

FROM BIG BANG TO INCREMENTALISM: CHOICES AND CHALLENGES IN CONSTITUTION BUILDING

The second Melbourne Forum on Constitution Building in Asia and the Pacific

Manila, the Philippines

3-4 October 2017

Jointly organised by International IDEA and the Constitution Transformation Network

Hosted by Department of Political Science, University of the Philippines Diliman

Session IV Moving between a Federal/Devolved and Unitary State

Devolution in Papua New Guinea

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Briefly describe the principal phases of devolution in PNG since 1975

There have been two major phases of devolution of powers to subnational governments since Independence in 1975. The first one was in 1977 when the Government implemented the first constitutional amendment of 1976, establishing the provincial government system. The constitutional amendment was complimented by the Organic Law on Provincial Governments. This law enabled the creation of 19 provincial governments in the country.

After almost two decades, the second phase of devolution happened in 1995 when the Constitution was amended (the sixteenth time) to create another level of government at the subnational level – local-level governments. As the first constitutional amendment, the sixteenth constitutional amendment was supported by an Organic Law called the ‘Organic Law on Provincial Governments and Local-level Governments’. This constitutional reform, allowed the national Government to devolve legislative, financial and administrative powers to the two lower levels of government. The exercise of these powers was however restricted by a string of conditions.

What prompted the deepening of devolution in the 1970s?

The first phase of devolution was prompted by the founding fathers’ and mothers’ experience under a centralist government rule (the Australian colonial administration). The framers of the Constitution of the emerging nation were critical of the centralisation of power in Canberra, Australia with remote control in PNG. The devolution they envisioned was to empower the people to participate in government and determine their own development pathways. This goal was to be achieved through the provincial government system.

The intervention in 1995 to create a third level of government was to further deepen the devolution of powers from the national government to the two lower levels of government. This change was

influenced by the desire of the country's leaders to further devolve powers down to the lowest level of government – local-level governments.

What legal mechanisms (eg constitutional change, organic laws, legislation) were used to achieve devolution and why?

The decentralisation phase in 1977 began with the first constitutional amendment to the Constitution in 1976, a year after Independence. This constitutional amendment was followed with the Organic Law on Provincial Governments of 1977. This approach was taken to entrench the decentralisation of government in the Constitution. The Constitution, which is the supreme or higher law, provided strong protection to the devolution of powers to the provinces.

Part VIA (ss187A-187J) of the Constitution provides for the devolution of powers to provincial governments. To amend this part of the Constitution, the Parliament requires two-thirds absolute majority vote of the 111 Members of Parliament. A government would usually find it difficult to muster the numbers to amend the Constitution.

In 1995, Part VIA of the Constitution was amended again to provide for the third level of government – local-level governments. This amendment ushered in the second phase of devolution.

What approach did decision makers take to negotiating and designing the arrangements for devolution?

The impetus for devolution straight after Independence in 1975 was the threat of secession from PNG by Bougainville. The island of Bougainville had prior to Independence aspired to separate from PNG. When the Bougainvilleans realised at Independence that there was no room for autonomy, they protested against the Government and threatened to break away from PNG.

The Independence Government of Michael Somare (who was the first Prime Minister of PNG) started frantic negotiations with the leaders of Bougainville and promised to devolve powers to the province if they withdrew their threats. To appease the Bougainvillians, the Parliament passed the first amendment to the Constitution in 1976 to provide for the devolution. Bougainville became the first province to be granted a provincial government.

What issues arose in negotiating and designing the arrangements for devolution? Which issues were most difficult and how were they resolved?

The trigger for devolution in PNG was the threat of secession of Bougainville from PNG. The framers of the Constitution, the Constitutional Planning Committee, had suggested that provinces be created and powers be devolved to them. The Constitutional Planning Committee suggested that devolution to provinces should be granted in stages (from stage 1 to 3). The pre-Independence government of Michael Somare rejected this proposal.

When Prime Minister Michael Somare and his Government negotiated with the leaders of Bougainville, the key issue on the table was the unity and integration of PNG as a “one people, one country, one nation”. The leadership of Bougainville agreed to this notion on the condition that they were granted some autonomy. Both sides settled on devolution.

What comparative models (if any) were considered? Were any other international influences being brought to bear?

The model of devolution adopted by PNG is based on the Canadian model. This model was promoted by two international consultants, Professors Ronald Watts (Canada) and William Tordoff (England) who were engaged by the Commonwealth Secretariat to assist the Constitutional Planning Committee. However, unlike Canada, the devolution of powers to provinces was largely limited.

A number of other international consultants were also brought into PNG intermittently to assist the Constitutional Planning Committee. These included Professor Yash Ghai from Kenya; Mr Roland Brown, Fellow International Legal Centre, United Nations, New York; Mr Justice Cross, Justice of the High Court of Tanzania; and Mr Justice Telford Georges, Justice of the High Court and Deputy Chairman of the Constitutional Commission of Trinidad and Tobago.

The Constitutional Planning Committee benefited greatly with the advice and counsel of these technical experts in designing the Constitution and framing the devolution framework.

What challenges were encountered in implementing devolution in PNG?

PNG gained Independence in 1975. At that time the workforce was very small and comprised mostly expatriates from Australia. The main challenges confronting the implementation of the first phase of devolution were therefore: (1) lack of technical capacity; (2) lack of resources; and (3) lack of understanding of the process of devolution. The Constitutional Planning Committee understood these obstacles and therefore recommended that devolution should be implemented incrementally throughout the country.

When devolution was rolled out in 1977, almost all the 19 provinces (excluding the National Capital District) immediately wanted provincial governments. To avoid a repeat of Bougainville, the national Government submitted to these demands and established 19 provincial governments, going against the advice of the Constitutional Planning Committee. This departure by the national Government proved fatal as devolution was skewed and lost its purpose. The result was its refinement in 1995 through the repeal and replacement of the Organic Law on Provincial Governments with the Organic Law on Provincial Governments and Local-level Governments.

What issues, if any, have arisen from the asymmetry created by greater devolution to Bougainville as opposed to other provinces?

In 2001, after a decade of civil war (1988-1998) on the island of Bougainville, the national Government finally agreed to grant greater devolution to Bougainville. Since then the national Government has taken a firm stand that no other provinces would be granted the same level of devolution as Bougainville. However, there is a strong and growing pressure from the other 20 provinces (two new provinces were created in 2012) for greater devolution.

The current national Government is seriously thinking about granting greater devolution to the 20 provinces but in stages as originally proposed by the Constitutional Planning Committee. It is considering a proposal to grant greater devolution based on the concept of 'incentivised performance'. Where a provincial government achieves a standard criteria, it will be granted greater devolution.

With hindsight, might anything have been done differently? What lessons may be learned from PNG's experience?

The Constitutional Planning Committee had advised the Independence Government to establish provinces and give them devolved powers. The national Government refused to accept this recommendation. As a result Bougainville threatened to secede from PNG. The national Government reacted by devolving powers to the provinces. In the early 1980s provinces such as Bougainville requested for more devolution of powers, again the national Government turned a deaf ear to this request. When the civil war broke out on Bougainville in 1988, it was too late to grant the request and stop the crisis.

Bougainville again, took the lead in being granted greater devolution in 2001. The other 20 provinces are now pushing for similar powers as Bougainville. For the sake of unity and greater integration, a process must be adopted by the Government to enable provinces to obtain greater devolution.

In hindsight, the national Government should have given greater devolution to the provinces as recommended by the Constitutional Planning Committee. With the ongoing calls for greater devolution, it is imperative that the national Government initiates a process for greater devolution so that the 20 provinces are given the opportunity to qualify for the draw down of these powers. This approach is more proactive than the reactionary strategy that the national Government has adopted since 1976.

The lesson to be learnt from PNG's experience is that people in different parts of a country who aspire to have a greater say and control over their development must be given that opportunity. This can be achieved through various levels of devolution without sacrificing the unity of a country. The constitutional framework of a country must therefore provide for devolution to achieve and maintain unity.

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