THE NATIONAL RESEARCH INSTITUTE
PAPUA NEW GUINEA

RESEARCH REPORT

GREATER AUTONOMY AND INDEPENDENCE FOR BOUGAINVILLE: INSTITUTIONAL OPTIONS AND ISSUES FOR TRANSITION

Anna Dziedzic
Cheryl Saunders

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The Constitution Transformation Network at Melbourne Law School supports the development and implementation of constitutions globally, with a particular focus on Asia and the Pacific: https://law.unimelb.edu.au/constitutional-transformations

Abbreviations & Acronyms

ABG	Autonomous Bougainville Government
ARoB	Autonomous Region of Bougainville
BPA	Bougainville Peace Agreement
JSB	Joint Supervisory Body
PNG	Papua New Guinea
PNG NRI	Papua New Guinea National Research Institute
VAT	value added tax

Executive Summary

At a referendum in late 2019, the people of Bougainville voted to express their choice between greater autonomy and independence for Bougainville.

'Greater autonomy' has been defined to mean a negotiated political settlement that provides Bougainville with a form of autonomy with greater powers than those currently available under constitutional arrangements. Under 'greater autonomy', the national government will continue to support the implementation of existing autonomy arrangements and provide additional powers and functions to the Bougainville government.

'Independence' means Bougainville would become an independent nation state with sovereign powers and laws, recognised under international law and by other sovereign states to be an independent state, separate from PNG[1].

The report describes what the governance arrangements under greater autonomy and independence might look like in practice. Table 1 summarises some of the key differences between the existing arrangements for Bougainville's autonomy and potential institutional arrangements for greater autonomy and independence. The table, and the discussions in this report, examine these differences across five aspects of governance: the powers and functions of government, fiscal matters, institutions, intergovernmental relations and identity.

An appendix to the report provides a comprehensive table that compares the differences between the existing autonomy arrangements and the changes that might be implemented as part of either greater autonomy or independence.

The main purpose of the report is to enable possible future arrangements to be compared. This structure may also assist to inform transitional arrangements in a move towards either greater autonomy or independence. Most of the steps necessary to complete the present level of autonomy would also be necessary as a foundation for greater autonomy or for independence, although in the case of independence, significant additional changes would also be required.

The report is designed to assist the governments and the peoples of Papua New Guinea (PNG) and the Autonomous Region of Bougainville (ARoB) to work towards a joint understanding of greater autonomy and independence, and to identify the key issues for consideration during the consultation and transition periods during and after the referendum period.

[1] These definitions were agreed between the two governments and set out in the *Bougainville Peace Agreement and Referendum: Key Messages and Frequently Asked Questions (2019)*; 'Descriptions of the Bougainville Referendum Options' (Bougainville Referendum Commission, 2019) <http://bougainville-referendum.org/publications/>

Table 1: Comparison of existing autonomy with options for greater autonomy and independence

	Existing Autonomy	Options for Greater Autonomy	Independence
POWERS AND FUNCTIONS Powers available to Bougainville government and the functions for which it is responsible	Powers are divided by subject matter between PNG and ARoB. Some powers are shared between PNG and ARoB governments, requiring consultation or consent by one or other government (e.g. criminal law, foreign relations, declaration of emergencies). Powers allocated to ARoB are gradually transferred from PNG to ARoB, following a process set out in law. Some powers and functions allocated to ARoB have not yet been fully transferred.	Revise the constitutional division of powers to confer new powers on ARoB (e.g. industrial relations, immigration, migratory and straddling fish stocks, telecommunications). Give ARoB greater authority to exercise existing powers (e.g. by removing legal constraints on law-making and executive power). Provide ARoB with greater authority over the process for transferring powers from PNG to ARoB.	Bougainville would be fully responsible for its people, territory, government and relations with other states. Lawmaking, executive and judicial powers of Bougainville would be held by Bougainville, limited only by a new Bougainville Constitution made by the people of Bougainville. Bougainville would have full responsibility for powers previously exercised by the PNG government (e.g. foreign relations, defence, customs, quarantine, citizenship). As a transitional measure, Bougainville could decide that PNG laws will continue to apply in Bougainville until such time as amended or repealed by the Bougainville parliament.
FISCAL MATTERS Revenue, spending and accountability	ARoB has some constitutionally protected sources of revenue (taxes, share of corporate and personal income tax levied by PNG, share of some resources revenue). Under the Peace Agreement and Constitution, ARoB is entitled to a range of annual grants from PNG government.	New revenues from transferred powers; for example, fishing, taxation. Full exercise of existing powers by removing or reducing constraints on ARoB obtaining foreign aid and raising loans. Remove conditionality on grants, giving ARoB greater discretion on how it spends its funds. Powers to raise revenue and spend accompanied by effective audit and accountability mechanisms.	Bougainville would have full responsibility for the generation of revenue (including aid) and accountability for expenditure. As an independent state, Bougainville would assume responsibility for monetary policy and currency. Bougainville and PNG governments would need to agree upon a division of assets and liabilities according to principles of international law.
INSTITUTIONS Functions and independence of institutions of government	ARoB has its own legislature, executive council, public service and police service. ARoB has the authority to establish an Auditor General, Ombudsman, and Judiciary but has not yet done so, r	Create new institutions; for example a Bougainville Court with final authority over the interpretation of Bougainville Constitution and laws; institutions to administer newly acquired powers. Greater independence of ARoB institutions; for example, removing PNG involvement in the appointment of senior officials or in monitoring and advising ARoB institutions. Empower ARoB public servants to deliver PNG programs.	Bougainville would need to establish new institutions, including a Head of State, diplomatic corps and court of final appeal. Joint action and resource-sharing with the institutions of other states would be possible, based on agreed arrangements between states.
INTER GOVERNMENTAL RELATIONS Relations between the governments of PNG and Bougainville	ARoB has a distinctive status within PNG different to PNG provinces. ARoB and PNG governments must consult each other in various law-making, executive and administrative activities. Joint Supervisory Body provides a forum for negotiation and dispute resolution.	ARoB's special status within PNG could be reflected in institutional arrangements (e.g. ARoB representation in PNG parliament, executive and judiciary). Permanent institution for government-to-government relations (e.g. standing committees on particular issues, periodic meeting of heads of government).	PNG and Bougainville might maintain a special relationship, expressed through international agreements for: • Access to services in other states (e.g. health, education); • Arrangements to eliminate barriers to trade; • Special immigration status for citizens in each state; • Deeper forms of association (e.g. Compact of Free Association, Treaty of Friendship).
IDENTITY Development and expression of an inclusive Bougainville identity	The people of ARoB are citizens of PNG. Bougainvillean identity is defined by the Bougainville Constitution. ARoB has its own emblem, anthem and flag. Building an inclusive ARoB polity post conflict.	Additional symbols that reflect the distinctive status of ARoB within PNG (e.g. currency). Continued work to build the internal cohesion of Bougainville, effective institutions and inclusive participation of its people in government.	Bougainville would establish a new identity as an independent state, represented in new symbols, and as an equal and sovereign state in the international community. This demands an effective state, with institutions of government responsive to its people.

Ch. 1 Introduction

At a referendum held between 23 November and 7 December 2019, the people of Bougainville voted to choose between greater autonomy and independence for Bougainville. This report, written before the vote was conducted and the outcome known, outlines what the governance arrangements under greater autonomy and independence might look like in practice.

By agreement between the Prime Minister of Papua New Guinea (PNG) and the President of the Autonomous Region of Bougainville (ARoB), 'greater autonomy' has been defined as 'a negotiated political settlement that provides for a form of autonomy with greater powers than those currently available under constitutional arrangements'. 'Independence' has been defined to require an 'independent nation state with sovereign powers and laws, recognised under international law and by other sovereign states to be an independent state, separate from the State of Papua New Guinea'[2].

Whatever the outcome of the referendum, four issues are clear.

First, whether as an autonomous region within PNG or as an independent state, it is critical for Bougainville to function peacefully and effectively as a polity for the benefit of all its people.

Second, the referendum will not result in an immediate change, whatever the outcome. Following the vote, there will be a period of consultation between representatives of PNG and ARoB over the referendum result. Representatives of both governments have reiterated their commitment to a joint approach, agreed together in the spirit of the Peace Agreement and the Melanesian way.[3] Consultation leading to agreement is also required by the Bougainville Peace Agreement (BPA) and the Constitution of PNG[4]. There is no prescribed timeframe for the consultation. Any 'differences' between the two governments are to be resolved in accordance with the dispute resolution procedure set out in the Constitution of PNG[5].

Third, once a way forward is agreed, there will be a period of transition. This is necessary for practical reasons, to ensure a sound foundation for the operation of Bougainville as either a more autonomous entity or as an independent state. In addition, either greater autonomy or independence for Bougainville would require changes to the Constitutions of both PNG and Bougainville. These would reflect the new status, powers, functions and responsibilities of Bougainville and/or PNG; remove spent provisions in Part XIV of the Constitution of PNG relating to arrangements for the Bougainville government and the referendum; and generally provide a framework for implementation of the new arrangements.

Finally, on either scenario, PNG and Bougainville will continue to have a close and ongoing relationship, whether as levels of government within a single state or as independent states with shared regional, social, economic and political interests. In the contemporary world, independent states are increasingly interdependent, and an independent Bougainville would be no exception.

1.1 Purpose and approach of this report

This report explains what greater autonomy and independence potentially involves and how each might be implemented so as to be reflected in the laws and institutions of Bougainville and PNG and in the relationships between the two governments. It is designed to assist the governments and the peoples of PNG and ARoB to work towards a joint understanding of what greater autonomy and independence might look like in practice, and to identify the key issues for consideration during the consultation and transition periods.

[2] 'Bougainville and PNG govts further define referendum choices', *Radio New Zealand* (online at 13 June 2019) <https://www.rnz.co.nz/news/pacific/391965/bougainville-and-png-govts-further-define-referendum-choices>

[3] Hon President John Momis, 'Address to the National Parliament by the President of the Autonomous Region of Bougainville' (29 August 2019); Hon Sir Puka Temu, Minister for Bougainville Affairs, 'Ministerial Statement to the National Parliament on the Bougainville Referendum and Peace-Building in Bougainville' (4 July 2019).

[4] Bougainville Peace Agreement art 311(b); Constitution of PNG s 342(1).

[5] Constitution of PNG s 333.

The report builds on a briefing note prepared by the Constitution Transformation Network in July 2019 and provided to the PNG National Research Institute (PNG NRI). This briefing note was discussed by the Post-Referendum Planning Taskforce and its associated working group in August and September 2019. This report incorporates feedback from the PNG NRI, the Taskforce, the Working Group and an independent reviewer, and expands on the briefing note with additional detail and further research.

The analysis in the report is based on research into the laws and institutions of PNG and Bougainville and their operation in practice. It draws on previous studies commissioned by the PNG NRI's Bougainville Referendum Research Project, as well as insights from the experiences of other states as they might apply in the specific context of PNG and Bougainville. This context includes the history of conflict and peacebuilding from which the BPA emerged[6], and the 18-year period that followed, during which the BPA was progressively put into effect. It requires an understanding of the diversity of peoples and cultures within each polity, reflected in the co-existence of peoples with different languages, laws and institutions for governance of their communities. Finally, the context for PNG and Bougainville requires both to be situated within their wider regional and global communities. This wider context highlights the potential for geopolitical power (as members of regional and international groupings with shared interests), as well as the risk of vulnerability as relatively small developing states (e.g. to economic and political dependence on larger more developed states).

The report is divided into four main parts. Part 2 briefly sets out the key actors and events that are likely to affect the structure and timing of the reactions of the two governments to the referendum result and consultations between them over an agreed response to it.

Parts 3, 4 and 5 identify the potential legal, institutional structures and administrative arrangements for Bougainville and PNG under three scenarios:

- Full implementation of the autonomy for Bougainville for which the BPA and the Constitutions of PNG and Bougainville already provide (Part 3);
- Greater autonomy for Bougainville within PNG (Part 4);
- Independence for Bougainville, including options for a continuing relationship with the separate state of PNG (Part 5).

To assist in understanding and comparing the implications of each of these scenarios, the report organises the relevant institutional and administrative arrangements discussed in each part across five aspects of governance.

- *Powers and functions:* the governmental powers available to the Bougainville government (legislative, executive and judicial) and the functions for which it is responsible.
- *Fiscal matters:* the manner in which Bougainville funds its governmental responsibilities and is accountable for its expenditure.
- *Institutions of government:* the existence, functions and independence of institutions within Bougainville and, to the extent that they are relevant, within PNG. Relevant institutions include the legislature, executive, judiciary, oversight agencies (e.g. Ombudsman) and institutions responsible for public administration (e.g. Public Service) and law enforcement (police and corrections).
- *Intergovernmental relations:* between the governments of PNG and Bougainville, and, potentially, Bougainville and other states.
- *Identity:* the development and expression of an inclusive Bougainville identity within or separate to PNG.

We note that a working group for the Post-Referendum Planning Taskforce suggested that a joint discussion paper might add two additional elements to deal with 'relations between peoples' and 'territorial delineation'. We have not elaborated this report to deal with these elements as distinct categories, although each is covered to some extent in Part 5 as aspects of citizenship and maritime boundaries respectively.

[6] For an overview see Hon President John Momis (n 3).

An appendix to this report provides a table that uses this structure to compare, at an abstract level, the differences between the existing autonomy arrangements and changes that might be implemented as part of greater autonomy or independence.

This structure may also assist to inform transitional arrangements in a move towards either greater autonomy or independence. Most of the steps necessary to complete the present level of autonomy would be necessary as a foundation for greater autonomy and for independence, although in the case of independence, significant additional changes would also be required.

Ch. 2 Actions following the referendum

It is recognised that the referendum will be followed by a period of consultation between the two governments with the aim of agreeing to a peaceful and mutually acceptable outcome[7].

An official roadmap, setting out the steps and a timetable for the consultation period is needed for the internal purposes of the two governments as they embark on negotiations and prepare the ground for the next phase in their changing relationship. Importantly, a roadmap is needed for public release as well, preferably shortly after the referendum results are known, in order to:

- provide reassurance to the people of Bougainville that all parties respect the results of the referendum and working towards implementation;
- inform the people of PNG as a whole of the actions on these important issues that are being undertaken on their behalf;
- manage expectations, including the idea that the result of a referendum of this kind can immediately be implemented, by providing a plan for consultation, transition and implementation, which might take some time, but is structured by an agreed timetable with clear objectives;
- build on the success of the Peace Agreement and take maximum advantage of the Melanesian way, by demonstrating leadership on the part of both governments and trust between them[8].

This part identifies key events in the period immediately following the referendum that are likely to affect the structure and timing of the reactions of the two governments to the referendum result and consultations between them over an agreed response to it. It outlines some of the issues, including the development of a roadmap, that the two governments, separately and together, might need to consider during the post-referendum phase.

2.1 What actions are required after the referendum and who will be involved?

PNG Parliament. The BPA requires 'ratification' of the outcome of the referendum by the PNG Parliament[9]. The PNG Constitution requires that the PNG government and the Bougainville government 'consult over the results of the Referendum'.[10] Whatever the precise meaning of the term 'ratification' in the context in which it appears, in practice it seems appropriate for the PNG Parliament to:

1. formally acknowledge the results of the referendum when these become available, following the procedure in section 342(2) of the Constitution of PNG; and
2. receive and accept the agreed outcomes of the consultation in due course, and take whatever action is needed to give it effect.

If legal and constitutional changes are required to implement the agreed outcome, these laws will have to be introduced and passed by the National Parliament of PNG following the process set out in the Constitution of PNG. This includes compliance with articles 14–17 (amendments to the Constitution of PNG) and article 345 (amendments affecting Bougainville).[11]

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[7] Hon Sir Puka Temu, Minister for Bougainville Affairs (n 3); Hon President John Momis (n 3).
[8] Similar recommendations were made in Christine Bell and Robbie McVeigh, *Bougainville Referendum Outcome Issues* (National Research Institute Papua New Guinea, December 2018) 46.
[9] Bougainville Peace Agreement art 311(b).
[10] Constitution of PNG art 342(1).
[11] Constitution of PNG arts 14-17 set out the requirements for the timing, required parliamentary majorities and form of constitutional amendment. Article 345 governs amendments of Part XIV relating to Bougainville, and requires joint government consultation, a two-thirds majority of the PNG legislature, and a vote of the Bougainville legislature. See also Bougainville Peace Agreement art 325.

Parliamentary elections are not due until mid 2022, in the ordinary course of events, providing a reasonable window of time within which change can be considered, made and given effect.

Bougainville House of Representatives. While the Constitution of PNG refers only to a copy of the National Parliament of PNG's decision being provided to the Bougainville executive, it would be appropriate for the Bougainville House of Representatives to also formally acknowledge the result of the referendum, the framework for the consultations and, in due course, the outcome of the consultations.

Where legal and constitutional changes are required to implement the agreed outcome, the proposed amendments must be tabled in the Bougainville House of Representatives, and adequate time for consultation with government and representatives of chiefs and traditional leaders and churches in Bougainville.[12] Before a second vote on constitutional amendment in the PNG Parliament, the Bougainville House of Representatives must approve the proposed changes by a two thirds majority.[13]

Autonomous Bougainville Government (ABG) elections are due to be held in mid-2020. If these remain on course, writs are likely to be issued in March 2020, when campaigning will begin. The process of consultation will need to be organised with these events in mind, so as to minimise any potential for disruption.

Post Referendum Ministerial Taskforce. The Post Referendum Ministerial Taskforce, co-chaired by the ABG Minister for Peace Agreement Implementation and the National Minister for Bougainville Affairs, has been tasked with responsibility for planning for the implementation of the referendum result. The Taskforce was established after a resolution of the Joint Supervisory Body (JSB) in 2018. Its mandate, issued by the JSB, was to conduct 'post-referendum scenario planning' with an emphasis on ensuring peaceful acceptance of the result, consultation between the governments, and developing an agreed basis for the ongoing relationship between Bougainville and PNG.[14]

Other stakeholders. Consultations over the referendum outcome are likely to involve a range of other stakeholders. Members of the Executive Councils of both governments will participate in the Ministerial Taskforce. Collectively, the Executive Councils are likely to approve the negotiating positions of their governments. Leaders in each government will have to separately engage community leaders and the people at large within their own jurisdictions, to include them in the process and to reassure them of the commitment of both governments to a peaceful and mutually agreed outcome. International players – including other states as well as regional and international organisations – will also have a role to play in supporting consultations and a peaceful transition.[15]

2.2 Tentative timeline

The timeline in Table 2 is intended only to identify some critical dates and key actions and actors in order to structure thinking about how this period might be used. It is not intended to be prescriptive, but rather provide a reference point for governments as they develop a more detailed roadmap for the consultation phase and, potentially, for transition and implementation.[16] Some timeframes are subject to change.

[12] *Constitutional Laws (Consultation) Act 2006.*
[13] Constitution of Bougainville s 217.
[14] Meeting of the Joint Supervisory Body, 'Agreed Record of Outcomes' (Arawa, Autonomous Region of Bougainville, 29 June 2018), 5-6. The Ministerial Taskforce is supported by UN Peacebuilding Fund project 'Sustaining Peace in Bougainville'.
[15] Bell and McVeigh (n 8) 34–5.
[16] Thomas Webster, *Planning for the Implementation of the Bougainville Referendum Outcome* (Bougainville Referendum Fortnightly Commentary No 10, PNG National Research Institute Papua New Guinea, 2019).

Table 2: Timeline with critical dates and potential actions

Event	Likely dates	Actions in Bougainville	Actions in PNG
		Joint actions	
Referendum conducted	23 November – 7 December 2019	Conduct poll.	
Return of writs	20 December 2019		Governor General to receive writs from BRC.
		Announcement of referendum results.	
Objection period	End January 2020	A period of 40 days from the return of the writs is allowed for persons who object to lodge an appeal.	
Announcement of roadmap or plan for consultations	November/ December 2019	The period between the referendum and announcement of results is an opportunity to announce or foreshadow a roadmap or plan indicating the timing and manner in which consultations are intended to proceed.	
Parliament of PNG and Bougainville House of Representatives recess	November 2019 – February 2020	Continued work on uniting Bougainville (reconciliations); prepare position on referendum results; public information about roadmap; continued work on implementing current level of autonomy.	Prepare position on referendum results; public information about referendum result and roadmap; continued work on implementing current level of autonomy.
		Agree a formal statement to the PNG Parliament about the results of the referendum, including the roadmap.	
Parliament of PNG and Bougainville House of Representatives reconvene	February 2020	Referendum results and roadmap reported to Bougainville House of Representatives.	Referendum results and roadmap reported to Parliament of PNG.
ARoB election campaign	January–April 2020	Bougainville election (date in April 2020).	Preparation for consultations over referendum outcome.
Post-ARoB election until new government takes office	April–June 2020	Develop a united negotiation position within incoming ARoB government; prepare for consultations.	Preparation for consultations over referendum outcome.
Consultation period begins at the latest	July 2020	Consultation to agree a position that respects the referendum results, that is mutually agreed and that is workable.	
PNG national election	June/July 2022	Latest date for end of consultations before possible change in PNG leadership. Introduction and passage of necessary laws. Transition/implementation begins.	

Ch. 3 Realising existing autonomy

The existing framework for autonomy, negotiated in the BPA and reflected in the Constituion of PNG, provides Bougainville with very extensive formal autonomy. The degree of autonomy that in principle is available to Bougainville is much deeper than that of the constituent units in most federations. PNG, apart from Bougainville, remains a unitary state, but Bougainville autonomy gains additional protection from the provisions of the BPA and Part XIV of the PNG Constitution, which apply only to Bougainville. The Constitution of PNG provides that Part XIV cannot be altered without the agreement of the Bougainville Parliament.[17] Further, and in contrast to its powers over the provinces in PNG, the national government cannot withdraw powers from the Bougainville government or suspend it.[18]

Implementation of substantial new autonomy arrangements is always a difficult task. It involves not just legal and institutional change, but also cultural or attitudinal change within both levels of government. It is made more difficult still where: (a) autonomy is a response to conflict and so is only one element of a broader exercise in peace-building; (b) previous arrangements provided only limited, if any, opportunity for self-government; and (c) the remainder of the state has a unitary system of government.[19]

The deferral of the referendum for a period 10–15 years after the first ARoB elections[20] provided both governments with an important opportunity to implement the autonomy arrangements. It also offered an opportunity to strengthen trust between the levels of government, to build peace within Bougainville, to develop the capacity of Bougainville to function as a polity, and to begin the attitudinal adjustments, in both PNG and Bougainville, on which autonomy depends.

During this time, significant progress towards implementing the agreed level of autonomy has been made. Much of the infrastructure in Bougainville destroyed during the conflict has been rebuilt, enabling a range of government services to be restored. A new Constitution for Bougainville has been prepared with considerable community engagement and put into effect.[21] The Bougainville House of Representatives and Executive Council have been established, policies for Bougainville developed, and legislation passed.[22] There have been three elections, the most recent conducted under the auspices of the Bougainville Electoral Commission.[23] A Bougainville public service has been established, after governing legislation was passed in 2014.[24] A new system of local government was established by legislation in 2016.[25]

Much still remains to be done, however, to realise the level of autonomy provided in the BPA. The implementation of autonomy has been complicated by a range of factors. These include the ravages of conflict, including the destruction of infrastructure; continuing tensions within Bougainville in the aftermath of the conflict; the continuing need for capacity-building in Bougainville to meet the demands of significant autonomy; and lack of familiarity within PNG with what is involved in relations with an autonomous region. While the deferral of the referendum gave PNG and ARoB time to implement the autonomy arrangements, the lapse of time has

[17] Bougainville Peace Agreement art 325 provides that amendments to the provisions of the Constitution implementing the BPA would need the support of a majority in the Bougainville legislature as well as a two-thirds absolute majority in the PNG Parliament. This requirement is reflected in Constitution of PNG s 345.

[18] Bougainville Peace Agreement art 268; Constitution of PNG s 331(c).

[19] Constitution Transformation Network and International IDEA, *Implementing Federalism* (Melbourne Forum on Constitution-Building: Constitutional INSIGHTS No 2, 2018) <https://www.idea.int/publications/catalogue/implementing-federalism>

[20] Bougainville Peace Agreement art 312(a); Constitution of PNG s 338(2).

[21] Constitution of Bougainville 2004. On the constitution-making process see Joanne Wallis, *Constitution Making during State Building* (Cambridge University Press, 2014) ch 6.

[22] For information on the House of Representatives, the Ministry and Executive Council, and Bougainville legislation see http://www.abg.gov.pg/

[23] 'Office of the Bougainville Electoral Commissioner' <http://www.abg.gov.pg/government/electoral-commissioner>

[24] *Bougainville Public Services (Management and Administration) Act 2014.*

[25] *Bougainville Community Government Act 2016.* See also 'Department of Community Government' http://www.abg.gov.pg/government/departments/community-government

meant that fewer people, particularly in the PNG government, have institutional memory of what was at stake in negotiating the BPA. As the referendum approaches, however, efforts are being made to re-engage more of those involved in the peacemaking process, so as to take advantage of their insights and expertise.[26]

The following sections set out elements of the autonomy offered by the BPA and the Constitution that are not yet fully realised, drawing on several recent studies.[27]

3.1 Powers and functions

The BPA stipulated that powers and functions would be divided between the governments of PNG and Bougainville by listing, as exhaustively as possible, the powers to be held and exercised by each government.[28] The Constitution of PNG specifies 15 powers and functions that will remain with the PNG government, including, among other things, defence, foreign relations, immigration, international trade and communications.[29] The Constitution specifies 58 powers and functions for the Bougainville government to exercise in relation to Bougainville.[30]

These powers were not immediately made available to the ARoB. Instead, the BPA and the Constitution of PNG established a process for the gradual transfer of powers. Under these arrangements, the government of ARoB can initiate the transfer of a specified power by giving 12 months' notice. During this time, the governments of ARoB and PNG were to cooperate to agree a plan to implement the transfer of powers and functions.[31] Until the transfer occurred and the Bougainville House of Representatives passed laws of its own, PNG laws on these issues would continue to apply in Bougainville.

The ARoB has not realised the full measure of autonomy formally available under existing arrangements because not all the functions and powers allocated to the ABG by the Constitution have been fully transferred to the ARoB. Tracking the current position in detail is difficult, as the process for transfer is complex and piecemeal, although some detail was provided by the independent expert reports for the *Second Independent Autonomy Review* and the PNG NRI Report on the *Status and Implementation of the Bougainville Peace Agreement*.[32]

The full transfer of powers and functions from PNG to ARoB might still be pending because:

- powers held by PNG are delegated to ARoB officials;
- resources and assets associated with a transferred power are not fully transferred;
- the power or function has not yet been transferred to the ARoB;
- only some aspects of a power or function have been transferred.

Examples in each of these categories are set out in the sections below.

It may be that there are good practical reasons why particular powers or parts of powers have not yet been transferred. These may relate to the resources, capacities and priorities of the ABG. The result, nevertheless, is that, the current position is 'a complicated patchwork of transferred, partially transferred and delegated powers

[26] Hon Sir Puka Temu, Minister for Bougainville Affairs (n 3).
[27] Government of Papua New Guinea and Autonomous Bougainville Government Joint Supervisory Body, *Second Independent Autonomy Review (2018)*; Kylie McKenna, *Status and Implementation of the Bougainville Peace Agreement and Implications for Referendum* (National Research Institute Papua New Guinea, January 2019); Government of Papua New Guinea and Autonomous Government of Bougainville, *Joint Review of Bougainville's Autonomy Arrangements (2013)*; Anna Dziedzic and Cheryl Saunders, *Constitutional Implementation for Sustainable Peace* (Constitution Transformation Network, 2019). The *Second Independent Autonomy Review* had not been published at the time of writing. When citing this document, we draw on the reports of the independent experts prepared for the Review.
[28] Bougainville Peace Agreement art 51.
[29] Constitution of PNG s 289.
[30] Constitution of Papua New Guinea 1975 s 290.
[31] Bougainville Peace Agreement pt 7; Constitution of PNG s 295. The Organic Law on Peace-Building in Bougainville, Autonomous Bougainville Government and Bougainville Referendum 2002 (PNG) ss 3-6 sets out additional detail on the content of implementation plans and processes for transfer.
[32] *Second Independent Autonomy Review* (n 27) 117-19; McKenna (n 27) 10–12.

and functions'.[33] One of the primary goals of autonomy – to 'empower Bougainvilleans to solve their own problems, manage their own affairs and work to realise their own aspirations within the framework of the Papua New Guinea Constitution'[34] – has not yet been met to the extent provided by the BPA.[35] Instead, in what is still an interim period, the PNG and ARoB governments share many responsibilities. As a result, it is often unclear which government is responsible for what services and functions.[36]

Delegations. Some powers formally assigned to the ARoB are currently delegated or shared between the ARoB and PNG governments. For example, in relation to policing, the police service in Bougainville remains part of the Royal Papua New Guinean Constabulary, and there is as yet no legislation in place to establish and govern the Bougainville Police Service as provided by the Constitution of PNG. PNG legislation therefore continues to apply to the police. Although the Constitution provides the ARoB with powers in relation to corrections and the justice system, both continue to be governed by national legislation.[37]

Transfer of resources and assets. There are examples where the resources and assets associated with ARoB powers and functions have only partially been transferred to the ABG.[38] For example, Bougainville has powers in relation to land. Section 44 of the Bougainville Constitution provides that the ARoB will develop a land policy, and the House of Representatives passed the *Physical Planning Act* in 2013, to give this effect. However, land titles continue to be held in PNG, inhibiting the ARoB's ability to deal with land in practice.

Powers and functions not yet transferred. Several of the powers and functions assigned to Bougainville by s 290 of the PNG Constitution have not yet been transferred. While the use of MOUs and partial transfers make it difficult to accurately measure progress,[39] responsibilities for which there do not appear to be MOUs or implementing legislation yet in place include:[40]

- cemeteries
- children
- communications and information services within Bougainville
- corporation law
- energy
- family law
- gambling
- harbours and marine
- heritage
- home affairs
- information technology
- insurance
- language
- intellectual property
- labour and employment
- land and natural resources
- land, sea and air transport
- manufacturing
- parks and reserves
- professionals
- science and technology
- waste management
- water resources
- wildlife preservation
- wills and succession

Where powers have not been transferred and there is no ARoB legislation, national laws continue to apply and are administered and enforced by the PNG government, unless delegated to Bougainville officials.

Partial transfer. Finally, some transfers are partial, providing the ARoB with power over some aspects of the function, while other aspects remain with the PNG government. For example, the majority of powers in relation

[33] Government of Papua New Guinea and Autonomous Bougainville Government Joint Supervisory Body (n 27) 119.
[34] Bougainville Peace Agreement art 4(b).
[35] Government of Papua New Guinea and Autonomous Bougainville Government Joint Supervisory Body (n 27) 9.
[36] Ibid 112.
[37] Policing powers: Constitution of PNG s 313; Constitution of Bougainville s 148-50. Justice system: Ibid 160–7.
[38] As required by Constitution of PNG s 298: Ibid 128.
[39] McKenna (n 27) 10–12; Government of Papua New Guinea and Autonomous Bougainville Government Joint Supervisory Body (n 27) 117–19.
[40] Based on legislation listed at http://www.abg.gov.pg/acts-laws and tables of MOUs and legislation in Government of Papua New Guinea and Autonomous Bougainville Government Joint Supervisory Body (n 27) Appendices B and C, 156-7.

to education have been transferred to ARoB, but a conscious decision was made that PNG retain specific powers in relation to curriculum standards, teacher qualifications, examinations and school inspections.[41] Similarly, the majority of functions in relation to health have been transferred to ARoB.

3.2 Fiscal matters

While it was recognised that Bougainville would, at least in the short term, be financially dependent on PNG, the autonomy arrangements set out in the BPA and Constitution of PNG sought to enable Bougainville to achieve fiscal self-reliance as soon as possible.[42] Bougainville has some constitutionally protected sources of revenue, including some taxation powers (which support the current tax on alcohol and cigarettes) and the right to a share of revenue from resources such as fishing.[43] It is also entitled to a specified share of the corporate and personal income tax collected by national authorities. These revenue sources could make the ARoB more self-sufficient, but a lack of administrative capacity presently constrains the ARoB from developing them.[44] The Panguna mine remains another potential source of income. This cannot contribute to the solution, however, until its future is more settled.

The *Second Independent Autonomy Review* found that internal revenue covers only 17 percent of the ARoB's recurrent budget. To cover the remainder, Bougainville relies on annual grants provided by the PNG government and foreign aid. The ARoB has the power to raise loans, but has not done so to date.

3.3 Institutions

Some ARoB institutions have not yet been established and some of those that exist have limited capacity. As a result, Bougainville continues to rely on PNG institutions in some areas where autonomy is available. In some cases, ARoB officials exercise authority under PNG laws. Examples include:

- The Office of the Bougainville Auditor-General is not yet established, although there are provisions for it in the Bougainville Constitution and in public finance legislation.[45] Until such time as the Office of the Bougainville Auditor-General is established, the national Auditor-General is to perform audit functions. However, the PNG Auditor-General's Office has formed the view that it has no transitional authority to conduct an external audit of Bougainville's public accounts.[46] The ABG does not regularly provide public accounts to the House of Representatives, nor is there an independent audit of financial reports.[47]
- There is provision in the Bougainville Constitution for a Bougainville Ombudsman,[48] but it has not yet been established. This has flow-on effects, in that the Leadership Code set out in Part 13 of the Bougainville Constitution only comes into operation once the Office of the Ombudsman is established. Until such time, the Leadership Code in the PNG Constitution applies, administered by the PNG Ombudsman's Office.[49] The PNG Ombudsman established an office in Bougainville in 2017.
- The BPA provides for an Autonomous Bougainville Police Service.[50] Policing powers were transferred to the interim Bougainville government in 2003 and were inherited by the ARoB government. The police service in Bougainville is a part of the Royal Papua New Guinea Constabulary, which trains and pays police

[41] Ibid 183.
[42] Bougainville Peace Agreement art 135, Constitution of PNG s 324, Constitution of Bougainville s 153.
[43] Bougainville Peace Agreement art 86 (Fisheries). It was not until 2018 that an MOU was signed to settle the share of fisheries revenue that Bougainville was entitled to: Government of Papua New Guinea and Autonomous Bougainville Government Joint Supervisory Body (n 27) 122–3.
[44] While the ARoB has legislated a range of taxes, it has not yet attempted to collect them and non-compliance with tax collection is high: Ibid 61.
[45] Bougainville Constitution s 158; Bougainville Public Finance (Management and Administration) Act 2014 s 53.
[46] Government of Papua New Guinea and Autonomous Bougainville Government Joint Supervisory Body (n 27) 103.
[47] Ibid 57–8, 72–3.
[48] Bougainville Constitution ss 165-8.
[49] Bougainville Constitution s 169. For the PNG Leadership Code see Constitution of Papua New Guinea s 27; Organic Law on the Duties and Responsibilities of Leadership (PNG).
[50] Bougainville Peace Agreement arts 211-14, Constitution of Bougainville ss 148-150.

officers, and deals with discipline and promotion. The Chief of the Bougainville Police Service is a Deputy Commissioner of the PNG Police and reports to the PNG Police Commissioner. A community policing service is provided by Bougainville's Community Auxiliary Police.

- The Bougainville Constitution included detailed provisions for the establishment of a Bougainville court system. However, these courts have not yet been established.[51] Judicial services continue to be provided by PNG. There is one National Court judge based in Bougainville. Magistrates and local court judges are appointed by the PNG government (although for village magistrates and land mediators, nominations are made by local community governments in Bougainville).

While totally or partially relying on PNG institutions is a useful transitional measure, it means that the extent of autonomy negotiated in the BPA is yet to be fully realised.

3.4 Intergovernmental relations

As an autonomous region, intergovernmental relations between the ARoB and the PNG governments differ to intergovernmental relations between the PNG provinces and national government. Intergovernmental arrangements are needed (a) whenever joint action is required by PNG and ARoB to put arrangements for autonomy in place or to enable their operation in practice, and (b) whenever the Constitution requires consultation between the two levels of government. Intergovernmental relations in either of these senses require mutual respect and active cooperation on the part of the institutions of both levels of government. It also requires both levels of government to be accountable for processes and outcomes. This mode of operation is new for both parties and is still evolving. Effective intergovernmental relations are necessary to realise the autonomy for which current arrangements provide.

An example may be helpful. Section 293(3)(a) of the Constitution of PNG requires the PNG government to consult with the ARoB government where an international agreement is likely to affect the exercise of the functions and powers available to the ARoB. It therefore is an illustration of the second kind of intergovernmental arrangement mentioned above. However, while PNG has signed several international treaties in areas in which the ARoB has powers and interests, there is no evidence of consultation between the two governments.[52] To that extent, in this area, intergovernmental relations remains a work in progress. Matters on which the ARoB government is required to consult the PNG government include management of the public service, the raising of loans, and participation in regional or international organisations.[53]

The primary formal institution for intergovernmental relations is the Joint Supervisory Body (JSB). The JSB was established by the Constitution of PNG and consists of equal numbers of members representing the PNG and ARoB governments.[54] It is the consultative forum for intergovernmental decision making in the implementation of the BPA. The JSB has provided an important forum for the resolution of disputes between the two governments. However, it has some shortcomings as a formal mechanism of intergovernmental relations. It has met infrequently, its records are difficult to access, challenging but critical decisions have been delayed, and those that have been made are not always implemented.[55]

There are other avenues for interdepartmental cooperation between PNG and ARoB officials, particularly to assist the process for the transfer of particular powers.[56] As noted in the *Second Independent Autonomy Review,* however, the quality of such interactions varies between departments, agencies and ministers, and with the kind of tasks they are cooperating to complete.[57]

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[51] Bougainville Constitution pt 9.
[52] Government of Papua New Guinea and Autonomous Bougainville Government Joint Supervisory Body (n 27) 38.
[53] Public Service: Bougainville Peace Agreement arts 194-6; Constitution of PNG s 311(4); Organic Law on Peace-Building in Bougainville, Autonomous Bougainville Government and Bougainville Referendum 2002 (PNG) s 13. Loans: Bougainville Peace Agreement art 194; Constitution of PNG s 311(4). Foreign relations: Bougainville Constitution s 46.
[54] Bougainville Peace Agreement art 164; Constitution of PNG s 328.
[55] Government of Papua New Guinea and Autonomous Bougainville Government Joint Supervisory Body (n 27) 139–40.
[56] Ibid 138–9.
[57] Ibid 141.

3.5 Identity

By its very nature, Bougainville has a distinct identity. In current conditions of autonomy it has its own flag, emblem and anthem to symbolise its identity. Effective autonomy also requires a cohesive polity, to realise the collective public interest. At least until recently, however, not all ex-combatants and factions within Bougainville have considered themselves part of the ARoB, inhibiting its capacity to take full advantage of autonomy and potentially destabilising peace. These factors inhibit resolution of the contested issue of the Panguna mine. There have, however, been positive developments towards inclusion and the question of the mine in the approach to the referendum.[58] As Bougainville develops as an autonomous region, all parties should be expected to accept whatever solution to this difficult issue is adopted by Bougainville institutions, which will properly exercise their authority under the Constitution of Bougainville.

3.6 Implications of incomplete implementation

In summary, one strength of the BPA was that it recognised that it would take time for the ARoB to build the capacity to fully exercise the autonomy offered by the BPA and PNG Constitution and for both levels of government to adapt to these new arrangements. Despite significant progress, in 2019 this process is not yet complete. In consequence, the full extent of the autonomy legally available to Bougainville is yet to be realised in practice. Equally, neither PNG nor ARoB has yet fully recognised the implications of autonomy for the relations between the two levels of government and adapted their practices accordingly.

The incomplete implementation of the existing autonomy arrangements has implications for the evaluation of each of the choices before the people of Bougainville at the referendum. Until the current arrangements are fully implemented, it is difficult to gauge the difference between the status quo and 'greater autonomy'. Greater autonomy would entail the full implementation of the current arrangements in addition to the other measures identified in Part 4 below. Similarly, implementation of the existing arrangements would be an important stage along the path to independence. Many, if not all, outstanding aspects of autonomy would need to be assumed by an independent Bougainville and be given effect for Bougainville to function as an independent polity.

[58] In July 2019, former combatants in the region met and agreed the *Mary, Queen of the Mountains - Panguna Declaration*, which included commitments to maintaining peace before and after the referendum and agreement that the Panguna mine can be re-opened after the vote.

Ch. 4 Greater autonomy

Part 3 demonstrated that existing arrangements offer Bougainville a significant degree of autonomy, which is still in the process of implementation. From that perspective, effectively implementing the existing arrangements would provide a 'greater' degree of autonomy than Bougainville presently experiences in practice.

This part outlines *additional* legal, institutional or administrative arrangements that might be made to provide 'greater autonomy' for Bougainville within the terms of the referendum question. It therefore also requires, and builds on, the effective implementation of existing autonomy arrangements.

None of the potential features of greater autonomy outlined here are necessary or essential to 'greater autonomy'. 'Greater autonomy' is a broad category: the precise scope of Bougainville's autonomy could range from powers not much greater than those it possesses under the current arrangements to a position that would entitle it to some but not quite all of the benefits of full statehood.

Ultimately, 'greater autonomy' is something for PNG and Bougainville to define together, drawing on the categories and the range of provisions and suggestions made in this part of the report. This exercise requires an understanding of existing arrangements; an understanding of how existing arrangements might work if they were fully implemented; agreement on ways to deepen Bougainville autonomy within PNG; agreement on changes in PNG governance that might better reflect, respect and support Bougainville autonomy; and agreement on the resolution of any consequential issues that arise. In the event of greater autonomy involving new initiatives of these kinds, amendments will be needed to the Constitutions of PNG and Bougainville to remove existing, inconsistent arrangements and to entrench the newly agreed arrangements.

Several of the potential features of greater autonomy outlined in this part are also relevant to independence, in that independence would require the exercise of new powers and functions, greater responsibility for revenue and spending, and new institutions.

4.1 Powers and functions

Enhancing the legal powers and functions of the ARoB under greater autonomy might be done through:

- giving new or increased powers to the ARoB;
- removing legal constraints on the powers presently exercisable by the ARoB;
- limiting the authority of the PNG government to legislate for Bougainville, generally or without ABG consent;
- giving Bougainville more authority to secure transfers of the powers and functions legally available to it.

This section identifies possibilities under each of these headings, building on the current autonomy arrangements and provisions of the BPA and the two Constitutions. Whether such changes would be workable in practice in the context of PNG and Bougainville, particularly in the short term, is an issue for consideration by governments, taking account of capacity, funding and the needs of the two communities.

New powers. The current provisions of the Constitution of PNG identify over 15 powers in relation to Bougainville that are retained by the PNG government. Most of these powers are listed in section 289 of the Constitution of PNG. Others can be inferred from carve-outs in section 290, which lists the powers available to Bougainville. Under section 296, powers retained by PNG under section 289 may also be exercised by the ARoB, but not in a way that is inconsistent with national law.

Most of these powers have been left to PNG either because they relate to the exercise of the external sovereignty of PNG when the state needs to speak and act as a whole (e.g. defence and foreign relations) or because it is more practicable to exercise them across the state as a whole (e.g. currency, central banking, quarantine, highly migratory fish stocks, aviation, international trade). The Constitution requires some of these powers to

be exercised in consultation with the ABG in certain circumstances (e.g. entry into certain new international obligations[59]). The effective operation of these and other requirements for consultation, already provided for in the Constitution, requires full implementation of the existing autonomy arrangements, in the manner described in Part 3.

It follows that some new powers potentially available to be allocated to Bougainville under greater autonomy arrangements can readily be identified from these sections of the Constitution of PNG. The effect of transfer would be to enable Bougainville to legislate in these areas, even in ways inconsistent with national law. Provision might need to be made to deal with trans-border effects, where the exercise of a power affects an activity that takes place outside, as well as within, Bougainville.

Examples of new powers that might be transferred wholly or in part on this basis, include:

- Industrial relations;
- Immigration into and out of Bougainville including from elsewhere in PNG (concerns about the immigration of people from other parts of PNG into Bougainville was one of many contributing factors to tensions before the conflict[60]);
- quarantine;
- firearms control;
- state-owned housing.

In some areas, the BPA, the Constitution of PNG or the Constitution of Bougainville already foreshadow the possibility that Bougainville may assume greater responsibility for matters presently allocated to the national level of government. These include:

- Highly migratory and straddling fish stocks: Under current arrangements, the PNG government has power over highly migratory and straddling fish stocks, but cooperation is envisaged and the entitlement to revenue is shared. The Bougainville Constitution empowers the ARoB government to agree a quota of domestic fishing licences for migratory and straddling fish stocks with the PNG government and to allocate the quota.[61] The BPA also provides that fishing revenues generated in Bougainville waters will be distributed to Bougainville on an agreed formula,[62] but disputes over this issue delayed the signing of the MOU transferring powers other fisheries to ARoB, and it is still unresolved.[63] Fishing resource rents nevertheless are a significant potential source of income for Bougainville. One estimate is that tuna fisheries rents alone could fund up to 60 percent of ARoB's recurrent budget, and also create employment and investment opportunities.[64]
- Central banking: While central banking is included in the constitutional list of powers allocated to the national PNG government, the BPA provided for a future possibility that ARoB might, after it has achieved fiscal self-reliance, assume some responsibilities for central banking.[65]
- Telecommunications: While telecommunications is included in the constitutional list of powers allocated to the national PNG government, the BPA sets out a process should ARoB wish to assume some responsibility for telecommunications.[66]
- The BPA also provided that the PNG government would delegate some aspects of international civil aviation,

[59] Constitution of PNG s 293(3).
[60] John Braithwaite et al, *Reconciliation and Architectures of Commitment: Sequencing Peace in Bougainville* (ANU Press, 2010) 20. Controls on migration also raise concerns about freedom of movement, an issue discussed during constitution making: Wallis (n 21) 209.
[61] Constitution of Bougainville s 47.
[62] Bougainville Peace Agreement art 86.
[63] Government of Papua New Guinea and Autonomous Bougainville Government Joint Supervisory Body (n 27) 122–3.
[64] Satish Chand, *Financing for Fiscal Autonomy: Fiscal Self-Reliance in Bougainville* (National Research Institute Papua New Guinea, August 2018) 25.
[65] Bougainville Peace Agreement art 91.
[66] Bougainville Peace Agreement arts 97-100.

international shipping, international trade and postal services.[67]

The desirability of transferring all or a greater part of these functions from PNG to ARoB under greater autonomy would be a matter for consultation between the governments. They are relevant for present purposes, however, because the negotiators of the BPA and lawmakers in PNG and Bougainville appear to have believed that these functions, while typically held by the national government, might be shared with the ARoB.

Another possible source of new powers for Bougainville for the purposes of greater autonomy is the powers presently unspecified in the Constitution of PNG, which might be allocated as a default position to Bougainville rather than to PNG, as currently is the case under section 292.

Full exercise of existing powers. Another significant way of enhancing the powers and functions of the ARoB under greater autonomy arrangements would be to remove the legal constraints on the exercise of some of the legislative and executive powers presently available to Bougainville. Some of the constraints may be desirable to coordinate the laws of PNG and Bougainville. If they were removed, coordination may be needed in another form.

Examples of current legal constraints that in principle could be removed or amended to provide greater *lawmaking* powers to the ARoB include:

- requirements that the PNG government consent to changes to ARoB criminal law[68] and laws relating to the Bougainville Public Service;[69]
- requirements that ARoB laws be 'consistent' or compatible' with PNG laws relating to the public service,[70] police,[71] corrections,[72] the leadership code,[73] human rights,[74] and emergencies;[75]
- requirements that the ARoB consult with the PNG government before amending the Constitution of Bougainville;[76]
- restrictions on ARoB's power to vary the rate of personal income tax and company tax.[77]

Examples of current legal constraints on the exercise of *executive power* by the ARoB that might be removed or amended include:

- requirement for joint review and consultation between the two governments on foreign investment in Bougainville, giving the ARoB greater control over foreign investment in Bougainville;[78]
- requirement that the PNG government approve foreign aid provided to ARoB;[79]
- requirement that the ARoB government must not propose a deficit budget without the express approval of the PNG Minister responsible for financial matters;[80]

[67] Bougainville Peace Agreement art 92.
[68] Bougainville Peace Agreement arts 296-7; Constitution of PNG s 291.
[69] Bougainville Peace Agreement art 194; Constitution of PNG s 311(4); Constitution of Bougainville s 13(2).
[70] Bougainville Peace Agreement art 194; Constitution of PNG s 311(2)(a), Constitution of Bougainville s 146.
[71] Constitution of PNG s 313, Constitution of Bougainville s 150.
[72] Constitution of PNG s 316, Constitution of Bougainville s 152.
[73] Constitution of PNG s 302.
[74] Bougainville Peace Agreement art 123; Constitution of PNG s 304.
[75] Constitution of Bougainville s 204.
[76] Constitution of PNG s 287, Constitution of Bougainville ss 207, 219(3).
[77] Constitution of Bougainville s 154(3), (4); Organic Law on Peace-Building in Bougainville, Autonomous Bougainville Government and Bougainville Referendum 2002 (PNG) ss 41(4), 43(2).
[78] Constitution of PNG s 290(4). Cf Bougainville Peace Agreement art 53 which provides that the ARoB will have the power to decide on foreign investment applications for Bougainville.
[79] Bougainville Peace Agreement arts 175-6, Constitution of PNG s 327(2), Constitution of Bougainville s 46.
[80] Bougainville Peace Agreement art 167, Constitution of Bougainville s 155(3).

- requirements for the ARoB government to consult the PNG government before raising loans,[81] and amending regulations and increasing the pay for public servants.[82]

Limiting PNG authority in relation to Bougainville. In the exercise of its powers retained under the BPA, decisions of the PNG government apply in Bougainville in the same way as in the rest of PNG, unless there are provisions requiring prior consultation with the ABG in particular cases. Under arrangements for greater autonomy for the ARoB, there may be scope for extending the requirement for consultation between PNG and the ARoB before PNG law or policy applies or for making it more effective. By way of example:

- The power of the PNG government to legislate in subject areas allocated to Bougainville by section 296(2) of the PNG Constitution might be altered to require consultation with the ABG (although note that the power in section 296(2) also is reciprocal, enabling the ARoB to legislate on PNG matters).
- The final appellate authority of the Supreme Court of PNG over the interpretation of the Constitution and laws of Bougainville[83] might be assumed by a final appellate court in Bougainville.
- Consultation with the ABG (or at least attempted consultation) might be required before any national emergency is declared with effect in the ARoB, modifying the current procedures (which already provide for consultation in some circumstances).[84]

Procedure for transferring powers and functions to ARoB. The current procedure for the transfer of powers and functions requires consultation with the PNG government and 12 months' notice, unless both governments agree otherwise.[85] As noted in Part 3, there have been some delays and inconsistencies in the transfer of powers from PNG to ARoB. Greater autonomy might provide an opportunity to streamline these procedures.[86] In addition, under arrangements for greater autonomy, the ARoB might be given greater unilateral authority to secure the transfer of powers. In this event, the ARoB would need to take full responsibility for ensuring that it had the capacity to exercise the functions and to be accountable for their exercise to its people.

4.2 Fiscal matters

The current arrangements for autonomy sought to ensure that Bougainville could achieve fiscal self-reliance as soon as possible, and granted the ARoB powers to tax, receive foreign aid, raise loans, and obtain a share of revenues from natural resources. In practice, however, the ARoB is far from achieving fiscal self-reliance.[87] Greater autonomy would present an opportunity to revisit the economic arrangements, with a view both to enabling Bougainville to take full advantage of the current fiscal arrangements and to further enhance its fiscal autonomy.[88]

Enhancing the fiscal authority of the ARoB under greater autonomy might be done by:

- increasing the fiscal powers available to the ARoB;
- removing legal constraints on the fiscal powers presently exercisable by the ARoB;
- limiting or removing the conditionality of grants by PNG to ARoB.

In the interests of the people of Bougainville, enhanced fiscal authority for the ARoB in relation both to revenue raising and expenditure necessarily must (a) be able to be exercised effectively by the ABG; and (b) be exercised

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[81] Bougainville Peace Agreement arts 164-6, Constitution of PNG s 328.
[82] Bougainville Peace Agreement arts 195-6, Organic Law on Peace-Building in Bougainville, Autonomous Bougainville Government and Bougainville Referendum 2002 (PNG) s 13(3), (4).
[83] Bougainville Peace Agreement art 286; Constitution of PNG s 308(5); Constitution of Bougainville s 209.
[84] Bougainville Peace Agreement arts 271, 273; Constitution of PNG s 323; Constitution of Bougainville s 199.
[85] Constitution of PNG s 295.
[86] Bell and McVeigh (n 8) 27.
[87] Fiscal self reliance is defined in the Constitution of PNG art 278 as 'the first year in which the revenue from company tax, customs duties and 70% of value added tax collected in Bougainville is equal to the value of the recurrent grant on a sustainable basis'.
[88] Some possible options are discussed in Bell and McVeigh (n 8) 37; Chand (n 64).

in a way that is transparent and accountable to the House of Representatives, the people of Bougainville and relevant donors.

Increased fiscal powers. The ARoB already has significant taxation powers legally available to it that are not yet used (largely, it seems, due to capacity constraints). The taxation powers that have been legally reserved to PNG by section 325 of the PNG Constitution – relating to customs duties, company taxation and VAT – are not suitable for exercise by a single region of a state, even in conditions of greater autonomy. New revenues may be available to Bougainville, however, from the transfer of other powers or functions; in particular, authority over certain migratory fish stocks. Amending some definitions may also serve to increase the tax base available to ARoB. For example, the *Second Independent Autonomy Review* drew attention to the fact that company tax is collected where the company's principal place of business is located rather than where the company operates. This precludes the ARoB from collecting corporate tax from companies operating in Bougainville but based in PNG or overseas.[89]

Full exercise of existing fiscal powers. The ARoB presently is constrained in the exercise of certain fiscal powers by the need to consult with, or obtain the approval of, the PNG government. For the purposes of greater autonomy, it may be that these constraints could be modified or removed, enabling the ARoB to assume greater responsibility in these areas, for which it would be accountable. For example:

- There are some constraints on the ARoB in obtaining foreign aid, which is subject to the approval of the PNG government taking into account any reduction to the aid available to PNG and foreign policy considerations.[90]
- The ARoB is obliged to consult with the PNG government in obtaining both foreign and domestic loans, and borrowing must be consistent with the requirements of the Bank of Papua New Guinea.[91]

Conditionality of grants. Some grants from PNG to the ARoB under section 326 of the PNG Constitution are made for specific purposes or on condition, while others are unconditional. For the purposes of greater autonomy, it may be possible to expand the categories of unconditional grants, or to remove conditionality altogether, giving the ARoB greater discretion in how it spends its funds. In these circumstances, full and transparent accounting for expenditure would become even more important. Audit could be conducted by the PNG Auditor-General, the Bougainville Auditor-General, or both, under cooperative arrangements. Audit of expenditure by an ARoB authority alone would be more consistent with greater autonomy but would need to be transparent and effective, to satisfy the obligations of the PNG government to its own institutions and constituents, as well as the obligations of the ABG within Bougainville.

4.3 Institutions

Greater institutional autonomy for the ARoB might be achieved by:

- The creation of new ARoB institutions, accountable for their effectiveness to the ABG, the House of Representatives and the people of Bougainville.
- Greater independence of ARoB institutions from supervision by PNG institutions.
- Delivery of PNG programs within Bougainville by ARoB institutions.

As with all other steps towards greater autonomy, for these to be effective, the ARoB institutions would need to work well and to be accountable within Bougainville.

New institutions. New ARoB institutions, or the extension of the authority of existing ones, would be necessitated by the transfer of additional powers and functions considered in section 4.1 above. Depending on the powers transferred, this could include, for example, institutions responsible for banking or immigration. If

[89] Government of Papua New Guinea and Autonomous Bougainville Government Joint Supervisory Body (n 27) 31.
[90] Bougainville Peace Agreement arts 175-6, Constitution of PNG s 327(2), Constitution of Bougainville s 46.
[91] Bougainville Peace Agreement arts 164-6, Constitution of PNG s 328.

final authority over the interpretation of the Constitution and laws of Bougainville was given to a final appellate court in Bougainville, such a court would need to be established.

Greater independence of ARoB institutions. Under existing arrangements, the PNG government is involved in the appointment, monitoring and oversight of several ARoB institutions. Such involvement might be limited or removed in conditions of greater autonomy. For example:

- ARoB institutions responsible for the appointment of a range of constitutional and public officials must include members appointed by PNG government authorities. Such arrangements apply for the appointments of the Auditor-General, Ombudsman, the heads of the Bougainville Police and Corrections, and judges.[92]
- In one case, the ARoB government is required to consult the head of the PNG department responsible for the national public service before appointing the most senior Bougainville Public Service officer.[93]
- In another case, the Bougainville Salaries and Remuneration Commission must take account of advice from the equivalent commission in PNG on matters of pay and conditions of employment.[94]
- There are legal constraints on institutional arrangements for the Bougainville Public Service,[95] Police,[96] and Corrections,[97] in the interests of alignment with PNG standards relating to terms and conditions of service and training.
- The PNG government or other institutions are entitled to monitor the Bougainville Public Service[98] and to inspect and audit Bougainville Police[99] and Corrections[100] for compliance with national laws.

Delivery of PNG programs within Bougainville. The National Public Service presently operates in Bougainville both to deliver national programs and to deliver some programs under Bougainville law, pending the further development of ARoB institutions.[101] In conditions of greater autonomy, some PNG programs might also be delivered in Bougainville by ARoB institutions under arrangements that provide for broad consistency with the administration of such programs throughout the country. Similarly, the PNG police presently operate in Bougainville both to enforce national laws and to enforce Bougainville laws under agreed arrangements.[102] Under conditions of greater autonomy, it may be possible to reduce the role of the PNG police in Bougainville, if and when Bougainville police have the capacity to enforce national laws.

4.4 Intergovernmental relations and shared rule

Every system of multilevel government within a state has both formal and informal arrangements for relations between the levels of government and for the representation of sub-state regions in central institutions (a practice sometimes described as 'shared rule'). The distinctive feature of multilevel government in PNG is that the ARoB has a significantly deeper degree of autonomy than regions elsewhere in the country. This seems unlikely to

[92] Constitutional officials: Bougainville Peace Agreement art 43, Constitution of PNG s 321(3), Constitution of Bougainville s 102(f); Auditor-General: Constitution of Bougainville s 158; Ombudsman: Constitution of Bougainville s 165; Head of Bougainville Police: Constitution of PNG s 313(2), Constitution of Bougainville s 149; Head of Bougainville Corrections: Bougainville Peace Agreement art 242, Constitution of PNG s 316(b), Constitution of Bougainville s 152; Judicial appointments: Bougainville Peace Agreement art 288, Constitution of PNG s 309, Constitution of Bougainville s 121.
[93] Bougainville Peace Agreement art 197, Organic Law on Peace-Building in Bougainville, Autonomous Bougainville Government and Bougainville Referendum 2002 (PNG) s 14.
[94] Bougainville Peace Agreement art 44(b), Constitution of PNG s 319, Constitution of Bougainville s 163(2).
[95] Bougainville Peace Agreement art 194; Constitution of PNG s 311(2)(a), Constitution of Bougainville s 146.
[96] Constitution of PNG s 313, Constitution of Bougainville s 150.
[97] Constitution of PNG s 316, Constitution of Bougainville s 152.
[98] Bougainville Peace Agreement art 198, Organic Law on Peace-Building in Bougainville, Autonomous Bougainville Government and Bougainville Referendum 2002 (PNG) s 15.
[99] Bougainville Peace Agreement art 215, Organic Law on Peace-Building in Bougainville, Autonomous Bougainville Government and Bougainville Referendum 2002 (PNG) s 20(2).
[100] Bougainville Peace Agreement art 245, Organic Law on Peace-Building in Bougainville, Autonomous Bougainville Government and Bougainville Referendum 2002 (PNG) s 30(2).
[101] Constitution of PNG s 312.
[102] Constitution of PNG s 315.

change, even if more extensive devolution occurs elsewhere in PNG.

Greater autonomy in this category might be achieved in ways that recognise and give effect to the distinctive character of the arrangements for government in the ARoB; in particular:

- If the ARoB is adequately responsible to its own people, through its own institutions, PNG supervision might be limited or removed altogether, generally or in particular areas. Examples have been given in the sections explored earlier in this part.
- Greater autonomy might be reflected in a more formalised intergovernmental relations mechanism, as a successor to the Joint Supervisory Body, to facilitate government-to-government negotiations on an equal footing, in a way that provides for transparency and accountability. These arrangements could take various forms, from standing committees on particular issues to an annual meeting of heads of government.
- If such arrangements are established, it might be useful to create an institution to support them, at arms length from both the PNG and Bougainville governments. Such a body would at least partly assume the functions of the National Coordination Office of Bougainville Affairs.
- Under present arrangements, Bougainville is represented in the national Parliament in a similar manner to the provinces (with open constituencies and one 'regional', cf. 'provincial', representative). Greater autonomy might provide the opportunity for a different and distinctive arrangement for the representation of Bougainville in the National Parliament, consistent with Bougainville's special status. Bougainville members of the National Parliament might, for example, represent Bougainville as a whole rather than separate constituencies. Alternatively, they might act as delegates of the Bougainville House of Representatives. In either case, the payment of Constituency Development Funds to the members would not be appropriate, but an equivalent amount might be built into payments to the ARoB.
- There may be opportunities to represent Bougainville as a special polity within PNG in the other branches of government. Examples include a permanent position for a Bougainville Minister in the National Executive Council or the appointment of a judge from Bougainville to the PNG Supreme Court.

4.5 Identity

Symbols and emblems are one way in which identity is expressed. The Constitution of PNG allocates powers in relation to 'symbols of the Bougainville government' to the ARoB,[103] and Bougainville has its own flag, emblem and anthem. The current autonomy arrangements require the national emblem to be used in particular cases, such as in the official markings of the Bougainville Police and Corrections, symbolising the identity of Bougainville within PNG.[104] Under greater autonomy, there may be scope to extend the use of existing symbols of identity further, or to provide for others. A specific Bougainville currency is a possible example, for which there is precedent elsewhere. Sub-state regions in other states issue their own coins and banknotes, which have the same value as the national currency (e.g. the Bank of Scotland issues Scottish pound notes).

Greater autonomy for Bougainville within PNG suggests the need for other ways to reinforce the identity of Bougainville as a polity and to reflect the nature of the relationship between Bougainville and PNG. A critical step in this regard is to continue to build the internal cohesion of Bougainville so that all its citizens (including ex-combatants) participate in its collective life and own the results of governmental decisions that are properly made. Effective institutions play a key role in this by providing peaceful and consistent forums for resolving disputes, as an alternative to conflict. In Bougainville, such institutions are not confined to the state and include, for example, churches, networks of ex-combatants and customary institutions. Processes for constitution-making or amendment, and consultations over law-making and reconciliations can also contribute to building a cohesive identity for Bougainville as a polity.[105]

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[103] Constitution of PNG s 290(2)(zx), Constitution of Bougainville s 4.
[104] Bougainville Peace Agreement arts 225, 249, Constitution of PNG s 310(4).
[105] See Wallis (n 21) ch 7.

Ch. 5 Independence

If Bougainville became fully independent, it would have full responsibility for the welfare of its people, subject to international law. It would join the almost 200 states into which the world presently is divided. It would be eligible for admission as a member state of the United Nations.

Article 2 of the United Nations Charter recognises 'the principle of the sovereign equality of all its Members' and imposes obligations on them. While this principle remains important, in practice, the world of the 21st century is one in which all states are interdependent and in which geopolitical and economic factors give some states greater de facto authority than others. This raises the possibility of degrees of independence, to which we return in Part 5.6 below.

The core features of independent statehood are territory, people, government and the capacity to enter into relations with other states.[106] While Bougainville already has a distinct territory, people and government, each would require further attention for the purposes of independence, in ways that are briefly explained below. New states also require recognition as states by other states.[107] Membership of the United Nations is an indicator of recognition, in that an application for membership requires the consent of two thirds of all member states, including the five permanent members of the United Nations Security Council.[108] Recognition of new states is relatively rare in recent times. In Bougainville's case, however, the deferred requirement for an independence referendum in the BPA and the Constitution of PNG, a vote for independence at a free and fair referendum, and negotiation and agreement on the outcome between the governments of PNG and ARoB, may facilitate international recognition of Bougainville statehood. Evidence of capacity to effectively carry out the functions of government can also be expected to be important.

Territory. The Constitution of Bougainville identifies the territory of Bougainville as the area of land formally defined as the Province of Bougainville[109] and the areas of sea extending to three nautical miles from the low water mark of these lands.[110] The BPA foreshadowed the possibility of further extending Bougainville's maritime boundaries through consultation between the two governments. It also acknowledged that Bougainville's jurisdiction would extend to the sea areas where PNG has power.

It seems likely that the land territory of an independent Bougainville would be defined in a similar way to the current territory. However, independence would make a difference in relation to maritime boundaries. As an independent state, Bougainville could claim sovereign rights to the surrounding sea, including claims to an Exclusive Economic Zone and to the continental shelf. The extent of these rights would need to be negotiated with neighbouring states, including PNG and Solomon Islands, consistent with international law. Generally speaking, maritime boundaries between close land territories are usually drawn at a median halfway line (or 'equidistant') between the shores of coastal states and adjusted to take account of geographic features and other circumstances to reach an 'equitable solution'. International agreements to define maritime boundaries can take some time. It is possible for states to enter into provisional agreements.[111]

People. Section 7 of the Constitution of Bougainville defines who is a Bougainvillean, and provides for membership by birth, descent, adoption according to custom, or marriage. Under current arrangements, a Bougainvillean is a citizen of PNG as well. In an independent Bougainville, Bougainvilleans presumably would become citizens of the new state, under constitutional and legislative provisions that would need to be made. Citizens of Bougainville would not necessarily also be citizens of PNG; this would depend on whether both

[106] Montevideo Convention on the Rights and Duties of States 1933 art I.
[107] James Crawford, *The Creation of States in International Law* (Clarendon Press, 2nd ed, 2006) ch 1.
[108] United Nations, 'About UN membership' https://www.un.org/en/sections/member-states/about-un-membership/index.html.
[109] As set out in the Organic Law on Provincial Boundaries (PNG) and replicated in Constitution of Bougainville sch 3.
[110] Constitution of Bougainville s 1.
[111] For an accessible explanation of these issues, see Government of East Timor Maritime Boundary Office, 'The Law of the Sea' http://www.gfm.tl/learn/the-law-of-the-sea/

states accepted dual or multiple citizenship.[112] The significant intermingling of the populations of Bougainville and PNG means that some care would be needed in sorting out the citizens of the two states.

Government. Bougainville already has a system of government that exercises considerable autonomy. Under current arrangements, however, the institutions of Bougainville government are those of a sub-state government. If Bougainville were independent, it would need to establish governing institutions capable of exercising powers and responsibilities for a state. This would involve some new powers, the removal of some limitations on existing powers, full responsibility for the welfare of the people of Bougainville and direct exposure to obligations under international law. The implications of these changes are examined in greater detail in the remainder of this part.

Capacity to conduct international relations. The final requirement for independent statehood is the capacity to conduct international relations. This requirement assumes that Bougainville has the capacity, the institutions and the resources to carry out relations with other states. Importantly, it also means that Bougainville must be recognised by other states as a state with which they are prepared to deal. The government of an independent Bougainville would be responsible for its relations with the states of the rest of the world. This might include membership of international organisations, of which the United Nations is only one, regional forums (such as the Pacific Islands Forum), and other international groupings of states (such as the Commonwealth of Nations). Bougainville would also be responsible for entry into its own multilateral and bilateral treaties, trade agreements and defence alliances.

The remainder of this part is organised around the same five aspects of governance used to explain existing arrangements and the possibilities for greater autonomy in Parts 3 and 4. In relation to each aspect, it identifies the kinds of changes that might be made to realise independent statehood for Bougainville, whether by assuming full responsibility for governance, exercising new powers and responsibilities, or in some other ways. Where relevant, each segment also identifies issues to be considered in the course of transition from an autonomous region of PNG to an independent state.

5.1 Powers and functions

An independent state of Bougainville would assume full responsibility for the exercise of public powers. It would also assume all the additional powers and functions necessary or relevant to its operation as a state.

Full responsibility. Existing autonomy arrangements provide the ARoB with a degree of power and extensive autonomy that in some respects comes close to those of a sovereign state.[113] However, all these powers are exercised subject to the Constitution of PNG. Some are subject to PNG law and to supervision by PNG authorities. As an independent state, Bougainville would assume full responsibility for the powers that it exercises. It would not be subject to PNG oversight in any way, unless by agreement. The results may be summarised as follows:

- Constitutional law: The Constitution of Bougainville would be the supreme law in an independent Bougainville. The PNG Constitution would have no effect in Bougainville and would not operate as a limit on the subject matter of the Constitution of Bougainville. The Bougainville Constitution would need to be changed, quite substantially in parts, to meet the new realities of independence. PNG approval would no longer be required, however, if the changes are made after independence. Given the relatively inclusive process by which the Bougainville Constitution was initially made, consideration would need to be given to an appropriate constitution-making process, and the extent to which current constitutional institutions and provisions could be carried over into an independence constitution.
- General law: Laws made by the Bougainville Parliament would be the sole source of legislation in an independent Bougainville. The legal power of the Parliament to make laws would be subject only to the limits of the Bougainville Constitution and, perhaps, to any international law that is binding within Bougainville.

[112] In 2014 and again in 2016 the Constitution of PNG s 64 was amended to permit PNG citizens to also hold the citizenship of a prescribed country.

[113] Anthony J Regan, 'Autonomy and Conflict Resolution in Bougainville, Papua New Guinea' in Ghai, Yash and Sophia Woodman (eds), *Practising Self-Government: A Comparative Study of Autonomous Regions* (Cambridge University Press, 2013) 412, 420; Joanne Wallis, 'Building a Liberal-Local Hybrid Peace and State in Bougainville' (2012) 25(5) *The Pacific Review* 613, 616.

The Bougainville government and parliament would be accountable to the people of Bougainville for the laws that are made, for the democratic processes by which they are made, for the effective execution of Bougainville law, and for compliance with law.

- Administration: An independent Bougainville also would assume full responsibility for the administration, implementation and enforcement of the laws of Bougainville. While many of these powers and functions have already been transferred or delegated, at least in part to the ARoB, independence would mean that Bougainville would exercise these functions without oversight or control from PNG. Constitutional and public office holders would be appointed by and accountable to, Bougainville institutions and, through them, to the people of Bougainville.

Additional powers. An independent Bougainville would formally assume all the powers and functions of government necessary for the government of a new state. These would include all the powers retained by PNG under existing arrangements, including, for example, currency, customs, defence, foreign relations, international trade and international civil aviation. Many of these deal, in one way or another, with relations with the outside world. Some would require new Bougainville institutions; an issue taken up in 5.3 below. Some may be able to be exercised in cooperation with other states, including PNG, as 5.4 briefly explains.

One new power in relation to currency raises particular issues that can conveniently be dealt with here. As an independent state Bougainville would need to provide for its own monetary policies, including a central bank and currency. A central bank is a government institution that issues currency and controls the amount of money that is in circulation and different interest rates. It may also act as a regulator for commercial banks operating in the state. An independent Bougainville would also need to decide how to provide a currency. The experiences of other Pacific island states suggest a range of possible options.

- Independent currency: some Pacific states have independent currencies and their own central banks.[114]
- Fixed currency: Many states with their own currencies peg or 'fix' it to the exchange rate of another currency or currencies, usually of major trading partners, to create stability for foreign investment.[115]
- Currency substitution: other small states have adopted the currency of a larger state, such as the United States or Australia.[116] For some, this means that they have not established central banks of their own, relying instead on the monetary policies of the larger state. However, a state can still use a foreign currency and establish a central bank (East Timor is an example: it uses the US currency, but established its own central bank in 2011). It is also possible for a state to use the currency of another state but still issue its own coins and notes. For example, Tuvalu uses the Australian dollar but issues its own coins that are of equivalent value to Australian coins; and a similar practice arises in East Timor, in relation to the United States dollar.

Transition. Some of the issues that may arise in the course of transition depend on decisions that would need to be made in consultation between the two governments about whether or not to take a staged or incremental approach to independence. With such an approach, the powers and functions of an independent state would gradually and progressively be transferred from PNG to Bougainville. An evolutionary approach of this kind was taken by colonial governments in relation to several Pacific states as they achieved independence.[117] More relevantly perhaps for present purposes, an incremental approach would also mirror the gradual approach to autonomy set out in the BPA, from which many lessons can be learnt.

Other transitional questions concern whether and on what basis existing laws and international legal commitments would continue to apply as Bougainville became independent of PNG.

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[114] Fiji, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu.
[115] Samoa, Solomon Islands, Tonga and Vanuatu.
[116] Kiribati, Nauru and Tuvalu use the Australian dollar; Republic of Marshall Islands, Federated States of Micronesia and Palau use the United States dollar.
[117] The standard constitutional steps taken as colonies moved to self-government and independence are outlined in Barrie Macdonald, 'Self-determination and Self-government' (1982) 17(1) *Journal of Pacific History* 51, 55–6.

PNG laws would only continue to apply in an independent Bougainville, on a transitional basis or otherwise, if permitted to do so by Bougainville laws. For example, upon becoming independent, several Pacific states picked up the laws of the colonial or another state (both statute and common law) as at a particular time, which applied until such time as they are amended or replaced by locally made laws.[118] The Constitution of PNG also included provisions to carry over the pre-independence laws made by the colonial administrators and institutions of self-government. A similar provision could be included in Bougainville's constitution to carry over laws made by the ARoB House of Representatives prior to the date of independence, leaving open the capacity for the legislature of an independent Bougainville to repeal or amend them as required.

Once an independent state is established it can negotiate and enter into its own treaties. Where such a state previously was part of another state, however, there is a question about the continuity of international arrangements that applied in its territory before independence. There are few clear rules in international law governing state succession to international treaties. States have some capacity to agree to the 'devolution' of existing treaty commitments held by the predecessor state (here, PNG) to the successor state (here, Bougainville). An independent Bougainville would have the right to declare its succession to multilateral treaties previously entered into by PNG. Succession of states does not, in itself, affect treaties establishing land or maritime boundaries, although such treaties might be renegotiated.[119]

5.2 Fiscal matters

An independent Bougainville would have fiscal autonomy in the sense that the government of Bougainville would have full responsibility for the generation of revenue (taxation, other revenues, loans, foreign aid) and would be fully accountable for its expenditure. It would have available to it a complete set of fiscal and economic powers, to exercise in accordance with its own policies. The challenge would be to use its powers to achieve fiscal self-reliance, given Bougainville's own circumstances. The PNG NRI Research Report, *Financing for Fiscal Autonomy,* identified some strategies to this end.[120] The purpose of this part is to identify the institutional arrangements that would be required in order for the government of an independent Bougainville to generate revenue, manage monetary policy, and be accountable for its expenditure.

Full responsibility. The ARoB already has a range of powers with the potential to generate revenue. As described earlier, however, many of the ARoB's powers in relation to taxation, foreign investment, foreign aid, borrowing, and the management of natural resources are shared with PNG, in the sense that consultation is needed before the powers are exercised in relation to Bougainville. In conditions of independence, this would no longer be the case. Bougainville would have the authority to develop its own fiscal and economic policies in light of the context in which it operates, and to put them into effect.

A range of consequences would follow.

First, the capacity of Bougainville to develop and implement its own policies in relation to, for example, taxation, resource rents and foreign investment would need to be significantly enhanced. To the extent that reopening the Panguna mine is a potentially significant source of revenue; this issue would need to be considered and resolved. Resolving it would require agreement between landowners and other stakeholders within Bougainville, and dealings with competitor companies.

Second, because at least in the short term an independent Bougainville would require significant financial assistance from foreign sources, potentially including PNG, the Bougainville government would require considerable negotiating capacity, to ensure that the development assistance is responsive to Bougainville's own needs.

Third, fiscal autonomy requires effective laws and institutions for accountability for government spending. The audit and accountability responsibilities of the House of Representatives, and the establishment of Bougainville

[118] Constitution of PNG schs 2.2.2, 2.4.6, 2.4.7.
[119] Andreas Zimmermann, 'State Succession in Treaties' in *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2006).
[120] Chand (n 64).

offices of the Auditor-General and Ombudsman (as provided by ARoB laws but not yet fully implemented) will be critical.

Additional powers. An independent Bougainville would assume the other fiscal and economic powers currently retained in relation to Bougainville by PNG, together with responsibility for their effective use. These would include, for example, customs duties, company tax and value added tax (VAT), as well as the new monetary and economic powers already canvassed in 5.1, of which central banking and currency are important examples.

Consistent with the earlier comments about the effective use of existing powers, in relation to these additional powers an independent Bougainville would need significant institutional capacity to develop and implement fiscal and economic policy in a way that responds to Bougainville's own circumstances. It would also need to exercise these functions in a way that ensured accountability for their exercise to the people of Bougainville and to any external stakeholders.

Transition. A range of transitional issues would arise as Bougainville geared up for the fiscal self-reliance that would accompany independence. The detail of these would depend on the outcome of the consultations over the way forward between the governments of PNG and Bougainville.

Another significant issue for transition, which would also require negotiation, concerns the ownership and division of assets and liabilities between PNG and an independent Bougainville.

The PNG NRI research report *Bougainville Referendum Outcome Issues* identifies the principles of international law that apply to the division of assets and liabilities when one state secedes from another, and explores the recent experiences of other states in this position.[121] As that report notes, there are two issues to be addressed:

- The assets and liabilities owned and shared by the two states must be identified.
- A basis for the division of those assets and liabilities must be agreed.

International law requires that parties must negotiate in good faith for an equitable division of assets and liabilities. While legal principles have been developed, these apply only if agreement cannot be reached. There is a further rule, subject to the principle of an overall equitable solution, that immovable property in the territory of the successor state (in this case, Bougainville) passes exclusively to that state without compensation. There are, however, moveable and non-physical assets and liabilities to be divided (e.g. shares in nationalised companies, and pensions). Ownership of offshore assets would become important in the negotiation of maritime borders.

In applying these principles to Bougainville, the PNG NRI report notes that it is up to the two governments to negotiate a solution. It suggests as a starting point that the existing autonomy arrangements could provide a template for determining the assets and liabilities that belong to Bougainville and PNG. The experience of other states might also suggest possible ways forward for the allocation of the national debt (perhaps with contributions from Bougainville offset by an acknowledgement of Bougainville's contribution to PNG's economy), the division of physical assets based on their location, and the division of non-physical assets and liabilities by reference to the current autonomy arrangements.[122]

5.3 Institutions

An independent Bougainville would be responsible for providing, managing and funding all necessary institutions of government, including the legislature, executive, judiciary, independent agencies, police and security services, and other public services. Bougainville's institutions would no longer be subject to supervision, control or approval by PNG, as a matter of law.

Bougainville would no longer have a direct voice in the government of PNG, through representation in the PNG Parliament or in other PNG institutions. PNG would have no direct democratic responsibilities towards Bougainville or its people.

[121] Bell and McVeigh (n 8) 40–43.
[122] Ibid 42.

Independence would not necessarily require Bougainville's institutions to do everything alone. There may be joint actions, shared services or shared personnel between Bougainville and other countries, including, most obviously, PNG. Thus, for example, Bougainville could collaborate with PNG in relation to defence or border security, or make arrangements for Bougainvilleans to access institutions in PNG (such as education or healthcare facilities, discussed further below). In an example of another kind, citizens of each state could continue to serve in the public services of the other, or the judiciary, or security services. In conditions of independence, Bougainville would be responsible for initiating and managing such arrangements on behalf of its own citizens. An independent Bougainville could also ascribe to regional pooling initiatives that currently provide services across Pacific island states in a range of matters.[123]

Importantly, any such arrangements would be subject to the agreement of the other state and would be possible only if they are compatible with the constitution and laws of the other state, including their citizenship provisions.

Full responsibility. The ARoB already has its own legislature (the House of Representatives) and executive (the Bougainville Executive Council). Existing autonomy arrangements already provide for a Bougainville judiciary, Auditor-General, Ombudsman, Police and Corrections. Some of these institutions are yet to be fully established. In the meantime, the ARoB relies on PNG equivalents as a transitional measure. For the purposes of independence, Bougainville would need to establish all its own institutions, unless arrangements for sharing can be made with PNG, as a now separate state. Bougainville would need to decide and implement arrangements for membership, appointment and dismissal of senior office holders, and for audit and accountability.

Additional institutions. In an independent Bougainville, institutions would be needed to implement and manage the various categories of new powers and responsibilities identified in 5.1 and 5.2. Some of these institutions would be new. Bougainville would be responsible for their funding, staffing and arrangements for accountability.

Three sets of institutions need particular mention.

- **Head of state:** A decision would need to be made about who would be the Head of State of an independent Bougainville: the President of Bougainville or a person representing the monarch, if the link with the monarchy based in the United Kingdom is maintained. In the latter case, this would be an issue to be negotiated with the representatives of the Crown and, potentially, the United Kingdom government.
- **Diplomatic corps:** Independent statehood requires diplomatic representation in regional and international institutions and in other states likely to be significant to Bougainville. It would be possible to minimise the cost of this by sharing embassies with other states, with their agreement. It may also be possible to confer authority to exercise diplomatic functions on behalf of Bougainville on diplomatic representatives of other countries. On the other hand, if negotiations are likely to be needed to serve Bougainville interests, it will be important for these to be conducted by people who can speak on behalf of Bougainville.
- **Court of final appeal:** Under existing autonomy arrangements, the Supreme Court of Papua New Guinea is the final court of appeal for Bougainville.[124] As an independent state, Bougainville would create its own court of final appeal drawing on its own judges and, if required, foreign judges. It could also designate an external court as its court of appeal as a transitional measure, using, for example, the Judicial Committee of the Privy Council in London, or the highest courts of Australia (as Nauru did until 2018), New Zealand (as Tokelau does) or PNG.

Transition. At least two questions arise in this category for transition to independent statehood.

The first and most obvious is that it would take time to establish new Bougainville institutions and to develop the capacity of all Bougainville institutions to the level that complete self-reliance requires. Strategies for capacity building would be needed. How these might work and the time available for them would depend on the outcome

[123] For an overview see Matthew Dornan and Tess Newton Cain, 'Regional Service Delivery among Pacific Island Countries: An Assessment' (2014) 1(3) *Asia and the Pacific Policy Studies* 541.
[124] Bougainville Peace Agreement arts 127, 285; Constitution of PNG s 308(5).

of consultations between the two governments in the wake of the referendum vote.

The second question is how to manage any interim period. For this purpose, it may be possible to enter into cooperative arrangements with PNG or other states. These possibilities would need to be anticipated in advance and managed.

5.4 International relations

In an independent Bougainville, the arrangements for intergovernmental relations between Bougainville and PNG, which are so critical for the operation of Bougainville as an autonomous region within PNG, would no longer apply. In their place, there may be international relations of various kinds between Bougainville and other states, including PNG. International relations between independent states differ from intergovernmental relations between levels of government within the same state. International relations depend on the agreement of each of the states involved. Each state is likely to be guided by its own self-interest, in the exercise of responsibility for their own peoples. Formal agreements between independent states are governed by international law.

The discussion below deals separately with the relations of an independent Bougainville with PNG and with other states, on the assumption that PNG and Bougainville are likely always to have a special relationship. Part 5.6 deals with the options suggested by the experience of some other states of a relationship between Bougainville and another state that falls just short of independence.

Relationship with PNG. PNG and an independent Bougainville are likely to maintain a special relationship, based on historical ties, geographical proximity and connections between their peoples. There are a range of different ways in which this connection can be expressed through formal and informal institutions and procedures, to the benefit of the peoples of both states.

The ties between the independent states of Australia and New Zealand provide only one of many examples from world experience:

- The citizens of each state have special access to some of the services in the other, although not necessarily on a reciprocal basis. For example, Australian citizens can study in New Zealand universities on the same terms as local students, and vice versa.
- Australia and New Zealand have a wide ranging 'Closer Economic Relations' agreement, designed to eliminate barriers to trade between the two states, which extends to agreements relating to the regulation of commerce across state boundaries.[125] A similar approach for Bougainville and PNG could include harmonisation of rules and regulations in shared spheres of activity (meaning the rules of each state are consistent) or mutual recognition (meaning that the state recognises the regulatory standards of the other state, even if they are not identical).
- Australia and New Zealand have reciprocal visa categories for each other's citizens.

Relations with other states. As an independent state, Bougainville would have capacity to conduct international relations with other states, including entry into treaties and membership of international and regional organisations. Interstate relations with states other than PNG might include bilateral relations with neighbouring states (e.g. Solomon Islands) on issues of shared importance, trade and investment agreements, and arrangements with states and international non-governmental organisations that provide financial and other assistance to Bougainville.

There are myriad other relationships that an independent Bougainville might forge with other, usually neighbouring, states for particular purposes, such as sharing of services, mobility of peoples, provision of currency and receipt of aid, to name only a few. Such arrangements would require the agreement of Bougainville and the other state or states. Usually, there is mutual benefit of some kind.

[125] Cheryl Saunders, 'To Be or Not to Be: The Constitutional Relationship between Australia and New Zealand' in David Dyzenhaus et al (eds), *A Simple Common Lawyer: Essays in Honour of Michael Taggart* (Hart, 2009) 251.

5.5 Identity

Independent statehood would itself be a powerful symbol of Bougainvillean identity. It would have the potential to bring the people of Bougainville together in a shared state of their own, operating in their shared interests. The existing symbols of Bougainville, including the flag, would be the principal symbols to be used on public occasions. Other symbols may be created, of which celebration of the anniversary of independence is a possible example, further reinforcing identity. A new Bougainville citizenship, which would need to be created, would have practical purposes but would have the potential to reinforce identity as well.

Two additional points should be made.

First, the identity of an independent Bougainville would be the identity of an independent state in an interdependent region and an interdependent world. It would also be the identity of a state with a history that at various points in the past had involved close links with other states, including PNG, which have helped to shape its people and its current circumstances, and which will also be relevant to its future. These considerations should be taken into account in thinking about the identity of an independent Bougainville and positioning it in the international community of states.

Second, identity requires more than formal independence and the symbols of it. Identity demands an effective state, with institutions capable of governing in ways that are responsive to the needs of its people. An independent Bougainville government would need to work effectively for its own people to develop a resilient internal identity to underpin the foundations of its legitimacy.

In the event of Bougainville's independence, PNG would also need to take steps to adapt its identity as a state without Bougainville, which potentially might extend to a new understanding of the unitary PNG state and the status of the provinces within it.

5.6 Degrees of independence

It is important not to overestimate what independent statehood means in contemporary conditions of globalisation. In practice, no state operates in isolation from other states, and some are more dependent than others. States share many connections, through membership of the international community and regional communities, international trade and investment, the multiple identities of peoples, and, relevantly to Bougainville, the provision and acceptance of foreign aid. Smaller states can be vulnerable to larger states in international negotiations and interactions. Increasingly, groupings of regions of states are used to assist states to further their interests in a globalised world. Smaller states sometimes enter into close relations with other states to conserve resources or for economic or security purposes.

Sometimes arrangements between two states are closer still, so that the status of one falls just short of independent statehood, in order to take advantage of the benefits that association with the other state brings. There is a variety of such relationships across the Pacific region.[126] Two that may be relevant to Bougainville are exemplified by Cook Islands and Marshall Islands, as explained more fully below. Both are described as forms of 'free association' although their characteristics differ in some important ways.

Cook Islands describes itself as having 'full self-government in free association with New Zealand'. Under this relationship, Cook Islanders are citizens of New Zealand, with New Zealand passports. New Zealand carries out the functions of external affairs and defence on behalf of the Cook Islands, in consultation with it. The Cook Islands uses the New Zealand dollar as its currency.

One consequence of this arrangement is that the Cook Islands is not formally an independent state and is not a member state of the United Nations. The arrangement is very close to independence, however; so close, that the Cook Islands is a party to some international treaties and is represented on some United Nations treaty bodies. The Cook Islands explains its choice as enabling its people 'at any time in the future, if they so desire, [to] move

[126] For discussion see Karl Kössler, Francesco Palermo and Jens Woelk, *Options for Bougainville's Autonomy Arrangement: A Study from a Global Comparative Perspective* (National Research Institute Papua New Guinea, August 2018) ch 3.

into full independence, or any other status that may become practicable, by a unilateral act, that is, one which New Zealand has denied itself the power to countermand'[127]. In other words, acquisition of full independence lies entirely within the power of the Cook Islands; the current arrangement is one of convenience, which Cook Islands considers suit its current circumstances. A similar arrangement applies in Niue.

Marshall Islands has a Compact of Free Association with the United States. Unlike the Cook Islands, the Marshall Islands is a fully sovereign state and a member state of the United Nations.[128] The Compact therefore is an agreement between two independent sovereign states. The preamble expressly recognises that the people of the Republic of the Marshall Islands have and retain their sovereignty and their sovereign right to self-determination and the inherent right to adopt and amend their own Constitution and form of government and that the approval of the entry of the Government of the Republic of the Marshall Islands into the Compact by the people of the Republic of the Marshall Islands constituted an exercise of their sovereign right to self-determination.[129]

Under the Compact, the United States provides the Marshall Islands with considerable financial support and it is responsible for its defence. Citizens of the Marshall Islands may live and work in the United States, and the Marshall Islands use United States currency. The Marshall Islands, for their part, house military bases for the United States, including a missile test site. The Compact of Free Association is negotiated periodically. Similar arrangements apply in the Federated States of Micronesia and Palau.

Another way in which a special relationship between two independent states might be recognised is through a Treaty of Friendship. Treaties of Friendship were used in the 19th and early 20th century as a tool of imperialism, but upon independence some Pacific states updated the concept to express continuing connections between two independent states rather than colonial control. In contrast to the Compacts of Free Association that apply in Cook Islands and Marshall Islands, a Treaty of Friendship is more a statement of principles of cooperation between two states. For example, the *Treaty of Friendship between the Government of Samoa and the Government of New Zealand*, signed in 1962 upon Samoa's independence provides for:

- a continued relationship 'governed by a spirit of close friendship';
- consultation between the two governments on matters of mutual concern;
- assurances that citizens of each state living in the territory of the other are given equitable treatment;
- a commitment from the government of New Zealand to provide assistance to the government of Samoa to conduct international relations (e.g. act as a channel for communications between Samoa and other governments or provide consular functions on behalf of Samoa). This is framed with the assurance that such assistance is for as long as the Government of Samoa wishes and is exercised in a way that does not impair Samoa's right to formulate its own foreign policies.[130]

[127] Government of the Cook Islands, 'Special Relationship with New Zealand' http://www.ck/govt.htm#nz

[128] United States Department of State, 'US Relations with Marshall Islands' https://www.state.gov/u-s-relations-with-marshall-islands/

[129] Compact of Free Association Amendments Act 2003, http://www.uscompact.org/files/RMI%20Publications/Compact%20Documents/Amended%20Compact%20Act.pdf

[130] *Treaty of Friendship between the Government of Samoa and the Government of New Zealand,* signed 1 August 1962, Apia Samoa https://treaties.un.org/doc/Publication/UNTS/Volume%20453/volume-453-I-6515-English.pdf

Ch. 6 Conclusions

There is much work to be done to realise in practice the autonomy that Bougainville already has, and to extend it to a form of greater autonomy or independence. Whatever the referendum decision, extensive consultation between the two governments will be necessary to make choices about issues and options and to determine a process for transition. If it eventuates, a relatively long transition period is not unusual in world experience as a means of dealing with such complex questions. It would also reflect the values of listening and consensus embedded in the Melanesian way.

The overriding goal is to ensure that the outcome works effectively for the people of Bougainville and maintains and fosters peace. In this, Bougainville and PNG can draw on the precedent of the negotiations that produced the BPA, reinforced by the values of Melanesian leadership, consultation and consensus.

We hope that the analysis in this report will assist the governments and peoples of PNG and Bougainville and their advisers to understand the legal and institutional possibilities under both greater autonomy and independence, in comparison to current arrangements. In this they may also be assisted by the Appendix, which summarises in table format the differences between the current arrangements, greater autonomy, and independence in each of the five aspects of governance: powers and functions, fiscal matters, institutions, intergovernmental relations, and identity.

In many ways, the options set out here are cumulative. Adequate implementation of the existing autonomy arrangements is necessary as a foundation to greater autonomy (and, indeed, would provide greater autonomy than that presently experienced by the people of Bougainville). Deep and effective regional autonomy might enable Bougainville to achieve self-determination within PNG. Full responsibility for, and implementation of, many of the aspects of existing autonomy would also be required under independence. This is not to say that independence, if that is the agreed outcome, ought to be delayed; rather, if as a result of the referendum independence is envisaged after a period of transition, it would be useful to be clear about the objectives and milestones in that transitional process. The options set out in this report can inform negotiators as they chart that course.

References

Bell, C. and McVeigh, R. (2018). *Bougainville referendum outcome issues.* (PNG NRI Research Report 05). Port Moresby: Papua New Guinea National Research Institute.

Bougainville Peace Agreement and Referendum: Key Messages and Frequently Asked Questions, 2019.

Bougainville Peace Agreement signed at Arawa on 30 August 2001 and published in National Gazette No. G 146 of 16 November 2001.

Bougainville Referendum Commission. (2019). *Descriptions of the Bougainville Referendum Options.* Retrieved from http://bougainville-referendum.org/publications/

Braithwaite, J., Charlesworth, H., Dunn, L., and Reddy, P. (2010). *Reconciliation and architectures of commitment: Sequencing peace in Bougainville*. Canberra: ANU Press.

Carl, A. and Garasu, L. (2002). *Accord: Weaving Consensus - The Papua New Guinea-Bougainville Peace Process*. London: Conciliation Resources.

Chand, S. (2018). *Financing for fiscal autonomy: Fiscal self-reliance in Bougainville* (PNG NRI Research Report 03). Port Moresby: Papua New Guinea National Research Institute.

Constitution of the Autonomous Region of Bougainville. (2004). Retrieved from http://www.abg.gov.pg/government/constitution

Constitution of the Independent State of Papua New Guinea. (1975). Retrieved from http://www.parliament.gov.pg/constitution-of-the-independent-state-of-papua-new-guinea

Constitution Transformation Network and International IDEA. (2018). *Implementing Federalism.* Melbourne Forum on Constitution-Building: Constitutional INSIGHTS No 2. Retrieved from https://law.unimelb.edu.au/__data/assets/pdf_file/0006/2903694/MF-Constitutional-INSIGHT-02-Implementing-Federalism.pdf

Crawford, J. (2006). *The Creation of States in International Law.* 2nd ed. Oxford: Clarendon Press.

Dornan, M., and Newton Cain, T. (2014). Regional Service Delivery among Pacific Island Countries: An Assessment. *Asia and the Pacific Policy Studies,* 1(3): 541–560.

Dziedzic, A. and Saunders, C. (2019). *Constitutional Implementation for Sustainable Peace.* Melbourne: Constitution Transformation Network. Retrieved from https://law.unimelb.edu.au/__data/assets/pdf_file/0006/3121728/FBA-FINAL-Report-15-Aug-19.pdf

Ghai, Y. and Regan, A. (2006). Unitary State, Devolution, Autonomy, Secession: State Building and Nation Building in Bougainville, Papua New Guinea. *The Round Table* 95(386): 589-608.

Government of the Cook Islands. Special Relationship with New Zealand. Retrieved from http://www.ck/govt.htm#nz

Government of East Timor Maritime Boundary Office. The Law of the Sea. Retrieved from http://www.gfm.tl/learn/the-law-of-the-sea/

Government of Papua New Guinea and Autonomous Bougainville Government Joint Supervisory Body. (2018). Agreed Record of Outcomes. Meeting at Arawa, Autonomous Region of Bougainville, 29 June 2018.

Government of Papua New Guinea and Autonomous Bougainville Government Joint Supervisory Body. (2018). *Second Independent Autonomy Review*. Unpublished.

Government of Papua New Guinea and Autonomous Government of Bougainville. (2013). *Joint Review of*

Bougainville's Autonomy Arrangements. Waigani: Papua New Guinea Government Printer.

Honourable President John Momis. (2019). Address to the National Parliament by the President of the Autonomous Region of Bougainville.

Honourable Sir Puka Temu. (2019). Ministerial Statement to the National Parliament on the Bougainville Referendum and Peace-Building in Bougainville.

Kössler, K., Palermo, F., and Woelk, J. (2018). *Options for Bougainville's autonomy arrangement: A study from a global comparative perspective (*PNG NRI Research Report 04). Port Moresby: Papua New Guinea National Research Institute.

Macdonald, B. (1982). Self-determination and Self-government. *Journal of Pacific History* 17(1): 51-61.

Masono, R. (2006). *Government Capacity and Citizen Expectations in Bougainville: The Impact of Political Autonomy* (Crawford School of Economics and Government Policy and Governance Discussion Paper 06-08). Canberra: Australian National University.

McKenna, K. (2019). *Status and implementation of the Bougainville Peace Agreement and implications for referendum.* (PNG NRI Research Report 06). Port Moresby: Papua New Guinea National Research Institute.

Nisira, P. (2017). *Leadership Challenges for the Autonomous Bougainville Government* (State, Society and Governance in Melanesia Discussion Paper No 2017/3). Canberra: Australian National University.

Organic Law on Peace-Building in Bougainville — Autonomous Bougainville Government and Bougainville Referendum 2002. Certified on: 25/6/2002.

Radio New Zealand. (2019). *Bougainville and PNG govts further define referendum choices.* (2019). Retrieved from https://www.rnz.co.nz/news/pacific/391965/bougainville-and-png-govts-further-define-referendum-choices

Regan, A.J. (2013). Autonomy and Conflict Resolution in Bougainville, Papua New Guinea. In Ghai, Y. and Woodman, S. (Eds.), *Practising Self-Government: A Comparative Study of Autonomous Regions.* Cambridge: Cambridge University Press.

Saunders, C. (2009). To Be or Not to Be: The Constitutional Relationship between Australia and New Zealand. In: Dyzenhaus, D., Hunt, M., Huscroft, G. and Taggart, M. (Eds.), *A Simple Common Lawyer: Essays in Honour of Michael Taggart.* Oxford: Hart.

United Nations. (n.d.). About UN Membership. Retrieved from https://www.un.org/en/sections/member-states/about-un-membership/index.html

United States Department of State (n.d.). US Relations with Marshall Islands. Retrieved from https://www.state.gov/u-s-relations-with-marshall-islands/

Wallis, J. (2014). *Constitution Making during State Building.* New York: Cambridge University Press.

Wallis, J. (2012). Building a Liberal-Local Hybrid Peace and State in Bougainville. *The Pacific Review* 25(5): 613–635.

Webster, T. (2019). Planning for the Implementation of the Bougainville Referendum Outcome (Bougainville Referendum Fortnightly Commentary No. 10). Port Moresby: Papua New Guinea National Research Institute.

Zimmermann, A. (2006). State Succession in Treaties. In: Max Planck Encyclopedia of Public International Law. Oxford: Oxford University Press.

		Existing autonomy	Possible options for greater autonomy	Independence
POWERS and FUNCTIONS	Division of powers	Powers are divided by subject matter between the PNG and ARoB. Powers allocated to ARoB are gradually transferred from PNG to ARoB, following a process set out in law. Some powers and functions allocated to ARoB have not yet been fully transferred. Residual or unspecified powers are vested in PNG.	Powers currently allocated to PNG could be transferred or shared with ARoB. Procedures for transfer of powers reformed to give ARoB greater unilateral authority to require transfer. Residual or unspecified powers could be vested in Bougainville rather than PNG, giving ARoB greater authority.	All powers of government will be held by Bougainville. Bougainville could decide that PNG laws will continue to apply in Bougainville as a transitional measure, until such time as amended or repealed by the Bougainville Parliament.
	Limitations on exercise of powers by ARoB	Legal constraints on how ARoB may exercise certain powers.	Legal constraints on the exercise of existing powers (e.g. requirements for approval by PNG government for some ARoB actions; requirements that ARoB laws are consistent with PNG laws) could be removed. This would increase the power, responsibilities and autonomy of ARoB.	The lawmaking and executive powers of the Bougainville government would be limited only by the Bougainville constitution.
	Specific powers and functions			
	Administration of justice	Allocated to ARoB, with some restrictions (see 'Institutions: Judiciary' below).	Consider establishing an ARoB final court of appeal for Bougainville matters.	Bougainville fully responsible (existing power).
	Agriculture	Allocated to ARoB, transfer by MOU 2011.		Bougainville fully responsible (existing power).
	Arts	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Building regulation	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Cemeteries	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Censorship	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Central banking	Powers in relation to central banking and allocated to PNG government. Provision for ARoB to assume some responsibilities once it has achieved fiscal self-reliance.	ARoB could assume some responsibilities for central banking, as anticipated in current autonomy arrangements.	Bougainville would have its own monetary policy, although the need for a central bank would depend on decisions about adopting a fixed or foreign currency.
	Children	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Churches & religion	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Civil registration	Allocated to ARoB, transfer by MOU 2013.		Bougainville fully responsible (existing power).
	Communications within Bougainville	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Community development	Allocated to ARoB, transfer by MOU 2009.		Bougainville fully responsible (existing power)
	Corporation law	Allocated to ARoB.		Bougainville fully responsible (existing power).

		Existing autonomy	Possible options for greater autonomy	Independence
POWERS and FUNCTIONS	**Specific powers and functions**			
	Correctional services	ARoB has power to establish and govern a Bougainville Correctional Service. ARoB laws for the structure of the Bougainville Correctional Service and terms of service for officials must be consistent with those of PNG.	Requirement for consistency with PNG laws might be amended or removed.	Bougainville fully responsible (existing power).
	Criminal law	ARoB has power to adopt the national Criminal Code and amend national laws relating to summary offences and other criminal laws as they apply in Bougainville. Any such amendments require the agreement of the national government.	Requirement for national government agreement to ARoB criminal laws might be removed.	Bougainville fully responsible (existing power).
	Culture	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Currency	Powers in relation to currency allocated to PNG government.		Bougainville would have its own monetary policy and currency. Options include: an independent fixed currency, with or without a Bougainville central bank, or adoption of a foreign currency.
	Customs	Allocated to national government.		Bougainville fully responsible (new power). Possibility of arrangements with other states.
	Defence	Allocated to national government. The PNG Defence Force can only send personnel to Bougainville for search and rescue and assistance in natural disasters, with consent of ARoB.		Bougainville fully responsible (new power). Bougainville could establish its own defence force and/or enter into security arrangements with other states.
	Education	Available to ARoB, transfer by MOU 2011 and *Bougainville Education Act 2013.*		Bougainville fully responsible (existing power).
	Energy	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Environment	Available to ARoB, transfer by MOU 2015.		Bougainville fully responsible (existing power).
	Emergencies	The power to declare an emergency in Bougainville is shared between the two governments.	Require consultation or attempted consultation with the ABG before a national emergency is declared with effect in the ARoB.	Bougainville fully responsible (extending existing power).
	Family law	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Firearms control	Allocated to national government.	Allocated to or shared with ARoB.	Bougainville fully responsible (existing power).
	Fire service	Allocated to ARoB, transfer by MOU 2016.		Bougainville fully responsible (existing power)
	Fisheries – highly migratory or straddling stocks	Allocated to national government. ARoB entitled to portion of revenue and to negotiate quotas.	Allocated or shared with ARoB.	Bougainville fully responsible (new power). Bougainville's maritime border and Exclusive Economic Zone to be negotiated with neighbouring states under international law.
	Fisheries – other	Available to ARoB, transfer by MOU 2015, 2018.		Bougainville fully responsible (existing power).

		Existing autonomy	Possible options for greater autonomy	Independence
POWERS and FUNCTIONS	**Specific powers and functions**			
	Foreign aid	Allocated to national government. ARoB can seek foreign aid but must consult national government, and any foreign aid secured must be approved by the national government.	Expressly shared between ARoB and PNG. Remove or amend requirement for PNG approval of ARoB foreign aid.	Bougainville fully responsible (new power). See 'Fiscal Matters: Foreign Aid' below.
	Foreign relations	Allocated to national government. ARoB can request the national government for assistance in negotiation of international agreements of relevance to Bougainville. National government must consult with ARoB government where PNG's entry into an international agreement is likely to affect the exercise of the functions and powers available to the ARoB.		Bougainville fully responsible (new power). An independent Bougainville could enter into treaties with other states, seek membership of international organisations such as the United Nations and regional organisations such as the Pacific Islands Forum.
	Foreign investment	Shared between ARoB and PNG. Applications for foreign investment in Bougainville are considered by both governments.	Requirement for joint review could be amended or removed, giving ARoB greater control over foreign investment in Bougainville.	Bougainville fully responsible (extending existing power).
	Forestry	Allocated to ARoB, transfer by MOU 2010.		Bougainville fully responsible (existing power).
	Gambling	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Harbours & marine	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Health	Allocated to ARoB, transfer by MOU 2011, *Health Partnership Act 2017, HIV Prevention Act 2011.*		Bougainville fully responsible (existing power).
	Heritage	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Home affairs	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Housing – state owned	Allocated to national government.	Allocated or shared with ARoB.	Bougainville fully responsible (new power).
	Housing – other	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Immigration	Allocated to national government.	Allocated or shared with ARoB. Consider vesting some power to control movement into Bougainville in the ARoB, balancing right to freedom of movement.	Bougainville fully responsible (new power).
	Industrial relations	Allocated to national government.	Allocated or shared with ARoB.	Bougainville fully responsible (existing power)
	Info. technology	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Insurance	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Intellectual property	Allocated to ARoB.		Bougainville fully responsible (existing power).
	International civil aviation	Allocated to national government, possible to delegate aspects to ARoB.	Aspects could be allocated to or shared with ARoB (cf. delegation).	Bougainville fully responsible (new power).
	International shipping	Allocated to national government, possible to delegate aspects to ARoB.	Aspects could be allocated to or shared with ARoB (cf. delegation).	Bougainville fully responsible (new power).

		Existing autonomy	Possible options for greater autonomy	Independence
POWERS and FUNCTIONS	**Specific powers and functions**			
	International trade	Allocated to national government, possible to delegate aspects to ARoB.	Aspects could be allocated to or shared with ARoB (cf. delegation).	Bougainville fully responsible (new power).
	Labour & employment	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Land & natural resources	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Land, sea & air transport	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Languages	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Leadership Code	The Constitution of Bougainville provides for a Leadership Code, which will come into effect when the Office of the Ombudsman is established. The Bougainville Code of Conduct must be similar to and require standards not less than those in the PNG Code.	Requirement for consistency with PNG laws might be amended or removed.	Bougainville fully responsible (extension of existing power).
	Licensing of public entertainment	Allocated to ARoB		Bougainville fully responsible (existing power).
	Liquor	Allocated to ARoB, transfer by *Liquor Control Act 2013*		Bougainville fully responsible (existing power).
	Livestock	Allocated to ARoB, transfer by MOU 2011		Bougainville fully responsible (existing power).
	Local level government	Allocated to ARoB, transfer by B*ougainville Community Government Act* 2016.		Bougainville fully responsible (new power).
	Manufacturing	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Mining	Allocated to ARoB, transfer by MOU 2008, *Mining Act 2015.*		Bougainville fully responsible (existing power).
	Oil and Gas	Allocated to ARoB.		Bougainville fully responsible (existing power)
	Parks & reserves	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Physical planning	Allocated to ARoB, transfer by MOU 2011 and 2015, *Physical Planning Act 2013.*		Bougainville fully responsible (existing power).
	Police	ARoB has powers to establish and govern the Bougainville Police Service, transferred in 2003. ARoB laws for the structure of the Bougainville Police Service, terms and conditions of service and training must be consistent with those of PNG.	Requirement for consistency with PNG laws might be amended or removed.	Bougainville fully responsible (existing power).
	Postal services	Allocated to national government, possible to delegate aspects to ARoB.	Aspects could be allocated to or shared with ARoB.	Bougainville fully responsible (new power).
	Professionals	Allocated to ARoB.		Bougainville fully responsible (existing power).

		Existing autonomy	Possible options for greater autonomy	Independence
POWERS and FUNCTIONS	**Specific powers and functions**			
	Public Holidays	Allocated to ARoB, transfer by *Public Holidays Act 2011.*		Bougainville fully responsible (existing power).
	Public service	ARoB has power to establish and govern a Bougainville Public Service. ARoB laws and regulations relating to Bougainville Public Service made following consultation with PNG government and must be compatible with PNG laws.	Requirements for compatibility with PNG laws and consultation with PNG government might be amended or removed.	Bougainville fully responsible (existing power).
	Public works	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Quarantine	Allocated to national government.		Bougainville fully responsible (new power).
	Science & technology	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Sports & recreation	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Statistics (other than census)	Allocated to ARoB.		Bougainville fully responsible (extension of existing power). Bougainville would be responsible for conducting its own census and would not be included in PNG census, unless by agreement.
	Symbols	Allocated to ARoB, transfer by *Bougainville Emblem, Anthem and Flag Protection Act 2018.*		Bougainville fully responsible (existing power). See 'Identity' below.
	Telecommunications	Allocated to national government. Process for ARoB to assume some responsibility.	ARoB could assume some responsibilities, as anticipated in current autonomy arrangements.	Bougainville fully responsible (new power).
	Time zones	Allocated to ARoB, transfer by *Standard Time Act* 2014.		Bougainville fully responsible (existing power).
	Tourism	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Trade, commerce & industry	Allocated to ARoB, aspects transferred by *Bougainville Inward Investment Act 2013.*		Bougainville fully responsible (existing power).
	Waste management	Allocated to ARoB.		Bougainville fully responsible (existing power)
	Water & sewerage	Allocated to ARoB. Sanitation MOU 2012 for ARoB to implement national legislation		Bougainville fully responsible (existing power).
	Water resources	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Wildlife preservation	Allocated to ARoB.		Bougainville fully responsible (existing power).
	Wills & succession	Allocated to ARoB.		Bougainville fully responsible (existing power).

		Existing autonomy	Possible options for greater autonomy	Independence
FISCAL MATTERS	Grants	PNG is required to provide a range of grants to ARoB. Some are for specific purposes and come with specific conditions; others are unconditional.	Consider expanding the categories of unconditional grants or removing conditionality altogether, giving ARoB greater discretion as to how it spends the funds.	Transitional grants might be negotiated with the PNG government.
	Foreign aid	ARoB can seek foreign aid but must consult national government and any foreign aid secured must be approved by the national government.	Requirement for national government approval for foreign aid obtained by Bougainville might be removed or amended.	Bougainville will build relationships with donor states and agencies. This will require negotiating capacity to ensure that external assistance is responsive to Bougainville's needs.
	Budget	ARoB responsible for its budget, but a deficit budget requires express approval of national Minister for Finance.	The requirement for the national Minister for Finance to approve a deficit budget for ARoB could be removed.	Bougainville would have full responsibility for the generation of revenue and would be fully accountable for its expenditure. Effective audit and oversight processes and institutions required.
	Loans	ARoB government can raise domestic and foreign loans, but only after consultation with the national government.	The requirement to consult the national government before raising loans could be removed.	Full responsibility and accountability.
	Division of assets and liabilities	Assets associated with a power transferred from PNG to ARoB are also transferred.		Independent Bougainville and PNG would negotiate a division of assets and liabilities according to international law principles.
	Taxation powers	Certain taxation powers are reserved for the national government (e.g. customs duties, VAT). ARoB has the power to levy sales tax; e.g. *Sales Tax (Beer and Cigarettes) Act 2011*. Restrictions on the degree to which the ARoB can adjust the rates of income and company tax against the PNG rates.	There may be ways to increase the tax base in the ARoB through new definitions of company tax. Consider removing or amending the restrictions on the extent to which the ARoB tax rates must match national tax rates.	Full responsibility for levying taxes.
	Taxation collection	Income tax and VAT is collected in ARoB by the national tax office and remitted to the ABG in accordance with agreed formulas.		Full responsibility for collecting tax and other levies (eg customs).

		Existing autonomy	Possible options for greater autonomy	Independence
INSTITUTIONS	**Bougainville Institutions**			
	Legislature	ARoB House of Representatives elected by Bougainville people with law making powers and responsibility for oversight of the Bougainville Executive.		The House of Representatives could become the national Parliament of Bougainville.
	Executive	Bougainville Executive Council, headed by the President of ARoB.		Bougainville would require a Head of State (could continue the link with the monarchy based in the United Kingdom or become a republic).
	Public service	Bougainville Public Service governed by the *Public Services (Management and Administration) Act 2014*; Senior Appointments Act 2014. National public service agencies operate in Bougainville to deliver national programs and some programs under ARoB law, pending the further development of ARoB institutions, and ARoB public servants exercise delegated functions from PNG.	PNG involvement in the Bougainville Public Service could be amended or removed, including: • inclusion of PNG representatives on the body responsible for appointing the most senior Public Servant for ARoB; • requirement that the Bougainville Salaries and Remuneration Commission must take account of advice from the equivalent Commission in PNG on matters of pay and conditions of employment; • right of PNG government to monitor developments in Bougainville Public Service.	Bougainville would establish its own Public Service, subject to Bougainville laws and oversight by the House of Representatives and Bougainville Executive. If required, it would be possible to share resources and seek assistance from external entities (e.g. secondment programs, appointment of non-citizens, or shared or integrated offices or systems with PNG or other states).
	Police	Bougainville Police Service is part of the Royal Papua New Guinea Constabulary (RPNGC). The Chief of the Bougainville Police Service is a Deputy Commissioner of the RPNGC and reports to the Commissioner of the RPNG.	PNG involvement in the Bougainville Police Service could be amended or removed, including: • inclusion of PNG representatives on the body responsible for the appointment and removal of the Chief of the Bougainville Police; • right of the RPNGC to inspect and audit compliance of the Bougainville Police Service in maintaining and enforcing national laws.	Full responsibility for policing.
	Judiciary	Bougainville court system is part of the national court system. The Supreme Court of PNG is the final court of appeal for Bougainville. Until Bougainville courts are established, judicial services are provided by PNG. Magistrates and Local Court judges are appointed by PNG and a Judge of the National Court sits in ARoB.	The final authority of the Supreme Court of PNG over the interpretation of the Constitution and laws of Bougainville could be removed in favour of a final appellate court for Bougainville. This would require provision for, and establishment of, a superior appellate court for Bougainville. Inclusion of two representatives of the national Judicial and Legal Services Commission on the body responsible for the appointment of judges could be removed.	Bougainville will establish its own judiciary, including a court of final appeal. If required, it could use foreign judges as is the case in other Pacific states. It could also designate an external court as Bougainville's final court of appeal (e.g. the Judicial Committee of the Privy Council sitting in London; or a foreign court, as Nauru did until 2018).
	Auditor-General	Provision is made for the Office of the Bougainville Auditor-General, but it is not yet established. In the meantime, the national Auditor-General performs audit functions.	Inclusion of PNG representatives on the body responsible for the appointment of the Auditor-General could be removed.	Full responsibility for establishing and maintaining Bougainville Auditor-General.

		Existing autonomy	Possible options for greater autonomy	Independence
INSTITUTIONS	Ombudsman	Provision is made for a Bougainville Ombudsman, but it has not yet been established. National Ombudsman office established in ARoB in 2017.	Inclusion of PNG representatives on the body responsible for the appointment of the Bougainville Ombudsman could be removed.	Full responsibility for establishing and maintaining Bougainville Ombudsman.
	Diplomatic corps	Foreign Affairs powers are allocated to the national government. ARoB has no separate diplomatic representation, unless permitted by PNG to send a representative to meetings of regional organisations. A Bougainville representative may be included in national delegations to regional meetings. ARoB can request the national government for assistance in negotiation of international agreements of relevance to Bougainville.		As an independent state, Bougainville would be represented in regional and international institutions. It would establish a diplomatic corps, with embassies or commissions in other states, as required. Potential transitional or cost-saving measures include sharing embassies with other states or conferring authority to exercise diplomatic functions on representatives of other countries, with their agreement.
PNG National Institutions				
INSTITUTIONS	Legislature	Bougainville is represented in the National Parliament in a similar way to PNG provinces (three constituency seats and one regional seat).	Represent ARoB in National Parliament to reflect its special status; for example, MPs who represent Bougainville as a whole, rather than separate constituencies or act as delegates of the Bougainville House of Representatives.	Bougainville would not be represented in the PNG Parliament.
	Executive	The National Coordination Office of Bougainville Affairs (NCOBA) is an agency of the national government.	Create a new, joint institution to coordinate Bougainville autonomy, that stands alone from the PNG and Bougainville governments (replacing or reforming the NCOBA). Represent ARoB in the National Executive to reflect its special status; for example, permanent position for a Bougainville Minister in the National Executive Council.	
	Judiciary	Some adjustments for Bougainville special status.	Represent ARoB in the National Executive to reflect its special status; for example, a judge from Bougainville could be appointed to the PNG Supreme Court.	The National and Supreme Courts of PNG would cease to have jurisdiction over Bougainville laws and matters.

		Existing autonomy	Possible options for greater autonomy	Independence
INTERGOVERNMENTAL RELATIONS	Relationship between PNG and Bougainville	ARoB has a special status within PNG, and relations between it and the national government are different to those between PNG provincial governments and the national government.	New institutional structures that reflect the special status of ARoB (as compared to PNG provinces); for example, different form of representation in the national Parliament and executive: see 'PNG National Institutions' above.	PNG and Bougainville are likely to maintain a special relationship, based on historical ties, geographical closeness and connections between their peoples. These ties can be expressed through formal and informal institutions and procedures, to the benefit of the peoples of both states; for example: • access by citizens of each state to services in the other (eg health, education); • arrangements to eliminate barriers to trade; • special status for citizens in each state. It may also be possible for PNG and Bougainville to enter into a form of 'free association'.
	Intergovernmental relations	The two governments are required to consult when undertaking various law-making, executive and administrative activities that are likely to affect the other. Joint Supervisory Body, comprising equal numbers of representatives of the PNG and ARoB governments, provides a forum for negotiation.	Create a permanent institution to facilitate government-to-government relations (e.g. standing committees on particular issues, a periodic meeting of heads of government).	There are a range of mechanisms for intergovernmental relations between two independent states, including bilateral treaties, free trade agreements, MOUs.
	Dispute resolution	Mechanisms for the resolution of disputes between the two governments include negotiations facilitated by the Joint Supervisory Body, expert arbitration and court proceedings.		Disputes between two independent states would be governed by international law.
IDENTITY	Cohesive polity	Reconciliation and integration of all ex-combatants and factions within the ARoB polity.		The Constitution of Bougainville could include new mechanisms and include provisions designed to bring in disparate factions.
	Defining the people	The people of Bougainville are citizens of PNG. The Constitution of Bougainville defines who is a Bougainvillean, providing for membership by birth, descent, marriage and adoption.		An independent Bougainville would make laws for its own citizenship. Consider arrangements for dual or multiple citizenship, taking account of Bougainville diaspora and significant intermingling of populations of Bougainville and PNG.
	Relationship between Bougainville and PNG	Bougainville is an Autonomous Region of PNG, with a status distinct from that of the provinces of PNG.	Consider ways to better reflect the special status of ARoB, as distinct from PNG provinces, through new institutional structures (see 'PNG National Institutions' above).	Bougainville will need to build a new identity as an equal and sovereign state in the international community. PNG would need to build a new identity as a state without Bougainville. The special relationship between PNG and Bougainville could be expressed by international agreement (e.g. Treaty of Friendship).
	Symbols	*Bougainville Emblem, Anthem and Flag Protection Act 2018.*	Expanded use of symbols of identity (e.g. official markings of public office, currency).	Symbols of an independent state including emblem, flag, anthem, currency, oath of allegiance.

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