Guinea were negotiated during the 1960s under the historic 1922 mining legislation and ordinances. The predecessor mining legislation to the current *Mining Act* 1992 was the *Mining Act (Amalgamated)* 1977 (No 8 of 1978).
- 9.7 On 6 June 1967 the agreement was entered into between the Administration of the former Territory of Papua and New Guinea and Bougainville Copper Pty. Limited, concerning the development of certain mineral deposits in Bougainville, and was varied by a further agreement made on 21 November 1974 between the Government of Papua New Guinea and Bougainville Copper Limited. The agreement was translated into legislation entitled the Mining (Bougainville Copper Agreement) Act 1967. The commencement date of the Agreement, being the date of commencement of the pre-Independence *Mining (Bougainville Copper Agreement) Act* 1967, was 30 November 1967.
- 9.8 Under Section 5 of the *Mining (Bougainville Copper Agreement) Act* 1967 Ch. 196 applications for grants, renewals of tenements or licences or leases, extensions of tenements or leases or licences etc. are made to the Prime Minister of Papua New Guinea. Pursuant to this provision BCL usually makes applications direct to the Prime Minister. As for the Panguna Mine project Special Mining Lease (SML) BCL has applied to the PNG Prime Minister for a renewal until 10 April 2032 and has final renewal option for 21 years, which if exercised, would take the life of the Special Mining Lease to the year 2053. However the Agreement, it seems, will have to be renegotiated and so has bearing on the currency of the SML granted to BCL. Mineral Resources Authority advised the review team that it has been advised by an international consulting law firm that the BCA even in the present form requires substantial amendment to attain consistency and also to bring it to international market practice in respect of mining projects such as Panguna. Market practice relates to global standard of risk allocation that has developed as best practice for mining projects in developing countries.
- 9.9 The review team notes that the SML granted to BCL by GoPNG to operate the Panguna Mine remains current but is in abeyance as a result of the Bougainville conflict. For all intents and purposes the Bougainville Copper Agreement between GoPNG and BCL are valid and still in force except that it has been in abeyance because of the unfortunate Bougainville conflict. The major stakeholders of the Bougainville Copper Ltd remain the same, GoPNG (19.06%), Rio Tinto (53.83%) and public hold the balance of 27.11% shares and they still have valid legal rights and interests in the Panguna Mine, source: Bougainville Copper Ltd 2012 Annual Report. Bougainville Copper Limited's 2012 Annual Report states that "*Since the suspension of mining operations the company has retained, in good standing, its mine lease and other leases on Bougainville. The company's special mining lease lapsed through effluxion of time on 10 April 2011 and in accordance with the applicable legislation the company is entitled to a 21 year extension which has been applied for but not as yet granted*".

- 9.10 At this point GoPNG and BCL are the only parties to the *Mining (Bougainville Copper Agreement) Act 1967*. However, new stakeholders have emerged.
- 9.11 Section 3(1) of the *Mining (Bougainville Copper Agreement) Act 1967* provides for the variation of the BCA between the Prime Minister for and on behalf of the State and BCL. This provision could be invoked to renegotiate the necessary terms to include the interests of all parties including the ABG and the landowners. The ABG's approach seems to be that it will draw down mining functions and powers under a transitional Act and then enter into serious negotiations with all stakeholders to address the issue of re-opening the mine and renegotiating an agreement that will accommodate all these parties and their interests. The question remains whether the interests of all parties in the BCA will be accommodated either in the ABG transitional legislation or through a negotiated agreement. GoPNG, ABG, BCL and customary landowners have made inroads in commencing initial negotiations to re-open the Panguna Mine and renegotiation of a new Bougainville Copper Agreement. Since the BCA is an Act of the National Parliament and since there are shareholders in BCL other than Rio Tinto and GoPNG the ABG needs to conduct wider consultations prior to enacting its transitional mining legislation that will affect the terms of the BCA and the interest of the shareholders of BCL.

#### **JOINT RESOLUTION #17:**

- 17.1 The governments will review the 15-step strategy and seek to implement it in full consultation with each other.**
- 17.2 The governments will as a matter of urgency meet in the Joint Consultative Coordinating Committee on Panguna Negotiations and agree the budget and potential sources of support for a comprehensive program of consultation, analysis and information-sharing so that the ABG, the landowners and the National Government are fully prepared to advocate and negotiate among each other and with BCL the new terms and conditions for mining and exploration leases associated with Panguna Mine.**
- 17.3 Both governments will continue to support building staff capacity of the ABG Mining Department and other departments in order for them to be fully prepared to administer, implement and monitor mining (including issuing, managing and monitoring of mining tenements) and other legislation associated with the possible re-opening Panguna Mine, other mining operations (if any).**
- 17.4 The ABG will continue to consult the National Government through the Department of Mining Policy and the Mineral Resources Authority on the ABG's proposed transitional law in accordance with the Alotau Agreement, prior to the House enacting the law. The ABG to continue wider consultation of all stakeholders in the ARB in formulating its mining legislation and the Panguna negotiations.**

## 10. The Referendum

*This section outlines the law around the holding of the Referendum. Understandably this is a topic of much interest and discussion, not only in Bougainville. As with many things concerning Bougainville misinformation and ignorance are clouding sensible planning and preparation. The Referendum was not specifically mentioned in the independent experts' terms of reference. However it underlies the purpose of the Review. Also it dominated all aspects of the consultations and is the centre-piece of autonomy for many. Accordingly the team provided this chapter for consideration by the two governments.*

### 10.1 The Law

- 10.1.1 The referendum on the future political status of Bougainville is one of the three pillars of the *Peace Agreement* together with autonomy and weapons disposal. The combination of the constitutionally guaranteed referendum on the future political status of Bougainville and the high degree of autonomy agreed to under the *Peace Agreement* represents the compromise between those who supported independence for Bougainville and those who opposed it. In fact it was this agreement on the constitutionally guaranteed referendum to determine the political future of Bougainville which influenced those people who fought for independence to join the peace process.
- 10.1.2 The Autonomous Bougainville Government was established mid-2005 so it is now only two years before the Referendum 'window' opens. For the purposes of the work of the Review Panel the critical element is that the date of the Referendum can only be set by the two governments after they have considered the two elements in Sub-paragraph 338(3) i.e. "weapons disposal" and "good governance".
- 10.1.3 The *Peace Agreement* in Clauses 309-324 sets out the agreement reached on the referendum. These clauses of the agreement provide for the referendum in detail including the mechanics of the referendum itself. These clauses are given legal effect by Sections 338-343 of the National Constitution. In particular, the *National Constitution* in these provisions authorizes a detailed *Organic Law* setting out the mechanisms of the referendum.
- 10.1.4 The *Organic Law* in Sections 52-63 provides for the Referendum and provides the authority for a detailed schedule of some 177 provisions providing for every aspect of the referendum and the polling arrangements etc. Schedule one of the *Organic Law* provides a comprehensive set of rules relating to the conduct of the referendum. These rules cover every aspect of the referendum even to the extent of allowing scrutineers from recognized interests groups and allowing international observers to observe every aspect of the referendum.
- 10.1.5 Section 338(7) of the *National Constitution* makes provision for a situation where, the people of Bougainville through their elected representatives in the Bougainville Government can consider, after consultation with the National Government, to not hold the Referendum on the political future of Bougainville. This provision of the *National Constitution* provides, that "*the Referendum shall not be held where the Bougainville Government decides, in accordance with the Bougainville Constitution, after consultation with the National Government, that the Referendum shall not be held.*" The details of the procedure for Bougainville making this decision are contained under section 194 of the *Bougainville Constitution*.

10.1.6 The *Peace Agreement* and the constitutional laws that implement it provide details on some of the issues that the National Government the Autonomous Bougainville Government, and in some cases the respective relevant electoral authorities are required to agree on prior to the tenth anniversary of the establishment of the ABG, i.e. these matters have to be agreed by May 2015:

- The weapons disposal and good governance considerations discussed earlier in the Review;
- Identifying personnel, funding and budgetary requirements for the purposes of conducting the referendum. The two governments are required to consult and reach agreement on when to establish the appropriate administrative structures needed to undertake the necessary preparatory work for the Referendum and conduct the Referendum.
- Choosing under Section 56(2) of the *Organic Law* the body to conduct the Referendum from either the National Electoral Commission; or the Bougainville Electoral Commission; or the two electoral authorities acting jointly, or a special body established under Section 58 of the *Organic Law*.
- Resolving the criteria of eligibility of a “non-resident Bougainvillean” to participate in the Referendum.
- Resolving the question as to what is the question or questions together with independence to be put to the people in the Referendum on the ballot paper.

10.1.7 The Joint Supervisory Body (JSB), at the 2009 Gaire meeting requested technical officials to commence work on these issues. The JSB wanted the consultative process between the two governments to begin at the earliest practicable opportunity.

10.1.8 When requesting officials to undertake work on these issues leaders expressed concerns about the need to not leave any matter required by law to be dealt with too close to the date when a referendum will be required to be held. Leaders were particularly concerned about the need for them to be informed of all the issues relevant to the preparations and conduct of the referendum at the earliest possible opportunity. Leaders wanted ample time to understand and deal with the problems that had to be dealt with to conduct the referendum.

10.1.9 The two governments have failed in all aspects of this express objective. The five issues raised in paragraph 10.1.6 above are significant and complex. Apart from reaching agreement of the five issues above there needs to be widespread awareness, consultation and consensus seeking within Bougainville. This will take significant time and resourcing once the legal issues, research and options have been considered. Considering how much is outstanding, basically everything, and the need to reach agreement at inter-governmental level it would take extraordinary effort and cooperation if the Referendum is to be held in the first half of the constitutional window.

## **10.2 The People’s Views**

10.2.1 There are two main themes arising from the consultations:

- widespread lack of understanding of the constitutional provisions and arrangements for the Referendum; and
- a strong view in some quarters that the current provisions do not matter as this is Bougainville’s referendum and Bougainville alone will decide when and how it is held.

10.2.2 Common views expressed during the consultations included:



- The Referendum will, or must, be held in 2015. This is both a widely held view and a view being spread by people who should know better but who for their own reasons keep pushing this line.
- The 2015 -2020 Referendum window is not widely understood in terms of the required steps and preparations.
- Many people think that fiscal self-reliance (see Chapter 7 above) is a condition of either holding the Referendum (which it is not) or a condition for achieving independence in the event of a vote for independence (again which it is not).
- The Referendum is a choice between autonomy and independence – again not correct as the Referendum options are to be determined one of which must be independence.
- A belief that only resident Bougainvilleans can or should be allowed to vote – again incorrect as described below. Non-resident Bougainvilleans who meet an agreed criteria of connectedness to Bougainville will be able to vote.
- Strong pro-independence views are heard through the region balanced by views from those who wish to defer the Referendum and/or vote against independence.
- A total lack of knowledge that the Schedule to the *Organic Law* contains the detailed provisions as to how the Referendum is to be conducted.
- Opposition to the PNG Electoral Commission conducting the referendum coupled with doubts about the capacity of the Bougainville Electoral Commissioner to organise the Referendum.
  - A strong view was heard from a minority, including prominent leaders that the current constitutional provisions in the *National Constitution* are irrelevant and that Bougainville alone will determine when and how the Referendum will be held. This view seems to ignore the fact that the constitutional provisions are identical to those in the *Peace Agreement*. Those expressing this view often return to the process around the final stages of concluding that agreement.

#### 10.2.3 There is little or no appreciation or understanding that three major questions remain unresolved:

- What is the degree of connectedness to Bougainville needed for a non-resident Bougainvillean to vote?
- What is the other option or options to be included on the Referendum ballot paper, other than independence?
- What body is to conduct the Referendum? And the related question of who is going to pay for the Referendum?

#### 10.2.4 The two governments are strongly of the view that these questions, especially the first two, will need deep and extensive consultation within the Region. They are not simply technical questions for officials and current leaders to decide.

## 10.3 Critical Unresolved Organisational Questions<sup>26</sup>

### Budget and Finance

- 10.3.1 Section 54(1) of the *Organic Law* provides that “before the tenth anniversary of the election of the first Bougainville Government after the commencement of this law, the electoral authorities and the Governments may begin consultation and agree on any matters required for the purposes of this law”. In addition to this section 54(2) provides that “without limiting the generality of subsection (1), the matters required for the purposes of this law include funding and budgetary requirements”. Quite clearly this provision enables the National Government and the ABG to consider any issue which they consider necessary for the purposes of an intergovernmental agreement on arrangements for conducting the constitutionally guaranteed Referendum. The issues of funding and budgetary requirements constituted very important aspects of these arrangements.
- 10.3.2 Section 56(1) of the *Organic Law* provides that “the governments and the electoral authorities shall consult and agree on the administrative requirements for conducting the referendum”. To begin this process the Chief Secretary of the National Government, as chairman of the JSB established Referendum Committee has requested the respective electoral authorities to immediately investigate or undertake a cost effective analysis of suitable joint arrangements needed for the two electoral authorities to jointly undertake this task. An initial paper was tabled by the PNG Electoral Commission in mid-2012 but there has been no further progress. Urgent work is needed on the organization structures, personnel and staffing requirements, funding requirements, office space and equipment requirements, communication and reporting procedures, command and control processes, etc. However, before this can proceed both government need to make a decision on the body to conduct the Referendum.

### What body will conduct the Referendum

- 10.3.3 As provided under Section 56(2) of the *Organic Law* the choices of the organisation or agency to conduct the Referendum include:
- the National Electoral Commission; or
  - the Bougainville Electoral Commission; or
  - the two electoral authorities acting jointly, or
  - a special body established under Section 58 of the *Organic Law*.
- 10.3.4 During the review consultations informal views were heard at senior levels that there is a strong preference to choose the option of establishing an authority under Section 58 of the *Organic Law*. This discussion needs to be formalised by the Referendum Committee and the JSB this year. If agreed it will be the responsibility of the PNG Electoral Commission to advise the Head of State, to issue a charter to establish such a body.
- 10.3.5 The law requires that the Head of State shall for the purposes of establishing this body, act only with, and in accordance with the advice of the National Electoral Commission (see Section 58(2) *Organic Law*). There is however an additional qualification provided by Section 58(3) of the *Organic Law* which requires prior consultation and agreement between the National

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<sup>26</sup> The Review Panel acknowledges the contrition of the ABG’s Deputy Administrator (Policy) and CEO Law and Justice Chris Siriosi to the next three sections on legal aspects. The views expressed are of course those of the Review Panel.

Electoral Commission and the Bougainville Electoral Commission, before the charter can be issued by the Head of State. Section 58(3) of the *Organic Law* details the substantial mandatory requirements that the Charter must provide for, including any other matters which the two governments acting with the advice of the electoral authorities deem necessary to include. This new body's role is to implement the Referendum. Both electoral commissions retain overall responsibility.

10.3.6 It will be necessary for the agreement concluded between the governments with respect to the administrative arrangements to adopt the relevant provisions of Part VII of the *Public Finance (Management) Act* 1995 to satisfy the requirements of Section 56(2)(b) of the *Organic Law*, because, the authority that will be established is intended to exercise responsibilities of the PNG State, as well as commit the State to expenditure of public funds. It will for all practical purposes be deemed a public body for the purposes of the Public Finances (Management) Act 1995.

10.3.7 When the Agency is established it will:

- be required by Sections 59 and 60 of the *Organic Law* to carry out its mandate impartially.
- not be subject to direction by any person or the two governments except in situations where the *Organic Law* expressly provides for such directions to be given by any persons or the governments for the purposes of enabling it to carry out its mandate effectively.
- be prohibited from supporting, promoting, advancing, advertising or proclaiming the views of any person or particular groups of persons, whether taking part or not taking part in the referendum to influence a particular outcome.

10.3.8 During the course of this review there were consistently strong views that the Referendum should be conducted with appropriate assistance from an international body such as the United Nations or the Commonwealth Secretariat.

#### **How is agreement to be reached?**

10.3.9 The procedures for reaching agreement on the administrative arrangements developed by the two electoral authorities are established by section 57 of the *Organic Law*. The process in very broad terms is as follows:-

- a. the two electoral authorities shall submit their joint draft arrangements together with their recommendations to the two governments. (Ideally this step should be undertaken after the two electoral authorities agree to the text of the draft agreement).
- b. the two governments will have 14 days after receipt of the draft arrangements to raise objections to the arrangements. In the event of objections being raised, the governments must undertake such consultation as is necessary to review the arrangements to the extent of the objections.
- c. where the governments are unable to resolve issues arising from their objections to the draft arrangements, then revisions will be undertaken in accordance with the dispute resolution procedures.
- d. when the draft arrangements are agreed to as the arrangements for the conduct of the referendum, the Referendum the electoral authorities must take immediately steps to publish the arrangements in the National and Bougainville Gazettes.

## 10.4 Who can vote?

10.4.1 The *Peace Agreement* provides, emphasis added:

*315. Eligibility to vote in the referendum will be the same as for national elections in Bougainville **plus non-resident Bougainvilleans (detailed criteria to be finalised).***

10.4.2 The Agreement has two distinct classes of voters at the Referendum:

- those who are entitled to vote in the national elections; **plus**
- non-resident Bougainvilleans.

10.4.2 The *Bougainville Constitution* defines ‘Bougainvillean’ as:

### **7. BOUGAINVILLEAN.**

(1) A person –

- (a) who is a member (whether by birth or by adoption according to custom by the clan lineage) of a Bougainvillean clan lineage (matrilineal or patrilineal) owning customary land in Bougainville; or
- (b) who is married (whether by law or custom) to a person to whom Paragraph (a) applies; or
- (c) who is a child one of whose parents is a Bougainvillean by virtue of Paragraph (a),

is a Bougainvillean.

(2) A Bougainville law, made by an absolute majority vote, may make provision for the alleviation of special cases of injustice or hardship or disadvantage arising as a result of the application of Subsection (1)(c).

(3) For the purposes of Subsection (1)(a), a person who was not born in Bougainville, or who is not of Bougainvillean descent or who is a non-citizen may be adopted as a member of a Bougainville clan according to custom.

(4) A Bougainville law, made by an absolute majority vote, shall make provision for all or any matters relation to this section including –

- (a) the nature of providing evidence of customary practices; and
- (b) the nature of providing evidence of birth outside Papua New Guinea; and
- (c) all matters relevant to the consequences of dissolution of a marriage involving a person to whom Subsection (1) refers; and
- (d) all other matters arising from the provisions of this section.

10.4.3 Section 55 of the *Organic Law* makes it mandatory “before the date for the Referendum is agreed in accordance with Section 338 (Referendum to be held) of the Constitution, the Governments shall consult and agree, in writing, on the detailed criteria to determine the link or links with Bougainville that a person (referred to in the Agreement as a “non –resident Bougainvillean”) must have in order to be entitled to vote at the Referendum.”.

10.4.4 Contrary to views heard in Bougainville the *Peace Agreement* provides that non-resident Bougainvilleans can vote at the Referendum. The issue of the detailed criteria of eligibility of “non-resident Bougainvillean” is one that is yet to be resolved by the two governments. Determining this link or links to Bougainville will be contentious given the large Bougainville Diaspora resident outside the Region relative to the number of resident eligible voters.

10.4.3 The two government need to request the two electoral authorities as a matter of urgency, with the support of technical officials, develop a consultation paper on possible criteria to determine the link or links with Bougainville that a Bougainvillean must have to vote in the Referendum. This paper should then be widely circulated in Bougainville and among other communities of Bougainvilleans outside of Bougainville.

## 10.5 What are the choices on the ballot paper?

- 10.5.1 The Gaire JSB resolutions on the issue of the Referendum focus on the need for the JSB to develop options that might be available concerning the future political status of Bougainville. The National Government and the ABG have an obligation to ensure that Bougainvilleans are well informed, before staging the referendum, about the various options that might be open to them.
- 10.5.2 In order for the National Government and the ABG to fulfil this requirement they must, as soon as is practicable, explore and reach agreement on the substantive aspects of each of the options that could be offered to the people of Bougainville to consider in the Referendum. This outstanding aspects will also need extensive consultation with the people of Bougainville.
- 10.5.3 There is no doubt about that the intention of section 339 of the *National Constitution* is that both governments agree additional options to Independence that could be put to the people of Bougainville during the referendum. The only requirements are that the questions to be put:
- be agreed to by the National Government and the ABG;
  - be formulated in such a way so as to avoid a disputed or unclear result
  - include a choice of a separate independence for Bougainville.
- There is certainly scope for consideration of more choices than just the two which at this stage can clearly be defined, i.e. yes or no to independence.
- 10.5.4 While the Review Panel makes no judgement on the appropriate options to be put, the options heard during consultations included:
- Stay with current autonomy arrangements; or
  - Stay with current autonomy arrangements and have another referendum in five or ten or even 15 years' time; or
  - Independence.

## 10.6 Decision to not hold the Referendum

- 10.6.1 For the sake of completeness the Review panel draws attention to the provisions under which Bougainville can decide not to hold the Referendum. According to Clause 312(a) of the *Peace Agreement* and Section 338(7) of the *National Constitution* only Bougainville can decide to not hold the referendum. The procedures is set out under Section 194 of the *Bougainville Constitution*. This decision can only be made during the period commencing on the 9th and ending on the 15th anniversary of the establishment of the ABG. The process established by section 194 of the *Bougainville Constitution* is initiated by a motion that would need to be moved in the Bougainville House of Representatives between 9<sup>th</sup> May 2014 and 8<sup>th</sup> May 2015. Such a motion must be passed by three-quarters of all the members of the Bougainville House of Representatives (three quarters absolute majority). If the motion is defeated then no similar motion can be moved again in the Bougainville House of Representatives.
- 10.6.2 In the event that a motion not to hold the referendum is passed by the required majority vote, widespread consultation with the people of Bougainville will then be needed in accordance with procedures established by a Bougainville law. All groups or factions in Bougainville must be given a fair opportunity to be heard regarding the decision not to hold the referendum. At the same time the provision provides protection against a situation that could rise if a certain group or faction decides to boycott the consultations and then challenges the validity of such consultations on the basis of lack of consultation.

- 10.6.3 The *Bougainville Constitution* in Section 197(2)(e) requires a second vote of the House of Representatives after widespread consultation takes place with the people of Bougainville. However, this second vote can only take place after three months of the first vote and would need to be initiated by a motion in accordance with Section 197(3) of the *Bougainville Constitution*. Where the vote fails to get the support of the required majority vote then the matter would end there, and no further procedure would follow. If the second vote is passed by the required three-quarters absolute majority vote, then the referendum to determine the future political status of Bougainville would not proceed.

## **10.7 Fair and Free**

- 10.7.1 Section 341 emphasises the need for co-operation between the National Government and the ABG in ensuring that all matters outlined above are dealt with in a way that *ensures the referendum shall be free and fair and that no person shall be prevented from exercising his/her right to make a personal choice on the question of the future political status of Bougainville.*”
- 10.7.2 This is an over-arching provision and brings to light the need for the two governments to consider any issue that could affect the conduct of a free and fair ballot. It is incumbent upon the two governments to consider this issue during the preparations undertaken on many of the matters discussed above.

## **10.8 Timing of the Referendum**

- 10.8.1 The Review Panel points out that most of the tasks required to conduct the Referendum have yet to be started. On some aspects extensive consultation is required in Bougainville and elsewhere. Failure to follow due process and seek widespread consultation could prove disastrous for the people of Bougainville and its peaceful future.
- 10.8.2 People can make their own judgements as to how long it may take to complete the preliminary tasks outlined in this Review. Previous efforts show that it may be unrealistic to expect the two governments to move expeditiously unless there is strong political direction and oversight and the resources are made available. Other factors which will impact the timing of the Referendum are the 2015 Bougainville elections and potentially the 2017 national elections.

## **JOINT RESOLUTION # 19**

- 19.1 The governments will meet quarterly in the Referendum Committee, and then at the Joint Supervisory Board, to monitor and discuss the preparations for the Referendum.
- 19.2 The governments agree that the Referendum will be conducted by an independent agency established for that purpose under Section 58 of the Organic Law on Peace - Building in Bougainville-Autonomous Bougainville Government and Bougainville Referendum 2002.
- 19.3 The governments agree that by 31 March 2014 the work plan for establishing the arrangements to conduct the Referendum will be completed including specifics on the roles, responsibilities and resources needed for:
- a. the administrative arrangements including establishing a special purpose agency to conduct a free and fair Referendum in Bougainville.
  - b. engaging with international partners to obtain support for the special purpose agency and the conduct of the Referendum.

- c. seeking secure sources of funding for the agency to conduct a free and fair Referendum;
- d. maintaining and supporting regular fora for officials (Referendum Committee) and political leaders (
- e. establishing a process of consultation with Bougainvilleans, and others, determine the link or links a person has to have to Bougainville, including those of non-residents, to vote in the Referendum [See Peace Agreement Article 315 and Organic Law Section 55];
- f. reviewing the legal and administrative *Rules for the Conduct of the Referendum* as contained in the First Schedule to *the Organic Law* taking into account issues and experiences arising from two Bougainville elections and any other relevant matter.
- g. establishing a process of consultation with Bougainvilleans and others, to seek agreement on the options to be voted on in the Referendum, including independence [PNG Constitution Section 338];
- h. developing and implementing a generalised awareness campaign within Bougainville on the process and arrangements for Referendum. [Awareness on the Referendum itself will be conducted impartially by the independent agency established to conduct the Referendum.];; and
- i. Complying with the *Bougainville Constitution's* general and specific provisions for consultation within the region with traditional leaders and others.

## **11. Feedback to the people**

- 11.1 The independent expert reports and this Review were prepared after extensive consultation in most areas of Bougainville. People asked the experts to return to present their findings as part of the feedback loop.
- 11.2 Both government agree that the outcomes from the Review should be made available to the people of Bougainville through a series of public consultations. These sessions should include the independent experts and representatives of both governments.

### **JOINT RESOLUTION #20**

- 20.1 Both government agree that the outcomes from the Review should be made available to the people of Bougainville through a series of public consultations. These sessions should include the independent experts and representatives of both governments.**



## ANNEX: PLACES AND PEOPLE VISITED BY EXPERTS

### Summary of Field Visits:

#### Team 2: South, Central and North Bougainville Island

Date	Location	Number of participants
Tuesday 2/4/13	Arrive in Buka and meet with Deputy Administrator and organize logistics	Mr Paul Kebori; Mr. Isreal Pais (2)
Tuesday 2/4/13	ABG Parliament House	President Momis on his own
Wednesday 3/4/13	ABG Parliament House	Speaker of ABG Parliament Hon Peter Miriki; Clerk of Parliament Robert Tapi; Minister for Commerce Hon Wilfred Komba & a staff members; Minister for Mining & natural Resources Hon Micheal Oni; Minister for Peace Hon Newton Kauva; Minister for Culture & Tourism Hon Rose Pihei; Minister for Com Development Hon Melchior Dare (8)
Wednesday 3/4/13	ABG Admin Conference Room	Met with 13 ABG Divisional Heads, the Chief Administrator and Deputy Administrators
Thursday 3/4/13	ABG Conference Room	Met with 30 participants representing local and international Civil Society Organizations and Development Partners
Thursday 4/4/13	Hahela Youth Hall – Bougainville Youth Mock Parliament	Refer attachment 1
Thursday 4/4/13	Team 2 departed for Buin overnighting in Arawa Team 1 stays in Buka and continues consultations at ABG Head Office and Buka Island	Refer attachment 2 for Team 1 list of consultations
Team 2 Itinerary and consultations		
Friday 5/4/13	Buin Uniting Church Hall with Buin District staff	Met with 23 men and women representing District admin, Health, Education, Commerce, DPI, Lands services and Police
Friday 5/4/13	Buin Uniting Church Hall	Meeting with Buin Business houses and Women leaders - 23 men and no women
Saturday 6/4/13	Buin Uniting Church Hall -	Konnou and Makis COE members - 25 men with only a few women
Saturday 6/4/13	Buin Uniting Church Hall - Ex-combatants and NGOs	19 ex-commanders & ex-combatants
Sunday 7/4/13	Oria –Chief Kaleva's Residence at Hairu School	Around 40 people representing COEs, Chiefs, Women, ex-combatants, Mekamui, churches, farmers, small business owners
Sunday 7/4/13	Turiboiru Catholic Mission	Around 20 people representing women, chiefs, churches, ex-combatants
Sunday 7/4/13	Buin High School	200 students and teachers
Monday 8/4/13	Siwai District Office	80 people representing ABG, 3 x COEs, chiefs, women, teachers, churches, police, ex-combatants
Tuesday 9/4/13 Morning	Baba Constituency in Nagovisi	50 peoples ABG, 2 x COEs, Chiefs, women, teachers, ex-combatants, churches, farmers
Tuesday 9/4/13 Afternoon	Bana High School (Lato & Bolave Constituencies)	60 delegates representing Bana High school staff and students, ABG, Mekamui, businesses; 2x COEs, Chiefs, Women, ex-combatants, farmers, Lower Tailings Land Owners

Wednesday 10/4/13 – morning	Moratona Hospital & Small Enterprise centre	Consultations with some Health centre staff, some members of the Boards of Management and community leaders (7 persons)
Wednesday – mid day to afternoon	Panguna	46 delegates representing ABG Panguna Dist Admin, Mekamui, land owners, women, Panguna Urban Development Authority, Chiefs, 3 x COEs, MDF, ex-combatants, alluvial mining, PCO, donors
Thursday 11/4/13	Arawa	85 delegates representing ABG, Mekamui, Businesses, Urban Council, Churches, Women, ex-combatants, Kieta District Admin, all 5 x COEs in Kieta district
Friday 12/4/13	Wakunai District	80 delegates representing Wakunai District, 3 x COEs, Women, Churches, Police, Banks, Health centres, ex-combatants, NGOs and small business
Saturday 13/4/13	Rotokas – Togarau Hydro Scheme Return to Buka	Visited the Togarau Hydro Scheme and held discussions with several villagers. Observed economic potential of hydro and vegetable farming
Sunday 14/4/13	Buka	Rest Day
Monday 15/4/13	Tinputz District – two COEs Some team members return to POM	40 delegates representing Govt, churches, 2 x COEs, chiefs, women, ex-combatants, teachers, health and small business
Tuesday 16/4/13	ABG Parliament	Team observed a Special Parliament session convened to discuss Budget and Members Pay increase.
Tuesday 16/4/13	ABG Admin Conference room	Met with 28 members of ABG Parliament
Wednesday 17/4/13	ABG Parliament House	Met with Hon President and Vice President
Wednesday 17/4/12	Buka Finance Ministers Office	Consultations with Minister for Finance  Consultations also with Veterans CEO Aaron Pita
Thursday 18/4/13	Team 2 members depart for POM  Lemankoa Hotel Conference room Buka	Team Leader held consultations with 15 leaders from 5 communities in North Bville attending SPSN sponsored Project Management Training in Buka.
Friday 19/4/13	Team returned to POM	
Mop Up field visits		
Monday 13/5/13	Torokina District Office	Met with 50 men and women (3 women) representing District Admin, COEs, Chiefs, churches, Women and ex-combatants
Tuesday 14/5/13	Manetai Community Market	Met with 35 men, 18 women, ex-combatants churches and Chiefs, small business houses
Wednesday 15/5/13	ABG Planning Office	Met with CEO Planning (Mr. Lesley Tseraha, Chief Collector Taxes Mr Peter Siana; CEO Finance Mr. Graham Kakarouts; Treasurer Mr Paul Amara; AusAID Advisor Ray Melepiea;
Thursday 16/5/13	ABG DPI Office	Met with CEO DPI and Senior Advisor
Friday 17/5/13	Law and Justice Office	Met with CEO (Mr. Chris Siriosi) and then with AusAID Advisor Ms Kate Sexton.
Friday 17/5/13	Lands Dept	Met with Senior Lands Officer Mr. Sam Roroga

Friday 17/5/13	Mining Dept Office	Met with CEO Mining (Mr Steven Burain) and Deputy CEO (Mr Meshake Rangai) and five other staff members
Saturday 18/5/13	Return to POM	

**List of participants at Bougainville Youth Conference - Hahela Youth Hall Centre.**

**Date: 14<sup>th</sup> April 2013**

Name	Region	Name	Region
1.Lawrence Hakout	Kieta	2.Marcos Kelly	Kieta
3.Regina Kelly	Kieta	4.Philip Ken	Panguna
5.Noah Doko	Panguna	6.Alphonse Vone	Wakunai
7.Virginia Tunsio	Panguna	8.Willie Tareasi	Wakunai
9.Denis Siriu	Wakunai	10.Alex Saruven	Tinputz
11.Barry Kerevou	Tinputz	12.Grace Ababa	Tinputz
13.Linus Nimat	Tinputz	14.Hilda Variki	Kunua
15.Norman Kevon	Kunua	16.Albert Nelson	Arawa
17.Fredrick Tegeon	Buka	18.Joseph Mekea	Arawa
19.Barkson Augustin	Arawa	20.Stanis Saveen	Buka
21.Paul Silas	Arawa	22.Junior Pais	Buin
23.Brenda Lambert	Buka	24.Agellius Anugu	Siwai
25.Lorna Puriala	Buin	26.Fayola Sawa	Kunua
27.Priscila Hukasa	Siwai	28.Fabian Kotsin	Kunua
29.Desmond Tores	Suir	30.Gerad Takusy	Panguna
31.Desmond Komoiki	Siwai	32.Jason Marena	Buka
33.Midas Kikinave	Tinputz	34.Charles Nani	Selau
35.Raymond Atei	Buka	36.Wency Saliib	Buka
37.Joseph Maineke	Siwai	38.Stanley Pakita	Tinputz
39.Grace Kobe	Selau	40.Vincent Tatsi	Buka
41.Adfrin Kosin	Selau	42.Brendan Anugu	Siwai
43.Rosemary Kingke	Buin	44.Mathew Kaviranung	Kieta

Note: There were 30 other people present at the meeting from the PNG National Youth Commission, the PNG National Broadcasting Commission, UNDP, ABG Community Development Division and Ancillary staff

**Attachment 2: Locations and People Consulted by Team 1 Buka and ABG Head Office**

Date	Location	People consulted
Friday 5/4/13	Haku, Halia and Gogohe	No audience at all 3 COEs and team left a note for a meeting on Sunday 7 <sup>th</sup> April
Saturday 6/4/13	Buka Town	Team used the day to reorganize meetings for next week.
Sunday 7/4/13	Halia	Team arrived at 1 pm while community waited at 11am after church service and departed after waiting – so no meeting again.
Monday 8/4/13	ABG Admin Conference Room	Met with 5 chiefs representing Halia COE
Monday 8/4/13	Siara Community School	Team met with around 100 community members representing a broad range of stakeholders – COEs, Chiefs, women, ex-combatants, farmers, teachers, churches
Tuesday 9/4/13	Lynchar Hotel	Met with Chairman of Panguna Landowners Mr Chris Damena and six other members (7)
Tuesday 9/4/13	LLG Division Office	Met with LLG Minister Hon Reverend Joseph Nopei and CEO of LLG Division Herbert Kimai and four senior staff (6)
Tuesday 9/4/13	ABG Planning Office	Met with 3 planning officers (Catherine Welba, Michael Omepa, James Tanko).
Wednesday 10/4/13	ABG Technical Services	Met with AusAID Advisor (Stan Basio) and Water Specialist (Simeon Itamai)

Wednesday 10/4/13	Buka Police Office	Met with Assistant Police Commissioner Supt Paul Kamuai
Wednesday 10/4/13	Buka Culture & Tourism Office	Met with Hon Minister Rose Pihei and two of her officers (Joan First secretary; Betty Research Officer).
Wednesday 10/4/13	Hutjena High School	Met with about 200 High school students and staff
Thursday 11/4/13	Veterans Affairs Office in Buka	Consultations with CEO Mr.Aaron Pita
Friday 12/4/13	ABG Parliament	Met with Clerk and Deputy Clerk of Parliament (Mr. Robert Tapi and Kenaha)
Saturday 13/4/13	Rest day	
Sunday 14/4/13	Hahela Catholic Church Congregation	Theresa Siaguru and Patrick Heromate addressed the congregation (about 200 strong) and talked about the autonomy review exercise and gave them an opportunity to share their experiences and thoughts on how ” autonomy was working”
Monday 15/4/13	Halia COE (Dr Tulaha’s Residence)	Met with 51 residents and members of Halia COE
Monday 15/4/13	Communications Office Buka	Met with CEO for ABG Communications Division Robert Anisi
Tuesday 16/4/13	ABG Parliament	Team observed a Special Parliament session convened to discuss Budget and Members Pay increase.
Wednesday 17/4/13	Halia at Dr. Tulaha’s residence	A follow up meeting with 5 Halia chiefs