



Inclusion of combatants: Autonomous Region of Bougainville as a case study

Dennis Kuiai

This paper presents inclusion and participation of the former combatants in constitution-making in the Autonomous Region of Bougainville in Papua New Guinea (PNG). Generally, in this paper, a constitution is understood as both a written and unwritten fundamental law which sets out how society will be organised, the powers and authorities of government between different political units, and the basic principles of the society. It is a frame upon which the government and laws of the society is built. A good constitution should be evolutionary that changes over time and development, usually through constitutional amendment to provide constitutional stability and to avoid conflict. The Constitution as the organic fundamental law should be made to last over time as it legitimises and overrides other laws, drawing on the authority of *'the People'*. The authority of the people is given through inclusion and participation in the constitution making process. Inclusion in the Melanesian culture of Bougainville is compulsory through 'direct' or 'indirect' participation. While participation is understood as a practical engagement, its purpose is inclusion, increased legitimacy, acceptance and respect of the Constitution.

Bougainville experienced a ten-year armed conflict in rebellion against the Constitution of Papua New Guinea which lacked substantive inclusion and participation of the ordinary citizens. Taking this experience as an important lesson, the Bougainville Constituent Assembly made sure that every stakeholder of Bougainville was included to participate in the constitution-making process of the Autonomous Region of Bougainville from 2001 to 2004. This inclusion and participation was underpinned by ownership, responsibility and sustainable security.

The participation and inclusion of the Bougainville stakeholders both within Bougainville and outside of Bougainville has contributed towards a Constitution which is home-grown on the basis of guarantees contained in the Papua New Guinea National Constitution; that facilitates the expression and development of Bougainville identity and a relationship between Bougainville and the rest of PNG; strengthens ownership and empowers Bougainvilleans to solve their own problems, manage their own affairs and work to realise their aspirations; that is recognised and accepted as the law for Bougainville's peaceful and secured future, its Government and the referendum on self-determination; and respected as the supreme law as regards matters that fall within Bougainville's jurisdiction.

The lessons drawn from Bougainville's constitution-making process are maybe unique but could be tailored to the benefit of any human society. In Bougainville, inclusion is inbuilt into the organic social structure and participation is undermined by popularity. To facilitate substantive engagement, the organic social structure should be used as the foundation of inclusion, and key people should be invited to participate in the constitution-making process to promote ownership and responsibility.

A. The Origins and Context of the Bougainville Armed Conflict

1. A Long Political Struggle. There has been a lot of writing about the context and the origins of Bougainville's almost decade-long armed conflict. The armed conflict that began on 28th November 1988 was a continuation of Bougainville's political history that dates back to about the year 1800 and has been passed-on from generation to generation. It was not the actual intention of Bougainvilleans to resort to armed war and cause devastation including loss of innocent lives. The Bougainvilleans took approaches to avoid bloodshed as indicated by the 1967 Bougainville Copper Agreement against the wishes of the Panguna Landowners and beginning commercial production in April 1972; the 1968 call by Mungkas Association for a referendum on the secession of Bougainville; the 1970 unofficial conduct of Bougainville referendum in which 11,000 of 16,000 voted for separate independence; and the September 1975 Unilateral Declaration of Independence.

2. The Original Drivers of Conflict. The main grievance was that the Constitution of Papua New Guinea did not protect the ownership and human rights of the people of Bougainville. The significant drivers of the armed conflict included: resistance to outsiders because they posed a perceived threat to Bougainville's resources, culture and identity, hence the aspiration and strong wish of the people for Bougainville's separate independence; unequal distribution of benefits and costs resulting in weakened traditions, norms and values as well as irreversible cultural change; and internal jealousies and inter-ethnic disputes in relations to land, sorcery, marriage and abuses of human rights.

3. The Escalation and Aftermath. The armed conflict further contributed to leadership rivalries and divisions as well as scepticism and distrust in the leadership; a general feeling of insecurity given the gun culture and increased domestic violence; the lack of relevant and trusted information and a practice of reasoning; increased grievances regarding land, people, environment and culture; destruction and damage to Bougainville's industries and infrastructure, including roads, bridges, schools, etc.; the weak economy, especially given the low Government revenue, resulting in the weak capacity of the Bougainville Government to facilitate sustainable development and effective service delivery.

4. A National Constitutional Crisis. The armed conflict in Bougainville could be comfortably referred to as a "*Papua New Guinea Constitutional Crisis*". This is with the understanding that a Constitution can be the written or unwritten fundamental law of a society (state) which sets out how that state will be organised, the powers and authorities of government between different political units, and the basic principles of the society. A good constitution will change through judicial interpretation and inclusive and participatory constitutional amendment processes to provide *constitutional stability and prevention of rebellion or conflict*.

B. The Bougainville Peace Agreement (June 1997 – August 2001)

1. An Agreed Joint Political Resolution. The Bougainville Peace Agreement (BPA) was the outcome of a four year negotiation between the people of Bougainville and the Government of Papua New Guinea. The countries of the South Pacific region as well as other countries through the United Nations played a crucial role throughout the process. The BPA was an undertaking by the parties to: end the conflict between the State of Papua New Guinea and Bougainville and also within Bougainville; address and resolve the causes and aftermath of the Bougainville conflict; and to promote the avoidance and prevention of future unrest and conflict including through Bougainville's ability to govern its own affairs in the post-conflict context. The parties resolved that the political arrangement to facilitate the agreement would be a guaranteed but deferred referendum for Bougainville

Independence; a high degree of autonomy for Bougainville before (or leading to) the referendum; and a demilitarisation plan including weapons disposal, reintegration and reconciliation.

2. Constitutional Framework. The BPA provided guidelines for the Constitutional Framework for Bougainville that included that the Autonomous Bougainville Government would operate under a home-grown Bougainville Constitution with a right to assume increasing control over a wide range of powers, functions, personnel and resources on the basis of guarantees contained in the National Constitution. The Constitution was also to facilitate the expression and development of Bougainville identity and the relationship between Bougainville and the rest of Papua New Guinea as well as empower Bougainvilleans to solve their own problems, manage their own affairs and work to realise their aspirations within the framework of the Papua New Guinea Constitution.

3. Agreed Constitution-Making Process. The BPA provided for the constitution making process, stipulating that there would be a Constitution for Bougainville that would provide for the organisation and structures of the Autonomous Bougainville Government as consistent with the Bougainville Peace Agreement. There would be consultation between the Bougainville Interim Provincial Government and the Bougainville People's Congress to establish a Bougainville Constitutional Commission and a Bougainville Constituent Assembly to make the Bougainville Constitution. The Bougainville Constitutional Commission was to consult widely with the people of Bougainville to understand their views on the Constitution for Bougainville. Upon completion, but before adoption of the Bougainville Constitution by the Bougainville Constituent Assembly, the PNG National Government was to be consulted about the content of the draft constitution. Following adoption, a copy of the Constitution was to be transmitted to the PNG National Executive Council and upon been satisfied that the requirements of the National Constitution have been met, the National Executive Council was to advise the Head of State to endorse the Constitution. After the endorsement, the PNG National Government was to gazette the Bougainville Constitution, which would come into effect on a date after its endorsement in a manner provided in that Constitution and would become the supreme law as regards matters that fall within Bougainville's jurisdiction.

C. Inclusion and Participation in the Constitution-Making Process in Bougainville

1. Compliance and Fair Representation. As consistent with the provisions of the BPA, the Bougainville Constituent Assembly was formed by the democratically elected leadership. The Bougainville Constitutional Commission was established with broad representation from former combatants, women, youth, the business community, community leaders, the churches, the Indigenous Movement leaders, and prominent Bougainvilleans. It formed four teams to consult in South Bougainville, Central Bougainville, North Bougainville and Bougainvilleans outside Bougainville. At the Technical Officers' Level of the Bougainville Constitutional Commission, representation was broadened to include international experts with the agreement of especially the warring former combatants.

2. Inclusion through Participation of Right Representation. A significant consideration informing the selection of the Commissioners of the Bougainville Constitutional Commission was to appoint the right people, that is, persons that are influential, accepted and respected by their respective groups and are able to discern and explicitly articulate the issues and challenges.

3. Listening to Understand. The first stakeholder consultation by the Bougainville Constitutional Commission involved listening to understand the wishes and aspirations of the people. The members of the Commission facilitated very frank and open dialogues without assuming that they as representatives of the Bougainville society knew the wishes, expectations and aspirations of the people.

4. Affirmation and Respect. The underpinnings of the Bougainville human society as collected throughout Bougainville and from Bougainvilleans abroad include:

- (a) A society is established upon the strong foundation of belief and faith that is derived from meta-narrative history, remembered history, lived history and recent events that have been experienced. There is a strong conviction that without belief and faith, the people have no value for tradition and custom which makes them nobody. Anything against their belief and faith is foreign and unwelcome.
- (b) The value of power and ownership. Based on belief and faith, the focus of any activity has its core concentration on basic human needs, quality of life, improved standard of living, security and independence that in turn must sustain and help maintain power and ownership.
- (c) Security and Prosperity. This is the utmost vision and goal of the individual, the family and the clan. It is defined by popularity, development, kinship and population, ownership of land and resources, wealth and luxury, feasting and ceremonies.
- (d) Governance and Leadership is based on a traditional system whereby the Chief is the Village Leader and is assisted by Elders appointed based on traditional merits and qualifications.
- (e) The people are organised and identified through family units and localised totemic groups, clans, sub-clans and lineages. Loyalty is first to the parents, immediate relatives, clan, and village, the occupational and external social identity and finally the state or government.
- (f) Except in Buin District in South Bougainville and Nisan District in North Bougainville, women are highly respected as administrators of the details of clan activities, brokers of peace and custodians of land and wealth.

5. Facilitate Ownership and Responsibility. In order for Bougainvilleans to respect the constitution with ownership and responsibility, the Bougainville Constitutional Commission recognised and adopted a facilitative approach to the constitution-making so that the Constitution (1) shall be a new evolution based on the views and aspirations of the least Bougainvilleans; (2) shall contribute to the reconciliation, unification and rebuilding of a peaceful and prosperous Bougainville; (3) shall provide for the development of a new Government that shall be cherished by Bougainvilleans; (4) shall truly reflect the needs, beliefs and dreams of Bougainvilleans; and (5) shall facilitate the expression and development of Bougainvillean identity.

6. Promotion of Sustainability and Good-Governance. In the first out of the three stakeholder consultations, the Bougainville Constitutional Commission considered a number of ideas and principles for the new Constitution including:

- (a) Recognition of Kastom (custom) and the faith and belief in tradition and kastom which was submerged by colonialism. Provision of balance between kastom and modern beliefs and laws. (Traditional Authority, Christianity and Democracy);
- (b) Government close to the People which is the recognition of traditional Government and a level of formal government close to the people. (Traditional Authority & Council of Elders);
- (c) Government that is responsive to the people and seeking consensus. The Government shall seek views and consensus on major and contentious (debatable) issues (Consultation and plebiscite);
- (d) Accountable Leadership to ensure true and honest leadership (leadership code and recall of members)
- (e) Doing what is possible to ensure cost-effective government that will spend money to look after the interests of the people (Bottom-up approach);
- (f) The importance of economic recovery and finding an economic road-map that is consistent with kastom and tradition to add value to Bougainville's status and prosperity; and

- (g) An evolutionary approach of starting small with the capacities that are available in order to develop and reflect the deep interest of the people to achieve a degree of autonomy that is as close to independence under which Bougainville becomes a nation within a nation (Independence).

D. The Constitution of the Autonomous Region of Bougainville.

1. Authentication and Implementation. The actual implementation of the BPA began in March 2002 when the Parliament of Papua New Guinea passed the Constitutional Law entitled 'Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum' that gave effect to the BPA. However, this Constitutional Law that deals with the Referendum Issues and provides for the establishment for the Autonomous Bougainville Government came into operation after August 2003 when the completion of Stage 2 Weapons Disposal was verified by the United Nations Observer Mission on Bougainville. The Constitution of the Autonomous Region of Bougainville was adopted by the Bougainville Constituent Assembly in November 2004 and gazetted by the Government of Papua New Guinea in December 2004. The first general election of the Autonomous Bougainville Government was held with its first inauguration in June 2005 after the United Nations Observer Mission on Bougainville verified the completion of Stage 3 Weapons Disposal in May 2005.

2. Characteristics. The Constitution of the Autonomous Region of Bougainville is a peoples' constitution as it reflects the aspirations, ownership and responsibility of the people. It is consistent with the BPA because (1) it is a home-grown Constitution on the basis of guarantees contained in PNG National Constitution; (2) it reflects the needs, beliefs and dreams of Bougainvilleans; (3) it facilitates the expression and development of Bougainvillean identity and the relationship between Bougainville and the rest of PNG; (4) it provides for the development of a new Government that is cherished by Bougainvilleans (the Hybrid Government System); (5) it empowers Bougainvilleans to solve their own problems, manage their own affairs and work to realise their aspirations; (6) it is the supreme law as regards matters that fall within Bougainville's jurisdiction; and (7) it guarantees Bougainville Peace-Building, Autonomous Government and the Referendum on the its future political status.

E. Lessons from Bougainville

1. Inclusion is inbuilt in the social structure of Bougainville's human society and participation should be facilitated through the engagement of key but the right representative.
2. The constitution-making process should be founded on the organic social structure, the aspirations and principles to facilitate ownership, responsibility and respect by the people for the Constitution.
3. Constitution-making in Bougainville is a major challenge in the face of belief versus faith, therefore an evolutionary approach to the constitution-making process is profoundly necessary.

Dennis Kuiai

Dennis Kuiai is a former pioneer Senior Commanders of the Bougainville Revolutionary Army, from the Bana District of South Bougainville. He worked as Acting Secretary of the Department of Bougainville Peace Agreement Implementation (DPAI) of the ABG as Director for Veterans Affairs, Unification & Weapons Disposal. He was a Technical Officer of the Bougainville Constitutional Commission from 2002 to 2004. He has served as Peacebuilding Advisor, Political Officer and Public Servant in the ABG since its inception in June 2005. Dennis has significant experience as researcher with a demonstrated history of working in the government relations industry. He is skilled in working with Not-for-profit Organizations, Policy Analysis, Government, Strategic Planning and Peacebuilding