



# ISSUES PAPER

## POSSIBLE SCENARIOS FOR FUTURE GOVERNANCE ARRANGEMENTS IN BOUGAINVILLE

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### Abstract

Nation states are like marriages. Sometimes they hit a rough patch. Sometimes this leads to a break-up. But, at other times counselling rekindles the relationship and marital bliss is restored.

This report looks at the consequences of a continued marriage of the Autonomous Region of Bougainville and the rest of Papua New Guinea, as well as it considers the consequences of a political divorce settlement.

As outlined in this report, to become an independent state has a number of direct and indirect costs. The direct costs pertain to not having access to a larger market. Being divorced from the parent state deprives the seceding entity from transfer-payments and new sources of revenue will have to be sought. While larger states might be willing to offer loans, these come with strings attached.

But independence is also about getting recognition in the international community. To become a member of the United Nations is not an automatic process but one fraught with difficulty. As the report concludes, “to survive, and even to get started as an independent state, Bougainville needs diplomats and friends in high places”.

While divorce settlements can be costly, they can be necessary. New states have occasionally developed excellent relations with erstwhile parent-states, like in the cases of Denmark and Iceland, and Norway and Sweden.

Secession is the drastic option, but there are other possibilities.

The term greater autonomy is undefined in the *Constitution of the Autonomous Region of Bougainville*. Generally speaking, as this report sets out, greater autonomy can mean several things ranging from devolution (as in the cases of ‘nations’ in the United Kingdom, Denmark and Spain) to fully fledged federalism (as in Austria, Belgium and Canada). In addition to these, there are various bespoke arrangements like in the case of Cook Islands and New Zealand.

Of these options, so the report contends, only federalism is likely to meet the aspirations of both parties. A new federal arrangement would entrench the rights of Bougainville – but would require a new constitution. By contrast, a devolved settlement would mean that the autonomous status could at any times be taken away by Port Moresby. The same, admittedly, is not the case with a bespoke solution *à la* the Cook Islands. However, this arrangement is likely to be prohibitively expensive for PNG.

There are no easy solutions. All scenarios will require a spirit of reconciliation and compromise.

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## POSSIBLE SCENARIOS FOR FUTURE GOVERNANCE ARRANGEMENTS IN BOUGAINVILLE

By Matt Qvortrup

### Introduction

The aim of the present report is to outline a number of possible scenarios for future governance of Bougainville post the 2019 referendum. The report was commissioned as a research report. Hence the language, methodology and the conclusions are those of an academic political scientist and not that of a public servant or legal counsel. Thus, based on political science research and legal and constitutional precedents, the report outlines the various options available, the rough estimated costs, the benefits, as well as the downsides of both options.

The report is based on comparative research, and this always comes with the caveat that no two cases are alike. Yet, despite the differences in levels of economic development, political culture and levels of societal violence, comparative research (in both law and political science) has identified common denominators that enable us to make inferences and draw conclusions<sup>1</sup>. Politics is not an exact science, but we ignore precedent and previous patterns at our peril.

The report sets out to present the various scenarios based on pure types of models of “territorial governance”<sup>2</sup> and contrasts these with the other option of independence<sup>3</sup>.

The first section of the report, “A future Bougainville with greater autonomy”, draws on the distinction between various forms of “unitary states” and contrasts these with different types of federal states (and even confederal) arrangements. In this section, as per recent research, it is acknowledged that the **“rigid division between federal and unitary states is less relevant than in the past, and that today we should think more of a spectrum with strong federal and unitary states at each end”**<sup>4</sup>. Nevertheless, the division has been maintained for pedagogical purposes and because it has heuristic value. Thus, the section sets out the panoply of different options for legal and political

governance systems and arrangements, ranging from pure unitary states (traditionally Scandinavia, Central Americas and Indonesia), through regionalised governance structures (France, Italy), models of devolution (Spain and the United Kingdom), and finally a federal constitution (as in the United States, Switzerland and Nigeria). The research outlines the economic and fiscal systems and arrangements characterising each. In addition, there will be an overview of the administrative and institutional arrangements for provision of government goods and services under each of the models. The latter will draw on examples from similar jurisdictions; in particular, New Caledonia, but also Scotland, Spanish *Autonomias*, the Cook Islands and small federal states.

In the second section, “A future Bougainville as an independent state”, the report will, drawing on recent experiences as well as theoretical modelling, analyse some of the models for achieving independence, as well as estimate the costs of full independence. The new state needs to establish legal and political governance systems and arrangements, but above all, it must decide on new currency arrangements.

This will take place at the same time as the country is severing ties with the former parent state; for this reason, there is also a section on the practical and legal issues pertaining to this. Hence, the second part of the section will also consider both financial costs (such as that of setting up new institutions, and establishing overseas representation), as well as consider practical policy considerations, including provisions for further education, and international security arrangements and business development. This section of the report will outline the economic challenges. However, the most extensive section is devoted to the process of establishing new constitutional and institutional arrangements that are both efficient and democratically legitimate.

Following this, the two distinct issues will be addressed in Boxes 6 and 7. Box 6 will address the question Will

*Bougainville have another referendum if independence does not work?* Drawing on the author's direct experience and previous research<sup>5</sup>), the section analyses various referendums on independence and cases of countries that have become sovereign states. Based on this, the section outlines the circumstances when a decision of independence was reversed. This, as the chapter shows, is very rare.

Box 7, addresses the specific question *Will students from Bougainville continue to attend PNG universities and colleges if Bougainville becomes independent?* In answering this very specific question, the report looks at case studies of the specific rules and regulations pertaining to students' right to attend universities in various states that became independent after the World War II. The chapter looks at the relatively recent cases of Montenegro, Malta and the Czech Republic. In addition, the chapter touches upon the case of Iceland. Although an earlier case (the country became independent in 1944), the arrangement the Icelandic politicians reached with Denmark (the former parent state) is in many ways exemplary, and there is a case that it could be emulated with benefits for both parties. (Iceland, it should be added, has a population size similar to Bougainville and a similar level of economic development at the time of independence.)

In the final section, "*Next steps and conclusions*", the report will make a number of recommendations depending on which option the voters choose in the referendum in October 2019. This section will thus answer the question *What are the unique challenges and opportunities provided to Bougainville under both options (i.e. independence and greater autonomy)? And what are the key challenges to implementing the outcomes of "greater autonomy" and what are the key challenges to implementing "independence"?*

### **A note on impartiality**

In contentious and controversial research, it is imperative to ensure the highest degree of impartiality. Throughout history, ingenious methods have been developed in order that those who draft policy documents were not swayed by personal interests and undue influences. In Ancient Greece, Solon the Wise (the author of the Athenian Constitution), left his city for 10 years, in order that he could not be unduly swayed by his peers<sup>6</sup>; and in the Italian city-states in the medieval period, it was customary to appoint a so-called *Podestà*, a foreign-born citizen of good standing who had no personal or partisan interest, and who could

therefore judge impartially<sup>7</sup>. The present report is written in the spirit of the latter *Podestà*. As a foreigner with no relations to either party, this report seeks to provide an impartial, unbiased and independent assessment of the options available for Bougainville.

## **A future Bougainville with greater autonomy**

### **Models of territorial governance**

Under the present *Constitution* of Papua New Guinea (PNG)<sup>8</sup>, the Autonomous Government of Bougainville (ABG) is granted considerable autonomy, which exceeds the levels of governance of many other countries (e.g. French regions and Spanish autonomias. Constitutionally speaking, the current arrangement can be characterised as a form of devolution (see below), which grants one or more parts of a sovereign state power over constitutionally specified policy areas.

In order to understand the position of ABG from an international perspective, it is necessary, in brief outline, to delineate the various pure types of territorial governance. Conventionally, scholars and policy-makers make a distinction between unitary states and federal states. While this dichotomous distinction is somewhat oversimplified and is subject to caveats, it serves as a useful point of departure. In most cases, as outlined in the next paragraphs, it needs to be complemented by intermediary forms of territorial governance, which fall outside the neat categorisation of the classical juxtaposition.

#### *Unitary states*

Traditionally, the two pure types of territorial governance were the unitary state (France) and the federal state (first established in the United States in 1788)<sup>9</sup>.

The traditional unitary states — of which France after the Revolution in 1789 was the most prominent example — were governed using uniform rules and regulations throughout the territory. All legislative power rested with the centre and a prefect (*préfet*) appointed by the head of State. Despite legal changes (see below), the French Constitution still prescribed (Art. 72), that "in the local governments of the Republic", the Prefect represents and "is in charge of national interests, of administrative checks, and the respect of Law"<sup>10</sup>. The unitary model of territorial government serves a number of distinct functions. Under the French *Jacobin* tradition, it was considered an article of political faith that each citizen was given the same rights

and responsibilities. Thus, in order that everyone should receive the same level of service and be subject to the same level of taxation, the Prefect was the enforcer of this uniformity. As an indirect result of Napoleon's conquest of Spain, several countries in Latin America adopted the French unitary model when they became independent. Despite steps towards decentralisation in the 1990s, there has recently been a tendency towards centralisation in South America, especially in countries with left-leaning governments<sup>11</sup>.

The justification for centralisation (or recentralisation), is largely a function of the introduction of the welfare state, and the universalist belief system associated with this model.

There is nothing new about this. In the years following World War II, Social Democratic governments in Scandinavia established unified and relatively centralised systems of governance. Yet, while these states were governed from the centre, they also contained tiers of local government with considerable powers, including the power to raise municipal and regional income taxes. In some ways, these highly centralised states had a system of local government that had tax-raising powers that exceeded devolved nations in the United Kingdom under devolution<sup>12</sup>.

Further, some of these centralised states also made provisions with historical claims to being culturally and ethnically distinct. For example, despite being a quintessentially unitary state, Denmark made special provisions for Greenland; and the United Kingdom, in different ways, made special provisions for Scotland and Northern Ireland. (We shall return to this in part iii. below).

### *Federal states*

Conceptually, unitary states are contrasted with federal states. While, historians have cited examples of proto-federations before the modern period<sup>13</sup> and "although the notion of federalism has existed from ancient times"<sup>14</sup>, modern federalism has a number of characteristics that were absent in ancient times.

**Table 1: List of existing federal states**

Argentina (23 provinces and 1 autonomous city)	Mexico (31 states and 1 federal district)
Australia (6 states and 2 territories)	Nigeria (36 states)
Austria (9 states)	Pakistan (4 provinces and 1 territory)
Belgium (Flanders and Wallonia)	Palau (16 states)
Bosnia and Herzegovina (Federation of Bosnia and Herzegovina and Republika Srpska)	Russia (49 oblasts, 21 republics, 10 autonomous okrugs, 6 krais, 2 federal cities, 1 autonomous oblast)
Brazil (26 states and 1 federal district)	Saint Kitts and Nevis
Canada (10 provinces and 3 territories)	South Africa (9 provinces)
Comoros (Anjouan, Grande Comore, Mohéli and Mayotte)	Switzerland (26 cantons)
Ethiopia (9 states)	United Arab Emirates (7 emirates)
Federated States of Micronesia (Chuuk, Kosrae, Pohnpei and Yap)	United States (50 states, 1 district, 2 commonwealths, and 12 territories)
Germany (16 states)	Venezuela (23 states and 1 capital district)
India (28 states and 7 union territories)	
Malaysia (13 states and 3 federal territories)	

Source: McGill University<sup>15</sup>.

According to the classic definition of federalism, it is, Necessary not only that the constitutional limits of the authority be precisely and clearly defined, but that the power to decide between them [the units of the federation] should not reside in either of the Governments, or in any functionary subject to it, but an umpire independent of both. There must be a Supreme Court of Justice<sup>16</sup>.

This is largely consistent with the way federations are defined today. As defined by modern political scientists, federation is broadly an arrangement of territorial

governance, “in which (a) public authority is divided between state governments and a central government, (b) each level of government has some issues on which it makes final decisions, and (c) a high federal court adjudicates disputes concerning federalism”<sup>17</sup>.

At its core, “federalism” is a political organisation in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions”<sup>18</sup>. And, in the words of Daniel J. Elazar, “federal principles are concerned with the combination of self-rule and shared rule”, and the “pursuit of common ends while maintaining the respective integrities of all parties”<sup>19</sup>.

Yet, while this could also be said for local government in unitary systems, the difference is that the rights of the individual units in a federal state have powers that are protected from the encroachment by the national government, and that this is done by an independent constitutional court.

Hence, a federation is best defined by Geoffrey Marshall’s dictionary definition “as a constitutional system of government where law-making powers are divided between a central legislative body and legislatures in the states or territorial units”, and where the “allocation of powers derives from the constitution and cannot be unilaterally changed by either set of legislators”<sup>20</sup>, and these entrenched powers are “protected and policed by a power in the courts to declare invalid legislation that infringes the limits laid down in the constitution”<sup>21</sup>.

Thus, while power-sharing between territorial elements are essential, the defining characteristic of modern federalism is the entrenchment of rights in a written constitution. In the words of Burgess and Gagnon, “[a] federation... is a distinctive organizational form or institutional fact which exists to accommodate the constituent units of a union in the decision-making procedure of the central government by means of constitutional *entrenchment*”<sup>22</sup>.

As a corollary of this, federal states have institutions that help to ensure that the units have equal powers despite their different sizes.

This normally means that federal states have bicameral legislatures, though smaller federations like Saint Kitts and Nevis and the Comoros have unicameral parliaments. Yet in most federations, there are bicameral parliaments,

cumbersome procedures for changing the constitution (typically involving referendums) and powerful and independent constitutional courts (see Box 1).

### Box 1: Legal adjudication in federal system

In a federal constitution there are well defined limits for what the different political actors may and may not do. According to the prevailing view of contemporary jurisprudence, the legal system is “pure” and that the decisions of courts, can in principle, be reached without reference to extra-legal circumstances, such as public opinion or the will of a transient majority<sup>23</sup>.

Hence, when adjudicating in matters regarding federalism and other national issues, the courts have often been willing to go against the political centre. India is a good example of this. The Constitution of India provides for the so-called *President’s Rule* (pursuant of Article 356 of the Constitution), which allows the central government to institute direct rule over the states. Earlier, direct rule was relatively common, and between 1966 and 1977 the Congress governments of Indira Gandhi imposed President’s rule 39 times in different states. This practice was followed by the Janata Party, which subsequently won power. However, since the 1990s the practice of imposing The President’s Rule has all but disappeared. This is largely due to the Supreme Court’s more strict interpretation of the Constitution. Since *S. R. Bommai v. Union of India*<sup>24</sup>, the scope for imposing direct rule against the wishes of a state have virtually disappeared.

Conversely, in a system with no constitutionally guaranteed powers, the rights of the units are much less secure. For example, in Spain, *El Tribunal Constitucional de España* has intervened extensively and frequently ruled statutes passed by the parliaments in the *autonomías* to be what lawyers call *ultra vires*, that is, in contravention of the constitution. For example, in *Judgement No. 103/2008*, the Court held that the Basque Parliament had acted *ultra vires* and declared “the unconstitutionality and subsequent invalidity of the *Basque Parliament Law 9/2008 of 27 June*” (a law on a referendum on *de facto* independence).

The same pattern can be observed in Britain, although this country does not have a written single document constitution. But, in Britain, the Supreme Court has tended to be scrupulously neutral in its adjudication.

In Spain, by contrast, the Constitutional Tribunal, is — with some justification — accused of siding with those who have a political preference for a unitary state. For example, in *Judgement No. 31/2010*, it found there was no desire for outright independence. This changed after the Constitutional Tribunal's ruling in 2010. The court's decision came as a result of a challenge by the leader of the centre-right *Partido Popular* (and later Prime Minister), Mariano Rajoy who, it could be argued, used this to forward his own and his party's electoral fortunes<sup>25</sup>.

“Federalism is a natural constitution for a body of states that desire union and do not desire unity”<sup>26</sup>, wrote Albert Venn Dicey. But in recent years it has also been associated with mechanisms of optimal resource allocation and, more ideologically, how competition between units can lead to welfare gains.

#### *Equalisation payments*

At the most neutral level, fiscal federalism, pertains to “understanding which functions and instruments are best centralized and which are best placed in the sphere of decentralized levels of government”<sup>27</sup>, but also to mechanisms to reduce levels of economic inequality among the members of the federation. Thus, in many countries there are mechanisms of equalisation payments (or programs) to this end. For example, under the *Canadian Constitution Act 1982*,

Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation. (Subsection 36 (2)).

Similar systems exist in other federal states, though to varying degree. In Belgium the *Nationale Solidariteitsbijdrage/ Intervention de solidarité nationale* aims to give transfers to regions where the average per capita yield of personal income tax falls below the national average, and in Germany, the so-called *Länderfinanzausgleich* provides that the richer states — subject to the consent of the *Bundesrat* (the Second Chamber of the German Parliament) — may transfer funds to states “whose per capita revenue from Land taxes and from income and corporation taxes is below the average of all the Länder combined” (Art. 107).

These programs, perhaps not surprisingly, are controversial

and have faced legal challenges in some countries and have had adverse political consequences in others. In Germany there have been several cases of litigation in the federal courts<sup>28</sup>, and in Belgium opposition to transfer-payments from the more prosperous Flanders to the less well-off Wallonia has been a source of political contention that has contributed to the growth of separatist aspirations and growth of secessionist Flemish parties<sup>29</sup>.

This source of discontent is not present in the United States, where there are no provisions for fiscal equalisation. This is in some ways, deliberate and reflect a tendency towards so-called *fiscal decentralisation*. The American system is based on the idea that different levels of taxation and services will create competition between the states, which, according to neoliberal economic theory, will “lead to the optimal allocation of resources in the market... and to local authorities adapting services to local circumstances”<sup>30</sup>.

Implicit in the argument for fiscal decentralisation (also sometimes called “fiscal federalism”<sup>31</sup>), is that competition between different governments will force them to develop better public services, which in the end will benefit the citizens. Or, in the words of a classic article of economic theory, “The consumer-voter may be viewed as picking that community which best satisfies his preference pattern for public goods”<sup>32</sup>. Yet, despite the popularity of this theory among economists, a review of the empirical evidence found that “no final agreement can be reached regarding the impact of decentralization on economic growth”<sup>33</sup>.

#### **Box 2: Financial equalisation in the United Kingdom**

In the United Kingdom a transfer system has existed since the 1970s. Named after Joel Barnett (the then Financial Secretary to the Treasury), the Barnett Formula ensures that increases in spending in England automatically lead to budget increases in Scotland, Northern Ireland and Wales (also called the devolved nations). Thus, for areas that are devolved (such as education and health), the formula for funding consists of a baseline times extra spending in England times the proportion of the population in the nation. The formula works as follows:

$$\text{Extra funding in devolved nations} = \text{Extra funding in England} \times \text{Population proportion in devolved nation compared to England} \times \text{Baseline}$$

For example, in 2000, the Scottish population was 10 percent of the population of England. For programs in the Department of Health, the comparability factor for Scotland and Wales was 99.7 percent. Hence, if one billion pounds was to be added to planned health expenditure in England, the extra amount added to the Scottish block grant, compared to the year before, would be £1bn x 10% x 99.7% = £99.7 million.

Based on: Timothy Edwards (2000), “The Barnett Formula” Economic Policy and Statistics Section, House of Commons Library, Research Paper 01/108, No. 30, pp. 10–13.

In an analysis of the appropriate model for a future Bougainville within PNG, it is also necessary to discuss when federations come into being and when (and why) they sometimes collapse.

In most cases, federations emerge historically when there is a credible external danger of invasion and “where this danger can be forestalled... only with a bigger government”<sup>34</sup>. Thus, many of the most prominent federations were established as a result of an international threat: the United States was established in response to a threat from Britain, Mexico before the War with the United States (1823–1848), Australia after a perceived threat from Japan (1900), and the European Union as a response to a perceived threat from the Soviet Union (1956).

Similarly, federations rarely survive when this threat is not considered credible and when there is little loyalty towards the federal government. As a general rule, therefore, all federations that fail are those where “external threats... are not significant”<sup>35</sup>. These federations include the cases of failed federalism, such as the West Indies Federation (which only existed between 1958 and 1962, when the largest state Jamaica voted to secede after a referendum<sup>36</sup>), and the State of Union of Serbia and Montenegro, which was dissolved after a referendum in 2006. In both cases, there were no external threats.

Yet much as this threat seems to be a precondition for

endurable federation, it should be mentioned that Federal Republic of Central America (In Spanish, *La República Federal de Centroamérica*) in the 19th century collapsed, notwithstanding a threat from Mexico, and that some federations have survived and come into being despite a lack of external threat; for example, Micronesia, Australia and Brazil.

### Box 3: The East African Federation: A new departure?

At the time of writing, six east African states (Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda), are working on plans to create a single federated state in the region. With close to 180 million people, the federation would be one of the tenth largest countries in the world. The federation would have Swahili as the common language (the name would be *Shirikisho la Afrika Mashariki*). In September 2018, representatives from the six countries began drafting a regional constitution. The idea was first floated in 2004, but it was only in 2016 that the heads of government agreed to create a confederation and a single market. Despite differences in economic levels of development and political culture, a committee was formed in 2018 with a view to drafting a federal constitution. In the early 1960s, a similar idea was proposed by Tanzania’s leader Julius K. Nyerere. However, after a few years of discussion, the plan was shelved after opposition from Jomo Kenyatta, the President of Kenya<sup>37</sup>.

Historically speaking, federations have rarely tended to be established in countries with deep ethnic divisions, though the establishment of Bosnia Herzegovina in the 1990s and Iraq (in 2006) as federal republics are exceptions to the rule. These two states have not proven successful in integrating the populations and have — arguably — been sustained only due to support from the international community. Few other states can expect the same level of financial and political support.

### Box 4: Powers shared between states and federal units

Federalism is a system in which different powers have decided to divide rather than share powers and sovereignty between them. As a general rule, therefore, governments in federal states have clearly defined (and constitutionally entrenched) responsibilities and powers. In practically all federal states, issues like

immigration, defence and foreign affairs (diplomatic relations) are the responsibility of the federal (or central) government. For example, in Australia, education is a state matter, whereas healthcare is the preserve of the federal government. Conversely, in Germany, health is the responsibility of the Federal Ministry of Health, though legislation has to be approved by a majority of the states if changes are proposed.

The problem emerges when the two levels encroach upon each other. For example, one of the controversies over healthcare in America revolves around the degree to which the federal government can play a role in the provision of healthcare. At the more abstract and legal level (though political arguments should not be overlooked), opponents of Obamacare have suggested that there should not be federal involvement in what is a state matter, whereas this is not the interpretation of proponents of this policy. In America — where the Constitution is rigid and difficult to amend — this problem is partly due to the fact that the Founding Fathers did not envisage anything like public healthcare.

In other countries, such as Germany, the solution to this problem has been to establish a separate area of “shared competences”. These are different from areas that are reserved to respectively states (*Länder*) and the Federal Government (*Bund*). Thus, in matters concerning civil law, consumer protection and social security, both levels share powers and Bills have to be approved by both levels — the federal parliament (Bundestag) and the federal council (Bundesrat).

#### *Devolution and autonomy*

In the real world of territorial governance, matters are always a good deal more complicated (or nuanced) than in the world of positive political theory.

While countries can be described as either federal or unitary states, they differ from the theoretical description. Thus, federal states can be more or less decentralised<sup>38</sup>. Australia, Canada, Belgium, United States, and the European Union are decentralised federations, whereas Argentina, Austria, India and Malaysia are centralised federations, with relatively few powers reserved for the states. Indeed, India was described by one constitutionalist as merely “quasi-federal”<sup>39</sup> in the early days when the centre intervened into state matters with impunity and in a way that arguably transgressed the constitutional limits of authority.

(However, as India has become more democratic, the division between the respective governments’ authority has been accepted and adhered to. Yet, it remains a case of slightly asymmetrical federalism<sup>40</sup>).

The same variation exists among formally unified states. Some remain very centralised, such as South Korea, Portugal and Ireland, whereas others have decentralised elements that make them in some cases appear more decentralised than even federal states. Thus, after the death of the dictator Francisco Franco, Spain’s new democratic constitution, granted a number of significant powers to so-called *Autonomías*, with regional powers over specific areas, though not always identical, areas. In contrast to the previously existing centralised state, the new order was described as an *Estado de las Autonomías* (“a state of autonomies”<sup>41</sup>), though one that allowed historical nations such as Catalonia, the Basque Country, Galicia and Andalusia to enjoy powers to enact primary legislation in additional areas. This has led some scholars to describe the Spanish system as one of “non-institutional federalism”<sup>42</sup> or “semi-federalism”<sup>43</sup>.

A similar system of so-called devolution was established in the United Kingdom after the election of Tony Blair’s New Labour Party in 1997. In this case, Scotland and Northern Ireland were granted extensive powers, whereas these were only gradually granted to Wales<sup>44</sup>.

The system that currently exists in PNG, is, constitutionally speaking, a variation of the system that exists in Spain and the United Kingdom.

Yet, much as some states have been granted extensive powers, it is important to note the fundamental constitutional differences between federalism and devolution. At the more abstract level, in a federation, “the fundamental distribution of power [is] among multiple centres... not the devolution of powers from a single centre or down a pyramid”<sup>45</sup>. This is more than merely a theoretical observation. For, as a corollary, devolved systems (no matter how extensive they may be) are subordinate to the will of the centre.

This means that whereas powers in a federal system are entrenched and unchangeable unless this is consented to by the federal units, in a devolved system. “Sovereignty rests with me as an English MP and that’s the way it will stay”, Tony Blair said before the enactment of the legislation that granted legislative powers to devolved parliaments<sup>46</sup>.

Legally speaking, this means that the British Parliament can, at any time, revoke the powers granted to Scotland, Wales and Northern Ireland through primary legislation and *without* the consent of either of the devolved parliaments. That this is not merely an abstract right is evidenced by the imposition of direct rule over Northern Ireland, a power London exercised on four occasions during Blair's premiership<sup>47</sup>, and which was exercised again in 2018<sup>48</sup>.

Similarly, despite its (semi) federal structures, the Spanish *Autonomías* are subordinated to the central powers in Madrid. Article 155 stipulates that "the Government, after lodging a complaint with the President of the Autonomous Community and failing to receive satisfaction ... may, following approval granted by an absolute majority of the Senate, take the control". In 2017, the Madrid government exercised this right following Catalonia's declaration of independence following the unconstitutional referendum held in the province.

Thus, while devolution (or Home Rule) has provided pragmatic solutions to certain countries, the risk for the distinct units are considerable in countries where the rights of the subnational units are not protected by entrenched constitutional rights and enforced by an independent and apolitical constitutional court.

Much will depend on whether the devolved region trusts the centre to refrain from interfering and imposing direct rule. Much as there are potential dangers, there are a number of excellent examples of devolved or regional governments that have served both parties well. Thus, in the case of Denmark, the devolution of powers Greenland and the Faroe Islands have given the latter considerable resources, and the two "nations" have been able to benefit from diplomatic representation abroad under an arrangement that essentially grants them all political powers short of independence. Indeed, both Greenland and the Faroe Islands are outside the EU and can make trade deals with third parties<sup>49</sup>.

Yet, there has been no history of violence between the parties, and this has arguably facilitated the amicable relations. Further, both these "nations" are very small with populations of 49,000 (Faroe Islands) and 56,000 (Greenland) inhabitants.

Unlike the said examples, there are a number of examples in France that suggest that autonomy under a system of

devolution can have positive benefits for both parties concerned. Thus, New Caledonia has enjoyed considerable autonomy under the *Nouméa Accords*. The first accord passed following a referendum, which followed secessionist violence<sup>50</sup>, and granted the territory political powers, with the exception of those of military, immigration and foreign policies<sup>51</sup>. A power-sharing mechanism was introduced following which executive power is shared by a representative for both the indigenous and the immigrant communities.

Moreover, France transfers considerable funds to New Caledonia. In 2018, the block-grant constituted €1.5 billion according to an estimate by the *Financial Times*<sup>52</sup>. This is roughly 10 percent of the total GDP for the archipelago. As a result of this generous grant, but perhaps also reflecting that immigrants constitute a majority of the population, 56 percent of the voters rejected independence in a referendum in 2018<sup>53</sup>. Autonomy can work but it requires considerable sums of money, which not all countries can afford. Interestingly, the measure of "autonomy" for the Faroe Islands provides for the same powers, though in the case of the Faroes, this small territory in the North Atlantic can sign its own trade deals<sup>54</sup>.

Other examples of greater autonomy are often mentioned, which may provide options for Bougainville. These examples include Cook Islands, Puerto Rico, and Zanzibar. We will look at each in turn.

### *Cook Islands*

The case of the Cook Islands (formally a part of New Zealand) requires us to introduce the concept of a "free association" (FA)<sup>55</sup>. Legally speaking, FA refers to a situation where a former colonial territory is granted extended autonomy over an area. Originally introduced in *United Nations General Assembly Resolution 1541* in 1960, to urge countries to provide assistance and in some cases gradual transfer of powers to a *non-self-governing territory*, this construct has been used especially in relation to small states often with small populations. However, the Cook Islands (with a population of 17,000) is currently the only example of a FA.

Legally speaking, New Zealand retains sovereignty over the archipelago; however, in other matters the Cook Islands has a special status, which in some ways make it look like an independent state. Using the traditional language of diplomacy, one could perhaps describe the relationship as

an example of the definition of *suzerainty*, which according to the Oxford Dictionary is “a position of control by a sovereign or state over another state that is internally autonomous”.

However, the case of the Cook Islands goes somewhat beyond this. According to a United Nations document<sup>56</sup> — albeit not one with legal force — The United Nations Office of Legal Affairs considered “the question of whether the Cook Islands... was an ‘independent’ entity, i.e. — States, with full treaty making capacity”. According to the document, “The Cook Islands maintained the status of self-governing territories in free association with New Zealand”. However, the responsibility of the Cook Islands to conduct their own international relations and particularly to conclude treaties has evolved substantially over the years: the Cook Islands became a member of WHO in 1984, of FAO in 1985, of UNESCO in 1985, and of ICAO in 1986. Further, in a declaration dated 10 November 1988, New Zealand stated, “by express provision and with the consent of all parties concerned, that its future participation in international agreements would no longer extend to the Cook Islands”. Thus,

In 1991 the Cook Islands sought, and obtained, full participation in the United Nations Conference on Environment and Development (UNCED) [and the] Preparatory Committee and the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC), providing further evidence that the international community had accepted the Cook Islands as a “State” under international law. Consequently, and in light of their admission to the membership of specialized agencies without any specifications or limitations, the Secretariat recognized the full treaty-making capacity of the Cook Islands in 1992<sup>57</sup>.

**Given this exceptionally high degree of autonomy, a similar arrangement could conceivably be arranged for Bougainville.** Indeed, on the face of it, this would provide for a future close relationship but one that nevertheless would give ABG a status on the international scene.

Would a similar arrangement be possible in the future? The most important question is financial. Under the current funding program 2018–2021, New Zealand provided a total block grant of NZ\$67 million. This is proportionally the same as PNG net contribution to ABG for the same

period. However, we have to compare like with like. New Zealand’s contribution translates into circa NZ\$1,313 per inhabitant in the Islands per year<sup>58</sup>. By contrast, the PNG government only contributes about NZ\$100 per inhabitant per year.

While the relationship between a future ABG under a similar agreement might provide international recognition, an open question is whether PNG could provide an equally (or more) financially attractive arrangement than the one that currently exists between the Cook Islands and New Zealand.

#### *Puerto Rico*

The relationship between Puerto Rico and the United States is somewhat weaker than what exists for the Cook Islands. Puerto Rico was seized by the United States in the Spanish American War 1898 (like the Philippines). However, unlike the latter, which received independence after a referendum in 1935, Puerto Ricans opted against a similar path<sup>59</sup>. They have been divided over their future. After a series of inconclusive referendums in which independence was consistently rejected, a majority of the voters supported becoming a US state in a referendum in 2017.

However, hitherto, the US Senate has not debated the Bill, and it is unlikely that Puerto Rico will be granted statehood. While Puerto Ricans enjoy US citizenship and are exempt from US income tax, they are disadvantaged in other ways. Due to its status, the inhabitants have no representation in Congress. The same, of course, is true for the Cook Islands in relation to New Zealand. But unlike the Cook Islands, Puerto Rico does not have representation in international fora. Moreover, its economy is in a precarious state (the territory was rendered all but bankrupt after the financial crisis and has been governed by a non-elected board appointed by President Obama)<sup>60</sup>.

Given its financial woes and the lack of representation in either international or national fora, the position of Puerto Rico is not one that many would seek to emulate.

#### *Zanzibar*

Following independence in 1963, Zanzibar joined Tanganyika, and the two formerly independent countries were renamed the *United Republic of Tanzania*. With a population of 1.3 million, Zanzibar is considerably smaller than the mainland Tanganyika (population 57

million). This unequal relationship meant that the former has found it difficult to assert its power vis-à-vis her larger partner until the 1990s when the Republic of Tanzania became a Partly Free State.

Under the current system of government, Zanzibar enjoys considerable autonomy over matters like education and health. But power resides in Dodoma (the national capital). This has led some to compare Zanzibar with Hong Kong: a one-country two-systems model, though one in which the larger is ultimately able to decide on major constitutional and political decisions<sup>61</sup>. This was shown during the negotiations over a new constitution in the second decade of this century. The largest party of Zanzibar, the governing Civic United Front (CCF), sought to move to “a full federal system with three governments: one for the mainland, one for Zanzibar, and one for the United Republic”.

However, “the proposed draft, devised after lengthy public debate, had endorsed this proposal... was blocked by the Constitutional Assembly”, which was dominated by Tanzanian President John Joseph Magufuli’s CCF party<sup>62</sup>.

This perhaps suggests how little power Zanzibar has. Further, though somewhat controversially, the then Prime Minister of Tanzania, Mizengo Pinda, stated that “nothing like the sovereignty of Zanzibar [exists] in the Union Government unless the Constitution is changed in future”<sup>63</sup>.

While Zanzibar enjoys wide powers, her status as a subject in international law is naught. Constitutionally as well as politically, her powers at the moment are similar to those enjoyed by Bougainville. And for this reason, Zanzibar is hardly a model that many would recommend for a future autonomous ABG.

In addition to these examples, there are autonomous government arrangements for a number of areas with similar levels of socio-economic development. Thus, Tobago enjoys devolved powers in its union with Trinidad, and, nearer to PNG, Aceh enjoys a special autonomy status in Indonesia. Following a peace agreement in 2005, the territory was given the status as *daerah istimewa* (Special territory). This has allowed the largely conservative Achenese to institute Sharia law. However, sovereignty still resides in Jakarta<sup>64</sup>. While Aceh enjoys a considerable level of independence, her status is that of a territory

under Indonesian rule. Much as the territory has been given self-rule, no permanent solution has been found and the current arrangement hardly meets international standards of democracy. However, the agreement has led to more peaceful relations and has put an end to the civil war<sup>65</sup>. In this respect, the Aceh agreement is akin to the one established in ABG after the peace agreement, though in the case of the latter with a much higher level of democratic governance.

As the above examples show, it is difficult to find models for autonomous government that will square the circle of maintaining PNG’s territorial unity with ABG’s aspirations for recognised sovereignty. The only example that currently exists is the Cook Islands. This case alone provides a feasible model; however, it is an open question whether this model would satisfy Bougainville’s desire for sovereignty and, perhaps more critically, if PNG has the financial resources necessary to support ABG in a way that is comparable to that of New Zealand’s support to the Cook Islands. Indeed, it seems that greater autonomy only tends to work when the central government provides considerable funds. We turn to this issue in the next section.

### **Fiscal implications of greater autonomy**

The legal implications of a no-vote in the forthcoming referendum would be the establishment of some form of “greater autonomy”. However, it is not clear what form this would take. As the section above showed, “greater autonomy” has been used as a shorthand for powers transferred to countries with strong regional governments (e.g. France), semi-federal states (such as Spain and the United Kingdom), in fully fledged, federal states (whether centralised or decentralised ones), and in countries with special autonomous regions (e.g. Zanzibar, Puerto Rico and the Cook Islands).

Thus, the fundamental problem with greater autonomy is that it is unclear what distinguishes the current state of affairs with a future arrangement. As in the case of South Sudan and East Timor, the current government of PNG has not made a clear and compelling case for future autonomy.

If the aim is to maintain national unity, it will require guarantees that make independence less attractive and future autonomy more attractive.

To make a case for autonomy, it is necessary to determine

how it could be made to work. One answer to that question could be answered by the word “federalist”. The attraction of this system of territorial governance is that it, at least legally, guarantees the autonomy of the individual units. Unlike under devolution, the central (or federal) units both have a distinct share of the country’s sovereignty. The central unit is entrusted part of the sovereignty by the voters, and another part of the self-same power is entrusted to the federal units by the electorate. None is technically superior.

Fiscally, federalism might be attractive to PNG. Unlike France and to a degree Denmark, PNG is unable to provide the massive financial incentives granted to, respectively, New Caledonia and Greenland. To make autonomy attractive, the Port Moresby government should offer an extensive form of federation or a federal republic. This will require a number of institutional changes, such as a new constitution.

However, before moving on to consider these institutional changes, it is necessary to look at other federations that currently resemble a possible future Federal State of PNG.

Most federations are multi-member federations. The average number of units of the world’s 20 federations, is 15.9, though this figure is largely due to the presence of federations like Brazil (26 states), India (28 states), Mexico (31 states) and the United States (50 states). Despite this high average, a significant number of federations have a relatively small number of units; for example, Belgium (3), Bosnia (2), St Kitts and Nevis (2), and Micronesia (4). There is nothing unusual about federations with a small number of units. Indeed, even larger states can be comprised of few units; for example, Pakistan (4). There is nothing to suggest that a two-state federation should not be feasible.

Politically, as well as economically, a federal solution (such as was rejected in Tanzania, see above) would safeguard the rights and powers of Bougainville as well as maintaining the union.

Whether such an arrangement is politically feasible, or indeed acceptable, is a political question that must be decided by the people(s) and their representatives.

## A future Bougainville as an independent state

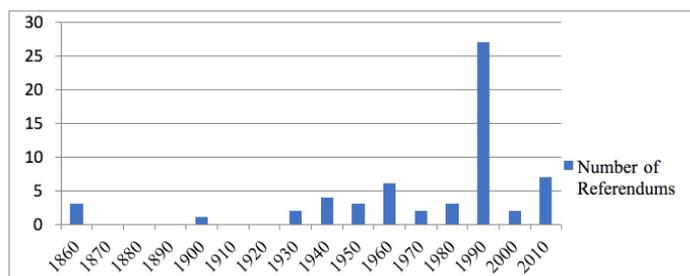
Establishing a new state is a major political, legal and economic undertaking. Before considering the practicalities of such an endeavour, and the likely economic implications of it, it is necessary to outline some of the other examples for countries that gained their independence or seceded from other countries.

In the 20th century, a large number of former colonies gained independence and a good number of countries that hitherto were part of larger states seceded. While there were examples of this before World War II, when, for example, the Philippines became independent in 1935, most new states were established after the war. In this period, most of the new states were former colonies; for example, the former British colonies, India, Kenya, and the former French colonies, Senegal, Togo and Cameroon.

By contrast, after the Cold War, most newly established countries were not former colonies but were areas that hitherto had been part of larger entities; for example, Croatia and Bosnia-Herzegovina in former Yugoslavia, and Ukraine and Belarus, to name but two, which were previously part of the Soviet Union.

The process also differed in important ways. Whereas the process of independence prior to 1970, with some exceptions, were conducted without the involvement of the peoples concerned, there was a trend towards using referendums in the period after 1980 (see Figure 1). There were only 11 referendums on independence in the period 1950–1980. By contrast, there have been 40 referendums on independence in the period 1980–2018. With one exception, only referendums in what Freedom House describe as non-free states have resulted in a vote for independence, the odd one out being the controversial Catalan independence referendum in 2017<sup>66</sup>; although this had a low turnout, it was boycotted by the opposition and in many cases interrupted by the Spanish authorities. The only country that split without a referendum was Slovakia, which formally seceded from Czechoslovakia after an elite agreement<sup>67</sup>.

Figure 1: Referendums on independence, 1860–2017



Note: This figure does not include the four multi-option referendums in Puerto Rico (1968, 1993, 1998 and 2012), which formally included “independence” as one of the options. However, the figure includes the two-round multi-option referendum in Newfoundland in 1948 as independence was one of the choices in the run-off. The independence options lost to “statehood” and the former British territory became a Canadian Province<sup>68</sup>.

Although there are sometimes considerable financial costs associated with independence, there are a considerable number of independence movements. From 1945 to 2018, the total number of states grew from 51 to now over 195. And, during this period 464 groups made secessionist claims in 120 countries<sup>69</sup>.

### Fiscal implications of independence

One of the main issues facing an independent country is of economic nature. Fundamentally, becoming an independent country costs money. This section will deal with some of these issues based on calculations from other would-be independent states. While the costs are never identical, and while there will also be idiosyncratic issues at play, there are common denominators.

There are historical examples of how a former parent state intentionally wreaked havoc to punish a former colony. A notorious example is Guinea in 1958. After Guinea, under the leadership of Sekou Toure, voted for independence from France in a referendum the French “left *en masse*, depriving the country of all technical expertise and worse, removing all key government files, even ripping out office telephones<sup>70</sup>. As a result, the country turned to the Soviet Union and sought — and was granted — financial assistance<sup>71</sup>.

However, compared to other former colonies, Guinea did not suffer long-term consequences, and overall there was lower inflation and higher growth in the country than in other former British colonies, though the causal factors behind this development are complex and multifactorial<sup>72</sup>.

But this does not mean that one should underestimate the

cost of independence. The economic costs are generally considerable, and the exceptions to this rule are often benefitting from particular circumstances, such as money from overseas donors, international bodies or a rich diaspora. Countries that have strategic importance have on occasion received large sums of money from great powers in return for a right to have military bases. Iceland, for example, received considerable sums from the United States, and in return the Americans were able to operate from the Keflavik Base until the end of the Cold War<sup>73</sup>.

A similar situation is likely here. However, this would not necessarily require independence but could be secured under the arrangement that currently exists in Greenland (an autonomous territory under Denmark). The large island in the arctic provides an ideal location for American forces and a vantage point from which the Americans can monitor movements in Northern Russia<sup>74</sup>. In return for providing access to bases, the Americans dispatched a consular and has provided financial support. A similar arrangement might be feasible for Bougainville (either as an autonomous region or, more likely, as an independent state). With China in the ascendency and with an increase in Chinese naval activity in the region, it seems plausible that Washington would have an even greater incentive to establish a relationship with a future Bougainville administration; however, this would require the latter to engage in lobby activity. This, in turn, would be made complicated by a paucity of diplomatic and politically connected representatives who could make the case to greater powers such as the USA, France, and the European Union.

Becoming successful or even just viable as an independent state is not just a question of resources or economics. **To survive, and even to get started as an independent state, Bougainville needs diplomats and friends in high places.** These seem to be in short supply, not so much because of a lack of competent and talented people but mainly because the international community (with the exception of Australia and New Zealand) are unaware of the situation. To quote former ABG president James Tanis, “Our problem is that we are not on CNN”<sup>75</sup>.

First, let us consider independence from the perspective of economic theory. From an economic perspective, there are several major advantages to be a large country. According to research by Alberto Alesina and Enrico Spolaore, the per capita expenses of public goods with large fixed

costs are lower in large nations, as the taxes to support infrastructure like roads, schools, and national defence are spread across a bigger population. For many of the same reasons, large states typically have bigger, more diverse internal markets<sup>76</sup>. Admittedly, this result of “economies of scale” can be offset by free-trade agreements and the relaxation of trade barriers. However, according to the same research, even extensive schemes of liberalisation cannot entirely compensate for the economies of scale that benefit larger states or amalgams of countries in a single market.

This finding echoes earlier theoretical research, which finds that,

From an economic efficiency point of view, separation of nations is never desirable. A unified nation is always more efficient since free trade among regions is guaranteed, duplication costs in defence and law enforcement are avoided, and local public goods provision (such as transportation and communication networks, or common standards) can be coordinated<sup>77</sup>.

To be sure, there are many other issues than purely economic ones, and matters concerning national identity, cultural belonging and deep-seated animosities based on past military conflict may compensate for financial disadvantages. However, the empirical evidence seems to support the theoretical predictions. While one should be careful when making comparisons, Timor-Leste provides an example of the costs. According to one evaluation after five years of independence, the economic effects of independence were not positive. As a result of independence, “the number of openly unemployed had increased to almost 17 percent”. The effect of independence also affected exports:

During the last years of the Indonesian period (1995–98) Timorese exports amounted to some 12–14 percent of the gross regional product on average... In 2000 and 2001, however, these exports dropped drastically, to no more than some 2.5 percent of GDP<sup>78</sup>.

The reasons for the decline, the report went on, were to be sought “in the loss of important Indonesian markets and infrastructural trading facilities”<sup>79</sup>. While these outcomes, in part, were caused by the war that followed independence, the results are not unique.

Some estimates suggest that Slovakia lost 4 percent of its GDP as a result of the split with the Czech Republic<sup>80</sup>. Some might consider this a small cost for gaining one’s independence.

Further, some countries have prospered after they became independent, although this is not the norm. One example, Montenegro (which severed its ties with Serbia following a referendum in 2006), has experienced a positive macro-economic development, though this is partly due to favourable loans and support from the European Union<sup>81</sup>. According to one research paper,

The large inflow of capital and imports, along with the increase in domestic consumption enhanced tax revenues, resulting in a budget surplus equal to 3.2 percent of GDP in 2006 and 6.3 percent in 2007. Growth of the economy, the regular servicing of debts and early repayment of debt to the World Bank, along with the partial write-off of debt to the Paris Club of creditors, led to a decrease in public debt from more than 80 percent of GDP in 2002 to less than 30 percent in 2008. The years of expansion led to reductions in unemployment and the growth of employment, with substantial increases in salaries. Increases in household incomes and income from the sale of property helped reduce the poverty rate from 11.3 percent in 2006 to 4.9 percent in 2008<sup>82</sup>.

Thus, while independence, as a general rule, leads to a reduction in economic welfare, there are examples of the opposite. And, in any case, the economic consequences have to be weighed up against the political costs of remaining in a union after warfare and prolonged enmity.

**Box 5: Would a new state be recognised? When does it become a UN member?**

Before moving on to what happens after independence, it is worth sketching the legal doctrines of recognition. There are two doctrines of recognition in international law:

- *Constituent theory*. According to the constituent theory, a state is recognised by virtue of the will and consent of already existing states. In other words, a state becomes a subject with rights and duties only when other states have recognised it<sup>83</sup>.
- *Declaratory theory*. According to the declaratory theory, a country can be regarded as independent

when it is in control of its territory; that is, a “new state will acquire capacity in international law... by virtue of a particular situation”<sup>84</sup>.

In practice, these doctrines are pure types, and elements of both can be detected in real world examples. For instance, some countries in the Middle East hold Israel responsible for violating international law although they, in theory, have not recognised the Jewish state<sup>85</sup>. However, formal lack of recognition — as in the case of the People’s Republic of China — can lead to a number of complications; for example, in matters regarding extradition.

Further, in practice, as reflected in decisions by the International Court of Justice (ICJ), it has become the norm that the people in a territory must express a wish to secede. This was recognised by the International Court of Justice (ICJ) case concerning East Timor and in the ICJ’s Advisory Opinion on Western Sahara. If a freely won and constitutionally legitimate referendum results in a vote to succeed, it would be difficult for the parent government to stand in the way.

The PNG government has indicated that it will regard the result of the referendum advisory only. This might be possible, yet there are no recent examples of results in advisory referendums on independence which have not been honoured by the parent state. A matter related to recognition is when a state becomes a member of the United Nations. The process for this follows four stages:

1. The State submits an application to the Secretary-General and a letter formally stating that it accepts the obligations under the Charter.
2. The Security Council considers the application. Any recommendation for admission must receive the affirmative votes of 9 of the 15 members of the Council, provided that none of its five permanent members — China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America — have voted against the application.
3. If the Security Council recommends admission, the recommendation is presented to the General Assembly for consideration.
4. If membership is supported by a two-thirds majority in the General Assembly, the state in question is granted immediate membership.

## The costs of independence

The previous section looked at the macro-economic costs of independence; the effects on exports, unemployment and inflation. However, there are other financial costs associated with the establishment of a new state. Again, it is impossible to compare different countries on a one-to-one basis. However, it is possible to get a sense of the costs by looking at the expenditures that historically have been associated with the establishment of new states.

In 2014, Professor Patrick Dunleavy and colleagues estimated that Scotland (in the event of independence) would be faced with one-off costs in the event of a vote for independence: “We can say with some confidence that Scotland’s immediate set-up costs are likely to be constrained — perhaps up to £200 million in creating new versions of a few but big existing UK department capabilities<sup>86</sup>. This conclusion was based on an assessment of the institutions a new state, at a minimum, would have to set up. The same institutions would need to be set up by a future independent Bougainville (see Table 2).

**Table 2: Major new departments or capabilities needed in an independent Bougainville**

Defence Department plus Bougainville Defence Force.	Rural Payments Agency, and agriculture policy-making competency.
Single Economic Regulator (covering a wide range of markets).	Bougainville Revenue.
Bougainville Security and Intelligence Agency.	Expanded Government Procurement capability.
Bougainville Debt Management Office.	A Bougainville Export Finance capability.
Foreign Affairs department, plus embassies and diplomatic service.	A Bougainville Passport Office. Civil Aviation Authority. A Bougainville Public Broadcaster.

Source: Adapted from [www.democraticaudit](http://www.democraticaudit)

The total one-off cost for Scotland was estimated to be in the region of two percent of the country’s GDP. While it is not possible to directly compare this hypothetical case with Bougainville, experiences from other newly established states suggest that this estimate is close to the actual one-off costs incurred by countries that have recently declared

independence. However, in many cases, these countries have benefitted from overseas aid. For this reason, the one-off costs were not a significant cost that merited analysis when the IMF assessed the economic consequences of independence for East Timor<sup>87</sup>.

### **Benefits of independence: No obligation to pay its share of national debt**

Financially speaking, Bougainville would start with a “clean slate”. This means that the new country is not liable for the financial obligations and debt incurred by Port Moresby prior to independence.

The evidence for this is based on long-established precedent. For example, when Belgium seceded from the Netherlands in 1830, it was deemed to have started “international life with a clean slate”<sup>88</sup>. And when Finland became independent from Russia in 1917, the British and the Americans took the view that the Finns were *not* bound by Russia’s contractual obligations<sup>89</sup>. To take an example, Bougainville would not be bound by, for example, the Torres Strait Treaty with Australia.

Does this legal position have fiscal implications? For example, does this mean that Bougainville would be able to walk away from its share of the PNG debt? In large measure yes, though some aspects of international law are a bit unclear. Admittedly, The Arbitration Commission on Yugoslavia declared that successor states must together settle all aspects of secession by agreement<sup>90</sup>. But, in the absence of an agreement, the legal position has been summed up as follows, “Where the predecessor state continues to exist, it would appear that the presumption is that the responsibility for the general public debt of the predecessor state remains with the predecessor state after the secession”<sup>91</sup>.

This interpretation is supported by other legal and historical precedents. Thus, when Texas seceded from Mexico in 1840 — and briefly became an independent state — it denied responsibility for the latter’s debt. This was not challenged. Further, no part of Colombia’s debt was assumed by Panama when this state seceded in 1903. Likewise, Pakistan did not pay any of India’s debt after partition in 1947<sup>92</sup>. It should be mentioned that the Irish Free State accepted to pay a “fair and equitable” part of Britain’s debt<sup>93</sup>. However, this was after specific negotiations.

For a brief time, it seemed that this position was likely to

have changed. Thus, the Vienna *Convention on Succession of States in respect of State Property, Archives and Debts 1983* provides that, Art. 37 (1),

When part of the territory of a State is transferred by that State to another State, the passing of the State debt of the predecessor State to the successor State is to be settled by agreement between them (2). In the absence of such an agreement, the State debt of the predecessor State shall pass to the successor State in an equitable proportion, taking into account, in particular, the property, rights and interests which pass to the successor State in relation to that State debt.

However, the Vienna Convention has not come into force. Although six states signed the convention before the 1984 deadline for signature, they have not yet ratified it in accordance with its relevant provisions, so the PNG government cannot rely on it. It would appear, therefore, that — all other things being equal — Bougainville does *not* have to pay its share of PNG’s debt.

Hence, in the event of independence, the seceding party is legally not obliged to pay the debt of the former parent state. In extremis, Bougainville could legally walk away from its share of the PNG debt and start independence with a clean slate. However, the political implications of this might be considerable and efforts should be made to reach a common position with Port Moresby lest non-payment will have implications for an independent Bougainville’s credit rating.

In addition to these issues, Bougainville needs to find sources of income. It is beyond the remit of this report to go into detail with this. This is a matter of economics and lies outside the expertise of a political scientist. But the options could include, the reopening of the Panguna Mine (controversial but economically efficient in the long run), entering into partnership with China (though short-term benefit but could lead to long-term dependency and would not be popular among regional powers such as Australia and New Zealand). ABG could also consider opening of new industries, such as above all fish-farming (with potential Australian funding). And, perhaps more controversially, ABG could consider opening of a detention centre for the Australian government which could replace the Manus Regional Processing Centre, which was ruled unconstitutional under PNG law by the Supreme Court of Papua New Guinea in 2016<sup>94</sup>.

However, the most important and the most challenging aspect of establishing a new state is the construction of new legal, political and administrative institutions. As this is the most challenging aspect of creating a new state, it will be dealt with at length in the next section of this report. This section will also consider the political and administrative institutions that have to be developed under greater autonomy.

## **Establishing a country or greater autonomy: Governance issues**

### **Political and administrative institutions/governance systems for a future Bougainville**

The decision in the referendum will not only determine the future of ABG. In the event of “greater autonomy”, much of the existing framework would need to be changed. In order to honour the result, it would be necessary to establish a new structure of governance, possibly one based on federalist principles or mechanisms for providing ABG with institutions akin to those of the Cook Islands.

In the case of independence, domestic institutions could be maintained. However, more consular and diplomatic institutions would have to be established, not least a foreign service and systems of overseas representation. Most importantly, the new state would have to resolve the currency issue. Will Bougainville enter into a currency union with PNG? Or will she use the kina or the Australian dollar; that is, adopt a foreign currency unilaterally (like Montenegro did)? Or will a new central bank be established alongside a new currency?

We shall look at each in turn.

### ***Administrative institutions/governance systems for greater autonomy***

The problem with the current situation is — as stated elsewhere in this report — that the term “greater autonomy” is rather vague. Assuming that greater autonomy results in a situation akin to that of the Cook Islands, it will be necessary for Bougainville to establish a foreign service and consular representation in overseas capitals. It will also be necessary for ABG to send representatives to international bodies and to seek formal recognition. As said above, the Cook Island option is not likely to be feasible for PNG, not least as it is economically costly. It would only work if PNG is willing to foot the bill in the same way as New Zealand does vis-à-vis the Cook Islands.

Thus, while attractive, the Cook Island option, is designed for a small territory and one that has *not* been marred by war and violence. The most likely option if the two parties are to enter into a stable relationship would be a federal system.

In order to establish this, there would have to be a new constitution. While ABG has considerable experience in drafting new constitutions, a hypothetical federal constitution would need to have maximum legitimacy. This is a tall order and would require both parties to agree to a process which is perceived to be fair, democratic and legitimate.

While it is recognised that ABG and PNG has experience in drafting constitutions, it might be useful for the parties to draw on the most recent experiences and scholarship on constitution making.

The constitution-making process has conventionally been divided into, respectively, “upstream” and “downstream” involvement<sup>95</sup>. The former is broadly speaking the grass roots stage, whereas the latter roughly corresponds to the phase of constitution drafting and the process of ratification. These two parts may in part be overlapping but it is analytically useful to keep them as distinct for analytical purposes.

Upstream involvement can take a number of different forms. It can include various forms of consultations, citizens’ forums, town hall meetings and even online forums. In many countries, including Canada during the Charlottetown process before the constitutional referendum in 1992 (other examples are Uganda, Kenya and South Africa)<sup>96</sup>, citizens were involved in an ongoing road show.

In the Canadian case this was intended to remedy the perceived elitism that allegedly had characterised the failed attempt to reach a constitutional settlement in 1987. In the words of a much-cited research, in 1992, in Canada “the failure of [the] Meech [Lake Agreement] seemed to deliver the message that the people at large would not tolerate being excluded from deliberation over their own constitution”<sup>97</sup>.

As a result of this, the Spicer Commission (officially A Citizens Forum on Canada’s Future) was set up to enable citizens to give input into the process. Yet, there is some scepticism regarding the usefulness and utility of this process. The citizen deliberations arguably resulted

in a process that “went the populist route and became a sounding board for all sorts of pent-up rage”<sup>98</sup>. Observers summed it up in their evaluation of the process with the words that Canadians were “consulted, even if this was to bore them to death”<sup>99</sup>. In Bougainville, after a perhaps divisive referendum where many may feel grievances, too much popular involvement could be a recipe for tensions, and this part of the process must be handled carefully.

Democracy requires popular involvement. However, evidence from single country studies suggest that the process often becomes unwieldy when citizens are directly involved at the early stage of the process. Thus, in Brazil, during the deliberations about a new constitution in 1987–1988, Benomar reports that citizens submitted a total of 64,000 proposals<sup>100</sup>. Such a process, as another study found, may often undermine the textual coherence of the text<sup>101</sup>. The main effect of citizen participation through citizens’ forums is that the constitution document becomes verbose and of little practical use; “an example here is Brazil, whose 1988 process was a model of public participation involving citizen proposals on content. The resulting document is one of the world’s longest, at more than 40,000 words”<sup>102</sup>.

Despite this, research suggest that documents drafted with participatory involvement can lead to more stable outcomes in the long run and suggests that citizen involvement — at least in developing democracies — have led to fewer demands for renegotiations later on<sup>103</sup>. The same study also found that constitutions drafted with upstream citizen involvement were regarded as more legitimate, though he was less specific about how exactly he measured this elusive concept<sup>104</sup>. Constitutional scholar Donald Horowitz similarly hinted at that downstream involvement by the people might improve the public’s acceptance of the process and that participatory constitution making “may give rise at least to a sense of local ownership of the product, even if the institutions fall short of what is required to mitigate conflict”<sup>105</sup>. Such ownership of a new constitution will be important if the option of greater autonomy is to be seen as legitimate.

### *Administrative institutions/governance systems for independence*

Independence means that Bougainville becomes a new international entity and a new subject in international public law.

However, it does not mean that the new country will start from scratch. Many of the existing institutions (the judiciary, the House of Representatives and the providers of social services and health) can continue in their present form.

What the new state will not have is diplomatic and consular offices abroad. However, as an independent state, especially a new one that seeks recognition from the international community, needs to establish a presence in foreign capitals. To do so, they may in part need to rely on lobbyists with access to overseas governments. And, at the more mundane level, the new state will need to find offices in often expensive overseas locations. This will be costly in terms of rent and purchase of residencies for staff and salaries for these.

But, above all, given that only a fraction of the PNG diplomatic staff come from Bougainville, it would be necessary to hire expertise from foreign experts and professionals. This is not an unusual situation for a country. Indeed, even the United Kingdom has “borrowed” expertise from New Zealand to meet the demand for trade experts in the wake of the Brexit referendum in 2016. However, given the relatively small size of the Bougainville economy, this would be a taxing challenge and one that will require financial assistance from overseas. It is an open question if this is forthcoming.

In previous cases of independence, new administrative institutions or governance systems (parliaments, ministries and courts) were rarely created. In most cases, hitherto existing administrative institutions merely changed their name. This, for example, was the case with Ukraine, Estonia and Latvia (see the following section).

However, these institutions have to be filled with new staff. There will be a need for expertise and very few newly independent countries have civil servants, judges, nurses and other highly qualified staff.

The challenge will not so much be the establishment of institutions under independence. The greater challenge will be policy related. We will return to this below.

### **Transitional challenges to implementing “greater autonomy” and “independence”**

Whether a majority of the voters in Bougainville opt for independence or greater autonomy, one thing is certain: there will have to be constitutional changes. This would,

under normal circumstances, pose significant transitional challenges. Fundamentally, either the new state will have to draw up a new constitution or PNG will need to change her constitution to accommodate Bougainville. We have dealt with this in the previous section and there is little to add. The greatest challenges to implementing the result of the referendum follow from a hypothetical “yes” to independence. For this reason, we will focus on this in the remainder of this chapter.

Will independence necessitate a new set of institutions, a new state apparatus? And if so, how are these changes to be implemented?

In a sense the second part of the question is redundant, as the former question can be answered in the negative. In terms of new institutions, it is unlikely that this will pose a significant challenge.

A number of countries — for example, the Baltic states — simply reverted to their old constitutions (the ones drawn up before they were swallowed up by the Soviet Union). **Given the relatively extensive constitution that exists at the moment, there is no need to make fundamental changes.** While Montenegro changed her constitution the year after independence (in 2007), the Constitution of South Sudan was broadly similar to the one that existed between the signing of the 2005 Comprehensive Peace Agreement and the vote for independence in 2011<sup>106</sup>.

Going back further still, Norway did not change her constitution after the vote for independence from Sweden. While it is difficult to claim that a process that happened over one hundred years ago can provide a template for the present, there are compelling arguments for using the Norway-Sweden independence process as a model to be emulated. For starters, Norway already had a considerable level of autonomy and had established institutions as laid down in the *Eidsvold* constitution.

Like Iceland in 1944, Bougainville has a functioning civil service (albeit one largely funded by grants from PNG), and there are both legal and representative bodies. Establishing a new constitution (after a hypothetical vote for independence) would, needless to say, be a matter of pride for the would-be new nation. However, it is not a necessity. The priority to be to ensure a smooth transition and in this the tried and tested legal and political framework will likely facilitate the process.

**The greatest challenge will be transitional arrangements.**

When Norway seceded from Sweden, representatives of both countries met for over a year and although the Swedish government initially refused to accept the outcome of the referendum (which was technically only advisory), the two parties — both eager to avoid war — found a compromise solution over a matter of months<sup>107</sup>. However, when Iceland seceded from Denmark, it took five years of negotiations. As recent research has shown, one should not underestimate the perverse incentives the former parent state may have in obstructing the process. This is a political issue that cannot be resolved by administrative remedies, but one that requires third parties (such as New Zealand and Australia) to exert pressure.

### *The currency issue: Monetary policy for a newly independent country*

Thus, under ideal circumstances, the process of implementing independence is mostly an accountancy matter. The two parties need to agree on ownership over institutions, with the general presumption that physical assets in the respective countries are owned by the country where these are placed. Given the presence of governance institutions that are comparatively efficient, the main stumbling block is likely to pertain to financial institutions, not least the issue over which currency should be used in the newly independent country.

The seceding entity will need a currency but there are several ways in which this can be done.

Again, comparative illustrations may be useful. During the 2014 referendum campaign on independence for Scotland, the issue of whether Scotland could keep the pound or whether it would have to adopt a new currency in the event of a vote for independence played a prominent role. This debate — though the result of the referendum was a defeat for the secessionists — is pertinent to Bougainville and PNG.

Will Bougainville be able to keep the kina in the event of a vote for independence? As in all other issues pertaining to the referendum, opinion is fiercely divided. The same was true in the Scottish referendum.

The lessons from this vote may be instructive, as they were not always based on objective legal reasoning but were rather often coloured by political attitudes. Thus, Ian Davidson (Labour) the Chairman of Scottish Affairs Committee in the House of Commons (which had no representation at all by the Scottish National Party),

referencing a Monty Python sketch said, “The Scottish Government tries to give the impression that a currency union is still a possibility. It is not. This parrot is dead”<sup>108</sup>.

His opponents in the secessionist Scottish National Party, of course, categorically denied this and maintained the view that a currency union was still possible. Thus, Deputy First Minister Nicola Sturgeon emphasised that, “not sharing sterling would cost businesses south of the border an extra £500 million in transaction costs”.

The issue of the currency was hard fought and was — for a while — a strong point for Better Together, the group that represented the unionist parties who fought against Scottish independence.

But this changed after an article published in *The Guardian* in March 2014 (six months before the referendum). The newspaper’s chief political correspondent, Nicholas Watt, wrote that a “government minister at the heart of the pro-union campaign [had admitted], ‘of course there would be a currency union’<sup>109</sup>. And to further undermine David Cameron and his allies’ cause, the Governor of the Bank of England, Mark Carney accepted that it was possible for Scotland to legally keep the pound, though, he also acknowledged that it “would be difficult”. He went on to say that the two governments, “[would have] to consider carefully what [are] the necessary foundations for a durable union”.

The same would be true for a future independent Bougainville. In the event of a vote for independence, the new country would (in theory) be able to keep the kina. However, doing so would mean a loss of independence over monetary policy and the macroeconomy of the newly minted state would be at the whim of the government in Port Moresby.

Some would undoubtedly argue that a currency union is a rarity and an anomaly. This was the argument in the Scottish referendum. In reality, it is not as simple as that. In fact, currency unions are not as rare as the British government suggested before the Scottish referendum.

Before the euro was established, Belgium and Luxembourg had been part of a successful currency union established under the name *Bleu (Belgisch-Luxemburgse Economische Unie)* in 1921. Earlier in European history there have been similar arrangements between large and small countries. Between 1873 and 1914 Denmark, Sweden and Norway formed the so-called *Den skandinaviske Møntunion* (The

Scandinavian Monetary Union), which broke down after the World War I broke out. Further, the Latin Currency Union, established by France, Belgium, Italy and Switzerland in 1865, lasted until 1927.

How would a currency union work? Under this (hypothetical) arrangement the Bank of Papua New Guinea would become a supranational institution with representatives from both independent countries. To establish such a union would require an international treaty. Some lawyers take the view that this treaty would lead to transfer of sovereignty to a new body, which would be likely to be politically controversial as well as legally complex. Further, such a move is unlikely to be met with enthusiasm from the Bank of Papua New Guinea, as it is likely that ABG would pursue a more expansive macro-economic policy than the one that is currently favoured by the bank.

If it becomes impossible to establish a currency union, an independent Bougainville could do the same as El Salvador and Ecuador do in relation to the US dollar; simply adopt it unilaterally. This is the second option. Similarly, and with relevance for a newly established country, Montenegro unilaterally adopted the euro in 2002; that is, before the country formally was granted independence from Yugoslavia.

Similar to these countries, Bougainville could simply use PNG banknotes. But that might not be palatable for a newly independent Bougainville; however, it would be an easy and tried and tested option. Of course, under this scenario, ABG would be at the whim of the Central Bank in Port Moresby, but this would — perhaps — be an acceptable sacrifice, which in any case would be easy to implement. Of course, the new county could also adopt the US, NZ or Australian dollar.

The third option is a so-called “Hong Kong Solution”. The Hong Kong dollar is pegged to the US dollar. This situation may seem controversial and unorthodox. In fact, it is not. Indeed, this option is also close to the current arrangement between Scotland and the rest of the United Kingdom. Since *The Banknote (Scotland) Act 1845*, Scottish banks such as RBS, Bank of Scotland and Clydesdale Bank have had the right to issue notes on the condition that they hold an equivalent quantity of English banknotes. Similarly, the Hong Kong Monetary Authority has at any given time a reserve of US dollars equal to the amount of Hong Kong dollars in circulation. In the event that an

independent Bougainville does not reach an agreement with Port Moresby, the Hong Kong option would be a possible solution, though one that would require a high level of fiscal stability in ABG. As long as the new state does not embark upon a spending spree, this option is a possible solution. Possible candidates for a new currency would be the Australian or the New Zealand dollar — though any stable currency would do.

The fourth option is that Bougainville establishes a new central bank and its own currency. This would be cumbersome and expensive, and it would require capital reserves that the would-be independent country can ill afford. Iceland's central bank (Seðlabanki Íslands) was only established in 1961, 17 years after independence.

New central banks tend only to be established when the new state is expected to have a tense relationship with its former parent state. Thus, the Bank of Latvia was (re)established in 1992 after the breakup of the Soviet Union. While this was formally a revival of an institution that had been closed after the invasion of the USSR in 1940, the *Latvijas Banka* was de facto a new institution. Its establishment was costly and benefitted from generous support from neighbouring countries, especially in Scandinavia.

Establishing a new central bank for Bougainville would be a very difficult undertaking. While it may be politically desirable for an independent country to have its own central bank, the costs of this are prohibitively high. Other options would be cheaper and more efficient.

**Box 6: Will Bougainville have another referendum if independence does not work?**

It is sometimes debated whether countries can change their minds? Can they reverse their decision if independence does not work out? Or, can they vote for secession a second time, if the first referendum results in a 'no' vote? To date, only two countries have reunified: Germany and Yemen. In the former, The German Democratic Republic (or GDR) merged with The Federal Republic of Germany in March 1990. In this case there was no referendum, and the legitimacy of the decision rested on the parties in favour of unification won the election. *Volkskammer* later voted 299–80 for merging with the Federal Republic of Germany under the provisions of the latter country's constitution. No referendum was held. Similarly, the voters were not asked — earlier in the same year — when The People's

Democratic of Yemen (or South Yemen) was reunited with The Yemen Arab Republic (North Yemen) to form Yemen, although, the following year, a 98 percent majority voted for a new unified constitution on a 72 percent turnout, thus giving the unification some democratic legitimacy<sup>110</sup>. Conversely, in the event of no-votes in an independence referendum, it is relatively common that a second referendum is held. This has happened in Canada, Montenegro, and New Caledonia, under slightly different circumstances. Thus, the Canadian province of Quebec twice voted on independence in respectively, 1980 and 1995. Both referendums resulted in “no-votes”<sup>111</sup>. The same was true for the two independence referendums in New Caledonia in respectively, 1987 and 2018. There are two examples of voters changing their minds. Thus, in 1992 over 95 percent of the voters in Montenegro opted for staying with Serbia after a vigorous campaign by Prime Minister Milo Đukanović. Fourteen years later — and after the fallout with Belgrade over the Kosovo War — the same politician spearheaded a second referendum that resulted in a 55 percent vote for independence<sup>112</sup>. Malta voted in 1956 to become fully integrated with the United Kingdom under a system that would have given the island three members in the UK House of Commons. However, the decision was reversed in a referendum in 1964, when a majority of the voters opted for a constitution for an independent Malta. The latter vote was seen as a de facto vote for independence<sup>113</sup>.

**Box 7: Will students from Bougainville continue to attend PNG universities and colleges if Bougainville becomes independent?**

Legally speaking, PNG will have no legal obligations to provide any help, assistance or transfers to an independent Bougainville. However, in many cases, countries have reached amicable agreements, especially about students. When Iceland seceded from Denmark, the parties agreed that Icelandic students could continue to attend universities on the same conditions as the natives of the former parent state. The same is true for the more recent example of Montenegro and Serbia. The position of Montenegrin students at Serbian universities immediately after the independence did not change. New students were de jure, treated as foreign citizens and, as such, paid foreign citizens' fees. However, if they give a simple written statement, that

they belong to the Serbian minority in Montenegro — or any other neighbouring state — they are treated as citizens of Serbia for the sake of enrolment in the first year. In practice, there is no need to prove this and Serbian and Montenegrin surnames do not differ much — so a true Montenegrin can easily pass as a member of Serb minority (and save around 12,000 euros for 4 years of schooling)<sup>114</sup>. The process was even less cumbersome in the case of Czechoslovakia. The two parties simply signed an agreement to the effect that students from each of Slovakia and the Czech Republic could continue to attend universities in the other country<sup>115</sup>. Others were more legalistic in their approaches. Malta is a representative case, following this country's Independence Day on 21 September 1964, Maltese citizens who studied in the United Kingdom (a) needed a visa to stay beyond the normal three months and (b) had no rights to work there while studying<sup>116</sup>. There is no clear and legal precedent, and much will depend upon goodwill and negotiations.

### Next steps and conclusions: What are the unique challenges and opportunities provided to Bougainville under both options (i.e. independence and greater autonomy)?

There are considerable challenges involved in both options of independence or greater autonomy. Independence will be financially more expensive and will be challenging in legally complex ways. However, politically, it might be more acceptable to the population. This will be decided in the referendum and is a political issue that goes beyond the remit of this report.

But, suffice it to say that neither of the two options will be easy. In the following sections, we will, on the basis of the foregoing analysis, sum up the pros and cons of each option and arrive at a political balance sheet. However, ultimately, this is (legally and politically speaking) a decision for local decision makers in accordance with the existing constitutional documents and the prevailing democratic will.

We begin with “greater autonomy”.

#### What are the key challenges to implementing the outcomes of greater autonomy?

The greatest challenge to greater autonomy is that the term is relatively vague. As the foregoing sections have shown, Bougainville already has a considerable degree of “home

rule”, and from an external perspective, it is difficult to see how this could be expanded.

One possibility is to follow the French example of New Caledonia, where Paris has spent lavishly in order to make independence less attractive. Yet, while this strategy to a degree has worked and helped to secure a “no” vote for the 2018 referendum, this plebiscite was in large measure decided by settlers. Even the policy of providing massive transfers does not seem to have convinced the majority of the Kanaks of the benefits of remaining part of France<sup>117</sup>. Other countries with nominally high levels of greater autonomy, such as Zanzibar and Puerto Rico, have in reality been subordinate units and have — despite having greater autonomy on paper — been ruled by the larger states that they are legally a part of.

It might be pointed out that the Cook Islands (formally a part of New Zealand) enjoys an exceptionally high level of autonomy, can sign treaties and act as a member of the international community. A similar arrangement might be attractive to those who desire the unity of the current PNG. However, this arrangement has in part worked because there is *not* a history of political violence between the Cook Islands and New Zealand. Moreover, New Zealand has paid — and continues to pay — substantial amounts to the Cook Islands. If a similar arrangement is to be viable in the PNG/ABG context, it is imperative that Port Moresby commits considerable funds to ABG, and that there is a legal guarantee that the money is paid.

As in the case of New Caledonia, the Cook Island example (and perhaps other examples from Europe — e.g. the Åland Islands in Finland, South Tyrol in Italy and Faroe Islands in Denmark) suggest that secessionist aspirations *can* be bought off by substantial transfer of funds. However, while subsidies to a would-be independent territory might curb secessionist aspirations (as it has arguably done in Greenland and the Faroe Islands), the option of massive funds is unlikely to be a viable option of the PNG government.

From the other side of the fence, greater autonomy is often less desirable from the minority's point of view. Several cases, but most notably those of Spain and the United Kingdom, suggest that greater autonomy can be taken away. Thus, Catalonia has had powers taken away from them at the behest of the central government, and with acquiescence by the nominally independent judiciary.

Admittedly, this curbing of powers was temporary, and it was proscribed by the constitution. However, as the case of Northern Ireland (in the United Kingdom) shows, a central government under “greater autonomy” can impose direct rule with more or less impunity.

### **For greater autonomy to work, it is likely to be necessary to establish a form of federal system**

The classic definition of a federal state is one where the rights and responsibilities of central and regional governments are clearly spelled out in entrenched articles of the constitution, and where the constitutionality of the decision of both types of government are policed and enforced by an impartial constitutional court.

Such a system has — to a large degree — worked in federal states like India, Canada and Germany.

While it is often the case that federations are large states with many constituent parts, this is not always the case. Smaller states like Belgium, Bosnia and St Kitts and Nevis only have two constituent parts.

But federations in plurinational states have often been short-lived, and they tend to survive mainly when the parties have a common foreign enemy. For example, notwithstanding religious differences, the historical examples of the Dutch United Provinces and the Helvetic Confederation (present-day Switzerland) were able to stay together due to threats from Germany, France, Spain and other great powers.

However, despite this tendency, political science is not subject to Newtonian laws of motion. Federations can survive without a common enemy, as Australia, Canada, Mexico, Micronesia and Malaysia have shown.

But for a federation to work, a number of very difficult decisions have to be made. For a start, it would require the set-up of a complicated constitutional process.

The two most important issues are those of an independent judiciary (to police clearly defined areas of jurisdiction) and financial transfers.

In many federations, especially in Europe, the richer states provide funds to the poorer ones. By contrast, in America, the federal system does not contain any mechanisms of economic equalisation (the latter is sometimes known as “fiscal federalism”). This is intended to facilitate a more

optimal economic system under which voters vote with their feet.

While the American system may work in a developed capitalist society with a relatively homogeneous population, it is unlikely that it will be a credible option for Bougainville; in any case, it is questionable whether this option is attractive to voters.

For a federal system to work, there have to be significant benefits for Bougainville; that is, political and economic benefits that weigh more heavily than the emotional attachment to independence. The parties will have to establish a legally binding formula akin to the one that exists in Germany or similar to the so-called Barnett Formula that regulates the financial relationship between the British government and the devolved administration in Scotland.

Historically, it has been difficult to create such attractions. Even loose confederations like those of Norway and Sweden (1814–1905) and Denmark and Iceland (1848–1944), both broke down notwithstanding the extensive powers granted to the would-be seceding states.

And, as the example of Britain’s exit from the European Union (a loose federal-like association) shows, emotive arguments often weigh more heavily than economic arguments<sup>118</sup>.

The cost for both parties would be financially limited if the federal option were to be chosen. But choosing this would require guarantees that Bougainville has out-of-proportion powers and influence, perhaps even a guarantee of a joint executive. Financially, the costs of this option would be comparatively minimal, and would only require the establishment of a process of constitutional reform.

To smooth this process, it could come with the caveat that a referendum would be held on independence within 10 years of the drafting of a federal constitution. The model of Montenegro might serve as an example of this.

### **What are the key challenges to implementing independence?**

The key challenges of implementing independence cannot be underestimated. This conclusion does not detract from the possible political desirability of choosing secession, but it is important that the voters are aware of the risks of opting for creating an independent state.

A recent study based on economic theory found that “the costs incurred in the process of a region becoming a sovereign state can be large enough to outweigh the long-term material benefits of independence. Transition costs consist of transaction costs, fiscal costs, and the cost of uncertainty”. The paper went on to show that the size of the transition costs “depends crucially on whether the politics of the transition are cooperative”, but that in many cases there were “incentives for threats of non-cooperation and for the exercise of such threats”<sup>119</sup>.

It is a fundamental fact that markets dislike uncertainty, and this fear of the unknown has on occasion been a contributing factor in independence referendums<sup>120</sup>. But, more importantly, economic theory is relatively unequivocal about the effects of smaller markets as opposed to larger ones. To put it simply, larger states benefit from what economists call the economy-of-scale-argument.

Overall, countries have seen contractions in their GDP as a direct consequence of losing access to markets. In Slovakia, the estimated effect of independence was a loss of about four percent of GDP. And the cost associated with Timor Leste’s independence from Indonesia was estimated to be even greater.

On the flipside, it needs to be stressed that countries that have achieved independence in recent years occasionally have benefitted economically, especially when they have entered into free-trade agreements and when they have enacted extensive reforms. Thus, Montenegro experienced a growth in its GDP subsequent to independence, largely due to collaboration with regional economic powers. The example of this should be studied carefully by those espousing independence.

But Montenegro is the exception. Generally speaking, independence comes with a financial cost. This needs to be acknowledged.

However, for some, an economic contraction of this magnitude might be seen as acceptable and even necessary, as a recession is but one of the birth pangs that need to be endured to get towards delivering independence.

But, this, once again, is a political decision. But it is one that proponents of independence must acknowledge for the sake of democratic and political clarity.

Another challenge is the cost of establishing a new state. It is impossible to give a truthful estimate of the financial outlays, but research done in Scotland suggest that the

running cost of establishing a new state could amount to more than two percent of GDP. Given the lower level of economic development, the cost of establishing new state institutions could be even higher for Bougainville. While it is not possible to give a definitive price for this, GDP has — on average — fallen by between two and five percent. However, many other factors are at play here, and it is worth pointing out that other countries have benefitted from independence.

Box 8 sums up the estimated and approximate economic costs of independence and greater autonomy. Needless to say, this is but an educated guess based on previous examples and not a cast-iron prediction based on solid quantitative evidence.

<b>Box 8: Some economic consequences – the two options</b>		
<b>Effect on:</b>	<b>Independence</b>	<b>Greater Autonomy</b>
<b>Economic growth</b>	Negative (up to 4 percent lower GDP), though Montenegro was an exception.	Status quo. Perhaps moderated welfare gains under a more transparent federal system.
<b>One-off institutional costs</b>	On average between 2–5 percent of GDP but with much divergence between cases.	Relatively low cost of establishing a new constitutional arrangement.
<b>International debt</b>	Positive. Bougainville is not liable to pay PNG’s debts but failure to reach an agreement may have negative long-term political consequences.	Negative, Bougainville will (through taxation) be liable to pay its share of national debt. However, in return for this, ABG will still benefit from transfer payments.

This might seem overly pessimistic and, needless to say, this assessment is hypothetical and not set in stone. No economic analyses are. One advantage that is not taken into

consideration is that under independence, Bougainville would be able to conclude her own trade deals. Further, a bit like Norway after 1905, Bougainville would be free to develop policies in the areas they are strongest in and not follow the lead of Port Moresby.

However, this would require the country to have experts who can carry out this. The question is if Bougainville-born civil servants currently working in Port Moresby would return to their new country if the referendum returns a “yes” for independence.

In addition, an independent Bougainville would have to look for sources of income. This is an issue that lies outside the remit of this report. Several options are available, including a reopening of the Panguna Mine. Another possibility is the option of opening refugee detention centres for the Australian government. In addition, tourism and fish-farming (possible with Australian investors) are possible options. However, raising sufficient money to run a functioning state will be a challenge. It can be done. But it will require a considerable effort.

Of course, whatever the people choose, the process can be reversed. At least in principle. In practice it is a bit more difficult, at least as far as independence is concerned. Thus, while it is rare for countries to reunite after they have separated, it is not uncommon for independence referendums to be rerun, and sometimes with a different result. If the voters vote “no” to independence, there is precedent for a second vote. This is what happened in Montenegro, Quebec, New Caledonia and, albeit under slightly different circumstances, in Malta. Indeed, the Scottish government is currently debating a so-called “IndyRef2” (second Independence referendum). A second referendum is not unlikely if the majority of the voters in Bougainville decide against independence in October.

This report has mainly been devoted to the big-picture issues: constitutional arrangements, sovereignty, legal status, and macroeconomics. But, as in all matters, there are also more low-politics or micro-issues. One such issue is whether students from Bougainville will be able to continue to pursue further education in PNG. Needless to say, the details of this would have to be negotiated. The overall picture is a relatively positive one. While Britain introduced visa requirements for Maltese students, the practice is not common. Thus, students from Iceland, Slovakia and Montenegro, could continue their studies with relative ease after independence from, respectively,

Denmark, Czechoslovakia and Yugoslavia.

## Conclusion

Breaking up is hard to do. But staying together can be unbearable. This report has summarised the problems facing the voters in Bougainville. Either of the two options pose challenges.

It is beyond dispute that independence would impose financial costs on Bougainville. These would not just be the costs of setting up new institutions, embassies abroad and so forth. The costs would also pertain to the loss of markets. While a new state would not have to share PNG’s national debt, this is unlikely to outweigh the macroeconomic benefits of going it alone.

While independence is a process rather than an event, the new state would face a number of fundamental challenges. One of the most important ones is whether to adopt the kina or establish its own currency. The latter would be costly, but the former would be difficult. In an ideal world, the two countries would share the central bank and enter into a currency union.

However, given the increase in spending necessary to establish a new state, the PNG government would — based on other historical examples — be unlikely to accept such a scenario. High spending in Bougainville would have monetary implications for the rest of PNG. If Bougainville shares in the decision making in the central bank, they are likely to demand a lower interest rate than the central bank could accept. As a result, it is most likely that Bougainville would have to adopt another currency unilaterally (like Montenegro did in the early 2000s). Establishing her own central bank should not be a priority.

Would an independent Bougainville prosper? Based on historical precedent, this is unlikely. However, after an initial period of economic hardship, there is nothing to suggest that Bougainville would struggle more than other island nations in the region. With good relations, especially with Australia, a would-be independent Bougainville would be viable. But independence would not be a panacea.

Whatever the people choose, Bougainville and PNG would face institutional challenges. Independence would require minimal institutional reform, as many of the current institutions work tolerably well and could be maintained as they have been in many newly minted states. However,

the tasks of resolving the currency issue (see above) and the cost of establishing consular representations and gaining recognition is likely to be considerable for a country that currently is without funds.

Likewise, greater autonomy, in whichever form it may take, would require more institutional changes.

One of the most disconcerting issues pertaining to Bougainville is the lack of clarity about the exact meaning of “greater autonomy”. Basically, the current system gives Bougainville as much autonomy as possible. Any further — or “greater” autonomy would require that the powers currently held are brought on a more firm and entrenched footing. This only solution is a federal arrangement. This in itself could be challenging. Federal states are not always stable, and to design them is a massive undertaking.

Another possibility is to follow the example of the Cook Islands or New Caledonia. In both cases, this would require a massive increase in the funding for the ABG. The Cook Islands model may be attractive. But it is worth pointing out that this territory has a much smaller population (less than 10 percent of the current ABG population) and that New Zealand has never been at war with the Cook Islands.

Bougainville’s voters are faced with the perhaps most important and wide-ranging decision in history. While a vote for or against independence could, in theory, be changed, a vote for independence is likely to be irreversible. Once countries have split; it is rare for them to come back together again. The question they have to ask themselves is whether it is worth it to opt for secession. What they must be aware of is that there are no panaceas. But equally, both options are viable. It is to be hoped that the debate will be nuanced and not alarmist.

## Endnotes

<sup>1</sup>See generally: Guy Petes, B. (2013) *Strategies for comparative political research*. Basingstoke: Palgrave; and Geddes, B. (2002) *Paradigms and sandcastles: Theory building and research design in comparative politics*. Ann Arbor, MI: University of Michigan Press.

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<sup>5</sup>See, e.g., Qvortrup, M. (2014). *Referendums and ethnic conflict*. Philadelphia: Pennsylvania University Press; and more generally, Rourke, J. T., Hiskes, R.

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