



BOUGAINVILLE REFERENDUM FORTNIGHTLY COMMENTARY

By Dr Thomas Webster – Team Leader of the PNG NRI Bougainville Referendum Research Project

Implementation of Autonomy Governance Provisions under the Bougainville Peace Agreement.

What is Autonomy?

Researchers engaged by NRI to undertake a study on the political autonomy of Bougainville, conclude that there is no clear and distinct definition of “Autonomy”. They adopt a working definition of territorial autonomy, such as for island regions similar to Bougainville as, ‘the granting of internal self-government to a region’.

The special autonomy provisions for the Governance of Autonomous Region of Bougainville (ARoB) under the Bougainville Peace Agreement (BPA) were far greater than those under the decentralised powers provided to provincial governments in PNG. These special provisions for autonomy are captured in amendments to the PNG Constitution and the special Organic Laws on Implementation of Autonomy and Referendum approved by the PNG Parliament.

The Institutions for Autonomy Government in the Autonomous Region of Bougainville.

The amendments to the Constitution and the Organic Laws established institutions such as the Bougainville Constitutional Commission that drafted the Constitution and the Bougainville constituent Assembly that subsequently considered and approved it in 2004.

The Bougainville Constitution provides for key institutions such as the Legislature, the Executive Government including various Constitutional office holders such as the Electoral Commission, the Bougainville Ombudsman, the Auditor General, - and the third Arm of Government, the Judiciary.

The Legislature. “House of Representatives”

The Bougainville Constitution provides for an elected House of Representatives from thirty-three (33) constituencies, as well as three women representatives and three ex-combatants from the three regions. It also includes the President who is elected by all eligible voters from the ARoB and a Speaker elected by the members of the House of Representatives (HoR) who is at least 40 years of age and qualified to be elected to the HoR but not already a member of the House. The House of Representatives is a member of the Commonwealth Parliamentary Association, independent of the PNG National Parliament.

All elections have been deemed successful by international observers, beginning with the first election in 2005 and since then two subsequent elections, in 2010 and 2015. The House has according to the “Autonomy Review Report of 2013” successfully passed more than fifty (50) pieces of legislation up until the date of the review. A major criticism observed then by the Speaker and Clerk was that the public service was not responsive to the executive and the legislature.

The Executive

The Bougainville Constitution establishes an Executive Government led by the President and a Bougainville Executive Council (BEC) as the Cabinet. The first President elected in 2005 was Joseph Kabui who died in office in 2008 and a subsequent by-election saw James Tanis elected as President. John Momis was elected President in the 2010 and again in 2015 and so will not be eligible to run for a third term in 2020, as per the Bougainville constitution.

Dr John Momis had been a senior and distinguished national politician. He was the Deputy Chair of the Committee responsible for drafting the PNG National Constitution and also the Minister responsible for the implementation of the decentralised system of government at Independence in 1975. He had resigned from the PNG Parliament in 2004 to run for the ABG Presidential elections in 2005 but lost to Joseph Kabui. Dr Momis was also one of the 14 signatories of the BPA.

Whilst the Bougainville Constitution provides for the establishment of various constitutional offices such as the Electoral Commission, the Auditor General and the Bougainville Ombudsman, only the Chief



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Electoral Commissioner has been appointed, whilst the other two offices have yet to be established.

The Judiciary.

The Bougainville Constitution provides for a Bougainville High Court, judicial officials and the administration of a Justice System in Bougainville. The Judiciary remains to be established, and enabling legislation are yet to be enacted by the HoR. The National Courts, the Magisterial Services, the Police Service and the Correctional Services currently operate under PNG laws, providing services through various administrative arrangements.

Current Status

The general observations today are that Autonomy Government for Bougainville has not been implemented to its fullest capacity. The ABG has not assumed full responsibility for powers and functions allowed under the BPA and the amendments to the PNG Constitution. PNG National laws remain in operation as a result of this.

The BPA and the Constitutional Laws required that a review of the Autonomy arrangements was conducted every five years. The first of these reviews was due in 2010, and the second in 2015 with these reviews then providing the information for the referendum that was to be held in-between 2015 and 2020. The reviews were to assess progress with the implementation of the BPA with a view to improve, clarify and strengthen the arrangements consistent with the objectives of the BPA.

The first review was finalised in October 2013, thus was late by 3 years. The report emanating from the review is scathing of the progress made in implementing the BPA. The Autonomy Review Report of 2013 points to a disconnect on the aspirations of the ordinary people about greater autonomy with improved levels of access to basic services with a political and administrative system unable to meet those expectations. The JSB endorsed the report and the recommendations with a number of decisions/resolutions made in October of 2013. To date, most of the recommendations from the 2013 Review remain to be implemented.

The second review, due in 2015 is currently underway, and thus is again three years overdue. It is being conducted by independent experts sourced by the UN on the request of the JSB.

With respect to the design of the BPA, the researchers engaged by the PNG NRI conclude that: “the legal framework grants Bougainville considerable legislative and administrative competencies as well as some judicial and external powers, which are – also in comparative perspective – quite substantial” (page 39). Questions however remain on the extent to which these competencies were realised. The forthcoming review will report on the progress made in implementing the BPA.

In sum, the challenge to date has been to make the Institutions of Autonomy Government work as envisioned in the BPA. Our next article will provide a commentary on fiscal self-reliance.

Note

For further information on this topic, readers can look at the following for additional information. Electronic copies are available from; Referendum.Research@pngnri.org

1. **Options for Bougainville’s Autonomy Arrangement. (NRI Research Report, 2018).**
2. **Joint Review of Bougainville’s Autonomy Arrangements. (JSB, 2005).**
3. **The Constitution of the Autonomous Region of Bougainville 2004.**

Authorised for release by:
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